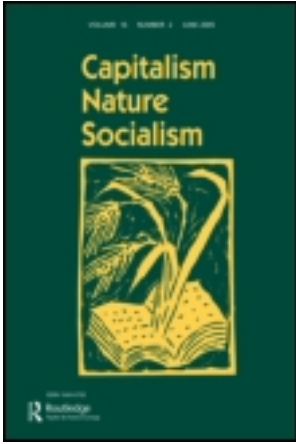


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## COMBINING AND OVERCOMING

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# Wounded Knee: Settler Colonial Property Regimes and Indigenous Liberation

Nick Estes\*

Wounded Knee has come to represent the millions of Indians who died at the hands of the United States and it represents all that is wrong with the United States' past. It represents the indigenous condition throughout the world. (Gonzalez and Cook-Lynn 1999, 83)

This essay builds upon the notion of land as wealth and examines the historical importance of the Wounded Knee site as both a site of genocide and resistance. It bridges Indigenous and Marxist perspectives by way of understanding the Oceti Sakowin Oyate's deeply anti-capitalist self-determination struggles by combining Marxist concepts and Indigenous intellectual contributions.<sup>1</sup> In reference to the Wounded Knee Massacre and the current auctioning of the site, I also aim to disrupt and denaturalize notions of settler "expectations" to right of occupancy of Indigenous lands.

The U.S. Seventh Cavalry massacre of 300 mostly unarmed Mnicounjou at Wounded Knee Creek stands as one of the most recognizable and infamous acts of genocide committed against Native people of North America—more specifically, the Oceti Sakowin Oyate (or the "Great Sioux Nation"). On February 6, 2013, James A. Czywczynski, the current white owner of the Wounded Knee Massacre site, announced he was putting the 16.19 hectares (40 acres) of property up for sale at \$4.9 million with buyer preference given to the Oglala Sioux Tribe of the Pine Ridge

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<sup>1</sup>Throughout this essay I use Native and Indian interchangeably, referring specifically to their usage in the documentation cited. Indigenous is used to reference the global and political condition of indigeneity and autochthoneity. Also, the Oceti Sakowin Oyate (literally, the Nation of the Seven Council Fires) represents the Lakota, Dakota, and Nakota speaking people. Furthermore, the use of "Sioux" is used as an equivalent to the Oceti Sakowin Oyate only when cited in documentation (i.e. "Sioux Territory" is used in the 1868 Fort Laramie Treaty) or used as legal names of tribes (i.e. Crow Creek Sioux Tribe). When not referring specifically to the documentation cited, I use Oyate to describe the "people" or "nation," in general.

Reservation in southwestern South Dakota. To justify the exorbitant price tag on the small tract of land, Czywczynksi cited the economic opportunity and historical importance of the massacre site represented to the Oyate; but, more importantly, he cited that the sale comes at the heels of the 30th anniversary of the 73-day standoff between the American Indian Movement (AIM) and the U.S. Marshalls and FBI. He stated, "We would really like to see the land returned to the Lakota people and that is why I am giving them an opportunity to purchase the land before I open it up to others for sale." Moreover, for Czywczynksi, the damage AIM caused to the property was "never repaid" and the current price "is an attempt for me to reclaim my losses, and an attempt to get fair market value for the land." (Ecoffey 2013a) In this sense, Czywczynksi and settler families equate themselves as victims of Native militancy and that profiting from selling stolen lands will somehow absolve settler theft and illegal occupancy while remunerating their perceived sense of victimization.

The sale of the Wounded Knee Massacre site, however, is not a unique phenomenon for the Oyate in recent years. In 2009, the IRS seized and put up for private auction 7,100 acres of tribal land from the Crow Creek Sioux Tribe in an attempt to remunerate back income taxes the tribe failed to pay. Eventually the Crow Creek Sioux Tribe, which is located in Buffalo County, South Dakota, the poorest county in the U.S., purchased the land back from the IRS with the help of other tribes of the Oyate (Affiliated Press 2009). Although this particular case received extensive coverage by regional newspapers, the issue, like most outrages against the criminal behavior of the U.S. colonial state, fell silent after the land was returned. Even more recently, the 785.09 hectares (1,940 acres) of land known as Pe' Sla (or Reynold's Prairie to settlers) in He Sapa (or the Black Hills to settlers illegally occupying the land) went up for private auction in August 2012 (Young 2012). Pe' Sla is one of many sacred sites in He Sapa, which the Oyate to this day reveres as the spiritual and material center of the universe. On November 30, the Oyate raised the \$9 million to purchase the site in an extensive international fundraising effort. The high price paid and the ability to quickly raise money to purchase the site also demonstrated to some like Czywczynksi that a quick buck and return on investment is in order.

