THE TROUBLE WITH TRACT D: EXPLORING INDIGENOUS DISTURBANCE OF SETTLER-COLONIALISM ON THE YAKAMA RESERVATION

by

James H. Baker

A thesis submitted in partial fulfillment of the requirements
for graduation with Honors in Politics.

Whitman College
2020

Certificate of Approval

This is to certify that the accompanying thesis by James H. Baker has been accepted in partial fulfillment of the requirements for graduation with Honors in Politics.

_____
Phil Brick

Whitman College
May 20, 2020

Table of Contents

Acknowledgements

Thank you to Bernard Forjwuor, Shampa Biswas, and Phil Brick for your support and guidance.

To Jay McLaughlin for introducing me to this topic and connecting me with critical resources and contacts.

To my family for setting encouraging me to follow my passions and providing unyielding support.

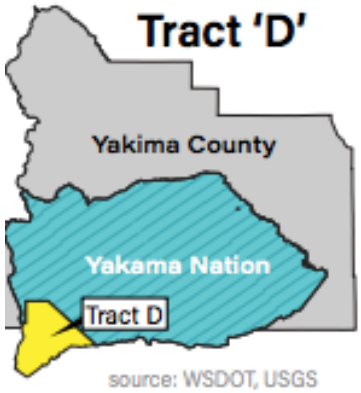
To Phil Rigdon and Dan Hathaway for sharing your perspectives.

Figures

I. Introduction

"We are tormented almost every day by the white people who desire to settle on our lands and wish to take possession of the very spots we occupy… Now we wish to know whether this is the land of the white man or the Indian. If it is our land the white man must not trouble us. If it is the land of the white man, when did they buy it?"
— William Chinook to Joel Palmer, 1853

[1] *Tract D viewed from the East*



[2] *Map of Tract D*

During the summer of 2017, I worked for a sustainable-forestry nonprofit in the small town of Glenwood, Washington that specialized in resource use and land management. During that summer, local ranchers would come to the office alleging that the Yakama Nation had seized over half of their irrigation water allocation. They voiced concerns of drought, questioning the possibility of a late-summer hay harvest and the health of their cattle. It was clear to me that their world had been turned on its head. But why had this conflict arisen? Unbeknownst to me, I had witnessed a watershed moment –

---

[1] Phil Ferolito, *Tract D Map*, August 29, 2019, Yakima Herald, Accessed April, 18, 2020, https://www.yakimaherald.com/news/local/federal-judge-glenwood-valley-is-within-yakama-reservation/article_22873f02-c4c5-50e5-b9a3-82c0d7f51ca8.html
[2] Lisa Cunningham, April 29, 2015, Goldendale Sentinel, Accessed April, 18, 2020, https://www.goldendalesentinel.com/story/2015/04/29/news/glenwood-fights-to-avoid-being-absorbed-into-indian-lands/5805.html

the disruption of an extensive history of settler-colonial domination, illicit resource extraction, and Native dispossession in the Glenwood Valley.

Located on the southeastern flank of Mount Adams, stretching south toward the Columbia River along the Klickitat watershed, lies Tract D, a 121,465.69 acre piece of land that has been the subject of contestation between the Yakama Nation and Klickitat County since the 1855 Walla Walla Treaty Council. For millennia, Tract D has provided sustenance and community to the Yakama peoples – its "flat and grassy meadows were an ideal location where multiple tribes and bands came together annually to trade, socialize, gamble, and race horses."[3] This territory was occupied and utilized by the Yakama peoples until it was settled by Euro-Americans in the 19th century, leading to the extirpation of nearly all Yakama peoples. Euro-American agricultural interests eclipsed traditional land uses, and over the next century, Tract D was entirely transformed by the settler-colonial project. Because of these dueling inhabitations, Tract D is enmeshed in the histories of settler communities like Glenwood, Washington and Tribal communities across the Yakama Reservation. Although Tract D has been occupied and controlled by Euro-Americans for over a century, the Yakama Nation is attempting to reclaim authority over the land.

Propelled by settler-colonial epistemologies of expansion, progress, and modernization, Tract D was occupied by Euro-Americans in the 19th Century. Their presence was justified and naturalized through law and space; a process that also facilitated the excision and disempowerment of indigenous peoples. While the occupation of Tract D by Euro-Americans can be historically isolated as a settler-colonial *event*, it

[3] The Confederated Tribes and Bands of the Yakama Nation v United States, *Findings of Fact, Conclusions of Law, and, Declaratory Judgment,* 9.

persists today as a *structure* – reliant on the constancy of white establishment, the on-going construction of the Yakama peoples as passive historical objects,[4] and ultimately, territoriality, defined by Patrick Wolfe as "settler-colonialism's specific, irreducible element."[5] Land and territorial sovereignty are the fundamental tenets of settler-colonial architecture within Tract D insofar as colonizers derive power from the acquisition, occupation, and manipulation of land; regulating space through colonial logic and practice. In this case, land – as opposed to human labor or capital that are central to other derivatives of colonialism – is the primary unit of analysis through which the colonizer and the colonized understand their relative positions. As such, the settler-colonial project within Tract D affords immense power and control to the occupying Euro-American communities and governments. However, this territory is *contested,* and the Yakama Nation has, throughout modern history, attempted to regain sovereign authority over Tract D. These contestations are evidence that while settler-colonial structures support Euro-American authority within Tract D, such structures are malleable; susceptible to disturbance.

In response to the modern, structural, settler-colonial occupation of Tract D, the Yakama Nation has engaged in what I argue is a multi-form, decolonial disturbance that exists in two configurations; (1) a disturbance of settler-colonial legal precedent and authority by renegotiating territorial boundaries within a Euro-American legal context; and (2) a radical refutation of the resource appropriation status-quo that disturbs

---

[4] Natchee Blu Barnd, *Native Space: Geographic Strategies to Unsettle Settler Colonialism*, First Peoples (2010). Corvallis: Oregon State University Press, 2017, 7.

[5] Patrick Wolfe, "Structure and Event: Settler Colonialism, Time, and the Question of Genocide," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History,* ed. A. Dirk Moses (New York: Berghahn Books, 2008), 108.

established settler-colonial space. In this project, I argue that these disturbances have disrupted the ontological certainty of settler-colonial law and space respectively, disaggregating the epistemological foundations of spatial/legal authority that underpin the settler-colonial project. Further, I will claim that this disturbance works toward decolonial ends, although doing so in a partial and necessarily incomplete fashion. Although my argument strays from contemporary decolonial discourses of singularity and universality, the disturbance pursued by the Yakama Nation is nonetheless an effective method of decolonizing settler-colonial establishments, and should be understood as such.

My thesis engages with primary documents, secondary documents, legal documents, and interviews. The secondary documents provide a theoretical framework for my empirical and evidentiary materials. I rely heavily on the work of Glen Coulthard, Frantz Fanon, Natchee Blu Barnd, Walter Hixson, and Mark Rifkin. These authors guided my analysis of settler-colonialism on the Yakama Reservation. The primary and legal documents provide necessary historical background and technical information through which I support my claims. For this project I interviewed Dan Hathaway, former chairman of the Hell Roaring Irrigation Company, and Phil Rigdon, Director of the Yakama Nation Natural Resource Department. Their testimonies are critical in helping me articulate a fair and accurate argument.

The organization of my argument centers around the methodology of linking and "de-linking,"[6] meaning that in order to understand the decolonial qualities of the

[6] Walter Mignolo and Catherine E.Walsh, *On Decoloniality: Concepts, Analytics, Praxis*. On Decoloniality. Durham: Duke University Press, 2018, 260.

