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FOUNDATIONS OF TRIBAL SOCIETY: Art, Dreams, and the Last Old Woman

Gregory H. Bigler[1]

Abstract

The Last Old Women is a story written in the traditional Euchee *de'ela* style. These *de'ela*, told in our language, often involved animals, usually told to children. Unfortunately, these are seldom heard any more for many reasons, not the least of which is the changing, or disappearing, structure of Euchee society. This *de'ela*, is a parable about what can happen when we no longer tell our stories, no longer use our language, no longer gather together to remember. The story illustrates how simple structures within our traditional tribal society may require explanation to those not of our tribal society, sometimes including own people. When we discuss traditional people and their beliefs rarely do we articulate the issues using the forms to which they themselves subscribe. Forms matter, process matters.

Following the Last Old Woman an essay lays out how art, language and ceremony comprise our tribal societies. But these cannot exist individually if we wish self-determination to mean anything. Art, culture, language, traditions, and ceremony—society—are intricately woven together. One is the other: art (for us mostly song and dance) is sacred and the sacred has life. One can look to various markers to see how this lack of a coherent society impacts tribal people. Our languages disappear, ceremonies cease. Native Art is produced for outsiders. Many traditional Indigenous People face an uncertain future unless space is created for our society. Yet our traditional people still dream this future

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into existence. But our advocates and attorneys must help to implement this dream. Thus, we must celebrate our tribal forms, and recognize the work done by such as Rabbit and the Last Old Woman so that their end does not arrive.

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I. Rabbit and the Last Old Woman[2]

When it used to be that some of them were still here, they said Rabbit was thinking it had been a long time since he visited his friend Bear.[3] Lately, there were many friends he could not remember seeing, and so he decided tomorrow he would go to find his friend. The next day, he set out walking down the trail. As he went, he thought of the many times he had gone this way, past the briar batches and the fields. Things seemed to have changed. Things were different, he thought. As he went over the hill, he looked around as he always did to see if any turkeys were there. He had brought his sack just in case.[4] But again, as it had been for a long

[2] This new story takes the form of the traditional Euchee *de'ela*, refering to stories or legends, usually about animals, that were traditionally told to children at bedtime. *See* Gunther Wagner, Yuchi Tales *passim* (1931), https://archive.org/details/rosettaproject_yuc_vertxt-2. The traditional *de'ela* often begin with the Euchee phrase "*gae-sthaw-la aw-ha-e-ha*" meaning "when they all used to be here" referring to the Euchee ancestors and might conclude with a similar phrase and the teller spitting on the ground. This served as a marker that the story had originated with "ones who have gone on." I deliberately use "some of them were still here" to contrast with traditional form, in admission of the fact we no longer have them all here. *See* Mary S. Linn, *Yuchi Stories in* A Listening Wind 143 (2016); *see also* Gregory H. Bigler, *Traditional Jurisprudence and Protection of Our Society: A Jurisgenerative Tail*, 43 Am. Indian L. Rev. 24–27 (2018), https://digitalcommons.law.ou.edu/ailr/vol43/iss1/2.

[3] Rabbit was often what external narrators call a trickster, having somewhat the same role as played in other tribes by Coyote. He was often self-absorbed and foolish yet at the same time a friend and a part of the animal community. *See* Linn, *supra* note 2, at 143. Perhaps in telling these stories through animals we were able to mock or note behavior within our tightly knit community that we could not directly address.

[4] In a *de'e'la* told by Ida (Clinton) Riley to the author Rabbit captures a flock of turkeys by the tricking them into a bag. Ida Clinton Riley, *Rabbit and Turkeys in* A

time, there were no turkeys. He paused to listen, but he did not hear even a faint gobble. "No turkeys, no laughter, no meal tonight," he laughed. With a slight shrug, he continued on his way. Finally, in the distance he saw Bear and called out to him, "My friend, my cousin, wait!"[5] Bear seemed happy to see Rabbit and told him, "Sit, here by my fire, and we will visit." Rabbit was happy, but thought his friend was not his usual big self. Rabbit was always a bit jealous of his friend's size and his strength, so Rabbit was surprised to see his friend this way. He asked Bear, "How are you? Is everything ok?" Bear shook his head and took a moment to answer, "You are the first one I have seen in a longtime. I don't know where everyone has gone." Rabbit was not sure what Bear meant, and asked, "Gone?? What do you mean? Did you eat them?" Bear looked at Rabbit and laughed, "I might have, my friend . . . " Rabbit looked at his friend a bit nervously and moved back a step. Bear, turning serious, continued:

> "No, I didn't eat them. Maybe they are not all gone but when I do see them and talk to them, they run away, or they just look at me, like my dog.[6] I don't think they understand. It is very strange. Its like they are not really here."

Then Bear was quiet. They sat for a long time not saying anything, just watching the fire. It was getting late, so Rabbit told Bear he had better return home and they shook hands.[7] As Rabbit turned to leave, Bear said:

> "Rabbit, we have been friends, brothers, visiting, dancing, sharing meals, for a very long time. I cannot remember not being your friend. We have many stories. But I think this may be our last. Thank you. You are a good friend, my brother. Always remember if this comes to be, always be yourself.[8]"

And with that Rabbit left and Bear was gone.

Rabbit thought about what Bear had said as he walked. He put his hand on his stomach, remembering, while quietly returning home.[9] The

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LISTENING WIND 158–61 (2016).

[5] Rabbit and Bear also have traditional story telling of their friendship. In Euchee Rabbit would often call out to people claiming them as his friend or his relation. In Euchee these relationships have meaning and duties. Thus, when Rabbit uses them so casually it indicates his nature that one should still always take his exclamations with some caution. *See* Bigler, *supra* note 2, at 26–27.

[6] Interestingly, in the *de'ela* that I am familiar with the animals tend to act like humans but dogs are just dogs. Thus, here Bear notes that shift in personality.

[7] In Euchee there is no word for "good bye". When asked what would the old Euchee do when they were ready to leave my mother would say "well, if you said what you had to say, you would just leave."

[8] In Euchee "*awhadilahnhuhn*" means it "may be". In Euchee future actions often end with the particle that denotes indeterminacy, "that it maybe". As one speaker explained to me long ago any action that is to occur in the future can not be known for sure. In this story Bear is also referring to an old story where Rabbit got in trouble for trying to be like Bear.

[9] This is a reference to the *de'e'la* about Rabbit visiting Bear where Rabbit ends up

woods seemed smaller as he went and the fields were overgrown. Rabbit felt lonely and decided he would stop by the old woman's house on the way. The old woman knew many things. She might know why things were this way. Maybe she would know what Bear was talking about. Besides, she always had something to eat. As he walked up to her house he yelled out, "Grandmother! Are you home?" He heard a voice, "*Huhn*. Come in."[10] There she was, sitting at her table. As he sat down, she asked him if he was hungry, which he was. After she fed Rabbit, she told him she was happy to see him. She too had not had visitors in a long time. Rabbit noticed she looked, even for her, very old and frailer. He mentioned this. She looked at him and said, "An old women gets lonely by herself." Rabbit paused for a moment before saying, "You were always the best storyteller." She laughed, "And you always gave me so many to tell."[11] Rabbit was not sure that was a good thing but she was a good cook and so he did not mind too much. He said to her, "I am surprised you have no visitors." She continued, "Yes, I know. I have so many stories but no one to listen." Rabbit finished his soup and was about to leave when she turned to him:

> "I am an old woman. I may not be here the next time. None of us know what will come. None of us thought this would happen, that this would come to be, but it has. I have no one to tell about you or the others. You have already lost many of your friends. We do not have a word for this, so I will use theirs—I am sorry.[12] I tried. Thank you, Rabbit, my little friend, for all you have done."

With that she spit on the floor and Rabbit turned and left.[13] When he looked back, the old woman was gone. Rabbit began walking home again wondering what she had meant. It seemed very strange and a little scary. He thought, "I just don't know", and began hopping home. That is what they will say.

II. Introduction

This article is an excuse to tell the story of Rabbit and the Last Old Woman with an essay of how the story came to be.[14] The story is written in the traditional style of *de'ela* which are orally told stories or parables

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stabbing himself in his stomach and his friend Bear has to patch him up.

[10] *Huhn* in Euchee means yes, or okay.

[11] Not all *de'ela* were parables with teachings. Some were simply stories.

[12] In Euchee there is no word for "sorry." Using this word here infers the Old Woman and Rabbit were talking Euchee and she had to switch to English.

[13] In traditional storytelling, at the conclusion of the story, Euchee would spit on the ground to signify the end.

