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## **creation stories: survivance, sovereignty, and oil in MHA country**

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*Berthold before Bakken, and Mandan, Hidatsa, Arikara before Berthold. Before Tribe, there was river and sea, and before water the back information of Time that shapes the meaning of this or any other narrative.*

It is January 2013, and snowfall is beginning to thicken as these thoughts congeal into notes. Just returned from the first of several interviews I was granted permission by MHA administrators to conduct, I am awaiting a cheeseburger at the Wrangler Café in Parshall, North Dakota, home of the Braves, located just on the eastern edge of its namesake oil field, which was discovered in 2006 by EOG Resources in conjunction with consulting geologist Mike Johnson.<sup>1</sup> Commentators on the history of the Bakken boom point to the discovery of the Parshall Field as the “eureka” moment that for oil investors and lease operators alike transformed the Bakken from enormous potential to immediate “play.” By the time my burger arrives, seven years later, so to speak, I’ve already heard whispers of another taking. Not the land outright, as in 1949, but a swindle of mineral and drilling rights to the tune of nearly a billion dollars. *The more things change....*

It is 1943, and flooding along the lower Missouri has “caused billions of dollars in damage and flooded thousands of farms in Nebraska and Iowa.” After nearly “a century of catastrophic flooding,” the floods of ‘43 are a tipping point that triggers a call for a massive engineering project to build a series of dams across the upstream portions of the Missouri and tame the Big Muddy (VanDevelder 26). The Pick-Sloan Plan, according to namesakes Colonel Lewis Pick, of the Army Corps of Engineers, and Glenn Sloan, of the Bureau of Reclamation, will provide access to irrigation for “four million acres of bone dry prairie” upstream while ensuring flood control to downstream farmers in Iowa and Nebraska (27). The “jewel in the crown” of the Pick-Sloan Plan will be the Garrison Dam, set to be located in the heart of Mandan, Hidatsa, and Arikara country. Once the dam is completed, the symbolic and economic heartland of the Three Affiliated Tribes of the Fort Berthold Reservation, an area that includes

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the tribal headquarters at Elbowoods, will be submerged under “a six hundred square-mile lake.” The Tribes will lose 153,000 acres of bottom land that has some of the richest topsoil in the world—18 feet deep in some places, according to Cory Spotted Bear—and many will be forced to attempt farming and ranching on the less arable “bad” lands west of the river.<sup>2</sup> The Tribes, with help from Wyoming Senator Joseph O’Mahoney, fight valiantly for four years to “forestall” what Paul VanDevelder refers to as an “inevitable catastrophe” (28). On October 9, 1945, during Congressional hearings on the matter, Senator William “Wild Bill” Langer of North Dakota asks the Chairman of the Three Affiliated Tribes, Martin Cross, how long his ancestors had been living in the area in question. “Since time immemorial,” the Chairman replies (117-18). Given that answer, what could possibly constitute ground of equal value or the price of “just compensation?” By then, though, all involved know too well that relocation to acreage of equal value would not be forthcoming in a Plan that has all the earmarks of a *fait accompli* in which the cultural and economic well-being of the Tribes seems a mere and increasingly irritating afterthought. Built to accommodate the submergences and dislocations of what the Elders would thereafter refer to as “the Flood,” New Town, located on Highway 23 some 70 miles northwest of Elbowoods and twelve miles west of Parshall, will be established as the new tribal center as of 1951.<sup>3</sup> As if in cruel mockery of the immemorial “heart” of Tribal life now lying submerged under the waters over Elbowoods, New Town is about as far north as one can go and still be on the Reservation. But at least it was dry.

Several other tribes along the Missouri, including the Sioux, were traumatized by the effects of the Pick-Sloan Plan. But as Michael L. Lawson points out, “the most devastating effects suffered by a single reservation were experienced by the Three Affiliated Tribes... whose tribal life was almost totally destroyed by the army’s Garrison Dam” (29). Recently, in December of 2016, MHA Chairman Mark Fox highlighted the irony of these tragic events in commemorating the restoration of nearly 25,000 acres that had hitherto been under the control of the Corps of Engineers. “Half of our adult men were fighting for their country and their homes in World War II when the federal government began making plans to take our lands for the Garrison Dam,” Fox said. “The flood caused by the Dam displaced 90 percent of our people from their homes. It literally destroyed our heartland” (“Interior Department”). The legal basis of such action, referred to by the government as a “taking,” can be found in Amendment V of the Constitution: “...nor shall private property be taken for public use, without just compensation.”

“Just compensation,” unlike beauty, is not in the eye of the beholder so much as in the pen of the colonizing power, in this case represented by the Army and the Bureau of Reclamation, both working on behalf of descendants of settlers rather than in the best interests of the Tribes. As if to underscore this point, amateur historian and blogger Judi Heit points out that “the Corps of Engineers, without authorization from Congress, altered the project’s specifications in order to protect Williston, North Dakota, and to prevent interference with the Bureau of Reclamation irrigation projects. However, nothing was done to safeguard Mandan, Hidatsa or Arikara/Sahnish communities” (“Ghost Lakes”). Do I need to add that Williston is not on the Reservation and that the majority of its residents were white? When all was said and done, according to legal scholar Raymond Cross, son of the aforementioned Martin Cross, “just compensation” for the Fort Berthold Taking Act (Public Law 437), signed into law by President Truman on October 29, 1949, turned out to be 7.5 million dollars—a paltry sum indeed for land on which the people had been living since “time immemorial.”<sup>4</sup> “Just compensation,” then, turns out to be just *compensation*, just one more turn of the colonizer’s screw, and hardly surprising at that.

Colonization,” according to Elizabeth Cook-Lynn, “is not just the invasion and inhabiting of a place owned by others; it is the setting up of laws to legitimize the power of occupancy and ownership” (2012 138). As an example of the kind of legitimizing she has in mind, Cook-Lynn points to this same “mid-twentieth-century Missouri River project, which, through federal law, destroyed millions of acres of treaty-protected land for hydropower over the objections of the citizens who lived there” (138). For Cook-Lynn, herself a member of the Crow Creek Sioux Nation that was also adversely impacted by the Pick Sloan Project, the social goods of cheaper power, accessible irrigation and effective flood control are each a metonym for a history of Native eliminationism in the name of social progress. As such, these “goods” will not be allowed to blunt the urgencies of her central and abiding question: “*for how long will the courts and academia and the intelligentsia of this country refuse to describe this history as genocide?*” (68 emphasis in original). As a means of pointing out the ramifications of that history, Scott Richard Lyons makes a useful distinction between “migration” and “removal.” Lyons imagines that *migration* has a “value” akin to what “Gerald Vizenor has called transmotion: a ‘sense of native motion and an active presence,’ that is recognized by ‘survivance, a reciprocal use of nature, not a monotheistic, territorial sovereignty’” (5). *Removal*, Lyons later states, “was a federal policy established in 1830 by President Andrew Jackson, *and it would now go by the name of ethnic*

*cleansing*” (“Introduction” 8, emphasis added). Not only would it go by that name now, but as Cook-Lynn reminds us, “[o]n Indian reservations *even today* the writing and enforcement of the laws of colonization are always charted by the federal system, often without the consent of the governed” (138 emphasis added). *Even today*—pipelines and competing jurisdictions crisscross Indian Country and undercut the very idea of sovereignty.

In October of 2013, Lisa DeVille and her husband, Walter, gave me a tour of the oilfields along an unpaved BIA road in the Mandaree area, where they live (see figure 1).<sup>5</sup> It was a chilly day, with a light



Figure 1: Residue from flares turns some snow in Mandaree yellow.

snow falling as we

drove around. What took my breath away, however, was not the cold but the extent to which the landscape had been taken over by the apparatuses of the oil industry. We saw artificial palm trees near a trailer park, which already seemed the beginnings of a man-camp on someone’s private land (see Figures 2 and 2a below).



