

Clinton's Initiative on Race

*The Latest Chapter
in America's
Indian Wars*

**Ward Churchill and
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For the nation, there is [concerning Indians] an unrequited account of sin and injustice that sooner or later will call for national retribution.

—George Catlin, 1844

How is it possible to have a genuine national dialogue on race without even one American Indian on your Advisory Board? With that question posed to noted African-American historian John Hope Franklin, chair of the Advisory Board to the President's Initiative on Race, the board's March 24, 1998, meeting in Denver erupted into an active challenge by a multiethnic alliance determined to question the operating assumptions of the Race Initiative. Implicit in the question was that it is impossible to engage in an authentic dialogue, conversation, debate, or any other discourse on "race" in this country without first acknowledging that the United States was founded—and is in fact maintained—on a racist, colonial project against

indigenous nations that predate the United States by millennia.

As with any interaction between the dominating settler society of the United States and native peoples, the role of semantics in Clinton's Race Initiative has been key. At its inception in June 1997, Clinton chose the slogan "One America in the Twenty-First Century" to describe his program. The thematic assumption of this superficially attractive phrase is that if the United States can only create a "common culture" in coming decades, then the "race problem" that has plagued the country for more than two centuries will be eradicated and the entire society will benefit accordingly. It all sounds so nice when you say it that way.

Unfortunately, the notion of achieving "One America" dovetails perfectly with the thrust of U.S. Indian policy since the beginning. To attain this very goal, the federal government has seized about 98 percent of all native property over the years and presumes to hold the remainder in perpetual "trust."

Along the way, it has sought to "mainstream" indigenous peoples by stripping us of our languages, spiritual traditions, and histories, eradicating our economies, and "reorganizing" our unique forms of governance into those of its own preference. The express objective of all this has been to figuratively "kill the Indian" in each and every one of us, "helping us to overcome the trap of [our own] cultures" so that we can "better ourselves" by simply disappearing into the settler society that has established itself on our land.² Reduced at this point to a mere 0.6 percent of the population, we are always conveniently out of sight, out of mind for everyone else.

One would think that with such illustrious members as John Hope Franklin, Angela Oh, and Linda Chavez-Thompson, the Advisory Board might have addressed such sordid realities rather than replicating them. Instead, when the idea of including an indigenous representative was broached when the panel as formed—the name of renowned Lakota scholar Vine Deloria Jr. was submitted as a likely candidate—it was nixed by the board itself. Reportedly, Franklin himself took the lead on grounds that the initiative on race should be primarily a "Black-White dialogue."³ Deloria's participation, he feared, would inevitably "dilute" the focus of the initiative, "diverting" attention toward indigenous issues and thus away from what he considered "more central" considerations.⁴

Franklin was quickly taken to task for his "Black-White" bias, and both Asian Americans and Latinos gained representation on the board. Even after complaints from various native groups were lodged, however, no American Indian member was ever appointed (as a sop, a native woman was eventually retained as a "consultant"). Hence, from the outset, the Race Initiative's agenda was quite deliberately skewed to discount or ignore Indian issues. Such essential questions as how the United States came to exist, at whose di-

rect expense, and with what enduring consequences were therefore destined to remain entirely unaddressed.

Circling the Wagons in Denver

As the Advisory Board prepared to convene its forum in Denver (following events in Akron, Little Rock, Phoenix, and San Jose), it was clear that the "Indian Question" was going to come to a head. In response to mounting expressions of disaffection on the matter, a meeting with native representatives was arranged in Phoenix. The transcript of the resulting exchange exhibits neither understanding nor appreciation of the historical realities of U.S. relations with indigenous nations on the part of official representatives. When native leaders attempted to raise issues of fundamental importance, organizers brushed over them in order to maintain a self-imposed two-hour time limit. Two similarly frustrating meetings were conducted in conjunction with the Denver protest.

