## Framing

#### Settler colonialism operates as an ongoing structure that seeks to eliminate or forcibly assimilate via erasure of the native. The settler enacts mass genocide in order to sever native epistemological ties to the land all while upholding the violent triad of the native-settler-slave. This structure perpetuates endless anti-black and anti-indigenous violence. Anything that does not start from the question of settler colonialism removes indigeneity from history.

**Tuck and Gaztambide-Fernandez 13** Eve, Professor at SUNY, Ruben, Professor at the University of Toronto, “Curriculum, Replacement, and Settler Futurity”, Journal of Curriculum Theorizing, Volume 29, Number 1, 2013, PDF, pg. 73-75, October 24, 2016 // RBA

Settler Colonialism and Curriculum Studies Settler colonialism is the specific formation of colonialism in which the colonizer comes to stay, making himself the sovereign, and the arbiter of citizenship, civility, and knowing. Patrick Wolfe (2006) argues that **settler colonialism destroys to replace**,” (p. 338) **operating with a logic of elimination**. “Whatever settlers may say—and they generally have a lot to say,” Wolfe observes, “the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory” (ibid., parentheses original). **The logic of elimination is embedded into every aspect of the settler colonial structures and its disciplines**—it is in their DNA, in a manner of speaking. Indeed invasion is a structure, not an event (p. 402). The **violence of invasion is not contained to first contact or the unfortunate birth pangs of a new nation, but is reasserted each day of occupation. Thus, when we write about settler colonialism in this article, we are writing about it as both an historical and contemporary matrix of relations and conditions that define life in the settler colonial nation-state**, such as the United States, Canada, New Zealand, Australia, Israel, South Africa, Chinese Tibet, and others. In North America, settler colonialism operates through a triad of relationships, between the (white [but not always]) settlers, the Indigenous inhabitants, and chattel slaves who are removed from their homelands to work stolen land. **At the crux of these relationships is land, highly valued and disputed. For settlers to live on and profit from land, they must eliminate Indigenous peoples, and extinguish their historical, epistemological, philosophical, moral and political claims to land. Land, in being settled, becomes property.** Settlers must also import chattel slaves, who must be kept landless, and who also become property, to be used, abused, and managed. Several **belief systems need to be in place to justify the destruction of Indigenous life and the enslavement of life from other lands**, in particular the continent of Africa. These **belief systems are constituted through** “what Michel Foucault identifies as **the ‘invention of Man**’: that is, by the Renaissance humanists’ epochal **redescription of the human outside the terms of the then theocentric, ‘sinful by nature’ conception/‘descriptive statement’ of the human**” (Wynter, 2003, p. 263). **These include what was termed in the 19th century “manifest destiny”–or the expansion of the settler state as afforded by God**; heteropaternalism–the assumption that heteropatriarchal nuclear domestic arrangements are the building block of the state and institutions; and most of all, white supremacy. **Settler colonialism requires the construction of non-white peoples as less than or not-quite civilized, an earlier expression of human civilization, and makes whiteness and white subjectivity both superior and normal** (Wynter, 2003). In doing so, **whiteness and settler status are made invisible, only seen when threatened** (see also Tuck & Yang, 2012). **Settler colonialism is typified by its practiced epistemological refusal to recognize the latent relations of the settler colonial triad; the covering of its tracks**. One of the ways the settlercolonial state manages this covering is through the circulation of its creation story. These stories involve signs-turned mythologies that conceal the teleology of violence and domination that characterize settlement (Donald, 2012a, 2012b). For example, Dwayne Donald examines the centrality of the “Fort on Frontier” as a signifier for the myth of civilization and modernity in the creation story of the Canadian nation-state. The image of the fort works as “a mythic sign that initiates, substantiates and, through its density, hides the teleological story of the development of the nation” (2012a, p. 43): Fort pedagogy works according to an insistence that **everyone must be brought inside and become like the insiders, or they will be eliminated. The fort teaches us that outsiders must be either incorporated, or excluded, in order for development to occur in the desired ways.** (2012a, p. 44) **The fort is not simply about the process of colonization–of the exogenous conquering of land and people, but more importantly, about a process of colonial settlement**—of imposing a hegemonic logic from the inside, “premised on the domination of a majority that has become indigenous” (Veracini, 2010, p. 5, emphasis added). As Donald (2012b) explains, “transplanting a four-cornered version of European development into the heart of the wilderness” (p. 95), the fort stands as a signifier “of the process by which wild and underutilized lands were civilized through European exploration, takeover, and settlement” (p. 99). Scholars like John Willinsky (1998) have offered ample evidence of the ways **in which schooling has served the purpose of promoting an imperialist view of the world that justifies colonization premised on European epistemological supremacy.** While he provides a powerful critique of the colonizing force of the North American curriculum, **such analyses stop short of examining how the project of curriculum is implied in the ongoing project of colonial settlement, assuming that settler colonies are a thing of the past. Recognizing that colonization is an ongoing process, there have been many postcolonial conceptualizations of curriculum and curriculum history** (e.g. Asher, 2005; Coloma; 2009; McCarthy, 1998). Yet such conceptualizations typically ignore important differences in the various kinds of colonial processes occurring in the contemporary world. Because it is different from other forms of colonialism in ways that matter, settler colonialism requires more than a postcolonial theory of decolonization. Indeed, “decolonization in a settler context is fraught because empire, settlement, and internal colony have no spatial separation” (Tuck & Yang, 2012, p. 7). In this light, the specific contours of settler colonialism in curriculum studies are as yet undertheorized, particularly its continued role in ensuring what we describe later in this article as settler futurity. This essay takes part in this conversation by theorizing what we call the curriculum project of replacement.

#### The ROTB is to embrace indigenous futurity – this means endorsing practices that challenge settler normative modes of thoughts and futurity, creating relations with the land as more than beings

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Krisha Hernández, 2019, "View of Co-Creating Indigenous Futurities with/in Academic Worlds," (Krisha J. Hernández (Yaqui/Xicanx/Bisayan), raised on Tongva/Gabrieleño land near the village of Nacaugna—in so-called Los Angeles, California—is an Indígenx Ph.D. Candidate and Teaching Fellow in the Department of Anthropology at the University of California, Santa Cruz (UCSC) whose work is relationally grounded through Indigenous Queer Feminist politics. They are a researcher in the Indigenous Science, Technology, and Society (Indigenous STS) international research and teaching hub chaired by Dr. Kim TallBear, and writes with the Creatures Collective.) <https://catalystjournal.org/index.php/catalyst/article/view/32833/25438> //RBA

I dream again of Babok the toad, the deliverer of fire to humans and bringer of rain to Earth. Babok, an excellent storyteller, holds my hand and shows me the way to the river and to myself—a reminder of responsibilities and possibilities. The dream ignites a vision: in the place of flowers, where their power far surpasses their beauty, all beings are regarded as having purpose(s)—with bodies and lives worthy of living and thriving to fulfill those purposes. Here, our community acknowledges each other’s roles and accepts our own as meaningful contributions. In this community, one seeks out the Hu’upa (Mesquite) and Cho’i (Palo Verde) trees to ask for guidance because trees have revealed many truths to our Yoemem ancestors from long ago and continue to teach us still. The vision becomes reality, a way of being and moving among worlds where many persons, such as insect beings, plant beings, soil bodies, elder stones, caretaker plants, and water beings, for example, are relegated to “natural resources”—objects of exploitation who are often taken up in servitude or generally mistreated. Doing academic work that listens to and thinks with more-than-human beings as having bodies and lives worthy of living through to their fullest meaning is indeed a challenge in arenas where settler futurities take precedence over all else. Place/land and all beings tied up with them, despite having much to teach, are rarely treated and centered as living beings in academic analysis (Tuck & McKenzie, 2015). In other words, taking up this sort of work has proven to be such a challenge that it is often skipped over by academics, and quite possibly for good reason. Engulfment in worlds largely filled with settler logics creates seemingly insurmountable barriers to those who may otherwise wish to co-create Indigenous futurities with/in academe, and in particular, with Indigenous Land. Scholars who work to co-create bridges that link the gaps between human-centered worlds and the many more-than-humans already living among them/us are of particular guidance to me in the challenge of co-creating Indigenous futurities with/in academic worlds. I am grateful to geographer Sarah Whatmore (2006) for gifting communities in/beyond the academy with “more-than” terminology, where, in English, one is provided with language that shifts landscape as a plane to land—a living actor. I look to Tonawanda Band of Seneca scholar on literature, race, and ethnic theory Mishuana Goeman (2013) when considering the necessary decolonizing work that is to (re)claim, (re)name, and (re)vitalize—where “(re)” creates Indigenous futurities that are simultaneously past and present but made anew. Sisseton Wahpeton Oyate anthropologist Kim TallBear’s (2013, 2014) work illuminates the ways in which worlds and beings are co-constituted in relation with others, where collaborations are sites for new knowledge formations, thus creating space for academe that is more-than research. I often think with the work of Kanaka Maoli political scientist Noelani Goodyear-Ka‘ōpua (2016), who reminds one that Indigenous Peoples forge their relationships with place/land and land-bodied beings, and, therefore, researchers are obligated to such land beings far beyond the scope of a research project. Political scientist Audra Mitchell (2018), a settler of Ukrainian, Polish, Scottish, and English ancestry who lives on the Ancestral and Treaty Lands of the Attawandaron (Neutral), Haudenosaunee, and Mississaugas of the New Credit, demonstrates ways in which non-Indigenous scholars might honor the efforts of Indigenous resurgents who seek to repair protocols and relations between particular peoples, plants, animals, and many land and water beings. Drawing on these lineages of thought and scholarship, my work strives to co-create Indigenous futurities with more-than-human beings, an effort that simultaneously envisions Indigenous futurities as it takes up and works against settler colonial modes of being and separation. I find an academic home in the emerging discipline of Indigenous Science, Technology, and Society (I-STS), a community of scholars who contribute to the interplay of emerging worlds, realities becoming. Together, this community honors land-bodied beings seen, unseen, and felt, while co-creating Indigenous futurities through scholarship.

