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The Indian "Problem" in Washington and Oregon: Exploring Connections Between Natural Resources and Indian Policy

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Abstract: Relationships between indigenous Americans and non-indigenous settlers of the western United States were determined in great part by the presence or absence of natural resources for which the groups competed. This paper is a study of the shifting patterns of inter-ethnic relations and governmental policies towards Indians and resources in Washington and Oregon from the 1850s to the present. We explore the connections between natural resource endowments on aboriginal lands, beliefs about indigenous peoples, and changing governmental policies affecting indigenous American communities in the two states. As philosophies guiding natural resource management have evolved over the course of the 20th century from notions of conquest and progress to approximations of ecological sustainability, how have the original inhabitants of the Pacific Northwest been involved? How do indigenous peoples' beliefs, traditional knowledges, and management practices impact environmental policy today and how might they shape future management of natural resources? Are we witnessing a paradigm shift in thinking that guides both inter-ethnic relations and human-nature relationships at the dawn of a new millennium?

Introduction

As settlement advanced toward the Pacific Northwest, the primary task of officials responsible for Indian affairs was the clearing of title to land for the successive waves of homesteaders. This activity was a its height during the mid-1850s when most of the Washington and Oregon treaties were negotiated. During this period the natives of Washington gave up title to some 90 percent of their land holdings (64 million acres). They essentially traded these lands for the protection of the U.S. government on the remaining 10 percent and, most importantly, rights to use the ceded lands to carry on traditional activities. The details of the treaties, subsequent policies and interpretations of the courts make Indian law complex, but it seems to us that policies were aimed at essentially the same straight forward and consistent objective: control of economically-significant resources. The extent, speed and nature of the taking of Indian lands is associated with resource endowments of the aboriginal lands and stages of industrial/urban development, which placed a premium value on different resources at different times. In this millennial essay we will try to avoid the complexity that too often obscures the developmental patterns of the last century so that we can have a clearer view of the present situation from which to speculate about the 21st century.

PART I: History

Ownership, rights, and resources

The arrival of Europeans of any ilk was detrimental to the original inhabitants of the Pacific Northwest, but the coming of the "Bostons" as opposed to the "Kingsmen" posed a new and extreme threat. Although Indians legally kept the communal rights that to them were most significant, this meant nothing to the American settlers who understood property only as private ownership. With the coming of permanent settlers from the eastern United States, the natives of

the Pacific Northwest were trapped between two wars: The Conquest of the West and The Conquest of Nature. The Liberal theories that drove the settlers and the American system made both causes holy wars.

During the early 1800s, three cases (known as the "Marshall Trilogy") laid out legal guidelines for interethnic relations in the growing United States. In 1823, U.S. Supreme Court case *Johnson v. McIntosh* established that discovery gave the United States exclusive right to extinguish tribal rights of possession (American Indian Lawyer Training Program 1988). Indians had occupancy and use rights on their lands unless the U.S. government purchased them—and only then could the land be settled by whites (Zucker, Hummel, and Hogfoss 1983, 82). *Cherokee Nation v. Georgia* (1831) established the doctrine of federal trusteeship (American Indian Lawyer Training Program 1988). In *Worcester v. Georgia*, U.S. Supreme Court Chief Justice John Marshall ruled that Indian tribes were "distinct, independent, political communities" with rights to govern their own affairs (Zucker, Hummel, and Hogfoss 1983) and that state law does not apply on reservations without congressional consent (American Indian Lawyer Training Program 1988). At the same time, these rulings set up Indian cultures as dependent nations, subordinate to the state within which they were encapsulated and to which they were supposedly indebted for protection of their subordinate sovereignty (Werther 1992).

Despite these rulings, the Donation Land Act, passed by Congress in 1850, gave about 2.5 million acres of Indian lands to settlers of the Oregon Territory prior to the ratification of any treaties negotiated between the Indian societies of the Pacific Northwest and the U.S. government (Zucker, Hummel, and Hogfoss 1983, 82). The principle that animated the taking of Indian lands was the same one that granted rightful title to settlers. This vengeful version of John Lockes' thought involved the idea that property rights are acquired by mixing one's labor

with the bounty of nature. The moral principle that followed was that taking more than one could use and wasting nature's gifts is a crime against others who could rightfully use what was wasted. From the perspective of the settlers and the U.S. government, since lands inhabited by aboriginal peoples were not being fenced and farmed, resources were being wasted. This made these "open" lands available to settlers who would put them to productive use, justifying the conquest of the West and making the taking of the land rightful. None of the limits that Locke applied to taking through conquest applied because waste cannot give title (Locke [1690] 1952). This same principle gave rightful title to the homesteaders only after they improved the land and made it productive.

Oregon was the target of the first great migration aimed at the agricultural potential of the Willamette Valley. This development preceded the treaty making of the 1850s and resulted in the destruction and relocation of native peoples. It largely eliminated the Indian problem in what would become the most populous and industrialized area of the state. In Washington, the settlement of Puget Sound came later—after treaties had been ratified establishing trust lands and extensive use rights throughout the area that would become the population center and industrial heartland of the state. With trust holdings located at the center of urban development and use rights blocking dam sites, the Seattle-Tacoma urban area became the main arena wherein native peoples confronted the conquest of nature and development so as to preserve their heritage in nature.

When Euro-American pioneers first began to settle the Pacific Northwest in the early- to mid-1800s, Oregon Territory was occupied by nearly 100 distinct cultural groups. They can be grouped into roughly five regional categories: those in the Puget Sound area; those living along the Columbia River; those living in the semi-arid regions east of the Cascade mountains; those

living south of the Calapooya mountains in southwestern Oregon; and those who occupied the Willamette Valley. Although most of the earliest white settlers were interested in the lands and resources of the Willamette Valley Indians, Indians in southwestern Oregon and those east of the Cascades in Oregon were considered by whites to pose the greatest threats to the pursuit of settlers' interests. In the Rogue Valley region and along the coast of southwestern Oregon, Takilman and Athapascan speakers attempted to drive whites from their lands from the late-1840s to the mid- to late-1850s (Ruby and Brown 1986). The Cayuse and Umpqua Indians in eastern Oregon became increasingly concerned about white immigration across their lands as whites poured into Oregon in the 1840s. After the Cayuse massacred Christian missionaries and white immigrants near present day Walla Walla, Washington in 1847, war erupted between the Cayuse and Euro-Americans (Ruby and Brown 1986).

The Oregon Superintendency of Indian Affairs had been established in 1848 along with the Oregon Territory, and territorial governor Joseph Lane served as the first ex-officio superintendent. A Congressional act in June, 1850 created the office of Superintendent of Indian Affairs as distinct from the governorship of Oregon Territory (Peterson 1934, 14). Anson Dart was appointed as the first full-time superintendent of Indian Affairs. The priority was to negotiate treaties with Indians in Oregon Territory that would result in their removal to "inhospitable wastelands east of the Cascades," so that whites might occupy their homelands. The Territory was divided into two administrative regions (east and west of the Cascades) and a commissioner for each region, along with several agents and subagents were appointed to help the superintendent investigate, locate, categorize, and negotiate with Indian tribes (Spores 1993).

These commissioners were instructed to pay Indians no more than 10 cents per acre for their lands. The funds would be disbursed in

> annuities of 5% in beneficial objects such as "agricultural assistance, employment of blacksmiths and mechanics, farmers to teach them how to cultivate the land, physicians, and above all, ample provisions for purposes of education. After providing for these objects, if any portion of the money remains, it should be stipulated that it be paid in goods" (Peterson 1934).