Figure 2a



Figure 2: the artificial palm trees are located at top left corner of this mini-man-camp.

(Man-camps were not allowed on Tribal land at the time of my interviews, although there was ongoing debate as to whether or not man-camps should be allowed in exchange for MHA housing.) We also saw evidence everywhere of how valuable water is to the pumping process. A blue sign along the road indicates “water depot # 3” belonging to a company out of Watford City (see figure 3 below). Earlier that summer Lisa DeVille had told me that she knew of one reservation family who was getting \$150, 000 for their water—per *month*. Even if the rate turns out to be annual, that figure would no doubt represent a considerable boost to the family’s economy. According to Fox, it takes “two to three million gallons of water” to drill a well. In what will turn out to be an even greater irony than the oil itself, the water of Lake Sakakawea, beneath which lies the Tribal heartland, will be even more valuable than the oil.<sup>6</sup> From Fox’s perspective, MHA will have gone from what Raymond Cross, borrowing from Bonnie Duran, calls the debilitating effects of “intergenerational post-traumatic stress disorder” (Cross 2000,



Figure 3: Where fracking is concerned, there is no oil without water.

958), a disorder underscored for his generation by a righteous rhetoric of too much water and not enough solid land, to a post-oil future in which MHA, facing West, will have surplus water for a world that cannot get enough of it. “One day,” Fox says by way of emphasizing his point, “in this nation and in this world, a barrel of potable drinking water is going to be more valuable than a barrel of oil.” All the more reason, then, to minimize wastewater contamination,

which may turn out to be easier said than done. According to a 2016 Duke University report, “there have been approximately 3900 brine spills reported to the North Dakota Department of Health by well operators.” The report goes on to define “brine spills” as “the accidental release of brine that may potentially impact groundwater or surface water” (Lauer). The key words here are “accidental” and “reported,” since both the DeVilles and the aforementioned Tribal Business Council member, Cory Spotted Bear (Twin Buttes Segment), are convinced that there are

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occurrences of illegal dumping. Illegal dumping, while pernicious in its cumulative effects, may turn out to be the least of their worries. On July 8, 2014, a leak in Crestwood Midstream’s Arrow Pipeline “dumped more than 1 million gallons of brine and oil in a Mandaree tributary of the colossal lake formed by the Garrison Dam” (Nauman). That “colossal lake” is what Fox is envisioning as a liquid lock box for MHA’s future.

Moving forward, as with looking back, the problem that the oversight of environmental hazards presents is that so much is out of the direct control of MHA. In what follows, I will trace out the implications for Tribal sovereignty as it pertains to the aspirations of two MHA members—Lisa DeVille and Cory Spotted Bear—both of whom I interviewed in the summer and fall of 2013. In doing so, I will elaborate on and interweave four different types of creation stories: the tale told by oil which, like the immemorial past of the MHA people, is a resource buried under the weight of its own history; the aspirational stories told by Spotted Bear and DeVille and the examples they embody that take sustenance from that deep past *in order to* progress toward a workable and sustainable future; the critique of the dominant culture’s political creation story as elaborated by Raymond Cross, a legal scholar for whom the founding of a doubled America—“one Indian and one non-Indian” (Cross 2004, 61)—might now, in a post-boom world, become an opportunity for renegotiating “the existing civil compact between the Indian and non-Indian peoples” under the aegis of what he calls, following Charles Taylor and Clifford Geertz, ““deep diversity”” (64). These creation stories will themselves be served by another type of creation story, the writer’s peculiar form of re-creation which we have come to call the *essay*.

### I. Essay/essay: the first doubling

All stories, according to self-described “postindian ironist,” Gerald Vizenor, are creation stories—none more so than that late arrival, the essay. Merging the neo-pragmatist critique of Richard Rorty with his own critique of the logic of Manifest Destiny that he calls “manifest manners,” Vizenor goes on to say that “[t]he shadows in trickster stories would overturn the terminal vernacular of manifest manners, and the final vocabularies of dominance” (“Shadow” 68). For “native stories,” as Vizenor explains in “Penenative Rumors,” “are the canons of survivance: the tease of seasons, scent of cedar, oneric names, shamanic creases, and the

transmotion of sovereignty” (23). He might as well have said “canyons,” where the tease of natural reason sent by cedars and the twists and turns of elemental forces over time have creased the very landscape of selves that are decidedly “not...essence, or immanence,” but are instead “the mien of stories” (20). Quoting literary theorist David Carroll, Vizenor is careful to emphasize that “master narratives”—the upper case Creation Stories of manifest manners and final vocabularies—“perpetuate an injustice” in their “denial of the right to respond, to invent, to deviate from the norm” (27). Such deviations—which I take to be synonymous with Vizenor’s notion of *mien*—are definitive, if necessarily diffuse, as implied in the following Vizenor quote from Jean François Lyotard’s “Lessons in Paganism”: “the people does [sic] not exist as a subject but as a mass of millions of insignificant and serious little stories that sometimes let themselves be collected together to constitute big stories and sometimes disperse into digressive elements” (“Shadow” 68). That key word “mien,” then, which figures as attitude and affect, is a sign of presence and belongs neither to teller nor auditor but links them both to the contingencies of the story being narrated.

As Vizenor suggests, every story impels many miens and no single story speaks for the order of things. Since “[t]he native essay is the transmotion of nature, culture, and sovereignty,” the stakes, as Vizenor sees them in “Penenative Rumors,” are high indeed (25). In what amounts to an essay on essays, Vizenor takes pains to point out the multifarious “*miens*” of the essay form. It is, he says, “resistance,” “contention,” “mediation,” “venture,” and above all “contingency”; it is also a “tease of creation” as well as a “trace of survivance and sovereignty” (23-4). As if to underscore that the essay is ultimately in the service of something larger than itself, Vizenor switches from indicative to imperative mood: “The essay *must* tease creation,” and “[t]he tease must reverse modernist theses, models of the social sciences, and the narratives of a native absence as an *indian* presence” (23, emphases in original). In Vizenor’s hands, the essay is the medium that best expresses his sense that “the eternal tease is chance” (*Postindian Conversations* 19). “Chance,” as I understand it, teases us in the form of contingency, and provokes us in the form of risk. From that perspective, Vizenor’s notion of the essay is very much in line with that of Michel de Montaigne, who is generally credited with being the inventor of the modern essay. For Montaigne, the essay ushers forth “a new figure—an unpremeditated and accidental philosopher” (“Apology”). Philosopher Ann Hartle opposes “accidental philosophy” to what she calls “deliberate philosophy.” The former, being “nonauthoritative”

(34), seeks not to “aim at a preconceived conclusion” but instead follows a path “of discovery that allows the accidental ‘some authority’” (87). Deliberate philosophy, Hartle stresses, seeks nothing less than “divine *stasis*,” as in Plato’s “eternal forms” or Aristotle’s “first causes” (27) or in the implied teleology of manifest destiny. With its reliance on the logical forms of “the syllogism, the disputation, and the treatise,” deliberate philosophy “assumes the truth of one’s premises,” and so “aims at a predetermined conclusion” (87). We can see that the protocols of deliberate philosophy are very much in line with those of what Vizenor calls “modernist theses” and “models of the social sciences.” As he explains in *Native Liberty*, “I write to creation not closure, to the treat of trickster stories over monotheism, linear causality, and victimry” (6). The task of his project, then, is to figure out how to restore “some authority” to the ongoing traces of “survivance and sovereignty,” traces that are constantly under threat of sedimentation by the deliberative discursive pressures brought to bear by 500-plus years of “accidental” *indianness*. Here, too, Lyons’ distinction between *migration* and *removal* is on point: the story-telling essay is a migratory form. “Stories,” as Kimberly Blaeser reminds us, “keep us migrating home” (qtd in Lyons, 5). Their discursive counterpart, the argument grounded in “deliberate philosophy” with its quest for logical purity, is necessarily a function of removal—more akin to assay than essay.