[14] I originally placed the Last Old Woman story at the end of this article. However, as one colleague noted, that ended the article on a bleaker note than most traditional people would have of their future even while they recognized the existential threats to their way of life. Ending with Chief Comingdeer's explanations, *infra*, summarizes much of what this paper hopes to present—a way forward that carries our traditional society into the future.

in our Euchee language. These *de'ela* were usually told to children and involved animals, but not always. These *de'ela*, unfortunately, are seldom heard any more for many reasons, not the least of which is the changing structure of our society. While *de'ela* were known and told by both Euchee men and woman, it seemed, at least by the time I was paying attention to such things in the 1980's and 1990's, they were mostly told by the few older woman who were fluent in Euchee, and that too only when they were sought out and asked. These first language Euchee speakers were all born prior to 1930. All those fluent men and women are gone now except for my ninety-five-year-old Aunt Maxine Wildcat Barnett.[15] With the passing of those old Euchee woman, our *de'ela* almost passed out of existence. While Euchee has several robust language programs, the stories and knowledge those first speakers took with them is irreplaceable.

This modern *de'ela* is a parable of what can happen when we no longer tell our stories, no longer use our language, no longer gather (together) to remember. The story illustrates how simple structures within our traditional native society may require explanation to those who do not live within that tribal society which includes many of our own people. Certain nuances may not be understood or even be recognized. The nuances and societal values contained in even a simple story illustrate that if there is no society left then there is no one to fully understand our things. When we discuss traditional people and their beliefs, all too rarely do we use the forms to which they themselves subscribe. Art, culture, language, traditions, ceremony, and society are intricately woven together. One is the other, art—for Euchee that means song and dance—can be sacred and the sacred is alive, it has a tangible spirit that our old people saw and interacted with.

The essay that grows from the story lays out how art, language, and ceremony embody our tribal societies. These elements cannot exist independently—they are fractions of a whole that must continue to exist if we wish our efforts at self-determination to mean anything. One can look to various markers to see how this lack of a coherent society impacts tribal people. Native art, in many instances, is sustained by outsiders. Languages disappear. Ceremonies cease. People move apart. For many traditional indigenous peoples, an uncertain future lay ahead unless a space is somehow created for them to continue to exist. How to achieve this is the great work ahead for our advocates and attorneys who must help to implement a future for our indigenous societies. As we work to create, or recreate, our society, we can celebrate our tribal forms and recognize the work done by Rabbit and the old women in carrying us this far, as illustrated in the opening story, by ensuring the survival of both the stories and us as tribal people.

If tribal sovereignty is to have meaning, it must entail the right of tribal people to have a society of their own that is in some way *tribal* in

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[15] After the last redraft of this Article, my Aunt Maxine passed away on August 27, 2021.

order for tribal centered things to exist. The terms indigenous, native, or tribal have different definitions within different disciplines.[16] Under federal law, "Indian tribe" has a specific meaning that refers to a "group of native people with whom the federal government has established some kind of political relationship or 'recognition.'"[17] Modern anthropology, on the other hand, appears increasingly hesitant to use "tribe" as a descriptor of people because of the term's colonialist roots.[18] I, however, use the term tribe in the sense of indigenous "people," as referenced in the United Nations' Declaration on Rights of Indigenous Peoples (DRIP).[19] Indigenous, though, has a more pan-Indian connotation than the specificity of tribe. One can be indigenous without retaining ties to that which made a tribe, such as a common language, history, culture, customs, sacredness, or some combination thereof. Some examples are the Euchee Tribe, the Cheyenne Tribe, and the Kickapoo Tribe. Politically or in federal Indian law, they may also be referred to as Indian nations. The word tribe should not invoke any negativity but rather be interpreted as a distinct social structure.

Nonetheless, what do we mean by "tribal society", or how do we understand the goal of having such a society? We must understand the consequences of failure to create space for our society but we must also figure out how to support those dreaming of our future. While not an all-inclusive list, and one which can vary between tribes, tribal society includes elements of people, place, economy, language, art, and ceremonies, and is a space where these elements are allowed to breathe.[20] They represent the institutions that allow us to survive and flourish. Advocates seeking Indian self-determination, too often, do not contemplate on what we wish the result of our work should be. That result, though, is one which many traditional people constantly think about as their duties as ceremonial leaders is to see our society exist into the future.

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[16] Internally, Indians, in their own language, define themselves or other tribes by reference to their definitions, i.e., Muscogee use of *etlvwv* for tribal town, other tribes, or nations. Bigler, *supra* note 2, at 58–59.

[17] 1 Cohen's Handbook of Federal Indian Law § 3.02 (2019).

[18] "Too many social scientists, as well as the general public, use [tribe] to maintain a false distinction between us and them, those people who used to be called primitive because they did not originate within the European tradition. Tribe, then, signals something about political domination but says nothing about the social complexity or political organization, now or formerly, of those to whom it is applied who may or may not have formed a polity in the past or present." David Sneath, *Tribe*, The Cambridge Encyclopedia of Anthropology (2016), *citing* Elizabeth Colson, *Political organization in tribal societies: a cross-cultural comparison*, 10 Am. Indian Quarterly 5, 6 (1986).

[19] G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP]. UNDRIP recognizes in forty-six articles Indigenous Peoples rights to their inherent rights to "political, economic and social structures and . . . their cultures, spiritual traditions, histories ad philosophies (and) to their lands, territories and resources." *Id.* at Preamble.

[20] The UNDRIP broadly recognizes these as rights in its forty-six articles.

III. When They All Used to Speak Euchee

Language (and art) can serve as a marker for the health of a tribal society. My mother, Josephine Wildcat Bigler, was born in 1921. In the late 1970's, I was fortunate to spend time with her Uncle John and Aunt Acie Snow who spoke only Euchee in their home. The same was true of my mother's older cousin Jimmie and his wife Wannie Cahwee. After these relations passed away in the early 1980's, except for Josephine Keith and her Uncle Max Barnett, there were no longer any fluent Euchee speakers living in the same household. There were Euchee who could call each other and speak together, but most social interactions were with non-Euchee speakers—at the bank, the grocery store, the mercantile, and at school. Most Euchee no longer spoke Euchee. When Euchee was heard, it likely was at Pickett Chapel Euchee Indian Methodist Church, at the ceremonial grounds, and at funerals. While those places were important aspects of Euchee society, gatherings or meetings at those locations did not occur on a daily basis.

The Euchee have three active ceremonial grounds, the main one being Polecat Stomp Grounds, brought to Indian Territory with us during removal on the Trail of Tears from Georgia in the 1830's. Polecat Grounds is descended through the direct and continuous lineage of the Euchee tribal town that was the center of religious, political, and cultural life prior to removal in the 1830's.[21] Christianity, on the other hand, came relatively late to the Euchee as no regular churches were founded within the Euchee community until 1901.[22] While the grounds and churches were important parts of Euchee life, people only met there on Sundays (for the churches) or on long weekends during the ceremonial season of spring and summer with the Green Corn Dance spanning an extended three weeks in July for Polecat and a long week for the other two Euchee ceremonial grounds. Preaching in Euchee ceased in the late 1960's, though hymns, prayers, and visiting continued in the language.[23] At the

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[21] When traditional Euchee, Creek, Shawnee, or Cherokee refer to a stomp grounds, they refer not only to the physical location of the grounds, but also to the social and tribal entity it embodies. Thus, during dance season I spend my weekends at the Polecat Grounds, but I am also a member of Polecat Stompgrounds. These Euchee and Creek grounds were the former tribal towns, or governments, which during a period from approximately 1770's to 1820's went from a confederacy of towns to the centralized Muscogee Nation. Forty-four of the tribal towns survived removal in the 1830's with approximately thirteen continuing today.

[22] Jason Baird Jackson, Yuchi Folklore 24 (2013). Euchee being an isolated language and with few members within with the much larger Muscogee Nation, undoubtedly played no small part in the lack of attention from the outside.

[23] In the Euchee context, visiting is an important and frequent theme within stories. It was something that Euchee elders would speak of doing—going to visit a relation or friend. It was in part how community remained tied together. It is why visiting was a frequent theme or reference in *de'ela* such as the Rabbit story. Formerly, visiting might be done for several days, although in the modern era this seldom occurs. It is still used to refer to when one stomp grounds goes to another grounds to help them with their dances, i.e., one went to visit Duck Creek Grounds, Hickory Grounds, or Nuyaka

grounds, the ground-appointed speaker continued to use Euchee until the mid-1980's, and Euchee was also heard regularly in visits amongst the older grounds members. Thus, as the twentieth century progressed, societal living saw fewer and fewer opportunities to support the use of the Euchee language, as there were less frequent interactions between speakers. This change also made traditional life more sporadic because the daily interactions of Euchee were increasingly with non-Euchee people who did not share common Euchee-based experiences or beliefs.