Thirteen treaties were negotiated with Indians in Oregon by November, 1851, though Congress had not ratified any of them by the time Joel B. Palmer succeeded Dart two years later as superintendent of Indian Affairs in Oregon (Spores 1993). Conflict between native inhabitants and white settlers along the Columbia River and in southwestern and eastern Oregon continued to hold the attention of Indian affairs administrators until the mid- to late-1850s (Spores 1993). It was not until 1855 that Palmer's attention could be fully directed to the remnants of the Willamette Valley Indians. Dart's treaties had granted Oregon Indians reservations on their native lands and would not have resulted in removal of the Willamette Valley Indians east of the Cascades. Consequently, white settlers were not in favor of them (Peterson 1934, 19). Palmer knew the Willamette Valley Indians would not willingly go east of the Cascades, and his approach to treaty negotiations was to balance Indian concerns with those of white settlers. By March, 1855, Congress had ratified the treaty creating the Grand Ronde Reservation in the northwest corner of the state to which the Willamette Valley peoples were relocated. Oregon's "Indian problem" was almost entirely resolved by the time settlers in Washington began to come to grips with it there.

When Washington Territory was created in 1853, its governor, Isaac I. Stevens, became the superintendent ex-officio of Indian Affairs there[1]. Aware of the legal quagmire spawned by the Donation Land Act of 1850, the U.S. Congress sent Stevens to negotiate treaties with Washington Indians. From 1853 to 1855, Stevens negotiated several treaties of cession with

western Washington Indians, including the Point-No-Point Treaty which created the Skokomish Reservation (Asher 1999). Stevens then turned his attention to treaty negotiations with Indians east of the Cascades. There he negotiated treaties that created the Yakama Reservation, the Nez Perce Reservation, and the Umatilla Reservation (Asher 1999). Stevens' unyielding approach created as many ill feelings as ostensible agreements, however, and interethnic conflict broke out in western Washington in the form of the Puget Sound War, which lasted from 1855 to 1856. Ongoing interethnic conflict created mounting pressure for Congressional ratification and implementation of Stevens' reservation system. By early 1859, Congress had ratified all the Stevens treaties. Gaps in the system Stevens had envisioned were later filled by various executive orders creating non-treaty reservations. The decimation of Oregon's Indian cultures and the treaties Stevens negotiated in Washington further shifted interpretation of earlier legal precedents toward understanding indigenous cultures as "domestic dependent nations" rather than "distinct, independent, political communities" (as in *Worcester v. Georgia*, 1832).

By taking lands belonging to indigenous peoples and relegating the native peoples of the Pacific Northwest to areas where they would not interfere with the developmental objectives of the U.S. government or its citizens, Indian Affairs administrators cleared the way for westward expansion. Their ultimate intention, formalized by the 1887 General Allotment Act (also known as the Dawes Act), was to school Native Americans in Liberal ways and turn them into freeholders on the trust lands. Indian reservations throughout the U.S. were to be divided into allotments for assignment to individual tribal members, who were by virtue of the Act acknowledged as partial citizens—in the sense that they were capable of owning land. Over the first half of the 20th century, this effort resulted in the alienation of a major portion of the trust lands. Indian landholdings were reduced from approximately 138,000,000 acres in 1887 to

48,000,000 in 1934 (Deloria and Lytle 1983, 10). Much of this land is now the private holdings of non-Indians within reservations. Although the majority of the Indian lands were lost after passage of the Dawes Act, it must be acknowledged that this was more often the result of the actions or inactions of individuals rather than direct government action. This is in contrast with the earlier experiences of tribes whose lands were taken through the Donation Land Act and treaty "negotiations," as well as the later experiences of tribes whose lands were lost as a direct result of the policy of termination.

Termination was a policy tool which enabled the taking of Indian lands by non-Indians during the 20th century. The 1924 Indian Citizenship Act had granted Native Americans citizenship. Although the granting of citizenship did not legally interfere with treaty rights and communal resource management practices, it created more controversy over the "Indian problem." Some policy makers have referred to Indians as "supercitizens," who enjoy both rights of citizenship and special rights related to their status as Native Americans (Singleton 1998, 67). Via congressional acts passed in 1953 and 1954, Congress formalized the U.S. government's capacity to terminate its trust responsibilities to the tribes. Termination meant the removal of federal supervision and related restrictions, along with the withdrawal of federal support and funding for reservation programs. Just prior to announcing its intent to terminate its trust responsibilities to the tribes via House Concurrent Resolution 108 in 1953, Congress made all Oregon Indian reservations except for Warm Springs "subject to the state's civil and criminal laws" and withdrew federal jurisdiction (Zucker, Hummel, and Hogfoss 1983, 77). Between 1954 and 1958 Congress passed 13 different termination bills that canceled federal Indian status of more than 12,000 people in eight states (Zucker, Hummel, and Hogfoss 1983, 77-78).

Historical linkage of resource endowment with policy

> When land occupied by the Indians was needed by settlers, or for some other public purpose, it was seized and the Indians herded onto apparently barren reservations. Then, when these reservation lands turned out to be rich in minerals and other resources, they were leased to mining companies, ranchers, and others, with little or no regard for the rights of the native inhabitants, their livelihood, or the long-term effects on the land (Eichstaedt 1994, ix).

That Indian lands and the resources thereon have been taken without concern for ostensible legal or moral standards is no secret to those familiar with the histories of the indigenous peoples of the Americas. As we have examined their histories and the history of development in Washington and Oregon during the latter part of the 19th and throughout the 20th century, we have observed that indigenous societies living on lands endowed with different kinds of resources met with different kinds of Indian policies throughout the settlement and development of the Pacific Northwest. Our intent is not simply to categorize the experiences of indigenous societies, but to create a starting point from which to begin to understand the evolution of policies affecting Indian groups and the politics of Indian resistance.

The timing of settlement and the type and extent of the resources in the native domain combine to create a policy mold in a given area. As states were organized in the Pacific Northwest and their governments became the primary locus of domestic policy, the initial mold shaped the enduring outlines of policy within state borders. Where Indian policy is concerned, not much attention has been paid to the states because of the theoretical dominance of the national government. States, however, play significant roles, particularly through congresses, in the determination of local Indian policy.

Although Oregon and Washington are neighbors, policy in the two states across all three levels of government (national, state and local) is different. Given the different starting points of development in the two states, resource endowments and patterns of development, we can discern two distinct molds in these neighboring states. Oregon's early settlement placed a

premium on agricultural land and the clearing of the Willamette Valley. There were no Indians left in the path of further development and salmon fishing could not become a staple of the Oregon economy. In Washington the reservations and rights established by the Stevens treaties stood directly in the path of urban development, commerce and hydroelectric power. The Salmon of Puget Sound were to emerge as a major industry and economic asset for the state of Washington.

Table I - PROGRESS AND POLICY

Historical match-ups of resources and values with Indian policy

	NATURAL RESOURCES	DEVELOPMENTAL RESOURCES
TARGET VALUES	1 AGRICULTURE (RELOCATION) Willamette Case	2 HYDROELECTRIC (EXPROPRIATION) Skokomish Case
EMERGENT VALUES	3 FOREST (TERMINATION) Klamath Case	4 URBAN (ASSIMILATION) Puyallup Case

From the match-ups in the cells of Table I we have elaborated the following rough typology of resource-policy relationships:

1. "Target peoples" were those who occupied lands and used resources for which settlers had the most immediate needs. These peoples were pushed aside and vilified, and their lands

and resources seized. Target peoples include the residents of the Willamette Valley as settlement of the Oregon Territory began in earnest and the tribes who lived in southwestern Oregon when gold was discovered there.

