

The Indian had what the world has lost. They have it now. What the world has lost, the world must have again lest it die. . . .We have lost the way, and the power to live is dead. . . .is this power to live? It is the ancient, lost reverence and passion for human personality, joined with the ancient lost reverence and passion for the earth and its web of life.

John Collier

An interesting quote, especially coming from one who many Indians feel laid the foundation for an end to that very "reverence and passion" that he saw Indian Country as possessing, and the world so badly in need of. Dr. Collier is correct in his belief that Indian Country "had what the world had lost." The question needing to be answered is whether "they [still] have it now." And like most questions involving Indian Country the answer really needs to be determined on a tribe by tribe basis. This paper, then, will look at the Turtle Mountain Band of Chippewa Indians, using Christine Zuni Cruz' *Tribal Law as Indigenous Social Reality and Separate Consciousness- [Re]Incorporating Customs and Traditions into Tribal Law*, and Bruce Miller's *The Problem of Justice*, in order to determine if "they have it now," and, if not, what they must do to reclaim it.

The Turtle Mountain Tribe of Indians (Chippewa, Cree and Ojibwa) is located in North Dakota, on the northeastern corner of the Great Plains, ten miles from the Medicine Line. Largely buffalo hunting Me'tis (French-Indian half-bloods), the United States government negotiated a treaty ("Old Crossing" Treaty) with the Tribe in 1863. The United States Senate confirmed the treaty, and President Abraham Lincoln signed it in 1864 (St. Ann's Centennial).

In October of 1932 the Tribe submitted a "Constitution and By-Laws for the Organization, Government and Election for an Advisory Committee of the Turtle Mountain Band of Chippewa Indians" to the United States Department of the Interior. Dr. John Rhoads, Commissioner of

Indian Affairs, approved the Tribe's Constitution in December of 1932 (St. Ann's Centennial). Although in advance of John Collier's 1934 Wheeler-Howard Act, the Constitution was later "rolled over" and by 1934 the Tribe had both federal recognition and a federally approved Constitution and By-Laws.

The Preamble of the *Constitution of the Turtle Mountain Band of Chippewa* reads as follows:

We the People of the Turtle Mountain Band of Chippewa, in order to form a fair and just government by the People and for the People, safeguard the inherent rights and sovereignty of the Band and our rights recognized by treaty, foster our values, traditions, and teachings, respect and protect our natural environment and resources, advance the general welfare, and to serve the People with equal justice, do establish this Constitution.

The Preamble to the *Constitution of the United States* reads:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Not word for word, perhaps, but one needn't be a scholar to see the framework of a colonial system at work.

The Preamble of the *Constitution of the Turtle Mountain Chippewa* also seeks to "foster our values, traditions, and teachings." Reading through the Constitution, however, one will find nary a word intended to "foster [or protect] the values, traditions, and teachings" of a pre-colonized indigenous People. Instead the Constitution mirrors the *United States Constitution* and *Bill of Rights*. Cruz wrote that,

In this period of self-determination, the adoption of law or the legislative function of indigenous nations takes on tremendous meaning for indigenous peoples who have long struggled to maintain their separate and distinct identity in the face of assimilationist policies of the federal government. Collective resistance, through the development of our own law,

means that indigenous nations must critically assess written law and infuse enacted law with indigenous values as well as strengthen oral law.

This is especially necessary for Turtle Mountain whose laws neither protect or strengthen indigenous values or oral law.

And Cruz argues in her work "that an alternative to the adoption of western law is necessary to make enacted tribal law relevant to the indigenous people it serves." The Code of Laws of the Ysleta del Sur Pueblo is a prime example of Cruz' premise:

The Ysleta del Sur Pueblo has operated since time immemorial as a Native American political sovereign and governs itself by oral tradition without any organic or written constitution, charter or by-laws. Except as may be specifically set forth in another Article of this Code of Laws, nothing in this Code, nor its enactment, is intended or shall be construed as a waiver of the sovereign immunity of the Ysleta del Sur Pueblo nor a grant of jurisdiction to any entity over the Ysleta del Sur Pueblo or any person located or action occurring within the jurisdiction of the Ysleta del Sur Pueblo. No officer, employee, or member of the Ysleta del Sur Pueblo shall be authorized to waive the sovereign immunity of the Pueblo or to agree or accede to any grant of jurisdiction over the Pueblo or any person located or action occurring within the jurisdiction of the Pueblo, such authorization being limited to the unanimous vote of the Tribal Council.

