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True Co-Management: Critical Approaches to Indigenous Food Sovereignty

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This Note examines the Inuit Circumpolar Council Alaska's project to achieve Inuit food sovereignty through cooperative agreements between tribal, state, and federal agencies for the co-management of Arctic food resources. The Note employs approaches from political ecology and critical race theory to evaluate risks of Native participation in co-management and identify means to mitigate the colonial tendencies of American law and environmental policy. Ultimately, it offers power sharing and ontological hybridity as criteria for "true co-management," the form of cooperative resource management that affirms tribal sovereignty. The Notes locates both criteria within the Inuit Circumpolar Council's framework.

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INTRODUCTION

This Note relates two broad concepts: food sovereignty and co-management. Specifically, I consider how and when tribal co-management schemes advance tribal food sovereignty. To frame this investigation, I divide the introduction into two parts. First, I set out the concept of food sovereignty in its international context. Second, I present the concept of co-management, illustrated by the story of the Alaska Eskimo Whaling Commission. Having established this context, I then introduce my claims regarding the relationship between food sovereignty and co-management, grounded by an Inuit framework.

A. *Food Sovereignty*

In the past quarter of a century, the ideal of food sovereignty has galvanized movements around the world. Food sovereignty stands for the empowerment of peasants, agrarian communities, and Indigenous peoples. It promises the realization of every community's right to define its own food system, to control local production and distribution of food, and to reimagine relationships between producers and consumers, farms and markets, people and their land. The international movement for food sovereignty arose in response to the globalization of agribusiness and its disastrous impact on smallholder farmers.¹ The late twentieth century saw

1. Marc Edelman, Tony Weis, Amita Baviskar, Saturnino M. Borrás Jr., Eric Holt-Giménez, Deniz Kandiyoti & Wendy Wolford, *Introduction: Critical Perspectives on Food Sovereignty*, 41 J. PEASANT STUD. 911, 914 (2014); Allison Hope Alkon & Teresa Marie Mares, *Food Sovereignty in U.S. Food Movements: Radical Visions and Neoliberal Constraints*, 29 AGRIC. & HUM. VALUES, 347, 347 (2012).

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the decline of public sector support for local agriculture, the hegemony of big seed companies, increased regulation and criminalization of traditional food practices, and worsening climate effects of the international food trade.² In response, food sovereignty emerged as the rallying cry for a radical rejection of the globalization of food markets.³

To understand the basics of the food sovereignty movement, one might start with the international organization, La Via Campesina. La Via Campesina coined the term “food sovereignty” at the 1996 World Food Summit and the organization remains a major player in the global movement.⁴ To this day, La Via Campesina boasts 182 affiliated organizations comprising over 200,000,000 peasants in eighty-one countries.⁵ Its conception of food sovereignty informs scholarship, policy, and on-the-ground practice.⁶ La Via Campesina defines food sovereignty as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their food and agriculture systems.”⁷ To achieve this collective right to sustainable food self-determination, food sovereignty “puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of

2. *Id.* at 914, 918.

3. *Food Sovereignty, a Manifesto for the Future of Our Planet*, LA VIA CAMPESINA (Oct. 13, 2021), <https://viacampesina.org/en/food-sovereignty-a-manifesto-for-the-future-of-our-planet-la-via-campesina/> [https://perma.cc/3DMG-JP5G].

4. *Who We Are*, LA VIA CAMPESINA, <https://viacampesina.org> [https://perma.cc/C79J-P77G].

5. *Id.* La Via Campesina is headed by a rotating international operative secretariat, relocated every four years. International leadership has been based in Belgium, Honduras, Indonesia, Zimbabwe, and currently sits in France. *The Global Voice of Peasants*, LA VIA CAMPESINA (2021), <https://viacampesina.org/en/international-peasants-voice> [https://perma.cc/ZM54-4CTJ].

6. Amy Trauger, *Toward a Political Geography of Food Sovereignty: Transforming Territory, Exchange and Power in the Liberal Sovereign State*, 41 J. PEASANT STUD. 1131, 1137 (2014).

7. LA VIA CAMPESINA, *supra* note 3.

markets and corporations.”⁸ This vision explicitly rejects patriarchy, parochialism, and all forms of invidious discrimination.⁹

Proponents describe food sovereignty as a dynamic process characterized by general principles.¹⁰ It is self-consciously a process of praxis and reflection, a movement both international and deeply localized. On a broad scale, the practice of food sovereignty features the decentralization and re-localization of agriculture, decommodification of food, democratization, and redistribution of land.¹¹ The food sovereignty movement also popularizes the term “peasant” as a political identity—an identity rooted in space, committed to agrarian communities, and presently under siege.¹² Despite shared commitments, disputes concerning strategy remain, including a critical question: what is the proper role of the state? While the movement at large agrees that state actors have been a major part of the problem, practitioners and theorists disagree on whether they can be part of the solution.¹³

