

THESIS

FEDERAL PERCEPTIONS AND TRIBAL SOVEREIGNTY: CONSULTATION AND
RELATIONS BETWEEN THE BUREAU OF LAND MANAGEMENT AND FEDERALLY
RECOGNIZED TRIBES

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Morgan Lundy

Department of Anthropology and Geography

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Master's Committee:

Advisor: Heidi Hausermann

Edward Henry
Lindsey Schneider

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ABSTRACT

FEDERAL PERCEPTIONS AND TRIBAL SOVEREIGNTY: CONSULTATION AND RELATIONS BETWEEN THE BUREAU OF LAND MANAGEMENT AND FEDERALLY RECOGNIZED TRIBES

The Bureau of Land Management (BLM) is an institution of settler colonialism. Its origins lie in Western expansion and the dispossession of land from Indigenous communities. Today it administers the largest collection of public lands in the country and must maintain relationships through consultation with Tribal governments. Even though these relationships are legally mandated, there is often contention and confusion surrounding them. Despite these issues, there is little research looking at how the BLM understands and carries out Tribal relations. Using semi-structured interviews with BLM employees and decisionmakers, Part I of this research analyzes how individual actors understand and shape these government-to-government relationships. Results indicate that even though BLM decisionmakers are responsible for Tribal relations, archaeologists are the primary employees maintaining them. Part II evaluates how these same actors understand and account for Tribal sovereignty in their work. Findings highlight that Tribal sovereignty is not a static concept and is negotiated in these government-to-government relationships. This thesis does not provide recommendations for improving the BLM's Tribal relations. Instead, it demonstrates how BLM staff members manipulate and move within settler colonial structures. Hopefully, this research provides basic

information useful in dismantling and reforming settler colonial institutions that have historically oppressed Native nations and communities.

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PART I: BUREAU OF LAND MANAGEMENT STAFF AND TRIBAL RELATIONS

ASSEMBLAGES

Chapter 1: Introduction

Critical journalism has been vital in detailing the often-difficult relationships between the Bureau of Land Management (BLM) and Native nations¹. Indigenous communities throughout the West know how the agency frequently places profits and industry before their religious practices, sacred sites, and health. Recently, the Chairman of the Ute Mountain Ute conveyed “[h]e doesn’t feel as though he and his people have a seat at the table with the federal government, which... controls the tribe’s hunting, fishing, and gathering rights on federal lands” (Swanson 2021). The federal government and its agencies are unwieldy. It can be difficult to see past the BLM’s controversial decisions and strained relations with Tribal governments to understand the complicated factors and people shaping these realities.

For example, the Biden Administration is encouraging production of more electric vehicles. However, this requires lithium mining. An Australian mining company conducted exploratory drilling on Arizona BLM lands in the Big River Sandy River Valley, hoping to develop an open pit lithium mine. This valley holds cultural and religious importance for the Hualapai and surrounds a sacred site they protect (Dawley 2021, p.1; Kapoor 2021). Initially, the BLM did not consult with the Hualapai because consultation is not required under the 1872 Mining Law (Dawley 2021, p. 2-3). After a few years of exploratory drilling, the BLM finally contacted the Hualapai government for consultation. The Hualapai requested to be a coordinating

¹ Throughout this thesis, I use Indigenous communities/nations and Native communities/nations when referring broadly to the Indigenous people and their political and cultural organizations in the United States regardless of their U.S. federal recognition. Because “Indian tribe” is codified in U.S. law, I also utilize tribe or tribal as shorthand for Native nations and their governments that are federally recognized (H-170-1 2016, p. G-2). This is the most common terminology used by research participants. I understand that “Indian,” “tribe” and “tribal” have complicated connotations and that there is no settled consensus amongst Indigenous peoples on preferred vernacular (Baker et al. 2021; Blackhorse 2018). Generally, I adhere to the Native Governance Center’s terminology guide throughout this paper (Baker et al. 2018).

party. They also invited BLM staff to tour of the area with community Elders so they could understand the area's cultural importance. The BLM office denied both requests and continued with its environmental analysis. (Kapoor 2021). As of September 2021, the Hualapai are looking to sue the BLM. However, decades of legal precedents and a new U.S. District Court ruling in a similar case make for grim prospects (Kapoor 2021; Oaster 2021).

In another case, old BLM actions still harm Indigenous communities, continuing to favor capitalist interests over human health and culturally important sites. The United States' last uranium mill, the White Mesa Mill, is in Utah next to the Ute Mountain Ute Reservation. In 1980, the BLM transferred this land to the company constructing the mill, essentially privatizing public lands to benefit extractive industry. The local BLM office knew there were Native American burial and cultural sites on this land, but still allowed the transfer, thus signing off on their destruction. The BLM office said it would, "monitor and mitigate any damage" every three years, but that has not happened (Douglas 2021). Additionally, the White Mesa Mill has worsened air and water quality and has poisoned wild game (Douglas 2021). While uranium processing should be phasing out, the mill continues to accept uranium waste from across the U.S. and seeks to import more from other countries. This would require additional tailing pools and more land exchanges between the BLM and the company. Capitalist interests continue to shape BLM decisions, the landscape, and Indigenous communities' health (Douglas 2021).

In these examples, it is easy to see the BLM as a faceless, unified, rational entity, in the vein of Weber's theorization (Weber [1922]; Gupta 1995, p. 384; Thelen et al. 2014, p. 5; Heyman 2004, p.488). There is an assumption that state and society are separate, that the state is something that happens to citizens, shaping their lives through inevitable and uncontrollable actions (Wedel et al. 2014, p. 43; Gupta 1995). However, these case studies miss an

understanding of the lower-level bureaucrats and decisionmakers enacting policies, working (or not) with Tribal governments, and making these decisions. Many researchers dedicate effort to understanding governments' impacts and bureaucracies, but few investigate how agency employees shape, understand, and carry out that work (Gupta 1995). Gupta demonstrates that lower-level bureaucrats' every day, often informal actions and interactions with locals shape the state's conceptualization and realities. This is the focus of this research, with an emphasis on BLM-Tribal relations.

Chapter 2: Current Research on Federal-Tribal Government Relations

For decades, cultural anthropology focused on the “exotic other,” paying no attention to bureaucracies in the cultures and countries they studied. Wedel et al. (2014) explain much of that relates the co-development of anthropology and colonialism. Anthropologists studied the people colonial powers wished to subjugate, contributing to colonization’s aims (Wedel et al. 2014, p. 32-33; Bouchard 2011, p. 185-187). However, in recent decades, anthropology has turned its gaze towards bureaucracies and how people interact with them (Thelen et al. 2014, p. 5-6; Bouchard 2011). Despite this attention, there are neglected areas in this branch of anthropology. Few studies evaluate how federal agencies in the United States function and interact with those they serve (p. 4).

In recent years, scholars have started paying more attention to the interface between U.S. federal agencies and Tribal governments. Some research focuses broadly on the interface between Native nations and the federal government (Ryan 2012; Richland 2021). Other research focuses specifically on the U.S. Forest Service, Fish and Wildlife Service, and the U.S. Army Corps of Engineers (Dockry 2018; Richardson 2016; Horowitz 2021). However, there are no studies focusing on the BLM.

Ryan (2012) uses poll data and semi-structured interviews to understand how cultural resource management (CRM) specialists understand consultation practices and their role in them. Her participants represent state, federal, Tribal, and private organizations. Federal employees discussed the legal constraints shaping these processes, as well as a desire to follow the intent of National Historic Preservation Act’s (NHPA) Section 106, going beyond minimum requirements. Federal employees explained their advisory role to decisionmakers and their

inability to shape outcomes. Poll results highlighted a disconnect in how different sectors view the efficacy of consultation practices. Federal employees voiced more satisfaction with current practices, while their Tribal counterparts were often dissatisfied. Participants also discussed ways to improve consultation practices. Suggestions included more training around legal requirements and Tribal interests, consultation laws with more “teeth,” and a change in individual behaviors and practices (p. 63-65). Ryan calls for more research that focuses on specific agencies.

Mills and Nie (2020) evaluate the legal structures shaping the government-to-government relationships between Native nations and the U.S. federal government regarding public lands. They find federal agencies have discretion in how they carry out these relationships and requirements under these laws. They look at how these structures could be used to foster a co-management approach in land management. They also give recommendations on how to compel more co-management between Tribes and federal agencies. Some of these suggestions include executive orders, legislation overhauling current practices, and using pre-existing structures in innovative ways to foster equitable public land management with Tribal nations.

Richardson (2016) engages with both Tribal government employees and U.S. Fish and Wildlife Service (the Service) staff to understand their perceptions of Tribal relations and consultation. He uses text analysis of relevant laws, agency policy, and the Service Tribal Relations handbook to see how the federal government talks about consultation. He contrasts this with interview data from Tribal government and Service staff. Richardson notes that his chosen consultation laws and policies employ vague language and idealize what tribal relations and consultations should be. Interviews showed a disconnect between the perceived levels of engagement between Tribal government staff and Service employees. However, both parties noted there is room to improve Tribal consultation and relationships. Richardson reports barriers

to better consultation include Tribes not having enough money to travel to Service offices for consultation; Service employees not having enough training about consultation requirements and Tribes' cultures and history; resistance from Service employees to engage in sincere consultation that goes beyond basic requirements; Service members not traveling to Tribal lands; power differentials; disrespect towards Tribes; distrust between parties; and racism. His interviewees also provided suggestions to improve consultation and Tribal relations. They include mandatory trainings, earlier Tribal involvement, having consultation meetings on Tribal lands, and developing cooperative management agreements with Tribal governments. Many of the themes and findings in Richardson's research are reflected in this research about the BLM.

Dockry et al. (2018) look at how U.S. Forest Service (USFS) employees understand Tribal relations. They interview 26 USFS employees at various levels of the agency who work in this area. Researchers asked participants about, "their perceptions of tribal relations job duties, tactics and strategies for building partnerships, barriers to partnerships, conflict resolution tactics and strategies, and perceptions of the future of the USFS relations" (p. 124). From these semi-structured interviews, they outline best practices. These include maintaining and strengthening formal and informal relations to establish trust; showing respect and actively listening to Tribal counterparts; having leadership take an active role in nurturing these relationships; and looking for ways to collaborate with Tribal governments in resource management. This research also highlights obstacles the USFS staff face in these relationships. Often, agencies' cultural and structural differences make it difficult for USFS and Tribal governments to work together. The USFS multiuse mission comes into conflict with Native nations' values and uses for specific resources. Another issue arises with the USFS archaeologists and cultural specialists being the main employees in charge of Tribal relations. Employee turnover in both Tribal government and

the USFS presents another barrier to building and maintaining relationships. Despite these challenges, interviewed employees voiced optimism for their agency's Tribal relations.

Finally, Horowitz (2021) uses assemblages to explain the forces shaping the USACE's adherence to NHPA's Section 106 consultation process and permitting for the Dakota Access Pipeline (DAPL). She highlights the different actors involved in this decision: the USACE, the Advisory Council on Historic Preservation (ACHP), the Standing Rock Sioux, district court judges, lawmakers, and the company paying for the project. Each entity has different emotions, interests, and interpretations of the situation that often conflict, causing turmoil within the assemblage. Legal frameworks provide room for differing interpretations and agency discretion in enforcing laws. Often, individual subjectivities determined outcomes. Despite a growing sense of responsibility and empathy towards Indigenous communities, ACHP's objections to the USACE's Section 106 process, and political interests, capitalist demands pressured DAPL's permitting. Horowitz uses interviews and document analysis in her research.

This thesis research shares commonalities in methods, themes, and findings with these studies. Even though the BLM is the biggest landowner in the U.S., there is a gap examining how this agency carries out its mission and interacts with the Indigenous communities (Skillen 2009, p. 3). Based in assemblage theory and prosaic stateness, this study fills this gap. Semi-structured interviews with BLM employees and line officers² show how local bureaucrats, amongst other factors, shape the BLM's Tribal relations.

² The terms "line officer," "manager", and "decisionmaker" are interchangeable.

Chapter 3: BLM History and Settler Colonialism

The BLM has a complicated and peculiar history, with origins in Western expansion and settlement (Skillen 2009, p. ix). It is housed within the U.S. Department of the Interior (DOI). President Truman commissioned the agency in 1946 by consolidating the General Land Office (GLO) and the U.S. Grazing Service (p. 1). The GLO, created in 1812, transferred land taken from Indigenous people to private U.S. citizens to develop homesteads, ranching, and other extractive industries (Wilson 2014, p. 19-21, 184; Grossman 2017, p. 19). The U.S. Grazing Service, created through the 1934 Taylor Grazing Act, managed grazing on unsold GLO lands. The agency's goal was to "stabilize the western livestock industry and improve range conditions" (Skillen 2009, p. 5-7; Wilson 2014, p. 184-191). The BLM did not receive a clear mandate until the 1976 Federal Land Policy and Management Act (FLPMA) (Skillen 2009, p. 7-8). Until that point, the BLM operated primarily from federal acts the GLO and U.S. Grazing Service followed. These included the Mining Law of 1872, the Mineral Leasing Act of 1920, and the Taylor Grazing Act. These statutes prioritized grazing, mining, and other resource development on public lands (p. 102). In the 1960s and 1970s, new laws focused on environmental and wildlife protection. The BLM's responsibility expanded to include environmental health, recreation, and cultural impacts (p. 7). FLPMA collected these responsibilities into a multiuse management mandate (p. 102-106). That mandate continues today and presents difficulties balancing often conflicting goals, interests, and public land users (p. 8).

Despite these responsibilities and managing the largest collection of public lands, the BLM has the smallest budget and number of personnel per acre compared to other federal

agencies (p. 3). Part of the budget disparity lies in that the BLM is expected to generate more profits through resource development than other agencies (Personal correspondence with BLM employee). Having to manage more land with less money creates an “underdog” mentality within the agency (p. 3). This reality shapes how individual employees experience their jobs and contribute to Tribal relations. Highlighting this reality, one employee interviewed in this research described the constraints of his work with Tribal governments:

We don't have enough people usually. They [tribes] don't have enough people, they got less. So, it's just like things just don't get done the way people want. But then it's like, well, we don't have the means to do it as best as we can. We're just doing what we can type of thing.

