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# Negotiating American Indian Inclusion: Sovereignty, Same-Sex Marriage, and Sexual Minorities in Indian Country

*Valerie Lambert*

On April 17, 2013, two intertwined, symbolic actions occurred in the New Zealand Parliament. In a vote of 77 to 44, this nation became the thirteenth country in the world to legalize same-sex marriage.<sup>1</sup> When it became clear that the bill had passed, lawmakers and spectators broke into song, specifically a Maori song, “Pokarekare Ana,” sung in the Maori language.<sup>2</sup> As an American and an enrolled member of the Choctaw Nation, I felt a mix of emotions at the time, including happiness for New Zealand and sorrow for Americans and American Indians. In the United States, a comparable victory for what some activists have termed “marriage equality” was not achieved until June 26, 2015, more than two years after New Zealand’s passage of the bill and more than fourteen years after the Netherlands became the first country to legalize same-sex marriage. Moreover, as far as I am aware, no American Indian even speculated that a Native-authored song would be sung in a Native language in court when the decision was announced. And indeed, no such song was heard issuing from the US Supreme Court building on that historic day.

The legalization of same-sex marriage in New Zealand, celebrated with a Maori song, was one of several events that prompted me to help document how American Indians—a population that Russ Hepler rightly describes as “one of the American groups overlooked in the debate”—participated in the same-sex marriage movement in the United States.<sup>3</sup> That American Indians have been excluded and marginalized from the historiography of this major US social movement is puzzling, and especially so given that the movement has, at least in some arenas, attempted to

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foreground the queer subject in the larger social context of a settler-colonial investment in “constructing Native peoples as hypersexual and nonheteronormative.”<sup>4</sup> In 2011, queer Native scholar Chris Finley explains this and other holes in the scholarship by asserting that queer studies “only rarely addresses Native peoples and Native issues” and that neither queer studies nor Native studies “has shown much interest in critically engaging the other,” a condition that fortunately has been changing.<sup>5</sup> She adds that American Indian sexualities in general have been overlooked, partly because a Native “silencing of sexuality” exists in Indian Country—one that “especially applies to queer sexuality.”<sup>6</sup>

Adopting Vasu Reddy’s conceptualization of *queer* as that which “signals an active force challenging compulsory heterosexuality,” this article explores American Indian efforts to both queer marriage and to impede and halt that queering.<sup>7</sup> I focus on the ten-year period when same-sex marriage received the most national attention, the decade prior to the 2015 Supreme Court decision that affirmed the right to marry as a right under the US constitution.<sup>8</sup> Amy Brandzel has pointed out that during this period, gay and lesbian rights activists who supported advocating for same-sex marriage were divided from queer theorists who were critical of that objective on the grounds that marriage reifies identity categories and is “assimilationist in tone and/or outcome.”<sup>9</sup> My research has found abundant evidence of American Indian challenges to homophobia and heteropatriarchy—challenges which help queer marriage and thus resonate with queer-theorist goals. Nonetheless, as will be seen, like many non-Native LGBTQ activists in the United States during this period, many Indians embraced the goal of legalizing same-sex marriage, engaging in complex processes of resistance, evasion, and even annexation of institutional power.<sup>10</sup>

The descriptions and analysis in this article have benefited greatly from and build upon queer theorists’ explorations of the forms and consequences of institutional power used to discipline and align Native queer subjects. Mark Rifkin, for example, systematically deconstructs and denaturalizes institutions, among them marriage, and identifies the ways institutions and institutional power work to erase and marginalize the experiences of Natives and Native writers.<sup>11</sup> Scott Lauria Morgensen insightfully discusses both non-Native and Native queer modernities, productively framing the latter as creative assertions of resistance to settler-colonial narratives and institutions.<sup>12</sup> Together with the stellar ethnographic work on Native sexual minorities by both Brian Gilley and Jenny Davis (Chickasaw Nation), this scholarship attests to the value of attending to the subjectivities of queer Natives living in exile from reservation homelands, a number of whom claim a Native identity but cannot meet the membership requirements of any tribe.<sup>13</sup>

Following the work of Jennifer Nez Denetdale (Navajo Nation) and Chris Finley (Colville Confederated Tribes), my study continues the work of extending these explorations more fully into early-twenty-first-century tribal homelands and addressing them as part of contemporary internal tribal domestic affairs.<sup>14</sup> For example, this article provides comprehensive coverage of the state of tribal same-sex marriage law during the second decade of the twenty-first century. My discussion centers on negotiations among Indians of Indian-authored tribal marriage laws, and the immediate

context for most of my materials are tribal governments, tribal courts, and other institutions controlled almost exclusively by Indians. Additionally, I hope to supplement the growing literature on queer Natives and issues by deploying a different lens and angle than those generally used in queer studies, as well as by addressing often-bypassed spaces. This article pools and helps make sense of diverse Indian perspectives and seeks to bring issues of same-sex marriage in Indian Country beyond legal specialists to wider scholarly audiences. A central goal of the second half of the discussion is to present a range of Indian voices, in Indians' own words, that emanate from these spaces. At the same time, my goal is to illuminate aspects of the social and political contexts in which these voices are expressed and these actions take place.

As this journal's readership and others familiar with Indian Country are aware, the legal status of "tribal member" is a prerequisite to participation in tribal legal and political affairs and is the bedrock upon which other tribal rights are layered. Tribal members thus have different sets of rights in their tribes; most have a partial set, while some have a full set of tribal rights. As will be seen, queer tribal members—a category that almost always has only a partial set—have been working to expand their set of rights, challenging homophobia and heteropatriarchy and queering marriage in tribal nations by legalizing same-sex marriage. To be sure, in many homelands homophobia is a part of modern Native nation-building, as Denetdale has noted, and may help explain a queer, largely non-Native "suspicion of Native nationalisms," as Melanie Yazzie has described.<sup>15</sup> This suspicion is sometimes dismissive and disrespectful of tribes and tribal sovereignty, and it is hoped that my findings will lessen some of this disrespect.

My exploration of tribal lawmaking around same-sex marriage began partly in response to the pressing need for a scholar to assemble, synthesize, and provide a framework for understanding the growing primary materials on same-sex marriage in Indian Country and Indian voices. The sketch I provide here is best conceptualized as mapping; that is, it is intended to provide a bird's-eye view of institutional shifts in marriage in Indian Country, rather than an up-close, comprehensive examination of same-sex marriage debates in a single tribal nation, for example. It finds inspiration in Finley's excellent question, "How does the queering of Native bodies affect sovereignty struggles?" but can take only a small step toward addressing that question.<sup>16</sup> My materials implicitly address another fruitful question, herein adapted to the reservation context: "How exactly [do] we want GLBT people and queer others to align themselves with [tribal] citizenship[?]"<sup>17</sup>

I begin by discussing at some length the demographic, political, and legal contexts that profoundly shape some of the key ways in which Indians in tribal homelands participate in debates over same-sex marriage. I then focus attention on the lack of uniformity in the early-twenty-first-century tribal laws that govern same-sex marriage in Indian Country. Tribal marriage laws, of course, emerge from particular social and cultural contexts. Drawing upon interview evidence with queer Natives, I describe and discuss the reality that some tribal homelands are welcoming to this sexual minority, others are hostile, and the overwhelming majority are uneven and thus are not dissimilar to most US communities. In the course of tracing some of the contours of queer

Native experience in tribal homelands, I identify and analyze some of the arguments Indians have been using to debate the issue of same-sex marriage. Like the sovereignty that Indians exercise over marriage and marriage laws, these arguments help define the distinctiveness of Indian participation in the US movement to legalize same-sex marriage. In this, my descriptions and analyses have benefited greatly from the work of legal scholars Matthew L. M. Fletcher (Grand Traverse Band) and Ann Tweedy in tribal law and federal law regarding same-sex marriage. Their penetrating insights have inspired me to use anthropological approaches and perspectives to further investigate and analyze these issues.<sup>18</sup>

Several different research methods were used. The vast majority of my research mined “narrative spaces,” to use Morgensen’s phrase, examining newspapers, web-based publications, books, and archives.<sup>19</sup> As an American Indian sociocultural anthropologist with training in legal anthropology and American Indian studies, I also drew from participant-observation field research data and interviews that I have conducted in Indian Country over the course of two decades. I received permission for all interviews and field research I conducted, which included visits to the homelands of a number of the tribes discussed. Lastly, I drew upon my prior professional experience working in the Bureau of Indian Affairs in Washington, DC. My sixteen months working in the Division of Tribal Government Services helped me to forge a broader and more complex understanding of Indian tribes, especially of their marked diversity.

