The Reservation as Place: A South Dakota Essay

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From the Indians we learned a toughness and a strength; and we gained
A freedom: by taking theirs: but a real freedom: born
From the wild and open land our grandfathers heroically stole.
But we took a wound at Indian hands: a part of our soul scabbed over:

Thomas McGrath

I. INTRODUCTION

Indian reservations are often described as islands of poverty and despair
cast adrift from the mainstream of national progress. Less often, they are
extolled as places luckily isolated from the corrosive predations of the twenti-
eth century. Each of these descriptions invokes, in part, the complex field of
Indian law as a touchstone of both the past and future, as either the driving
wedge for Indian natural resources and land and cultural breakup or as a
countervailing force of restraint and an element of cultural renewal. Hidden
in this web of description and claims lies the important notion of the reserva-
tion as place: a physical, human, legal, and spiritual reality that embodies the
history, the dreams, and the aspirations of Indian people, their communities,
and their tribes. A place that marks not only the enduring survival of Indian
communities from a marauding western society, but also a place that holds the
promise of fulfillment. As Lakota people say: "hecel lena Oyate nipikte"
(“that these people may live”). The reservation constitutes an abiding place full of quotidian vitality and pressing dilemmas that continue to define modern Indian life.

There is little doubt that the state of South Dakota has often resisted the notion that the reservations either endure or possess any positive significance for the state. The history of litigious animosity is long and bitter, with continuous and ongoing disputes about reservation boundaries, water rights, the Black Hills, and state authority on the reservation, to name only the most

their traditional enemy, the Lakota. For this reason, Lakota is the preferred term, although popular and legal usage has made the word Sioux a much more conventional and better known term. The terms are used interchangeably throughout the text.

The Teton Sioux make up one of the three main divisions of the Sioux people. The other two main divisions of the Sioux people are the Santee and Yanktonai. The Santee were basically wood-

land people who lived in Wisconsin and Minnesota. The Yanktonai were primarily riverine people who lived in Minnesota and eastern South Dakota. The Teton lived in the plains of the Dakotas. The Teton people spoke their language with an L(akota) emphasis; the Yanktonai with a D(akota) emphasis and the Santee with an N(akota) emphasis. See generally, Satterlee and Malan, History and Acculturation of the Dakota Indians (Bulletin 613, S.D. State Univ. Rural Sociology Department, 1973).

In South Dakota, the Santee division of Sioux people are found primarily on the Lake Traverse (Sisseton-Wahpeton) and Flandreau Santee Reservations; the Yanktonai on the Yankton, Standing Rock and Crow Creek Reservations; and the Teton on the Rosebud, Pine Ridge, Lower Brule, Cheyenne River and Standing Rock Sioux Reservations. It is reasonably accurate to state that today the strongest identification of Indians in South Dakota is with their reservation, rather than with their major Sioux Branch. See, e.g., M. Lawson, Damned Indians 31-32 (1982) [hereinafter Damned Indians].

7. See, e.g., the recent statement by the South Dakota Attorney General, Roger Tellinghuisen, that “Indian reservations are a ‘divisive system’ of government that have outlived their usefulness” as quoted in Gale, Divisive System, Sioux Falls Argus Leader, Feb. 15, 1989, at 1A.

In almost ironic juxtaposition, see the thoughtful proposals of Dr. Jim Wilson, an Oglala Sioux educator, for improving Indian/white relations in South Dakota, which include, for example, that the state legislature go on record with reassurance that its intention is not to wipe out the Indian tribes and that there be specific efforts to develop cooperation between the state and tribe. M. Cook, Wilson “Knocking on Door” of Governor’s Mansion with Indian/White Guidelines, Lakota Times, Feb. 14, 1989, at 7.


9. See, e.g., State ex rel Meierhenry v. Ripping Water Ranch, Inc., 531 F. Supp. 449 (D.S.D. 1982), which was an action brought by the State of South Dakota to adjudicate the water rights of all parties to the Missouri River and its tributaries. It was ultimately dismissed on the state’s own motion, apparently because of problems related to financing the complex and massive litigation. At no time prior (or subsequent) to this litigation was there any attempt by the state to meet with the tribes to discuss (much less negotiate) the important issues related to Indian and non-Indian water rights in South Dakota. This is not to say that tribes would necessarily welcome or accede to such an invitation, but only to emphasize that such discussion is not seen, apparently, as even helpful, much less fruitful. See also the remarks of former Governor, then Attorney General, William Janklow made in 1977 about this same dilemma, in which he stated, in part, “if we don’t act quickly, intelligently, and correctly . . . we may find ourselves up the proverbial creek, (and) not only will the tribes and Uncle Sam have all the paddles, there may not be any water to keep us afloat.” Janklow, Can Indian Water Rights Effect [sic] South Dakota Development?, Stockgrower 12 (Dec. 1977).

10. Simply stated, all major elected state (e.g., Governor, Attorney General) and federal officials (both Senators and South Dakota’s single Representative) are uniformly opposed to any kind of legislative redress to return federally held land in the Black Hills to the Sioux Nation. For a review of the legal history, see United States v. Sioux Nation of Indians, 448 U.S. 371 (1980), which awarded the Sioux Nation $17.1 million (plus interest) for the wrongful taking of 7.7 million treaty-protected acres in the Black Hills. Justice Blackmun, writing for the majority, adopted the characterization of the Court of Claims that “[a] more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history[.]” Id. at 388. The proposed bill (S. 705, 100th Cong., 1st Sess.
prominent. Yet at this centennial juncture it may be worthwhile to suggest another angle of vision which might, in turn, suggest an angle of repose—a vision infused by mutual understanding and common interest.

The perspective of this essay centers on examining the continuing process of cultural self-scrutiny and intercultural contact between Indians and non-Indians and between Indian tribes and the state and federal governments. This notion of "contact," which began with the arrival of the first Europeans, is continuous and ongoing. As a process it is not, of course, related to the ethnocentric concepts of manifest destiny, progress, and cultural superiority but rather to examination of the forces at play in the "contact" and the rubric of choices that emerges in the process. Choice, whether conscious or not, has very real implications for individuals, communities, and tribes. Choice is not always apparent and the failure to be aware of it often results in loss and forfeited opportunity. It is therefore important to highlight and clarify these choices as they emerge from the consideration of the reservation as place and eternal center. These choices are not merely grounded in considerations of efficiency, but are also located in the larger space of culture and meaning.

There are no "answers," and the imposition of "answers" in the past, such as cultural assimilation, religious conversion, and the concept of individual property, resulted in substantial cultural loss and the severe erosion of political and personal autonomy. These responses were the "answers" to the wrong questions, for the questions were framed by the wants and desires of a western, expansionary society, not by the needs and values of tribal communities. Sovereignty and freedom have no meaning apart from the ability to make choices and exercise informed options. My intention here is to develop and elucidate the contours of some of the right questions about the reservation—their texture, their import, and the options they suggest. To do so is the challenge and obligation that flows from friendship and reciprocity to people and

(1987)) is entitled the Sioux Nation Black Hills Act. See also a survey of articles on the various issues in THE WICAZO SA REVIEW No. 1 (1988).

11. See, e.g., the recent case of State v. Onihan, 427 N.W.2d 365 (S.D. 1988), in which the South Dakota Supreme Court held that the state has criminal and civil jurisdiction over Indians and non-Indians on highways on the reservations. This is the first time it has been held in South Dakota that the state has jurisdiction over Indians on the reservation. There is a parallel federal case, Rosebud Sioux Tribe v. South Dakota, No. 86-3019 (D.S.D. filed May 13, 1986), pending in federal district court in South Dakota.