The movement for food sovereignty is a global phenomenon with various distinct manifestations. As Rita Calvário documents, the Euskal Herriko Nekazarien Elkarasuna practices food sovereignty in Basque territory through small-farmers’ unions, working to support the localization of food and the re-peasantization of Basque agriculture.¹⁴ In Mali, food sovereignty served as a framework for progressive legislation: the 2006 *Loi d’Orientation Agricole* strove to support family farms, equitable land access, and female land ownership.¹⁵ In northern Minnesota, Amy Trauger documents food sovereignty in the Anishinaabe tribe’s cultivation of wild rice—a practice Trauger characterizes as civil disobedience that challenges

8. *Id.*

9. *Id.*

10. Edelman et al., *supra* note 1, at 911.

11. *Id.* at 917; Trauger, *supra* note 6, at 1138; Rita Calvário, *Food Sovereignty and New Peasantries: On Re-Peasantization and Counter-Hegemonic Contestations in the Basque Territory*, 44 J. PEASANT STUD. 402, 402 (2017).

12. Michel Pimbert, *Toward Food Sovereignty*, INT’L INST. FOR ENV’T & DEV. 6 (2009), <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/5851/14855IIED.pdf?sequence=1> [<https://perma.cc/HYZ7-44SH>].

13. Trauger, *supra* note 6, at 1140.

14. Calvário, *supra* note 11 at 408-09.

15. LANDAC, FOOD SECURITY AND LAND GOVERNANCE FACTSHEET: MALI 3-5 (2016), <http://www.landgovernance.org/assets/20160608-Factsheet-Mali.pdf> [<https://perma.cc/6RBK-JVRY>]; Pimbert, *supra* note 12, at 12.

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settled notions of territory, economy, and power.¹⁶ Meanwhile in West Oakland, Allison Alkon and Teresa Mares identify food sovereignty in farmers' markets—self-declared food justice programs that connect Black farmers with Black consumers.¹⁷

Against the backdrop of this international “movement of movements,”¹⁸ I examine a theoretically rich conception of food sovereignty rooted in the American Arctic, devised by and for Inuit. By relating notions of food sovereignty with tribal co-management, this project could inform not only tribal resource management across the United States, but also Indigenous food sovereignty movements around the globe.

B. Co-Management and Alaska Natives

In the world of United States-tribal relations, the term “co-management” refers to cooperative relationships between tribes and the federal government, or tribes and states, created for the purpose of resource management. Unlike environmental impact consultation programs, co-management involves ongoing participation on the part of tribes. Today, co-management is a strategic means for tribes to enhance sovereignty. The following story of the Alaska Eskimo Whaling Commission offers an illustration of co-management and how it comes about.

In 1977, the International Whaling Commission announced a total ban on bowhead whaling in the Western Arctic. The prohibition was an act of conservation, an effort to protect the endangered species.¹⁹ As a party to the Commission, the United States adopted the policy²⁰ and prohibited the Inupiat bowhead harvest—a practice Alaska Natives have observed since

16. Trauger, *supra* note 6, at 1146. In particular, the traditional practice of seeding the lakes off-reservation is a protest of state law and private property rights. *Id.* at 1147.

17. Alkon & Mares, *supra* note 1, at 354.

18. *The Global Voice of Peasants*, LA VIA CAMPESINA (2021), <https://viacampesina.org/en/international-peasants-voice> [<https://perma.cc/ZM54-4CTJ>]; Priscilla Claeys & Jessica Duncan, *Food Sovereignty and Convergence Spaces*, 75 POL. GEOGRAPHY 1, 1 (2019).

19. See Boyce Rensberger, *Alaskan Eskimos Angered Over Ban on Hunting of Bowhead Whales*, N.Y. TIMES, Oct. 5, 1977, at A8.

20. Whaling Convention Act, 16 U.S.C. §§ 916a-916l (2018).

time immemorial.²¹ As Harry Bower Jr. and Taqulik Hepa assert in their 1998 article, “[t]he bowhead whale is the most culturally significant resource harvest on the North Slope. . . . Subsistence whaling is a physical, emotional, and spiritual experience which gives our people self-confidence and unites our communities.”²² In fact, the landscape of the North Slope is bound up with the bowhead migration: villages developed along their migratory path, with the major settlements of Utqiagvik and Point Hope adjacent to prolific whaling grounds.²³ Nevertheless, the United States implemented the total ban.

In response, Inupiat communities of the North Slope leapt into action. In a matter of months, whaling captains and other local leaders formed the Alaska Eskimo Whaling Commission (AEWC) to launch a unified response. With members from the eleven whaling villages, AEWC fashioned itself as the representative of Inupiat interests before both the United States federal government and the International Whaling Commission.²⁴ They demanded an Inupiat role in bowhead whale management. The timely, organized appeal worked: the International Whaling Commission held a special meeting in December of 1977 to revisit the policy.²⁵ Endorsed by the United States, AEWC addressed the international community. They asserted the distinct cultural importance of whaling and contested the need for a total