IV. Art Theory, Traditional Practices, and UNDRIP Rights to Institutions

Realization of art as a signal of health within a Native society came into focus for me while attending Stephan Sondheim's play, *Sundays in the Park with George*. Its handling of George Seurat's attempt to create a new way of looking at art, breaking with tradition, lead to the questions of art's role and existence within a society. By using dots of color to compose his paintings in his pointillist style, Seurat made one's perception of the work differ depending upon if one was closely inspecting the dots or standing at a distance viewing the scene. This artistic breaking of boundaries led to Picasso, Dali, and others challenging how we perceived art, how we looked at the world around us, and, thus, at society.[24] They were commenting upon their society. This dynamic seems different from current Native art, which utilizes forms from our past and primarily sells them to non-natives. Many of our visual arts are retrospective. For instance, using ledger art or symbols from historic or ancient pottery. This is not a criticism of indigenous art's importance, creativity, or beauty—and ignores the "modern" native arts that may not even appear "native"—but simply notes that another potential aspect of Indigenous art tends to be absent. Native art has grown and flourished, making use of modern materials and techniques. What Seurat did for me was not truly a question of wanting art to show a new way to look at our future, but rather the question of who is going to do that for us and the importance of supporting that effort, whether it is artists, lawyers, or writers? More importantly, perhaps, is the question of who do we primarily rely upon to support native art and why?[25] Perhaps asking art to produce visionaries who suggest a future path for our societies is no more appropriate than

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Grounds. The old Euchee speakers would also explain that "they really got to visiting in Euchee", meaning that they used their language with each other, denoting both an action and the thing which occurred.

[24] Susana Martinez-Conde et. al., *Marvels of illusion: illusion and perception in the art of Salvador Dali* FRONTIERS IN HUMAN NEUROSCIENCE (2015) ("Salvador Dali intuited that what we construe visually as reality is the product of the habits of the mind, more than of the eye [. . .] Thus, Dali's artworks challenge the viewers' perceptions of reality and enable them to see beyond the surface.").

[25] Perhaps an exception here is the beadwork and dance regalia (i.e., fashion) created for pow-wows. Much of this is of the finest quality, art extraordinary, and is primarily consumed by native people for their own use at tribal gatherings.

failing to ask the same of other disciplines. Nonetheless, dreamers are what we need to invigorate and revive tribal societies. And, who better to dream than artists?

This retrospective view of our art is neither an unexpected phenomenon nor unimportant. We are a people who look to the past as a golden era, even referring to our religious ceremonies as "traditional."[26] While contemplating potential alternatives or additional purposes of Native artists in creating their art, it may help to simultaneously think about the "purpose" of traditional ceremonies and what they teach about our future societies.[27] For Euchee, our ceremonies have many purposes, not merely praise, receiving blessings or, as in many Christian churches, learning of God's word. For traditional tribal people, there is often a direct tie to the spiritual world and creation, a flow from us in continuing our ceremonies to fulfilling duties to our elders, the spirits, our fireplace, medicines and even the songs. Joel Barnes, Shawnee from White Oak ceremonial grounds, explained in regard to having to adjust their ceremonial cycle in response to the Covid-19 pandemic while needing to fulfill duties to those ancestors who are deceased:

> We had a duty to go forward on behalf of, you know, those folks, . . . that's gone on before us . . . It's . . . important that we go down there and this past spring for a spring Bread Dance, that's when we open everything up, that prayer after we dance, that's a big, long prayer, it's praying—it's opening everything up and also lets them folks know, "Hey, we are still here."· Folks come back and they dance with us. They spend that evening with us, they spend that night with us. So the most important thing we need to go down there was take care of that prayer and open everything up and also talk to those folks to let them know that, you know, we haven't quit, that we will be back.[28]

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[26] Phillip Deer, a Muscogee medicine man and American Indian Movement spiritual leader explained why Native Americans looked to the past, our traditions, as a more perfect time:

The jailhouses, the prisons in this country, are no more than four hundred years old. Prior to the coming of Columbus, more than four hundred tribes, speaking different languages, having different ways, having different religions, lived here. None of these tribes had jailhouses. They had no prison walls. They had no insane asylums. No country today can exist without them! Why did we not have any prisons? Why did we not have jailhouses or insane asylums? Because we lived by an understood law.

No More Are We Going to Stand Around . . . This Is Not The End of The Longest Walk, Akwesasne Notes, 1978, at 4–5, https://www.umass.edu/legal/derrico/phillip_deere.html.

[27] A ceremony's purpose can be analyzed in the context of a religious scholar who tries to place religion into the disinterested observer's perception of what role religion plays in society. Purpose in my context is from the perspective of the Indigenous people themselves, that is as to why were they were given these ways from the Creator, or other spiritual beings, why are the traditional ceremonial people to carry them on?

[28] "Folks" here refers to the people who have departed and obligations to them. Interview with Joel Barnes, Benjamin Barnes, Chebon Kernal & Robert Williamson (Aug. 3, 2020).

Our ceremonies are a mutual act of continuance. We fulfill duties to our ceremonies, ancestors, medicines, fireplaces, land / sacred sites, or other physical or spiritual entities. In exchange our ceremonies create a blessing upon the people and function to continue our society.[29] Society is itself an institution comprised of various smaller, distinct, yet related processes. Ceremonies or traditional religion are but one element that helps form tribal society. Ceremonies, though, depend on people to learn, continue and pass them on in order to exist.

The artist, in some ways, is also dependent upon society in order to create, or make a living from, their art. Art, though, could also be a metaphor for ceremonies. While artists create their art, the ancient Greeks believed the Muses inspired the arts. In this aspect art for Indigenous people may be attributed to dreams, visions or other spiritual sources. Art may be seen as flowing from the artist to society by helping create culture, yet someone must buy the art in order for the artist to make a living. If we want art to be a function of our tribal society, we have a duty to support native artists.[30] A healthy, vibrant society can provide such support. However, tribal society, for many reasons, currently is generally incapable of self-support. Why the artist creates may have many answers but the question here is, just like ceremonies, what, function should art have in the mutual act of creation wherein art embellishes tribal society and society supports tribal art?

Perspective changes all. Non-Hopi tend to view Kachinas as art or doll representations. This may be true in some forms, as Hopi produce items for sale but, in other contexts, the Hopi themselves view Kachina as living representations of their gods and spiritual entities that do not belong outside of Hopi society. Sale and possession by non-Hopi of such "art" are not acceptable and have led to attempts by the Hopi to repatriate them from non-Hopi.[31] Similarly, Australian Aborigines litigated to recognize that an individual artist's commercial pieces fulfilled the collective function of the sacred. The Aborigines object not to the

[29] In exchange for this life we Euchee were given, corn, medicines, tobacco, song, we have a covenant with the Creator that we will carry on this dance.

[30] Duty and obligation themes run deep in traditional tribal societies. Familial relations are an obvious example as illustrated by our stories. *See* Bigler, *supra* note 2, at 26–27. But this also includes our obligations discussed above regarding ceremonies and continuance of our world. We also may have obligations regards the spirits themselves to carry on our world *and theirs*.

[31] *See* Robert G. Breunig, *Museum of Northern Arizona Director Condemns Paris Auction of Hopi and Other Native Ceremonial Objects*, https://beyondthemesas.com/tag/hopi-repatriation (last visited Nov. 5, 2021).

I am writing to request that you cancel this auction, withdraw the katsina friends from sale, and that they be returned by the "owner" to the Hopi, Zuni, Acoma, and Jemez people. I have placed quotation marks around the word "owner," because no one can "own" them but the Hopi, Zuni, Acoma, and Jemez people. Although katsina friends can be held and cared for by individuals, they belong to the communities from which they come or to specific ceremonial societies. Under tribal custom and law they cannot be sold or given away by an individual.

concept of sale of art involving the sacred, but to whom was authorized to produce the art and for what reasons. That is, if it was not properly produced, it disrespected their ancestors and violated *Barnda's*, creator ancestor's, directives.[32] These examples show how that which is viewed as art by outsiders can fill a place within Indigenous society which is unique or even necessary to that society.