12. W. STEGNER, ANGLE OF REPOSE (1971). This extraordinary novel traces the moral and loving investigation by the narrator, Lyman Ward, of the lives of his grandparents, Oliver and Susan Ward, in the West of the nineteenth century, as well as, finally, the narrator's own inner life as a modern twentieth century westerner. The book has nothing to do with Native Americans or South Dakota, yet the title and introspection of the work seem especially resonant in the context of this essay. Angle of repose is also an engineering term that refers to the angle between the horizontal and the plane of contact between two bodies when the upper body is just about to slide over the lower. McGRAW HILL DICTIONARY OF SCIENTIFIC AND TECHNICAL TERMS 78 (S. Parker 3d ed. 1984).


14. See, e.g., the insightful discussion that matters of health and well-being require the complementary concerns of both mechanical and metaphysical approaches to understanding in O. SACKS, AWAKENINGS 202-10 (1983).
communities who have done so much, with lasting good humor, to highlight the issues and to enhance the choices in my own life and those of my family.  

More broadly, I write from two overarching assumptions. One is that, despite grinding poverty and a certain prevalence of despair, there is a countervailing flame of hope and a broadening range of choices in almost all aspects of reservation life. If it might be said, and it has, that the most observable and detrimental aspect of the dominance of the majority society in Indian country was the presence of substantial constraints and a reduced flexibility of choice, this situation has been successfully reversed. Despite the difficult and oftentimes inimical conditions, renaissance and struggle at the grassroots level have accomplished important changes in options for growth and fulfillment.

The second assumption is that, whatever the conditions, the historical and contemporary exercise of choice has always been undergirded by a commitment to remain indelibly Indian and for tribal people both to define themselves proudly as a people apart and to resist full incorporation into the dominant society around them. Yet Indians and their tribes must encounter and transform modern social, economic, and political conditions in order to achieve a meaningful and flourishing future; an encounter and transformation that must be governed by wise choice and mediated through deeply held cultural values.

A new understanding and willingness by the non-Indian community to listen and to engage in dialogue and in discussion may also advance the possibility of accomplishing this formidable task of transformation. Such mutual efforts may, in turn, redefine and redirect the political, legal, and social relationship of Indians and non-Indians, and the tribes and the state. Yet the realization of any of these aspirations must rest on a firm understanding of the role of the reservation as the irreducible touchstone of tribal posterity and well being.

15. This statement may seem seriously out of place in a law review article, yet it is one I want to make. I lived and worked on the Rosebud Sioux Reservation from 1973 to 1983. These facts affect what I say. The experience did not make me blind to problems on the reservation, but instead it has deepened my understanding of their etiology and increased my appreciation of the values and commitment embodied in Lakota history and culture.

The best statement of what I am trying to say comes from this description by an English writer living with, and writing about, rural peasants and their villages in France:

The fact that a stranger does not belong to this centre means that he is bound to remain a stranger. Yet provided the stranger's interests do not conflict with those of his neighbour—and such a conflict is likely immediately [if] he buys land or builds—and provided that he can recognise the portrait already in existence—and this involves more than recognising names or faces—he too may contribute to it, modestly, but in a way that is unique to him or her. And one must remember that the making of this continuous communal portrait is not a vanity or a pastime: it is an organic part of the life of the village. Should it cease, the village would disintegrate. The stranger's contribution is small, but it is to something essential.

Thus, in our double role as novices and independent witnesses, a certain reciprocity has been established.


II. FIGURES ON MOTHER EARTH

Land is inherent to Indian people; they often cannot conceive of life without it. They are part of it and it is part of them; it is their Mother. Nor is this just a romantic commonplace. For most Indian groups, including the Lakota people, it is a cultural centerpiece with wide-ranging implications for any attempt to understand contemporary reservation life.

The importance of the land is severalfold. Beyond its obvious historical provision of subsistence, it is the source of spiritual origins and sustaining myth which in turn provides a landscape of cultural and emotional meaning. The land often determines the values of the human landscape. The harsh lands of the prairie helped to make Lakota tribal communities austere and generous, places where giving and sharing were first principles. The people needed the land and each other too much to permit wanton accumulation and ecological impairment to the living source of nourishment. Much of this is, of course, antithetical to western history and culture. As suggested by one commentator, the western ethos reflects a commitment to take possession without becoming possessed: to take secure hold on the lands beyond and yet hold them at a rigidly maintained spiritual distance. It was never to merge, to mingle, to marry. To do so was to become an apostate from Christian history and so be lost in an eternal wilderness.

Such differing conceptions between Indians and non-Indians about the nature of land only adds tinder to the likelihood of adversity and misunderstanding. And sure enough, one of the results of over three centuries of contact has been the severance of much of this central, cultural taproot connecting Lakota people to the land. Impaired but not eradicated, this root is, nevertheless, being rediscovered and tended with renewed vigor and stewardship. In fact, this is so prevalent that it has been noted as a recurrent theme in contemporary Indian literature. The theme involves the loss of the old guardian spirits of place and how they might be made to speak again—how the land may become numinous once more and nod toward its dwellers.

This then is one pull of the land, the source of vital myth and cultural well-being. But there is also the complementary notion of a homeland where generations and generations of relatives have lived out their lives and destiny—that it is, after all, my home, my community, my reservation in In-

20. See, e.g., J. Neihardt, Black Elk Speaks (1932) and L. Standing Bear, The Land of the Spotted Eagle (1933) for the most forceful descriptions of these observations.
Indian country. Many reservations may seem rural and isolated and they are, but many like the Rosebud Reservation are quite beautiful, captivating in the way the subtle paintbrush of the prairie often is. The Rosebud Reservation and others like it do not possess (fortunately) the grandeur for tourists, but a long stay makes lasting impressions on one's psyche. This notion of homeland is not, of course, unique to Indians alone, and despite the obvious irony, it is valued by many non-Indians, including non-Indian residents of the reservation.

These attractions and connections do not prevent people from leaving the reservation, but they make it hard. People do leave, most often for greater economic opportunity, as well as sometimes to escape violence and perceptions about inferior schools. But most who leave also return. Maybe Robert Logterman, a long-time non-Indian rancher on the Rosebud Reservation said it best when he said, "they ought to send someone from the reservation into outer space because then they would be sure that they would return safely." Even the federal government learned this lesson and abandoned its program of "relocation" which attempted to take people from the reservation and resettle them in major urban areas with greater economic opportunities. Few would participate and most of those who did would not stay for very long on the fringes of urban ghettos.

The reservation is home. It is a place where the land lives and stalks people, where the land looks after people and makes them live right, a place where the earth's ways provide solace and nurture. Yet, paradoxically, it is also a place where the land has been wounded and the sacred hoop has been broken; a place where there is the stain of violence and suffering. And it is this painful dilemma that also stalks the people and their Mother.

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24. This policy of the Bureau of Indian Affairs was prominent during the period 1955-61, the latter part of the termination period (1945-61), when it was believed, among other things, that the reservations were inhospitable anachronisms which, if they were not actually brought to an end, people should be encouraged to leave. See generally D. Fixico, TERMINATION AND RELOCATION: FEDERAL INDIAN POLICY, 1945-1960 (1986).

