

any more "preposterous" to recognize these particular claims than to recognize the extraordinary claims of, say, the richest 3 percent of Americans to ownership or control of about a third of the nation's wealth (Bill Gates alone being "worth" an estimated \$46-69 billion).

138. See, e.g., the examples of such disinformation discussed by Paul Brodeur in his *Restitution: The Land Claims of the Metispe, Passanquaddy, and Penobscot Indians of New England* (Boston: Northeastern University Press, 1985). Also see Alan Van Gestel, "When Fictions Take Hostages," in James E. Clifton, ed., *The Invented Indian: Cultural Fictions and Government Policies* (New Brunswick, NJ: Transaction Books, 1990) pp. 291-312.

139. For breakdowns of this acreage, see *One Third of the Nation's Land*. For analysis, see Barsh, "Land Claims Policy."

140. Rosenthal, *Day in Court*, p. 253.

141. Memo of the Chairman to the Committee on Interior and Insular Affairs, U.S. Senate, *An Analysis of the Problem and Effects of Our Diminishing Indian Land Base, 1948-1957* (Washington, D.C.: 85th Cong., 2nd Sess., Dec. 1959) p. 101.

142. In international law, there are two primary principles of restitution: (a) "restitutio in integrum" (restoration of the former legal situation) and (b) "restitutio in natura" (returning of something wrongfully taken to its original owner). Acts of compensation or reparation are considered only if the former legal situation cannot be restored. Irvan Vasariely, *Restitution in International Law* (Budapest: Hungary Academy of Science, 1964) p. 74.

143. DeLoria, *Tribal of Broken Treaties*, pp. 223-6.

144. Consider as analogs the compensation customarily awarded for such things as "mental anguish," "pain and suffering," and "discrimination" in U.S. civil law.

145. Rosenthal, *Day in Court*, p. 257.

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Ward Churchill, Reversions of Justice

Indigenous Peoples and Anglo-American

Law, San Francisco: City Lights, 2003,

A Breach of Trust

The Radioactive Colonization of Native North America

There are whole disciplines, institutions, rubrics in our culture which serve as categories of denial.

—Susan Griffin
A Chorus of Selves

In 1903, the United States Supreme Court opined that, as a racial group, American Indians, like minor children and those deemed mentally deficient or deranged, should be viewed as legally incompetent to manage our own assets and affairs. Indians were therefore to be understood as perpetual "wards" of the federal government, the government our permanent "trustee." With a deft circularity of reasoning, the justices then proceeded to assert that, since it was Indians' intrinsic incompetence which had led to our being placed under trust supervision, we should by the same definition be construed as having no standing from which to challenge the exercise of our trustee's authority over us.¹

Thus did the U.S. formally and unilaterally assign itself "plenary"—that is, absolute and unchallengeable—power over all native lands, lives and natural resources within the forty-eight conterminous states of North America, as well as Alaska, Hawai'i and other external possessions such as Guam and "American" Samoa. The only curb upon the imagined prerogatives of the United States in this regard was/is an equally self-appointed fiduciary responsibility to act, or at least claim to act, in the "best interests" of those it had subjugated both physically and juridically.² Although the basic proposition at issue has undergone almost continuous modification and perfection over the years, it remains very much in effect at present.³

The scale and implications of the situation are in some ways staggering. In its 1978 final report, the government's own Indian Claims Commission conceded that after more than thirty years' intensive investigation, it had been

unable to find evidence that the U.S. had ever acquired anything resembling legitimate title to about a third of its claimed territoriality, all of which therefore remains native property in a legal sense.⁴ The approximately 2.5 percent of U.S. territory currently reserved for Indian use and occupancy—most of it still held in federal trust status—is also extraordinarily rich in mineral resources.⁵ As much as two-thirds of the uranium ore the U.S. claims as its own is situated within reservation boundaries, as is about a quarter of the readily accessible low sulfur coal, up to 20 percent of the oil and natural gas, and substantial deposits of molybdenum, copper, bauxite and zeolites.⁶

The Bureau of Indian Affairs (BIA), a component of the U.S. Department of Interior, presently administers trust relations with several hundred indigenous peoples and communities encompassing, by official count, some two million individuals.⁷ Simple arithmetic reveals that when the fifty million-acre of reserved land is divided by the federal tally of Indians, we end up as the largest landholding group in North America on a per capita basis. Divide the estimated dollar value of the mineral assets within the land by the number of Indians and you end up with native people as the wealthiest population aggregate on the continent (again, on a per capita basis).

