

INDIGENOUS PERSPECTIVES ON THE OCCUPATION OF
MALHEUR: COMPARING CONTEMPORARY RESPONSES
FROM INDIGENOUS AND NON-INDIGENOUS SOURCES

by

DOUG SAM

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Prof. Peter Walker

On 2 January 2016, armed militants led by Ammon Bundy seized the headquarters of the Malheur National Wildlife Refuge in Harney County, Oregon and began a month-long occupation of the refuge as part of a revived movement to pressure the federal government into transferring public lands to state and local authorities. Narratives surrounding this event center on the interests of the occupying militants vs. those of the public. This occludes the perspectives of Indigenous Americans, particularly the Northern Paiute of the Burns Paiute Tribe whose ancestors have lived in the area since time immemorial. Comparing responses contemporary to the occupation from Indigenous and non-Indigenous voices, this study frames the Malheur Occupation outside of the settler-colonial context in which it is couched. Indigenous peoples responded in a distinct, independent manner from either the occupiers or the public at large. This has often been ignored or given reduced importance in the general discourse over public lands in the American West. However, recognition of the Indigenous perspective is imperative to a comprehensive and decolonized understanding of this significant event in the American West.

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Introduction

On 2 January 2016, armed militants led by Ammon Bundy seized the headquarters of the Malheur National Wildlife Refuge (NWR) in Harney County near Burns, Oregon and began a month-long occupation of the refuge. The occupation was part of a revived movement to pressure the federal government to transfer publicly owned lands to state and local authorities. Capitalizing on the re-sentencing of Dwight and Steven Hammond, ranchers convicted of arson on federal lands in 2012 and re-sentenced to a mandatory minimum prison sentence in 2015, Ammon Bundy called for “all good Men and Women”¹ to occupy the Malheur Wildlife Refuge and thereby transform Harney County into the “first constitutional county in America.”² News organizations immediately began covering the story, as did individuals through social media, including those occupying Malheur. Nearly invariably, however, the events were framed as a conflict over the rights to own and use public lands between the federal government and the ranchers of the rural West.

The fact that public lands were created based on the taking of land from Indigenous peoples is ignored by this framing. Usually left out of this narrative are the actual original inhabitants of the land: the Northern Paiute, even as they did much to drive the popular discussion of the Malheur occupation further. The Northern Paiute people have lived in the Great Basin since time immemorial. Indeed, some of the oldest archaeological evidence of human settlement in North America has been found on

¹ Ammon Bundy, “Calling all good Men and Women to Burns, Oregon, Malheur Wildlife Refuge” *Bundy Ranch* (blog), 5 Jan. 2016. 1:40PM. <http://bundy ranch.blogspot.com/2016/01/calling-all-good-men-and-women-to-burns.html>.

² Peter Walker as quoted in William G. Robbins, “The Malheur Occupation and the Problem with History” *Oregon Historical Quarterly* 117, no. 4 (2016): 576.

traditional Northern Paiute territory. Despite a long, complex history with the land in question, the mainstream debate never decolonized the narrative of Malheur. It has been relegated to a matter of “the public” or “the government” versus the occupiers.

Evidence of this may be found by looking at the *New York Times*’ Room for Debate opinion section from 7 January 2018 asking: “Who Should Control the West?” Six guests were invited to write their take on the question. Only two mentioned Indigenous people: Louis Warren³ and Charlotte Rodrique.⁴ Even then, Warren’s take wasn’t really about “Indians” as he called them but rather about how states and settlers both rejected land like the Malheur. To decolonize the events that transpired at the Malheur, this work intends to explore the three areas of inquiry to unsettle this dichotomy:

- Is there a unique Indigenous perspective and how is it different from either the occupiers and the public at large? What are the historical contexts which inform the modern-day positions of each group (Indigenous, occupier, general public)?
- How were Indigenous concerns during the occupation received and were they reflected in the occupiers’ or public’s general concern?
- Why did the Burns Paiute Tribe reject invitations to potentially join in the occupation?

Situating the occupation in a decolonial framework recognizes the deeper, multifaceted nature of the conflict, and opens dialogue on best practices in land and cultural management in the rural west.

³ Louis Warren, “Neither States nor Settlers Wanted Ownership of Much of the Land Out West,” *New York Times*, 7 Jan. 2016.

⁴ Charlotte Rodrique, “Don’t Change the Status Quo—Unless It’s to Return Land to Tribal Control,” *New York Times*, 7 Jan. 2016.

Rationale, Theory, and Methodology

As Prof. Kari Norgaard often reminded my Environmental Justice class: “we breathe the air of settler colonialism every day.” Settler colonialism has been so deeply entrenched into the thought, ideology, and media in the United States that it is simultaneously nearly impossible to avoid on a daily basis while also feeling wholly natural to accept and not even think about as a basic tenet of the collective American reality. Few would venture to think that they are colonizers—and I dare say even fewer would even want to be. However, for those who have the privilege of benefiting from this system and its history, myself included, it is still easy to ignore that the land we stand on, the resources we extract, and the benefits we reap—be it knowledge, profit, or anything in between—are begotten from violence, erasure, and genocide of Indigenous peoples; Indigenous peoples who still collectively still feel traumatic emotion, cultural, and economic pain from this.

Even thought can be colonial. How many times have American school children been taught, or at least led to believe by the lacunae of the history presented to them, that the history of the Americas started in 1492 when Columbus sailed the ocean blue, or that Oregon’s history began when Lewis and Clark first stepped foot in the territory in 1805? Worse yet, how many believe it to be in 1843 when the first large wagon train came rumbling down the Oregon Trail or 1859 when statehood was achieved? How many of them—of us—have never challenged this version of events and accepted them as fact? As if the Taíno who Columbus raped, killed, and enslaved, or the Mandan and Clatsop who hosted Lewis and Clark during the winter, or the numerous serendipitously

friendly Indigenous nations over whose territory the Oregon Trail crossed did not have a history before they were sighted by white people!

Another example perhaps more pertinent to this thesis: who owns the public lands—and by extension how should the discourse over this question be framed? To the “average” American, it may not be difficult to conceptualize that they are, in a way, themselves the part owner. Public lands are *their own* land by way of being ostensibly *everyone’s* land. This thought perpetuates the collective forgetting of Indigenous peoples, their histories, and the genocidal efforts to destroy them so that these public lands might be created. It forgets that these lands were once used for a myriad of things besides hiking in or grazing cattle on; they were homes and hunting grounds and shrines and burial sites, sometimes used this way thousands of years.

These land uses are now largely barred and seen as antithetical to the mission of public lands. A collective forgetting of the Indigenous presence on the land enables their erasure from its history. As Ayantu Kief Israel-Megerssa has argued, a discourse of Orientalism rendered the Northern Paiutes as the “others: in their own land.”⁵ Whiteness is normalized on the land while Paiutes are perceived as foreign and deviating from the norm. Thus, traditional Paiute practices are now seen as being outside of what is acceptable and expected in these “white spaces”⁶ of public land. Decolonization forces us to reconsider who owns these “public lands,” for what reason,

⁵ Ayantu Kief Israel-Megerssa, “‘The Other’ in Their Own Land: Orientalism, Genocide, and the Northern Paiute of the Oregon Great Basin,” bachelor’s thesis, Robert D. Clark Honors College, University of Oregon, 2017, https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/22858/Final_Thesis_Israel_Megerssa.pdf. Ayantu was a classmate of mine in the same Northern Paiute History cohort. Citing the work of my fellow undergraduates is not, as I hope to show will be clear, due to a paucity of research on my part, but rather that there is no better available work due to a paucity of research into Northern Paiute history and experiences in general.

⁶ I borrow this term from Carolyn Finney, *Black Faces, White Spaces: Reimagining the Relationship of African Americans to the Great Outdoors* (Chapel Hill, NC: University of North Carolina Press, 2014).

and how it came to pass that what was once decidedly not part of the United States came to be conceptualized as collectively owned by all Americans as a part of our cultural heritage. Such are some examples of the thinking that I bring into this thesis, which will be contextualized and presented in this section.

The Gap in Knowledge

At the writing of this thesis, two years have elapsed since the occupation of the Malheur NWR. The news cycle has largely moved on, and the occupation has become enshrined as a common cultural touch point for utilization as an anecdote when convenient. Numerous academic and popular pieces have been written either about the occupation itself or about the occupation as reflective of a broader trend being examined. For example, many books and articles use the occupation as an example of a broader theme they are examining. Even as many are crucial to informing this thesis, none of them had an expressly Malheur focus.⁷ These authors find value in examining the Malheur, but only to vividly use a recent charismatic event to illustrate a more general theme.

⁷ A few examples: Linda M. Hartling and Evelin G. Lindner, “Can Systematic Humiliation be Transformed into Systematic Dignity?” in *Systematic Humiliation in America: Finding Dignity within Systems of Degradation*, Daniel Rothbart, ed., (London: Palgrave Macmillan, 2018), 31-2; Michael Kruse, “This Land is Our Land: A Public Lands Oral History,” master’s thesis, Prescott College, 2016. Sanford Levinson, ed., *Nullification and Secession in Modern Constitutional Thought*, (Lawrence, Kansas: University of Kansas Press, 2016); David Niewert, *Alt America: The Rise of the Radical Right in the Age of Trump* (New York: Verso, 2017). Hartling and Lindner’s chapter briefly discuss the Northern Paiutes in relation to the occupation, but go on to suggest “extreme individualism” as the “blinding force” driving the occupation. Levinson’s edited edition uses the Malheur to open several of the essays and to illustrate the importance of their work and Niewert devotes one chapter in 456-page tome (including extensive footnotes) to examining the Malheur. Three pages deal with the occupation outright. Kruse’s interviewees were in Texas and Arizona. Though there is a question in their interview asking if the interviewees had heard of the Malheur occupation, it appears that insufficient evidence was collected to analyze for his work and that none of the interviewees reported ever visiting the Malheur NWR, granted that in December 2016, when the thesis was submitted, the occupation wasn’t even a year old.

To see the extreme of how blasé the occupation has become, look to Gordon N. Bardos' statement before the House Subcommittee on Europe, Eurasia, and Emerging Threats for their hearing on the Balkans. In his prepared statement, Dr. Bardos provides his expert opinion on the state of the Balkan democracies and the threat of Russian plots to initiate coups in the region. Discussing a specific alleged plot to overthrow the Montenegrin government in October 2016, he concludes that it is either a hoax or "at most an amateurish exercise by a group more akin to the yahoo militiamen who occupied the Malheur National Wildlife Refuge in 2016 than a serious covert operation."⁸ Igor Lukšič, Professor of Social Science at the University of Ljubljana in Slovenia used it to open his exploration on property comparing the views of John Locke and Robert Filmer.⁹

Moving on to the scant current published scholarship produced on Malheur, much scholarship has focused on the occupiers, mostly on their legal and historical claims and positions.¹⁰ Adding to this body of work is perhaps the first book focused on the Malheur, *Vice* Journalist James Pogue's forthcoming *Chosen Country*, which

⁸ *The Balkans: Threats to Peace and Stability: Hearing Before the Subcommittee on Europe, Eurasia, and Emerging Threats of the Committee on Foreign Affairs, House of Representatives*, 115th Congress (2017), (statement of Gordon N. Bardos, PhD., President of Southeast European Research & Consulting, LLC), <https://docs.house.gov/meetings/FA/FA14/20170517/105978/HHRG-115-FA14-Wstate-BardosG-20170517.pdf>.

⁹ Igor Lukšič, "Aktualnost in Akutnost Lockove Konceptije Lastnine," *Teorija in Praksa* 53 (2016): 625-44.

¹⁰ Michael C. Blumm and Olivier Jamin, "The Property Clause and Its Discontents: Lessons from the Malheur Occupation," *Ecology Law Quarterly* 43, no. 4 (2017); Carolyn Gallaher, "Placing the Militia Occupation of the Malheur National Wildlife Refuge in Harney County, Oregon," *ACME* 15, no. 2 (2016); Joshua F. J. Inwood and Anne Bonds, "Property and Whiteness: the Oregon Standoff and the Contradictions of the US Settler State," *Space and Polity* 21, no. 3 (2017); Robbins, "The Malheur Occupation;" John C. Ruple "The Transfer of Public Lands Movement: Taking 'Back' Lands that were Never Theirs and Other Examples of Legal Falsehoods and Revisionist History," *Utah Law Faculty Scholarship* 8, (2017).

focuses on his personal interactions with the occupiers.¹¹ Notably, the University of Utah has produced a small collection of scholarship concerning public lands transfers in response to the event.¹² However, couching the event in legal terms also leaves out Indigenous voices since the arena of debate is already constructed around Euro-American values, conceptions, and ontologies of land, ethics, and ownership—all of which tend to differ significantly from Indigenous notions of the same concepts.

Few focus on the community response more broadly,¹³ although Peter Walker's forthcoming book *Sagebrush Collaboration* on this subject represents the first book-length study on the occupation.¹⁴ Further afield, Alexa M. Dare and C. Vail Fletcher of the University of Portland broaden the scope of perspectives on the occupation beyond even that of this thesis by connecting it to the more-than-human agents entangled in the debate.¹⁵ Yet, little to no work has been done on the Indigenous perspectives of this occupation. This should be of no great surprise given the scarce available recent academic work being done with the Indigenous Northern Paiute of the region and the fact that this occupation is spoken of in the false dichotomy of general public or

¹¹ James Pogue, *Chosen Country: A Rebellion in the West*, (New York: H. Holt & Co., forthcoming 2018). A review in *Publishers Weekly* called the book “uneven” and “novellike,” raising questions about impartiality. While Pogue humanizes his subjects, some of whom he apparently refers to as “friends,” he “doesn’t quite get to the bottom of the motivation of their reckless actions” and lacks “any perspective from the federal agents on the other side.” See: *Publishers Weekly*, “Chosen Country: A Rebellion in the West,” last modified 1 Jan. 2018, <https://www.publishersweekly.com/9781250169129>.

¹² I cite none specifically, but they can be found through the University of Utah Quinney College of Law's Stenger Center for Land, Resources and the Environment. See: University of Utah, “University of Utah S.J. Quinney College of Law Environmental Program,” <http://www.law.utah.edu/research/stegner/>, accessed 15 May 2018.

¹³ Mariya Strauss, “Keeping Public Lands Public: How Oregon's Rural Communities Rescued the Malheur Wildlife Refuge,” *New Labor Forum* 26, no. 3 (2017).

¹⁴ Peter Walker, *Sagebrush Collaboration: How Harney County Defeated the Takeover of the Malheur Wildlife Refuge* (Corvallis, Oregon: Oregon State University Press, forthcoming 2018).

¹⁵ Alexa M. Dare and C. Vail Fletcher, “A Bird's Eye View of the Malheur Wildlife Refuge Occupation: Nonhuman Agency and Entangled Species,” *Environmental Communication* (2018).

occupier.¹⁶ As Vine Deloria writes in *Custer Died for Your Sins*: “to be an Indian in modern American society is in a very real sense to be unreal and ahistorical.”¹⁷ The perspective of Indigenous peoples has not been properly historicized and presented in the literature. It is therefore the intention of this thesis to attempt to begin the process of filling that gap.

Theory of Decolonization and Decolonizing Methodologies

Filling this gap necessitates respectful and Linda Tuhiwai Smith’s book *Decolonizing Methodologies: Research and Indigenous Peoples* is regarded as a handbook for setting up a theoretical framework for decolonizing research. From an Indigenous perspective, the very term “research” is “inextricably linked to European imperialism and colonialism” and is “one of the dirtiest words in the indigenous world’s vocabulary... it is a history that still offends the deepest sense of humanity”¹⁸ Western research has had, and often continues to perpetuate the disenfranchisement and self-

¹⁶ Scholars are still forced to do considerable work with incomplete available sources to create a history, or, if they aren’t particularly versed in the scholarship, rely two main sources: Sarah Winnemucca Hopkin’s *Life Among the Piutes*, or Gale Ontko’s *Thunder Over the Ochoco* series. Winnemucca Hopkin’s work comes from a Paiute perspective—and a Paiute woman’s perspective, no less—but she was also a popular lecturer at the time and the book was edited by a white woman and designed to sell in the white market in the 1880s. Gale Ontko’s five-volume set is more akin to a historical romance with threads of international conspiracy to cover up a fantastic strong Northern Paiute confederacy supposedly reigning over the land being a part of the work. Many of the Paiutes he discussed never actually existed.

The strongest body of work are the papers of the Northern Paiute History Project, housed in the University of Oregon’s ScholarsBank, and James A. Gardners’s forthcoming book, full citation in footnote 29. See: Gale Ontko, *Thunder Over the Ochoco*, 5 vols., (Bend, Oregon: Maverick Books, 1993-9); Sarah Winnemucca Hopkins, *Life Among the Piutes: Their Wrongs and Claims*, Mrs. Horace Mann, ed., (Boston: Cupples, Upham & Co., 1883).

¹⁷ Vine Deloria, *Custer Died for Your Sins* (Norman, Oklahoma: University of Oklahoma Press, 1969), 2.

¹⁸ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books, 1999), 1.

determination of Indigenous peoples, who remain marginal despite whatever truths are produced from Indigenous people.¹⁹ To summarize this anger, Smith writes:

It galls us that Western researchers and intellectuals can assume to know all that it is possible to know of us, on the basis of their brief encounters with some of us. It [appalls] us that the West can desire, extract and claim ownership of our ways of knowing, our imagery, the things we create and produce, and then simultaneously reject the people who created and developed those ideas and seek to deny them further opportunities to be creators of their own culture and own nations. It angers us when practices linked to the last century, and the centuries before that, are still employed to deny the validity of indigenous peoples' claim to existence, to land and territories, to the right of self-determination, to the survival of our languages and forms of cultural knowledge, to our natural resources and systems for living within our environments.²⁰

Moreover, Western norms cloud the analysis of research. Researchers bring in preconceived notions everything from race and gender to the organization of time and space. Even the notion of an objective truth is primarily a western notion, made possible by the concept of maintaining distance from one's "objects" of study, including people.²¹ Smith calls this "research through imperial eyes."²² When trying to make sense of Indigenous knowledge given these lenses, the knowledge created may not be considered valid to the very people the research is about. The process of extracting this knowledge for one's own gain in intellect of academia is another important aspect of research with continues the silencing of Indigenous voices while perpetuating the colonial enterprise of research.

While much more is left to be said about the theory of decolonization, I'll leave the last word here to Patricia Cochrane, executive director of the Alaska Native Science

¹⁹ *Ibid*, 34.

²⁰ *Ibid*, 1.

²¹ *Ibid*, *passim*; 56.

²² *Ibid*, 42.

Commission, who put it clearly and succinctly: “we don’t care what you know until we know that you care.”²³

Methodology

Initial plans for this project involved collecting oral histories and interviews with enrolled members of the Burns Paiute Tribe. This was deemed feasible at the initial conception of this project approximately a year prior to this writing. In that time, the Burns Paiute Tribe has undergone some changes politically. New elections brought new Tribal Councilmembers into power, who were more reluctant to speak to outsiders, which is quite understandable given the trauma caused by the event.

A new research plan was formulated which was used to write this thesis. A more structured overarching theory is presented, showing factors which inform modern perspectives. Essentially, the historic experiences of Indigenous peoples compared to the occupiers and the public at large provides justification and foundations for a uniquely Indigenous perspective, especially for the Northern Paiute. Indigenous voices are still given space in this thesis provided by sources contemporary to occupation. Given that there would be a distinct Indigenous perspective, it should be evident in the record of articles reporting on and responding to the occupation. Selected sources must have been intended for public release. To count as an Indigenous voice, authorship or quotes must be attributed to someone who identifies or was identified as belonging to a tribe, with a particular interest in those of Northern Paiute heritage.