25. See, e.g., K. Basso, 'Stalking with Stories': Names, Places, and Moral Narratives Among the Western Apache, in ON NATURE 95-116 (cited in note 18). Note also the observations of N. Scott Momaday (Kiowa) concerning the moral dimensions of Native American conceptions of the land:

You cannot understand how the Indian thinks of himself in relation to the world around him unless you understand his conception of what is appropriate; particularly what is morally appropriate within the context of that relationship.

The Native American ethic with respect to the physical world is a matter of reciprocal appropriation: appropriations in which man invests himself in the landscape, and at the same time incorporates the landscape into his own most fundamental experience. ... This appropriation is primarily a matter of imagination which is moral in kind. I mean to say that we are all, I suppose, what we imagine ourselves to be. And that is certainly true of the American Indian. ... [The Indian] is someone who thinks of himself in a particular way and his idea comprehends his relationship to the physical world. He imagines himself in terms of that relationship and others. And it is that act of imagination, that moral act of imagination, which constitutes his understanding of the physical world.

N. Scott Momaday, Native American Attitudes to the Environment, quoted in ON NATURE at 115 (cited in note 18).
III. THE FORMATION OF RESERVATIONS

Any attempt to understand contemporary reservation life also requires an understanding of what reservations are and how they came to be. For example, what have been the federal policies and expectations concerning reservations and how have they harmonized or clashed with tribal objectives? Without an understanding of the legal and cultural roots involved in the formation of reservations, it is impossible to comprehend much of the current social reality and political atmosphere that dominates individual and institutional life in Indian country. The particular history of any given reservation can then augment this general understanding. Particulars include such things as whether the reservation is located within a tribe’s aboriginal homeland,\(^\text{26}\) whether more than one tribe is “confederated”\(^\text{27}\) there, and the degree of permanent non-Indian presence. All of these elements ionize expectations and affect the course of life on the reservation. Much of how the people live and what galvanizes their aspirations and struggles is the modern refraction of old promises and commitments—the covenant with the past.

The concept of an Indian reservation is best defined as the guarantee of a “measured separatism”\(^\text{28}\) to Indian people as the result of negotiated treaties\(^\text{29}\) and settlements reached between Indian tribes and the federal government. Most of these treaties between mutual sovereigns were agreed upon in the nineteenth century through negotiations which represented political and legal adjustments between the western march of an expansionary, American society and the staunch resistance of established, tribal societies.

The treaties that established reservations did much more. They helped create the enduring and special legal and moral relationship that exists between the federal government and Indian tribes.\(^\text{30}\) Treaties also reflect a set of sovereign promises and expectations that continue to be at the heart of defin-

\(^{26}\) For example, when the Sioux reservations were established in South Dakota, Sioux people were already living there. This was, for example, in vivid contrast to the removal policy which required many southeastern tribes such as the Five Civilized Tribes to remove to the Oklahoma Territory to settle on new “reservations” there. See generally G. Foreman, Indian Removal (1932). See also infra note 37 and accompanying text.


\(^{29}\) It is important to note that the Lakota did not see the treaty as mere expedience and the power politics of the day, subject to future accommodation of other emerging national interests. Every treaty was settled with the smoking of the pipe. As insightfully noted by Father Peter John Powell, the well known historian and anthropologist, whites rarely, if ever, have understood the sacredness of the context in which treaties were concluded by Lakota people. . . . “The pipe never fails,” my people, the Cheyennes, say. For the pipe is the great sacramental, the great sacred means that provides unity between the Creator and the people. Any treaty that was signed was a sacred agreement because it was sealed by the smoking of the pipe. It was not signed by the Chiefs and headmen before the pipe had been passed. Then the smoking of the pipe sealed the treaty, making the agreement holy and binding.

Thus, for the Lakotas, the obligations sealed with the smoking of the pipe were sacred obligations.


ing the modern contours of this relationship. It is therefore instructive to explore the roots of these interactions and legal exchanges because they color and affect so much of what continues today in this dynamic though often misunderstood and wrongly construed relationship.

The meetings of tribes and representatives of the federal government brought together people with very different languages, cultures and world views. These often extreme divergences must have gravely affected emotions and understandings. Perhaps under no other set of circumstances, except those of raw, historical necessity involving one sovereign in the face of another, could these disparate human configurations have come together. Yet they did. And the treaties represent the documents of that unprecedented exchange where, in part, each side cast its future on the integrity and good will of the other side. But the exchange has not always honored the Indian part of the bargain.

Treaties represent a bargained-for exchange and it is important to understand what the exchange was. The Indians usually agreed to make peace and cede land—often vast amounts of it—to the federal government in exchange for a cessation of hostilities, the provision of some services, and most importantly, the establishment and recognition of a reservation homeland free from the incursion of both the state and non-Indian settlers.

The quality of these exchanges varied significantly. Many tribes were forced to agree to small reservations in regions removed from their aboriginal territories because the federal government had the strong military upper hand. Yet in other cases—particularly involving the Lakota of the Great Sioux Nation in South Dakota—there was a virtual military standoff and the reservations were established in the heart of the traditional Sioux homeland in the Dakota Territory.

Much of the negotiations surrounding the treaties focused on national promises and guarantees to protect tribes from the swelling tide of western settlement. For example, the Chippewas, Ottawas, and Potawatomies were told that

the Great Spirit has ordained that your Great Father and Congress should be to the Red Man, as Guardians and Fathers.... Soon you shall be at a permanent home from which there will be no danger of your moving again, you will receive their full benefit.

The need for reservations and for homelands of a “measured separatism” was the one point upon which both the tribes and federal government could readily agree. Such entities met important policy objectives for each side. The United States wanted to regulate and reduce the contact of Indians with future

32. Id. at 611.
33. Id. at 609-10.
34. See, e.g., Fort Laramie Treaty of April 29, 1868, 15 Stat. 635 (1868).
35. WILKINSON at 17 (cited in note 28).
settlers in order to minimize the likelihood of violence. This federal policy was consistent from the beginning of the Republic. Non-Indians could not live harmoniously with Indians. Hence, the federal government early on regulated contact between Indians and non-Indians. Non-Indians (including the states) could not purchase lands from individual Indians or tribes without the approval of the federal government. Hence, the federal government also regulated trade, the interdiction of liquor, and criminal activity in Indian country.36

This non-intercourse policy was complemented by that of removal. When non-Indians continually pressed upon Indian lands and settlements, Indians were often “removed” from their aboriginal homelands and relocated west of the Mississippi River. The best example of this is the Trail of Broken Tears, when President Andrew Jackson in 1831, under the conditions imposed in the Treaty of Dancing Rabbit Creek, removed the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles to their new “homes” in the Oklahoma territory.37 In the West, removal was untenable since the continent ended at the not-so-distant west coast, and since many tribes, including the Lakota of the Great Sioux Nation, were not sufficiently “subdued” to have such conditions imposed on them.

The tribes, for their part, wanted to be left alone. Many treaties, including the Fort Laramie Treaty of 1868,38 provided that the reservation was set apart for the absolute and undisturbed use and occupation of the Indians herein named . . . and the United States now solemnly agrees that no persons except those herein designated and authorized so to do . . . shall ever be permitted to pass over, settle upon, or reside in the territory described in this article[.]39

Much of what federal negotiators said and did, ultimately, was a mixture of grandiloquence and ash, the expedience of the day grounded in the clash between binding promise and mere holding actions. For the Indians, more was at stake. It was not simply the need for a place to live, but the necessity to preserve the land which was critical for cultural survival and spiritual succor. Despite these contrasting needs and expectations, the notion was born at this time that reservations were to exist as islands of Indianness within an ever expanding, encroaching society.40 Yet whatever their shortcomings—and there are many—reservations continue to provide the opportunity to strengthen and to fulfill the national commitment to a vital, pluralistic society and to preserve the promise of a “measured separatism.”

