### Advantage

#### Hopi culture is being erased, Taatawi or hopi song acts as a lifeline that mobilizes community action and re-asserts Hopi culture

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(Trevor George Reed, Itaataatawi: Hopi Song, Intellectual Property, and Sonic Sovereignty in an Era of Settler-Colonialism, Academic Commons, https://academiccommons.columbia.edu/doi/10.7916/D87S95D0, 2018)//iLake-💣🍔

The perpetuation of taatawi has taken on a new urgency at Hopi given **the lasting effects of colonization**. Widespread **fears over language and cultural loss** have brought renewed emphasis on song learning and performance: as fewer people speak hopilavayi (Hopi language), taatawi become a kind of lifeline that **connects people to the Hopi community and to Hopi lands** despite the imposition of settler-colonial political and social structures on Hopi lands.1 Given their power, the performance of meaningful taatawi have also historically functioned as a means of moving the Hopi community to action and **bringing attention to core social and political issues**. Tiffany Bahnimptewa, who was crowned Miss Hopi in 2006, memorably demonstrated how taatawi exist as something more than a mode of artistic or cultural expression. Miss Hopi is an important figure within the Hopi community. Given the central role of women in Hopi society, Miss Hopi gives voice to important community issues, and has considerable influence on social policy. During the 2006 competition, Bahnimptewa was asked to perform a cultural talent and then give a speech to the public on an issue of importance to the community. In the time she was allotted to give her speech, Bahnimptewa chose to **perform a tawi** she had learned from her taaha (maternal uncle) as a means of **advancing her platform of reducing substance abuse**. Her tawi talked about the value of family, and how important the role of the taaha is in a young woman’s life. Using a Powerpoint presentation, she showed images of corn grinding as a girl grows into a woman. 2 The song was particularly emotional as many Hopi girls today lack the support of their maternal uncle—the one who is supposed to be one of their strongest advocates in life—due to the effects of substance abuse. As she explained, Back then I knew what the song was about, and every time I sang it, I would see a lot of people crying, because it was a very heartfelt song, and a good reminder of many of our cultural values which aren’t really being talked about or shared as much any more. For Bahnimptewa, singing has a way of reaching audiences in a more complete way. “You can say a lot through speaking, but Hopi song is a whole other language. . . . **Hopi song language is more poetic**. **It brings more meaning, brings more character, more fullness to it** . . . It’s going to another level.” Bahnimptewa’s choice to sing as a form of political speech, rather than as a “cultural talent” demonstrates the notion that **“no one just sings” at Hopi**. Tawi does not necessarily exist to showcase “talent” or function as an object of “culture.” Rather, **it is a mode of collective action, an assertion of sovereignty that moves beyond settler political frameworks**. It is an example of the many ways **indigenous peoples continue to generate social, environmental, and political networks of sound-based relations to accomplish change in the contemporary world.**

#### Abstraction of Taatawi is a prerequisite to IP protection meant to erase indigenous networks and allow the settler state to easily coopt works.

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Second, **intellectual property law—particularly copyright—requires certain kinds of transformations to indigenous voices** before they can be eligible for protection against unauthorized uses. Copyright establishes as prerequisites to ownership both **a physical and a conceptual separation of indigenous voices from the networks of relations that generate them.** Through this separation, the **voice is transformed into an alienable object** rather than remaining a node of social relations between bodies. Indeed, **intellectual property law has been engineered to purify** sonic creativity of its rich networks of social relations, transforming it into an abstract “work”—what is presumed to be the product of an individual or corporate mind.194 **These transformations allow voices to be transacted efficiently** within the marketplace, thereby **permitting ownership and control** over them **regardless of the end-user**’s relationship to the networks that created them and benefit from them. Copyright’s law’s requirement that works be disembodied to receive copyright protection has most recently been codified in the 1976 Copyright Revision Act’s “fixation” requirement. **The United States Copyright Act requires that all works, including “musical works,” be “fixed in any tangible medium of expression”** for copyright protection to attach. Copyright law’s insistence that the voice be embedded in lifeless media rather than in the body—a vibrant, agentive entity—effectively **subjugates the voice, making it vulnerable to external control.** When contained by physical media, the voice is preserved in form, but also becomes easily removed from the domain of the social—it is transformed into an aesthetic object that can be pinned down in time and space. The logic behind this requirement appears to be that **works which have not been embedded in an object outside the body cannot be fully transacted** from one individual owner to another because **they do not have verifiable boundaries and endpoints.**196 In addition to requiring the physical disembodiment of voices as a prerequisite for copyright protection, the Copyright Act also imposes **a conceptual separation of the voice from its material reality**. Even though copyright law requires “works” to be physically fixed in a tangible medium, the works themselves are presumed to have no material existence; they are different from “copies,” which are “material objects . . . in which a work is fixed.”197 Through this conceptual separation, the paper and ink of a letter, for example, are considered a property that can be transacted separately from the abstract work of literature one reads in the words on the page.198 To secure its protection for our ancestors’ voices, copyright law would require the reification of a tawi’s internal relations (protecting only the sound of the voice), while conceptually **purifying it of its material networks** (the relations that connect the sound of the voice to people and other actors within the territory)—**taatawi can no longer exist with their own presence in the world; they must be hollowed out;** they are protected only insomuch as they are formulas or calculations that describe the relations between internal sonic points, not as nodes within networks of relations of which they are a vital part.199 The **disembodiment and conceptual abstraction of song and sound from their material relations** in order to receive copyright protection **is a fundamental part of settler intellectual property frameworks and, on a broader scale, the project of settler-colonialism**. As such, these transformations continue to be a pre-requisite for obtaining the protections afforded to intellectual property under settler law. 200 But, **by imposing settler philosophies of intellectual property on our ancestors’ voices, we may be required to sacrifice what matters most: the material connection between vibrant, sonic knowledge and the embodied networks within which this knowledge is generated and is meant to circulate**. It is true that a copyright holder can lawfully control certain acts that convert a reified, abstracted, disembodied “work” back into material—its reproduction, distribution, public performance or display, and the creation of derivative works. However, as is made clear in copyright’s “first sale doctrine,” **the copyright holder can’t control the new relations that develop around a hollowed-out voice after it is embedded in new material objects and sold.** **At that point, our** **ancestors’ voices can be transacted, possessed, experienced, consumed, shared, or discarded completely outside the control of the copyright holder**.

