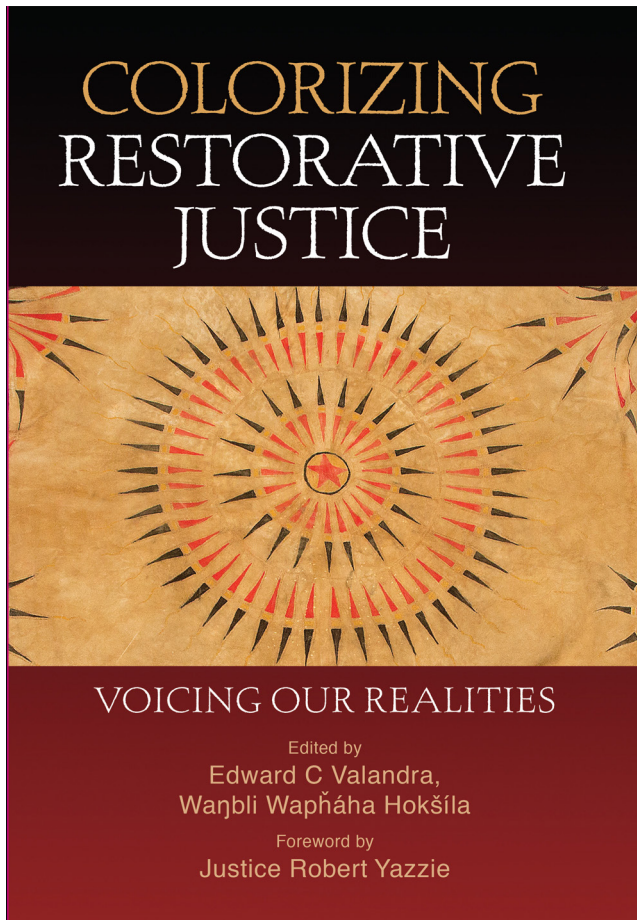


Undoing the First Harm: Settlers in Restorative Justice

Edward C Valandra, Waṅbli Wapḥáha Hokšíla

An essay included in the volume



Living Justice Press
St. Paul, Minnesota

Colorizing Restorative Justice is a much anticipated and mighty act of truth-telling! These stories arise from the lived experiences of a broad range of seasoned, loving restorative justice practitioners of color, mostly women, who fiercely unearth realities about the devastation caused by white practitioners who unthinkingly work without a racial or social justice consciousness. Required reading, **Colorizing** is a wake-up call for European-descended restorative justice practitioners.

Fania E. Davis, African-descended, PhD, JD, author of *The Little Book of Race and Restorative Justice*, long-time racial and social justice activist, and restorative justice practitioner

The journey of the modern RJ movement, now decades old, sadly, as a collective, has for the most part missed, watered down with romanticism, and in many cases intentionally and sometimes unintentionally excluded the voices represented here.... It is my hope they land on ears willing to hear their wisdom that will enrich and perhaps even transform the RJ journey, even when the wisdom is uncomfortable.

Harley Eagle, member of the Wapháha Ská Dakhóta First Nation, facilitator and consultant in, among other things, anti-racism, decolonization, and trauma-informed practice

In my over forty years as a teacher, researcher, lawyer, and social activist, ... I have read scores of books addressing issues of race and justice. This book stands out amongst all these works. It is unique in its penetrating exploration of the lived experience of people of color involved in restorative justice, coupled with an excellent analysis of the larger colonial structures that perpetrate inequality and racism.... [T]his is a must read not only for those in restorative justice, but also for others, like myself, who address issues of race and justice.

Charles E. Reasons, White settler, PhD, JD, Law and Justice Professor at Central Washington University, author-activist on social and legal problems in the US and Canada

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Chapter 18

Undoing The First Harm: Settlers in Restorative Justice

Edward C Valandra, Waṅbli Wapǎ́áha Hokš́íla

A Space for Our Realities

When Living Justice Press (LJP) decided to publish *Colorizing Restorative Justice (CRJ)*, restorative justice (RJ) experienced a nuanced, but profound shift in its color. This shift will become more pronounced in the United States (herein the States) when no particular racial group numerically dominates. However, even a minority racial group can wield political, economic, and social power over others when it controls a state's apparatus, as happened in apartheid South Africa, British-colonized India, and pre-Civil War South Carolina. For example, the US national legislature and its fifty state legislatures are disproportionately males who are White and settlers. These governing bodies are sites of power in which White settlers have turned their fictions and fantasies of racial entitlement into social realities for People of Color (POC). The school-to-prison pipeline and the disproportionate number of non-Whites incarcerated, many of whom are on either probation or parole, reveal how Whites racially criminalize non-White bodies. Hence, the Black Lives Matter (BLM) movement contests White subjectivities about Black Peoples.

Similarly, Whites' pushback on the Deferred Action for Childhood Arrivals (DACA) program primarily impacts non-Whites south of the "US border." Whites perceive these People of Color as uncivilized "hordes" (rapists, drug dealers, etc.), which instills in Whites unwarranted fears of becoming the hordes' victims. These fears have made politically popular the call for Whites—and People of Color who drink White-settler Kool-Aid—to chant "Build the Wall" at rallies where White settlers predominate.

But as much as unfounded fantasies, especially settlers' fantasy of entitlement, drive Whites' pushback against any actions that benefit POC and Indigenous Peoples, POC's and Indigenous Peoples' resistance—often by simply asserting basic human rights—unsettle Whites and their fantasies. The

Očhéthi Šakówiŋ Oyáte's resistance to the Dakota Access Pipeline (DAPL) and the Native Hawaiians' Sovereignty Movement demonstrate this unsettling effect. With respect to Native Peoples, settlers' fantasies position Whites as being the "true" North American landowners, when in reality they continue to illegally occupy lands they stole from us. For these reasons, dedicating a book to communities of color is historically transformative, not only for POC but for settlers as well. Most settlers and their apologists struggle with either authentically engaging or intimately knowing non-White communities.

Of course, *CRJ* concerns community transformation, but it is also about restoring community. The RJ literature is clear: those harmed must have a

The RJ literature is clear: those harmed must have a space to tell their story, and CRJ is one such space.

space to tell their story, and *CRJ* is one such space. Hearing from and listening to those who are suffering or have suffered harm, whether individually or through structural marginalization, is RJ's core value—is it not? In this space,

I want to talk about settler colonialism and its structure from the perspective of someone whose people, the Očhéthi Šakówiŋ Oyáte, is subject to its ongoing harms.

Why structural marginalization? In discussing structural marginalization and its harms to Indigenous Peoples, I want RJ's rank and file to know that these harms are being done in their names, which means they cannot ignore it. Without this awareness, RJ's core values and principles, which theorists and practitioners pride themselves in, become little more than tools in the service of settler colonialism. Because settler colonialism (a structure that harms) and RJ (a framework that addresses harms) intersect in settler states, I challenge RJ theorists and practitioners alike to address this intersection with another fundamental RJ principle: *the mandate to undo harm caused by wrongdoing*. This challenge to settlers and others in RJ is what I call "Undoing The First Harm."

Understanding this challenge that I, as an Indigenous person, lay before the RJ movement requires establishing a nomenclature or common understandings, some of which would be familiar to RJ, some not. Structural marginalization, for example, includes recognizable themes, such as institutional racism (e.g., disproportionate disparities between races, such as incarceration), a stained-glass ceiling (e.g., economic inequity between racialized gender), American nativism (targeted versus favored immigrants), and other core concepts of critical thinking. *CRJ*'s call for abstracts assumed a level of critical awareness equal to my challenge.

Communities of color have historical and contemporary experiences that differ from White communities, as recent actions led by Indigenous Peoples and People of Color show. Both systemic racism and colonization account for these disparities in experiences. The most disconcerting dispar-

Though the field makes repairing harm from wrongdoing a fundamental tenet, acknowledging RJ's Indigenous antecedents (e.g., Circles) is not the same as addressing or undoing settler colonialism's First Harm.

ity is the sanctioned, structural violence ubiquitous throughout communities of color.¹

Yet the RJ movement, while doing some good in many areas, has not produced a critical awareness about race, as these *CRJ* chapters attest. When Indigenous Peoples become involved with RJ, what has seemed obvious—a commitment to repairing harms—becomes less so. Though the field makes repairing harm from wrongdoing a fundamental tenet, acknowledging RJ's Indigenous antecedents (e.g., Circles) is not the same as addressing or undoing settler colonialism's First Harm.

Settler colonialism's literature provides disturbing insights as to why RJ sidesteps this harm in particular. Most notably, RJ counts settlers among its numbers, some of whom are considered its leaders. Yet, almost all Whites neither think of nor see themselves as settlers on a daily basis. Whites attending a 2018 restorative practices conference, for example, were unsettled when I used the term “settler” to describe them and to discuss what their settler identities mean for my people. My allies who attended breakout sessions or talked with the attendees at this conference related to me that White men were angry, White women cried. Their anger indicates to me that even fewer Whites in RJ comprehend what settler identity means for Indigenous Peoples—not only in the past but now and going into the future.

In “Beyond White Privilege: Geographies of White Supremacy and Settler Colonialism,” Anne Bonds and Joshua Inwood, both White professors, explain why settlers become unhinged when Indigenous voices deconstruct their settler identity:

Settler colonialism focuses on the *permanent* occupation of a territory and removal of indigenous peoples with the express purpose of building an ethnically distinct national community [e.g., Americans, Canadians, Australians, New Zealanders]. Because of the permanence of settler societies, *settler colonization is theorized not as an event or moment in history, but as an enduring structure requiring constant maintenance in an effort to disappear indigenous populations*. Settler colonialism is therefore premised on “logics of extermination” as the building of new settlements necessitates the eradication of indigenous populations, the seizure and privatization of their lands, and

the exploitation of marginalized peoples in a system of capitalism established by and reinforced through racism.²

Here, Bonds and Inwood refer to a foundational understanding that has become decolonization literature's baseline since the 1990s: settler colonialism is "a structure, not an event." This structure secures settler "permanence" by disappearing Indigenous populations, which is discussed later in this chapter. Because settler colonialism is how settlers live on Indigenous lands every day, the structure through which it makes invasion and land theft "permanent" requires constant maintenance, something settlers perceive as necessary to secure a feeling of certainty. Settler identities are a prime vehicle for doing this.

Does settler colonialism's structural genocide fit with restorative (or any) justice? Among settlers in RJ, what commitment is there to interrupting this

Among settlers in RJ, what commitment is there to interrupting this pattern of harm and repairing it? The issue is ever-present.

pattern of harm and repairing it? The issue is ever-present. For instance, not only does our physical presence remind settlers of their theft of—and illegal occupation in—our homelands, but it also raises challenging questions about the fundamental relationship of settlers within RJ to restorative justice's philosophy, core values, and

principles. Trevor Noah, Black South African and host of *The Daily Show*, noted this disconnect around racial relationships when he observed that the Second Amendment is a "Whites Only" right.³ Similarly, does RJ apply to White settlers only and not to us? Whose harms matter and warrant repair? From Indigenous Peoples, then, comes a decentering question for RJ: "Other than adopting Circles or paying token homage to Indigenous Peoples' influence on RJ, what is RJ doing to undo The First Harm perpetrated against Indigenous Peoples?" No doubt, such an honest Native question will rattle settlers in RJ, as it should. If you have read this far, and you are truly a believer in justice, I encourage you to continue reading.

Contextualizing The First Harm

A few years ago, I visited the Highland Park area in St. Paul, Minnesota. While there, I read a realtor's advertisement in a community paper that unmarks settler colonialism's unmarked, yet normative structure. The real estate agent asked a colleague, "Do you know when the first land claim was in Mendota [MN]?" The colleague answered, "I believe that would be Constant Le May's farm in 1849." To the uninitiated who reads the advertisement, the question poses little more than local community trivia, an interesting ad gimmick, and

not worth the effort to retain it—or so it seems. However, deconstructing settler subjectivities—i.e., settler attitudes, assumptions, personal feelings, tastes, and opinions—reveals that these subjectivities are thoroughly embedded in millions of such ostensibly innocuous exchanges that, in reality, maintain settler colonialism and its structure. And through these exchanges, settler identities are formed and reinforced.