Yakama's disturbance, one must also understand the colonial objects that are being disturbed/resisted. Therefore, both "de-linking" sections of the paper regarding decolonial spatial and legal disturbance are prefaced by "linking" sections that illustrate the epistemological origins and ontological establishment of spatial and legal colonization. I begin in section I by locating my discussion within the parameters of decolonial theory. This framework is crucial because it provides the analytical tools to identify colonial structures, and conceive of decolonial correctives. In section II, I discuss the history of settlement in Tract D, specifically articulating how Euro-American epistemologies of territory were mobilized to legally settle and assume jurisdiction. This prefaces section III where I situate the Yakama's federal court jurisdictional victory as a decolonial disturbance. I then defend the decolonial qualities of this disturbance against popular criticisms of recognition politics, offered by Glen Coulthard and Frantz Fanon. Section IV contends with Euro-American epistemologies of spatiality within the context of Tract D, centering around the acquisition and erection of settler-space through occupation and irrigation. Section V illustrates the decolonial nature of spatial disturbance through irrigation re-appropriation in the Glenwood Valley. Finally, I conclude by making a case for accepting disturbance as decolonial, arguing that "turn[ing] away"[7] from colonialism is not the only way forward – instead, pluralizing decolonial acts to include the incomplete or the partial offers opportunities to notice and celebrate the accretion of Native power and authority.

[7] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Indigenous Americas, Minneapolis: University of Minnesota Press, 2014, 154.

II. Decolonial Positioning: The Purpose and Position of Disturbance

"We must choose to see through the holes in reality, choose to perceive something from multiple angles"[8] – Gloria Anzaldúa

At present, modern decolonial theory centers around the concepts of coloniality and decoloniality that arose after the widespread and sometimes violent decolonization movements of the late 20th century. Coloniality is defined by Nelson Maldonado-Torres as "long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations. Thus, coloniality survives colonialism."[9] As Maldonado-Torres notes, coloniality refers to the veiled or naturalized iterations of colonial power that remain without classic colonial enforcement and outside of overt colonial structures. As traditional colonial arrangements were rooted out by struggles for decolonization, coloniality emerged as the new paradigm through which to view relations of power and dominance. Consistent with Torres' definition, coloniality encompasses two distinct dimensions, epistemic and ontological, both exerting power through "exploitation, domination and control."[10] The coloniality of power thus assumes a multiform structure – a nexus within which epistemic and ontological constituents permeate the "structure[s] and subjectivit[ies]"[11] of the colonized. Because of the inextricable bond between materiality and knowledge production, theorists such as

[8] Gloria Anzaldúa, *Light in the Dark, Luz en lo oscuro: Rewriting Identity, Spirituality, Reality*, ed. Analouise Keating (Durham, NC: Duke University Press, 2015), 3.
[9] Nelson Maldonado-Torres, "ON THE COLONIALITY OF BEING: Contributions to the Development of a Concept1," *Cultural Studies* 21, no. 2-3 (2007): 243.
[10] Ibid, 254.
[11] Coulthard, *Red Skin, White Masks*, 140.

Fredrick Hegel and Frantz Fanon assert that any decolonial option or "turn" must incorporate a complete shift away from colonial mechanisms of power.[12] As such, the bulk of modern de-colonial literature emphasizes the importance of initiating a "foundational break" with the colonial past and present to "radically transform the colonial power relations that have come to dominate our present."[13] Hegel referred to this as the "turn[ing] away" from all vestiges of colonialism, while many others have emphasized the importance of exclusively engaging with indigenous praxis.[14] This is due to the perception that coloniality is so deeply inscribed within hegemonic logics, linguistics, institutions, etc. that decoloniality must eschew colonialism, at once, in all of its forms. This perception lends itself to a universalizing, totalizing resistance paradigm capable of negating the hegemonic colonial superstructure – a method advocated for by decolonial scholars such as Gloria Anzaldua, Aime Cesaire and Frantz Fanon. However, to suggest that totalizing decolonial paradigms are the only methods capable of dissolving existing structures of colonial oppression and erecting egalitarian futures, is to ignore the role of partial and incomplete resistances in chiseling into the hegemonic colonial system, creating sites from which other decolonial resistances can emerge. In the words of the Uruguayan writer Eduardo Galeno, although there is romance in aspiring to dismantle systems and histories, "basta conhacerle una grieta," or, "it's enough to make a crack in it."[15] In other words, the efficacy of a decolonial project should not be determined by

[12] Ibid, 47.
[13] Ibid, 39.
[14] Ibid, 48
[15] Walter Mignoloand Catherine E.Walsh, *On Decoloniality: Concepts, Analytics, Praxis*. On Decoloniality. Durham: Duke University Press, 2018, 48.

scale alone because partial acts of disturbance can still create foundations for decolonial futures.

I intend to position the resistance posed by the Yakama Nation to the settler-colonial occupation of Tract D as an incomplete resistance, in that it does not *comprehensively* reject both colonial knowleges and realities. My primary intervention is to suggest that the project undertaken by the Yakama Nation to disturb colonial legal architectures and settler space constitutes a partial decolonial resistance that initially, challenges established settler-colonial ontologies of legal authority and spatial occupation. Those ontological disturbances lead to the disaggregation of constitutive epistemologies. Although this disturbance operates outside of the parameters of universality often asserted in modern decolonial theories, I posit that it has been uniquely effective in decolonizing the Yakama Nation. Ultimately, by understanding how these disturbances affect the settler-colonial apparatus, we might begin to embrace the project of partial and incomplete decolonization, making space for other burgeoning decolonial resistances.

III. Legal Foundations: Authorizing Settlement and Jurisdiction within Tract D

"If you do not accept the terms offered you will walk in blood knee deep"
– Governor Isaac Stevens to Yakama Chief Kamiakin, 1855

Legal History of Settlement

Historically, settler-colonial societies have authorized the extirpation of indigenous populations and the acquisition of land by appealing to supreme authorities such as divine entities, religious leaders, or legal structures. In Euro-American history, justification for colonial projects has often been achieved by utilizing Western jurisprudence. This jurisprudence is undergirded by a suite of Euro-American epistemologies that dictate how indigenous peoples can be conceptualized in a legal context. Acceptable standards of existence were defined in Eurocentric terms, inscribing "racial superiority, progress, and providential destiny"[16] into a universal jurisprudential system. This legal order incorporated indigenous peoples into a Western liberal social/moral framework that positioned Native modes of thought and being in opposition to Euro-American conventions, thus providing justification for occupation and the usurpation of authority. This relationship, forced by the Euro-Americans was "culturally imagined and legally enshrined."[17] In other words, settler-colonial law is the ontological formalization and universalization of Euro-American epistemologies of progress, white supremacy, private property, and land ownership. This legal structure was implemented to cast Native peoples, including the Yakama, as underprivileged and impotent by a European standard, justifying the expropriation of Native lands. Euro-American law was

[16] Walter L. Hixson, *American Settler Colonialism:A History*, First ed. New York, NY:Palgrave Macmillan, 2013, 7.
[17] Ibid, 6.

thus mobilized to secure access to both land and jurisdictional authority within Tract D, dispossessing and extirpating the Yakamas.

The territorial contestations between the Yakama Nation and Euro-American settlers have historically been, and are currently, mediated by law. In *Land Divided by Law* Barbara Leibhardt Wester asserts that "Euro-Americans have viewed law as their chief means of bringing Native peoples and their resources under Euro-American control. Not only did Euro-Americans use law to legitimize their domination of Native societies, law became the primary mechanism that governed relations between the two cultures."[18]

The 1855 treaty was the first consequential legal agreement between the U.S. and the Yakama Nation and was essential in facilitating Euro-American appropriation of indigenous lands. The treaty created the Yakama "tribe," a conglomeration of fourteen separate Native groups local to the Plateau region, and dictated the boundaries of a territorial reserve to which the Yakama people would have "the exclusive use and benefit of … as an Indian reservation."[19] Contained within the 1855 treaty document was a description of the reservation, which by metes and bounds provided only a general outline of its exterior boundaries. Given the ambiguity of the reservation boundaries and the complex overlapping nature of multiple federally contracted surveys, Euro-American settlers began to encroach on the intended reservation boundaries in the late 19th century. Although in part due to confusion and ambiguity, Euro-American settlement was also sanctioned by the 1855 treaty itself. As stated in Article II, "Guaranteeing… the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually

[18] Barbara Leibhardt Wester, *Land Divided by Law: The Yakama Indian Nation as Environmental History, 1840-1933*. Classic Dissertation Series. New Orleans, Louisiana: Quid Pro Books, 2014, 6.
[19] United States, *Treaty between the United States and the Yakama Nation of Indian: June 9, 1855, Ratified March 8, 1859.* Washington, D.C.]:[publisher Not Identified], 1859.

occupied and cultivated by said Indians at this time, and not included in the reservation above named."[20] By formalizing physical presence as a legal requirement for maintaining access to lands, Native Americans were subjected to Euro-American epistemologies of territory and private property, ultimately advancing the expropriation of Tract D within the reservation boundary. Other laws encouraging settlement followed the 1855 treaty. For example, the Indian General Allotment Act of 1887 divided the reservation into individually allocated sections, allowing Euro-American settlement on "un-allotted lands."[21] Seventeen years later, Congress passed the 1904 Act, allowing the "sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation."[22] Taken together, the 1855 treaty and the two laws succeeding it allowed for the "legal" settlement of the Yakama Nation by non-tribal members, collapsing the territorial sovereignty of the Yakama Nation. Moreover, these policies legalized the settlement of contested lands without consulting tribal officials, wholly subjecting the Tribe to the judicial processes and procedures of the U.S. government.