For our present purposes, it is useful to know that the word “essay,” used as a verb, was once synonymous with the word “assay.” Both imply a “trial” or “test” (Hartle 4, 63). To *essay*, according to the OED, is to “put to the proof.” The emphasis, as I understand Hartle and Vizenor, is less on “proof” than on “*put*”: for the obligation of the essayist is to *chance* the topic under review. In what would seem a slightly different register, one tests for the presence of a mineral by assaying, or *proofing*, its ore. But are these truly different registers? Inasmuch as there is no gold standard for the logic of an essay, how, for example, does one test for presence in an essay? As poet Diane Glancy reminds us in a short segment on Vizenor entitled an “Essay on the Essay,” the “variable units” of Vizenorian language are “the four directions of trick, disturb, interpret and realign.” Glancy figures these verbs, each stressing a dislocation or a dislocation, as cardinal virtues in Vizenor country, even as they map out the contours of Glancy country as well. Within, she goes on to explain, are “texture,” and “a geology or geography of written language as conduit” (“The Naked Spot” 279). The transmotion of Glancy’s figurations, from “texture” to “geology” to “language,” invites a pivot from the creative storytelling of *essays*

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to the creation stories imbedded within geologic *assays*. In this case, the assays I have in mind are the core samples by which petrologists test for oil. While the geologic story they tell originates thousands of feet below ground and millions of years ago—from time immemorial, we might say—the surface story plots out a narrative of transmotion wherein the tragedy of removal might potentially allow MHA an opportunity to frack out a migratory and redemptive irony of the last laugh. After all, as we shall discuss, they, too, according to their creation stories, came up to the surface from deep underground.

## II. Reading from the ground up

The idea of geology as a story seems a foundational metaphor for North Dakota's Geological Survey Department. In their 1997 guide book to the geology of the area around Dickinson, North Dakota, Robert F. Biek and Edward C. Murphy explain that “geologists often view the earth as a book.” They go on to add that “the story is not told in words and sentences...but in layers of rocks that record geologic history. Each layer is like “a page in a book,” with pages “grouped into chapters and the chapters into four great volumes” (2). These “volumes,” from the earliest to the most recent, are the Precambrian or Cryptozoic, Paleozoic, Mesozoic, and Cenozoic Eras (3). While Biek and Murphy go on to stress the incompleteness of the text of geology, figuring that it might better be thought of as an “incomplete diary,” they nevertheless insist that the “record...with careful observation can be pieced back together” (2-3). In *The Face of North Dakota* (2000), State Geologist John P. Bluemle sounds a more cautionary note while utilizing a similar bibliographic analogy: “The rocks and sediments found in North Dakota are not all the same age,” he writes. “Like the pages in a long and difficult history book, they record events of the past. The ‘book’ however, is incomplete. Many pages are missing; other pages—even entire chapters—are torn and tattered, difficult or impossible to decipher.” Missing pages notwithstanding, Bluemle assures his readers that geologists “know” that “the record of life in North Dakota goes back between 500 and 600 million years” (135).

Much of that knowledge is gleaned from core samples drilled in order to assay for petroleum (Biek 3). And, in keeping with the bibliographic metaphor, these core samples are readily available for review at the Wilson M. Laird Core and Sample Library. With 18,000 square feet of climate-controlled storage space, this voluminous facility “currently houses

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approximately 70 miles of cores and 34,000 boxes of drill cuttings,” including about 95% of “the samples collected” from “the North Dakota portion of the Williston Basin” (“Core Library”). Cores from the Bakken formation constitute a significant portion of this archive, and to a State geologist they provide the necessary texture with which to plot out their ur-text—a creation story of the deep structure of North Dakota geology that intersects at surface level with a complicated social history wherein land, water, and people converge. The plot has its rising action in volume 2 (the Paleozoic Era), with a series of transgressions and regressions of warm inland seas, and of the consequent deposition and sedimentation of layers upon layers of mud mixed in with the organic residue of lush, tropical vegetation.<sup>7</sup> “Long after the sea...dried up,” or so the storytellers say, “the weight of thousands of feet of overlying rocks, coupled with heat from the earth’s interior” triggered in that organic slush chemical transformations that produced petroleum. Additional pressure “caused the petroleum to migrate from the source rocks (mainly shale) into more porous rocks (mainly sandstone and carbonates)” [Bluemle 147-8]. As of now, the richest deposits in the Williston Basin are to be found in the Bakken Formation, so named in 1953 by geologist J. W. Nordquist after H.O. Bakken, the man who owned the land in Williams County, North Dakota, on which the Amerada Petroleum Corporation took core samples from its test hole #1.<sup>8</sup> A relatively thin layer of source rock—only 46m thick at its “depocenter” (defined as the site of maximum deposition)—the Bakken is a layer of “organic-rich shales” that “overlies the Upper Devonian Three Forks Formation and underlies the Lower Mississippian Lodgepole Formation” (“Diagenesis” 4). This would date the formation at about 360 million years.

A comparative analysis of core samples done by a well-trained eye can pinpoint where the oil is and approximately how much of it has been generated. Indeed, this is how the late Julie LeFever, geologist and longtime Director of the Laird Core Library, earned her affectionate sobriquet of “Miss Bakken.” She “knew where the oil was,” according to colleague Kent Holland. “She looked at nearly every Bakken core, logged it, and put that information together. She knew it was there before the technology existed to extract it” (Orvik). According to a study published in 2001, by Janet K. Pitman, Leigh C. Price, and LeFever, the Bakken “generated approximately 200 to 400 billion barrels of oil in place” (“Diagenesis” 1). As the 200 billion barrel swing might indicate, oil generation estimates are in dispute. As geologists develop ever more sophisticated computer models, the amount is adjusted—sometimes higher, and sometimes lower. Even if all could agree on a fixed amount, generated oil does not necessarily equal

“recoverable” oil. There is a great, and one supposes often frustrating, disparity between what nature is deemed to have generated and what technology and pricing will allow to be recovered. In a 2006 paper co-authored by LeFever and Lynn Helms, legendary geologist Leigh Price is quoted as placing the recovery estimate “as high as 50%.” Headington Oil Company, operating in Richland County, Montana, put a “primary recovery factor of 18%” for their operations, while North Dakota’s Industrial Commission came in with the most conservative estimate of from 3-10%. Admitting that the “Bakken play” in North Dakota is still in a “learning curve,” LeFever and Helms go on to point out that technological adjustments (including horizontal fracking) and the price of oil “will dictate what is potentially recoverable from this formation” (“Bakken Formation”). In 2008, the State of North Dakota estimated that 11-14 billion barrels were recoverable, whereas in 2013 the US Geological Survey put the number at just under 7.4 billion (Gaswirth, et.al.).

Be that as it may, they don’t call it a “boom” for nothing. Actual production in the Bakken, even with the recent plunge in oil prices, is still above a million barrels a day.<sup>9</sup> And for various reasons, not all of them good, that boom may very well reverberate in MHA Nation for a long time. The Reservation is located right at ground zero of what North Dakotans affectionately refer to as “the Patch.” For MHA, the metonym “the Patch” is counterpoised to an earlier metonym, “The Flood,” the traumatic effects of which have been intergenerational. It remains to be seen as to what is ultimately “recoverable” within that scenario.