“The first land claim” narrative is a typical, i.e., unmarked, yet normative subjectivity. It suggests to contemporary settlers that their progenitors possessed a land claim superior to all others, including Indigenous Peoples. Moreover, this narrative invokes commonsense understandings that only settlers self-identify with. Le May, a White immigrant who worked for a fur trading company located on the “frontier’s fringes,” was one of several settlers who, at the US’ discretion, lived within a US military reservation or outpost illegally established in my homeland.⁴ Like all settler land claims in the states, Le May’s Mendota land claim is not as innocent as the advertisement would like us to believe. With US acquiescence, not only did he steal land—The First Harm—that rightfully belongs to the Očhéthi Šakówiŋ Oyáte, but also his land claim, one of hundreds of thousands in Minnesota (as well as in the other forty-nine states), eventually resulted in my people’s forced, physical removal from Minnesota.⁵

Of course, stealing land that rightfully belongs to someone else and then framing the theft as a legitimate land claim requires settlers to rationalize the harm(s) they commit. Constructing fictional or fantasy entitlements does the job. One such fictional entitlement is the Discovery Doctrine (as in “Columbus Discovered America”). Infamous as this fiction is, the Discovery Doctrine is seldom thoroughly, much less critically, discussed in White society. Only in rarified circles such as in colonizer courts, or in certain academic courses such as property law, “Federal Indian law,” or in academic fields such as Native Studies is it discussed. Settler states founded on this doctrine normalize the idea that settlers are the true owners of Native lands. In *American Indians*, Jack Utter, federal Indian law historian, writes:

Stealing land that rightfully belongs to someone else and then framing the theft as a legitimate land claim requires settlers to rationalize the harm(s) they commit.

National celebrations of European arrival in the Western Hemisphere cause resentment among many American Indians who are aware of the so-called “doctrine of discovery.” *This doctrine is the European-invented legal theory upon which all claim to, and acquisition of, Indian lands in North America is ultimately founded.*⁶

This particular settler narrative is not about “discovery” but is about Whites rationalizing their theft of Indigenous Peoples’ land.

This widely celebrated idea flies in the face of factual reality: Indigenous Peoples, by virtue of our physically being in our respective territories before White invasion, remain the rightful, permanent landowners. Structural colonialism, then, keeps the lie going. It invokes the settlers’ Discovery Doctrine in a variety of ways that justify their privatizing or nationalizing land they continually steal from Indigenous Peoples. Hence, this particular settler narrative is not about “discovery” but is about Whites rationalizing their theft of Indigenous Peoples’ land.

Not surprisingly, the US Supreme Court’s Chief Justice John Marshall—a White male settler who also owned slaves and speculated in selling stolen Indigenous land—first employed this doctrine in an 1823 court case. That case rid settlers of ever having to confront the reality that Indigenous Peoples possess absolute title to their homelands.⁷ Ironically, the court case did not directly involve a land dispute between Indigenous Peoples and White settlers; instead, the dispute involved two White settlers, both of whom claimed ownership of the same Indigenous land.⁸ One settler, Johnson, acquired land by purchasing it directly from Indigenous Peoples; the other, McIntosh, acquired it from the United States. Though we still own absolute title to the North American continent since time immemorial, with a pen’s stroke, Chief Justice Marshall ignored this reality. His ruling in favor of McIntosh meant that, as far as US settler law is concerned, Indigenous Peoples do not own any land outright in the continent, and Indigenous Peoples cannot do what we want with our land.

Thus, all the nations of Europe, who have acquired territory on this [North American] continent, *have asserted in themselves*, and recognized in others, the exclusive right of the discoverer to appropriate lands occupied by the Indians. Have the American States rejected or adopted this principle?⁹

Of course, White Justice Marshall answered his own question in the affirmative. When the White settlers defeated their British cousins and negotiated a subsequent peace treaty with them, the (now self-identified) White American settlers presumed to have acquired from the British the lands the British stole with no justification but the Discovery Doctrine. Hence, Marshall’s contrived legal fiction elaborates how White settlers stole Indigenous lands.

By this treaty [of Paris 1783], the powers of government, and the right to the soil, which had previously been in Great Britain, passed definitely to these states. . . .

They [White American settlers] hold, and assert in themselves, the title by which it was acquired. . . . [T]hat discovery gave an exclusive right to extinguish the Indian title of occupancy; . . . and gave also a right to such a degree of sovereignty [over Indians and their land], as the circumstances of the people [of the US] would allow them to exercise.¹⁰

Although the Discovery Doctrine is widely discredited for its extreme racist and colonizing assumptions, its legacy of land theft remains in force. Steven T. Newcomb, Indigenous law scholar and author of *Pagans in the Promised Land*, decodes a Christian character embedded in the doctrine, which explains why its structural perseverance is so bone-deep and enjoys uncontested popularity amongst present-day settlers:

When forms of reasoning found in the Old Testament narrative are used to reason about American Indian lands, the result is that Indian lands metaphorically become conceptualized—from the viewpoint of the United States—as the “promised land” of the “chosen people” of the United States. . . .

There is ample evidence to show that prominent leaders of the United States have applied the Chosen People–Promised Land cognitive model as a way of thinking about and experiencing the identity of the United States, both in relation to the lands of the North American continent and, by means of words such as *pagan*, *heathen*, and *infidel*, in relation to American Indians. Once one begins looking for evidence of the Chosen People–Promised Land model in the historical record, it seems ubiquitous.¹¹

Without the tremendous cultural energy expended in sustaining this fictitious Chosen People–Promised Land narrative—or as Newcomb labels it, the Doctrine of *Christian* Discovery—the settler society that I am so familiar with could not maintain itself. Indeed, our mere presence in North America pierces through the settlers’ discovery facade and its derivatives.

However, whenever Indigenous Peoples intentionally expose settlers’ illegal presence in North America, we do so at great risk. For example, our 1973 Wounded Knee II stand against our colonization and the Spirit and Sacred Stone Camps’ 2016 actions against the Dakota Access Pipe Line (DAPL) show that we can expect settler retaliation in the form of structural violence.

Our settlers do not disappoint either. They militarize law enforcement and utilize private security to protect their ill-gotten property against the rightful owners. Settler legislators have since proposed post-NO₂DAPL punitive measures that target future Indigenous decolonization actions.¹² And the settlers' sitting president approved executive actions (the Discovery Doctrine's descendants) to proceed with

Certainly, twenty-first-century settlers—those who benefit from either private property or public lands—cannot deny that they remain the Discovery Doctrine's primary, if not sole, beneficiary.

illegal pipeline development within occupied, treaty-recognized Indigenous land.¹³ These actions underscore how settler colonialism takes, as Newcomb argues, ubiquitous form within settler structures. Certainly, twenty-first-century settlers—those who benefit from either private prop-

erty or public lands—cannot deny that they remain the Discovery Doctrine's primary, if not sole, beneficiary.

The structures supporting settler colonialism, while simultaneously colonizing Indigenous Peoples into oblivion, are evident in settler states. For most settlers and their apologists, being a settler has a positive subjectivity, especially in settler states such as Canada, Australia, New Zealand, and particularly the United States—or CANZUS for short. In other words, the structures that socially, politically, economically, and “legally” give settlers their “permanence” are not only external; integral to settler colonialism's persistence is the settlers' subjectivity or “structure of feeling.”¹⁴ First among these internalized structures of feeling among settlers is unexamined entitlement to Indigenous land. This unexamined entitlement and other settler fantasies have no basis in fact, let alone reality, yet their social consequences are lethal.

To ensure that new generations of settlers embrace these fiction-based subjectivities, like the Discovery Doctrine, settlers socialize their people from cradle to grave to believe that they are entitled to this continent, even though they clearly are not. For example, in February 2018, while passing through a South Dakota White border town, I purchased a children's coloring book, “Taming the Prairie: Pioneers of the Great Plains.”¹⁵ Other than the three less-than-gratuitous but generic mentions of “Native Americans,” *the* settler experience is central. Homesteading, for example, is portrayed positively. The narrative introduces the 1862 *Homestead Act* that enjoins settlers to come to the Great Plains and establish themselves as private property owners:

Under this Act a person over 21 years of age could have 160 acres of undeveloped land for only an \$18.00 fee. He had to live on the land for 5 years, build a home and make improvements before he could own it.¹⁶

This narrative is quintessential settler poppycock. Undeveloped land? Establishing a five-year residency? Build a home? Make improvements? These last three criteria are prerequisites for a settler to convert stolen, Indigenous homeland into private property after the US settler state “nationalized” our territory—all-out land theft. Not surprisingly, this settler narrative never mentions Indigenous Peoples as *the* permanent, original landowners, except to say in the first mention—and a conditional one at that—that the first people in the Great Plains “were likely Native Americans” and then to associate us with “untamed” land. The settler narrative does not teach settler children that we Indigenous Peoples have lived here for many thousands of years, built our homes here since time immemorial, maintained the buffalo commons and a thriving, diverse, ecosystem, and never turned the Great Plains into a dust bowl within a few decades and a national sacrifice zone due to radiation and other toxic poisoning within a century.

Of course, settler subjectivity becomes meaningless without mentioning hardship and labor, and, true to form, the settler children’s book drives home this point. It depicts White settlers overcoming hardships with their labor. Presumably, this settler experience singularly justifies settler actions of expropriating land from its rightful owners, Indigenous Peoples. In her work about settler colonization, Eva Mackey, a settler Canadian professor, explains why repeating this generic settler narrative is crucial for settlers: it clothes their lies and myths as certain facts.

When I began my interviews with members of CKCN [Chatham-Kent Community Network], people often introduced themselves by telling me stories of how long their families had been in the area and what kind of hard work they had done to settle the land and build their homesteads; . . . Each person provided me what I think of as a personalized settler genealogy of land possession and labor.¹⁷

For settlers (historic, contemporary, and future), their stories provide an emotional base of attachment or belonging to the land in the form of private or state—never as Indigenous—property. This land-possession narrative, bolstered by a labor genealogy, prompts settlers’ irrational reaction of anger whenever Indigenous Peoples assert either a land claim (settler’s angry response: “Go back to where you came from!”) or treaty-based rights, such

Settler literature inculcates a fictional and fantasy entitlement that not only is undeserved but also has deadly consequences for Indigenous people.

as fishing (settler's angry response: "Spear a pregnant Native woman, save two fish") or both. Again, settler literature inculcates a fictional and fantasy entitlement that not only is undeserved but also has deadly consequences for Indigenous people.

Mackey accounts for settlers' reactive anxiety toward Indigenous Peoples. Contrary to their benign depiction of us in their literature, settlers know settlement's unspoken, ultimate function—the disappearing of Indigenous Peoples:

Yet, this sense of belonging and attachment to home, to the land, can also be mobilized to defend expectations of entitlement and certainty in settler possession of land and *contribute to legitimizing Indigenous dispossession*. Again, it is labour, in Locke's view, which turns wilderness into private property. By stressing the long years of labour that it took to make the land into their home, they implicitly make a claim of possession through labour.¹⁸

The connections between the settler children's coloring book and Mackey's analyses of settler subjectivities merge in settler daily life. For example, in South Dakota, a state internationally known for its Native-hating, the personal story of Dennis Daugaard, the state's former White governor, follows this settler narrative and, as we shall see, repeats its deadly consequences for Indigenous Peoples.

Dennis Daugaard grew up . . . on his family's dairy farm, which his grandfather purchased in 1911 after they emigrated from Denmark. . . . Daugaard moved back to South Dakota in 1981 to marry his high school girlfriend. . . . Two years later, they purchased the Daugaard family farm site where, over the next year, they built their own home.¹⁹

The Daugaard narrative contains settler colonialism's structural elements, starting with a European emigrant (White) settler genealogy that omits Indigenous Peoples. Serving to normalize land theft, the narrative justifies with labor a settler's illegal occupation of Indigenous land. Of course, Daugaard's narrative exemplifies what Emma Battell Lowman and Adam Barker describe as one of settler colonialism's three pillars: transcending colonialism.²⁰

Serving to normalize land theft, the narrative justifies with labor a settler's illegal occupation of Indigenous land.