#### The ROTJ is to center indigenous knowledge – red pedagogy is the only orientation that combats settler colonialism within educative spaces

**Grande 04** [Red Pedagogy Native American Social and Political Thought Sandy Grande 2004; quals: a professor of Education and Director of the Center for the Critical Study of Race and Ethnicity (CCSRE) at Connecticut College. She is Quechua. She got her masters and PhD from Kent State University.] // SJ AME

As we raise yet another generation in a nation at war, it is even more imperative for schools to be reimagined as sites for social transformation and emancipation; as a place "where students are educated not only to be critical thinkers, but also to view the world as a place where their actions might make a difference" (McLaren 2003). More specifically, McLaren outlines the essential elements of a post-9/11 critical pedagogy: (1) to support the broader societal aim of freedom of speech; (2) to be willing to challenge the Bush ad- ministration's definition of "patriotism"; (3) to examine the linkages between government and transnational corporations; (4) to commit to critical self- reflexivity and dialogue in public conversations; (5) to enforce the separation between church and state; (6) to struggle for a media that does not serve corporate interests; and, above all, (7) to commit to understanding the fundamental basis of Marx's critique of capitalism (McLaren 2003) Indeed, in a time when the forces of free-market politics conspire not only to maintain the march of colonialism but also to dismantle (i.e., privatize) public education, such aims are essential. In addition to these immediate concerns, the frameworks of revolutionary critical theory provide indigenous educators and scholars a way to think about the issues of sovereignty and self-determination that moves beyond simple cultural constructions and analyses. Specifically, their foregrounding of capitalist relations as the axis of exploitation helps to frame the history of indigenous peoples as one of dispossession and not simply oppression. Their trenchant critique of postmodernism helps to reveal the "problem" of identity (social representation) as a distraction from the need for social transformation. Similarly, the work of revolutionary critical feminists helps to explain how gendered differences have been systematically produced and continue to operate within regimes of exploitation. In all these ways, the analyses of revolutionary critical pedagogy prove invaluable. As discussed in previous chapters, however, there are also ways in which the analysis of revolutionary theorists fails to consider their own enmeshment with the Western paradigm. Specifically, the notion of "democratization" remains rooted in Western concepts of property; the radical constructs of identity remain tied to Western notions of citizenship; the analyses of Marxist-feminists retain Western notions of subjectivity and gender; and revolutionary conceptions of the "ecological crisis" presume the "finished project" of colonization. Such aporias of revolutionary critical pedagogy, however, must not be viewed as deficiencies. Rather, they should be theorized as points of tension, helping to define the spaces in-between the Western and indigenous thought-worlds. Revolutionary scholars themselves acknowledge "no theory can fully anticipate or account for the consequences of its application but remains a living aperture through which specific histories are made visible and. intelligible" (McLaren and Farahmandpur 2001, 301). In other words no theory can, or should be, every- thing to all peoples—difference in the material domain necessitates difference in discursive fields. Therefore, while revolutionary critical theory can serve as a vital tool for indigenous educators and scholars, the basis of Red pedagogy re- mains distinctive, rooted in indigenous knowledge and praxis. Though a "tradition-based" revitalization project, Red pedagogy does not aim to reproduce an essentialist or romanticized view of "tradition." As several indigenous scholars have noted (e.g., Alfred, Deloria, Mihesuah, Warrior) the "return to tradition" is often a specious enterprise. In contradistinction to essentialist models of "tradition," Taiaiake Alfred suggests a model of "self- conscious traditionalism" for indigenous communities. He defines "self- conscious traditionalism" as an intellectual, social, and political movement to reinvigorate indigenous values, principles, and other cultural elements best suited to the larger contemporary political and economic reality (Alfred 1999, 81). In this context, tradition is not simply "predicated upon a set of uniform, unchanging beliefs" but rather is expressed as a commitment to the future sustainability of the group (Warrior 1995, xx). In other words, the struggle for freedom is not about "dressing up in the trappings of the past and making demands" but about being firmly rooted in "the ever changing experiences of the community." As such, the process of defining a Red pedagogy is necessarily ongoing and self-reflexive— a never-ending project that is continually informed by the work of critical and indigenous scholars and by the changing realities of indigenous peoples. Though the process is continual, the overarching goal of Red pedagogy is stable. It is, and will always remain, decolonization. "Decolonization" (like democracy) is neither achievable nor definable, rendering it ephemeral as a goal, but perpetual as a process. That is not to say, however, that "progress" cannot be measured. Indeed, the degree to which indigenous peoples are able to define and exercise political, intellectual, and spiritual sovereignty is an accurate measure of colonialist relations. The dream of sovereignty in all of these realms, thus, forms the foundation of Red pedagogy. As such, indigenous responses of the international, transnational, postcolonial question are discussed in terms of Lyons's quest for a "nation-people," and Alfred's (1999) model for self-determined and self-directed communities. [Continued…] In the words of Peter McLaren, "one of the first casualties of war is truth." History, in other words, belongs to the victors (McLaren 2003, 289). Perhaps no one understands this better than indigenous peoples who, in addition to suffering the depredations of genocide, colonization, and cultural annihilation, have been revictimized at the hands of whitestream history. The lesson here is pedagogical. The imperative before us, as educators, is to ensure that we engage a thorough examination of the causes and effects of all wars, conflicts, and inter/ intracultural encounters. We must engage the best of our creative and critical capacities to discern the path of social justice and then follow it. The ongoing injustices of the world call educators-as-students-as-activists to work together—to be in solidarity as we work to change the history of empire and struggle in the common project of decolonization. To do so requires courage, humility, and love *(mun).* Moreover, revolutionary scholars remind us that "our struggle must not stop at calling for better wages and living conditions for teachers and other workers but must anticipate an alternative to capitalism that will bring about a better chance for democracy to live up to its promise" (McLaren 2003, 290). Though the promise of democracy has always been specious for American Indians, the notion of an anticapitalist society has not. Indigenous peoples continue to present such an alternative vision, persisting in their lived experience of collectivity and connection to land, both of which vehemently defy capitalist desire. Red pedagogy is the manifestation of sovereignty, engaging the development of "community-based power" in the interest of "a responsible political, economic, and spiritual society" 12 (Richardson and Villenas 2000, 272). Power in this context refers to the practice of “living out active prescnecses and survivancesrather than an illusionary democracy" (Richardson and Villenas 2000, 273). As articulated by Vizenor, the notion of survivance signifies a state of being beyond "survival, endurance, or a mere response to colonization," toward "an active presence . . . and active repudiation of dominance, tragedy and victimry"(Vizenor 1998, 15). The *survivance* narratives of indigenous peoples are those that articulate the active recovery, reimagination, and reinvestment of indigenous ways of being. These narratives assert the struggles of indigenous peoples and the lived reality of colonization as a complexity that extends far beyond the parameters of economic capitalist oppression. Survivance narratives form the basis of a Red pedagogy. They compel it to move beyond romantic calls to an imagined past toward the development of a viable, competing moral vision. Specifically, a Red pedagogy implores our conversations about power to include an examination of responsibility, to consider our collective need "to live poorer and waste less." It implores struggles for human rights to move beyond the anthropocentric discourse of humans-only and to fetter battles for "voice" with an appreciation for silence. In the end a Red pedagogy embraces an educative process that works to reenchant the universe, to reconnect peoples to the land, and is as much about belief and acquiescence as it is about questioning and empowerment. In so do- ing, it defines a viable space for tradition, rather than working to "rupture" our connections to it. The hope is that such a pedagogy will help shape schools and processes of learning around the "decolonial imaginary." Within this fourth space of being, the dream is that indigenous and nonindigenous peoples will work in solidarity to envision a way of life free of exploitation and replete with spirit. The invitation is for scholars, educators, and students to exercise critical consciousness at the same time they recognize that the world of knowledge far exceeds our ability to know. It beckons all of us to acknowledge that only the mountain commands reverence, the bird freedom of thought, and the land comprehension of time. With this spirit in mind, I proceed on my own journey to learn, to teach, and to be.

## The Topic

#### Liberal affirmations of this topic will always re-affirms settler colonialism’s projects of erasure– where indigenous histories are buried, indigenous women disappear, and the settler gets to deny their complicity in the system.

Barker 12—MA U of Victoria, BASc McMaster University [Adam J., “(Re-)Ordering the New World: Settler Colonialism, Space, and Identity” Thesis submitted for the degree of Doctor of Philosophy, University of Leicester 224-234, December 2012] //RBA