²³ Patricia Cochran, “Keynote,” (Speech, Climate Change and Indigenous Peoples Conference, University of Oregon, Eugene, OR, 2 Dec. 2014).

A content analysis will be conducted focusing on the questions outlined in the Introduction, particularly how the Indigenous perspective is unique from the general public's. Statements in the news, articles relating to the Malheur, tribal newsletters and statements made by both Indigenous and non-Indigenous people will all be considered. Much is left wanting in this methodology. While Indigenous voices and perspectives will be privileged as much as possible, it and I fail to rectify the inherently extractive nature of this project. These voices will be used to argue for a decolonized narrative, but are still subject to colonization in the way those voices are effectively harvested from Indigenous peoples themselves based on what is available in the public record. Future work must be done to more fully articulate and respectfully incorporate Indigenous people into the research process.

An Indigenous History of Malheur

Ancient Humans of the Malheur

The area that I refer to as the Malheur is roughly synonymous with the Harney Basin, itself part of the Great Basin, in the southeastern part of Oregon. The area tends to be hot and semi-arid, with snow in the winter. However, this aridity is ameliorated with the presence of desert waters, including Lakes Malheur and Harney. These lakes also serve as an important stopover on the migratory route of millions of birds utilizing the Pacific Flyway, which stretches from Alaska to Mexico.²⁴ Salmon runs, while typically identified with tribes who lived along the Columbia River and the coast, also transported vital nutrients deep inland to the high desert along rivers like the Snake and the Deschutes.

Northern Paiute are the Indigenous people of this land. For Northern Paiutes, even as they ranged all over central and eastern Oregon as well as across to what are now the neighboring states of California, Idaho, Nevada, the Malheur Basin was still the center of the world. According to Paiute legend as dictated by Wilson Wewa, while Oriole Woman would eventually create the human people, the (animal) people first came into the world from Malheur Cave, only 30 miles (50 km) distant from the current Malheur NWR headquarters.²⁵ Northern Paiutes learned to live in the Malheur by following a semi-nomadic lifestyle. Life was structured around the Seasonal Round, a

²⁴ Carla D. Burnside, *Malheur's Legacy: Celebrating a Century of Conservation 1908-2008* (Washington: Government Printing Office, 2008); Fish and Wildlife Service, *Malheur National Wildlife Refuge Comprehensive Conservation Plan and Environmental Impact Statement* (Burns, Oregon: Malheur National Wildlife Refuge, 2013).

²⁵ Wilson Wewa, *Legends of the Northern Paiute, as told by Wilson Wewa*, James A. Gardner, ed., (Corvallis, Oregon: Oregon State University Press, 2017), 3-10.

yearly cycle of food gathering activities necessary given the harsh environment. The foods gathered in the seasonal round were also important in informing a sense of identity for specific bands. Northern Paiute bands were named based on their main food source. In the Malheur region, the Wadatika or “wada eaters” were so named for their propensity to harvest and eat wada, the black seeds of the Paiuteweed (*Suaeda calceoliformis*), from the lakes. Flexibility and mobility were keys to survival as the availability of resources varied across space and time. Permanent settlement with agriculture and livestock husbandry were impractical and not practiced. This is not to say that they were an impoverished and weak people, however. Indeed, Peter Skene Ogden commented multiple times in his journal about how numerous the “Snake” Indians (considered a derogatory term for the Northern Paiutes) were in 1826.²⁶ Northern Paiutes in Oregon instead took advantage of all resources available to them across a vast landscape, from salmon and mud hens to Paiuteweed, camas roots, and insects.²⁷ Desert waters constituted a vital resource and gave rise to important hunting and gathering site in the Seasonal Round.²⁸

Some of the earliest evidence of ancient North Americans comes from this region. Radiocarbon dating of coprolites and obsidian hydration dating of projectile points at Paisley Caves show human occupation for tens of thousands of years.²⁹

Controversially, the earliest DNA evidence of human habitation in North America was

²⁶ Peter Skene Ogden, “Journal of Peter Skene Ogden: Snake Expedition, 1828-1829,” *The Quarterly of the Oregon Historical Society* 11, 4 (1910): 381-96.

²⁷ James A. Gardner, *Oregon Apocalypse: The Hidden History of the Northern Paiutes* (Corvallis, OR: Oregon State University Press, forthcoming), 66-70.

²⁸ Gardner, *Oregon Apocalypse*; Susan Jane Stowell, “The Wāda-Tika of the Former Malheur Indian Reservation” (PhD. Dissertation, University of California, Davis, 2008).

²⁹ Dennis L. Jenkins, Loren G. Davis, Thomas W. Stafford Jr., Paula F. Campos, Bryan Hockett, George T. Jones, Linda Scott Cummings, et al., “Clovis Age Western Stemmed Projectile Points and Human Coprolites at the Paisley Caves,” *Science* 337, no. 6091 (2012), 223-8.

found at Paisley Caves and dates to 14,300 years before present (BP).³⁰ The oldest surviving shoes, dated to over 10,400 years BP, were found at Fort Rock, located only about 113 miles (180 km) away from Lake Malheur, also well within Northern Paiute territory.³¹ While the Malheur doesn't have as extensive of a record, the site of the present Malheur National Wildlife Refuge Headquarters is a well-known archaeological site, attesting to its long history reaching at least 7600 years BP.³² Whether or not these people are the actual direct descendants of the Northern Paiute, which the Northern Paiute claim they are, the fact remains that the Malheur is an ancient cultural landscape with human use dating back at least ten millennia.

As familiar as Indigenous peoples were to this place, the Harney Basin remained largely unknown land to Western societies. The climate made it unprofitable for crop farming and fear of Paiute raiders (whether justified or not) made it undesirable to explore. In 1828, fur trapper Peter Ogden wrote in his journal that "a more Gloomy Barren looking Country I [sic] never yet seen."³³ John C. Fremont's 1845 Map of an Exploring Expedition to the Rocky Mountains includes an annotation that the Great Basin's geography was "almost unknown, but believed to be filled with rivers and lakes which have no communication with the sea, deserts and oases which have never been

³⁰ M. Thomas P. Gilbert, Dennis L. Jenkins, Anders Götherstrom, Nuria Naveran, Juan J. Sanchez, Michael Hofreiter, Philip Francis, et al., "DNA from Pre-Clovis Human Coprolites in Oregon, North America," *Science* 320, no. 5877 (2008): 786-9.

³¹ Catherine S. Fowler, *The Great Basin: People and Place in Ancient Times* (Santa Fe: School for Advanced Studies Press, 2008) 68-73.

³² C. Melvin Aikens and Ruth L. Greenspan, "Ancient Lakeside Culture in the Northern Great Basin: Malheur Lake, Oregon," *Journal of California and the Great Basin Anthropology* 10, no. 1 (1988): 32-61.

³³ Nancy Langston, *Where Land and Water Meet: A Landscape Transformed* (Seattle: University of Washington Press, 2003), 19. Capitalization original to the source.

explored, and savage tribes which no traveler has seen or described” (Fig. 1)³⁴ Without grass for oxen to graze, the main stem of the Oregon Trail would bypass going through Northern Paiute territory, instead electing to detour up along the Snake and Columbia Rivers to get to the Willamette Valley.³⁵



Figure 1: John C. Fremont’s *Map of an Exploring Expedition*.

Note the areas being depicted and those which are still unknown to Fremont and other western explorers. This visually approximates the extent of geography known to the United States at that time.

One notable exception is Stephen Meek’s party in 1845 who elected to divert from the main trail and through the Malheur region before finding themselves unable to find water or food and rejoining the trail at The Dalles. Northern Paiutes attempted to assist the party, but fear of Indian raids was so pervasive that Meek’s wagon train shot

³⁴ John C. Fremont, *Map of an Exploring Expedition to the Rocky Mountains in the Year 1842 and to Oregon and north California in the Years 1843-44* [map], 1845, 1:3000000, Library of Congress, <https://www.loc.gov/resource/g4051s.ct000909/>.

³⁵ Gardner, *Oregon Apocalypse*, 59; James E. Vance Jr., “The Oregon Trail and Union Pacific Railroad: A Contrast in Purpose,” *Annals of the Association of American Geographers* 51, no. 4 (1961): 357-379.

at their would-be saviors, discouraging any further attempts by the Paiutes to approach.³⁶ Twenty-three emigrants and many of their animals died along the Meek cutoff, and 23 more perished at The Dalles.³⁷ This group would be remembered as the “Lost Wagon Train.”

Genocide and Removal: The Snake War and the Malheur Indian Reservation

As the area around Oregon City got more crowded with settlers from the Oregon Trail, lands in the southern Willamette Valley and east of the Cascade Mountains, including the Malheur, seemed ever-more desirable for settlement. One source of this desire was from miners, called the “shock troops” of the American invasion by historian James Gardner.³⁸ While Meek’s journey unequivocally disastrous, it also led to the purported discovery of the legendary Blue Bucket Gold Mine. Supposedly, the Lost Wagon Train encountered a stream so rich with gold that children were able to pick up shiny stones by hand. Prospectors late to the California Gold Rush were primed for a new strike and soon prospectors set out to find the mythical mine. In 1861, I.L. Adams raised a party of 50 prospectors by claiming to have been in the Lost Wagon Train. While the party disbanded when it became clear that Adams was a charlatan, Henry Griffith did eventually strike gold near Baker City.³⁹ In the following year a second strike gave rise to the 5000-person boom town of Auburn, at the time bigger than

³⁶ Gardner, *Oregon Apocalypse*, 54.

³⁷ Dianne J. Lesniak, *Let the Mountains Remember: Campaign Against the Northern Paiute, Eastern Oregon 1861-1869* (Bend, Oregon: Maverick Publications, 2014), 21.

³⁸ Gardner, *Oregon Apocalypse*, 295.

³⁹ Lesniak, *Let the Mountains Remember*, 21.

Portland.⁴⁰ While the strike was transient, this did force a major redistribution of the population of Oregon.

Land for agriculture and ranching operations formed another major impetus for white settlement into Paiute lands. The desire to move cattle into the Malheur begins in California. In 1871, California passed herd laws, requiring cattle be fenced *in* to their paddocks rather than fenced *out* of wheat fields, impacting the profitability of ranching in that state. As a result, the wheat king Hugh Glenn would shift his cattle operations under Peter French to the Great Basin of Oregon. This signaled the start of ranching and homesteading in the region and drove a hunger for land. Men like French did the bidding of their corporate bosses, buying land throughout the basin to establish ranches.⁴¹ One such ranch is the historic P Ranch in Harney County, established by French in the 1880s and purchased for inclusion in the Malheur NWR in 1935.

A reason the Malheur was particularly attractive, despite the arid conditions and difficult terrain, was because these lands were perceived to be empty and ripe for the taking. Commissioner of Indian Affairs Francis A. Walker to try and resolve the government's troubles with Indigenous resistance to colonization by removing the people he considered "[obstacles] to the progress of settlement and industry" by whatever means necessary.⁴² The creation of such an empty state despite its long human history was accomplished in a prolonged period of treatymaking and genocides. For those who would capitulate, Joel Palmer, Superintendent of Indian Affairs for the

⁴⁰ *Ibid*, 22.

⁴¹ Langston, *Where Land and Water Meet*, 20; 28.

⁴² Francis A. Walker, "Report of the Commissioner of Indian Affairs" in *Report of the Secretary of the Interior: Being Part of the Messages and Documents Communicated to the Two Houses of Congress at the Beginning of the Third Session of the Forty-Second Congress*, Columbus Delano, ed. (Washington: Government Printing Office, 1872), 391.

Oregon Territory, and Isaac Stevens, Governor of Washington, negotiated treaties in the Pacific Northwest to remove the Indigenous peoples of those lands onto reservations. Tribes that were eager to retain some sovereignty and avoid complete genocide were obliged to participate.⁴³ These included Tenino and Wasco peoples, who signed the Treaty with the Tribes of Middle Oregon in 1855. Despite traditionally living on the Columbia River, they were removed to the Warm Springs Reservation on what is traditionally Northern Paiute land.⁴⁴

Those who resisted treaties or were not offered the chance to treat were subjected to genocide. After the Warm Springs Reservation was established, Northern Paiutes began undertaking raids against their traditional enemies who now lived on their traditional lands. To quell the Northern Paiutes, warriors recruited from Warm Springs were used as scout and commando units on behalf of the US Army to launch counter-attacks against the Paiute, even capturing Chief Paulina and Chief Weahwewa in 1859.⁴⁵ The point where these skirmishes escalated to full-fledged war—the Snake War—is unclear. Many possible historical interpretations of the timeframe are possible, as analyzed by Gardner.⁴⁶ The result, in any case, was a near-extermination of the Paiutes in Oregon with many atrocities. One instance, known as the Moon Shadow Massacre, occurred late in the war as central Oregon Paiutes fled east from to escape the genocide. On 4 April 1868 at midnight, soldiers led by Capt. David Perry fired on a Paiute encampment, killing 32 people, including 20 women and children, while they slept. They also captured two others and only two would escape outright. For their

⁴³ Gardner, *Oregon Apocalypse*, 168-81.

⁴⁴ *Ibid*, 268-71.

⁴⁵ *Ibid*, 281.

⁴⁶ *Ibid*, 291-3.

actions, two army officers were brevetted. Gardner calls this as a “microcosm of the entire “Snake War.””⁴⁷

By 1868, weary of battle and desperate to save the people they had left, many Paiute chiefs came forward with offers of surrender and the Snake War ended. Oregon Superintendent of Indian Affairs J.W. Perit Huntington estimated that two-thirds of the Northern Paiutes population of Oregon was killed in the war.⁴⁸ While an often-forgotten war its impact on the cultural geography of the landscape of Eastern Oregon is significant, especially in finally emptying the land of Northern Paiutes.⁴⁹ The unratified Treaty of 1868 stipulated the creation of a new reservation bordering Lake Malheur to contain “all the roving and straggling bands in Eastern and Southeastern Oregon which can be induced to settle there [at the Malheur Indian Reservation].”⁵⁰ Northern Paiutes agreed to the treaty and acted as if it already had the power of law when it was negotiated. After all, the negotiations were made in good faith. However, angered by the prolific Indian wars, the Treaty of 1868 was one of several never ratified by the Senate, so the Malheur Indian Reservation was established in 1872 (with boundaries

⁴⁷ *Ibid*, 562. Brevet is a field promotion as a commendation for gallantry or other distinguished service.

⁴⁸ *Ibid*, 613.

⁴⁹ Many places in Central and Eastern Oregon still commemorates those who fought for the United States in the Snake War. A few examples are listed here. The Alvord Desert is named for Brig. Gen. Benjamin Alvord, who oversaw building a military road through southern Oregon and commanded the Department of the Pacific for the Army during the war. Crook County is named for Lt. Col. George Crook, who oversaw much of the campaign against the Northern Paiute. Steens Mountain is named for Maj. Enoch Steen, who earned fame for using cavalry to drive Paiutes off the mountain. Lake Billy Chinook, formed by the Round Butte Dam, is named after First Sergeant Billy Chinook, a Wasco who served as a scout and was present during the Moon Shadow Massacre.

⁵⁰ Walker, “Report of the Commissioner,” 453.

defined in 1875 and shrunken slightly in 1876) by executive order from President Ulysses S. Grant instead.⁵¹

This fact is highly significant for the 2016 occupation because it establishes several things, touched upon later in this work. Firstly, the executive order did not take the place of a treaty since it granted no additional rights to the tribe. For example, the unratified Treaty of 1868 guaranteed the prosecution of white settlers who broke the law on reservation land. This was no longer a given in the executive order. Moreover, and most significantly, it never had the tribe formally cede any land legally to the United States and never discussed any usufruct rights retained by the tribe on that ceded territory, a commonplace, if usually ignored clause in many other Indian treaties. While provisions were made in 1868 to extinguish native title to the land on the part of the Northern Paiute, the US government effectively reneged on this concession by not ratifying the treaty. A last important ramification of executive orders is that the reservation was also more tenuous than most, existing only at the pleasure of the President of the United States, who could—and would—dispose of it at his own will.

Initially, the Northern Paiute were successfully adjusting to farm life on the reservation under Indian Agent Samuel Parrish. In 1876, 762 Northern Paiutes were living on the reservation and cultural practices like hunting and root digging were still practiced.⁵² However, the appointment of W.V. Rinehart to the position in 1876, backed by ranching and religious interests, drastically altered life on the reservation.⁵³ Rinehart was regarded as a cruel agent and neglected many of his duties. Rather than providing

⁵¹ *Executive Orders Relating to Indians Reservations*, (Washington: Government Printing Office, 1912) 151-2.

⁵² Gardner, *Oregon Apocalypse*, 671.

⁵³ *Ibid*, 669.

rations, he insisted that Paiutes should have to buy their food. Rinehart was also apparently quick to anger, once threatening to shoot a Paiute boy over a misunderstanding on getting beef from the commissary.⁵⁴ However, drawing from Reinhart's reports, Commissioner Walker painted a scene of idleness on the part of the Northern Paiute. Reservation residents were portrayed as though they were vagrants seeking to exploit white colonizers. "The Indians," he wrote, "are now a constant source of annoyance to the white settlers. They hang about the settlements and military posts begging and stealing, and, unless some prompt measures be taken...serious trouble may result at any time."⁵⁵ The report made no mention of the disfunction of the reservation of the various white settlers who had begun to illegally settle on the reservation with no objections from Agent Rinehart.⁵⁶

With their patience towards Agent Rinehart wearing thin, the Northern Paiutes who stayed on the reservation agreed to join the Bannocks when they declared war on the United States in 1878. An overwhelming majority of Northern Paiutes leaders elected to join them and nearly all of the former residents of the reservation went to war against the United States, even as the Paiutes did little of the actual fighting. In response, the reservation was "discontinued" at Rinehart's recommendation.⁵⁷ This effectively ended the reservation, though originally President Chester A. Arthur retained a small tract of land as a reservation in his executive order restoring the land to the public domain (i.e. open for white settlement) in 1882, and even that was again reduced

⁵⁴ *Ibid*, 673.

⁵⁵ Walker, "Report of the Commissioner," 453.

⁵⁶ Gardner, *Oregon Apocalypse*, 675.

⁵⁷ *Ibid*, 692-696.

to 320 acres in 1883.⁵⁸ President Grover Cleveland did away with these last remnants of the Malheur Reservation entirely in 1889, finally restoring the whole area to the public domain.⁵⁹

After the Bannock Wars ended the Northern Paiutes were marched in the snow in what Gardner has dubbed the “Paiute Trail of Tears” to the Yakama Reservation with minimal supplies in January of 1879.⁶⁰ 543 Paiutes would start the 350-mile trek to Yakima. Only 510 arrived a month later, the dead being left unburied in the on the side of the trail.⁶¹

Return to the Malheur: Warm Springs and the Burns Paiute Reservations

The Warm Springs and the Burns Paiute Reservations represent important legal recognition of the Indigenous and, specifically, the Northern Paiute presence in Eastern Oregon. While located on the northern borderlands of what would be considered Northern Paiute territory, the Treaty with the Tribes of Middle Oregon, 1855 created the Warm Springs Indian Reservation for the Wasco and the Warm Springs tribes.⁶² Some Paiutes were already residing on the reservation when escapees from Yakama arrived in the winter of 1879.⁶³ In addition to escaping another abusive agent at Yakama, this escape also represented a great desire on the part of the displaced Northern Paiutes to

⁵⁸ *Executive Orders Relating to Indian Reservations*, 151.

⁵⁹ *Ibid*, loc. cit.

⁶⁰ Gardner, 719-44.