2. "Emergent owners of natural resources" are Indian societies that have been granted ownership or control of lands which contain timber, animal, mineral or water resources originally considered plentiful or inconsequential. Such resources, as the regional resource base is depleted, are eventually targeted for exploitation by non-Indians. The peoples of the Klamath reservation in Oregon and the Yakama reservation in Washington have encountered challenges to their trust rights by virtue of being owners of timber.

3. "Controllers of developmental resources" are those Indian societies which have been granted ownership or control of resources which have become important to socioeconomic development. As technology has evolved, these Indians become major players in contemporary disputes over control of resources, as more powerful actors demand use rights and expropriation of resources. In the course of developing hydroelectric power for the Tacoma region, the Skokomish River was dammed, which resulted in encroachment on trust lands, eradication of use rights, and serious ecological damage to Skokomish lands and resources.

4. "Occupants of urban space" lived among the settlers and used resources alongside the newcomers. Occupants of urban space were marginalized gradually by socioeconomic development which resulted in the taking of resources that were not immediately central to white settlement and development, but which would become economically-significant later. Such resources provided economic security for the Indians, and encroachment by whites undermined this security. Tribes that occupied the Puget Sound region as it was gradually settled by whites fall into this category.

Conquest and progress in two states

Because of the different resource endowments and the timing of settlement and development in Washington and Oregon, the focus of Indian policy in these states has been on different problems and resources. Initial patterns along the Columbia are similar for both states, but there seems to be a divergence of policy concerning the larger reservations east of the Cascades and in southwest Oregon. For the most part, however, it is in the population centers west of the Cascades that the mold for the two states was set.

Case 1: the Willamette Valley—casting the Oregon mold

> The Indians who occupied the Willamette Valley at the turn of the nineteenth century were living at the bullseye of the historical target that was "Oregon" (Ramsey 1977, 89).

In the Willamette Valley, diseases, introduced by the earlier presence of British fur traders in the region, had greatly diminished the numbers of the indigenous Kalapuyan speakers by the 1830s. From an estimated population of 15,000, native inhabitants of the Willamette Valley declined in number to around 2,000 by the time whites began to arrive in substantial numbers (Spores 1993). This meant that white settlers outnumbered the relatively passive indigenous societies of the Willamette Valley soon after the area became a target for white occupation. According to the treaties arranged under Anson Dart in 1851, native Willamette Valley inhabitants were granted small reservations within their traditional territories. After living for several years without ratification of the Dart treaties and with problems that accompanied increasing white occupation of their lands, several Calapooya groups opted to participate in the negotiation of another treaty in January, 1855. This treaty, negotiated during the tenure of Joel B. Palmer, required them to cede all their lands in the Willamette Valley and specified their removal to a reservation in the northwest corner of Oregon (Spores 1993). Congress ratified the

treaty on March 3, 1855 (Ruby and Brown 1986). In January and February, 1856, Indians began arriving at Grand Ronde (Spores 1993), and the 60,000-acre Grand Ronde Reservation was established on June 30, 1857 (Ruby and Brown 1986). After relocation, the numbers of Kalapuyan speakers continued to decline. Although the various tribes that were moved to the Grand Ronde Reservation organized themselves into differentiated settlements and attempted to maintain their cultural identities, they were ultimately unable to do so. By 1930, there were only 45 Kalapuyan speakers on the Reservation, and today there are none remaining (Ruby and Brown 1986, 11).

After passage of the 1934 Indian Reorganization Act, the Grand Ronde Community organized itself as the "Confederated Tribes of the Grand Ronde Community of Oregon" and received a charter of incorporation. Grand Ronde residents were disappointed that reorganization and incorporation did not result in the return of lands they had lost after passage of the Dawes Act or in increased governmental aid. In 1956, after a vote to terminate their relations with the federal government, they lost all governmental support and recognition (Ruby and Brown 1986). Congress voted to end their termination status in November, 1983. With the signing of Public Law 98-165, the Grand Ronde Restoration Act, federal recognition of Confederated Tribes of the Grand Ronde Community of Oregon was restored. On September 9, 1988, the Tribes regained 9,811 acres of the original reservation when Ronald Reagan signed the Grand Ronde Reservation Act into law (Confederated Tribes of the Grand Ronde Community of Oregon 1999).

Case 2: The Klamath forests—termination

The Klamath Reservation was created by an 1864 treaty between the U.S. and the Klamath, Modoc, Pit River, Shasta, and Northern Paiute Indians of southern Oregon and

northern California. These peoples gave up approximately 13 million acres in Oregon and California in exchange for a 1.1 million-acre reservation in southern Oregon (Zucker, Hummel, and Hogfoss 1983, 107-108). Initially, those bands among the peoples of the Klamath Reservation who had lived for generations in the region continued some subsistence activities, such as gathering plants from the marshes and forests with which they were familiar. Given the reduced land base which they now occupied, however, traditional subsistence activities could not sustain the reservation peoples for long. Luckily, much of the reservation lands were also prime forest lands, and the Klamath peoples soon adapted to the new money economy and gained a reputation among whites for being "timber barons" (Zucker, Hummel, and Hogfoss 1983, 110). It was not long, however, before others more deserving of the title would usurp Indian claims to the forests of southern Oregon.

Challenges to the Indians' control over their lands and resources began shortly after the reservation was established. Between 1867 and 1873, Oregon issued patents to the Oregon Central Military Road Company for 111,385 acres of land within the reservation in order to facilitate the construction of a military road from Eugene to the southern boundary of the state. Starting around the turn of the century, the Klamaths and Modocs tried to get compensation for the loss of these lands. In 1906, the federal government made a deal with the company whereby the original 111,385 acres were traded, without consultation with the Indians, for 86,418.06 acres "of unalloted choice timber lands" also in the reservation. Ultimately, in 1938, the Indians won their lawsuit—after several appeals—for compensation for this loss, but their troubles had not ended (Ruby and Brown 1986).

Despite the policy of allotment and the fact that many individual Indians became private land owners, the Klamath peoples were able to retain some unalloted lands as tribal lands. Some

of these lands contained “some of the finest stands of ponderosa (yellow) pine in the western United States” (Zucker, Hummel, and Hogfoss 1983, 109). By the 1950s, the Indians had entered into an agreement with the BIA which allowed commercial harvests of the pines, and gave each of the tribe’s members up to $800 per year in revenues. The new wealth created some divisions between members of the tribe who could benefit from the timber revenues, and those without allotments, who could not. This political dissent helped contribute to confusion over the ultimate impacts of termination of the tribe’s federal status. The termination policy required the Klamaths to vote on whether to remain in the tribe as wards of the U.S. National Bank of Oregon, or to withdraw and receive payment for their individual allotments of land. Most of the members of the tribe voted to withdraw (Zucker, Hummel, and Hogfoss 1983). In addition, "property selected for sale as a result of termination constituted 77.825 percent of the value of the total estate. Of that, 78 percent was forest land, which had the greatest value of all" (Ruby and Brown 1986). When Klamaths who had voted to become wards of the bank became dissatisfied with this arrangement and dissolved the trust, those who requested their remaining shares be paid in tribal forest land rather than in funds were denied.