Although I occasionally use “Native” and “Native nation,” most often I use the words “American Indian” and “Indian tribes,” both because these terms denote legal categories and because Indians themselves use them widely in Indian Country. In accordance with federal and tribal legal conventions, I capitalize the word “tribe” when referring to a specific tribe, but not when referring to a non-specific tribe or group of tribes. Several times I use “LGBTQ” (lesbian, gay, bisexual, transgender, queer) to refer to sexual minorities, an acronym (and its variations) that is in widespread use among queer Natives. Despite this, Jenny Davis has made the critical point that the meanings and boundaries of these terms are not always “synonymous with dominant understandings” when used by Indians.<sup>20</sup> For example, she explains that some Indians understand sexual and gender binaries as “potentially overlapping states” rather than “mutually exclusive opposing poles.” Likewise, she cautions that Indians may frequently and “simultaneously” “align and diverge from mainstream discourses regarding sexuality.”<sup>21</sup> Throughout this article, Davis’s important insights should be kept in mind.

## AMERICAN INDIANS AND MARRIAGE LAWMAKING

The societal context for American Indian participation in debates over same-sex marriage helps illuminate the ways in which Indians engage with this issue. The apparent lack of visibility of Indians in public debates about marriage equality is most striking, especially from 2005 to 2015, when such debates were at their height. Demographics provide a partial explanation: Indians comprise less than one percent of the US population. In addition, Indians are underrepresented in the legislative branches of the US state and national governments, some of the most visible sites for

these public debates. From 2005 to 2015, for example, in seven out of the ten years only one member of the US Congress was Indian out of the total of 535 members.<sup>22</sup>

Yet American Indians in the United States do exercise leadership on issues that include the topic of same-sex marriage. It is simply that this leadership tends to be limited to the islands of authority that are our tribal homelands; Indian agency would be significantly more apparent if our primary domestic political actions took place within mainstream US politics. A constellation of legal facts helps shape this context. Indian tribes are recognized as possessing “a significant sovereignty”<sup>23</sup> that US and tribal law often characterize as “preconstitutional,” because this sovereignty predates the formation of the United States, and also “extraconstitutional,” because this sovereignty exists outside the US Constitution. As preconstitutional and extraconstitutional sovereigns who did not participate in or consent to the provisions of the US Constitution and were never incorporated into the federal union, Indian tribes are not subject to the US Constitution and Bill of Rights. Consequently, the 2015 Supreme Court decision which found that the equal protection and due process clauses of the Fourteenth Amendment include a “fundamental right to marry,” *Obergefell v. Hodges*, does not apply to the homelands of Indian tribes.<sup>24</sup> Prior to this landmark decision, the state laws and amendments to state constitutions that banned same-sex marriage in many states also did not apply to tribes, as “states have no authority to regulate on-reservation domestic relations.”<sup>25</sup> Interestingly, the Defense of Marriage Act passed by Congress in 1996, which was ruled unconstitutional in 2015, specifically included Indian tribes.<sup>26</sup>

Despite the fact that federal agents and missionaries spent much time and effort attempting to regulate Native sexuality and “exercised a heteronormative influence,”<sup>27</sup> Indian sovereignty over marriage and related domestic law is legally well established, “quite pronounced,” and represents some of the most secure rights exercised by Indian tribes in the United States.<sup>28</sup> Tribes have “undisturbed inherent authority to decide matters of domestic and family law within Indian Country,” Matthew Fletcher (Grand Traverse Band) explains in his foundational article about same-sex marriage in Indian Country.<sup>29</sup> “The hard inner core of tribal sovereignty,” he continues, is “the *Williams v. Lee* formulation that Indians have the right to make their own laws and be governed by them. At the center of this core are domestic relations and family law.”<sup>30</sup> As justices of the Navajo Nation Supreme Court have explained, exclusive control over marriage law is critical to “enhance Navajo sovereignty, preserve the Navajo marriage tradition, and protect those who adhere to the Navajo tradition.”<sup>31</sup> Such assertions are common in Indian Country.

Fletcher explains that the assemblage of US case law that supports the “plenary and exclusive inherent authority” of Indian tribes over marriage begins with cases from the late-nineteenth century.<sup>32</sup> The earliest such case appears to be *Kobogum v. Jackson Iron Co.* In 1889, the Michigan Supreme Court justice declared,

We had no more right to control [tribal] domestic usages than those of Turkey or India . . . [A]mong these Indians [Chippewa] polygamous marriages have always been recognized as valid. . . . We must either hold that there can be no valid Indian

marriage, or we must hold that all marriages are valid which by Indian usages are so regarded. There is no middle ground which can be taken, so long as our own laws are not binding on the tribes.<sup>33</sup>

In the 1906 Cherokee intermarriage cases and *U.S. v. Quiver* in 1916, the courts reiterated that “domestic relations issues within tribes should be regulated by tribes themselves according to their own laws and customs,” and added that US courts should not and “would not get involved in these issues.”<sup>34</sup> In *Ortley v. Ross* (1907) the court declared, “It has always been the policy of the general government to permit the Indian tribes as such to regulate their own domestic affairs, and to control the intercourse between the sexes by their own customs and usages.”<sup>35</sup> A final example of a foundational case in early case law that affirmed tribes’ sovereign rights over marriage is *Hallowell v. Commons* (1914). The court pointed out that the Omaha tribe had a “right” to practice polygamy in accordance with their “customs” and that this right “must be respected.”<sup>36</sup> More than one hundred years later, in the aftermath of the *Obergefell v. Hodges* decision, in 2015 BIA public affairs director and my former co-worker Nedra Darling (Prairie Band Potawatomi Nation) referred to this weighty legal foundation, explaining that “because the tribes have the ability to regulate domestic relationships” the federal government would not “interfere” in the marriage laws of tribes.<sup>37</sup> This legal foundation is an important resource for tribes exercising their sovereign right to regulate domestic relations, especially given the extensive history of efforts by federal agents, missionaries and others to interfere in Indian marriage and other tribal domestic affairs.<sup>38</sup>

## TRIBAL LAWMAKING ON SAME-SEX MARRIAGE

An overview of Indian tribal law on same-sex marriage shows that Indian tribes have been engaged with lawmaking on same-sex marriage longer than many world nations, with lack of uniformity across tribes being this lawmaking’s defining feature. Ann Tweedy has analyzed the content of many of these tribal laws and the processes by which they were enacted, building upon Fletcher’s brilliant overview of their legal foundations. She rightly points out that such laws “have been under-researched and under-theorized” and argues for more scholarship in this area.<sup>39</sup> As is well-known in Indian Country, the first tribe to explicitly legalize same-sex marriage is the Coquille Indian Tribe. From the passage of the Coquille law in 2008 until the 2015 *Obergefell v. Hodges* decision, a period when many US states banned same-sex marriage and the period when Tweedy published her important survey, more than a dozen additional Indian tribes either legalized same-sex marriage or performed marriages of same-sex couples under existing tribal, sex-neutral marriage laws. While lengthy, to list these tribes by name may help dissipate the stereotype that tribes are highly homophobic, a belief that is common in some circles. During the period from 2005 to 2015, tribes with laws allowing same-sex marriage included the Suquamish Indian Tribe, Little Traverse Bay Bands of Odawa Indians, Mashantucket Pequot Tribal Nation, Pokagon Band of Potawatomi Indians, Iipay Nation of Santa Ysabel, Confederated Tribes of the Colville Reservation, Cheyenne and Arapaho Tribes, Eastern Shoshone and Northern

Arapaho Tribes, Leech Lake Band of Ojibwe, Minnesota Chippewa Tribe–Leech Lake Band, Puyallup Tribe, Tlingit and Haida Indian Tribes, Oneida Nation (Wisconsin), and Keweenaw Bay Indian Community.<sup>40</sup> Since 2015, other tribes have also legalized same-sex marriage, most notably the Cherokee Nation and the Osage Nation. Most often, tribal councils or other tribal lawmaking bodies vote to change or uphold tribal marriage laws; alternatively, tribes may hold national referenda on same-sex marriage.<sup>41</sup>

