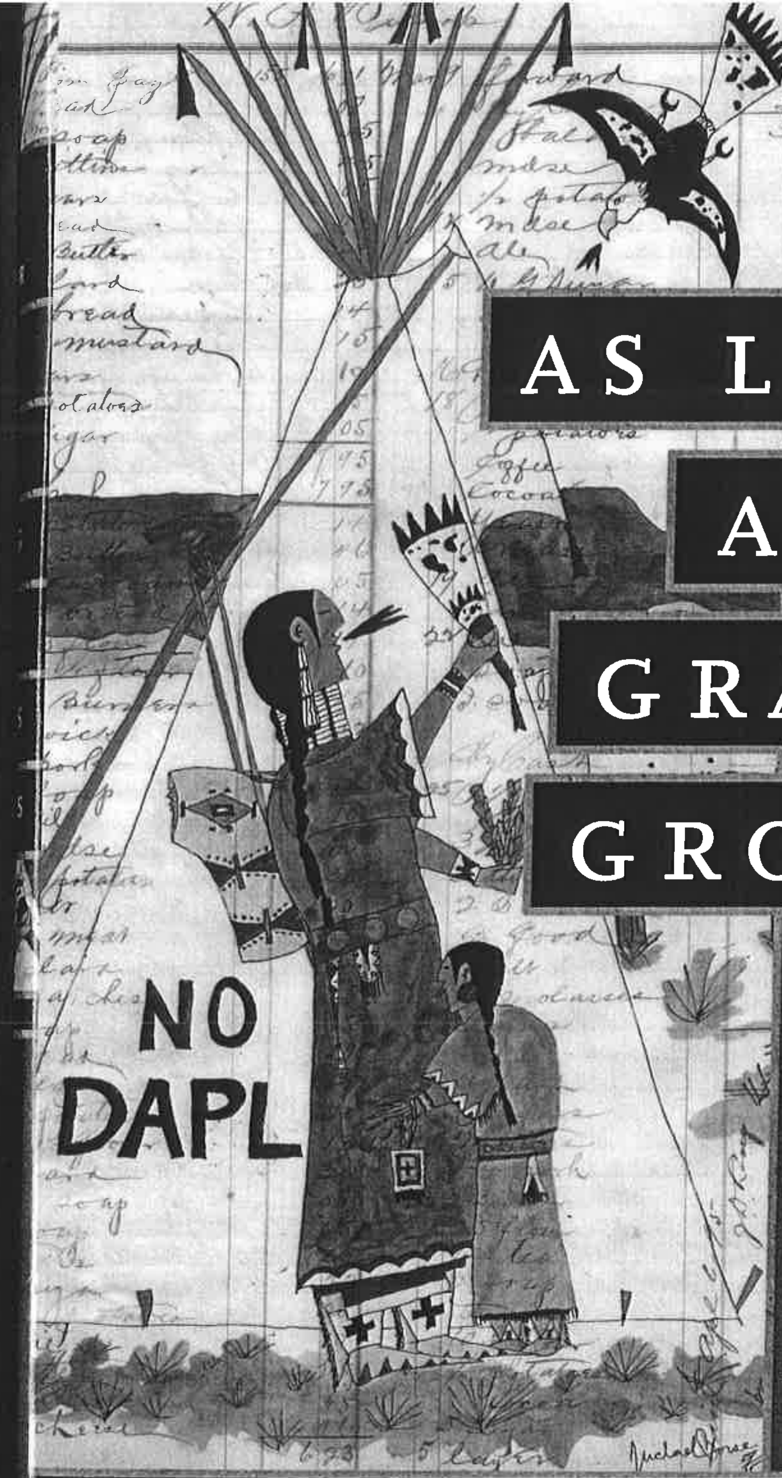

AS LONG AS GRASS GROWS

THE INDIGENOUS FIGHT FOR ENVIRONMENTAL JUSTICE, FROM COLONIZATION TO STANDING ROCK

DINA GILIO-WHITAKER

"A masterpiece . . . Powerful, urgent, and necessary reading."
—ROXANNE DUNBAR-ORTIZ, author of *An Indigenous Peoples' History of the United States*

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Author's Note

Books are born for many reasons. This one emerged as a result of many years of research and activism, which for me has always focused on environmentalism, Native sovereignty, and their intersection. If what the preeminent Indian law scholar Felix Cohen said was true, that Indians are the United States' miner's canary that signals the poison gas of the political atmosphere, to extend the metaphor, then in the larger world dominated by the fossil fuel industry all humans have become the miner's canary. On a planet with a rapidly changing climate and undergoing what many scientists believe is the Earth's sixth mass extinction, the future of humanity is looking about as bright as it did for American Indians in 1953 when Cohen wrote those words railing against federal Indian policy (known as termination, which was every bit as menacing as it sounded). From an American Indian perspective, we're all on the reservation now.

In the past few decades it has become crystal clear that, as "the people," our common enemy is the entrenched corporate power of Big Oil and other toxic industries that buy political influence to protect their own corrupt interests in collusion with government, all in the name of democracy. This has come at the expense of countless marginalized people worldwide. In the US, that has always meant Indigenous people, other people of color, and those having low incomes. The overall goal of this book is to highlight the importance of building alliances across social and racial divides. To do this requires an honest interrogation of the history of the relationships between the environmental movement and Indian country.

In my years of research and writing on American Indian environmental justice (EJ), I have observed two locations where those conversations predominantly occur: in academia and in activist spaces. By "activist spaces," I am referring to points of contact between activist groups (such as spontaneous actions or movements, coalitions, and nonprofits),

governmental agencies in charge of implementing environmental policies, and business interests those policies may or may not regulate in the process of development. Academics in environmental studies, Native studies, and other disciplines educate students on the histories and principles of EJ in different EJ communities, but they face a dearth of literature from which to teach on the topic relative to Indigenous peoples. A similar lack of knowledge exists within governmental and nongovernmental institutions and businesses. People in these organizations might have access to lawyers trained in federal Indian law, but law is only one aspect of the EJ world, especially when it comes to Indian country, not to mention the fact that federal Indian law is a creation of colonial forces and not particularly designed to deliver justice to Indian people. Lawyers with expertise in federal Indian law often are also neither versed in environmental justice history or principles nor are aware of other critical work by historians and other academics that inform EJ praxis (that is, the way EJ is imagined and implemented).

American Indian activists doing EJ work, however, tend to be quite knowledgeable about the issues they are working for and the histories that inform those issues. As a result, they inevitably end up having to educate, with no additional financial compensation, the various groups they interact with, people with whom they often have contentious relationships to begin with. This points to an in-between space in Indigenous environmental justice organizing, where there is a need for education that helps build the foundation for productive relationships. Thus, a primary goal of this book is to help fill that gap by providing a broad overview about what environmental injustice is for American Indians, describing what justice looks like, and proposing avenues to get there. The only book of its kind to date, my hope is that it will be used not only in classrooms but also by every organization, institution, and individual that engages with Indigenous peoples on the protection of the environment and their rights within it.

NOTE ON TERMINOLOGY

There are numerous terms used to describe and define American Indian people. Some are more accurate or appropriate than others, depending on context. Some are a matter of personal preference, while others are more legal in nature. As a general rule of thumb, the most appropriate terms

are specific Native nation names, such as Lakota, Diné (aka Navajo), or Anishinaabe. But when referring to American Indians collectively, the older terms "American Indians," "Indians," and "tribes" are terms used in federal legal parlance, and tribal nations and individuals often still use these terms. "Native American" is more contemporary and also used in legal contexts, but many Native people prefer simply "Native" in addition to their specific tribal names. Native people often also prefer the term "nation" to "tribe," since "tribe" can imply cultural inferiority, while "nation" invokes Indians' historical, preinvasion self-determination and governing systems. The terms "Indigenous" and "fourth world" signal originality to place and also provide context for a more global category of people who share similar struggles against states. Accounting for these complexities, the terms are used interchangeably throughout the text. When discussing specific American states, except where naming specific states (such as Washington State), "state" (lowercase s) is used to distinguish the individual state from "State" (capital S) meaning the US nation-state.