Despite this history of bargained-for exchange, treaties and reservations are often misconstrued as unilateral, revocable acts of majority and federal largesse. Tribes gave up much for what they received in return—homelands,

37. See supra note 24 and accompanying text.
38. 15 Stat. 635 (1868).
39. Id. at Art. II.
often reduced in size, with the right to govern their own affairs intact. If this mutuality had been preserved and legally vouchsafed, perhaps the original purpose of reservations might have been achieved and maintained. Yet these treaty-based promises were often quickly eroded and the “strong fences” of federal protection torn down.

IV. “Measured Separatism” Under Assault

The pressure of western expansion did not abate with the signing of treaties, and the federal policy of “measured separatism” soon gave way to a policy of vigorous assimilation, which had dire consequences for reservations as islands of Indianness. The homelands were cut open. The bright line separating Indians and non-Indians was obliterated. Much land was lost as many non-Indian settlers came into Indian country. Cultural ways were strained, and traditional tribal institutions were undermined and weakened. For many, this was the most devastating historical blow to tribalism and Indian life.41

The linchpin for this policy was the Dawes Severalty Act, which is also known as the General Allotment Act of 1887.42 President Theodore Roosevelt most forcefully described the purpose of the Act as “a mighty pulverizing engine to break up the tribal mass. It acts directly upon the family and the individual.”43 The General Allotment Act authorized the Bureau of Indian Affairs to allot 160 acres of tribal land to each head of household and forty acres to each minor. Allotments were originally to remain in trust for twenty-five years, where they would be immune from local property taxes during the period of transition from being a tribally owned communal resource to an individually owned piece of land managed and used like surrounding non-Indian farms and ranches.

This twenty-five year trust period was undermined by the Burke Act of 1906,44 which allowed the transfer of a fee patent to “competent” Indians prior to the expiration of the trust period. Competency commissions were quickly established to determine whether individual Indians were “competent” to receive fee patents which would remove restrictions against alienation and tax obligations. These commissions often made competency determinations based on the most perfunctory of findings, including whether the individual was one-half degree Indian blood or less.45 In addition to authorizing allotments, the Act permitted the opening of so-called “surplus” reservation lands for non-Indian homesteading.46

The allotment policy is best understood, perhaps, when analogized to a land reform policy imposed from the top down without tribal input and con-

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41. Id. at 19-23.
43. Quoted in S. Tyler, A History of Indian Policy 104 (1973).
sent; a policy grossly undercapitalized, providing as little as ten dollars and less per allottee for implements, seeds, and instruction; a policy insensitive to the hunting and food gathering traditions of non-agricultural tribes; and a policy devoid of any cultural understanding of the roles of the tiyospaye (e.g., the extended family of the Lakota) in which the allotments that were often assigned to individuals were located outside their home communities beyond their natural habitat. Seen from this perspective, it is not difficult to understand why the allotment policy failed.

The results were truly devastating. The national Indian land estate was reduced from 138 million acres in 1887 to fifty-two million acres in 1934. More than twenty-six million acres of allotted land was transferred from the tribe to individual Indian allottees and then passed to non-Indians through sale, fraud, mortgage foreclosures and tax sales.47

Sixty million of the eighty-six million acres lost by Indians during the allotment era were lost because of the “surplus” land provisions of the Act. According to the historian Father Francis Prucha, thirty-eight million acres of unallotted tribal lands were declared “surplus” to Indian needs and were ceded to the federal government for sale to non-Indians. The federal government opened to homesteading another twenty-two million acres of “surplus” tribal land.48 The ravages of the allotment policy were halted only by the Indian Reorganization Act of 1934,49 which permanently extended the trust status of all existing allotments and halted the issuance of any new allotments.

These ravages had equally scarring collateral effects. For the first time, the reservations became checkerboarded with tribal, individual Indian, individual non-Indian, and corporate ownership. Individual Indian allotments quickly fractionated within two to three generations, often resulting in dozens or even hundreds of heirs. Even land that remained in trust was more often leased to non-Indians than used by the allottees.50

More difficult to assess is the direct effect of the allotment process on tribal government and tribal institutions. Some commentators51 have argued that when the reservations were opened, true traditional governments were essentially doomed in most tribes, and the authority of any form of tribal government was undermined. The great influx of non-Indian settlers coupled with the loss of communal lands and the attendant yoke of federal support of these policies simply eradicated much of the tribes’ ability to govern. And in the resulting void, the Bureau of Indian Affairs, in league with Christian missionaries, became the true power brokers and the de facto governing forces.

The missionaries, in particular, wreaked a debilitating havoc with their religious and educational programs, particularly the boarding school program which took Indian children away from their families for substantial periods of time and specifically forbade the speaking of tribal languages in school.\(^5\)

Under these circumstances, it is not difficult to perceive the strain and pressure placed on traditional culture. This is even more apparent when these policies were joined to Bureau of Indian Affairs directives outlawing traditional religious practices such as the Sun Dance.\(^5\) As a result, the heart of the culture was driven underground into a shadow existence.

Many people on the reservation vividly recall these times. Albert White Hat, an instructor of Lakota Thought and Philosophy at Sinte Gleska College on the Rosebud Sioux Reservation, speaks of the many instances in which he and his classmates at St. Francis Indian School had their mouths washed out with soap for speaking Lakota in school. As Mr. White Hat eloquently summarizes without rancor: "You gave us the Bible, but stole our land. You taught us English only so we could take orders, not so that we might dream."\(^5\)

The point is not to assign blame, which is essentially fruitless, but rather to comprehend more deeply the forces at work on the reservation. The governmental and religious policies of assimilation were—at least in hindsight—clearly erroneous; but they were, at least in part, driven by worthy motives. The more sinister motives of greed, ethnocentrism, and religious exclusivity are clear, even glaring, but it is also true that many well meaning individuals and groups clearly identified as Indian supporters believed that the policies of allotment and assimilation were the only way to stave off complete obliteration at the hands of the forces of manifest destiny. As the leading historian of the allotment era, D.S. Otis has written:

That the leading proponents of allotment were inspired by the highest motives seems conclusively true. A member of Congress, speaking on the Dawes bill in 1886 said, "It has . . . the indorsement of the Indian rights associations throughout the country, and of the best sentiment of the land."\(^5\)

A minority of Congressional opponents saw it more unsparingly. The minority report of the House Indian Affairs Committee in 1880 stated:

The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at the lands and occupy them . . . . If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or

54. Personal interview with Albert White Hat (May 1983).
not, is infinitely worse.\textsuperscript{56}

With all this imposed slash and burn, cultural and institutional loss was inevitable.

Federal government endorsement of these policies was reversed with the Indian Reorganization Act of 1934 (IRA), which ended the allotment process and supported the development of tribal self-government.\textsuperscript{57} The reforms of the IRA, including explicit authorization and assistance in the adoption of tribal constitutions, sought to engender recovery from stultification. Yet the "new" opportunity held out in the IRA with its notion of "modern" tribal government was, and is, often perceived on the reservation as further evisceration of traditional tribal government with its emphasis on the "white man's way" of elections, English, and the written word. For some, the apparatus of IRA tribal governments disturbed and unsettled further the cultural balance necessary to support traditional forms of self-rule often associated with tribal governance in force at the time of making treaties. As a result, IRA elected tribal governments often remain controversial and continue occasionally to have a hint of illegitimacy about them.\textsuperscript{58}

The dismal effects of allotment and assimilation have been halted and the thrust of inherent self-rule reworked and reinvigorated. But the scars of the severe loss of land and the reminders of social weakening serve to verify the inextricable bond between the people, the culture, and the land.