Ultimately, federal organizers elected to go forward with the Denver event without altering the composition of the Advisory Board or taking steps to correct the board's avoidance of tough questions on "Indian affairs." To accomplish this without a major "incident," they set out to subvert the Denver native community, trying to divide it for purposes of pitting one faction against another. When such tactics backfired, fostering an even greater degree of unity among Indians, a last minute attempt was made to placate protest organizers—Presidential Assistant Lynn Cutler was even flown to Denver for this purpose—in some manner short of making substantive changes to the board.

Federal planners had promised a "town hall meeting" in Denver, with ample opportunity for dialogue and debate. Instead, the venue resembled that of a television talk

Some African Americans were disturbed that demonstrators confronted and interrupted Franklin, who, in addition to his scholarly pedigree, carries a solid reputation as a civil rights activist. In response, an indigenous protester explained that if a native person had been named chair of the board and had then excluded African Americans, not only would blacks be justified in protesting but Indians would be obliged to join their protest. Since there seemed to be little reciprocation of this position from the Afro-American community, the native activist continued, "It looks like you folks are selling us out and even attacking us to make sure you get a 'slice of the pie,' at our expense. Well, later for *that*, my 'brother.'"

"From where we stand," the member of the American Indian Movement of Colorado summed up, "it's still *all* stolen pie. And John Hope Franklin? He's just today's version of a Buffalo Soldier." The last reference was to troops in the all-black Ninth and Tenth U.S. Cavalry Regiments who volunteered to expand U.S. colonialism by invading the territories of the Comanches, Apaches, Lakotas, Cheyennes, Arapahos, and Kiowas during the 1870s and 1880s.⁶ In the final analysis, however, the composition of the Advisory Board was only a superficial symptom of a much deeper disease.

A Genuine Dialogue on Race?

An essential characteristic of any genuine dialogue on race between the United States and native peoples would have started with acknowledgment that U.S. Indian law and policy remains rooted in policies of "discovery and conquest"—the government's original "One America" program, if you will—applied with the intent to literally destroy indigenous nations.⁷ Behind the veil of official rhetoric of "utmost good faith" and "fair dealing" lives an ideology of racial

supremacism and colonialism that finds life to this day not only on American Indian reservations but in Hawaii, Guam, "American" Samoa, Alaska, Puerto Rico and the "U.S." Virgin Islands.⁸

In any honest dialogue, it would be imperative to note that long before the first African slaves, and even longer before the arrival of Asians in the Americas, Europeans had already devised a social construction that elevated members of the "white race"⁹ while reducing indigenous people to the point of animal status.¹⁰ Since before arrival of the first "Old World" settlers, corresponding legal rationalizations have been evolved through what one legal scholar describes as the "deployment of historically fictitious doctrines of discovery and conquest to legitimize [Euro-American] power" over indigenous peoples and property.¹¹

If these pretentious fabrications were relegated to the past, none of this discussion would be necessary. Unfortunately, they are very much alive today, not just in law but in every dimension of America's popular culture, from the persistence of degrading sports team mascots to the equally demeaning depictions of native people in films and television, from cartoons and pulp fiction to academic curricula, and on into the halls of Congress and the State Department's current posturing at the United Nations.¹² Any meaningful dialogue between indigenous peoples and the United States will remain impossible so long as such legal doctrines and the perceptions that have metastasized from them remain unchallenged and even revered in American society.

Specifically, the bedrock of U.S. federal Indian law is the 1823 case of *Johnson v. McIntosh*. This opinion, the first in the so-called "Marshall Trilogy" written by Chief Justice John Marshall, set forth the legal fiction that the Christian-European discovery of the Americas vested the English crown, and



Photo by Ben Wheeler.

show, with a special VIP section up front and with preselected questioners and discussants. The whole thing was carefully scripted by White House handlers for maximum positive media exposure.⁵ The general audience was roped off in a darkened section, safely out of camera range. When the event began, the audience patiently listened, first to the welcome and then to a banal analysis of stereotyping by former Denver mayor-cum-transportation

secretary-cum-energy secretary Federico Peña.

