The (Post)Colonial Predicament of Native American Studies

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To cite this article: Eric Cheyfitz (2002) The (Post)Colonial Predicament of Native American Studies, Interventions, 4:3, 405-427, DOI: 10.1080/1369801022000013824

To link to this article: http://dx.doi.org/10.1080/1369801022000013824

Published online: 01 Jun 2011.
For reasons having to do with both literary and political theory, post-colonial studies have largely ignored Native American issues in the United States, while at the same time Native American studies have remained ambivalent as to their potential position within a more inclusive, or aware, postcolonial studies. In this essay I argue that the indispensable and yet to date unexamined context for situating Native American literatures of the US within a (post)colonial context is federal Indian law, which perpetuates an ongoing colonialism for the 330 Indian tribes in the lower forty-eight states that come completely under its governance. Among its possible effects, I understand this context as potentially mediating current debates between Native Americanists from the nationalist and cosmopolitan schools of Native studies, though I use mediating here in its theoretical not its political sense, for I doubt these intensely conflictive positions will be reconciled nor do I necessarily have any interest in such reconciliation. My interest, rather, is in making a compelling case for the necessity of deploying federal Indian law in understanding Native literatures of the US. In order to exemplify this necessity, I sketch a reading of Leslie Silko’s Almanac of the Dead in the final part of this essay.
Native American Studies as an academic discipline . . . could become one of the useful mechanisms for the deconstruction of colonization. This deconstruction . . . will require of postcolonial theorists that they come to grips with the realities of colonial domination of Indian/White relations in America. (Cook-Lynn 1997b: 21–2)

In my understanding, postcolonial studies take as their proper field the histories of European imperialisms, manifested both in colonial situations since the onset of modern globalization in 1492, and, where applicable, in the transformation of these situations into neocolonial or postcolonial predicaments. It is surprising, then, if not a complete scandal, that postcolonial studies have virtually ignored the predicaments of American Indian communities in that territory known in European terms since the late eighteenth century as the United States. For example, in The Post-Colonial Studies Reader, edited by Ashcroft, Griffiths, and Tiffin, and published by Routledge in 1995 (then reprinted in 1995, 1997, and twice in 1999), there is not a single selection on the historic situation of American Indians who inhabit this territory. And in the recent compilation Cosmopolitics: Thinking and Feeling Beyond the Nation, edited by Cheah and Robbins for the University of Minnesota Press one finds only a single passing reference to Native Americans (1998: 1).

It is not my purpose in this essay to account for this erasure. It may be the result of the domination of the field of postcolonial studies by African, Asian, and Caribbean agendas, and by paradigms grounded in the transformation of indigenous societies in these locales into contemporary forms of the European nation-state, a model that does not apply to the historic transformations of Native American kinship-based communities under Euro-American imperialisms. As Elizabeth Cook-Lynn has suggested, it may be that

In the past twenty or thirty years, postcolonial theories have been propounded by modern scholars as though Native populations in the United States were no longer trapped in the vise of twentieth-century colonialism but were freed of government hegemony and ready to become whatever they wanted, which, of course, they were not. (1997b: 13)

On the other hand, the lack of an engagement between Native American and postcolonial studies may be the result, at least in part and with a few notable exceptions, of a resistance to critical theory within Native American studies itself. All of these forces, including the issue of disciplinary autonomy, which
Cook-Lynn and other scholars who identify with the ‘nationalist’ approach to Native American studies have urged, may account for the almost total eclipse of US Native American studies within the firmament of the post-colonial.

Whatever the case may be, it is my purpose in what follows to argue for the situation of Native American studies, specifically literary studies, within the purview of the postcolonial, not, I want to emphasize, by borrowing a theoretical terminology from postcolonial studies (the terminology, for example, of the subaltern) but by adding a theoretical terminology to it: the terminology of US federal Indian law, the body of legal norms and regulations that since the late eighteenth century has increasingly constituted US Indian ‘tribes’ or ‘nations’ as colonized communities. Asserting the relevance of ‘federal policy . . . to many aspects of everyday Indian life’, Cook-Lynn insists on the importance of federal Indian law in forming the fundamental context for Native American studies: ‘the study of . . . [the “machinations of the government and the courts”] should be at the core of curricular development’ (1997a: 7).

At the end of this essay, through a reading of Leslie Marmon Silko’s novel Almanac of the Dead, I shall focus Cook-Lynn’s comments as they bear on the field of Native American literatures of the United States in order to suggest the indispensability of a knowledge of federal Indian law in understanding these literatures, a knowledge that has not been brought into significant play in their interpretation up to this point. In preparation for my reading of Almanac, then, I must sketch a history of federal Indian law in order to delineate its force in the colonizing of Native tribes, or nations, because it is my sense that very few readers of American literatures, including, of course, American Indian literatures, are aware of this history in any significant detail.

In the first instance, the very ascription of the term tribe, or nation, to Indian communities is itself a part of this colonizing process: the projection of European conceptions of centralized governance and hierarchical social structure onto various kinds of extended kinship-based communities, of which the clan might more accurately be understood as the fundamental social unit. These Native communities governed themselves not by forms of representation but by more or less formal modes of consensus, which involved the entire community directly in decision-making processes that were politically and economically egalitarian in a way that no nation-state has ever been or could ever be. Even the relatively centralized Iroquois confederacy governed itself by a mode of consensus located in the first place in the matrilineal clan structure of the five (and ultimately six) associated tribes; thus, it could never act with the unanimity of a nation-state (Richter 1992: 40–9), where, even in its democratic forms, the complacency and capriciousness of the vote, as Thoreau recognized in his anti-imperial essay.
‘Resistance to civil government’ (1986 [1849]: 391–3), subsumes minority resistance in majority rule. In *Worcester v. Georgia* (1832), Chief Justice John Marshall, with another intent, recognized this process by which western law translated Indian social structures into its terms:

The words ‘treaty’ and ‘nation’ are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. (559–60)\(^3\)

It is crucial to note, however, that over time and through the coercion of necessity – the necessity in the first instance of signing treaties with a succession of European regimes and then of fighting legal battles for land rights in US courts – Indian communities have themselves adopted and adapted the terms *tribe* and *nation*, and the political vocabulary of *sovereignty* that goes along with these terms. In the instance of US/Indian history, this adoption/adaptation is made particularly visible from the moment when the Cherokees went to the Supreme Court in 1831 to ask the Court to recognize them as a sovereign, that is, a *foreign*, nation so that they could bring suit in the Court for an injunction against the state of Georgia, to stop the state from violating treaties that the Cherokees had signed with the United States but that President Andrew Jackson refused to enforce.