Although these recent purchases of land do implicate Native Nations in the exchange and commodification of land through market economy, they must be put into context of a more complicated history of U.S. settler colonial property regimes. Dakota scholar Elizabeth Cook-Lynn notes that the current situation of many Native Nations' relationship with the U.S. settler colonial state is dictated through acts of benevolence and "legal reasoning" that seeks consent through coercion and force. Even the imposition of the 1934 Indian Reorganization Act (IRA) tribal governments is, according to Cook-Lynn, akin to furthering U.S. domestic hegemony and Native Nations seeking parity with this form "domestic colonialism" that actively discounts Wocowoyake ("true stories" or the lived experiences of the Sioux Nation) is seemingly futile. Or put differently, Wocowoyake centers returning stolen lands and addressing histories of genocide, which is beyond the reasoning of

IRA and Indian policy that favors the vested interests of U.S. colonialism and capitalist development (Gonzalez and Cook-Lynn 1999, 77, 161, 232). In this respect, Cook-Lynn takes on aspects of Antonio's Gramsci's (1971) theorizations of coercive consent and hegemony as being foundational to the creation of a type of "coerced" consent among IRA governments through the "legal reasoning" of political "consent" through the adoption of colonial manufactured political institutions. Cook-Lynn extends Gramsci's notion of consent and political and cultural/ethnic hegemony to further develop a cohesive tribal "treaty sovereign/nationalistic" critique of U.S. settler colonialism, which she extends beyond pure economic terms (Gonzalez and Cook-Lynn 1999, 77, 161, 384n38; Gramsci 1971, 52–120). Yet, Sioux IRA governments, despite the cooption of political consent among IRA governments, retain a significant land base and claims to stolen territory (i.e. practically the entire continental land base of the U.S.), currently at the center of current political and economic struggles over resources and property rights.

Furthermore, the primitive accumulation of land and the establishment of settler colonial property regimes, in effect, create the material conditions of possibility to simultaneously legitimize settler status through the protection of property rights within liberal democratic institutions of law and politics, and roots of capital as a formulaic enterprise of Native territorial dispossession. Marx's insights into colonial primitive accumulation ([1867] 1970, 915) are foundational to understanding the inherent violence of alienation from land and base colonial practices of Native dispossession. David Harvey furthers Marx's theory of capital's primitive accumulation through his notion of "accumulation by dispossession." Harvey notes that Marx viewed primitive accumulation "as a necessary though ugly stage through which the social order had to go through." Furthermore, Harvey notes that Marx "placed little if any value on the social forms destroyed by original [primitive] accumulation" and did not advocate for a return or renewal of pre-capitalist social relations or production (2010, 249). In effect, the acquisition of Native land and title through force or coercion is indeed a form of primitive accumulation that places acquired land into circulation.

Notwithstanding Marx's projection of revolutionary adaptations of the progressive aspects of capitalism and the abandonment of pre-capitalist social relations and modes of production, the Oyate, as Elizabeth Cook-Lynn emphasizes, employs aspects of cooption and resistance—neither fully one or the other, but simply defined by perpetual existence and practice of pre-colonial and pre-capitalistic social relations and ways of being and knowing. These life-ways maintain and continue ancestral ties to land and social relations that pre-empt capitalism and settler colonialism through the practice of Wocowayake. Gonzalez and Cook-Lynn writes:

for a nation of colonizing capitalists like those in charge of the United States governing and financial institutions, to return stolen lands . . . and apologize for the systemic theft which continues even today requires something beyond "legal reasoning." It requires an idealized model which will not rise out of the present

historic denial . . . How this is to be done is the challenge of our time, and, most certainly, requires new forums in which Indians may discuss and evaluate the historical contests with their colonizers. The mechanisms presently in place, according to the new historicism, are racist in origin and colonialistic in practice. (1999, 161)

### Colonial Scripts and Metaphors

Over at least the past forty years, the 1890 Wounded Knee act of genocide has become one of the most notorious massacres, and has even been imprinted on the minds of many as being the “last stand” of Native resistance to U.S. imperialism and colonization. Sculptor James Earle Fraser’s famous *End of the Trail* emboldened this image of the tragic Indian slumping on his horse literally at the end of the trail—romanticized as a noble, proud warrior race now vanishing at the hands of an insurmountable and unstoppable force. Indeed, many writers, historians, activists, artists have used the image of the Indian as both resister and defiant symbol of all things abhorrent in this new historicism of our contemporary moment—i.e., environmental degradation, global warming, global capitalism, poverty and the wealth gap, “internal colonialism,” and so on.