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21. Inupiat Arctic whaling has been dated back to at least 1800 B.C.E. KARLA JOSEPHSON, *ALASKA AND THE LAW OF THE SEA: USE OF THE SEA BY ALASKA NATIVES – A HISTORICAL PERSPECTIVE* 42 (1974).
 22. Harry Brower Jr. & Taqulik Hepa, *Subsistence Hunting Activities and the Inupiat Eskimo*, *CULTURAL SURVIVAL Q.*, Sept. 30, 1998, at 2.
 23. Bowhead whales migrate past Utqiagvik twice a year, in spring and fall. Their wintering grounds are in the northern Bering Sea and their summering grounds are in the Canadian Arctic. They pause near Barrow and other villages in the migrations to feed. The locations of Native villages were likely selected because of the access to bowhead whales. Carin J. Ashjianm Stephen R. Braund, Robert G. Campbell, J.C. “Craig” George, Jack Kruse, Wieslaw Maslowski, Sue E. Moore, Craig R. Nicolson, Stephen R. Okkonen, Barry F. Sherr, Evelyn B. Sherr & Yvette H. Spitz, *Climate Variability, Oceanography, Bowhead Whale Distribution, and Iñupiat Subsistence Whaling near Barrow, Alaska*, 63 *ARCTIC* 179, 180 (2010).
 24. INT’L WHALING COMM’N, *DESCRIPTION OF THE USA ABORIGINAL SUBSISTENCE HUNT: ALASKA*, <https://iwc.int/alaska> [<https://perma.cc/J839-YC6Z>].
 25. Brower & Hepa, *supra* note 22, at 3.

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ban with Inupiat-gathered bowhead population data.²⁶ And they prevailed: the International Whaling Commission rescinded the ban in favor of an annual quota.²⁷

With the implementation of the quota, AEWc's demand for a Native role in management was realized. AEWc continued to represent the North Slope Inupiat whaling communities both domestically and internationally. Domestically, AEWc negotiated a cooperative management arrangement with the National Oceanic and Atmospheric Administration, under which AEWc manages local harvests, approves hunts, and enforces regulations.²⁸ The organizations also collaborate in research.²⁹ Internationally, AEWc continues to represent Inupiat interests before the International Whaling Commission.³⁰

Today, AEWc is celebrated as a paradigm for Native empowerment through cooperative resource management. In recent decades, the AEWc success story has been joined by others: the Eskimo Walrus Commission and the Kuskokwim River Inter-Tribal Fish Commission offer additional models for Alaska Native co-management. More than ever, co-management is championed by Native groups, regulators, and academic observers who invoke effectiveness, necessity, and sovereignty as guiding virtues. Meanwhile, the rapid transformation of the Arctic environment due to climate change exacerbates the urgency for responsive management.

This Note intervenes in the ongoing co-management conversation to identify the dangers of shallow co-management models and distinguish the vision articulated by Inuit leaders. I ground this project in the Inuit Circumpolar Council (ICC) Alaska's 2020 report on food sovereignty and self-governance. ICC Alaska is the United States-based office of the Inuit Circumpolar Council, an international body representing Inuit across Alaska, Canada, Chukotka, and Greenland. Within Alaska, ICC represents Inupiat, St. Lawrence Island Yupik, Yup'ik, and Cup'ik peoples. Adopting the ICC Alaska food sovereignty framework, I employ methods of critical race

26. DAVID S. CASE & DAVID A. VOLUCK, *ALASKA NATIVES AND AMERICAN LAWS*, 277 (3d ed. 2012).

27. Brower & Hepa, *supra* note 22, at 3.

28. *Id.*; ALASKA ESKIMO WHALING COMM'N, BOWHEAD HARVEST QUOTA, <http://www.aewc-alaska.org/bowhead-quota.html> [<https://perma.cc/LNE6-GRCU>].

29. Brower & Hepa, *supra* note 22.

30. INT'L WHALING COMM'N, *supra* note 24. AEWc representatives attend the International Whaling Commission as members of the Inuit Circumpolar Council (observer status) and the U.S. Delegation.

theory and concepts from political ecology to clarify criteria for “true co-management,” in which Native participation in regulatory programs affirms tribal sovereignty.

In today’s warming Arctic, the stakes are high. The overlapping state and federal regulatory schemes are inadequate: their externally imposed rules conflict with Inuit traditions of stewardship, fail to respond to adapting food networks, and undermine Indigenous Knowledge (systems of knowledge developed by Native peoples, rooted in Native cosmologies).³¹ ICC Alaska documents a common experience of cultural harm; state and federal policies impede the practice of Indigenous Knowledge and alienate communities from traditional foods.³² Inuit cultural flourishing and the survival of precarious Arctic ecosystems require the redistribution of power and reimagination of management. Management must be an Indigenous prerogative, framed in Indigenous terms.

This Note explores the ICC Alaska vision and its significance in the context of critical race theory, political ecology, decolonization, and resource management literatures. Part I recounts the ICC Alaska report and its American legal context. Part II engages political ecology and critical race theory to examine the political construction of landscapes, the many faces of power, the assimilating forces of settler law and research, and subsequent threats to Indigenous worldviews. Part III examines co-management scholarship based in the Arctic to recognize promising developments and identify the limitations of existing models. Finally, Part IV outlines conditions for the ICC Alaska conception of true co-management.