In the famous case of *Cherokee Nation v. Georgia* (1831), which the Court heard in the wake of the passage of the Indian Removal Act by a deeply divided Congress in 1830, the Court refused to recognize the Cherokees as a foreign nation (and thereby their right to bring suit against Georgia). Chief Justice Marshall argued in his opinion that the Cherokees, far from being a fully sovereign, or foreign, nation, were in their relation to the US analogous to ‘a ward to his guardian’ and should be properly defined as ‘domestic dependent nations’ (*Cherokee Nation* 1831: 17). This oxymoronic dictum (under international law a *nation* was and is defined as *independent* and *foreign* in relation to other nations) got the Court out of a potential constitutional crisis over separation of powers (a confrontation with both the president, Andrew Jackson, who supported Indian removal, and the state of Georgia, which claimed Cherokee lands); it has remained to this day the legal definition of the federal/Indian relation.

In his contradictory definition of Indian nationhood, Marshall, joined in his opinion by Justice McLean, split the difference between complete denial of Cherokee sovereignty, which was argued in separate opinions written by Justices Baldwin and Johnson, and complete affirmation of it, which was articulated in a dissenting opinion written by Justice Thompson, joined by Justice Story (in 1831 the membership of the Court was seven; Justice Duvall...
was absent for this case). Marshall grounded his definition of the federal/Indian relationship in an ingenious formalistic reading of the Commerce Clause of the Constitution (article I, section VIII, paragraph 3) granting Congress the power ‘[t]o regulate commerce with foreign nations, and among the several States, and with the Indian tribes’. He argued:

In this clause they [the tribes] are as clearly contradistinguished by a name appropriate to themselves, from foreign nations, as from the several states composing the union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. (Cherokee Nation 1831: 18)

In his dissent, Thompson criticized Marshall’s reading of the Commerce Clause because it seemed to him ‘to partake too much of a mere verbal criticism, to draw after it the important conclusion that Indian tribes are not foreign nations’ (ibid.: 62).

But Marshall’s definition stood and in time drew after it the entire colonial edifice of federal Indian law, which stands today enshrined, except for a few provisions, in Title 25 of the US Code. Indeed, Indians are the only ethnic/racial group in the United States governed by a separate body of law, the primary action of which is not on the individual, as is the case in mainstream US constitutional law, but on the tribe or nation; the primary agenda of which is not individual rights but sovereignty or, to be precise (from the federal perspective), its limitation. While all Indians were made citizens of the United States by an act of Congress in 1924, the fact is that the approximately 1,300,000 Indians in the lower forty-eight states who are members of the 330 federally recognized tribes and who are living on or near reservations are acted upon, through their tribes, as colonial subjects, not free citizens of either the United States or their own nations (US Department of Interior 1999: i). The legal rationale for this formal granting of citizenship is stated in Winton v. Amos (1921), where one cannot help but notice that in the case of Indians the fundamental ground of citizenship is a ‘mere grant’:

It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. The guardianship arises from their condition of tutelage or dependency; and it rests with Congress to determine when the relationship shall cease; the mere grant of rights of citizenship not being sufficient to terminate it. (cited in Cohen 1988 [1941]: 156, emphasis added)

This is the political situation of what is defined in Title 18 of the US Code (section 1151) as ‘Indian country’: ‘Broadly speaking . . . all the land under the supervision of the United States government that has been set aside

4 Depending on the circumstances, Indians can be defined within federal Indian law as part of either a political or a racial group. See, for example, Morton v. Mancari (1974), where the preferential hiring of Indians within the BIA was not judged discriminatory by the Supreme Court because in this instance the category ‘Indian’ was a political not a racial category: ‘The preference is not directed towards a “racial” group consisting of “Indians”; instead, it applies only to

general, indicating nothing more than a community’s sense of itself as a community, that they lack any historical or cultural specificity. In fact, Womack’s argument for the pre-contact nationhood of the Creeks is contradicted by Creek historian Kenneth W. McIntosh: ‘At the time of European contact in the seventeenth century, the native inhabitants of the Southeast had no single name for themselves and no inclusive social or political identity’ (Hoxie 1996: 142).

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members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as "Indians". In this sense, the preference is political rather than racial in nature (ibid.: 554), promulgated by Congress in order to further Indian self-governance.

5 This figure represents the Indian 'service population': those tribal members who are receiving federal benefits in the lower forty-eight states. The total tribally enrolled population is 1,698,483 out of approximately 2,000,000 Indians living in the United States (US Department of the Interior 1999: i), including the approximately 85,000 Native Alaskans living in 226 villages incorporated under the Alaska Native Claims Settlement Act of 1971. While Alaskan Native villages come under the provisions of federal Indian law, they hold their land primarily for the use of Indians' (Pevar 1992: 16, emphasis added). I emphasize 'use' here because the constitutionally grounded cornerstone of federal Indian law, Johnson v. M'Intosh (1823), recognized that the imperial 'doctrine of discovery' (ibid.: 572–3) conferred the title to all Indian land in the federal government under what would subsequently be defined as the 'plenary power' of Congress to do with that land what it willed (see, for example, Lone Wolf v. Hitchcock 1903: 565–6). Johnson preceded Cherokee Nation by eight years and laid the groundwork for its simultaneous recognition and usurpation of Indian sovereignty: recognition of sovereignty, one might say, precisely so that it could be 'legally' usurped.

Johnson, Cherokee Nation, and, finally, Worcester v. Georgia, known collectively as the 'Marshall trilogy', form the constitutionally grounded foundation for the colonial structure of Indian country as it exists today. In Worcester, the Court both asserted federal over state authority in Indian matters and recognized, in general terms and, ironically, in a language borrowed from the Thompson dissent in Cherokee Nation, certain inherent sovereign powers residing in Indian tribes as independent political entities. The language quoted previously from Worcester, applying the terms nation and treaty 'to Indians, as we have applied them to the other nations of the earth', virtually contradicts the dictum from Cherokee Nation defining the tribes as 'domestic dependent nations'. But we should remember that dicta are not decisions (Black's Law Dictionary 1990: 454), and, perhaps more importantly, that federal Indian law works in the same way as Freud describes the unconscious – as a system of contradictions which is incapable of reading itself as such.

What we witness from the time of the Marshall trilogy to the Indian Reorganization Act (IRA) of 1934 is the continual subversion by the executive, the courts, and Congress of Indian sovereignty, first through a policy of forced removal accompanied by the construction of a colonial bureaucracy – the Bureau of Indian Affairs (BIA) in 1824 and the reservation system in the 1850s – and then, beginning in the 1880s, through a policy of forced assimilation. Within these broad policy parameters, certain exemplary moments in the legal construction of Indian country articulate crucial issues.