Settler colonialism adds to the complexity of the BLM's history. In *Native Space* (2017), Natchee Blu Barnd explains that settler colonialism is the process in which, “nonindigenous or ‘settler’ populations implant themselves in new lands” (p. 9). Tuck and Yang (2012) expand on this, describing how settler colonialism is the combination of external and internal colonization. External colonization involves outsiders extracting from Indigenous people and their land, recasting them as “‘ natural resources’” exploited to build wealth (p. 4). Internal colonization involves, “the biopolitical and geopolitical management of people, land, and flora and fauna within the ‘domestic’ borders of the imperial nation” to bolster and maintain systems of white supremacy (p. 4-5). Combining both, settler colonialism's goal is complete, “sovereignty over all things” within a nation-state (p. 5). In this pursuit, settlers seek to change, “the demographics, cultures, and physical landscape of colonized lands” (Barnd p. 9). Settler governments normalize these changes, so they do not have to address their role in colonization (Barnd 2017, p. 13; Grossman 2017, p. 16-17).

In North America, settlers initially used violence, laws, and extralegal means to remove Indigenous people from their homes to create a new narrative where settlers become the rightful

inhabitants of stolen lands (Barnd 2017, p. 9; Coulthard 2014, p. 15). That violence was physical, but also paired and amplified through, “economic, gendered, racial, and state-power” oppression (Coulthard 2014, p. 6-7). Leanne Simpson details how the Canadian settler state disrupted Indigenous self-determination by, “punish[ing] Indigenous peoples for not adhering to heterosexuality, monogamy, and colonial gender expressions” (2017, p. 104-105). These punishments, primarily levied against women, included imprisonment, removing children from families, and withholding economic assistance (p. 104-109). These forms of oppression worked to create internalized shame through which settlers could levy control emanating from the individual to whole Indigenous communities (Simpson 2017). As Simpson explains, these internalized forms of control still persist.

Coulthard argues even with those tools of settler colonialism still at work, settler power is now largely reproduced and maintained, “through seemingly more conciliatory set of discourses and institutional practices that emphasize [First Nations’] recognition and accommodation” (p. 6). These means can include processes such as land claim negotiations in Canada, federal recognition in the U.S., and Tribal consultations required in federal land management (Coulthard 2014). At first glance, these actions appear good-natured, but they define Indigenous self-determination on what is acceptable to the settler state and does not diminish its power (Coulthard 2014). Along those same lines, Grossman details how settlers enact land management systems to change the characteristics of the landscape (2017, p. 16-17, 21).

As an extension of the U.S. federal government, the BLM and its predecessors have engaged in those processes and are tools of settler colonialism. From 1812 through 1934, the GLO and the U.S. Grazing Service facilitated the transfer of Indigenous lands to white settlers, changing the demographics and dominant culture in the West. They also implemented land uses

such as grazing and mining that changed the landscape's appearance. These actions and practices, cemented in FLPMA's mandate, made these drastic changes appear natural and inevitable. Even though the BLM acquired new responsibilities under its multiuse mandate, cattle and mining still figure prominently in its mission (Skillen 2014, p. 2-3). Some of the BLM's newer missions such as environmental protection and recreation may limit some extractive uses. However, as Eichler and Baumeister (2018) argue, even seemingly good policies, such as the North American Model of Wildlife Conservation, are continuations of settler colonialism and conflict with Indigenous values and uses.

Even BLM practices requiring engagement with Tribal governments on a nation-to-nation basis reproduce settler colonialism and reassert the U.S.' power (see Coulthard 2014). As discussed in following sections, consultation is problematically situated in the settler state's acknowledgement of Tribal sovereignty and does not afford Tribal nations meaningful agency over lands vital to their wellbeing (Coulthard 2014). Legally, the BLM must maintain relationships with Tribal governments, often through consultation and Tribal relations. Typically, these processes happen at the agency's lower levels. Ultimately, local employees and line officers shape these interactions. The following theoretical perspectives provide a framework for these dynamics.

Chapter 4: Assemblage Theory and Prosaic Stateness

Assemblages present a valuable lens to analyze BLM actors and Tribal relations. Assemblage theory examines the processes and spatial formations in which different actors, both human and non-human, come in relation, or not, with one another. These entities can work cohesively or underscore their “multiple differences and contradiction” (Anderson et al. 2012, p.173). These actors are unified by their co-functioning, but not necessarily anything else (p.177). The components creating an assemblage are not solely defined by their relation to one another (p.172). Actors coming together can catalyze different possibilities and potentialities. Assemblages are dynamic, blur social constructions, and can overlap with one another. Understanding an assemblage requires analysis of how it comes together, stays together, or comes apart. Horowitz (2021) also uses assemblages to understand the USACE’s Section 106 process and permitting of the DAPL.

Assemblages coincide with Doreen Massey’s conceptualization of space and trajectories detailed in *For Space* (2005). Trajectories are the “history, change, [and] movement” belonging to specific actors (p. 12). Space is the meeting and negotiation that occurs between different trajectories. All actors have agency and shape how space is created, although that influence may not be equally expressed. Space is socially crafted through the meeting of trajectories and is defined by possibility and multiplicity of different realities. It is in an open state of constant formation (p. 10-11).

Natchee Blu Barnd (2017) provides further conceptualizations of place and geographies that help contextualize this research. In *Native Space* (2017), he explains how place is created through everyday practices such as naming streets and art. Different parties can use these and

other practices for different aims. For example, in exploring street naming practices, Barnd notes Indigenous communities often use naming conventions that break settler grammar rules. These actions aim to reclaim and decolonize land. However, primarily white communities often use Indigenous names, words, and stereotypes in street names to create illusions of inclusivity and multiculturalism. Everyday practices create narratives and imageries of place. As Barnd notes, these geographies often overlap and coexist in tension (p. 1). These ideas are important in this research because the BLM's everyday practices and government-to-government consultations with Tribal nations often brings differing geographies in direct conflict with one another.

Furthermore, these practices are not stagnant or confined to strict borders implemented by the settler state. Omushkegowuk Cree scholar, Michelle Daigle stresses the importance of relationality in creating and understanding place (2016). This is a guiding principle often prominent in Indigenous scholarship, tying directly to assemblages. Land is the place bringing animals, plants, humans, spiritual forces, non-animated entities, and even settler colonialism in relation with one another to form knowledge and understanding (Daigle 2016; Tallbear 2017; Simpson 2017; Coulthard 2014). The practices that keep these entities in relation are based in, but unconfined to specific locations. When a person moves about, relocates, or travels they bring these perspectives with them, creating new contexts for land relations and understandings (Daigle 2016). These same concepts apply to BLM employees. They exist in specific geographic contexts but bring a variety of practices and experiences in relation to the settler state to shape federal land management.

Building from these place-building practices, prosaics are the ordinary aspects and occurrences of everyday life. In his article on the topic, Joe Painter (2006) dismantles the false dichotomy separating the state from society. He explains the state shapes and seeps into the

realm of the social (p. 755). Assumedly, since the border between the two is “porous,” the social world reciprocally shapes the state via those who constitute it. This dynamic undermines the image the state tries to perpetuate of being a united, monolithic, “collective actor” working towards a single outcome (p. 761; also see Hausermann and Ferring 2018). Painter counters that the state is defined by its “heteroglossia” and “panopoly of discordant voices” (Painter 2006 citing Campbell 1996, p. 761-762).

Prosaics and the multi-vocal nature of government can cause variations in legal interpretations, meaning actors can manipulate them to meet specific objectives. These understandings and applications can contradict with the original intent of laws and policies (also see Richland 2021, p. 5-7). Hausermann and Ferring (2018) demonstrate this in their work. They outline how international capitalist interests manipulate Ghanaian mining laws to develop natural resources. These laws are supposed to protect and benefit Ghanaian citizens. Similarly, Boyce et al. (2015) demonstrate how individual government employees form and reinforce contradictions in strategies and false dichotomies in Mexico’s ‘drug war.’ State actors’ subjectivities play a prominent role in these contradictions and variations (also see Hausermann 2015).

Subjectivities are another assemblage culminating from human actors’ embodied experiences. Nightingale (2010) highlights this in her research about intersecting Nepalese identities. She demonstrates how social constructions such as gender and caste intersect with each other and the physical world to shape how people know and interact with their environments. These subjectivities are made and remade, simultaneously reinforcing social norms, while allowing for shifting identities and contradictions. This results in varying levels of embodied power, privilege, and perceptions of the material world. This impacts how actors interact with their embedded systems and assemblages. Similarly, Hausermann and Ferring

(2018) demonstrate this in their work on Ghanaian gold mining. Ghanaian subjectivities and embodied power shape how local actors understand and facilitate foreign access to resource extraction. Ghanaian frontmen are knowledgeable of the land, local culture, and government processes necessary to obtain mining permits. In exchange for payment, frontmen apply for mining permits reserved for Ghanaians to allow foreign actors to extract gold. This embodied knowledge and subjectivity benefits frontmen financially but at the cost of the environment and citizens with less power.

These understandings of assemblages, space/place, everyday practices, and subjectivities create a useful framework to understand the BLM's multiuse mandate and history, especially as they pertain to individual employees shaping Tribal relations. Each BLM action is an assemblage of countless overlapping human and non-human trajectories and actions that create a range of possible outcomes. The BLM's mandate tasks the agency to balance these different factors, many of which conflict and contradict. It is not possible to give all actors and factors equal consideration in a decision. That prioritization lies in the hands of BLM employees and managers. In particular, this research demonstrates how the subjectivities of BLM employees influence the agency's relationship with Tribal governments.

4.1 Post-humanism: A Brief Critique

The aforementioned theorizations of space and place are part of the ontological turn and post-humanism. This work draws largely from preexisting and current Indigenous scholarship, epistemologies, and ontologies, often without recognition from Euro-American academic institutions and researchers (Todd 2016; Tallbear 2017; Sundberg 2014). Additionally, post-humanist Euro-American scholars often do not disclose their own positionality, reinforcing a universalizing effect of settler-centric thought, instead of embracing the multiplicity of truths and

knowledges that can coexist (Sundberg 2014; Simpson 2017, p. 156-157). These processes reproduce settler colonialism and cultural appropriation in academia, making theories based in relationality seem like new concepts from settler scholars, when in fact Indigenous people have been living by and developing these principles from time immemorial to the present (Simpson 2017, p. 171; Todd 2016; Tallbear 2017, p. 198-199). Because this research focuses on a settler institution, Indigenous scholarship and theory is vital to understanding how BLM actors shape and reify settler colonialism in its everyday practices.

In full disclosure and to better situate this work, it is important for me to state my own location in relation to settler colonialism (Sundberg 2014, p. 41). I am a white settler woman and anthropologist living in Colorado and I am sponsored by Colorado State University. These identities, in part, create the lens through which I analyze and understand my collected data.

Chapter 5: Methods

My research took place in 2021 during the COVID-19 pandemic. This virus continues to change the course of everyday life and research. As an anthropologist, typically I would engage in fieldwork and participant observation. With many people social distancing and working from home, that was not feasible for me. Instead, I designed my methods so I could conduct research from home, protecting my health, as well as the health of my participants.

To contextualize the BLM's Tribal relations assemblages, I locate my methods in feminist scholarship. Feminist scholar Donna Haraway (1988) rejects the idea of universal objectivity. She asserts Western scholarship derives its power from this falsehood. Instead, Haraway argues there are many objectivities existing in "limited location[s]," consisting of "situated knowledge[s]" (p. 583). Situated knowledges must be accountable for the ways they know the world (p. 583). These ideas are also prominent in Indigenous scholarship. Nishnaabeg scholar, Leanne Simpson explains that knowledge is created and situated in relation to land and through practice (2017). There are a "plurality of truths," and each person is responsible for their "own interpretations," thus it is essential for people to situate themselves when sharing knowledge (p. 156-157). Haraway (1988) calls for critical examination of Western power discourses, how they are situated, and the processes presenting them as universal truths. With this understanding, I use text analysis and semi-structured interviews to address my research questions.

Historically anthropologists have neglected bureaucratic documents, often excluding them from critical analysis (Hull 2012, p. 253). In recent decades, anthropologists have started recognizing their importance. Hull explains "documents are not simply instruments of

bureaucratic organizations, but rather are constitutive of bureaucratic rules, ideologies, knowledge, practices, subjectivities, objects, outcomes, and even the organizations themselves” (p. 253). They can be interpreted and used for purposes beyond their original intent. They also shape how others see the state, and arguably how the state sees itself (p. 260). This necessitates analyzing BLM documents.

In this research, I analyzed the BLM’s *Manual 1780* (MS-1780), *Tribal Relations* (2016), and *Handbook 1780-1* (H-1780-1), *Improving and Sustaining BLM-Tribal Relations* (2016). These are the most recent BLM guidelines for Tribal relations and government-to-government consultation. Specifically, I read these documents to understand the BLM’s agency-wide perspective on Tribal relations. I searched for guiding themes, points of interest, and contradictions. This analysis contrasts the idealized relationship the agency wants with Native nations and their lived realities. This method is further supported by Richardson’s (2016) work with U.S. Fish and Wildlife service. He analyzes laws and agency policies, including its Tribal relations handbook, to see the delta between the idealized version these documents present and the realities his interviewees describe. Similarly, Horowitz (2021) uses document analysis on emails obtained through FOIA requests to better understand attitudes within the USACE. Ultimately, these guides are another trajectory and framework to consider in BLM Tribal relations assemblages.

Traditional ethnographic methods emphasize being in the field, engaging in participant observation (Hesse-Biber 2017; Gupta 1995). COVID-19 made that option impractical. However, there is change in how anthropologists conceptualize the ‘field.’ Akhil Gupta calls for a translocal approach (1995; also see Wedel et al. 2005). He argues that anthropologists cannot fully capture the state’s essence at one discrete location. The state is the sum of interactions

between government officials and the people they serve. Many of these interactions are informal and do not happen in government offices. Thus, physical presence in a government facility can be unnecessary or impractical (Gupta 1995). Anthropology's advantage in studying the state does not lie in physical presence. Rather, it is the ability to recognize and document the difference between official narratives and people's actions (Heyman 2004; Thelen et al. 2014; Wedel et al. 2005). An anthropological approach captures the state's complexities that are embedded in historical and contextual realities (Thelen et al. 2014; Laszczkowski and Reeves, 2015). It also emphasizes the relational and how actors cocreate the state at local levels (Gupta 1995; Thelen et al. 2014). Regardless of location, anthropology allows researchers to see hidden trajectories and power structures (Heyman 2004).