#### Understanding Taatawi as property is counter to indigenous social economies

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As a gloss, **“property” often means a thing that is owned or possessed**. **But the potency of the word is made possible in large part because of its special place in settler law:** property is a kind of ownership of a thing—tangible or intangible—that can be enforced against others through some coercive means.186 As several scholars have recently observed, **intellectual property carries with it an ontological specificity** that may or may **not fit comfortably within indigenous modes of owning** or circulating music and sound.187 First, intellectual property operates as a device of exclusion, which may be contrary to the ways sound is circulated within indigenous networks of exchange. And second, the application of copyright and other intellectual property forms to songs, ritual expressions, or other forms of the indigenous voice (i.e. to create “intellectual property”) requires certain transformations to occur in order for these rights to be claimed under the authority of the state. This kind of **ontological transformation significantly alters the structures** through which taatawi and other forms of Hopi knowledge are held and transferred, **with important implications for Hopi creativity and sovereignty.** **First,** **the circulation of sound in Hopi society operates under different economic assumptions from that of Euro-American intellectual property principles**, which have become the foundation for global regimes that govern the circulation of many types of cultural expression. See Figure 1: Comparison of Hopi and Euro-American Creative Models. Copyright, at least in the United States, has historically operated under the assumption that creativity is best stimulated by **giving individual creators a monopoly on the ability to use the works they create**. Under this model, [1] as individuals exert their labor to create new works, [2] they are likely to produce original material that may benefit society. Therefore, copyright law rewards the laborer who produces original work with [3] the right to prevent others from being able to use that work without the creator’s permission. Essentially, **the owner of a music or sound recording copyright can draw on the coercive power of the state (i.e., courts, police, customs agents, etc.) to control the circulation** (albeit in a limited way) of the work’s sound. The creators can then [4] grant permission for specific uses of the work to others in exchange for capital. As the creator accumulates capital from the work, he or she is incentivized to develop new markets for the work, to continue to develop new works, and to further refine his or her capacities in light of shifts in market demand. **Taatawi ideally circulate under different economic assumptions.** Members of Hopi society are supported not only by our own work to accumulate resources for ourselves, but through our **relationships to members of our clan**, related clans, members of our villages, and the ceremonial societies to which we belong. If you were to map all the relationships each person in a village has to others, you would see a densely packed web of reciprocity, where no one is supposed to go hungry or lack necessary resources because each person’s welfare becomes the responsibility of others.188 While accumulating personal capital to benefit one’s family is important for our modern lives, **this strong desire to share with others continues to be a fundamental aspect of being Hopi**. **Yeewa, the compositional process for taatawi**, plays an important role within this economic model because it **is a catalyst for bringing networks of people, environmental actors, and other entities into productive relations in ways that benefit the whole**. As discussed in Chapter 1, as a yeewa raises plants in his or her field, he or she encourages the plants to grow by metaphorically “feeding” them with his or her voice, and they respond to him or her by their movements and growth, thus helping the yeewa to generate the right “feeling” for the song. The sensitivity required in this exchange is such that some people won’t be able to create songs: one shouldn’t create if you are easily angered, for example.189 Through the dialogue between the farmer and his or her plants, the songs become a fusion of human and non-human lavayi (speech) and tawvö (melody). The farmer will craft his songs in response to his or her plants, and the resulting taatawi resonate within both human and non-human aesthetic domains. Once a yeewa has [1] created a good tawi, one that is full of meaning and produces positive effects on his or her plants, **the yeewa will share his or her good songs with others in the village without compensation** in the weeks leading up to a ceremonial performance. These shared songs, when feelingfully performed in ceremony will [2] bring humans, weather systems, plants, animals and other actors into productive relations. In the process of learning and performing the songs, [3] **the composer gives ownership of his or her songs to members of the village who hear them**, which not only brings the composer prestige as members of the composer’s village or kiva come to depend on him or her **to increase the welfare of the community**; the composer benefits directly when good songs are sung by the village, because [4] the **village as a whole, including the composer, experiences greater prosperity as good songs sung with a good heart tend to produce rain, good crops, and happiness** (natwani). As a result, the composer is incentivized to continue to produce more songs and to share them without need of personal remuneration. Others in the village are sometimes motivated to “out-do” him or her by composing their own songs.190 The sharing of taatawi within the Hopi creative economy **follows a principle of obligated reciprocity on the part of the listener**. Some have described this as nasimokyaata, “to borrow” or “to adorn oneself,” though in some Hopi villages this term is not used with intangible things. Some suggest the term no’i’yta, or “to share” or “give the right to use.” Finally, some have suggested the phrase tuuwat akw mongvistoti (to benefit when complete), which explains how taatawi will become beneficial to those that use them or listen to them when they are wholly realized through sincere, complete ceremonial performance. While villages seem to differ in the words they use for the principle, several composers I interviewed from a cross section of **villages essentially described the same principle whereby a listener acquires the ability to use a song from one’s village—sometimes even without asking—as long as the user gives benefit to the community or the world (and not him or herself), and/or the user provides some reciprocal benefit to the owner(s) of the song**. In the process of transferring ownership from a yeewa to the village (or a ceremonial society, if the song is meewanpi), the village (or the ceremonial society) becomes the owner of the song, and the yeewa will often “forget” the song.191 The yeewa knows as he or she composes in his or her field that the song ultimately will not be his or her own. In fact, as several older composers have told me, **in the moment the composer shares his or her songs, he or she detaches them from him or herself**, so that they can be used freely by other members of the village without his or her permission. While this may sound a lot like copyright law’s “fair use” doctrine, **there are subtle differences**. Unlike the fair use of copyrighted works, **the circulation of shared taatawi implicitly carries an obligation of reciprocity** coinciding with the song’s original purposes: either to be returned with a reciprocal gift or to be remembered and performed for the good of the world. This principle of **obligated-ownership can be instructively contrasted with another Hopi term, sokopta, or “to steal with intent to take advantage of**,” a term **whose most salient definitions include the clandestine taking of Hopi sacred ceremony for selfish purposes**, adultery, and rape.192 In comparing both of these ownership frameworks, it becomes clear that ownership of Hopi songs is not necessarily based on a logic of exclusion. **Under copyright, a copyright owner is allowed to stop others from using his or her songs so as to leverage benefits for the individual**. Instead, the circulation of **taatawi has historically operated under a logic of inclusion, where these songs are protected against “selfish” uses**, to accumulate benefits to entire networks of actors. Therefore, when indigenous communities adopt copyright and other property-based frameworks as the basis for ownership and circulation of songs and other forms of knowledge and cultural expression, they run the risk of espousing “capitalism’s commodifying logic” in the name of cultural protection, which may make upholding indigenous economic principles more complex (Brown 2003:287; see Chapter 6).

#### Copyright prevents innovation in Taatawi

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Clark Tenakhongva and I began work on Puhutawi as a way to **expand the reach of taatawi to new audiences**. I first approached Clark Tanakhongva about doing a collaborative composition after hearing about the challenges he was facing as he tried to incorporate new sounds into his songs. In a 2009 interview, Tenakhongva explained that after winning a Native American Music Award and being nominated for a GRAMMY and a Canadian Music Award for best indigenous album, **he approached his record label, Canyon Records, about adding some new elements into his songs.** “I tr[ied] to tweak it up a little bit in a different way by adding other percussion music into it,” he said. Tenakhongva specifically wanted to add African rainmakers and other kinds of percussive shakers to his songs. “**But Canyon won’t allow me to do it, because it’s taking away from the element of being traditional**. You’re kind of going into a new genre . . . .” Unfortunately for Tenakhongva, **Canyon’s interest in “working with Native American artists to develop new styles of Native American music that expand upon traditional song form and performance” excluded**, at least initially, the kinds of cross-cultural **innovations Tenakhongva was interested in pursuing**.52 And, **because Canyon claims both the composition and sound recording copyrights to Tenakhongva’s albums, Tenakhongva was forced to obtain approval from Canyon to develop any of his existing songs in new ways.**

#### Paradoxically indigenous people are rendered both invisible and hyper-visible though settler control of indigenous cultural narratives which maintains settler colonialism – only a movement focused on cultural resurgence can solve

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(Michelle Stanley, [Beyond Erasure: Indigenous Genocide Denial and Settler Colonialism](https://globalstudies.uncc.edu/sites/globalstudies.uncc.edu/files/media/Stanley_Michelle_Erasure%20of%20Indigenous%20peoples%20and%20history.pdf), https://globalstudies.uncc.edu/sites/globalstudies.uncc.edu/files/media/Stanley\_Michelle\_Erasure%20of%20Indigenous%20peoples%20and%20history.pdf, 2019)//iLake-💣🍔

Today, **Indigenous Peoples are often referred to as “invisible”** populations within academia and popular culture. **Despite the fact that over 5.2 million Native Americans live in the United States, 40 percent of Americans think Native Americans no longer exist; while 62 percent of Americans living outside of Indian Country have never met a Native American** (Campisteguy, Heilbronner, Nakamura-Rybak, 2018). These findings demonstrate the invisibility of Indigenous Peoples through historical accounts, but also, how Indigenous people are identified in daily life. In reality, many of the Americans “who have never met a Native American” have probably met an Indigenous person but did not acknowledge the individual as Native. **Indigenous recognition often lies outside of the Indigenous individuals’ control.** Both Indigenous and non-Indigenous Peoples in the U.S. overwhelming refer to the invisibility of Indigenous Peoples. Research, diversity-focused studies and reports have maintained this “invisibility” discourse regarding Indigenous populations. The invisibility discourse has consequences for Indigenous populations. **Issues that disproportionately affect Indigenous Peoples are often ignored because we are perceived as too small of a population to attract researchers, media coverage, or money and resources to address problems.** Specifically, the Missing and Murdered Indigenous Women and Girls (MMIWG) demonstrates the way the invisibility discourse harms Indigenous Peoples. According to a report funded by the U.S. Department of Justice, **4 out of 5 Native women experience violence, and murder is the third-leading cause of death among Native women** (Bachman, Zaykowski, Kallmyer, Poteyeva, & Lanier, 2008). Further, there were 5,712 cases of MMIWG in 2016, but only 116 of the cases were logged in the DOJ database. **Despite the extremely high numbers of MMIWG in the U.S., police forces have overwhelmingly failed to track MMIWG and legislation to standardize tracking has yet to be passed** (Lucchesi & EchoHawk, 2018). The MMIWG represents the ongoing settler colonial processes that cast Indigenous women’s bodies as resources to be extracted (Simpson, 2014). The refusal to appropriately address the MMIWG demonstrates settler colonial ideology that renders Indigenous Peoples invisible.

Settler colonial processes and genocide denial attempt to erase Indigenous Peoples from history and present-day society. However, in many ways, these mechanisms also render Indigenous Peoples hypervisible. The **settler state attempts to make Indigenous traditions and cultures invisible so settlers can appropriate Indigenous cultures and control Native narratives**. Adrienne Keene, Cherokee Nation, (2015) writes that “Native peoples are only ever represented as a stock set of stereotypes, including: savage warriors, subservient squ\*ws, or mystical shamans, and always set in the historic past, in contrast to contemporary modernity.” In popular culture, Indigenous people are underrepresented and misrepresented in TV shows, movies, books, photography, and the media. When National Geographic hires non-Native photographers and writers to publish photos and articles, they typically portray the tired trope of the “stoic Indian” who lives on an impoverished reservation where alcoholism and drug addiction are common. Indigenous photographers rarely receive the same attention as non-Native photographers and writers (Wilbur & Keene, 2019). In TV shows and films, Indigenous Peoples are overwhelmingly represented as criminals or savages from the past who terrorized white settlers. Media portrayals build upon what Americans learn in K-12 history curriculum to solidify settler colonial ideology that justifies the U.S. settler state. Further, these representations ignore the fact that 78 percent of Indigenous people live outside of reservations (OMH, 2018).