Referring to these tribes' legalization of same-sex marriage prior to the *Obergefell* decision, Tweedy makes the critical point that "tribal sovereignty is very important to tribes. They don't want to just adopt what the U.S. does."<sup>42</sup> Indeed, in at least three states that banned same-sex marriage between 2009 and 2013 (Oregon, Michigan, and Oklahoma), the first same-sex couples to be legally married were married by Indian tribes under tribal law. As journalist Gyasi Ross (Blackfeet Nation) has commented, "there were many Tribes who were ahead of the game and said, 'No, we can't treat humans like that. We have to treat them all equally.'"<sup>43</sup> To be married under tribal law, however, many tribes require at least one of the parties to be a tribal member.<sup>44</sup> An individual who is not enrolled in their spouse's tribe may or may not receive benefits from that tribe. When the Coquille Tribe married two women in 2009, for example, non-member spouse Jeni Branting acquired health insurance fully funded by the Tribe and the right to participate in tribal events,<sup>45</sup> but some tribes (such as my own) do not provide direct tribal benefits to non-member spouses. (My husband, who is enrolled in the Eastern Band of Cherokee Indians, receives no direct benefits from the tribe in which I am enrolled, the Choctaw Nation.)

A number of Indian tribes ban same-sex marriage, a fact that is well-known in Indian Country.<sup>46</sup> In 2005, when same-sex marriage was legal in the nearby states of Arizona, New Mexico, and Utah, the legislature of the largest Indian tribe, the Navajo Nation, passed the Diné Marriage Act outlawing same-sex marriage.<sup>47</sup> In 2004, the second-largest tribe, the Cherokee Nation, banned same-sex marriage, but importantly, twelve years later the Cherokee law was overturned. By July 2017, among the tribes that outlawed same-sex marriage were the Chickasaw Nation, Choctaw Nation, Seminole Nation, Muscogee (Creek) Nation, Kickapoo Tribe, Navajo Nation, Kalispel Indian Community, Sac and Fox Tribe of the Mississippi in Iowa, and the Ak-Chin Indian Community (Arizona).<sup>48</sup>

If nearly "1,000 federal benefits hinge on marital status,"<sup>49</sup> the benefits of tribal recognition of a marriage can also be significant. For example, Navajo law banning same-sex marriage denies same-sex couples the right to participate in medical decisions that pertain to their partner, the right to share in a home on a lease site, and other rights enjoyed by married heterosexual couples who live on the reservation.<sup>50</sup> Not only is same-sex marriage against tribal law in the Ak-Chin Indian Community, but so is the cohabitation of couples who are unmarried or whose marriage is not recognized by the Tribe.<sup>51</sup> In the 2010s, Cleo Pablo, a lesbian with a home on the Ak-Chin Indian reservation who married a woman under Arizona state law, gave up that home rather than risk arrest by tribal police simply for living with her family. She and her spouse and their children relocated to Phoenix fifty miles north.<sup>52</sup> Thus, as Native journalist Julian Brave NoiseCat has pointed out, same-sex couples living



on the reservations of tribes that ban same-sex marriage “are denied the same rights and benefits afforded to heterosexual couples . . . in areas like housing, property rights and custody of children.”<sup>53</sup> Explaining her decision to take legal action against her Tribe, Pablo said, “As Native people in the community, we’re taught to stand in the background, not create waves . . . [before,] I wouldn’t rock the boat, [but recently] I’ve done the opposite. . . . It gets to the point if you don’t say anything, nothing is going to change.”<sup>54</sup>

Not all tribal marriage laws explicitly approve or prohibit same-sex marriage, a fact that contributes to the lack of uniformity in tribal marriage laws. For example, in the marriage law of the Cheyenne and Arapaho Tribes, the gender of participants is unspecified.<sup>55</sup> Tribal law states that at least one spouse must be a tribal member, at least one must live within tribal jurisdiction, and both must have Indian ancestry.<sup>56</sup> At least three same-sex couples have married under this sex-neutral tribal marriage law. Yankton Sioux tribal marriage law uses the terms “husband” and “wife.” It does not, however, specify that a husband must be male and a wife be female, thereby providing room for same-sex couples to marry under Yankton Sioux marriage law. A third example is the marriage law of the Eastern Band of Cherokee Indians (EBCI). In 2014 the tribal council amended their marriage law that was based on North Carolina marriage law, declaring, “the licensing and solemnizing of same-sex marriages are not allowed within this jurisdiction.”<sup>57</sup> At the same time, however, the tribe’s acting attorney general affirmed that the EBCI recognizes as legal the marriages of same-sex couples married elsewhere and that same-sex couples can “live on [EBCI] tribal land with no penalty.”<sup>58</sup> Lastly, there are perhaps a dozen tribes, including the Sault Ste. Marie Tribe of Chippewa Indians, that define the marriage law of their tribe as the marriage law of the US state where their tribe’s homeland is located.<sup>59</sup> As a result, when the 2015 *Obergefell* decision determined that US state marriage laws banning same-sex marriage were unconstitutional, same-sex marriage became legal for these tribes as well.

Emerging as they do from particular social and cultural contexts—as this article will later explore in greater detail—tribal laws governing same-sex marriage have been made and carried out with varying levels of dissent among tribal lawmakers and citizenries. Some tribes have reached near-consensus on same-sex marriage. Both the 2011 vote of the Suquamish Tribe’s legislature and the 2015 vote of the business committee of the Oneida Nation (Wisconsin) were unanimous in legalizing same-sex marriage.<sup>60</sup> In regard to the Cheyenne and Arapaho Tribes, Lieutenant Governor Amber Bighorse asserted that the marriage of same-sex couples has been unremarkable because same-sex marriage “has never been controversial.”<sup>61</sup> About her Tribe’s decision to legalize same-sex marriage, Chief Justice Debra O’Gara of the Tlingit and Haida Indian Tribes remarked, “There was very little controversy over the same gender aspect because everybody believed it [marriage] should be open. Whoever our citizens are should have the same rights as everyone else.”<sup>62</sup> She added that there was a lot more discussion of whether members of the same clan should marry.<sup>63</sup> By contrast, in some tribes there has been near-agreement not to approve, but to limit or even ban tribal recognition of same-sex marriage. For example, the 2014 EBCI law that did

recognize same-sex marriages performed elsewhere but banned marriage ceremonies for same-sex couples on tribal land was passed with only one dissenting vote.<sup>64</sup>

Historian Gregory Smithers has correctly pointed out that many Indian “communities are divided—sometimes bitterly so—over the issue.”<sup>65</sup> In the early 2010s this was the case for the Little Traverse Bay Bands of Odawa Indians. In 2012 the tribal legislature voted down a bill to legalize same-sex marriage by five to four; the following year the bill passed, but by another highly divided vote of five to four.<sup>66</sup> John Keshick III, a Little Traverse representative, remarked, “It was a close vote, and I [simply] voted the way I was brought up,” which was against same-sex marriage.<sup>67</sup> In 2005 the Navajo legislature voted to ban same-sex marriage by a significant margin, by a vote of sixty-two to fourteen.<sup>68</sup> Though these results may suggest the presence of only a small amount of dissent, by all accounts great “bitterness and divisions” resulted from what Navajo lawmaker Otto Tso described as the “heated debate” over this law (termed the Diné Marriage Act), a debate that occurred both in the tribal legislature and throughout the Tribe’s more than 27,000-square-mile homeland.<sup>69</sup> Following the vote, Navajo Nation President Joe Shirley, Jr. then vetoed the act, citing its “discriminatory nature,” “violation of a basic human right,” and alleged “low priority for Navajo citizens.”<sup>70</sup> Navajo lawmaker Larry Anderson launched a counterattack and eventually obtained the necessary votes to override the veto and make the act into law.<sup>71</sup> Both then and now, Navajos have engaged in vocal protests of the Diné Marriage Act and have mobilized extensively to expand the set of tribal rights accorded LGBTQ Navajos.<sup>72</sup>

## THE CLIMATE FOR QUEER INDIANS ON OR NEAR TRIBAL HOMELANDS

The marriage laws of Indian tribes, as we have seen, range broadly from laws that accord same-sex couples and heterosexual couples the same rights, to laws that discriminate against same-sex couples and individuals who do not conform to hegemonies of sexuality and gender. The foregoing overview speaks to existence of a range of spaces in tribal homelands, some of which harbor hostile or mixed attitudes towards sexual minorities, and others which welcome and include these populations. The remaining discussion provides richer descriptions of these spaces and the perspectives and experiences of queer Indians. After first tracing some of the contours of these experiences and perspectives, I then turn to some of the arguments Indians have been using in debating same-sex marriage. Like the previous survey of the sovereignty that Indians exercise over marriage laws and the lack of uniformity of these laws across tribes, these arguments help define the distinctiveness of Indian participation in the US marriage-equality movement. In addition, such distinctiveness stems from the particular individuals who have exercised leadership in the movement and have helped to bring about social change. The influence of some of these figures deserves greater scholarly and popular attention.