I address my research questions through semi-structured interviews with BLM employees and decisionmakers involved in Tribal relations. These interviews happened via phone and video call. I formulated my interview protocol using Adams' (2015) guiding principles. He explains semi-structured interviewing is a flexible method that seeks open sharing from participants. To foster that, I adjusted the interview protocol to accommodate each interviewee (Adams 2015). I asked BLM employees to share their understanding about Tribal relations, Tribal sovereignty, the agency's mandate, and how this knowledge impacts their work and the BLM's relationship with Native nations. This choice in methods is further supported through Dockry et al. (2018), Richardson's (2016), and Horowitz (2021) research with the USFS, the Service, and the USACE. They use semi-structured interviews to ask their participants similar questions related to the themes I address in my protocol (See Appendix A).

To recruit participants, I contacted BLM and DOI employees in my personal network. In turn, they put me in contact with their coworkers via email and social media. Interested people

emailed me to schedule interviews. Additionally, I found contact information online for BLM Tribal liaisons. I relied on convenience and snowball sampling for several reasons (Hesse-Biber 2017, p. 56-58). First, there is no public BLM directory, making established relationships essential to garner participation. Secondly, I know that some employees do not share personal opinions in public or with strangers. Often, there is a desire to maintain an apolitical position in their work. Lastly, honest, in-depth responses, require trust. Connecting through mutual acquaintances helped facilitate that trust (p. 57-58). I also guaranteed to protect participants' anonymity in raw data and publications (p. 137).

Before each interview, I obtained verbal consent to record. From those recordings, I typed verbatim transcripts. I analyzed transcripts looking for major themes, points of interest, and contradictions (p. 143-144).

I interviewed 14 BLM employees and line officers. Almost half of participants are archaeologists. Other interviewees include a field manager, district manager, state director, project manager, and four people classified as Tribal liaisons³. This group represents offices in over seven states at the field, district, and state levels. Interviews lasted between 30 minutes to an hour and 45 minutes.

I chose not to interview Tribal government representatives. Tribal governments receive many letters from agencies requesting consultation, which can be burdensome. I did not want to add to that burden by asking for more of their time. Anthropologists have a history of exploiting Indigenous communities to understand the cultural “other” and preserve colonial power structures (Simpson 2007). Indigenous anthropologist Audra Simpson (2007) explains anthropology has been a colonization tool that has misrepresented and silenced Native voices

³ Tribal liaison duties are often assigned to Deputy Historic Preservation Officers (DPO). There are few standalone Tribal Liaison positions at the BLM. I interviewed three DPOs and one dedicated Tribal Liaison.

and narratives (p. 67-69, 78). I chose not to reproduce this process, especially as a white anthropologist. Instead, I focus my research on settler colonial institutions maintaining power inequities. This approach allows me to see how BLM actors within the settler state shape Tribal relations.

5.1 This Work is Not Decolonization

At first, I was inclined to claim this research fits within a decolonization framework since it is taking a critical look at a settler institution. However, as Tuck and Young (2012) explain, being critical of settler colonialism and its structures is not the same as decolonization (2012, p. 19). As they state, “decolonization is not a metaphor;” it is the literal, “repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted” (p. 3, 7). Other scholars have expanded or different definitions of decolonization. Additionally, Glen Coulthard states decolonization must also include an understanding of how different settler structures construct and interact with one another to maintain power (2014, p. 14). Coulthard also builds his definition in relation to other scholars, like Leanne Simpson, asserting that decolonization must not be on settler colonial terms, but rather through Indigenous “self-affirmation” and practices (Coulthard 2014, p. 43-47, 154-159). Decolonization happens through radical resurgence of Indigenous land-based values, knowledges, and practices (Coulthard 2014; Simpson 2017, p. 47-51). Despite some differences in these definitions, these scholars all require recentering and refocusing Indigenous peoples outside of the confines of settler colonialism.

My research decidedly focuses on the BLM as a settler institution. Even though it critically analyzes the agency and its Tribal relations, it does nothing to facilitate the repatriation

of land to Indigenous peoples. However, I do hope it helps denaturalize some of the settler power structures existing in the BLM's Tribal relations.

Chapter 6: Legal framework

Before analyzing how BLM employees use their subjectivities, morals, values, etc. to shape Tribal relations, it is important to understand how legal and bureaucratic frameworks contribute to this assemblage. These components both limit and allow flexibility in these relationships.

The BLM is an outcome of settler colonialism and exists within that historical context. During that history the U.S. federal government and its predecessors formalized their relationships with Native nations partially through treaty making. In these treaties, Indigenous communities ceded lands to the U.S. under conditions that they reserve certain rights, protections, and services from the federal government (Canby 2009, p. 116-117). Most importantly, these treaties signified that the United States and Tribes are sovereign nations making agreements with each other (p. 118; Richland 2021, p. 55).

Since those early treaties, the U.S. settler state has complicated and politicized recognizing Tribal sovereignty (Canby 2009, p. 6). In addition to treaties, Native nations can gain recognition through Congressional legislation, executive order, or administrative order (p. 4). In 1978, the DOI established recognition criteria for Tribes not yet federally recognized (p. 7-9).

In this research's context, federal recognition is essential because much of the legislation mandating the BLM and other agencies to consult with Indigenous communities, requires them to have federal recognition. This recognition signifies a special relationship with certain rights and responsibilities between these parties. Through early Supreme Court cases and other legislation, that special relationship is characterized as that between a guardian and its ward, in

which the federal government has a moral and sometimes legal obligation to act in the interest of those Tribes (p. 5, 35, 51-53, 62). At the same time those Tribal nations are considered domestic dependent nations, meaning Tribes retain “certain inherent rights of self-determination and internal governance, while ceding other aspects of their sovereignty to the United States, including absolute title to their Aboriginal lands and resources” (Richland 2021, p. 6). Federal recognition brings Tribes to the decision-making table with the BLM and other agencies (p. 141).

There is a suite of laws, regulations, executive orders, secretarial orders, and policies that require the BLM to consult with Tribal governments. H-1780-1 lists and describes a smaller subset of those policies. In practice, that list is smaller for those working in Tribal consultation. The table below focuses primarily on the laws BLM staff mentioned in their interviews in addition to a few more that provide further context. This list reflects the lived realities of research participants. This table only provides legal context and a basic understanding of the included laws.

Table 6.1⁴: Legal Consultation Framework

Law	Basic Purpose	How it Relates to Tribes	BLM Consults with
National Historic Preservation Act 1966 (NHPA) Section 106	Section 106 requires federal agencies to consider the potential impacts of a proposed federal undertaking on historic properties on or eligible for the National Register of Historic Places (H-1780-1 2016, p. X-1-X-5).	Federal agencies must consult with Tribes that have, “traditional or historical” ties to, “the area of potential effects associated with a federal undertaking” to identify and learn about possible impacts to historic properties of, “traditional cultural or religious importance” (H-1780-1 2016, p. X-1-X-5).	Federally recognized Tribes (H-1780-1 2016, p. X-2).
National Environmental Policy Act 1969 (NEPA)	Requires, “federal agencies to consider the environmental impacts of their proposed actions and alternatives” (Eagle et al. 2017, p. 97).	NEPA regulations require federal agencies to consult with tribes about how a proposed action impacts their, “uses of the environment for cultural, religious, and economic purposes” and, “to seek alternatives that would resolve potential conflicts” (H-1780-1 2016, p. IV-7-IV-8).	Federally recognized Tribes (H-1780-1 2016, p. IV-7).
Native American Graves Protection and Repatriation Act 1990 (NAGRPA)	Establishes processes for federal agencies to return, “human remains, funerary objects, sacred objects and objects of cultural patrimony” obtained prior to 1990 to lineal descendants and/or affiliated Tribes. After 1990, if remains and/or objects are found on public lands, agencies must identify and consult with lineal descendants and/or affiliated Tribes to determine how to handle these discoveries (H-1780-1 2016, p. X-11-X-17).	See previous box.	Lineal descendants, federally recognized Tribes affiliated with the remains and/or objects, or “traditional religious leaders.” “Lineal descendants do not have to be members of federally recognized tribes” (H-1780-1 2016, p. X-16).
Federal Land Policy and Management Act 1976 (FLPMA)	This is the BLM’s authorizing legislation that establishes its multiuse mandate for land management (Eagle et al. 2017, p. 205-206).	BLM must consult with Tribes regarding land use plans. To the extent that law permits, these plans must coordinate with pertinent local and Tribal governments’ land management policies (H-1780-1 2016, p. IV-6-IV-7; 43 U.S.C. 1712 § 202 (b) and (c)(9)).	Federally recognized Tribes (H-1780-1 2016, p. IV-3).

⁴ Table partially adapted from *Figure III-1, Figure IV-2, Figure IV-4, Figure X-1, and Figure X-8* in H-1780-1 (2016, p. III-8, IV-3, IV-8, X-1, X-16)

The laws in Table 6.1 can be vague. Laws provide intent, but not necessarily a clear path to meeting their objectives⁵. This lack of clarity allows agencies, such as the BLM, leeway in how they carry out their legal responsibilities and form relationships with Tribal governments (also see Mills and Nie 2020; Richardson 2016; Horowitz 2021). At the same time, law and policy can “limit the range of reasonable choices that one can make” (Wedel et al. 2005, p. 38, Dockry et al. 2018; Ryan 2012). H-1780-1 and MS-1780 emphasize actions and documentation practices to legally protect themselves (also see Ryan 2012). They also list ways to enhance and improve working with Tribes. These are not clear mandates dictating specific actions from agency actors. Simply, they provide a framework for BLM staff and managers. This ambiguity allows state actors to interpret laws and policies and enact those understandings in their relationships with Tribal counterparts. This exemplifies how state actors’ subjectivities and laws can shape Tribal relations assemblages.

In addition to this legal framework, it is important to understand the BLM’s organizational structure. This structure reveals the scope of influence and power each interviewee has within the agency. Deb Haaland is the current Secretary of the Interior and the first Indigenous woman to hold this position. For matters pertaining to the BLM, the Secretary of Interior delegates her authority to the BLM Director, currently Tracy-Stone Manning. Beneath her are two Deputy Directors (“Organization Chart”). That authority disseminates down to State Directors, then District Managers, and finally to Field Managers. Collectively, those with delegated authority are called line officers. Within their geographic area, line officers hold decision-making authority and are the U.S. representatives in government-to-government

⁵ The 1946 Administrative Procedure Act allows federal agencies to establish rules and procedures necessary for enacting congressional legislation. This process gives agencies latitude in their legal interpretations. Typically, court challenges against agencies are not about specific decisions, but about whether the agency followed its own decision-making process (Eagle et al. 2017, p. 62-67).

consultations (MS 1780 2016, p. 1-9). There are staff and specialists at all BLM levels carrying out the agency's day-to-day business and providing line officers the necessary information to make informed decisions. These staff do not have decision-making authority but can be involved in consultation and Tribal relations. In fact, many of these government-to-government relationships are built from these employees' efforts. This research focuses on staff archaeologists and line officers at the state, district, and field levels. A BLM actor's position in this organization impacts the latitude they have in forming Tribal relations.

Chapter 7: Results

7.1. Who is Doing the Consultation?

There are many trajectories influencing government-to-government relationships between the BLM and Native nations (Horowitz 2021). There is the agency's settler colonial history, legal frameworks, and BLM-issued guidance. However, local bureaucrats and line officers do the day-to-day work building these relationships. Specifically, BLM field and district archaeologists are the primary actors shaping them.

Legal requirements mandate federal agencies consult with Tribal governments. The clearest mandate comes from NHPA's Section 106 requirements⁶ (H-1780-1 2016, p. IV-22-IV-23). NHPA deals primarily with historic properties, including archaeological sites (H-1780-1 2016, p. IV-22). Since NHPA has the strongest consultation requirements, relations between the BLM and Tribal governments often fall to field and district archaeologists responsible for the

⁶ There are few legal standards for how Tribal consultations should proceed. The strongest guidance comes from the NHPA's Section 106 regulations (MS 1780, p. A2-1). Still, those regulations leave room for interpretation. In Section 106 regulations the clearest mandate requires federal agencies to provide Tribes with a:

reasonable opportunity to identify [their] concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects (36 CFR 800.2.B.ii.A).

These regulations require federal agencies to, "make a reasonable and good faith effort" to identify the appropriate Tribes for consultation and to consult with the correct representatives from these governments (36 CFR 800.2.B.ii.A; 36 CFR 800.2.B.ii.C). Even in these requirements, phrases such as "reasonable" and "good faith" are undefined, leaving room for agencies to interpret their meaning.

Other sections in 36 CFR 800 regulations list best practices. For example, they suggest Tribal consultation "should" happen early in the project, and that agencies "should" consult, "in a sensitive manner [that is] respectful of tribal sovereignty" (36 CFR 800.2.B.ii.A; 36 CFR 800.2.B.ii.C). These are helpful suggestions but ultimately this language insinuates they are at the discretion of agency officials. H-1780-1 also lists best practices to fulfill the good faith standard. These suggestions focus on legal defensibility (H-1780-1 2016, p. III-15-III-17; also see Ryan 2012; Horowitz 2021).

Section 106 process⁷. Consultation efforts with Tribes are often conflated with Section 106, so other BLM employees refrain from Tribal relations. This is also the case with USFS, which can cause issues within that agency's Tribal relations (Dockry et al. 2018). This demonstrates how laws dictate which BLM actors exist in these assemblages.