A recent publication by the Crystal Bridges Museum in Bentonville, Arkansas tries to share the story of Indigenous artists in the development of contemporary art focusing upon the place of Indigenous art in the *western* art world.[33] It, in part, traced the development and placement within *American*, or *Western*, collections and museums. This welcome recognition of Native art nonetheless still pushes us into the western world and fails to explore the potential of Indigenous art in articulating a future Indigenous society. It is not a question of what medium we use for art, but of what purpose it might have. Where does that art fit within a native or tribal society and can we create a space for it to exist? Native Art collections and development in the early 1920's tried to lock us into the past in order to be considered "true" native art.[34] That limitation seems a remnant of that era, but we now need to look to the future.[35]

Regardless of the form our art takes, in order for us to successfully carry it into the future, we must find people to lay out the possibilities, explore what the future might be, what can happen to our tribal societies.[36] Walter Echohawk describes a similar need in the struggle to implement a new era in federal Indian law and human rights.[37] He argues the success in overturning *Plessy v. Ferguson*, ending the separate-but-equal era in race relations for African-Americans, was brought about by planning, leadership and conscious movement towards a new society.[38] Echo-

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[32] Bulan Bulan and Another v. R & T Textiles Pty Lrd 199, Australian Law Reports 157 (1998).

[33] Mindy N. Besaw, Candice Hopkins, Manuela Well-off-Man, Art for a New Understanding: Native Voices, 1950s to Now (2018).

[34] *Id.* at 22 (placing Indigenous art within "salvage ethnology" which sought to preserve "authentic" components of native culture before they disappeared).

[35] This discussion though is not truly dead as it still seems to be insidiously contained within much of the anthropological discussions of our ceremonies or languages. If it is not frozen in the past like a spectator of Methusa then questions or eyebrows are raised as to the "legitimacy" of indigenous practices. The federal courts also seem to be captive to this paternalistic approach in relation to Indigenous religious freedom cases, wishing to lock Native religions practices into a moribund past as determined by non-Native practitioners. See Michael D. McNally, Defend the Sacred: Native American Religious Freedom Beyond the First Amendment 123–24 (Kindle ed. 2020).

[36] Not being an artist, I do not claim to have insight on what the form or nature of that art might take.

[37] Walter Echohawk, In the Light of Justice: The Rise of Human rights in Native America and the UN Declaration on the Rights of Indigenous Peoples (2013).

[38] 163 U.S. 537 (1896); Echohawk, *supra* note 37, at 221–39. I note the blueprint laid out by the NAACP leading to Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), was one to find themselves integrated into American society whereas what

hawk explains how such a strategy might provide a blueprint for a new Indian law era, one that must be planned and led by Native lawyers.[39] There are too many roadblocks to achieving a tribally centered society to neglect creating a roadmap to our future. The history of American attempts to destroy Native society and culture can be found in the need to create federal legislation to try and undo the damage of two-hundred years of oppressive federal policy towards tribes and Indians. These corrective acts include the Indian Child Welfare Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act and the Native American Languages Act.[40] Despite the enactment of these laws, American Indians still see their traditional societal structures under assault and slipping away. In recent years during Polecat's Green Corn, our young men have been harassed by local law enforcement along public easements while gathering willow to renew our traditional arbors at our stomp grounds. Road checks have been set up just outside of Muscogee ceremonial grounds entrances. Our languages are in the present endangered status not by accident, but because they have been historically suppressed at boarding schools and other places, thus Indigenous people continue to suffer current problems because of past actions of the federal authorities and those entrusted "to care" for Natives.[41] Thus, reforming or refining our society to show what can or should be and shedding new light and changing us for the better is how we need to think of our society to enable tribal institutions within our future.

Currently, if the Indigenous artist is to make a living, their art must appeal to non-natives. Indian Country does not have a full-fledged, multi-layered economy. Prof. Robert Miller notes:

> only 14 percent of Indian lands even had a financial institution in their community. More than one in six American Indians had to travel over 100 miles to find a bank or an automated teller machine . . . One obvious problem that inhibits the development of economic activities in Indian Country is the almost total lack of functioning economies. . . . (these terms are defined here as) the structure and organization . . . for the production, distribution, and consumption of goods and services.[42]

There is not sufficient disposable wealth to truly support Indigenous art. So long as this situation exists, art is, perhaps, less likely to be created

Native Americans seek is often the right to maintain a separate society or culture. These differences lay in deep historical roots, but each requires cognitive efforts to achieve which will not, or do not, occur by accident.

[39] Echohawk, *supra* note 37, at 239–48.

[40] Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013 (1990); Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901–1963 (1978); American Indian Religious Freedom Act of 1978 (AIRFA)m 42 U.S.C. § 1996 (1978); Native American Languages Act, 25 U.S.C. §§ 2901–2906 (1990).

[41] *See* Bigler, *supra* note 2, at 64–68.

[42] Robert J. Miller, Reservation Capitalism: Economic Development in Indian Country 2–3 (2012).

to challenge Indigenous peoples' way of looking at things or forms that explain our native society including how we see, inspire and dream of the future. Bertolt Brecht, as part of the modernist movement in the theater, represents this ideal. Brecht wanted his audiences "to recognise social injustice and exploitation and to be moved to go forth from the theatre and effect change in the world outside."[43] Picasso, too, strove to change that which was around him by his art. His most notable example of this is in his painting *Guernica*, which illustrated in his style the Nazi bombing of the Spanish town in 1937. Picasso of his mural at one time said:

> No, the bull is not fascism, but it is brutality and darkness . . . the horse represents the people . . . The Guernica mural is symbolic . . . allegoric. The mural is for the definite expression and solution of a problem and that is why I use symbolism.[44]

This is a role Western artists have filled from Seurat to Picasso to Dali.[45]

If our tribal ceremonies create duties between indigenous people and their institutions and art is to have a function within and be supported by our society, we must somehow affirm our right to these institutions including ceremonies, art, language and other components of our tribal society. Under current federal law, that guarantee to continuing the existence of indigenous forms remains tenuous. The plenary power of Congress over Indians means that our institutions, even our reservations and tribes themselves, can be terminated with little legal recourse.[46] These most fundamental of institutions—land and government—exist at the whim of the federal government. If federal law will not protect tribes, then an external source must be found, such as the United Nations Declaration on the Rights of Indigenous Peoples ("DRIP").[47] The DRIP recognizes as a human right our right to Indigenous institutions covering the elements comprising a society.[48] If we do not have an Indigenous society or an economy to support it, we cannot create and support indigenous art, plays or books or, more practically, government for that native society.[49]

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[43] Bertolt Brecht, Wikipedia, https://en.wikipedia.org/wiki/Bertolt_Brecht (last visited Sept. 29, 2020).

[44] Rene G. Cepeda, *Brecht and Picasso, Art as a Weapon for Social Change* (Mar. 12, 2014), *citing* Dobrowski, Picasso: Guernica and his reaction to the Civil War 462, *in* Robinson, W.H. et. al., Modernity: Picasso, Gaudí, Miró, Dalí (2007), https://ragc.wordpress.com/2014/03/12/brecht-and-picasso-art-as-a-weapon-for-social-change.

[45] Indigenous art also has this "revolutionary" aspect but it usually aims towards reform or pointing to flaws in mainstream society not to creation of an internal tribal vision.

[46] Hit-Ton Indians v. United States, 348 U.S. 272 (1955); *see also* Walter Echohawk, In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided (2012). Though more generally accepted these days, tribal rights to our ceremonial, sacred or religions are still frequently not recognized under federal law. *See generally*, McNally, *supra* note 35.

[47] *See* UNDRIP, *supra* note 19.

[48] The UNDRIP recognizes Indigenous Peoples right to their own institutions. S*ee id.*, at art. 5, 20, 34.

[49] The UNDRIP recognizes the role culture as creating our societies. Article 11

The juxtaposition of art and ceremonies in the Euchee world helps foster an understanding of our society. Newman Littlebear, who during the 1990's and early 2000's was the speaker at Polecat Ceremonial Grounds, the main Euchee Grounds, would talk of songs that were twins / related, of songs that were sacred and songs that were secular.[50] To us, the sacred is living and the secular is without life or a spirit.[51] In Greek mythology, Medusa the demi-god would turn the living to stone upon seeing her, thus transforming the living into sculpture. Similarly, our ceremonial songs and dances, become stone, inanimate shadows of their living spirituality, their sacred life removed through taking them from the place they belong or by performance of those not authorized to conduct them.