The culmination of events and the aftermath of the infamous Wounded Knee Massacre were consistent with the policies of elimination and tied to the dispossession of Native land and life. Preceding policies of land theft stemming from the 1877 Black Hills Act and the 1887 Dawes Allotment Act guaranteed the “legal” dissolution and fractionation of remaining “Sioux Territory” promised under federal authority through both the 1851 and 1868 Fort Laramie treaties with the Oyate. In early December 1890, leading up to the Wounded Knee Massacre, the newly formed State of South Dakota created a vigilante cowboy militia called the “Home Guard” in Rapid City under the orders of Governor Arthur C. Mellette. They massacred 75 unarmed Lakota on the Pine Ridge Reservation at what is known as the Stronghold in the Badlands and attacked and killed a hunting camp of Lakota along French Creek at Buffalo Gap (Gonzalez and Cook-Lynn 1999, App. C).

The 1877 Black Hills Act and the 1887 Dawes Allotment Act effectively “ceded” 3,642,200 hectares (9,000,000 acres) of treaty protected “Sioux Territory” to the U.S. and opened it up for settlement. After the defeat of Colonel George A. Custer’s Seventh Cavalry at the Battle of the Little Bighorn in 1876 by the allied Sioux, Cheyenne, and Arapahoe, the failure of a military defeat of the Lakota resulted in the congressional abrogation of Sioux treaties through the 1876 Appropriations Bill that allowed for the colonial settlement of the Black Hills and the ultimate coercion of a meager ten percent of Lakotas to agree to the ceding of 2,972,500 hectares (7,345,157 acres) of land. The remaining “surplus” area was opened up for colonial settlement after the Dawes Act designated tracts of land to individual Natives and their families. Furthermore, the Black Hills Act and the Dawes Allotment Act became infamously known as “sell or starve” conditions and made any

Native movement off of designated reservation area appear as an act of war upon the U.S. (U.S. Senate 1976).

The Dawes Allotment Act led to the coercive cession of 36.42 million of the 55.85 million hectares (90 million of the 138 million acres) held at the time before allotment (Deloria and Lytle 1983, 10). Furthermore, Indian land was advertised in such a way that it created certain “expectations” of non-Native purchasers of land that are still held up in the Supreme Court. Land not allotted to individual Indians and their families was advertised as “surplus” land and opened for settlement at a cheap price. In effect, Ann Tweedy identifies a distinct change in view of tribal lands during the allotment period, as property that was once considered a “birthright” thus became “public domain” and open for settlement (Tweedy 2012, 136).

Before the passage of the 1934 IRA, which stopped allotment and the wholesale selling of tribal lands, U.S. President Franklin D. Roosevelt “granted” the 16.19 hectares (40 acres) tract of land, where the Wounded Knee Massacre happened to the Gildersleeves, a non-Lakota family who opened up a trading post and Wounded Knee Museum. In 1968, the Gildersleeves sold the 16.19 hectares to the Czywczynski family who owned the site where the 1973–1974 AIM sieges occurred. After the siege and the destruction of the highly exploitative museum that profited off the site and the burning down of the church and destruction of the trading post, James Czywczynski placed a \$2.5 million price tag on the entire “business” venture, including the damages to his property, which he felt he incurred as a result of the AIM siege of Wounded Knee (Gonzalez and Cook-Lynn 1999). The hope of Czywczynski is to cash in on his claim to the land and receive remuneration for the damages, which he feels he has incurred over the years by possessing the property. Indeed, Czywczynski’s “expectations” are legally valid and protected through federal law. Since the Czywczynski’s original appraisal of \$2.5 million, he has raised the buying price to \$4.9 million to reflect an increased interest and historical importance of the massacre site to the Oyate.