Dynamics of Erasure It is important to begin by investigating the erasure of Indigenous presence from place. Erasure is essential to both occupation and bricolage, the two other colonising acts that are critical to settler colonial spatial production. Erasure of Indigenous presence can take many forms and may precede and continue throughout the time of Settler occupation. The variety of ways that settler colonialism produces space is predicated on consuming elements of Indigenous relational networks. Elements of Indigenous relational networks are extracted (removed from contexts that sustain meaning), processed and redeployed through settler colonial social space. What is Erasure? Historical geographer Cole Harris chose to reprint his essay ‘The Good Life Around Idaho Peak, originally researched and written more than thirty years ago, in a 1997 collected volume partly because it contains an egregious error that reflects the mind‐set of colonialism” (xvi). In the first version of this essay, Harris asserted that Idaho Peak, north of Nelson, British Columbia, had never been a site of Indigenous settlement. In the 1997 volume, he recanted: “[m]y proposition that no Native people had ever lived near Idaho Peak is absurd, and grows out of the common assumption, with which I grew up, that a mining rush had been superimposed on wilderness” (p.124). Harris, one of the most important and influential scholars of British Columbia’s native‐newcomer history, bases this striking reversal on a 1930 report by ethnographer James Teit of which he had previously been unaware. Based on interviews conducted between 1904 and 1907 with elders of the Sinixt (Lake) people whose ancestors had lived in the region, Teit’s report details Indigenous peoples’ village sites and the devastating impacts of imported disease (pp.194‐195). In this case, not only were the physical bodies and communities of Indigenous peoples destroyed and reduced by pathogens introduced by European and American newcomers, even Settler knowledge of indigeneity was discarded and ignored. In Harris’ analysis, “[m]ine is another example, from one who should have known better, of the substitution of wilderness for an erased Native world” (1997 p.xvi). This is erasure: the total removal of Indigenous being on the land, even from history, memory, and culture, to facilitate the transfer of those lands. This can even be accomplished without the removal of Indigenous bodies; it is the relational networks with place that sustain Indigenous being that are the true targets of erasure. Veracini notes that settler colonialism is most often pursued by settler collectives operating in corporate form (Veracini, 2010a pp.59‐62). It is easy and not uncommon to ascribe Settler peoples the role of occupation while attributing erasure to a combination of ‘just war’ by state and imperial para‐/military forces, and uncontrollable diseases like smallpox or influenza, washing Settler hands of responsibility. Individual Settler people deny their colonial responsibilities through this corporate ‘limited liability’ such that settler colonialism “obscures the conditions of its own production” (p.14). However, Settler peoples are — historically and in the present — directly implicated in acts of erasure. It is more acceptable to suggest that the British Empire or the American state ‘have colonised’ than to suggest that the Settler populations of the northern bloc ‘are colonisers/colonial.’ This is part of the complex dynamic whereby Settler people, even as they are or become aware of the existence of settler colonial atrocities, are able to deny their own complicity (Regan, 2010) or even those of their forbears.60 The goal of erasure is the reconciliation of the colonial difference through the materialisation of perceived terra nullius (Tully, 2000), an ‘empty land’ that, if not actually empty, is at least open: to the entrance of settlers, to being reshaped, to the extraction of advantage. The literature on terra nullius is extensive, and it was recently condemned as part of the ‘doctrine of discovery’ by the United Nations Permanent Forum on Indigenous Issues (2012). For the purposes of settler colonial erasure, terra nullius can be thought of as the creation of a vast, conceptual space of exception. Settler state sovereignty is premised on spaces of exception that reduce Indigenous people to homo sacer (Morgensen, 2011), and Settler identities are entwined with spatial segregation through frontier narratives that exile indigeneity to the wilderness beyond the reach of the civilising state (Larsen, 2003 pp.92‐94). Thus state space is premised on the erasure of indigeneity itself; Indigenous bodies stripped of sacred nature can be consumed or disposed of in a variety of ways without consequence. The governmental act of regulating and extinguishing indigeneity exceeds Settler sovereignty in two major ways: first, in the extension of the power of life or death over populations whose relationships are not considered part of the state (thus an extra‐territorial assertion of sovereign power), and second, in the extension of the state over territories to which Settler people have no legitimate claim based on the presence of Indigenous peoples. According with Agamben’s observations of the creation of spaces of exception and the imposition of spatial restriction, and the reduction of human life to numbers, both Canada and the United States imposed ‘band lists’ on Indigenous communities. These lists of names of ‘official’ members, later identified by personal identification cards (numbered), issued by the government, were used to control Indigenous movements on and off of reserves and to prevent the entry of Indigenous individuals into colonial spaces, like cities and towns (Frideres et al., 2004 pp. 95‐102). Further, the governments of these states have turned the extermination of Indigenous peoples into a demographic problem. By claiming the sole responsibility to determine who is ‘Indian’ (as per the Constitution in Canada or a whole host of statutes at federal and state levels in America), states were able to legislate rules of heritage. These ‘status’ laws — based often on varying levels of blood quantum in the USA (Garoutte, 2003 pp.38‐60), and an odd, collaping system of parentage in Canada (Lawrence, 2003 p.6) — ensure that, even as Indigenous populations increase, ‘Indian’ people are disappearing. Physical Erasure Indigenous peoples perceived across settler colonial difference are often constructed as a threat: to the advantages conferred by the occupation of spaces of opportunity, to the safety of Settler people and to the norms and ‘civilised’ values of settler colonisers. As a consequence, all manner of violence is directed at Indigenous peoples, resulting in the physical elimination, removal, or disappearance of indigeneity from place. Physical erasure of Indigenous peoples is often initiated extraterritorially by para‐/military forces. This is important for understanding the concept of ‘the frontier’ (below); however, it should not be read to implicate only metropole powers in physical erasure.Settler collectives also participate in the physical erasure of Indigenous peoples and spaces. With rare exceptions, it has been expected that Indigenous peoples will assimilate into and disappear from Settler spaces, rather than the other way around. There are, of course, exceptions to this. There are widespread accounts of Settler people either excluded or exiled from larger collectives, or remnants of failed or collapses collectives, being adopted into Indigenous societies. For example, the second Roanoke colony is believed to have been assimilated into local Indigenous societies sometime between 1578 and 1590 (Kupperman, 2000 p.12). In a different but related vein, the Métis people of the Red River Valley, while a hybrid of Scottish, French, English, Cree and other peoples, are widely recognised as an emergent Indigenous peoplehood (Read & Webb, 2012; Tough & McGregor, 2011). Although the Métis are both culturally and genetically related to European peoples, they assert indigenised networks of being on the land rather than dominating colonial displacement of indigeneity.61 Indigenous networks were capable of absorbing these non‐indigenous Others absent the violent intercession of colonial force. As Chapter 3 has shown, settler colonial space is created by the direct assertion of Settler power over place with the result that exceptional examples such as Roanoke or the Métis are rare. Of course, personal relationships between Settler and Indigenous peoples are not completely encompassed by the drive for erasure, but the threat of colonial violence is ever‐present. Even when pursued ‘peacefully,’ intermarriage and socialintegration of Indigenous peoples into Settler spaces occurs in a highly coercive and uneven environment. For example, settler colonial logics that divide and sort have consistently dehumanised Indigenous people, and especially Indigenous women (Smith, 2005; Maracle, 1996 pp.14‐19), leading to widespread gendered and racialised violence. The selective dehumanisation of Indigenous women by settler colonisers contributes to very real physical erasures; consider the contemporary case of the hundreds of missing and murdered Indigenous women in and around Vancouver (Dean, 2010 p.14). More broadly, Settler collectives also play direct roles in spreading disease (Swanky, 2012; Wright, 1992 pp.74, 103‐104) and in extermination through dispossession. Returning to the example of the Pacific Northwest, Settler ranchers did not necessarily intend to physically erase Indigenous populations, but as they monopolised both grazing lands and food markets in the British Columbia Interior, they deprived Indigenous communities of networks of resources that had sustained them since time immemorial (Thistle, 2011; Harris & Demeritt, 1997 pp.234‐240). Erasure through deprivation continues to this day. Despite the fact that Settler societies of the northern bloc are among the most affluent in history, Indigenous communities continue to endure starvation, lack of access to clean drinking water, lack of medical and other health and social services (including education), enforced isolation, and denial of a sufficient land base for social health and reproduction. Conceptual Erasure As well as the removal of the physical presence of Indigenous people from the land, settler colonial logics call for the removal of Indigenous peoples — at least as autonomous, intelligent actors — from the understood history of places (Veracini, 2007). Bureaucratic management techniques ensure that the business of solving the ‘Indian problem’ does not impact on the daily life of the average Settler person by positioning Indigenous populations as inventories to be liquidated rather than people to be engaged with. Erasure has been at times a matter of counting: how many ‘Indians’ are left, how many fewer than last year, how much property should be allocated ‘per Indian,’ and when will the ‘vanishing Indian’ become reality (Veracini, 2010a: 39‐40; Neu, 2000). This further allows individual Settlers to deny complicity in the erasure of Indigenous presence: the modern, industrial state counts, includes or excludes, and ultimately disposes of Indigenous peoples, and the state is impersonal. That the state exists because of settler colonisation, that Settler people serve as bureaucrats and colonial agents, or that erasure and occupation go hand in hand is rarely acknowledged. Indigenous histories, especially those living histories sustained in oral traditions, are the storehouse of knowledge of rituals, sacred places, and place‐ based personalities and tend to confound settler colonisation. These histories constantly remind Settler peoples of their illegitimacy on the land; they point out that there are ways of relating to place beyond the understanding of contemporary Settler peoples; and, they provide a source of strength and identity for Indigenous groups even after they have been separated from their places or their spaces have been replaced by colonial spaces. As Holm et al., point out, even the stories of loss regarding a sacred space can be a source of identity (Holm et al. 2003 pp.9‐12; see also Chapter 1). Settler colonisers, then, if they wish to avoid the discomfort associated with living Indigenous histories, must follow a logic of deliberately constructing histories in which Indigenous peoples are either absent or relegated at the margins. These then serve as the reference point for Settler people to judge their own ‘progress’ or ‘development’ as a people against anachronistic ‘savages’ who lack agency or power. This is also projected temporally forward: settler colonisation does not intend simply to erase these histories, but also to predetermine the future through “master narratives” (Austin, 2010) of technological progress, the inevitability of civilisation, rights‐based social assimilation, and the wholesale replacement of Indigenous systems of law and governance (Alfred, 2009a). Settler collectives create and perpetuate Settler myths such as the “Peacemaker myth” (Regan, 2010), the heroic trope of the frontier pioneer (Nettlebeck & Foster, 2012), and the up‐by‐the‐bootstraps myth of the self‐made Settler (Ramirez, 2012), to name but a few. Often these myths were created and are perpetuated by playing off of stereotypes about settlement in other colonial jurisdictions. Historian Chris Arnett has remarked: ... there remains the colonial myth that, contrary to what happened south of the 49th parallel, the British resettlement of British Columbia was benign, bloodless and law‐abiding ... Granted the “Indian Wars” of British Columbia came nowhere near the wholesale slaughter of aboriginal people that too often characterized the inter‐racial conflict in the western United States, but as one historian has observed, “human conflict does not decline in complexity as it does in scale.” Artnett, 1999 p.14 Both American and Canadian settler colonisation involved in varying combinations: treaty‐making and breaking; violent military and para‐military force; and, concerted attempts at cultural assimilation or extermination. In Regan’s work, she positions the peacemaker narrative in opposition to the violent reality of residential schools (Regan, 2010). As she points out, many physical buildings of residential schools still exist, though Settler people are unable to “see” them (2010 pp.5‐6). Steeped in national myths premised on narratives of treaty making and cooperation, and especially played off against perceptions of American ‘militant’ conquest, residential schools physically disappear to Settler Canadians: the structures are not seen, the damage not perceived. The residential school project in Canada, jointly pursued by the federal government and churches, was premised on the belief that ‘primitive’ and ‘disappearing’ Indigenous peoples could best be served by ushering their extinction through assimilation.62 However, given that the role of residential schools in erasure cannot be denied, Settler people instead must either deny their own involvement with them (and thus with settler colonisation) or deny that they existed at all. This is symptomatic of widespread Settler denial that serves not just to erase indigeneity, but also to erase the colonising act of erasure. Erasure and Transfer Erasure is required at some stage for each type of settler colonial land transfer. Sometimes this is obvious; for example “necropolitical transfer” (Veracini, 2010a: 35) involves the physical liquidation of Indigenous peoples by military action. However, erasure is involved in many other kinds of transfer either concurrent to (and hidden by) occupation and bricolage, or (usually) before or after these other colonising acts. Notably, Veracini describes that “perception transfer” — “when indigenous peoples are disavowed in a variety of ways and their actual presence is not registered (... for example, when indigenous people are understood as part of the landscape)” — “is a crucial prerequisite to other forms of transfer” (Veracini, 2010a p.36). Veracini then draws attention to an important dynamic: “when really existing indigenous people enter the field of settler perception, they are deemed to have entered the settler space and can therefore be considered exogenous” (2010a p.36). The implication is that erasure is unidirectional. Indigenous peoples cannot be retrieved or revived from their erased condition without serious disruption to settler colonial space. All transfer, regardless of whether it relies on physical or conceptual erasure, is intended to be permanent. Arguments that certain kinds of transfer are ‘better’ than others — such as the Canadian assertion of the peacemaker myth juxtaposed against violent American frontier adventurism — are seeking to differentiate between genocidal acts based on arbitrary distinctions, splitting colonial hairs.