This group of legal decrees authorized the Euro-American occupation of Tract D. By 1968, 97,908.97 of the total 121,465.69 acres encompassing Tract D had been allotted to non-tribal members, demonstrating the rapid colonization of the area after the legal establishment of non-Native occupation. The formalization of Euro-American epistemologies through law, worked to justify and naturalize the settler-colonial project within Tract D.

---

[20] Ibid.
[21] Confederated Tribes and Bands of the Yakama Nation v United States, Findings of Fact, Conclusions of Law, and Declaratory Judgement, August 28, 2019, 13. https://turtletalk.files.wordpress.com/2019/08/112-dct-order.pdf.
[22] Ibid, 16.

Settler Jurisdictional Claims

In addition to facilitating physical settlement of Tract D, legal procedures were also employed by Euro-Americans to achieve federal, state, and local jurisdiction over the Yakama Nation. The practice of assuming jurisdiction over matters pertaining to Native life and governance is ubiquitous across Euro-American/Native American relationships, with origins dating back to the first Spanish voyage to the Americas. By assuming jurisdiction over tribal territories, the United States was able to legally dominate tribal peoples, resources, and lands – initiating a relationship in which Native nations were dependent. The legal foundations of jurisdictional acquisition lie in the "Doctrine of Discovery" a declaration issued by the Spanish Catholic Church in 1493[23] that, in essence, afforded "the European nation which first discovered and settled lands … the right to acquire those lands from their inhabitants."[24] This was one of the first legal sanctions of the American settler-colonial project, and served as justification for westward expansion and Native American extirpation. The assumptions of divine entitlement to land, and, as a consequence, control over native inhabitants were embraced by colonists in the 18th and 19th centuries and used to articulate a sort of legal jurisdiction over Native Americans.

U.S. Supreme Court Chief Justice John Marshall worked to further establish federal jurisdictional authority over Native American land and affairs by relying on the logic incorporated within the original Doctrine of Discovery, modified for a modern era

[23] Jaimes M. Annette, *The State of Native America: Genocide, Colonization, and Resistance*, Race and Resistance Series. Boston: South End Press, 1992, 271.
[24] Ibid*,* 143.

governed by international law. Marshall established what is known as the "Marshall Doctrine," a set of "carefully balanced logical contradictions … which allowed the U.S. to pursue one course of action with regard to Indian land while purporting to do the exact opposite."[25] The United States concealed expansionist, developmental schemes and aggressive colonial goals in discourses of benevolence, education, and paternal guidance, insisting that federal oversight would lead to wealth and success. Federal jurisdiction over Native American affairs and the Native state of dependency were established during Marshall's tenure and embodied in a series of judicial opinions, most notably *Kagama v. United States.* In *Kagama*, the Supreme Court held that "The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell"[26] The descriptors "weak," "diminished," and "protection" defined Native Americans as helpless subjects located outside of Euro-American standards of modernity. This clearly shows how assumptions of settler entitlement and errant Euro-American observations of Native peoples were mobilized to subsume Native people, land, and government under federal jurisdiction. This case law established a "trust relationship" that was further solidified through the passage of subsequent federal legislation.

First, the Major Crimes Act of 1885 contributed to this trend by authorizing the United States federal court system to assume jurisdiction over Tribal criminal adjudication of most felony charges. As such, the U.S. government sanctioned the prosecution of Native Americans in federal courts regardless of whether or not the criminal offense implicated non-Natives. Second, the General Allotment Act of 1887

[25] Ibid.
[26] United States v. Kagama, 118 U.S. 375 (1886).

justified U.S. expansion and intervention into Native affairs by reserving ultimate authority over land use and division of Native lands to the federal government. Finally, in 1954, Congress enacted Public Law 280, a federal statute that partially re-designated jurisdictional authority to states, relinquishing ultimate federal tribal oversight.[27] In the State of Washington, many civil claims and criminal offenses that took place on Native lands were signed over to state jurisdiction, further limiting the sovereign rights afforded to Indigenous Nations. Together, these extensions of the U.S. legal system mobilized epistemologies of settler entitlement and Native dependency, concretizing a hierarchical relationship in which federal/state governments held jurisdictional authority over tribal affairs and territory while still maintaining, nominal equal sovereignty.

Euro-Americans transposed ideas of entitlement and legal authority emanating from settlement and federal and state jurisdictional claims to assert jurisdictional control over Tract D. This assertion of right was primarily exercised by the governing body of Klickitat County, a political subdivision of the State of Washington that represents the interests of the unincorporated community of Glenwood, Washington. The Klickitat County Sheriff's Department noted publicly on April 11, 2016, that "we do not consider the town of Glenwood or any portion of Glenwood Valley part of the Reservation."[28] On April 23, 2015, Klickitat County Prosecuting Attorney, David Quesnel wrote that "[T]ract D is a part of Washington State and under the jurisdiction of Klickitat County… For over a century, federal, State and local governments have long-treated Tract D as being outside the Yakama Reservation and have exercised their prospective jurisdiction

[27] Annette, The State of Native America, 14.
[28] Lou Marzeles, "Klickitat Co. says Glenwood not part of Yakama Reservation," The Goldendale Sentinel, April 20, 2016.

based on this treatment.[29]As such, Klickitat County officials were operating under the assumption that Tract D was territorially controlled by the State of Washington and, as a result, legal jurisdiction was also afforded to the state. Years of settler-occupation of the Glenwood Valley as well as the construction of a body of law that legitimizes settler-colonialism – both based on Euro-American epistemologies of authority – worked to imbue the settler-colonial project in Tract D with ontological certainty and truth.

[29] Quesnel, D, (2015, April 23), RE: Yakama Nation Retrocession Petition, *Klickitat County,* Retrieved from https://www.klickitatcounty.org/DocumentCenter/View/1129/Klickitat-County-Letter---Yakama-Nation-Retrocession-Petition-PDF?bidId=.

IV. Modern Legal Conflict: Territorial Contestation and the Politics of Recognition

I am a part of Being to the degree that I go beyond it
– Frantz Fanon, Black Skins White Masks

The 1855 treaty, as well as the subsequent laws regulating territories held by the Yakama Nation such as The Major Crimes Act of 1885, The Indian General Allotment Act of 1887, the 1904 Act, and the *Kagama* decision afforded multiple state actors partial jurisdiction over the Yakama Nation. This cemented U.S. jurisprudence, a system that is "constructed by Euro-Americans to control Native societies,"[30] as the primary avenue through which the Yakama Nation could negotiate their relationship with the United States.

Within the last decade the Yakama Nation has used the judicial system to pursue numerous legal challenges regarding territorial boundaries of their reservation, attempting to reclaim sovereignty through the re-acquisition of jurisdiction and territory. Indeed, a 2019 jurisdictional challenge of legal authority within Tract D comprises one part of what I argue is a paradigm of decolonial disturbance. Insofar as the Yakama Nation was epistemologically imagined as *dependent* upon and exploitable by Euro-Americans, and ontologically constructed as such through legal theory and precedent, the Tribe is challenging the rigidity and certainty of those claims by attacking the very same structures that established them; American jurisprudence. The decolonial essence of this legal resistance might be seen as tenuous or even wholly challenged on the basis that pursuing legal ends entails obtaining recognition from the colonizer, thereby re-affirming

[30] Wester, *Land Divided by Law,* 5.

the dependent or colonial nature of the relationship. I argue however, that because the settler-colonial project is contingent upon territorial acquisition, the act of re-claiming territory from the colonizing body (even through legal channels) disturbs the concept of a dependent, exploitable Native population, thereby disturbing the continuity of settler common-sense and disaggregating the legal legitimacy of settlement.