I. INUIT FOOD SOVEREIGNTY

This Part presents the ICC Alaska’s conception of true co-management. First, I introduce the ICC Alaska *Food Sovereignty and Self-Governance* report, which defined true co-management in 2020. Next, I situate the report in the American legal landscape. This brief overview of the legal

31. Thaddeus R. Miller, Timothy D. Baird, Caitlin M. Littlefield, Gary Kofinas, F. Stuart Chapin III & Charles L. Redman, *Epistemological Pluralism: Reorganizing Interdisciplinary Research*, 13 *ECOLOGY & SOC’Y*, no. 2, 2008, at 11-12.

32. *Food Sovereignty and Self-Governance: Inuit Role in Managing Arctic Marine Resources*, INUIT CIRCUMPOLAR COUNCIL ALASKA 16 (2020) [hereinafter ICC Alaska Report], <https://www.inuitcircumpolar.com/project/food-sovereignty-and-self-governance-inuit-role-in-managing-arctic-marine-resources> [https://perma.cc/XBR9-KRGA].

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circumstances of Alaska Natives identifies the unique legal history and enduring limitations on tribal sovereignty in Alaska. These limitations explain the appeal of co-management as a means to advance food sovereignty in the American Arctic. Last, I draw out the distinctions between ICC Alaska's true co-management and other forms of cooperative resource management.

A. *An Inuit Framework for Food Security and Food Sovereignty*

In 2020, the ICC Alaska published *Food Sovereignty and Self-Governance: Inuit Role in Managing Arctic Marine Resources*. The 144-page report documents resource management in Inuit communities in Alaska and the Inuvialuit Settlement Region of Canada. It analyzes the legislative and regulatory structures that govern Inuit food security and evaluates existing co-management schemes. Moreover, the report offers a framework for understanding food security rooted in Indigenous Knowledge, using theoretical tools devised by and for Inuit. The ICC Alaska framework recognizes that food security involves more than material subsistence because food-based practices are bound up with spirituality, linguistics, knowledge, environmental health, and self-governance.³³ The report ultimately asserts that food security requires “food sovereignty,” defined as:

the right of all Inuit to define their own hunting, gathering, fishing, land, and water policies; the right to define what is sustainably, socially, economically, and culturally appropriate for the distribution of food and to maintain ecological health; and the right to obtain and maintain practices that ensure access to tools needed to obtain, process, store, and consume traditional foods.³⁴

While ICC Alaska uses the language of rights to describe the concept of food sovereignty, structurally, the distinction between food security and food sovereignty involves power. Food sovereignty ensures food security insofar as it requires Native control of Native foods, which in turn requires control over resources and land.³⁵

33. *Id.* at 17. ICC Alaska identifies six interconnected dimensions of food security: availability, Inuit culture, decision-making power and management, health and wellness, stability, and accessibility. *Id.*

34. *Id.*

35. The global food sovereignty movement generally situates its vision in opposition to food security. In particular, La Via Campesina calls out the

This notion of food sovereignty stands apart from Alaska's existing resource management strategies, including models developed by progressive management researchers and regulators who embrace the rhetoric of co-management and Indigenous Knowledge. As Part III details, academic and professional discussions of subsistence rights and resource management feature a limited space for change, restricted by technocratic and colonial assumptions. These restrictive visions of co-management seek to fit Indigenous consultants and Indigenous Knowledge into the existing American management framework. They fail to imagine a real transfer of decision-making power to Natives, let alone management regimes structurally informed by Native worldviews. To achieve the ICC Alaska notion of food sovereignty, the discourse of co-management must be upset.

B. Limitations of the American Legal Landscape

While the call for food sovereignty is radical, the chosen vehicle of co-management is pragmatic. This strategy must be understood in the context of the constraints on Inuit sovereignty under American law. To this end, this section briefly recounts the legal landscape governing Alaska Native people, villages, and food networks.

Alaska Natives occupy a unique space in federal Indian law. While Alaska Natives are typically included in federal legislation and regulations governing Indians, they are at times distinguished.³⁶ American law's treatment of Alaska Natives is rooted in the particular colonial history of the Alaska territory and Congress's unique resolution of Alaska Native land

technocratic account of food security typically espoused by governments. LA VIA CAMPESINA, *supra* note 3. However, Marc Edelman and his coauthors point out that while this distinction can be useful, it is at times confusing because in the early days of the movement food sovereignty proponents used the terms interchangeably. Edelman et al., *supra* note 1. This paper adopts ICC Alaska's use of both "food security" and "food sovereignty" and the proposed relationship between the two: that food sovereignty enables food security.

36. The distinct treatment of Alaska Natives is often related to the unique political and economic organization of tribes in Alaska, pursuant to the Alaska Native Claims Settlement Act. *See generally* Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520 (1998) (declining to recognize Native corporation land as Indian Country).