INTRODUCTION

The Standing Rock Saga

> *We are unapologetically Indigenous, we embody resistance, everything we do from eating rubber bullets for breakfast to holding our frontline has been done in a manner that is nothing but spiritual.*
>
> —RED WARRIOR CAMP COMMUNIQUE, DECEMBER 15, 2016[1]

As things often do in Indian country, it began with a story, this one a prophecy. Ancestors of today's Lakota, the people of Oceti Sakowin, had for generations warned about a black snake that would slither across the land, bringing destruction to the Earth and her people. The day representatives for Energy Transfer Partners entered the council chambers of the Standing Rock Sioux Tribe on September 30, 2014, to present plans for the Dakota Access Pipeline (DAPL), it perhaps came as no surprise to the tribal council that another pipeline was threatening Lakota lands. Other Lakota bands, Plains tribes, and white ranchers and farmers were, after all, already fighting the Keystone XL Pipeline. But nobody that day could have predicted the debacle the DAPL would turn into—the extremes to which Energy Transfer Partners (ETP) would go to put down tribal opposition to the project, beginning with CEO Kelsey Warren's lie that the tribe had not registered their dissent to the project early enough, and that if they had, the pipeline could have been rerouted. Or the human rights abuses by ETP's private security firms and militarized state police that would bring United Nations observers to the protest camps. Or the level of support the tribe would receive for a cause millions of people around the world found to be righteous. Then again, maybe they could have.

The startling truth is that there are 2.4 million miles of black snakes in the United States. These pipelines convey more crude oil, gasoline, home heating oil, and natural gas than any other country in the world.[2] Of the total miles, 72,000 are dedicated to crude. Pipelines are "an

extremely safe way to transport energy across the country," says the oil industry's Pipeline101.com, claiming they are generally considered safer than truck or rail transport. Yet hundreds of pipeline leaks and ruptures occur each year, with consequences that range from relatively benign to catastrophic. And with the pipeline infrastructure aging, critics warn about increasing risk of accidents.

Pipelines are so ubiquitous and normalized in the American political (and actual) landscape that they aren't even heavily regulated. While numerous federal and state agencies oversee some aspects of the pipeline infrastructure, most government monitoring and enforcement is conducted through a small agency within the Department of Transportation called the Pipeline and Hazardous Materials Safety Administration, PHMSA ("fimsa") for short. The agency's mandate requires that only 7 percent of natural gas lines and 44 percent of all hazardous liquid lines be subject to rigorous and regular inspection criteria. The rest are inspected less often.[3]

So when Energy Transfer Partners initiated the permitting and construction process, it was business as usual. The pipeline—1,172 miles long and spanning four states—was designed to connect Bakken Oil Field crude to an oil field tank farm in Illinois, flowing 470,000 barrels per day. It's hard to say if ETP was caught off guard when they encountered a dramatic groundswell of protest in 2016. Not that there hadn't been indications of the possibility of a backlash: in 2015, farmers in Iowa registered their dissent against the project with letters to the Iowa Utilities Board. The following year a lawsuit was filed by thirty Iowans contesting the state's granting eminent domain to ETP. At the same time, opposition to the Keystone XL Pipeline had become so high profile, due to the cross-sectional organizing of many diverse groups, that President Barack Obama had rejected Keystone's permit, sealing its fate in 2015. Pipeline protests were nothing new, given that the history of pipeline opposition goes back to at least 1968 with the building of the Trans-Alaska Pipeline System, and the battle against the Trans-Alaska Pipeline is still considered the biggest pipeline battle in history.[4] What took ETP by surprise, however, was the Obama administration's order to halt the DAPL project in December 2016 as the result of a massive grassroots resistance movement that mobilized millions of people in the United States and beyond.

The resistance movement, organized around the hashtags #NoDAPL, #Mniwiconi, #Waterislife, and #Standwithstandingrock, officially began in April 2016 when a small group of women from the Standing Rock Sioux Tribe (SRST) set up camp and named it Camp of the Sacred Stones, or Sacred Stone Camp.[5] The idea was to monitor pipeline construction while registering tribal dissent in a tangible way and, they hoped, to stop the project. SRST had known about the DAPL project since at least 2014 when Energy Transfer Partners conducted their first meeting with the tribal council. As reported by the *Bismarck Tribune*, an audio recording from September 30 documents the first meeting between ETP and the tribal council in which the company outlines its planned route less than a mile from the reservation boundary and crossing under the Missouri River at Lake Oahe. The council argued that while the route was not within current reservation boundaries, it was well within the boundaries acknowledged in the 1851 Treaty of Fort Laramie, and the treaty of 1868. The council expressed its concern about the potential of desecrating sacred sites and the danger of contaminating the community's water supply in the event of a pipeline rupture. The tribal council informed company representatives at the meeting that in 2012 they had passed a resolution opposing all pipelines within the treaty boundaries.[6]

Even more significant, ETP did not mention that an earlier proposal had the pipeline crossing the Missouri River north of Bismarck (some seventy miles away), as documented by a map included with other documents provided to the North Dakota Public Service Commission (PSC) as part of the permitting process. The same document shows that a change to the route was made in September, the same month as the meeting with the tribal council. A permit for that route had been rejected by the Army Corps of Engineers (ACE) after an environmental assessment concluded that among other consequences, it posed too great a risk to wells that served Bismarck's municipal water supply.[7] This led to a charge of environmental racism by the Standing Rock tribal council, a claim the PSC dismissed. On July 27, 2016, SRST filed a lawsuit against the Army Corps, claiming multiple federal statutes were violated when it issued permits to ETP.[8] And a carefully orchestrated campaign to discredit the Standing Rock Sioux Tribe emerged, backed by fossil fuel interests in a state whose political machine is heavily influenced by industry money and where 90 percent of the population is white.

Meanwhile, back at Sacred Stone Camp, people kept coming. By late August there were thousands of people at what was being referred to generally as Standing Rock, and new camps were popping up. Sacred Stone, Oceti Sakowin, and Red Warrior were the three primary camps people came to. Hundreds of tribal nations in the United States sent their support, financial and otherwise, and messages of encouragement poured in from Indigenous and non-Indigenous communities all over the world. Oceti Sakowin came to be the central gathering place for new arrivals, who were visually greeted by the dozens of tribal nation flags that regally lined the road of the main entrance. People brought donations of firewood, tents, construction materials, clothing, sleeping bags, and anything and everything needed for life in the camps. Kitchens staffed with volunteers fed the masses with donated food. The demonstrators refused the term "protestors," referring to themselves instead as "water protectors," and their main organizing principle was peaceful prayer and ceremony. "*Mni Wiconi*" was their mantra, meaning "Water is life" in the Lakota language. Drugs, alcohol, and weapons were banned in the camps. Although violence was strictly eschewed, civil disobedience was embraced; people put their bodies in the way of the construction path, locked themselves to heavy equipment, and got arrested.

As remarkable as the gathering was, few outside Indian country or the environmental movement were initially aware of what was happening in North Dakota. The mainstream press had turned a blind eye—until the violence began. On September 3, 2016 (Labor Day), as people attempted to block the digging up of a sacred site, ETP brought in a private security firm armed with approximately eight attack dogs and mace. The security personnel sprayed people directly in the face and eyes and pushed the dogs to bite people. One dog was unleashed and ran into the crowd in attack mode.[9] At least five people and a horse were bitten, and around thirty people were injured by the chemical spray. Images and video of the dog attacks went viral on social media, thanks to the handful of journalists at the site, particularly Amy Goodman of the popular program *Democracy Now!*, for whom an arrest warrant was later issued by the Morton County Sheriff's Department. Footage of a German shepherd with its mouth covered in blood was viewed by millions of people. The mayhem and viciousness of attacks on American Indians was a chilling reminder of a history of brutality used against the Lakota Sioux by the US military

in the staunch defense of their lands and freedom, and the dog attacks evoked the history of Christopher Columbus's savage rampage and genocide against the Arawaks on Hispaniola in which dogs were used. After that day the world started paying attention to the #NoDAPL movement at Standing Rock.