V. THE SOUTH DAKOTA EXPERIENCE

All reservations in South Dakota have felt the battering of the allotment and assimilation process.\textsuperscript{59} Some reservations such as the Sisseton-Wahpeton Reservation\textsuperscript{60} and the Yankton Sioux Reservation\textsuperscript{61} were completely allotted, with the remainder ceded to the federal government and subsequently made available to non-Indian homesteaders. On both these reservations the portions allotted to tribal members consists of only fifteen to twenty percent of the original reservation's territory. No longer is any land held in common by these tribes. In other instances, such as Pine Ridge\textsuperscript{62} and Rosebud,\textsuperscript{63} the tribes were able to retain approximately one-third of the reservation land base

\textsuperscript{56} \textit{Id.} at 19.
\textsuperscript{58} \textit{See}, e.g., \textit{D. Getches \& C. Wilkinson, Federal Indian Law} 128-29 (2d ed. 1986). \textit{See also} \textit{Damned Indians} at 36-37 (cited in note 6).
\textsuperscript{59} This discussion does not include the 7.7 million acres taken as part of the Black Hills Act of 1877, \textit{Act of Feb. 28, 1877}, ch. 72, 19 Stat. 254 (1877), or the nine million acres lost as part of the Great Sioux Agreement of 1889, \textit{Act of March 2, 1889}, ch. 405, 25 Stat. 888 (1889), which carved out the six West River reservations (Pine Ridge, Rosebud, Cheyenne River, Standing Rock, Lower Brule and Crow Creek) from the Great Sioux Reservation established as part of the Fort Laramie Treaty of 1868.
\textsuperscript{60} \textit{See} the discussion in \textit{De Coteau v. District County Court}, 420 U.S. 425 (1975).
\textsuperscript{61} \textit{See} the discussion in \textit{Wood v. Jameson}, 81 S.D. 12, 130 N.W.2d 95 (1964).
\textsuperscript{62} \textit{See} the discussion in \textit{United States ex rel Cook v. Parkinson}, 525 F.2d 120 (8th Cir. 1975).
under tribal ownership, with approximately one-third held by individually allotted Indians and one-third by non-Indians.

Coordinate with the allotment and assimilation process which facilitated the loss of so much tribal land was the related process of diminishment, which often reduced the boundaries of a reservation. The diminishment issue focuses not on the question of who owns the land, but more precisely on whether the process through which the federal government obtained “surplus” unallotted tribal lands for non-Indian homesteading resulted in a corresponding reduction of the reservation’s boundaries. The concept of diminishment addresses the size of the reservation, not the composition of land ownership patterns within the reservation. Therefore, the question of diminishment focuses most directly on the potential territorial scope of tribal governmental authority.

The principal legal issue in diminishment cases has been whether Congress in “opening” unallotted portions of reservations for non-Indian settlement intended to reduce the size and boundaries of the reservation or whether it simply intended to allow non-Indians to settle on the reservation. The authority to do either is clearly within the scope of Congress’s plenary authority in Indian affairs, but, since Congress never directly addressed the issue in any of the acts which encouraged non-Indian settlement in Indian country, the question has tended to center on Congressional intent. That Congress never directly addressed the issue seems wholly remarkable given the potentially serious consequences attendant upon Congress’s actions.

The United States Supreme Court has itself noted the incongruity. As Justice Marshall pointed out in his dissent in *Rosebud Sioux Tribe v. Kneip*:

> Congress manifested an “almost complete lack of . . . concern with the boundary issue.” This issue was of no great importance in the early 1900’s as it was commonly assumed that all reservations would be abolished when the trust period on allotted lands expired. There was no pressure on Congress to accelerate this timetable, so long as settlers could acquire unused land. Accordingly, Congress did not focus on the boundary question. . . . For the Court to find in this confusion and indifference a “clear” congressional intent to disestablish the Reservation is incomprehensible.

The test for determining Congressional intent in diminishment cases finds its most recent elucidation in *Solem v. Bartlett*. Here, Justice Marshall, writing for a unanimous Court, held that a 1908 Act of Congress opening part of the Cheyenne River Sioux Reservation to non-Indian settlement did not evince any Congressional intent to diminish the boundaries of the reservation.

The Court stated that diminishment will not be lightly inferred and that

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64. Id. at 586.
65. Id. at 585-86. See also *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) for a discussion of Congress’s plenary authority in Indian affairs.
the examination of surplus land acts requires that Congress clearly evince an "intent" to change "boundaries," before diminishment will be found.71 Pertinent indicia of Congressional intent include the statutory language used to open the Indian lands, regarded by the Court as "most probative,"72 as well as surrounding circumstances—particularly the manner in which the transaction was negotiated with the tribes involved and the tenor of legislative reports of Congress.73 "To a lesser extent," the Court has "looked to events that occurred after the passage of a surplus land Act to decipher Congress' intentions."74 And finally, "[o]n a more pragmatic level, [the Court] recognized that who actually moved into open reservation lands is also relevant to deciding whether a surplus land Act diminished a reservation."75

Five reservations in South Dakota have been diminished under this analysis. These are the Sisseton-Wahpeton,76 Yankton,77 Rosebud,78 Pine Ridge,79 and Lower Brule Reservations.80 The result in each instance was to reduce the boundaries of the reservation and in effect to contract the size of the "homeland." Diminishment can also have the anomalous effect of placing substantial numbers of Indian people and their communities outside the reservation. For example, one of the results of the Supreme Court's decision in Rosebud Sioux Tribe v. Kneip, which upheld the diminishment of the Rosebud Sioux Reservation, was to place 2,000 tribal members81 and seven recognized tribal communities outside the official reservation boundaries. The social, cultural, and psychological—not to mention the obvious legal—impact of such decisions clearly exacerbates the stress and burden of attempting to maintain individual and tribal well-being and integrity.

This wrenching epoch of allotment and diminishment was not the last of its kind in South Dakota. Another round of federal "takings" of Indian lands in South Dakota occurred in the 1940's as part of the Pick-Sloan project. The Pick-Sloan Plan consisted of a joint water development plan developed by the Army Corps of Engineers and the Bureau of Reclamation in 1944 for the Missouri River Basin.82 As finally adopted by Congress, the Pick-Sloan Plan, which was officially labelled the Missouri River Basin Development Program, included a total of 107 dams, thirteen of which had previously been authorized. The five Corps of Engineer dams on the Missouri provided the key structures. They included Garrison Dam in North Dakota and the Oahe, Big

71. Id. at 470.
72. Id.
73. Id. at 471.
74. Id.
75. Id.
76. Supra note 60.
77. Supra note 61.
78. Supra note 62.
79. Supra note 63.
81. Rosebud Sioux Tribe, 430 U.S. at 616.
82. DAMNED INDIANS at xxi (cited in note 6).
Bend, Fort Randall and Gavins Point Dams in South Dakota.\textsuperscript{83} The primary goals of the project were flood control, irrigation, and hydroelectric power.