Many study participants frame this responsibility as “collateral duty,” something that is not their main job, yet takes up a sizeable portion of their work. Some archaeologists voiced they did not know much about Tribal relations when they began their positions and had to learn on the job and take extra trainings. Technically, line officers are responsible for Tribal consultations because they are the official U.S. representatives in these nation-to-nation relations. However, both archaeologists and line officers that were interviewed acknowledge that archaeologists lay the groundwork for these consultations and relationships. They explained it is often up to office archaeologists to remind their line officers of their legal requirements in these interactions. Depending on the office and the number of Tribes claiming ties to specific BLM lands, this responsibility can take up much of an archaeologist's time, which can be overwhelming. Dockry

⁷ Suagee (2018) explains the NHPA Section 106 process as outlined in the 36 CFR 800 regulations. These regulations dictate the consultation process federal agencies must engage in with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and Tribal governments. Whenever a federal agency is going to partake in an undertaking, which is a project utilizing federal lands, resources, funds, or permitting, it must determine the area of potential effects (APE). Next the agency must see if there are historic properties within the APE that are on or eligible for the National Register of Historic Places. This identification involves consulting with relevant SHPOs, THPOs, and Tribal governments who have, “religious and cultural” ties to the properties in question (p. 44). To initiate consultation, the agency sends letters to those parties. If they do not respond within 30 days, the agency can proceed without consultation to the next part of Section 106. If there are historic properties within the APE, the agency will determine if the undertaking has an adverse impact on them. If the agency determines there are no adverse impacts, it sends another letter to potential consulting parties. These parties have 30 days to voice any objections. If there are none, Section 106 is complete. Alternatively, if the federal agency determines there are adverse impacts, it will invite Tribal governments and other parties to consult on what those impacts are and how to address them. If they choose to consult, the agency can make a treatment plan with these parties. This plan is then outlined in a Memorandum of Agreement and Section 106 is complete. Sometimes consulting parties may not come to an agreement with the agency. If the federal agency engaged in proper consultation and documented its efforts, it can still proceed with the undertaking and end Section 106. See 36 CFR 800 regulations for a more in-depth description.

et al. (2018) find similar dynamics in their research with USFS employees, indicating this pattern extends beyond the BLM.

Interviews highlight the different kinds of consultation and individual employees' roles in them. One field archaeologist explained "Consultation" vs. "consultation." Big C consultation is a formal process involving line officers and Tribal government leaders or their designated representatives. This process includes official correspondence, meetings between leaders, and agreements between governments. Line officers at the BLM are responsible for this kind of Consultation. Archaeologists support Consultation by drafting official letters for line officers to sign and send to Tribal leadership. This is the smaller part of these government-to-government relationships. These prosaics of state performed by individual employees shape more formal relations with Tribes.

The larger, more work-intensive part of these relationships is "consultation." Archaeologists oversee this process. Little c consultation includes the behind-the-scenes groundwork necessary for Consultation. In consultation, archaeologists talk with Tribal government employees, share project information and potential issues, and try to problem solving before consultation is official. The archaeologists I talked to try to foster goodwill and open communication with their Tribal counterparts to improve relationships between governments. Generally, when archaeologists talk about their roles in consultation, they are referring to these aspects. These prosaic actions in archaeologists' work contribute Tribal relations assemblages. Note, this may not be universal across the agency. Just as there are good actors, there are those who may not try to act in the interests of Tribes.

Similarly, Dockry et al. (2018) differentiates between the informal and formal relations between the USFS and Native nations. Both are necessary and co-build from one another. There are similarities with the BLM in what work is necessary for each kind of consultation.

Archaeologists at all levels in this research asserted that Tribal consultation and relationships should be everyone's responsibility in their offices. Tribes have many concerns and interests beyond archaeology. Some archaeologists reported Tribes asking them questions outside of their expertise they could not answer. Thus, it took longer for Tribes to get requested information. This was an issue also mirrored in the USFS (Dockry et al. 2018, p. 129). Other staff members are often hesitant to work with Tribes because they have not had to in the past. Many of these employees do not know the legal requirements involved in these processes. This is a problem that both the Service and the USFS face as well (Richardson 2016; Dockry et al. 2018). BLM participants explained that some of their coworkers do not know that official consultation must be between both government's leadership. A BLM employee cannot talk with any Indigenous person and call it consultation without documentation and leadership involvement. Richardson (2016) also discusses this issue (p. 51). Specific employees' knowledge regarding consultations can determine the success of these government-to-government relationships.

Archaeologists in this study try to address this problem. One field archaeologist wants to offer trainings for her coworkers to inform them about local Tribes' interests in the lands they manage. Richardson (2016, p. 52-53) and Ryan (2012, p. 64-65) also indicate a desire and need for more training. A BLM Deputy Preservation Officer explained how she helps non-archaeology staff form their own relationships with Indigenous nations, so the responsibility

does not fall to her. These archaeologists strive to make this cultural shift, but bureaucratic change happens slowly (Richardson 2016, p. 53).

This desire is evident at upper levels of the agency. In 2016 the BLM issued a new Tribal relations and consultation handbook and manual. Both outline legal requirements, best practices, opportunities for improvement, and each program's duties. Previous guidelines were in the BLM's cultural resources program series, indicating Tribal relations were archaeologists' responsibility. These new policies exist in the government relations series, symbolically moving Tribal relations beyond archaeology (H-1780-1 2016, p. I-1). These documents explain Tribal relations are primarily line officers' duties. They also provide guidance for how different program areas can support these relationships. Outside of the cultural resource section, there are few parts requiring archaeologists to do specific tasks to improve and maintain Tribal relations. The handbook and manual explain these relationships require more than meeting Section 106 requirements (H-1780-1 2016; MS-1780 2016).

Despite the new BLM policy, change happens slowly. One Tribal liaison explained why this shift is difficult:

BLM has, about the time I started this position... came out with a national policy, a new manual handbook series on Tribal relations. So, getting that actually to the... forefront of decisionmakers' minds is a real struggle. It's a big document. There's a lot to it.... It had not been widely promulgated... there is no critical element that speaks directly to tribal relations in our management performance plans, and there's no impetus for them [decisionmakers], in general, to push forward with those kinds of relationships and require-- again the 17-80 manual says that all specialties, all our programs will engage with Tribes, as they should. But that's a hard sell, one, because ... it freaks people out for whatever reason. I think the fear of the unknown, horror stories of people not doing proper consultation and getting chewed out for it by the Tribes. And so, there's a hesitancy to go out and meet with Tribes. And it's just a hard hump to get over in people's mind that Tribes, Tribal members, Natives are real people, they live in the real world, they live in the 21st century.

Without a mechanism compelling decisionmakers to read and enact these changes, there is no push to follow these policies (also see Ryan 2012). Also, there is resistance from other BLM staff because many have misconceptions about Indigenous communities. Without a demand for change, it is at decisionmakers' discretion how much, if at all, they enact the BLM's Tribal relations policy. Despite these policies, archaeologists are still, in practice, responsible Tribal relations.

Similarly, Dockry et al. (2018), Richardson (2016), Horowitz (2021), and Ryan (2012) discuss the roles of agency leadership and employee attitudes in hindering and improving Tribal relations. Mills and Nie, Richardson, and Ryan call for specific actions, trainings, and best practices that are either incentivized or mandatory (2020; 2016, p. 53; 2012, p. 64-65).

Before moving to specific actors' subjectivities, it is important to note the tension between archaeologists primarily doing little c consultation and their line officers engaging in big C consultation. If relationships between these actors are good, BLM offices can present a united front in Tribal relations. However, that may not always be the case. Each of these parties have different constraints on them and there are times where their priorities do not align.

In one example, an archaeologist explained her frustrations with her line officer. She is supposed to foster these government-to-government relations and be the liaison between local Tribal governments and her manager. However, to do that, she needs her manager's support so she has clout and can garner trust with Tribes. She has tried to convince her line officer to show up for more meetings with Tribal counterparts to give her legitimization, but sometimes that does not happen as much as she would like. She explained that Tribes often get annoyed because the BLM, "always sends [their] worker bees" instead of decision-makers. This lack of action

confines Tribes to little consultation, keeping them from greater engagement in real decision-making.

This tension is not uncommon and highlights the power differential between Tribes, archaeologists, and line officers. A lot cannot be done without line officers' approval and participation. However, even with this limited agency, some archaeologists do try to influence their managers through other means.

7.2. Archaeologist Subjectivities: Doing the Right Thing

Throughout interviews, participants asserted they must compartmentalize personal feelings when working with Tribes. However, that personal and professional boundary is often blurry. Most archaeologists talked about primarily having to follow legal requirements. Ryan also had similar assertions from her federal informants (2012, p. 53). However, as noted, these legal requirements act more as a framework, leaving some flexibility in how individual employees follow those requirements. Richardson (2016), Mills and Nie (2020), and Horowitz (2021) also highlight how legal discretion allows agencies more flexibility in Tribal relations. In that space, archaeologists have leeway in relationship-building, allowing them to bring their subjectivities and values into these dynamics.

Many archaeologists described their personal sense of duty to advocate for Tribes in government-to-government relationships. For example, one field archaeologist stated:

[U]ltimately it is a great honor to work in a position where advocating for [Tribes] to the federal government. You know, I can't represent them but I can advocate for their perspective as I understand them in the time that I've been working in this region and come to understand things.

Another archaeologist discusses this further when asked what he likes about his work with Tribes:

Well, I like to learn about the culture. I want to know more about, I want to protect, I want to preserve these [cultural] resources. That's why I'm here. I'm an archaeologist because I like that... I'm not related to the [Tribes], and [I'm] kind of a steward over them, right. And so, I want to know a little bit more about them. I would love to learn about how they view these resources and they're connection to them.

This advocacy and sense of duty was also present in federal employees' responses in both Dockry et al. and Ryan's research (2018, p. 126; 2012, p. 54).

Even in offices with contentious Tribal relations, some archaeologists still advocate for Native nation's interests. Sometimes those feelings are strained when Tribes bring lawyers into consultation, leaving less room for personal connections. At one BLM office there are land-clearing projects opposed by local Tribes. Their governments started bringing lawyers to consultations, increasing tensions in these interactions. Despite negative feelings, one archaeologist said she still tries, "really hard to advocate" for Tribes when they make reasonable requests for more time to review a project. Another archaeologist in a similar situation discussed that despite these difficulties she still likes working with Native communities because, "[i]t makes [her] feel like [she's] doing the right thing." One participant described his job as "thankless," yet he still is dedicated to do right by Tribal governments. Horowitz (2021) also demonstrates how individual actor's feelings often conflict with other factors, which can impact their assemblages and outcomes. People with varying wants and interests shape each government agency, decision, and relationship with Native nations.

In these examples, archaeologists express a desire to work with Tribes and advocate for them. This often stems from their own sense of morality (also see Horowitz 2021). On the surface, this looks like paternalistic attitudes from well-meaning archaeologists. To some extent,

perhaps it is. However, interviewees acknowledged that the BLM's multiuse mandate and consultation laws often do not benefit Tribal governments or give them a meaningful place at the table. This reality is also present within the USFS, another multiuse agency (Dockry et al. 2018, p. 128). BLM archaeologists are cognizant of the settler colonial histories shaping these difficult relationships (also see Ryan 2012, p. 54). Laws limit what archaeologists can do. However, some archaeologists know how to manipulate and move within settler colonial frameworks to give Indigenous nations greater say. This is how individual archaeologists shape the realities of these relationships.

One archaeologist has used Section 106 requirements to slow down mining. He explained the 1872 Mining Law gives federal land management agencies only two weeks to inspect a five-acre mining claim. If there is no response from the government in that time, the claimant can break ground. Mining claims do not require Section 106 analysis. But this archaeologist asserted, he, "always figure[s] out a way to make them trigger 106, especially if it's an important area" for Tribes. Granted, this is difficult to do within those two weeks, especially if an office already has many projects. This archaeologist does not have to do this. Yet, he feels obligated to give Tribal governments the opportunity to voice their concerns. Both legal and individual trajectories collide in this space to shape Tribal relations.

In other examples, several archaeologists talked about how they manipulate project timelines to give Native nations more time to consult and provide feedback. One archaeologist always stresses to his managers that Tribal consultation is an ongoing process that never ends. USFS employees working in Tribal relations stress this too (Dockry et al. 2018, p. 125-126). When a BLM office sends letters to Tribes inviting them to consult under Section 106, they have 30 days to respond. If the BLM receives no response within that period, the office can proceed

without consulting. If a Tribe responds after the deadline, this archaeologist makes a point to incorporate their feedback and implores the field manager to consider their comments. This is not a unique occurrence. BLM archaeologists know that Tribal governments are inundated with consultation requests from other federal agencies and offices. USFS employees also acknowledged this constraint (Dockry et al. 2018, p. 130). Frequently, Tribal governments do not have the time to answer each request within a 30-day timeframe.

All the archaeologists interviewed try their best to accommodate Tribes' needs. One Deputy Historic Preservation Officer explained how archaeologists maneuver rule changes in NEPA to give them more time:

[T]he last administration changed our NEPA guidance and how quickly we have to get our NEPA done on certain projects. So that puts us in like a six-month time frame most of the time [this is a shorter timeframe]. So, we had to be really careful about when the clock starts on a project and trying to front-load consultation and things like that so that when the project starts, we're able to get Tribes outside [to] consult with them if we need to in time to be, "Let's get that NEPA done." So that has been really, really challenging recently. It's something I just don't think was accounted for in that decision.

Again, the BLM is not legally required to accommodate Tribes in this manner. This relates back to individual actors' morality instead of using new requirements to limit their roles in these processes.

In another instance, one participant knew his office would approve an oil transmission line. Through consultation he proposed a different route that avoided an important site for local Tribes. Law did not require the reroute, but this archaeologist and his manager recognized it cost minimal effort to accommodate those concerns.

Beyond legal maneuvering, archaeologists put themselves on the line in more personal ways to improve Tribal relations. Several participants stressed the importance of simply showing interest in Indigenous communities' politics, histories, and events. Dockry et al. (2018) and

Richardson (2016) also stressed the importance of this in Tribal relations. One archaeologist mentioned his office does not work with many Native nations. Still, he makes a point to visit those communities and attend their special events open to the public:

It's giving a perception that, "Hey, I'm interested, I wanna know more about you guys. I wanna know more about your history, not just for the job, but I'm interested." You can say that over the phone and email all you want to, but if they don't see your face... and a lot of these festivals are at the pueblo or at the reservation. So, you have to go.