Instead of discouraging people from coming into what was increasingly turning into a risky situation, the Labor Day incident attracted even more people to the encampment as Standing Rock began currying widespread favor in the media. SRST tribal chairman Dave Archambault Jr. came to be the most recognizable face in what had grown into a global movement. Archambault (and other Lakota people like LaDonna Brave Bull Allard and Dallas Goldtooth) suddenly had a public platform to tell their stories, which described a long line of violent depredations against the seven nations of the Oceti Sakowin (literally "Seven Council Fires"), the Great Sioux Nation's traditional name for themselves. These accounts include centuries of genocidal policies, treaty violations, illegal land seizures, and environmental catastrophes perpetrated by the US settler government. The creation of Lake Oahe itself is one such environmental catastrophe against the Standing Rock people. Under the Pick-Sloan Missouri River Basin Program, the Lake Oahe Dam was one of five dams built in Oceti Sakowin treaty territory. Completed in 1962, the lake created by the dam destroyed more Native land than any other water project in the US, eliminating 90 percent of timberland on the Standing Rock and Cheyenne Sioux reservations and the loss of much grazing and agricultural land.[10] Altogether, the nations lost 309,584 acres of vital bottomlands and more than one thousand Native families were displaced without their consent. In the words of Kul Wicasa Lakota scholar Nick Estes, "Entire communities were removed to marginal reservation lands, and many more were forced to leave the reservation entirely."[11]

On one hand, the Dakota Access Pipeline was only the most recent intrusion into the Standing Rock Sioux's lands and sovereignty. On the other, it represented a breaking point, the final straw in which SRST sent the message that they would not tolerate the further desecration of their treaty lands and the potential contamination of their water—especially for the sake of profits of a fossil fuel conglomerate and for which the tribe would see no benefits whatsoever. Proponents of the DAPL argued that because the pipeline did not cross reservation boundaries, and because

the company conducted a meeting with the tribal council, the Army Corps' permit was in compliance with the law. But SRST contended that the territory within the original treaty boundaries, which covers a far larger area than the current reservation boundaries, was legally subject to a more extensive environmental study than had been done.[12] The council also argued that the tribe should have been consulted much earlier and more thoroughly, especially given the presence of traditional burial grounds and Lake Oahe as the primary source of drinking water for the reservation.[13]

SRST consistently maintained that all they wanted was for an EIS, an environmental impact statement, to be performed and the pipeline rerouted away from the lake. Their legal team, the iconoclastic non-profit Earthjustice, continually filed motions designed to halt construction, force the EIS, and push the Army Corps to deny the easement for the lake crossing. The court and even other departments of the federal government responded with a joint request for ETP to voluntarily halt construction, which the company declined to heed.[14] On September 16 a federal district court in Washington, DC, ordered the company to temporarily cease construction, but the company ignored the order and work continued.[15] On October 10 another joint statement was issued by the three federal departments—the Army Corps, the Department of Justice, and the Department of the Interior—repeating requests for a voluntary stoppage.[16] Still, the work continued. While the tribal council wrangled with lawyers, courts, and federal agencies, water protectors on the ground continued to put their bodies in the way of construction, and tensions mounted. Observers pointed out that instead of following their mandate to protect the public, the Morton County Sheriff's Department, becoming increasingly militarized, was in reality protecting Energy Transfer Partners pipeline project. And then the standoff at Standing Rock took a shocking turn for the worse.

Construction crews, whose drill pad was on a bluff adjacent to the Oceti Sakowin encampment, had drawn closer to the Lake Oahe crossing. A group of water protectors had set up a new camp—with tipis, tents, a small kitchen, and a sweat lodge—directly in the crew's path and blockaded the main road in and out of the area. They named it the 1851 Treaty Camp, in commemoration of the original Fort Laramie treaty. Media reports said the camp was on private land that the Dakota Access Pipeline

had recently purchased, but water protectors asserted it was unceded treaty land, land that had been wrongfully taken to begin with.[17] A statement issued on October 24 by Mekasi Camp-Horinek, an Oceti Sakowin camp coordinator, read, "Today, the Oceti Sakowin has enacted eminent domain on DAPL lands, claiming 1851 treaty rights. This is unceded land. Highway 1806 as of this point is blockaded. We will be occupying this land and staying here until this pipeline is permanently stopped. We need bodies and we need people who are trained in nonviolent direct action. We are still staying nonviolent and we are still staying peaceful."[18] Three days later, on October 27, the militarized police conducted a violent sweep of the camp, with more than three hundred officers from five states in riot gear and aided by eight all-terrain vehicles, five armored vehicles, two helicopters, and numerous military grade Humvees.[19] Several live Facebook feeds captured police using high-tech sound weapons (known as Long Range Acoustic Device, or LRAD), tasers, beanbag guns, pepper spray, concussion grenades, and batons; and snipers were reportedly seen on the armored vehicles.[20] One horse was shot and later had to be put down. Police alleged that water protectors set fires to several vehicles and a bulldozer, that a Molotov cocktail was thrown at them, and that a woman fired three shots at police; claims that were unsubstantiated by any of the videos. The violence lasted several hours, and at the end of the day 141 people had been arrested and many people were injured, some severely.

Ironically, the same day Ammon and Ryan Bundy were acquitted of charges in the armed takeover of the Malheur Wildlife Refuge (formerly the Malheur Indian Reservation) in January 2016. Commentators noted the disproportionate use of police violence against the Standing Rock water protectors, compared to the way the Malheur situation was handled.[21] Indian people recalled the chilling parallel of militarized violence in 1973 during the seventy-one-day siege at Wounded Knee in South Dakota.

The numerous videos captured on October 27 went viral, further galvanizing the world's attention and support for Standing Rock's cause. The violence, however, didn't end there. On the evening of November 20, police again attacked peaceful water protectors with rubber bullets, tear gas, and mace after they attempted to remove a police blockade on Highway 1806. The violence became potentially lethal when police sprayed the crowd with a water cannon in the subfreezing temperatures. One young woman, Sophia Wilansky, was hit with an explosive device that nearly

blew her arm off. Legal observers with the National Lawyers Guild said that numerous people lost consciousness after being shot. More than one hundred people were hurt and many were hospitalized, and there were speculations that the water cannon was mixed with mace. An elderly woman went into cardiac arrest and was revived on the scene.[22]

Throughout the months of the Standing Rock standoff, President Obama had remained mostly silent, aside from one interview with *NowThis News* on November 1, where he said, "We are monitoring this closely. I think as a general rule, my view is that there is a way for us to accommodate sacred lands of Native Americans. I think that right now the Army Corps is examining whether there are ways to reroute this pipeline."[23] Meanwhile, an extremely contentious presidential election was just a few days away, with polls favoring the Democrat, Hillary Clinton. Clinton had also been silent on the Standing Rock issue but finally issued a statement on October 27, the same day as the 1851 Treaty Camp incident and the Bundy decision. The only reason she said anything at all was because a contingent of Native youth stormed her campaign office in Brooklyn, New York, demanding some kind of acknowledgment. The statement was not what the #NoDAPL activists had hoped for. In a scant four sentences, Clinton said that "all voices should be heard" and that all parties involved needed to "find a path forward that serves the broadest public interest."[24] Indian country viewed Clinton's position as no less than a tacit endorsement for the DAPL project, or in the words of one commentator, "a crock."[25] As for the Republican candidate, Donald Trump, while he made no official statement, it was widely presumed what a Trump presidency—as outlandish as it seemed at the time—would mean for the DAPL: green lights all the way. It had been well publicized that Trump was an investor in Energy Transfer Partners, and that ETP had also donated a lot of money to the Trump campaign. It was, however, a matter of speculation about how a Clinton presidency would handle the DAPL. But then on Tuesday, November 9, the unthinkable happened, and Trump was elected president.

A few days after the election, with more than half the country in shock (especially Indian country and their allies in the environmental movement), Energy Transfer Partners CEO Kelsey Warren appeared on CBS News, breaking his own silence on the pipeline controversy. Noting that the pipeline was already 84 percent complete, Kelsey expressed that he was "100 percent confident" that the Trump administration would grant the contested easement and get the project completed. It was a bitter pill, yet no reasonable person could argue against it being probably true.[26]

But on December 4 the DAPL roller coaster took another surprising turn—the one that caught ETP off guard—when the Army Corps announced it would not grant the permit for the lake crossing. It clearly seemed to be a major victory for Standing Rock. The corps said that after discussions with the tribe and the company, more work was necessary, and that "the best way to complete that work responsibly and expeditiously is to explore alternate routes for the pipeline crossing." This could best be accomplished, the Army Corps said, through engaging full public input and analysis and an environmental impact statement "that could aid in future showdowns with President-elect Donald Trump's incoming administration."[27]

The #NoDAPL movement could bask for a moment in the glow from that victory. It was fragile, however, with the looming threat of what a Trump administration would bring, and everyone, especially water protectors, knew it wouldn't be good. Reality set in when Trump took office and within days started signing executive orders. One executive order after another, sometimes several a day, came for the first several weeks of his presidency, signaling his intention to make good on some of his more controversial campaign promises, like banning and deporting undocumented immigrants, building a border wall, and overturning the Affordable Care Act, among many others. Reviving the Dakota Access Pipeline was at the top of his list when on January 24, 2017, his second day in the White House, he signed a presidential memorandum "regarding construction of the Dakota Access Pipeline" and authorized both the Dakota Access Pipeline and the Keystone XL Pipeline.[28] The memorandum itself had no legal teeth to overturn the Army Corps' decision to order an EIS but did make clear the administration's pro-fossil-fuel agenda and intention to move the project forward. Two weeks later the environmental review had been canceled and the easement was granted by the Army Corps.

