

FOURTH WORLD JOURNAL

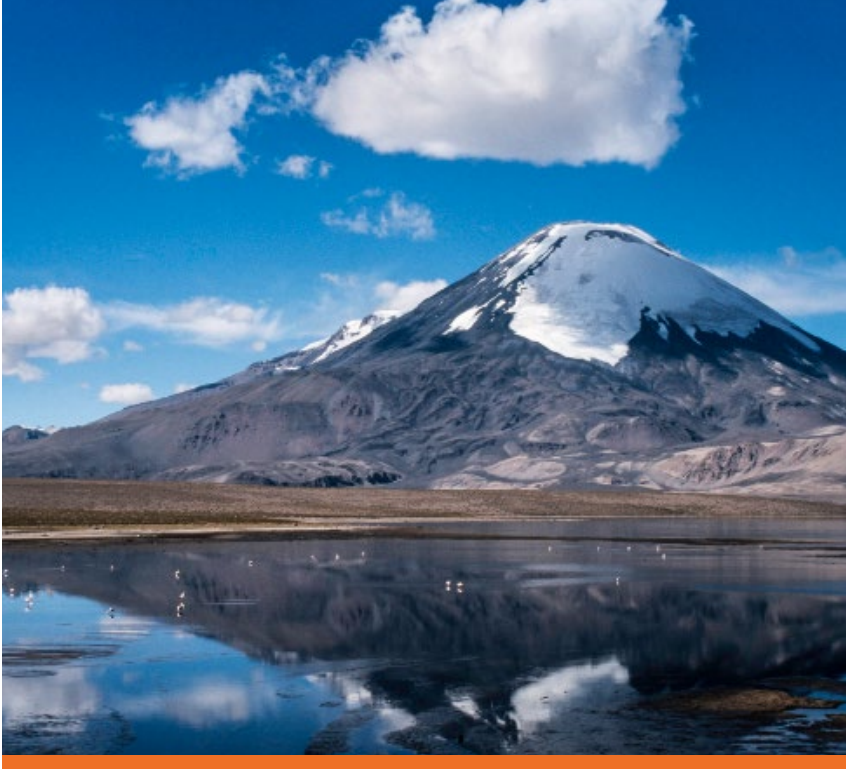


CENTER FOR WORLD INDIGENOUS STUDIES

SUMMER 2018

VOLUME 17 NUMBER 1





Umax Jakañataki / Photography by John Amato, RN

The Fourth World Journal is published twice yearly by DayKeeper Press as a Journal of the Center for World Indigenous Studies.

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ISSN: 1090-5251

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Center for World Indigenous Studies
PMB 214, 1001 Cooper PT RD SW 140
Olympia, Washington 98502, U.S.A.
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EBSCO PUBLISHING, Inc. Ipswich, Massachusetts,
USA GALE GROUP, Inc. Farmington Hills,
Michigan, USA INFORMIT, RMIT PUBLISH, Ltd.
Melbourne, AUS

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ON THE COVER

Photo by Dr. Vickie Jensen (author of Totem Poles and The Lure Of Stanley PARK – published by Our Books, Vancouver, BC. Canada) of KwashKwash (Dr. Jay Powell) with Salish Mask.

LUKANKA

Lukanka is a Miskito word for “thoughts”

FWJ V17N1 - SUMMER 2018

In the autumn of 1985 Wilson Manyfingers, Joseph E. Fallon, Dr. Ramendu S. Dewan, and your humble Editor in Chief inaugurated the Fourth World Journal with the publication of their five articles. The articles opened Fourth World Scholarship to perspectives and analysis on governance, wars, forced assimilation, genocide and hopeful political independence. Authors embedded in these articles rich “inside-out” analysis not commonly published anywhere in the world. The tradition for specific, targeted scholarship from Fourth World peoples was begun.

Typically, such articles and analysis rarely saw the light of day much less did they become available for inspection and critical review by inquiring scholars, political leaders, activists and grassroots people. The Fourth World Journal has continued this tradition publishing more than eighty-eight insightful, information filled essays, investigative pieces, and peer reviewed research articles, and with this issue, what has been 17 volumes. The Fourth World Journal has published authors from all six continents reporting or examining the cultural, historical, social, economic, and political life of Fourth World nations. Some FW nations are widely known



RUDOLPH C. RYSER
Editor in Chief
Fourth World Journal

A handwritten signature of Rudolph C. Rysler in black ink, written in a cursive style.

by scholars and the reading public while many about which FWJ has published articles are not so well known. But, what is shared between the authors, subject matter and perspective is an abiding commitment to understanding and appreciation for the differing knowledge systems and customs as applied to the social, economic, political and cultural realities of Fourth World peoples.

The challenges that more than 5,000 Fourth World nations meet are too often overshadowed by conventional scholarly journals—masked by discussions and disciplines largely founded in 19th century Europe (such as psychology, allopathic medicine, history, economics, politics and diplomacy, commerce, and various sciences). When FWJ entered the publication arena, many of the conventional scholars criticized the content and conclusions of many of our authors since they were not presenting their analysis in conformity with “conventional wisdom.” Indeed, many of our authors came to FWJ seeking publication since academic and other commercial journals were unwilling to publish their work. One of our authors complained that conventional journal editors rejected his article since the piece revealed a cover-up committed by academics having to do with the Philippine government staging “cave dwelling”

peoples in the jungle. Conventional scholars at various universities in the 1970s (it was revealed by our author) built their academic career on the basis of this counterfeit discovery of a Paleolithic people. Our author's investigation and analysis proved quite accurate, but still those who had prospered on the basis of this "discovery," continued to prosper due to institutional momentum and their long time employment by the various institutions.

Students and faculty at more than 300 universities and colleges around the world and community leaders, grassroots people, political leaders, and activists now read FWJ setting the pace for 21st century scholarship. Of that fact we are proud and pleased to know from our readers that the Fourth World analysis we offer is now part of the global and local dialogue.

I am pleased to offer to our long-time and newer readers the Fourth World Journal 17th volume, 1st issue for the Summer of 2018.

Dr. Jay (Kwash Kwash) Powell is a linguist who has for many years lived and worked with the Quileute people on the northwest coast of the United States of America. There he learned, documented and recovered the Quileute language through conversations with elders, thus granting to young members of the tribe modern access their language for use in everyday life. Recognizing that embedded in the language of Fourth World peoples is meaning and knowledge Dr. Powell has worked with tribal members to restore the ancient knowledge systems so to better understand the concepts contained there. Powell has extended his work to other nations along the Pacific Coast. His work is not only about restoring and perpetuating access to the languages, but also revealing ideas, concepts and traditional sciences lending new understanding of knowledge

for modern life. In this issue of Fourth World Journal Powell reveals concepts of law in **The Haisla Nuyem—A Description of Haisla Traditional Law**. The concepts and principles Powell reports give deeper meaning to what is meant by "law" in the Haisla society of British Columbia. Dr. Powell writes with grace and precision rendering Haisla Nuyem knowable and appreciated.

In **Umax Jakañataki – Water is Life** Center for World Indigenous Studies Associate Scholar, **Dr. Amy Eisenberg** is joined by co-authors **Richard Antonio Fernandez Chavez (Coordinadora Aymara de Defensa de los Recursos Naturales Arica y Parinacota)** and photographer **John Amato, RN** in a detailed description and analysis of the high desert irrigation and pastoralism strategies of the Aymara Marka Nation of Chile for long-term sustainability contrasted with the Chilean Government short-term, imposed mining, water pollution and other development strategies. Dr. Eisenberg and her co-authors provide a clear and objective discussion of the challenges the Aymara Marka Nation must meet to prevent their destruction and the breakdown of the ecosystem. Admittedly, the analysis points to the self-interested desire by the Aymara to prevent destruction of their ancestral lands in large measure due to their economic, spiritual and social attachment and dependence on the land and the water. Since the state of Chile has existed since only 200 years (Independence 1818), it is apparent that it has not existed long enough to fully appreciate the greater depth of Aymara knowledge and their analysis of sustainable management to support life in the region.

In her successful work promoting elementary school student literacy in the Yup'ik language, Ms. Freda Dan authors **How to Re-Invigorate Your Language in Five Easy Steps**. A Yup'ik herself,

Ms. Dan created and organized a Yup'ik Spelling Bee for Beginners. She has moved Yup'ik youngsters into participating in a "statewide" contest in the United States' Alaska. She describes the process and the involve fun promoted in the "game" that actually encourages spelling, orthography, pronunciation and definition" in reverse. Ms. Dan's lively and enjoyable description of her "language process" provides a wonderful picture of how this process works.

The Karuk (Chum-ne or in English "upstream people") have lived on the Klamath River in the northwestern part of the United States state of California for thousands of years. While the Chum-ne have made accommodations to early settlers and later settlements, they remain quite traditional in their commitment to their origin stories and foods and medicines in the land. **Ms. Laura Hurwitz and Mr. Shawn Bourque** co-author this bluntly titled essay **Killing the Settler to Save the Human: The Untidy Work of Unsettling the Klamath River Thus Far**. The authors are co-founders of a group of "settlers" making up the *Unsettling Klamath River*, a group of people intentionally working to "unsettle" the area of ancestral Chum-ne lands in which they find themselves. Colonialism is the theme of this piece, but instead of pressing for colonial control, the authors and their colleagues are working to accomplish the opposite. "Invasion is a system and not an event" the authors quote Wolfe (1999) as having written. Now, they have decided to acknowledge their own hypocrisies, "challenging the settler code of silence." This is a striking piece of narrative that demonstrates how "self-awareness" can become a motivating force for correcting ignorance and the commissions of ancestral wrongs.

Center for World Indigenous Studies **Clinical Director Dr. Leslie E. Korn**, and **Policy Director Dina Gilio-Whitaker** join me in publishing

the first findings from the **CWIS Model Legislation Study: Government's Policies for Medicinal/Pharmacologic Uses of wildlife for the benefit of small communities** sponsored by the California Community Foundation's Elina Vesara Ostern Fund. The researchers have co-authored the first findings entitled **Regulating Access to Customary Fourth World foods & medicines: Culture, Health and Governance**. The authors base the study on Fourth World Theory and examine the foundations of "customary laws," biodiversity and Fourth World regulation, plant-based and animal-based foods and medicines, hazards confronting Fourth World nations' food and medicine systems, sample the customary law, and compare to constitutional and treaty provisions, statutes enacted by a random sample of Fourth World governments and their cross jurisdictional engagement. All of this is then related to a sample review of 109 international states and their statutory regulation of traditional foods and medicines. Finally, the authors examine existing international instruments such as the UN Declaration on the Rights of Indigenous Peoples, UN Conference on Environment and Development, the Convention on Biological Diversity to assess international commitments and the forms of regulation. The authors argue that cultural and governing leaders "can and must initiate regulatory rules, laws and practices they enforce based in their customary law".

As a faithful reader of the Fourth World Journal, we look to you for your comments, suggestions and responses to these important contributions to Fourth World Scholarly literature.▪





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Saving the Haisla Nuyem

By Jay Powell

ABSTRACT

Residential schools, a recognized Canadian institution of assimilation for generations of Aboriginal youth, were unsuccessful in suppressing traditional culture among the Haisla of northern British Columbia due to the tribal rememberer, who codified the tribal oral law, their *nuyem*.

Key Words: residential schools, cultural suppression, Canadian aboriginal tribes, Haisla, traditional oral

The Canadian Residential School System – Education as genocide

Canada is currently attempting to redress a historic issue of official genocide—the residential school system. We are speaking of genocide as programmed efforts to wipe out an ethnic identity. Between the 1820s and the 1970s as many as 140 residential schools operated on or near reserves across Canada. Aboriginal young people were taken from their families, transported to schools where they were taught to read, write, do arithmetic, speak English or French, and to think and behave according to mainstream “whiteman” values.

Besides curriculum issues, school life involved tactics to discourage the use of the students’ traditional languages, tastes, beliefs and perspectives. As a single example, in some of these institutions, students were given seven supper dessert tickets per week, and any resident who overheard another student say something in their native language

could demand one of the speaker’s dessert tickets. In a regimen with few treats, such tactics and teachings worked. As the years passed, many students returned from school unable to speak their native language and not inclined to engage in what they had been taught were primitive tribal ways.

The residential schools are now thought and spoken of as “sites of unspeakable trauma.” A national effort referred to as the Truth and Reconciliation movement is attempting to provide treatment and recompense for the 80,000 or so survivors of these institutions who are still alive. But the psychological effects of residential school life affected not only those who attended, but subsequent generations. And certainly, the schools’ efforts to discourage traditional lifeways back home had the effect of gradual loss of many aspects of “the Old Ways.” Back home in the native communities, elders remembered how things used to be, but many students returning home from the residential schools were not inclined to learn the details or even the logic underlying traditional beliefs and ways.



Figure 1: Major languages in NWC culture area



Figure 2: Major language groups on the Northwest Coast

Saving the Haisla Nuyem

The erosion of traditional lifeways and perspectives, exacerbated by the effects of the residential schools in Canada, became increasingly apparent during the 1940s and '50s. Ethnographers recognized the potential unrecorded loss of cultural traits as Aboriginal cultural features and languages were being replaced by mainstream English and “pan-Indian” behaviors and perspectives. Native communities patiently put up with anthropologists intent on documenting the Old Ways, interviewing elders and observing public activities. In some cases, communities even hired their own anthropologist to record the details of their traditional life. Starting in the late 1980s, “traditional use studies” documented band and tribal hunting, fishing and gathering or details of the group’s territory, boundaries and

traditional ownership, occupation and use of their lands. Such projects made clear all that was being lost and replaced, in part due to and exacerbated by the residential school experience.

Such an opportunity to record what was being lost happened to me in 1999. I received a call from the Haisla Band, located far to the north at Kitamaat Village, British Columbia. The voice on the phone said, “We have almost 50 elders who are the last ones that remember the way things used to be. Would you come up and write a book about each one of those elders’ lives and memories?” I had just retired after 30 years on the faculty of anthropology at the University of B.C. This was an invitation to become a failure at retirement and keep on working. I accepted and was invited to fly up north for an interview.

I knew from previous work with almost a dozen aboriginal groups that I would have to pass the interview process. My wife-colleague and I call it the “truth test.” Every Northwest Coast Aboriginal group we have ever worked with decides early on whether or not you can be trusted. My wife and I have noted that the people seem to decide in an instant; they are seldom wrong and they never change their mind. So, with some nervousness, I flew up north to the Terrace airport, rented a car and drove for an hour out to the village.

I was talking with the official who had originally contacted me when three old men came into the office. I was introduced, and one of them said, “Are you Jay? Let’s go to lunch.” I expected that we would drive to a café “in town” for a soup and sandwich. Instead we went down to the dock and got into an old carved cedar canoe and paddled out to a floating buoy in front of the village where we tied up. One of the old men reached into the water, grabbed a line and started pulling up what eventually turned out to be a prawn trap that was lifted into the canoe. It was loaded with large prawns. When the trap was opened, they skittered freely in the bottom of the canoe. The three old men chatted over “lunch” as we picked up one prawn after another, peeled and ate it, saying each time “*Nolaxw, nolaxw, nolaxw.*”

We talked and they gently razzed me about how “all the other smart ‘perfessers’ had gotten it all wrong when they came up to study us over the years.” The right response was to laugh and agree. I did. After eating our fill, the prawns that remained were gently picked up and put back into the water. Then one of the men got up and, despite my

concerns about an unstable canoe, he did a dance, singing in Haisla while he patted out the drumbeat gently on his chest. He spoke a few sentences in Haisla and then look directly at me and said, “You see that mountain over there. That’s my *wa’wais*, my valley is there. My uncle gave it to me with his name. He first taught me about the spirit powers of that place and the other living things there.” And as he spoke, I knew that I had passed the truth test. Word would spread, but without that acceptance, I might as well go home because none of the elders would have confided in me.

Word that I had passed did spread. I was given an “office” in the gym and, at my request, they hired two typists to transcribe the week-long tape-recorded interviews with elders that I immediately got started doing. During those interviews we took down the matrilineal family trees, showing how the 52 *wa’wais* (heritable ownership areas) had been passed down from one family headman to his sister’s son, as was the traditional inheritance pattern among the Haisla. Each family had a precise annual resource harvesting schedule that assured that they would be at the right place when fish ran and harvestable resources were mature. My interview notebooks included hand-drawn maps and the design of fish weirs, as well as descriptions of springpole (a baited noose attached to a bent-over tree), pitfall and deadfall traps, and other traditional technology. And the interview cassettes included songs and mythic, legendary, and folkloric narratives, all of which were family property. Each interview transcript was, in fact, an inch-thick book of the lineage and individual memory of the elder interviewee.

Actually, this project was documenting the Haisla culture in transition. I was surprised how often I was told, “You shoulda been here last year when Old Man so-and-so died. He was the last one who knew about that.” It was clear that everything we were getting down was like a catching a dodo bird by the toe as it flew off to extinction. The things we got down, the community would have forever. What we didn’t get down would be lost forever. Considered in those terms, there was no doubt that these interviews were the right thing to do at the right time.

As the elders spoke, I heard the same phrase regularly. They would say, “Our *nuyem* (NOO-yum) says...” When I asked what that *nuyem* was, I was always told, “The *nuyem* is our law. It’s our stories.” When I pressed for explanation and details, I was sometimes told a narrative in which a Haisla person in the recent or mythic past was told, “Don’t...” “Don’t harvest more than you need and waste.” “Don’t disrespect other living things; but whatever you do, don’t injure or make fun of frogs.” And in each of those *nuyem* stories, that miscreant who disregarded the warnings and did what they had been told not to do, was punished for disregarding the law. Disregarding the *nuyem* could even be a capital offense.

And when I asked if it was possible to “get the *nuyem* down,” I was told that it is an oral code and so complex that one could never get it all written down. The elders of the year 2000 had learned the details of the *nuyem* from the admonitions and stories of their parents, uncles, grandparents who were born shortly before or after 1900. But, “No,” they said. The *nuyem* was too complex and enormous. “Us elders,” they said, “are the generation who

went to residential school. We had the *nuyem* scared out of us.”

A year passed while I interviewed elder after elder in Kitamaat Village. And, one day when I had a break, I went over to visit the oldest Haisla in the village, Sampson Ross, born 1912. I had spoken to him about the *nuyem* on a couple of occasions. That day he told me something that I had never heard before. He said, “Our *nuyem* says that in each generation, there will be someone who was born with the skill to be (1) a story teller, (2) a healer, (3) a wise counselor or judge, (4) a carver, and (5) a rememberer. Louise Barbetti is our rememberer. You go to talk to her about the *nuyem*.”

When I asked other Haislas about Louise, they told me that, in fact, “She says, ‘Our *nuyem* says...’ regularly. And, we also go to her to find out about the protocol for Settlement Feasts (ritual dinners when the names of deceased Haisla are passed on to the next generation). Louise also remembers what happened at potlatch feasts (dinners where guests are paid with gifts for witnessing ceremonial activities, sometimes inappropriately called giveaway feasts).” I realized that Louise was considered to be the Haisla rememberer.

So, I went to Louise and asked her whether she would work with me to record the *nuyem*. And, just like the other villagers, she said that the *nuyem* is too complicated to document, since each forbidden behavior has a prohibition story that goes with it. Prohibition narratives are common in the oral history and legal codes of ethnic groups. An example is the Adam and Eve story in the Biblical book of Genesis. In that narrative, the deity told Adam and Eve that they could eat fruit from all of the trees in the

Garden of Eden except for the Tree of the Knowledge of Good and Evil, and the fruit of that particular tree they were prohibited from eating. However, Eve was tempted and talked Adam into eating the “apple” from the forbidden tree. As a result, the deity forced them to leave the garden forever and to suffer for having eaten the forbidden fruit. The Haisla *nuyem* stories are Amerindian examples of such prohibition narratives. And, Louise argued, they are so numerous and so varied that the attempt to put together the Haisla *nuyem* would be too daunting to consider.

In response, I told Louise, “Just think how many hundreds of generations it took for the Haisla *nuyem* and the supportive corpus of stories to develop. Think also that there is no return from the unrecorded extinction of small group cultural traits when the last one who remembers has passed. And if one can “think” an oral code such as the *nuyem*, then one can also record those thoughts. It would take patience and time, but it would be worth it. And this is probably the last opportunity there will ever be.”

A week later, I saw Louise and she said, “OK, Jay. I’m willing to try to get down the *nuyem*.”

When I paid her a visit later the same day, she said, “The *nuyem* is so important that I have to try this. But you will have to agree to spend every day with me so that as soon as I think of a tenet of *nuyem*, I can also recall the story that tells the origin of the prohibition and that tells what will happen if one doesn’t refrain from prohibited activity. I get up at 6:00 every morning. I’ll see you early. And bring lotsa pencils.”