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claims.³⁷ Although external observers³⁸ and Alaska Native leaders³⁹ alike agree that key doctrines of Indian law have always governed American relations with Alaska Natives, the federal courts treat Alaska Native aboriginal claims as something distinct and lesser than those of their counterparts in the lower forty-eight.⁴⁰

The Alaska Native Claims Settlement Act (ANCSA) defines Alaska Natives' relations with the State of Alaska and the federal government. Congress passed ANCSA in 1971,⁴¹ under pressure from increasing Alaska Native political organizing and oil companies eager to exploit Alaska's vast oil deposits. ANCSA sought to settle all Alaska Native land claims and establish a sustainable structure to protect Alaska Native cultural and economic interests. The Act explicitly extinguished all aboriginal claims within the State of Alaska in exchange for a monetary settlement of over \$900 million and the conveyance of 44 million acres of land to Alaska Natives.⁴² To facilitate the distribution of these funds and land parcels, Congress created a two-tiered corporate shareholding structure and automatically enrolled Alaska Natives as shareholders in village and regional corporations.⁴³

ANCSA marked a sharp departure in American Indian policy. The Act purported to settle claims "with maximum participation by Natives in

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37. Alaska Native lands came under American control in 1867, in the Treaty of Cession from Russia. Alaska became a state under the Statehood Act of 1958, which left significant uncertainty about the status of Native lands and inspired a flood of land claims. *See* Pub. L. No. 85-508, § 4, 72 Stat. 339, 339 (1958); *see also* Martha Hirschfield, *The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form*, 101 YALE L.J. 1331, 1335 n.34 (1992).
 38. CASE & VOLUCK, *supra* note 26, at 79 ("Considering all the cases together, the most tenable legal conclusion is that prior to ANCSA, Alaska Native title had the same legal status as original Indian title elsewhere in the United States.").
 39. William Iḡḡiaḡruk Hensley, *Why the Natives of Alaska Have a Land Claim*, in THE ALASKA NATIVE READER: HISTORY, CULTURE, POLITICS 195 (Maria Shaa Tláa Williams ed., 2009).
 40. *See, e.g.*, *Organized Vill. of Kake v. Egan*, 369 U.S. 60, 65 (1962) (finding state jurisdiction over Native fishing rights); *Native Vill. of Eyak v. Blank*, 688 F.3d 619, 623 (9th Cir. 2012) (articulating a stringent exclusivity requirement for Alaskan claims to aboriginal rights).
 41. *See* Alaska Native Claims Settlement Act of 1971, Pub. L. No. 92-203, 85 Stat. 668, 668 (1971) (codified at 43 U.S.C. §§ 1601-1628 (2018)).
 42. *Id.* 44 million acres is about ten percent of Alaska.
 43. 43 U.S.C. § 1606-07 (2018).

decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights privilege, or obligations, without creating a reservation system or lengthy wardship or trusteeship”⁴⁴ With ANCSA, Congress rejected the reservation model that characterizes Indian law in the lower forty-eight, in favor of the Native corporation. And there were consequences: as the Court found in *Alaska v. Native Village of Venetie Tribal Government*, Alaska Native Corporation land is not Indian Country.⁴⁵ With the exception of the Metlakatla Reservation, there is no Indian country in Alaska. In other words, Native corporations and the lands they hold are subject to Alaska state laws and regulations, including those governing hunting, fishing, and conservation.⁴⁶

The Native corporations can be traced to goals of economic security and assimilation. As J. Tate London observes, ANCSA is troubled by an inherent tension “between the goal of assimilating Alaska Natives and the goal of safeguarding the ancestral lands and culture of Alaska Natives.”⁴⁷ By recognizing the primacy of land in the protection of tribal interests, and by creating tribal organizations tasked with managing those ancestral lands, ANCSA is responsive to the need for cultural preservation. On the other hand, these organizations are private state-chartered corporations intended to develop Native lands and bring remote subsistence cultures into a broader economy.⁴⁸

On its own, ANCSA was incomplete: Congress still needed to address the issue of Alaska Natives’ access to their customary ecological resources on vast swaths of federal land. When ANCSA extinguished all aboriginal land claims, it also extinguished claims to “any aboriginal hunting and fishing rights that may exist,” without instituting any alternative mechanism for food security.⁴⁹ Congress was aware of this hole in the settlement; ANCSA’s

44. *Id.* § 1601(b) (2018).

45. 522 U.S. 520, 532 (1998).

46. Note that Alaska is also a mandatory Public Law 280 state, which requires the State of Alaska to assume criminal and civil jurisdiction over its Native communities. 18 U.S.C. § 1162 (2018).

47. J. Tate London, *The 1991 Amendments to the Alaska Native Claims Settlement Act: Protection for Native Lands?*, 8 STAN. ENV’T. L.J. 200, 201 (1989).

48. See Stephen Colt, *Alaska Natives and the “New Harpoon”: Economic Performance of the ANCSA Regional Corporations*, 25 J. LAND, RES. & ENV’T L. 155, 159 (2005); Thomas F. Thornton, *Alaska Native Corporations and Subsistence: Paradoxical Forces in the Making of Sustainable Communities*, in SUSTAINABILITY AND COMMUNITIES OF PLACE 41, 45 (Carl A. Maida ed., 2007).

49. 43 U.S.C. § 1603(b) (2018).