All of this is, unfortunately, on paper. The practical reality is that American Indians, far from being well-off, are today the most impoverished sector of the U.S. population.⁸ We experience by far the lowest average annual and lifetime incomes of any group. The poorest locality in the United States for 23 of the past 25 years has been Shannon County, on the Pine Ridge Sioux Reservation in South Dakota, where a recent study found 88 percent of the available housing to be substandard, much of it to the point of virtual uninhabitability. The annual per capita income in Shannon County was barely over \$2,000 in 1995, while unemployment hovered in the 90th percentile.⁹

Bad as conditions are on Pine Ridge, they are only marginally worse than those on the adjoining Rosebud Sioux Reservation and a host of others. In many ways, health data convey the costs and consequences of such deep and chronic poverty far better than their financial counterparts. These begin with the facts that, overall, American Indians suffer far and away the highest rates of malnutrition, death from exposure and infant mortality (14.5 times the national average on some reservations).¹⁰

The Indian health level is the lowest and the disease rate the highest of all major population groups in the United States. The incidence of tuberculosis is over 400 percent

the national average. Similar statistics show the incidence of strep infections is 1,000 percent, meningitis is 2,000 percent higher, and dysentery is 10,000 percent higher. Death rates from disease are shocking when Indian and non-Indian populations are compared. Influenza and pneumonia are 300 percent greater killers among Indians. Diseases such as hepatitis are at epidemic proportions, with an 800 percent higher chance of death. Diabetes is almost a plague [5.8 times the general population rate].¹¹

It should come as no surprise, given the ubiquitousness of such circumstances, that alcoholism and other addictions take an inordinate toll. Although fewer Indians drink than do non-Indians, the rate of alcohol-related accidental deaths among native people is ten times that of the general population, while the rate of Fetal Alcohol Syndrome (FAS) among the newborn is 33 times greater.¹² The suicide rate among Indians is ten times the national norm, while, among native youth, it is 10,000 percent higher than among our non-Indian counterparts.¹³

All told, the current life expectancy of a reservation-based American Indian male is less than fifty years in a society where the average man lives 71.8 years. Reservation-based Indian women live approximately three years longer than their male counterparts, but general population women enjoy an average life expectancy seven years longer than non-Indian men.¹⁴ Hence, every time an American Indian dies on a reservation—or, conversely, every time a child is born—it can be argued that about one-third of a lifetime is lost. This 30th percentile attrition of the native population has prevailed throughout the twentieth century, a situation clearly smacking of genocide.¹⁵

This last is, of course, a policy-driven phenomenon, not something inadvertent or merely “unfortunate.” Here, the BIA’s exercise of trust authority over native assets comes into play. While it has orchestrated the increasingly intensive “development” of reservation lands since 1945, a matter which might logically have been expected to alleviate at least the worst of the symptoms sketched above, the Bureau’s role in setting the rates at which land was/is leased and royalties for extracted minerals were/are paid by major corporations has precluded any such result.¹⁶

Instances in which the BIA has opted to rent out the more productive areas on reservations to non-Indian ranchers or agribusiness interests for as little as \$1 per acre per year, and for as long as 99 years, are legion and notorious.¹⁷ As to mineral royalties, the Bureau has consistently structured contracts “in behalf of” Indians which require payment of as little as 10 percent of market rates while releasing participating corporations from such normal

overhead expenses as the maintenance of minimum standards for worker/community safety and environmental safeguards. In fact, most such arrangements have not even provided for a semblance of post-operational clean-up of mining and processing sites.¹⁸