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In 1846 in the case of US v. Rogers, to take one of these key moments, the Supreme Court, in the course of deciding an issue of criminal jurisdiction in Cherokee territory, instituted what would become federal control over the identity of the term Indian, precisely by racializing it as a pan-tribal term. This dictum subsequently found legal expression in the federal institution of ‘blood-quantum’ which, from the Dawes era (1887–1934) forward, became
in fee as opposed to the trust relationship of the tribes in the lower forty-eight states and the one reservation in Alaska; thus these incorporated villages are not in legal terms considered ‘Indian country’, though many of the colonial issues outlined in this paper around control of resources obtain in Native Alaska. The ongoing issues of US colonialism impacting on Native Hawaiians do not come under the purview of federal Indian law because of ‘the federal government’s failure to assume responsibility for the protection of Hawaiian native people, their land, and their political status’ (Getches et al. 1998: 944). The provenance of this paper, then, is the federally recognized tribes of the lower forty-eight states.

6 See US v. Broncheau: ‘Unlike the term “Indian Country”, which has been defined in 18 USC s 1151, the term “Indian” has not been statutorily defined but instead has been judicially explicated over the years. The test, first suggested in United States v. Rogers and

a fundamental determination of Indian identity. From the IRA onward, this institution was also adopted by most federally recognized tribes to regulate their own memberships in response to a scarcity of resources, though with more or less flexibility from tribe to tribe. Somewhere between the institution of the IRA and 1940, Indians began to have to obtain a Certificate of Degree of Indian Blood (CDIB), issued by the BIA, in order to be eligible for certain federal benefits. Though the ostensible purpose of the CDIB is to aid Indians in obtaining these benefits, the mechanism itself, which is exclusionary, echoes in disturbing ways the antebellum Black Codes and the Nuremberg laws of Nazi Germany, employed to maintain a fictive, but no less deadly, racial purity.

Patricia Nelson Limerick has articulated the subversive effects of the policy:

Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it had for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent ‘Indian problem’. (Limerick 1987: 338)

Prior to Rogers, Indian communities had the power to make ‘Indians’ through adoption, whether or not these communities referred to themselves as ‘tribes’ or ‘nations’ or ‘clans’ or ‘families’. But prior to Rogers, it should be emphasized, adoption by the community did not make an ‘Indian’ (a Western racial category), but a community member (a Native cultural category): a member of the Cherokee clan, to take an example from the Navajos, who became a ‘tribe’ only when they were forcibly tribalized by the federal government in 1868, and did not adopt the term nation to describe themselves as a political unit until a hundred years later.

In 1871, to cite another key moment in the colonial history of Indian country, Congress declared the end of treaty making with Indian tribes, another turn of the screw in the subversion of Native sovereignty begun with the Marshall trilogy; and in 1885 it instituted the Major Crimes Act, which further limited the sovereignty of Indian communities in matters of internal governance, specifically in the area of adjudicating certain major felonies that involved Indian-on-Indian crime (since the first Trade and Intercourse Act in 1790, the federal government had taken jurisdiction in major crimes involving white people in Indian country).

Two years after the Major Crimes Act, Congress enacted what has been, arguably, the most devastating piece of legislation in the history of Indian country: the Dawes, or General Allotment Act, which gave the president the power to translate Indian communal land into property and Indians into individual property holders. Because I have written at length elsewhere of this translation process (Cheyfitz 1993, 1997 [1991], 2000, 2001), I shall not
generally followed by the courts, considers (1) the degree of Indian blood; and (2) tribal or governmental recognition as an Indian” (1979: 1263).

7 I arrive at this date from information supplied to me in a telephone conversation with Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma Region, Department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401.

8 Here is the definition of an ‘Indian’, which is part of a rule proposed by the BIA in April 2000 for determining who is eligible to hold a Certificate of Degree of Indian or Alaska Native Blood (CDIB): ‘Indian means any person of Indian or Alaska Native blood who is a member of those tribes listed or eligible to be listed in the Federal Register pursuant to 25 USC 479a–1(a); or any descendant of such person who was residing within its boundaries of any Indian reservation on June 1, 1934; or any person not a member of one of

rehearse it here, except to emphasize that traditional Indian relations to land, mediated as they are by extended kinship relations, rigorously exclude in their very definition the notion of property, as the west has defined it historically, both materially as a commodity – which by definition is an alienable entity – and metaphysically as that which defines, as a special category of the person, an individual, an historically and culturally relative entity that has been viewed, by Marx, let us say, or Freud, as the apotheosis of alienation.

The force of the Allotment Act was to try to compel Indian persons to become individuals through the socialization process of property ownership. Or, to borrow some words of Leslie Marmon Silko’s novel Ceremony, which, set in Indian country in the post-WWII period, nevertheless echoes the Allotment era, the force of Allotment was to try to compel Indian persons to displace words like ‘we’ and ‘us’ with ‘I’ (Silko 1986 [1977]: 125). Quoting Merrill E. Gates in comments made to the ‘Friends of the Indian’ at the Lake Mohonk Conference in 1900 (Prucha 1984: 671), President Theodore Roosevelt described Allotment in his message to Congress of 3 December 1901, as “a mighty pulverizing engine to break up the tribal mass” whereby “some sixty thousand Indians have already become citizens of the United States” (Cohen 1988 [1941]: 154). As if to emphasize the force of Allotment in its attempts to displace Indian communalism with western individualism, along with the Act came an official renaming program that displaced traditional Indian names with names that would define nuclear families for purposes of land ownership and inheritance (Prucha 1984: 673–4).

Between the institution of the Allotment Act in 1887 and its end in 1934, when Congress annulled it as the first provision of the IRA, the result of Allotment was the loss of approximately 90,000,000 acres of Indian communal land and the consequent deepening impoverishment of Indian communities. According to a memorandum of 19 February 1934 ‘submitted to the Senate and House Committees on Indian Affairs by Commissioner [of the Bureau of Indian Affairs John] Collier’, who had been opposed to Allotment throughout his public career before coming to the BIA, ‘the total of Indian landholdings has been cut from 138,000,000 acres in 1887 to 48,000,000 acres in 1934’. Collier noted in the same memo, which was incorporated into the IRA: ‘The approximately one third of the Indians who as yet are outside the allotment system are not losing their property; and generally they are increasing in industry and are rising, not falling, in the social scale’ (Cohen 1988 [1941]: 215, 216). Today in the United States, tribal Indians are the poorest of the poor, with the 1990 census reporting a per capita income in Indian country of $4,478, compared to a national average of $14,420. In 1999 unemployment among the labor force of the 556 federally recognized tribes and Alaskan Native villages was 43 per cent, a 1 per cent increase from 1997; and the ‘poverty level among employed tribal members increased by three per
the listed or eligible to be listed tribes who possess at least one-half degree of Indian blood. For
purposes of these regulations, Eskimos and other aboriginal peoples of Alaska shall be considered Indians’ (65 FR 20775, * 20781–2). For a copy of the rule, which is still under discussion as of June 2002, see: <http://www.yvwiisdnvnohi.net/govlaw/BIA000418CDIBproposedrule.htm>.