⁶¹ Augustine Beard, “The Network of Resistance: Northern Paiute Opposition to Imprisonment at Yakama Reservation, 1878-1884,” *Oregon Heritage Fellowship* 2017, http://www.oregon.gov/oprd/HCD/FINASST/docs/2017%20OHF_Beard_OHF%20Paper.pdf. Augustine is another undergraduate student and alum of the Northern Paiute History project.

⁶² US Fish and Wildlife Service, “Treaty with the Tribes of Middle Oregon, 1855, ratified 8 Mar. 1859,” https://www.fws.gov/pacific/ea/tribal/treaties/Tribes_Mid_or.pdf.

⁶³ Beard, “The Network.” Beard cites reports of 24 escapees, though that number is disputed by the Confederate Tribes of the Warm Springs, who claim 38.

return to their homelands. Ultimately, there would be a mass exodus of Northern Paiutes from Yakama. It started in summer of 1882 with Chief Leggins' band, who left for Fort McDermitt on the Oregon-Nevada border. While they were stopped, this incident would lead to the resignation of the Yakama Indian Agent and another escape in 1883, which the newly instated Agent Milroy would later state he was powerless to stop.⁶⁴ By October, all 300-400 of the Paiutes living at Yakama had escaped back to Oregon and Nevada.⁶⁵

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

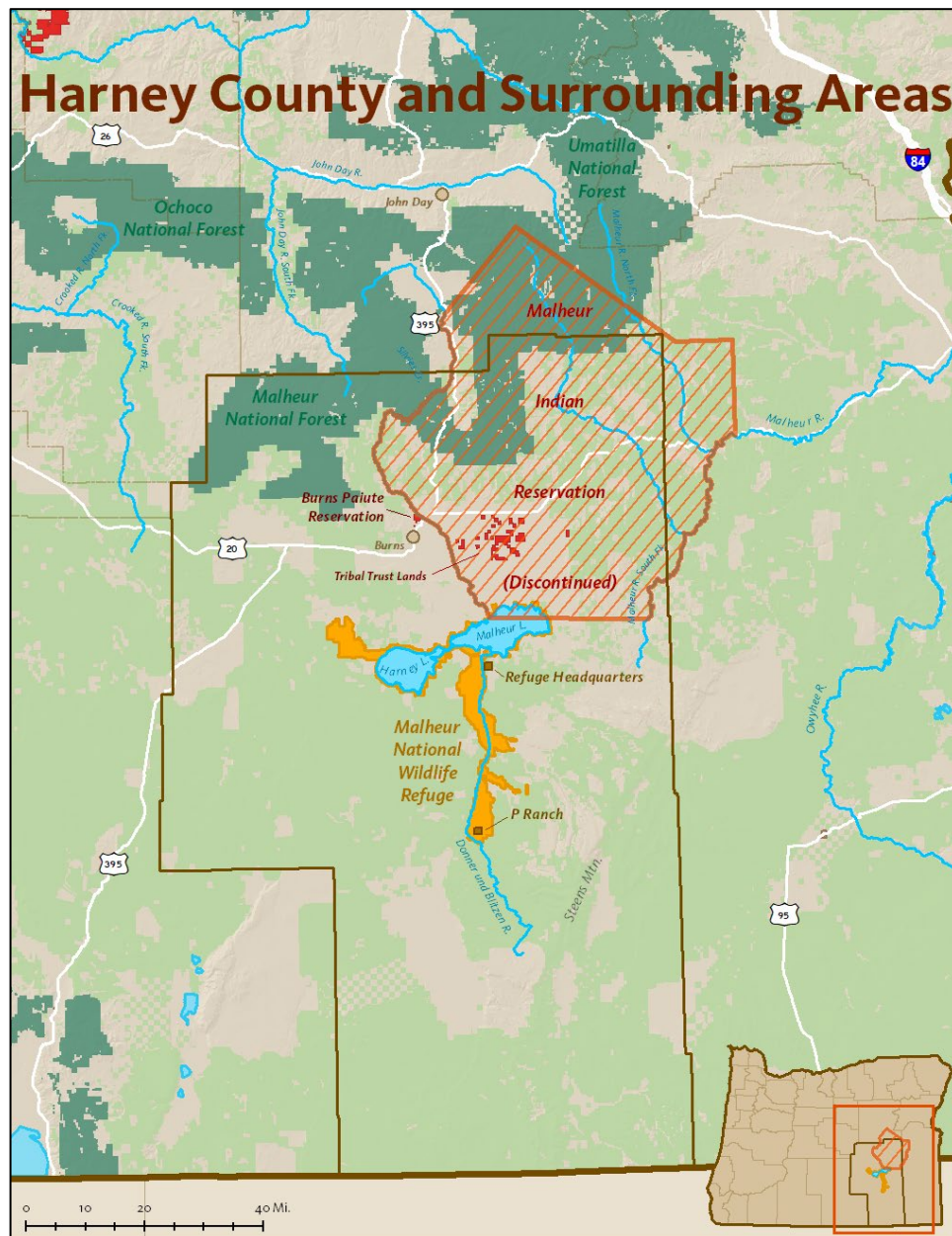


Figure 2: Map of Harney County and Surrounding Areas.

The sage green areas represent BLM lands, the forest green represents national forests, yellow are wildlife refuges, and red lands represent tribal trust lands of in the Rye Grass Area as well as the Burns Paiute Reservations. Tribal trust lands of the Warm Springs Tribe can also be seen in the North. Map by Doug Sam. Sources: Oregon Department of State Lands, Oregon Geospatial Enterprise Office, US Census Bureau.

the Burns Paiute in 1928 to form the first land holdings for the Burns Paiute.⁶⁶ This land would be meagerly expanded after Paiutes petitioned for recognition and redress. Pete Teeman, then 90, testified in 1934 lamenting “the Bannocks kept their reservation but we, the Paiutes, who remained friends with the soldiers lost our reservation and were taken to Yakama and turned over to our enemies. We did not give up our reservation.”⁶⁷ Seeking redress at the behest of Father Heuel, a Catholic priest, the Paiutes were offered \$567,000 in 1934, reduced to \$98,000 after attorney fees. With interest, the final amount dispersed was \$519,827.49. This was given out in 1969 in payments to 850 Paiutes, who were awarded \$741 each—approximately 32 cents per acre for the terminated Malheur Reservation.⁶⁸ In 1935, 760 additional acres would be purchased for a Paiute reservation, the core of the modern reservation. The Burns-Paiute Colony would officially be established as a federally-recognized tribe in 1968.

⁶⁶ *Ibid*, 18-9.

⁶⁷ Planning Support Group “The Burns-Paiute Colony,” 19.

⁶⁸ *Ibid*, *loc. cit.*

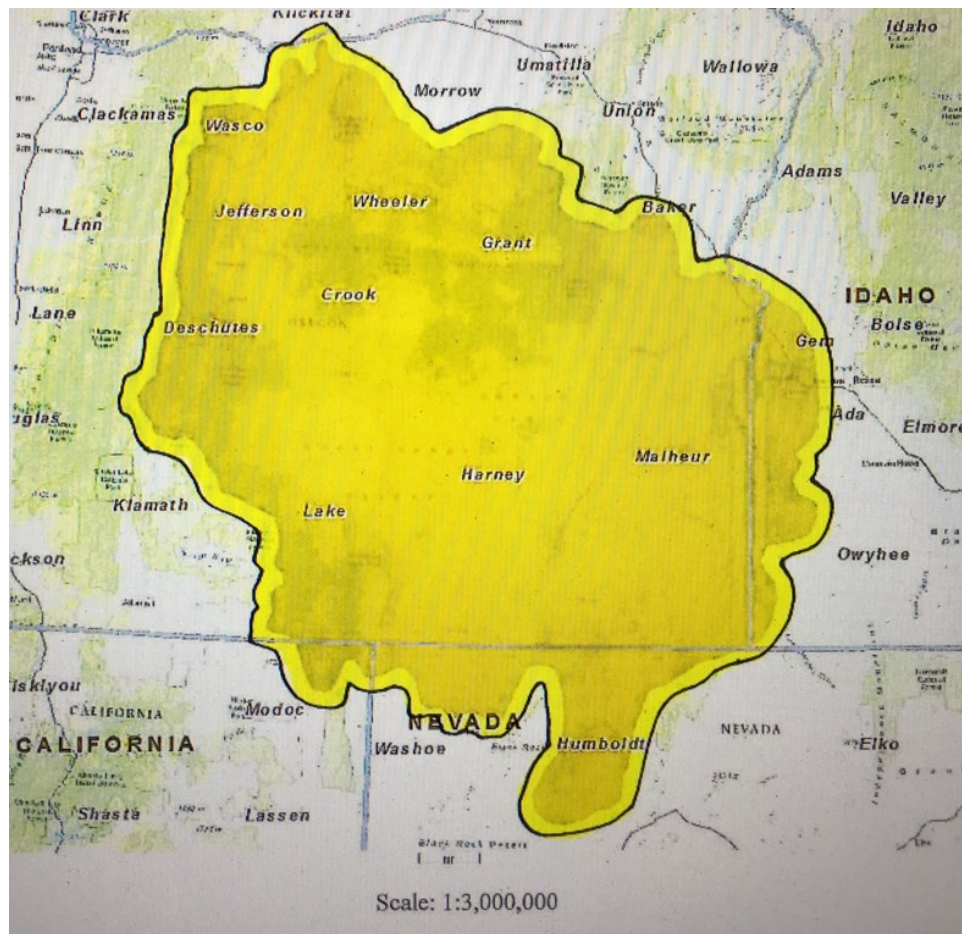


Figure 3: Burns Paiute Tribe Traditional Aboriginal Territory

This map from the Burns Paiute Tribe Department of Culture and Heritage shows the approximate extent of the aboriginal lands traditionally utilized by the ancestors of the Burns Paiute Tribe. Source: BPT Dept. of Culture and Heritage, Diane Teeman.

Though federal recognition and regaining a land base represent huge victories that have yet to be accomplished by many other tribal nations, the present reservation and the compensation given for the termination of the Malheur Reservation still represents a mere fraction of the historical range and value of Paiute lands. Today, the Burns Paiute claim a vast aboriginal territory across three states (Fig. 3) and maintain relationships with various outside entities including the Malheur NWR to continue cultural practices and preserve tribal heritage.

Disposing Native Land, Establishing the Malheur National Wildlife Refuge

No matter the human situation around Lakes Malheur and Harney, they remained an important stopover in the Pacific Flyway and were frequented by birds, seemingly without fail. However, soon birds were also coming under threat of removal from the land. Feather plumes for hats became a fashion trend in the late 19th and early 20th centuries. Plume hunting to support the hat industry had decimated bird populations across the US, including Malheur. Wildlife photographers William L. Finley and Herman T. Bohlman, with backing from the Oregon Audubon Society, sought to preserve what Finley called the “greatest feeding and breeding ground for waterfowl on the Pacific Coast.”⁶⁹ Finley managed to win over President Theodore Roosevelt, who created the Malheur NWR in 1908. The *Sunday Oregonian* would celebrate with a photospread of the birds of the region, proclaiming that the Audubon Society had won its “great fight” in Central Oregon.⁷⁰ Even with this victory, there was still great local acrimony for the refuge and it would take great effort to gain local acceptance of its existence.⁷¹

One mustn’t forget the mythological narratives espoused and the Indigenous toll exacted to achieve such a “great fight,” however. Establishing the wildlife refuge necessarily reifies certain mores and conceptions about a place by codifying them into law. It recognizes that birds are the valued members of the “wild” and “natural” landscape, discrediting the ancient and sustained human presence already discussed. Only 29 years had elapsed from the Paiute Trail of Tears to the creation of the refuge.

⁶⁹ Langley, *Where Land and Water Meet*, 84.

⁷⁰ “Audubon Society Wins Its Great Fight for Bird Reserves in Central Oregon,” *Sunday Oregonian* (Portland, OR), 23 Aug. 1908.

⁷¹ Langley, *Where Land and Water Meet*, 99-101.

Less than three decades was sufficient to recode the area from an Indigenous Northern Paiute space into an unpopulated and pristine wilderness worthy of conservation. Such a flight from history has been often critiqued, most notably by William Cronon's famous "The Trouble with Wilderness."⁷² The circumstances at Malheur, where Indigenous peoples are forcibly displaced, culturally forgotten, and their lands preserved in parks which place white-created norms valuing beauty and recreation, is not unique, either. Historian Mark David Spence documents this same process being repeated at the flagship sites of preservation, the national parks, particularly Yellowstone, Glacier, and Yosemite.⁷³

The Malheur's history up to this point is not unique one. It may not even be the most extreme, or cruel, example of Indian removal though extreme and cruel it was for non-white actors in the story thus far. Iterations of disposing Indigenous lands for the creation of "public lands" abound across the national landscape of the United States. What will make Malheur's story unique is not only the ignorance of this history by the mainstream consciousness, but also the willful arrogance with which this history is perverted and represented in audacious takeover of the Malheur by the occupiers.

⁷² William Cronon, "The Trouble with Wilderness; or, Getting Back to the Wrong Nature," in *Uncommon Ground: Towards Rethinking the Human Place in Nature*, William Cronon, ed., (New York: W.W. Norton & Co., 1996), 69-90.

⁷³ Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks*, (New York, Oxford University Press, 2000).

Public Lands and Public Land Conflicts

As much as this work seeks to focus on Indigenous perspectives, the events that transpired at Malheur and the perspectives which drove them would be wholly uncontextualized without a working understanding public lands, the conflict over them, and, more generally, of violent anti-government protests more broadly. This section will bring an account of the history of these three areas and offer context against which the ideologies of the occupier and more general “public” perspective can be gleaned to compare with the Indigenous perspective.

The settler colonial project of the American West was founded on two seemingly contradictory principles. The first is the ideal of yeoman farming: free men farming their own land un beholden to a landlord. Yeoman agriculture formed the cornerstone of Jeffersonian Democracy, and the desire for land paired with the liberty and masculinity of making a living out in the rugged West drove westward migration.⁷⁴ The inexpensive land which lured settlers was, of course, made available by design. This was done through the second major principle: that the US Federal Government, should administer the disposal and use of the lands it procured as part of a national program to expand the into the frontier. Frederick Jackson Turner would argue that the effective loss of the frontier in 1880 would signal the end of the first major chapter of

⁷⁴ Tarla Rai Peterson, “Jefferson’s Yeoman Farmer as Frontier Hero: A Self Defeating Mythic Structure,” *Agriculture and Human Values* 7, no. 1 (1990): 9-19. DOI: 10.1007/BF01530599

American history.⁷⁵ With an eye towards encouraging settlement and extractive use of undisposed (public) lands, the initially laissez-faire regulations for grazing or timber harvests drew little protest from these users. After all, the rates charged were, and generally still are, are under market value.⁷⁶

The shift in values and a decline in opinion on extractive industries can be detected in Bernard DeVoto's popular and scathing 1947 essay in *Harper's* entitled "The West Against Itself." DeVoto lambasts the East as holding a "mortgage on the permanent West, channeling its wealth eastward, maintaining it in a debtor status, and confining its economic function to that of a mercantilist province."

No longer was the West conceived as the land of independence and freedom, but rather as a place for the east to get rich and oppress. DeVoto was decidedly not a fan of extractive workers and especially ranchers, however. He scathingly describes them thus:

The cattlemen came from Elsewhere into the empty West. They were always arrogant and always deluded. They thought themselves free men, the freest men who ever lived, but even more than other Westerners they were peons of their Eastern bankers and of the railroads which the bankers owned and the exchanges and stockyards and packing plants which the bankers established to control their business. With the self-deception that runs like a leitmotif through Western business, they wholeheartedly supported their masters against the West and today support the East against the West. They thought of themselves as Westerners and they did live in the West, but they were the enemies of everyone else who lived there. They kept sheepmen, their natural and eventual allies, out of the West wherever and as long as they could, slaughtering herds and frequently herdsmen. They did their utmost to keep the nester—the farmer, the actual settler, the man who could create

⁷⁵ Fredrick Jackson Turner, "The Significance of the Frontier on American History" (read paper, World Columbian Exposition, Chicago, 1 May–30 Oct, 1893). Turner's thesis is not to be presented as if it were simply fact. Though a highly influential piece at the time, it is not unchallenged, especially since other factors besides frontier mentality affected American history to that point. In any case, it should be noted again that the frontier was opened for settlement through the genocidal extinguishing of native title to land.

⁷⁶ Bernard DeVoto, "The West Against Itself," *Harper's* 194, no. 1 (1947).

local and permanent wealth—out of the West and to terrorize or bankrupt him where he could not be kept out.⁷⁷

On the subject of public lands, DeVoto also notes how they extract wealth with public subsidies on public lands:

Two facts about the cattle business have priority over all the rest. First, the Cattle Kingdom never did own more than a minute fraction of one per cent of the range it grazed; it was national domain, it belonged to the people of the United States. Cattlemen do not own the public range now; it belongs to you and me, and since the fees they pay for using public land are much smaller than those they pay for using private land, those fees are in effect one of a number of subsidies we pay them. But they always acted as if they owned the public range and act so now; they convinced themselves that it belonged to them and now believe it does; and they are trying to take title to it. Second, the cattle business does not have to be conducted as liquidation but throughout history its management has always tended to conduct it on that basis.⁷⁸

DeVoto's analysis isn't entirely unproblematic, however. For instance, much of the land remaining in public domain after the various land claim schemes was simply too arid to farm, making such lands only suitable for grazing or mining by American standards. However, DeVoto begins fomenting some of the early thought on what values should truly be prioritized in the West and began attracting support away from cattle ranchers.

The introduction of environmental regulations and laws in the 1960s driven by the newly awakened environmental movement would further upset this relationship and increase the friction between the two principles of free yeoman agriculturalism and the government regulation of land use. The Federal Land Policy and Management Act, first introduced in 1976, repealed over 1000 other land management statutes including the Homestead Acts, mandated the permanent federal ownership of public lands, and

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

expanded the mission of the BLM especially to include multiple-use management.⁷⁹

When the government solely did the bidding of extractive land users, the relationship between them was naturally convivial. However, when the purview of the wise use management of public lands shifted to also consider recreational and environmental values, the relationship became strained as the government began to be perceived as tyrannical by the newly-regulated industries.

As the counterculture and the environmental awakening begat such movements as hippies and Earth First!, reactionary movements from the conservative West would also rise, sometimes with the power influence national legislative agendas and elect Presidents. For instance, Ronald Reagan rode into office under the banner as a “rebel,” aligning himself with the sagebrush rebellion.⁸⁰ Posse Comitatus and the Sagebrush Rebellion are two distinct but ideologically related movements which represent the initial incarnation of the ideologies espoused by the occupiers at Malheur.

Posse Comitatus

As an idea, Posse Comitatus has roots in common law, enabling law enforcement officers to conscript able-bodied persons to assist them in enforcing the law. In the US, the Posse Comitatus Act was passed in 1878 to limit the ability of the federal government to use the military for law enforcement purposes in postbellum South. Posse Comitatus as a movement, however, originates from c.1971, based on the idea that the county sheriff was the “only legal law enforcement officer in the United

⁷⁹ Burns District Office, *What is FLPMA? And Why Should We Care?* Burns Oregon: Burns District Office, Bureau of Land Management, 2016,

<https://www.blm.gov/or/districts/burns/newsroom/files/FLPMA102116.pdf>

⁸⁰ C. Brant Short, *Ronald Reagan and the Public Lands: America's Conservation Debate 1979-1984*, (College Station, TX: Texas A&M University Press, 1989).

States of America” by virtue of being the closest representative of the people and had the duty to protect individual rights, including from the federal government.⁸¹ As such patriotic individuals had a duty to support the sheriff, based on the principle that the sheriff may issue a hue and cry to form a posse to apprehend a criminal. William P.