These five main stem dams destroyed over 550 square miles of tribal land in North and South Dakota and dislocated more than 900 Indian families. Most of this damage was sustained by five Sioux reservations in South Dakota: Standing Rock and Cheyenne River reduced by the Oahe project; Yankton, affected by Fort Randall Dam; and Crow Creek and Lower Brule, damaged by both the Fort Randall and Big Bend projects.\textsuperscript{84} Army Corps of Engineer dams on the Missouri inundated another 200,000 acres of Sioux land and uprooted an additional 580 families.\textsuperscript{85}

The results of this destruction are summarized by a leading chronicler of the Pick-Sloan project:

[Sioux families were] uprooted and forced to move from rich, sheltered bottomlands to empty prairies. Their best homesites, their finest pastures, croplands and hay meadows, and most of their valuable timber, wildlife, and vegetation were flooded. Relocation of the agency headquarters on the Cheyenne River, Lower Brule, and Crow Creek reservations seriously disrupted governmental, medical, and educational services and facilities and dismantled the largest Indian communities on these reservations. Removal of churches, community centers, cemeteries, and shrines impaired social and religious life on all five reserves. Loss not only of primary fuel, food, and water resources but also of prime grazing land effectively destroyed the Indians' economic base. The thought of having to give up their ancestral land, to which they were so closely wedded, caused severe psychological stress. The result was extreme confusion and hardship for tribal members.\textsuperscript{86}

The Sioux knew little of the Pick-Sloan project until long after it had been passed by Congress. Despite treaty rights that provided that land could not be taken without their consent, none of the tribes were consulted prior to the program's enactment. The Bureau of Indian Affairs was, however, fully informed but made no objections to Congress and did not inform tribes of their impending loss until 1947—three years after the project was approved by Congress!\textsuperscript{87} Financial settlements, generally regarded as grossly inadequate, were not achieved until the period between 1954 and 1962.\textsuperscript{88}

Vine Deloria, Jr., the leading Sioux intellectual, has noted that this flooding of ancestral lands ruthlessly took away old memories and led to material and spiritual impoverishment. He characterized the Pick-Sloan Plan as "the single most destructive act ever perpetrated on any tribe by the United States."\textsuperscript{89} Yet this legacy of loss has not reduced, but rather has extended and deepened the emotional and cultural commitment of Lakota people to the land

\textsuperscript{83} \textit{Id.} at 20.
\textsuperscript{84} \textit{Id.} at 27.
\textsuperscript{85} \textit{Id.} at 29.
\textsuperscript{86} \textit{Id.}
\textsuperscript{87} \textit{Id.} at 45.
\textsuperscript{88} \textit{Id.} at 94-107.
\textsuperscript{89} V. Deloria, Jr., \textit{Forward}, in \textit{DAMNED INDIANS} at xiv (cited in note 6).
as the enduring repository of their ultimate well-being. Without the land, there is no center to resist the historical pressures created by the dominant society.

VI. THE AMERICAN WEST AS LIVING SPACE

Despite the pervasive conflict between tribes and the state and federal governments, and between Indians and non-Indians, there are other more unitive factors which point to similarities in situation that are often not perceived and occasionally even ignored. One such fact is the unique geographical situation of living in the West—a West that constitutes a unique environmental and ecological system that exacts a premium for successful living. The key attributes of this habitat are space and aridity.

Wallace Stegner, a leading western novelist and critic, aptly describes this West of living space:

In the West it is impossible to be unconscious of or indifferent to space. At every city's edge it confronts us as federal lands kept open by aridity and the custodial bureaus; out in the boondocks it engulfs us. And it does contribute to individualism, if only because in that much emptiness people have the dignity of rareness and must do much of what they do without help, and because self-reliance becomes a social imperative, part of a code.

... It encourages a fatal carelessness and destructiveness because it seems so limitless and because what is everybody's is nobody's responsibility. It also encourages, in some, an impassioned protectiveness: the battlefields of the environment movement lie in the western public lands. Finally, it promotes certain needs, tastes, attitudes, skills. It is those tastes, attitudes, and skills, as well as the prevailing destructiveness and its corrective, love of the land, that relate real Westerners to the myth.

The complement to the space of the West is aridity, which not only con-

91. The West is not always easily defined geographically, though Wallace Stegner suggests:

   ... that it starts about the 98th meridian of west longitude and ends at the Pacific Ocean. Neither boundary has the Euclidean perfection of a fixed imaginary line, for on the west the Pacific plate is restless, constantly shoving Los Angeles northward where it is not wanted, and on the east the boundary between Middle West and West fluctuates a degree or two east or west depending on wet and dry cycles.

   Actually it is not the arbitrary 98th meridian that marks the West's beginning, but a perceptible line of real import that roughly coincides with it, reaching southward about a third of the way across the Dakotas, Nebraska, and Kansas, and then swerving more southward across Oklahoma and Texas. This is the isohyetal line of twenty inches, beyond which the mean annual rainfall is less than the twenty inches normally necessary for unirrigated crops.

STEGNER at 5 (cited in note 90).

For purposes of this essay, I have included all of South Dakota in the West. Yet it is interesting to note that most of the Indian population and Indian land in South Dakota are in the western part of the state, and there is a clear East/West distinction marked by the Missouri River in South Dakota. East of the river it is more the traditional crop agriculture of the Middle West, while west of the river it is mostly cattle ranching and the literal province of "cowboys and Indians."

92. Id. at 80-81.
stimates a physical, and often brutal fact, but is also a determinant of the social fabric:

Aridity, and aridity alone, makes the various Wests one. The distinctive western plants and animals, the hard clarity (before power plants and metropolitan traffic altered it) of the western air, the look and location of western towns, the empty spaces that separate them, the way farms and ranches are either densely concentrated where water is plentiful or widely scattered where it is scarce, the pervasive presence of the federal government as landowner and land manager, the ever more noticeable federal presence as dam builder and water broker, the snarling states'-rights and antifederal feelings whose burden Bernard DeVoto once characterized in a sentence—"Get out and give us more money"—those are all consequences, and by no means all the consequences, of aridity.93

The facts of aridity and space have combined to establish a unique environment in which there is often a sharp sense of independence counterpoised against the encroaching tentacles of federal authority. Despite the vastness of geography and the mythic claims of western individualism and tribal sovereignty, there is significant and seemingly intractable dependence on, and resentment of, the federal presence in Indian country and the West. This bleak history is keenly summarized: "Take for granted federal assistance, but damn federal control. Your presence as absentee landlord offends us, Uncle. Get out, and give us more money."94

This description contains the necessary seeds to cultivate a renewed examination of the role that federal money and the federal government play in Indian country and throughout the West. Though Indian tribes are often casually described as too dependent on the federal government,95 it is less often noted that many of their non-Indian "rugged individualist" neighbors are equally dependent on the federal government, whether through federal farm subsidies and/or the below cost access and use of the public domain for water, natural resources, and grazing rights.96 This knot of common dependency must be examined and explored in order to determine whether there is sufficient common ground on which Indians and non-Indians, tribes and states might be able to define a clearer, more productive, and more satisfying relationship with the federal government.

This is not an easy matter. Tribal dependency on the federal government is grounded in the unique "trust relationship"97 that exists between the federal government and Indian tribes which, in turn, is grounded in the mutual covenants of the treaty relationship. The object therefore is not, or should not be, to end this important relationship, but rather to redefine its contours in such a way as to make the relationship less asymmetrical with a renewed infusion of

93. Id. at 8-9.
94. Id. at 15.
97. Supra note 30.
mutuality. Coordinately, there needs to be a reduction of the dependence of
western farmers and ranchers on federal subsidies and profligate use of the
public domain. No doubt there is the potential for exacerbated state/tribal
conflict here, but that is the risk that must be taken if there is to be a potential
realignment of interests by people and entities that actually call the West
home.