Attempts to evict the water protectors from the #NoDAPL encampments began in November. The evictions were supported by the Morton County Sheriff's Department, the Army Corps of Engineers, the Standing Rock tribal council, and, eventually, the Bureau of Indian Affairs. Deadlines were set and changed. Given that the winter had brought abundant

snow and that the camps were in a known floodplain, officials were concerned about the impact of the snowmelt. Newly elected governor Doug Burgum ordered a final date, February 22. Under the supervision of hundreds of armed police, one hundred fifty or so of the people who remained at Oceti Sakowin ceremoniously marched out of camp, while fires burned wooden structures in the background and people drummed and sang prayer songs. A stalwart group of forty-six unarmed water protectors held their ground and the following day were arrested at gunpoint. The same day at a White House press conference, in response to a question about why the president hadn't yet intervened to try to negotiate a solution between Standing Rock and Energy Transfer Partners as promised, press secretary Sean Spicer stated that the president had "been in contact with all parties involved, . . . working and communicating back and forth."[29] Chairman Archambault responded that the claim was "absolutely false"; there had been no contact despite repeated requests for meetings with the Trump administration—just one in a myriad of "alternative facts" the new administration immediately became known for.

Although on the surface it appeared that the #NoDAPL movement was defeated in the wake of a hostile Trump administration, water protectors, Standing Rock Sioux Tribe, and Indian country more broadly claimed the nearly yearlong protest movement as a victory on many fronts. For one thing, it was the ground for a ceremonial reunification of the Seven Council Fires—including a revival of the term "Oceti Sakowin"—in a way that hadn't occurred since the Battle of the Little Big Horn. And it brought more than three hundred tribal nations together in solidarity for Standing Rock's cause and for environmental justice throughout Indian country. Beyond that, it was widely acknowledged by scholars and other commentators as the most significant Indigenous protest in recent US history. As part of the climate justice movement, it arose spontaneously and on the heels of the Idle No More movement and the less successful Occupy movement a few years earlier. By comparison, the last Native resistance movements of major consequence occurred in the 1960s and early '70s, beginning with the Fish Wars in the Pacific Northwest (approximately 1964–74) and the Alcatraz Island occupation of 1969–71. Then, the Trail of Broken Treaties and takeover of the Bureau of Indian Affairs building in 1972 and the seventy-one-day armed siege of Wounded Knee

in 1973, while viewed as militant and violent, nonetheless contributed to a growing national consciousness about the United States' pattern of injustice toward American Indians. Collectively those actions led to sweeping changes in federal Indian policy, which included the Boldt Decision of 1974 (reaffirming tribal treaty rights) and Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975. These and many more progressive legislative acts and court decisions constituted a reversal of previously oppressive federal policy and accorded new respect for government to government relationships between the United States and tribal nations, however imperfectly implemented.

Those previous victories happened amid a social revolution that resulted in new levels of enfranchisement for a number of historically marginalized people. Half a century later, the gains made during the civil rights era (approximately 1954–68) became threatened as a result of a growing conservative backlash during the Reagan years—and intensified despite eight years of an African American presidency—reaching startling proportions during the Trump campaign. Two decades of neoliberal policies under Democratic and Republican leadership led to the worst economic recession since the Great Depression. The subprime mortgage debacle and bank bailouts, ever-widening gaps in wealth and income, loss of the American manufacturing base and rampant offshoring of previously American-held jobs, and a health-care crisis became fertile ground for a blame game that pitted economically struggling people against each other. Renewed racial tensions evidenced in particular by disproportionate incarceration of people of color and rampant police brutality led to new movements like Black Lives Matter, while right-wing operatives like Donald Trump, the so-called alt-right, and a Republican-controlled Congress, were widely perceived as stoking the flames of xenophobia and racism. "Trumplicans" (Trump Republicans) seized power by promising extreme market fundamentalism reliant on fossil fuels, an authoritarianism that would have made Richard Nixon proud, and a toxic rejection of what they referred to as "political correctness," which was really just a dog-whistle invoking their hatred of Democratic values. Shored up by a disdain for the media and a loose relationship with the truth, the Trump administration was on a collision course with Standing Rock and served as little more than a thinly disguised sponsor for the Energy Transfer Partners' Dakota Access Pipeline.

It is no surprise that the #NoDAPL movement would spring up in Indian country. In the big picture, after all, it was just one more assault on the lands, resources, and self-determination of Native peoples since the beginning of American settler colonialism. As the Standing Rock story illustrates, the assaults have never ended. It also illustrates the trend in the past couple of decades of the uniting of the environmental movement with Indigenous peoples' movements all over the world, something that hasn't always been the case. Environmentalists recognize that the assaults on the environment committed by relentless corporate "extractivism" and development are assaults on the possibility for humans to sustain themselves in the future. They recognize that in some ways, what happened to the Indians is now happening to everybody not in the 1 percent.

This book is not about Standing Rock—but it takes Standing Rock as an excellent example of what environmental injustice in Indian country looks like. It starts from the assumption that colonization was not just a process of invasion and eventual domination of Indigenous populations by European settlers but also that the eliminatory impulse and structure it created in actuality began as environmental injustice. Seen in this light, settler colonialism itself is for Indigenous peoples a structure of environmental injustice. As this book will argue, however, the underlying assumptions of environmental injustice as it is commonly understood and deployed are grounded in racial and economic terms and defined by norms of distributive justice within a capitalist framework. Indigenous peoples' pursuit of environmental justice (EJ) requires the use of a different lens, one with a scope that can accommodate the full weight of the history of settler colonialism, on one hand, and embrace differences in the ways Indigenous peoples view land and nature, on the other. This includes an ability to acknowledge sacred sites as an issue of environmental justice—not merely religious freedom—and recognize and protect sites outside the boundaries of reservation lands or on aboriginal lands of nonfederally recognized tribes. Overall, a differentiated environmental justice framework—we could call this an "Indigenized" EJ—must acknowledge the political existence of Native nations and be capable of explicitly respecting principles of Indigenous nationhood and self-determination.

These principles of nationhood and self-determination are plainly evident in the ways Native peoples have always fought to defend and remain on their lands and the life those lands give them. From the intrusions of the earliest colonists into Native gardens, to the havoc wreaked by railroads and the imposition of reservation boundaries, to today's pipeline and fracking conflicts, Indigenous peoples have been forced into never-ending battles of resistance. As the #NoDAPL movement made clear through the slogan "Water is life," Native resistance is inextricably bound to worldviews that center not only the obvious life-sustaining forces of the natural world but also the respect accorded the natural world in relationships of reciprocity based on responsibility toward those life forms.[30] The implicit question this book asks is what does environmental justice look like when Indigenous peoples are at the center?

To that end, this book proceeds in eight chapters that identify Indigenous approaches to conceiving of environmental justice. Having laid the foundation with the Standing Rock story, it views environmental justice and injustice from a variety of angles, taking a view on the history of American Indians' relationship with the US as an environmental history. It uncompromisingly exposes the roots of white supremacy not only at the governmental level but even within the environmental movement itself, ultimately for the purpose of building effective alliances around issues of common concern. It recounts numerous examples of how Native and non-Native peoples are working together to build those partnerships, and the importance of women to these efforts, and takes you on a journey to Southern California to tell a story about how one coastal sacred site and iconic surf break were simultaneously saved as a result of successful coalition building and recognition of the sacred site's importance. Finally, the book looks for a way forward for environmental justice in Indian country by identifying positive trends and innovative ways communities are rallying together to build a more sane future in the face of relentless corporate power, an entrenched fossil fuel industry, and its collusion with the US State.