Additionally, the use of Native imagery and names for sports team mascots, businesses, and military weapons and operations function to make Indigenous Peoples invisible and hypervisible. Some of the most well-known sports teams’ mascots, such as the Washington Redsk\*ns and Chief Wahoo from the Cleveland Indians have become points of contention within popular culture. Many sports teams at schools throughout the U.S. use Native imagery, names, or pseudo-Indian rituals. What is absent from many debates regarding sports team mascots, is the way that they posit a certain type of Native imagery that is far removed from real lived Indigenous experiences. **Most media portrayals fail to acknowledge Indigenous resilience and resistance despite genocidal efforts and ongoing settler colonialism**. These portrayals are harmful because they dictate how Indigenous Peoples are perceived within the U.S. imaginary. The Reclaiming Native Truth report found that most Americans learn about Natives from popular culture and media (Campisteguy et al., 2018). **Americans are not learning about Indigenous Peoples in schools nor from actual Natives, but instead, rely on media and popular culture to teach them about Indigenous Peoples.** When popular culture and media portrayals rely on deficit narratives to portray Indigenous Peoples, they are (mis)educating the public.

**The hypervisibility of Indigenous Peoples is also perpetuated through cultural appropriation**. In the simplest terms, cultural appropriation is the **“taking, from a culture that is not one’s own, intellectual property, cultural expressions and artifacts, history and ways of knowledge”** (Tobias, L.K. in Keene, 2016). Cultural appropriation demonstrates the marginalization of Indigenous Peoples and represents the power imbalance between settlers and Indigenous Peoples. In the U.S. some of the most commonly appropriated items include, spiritual practices, such as prayer bundles and smudging; the use of war bonnets and headdresses; dreamcatchers; and Halloween costumes. The hypervisibility of Indigenous Peoples through cultural appropriation, media portrayals, and Native mascots represents a form of settler colonialism that is influenced by genocide denial. **The erasure of Indigenous genocide allows for the settler state to appropriate and re-write Indigenous narratives for their own benefit**. **NonIndigenous settlers make money off Indigenous cultural items and imagery.** Despite the fact that until the American Indian Religious Freedom Act of 1978, Indigenous traditions were criminalized. The erasure of this genocidal settler colonial history allows for the continuation of settler colonial practices that appropriate and control Indigenous narratives and traditions. As demonstrated throughout this chapter, genocide denial is inextricably linked to settler colonialism. Indigenous genocide denial functions as a method of settler colonialism that simultaneously renders Indigenous Peoples invisible and hypervisible. By situating genocide denial within settler colonialism, it becomes necessary to acknowledge and challenge settler colonialism within Indigenous genocide discourse. In order to appropriately challenge settler colonialism and genocide denial, scholars must be committed to decolonization and Indigenization efforts that center cultural resurgence and Indigenous sovereignty. While many scholars and communities call for decolonization, **Indigenization is necessary to challenge settler colonialism**. Stephen Gilchrist (Yamatki People) **states that “decolonizing is undoing, Indigenizing is doing”** (Waterman et al., 2018). Essentially, **decolonization disrupts colonial processes while Indigenization establishes a new or different way to function**. Indigenization refers to the “process of naturalizing Indigenous knowledge systems and making them evident to transform spaces, places, and hearts” (Antoine, Mason, Mason, Palahicky, & Rodriguez de France, n.d.). Further, Indigenization efforts should always emphasize cultural resurgence. Cultural resurgent practices “draw critically on the past with an eye to radically transform the colonial power relations that have come to dominate our present” (Coulthard, 2014). Cultural resurgence acknowledges the role of Indigenous traditions to challenge settler colonialism. Specifically, Indigenization that emphasizes **cultural resurgence focuses on developing culturally appropriate practices and policies for the tribal nation(s) being served**. Indigenization and decolonization efforts include Indigenous genocide and settler colonialism education in K-12 and higher education curriculum. Additionally, **Indigenization challenges the popular culture references and cultural appropriative practices**. By naturalizing Indigenous knowledge, Native traditions, names, and imagery retain their intended meaning and importance in the settler state imaginary. Indigenization emphasizes the centering of Indigenous perspectives, requiring the inclusion and **acceptance of Indigenous actors, actresses, photographers, writers, and other roles to regain control of Indigenous narratives** Additionally, Indigenization and decolonization efforts must support Indigenous sovereignty movements. Sovereignty refers to the political and cultural campaigns to gain self-determination and self-governance. According to the Reclaiming Native Truth report (2018), **most Americans do not support sovereignty, partly because they don’t understand what it is and its importance for Natives** (Campisteguy et al., 2018). Genocide and settler colonial discourses must acknowledge Indigenous tribal nations as sovereign in the U.S. Importantly, **the U.S. maintains settler colonialism by refusing to fully engage with Indigenous nations and tribes as sovereign entities**. Often, Indigenous nations and **tribes are characterized as existing within settler sovereignty** rather than as a nation that existed and continues to exist as a separate nation (Simpson, 2014). Specifically, **more attention needs to be focused on settler state recognition practices which deny federal recognition to many Indigenous tribal nations**. Since widespread genocide denial functions as a method of settler colonialism, it is necessary for both genocide and Indigenous studies scholars to engage in decolonization and Indigenization efforts that emphasize cultural resurgence and sovereignty. Simply **acknowledging Indigenous genocide is insufficient to disrupt settler colonialism**. Instead, decolonization and Indigenization efforts in K-12 education, higher education, and in popular culture challenge both the widespread genocide denial and settler colonialism. Specifically, these efforts combat the invisibility and hypervisibility of Indigenous Peoples by centering Indigenous perspectives and emphasizing the importance of sovereignty. The U.S. settler state continues to operate in a way that requires that “Indigenous peoples must be erased, must be made into ghosts” (Tuck and Ree, forthcoming, as cited in Tuck & Yang, 2012). **The combination of decolonization, Indigenization, cultural resurgence, and Indigenous sovereignty allows us to challenge the settler state**. **Without these efforts, genocide discourses will fail to move beyond acknowledgment and erasure rhetoric to challenge settler colonialism.**

#### Try or die to decolonize. The continuation of the settler-dominated world perpetuates a transversal structural violence that culminates in extinction.