#### It’s key for this topic – there will be discussions of “the right to strike” without ever mentioning the people of this land. Forcing settlers to confront native histories disrupt settler’s path of erasure. There is no better acknowledgement of indigenous history than understanding the way liberal affirmations of this topic have resulted in the degradation of native sovereignty.

Kaighn Smith, 2018, "Native Americans, Tribal Sovereignty and Unions on JSTOR," No Publication, https://www.jstor.org/stable/10.14213/inteuniorigh.25.4.0022

To understand labour relations in ‘Indian country’ (e.g. ‘reservations’ Native Americans retained after untold land cessions to the US under the barrel of the gun), one must understand the fundamental nature of tribal sovereignty and the relationship between tribal nations and the United States. Indigenous peoples have occupied what is now the US from time out of mind, and in so doing exercised governmental authority over their respective tribal citizens and their lands. After the American Revolution, the US Constitution defined treaties with tribal nations as the ‘Supreme law of the land’. The Constitution also granted Congress broad authority over Indian affairs. Centralising power over Indian affairs within the federal government had practical consequences: it was essential for systematic colonisation. The Supreme Court established early on that tribes are ‘domestic dependent nations’ and that the US has a trust responsibility to protect their sovereign authority as governments. The Supreme Court subsequently described the sovereignty of Indian tribes as of ‘a unique and limited character’, which ‘exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers’1. The Court also established that the federal trust responsibility to protect tribal sovereignty requires ambiguities in statutes affecting tribal nations to be construed in favour of tribal self-determination2. Thus, if Congress is silent on the question of whether a federal law may be imposed on a tribe in a manner that would undermine its inherent sovereign authority, the ‘proper inference... is that the sovereign power remains intact’3. Labour and Employment Relations In Indian Country It is well-established that tribes have inherent sovereign power to govern labour and employment relations within Indian country, their territorial jurisdiction, in accordance with their own laws. Tribal nations engage in a host of economic activities on their lands to raise governmental revenues for the provision of governmental services to their members. These include the operation of casino resorts, timber and other natural resources industries, and many more. In these settings, tribes retain inherent sovereign authority to enact and enforce labour and employment laws. Many tribes have enacted laws to govern unions and collective bargaining as well as employment discrimination. Non-citizens of Indian nations who take up employment with tribes or their enterprises in Indian country are also subject to these laws. The National Labor Relations Act (NLRA) - enacted in 1935 – establishes and protects the right of private-sector employees to organise and join unions and to engage in collective bargaining with employers. The NLRA expressly excludes the federal government, states, and municipalities from its application; it applies only to private employers. Labour organising in the public sector is separately governed by state and federal laws, which differ in substantial ways from the NLRA. Congress is silent on the application of the NLRA to tribal nations or their enterprises within Indian country. For nearly 75 years, the National Labor Relations Board (NLRB) had held that tribal nations and their enterprises in Indian country are not ‘employers’ subject to the NLRA, in recognition that tribal nations are sovereign governments, like the state and federal governments. NLRB applies the NLRA to tribal gaming operations In 2004, the NLRB changed course and held that a tribe engaged in gaming within Indian country to generate governmental revenues in accord with the Indian Gaming Regulatory Act (IGRA) was an ‘employer’ subject to the NLRA. The ruling was upheld on appeal4. The Court said that because operation of a casino was ‘not a traditional attribute of self-government’ and the tribe employed non- citizens at the casino, tribal sovereign interests did not warrant construing Congress’s silence in favour of the tribe. The San Manuel decision has been roundly criticised by federal Indian law scholars. Tribal nations engage in gaming pursuant to the IGRA to generate governmental revenues to support badly needed governmental services for tribal members. The IGRA requires that tribes use the net revenues from gaming to support tribal governmental services. Such an enterprise is thus no different than the lotteries, horse racing facilities, and liquor stores that states operate as employers. These public employers may be subject to the public sector labour laws of states, but they are clearly excluded from the NLRA. These are governmental operations to generate governmental revenues, not ‘commercial’ or private sector activities. The decision can also be criticised because it jettisoned the requirement to construe Congressional silence so as not to undermine tribal sovereignty: the ‘proper inference’ is that the NLRA cannot be applied to Indian tribes. In the wake of San Manuel, the federal courts have continued to grapple with this issue. The Little River Band of Ottawa Indians has had an operational labour law on its books for a decade, modelled on public sector labour laws of states. It allows union organising within the Band’s governmental agencies and subordinate economic organisations, including its IGRA gaming operations. Like the labour laws of most states and the federal government, the law prohibits strikes and restricts collective bargaining over specific subject areas. The Band’s law covers union elections, collective bargaining, and the resolution of unfair labour practices. In 2013, the NLRB challenged the Band’s laws and ruled that it could strike them down to the extent that they (a) apply to the tribe’s gaming enterprise, and (b) vary from the NLRA. The Band appealed and lost. For the first time, a federal agency was empowered to strike down the duly enacted and operational laws of a federally recognised Indian tribe. As the Band argued in Court, ‘[i]t is hard to imagine a greater affront to a sovereign’s authority (and its dignity) than to topple its own, carefully thought-out policy judgments in these areas and to substitute those of another power’5. Tribal nations within the jurisdiction of the US Court of Appeals for the Sixth Circuit are now subject to union organising under the NLRA and cannot enact public sector labour laws that vary from it. In June 2016, the Supreme Court declined to review the case, leaving the state of law in disarray. For example, tribal nations in Wyoming, Colorado, New Mexico, Oklahoma, and Kansas are subject to a rule set by the US Court of Appeals for the Tenth Circuit, which can generally be described as more protective of tribal sovereignty. Tribes in Montana, Idaho, Arizona, California, the Northwest, New York, and Connecticut are subject to decisions of the US Courts of Appeals for the Ninth and Second Circuits, which are less protective of tribal sovereignty. In other parts of the country, it is hard to gauge what the rule is. The Tribal Labor Sovereignty Act The Tribal Labor Sovereignty Act (TLSA) was first proposed in Congress in 2015. The Act would have amended the NLRA to exclude an ‘Indian tribe, or any enterprise or institution owned and operated by an Indian tribe and located on its Indian lands’ from the definition of ‘employer’. Tribal Nations and inter-tribal organisations as well as the US Chamber of Commerce’s Native American Enterprise Initiative argued that the measure appropriately supported tribal self-government and created parity between tribal governments and federal, state, and municipal governments – likewise excluded under the NLRA. However, the TLSA met stiff opposition from organised labour. The AFL-CIO wrote in response that the federation ‘does not believe that employers should use [the principle of sovereignty for tribal governments] to deny workers their collective bargaining rights and freedom of association... fundamental human rights that belong to every worker in every nation’. The AFL-CIO cited an informal opinion from the ILO’s International Labour Standards Division, stating that ‘it is critical that the State (the national authority) takes ultimate responsibility for ensuring respect for freedom of association and collective bargaining rights throughout its territory’6. In April 2018, the bill failed to pass the Senate. It remains to be seen whether it will be re-invigorated. Conclusion Tribal nations, like all sovereign governments, can enact laws within their respective jurisdictions to reflect their unique values and public policy priorities. Tribal nations want their workplaces to be fair. They want to attract and retain a high quality work force. Providing employees with fair wages and good working conditions furthers those interests. But the legal impetus to establish this setting should come from within tribal nations themselves, not foisted upon them from the outside. Tribes are subject to the Indian Civil Rights Act (ICRA), which prohibits tribal governments from interfering with essentially the same rights as those protected from state interference in the Bill of Rights and Fourteenth Amendment. Employees within Indian country may invoke ICRA as necessary, but (appropriately) the interpretation and enforcement of ICRA is within the exclusive authority of any given Indian nation to decide7. The imposition of the NLRA upon the enterprises of tribal nations in Indian country forces a law intended to govern private sector employment relations upon public sector employment relations. There is no concurrent push to impose the NLRA on federal, state, and municipal employees; over twenty US states prohibit collective bargaining rights for public employees altogether8. Furthermore, the extension of the NLRA to cover tribal enterprises can hardly be considered a panacea for ensuring workers’ rights to organise in tribal enterprises. Maina Kiai, former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, observed that the NLRA ‘legalises practices that severely infringe workers’ rights to associate’ and ‘provides few incentives for employers to respect workers’ rights’9. Tribal nations like the Little River Band may do better. Imposing the NLRA upon tribal enterprises in Indian country intrudes upon tribal sovereignty by displacing tribal law with a foreign law. It is a modern act of colonisation.