The Legal Challenge

On November 3, 2017, and December 11, 2018, the Yakama Nation filed two separate legal actions against Klickitat County, alleging that the county unjustly exercised criminal jurisdictional authority over tribal members within tribal boundaries, violating the sovereignty guaranteed to the Tribe since the 1855 treaty. The incidents at issue both occurred within the contested territory of Tract D. The first was the arrest of an underage member of the Yakama Nation by a Klickitat County Sheriff's deputy in the community of Glenwood, Washington on the charge of statutory rape (against a non-tribal victim). The second claim involved Robert Libby, a member of the Yakama Nation, who was arrested within Tract D for "various firearms related crimes and traffic offenses by Klickitat County."[31] The two lawsuits filed by the Yakama Nation simultaneously contested the jurisdictional authority of federal and state actors as well as the precise boundaries of the Yakama Reservation. Specifically, the Tribe claimed that in 2014, when the State of Washington retroceded partial jurisdictional authority to the Yakama Nation, this meant that the state, and all constituent legal bodies such as Klickitat County, forfeited the previously held right of jurisdiction over tribal members for crimes committed within the Tribe's sovereign boundaries. The Yakama's claim to ultimate

[31] Yakama Nation v United States, 30.

jurisdictional authority was rejected by the federal court due to a clause in the retrocession proclamation maintaining that "[t]he State retains jurisdiction over criminal offenses involving non-Indian defendants and non-Indian victims." [32] In summary, this ruling held that the State was not liable in the arrest of the minor tribal member because a non-tribal member was the victim of the crime. Conversely, the Federal court declared that " Tract D… is located within the exterior boundaries of the Yakama Reservation established by the Treaty of 1855," awarding legal entitlement of Tract D to the Yakama Nation.[33] So, while the court's ruling upended the jurisdictional claims that Klickitat County officials had been asserting over Tract D, it did not afford complete jurisdiction to the Yakama Nation within Tract D. Rather, the court held that the Yakama had the same jurisdictional authority over Tract D as it had over other reservation lands. In its argument before the court, the Yakama Nation challenged the territorial infringement and settler-colonial project in Klickitat County, as well as the hierarchical legal arrangement in which the Yakama Nation was wholly subservient to U.S. structures and entities. In response to the decision, members of the Glenwood community held a town hall, inviting county commissioners to speak about further action. Concerns were voiced about "property rights, management of state lands, status of wells, hunting rights, emergency services, and continuation of county services on tribal land."[34] Residents wanted to know, were they still in control?

---

[32] The Confederated Tribes and Bands of the Yakama Nation v United States, *Order Denying Plaintiff's Motion For Preliminary Injunction*, 10, https://cases.justia.com/federal/districtcourts/washington/waedce/1:2017cv03 192/7 9 0 85/58/0.pdf.

[33] Yakama Nation v United States*,* 44.

[34] "Tract D Talk in Glenwood" *Gorge Country Media, September 5, 2019, Accessed April 23, 2020,* https://gorgenewscenter.com/2019/09/05/tract-d-talk-in-glenwood/

Thus, the territorial and jurisdictional concessions achieved through this legal challenge initiated an ontological shift in both the territorial structure and entitlement of Tract D, disturbing the epistemological foundations of settler-colonial supremacy and Native dependency that undergirded the legality of dispossession and oppression. This, I posit, is one critical segment of the Yakama's decolonial resistance.

More Than Recognition Politics

Although I argue that the Yakama's dual legal challenge of state jurisdiction and reservation boundaries was, in fact, decolonial, it would be negligent to omit a serious discussion of how this resistance could potentially re-inscribe some of the same inequality that it seeks to overcome. This method of inquiry poses the question, *can legal resistance in a hierarchically ordered structure of dominance ever be truly decolonial?* This particular legal resistance posed by the Yakama Nation could be understood to be operating within the conciliatory settler-state recognition paradigm, where, as Glen Coulthard notes in *Red Skins White Masks, "*colonial powers will only recognize the collective rights and identities of Indigenous peoples insofar as this recognition does not throw into question the background legal, political, and economic framework of the colonial relationship itself."[35] In other words, while the Yakama may have been victorious in reclaiming territory, their resistance did nothing to alter the structures of oppression that maintain asymmetrical relations of power between the Tribe and the State/Federal government. This contention is primarily rooted in Hegel's master/slave dialect and Frantz Fanon's discussion of the colonial politics of recognition.

[35] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Indigenous Americas, Minneapolis: University of Minnesota Press, 2014, 41.

As Hegel discusses in *Phenomenology of Spirit,* "self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged."[36] Human subjectivity, according to Hegel is necessarily relational, and therefore, knowledge as such is intersubjective. For Hegel, the realization of subjectivity constitutes self-determination and, to some degree, freedom.[37] However, in order for the subjectivity to elicit the potential freedom/self-determination, recognition must be afforded by a pre-established self-determining entity. Problematically, this assumes a mutual and equal ground, where both parties are understood as equivalent, deserving political actors. In the context of an asymmetrical or hierarchical relationship between two entities, Hegel argues that a "master/slave relationship" manifests, in which the slave is incapable of either giving or receiving self-determination. However, Hegel suggests some degree of reciprocity as both master and the slave seek affirmation from each other – creating a mutually dependent relationship. This allows for the possibility of inverting relations of power as the slave begins to understand his/her power through the master's quest for recognition.

Frantz Fanon and Glen Coulthard challenge Hegel's relational paradigm, arguing against a mutual desire for recognition. Coulthard notes that modern "relations of domination that exist between nation-states and the sub-state nation groups that they 'incorporate' into their territorial and jurisdictional boundaries," *do not require* recognition.[38] Fanon similarly deviates from Hegel's theory of reciprocal recognition, saying, "For Hegel there is reciprocity; here the master laughs at the consciousness of the

[36] Georg Wilhelm Friedrich Hegel, Arnold V Miller, and J. N Findlay, *Phenomenology of Spirit*, Oxford Paperbacks. Oxford: Clarendon Press, 1977, 178.
[37] Coulthard, *Red Skin, White Masks, 28.*
[38] Coulthard, *Red Skin, White Masks,* 40.

slave. What he wants from the slave is not recognition but work."[39] Transposed into a settler-state model, colonizers do not require recognition from the Native population as Hegel would suggest, they require land and resources.

However, the colonized populations still require recognition from the colonizers. Coulthard suggests that in order to temper the demands of Native peoples seeking right and ownership, freedoms and liberties are awarded (at least nominally), "by the settler-state… in the form of political rights."[40] However, because such recognition is awarded at the discretion of the colonizing body, the emancipatory potential of the colonized subject is limited to, as Fanon suggests, "white liberty and white justice; that is, values secreted by masters."[41]Similarly, the reformation of colonial wrong-doing is often addressed by the colonizer through legal avenues, allowing small victories, or moments of legal recognition before claiming that "historical 'wrong has been 'righted' and further transformation is not needed."[42] In that sense, while it is enticing to understand indigenous legal challenges, and legal victories, as decolonial because of their reclamatory potential, they can simultaneously legitimize the structures of the settler-colonial state that sponsor their oppression. Or, as Coulthard notes, the state maintains a *simulative* politics that purports to "address its colonial history through symbolic acts of redress while in actuality further entrenching in law and practice the real bases of its control."[43] This is the charge against the allure of recognition politics – it is reformative

[39] Ibid, 220.
[40] Ibid, 38.
[41] Fanon*, Black Skin, White Masks, (2011), 221.*
[42] Coulthard, *Red Skin, White Masks,* 155.
[43] Ibid.

in function, incremental in scope, and inert to structural change unless permitted by the colonial authority.