Our ceremonies, for the Euchee at least, are not to change.[52] Ceremonies fulfill many functions, but one function is to help explain our society: how it is to be and our duties therein. One can view traditional ceremonies as the embodiment of law. For us, they define how we are to act, structuring our society and our relationships to one another.[53] It is not just how ceremonies are conducted but their structure. For instance, at Polecat Grounds, we have to name just a few positions: chiefs, warriors, pole-boys, head woman dancers and head campers, each a vestige of our tribal-town system.[54] Ceremonies function to continue our society, giving it cohesion. Ceremonies, like art, cannot exist in a vacuum without a society supporting them. The further we slip away from our tribal society roots, the more we have to explain what our ceremonies mean and why they are conducted as they are. How we are able to move forward as a distinct tribal or indigenous society is a fundamental issue for those of us who want to argue for self-determination or sovereignty. That is, what are we self-determining?

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recognizes Indigenous Peoples right to future manifestations of their culture and Article 13 addresses future generations right to their own literature. *See id.*

[50] The speaker at Euchee ceremonial grounds, and similarly at Muscogee grounds, fills a traditional function where a particular man chosen by the chief speaks on the chief's behalf when he wishes anything said to the members or visitors during dances or ceremonies. The chief himself rarely speaks on his own behalf, this practice often carrying over to meetings outside the grounds when the ceremonial grounds is directly involved. Once chosen as the speaker the individual tends to hold that position till he is physically unable to continue.

[51] Although to us almost all living things have a spirit. Additionally, things that American or European culture would consider inanimate may to us be alive and have a spirit such as our sacred fireplace, songs, traditional Indigenous medicines, rivers, thunders, etc.

[52] Ceremonies do in fact change, for various reasons from no longer knowing the proper procedure to Polecat grounds during W.W.II placing an American flag on the Chief's arbor recognizing the men serving during the war, but change is something we generally work to avoid. I hope to explore this theme in another article, *Covid-19, Traditional Native Americans and Ceremonies: Survival and Obligation. Conversations with Practitioners*.

[53] *See* Bigler, *supra* note 2, at 22–24, 29–31.

[54] *See id.* for discussion of Polecat structure.

Indigenous law advocates focus upon upholding tribal sovereignty which mainly translates to ensuring tribal governments rights are not diminished or destroyed.[55] Most of this works is dividing jurisdiction between sovereigns: states, the federal government and the tribes. While translating into the Muscogee language DRIP Article 33, par. 1: "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions." The Muscogee speakers discussed what the right to determine their own identity or membership meant, and what was the difference between identity and membership. In *Mvskoke* the speakers viewed membership as citizenship as "belonging to",[56] such as their membership in a tribal town (ceremonial grounds)[57] On the other hand, they understood as identity, or "who you are" as a cultural and societal based identification. Thus, a tribal citizen might not be differentiated culturally from non-Indigenous population. The Muscogee speakers discussed how we should have the rights as a People to decide these things: membership and identity, citizenship and culture. This is how the *Mvskoke* speakers explained such words to argue traditional people have a right not only to be Indian politically but also to be culturally tribal / indigenous.[58]

V. Assaulting Tribal Society Through Dilution

As hinted at in the Introduction, elements of our Euchee society continue to exist but, in most instances, our tribal society no longer flourishes except on the rare days it is brought into the light from our homes where we nourish it. Merely having some elements we remember and know within our homes is not enough for a vibrant, functioning society to flourish. When I used to stay with Uncle John and Aunt Acie just outside of Kellyville, Oklahoma, they had each other to speak Euchee to in their

[55] *See* Miss. Choctaw v. Holyfield, 490 U.S. 30 1597 (1989) (discussing jurisdiction of tribal court over reservation business); *see also* Herrera v. Wyoming, 139U.S. 1686 (2019) (discussing power of tribal police over non-Indians); *see generally*, Walter Echohawk, *supra* note 37.

[56] The federally recognized tribe is the Muscogee (Creek) Nation, but speakers of the language tend to use the form "*Mvskoke*" when writing about the language.

[57] Citizen is something along the lines of "*dvstanvke*" which they said was closely related to warrior I was told.

[58] The *Mvskoke* discussion also shows complex concepts about identity, politics, society and belonging occur and has a vocabulary amongst traditional tribal language speakers. This should be obvious but in a time of immense language loss often focusing on simple language survival the nuance and complexity of language can be overlooked, which goes to the theme of supporting an Indigenous literature. Treaties were negotiated with the United States government in native languages, unfortunately, discussions in the tribal languages have not been preserved and thus the tribal language of diplomacy is lost or at least dormant. This is unfortunate as the U.S. Supreme Court stated: "The language used in treaties with the Indians should never be construed to their prejudice . . . How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction." Worcester v. GA., 31 U.S. 515, 582 (1832). As tribes negotiated treaties in their own language, using translators to interpret, tribal diplomatic language matters.

household. At least in that house, they could live a Euchee life. Today, we as tribal people are all becoming Ishi, whether metaphorically living in a museum or literally bringing ourselves to the museum for exhibition.[59] We appreciate the Smithsonian National Museum of the American Indian giving tribal people exhibits to celebrate the tribal history and culture, but we wish to see our culture flourish.[60] We must have opportunities to live our indigenous forms for our tribal ways to continue. A society lives through interaction and creation. Merely speaking Euchee to our dog will never make our dog Euchee nor will it continue our Euchee society.[61]

To be successful in our self-determination efforts, we must breathe life into our tribal societies. We cannot simply continue relearning our language every generation. Nor can our dances and ceremonies continue if we are unable to regularly teach their meaning and nuances through pointing to life and explaining in context what the dance or ceremony means. We must be able to regularly discuss and illustrate a Euchee world which surrounds and bathes us. When we have sufficient Euchee interactions, we understand life through a Euchee perspective. By "Euchee interactions," I mean not a mere meeting of Euchee, but those dealings that reflect and are imbued with context derived from Euchee culture. Funerals and ceremonies are the most Euchee of these examples, but even visits in Euchee would be such an example. There are, unfortunately, fewer and fewer occurrences on which to draw for understanding. This is true for language, ceremonies and tribal relations. Preserving or

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[59] Ishi's story is a tale of genocide, survival, and academic ethnocentricity:

In August of 1911 a starving native-American man walked out of the Butte County wilderness into Oroville and became an instant journalistic sensation. He was identified by U.C. anthropologists Alfred Kroeber and T. T. Waterman as the last of a remnant band of Yahi people native to the Deer Creek region. The UC anthropologists immediately went north to Oroville and brought him back to live on the Parnassus campus, giving him the name "Ishi" which meant "man" in the Yahi language. During the next four years, the anthropologists and physicians at UC would learn much from Ishi, as he demonstrated his toolmaking and hunting skills, and spoke his tribal stories and songs.

Nancy Rockafellar, *The Story of Ishi: A Chronology*, A HISTORY OF USCF: SPECIAL TOPICS (Nov. 1, 2021, 10:03 AM), https://history.library.ucsf.edu/ishi.html.

[60] The National Museum of the American Indian at the Smithsonian sponsors tribal festivals celebrating each tribe's or Indian nation's history and culture during its feature.

[61] This is especially true for Euchee as the Euchee language uses particles that will always note a dog is non-Euchee. As illustrated by Rabbit, our Euchee stories were filled with animate animals that acted as if they were part of our Euchee society. Generally when these traditional stories were told in Euchee, the speaker used the noun particle "*wa*" or "*wa-nu*" that indicated all non-Euchee animate objects, regardless of human or animal, male or female. Only Euchees were referred to by use of female (*sa-nu*) or male (*ha-nu*) specific particles. *See* JASON BAIRD JACKSON, *supra* note 22 at 46–49 with Mary Linn discussing Trickster Tales noting the Euchee versus all other animate pronouns. *See also* LINN, WHISTLING WIND, at 143 discussing a story where a Euchee woman had several animal husbands but the husbands' pronouns were the non-Euchee pronoun "*wa-*".

recreating a society on a small scale is difficult but continuing some part of our unique tribal institutions' existence is worth the effort.