## The Plan

#### Thus the advocacy resolved: Tribal Governments ought to recognize the unconditional right of workers to strike

Keel & Stevens 18

Jefferson Keel, Ernie Stevens (Jefferson Keel is the Lieutenant Governor of the Chickasaw Nation of Oklahoma and the President of the National Congress of American Indians.,Ernie Stevens is the Chairman of the National Indian Gaming Associatio), 4-16-2018, "Editorial: Support Tribal Sovereignty and Pass the Tribal Labor Sovereignty Act," No Publication, https://www.ncai.org/news/articles/2018/04/16/editorial-support-tribal-sovereignty-and-pass-the-tribal-labor-sovereignty-act

In life, timing is everything as they say. And the time is now for the United States Senate to take up and pass the Tribal Labor Sovereignty Act, a bi-partisan bill that has been pending for years that would uphold the inherent rights of Indian tribes to self-governance. TLSA would provide parity for tribal governments by ensuring they have the same ability as all other governments to regulate labor relations for our government employees.When the National Labor Relations Act (NLRA) was enacted in 1935, Congress deliberately excluded from its coverage federal, state, and local government employers. For seven decades after the enactment of the National Labor Relations Act in 1935, the National Labor Relations Board (NLRB) held the law also did not apply to tribal government employers, affirming their official status as governments as recognized in the U.S. Constitution. The NLRB’s position made sense, because labor strikes risk paralyzing tribal governments and causing havoc in their communities (just as it would for other governments). In 2004 – without any directive change in the law – the NLRB pulled an about-face, arbitrarily deciding for the first time that the NLRA applies to tribal government employers. Developed to right the NLRA’s unfounded wrong, the (TLSA) Tribal Labor Sovereignty Act reflects our unwavering belief that tribal sovereignty is not conditional. There is no alternative when it comes to treating tribal governments with the same respect and deference accorded to federal, state, and local governments when it comes to the NLRA.Sovereignty in this instance simply means tribal governments should be allowed to enact their own laws regulating labor organizing by government employees – just like other governments have always been. The truth is that many tribal nations openly welcome labor unions into the enterprises that they own, and a growing number have designed and enforce their own labor regulations. As tribal governments, we all strive to attract and retain employees and provide the best working conditions and the best incentives for workers. Tribal nations, like other governmental employers, have a huge interest in ensuring that our employees are satisfied and productive. In fact, tribal government employers regularly are hailed as the best employers in our regions.The NLRB’s decision not to exempt tribal nations as governmental entities gives outside third-party unions the power and control to call a strike of a tribal government’s workforce. This can be devastating to tribal nations, as their governments face potential shutdowns that would stall the provision of public services and vital revenue-generating operations. Therefore, tribal nations must not, have not, and will not stand for the NLRB’s position.State and local governments are very similar to tribal governments. They employ hundreds of thousands of workers in government-owned enterprises, including hotels, convention centers, state casinos and lotteries, state parks, golf courses, ski resorts, as well as revenue-generating banks, flour mills, and facilities for vehicle repair. All of these state employers and those they employ are exempt from the NLRA. Tribal governments simply ask for the same treatment – fair treatment.The Tribal Labor Sovereignty Act is a simple amendment to the (NLR)National Labor Relations Act that would explicitly name tribal governments in the same exempt category as all other government employers in the United States. At the end of the day, policy, as in life, means making choices that define who we are and what we value. The Senate has the opportunity to correct the NLRB’s flawed decision by voting to pass the Tribal Labor Sovereignty Act, upholding tribal self-governance and providing a measure of justice to tribal nations and Native people.

## Adv 1 Labor

#### Current native and non-native labor relations are strained

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Harvard Law Review, January 2021, "Tribal Power, Worker Power: Organizing Unions in the Context of Native Sovereignty," No Publication, https://harvardlawreview.org/2021/01/tribal-power-worker-power-organizing-unions-in-the-context-of-native-sovereignty/

Since 1990, employees of businesses owned and operated by Native nations have increasingly sought to amplify their voices in the workplace through union representation.1 Many of these (primarily non-Native2) workers have invoked the protections of the National Labor Relations Act3 (NLRA). The protections of federal labor law have been crucial to building worker power in private-sector enterprises. But to many tribal governments, this invocation of a federal statute is an affront to the inherent sovereignty of Native nations.4 Labor organizing in tribal enterprises5 uncovers a seemingly intractable tension between two classes of power-building institutions: unions and tribes. Unionizing workers, often members of non-Native minority groups, feel disenfranchised in their workplaces, while Native governments perceive intervention into their internal affairs as threatening their inherent sovereignty6 — sovereignty that has been weakened through congressional action and Supreme Court decisions.7 This tension is especially acute in the ideological context of the modern labor movement, which casts unionism as rooted in values of progressivism and social justice.8 This Note attempts to ameliorate that tension by advocating a labor movement that builds worker power under the protections of tribal, rather than federal, law. This Note proceeds in four parts. Part I sets out the historical backdrop, while Part II outlines the doctrinal context. A question central to many tribal-labor conflicts is whether general federal regulatory statutes, including the NLRA, apply to Native nations. The Supreme Court has addressed this question only in dictum,9 and lower courts are divided. Part III argues that, under federal Indian law doctrine, general federal labor statutes do not apply to tribally owned businesses. As several scholars have articulated, interpreting federal labor law as inapplicable to these businesses is consistent with Supreme Court precedent, the text and history of the NLRA, and the nature of tribal enterprise.10 Part IV examines the implications of this argument. Drawing on examples of existing tribal labor-relations schemes, this Part encourages worker advocates to see organizing in tribal enterprises as an opportunity to amplify workers’ voices while honoring Native sovereignty. In the absence of federal regulation, unions and Native nations may find common ground as institutions dedicated to building power for their members.11

#### Ensuring the right to strike solves - Labor rights in the context of tribal sovereignty not only secure indigenous futurity but also empowers the working class, building alliances and coalitions that spill-over globally

Harvard Law Review 21

Harvard Law Review, January 2021, "Tribal Power, Worker Power: Organizing Unions in the Context of Native Sovereignty," No Publication, https://harvardlawreview.org/2021/01/tribal-power-worker-power-organizing-unions-in-the-context-of-native-sovereignty/