Although the repudiation of a legal recognition resistance model established by Hegel and refined by Fanon and Coulthard is damning – insistent that recognition politics only serves to further entrench colonial structures and iterations of power – it makes broad assumptions about the character of a decolonial movement that are inconsistent with my analysis. For Fanon, a decolonial resistance cannot be achieved through recognition politics because his ideal decolonial end is premised upon the attainment of self-determination – either as a group, or an individual.[44] Self-determination implies no existing dependencies on other sovereign bodies as well as freedom from domination. Following this as the primary objective, any decolonial resistance would have to universally and totally reject the epistemic/ontological characteristics of colonial oppression in order to achieve that end. For conditional self-determination is logically incoherent. Furthermore, true self-determination requires a subjective and material break with colonialism because one cannot be self-determining in faculty if he/she is not self-determining in mind. Fanon also locates a temporal aspect of decolonization by privileging violence as the most effective method for structural turnover. He notes that without violent resistance, the values and logics of the colonizer will become internalized by the colonized. For Fanon, violence offers a complete rejection and negation of colonial ontologies and epistemologies. This universal, temporally restricted, totalizing break is, for Fanon, the only method capable of "recaptur[ing] the self."[45] In this sense, the resistance posed by the Yakama Nation would

[44] Coulthard, Red Skins, White Masks, 39.
[45] Fanon, *Black Skin, White Masks, (1968),* 231.

not be deemed 'decolonial,' but likely 'reformative,' as the subject goes "from *one way of life to another, but not from one life to another*."[46] In other words, the Tribe is still under the jurisdiction of the federal government, and, to some degree, subject to state authority as well. In this sense, although their legal victory redefined reservation boundaries and re-allocated some jurisdiction to the tribe, it was afforded to them by the colonizing entity, reaffirming, in some capacity the master/slave relationship. However, a universal, totalizing, and temporally restricted decolonial resistance is not *the only* decolonial option.

In the concluding remarks of her piece entitled, *Unsettling Expectations: (Un)certainty, Settler States of Feeling, Law, and Decolonization* Author Eva Mackey asks, "Must settler law first be made unsettled and uncertain in order for a more just and decolonizing law to emerge?"[47] I believe that the Yakama's legal challenge to the jurisdiction and territorial settlement of Tract D provides an answer to this question. By transcending the Fanonian tradition of universalizing, totalizing decolonization, the Yakama's legal resistance *is,* in fact, decolonial because of its disturbance of settler norms and logics. Specifically, the primary decolonial intervention here is the disruption of what Mark Rifkin terms, "settler common sense," defined as the "the normalized legalities and geographies of settler policy" that are "predicated on the assertion of an underlying incontestable national sovereignty," and "influence everyday life in the United States."[48] Brenna Bhandar writes about a similar condition which she terms the

[46] Fanon, Black Skin, White Masks, (1968), 220.
[47] Eva Mackey, "Unsettling Expectations: (Un)certainty, Settler States of Feeling, Law, and Decolonization," Canadian Journal of Law and Society 29,no. 2 (2014), 250.
[48] Rifkin, Settler Common Sense, 14-16.

"always-already,[49] defined as the unchallenged constitutive ideologies and precedents that underpin settler-colonial states and governance, manifesting a hegemonic and homogenizing power that constructs space and subjectivity in accordance with settler-colonial expectations. Both settler common sense and always-already are intertwined with the settler-colonial jurisprudence that legitimated the occupation and governance of Tract D by Euro-Americans. This is prominent in both of the statements made by the Klickitat County Sheriff's office and the Klickitat County Prosecuting Attorney in which they claim authority over Tract D. The idea of Tract D's legitimate Euro-American ownership has been reproduced and validated many times over for more than 100 years, creating an incontestable narrative of continuous and unwavering U.S. sovereignty, reinforced by legal precedent, theory, and spatial assertion. Consequently, the legal assertion of ownership over Tract D is the ontological manifestation of this epistemological construction, a concretization of an abstraction – cemented as common-sense. Therefore, the decolonial nature of the Yakama's legal victory is in the act of forcing the colonizing body to confront its colonial history of domination and oppression through the exposure of contradictions/errors in the "legal" establishment of sovereignty within Tract D. In other words, challenging the continuity of settler law by exposing the illegitimacy of Euro-American settlement is a decolonial act precisely because the American judicial system depends upon precedent, justification, order, and *legitimacy.* Thus, the Yakama resistance did not simply appeal for recognition, it disturbed the

[49] Brenna Bhandar, "Plasticity and Post-Colonial Recognition: 'Owning, Knowing and Being'," *Law and Critique* 22, no. 3(2011): 227-49.

continuity of settler common sense, unveiling the illegitimacy of Tract D's Euro-American occupation and jurisdictional authority within the colonizer's own legal paradigm. To my point, this resistance disturbed the fixed ontological character of the Euro-American settler-colonial paradigm by altering the nature of Tract D both legally and territorially while also contesting the underlying Euro-American epistemologies of Native dependence and settler preeminence.

By acknowledging the decolonial potential of partial or incomplete resistances, we are better able to identify decolonial cracks, from which greater resistance may be established. In this case, that takes the form of partially unsettling dominant settler-colonial logics and legalities. It does not provide an overarching decolonial solution, but it does the requisite partial decolonial work. To remain within the Fanonian/Coulthardian decolonial tradition that privileges universality and totality, however, is to remain blind to the burgeoning potential of the incomplete.

V. The Establishment of Settler-Colonial Space Within Tract D

It seems that the white people has full control of that water down there and the Indians have very little voice in the water [50] *– Harvey Schuster*

Having already established how the Yakama Nation engaged in decolonial resistance by disturbing the legality of Euro-American settlement and jurisdiction within Tract D, I now turn to another dimension of the resistance paradigm – spatial disturbance. Through the radical and extra-legal re-allocation of irrigation access within Tract D, the Yakama Nation has disturbed constructions of settler space – challenging naturalized Euro-American epistemologies of land, entitlement, and purpose. Although I have previously outlined how settler-colonial *jurisdiction* was developed within Tract D through jurisprudence and ideology, this section focuses on the epistemological, legal, and material construction of settler *space* within Tract D through settlement and irrigation. By first detailing how the epistemological core of settler-colonial spatiality was concretized through the ontological production of settler space, I will be better positioned to elaborate on the nature of the Yakama Nation's spatial disturbance.

Spatial Epistemologies

Following the 1855 treaty, Euro-American settlers began to occupy land within the boundaries of the Yakama Nation, pursuing limitless growth and expansion as promised by the believed abstraction of Manifest Destiny. As mentioned earlier, this movement was justified by the homestead laws such as the Indian General Allotment Act of 1887 and the 1904 Act. However, the combination of ideology and law did more than justify settlement, it made a conclusive judgment about proper *spatiality,* land use, and

[50] Wester, Land Divided by Law, 159.

deservingness. Land that was not being cultivated, grazed, or irrigated was immediately marked by the settlers as virgin, untouched, and consequently, exploitable. The early years of settler occupation on the Yakama Nation and within Tract D helped to establish this spatiality, defining relationships between settlers, native, and land normatively, creating a "right" way to occupy space. As Natche Blu Barnd mentions in *Native Space,*

> Western spatiality [is] rooted in intentional, observable, and demarcated human interventions in the processes of the natural world… Settlers simply interpreted indigeneity as either lacking proper spatiality or without sufficient authority and moral capacity. The result was conscription of the land into settler spatial systems that erased 'other ways to relate geography and identity.'[51]

The implementation and naturalization of Euro-American epistemologies of spatiality not only facilitated the settler occupation within Tract D, and but also the troubled, inequitable distribution of natural resources, particularly water, between tribal and non-tribal entities. For Euro-American settlers, water was viewed exclusively as a resource, something to be harnessed and implemented to contribute to the modernizing settler-colonial mission. Settlers utilized water resources primarily for the irrigation of crops and for livestock since "most agriculture took place at or below the elevation of the foothills, where rainfall was insufficient to support crops, and which led non-Indian farmers to view every stream as a potential reclamation site."[52] Therefore, the Euro-American process of manipulating channels, directing flow, and moving surface water to historically arid regions, fueled by the observation that the "sagebrush specked hills of the Yakima Valley [was] proof of nature's barrenness"[53] proved to be the new normal.