The most I hope to accomplish is to scratch the surface of what environmental justice means in Indian country, in terms of academic theory, activist praxis, and where the two meet in the formulation of government policies at all levels. It is a daunting (and humbling) task in which this is but one possible starting point; it is undoubtedly incomplete and imperfect, but one that I hope scholars more accomplished than I will expand and build upon in time.

CHAPTER ONE

Environmental Justice Theory and Its Limitations for Indigenous Peoples

You are now in a country where you can be happy; no white man shall ever again disturb you; the Arkansas [River] will protect your southern boundary when you get there. You will be protected on either side; the white shall never again encroach upon you, and you will have a great outlet to the West.

As long as water flows, or grass grows upon the earth, or the sun rises to show your pathway, or you kindle your camp fires, so long shall you be protected from your present habitations.

—PRESIDENT JAMES MONROE'S SPEECH TO THE CHEROKEES, 1817

HISTORY, ORIGINS, AND DEFINITION OF ENVIRONMENTAL JUSTICE

"Environmental justice" did not enter common vernacular until the early 1980s. In 1982, when a landfill designed to accept PCBs (polychlorinated biphenyls, a highly toxic by-product of the chemical industry) was proposed to be placed in Warren County, North Carolina—a predominantly low-income African American community—it sparked a massive protest to try to stop the project. The protest failed to stop the dumping, but it stands nonetheless as a defining moment in the environmental movement and is generally hailed as the birth of the environmental justice movement. It was not the first incident of minority communities resisting exposure to hazardous environmental conditions. In the early 1960s, for example, Cesar Chavez organized Latino farmworkers to improve their working conditions, including protection from toxic insecticides. In 1968 black residents in West Harlem, New York, waged an unsuccessful campaign against siting a sewage plant in their community. Many more

examples can be named, but it was the Warren County protests that galvanized national attention, leading to claims that the proliferation of toxic facilities in communities of color was environmental racism. Citizen groups from poor minority communities began forming beyond North Carolina; they believed they were being targeted by polluting industries, resulting in high rates of environmentally related illnesses.[1]

The Warren County incident led initially to several foundational studies designed to uncover the veracity of the claims being made by communities. In the first of the studies, commissioned by Congress, thanks to the influence of Democratic representative Walter Fauntroy, delegate to the House of Representatives from the District of Columbia, the US General Accountability Office confirmed that blacks made up the majority of the population in three of the four communities in a region where four off-site hazardous waste landfills were located (EPA Region Four, consisting of Alabama, Florida, Georgia, Kentucky, Mississippi, North and South Carolina, and Tennessee).[2]

In 1986 two cross-sectional studies were conducted to determine to what extent African Americans, Hispanic Americans, Asian Americans, Pacific Islanders, and Native Americans were exposed to uncontrolled toxic waste sites and commercial hazardous waste facilities in their communities. Those two studies—the first national studies of their kind—were brought together in another study in 1987, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites*, which originated from the United Church of Christ's Commission for Racial Justice (CRJ), led by Ben Chavis. The findings revealed, among other things, the smoking gun: while socioeconomic status was implicated in siting hazardous waste facilities, race was the most significant variable, and three of every five black and Hispanic Americans and approximately half of all Asians, Pacific Islanders, and American Indians lived in communities with uncontrolled toxic waste sites.[3] Among the report's many recommendations, it urged the US president to issue an executive order mandating federal agencies to "consider the impact of current policies and regulations on racial and ethnic communities" and for the Environmental Protection Agency to establish an Office of Hazardous Waste and Racial and Ethnic Affairs.

It made sense that these early studies would emerge from the African

American community, given their leadership in the civil rights movement. It was a good and necessary start to articulating this new environmental justice movement, as the studies addressed long-standing, life-threatening problems in communities plagued by centuries of exploitation and marginalization. And they laid a solid foundation for other marginalized communities to build upon. What was true about the early research, however, was that as the *Toxic Wastes and Race* study exemplified, their predominant focus on the effects of siting of noxious facilities provided only a narrow window into how environmental racism played out in communities of color. But racial and ethnic minorities were being environmentally—and economically—exploited in ways that didn't involve incinerators or dumps. Between 1965 and 1971, for example, under the leadership of Cesar Chavez, Mexican farmworkers in California launched a historic resistance movement to organize a union not only in the interest of raising wages and improving working conditions but also to combat pesticide abuse, which was notorious for making workers sick. As leading environmental justice scholar Laura Pulido shows, the farmworkers' struggle brought together multiple issues that tied economic and political exploitation together with environmental abuse to show how hegemonic relationships disempower marginalized communities in many seemingly disparate but inevitably connected ways. As she writes, by fully appreciating the conditions structuring the lives of minorities and their precarious economic circumstances, it becomes apparent how new social movements and the environmental concerns of people of color differ dramatically, resulting in the need for a new understanding of environmentalism.[4]

The narrow focus of the early EJ research on the location of toxic and hazardous waste sites was only the beginning point for EJ research, and as it evolved, so would the nuances of the research. Important distinctions were yet to be made, such as how experiences varied across racial and ethnic minority groups (as the California farmworkers case demonstrates). It would become apparent that collapsing environmental discrimination against people of color into one monolithic group elided the experience of Indigenous peoples who had been undergoing environmental devastation of a particular, genocidal kind. For one thing, as the *Toxic Wastes and Race* study makes visible, it couldn't account for the ways Native Americans were being poisoned by uranium mine tailings in the hundreds of

abandoned mines on and near reservations, the contaminated water the mines created, and how many had died as a result of uranium mining during the Manhattan Project era. Nor could collapsing all racial and ethnic minority groups' EJ experiences into one account for the ways forced displacement and assimilation over hundreds of years had disrupted traditional food systems to such an extent that chronic health problems and lower life expectancies in Native American and Native Hawaiian communities would be attributed to it. Or the ways foreign invasion and military occupation in Hawaii had rendered large swaths of land—including an entire island—not only off limits to Native Hawaiians but totally uninhabitable for generations to come.

Although the early studies initiated the important work of underscoring the ways in which environmental issues overlap with racial issues, the early studies also made visible wounds that had been festering for decades in communities of color and identified environmental justice as a civil rights issue. It wasn't until 1991, when the Commission for Racial Justice sponsored a landmark gathering, the first People of Color Environmental Leadership Summit in Washington, DC, that the first inklings of indigenized environmental justice could be seen. The summit produced a visionary document titled *Principles of Environmental Justice.* Its preamble reads:

> We, the people of color, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice.[5]

As the language suggests, the seventeen-point proclamation represented a greater level of inclusion for Indigenous concerns than the preceding studies had, framing environmental justice in terms of colonial histories and oppressive political domination, even reflecting an Indigenous worldview by recognizing "our spiritual interdependence to the sacredness of Mother Earth." Specific to Indigenous peoples, principle eleven claims that "environmental justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination," and principle fifteen, "Environmental justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms." It was a big step forward in recognizing the distinctions between Indigenous populations and all others, necessary in framing legal approaches to environmental justice—a goal that has yet to be fully realized.