In the end, I rented Louise’s guest bedroom and we were up drinking coffee, talking and taking notes most mornings by six. Furthermore, it turned out to be less impossible or more possible than she (and everyone) had expected. We worked for three intense weeks. At first every issue had to be explained and related to some aspect of one or several of the *nuyem* stories. But towards the end of the second week, Louise and I realized that we were starting to recognize that many of the *nuyem* behavioral prohibitions related to the same issues of belief and perspective. At the end of the third week, I wrote up a first draft of the basic prescriptions of the *nuyem*. Louise read it and said, “That’s the *nuyem*.”

The Haisla Nuyem—A Brief Account

The *nuyem* as it was finally expressed and edited was 15 pages long, and the corpus of relevant *nuyem* stories was 90 pages long. It seems probable that many other *nuyem* stories were lost due to a lapse in traditional transgenerational oral discussion and storytelling. But, the *nuyem* still feels satisfyingly complete as the Haisla currently have it. The final printed version of the known *nuyem* was provided to the Haisla people in a book called *Haisla! We Are Our History: Our Lands, Nuyem and Stories as Told by Our Chiefs and Elders*, Louise Barbetti, editor, and Jay Powell, compiler, (2005, Kitamaat Village Council: Kitamaat Village). It was printed privately and distributed to the community at the Haisla Unity Feast, June 21, 2005.

The Haisla Village Council has never released the *nuyem* into public domain, considering it a private aspect of Haisla individual identity and tribal distinctness. The introduction of the original presentation of the *nuyem* to the Haisla, though, has been

included in many reports of various types and is considered by the Haisla Nation Council and the people to be an expression of the ancient aboriginal cultural sophistication of the people. Here is the introductory statement regarding the Haisla and their prehistoric oral law. There is some repetition of information provided previously, but this is the *nuyem* as the Haisla wish it to be presented—the Haisla people’s characterization of their oral law, their *nuyem*.

The Haisla Nuyem

The Haisla *nuyem* is our traditional rule of behaviour and conduct. But, it is more than a set of regulations to be followed. It’s not like the Ten Commandments. We can characterize it like this:

(a) Our *nuyem* is a Haisla philosophy of life that teaches us who we are, our group history and our personal identity as a member of a family and a clan.

(b) Our *nuyem* is the Haisla ‘worldview’, outlining our traditional beliefs about our relationship to other living things and to the physical and spiritual worlds.

The *nuyem* is part of our tradition, but it is not a cultural leftover from “the old ways” like a bow and arrow that is no longer relevant to our lives. Our *nuyem* is still our law. It is a good law, and it will always be our law.

Even though our *nuyem* provides guidance for behavior in every situation, it is really quite simple. Our *nuyem* tells us how to act in any situation of daily life, yet it can be described in a few words like this:

“With the power you get by being grounded on the earth and with the help of the Creator, always

fulfill your obligations to yourself, to your family, clan and chiefs, to your land, and to the other living things in it.”

The *nuyem* specifies the details of these obligations to self, family, clan, chiefs, land and other living things. It also tells us how to carry out those obligations. And, finally, it teaches us how to achieve the personal integrity and strength of character to fulfill these responsibilities.

Our *nuyem* has always been an oral tradition and has been passed on among the Haisla from generation to generation. We learn it from our chiefs, elders, grandparents, aunts and uncles and parents. Hardly a conversation happens among the older Haisla people without someone telling us, “Our *nuyem* says...” But, nowadays there are Haisla families in which the children grow up without learning about the *nuyem*. Traditional Haisla storytelling habits and teaching of the *nuyem* were interrupted by the residential school experience. Many of those who attended residential school either never learned our *nuyem* or were taught to feel that it was primitive, sinful or wrong. So, instead of every family teaching the *nuyem* to their children, the line of cultural transmission of our *nuyem* became a thin cord, with only a few elders speaking of our law. Indeed, some of the traditional knowledge of our Haisla ancestors may already have been forgotten. For this reason we are writing it down, so that it will be preserved and will never be lost.

Here, then, is our *nuyem*. We are aware that non-Haisla people sometimes wonder why the Haisla do the things we do or why we may not be comfortable doing some things that other people do. Interested non-Haisla people, if they wish, can better under-

stand us and learn from this description of our law. This ancient wisdom still works well for us. Our *nuyem* will always be the law for the Haisla people.

The Haisla Nuyem—Our Law

We call it *nuyem*. It is our history and our law. If you ask one of our elders what the *nuyem* is, you will get a set of very simple statements that outline the general rules of Haisla life. If you inquire further, you will be told the reasons for each of those rules. So, that's how we will start. We will give the *nuyem* in simple statements.

Remember that the *nuyem* is guidance. It has general guidelines to help one decide on the best course of action, guidelines as to the way things have been done for generations—maybe millennia. Those who know the *nuyem* well say that there is no order of importance in the rules of our *nuyem*. Each thing is as important as the next. Here is a general list of the guidelines that reflect the most basic principles of our Haisla *nuyem*.

- Draw gratefully on the sources of our strength. Ground yourself in the power of the earth and pray to the Creator for strength, help and wisdom. Cleanse yourself mentally and physically. Give expression to your deep feelings of awe for the natural world and its bounty by saying, “*Nolaxw. nolaxw, nolaxw.*”
- Respect and obey our chiefs and support our leaders. Demand honesty, courage and commitment to the people's good from your leaders. Support leaders who listen to everyone's point of view and, without surrender, encourage negotiation rather than hostilities. Attend feasts politely, following protocol.

- Know your history, including the background of your tribe, clan and family. It is the source of your identity and self-confidence. Listen to the elders when they tell our story.

- Know our land and our natural world. It is our obligation to be stewards of the land and the living things on it. Never take or kill more than you need. Something has to be left for the future. Live to the rhythm of our annual cycle. Know the weather and the habits of other living things.

- Family is first. The family provides support to those who need it: the young, needy and enfeebled. Pregnant women get special care and guidance. Children of your siblings are your children. Everyone in the family is responsible for teaching and guiding the young.

The *Nuyem* also says the following eight dicta to help us in our personal behavior, balance and relationships:

a) Share what you have with others who need it. A Haisla is never greedy. If someone needs what you have, give it to them.

b) Be handsome. A handsome person recognizes what is needed, whether an aspect of the social fabric or physical environment, and can influence others to help fix it. A handsome person is caring and sympathetic for those who grieve or are needy. A handsome person accepts others as they are and respects everyone.

c) Be responsible for your word. If you agree to do something, prepare yourself and make sure it gets done. Don't shirk your obligations or procrastinate. Do what is necessary now.

d) Leave your own footprints. You can never fill someone else's footprints. Accept yourself as you are. But also don't be proud or boastful. Good will be recognized without blowing your own horn.

e) If your enemy spits in your face, don't retaliate. Find a way to avoid stooping to violence because of envy or greed. Be handsomer than your tormentor.

f) What you learn or receive, you give back in some form. A parent should train the children about the *nuyem*, to take responsibility and not to be lazy, to pick up after themselves and do things right from the start. Never give children anything they don't earn.

g) Let go of grief and sadness. Fulfill your obligation to have a settlement for the deceased. Burn food for the dead.

h) Never mistreat animals; a similar mistreatment comes back on you double. Be especially respectful of frogs.

Saving the Haisla *nuyem* from unrecorded extinction is an uncommon success story in the

attempt to reverse the effects of the residential schools and subsequent assimilation to mainstream ways. Current Canadian efforts to create a national mood of truth and reconciliation deserve the encouragement of knowing that some communities mounted successful attempts to maintain their traditional institutions.

There have been few positive stories in this shameful history and its outcomes. This essay remembers a close call with regard to the near extinction of a remarkable cultural institution. It's the story of the survival of the Haisla aboriginal oral law. Such legal codes may have been common throughout the Northwest Coast cultural area in traditional times, but the only one that is known to have survived is the Haisla *nuyem*. The documentation and survival of this *nuyem* is a feel-good outcome. And just as this native legal code has survived, so should the story of the remarkable woman who kept the code alive—Louise Barbetti, the Haisla rememberer. •

This Article may be cited as:

Powell, J. (2018) Saving the Haisla Nuyem. *Fourth World Journal*. Vol 17, N 1. pp. 1-8.



ABOUT THE AUTHOR

Jay Powell

Shown playfully transforming into Bluejay, Jay (a.k.a. Dr. J.V. Powell) is an ethnographer and anthropological linguist, now emeritus professor, at the University of British Columbia. He has worked intensively with a dozen Canadian and American bands and tribes living on the Northwest Coast. His focus is the documentation of traditional lifeways and language as well as the development of cultural and language curricula for Native schools. Working with his

wife, author Vickie Jensen, and knowledgeable elders, he has written more than 50 books for various groups (studies of Native beliefs, lands, traditional economics, ceremonial life, language grammars and dictionaries). He is the last fluent speaker of Quileute, a tribe with whom he has worked for 50 years.



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Umax Jakañataki – Water is Life

By Amy Eisenberg, Ph.D., Richard Antonio Fernandez Chavez -Coordinadora Aymara de Defensa de los Recursos Naturales, Arica y Parinacota

Photography by John Amato, RN

ABSTRACT

For Andean people, economic, spiritual and social life, are inextricably tied to land and water (**Figure 1**). The Aymara of Chile are a small geographically isolated minority who are struggling to maintain their sustainable traditional systems of irrigation water distribution, agriculture, and pastoralism in one of the most arid regions of our world, the Atacama Desert (**Figure 2**). Together we explore the ethnoecological dimensions of the conflict between externally imposed unsustainable development and the Aymara Marka (Nation) sensitive cultural and natural resource base. The Aymara people are proactively engaged in protecting their sacred resources from further toxic mining, water pollution, diversion and appropriation, international highway development, landfills, hydroelectric and geothermal development, desecration of their natural and cultural properties, and introduction of GMOs into their organic sustainable agricultural and agropastoral systems in the most impoverished province of Chile, highland Parinacota (**Figure 3**).

Key Words: Aymara, water, earth, life, Andes, land, sustainable, sacred, resources, development



Figure 2: Desertic Plateau

Through USAID and the International Cooperative Biodiversity Group Project, we conducted participatory social and environmental impact and needs assessment with the Aymara people in the Andes of northern Chile along the UNESCO-designated World Heritage Qhapaq Ñan - Andean Road System and within the UNESCO International Biosphere Reserve – Parque Nacional Lauca in an attempt to understand Aymara perspectives on externally imposed unsustainable development within their sacred homeland. Our work is about giving voice to the Aymara people (**Figure 4**). The findings, based on Aymara knowledge are to aid in understanding Aymara needs and respecting and appreciating their cosmological vision – “jaqin uraqpachat amuyupa.” Jaqin Uraqpachat Amuyupa is the Aymara cosmological vision - Aymara people’s thinking about the world (Justino Llanque-Chana, personal communication, 26 April 2002).

We are partnering with Coordinadora Aymara de Defensa de los Recursos Naturales, Arica y Parinacota, Chile in direct response to the



Figure 3: Jallalla Suma Pachamama



Figure 4: Fiesta de San Andres, Pachama

preferences and concerns of the Aymar Marka, which is to safeguard their watersheds from further contamination by the spoil from mining activities (Figure 5). “Chile public water agencies have conducted studies on the water but they are very biased. We can contribute to its improvement and know the origin of the contamination and require the Chilean state to generate mitigation measures.” – Coordinadora Aymara de Defensa de los Recursos Naturales, Arica y Parinacota (CADRN).

CONVOCATORIA FEBRERO 2018

Las organizaciones ambientales, sociales, indígenas invitan a **todos los interesados** a:

a) Realizar una reunión **VIA SKYPE** con el encargado **Gianfranco Pincetti Zuñiga** sobre el “Estudio de calidad de aguas en la región de Arica y Parinacota: extensión de la contaminación de arsénico afectando a áreas remotas del norte Chile” a realizarse el **VIERNES 23 de FEBRERO a las 18:30 horas** en la sede del Colegio de Profesores ubicado en 18 de Septiembre N° 1230, al lado del SAPU, esquina Chiloé (Al frente de la Universidad Santo Tomas).

CONVOCAN Junta de Vigilancia del Río LLUTA, Comunidades Indígenas de SOCOROMA, MULLURI, SAN FERNANDO DE TACORA, PARINACOTA CHUCUYO, LUPICA, APR Comunidad de BELEN, Organización Ambiental SALVEMOS CHINCHORRO, Parlamento Pueblo Quilana Aymara, COSOC Ambiental, Coordinadora Aymara Defensa de los Recursos Naturales.

Hacemos un llamado a colaborar en este PROCESO DE DEFENSA DE LOS DERECHOS DE LOS PUEBLOS INDÍGENAS, DEL MEDIO AMBIENTE Y DE LA CALIDAD DE AGUA EN NUESTRA REGIÓN.
Se ruega puntualidad y colaboración a la difusión de esta invitación.

Arica, Febrero del 2018.-

El medio ambiente solo tiene una sola oportunidad para defenderse, en cambio las empresas mineras tienen muchas oportunidades para presentar su proyecto



Figure 5: 5a. Convocatoria - Defensa de los Derechos de los Pueblos Indígenas, del Medio Ambiente y de la Calidad de Agua en Nuestra Región

“An important issue is in relation to water in Arica y Parinacota, a special region with five watersheds and the only hydrographic basin in the highlands (Figure 6). Pollution of the Rio Lluta and Lauca River basin is increasing each year. This endangers the entire watershed, biodiversity, and quality of traditional agricultural projects of the Aymara communities. Our goal is to make a study or analysis of the waters of these basins. The results will allow us to know the sources of contamination and the water quality. This can project to tourism with special interest in the region; having knowledge of our water from an Aymara cosmological vision and



Figure 6: Qutaqutani

technical vision of the importance of water quality... Public water agencies and mining companies always say that mining will not pollute the water. We can do something deeper, accompanied by a process of education of the culture of water with full participation of the community.” – Coordinadora Aymara de Defensa de los Recursos Naturales, Arica y Parinacota (CADRN).

“We thank you for the support and we continue resisting the mining intervention. I hope the Pachamama continues to give me the wisdom to face this situation. Jikisinkama munat kullaka (until we meet again dear sister) Amy.” - Richard Antonio Fernandez Chavez, Coordinadora Aymara de Defensa de los Recursos Naturales, Arica y Parinacota (CADRN).

The subsistence of the Aymara people depends on *uma* – water, the rains and snow, the source of all life (Figure 7). The Aymara know each and every

“Water is everything, for us it is as important as the earth.”

—AYMAR AWATIRI (PASTORALIST)

source of water within their territory and all are used for religious and practical purposes. Aymara ritual performances associated with water are absolutely necessary to attract all the bounties of nature and to ensure their entitlement to resources. *Phuju* (springs) are the source from which animals

emerged from the innermost part of the earth to the surface (**Figure 8**). The spring deity is *Samiri*, “breath of life.” *Samiri* encompasses springs, bofedales (wetlands) lagunas, rivers, small lakes, and streams and is revered as the generator of life and strength for animals. Springs are the creation place of animals and a vital life force remains localized there. Springs are where the llamas are born and where their *illa*, (image) is reflected in which magical virtue is attributed. Highland springs are considered as the center of each community and the source that encourages the unity of people and supernatural forces within the Aymara reciprocal system. Deities travel along watercourses and rivers and distribute land and *juqhu* (bofedales boglands) to each family.

Springs and mountains are associated with raising animals (**Figure 9**). Mountains are the source of irrigation waters for parched fields and pastures, to which the mountain spirits are connected in a most



Figure 7: Umax Jakañataki



Figure 8: Phuju, springs are the creation place of animals

intimate way. Springs, the source of animal life are considered the center of equilibrium of the Aymara community. Although the water resources in the region are scarce, the greatest difficulties lie in the chemical constituents of the water for drinking and irrigation due to natural and anthropic factors that are responsible for the high levels of arsenic, boron, and fluoride in the waters of the valleys, particularly the Lluta Valley, Chaca, and Camarones.



Figure 9: Wallatiri

The sustainable management, availability and quality of water resources for domestic, agricultural and industrial consumption are essential to ensure the subsistence livelihoods of the Aymar Marka (**Figure 10**) and the perpetuity of fossil water, a non-renewable natural resource with a very slow



Figure 10: Aymar yapuchiri, Azapa Valley

rate of recharge. In recent years, various studies promoted by the Chilean government through the Ministries of Public Works and Agriculture, Research Centers such as Laboratorio de Investigaciones Medioambientales de Zonas Áridas (LIMZA), Centro de Investigaciones del Hombre en el Desierto (CIHDE), Centro Nacional de Investigación para la Gestión Integrada de Desastres Naturales (CIGIDEN), CEDEON, the Aymar Marka, the Departamento de Medio Ambiente del Colegio Médico - Department of Environment of the Medical College, the Universidad de Chile, Presidente Dr. Andrei Tchernitchen, among others have served to establish regional priorities that include the improvement of water quality amid the high levels of arsenic, boron and other toxic elements. They also work to improve resource management through the development of APR, Chile, i.e. Agua Potable Rural, services that are provided in territorial areas classified as rural or agricultural in accordance with the respective instruments of territorial planning, such as The Regulatory Plan. APR is the Diffusion Program of Chile's Rural Potable Water, hydrogeological, and environmental issues and reservoirs.



Figure 11: Copaquilla spring

“We are defending the watersheds – the source of life, from its birth in the Andes to its mouth in the sea.”

—COORDINADORA AYMARA DE DEFENSA DE LOS RECURSOS NATURALES, ARICA Y PARINACOTA, CHILE

The present project titled, “Water Quality Study in the Region of Arica and Parinacota: Extension of Arsenic Contamination Affecting Remote Areas of Northern Chile” seeks to provide basic information on the chemical constituents and quality of water, with a special focus on arsenic, which is considered highly harmful to health, even in low concentrations. The emphasis of this study is to evaluate the chemical quality of water for consumption, primarily from subterranean



Figure 12: Aymar yapuchiri

sources including natural springs and superficial channels (**Figure 11**). For this investigation, interaction with rural communities, predominantly Aymara, are fundamental since the perspectives of the people, their intimate knowledge of the area and other relevant information will be utilized in defining sites for measuring parameters in the field and water sampling. In addition, open fora will be held to disseminate information on the subject of water quality and to listen to the perceptions and local experiences concerning this topic.

The results of the research project will be shared with communities and local authorities as well as contributing to the preparation of scientific articles with international impact. The project objectives are to study water quality parameters in the field (in situ) and to collect samples in order to determine the extent of arsenic contamination in the water used for drinking and agriculture (**Figure 12**). This will contribute to the chemical database for the waters of the region to contrast previous results and to evaluate possible changes in the natural systems.



Figure 13: Borax mining Salar de Suriri

Specific objectives of this investigation are to collect samples (multi-elements and stable isotopes of water) and the measurement of parameters in situ, including the estimation in the field of the total arsenic concentration. The focus is on groundwater and secondly, surface water according to availability and access. The arsenic level in groundwater will be recorded, where possible.

An important objective is to convene and engage the rural communities in an informative discussion titled “Chemical Quality of Water for Human Consumption: Importance, Advances and Risks Associated with Pollutants in the Region of Arica y Parinacota.” The samples will be analyzed (major, minor, traces and stable isotopes) to obtain a geochemical characterization of the Lluta Valley River basin and the main basins of the Region. This work will determine the possible influence of human activities, especially mining (**Figure 13**) on the quality of the water, with a focus on water used for drinking. The results will be compared with previous studies to evaluate the evolution of the chemical quality of the water.

Validated data will be utilized for the study of the geochemical evolution of waters through

geochemical modeling using The Geochemist’s Work Bench (GWB) software: <https://www.gwb.com>. The Geochemist’s Workbench is the standard for geochemical modeling in aqueous systems. It is used to create Eh-pH diagrams, calculate speciation in solution, trace reaction paths, model reactive transport in flowing groundwater, etc. A map will be created to indicate the distribution of arsenic concentrations in the areas studied.

The hypothesis is that arsenic contamination and other metals present in the region is largely due to geographical factors such as the presence of highly reactive volcanic minerals in the headwaters of the rivers and is accentuated by mining activity development in the region. The predominant conditions in the extreme north are the scarce development of aquifers, relatively shallow groundwater, high salinity, and possibly high boron, fluoride, and iron content. Arsenic concentrations are expected to be higher in surface waters with an influence of thermal waters at the head of the valleys.

The collaborators in this significant study include Coordinadora Aymara de Defensa de los Recursos Naturales; Arica y Parinacota with Aymara Community Coordinator Richard Antonio Fernandez Chavez; The University of Manchester, United Kingdom; Professor David Polya, specialist in the study of arsenic in Asia; Dr. Laura Richards, Associate Researcher and specialist in the study of arsenic in Asia; The University of Chile, Santiago with Dr. Linda Daniele, specialist in hydrogeology and hydrogeochemistry; Giselle Placencia, a student studying hot springs in Huasco and Pica; and a field assistant to be determined. This list of collaborators will be expanded, as more local collaborators join this important initiative.

“It is important to hear the concerns of our community. We must be able to decide our future equitably.”