That is, Indigenous peoples are eliminated and the presence of this new people—the settler society—becomes so deeply established that it is naturalized, normalized, unquestioned and unchallenged. As Jodi Byrd has shown, settler colonialism is a type of colonialism that “succeeds” not by preserving a given colonial order, but by superseding it. In order to obscure the violence of persistent invasion and dispossession, the histories of the new people are whitewashed. Sanitized emphasis on practises of benevolent or philanthropic colonialism . . . is used to overwrite the realities of how the new nation was formed through warfare, terrorism, subjugation, and theft.²¹

Moreover, as with so many Whites’ settler narratives, Daugaard’s is not benign but structurally harmful, especially when he acts on or evokes his settler identity. As the South Dakota governor, Daugaard introduced and eventually signed into law a state bill that only settlers would, of course, appreciate. To those untutored in settler-speak, the law’s interpretation comes across clinically.

SB 176 prohibits individuals from blocking highways and interfering with traffic and allows the South Dakota Department of Transportation to temporarily establish no parking zones. The new law also gives the [SD] Chief Justice authority to temporarily license outside attorneys to assist counties with an increase in criminal cases.²²

Daugaard invokes the settler spin when he says that the law is “to protect those who want to peacefully exercise their First Amendment rights, as well as the people who reside in and travel through our state.”²³ The law imposes a settler understanding of what constitutes “public safety,” all the while promoting harms against Indigenous Peoples.

First, when settlers employ their laws, like SB 176, their fictional subjectivities—as in Oh! My! God! Indians!—come out. A SD governor can establish public safety zones (read: pipelines and other development infrastructure rights-of-way) that limit frontline actions to not more than twenty people without subjecting them to arrest. Second, this state law is aimed at Indigenous Peoples who dare defy settler colonialism’s lethal excesses, such as the Keystone XL (KXL) pipeline (figure 1). Recall that, based on treaty, the KXL pipeline is a criminal trespass, since my nation has *never given its consent* for settlers to build a pipeline across our homeland to transport toxic tar sands from Canada, let alone allow them to become “permanent” residents.

In short, the egregious harm that my people suffer at the hands of settlers is that of being a national sacrifice peoples. The Indigenous Question for the

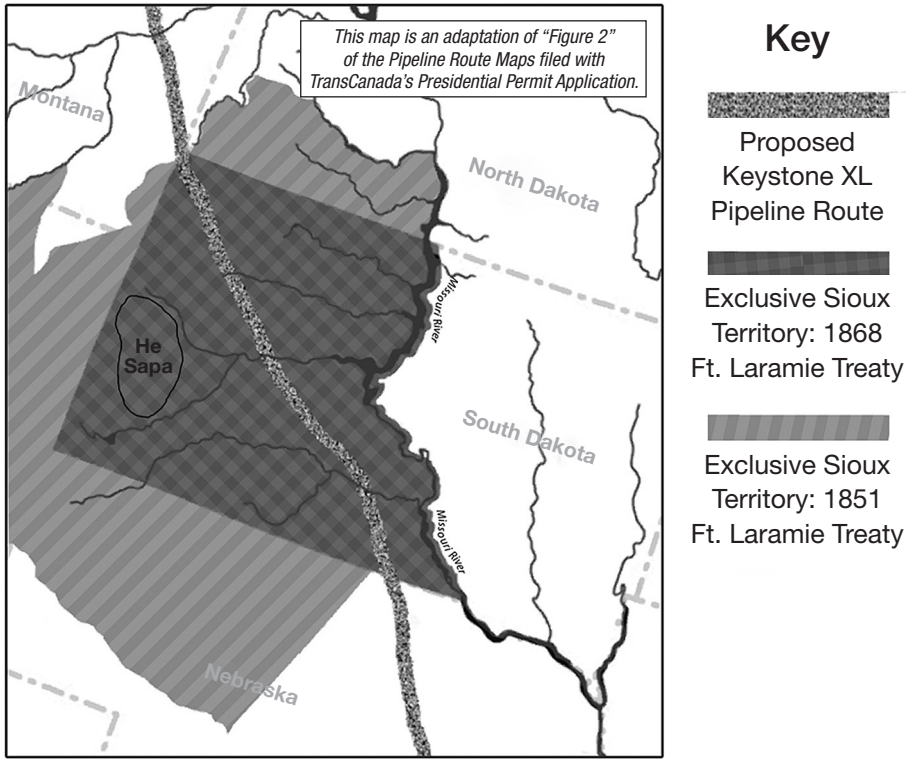


Figure 1. Ojibwe and Dakota Homelands and KXL Pipeline.

RJ community becomes, “Why is restorative justice silent with respect to settler colonialism’s harms against Indigenous Peoples?” Could it be that RJ has settlers within its rank and file who not only benefit from stealing Indigenous land but also condone the genocide that goes with such theft? If they do not condone settler colonialism’s genocide, then where are their actions to stop and undo it?

The First Harm: Mandates the Logic of Elimination

From its inception, settler colonialism’s agenda has been not only to displace existing Indigenous societies with a settler one but also to maintain the outcome. This agenda is what makes settler colonialism so distinctly lethal for Indigenous Peoples from other forms of colonialism, such as extractive colonialism. The settler narrative socializes and reinforces settlers’ *raison d’être*: they have come to stay in Turtle Island.

Now settler descendants, i.e., US and Canadian citizens—many of whom are engaged in RJ and other social justice organizations—continue to maintain that purpose. But that purpose carries a price—racially, politically, and morally too. The late Patrick Wolfe, Euro-Australian anthropologist and eth-

nographer, is the one who first stated the now-famous axiom that “invasion is a structure, not an event” and linked it with “the logic of elimination.” He explains how constructing race socially serves settlers and their colonization:

As opposed to enslaved people, whose reproduction [i.e., the one-drop rule] augmented their owners’ wealth, Indigenous people[s] obstructed settlers’ access to land, so their increase was counterproductive. In this way, the restrictive racial classification [i.e., use of blood quanta] of Indians straightforwardly furthered the logic of elimination.²⁴

His observation gives yet another example of how settler colonialism operates as a structure. Blood quantum—“how much ‘Indian’ are you?”—becomes core to how white supremacy mediates settler–non-settler relationships. Without white supremacy, racial conventions could not be organized to harm communities of color in the ways that they do.

As Wolfe makes clear, Indigenous Peoples face the multitude of racial harms that the logic of elimination generates, and it is an ongoing project. Settlers employ this logic first to obtain and then to maintain 100 percent of Indigenous-owned territory: Indigenous land becomes “theirs” in the form of either private property or state ownership. As the children’s book about pioneers illustrates, this logic is inherent in settler nations’ identity. Wolfe explains that settlers employ a variety of methods to justify and maintain their outright theft of Native territory:

The logic of elimination not only refers to the summary liquidation of Indigenous people[s], though it includes that. In common with genocide as Raphael Lemkin characterized it, settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base—as I put it, settler colonizers come to stay: *invasion is a structure not an event*. In its positive aspect, elimination is an organizing principle of settler-colonial society rather than a one-off (and superseded) occurrence.

The positive outcomes of the logic of elimination can include officially encouraged miscegenation [increasing a Native person’s “White” blood quantum], the breaking-down of commonly-held native title into alienable individual freeholds [fabricating the Discovery Doctrine and its derivative of allotting Native land to individuals to establish private property], native citizenship [forcibly incorporating Native people into the US without our consent], child abduction [forcing Native children into adoptions and foster care, including sex trafficking], religious conversion [church and state joining forces to achieve

assimilation], resocialization in total institutions such as mission or boarding schools, and a whole range of cognate bicultural assimilations [imposing a westernized education model]. All these strategies, including frontier homicide, are characteristic of settler colonialism.²⁵

Settler structures and white supremacy are, of course, the head and tail of settler colonialism's coin, which means Indigenous Peoples will always lose this coin toss when we call for justice from settlers. Bonds and Inwood reveal how this coin's initial manufacture ensures that Indigenous Peoples *can never obtain justice from settlers*. For instance, as mentioned earlier, settler colonialism is different from other forms of colonization because (1) settlers come to stay, not leave; and, as a result, (2) they expressly build their own distinct, national community, i.e., white supremacy or nationalism, to replace Indigenous national communities and to exploit non-White, non-Indigenous communities. Bonds and Inwood name this pattern of colonization, which is in force and every bit as virulent today:

Colonization, from the settler colonial perspective, is a kind of permanent occupation that is always in a state of becoming. This unfolding project involves the interplay between the removal of First Peoples from the land *and* the creation of labor systems and infrastructures that make the land productive. These two processes are interconnected and necessary: land must be cleared of indigenous populations, privatized, and then cultivated and made profitable. This ongoing project requires the continued displacement of indigenous and other marginalized peoples who are impediment to capitalist development, as well as particular forms of labor exploitation that extract value from appropriated land.²⁶

The logic of elimination, then, requires that settlers *must* displace and replace already existing Indigenous societies with their own structure (e.g., the illegal establishment of the United States of America and Canada). Because restorative justice counts settlers among its numbers, RJ's moral quandary is plain: if the movement ignores The First Harm, RJ's legitimacy within settler states becomes untenable. This predicament became painfully evident in September 2007 when the US was one of four settler states to vote against the

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The First Harm, RJ's legitimacy within settler states
becomes untenable.*

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).²⁷ The First Harm against Indigenous Peoples continues as long as settlers continue to ignore The First Harm, all the while benefitting from it.

Native Permanence: A Settler Trigger

From birth to death, our settler friends, our settler colleagues, our settler lovers and spouses, our settler allies, our settler apologists, our settler opponents, etc., are socialized to believe that, however unfortunate, stealing Native homelands and killing Native Peoples—the hallmarks of settler colonialism’s structure—are acceptable actions. For example, settlers’ civic behavior (e.g., Independence Day) celebrates the Marshall Trilogy (*Johnson v. McIntosh*, 1823,²⁸ *Cherokee Nation v. Georgia*, 1831,²⁹ and *Worcester v. Georgia*, 1832³⁰) as determinative decisions that, among others, define settlers’ ongoing structural relationship with Native Peoples. Unlike the *Johnson* decision, both the *Cherokee Nation* and *Worcester* decisions came immediately after a May 1830 settler law—the Indian Removal Act—which called for Indigenous Peoples’ physical removal from their homelands east of the Mississippi River.³¹ Indeed, seven months after removal became law and eight years before the infamous Cherokee Trail of Tears death march, Whites’ settler President Andrew Jackson cloaked Indigenous Peoples’ ethnic cleansing in settler fantasy:

Doubtless it will be painful [for Indigenous Peoples] to leave the graves of their fathers; but what do they more than our [White, European] ancestors did or than our [White American] children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects. . . . Does Humanity weep at these painful separations from everything, animate and inanimate. . . ? Far from it. It is rather a source of joy that our country affords scope where our young population may range unconstrained in body or in mind. . . . These remove hundreds and almost thousands of miles at their own expense, purchase the land they occupy, and support themselves at their new homes from the moment of their arrival.³²

For any settler of any era to compare Indigenous Peoples’ removal as even remotely akin to the settler experience defies reality.

The Cherokee people, quite naturally, resisted the settlers’ removal law for reasons not foreign to today’s settlers, who scream “**Unfair!**” when confronted with the idea, let alone the reality, of returning stolen Indigenous land. When Mackey interviewed settlers about Indigenous land claims in Canada, they, much like their settler cousins in the States, invoked cherished tropes. Appealing to their frontier narrative, they both cast themselves as the innocent

victims-to-be and portrayed Indigenous Peoples as perpetrators who were unjustly disrupting their fantasy-of-entitlement regime:

These [settler] stories are told in a manner that implicitly communicates a kind of “evidence” demonstrating not only their emotional attachments to place, but also their sense of legitimate and rightful possession of the land. It is not only about purchasing land, but it also about making it one’s own through years of labour. As one person said, “This isn’t just about a farm, it’s our *home*,” which shows the deep attachments people have to specific pieces of land, and the pride they have in the work done to build their farms and lives.³³

Prior to the Cherokee People’s forced removal from their homeland in the late 1830s, the Cherokees also presented settlers with “it-is-not-just-about-a-farm, it-is-our-home” narrative. As past- and present-day settlers are wont to do, Cherokees also claimed a significant investment of labor in their homesteads. For example, on the material side of the ledger, an 1828 Cherokee census reveals that they possessed significant farm property (table 1) and farm-related infrastructure.