Maps of the Bakken Total Petroleum System (which also include the Three Forks formation that undergirds the Bakken) show that the area under review stretches east-west from longitude 99° in east-central North Dakota to longitude 107° in eastern Montana, and north-south from the Canadian border (although the actual geological formation extends into Manitoba and Saskatchewan) to latitude 45° in South Dakota. Compare those boundaries to the following:

Commencing at the mouth of the Heart River; thence up the Missouri to the mouth of the Yellowstone River; thence up the Yellowstone to the mouth of the Powder River, thence in a southeasterly direction to the headwaters of the Little Missouri River, thence along the Black Hills to the headwaters of the Heart River; thence down the Heart River to the place of the beginning. (“Laws and Treaties”)

So reads the language of the 1851 Treaty of Fort Laramie. Starting at the mouth of the Heart, the boundary circles back, as if to come home. These days, the southern boundary of “home” for the

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MHA Nation is some 100 miles north, as the crow flies, from present-day Mandan, a city situated at the mouth of the Heart on the west side of the Missouri across from Bismarck, the state capital. A two and a half hour drive will get you to tribal headquarters at Four Bears, across the river from New Town. At approximately 500,000 acres, the tribal land base is miniscule compared to the roughly 12 million acres allotted in the original treaty (“Demographics”).<sup>10</sup>

In the oral tradition, this lost area is referred to as “the heart of the world.” It was here, at the Heart River villages, that the Mandan expanded their agriculture-based economy by establishing a “great trading bazaar” that became a “commercial hub” along the Mississippi-Missouri trade routes (VanDevelder 17). When Spotted Bear recounted this history to me, he used the analogy of Sam’s Club—a one-stop retail-warehouse shopping experience under the corporate aegis of Walmart—to connect MHA’s past prowess as traders to today’s commercial circumstances. Archaeology bears this out. According to Elizabeth Fenn, at one particular Mandan site in Hull, North Dakota (south of Heart River), “investigators have unearthed items traceable” to locations as far-flung as the Pacific Northwest, Florida, the Tennessee River, the Gulf Coast, and the Atlantic Seaboard (18). Given the centrality of trade to agriculture-based and hunting-gathering peoples alike, it would indeed be fair to call the Heart River villages “the heart of the world.” But the people of MHA had other reasons for calling this the “heart” of their world. In one version of their creation story, Lone Man and First Creator engage in a friendly contest to create their respective portions of the world. They begin and end at the confluence of the Heart and the Missouri (Fenn 5-6).

As it turns out, each of the Three Affiliated Tribes has some version of a creation story that indicates an origin from deep underground. One Mandan account, for example, as told to Wolf Chief by Chief, his Mandan father-in-law, tells of “a high point on the ocean shore that the Mandan came from. They were said to have come from under the ground at that place and brought corn up” (Bowers 2004 156). Wolf Chief was Hidatsa, and they, too, had tales that reckoned an underground origin. In one account, from an unnamed source, it is said that First Creator “caused the people who were living below to come above, bringing with them their garden produce” (Bowers 1965 298). In Arikara origin stories the people are likewise said to have come up from the ground, or from an underground cave. As Star tells us, “A long time ago, people lived in the ground” (Dorsey 18).<sup>11</sup>

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In the time “long ago” it was corn and other garden produce that the people brought with them from below. Since 2008, what comes from below has primarily been a volatile mix of oil, natural gas, and wastewater. The nearly constant movement of tanker and supply trucks is literally spreading and widening BIA roads, most of which are unpaved. This constant rumble of oil-related products is further complicated for MHA members by issues pertaining to resource allocation, Native sovereignty, environmental concerns, and federal, state, and local laws. Since the advent of Bakken oil, MHA highway fatalities—“40 in the last few years,” according to Fox—have increased at an alarming rate<sup>12</sup>; drug and sex trafficking are rampant; and with the Four Bears Casino and the expected revenues from oil, fewer and fewer youth are seeing any good reason to further their education beyond high school. I learn all this from several persons I was granted permission by Tribal administrators to interview during the boom year of 2013. All of them had at least a college degree, several had Masters, and one, Fox, a law degree. Three of them had served in a branch of the armed services. All are very alive to the deep irony of recent tribal history in which MHA’s best land had been “taken” in the late 1940s by the Federal government on behalf of the Pick-Sloan plan to dam up the Missouri for purposes of flood control. The notion of “transgenerational trauma” in reference to that post-Flood generation is a touchstone concept expressed by almost all the people I interviewed.<sup>13</sup> The youngest of these, Cory Spotted Bear and Lisa DeVille, live on the west side of Lake Sakakawea, in Twin Buttes and Mandaree, respectively. MHA Nation, and Mandaree in particular, turns out to be at the heart of the most productive portion of the Bakken boom. Their stories show the extent to which creation is an ongoing process.

### III. Cory Spotted Bear

“I’m to the top of my head in the earth here,” Cory Spotted Bear declares. We are sitting around the dining room table of his house in Twin Buttes, North Dakota, on an early afternoon in July, and he is explaining to me why he has no desire to move away. Because he has just graced me with an hour-long survey of the history of the MHA people, I think I know that this statement means more than a deep personal commitment to the priority of place. As we have seen, since time immemorial “the people” of MHA have always imagined themselves as having come up from the ground. Spotted Bear, too, sees himself as emblematic of that tradition. And at 36, he

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feels that he is just now beginning to emerge from the ground up to grow into a vision of himself that he has been cultivating since his senior year in high school.

Signs of a continuous past are all around us. There was the sweetgrass burned in the smudge pot to welcome me into his home and to sanctify the time and space of our conversation. There is talk of building an earth lodge on the grounds of the local elementary school, just across the street from Spotted Bear’s home. Later in our conversation he will tell me that he is preparing for a sun dance and will need to get a proper tree for the ceremony. Spotted Bear is a mesmerizing speaker, so I am not surprised to learn that he is often called on by outside groups to talk about MHA-related issues. For that reason, our time today will be limited, although he will give me even more of it than I had hoped. A humble man, he seems almost embarrassed to explain that shortly after I leave he will be relating his Tribal history to a documentary film crew from Wales, chasing down the hoary old myth of the “Welsh” Mandan.

Spotted Bear is proud to say that he grew up a reservation boy, raised in the old ways by his grandmother, Olive (“Ollie”) Benson. Mrs. Benson happened to be a “full-blooded Norwegian,” or *masi*, but Spotted Bear tells me that because she was raised on the reservation and because she had learned the old ways from her husband, Lorenzo “Larry” Spotted Bear, he thinks of her unapologetically as a conduit for the old ways. One of these teachings is to honor one’s relatives. In light of that, Spotted Bear considers himself to be “socially Mandan,” while acknowledging his Norwegian and German ancestry. “You must acknowledge your parts in order to be whole,” he tells me. But make no mistake, Spotted Bear affirms the synergy that the parts add up to when he tells me, with pride quite evident in his voice, that, since both his mother and father were half, he considers himself to be “full-blooded Indian.”

Trying to make tradition continuously present also means coming into contact with the vestiges of genocide. There is the “historical trauma” that Spotted Bear identifies with assimilation and acculturation when talking about his father and mother and why they were ill-equipped to raise him. “After boarding school,” he says, “they say we did not know how to love our children.” He was raised during formative years by his Uncle and Aunt, Dennis and Berta, who taught him a good work ethic by way of the many chores that a working ranch requires. Chores and good grades were a negotiating point for the avid young basketball player.

As with many Native men, Spotted Bear sees in basketball an opportunity for young persons to be “warriors.” During his senior season in high school, he had what he refers to as an

“embarrassing experience with weed,” one that left him feeling psychologically unsettled for a couple of months. “I felt like something was missing,” he says, “I always felt like I was forgetting something, or like there’s something that should be there that wasn’t there.” Spotted Bear says he didn’t really have a language for making sense of those uneasy sensations until years later after he had begun sun-dancing. As he began to come to terms with what he calls “the ceremonial way of life,” he learned that “when we are not doing good, part of our good spirit leaves us. It can’t be around us anymore because it is so pure, like a child.” As he tells it, he now understands what his spirit was doing during those two months. “It was up in the heavens, talking to other spirits, talking to my ancestors, talking to my grandmas and grandpas. And it was getting wisdom, and it was getting stronger, and it was preparing to come back and start helping me down in this earth again.”