Attending events like these are at the discretion of BLM employees, but their presence shows that archaeologists and, by extension, their offices care about their Tribal counterparts. It builds trust that is useful for later (Dockry et al. 2018, p. 126; Richardson 2016, p. 54, 61).

Relationship building can happen through smaller, individual acts that show basic decency and respect for Tribal governments. Several archaeologists within a state inherited strained and tumultuous Tribal relationships from their predecessors. Some of them took it upon themselves to improve these situations. For instance, some of them realized they did not know when Tribal elections occur or have contact information for Native nations' government leaders and staff. This was a problem because their BLM offices did not know how to reach Tribes for consultation, meaning their office potentially neglected legal requirements. These prosaics of state contribute to Tribal relations assemblages.

In another scenario, one archaeologist found a map with a Tribe's names for different landmarks. He began using those names in consultation letters and received more responses from that community. One Tribal liaison remarked, "you wouldn't send somebody to France to discuss an issue on a nation-to-nation level without them knowing everything they need to know in that cultural context. We do it with Tribes all the time and they're sovereign nations. What's up with that?" Just knowing basic information and history goes a long way in relationship building, making consultation more fruitful for both parties (Dockry et al. 2018; Richardson

2016; Ryan 2012). These archaeologists were not forced to take these actions. They did it through their own initiative, highlighting how individuals' subjectivities shape these much larger government-to-government relationships (see Horowitz 2021; Ryan 2012, p. 64). Richardson (2016) also mentions the role of individual employees in shaping agency culture and practices (p. 53).

Sometimes relationship building can come with a heavy emotional toll. Horowitz (2021) also focuses on the roles of individual emotions and interests in shaping government assemblages and outcomes. One BLM archaeologist described an incident where his office essentially approved the desecration of a local Tribe's sacred place. This worsened the relationship and fostered negative emotions from both parties. Realizing the damage, this archaeologist took steps to start mending the relationship. He realized that:

[T]he olive branch [had] been pulled back and people [were] absolutely not shaking hands, and people [were] absolutely not eye to eye... I kinda followed through behind that. I would make appointments and I would go down [to the reservation] and I would sit with the Elders and sit with the people that were on the Cultural Committee, and sit with the THPOs... and just listen and listen and listen and listen, and have them point their finger at me and... what else can I do but listen?... If they gave me the time, I'd be there.

This archaeologist felt the gravity of the situation and understood the harm it inflicted. He was not responsible for this outcome but took it upon himself to be there for that community and take the blame for his office. The relationship had worsened, but he put himself in a vulnerable position to make sure it did not completely deteriorate. Even if he could not always influence his decisionmaker to consider Tribes' concerns, he could at least be there to listen and provide support as an individual. Simply listening can go a long way in shaping these relationships (Dockry et al. 2018, p. 126).

These types of actions lay the groundwork for an archaeologist's reputation. Longtime BLM archaeologists often spoke about their reputations within the agency and amongst Tribal

governments. They are built by establishing trust with both their line officers and Native nations. The greater their reputes, the more they can maneuver within government-to-government relationships in attempts to satisfy both parties. This comes with risk. If they cannot follow through with a promise, both their office and Tribal counterparts can lose confidence in them. This often places archaeologists in a precarious position where they are the ones problem-solving and putting themselves on the line, highlighting again the role of individual actors in these assemblages.

One archaeologist talked about a situation where her line officer and Tribal governments depended on her to solve an issue. Both parties trusted her, not knowing how she would handle this highly contentious issue, but she gave them her word it would happen. This participant explained what that situation meant to her:

And that was put on the premise of hugs and tears that came out the back end of the initial meeting where the information was shared [between the BLM office and Tribes] ... That was a very personal commitment on my part, and I took it to task... And I do take it personally. That I've existed in this space, that I have formulated relationships and... I have a reputation... And that my word is my bond. And I think that it's important to try to translate that then to the entire office that you exist in, your decisionmakers, and the Bureau as a whole—and it's damn near impossible with the latter.

These instances highlighting archaeologists' subjectivities exemplify Tuck and Yang's (2012) "settler moves to innocence." They define this concept as, "strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all" (p. 10). These participants work within the settler state and help preserve its power. It can be distressing seeing how the BLM, as an extension of settler colonialism, harms Native communities and the lands important to them (p. 10). Advocacy for Tribal governments within these confines can assuage these individuals' potential feelings of guilt or sadness, but they do not address the root issues. They are temporary

fixes that do not challenge the settler colonialism's status quo. These archaeologists are ultimately settler state actors confined by the same system's laws, logics, and practices. These dynamics are evident with line officers as well.

The BLM tasks local level archaeologists with Tribal relations, with essentially a legal framework, a handbook, and their own moral compasses guiding their actions. Although there are some limitations, such as time and Tribal governments' constraints, archaeologists have some discretion in building these relationships. Although archaeologists may share similar experiences, none are uniform or universal. The agency does not have a singular approach to working with Native nations, but a "panoply of voices" shaping relationships from the bottom up (Painter 2006 citing Campbell 1996, p. 761-762). This makes it difficult to change government-to-government relationships at an agency-wide level to undo the harms from the BLM's settler colonial origins. The government is often imagined abstractly at the national level, but Tribal relations are molded in local contexts (Gupta 1995). Tribes consist of many trajectories, as do BLM archaeologists and offices. Line officers present another set of trajectories in these relationships. Although they are less involved with Tribal relations, decisionmakers can shape them through their own subjectivities.

7.3. Line Officers: Where (Limited) Power Coalesces

While archaeologists embody knowledge and affect in Tribal relations, line officers embody power. Line officers are the official U.S. representatives in these relationships and have legal authority to make decisions for the offices' lands they administer. An archaeologist can spend time building relationships with Tribal counterparts, but managers can affect them through their willingness to work and consult with Native nations. Dockry et al. (2018), Richardson (2016), and Horowitz (2021) also stress the role of agency leadership in Tribal relations. How

line officers shape these relationships varies by factors including decision-making space, legal interpretations, and personal feelings towards Indigenous communities.

Each of the three line officers interviewed mentioned the concept of “decision space.” A manager explained, “there’s a difference between doing what we [line officers] have to do and what we should do... that delta is the decision space that managers get to work in.” Line officers must follow Congressional mandates and executive directives. This limited decision-making space is the same for other federal land agencies (Dockry et al. 2018, p. 128-129; Horowitz 2021). They may have decision-making power at local levels, but that power is limited. For example, one line officer described a contentious project where a Tribe would lose access to an important ceremonial site. The line officer expressed empathy but also a sense of helplessness since Congress passed legislation ordering the project. He lamented, “[A]t [this] point, I don’t have the decision to say, ‘No.’ I just have the authority to say, ‘Yes, and this is how I’ll do it.’” Line officers sometimes cannot control the outcome of a project and accommodate Tribes’ needs. This can strain these relationships.

These local actors do have agency over how they enact predetermined decisions and communicate their decision-space limitations. The same line officer expressed that in these situations, he makes a point to communicate clearly with Tribal governments. There are legal loopholes allowing him to end communication with Tribes, but he follows his morals and has those tough conversations. Other managers may not feel an obligation towards Indigenous communities and instead let agency culture and mandates shorten the consultation process (Horowitz 2021). Another line officer discussed that when she knows a decision will harm a Tribe’s important sites, she often lets them decide how to unfold that process. Tribes can essentially ‘pick their poison,’ yet these small kindnesses are still at line officers’ discretion.

Legislation and limited authority present a boundary in these assemblages, but managers can choose how they move within these constraints. These well-intentioned actions also demonstrate “settler moves to innocence.” They help address settler actors’ guilt but does nothing to address root causes of these structural harms (Tuck and Yang 2012).

Like their archaeologists, line officers apply personal discretion in their interpretations of laws and policies. These mandates’ vague language allows flexibility in how they do or do not follow them (also see Horowitz 2021; Mills and Nie 2020; Richardson 2016). For instance, in 2012 former DOI Secretary Jewell issued an order mandating DOI agencies improve Tribal relations. Upon that order, one field archaeologist made a list of additional Native nations her office needed to include in consultations. She shared this list with her line officers, but they refused to include them. When she cited the secretarial order, her managers said, “Well, we don’t really know what that means... we’re not going to do that until somebody makes us.” In this instance, line-officers demonstrated apathy for Tribal relations, informing their choice to ignore the order until they faced negative consequences (Horowitz 2021; Ryan 2012).

Beyond cutting Tribes from consultation, managers can limit their involvement based on personal feelings (Horowitz 2021). An archaeologist explained her line officers are sometimes reluctant to give Tribes’ extensions to comment on a project because, “decisionmakers have a really bad taste in their mouth because a lot of the Tribes have tried to stall a project to death and then never provide the comments that [they] need.” There are no legal requirements demanding line officers give Tribal nations an extension beyond the initial 30 days. If line officers have negative feelings towards a Tribe, they can deny them extra time. Again, this demonstrates the roles individual actors’ emotions play in these assemblages (Horowitz 2021).

One line officer voiced his frustrations working with Tribal governments and how they impact those relationships. He explained Native nations do not, “operate under our standard...white perspective of show up for a meeting on time with the people and [be] prepared.” Often, he goes to meetings on reservations far from his office. More than once he has arrived to find they were canceled without notice. He did not explicitly say it deterred him from attending future meetings, but he commented that those occurrences only have, “to happen a few times and most folks treat it like, ‘Well, I’m not gonna make the effort any more then.’” This manager also expressed a paternalistic attitude towards Tribes, stating:

Our job, as I see it, is to uphold our responsibility to care for that land [public lands] for them as an entity, as well as the American public, which gets back in the process of how and to consult with them. But there’s no additional say they have in what happens there. I have a different legal process for working with them than I do with other people, it’s really the underlying issue.

These statements touch on the power dynamics, cultural differences, and realities often present in government-to-government relationships (Richardson 2016; Dockry et al. 2018; Horowitz 2021). Settler colonialism has been an effective process for diminishing Tribes’ rights on public lands (Horowitz 2021). With no real imperative to extend Native nations’ rights, the nature of Tribal relations depends on local offices’ leadership (Richardson 2016; Dockry et al. 2018; Horowitz 2021). Managers may feel some responsibility or guilt towards Indigenous communities, prompting them to be more inclusive in decision-making. Still, Tribal involvement and consideration depends on line officers’ subjectivities. Even though their decision-making power is limited, their authority impacts these relationships. There are few incentives to move beyond the reality this passage presents (Richardson 2016; Ryan 2012).

Unless a Tribal government sues an agency office, there are few negative consequences decisionmakers face (Horowitz 2021). One employee explained, “there is no critical element that

speaks directly to Tribal relations in... management performance plans.” The BLM consultation handbook confirms this:

Line managers and staff members routinely engaged in actions with tribal implications must be evaluated regarding their efforts to build tribal relations and carry out effective consultation as part of their employee performance appraisal plan (EPAP) evaluations. (H-1780-1 2016, p. II-15)

Despite this directive, the handbook does not provide clear standards for what to include in these evaluations. It leaves specific criteria to be determined by local offices’ needs and circumstances (p. II-15). It also does not include consequences for line officers failing to meet those standards. Ultimately, local line officers and their supervisors determine how they are evaluated in Tribal relations without any meaningful repercussions for failing to meet their own measures.

These cases paint a stark picture. They convey a sense of hopelessness for healthy Tribal relations. Yet, there are bright spots. Some line officers try to improve relationships and shift agency culture. Several BLM employees mentioned that managers are improving their attitudes towards Indigenous communities. This attitude change is also reflected in agency leadership in the USFS and the USACE (Dockry et al. 2018; Horowitz 2021). One BLM archaeologist described his former manager who went out of his way to be gruff with Tribal governments and limit their involvement. Towards the end of his career, this same manager softened his stance and made decisions benefitting Native communities.

Other BLM employees discussed the new generation of line officers working harder to improve Tribal relations. These decisionmakers approach this aspect of their work with enthusiasm and eagerness. The managers interviewed reflected these shifting attitudes. One line officer explained how he takes a more holistic approach in his relationship with Tribes, going beyond basic legal requirements and emphasizing transparent communication (also see Dockry

et al. 2018, p. 127). He is exploring new ways to inform Tribes about projects, allowing them to determine which ones are important to them. Also, he expressed openness to finding compromises and managing BLM lands differently, so Tribes' important resources and places have more protection. Again, these are "settler moves to innocence" since Tribes are still at the whim of BLM actors' morality (Tuck and Yang 2012). They also reflect Coulthard's assertion that settler colonialism is shifting from reproducing itself using overt violence to, "more conciliatory" means focused on, "recognition and accommodation" (2014, p. 6).

Another manager discussed the importance of listening to Tribal governments and having empathy for the inundation of consultation requests they receive from other agencies. Often, the volume of requests outweighs what these governments can handle. She also shared her experiences with Tribal Elders and government officials where they hiked to different areas to discuss these sites' importance. This highlights her eagerness to listen, learn, and make time for these relationships, going beyond official government-to-government formalities. She recognizes as a BLM manager, she makes decisions for landscapes that hold spiritual, familial, and cultural importance. It is deeply personal, so she dedicates time to treat these moments with sensitivity. This is not mandatory, but it shows how some managers take these relationships seriously and are shifting agency culture and Tribal relations.

These actions demonstrate some BLM managers' desire to improve their relationships with Tribal counterparts. Still, many managers need archaeologists reminding them of their legal requirements and obligations to show up for official consultations. There may be changes in some line officers, but when it depends on individual efforts and attitudes, it can be slow, leaving much of the work to archaeologists (Richardson 2016, p. 53).

Even though there is a growing desire from individual employees and managers to improve Tribal relations, it may not matter at a larger scale. Unless there are big, structural changes to the BLM and laws governing the agency, it remains an institution of settler colonialism (Ryan 2012, p. 64). Settler colonialism and the BLM have more powerful, historic trajectories than individual employees. Settler institutions do not cede power and authority to those they seek to disempower (Dockry et al. 2018, p. 129). Local actors have some latitude in government-to-government relationships and how they are experienced at the local level (Ryan 2012, p. 64; Richardson 2016, p. 53; Horowitz 2021). However, actors face limitations to what extent they can shape them. The structure of the BLM and consultation laws do not incentivize employees going out of their way to foster good relationships (Richardson 2016, p. 53; Ryan 2012, p. 60-64; Horowitz 2021). The agency is understaffed, and employees often feel they do not have enough time to improve Tribal relations to their ideal state (Skillen 2009, p. 3). The BLM's recent reorganization, relocation to Colorado, and the subsequent resignations have worsened this disparity (Kutz 2021). These archaeologists and line officers, even with these constraints, can shape Tribal relations at local levels, but larger legal and settler colonial structures limit their extent and the possibility of addressing root causes of settler colonialism.