As John Hope Franklin, the person most responsible for the composition and actions of the board was introduced, however, the protesters' patience reached an end. About a third of the 700-person audience rose and vocally demanded to know how the board could ignore the concerns of indigenous peoples. The protest was so sustained and vehement that it finally forced forum emcees to surrender the floor to the audience. Indeed, due to the protests, many more of the townspeople in the "town hall" were provided an opportunity to speak than had been intended by Race Initiative organizers.

An important lesson of the confrontation was that a remarkable knowledge gap exists, not only between native peoples and federal government but also between native peoples and other people

of color. During the demonstration, which was led by American Indians but was joined as well by Chicanos, Asian Americans and Euro-Americans, some people of color in the audience condemned the Indians for the disruption. One indigenous protester replied to a distraught African American, "Why are you angry at us, when you should be angry at the racists from the White House who are putting on this dog-and-pony show?"

later the United States, with an unfettered "right" to steal the lands of indigenous nations. As part of his spurious rationale, Marshall used patently false characterizations of indigenous peoples as "heathens" and "fierce savages, whose occupation was war" and "with whom it was impossible to mix."¹³ Through these pronouncements, it is made clear that indigenous peoples are to be excluded from "One America," either through outright extermination, forced removal, or systematic cultural eradication.

As native legal scholar Robert A. Williams Jr., explains, "Johnson's acceptance of the Doctrine of Discovery into U.S. law preserved 1,000 years of European racism and colonialism directed against nonwestern peoples."¹⁴ Again, if such baldly racist doctrines could be confined to the nineteenth century, perhaps there would be no issue. Yet, even today, the Supreme Court views *Johnson* and its illegitimate progeny as "the supreme law of the land."¹⁵ How, precisely, does Bill Clinton expect to commence a conversation on race with indigenous peoples when the entire legal history of the country over which he presides functions on the basis of such "good [and] settled law"?

The fact is that the United States continues to shirk its legal obligations under its hundreds of treaties with indigenous peoples. The Western Shoshone Nation, for instance, is fighting for its very existence in Nevada, mainly because U.S. courts recently upheld the invasion of its territory by U.S. citizens in direct violation of the Treaty of Ruby Valley. Similarly, even the Supreme Court admits that the Black Hills of South Dakota were

blatantly stolen from the Lakota Nation in violation of the 1868 Fort Laramie Treaty. To date, more than \$14 billion in gold alone has been taken from the hills. Yet the Court still seeks to "settle" the issue by paying the Lakotas what the United States claims was a "fair market value" for their land *in the nineteenth century*. The list of such examples could be continued at length.¹⁶

In real terms, the result of such "due process" is that while the settler society receives the benefit of our land and the resources in/on it, more than a third of all native people in the United States live below the poverty line. Unemployment rates on reservations nationally average about 60 percent while, on some, it has run about 90 percent for decades. The poorest locale in the entire United States has been Shannon County, on the Pine Ridge Reservation in South Dakota, for the past forty years. Some 57,000 reservation dwellings—88 percent of the houses on Pine Ridge, for example—were officially deemed "uninhabitable" as recently as 1995.¹⁷

The depth of native poverty is amply reflected in our health data. The infant mortality rate among Indians runs at 167 percent of the national average; the incidence of tuberculosis, 1,175 percent; strep infections, 1,000 percent; meningitis, 2,000 percent; dysentery, 10,000 percent. Influenza and pneumonia kill Indians at a rate three times the national average, hepatitis at eight times. Yet while the average American receives \$3,261 per year for health care, American Indians receive \$1,382.¹⁸ These conditions cannot be explained away by Clinton's or Franklin's opting to ignore them.

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To take it from yet another angle, how is it that Clinton expects to engage in a constructive dialogue with native peoples when his State Department is at the Commission on Human Rights in Geneva *right now* attempting to gut the Draft U.N. Declaration on the Rights of Indigenous Peoples? The United States adamantly refuses to concede that indigenous peoples hold the same collective right to self-determination as all others, to protect our territories from invasion or exploitation by governments or transnational corporations, to maintain our cultures and our legal, political, economic and educational systems. It refuses even to accord us the respect of referring to us as peoples, insisting instead on labeling us as "population groups" or "tribes" or "minorities," entities without standing in international law.¹⁹