Clearly Ysleta del Sur Pueblo sees the pre-colonial values, traditions, and teachings of the People as being more important to their future existence than those of the colonizer. And Miller makes note of the importance of values, traditions, and teachings in the historic Delgamuukw case before the Canadian courts:

[T]he decision gave a new role to Indigenous oral history in Canadian courts. Oral history entered as evidence could bear the weight of proof if it is more convincing than the other side and if it has an "air of reality." It remains to be seen how the courts will treat oral history and, significantly, who within communities will be entered as experts in history and on what grounds. Nevertheless, the emphasis on tribal law, or folk law, as a factor in determining title underscores the increased significance of the articulation of indigenous concepts of justice in Canada. (32-33)

Unlike Ysleta del Sur Pueblo or the Git'ksan and Wet'suwet'en, for whom *Delgamuukw vs The Queen* was filed, Turtle Mountain includes no values, traditions, and teachings of the pre-colonial indigenous People because, as noted in the Acknowledgement and Credits of *St. Ann's Centennial*, "This book was originally intended to commemorate the 100 years St. Ann's Catholic Church has been in existence. However, it would have been impossible to write the history of the church without including the Turtle Mountain Reservation and its people, because the two are one" (17).

As noted in the second paragraph the reservation is largely Me'tis who had their mother's culture, but their father's religion. And the full-bloods among them were converted to Catholicism beginning in the 1830s with the arrival of Father George Belcourt. Cruz quotes Chief Justice Robert Yazzie of the Navajo Nation Supreme Court:

The Navajo word for "law" is *beehaz 'aanii*. It means something fundamental, and something that is absolute and exists from the beginning of time. Navajos believe that the Holy Ghost 'put it there for us from the beginning' for better thinking, planning and guidance. It is the source of a healthy, meaningful life, and thus 'life comes from it.' Navajos say that 'life comes from *beehaz 'aanii*,' because it is the essence of life. The precepts of *beehaz 'aanii* are stated in prayers and ceremonies that tell us of hozho - 'the perfect state.' Through these prayers and ceremonies we are taught what ought to be and what ought not to be.

And Pueblo historian Joe S. Sando:

[T]radition was history, history was tradition. Originally, the Spirit warned the people to respect and obey the laws of nature, and the orders of their leaders: the chiefs, the war captains, and the cacique. The cacique was to guide them spiritually. In him was vested the power of authority to legislate laws. The Spirit cautioned that this was the only way for them to live together in peace and be protected. The Pueblo people had confidence that the cacique and the other leaders had power and wisdom because they were guided by the One above. Under this government the people made religion a part of their daily lives.

But Turtle Mountain is Catholic. Our religion is the religion of the colonizer. There is no

attempt to pretend that Catholicism has existed from the "beginning of time." Nor is there any attempt to connect religion, government, or the health of the people, in or out of the Constitution, to a pre-colonized belief in a Higher Power who directed the people from time immemorial. Instead, to borrow from the Navajo, Turtle Mountain walks the Jesus [white man's] Road.

To be fair it should be noted that the tribe has protected its language - Cree, Chippewa, Ojibwa, and michif - and teaches them in the K-12 system, as well as at the Turtle Mountain Community College, one of thirty-five Tribally Controlled Colleges. Likewise the history of the Tribe is taught, also. Kudos to the Tribe! It's something that should be done. But is that enough? John Collier said, " The Indian had what the world has lost. They have it now. What the world has lost, the world must have again lest it die." Did he mean only the teaching of history and the preservation of language, important as that is? Or was there a deeper intent to his words, one that speaks far more of Navajo and the Pueblos, and of the Smoke House religion and Shaker Church of the People of the Pacific Northwest, than of the contemporary situation at Turtle Mountain?

Please don't get me wrong, I'm proud to be Turtle Mountain. I am proud of all the Tribe has accomplished And I am only too aware that I speak as an outsider who has not lived on the reservation and who has only nominally been touched by Catholicism or Christianity. Still, I know colonialism when I see it, and we are a colonized people. The "ancient, lost reverence and passion for human personality, joined with the ancient lost reverence and passion for the earth and its web of life" that Dr. Collier talked about is absent in the constitution, religion, and teachings of the people.

I don't realistically believe that Turtle Mountain is going to reject Catholicism or change the Constitution and governmental structure to meet the beliefs of an urban member of the Tribe, the colonial system is far too embedded. And no one alive has ever practiced a non-colonial form of tribal government. And breaking from the religion of one's parents is to reject the foundations of one's life. So, no, I do not believe that my desire to see change is rooted in reality. But I truly believe that it needs to occur. The cost of doing business with the colonizer has been our very soul. We have surrendered the essence of our pre-colonized existence for a system that was forced upon us and WE DON'T SEE THE PROBLEM. We will never be free of the colonial system, nor effectively deal with it, until we realize that we are exactly where they wanted us to be when they forced their system upon us. And until we cease going down on bended knee to worship their religion, praise their government, salute their flag, and colonize in their name, we will never reach that sovereign state that we struggle to achieve. Nor will we be able to claim that we still have what the world has lost.

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