Case 3: The Skokomish Tribe and hydroelectric power development—expropriation

The Skokomish River is located on the southwestern slopes of Washington's Olympic mountain range. Fed by two flows (the North and South Forks of the Skokomish), the river is the largest tributary to the Hood Canal Basin of Puget Sound. In addition, The Skokomish River is the major supplier of the water for the largest estuary and inter-tidal zone in the Skokomish watershed. Providing a wealth of natural resources, including the region's largest runs of anodromous salmon and steelhead, this incredibly rich area was also home to a tribe of

indigenous people, the Skokomish—one of the many groups of Twana-speaking tribes in the region.

For thousands of years the Skokomish people relied on the area's abundant waterways and estuaries to develop their way of life. The natural resources produced by the Skokomish River watershed and Hood Canal Basin, were (and are) lifeblood to the physical, economic, social, and spiritual life of the tribe. Salmon, clams, elk, deer, bear, beaver, and various plants were used to support the people and their society. Of special importance to the tribe was the North Fork of the Skokomish River. Home to large spring and summer runs of fish, this area provided the Skokomish with a stable and bountiful fishery from which to extract the necessary resources used for subsistence and trade. Shellfish were also extremely important to the tribe. Collected from the tidelands, beaches, and sub-tidal areas surrounding the mouth of the Skokomish River, these resources were utilized for food and fish bait. Shells were also used as tools, ornaments, and currency. In addition, shellfish provided valuable insurance. In times when valuable salmon runs were scarce, the tribe could turn to the plentiful bounty of calms and oysters to feed its people. The abundant, diverse, and easily-accessible resources made the Skokomish people wealthy.

As is the case for the other peoples whose experiences provide the case studies here, resources of the region provided more than just food, currency, and social status; they were also the basis for the tribe's belief system. In addition, key geographic features (such as the original Lake Cushman, the North Fork of the Skokomish River, and the surrounding slopes of the Olympic Mountains) were more than just places to hunt; they were also sources of spirit power. To the Skokomish, no adult human being could function without the aid of a guardian spirit.

The arrival of the government of the United States into the Pacific Northwest forever changed the native lifestyle. Requiring tribes inhabiting the Hood Canal Basin and Skokomish watershed to be relocated onto a relatively small tract of land located at the mouth of the Skokomish River, the federal government forced the indigenous people to abandon their way of life. Needless to say, this action met with a great deal of resistance from aboriginal people of the region. The tribe worried about losing access to resources necessary for survival and maintenance of their way of life—particularly salmon. After assurances from Washington's territorial governor Stevens concerning the protection of tribal resource use rights, the tribe felt secure enough with the guarantees and conditions from the federal government to agree to sign a treaty.

On January 26th, 1855, the Skokomish Indian Tribe signed the Point-No-Point Treaty with the government of the United States. Congress ratified the Point-No-Point Treaty in 1859. In exchange for 6,000,000 acres, the tribe was guaranteed the right to harvest the salmon, shellfish, and other natural resources necessary for continued prosperity and existence. In addition, the Skokomish were given 3,300 acres of trust lands (expanded in 1874 to approximately 5,000 acres, by Ulysses S. Grant) and relocated to the lands along the western shores of the mouth of the Skokomish River. This action resulted in the establishment of the Skokomish Indian Reservation and federal recognition of the Skokomish Indian Tribe.

With the expansion of the Industrial Revolution at the beginning of the 20th century and the shift from an agrarian workforce to a more urbanized commercial and industrial base, hydroelectric projects came to be viewed as a more feasible alternative to fossil fuel generation. Considered the catalyst that would ease the transition of the American economy, hydroelectric energy was looked upon as vital to the national interest. Among the many projects pursued at

this time was the Cushman Hydroelectric Project located on the Skokomish River. It was designed to provide clean, cheap, abundant energy for the City of Tacoma's fledgling industry. Little consideration was given to either long-term financial ramifications or environmental impacts of this project. With relatively few restrictions from legislators, the Cushman Project received unwavering support from the Federal Energy Regulatory Commission's predecessor, the Federal Power Commission. In 1924, the City of Tacoma was allowed to go ahead with development of the project.

The project exceeded any and all parameters and permits (expanding from 8.8 acres to 4,700 acres, as well as diverting the entire North Fork of the Skokomish River) and destroyed arguably the best salmon habitat in the Puget Sound watershed—thereby eradicating the Skokomish Indian's most valued treaty-established resource use rights. The Skokomish Tribe had been extremely dependent upon the Skokomish River, not only for the financial well-being, but also for cultural survival. Though there was opposition from the Skokomish Tribe, the political climate of the time ensured that developmental interests were given priority over treaty rights. Skokomish culture was left to survive on the trickles of its birthright.

Case 4: Urban Puyallups—assimilation

In the mid-1850s when Isaac I. Stevens, governor and superintendent of Indian Affairs, arrived in Washington Territory, he quickly and decisively concluded treaties with the nearly 30 tribes around the Puget Sound. The Treaty of Medicine Creek, signed on December 26, 1854, ceded about 2,240,000 acres of territory belonging primarily to the Nisquallys and the Puyallups (American Friends Service Committee 1970, 25). The Puyallups had been hunter-gatherers and fishers, relying primarily on salmon. Their traditional territory encompassed most of what is today Pierce County, Washington (Northwest Portland Area Indian Health Board 1999).

Puget Sound, unlike the Willamette Valley, had not been a target of white settlement. The treaties reserved parcels of land near the mouths of the rivers which defined the homelands for the various tribes. These parcels were marginal at best for agricultural purposes, but it was not long before the eastern side of the Sound became the industrial, commercial, and population center of the new state of Washington. Access to the sea became a principal value, and ports became principal centers of economic activity. As the cities of Seattle and Tacoma began to grow, they encountered the reserved Indian lands.

The General Allotment Act of 1887 made official the intention of the United States government from the beginning, which was to divide tribal lands, thus making private property a primary value for the Native Americans and assimilating them into the dominant culture. With its provisions for the alienation of individual allotments after 25 years, the Act provided an ideal mechanism for the acquisition of Indian lands under the guise of assimilation. The intent to develop the Port of Tacoma and other highly-valued urban use areas on Puyallup Reservation lands ultimately led to an act passed by Congress in 1893 that made allotment mandatory on the Puyallup Reservation and reduced the time for alienation to ten years from 25 years (American Friends Service Committee 1970, 54). The special focus and increased effort with reference to the Puyallups had resulted in the alienation of all but 35 acres (American Friends Service Committee 1970, 54), with some 200 to 300 acres remaining as the holdings of Puyallup allottees. The "assimilation" of the Puyallups seemed so complete by 1964 that the state of Washington, under the auspices of the Department of Game, brought action against Puyallup fishers in an effort to completely extinguish the tribe's identity and rights (American Friends Service Committee 1970, 95). The state made the case and Judge Cochran of the Pierce County Superior Court ruled that "there is no Puyallup tribe which succeeds in interest to the rights of

the signers of Medicine Creek; that there is no Puyallup reservation; and that the fisheries regulations of Washington are reasonably necessary for the conservation of fish" (American Friends Service Committee 1970, 95). The appeal of this case constitutes a turning point for the Puyallup Tribe and, possibly, for all Native Americans in the Pacific Northwest, since it paved the way for the Boldt decision. The Washington State Supreme Court ruled on January 12, 1967 that treaties cannot be repudiated by a state, and reversed the finding that there was no Puyallup Tribe (American Friends Service Committee 1970). The Supreme Court did rule, however, that there was no longer a Puyallup reservation, and that all the land except the cemeteries could be taxed. In addition, the Court determined that, as a consequence, the Puyallups had no on-reservation rights. The U.S. Supreme Court essentially upheld the decision of the Washington State Supreme Court in *The Department of Game v. the Puyallup Tribe*. In a footnote, however, Justice Douglas observed that the Court "does not decide whether 'the reservation has been extinguished'", but rather, that the Puyallup Reservation had simply passed to private ownership, except for two small tracts used as a cemetery (American Friends Service Committee 1970, 97).