Report and Recommendations

Unsurprisingly, given all the above, the Race Initiative continued to employ the government's time-honored vernacular of colonialism in framing every reference to American Indians in its final report and recommendations.²⁰ For instance, the document speaks only of meaningless "government-to-government relationships" between the United States and native peoples (p. 40), although by some 400 duly ratified and still-binding treaties, our relations with the United

States are legally defined as being between *nations*.²¹ The qualitative differences between "government-to-government" and "nation-to-nation" relationships are legion, as the Departments of State and Interior well know.²² U.S. employment of the former term, like its above-mentioned insistence on describing us as "tribes," reflects an attempt to diminish the sovereign and self-determining status of our nations, as well as a denial of the actual historical circumstances that allowed the United States to be formed and expanded in the first place.²³

Moreover, the report relegates the true horrors of U.S. policy exclusively to the past: "[O]ur early treatment of American Indians and Alaskan Natives—is a history of which—no American should be proud" (p. 36); this is said while conspicuously neglecting to mention Native Hawaiians and the Chamorros of Guam.²⁴ Finally—and predictably—the document concludes that contemporary problems between the United States and indigenous people can be remedied by superficial adjustments in the status quo: for example, a "Comprehensive Indian Education Policy" (p. 4); "further study" of Indian "economic development opportunities" (p. 5); promoting Indian access to affordable housing (p. 5); and, of course, support for American Indian law enforcement.²⁵

Nowhere is there so much as a mention of the racism inherent to the politicoeconomic

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and legal structures of the United States. Nowhere is there a hint that the United States first seized the benefit of the bargain in its treaties with indigenous nations and then violated every one of these international compacts.²⁶ Nowhere is it noted that native peoples have been forcibly incorporated into the United States, compelled to accept U.S. citizenship, and subordinated to the political will of the federal government in every aspect of our affairs. Nowhere is there recognition that the United States has engaged, and continues to engage, in a policy of internal colonialism, denying indigenous peoples their right to exercise free and informed consent in political, economic, and cultural matters.²⁷

In the final analysis, there is for native people only one glimmer of light in the recommendations. This is the idea of creating a President's Council to continue the work of the Race Initiative (pp. 88-89). One of the major responsibilities of the council would be to publish a multivolume "White House Monograph on the State of Race Relations in America at the End of the Twentieth Century." If, unlike the initiative itself, this new process were to be truly inclusive and the best indigenous intellects solicited to participate in the monograph project, then at least a first step could be taken toward an accurate appraisal of relations between the United States and the indigenous nations within its purported domain.²⁸

Moving Forward

The American Indian Movement of Colorado, one of the groups organizing the Denver protest, has issued some recommendations of its own. In a five-point plan challenging the president to finally open a meaningful dialogue with indigenous peoples/nations, Colorado AIM proposes that Clinton undertake the following as a good-faith starting point.

- Immediately impanel a joint executive/legislative red-ribbon commission to conduct a comprehensive examination of relations between the United States and indigenous peoples, including those of Alaska, Hawaii, and Guam. At least half the commissioners, as well as the chair, should be native people. The mandate of the commission should, in accordance with the requirements of the United Nations Charter, include a presumption that the international character of relations between the United States and indigenous nations will be restored in a timely fashion.²⁹
- Immediately, through executive order, repudiate (both retroactively and prospectively) the Doctrine of Christian Discovery and Dominion, the Doctrine of the Rights Conquest, and the acquisition of territory under the concept of Terra Nullius or Effective Occupation that have been used, and continue to be used, by the United States to justify its theft and occupation of territories belonging to indigenous nations.³⁰
- Immediately order all members of the Cabinet, especially those in the Departments of State, Justice, and Interior, to endorse, support, and advance until ratification the United Nations Declaration on the Rights of Indigenous Peoples, as it existed in 1993.
- Immediately grant the Presidential Clemency Petition of AIM member Leonard Peltier, prisoner of war, and political prisoner of the United States.³¹
- Immediately terminate all assistance to the government of Mexico until such time as impartial international observers certify that it is no longer using, or allowing to be used by others, military equipment supplied by the United