A good number of scholars and activists have worked during the past few decades to document what Brian Gilley characterizes as the “ubiquitous homophobia that alienates” queer Indians.<sup>73</sup> By all accounts both Indians and non-Indians are perpetrators of the bullying, discrimination, and hateful treatment that many queer Indians

experience. Alarming high rates of victimization plague the American Indian and Alaska Native LGBTQ population, a report of the National Gay and Lesbian Task Force found, with the violent beating death of Fred Martinez, Jr. in 2011 serving as a powerful symbol of the widespread mistreatment of LGBTQ Indians in general, and transgender Indians in particular.<sup>74</sup> Martinez, Jr., a sixteen-year-old transgender Navajo woman, was brutally murdered near the reservation border town of Cortez, Colorado by non-Indian Sean Murphy, who later told others that he had “bug-smashed a fag.”<sup>75</sup> The grassroots organization Native OUT has focused needed attention on the story of Martinez and other queer Indians who have been murdered, with Navajos comprising a disturbing two-thirds of the murder victims listed on the group’s website.<sup>76</sup>

Heather Purser, a Suquamish Indian and a lesbian, reported that she was attacked and beaten by fellow Indian students at Haskell Indian Nations University “for being different” when she attended the BIA-run, Indian-only school in the early 2000s.<sup>77</sup> She was victimized again, she added, when the university first thwarted an investigation into the crime, then prematurely terminated it. Purser shared that after these types of incidents “You hide yourself so well that you forget who you are. I know I did for such a long time.”<sup>78</sup> Darren Black Bear, a citizen of the Cheyenne and Arapaho Tribes, said that while traveling in about 2007, he and his then-boyfriend Jason Pickel (now his spouse), “were denied entrance to a hotel because we were gay.”<sup>79</sup>

The findings of scholars and activists who are helping to document this discrimination suggest that such incidents are not uncommon. A substantial number of the dozens of queer Native consultants whom Gilley interviewed between 1998 and 2010 reported experiences of discrimination, ostracism, and rejection by both members of the larger, non-Indian society and citizens of their own tribes. Gilley conducted field research in Colorado and Oklahoma on the experiences of queer, mostly male Indian members of two different “two spirit” organizations.<sup>80</sup> His book, *Becoming Two-Spirit: Gay Identity and Social Acceptance in Indian Country*, provides much insight into the psychological and emotional pain his consultants experience, their strategies of resistance, and the climates for queer Indians on or near their tribal homelands (many of Gilley’s consultants are affiliated with tribes located in the US Southwest and Southern Midwest). Gilley’s work after *Becoming Two-Spirit* explored the ways that some of these men pursued “personal empowerment” in ceremonial contexts by means of an orientation grounded in “docility to cultural authority” that did not “disrupt.”<sup>81</sup>

Despite the great diversity of tribal affiliations that Gilley’s consultants likely represent, their accounts exhibit striking similarities. Gilley reports, for example, “Most believed the common Native idea that they were (and still are) harming their families by being gay.”<sup>82</sup> In addition, he found that many of his consultants’ families and fellow tribal members associated “same-sex relations and gay culture-related behaviors . . . with “whiteness” and white-dominated geographic space, such as the major cities.”<sup>83</sup> Gilley found a related belief to be common in this part of Indian Country: “If an Indian man is recognized as gay, it is thought that he learned this behavior from white people.”<sup>84</sup> Finally, Gilley documents resemblances among his consultants’ coming-out stories. “We tried to come out to the elders a couple years ago,” said one, “and the elders were very much against it, and were very mean-spirited.”<sup>85</sup> Another reported, “There’s

homophobia alive and well on many Native reservation communities. The families, the friends, they say you are no longer welcome here: 'If you wanna engage in that kind of activity, there are places . . . the big cities. That's where you go to do it. Here, we do not condone that type of activity. We will not tolerate that kind of activity.'<sup>86</sup>

The writings of Zachary Pullin (Chippewa Cree Tribe) lend much-needed insight into the feelings of alienation and exclusion experienced by queer Indians in the northern Great Plains and Pacific Northwest. Of his childhood experiences on Rocky Boy's reservation in Montana and later in Spokane, Washington, Pullin writes "I had grown up with the idea in my own mind that I was less of a man" and "[t]here was a deep sense that I couldn't present my whole self in that space."<sup>87</sup> Nearly all Gilley's consultants describe themselves as having found healing and belonging in two-spirit spaces created mostly outside tribal homelands; likewise, Pullin continues, "It wasn't until I attended a two-spirit gathering—a cultural event that draws together two-spirit individuals for traditional dancing, storytelling and other customs—that I entered a dance arena and felt authentic about who I was in my place in the circle [and did not have to hide my identity as both Native and gay]."<sup>88</sup>

The Navajo Nation and the Cherokee Nation have received public attention for the antagonism that some of their citizens have shown to their queer fellow tribal members; they are the first- and second-largest tribes in the United States, respectively. By many accounts, it is common for queer Navajos to feel unwelcome on their reservation. As an older female Navajo told Gilley, "Indian gay men . . . went into the white community, 'cause our tribes didn't want 'em."<sup>89</sup> Gay activist and Navajo Alray Nelson hints at an indirect shunning or near-banishment of queer Navajos by some on the reservation. "We still have leaders today," he said, "that say, 'It is fine to get a marriage license off the reservation and to live in a city like San Francisco or in a border town like Farmington or Gallup, but don't get married here at home because we're not going to recognize it.'"<sup>90</sup> In an attempt to educate the broader public about Indian issues in 2014, Pullin asserted, "There are complicated debates about the rights of LGBTQ Native men and women on reservations, like the one taking place on the Navajo Nation, where LGBTQ rights advocates have received support from some and resistance from others in their attempt to undo the 2005 Diné Marriage Act."<sup>91</sup> About the Navajo debate, tribal member Amber Crotty remarked, "Hopefully it attracts Navajos who are living in urban settings to come back home and have this discussion."<sup>92</sup>

Reactions to a tribal same-sex marriage in the early 2000s helped some of the citizens of the Cherokee Nation to earn a reputation for being unwelcoming to queer tribal members. In May 2004, two female citizens of the Cherokee Nation, Kathy Reynolds and Dawn McKinley, were granted a marriage license under the tribe's marriage law, then sex-neutral. The Tribe's attorney general, followed by a group of Cherokee Nation lawmakers, then filed petitions seeking to invalidate the same-sex marriage. These were dismissed by the Cherokee Nation Judicial Appeals Tribunal because petitioners failed to show that they had been harmed by the marriage.<sup>93</sup> Cherokee tribal council representative Lina O'Leary declared, "We don't want gay marriage in the Cherokee Nation. It's that simple."<sup>94</sup> About such reactions to her marriage, Reynolds remarked, "Dawn and I are private people, and we simply wish to live our lives in peace and quiet,

just as other married couples are permitted to do.”<sup>95</sup> By the end of 2004, the Cherokee Nation legislative branch had banned same-sex marriage pursuant to the Cherokee Nation Marriage and Family Protection Act. Twelve years later, in December 2016 the Cherokee Nation Supreme Court ruled this law unconstitutional, and same-sex couples can now marry under Cherokee Nation law.