Table 1: Cherokee Farm Property (livestock)

District	Cattle	Horses	Swine	Sheep	Goats
Coosewaytee	2944	1207	4965	369	91
Tahquoa	1506	554	2419	323	
Chickamauga	1505	1175	8900	397	111
Hickory Log	1733	520	3178	187	24
Aquohee	1799	1191	5544	765	37
Ahmohee	1730	845	6080	243	93
Chattooga	7018	1318	4654	335	15
Hightower	3170	818	3777	298	67
Total	21405	7628	39517	2917	438

Source: <http://www.cherokee.org/About-The-Nation/History/Facts/1828-Cherokee-Census-Information>

Indeed, three years prior to the census, Thomas L. McKenney, a settler appointed to be the Indian Affairs first superintendent, issued an 1825 report about the Cherokee to the War Department that the census corroborated (table 2). No doubt both the 1828 Cherokee census and McKenney’s observations depict a thriving Indigenous society amidst settlers:

Table 2. Cherokee Farm-related Infrastructure

District	Looms	Spinning Wheel	Wagon	Plough	Saw Mill	Black-smith	School	Grist Mill	Cotton Gin	Ferry	Store	Turn Pike	Roads	Threshing Machine
Coosewaytee	113	397	33	461	5	10	2							
Tahquoa	53	211		308		1		1						
Chickamauga	121	368	18	354	2	11	4	1	1	5	4			
Hickory Log	76	232	32		1	5			1		2			
Aquohee	145	346	7	446	1	5	1							
Almohee	70	327	29	372	3	7	5	6	2	5	1	1	6	1
Chattooga	124	307		446	1	11	6	5	2		2			
Hightower	67	240	7	65		5	1	2						
Total	769	2428	126	2452	13	55	19	15	6	10	9	1	6	1

Source: <http://www.cherokee.org/About-The-Nation/History/Facts/1828-Cherokee-Census-Information>

The northern part is hilly and mountainous; in the southern and western parts there are extensive and fertile plains. . . . These plains furnish immense pasturage, and numberless herds of cattle are dispersed over them; horses are plenty; numerous flocks of sheep, goats, and swine cover the valleys and hills. . . . In the plains and valleys the soil is generally rich, producing Indian-corn, cotton, tobacco, wheat, oats, indigo, and sweet and Irish potatoes. The natives carry on considerable trade with the adjoining States; some of them export cotton in boats down the Tennessee [River] to the Mississippi [River], and down that river to New Orleans.

Apple and peach orchards are quite common, and gardens are cultivated, and much attention paid to them. Butter and cheese are seen on Cherokee tables. There are public roads in the nation, and houses of entertainment kept by natives.

Numerous and flourishing villages are seen in every section of the country. Cotton and woolen cloths are manufactured: blankets of various dimensions, manufactured by Cherokee hands, are very common. Almost every family in the nation grows cotton for its own consumption. Industry and commercial enterprise are extending themselves in every part. Nearly all merchants in the nation are native Cherokees. Agricultural pursuits engage the chief attention of the people.³⁴

Ironically, McKenney's report about the Cherokee describes in detail various accomplishments that present-day settlers also cite to convince themselves they are the "legitimate or rightful" landowners. No doubt, the Cherokee belonging to the land is authentic and inalienable, and they did not need these settler-type achievements to justify their existence on the land. However, knowing that settler society views Indigenous and other non-White peoples as occupying a very low rung on a human evolutionary scale, the Cherokee people rightly anticipated that only bad faith would come from settlers, as the 1830 Indian Removal Act eventually proved.

Owing to their national resilience, the Cherokee flipped the Whites' evolutionary scale and, in doing so, unsettled settlers' fantasies of entitlement. In addition to the Cherokee's stunning prosperity, which both the 1828 Cherokee census and McKenney document, the Cherokee took two other self-determining acts: they adopted a constitutional government in 1827, and they built their literacy rate until it exceeded that of all the states, thanks to Se-

The Cherokee flipped the Whites' evolutionary scale and, in doing so, unsettled settlers' fantasies of entitlement.

quoyah, a Cherokee citizen who developed a Cherokee syllabary. The Cherokee people's dramatic transition, without ever having to relocate west of the Mississippi River, so stunned White settlers that, through their westernized lens, they took to labeling them a "Civilized Tribe."³⁵

Being a Civilized Tribe also indicates that settlers grudgingly viewed the Cherokee as having *the* attribute commonly associated with settler identity, namely, having fulfilled the Lockean requirement for possessing land: privatizing it (turning it into private property).³⁶ John Locke, seventeenth-century English philosopher, argued that humans—European capitalist ones, that is—have a natural right, first, to acquire land and then to privatize it by imbuing "the Earth" with their labor:

Though the Earth, and all inferior Creatures be common to Men, yet every Man has a Property in his own Person. . . . The Labour of his Body, and the Work of his Hands, we may say are properly his. Whatsoever then removes out of the State that Nature hath provided, and left in it, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it [the acquired land] his Property. It being by him removed from the common state nature placed it, it hath by his labour something annexed to it, that excludes the common right of other Men.³⁷

From the Lockean perspective, then, a person's labor is solely his or her "property." It follows, in his view, that when a person works the land (the pioneer/homesteader/settler story), they infuse, somehow, the land with their labor. Through this act, the soil becomes their private property. Based on all available evidence, the Cherokee easily met Locke's requirements for establishing private property. They assumed that their private property (and rights thereof that go with it) would shield them against The First Harm.

Settlers in restorative justice and other allied fields (e.g., community justice, transformational justice, reparative justice, social justice, or environmental justice) must be especially cognizant of the context in which settlers perpetrate The First Harm. In this case, Cherokee people (as other Indigenous Peoples also did) virtually remade themselves in their colonizer's image (even privatizing land into property in the manner of settlers), yet this did not shield them from settlers' violent dispossession. The Cherokee case study reveals a fundamental reality about settler colonialism: *Settlers are deaf to humane calls not to perpetrate harms against Indigenous Peoples.*

Settlers are deaf to humane calls not to perpetrate harms against Indigenous Peoples.

Institutional oppression (e.g., the 1924 Indian Citizenship Act and the

Indian Reorganization Act), social marginalization (e.g., racism, claiming Indigenous land as private and state property), and trivializing Indigenous cultures (e.g., sports mascots, attaching Native nations' names to military hardware) all contribute to normalizing settler violence against Indigenous communities, and all these harms need to be addressed. However, the outright theft of Native lands—*our homelands*—remains the outstanding *First Harm that leads to all the other harms*. This settler violence is the harm that settlers in restorative justice deliberately ignore, though at an extremely high moral price.

Studying colonialism by researching not the Indigenous Peoples impacted but the behavior of the invader-settlers, Wolfe deconstructs for settlers why

Absent reparative actions, restorative justice's credibility among Indigenous Peoples and People of Color will continue to implode . . .

they, in the main, are fine with perpetuating this harm and living with its outcome: structural genocide. Wolfe's deconstruction challenges settlers in restorative justice to act. Absent reparative actions, restorative justice's credibility among Indigenous Peoples and

People of Color will continue to implode, as the existing gaps between settler praxis and RJ's principles become wider and more indefensible.

These gaps are where restorative justice and settler colonialism intersect with painful truth and reality, which go to the core of who settlers are. Settler colonialism differs from colonialism's other forms because of the settler identity that this system creates and requires to keep its structures going. Wolfe observes that a settler society does not eliminate Indigenous Peoples because of where the latter just happen to live or who they just happen to be, but because of the threat we represent to settlers' identity:

So far as Indigenous people[s] are concerned, *where they are is who they are*, and not only by their own reckoning. As Deborah Bird Rose has pointed out, to get in the way of settler colonization, all the native[s have] to do is stay at home. Whatever settlers may say—and generally they have a lot to say—the primary motive for elimination . . . is access to territory. Territoriality is settler colonialism's specific, irreducible element.³⁸

In the Cherokee's case, Wolfe clarifies the root of settler society's stance toward Indigenous Peoples—what drives its genocide-structured behavior:

But if the natives [Cherokee] are already agriculturalists, then why not simply incorporate their productivity into the colonial economy? At this point, we begin to get closer to the question of just who it is (or, more to the point, who they are) that settler colonialism strives to eliminate—and, accordingly, closer to an understanding of the relationship between settler colonialism and genocide. To stay with the Cherokee removal: when it came to it, the factor that most antagonized the [White] Georgia state government . . . was not actually the recalcitrant savagery of which Indians were routinely accused, but the Cherokee's unmistakable aptitude for civilization. . . . They had become successful agriculturalists on the White model, with a number of them owning substantial holdings of Black slaves, and they had introduced a written national constitution that bore more than a passing resemblance to the US one. Why should genteel [White] Georgians wish to rid themselves of such cultivated neighbours? *The reason why the Cherokee's constitution and their agricultural prowess stood out as such singular provocations to the [White settler] officials and [White settler] legislators of the state of Georgia—and this attested over and over again in their public statements and correspondence—is the Cherokee's farms, plantations, slaves and written constitution all signified permanence.*³⁹

For settler societies (e.g., Canada and the United States) to feel secure in their private or state property, any Indigenous signifier that recognizes permanence (treaties and the rights stated in them, homelands, sovereignty, Traditional Ecological Knowledge [TEK], etc.) must be eradicated. Consequently, to secure the very land that they falsely claim as either private or state property, settlers have to collectively reinforce a fantasy—one that crumbles at the mere presence of Indigenous Peoples. In North America, knowing how they came by the land, settlers experience primal uncertainty about their very legitimacy. This uncertainty drives them deeper into their fantasies of entitlement and fuels their resolve, by any means necessary, to eliminate Indigenous Peoples.

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Red Earth, Black Lives, and White-Created Dilemmas

Wolfe and others identify the one Indigenous theme—that we are the land’s original title and therefore its rightful owners—that settlers acknowledge but find so disquieting to their settler identity. To implement the fantasy of settler entitlement to Indigenous land, CANZUS states have fashioned racial regimes that target Indigenous Peoples. While a fuller treatment of racial constructions in the states merits a thorough discussion, this chapter can provide only a quick tour of how the settler structure and its concomitant racism have harmed—and continue to harm—Indigenous Peoples.

One settler racial regime involves forcing Indigenous Peoples to emigrate from Africa. In the antebellum US, settlers constitutionally sanctioned Indigenous Africans and their descendants as three-fifths of a person until 1868. Until 1865, the states designated them as personal property, i.e., slaves, which socially “constituted their blackness.”⁴⁰ These regimes continue to inform settler society’s perceptions of race, and those of us on the receiving end are not always aware of how the logic of elimination impacts us personally.

For example, President Obama had a racial option to exercise, which in his case shows how far the social construction of race has come from its original, narrow definition. After all, prior to 2000, the US census did not provide options for an individual to self-identify with one of several races as we do today or as a blend of different races. Hence, Barack Hussein Obama II self-identifies as Black, and settlers and others identify him as the first Black US president.

But from an Indigenous worldview, Obama is arguably the first Indigenous US president. Unlike many Blacks in the states who, because of slavery, are several generations removed from their Indigenous roots in Africa, Obama is only one generation removed. His biological father is Luo, the East African Indigenous Peoples of Kenya and the upper Nile valley, and his father came to the states voluntarily. That Obama chose a non-Luo identity is a familiar but complicated story for Indigenous people in settler states. Exercising this choice comes at a high cost: it is, in fact, a choice that aligns with the logic of elimination. Obama surely felt this cost of not fully embracing his indigeneity when Alice Matthew, a Malaysian citizen, confronted him in September 2016 about his ambivalent responses to the Očhéthi Šakówiŋ Oyáte’s resistance to the Dakota Access Pipe Line (DAPL) at a town hall gathering.⁴¹

We know that the settlers’ racial regime adopts new forms when white supremacy is threatened.⁴² It morphed in response to slavery’s abolition on one hand and Indigenous Peoples’ national character on the other.⁴³ Almost five decades ago, Vine Deloria Jr., Húŋkpaŋha Thithuŋwaŋ/Očhéthi Šakówiŋ Oyáte citizen (1933–2005), mapped how settlers racially manage our Indigenous African and Indigenous North American identities and what it has meant for each:

The white man adopted two basic approaches in handling blacks and Indians. He systematically excluded blacks from all programs, policies, social events, and economic schemes. He could not allow blacks to rise from their position because it would mean that the evolutionary scheme had superseded the Christian scheme that man[kind] perhaps truly descended from the ape.