Such "savings" accrue to U.S. corporations in the form of superprofits indistinguishable from those gleaned through their enterprises in the Third World, a matter which has unquestionably facilitated the emergence of the United States as the world's dominant economic power in the post-World War II context.¹⁹ Minerals such as uranium, molybdenum and zedlite, moreover, are not only commercially valuable but strategically crucial, an important factor in understanding America's present global military ascendancy.²⁰

All of this has been obtained, as a matter of policy, at the direct expense of Native North America as well as other underdeveloped regions of the world. As Eduardo Galeano once explained to mainstream Americans, with respect to the impact of their lifestyle(s) on Latin America: "Your wealth is our poverty."²¹ The correlation is no less true on American Indian reservations. It holds up even in such superficially more redeemable connections as U.S. efforts to curtail acid rain and other collateral effects of electrical power generation through reliance upon low-sulfur bituminous rather than high-sulfur anthracite coal.

The largest and most easily extracted deposit of bituminous coal in North America is located at Black Mesa, in northern Arizona, an area occupied almost exclusively by Navajos. Beginning in 1974, the federal government undertook a program of compulsory relocation to remove some 13,000 resident Navajos from the intended mining area, dispersing them into primarily urban areas and completely obliterating their sociocultural existence (until then, they had comprised the largest remaining enclave of traditionally oriented Indians in the lower forty-eight states). The land upon which their subsistence economy was based is itself to be destroyed, a circumstance barring even the possibility of their reconstitution as a viable human group at some future date.²²

The coal, once mined, is hurried to the Four Corners Power Plant and other generating facilities where it is burned to produce electricity. This "product" is then transported over massive power grids to meet such socially vital needs as keeping the air conditioners humming in the Phoenix Valley and the neon lights lit 24-hours-a-day at Las Vegas casinos. Meanwhile, 46 percent of the homes on the Navajo Reservation have no electricity at all

(54 percent have no indoor plumbing, 82 percent no phone).²³ No more fitting illustration of Galeano's equation seems conceivable.

Internal Colonialism

Historically, the term "colonialism" has been employed to describe this sort of relationship between nations. Since ratification of the United Nations Charter in 1945, however, such structural domination/exploitation of any nation or people by another, even (or especially) when it is disguised as the exercise of a perpetual "trust," has been deemed illegal within the canons of international jurisprudence. The principle has been clarified, and has received considerable amplification, in subsequent instruments, most unequivocally in United Nations General Assembly Resolution 1514 (XV), also known as the "Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960."²⁴

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken in Trust or Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principles of the Charter of United Nations.
7. All States shall observe faithfully and strictly the provisions in the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all

States, and respect for the sovereign rights of all peoples and their territorial integrity.²⁵

While this would seem straightforward enough, the Declaration's universality was muddled by a follow-up provision—General Assembly Resolution 1541 (XV)—which effectively constrained its applicability to peoples/territories separated from colonizing powers by at least thirty miles of open ocean.²⁶ This “overseas requirement” has seriously undermined assertions of the right to self-determination by American Indians and other indigenous peoples.²⁷

There are decolonization issues in the international system which are not so easily defined, such as the Palestine Question or that of South Africa, while the formation of Pakistan out of greater India and the separation of Bangladesh from Pakistan did not relate to legalisms but to political realities. On the other hand, separation by water is no guarantee of independence, as in the case of Puerto Rico, which is officially the “colony” of the United States under United Nations Trusteeship.²⁸