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Western scientists\* are proclaiming the start of a ‘sixth mass extinction event’ that may involve the destruction of more than three quarters of earth’s currently-existing life forms. In their attempts to explain this phenomenon, most scientists have converged around four major, interlinked drivers: climate change, habitat destruction, species exchange, and the direct killing of plants and animals. In most cases, these drivers are understood as the unintended consequences of generic ‘human’ activity, and as a result of desirable trends such as development or urbanization (Wilson 2002; Barnosky 2014; Ceballos 2016). A crucial driver is missing from this list: transversal structural violence against Indigenous peoples and their relations, and colonial violence in particular. ‘Structural violence’ involves systemic forms of harm, exclusion and discrimination that disproportionately affect particular groups, and which can take many forms (physical, psychological, economic, gendered and others). They are embedded in and expressed through political, cultural, economic and social structures (Farmer 2009) that can persist across large spans of time and space. I use the term ‘transversal’ to refer to forms of structural violence that extend across multiple boundaries – not only those of nation-states, but also other kinds of nations (human and otherwise), communities or kinship groups, and temporalities. Prime examples of transversal structural violence include: settler colonialism, colonial genocides (Woolford et al 2014); environmental racism or ‘slow violence’, including toxification and pollution; and complexes of sexual, physical, communal, spiritual and land-based violence associated with the extractive industries. Each of these forms of violence is ecologically devastating, and their convergence in European projects of colonisation is even more so. Many formations of transversal structural violence are significant causes of the so-called ‘four horsemen’ of extinction mentioned above. For instance, ‘direct killing’ is carried out to clear land for settlement, and it occurs as a result of ecological damage caused by resource extraction. Settler colonialism, carbon-based economies and regimes of environmental racism also support forms of socio-economic organization (for instance, carbon and energy-intensive urbanized societies) that intensify climate change and increase habitat destruction. Meanwhile, colonization has played a significant role in the ongoing transfer of life forms across the planet – whether unintentionally (e.g. the transfer of fish in the bilge water of ships); as an instrument of agricultural settlement (e.g. cattle ranching), or as a deliberate strategy of violence (e.g. smallpox). However, transversal structural violence is a driver of extinction in itself, with its own distinct manifestations. First, it involves the disruption or severance of relations and kinship structures between humancommunities and other life forms, and the dissolution of Indigenous systems of governance, laws and protocols that have co-created and sustained plural worlds over millennia (Borrows 2010; Atleo 2012; Kimmerer 2013). Second, the destruction of Indigenous knowledges through policies of assimilation, expropriation, cultural appropriation and other strategies undermines these forms of order and the relationships they nurture. Third, the displacement of and/or restricted access to land by Indigenous peoples interferes with practices of caring for land or Country that are necessary for the survival of humans and other life forms (Bawaka Country 2015). Colonial genocides embody all of these forms of destruction by killing or displacing Indigenous communities, undermining Indigenous modes of governance and kinship systems, systematically destroying relationships between life forms and erasing knowledge. All of these modes of violence weaken co-constitutive relationships between Indigenous communities, other life forms and ecosystems that have enabled their collaborative survival. This results in disruptions to ecosystems – and climate – that Potawatomi scholar Kyle Powys Whyte (2016) has recently argued would have been considered a dystopia by his Ancestors. In other words, transversal structural violence, and colonial violence in particular, are fundamental drivers of global patterns of extinction. It stands to reason, then, that responses to extinction that focus on managing endangered species or populations, or ‘backing up’ genetic material, are insufficient: they leave the structures of violence intact and may add to their power. Instead, efforts to address extinction need to focus on identifying, confronting and dismantling these formations of violence, and on restoring or strengthening the relations they sever. Yet responses to global patterns of extinction are overwhelmingly rooted in Western scientific concepts of conservation – a paradigm that emerged within 20th century European colonial government structures (Adams 2004). Contemporary conservation approaches – from the creation of land and marine parks to the archiving of genetic materials – may exacerbate the destruction of relations between Indigenous peoples and their relations. For instance, conservation strategies often involve displacing Indigenous peoples from the land that they care for (Jago 2017, Brockington and Igoe 2006), or curtailing of processes such as subsistence hunting, fishing or burning that have enabled the co-survival of Indigenous groups, plants, animals and land for millennia. Meanwhile, ex situ and genetic forms of conservation (including zoos and gene banks) may violate these relationships by instrumentalizing or commodifying kinship relations. Increasingly popular conservation approaches based on Traditional Ecological Knowledge (TEK) approaches claim to center Indigenous communities and knowledges. However, they ultimately instrumentalize fragments of Indigenous knowledge systems (for instance, data on climatic change) to test or support Western approaches. As such, they leave the structures of colonization and other forms of transversal structural violence untouched, and may even exacerbate them. All of this suggests that confronting global patterns of extinction calls for decolonization and other ethos that work to eliminate transversal structural violence – and I don’t mean this metaphorically. Enabling the restoration of relations that can enable the ongoing flourishing of life on earth will require the transfer of land and power back into plural Indigenous peoples and their distinct modes of sovereignty, law and governance (Tuck and Yang 2012). These relationships and forms of order have enabled plural Indigenous peoples and their multitude of relations to co-flourish for millennia, including through periods of rapid climate change, and they are needed to ensure the continuation of this co-flourishing. This means that decolonization is not simply related to global patterns of extinction: it is necessary to ensuring the ongoingness of plural life forms on earth.

### Plan

#### The WTO regulates indigenous music

**WTO** – big bad international organization

(World Trade Organization, Copyrights and Related rights, https://www.wto.org/english/tratop\_e/trips\_e/ta\_docs\_e/modules2\_e.pdf, accessed 8/28/2021)//iLake-💣🍔

Article 2.1 of the Berne Convention, as incorporated into the TRIPS Agreement, **obliges members to protect ‘literary and artistic works’.** This expression includes ‘every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression’. Article 2.1 contains a non-exhaustive list of such works. Examples of works covered by copyright include books, newspapers, other writings, musical compositions, films, photographs, paintings and architecture.

#### Plan: The Member states of the WTO should reduce Intellectual property protection of indigenous music and cede it to indigenous Tribes or tribal members through a GNU licensing agreement

Trevor **Reed, 18** – member of the Hopi community, PhD in ethnomusicology from Columbia university

(Trevor George Reed, Itaataatawi: Hopi Song, Intellectual Property, and Sonic Sovereignty in an Era of Settler-Colonialism, Academic Commons, https://academiccommons.columbia.edu/doi/10.7916/D87S95D0, 2018)//iLake-💣🍔

As the discussion above illustrates, **copyright and other intellectual property laws are not the perfect answer to indigenous people’s demands that their creative works be protected according to their own interests** and protocols.236 As of the writing of this dissertation, copyright and other federal **intellectual property laws do not recognize tribes’ authority** to determine when and how indigenous interests apply to creative work generated on tribal lands, **how indigenous protocols governing creative work will be enforced when they conflict with settler laws**, or **how indigenous ownership interests might affect those who are not members of federally recognized Indian tribes.** And, given current politics, **the possibility of such a change in these laws seems somewhat remote**. Even if tribal laws governing copyrightable materials were enforceable by state and/or federal courts, there may very well be **indigenous voices or other creative materials that presently exist in the “public domain” or which otherwise cannot be legally reclaimed by indigenous groups**, but which tribes would still be anxious to care for and control. This leads us to ask whether another body of law that typically governs archival materials—**contract law— might provide additional solutions for indigenous communities seeking to reclaim and control uses of their ancestors’ voices**. Kathy Bowrey (2006) suggests that protocols governing ownership and circulation of Aboriginal Australian cultural materials, while not readily enforceable through existing intellectual property laws, might **nonetheless be enforceable through private agreements between indigenous groups and holding institutions.** She explains that in a number of communities— particularly the software development community—contract law has for decades been used as a means of **creating alternative ownership and circulation regimes.** These communities have generated specially tailored licensing frameworks that create pockets of industry custom through private law that are **difficult to disturb**.237 Over time, **indigenous protocols for ownership and circulation embedded in contracts with holding institutions could potentially receive recognition in copyright law** in the same ways open source (and to some degree CopyLeft)paradigms of ownership and circulation have. At the very least, as the open source software movement has shown, the **risk of litigation and the potential for community sanctions and shaming may be enough of a deterrent that regimes established through these kinds of licenses will be widely adhered to.** Open Source licensing had its origins in the early 1980s as a form of “ethical rebellion” by software programmers who were opposed to the proprietary model of software development espoused by the software giants of the day. Under the proprietary model, the use of source code had been restricted under copyright law to copyright holders (typically a software manufacturer) and its licensees (paying customers), thereby limiting the possibility for collaboration within the industry.238 To remedy the situation, the open source movement sought to move away from exclusion as the device used to manage the circulation of software, replacing it with a set of universal software licenses that actually did the opposite: open source licenses effectively prevented anyone who possessed open source software from restricting its flow.239 The first open source license was generated for the GNU (later Linux) operating system—an open source alternative to the commercial UNIX operating system.240 As Vasudeva (2014) reports, the GNU license “gives subsequent users of the copyrighted code the ability to pass along restrictions that embody open source tenets”—in other words, it exercises a copyright owner’s right to determine who reproduces or distributes software in a way that forces all subsequent users to keep the circulation of the software open without extracting royalties or placing other conditions on its use.241 The GNU GPL open source license contains a number of provisions that carry out the ideals of the open source movement despite its reliance on traditional copyright law to enforce the license. On a broad scale, the GNU license affirms the copyright rights that apply to the software it covers (“This License explicitly affirms your unlimited permission to run the unmodified Program” and “This License acknowledges your rights of fair use or other equivalent, as provided by copyright law.”).242 Nothing in the license suggests that copyright law does not apply or is not enforceable. To the contrary, unless some kind of limitation on circulation or access (including copyright rights like reproduction, distribution, or the creation of derivative works) could be exerted by the licensor, the terms of the GNU open source license probably would be unenforceable. To achieve the open source movement’s objectives, the GNU license partially negates the exclusivity of some of the copyright holder’s rights in a way that defeats copyright’s underlying premise (i.e., that owners of copyrights should have the right to exclude others from the work they create in order to advance their [or their firm’s] own financial interests). But in order to obtain the negation of the copyright holder’s exclusive ownership and circulation of the software, the Licensor imposes rules on circulation and ownership that those in the open source community must theoretically agree to to be able to use it—i.e., conditions that arguably advance collaborative innovation by allowing all potential users the ability to access and use the original software and any newly created work derived from it as long as they also give open access to others on the same, generally accepted terms. At a more granular level, the GNU 3 License propagates open source ideology through its conditional granting clause, which allows those who receive the work to use it and distribute it, but (1) only upon the recipient’s compliance with the terms of the GNU 3 open source license, and (2) only on condition that any re-grant of the work by the recipient follows essentially the same terms of the original grant along with a copyright notice providing the “rules of the game.” For example, the GNU GPL 3 granting clause contains the following language: “You may convey verbatim copies of the Program’s source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice; keep intact all notices stating that this License [and any additional terms permitted under the GNU 3 license] apply . . .; and give all recipients a copy of this License243 . . . .” “You may convey a work based on the Program . . . provided that you also meet all of these conditions: a) The work must carry prominent notices stating that you modified it . . . b) The work must carry prominent notices stating that it is released under this license . . . c) You must license the entire work, as a whole, under this License to anyone who comes into possession of a copy. This License will therefore apply, [along with additional terms added by the licensee], to the whole of the work, and all its parts, regardless of how they are packaged. This License gives no permission to license the work in any other way, but it does not invalidate such permission if you have separately received it.”244 Under the GNU GPL 3’s granting clause the licensee acts essentially as the agent of the licensor. The licensee is required to offer a license to subsequent users to use the work, but only on the conditions specified by the open source license. Importantly, the licensor does not explicitly grant the licensee the right to sublicense the work;245 rather, when the licensee provides the work to another person, the initial licensee is simply facilitating the grant of a license from the original licensor to the new user (“Each time [the licensee] convey[s] a covered work, the recipient automatically receives a license from the original licensors, to run, modify and propagate that work, subject to this License.”)246 So, there is no chain of title that can be broken or altered—all users of the work are required to be linked to the owner of the work via contract. As mentioned above, the GNU GPL 3 license also contains a “whip” of sorts to ensure compliance with its provisions. The License contains an automatic termination provision, where “[a]ny attempt otherwise to propagate or modify [the GNU license] is void, and will automatically terminate your rights under this License.”247 In practice, this means that if a software developer uses a piece of GNU-protected source code in her commercial software, but attempts to add additional exclusions to the license, her license ends and she could be sued for copyright infringement if she were to sell the software. But even if her license is terminated, the GNU GPL ensures that anyone who uses her software remains a licensee of the original licensor, bound only to the conditions of the GNU GPL. Because the license is granted anew from the owners of the work each time the original software passes from one person to another (rather than being sublicensed in a chain of licensees) any termination of a licensee’s rights “does not terminate the licenses of parties who have received copies or rights from [a licensee] under this License.”248 The terminated licensee’s unauthorized additions to the GNU GPL, if any, fall out, and the License continues on, unchanged.