Although a number of queer Natives, as we have seen, report discrimination, prejudice, and hate in Indian Country, others state that they have experienced love, acceptance, and affirmation of their difference on reservations and in other Native spaces. Heather Purser, a lesbian who faced hate from fellow Indian students at Haskell Indian Nations University, said that her Tribe, the Suquamish, has embraced her for who she is both on and off the reservation, which is about twenty miles from Seattle in central Puget Sound. “Indian people, especially in my community, are way more understanding [about discrimination] because they’ve been through it,” she explains.<sup>96</sup> “The elders know what it’s like to go to school and have their hair cut off and be called a filthy, sick person just because of who they are.”<sup>97</sup> Further reflecting upon her Tribe, Purser adds, “Suquamish are very live-and-let-live. Very progressive. Here, we were all family. Suquamish has always been my safe place.”<sup>98</sup> The Squaxin Island Tribe is also widely described as accepting of queer tribal members. For example, Ron Whitener, executive director of the University of Washington’s Native American Law Center and a tribal member, has an openly gay brother who was elected to the Squaxin Island tribal council. Whitener reports that his brother’s sexuality “was [simply] not an issue” in the election that brought him into office; his explanation is that Squaxin Island tribal members “have a much more fluid spirituality.”<sup>99</sup>

Legalizing same-sex marriage has been a way for some tribes to show acceptance and support of their queer tribal members. As Ken Tanner, chief of the first tribe to legalize same-sex marriage, explained the Tribe’s decision: “Our directive is to provide recognition and respect to all . . . Native Americans, more than anyone, know about discrimination.”<sup>100</sup> When the Iipay Nation of Santa Ysabel passed a resolution in support of same-sex marriage in 2013, California was a state that outlawed same-sex marriage. Tribal Chairman Virgil Perez “aggressively defended marriage equality” in his public announcement to the tribe’s citizenry, as well as to non-Indians where the Tribe’s reservation is located in south-central California. Our Tribe “won’t ever forget the sting of prejudice,” he cried, “or stand passively by when others suffer discrimination or denial of basic human rights!”<sup>101</sup> Also that year, the tribal council of the Confederated Tribes of the Colville Reservation in Washington voted unanimously to legalize same-sex marriage. Gays “have a special place in . . . [our] society,” tribal leader Michael Finley explained; “they’ve always been accepted.”<sup>102</sup> Finley’s words were echoed that year by Dexter McNamara, the tribal chairman of the Little Traverse Bay Bands of Odawa Indians, whose headquarters is in Michigan, a state that banned same-sex marriage at the time. “This is about people being happy,” McNamara explained.<sup>103</sup> “I’ve always felt that either you believe in equal rights or you are prejudiced. We [Odawa Indians] don’t have a dividing line . . . Everyone deserves to live the lives of their choice.”<sup>104</sup>

Tribal chairman McNamara himself married two men under tribal law: Tim LaCroix, an enrolled tribal member, and his boyfriend of thirty years, Gene Barfield, a non-Native. Barfield, deeply moved by the actions of McNamara and the Tribe, stood humbly in the tribal building after the ceremony and said: "This is their turf. They have their own government, they have their own police force, they have their own rules and regulations. They're very big on respect, and for them to say to us, 'We respect your relationship and your prerogative to define it as you choose,' is really special." Nearly speechless after the ceremony, newlywed LaCroix said, "I'm so proud of my tribe for doing this. I just can't say enough." Tribal communications coordinator Annette VanDeCar explained to the public, "We as Indians are taught to respect people as individuals, and as individuals people have the right to decide what is best for them."<sup>105</sup> Indeed, more than one hundred tribal citizens organized a wedding reception for the gay couple.<sup>106</sup> A similar experience followed the 2013 wedding of another gay couple under Cheyenne and Arapaho tribal law. These tribes are located in the state of Oklahoma, which banned same-sex marriage until 2014, when the Supreme Court ruled such laws violated the US Constitution. Private donors paid for the major expenses of the couple's reception, including the catering, the cake, and the use of the reception hall. The couple reported the "vast majority" of tribal members to be "very supportive."<sup>107</sup>

## DEBATES OVER SAME-SEX MARRIAGE

Although American Indians, like other populations, deploy a wide range of arguments in promoting and defending their positions either for or against same-sex marriage, two distinct categories of arguments pervade Indian Country regarding Natives' participation in the marriage equality movement: arguments that appeal to "tradition" and arguments that invoke Christianity and its teachings. In Indian Country, these two arguments tend to be used to support opposed positions on same-sex marriage, but this is not always the case, as will be seen.

However, before analyzing this rhetoric and discussing the insights into Indian participation in these debates that it provides, a critical point should be made about how "culture" and "tradition" operate in American Indian contexts. It can be challenging and even dicey for actors in any society to claim and legitimize a practice or belief as "traditional" or as part of a group's "culture," but for American Indians the process is further complicated by problematic and offensive stereotypes produced by non-Natives. An Indian tribe's culture, for example, is often simply presumed to be singular, while its traditions, or what are recognized as such, are often constructed by outsiders as cloudless, uncomplicated, and immobile, treated like a time capsule from an implicitly static, simple past. For these stereotypes to be replaced by more accurate and productive conceptualizations of Indian traditions and cultures, each tribe's culture should be treated as a collection of diverse practices and ideas, as collective creative assemblages. These products should be understood as complex, open-ended, and shifting, and it should be expected that, as is the case for all societies, parts of such assemblages are piecemeal and contradictory. Finally, it should always be kept in

mind that these collective creative assemblages are products of history and thus have multiple authors and origins.

Such a reconceptualization of Indian traditions and culture is important for many reasons. For one, it fosters greater appreciation for the enormity and complexity of Native legal projects, including tribes' efforts to exercise their legal right to interpret the Indian Civil Rights Act of 1968 "in terms of their own cultures and traditions" and to incorporate tribally specific traditions into tribal laws and judicial proceedings.<sup>108</sup> Lopez asks how Navajo tribal judges "determine relevant Navajo culture" and, hinting at the many challenges this question presents, identifies one of a myriad of questions these judges face: "Do they look to the culture of pre-European contact . . . [or to] the contemporary [Navajo] community?"<sup>109</sup> Related questions include who gets to decide what is "traditional," and what role these constructs should have in tribal lawmaking, adjudication, and enforcement. In Navajo debates concerning the tribal law banning same-sex marriage, each side has argued that Navajo traditions and culture support their position. Tradition is actually at "the heart of the [marriage equality] issue" in this Tribe, as NoiseCat points out.<sup>110</sup>

Indeed, some Navajos contend that embracing multiple gender identities and extending marriage to non-heterosexual partners is following ancient Navajo cultural prescriptions. LGBTQ Navajos and their supporters cite the *nádleeh*—a gender identity that is neither male nor female and that sanctions non-heterosexual sex—as proof that, in ancient times "third, and possibly fourth, genders were accepted and celebrated,"<sup>111</sup> and that same-sex couples "were recognized" and "had every right to be productive members of our community."<sup>112</sup> Denetdale adds that in the Navajo creation narratives "the *nádleehí* played a crucial role in bringing about harmony between men and women after a period of conflict and unrest between the two sexes."<sup>113</sup>

A coalition headed by some past and present Navajo lawmakers has opposed this position, among them Kenneth Maryboy and Larry Anderson. Maryboy has argued that "in the traditional Navajo way, gay marriage is a big no-no . . . It boils down to the circle of life . . . We are put on the earth to produce off-spring."<sup>114</sup> Anderson, who has argued that the ban on same-sex marriage is necessary "to strengthen family values,"<sup>115</sup> has explained, "[t]raditionally, Navajos have always respected the woman and man union. Family values are important. The Navajo elders said we should respect both men and women."<sup>116</sup> Denetdale contends that such claims are best understood as a "conflation of Navajo traditional values with mainstream American values" including "monogamy, the nuclear family, and heterosexuality."<sup>117</sup> Indeed many non-Indians, including the leaders of the National Organization for Marriage, define heterosexual marriage as "traditional" American marriage.<sup>118</sup>

Similar debates have transpired elsewhere in Indian Country. Both supporters and opponents of the 2004 Cherokee Nation law banning same-sex marriage, which was overturned in 2016, claimed to have "tradition on their sides."<sup>119</sup> Additionally, in Colorado and Oklahoma many members of a two-spirit movement construct and deploy "tradition" toward the goals of acceptance, empowerment, and inclusion, while some other American Indians in these parts of Indian Country circulate their opposing views that "[h]omosexuality is not a traditional value" and "gay is not a part of our

[tribe's] traditions."<sup>120</sup> Moreover, some "traditionalists" see themselves as "preserving tribal social values" in condemning homosexuality and multiple gender identities.<sup>121</sup> Tweedy argues that these traditionalists' claims are "contemporary prejudice" being made "to masquerade as tribal tradition."<sup>122</sup> To prevent such exclusions from being institutionalized in the name of tradition, she argues, tribal judges should require "solid evidence" that the exclusions are indeed tribal traditions.<sup>123</sup> While such a directive is likely to raise many more questions than it answers, it hints at how messy it can be when the tribal processes that regulate domestic relations involve the evaluation of proposed rules or actions in terms of culture and tradition.