A. Tribal Law as Alternative to Federal Law Unions’ fight to apply the NLRA to tribal enterprises rests on a false premise: that without federal law, tribal employees will lack any legal protections. 140. See, e.g., Unions Target Organizing Employees, supra note 1 (quoting a union leader describing tribal employees as existing in a “legal no-man’s land”). Show More Like other sovereigns exempted from the NLRA, Native nations have the authority to promulgate labor regulations and an economic and sovereign interest in doing so. 141. See KAMPER, supra note 5, at 73. Many tribal governments have developed comprehensive labor codes. The following examples provide some insight into how unions and Native nations can coexist and exhibit mutual respect — even, in some cases, allowing workers greater protection than is currently available under federal law. The Navajo Nation provides a leading example of effective tribal-labor relations. In the 1990s, the Navajo Council promulgated a labor code that established collective bargaining rights for employees of the Navajo government and tribally owned corporations. 142. See id. at 86. The Laborers’ International Union of North America (LiUNA) subsequently campaigned to unionize the Navajo Area Indian Health Service (IHS). 143. See id. at 101. LiUNA had represented employees of the Navajo Area IHS when it was managed by the federal government. See id. at 105. The 2001 campaign arose out of a decision to transfer management of the health service to the Navajo Native Council. See id. at 104. Show More The IHS — unlike many tribal enterprises — employs a majority Native workforce. 144. See id. at 101; see also id. at 136–39 (discussing the ways in which a primarily Native workforce complicates, rather than simplifies, tribal labor relations). Show More The union therefore served as a tool for both improving workplace conditions and amplifying the political will of tribal citizens. 145. See id. at 102. Union organizers found that Navajo law presented some advantages over federal law: Unlike federal law, the Navajo code mandates employer neutrality, thus prohibiting employers from engaging in anti-union campaigns. 146. See id. at 143–47. Navajo law also provides for card-check recognition, whereby a union is automatically recognized if more than fifty-five percent of workers express support by signing union cards. 147. See id. at 86–87. Card-check is faster and less cumbersome than the election process established under federal law — a process employers frequently exploit to undermine organizing efforts. See SHARON BLOCK & BENJAMIN SACHS, CLEAN SLATE FOR WORKER POWER: BUILDING A JUST ECONOMY AND DEMOCRACY 52 (2020), https://uploads-ssl.webflow.com/5fa42ded15984eaa002a7ef2/5fa42ded15984e5a8f2a8064\_CleanSlate\_Report\_FORWEB.pdf [https://perma.cc/2DYS-XXKM]. Show More Ultimately, the IHS campaign yielded a collective bargaining agreement without Board or court involvement. 148. See Kamper, supra note 26, at 34–35. The Mashantucket Pequot Tribal Nation provides a contrasting example. 149. The Mashantucket Pequot Tribal Nation operates Foxwoods, one of the largest resort casinos in North America. See About Us, FOXWOODS RESORT CASINO, https://www.foxwoods.com/about/about-us“>https://www.foxwoods.com/about/about-us/”>https://www.foxwoods.com/about/about-us [https://perma.cc/MVS6-S2JK]. For a detailed account of the union campaign discussed here, see Derek Ghan, Federal Labor Law and the Mashantucket Pequot: Union Organizing at Foxwoods Casino, 37 AM. INDIAN L. REV. 515 (2012). Show More In 2007, the United Auto Workers (UAW) won an NLRB-administered election among majority non-Native dealers at Foxwoods Casino. 150. KAMPER, supra note 5, at 203; see Harriet Jones, UAW Brokers First Union Contract Under Tribal Law, NPR (Mar. 14, 2010, 12:01 AM), https://www.npr.org/templates/story/story.php?storyId=124625523“>https://www.npr.org/templates/story/story.php?storyId=124625523”>https://www.npr.org/templates/story/story.php?storyId=124625523 [https://perma.cc/MV32-DHJW]. Show More Earlier that year, in response to both the UAW campaign and the San Manuel decisions, the Tribe, which owns Foxwoods, had promulgated a labor code that was largely hostile to unions. 151. See Ghan, supra note 149, at 530–31. Following the election, the Tribe unsuccessfully challenged the NLRB’s jurisdiction; 152. See id. at 535–36. in parallel, the Tribe and union negotiated. Following this negotiation, the Tribe’s labor ordinance was amended both to allow union security agreements for contracts negotiated under tribal law and to establish a neutral third-party dispute resolution procedure. 153. See id. at 536–37, 537 n.160. The ordinance retained its no-strike provision. 154. See id. at 537. The result was a legal framework resembling many public-sector collective bargaining laws, without injuring Mashantucket Pequot sovereignty. 155. See id.; Jones, supra note 150. At least three unions have since organized under Mashantucket Pequot law. 156. See Mashantucket Tribe Oversees Another Union Election for Casino Workers, INDIANZ.COM (Apr. 5, 2018), https://www.indianz.com/IndianGaming/2018/04/05/mashantucket-tribe-oversees-another-unio.asp“>https://www.indianz.com/IndianGaming/2018/04/05/mashantucket-tribe-oversees-another-unio.asp”>https://www.indianz.com/IndianGaming/2018/04/05/mashantucket-tribe-oversees-another-unio.asp [https://perma.cc/5RR4-3UWG]. Show More California’s IGRA compacting process has created a third example of how Native nations may regulate tribal labor relations. Many Native nations in California have adopted tribal labor relations ordinances (TLROs) as a condition of their gaming compacts negotiated with the state. 157. See KAMPER, supra note 5, at 79. TLROs promulgated in response to compacting provide an interesting model of what Professor David Kamper calls “interdependent self-determination,” 158. Id. as compacting requires unions and Native governments to work together to build a labor-relations framework that is rooted in Native sovereign power. In some cases, the resulting ordinances are more friendly to labor than many state labor laws. Although the model California TLRO prohibits most strikes, it allows them when collective bargaining has reached an impasse. 159. Model Tribal Labor Relations Ordinance §§ 6(2), 11 (Sept. 14, 1999) [hereinafter Model TLRO], https://www.tasin.org/home/showdocument?id=8“>https://www.tasin.org/home/showdocument?id=8”>https://www.tasin.org/home/showdocument?id=8 [https://perma.cc/43RE-CFPB]. Show More In these cases, the TLRO also permits secondary boycotting — thus offering protection beyond that offered by the NLRA. 160. Compare id., with 29 U.S.C. § 158(b)(4). The San Manuel ordinance authorizes unions to negotiate subjects beyond the “terms and conditions of employment,” 161. See Wermuth, supra note 70, at 104–05; cf. 29 U.S.C. § 158(d) (limiting employers’ obligation to bargain in good faith to “wages, hours, and other terms and conditions of employment”). Show More and the Tribe’s gaming compact prohibited discrimination on the basis of sexual orientation before federal law did. 162. See Tribal-State Compact Between the State of California and the San Manuel Band of Mission Indians § 12.3(f), http://www.cgcc.ca.gov/documents/compacts/amended\_compacts/San\_Manuel\_Compact\_2016.pdf“>http://www.cgcc.ca.gov/documents/compacts/amended\_compacts/San\_Manuel\_Compact\_2016.pdf”>http://www.cgcc.ca.gov/documents/compacts/amended\_compacts/San\_Manuel\_Compact\_2016.pdf [https://perma.cc/5UD4-ZZWJ]. Show More California’s TLROs have been criticized by champions of sovereignty. 163. See KAMPER, supra note 5, at 79–80. Because the ordinances are imposed by the state as a condition of gaming, some commentators view them as undermining one of the core functions of self-government — legislation. See id.; Guss, supra note 136, at 1635–36. TLROs adopted through compacting are frequently identical to one another, inviting criticism that they reflect California state policy, not the interests of the promulgating nations. See Guss, supra note 136, at 1634–36; see also Model TLRO, supra note 159. This criticism is a reminder that the power-building potential of collaborative lawmaking depends on the exercise of power by Native nations; states imposing regulation under the auspices of government-to-government contracting does not bolster sovereignty. Show More But the underlying principle of encouraging the promulgation of tribal labor law through the compacting process presents a promising model of interdependent self-determination. As the California and Mashantucket Pequot examples illustrate, many tribal labor codes are promulgated in response to ongoing union organizing. As a result, these codes, unlike state and federal laws, arise out of both explicit and implicit negotiations over jurisdiction, sovereignty, and worker power. This context provides an opportunity for worker advocates and tribal governments to engage in collaborative lawmaking, moving away from the “negative” approach identified by Guss and toward a positive, interdependent approach to power-building that better serves both workers and sovereignty. 164. Cf. Guss, supra note 136, at 1661–66 (characterizing stronger labor and employment protections as positive assertions of tribal sovereignty). Show More Against the backdrop of a legal landscape that is hostile to tribal jurisdiction over labor relations, unions may voluntarily recognize a tribal government’s authority to gain bargaining power in tribal enterprises. 165. Cf. Ghan, supra note 149, at 542–47 (discussing the negative corollary to this approach, wherein unions leverage the threat of Board jurisdiction to strengthen their bargaining power). Show More On the other hand, if, as this Note argues, tribal enterprises are not employers under the NLRA, the absence of federal law allows Native nations to build systems that better support workers. Scholars have argued that the NLRA is inadequate to protect efforts to build worker power. 166. See, e.g., ESTLUND, supra note 12, at 30–31. Professors Sharon Block and Benjamin Sachs have called for a “clean slate” for labor law. 167. BLOCK & SACHS, supra note 147, at 20. Tribal labor regulation presents just such a clean slate. Several of the Clean Slate proposals have already been implemented in tribal labor codes, including improved organizer access to workers, 168. See id. at 50; Model TLRO, supra note 159, § 8(a). card-check recognition, 169. See BLOCK & SACHS, supra note 147, at 52; KAMPER, supra note 5, at 86–87. and an expanded range of bargaining subjects. 170. See BLOCK & SACHS, supra note 147, at 66; Wermuth, supra note 70, at 104–05. The resolution of labor disputes under tribal jurisdiction also benefits from small dockets and culturally specific alternative dispute resolution mechanisms. 171. See Wenona T. Singel, The Institutional Economics of Tribal Labor Relations, 2008 MICH. ST. L. REV. 487, 499–500. Show More Federal labor law’s inadequacy as a tool for building worker power therefore grants Native governments their own positive leverage — not the implicit threat that accompanies the lack of NLRB jurisdiction, but the promise of a better alternative. It is this promise of a better alternative that Professor Scott Lyons had in mind when, shortly after San Manuel, he called on Native nations to “head [the Board] off at the pass and develop even stronger labor laws and worker protections — that is, stronger unions — than what the Americans currently enjoy. Make Indian enterprises the envy of workers everywhere.” 172. Scott Lyons, Unionization in Indian Country Can Be an Act of Sovereignty, INDIAN COUNTRY TODAY (Oneida, N.Y.), July 14, 2004, at A5. Show More B. Reinforcing Sovereignty as an Act of Solidarity Realizing Professor Lyons’s vision requires cooperation from both Native nations and labor activists. Outside of the United States, some unions and indigenous groups have come together as allies in combating the harms of capitalism and settler colonialism, recognizing the shared mission of unions and indigenous communities as power-building institutions. 173. See Stéphane Le Queux, Labour and the Kanak People’s Struggle for Sovereignty, 25 J. INT’L CTR. FOR TRADE UNION RTS., no. 4, 2018, at 10, 12 (translating the slogan of a trade union in the French colony of New Caledonia as “Factories, Tribes, Same Struggle”). Show More Solidarity is the core value of the labor movement; a motivating sentiment of organized labor is the conviction that “[a]n injury to one is an injury to all.” 174. See, e.g., Dennis Williams, From the President: Understanding Our Union’s Core Values, SOLIDARITY MAG. (June 16, 2017), https://uaw.org/solidarity\_magazine/president-understanding-unions-core-values“>https://uaw.org/solidarity\_magazine/president-understanding-unions-core-values/”>https://uaw.org/solidarity\_magazine/president-understanding-unions-core-values [https://perma.cc/3MBW-57WA]. Show More This value is not always reflected in American unions’ relationships to Native nations. Using language that echoes countless employer reactions to union campaigns, 175. See, e.g., Karen Baynes-Dunning, SPLC Response to Union Petition, S. POVERTY L. CTR. (Nov. 19, 2019), https://www.splcenter.org/news/2019/11/19/splc-response-union-petition“>https://www.splcenter.org/news/2019/11/19/splc-response-union-petition”>https://www.splcenter.org/news/2019/11/19/splc-response-union-petition [https://perma.cc/9FS8-WU8X] (proclaiming “support for unions” while declining to recognize a staff union). Show More the AFL-CIO has stated that it supports “the principle of sovereignty” for Native nations while advocating for the United States government to assert control over tribal-labor relations. 176. William Samuel, Letter Opposing a Bill that Would Deprive Workers Employed by Tribal-Owned and -Operated Enterprises Their Rights and Protections Under the NLRA, AFL-CIO (Apr. 13, 2018), https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-bill-would-deprive-workers-employed-tribal-owned“>https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-bill-would-deprive-workers-employed-tribal-owned”>https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-bill-would-deprive-workers-employed-tribal-owned [https://perma.cc/H9JX-JHN9]. Show More Twenty-first-century American unions have positioned themselves as tools for combating racist power structures. 177. See, e.g., Williams, supra note 174 (identifying a core value of the UAW as “[F]ight[ing] for Everyone; Not Just Ourselves” and touting the union’s role in advocating antiracist causes); Shwanika Narayan & Roland Li, Port of Oakland Shut Down by Dockworkers in Observation of Juneteenth, S.F. CHRON. (June 19, 2020, 3:09 PM), https://www.sfchronicle.com/business/article/Port-of-Oakland-shut-down-by-dockworkers-in-15352644.php“>https://www.sfchronicle.com/business/article/Port-of-Oakland-shut-down-by-dockworkers-in-15352644.php”>https://www.sfchronicle.com/business/article/Port-of-Oakland-shut-down-by-dockworkers-in-15352644.php [https://perma.cc/7S4P-3ZPM]. Show More Yet even as Native income per capita is less than half of the national average, 178. RANDALL K.Q. AKEE & JONATHAN B. TAYLOR, SOCIAL AND ECONOMIC CHANGE ON AMERICAN INDIAN RESERVATIONS: A DATABOOK OF THE US CENSUSES AND THE AMERICAN COMMUNITY SURVEY 1990 – 2010, at 16 (2014), https://static1.squarespace.com/static/52557b58e4b0d4767401ce95/t/5379756ce4b095f55e75c77b/1400468844624/AkeeTaylorUSDatabook2014-05-15.pdf [https://perma.cc/LS34-5JZ5]. Show More unions have exploited fears of “rich Indians” to garner support from non-Native workers. 179. See, e.g., Ghan, supra note 149, at 541–42. And unions, through litigation, have encouraged and benefited from courts’ racist preconceptions of “Indianness” in setting the boundaries of acceptable exercises of sovereign power. 180. See, e.g., Response of Intervenor Unite Here! International Union to Petitioners’ Petition for Rehearing or Rehearing En Banc at 5–11, San Manuel Indian Bingo & Casino v. NLRB, 475 F.3d 1306 (D.C. Cir. 2007) (No. 05-1392) (“Sovereignty is not the broad concept the Band espouses. It is about the maintenance of the key elements of culture.” Id. at 6.); see also Limas, Tuscarorganization, supra note 70, at 476–79, 477 n.50 (detailing the ways in which courts’ distinction between “commercial” and “governmental” activities builds on and reinforces racist conceptions of sovereignty). Show More It does not serve the mission of the labor movement to benefit from these wrongs. As union leaders and labor activists fight for a world in which power is redistributed away from the hands of the few, solidarity requires that those efforts be situated within the broader context of genocide, systematic dispossession, and the destruction of Native sovereignty. When unions approach organizing in the tribal context as a fight over NLRB jurisdiction, they seek to build worker power at the expense of Native self-determination. But power-building is not a zero-sum game. By centering tribal organizing on disputes over Board jurisdiction rather than turning to tribal labor law as a first choice, unions miss the opportunity to engage collaboratively with Native nations to build institutions that better serve both.