Grounded once more, the consequences were very real for Spotted Bear. He began to think about deepening his education in various ways. The BA he earned at Haskell and the MA in Indigenous Studies from the University of Kansas may have provided him with a credentialed portfolio that pointed him to the future, but his experiences at these institutions also buttressed an intensifying commitment to learning the old ways from his Elders, what he refers to as “teachings.” Without them, he would continue to feel as empty and rootless as he had after that episode in high school. In asking about the old ways, Spotted Bear was struck by how often his Elders would affirm the value of getting an education. Both his Grandma Ollie and his Grandma Martina spoke of its importance, the latter doing so on her deathbed. His late aunt, Alyce Spotted Bear, herself an internationally recognized educator, had, during her stint as Tribal Chair, guided MHA through the Joint Tribal Advisory Committee (JTAC) investigations that eventually led, in 1992, to the allocation of an additional 149.2 million dollar compensation for the tribal lands appropriated by the Forth Berthold Taking Act.<sup>14</sup> Raymond Cross had successfully argued that case all the way to the Supreme Court. For Spotted Bear, a more complete education would have to embody not only the academic finesse exemplified by Elders such as Alyce and Raymond, but it would also have to include learning the intricacies of tribal ways that had been passed down since “time immemorial.”

After a detailed, and at times emotional, explanation of tribal and personal history, Spotted Bear says, “Maybe you want to know my take on the oil.” Based on my introductory phone call, he knows that interviewing him on this topic is the primary reason for my visit. But

being a consummate host, he gently explains the deferral in relation to the old ways. “The intelligent answer is the pondered answer; I’m pondering things still,” he says. “I’m okay with this oil if we can do it in compliance. But because we went through so much trauma, we tend to do things out of order. I could run an oil-field service, but are we going to build a house on the ground or are we going to build a nice foundation first?” After a short pause, he continues. “Let me paint a picture for you: there are those of us who absolutely love our way of life—the Earth way, the fact that we are businessmen.” It is in this context that he talks about Sam’s Club and the Mandan reputation as traders extraordinaire. Rightly proud of this tradition, Spotted Bear thinks the oil can be leveraged in such a way that MHA can continue to be trade brokers long after the oil is gone. “Today,” he says, “what my view is right now is that we can do these things in balance.”

Lest I get the wrong idea about his self-interestedness, he quickly explains that he doesn’t get any oil revenue. “There is talk of a People’s Fund,” he says, “and I might possibly get a

monthly stipend off the interest from the fund. I live paycheck to paycheck, so to have a little boost financially would be nice. But let us not as a people forget the



gentlemen that we are. Maybe we can extract this oil in a way that creates balance.” This last is easier said than done, as he well knows.

At his invitation, we hop into his pickup for a tour of the area. He takes me up on the buttes where many of the pump units, gas flares, and container pits are located. We see trucks lined up at one site (figure 4 above). Are they bringing the much-needed water for the fracking proppant, or are they waiting to carry out the wastewater? It’s hard to tell. But Spotted Bear frequently patrols the backroads, doing what he calls “community watch” on what is, after all, *his* community. He occasionally queries truckers pulled over to the side of a dead-end road or some out of the way spot, and guesses they are probably illegally dumping drilling wastewater, which, by some accounts, is “ten times saltier than ocean water” (Stockdill). “We left such a small scar on the earth,” he says wistfully, thinking back to his ancestors. “We lived in close

Figure 4. Are these trucks bringing water in or taking wastewater out?

proximity to nature” (see figure 5, below). Then, as if to emphasize the potential for oil to disrupt that equilibrium, he goes on to say that if “you create a culture that you can be proud to claim, then in the process you are reclaiming your past.” To that end, he and others have started The



Figure 5: This landscape scene could be the “before” to the scene with the pump above.

Earth Lodge Movement, dedicated to living in earth homes as sustainably and as self-sufficiently as possible. “We are going to have a wind turbine,” he says, “even if we have to buy one from Menards.” Spotted Bear’s dream is that as “inherent stewards of the land,” MHA will be at the forefront of green energy. It’s in his cultural DNA, we might say. “I really believe I’m a plant, and that I can walk around. This oil,” he continues, with a sweep of his arm, “this oil is going to make the wind blow harder.” I take him to be making a double-edged statement: that oil will make going green more economically feasible, since the financial resources from oil revenue could enable development of sustainable alternatives; and that if they wait until after the oil dries up, going green will become more environmentally necessary but by then it may be too late.

Since my interview, Spotted Bear has been elected to MHA’s Tribal Business Council, where he currently serves the Twin Buttes segment (MHA is divided into six administrative segments—the other five are New Town/Little Shell; Parshall/Lucky Mound; White Shield; Mandaree; and Four Bears). The fact that his subcommittee assignments are on the Education and Economic Development committees bodes well, I think, for both Twin Buttes and for MHA.

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#### IV. Lisa DeVille

I first met DeVille in the cafeteria at Fort Berthold College, in New Town, on July 10, 2013. She immediately handed me an inch-thick dossier of documents related to various issues, most of them oil-related, including some of her own environmental impact studies. As I thanked her for the dossier, I couldn't help but think of the Lac-Mégantic, Quebec, disaster four days earlier in which a train containing Bakken oil had derailed and exploded, killing 47. The oil, so pure as to be highly volatile, had been loaded in New Town. According to an article in the *Globe and Mail*, local residents in New Town “like to boast that the honey-coloured oil is so light they can take it right from the well and pour it into truck engines because it requires little refining” (McNish and Robertson). A point of local pride had just erupted into an international nightmare, and as I would come to find out, those are precisely the kinds of disasters that Lisa is concerned to prevent at the local level. By the time I met her, DeVille had already garnered quite a bit of attention as a go-to source for many journalists working on MHA-related stories about “the Patch.” Part of her appeal, I suspected, is that she is very outspoken, absolutely unabashed about telling it like it is from the perspectives that matter most to her: as a 37-year old mother of five; as an enrolled member of MHA (Manda/Hidatsa); as a member of Mandaree Segment much concerned with issues of equity and sustainability in relation to the distribution of oil revenue that MHA holds in common; and as a citizen who is very critical of the lack of oversight on the part of Federal, State, and Tribal leaders in regard to environmental impact. As with Spotted Bear, she, too, wants to push ahead into an oil-based future with an eye toward promoting traditional values.

Raised in straitened economic circumstances, DeVille knows too well what it is to do without. “I grew up hard,” she informs me. “I didn't have a father. It was my grandmother who raised me. We had alcoholism, my husband had alcoholism in his family. So we grew up hard. No money. Sometimes we only ate once a day.” That personal past is what drives DeVille to focus her activism around the holistic mantra of “healthy hearts, healthy minds, and healthy homes.” Given the amount of oil revenue coming into Tribal coffers, she is adamant that there are “many, many, opportunities that Mandaree should be having right now. Our children shouldn't be sitting there 90% obese. They shouldn't be sitting there diabetic at the age of twelve or whatever. There should be a rec center, and they should be incorporating more culture into our

community.” By “they,” DeVille means Tribal administrators, who, she feels, have thus far let them down.

DeVille’s activism—and she is *very* active—may very well put her at odds with the Tribe’s decisions as to how to allocate the money. She feels that since such a disproportionate amount of the oil revenue is coming from the Mandaree segment, and since her community will be left literally and figuratively holding the radioactively-contaminated fracking socks after the oil is gone, a greater percentage of the revenue should go toward building up the infrastructure of Mandaree. She says they need to invest in the schools, build a health clinic and a fire station so that folks don’t have to go 30 or more miles for their basic health and emergency needs (figure 6). She says Administration gave each reservation school \$150,000. A good start, to be sure, but DeVille is also on record as



Figure 6: Emergency services are sorely needed in Mandaree.

insisting that Mandaree should have instead received a million dollars from the same fund. That, from her perspective, would be fair and just.