Gale, a white supremacist and member of the Christian Identity radical right movement, started publishing articles for his Christian Identity newsletter. These were later collected into the “Posse Comitatus Blue Book,” the movement’s guiding manifesto. It espoused, among other things, that submission to the UN, federal education, gun control, civil rights laws, income tax, and the Federal Reserve were evidence of tyranny and the erosion of individual rights in the US.⁸² While loosely organized, with little central governance, the Posse movement gained support in many parts of the country, especially Oregon,⁸³ until it was dismantled as its leaders were taken into custody for gun and tax law violations in the 1980s.⁸⁴

It was revived in the 1990s as the militia movement after the deadly botched federal raids at Ruby Ridge and Waco. Membership in this burgeoning militia movement soared after the Oklahoma City bombing by Timothy McVeigh.⁸⁵ This would not be sustained, though, as years of bad press and another crackdown on criminal elements of the militias caused a wane in membership again. Most militia groups went quiet after September 11th terror attacks convinced many that the greatest

⁸¹ Jared A Goldstein, “The Kill and Die for the Constitution: Nullification: Nullification and Insurrectionary Violence,” in *Nullification and Succession in Modern Constitutional Thought*, ed. Sanford Levinson (Lawrence, Kansas: University of Kansas Press, 2016), 186.

⁸² *Ibid*, 185-7.

⁸³ Eckard Toy, *Oregon Encyclopedia*, s.v. “Posse Comitatus,” accessed 10 May 2018, https://oregonencyclopedia.org/articles/posse_comitatus/#.WwTvjogvyMo

⁸⁴ Goldstein, “To Kill and Die for the Constitution,” 192.

⁸⁵ McVeigh himself wasn’t officially affiliated with a militia, but was explicitly inspired by militia ideology.

threats lay not in the New World Order taking over the federal government, but rather foreign threats.⁸⁶

For this work, Posse Comitatus is distinguished from previous anti-government movements and is relevant to this history for two reasons. The first is that it called for violence to check the perceived tyranny.⁸⁷ Posse ideology is underpinned by an insurrectionist interpretation of the Second Amendment.⁸⁸ Patriots had the ability—and duty—to fight against a federal government hijacked by Jews, an “alien force” who supposedly sought to undermine the intended (Christian) interpretation of the Constitution.⁸⁹ Gale’s work stipulated that government officials who were found to have “violated” the Constitution should be “removed by the Posse to a populated intersection of streets and at high noon be hung there by the neck, the body remaining until sundown, as an example to those who would subvert the law.”⁹⁰

The second is that it gave rise to the sovereign citizens movement, a branch of the greater Patriot Movement which subscribes to the “fake legal tradition” of Posse Comitatus⁹¹. Many of the Malheur occupiers subscribe to this movement.⁹² Sovereign citizens claim not to recognize the authority of the federal government because they are accountable only to their own interpretation of the law. The Freemen of Montana, a militia, declared themselves sovereign citizens in March of 1996, setting up common law courts. When they failed to comply with federal arrest warrants for gun violations

⁸⁶ Goldstein, “To Kill and Die for the Constitution,” 208.

⁸⁷ *Ibid*, 187.

⁸⁸ *Ibid*, 191-2. i.e. that the well-regulated militias were in fact the Constitution’s way to for the people to defend themselves against unchecked government transgressions of the Constitution itself.

⁸⁹ *Ibid*, 184.

⁹⁰ *Ibid*, 187.

⁹¹ Sunshine, *Up In Arms*, 22.

⁹² Gallaher, “Placing the Militia Occupation,” 294-5.

and for fraud, a standoff ensued.⁹³ This would become a model for the occupiers at Malheur to follow, and, indeed, Malheur represents a continuation of that ideology just under different contexts.

Public Land Transfers and the Sagebrush Rebellion

As much as the right to bear arms and the protection of other individual liberties form a core part of the history of anti-government movements, the specific context of public lands must also be considered. Ostensibly, the transfer of public lands to state and local control would be the final goal of the occupation. Advocacy for, and even action taken to further this goal, has a long history which informs the current relationship between ranchers and the federal government.

Six public lands conferences were held in the Western states from 1907-1915 in response to a series of proposals which would increase federal management of land and resources.⁹⁴ Historian Lawrence Rakestraw details the proceedings of each tidily, and I'll give an incomplete account of key events below. The first was held in Denver in June of 1907, called to bring attention to the grievances against "Pinchotism."

Ironically for the states' rights faction then, a survey circulated by the American National Livestock Association concerning approval of the current government regulation on national forests found nine out of ten stockmen expressed their approval of federal management at that time.⁹⁵ The election of Woodrow Wilson in 1912 gave new impetus for public lands transfer since Wilson campaigned on giving states more

⁹³ Goldstein, "To Kill and Die for the Constitution," 200.

⁹⁴ Lawrence Rakestraw, "The West, States' Rights, and Conservation: A Study of Six Public Land Conferences," *The Pacific Northwest Quarterly* 48, no. 3 (1957): 89-99.

⁹⁵ *Ibid*, 90.

power over management of land and water resources in their boundaries.⁹⁶ Rakestraw concludes that these meetings were not spontaneous flashpoints indicative of broader fear for states' rights and disdain of federal management, but rather failed propagandistic events meant to put forward an image of a united west that instead showed the varied range of issues and opinions of the Americans⁹⁷ living across the vast west.

The opening salvo of the conflict that came to be known as the Sagebrush Rebellion occurred with the passage and signing into law of Assembly Bill 413 in Nevada, which provided for the transfer of federal lands to state control, on July 1, 1979. This represents a departure from previous movements due to widespread support in the legislature. Eleven states would propose legislation in a similar vein demanding the transfer of federally-owned land to state and local control during the 1970-80s.⁹⁸ With the election of Reagan, who appointed James G. Watt, a supporter of the Sagebrush Rebellion, as Secretary of Interior, the movement considered its goals accomplished and the movement dissipated.⁹⁹

⁹⁶ *Ibid*, 94.

⁹⁷ By this I generally speak of white, land-owning male citizens, which of course at the time discounted the considerable populations of Native Americans and Asians living in West who could not be citizens, Black Americans who were systematically excluded from the West, and Mexican nationals who were technically American citizens in 1848 under the Treaty of Guadalupe-Hidalgo and the Gadsden Purchase of 1853, but were treated as second-rate citizens at best.

⁹⁸ R. McGreggor Cawley, *Federal Land, Western Anger: The Sagebrush Rebellion and Environmental Politics* (Lawrence, Kansas: University of Kansas Press, 1993).

⁹⁹ C. Brant Short, *Ronald Reagan and the Public Lands*, 36.

Hard Right Mormonism

A third factor that must be considered especially because the Bundys were leading this occupation is the inspiration they drew from their Mormon faith. Ryan Bundy, for example, cites it as the primary driver of his actions.¹⁰⁰ While many of the occupiers did not identify as Mormon, mainstream or otherwise, the Bundys as well as LaVoy Finicum, who constituted a good portion of the occupation's leadership, did. However, the Church of Jesus Christ of Latter-Day Saints (LDS Church) condemned the occupation, stating that "this armed occupation can in no way be justified on a scriptural basis."¹⁰¹

It is true that the Church of Jesus Christ of Latter-Day Saints (LDS Church), commonly referred to as the Mormon Church, did historically harbor animosity towards the federal government. Fleeing to modern-day Utah to establish the independent State of Deseret, founded particularly to create a holier society to please God, this territory was protected against American domination and perceived threats of settlement by non-church members. However, the LDS Church no longer claims those anti-American tenants as part of approved church doctrine.

The Bundys do not look towards the LDS Church for inspiration, however, but rather to a Hard Right version of Mormonism structured around the Nay Book. The Nay Book is a collection of photocopied scripture and speeches compiled by Keith Nay and spread by the Bundys to justify their actions.

¹⁰⁰ Spencer Sunshine, Jessica Campbell, Daniel HoSang, Steven Besa, and Chip Berlet, *Up in Arms: A Guide to Oregon's Patriot Movement*, (Somerville: Political Research Associates, 2016), 22-3.

¹⁰¹ The Church of Jesus Christ of Latter-Day Saints, "Church Responds to Inquiries Regarding Oregon Armed Occupation" *The Church of Jesus Christ of Latter-Day Saints*, 4 Jan. 2016, <https://www.mormonnewsroom.org/article/church-responds-to-inquiries-regarding-oregon-armed-occupation>.

The introductory letter is even penned by Cliven Bundy, asking “what is the Constitutional duty of a member of the Lord’s church?” The answer was to defend rights and ranches against federal tyranny, with color-coded sections in the Nay Book corresponding to places where the gospel is said to support such a notion.¹⁰²

¹⁰² Leah Sottile, “Bundyville Chapter Two: By a Thread,” *Longreads*, May 2018, <https://longreads.com/2018/05/16/bundyville-chapter-two-by-a-thread/>.

Cliven Bundy and Bunkerville

After years of relative quiet, during which time the ideologies described above never died, the Sagebrush Rebellion saw its first revival in the early 2014 when news of the Cliven Bundy standoff near Bunkerville, Nevada, surfaced. Cliven Bundy initially refused to renew his grazing contract with the federal government in 1993, though he continued to graze his cattle on that land. Despite attempts to get him to pay his renewal fees, Bundy refused, “pursuant to [his] vested grazing rights.” He additionally declared that he did not recognize the authority of the BLM and accumulated more than \$1 million in unpaid fines.¹⁰³ The Bureau of Land Management sought to remove the unpaid cattle from the land in 2014 and federal agents were dispatched to seize them. Agents stood down when they found themselves outnumbered with supporters, both armed and unarmed. As with the Posse Comitatus and Militia movements, support died down from an intervening event. In this case, the movement lost major public support when video of Cliven Bundy suggesting that African Americans were better under slavery surfaced,¹⁰⁴ leaving the revived rebellion in a stall as they waited for new opportunities to arise to reinvigorate it again.

¹⁰³ *United States v. Cliven Bundy*, 1998 US Dist. LEXIS 23835.

¹⁰⁴ Aaron Blake, “Cliven Bundy on Blacks: ‘Are They Better off as Slaves?’” *Washington Post*, 24 Apr. 2014. Cliven Bundy originally questioned if the “negroes” were better off enslaved.

The Occupation at Malheur

The Hammonds

Bundy and his supporters saw such a new opportunity in 2016 with the resentencing of Dwight and Steve Hammond. In 2012, Dwight Hammond, Jr. and his son Steven Hammond were charged with felony arson after setting fire to federally-managed land in 2001 and 2006. In the 2001 fire, it was alleged that the Hammonds had illegally slaughtered a herd of deer and set the fire to destroy the evidence. The Hammonds countered that they were trying to prevent the spread of invasive plants onto their property. The 2006 fire was a backburn intended to protect winter feed on their ranch from a nearby wildfire started by lighting. The fire burned onto public land and threatened the lives of four BLM firefighters who were unaware that the backburn had been lit.¹⁰⁵ While they were convicted on two counts of arson on federal lands, US District Judge Michael Robert Hogan, on his last day on the bench before retiring, opined that the minimum sentence of five years, as set by the Antiterrorism and Effective Death Penalty Act of 1996, would constitute cruel and unusual punishment. Judge Hogan independently sentenced Dwight Hammond to three months imprisonment and Steven Hammond to a year and a day. After the sentence was struck down by the 9th Circuit Court of Appeals, Chief Justice of the District Court of Oregon Ann Aiken resentenced both to the mandatory minimum five years with credit for time served.¹⁰⁶

¹⁰⁵ US Attorney's Office, District of Oregon. "Eastern Oregon Ranchers Convicted of Arson Resentenced to Five Years in Prison," *US Attorney's Office, District of Oregon*, 7 Oct. 2015. <https://www.justice.gov/usao-or/pr/eastern-oregon-ranchers-convicted-arson-resentenced-five-years-prison>.

¹⁰⁶ Mateusz Perkowski, "Judge Sends Oregon Ranchers Back to Prison," *Capital Press* (Salem, Oregon), 7 Oct. 2015.

The Bundys Come to Oregon

The Bundys capitalized on this development as a potential means by which to revitalize their own movement. They and many supporters had moved into town at least by 15 December 2015, urging residents in a town hall to form the Harney County Committee of Safety.¹⁰⁷ These are based on the Committees of Safety created during the American Revolution to create a shadow government of Patriots to overthrow British tyranny. In a video posted on 1 January, Ammon Bundy released a video on YouTube remarking on how similar he believed the situation to be to the Bunkerville Standoff and stating that he was doing what God intended him to.¹⁰⁸ On 2 January 2016, two days before the Hammonds were to report back to prison, Cliven Bundy released a press statement calling for the Hammonds to be taken into protective custody by the Harney County Sherriff, arguing that “the United States Justice Department has NO jurisdiction or authority within the State of Oregon, County of Harney over this type of ranch management.”¹⁰⁹ This harkens back to the ideology espoused by Posse Comitatus, which Bundy presents as the “divine inspired form of government” and the “proper form of government” (Fig. 4).

¹⁰⁷ Shane Radliff and Kyle Rearden, “The Origins of the Harney County Committee of Safety,” *Liberty Under Attack* (blog), 27 Apr. 2016, <http://www.libertyunderattack.com/origins-harney-county-committee-safety/>. I note that this is a personal website run by free market anarchist and radio host Shane Radliff. Researchers should approach its contents with due intellectual caution.

¹⁰⁸ Ammon Bundy, *Dear Friends*, Video, 19:37, Jan. 1, 2016, <https://www.youtube.com/watch?v=M7M0mG6HUyk&t=1017s>.

¹⁰⁹ Cliven Bundy “Letter to the Hammonds and Harney County Sheriff David M. Ward.” *Bundy Ranch* (blog), 2 Jan. 2017. 9:58AM. <http://bundyranch.blogspot.com/2016/01/for-immediate-press-release-cliven-d.html>.

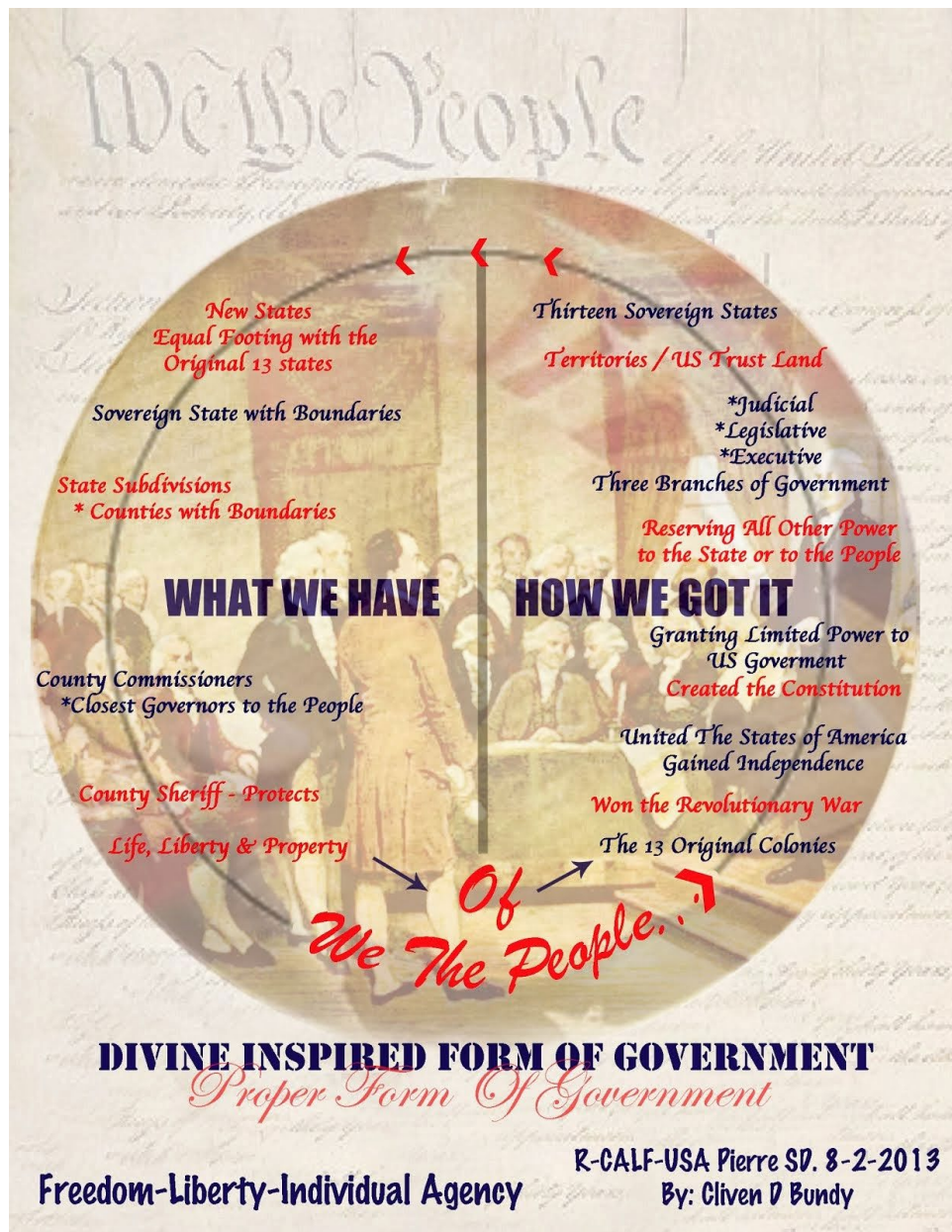


Figure 4: “Proper Form of Government”

Cliven Bundy’s “divine inspired” conception of a proper form of government. The infographic is somewhat coherent, showing the relationship between “what we have,” as in the ideal forms of law that Bundy envision, such as how states enter the union as equals to the thirteen original states, contentious for him since there is so much federally-owned land in the west, but not in the 13 original colonies, and “how we got it” which outlines early American history. Source: Bundy Ranch.

At a rally in the Burns Safeway parking lot, Ammon Bundy and Ryan Payne announced that they were going to occupy the Malheur NWR Headquarters and encouraged their supporters to join them to “make a hard stand.”¹¹⁰ This was followed by an inaccurate and highly conspiratorial history of the situation posted to the Bundy Ranch Blog to justify the occupation. For instance, it referred to the creation of the wildlife refuge as a “political scheme” to protect birds in an “Indian reservation” (without Indians).¹¹¹ Adopting the name Citizens for Constitutional Freedom, Ammon Bundy finally issued a call for members of the public to join them on 5 January on the Bundy Ranch blog:

Calling all good Men and Women to Burns Oregon, Malheur Wildlife Refuge

We have a lot of work to do here in Harney County. We need more people to pitch in the work of defense, title records research, and other needs. We have had non-stop people from Harney County coming by and giving us their support. They are showing a [sic] excitement to participate in taking back their land and resources.

We need more good men and women to come and participate in the work. We have good facilities and regular meals. Come and be part of assisting the people in claiming & using their lands and resources.

There are no road block [sic], just navigate to the refuge and look for the media trucks. The Lord has been good to us,

Ammon Bundy¹¹²

Many key players from the Bunkerville Standoff also were present at the Malheur Occupation. These included Ryan Payne, the Montana militiaman and tactician of the

¹¹⁰ Ammon Bundy, “Speech at Safeway Parking Lot Rally,” (speech, Burns, Oregon, 2 Jan. 2016); Tyler Leeds, “Central Oregon Activists in Burns: Occupiers Hijacked Trust: Constitutional Guard Members Critical of Takeover,” *Bend Bulletin* (Bend, Oregon), 4 Jan. 2016; Les Zaitz “Militiamen, Ranchers in Showdown for Soul of Burns,” *Oregonian*, Dec. 30 2015.