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legislative history shows that Congress both recognized the dire importance of traditional food resources to Alaska Natives and anticipated their protection through other means. Specifically, the Conference Committee Report declared that “Native interests in subsistence resource lands can and will be protected by the Secretary [of the Interior] through the exercise of his existing withdrawal authority.”⁵⁰ The term “subsistence” refers to practices of hunting and gathering (and in other contexts, farming as well) for the sustenance of individuals, families, and communities outside commercial and capitalist markets. Congress imagined the Secretary withdrawing public lands for the purpose of Native subsistence, and even closing them off to outsiders when subsistence resources were under threat.⁵¹ The report also expressed an expectation of cooperation by the state to ensure the protection of these resources.⁵² When that never happened, Congress took up the issue in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).⁵³

Title VIII of ANILCA protects subsistence practices in rural Alaska. Title VIII acknowledges the centrality of subsistence to Natives’ “physical, economic, traditional, and cultural existence,”⁵⁴ and situates itself as a continuation of ANCSA.⁵⁵ At the same time, ANILCA applies to *all* rural residents. While Title VIII singles out the particular need of Alaska Natives, it simultaneously values the significance of subsistence to non-Natives.⁵⁶ Custom and dependence are the basis of ANILCA’s subsistence definition.⁵⁷ Under ANILCA, harvesting wildlife is protected on public lands so far as it falls within traditional and personal purposes.⁵⁸ Conservation measures must prioritize rural subsistence and all development of public lands must endeavor to cause the least adverse impact possible to subsistence

50. H.R. Rep. No. 92-746, at 5 (1971).

51. *Id.*

52. *Id.*

53. Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified at 16 U.S.C. §§ 3101-3233 (2018)).

54. 16 U.S.C. § 3111(1).

55. *Id.* § 3111(4).

56. *Id.* § 3111(1).

57. *See id.* § 3114.

58. *See id.* §§ 3112-13.

practices.⁵⁹ In their seminal text on Alaska Natives and American law, David Case and David Voluck characterize ANILCA as the settlement of aboriginal hunting and fishing claims.⁶⁰

To be clear, subsistence rights and rural resident priorities do not include management authority. In the ANCSA/ANILCA framework, Alaska Natives rely on the benevolence of state and federal agencies to maintain the ecological resources essential to their survival. Instances of cooperative management are the exception, not the rule. Among Alaska Native communities, there is a widespread lack of trust in regulatory agencies, particularly the Alaska Board of Game.⁶¹ In turn, the majority of local agents expect Native resource users to ignore regulations.⁶²

The primary statutory basis for Native participation in the regulation of traditional food resources is the Marine Mammal Protection Act (MMPA).⁶³ The MMPA enacted a general moratorium on taking and importing marine mammals with an exception for Alaska Native subsistence practices.⁶⁴ It seeks to protect marine ecosystems species by species. The Act states that the Secretaries of Commerce and the Interior “may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.”⁶⁵ These agreements include Native advisory protocols as well as joint research and

59. *Id.* Protections against development projects by federal agencies are largely procedural. While ANILCA makes development harder, it does not prevent development altogether. Catherine A. Rinaldi, *Amoco Production v. Village of Gambell: The Limits to Federal Protection of Native Alaskan Subsistence*, 7 VA. J. NAT. RES. L. 147, 160 (1987).

60. CASE & VOLUCK, *supra* note 26, at 296.

61. Jack Kruse, Dave Klein, Steve Braund, Lisa Moorehead & Bill Simeone, *Co-Management of Natural Resources: A Comparison of Two Caribou Management Systems*, HUMAN ORG., Winter 1998, at 455.

62. Only twenty-five percent of local managers expect users to comply with Board of Game regulations. *Id.*

63. 16 USC §§ 1361-1423 (2018).

64. *Id.* § 1371(a)-(b).

65. *Id.* § 1388(a). The Departments of Commerce and Interior are both implicated because the list of protected species is divided between them. The Department of Commerce, specifically the National Marine Fisheries Service, governs whales, dolphins, porpoises, seals, and sea lions. Meanwhile, the Department of the Interior, through the Fish and Wildlife Service, governs walruses, sea otters, polar bears, manatees, and dugongs. ICC Alaska Report, *supra* note 32, at 83.

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data collection to measure marine mammal populations and monitor marine mammal harvests.⁶⁶ The MMPA regulatory regime also allows for Alaska Native involvement in non-hunting regulation, namely in the permit process for development projects that impact protected marine life.⁶⁷ Both the National Oceanic and Atmospheric Administration's National Marine Fisheries Service and the U.S. Fish and Wildlife Service require permit applicants to consult with impacted Alaska Native communities.⁶⁸

However, these provisions are far from sufficient to enable a meaningful Native role in management or ensure food security. While a variety of MMPA agreements exist between Native organizations and federal agencies, "the agreements have not yet amounted to true power sharing," according to ICC Alaska.⁶⁹ The consultation requirements are even weaker. As one contributing author to the ICC Alaska Report stated, "I thought consultation was a back and forth [discussion] and getting permission from us. But it is not about permission, it is about [the federal government, state, or researchers saying] this is happening."⁷⁰ In practice, cooperative agreements and consultation procedures use superficial Native participation to legitimize unilateral state decision-making. They may have the potential to facilitate meaningful co-management; however, such a transformation would require a substantial departure from the status quo.