Summary

Indian policy in the Pacific Northwest is a chronicle of assault on the commons and the people who depended upon them. Through the course of white settlement of Indian lands in Oregon and Washington, treaty-making and the creation of a system of reservations on supposedly "marginal" lands, and through allotment and termination, Indians lost their domain and most of their access to natural resources that had once made them prosperous peoples. Initial differences in the settlement patterns and early Indian policies of the two nascent states set the molds from which subsequent policies toward Indians and tribes grew. However, as we shall

see in Part II, it is also true that convenient and equally powerful fictions of law, such as Indian sovereignty, have been created which we believe can ultimately reverse the situation.

In Oregon, intensive white settlement preceded treaty-making, and, despite ostensible guidelines for U.S. policy toward Indian societies, most of the indigenous peoples of the Willamette Valley were either killed or driven off their lands, and finally relocated under treaty arrangements in 1855. We observed above that by the middle of the 20th century there were no longer any Kalapuyan-speaking descendants of the inhabitants of the Willamette Valley in Oregon who had been subjected to the original policy of decimation and relocation as non-Indian settlers made use of their lands for agriculture. Case 2 provides an example of the total elimination of trust rights so that timber resources held by the Klamath Indians in Oregon could be expropriated. Lands endowed with resources desired for economic development by whites were simply taken.

In Washington, Indians have fared better. Treaties were in place before the flood of incoming white settlers. Stevens' treaty-making endeavor secured access for whites to resources controlled by the tribes, but the Indians in Washington were granted reservations on or near their original homelands and some use rights to important resources. Development proceeded around these enclaves. As the forces of science began to build industrial complexes leading to urban settlement, the aboriginal use right—which at an earlier stage had been granted with little or no controversy because it held no apparent value for Euro-Americans—became a barrier to the acquisition of energy and other resources required by the new development. When hydroelectric power development came into direct conflict with the use of "accustomed fishing and hunting grounds," state and local policy makers worked together to expropriate resources on Indian lands. When developmental resources were desired, treaty rights were ignored as sites Indians

had used for generations were flooded or otherwise eliminated by the development of hydroelectric power. The experiences of the Skokomish Tribe and the difficulties encountered by all Indian fishers in the face of the growing salmon industry of Puget Sound are illustrative on this count. In the case of the Puyallups, since the areas of urban development had not been cleared as in Oregon, actual land had to be taken for urban development. Special action by Congress accelerated the privatization of Indian landholdings. The ostensible goal, or rhetoric, was assimilation of the Puyallups into the dominant society. The real intention and result was the alienation of Indian lands and their transfer to non-Indians. Like the other tribes of the Puget Sound, the Puyallups now participate in comanagement of the fisheries and continue to fight in court for recovery of their treaty rights at the dawn of the new millennium. It is the nature of salmon and the fishery resource that has made the Puget Sound tribes viable stakeholders and participants in contemporary fishery management regimes. This is a beginning that could permit the tribes to exercise real control over these resources. Their success already provides a model for tribes elsewhere.

PART II: A Paradigm Shift?

Salmon wars—moving toward aboriginal control of resources

By the mid-1900s, fisheries in the Pacific Northwest were being severely depleted by a number of causes—including over-fishing, the construction of dams, and pollution. As competition for this scarce resource mounted in the Puget Sound, Indians, using methods developed during the Civil Rights movement, fought to recover and preserve their aboriginal rights to resources on their traditional lands. They used their formally-guaranteed treaty rights and court cases such as *Johnson v. McIntosh* (Chapin 1993), which had established aboriginal title, to fight a legal battle at the same time that they carried out protests and engaged in acts of

civil disobedience. All stakeholders became embroiled in litigation, with the state of Washington in the forefront fighting for the interests of non-Indian commercial and sports fishermen.

The Point-No-Point Treaty and other treaties negotiated by Isaac I. Stevens with Puget Sound peoples included the following provision: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the Territory" [Kappler, 1904 #14, 674]. Indians had the right to fish in such "usual and accustomed" places whether or not these were found on lands owned by Indians. By 1966, however, Washington and Oregon were increasingly regulating Indian fishing and pre-empting tribal regulation of their members' fishing practices (Zucker, Hummel, and Hogfoss 1983, 169). Exactly what regulatory rights states and tribes held were not clear, and numerous court battles were fought to determine this. Washington had entered into a series of actions against Indian fishers which had virtually established the supremacy of state regulatory agencies. After the 1968 Supreme Court case, *Puyallup Tribe v. Department of Game*, gave Washington the right to regulate Indian fishing for purposes of conservation, Columbia River treaty fishermen sued the Oregon Fish Commission in a federal court in Oregon to have their rights and those of the state of Oregon more carefully delineated. The federal government, in order to fulfill its trust obligations, brought suit against the state of Oregon on behalf of the Indians, and four other treaty tribes joined the suit. These were the combined cases of *Sohappy v. Smith* and *U.S. v. Oregon*. U.S. District Court Judge Belloni's 1969 ruling allowed state regulation of Indian fishing, but with strict limitations on state powers and required that a "fair and equitable share of all harvestable fish" be guaranteed Indian fishers by state fisheries administrators (Zucker, Hummel, and Hogfoss 1983, 169).

These cases laid the foundation for the better-known Boldt decision (*United States et al. v. State of Washington et al.*) in 1974, which reversed the precedents that had been set by the state of Washington. Following the precedents set in the Oregon cases, it was the United States government, through the Department of Justice, that brought the case against the state of Washington to enforce the Stevens treaties as trustee for the Indians and their treaty use rights. Acting on behalf of seven Washington tribes, Justice Department lawyers sued Washington state fisheries agencies in the U.S. District Court at Tacoma, Washington in 1970. In the landmark ruling, Boldt declared that Washington Indians had agreed to share their resources with whites when they, during treaty negotiations, agreed to fish "in common with" U.S. citizens. This meant they had retained the right to a portion of the fish that was at least equal to the one they gave up to the citizens. The state, then, was obligated to regulate its citizens so that "half the migrating salmon could reach the places where Indians fished" and could not expropriate the Indians' rightful share of the catch by "regulating" Indian fishing (Harmon 1998, 230-31). In addition, Boldt ordered the state's Department of Fish and Wildlife to share management of fisheries with the treaty tribes (Singleton 1999).

Reaction to the ruling was intense. White fishermen burned Judge Boldt in effigy, newspaper editors and state legislators assailed the decision, and the Washington State Department of Game refused to accept it, while the Department of Fisheries drug its feet in the implementation phase. The resistance of the Washington state agencies was so intense that the court eventually had to enforce its own ruling in the *United States et al. v State of Washington et al.* case. It was not until 1980 that such hostility and recalcitrance began to give way to a climate approximating cooperation between Indian and non-Indian fishers and resource managers (Singleton 1998).