— AYMAR YAPUCHIRI (AGRICULTURIST)



Figure 14: Chunkara pastoralists and artisans



Figure 15: Judith Bustamante and nephew, Puxtiri

Development in the Andes must consider the individual and collective needs of the Aymara people and their Nation, in their terms. Environmental transformation must be grounded in a careful understanding of the Aymara and their way of life. Our collaborative partnership with the Aymar Marka attempts to contribute to that understanding (**Figure 14**).

Aymara people are knowledgeable experts who are on the frontlines of climate change. They live in a closely defined reciprocal relationship with nature therefore disruption of the inherent homeostasis

in their way of life is critical. We must listen to these teachers and stewards of the environment, which sustains all life. Integrity of the environment and the health, safety, and welfare of the human community shall at all times be placed above any sectoral or private interests (**Figure 15**). Aymara people have the right to the conservation and protection of their environment and the productive capacity of their lands, territories, and resources. Sustainable, equitable development meets the needs of the present without compromising the ability of future generations to meet their own needs (**Figure 16**). It necessitates meeting the basic needs of all and extending and ensuring equitable opportunities to satisfy their aspirations for a better life.

Understanding the *Jaqin Uraqpachat Amuyupa*, the Aymara cosmological vision and the cultural significance of Aymara sacred and ceremonial places, is essential for effectively assessing the social and environmental impacts of imposed development within the Aymara holy land. The dynamics and intricacies of Aymara traditional systems are seldom comprehended and respected, making it difficult to realize the gravity of the desecration of Aymara sacred resources, and the disequilibrium of the homeostasis in their way of life. The Aymara define themselves in terms of their cosmological universe and local geography. Their homeland is imbued with cultural significance and the meaning of places, lineages, history, oral tradition, and teachings that permeate their landscape. Their cosmological vision serves to keep our world in balance. The destruction of Aymara sacred resources and ceremonial places raises human rights and legal concerns, and violates the United Nations Declaration on the Rights of Indigenous Peoples. •



Figure 16: Parinaquta Aymar tayka & wawa

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This Article may be cited as:

Eisenberg, Amy, Richard Antonio Fernandez Chavez and John Amato. 2018. Umax Jakañataki - Water is Life. *Fourth World Journal* Vol. 17 N 1. Pp 10-22.

ABOUT THE AUTHORS



Amy Eisenberg

Amy Eisenberg is an ethnoecologist, botanist, scientific artist, and organic sustainable agriculturist and agroforester who conducts collaborative research with indigenous peoples of Asia, the Pacific, South America, and North America. "Aymara Indian Perspectives on Development in the Andes" is her new book; a collaborative project with the Aymara people. She became an Associate Scholar with the Center for World Indigenous Studies in 2006 while serving as an International Expert at Jishou University's Research Institute of Anthropology and Ethnology in Xiangxi Autonomous Prefecture in Hunan with ethnic minority graduate students of China. She conducted participatory research with the Kam people of China through

the UN Permanent Forum on Indigenous Issues and UNESCO - Local and Indigenous Knowledge Systems. Photos of her work by professional photographer John Amato, RN can be viewed at: www.pbase.com/jamato8



Richard Antonio Fernandez Chavez

Richard Antonio Fernandez Chavez, from the Aymara people, fifth generation, comes from a modest family belonging to the Aymara community of Socoroma, located in the foothills of the commune of Putre, Arica y Parinacota region. He enters the University of Tarapacá in 2000, where he creates the Asociación de Estudiantes de Pueblos Originarios, and he is chosen Jilakata of the indigenous organization. He manages to obtain a space at the university to strengthen the cultural identity, as well as the creation of an Indigenous home called "Tupac Amaru" and a scholarship for indigenous students. Unfortunately, due to economic problems, he could not continue his career at the University. In 2004, he stands for the the Aymara

Communities for the Water Extraction project in the Altiplano, situation that threatens the subsistence of the Aymara communities, achieving the withdrawal of the government. In 2005 he was elected as Aymara councilor of the Arica commune of the National Council of Mallkus-T'allas of the Arica and Parinacota region, where he formed the Indigenous Law, Indigenous Women and Natural Resources committees. In 2007 he creates the Asociación Indígena Centro de Investigación de las Artes y Cultura de los Pueblos Originarios, which implements a training process for the Aymara community members regarding human rights, sectoral laws and historical, linguistic and cultural aspects of the Aymara people. In 2009 he creates the Aymara Coordinadora de Defensa de los Recursos Naturales whose purpose is to protect the subsistence resources of the Aymara communities, for the continuity of their existence against extractive projects, specifically miners, national and transnational capitals. In 2011, he enters the Faculty of Law of the Universidad Mayor de San Simón in Cochabamba, Bolivia, through the Andrés Bello Agreement, and with this academic training he provides advice to the communities on human rights issues of indigenous peoples, environment and in the coordination of territorial defense and its natural resources. He is currently preparing his thesis to practice advocacy.



John Amato

John Amato has been a professional photographer for over 35 years with skills ranging from documentation of collaborative research with minority cultures to scientific and natural history photography. John has worked with The Bureau of Applied Research in Anthropology Native American Cultural Resource Revitalization Program at The University of Arizona. John has published in various journals and books for higher learning and research studies. John has also worked in many remote areas through UNESCO-LINKS, UNPFII and UNDESA in China and through USAID and the International Cooperative Biodiversity Group project in northern Chile with the Aymara Nation.

John is also a registered nurse and has worked in cardiac critical care, ICU, trauma, ER and medivac. He has also taught and performed onsite medical care in China, Micronesia, Tibet and other localities. In Micronesia he set up an eye examination process and gave out glasses to correct vision and checked for cataracts. Diabetes and heart health have also been taught to the population at large.



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How to Re-Invigorate Your Language in Five Easy Steps

By Freda Dan

A boarding high school was built several air/water miles from my village one year. It was my sophomore year, and my older brother and I went there and stayed with different families. My brother stayed with our grandmother with several other boys from home.

She was not our true grandmother but our grandmother's sister.

She was a very old lady; lines were many and deep on her face. Her head was very large as was her body. Everything seemed to sag on her. She was so old that the muscles on her cheeks hung like sacks, her arms, and belly as well. She walked heavy and bent against gravity. She was decent and fair, and ran a good household with all those young high school boys and two of her own grown sons. In all my times with her I found her to be kind and friendly.

I would visit my brother here and there, and one day I entered into her kitchen, she was sitting, breathing deep and heavy. She looked at me and said, or tried to say what was on her mind but she was so upset and agitated that her words needed her mind to slow down to say what she wanted. She calmed down and began to tell me in a loud, strong, and angry voice that a man and a woman, both white, from the school had come by. They

wanted to know if she would teach Inuqiaq at the school. The request returned her to a very sore spot in her life. She told them that when she was in grade school she spoke her language in the playground and was punished. She told me that, at the time, she did not even know what she was being punished for, all she was doing was talking to her friend.

As a child, she did not even know why it was wrong to speak her language. I can't recall what the punishment was, something enough so that she would not forget that she was not allowed to speak in her language.

My grandmother said that after she told the couple of her experience, she asked them rhetorically, "... and now you want me to teach my language after what was done to me?" She relayed that the man seemed to understand her anger and seemed sympathetic but the woman got up and said to the man, "Come on, let's get outta here," in a disgusted tone.

I think the woman's attitude and response upset her more than anything.

I have heard of others like my mother, brother, and other folks who were punished for speaking in American. I call any Native American, just 'American' because that is what we are, American. A shout out to the Italians for naming our country

after Amerigo! I call every immigrant after us, New Americans.

As a middle-aged woman, I asked my mother why she and my dad had never spoken Yup'ik so that I could hear it and learn it. She said that they thought if they spoke only in English, we, my siblings and me, would do better in school.

Throughout my more than half century, I heard, learned, and experienced everything in English, so very little of my experience was in my language. I butted my head into a language-learning book. I had to keep ramming my head into the first chapter over and over again to figure out what was said and what it meant. I suppose I could have shelled out \$750 and taken the class at the college in town but raising four offspring swept away the financial resources and time.

One day I was waiting at the grade school vehicle pick-up queue when my third-grader came toward the car with his hands behind his back. As he's getting into the car, he whips out a trophy from behind his back. I say, "What's this, let me see." I read the

plaque on the trophy saying it is third place for the school spelling bee. My mind goes into left gear wondering if there is a spelling bee in my language that I could get my crew into.

I begin searching for a spelling bee to sponsor my guys into. I find one but it is a closed spelling bee and only meant for that particular school district. I wheedle and charge and retreat at the director of the spelling bee to open it up and allow me to enroll my son's school into it but it is a no go. I find another but it is for Navajo country. I widened my search and found an article from some college about indigenous languages. It stated that we Americans complain about what happened to us but we do not do anything. If someone, anyone would just do something ... I think to myself, who do they mean when they say 'someone, anyone' should do something? The school? Indian education? Does anyone include me even if I do not have any credentials?

I decide that the article is giving me permission to do something to invoke my language. I study the Navajo spelling bee system as a model. Once the formula is figured out, I went to one of my children's



middle school principal and asked him if he would take on a Yup'ik spelling bee. I'm fortunate that the principal had spent time in a place that had people of my language and he was not against it.

I talked to a bilingual/bicultural teacher, a cousin from my home village to take it on, who then turned it into an all school districts spelling bee. 2017/2018 was the spelling bee's seventh season.

I gained a lot of insight about the state of my language. I learned that many adults are learning to spell—I can tell they are learning by the errors in their spelling. I know from experience that very few of us ever had a class in our language, thus it is understandable. I see students who just want to have some involvement with their language and don't mind if they do not make it into the spelling bee competitions, they just want to take part in the practices. I see the limited amount of resources that teachers have for teaching the language. I see that non-natives do not include themselves into our world but they will take French and Spanish, though they live amongst us.

The spelling bee, which is called, Yup'ik Spelling Bee for Beginners, includes optional weekly practice material, covering practices in family terms, numbers, gemination and so on. Though the coaches are told that this is not a language course but a course covering the spelling and orthography of the language via spelling, pronunciation and definition in reverse (experiencing the meaning of a word, how to pronounce it, and how it is spelled), I've learned that some of them have used the practice emails as a model for teaching beginning grammar, which points to the lack of support language instructors get in designing a language course.

One might be saying to oneself that the author did not even say what the five easy steps are to re-invigorating one's language. I did not directly say what they are but here it is:

Do it.

Do it.

Do it.

Do it.

Do it.

This Article may be cited as:

Dan, Freda (2018). How to Re-Invigorate Your Language in Five Easy Steps. *Fourth World Journal*. Vol 17, N1. pp. 24-26.



ABOUT THE AUTHOR

Freda Dan

Freda Dan, an Alaska Native Yup'ik, lives in Anchorage, Alaska. She is a mother of four and creator and organizer for Yup'ik Spelling Bee for Beginners, an endeavor to provide a tool for elementary students to experience Yup'ik literacy.



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Killing the Settler to Save the Human: The Untidy Work of Unsettling Klamath River

By Laura Hurwitz & Shawn D. Bourque

ABSTRACT

The specter of settler colonialism fills every sliver of the United States. This article studies the current moment of settler colonialism in the Karuk homeland on the Klamath River in Northwest California. Part of this moment has been the emergence of Unsettling Klamath River, a group of settlers engaging in the work of “unsettling.” Analysis and critique of this group’s political actions and internal dynamics are traced by the authors, who are also co-founding members. Specifically discussed is controversy raised by Unsettling Klamath River sending an open letter to a local commune, Black Bear Ranch, asking them to “close the portal” due to problematic consequences on Indigenous communities and suggest repatriating the land as a small contribution to decolonization and settler responsibility. The way white settler fragility manifests on the ground is analyzed. It is argued that only by separating our affinity and untangling settler identities from settler colonialism—in short, a death of the settler—might we end our complicity with the settler colonial system and potentially gain back our humanity.

Key Words: settler colonialism, Klamath River, unsettling, white fragility, back-to-the-land movement

Brief Overview of the Problem

Part of the mechanics of settler colonialism is the denial of settler colonialism. It is an unmentioned basic right for settlers not to have to acknowledge or take responsibility for the murder and displacement that provides those of us that are settlers with that which makes possible survival and wealth—land, every inch of it. We, the authors, are settlers, living

on stolen land that we “own,” legitimated by all the power, violence and ideological/cultural hegemony of the settler state of the so-called United States and the capitalist spectacle: the police, schools, entertainment industry, ideology, courts, prisons, etc. Numerous experiences brought us, separately yet together, to accept and challenge our place in the settler colonial system.

From our experiences living in a roughly half-settler, half-Indigenous community, these unnerving eight words crystalized our politics, “invasion is a system and not an event” (Wolfe, 1999). This has meant, among other things, acknowledging our own hypocrisies, challenging the settler code of silence and questioning our own motivations for this work termed “unsettling.” In no way do we feel we have done this right. We can never preclude the reality that we might eventually need to leave and return to Europe—settlers have no right to this land. Often it feels like we are heading blindfolded down an unknown path and often we slip back into complicity. We share with you the work of what has become known as Unsettling Klamath River, thus far.

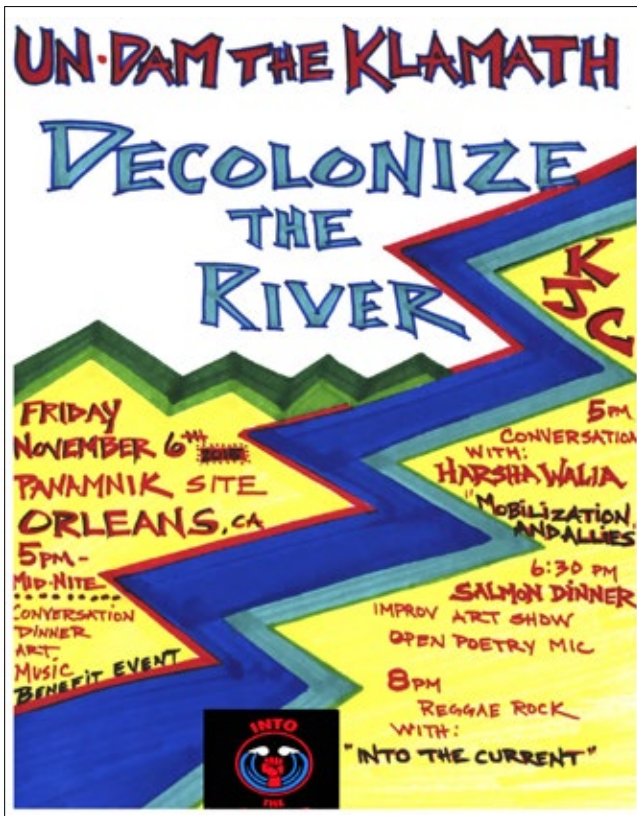
The Karuk homeland, on the Klamath River, in so-called California is the territory of settler intrusion we describe. The Karuk were never successfully removed from their homeland although all their land was stolen. They also have no ratified treaty with the United States and were not “given” a reservation. Mostly, colonial resource extraction has sustained settler occupation of the land: first the Gold Rush, then logging and currently the Green Rush of cannabis cultivation. The Karuk people have survived every attempt at genocide, work to revitalize their culture, ceremonies, and language, and fight to save their natural resources, land base and ecosystem from exploitation, greed, and ignorance.

Many settlers arrive as continuing reverberations of the “back to the land” movement, not knowing whose land they/we have gone “back” to. Hippies, homesteaders, survivalists, primitivists: we occupy land, attempt to invent new cultures and “connect with the land” with the hubris of assuming the land

speaks our/their language and not the language of the people who have tended it since time immemorial. Most of us settlers fancy ourselves somewhere in the political spectrum of liberal, progressive, or radical. Yet the reality of our occupation of the place we claim to love and the collective silence of our benefiting from the continuing system of settler colonialism leads to an ever-present tension lingering in all settler/Indigenous intersections. Land repatriation waits to exhale as (we imagine) Indigenous people do not hold their breath that us settlers will ever give up anything.

The Birth of Unsettling Klamath River

It has been four years since a small group of settlers in this place began to organize around decolonization and unsettling. In the beginning we thought that public dialogue might begin amongst Indigenous and settler people together. However, as one Indigenous friend explained, he feels obliged to let settlers off the hook, protect their feelings and make them feel better when these difficult issues are addressed. Another friend who is Indigenous pointed out that it would be better for us to work within the white settler community to better educate ourselves before attempting to engage in decolonizing conversations with Indigenous people. He didn’t have the energy to deal with settlers going through their process which would inevitably result in Indigenous people having to endure ignorant and insulting comments. This made sense to us as it has been clearly articulated from within other struggles such as the anti-racist and feminist movements that it is the job of the oppressor to educate themselves. In practice, this was problematic because so many settlers want to hear from Indigenous people first-



hand. At the same time, we were receiving feedback from Indigenous people that settlers do not seem to want to hear these truths from them either. As settlers, we have had to be ever-vigilant not to center ourselves, thus inadvertently recreating settler colonialism in our efforts to defy it.

Integral to the groups coming together, one of the authors, Hurwitz, was working on a master's thesis and was conducting interviews with white settlers. Many of the interviewees were interested in continuing these conversations along with other individuals who had been engaging in dialogue. This led to an initial set of meetings where settler colonialism was explained and an open conversation about these ideas and how it relates to our area ensued, including some settler's repulsion. Out of this, a smaller group of us agreed to meet once a month. We organized loosely using popular educa-

tion tools, including readings and group activities, such as making a living timeline of settler colonialism and resistance to it on the Klamath River. We rotated facilitation and other group roles monthly and attempted to share responsibility and power in decision-making.

Attendance at our meetings fluctuated regularly. Many people recoiled, we believe largely because of uncertainty, fear, and the pain of acknowledging the unintended harm we are causing to our Indigenous neighbors. One older male person left the group as he irately described that it felt like we were trying to cut off his penis. New community members continued to be interested, try the process on, and to engage. Time was spent understanding who we were, learning the history of the area, knowing our own ancestral heritage, and the long history of war, conquest, and displacement that lead to Europeans not being a land-based people. Inspired by the efforts of *Unsettling Minnesota* and *Unsettling America* we began to call ourselves *Unsettling Klamath River*.

We spent some time developing our understandings and points of unity which were identified in the following list:

- We are settlers living on stolen land.
- Settler colonialism is a structure that continues today, not just a thing of the past.
- As settlers, we benefit from this system.
- We are not entitled to be here in the Karuk homeland.
- We want to support Indigenous-led material change and Indigenous resurgence.
- The state of the world is unsatisfactory due to dominant culture, which has been perpetuated generationally.

- We do not have a right to Indigenous knowledge, yet we believe Indigenous knowledge is critical to this place and the survival of life on this planet.
- All of our liberation is tied together, no one is free until we all are free.
- We believe decolonization is a process, the destination is unknown, it means different things to different people, it is not centered on the future of settlers, and it is ultimately about the repatriation of land.
- For white settlers “unsettling” is a process of facing and destroying a false entitlement and be-heading an identity that affords us a toxic privilege.
- Becoming new people will require on-the-ground material change to power and privilege, we cannot “think” ourselves into a new way of being.
- We want to see change in our lifetime and are also dedicated to change for future generations and all life.

We met formally with a group of Indigenous activists and community and spiritual leaders to seek direction, as we sought not just to educate ourselves but to take action. This was hosted on Martin Luther King Jr. Day, which also coincided with the anniversary of the Red Cap War (a local anti-colonial struggle which began in 1855). This also had its challenges as clearly Indigenous people are individuals with a wide range of opinions, ideas, and priorities and the directions that we would take would vary greatly depending on whom we received feedback from. It was a goal of the settler group to each talk with and listen to as many Indigenous people as possible in

order to get the greatest amount of perspective. Inevitably the people we were more connected to were the people we got more guidance from. This prioritized certain families more than others which likely insulted other families that we had not reached out to. It has also proven difficult for most settlers to speak unsettling ideas out-loud and initiate conversation with Indigenous people or settler people, albeit for different reasons. We continue to stumble, falter, make mistakes, and learn as we do this work.

Identifying the Issues

Prior to the MLK Day meeting we had to intentionally work on learning to listen more and talk less. While making clear that inevitably settler society, the elimination of private property, and total land repatriation was what decolonization looks like, lots of short term actions were suggested that would make settlers better guests. Problems named at this meeting were: how cannabis production had made property prices so high and Indigenous people are pushed out of the market, while increasing economic disparity between settler and Indigenous communities and wreaking substantial impacts on the land from pollution and heavy water use; and the number of settlers moving into the Karuk territory was growing exponentially, leaving many “homeless in the homeland” and forcing more settler culture on Indigenous people. These institutions of dispossession that bring settlers to this place became known as “portals” and many were named including: non-profit interns, the AmeriCorp program, farm interns, the cannabis economy, the Forest Service, and Black Bear Ranch. Black Bear is a local commune where many settlers (including the authors) had lived before moving and often

buying land. Another problem brought up was that cannabis growers and other settlers, many not even living in the community, have erected fences (sometimes with guard dogs and armed workers) which prevents Indigenous people from gathering wild plants (such as mushrooms, acorns, and basket materials), and hunting and access to ceremonial sites. Some settlers treat the area like a resort, leaving in hard winters and coming back to enjoy summers. Lots of settlers do not work and many jobs need doing (it was explained that this was a tough one because in some ways Indigenous people do not want to integrate, but if folks are going to stay then it might be better to be all in, but then again having us all just leave might be the best scenario). Indigenous people fight hard to protect the land-base while settlers reap the benefits and many don't step up enough to support the community. One of the most potent comments was, "You say you're settlers living on stolen land... You know what you need to do. And it's not giving your land to me personally or even the tribe. You know what you need to do!"