Application of the GNU Open-Source License Model to Indigenous Voices **The GNU open source license, then, is a means of leveraging copyright** (or other rights to limit access to a work) i**n a way that superimposes a specific economic structure and mode of relations within a particular community**—backed up by the coercive power of the state**.** My argument here is that this same structure could be utilized to achieve the goals of indigenous groups who are seeking to **negotiate agreements with museums, archives, and even private collectors over the ownership of their ancestors’ voices**. Using Licenses to Recognize Tribal Interests in Indigenous Media First, as discussed above, the GNU GPL 3 License uses copyright law as a means of compelling compliance with its ideology and economic structure. **It effectively limits the scope of copyright rights**, but on condition that the work be used in ways that coincide with open source principles. As discussed above, the GNU license would not function unless at least some rights were held solely by the Licensor. If a work distributed by the GNU license were somehow owned by another entity or in the public domain (and physically or digitally available for the general public to make copies from), there would be no need for the public to abide by the conditions of the GNU GPL. In situations where an indigenous legal entity (individual, federally or state recognized tribe, corporation or unincorporated association of indigenous community members, etc.) clearly owns reproduction and/or distribution rights to indigenous media housed in an archive, or, if the media is not subject to copyright but the tribe or other indigenous entity has secured the right to control public access to media from the institution, **the stage is set for the indigenous owners to control the circulation of the media under a contingent licensing framework like the GNU** GPL.249 It is imperative, then, that tribes first secure agreements with holding institutions that bind the parties to an understanding of how copyrights and other exclusive intellectual property rights pertaining to indigenous media are owned, as well as an agreement to abide by any exclusive rights arising under tribal, international, or federal laws. And if tribes do not hold these rights, they should seek to reclaim them either by an institutional grant back to the tribe or some other kind of repatriation mechanisms (see Chapter 3). In cases where the holding institution might not otherwise be within the jurisdiction of the tribe or bound by the protocols established by the tribal entity,250 it is also important that these licensing agreements contain choice of law provisions that recognize tribal laws governing these materials. Some **specific terms that may allow for indigenous rights in these materials to be recognized may include:**

• **An agreement that Tribes or tribal members are the rightful owners of some or all of the intellectual property rights, including copyrights, contained in the media.**

• An agreement that the Tribe or tribal members possess ownership interests in the media arising out of tribal law, and that the Archive consents to being subject to tribal laws governing those interests; and, if the Archive is a federal or state agency, **waives any sovereign immunity from suit for actions brought in federal, state or tribal courts to assert or defend those interests.**

• An agreement that the media in question is **considered by both parties to be a sacred object or an object of cultural patrimony** within the meaning of the Native American Graves Protection and Repatriation Act; that the Museum or Archive has no evidence that the media was obtained with the voluntary consent of an individual or group that had authority of alienation; and therefore, **the media, and any intellectual property rights appertaining to it, is owned solely by the Tribe and subject to expeditious repatriation by the Museum or Archive.**

• As between the parties, **the United Nations Declaration on the Rights of Indigenous Peoples, articles 11 and 31 (which require the return of indigenous intellectual property, cultural heritage and traditional knowledge and the enforcement of indigenous laws governing them), shall determine the ownership interests pertaining to the media in question**, and shall provide any remedies applicable to the unauthorized use of the media.

• **Any dispute as to ownership or circulation of the media between the parties** **shall be adjudicated in a court of the Tribe, or through an alternative adjudicatory mechanism approved by the Tribe.**

As discussed earlier in this section, transferring copyrights from a museum or archive to a federally recognized Indian tribe or other indigenous community entity is not always possible, nor is it a foolproof way of ensuring that indigenous media is circulated within indigenous cultural protocols. **The GNU GPL 3 license also provides a potential mechanism indigenous communities might use to require archives and potential follow-on users of their materials to circulate those materials according to tribal customs** or protocols or only with permission of specific tribal or cultural authorities. **Indigenous groups, upon securing exclusive control over archival materials through tribal, federal, state, or international law as discussed above, could grant a conditional license to archives** and other users of their work, **requiring that (1) the holding institution music comply with indigenous protocols** governing the use of the materials, and (2) that the archive must license the work, on behalf of the tribe, to anyone who obtains possession of a copy of the work in any form, using a license approved by the Tribe or incorporating tribal laws, policies, or protocols pertaining to cultural materials. A sample granting clause, based on the GNU GPL 3 discussed above, might read: “The Tribe hereby grants a nonexclusive license to the Archive to reproduce, distribute, perform, or convey the Media or any materials derived from the Media to Users provided that the Archive also meet all of the following conditions: 1. (1) Every copy of the Media must carry a prominent notice stating how the Media is owned and who may 185 authorize its use including but not limited to the name and contact information of the owner(s) of any copyrights or other intellectual property rights in the Media and/or tribal or aboriginal rights pertaining to the Media, and a warning that by using the Media, the User will enter into a License Agreement with the Tribe (directly affecting tribal interests) under the same terms as that of the Archive, and that any violation of the License Agreement may be subject to remedies available under tribal law and enforcement in tribal court. 2. (2) The Media must carry a prominent notice plainly visible to all Users of the Media, that access to the Media is conditioned on compliance with the protocols, customs, or other conditions annexed to this License Agreement, which the Archive shall make available in full [at a specific location / on the organization’s website / upon request to the Archive], unless permission to use the Media has been otherwise expressly granted by [the Tribe or a specific tribal or cultural authority] to the User under separate terms and conditions. 3. (3) The Archive must license the Media described in this License Agreement to anyone who comes into possession of a copy of the Media. This License will apply to the Media, in whole or in parts, regardless of how it is packaged. This License gives no permission to license the Media in any other way without the express written consent of [the Tribe or a specific tribal or cultural authority].” 4. (4) Any attempt otherwise to propagate or modify this License Agreement is void, and will automatically terminate the Archive’s rights under this License. However, the termination of the License Agreement does not terminate the licenses of Users who have received copies of the Media or any rights to access or use the Media under this License. While it might seem counter-intuitive, **the goal of this granting clause is to compel the archive to license the conditional right to use the media it holds to each and every person who obtains the media**, whether in person, via streaming from an online database, etc. But even though end-users technically receive the right to use the work, that right is made continent on their abiding by the indigenous community’s laws and protocols or obtaining approval from indigenous authorities. 186 By making both the archive’s and the end-user’s license from the indigenous entity conditional on the their fulfillment of these obligations, any violation of indigenous protocols contained or referenced in the agreement would not only constitute a breach of contract, but, if the material is under copyright, any § 106 use of the material once the license is breached could also constitute copyright infringement.251 Further, the Archive could be subject to tribal laws and remedies for the violation of its tribal or aboriginal rights. **In effect, the archive would be required to ensure that the material is circulated and protected under the terms set forward by the indigenous community**. In sum, licensing agreements that contain provisions like these may allow indigenous communities to assert and exercise control over these materials on their own terms, including the application of tribal laws, protocols, or authorities established in or referenced by the agreement, to questions of ownership and circulation involving indigenous media. The final proposal I want to make concerns what to do about indigenous voices currently held outside of the care of indigenous communities. As I argued in Chapter 4, erasure and forgetting are necessary aspects of indigenous sonic sovereignty. When indigenous voices are made to live under the anonymous care of the settler state, indigenous sovereignty is diminished. Therefore, the care of indigenous voices should be, in the first instance, in the hands of indigenous peoples and not settler institutions. Importantly, this care may include the right of indigenous communities to determine how these voices should live, or whether these voices should die, disintegrate, or be forgotten. In many ways, the right of indigenous peoples to care for their voices parallels current debates in Europe regarding the right of individuals to have their data be erased or “forgotten” by big data corporations like Google, Facebook, Apple and Amazon. For indigenous peoples to retain their sonic sovereignty, they must have the power to create culture, but also to let their culture die. The Right to Forget Governments, particularly in Europe, have started generating policies to ensure forgetfulness and erasure of memory (Grax, Ausloos, & Valcke 2012). For example, in May 2016, the European Union adopted major revisions to its 1995 Data Protection Directive that includes an individual “right to be forgotten.” The European Parliament found that each European citizen “should have the right to have his or her personal data erased” under certain conditions, including the following:

• where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed,252 or

• where [the citizen] has withdrawn his or her consent or he or she objects to the processing of personal data concerning him or her,253 or

• where personal data have been unlawfully processed.254 The EU was particularly concerned about situations where individuals, particularly children, were “not fully aware of the risks involved.”

At the same time, the EU also faced considerable pressure from social media corporations, journalists, and historians, among others, to weigh carefully the potential impact of the right to forget on freedom of expression and information. In fact, the EU took particular care to preserve an exception to the right to forget for “archiving purposes in the public interest, scientific or historical research purposes or statistical purposes” among other apparently self-evident “publicly beneficial” interests.256 But even in providing an exemption for archival institutions from the “right to forget” for these “publicly beneficial” purposes, the EU stipulates that holding data against an individual’s wishes can only occur when it is “likely to render impossible or seriously impair the achievement of the [publicly beneficial] objectives of that processing.”257 As the Regulation later instructs, archival institutions holding data from individuals for these purposes “shall be subject to appropriate safeguards” protecting individual privacy (specifically “pseudonymization” and measures to prevent identification of data subjects). However, nothing in the EU’s “right to forget” provision requires that these holding institutions, EU member states, or the EU take into account group rights or indigenous rights258 as described in the United Nations Declaration on the Rights of Indigenous Peoples.259 In the United States, several legal scholars have mocked European efforts to implement a right to forget, taking particular interest in a 2014 Court of Justice of the European Union ruling requiring Google Spain to delete search results containing an archived article with “irrelevant and excessive” information after a Spanish citizen requested that it be taken down and delisted.260 At least one of these scholars considered the “right to forget” to be “the biggest threat to free speech on the Internet in the coming decade.”261 Certainly EU and American notions of freedom of speech have fundamental differences: contributors to American First Amendment thinking have advocated for an “uninhibited, robust, and wide-open” debate on public issues,262 which for some legal theorists, requires citizens to have uninhibited access to information for the purpose of self-government.263 And yet, doctrines like expungement of criminal histories and various forms of evidentiary privilege show that American law can be marshaled to force various kinds of archives to either let go of (or refrain from circulating) knowledge acquired in the past so that certain publics can move forward unconstrained in the present and future. My argument here is that one of **indigenous sovereignty’s core attributes must be the ability to care for and maintain connections to our land through the voices of our people, past and present**. **This may include (but is certainly not limited to) the ability of indigenous communities to determine appropriate preservation techniques, possibilities of circulation, and/or the right to demand the destruction of archived ancestral voices, and it may require archives to deaccession them and transfer complete ownership of the physical media and intellectual or cultural property rights to indigenous communities.** There are important counterarguments as to why First Amendment concerns over access to indigenous information are either irrelevant or, at best, sidestep the immense inequities in the way indigenous peoples are “known” as compared to settler populations in the United States.264 But perhaps the most compelling argument for recognizing indigenous peoples’ rights to care for their and their ancestors’ voices comes from the role these voices play in the networks of relations that constitute our contemporary indigenous communities: they are material manifestations of sonic sovereignty.

#### Taatawi asserts indigenous sovereignty and delegitimizes colonial land claims

Trevor **Reed, 18** – member of the Hopi community, PhD in ethnomusicology from Columbia university

(Trevor George Reed, Itaataatawi: Hopi Song, Intellectual Property, and Sonic Sovereignty in an Era of Settler-Colonialism, Academic Commons, https://academiccommons.columbia.edu/doi/10.7916/D87S95D0, 2018)//iLake-💣🍔

**If this song were spoken in English, it would be hard to imagine a more severe rebuke.** But, as I will explain, the fact that this is spoken in Hopilavayi (Hopi language) and comes in the form of a tawi (traditional song) is both significant and powerful. I argue that this song enacts Hopi sovereignty. **It is a command to refrain from acting in a certain way within a place, backed by the authority of powerful, long-term relations existing within that territory**. It is in some ways **an expression of jurisdiction**, which is typically defined as “a government’s general power to exercise authority over all persons and things within its territory.”11 And yet, coming in the form of a song, it seems fundamentally **distinct from legal constructions of authority**. In this chapter, I ask, **what is the nature of the authority whereby Tenakhongva**, a 60-year old Hopi man and United States Army veteran, **could command all present—United States officials, tourists, Navajo Nation residents, and Hopis alike—and all those who would hear the performance on radio, social media, and physical media, to conform their actions to his voice?** To begin to answer this question, I explore the notion of sonic sovereignty or the resonance of political authority with the performance of indigenous sound. As discussed in the introduction, Hopi yeeyewat (composers) generate taatawi (traditional songs) through their collaborations with plants and other living things within a territory over the course of months and years. As Lee Wayne Lomayestewa explained, these songs are “not just for us Hopis. It’s for all the little insects that crawl the earth, the animals, the plants, the birds, the butterflies, all the people that live on the earth . . . even the stars, the galaxies.”12 As I attempt to show, **song is a vital component of contemporary governance within many indigenous territories**; for Hopi people, song-based authority has been practiced since our emergence—far longer than the kinds of jurisdictional discourse which make up European settler forms of political sovereignty. **Hopi taatawi have several components that generate authority**. In the sections that follow I will discuss how **taatawi operate at the level of the linguistic sign, producing a cognitive response** in listeners who have attuned themselves to the poetics and other sonic structures **gained through their individual and collective experiences within Hopi territories** (Basso 1996; Feld 1996). At the same time, **Hopi taatawi also operate at the level of sensory perception, generating feelings and memories of particular times and places** within those who hear them (Samuels 2004). **Taatawi also reveal networks of relations between actors in Hopi territories and throughout the cosmos, and function as a means of engaging with and encouraging diverse actors to come together** in productive labor. As I will argue, in the Hopi context, **sovereignty is a performed, acoustic reality in addition to being a political or juridical fact**—a reality that is not necessarily dependent on present-day Euro-American legal forms.13 **The voicing of authority through taatawi challenges the territorial sovereignty imagined by the settler-state**. **It disrupts settler notions of time and place** that have been superimposed on histories and geographies of the Southwest generally and Hopi lands in particular. Spanish, American, and now Navajo **colonization, all of which contributed to the urgency of Tenakhongva’s sharp rebuke** in the song I just shared, have attempted to **superimpose their own constructions of sovereignty within Hopi territories, leading in some cases to catastrophic results**. The negative effects of colonization, and our **efforts to open up a “third space” to recognize and hopefully overcome these effects**, reveal themselves at several moments in Puhutawi, during its composition, negotiations with performers, the rehearsals, in its performances and later rebroadcast, and in audience responses as questions of musical authority on Hopi lands continue to be debated and tested.