THE LEGAL LANDSCAPE OF EJ

The concept of environmental justice began finding its way into the federal regulatory terrain with the help of the Congressional Black Caucus. Since its inception in 1971 the CBC had been advocating for strong environmental policies, including the Clean Water Act (1972); the Marine Protection, Research, and Sanctuaries Act (1972); the Endangered Species Act (1973); the Safe Drinking Water Act (1974); the Toxic Substances Control Act (1976); the Comprehensive Environmental Response, Compensation, and Liability Act (1980); and the Nuclear Waste Policy Act (1982).[6] With the CBC's leadership, in 1990 the EPA established the Environmental Equity Work Group (EEWG) in response to findings by social scientists that "'racial minority and low-income populations bear a higher environmental risk burden than the general population' and that the EPA's inspections failed to adequately protect low-income communities of color."[7] Based on this knowledge, the EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[8] The EEWG was tasked with two primary

functions: first, to evaluate evidence that racial minority and low-income groups bear a disproportionate burden of environmental risks, and second, to identify factors that contribute to different risk burdens and suggest strategies for improvement.[9]

In 1992, one year after the People of Color Environmental Leadership Summit, the EPA formed the Office of Environmental Equity, and in 1993 it created the National Environmental Justice Advisory Council (NEJAC). By 1994 the office's name was changed to the Office of Environmental Justice. That same year President Bill Clinton issued Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 12898. The executive order created the Interagency Working Group on Environmental Justice, which was charged with conducting research, data collection, and analysis. To date, the executive order remains the cornerstone of environmental justice regulation in the US, with the EPA as its central arbiter. The EPA's primary EJ functions lie in standard setting, permitting of facilities, grant making, issuing licenses and regulations, and reviewing proposed actions of other federal agencies.[10]

Executive Order 12898 mandates federal agencies to ensure that recipients of federal funds comply with Title VI of the Civil Rights Act of 1964 "by conducting their programs in a non-discriminatory manner [based on race, color, or national origin]. Unlike Title VI, Executive Order 12898 does not create legally enforceable rights or obligations."[11] Some critics argue that Title VI is ineffective at addressing environmental injustice, in part because it is unlikely that section 602 (the clause prohibiting discrimination in federally funded projects) is privately enforceable.[12]

Legislative efforts to pass an EJ bill have been vexed for decades. The first attempt to pass an EJ bill—the Environmental Justice Act of 1992 (H.R. 2105)—died in committee in both the House and the Senate. Then, with a Republican takeover in 1994, Congress hamstrung further efforts to pass this progressive legislation. Subsequent attempts to pass environmental justice legislation went awry in 2007 and again in 2011 with a proposal by Representative Jesse Jackson Jr. (D-IL) to amend the Constitution, recognizing the "right to a clean, safe, and sustainable environment." Another congressional blow to EJ was delivered in 2009 when the Congressional Research Service stopped using the term "environmental justice" as a tool for citizens to track EJ-related legislation.[13]

In the court system, scholars generally recognize the limited results of EJ law. Legal scholars Clifford Rechtschaffen, Eileen Gauna, and Catherine O'Neill said in 2009 that legal challenges have met with "mixed success," where "claims alleging violations of the Equal Protection Clause of the U.S. Constitution have largely failed because of the difficulty of proving intentional discrimination. Other claims, some using traditional common law theories and environmental laws, have been somewhat more successful."[14] The authors contend that, overall, integrating EJ into environmental regulations in a meaningful way has proven to be extremely complex. More recently, another study found that courts have provided too few opportunities for environmental justice advocates to effect change when limited to Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the US Constitution, and the National Environmental Policy Act.[15]

EJ FRAMEWORKS IN THE CAPITALIST STATE

Changing the name of the Office of Environmental Equity to the Office of Environmental Justice in 1994 came on the heels of public criticism and reflects what remains a long-standing debate in activist, academic, and legal EJ circles.[16] As many have pointed out, the difference between environmental equity and environmental justice is in how risk is distributed. Equity says that the burden of environmental risk should be equally distributed among all populations, whereas justice guarantees protection from environmental degradation, prevention of adverse health impacts, mechanisms for accountability, and the availability of remedial action and resources. Justice guarantees three basic rights: the right to information, the right to a hearing, and the right to compensation;[17] or as EJ activist Mike Ewall succinctly states, "It represents the fundamental difference between the concepts of 'poison people equally' and 'stop poisoning people, period!' "[18]

While proving environmental racism is easier said than done when it comes to law, scholars also argue that simply defining terms like *environmental justice*, *environmental racism*, and even *environment* and *environmentalism* can be difficult and contentious. For instance, environmental racism is a narrow term that doesn't account for ways in which poor white communities are affected by polluting industries, or the ways it can

ignore the historic and systemic nature of racism. From this perspective, the question is, is race or class responsible for discriminatory pollution? Similarly, how we understand *environment* raises questions about human presence in and use of the environment. In whatever ways we answer these questions, they are rooted in certain fundamental assumptions: first, they are based on a paradigm of social justice that presumes the authority of the State (nation-state), under which victims of social injustice are presumably subjected with their consent, even if as ethnic minorities they are "others." Scholars often call the ethnically diverse State the multicultural or multiethnic State. Second, the multicultural State is a form of democracy where justice is framed by principles embedded in a capitalist system. This leads to a third point: that justice is presumed to follow a distributive model. Let's briefly analyze each of these three points.

The multicultural nature of the State is capable of recognizing that ethnic and cultural groups have varied histories and interests, and sometimes those interests clash with each other. This is exemplified in the Southwest where hundreds of years of colonial interactions between Indigenous peoples, Hispano populations (Spanish descendants who were under Spanish and later Mexican rule prior to the Treaty of Guadalupe Hidalgo), and more recent white settlers have led to complicated and ongoing environmental battles based on conflicts over Spanish land grants and American treaties and laws and varied ideas about proper land use. For example, in northern New Mexico in the 1980s and '90s, environmentalists (predominantly white) came into conflict with the Hispano community of Ganados del Valle over the community's controlled use of elk-grazing habitat.[19] In another northern New Mexico example, battles over forest use demonstrated widely divergent beliefs among white environmentalists, state forest service officials, Chicano, Hispanic, and Latino activists, Indigenous peoples, and even nuclear scientists as a result of the Los Alamos Nuclear Laboratory.[20]

Bringing us to the second point, the logical question is how would an accurate EJ analysis account for these particularities, or differences, and can they coexist under the universalizing impulse of the State? Racism at its most basic level is the denial of the benefits of national citizenship (particularly equality), either covertly or overtly. In theory, equality in a democracy means that all people, regardless of ethnicity or race, have equal opportunity to enjoy the potential advantages available to them: a comfortable life with financial security, fair wages, a clean environment, education, and so on. These represent, in a capitalist democracy, the promise of material benefits for all.[21]

Third, if justice is a function of the capitalist State (which is imbued with the power to correct wrongs), when redress is sought for environmental injustices committed against ethnic minority groups, it is typically conceived of as distributive justice. That is, both the risks of environmental degradation and the benefits of a clean environment would be evenly distributed among citizens. However, some scholars contend that a distributive framework of justice is insufficient, because on a global scale, it doesn't account for the "social, cultural, symbolic, and institutional conditions *underlying* poor distribution in the first place."[22] This would also be true in the domestic sphere. In this line of reasoning, a focus on the distribution of goods and "bads" ignores group difference, perpetuating a lack of recognition and participation (for example, the right and institutional ability of activists and communities to speak for themselves). This relates directly to Indigenous peoples. One example is the United States' refusal to abide by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the Dakota Access Pipeline controversy, and its guarantee of the right of free, prior, and informed consent in projects that involve industrial development in traditional Indigenous lands.[23] Had the US Army Corps of Engineers taken seriously the United States' commitment to the UN declaration, in which the Standing Rock Sioux Tribe would have been given the opportunity to exercise their institutional ability to speak for themselves, one can imagine a different outcome to the Dakota Access Pipeline controversy.

THE POLITICAL DIFFERENCE OF INDIGENOUS PEOPLES

Emphasizing the ways that a solely distributive notion of environmental justice fails Indigenous peoples, EJ scholar David Schlosberg notes different conceptions of justice in the EJ movement, and that too often Indigenous conceptions of justice—and Indigenous ways of understanding land and human relations with it—are obstructed or not recognized at all. Even more problematic, as he points out, Indigenous nations in North America experience numerous barriers to their participation in

the governance of environments. Broadening participation, he contends, would enhance recognition and validate diverse ways of valuing land.[24]

For a conception of environmental justice to be relevant to a group of people, it must fit within conceptual boundaries that are meaningful to them. Indigenous peoples fighting for political autonomy from the hegemony of the State are fighting the forces of colonialism while simultaneously fighting capitalism—all aimed at control of land and resources—with colonialism as the precondition for capitalism. The wealth generated in the Americas (much of it transferred to Europe) could only accumulate from centuries of violent Indigenous displacement, genocide, and land theft. Colonialism is inextricably bound up with slavery, having paved the way for the transatlantic slave trade initiated by Columbus in his first voyage to the "New World." Colonialism and slavery are also irrefutably linked to the unprecedented amassing of wealth in the United States. Karl Marx recognized colonialism as the genesis of what he called "primitive accumulation," connecting colonialism, slavery, and capitalism. He wrote, "The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalised the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive accumulation."[25] In the foundation of the US, slavery and capitalism are the two cornerstones made possible by colonial dispossession of Indigenous lands.