It is also common in Indian Country to appeal to Christianity when opposing same-sex marriage.<sup>124</sup> In a debate over legalizing same-sex marriage during a tribal council meeting of the Little Traverse Bay Bands of Odawa Indians, for example, tribal elder Doug Emery cited "Romans 22 of the Old Testament" about "man not being with man."<sup>125</sup> He explained, "[G]ay marriage is against the Bible. If two men can't reproduce with each other, we become extinct."<sup>126</sup> "God created woman for man," he continued, "and when you try to rewrite creation you can expect judgment to fall on your people."<sup>127</sup> Likewise, Cherokee Nation lawmakers "referred to Christianity" when they banned same-sex marriage.<sup>128</sup> Finally, according to Navajo priest Dale Jamison the Navajos who attend the "influential churches" on the reservation tend to see same-sex marriage not only as against their Christian religion, but also as "a foreign imposition creeping into Navajo life from cities like Albuquerque and San Francisco."<sup>129</sup>

Although Christianity is a commonly cited reason for opposing same-sex marriage in the United States, it should be pointed out that a number of Christian religious bodies officially approve of same-sex marriage, including the Quaker, Unitarian Universalist, Episcopal, Evangelical Lutheran, and Presbyterian churches.<sup>130</sup> Officially opposed are the American Baptist, Mormon, Roman Catholic, and Southern Baptist Convention churches, among others.<sup>131</sup> Providing additional evidence that US Christians' opinions are divided over same-sex marriage, one poll found that 66 percent of US Christians reported "no conflict between homosexuality and their religious belief."<sup>132</sup>

## NEGOTIATING INCLUSION

This article has gathered, supplemented, synthesized, and framed materials from tribal homelands in the United States in order to shed light on American Indian participation and involvement in debates over same-sex marriage. During the decade from 2005 to 2015 on which this article has focused, and even beyond, both popular and scholarly attention to Indian engagement in these debates has been disappointingly sparse. An unfortunate impression may have developed that Indians are indifferent to, or uninterested in, the inclusion or exclusion of sexual minorities and the queering of marriage. To be sure, Indian voices have been almost entirely absent from the spaces in the United States where these debates have been given the most public attention and where lawmaking and legal decisions about marriage equality and queer rights have taken place: namely, the legislatures of the state and national governments and



the Supreme Court. Even so, Indian engagement, decision-making, and leadership on these issues have been extensive.

This article's ethnographic descriptions and analyses support my contention that, in and around our tribal homelands and outside of the public view of most Americans, Indians have been deeply ensconced in conversations about marriage, sexuality, gender, and belonging. In many parts of Indian Country, questions are pressing about whether and how to queer marriage, to extend fuller rights to tribal members who are also sexual minorities, and to effectively combat heterosexism and heteronormativity. Whether they are working toward disrupting existing arrangements in tribal homelands or trying to stem those efforts, Indians have been making substantial use of tribally controlled political and legal institutions, including tribal legislatures, courts, and political processes. As this article has discussed, since 2008 tribal marriage laws have been extensively revisited and revised.

Another central finding and argument of this article is that Indians in the United States have taken a range of positions on same-sex marriage, both as Native nations and as individuals. On the one hand, my materials show that Indians cannot be construed as paragons of tolerance and compassion—the way they have been rendered by some queer non-Natives who seek their “primordial” counterparts, as Jenny Davis aptly puts this impulse.<sup>133</sup> On the other hand, this study's materials demonstrate that Indians also cannot be characterized as wholly contemptuous, dismissive, and rejecting of individuals of nonconforming sexualities and gender identities. Delving into the content and character of the debates over marriage, sexuality, gender, and citizenship that have unfolded in tribal homelands reveals not only Indian individuals who creatively appeal to “tradition,” “culture,” and Christianity (among other symbols, institutions, and ideas), but also those who work to discredit these appeals. In order to better understand these and other debates in Indian Country, the most promising approaches treat tribal “traditions” and “culture” as variegated, contradictory, contested, and piecemeal. American Indians, like other human beings, have at their disposal a strikingly wide range of ideas and practices that can be (and are) reassembled, reinterpreted, divided, combined, and in other ways reworked. We are all, both Native and non-Native, still quite far from a thorough, or even an adequate, understanding of the complex processes by which these creative assemblages are legitimized, and exactly how they are used to transform tribal institutions, including the institution of marriage.

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## NOTES

1. Abby Ohlheiser, "New Zealand Lawmakers Burst Into Song as They Legalize Gay Marriage," *The Slatist*, April 17, 2013, [www.slate.com/blogs/the-slatest/2013/04/17/new-zealand-gay-marriage-law-passes-supporters-sing-maori-love-song-in-parliament.html](http://www.slate.com/blogs/the-slatest/2013/04/17/new-zealand-gay-marriage-law-passes-supporters-sing-maori-love-song-in-parliament.html).
2. Ibid.
3. Russ Hepler, "Native Americans Say 'No' to Gay Marriage," *The Federalist Papers Project*, n.d., [www.thefederalistpapers.org/us/native-americans-say-no-to-gay-marriage](http://www.thefederalistpapers.org/us/native-americans-say-no-to-gay-marriage).
4. Chris Finley, "Decolonizing the Queer Native Body (and Recovering the Native Bull-Dyke): Bringing 'Sexy Back' and Out of the Native Studies' Closet," in *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature*, ed. Qwo-Li Driscoll, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen (Tucson: University of Arizona Press, 2011), 40.
5. Ibid., 33.
6. Ibid., 32.
7. Vasu Reddy, "Queer Marriage: Sexualising Citizenship and the Development of Freedoms in South Africa," in *The Prize and the Price: Shaping Sexualities in South Africa*, ed. Melissa Steyn and Mikki Van Zyl (Cape Town: Human Sciences Research Council, 2009), 345.
8. *Obergefell v. Hodges*, 576 U.S. 15-556 (2015).
9. Amy Brandzel, "Queering Citizenship? Same-Sex Marriage and the State," *GLQ: A Journal of Lesbian and Gay Studies* 11, no. 2 (2005): 187, <https://doi.org/10.1215/10642684-11-2-171>.
10. In this connection, an important next step would be to extend the approach and analysis of this article into the homelands of the First Nations. Canada legalized same-sex marriage in 2005, ten years prior to the United States; comparative work on the actions taken by Native peoples in that country would be fruitful.
11. Mark Rifkin, *When Did Indians Become Straight? Kinship, The History of Sexuality, and Native Sovereignty* (New York: Oxford University Press, 2011), and *The Erotics of Sovereignty: Queer Native Writing in the Era of Self-Determination* (Minneapolis: University of Minnesota Press, 2012).
12. Scott Lauria Morgensen, *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization*, (Minneapolis: University of Minnesota Press, 2010).
13. Brian Joseph Gilley, *Becoming Two-Spirit: Gay Identity and Social Acceptance in Indian Country* (Lincoln: University of Nebraska Press, 2006); Jenny Davis, "More Than Just 'Gay' Indians, Intersecting Articulations of Two-Spirit Gender, Sexuality, and Indigeness," in *Queer Excursions: Rethorizing Binaries in Language, Gender, and Sexuality*, ed. Lal Zimmerman, Jenny Davis, and Joshua Reclaw (Oxford: Oxford University Press, 2014), 63–81.
14. Jennifer Denetdale, "Carving Navajo National Boundaries: Patriotism, Tradition, and the Diné Marriage Act of 2005," *American Quarterly* 60, no. 2 (2008), <https://doi.org/10.1353/aq.0.0007>; Finley, "Decolonizing the Queer Native Body."
15. Denetdale, "Carving Navajo National Boundaries"; Melanie Yazzie, "Rifkin, Mark, The Erotics of Sovereignty: Queer Native Writing in the Era of Self-Determination," *Studies in American Indian Literatures* 26, no. 2 (2014): 106.
16. Finley, "Decolonizing the Queer Native Body," 32.
17. Brandzel, "Queering Citizenship?," 172.
18. See especially Fletcher, "Same-Sex Marriage," and Ann Tweedy, "Tribal Laws and Same-Sex Marriage: Theory, Process and Content," *Columbia Human Rights Law Review* 46 (2015): 104–65.
19. Morgensen, *Spaces Between Us*.
20. Davis, "More Than Just 'Gay' Indians," 62.
21. Ibid., 62, 65.