9 Limerick’s statement is in reference to a 1986 proposal by the Indian Health Service ‘to change the definition of Indian’, which she seems to extend to all of federal policy. She appears unaware, then, of the history of blood-quantum that I am sketching, which goes back to at least 1846 and the Rogers case. The 1986 proposal, she claims, ‘carried the added threat of making Indianness a racial definition rather than a category of political nationality’ (Limerick 1987: 338). But, in fact, the definition of Indianness was already both racial and political, depending on the legal context (see notes 4–6).

cent to 33% of the overall employed total as compared to the 1997 level of 30 per cent’ (US Department of the Interior 1999: i, emphasis added).

While the IRA was the federal engine for reconsolidating tribal land or what was left of it (today tribal acreage is 45,678,161, less than it was in 1934 (US Department of the Interior 1997)), it also imposed western-style governments on the tribes.11 The Act formalized the power of tribal government in a classical colonial manner, where native elites stand in for the colonial power at the local level. However, this classical colonial situation is complicated or perhaps only ironized by the fact of the Indian Citizenship Act of 1924, by which Congress imposed citizenship on all Indians living in the United States. This Act granted no particular rights to the Indians. The right to vote came subsequently on a state-by-state basis; and Fourteenth Amendment rights did not apply to tribal Indians on the reservation. Congress passed the Indian Civil Rights Act in 1968, which granted certain constitutional rights to Indians on reservations. But in a landmark case, Santa Clara Pueblo v. Martinez (1978), in which a female member of the pueblo brought a gender discrimination suit against the tribe, the sovereignty of the tribe was judged to overrule the civil rights of the individual; and, generally speaking, federal courts will not hear a civil rights suit brought by a tribal member unless the suit involves a writ of habeas corpus (Getches et al. 1998: 515, n. 3) enjoining not the tribe but the individual tribal official holding the prisoner (Santa Clara Pueblo v. Martinez 1978: 59). Federally recognized tribes retain sovereign immunity from lawsuits, unless of course either the tribe or the Congress waives the immunity.

Given the history of the steady usurpation of tribal sovereignty by the federal government that I have been sketching, there is certainly something ironic in the Supreme Court upholding tribal sovereignty when it conflicts with the sovereignty of an individual member of the tribe, whose children in this case were denied tribal enrollment because their mother had married outside the tribe, whereas the male members of the tribe were not restricted in this way. However, we should note that at best the Indian Citizenship Act was and is a double-edged sword, at once an assimilationist attack on tribal existence and a leverage for empowerment in the larger nation. But, and this is crucial, the Act empowered one only as an individual, operating beyond the reservation, the home community. If an Indian remains on the reservation, which, with all its economic hardships due to colonial underdevelopment, is still the place of identity – the nurturing nexus of kin and land – then she or he is constrained to live under the colonial regime of federal Indian law without the constitutional guarantees of his or her US citizenship, excepting the right to vote in US state and national elections. As noted in my citation of Winton v. Amos, the Indian Citizenship Act of 1924 in no way affects the colonial status of federally recognized Indian tribes but only ironizes it by presenting us with the legal paradox of sovereign citizens who are at the same
time colonial subjects if they choose to reside in ‘domestic dependent nations’ that comprise ‘Indian country’. If we were to describe the situation of US Native Americans as postcolonial rather than colonial, it is within the ironic context of the Indian Citizenship Act that we would do so.

Within this context, the IRA creation of representative tribal governments must be read within an alternating emphasis on the prefix and root of post-colonial. For one often finds in Indian country a democratically elected tribal government that is at the same time opposed by or alienated from the grassroots population precisely because it is perceived as an arm of the colonial power, even while it may oppose that power in certain instances and so claim the support of its constituency from time to time. These kinds of divisions within the tribes have a long history that it is not possible to rehearse here but that I have elaborated elsewhere in the case of the Navajo-Hopi land dispute (Cheyfitz 2000). It should be noted that in the realm of Native American literatures, Sherman Alexie’s Reservation Blues (1995), Ray A. Young Bear’s Black Eagle Child (1992), and Gerald Vizenor’s Bear Heart: The Heirship Chronicles (1990) [1978] are examples of narratives that represent this issue with a particular ironic acuity.

Following the contradictory dynamics that have marked federal Indian policy since its inception, Congress, in the wake of the resignation of Collier from the BIA in 1945 and the issuing of the Hoover Commission Report in 1949, embarked on a policy over the next twenty years that sought to undo the tribal consolidation of the IRA and finish what Allotment had begun: the termination of the tribes and the forced assimilation of Indians, this time through their relocation in urban areas. Scott Momaday’s landmark novel House Made of Dawn (1968), published at the end of this period, charts in its second half the urban Indian landscape of relocation. The engine of congressional termination and relocation policy was House Concurrent Resolution 108. Couched, as Allotment had been, in the classical liberal language of individualism (Indians ‘should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians’ (cited in Getches et al. 1998: 205–6)), the policy, implemented incrementally through distinct congressional acts, resulted in the further erosion of tribal sovereignty not only through the termination of ‘approximately 109 tribes and bands’ and the loss of ‘about 3.2 per cent’ of trust land (ibid.: 209) but through the transfer of areas of tribal and federal jurisdiction, such as criminal law, to particular states (ibid.: 208). ‘Although the great majority of Indian spokesmen were opposed to the legislation’ (ibid.: 207), it went forward. ‘Termination’, Getches et al. emphasize, ‘stands as a chilling reminder to Indian peoples that Congress can unilaterally decide to extinguish the special status and rights of tribes without Indian consent and without even hearing Indian views’ (ibid.: 204).

But Termination also provoked pan-tribal resistance and by the early 1960s
the policy had reached its limit. The official end of Termination is typically marked by a speech given on 8 July 1970 by President Nixon, ‘calling for a new federal policy of “self-determination” for Indian nations’ (ibid.: 224–6). The period from 1970 to the present is conventionally titled in the histories as the ‘era of self-determination’ but this, to borrow a terminological distinction from Vine Deloria, Jr. and Clifford Lytle (1984: 244), is to confuse ‘self-determination’ with ‘self-governance’, and even the latter modification, if not read critically within the (post)colonial history I have been sketching, will tend to give the appearance that this history has been superseded, which it decidedly has not, either in economic or political terms. While, since 1934, the BIA has increasingly been staffed by Indians, including most recently its commissioners, so that today its personnel is well over 90 per cent Native, the bureau, as it always was, an arm of federal policy. As the statistics I have cited indicate, Indian country remains substantially underdeveloped, in the classic colonial meaning of the term, which includes corporate and governmental exploitation of its minerals, grazing lands, forests, and water. The plenary power of Congress, which authorizes this underdevelopment, remains undiminished.