In settler colonialism, which is viewed not just as a historical event but also a structure designed to eliminate the Native via physical and political erasure, the purpose of political control and domination is to gain access to territory.[26] The political erasure of Indigenous peoples happens in many different ways, including the refusal of the State to fully recognize the nationhood of Native collective existence. In the US legal system, Native nationhood is expressed as federal recognition and the so-called government to government relationship.[27] In other words, the State has become the sole determiner of Native nationhood, despite the longevity of a people and a community that have been tied to a place since time immemorial and their collective ongoing Indigenous identity. Native peoples are thus in the position of fighting against the whims of the State not only to protect their lands but also for their continued existence as nations.

Central to Native nationhood is sovereignty. Federal law has long recognized the inherent sovereignty of Native nations based on treaty relationships, but it is a limited form dictated by legal doctrines as imagined by the US Supreme Court. The first three cases ever argued in front of the court involving Indians, referred to as the Marshall Trilogy, form the basis of today's canon of federal Indian law. The court created what legal scholars have widely called legal fictions that constructed Native peoples' relationships with the State that reached beyond the original intent of the treaties (the recognition of the independent existence of tribal nations), reining them in under federal control without their consent. In the first case, *Johnson v. M'Intosh* (1823), to settle a land dispute between two white men and out of a need to more clearly define land law in the fledgling country, the court articulated the so-called doctrine of discovery, the idea that European religious and cultural superiority gave the US the superior right of title to land by virtue of discovery, while Native nations merely possessed the right of occupation, or usufruct rights. In the 1831 case *Cherokee Nation v. Georgia*, the court denied the independent existence of the Cherokee Nation, claiming they were a "domestic dependent nation," likening the relationship as a ward to its guardian. The following year in the *Worcester* decision, the court asserted the primacy of the federal government to deal with Native nations, saying that the state of Georgia had no authority over Indian affairs and giving birth to the concept of inherent—but limited—sovereignty. More than one and a half centuries of legal decisions and legislation have chipped away at Native nations' control over their own lives and lands, resulting in a form of sovereignty they never agreed to, with many nations having been stripped of their sovereignty altogether. The legal framework that governs the tribal-federal nexus forms the core of what is thought of as a settler colonial structure in a relationship of domination.[28]

EJ for Indigenous peoples, therefore, must be capable of a political scale beyond the homogenizing, assimilationist, capitalist State. It must conform to a model that can frame issues in terms of their colonial condition and can affirm decolonization as a potential framework within which environmental justice can be made available to them. It must also recognize that racism is imbricated with colonialism in a logic that, as EJ geography scholars Anne Bonds and Joshua Inwood claim, "situates white supremacy not as an artifact of history or as an extreme position,

but rather as the foundation for the continuous unfolding of practices of race and racism in settler states."[29]

We might think of this as a project to "Indigenize" environmental justice. Indigenizing EJ by centering Native issues means it should conform to principles outlined in decolonizing theories and Indigenous research methodologies, defined as "research by and for Indigenous peoples, using techniques and methods drawn from the traditions, and knowledges of those people."[30] While Indigenous peoples' lived experiences vary from place to place, there are common realities they all share in the experience of colonization that make it possible to generalize an Indigenous methodology while recognizing specific, localized conditions. Maori scholar Linda Tuhiwai Smith (who broke ground with her book on decolonizing methodologies), quoting Franke Wilmer, notes that "the Indigenous voice speaks critically to the narrative (some would say the myth) of the nation-state—the hierarchical, incorporative, coercive state that exists, in part, to facilitate the process of creating economic surplus on an international scale."[31] Creating economic surplus is possible from not only the exploitation of Indigenous lands but the commodification of them also—that is, the construction of land as property. Such an understanding necessitates the constant migration of people, which relies on Indigenous displacement and disappearance.[32]

From an Indigenous standpoint, justice must transcend the distributive, capitalist model. Indigenous modes of justice typically reflect a restorative orientation. A decolonized American justice system would also necessarily encompass both the colonized and the colonizer. In essence, justice for Indigenous peoples is about restoring balance in relationships that are out of balance.[33] In Western legal theory "laws hold insofar as those in economic and political power say they do," as legal scholars Wanda McCaslin and Denise Breton argue, but Indigenous peoples rarely experience Western law as either fair or equitable; for them, law is an enforcer of oppression.[34] For this reason, McCaslin and Breton argue three points: (1) that decolonization is good for both the colonizers and the colonized because it can restore right relationship to all involved; (2) rule by force cannot somehow become benevolent or even benign; it punishes the colonized for who they are; and (3) colonization has steered the colonizers away from their own ancestral wisdom. Decolonizing the colonizers is necessary so that they can once again learn how to respect themselves and others.

CULTURAL DIFFERENCE: CENTERING INDIGENOUS WORLDVIEWS AND THE FAILURE OF THE EPA

The very thing that distinguishes Indigenous peoples from settler societies is their unbroken connection to ancestral homelands. Their cultures and identities are linked to their original places in ways that define them; they are reflected in language, place names, and cosmology (origin stories). In Indigenous worldviews, there is no separation between people and land, between people and other life forms, or between people and their ancient ancestors whose bones are infused in the land they inhabit and whose spirits permeate place. Potawatomi scholar Kyle Powys Whyte refers to these interconnections as systems of responsibility. Based on his study of various Indigenous philosophies and how Indigenous people relate to land and the environment, Whyte notes that environmental injustice occurs when systems of responsibility between humans and the land are disrupted through the processes of colonization:

> In these cases, environmental injustice cuts at the fabric of systems of responsibilities that connect [nonhuman] people to humans, nonhumans and ecosystems. Environmental injustice can be seen as an affront to peoples' capacities to experience themselves in the world as having responsibilities for the upkeep, or continuance, of their societies. . . . Environmental injustice can be seen as occurring when these systems of responsibilities are interfered with or erased by another society in ways that are too rapid for indigenous peoples to adapt to without facing significant harms that they would not ordinarily have faced.[35]

So, it is the interruption of the collective continuance of a people that disables their systems of responsibility, which are built upon place-based knowledge accumulated over eons. Throughout this book we will explore the nuances of these worldviews, particularly in chapter 7 on the topic of sacred sites and what constitutes them and their relationship to environmental justice. These are inevitably discussions about the spiritual foundations of Native peoples that inform all other aspects of life, including the political relationships that shape today's Native nations. This section of chapter 1, however, reveals how the philosophies undergirding cultural difference that Native peoples assert do, or conversely do not, find their way into State-based environmental justice frameworks.[36]

Although the Environmental Protection Agency was formed in 1970, American Indians were not substantively included in the EPA policy schema until 1984. That year, under the Reagan administration, the EPA issued its *Policy for the Administration of Environmental Programs on Indian Reservations*. Barely four pages long, the document's purpose was essentially to affirm the trust-based government to government relationship between tribal nations and federal agencies.[37] It acknowledged tribal governments as the primary parties for standard setting, decision making, and program management relative to environmental policy on reservations. It also promised to take affirmative steps to assist tribes in those duties, to remove legal and procedural impediments to working effectively with tribal governments. It assured that tribal concerns and interests were considered in EPA actions that may affect reservation environments, encouraged interagency cooperation with tribal governments, and pledged to incorporate all those principles into the agency's planning and management activities. Despite these promises, the federal government's efforts fell short and concerns were raised about the lack of effective consultation and collaboration between tribal governments and federal agencies. With the founding of the National Environmental Justice Advisory Council (NEJAC) in 1993, other policy statements were issued, such as the *Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Citizens* (November 2000), and *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs* (November 2004), both compiled by NEJAC's Indigenous Peoples Subcommittee.

Both reports built upon the 1984 document, elaborating on tribal sovereignty and fleshing out the finer details of things like federal Indian law, effective consultation practices, public participation, interagency cooperation, and other administrative functions of the State to better facilitate tribal-federal relationships in the realm of environmental policy and law. They reflect an expanding agenda that encompassed nonfederally recognized tribes, grassroots organizations, sacred sites, and international human rights and language that recognized tribal models of fair treatment and meaningful public participation.