[51] Natchee Blu Barnd, *Native Space*, 14.
[52] Wester, *Land Divided by Law,* 123.
[53] Ibid, 125.

Settlers aimed to change the state of nature by implementing irrigation systems that would make the dry desert "blossom like a rose."[54]Settler space in and around the Yakama Nation was constructed around labor, infrastructure, and technology, producing the foundations for a modern and progressive society. This spatial arrangement conflicted with the traditional Yakama perspective on resource development. Many Yakama initially declined to implement extensive irrigation infrastructure, instead deferring to the perennial spring and winter flood events that would bring both water and nutrients to the soil.[55] Additionally, during the early 20th century, most Yakama peoples relied on plentiful surface water to facilitate essential practices such as fishing. Removing surface water to irrigate induced attenuated water quality and impaired fish habitat. The incongruity between these perspectives became apparent as settlers began to inhabit the Yakama Reservation. With much of central/eastern Washington's water resources located within the boundaries of the Yakama Nation, tensions over rights and ownership began to arise. To resolve this epistemological conflict settlers relied on American jurisprudence to justify their spatial occupation and resource entitlement.

Legality of Space

Within the overlapping paradigm of legal authority, water rights are to be allocated to individual property owners by the state, not the federal government.[56] Although extremely complex and variable, Washington State's water law is best classified as a prior appropriation system. Essentially an irrigator achieves exclusive right to a specific quantity or volume of water by using it in a *dynamic* rather than a *passive*

[54] Benton v. Johncox, 17 Wash. 277;49 P.495 (1897).
[55] Ibid,130.
[56] Wester, *Land Divided by Law,* 125.

manner. In other words, if you can make the water do work, it is yours. Farming, livestock cultivation and development all meet this criterion. Similar to the western logic that motivated land and settlement, the Euro-American telos of modernization and progress also undergirded the allocation and use of water resources. For "as soon as the appropriator ceased to use the water 'beneficially,'[57] the water rights were lost."[58] This vision was then universalized through the idea of "beneficial use," – a relational judgment in which water was no longer allocated to *any* entity who was engaged in civilizing/modernizing practices, but to entities that held the greatest public benefit.[59] In Washington, this adherence to beneficial use ensured that water access was inextricably enmeshed in the structure of settler-colonialism, because the Yakama were less likely to use water for developmental purposes. Therefore, the enactment of a system in which ownership was achieved through use greatly advantaged Euro-Americans, allowing them to claim exclusive title to contested waters. Settlers who had acquired lands within the Yakama Reservation began to make claims on reservation water resources pursuant to state law, supplanting Native sovereignty and modes of being/knowing with land management practices emanating from Euro-American progress-oriented epistemologies.

This allocation system operated in tandem with sentiments expressed by Euro-American settlers, Bureau of Indian Affairs officials and Reclamation Service officials who repeatedly expressed the notion that "Indians could not develop their resources as quickly, efficiently, or profitably as whites," due to their insufficient "intellect, skills, and ambition to embrace civilized ways."[60] In the early 20th Century, BIA and Reclamation

---

[57] Quotes here are mine
[58] Wester, *Land Divided by Law,* 134.
[59] Ibid.
[60] Wester, *Land Divided by Law,* 142.

services worked tirelessly against their stated missions to obtain Euro-American resource access on reservations. C. F. Larrabee, Commissioner of the BIA wrote in 1908 that "These settlers certainly have equities if not legal rights against the Indians and I am heartily in favor of any settlement, which while fair to the Indians, will not wholly deprive the settlers of water for irrigation."[61] Euro-American resource access, profit, and development was privileged at all costs on both state and federal levels. As a result, the Yakama began to see their resources arrogated by the settler-colonial mission.

As Euro-American settlement continued across the United States, so did the quantity of claims filed by settlers on water resources within reservation boundaries. Many believed that state water law superseded tribal sovereignty and proceeded to access water from inside the reservation. In 1908, the U.S. Supreme Court in *Winters v. United States* refuted that belief, asserting that tribal authority superseded state authority and thus, tribes had preeminent control over water contained within the reservation. However, as noted by Wester, this decision further confused "how much water had been reserved, who had reserved it, or the relationship between the reserved water rights and vested rights under state law."[62] Ultimately, while the tribes were entitled to authority over their water resources, it was deemed necessary to accommodate the desires of Euro-American settlers. In 1983, the Washington federal district court in *Holly v. Totus* further explicated the *Winters* decision when it held that "Indian *Winters* rights reserve a paramount right to the use of as much water which is in contact with the reservation as is needed to fulfill *the primary purposes* for which the land was reserved."[63] The last clause in the above

---

[61] Ibid, 156.
[62] Ibid, 54
[63] Holly v. Totus, 655 F.Supp.548 E.D.Wash. 1983.

passage indicates that tribes do not have the ability to regulate "'excess waters,' defined as stream waters which are over and above those used to satisfy reserved *Winters* water rights."[64] This decision created a legal loophole to accommodate the settlement and irrigation of land – ultimately essentializing Euro-American epistemologies of modernity.

Irrigation and Spatial Establishment within Tract D

Access to water resources sufficient to support large-scale irrigation was requisite to the articulation of settler space within Tract-D. According to Natche Blu Barnd, settler-space is constructed through "intentional, observable, and demarcated human interventions in the processes of the natural world."[65] This is readily observable through spatial markers such as the gridded road system, U.S. Post Office, hundreds of acres of fenced, surveilled private property, and notably, miles of irrigation ditches, cattle, and hay/alfalfa cultivation. The ditches cross-cut the Glenwood Valley, delivering water to numerous private ranches, permitting irrigation throughout the dry summer and fall. Without irrigation, the settler-colonial establishment would struggle to maintain the spatial characteristics necessary for productive agriculture. Originally settled as an agricultural region, livestock cultivation and hay and alfalfa production continue to be central to the prosperity of the Glenwood Valley. According to rancher and longtime Glenwood resident Dan Hathaway, the valley is agriculturally oriented toward a "[t]ypical cow/calf type deal with pasture – you know, not any high volume high dollar crops, those went away years ago."[66] These practices are wholly reliant upon two

---

[64] Ibid.
[65] Blu Barnd, *Native Space*, 14.
[66] Dan Hathaway, interview with James Baker, February 2020.

irrigation sources: the Big Muddy Creek and Hell Roaring Creek, both also located within reservation boundaries and controlled by the Hell Roaring Irrigation Company. For the last century, Hell Roaring Irrigation Company has been drawing approximately 125 cfs from the Big Muddy and 150 cfs from Hell Roaring Creek. In the early 1900's irrigators posted "claims" on the streams, acquiring right to a specified quantity of water. According to Hathaway, "Those are the two main water sources. Both contained within the boundary of the Yakama Nation. But in the early 1900's when Washington water law had first been formed, it didn't make any difference. The State of Washington was the keeper of all water. It didn't make any difference if it was on the reservation or not."[67]

It is clear that initial irrigation efforts within Tract D were guided by a belief in the preeminence of state water law and a desire to manage the land to be spatially suitable for agricultural production. With that said, this circumstance demonstrates how Euro-American epistemologies of modernity and spatiality were animated through American jurisprudence, guaranteeing the settler-colony of Glenwood access to tribal water resources, fueling agricultural productivity for nearly a century, and ultimately contributing to the ontological reification of settler space and presence. The ability to irrigate allowed the Euro-Americans to alter the land and impress upon it visual articulations of the settler-colonial project. Dredged ditches, irrigation pivots, thick stacks of hay bales all performing the visual work of colonialism – declaring to all that *this* is how the land will look, *this* is how the water shall flow, *this* is how the people will live, *this is*, and will eternally remain.

[67] Ibid.

Ultimately the assertion of settler space creates an ontological certainty that is very difficult to break.[68] As I have established, it is born through ideology, constructed through law and then concretized in space. It is impressively inert to resistance and forestalls legal and epistemological challenges. As Mark Rifkin aptly notes, "Power is *inherently* spatial and, conversely, spatiality is *imbued* with power."[69] In the Glenwood Valley, irrigation has afforded the settler-colony the ability to establish proper spatiality, an act that alone has afforded them immense power to control local, state, and federal resources, and garner support for their settler-colonial project, ultimately giving them power over the Yakama Nation. However, by disturbing this ontological certainty through spatial rearticulation, the Yakama Nation opposed the settlement of Tract D on yet another front.