With the Indian the process was simply reversed. The white man had been forced to deal with the Indians in treaties and agreements. It was difficult, therefore, to completely overlook the historical antecedents such as . . . the desperate straits from which various Indian tribes had often rescued the whites. Indians were therefore subjected to the most intense pressure to become white.⁴⁴

Faced with these two approaches, Blacks (whose descendants suffer the outstanding debt incurred by the theft of their ancestors' labor) and Indigenous Peoples (whose descendants suffer the outstanding debt incurred by the theft of their Indigenous lands) rarely compared their distinct experiences with settler colonization. However, in the space that colorizing restorative justice creates, we conflate almost fifty-three decades of our experiences with settlers and find that, although People of Color and Indigenous Peoples are unique, we share common ground.

Without question, Black cultural expressions in the states have deep Indigenous African roots. It is not surprising that Blacks' oral tradition is replete with stories about Indigenous African "slaves"—and later their descendants—escaping from White settlers either to join other established Indigenous communities or to forge their own communities based on Indigenous African worldviews. From an Indigenous perspective, Red and Black Power movements are not about fighting for a settler-defined space at the settlers' table, i.e., equality; instead, such power is about self-determination as Indigenous Peoples.

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The disconcerting reality is that, as long as we internalize the settlers' racial regime(s), we participate not only in sustaining The First Harm but also in undermining how People of Color interact or relate with each other. By contrast, whenever Indigenous North America's descendants recognize that African descendants are Indigenous or have Indigenous roots, this recognition disrupts the settler's racial framework. Rather than staying racially siloed as "American Indians/Alaskan Natives" and "Blacks/African Americans" and building race-based coalitions only within our own racial groups, as we are

For Indigenous Peoples and People of Color, constitutional incorporation is the answer neither to the settlers' political dilemma nor to the Whites' racial dilemma. Such incorporation will not lead to our decolonization, nor will it absolve settlers of their wrongdoing: stealing Indigenous North America's land and stealing Indigenous Africa's labor. The First Harm and The Second Harm stand unrepaired.

conditioned to do, we work collaboratively on our relationships as descendants of Indigenous Peoples. The result? Not only are we more effective at building coalitions across race but also our collaborations expose how the logic of elimination lies at the root of the settlers' racial setup.

For example, "American Indian/Alaskan Native" as a definition collapses the hundreds of existing Indigenous Nations into a single race; the term "Native American" has a similar effect. This racial positioning of Indigenous Peoples furthers the settlers' project of elimination, because it imposes a racial status that obscures our political status as self-determining peoples.

Another way settlers promote our elimination as distinct peoples is with their assumption that assimilation or some other Americanization program addresses the wrongs done to us. In the settlers' mind, racial groups (Blacks, Asian Americans, Latinxs, etc.) simply want equality: they desire to be free from discrimination; they want White social acceptance; or they want a chance at "equal opportunity" within a settler state. Rarely, if ever, does our *political status* as self-determining, Indigenous Peoples break through the settlers' racial regime. As far as settlers are concerned, simply carving out greater constitutional space (e.g., the Thirteenth, Fourteenth, and Fifteenth Amendments, civil rights laws, and court decisions) for Indigenous North American and Indigenous African Peoples will do the trick.

Yet for Indigenous Peoples and People of Color, constitutional incorporation is the answer *neither* to the settlers' political dilemma *nor* to the Whites' racial dilemma. Such incorporation will not lead to our decolonization, nor will it absolve settlers of their wrongdoing: stealing Indigenous North America's land and stealing Indigenous Africa's labor. The First Harm and The Second Harm stand unrepaired. To think that guaranteeing constitutional space might be equivalent to or a form of restorative justice is simply wrongheaded. Equity—constitutional, racial, or otherwise—will never be the answer to undoing these harms: equity not only leaves the settler structure unchallenged but also reinforces it with the mountainous benefits that come with leaving

harms unrepaired. Failure to grasp the magnitude and nature of these harms, settlers continue to perpetuate them, both structurally and individually.

Perhaps Deloria did not foresee colorizing restorative justice. Nonetheless, he called it right when he predicted the challenge for late twentieth- and twenty-first-century settlers: “Between these two basic attitudes [toward Natives and Blacks] . . . the white man was impaled on the horns of a dilemma *he had created within himself*.”³⁵ Settlers, who benefit from racial construction, as do their apologists of color, wince at the racial regime they have constructed: as of this writing, racial politics is playing out as the regime unravels. The post-9/11 cultural wars in the states expose the racial animus between White settlers and Indigenous Peoples and Communities of Color. Settlers do indeed find themselves impaled on the horns of a racial-political dilemma that is of their making.

It never had to be this way. Coexistence was the option that Indigenous Peoples always sought—and invaders-settlers-Whites continue to reject. Hence, this rejection, no doubt, reflects the racial disparities and socio-political inequities that plague Indigenous Peoples and other communities of color but do not affect White settlers to the same degree or in the same way.

“The Talk”: What a Community Equal to It Requires

I speak from an Indigenous experience. More specifically, I speak with an Očhéthi Šakówiŋ Oyáte voice. Although what I say may resonate with Indigenous Peoples and perhaps other communities of color, I speak neither on behalf of all Indigenous Peoples nor for my own nation. Moreover, this chapter is not the first time that I and other Indigenous Peoples have raised our printed voices against settler injustices, which include genocide. Settlers can be assured that this chapter will not be the last, either.

So, turning my thoughts to our settlers, I do not see it as my job to come up with a “solution” for you, including those of you who are in restorative justice. I am willing, though, to engage “The Talk” about this dilemma your ancestors created for you and which you sustain. Restorative justice has promise, but I do not see how restorative justice can fulfill its promise as long as you turn a blind eye to the one massive harm that predicates all the rest and that has made you as a group believe that wrongdoing can stand as your society’s foundation.

Turning my thoughts to our settlers, I do not see it as my job to come up with a “solution” for you, . . . I am willing, though, to engage “The Talk” about this dilemma your ancestors created for you and which you sustain.

Restorative justice literature recognizes the role of community in addressing and undoing harms as a result of wrongdoing; yet this role remains problematic between Indigenous Peoples and settlers. To repair The First Harm,

To repair The First Harm, you first need some way to come together among yourselves that carries the community or relationship muscle equal to addressing a harm of this magnitude—one whose repair will and must be deeply transformative.

you first need some way to come together among yourselves that carries the community or relationship muscle equal to addressing a harm of this magnitude—one whose repair will and must be deeply transformative. I know many of you believe it is not in your interests to repair The First Harm; otherwise, you would have done so. I believe it is, but that is another discussion. Here, I want to explore how to create a space that builds the

community-muscle equal to the task—that keeps the harm of stolen Indigenous land central in the minds of settlers in restorative justice.

To start, Indigenous Peoples and settlers experience community very differently. Acknowledging this difference is critical, because forming community relations is core to the RJ process. I would say settlers experience community in ways that are alien, if not antithetical, to Indigenous communities. While considering this difference is also not within the scope of this chapter, I can point to how settlers have thought about and struggled with the notion of community.

Daniel Kemmis, a White male attorney-settler, for example, explains community in a way that is likely to be familiar to his White compatriots, namely, as a procedural republic. He recognizes that local or regional community development schemes, public works, or other shared interests may bring people or communities together. However, the public discourse surrounding community development often reveals more disconnection than common ground. In short, people break into factions and fight.

Kemmis attributes this disconnection to the nature of these forums. In them, people speak “the first language of individualism,” as he puts it. In a structured, public discourse, individual rights dominate, which frames the exchange with defensiveness, opposition, and conflicts; connections and trust are unlikely to develop. He writes:

People in this situation [e.g., public hearings] do not speak of what they have in common, or how the common good might be guarded and enhanced. What they speak of is how a proposed initiative (in this case the land use plan) either enhances or threatens their individual lives. They speak in terms of the ideologies most conducive to their particular [individual] rights.⁴⁶

However, according to Kemmis, individuals also possess “second languages of cooperation, tradition, and commitment” that must be invoked in order to achieve a higher common ground or good. For Kemmis and others who share his view—and there are many—the politics of place reveals an “unencumbered space” where these second languages reside and where settlers are likely to express their common structure of feelings. In this space, people are likely to tell stories about their lives and share a sense of meaning.

To illustrate the characteristics of community, Kemmis invokes a well-known settler trope: barn raising. Whenever a ranch or farm family or individual decided to build a barn, every able-bodied person within horse-riding (now a pickup-driving) radius arrived. Their help was unsolicited, because raising a barn represented a higher common ground or good. It opened an unencumbered space where cooperation and other values subordinated individual rights and tolerated a wider range of contrasting or conflicting values. Whether we agree with Kemmis on his notion of a higher common ground, we can agree that community-based relationships are decidedly pragmatic. Among farm families, having a barn is a matter of survival. For Kemmis and others who desire a seamless web between the procedural (re)public space and the unencumbered community space, *the challenge is twofold: it is relational, and it involves real-world concerns.*

To go deeper into these notions of community, Kemmis’ observations about how diverse groups engage one another differently in formal spaces than in informal spaces (and *visa versa*) are instructive. To link these two spaces, Kemmis borrows from Hannah Arendt, a German-Jewish philosopher and political theorist, who argued that we enter public spaces (*publica*) in a concrete (*res*) way (in Latin “*res publica*” means “the (or a) public thing”):

Hannah Arendt offers this perspective on the relationship of the public and the *res*. “To live together in the world means essentially that a world of things is between those who have it in common, as a table located between those who sit around it; the world, like every in-between, relates and separates men [and women] at the same time. . . . The public realm, as the common world, gathers us together and yet prevents our falling over each other, so to speak. What makes mass society so difficult to bear is not the number of people involved, or at least not primarily, *but the fact that the world between them has lost its power to gather them together, to relate and to separate them.*”²⁴⁷

Kemmis finds in Arendt a clue for why people in a community space have so much trouble with relationality. Arendt reflects on how a table—a concrete thing perceptible to our senses, something tangible—seemingly disappears for the people sitting around it and what this disappearance entails.

The weirdness of this [common world-of-things] situation resembles a spiritualistic séance where a number of people gather around a table might suddenly, through some magic trick, see the table vanish from their midst, so the two persons sitting across from each other were no longer separated but also would be entirely unrelated by anything tangible.⁴⁸

For Kemmis, Arendt's simile of the "world as vanishing table" appeals to his settler sensibilities. He argues that without such tangibility to draw people together, the world between us loses its power to gather us together.

How do these ideas relate to The Talk and the call for settlers in restorative justice to address The First Harm? Whatever other dynamics may be in play, settler fantasies—the magic trick Arendt alludes to—impair or even eclipse our capacity to track the world between us. These fantasies disconnect you from me and hold more power over you than realities. Settlers' fantasies of entitlement have made the "table"—the land's first and only owners—"vanish from your midst." This dilemma is why settlers construct their fantasies in the first place: to disappear inconvenient realities.

But choosing to believe in the magic trick is costly, and not only for Indigenous Peoples. I observe among you that, as White settlers, you lose the capacity to come together, not only with others but also among yourselves. The single most important thing "settling" has done to make your existence on this continent possible—stealing a continent of land through structured colonialism—vanishes like Arendt's table in your public spaces. With it goes an ability to let the world gather you. Hence, the consequences of fantasy-disconnection appear today when any fantasy substitutes for socio-political reality, and facts have no power to pull factions together in problem-solving.

For "The Talk" to happen, then, settler fantasies must be exposed as the magic trick, and the realities of how you came here and how you exist today must stand at the center of public discourse. Nothing is more real for your existence. For those of you in restorative justice who are prepared to release yourselves of settler fantasies—a lifelong endeavor, to be sure—I am prepared to take a step further and suggest a way for you to keep "the real world between us" front and center—visible, so as not to vanish from your midst—during your dialogues.

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Settler Structures of Feeling: Unlikely to Budge

Before I go further, though, I want to pause and acknowledge the challenge before you. As I said earlier, the settler structure is not only external. Its roots lie in settler subjectivities, the structures of feeling that perpetuate The First Harm's continuation. The challenge to dismantle these internal structures demands disrupting lifetimes of experiences as White settlers. Will the settler identity prove too strong for restorative justice to win out?