We did not come to this point overnight. It is a process that accelerated under modern society but had its roots in legal epochs imposed upon the tribes over the last two-hundred years. The federal policy of allotment of tribal lands, breaking up the tribal land base under the Curtis Act of 1898, played a significant role in this shift.[62] That Act's purpose was, in part, to make the Euchee and Muscogee into farmers, even though we were already farmers. Another purpose was the breakup of tribal land base and making excess lands available for the clamoring of the American public for lands to settle. This breakup of the tribal lands led to more interactions with non-Euchee, more English as the lingua franca, Euchees becoming more "Americanized".[63] Allotment, however, may have merely tipped a process ripe for initiation. Prior to the 1830's the Euchee still had a tribal town where most lived in close proximity and interacted daily.[64] Upon removal from Georgia to Indian Territory in the 1830's Euchee tribal town ceased to exist as a town with all the daily interactions. The physical separation into non-township living from the 1830's to 1900's instigated a social and cultural separation. As this noisy interactive Euchee life ceased, it opened itself to a further shift due to allotment and the 20th-century mobility which allowed more interactions with non-Euchee and to Euchee culture's replacement with a more Anglo lifestyle. This accelerated with boarding schools and the post-1920 rise of automobiles allowing for daily trips to schools, stores, towns where the dominant society washed over the Euchee. Increased mobility changed American society but also often very detrimentally impacted tribal centered life.[65] Combined with the current saturation of media and art, the drowning of our languages, stories and songs accelerated.

In thirty years, to whom can we present our Native theatrical plays? In what language? Who would understand it in Euchee? For the Euchee, we are fortunately increasing the number of speakers, albeit slowly. Regardless, in the future, few are likely to understand the societal contexts without extended explanations. An illustrative example of this is the Rabbit story in this Essay. At this time, there are still a number of people who have sufficient direct memories or interactions to comprehend

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[62] Curtis Act, 30 Stat. 495 (1898).

[63] If not more Anglo or "civilized."

[64] William Bartram, wrote in 1775 in his Travels, that Yuchi town was the "largest, most compact and best situated Indian town I ever saw" with homes that were "large and neatly built." Jason Baird Jackson, Yuchi Indian Histories Before the Removal Era 94 (2012) (ebook).

[65] In the 1950's the Bureau of Indian Affairs began a program of American Indian Relocation, transporting Indians to large urban areas. This was part of the effort to "eliminate" the Indian problem. The ease of transportation, the dilution within the greater population lead to numerous individual problems and tribal continuity issues. *See American Indian Urban Relocation*, national archives: educator resources: teaching with documents (Nov. 1, 2021, 10:40 AM), https://www.archives.gov/education/lessons/indian-relocation.html.

Euchee society. In the future, will we be sharing and exploring a common Tribal experience? We do not wish for tribal society to become a museum piece, Ishi of the art world, of Indigenous languages or ceremonies that merely preserves a glimpse of what once was for those who never have and never will have a tribal experience, a native life.

Commitment of Indigenous Peoples to their way of life is not enough. To avoid such a bleak future, removal of the dominant society's impediments to Tribal societies are fundamental to strengthening tribes' languages, traditions, ceremonies and communities.[66] Without such larger efforts, the tribal peoples' internal work will be one of continuously rebuilding. Thus, empowering tribal society is fundamental to language preservation, ceremonial survival and societal existence.

What will a reconstituted tribal society look like? How do you differentiate that effort from utopian cults or Indian hobbyists' creations? If one makes up society based upon fantasy ideals of tribal structures, then one is no different than pre-tendians who falsely claim indigenous ancestry in order to achieve recognition, jobs or academic legitimacy often while falsely representing insider knowledge of tribal interests.[67] A tribal effort must be founded on a tribal lineage that is legitimate and continuous. If one did not have a real fireplace to begin with, then "rekindling" is an act of parody.[68] Those things which are sacred are not to be played with, and once put away many would believe such are not to be revived.[69]

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[66] Walter Echohawk, *supra*, note 37 (discussing NAGPRA, ICWA, AIRFA, Native American Languages Act).

[67] *See* Kaniehtonkie', *Identity Problems: The Pretendian*, Indian Time (Apr. 26, 2021), https://www.indiantime.net/story/2021/02/04/news/identity-problems-the-pretendian/36132.html; *see also* Interview with Benjamin Barnes, *supra* note 28.

[68] During a November 16th 2016 meeting with the Muscogee (Creek) Nation Principal Chief James Floyd, other tribal officials and several of the traditional Mvskoke (Muscogee) Grounds Mekvlke (Chiefs) Meko Bobby Yargee of Alabama Ceremonial Grounds explained:

Muscogee Nation founded with 44 ceremonial grounds (*here in Indian Territory in 1830's.*) Way way back we could rekindle fires (*thus reviving our ceremonial grounds upon arrival here*). We are here today with (*only*) 13 grounds, all our old ones are passed on. Maybe a few could put a fire out today (*meaning put the grounds away and end it*). But no one can move it. You could wipe out your whole people out. (*if you tried and did things wrong / not supposed to you could harm them spiritually and or physically*.) We are still here. The old people are the ones that were in Georgia, Florida *(back pre-1830's*). We keep them in remembrance. Is sickness gonna come on us? Is there going to be another one coming for us, is this one the one going to make us move? That was what old ones said, that there was one more move to west that our people would make. (*After we had this move to Indian Territory on the Trail of Tears in the 1830's.*) This could happen to us. This is the Meko's (*chief's*) job—It not just a weekend job, you wake up with it. Think of it everyday.

[69] *See* UNDRIP Article 31.1 which reads:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and

In the late 1960's, the Euchee put away our four-day traditional funeral ceremony after our last medicine man died and no one knew how to properly doctor the door of the deceased's house for the funeral feast.[70] However, at our dances, many of us still use flint rock to start our fire. From the smallest of sparks, sometimes barely visible, we build our fires that can blaze through the night for the entire eight days of our Green Corn and through the heaviest of downpours. To create a tribal society, there must be a continuity, even if rekindling from a mere ember. The Euchee and Muscogee people literally brought the ashes or coals from their sacred ceremonial fireplaces with them from Georgia and Alabama to Indian Territory (present day Oklahoma) during their removal in the 1830's. By literally carrying the ashes of our fireplace from our last tribal town in Georgia, we were able to rekindle our tribal life by recreating our society in a new land. This life changed from what we had in Georgia but was based on a vision of continuity of our traditional life.

By listening to tribal specific stories, we can authenticate our tribal efforts, sourcing our sovereignty efforts from traditional people. To the extent these traditional people exist, they are historical repositories that give tribal specific guidance to interpret society-building efforts. The problem is not in borrowing from others, but in not knowing one is borrowing.[71] Ignorance is little different than mockery, as either one hides an Indigenous society beneath a mask of foreign presumptions.

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performing arts. They also have the right maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

UNDRIP, *supra* note 19, art. 31. However, in the *Mvskoke* DRIP this was translated as "*Hiyomakat pum ayetv pum wihokat vcacvket omet sahkopanetvt okot omes*." (Now this is our ways that was given to us and is very sacred and is not to play with.) *Mvskoke Este Catvlke Vhakv Empvtakv Enyekcetv Cokv* (Mar. 16, 2019) https://creekdistrictcourt.com/wp-content/uploads/2019/08/Mvskoke-DRIP-031619.pdf.

[70] A few years ago, I visited Palm Springs and stayed in the tribal hotel, not realizing downtown Palm Springs was tribal lands. In the hotel, since torn down and rebuilt, I saw pictures from the Mission Indians. One struck me as it, if I remember correctly, was of the last Palm Springs Mission traditional leader. The script below it stated that in the 1950's this elder destroyed their last medicine bundle, gathered his young men afterwards and told them it was time to follow a new way. I have since been unable to track down more information about that event. However, it was similar to what I had been told by a Mvskoke Meko about what happened with one of the main tribal grounds of the Mvskoke. when Thlopthlopco Meko put away their fire and stopped dancing when the Meko decided they could no longer continue. I had in each instance initially questioned how these elders could decide to give up what had been passed to them from so far back. However, as I thought about it and learned, I came to think that perhaps these were elders who truly, deeply understood their own ways. This deep belief and actions illustrate the expression "our ways are not to be played with." Once a people are no longer capable of properly caring for them, or bothering to learn, perhaps then it is the ceremonies time to rest.