¹¹¹ “Full Story About What’s Going on in Oregon.” *Bundy Ranch* (blog), 4 Jan. 2017. 6:19PM. <http://bundryranch.blogspot.com/2016/01/full-story-about-whats-going-on-in.html>

¹¹² Ammon Bundy, “Call.” Space breaks in the original.

takeover. Payne was already known for having organized snipers to face off against federal agents at Bunkerville. Pete Santilli is an internet radio host who was at Bunkerville and broadcasted live from the occupation.¹¹³ Others, like LaVoy Finicum, would gain new fame as well-known faces of the occupation. Even Cliven Bundy, with outstanding federal arrest warrants, attempted to reach Malheur but was arrested at Portland International Airport.¹¹⁴ The occupiers renamed the Malheur NWR headquarters to the Harney County Resource Center.

The Initial Tribal Response

The Burns Paiute Tribe was immediately concerned with the occupation and organized a press conference on 6 January. Tribal Council Chairperson Charlotte Rodrique read the following statement:

Yesterday the Burns Paiute Tribe joined other community leaders and developed a statement calling for an end to the armed protest at the Malheur National Wildlife Refuge. Armed protesters don't belong here. By their actions they are desecrating one of our sacred sites. They are endangering our children and the safety of our community. They need to leave. Armed confrontation is not the answer.¹¹⁵

Tribal Council Member Jarvis Kennedy spoke more bluntly on his frustration:

We just need them to get the hell out of here. Sorry. Because we didn't ask them here. We didn't want them here.

¹¹³ Bryan M. Vance, Conrad Wilson, "Faces of the Malheur Refuge Occupation," *Oregon Public Broadcasting*, 26 Feb. 2017; Amanda Peachler, and John Sepulvado. 2 Sep. 2016, "Ep. 1: What Happened in Harney County?" in *This Land is Our Land*, produced by OPB, podcast, MP3 audio, 22:10, accessed 9 May 2018. <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/this-land-is-our-land-podcast-meet-defendants/>.

¹¹⁴ Les Zaitz, "Nevada Rancher Cliven Bundy Arrested by FBI in Portland," *Oregonian*, 10 Feb. 2016.

¹¹⁵ Charlotte Rodrique, "Burns Paiute Press Conference," (speech, Burns, Oregon, 6 Jan. 2016).

They say they don't want to bother the community. But you know what? Our little kids are sitting at home right now when they should be at school. They're jeopardizing...they're scaring our people out here.¹¹⁶

Concerning federal relations and the oppression that the people of Harney County, including the Burns Paiute were supposedly subjected to, Tribal Chair Rodrique noted that the tribe considered the Malheur National Wildlife Refuge as the “protector of our cultural sites in that area. And because of our wintering grounds there, there are a lot of sites that are important to our tribe. We have sites that are protected within the boundaries of the wildlife refuge.”¹¹⁷ To that end, maps, documents, and location information for many sacred Paiute sites were kept confidential at the Headquarters, as were many Paiute artifacts. Rather than liberation, there was frustration over the disruption to the Tribe's good working relationship with the US Fish and Wildlife Service (USFWS) who operate the Malheur NWR and anger over the occupation and fear that sacred sites and artifacts might be damaged, looted, or exposed.

This leaves the point of if the tribe could still identify with the occupiers as the Burns Paiute Tribe is heavily regulated by the federal government. For instance, the tribe is still beholden to the USFWS to access and store their artifacts, no matter how good the relationship with the agency and the tribe was. While fielding questions, a KGW reporter asked: “Mr. Bundy and his crew say that they're here to help you stand up for your rights, to push back the Federal Government's oppression. Do you need that help?” Chairperson Rodrique responded:

¹¹⁶ Jarvis Kennedy, “Burns Paiute Press Conference,” (speech, Burns, Oregon, 6 Jan. 2016).

¹¹⁷ Rodrique, “Burns Paiute Press Conference;” Charlotte Rodrique, “Don't Change the Status Quo—Unless It's to Return Land to Tribal Control,” *New York Times*, 7 Jan. 2016; Amanda Preacher, “Tribe Denounces Malheur Refuge Occupation,” *Oregon Public Broadcasting*, 6 Jan. 2016; Conrad Wilson, “Tribe Asks Federal Authorities to Protect Refuge Artifacts,” *Oregon Public Broadcasting*, 25 Jan. 2016.

I don't feel oppressed. I don't think any of the tribal members feel oppressed. I think oppression is in their [the occupier's] minds. It's not in our minds. And I think a majority of the tribal people function well here in this community and...we feel like we're part of the community.¹¹⁸

This is not to suggest that the tribe was free from problems, nor that there isn't a need for decolonizing methodologies to be applied to this situation, merely that the type of oppression being perceived by the occupiers were not reflected in Paiute thought. Even the fiery rhetoric of Jarvis Kennedy acknowledged the ties the Burns Paiute felt to the Harney County community, choosing to frame the issue as one for all of Harney County rather than just the Burns Paiute:

We as Harney County residents don't need some clown to come in here and stand up for us. This community is hardworking. We make something out of nothing here. We don't got no jobs here. But we don't need them to back us up. We survived without them before, and we'll survive without them when they're gone...

We don't need these guys here. They just need to go home and get out of here. Because we as Harney County people [can] stand on your own feet. We have our own rights. And we're hard-working people.¹¹⁹

Beyond just not supporting the occupation, Burns Paiute tribal members felt indignant and were appalled that people from outside the community would attempt to co-opt the struggles of the Harney County, which they didn't understand, to further their own agendas. Charlotte Rodrique opined:

I think about the protestors as outsiders, as people who don't understand what the goals are, what people in this country have become accustomed to...I don't think that the people who came in and occupied the wildlife refuge have a clear understanding of how our relationships with the federal government are in this country.¹²⁰

¹¹⁸ Rodrique, "Burns Paiute Press Conference."

¹¹⁹ Kennedy, "Burns Paiute Press Conference."

¹²⁰ Rodrique, "Burns Paiute Press Conference."

Beyond merely rebuking the advances of the occupiers, the Burns Paiute press conference also sought to bring focus to the Indigenous history of the land and assert their presence as extant people still living in their unceded ancestral homelands. The sense of offense on the part of the Burns Paiute is was tied directly to an unbroken history of being forgotten. Cheryl Lohman, CEO of the Numu Allottee Association, said as such in her comment:

The Paiute people have suffered tragedies that are unbelievable. Genocide. Vendetta against them. And we—and me personally—my ancestors are original allottees that came, that were put in prison, and came back. So, I’m an heir, and I’m a descendent, and I feel that it’s my responsibility to protect my land, what’s left of it. I know that all the people out there in Burns, even though I’m not involved there due to boarding school, they are my relatives... and for those people [the occupiers] to say that the land belongs to the ranchers... it’s an insult.¹²¹

Tribal Councilmember Cecil Dick states: “what we want to do with the refuge is that we want to get the historical facts *right*. Mr. Bundy comes in and talks about 1890. Well, before then it was occupied by our people.”¹²² Chairperson Rodrique concurred:

Just recently they found some artifact here that were 15,000 years [old]. And don’t tell me any of these ranchers came across the Bering Strait and settled here. We were here first. We were here before the volcanoes formed the diamond craters. And we’d like the public to acknowledge that.

Our history isn’t pretty. The inequities we’ve experienced, the poverty that we’ve lived through, but the one thing I’m really proud of is the tenacity of our people. You know, these 420 people [of the Burns Paiute Tribe] are probably descendants of about 60 people who were able to get back here from Fort Simcoe.¹²³

¹²¹ Cheryl Lohman, “Burns Paiute Press Conference” (comment, Burns, Oregon, 6 Jan. 2016).

¹²² Cecil Dick, “Burns Paiute Press Conference (comment, Burns, Oregon, 6 Jan. 2016). Emphasis is my own based on Councilmember Dick’s delivery in the original. It is unclear what Councilmember Dick was referencing in terms of 1890 as a significant date.

¹²³ Rodrique, “Burns Paiute Press Conference.” Fort Simcoe is on the Yakama Indian Reservation.

Rodrique would also go on to note that the point of sharing this history of genocide wasn't for pity, but so that the general public would understand why the Burns Paiute Tribe opposes this occupation specifically and why the tribe protests other events they perceive as threatening their sovereignty and way of life in their ancestral lands more generally.¹²⁴ This would indicate that, at this point, the tribe viewed the occupation not as an isolated or unprecedented event where their rights were being infringed upon. Jarvis Kennedy says as much, calling the occupiers just a "different cavalry" from the ones that pursued genocide against his ancestors:

We were here way before anybody else got here in Eastern Oregon, Idaho, Northern California and Northern Nevada there. And it's tiring. It's the same battle that my ancestors had and now it's just a bunch of different cavalry wearing a bunch of different coats, the way I see it.¹²⁵

However, the Burns Paiute recognized the occupation not only as an unfortunate opportunity to assert themselves against the occupiers, but also to publicly frame the tribe's stance on other issues the tribe was working against, such as lack of wildlife or damming rivers. As a colonial event which also affected the surrounding white community, the occupation represented an important opportunity for the Burns Paiute to assert their presence and sovereignty.

What can be clear is that members of the Burns Paiute recognized that the federal government was responsible for how law enforcement actions against the occupiers was taken, but the subdued the response by police and federal agents did not escape notice. Federal law enforcement desired a peaceful resolution and to especially avoid a repeat of the tragedies at Ruby Ridge and Waco, even as the responded with

¹²⁴ *Ibid*

¹²⁵ Sarah Sidner, "Native Tribe Blasts Oregon Takeover," *CNN*, 6 Jan. 2016, <https://www.cnn.com/2016/01/06/us/native-tribe-blasts-oregon-takeover/index.html>.

overwhelming numbers to keep from being outgunned as they were at Bunkerville. Charlotte Rodrique noted at the presser that the tribe believed that this was a federal issue and therefore outside their jurisdiction to comment on how to properly deal with the occupiers, other members of the tribe were free to express their own individual takes. Denise Pollard, newly elected Councilperson of the Fort Bidwell Indian Community and Cheryl Lohman's sister was not pleased with the sluggishness:

I cannot understand why they are being allowed to come into this area and causing millions of dollars of damage not only disrespecting our people, but disrespecting the animal lives that depend on this area to live. And it just really makes me angry that the federal government just sits there and watches."¹²⁶

Jarvis Kennedy cut through the Ruby Ridge/Waco defense and recognized race and whiteness as a significant factor in the pace of law enforcement action:

I've got a question for the world out there: cause all the eyes are on this little tribe here. What if it was a bunch of Natives that went out there and took that, or any federal land? What would the outcome be? Think about that. What would happen?

Would they let us come into town and get supplies and reup? Tell me. I'm asking you, think about that.¹²⁷

This sentiment was repeated ten days later by Charlotte Rodrique to RT America:

If we had gone out there and done something like that—we're brown skinned, people of color—I'd say you would have thumped me on the forehead first, [dragged] me out of there, thumped me again, and locked me up. Or shot me. Or whatever.

But because these people are not people of color, the whole approach to enforcing government laws is different... it's biased. I think it should be

¹²⁶ Denise Pollard, "Burns Paiute Press Conference" (comment, Burns, Oregon, 6 Jan. 2016).

¹²⁷ Kennedy, "Burns Paiute Press Conference."

more aggressive. And I think, truthfully, I do think if it were people of color, the approach would be more aggressive.¹²⁸

The Burns Paiute's initial response demonstrates two key points: that the tribe believed that it had a more legitimate claim to the land based on history and disagreed with the occupation because of both its flight from history and the fact that the tactics employed relied on ignorance of local realities and highlighted the privilege that its supporters carried by being white or white-presenting. The notion of returning the land to the local ranchers carried little weight because history has shown that the local ranchers themselves were products of settler colonial policies which removed them from their unceded homelands and sent them to Yakama. Despite this, the Burns Paiute Tribe and the Burns Paiute people had discovered ways to work with the greater Harney County community, which the occupiers ignored when they came in without being invited by the local community. Their tactics were also alienating since the tribe, even if it had condoned such violence, would probably be sanctioned more strictly by the government and its people more violently dealt with, compared to the Bundys or the other occupiers. For the Burns Paiute, there was more to lose as a relatively small, poor, and recently federally-recognized¹²⁹ tribe and as people of color. In fact, the only confirmed tribal person participating in the occupation was Eric Lee Flores of the Tulalip Tribes of Washington State.

¹²⁸ RT America, "Oregon Standoff: Who Are the 'Rightful Owners' of the Land?" YouTube Video, 4:51, Posted 15 Jan. 2016, <https://www.youtube.com/watch?v=9VMtvZEKLSM>.

¹²⁹ The Burns Paiute gained federal recognition as a tribe in 1968.

Pick Up Your Things: The Occupier's Perplexed, Perplexing Response

The occupier's response to this first press conference suggests ignorance of Indigenous presence on the land and a failure to consider how to incorporate Indigenous support to their cause before beginning the occupation. For instance, Ammon Bundy responded that he found the Burns Paiute Tribe's position "interesting," noting that "they have rights as well. I would like to see them be free from the federal government as well. They're controlled and regulated by the federal government very tightly and I think they have a right to be free like everybody else."¹³⁰ While this statement is relatively innocuous, actions and calls by LaVoy Finicum would deeply upset the Burns Paiute Tribe and bring into reality some of the fears the Burns Paiute expressed during the 6 January press conference.

LaVoy Finicum, one of the most visible of the occupiers in the media, posted a video on 21 January on his YouTube channel with Blaine Cooper. Finicum and another occupier are seen in the storage room of the Malheur NWR headquarters building with Northern Paiute artifacts, explaining that they were there to express their "concern" for how the artifacts were stored. Among other allegations, they claimed to find rats nests strewn among the boxes of artifacts. Their expressed reason for filming the video was to reach out to the Burns Paiute Tribe to "open up a communication with a liaison because we want to make sure that these things are returned to their rightful owners and they're taken care of." Cooper expressed disbelief as to why the "BLM or whoever was in charge of these native artifacts just kind of boxed them up and let them just rot down

¹³⁰ Preacher, "Tribe Denounces."

here.”¹³¹ Addressing the camera, Finicum states: “my question is: *why* do they just keep them down here?” to which Cooper responds “yeah. Don’t they belong to the natives—the rightful owners?” Finicum concludes with another request for contact with the Burns Paiute:

Why are they locked away here for nobody but for them to look at whenever they come down here? This needs to be taken care of, and so we’re reaching out to the Paiute people. In... in as sincere a manner as I can. Please, let’s open up a dialogue. Come... get a representative [to] come here [and] let’s start talking face-to-face and let’s make sure we take care of the heritage of the Native American people, and any concerns that they have, so they can voice them so we can hear that. Any claims that they may have upon the lands, so let’s begin that dialogue. But as I said this is just some of them here.

This is how the Native American’s heritage is being treated. To me, I don’t think it’s acceptable. Let’s get this thing cleared up and let’s start having this dialogue. So, again, just starting this dialogue and we want to as respectful as possible of everybody.¹³²

Additionally, another occupier can be heard saying “sir, this is evidence” with Finicum responding “that’s why I didn’t touch anything,” implying that the storage of the artifacts was conducted in a criminal manner. The occupiers sought to shift the criminality off of them, even as they seem confused over how Indigenous the land was or even who managed the land they were currently occupying. In fact, it wasn’t the BLM, the agency the occupiers had the largest gripes against, but the USFWS, which doesn’t generally manage rangeland at all.

Finicum was featured in at least two other videos filmed on or around 26 January renewing his calls for dialogue. One titled “Liberty Revolution – Neglected Paiute Artifacts” was posted to David Fry’s channel and “Liberty Revolution –

¹³¹ LaVoy Finicum, “Jan 20 NATIVE AMERICAN ARTIFACTS,” YouTube Video, 3:26, Posted 20 Jan. 2016, <https://www.youtube.com/watch?v=EzFhWAcu3i0>.

¹³² *Ibid.*

Reaching Out to the Paiute's [sic]" was posted to his own. In Fry's video, Finicum asks for a face-to-face meeting with them through one of the various other tribal people who have supposedly volunteered to act as emissaries, and that it is time for the Burns Paiute to "throw off the BIA, to become a completely sovereign, independent nation without the overlordship, the overseership of the BIA... we desire a mutual respect back towards you and towards those things you hold sacred... We be on the same sides. We're not enemies."¹³³ The video on his own channel repeats the call to meet, though he admits the "Paiute Tribe" had made it "really clear that they do not want to have any interaction with us." Still, he specifically notes this time that he had brought in a member of the Delaware Tribe to act as a mediator and made assurances that "the artifacts are not disturbed, not moved, left as we have found them, safe, and secure."¹³⁴

Even as these promises and calls for mutual respect were made, the occupiers paid little heed to the potential damage to artifacts found in the landscape. As previously noted, many artifacts and burial sites still exist in the landscape. Charlotte Rodrique notes that "this country is covered in artifacts. What little piece of our history is in those boxes and on those shelves is not a drop in the bucket."¹³⁵ Still, occupiers used heavy equipment to build an improvised road and dug at least two large trenches, at least one of them for a latrine. These and the main outdoor campsite used by the

¹³³ DefendYourBase (David Fry), "Liberty Revolution – Neglected Paiute Artifacts," YouTube video, 3:28, posted 25 Jan. 2016, <https://www.youtube.com/watch?v=6l2tJ7Bxb3Q&t=28s>.

¹³⁴ The Delaware Tribe lived on the Eastern seaboard until they were removed to Wisconsin and Oklahoma in the United States. The tribe has no historical connection to the Great Basin or the Northern Paiute.

¹³⁵ Charlotte Rodrique, "The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response," (speech, CU Boulder Center of the American West, Boulder, Colorado, 21 Feb. 2017).

occupiers were on or adjacent to sensitive cultural areas, according to the FBI.¹³⁶ Jarvis Kennedy addressed this at a rally in Portland: “what would they do if I went into their cemeteries where their grandparents are buried, sitting there, [occupying], driving heavy equipment around and over their graves? I could always go out and loot their cemetery, but I have more respect than that. So does [sic] my people.”¹³⁷ Tribal responses reassert their Indigenous presence as being irreducible to merely having possession of artifacts and liquifies the moral high ground that the occupiers sought to reclaim.

Tribal Responses to Finicum’s Offer

The tribe chose not to respond to the occupiers. According to Charlotte Rodrique, to the Burns Paiute Tribe, there is no point to sending a liaison. The tribe operates with the US on a government-to-government relationship, and the occupiers had no such authority. “I might as well go talk to our neighbors across the fence from the reservation,” she exclaims, “They got just as much authority.”¹³⁸ In an interview with Jennifer Dowling of the news station KOIN of Portland, she stated of Finicum’s video:

Their presentation on the video was mainly for effect. You know? They’re trying to get a reaction out of somebody. The things we’re worried about are the things that are defenseless: the animals, the plants,

¹³⁶ Ryan Hass, “Militants May Have Dug Latrines Near Tribal Sites,” *Oregon Public Broadcasting*, 26 February 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/militants-reportedly-dug-latrines-near-tribal-sites/>; Billy J. Williams, “3:16-CR-00051-BR: Government’s Response to Defendants’ Motions for Site Access” (US District Court, District of Oregon, Portland, Oregon, 2016),

http://res.cloudinary.com/bdy4ger4/image/upload/v1455670125/Motion_for_MNWR_access_jix0hn.pdf.

¹³⁷ Jarvis Kennedy, “Rally for Malheur and Public Lands,” (speech, Portland, Oregon, 19 Jan. 2016).