[68] Mackey, "Unsettling Expectations," 250.
[69] Rifkin, *Settler Common Sense,* 13.

VI. Spatial Resistance: Decolonial Disturbance Through Irrigation Contestation

Part of it goes back to the 1850's. And I'm sorry, I wasn't here, nobody else in the valley was there. There's nobody in the valley that has any blood on their hands. So part of this whole Indian thing is hundreds of years old. – Dan Hathaway

In this section I will examine how the restructuring of settler-space within Tract D through radical irrigation readjustment has altered Euro-American epistemologies of land use and Native authority while disrupting settler economies built upon stolen lands and resources. I then argue that this specific spatial disturbance can be understood as challenging the ontological certainty of settlement within Tract D and consequently, disconnecting settler space from its epistemological foundations. This comprises the second branch of the Yakama's partial decolonial resistance.

The modern resistance enacted by the Yakama Nation against the Euro-American irrigators in the Glenwood Valley began in the 1980's when Hell Roaring Irrigation Company, The Department of Ecology, the State of Washington, and the Yakama Nation simultaneously realized that the water right to Hell Roaring Creek and Big Muddy Creek were never properly claimed by the irrigation company. This motivated the Yakama Nation to contest the legality of the irrigation company's claim, attempting through the courts, to establish legal entitlement to subject the irrigation company to their water code – effectively securing the right to allocate water to the company. This appeal was denied in *Holly v. Totus.*[70] The irrigation company's original right was secured thereafter through a state legislative order that allowed the irrigation company to re-file its claim. This was received by local ranchers and farmers as a substantial victory because the State

[70] Holly v. Totus, 655 F.Supp.548 E.D. Wash.1983.

of Washington, the guarantor of water rights, offered legal affirmation of their water right. Hathaway noted that "Because that was one of the oldest water claims that we had, we naturally wanted to reestablish our claim and not have to go through the Tribe."[71] The legislative enactment ensured that the irrigators could bypass tribal authority in water allocation. However, the testimony against this bill by Yakama Nation representatives suggested otherwise,

> The diversion works and part of the canal system for the Hell Roaring Irrigation Company are located on closed lands on the Yakima Indian Reservation... Rather than passing this legislation, the Legislature should give the company and the Yakama Nation one year to work toward an agreement. The bill will simply result in litigation.[72]

In claiming sovereignty over the land in which the headwaters lie and threatening litigation, the Yakama Nation attempted to contest the appropriative authority of the irrigation company. Although it was unsuccessful, it positioned the Tribe to further contest the company's water right. According to Hathaway, "When we finally won that through the legislature, that was just one battle in the war. I don't think the Tribe ever forgot, or they wouldn't forget. It wasn't the outcome that they wanted so they needed to sit back and look at their next chess move."[73] Although Hathaway viewed the legal access to water right as a victory claimed in the face of an unjust, appropriative challenge, Phil Rigdon, the Yakama Director of Natural Resources, noted that it wasn't the act of *using water* that was the problem, it was the act of circumventing tribal

---

[71] Hathaway, 2020.
[72] Washington State Congress, House, Committee on: Agriculture & Rural Development, *An act relating to water rights,* February 20, 1992, https://app.leg.wa.gov/documents/billdocs/1991-92/Pdf/Bill%20Reports/House%20Historical/5389%20BRH%20NRP.pdf
[73] Hathaway, 2020.

consultation and authority on water issues by going directly to the state legislature. Rigdon noted,

> There's an irrigation project that's on the reservations that's taken water out of streams that are very connected to lands that are part of what we call the 'closed area' that we have maintained for quite a long time. And nobody goes up there except for tribal members. And we've had these folks going up there, kind of feeling like they could do whatever they want, without talking to us, without respecting us and I think that in its own right… that's colonialism – when we finally are saying wait a minute, you can't do that, they run to Congress and all these other folks. [74]

Rigdon appropriately identifies the heavy-handed, dispossessing logic of settler-colonial resource appropriation and Euro-American superiority and entitlement that informed the Glenwood Valley irrigators' response. Rigdon noted, "I think that's the tragic part why this keeps on going because they run to congressmen and all these other people so that they don't have to deal with the Tribe. Get over here and deal with us! Don't treat us like we're not part of this community."[75] Tensions arose between parties not strictly because of resource appropriation, but because of discourse, lack of cooperation, and the withholding of due recognition. Such actions and communications reflect and reinscribe the epistemological foundations of settler-colonialism that imagine Native Americans as insignificant, passive, and undeserving, and Euro-Americans as hegemonic and authoritative.

According to Rigdon, the controversy between the Tribe and the Glenwood Valley irrigators did not boil-over until 2008 when the irrigators were caught using heavy machinery to divert water from the Big Muddy. According to Rigdon, "they have for

[74] Phil Rigdon, interview with James Baker, March, 2020.
[75] Ibid.

decades gone up, taken a cat without our permission, outside of their right of way and they've done things that just seem crazy, that are not appropriate."[76] In 2016, the Tribe notified the irrigators that the road easement would not be renewed. Rigdon commented on the tribe's decision, saying, "[t]aking a cat into a river is against your own hydraulic code. Just because it's in an area where the state doesn't have jurisdiction doesn't mean you should be able to do it at all."[77] The irrigators' actions violated virtually *every* water code, including the state's and the Tribe's, and furthermore, was yet another gesture of disrespect and colonial resource imposition. In reflecting on the decision to deny further access to this diversion, Rigdon said, "this is how you'll end up in this relationship that we currently have. It's because you're treating us like what we value to be protected is not what you think it should be because you've always done it."[78] Rigdon's statements illustrate the power exerted by the Tribe's repossession of stream waters. However, it was not simply the act of reclamation that challenged and disturbed the ontological certainty of settlement within Tract-D; the real decolonial act manifested in the resulting spatial rearticulations in the Glenwood Valley.

The loss of the 125 cfs of irrigation water was a major loss to the irrigation capabilities of Glenwood irrigators. While the irrigation company still draws from Hell Roaring Creek to irrigate during the spring and early summer, the water from the Big Muddy that was previously used to irrigate crops in the dry summer months is no longer

[76] Ibid.
[77] Rigdon, 2020.
[78] Ibid.

available. According to Hathaway, that has drastically unsettled the order of things in Glenwood.

> Our ditch can typically handle 100cfs of water throughout the summer that would be kind of the average. Now we get into about the end of June and that drops to about 20 cfs. Throughout when we really need irrigation water we are probably getting less than one-fifth of our traditional water volume. There's not enough of it to go around.[79]

Hathaway claims that the tribe's reclamation of the irrigation water has cut a typical irrigated pasture season by as much as sixty percent. Hathaway also asserted that the heat stress endured by crops in the late, now unirrigated season, has affected future productivity. He estimates the change has curbed his hay production to one-third of its potential volume. However, hay is only one part of the Glenwood Valley's primary products. Hathaway continued, saying,

> [t]here's basically over 1000 head of cattle throughout the Glenwood over the summer, and if you take those calves and look at the lost poundage that they would've typically gained, it starts to get into the thousands of dollars.[80]

By cutting off access to the Big Muddy Creek, the entire structure of Glenwood's agricultural system was imperiled.

Clearly, the small act of reclaiming one wrongfully acquired irrigation right had an enormous impact on the settler-colony of Glenwood. As fields turned golden brown at midsummer and irrigation ditches baked in the dry heat, the foundational essence of "Glenwood" was uprooted from its previously fixed position, disconnected from the teleology of the settler state. Moreover, the change disturbed the spatiality, economic

[79] Hathaway, 2020.
[80] Ibid.

status, and ultimately logical continuity of the settler-colonial project. By running the fields dry, the Yakama altered the ontological character of the land within Tract D, changing it from fertile and "blossom[ing]"[81] to barren and arid, overnight. The agricultural character of the valley simply could not be maintained with less irrigation water. Given that, the physical space within the valley was transformed. This change in the Tract D's ontological nature, or representable being, directly challenged the underlying Euro-American epistemologies of unconditional fertility, cultivation, and self-sufficiency that supported the settler-colonial project. By forcing the valley to dry up, the space no longer reified, but contradicted the epistemological foundations.