The 1940s Taking had such a traumatic effect on the Tribe as a whole that reparation in whatever form is bound to be attractive, especially if it comes with a healthy serving of poetic justice that made the bad land they’d been shunted off to turn out to be the most valuable, at least in the short run. DeVille is quick to point out that her husband, Walter, receives oil money from some of his land but that, like Spotted Bear, she does not. All of this oil bonanza is happening so quickly, and so inequitably, that she worries that MHA, in some ways, is not ready for it. For this reason, they have to be prudent, she thinks, about how they proceed. “We’re modern today,” DeVille explains, “but it doesn’t mean we have to give up our traditions.” To punctuate her point, she tells me that she knew what she wanted to be as far back as 7<sup>th</sup> grade. “It was either going to be nursing, attorney, or business, one of the three. I wasn’t sure yet.” She attributes her success in education to the fact that she had people who believed in her. Her grandmother, who

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had just recently passed away, made the biggest impact on her education. One day while they were picking juneberries, she told her granddaughter, “People say there’s oil under here, but they can’t get to it because of the boulders. They’ll figure out a way to get it, but I won’t get to see it.” “But she did get to see it,” DeVille says. “Then she told me, make sure you get your education, because you know the white man, what they did to us before. When that oil gets here they’re going to be taking again. You get your education so when they put that paper in front of you, you know what they’re giving you.” Or taking away, as the case may be. But DeVille is also quick to point out that without sufficient oversight, Tribal authorities themselves may be involved in underhanded or misguided deals that ultimately benefit themselves at the expense of the Tribe.<sup>15</sup> Listening to DeVille and her friend exchange opinions on this, I hear myself chiming in with “The taking continues, but now it’s an inside game,” to which they readily assent. One manifestation of this, as DeVille describes, is tribal leaders using “tradition” as a way to bolster their own status. DeVille’s own commitment to tradition is very much in evidence in the way she talks about her own upbringing and about how she is raising her own children. Her eldest son was with her on the day we talked, and DeVille, who is Catholic, spoke proudly of his having been selected to be a Tribal spiritual leader. “If you don’t know who you are,” she says, “you’re lost.”

Since our initial talk, DeVille’s tireless efforts on behalf of keeping various constituencies—Tribal, State, and Federal—attuned to the need for environmental awareness and oversight have been recognized by the North Dakota Human Rights Coalition (NDRHC). On Nov. 13, 2015, she received the Arc of Justice Award from the Coalition. Barry Nelson, outgoing chair of the Coalition, expressed the following sentiments in reference to her activism: “Lisa DeVille embodies the NDRHC Arc of Justice Award in her lifelong quest for justice and for advocating for the protection of the land about her. She is someone that people can look to for inspiration and leadership.” Nelson went on to explain that DeVille was nominated due to her “strong record of achievement combining skills in diverse areas of organizational development, group/staff leadership, program development, project management, building partnerships and community relationships.” It is clear from the award and from her increasingly diverse portfolio of committee and interest-group activities, including membership on the Dakota Resource Council and the National Environmental Justice Advisory Council, that DeVille is well on her way to becoming a State and National figure on issues of environmental justice. But increased

visibility, while serving as a useful magnifier by which to augment her critical opinion, is not her primary concern. Global exposure is merely a function of local commitment. DeVille's primary concern is that MHA keep its share of the exceptionally pure and extremely volatile oil safely on track for *equitable* and *sustainable* use for all members of MHA, now and in the future.

I can easily envision a future in which Spotted Bear and DeVille both continue to develop into exceptionally savvy and effective leaders. Spotted Bear's way of surveilling his Twin Buttes community is to drive around and be a visible sign of Native sovereignty; DeVille's way is to keep an ear to her scanner. "Something happens almost every night," she says, "either a spill, something tipped over, or something's exploded."

#### V: The Fold in the Constitution

Raymond Cross has consistently argued that if MHA is to benefit from the extraction of oil rather than be victimized by it, then "reasonable legal and social regulation" mandated by the Tribes will have to win out. If not, what looks like a boon now may end up "jeopardiz[ing] the progress the tribal people have made in their recovery from the disastrous effects of the Garrison Dam taking some sixty years ago" (Cross 2011, 569). However, Cross thinks there is "reason for optimism" since "both the federal and state governments have an important stake in helping the tribe regulate oil and gas development." But in order to turn Cross's optimism into hard fact, the other two governments will need to "acknowledge the tribe as an *indispensable* regulatory partner in the realization of this common goal" (569, emphasis added). I take Cross's sly invocation of "indispensable" as a way of gesturing toward the hard sovereignty grounded in the commerce clause of Article I, section 8, clause 3 of the Constitution, wherein is stated that "Congress shall have power to...regulate Commerce with foreign Nations, and with the several States, and with the Indian Tribes." Constructing the Tribes as "indispensable" *partners* is a way to undercut the authority of the halfway covenant articulated by Chief Justice Marshall in *Johnson v. McIntosh* (1823), in which the "doctrine of discovery" is presumed to trump Native occupancy, and in *Cherokee Nation v Georgia* (1831), wherein tribes are defined as "domestic dependent nations."<sup>16</sup> Rhetorically, if not legally, Cross's adjective "indispensable" turns "dependent" into *independent*. Rhetorical finesses notwithstanding, "the meaning of Indian tribal sovereignty within the framework of U.S. Indian law" and its application across the legal

landscape, as David Carlson reminds us, remains “ambiguous.” Carlson goes on to explain that “even in the most generous interpretations tribal sovereignty has been held...to be something inferior to state sovereignty” (30). This “something inferior” originates with the Marshall Court’s establishment of the “principle” that “discovery gave title to the government by whose subjects, or by whose authority, it was made, *against all other European governments*, which title might be consummated by possession” (*Johnson*, emphasis added).

As we were about to wrap up my October guided tour of Mandaree, we came upon a brown, weather-beaten sign overlooking Lake Sakakawea, presumably set up by the BIA. Once I read it, the situational irony between text and context was too tempting to leave untended, so I got out and snapped a few pictures. The content of the sign, as it turns out, is a quote attributed to Meriwether Lewis, one half of the duo appointed by Thomas Jefferson to lead the Corps of Discovery.

This scenery, already rich, pleasing and beautiful, was still further hightened by Immense herds of buffalo, deer and elk...which we saw in every direction feeding on the hills and plains. I do not think I exaggerate when I estimate the number of which could be comprehended at one view to amount to 3000. (see figure 7 below)

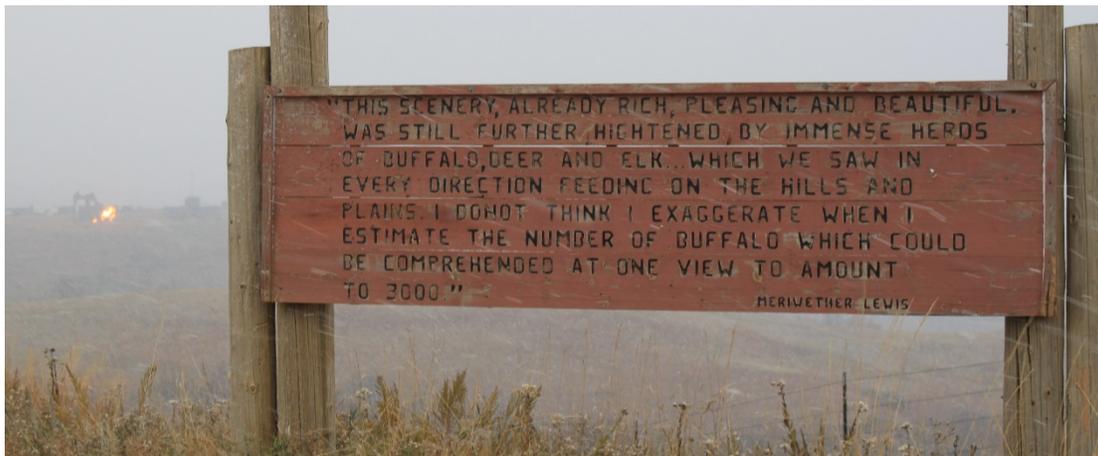


Figure 7. Excerpt from Lewis and Clark Journal.