¹³⁸ Hannah Button, “Paiute Tribe: ‘It’s Not About Possessing’ Artifacts,” *KOIN*, 24 Jan. 2016, http://www.koin.com/news/paiute-tribe-its-not-about-possessing-artifacts_20180208091512651/960329055.

all the archaeology and the history of the land. You know, it's not about possession of something.¹³⁹

As calm as Rodrique appeared on camera, the videos posted from Finicum did not allay fears that the Burns Paiute had about the safety of their artifacts. On the contrary, they confirmed the fears that the occupiers had access to them and were indeed handling them. Following a letter sent by Gov. Kate Brown to Attorney General Loretta Lynch and FBI Director James Comey, on 20 January calling for an end to the occupation, the Burns Paiute Tribe sent their own letter two days later. The Burns Paiute Tribe called on the Department of Justice and the FBI to secure the “porous boundary between our community and anarchy.” The Burns Paiute Tribe sought to protect their people from being harassed by “bigots,” prevent the occupiers from potentially financing their occupation by selling plundered artifacts on the black market, and to stop what the tribe considered the *de facto* condoning of the occupation of federal buildings.¹⁴⁰ They also note that, in the unratified 1868 treaty, the tribe was supposed to be protected from crimes committed by white people against them. The tribe requested a “swift resolution” to the occupation as well as additional steps be taken to prevent the loss of cultural patrimony.

Despite these clear signals as to the strain that their occupation was causing the Burns Paiute, LaVoy Finicum still appears perplexed at the tribe's response. In the same KOIN segment mentioned above, he tries to portray the occupiers as saviors of tribal cultural objects:

¹³⁹ *Ibid.*

¹⁴⁰ Burns Paiute Tribe to Hon. Loretta E. Lynch, Attorney General and Hon. James B. Comey, Dir. of the Federal Bureau of Investigation, 22 Jan. 2016, <https://www.scribd.com/document/296625561/Burns-Paiute-Statement-and-Letter>. Contact with the outside world was so normalized that occupiers were receiving mail at the refuge headquarters. A FedEx truck was seen at the headquarters days before the letter was dated.

For some reason, they don't [want to] have a dialogue... It doesn't seem reasonable to me where a whole group of white men come and disturb the ground—disturb it, put it in boxes for 30 years down in the dark basement—and now we bring it to light and say “hey, would you like to have this?” And, somehow, they don't.

Finicum also let the reporter know that the artifacts were inspected by Siletz tribal elder Sheila Warren, who stated that the occupiers left them in good condition. In reality, the 24 January video shows Sheila Warren noting that nothing about the way the artifacts had been changed and that “they're safe, they're dry, they're well kept, and I don't see any problem with the storage except that they're just stored in here [at the headquarters].” Her only question was why the government did not turn the boxes over to tribal elders or why had they not been displayed in museums, pondering that “ I would wonder why the Paiute Tribe wouldn't want to come out here, pick these up, put them in their proper place where they belong, and make sure they're authenticated and taken care of.”¹⁴¹ The exact reasons for Warren's visit aren't immediately clear, and neither is the extent of her familiarity with the Burns Paiute. For example, her spur-of-the-moment suggestions for maintaining and displaying the artifacts are largely

¹⁴¹ Viewing Blaine Cooper's original video is now impossible. One is available on Wiki Commons. See: Blaine Cooper, “Breaking Update, Oregon Native American Weighs in On...,” YouTube Video, 1:36, Posted 24 Jan. 2016. https://commons.wikimedia.org/wiki/File:Oregon_Native_American_at_Malheur_Occupation.webm. The original video's site and title were unrecoverable since Blaine Cooper's YouTube account was suspended.

impractical since the Burns Paiute Tribe maintains no tribal museums, and there is only one museum at all in Harney County.¹⁴²

A more important reason was that Burns Paiute Tribe saw no need to remove the artifacts. From a safety perspective, Sheila Warren herself had already pointed out that the artifacts were being kept appropriately and that there was no imminent threat of their destruction. Additionally, the artifacts were hardier than the occupiers implied them to be. Speaking at the University of Colorado Boulder's Center of the American West, Charlotte Rodrique offered a simple explanation on the condition of the artifacts at the refuge headquarters:

These are *stone* artifacts. I said, 'they're not organic. They're not baskets; they're not leatherwork; they're not anything that would be chewed up by mice or anything like that.' I said, 'these are stone.'

And [LaVoy Finicum] complained about there being mouse turds in the boxes. I said, 'those things came from the desert. I said, 'they laid under sage brush.' I said, 'I'm sure that a chipmunk sat on it and ate something and left a dropping on it.' I said, 'crows or whatever flying over dropped something on it.' I said, 'when they're laying out there in the open exposed,' I said, 'they're subject to all kinds of things. But it doesn't hurt the stone itself.'¹⁴³

¹⁴² The situation for the Burns Paiute Tribe is generally very different from that of the Confederated Tribes of the Siletz, as well. While the original Oregon Coast Reservation has been severely shrunken, terminated, and then restored, the Siletz have been recognized since the 1850s until termination in 1955 and restoration in 1978; the Burns Paiute Tribe was only established in 1968. The Burns Paiute have approximately 402 enrolled members while the Siletz have around 5000. Burns Paiutes barely had the resources to start their Culture and Heritage while the Siletz maintain a cultural and community center. The Burns Paiute generally have fewer monetary resources, unable to maintain a profitable casino in the desert while the Siletz run the Chinook Winds Casino on the coast, which includes a convention center, two restaurants, 227 hotel rooms, 157,000 square feet (14,600 square meters) of gaming space, and operates 24/7. There are also no known mineral or timber resources on the Burns Paiute Reservation. This is not to say that the Siletz are without problems, nor do I imply that tribes should be pitted against each other for limited resources. By in large all tribes deserve better than they get, but the Burns Paiute are especially resource strapped and solutions proposed by Warren, while feasible for the Siletz, may be impossible for the Burns Paiute.

¹⁴³ Rodrique, "The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response."

Practically, she also addressed how large artifacts like a 10-foot cubed petroglyph couldn't be moved from the landscape. "I'm going to put that in my little Ford Ranger and drive off with it? I don't think so!" Lastly, she didn't want to make herself culpable to a crime by effectively stealing the Burns Paiute Tribe's own artifacts. She wanted to tribe to follow the regulations set in place in terms of chains of custody for the artifacts. If she had taken them without proper documentation, "I'd be just as guilty as them."¹⁴⁴

Moreover, there is a spiritual and sacred dimension to the artifacts which informed the tribe's decision that the artifacts did not need to be moved, and indeed that moving them could bring greater harm than not. Considering her earlier statements about wildlife, plants, and the history in the land, Rodrique is linking human history in the land to natural history. While the occupiers view artifacts as strictly divorced from the landscape, Northern Paiute people still envision them as deeply enmeshed in it and therefore should not be removed from it. "We're in the dirt. Our history and culture is in the soil," Rodrique explains.¹⁴⁵ She recalled a story about "remains that washed up out of those lakes during that flood and they were reburied on the Malheur Refuge because, as tribal people, we didn't want to rebury them some place way away from where they were. So, the closest safe place for them at the refuge."¹⁴⁶ The artifacts from the landscape are but a small part of why the land is sacred. Tribal archaeologist Diane Teeman explains that:

It's a community in the dirt. I use that word. And when we dig it's an offense against that community. It's why I became an archaeologist, not so much to participate in this particular knowledge-gathering system of

¹⁴⁴ *Ibid.*

¹⁴⁵ Anthony McCann "Malheur Part II: "Ours, But Not Ours,"" *LA Review of Books*, 8 Sep. 2016, <https://lareviewofbooks.org/article/malheur-part-ii-not/>

¹⁴⁶ Rodrique, "The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response."

the West, but to minimize the offense that archeology is to these communities in the soil.¹⁴⁷

The artifacts do not merely exist for preservation as cleaned museum pieces or solely for the Burns Paiute Tribe to have possession of them, and their removal from the site would disturb, but doesn't remove, the sacred value of the land from which they are taken. In fact, Finicum was offering the opposite of what the tribe wanted. Diane Teeman envisions a day where collaboration between the tribe and the Fish and Wildlife Service would change laws to allow repatriation of some or all the artifacts stored at the refuge *back to the soil*.¹⁴⁸

Additionally, these artifacts are imbued with *puha*, the Northern Paiute concept of the power of essence of a person, which is imbued on everything they make or use and lingers after death. "An action on a landscape is not only an action on prior acts and events," Teeman explains, "but also the people who were involved in those activities." Improperly moving the artifacts without the necessary ceremony and protections, it is believed, would have disturbed the ancestors who created them and provoke them to come back and bring harm upon those who have wronged them.

These measured responses and deep cultural explanations did not mean that other tribal members did not wish to at take possession of them because of the occupier's blatant disrespect and mistreatment of them, however. The Burns Paiute Tribe Facebook page issued the following plea, also on 22 January:

NOTICE

MEMBERS OF FACE BOOK

¹⁴⁷ McCann "Malheur Part II: "Ours, But Not Ours.""

¹⁴⁸ *Ibid.*

REZ

It has come to surface that several people from our Tribe are contemplating or at least discussing going to the refuge to take possession of artifacts stored at that facility. It has been reported this is being discussed on Face Book

Considerations

- The refuge is a Federal Crime scene
- It could lead to you being prosecuted as an accomplice
- There is more to our archaeological presence on the Refuge than those ARTIFACTS at the headquarters.
- The tribe will not take possession of those items. These Artifacts are evidence which will be used for prosecution of Those who have disturbed them or have them in their Possession

PLEASE LET THESE PEOPLE BE PROCESSED UNDER THE
ARCHAEOLOGICAL PROTECTION ACT AND TRY NOT TO GET
INVOLVED. CULTURAL RESOURCES PROTECTION CODE
PROHIBITS THE POSSESSION OF TRIBAL ARTIFACTS¹⁴⁹

Much as Rodrique feared herself becoming an accomplice, the Burns Paiute Tribe pleaded for its members to not lose legal standing despite the emotional and traumatic incident Finicum had created.

Resolution of the Occupation

As it became clear that the occupiers would not leave and that the FBI would not swiftly resolve the issue, patience with the situation began to wear thin in the local community.¹⁵⁰ Already on 9 January 2016, barely a week into the occupation, the Harney County Committee of Safety—the group the Bundys helped form but comprised

¹⁴⁹ Post to Burns Paiute Tribe Facebook page, 22 Jan. 2016, 5:08PM, accessed 20 Mar. 2016, https://www.facebook.com/permalink.php?story_fbid=1036492899746808&id=512598265469610. Extraneous spaces were removed, but nothing else has been changed.

¹⁵⁰ Samantha White, “Harney County Community Weighs In,” *Burns Times-Herald*, 13 Jan. 2016, <http://btimesherald.com/2016/01/13/harney-county-community-weighs-in/>.

of local residents—asked the occupiers to leave.¹⁵¹ Oregonian brothers Jake and Zach Klonoski began the Getting the Occupiers of Historic Oregon Malheur Evicted (G.O.H.O.M.E.) campaign to raise money for the Friends of Malheur National Wildlife Refuge, the Burns Paiute Tribe the Southern Poverty Law Center, Americans for Responsible Solutions, and the Malheur Field Station on 17 January. Jake Klonoski stated of the mission: “our only goal was a quick and peaceful end to this occupation of our home by people from out of state. Oregon is definitely the wrong state to mess with.”¹⁵² By the time the campaign made their final donation, 1643 people had donated \$135,647.¹⁵³ Soon afterwards, the Malheur National Wildlife Refuge Staff posted an open letter to their Facebook page:

An open letter to our friends, our supporters, and many curious about what's going on here.

From: The Staff of Malheur National Wildlife Refuge

To: Our Friends, Partners, and the American Public

Dear Friends,

Many have asked us to comment on the ongoing situation at Malheur NWR. We have refrained because we care deeply for the community, and want to ensure our words do not inflame an already heated situation. However, we believe it is important that our views and position are known.

We believe many in the media (as well as those sympathetic to the illegal occupiers) were surprised to hear that the community—while frustrated

¹⁵¹ Dave Blanchard, “Harney County Committee of Safety Asks Occupiers to Leave,” *Oregon Public Broadcasting*, 9 Jan. 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/harney-county-group-asks-occupation-to-leave/>.

¹⁵² Amanda Peachler, “Anti-Refuge Occupation Organizers Raise More Than \$130K,” *Oregon Public Broadcasting*, 16 Mar. 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/fundraising-refuge-restoration/>.

¹⁵³ Internet Archive, “Go Home Malheur,” Captured 12 Mar. 2016. <https://web.archive.org/web/20160312093517/http://www.gohomemalheur.org/>

with the Hammond situation—did not leap to the support of the militants. We are not surprised.

For over 100 years, our Refuge employees have been members of this community. We study, watch our kids play basketball, worship, commune, and interact with our fellow Harney County citizens—not as a ‘we vs. they’—but as an ‘us.’

In a community with nearly 40% of working adults engaged in some form of government, we are all touched or involved in the public process. In Harney County, that means we talk. We have cups of coffee. We have arguments. Together we knit our brows, and together we knit scarves. We understand what those currently occupying the Refuge don’t understand---that Harney County isn’t afraid of tough talk.

We can have effective disagreements and either find resolution, find compromise, or simply agree to disagree. But we do it with respect for the rule of law, and know that our areas of agreement and cooperation are infinitely more powerful than the differences we may face. Mostly, we face those differences together with open dialogue and open gates—not intimidation and threats. We have access to each other, because we are not afraid to confront difficult situations or have difficult conversations.

It pains each of us that we are missing our obligations to you—as church leaders, as 4-H advisers, as friends, and as school volunteers. We hope to be back soon and pick up where we left off.

From the bottom of our hearts, we thank you for your support. We know (as you do too) that it is not our Refuge that has been occupied; this is Harney County’s and America’s Refuge.

We are excited to be part of the eventual healing process for our community. We believe that this difficult situation will lead to even stronger bonds between the Refuge and the community that has supported us. We feel for you, because we are you.

We will get through this—because:

We. Are. Harney. County.

This is not to say that there was no support for the Bundys and the occupiers. In fact, the question of whether to support the Bundy’s cause and to what extent was quite divisive in Harney County. However, for many Harney County people, there was a stronger

connection to the refuge and the government which was severely misjudged by the occupiers. Much of the Harney County community was ready to see an end to the situation.

The occupation finally started unravelling on 26 January. Around 4:30PM six occupiers were arrested on their way to attend an event in John Day, including Ammon Bundy, his brother Ryan, and Ryan Payne. LaVoy Finicum was seen reaching for a gun and Finicum was shot and killed by Oregon State Police (OSP) officers and FBI agents. Eight occupiers were arrested that day, including radio host Pete Santilli as the FBI established checkpoints at the refuge.¹⁵⁴ In one day, all the top leadership of the occupiers was arrested and the public face of the occupation was shot and killed by police. Sean Anderson, who would go on to be one of the last four occupiers to surrender, stated that “all the chiefs left and they left us little Indians behind.”¹⁵⁵ Two days later, Ammon Bundy issued a statement to those remaining at the refuge: “I love you. Let us take the fight from here. Please stand down. Go home and hug your families. This fight is ours for now in the courts. Please go home.”¹⁵⁶ In a statement

¹⁵⁴ Conrad Wilson, Ryan Haas, and John Rosman, “FBI Surrounds Militants Still Inside Refuge After 1 Dead, 8 Arrested,” *Oregon Public Broadcasting*, 26 Jan. 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/bundys-arrested-fbi-oregon/>.

¹⁵⁵ OPB “Trapped Inside Malheur Refuge, Militants Desperate for Way Out,” *Oregon Public Broadcasting*, 28 Jan, 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/trapped-inside-malheur-refuge-militants-search-for-opitions/>

¹⁵⁶ Sarah Sidner and Dana Ford, “Oregon Standoff: Ammon Bundy Asks Colleagues to Go Home,” *CNN*, 28 Jan. 2016, <https://www.cnn.com/2016/01/27/us/oregon-wildlife-refuge-siege-arrests/index.html>.

later that day, he urged remaining occupiers to “Turn yourselves in. Do not use physical force.”¹⁵⁷

As soon as news broke that the Bundy brothers and Ryan Payne had been arrested and that Finicum had been killed, most people left the refuge.¹⁵⁸ Jason Patrick took leadership of the remaining 10 or so occupiers, who voted to stay.¹⁵⁹ Promised safe passage out of the refuge though, he was taken into custody that same day.¹⁶⁰ Ultimately, four occupiers would remain at the refuge. The four offered to surrender if they were given the same deal of free passage without arrest as other occupiers and if the pre-existing outstanding warrant for Anderson was dropped.¹⁶¹ Tensions and uncertainty rose as this request was refused and the occupiers stopped answering calls from the outside. After 41 days, the occupation ended on 11 February when, at the urging of the supporters they were still in contact with, all four were taken into custody. David Fry was the last to surrender after supporters urged him not to kill himself or get himself killed by police.¹⁶²

¹⁵⁷ Ammon Bundy, “A Statement of Ammon Bundy, As Read by His Lawyers on Thursday, Jan. 28, 2016,” Statement: Portland, Oregon, 28 Jan. 2016, http://res.cloudinary.com/bdy4ger4/image/upload/v1454011961/A_statement_from_Ammon_Bundy_m2_zjxv.pdf; Conrad Wilson and Bryan M. Vance, “Ammon Bundy to Remaining Militants: Turn Yourselves In,” *Oregon Public Broadcasting*, 28 Jan. 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/ammon-bundy-to-remaining-militants-turn-yourselves-in/>.

¹⁵⁸ Laura Gunderson, “Occupiers Leaving Amid Mounting Calls to End the Takeover,” *Oregonian*, 27 Jan. 2016, http://www.oregonlive.com/oregon-standoff/2016/01/occupiers_begin_to_trickle_out.html.

¹⁵⁹ Les Zaitz, “Leader of Dwindling Band of Refuge Occupiers Still Hopes for Peaceful Resolution,” *Oregonian*, 27 Jan. 2016, http://www.oregonlive.com/oregon-standoff/2016/01/leader_of_dwindling_band_of_re.html

¹⁶⁰ Carli Brosseau, “Jason Patrick, 2 Others Linked to Oregon Refuge Occupation Taken into Custody,” *Oregonian*, 27 Jan. 2016, http://www.oregonlive.com/oregon-standoff/2016/01/jason_patrick_2_others_linked.html.

¹⁶¹ Les Zaitz, “Four Holdouts Want Charges Dropped for One to End Occupation,” *Oregonian*, 28 Jan. 2016, http://www.oregonlive.com/oregon-standoff/2016/01/five_holdouts_want_charge_drop.html

¹⁶² *Oregonian*, “Oregon Standoff: 4 Holdouts All in FBI Custody as Occupation Ends,” *Oregonian*, 11 Feb. 2016, http://www.oregonlive.com/oregon-standoff/2016/02/watch_live_video_feed_from_the.html.

Burns Paiute Reactions to the End of the Occupation

The first indications as to the state of the Malheur NWR were revealed by filings by US Attorneys during the pretrial phases of *United States v Ammon Bundy et al.* In it, US Attorney Billy J. Williams and Assistant US Attorneys Ethan D. Knight and Geoffrey A. Barrow draw on FBI accounts to illustrate the state of the refuge. There were 24 structures that the Evidence Response Team had to process, which was estimated to take 21 days. The initial tactical teams reported feces and large stores of spoiling food. Vehicles and buildings were being carefully approached since there was a fear that they could be booby trapped.¹⁶³ The Art Crimes Team was called into process culturally sensitive sites alongside archaeologists from the Burns Paiute Tribe and the USFWS. The sites were described as follows:

The outdoor camping area is adjacent to or on a particularly sensitive cultural site that may require extensive processing. Occupiers appear to have excavated two large trenches and an improvised road on or adjacent to grounds containing sensitive artifacts. At least one of these trenches contains human feces.¹⁶⁴

Sean Anderson and one other person, later found out to be Jake Ryan, were indicted of depredation of government property for digging the trenches to “injure and commit a depredation against [United States] property, specifically, an archaeological site

¹⁶³ US District Court for the District of Oregon, *Government’s Response to Defendant’s Motions for Site Access: United States of America v. Ammon Bundy et al.*, by Billy J. Williams, Ethan D. Knight, and Geoffrey A. Barrow, 2-ECF16-16, Document 154, Portland: US District Court for the District of Oregon, 2016, <https://www.scribd.com/document/299479564/2-ECF16-16-154-U-S-A-v-A-Bundy-et-al-Government-s-Response-to-Defendants-Motions-for-Site-Access>.