### Framing

#### Repetitive practices of settler engagement disavow internalized violence within debate – The role of the ballot is to affirm decolonial disruption

Henderson, 15 - Professor at the Department of Political Philosophy at the University of Victoria [Phil, “Imagoed communities: the psychosocial space of settler colonialism”, Settler Colonial Studies, p. 12-13] mp

Goeman writes as an explicit challenge to other indigenous peoples, but this holds true to settler-allies as well, that decolonization must include an analysis of the dominant ‘self-disciplining colonial subject’. 73 However, as this discussion of subjective precarity demonstrates, the degree of to which these disciplinary or phenomenological processes are complete should not be overstated. For settler-allies must also examine and cultivate the ways in which settler subjects fail to be totally disciplined. Evidence of this incompletion is apparent in the subject’s arrested state of development. Discovering the instability at the core of the settler subject, indeed of all subjects, is the central conceit of psychoanalysis. This exception of at least partial failure to fully subjectivize the settler is also what sets my account apart from Rifkin’s. His phenomenology falls into the trap that Jacqueline Rose observes within many sociological accounts of the subject: that of assuming a successful internalization of norms. From the psychoanalytical perspective, the ‘unconscious constantly reveals the “failure”’ of internalization.74 As we have seen, within settler subjects this can be expressed as an irrational anxiety that expresses itself whenever a settler is confronted with the facts regarding their colonizing status. Under conditions of total subjectification, such charges ought to be unintelligible to the settler. Thus, the process of subject formation is always in slippage and never totalized as others might suggest.75 Because of this precarity, the settler subject is prone to violence and lashing out; but the subject in slippage also provides an avenue by which the process of settler colonialism can be subverted – creating cracks in a phantasmatic wholeness which can be opened wider. Breakages of this sort offer an opportunity to pursue what Paulette Regan calls a ‘restorying’ of settler colonial history and culture, to decanter settler mythologies built upon and within the dispossession of indigenous peoples.76 The cultivation of these cracks is a necessary part of decolonizing work, as it continues to panic and thus to destabilize settler subjects. Resistance to settler colonialism does not occur only in highly visible moments like the famous conflict at Kanesatake and Kahnawake,77 it also occurs in reiterative and disruptive practices, presences, and speech acts. Goeman correctly observes that the ‘repetitive practices of everyday life’ are what give settler spaces their meaning, as they provide a degree of naturalness to the settler imago and its psychic investments.78 As such, to disrupt the ease of these repetitions is at once to striate radically the otherwise smooth spaces of settler colonialism and also to disrupt the easy (re)production of the settler subject. Goeman calls these subversive acts the ‘micro-politics of resistance’, which historically took the form of ‘moving fences, not cooperating with census enumerators, sometimes disrupting survey parties’ amongst other process.79 These acts panic the subject that is disciplined as a product of settler colonial power, by forcing encounters with the sovereign indigenous peoples that were imagined to be gone. This reveals to the settler, if only fleetingly, the violence that founds and sustains the settler colonial relationship. While such practices may not overthrow the settler colonial system, they do subvert its logics by insistently drawing attention to the ongoing presence of indigenous peoples who refuse erasure. Today, we can draw similar inspiration from the variety of tactics used in movements like Idle No More. From flash mobs in major malls, to round dances that block city streets, and even projects to rename Toronto locations, Idle No More is engaged in a series of micro-political projects across Turtle Island.80 The micro-politics of the movement strengthen indigenous subjects and their spatialities, while leaving an indelible imprint in the settler psyche. Predictably, rage and resentment were provoked in some settlers;81 however, Idle No More also drew thousands of settler-allies into the streets and renewed conversations about the necessity of nation-to-nation relationships. With settler colonial spaces disrupted and a relationship of domination made impossible to ignore, in the tradition of centuries of indigenous resistance, Idle No More put the settler subject into serious flux once more. Settler colonialism has been distinguished from colonialism proper by what Wolfe calls its ‘logic of elimination’, which requires the erasure of indigenous peoples from the colonized territory. This is accomplished through a variety of mechanisms that range from outright violence to policies of gradual elimination. Ultimately, settler colonialism is perpetuated through a double move: to erase indigenous peoples and then to disappear settlers by naturalizing the violence inherent their existence in colonized territory. This is accomplished through the production of spatialities bereft of indigeneity. Out of this spatial logic, an imago of settler society is produced that binds settlers both psychically and socially to each other and to the colonized spaces. The continual (re)production of a settler colonial imago is necessary to secure the psychic horizons of the settler subject; it is also inextricably bound up with an insatiable need to constantly renew the erasure of indigenous peoples. Thus, in order to secure its continued survival as a subject, the settler must always strive to maintain the conditions of settler colonialism. Total erasure of indigeneity is the grotesque desire of the settler that must be constantly disrupted. Where indigenous peoples have persisted as an insurgent presence in the settler imago, they are always already threatening this disruption of the settler subject at its very core. For while the affirmation of indigeneity can induce panic, and subsequently rage, in the settler, it also opens a crack within the imago – that is, within the settler subject itself – through which an ethic of decolonization can emerge. While it seems that settler colonialism is propelled by a tightly circuitous movement of subject formation, projection, and (re)formation, the presence of indigenous peoples in ongoing and sovereign relationship with the land serves as a powerful blockage of to the smoothness of this process.

#### Complex extinction scenarios are impossible to predict or simulate and will almost always be wrong – prefer impacts we know are happening

Matheson 15 (Calum Matheson – This is his PhD dissertation at the University of North Carolina at Chapel Hill, “Desired Ground Zeros: Nuclear Imagination and the Death Drive”, https://cdr.lib.unc.edu/indexablecontent/uuid:4bbcb13b-0b5f-43a1-884c-fcd6e6411fd6, pgs. 77 – 86, EmmieeM)