## Adv 2 Tribal Sovereignty

#### Tribal sovereignty recognizes the importance as land, not as a commodity, but full of life and meaning – protecting and caring for it in ways settler states never could – this solves

#### Coquille Indian Tribe, no date

Coquille Indian Tribe, no date, "The Meaning of Sovereignty – Coquille Indian Tribe," No Publication, https://www.coquilletribe.org/?page\_id=26

A Statement from Tribal Chairperson Brenda Meade Sovereignty is understood worldwide as the right and power of a governing body to govern itself, its people and its lands without outside interference. In political theory, sovereignty means the supreme decision-making authority of a government. For Coquille people, sovereignty is an inherent right and responsibility that has been upheld by our Tribal leaders since time began. Today, sovereignty is the principle that the United States government and the Coquille Indian Tribe understand and agree on when we talk about the importance of taking care of our people and the lands that we come from. The Coquille Tribe’s sovereignty is tied to who we are and who we have always been. It is reflected in how we treat one another and our neighbors in the broader community. It is tied to our culture, our heritage, and the responsibility we feel to address the needs of our people, to ensure the future of our Tribal nation and the health of these lands and waters. Since our creation, Tribal leaders have always recognized and prioritized the needs of our people. Those priorities consistently have been to ensure health and safety; to care for our Elders; to teach our young people; and to offer opportunities for Coquille people to stay strong, healthy and proud of their heritage. Sovereignty also means protecting our sacred places and the lands that support our traditional activities and teachings. It is important to know that the Coquille people never gave up their sovereign rights. Despite unratified treaties, removal from our lands to reservations, vigorous assimilation programs, and the termination policies meant to extinguish Indian identity, the Coquille Indian Tribe never abandoned our sovereignty or our desire to be recognized as the people of this land. We never forgot the importance of sovereignty to the health, wellness and future of our people. The Coquille people persevered through decades of devastation. After much personal dedication and sacrifice, we regained our federal recognition on June 28, 1989. It was a day that changed the future of our people – a day we will celebrate forever. We understand that we must uphold our sovereignty and our culture. We must never forget who we are and where we come from. By remembering to “take only what we need and to leave some for the others,” we ensure that Coquille people will always be here on this land.

#### Fighting discrimination must be centered around indigenous resurgence and solidarity. Understanding the ways different acts of violence intersect with settler colonialism and endorsing land-based practices is the only way decolonize.

**Snelgrove et. al 14**(Corey Snelgrove, Rita Kaur Dhamoon, Jeff Corntassel (2014), professor at University of British Columbia, professors at University of Victoria, Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations, 3:2, p. 2-3) //RBA

Our goal in this article is intervene and disrupt current contentious debates regarding the predominant lines of inquiry bourgeoning in settler colonial studies, the use of ‘settler’, and the politics of building solidarities between Indigenous and non-Indigenous peoples. These three themes are not only salient in scholarly debates but also in practices of Indigenous resurgence, decolonization, anti-racism, feminist and queer work, and in alliances that challenge corporate pipeline expansion, resource extraction, colonial environmentalism, neo-liberal exploitation of temporary foreign workers, and violence against women, transgendered, and queer people. Through our own particular engagements with these issues, the three of us came together to think through our different relationships to settler colonial studies, debates about the term ‘settler’, and decolonizing relations of solidarity, with a shared commitment to practicing and/or supporting Indigenous resurgence. By Indigenous resurgence we mean ways to restore and regenerate Indigenous nationhood (Corntassel, 2012) and the “repatriation of Indigenous land and life” (Tuck & Yang, 2012). By centering Indigenous resurgence, we resist the disavowal of a colonial present still defined by Indigenous dispossession, we center transformative alternatives to this present articulated within Indigenous resurgence, and we remain attentive to the very ground upon which we stand. Indigenous resurgence, then, is our organizing frame for responding to the three themes of this essay, namely settler colonialism, settlers, and solidarity. First, our process of thinking together revealed some uncertainty about the emerging institutionalization of settler colonial studies and its relationship to Indigenous studies; at the same time, the practice, structure, governmentality, and politics of settler colonialism distinctly sharpens the focus on ongoing colonialism, the dispossession of Indigenous lands, and the actual/attempted elimination of Indigenous peoples. It is this focus on power, land, and Indigenous bodies that we centre in our approach to the study of settler colonialism. But our understanding of settler colonialism is not one-dimensional; instead, we begin from the position that it is intrinsically shaped by and shaping interactive relations of coloniality, racism, gender, class, sexuality and desire, capitalism, and ableism. This multi-dimensional understanding of settler colonialism enables specificity in the ways to which place, culture, and relations of power are approached; reflects the ways in which the State has governed subjects differently; and emphasizes that the disruption of settler colonialism necessitates the disruption of intersecting forces of power such as colonialism, heteropatriarchy and capitalism. Second, our analysis and dialogue about the term ‘settler’ illuminated that, whether using Indigenous words for ‘settler’ or the English word ‘settler’, these terms should be discomforting and provide an impetus for decolonial transformation through a renewed community-centered approach. This decolonizing praxis requires what Kanaka Maoli scholar Noelani Goodyear-Ka’ōpua (2013, pp. 30, 36) calls “land-centered literacies” which are “…based on an intimate connection with and knowledge of the land.” At the same time, our concerns go beyond the proper assignment of ‘settler’, where we are vigilant of those who adopt and legitimize a “way of thinking with an imperialist’s mind” (Alfred, 2009, p. 102). Third, while the language of solidarity does not fully capture the way we approach social struggles as interconnected, our collective conversations highlighted for us that Unsettling incommensurabilities 3 solidarity between Indigenous and non-Indigenous peoples must be grounded in actual practices and place-based relationships, and be approached as incommensurable but not incompatible.