Well-meaning settlers in RJ can ill afford to underestimate the strength of your identities as White settlers. Kemmis discusses how inhabitation of place brings tangible elements associated with forming relationships. Of course, bond formation among settlers reinforces their self-perpetuation:

But it [genuine public life] is also concrete in the actual, specific places within which those practices and that cooperation take place. Clearly, the practices which shaped the behavior and the character of frontier families did not appear out of thin air; they grew out of the one thing those people had most fundamentally in common: the effort to survive in a hard country. And when the effort to survive comes to rely upon shared and repeated practices like barn raising, survival is transformed; it becomes inhabitation. To *inhabit* a place is to dwell there in a practiced way, in a way that relies upon certain, trusted habits of behavior.⁴⁹

Kemmis makes clear that for each person inhabiting a place, relationships blossom out of necessity from a community born out of shared inhabitation. His narrative communicates settlers' formative experience about survival in a hard country or, more accurately, Native Country. Just as survival constitutes the one thing that all settlers have in common, so, too, has stealing Indigenous Peoples' land proven a common community practice—one that has shaped not only settlers' behavior and character but also their structures of feeling. With bonding-for-survival as settlers' glue, Kemmis' concept shows that the classic settler narrative excludes Indigenous Peoples from the settler narrative, let alone community. This peculiar and ongoing way of establishing community is where settler colonialism violently intersects with restorative justice. It is where settlers find themselves today: impaled on the horn of The First Harm's dilemma.

I have experienced settlers' structure of feeling often: pointing out settler fantasies is enough to trigger settlers' rage. Given how little it takes to trigger settlers' anger and defensiveness, it is not clear to me how you will dismantle your settler structures enough to be able to dialogue about The First Harm, much less to undo it. Granted, my naming of settler behavior comes with an

edge born of seeing the human and natural world costs of settler colonialism every time I set foot out my door in my nation's homeland.

Restorative Justice Requires Self-Change

So, again, will settlers in restorative justice choose RJ principles that call for repairing harms, or will settler identities, reinforced for more than five centuries, prove too strong for your group? To put it another way, can restorative justice support settlers in holding yourselves accountable for the massive harms your settler identities perpetrate? If so, can settlers in RJ engage the reparative process as a group and effect your collective self-transformation? You may think I am asking a lot, but you ask a lot of us: Indigenous Peoples and Peoples of Color keep paying the consequences of your refusal to hold yourselves accountable—your determination to keep living at our expense—as if you can ignore both the crimes in the history and the injustices in the present that your settler structure maintains for its futurity.

The restorative justice literature takes much satisfaction from its community uniqueness. This claim to uniqueness is not unlike Kemmis' call for community to mean something more relationally genuine. So let us start with considering restorative justice principles. Johannes Wheeldon, criminologist, frames at least three restorative justice principles that differ from the westernized, state-run, punishment-based model.

First is a focus on harms. Harms refer here to those suffered by the victim of a particular incident, by an offender, and even those suffered within communities. . . . The second is a desire to root processes in the communities where the harm occurred. . . . The third principle is related to the moral potential for restorative justice. Often tied to spiritual or religious traditions, there is a tradition of humanism described as rooting morality in attending to the real needs of actual individuals through processes which are consistent with and reflect community values.⁵⁰

These principles are promising, no doubt, but it is also discouraging for me to read them. As much as these principles make intellectual space for repairing The First Harm and as many decades as the Western iteration of

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restorative practices has been gaining momentum, undoing The First Harm cannot be found on RJ's agenda. Reflecting the experiences of non-Whites and non-White communities, multiple chapters in *Colorizing Restorative Justice* question whether restorative justice—as a movement, as a field—is morally up to the task of addressing, let alone solving, two of modern, Western communities' most vexing moral challenges: decolonization (putting right the theft of Indigenous homelands) and reparations (putting right the theft of Indigenous African labor).

Admittedly, I share their skepticism that restorative justice's charge to undo harms that result from wrongdoing holds any real meaning for us, Indigenous Peoples, particularly when the movement is thoroughly peppered with settlers, many of whom are “leaders” in this field. No doubt, settlers and perhaps some non-settlers will find this critique harsh. And I suppose it is, but the following structural reasons inform my skepticism.

The fundamental relation between Indigenous Peoples and settlers is an extremely structured one, far more than Kemmis could even imagine for a “democratized,” procedural republic. Consider the context from which this hyper-structure formed. Up until 1871, both settlers and Indigenous people signed treaties to resolve conflicts over land, jurisdiction, and relational rights to the natural world. That means settlers—past, present, and future—are, like Indigenous Peoples, treaty people, so much so that the settlers' venerated “Founding Fathers” recognized treaties as settlers' supreme law.⁵¹ Treaties are, therefore, *prima facie* a hyper-structured relationship between Indigenous Peoples and settlers. Yet, though both parties signed treaties to secure peaceful relations, settlers violate these treaties daily. Honoring treaties is an obvious place to start, and yet it is what settlers refuse to do.

Though both parties signed treaties to secure peaceful relations, settlers violate these treaties daily. Honoring treaties is an obvious place to start, and yet it is what settlers refuse to do.

What is the result of generations of this settler behavior—namely, multi-generational contempt for agreements designed to establish relations between our peoples? Indigenous Peoples in the fifty states today represent less than one percent (1%) of the US population, and we *conditionally*, thanks to the settlers' 1823 *Johnson v. McIntosh* ruling, “retain” about two percent (2%) of our homeland within the US. Comparatively, prior to October 1492, Indigenous Peoples constituted one hundred percent (100%) of the population and held unconditionally one hundred percent (100%) of the land that the fifty states now occupy. In the 527 intervening years (and counting), what happened? Settler colonialism happened. Eliminating Indigenous populations and outright stealing our lands from us are the *sine qua non* of settler identity.

No wonder our relation(ship) with our colonizers is fraught with deep distrust, and the likelihood of having an authentic conversation is slim. A most telling statement (and personal favorite) about settler trustworthiness comes from Harold Fey, a White settler, who, in 1955, wrote for *The Christian Century*. He sarcastically self-observed then what I find to be much more true about settlers today:

Why don't the Indians trust us? We mean well toward them. We want them to succeed. Indeed, we would be glad if the Indians were just like ourselves, and what more could they desire than that? We are not like some nations we could mention—deceivers, slave-drivers, treaty-breakers. We are upright people, and it irritates us a little to have to say so. Some of us are in the habit of referring to the United States as a Christian nation. So if the Indian does not trust us, it must be because he [or she] has some unfortunate defect in his [or her] own character, such as innate suspicion. If so, that is something we should help overcome. . . . These things we [settlers] say to ourselves to calm the uneasiness which clings to the fact that we are not trusted by the original Americans, *who have known us longer than anybody else*.⁵²

As Kemmis observed, structured, formal relations amongst settlers lead to arguments over rights, especially around private property, which many of them own or idealize. If restorative justice depends on people coming together in “unencumbered” spaces to share their stories, speak from the heart, and have their words count toward working out solutions that are good for everyone, then what are the chances for the kind of authentic conversation that RJ requires in the hyper-structured, therefore hyper-contentious, context that surrounds Indigenous and White-settler relations?

Hence, when we talk about the possibility of having the authentic conversations necessary to undo The First Harm, we are asking restorative justice to find and thread a needle in a land strewn with blunt instruments—a crime scene, an open wound with blood and pain everywhere. Settlers, especially those of you who have either internalized or are on the path to internalizing restorative justice principles, have always known of The First Harm, the subsequent harms against Indigenous Peoples, and your culpability in all of this. You know that The First Harm exists and continues on behalf of your descendants, your futurity.

So, even if that needle is miraculously found and somehow threaded, stitching together an extremely damaged and one-sided relationship between settlers and Indigenous Peoples into a relationship that is less damaged and reciprocal will require that Whites disavow their core settler identity. This

transformation includes disavowing Settler Structures of Feelings (settler attitudes or emotional qualities that rationalize or justify your land theft);⁵³ Settler Expectations (legal, institutional, and cultural processes supporting your idea that you are entitled to Indigenous territory);⁵⁴ and Fantasies of Settler Entitlement (socially internalized privilege without any factual basis in reality).⁵⁵ Settlers in restorative justice must be committed to doing this work. Is restorative justice up to providing the muscle that supports a commitment to repairing The First Harm?

An Unencumbered Container Equal to Undoing The First Harm

In “Passing the Cup of Vulnerability,” *CRJ* contributor Gilbert Salazar uses the image of a container to describe the intentional spaces we create to hold different kinds of dialogue for different purposes. What container can we create to hold dialogue for undoing The First Harm?

Some nations, like South Africa and Canada, have created Truth and Reconciliation Commissions (TRCs) that are more formal, drawing upon court and panel-inquiry models. Some TRCs focus on hearing the stories of those harmed and those who did harm, but repairing or undoing harm is not part of the process. Others TRCs, like the one in Canada, have involved reparations as well. In Canada’s case, though, the reparations for boarding-school harms were state determined by a fixed algorithm and came with the condition that, upon paying victims, Canada viewed that chapter in its settler history closed. The takeaway from these examples was not about building relationships and community between settlers and Indigenous Peoples. The outcome was formal and procedural, absolving settlers, as in the White Canadians’ case, of further responsibility for the harm.

Restorative justice critiques formal institutional processes precisely for their failure to use the harm to build the very relationships and community that prove transformative and sustainable going forward. Even if formal processes start with good intentions, as is the case with these TRCs, formal processes do not build relationships, which, when one reads the RJ literature or hear RJ practitioners extoll RJ virtues, are the might and muscle of RJ. No relationships, no real RJ process, hence no authentic or transformative outcomes with which to build a new future.

Yet it is hard to escape formal processes, since Western-based societies impose them in every direction. For example, much like the public proceedings or hearings Kemmis witnessed, court hearings, public school hearings, and

What container can we create to hold dialogue for undoing The First Harm?

other institutionalized hearings prioritize individual rights above community and elicit the disconnect that Kemmis observed among community members when they participated in formal, structured procedures.

RJ practitioners find themselves negotiating formal systems regularly, if not mostly. They struggle to insert restorative processes into institutional spaces that operate at cross-purposes, since most institutions function in hierarchical, adversarial ways (the procedural republic). The chapters in this book testify to the magnitude of the struggle, since People of Color are keenly aware of how White-run settler institutions not only fail communities of color but also co-opt restorative processes to protect the status quo and keep system change at bay.

To unencumber structured procedures and explore space for deeper, more “second language” dialogue, restorative practices turn to—more like, resort to—Circles as an alternative to institutional processes. Can Circles provide

Can Circles provide a container strong enough to undo The First Harm? Perhaps—but if and only if they do not reinforce settler fantasies or cause them to invoke white fragility.

a container strong enough to undo The First Harm? Perhaps—but if and only if they do not reinforce settler fantasies or cause them to invoke white fragility.⁵⁶ I suspect Kemmis would nod approvingly at White settler and Circle trainer Kay Pranis’ description of Circles as an unencumbered space:

Our ancestors gathered in a circle. Families gather around the kitchen table in a circle. Now we are learning to gather in a circle as community to solve problems, support one another, and connect to one another.

A new way of bringing people together to understand one another, strengthen bonds, and solve community problems is blossoming in modern Western communities. . . .

Peacemaking circles are providing a space in which people from widely divergent perspectives can come together to speak candidly about conflict, pain, and anger and leave those conversations feeling good about themselves and about others.⁵⁷

Echoing Kemmis’ concern about the absence of informal relations—“second languages of cooperation”—in formal spaces, settlers who are in restorative justice also emphasize relational space being a priori essential to reparative work. In settler restorative justice, for instance, a Circle is designed to facilitate this relational space—at least ideally or in theory.

The rituals of circle affirm a social order based on inclusiveness, equality, and respect for all participants. In circle, everyone is an equal part

of the whole; a circle has no head and no hierarchy, each person has his or her individual place, and no place is outside the circle. A circle has no table to hide behind or back of the room to retreat. Each person faces others as a human being, leaving titles that signify position outside, using first names only. Everyone is given an equal chance to participate and is encouraged to speak from his or her heart or experience. The rituals of the circles are a way of practicing new ways of relating to one another.⁵⁸

This description of a Circle's structure by Carolyn Boyes-Watson, a White settler in restorative justice, provides another way for groups to relate to one another. To those new to Circles, it is novel and appealing. However, as we will see, these factors do not alone make Circles subversive to the settler status quo.