Reflecting on all of this at the next meeting we interpreted the following issues to guide our action planning: Stop growing cannabis and stop other settlers from growing; shut down portals; confront gated properties and open up where you are living to Indigenous use; support Indigenous activism and fight for the land base; fight private property; shed our entitlement to this place and learn to live with uncertainty. We came up with actions that we could collectively work on, including keeping each

other accountable for our participation in the cannabis economy; drafting a "pot stance" from Unsettling Klamath River and bringing this message to other settlers and businesses serving the cannabis industry; targeting the worst of the worst cannabis growers; work to educate farmers and non-profits to not bring in interns from the outside the area; work to close the Black Bear portal through conversations, theater events, and an open letter to the commune family; seeking out ways to further contribute our skills to the community; creating a support network modeled after **Black Mesa Indigenous Support**,¹ those of us that are "land owners" finding ways to create housing for Indigenous families, tear down fences, and open up land access, and those of us who are tenants talk to our landlords about making these same things happen; work to create a land trust that aims at eliminating private property.

Educating the Community

The group was energized and full of life. As one member at the time described it, "sometimes seeds need fire to grow." Also, during this time members of the group helped to organize a book tour for the amazing decolonization author and activist Harsha Walia, and many settler and Indigenous people attended the event. An outsider, who was neither white nor Indigenous, sharing first-hand knowledge and experiences with decolonization work, turned out to be an effective messenger. This event was co-sponsored by the Klamath Justice Coalition, a local Indigenous-led group working to protect the Klamath River, and funds were raised to support their efforts. Some participants of Unsettling Klamath River took the time to turn the timeline of settler colonialism and resistance into a beautiful art piece and it was displayed around the room at this

¹ Black Mesa Indigenous Support is a group of non-Native grassroots activists committed to working with the resistance communities of Black Mesa/Big Mountain in Arizona.

event. This gave community members a chance to contribute to the growing collective knowledge.

The next event hosted by the Unsettling group was about settler colonialism in Palestine and utilized the technique of palimpsest, a tool that overlay's images on top of one another—in this case, Israeli settlements on top of the original Palestinian villages. Local Indigenous activist art was displayed, including a map of the so-called United States that boldly stated “Indian Land” in red. This event shed light on some divergence within the group as the organizer steered the conversation away from the local situation and asked the group to focus on Palestine. They preferred to infer the local relevance and let people come to their own conclusions. Other members, specifically the authors, felt that it was important to state the connection between the situations outright and that settler people experiencing discomfort and pain over this is an important part of the process. These issues had arisen before, during our hours and hours of discussions, causing a large rift in the group. Some felt it important to be patient with settlers and prioritize not hurting people's feelings, that we will get more done if we do not offend people. Others wanted to de-center settlers, believing that it is not possible to decolonize without hurting settler feelings and not wanting to be beholden to settler fragility. Only now are some members of Unsettling Klamath River beginning mediation to address issues around group dynamics.

Unsettling Klamath River was faced with challenges not only in our interpersonal group dynamics but in actualizing some of the action items we came up with. For instance, we never succeeded in organizing an Indigenous solidarity network. Efforts were

made to connect with elders in order to determine if settlers could be useful. Some individual acts of support did and do happen but we have still to create a collective model from which to work.

There was also an effort to create an Indigenous land trust as a transitional step towards land repatriation to hold settler private property in. We met with different Indigenous people, a lawyer and other environmental land trusts. Many stumbling blocks emerged including: how would an inclusive Indigenous Board be set up, who would be on it and how would tribal government be involved? The main challenge remained, that there are very few settlers willing to consider returning land in any way. Looking for ideas from other similar projects proved disappointing as well and we could find very few examples. Many potential endeavors that were imagined within the land trust included the idea of “back rent,” inspired by Waziyatawin's project Makoce Iki cupi (Land Recovery). Back rent acknowledges that settlers can never repay Indigenous people, but can at least start making payments. Another part of this included the idea of “cultural easements,” that is, on parts of settler's land, particularly on large parcels that settlers are not living on, the land would be managed and used by Indigenous people using tradition ecological knowledge. Building housing for Indigenous families on so-called “land owners” properties was also talked about. Again, some of these ideas have been actualized, but individually, not collectively.

In working to close settler portals, Unsettling Klamath River recognized the obvious contradiction that we remain in this place while trying to prevent other settlers from coming here. We have learned

that we must be ever-mindful to fight against adoption and belonging fantasies that we might harbor and that we must continue to force settler colonialism into the forefront of our consciousness. Living with these contradictions, we believe it is better to break the silence than to be paralyzed by the inevitable hypocrisies that current political systems keep us bound within. People from the group did talk to farmers who use intern labor about why it was important to hire and house local people instead of bringing in more settlers. This was ultimately successful in two cases. The Forest Service and non-profit AmeriCorps program was serendipitously shut down at this time, closing that portal. Stopping the influx of settlers associated with cannabis production has proved more difficult as the financial incentive is so high and the sheer size of the industry so great.

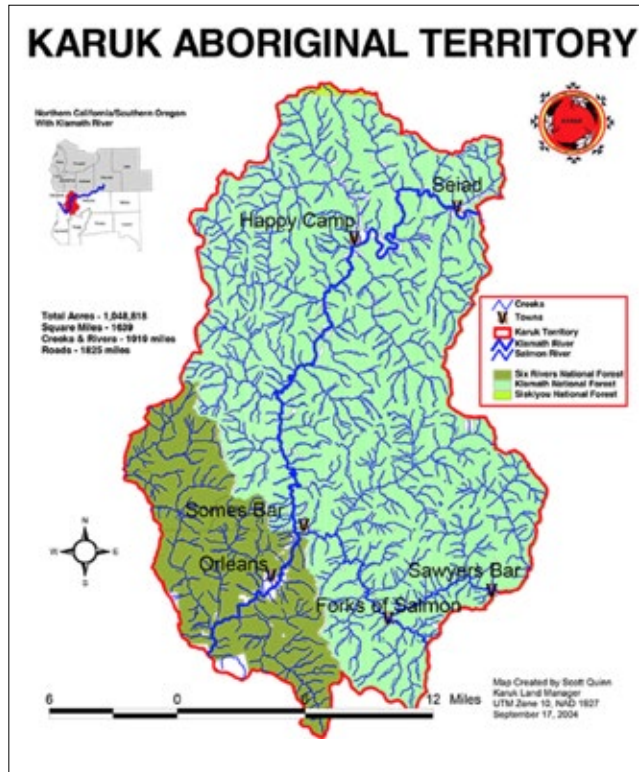
Decolonizing Black Bear Ranch

Along with these efforts, we began talking to members of the Black Bear community. Our unsettling group agreed to talk with as many former Black Bear residents as possible about what we had learned about the impacts of the commune on Indigenous communities. Foremost of concern was the continuing pattern of settlers moving to Black Bear to live collectively, tiring of the place and moving into nearby communities and often buying the land with family money and/or money from cannabis production. Here again, we found ourselves internally struggling. We knew that this new information would be painful to many in the Black Bear family (as former members address themselves) which many of us, including the authors, were a part of. It was difficult to get the words out as we did not

desire to bring a discomfiting message to those we were close to. From the beginning there were also a number of unsettling participants who had never lived at Black Bear and who did not think that so much energy should be focused on addressing the commune.

The first public action to gain support for closing the Black Bear portal was the performing of an interactive skit using tools from “Theatre of the Oppressed,” a technique developed by Brazilian revolutionary Augusto Boal that works through audience participation in the service of social justice. This took place at the commune, ironically, during the annual Thanksgiving gathering of 2015, where large numbers of former residents converge. Many people were inspired to participate and the activity prompted lots of honest dialogue that went on into the night. Theatre of the Oppressed is one example of a successful and creative contribution that members of Unsettling Klamath River brought to the work.

Because the extended Black Bear Ranch community is comprised of hundreds to thousands of people who are geographically dispersed, we needed a vehicle to reach as many people as possible and decided an “open letter” would best accomplish this. The authors of this article made a rough draft of a letter that we presented to the group. The group agreed to work from this draft. In retrospect, it was problematic to start from an already fashioned draft and not from scratch, although the letter changed considerably from the original. Up to a dozen Unsettling Klamath River participants at a time worked for over six months to collectively write this letter. There was continuous anxiety around the tone of the letter, again stemming from the tension between



not wanting to hurt those that we love, and a dedication to systematic change. The continual debate still remains: is it the tone or is it the message itself that leaves settlers so upset? Again, we the authors landed in the latter camp. Creating a letter that appealed both those that wanted to soften the message and not insult the Black Bear family, and of us who felt we had to hold a hard line proved difficult. The language of repatriation was touchy as well as some felt it was imperative and some thought it just might be too much. We were never asked to call for the repatriation of Black Bear Ranch by Indigenous people, only to close it as a portal. Yet many of us felt the returning of Black Bear would be a good place to start land repatriation since there are no permanent residents, it was not privately owned, and we naively believed that the Black Bear family would be open to engaging about this new possibility for the future of the Ranch. Positively, writing collectively taught us all a lot and at times was very inspiring. We at times

healthily debated many issues and ideas, forcing everyone to expand their thinking.

Black Bear Ranch is located on the Salmon River, in the Konomihu, Shasta, and New River Shasta Homelands. Most of our group was located downriver in the Karuk homeland and we had gotten a lot of perspective from Indigenous people there as well as from Yurok people (downriver from the Karuk) about how their land was also being bought up by settlers, some who came through the Black Bear portal. At this time, we realized that we had not talked to enough Indigenous people on the Salmon River itself. We met with the Salmon River Indian Club and shared a draft of the letter with them. We heard that there were issues on the Salmon River that were more pressing than Black Bear but it was also clear that there had been constant problems as a result of Black Bear for decades. Visitors who are kicked off the commune many times end up on the Salmon River causing harm and danger to the community, such as mentally ill people turned loose in the community without warning, starting fires in the heat of the summer to cook a road kill squirrel, graffiti, abandoning junked vehicles on the road and living in a campsite during the cold of winter with children and not having food or resources to properly care for them, to name a few. Also, the Salmon River is even more bought-up than downriver by Black Bear settlers, forcing most Indigenous people to live other places and remain in exile from their homelands. We took their input and made changes to the letter.

We approved a final draft and two members agreed to deliver the letter to the residents currently living there. They backed out of delivering the letter

at the last minute, sending shockwaves through our group and bringing about serious division and conflict. At this point some people were pushing hard to release the letter and others questioned if we should even send it at all or start the letter from scratch with a much gentler message. The authors of this paper reflect on how patriarchy intensified the already challenging diversions within our group dynamics, manifesting at times in the casting of judgement and lack of compassion for ourselves and other settlers. Over the next two months the group tensely met in order to address concerns about the tone. Some of us fought to keep the message from being watered down.

Blowback

The letter was released. As it cycled through the internet, the letter went viral in comparison to our expectations, even receiving press coverage. The backlash was worse than most of us could have imagined. Many Black Bear settlers spewed ugliness and hate at members who stood behind the letter. Divisions that had arisen during the writing of the letter were fully enflamed at this time. Due to all this infighting and resentment the group was not able to support one another in a time when we all needed each other's support the most.

During the aftermath of the letter going out, two public meetings were organized by Unsettling Klamath River and Indigenous activists who felt that these issues were important. There was one on the Salmon River and one later in Orleans, each full of respectful yet intense discussions. Some of our group backed away somewhat denouncing the letter, and those of us who stood behind it began to grow

thicker skin. We (the authors) made personal house calls to many BBR elders living in the area. Some folks talked with us about their discontent with the letter. Others did not invite us past their porch and closed the door on us and our then five-year old daughter. This felt shocking to behold from what we knew as an open-armed community of acceptance.

Soon after this some of Unsettling Klamath River attended the Black Bear Ranch summer solstice gathering (the other large event hosted at BBR) to talk further. There are a few core families who have given a great deal of their time to manage and care for the Ranch and to keep the original vision of the commune alive, many of whom we met with at this time and were close friends of ours. They took the letter as a personal attack. It seems very difficult for most settlers to center the systematic underpinnings of settler colonialism over their own hurt feelings in the situation. The conversation here mostly revolved around how hurt people were and the ideas contained in the letter never even made it on the table. As Robin DiAngelo has observed in anti-racist work in what she calls "white fragility," we witnessed white fragility in action at this meeting. White settlers often center themselves by presenting themselves as the victim who is being attacked and are resolute in protecting their own moral character, thus denying responsibility to their/our role and benefits within a continuing settler colonial system.

Another obstacle to white settler accountability in this place is how settlers labeled hippie/ "Back to the Lander's" have built an identity in part based on being "stewards of the land" because of the environmental work that has been done to prevent logging,

stop the spraying of pesticides, etc. This lends itself to a narrative that claims to have saved the area, benefitting Indigenous people and that hippie settler presence was/is necessary to “save” this place. This white savior complex completely ignores the intense and costly struggle that Indigenous people have engaged from initial colonial invasion through the present. Older counterculture settlers and their settler children born in the Karuk homeland are specifically tied to these identities and are extremely threatened by challenges to their stories of place and belonging.

One unfortunate consequence of the Open Letter was how Unsettling Klamath River began to be equated with the closing of Black Bear. For distinctive reasons, some Indigenous and some settler people felt that we focused on Black Bear too much. We never intended for this work to take over the unsettling agenda or dialogue. Village sites and all land in more traditional living areas “owned” by settlers is far more important for repatriating than Black Bear Ranch, which is extremely isolated. Some of us thought that closing the Black Bear portal had a real chance at happening and for material and symbolic reasons would further galvanize the unsettling movement. The other side of the coin is that Black Bear Ranch is the heart of settler society in this area, and our letter was an arrow shot with a direct hit, bringing about more conversation and engaging more settlers than probably any other action we could have achieved. The settler right to silence was, for a time, revoked. There is an extreme sense of nostalgia held for Black Bear Ranch and it is important to recognize that for many of the communes

extended community the time spent living at Black Bear, even if it was fifty years ago, was the only time where they felt connected to a land-base and a community. Imagine how they would feel if their relatives had been living there since time immemorial?

Lots of talk about change has been happening by the Black Bear family, which the authors are, for all practical purposes, banned from now, but as of now there has not been any material changes to the practices of the commune. Two years after the letter, some BBR family have released their own “open letter.” It in no way acknowledges Unsettling Klamath Rivers letter but addresses “Our [I]ndigenous Neighbors.” While the letter did state that the commune wanted to be more responsible to Indigenous people, the letter took on an air of burying one’s head in the sand as we had personally observed the family being told a multitude of times over the last two years, by numerous Indigenous people what the ramifications of Black Bear were and that the portal needed to be closed. The authors of this article diverge on whether this letter has any potential to forward positive change to the situation at Black Bear. The Black Bear family at least opened up an opportunity to listen to Indigenous voices and yet as one Karuk elder commented, “Yeah, maybe a bit better than no response at all? But maybe not, as it rings very offensive by just continuing to dance around and avoid issues, as opposed to actually addressing issues.”

Reflecting on the Conflict

Alongside efforts to close the Black Bear portal, members of the group (particularly one comrade

who did not ever live at Black Bear) were also working to address the cannabis economy. This meant pushing each other to disentangle from this destructive industry. Direct actions against the most exploitive growers were carried out by unidentified individuals. A letter from Unsettling Klamath River was released after the Black Bear letter, taking a stance on the cannabis economy. In part, the letter states:

What was started with the intention of supporting an escape from the greater capitalistic society, has become another aspect of its resource extraction, impoverishing the disadvantaged to the benefit of the privileged. Like the timber and mining industries before it, the marijuana economy has begun to eat its own tail. Its inability to stay within sustainable limits, or respect the land-base it exploits has become obvious.

We stopped meeting formally shortly after the pot-stance letter. Some members have moved out of the area, as settlers often do. Others have chosen to not collaborate with each other. Many continue this work as individuals, not as a group. The language has seeped into settler culture, particularly the use of the word “settler” to identify non-Indigenous people.

Complacency can often be seen. Some members meet more informally, checking in and trying to keep on and planning the next incarnation of Unsettling Klamath River.

In our experience, gender has directly affected white settler’s willingness and ability to engage with unsettling. On the whole, women have been much more inclined than men to try out the ideas as one woman candidly explained, “I am used to being told I am wrong, so it is not as big a deal for me.” A growing number of white settler women and men in this place have a heightened awareness about settler colonialism and the role that we play in the system. Yet, white settlers are still afraid to speak up about these issues. Despite the loss of social standing or the ridicule and alienation that may follow, a collective breaking of the silence is necessary in propelling white settler society further down the path towards accountability.

Through conscious efforts or just by the nature of reactionary motion, division and individualism corrode many a decent movement of affinity. Doing our best as individuals cannot create exponential motion. Settlers here seek unity, connection, and belonging, thinking we have discovered our own paradise. But how can our dreams be built upon the destruction of another’s paradise? The path to these deep relationships is rocky and has revealed a much rougher terrain than anticipated. It will never be gained with the blueprint of settler colonial violence we inherited. It will not be obtained by engaging in the illusion that it is already so. For the settler, reaching this destination is by no means guaranteed, especially in this lifetime. We find ourselves part of a continuum, of things that came before us and things that are to come. There is strength in knowing that the collective actions we take today

will continue to ripple out over time and contribute to the connection we seek. Settlers' unity might be found in our collective unsettling.

If the authors had a guiding motto through our unsettling journeys it would be an inverse of the Richard Pratt's slogan "kill the Indian to save the man;" instead, we say "kill the settler to save the human." Fighting against the toxic ideologies, mythologies, histories, beliefs, silence and culture of settler society is not to "save" the Indian but is in the interest of life. We do not expect an enchanted rescue by the "noble savage" to release us from a culture of death

but recognize that with all the supposed technology and civilization settlers claim, settler society has absolutely no idea how to live off of and tend a land base. After millenniums of intergenerational trauma, white settlers best interest is in the destruction of the structure that we are taught to believe benefits us. What we view as necessary conditions, made possible by the deaths of others, is our own suicide.

Everyone was Indigenous to some place at some time. Those of us that are white settlers will never be native to the lands we occupy, but may we one day not be settlers, no matter what this looks like.▪

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This Article may be cited as:

Hurwitz, L., and Bourque, SD. (2018). Killing the Settler to Save the Human: The Untidy Work of Unsettling Klamath River. *Fourth World Journal*. Vol. 17, N1. pp. 28-40.

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Laura Sarah Hurwitz is a white settler, activist, writer, and lifelong learner living in the Karuk Homeland. She is a teacher for the Yurok Tribal Head Start, studying and implementing trauma informed practice. She holds a Master's degree from Humboldt State University where she researched settler colonialism and decolonization theory in conjunction with her on the ground anti-colonial organizing within her own white settler community to combat entitlement and forward a collective white settler ethic of responsibility. Laura imagines a world free of capitalism and patriarchy. She believes that white people are currently on the outside of humanity looking in and that only when systems of settler colonialism and white supremacy are obliterated will we/they return to being siblings of the earth and its inhabitants.



Shawn D. Bourque

Shawn Bourque is an anarchist and a settler. Along with his partner and three daughters he lives in the Karuk Homeland along the Klamath River in Northern California where he is an organizer, writer and homesteader. His work with Unsettling Klamath River, writings and blog (astheworldbunns.net) focus on dismantling settler colonialism and other intersecting hierarchical systems. He holds a Masters in Anthropology from the New School for Social Research. Currently he is co-writing a history of the Red Cap War, a Karuk uprising shortly after invasion. For his day job, Shawn is the operator of a local water system.



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Regulating Access to Customary Fourth World foods & medicines: Culture, Health and Governance

By Rudolph C. Ryser, Dina Gilio-Whitaker and Leslie E. Korn

(This article was written as part of the Center for World Indigenous Studies Research Study on the medicinal/ pharmacological use of wildlife products for small communities supported by a grant from the California Community Foundation's – Elina Vesara Ostern Fund)

ABSTRACT

Fourth World (indigenous) nations regularly express concerns, frustrations and demands declaring their rights to sustained access to wild-harvested plants and animals as sources of medicines and nutrition for the benefit of their people. They give rhetorical power to the claim that biological diversity is essential for sustainable life on the planet. Yet, despite public declarations and appeals to prevent contamination, damage, or destruction of biologically diverse medicinal sources of wild plants and animals, biologically diverse plants and wildlife continue to be destroyed. In this article the authors argue that little actual evidence exists to demonstrate that neither the cultural and governing leadership of Fourth World nations or states (or their international bodies) proactively engage in the promulgation of enforceable customary or statutory regulations or laws ensuring access and uses of medicinal plants and animals beneficial to indigenous communities.