For Marx, the U.S. represented a unique aspiration for soon-to-be private property owners. In essence, as a “free colony,” the majority of the land in the soon-to-be U.S. was labeled as “public property,” that is until “every settler on it can therefore turn part of it into his private property and his individual means of production” (Marx [1867] 1970, 934). It is then that the U.S. government would set an artificial price on land, impartial to settler-immigrants’ supply and demand (expectations), and compel the settler-immigrants to work to attain enough money to buy land, thus establishing a labor-debt economy that is foundational to capital’s reproduction in the colonies. It is this system, as Marx observes, which laid the foundation for settler social relations—that of slave and Native economies of property—in the New World as exported from the political economy of the Old World—that of alienation and expropriation. Furthermore, the nascent U.S. “gave” large tracts of lands to individual and corporate speculators that asymmetrically benefited from the surplus land and labor (Marx [1867] 1970, 938–940). The

fiction of “freedom” as a settler expectation in the attainment of land or private property, thus equaling political and capital enfranchisement, engages in the kind of speculative freedom through speculation of eventual property ownership—a promise hardly fulfilled to any but a select few given the short history of the U.S.

The inherent violence of such expectations as guaranteed through the speculative investment on and primitive accumulation of land as form of wealth culminated at Wounded Knee on December 29, 1890, but ostensibly did not subside. Years of war and resistance to settler incursions into Oyate homelands in South Dakota, North Dakota, Wyoming, Nebraska, Montana, and Minnesota resulted in policies of outright extermination of the Oyate (Ostler 2004 and 2010). Although the Wounded Knee Massacre was the culmination of such policies, in 1862, President Abraham Lincoln by executive order commissioned the hanging of 38 Dakota men at Mankato. The manifestation of this public display of force and power was the result of the 1862 U.S.-Dakota War, which the Dakota waged in response to the illegal encroachment and trespassing of settlers on Dakota land. To date, the “Dakota 38” hangings, as they have become more commonly known, stand as the largest mass execution in U.S. history (Waziyatawin 2008, 40). Dakota scholar and activist Waziyatawin notes the policies of active genocide against the Dakota Oyate in Minnesota represent a larger history of dispossession and ecocide. The result of the expulsion and active elimination of the Dakota Oyate also resulted in the reduction of Dakota land base from 21,860,119.63 hectares (54,017,532 acres) to about 0.006% of the original Dakota Makoce.<sup>2</sup> The active dispossession of land and the active elimination of the Dakota Oyate also represents the more insidious aspects of present-day colonialism—that of disproportionately low quality of life, high mortality rates, and the denial of basic human rights (Waziyatawin 2008, 61–62).

The historical conquest of Oyate treaty land is also an international phenomenon that implicates indigenous people within the colonial and imperial logics of property as they relate to the notions of dominance as expressed by both the Doctrine of Discovery and the Framework of Dominance, key concepts in international and domestic law both past and present. Inherent within U.S. federal Indian law is the reification of the theological Christian underpinnings of the Framework of Dominance and the expressed right of sovereign Christian nations of dominion over discovered land and people, rendering both as property of their Christian discoverers. The European Old World understanding of property, for example, originates from the Latin term *dominium*, which means absolute ownership. The infamous 1832 U.S. Supreme Court case *Johnson v. M'Intosh* ruled that the U.S. retained rights of conquest and discovery as inherited from prior European colonial powers, thus legally condoning settler transgressions into Native held territory (Permanent Forum on Indigenous Issues 2010, 4n2). The legal foundations and articulation of Native title, therefore, will always be subject to the understandings of property law as the right of absolute ownership over Native land and

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<sup>2</sup>Makoce literally translates from D/Lakota languages into “one’s land” or “the people’s land.”



people. Sustaining settler colonial property regimes is then contingent upon the continued dispossession of Native territory and title as self-perpetuating system of capital accumulation that required and still requires dispossession and active elimination.