The attribution is correct and is excerpted from a relatively lengthy journal entry by Lewis dated Monday, September 17<sup>th</sup>, 1804. Given the placement of the sign overlooking the Missouri near Mandaree, one might be excused for thinking that Lewis was referring to what he encountered on

that fall day in what is now MHA country. As it turns out, though, the location that elicits from Lewis such a gushing survey of aesthetic beauty “hightened” by a detailed reckoning of material plenitude is actually located near the town of Oacama, in Lyman County, South Dakota, closer to the present-day Crow Creek Sioux Reservation than to the Heart of the World in Mandan country some 400 miles upstream (*Journals* 79-82). Placing the quoted passage back into the historical context exposes some of the complications imbedded in the concept of sovereignty.

Reflecting on the Lewis and Clark bicentennial “celebrations” that proliferated some 15 years ago along the expedition’s route, Elizabeth Cook-Lynn, historian and member of Crow Creek Sioux Nation, offers a survey of a different kind. “As one surveys the history of massive land thefts, treaty violations, U.S. court decisions, genocidal policies, and the diminishment of tribal sovereignty that followed the Lewis and Clark adventure,” she writes, “the hope of many Indians that people of good and free will may rise up and make correct moral determination is fragile indeed” (“The Lewis and Clark Story” 42). Such fragility is further exacerbated by the aesthetic and environmental imperatives invoked by the sign itself. Dislocated from its point of origin, the sign unavoidably becomes a sign of absence, emblematic of all the dislocations so recently enacted under the right of eminent domain. Vizenor, in comments reflecting on Jefferson’s attitude toward Native Americans, says that “Natives were named in connection with the vast distances of an unexploited nation.” Viewed as a direct threat to the “vast,” “unexploited” distances described so agreeably in Lewis’s account, “Natives,” Vizenor concludes, “were removed as a vindication of the environment. The *absence* of the *indian* in the histories of this nation is an aesthetic victimry” (*Fugitive Poses* 21 emphasis in original). This sign, then, in its presumption of a universalizing pose that dislocates geographic and cultural specificity on behalf of celebrating, in the abstract, *what was once here*, affirms, as well, the ways in which aesthetic contemplation itself is an avatar of discovery. Franklin K. Lane, the Secretary of the Interior when the first National Parks Portfolio was published in 1916, imagined such contemplative engagement with iconic American landscapes as a “further discovery of America” (“Introduction”). Add to this the unavoidable fact that one can no longer view this particular sign, at this particular place, without making visual contact with the oil rig and pumps operating in the background, and one can begin to appreciate the extent to which Native sovereignty is indeed a vexed concept. Legal pragmatists like Cross would take solace, however, in the fact that “sovereignty,” as Carlson stresses, “is truly meaningful in its *use* and not as a

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mere formal category or abstract concept” (30). “Sovereignty is the guiding story in our pursuit of self-determination,” declares Lyons, “the general strategy by which we aim to best recover our losses from the ravages of colonization: our lands, our languages, our cultures, our self-respect.” As a guiding story, it is necessarily a nested narrative, one that simultaneously invokes the promises of home even as it threatens the possibility of homelessness. Best then to imagine, as Lyons does, that the “pursuit of sovereignty is an attempt to revive not our past, but our possibilities” (449). From that perspective, those rigs and pumps are as much a sign of “possibilities” at work as they are a prompt for environmental protectionism. If the sign proper underscores Native absence, the rig and pumps that ostensibly “mar” the “beauty” of the landscape affirm Native presence as much as they underscore global capital. Where work is to be done on behalf of “environmental protectionism,” that work will have to be undertaken and enforced by the very people who have for so long been its primary victims.

For Cross, then, living the lessons of the Taking, here and now, means insisting that sovereignty will have to be both protected by the Tribes themselves and respected by State and Federal governments. According to Cross, it is sovereignty itself that hangs in the balance of environmentally responsible oil production. “[T]he biggest potential adverse effect,” he writes, “would be to erode the tribe’s status as an economically viable, and culturally intact, political entity. Therefore, development, if it is not regulated in a legally and socially responsible manner, may threaten the tribe’s cherished political and legal rights as a federally recognized Indian tribe” (Cross 2011, 543). The warrant for Cross’s concerns in regard to the potential for erosion of sovereignty, if not its evacuation altogether, can be found in an obligation mandated by the 1886 treaty with the Federal government “to use its tribally reserved lands...as the means of achieving economic self-sufficiency” (543). That self-sufficiency, and the sovereignty that Cross insists it anchors, “will be sorely tested by large-scale development on tribal lands, though, because development brings with it novel regulatory challenges that will test the tribal people’s sovereignty in new ways” (544).

In order to reinforce the Tribe’s continuing socio-political ties to reservation land, Cross references the tribe’s creation stories that “tell of how Lone Man and First Creator selected the Fort Berthold lands as the tribal people’s permanent homelands.” He goes on to emphasize that by virtue of “the people’s continuing re-enactment of their cultural and religious practices, they strive to renew their ties to these lands and to help secure the creator’s continued blessing for

their good uses of those lands” (Cross 2011, 545). In anchoring his call for tribal sovereignty in his people’s traditional creation story, Cross reaffirms his own status as a tribal member, an affirmation that in turn acts as synecdoche for the *Tribe’s* adherence to the mandates of the 1886 treaty. From Cross’s perspective, American legal mandates and his own Tribal obligations constitute twin creation stories that, if treated with mutual respect, may “enable” the two cultures to “navigate in what has become a ‘splintered and disassembled’ modern world” (Cross 2004, 65). Following constitutional scholar Martin Becker, Cross views “the privileged moment” of the founding of the United States of America as a signal event when “[t]wo Americas—one Indian and one non-Indian—were simultaneously created” (61). This *creational* doubling up becomes, for Cross, an opportunity for a *creative* doubling wherein Native and non-Native Americans can dialogically “re-negotiate” their “civil compact” with one another. The short term goal for Cross would be very much in line with the notions he espouses on behalf of safeguarding MHA sovereignty by virtue of having a greater say in regulating environmental protections—it’s about “mutual and reciprocal respect” (64).

Such dialogue will have to “meet a high standard” of mutual receptivity in which the “interlocutors must embody” what anthropologist Clifford Geertz describes as “‘new ways of thinking that are responsive to particularities, to individualities, oddities, contrasts, and singularities,’” that are in turn “responsive” to a “plurality of ways of belonging and being, and that yet can draw from them—from it—a sense of connectedness that is neither uniform nor comprehensive, primal nor changeless, but nonetheless real” (qtd in Cross 2004 65). Such a radical doubling, Cross stresses, will not be found in “dreary tomes written by constitutional law scholars or the drab scientific texts written by Indian anthropologists or ethnographers”—will not be found, as Vizenor might phrase it, in the texts of manifest manners. It will instead be through the “respective ‘creation myths’ these people offer to justify the great individual and collective sacrifices demanded by the founding of the shared America we know and love today” (66). From that perspective, as Cross makes clear, it is the recognition of Native creation stories, Native experiences and Native sacrifices—in short, Americans’ reckoning with Native survivance—that will provide the grounds for this new foundation.

“Native stories of survivance are the creases of transmotion and sovereignty,” Vizenor reminds us (*Fugitive* 15). A crease implies a fold unfolded, a mind made up and then unmade, an opening that refuses the very closure that created it. Such is the history of American treaty

making, and hence the necessity for strategies of survivance. But how often can one fold and unfold along the doubled crease of the Constitution before wearing thin the fold that binds us? Better to move forward into the future—however accidentally—with a clear legal vision and a trickster’s soul, than to be doubled over in the pain of a traumatic past that cannot be recovered.