The authors furthermore argue that cultural and governing leaders in Fourth World nations can and must initiate regulatory rules, laws and practices that they enforce to prevent continuing plant and animal damage and destruction reported by the nations themselves and the states exercising jurisdiction. Non-Fourth World jurisdictions (cities, states, provinces/counties) regularly engage in economic, social and political development activities that alter and often destroy access to or the healthful use of wild plants and animals beneficial for the health and sustainability of Fourth World communities and individuals. These alterations include activities that elevate CO₂ and other greenhouse gas levels, herbicide and insecticide contamination and genetic modifications). Pathways to restore access to, and protection of customary wild-harvested foods and medicines to Fourth World nations may include a framework, statutory incorporation of customary

laws (cultural incorporation), complimentary jurisdictional regulation or intergovernmental protocols. Alternatively, a form of internationally supervised reconciliation that in part holds non-Fourth World jurisdictions accountable for the destruction and restoration of dietary and medicinally beneficial wildlife that recognizes the agency of Fourth World nations to proactively establish and enforce customary and statutory laws may serve as an alternative or parallel initiative.

Keywords: wild harvested plants, foods, medicines, regulation, statutes, Fourth World peoples, indigenous nations.

This research study was undertaken to answer the overarching question: “What institutional or legal measures can Fourth World nations in the United States develop and implement to ensure the application of customary laws¹ to the regulation of traditional plant-based and animal-based food and medicine uses and access to ensure the long-term health and well-being of these nations?” The question arises in part from the growing calls by assemblies of Fourth World nations in the United States of America and elsewhere in the world for recognition of their sovereign rights to traditional foods and medicines to ensure the long-term availability of plants and animals. The frequency of these declarations and pronouncements commands the attention of policy makers, researchers, practitioners of tribal law, and indigenous health and nutrition institutions though there is little actual information about the extent of existing Fourth World customary laws

or states’ laws to respond in concrete and proactive ways. The purpose of this study is, therefore, to inquire into the role of traditional foods and medicines in the decision-making of Fourth World governments, states’ governments as well as international institutions in an effort to gauge the most likely and most appropriate shape and focus of institutional measures for enforcing and regulating human behaviors in relation to traditional systems of food and medicine that may reasonably be expected to ensure the long-term benefits of traditional foods and medicines.

The world’s Fourth World peoples (indigenous peoples) comprising more than 5000 distinct cultural communities with an aggregate population of 1.3 billion worldwide use and consume wild plants and animals for their health and nutrition. Most of these peoples are located in biodiverse territories

¹ Customary law means the rule of conduct, laws, practices, and traditional norms of an indigenous society originating in Origin Stories, oral histories, pictograms, petroglyphs, paintings and other ancestral records that guide social, cultural, political, and economic behaviors of members of a culturally distinct society (Mataatua, 1993). Stated another way “Customary law refers to locally recognized principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of the lives and activities of indigenous and local communities. * * * Customary law is “procedural... * * * by which rights are obtained” and not codified (Ongugo, et al, 2012). Customary law in the international sense specifically entails the “customary relations between states.” The distinction is important so as to make clear which form of customary law is being specified.

that contain most of the world's life sustaining plants and animals—they occupy lands with 80% of the world's remaining biodiversity. Partial dependence or full dependence on wild harvested plants and animals importantly differentiates Fourth World peoples from peoples living in corporate societies where industrial farms, food processing and pharmacological products are the main sources of nutrition and medicinal support. Yet, the ability of Fourth World peoples to apply their cultural and governing interactions with plant-based and animal-based foods and medicines is increasingly limited by their inability to enforce their customary laws against encroachments by corporate-state development and controls over their ancestral lands. The limitations on Fourth World peoples imposed on them now threaten the availability of nutrient-rich plants and animals necessary for life that comprises biodiverse ecosystems. When Fourth World peoples describe themselves as protectors of the environment they are drawing a clear connection between their dependence on living sources of nutrition and medicine and, their ability to sustain their societies. The imperative for ensuring the continuity of Fourth World cultures is intimately connected to global necessity to sustain and expand the diversity of ecosystems to sustain life on the planet.

Fourth World peoples on all of the settled continents and islands rely on balanced ecosystems that are biologically diverse to support their nutritional and health needs. The ability to limit and reduce encroachments from corporate societies (i.e., deforestation, mining, oil extraction, uses of herbicides and pesticides) are incomplete or in many instances non-existent. The looming breakdown of biologically diverse and “protected” lands on every continent is

supercharged by industrial farms, housing and facilities development, “road-building, installation of power lines,” and the construction of cities, according to **James Watson from the University of Queensland and the Wildlife Conservation Society** in statements given to the British Broadcasting System's environmental correspondent Mat McGrath. States' governments are enacting and promoting the destruction of biodiverse ecosystems in the name of “development” without legal or other regulatory restrictions either by Fourth World nations or international organizations.. It is this very same states' government-driven charge into ecosystems that undermines Fourth World nations' cultural regulation of access and uses of wild harvested plants and animals. What threatens the demise of biodiverse ecosystems also threatens the destruction of Fourth World cultures and their ancestral territories.

Theoretical Framework

Fourth World Theory (Ryser, Gilio-Whitaker, & Bruce, 2017) essentially states that the concepts of comparison, relational reasoning, balance between contending forces, and an equality of kind (that human beings are part of all living things and not the dominant living thing) will— when applied in life and thought— ensure comity between peoples, between peoples and living nature, and with the forces of the cosmos. If human need exceeds the capacity of the natural world to reproduce a destructive imbalance causes the destruction of life. This study tests whether the theory as stated is supported by the inquiry, requires modification, or whether the evidence rejects it.

Scope

This study has focused on finding the answers to these questions in an effort to assess what statutory framework might best be considered by US-based Fourth World governments when considering regulatory regimes for traditionally used and accessed plants and animals for food and medicine:

Q1. What native institutions have promulgated regulatory enforcement of laws that incorporate customary law to protect or oversee access and uses of plant-based and animal-based foods and medicines in the United States?

Q2. What are the laws, regulations or customary practices implemented by states' governments such as Ghana, India, Uyghuristan, Senegal, the Gambia, New Zealand and Norway that determine medicinal/pharmacologic uses of wildlife for the benefit of communities?

Q3. What are examples of indigenous institutional regulation, legislation or customary practice, methods of enforcement and the degree of their success concerning the medicinal/pharmacologic use of wildlife in the United States?

Q4. What plants and animals do indigenous institutions in the United States seek to regulate, legislate or control under customary practices or government statute?

To respond to these questions the study focuses on applying customary laws to the regulation of uses and access to plant-based and animal-based foods and medicines within the context of origin stories and national constitutions in an effort to understand effective means for enforcing these laws. Traditional foods and medicines are frequently imprecisely referred to in the literature as well as in public policy

formulations. Accordingly, our study defines traditional foods and medicines in a manner more directly reliant on origin stories and oral traditions as distinct from Complementary/Alternative and Allopathic medical systems in the following way:

Traditional Foods and Medicines: Traditional food and medicine practices include interaction between human beings, plants, animals, the earth, and the cosmos. Traditional foods are understood as “life-giving medicines” requiring exacting care and respect for both plants and animals. Traditional foods and medicines prevent, treat, and heal 80% of all human illnesses. Traditional food and medicine practices are localized to particular cultural communities. Practitioners of Traditional foods and medicines may include herbalists, diviners, spirit healers, and traditional birth attendants. The reciprocal respect between humans, plants, and animals fosters balance and includes a diversity of health practices, approaches, knowledge, and beliefs incorporating plant, animal, and/or mineral-based medicines; spiritual therapies; sweat baths; psychotropic substances including entheogenic fungi and plants; animal spirit medicine; manual techniques; and exercises, applied singly or in combination to maintain well-being, as well as to treat, diagnose, or prevent spiritual, mental, social and physical illness. Some traditions hold that human beings failed to fully respect plants, animals, and the earth by tormenting and corrupting them. It was this failure that caused disease and illnesses generally among humans. In response to this failure plants, animals, and the earth held to themselves the necessary cures, which could only be obtained if medicine men and women listened to the Spirits of plants, animals, and the earth for the appropriate remedy (Lore, 2018).

Complementary Medicine or Alternative

Medicine: These practices are distinctly separate from traditional food and medicine healing systems. While they may be practiced in Fourth World communities they do not originate with the nation or peoples, but are borrowed from other practices and methods of healing. They are secularized traditional medicine, denuded of the cultural, spiritual or indigenous origins, with the “active substance” used or practiced.

Allopathic Medicine: This system of medicine evolved in concert with the Cartesian era as it sought to dissociate medicine from religion and the supernatural. It prevents and treats approximately 20% of human illnesses. It includes descriptors such as western medicine or biomedicine, and uses pharmacologically active agents or physical interventions such as surgery to treat or suppress symptoms or pathophysiologic processes of diseases or conditions.

In our study we begin the assessment of traditional food and medicine customary law by reviewing oral history and origin stories. Our statutory assessments focus on treaties and executive orders with the United States of America, internal governmental regulatory institutions, and co-jurisdictional or cooperative arrangements between the Fourth World nation governments and the neighboring jurisdictions (country, city, state, port, and federal government). The study also considers international covenants and declarations by states’ governments and Fourth World assemblies as well as the existing laws and practices of international states’ governments in relation to indigenous population traditional food and medicine access and usages. Finally, the study

identifies potential language and measures how Fourth World nations and states’ governments may consider establishing customary and/or statutory regulation for access and uses of traditional plant-based and animal-based foods and medicines for the benefit of indigenous communities and beyond.

In this study it has become evident that Fourth World nations may need to extend their cultural practices regulating interactions with plants, animals and the land that maintain balanced ecosystems into statutory laws that either aid or obstruct corporate state development. Fourth World nations have attempted to seek states’ cooperation and collaboration to protect and enhance biodiverse territories, but with little success. States’ governments have adopted laws and regulations and they have caused their multilateral organizations to establish conventions such as the 1992 *Convention on Biodiversity*, but these statutory laws have gone unenforced and have not slowed or stopped the capital-driven encroachments. The last mechanism that could possibly stop the expansion into and destruction of Fourth World territories and other biologically diverse territories may well be Fourth World nations acting through their cultural practices while creating and initiating enforceable laws and regulations that impose restrictions to wildlife access and uses on outside jurisdictions.

Before the so-called “Age of Discovery” when European, Asian, Arabic, and some African kingdoms and empires began their search for resources on which to build their stores of lucre, Fourth World societies throughout the world tended to harvest foods and medicines from natural ecosystems.

While all methods were not perfectly successful (some societies suffered periods of starvation due to natural environmental changes or overuse of resources, or lack of methods for treating various “animal to human transferred” diseases²) the systems of “natural harvest” supported slowly growing societies all over the world. Though the conventional ethos is to conceive of human beings as separate from and dominant over other living beings, the common Fourth World cultural perspective may more accurately state this relationship thusly: “interaction between beings is based on the idea that behind the different bodies is a shared humanity” (Virtanen, Saarinen, & Kamppinen, 2012), which is to say that all beings are related, i.e., plants, animals, insects, fungi, humans, etc. (Trafzer, 1997).

Environmental Justice

When human industrial, commercial, and economic development expands in the world, access to traditional plants and animals becomes increasingly a matter of environmental justice. This view becomes more obvious when one considers that the poor and indigenous peoples are disproportionately affected by polluted ecosystems rampaged by industry-driven pollution³. Environmental justice is a matter of law and policy at the state level. The United Nations Development Program notes the

increasing trend of state governments incorporating environmental rights law into their constitutional frameworks, more than doubling between 1992 and 2012. It also notes, however, that indigenous peoples are the most vulnerable to environmental change, especially in light of histories of colonization. UNDP recognizes that because of indigenous peoples’ unique relationships with land and environment, the principle of legal pluralism must be able to account for indigenous customary law in addition to state-based law (UNDP, 2014).

Recent scholarship emphasizes settler colonialism itself as an ongoing system of environmental injustice in the context of the United States and Canada (Whyte, 2016). On a global scale, colonization manifested in myriad forms and even settler colonialism is complicated by regional and temporal particularities that differentiate Fourth World nations’ experiences and relationships with states’ settler populations. Overall, however, given the scope of land loss, the study of original indigenous nations working to restore their access to, and protection of, traditional medicinal resources must take into consideration the framework of environmental justice, which in part holds governments accountable for their maintenance of asymmetrical relations of power, and at the same time recognizes the agency

² So-called “zoonotic diseases” are caused by insect bites such as mosquitos and fleas, contact with other infected animals through scratches, bites, or eating contaminated food or drinking contaminated water, and plants contaminated by feces from other infected beings. Until the early 18th century these were the dominant health challenges experienced by most Fourth World peoples. It was only after the introduction of diseases by remote peoples that deaths from human-borne diseases changed the nature of human health challenges.

³ The World Bank observes that “development” has resulted in serious inequities between states, whereby large numbers of the world’s inhabitants are mired in poverty, especially in Africa, while inhabitants of the world’s richest countries live in both relative and absolute luxury. The Bank also notes, “due to development trends, populations in poor countries are becoming wealthier over time—a process linked to globalization because countries in the developing world can raise their standards of living by integrating with highly developed states.” (<http://www.globalization101.org/introduction-what-is-development-2/>)

of Fourth World nations to proactively work toward those protections. When attempting to protect and maintain access to resources now out of their control, this should be viewed, at least in part, as an environmental justice issue. Protecting resources within Fourth World nation boundaries, on the other hand, is a matter of self-determination, but also to the degree that governance has been influenced by a history of state control, it is a matter of how indigenous governments construct their relationships with land and their management approaches.

Fourth World peoples consider themselves responsible to the non-human life forms they consider relatives in what Whyte calls “systems of responsibility” (2016). As Whyte writes,

...[E]nvironmental injustice cuts at the fabric of systems of responsibilities that connect people to humans, nonhumans and ecosystems. Environmental injustice can be seen as an affront to peoples’ capacities to experience themselves in the world as having responsibilities for the upkeep, or continuance, of their societies...Systems of responsibilities are the actual schemes of roles and relationships that serve as the background against which particular responsibilities stand out as meaningful and binding (pg. 9).

In contexts where foreign settlement and other processes of development on or near indigenous lands disrupts traditional lives based on hunting, wildlife gathering, and other subsistence activities—interrupting their collective continuance—the disruption becomes an issue of environmental injustice (Whyte, 2016). The environmental justice frame-

work is especially true in areas that indigenous peoples still rely on and may be protected by treaty or other agreements, but are nonetheless beyond indigenous control.

Fourth World nations meeting in large international assemblies around the world issue declarations, statements, and pronouncements declaring their understanding that the loss of wild foods and medicines on which they depend threaten their livelihood. Forced dislocation of populations, and the contaminated, destroyed and systematically altered foods and medicines caused by state and corporate development trigger fear and anguish. Nations from Sámi land in northern Scandinavia, to the Cherokee, Cree, Q’anjob’al, Qom and Xochiquatla in the Americas, Igbo and Xhosa in Africa, the Uyghurs in central Asia to the Bashkir in Russia repeat calls for the protection of the environment and their sacred foods and medicines.

Biodiversity and Fourth World Regulation

Hinmuuttu-yalatlat (Thunder Rolling Down the Mountain who is also more famously known by his English name, Chief Joseph, 1840-1904) of the Chutpalu (Nez Perce) is often quoted as having said, “The earth and myself are of one mind. The measure of the land and the measure of our bodies are the same.” His words echo into the past, present and future said in thousands of different languages. Corporate societies struggle to dominate the living world while others find collaboration with living beings a more sustainable way of thinking and living.

University of California at Berkeley geographer Bernard Q. Nietschman wrote in 1994 that most of the world's biodiversity is embodied within the limits of indigenous peoples territories in tropical countries:

If you're interested in cultural diversity, you have to be interested in biological diversity, because nature is the scaffolding of culture — it's why people are the way they are. If you're interested in environments, you have to be interested in culture. (Nietschmann, 1994)

Fourth World communities' customary and constitutional governance regulating uses and access to wild-harvested foods may indeed serve as the primary defense to ensure biodiversity and access to and use of wild harvested plants and animals for food and medicine. This is now quite apparent despite decades of generally failed diplomatic and political efforts by state and international governing bodies to establish enforceable rules for regulating traditional access to and use of wild-harvested food and medicine systems. The essential ingredients to enforceable cultural and statutory controls are, as Nietschmann argues a fundamental recognition of symbiotic conservation as a principal underlying human survival in the face of human development.

This bio-cultural axiom, called by B. Nietschmann the 'concept of symbiotic conservation,' in which 'biological and cultural diversity are mutually dependent and geographically coterminous,' constitutes a key principle for conservation theory and applications, and epistemologically [sic] is an expression of the new, integrative, interdisciplinary research gaining recognition in contemporary science. (Toledo, 2013).

The World Bank reports that the world's Fourth World peoples⁴ occupy 20% of the planet's land-mass, but these more than 5000 distinct peoples use, access, and safeguard 80% of the world's last remaining biodiversity. What this means is that Fourth World peoples tend to rely in whole or in part on wild-harvested plants and animals for their foods, nutrition, medicines and raw material social and economic support⁵. They hold vital ancestral knowledge and expertise on how to adapt, mitigate, and reduce risks from climate change and natural disasters. However, only a fraction of these lands are officially recognized by states, whether they are lands Indigenous Peoples traditionally owned or possessed under customary title⁶.

⁴ Estimated by the Center for World Indigenous Studies to be 17% of the world's 2018 population or about 1.3 billion people located on six continents.

⁵ The United Nations and the World Bank claim that the world's total number of indigenous peoples in the aggregate is 370 million. This figure is misleading since it constitutes the estimated number of indigenous peoples "claimed" by UN member states—counted in 90 of the world's 193 countries. The indigenous populations in India, China, Russia, for example, are not included in the UN figure. The Center for World Indigenous Studies conducted a global study of indigenous populations and estimates that the actual figure is 1.3 billion or more people in more than 5,000 distinct culturally distinct peoples.

⁶ <http://www.worldbank.org/en/topic/indigenouspeoples>

As Fourth World nations and indeed all of humanity declare in public proclamations and pronouncements their utter and absolute dependence on plants, fungi and animals to sustain human life, the products (notably the wastes and byproducts) of industrial expansion are causing damage to life giving sources of food and medicine. Rapid human development since the 17th century has piled up poisonous contamination from petroleum, metallurgic, urban waste, technical and industrial production fundamentally altering and sometimes destroying the nutritional and medicinal benefits of virtually all plants and animals on earth. Despite evolving changes in forms of governance by Fourth World nations, states, and multilateral organizations, little success has been achieved in the form of enforced regulation to prevent human-produced and generated contamination and destruction of land, ecological systems, plants, animals, and water causing and risking human social, economic, political, and cultural displacement worldwide. And while thousands of political, spiritual, economic, and public health reports, proclamations, and warnings have been issued by spiritual leaders, traditional knowledge holders, scientists from traditional and conventional societies describing the declining quality of life experienced by major parts of the human family as a result of contaminated foods and medicines, the numbers of human beings suffering from dietary and nutritional shortages, limited access to quality food and medicines continues to grow in the cities and in the rural lands.

Traditional Plant and Animal Food Medicines

Fourth World peoples comprise the bulk of the world population located in high-risk countries

suffering from insufficient macronutrients and micronutrients. The result for populations suffering from these nutritional shortages is child stunting, and anemia, with increasing levels of obesity and chronic disease in adults such as diabetes due to the trend toward “lifestyle and nutrition transition” (Kuhnlein, 2003; Popkin, 2004; Korn, 2006; Gracey & King, 2009).

The “transition” of Fourth World peoples reliant on traditional foods and medicines to becoming reliant on relatively low cost commercially-produced foods and medicine is an increasingly accelerating social phenomenon. In the United States this phenomenon has for Fourth World peoples resulted in a form of malnutrition from excessive saturated and hydrogenated fat, high levels of sodium, refined sugars and grains, and excessive calories. American Indians, Alaskan Natives and Hawaiian Natives as well as Mayan Natives, Purépeche and other Fourth World expatriates from México, Guatemala, Honduras, and El Salvador in the United States suffer from high levels of chronic diseases including diabetes, obesity, hypertension, alcoholism, heart disease, asthma, and cancers. These chronic conditions combined are a direct result of recent and generational transitions from traditional foods and medicines to low-cost commercially produced and distributed sources such as quick stop food stores at gasoline stations, fast food restaurants, and food aid programs. US Fourth World peoples’ nutrient deficiencies may be linked higher levels of numerous conditions such as viruses, disease, infections, obesity, allergies, headaches, stress, strokes, fatigue, ulcers, bowel and colon problems, tumors, cancer, lower birth weights, kidney failure, heartburn, a weak immune system, arthritis, blood pressure problems,

heart attacks, and growth and circulation problems among other conditions (Mailer & Hale, 2015). The conventional wisdom remedy for this state of affairs is to prescribe consumption of whole grains, fresh fruits, green leafy vegetables, and elimination of refined, processed foods—all of which impose costs greater than family budgets can pay⁷, and without regard to traditional food use patterns. American Indian life expectancy is according to the US Indian Health Service 5.5 years lower than the general population (73 to 78.5). American Indians experience a higher level of mortality than the general population from preventable conditions (death from diabetes [32%], heart disease [8%], liver disease [22%], malignant neoplasm [3%]).⁸

Before the occupation of ancestral Yakama Nation lands by European settlers the Yakama people experienced none of these diseases (Trafzer, 1997). Indeed, it was not until 1930 that the Yakama people suffered a spike in communicable diseases such as tuberculosis, pneumonia, gastrointestinal, and influenza. By the beginning of the 1950s these medical conditions shifted to dominance of heart disease as the most common reason for death among Yakama men and women. The shift from infectious diseases to chronic diseases began with the commencement of mass commercial food production in

the late 1940s (Trafzer, 1997). The transition away from traditional foods and medicines had occurred decades earlier contributing to the rise of human created chronic disease as a result of refined foods and artificially created medicines (Omran, 2005).