### **Land as Wealth and the Wealth of a Nation**

The 2008 U.S. subprime mortgage crisis grounded the global economy in the real estate exchange scheme that bought and sold compound debt interests. The U.S. mythologies of home ownership came to a head when the speculative interest rates of these subprime mortgages could not be paid back because of false promises. Ironically, the stake of claiming one's future boiled down to the "promise" of home and land ownership, which inevitably crashed and the real material basis for such financial speculations arose out of the material wealth of settler society—land. Economic crisis gave way to popular unrest in the Occupy Wall Street movement and created the moniker "the 99%" in response to the overly apparent wealth gaps in the U.S. Wealth and the measure of potential wealth has been historically contingent upon the primitive accumulation of land and territory as an expansion and proliferation of capitalism. For example, even leftist propaganda about wealth inequality in the U.S. draws its analysis from the assumption that land (like wealth) should somehow be equally distributed, contrasted against the image of the territorial U.S. landmass and the wealthiest 1% and 9% owning a disproportionate amount of wealth (equated, in this sense, with the ownership of land). Eve Tuck and K. Wayne Yang argue that the irony of graphing land with monetary wealth misses the point that "Land is already wealth; it is already divided; and its distribution is the greatest indicator of racial inequality" (Tuck and Yang 2012, 24). The crisis that brought about the popular unrests of the Occupy Movement and the creation of the so-called "99%" was and is, in fact, due to the crash in home and land ownership—all of this land and property violently dispossessed from Native peoples. The fact is that land does equal wealth in the context of the U.S., and taking away land would mean little wealth left to distribute. Yet, the very foundation of wealth (both monetary and material) in the U.S. ultimately boils down to the accumulation of land through active dispossession and elimination of Native peoples (Wolfe 2006).

What must be taken into consideration, however, is that the right and access to Native lands, as described above, is contingent upon the legal fictions of the U.S. settler colonial state. Moreover, the base economy of the wealth of the U.S. is contingent upon land and the possession of land as private property. The speculative economic wealth and political enfranchisement of U.S. settler society is intrinsically bound to the market economy of land. These economic and political fictions are what fuel the legal fictions of rights and expectations of settlers. Legal definitions of Native nationhood as "domestic dependent nations," which comes from the 1830 Marshall decision, are fictional, and justice sought on behalf of these definitions are equally fictional. Cook-Lynn notes that although these are fictions, returning to

treaties as legal and material bases for Native claims to land and resources is essential. Equally so, she describes Native sovereignty and development as “not a return to the blanket days,” but instead Native land and resource development requiring restructuring and the overturning of legal fictions that invariably undermine and cause harm to Native Nations (Cook-Lynn 2012, 31–33). U.S. common law, inherited from English common law, therefore, has been used to interpret and define Native status and title in the U.S. federal legal system is built upon the fictitious creation of status and rights that repeatedly reifies the dominance and sovereignty of the U.S. through federal courts and legislation, thus manufacturing forms of consent among Native Nations.

When compared to Marx’s theorizations of fictive finance capital that depends on the exchange of money as a commodity for more money, the “legal reasoning” and fictions of the U.S. settler state, as Cook-Lynn describes, creates layers and layers of myth and settler expectations. Marx’s M-M (money begetting money) formula for financial capital and credit systems exemplifies productive fiction of money and the alienation from the material to create new social relations and capitalist expectation. In his analysis of the economic fictions of debt and finance capital, Marx writes:

Credit offers the individual capitalist, or the person who can pass as a capitalist, an absolute command over the capital and property of others, within certain limits, and, through this, command over other people’s labour. It is disposal over social capital and property of others, rather than his own, that gives him command over social labour. The actual capital that someone possesses, or is taken to possess by public opinion, now becomes simply the basis for a superstructure of credit. (Marx [1894] 1991, 570)

Moreover, Lenin furthers Marx’s critique, and states, “Imperialism, or the domination of finance capital, is that highest stage of capitalism,” which separates money capital from industrial and productive capital (Lenin [1916] 2008, 59). In this case, the further the separation of capital from the material means of production, the more the irrationality of the money economy is exposed, thus creating crises.

It appears through the analysis of Marx and Lenin that the westward settler colonial expansion of the U.S. did not exhaust itself upon the spatial limitations of territorial acquisition, but simply turned in on itself. The type of conquest and imperialism the U.S. settler state imposed upon Native Nations was not distinguished by the classic separation of colony and metropole. Actually, as Patrick Wolfe describes, “Settler colonization occurs and persists to the extent that a population sets out to replace another one in its habitation, regardless of where the colonizing population originated” (2008, 122). This should be extended to fit the economic and political modes of production in the sense that, land as spatial and commodity form replaces and re-signifies value through the elimination of Native title and populations. This process of effacing Native meaning from landscapes is economic, political, legal, and material in nature. The expectation here is that settler

political and economic interests supersede Native title and populations, if they are considered at all. The result is the production and re-production of legal and economic myths that center land as the base form of economic and political dominance and relations of settler colonial capitalism.