22. In 2005, there were three Indians in the US Congress: Ben Nighthorse Campbell (Northern Cheyenne), Brad Carson (Cherokee Nation), and Tom Cole (Chickasaw Nation). From 2006 to 2012, Tom Cole (Chickasaw Nation) was the only American Indian in the US Congress. From 2013 to 2015, Tom Cole was joined by Markwayne Mullin (Cherokee Nation).
23. Fletcher, "Same-Sex Marriage," 66.
24. *Obergefell v. Hodges*, 576 U.S. 15-556 (2015).
25. Fletcher, "Same-Sex Marriage," 81.
26. Pub.L. 104-99, 110 Stat. 2419 (1996), 1 U.S.C. 7 and 28 U.S.C. 1738C; Jeffrey S. Jacobi, "Two Spirits, Two Eras, Same Sex: For A Traditionalist Perspective on Native American Tribal Same-Sex Marriage Policy," *University of Michigan Journal of Law Reform* 39, no. 4 (2006), 823-50, <http://www.heinonline.org/HOL/Page?handle=hein.journals/umijlr39&id=833>.
27. Jacobi, "Two Spirits," 845; Rifkin, *When Did Indians Become Straight*; Morgensen, *Spaces Between Us*.
28. Antoinette Sedillo Lopez, "Evolving Indigenous Law: Navajo Marriage-Cultural Traditions and Modern Challenges," *Arizona Journal of International and Comparative Law* 17, no. 2 (2000): 305, <http://www.heinonline.org/HOL/Page?handle=hein.journals/ajicl17&collection=journals&id=297>.
29. Fletcher, "Same-Sex Marriage," 59.
30. *Ibid.*, 79.
31. *In re: Validation of Marriage of Francisco*, 16 Indian L. Rep 6113 (Navajo Nation S. Ct. 1989), quoted in Lopez, "Evolving Indigenous Law," 298.
32. Fletcher, "Same-Sex Marriage," 54.
33. 76 Mich 498, 43 N.W. 602 (1889), quoted in Fletcher, "Same-Sex Marriage," 53-54.
34. Paula Burkes, "Same-Sex Marriage May Not Extend to Indian Country Land," *The Oklahoman*, August 13, 2015, <http://www.newsok.com/article/5439817>.
35. 78 Neb. 339, 110 N.W. 983 (1907), quoted in Lopez, "Evolving Indigenous Law," 305.
36. 201 F. 793 (8th Cir. 1914), quoted in Lopez, "Evolving Indigenous Law," 305. About these early cases, some of which affirm the right of tribes to practice polygamy, the point should be made that on the ground, federal officials often discouraged and even imposed criminal penalties on Indians practicing polygamy; see Tweedy, "Tribal Laws and Same-Sex Marriage, 157n284, and Lopez, "Evolving Indigenous Law."
37. Sarah Netter, "Brides Look Forward to Marrying under Tribal Same-Sex Marriage Law," ABCNews.go.com, August 27, 2008, <http://abcnews.go.com/TheLaw/story?id=5659821>.
38. Rifkin, *When Did Indians Become Straight*; Morgensen, *Spaces Between Us*.
39. Tweedy, "Tribal Laws and Same-Sex Marriage," 162.
40. Freedom to Marry, "Why Marriage Matters to Native Americans," [Freedomtomarry.org](http://www.freedomtomarry.org), <http://www.freedomtomarry.org/communities/entry/c/native-americans>; see also Tweedy, "Tribal Laws and Same-Sex Marriage."
41. In 2015 the Keweenaw Bay Indian Community approved same-sex marriage by tribal referendum and Navajo president Russell Begaye said that, if elected, he would put same-sex marriage to a "reservation-wide vote"; see Jonathan Drew and Felicia Fonseca, "Handful of Holdout Tribes Dig In Against Gay Marriage," CNS News, April 6, 2015, <http://www.yahoo.com/news/ap-handful-holdout-tribes-dig-in-against-gay-marriage-153352266.html?ref=gs>.
42. Felicia Fonseca, "Gay Marriage Is Legal but Not on Tribal Lands," ABCNews.go.com, November 27, 2015, <http://abcnews.go.com/US/wireStory/gay-marriage-legal-tribal-lands-35448512>.
43. Gyasi Ross, "Smear the Queer, the Supreme Court, and Same Sex Marriage: Love For the Win (Finally)," *Indian Country Today Media Network.com*, June 25, 2015, <http://www.indiancountrytodaymedianetwork.com/2015/06/26/smeared-queer-supreme-court-and-same-sex-marriage-love-win-finally-160872>; emphasis in the original.

44. Most Indians today marry under US state law and concomitantly receive tribal recognition of most of these marriages.
45. Netter, "Brides Look Forward to Marrying."
46. Jacobi, "Two Spirits," 823.
47. Fletcher, "Same-Sex Marriage," 70.
48. This is as of July 10, 2015; see Matthew Tharrett, "Some Native American Tribes Are Still Banning Same-Sex Marriage," *NewNowNext.com*, July 7, 2015, <http://www.newnownext.com/some-native-american-tribes-are-still-banning-same-sex-marriage/07/2015/>.
49. Jacobi, "Two Spirits," 832.
50. Drew and Fonseca, "Handful of Holdout Tribes Dig In."
51. Fonseca, "Gay Marriage Is Legal."
52. *Ibid.*
53. Julian Brave NoiseCat, "Fight for Marriage Equality Not Over on Navajo Nation," *Huffington Post*, July 2, 2015, [http://www.huffingtonpost.com/2015/07/02/navajo-marriage-equality\\_n\\_7709016.html](http://www.huffingtonpost.com/2015/07/02/navajo-marriage-equality_n_7709016.html).
54. Fonseca, "Gay Marriage Is Legal," 3.
55. Henrietta Mann, interview with author, Chapel Hill, North Carolina, April 12, 2016.
56. Elizabeth Dias, "A Gay Marriage Loophole for Native Americans," *Nationtime.com*, November 1, 2013, <http://nation.time.com/2013/11/01/a-gay-marriage-loophole-for-native-americans/>.
57. Gregory Smithers, "Will Gay Marriage Split Indian Country?" *Indian Country Today Media Network.com*, May 30, 2015, <http://www.indiancountrytodaymedianetwork.com/2015/05/30/will-gay-marriage-split-indian-country>.
58. Drew and Fonseca, "Handful of Holdout Tribes Dig In."
59. Other tribes with such marriage laws include the Blackfeet Nation and the Fort McDowell Yavapai Nation; see Tweedy, "Tribal Laws and Same-Sex Marriage," 139.
60. The Circle Staff, "Oneida Nation Approves Gay Marriage," *The Circle*, June 1, 2015, [http://thecirclenews.org/index.php?option=com\\_content&task=view&id=1174&Itemid=76](http://thecirclenews.org/index.php?option=com_content&task=view&id=1174&Itemid=76); Samantha Mesa Miles, "A Foot in Two Worlds: The Battle for Gay Marriage on Tribal Lands," *Indian Country Today Media Network.com*, April 28, 2015, <http://indiancountrytodaymedianetwork.com/2015/04/28/foot-two-worlds-battle-gay-marriage-tribal-lands-160178>.
61. Dias, "A Gay Marriage Loophole."
62. Fonseca, "Gay Marriage Is Legal."
63. *Ibid.*
64. Drew and Fonseca, "Handful of Holdout Tribes Dig In."
65. Smithers, "Will Gay Marriage Split Indian Country?"
66. Rob Hotakainen, "Among Indian Tribes, A Division Over Gay Marriage," *Washington Post*, May 12, 2013, [http://www.washingtonpost.com/politics/among-indian-tribes-a-division-over-gay-marriage/2013/05/12/4c77bf3e-bb3a-11e2-9b09-1638acc3942e\\_story.html](http://www.washingtonpost.com/politics/among-indian-tribes-a-division-over-gay-marriage/2013/05/12/4c77bf3e-bb3a-11e2-9b09-1638acc3942e_story.html); see also John Carlisle, "Tribe Hosts Mich.'s First Legal Same-Sex Marriage," *USA Today.com*, March 15, 2013, <http://www.usatoday.com/story/news/nation/2013/03/15/tribe-hosts-first-legal-gay-marriage/1991781/>.
67. Hotakainen, "Among Indian Tribes, A Division."
68. Denetdale, "Carving Navajo National Boundaries," 293.
69. *Ibid.*, 294; Fonseca, "Gay Marriage Is Legal"; Tweedy, "Tribal Laws and Same-Sex Marriage," 135.
70. Denetdale, "Carving Navajo National Boundaries," 293.
71. *Ibid.*
72. NoiseCat, "Fight for Marriage Equality Not Over"; Freedom to Marry, "Why Marriage Matters to Native Americans."