Considering the BLM's history and current structure, the agency's existence is incompatible with decolonization. Individual employees' actions meant to help and accommodate Tribes fall short because ultimately, these government-to-government relationships serve to preserve the U.S.' power over colonized lands. They also do nothing to repatriate land to Indigenous peoples (Tuck and Yang 2012). The well-meaning actions detailed in this research and the consultation process gives the illusion that Tribal governments have some agency. These are examples of Tuck and Yang's (2012) "settler moves to innocence"

because they distract from the inequities baked into these dynamics and do not do much to challenge them. These limited forms of agency are not Indigenous self-determination, because they are on the settler state's terms (Coulthard 2014). As Coulthard (2014) and Simpson (2017) assert, decolonization does not happen within settler institutions and confines. Indigenous people must turn to their own ingenuity and values for decolonization to happen (Coulthard 2014; Simpson 2017).

Chapter 8: Conclusion

This research started with stark case studies highlighting the strained relationship between the BLM and Tribal governments. The BLM, as an extension of the settler state, appeared as a singular entity, operating unilaterally to antagonize Tribes protecting their sacred places and cultural practices. In some respects, this assessment is fair. The BLM often makes decisions contrary to Indigenous communities' wants and needs. The agency has also limited the extent federally recognized Tribes can be involved in these decisions. However, these case studies miss the complexities of these dynamics.

Within the settler state and its legal framework, there are individual actors shaping these relationships with their subjectivities, emotions, and maneuverings in these spaces. All these trajectories come together to form and reform these assemblages through state prosaics, opening and closing different possibilities. BLM archaeologists are often the ones trying to reshape these assemblages into something more beneficial for Tribes. Local decisionmakers play pivotal roles as well. Despite some actors' efforts, settler colonialism presents a bigger trajectory that is harder to push aside in these assemblages. It takes time and concentrated efforts to move within a framework designed to preserve settler power and erase Indigenous peoples from the landscape.

As noted in this research, social scientists have started taking a closer look at U.S. federal agencies and how their employees shape Tribal relations. This is a new direction with much room to grow. Even though their research looks at different agencies (the USACE, the USFS, and the Service), there are important themes and commonalities emerging in conjunction with this work. Specifically, archaeologists are the ones building and sustaining relationships with Tribal governments (Dockry et al. 2018). Research participants cite a lack of necessary training

around legal requirements and cultural competency (Dockry et al. 2018, Richardson 2016, Ryan 2012). Researchers also have noticed the role of employee subjectivities in shaping these relationships, specifically from leadership (Ryan 2012; Richardson 2016; Dockry et al. 2018; Horowitz 2021). Future research should look further into these commonalities and differences in how each agency works with Tribal governments (Ryan 2012). Better understanding different agencies' protocols can help researchers and activists, Tribal governments, and employees better understand how the settler state operates.

PART 2: TRIBAL SOVEREIGNTY AND BLM NEGOTIATIONS

Chapter 1: Introduction

Admittedly, as a young white woman, I did not know the full history shaping the relationship between the United States and Indigenous⁸ communities. Of course, I knew about the white-washed ‘friendship’ between the Pilgrims and the Tribes they encountered, resulting in the first Thanksgiving. Growing up in Tucson, Arizona, teachers taught me about Spanish conquistadors and Padre Kino. They focused on these European figures often at the cost of learning about the Tohono O’odham and Pascua Yaqui who inhabited the area prior to contact. It was not until college that I began learning about the travesties of ‘discovery’ and settler colonialism. I started realizing how these histories and injustices are the foundation of United States.

In 2017 I applied for an internship at the Bureau of Land Management’s (BLM) Tucson Field Office (TFO). I was a few years out of college, exploring career paths. As an undergraduate, I majored in cultural anthropology, and had taken classes both in American Indian studies and cultural resource management. This sparked an interest at these crossroads. I knew this internship would help me pursue that interest.

Initially, my internship duties did not focus on Tribal relations. Rather, I spent much of my time picking up trash, running barbed wire fence, and coordinating volunteer events with other interns. In my free time I connected with TFO’s cultural resource specialist/archaeologist.

⁸ Throughout this thesis, I use Indigenous communities/nations and Native communities/nations when referring broadly to the Indigenous people and their political and cultural organizations in the United States regardless of their federal recognition. Because “Indian tribe” is codified in U.S. law, I also utilize Tribe or Tribal as shorthand for Native nations and their governments that are federally recognized (H-170-1 2016, p. G-2). This is the most common terminology used by research participants. I understand that “Indian,” “tribe” and “tribal” have complicated connotations and that there is no settled consensus amongst Indigenous peoples on preferred vernacular (Baker et al. 2021; Blackhorse 2018). Generally, I adhere to the Native Governance Center’s terminology guide throughout this paper (Baker et al. 2018).

She mentored and taught me about the nuances of government-to-government relationships between Native nations and federal agencies. She shared her struggles and joys in building Tribal relations. Oftentimes, she had to be the bearer of bad news when she told Tribal governments about certain BLM actions. But in other instances, she figured out ways to maneuver through laws and policies, and bend decisionmakers' ears to negotiate better outcomes for Native communities. During this time, I became increasingly aware of the injustices and power imbalances characterizing Tribal relationships. Even though the federal and Tribal governments are sovereign, it seemed like the federal government always had the upper hand and final authority. This made me question what sovereignty, specifically Tribal sovereignty, meant in these relationships.

In planning this research, I did not want to make Tribal governments my primary subject. As noted in part one, anthropologists have a long history of extracting and exploiting Indigenous communities in the name of science (Simpson 2007). I did not want to repeat those harmful practices. Instead, I focus on the settler state. In this part of my thesis research, I seek to understand how BLM employees and line officers understand Tribal sovereignty. Additionally, this research demonstrates how Tribal sovereignty is negotiated through government-to-government relationships between the BLM and Indigenous nations. Understanding these settler state dynamics can provide insights useful in undoing inequitable relationships.

Chapter 2: What is Tribal Sovereignty?

2.1. Tribal Sovereignty as Defined by the Settler State

In European thought, sovereignty's meaning evolved from the absolute power of a ruler to the power of self-governing for the people (Foucault 1990; Wirth and Wickstrom 2002, p. 509-510). As time progressed, the concept of sovereignty has become murkier (Wirth and Wickstrom 2002, p. 509-510). However, at a basic level, sovereignty is, "the inherent right or power to govern" (Canby 2009, p. 76). This concept is convoluted when applied to Indigenous nations in the U.S. As Canby asserts, sovereignty is a word used, "loosely in Indian affairs" (p. 76). In researching what Tribal sovereignty is, as ensconced in U.S. law, there are clear contradictions and gray areas. This confusion continues to shape government-to-government relationships between federally recognized Tribal governments and federal agencies. Treaties, Supreme Court rulings, and federal laws and processes continue to define and redefine the confines of Tribal sovereignty. The following section briefly outlines the origins and basic tenants of Tribal sovereignty as defined in U.S. law.

2.1.A. European Settler Colonialism and Treaty Making

In her seminal work, *An Indigenous People's History of the United States* (2014), Roxanne Dunbar-Ortiz tells the history of the U.S. through the lens of settler colonialism. Prior to Western colonization, Europe underwent philosophical and structural changes impacting the power of Christianity and land tenure. In the first of these changes, the European Crusades established precedence for using Christianity to justify looting and land seizure from non-Christians. In subsequent centuries, Europe began privatizing land, pushing many people into cities and poverty. To prevent the poor from revolting, wealthy Europeans created the concepts

of race and white supremacy to redirect attention and create new systems of oppression. This set the stage for settler colonialism in the Americas.

Landless Europeans flocked to the Americas, using race and Christianity to justify theft of Indigenous lands (2014, p. 33-39). Further justifying this seizure, the Catholic Church's Doctrine of Discovery dictated European countries could claim these 'new' lands if they were inhabited by non-Christian peoples (p. 199). As Vine Deloria Jr. explains this principle undermined Tribal sovereignty because, "it took away their [Tribal nations] title to their land and gave them the right only to sell. And they had to sell it to the European nations that *discovered* their land" (1988, p. 30). This doctrine, steeped in racism and Christian bias, continued to be the bedrock for European and U.S. sovereignty (Dunbar-Ortiz 2014, p. 198-200).

Despite the sovereignty this doctrine tried to assert, European countries and the U.S. needed to make treaties with Tribal nations to ease the acquisition of land (Canby 2009, p.115; Deloria 1988, p. 31). In these treaties, Native nations gave land to these settler states, hoping to establish peace (Deloria 1988, p. 31). In exchange, Tribes retained rights to fish and hunt on ceded lands and were promised undisturbed occupancy on their reserved lands (Deloria 1988, p. 31, 36-37, 40; Canby 2009, p. 15-16, 115-116). When entering these treaties, both parties acknowledged each other, "as politically distinct entities," thus, both were sovereign (Nielsen 2020, p. 10). However, there was a difference in how each party viewed these treaties. Tribal nations saw these agreements as, "sacred moral pledges," but their European and American counterparts did not (p. 11). Rather they treated them as, "secular business transaction[s] that could be amended or discarded according to prevailing political considerations" (p. 11). This difference in perception helped create an unstable foundation for Tribal sovereignty in the United States legal system. As Vine Deloria, Jr. repeatedly asserts in *Custer Died for Your Sins*, "the

United States never intended to keep any of its promises” to Indigenous nations (1988, p. 48). Despite that, treaties acknowledged Native communities have sovereignty. This is evident in subsequent Supreme Court cases and federal laws.

2.1.B. U.S. Supreme Court Defining Tribal Sovereignty

Early U.S. Supreme Court cases, specifically the Marshall Trilogy, set the basic parameters for Tribal sovereignty in U.S. law (Cornell and Kalt 2007, p. 19). The first case, *Johnson v. Macintosh* 1823 used the Doctrine of Discovery to establish that Native nations are sovereign, but their sovereignty comes second to the United States. In practice, this means Tribes have the right to occupy land but can only sell or give it to the U.S. federal government (Canby 2009, p. 15-16, 76-77). The second case, *Cherokee Nation vs. Georgia* 1831, established that Tribes are not foreign nations, but rather, “domestic dependent nations” (p. 37-38, 77-78). The court also characterized the relationship between the U.S. federal government and Tribes as one between a guardian and a ward (p. 38). The third case, *Worcester v. Georgia* 1832, ruled that states cannot infringe on Tribal sovereignty and essentially, state laws do not apply to Tribes (Canby 2009, p. 18-19, 78-79).

The Marshall Trilogy lays the legal foundation for Tribal sovereignty in U.S. law. Later court rulings amended these basic tenants, but they remain central in understating Tribal sovereignty (Cornell and Kalt 2007, p. 19). However, the Supreme Court is not the only legal body shaping this concept. U.S. Congress molds these dynamics through legislation.

2.1.C. Congress Defining and Redefining Tribal Sovereignty

Canby explains, “[a]lthough there may be argument over the extent to which courts may properly limit tribal sovereignty, there has never been any doubt that Congress is legally free to do so” (2009, p. 99-100). Congress can limit Tribes’ rights and sovereignty through legislation,

allowing it to expand and contract based on its will. For example, Congress passed the General Allotment Act of 1887 privatizing communally held Native lands and gave individual Tribe members 160-acre allotments. The federal government took the rest of the land for settler use (p. 21-24). This was the biggest Indigenous land seizure, transferring 65 percent of Native lands into the hands of private owners and the federal government (Richland 2021, p. 74). Additionally, Congress has the power to end treaties via legislation, removing Tribes' rights and taking more of their land (Deloria 1988, p. 43). Through these Congressional acts, Tribes lost and still can lose more of their land base, further limiting their sovereignty.

On occasion, Congress has enacted legislation broadening the scope of Tribal sovereignty. For instance, the 1934 Indian Reorganization Act allowed Indigenous nations to govern themselves and helped them rebuild their land base (Deloria 1988, p. 48). However, not long after this legislation, Congress started its termination policy, removing some Tribes' federal status and special rights, while privatizing their lands in the process (Canby 2009, p. 27-28). Since then, Congress has passed legislation reversing termination and promoting Native nations' self-determination (p. 30-34). Congress fails to establish a basic, lasting meaning of Tribal sovereignty, and its actions often contradict. This puts Tribal sovereignty in a precarious place within the U.S. legal system.

2.1.D. Federal Recognition's Role in Tribal Sovereignty

Court cases and laws can determine the extent of Tribal sovereignty, but federal recognition determines which Tribes the U.S. considers 'sovereign,' dictating a government-to-government relationship (H-1780-1 2016, p. G-1). Federal recognition can occur through, "treaty, statute, executive or administrative order, or from a course of dealing with [a]Tribe as a political entity" (Canby 2009, p. 4-5). Recognized Tribes have a "special relationship" with the

federal government (p.5; H-1780-1 2016, p. G-1). These Tribes are entitled to certain services such as healthcare, education, and state tax exemption for their lands held in trust (Canby 2009, p. 5, 51-53, 62). This relationship dictates that the federal government has a trust responsibility for recognized Tribes, in which it has a “mixture of legal duties, moral obligations, understandings and expectancies” (p. 35). Essentially, the federal government is supposed to act in the best interest of federally recognized Tribes. However, as with most federal Indian law and policy, this responsibility can be interpreted in numerous ways, many of which do not serve Tribal interests (Deloria 1988, p. 43-47).

As evident in this overview, Tribal sovereignty does not have clear, set boundaries in the U.S. legal system. The settler state has continued to use federal law and Supreme Court decisions to justify and legalize the suppression of Tribal sovereignty (Nielsen 2020, p. 10). The history and the continued redefining of Tribal sovereignty reveals the problems with this concept, especially as it applies to the relationship between Indigenous nations and the U.S. It highlights how sovereignty, particularly Tribal sovereignty, is always in a state of negotiation within the settler state.