And yet “recovery,” as it pertains to a past immemorial and the oil beneath the ground, will continue to be a key word—for the costs associated with rising waters have been that high. One would love to imagine a future in which the people of MHA, if they are careful stewards of their treaty obligations and their natural resources, will be in the right place to make the profitable commercial exchange



Figure 8. Sign on BIA 12, just west of Mandaree.

when the price for water rises, as it inevitably will. While the past clearly has levied its costs in the form of intergenerational trauma, MHA leadership will have to proceed into the near future with eyes wide open and ears to the ground in order to ensure that the next generation is not permanently scarred by the negative environmental and cultural effects so often associated with extraction (see figure 8, above). There is, for instance, anecdotal evidence of an alarming increase in human and drug trafficking, both of which are exacerbated by too few law enforcement officers, many of whom lack resources and jurisdictional authority (Finn, et al. 8, 10). There also seems to be a growing trend among the young to devalue higher education, a trend based, in part, on the promise of “easy” money from oil revenue or casino work. Marilyn Hudson, Raymond Cross’s sister, was disappointed to report that there were no students from New Town High School who were admitted to either of the state’s two flagship universities in 2012-2013. There is danger, too, of MHA members being economically squeezed out of housing and other resources due to shortages and higher costs engendered by the oil industry. According to Fox, MHA has had to raise wages just to remain competitive.

To emphasize the path MHA must travel to engage the future that is best for them, Fox uses the example of two nearby tribes. His aspirational ideal is embodied by the casino-rich Shakopee Mdewakanton Sioux, located just southwest of the Twin Cities. There, each enrolled member receives over a million dollars a year (see *Daily Mail*, 8-12-12). Based on the money already coming in to MHA coffers and on projections of future revenue, Fox says that MHA “should wake up and we should be Shakopee—or close to it.” In this ideal vision, “everybody’s got a home, everybody can work if they want to, have an education, [and their] health system’s good.” As an example of what not to do, Fox points to the once oil rich Fort Peck Reservation, circa 2013. “If we don’t change the course of where we’re at, we’re going to end up being Fort Peck,” he admonishes. “Go to Fort Peck. What do you see? Poverty is worse, crime is worse. They didn’t make the right choices.” As a case in point, in 2011, as Fort Peck geared up for another run at extraction, residents of the nearby community of Poplar were dealing with the recent past in the shape of a “plume of salty brine” that was already contaminating the local drinking water (Groover). Poised between the promise of Shakopee and the problems of Fort Peck, Fox emphasizes that “if the end result of somebody coming in and extracting that oil” is that we have to “take the revenue just to deal with the extraction of it, then we’ve made a poor choice. If that is the end result, then we better just leave it in the ground like a bank account.”

### Notes

<sup>1</sup> Unless otherwise noted, I will use the acronym MHA—for Mandan, Hidatsa, Arikara—to refer to the Three Affiliated Tribes of Fort Berthold Reservation. I would also like to take this occasion to thank the following persons: guest editor Melissa Slocum for her wise guidance throughout this process; the anonymous referee for helpful commentary and constructive criticism; Gina Donovan for helping format the images; and special thanks go to Glenda Embry of MHA, for helping me get in contact with the persons I interviewed for this project.

<sup>2</sup> In some places, especially along the Little Missouri, MHA land does meet the criteria for a specific type of geologic formation predicated on erosion and deposition, formations that we have come to call “badlands.” I’ve also heard the term “badlands” used by some MHA members to refer in general to the land west of the Missouri. Whether technically “badland” or functionally “bad” land, underneath lie some of the richest oil deposits in the Bakken, and hence in the United States. As will be seen, that irony is not lost on members of MHA.

<sup>3</sup> Some of the proceeding information about the Taking is used in the service of a different argument in an article of mine entitled “Abducted by Puritans: Adoption and Submergence on the New Frontier,” published in *North Dakota Quarterly*, v. 75, nos. 3 & 4, 2008.

<sup>4</sup> Cross uses this number in his essay “Tribes as Rich Nations,” 79 *Or. L. Rev.* 893 (2000), p. 963. VanDavelder, from whom I cite the signing date, uses the figure of 12.5 million, which he

refers to as a “compromise package” (p. 133). Upward adjustments were made after the initial offer, and this may account for the discrepancy between the two figures. Neither figure accounts for the discrepancy between compensated and “real” value.

<sup>5</sup> All photographs are the property of the author.

<sup>6</sup> Conversation with author, July 10, 2013. At the time of the interview, Fox was Tax Director for MHA, in which role he was instrumental in oversight of oil leases and access to water.

<sup>7</sup> Biek and Murphy suggest that fossil evidence from the Mississippian period “reveals a warm sea” (6).

<sup>8</sup> On the origin of the name “Bakken,” I rely on information gleaned from Steven G. Grape’s “Technology-Based Oil and Natural Gas Plays: Shale Shock! Could There Be Billions in the Bakken?” Washington, D.C. U.S. Energy Information Administration, November 2006, as well as Joanne Lerud’s *Lexicon of Stratigraphic Names of North Dakota*, Report of Investigation No. 71, North Dakota Geological Survey, p. 7.

<sup>9</sup> Figures were quoted by Alison Ritter, public information officer for North Dakota Department of Mineral Resources, in a phone conversation with the author on June 26, 2017.

<sup>10</sup> The total is about 1 million acres, of which approximately 50% is trust land. The rest includes private holdings as well as the approximately 150,000 acres under Lake Sakakawea (“Demographics”).

<sup>11</sup> Dorsey begins his *Traditions of the Arikara* with several origin stories, many of which begin with phrasing similar to Star’s. “A long time ago, the Arikara lived under the ground,” Four-Horns tell us (31); and according to Hawk, “we were told by old people that our people came out from the ground” (32).

<sup>12</sup> According to a study by Karen Vachal, during the period of 2009-2013, 38% of the severe injury crashes on MHA roads were the result of “heavy vehicle crashes.” See the 2016 report, “Tribal Crash Reporting in ND: Practices, Perceptions, and Systematic Implementation,” North Dakota State University, p. 6. <http://www.mountain-plains.org/research/projects/downloads/2016-mpc-518.pdf>. Accessed 7-29-17.

<sup>13</sup> I first encountered this phrase in Cross’s “Tribes as Rich Nations.” That essay predates these interviews, but it is in no way clear if it is Cross who is responsible for its currency among MHA members.

<sup>14</sup> For a summary of JTAC and its consequences for MHA, see the account provided in *The History and Culture of the Mandan, Hidatsa, and Sahnish*, on the North Dakota Studies.org website:

[http://www.ndstudies.org/resources/IndianStudies/threeaffiliated/historical\\_1900s\\_jtac.html](http://www.ndstudies.org/resources/IndianStudies/threeaffiliated/historical_1900s_jtac.html).

The conditions leading up to and the persons involved in the JTAC settlement are described extensively in Paul VanDevelder’s *Coyote Warrior*. As one might expect, and as I heard repeatedly that summer, many of the current tribespersons chafe at the implication that it was “one man” or even one family responsible for the settlement.

<sup>15</sup> There was much talk that year about the case colloquially known as “the Dakota Three.” A class-action lawsuit was filed by Ramona Two Shields and Mary Louise Defender Wilson, with the appeal being filed December 26, 2013 in the Eighth Circuit Court of Appeals. It alleges that Spencer Wilkinson, Jr. (MHA member who was, at that time, also in charge of the Casino), Rick Woodward, Robert Zinke, and a certain “John Doe” alleged to have funded the trio, “leased roughly 85,000 acres of land, bundled the leases together for sale, and then sold the leases in

2010 to a third party for \$925 million.” According to the suit, “while defendants received over \$10,000 per acre from their own sale, they paid some putative class members lease bonuses of only \$250 per acre or less” [*Shields v. Indigenous Law and Policy Center*, Amicus on Behalf of Appellant(s)].

<sup>16</sup> For the language on Article I of the US Constitution see [https://www.usconstitution.net/xconst\\_A1Sec8.html](https://www.usconstitution.net/xconst_A1Sec8.html). For the quote from *Cherokee Nation*, see *Justia*, <https://supreme.justia.com/cases/federal/us/30/1/case.html>.

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