States in violation of the fundamental human rights of indigenous individuals/peoples in any areas now claimed by Mexico, but especially in the State of Chiapas.³²

Whether this simple proposal will be acted on, only time will tell. To date, there has been no sign that the Clinton administration has even acknowledged its existence. But until it does, there can be no hope of an honest dialogue on race in the United States where native people are concerned. Nor can there be any real hope of anyone else getting anywhere either, for, as legal scholar Felix S. Cohen once observed: "The Indian, like the miner's canary, marks the shifts from fresh air to poison gas in our political atmosphere . . . [O]ur treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall of our democratic faith."³³

Notes

1. Contemporary U.S. trust doctrine was set forth most clearly in *Lonewolf v. Hitchcock*, 187 U.S. 553 (1903). For analysis, see Ann Laquer Estlin, "Lonewolf v. Hitchcock: The Long Shadow," in Sandra L. Cadwalader and Vine Deloria Jr., eds., *The Aggressions of Civilization: Federal Indian Policy Since the 1880s* (Philadelphia: Temple University Press, 1984).
2. See generally, Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984); David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University Press of Kansas, 1995).
3. Michael Fletcher, "Initiative on Race Ends Short of Its Soaring Goals," *Washington Post*, September 17, 1998.
4. Vine Deloria Jr., personal conversation with G. T. Morris, February 25, 1998.
5. An actual script, developed by the White House staff, was found after the event and is in the authors' files.
6. See William H. Leckie, *The Buffalo Soldiers: A Narrative of the Negro Cavalry in the West* (Lincoln: University of Nebraska Press, 1967).
7. Steven T. Newcomb, "The Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Dis-

covery, *Johnson v. McIntosh* and Plenary Power," *New York University Review of Law and Social Change* 20 (2) (1993); Robert A. Williams Jr., "Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in Narrative Traditions of Federal Indian Law," 31 *Arizona Law Review* 237 (1989).

8. Ward Churchill, *Since Predator Came: Notes from the Struggle of American Indian Liberation* (Littleton, CO: Aigis, 1995), 304-305.

9. The term "white race" as used here was invented and utilized by Europeans for their own purposes, most notably to "prove" their inherent, natural superiority over other "races." The biological concept of "race" has been roundly criticized and stands in disrepute. See Theodore W. Allen, *The Invention of the White Race: Racial Oppression and Social Control*, 2 vols. (London: Verso Press, 1994, 1997); Michael Omni and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, 2d ed. (New York: Routledge, 1994); Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA: Harvard University Press, 1981); Ian Haney Lopez, *White by Law* (New York: New York University Press, 1995); Cheryl Harris, "Whiteness as Property," 106 *Harvard Law Review* 1707 (1993).

10. Robert A. Williams Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), esp. 151-232.

11. David E. Wilkens, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997), 34.

12. Ward Churchill, *Fantasies of the Master Race: Literature, Cinema, and the Colonization of American Indians*, 2d ed. (San Francisco: City Lights, 1998). Also see the essay "Let's Spread the Fun Around: The Issue of Sports Team Names and Mascots," in Ward Churchill, *From a Native Son: Selected Essays in Indigenism, 1985-1995* (Boston: South End Press, 1996).

13. 21 U.S. (8 Wheat.) 543 (1823). The other two opinions in the "Trilogy" are *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831) and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 551 (1832).

14. Williams, *American Indian in Western Legal Thought*, 317.

15. Wilkens, *American Indians and the Supreme Court*, 309-310.

16. Churchill, *Predator*, 107-166.

17. Teresa L. Ammott and Julie A. Matthaei, *Race, Gender, and Work: A Multicultural History of Women in the United States* (Boston: South End Press, 1991), 59-61; Rennard Strickland, *Tonto's Revenge: Reflections on American Indian Culture and Policy* (Albuquerque: University of New Mexico Press, 1997), 53.

18. "Regional Differences in Indian Health," 1996 *Indian Health Service Report* (Washington, D.C.: Department of Health and Human Services, 1996); Strickland,

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Tonto's Revenge, 53; "Clinton Backs Indian Health Financing," *Rocky Mountain News*, January 16, 1999.