Economic and political arrangements between Natives and the U.S. settler government in the way that asymmetrically benefits capitalists through dispossession by primitive accumulation and “legal reasoning” is an historic relationship extended globally as the interventionism of the First World into Third World or developing countries. In effect, the economic, political, and social engineering programs practiced on the Indigenous populations were extended to the rest of the world’s “wretched of the Earth.” Yet, as Maurizio Lazzarato is quick to identify, the new expansion of capitalism as a political and economic form to developing nations is one determined through the machinations and functions of debt as a new function of power and control under neoliberalism. “Debt,” writes Lazzarato, “ignores boundaries and nationalities; at the level of the world economy, it knows only creditors and debtors” (2012, 162). For the U.S. the relationship between the Third World (or Fourth World) of Native Nations and the First World of U.S. settler society, the relationship between colonizer and colonized is one where debts are paid in blood and the continued expropriation of an Indigenous land base. Therefore, the sale of the Wounded Knee Massacre site is logical and follows the “legal reasoning” and economic fictions of the U.S. settler colonial state. The wholesale slaughter of about 300 Mniconjou men, women, and children on December 29, 1890 must be regarded as a logical elimination of Native people to ensure the political and economic acquisition of Native land and title. Furthermore, the actions of the Seventh Calvary were valorized and politically sanctioned. Eighteen Medals of Honor, the U.S. military’s highest combat award, were awarded to soldiers who perpetrated this act of genocide, more than any awarded per capita in any U.S. war and military engagement (Gonzalez and Cook-Lynn 1999, 392).

### **Conclusion: Recent Challenges to Settler Colonial Property Regimes**

In the U.S., many commentators argue that land claims, including Wounded Knee, on behalf of the Oyate, should be a focal point for the material application of the United Nations Declaration of the Rights of Indigenous People (UNDRIP). In 2012, UN human rights Special Rapporteur James Anaya visited He Sapa and met with various Native communities around South Dakota and North Dakota to listen to their concerns about various issues that affected the everyday existence of the Oyate living within the material conditions of settler colonialism. Among many of Anaya’s findings, land, namely He Sapa, is central to the Oyate’s demands on the international governing body for resolving the 150 years of occupation of treaty-specified territory (Anaya 2012, 7, 17, 18, 20, 37–40). In fact, one of the primary movers for an international redress for outstanding Indigenous land claims originated in 1974 with the First International Indian Treaty Council (IITC) at Standing Rock

that was organized around the outstanding land claims of the 1868 Fort Laramie Treaty and the illegal occupation of He Sapa and treaty designated territory (Dunbar-Ortiz [1977] 2013, 201). The IITC went on to be foundational in creating a permanent forum for Indigenous issues at the United Nations, which was also foundational in creating the framework for UNDRIP (Goldstein 2012, 238-240).

Yet many scholars, Anaya included, express serious reservations as to the effectiveness of UNDRIP for effectively ameliorating these demands for land return to the Native nations for two important reasons: 1. UNDRIP is not a legally binding document (Anaya 2012); and 2. UNDRIP primarily emphasizes Indigenous “collective” rights as individuals and not as “nations.” Cook-Lynn argues that the implication of “nation” through the use of the word “collective” is not enough. Obfuscating Native nationhood within UNDRIP and not providing legal mechanism for redress, the Oyate treaty councils that directly opposed the very mechanisms of colonial property regimes since 1890, find that the only remedy is to return to treaties made between the U.S. and Native nations (Cook-Lynn 2012, 188). Given the long history of outstanding Indigenous land claims both internationally and within the U.S. settler colonial context, there still remains no material application of UNDRIP as effecting land return to Indigenous people. Despite these deficiencies, international law does remain an option for addressing colonial occupation of Indigenous lands.

While the world waits for the material application of UNDRIP, on May 16, 2013 the Oglala Sioux Tribe decided to seize the 16.19 hectares (40 acres) of property of the Wounded Knee site under Eminent Domain. Under this action, the Tribe seeks to set in motion a condemnation procedure under its own constitution and authority, although it has yet to be determined if it has legal authority to proceed with Eminent Domain for private property owned by non-Natives (Ecoffey 2013b). The process of states seizing land through the exercise of Eminent Domain to prevent it from going into circulation does have precedent. Timothy Gibson (2010) notes several instances in which the U.S. seized land through Eminent Domain to the detriment of private interests and to the benefit of public interests. Proving the Oglala Sioux Tribe has an interest that supersedes private interest and whether or not the Tribe has the legal authority is still in question. Nonetheless, through the condemnation process, the Tribe will still be required to purchase the Wounded Knee site, if it has the authority to claim Eminent Domain, at a fair market price determined by the courts.