In 2011 the EPA's Office of International and Tribal Affairs and Office of Environmental Justice commissioned another report "to provide advice and recommendations about how the Agency can most effectively address the environmental justice issues in Indian country, including in Alaska and Hawaii and those facing indigenous peoples both on and off reservations," asking Indigenous peoples for their input. Now called the Indigenous Peoples Work Group (formed in 2011), in 2013 the committee submitted its *Recommendations for Fostering Environmental Justice for Tribes and Indigenous Peoples*. The IPWG was an ad hoc eleven-member group of Indigenous advisors from diverse backgrounds, including representatives of tribal governments, Indigenous grassroots groups, environmental organizations, academia, and elders and youth. The commissioned report was the first government effort to specifically and comprehensively address environmental justice for Indigenous peoples.

The IPWG was certainly not the first committee to be composed of Indigenous advisors, as the prior two studies under the Indigenous Peoples Subcommittee were also predominantly staffed by Native people. The EPA recommendations from 2000 and 2004 are notable for their prosovereignty and treaty-rights positions, empowering Native participation, and incorporating Native values into the federal administrative apparatus relative to environmental programs. Ultimately, however, the focus of the earlier recommendations was constrained by their deferral to federal law, problematically attempting to adapt Indigenous peoples' needs to the existing domination-based legal structure. The historical context of colonialism was almost completely absent. But what was significant about the 2013 *Recommendations* document is its heightened attention to history, explicitly naming the processes of dispossession that have led to the environmental injustices faced by Indigenous peoples today. There is no whitewashing or sugarcoating of history here:

> "Advanced" knowledge, innovation, technology and wealth have accelerated the insatiable need to feed, finance and advance growth and development, consuming natural resources at a rate that exceeds Mother Earth's ability to restore. At the same time, Indigenous peoples whose communities and nations pre-date the settler-state have maintained their unique relationships with the land, rivers, seas and sky. But in the 500 years since western contact, indigenous peoples have experienced dispossession and disenfranchisement, rendering them one of the most vulnerable subgroups on standard measures for quality of life and

> sustainability such as: poor health, obesity, unemployment, teen pregnancies, high school drop-out rates, drug abuse, incarceration, etc. . . .
>
> EPA must remain vigilant to the historical reality that federal policy recognizing tribes' separate political existence and sovereignty depends upon the cultural distinctiveness of tribes from the larger American society. Institutions of tribal governance include extended kinship networks that "do not exist to reproduce or replicate dominant canons appearing in state and federal courts." This "Dilemma of Difference" occurs even within tribes, such as the diversity of spiritual expression and the social contexts of tribal community members.[38]

The *Recommendations* document names some of the challenges facing Native peoples' ability to maintain traditional lifeways and ancestral places: sustainability of homelands, subsistence lifestyles, cultural and ancestral (sacred) sites, and environment-related health-care issues, including reproductive health and food insecurity. It recognizes the problems inherent in federal Indian law, which complicates EJ issues due to jurisdictional conflicts and whose sovereignty prevails. Further, it refers to President Obama's 2009 executive order on tribal consultation (Exec. Order No. 13175) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as established principles upon which to build a federal framework for Indigenous EJ. Several aspects of UNDRIP are invoked, including the right of free, prior, and informed consent. Numerous suggestions were made that would integrate various Native institutions, enabling the engagement of the best and brightest of Indigenous peoples' intelligentsia. One of its most important recommendations was for the EPA to establish a standing Indigenous Peoples Environmental Justice Committee or a standing NEJAC subcommittee. Overall, the document's twenty-four recommendations contained the most extensive Indigenous-centered solutions ever offered to build an EJ foundation for Indigenous peoples. It might also be said that the *Recommendations* document paralleled and reflected the trajectory of Indigenous studies scholarship, resisting the previous pattern of deferring to State-based law and statutory agendas.

In 2014, after receiving the recommendations from NEJAC's Indigenous Peoples Work Group, the EPA issued its *Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*, supplementing its *Plan EJ 2014*, a roadmap designed to help the EPA integrate EJ into the agency's programs, policies, and activities. It was written with the intent to create standards applicable to all Indigenous peoples on the US continent and in Hawaii, Puerto Rico, and the Mariana Islands.[39] In general, the seven-page document did not include any dramatically new policy statements, but for the most part simply reiterated many of the principles articulated in the previous guidelines, with updated language drawn from more recent executive orders and other policy implementation tools.

Noticeably absent from the new policy statement was any reference to the United States' colonial history or some of the more specific problems Indigenous communities face that the *Recommendations* document detailed (especially food insecurity and subsistence lifeways). What it does mention is the EPA's desire to integrate Indigenous traditional ecological knowledge into environmental science, policy, and decision-making processes "as appropriate and to the extent practicable and permitted by law," and it does affirm the "importance" of UNDRIP, but only to the extent that its principles are consistent with the mission and authority of the agency. It "seek[s] to be responsive to environmental justice concerns" and understand definitions of health and environment from Indigenous perspectives. No standing Indigenous people's committee was created as recommended. This policy statement, like the previous ones, emphasizes the language of "fair treatment and meaningful involvement" of Indigenous communities. The document closes with the following disclaimer:

> This document identifies internal Agency policies and procedures for EPA. This document is not a rule or regulation and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally-binding requirement and is not legally enforceable. As indicated by the use of non-mandatory language, this Policy does not create any judicially enforceable rights or obligations substantive or procedural in any person.[40]

The EPA's obvious weaknesses explain, at least in part, how things went so horribly wrong with Standing Rock. For one thing, the disclaimer makes it clear that none of the Indigenous-affirming language used in the policy statement is legally binding, making the document aspirational only. A more cynical—or perhaps realistic—perspective would be that the EPA's entire Indigenous policy stance amounts to no more than a façade, a ruse to cover for the more standard project of the State to hamstring Indigenous peoples' rights to self-determination, as articulated in international rights agreements like UNDRIP and previous covenants like the *International Covenant on Civil and Political Rights* (which was affirmed in NEJAC's 2004 policy report). And there's plenty of evidence for this argument. In the EPA's 2014 policy statement, the language emphasized tribal "consultation" and "involvement," as compared to language in UNDRIP, particularly the right to "free, prior, and informed consent." Consent implies the power to veto any action a tribal government or people disagrees with, whereas consultation means that even if a community objects to a proposed project (like a pipeline), it has no power to stop it, and the federal government will have theoretically met its legal obligation to "consult" with them, no matter how flimsy such a consultation may actually have been. This is in fact what happened in the Standing Rock case, leading to the three federal departments' (Interior, Justice, and Army) announcement to halt the DAPL having recognized that the tribe had not been adequately consulted. Needless to say, it took months of high-profile demonstrations for the agencies to come to this conclusion. Further bolstering the argument that the federal government doesn't really believe in internationally based rights to Indigenous self-determination is that when the Obama administration endorsed UNDRIP in 2010, it issued a fifteen-page announcement littered with disclaimers.[41]

In the Obama announcement, the administration asserts the dubious, unsupported claim that the "[UN] Declaration's call is to promote the development of a concept of self-determination for indigenous peoples that is different from the existing right of self-determination in international law."[42] It goes on to emphasize the disclaimer contained in UNDRIP itself, that "the Declaration does not imply any right to take any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States"; in other

words, moves toward independence. Put another way, the statement argues that the meaning of self-determination is limited to domestic law, which as we have seen, is a dictatorial and colonial approach to the recognition of Indigenous self-determination. The rest of the administration's announcement is spent in sanctimonious declarations about all the ways the US honors its relationship with Native Americans in its ongoing rehearsal of "benevolent supremacy."[43] Granted, Obama and his administration more than any other honored Native nations' political status, settled immense land claims, went out of the way to visit reservations, and signed important executive orders addressing some of the most pressing problems in Indian country. But never has the federal government officially acknowledged the term "colonialism" to describe the sociopolitical and legal structure that still governs the relationships between the US and Indigenous peoples. When the federal government does acknowledge its depredations, they are invariably sanitized as a simple "wrongdoing" or "mistreatment" consigned to a distant past.

To summarize, the extent to which the US government has incorporated Indigenous peoples into its environmental justice policy regime has, predictably, mirrored and replicated its hegemonic relationship to Native peoples in the language of benevolent supremacy. The political relationships are always evolving, always fragile, and subject to the unpredictable whims of the US political system. And it's been Indigenous peoples' initial assertions of sovereignty that have led to what advances have been made in distinguishing an Indigenized EJ from a more mainstream EJ, based on a differentiated cultural, legal, and political status. Next, we turn to specific histories and circumstances that constitute a broadly defined concept of environmental injustice, rooted in the history of the US settler State.