Circle trainers emphasize that any table in the middle must be removed precisely so that there is “no table to hide behind” or to separate participants. But what “world in between” fills that function of gathering groups together in a Circle? What invisible worlds come into the room with the participants? What “world in between” frames the Circle, gathers groups together, separates them as well, and shapes the experiences of those who sit in it?

To address the “vanishing table”—the question of what draws groups together as well as separates them—Circle practitioners use various devices. One device Circle keepers use to build common ground—a world in between—are intentional discussions about values and guidelines. Check-in rounds and learning about each other always precedes raising hard issues. Hence, settlers in restorative justice believe, or at least assume, that establishing Circle guidelines will transform a Circle into a “space safe to speak in their authentic voices.”⁵⁹ Really? The “world in between” is not so handily stitched. Sitting in a restorative justice Circle amid settlers and their apologists is treacherous space, should you be Indigenous. I know personally from being in restorative justice that Circles neither alter settler colonialism's structured violence nor curb its systemic excesses, such as the logic of elimination. The reality, after all, is that, despite settler proclamations or protestations to the contrary, we live, work, and play in *your* colonizer society where Indigenous Peoples and so many other People of Color have never collectively experienced inclusiveness, equality (let alone equity), or respect from settlers.

... what I want from settlers—especially those who are in restorative, social, community, transformational, and other fields of justice—is for you to undo The First Harm.

Not surprisingly, what I want from settlers—especially those who are in restorative, social, community, transformational, and other fields of justice—is for you to undo The First Harm. The initial harm we continue to experience has everything to do with the outright theft of our land, and therefore its rightful return to its Indigenous owners can undo the ravages we endure from The First Harm. To help move forward with returning stolen Indigenous land, I have a simple yet elegant Indigenous proposal for settlers and others when you gather in Circles either within or without restorative justice’s framework.

Earth as The Talking Piece

My proposal concerns the talking piece(s) used in restorative justice Circles or their derivatives. *Circle Forward*, a restorative justice field manual popular among settlers and others, has a “How Circles Work” section that explains a talking piece’s importance:

The talking piece is a powerful equalizer. It gives every participant an equal opportunity to speak and carries an implicit assumption that every participant has something important to offer the group. As it passes physically from hand to hand, the talking piece weaves a connecting thread among the members of the Circle. . . . *Whenever possible, the talking piece represents something important to the group. The more meaning the talking piece as (consistent with the values of Circle), the more powerful it is for engendering respect for the process and aligning speakers with the core self. The meaning or story of the talking piece is shared with the group when it is introduced.*⁶⁰

This field manual does not specify a talking piece’s shape, color, material, size, texture, or other tangible qualities that would identify it as extraordinary. Yet this statement indicates that its intangible qualities make it quite remarkable: it is an equalizer, it weaves a connecting thread, it represents something important, it helps align a person’s core self from within, and so forth.

I propose to restorative justice a talking piece (herein The Talking Piece) designed to match a metaphysic that,⁶¹ in any Circle or gathering concerned

The Talking Piece I have in mind would necessarily contain a handful of Earth from North America and, inscribed on its surface, would read: “The land on which you stand rightfully belongs to [insert name of Indigenous People(s)].”

with justice, mindfully centers The First Harm. For a talking piece to do such society-wide heavy lifting is not as unimaginable as others might (have us) think. The Talking Piece I have in mind would necessarily contain a handful of Earth from North America and, inscribed on its surface, would read: “The land on which you stand rightfully belongs to [insert name of Indigenous People(s)].”

An initial reaction to this proposal might be similar to how restorative justice literature perceives things Indigenous—the medicine wheel or the four directions—as lending gravitas to restorative justice. But what would The Talking Piece contribute to Circles, to restorative justice, or to settlers’ and others’ core self? Or to undoing The First Harm? The field manual’s “Circle for Making a Talking Piece” section speaks to these questions:

You know from our previous Circles that the talking piece is a very important part of how the Circle works. . . . A symbol is an object that can stand for more than one thing—it can have many meanings. . . . *Your talking piece can symbolize something about who you are as an individual. We can talk about who we are by telling the story of our talking piece, and what the parts mean.*⁶²

Hence, The Talking Piece I want to see adopted throughout restorative justice or in every Circle would certainly address Indigenous Peoples’ First Harm stories, much as I have done here or as Harold Fey hinted at over six decades ago from self-reflecting on White settler behavior. Land dispossession stories tell the many faces of The First Harm.

Land dispossession stories tell the many faces of The First Harm.

The subsequent reactions from settlers and their apologists to my proposal—outrage, anger, denial, dismissal—should emerge about now, which is not the least bit surprising to Indigenous Peoples and People of Color. For one, settlers become extremely reactionary whenever Indigenous Peoples broach the subject of returning stolen land—and more than land ownership is being triggered. Lorenzo Veracini, like Wolfe, Bonds, and Inwood, is one of a growing number of non-Indigenous people in the academy who critically examine settler colonialism. Veracini sheds light on settlers’ intense reactions to land return, which is really quite disturbing. As he frames settler colonialism’s theoretical evolution, Veracini shows why this visceral reaction has everything to do with Indigenous permanence and its challenge to your settler identity, not only your illegal occupation of our homelands but also who you are now and in future generations.

The [Bowman] essay identified who was a “pioneer”: “a young man bent upon winning from the wilderness with strong hands and the hope of youth a homestead for himself and *an inheritance for his children*.” This definition encapsulated many of the long-lasting traits of settler colonial political traditions: a gendered order, a focus on *mononuclear familial relations and reproduction, and the production of assets transferable across generations*. Its author did not mention it, but it went without saying: this young man had a white wife, his children were white and, if he had non-white neighbors, it was understood that they would be gone by the time his children were to inherit.⁶³

Of course, as far as settlers are concerned, inheritance (or in this case “pioneer birthright”), familial reproduction (increasing settler population and

The Talking Piece can help work through this impasse. Though hand-size, then, The Talking Piece is quite extraordinary in its message.

therefore land acquisition), and transferable assets (private or other tangible property) are all ephemeral so long as their non-White neighbors, i.e., Indigenous Peoples, exist. So far, this settler understanding—the logic of elimination, i.e., that I should not exist here to-

day, let alone be writing this paper or editing this book—remains unrealized, thankfully, yet simultaneously our very presence activates a bone-deep angst within settlers. How could it not, right?

And yet The Talking Piece can help work through this impasse. Though hand-size, then, The Talking Piece is quite extraordinary in its message. If we take at face value how settlers perceive a talking piece and Circles—a major assumption given settler history—this perception could prove helpful in making space both for you to gather yourselves together around addressing The First Harm and for us to voice our realities.

The talking piece is an object that is passed from person to person around the Circle. As its name implies, the holder of the talking piece has the opportunity to talk while all other participants have the opportunity to listen without thinking about a response. . . . *The talking piece is a critical element of creating a space in which participants can speak from a deep place of truth.*⁶⁴

Imagine Indigenous people sitting in a Circle with our perpetrators. While holding The Talking Piece, we speak to them about how we come to *experi-*

ence reality, compared to how they *construct* reality. Such a Circle becomes a deep place of truth. The First Nations Sculpture Garden (FNSG), a project that memorializes four Očhéthi Šakówiŋ Oyáte citizens, perhaps opened a window on the question of truth, which I acknowledged at the FNSG's dedication ceremony.

Because the FNSG's story is an indigenous one, certain challenges arise. The challenges are not just project related, such as funding or getting Rapid City [SD] whites' buy-in. They are about how two different societies understand and interpret their place in the same space; one being endogenous, the other exogenous; one being about uniqueness, the other being about universalism; one being about authenticity, the other about appearances; and the comparisons go on. These differing narratives push us to confront the difference between *what has always been true and what others wish to be true*. This sculpture garden shows us that difference.⁶⁵

The Earth contained in The Talking Piece with the inscription connects settlers to The First Harm as no other convention has done. Moreover, The Talking Piece, given its magnitude of importance in Circles, unsettles the space where settler colonialism intersects with restorative justice. It disrupts restorative justice's complicity in not undoing—hence perpetuating—The First Harm. I ask settlers—all settlers—who want more than to just live but to live justly or who struggle with living justly: Is not addressing harms resulting from wrongdoing and undoing them restorative justice's *raison d'être*? How do settlers tell their offspring that stealing is wrong, when the entire relationship between settlers and Indigenous Peoples is a story about theft and the failure to put it right?

How do settlers tell their offspring that stealing is wrong, when the entire relationship between settlers and Indigenous Peoples is a story about theft and the failure to put it right?

As I have found need to write before, stealing others' property is a crime, a criminal act, yet settlers embrace a fantasy of innocence around it.⁶⁶ Genocide, like stealing other's property, remains a crime, which the world community recognizes, yet North America's settler states refuse to hold themselves accountable for the crime and repair it. And, after more than five centuries, settler colonization constitutes a crime and is finally named as such, yet this awareness remains remote from mainstream White consciousness. Being Indigenous, I dare settlers to prove Harold Fey wrong. I now pass The Talking Piece.

DISCUSSION QUESTIONS

1. What role and responsibility do settlers in RJ have for perpetuating The First Harm and for undoing it? What obstacles (outer and inner) block settlers from owning their complicity in The First Harm and holding themselves as a people accountable—all the way to undoing it?
2. How does the logic of elimination operate as a structure today? That is, how is the logic of elimination institutionalized?
3. How does settler identity serve settler colonialism? Related to this, what might it mean to dismantle internalized settler structures? What does that look and feel like? How might it move settlers toward undoing The First Harm and working toward coexistence as peoples?

Note: The following questions are from Emma Battell Lowman and Adam Barker, Wolfe, Patrick, *Global Social Theory*, <https://globalsocialtheory.org/thinkers/patrick-wolfe-2/>.

4. How is “elimination” pursued through both state violence and also legal and political—as well as educational and economic—mechanisms? (Quotation marks added.)
5. What are the common stories and cultural narratives that justify settler colonial invasion and dispossession of indigenous peoples?
6. Wolfe has argued that settler colonial societies are exceptionally “resistant to regime change.” Why is this?
7. Describe the differences between racialisation for elimination, as in settler colonization, and racialization for exploitation, as in imperial enslavement.
8. What is the end goal of settler colonialism? Has it ever been achieved?

ACTIVITIES

1. “Playing” with Cowboys and Indians. This activity involves obtaining a “Cowboy and Indian” figurines play set. This play set is commonly sold in toy stores or can be purchased online. It is important for Circle participants to have an equal chance of being selected as a volunteer for this activity. I recommend participants’ names randomly number themselves off. This activity should prompt participants to understand the game’s connection with settler colonialism’s logic of elimination (structural genocide).
 - a. In Circle, place the container with cowboy and Indian figurines in the center. Have a randomly selected volunteer spill them out in the center. This action will result in a random placement of the figurines.

- b. Have another randomly selected volunteer arrange them as children are taught to play cowboys and Indians.
 - c. After the cowboys and Indians are so arranged, look at the arrangement, and pose the following questions:
 - i. Why are the cowboys and Indians arranged as such?
 - ii. What does the technology depicted imply about each group?
 - iii. Examine the respective postures of each group: e.g., Which group minimizes its exposure to harm? What do their postures imply about each group?
 - iv. Why are Indigenous children and women not included?
 - v. Why is a set of “how to play” instructions not included?
 - vi. Why is this game still being manufactured?
 - vii. How do we respond to the charge, “It’s only a game!”?
 - viii. Why is there no “Slaves and Slave owners” figurine game set?
2. Talking Piece or Peace? Building on activity 1 and this chapter’s content, this activity involves the construction of The Talking Piece for Circle use on a specific landbase. This activity should prompt Circle participants to act on an understanding that, without returning stolen Native land—The First Harm—restorative justice cannot be transformative.
- a. Prior to constructing The Talking Piece, research where the land’s Indigenous owners are today. How does the loss of Native landownership continue to benefit settlers?
 - b. However The Talking Piece is constructed, at a minimum it should be transparent, so the Earth contained within it is visible, its dimensions fit comfortably in the hand, and the inscription—“The land on which you stand rightfully belongs to [insert name of Indigenous People(s)]”—should be visible.
 - c. As a settler or recent immigrant, determine what concrete actions you can take to undo The First Harm.