The history of violent settler colonial invasion and occupation of Indigenous lands that became the U.S. represents a history and economy founded on the dispossession and active elimination of Native peoples. Wounded Knee, in this sense, represents the historic and continued valuation and devaluation of Indigenous lands and life as something that is marketable and exploitable. Inherent in the very foundations of the U.S. as a settler colonial nation state is the objectification and

commodification of land. Since the 73-day standoff at the Wounded Knee site in the winter of 1973 and 1974, Lakota resistance and calls for liberation of their homelands served as vehicle for mobilizing worldwide Indigenous independence struggles. Yet, the AIM takeover and standoff with federal and tribal authorities is but one event in the longer history of Lakota and Indigenous resistance to settler colonial invasion and occupation. After the Wounded Knee siege, for instance, AIM and many tribal activists and peoples gathered in Standing Rock, South Dakota, in 1974, for the first ever IITC meeting, which spearheaded the initial charges of genocide and human rights violations against the U.S. and its coconspirators against Native and Indigenous peoples (Dunbar-Ortiz [1977] 2013).

Whether or not the Oyate can reclaim the Wounded Knee site is not as important as the larger outstanding issue of the historic criminal behavior of the U.S. and settler society as a whole. This essay has briefly touched upon key insights Marxist and Native scholars brought to light about the inherent violence of settler colonial property regimes and the manufacturing of legal fictions and expectations to occupancy. It goes without saying that the settler colonial experience of Indigenous peoples in the U.S. and the world is one marked by ongoing crises and violence that stems from first contact with European explorers and settlers. Furthermore, for Native peoples seeking justice and liberation is one of peculiarity in which the current system for restitution provides that Native people ask their colonizers and the criminals inhabiting their lands to colonize more humanely and prosecute their own criminal behavior. It is the hope, as Gonzalez and Cook-Lynn notes:

that crimes against humanity can be acknowledged by their perpetrators, that official apologies can ensue, that stolen lands and rights can be returned to tribal peoples, that colonization and enforced assimilation can be identified as among the historical crimes against humanity, and that the recognition of wrongful death can be more than just an ache in the heart. (1999, 232)

Until then, Wounded Knee remains an insoluble feeling of loss and resentment for many of the Oceti Sakowin Oyate. It is here and many other places that the U.S. continues to perpetrate criminal acts not only on the bodies of Native peoples, but to the land and environment to the point where futures are put in jeopardy. In the short history of the U.S., the phrase “Drive it like you stole it!” comes to mind.

Working outside the limits of colonial recognition as an avenue of emancipatory struggle, Glen Coulthard notes:

I think that the strategies and tactics adopted by a growing number of today’s Indigenous activists . . . have begun to explore the emancipatory potential that this type of politics offers; a politics that is less oriented around attaining an affirmative form of recognition from the settler-state and society, and more about critically reevaluating, reconstructing and redeploying culture and tradition in ways

that seek to prefigure, alongside those with similar ethical commitments, a radical alternative to the structural and psycho-affective facets of colonial domination. (2007, 456)

Indeed, the U.S. settler colonial nation state created the conditions in which political applications of redress and justice are bound in the courts and laws of the colonizers. What this essay has attempted to bridge is exactly what Indigenous and Native peoples of North America and some Marxists have been arguing: U.S. settler colonialism is based on the primitive accumulation of resources through dispossession. Furthermore, it is imperative that within the context of the U.S. and North American settler colonialism, Indigeneity becomes a tool for analysis of global capitalism and currents of U.S. imperialist projects abroad, as well as the historical legacies of U.S. settler colonialism.