Once it became apparent that the Boldt ruling would stand, Washington became a leader in the establishment of comanagement of resources. The Boldt ruling, then marks a transition in policy toward the recognition of tribal rights and the obligation of the United States and state governments to preserve and protect treaty resources. The significance of the Boldt decision for Indian rights in resource management can be compared to that of the *Brown v. Board of Education* case for the Civil Rights movement. We believe the Boldt decision represents a major turning point in interpretation of Indian rights, as it recognizes communal property rights established in earlier treaties. It gives this communal right and Indian identity priority over individual and corporate rights of non-Indians.

Indian communities and organizations have since expanded their involvement in management of fisheries resources in Washington and Oregon. Tribal governments and representatives are becoming more adept at securing treaty promises and avoiding the pitfalls of policies which might result in further losses of their natural wealth. Singleton characterizes the new era of comanagement of fishery resources in the Pacific Northwest as a highly-sophisticated management regime in which 20 American Indian tribes comanage the area's salmon fisheries along with state, federal and international regulatory bodies (Singleton 1999). While distributional conflict between the tribes has greatly increased since the 1970s, the tribes have created and maintained intertribal organizations to manage this conflict and manage to successfully act in a collective manner in areas where they share interests (Singleton 1999).

A paradigm shift?

As the doctrine of progress begins to give way as the driving paradigm of development, powerful interest groups have grown in support of conservation and the ecological sustainability of development. In this new climate, Indian societies' assertions of their roles as guardians of

nature are becoming much more accepted. There have emerged over the last forty years signs that give hope of the return of the commons and of a better way of life based on the traditions and knowledges of the diverse ethnicities of the Americas. But, while some of the problems associated with the developmental paradigm have been mitigated in the past few decades, the lack of political capital and economic resources historically possessed by Native Americans continues to undermine their capacities to fully participate in policy formation and effectively address developmental and environmental problems. Until this situation is remedied, the tribes of Washington and Oregon face a difficult situation which threatens their present and future well-being as well as the natural resource bases upon which everyone depends.

A paradigm shift leading to development based on ecological sustainability and respect for the diverse cultures of the peoples of the United States requires further expansion of opportunities for cooperation between Indians and non-Indians in natural resource management. A paradigm shift should result in the creation of new opportunities for Native Americans to manage culturally-significant resources. If tribal administrations can cope with challenges posed by the new regime that has accompanied the Indian Self-Determination Act, they may create opportunities to employ traditional knowledge and communal management practices in natural resource management.

We now turn to an exploration of how the shift from a progress-developmental paradigm of the late 19th and early 20th centuries to one that ties ecological sustainability and historical and cultural preservation to development can impact Indian policy in the two states. We pursue this objective by recasting Table I to incorporate recent legislation associated with these new values, which are challenging the old idea of progress.

Table II - SUSTAINABILITY AND POLICY

	NATURAL ENVIRONMENT	CULTURAL ENVIRONMENT
TARGET VALUES	1 ENVIRONMENTAL PROTECTION (COMMON STOCKS) Endangered Species Act	2 HISTORICAL PRESERVATION Archeology/Heritage
EMERGENT VALUES	3 COMANAGEMENT Holistic management of resources	4 BIO-CULTURAL DIVERSITY Comanagement/Synthesis of scientific and traditional knowledge

From the match-ups in the cells of Table II, we have sketched out a typology of resource policy situations that are based on recent legislation, much of which emerges from the current period of Indian self-determination.

1. Environmental protection: target species. Legislation that has resulted in the Endangered Species Act (ESA) began with passage of The Environmental Protection Act in 1969. Since 1973, the ESA has sought to protect target species that are "listed" as threatened or endangered by limiting activities of those who manage and harvest common stocks. In order to create a national policy aimed at encouraging productive harmony between humankind and the environment, the EPA called for the establishment of a National Council on Environmental Quality to oversee both public and private usage of lands. The ESA has not taken a holistic approach, but is targeted upon specific endangered species, making cooperation feasible because of its narrow focus. Protecting species, however, means protecting entire ecosystems from the

impacts of development. Regional management plans that draw upon all applicable knowledge and involve cooperation between differently-situated stakeholders will be required to protect any single species in the long-term. In the case of Pacific Northwest fisheries management, all stakeholders are required to adjust their activities to protect endangered marine species. Indian managers of the watersheds around Puget Sound object because ESA prohibitions infringe on treaty-reserved activities to protect species depleted primarily by non-Indians. Since the ESA approach to protecting species has not been holistic and has not acknowledged the utility of traditional knowledge,

2. Historical preservation: target sites and artifacts. The Archaeological Resources Protection Act (ARPA) was passed in 1979. The purpose of this act was to secure the protection of archaeological resources and sites on public and Indian lands. In addition, ARPA was designed to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having private collections of archaeological resources and data obtained before this act. CFR Title 43: Part 3- Preservation of American Antiquities established guidelines concerning the jurisdiction, delegation, and enforcement of recognized archaeological sites. In addition, this act established rules and procedures regarding permitting procedures for ruins, archaeological sites, prehistoric monuments, and objects of antiquity, historic landmarks and other objects of historic or scientific interest. The Native American Graves and Repatriation Act was passed in 1990. This legislation created guidelines for the protection of Native American and Hawaiian remains and objects. It also establishes procedures for the return of any and all archaeological discoveries to the appropriate tribe upon request, and assigns penalties for those parties that fail to comply with these regulations. While this legislation has been implemented to remedy past abuses of Indian

cultural and property rights, it cannot mandate respect for contributions indigenous cultures might make to the science of resolving common problems created by development.

3. Comanagement: moving toward holistic management of resources. In recent years, environmental legislation has been passed to protect resource bases more effectively. The following examples of legislation have the potential to support the interests of the Skokomish Indians and other similarly-impacted tribes in restoring regional ecosystems. The Pacific Northwest Power Planning and Conservation Act, passed in 1980, encouraged power producers to investigate solutions to conserve energy, protect renewable resource development, and provide fish and wildlife enhancement. The Electric Consumer Protection Act of 1986 required the Federal Energy Regulatory Commission to base recommendations for mitigation upon recommendations from federal and state fisheries and wildlife agencies. This act also required the Commission to give recreation, fish, wildlife, environment, and other non-power interests the same consideration during renewal of licensing. This kind of legislation brings the old values of development espoused by the Federal Energy Regulatory Commission into direct conflict with the new values represented by the environmental protection movement. Nonetheless, the City of Tacoma's license to continue operation of the Cushman Hydroelectic Project was renewed in 1998, despite the fact that the Project continues to endanger several salmon species, a regional watershed, and the well-being of a treaty tribe.

Since 1974, treaty tribes have comanaged salmon and other fisheries resources Including halibut, herring, shellfish and other marine species through the Northwest Indian Fisheries Commission (NWIFC) (NWIFC 1999). The NWIFC has facilitated inter-tribal cooperation on both the resource management and political fronts. While each treaty tribe in Western Washington has its own fisheries management personnel, decisions which impact the Pacific

Northwest salmon population in the vast habitat comprised by streams, rivers, the Puget Sound, and the Pacific Ocean are also made by state and U.S. government agencies as well as Canadian and international bodies. The NWIFC works with the Washington Department of Fish and Wildlife (WDFW) and the Pacific Fishery Management Council (comprised of seats held by tribal and state representatives) to make recommendations for an ocean fisheries management plan. This plan must be approved by the Secretary of Commerce, and NWIFC and WDFW management regimes must be comply with it (NWIFC 1999). Ultimate decision-making power, then, rests with the Secretary of Commerce. Fisheries management in the Pacific Northwest remains problematic because final decision-making authority rests not with those who have knowledge about and extensive experience managing the region's ecosystems, but with the U.S. Secretary of Commerce, who's main concern is business.