C. True Co-Management

In light of the regulatory scheme outlined above, co-management is a pragmatic means to food sovereignty and ultimately food security. Human management is, and always has been, essential to Arctic ecology; Inuit have managed Arctic resources for millennia.⁷¹ Even while these lands and waters are under the direct control of state and federal agencies, Inuit resource users continue this traditional management role. However, state

66. See 16 USC § 1388(b) (2018).

67. Jordan Diamond, Greta Swanson & Kathryn Mengerink, *Rights and Roles: Alaska Natives and Ocean and Coastal Subsistence Resources*, 8 FLA. A&M U. L. REV. 219, 246 (2012).

68. *Id.*; *Marine Mammal Protection: Our Partners*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/marine-mammal-protection#our-partners> [<https://perma.cc/BY8D-A4NB>].

69. ICC Alaska Report, *supra* note 32, at 88.

70. *Id.* at 13.

71. *Id.* at 22.

and federal regulations interrupt and impede these practices. ICC Alaska describes “an illogical legal framework of varying federal and state subsistence regulations—regulations which demonstrates a lack of understanding [of] Inuit food security.”⁷² By instating formal, professional regulation over traditional, Indigenous management, the state set up a dissonant system of resource management that threatens Native cultural and physical survival.

Co-management, like the archetypical whaling commission, promises effective resource regulation and improved relations between Alaska Natives and the United States. However, many parties disagree about the exact nature of co-management. For many managers and scholars, co-management amounts to using local Native people to collect more accurate data and fortify government research with Indigenous Knowledge. Unfortunately, this conception lacks a meaningful sharing of power with tribal organizations. Others champion a diluted form of Native participation through advisory roles akin to those discussed in the previous section.

ICC Alaska distinguishes true co-management from these weaker forms. In the report, “the term true co-management is used to illustrate a framework where state, federal, and territorial governments genuinely share power with Inuit governments in real partnership, collaboration, and cooperation.”⁷³ True co-management also involves the co-production of knowledge.⁷⁴ At its heart, true co-management recognizes the rules, practices, laws, and values of Inuit, and places them “at the forefront of all management discussions.”⁷⁵

Such arrangements are impeded by the significant lack of trust inherent to colonization, as well as the state’s reluctance to surrender ultimate decision-making power.⁷⁶ In the immortal words of Frederick Douglass: “Power concedes nothing without a demand.”⁷⁷ Indeed, the co-management schemes in Alaska that have approached ICC Alaska’s standard for true co-management were won by notable mobilization by Alaska Natives. Most co-management schemes set up under the MMPA do not presently involve

72. *Id.* at 42.

73. *Id.* at 25

74. *Id.* at 32.

75. *Id.* at 22.

76. *Id.* at 38.

77. Frederick Douglass, West India Emancipation Speech at Canandaigua, New York (Aug. 3, 1857).

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actual power sharing.⁷⁸ While the statute requires full and equal participation and representation between Alaska Natives and federal agency representatives, final enforcement power always remains with the federal agencies.⁷⁹

True co-management requires attention to power relations in the past and present. ICC Alaska identifies a need for “a fundamental shift” in the relationship between Inuit and external regulators, a shift that “respects and honors the inherent status, rights, roles, and governance systems of Inuit, while also acknowledging the history of injustices from federal, state, and territorial governments.”⁸⁰ Present and future cooperation between Natives and settler institutions inevitably involves historical baggage, which will impede progress if neglected.

II. CRITICAL APPROACHES

To approach a transformative reimagining of Native ecological management, I draw on insights from political ecology and critical race theory. First, I introduce basic theses from political ecology: that nature is constructed, that wilderness is produced by people, that conservation can be a tool of colonization, and that environments are political. Next, I present power analysis as employed by critical race theory. I briefly review how the lens of power can help us understand political movements, American law, and, in particular, federal Indian law. Finally, I consider concepts from decolonization scholarship, from authors rooted in political ecology and critical race theory. I look at the displacement of Indigenous systems of knowledge and the imperative of translation for tribes asserting claims under American law.

A. Political Landscapes

The central insight of political ecology is simple: the environment is political. Nature and natural processes are constructed. They have histories, genealogies, and political uses—often colonial.⁸¹ In his survey text, *Political Ecology: A Critical Introduction*, Paul Robbins describes two camps of political ecology constructivism: hard (or radical) constructivism and soft

78. ICC Alaska Report, *supra* note 32, at 88.

79. *Id.*

80. *Id.* at 32.