RESOURCES

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NOTES

1. See *Coloring Restorative Justice’s* “Call for Contributors: Living Justice Press (LJP) invites abstract submissions” in the appendix.
2. Anne Bonds and Joshua Inwood, “Beyond White Privilege: Geographies of White Supremacy and Settler Colonialism,” *Progress in Human Geography*, 40, no. 6 (2016): 716. Emphasis added. In-text citations omitted.
3. Trevor Noah, “Emantic Bradford Jr.’s Death & Why the Second Amendment Doesn’t Apply to Black Men,” *The Daily Show*, November 28, 2018, <https://www.youtube.com/watch?v=wWwQjH7T1bE>.
4. Fort Snelling is the military reservation in question. From November 1862 to May 1863, White settlers interned at least 1,700 Dakhóta, mostly elders, children, and women, for no reason other than that they were defending themselves against settler-sanctioned genocide. At this fort, White settlers’ descendants continue with celebratory reenactments of their settlement from the time period.
5. See Waziyatawin Angela Wilson’s *In the Footsteps of Our Ancestors* (St. Paul, MN: Living Justice Press, 2006) and *What Does Justice Look Like? The Struggle for Liberation in Dakota Homeland* (St. Paul, MN: Living Justice Press, 2008). See also Edward C Valandra’s, “‘Forgive Everyone Everything’—For What? 1862 Dakota–US War Sesquicentennial, A Case Study,” Community for the Advancement of Native Studies, 2015 (unpublished), Academia.edu.
6. Jack Utter, *American Indians: Answers to Today’s Questions*, 2nd ed. (Norman: University of Oklahoma Press, 2001), 10. Emphasis mine.
7. *Johnson v. McIntosh* 21 US (8 Wheat.) 543, 5 L.Ed. 681 (1823).
8. See Steven T. Newcomb’s *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Golden CO: Fulcrum, 2008). Newcomb questions whether the dispute was genuine or instead fabricated in order to assert the Discovery Doctrine.
9. *Johnson v. McIntosh*. Emphasis mine.
10. Utter, *American Indians*, 12.
11. Newcomb, *Pagans*, 52–53.
12. Several North and South Dakota settlers introduced legislative bills targeting Indigenous decolonizing actions. On January 9, 2017, seven North Dakota settlers introduced a legislative bill (House Bill 1203) that would provide protection from liability for a driver who “unintentionally” hits a person protesting on a public highway. A close vote in committee (41 YES, 50 NO, 3 Not Voting) stopped HB

1203. Dennis Daugaard, a White settler and South Dakota governor, introduced legislation and, on March 13, 2017, signed Senate Bill 176 into law. This settler law establishes “public safety zones” limited to twenty people. The settler law anticipates Indigenous decolonizing actions to stop the Keystone XL Pipeline’s development.
13. On January 24, 2017, President Trump issued a series of memoranda and executive orders to push pipeline construction forward, including a Construction of the Dakota Access Pipeline Memorandum; a Construction of the Keystone XL Pipeline; an Executive Order Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects; and a Construction of American Pipelines Memorandum.
 14. See Eva Mackey, *Unsettled Expectations: Uncertainty, Land, and Settler Decolonization* (Halifax and Winnipeg: Fernwood Publishing, 2016), 76–77.
 15. Ken Alvine, n.d.
 16. *Ibid.*, 5.
 17. Mackey, *Unsettled Expectations*, 83–84. The KCCN is a settler organization whose purpose was to derail an Indigenous land claim.
 18. *Ibid.*, 84. Emphasis mine.
 19. South Dakota Career and Technical Education Summer Conference. July 31–August 1, 2017, Brookings, SD, 9.
 20. Emma Battell Lowman and Adam J. Barker in *Settler: Identity and Colonialism in 21st Century Canada* (Halifax and Winnipeg: Fernwood Publishing, 2015) outline settler colonialism’s three pillars. The other two pillars are settler colonialism’s invasion is a structure not an event; and settlers came/come to stay (permanence), 25–26.
 21. *Ibid.*, 26. Footnote references omitted. See also Edward C Valandra’s “South Dakota Board on Geographical Names (SDBGN): Testimony Regarding The ‘Renaming’ of Harney Peak.” Community for the Advancement of Native Studies, submitted to South Dakota Board on Geographical Names, April 2015.
 22. “Governor Daugaard Signs Senate Bill 176 ‘Public Safety Bill’ to Suppress Protest” March 14, 2017, <https://www.thesiouxempire.com/gov-daugaard-senate-bill-176/>.
 23. “South Dakota Legislature—Senate Bill 176—2017,” the Free Speech Project, Georgetown University, <http://freespeechproject.georgetown.domains/state-and-local-government/south-dakota-legislature-senate-bill-176-2017/>.
 24. Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 388. Emphasis mine.
 25. *Ibid.*
 26. Bonds and Inwood, “Beyond White Privilege,” 721. In-text citations omitted.
 27. The UN General Assembly September 2007 vote was 144 Yes, 4 No, 11 Abstentions.
 28. This decision upheld a White settler’s claim, McIntosh, against another White settler, Johnson. In that decision, the settlers’ government (US) did (and still does) not recognize any property title as valid if it was purchased directly from a Native nation, which Johnson did. Using this decision, the settler court (US Supreme Court) articulated the Discovery Doctrine, which fictionally—i.e., arbitrarily and unilaterally—determined that settlers, and not Native Peoples, are the “true” landowners of North America. They alone possess absolute title over the North

- American continent, including the sole right to decide what happens to the land. This settler-court decision did assert that Native Peoples possess a diminutive land right of use and occupancy only, *which is a subordinate right to the settlers' fictional ownership*.
29. The settler court determined that it had no power to hear the case. The Cherokee were neither a foreign nation nor a state of the United States. They constituted a “domestic dependent nation.” This settler-court interpretation excluded the use of US courts to resolve disputes involving Native nations as independent sovereigns. Today this subordinate condition is called “Tribal Sovereignty.”
 30. This settler decision held that Georgia law does not apply within the Cherokee Nation’s exterior boundaries. This case involved a White male missionary’s refusal to obey Georgia’s law that required him to have a license to legally reside within the Cherokee Nation.
 31. 1830 *Indian Removal Act*, 21st Congress, Session I, Chapter 148: An act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the Mississippi River.
 32. Andrew Jackson’s speech to Congress on Indian removal, https://www.nps.gov/museum/tmc/MANZ/handouts/Andrew_Jackson_Annual_Message.pdf, accessed July 4, 2018. See also President Jackson’s message to Congress “On Indian Removal,” December 6, 1830; Records of the United States Senate, 1789–1990; Record Group 46; National Archives and Records Administration.
 33. Mackey, *Unsettled Expectations*, 84.
 34. Helen Hunt Jackson, *A Century of Dishonor: The Classic Exposé of the Plight of the Native Americans* (Mineola, NY: Dover Publications, 2003), 275.
 35. Faced with physical removal, a significant number of Choctaw citizens, another “Civilized Tribe,” opted to invoke a clause in their removal treaty, much to settler dismay, if not chagrin. This clause allowed a Choctaw citizen to remain rather than to relocate; however, Wolfe points out that the trade-off requires invoking the logic of elimination.
 36. Prior to possessing property, however, Locke argues that there exists a natural right to acquire land.
 37. <https://www.libertarianism.org/columns/john-locke-justification-private-property>.
 38. Wolfe, “Settler Colonialism,” 388. Emphasis mine. Footnote reference omitted.
 39. *Ibid.*, 396. Emphasis and underline mine.
 40. Wolfe, “Settler colonialism,” 388.
 41. See “President Barack Obama on #NoDAPL and Dakota Access Pipeline,” <https://www.youtube.com/watch?v=gIMlc-iaxsk>.
 42. For example, states’ stricter voter identification laws negatively impact non-White voter turnout more than they do White voters. See North Dakota voter ID law, H.B. 1369. It requires a North Dakota or other valid ID card to have physical street address. In North Dakota, many Indigenous Peoples who reside in Native Country often use a P.O. box for their mailing address.
 43. The Thirteenth Amendment’s language carves out an exception for slavery. A person who is duly convicted of crime (i.e., a felon) can, as punishment, be enslaved. Indeed, US twenty-first century incarceration rates exceed that of other countries,

- and non-Whites are disproportionately or overly represented in prisons, jails, and other forms of detention. A felony limits other rights or privileges, such as voting as well as housing, employment, and educational opportunities. In 1871, our colonizers passed a law (16 Statute 566) that unilaterally declared they would not acknowledge or recognize Indigenous Peoples as sovereign, independent nations, hence “the United States will no longer contract by treaty” with them.
44. Vine Deloria Jr., *Custer Died for Your Sins* (Norman: University of Oklahoma, [1970] 1988), 172.
 45. *Ibid.*, 172. Emphasis mine.
 46. Daniel Kemmis, *Community and the Politics of Place* (Norman: University of Oklahoma Press, 1990), 66–67. Kemmis notes that public hearings “would be part of an honest conversation which the public holds [with] itself. But that almost never happens” (p. 53).
 47. *Ibid.*, 5–6. Emphasis mine.
 48. *Ibid.*, 6. See also Deloria’s *Custer Died for Your Sins* and *We Talk You Listen: New Tribes, New Turf* (New York: Dell Publishing Company, 1970). These are only two of hundreds of books that reveal that the magic trick alluded to is the Western worldview and its derivatives, such as white supremacy.
 49. *Ibid.*, 79.
 50. Johannes Wheeldon, “Finding Common Ground: Restorative Justice and Its Theoretical Constructions,” *Contemporary Justice Review* 12, no. 1 (March 2009): 93.
 51. See Article VI, second clause: “This Constitution . . . and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”
 52. Harold E. Fey, “Our National Indian Policy,” *The Christian Century* 72, no. 13 (March 30, 1955): 395. Emphasis mine.
 53. See Mackey *Unsettled Expectations*, 7–8.
 54. *Ibid.*, 8–9.
 55. *Ibid.*, 9–12.
 56. In Robin DiAngelo’s *White Fragility: Why It’s So Hard for White People to Talk about Racism* (Boston: Beacon Press, 2018), Michael Eric Dyson describes white fragility in his foreword: “It is an idea that registers the hurting feelings, shattered egos, fraught spirits, vexed bodies, and taxed emotions of white folk. In truth, their suffering comes from recognizing that they are white—that their whiteness has given them a big leg up in life while crushing others’ dreams, that their whiteness is the clearest example of the identity politics they claim is harmful to the nation, and that their whiteness has shielded them growing up quickly as they might have done had they not so heavily leaned on it to make it through life” (xi–xii). On the notion of Circles as containers, see also Kay Pranis, *The Little Book of Circle Processes: A New/Old Approach to Peacemaking, The Little Books of Justice and Peacebuilding* (Intercourse, PA: Good Books, 2005), 9.
 57. Kay Pranis, *The Little Book of Circle Process: A New/Old Approach to Peacemaking* (Intercourse, PA: Good Books, 2005), 3, 6. Emphasis mine.
 58. Carolyn Boyes-Watson, “Seeds of Change: Using Peacemaking Circles to Build a Village for Every Child,” *Child Welfare* 84, no. 2 (March/April): 196.

59. Pranis, *Little Book of Circle Processes*, 34.
60. Carolyn Boyes-Watson and Kay Pranis, *Circle Forward: Building a Restorative School Community* (St. Paul: Living Justice Press; Boston: Institute for Restorative Initiatives, 2015), 30–31. Emphasis mine.
61. Ibid. Indeed, the two authors devote three sections to a talking piece: “Introducing the Talking Piece,” “Circle for Making a Talking Piece,” and “Practicing the Use of the Talking Piece Circle.” Emphasis mine.
62. Ibid., 52.
63. Lorenzo Veracini, “‘Settler Colonialism’: Career of a Concept,” *Journal of Imperial and Commonwealth History* 41, no. 2 (2013): 315. The essay Veracini references is Isaiah Bowman’s “The Pioneer Fringe,” *Foreign Affairs: An American Quarterly Review* 6, nos. 1–4 (1927–28): 49–66. Emphasis mine.
64. Pranis, *Little Book of Circle Processes*, 35.
65. Edward Valandra, “Why a First Nation Sculpture Garden?” November 16, 2017, delivered at Rapid City, SD.
66. Edward Valandra, “Stolen Native Land,” 2014, <http://themedes.org/articles/stolen-native-land/>; or see Academia.edu.