Over the last fifteen years or so Native American studies in the United States has, in significant instances, provided various arguments for situating the field within the purview of the postcolonial. Elizabeth Cook-Lynn, to take a significant voice from the ‘nationalist school’ of US Native studies (see note 2), has called for an end to a ‘postcolonial incoherence on the part of writers who claim to be indigenous people’ (1996: 83). From Cook-Lynn’s perspective, as articulated in her essay ‘The American Indian fiction writers: cosmopolitanism, nationalism, the Third World, and First Nation sovereignty’, which I have just cited, such ‘postcolonial incoherence’ manifests itself in a ‘cosmopolitan’ or ‘hybrid’ (ibid.: 83–4) approach to Native literatures that deracines them from the ‘nation’, understood not as the European nation-state but as the indigenous tribal community ‘rooted in a specific geography (place)’ (ibid.: 88). In this interpretation, Indian nationalism, then, is the recognition of the histories of sovereign Indian nations that begin before contact. (Vis-à-vis my earlier comments, the use of the vocabulary of the ‘nation’ here strikes me as at once strategic, within the history of US colonialism in Indian country, and potentially anachronistic, within a pre-contact Native history of radically decentralized kinship-based communities where the vocabulary of international law would have literally made no sense (see note 3).) Within the colonial context, Cook-Lynn insists, it should be the task of Native literatures, a task they have by and large failed in her estimation, to project a vision of the ‘decolonization’ (ibid.: 89) of these nations.
For Cook-Lynn the novel that comes closest to achieving this task is Leslie Marmon Silko’s *Almanac of the Dead*: ‘Perhaps the most ambitious novel yet published by an American Indian fiction writer which fearlessly asserts a collective indigenous retrieval of the lands stolen through colonization’ (ibid.: 89). Yet even this ‘most ambitious’ attempt at achieving ‘the nationalist’s approach to historical events’ ‘fails’ Cook-Lynn’s rigorous requirements for postcolonial coherence because it does not take into account the specific kind of tribal/nation status of the original occupants of this continent. There is no apparatus that allows the tribally specific treaty-status paradigm to be realized either in Silko’s fiction or in the pan-Indian approach to history. (ibid.: 93)

While in ‘The American Indian fiction writers’ Cook-Lynn engages the vocabulary of postcolonial studies and calls for Native nations to be understood within the colonial histories of the ‘Third World’, in an essay published shortly afterward (1997b) and in a passage already cited she understands the institutionalization of postcolonial studies, its praxis, as posing a threat to the coherence of Native American studies:

In the past twenty or thirty years, postcolonial theories have been propounded by modern scholars as though Native populations in the United States were no longer trapped in the vise of twentieth-century colonialism. . . . For American Indians, then, and for the indigenes everywhere in the world, postcolonial studies has little to do with independence, nor does it have much to do with the actual deconstruction of oppressive colonial systems. (1997b: 13–14)

That is, as Cook-Lynn understands the situation, postcolonial studies, whether through ignorance or neglect, has been oblivious to the precise colonial situation of Native communities (the situation embedded in federal Indian law), thus exhibiting the very amnesia against which the field would seem to be posited.

While Cook-Lynn’s paradigm for a US Native American postcolonial literary studies rejects a cosmopolitanism, which she equates with assimilation to western cultural institutions and their agendas, Arnold Krupat, in what is one of the earliest attempts to discuss US Native American literatures in a postcolonial context, projects the category of cosmopolitanism as the most progressive form that US Native American literatures might take, a form that would put them in dialogue with other national literatures around the globe ‘not to homogenize human or literary differences but to make them at least mutually intelligible’ (Krupat 1989: 215–16).

It is important to note that, in imagining a cosmopolitan literary universe as a ‘complex interaction of *national* literatures’ (ibid.: 216, emphasis added),
Krupat’s use of the ‘national’ at this juncture references the western nation-state and its cultural institutions, whereas for Cook-Lynn, who takes as her primary context the local not the global community, *national* references *tribal* (extended kinship-based communities):12

I would define the term *national literature* . . . as the *sum* of *local* (traditional, ‘Indian’), *indigenous* (mixed, perhaps ‘ethnic’), and *dominant* literary productions within the territory of the given national formations. Any national literary *canon*, therefore, will be a selection from all the available texts of these various kinds, and it may thus be thought to stand as the heterodox, collective autobiography of any who would define themselves in relation to a particular *national* identity – literature as a kind of multivoiced record of the *American*, for example. (ibid.: 215)

Even without knowing that Krupat and Cook-Lynn have disagreed in print,13 one can imagine that, for Cook-Lynn, Krupat’s cosmopolitan program is part of the problem not part of the solution, part of what she refers to as

the cynical absorption into the ‘melting pot’, [the] pragmatic inclusion in the canon, and involuntary unification of an American national literary voice. . . . To succumb to such an intellectual state is to cut one’s self off as a Native American writer from effective political action. It severs one’s link not only to the past but to the present search by one’s native compatriots for legitimate First Nation status. (Cook-Lynn 1996: 96)

Between these two postcolonial programs for US Native American literary studies, we find the use of *exactly* the same set of terms, *national* and *cosmopolitan*, with precisely opposed meanings or political valences ascribed to each. What Krupat terms the ‘indigenous’, for example, is, one can imagine, from Cook-Lynn’s perspective already a cosmopolitan corruption of the term:

*Indigenous literature* I propose as the term for that form of literature which results from the *interaction* of local, internal, traditional, tribal, or ‘Indian’ literary modes with the dominant literary modes of the various nation-states in which it may appear. Indigenous literature is that type of writing produced when an author of subaltern cultural identification manages successfully to merge forms internal to his cultural formation with forms external to it, but pressing upon, even seeking to delegitimate it. . . . Indigenous literature exists not only in the Americas, of course, but globally. (Krupat 1989: 214)

Krupat’s notion of indigenous literature as a cosmopolitan form ‘even seeking’ the ‘delegitimat[ion]’ of ‘traditional’, or ‘tribal’, forms certainly runs counter to Cook-Lynn’s conception of the indigenous, just as her conception surely resists Krupat’s ‘utopian’ construction of a cosmopolitan canon.
What accounts for the radical differences between Cook-Lynn’s and
Krupat’s agenda for Native American studies, and the fundamentally
different grounds of argument they represent in the field? For Cook-Lynn,
this ground is first of all political in the activist sense of the word: specifically – as articulated in 1970 at the First Convocation of American Indian
Scholars at Princeton University but since then in her estimation betrayed by
a host of institutional arrangements within the academy – Native American
studies begins as a plan to build an autonomous field that would link scholar-
ship to social action on behalf of Native communities, particularly around
the central issue of indigenous land and sovereignty within that land (1997b).