73. Brian Joseph Gilley, "Native Sexual Inequalities: American Indian Cultural Conservative Homophobia and the Problem of Tradition," *Sexualities* 13, no. 1 (2010): 47, <https://doi.org/10.1177/1363460709346114>.
74. Zachary Pullin, "Two Spirit: The Story of a Movement Unfolds," Native Peoples.com, May–June, 2014, <http://www.nativepeoples.com/Native-Peoples/May-June-2014/Two-Spirit-The-Story-of-a-Movement-Unfolds>.
75. NoiseCat, "Fight for Marriage Equality Not Over."
76. Nativeout.com.
77. Kevin Taylor, "Diver Heather Purser Pioneers Same-Sex Marriage for Suquamish," Indian Country Today Media Network.com, January 18, 2012, <http://indiancountrytodaymedianetwork.com/2012/01/18/diver-heather-purser-pioneers-same-sex-marriage-suquamish-72993>.
78. Ibid.
79. Lisa DeBode, "Native American Tribes Challenge Oklahoma Gay Marriage Ban," AlJazeera America, October 22, 2013, <http://america.aljazeera.com/articles/2013/10/22/native-american-tribeschallengeoklahomagaymarriageban.html>.
80. Gilley, "Native Sexual Inequalities," and *Becoming Two-Spirit: Gay Identity and Social Acceptance in Indian Country* (Lincoln: University of Nebraska Press, 2006). "Two spirit," as Jenny Davis has explained, is a term that aims "to encompass all the localized realizations of indigenous gender and sexual variation." See Davis, "More Than Just 'Gay' Indians," 65. It has been in use since at least the early 1990s, and though it has been rejected by some queer youth activists and others, many prefer the term "two spirit" to the alternatives. See, for example, Sue-Ellen Jacobs, Wesley Thomas, and Sabine Lang, *Two-Spirit People: Native American Gender Identity, Sexuality, and Spirituality* (Urbana and Chicago: University of Illinois Press, 1997).
81. Brian Gilley, "Joyous Discipline: Native Autonomy and Culturally Conservative Two-Spirit People," *American Indian Culture and Research Journal* 38, no. 2 (2014): 30–31, <https://doi.org/10.17953/aicr.38.2.l874w4216151vp23>.
82. Gilley, "Native Sexual Inequalities," 53.
83. Ibid., 55.
84. Ibid.
85. Ibid., 57.
86. Ibid., 59.
87. Pullin, "Two Spirit."
88. Ibid.
89. Gilley, "Native Sexual Inequalities," 55.
90. NoiseCat, "Fight for Marriage Equality Not Over."
91. Pullin, "Two Spirit."
92. NoiseCat, "Fight for Marriage Equality Not Over."
93. Fletcher, "Same-Sex Marriage," 70; National Center for Lesbian Rights, "Cherokee High Court Rules in Favor of NCLR and Same-Sex Couple," press release, January 4, 2006, <http://www.nclrights.org/press-release/cherokee-high-court-rules-in-favor-of-nclr-and-same-sex-couple/>; Tweedy, "Tribal Laws and Same-Sex Marriage," 136.
94. Quoted in Jacobi, "Two Spirits," 828.
95. National Center for Lesbian Rights, "Cherokee High Court Rules in Favor of NCLR."
96. Taylor, "Diver Heather Purser Pioneers Same-Sex Marriage."
97. Ibid.
98. Ibid.
99. Hotakainen, "Among Indian Tribes, A Division."
100. Netter, "Brides Look Forward to Marrying."

101. Steve Russell, "The Headlines Are Wrong! Same-Sex Marriage Not Banned Across Indian country," Indian Country Today Media Network.com, April 23, 2015, <https://indiancountrymedianetwork.com/news/native-news/the-headlines-are-wrong-same-sex-marriage-not-banned-across-indian-country/>.
102. Tweedy, "Tribal Laws and Same-Sex Marriage," 121.
103. *Ibid.*, 120.
104. Carlisle, "Tribe Hosts Mich.s' First Legal Same-Sex Marriage," 2.
105. *Ibid.*
106. Miles, "A Foot in Two Worlds."
107. Tweedy, "Tribal Laws and Same-Sex Marriage," 123.
108. 25 U.S.C. 1301–1304 (1968), quoted in Tweedy, "Tribal Laws and Same-Sex Marriage," 149.
109. Lopez, "Evolving Indigenous Law," 301.
110. NoiseCat, "Fight for Marriage Equality Not Over," 3.
111. Denetdale, "Carving Navajo National Boundaries," 294.
112. Well-known Navajo activist Alray Nelson, quoted in Tharrett, "Some Native American Tribes Are Still Banning Same-Sex Marriage," 2.
113. Denetdale, "Carving Navajo National Boundaries," 293.
114. Aguayo, Anna Macias. "Navajo Nation Council Overrides President's Veto of Same-Sex Marriage Ban," Arizona Daily Sun, June 3, 2005, [http://azdailysun.com/navajo-nation-council-overrides-president-s-veto-of-same-sex/article\\_75f82c28-2da0-5c56-a70a-0db6024ddec4.html](http://azdailysun.com/navajo-nation-council-overrides-president-s-veto-of-same-sex/article_75f82c28-2da0-5c56-a70a-0db6024ddec4.html).
115. Russell, "The Headlines Are Wrong," 2.
116. Quoted in Denetdale, "Carving Navajo National Boundaries," 293.
117. *Ibid.*, 289, 293.
118. Mark Walsh, "A 'View' From the Courtroom: A Marriage Celebration," Scotusblog.com, <http://www.scotusblog.com/2015/06/a-view-from-the-courtroom-a-marriage-celebration>.
119. Tweedy, "Tribal Laws and Same-Sex Marriage," 154.
120. Gilley, "Native Sexual Inequalities," 55.
121. *Ibid.*, 54.
122. Tweedy, "Tribal Laws and Same-Sex Marriage," 154.
123. *Ibid.*
124. Jacobi, "Two Spirits," 829, 849.
125. Quoted in Miles, "A Foot in Two Worlds," 3.
126. *Ibid.*
127. Quoted in Hotakainen, "Among Indian Tribes, A Division."
128. Russell, "The Headlines Are Wrong," 2.
129. NoiseCat, "Fight for Marriage Equality Not Over," 4.
130. David Masci and Michael Lipka, "Where Christian Churches, Other Religions Stand on Gay Marriage," Pew Research.org, July 2, 2015, [www.pewresearch.org/fact-tank/2015/07/02/where-christian-churches-stand-on-gay-marriage](http://www.pewresearch.org/fact-tank/2015/07/02/where-christian-churches-stand-on-gay-marriage).
131. *Ibid.*
132. *Ibid.*
133. Davis, "More Than Just 'Gay' Indians," 64.