4. Bio-cultural diversity. The experiences of American Indian tribes working to preserve their cultural identities and their natural resources in the modern context affirm the claim of political ecologist Arturo Escobar: local cultural models of nature are in contact with and influenced by modern models of nature and economy (Escobar 1999). A scientifically-based and economically-driven approach to resource management has resulted in the commodification of nature and often ineffective attempts to preserve endangered species—even by treaty tribes and organizations like the NWIFC. Instead of being able to draw upon the knowledges and experiences of indigenous peoples and engaging with them in resource management, rational-bureaucratic management regimes have typically marginalized or excluded them. Rather than simply extending rights of the dominant political and economic systems to Indian societies, it is necessary to develop new approaches to resource management and jurisprudence which protect "the dynamic collective processes that generate human knowledge" (Hosken 1999, 19), draw

upon cultural diversity, and reflect the biological laws that govern life on the planet. A new paradigm would require the protection of whole ecological systems, and all the peoples that inhabit them. Since the late 1990s, various federal authorities responsible for resource management have begun to incorporate the idea of ecosystem management into administration of the EPA. It remains necessary, in order to move to a more effective approach to resource management, to incorporate the concerns and views of all cultural groups which hold stakes in and have management experience with the ecology in question. Effective environmental protection depends upon bio-cultural diversity in resource management. New approaches must acknowledge the multicultural and collective nature of modern societies and such societies' relationships to biodiversity if the human species is to adapt, restore ecosystems, and survive into the future (Hosken 1999). Eclipsing the intense conflict between the values of indigenous peoples and the descendants of the original Euro-American settlers, as the 21st century dawns, is the opportunity for convergence of what were formerly divergent value systems and world views. We hypothesize that convergence of values and world views can provide new opportunities for cooperation and more effective natural resource management. We see evidence of this convergence in renewed discussion of the commons and fresh interest in interpreting management of the commons as something beyond a "tragedy".

The self-government problem

Tribal sovereignty was the big news in Washington state as the first political season of the new millennium kicked off. The Washington Republican Party created a furor at its convention with a resolution "against tribal sovereignty." This resolution was criticized fervently, and elected Republican officials repudiated the action. In the end, the Party issued a statement apologizing and expressing regret for any anxiety or discomfort caused by the

resolution. The Republicans reaffirmed their continuing and ongoing support for Native American sovereignty as well their ability and right to self-govern as determined by legal treaties.

It seems that the whole controversy stems from a "good Republican," non-Indian who lives (owns property) on the Swinomish Reservation and was upset because he couldn't vote in tribal elections (since tribal regulations interfered with the use of his property). So, at the convention he desired, and the resolution requested, that the federal government take whatever steps necessary to terminate all such non-republican forms of government on Indian reservations. It's the old "no taxation without representation" cry. But the "good Republican" has it backwards. It's the Tribe that should respond, "no representation without taxation." Does the "good Republican" really want a republican form of government? Does he want the federal government to empower the Tribe to tax his property in return for representation? Very doubtful. Obviously what he wants is termination, pure and simple—as in the Eisenhower era—but by majority vote of the residents. Non-Indians outnumber Indians on the reservation. Even better, what if, as the Party seems to support, the treaties, as signed, were applied to the case of the "good Republican"? In the first case, the "alienation" of trust lands, from which he benefits, would be eroded; in the second, it would be erased.

During the period when the states and the national government were fighting over what the Constitution meant in terms of their respective rights, John Marshall established that Indian tribes, in terms of sovereignty, lie between the states of the Union and foreign nation states. The status of these states changed, in theory, because of the Civil War, and, in fact, in 1913 with the 16th Amendment and the income tax for the national government. Since that time, the 80,000 governments that share sovereignty in our federal system have worked out a pattern of

intergovernmental relations in which all are sovereign in their jurisdictions and subject matters. None of the 500-odd tribes which are still stuck in court striving for *de jure* status share in this *de facto* outcome. The record to date is clear: every action taken by Congress to enhance sovereignty for tribes has resulted in increased access to Indian lands and resources for non-Indians. What does the latest wave of Indian legislation portend?

The Indian Self-Determination Act of 1975

Anyone familiar with the Reagan devolution scheme aimed at state and local governments in the name of local control sees the similarity of that scheme to the Indian Self-Determination Act. The real intent in both cases is to divest the national government of responsibility for funding programs. In order to cope with the consequences of devolution, state and local governments had to increase their own revenues by raising taxes. Unfortunately, there is little available to the tribes in this respect. It would be helpful if they were given the prerogative to tax all of the alienated property within the original confines of the reservations, but no "good republican" would stand for such a thing. Congress, as always, bound itself to fund the costs associated with the Indian Self-Determination Act, but it has not—to this date (Gray 1999, 11). Without a tax base sufficient to cover basic operations, there can be "no ability to self-govern." Contracting and compacting for and with the revenues of other governments can only increase dependency. The alternative in Indian Country is gambling.

The Indian Gaming Regulatory Act of 1988

Whereas other governments tax, the tribes are allowed to go into business to raise revenues to provide governmental services. In the view of the responsible Senate committee:

> A tribe's governmental interests include raising revenue to provide governmental services for the benefit of the tribal community and reservation residents, promoting public safety as well as law and order on tribal

> lands, realizing the objectives of economic self-sufficiency and Indian self-determination and regulating activities of persons within its jurisdictional borders (Spaeth, Wrend, and Smith 1993, 353).

When it comes to gaming, they are still responsible for withholding federal income tax on individual winnings, like any other gaming operation. Taxes to other governments depend on location and agreements. Unlike that of any other governments, success for tribes is increasingly dependent on extra-governmental business ventures. That gaming revenues are now running in the billions and account for several times the BIA appropriation is touted as proof of the emerging "ability" of the tribes. Success stories appear frequently in the media. They all center on cultural preservation and emphasize gaming as a means to an end. The tribes are using the proceeds from gaming to buy back lands of cultural significance that were taken or lost. How likely is it that by the year 2100 cell 2 will contain the case study of a successful gaming tribe that has fully restored its cultural heritage and become self-governing through the taxes of its prosperous members? How successful would gaming have to be? It seems more likely that if tribes become gaming-dependent, the eventual outcome would approximate cell 2 in Table I: expropriation. The state governments are pressured by other interests, maybe even the local governments, for a share of the gaming pie. Gaming is legalized. Indian operations, because of their location and capitalization, are marginalized—as with salmon fishing. The tribal businesses go bankrupt and the land and assets must be sold to meet debts. Even the most optimistic gaming scenario is unlikely to result in progress toward cell 4 in Table II (a synthesis of modern and traditional knowledge) because the skills necessary to succeed in business are modern—not traditional—and are essentially disconnected from traditional knowledge.

Conclusion

A more optimistic path starts with the core natural and cultural resource—salmon—in cell 3. Since it has already led to comanagement in the form of the NWIFC and lip service to

traditional knowledge, it seems possible that over the next century a fully-participatory, holistic management regime might develop for Puget Sound fisheries. Whether the emerging paradigm will become the basis of a new direction for Indian policy in the United States will be determined by the nature of our thinking.