2.2 Repurposing Sovereignty for Indigenous Nations

Audra Simpson asserts Euro-American understandings of sovereignty are mutable and based in violence, property, capitalism, and the rights of states to kill (Simpson 2008; Simpson 2020). This does not translate to Indigenous epistemologies and expressions of nationhood (Simpson 2020; Wirth and Wickstrom 2002). Vine Deloria, Jr. (1998) scoffs at concepts such as sovereignty, self-determination, and colonialism, claiming these terms have no real meaning. Instead, they create intellectual distance from pre-existing issues, making them easier to ignore. Despite this skepticism, many Indigenous communities have adapted sovereignty for their

purposes, imbuing it with their own meaning (Simpson 2020; Deloria1998). This does not replace settler definitions of Tribal sovereignty. But it does challenge the settler state and negotiations around Tribal sovereignty.

2.2.A. The Right to Protect

Tribes transformed sovereignty from the right to kill, to the right, “to protect land and relationships” and to ensure, “bodily integrity and safety” (Simpson 2020, p. 688). This is evident in the Standing Rock Sioux’s resistance to the Dakota Access Pipeline. Under sovereignty’s banner, they asserted their treaty rights and their right to protect their lands, relations, and people from the pipeline’s toxicity (p. 688).

Tallbear and Reardon (2012) expand this interpretation to include Indigenous communities’ rights to protect their biological materials. They explain how academic institutions, firmly ensconced in settler colonialism, try to claim rights to Indigenous biological materials, such as blood and DNA. With these materials they use scientific findings to perpetuate settler sovereignty over land (also see Tallbear 2017). Both LaDuke (2005) and Reardon and Tallbear (2012, p. S237-S240) give an example of this. Researchers from Arizona State University took blood samples from members of the Havasupai Tribe for type II diabetes research. Without the Tribe’s knowledge or consent, researchers used these samples in other studies. One study used the samples to support the Bering Strait Theory. This theory contradicts the Havasupai’s knowledge of their origins. Tallbear further explains that this conflict is not about, “indigenous people being antiscience” (2017, p. 186). Rather, it is about settler powers trying to undermine Native peoples’ relations to their homelands and the non-human entities that also live there (p. 185-186). It is about protecting their collective identities as Indigenous people and not letting white settlers define indigeneity (Reardon and Tallbear 2012; Tallbear 2017, p.

185). When settlers control who can claim being Native, this weakens Indigenous claims and rights to their lands (LaDuke 2005, p. 124; Reardon and Tallbear 2012). By using sovereignty to protect their biological materials, Tribes protect their lands from further settler state intrusions.

2.2.B. The Right to Refuse

In addition to the right to protect, some Native communities assert Tribal sovereignty in their right to refuse. In *Mohawk Interruptus* (2014), Audra Simpson describes how the Mohawks exercise their sovereignty. Mohawk sovereignty, history, and practices exist in the same assemblage with the settler state. In this configuration, Mohawks determine if, how, and when to engage (or not) with the settler state and its sovereignty. Simpson (2008) gives an example in her analysis of cigarette ‘smuggling’ across the Canadian-U.S. border. Canada raised taxes on cigarettes, reducing tobacco companies’ profits. In turn tobacco companies sold cigarettes to distributors in the U.S. They were then transported and sold on Mohawk and other Iroquois reservations straddling the U.S.- Canadian border. This helped tobacco companies avoid Canadian taxation and maintain profits. Canada tried to sue the U.S. for lost tax revenues, but the court determined that it is not appropriate for one sovereign nation to enforce the taxation of another. However, both legal proceedings and the media ignored Mohawk sovereignty. By treaty, Mohawks and other Iroquois maintain the right to control trade and commerce on their reservations. Canada and the U.S. ignored that Mohawk territory overlaps this political demarcation. Conversely, the Mohawks refused to let settler sovereignty shape their geographies and commerce.

Expression of Tribal sovereignty through refusal can happen in myriad of ways. In his book, *Cooperation without Submission* (2021) Justin B. Richland explains how Hopis assert sovereignty, “in the practices of everyday Tribal governance and engagement with U.S.

agencies” (p. 22). He specifically looks at how Hopi exercise their sovereignty in sharing information with federal agencies. In one example, he retells an encounter between a Hopi leader and the Indian Claims Commission to address a land claim dispute. When asked for privileged information and to see a protected object, the Hopi representative initially refused. Upon a second request, he decided to divulge. The Hopi leader intended to do this but chose to do so on his terms and in compliance with Hopi knowledge sharing practices (p. 86-92). As Richland asserts, in the face of the settler state’s rationale, “Hopi Peoples [insist] on their rights to regulate how their stories will or will not unfold” (p. 92). Information sharing can be a site for Tribes to express their sovereignty in negotiations with federal agencies. Richland also explains Tribal sovereignty is, “an active undertaking...that is getting (re)constituted in the unfolding, unstable pragmatics of the present” (p. 28). Essentially, Tribal sovereignty is not static and is negotiated in these everyday interactions with the state. This is the same argument this research makes.

Nishnaabeg scholar Leanne Simpson (2017) expands this right of refusal to Indigenous bodies. She explains Nishnaabeg knowledge and governance stems from individuals’ situated practices in relation to each other, the spirit world, animals, and the land (p. 22-24). The settler state tried to undermine Nishnaabeg sovereignty by controlling their bodies and interpersonal relationships. Settler regimes implemented heteronormative gender norms and heterosexual relationships. This essentially criminalized Native women, queer identities, and non-monogamy. This process embedded harmful stereotypes into Indigenous minds, creating oppression for generations to come. To counter this control and hurt, Simpson explains Tribal sovereignty is gained through dismantling these stereotypes and not letting white settlers shape personal expressions and practices. Tribal sovereignty and the right of refusal emanates from the individual out to the larger community (p. 95-118).

2.2.C. Challenging the Settler State on its Own Terms

Focusing back on the confines of the settler state, Vine Deloria, Jr. asserts that Tribal sovereignty, “should include all promises contained in treaties and should recognize the eligibility of Tribal governments for all federal programs which are opened to counties and cities” (1988, p. 144). This is a straightforward, utilitarian understanding of sovereignty. Deloria calls on the settler state to simply uphold the deals it made with Native nations. He is not trying to make sovereignty fit Indigenous epistemologies, but rather uses Euro-American confines to hold settler states accountable (Deloria 1998).

Indigenous nations and scholars are purposeful and strategic in how they use and assert sovereignty. These numerous understandings of Tribal sovereignty are at the table when Native nations and settler states interface with each other. These parties constantly negotiate and renegotiate Tribal sovereignty’s meaning and its boundaries. These dynamics and understandings are on display in the BLM’s government-to-government relationships with Indigenous nations.

Chapter 4: Methods

I locate my methods feminist scholarship. Feminist scholar Donna Haraway (1988) rejects universal objectivity. She asserts Western scholarship derives its power from this falsehood. Instead, Haraway argues there are many objectivities existing in, “limited location[s],” consisting of “situated knowledge[s]” (p. 583). Situated knowledges must account for the ways they know the world (p. 583). Haraway calls for critical examination of Western power discourses, how they are situated, and the processes presenting them as universal truths.

With this perspective, I use semi-structured interviews to address my research questions. I interviewed BLM employees and decisionmakers involved in Tribal relations. These interviews happened via phone and video call. I formulated my interview protocol using Adams’ (2015) guiding principles. He explains semi-structured interviewing is a flexible method that seeks open sharing from participants. To foster that, I adjusted the interview protocol to accommodate each interviewee (Adams 2015). I asked each participant to describe their understanding of Tribal sovereignty and how it impacts their work.

Fourteen BLM employees and line officers partook in this research. Interviewees included a field manager, district manager, state director, project manager, four Tribal liaisons⁹, and six archaeologists. This group represents offices in over seven states. Interviews lasted between 30 minutes to an hour and 45 minutes. These interviews demonstrate how Tribal sovereignty is negotiated in government-to-government relationships.

⁹ Tribal liaison duties are often assigned to Deputy Historic Preservation Officers (DPO). There are few standalone Tribal Liaison positions at the BLM. I interviewed three DPOs and one dedicated Tribal Liaison.

Chapter 5: Results

One of the main focuses of this research revolves around how BLM employees conceptualize and incorporate Tribal sovereignty in their work. As detailed above, sovereignty, and its expressions are amorphous, ever changing, and sometimes contradictory. This dynamic is clear in interviews with BLM staff and decisionmakers. Sovereignty, specifically Tribal sovereignty, is constantly in negotiation in government-to-government relationships between the BLM and Indigenous nations.

5.1. BLM Staff Define Tribal Sovereignty

I establish a baseline understanding by asking each interviewee how they define Tribal sovereignty. There are variations in definitions, but two main components are evident throughout these conversations. At its most basic level, Tribal sovereignty is federally recognized Tribes' right to govern themselves and to consult with federal agencies on a government-to-government level about actions potentially impacting them.

Beyond these components, there are variations in participants' definitions. Some employees voiced they were unsure how to define Tribal sovereignty. This indicates that they do not necessarily deal with Tribal sovereignty in obvious ways in their day-to-day work. One project manager voiced confusion on how to view sovereign Tribal nations:

So, I think sometimes that can get a little confusing when it comes to Tribes because we're told to treat them like a government, but which type of government, right? Like are they another government agency or are they like a state and local government?

Even though this staff member knows federally recognized Tribes have special status and processes, she is unsure what that means for how she approaches them. She explains that state

and local governments have clearer roles in their relationships with federal agencies. However, with Tribal governments, that role and how it impacts projects is less clear.

Beyond this confusion, many staff outside of the BLM's cultural program do not even know how to consult with Tribal governments. One archaeologist bemoaned that her colleagues often report they consulted with Tribes, when they only talked to a Tribal member or organization not designated to represent Tribal governments. Official Tribal consultation requires decisionmakers from both governments. These interactions and the work around them require documentation, at least from the BLM's side. When staff members do not engage with the appropriate Tribal representatives, they conflate good deeds for individual Tribal members with official consultation. This undermines Tribal sovereignty, leaving the BLM liable to be sued by Native nations.

The decisionmakers interviewed have the same basic understanding of Tribal sovereignty. Additionally, their responses reflect some nuance in deciphering Tribal sovereignty's applications. One decisionmaker made it clear that Tribal sovereignty does not extend to U.S. public lands, it just indicates a specific legal process:

That's an interesting one [question], especially when it comes to public land management. There's a difference between how they [Tribal governments] have authority over the lands strictly within the reservation boundaries versus their say in a piece of public land that's outside of Tribal trust responsibilities. Where often we have competing perspectives between the Tribes who claim the same piece of ground. Our job, as I see it, is to uphold our responsibility to care for that land for them as an entity, as well as the American public, which gets back in the process of how and to consult with them. But there's no additional say they have in what happens there. I have a different legal process for working with them than I do with other people, it's really what the underlying issue [is].

In this view, Tribal sovereignty means Native governments have special considerations and legal processes, but no extended control over public lands. This demonstrates the unequal balance of each nation's sovereignty.

The same line officer highlighted the settler state's fragility (Simpson 2008) when talking about expected changes in the new administration. With Deb Haaland as the new Secretary of the Interior, there is speculation about how Tribal relations will change, often with hopes that Indigenous communities will have more influence in public land management (Volcovici 2021). Commenting on that possibility, this decisionmaker said the following:

In theory it [the role of Tribal governments] hasn't changed and if they [the Biden Administration] give another government more say in the decision space, then that is going to be a pretty dramatic change of policy, that I expect [there] will be some pushback for some other groups too.

He highlights the reality of Tribal sovereignty. The federal government, despite its rhetoric, will not give up control over public lands. Tribal sovereignty will always come second in the settler state because if Tribes have more authority off reservations, it undermines the United States' claims to public lands (see Simpson 2008; Dockry et al. 2018, p. 129). This reinforces one archaeologist's assertion of why it is difficult to, "treat Tribal sovereignty as something other than just lip service."

Some BLM employees and line officers use their morals to shape their understanding of Tribal sovereignty. This can conflict with their own actions and roles within the settler state. One line officer, who has a clear understanding of Tribal sovereignty's legal definitions, expanded his meaning to include the following:

[T]ribal sovereignty is that they as a sovereign government get to dictate how they handle and manage themselves, their heritage, their culture. They're the ones that get to make that choice. Not me. Not the BLM. Not the BIA (Bureau of Indian Affairs). Nobody else. They are sovereign and get to make that choice in decisions themselves. They are the curators, the managers, the decisionmakers on what their heritage is, what its value is to them, and everything else. So Tribal sovereignty to me comes down to that. They choose. They say. I hear and I listen. And then I get to work with them on what that value is. I don't have to agree with it. They don't have to agree with me. But that is what their sovereignty is.

However, this manager explained a situation where a Congressional act required him to approve a project that will make it impossible for a local Indigenous community to perform essential ceremonies. In this case, the Tribe did not get to choose, “how they handle and manage themselves, their heritage, and [their] culture.” This project primarily benefits mining interests and one company’s profits. The settler states’ desires and capitalistic pursuits undermined this Tribe’s sovereignty, as defined by this manager. This situation demonstrates that Tribal sovereignty comes after capitalism and profits in the settler state (also see Simpson 2008).

The variety in responses shows that Tribal sovereignty’s meaning is always in negotiation (Richland 2021). The following section shows the mechanisms the BLM and Tribal governments use to negotiate Tribal sovereignty and its applications.

5.2. Negotiating Sovereignty

Conversations with BLM employees and line officers highlight some mechanisms to negotiate Tribal sovereignty in government-to-government relationships. They include the initiation of the consultation process, prioritization, sharing info, the use of programmatic agreements, and litigation.