For Krupat, on the other hand, the ground is first of all cultural, which is
not to deny a political valence to Krupat’s understanding of culture but never-
theless to call attention to the way he contains that valence within certain
institutional parameters. ‘Disciplinary “parameters” and political boundaries
have much in common, to be sure’, Krupat states in ‘Scholarship and Native
American studies: a response to Daniel Littlefield, Jr.’. ‘But disciplinary
parameters . . . are somewhat less constrained by their material historicity –
i.e., their real institutional existence in the academy – than are political
boundaries’ (Krupat 1993: 91). One can well imagine Cook-Lynn disagree-
ing with this statement. So, while in his essay ‘Criticism and Native American
literature’ (1996: 1–29) – a revision of the essay just cited – Krupat offers
statistics to explain the beleaguered state of Native academics and elaborates
a political idea of Indian sovereignty derived from the work of Vine Deloria,
Jr. and Clifford Lytle, it is in passing on to a critique of Native ‘cultural’ or
‘intellectual sovereignty’,14 which is his central interest, that he briefly
engages the politics in the larger Indian community, beyond the cultural insti-
tution of Native American studies. Although Krupat is interested in engaging
Cook-Lynn on the issue of ‘intellectual sovereignty’, nowhere does he choose
to engage her on the relation of cultural politics (teaching and writing about
Native American literatures in particular) and social action in the reservation
communities, which are represented in Native literary texts but typically,
because of the colonial underdevelopment of Indian country, radically under-
represented in the cultural institutions in which these texts are produced and
circulated. One could argue that for Cook-Lynn it is precisely this relation
that is crucial, at least in theory, so that not to engage it is to be operating
on altogether different ground. Just how different can be read in Krupat’s
transnational interpretation of Silko’s Almanac of the Dead, which he uses
as an occasion to call Cook-Lynn’s nationalist reading of the novel, which I
have cited in a somewhat revised form, into question:

my sense of Almanac’s commitment to ‘a transnational rather than a national soli-
darity’ once more puts me at odds with Elizabeth Cook-Lynn, who claims that the
book ‘insists upon the nationalist’s approach to historical events’ in its creation of
our [Indian] minds’ (1998: 16), which means wresting Native studies from the ‘alien control’ of ‘non-indigenous scholars’ (ibid.: 17) and ‘develop[ing] a new branch of Native American Studies, perhaps known as Americanology... This would be the integrated holistic study of ancient American history [by which Forbes means indigenous history throughout the Americas] from an American indigenous perspective’ (ibid.: 19). There are problems with this formulation, not the least of which is the assumption of a single, unified ‘American indigenous perspective’ and the edging towards a simple opposition between ‘us’ and ‘them’ grounded in the dubious equation that being = knowing. Deloria’s point in the essay cited above is that the academic turf wars in Native studies are distracting Native scholars from the historic turf wars waged between the federal government and Indian tribes, where their talent and resources are needed.

‘a Pan-Indian journey toward retribution’. But Cook-Lynn’s very next sentence admits: ‘[Almanac] fails in this nationalistic trend since it does not take into account the specific kind of tribal/nation status of the original inhabitants of this continent. There is no apparatus for the tribally specific treaty-status paradigm to be realized either in the Silko fiction or in the Pan-Indian approach to history.’ But surely this is to recognize that Almanac is not so much failing in its nationalist approach as simply not taking such an approach at all. Almanac is not only committed to Pan-Indianism rather than tribal nationalism – as Cook-Lynn herself realizes – but also is committed to a kind of Pan-Americanism, in which all those who adhere to tribal values of life and healing may join, regardless of blood quanta or enrollment cards. (Krupat 1996: 54)

In their readings of Silko’s Almanac of the Dead Krupat and Cook-Lynn reach a kind of perverse accord: the nationalist approach is, finally, not functional in the novel, which winds up emphasizing transnationalism in the form of pan-Indianism. I stress perverse because clearly their accord is a discord. For Krupat, what he reads as Silko’s transnationalism is a positive effect of the novel in keeping with his cosmopolitan vision, while for Cook-Lynn it marks the novel’s ultimate failure to ground itself in what she defines as Native nationalism. As a Native scholar-critic committed to an activist agenda for Native American studies, Cook-Lynn, it must be clear by now, has a specific political agenda into which she appears to want Native American literatures to fit as didactic advocates. In order to play their part in this agenda, these literatures must ‘take into account the specific kind of tribal/nation status of the original occupants of this continent’ so that ‘the tribally specific treaty-status paradigm [can] be realized’. On the other hand, Krupat’s agenda is decidedly cultural. That is, at the particular moment represented by the passage I am considering, Krupat is interested in emphasizing a particular postcolonial paradigm of reading: the transnational.

To an important degree, Krupat finds himself ‘at odds with Elizabeth Cook-Lynn’ because he is not engaging her on the activist grounds on which her argument is constituted, but instead trying to engage her on his cultural grounds. I might add that at least Krupat is trying to engage with Cook-Lynn’s ideas, whereas Cook-Lynn, when she has mentioned Krupat, has not engaged with his work, at least directly, in any substantial way (see note 13), even to point out that, perhaps, he is not engaging with her work on what she understands to be its own terms. This radical difference in ground of argument (in topos or place) between Krupat and Cook-Lynn epitomizes the radical difference over issues of method within Native American studies between nationalists and transnationalists or cosmopolitans. This difference, I would argue, is an effect of the colonial history that I sketched in the first part of this essay. In particular, I understand it as an effect of the identity politics that emerge with particular force in US v. Rogers (1846), in which,
as noted, the opposition Indian/white was racialized, that is, essentialized or
naturalized, by the Court. When, in a passage cited previously, Cook-Lynn
refers to the ‘postcolonial incoherence on the part of writers who claim to be
indigenous people’ (emphasis added), she raises questions, which she does not
answer, about what she considers legitimate claims to an Indian identity
might be. Whatever her intentions in this matter, her use of the word claim
in this context, with its judgmental tone, cannot help but conjure the federal
government’s ongoing colonial interventions in the definition of Indian
identity.

Further, Cook-Lynn’s reference to the ‘postcolonial incoherence’ of these
claimants sets up an opposition between nationalists and transnationalists/
cosmopolitans, between tribal and pan-tribal Indians, which Krupat, focused
on Cook-Lynn, repeats in its oppositional form. But for the moment let us
repeat these terms not oppositionally but dialectically. For the transnational
cannot articulate itself except through national situations; the global is
grounded in the local because it needs a place to give it form – there is no
simply global place. This dialectic, rather than the opposition, between the
national and the transnational seems to me to drive the structure of
Almanac’s vision of pan-Indian revolution in the Americas. For in the novel
the transnational bases itself, in the first and last instances, in local sites:
Mexico, and the United States; Laguna Pueblo (the site of uranium poison-
ing fostered by cold-war corporate/government exploitation of Indian land
(Silko 1991: 34)); Sonora (the site of the Mexican government’s massacres of
Yaqui Indians ‘who refused to acknowledge the Mexican government or to
pay taxes on their land’ (ibid.: 190)); Tucson (where Geronimo signed his
surrender (ibid.: 79–80) and Yaquis fled to escape the massacre); and Tuxtla
Gutierrez (the capital of Chiapas, where Silko’s revolutionary Mayan Indians
organize the villages).