The cause of these health disparities is directly attributed to loss of land, traditions, and poverty from urbanization (*The Lancet*, 2009). Mackey & Liang (2009) note that Indigenous peoples' health disparities are further complicated and exacerbated by bio-piracy and exploitation, and that state-based approaches to biodiversity protection have not led to adequate biodiversity protection, management, or resource sharing, which affects access to lifesaving drugs, and ethically links the issues to environmental justice.

Food Systems Movement

The growing health crises as a result of the lifestyle and nutrition transition in Fourth World communities also make obvious the function of food as preventative medicine. With many of today's health conditions nearly unknown in the indigenous world prior to colonization, the imposition of foreign and far less healthy foods is increasingly thought to be responsible for declining health of indigenous peoples and at least partially responsible for their high

⁷According to the United States Census updated in 2015 American Indian and Alaskan Native families with children under the age of 18 the poverty rate is 29.8%. Of 824,151 native households, 21% (142,637) are single women households. Retrieved from <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁸ Documenting health disparities for American Indians and Alaskan Natives eligible for services, the US Indian Health Service report in 2011 for leading causes of death was retrieved from <https://www.ihs.gov/newsroom/factsheets/disparities/> The median single family income in 2014 was \$37,227 compared to the general population with \$53,657 annually.

premature death rates in many places (Chino, Haff & Dodge-Francis, 2009; Mailer & Hale, 2015). The food systems movement across the globe manifests in food sovereignty projects that seek to restore the consumption of traditional foods as an important line of defense against colonial lifestyle diseases, and simultaneously revitalize cultures and assert self-determination (Kamal, Linklater, Thompson, Dipple & IMC, 2015; Gupta, 2015). In some food sovereignty projects the revitalization of traditional medicine is incorporated, including harvesting knowledge, the growing of medicinal plants, and the making of plant-based medicine products.

Plant-based Medicines

Long before indigenous and Fourth World peoples came to be surrounded and controlled by foreign powers they lived in homelands that provided nearly everything they needed: food, shelter, implements for hunting and harvesting, clothing, medicines and more. Traditional healing systems included many different practices that invariably involved plants and animals available in the surrounding environment. Colonization has profoundly disrupted Indigenous peoples' traditions in virtually every aspect of their lives. The central and colonial governments early in the colonization process induced and forced tribes to move into cash economies, and changed land use patterns in ways that became detrimental to wild plant and animal populations.

However, these disruptions vary from country to country, and indigenous peoples have maintained their use of traditional foods and medicines to varying degrees. In places such as the United States and

Canada western medical systems became the primary form of healthcare in the mid to late 19th century. While traditional medicine is still actively practiced in some indigenous communities, in others it is not, and these changing patterns have led to a conception of traditional medicine as "alternative" medicine (Johnston, 2002). In other regions of the world indigenous peoples still strongly depend on wild plants and animals to treat infections, endocrine and metabolic diseases, diseases of the nervous system, respiratory, eye, ear and throat infections, pregnancy and childbirth associated conditions (World Health Organisation, 2001). One study of a traditional community in Uttarakhand state in India, for example, found that 70% of the population still depends on herbal healers (Vaidyas) where modern healthcare facilities are rare (Phondani, Maikhuri & Bisht, 2013). A similar pattern can be found among the Ati located in forests on Guimara Island in the Philippines. The Ati's medicinal traditions persist though external influences are eroding traditional usages (Ong & Kim, 2014).

Animal-based medicines

Fourth World peoples' uses of animal-based medicines to support health and healing people pre-dates allopathic medicine by thousands of years. The range of animal-based medicinal sources include virtually all of the animal kingdom such as: marine invertebrates (star fish, sea cucumbers, sea urchins, etc.), mollusks (clams, conches, oysters), insects (termites, ants, bees, cockroaches, etc.), fish (cod, salmon, herring, etc.), amphibians, reptiles, (snakes, iguanas, lizards, tortoise), birds (ducks, black vulture, turkey, falcons, pea fowl), and mam-

mals (bovine, deer, elk, moose, sheep, fox, opossum, skunk, horse, camel, manatee, bat). Animal-based medicines are made from animal parts (glands, organs), bodily products of metabolism (i.e., secretions and feces), and from the nests or cocoons made by animals (Alves, Barbosa, Santos, Souto, & Barboza, 2011; Cordain et al., 2000; Costa-Neto, 2005).

The Hazards to Living Food and Medicines

The territories that Fourth World nations occupy and the lands outside their direct control but adjacent to them are under constant threat due to relentless industrialization in the name of development. Development can mean the construction of fossil fuel infrastructure (pipelines, refineries, and fracking); the building of dams, railroads, highways, cities and towns; the mining of minerals and plants that process minerals; manufacturing; commercial fishing and the building of harbors and other oceanfront projects; industrial farming, and more. Encroachments by neighboring jurisdictions through farming, logging, the taking of plant and animals and commercial development on Fourth World lands (reserved and treaty-guaranteed) do not respond to customary Fourth World laws. Much to the frustration of each nation these acts contrib-

ute to the destruction of plant and animal communities. The failure to recognize and observe customary laws also contributes to chemical, radioactive, and waste poisoning of biodiverse ecosystems that support the foods and medicines central to traditional livelihoods. Examples abound: In the Columbia River Basin where the most radioactive waste site in the world at Hanford, Washington is located on Yakama Nation ancestral lands⁹, and in the Dakota peoples' and Colorado Plateau regions, defunct uranium mines contaminate and pollute lands and waters that will not be restored for thousands of years (Grinde & Johansen, 1995; Moore-Nall, 2015; Voyles, 2015). In Canada's British Columbia the world's largest gold-copper project owned by Seabridge Gold's KSM¹⁰, mining of the Alberta tar sands has caused significant damage to First Nations ecosystems. In West Papua the Grasberg and Panguna open pit gold and copper mines have destroyed entire ecosystems directly harming the Amungme and Kamoro (Commission & Brisbane, 2016; Unknown, 2009), but also perpetuating genocidal violence against the indigenous populations. These types of encroachments dot Fourth World territories the world over.

On lands where conflict is low or non-existent, but where farming, logging and development has

⁹ The Center for World Indigenous Studies 2016 Radiation Risk Assessment Project reports how extensively radioactivity has been contaminating Fourth World human life, lands and wildlife in more than twenty territories: <http://www.truth-out.org/news/item/35381-the-indigenous-world-under-a-nuclear-cloud>

¹⁰ Canada's Minister of the Environment approved this copper-silver-gold and molybdenum open-pit mine located in the wilderness in 2014: <http://www.mining.com/canada-approves-worlds-largest-copper-gold-project-57001/> Concerned that "wet tailings" stored by mining in the area, Alaskan Native tribes and First Nation bands demanded changes: "Unless there are major changes to B.C. tailings storage, we will soon see more dangerous dams built across B.C. and in the headwaters of major trans-boundary salmon rivers such as the Stikine, Taku and Unuk. These tailings dumps will be toxic time bombs poised upstream of vital salmon habitat."

circumscribed indigenous homelands, such as in highly urbanized settings indigenous foods and medicines become non-existent or damaged. Foreign, invasive species also choke out indigenous species decreasing biodiversity, exemplified by garlic mustard proliferation in the eastern United States (Rodgers, Stinson & Finzi, 2008).

Genetically modified organisms (GMO) are another threat to indigenous plant and animal communities. Wild rice (*manoomin*) managed by Dakota, Menominee, Meskwaki, Ojibwa, Omaha, Ponca, and Winnebago in North America face potential nutritional food value changes. The Ojibwa have for years fought against the genetic patenting of their manoomin, engaging in legal battles with the University of Minnesota and corporations like Busch Agricultural Resources and Syngenta to protect the genetic integrity of manoomin as well as Ojibwa markets. In México, Guatemala, Honduras, Belize and El Salvador many Zapotec, Purépecha, Yucatec, Mixe, Totzil, Tzeltal, Ch'ol, Kekchi, Mopan and Achi, K'iche corn varieties were contaminated by GMO corn despite a ban on genetically modified maize (LaDuke, 2005). Similar battles are fought in many other places, including Hawai'i where GMO crops not only threaten biodiversity but also results in higher incidence of respiratory and other illness in Native Hawaiians due to intense pesticide use. In the Amazonian region of Brazil where rainforests have for decades given way to massive corporate mining, ranching, and farming, a ban on GMO's was lifted in 2003 resulting in heavy pesticide use and deeper encroachments into indigenous lands contributing to decreased soil quality and plant and animal diversity. The results for the Guarani people have been loss

of culture, murder of resisting tribal leaders, and a youth suicide epidemic (Bellevue, 2017).

Fourth World Government Regulation

Fourth World nations are intentional or accidental contributors to the sustainability of environmental biodiversity. Intentional and accidental customary and statutory regulation and uses of wild-harvested plants and animals for food and medicine is primarily achieved through cultural practices that result in sustained biodiversity in ecosystems¹¹. The intimate relationship between the peoples of Fourth World nations to the land and life-giving organisms promotes biological sustainability and the diversity of organisms. Ranjay K. Singh, et al (2006) conducted a study of the Monpa Tribe located in India's Arunachal Pradesh to learn the "dynamics of using *Paisang* (*Quercus rex*, Oak tree) and *Roinangsing* and *Lenthongsing* (pine tree spp. *Pinus wallichiana* and *Pinus roxburghii*) leaves in different crops." Biodiversity, this study concluded, is often sustained by the "cultural, spirit, and ethical norms possessed of the local people" (Singh, Singh, & Sureja, 2006). Further evidence of human sustained biodiversity is readily apparent in the traditional farming and selection of *maize* (Spanish), *corn* (English) *olote* (Nahuatl), *ix'im* (Yucatec), *selu* (Cherokee), *onenhste* (Mohawk), *naadqáq'* (Diné) over thousands of years. In México, Guatemala, the

¹¹ Biodiversity has been defined under international law as "the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part: this includes diversity of species, between species and ecosystems." (Parties, T.C., 1992, Art. 2)

US Southwest and throughout Central and South America the diversity of *olote* is maintained mainly by indigenous farming communities (Plested, Thurman, Edwards, & Oetting, 1998; Findings, n.d. Sarukhán, 2004; Frison, Smith, Johns, Cherfas, & Eyzaguirre, 2005).

Current Status of Customary and Statutory Regulation

Fourth World governments and states' governments exercise regulatory authority over their constituents directly or indirectly on most topics of life. The forms of regulation tend to be statutory, but may be customary in the form of a law, resolution or other official proclamation intended by the authors to be enforced by the government issuing the law. Governments may decide to impose their authority or they may symbolically enact a law and not actually enforce it.

Customary law rooted in the culture of the community serves as the regulating mechanism for social conduct of Fourth World societies. Indigenous systems of knowledge long predating corporate societies constitute the expression of social, economic, political, spiritual, health aspects of culture practiced in the form of customary law. To specify the major elements of customary law we turn to the creation texts of the Haudenosaunee, the *Great Law of Peace* as articulated by Deganawida, Jingosaseh, and Aionwantha in 1100, the Yucatec's *Popol Vuh* (Christenson & Translator, 2007), and the Tibetan's *Tibetan Book of the Dead* (Padma-Sambhava, 1927). Creation texts or oral transcriptions constitute the most fundamental law of each nation providing a

degree of clarity about the cultural foundations of customary laws. This can be illuminating since the relationship between all beings is depicted and in those relationships we can understand the reasons for customary laws. Though changes over time may cause adjustments in the laws (ecological, social, cosmological) it will remain true that the laws will have been founded on the basis of the dynamic relationship between humans, the land, and the cosmos.

Customary law identifies the subject matter for use, access and consumption of plant-based and animal-based foods and medicines. Customarily such law also states the limitations or extent of uses, and the extent of authority to be conferred on individuals or groups, and the conduct of individuals (the responsibility to treat all things with respect and honor). In addition, it is essential that the individual, family, or community must consult the well-being of the occupants of the land (plants and animals) to protect all that is there, respecting the influence of the moon and the seasons. Customary law may also require that a person or community exercise caution when seeking use and access to plant and animal foods and medicines while recognizing that when damage is done, damage will be reciprocated to the perpetrator. Customary law requires that individuals, families, and communities exercise responsible behavior to ensure the protection of sacred lands and sites and not disturb human remains and ancient artifacts. Customary Law requires that persons respect the nation and its inherent powers. Customary law formalizes the identity of ownership (individuals, families, communities), the modes of acquisition, the length of time that use and access

may be authorized and the specific forms of enforcement associated with the law (Christenson & Translator, 2007; Deganawida et al., 1100; Kuruk, 2003; Padma-Sambhava, 1927). All of these elements are essential to guide individual and community behavior. And when applied to plant and animal-based foods and medicines the cohesiveness of a community and assignments of authority determine how and when the laws are enforced.

Fourth World customary laws may vary from ecosystem to ecosystem and community to community, but the efficacy and essential nature of interaction between human beings, plants, and animals producing a biodiverse environment cannot be questioned. Customary laws do have enforcement and regulatory mechanisms built to ensure compatible human behavior within a particular society, the same cannot be said to be true in relation to other neighboring societies. Cultural authorities are at a disadvantage when asserting enforcement of customary law and regulation of culturally-defined rights to access and use plants and animals when actors outside the immediate society behave in ways contrary to customary law. Corporate societies define “property” as an individual right conferred by the governing jurisdiction. The collective right of a society is not comprehended by outside legal systems (Kuruk, 2003).

Despite the ancient roots of customary law, preventing violations of specific customary laws can be ignored by corporate societies though a minority of states has taken limited actions to incorporate customary laws into their legal framework. States’

conventions, statutes, and decisions of international bodies such as the World Intellectual Property Organization declare that “rights” to land, resources, and other interests flow from the state, thus reducing indigenous peoples and rendering their claims to original ownership as meaningless under international and domestic state laws. The state is the only authority with the power to confer “rights.” By not claiming and enforcing their “inherent rights” dependent on the originality of each indigenous nation itself, Fourth World nations place themselves in a condition of suspended supremacy bowing to the unearned claims of states and their international bodies. After decades of state-level and international declarations calling for action by states to produce responses to global malnutrition and medicinal demands, the promises of states have resulted in little domestic action to establish collaborative enforcement frameworks with indigenous nations. The possible uses of plants and animal species used for foods and medicines by Fourth World peoples remains unknown to states’ authorities (Kuhnlein, 2003). The result of Fourth World nations’ suspended supremacy is that their customary law remains enforceable only within each community, but unenforceable to regulate the behavior of external actors who may use and dispose of lands, foods, medicines, waters, and resources without restrictions imposed by nations in their ancestral territories.

The conventional wisdom in the corporate state asserts that even as foods and medicines are reduced by human contamination the world’s peoples will benefit from quick, new inventions of semi-artificial foods and pharmacological inventions to

replace those natural sources. Genetically modified foods as well as artificially grown animals and fishes (aquaculture and enclosed hothouses) are viewed as “win-win” commercial food and medicine production activities. Commercially produced food and medicinal substitutes are rapidly entering the human food and medicinal chains especially, but not exclusively in the urban centers where nearly two-thirds of the world’s 7.6 billion human beings now reside. The 2.6 billion people living in forests, jungles, deserts, mountain regions, plains, and in other rural locations are often reliant on farm-harvested plants and animals as well as wild-harvested plants and animals.

Fourth World nations issue frequent declarations, pronouncements, speeches, and resolutions calling attention to the damages caused to traditional foods and medicines by state and corporation sponsored contamination of plants and animals with herbicides, heavy metals, and insecticides. But despite the pronouncements, claims of sovereignty, rights to ancestral lands, and demands for access and preservation of traditional foods and medicines, these public announcements have gone unanswered. Though several international states’ organization (i.e., UN, IPO, WTO, ILO) have issued declarations regarding indigenous peoples and UN member states’ governments have made constitutional reforms conceding the collective nature of Fourth World peoples¹² and their right to ownership

of lands, “land-titling procedures have been slow and complex” and in many cases “the titles awarded to the communities are not respected” (UNPFII, 2007). Fourth World nations repeatedly call on the states, international state institutions, and state agencies to provide the acts of preservation and enforcement of the Fourth World “right” to those traditional foods and medicines with the result of symbolic gestures but no enforcement.

The realization of indigenous peoples’ rights to food and food sovereignty depends crucially on their access to and control over the natural resources in the land and territories they occupy or use. Food procurement and consumption of food are an important part of culture, as well as of social, economic, and political organization. Subsistence activities such as hunting, fishing, and gathering are essential not only to the collective right to food, but also to the nurturing of indigenous cultures, languages, social life, and identity. Only then can indigenous peoples maintain traditional economic and subsistence activities to meet their nutritional and sustenance needs, as well as protect and preserve their culture and distinct identity¹³.

Cultural-Social Regulation by Nations’ and States’ Governments

To ensure adequate harvests in the ecological niches where Fourth World societies generally

¹²Argentina, Bolivia, Brazil, Colombia, Guatemala, México, Nicaragua, Panama, Paraguay, Peru, Ecuador and Venezuela

¹³UNPFII (2012) “The Rights of Indigenous Peoples to Food and Food Sovereignty.” UN Department of Public Information, May 2012. Retrieved from https://www.un.org/esa/socdev/unpfii/documents/2012/News%20and%20Media/EN%20Fact%20Sheet_Right%20to%20Food.pdf

prospered they required cultural-social regulation to prevent over-harvesting or destruction of food and medicine sources. The central feature of the regulatory framework for each society is expressed through the dynamic and evolving relationship between the people, land (and ecosystems), and the cosmos. This customary approach established who harvests, and where, when and how they harvest. Clearing of lands (slash and burn for example) to maximize access to foods and medicines depends on customary regulation as well (Anderson, 2005). The rules for access and use decide seasonal access including how much can actually be harvested. Specialized food producers (hunters, gatherers, planters, etc.) and medicinal producers (traditional healers, medicine providers, herbalists) are specifically defined within each cultural framework and guided by cultural or what can also be called customary regulation.

Many modern Fourth World peoples implement the cultural regulatory framework based on what best suits the ecosystem from which foods and medicines are harvested. A central principle of the cultural regulatory framework is that it evolves and adjusts to changes—either movement of a population to new locations due to climatic or social conflict reasons or due to subtle actual changes in the environment. What may have been the cultural approach to regulating food and medicine access in the 18th century, for example, may not actually apply due to changes in the ecosystem or the socio-political environment.

A healer, elder, gatherer, hunter or preparer of foods may determine sanctions or implementation of cultural regulation. The role of persons in each society or by specialized societies established within a community usually takes precedence over specific

medicinal, food, and gathering practices. Neighboring societies might compete for access to foods and medicines resulting in staged conflicts to enforce rules of access and uses.

Customary nutritional and medicinal uses of foods and medicines derived from wild-harvested plants, fungi, animals, fish, mollusks, and insects by Fourth World peoples are at grave risk as are conventionally-cultivated foods. The protection and regulation of access to these life sustaining supports used by Fourth World peoples and for cultivated foods for the bulk of the world's population are being contaminated by state and corporation development policies and actions resulting in the wholesale destruction of life-giving plants and animals on which ultimately all life depends. Explaining that 80% of South Africa's population depends of wild harvested foods and medicines under customary community regulation for example Steve McKean (2007) writes,

Despite the persistence of customary controls on use of many species, the commercial trade and consequent economic benefits has [sic] eroded many of these controls to the detriment of the species involved and the systems in which they occur. (Mander et al., 2007).

Customary regulation of access and uses of plant and animals in a Fourth World territorial context carries weight and influence over the peoples living in such territories—particularly the culturally bound community members. Therefore, regulation has the significant effect of ensuring culturally defined balance and availability of plants and animals for

foods and medicines to the population. However, customary regulation does not necessarily influence or regulate the behaviors of individuals outside the cultural context of a particular Fourth World nation. Indeed, as frequently frustrated Fourth World assemblies state in declarations and proclamations calling on outside jurisdictions (counties, states, provinces, and central state governments) to comply with customary regulation or at least respect for living things suggest, outside jurisdiction do not take these calls for responsible action seriously.