Additionally, the alteration of settler space through irrigation reclamation challenged the ontological certainty of settler-economic prosperity. Luscious green fields under endlessly rotating irrigation pivots, and herds of cattle have been consistent markers of settler-colonial prosperity in Glenwood. As Hathaway mentioned, water stress cuts hay output and stunts cattle growth. Thus, the economic toll of this reclamation was highly visible, making it clear that the operation was no longer profitable. Again, this separated the settler-colonial logic of guaranteed economic prosperity from the observed reality, or rather, the observed state of being. As Couthard notes in *Red Skins White Masks "*economic toll[s] cut the hearts of settler-colonial communities and logics."[82] This ontological disturbance created a logical crisis in which agriculture could no longer co-exist with economic prosperity.

---

[81] Benton v. Johncox.

[82] Coulthard, *Red Skin,White Masks, 170.*

Ultimately by denying access to the resource that fulfilled the settler dream of modernization, productivity, and progress in the Glenwood Valley, the Tribe effectively broke the link that connected settler-colonial epistemologies and settler-colonial space, rupturing the continuity of settlement. This, in all its simplicity, was a powerful decolonial act.

VII. Decolonial Studies: The Potentiality of the Incomplete

"It's kind of ironic that ... now that the rules have been firmly established and everything, [they] don't like the rules because it's not benefiting folks, they're not allowed to do things that they had once done." – Phil Rigdon

The decolonial nature of the Yakama Nation's disturbance paradigm rests in what I argue are concurrent ontological and epistemological alterations of the settler-colonial project within Tract D. The legal victory re-designating Tract D's boundaries disturbed settler-colonial ontologies of legal authority and jurisdiction by challenging the fixity of Euro-American epistemologies that cast Native Americans as helpless and powerless. The reclamation of irrigation water disturbed the ontological character of settler space, while also challenging the fixity of underlying Euro-American epistemologies. Taken together, these disturbances worked to further the decolonial mission of restructuring relations of power that have historically oppressed and disenfranchised Native.

So, what is the utility in re-understanding these disturbances as decolonial? In part, incorporating incomplete decolonial acts into the canon of decolonial literature multiplies sites of fissure upon which further decolonial acts can be established. While such a "progression" might reach toward a specific decolonial end, such a teleology is not requisite. This way of thinking/acting transcends the colonial/decolonial binary, promoting relational assessment of *more decolonial.* This is a critical alteration to the standard that is more accommodating of modern decolonial goals that don't conform to such a binary. For instance, when asked about the decolonial nature of the Yakama's irrigation disturbance, Rigdon noted "there are a lot of Tribal members that live in the Glenwood Valley and depend upon the economy of Glenwood Valley. As a Tribal people we cannot discount that either. We're part of that community if we want it or not. It's a

reality, people live there. My relatives live there."[83] Rigdon's sentiments target the impracticality of the rigid colonial/decolonial binary. How do you decolonize when the colonizers and the colonized are linked? For Rigdon, and many others, decolonization/decoloniality doesn't specify a deterministic telos aside from achieving a more equitable and compatible relationship with non-tribal entities. He noted, "Don't treat us like we're not part of this community." In this case, a *more decolonial* arrangement might involve facilitating amicable interagency relationships, moving past the era of avoidance and circumvention. For Rigdon the resistance is absolutely partial, but nevertheless, decolonial.

Although one might categorize my academic project as an attempt to infuse plurality into the discipline of decolonial political theory, I seek further ends. There is something particular to this necessarily incomplete decolonial disturbance that is more insurgent than pluralizing. Incomplete decolonial disturbance is not just another iterative decolonial form, what it produces is critically different. Author Homi Bhabha, articulates it best, saying, "if your ontology or your genealogy is a fissured one, then where else will it get you, and how would you work through it?"[84] Partial and incomplete resistances, as I have established, are entirely capable of rupturing or creating fissures within ontologies. In doing so the colonizing body is not simply damaged or set-back, it is forced to consider Bhabha's question, "how would you work through it?" This moment of reckoning between the colonizer and the colonizing structures is an extremely powerful act with burgeoning applicability. Such a disturbance may even push the colonizing

[83] Rigdon, 2020.
[84] Gary A Olson and Lynn Worsham,"Staging the Politics of Difference:Homi Bhabha's Critical Literacy," *JAC*18, no. 3 (1998):368.

entities to confront oppressive epistemologies and to reflect on the source and origins of their knowledge. As such, while incorporating incomplete disturbances into the decolonial canon is first, practical, it is simultaneously an opportunity to embrace a powerful and distinguished potential.

Bibliography

Bhandar, Brenna. "Plasticity and Post-Colonial Recognition: 'Owning, Knowing and Being'." *Law and Critique* 22, no. 3 (2011): 227-49.

Barnd, Natchee Blu. *Native Space : Geographic Strategies to Unsettle Settler Colonialism*. Corvallis: Oregon State UP, 2017. Print. First Peoples (2010).

Coulthard, Glen Sean. *Red Skin, White Masks : Rejecting the Colonial Politics of Recognition*. Minneapolis: U of Minnesota, 2014. Indigenous Americas. Web.

Fanon, Frantz, and Markmann, Charles Lam. *Black Skin, White Masks*. First Evergreen ed. Evergreen Book. New York: Grove Weidenfeld, 1968.

Gorge Country Media. "Tract D Talk in Glenwood." September 5, 2019. Accessed April 23, 2020. https://gorgenewscenter.com/2019/09/05/tract-d-talk-in-glenwood/

Hegel, Georg Wilhelm Friedrich, Arnold V Miller and Findlay, J. N. *Phenomenology of Spirit*, Oxford Paperbacks. Oxford: Clarendon Press. 1977.

Hixson, Walter L. *American Settler Colonialism: A History*. First ed. New York, NY: Palgrave Macmillan, 2013. Print.

Jaimes, M. Annette. *The State of Native America: Genocide, Colonization, and Resistance*. Boston: South End, 1992. Print. Race and Resistance Ser.

Mackey, Eva. "Unsettling Expectations: (Un)certainty, Settler States of Feeling, Law, and Decolonization." *Canadian Journal of Law and Society* 29, no. 2 (2014): 235-52.

Maldonado-Torres, Nelson. "ON THE COLONIALITY OF BEING: Contributions to the Development of a Concept1." *Cultural Studies: Globalization and the De-Colonial Option* 21, no. 2-3 (2007): 240-70.

Marzeles, Lou. "Klickitat Co. says Glenwood not part of Yakama Reservation." *The Goldendale Sentinel.* April 20, 2016.

Mignolo, Walter, and Walsh, Catherine E. *On Decoloniality: Concepts, Analytics, and Praxis*. On Decoloniality. Durham: Duke University Press, 2018.

Olson, Gary A., and Lynn Worsham. "Staging the Politics of Difference: Homi Bhabha's Critical Literacy." *JAC* 18, no. 3 (1998): 361-91.

Quesnel, David. (2015, April 23). RE: Yakama Nation Retrocession Petition. *Klickitat County.* Retrieved from https://www.klickitatcounty.org/DocumentCenter/View/1129/Klickitat-County-Letter– -Yakama-Nation-Retrocession-Petition-PDF?bidId=.

Rifkin, Mark. *Settler Common Sense: Queerness and Everyday Colonialism in the American Renaissance*. Minneapolis ; London: University of Minnesota Press, 2014.

Washington State Congress. House Committee on: Agriculture & Rural Development, *An act relating to water rights.* February 20, 1992. https://app.leg.wa.gov/documents/billdocs/1991-92/Pdf/Bill%20Reports/House%20Historical/5389%20BRH%20NRP.pdf

Wester, Barbara Leibhardt. *Land Divided by Law: The Yakama Indian Nation as Environmental History, 1840-1933*. Classic Dissertation Series. New Orleans, Louisiana: Quid Pro Books, 2014.

Wolfe, Patrick. "Structure and Event: Settler Colonialism, Time, and the Question of Genocide," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History,* ed. A. Dirk Moses (New York: Berghahn Books, 2008).