¹⁶⁴ Greg Bretzing, “Statement by FBI Special Agent in Charge Greg Bretzing on the Situation at the Malheur National Wildlife Refuge,” (Statement, Burns, Oregon, 11 Feb. 2016), <https://www.fbi.gov/contact-us/field-offices/portland/news/press-releases/statement-by-fbi-special-agent-in-charge-greg-bretzing-on-the-situation-at-the-malheur-national-wildlife-refuge>.

considered sacred to the Burns Paiute Tribe.”¹⁶⁵ Jarvis Kennedy hoped that these disturbances would be brought to justice: “I think they got a case against them,” he told *Indian Country Today*, “[they] were dumb enough to make a video of themselves making the road and digging. They also left fingerprints on the controls of the heavy equipment they operated.”¹⁶⁶

Given the disturbing nature of the event for many in the community, not only the Burns Paiute Tribe, tribal people felt a sense of relief that the occupation was over. Chairperson Rodrique stated that she was “so thankful for all the Native nations—all the groups out there that supported us through this whole thing. Knowing that other people cared has meant a lot. Knowing here are people out there who can understand our situation, our concern about our ancestors’ remains.”¹⁶⁷ Still she also noted how the occupation managed not only to bring the tribe closer together, but also bring the community members closer to the tribe. “I think we all have gotten past the ‘I hate white people/I hate Indians interaction,” Rodrique said. Indeed, the occupation even caused local BLM employees to attend the regular county court meetings to seek out feedback from their local community.¹⁶⁸

¹⁶⁵ Portland Division, United States District Court for the District of Oregon, *Superseding Indictment, United States of America v. Ammon Bundy et al.*, by Billy J. Williams, Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, 3:16-cr-00051-BR, Document 282, Portland, United States District Court for the District of Oregon, 2016, <https://www.scribd.com/document/303442094/3-9-16-ECF-282-U-S-A-v-A-BUNDY-et-al-Superseding-Indictment>.

¹⁶⁶ Jacqueline Keeler, “Burns Paiute Make First Visit After Armed Takeover of Malheur Refuge,” *Indian Country Today*, 9 Mar. 2016, <https://indiancountrymedianetwork.com/news/native-news/burns-paiute-make-first-visit-after-armed-takeover-of-malheur-refuge/>.

¹⁶⁷ Jacqueline Keeler, “‘It’s So Disgusting,’ Malheur Militia Dug Latrine Trenches Among Sacred Artifacts,” *Indian Country Today*, 17 Feb. 2016, <https://indiancountrymedianetwork.com/news/native-news/its-so-disgusting-malheur-militia-dug-latrine-trenches-among-sacred-artifacts/>.

¹⁶⁸ Samantha White, “Local BLM Employees Aim to Enhance Communication with Community,” *Burns Times-Herald*, 23 Mar. 2016, <http://btimesherald.com/2016/03/23/local-blm-employees-aim-to-enhance-communication-with-community/>.

However, supporters of the occupation immediately turned on the Burns Paiute people as the occupation itself started to crumble. Charlotte Rodrique tells *Indian Country Today* that “if [a phone number] has a Colorado prefix, I can be sure it’s one of the militia people here on their cell phone” and that she forwarded all the threatening letters, emails, and texts she had received to the FBI.¹⁶⁹ Rodrique also recalled a phone call with a bigoted woman right after LaVoy Finicum was killed who called her a derogatory name before asking if she was happy Finicum was dead. Rodrique replied that she wasn’t at all joyful:

And I told her, “you’re talking to a tribal person. We don’t find joy in death. We know that that person’s gone into the next world, that that person is at peace with whatever was disrupting his life here in this world.” And I said, “that’s the only thing I’m thankful for is that. He was a very miserable person, and you could tell it by his actions and his feelings of being persecuted and all that stuff.” And I said, “it’s gone now. He’s in a good place.”¹⁷⁰

However, tribal members did not necessarily believe that the death was undeserved. This was not exclusively because of Finicum’s actions as an occupier, but because of the disrespect he showed to the artifacts he found at the refuge headquarters and the general disregard for artifacts the occupiers had exhibited towards tribal cultural patrimony through their actions at the refuge. Tribal archaeologist Diane Teeman describes to *LA Review of Books* reporter Anthony McCann that in doing her work, she must prepare herself beforehand to prevent illness. Recall the concept of *puha* informing this belief. Finicum and his fellow occupiers did not perform proper ceremony nor give proper deference to the spirits of those who made the artifacts he touched. Because of this, Jarvis Kennedy was not surprised at Finicum’s death,

¹⁶⁹ Keeler, “It’s So Disgusting.”

¹⁷⁰ Rodrique, “The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response.”

explaining “we don’t think it’s a coincidence that he died. No disrespect. We feel for his family. We didn’t want that to happen to him. But you can’t go messing with objects like that without protection.”¹⁷¹ Charlotte Rodrique concurred:

He had a bag of flints. He was waving them and the next day he is dead. He should never have picked those up and disturbed the spirits who made them. If it is flint arrowheads, someone who was a warrior or was a good hunter—those are the kind who come back and do these things.¹⁷²

Whether one attributes Finicum’s death to spirits who had come back to take revenge or not, one thing remained clear to the Burns Paiute: Finicum and the other occupiers weren’t simply accidentally disturbing their cultural patrimony out of ignorance. Rather, as Jarvis Kennedy notes: “they didn’t care. We did our press conference. We took our stand. They knew.”

To close out the occupation, the Burns Paiute led a number of tribes in a cleansing ceremony at sunrise on 12 March on a high point across from the refuge. Chairperson Rodriquee said the tribe sought to put uneasy spirits agitated by the disrespectful handling of tribal artifacts back to rest. “We don’t want our old people going down to gather basking making materials or fishing, things like that. We don’t want the spirits to be uneasy that we’re there,” she said. When they were allowed back onto the refuge, Councilperson Kennedy said they prayed, “prayed for their [the federal agent’s] families and for their safe passage home, and we prayed for Finicum and his family too—you know we didn’t want that to happen... and I sang a song... a victory song... It was like I said in the beginning at the news conference. We were here before you got here, we’ll be here when you’re gone.”

¹⁷¹ *Ibid.*

¹⁷² Keeler, “‘It’s So Disgusting.’”

Aftermath

Jarvis Kennedy's victory at that moment would not be reflected in the courts. Six counts were brought against 27 people. No charges were brought up on the Archaeological Resources Protection Act as the Burns Paiute Tribe desired of the Native American Graves Protection Act. Of these, 14 would plead guilty, including Blain Cooper, Ryan Payne—the strategist of the occupation who was also tried in Nevada for his actions at Bunkerville, Sean Anderson (depredation of government property) and his wife Sandra, as well as Eric Flores, the only known Indigenous occupier and a member of the Tulalip Tribes of Washington. Charges were dropped for Pete Santilli. Jason Patrick was found guilty of conspiracy, and Duane Ehmer and Jake Ryan were found guilty of depredation of government property. Ammon and Ryan Bundy were both acquitted in Oregon. Besides the acquittals in these trials, perhaps the most memorable episode was when occupier Jason Patrick attempted to approach Councilperson Kennedy to apologize outside the courthouse. Kennedy sternly rejected his advances, comparing Patrick to poking an “pissed off bear.” Patrick would later state “I’m sorry if they [the Burns Paiute] feel slighted in some way,” and that the occupation was “not at all” about disrespecting tribal lands.¹⁷³

Thus far, no one convicted from Malheur has received a sentence longer than the Hammonds. All told, \$78,000 in fines were levied, with Jake Ryan and Duane Ehmer

¹⁷³ Conrad Wilson, “2nd Malheur Trial Goes to Jury, Tempers Flare Outside Courtroom,” *Oregon Public Broadcasting*, 8 Mar. 2017, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/closing-argument-apology-jason-patrick-jarvis-kennedy/>

paying \$10,000 each earmarked for the Burns Paiute Tribe.¹⁷⁴ The estimated toll of the occupation on the Malheur NWR is \$6 million. This includes \$2.25 million for law enforcement response throughout the west and \$1.7 million for repairs and restoration.¹⁷⁵ US Attorney Billy J. Williams floats the total figure at just under \$12 million.¹⁷⁶ Both Bundy brothers, Cliven Bundy, and Ryan Payne faced trial in Nevada. However, charges against them were dropped by Chief US District Judge Gloria Navarro for the government's "reckless disregard to fulfill its constitutional duties."¹⁷⁷

¹⁷⁴ US District Court for the District of Oregon, *Joint Motion for Restitution: United States of America v. Jon Ritzheimer et al.*, by Lisa Hay, 3:16-cr-00051-BR, Document 2209, Portland: US District Court for the District of Oregon, 2017 <http://media.oregonlive.com/oregon-standoff/other/2017/08/23/restitutionamounts.pdf>; US District Court for the District of Oregon, *Joint Motion for Restitution: United States of America v. Duane Leo Ehmer and Jake Ryan*, by Michele L. Kohler, 3:16-cr-00051-BR, Document 2293, Portland: US District Court for the District of Oregon, 2017, <http://media.oregonlive.com/oregon-standoff/other/2017/10/26/ehmerryanrestituion.pdf>

¹⁷⁵ Malheur National Wildlife Refuge, "Post Occupation Information," *US Fish and Wildlife Service*, last updated 28 Oct. 2016, <https://www.fws.gov/nwrs/threecolumn.aspx?id=2147587683>

¹⁷⁶ Maxine Bernstein, "13 Oregon Refuge Occupiers Agree to Pay \$78,000 in Restitution," *Oregonian*, 23 Aug. 2017, http://www.oregonlive.com/oregon-standoff/2017/08/13/oregon_refuge_occupiers_agr.html

¹⁷⁷ Ryan Lenz, "Federal Judge Says Justice Was Violated in Prosecution of Cliven Bundy," *Southern Poverty Law Center*, 8 Jan. 2018, <https://www.splcenter.org/hatewatch/2017/10/30/bundy-trial>

Discussion

The above sections are intended to provide readers a rich account of Malheur and the history leading up to the occupation. Having at least a basic sketch of the discourse produced, this section will attempt to answer the original questions posted in the Introduction.

Were Tribal Responses Different?

Responses from the Harney County community in general were different compared to national media. Harney County itself only has a population of 7200 people, so the responses were tended to be more measured compared and cautious towards events happening in one's own backyard and to one's own neighbors. *Burns Times-Herald* reporter Samantha White reflects on the difficulty of the situation for local residents, including herself.¹⁷⁸ While some county residents did see the opportunity to put county issues to the fore of national debate, many others deemed it offensive that outsiders seized upon the Hammond's arrest to divide local residents from the government, considering that the federal government itself provides 240 jobs for the county, more than ranching and hay growing combined,¹⁷⁹ and 40% of the county works for some form of government, either local or federal.¹⁸⁰ In general, county residents expressed an overwhelming sense of community identity and pride in weaving

¹⁷⁸ Samantha White, "Seeing Harney County for What It Is," *Burns Times-Herald*, 6 Jan. 2016, <http://btimesherald.com/2016/01/06/seeing-harney-county-for-what-it-is/>.

¹⁷⁹ Dylan J. Darling, "The Federal Footprint of Harney County: County to Send Bill to Militants at Refuge," *Bend Bulletin*, 14 Jan. 2016, <http://www.bendbulletin.com/localstate/3906161-151/government-a-big-player-in-harney-county-economy>.

¹⁸⁰ Conrad Wilson, "Fears, Frustrations Persist for Harney County's Federal Employees," *Oregon Public Broadcasting*, 14 Jan. 2016, <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/harney-county-federal-employees/>.

strong relationships between various groups. Local rancher Georgia Marshall gave an impassioned statement during a town hall:

We are the poster child of the ranching community, of the environmental community, of the government community when they see what has happened here in Harney County. We have a CCP [Comprehensive Conservation Plan] that was done just a couple of years ago that is unprecedented across the United States on refuges. Have we ever had anybody put together a refuge plan in this goddamn nation? Hell no we haven't! But it happened here, and it happened in Harney County. And you know why? Because we love this county. Because we care about it, and we care about how it works for us.¹⁸¹

After the occupation the Chamber of Commerce led an effort put up a town-wide display of orange ribbons symbolizing county unity.¹⁸²

A sense of community is echoed in Kennedy's and Rodrique's statements. The connection of the Burns Paiute Tribe to the local community and wanting to bolster a united community stance was evident. However, there were many key points of divergence between Northern Paiute perspectives and the perspective of the community at large. First, history and oral tradition does much to inform Indigenous perspectives. These have been hallmarks of Northern Paiute teaching and learning since time immemorial. Wilson Wewa recalls that was how winters were spent for Paiutes—telling legends and stories about their people.¹⁸³ Nearly any time a tribal member spoke, they repeated some amount of tribal history to reaffirm their presence on the land and trouble the notions espoused explicitly by Bundy—though sometimes held unquestioningly by others—that ranchers were the first people to come into an empty land: *terra nullius*.¹⁸⁴

¹⁸¹ White, "Harney County Weighs In."

¹⁸² Samantha White, "Restoring Unity in the Community," *Burns Times-Herald*, 17 Feb. 2016, <http://btimesherald.com/2016/02/17/restoring-unity-in-the-community/>.

¹⁸³ Wewa, *Legends*.

¹⁸⁴ Rodrique, "The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response."

The fact that the Paiute had lived there for thousands of years is of great importance for tribal members to espouse. There is an irony that the occupiers and their supporters felt their rights to land and liberty had been eroded away from them when Paiute liberty and land was quite explicitly and violently stripped from them to give ranchers anything to possess in the first place. Moreover, the occupation and the press coverage allowed Burns Paiutes to express a sense of Paiute pride for their heritage. Northern Paiutes have been put down and called derogatory names for their history as a source of slaves for other tribes. However, as Chairperson Rodrique notes, this history of oppression and the resiliency and tenacity of the Paiute people to continue to survive is a point of pride.¹⁸⁵

As a result of the occupation and such histories coming to light, public interest in the Malheur Indian Reservation and the Paiute history of the region increased sharply. The *Daily Kos* was one of the first to report on the existence of the reservation on 4 January, which ignited a firestorm of reporting on it.¹⁸⁶ John Green on the VlogBrothers YouTube channel even did a segment on it.¹⁸⁷ However, history is just a part of the experience of the Malheur occupation for Burns Paiute people. As much as one can learn about history, other aspects of the Indigenous experience are internal, or even corporeal and therefore not fully comprehensible to those who are not Indigenous, the author included, for that matter. One can learn Indigenous history and about Indigenous people, but it is more difficult to understand Indigenous thought and

¹⁸⁵ Rodrique, "Burns Paiute Press Conference."

¹⁸⁶ "Eastern Oregon Once Had a Malheur Indian Reservation. Guess What Happened," *Daily Kos*, 4 Jan. 2016.

¹⁸⁷ VlogBrothers, "Who Owns Oregon? Some Historical Context on the So-called Militia Occupation of Public Lands." YouTube Video. 5:34. Posted 5 Jan. 2016. <https://www.youtube.com/watch?v=5e7-7vWWW6Y>. Interestingly, both technically stole maps created by James Gardner, an adjunct instructor with the Northern Paiute History Project, from the Northern Paiute History Project class blog.

impossible to understand occupying an Indigenous body without being born and raised as an Indigenous person.

For example, Northern Paiute perspectives were also informed by the spirituality imbued on the land during that long history. Millennia of burials and activities which leave behind a person's *puha* across the landscape lends sacredness to the land that necessitates proper respect and ceremony. Combined with traditional Paiute ontologies of the land as being a relation rather than an object to own, tribal people had a very different sense of what the land the Malheur occupiers sat on meant. While members of the public were concerned with a whole litany of issues, including preservation of scenic bird habitat and the inability to access "public" lands, as well as increased law enforcement and press presence in their community, the Burns Paiute also had to contend with threats to their cultural heritage. Few outside the tribe even discussed the artifacts as a central issue, a notable exception being the American Anthropological Association, who sent a letter of support for the tribe.¹⁸⁸ A non-tribal person might appreciate the physical archaeological value of artifacts endangered in the ground or in the headquarters, or the disruption to the aesthetic nature of a piece of land caused by digging latrines into it; a non-tribal person may even have a sublime and spiritual connection to the land. However, the concept of *puha* and contributes to Northern Paiutes having to deal with a different and specific spiritual dimension of those disturbances to artifacts as well as face the possibility that such objects, connected to their direct ancestors, may be destroyed and lost forever.

¹⁸⁸ American Anthropological Association to Hon. Sally Jewell, Secretary of the Interior, 27 Jan. 2016. <https://s3.amazonaws.com/rdcms-aaa/files/production/public/160127%20Malheur%20artifacts%20letter.pdf>.

Their artifacts were not the only things in danger during the occupation, however. Burn Paiute tribal members' actions were also informed by their perceived, and likely actual, increased risk of harassment, injury, or death. The risk of bodily harm was much greater for Indigenous people. Harney County residents and Burns Paiute generally stayed out of the debate over domestic terrorism or the jeering on twitter over "Y'all Qaeda." As noted with Rodrique's need to forward messages to the FBI, tribal people were already being harassed for the controlled statements they did make and provoking the occupiers, even if one suspected them of being terrorists,¹⁸⁹ could have had morbid consequences. With only one tribal police officer on the payroll at that time, the Burns Paiute knew they had to rely on community support outside the tribe as well as policing their own actions to keep safe. The Tribal Council approved a resolution considering any person who wasn't tribal staff or a tribal member would be considered trespassing if found in Burns Paiute buildings, attesting to the level of harassment Paiute people were experiencing during the occupation.¹⁹⁰ Skin color put tribal members at much greater danger from occupiers and their supporters. Jarvis Kennedy recalls his cousin taking a picture of some militia members at a McDonald on 8 Jan. The armed militiamen surrounded him and his cousin began to stand his ground until another Burns Paiute man urged him to return the reservation instead. Later, Kennedy told his cousin to "relax, because if we do something it will blow up—all we can do is

¹⁸⁹ Some occupiers did potentially end up on terrorist watch lists. See: Fedor Zarkhin, "Three Malheur Refuge Occupiers Claim to be on Terrorist Watchlist; Evidence Suggests It's True," *Oregonian*, 26 Nov. 2016, http://www.oregonlive.com/oregon-standoff/2016/11/three_malheur_refuge_occupiers_claim_to_be_on_terrorist_watchlist_evidence_suggests_its_true.html.

¹⁹⁰ "Notice of Trespass to any Unauthorized Individuals in or upon any Building and/or Properties of the Burns Paiute Tribe," signed 22 Jan. 2016, *Burns Paiute Tribal Council Resolutions*, Resolution 2016-01.

pray.”¹⁹¹ Race also factored into their perception of slow law enforcement action against the occupiers as much as their perception that law enforcement would not hesitate to act against them as people of color. Restraint was practiced by tribal members to control outside perceptions of the tribe, maintain their legitimacy as drivers of the narrative being put out about the occupation, and to protect their own lives.