The Cherokee Nation is engaged in an internal government/community dialogue concerning the most appropriate approach to land management and thereby securing the best method for protecting and sustaining use and access to plant-based and animal-based foods and medicines. In his published volume subtitled *Ethnobotany and Cherokee Environmental Governance* Clint Carroll (2015) describes how the Cherokee Nation developed an approach to land management that was shaped by its paternalistic relationship with the Bureau of Indian Affairs. Carroll argues that the “state system” adopted by the Cherokee government can consciously establish alternative ways for Cherokee to interact with the environment. The adopted state-based management system produced an approach to land management motivated by economic and commercial forces—the mandate for the land to generate income from activities such as cattle grazing and silviculture. Thus, Cherokee land management became enmeshed with complex bureaucracies, and adopted non-Cherokee language and frameworks, what Carroll calls “resource-based practice.”

In 2008 a Cherokee land management elders’ council was formed as a response to Cherokee community demands to incorporate traditional values into the tribal government’s management practices, which recognizes Cherokee responsibility to the nonhuman world. Carroll calls this a “relationship-based” approach, and is especially relevant because of Cherokee people’s recognition of the need to protect their medicine plants, which was brought about through the activism of an elders group in 2008.

Carroll’s work conceives of the Cherokee Nation in terms of a “transformative indigenous state,” a theoretical framework that is debatable from a Fourth World theory perspective, but is inconsequential to our discussion about how tribal governments protect their medicinal plant resources. What’s most relevant for our discussion is how institutional tribal structures negotiate conflicting forces to attain their goals, and the Cherokee Nation study provides us with a valuable example of what is probably true for most tribal nations.

Anecdotally, a comparison can be drawn between the Cherokee case, and the example of the Colville Confederated Tribes (CCT). The Colville tribal government commissioned a study in 2015 for the purpose of updating their Integrated Resource Management Plan. The study is the result of a survey in which the tribal membership was to choose between five management strategies. The choices essentially hinged upon approaches toward timber management and cattle grazing activities, including eliminating or expanding both. The preferred

strategy they chose was an “enhanced and improved current management strategy.” The document, *Draft Programmatic Environmental Impact Statement 2015*, exhibits the tension between economic activity inherent in resource management practices (inherited from BIA policies, as was the case with the Cherokee) and the need to protect “cultural resources,” including archeological resources and culturally significant plants. It notes the difficulty of protecting culturally significant plants due to a lack of resources for a permanent staff, impacts due to wildfire, livestock and wildlife grazing, and timber harvesting. Another impediment was the unwillingness of tribal members to divulge the locations of favorite gathering spots. Interestingly, 69% of survey respondents reported that “they or their family members actively gather plants on the Reservation” (pg. 27). On the governmental level the Colville report accurately reflects, as Carroll writes, the language of “resource-based practice” versus a “relationship-based” approach to land management.

Engaging in regulation of “cultural material” is about as close as Fourth World governments in the United States appear to get in their effort to establish statutory controls, but as the Warm Springs legislative example indicates these controls only extend to members of the community. No limitations are imposed or sanctions legislated to control non-member access and uses of “cultural material” much less food and medicine plants and animals. Only limited consideration is given to imposing restrictions on outside jurisdictions (county, state, federal) or peoples who live in those jurisdictions primarily invoking US government legal authorities.

The record on statutory regulation of wildlife access and uses for many US located Fourth World nations is extremely limited and usually tied to “economic development of natural resources” if the nation’s government exercises regulation. What follows is a sampling of how tribal governments in the U.S. do (or don’t) regulate the gathering of plant-based and animal-based foods and medicines within current official boundaries and treaty or executive order reserve rights in ancestral lands (i.e. reservations, Rancherias, and other Native community formations). We examined the tribes’ websites and other online sources for government documents relative to tribal plant and animal usages and protection/regulation policy. We chose a random sample of tribes with the possibility that each government would adopt such policies and codes in accord with founding documents and oral traditions.

Sixty-five percent of the published origin stories or histories that make up customary law specifically reference the relationship between humans, plants and animals: (See Table 1). The actual proportion is likely to be greater if one considers all of the more than 620 Indian nations and communities in the United States. The fundamental reality is that customary laws are foundational to American Indian nations. Customary law is defined in this study as rooted in origin stories as well as other oral traditions explaining the relationship between people, plants and other animals.



Table 1 - Sample FW/US-Based Governments Regulatory Status (n=16)

Fourth World Nation	US State	Customary Law	Constitutional and/or Treaty Provisions	FW Nation Statutes	Cross- Jurisdiction Access
Bishop Paiute	CA	0	0	1 ¹⁴	1
Cow Creek Umqua	OR	0	1	0	0
Crow (Absoro-Kee) (Apsáalooke)	MT	0	1 ¹⁵	1 ^{16 17}	1

¹⁴Under Article III para. 201 of the Tribal Environmental Policy Ordinance (2012) the Shoshone-Paiute government asserts its jurisdiction over members and non members in matters concerning violation of its Ordinance where it states: “The Tribe recognizes that the actions of persons and/or entities not located on Tribal lands have the potential to harm the natural environment of the Reservation and the health, safety and welfare of the Tribe, its members and territory. Because of Tribal concern and interest in, and duty to protect the environmental quality and integrity of its lands and health and safety of its members, the Tribe finds it necessary to have the ability to call persons who cause harm within Tribal jurisdiction to account for their acts or omissions before the tribal administrative and tribal judicial system.” The ordinance established the Tribal Environmental Protection Agency to establish and enforce the regulations.

¹⁵Under the Treaty with the Crow Indians of 1868 Article IV provides that the Crow may hunt on “unoccupied” lands outside the reservation, but no further agreement is made about access to foods and medicines.

¹⁶The Crow government adopted its Title 12 “Fish and Game Code” providing for “by Tribal Conservation Officers/Bison Pasture Rangers of the Crow Natural Resources Department or other duly authorized Federal Officers as provided for by tribal or Federal law or by cooperative agreement” under Chapter 11.

¹⁷Title 24 Environmental Policy of the Crow Governments Code provides for remediation when damage is caused to soil, plants and animals calling for restoration of “native plants” and document “animal systems.” The purpose of the code is to provide quality environment, “free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the Crow Tribe, and to establish an environmental quality council.

Fourth World Nation	US State	Customary Law	Constitutional and/or Treaty Provisions	FW Nation Statutes	Cross-Jurisdiction Access
Flathead	MT	1	1 ¹⁸	0	1 ¹⁹
Haudenosaunee	NY	1 ²⁰	1	0	0
Ho Chunk	WI	1	1 ²¹	0	1
Hopi	AZ	1 ²²	0	0	1

¹⁸Article III of the Treaty of Hellgate (1859) provides for the exclusive right to take fish from rivers running through and bordering the reserved lands and “the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”

¹⁹The Flathead (Salish & Kootenai) government has drafted “Bird Hunting Regulations (2/27/2018)” that provide for US federal regulations and guidelines jointly enforced by the tribal government and the US government.

²⁰Responsibility for the foods and medicines were divided between the five confederating peoples by the creation spirit: “To the Mohawks, I give corn,” he said. “To the patient Oneidas, I give the nuts and the fruit of many trees. To the industrious Senecas, I give beans. To the friendly Cayugas, I give the roots of plants to be eaten. To the wise and eloquent Onondagas, I give grapes and squashes to eat and tobacco to smoke at the camp fires.”

²¹ 21 09-19-2015-09 To Amend the Ho-Chunk Nation Constitution and Provide for the Rights of Nature.

Amendment to Article X, Section 2. (b) iii. Rights of Nature: “The Nation shall apply preventive and restrictive measures on activities that might lead to the pollution of air, water and soil, affect the abundance of surface and groundwater, destroy Ho-Chunk food and medicine plants, decrease habitat for important Ho-Chunk plant and animal communities, cause the extinction of species, lead to the destruction of ecosystems and the to (sic) permanent alteration of natural cycles.”

cont.

(c) Prohibitions. It shall be unlawful within the Ho-Chunk territory for any corporation or government to engage in activities that would violate, or infringe upon, the rights recognized and secured by this Article, including but not limited to, damage or destruction of flora or fauna possessing traditional medicinal significance to the Ho-Chunk Nation or its members, fossil fuel extraction, frac (sic) sand mining, and the introduction or use of genetically engineered organisms.

²² For some time prior to their emergence from the underworld, people had been hearing footsteps above them, but when they reached the surface of the earth it was cold and dark, and nothing could be seen. In due time they noticed a distant light and sent a messenger who returned with the welcome news that he had discovered a field on which corn, watermelon, beans, etc., were planted. All around this field a fire was burning . . . by which the ground was kept warm so that the plants could grow. Nearby the messenger found a man whose handsome appearance contrasted strangely with the grotesque death's head mask that stood by his side. At once the messenger realized that it was Skeleton (Masauwuu) whom they had heard walking about from the other world. The deity proved kindly disposed, fed the courier and sent him to fetch all his companions. Here they built a large fire, warmed themselves, and Skeleton gave them roasting ears and watermelons, melons, squashes, etc., and they ate and refreshed themselves. Some of the plants were very small yet, others still larger, so that they always had food. (Titeva, 1944)

Fourth World Nation	US State	Customary Law	Constitutional and/or Treaty Provisions	FW Nation Statutes	Cross-Jurisdiction Access
Navajo (Diné)	AZ, NM, CO	1	1	1	1
Nez Perce Chutpalu	ID	1	0	0	1
Pine Ridge-Dakota	SD	1	0	0	1
Ponca	OK	1	0	1 ²³	1
Quinault	WA	1	1	1	1
Rosebud Dakota	SD	0	0	0	1
Standing Rock Dakota	SD	0	0	0	1
White Earth Anishinabe	MN	1	0	0	1
Wind River — Arapahoe & Shoshone	WY	0	0	0	1
Yurok	CAL	1 ²⁴	1	1	1
TOTAL	17	11	9	5	15
		65%	52%	29%	88%

²³ The Ponca Tribe of Oklahoma adopted the Rights of Nature Resolution that imposes misdemeanor and felony sanctions for violations: “Within the jurisdiction of the Ponca Tribe, all human beings, all governments, all corporations and public and private institutions must act in accordance with the rights and obligations recognized in Article 2 of this law, and the failure to do so shall constitute a crime against Nature.” Article 2 affirms the inherent rights of all elements of Nature, conceived of as “beings.”

²⁴ The jurisdiction of the Yurok Tribe extends to all of its member wherever located, to all persons throughout its territory, and within its territory, over all lands, waters, river beds, submerged lands, properties, air space, minerals, fish, forests, wildlife, and other resources, and any interest therein now or in the future (Yurok, 1993, Art 3). “We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. We never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals. We also have practiced our stewardship of the land in the prairies and forests through controlled burns that improve wildlife habitat and enhance the health and growth of the tan oak acorns, hazelnuts, pepperwood nuts, berries, grasses and bushes, all of which are used and provide materials for baskets, fabrics, and utensils” (Yurok, 1993).

Of the Constitutions for Indian nations and often the treaties they signed with the United States 52% of those we examined contain provisions for access and uses of the lands, and in some instances areas for hunting and gathering. Constitutional and/or Treaty provisions must explicitly state the nation's jurisdiction over lands, uses and accustomed access to land and wildlife.

There is a significant drop off of oral and documented mentions of food and medicine access and uses for plant-based and animal-based foods and medicines where less than a third (29%) of those nations we examined included statutes providing guidance and regulation as well as enforcement of these regulations. Fourth World Nation statutes may be resolutions, legal codes or governmental regulations expressly stating protection, uses, or access to plants and animals with provisions for regulatory control over use and access by specialized individuals or groups in society.

Indian nations among those we sampled (88%) are nearly unanimous in their dependence on the legal and enforcement mechanisms of the United States government to control uses and access to plants and medicines usually not mentioned in arrangements concerning "environmental protection." Cross-Jurisdictional Access is the label for instances of Fourth World nation references to US Federal government regulations and laws controlling environmental activities within the boundaries of the nation's territory.

If a Fourth World nation's origin story, oral (to text) histories explain, describe and/or prescribe be-

haviors between humans, plants, and animals then we assigned a 1 and if not then a 0. We repeat this process for Constitutional and/or Treaty Provisions, FW Nation Statutes and Cross-Jurisdiction Access. The total then tallies the total nations with those references with a "1" and ignores the "0."

Indigenous Knowledge, State Governments and International State Bodies

Local jurisdictions inside corporate states and the states themselves issue laws and regulations over the uses and access to "natural resources" stressing the economic and aesthetic importance of expected outcomes. Of the 123 states documented by the World Health Organization's study of the "Legal Status of Traditional Medicine and Complementary/Alternative Medicine" researchers found that many states in Africa (notably South Africa, Ghana, Botswana, Kenya and Mali) recognize the role of traditional medicine as a practice by healers, herbalists, and spirit doctors and engage local practitioners as these essential authorities. These states have entered into cooperative arrangements with local communities to establish rules for apprenticeships that are in turn controlled by local practitioners. These practices by indigenous nation authorities in relation to state authorities are rather unusual on the global stage. Of 109 of the world's recognized states we examined, thirty-eight recognize the efficacy of traditional health practices by herbalists, spiritual healers, midwifery, and the formulation of plant-based and animal-based medicines by indigenous traditional medicine practitioners (World Health Organisation, 2001).

While primarily African and Asian and Pacific states¹⁴ recognize the efficacy of traditional medicine, regulating use and access to plant and animal-based medicines is left to local traditional medicine practitioners.

As **Table 2** illustrates summary findings of 109 states' regulation of indigenous plant-based and animal-based foods and medicines identified by the World Health Organization in 2001. We reviewed these states in our study and note that most do not or only partially recognize traditional medicine as an important part of the country health delivery system. It is, however, noteworthy that Fourth World nations play a major role in the delivery of beneficial nutri-

tion and medicines in Africa, South East Asia, and in Western Pacific states.

Beginning in the 1980s multi-lateral states' international organizations began to entertain new conventions to set standards for states' governments to regulate ecological environments and in some instances relations between indigenous nations and states governments to govern the uses and access to plant-based and animal-based foods and medicines.

¹⁴ For this research we found that 17 of 35 African states, 8 of 8 South East Asian states and 7 of 19 Western Pacific States recognized indigenous nation's traditional medicine systems. In the Americas of 15 states reviewed only three recognized traditional medicine systems

Table 2: Sample States' Regulation of Indigenous Plant-Based & Animal-Based Foods and Medicines (n-109)

World Region	Number of States	Recognize TM, Integrate in Health System	Local TM regulation	Recognize some TM, practices and limited integration into Health System	Does not Recognize TM or integrate into Health System
Africa	55	17		25	26
Americas	15	3		5	7
Eastern Mediterranean	12	2		3	7
Europe	20				20
SE Asia	8	8			
West Pacific	19	7		8	4
TOTAL	109	28		41	64

United Nations Conference on Environment and Development

The UN Conference on Environment and Development, held in Rio de Janeiro in 1992 and also known as the Earth Summit or Rio Summit, was the first major gathering of United Nations member states to address the growing issue of environmental degradation and articulate the concepts of sustainability in development and climate change. The summit accomplished several landmark initiatives, some legally binding, including the establishment of the *Framework Convention on Climate Change*, *Convention on Biological Diversity*, and the *Convention to Combat Desertification*. Non-binding documents included *Agenda 21*, *Forest Principles*, and the *Rio Declaration*. Most though not all of the documents produced by the UNCED contain clauses or sections specific to indigenous peoples¹⁵.

Principle 22 of the *Rio Declaration* proclaims:

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

The Forest Principles document mentions indigenous peoples in section 5 § a in Principles and Elements:

National forest policies should recognize and duly support the identity, culture and the rights

of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests.

And again in¹² § d:

Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

Convention on Biological Diversity

Negotiated and concluded by states' governments in 1992, the Convention on Biological Diversity presents guidelines and terms of reference for promoting sustainability in diverse biological niches throughout the world. The Convention's efficacy is dependent on the willingness of states to comply and regulate institutions (businesses, non-governmental organizations,

¹⁵The Convention to Combat Desertification and Framework Convention on Climate Change did not contain any explicit references to indigenous peoples. The FCCC led to the establishment of the Kyoto Protocol, which also excluded indigenous peoples and was highly criticized by them for that among other reasons.

subordinate governmental entities) to protect the diversity of soils, plants, and animals in undeveloped regions. The Convention only tangentially comments on the role of indigenous peoples in the preservation of diverse ecosystems as noted in the preamble:

... the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

Despite the fact that indigenous peoples were not party to the Convention, authors of the principles and guidelines assumed the owners of the biological resources are the “states” themselves and not indigenous nations. Thus the “benefit sharing” sentiment essentially speaks to “state confiscation” of indigenous nations’ plant and animal foods and medicines. This perspective is reinforced by the operable paragraph Article 8 § j that states:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits

arising from the utilization of such knowledge, innovations and practices (United Nations, 1992).

The compromise language in Article 8 § j was negotiated to directly address relevant Fourth World ecological interests, but in reality, the language emerged as an agreement between northern states and the southern states to allow the northern states to gain access to biological resources while providing the means to compensate the southern states (Kuruk, 2003, p. 73). The language in Article 8 § j obscures this compromise with the result of actually undermining indigenous peoples’ authorities given that implementing the article is dependent on laws enacted by the affected states.

The Convention further imposes strictures on Fourth World nations despite referring to “traditional cultural practices” that must be judged compatible with states’ government definitions of conservation and sustainability as indicated in Article 10 § c of the Convention:

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

The final constraint on indigenous nations’ access and uses of traditional food and medicinal plants and animals is composed into Article 18 § 4

The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including

indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

While the states' essentially impose their laws and policies on indigenous nations through the convention, they do not impose enforceable regulatory controls over the states and their subordinate economic and political entities.

Rome Declaration 2009

The *Rome Declaration* of 2009 expresses a determination to preserve, protect and guarantee Fourth World peoples' access and use of wildlife for nutritional, medicinal, and cultural benefits. The representatives to the Global Forum for Peoples' Food Sovereignty, a forum of people's organizations, social movements and NGOs, emphasized participation of indigenous representatives in the UN where decisions concerning food sovereignty are the subject: "Promote the effective participation of Indigenous Peoples and local communities in decision-making processes and the implementation of policies relating to the use of traditional knowledge and biodiversity, amongst many other issues including agriculture, poverty and development." That is a common theme throughout the declarations issued by indigenous peoples (*Declaration of Indigenous Peoples for Food Sovereignty*, 2009). The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) underscores this principle where it states in Article 24:

Indigenous peoples have the right to their traditional medicines and to maintain their health

practices, including the conservation of their vital medicinal plants, animals and minerals. (United Nations General Assembly, 2007)

Neither the assertions by the Global Forum on for Peoples' Food Sovereignty or the UN General Assembly, though laudable in their intent, have the force of law to enforce compliance. They constitute sentiments that could inform the development of enforceable law that either a Fourth World nation or a state could act on to ensure compliance, but the sentiments have not achieved worldwide acceptance.

There are notable differences between the principles articulated in *UNDRIP*, the *Rome Declaration* and the UNCED documents. The UNCED documents include indigenous peoples' concerns primarily for the purposes of supporting ethical commerce, to ensure compensation for the taking of their traditional resources, which may or may not be taken or used with their consent. The *Rome Declaration* and the UNCED statements on the other hand emphasize principles based on indigenous values, i.e. the desire to conserve resources for reasons related to values rooted in ecological sustainability and cultural perpetuation. This exposes the inherent tension in UN approaches toward indigenous peoples that on one hand favor state-based objectives which privileges development over sustainability, and suggests the reinforcement of state policies and laws which may in fact undermine indigenous customary law, and on the other attempts to invest indigenous communities with a measure of power over their own resources. States' responses overall have leaned in the direction of not respecting indigenous peoples despite the preponderance of declarations and

other instruments that appear to forward indigenous concerns.

World Health Organization

The World Health Organization reported in 2017 that eighty-six countries or 45% of the world's countries suffer from high or moderate rates of malnutrition. These countries are located mainly in the continents of Africa, Melanesia, South America, and South Asia. The WHO reported that 2 billion people in the world lack sufficient micronutrients for good health, 155 million children are stunted due to the lack of sufficient micronutrients such as zinc and manganese. Protection of rural environments where indigenous peoples live and harvest their unique food species is a logical prerequisite for health promotion activities¹⁶.

When representatives of Fourth World peoples gathered from six regions of the world in Rome in 2009 the solemn pronouncement was made that “Indigenous peoples will continue to consume our traditional foods. Seeds are what we find along the way, wild animals are our sibling, our myths and our history ...” linked to the health and nutrition of the people. The Rome Declaration claimed “Food is not just agriculture ... it also includes wild plants and animals¹⁷ as the expression of “Indigenous Food

Sovereignty.” (“Declaration of Indigenous Peoples for Food Sovereignty,” 2009).