5.2.A. Initiating Consultation

The first mechanism happens before any BLM office initiates consultation with Tribal governments. When there is a proposal for a project, BLM archaeologists and line officers determine which Tribes to include in consultation. They base this decision on which Tribes have historic ties to the area and the resources in question, as well as the types of projects Tribal governments have voiced an interest (H-1780-1 2016, p. III-4-III-5). Even though Native nations have a right to consult, it is at federal agencies’ discretion to determine and notify who accesses that right. One archaeologist discussed a situation where she notified her line officers that they

were not consulting with all the necessary Tribes. Her managers informed her that unless they were forced, assumedly through litigation, they were not going to consult with additional Tribes. The right to consult is a basic component of Tribal sovereignty as defined by many interviewees, yet the actualization of it often depends on BLM decisionmakers' integrity.

When an office decides to consult¹⁰ with a Tribal government, the line officer will send out a letter describing the proposed action, location, and possibility of impacting areas important to the Tribe. Once they send this letter via certified mail, the Tribal government has 30 days to respond (Suagee 2018). Depending on the proposed action and BLM actors involved, this deadline can sometimes be extended. On the receiving end of these communications, Tribal governments decide if and how they respond. If Tribes have no vested interest or concern about a project, they may choose to not consult and may not even respond. As Simpson demonstrated in her case study, refusing to participate in settler state activities and frameworks is an expression of sovereignty (2008). Also, Tribes can negotiate with one another regarding how they exert their respective sovereignties. One archaeologist shared that it is not uncommon for Tribal governments to defer to one another in consultation. If there is an Indigenous community that is geographically closer or has stronger ties to the area in question, sometimes other Tribes will turn down the option to consult and defer to that Tribal government. Instead of the BLM determining which Tribes deserve or need to be included, Tribes can, to some extent, decide amongst themselves.

5.2.B. Prioritizing Consultation Participation

The federal government's structure, its agencies, and Tribal governments' capacities create a dynamic that limits all federally recognized Tribes' sovereignties. Within the U.S.

¹⁰ Usually, interviewees inferred consultation was under Section 106 of the National Historic Preservation Act. See Part I for a description of the Section 106 consultation process.

government's executive branch, there are many agencies, with hundreds of division offices across the country. There are 574 federally recognized Tribes, many of which have smaller governments with limited functions compared to the U.S. federal government ("Federally Recognized Indian Tribes"). Land management agencies such as the Forest Service, Park Service, and the BLM are legally required to consult with Tribes. Beyond land management, other federal agencies must consult with them too. Thus, Tribal governments are constantly inundated with consultation requests from the federal government. There is no possible way for them to consult on every proposed action even if that is their sovereign right to do so. This imbalance creates a dynamic where Tribal sovereignty, in its most basic form, cannot be fully actualized.

This reality prompted BLM offices to implement strategies to help Tribes prioritize what projects they consult on. Many interviewees discussed regular quarterly meetings they have with their Tribal partners to inform them of upcoming projects. This is not official consultation, but just a presentation to help Tribes determine where they want to be involved. Interviewees discussing these meetings claim that both BLM offices and Tribal governments value them. They provide an opportunity to connect and build relationships, as well as ensure Indigenous governments are not surprised by a project or denied their rights to consult. Despite these positive feelings, these meetings are necessary because Tribal governments are not equipped to exercise this definition of sovereignty in its most basic form.

In these instances, Tribal governments exercise their sovereignty through choice and prioritization. This expression of their limited power is not something Native nations take lightly. One archaeologist explained how he tried to strengthen Tribal relations when he first arrived at his current office. He kept sending consultation letters to a particular Tribe and never got a

response from them. When he finally got to meet with that Tribe's representative, he asked if she would prefer him to filter out communications for certain projects. He thought he was making a helpful offer, knowing that this representative has a never-ending stream of consultation letters. This representative quickly rejected his offer, telling him, "No. I don't know you. I don't trust you yet. So, you send me everything. And if I ignore it, then you still sent it to me." Tribal sovereignty already faces limitations in the consultation process and in government-to-government relationships. Even though that was not the archaeologist's intention, this Tribal government was not going to cede more power and, by extension, sovereignty to the BLM. It is Tribes' sovereign rights to determine if and when they will engage with the U.S. government (Simpson 2014; Simpson 2008; Richland 2021).

5.2.C. Sharing Information

Some research participants voiced frustrations with Tribal governments not sharing enough information in consultations. Tribes may request the BLM grant certain protections for sites. When asked to clarify why an area needs accommodations, often Tribes will decline to provide a detailed answer. That information may be privileged and not something to share outside of their community. This lack of sharing can impact public education as well. One archaeologist described instances where the public wants to know more about an archaeological or cultural site on public lands and he can only provide answers rooted in Western science. Sometimes when asked to provide the history of a site, Tribes will refuse. Not all knowledge belongs to everyone. This relates to Simpson's (2014) right to refuse and Richland's (2021) demonstration of how Hopi uses control of their knowledge to assert sovereignty in government-to-government relationships.

Another factor to consider is the extent the BLM can protect information Tribes share with the agency. All federal agencies are subject to the Freedom of Information Act, which allows citizens to petition for information regarding their operations. However, this law does not provide special protections for federally recognized Tribes (Mense 2011; H-1780-1 2016, p. X-20). Tribes and the BLM are acutely aware of this. Often, Tribes do not want to share sensitive information with agencies if it can be made publicly available. The BLM's Tribal relations handbook offers suggestions to circumvent the issue such as storing sensitive data and reports in Tribal government offices or creating data sharing agreements that offer an additional layer of protection (H-1780-1 2016, p. X-20-X-23). However, as several archaeologists explained in their interviews, getting Tribes to enter agreements with the BLM is not an easy task. Tribes want full sovereignty over their knowledge. They may not always be able to protect their important sites on public lands, but they can guard their knowledge.

5.2.D. Agreements and Memorandums of Understanding

In building relationships with one another, the BLM and Tribal governments have the option to enter agreements or memorandums of understanding (MOUs) with one another that:

define the manner in which Tribes prefer that future consultation take place, areas or actions the Tribes wish to discuss in the future, or specific natural or heritage resources Tribes wish to be consulted about whenever proposed actions might affect them (H-1780-1 2016, p. III-2).

Several archaeologists and a line officer expressed a desire to enter into these types of agreements with Tribal governments. However, a few archaeologists explained Native nations typically will not do that. These interviewees posited that this decision rests in hundreds of years of the settler state breaking promises made with Tribes. As one archaeologist explains:

[A]t its base, Tribes are just incredibly reluctant to engage in any new, quote unquote, treaty making...And there are very few Section 106 agreement documents that I have seen any Tribe sign in the course of my almost 30-year career. Very few. I think I can

count them on one hand. And those that did get signed by Tribes, I think were signed only because there was work that was actually happening on Tribal land, because they had to execute those agreements for the work to happen, and the BIA was involved then.

Sometimes Tribes do not like the content of a proposed agreement. Agreements can outline how the BLM plans to mitigate any damage a proposed action could have on a cultural site.

According to another archaeologist, “nine times out of 10, Tribes don’t sign them [agreements]. It’s very rare... They don’t sign to the destruction of ancestral places. It’s just how they are.”

Tribes express and exercise their sovereignty in these instances. Again, that expression comes through Simpson’s (2014) right to refuse. Perhaps a Tribe cannot stop an action from happening on federal land, but they can refuse to enter agreements that make intolerable actions easier to carry out. Even if a Tribe has a somewhat good relationship with BLM employees and line officers, history has taught them to be discerning in who they trust to carry out their best interests.

5.2.E. Litigation

Sometimes these negotiations over settler and Tribal sovereignties escalate from the local BLM level and are brought to court. Archaeologists expressed frustration knowing what Tribes want them to do but being beholden to the BLM’s legal interpretations and policies. One archaeologist explained how these contentious conversations go. BLM employees often say something like the following: “You need to sue us to figure out if what you’re saying is true. Because the BLM is on one side and you’re on the other and we’re not coming your way.” These are instances where both parties are staunch in their interpretations of what their sovereignty permits them to do.

In response, some Tribal governments are starting to bring lawyers to consultation meetings. This puts staff on edge because they must be more formal and careful with what they

tell Tribal representatives. There is less legal room to maneuver. However, not all Tribes can regularly afford to have legal counsel at every meeting or to bring an issue before court. If a Tribe goes to court, it must prioritize which issues matter enough to justify paying high opportunity and monetary costs. One interview participant explained that sometimes, Tribal nations join forces with other special interest groups to sue the BLM. Presumably, this makes litigation more affordable.

There is another limitation to how Tribes can use litigation to assert their sovereignty. Laws such as NEPA and NHPA prescribe processes for federal agencies to follow, not particular outcomes. Under these laws, Tribes cannot bring a matter to court unless it relates to how a federal agency carried out its consultation and decision-making processes. If the BLM did not properly consult with a Tribe, it can sue the agency. If the BLM carries out its full consultation responsibilities and does not break any other laws, Tribes will have a difficult time in court. Even if a Tribe is successful in its legal pursuits, the outcome of a project can still be the same (Rowe et al. 2017).

Litigation fits into Vine Deloria Jr.'s (1988, p. 144) definition of sovereignty. By litigating in federal courts, Tribes seek justice through the settler states' legal system. They assert the sovereign status the U.S. confers them. This actualization lies at the whim of the court, which may not always be in favor of Tribes' rights. Tribal governments use litigation to try to hold the settler state accountable by its own terms.

5. 3. A Note on COVID-19

I collected these interviews during the Spring and Summer of 2021 during the COVID-19 pandemic. Every participant discussed how COVID impacted their work and their offices' Tribal relations. Many BLM employees had to turn to virtual work and online meetings to keep their

offices functioning. However, for many of their Tribal government counterparts, COVID had a larger impact.

Some Tribal governments had to direct their operations towards managing the pandemic. In many cases, COVID drastically limited Tribes' abilities to consult and work with the BLM. Some Tribes could not answer consultation requests or keep in regular contact with the BLM. One archaeologist relayed how a coworker was monitoring an important cultural site for a local Tribe. She could not reach anyone to provide updates, but she kept calling and leaving messages. In some instances where Tribal governments had the capacity to consult or meet with the BLM, technological inequities made it difficult for them to fully engage in virtual settings.

In efforts to accommodate this public health crisis, some BLM offices tried to slow down projects and stretch out timelines so Tribes could be involved. However, this was not universal. One archaeologist working at an office with a lot of oil and gas projects explained that kind of work does not stop. His office tried to figure out how to keep these projects running, while the archaeologists scrambled to find ways to inform Tribes even if they could not participate in consultation.

COVID created dynamics that complicated how the BLM works with Tribes. But most importantly, the pandemic revealed the inequities within the settler state that keeps Tribal sovereignty secondary to that of the United States. Disasters often reveal the systemic inequities and injustices that leave certain groups vulnerable and others in power (Matthewman 2015). Centuries of settler colonialism diminished Indigenous nations' land base, impoverished them, and created Tribal governments not as well equipped to handle public health crises. The U.S. at large, seemed more focused on maintaining normalcy, while many Native nations focused on survival.

Chapter 6: Conclusion

Tribal sovereignty is constantly negotiated (Richland 2021). Sovereignty and Tribal sovereignty in the legal system came from origins steeped in violence and the pursuit of property. European countries touted their sovereignty and used it as a tool of settler colonialism against Indigenous peoples living in North America (Simpson 2020). The U.S. continues to use Tribal sovereignty as tool to control Native nations, especially in defining what it means for their communities. Through treaties, court rulings, legislation, and the federal recognition process, the U.S. creates more confusion and contradictions.

To assert themselves and their power against the settler state, Indigenous communities have imbued Tribal sovereignty with their own meanings. Instead of using sovereignty as the right to kill or take, Indigenous people use it to affirm their right to belong to the land, protect their knowledge, reject the settler state, and call on the U.S. to honor its promises and responsibilities (Simpson 2020; Simpson 2008; Richland 2021; Deloria 1988).

Settler state and Indigenous ideas about sovereignty build and develop in response to one another. This relationship is exemplified in the government-to-government relationships between the BLM and federally recognized Tribes. Through consultation, these parties negotiate what their sovereignty means in relation to each other. This negotiation can happen through the initiation of the consultation process, the prioritization of what to consult on, how Tribes do or do not share information, agreements, and litigation. This research highlights these methods of negotiation while illuminating how BLM employees and line officers understand, feel, and contribute to these processes. Their feelings are often mixed with pangs of frustration towards

Tribes, while simultaneously understanding why they make sovereignty an issue in these relationships.

This thesis does not provide solutions to the inequities and complexities that characterize the BLM's relationships with Tribal governments. Instead, it highlights the structures of the settler state that shape these dynamics. It also elucidates how people working in the BLM understand their work with Tribes and the role of Tribal sovereignty in these relationships. By holding up the mirror to the BLM as a representative of the U.S. settler state, this work hopefully inspires further critical analysis of the systemic structures that benefit Euro-Americans at the cost of others.

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APPENDIX A: INTERVIEW PROTOCOL

1. Tell me about your work at the BLM.
 - a. How long have you worked at the agency?
 - b. Tell me about your position and area(s) of specialization.
 - c. What lead you to work at the BLM?
2. What is your understanding of the BLM's mission as a land management agency?
 - a. How does your work fit into that mission?
3. What are your office's policies and processes for working and consulting with federally recognized Tribes?
 - a. Does your office have specific priorities and responsibilities in these kinds of relationships and in consultations?
 - b. How do you differentiate between working with federally recognized Tribal governments and individual tribe members?
4. Describe your role and responsibilities in your office's relationships and consultations with the Tribes it works with.
 - a. Who else is involved in your office?
5. How do you shape these relationships, consultation processes, and/or outcomes?
6. In your experience, are there other factors that shape these relationships (politics, resources, geography, Tribe's wealth)?
7. How do you define Tribal sovereignty?
 - a. What factors and experiences have shaped that understanding?
 - b. Do you have to account for Tribal sovereignty in your work? If so, how?
8. Have you seen situations where the BLM's mission comes into conflict with Tribal sovereignty?
 - a. If so, how are they negotiated or resolved?
 - b. If it were fully up to you, how would you address these conflicts?
9. What makes for good Tribal consultations and relationships?
10. If you could change the consultation process and/or your office's relationships with Tribes, what would you change and why?
11. What are some challenges you've experienced in your work with Tribes?
12. Are there specific aspects you like about your work with Tribes?
13. Is there anything else you would like to share with me that we did not cover?