Herman Kahn and Bernard Brodie, perhaps the most prominent American strategists of the early Cold War, tried to make nuclear war “thinkable” in the sense that they tried to explain how such a war might start and what options would exist for national leaders. At the same time, both acknowledged that the outcome of a full-scale nuclear war was indescribable. In Brodie’s words, to “make an intellectual prediction of the likelihood of war is one thing, to project oneself imaginatively and seriously into an expected war situation is quite another” (Ghamari-Tabrizi 149). The unwillingness or inability to think “seriously” about a nuclear war—in other words, to understand it instrumentally rather than through dislocating language of the sublime—was met by organizations like the RAND Corporation with an attempt to systematize nuclear strategy and develop the intellectual and technical means to actually fight and control a nuclear war. Before RAND exercised its power through the “Whiz Kids” of the Kennedy Administration, the Strategic Air Command’s “Sunday punch” nuclear plan, enshrined in SIOP-62, was an all-out nuclear attack on the USSR, Eastern Europe, and the People’s Republic of China. It might have killed 285 million people in the initial attack (Kaplan 269). Despite its intricate planning and detailed execution strategies, SIOP was immensely inflexible. Asked whether the U.S. had any options to attack without striking China, which might not even be a combatant in the war, General Thomas Power replied “Well yeh [sic], we could do that, but I hope nobody thinks of it because it would really screw up the plan” (Kaplan 270, emphasis in original). Starting in the 1960s, a set of war games of various complexity was developed to test a broader range of nuclear theories and attack options at RAND and elsewhere (Arbella 35). Games like them continue to be used for strategic military planning today (Raatz). Most of these games—or at least their results—are classified, as they became the basis for US nuclear plans. In politicomilitary games, a number of military officers, civilians, and generally mid- to lowranking government officials would play various roles as US and/or foreign. decisionmakers. Another group, “control,” would feed them information about the actions of countries or groups not played by the participants or about world events that might influence the context of their actions. In more limited military simulations, extant or proposed war plans would be evaluated by computer or human players to identify possible flaws and improvements. The games themselves never had a guarantee of accuracy and were often quite obviously flawed. In one Navy game, American aircraft carriers were declared to be unsinkable. In others, the Soviet Union was assumed to have no effective airpower. Because factors like air pressure, prevailing winds, defense effectiveness, early warning, and missile failure rate were largely random or incalculable, a “fudge factor” simply declared estimated success. Even their designers sometimes admitted that the games were inaccurate, unprovable, or simply wishful thinking (Ghamari-Tabrizi 8; Allen 78). Especially in the case of nuclear war, these games cannot possibly be understood as accurate simulations of a real-world system, because there is no empirical data on the compound effects of many near-simultaneous nuclear explosions and no data on what factors cause states to cross the nuclear threshold against other similarly-armed states, a fact that bedevils nuclear planning in general and always has (Kaplan 87). By the admission of many of those who create and play them, they are “social science fiction” with no tangible effect other than that they are entertaining (Ghamari-Tabrizi 160-1). Some contemporary social science work supports this claim especially in the context of extinction-level events. Human beings simply aren’t wired to think at such a scale, and they perform very poorly assessing probability and calculating magnitude (Yudkowsky). Others have suggested that warfare is a stochastic system that we could never identify laws for, no matter how diligent we might be, because its initial conditions are simply too complex a model and they do not conform to linear causality (Beyerchen; Buchanan 62). Indeed, military planners tended to be far less willing to predict the conduct and outcome of a conventional war—despite an enormous data set spanning thousands of years—than a nuclear war fought between two superpowers, an event that has never occurred in recorded history. Fred Iklé, former RAND strategists who was at times head of the Arms Control and Disarmament Agency and Undersecretary of Defense for Policy, criticized these semi-mathematical abstractions in harsh terms that deserve to be quoted at length: The prominence of the calculations continues because we know how to make them…we have tailored the problem to our capability to calculate. The seemingly rigorous models of nuclear deterrence are built on the rule: "What cannot be calculated, leave out’”…Such thoughts, especially those focusing on deterrence, lack real empirical referents or bases. No other field of human endeavor demands—absolutely compels—one to work out successful solutions without obtaining directly relevant experience, without experimenting. There can be no trial and error here, no real learning. Curiously, we are far more skeptical in accepting the calculations of traditional conventional military campaigns than the calculations of nuclear warfare. In fact, the more battle experience and information military analysts have, the more modest they become in predicting the course of conventional war. Such modesty is missing for nuclear war, where pretentious analyses and simplistic abstractions dominate and blot out the discrepancies existing between abstractions and possible reality—a reality that for so many reasons is hard even to imagine. (Iklé 246). Iklé is drawing attention to two unique aspects of nuclear war planning: first, that no empirical date (or at least very little) can be gathered for the species of war that planners concerned themselves with, and second, that unlike other military problems where little data exists, defense intellectuals were willing to display great confidence in untested (and untestable) theories. Despite this lack of empirical grounding, nuclear war simulations have been repeated again and again over the decades while nuclear doctrine has remained fundamentally the same (McKinzie et al. ix-xi). There has been some dispute in military circles about whether these exercises should be called simulations or games, with “simulations” becoming more popular by the 1980s (Allen 7). To call politico-military exercises “roleplaying games” conjures images of adolescent boys rolling dice and weaving fantasies about orcs and dragons. To call battle simulations “war games” might associate them with videogames produced for entertainment. Still, even military officers responsible for the creation of these artifacts had trouble distinguishing between game, model, and simulation and used them interchangeably. In his comprehensive history of U.S. wargaming, Thomas Allen writes that the three words “hover over imaginary battlefields like a mysterious, ever-shifting concept of the Trinity” (64, emphasis added). Berger, Boulay and Zisk, writing in the journal Simulation & Gaming acknowledge that “[d]efinitions of simulation are legion,” but center on representations of a system that allow users to model behavior (Berger et al. 416). Brewer and Shubik define games as a subset of simulation and simulation as a subset of modelling, the key defining feature of a game being the inclusion of human beings playing roles. Still, their extended attempt to define these terms results in the acronym MSG, grouping them all together (3-8). The difficulty in Brewer and Shubik’s definition is that all models and simulations require that human beings make decisions at least indirectly, at a minimum defining the independent variables and the parameters of the exercise. As a result, they all create some possibility for investment in the outcome. In common usage, the difference between simulations and models, on the one hand, and games, on the other appears to be a ludic dimension. Games are for play, with an agent making decisions within a set of prescribed rules to change the outcome, while simulations and models may simply represent the rules of a system. The least common denominator is that one rules-bound system—the game— stands in for another. Games, simulations, and models therefore have a metaphorical quality to them.10 In his work on videogames, Ian Bogost has identifies what he calls procedural rhetoric as “the practice of persuading through processes in general and computational processes in particular…a technique for making arguments with computational systems and for unpacking computational arguments others have created” (3). Whereas oral rhetoric attempts to persuade an audience to adopt a particular viewpoint through speech and written rhetoric does the same through writing, procedural rhetoric has its own unique goals and characteristics suited to the medium of games. Videogames create a digital process that simulates a real-world process, allowing the player to model something extant in the world of flesh, blood, steel and glass that exists outside of the game. Procedural rhetoric is the persuasive aspect of simulation. Bogost’s argument might be adapted to this understanding of metaphor. The replacement of the tenor (the thing represented) with the vehicle (the signifier standing in for it) makes an enthymematic argument that draws the audience to do the work of cathexis in connecting the two based on the shared principle that allows the substitution. This does not suggest that we read games as texts. Games require their players to invest in a specific way because they are called on to make choices that alter the outcome. Players identify with their characters in a powerful way: what is shared is not just a set of traits, but decisions over time that, to maintain the interest that keeps players playing, require at least some minimal attachment. One can identify deeply with Sauron, but no reading of Lord of the Rings can make him finally subjugate his haughty human and elven foes, let alone order the Scourging of the Shire and its disgustingly bourgeois hobbits when he still has a chance to succeed.11 This is the procedural element of Bogost’s theory: it is the procedure that links the system with its representation in the game, and the sense of control that binds us, something that differentiates this medium from others. One doesn’t have to decide that play matters and narrative doesn’t—it is the interaction between the two that channels the player’s investment in a game. In war games, attachments are formed even when a computerized Sam fights a computerized Ivan to test the SIOP and RSIOP.12 Allen’s book is full of examples of war game players becoming emotionally tied to their games, sometimes in perverse ways. Failing in a game that he was allowed to play, Allen himself described his team reacting with shock, real shock, not just a reaction to a bad break in a game. We were really feeling upset about what was happening in our imaginary world. ‘What is happening to our institutions?’ someone indignantly asked, as if real institutions were really going through what the situation paper had described. I had an unreasonable feeling of helplessness and failure. Some of us spoke softly to each other about having failed. (18). The prevalence of this reaction is confirmed in more recent scholarship by Paul Bracken, himself a war game participant. Bracken puts the case simply: “People get emotionally involved in games” (20).

#### Particularity is the best standard

Price 98 [(RICHARD PRICE is a former prof in the Department of Anthropology at Yale University. Later, he moved to Johns Hopkins University to found the Department of Anthropology, where he served three terms as chair. A decade of freelance teaching (University of Minnesota, Stanford University, Princeton University, University of Florida, Universidade Federal da Bahia), ensued. This article is co-authored with CHRISTIAN REUS-SMIT – Monash University – European Journal of International Relations Copyright © 1998 via SAGE Publications – http://www.arts.ualberta.ca/~courses/PoliticalScience/661B1/documents/PriceReusSmithCriticalInternatlTheoryConstructivism.pdf)]

One of the central departures of critical international theory from positivism is the view that we cannot escape the interpretive moment. As George (1994: 24) argues, ‘the world is always an interpreted “thing”, and it is always interpreted in conditions of disagreement and conflict, to one degree or another’. For this reason, ‘there can be no common body of observational or tested data that we can turn to for a neutral, objective knowledge of the world. There can be no ultimate knowledge, for example, that actually corresponds to reality per se.’ This proposition has been endorsed wholeheartedly by constructivists, who are at pains to deny the possibility of making ‘Big-T’ Truth claims about the world and studiously avoid attributing such status to their findings. This having been said, after undertaking sustained empirical analyses of aspects of world politics constructivists do make ‘small-t’ truth claims about the subjects they have investigated. That is, they claim to have arrived at logical and empirically plausible interpretations of actions**,** events or processes**,** and they appeal to the weight of evidence to sustain such claims. While admittingthat their claims are always contingent and partial interpretations of a complex world, Price (1995, 1997) claims that his genealogy provides the best account to date to make sense of anomalies surrounding the use of chemical weapons, and Reus-Smit (1997) claims that a culturalist perspective offers the best explanation of institutional differences between historical societies of states. Do such claims contradict the interpretive ethos of critical international theory? For two reasons, we argue that they do not**.** First, the interpretive ethos of critical international theory is driven, in large measure, by a normative rejection of totalizing discourses, of general theoretical frameworks that privilege certain perspectives over others. One searches constructivist scholarship in vain, though, for such discourses. With the possible exception of Wendt’s problematic flirtation with general systemic theory and professed commitment to ‘science’, constructivist research is at its best when and because it is question driven, with self-consciously contingent claims made specifically in relation to particular phenomena, at a particular time, based on particular evidence, and always open to alternative interpretations. Second, the rejection of totalizing discourses based on ‘big-T’ Truth claims does not foreclose the possibility, or even the inevitability, of making ‘small-t’ truth claims. In fact, we would argue that as soon as one observes and interacts in the world such claims are unavoidable, either as a person engaged in everyday life or as a scholar. As Nietzsche pointed out long ago, we cannot help putting forth truth claims about the world. The individual who does not cannot act, and the genuinely unhypocritical relativist who cannot struggles for something to say and write. In short, if constructivists are not advancing totalizing discourses, and if making ‘small-t’ truth claims is inevitable if one is to talk about how the world works, then it is no more likely that constructivism per se violates the interpretive ethos of critical international theory than does critical theory itself.

#### Refuse imperial impact calculus – Indigenous genocide outweighs

Mignolo 7 (Walter, argentinian semiotician and prof at Duke, “The De-Colonial Option and the Meaning of Identity in Politics” online)

The rhetoric of modernity (from the Christian mission since the sixteenth century, to the secular Civilizing mission, to development and modernization after WWII) occluded—under its triumphant rhetoric of salvation and the good life for all—the perpetuation of the logic of coloniality, that is, of massive appropriation of land (and today of natural resources), massive exploitation of labor (from open slavery from the sixteenth to the eighteenth century, to disguised slavery, up to the twenty first century), and the dispensability of human livesfrom the massive killing of people in the Inca and Aztec domains to the twenty million plus people from Saint Petersburg to the Ukraine during WWII killed in the so called Eastern Front.4 Unfortunately, not all the massive killings have been recorded with the same value and the same visibility. The unspoken criteria for the value of human lives is an obvious sign (from a de-colonial interpretation) of the hidden imperial identity politics: that is, the value of human lives to which the life of the enunciator belongs becomes the measuring stick to evaluate other human lives who do not have the intellectual option and institutional power to tell the story and to classify events according to a ranking of human lives; that is, according to a racist classification.

### Underview