## References

- Anaya, J. 2012. *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya*. August 30, U.N. General Assembly, Human Rights Council, 21st sess., A/HRC/21/47Add.1. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/162/70/PDF/G1216270.pdf?OpenElement>.
- Affiliated Press. 2009. "Crow Creek Sioux Tribe Fails to Block IRS Land Auction." *Sioux Falls Argus Leader*, December 3. <http://64.38.12.138/News/2009/017624.asp>.
- Cook-Lynn, E. 2012. *A Separate Country: Postcoloniality and American Indian Nations*. Lubbock: Texas Tech University Press.
- Coulthard, G. 2007. "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada." *Contemporary Political Theory* 6 (4): 437–460. doi:10.1057/palgrave.cpt.9300307.
- Deloria, V., and C. Lytle. 1983. *American Indians, American Justice*. Austin: University of Texas Press.
- Dunbar-Ortiz, R. [1977] 2013. *The Great Sioux Nation Sitting in Judgment on America: An Oral History of the Sioux Nation and Its Struggle for Sovereignty*. Lincoln: Bison Books.
- Ecoffey, B. 2013a. "Wounded Knee Site Put up for Sale at \$3.9m." *Native Sun News*, February 6. <http://www.indianz.com/News/2013/008419.asp>.
- Ecoffey, B. 2013b. "Tribe Moves to Seize Wounded Knee Site." *Native Sun News*, May 30. <http://www.indianz.com/News/2013/009888.asp>.
- Gibson, T. A. 2010. "Primitive Accumulation, Eminent Domain, and the Contradictions of Neoliberalism." *Cultural Studies* 24 (1): 133–160. doi:10.1080/09502380903415008.
- Goldstein, A. 2012. *Poverty in Common: The Politics of Community Action during the American Century*. Chapel Hill: Duke University Press.
- Gonzalez, M., and Cook-Lynn, E. 1999. *The Politics of Hallowed Ground: Wounded Knee and the Struggle for Indian Sovereignty*. Urbana, IL and Chicago, IL: University of Chicago Press.
- Gramsci, A. 1971. *Selections from the Prison Notebooks*. Translated and edited By Quintin Hoare and Geoffrey Nowell Smith. New York: International Publishers.
- Harvey, D. 2010. *The Enigma of Capital and the Crisis of Capitalism*. London and New York: Oxford University Press.
- Lazzarato, M. 2012. *The Making of the Indebted Man*. Translated by Joshua Jordan. Los Angeles, CA: Semiotext(e).

- Lenin, V. [1916] 2008. *Imperialism the Highest Stage of Capitalism*. New York: International Publishers.
- Marx, K. [1867] 1970. *Capital Vol. 1*. Translated by Ben Fowkes. New York: Random House.
- Marx, K. [1894] 1991. *Capital Vol. 3*. Translated by David Fernbach. London: Penguin Classics.
- Ostler, J. 2004. *The Plains Sioux and U.S. Colonialism from Lewis and Clark to Wounded Knee*. New York: Cambridge University Press.
- Ostler, J. 2010. *The Lakotas and the Black Hills: The Struggle for Sacred Ground*. New York: Penguin.
- Permanent Forum on Indigenous Issues. 2010. *Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery*. New York: United Nations Economic and Social Council.
- Tuck, E., and K. W. Yang. 2012. "Decolonization Is Not a Metaphor." *Decolonization: Indigeneity, Education & Society* 1 (1): 1–40. <http://decolonization.org/index.php/des/article/view/18630>.
- Tweedy, A. 2012. "Unjustifiable Expectations: Laying to Rest the Ghosts of Allotment-Era Settlers." *Seattle University Law Review* 36 (129): 129–188. <http://digitalcommons.law.seattleu.edu/sulr/vol36/iss1/4/>.
- U.S. Senate. 1976. *James Abourezk Sioux Black Hills, and Wichita Tribal Claims* (to accompany S. 2780) (S. Rept. 94-1042). 94th Cong., 2nd sess. Washington: Government Printing Office.
- Waziyatawin, 2008. *What Does Justice Look Like?: The Struggle for Liberation in Dakota Homeland*. St. Paul: Living Justice Press.
- Wolfe, P. 2006. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research* 8 (4): 387–409. doi:10.1080/14623520601056240.
- Wolfe, P. 2008. "Structure and Event: Settler Colonialism, Time, and the Question of Genocide." In *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by Dirk Moses, 102–132. New York: Berghahn Books.
- Young, S. 2012. "Tribes Concerned about Sale of Property near Deer Lake." *Rapid City Journal*, August 18. [http://rapidcityjournal.com/news/tribes-concerned-about-sale-of-property-near-deerfield-lake/article\\_28dd8422-49a6-59d5-a58f-911780af26b4.html](http://rapidcityjournal.com/news/tribes-concerned-about-sale-of-property-near-deerfield-lake/article_28dd8422-49a6-59d5-a58f-911780af26b4.html).