This federal dependence also has its non-governmental analogue in the
western suspicion and distrust of outsiders and do-gooders and the resultant
insularity of vision. The history of the West

from the fur trade to tomorrow, is a history of colonialism, both mate-
rial and cultural. Is it any wonder we are so deeply xenophobic, and
regard anything east of us as suspect? The money and power always
came from the East, took what it wanted, and left us, white or Indian,
with our traditions dismantled and our territory filled with holes in the
ground.98

This insularity, at least in South Dakota, remains more prominent in the
non-Indian rather than the Indian community. Tribes increasingly look to
and find more congenial support for their efforts outside rather than inside the
state; witness for example the controversial Black Hills issue.99 Yet it remains
true for both communities that difficulty and exploitation have often come
from outsiders. This aggravated insularity needs to be set aside, with an eye
toward allowing each group to assay and to rethink the potential coalition
against real outside exploiters and support for outsiders who have genuine em-
pathy and commitment to both the Indian and non-Indian community. Ex-
amples of outsiders to be opposed might be the corporate disposers of nuclear
and other toxic waste who want to dump in South Dakota and Indian country,
while outsiders to support might include those planners and businesses who,
of course, seek profit, but who do so in ways that are consistent with fair
wages and the enhancement of rural life.

Implicit in such a process of clarifying relationships with both govern-
mental and non-governmental “external” forces is the opportunity to embrace
a new concern for improving “internal” relations between Indians and non-
Indians, between tribes and the state. This, of course, would not be easy given
the historical animosity. Yet it is necessary, if there is to be any unity on the
issues central to the existence and reinvigoration of Indian and non-Indian
rural communities, which often share the common attributes of being under-
developed, isolated, and easily ignored by the powers that be. A good example
in this area might be, on the one hand, to prevent the corporate purchase and
control of agricultural lands within the state and to prevent the massive leasing
and development of tribal lands, while on the other hand, to explore the

99. The Congressional bill for return of the Black Hills (S. 705, 100th Cong., 1st Sess.) could not
find a sponsor in the South Dakota Congressional delegation. The original sponsor was Senator Bill
Bradley (D.-N.J.) who conducted summer basketball clinics for the children of Pine Ridge, where he
first heard about the Black Hills issue.
potential for productive agricultural joint ventures by Indians and non-Indians, by the tribes and the state.

The import of these suggestions is that Indians and non-Indians, the tribes and the state have more in common than they might think. Despite a history of conflict, their future is inextricably linked. There cannot be well-being for some, if not for all. Many of the dominant forces, such as the scarcity of capital, the shortage of many resources, the increased reliance on technology, and a disappearance of markets that threaten to, and in many cases already do, impinge on the integrity of rural communities act with equal devastation on Indian and non-Indian communities.

Each side must, however, accede to a condition before any of the mutual agenda can be addressed. Each side—and each group—must recognize the permanency and legitimacy of the other. Neither the state nor the tribe, neither Indians nor non-Indians are going to disappear, so they had best see how they might get on to preserve the best of what they already have. This is not unlike the situation, to use another contemporary parallel, of the Israelis and Palestinians in the Middle East. Neither the Israelis nor the Palestinians are going to disappear, and both have legitimate claims for a homeland in the area. Without this threshold admission, there can only be the continued violence and bloodshed that seems to define their interaction. The tragedy of that controversy ought to be instructive for all sides in South Dakota.

What both sides already have is space and aridity, but what is most important is a sense of place to meet the deep human need of belonging, particularly in our complex riven society—a sense of place that provides silence, space, and solitude for the healing of our raw spirits. Yet this is unlikely without some painful introspection, particularly in the non-Indian community. The mythology of the non-Indian West is grounded in conquest and possession and it no longer works. As suggested in an incisive essay:

But all over the West, as in all of America, the old folkway of property as an absolute right is dying. Our mythology doesn't work anymore.

We find ourselves weathering a rough winter of discontent, snared in the uncertainties of a transitional time and urgently yearning to inhabit a story that might bring sensible order to our lives—even as we know such a story can only evolve through an almost literally infinite series of recognitions of what, individually, we hold sacred. The liberties

100. For example, note the views of Palestinian villagers exiled from their village in 1948, but allowed to return to the same village by the Israeli government in 1972:

I ask my conversants how the return to their land affected them.

"Everything changed," Abu Harb says. "We now live here among real people. The people who stayed behind in the Deheisha and in Jericho are miserable. They are going mad from sadness and longing for their land. They come and plead with us to give them a little garden plot. Just so they can regain a little self-respect. Something to live for. After all, it is just not land, it is everything. They are cut off from everything there. They have ceased to be people. We have been planted anew. Not only in the land. The land is the beginning: we are planted in life as a whole. In normal relations with other people. In tradition. In all the right things. We are no longer strangers in the world."


101. STEGNER at 52 (cited in note 90).
our people came seeking are more and more constrained, and here in the West, as everywhere, we hate it.

Simple as that. And we have to live with it. There is no more running away to territory. This is it, for most of us. We have no choice but to live in community. If we're lucky we may discover a story that teaches us to abhor our old romance with conquest and possession.\footnote{102}

This outworn mythology has also been fueled by the excesses of individualism which have hindered the development of communities and traditions. “It has robbed us of the gods who make places holy. American individualism, much celebrated and cherished, has developed without its essential corrective, which is \textit{belonging}.”\footnote{103}

In South Dakota, particularly in the rural areas on or near Indian country, this sense of belonging in the non-Indian community may not be so sharply attenuated, which again suggests the potential for a coming together on these issues. Yet the key, it seems to me, to generating a long-term coming together is the development of a \textit{story} or an \textit{ethic}. There are complex issues aplenty, such as the use of Missouri River and Oglala Aquifer water, or the Black Hills issue, to potentially bring Indians and non-Indians together, but the development of a greater ethic or story, beyond the particulars of any issue, is needed to hold us together. Of course, no one knows exactly how to do this, yet important work has begun in this area:

We need to develop what I will call an ethic of place. It respects equally the people of a region and the land, animals, vegetation, water, and air. An ethic of place recognizes both that western people revere their physical surroundings and that they need and deserve a stable, productive economy that is accessible to those of modest incomes. An ethic of place ought to be a shared community value and ought to manifest itself in a dogged determination of the society-at-large to treat the environment and its people as equals, to recognize both as sacred, and to insure that all members of the community not only search for, but insist upon, solutions that fulfill the ethic.\footnote{104}

And within this ethic of place a recognition that Indians:

possess individuality as people and self-rule as governments, but they are also an inseparable part of the larger community, a proud and valuable constituent group that must be extended the full measure of respect mandated by an ethic of place.\footnote{105}

The necessity for the story and ethic to emerge remains critical to the viability of the West, if it is to join its spacious physical terrain to the geography of hope.\footnote{106}

\footnote{102. \textit{Owning It All} in \textbf{Kittredge} at 67-68 (cited in note 98). \textit{See also} P. Limerick, \textit{The Legacy of Conquest} (1987).}

\footnote{103. \textit{Stegner} at 22-23 (cited in note 90).}


\footnote{105. \textit{Id.} at 407.}

\footnote{106. \textit{Stegner} at 43, 60 (cited in note 90) in which his own hope waivers. \textit{See also} his splendid earlier observation:}
Along with these encouraging beginnings, there are other vital signs of sharing and coming together. These examples are found most often in the area of education and specifically in the experience of the Indian controlled colleges located on several Indian reservations in South Dakota and throughout Indian country. Sinte Gleska College at Rosebud and Oglala Lakota College at Pine Ridge are the two fastest growing colleges in the state of South Dakota. These colleges, both founded in the early 1970's, represent successful acts of self-determination by local tribal leaders to meet the higher education needs of tribal people through accredited tribal institutions. Yet in meeting these tribal needs, the reservation colleges were also available to non-Indians living on or near the reservation.