19. "Commentary: Further Motion by State Department to Railroad Indigenous Rights" and "Stop Making Sense: State's Distortion of U.S. Indigenous Policy," *Fourth World Bulletin* 6 (1998):9 (Fourth World Center for Study of Indigenous Law and Politics, University of Colorado at Denver [available: <http://www.cudenver.edu/fwc/>]).

20. *One America in the 21st Century: Forging a New Future: The President's Initiative on Race, the Advisory Board's Report to the President* (Washington, D.C.: White House, September 18, 1998).

21. For the texts of 371 of these instruments, see Charles J. Kappler, comp., *Indian Treaties, 1778-1883* (New York: Interland, 1973). It should be noted that the federal government is prohibited by Article 1, Section 10 of the U.S. Constitution from entering into treaties with entities other than fully sovereign nations. Each U.S. ratification of a treaty with an indigenous people thus conveyed formal recognition by the United States that that people was indeed "a nation, like any other." Under international law, such recognition, once conveyed, cannot be unilaterally rescinded; Robert T. Coulter, "Contemporary Indian Sovereignty," in National Lawyers Guild, Committee on Native American Struggles, *Rethinking Indian Law* (New Haven: Advocate Press, 1982), 117. He cites M. Whitman, *Digest of International Law* 81 at 2 (1963) on this point.

22. There are "government-to-government" relationships between the United States and its constituent states, for example, as well as between state governments and their various counties and municipalities. These are obviously different in kind from "nation-to-nation" relationships.

23. For a succinct overview of this history, see Vine Deloria Jr., "Self-Determination and the Concept of Sovereignty," in Roxanne Dunbar Ortiz and Larry Emerson, eds., *Economic Development in American Indian Reservations* (Albuquerque: Native American Studies Center, University of New Mexico, 1979).

24. On those left out, see Haunani-Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i* (Monroe, ME: Common Courage Press, 1993).

25. Similar groups have been offering essentially the same set of suggestions at approximate ten-year intervals throughout the twentieth century. For an early example, see Lewis Meriam et al., *The Problems of Indian Administration* (Baltimore: Johns Hopkins University Press, 1928). This was the report of the "Committee of 100" convened to make recommendations on Indian policy in the mid-1920s.

26. On the pattern of treaty violation, see Donald Worcester, ed., *Forked Tongues and Broken Treaties* (Caldwell, ID: Caxton, 1975).

27. Robert K. Thomas, "Colonialism: Classic and Internal," *New University Thought* 4 (4) (Winter 1966-1967).

28. Contributors might include Coulter, Deloria, Dunbar-Ortiz, Newcomb, Strickland, Trask, Wilkins, and Williams (cited herein), as well as Terry Allen, Carter Blue Clark, Duane Champagne, Donald A. Grinde Jr., Troy Johnson, Lilikala Kame'e'e'lehiwa, Winona LaDuke, Barbara Mann, John Mohawk, Linda Pertussati, Luana Ross, George Tinker, Mililani Trask, and Robert Allen Warrior (in addition to the present authors).

29. This is hardly a new idea. It was submitted to the Nixon administration as one point of a twenty-point program prepared by the Trail of Broken Treaties alliance in 1972; for text and analysis, see Vine Deloria Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence*, 2d ed. (Austin: University of Texas Press, 1985).

30. Such doctrines have long been null under international law—in any event, "rights of conquest" has been since the Kellogg-Briand Pact of 1928 (and certainly since Nuremberg), and *Terra Nullius* since the 1975 World Court opinion on *Western Sahara*.

31. See generally, Peter Matthiessen, *In the Spirit of Crazy Horse: The Story of Leonard Peltier*, 2d ed. (New York: Viking, 1991).

32. See generally, John Ross, *Rebellion from the Roots: Indian Uprising in Chiapas* (Monroe, ME: Common Courage Press, 1995).

33. Felix S. Cohen, "The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy," *Yale Law Journal* 62 (1953):390.