#### Policy action within tribal sovereignty and the Interrogation into legal solutions ruptures the intelligibility of settler colonialism and creates meaningful progress

Bhandar 13 [lecturer at Kent Law School and Queen Mary School of Law – her areas of research and teaching include property law, equity and trusts, indigenous land rights, post-colonial and feminist legal theory, multiculturalism and pluralism, critical legal theory, and critical race theory Brenna, “Strategies of Legal Rupture: the politics of judgment” [http://www.forensic-architecture.org/wp-content/uploads/2013/02/BHANDAR-Brenna.-Strategies-of-Legal-Rupture.pdf] // recut SJ AME

In this article, my aim is to consider the use of law as a political strategy of rupture in colonial and post - colonial nation states. The question of whether and how to use law in order to transform and potentially shatter an existing political - legal order is one that continues t o plague legal advocates in a variety of places, from Australia, to India, to Canada to Israel/Palestine. For example, the struggle for the recognition of indigenous rights in the context of colonial settler regimes has often produced pyrrhic victories. 21 T he question of indigenous sovereignty is ultimately quashed, and aboriginal rights are paradoxically recognized as an interest that derives from the prior occupation of the land by aboriginal communities but is at the same time parasitic on underlying Crow n sovereignty; an interest that can be justifiably limited in the interests of settlement. 22 Thus, the primary and inescapable question remains: how does one utilize the law without re - inscribing the **very** colonial legal order that one is attempting to break down? 23 I argue that this is an inescapable dilemma; as critical race theorists and indigenous scholars have shown, to not avail ourselves of the law in an effort to ameliorate social ills, and to promote and protect the rights of oppressed minorities is to essentially abrogate one’s political responsibilities. Moreover, the reality of political struggle (particularly of the anti - colonial variety) is that it is of a diffuse and varied nature, engaging multiple different tactics in order to achieve its ends.¶ The notion of the ruptural defense emerges from the work of Jacques Vergès, a French advocate and subject of a film by Barbet Schroder entitled Terror’s Advocate . The film is as much a portrait of Vergès ’ life as it is a series of vignettes of armed anti - colonial and anti - imperial struggle during the decades between the late 1940s and the 1980s. I should say at the beginning that I do not perceive Vergès as a heroic figure or defender of the oppressed; we can see from his later decisions to defend Klaus Barbie, for instance, that his desire to reveal the violence wrought by European imperial powers was pursued at any cost. But in tracing the development of what Vergès called the ruptural defense, the film takes us to the heart of the inescapable paradoxes and contradictions involved in using law as a means of political resistance in colonial and post - colonial contexts. I want to explore the strategy of rupture as developed by Vergès but also in a broader se nse, to consider whether there is in this defense strategy that arose in colonial, criminal law contexts, something that is generalisable, something that can be drawn out to form a notion of legal rupture more generally.¶ To begin then, an exploration of Vergès’ ‘rupture defense’, or rendered more eloquently, a strategy of rupture. At the beginning of the film, Vergès comments on his strategy for the trial of Djamila Bouhired, a member of the FLN, who was tried in a military court for planting a bomb in a cafe in Algiers in 1956. Vergès states the following in relation to the trial:¶ The problem wasn’t to play for sympathy as left - wing lawyers advised us to do, from the murderous fools who judged us, but to taunt them, to provoke incidents that would reac h people in Paris, London, Brussels and Cairo...¶ The refusal to play for sympathy from those empowered to uphold the law in a colonial legal order hints at the much more profound refusal that lies at the basis of the strategy of rupture, which we see unfold throughout the film. In refusing to accept the characterisation of Djamila’s acts as criminal acts, Vergès challenges the very legal categories that were used to criminalise, condemn and punish anti - colonial resistance. The refusal to make the defendan ts’ actions cognizable to and intelligible within the colonial legal framework breaks the capacity of the judges to adjudicate in at least two senses. First, their moral authority is radically undermined by an outright rejection of the legal terms of refer ence and categories which they are appointed to uphold. The legal strategy of rupture is a politics of refusal that calls into question the justiciability of the purported crime by challenging the moral and political jurisdiction of the colonial legal order itself.¶ Second, the refusal of the legal categorization of the FLN acts of resistance as criminal brought into light the contradictions inherent in the official French position and the reality of the Algerian context. This was not, as the official line would have it, simply a case of French criminal law being applied to French nationals. The repeated assertion that the defendants were independent Algerian actors fighting against colonial brutality, coupled with repeated revelations of the use of torture on political prisoners made it impossible for the contradictions to be “rationally contained” within the normal operations of criminal law. The revelation and denunciation of torture in the courtroom not to prevent statements or admissions from being admissable as evidence (as such violations would normally be used) but to challenge the legitimacy of the imposition of a colonial legal order on the Algerian people made the normal operation of criminal law procedure virtually impossible . 24 And it is in this ma king impossible of the operation of the legal order that the power of the strategy of rupture lies. ¶ In refusing to render his clients’ actions intelligible to a colonial (and later imperial) legal framework, Vergès makes visible the obvious hypocrisy of the colonial legal order that attempts to punish resistance that employs violence, in the same spatial temporal boundaries where the brute violence of colonial rule saturates everyday life. In doing so, this is a strategy that challenges the monopoly of legitimate violence the state holds. Vergès aims to render visible the false distinction between common crimes and political crimes, or more broadly, the separation of law and politics. 25 The ruptured defense seeks to subvert the order and structure of the tr ial by re - defining the relation between accuser and accused. This illumination of the hypocrisy of the colonial state questions the authority of its judiciary to adjudicate. But more than this, his strategy is rupture in two senses that are fundamental to the operation of the law in the colonial settler and post - colonial contexts. The first is that the space of opposition within the legal confrontation is reconfigured. The second, and related point, is that the strictures of a legal politics of recognition are shattered.¶ In relation to the first point, a space of opposition is, in the view of Fanon, missing in certain senses, in the colonial context. A space of opposition in which a genuinely mutual struggle between colonizer and colonized can occur is denied by spatial and legal - political strategies of containment and segregation. While these strategies also exhibit great degree es of plasticity 26 , the control over such mobility remains to a great degree in the hands of the colonial occupier. The legal strategy of rupture creates a space of political opposition in the courtroom that cannot be absorbed or appropriated by the legal order. In Christodoulidis’ view, this lack of co - option is the crux of the strategy of rupture.¶ This strategy of rupture also points to a path that challenges the limits of a politics of recognition, often one of the key legal and political strategies utilized by indigenous and racial minority communities in their struggles for justice. Claims for recognition in a juridical frame inevitably involve a variety of onto - epistemological closures. 27 Whether because of the impossible and irreconcilable relation between the need for universal norms and laws and the specificities of the particular claims that come before the law, or because of the need to fit one’s claims within legal - political categories that are already intelligible within the legal order, legal recognition has been critiqued, particularly in regards to colonial settler societies, on the basis that it only allows identities, legal claims, ways of being that are always - already proper to the existing juridical order to be recognized by the law. In the Canadian context, for instance, many scholars have elucidated the ways in which the legal doctrine of aboriginal title to land im ports Anglo - American concepts of ownership into the heart of its definition; and moreover, defines aboriginality on the basis of a fixed, static concept of cultural difference. The strategy of rupture elides the violence of recognition by challenging the legitimacy of the colonial legal order itself.¶ In an article discussing Vergès’ strategy of rupture, Emilios Christodoulidis takes up a question posed to Vergès by Foucault shortly after the publication of Vergès’ book, De La Stratégie Judiciare, as to wh ether the defense of rupture in the context of criminal law trials in the colony could be generalized more widely, or whether it was “not in fact caught up in a specific historical conjuncture.” 28 In exploring how the strategy of rupture could inform practices and theory outside of the courtroom, Christodoulidis characterizes the strategy of rupture as one mode of immanent critique. As individuals and communities subjected to the force of law, the law itself becomes the object of critique, the object that ne eds to be taken apart in order to expose its violence. To quote from Christodoulidis:¶ Immanent critique aims to generate within these institutional frameworks contradictions that are inevitable (they can neither be displaced nor ignored), compelling (they necessitate action) and transformative in that (unlike internal critique) the overcoming of the contradiction does not restore, but transcends, the ‘disturbed’ framework within which it arose. It pushes it to go beyond its confines and in the process, famously in Marx’s words, ‘enables the world to clarify its consciousness in waking it from its dream about itself’. 29¶ Christodoulidis explores how the strategy of rupture can be utilised as an intellectual resource for critical legal theory and more broadly, as a point of departure for political strategies that could cause a crisis for globalized capital. Strategies of rupture are particularly crucial when considering a system, he notes, that has been so successful at appropriating, ingesting and making its own, political aspirations (such as freedom, to take one example) that have also been used to disrupt its most violent and exploitative tendencies. Here Christodoulidis departs from the question of colonialism to focus on the operation of capitalism in po st - war European states. It is also this bifurcation that I want to question, and rather than a distinction between colonialism and capitalism, to consider how the colonial (as a set of economic and political relations that rely on ideologies of racial diff erence, and civilizational discourses that emerged during the period of European colonialism) is continually re - written and re - instantiated through a globalized capitalism. As I elaborate in the discussion of the Salwa Judum judgment below, it is the combi nation of violent state repression of political dissent that finds its origins (in the legal form it takes) during the colonial era, and capitalist development imperatives that implicate local and global mining corporations in the dispossession of tribal peoples that constitutes the legal - political conflict at issue.¶ After the Trial: From Defense to Judgment¶ In response to a question from Jean Lapeyrie (a member o f the Action Committee for Prison - Justice) during a discussion of De La Stratégie Judiciare published as the Preface to the second edition, Vergès remarks that there are actually effective judges, but that they are effective when forgetting the essence of what it is to be a judge. 31 The strategy of rupture is a tactic utilized to subvert the order and structure of a trial; to re - define the very terms upon which the trial is premised. On this view, the judge, charged with the obligation to uphold the rule o f law is of course by definition not able to do anything but sustain an unjust political order.¶ In the film Terror’s Advocate , one is left to wonder about the specificities of the judicial responses to the strategy deployed by Vergès. (Djamila Bouhired , for instance, was sentenced to death, but as a result of a worldwide media campaign was released from prison in 1962). While I would argue that the judicial response is clearly not what is at stake in the ruptured defense, I want to consider the potentiality of the judgment to be ruptured in the sense articulate ed by Christodoulidis, discussed above. Exposing a law to its own contradictions and violence, revealing the ways in which a law or policy contradicts and violates rights to basic political freedoms , has clear political - legal effects