[71] Efforts to view Indigenous culture through a book or one day participation is like looking at shadows on a wall and trying to describe the thing which cast the shadow. The increasing inundation of external media and sources from outside non-native origins shapes natives to start seeing and unconsciously accepting or incorporating

VI. Dancing the World's Existence

The Euchee are not unique in intertwining dance or art with religion to form creation. Shiva in the Hindu pantheon of gods dances the world into existence, continuance, and annihilation. Shiva is a connection between art (dance) and religion (creation). For Euchee, dance continues the world. Only in its absence does destruction occur, as the Euchee fail to complete their duty to perform certain dances and the Sun looks down and sees no more Euchee. In the Euchee perspective it is the Euchee's duty to continue the world, not the Creator's. So too is the return of the Euchee menfolk to the arbors after completion of the Friday night Lizard Dance that shows the Euchee are still here, sitting where they are supposed to be. It is movement, as well as stillness, that shows our presence and commitment to continuity by carrying out our covenant with the Creator. On the evening before our Green Corn Dance, we all gather together as Euchee looking forward to celebrating another new year of Euchee life with all the anticipation it entails. In exchange for life, the medicines and all we were given, we will continue these dances and songs, remembering. This simple return to sit under the arbor *after* the Lizard Dance has concluded is a reminder that actions which outwardly appear mundane, unnoticed to others, or even ourselves if not tribally educated, can have powerful societal and sacred import when properly understood.

Art may be a personal expression, but the great artists from the mid-late nineteenth century increasingly used it to challenge how people looked at art and the world, and as a means to change the world itself, to look at things in a new way. Dance is art. It can also be sacred, creating, destroying, and continuing, a covenant, and exposing or celebrating life and society. This is true with Shiva. It is true for us. Without our Green Corn dances performed with the medicines at the proper place and time, a fundamental part of Euchee society ceases. If, or once, that happens, the sacred Euchee dances would transform from sacred to secular, from spiritual liturgy to a mere literature of what once was. Art constitutes part of our sacred and thus forms a basis for our future.

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images of what an Indian should be like. Use of eagle feathers on graduation regalia at public schools is occasionally an issue For some tribes the use of eagle feathers is an important part of their tribal traditions. However, some tribes such as the Euchee did not traditionally allow young people or women to wear eagle feathers. One of my chiefs, now deceased, in explaining told me wearing eagle feathers was reserved for older men who had accomplished great things. He mentioned he had been given several feathers but never felt he had done anything to deserve to wear them so he kept them in a box at home. Yet, this man was a fullblood Euchee, the traditional chief of the main ceremonial ground of the Euchee, a Vietnam War combat veteran. It too easily becomes for us to see the shadows on the wall and think the shadows are the real thing.

VII. Protections for Our Traditional Cultural Expressions and Knowledge

Modern folklore studies the traditional artifacts of a group and the group within which these customs, traditions and belief are transmitted.[72] Folklore is the result of a group effort, societal in nature.[73] However, when such efforts are perceived as individualistic, the resulting products become "high culture" and protected by western conceptions of property. That is the point of contention in the World Intellectual Property Organization (WIPO) undertaking of whether or how to recognize Indigenous group rights and conceptions of cultural property and traditional knowledge under western property law.[74]

American law fails, generally, to protect Indigenous Peoples' rights to their unique, sacred ways and society. This failure is perhaps due to the United States' jurisprudence lack of understanding of our concepts of sacred and society. Examples of these abound in American Indian religious freedom cases.[75] For instance, NAGPRA has its purpose to "establish a process for the repatriation of Native American human remains, funerary objects, cultural patrimony and sacred objects."[76] And yet, thirty years after its enactment, despite some progress, NAGPRA still faces resistance in implementation. Further, traditional tribal people are also concerned about what might be called "spiritual repatriation," the possession or performance of our sacred songs or dances by others who are not authorized to have or perform them.[77] These sacred acts may be viewed by Indigenous People as not belonging to any single individual, perhaps even having rights of their own as living entities.[78]

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[72] Modern folklorists recognize the talent and artistry of the artisans derived from the artist place within a group. The group knowledge the Indigenous artist represent, however, is not generally protected under either federal or international property law.

[73] *See* William A. Wilson, The Marrow of Human Experience: Essays on Folklore 85 (Jill Terry Rudy ed., 2006). Folklorist study things people make with words (verbal lore), hands (material lore), and actions (customary lore). This leads into a larger philosophic discussion of Western propensity for individualism versus Indigenous societal and communal values.

[74] This seems only contextually different from corporate ownership of property, freedom of speech or legal personality, as both are group rights. But, whereas the economically based fiction is considered normal, the land or environmentally one is viewed skeptically by western jurisprudence. UNESCO, Final Conference Report: Recommendations On The Safe-Guarding Of Traditional Culture And Folklore (1982) https://ich.unesco.org/doc/src/00111-EN.pdf.

[75] *See* McNally, *supra* note 35.

[76] S. REP. No.101–473, p. 1 (1980).

[77] *See* Bill Proctor and George Thompson, *infra* note 84.

[78] Indigenous people have already begun to recognize the legal rights of natural elements that are important to them, and which are merged with their concepts of sacred. *See* Jennifer Bjorhus, *Minnesota tribe asks, Can wild rice have its own legal right?* Star Tribune (February 9, 2019), https://www.startribune.com/minnesota-tribe-asks-can-wild-rice-have-its-own-legal-rights/505618712; *see also* Jillian Kestler-D'Amours, *This river in Canada us now a 'legal person,'* Aljazeera (April 3, 2021) https://www.aljazeera.com/news/2021/4/3/this-river-in-canada-now-legal-person (explaining that Innu

In the tribal perspective, some things may not belong to any individual but rather to the tribe, clan or ancestors, or perhaps even have their own rights. If a spirit or item is deemed to not only be animate but self-aware, then it cannot be deemed to "belong to" anyone as property. Western jurisprudence generally fails to understand the often-animate nature of our sacred, particularly the view that the sacred may have their own rights. The discussion traditional tribal people have regarding our ceremonies and "ways" are not couched in terms of Western property or religious-freedom dialogue. The infusion of our perspective into intellectual analysis across societies is often only beginning, if occurring at all. Looking at western academic investigations of our societies has traditionally fallen to the fields of either anthropology, folklore or archeology depending on the timeline being investigated. Those tribal people who carry on their traditional ways are few in number, often only a handful.[79] As Robert Williamson, Sauk Fish Clan leader said in talking about their language but also referring to ceremonial people:

> We are to the brink of—our language is we are at the edge of that cliff over here. Out of 4,000 people there is less than one hand that speaks fluent, really fluent. One is my mother who is 92, who is still here luckily, blessed, and then I have an aunt who is up in her 80s and she has been ill. But there is so much that's going to be gone. Sure, they have recorded them and interviewed them and all that, but if you do not grow up fluently you are missing so much definition, you know? It is—it's a different—it's a different. You're different. You know, you are not like—we are not like them guys.[80]

These practitioners are busy trying to carry out their ceremonial duties, to teach their young and pass on to their own instead of worrying about explaining to federal courts the nature of our sacred jurisprudence.

Discussions of our sacred must lead to questions of how to protect our sacred ways. Others have well laid out the failures under United States law.[81] As counter to the shortcomings of federal Indian law jurisprudence, a growing body of advocates looks to the potential international law or doctrines such as the World Intellectual Property Organization's (WIPO) efforts regarding traditional knowledge of Indigenous peoples, especially as it might relate to Indian peoples cultural and spiritual matters.[82] WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is currently negotiating international legal instruments with at least attempts at

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Council of Ekuanitshit in February recognised the Magpie River as a legal person).

[79] *See* Bigler, *supra* note 2; *see also* interview with Robert Williamson, Sauk Fish Clan chief (July 31, 2020).

[80] *Id.*

[81] *See* Echohawk, Courts of the Conqueror, *supra* note 46.

[82] *See* UNESCO, Final Conference Report: Recommendations on the Safeguarding of Traditional Culture and Folklore (1982) https://ich.unesco.org/doc/src/00111-EN.pdf.

getting input from Indigenous Peoples on intellectual property.[83] Unfortunately, this rather arcane work is hidden away (not purposely) where most Indigenous People are unaware of it. The work, though, is one that traditional people understand in the context of their own societal directives and which they have strong feelings about. Traditional Muscogee Mekvlke[84] Bill Proctor and George Thompson explained:

> Our songs, these belong to our old medicine people.[85] They are not to be played with. They belong to the grounds, not out in public.[86] Our Grounds are in remote areas, not out in public. We want people to come to us, not send our ways out in the public. Our old people used to say if you want to dance, you have a place.[87]

This view reflects how traditional leaders looked at these things as belonging to their people, not to others outside of their tribal towns or society. These things, tribal in nature, have a place within tribal society but need a tribal society for their existence.