Fourth World International Declarations

These “globally conceived principles” are echoed in declarations issued by the Saami, Cherokee, Ojibwe, Hawaiians, and numerous other peoples around the world. In each instance declarations such as the *Kari-Oca 1 Declaration (1992)*, *Mataatua Declaration (1993)*, *Indigenous Peoples Seattle Declaration (1999)*, *the Kimberly Declaration (2002)*, *International Cancun Declaration of Indigenous Peoples (2003)*, *Kari-Oca 2 (2012)* and others affirm indigenous rights to access and use of traditional foods and medicines as an “inherent right” of Fourth World peoples. They also assert the right to be free from destructive state policies, to sustained biodiversity, customary environmental management, and to be free from the onslaught of GMO's and other pro-globalization practices (Mander and Tauli-Corpuz, 2006).

Fourth World nations issue these declarations, pronouncements, speeches, and resolutions calling attention to the damages caused to traditional foods and medicines by state and corporation-sponsored contamination of plants and animals with herbicides, heavy metals, and insecticides; yet the remedy

¹⁶ Kuhnlein, H.V. 2003. “Micronutrient Nutrition and Traditional Food Systems of Indigenous Peoples.” Food, Nutrition and Agriculture. No. 32. Rome: FAO. Pp. 33-39 (p. 34)

¹⁷ Rome Declaration (2009) Declaration of Indigenous Peoples for Food Sovereignty. Six Regions: Asia, Africa, Latin America, North America, Northern Europe, the Pacific. 13-17 November 2009. Relevant paragraphs:

19. - We, the Indigenous Peoples will continue to consume our traditional foods. Seeds are what we find along the way, wild animals are our siblings; our myths and our history are linked to the way we eat.

20. - Food is not just agriculture or what men and women produce, but it also includes wild plants and animals, and the relationship between these and Mother Earth. We, as Indigenous Peoples will continue to put our traditional methods of food producing in practice as an act of self-determination.

is for whoever is causing the damage: STOP doing that. But, despite the pronouncements, claims of sovereignty, rights to ancestral lands, demands for access and preservation of traditional foods and medicines, these public announcements have gone unanswered. Even with the preponderance of international states' organization (i.e., UN, IPO, WTO, ILO) declarations regarding indigenous peoples and UN member states' governments have made constitutional reforms conceding the collective nature of Fourth World peoples¹⁸ and their right to ownership of lands, "land-titling procedures have been slow and complex" and in many cases "the titles awarded to the communities are not respected" (UNPFII, 2007). Fourth World nations repeatedly call on the states, international state institutions and agencies of states to provide the acts of preservation and enforcement of the Fourth World "right" to those traditional foods and medicines with the result of symbolic gestures but no enforcement.

The Study and the Theory

Fourth World Theory applied in this study demonstrates its utility when assessing traditional knowledge systems responsible for indigenous customary law particularly when applying the concepts of comparison, relational reasoning, and balance between contending forces. Since customary legal systems emerged in separated and often distinct cultures understanding similarities and differences must rely on these basic concepts. When comparing indigenous customary legal systems with state legal systems the theory's requirement of "balance between contending forces and equality of kind" made it possible to see the distinctions, but also recognize

bridges between the systems that could be developed to reduce and in some instances eliminate the perceived gap. Fourth World Theory is supported by this study and its results.

Summary of Findings- Research Questions

This study was organized based in the concepts of Fourth World Theory to address the problem that while Fourth World nations claim sovereign authority over plant-based and animal-based traditional foods and medicines in accord with their customary laws, these traditional sources of life are fast being destroyed, contaminated or placed out of reach. The overarching question of this study was "What institutional or legal measures can Fourth World nations take in the United States to ensure the application of customary laws to regulate traditional plant-based and animal-based food and medicine uses and access to ensure the long-term health and well-being of these nations?" Four questions are asked in this study to help identify a means for Fourth World nations to realize the sovereignty they claim to protect as well as ensure future access and uses of traditional plants and animals for food and medicine.

Question 1: What native institutions have promulgated regulatory enforcement of laws that incorporate customary law to protect or oversee access and uses of plant-based and animal-based foods and medicines in the United States?

The study took a random sample of American Indian governments to examine origin stories, constitutions, treaties, tribal statutes as well as

¹⁸Argentina, Bolivia, Brazil, Colombia, Guatemala, México, Nicaragua, Panama, Paraguay, Peru, Ecuador and Venezuela

cross-jurisdictional arrangements. While most of the sixteen nations included in the random sample had customary laws spelled out in origin stories or oral traditions recognizing the interconnection between humans, plants and animals—and stating the obligations of human beings to plants and animals—constitutional, treaty, and tribal statutory provisions were either not related to customary laws or when mentioning plants (trees) and animals (deer, fowl and elk) the references pointed to economically motivated benefits or controls or in the case of animals hunting limitations regulated by US federal authority coincident with tribal authority.

Question 2: What are the laws, regulations or customary practices implemented by states' governments such as Ghana, India, Uyghuristan, Senegal, the Gambia, New Zealand and Norway that determine medicinal/pharmacologic uses of wildlife for the benefit of communities?

We decided in this study to evaluate a significant proportion of the states (109) monitored by the World Health Organization (123 of 191 states) for the legal status of "Traditional Medicine and Complementary/Alternative Medicine" (2001) in six of the world's regions to capture a sample of states' policies and practices concerning the regulation of plant and animal access and uses for food and medicinal purposes. African, South East Asian and West Pacific states proved most notably engaged in establishing institutions and laws establishing regulatory regimes, whereas American, Eastern Mediterranean and American states did not engage the subject or did so in only very limited and restricted terms. Several African states began in the 1980s to

institute laws and create governmental mechanisms to facilitate the integration or recognize customary indigenous laws regulating uses and access to traditional plants and animals for food and medicines. These laws and mechanisms frequently give primacy to the customary laws of local communities and traditional food and health practitioners. Full or partial integration of customary uses and access to plants and medicinal sources occurs in some African states (Ghana, Madagascar, Lesotho, South Africa, Mali, and Ethiopia) and in South East Asian states (India, Thailand, Bangladesh), and the West Pacific states (China, Fiji, Japan, Laos, Mongolia).

Question 3: What are examples of indigenous institutional regulation, legislation or customary practice, methods of enforcement and the degree of their success concerning the medicinal/pharmacologic use of wildlife in the United States?

In this study it has become evident that Fourth World nations must extend their cultural practices regulating interactions with plants, animals, and the land that maintain balanced ecosystems into statutory laws that either aid or obstruct corporate state development. Fourth World nations have attempted to seek states' cooperation and collaboration to protect and enhance biodiverse territories, but with little success. States' governments have adopted laws and regulations and they have caused their multilateral organizations to establish conventions such as the 1992 *Convention on Biodiversity*, but these statutory laws have gone unenforced and have not slowed or stopped the capital-driven encroachments. The last possible mechanism that could possibly stop the expansion into and destruction

of Fourth World territories and other biologically diverse territories may well be Fourth World nations acting through their cultural practices while creating and initiating enforceable laws and regulations that impose restrictions to wildlife access and uses on outside jurisdictions. By their own declared terms Fourth World nations must become proactive since the “granting of rights” by states is not working. No state wants to give up its control and least of all to indigenous nations. Indigenous nations that “take” control of their lives meet resistance, but not always from the state.

Engaging in regulation of “cultural material” is about as close as Fourth World governments in the United States get to establish statutory controls based in customary law, but as the Warm Springs Tribe’s legislation¹⁹ indicates, these controls only extend to members of the community. No limitations are imposed or sanctions legislated to control non-member access and uses of “cultural material” much less food and medicine plants and animals. No consideration is given to imposing restrictions on outside jurisdictions (county, state, federal); however, limited restrictions are imposed on people who live in outside jurisdictions particularly in reference to fishing, hunting fowl, deer and elk, and some limited restrictions on environmental damage.

Virtually all such restrictions rely on the US federal government and its regulatory framework applied inside tribal territory. No such measures are consistently or widely used by Fourth World gov-

ernments in conjunction with outside jurisdictions to regulate plant and animal usages in non-reserved ancestral lands. No Fourth World legislation or regulations documented by the randomly sampled 15, nations seek to control access to or usages of traditional plants (except for trees and timber) and animals for food or medicine.

Given the limitations of customary law outside the indigenous community and the extent of plant and animal sources outside the immediate community lands, it becomes clearer that to ensure the quality and diversity of plants and animals for food and medicine indigenous communities must create new methods of regulating access and use to these valuable assets.

Question 4: What plants and animals do indigenous institutions in the United States seek to regulate, legislate or control under customary practices or government statute?

The study revealed that very few if any Fourth World nations through their governments legislate or in any way regulate plant and animal food and medicine usages by statute, with the possible exception of the Ponca and Ho Chunk’s Rights of Nature laws. Aside from these two examples, there appears to be no connection between customary law and the regulatory practices of Fourth World governments. There is some regulatory activity by these governments to preserve or manage forests, lands,

¹⁹ 490.520 Prohibited Acts. No tribal member shall gather, collect, possess, sell, barter, exchange, purchase, offer to sell, purchase or exchange, or transport any cultural material in violation of tribal laws, traditions or customs. Any tribal member doing so shall, in addition to any sanctions imposed by any other applicable law, be subject to such traditional sanctions as may be determined by the Tribal Culture and Heritage Committee. Tribal code for Protection and management of archeological, historical, and cultural resources 490.510, and 490.520

pastures, rangelands and waterways as economic assets. In a few instances salmon fisheries or other fisheries receive attention for regulation to preserve “cultural resources.” The fisheries regulatory frameworks resulted not by Fourth World initiatives as governing bodies passing legislation, but these governments passing legislation in response to US Federal Court decisions recognizing the right of nations to 50% of the fishery.

Other regulation of plants and animals by some Fourth World governments relies on the legal authority of the United States and in some instances of subnational state governments and counties. The various governments that do include regulation of hunting and fishing frequently point to the authority of the US government’s Fish and Wildlife Agency, Environmental Protection Department, US Department of the Interior and the US Department of Agriculture. There is no recognizable connection between these regulations and indigenous customary laws.

The overarching question and the specific research questions leads to the conclusion that the gap between Fourth World customary legal frameworks and state-formulated customary law in international and domestic law is quite wide, but not necessarily impossible to bridge (Kuruk, 2003. p. 72). That the two systems of customary law exist in parallel has been overcome in several parts of the world where Fourth World nations are frequently the dominant

political reality in the state. Where control by the state is in the hands of immigrant descended populations or a single Fourth World nation exercising governing authority without the consent of other nations inside the state, indigenous customary laws are either minimized or even outlawed.

International Institutes such as the United Nations, World Intellectual Property Organization, International Labor Organization, and World Health Organization are engaged in incremental efforts to give space for Fourth World customary law (at least referentially) in international state declarations and legal instruments (WIPO, 2013). The World Intellectual Property Organization established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in 2000 to develop an international instrument to protect Traditional Knowledge and Traditional Cultural Expressions²⁰. The WIPO instrument under consideration offers the possibility of developing an international enforcement regime for customary law as it relates to tangible expressions of traditional knowledge.

Among Fourth World nations in the United States it is clear that while customary law specific to each indigenous society does exist and in many instances enjoys a robust influence providing guidance for human behavior and cultural practice, it is also clear that customary law only incidentally influences the constitutions, treaties, and executive orders that form the basis of each nation’s governing

²⁰This refers to “tangible and intangible forms in which TK and cultures are expressed, communicated or manifested. Examples include traditional music, performances, narratives, names and symbols, designs and architectural forms.” Notably the cultural interactions between humans, plants, and animals are not included as directly relevant to the preservation, protection, access, and uses of plant-based and animal-based foods and medicines.

authority. As an apparent direct consequence of the limited relationship (and in most instances non-existent relationship) between customary law and each nation's statutory expressions, the governing bodies do not exercise governing powers to regulate access to or usages of plant-based and animal-based foods and medicines inside their territories or in ancestral territories. The United States government does not engage in regulation of plant-based and animal-based foods and medicines specific to each nation's cultural life; however, the US government and its subdivisions exercise regulatory controls over land use and controls over plants and animals under environmental laws as well as laws associated with farming and forestry.

Just as there is a gap between customary law and state-formulated customary law there is also a gap between most US-based Fourth nations' customary laws and their statutory laws. There is a significant disconnect between the declarations, pronouncements and proclamations of Fourth World nations' assemblages calling for recognition of "indigenous sovereignty over lands, plants and animals" and the actual practices of Fourth World nations' governing authorities in the United States.

While the gap between customary statutory legal systems is quite wide in United States of America and other states, the gap in states with populations heavily reliant on traditionally used plant and animal foods and medicines is significantly smaller. This is especially the case in South Africa, Kenya, India, Madagascar, Mongolia, Peoples' Republic of China, Bolivia, México, Ghana, and Mali. It is apparent that applying the experience of these other countries may help reduce the gap between legal systems

in the United States and Fourth World nations. A detailed comparative study of Fourth World nations and states' establishing cooperation between legal systems may constructively contribute to effective methods for enforcing cultural laws guiding wild plant and animal use and access for food and medicine.

The evidence is persuasive that to achieve the declared sentiment of "indigenous sovereignty over lands, plants, and animals" merely asking states' governments and institutions to recognize and enforce rules to prevent breaches of indigenous sovereignty is not tenable—given the gap between customary and state legal systems. Furthermore, evidence is rather clear that Fourth World nations' governments in the United States are not actively engaged in implementing the call for indigenous sovereignty through the application of customary law.

Pathways Toward Cultural and Statutory Regulation

In this study it has become evident that Fourth World nations must extend their cultural practices regulating interactions with plants, animals, and the land that maintain balanced ecosystems into statutory laws that either aid or obstruct corporate state development. Fourth World nations have attempted to seek states' cooperation and collaboration to protect and enhance biodiverse territories, but with little success. As noted, international agreements such as the 1992 Convention on Biodiversity have gone unenforced and have not slowed or stopped the capital-driven encroachments. The last mechanism that could possibly stop the expansion into and destruction of Fourth World territories and other biologically diverse territories may well be Fourth World

nations acting through their cultural practices while creating and initiating enforceable laws and regulations that impose restrictions to wildlife access and uses on outside jurisdictions. Fourth World nations must become proactive since the “granting of rights” by states is not working. No state wants to give up its control and least of all to indigenous nations. Indigenous nations that “take” control of their lives meet resistance, but not always from the state.

Given the limitations of customary law outside the indigenous community and the extent of plant and animal sources outside the immediate community lands, it becomes clearer that to ensure the quality and diversity of plants and animals for food and medicine indigenous communities must create new methods of regulating access and use to these valuable supports to life.

CONCLUSION

We conceive of three responses to the call by Fourth World leaders for outside jurisdictions to recognize their sovereignty over lands, plants, and animals to ensure the diversity and sustainability of wild plants and animals for food and medicine. These responses begin by recognizing that customary laws can only survive and benefit the communities in which they are formed if modern-day Fourth World governments accept responsibility in conjunction with traditional knowledge authorities for protecting and regulating plant and animal access and uses. To this point we suggest Cultural Incorporation as a necessary step.

While an approach to instituting regulatory authority within a community is achievable, rendering that authority effective in relation to outside individuals and jurisdictions requires a different level of

institution building. We see that as Complementary Jurisdictional Regulation.

That there are internationally formulated sentiments by state institutions and by Fourth World assemblies discussing and stating principles for traditional foods and medicines suggests the necessity for an international component structured on the basis of a reciprocal relationship between each Fourth World nation and each state government. Many international instruments urge or obligate state’s governments to engage Fourth World nations on the basis of the principle of “free, prior, and informed consent” yet there is no mechanism for accomplishing this as relates to traditional foods and medicines. We at the Center for World Indigenous Studies originated a proposed Intergovernmental Protocol in 2013 specifically designed for states and Fourth World nations to selectively implement and enforce provisions of international instruments concerned with the advancement of traditional knowledge. We think instituting the Intergovernmental Protocol as a mechanism for constructing an enforceable relationship between each Fourth World nation and the respective state(s) overseen by international bodies may further advance a successful framework for advancing customary law as the basis for regulating the use and access to traditional foods and medicine.

Cultural Incorporation

It is apparent that the exercise of indigenous customary law through local cultural practice may be beneficial to ensure biodiversity inside a reserved territory for plant-based and animal-based foods and medicines. But without an internally de-

defined indigenous government enacting an enforceable statute based in customary law through governing agencies, committees, or councils authorized to administer a law, the ability to enforce customary law may not be possible.

Forming traditional foods and medicine societies, councils, or committees comprised of customary law authorities within the community may provide the authoritative base for customary law in the community. The Fourth World government's recognition of such societies, councils, or committees as the expert and authoritative interpreters of customary law is a natural step. The government's ability to enforce laws within the community would need to draft and enact legislation to codify the traditional foods and medicine bodies within the community and provide the institutional enforcement mechanisms to carry out the customary laws as interpreted by the traditional groups. To ensure the supremacy of customary law, the statutes or codes that authorize the policy of recognizing traditional customary law the governmental statute would subordinate any competing policies and laws on a case-by-case basis. The traditional foods and medicine group would have the final decision-making power.

This approach to incorporating customary law into Fourth World governing codes to regulate access and use of traditional foods and medicines is informally observed in some Fourth World communities and on a very limited basis observed formally. Ponca and Ho Chunk's Rights of Nature laws is probably the most direct example of customary law being codified into the nations' formal governing structure, and in the case of Ponca, is enforceable through clearly defined penalties.

Fisheries management is notably one area where Fourth World governments have instituted more formal decision-making power vested in fishermen. Where traditional foods and medicines specialized knowledge is concerned, this approach could ensure four outcomes: 1. This will strengthen and confirm for each Fourth World community the importance and authority of traditional foods and medicine knowledge holders; 2. Institutionalize in the modern-day Fourth World societies in the United States a regulatory regime that ensures the diversity and sustainability of traditional foods and medicines; 3. Securing and affirming each Fourth World governments' sovereign authority to protect and regulate wild plant and animal uses and access for food and medicine; 4. Provide a mechanism within each Fourth World government to engage neighboring governments regarding wild plant and animal uses and access for food and medicine.

Complimentary Jurisdictional Regulation

Fourth World nations are neighbors to city, county, and state jurisdictions that enact laws and regulations that when implemented may encroach on the authority of the Fourth World nation. This is particularly problematic as relates to traditional foods and medicines that are on reserved land, but most problematic when located in ancestral lands outside reserved land. Most Fourth World nations claim or assert as a matter of public policy or as the individual right of members to access traditional plants and animals for food and medicine. Conflict over access and use can and does arise between jurisdictions due to differences between legal and authoritative understanding of traditional rights.

If a Fourth World government has enacted its own laws (Cultural Incorporation) it is well positioned to open a dialogue with neighboring jurisdictions to promote biodiversity and sustainability of plants and animals by negotiating “complementary jurisdictional regulation.” Just as many counties and Fourth World nations have instituted cross-deputation between nation law enforcement and county/city law enforcement, agencies establishing similar agreements concerning access and use arrangements for traditional plants and animals may be beneficial to both sides. Similarly, fishing, hunting, and wild plant harvesting arrangements between Fourth World nations and individual state governments have been formed and may be more widely instituted to incorporate traditional foods and medicine access and use regulation.

Intergovernmental Protocol

Central state governments exercise broad authority with their asserted boundaries as “universal law.” However, such state government powers (whether by a unitary government or a federal government) can and do conflict with the exercise of customary laws in relation to traditional foods and medicines. The United Nations Declaration on the Rights of Indigenous Peoples (UN-2007) and World Conference on the Rights of Indigenous Peoples (UN-2014) announce numerous principles to preserve and advance the rights of indigenous peoples. However, in neither case, (and this is equally true for virtually all other instruments such as ILO Convention 186 and Convention on Biodiversity for example) there is no mechanism for implementing the principles or commitments made or for monitoring compliance, except for the goodwill of each states’ government.

On the matter of traditional foods and medicines there are many claims to principles and commitments to recognize and protect traditional knowledge (in many forms), but no international body or instrument provides for a means to implementation or monitoring.

We suggest that the language in the Joint Statement of Constitutional and Customary Indigenous Governments (Piquot, et al. 2014) contains language and a framework for describing the process of establishing a formal arrangement between each Fourth World nation and respective state’s government to close the gap between customary law and state’s formalized law with respect to the regulation of traditional plant and animal food and medicine access and usage. The principles in various international instruments can provide the conceptual framework for implementing the principle of free, prior, and informed consent in relation to traditional plant and animal access and usages. And, the Joint Statement provides an enforcement mechanism in by incorporating a mechanism for a Third Party Guarantor for each agreement.

When all three levels are formalized, full regulation and protection of biodiverse ecosystems and their plants and animals can be assured. The essential agreement in this overall process is the commencement of Cultural Incorporation at the Fourth World nation level. In essence this is where the fundamental law begins and rests for the other levels.

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This Article may be cited as:

Ryser, R., Gilio-Whitaker, D., Korn, L.E., (2018). “Regulating Access to Customary Fourth World foods & medicines: Culture, Health and Governance.” *Fourth World Journal*. Vol. 17/1 pp. 42-80.

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