This last could as easily be said of Hawai'i, or such “protectorates” as Guam, “American” Samoa or the “U.S.” Virgin Islands.²⁹ In any event, the “Blue Water Thesis” institutionalized in Resolution 1541 has afforded the U.S., Canada and other U.N. member-states a useful pretext upon which to construct the pretense that their ongoing colonization of indigenous nations/peoples is not really colonialism at all. Rather, they contend, they are merely exercising the prerogative, provided in the U.N. Charter, of preserving the integrity of their own respective territories.³⁰ At present, the U.S. in particular is endeavoring to have native rights (re)defined in international law in a manner conforming to its own practice of maintaining American Indians in a condition of “domestic” subjugation.³¹

While it is true that the “internal” variety of colonialism visited upon native peoples by modern settler states differs in many respects from the “classic” models of external colonization developed by European empires over the past several centuries, it is colonialism nonetheless.³² Moreover, it is no less genocidal in its implications and effects than were the forms of overseas colonialism analyzed by Jean-Paul Sartre in his famous 1968 essay on the topic.³³ Indeed, given how seamlessly it has been imposed, how imperfectly its existence and functioning are reflected in even the most ostensibly liberatory political discourses, and how committed to attaining its formal legitimation the great majority of states have lately proven themselves, internal colonialism may well prove to be more so.³⁴

Predictably, there are a number of ways in which the Sartrean equation of colonialism to genocide can be brought to bear when examining the situation of contemporary Native North America. Several of these were suggested in the preceding section. Probably the clearest representation will be found, however, in the sorry history of how the United States has wielded its self-assigned trust authority over Indian lands and lives in pursuit of global nuclear supremacy over the past half-century.

Radioactive Colonization

The origins of the U.S. nuclear policy obviously lie in its quest to develop an atomic bomb during World War II. The “Manhattan Project” was conducted mainly at the Los Alamos National Scientific Laboratory, a huge fortified compound created in 1942 on the Pagartio Plateau, northwest of Santa Fe, New Mexico, on land supposedly reserved for the exclusive use and occupancy of the San Ildefonso Pueblo.³⁵ Uranium, the key material used in the lab's experiments and eventual fabrication of prototype nuclear weapons, was mined and milled exclusively in the Monument Valley area of the nearby Navajo Reservation.³⁶ Hanford, a uranium enrichment/plutonium manufacturing facility, was added in 1944, near the town of Richland, on Yakima land in eastern Washington.³⁷ When the first bomb was detonated on July 16, 1945, it was on the Alamogordo Bombing and Gurnery Range, now the White Sands Test Range, adjoining the Mescalero Apache Reservation.³⁸

While the official rationale for these site selections has always been that their remoteness from major urban centers was/is essential to protecting the secrecy of the research and production to which they were devoted, this in itself does not account for why they were not situated in such sparsely populated areas as western Kansas.³⁹ A better explanation would seem to reside in the fact that planners were concerned from the outset that the nuclear program embodied substantial risks to anyone living in proximity to it.⁴⁰ Such people as resided in the central plains region by the 1940s were mostly members of the settler society; those at San Ildefonso, Mescalero and Yakima were almost entirely native. For U.S. policymakers, there appears to have been no real question as to which group was the more readily expendable.

That such an assessment is none too harsh is borne out by even the most cursory review of federal complicity in the immediate postwar period. Already possessed of a nuclear weapons monopoly which it believed would allow it to dictate terms to the planet, the U.S. was unsure exactly how

much more uranium it needed to acquire.⁴¹ In such circumstances, it was impossible to entice American corporations to engage in uranium extraction. Beginning in 1947, the government's newly formed Atomic Energy Commission AEC, now the Department of Energy; DoE) "solved" the problem by arranging for several hundred otherwise destitute Navajos to be underwritten by the Small Business Administration (SBA) in starting up tiny mining operations of their own.⁴²

Although it has since been claimed that the AEC was unaware of the dangers attending this occupation, there is ample reason to believe authorities were in possession of sufficient information to realize they were consigning every Navajo they coaxed to go underground to a veritable death sentence.