Within these locales, Almanac takes a decidedly national approach to its
transnational vision, national in both the Native and nation-state sense of the
word. Within this nationalist approach, it displays an ‘apparatus’ for what
Cook-Lynn terms ‘the tribally specific treaty-status paradigm’. Here, for
example, is Calabazas, a Mexican/Yaqui smuggler/dope dealer from Tucson,
articulating the south-western aspect of the ‘treaty-status paradigm’:

The whites came into these territories, Arizona. New Mexico. They came in, and
where the Spanish-speaking people had courts and elected officials, the americanos
came in and set up their own courts – all in English. They went around looking at
all the best land and where the good water was. Then they filed quiet title suits.
Only a few people bothered to find out what the papers in English were talking
about. After all, the people had land grants and deeds from the king of Spain. The
people believed the Treaty of Guadalupe Hidalgo protected their rights. They
couldn’t conceive of any way they could lose land their people had always held.
They couldn’t believe it. Some of them never did. Even after it was all over, and all the land and water were lost. (Silko 1991: 213)

Calabazas narrates a condensed legal history of Pueblo struggles for land rights, which eventuated in the Pueblo Lands Act in 1924, placing Pueblo land titles ‘in trust’ to the federal government. The Act at once consolidated Pueblo lands in order to settle and end further Anglo land claims, but it did so by turning the pueblos into reservations, thus bringing them under the colonial regime of federal Indian law; it is in this sense, but only this sense, that Calabazas is right in claiming that ‘all the land and water were lost’ (see Cohen 1988 [1941]: 383–400). The Pueblos are the only Indians in the United States who remain on their original land base, however diminished by Spanish, Mexican, and US invasion.

Almanac of the Dead, then, displays a keen interest in the national issues of US federal Indian law, as well it might, because, as Silko herself narrates, her development as a writer began during her brief stint in law school, where she recalled that, when she ‘was only five or six years old [and her] father was elected tribal treasurer’ (Silko 1996: 18), Laguna Pueblo was pursuing a land claims case:

I should have paid more attention to the lesson of the Laguna Pueblo land claims lawsuit from my childhood: The lawsuit was not settled until I was in law school. The US Court of Indian Claims found in favor of the Pueblo of Laguna, but the Indian Claims Court never gives back land wrongfully taken; the court only pays tribes for the land. The amount paid is computed without interest according to the value of the land at the time it was taken. (ibid.: 19)\footnote{Contra Silko, the Indian Claims Commission did award interest in the case of the Sioux claim for the wrongful taking of the Black Hills (Wilkins 1997: 224–5). Getches et al. note that exceptions to the ‘no-interest’ rule ‘require interest payments under some circumstances, such as when a Fifth Amendment taking is involved’ (1998: 281), which was the case in the Sioux claim.}

The Laguna people – and this is typical of the Indian response across communities – did not want money; they wanted their land. Ultimately, from this response, Silko understood ‘that injustice is built into the Anglo-American legal system’ (ibid.: 19), and she decided to leave law school and pursue a career in literature and the arts: ‘I decided the only way to seek justice was through the power of the stories’ (ibid.: 20). But her sojourn in law school was far from a waste of time: ‘It seems to me there is no better way to uncover the deepest values of a culture than to observe the operation of that culture’s system of justice’ (ibid.: 20).

If we were looking for a figure of Silko in Almanac, we would, I think, have to focus on ‘Wilson Weasel Tail, Poet Lawyer’ (1991: 713), who appears near the end of the novel at ‘the International Holistic Healers Convention in Tucson’ (ibid.):

Weasel Tail was Lakota, raised on a small, poor ranch forty miles from the Wounded Knee massacre site. Weasel Tail had dropped out of his third year at
UCLA Law School to devote himself to poetry. The people didn’t need more lawyers, the lawyers were the disease not the cure. The law served the rich. The people needed poetry; poetry would set the people free; poetry would speak to the dreams and to the spirits, and the people would understand what they must do. (ibid.)

Weasel Tail appears at the convention ‘not as a lawyer-poet’ but ‘as “a Lakota healer and visionary” ’ (ibid.: 716); and yet we learn from Lecha (one of the central characters in the novel), who listens raptly to Weasel Tail’s revolutionary lecture/poem on the Ghost Dance: ‘Still, Weasel Tail was a lawyer at heart; Lecha noted that he had made the invaders an offer that couldn’t be refused. Weasel Tail had said to the US government, “Give back what you have stolen or else as a people you will continue your self-destruction” ’ (ibid.: 725).

‘Lecha had met Wilson Weasel Tail on a cable-television talk show originating in Atlanta years before’ (ibid.: 713), where, before he was forcibly removed, he had seized control of the show long enough to recite a revolutionary poem about the US government’s theft of Indian land, couched entirely in the language of Anglo-American law in general and of federal Indian law in particular. It is worth quoting the poem in its entirety:

Only a bastard government
Occupies stolen land!

Hey, you barbarian invaders!
How much longer?
You think colonialism lasts forever?
Res ipsa loquitur!
Cloud on title
Unmerchantable title
Doubtful title
Defective title
Unquiet title
Unclear title
Adverse title
Adverse possession
Wrongful possession
Unlawful possession! . . .

We say, ‘Adios, white man,’ to
Five hundred years of
Criminals and pretenders
Illicit and unlawful governments,
Res accedent lumina rebus,
One thing throws light on another.
Worcester [sic] v. Georgia
Ex parte Crow Dog!
Winters v. United States!
Williams v. Lee!
Lone Wolf v. Hitchcock!
Pyramid Lake Paiute Tribe v. Morton!
Village of Kake, Alaska v. Egan!
Gila River Apache Tribe v. Arizona!

breach of close
breach of conscience
breach of contract
breach of covenant
breach of decency
breach of duty
breach of faith
breach of fiduciary responsibility
breach of promise
breach of peace
breach of trust
breach of trust with fraudulent intent!

Breach of the Treaty of the Sacred Black Hills!
Breach of the Treaty of the Sacred Blue Lake!
Breach of the Treaty of Guadalupe Hidalgo!