The fact that the Burns Paiute were people of color living in a small community and stood to lose so much would alone logically justify their conservative and calculated stances. However, Charlotte Rodrique revealed one additional element of the Paiute mindset, a stubbornness borne from her days at boarding school:

You know, they would punish you [at the boarding school], and punish you and punish you, and you didn't give them the satisfaction of knowing that they hurt you. And that kicks in every once in a while with tribal people who have had that boarding school experience. So that happened with me and the militia. The more they tried to intimidate, the more stubborn I got.¹⁹²

A traumatic abuse at the hands of boarding school staff taught Rodrique and other tribal people to respond to such violating events by not responding. For tribal people, it's a show of strength against stronger oppressors, reclaiming power and protesting in an asymmetric situation.¹⁹³ As much as Rodrique's statements were an expression of the anger and frustration that she and the Burns Paiute Tribe felt, they were also an expression to challenge colonial mindsets and actions she has had to contend with since her childhood, experiences that a general public viewpoint would never have to account for or think about when analyzing the occupation. She also retained power by not

¹⁹¹ Lori Edmo-Suppah, "Burns Paiute Want Occupants to Leave," *Sho-Ban News* (Fort Hall, ID), 14 Jan. 2016, <http://www.shobannews.com/images/NAJA/01142016BurnsPaiuteMalheurNewsStory.pdf>

¹⁹² Rodrique, "The 2016 Oregon Wildlife Refuge Takeover: A Tribal Response."

¹⁹³ Helen Jacqueline McLaren, "Silence as a Power," *Social Alternatives* 35, no. 1 (2016): 3-5.

meeting with or responding directly to the occupiers. Her analysis that the occupiers were arrogant outsiders who would not heed logic and reason justified a greater goal of keeping hold of the ability to direct and focus the conversation on tribal terms.

Lastly, and perhaps most tellingly, despite outrage, disgust, and generally feeling disrespected, Northern Paiute perspectives didn't view this as a wholly unusual event. This wasn't something that seemed new or shocking to the Burns Paiute Tribe. Kennedy described the occupiers as being "different cavalry" than the literal cavalry who pursued the Northern Paiutes, but the only difference is their appearance. They are still cavalry all the same.¹⁹⁴ Concerning the history of the land and the artifacts at the refuge, these were also just repeated episodes in a history of erasure from removal to boarding school. "As far as I'm concerned," Charlotte Rodrique told the Associated Press, "our history is just another hostage."¹⁹⁵ Malheur, as upsetting as it was, it was not shocking except to those who were experiencing the bizarre, paternalistic experience of being colonized for the first time.

Seeking Indigeneity and Claiming Indigeneity

But the Bundys were ostensibly trying to fight oppression from the federal government, a position which on the surface would feel attractive to colonized people. One can only speculate as to what would happen if the occupiers had not committed so many blunders, but, the reality is, blunder they did. The heavily mediated interaction primarily between LaVoy Finicum and Charlotte Rodrique reveals several points of

¹⁹⁴ Sidner, "Native Tribe Blasts."

¹⁹⁵ Molly Jackson, "The 'Hostages' of Oregon Standoff: 4,000 Paiute Artifacts?" *Christian Science Monitor*, 17 Jan. 2016, <https://www.csmonitor.com/USA/USA-Update/2016/0117/The-hostages-of-Oregon-standoff-4-000-Paiute-artifacts>.

contention between the two parties, not least being what the land and artifacts the occupiers used to try to court Paiute people actually mean. Finicum, despite his self-described “pretty good understanding” of tribal relations,¹⁹⁶ never expressed an understanding of how place factors into the meaning of artifacts. For the occupiers, seeking better press after nearly a month of occupying the refuge, getting approval from the Burns Paiute would have been a welcome turn of events. However, their narrow conception of what Indigenous people desired and the clearly hasty attempts to incorporate them into the movement after realizing the presence of the Burns Paiute proved a vital flaw in their outreach. Possession of the contents in the boxes, as expressed by Tribal Chairperson Charlotte Rodrique, was never a desire. The Burns Paiute were concerned with elements of the landscape of both historic and continuing cultural value, such as the native plants and wildlife, many of which constitute important resources for traditional objects and food which can still be gathered. The occupiers only saw the land as being historically Indigenous at best. Paiutes were only rightful owners of their artifacts. In other words, they had a legitimate claim over the past—but not of the land in the present. Ryan Bundy said as much, giving an invalidating and racist statement to the Associated Press that “we [the occupiers] also recognize that the Native Americans had the claim to the land, but they lost that claim. There are things to learn from cultures of the past, but the current culture is the most important.”

It also reveals a flimsy understanding of the diversity of Indigenous Americans as well as the unifying trust responsibilities owed to them by the United States via the

¹⁹⁶ LaVoy Finicum, “Reaching Out.”

Bureau of Indian Affairs. The occupiers seem to rely on the notion that simply by bringing in someone with Native heritage, no matter which tribe they are members of, they would have done a sufficient job of trying to liaise with the Burns Paiute Tribe specifically. The same philosophy applies by citing Warren, a Siletz elder, as an authoritative source to attest to the condition of Paiute artifacts. The Siletz Tribes have had limited or no historical relations with the Northern Paiute simply based on geography, and neither do any of the other tribes that occupiers claimed heritage to. Physical distance along with neither being removed to the same place as Northern Paiutes would have made pre-settler or even settler-forced encounters likely. A rough analogy of this situation might be to have a Korean elder comment on the state of Tibetan relics in China. While they are all defined in the American racial classification system as “Asian,” specifically East Asian as well, all three groups—Koreans, Chinese, and Tibetans, have a complex history with each other and distinctly different cultures. So to do various different Indigenous peoples in the Americas, including the Indigenous people of Oregon specifically.

The white savior complex is rife through Finicum’s and the other occupier’s responses. Finicum offers what he views as a charitable act and seems indignant that his offer to return Paiute artifacts isn’t taken. He “doesn’t understand” this “unreasonable” situation where the Burns Paiute refuse to send a liaison. From the occupier’s perspective, they seemed to believe that they were offering the Burns Paiute a favor, saving their culture from rotting in deplorable conditions under the “BLM or whoever.” However well-intentioned Finicum purported to be, this perpetuates the portrayal of Indigenous Americans as helpless and in need of the white man’s help ala Kipling’s

“White Man’s Burden.” Indeed, this line of thinking where Indigenous peoples have been rendered so helpless so as to be reliant on white charity was a very desirable narrative to Commissioner Walker in his report where he stated:

No one certainly will rejoice more heartily than the present Commissioner when the Indians of this country cease to be in a position to dictate, in any form or degree, to the Government; when, in fact, the last hostile tribe becomes reduced to the condition of suppliants for charity.¹⁹⁷

The notion that the occupier’s supposed “charity” would be gladly received as a favor adds to this long and racist history. Reaching out with this mindset continues to stereotype tribal people in this way, and the tribe, not beholden to such racist acts masquerading as charity, reacted against this stereotype.

Such “favors” and the desire to build rapport on the part of the occupiers led to their using the Indigenous peoples they had contact with to offer as authorities into the ethical treatment of artifacts and as liaisons to the Burns Paiute. This illustrated that occupiers knew at least that different tribes and cultures existed in America prior to colonization, but still negates the diversity of these groups by conceiving them all as one race. Ryan Bundy obtusely put it best when he noted that the “current culture” instead of Native American culture is most important for determining land claims to the Malheur, as if the Burns Paiute were second-class parties to the affair. Finicum would at least attempt to finesse the situation by recognizing that Indigenous peoples across the Americas, might have some affinity towards one another. His claimed collection of willing Indigenous liaisons including specifically a member of the Delaware Tribe, lends credence to that, though it is unclear if Finicum was aware that the Delaware and

¹⁹⁷ Walker, “Report of the Commissioner,” 9.

the Northern Paiutes would have historically had little to do with each other and shared neither a common language nor customs. The occupiers trumpeted Sheila Warren's visit as validation that they were doing right by the Paiutes all along, even though, as a Siletz citizen, she inhabits a very different world from the Paiutes. Finicum is right that there is a certain unifying aspect for all Indigenous Americans: they were lumped in common as a race to be exterminated when settler colonists arrived. There is no inherent Indigenous-Indigenous affinity or innate ability to analyze any Indigenous artifacts and decide the proper way to dispose of them. It is, ironically and simply, that all Indigenous peoples in the Americas have been subjected to the violence and degradation of settler colonialism.

It is possible that some occupiers began to recognize this when they attempted to circumvent that settler colonial history by claiming Indigenous ancestry and heritage. By not claiming to be white, they attempted to avoid the white savior complex as if they were talking as tribal people as tribal people and thereby lend native clout and authority to their statements. In the video posted to David Fry's YouTube account, LaVoy Finicum discusses how he was born and raised on the Navajo Reservation, worked at a Sioux reservation, and how "oral history" dictates that his father's family married into the Comanches and his mother's family married into the Pima.¹⁹⁸ Vine Deloria notes that white people who claim such heritage usually do so to reinforce their own mythical beliefs about Indians.¹⁹⁹ Even as Deloria found that there is something un-American to white people about Indigenous Americans, George D. Smithers now argues that in some

¹⁹⁸ Fry, "Neglected Paiute Artifacts."

¹⁹⁹ Deloria, *Custer Died for Your Sins*, 3.

cases “to claim Cherokee blood is to authenticate your American-ness,”²⁰⁰ in this case to both original ownership of both land and acting as a primary source for cultural knowledge. In addition, witness statements and affidavits submitted for the trial of *Ammon Bundy et al. v. United States* on behalf of the occupiers erode the supposed good-faith nature of these statements. None of the witnesses are Northern Paiute, and everyone who mentions “Indian artifacts” attests to how well they were treated. Emory Coons, who claims part Cherokee and Choctaw descent and an expert in lithics, has a particularly telling statement. After going over his qualifications to “generally identify” whether stone flakes are “authentically aboriginal” or not, he also is prepared to swear that:

20. I can state categorically that the area known today as the Malheur National Wildlife Refuge was never known as a significant or sacred Paiute Indian camping, settlement, or burial ground.

21. Although Harney County does contain a few significant Paiute sites, never has the headquarters area of the Malheur Wildlife Refuge been recognized as a sacred Paiute site by anthropologists or historians.

22. It is true that ancient or recent aboriginal groups probably wandered or visited the area now known as the Malheur Refuge, but the Malheur Refuge headquarters are no more significant or sacred to Paiute traditional culture than any other area of Harney County, including places that are now parking lots, gas stations, or residential sites. The only sense in which the Malheur Refuge might be described as a sacred

²⁰⁰ George D. Smithers, “Why Do So Many American Think They Have Cherokee Blood: The History of a Myth,” *Slate*, 1 Oct. 2015, http://www.slate.com/articles/news_and_politics/history/2015/10/cherokee_blood_why_do_so_many_americans_believe_they_have_cherokee_ancestry.html. Cherokee is used as a stand-in for any Indigenous people since they are the most popular group for white Americans to claim ancestry from.

Paiute location is the sense that every other location in the Country (or even the entire State of Oregon) is also sacred.²⁰¹

While not being Northern Paiute or an expert in Paiute history or archaeology, Coons is prepared to state that the Malheur National Wildlife Refuge is “categorically” not sacred. This is despite Northern Paiute statements stating such, including histories where removed Paiutes escaped Fort Simcoe in Yakama to return to their homeland. It also ignores the widely-accepted archaeological findings of Aikens and Greenspan whose investigation found 166 sites of human occupation around Malheur, showing at least that the Malheur was visited repeatedly over many years and probably for a specific purpose, though they do not speculate what this may have been.²⁰²

Additionally, the Burns Paiute trace their ancestry back primarily to the Wadatika Band of Northern Paiutes, literally the “Wada (Paiuteweed seed and root) eaters.” As wada is only found in the aquatic environment of lakes, it would seem incredulous even without the corroborating statements from tribal people that the land wasn’t at least incredibly important for Northern Paiute culture.

In addition to Coons, Larry Jay, who claimed Crow descent by adoption, submitted an affidavit that discredits the notion that artifacts were not touched beyond the what was already shown in LaVoy Finicum’s first video. He describes how he witnessed the way that “LaVoy Finnicum [sic] and others treated Native American artifacts with great respects [sic]... The government agencies had allowed the artifacts

²⁰¹ Emory Coons, “Sworn Declaration of Emory Coons, Recognized Expert on Aboriginal Tool-Making, Lithics, and Aboriginal Artifacts Around Harney County, Oregon,” in Portland Division, United States District Court for the District of Oregon, *Witness Statements and Affidavits, United States of America v. Ammon Bundy et al.*, by Emory Coons, et al., 3:16-cr-00051-BR, Document 892-2, Portland, United States District Court for the District of Oregon, 2016, <https://www.scribd.com/document/318452545/07-15-2016-ECF-892-2-USA-v-A-BUNDY-et-al-Witness-Statements-and-Affidavits>.

²⁰² Aikens and Greenspan.

to become deteriorated and to fall into bad condition. Finnicum and his friends had respectfully cleaned, organized and prepared the artifacts to be delivered to the Paiute Tribe.”²⁰³ If true, Jay’s affidavit shows that the occupiers would have further disturbed the artifacts more than originally claimed, potentially desecrating or even damaging them through such “respectful cleaning.”

Reception of Tribal Concerns by the General Public

In general, the Burns Paiute Tribe was successful in driving discussion about the refuge during the occupation, maintaining media interest and presenting tribal perspectives to mainstream audiences. Many media outlets covered the Paiute history of the land and the discontinuing of the Malheur Indian Reservation, for instance. Letters from Governor Kate Brown and the American Anthropological Organization supported the Paiute request for protection of their cultural patrimony as well as requests to bring up charges under various acts to protect Indigenous graves and artifacts.

However, media focus after the occupation focused nearly exclusively on the occupiers (by then, defendants) and their trials. Potentially this was because the Burns Paiute were no longer such a physical presence on the landscape given that the trials took place in Portland and then Las Vegas and not in Harney County itself. Federal prosecutors only pressed charges against two people for damaging cultural artifacts, and even then, these charges were alleging depredation of government property, not desecrating tribal artifacts under the Archaeological Resources Protection Act. Again,

²⁰³ Larry Jay, “Affidavit of Larry Jay,” in Portland Division, United States District Court for the District of Oregon, *Witness Statements and Affidavits, United States of America v. Ammon Bundy et al.*, by Emory Coons, et al., 3:16-cr-00051-BR, Document 892-2, Portland, United States District Court for the District of Oregon, 2016, <https://www.scribd.com/document/318452545/07-15-2016-ECF-892-2-USA-v-A-BUNDY-et-al-Witness-Statements-and-Affidavits>.

calls for charges under the Archaeological Resources Protection Act and the Native American Graves and Repatriation Act went unheeded as the government moved forward with a main charge of conspiracy to impede officers of the United States instead.²⁰⁴ Note also that the government legally considered the artifacts as “government property” merely because they were found on federally-managed “public lands.” Though the government acknowledged the sacredness of the artifacts to the Burns Paiute, the tribe didn’t have the legal standing to pursue charges themselves, even as their own cultural patrimony was threatened.

²⁰⁴ Superseding Indictment. <https://www.scribd.com/document/303442094/3-9-16-ECF-282-U-S-A-v-A-BUNDY-et-al-Superseding-Indictment>

Conclusion

The occupation of Malheur simultaneously has roots in Indigenous land struggles and public lands conflict in the American West. The Indigenous perspective, primarily by way of the Northern Paiute of the Burns Paiute Tribe, contains unique elements of history and culture which do not independently emerge in the mainstream narrative of what the “public” perceives of the occupation. Some elements, such as the boarding school mentality, could never arise outside of an Indigenous context. Northern Paiute perspectives helped drive the narrative of the occupation while it was in Harney County, yet began to be discounted again once the trial moved away from traditional Northern Paiute territory. While the Burns Paiute respected that the occupation was a matter for federal law enforcement, the desire to charge the occupiers specifically for mistreating and harming the tribe’s artifacts and cultural patrimony fell on deaf ears as the trial was increasingly centered around the troubled conspiracy charge. Indigenous perspectives into the occupation give reason to believe that the simplistic narratives concerning public lands in the American West are insufficient not only to explain the situation, but also understand and resolve it. Even if Indigenous histories are sufficiently elucidated and Indigenous voices heard, the ontological frameworks which guide Indigenous viewpoints are hard to grasp for non-Indigenous people. Such frameworks they are internal, spiritual, and corporeal in nature, which can be impossible to embody without being an Indigenous person.

As other recent and continuing events show, the need to recognize and consider Indigenous perspectives is becoming more timely and necessary. Tribes are now more forced into actively taking stances against ever-more dangerous attacks against their

sovereignty and ways of life. For example, as Malheur was being occupied, the Lakota and Dakota of the Standing Rock Indian Reservation were organizing against the Dakota Access Pipeline, diverted to ensure that waters flowing through the city of Bismark, ND were protected while still directly threatening waters which flowed adjacent to Indigenous communities downstream at the Standing Rock Reservation. The pipeline crossed unceded territories which the tribe still claims, and yet the flight from this history allows the depiction of the water protectors as greedy Indigenous people with no claim to the land, just as a flight from history at Malheur allowed occupiers to claim to be the original land owners. Also note the maiming of unarmed Indigenous people by police and national guard troops dispatched to dispel the protest. Just because the Burns Paiute weren't physically harmed by authorities in the Malheur's colonized narrative, other Indigenous peoples are both in this country and around the world.

In another example, under the Obama Administration, Bears Ears became the first national monument designated after tribes petitioned for its protection for its sacred value and to protect it from looters and art thieves. Now those protections are being rolled back as colonizing extractive industries are lobbying the present administration hard revoke protections. Just as the Malheur Indian Reservation was decreed only at the pleasure of the President of the United States, so too are places like Bears Ears subject to tenuous protection. If Malheur is to serve as an example, the revoking of Bears Ears will be detrimental on many levels to the local Indigenous peoples who originally petitioned for its protection in the first place.

Other forms of slow violence are also still being perpetrated against Indigenous peoples, continuing to erode their sovereignty and threatening Indigenous bodies and

culture. These include forced assimilations that replace traditional knowledge and epistemologies and languages, or land management which bars access to traditional foods. For instance, Kari Norgaard's work with the Karuk document how altered diet affected tribal health. With the obliterating salmon fisheries with dams built without consideration for Indigenous impacts, the subsequent reliance on commodity foods has led to extremely poor health from many Karuk people. The rate of heart disease is three times the US average and the rate of diabetes four times that of the US average.²⁰⁵ This is an example of colonialism not killing Indigenous people outright, merely stripping away all other forms of subsistence to have tribal members die slowly from diseases previously unheard of and preventable diseases. Forgetting, or at least discounting the Indigenous voice here didn't leave to lands being taken away or bullets being fired, but culture and people keep dying a slow death in the Klamath Basin anyway.

Malheur represents one of many calls to re-center national discourse on land, especially public lands, to better include Indigenous perspectives. It not only enriches the narratives which get produced, but is a key part of being a good ally to Indigenous communities who continue to face undue discrimination challenges to their sovereignty based on faulty, simplistic historical understandings. Indigenous perspectives are multifaceted and complexed because the history of Indigenous peoples in the Americas has been complex. Endeavoring to understand them and look through such event such as the Malheur occupation with a decolonizing lens allows a more just examination of what transpired and allows tribal people to regain power and retain sovereignty.

²⁰⁵ Kari Norgaard and Karuk Tribe of California, *The Effects of Altered Diet on the Health of the Karuk People*, Federal Energy Regulatory Commission, Docket No. P-2082, Happy Camp, CA: Karuk Tribe of California, 2005.

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