It is important to realize that uranium mining is unlike most other kinds of mining in that during the course of blasting and digging for ore, radioactive radon-222 gas is released. Radon-222 is a natural decay product of uranium with a half-life of about three and one-half days. Radon gas by itself poses no real danger: as a noble gas, it is chemically inert and is simply exhaled. But its radioactive "daughter products," can settle in the lungs and injure the tissues. The primary hazard comes from polonium-218 and 214, alpha-emitting radionuclides that lodge in the lining of the lung. Uranium miners are also bombarded by gamma radiation, but the primary danger, again, stems from the ingestion and inhalation of alpha emitters. . . . Robert J. Roscoe of the National Institute for Occupational Safety and Health has shown that nonsmoking uranium miners followed from 1950 to 1984 were thirteen times more likely to die from lung cancer than a comparable group of nonsmoking U.S. veterans.⁴³

Dr. Roscoe's test group included a significant proportion of miners who had worked in relatively large, well-ventilated shafts and even open-air uranium stripping operations. The initial group of Navajos worked in tiny, unventilated shafts where radon concentrations were often hundreds of times higher than average. As a consequence, *all* the AEC/SBA miners were dead or dying of lung cancer and/or other respiratory ailments by the mid-1980s (in a preview of what by the 1990s would become national policy—and a yuppie fad—an attempt was made to blame cigarette-smoking and other personal behaviors for this health catastrophe).⁴⁴

As early as 1556, Austrian physician Georgius Agricola had described the extraordinary incidence of death by "consumption of the lungs" among Carpathian silver miners digging ores laced with radium.⁴⁵ In 1879, FH. Härtig and W.Hesse correctly diagnosed what had by then become known as *Bergkrankheit* (mountain sickness) as lung cancer, and demonstrated that

approximately three-quarters of all miners in the Schneeberg region of Saxony died of the disease within twenty years of entering the shafts.⁴⁶ By 1924, German researchers P. Ludewig and S. Lorenser had linked the Schneeberg miners' cancers to radon inhalation,⁴⁷ a connection explored more fully by American physician Wilhelm C. Hueper, founding director of the American Cancer Institute's Environmental Cancer Section, in his seminal 1942 book, *Occupational Tumors and Allied Diseases*.⁴⁸

Nor was Hueper's study the only one readily available to the AEC. In 1944, Egon Lorenz published an article in the *Journal of the National Cancer Institute* which concluded that "the radioactivity of the ore and the radon content of the air of the mines are generally considered to be the primary cause" of lung cancer among uranium miners.⁴⁹ Occupational cancer expert Fred W. Stewart went further in a 1947 issue of the *Bulletin of the New York Academy of Medicine*, predicting that there would likely be epidemic "cases of cancer and leukemia in our newest group of industrialists, workers in the field of fissionable materials."⁵⁰ Even Bernard Wolf and Merrill Eisenbud, directors of the AEC's own medical division, were warning their superiors of such dangers.⁵¹

The Navajos, of course, were told none of this. On the contrary, when Wolf and Eisenbud tried to establish minimum safety standards for miners in 1948, they were "told by Washington that the health problems of the mines were not the responsibility of the AEC, and . . . should be left to the jurisdiction of the local authorities."⁵²

The AEC had been assigned by Congress the responsibility for radiation safety in the nuclear program but, according to a bizarre interpretation of the 1946 Atomic Energy Act, the commission was bound only to regulate exposures after the ore had been mined. Responsibility for the health and safety of uranium miners was left up to individual states, a situation that Merrill Eisenbud rightly recognized as "absurd," given their lack of equipment and expertise to deal with the expected health problems [not to mention the fact that the states lacked jurisdiction on Indian reservations in any event].⁵³

Be that as it may, the AEC plainly went to great lengths to ensure that the general public remained equally uninformed. This was accomplished through a regulation requiring that all scientific papers dealing with radiation prepared under auspices of the National Institutes of Health (NIH) be cleared by the commission prior to presentation/publication. Thus, when Hueper sought to present a paper at a 1952 meeting of the Colorado State