All four cells offer openings, but only cell 4 holds potential for a paradigm shift. The Japanese framework of appearance and reality will let us see the pitfalls of cells 1 through 3. It is not the case, as it may appear, that there has been a conspiracy against the Indians over the last century. In fact, the situation in the last century was the same as it is today. If competing established interests fight each other, they produce a negative or a zero-sum situation. If they go after Indian resources, if not win-win, the situation is at least no-lose for them. Has the emergence of new environmental interests changed this reality? We say no. It provides an opportunity, but in itself changes nothing.

The Makah on the Pacific coast of Washington provide an illustrative case at the dawn of the millennium. Singleton (1998) points out that they are the exception among Washington Indians in that their life way and culture are based on the whale, not the salmon. The international effort to save the whales goes back much further than the ESA and salmon. The Makah cooperated fully in the effort to restore and preserve this economic asset and cultural icon. The effort succeeded! Now all of their former allies in the environmental movement and the press have turned on them as they revive their whaling life. This looks like a repetition of the reality that has been the problem of Indian policy. Is there any reason to suppose that success with salmon or any other target resource would produce a different result for Indians? Even if there is, the listing-driven ESA system—where money follows threat or controversy—and the exploitation-based management approach offer little opportunity to move beyond the present, to

realize the revolutionary potential of the Boldt decision, and to combine knowledges to recover the commons.

Establishing real bio-cultural diversity (cell 4) emerges from a different paradigm. It is not a new one. It is a synthesis of the scientific and traditional. In order to fit into the intergovernmental pattern that has evolved in these united states and communities over the past 70 years, the tribes must be allowed to find and control the jurisdictional and subject matter niches where the traditional knowledge they still possess is superior to the current scientific approach.

The second phase of Boldt established that the U.S. government had an obligation to conserve and protect the resources to which the treaties granted use rights to the tribes (Singleton 1998). It is obvious that we have failed to meet this obligation. It is also apparent that current approaches are not well-suited to the restoration of these resources. With the institutionalization of the NWIFC and the widespread concern for the preservation of the salmon, the way is open to cell 4. The only thing that keeps us out seems to be the established definitions which animate the fears and prejudices that imprison us. To escape the "prison of old concepts," we must settle on an understanding of key ideas that will free us. We conclude with some speculation on three of them: knowledge, sovereignty and intergovernmental cooperation.

Knowledge

The first thing that must be thought through is the difference between scientific and traditional knowledge. Once that has been stated, much of the controversy is settled. Science seeks general principles that have universal applicability, whereas traditional knowledge is place-specific. Traditional knowledge is superior where it originates, but it cannot and is not intended to travel. When it comes to salmon, the division of labor between the two types of knowledge is

clear: the tribes know their river basins best and have traditions that have, and can once again, guarantee their viability and productivity. If traditional knowledge can deliver where science has failed, half of the harvestable salmon available before our successful conquest of nature (development) would be more than enough for all non-Indian commercial and sports needs.

Sovereignty

Basically, we have avoided using the word "sovereignty" in our exploration of resources and policy. This is a near impossible task, since the word is so pervasive in all writings about Indians. But it is essential because the concept has lost all meaning as definitions and understandings have permutated and multiplied over the last two centuries.

Once sovereignty has been divided in a federal state, the debate as to who is the highest authority where is endless at the macro level. At the micro level, we all end up being subject to multiple sovereigns. In our intergovernmental system, it is not rare for individuals to be subject to 20 or more different governments and everyone is subject to at least three. As the organizing principle for the modern system of nation-states, however, the concept of sovereignty is precise. Nation-states are sovereign. The government of the United States of America is the sole voice of the federal state in international relations. Even if all of the intricacies are worked out, legal and philosophical niceties have little to do with popular understandings that animate electoral politics. Sovereignty and treaties are generally thought of from the perspective of peace treaties—as with the Germans and the Japanese—ending wars of aggression with the United States. Such treaties are backed by theories and popular ideas of justice and just war, which vindicate and empower the victor. As such, treaties set the terms of surrender and occupation. In this context, "domestic dependent nations" would be equivalent to Okinawa if there had been no Japan. There is no sovereign to which to return the tribes.

That sovereign nations are involved in war relatively infrequently and that relations among them and treaty-making are always in progress is the fact that popular understandings obscure. Most interactions among nations are commercial and most treaties are similar to normal contracts. If the treaties are viewed from this perspective, which is the perspective of Boldt, then the millions of acres of land that the tribes occupied were traded for something of greater value to them than property ownership—the use of essential resources. Preservation of and guaranteed access to treaty resources was, and is, the payment the United States government agreed to for the land. The terms of these contracts have not been met. Any understanding of the law would require either that payment be made, a new agreement negotiated, or that the property be returned. In a polity like the United States, however, it is the non-Indian owners and users of these lands that must feel this obligation. Can such a revolution in thinking take place? Judge Boldt thought that it had, or wasn't necessary, when he said in his ruling

> The vast majority of the residents of the state . . . are fair, reasonable and law abiding people. They expect that kind of solution to all adjudicated controversies . . . and they will accept and abide by those decisions even if adverse to interests of their occupation or recreational activities (*U.S. v. Washington* in Singleton 1998, 66).

He was wrong in the short run, but current developments, like the Centennial Accord and the Millennium Agreement in Washington, might be a start. These agreements between tribal leaders and state officials acknowledge that a "stronger foundation for tribal/state relations is needed to enable us to work together to preserve and protect our natural resources and to provide economic vitality, educational opportunities, social services and law enforcement that allow the governments to protect, serve and enhance their communities" (Tribal and State Leaders' Summit 1999). The NWIFC is real while the Agreement is mostly symbolic. But, the shift that is required is symbolic. After a quarter of a century, the "good Republican" not withstanding, there seems to be hope for a new understanding.

Intergovernmental cooperation

Before real cooperation can take place, real governmental status must be attained. The 80,000 governments in the intergovernmental system of the United States are sovereign because they make laws, enforce them through binding public authority, and tax those to whom the laws apply to pay for their activities. This is the kind of real sovereignty the tribes need to bring their unique knowledge to bear on the problems that have destroyed their cultural heritage. The problem today is restoration and preservation. There are governments involved in what seems to be a similar activity: reclamation. Reclamation districts are institutionalized as part of the intergovernmental system. Their task is to bring scientific knowledge to bear on the problem of bringing marginal lands into production. In most cases, this amounts to another round in the conquest of nature in which the tribes are encouraged to participate. They generally resist, and for good reason. But the pressures are great and, in the end, it's usually that or nothing. A restoration district would be very different. It would place control of resource restoration in each cultural patrimony in the hands of the nation (cultural entity) whose life ways stem from the land. Such a specialized government would have to be supported by all who benefited from the destruction and all who will benefit from the restoration. That is to say, as with other special districts, the power to tax has to be real, sufficient, and independent of other governments.

The Amish maintain an autonomous ("sovereign") community because they have been able to resist dependence upon the dominant culture. The traditions of the native peoples of Puget Sound are—or were—as strong, but Native Americans were deprived of the means of self-sufficiency and made wards of the United States government. As the new millennium dawns and the devastation of our successful war on nature is everywhere apparent, our best hope may lie in the restoration of real capacity to proven stewards of the earth.

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[1] From approximately 1856 to shortly after Oregon attained statehood in 1859, at least two individuals served as the superintendent of Indian Affairs for both Oregon and Washington (U.S. Department of the Interior 1856-1862). They were J.W. Nesmith (1857-1858) and Edward R. Geary (1859-1860). After Oregon statehood, Oregon and Washington once again were made separate superintendencies (U.S. Department of the Interior 1856-1862).