The federal government actively suppressed tribal languages, ceremonies, religion, and governmental systems. Captain Richard Pratt, founder of the Carlisle boarding school for Indian youth and leading light of the philanthropic "Friends of the Indian," believed in removing all vestiges of Indian society, "that all the Indian there is in the race should be dead. Kill the Indian in him and save the man."[88] Having suffered generations of manpower and significant resources committed to eliminating Native society, we now bear a tribal responsibility to resurrect or carry forward our Indigenous institutions. However, the federal government, having played an active role in the suppression of native institutions and languages causing the current situation, should also have a duty to help tribes in their efforts to rebuild their societies.[89] As Kristen Carpenter and Alexey Tsykarev noted in relation to the suppression of Indigenous languages by the federal government:

> [T]hese past acts have not yet been remedied. The historical suppression of indigenous languages disrupted intergenerational learning, brought about individual and collective trauma, and diminished confidence and pride in the language. It has also created gaps in usage such that many communities lack not only fluent speakers but also

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[83] *See Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, WIPO https://www.wipo.int/tk/en (last visited Nov. 13, 2021).

[84] In the Muscogee (*Mvskoke*) language *Meko* is chief, the plural form is *Mekvlke*. *See* Bigler, *supra* note 2 (discussing the comments by *Mekulke* Proctor and Thompson submitted to the Colorado Law School meeting on the WIPO consultation on May 3, 2017).

[85] Meaning those old medicine people who have already passed on.

[86] Meaning the songs, dances and or medicines.

[87] Meaning at the Ceremonial Grounds, and the Grounds only.

[88] From a paper for the 1892 Charities and Correction Conference held in Denver *in* Patrick Wolfe, *Settler colonialism and the elimination of the native*, 8 J. of Genocide Res. 387–409 (2006).

[89] *See* Kristen Carpenter and Alexey Tsykarev, *(Indigenous) Language as a Human Right*, 24 UCLA J. Int'l L. & For. Aff. (2020).

> contemporary media, schools, literatures, and professional terminologies in their indigenous languages.[90]

It may be upon us to determine the nature and path for our future society. However, impediments still exist that must be removed, and the federal government should assist rectifying the wrongs committed in such active, sometimes violent suppression of tribal cultural and social institutions.[91]

Indian-country language revitalization methodology emphasizes language immersion for purposes of successful teaching. A society, including Indigenous society, should not only want to survive and be allowed that right, but also to preserve "high culture" as a way to empower those thinkers, speakers and intelligentsia who can envision what their society can could become. The power of our "revered" leaders was often in their ability to utilize language in its highest form.[92] Thus, we want not only to speak but be literate in our language. Language as art form, for instance literature or poetry, should be encouraged as an integral part of a vibrant tribal society. Just as our ceremonies create an interdependency, i.e., our duty to continue ceremonies for the spiritual world and the spiritual world in turn blessing our existence, so to can be the seen Indian art's relation to an Indigenous society. Art serves as one benchmark for a

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[90] *Id.* at 130.

[91] The current climate has begun a more general national recognition of boarding schools' role in suppression of culture, and as initially brought to light in Canada, the mass deaths of Native children at the boarding schools. One commentator went on to further explain:

Though the (boarding) schools were motivated by greed, humanitarian language about assimilating Indians ran deep. Politicians claimed that tribal life was obsolete and that our ancestors needed U.S. citizenship and American values of individualism. Young people were trained as agricultural or industrial workers as their homelands were being carved up and sold.

Brenda J. Child, *U.S. Boarding Schools for Indians Had a hidden agenda: Stealing Land*, Wash. Post (Aug. 27, 2021) https://www.washingtonpost.com/outlook/2021/08/27/indian-boarding-schools-united-states. The U.S. Department of the Interior, which has the Bureau of Indian Affairs within it, noted the past history of suppression which the Department bore some responsibility:

The purpose of Indian boarding schools was to culturally assimilate Indigenous children by forcibly relocating them from their families and communities to distant residential facilities where their American Indian, Alaska Native, and Native Hawaiian identities, languages, and beliefs were to be forcibly suppressed. For over 150 years, hundreds of thousands of Indigenous children were taken from their communities.

Press Release, U.S. Dept. of the Interior, Secretary Haaland Announces Federal Indian Boarding School Initiative (June 22, 2021) https://www.doi.gov/pressreleases/secretary-haaland-announces-federal-indian-boarding-school-initiative.

[92] Ofelia Zepeda, MacArthur Foundation grantee, uses her To'onodom language in written form to create poetry, using traditional language in new ways to create and carry on To'onodom culture. Concurrently, the Euchee and Muscogee ceremonial grounds have traditional speakers to announce and speak for the ground's *meko*, and their use of language is in highest oral literary traditions. Jackson, Yuchi Folklore, *supra* note 22, at 6.

healthy, vibrant native culture that can support native art and native art can express to us what we should or can become as a society.

VIII. We Breathe Life into Dreams[93]

Our Euchee ceremonial dances and songs are sacred. They give life to us, but we also give life to them through our utterance, through our dancing them. Our stories of their origins are also sacred. There is a two-fold purpose to our dances: a compact with the Creator to carry on these songs and dances to give thanks for the life we are given; and keeping this world in existence. When we go over the hill, the Sun looks down and sees the Euchee still exist as shown by the Euchee continuing the dances they were given, and thus the Sun continues on her path, keeping the world in existence. But we also keep these songs, these dances, animate through our performances, which in turn brings their healing power and blessings to us who perform them and to all others. This is also true of our scared fire. By feeding it we keep it alive. It, in turn, brings blessings and life to us in a mutual act of continuance. Shiva the God creates, continues and destroys the world through his dance. However, in our world view, it is we as Euchee who remember and must continue the world through dance and song, providing a place for them. We annually recreate these dances, giving life to them every year so their spirit might bless us. Once these practices stop, are no longer done when they are supposed to be and where they are supposed to be and with the proper medicines, we—the Sun and the Euchee—both disappear.[94] Even if some others were to do these but not in the way which they are meant to be, it would be a mere caricature, a profane performance of a thing that was not alive. Just as we also would not consider a fireplace alive if it were not a medicine fire built where our medicines were, at our stomp ground. Once gone, no longer carried out at our ceremonies, we fade to a shadow, a mere remembrance of that which was, like birds singing in a forest that is no more. Neither birds nor songs nor forest will exist if they are burnt to the ground.

New Echota Cherokee Stompground Chief Comingdeer explains:

> The Creator's songs give us life, we give back to the songs. We keep each other alive. When one dies, we both die. [These understandings] make sense not only to Human Rights, but to Human Existence. Our songs are our existence, our songs exist because we live. This type of

[93] The Euchee word for Creator or God is *Gohatene*, which can loosely translate to Breathe Master, or One Who Gives Breathe.

[94] Sam Deloria wrote that as a matter of federal Indian law, tribal rights should not depend on culture because the culture will go away and then where will tribes be arguing for political classification of tribes. *See* Sam Deloria, *New Paradigm: Indian Tribes in the Land of Unintended Consequences*, 46 Nat. Res. J. 301, 303 (2006). This is an internal question for Indigenous people, what is the purpose of tribal rights if we are willing to simply become Brown White people (or, as perhaps more common now, a little brownish white people)? Why do we argue for tribal rights if we are to be simply identical to the dominant society? I have no answer to these questions.

> understanding runs through my brain constantly, but it is not something I put in words. When my mind thinks of the (stomp) ground I don't see Oklahoma. I see a different place. It's beyond verbal explanation. It's the feeling of a place we haven't ever seen, and I believe it's similar to interpretation of a dream. That "dream" is foggy remembrance of our tribal town origin and that fog is in our blood.[95]

The more people who "dream" this dream together, the stronger the reality of a traditional tribal society becomes. Unfortunately, there are fewer people who are there to carry on this dream. The challenge for tribal advocates is to create a place where these may become fixed in our future. As Chief Comingdeer explains about his responsibility as chief to his people:

> It is like being in a bad over whelming storm. You have so many people to hang on to, but only two hands. That's what saving our tribal ways feels like to me. As I get older, I feel the storm more and more, but at the same time, I feel like I'm getting stronger. Could be a false sense, but it's how I feel. Tomorrow I'm issuing new ballsticks to a bunch of boys from our ground, and I'm gonna pull them away from their parents to talk to 'em. My hope and energy is in the kids.[96]

To empower the possibilities of a tribal society, it must be grounded on those things which were ours, our traditions. That foundation alone is not enough, as it must also have someone who dreams of what that past can be in the future, can show what we can be and perhaps even teach, explain or lead. Failing to talk about, to dream, to envision, to teach, leads to darkness. Without us to "tell our story" for the next generations, then, just as with Rabbit and the Last Old Woman, that which we are and what we can be fade away.

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[95] Text interview with David Comindeer (Mar. 7, 2020).

[96] *Id.*