Non-Indians make up a sizable minority (ten to fifteen percent) of students and staff at these institutions and they receive quality educations which prepare them to be teachers, nurses, and counselors, as well as obtaining advanced undergraduate and graduate education off the reservation. The more extraordinary aspect of this experience is that the colleges have provided—simply by existing and not being racially exclusive—rare forums in which Indians and non-Indians come together in and out of the classroom. These opportunities for face to face communication and exchange foster as a natural by-product, increased personal, cultural and political respect and understanding.

During the time I taught at Sinte Gleska College, I was struck over and over by the transformative nature of these exchanges, particularly as they affected non-Indians. Non-Indians reacted most favorably in three areas: 1) to the rigor and quality of education they were receiving; 2) to the fact that they were welcomed and not discriminated against; and 3) to the opportunity to meet Indians and their cultures in a non-threatening, non-stereotyped situation.

The most striking attributes of these exchanges are legitimacy and humanity—legitimacy in the sense that there emerges in most non-Indians a recognition and appreciation of the legal and ethical thrust of Indian people to develop and to improve their institutions and government, humanity in appre-
cating the human faces behind these exertions. Non-Indians gain a perception that, despite differences in culture and historical circumstances, there is a common thread of effort on both sides to improve the quality of opportunity and life in one's family and community. This alone, of course, does not solve difficult questions, but it is an important ameliorative factor in shaping the necessary discussion for the ultimate solution to such pressing issues as the alleviation of discrimination, the Black Hills controversy, and the recognition of authentic tribal government permanence in Indian country. The education process, which has often held so much promise for fulfillment in the dominant community, holds equal sway in tribal communities. Yet there is also the added potential for the emergence of a precious ethic of common understanding and respect.

VII. CONCLUSION

The questions of the land have profound implications. They suggest the necessity of the land as the mediator of unity and wholeness, the central intercessor for a people. The bond to the land was almost completely severed by the grievous loss of so much of it through enforced assimilation and changed land tenure patterns and by almost total eradication of an economic relation to it as a material provider of sustenance. As Gerald Clifford, an Oglala and Chairman of the Black Hills Steering Committee, has said, "[o]ur relationships to one another as Lakota are defined by our relationship to the earth[.] Until we get back on track in our relationship to the earth, we cannot straighten out any of our relationships to ourselves, to other people." 110 The difficult question is how to get back on track in the relationship to the earth. There are no easy or simple answers.

For many on the reservation, the relationship to the land has become more passive than active. The land does not provide economic livelihood for very many and the detritus of the dominant society often invades and mars the landscape. Discussions about Indians and their relationship to the land often conjure disturbing utopic visions that endlessly romanticize the people and the land. 111 The bracing observations of a visitor to a reservation in the southwest are salutary:

I was also impressed by the amount of junk scattered around the villages—the usual modern American assortment of cans and bottles, plastic jugs, old cars, etc. In that climate even paper lasts a long time, and it blows everywhere. The junk surprised me; most people who write or talk about Indians, I think, try to see or imagine them apart from the worst—or at least the most unsightly—influences of white society. But of course one should not be surprised. When junk is everywhere—better hidden in some places than in others—why should one not expect to find

The rupture in the relationship of the people to the land has also had adverse social effects. Ronnie Lupe, former Chairman of the White Mountain Apache Tribe in New Mexico vividly articulates this view. “Our children are losing the land. It doesn’t go to work on them anymore. They don’t know the stories about what happened at these places. That’s why some get into trouble.”

At Rosebud and other reservations in South Dakota, problems of teenage alcoholism and juvenile crime provide dispiriting confirmation of this observation. Yet as Stanley Red Bird, cherished friend and founder and former Chairman of the Board of Directors at Sinte Gleska College of the Rosebud Reservation, has observed, “You white people got a lot of our land and a lot of our heart, but we know you were wrong and now with the help of the Great Spirit, and the new warriors of education, we will live again.”

The land needs to be retained, restored, and redefined. Its economic role—long dormant—must be resuscitated. Its spiritual role—long atrophied—must be revivified. Its healing role—long obscured—must be revitalized. The land must hold the people, and give direction to their aspirations and yearnings. In this way of looking at the reservation as place, the land may be seen to be part of the “sacred text” of Lakota religion and culture.

As part of the “sacred text,” the land—like sacred texts in other traditions—is not primarily a book of answers, “but rather a principal symbol of, perhaps the principal symbol of, and thus a central occasion of recalling and heeding, the fundamental aspirations of the tradition.” It summons the heart and the spirit to difficult labor. In this sense, the “sacred text” constantly disturbs—it serves a prophetic function in the life of the community. The land, therefore, constantly evokes the fundamental Lakota aspirations to live in harmony with Mother Earth and to embody the traditional virtues of wisdom, courage, generosity, and fortitude. The “sacred text” itself guarantees nothing, but it does hold the necessary potential to successfully mediate the past of the tradition with its present predicament.

The vindication of any tradition—including Lakota tradition—cannot be assumed. Yet the potential for the vindication and the flowering of the tradition is contingent, in part, on the commitment and exertions of the tradition’s followers. This process is richly described by a leading commentator within the Christian community:

Ultimately, however, tradition will be vindicated for us, for us as an individual and for us as communities, by how it manages to accord with our own deepest intuitions and highest aspirations. . . . Those intuitions and aspirations tell us that there must be a way of holding together what

112. Berry at 71-72 (cited in note 19).
114. Personal interview with Stanley Red Bird (May 1983).
116. Id.
117. Id.
the vicissitudes of our experience have driven apart—our realism about a fallen world and our hope for what the world may still become, our private integrity and our public duty, our hunger for community and our yearning for personal fulfillment, what Pascal called "the grandeur and the misery" of our common humanity.  

This concept of a "sacred text" and its tradition not only illuminates the commitment and struggle of Indian people in South Dakota, but also challenges non-Indians to examine their own traditions. For example, for many in South Dakota, this would include a review of the Christian tradition and whether its aspirations include solidarity with the struggles of others for justice and self-realization. Non-Indians need also to consider the deeper quandary of their Lakota neighbors' commitment to a "sacred text" so often assaulted by Western history. Within the legal profession itself, this might include an examination of the aspirations of our constitutional "faith."  

The breath of despair once so prevalent in Indian country seems to be yielding to the air of hope. The answers to these troubling questions about the land and its economic, cultural, and spiritual roles do not readily insinuate themselves, but the questions are increasingly recognized and energetically posed. Nor are these questions isolated to Indians and reservations. They also unerringly pierce the larger society's continuing assumptions about cultural diversity and the use and exploitation of the earth to sustain economic prodi-gality and waste. The questions inevitably challenge all of us—Indian and non-Indian, the tribes and state alike—to summon the honor and wisdom of ourselves, our communities, and our traditions and to apply them to these relentless and provocative issues.

the Constitution embodies the aspiration to social justice, brotherhood, and human dignity that brought this nation into being. . . . [W]e are an aspiring people, a people with faith in progress. Our amended Constitution is the lodestar of our aspirations.