Res judicata!
We are at war. (Silko 1991: 714–15)

This poem, composed with legal terms, the title of federal Indian cases and treaties, is in the form of a verdict, pronounced by a trans-tribal voice, which judges the US government guilty of colonialism and hereby declares an anti-colonial war against this government, a war that by implication is both legal and just. Although Wilson Weasel Tail’s ultimate cry is transnational – a cry for all the dispossessed (Indians, African-Americans, and the poor across races and ethnicities, that is, beyond identity politics) ‘to take back the Americas!’ (ibid.: 724) – he necessarily grounds that cry, in both his Ghost Dance poem and the one under consideration, in nationalist terms, nationalist in both the Native and nation-state sense of the term. For the two senses are imbricated within the context of US colonialism structured by federal Indian law. The necessity of grounding this transnational cry in the national is that in the first instance revolutions can only take place in specific locales by overturning specific institutions, of which federal Indian law is the one on which Weasel Tail focuses here.
The ‘Marshall trilogy’, which I elaborated in the first part of this essay, is text and context evoked by Weasel Tail’s anticolonial poem, as is what Cook-Lynn terms ‘the tribally specific treaty-status paradigm’. Of the three treaties specified in the poem, which invoke the ‘treaty-status paradigm’ in general, we should note that there is no ‘Treaty of the Sacred Blue Lake’ specifically, but that in 1906 the federal government took Blue Lake from Taos Pueblo and made it part of the Carson National Forest, thereby violating one of the provisos of the Treaty of Guadalupe Hidalgo, which ‘guarantee[d] protection of all property rights recognized by Spanish and Mexican law’ (Gordon-McCutchan 1995: xvi). The lake was restored by Congress to the Pueblo as trust title land in 1970, a rare concession in the history of federal Indian law, where, as Silko notes in the autobiographical passage cited previously, money is typically offered for land the Indians traditionally consider non-fungible. In this context, Weasel Tail’s reference to ‘the Treaty of the Sacred Black Hills’ necessarily invokes the refusal of the Sioux to accept money for their most sacred ground, which in 1974 the Indian Claims Commission determined to have been illegally taken by the US government in 1877 in violation of the Fort Laramie Treaty of 1868 (Wilkins 1997: 225).

Weasel Tail’s anticolonial poem, then, invokes the colonial history of the US translation of non-alienable Indian communal lands into property; and ongoing Indian resistance to this imperial process of translation (see Cheyfitz 1993, 1997 [1991], 2000, 2001). It is this ongoing resistance, not some timeless cultural essence, that is represented by the word traditional in an indigenous context. The chant of ‘title’ (of various synonyms for ‘Doubtful title’ and ‘Defective title’) in the second stanza and the chant of ‘breach’ in the fifth invoke this national history of struggle over land/property instituted in federal Indian law by the cornerstone of the Marshall trilogy, Johnson v. M’Intosh, which from the US nation-state perspective is a lawful claim to title of all Indian lands, but from the Indian nationalist, or tribal, perspective is a decided ‘breach of close’ (‘the unlawful or unwarrantable entry on another person’s soil, land, or close’ (Black’s Law Dictionary 1990: 188)) – a breach of close that, as noted, the Cherokee nation came to the Supreme Court in 1831 to remedy in the second case in the trilogy, Cherokee Nation v. Georgia.

The third case of the Marshall trilogy, Worcester (misspelled ‘Worchester’ in the Weasel Tail poem) v. Georgia, is invoked as the first line of stanza four. As previously noted, this case triangulates the relationship between the US nation-state, Indian ‘domestic dependent nations’, and the several states. In the conclusion to his opinion, Marshall asserts:

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of
congress. The whole intercourse between the United States and this nation is, by our constitution and laws, vested in the government of the United States. (Worcester v. Georgia 1832: 561, emphasis added)

In relation to the several states, Marshall makes it quite clear that Indian sovereignty is absolute, while he appears at points in his decision to accord considerably more sovereignty to the tribes than he does in both Johnson and Cherokee Nation, terming them in one instance ‘distinct political communities, having territorial boundaries, within which their authority is exclusive, and having the right to all the lands within those boundaries, which is not only acknowledged, but guarantied [sic] by the United States’ (ibid.: 557). In a concurring opinion, however, Justice McLean references the qualification of Indian sovereignty in the first two cases of the trilogy:

At no time has the sovereignty of the country been recognized as existing in the Indians, but they have been always admitted to possess many of the attributes of sovereignty. All the rights which belong to self government have been recognized as vested in them. Their right of occupancy has never been questioned, but the fee in the soil has been considered in the government. (ibid.: 580)

Following Worcester in the Weasel Tail poem, the rest of the cases cited, which, including Worcester, span the time from 1832 to 1997, have to do with legal conflicts resulting from the triangle of sovereignties established by the Marshall trilogy and always played out at the local level, where Indian nations struggle for their land (Lone Wolf v. Hitchcock 1903), their water (Winters v. United States 1908; Pyramid Lake Paiute Tribe v. Morton 1972; Gila River Apache Tribe v. Arizona 1997),16 the sovereignty of tribal law (Ex parte Crow Dog 1883; Williams v. Lee 1959), and the right to use their natural resources in order to survive (Organized Village of Kake v. Egan 1962). As the Weasel Tail poem tells us, though, the game is rigged in favor of the colonial power, which stages the game. Lone Wolf – already cited in the first part of this essay, and appearing conspicuously in the fourth stanza of the Weasel Tail poem because, articulating the doctrine of ‘plenary power’, it collapses the triangle of sovereignty implied in Worcester and articulated in the other cases – shows the government’s hand by asserting the virtually absolute power of Congress to keep the game under its control. Hence the inevitability of the declaration of ‘war’ that concludes the poem.

I have sketched the beginnings of a reading of Almanac of the Dead. To continue the reading would require an understanding of federal Indian policy in Mexico, and a comparison of it to US policy. This is how a transnational reading of the novel would proceed – from its nationalist bases, both nation-state and Indian nationalist, including not only Native resistances to and collaboration with nation-state policy, but the historic interaction of other
political/ethnic groups in these conflicts. Silko, for example, is centrally interested in *Almanac* in the historic collaboration of Africans and Indians in revolutionary Maroon communities.

But I also sketch here, or suggest a way of reading, the corpus of US Native American literatures from the era of Apess to the era of Alexie. While I cannot claim that every piece of these literatures is law-bound the way *Almanac* is, I am prepared to argue that federal Indian law provides at this moment the crucial missing context in the articulation of a US Native American literary history. That is, because of their ongoing (post)colonial context, it makes no *sense* to read US Native American literatures without reading federal Indian law. Concomitantly, following *Almanac*, because the European theft of Indian land *in the name of the law* founds the modern Americas (accompanied by the theft of Indian and African labor), it makes no sense to ground a postcolonial American studies, including the reading of all national literatures in the Americas, in anything but an historical understanding of the legal machinations of the ongoing Euro-American colonial war against the indigenous peoples of the Americas.

**Acknowledgements**

The research for this essay was accomplished with the help of fellowships from the National Endowment for the Humanities and the Society for the Humanities at Cornell University.

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