81. See PAUL ROBBINS, *POLITICAL ECOLOGY* 109 (2d ed. 2012).

constructivism.⁸² In Robbins's account, hard constructivism asserts that the environment is essentially an invention of human imagination.⁸³ Social context determines ideation, which in turn determines nature, such that environmental conflict is actually a struggle over ideas about nature—a struggle whose outcome depends on the mobilization of social power that produces truth.⁸⁴ On the other hand, the soft constructivists assert the existence of an objective natural reality that gets filtered through our imperfect observations and methods.⁸⁵ At root, they maintain that “our concepts of reality are real,” while admitting that our scientific methods are socially conditioned and biased.⁸⁶ The soft constructivists believe we can use science to reveal biases in our methods and assumptions, such that we can discover the objective reality of nature.⁸⁷

Constructivist approaches enable a central thesis of political ecology—that the construction of wilderness is a form of colonial expansion, one that imagines and enforces a vision of nature that disempowers Indigenous Peoples in the name of conservation. In Robbins's words, “Wilderness conservation has turned complex cultural-environmental landscapes of *production* into commodified landscapes of tourist *consumption*, where environment and society are artificially partitioned at the expense of social and ecological sustainability.”⁸⁸ As Robbins indicates, the production of wilderness comes with significant implications for humans and our ecological resources. The idea of wilderness enforces this separation between people and nature, a distinction that is both ahistorical and contrary to many Indigenous worldviews, including that of the Inuit. Just as Inuit communities produced a particular Arctic environment through material management and cultural practices, the United States enforces the production of a different man-made Arctic through the creation of two national parks on Inuit land.

The notion of wilderness goes hand in hand with the imperative of conservation. The state works to protect an ahistorical vision of nature,

82. *Id.* at 127.

83. *Id.*

84. *Id.* at 128.

85. *Id.*

86. *Id.*

87. *Id.* at 129.

88. *Id.* at 177.

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which includes the displacement of traditional stewardship.⁸⁹ In the North American Arctic, wildlife management privileges American cultural values and notions of conservation at the expense of Inuit values and sovereignty.⁹⁰ In the United States, wilderness conservation is most obviously perpetuated through the National Park System. However, the strength of these twin ideals of wilderness and conservation lies in their general popularity among America's settler population. Not only state agents, but also private individuals and organizations work to enforce the conservationist agenda.⁹¹

To be sure, the critique of conservation does not imply a preference for unfettered industrialization, extinction, or the destruction of green spaces. Rather, it seeks to replace an ahistorical vision of nature absent of human activity with one that recognizes interdependencies of all species, humans included. Accepting that humans are part of the ecological system, we can then look for management models that promote the well-being of the whole system.

By denaturalizing the notion of wilderness, the constructivist approach of political ecology can be employed to challenge conservation projects and reveal their colonial effects. It is no coincidence that the bowhead whaling ban was imposed in the name of conservation, at the expense of Indigenous livelihoods. Moreover, when we recognize the political dimensions of environments, resource management takes on an overtly political meaning.

B. The Lens of Power

While political ecology interrogates notions of wilderness and ultimately reveals mechanisms of state control, critical race theory focuses on power more explicitly. In *The Miner's Canary*, Lani Guinier and Gerald Torres describe the utility of political race in the mobilization of movements to refashion hierarchies. Political race is both an analytical concept and an aspirational project.⁹² The term refers to the association between racialized groups and democratic social movements, and the concept assumes that

89. *Id.* at 179. Of course, this ahistorical vision of nature—one of empty, untouched wilderness—is part of a larger settler narrative that erases Indigenous people to help justify colonization.

90. ICC Alaska Report, *supra* note 32, at 50.

91. ROBBINS, *supra* note 81, at 164.

92. LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 12 (2003).

race matters in American political and social life.⁹³ In this project, Guinier and Torres assert that power is central to understanding existing racial systems and mounting sustainable resistance. Movements must reckon with power relations and the narratives that justify them.⁹⁴

Generations of critics have worked to uncover the ways in which American law justifies unequal relations of power. As Mari Matsuda points out in *Looking to the Bottom*, Frederick Douglass recognized how law justifies maldistributions of wealth and power long before legal realism brought such insights to American law schools.⁹⁵ In the early twentieth century, legal realists like Robert Hale revealed how law masks coercion to serve the status quo.⁹⁶ The critical legal studies movement continued this work, deconstructing our liberal commitments and calling for radical reimagining of legal structures. As critical legal studies notable Roberto Mangabeira Unger explained, the dominant conception of rights and injuries fails to facilitate justice in a communal society.⁹⁷

Critical race theory⁹⁸ moved beyond the critical legal studies critique to identify the systemic subordination of people of color, to understand the relationship between law and racial power, and ultimately to undermine that relationship.⁹⁹ In *Legitimizing Racial Discrimination Through Antidiscrimination Law*, Alan David Freeman details the ways in which

93. *Id.*

94. *Id.* at 131-67.

95. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 327 (1989).

96. Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470 (1923).

97. ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT: ANOTHER TIME, A GREATER TASK* 120 (2015).

98. The movement has been called both Critical Race Studies and Critical Race Theory, both with and without capitalization.

99. KIMBERLÉ CRENSHAW, NEIL GOTANDA, GARY PELLER & KENDALL THOMAS, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xiii (1995). *See also* CARL GUTIERREZ-JONES, *CRITICAL RACE NARRATIVES: A STUDY OF RACE, RHETORIC, AND INJURY* 70-71 (2001) (describing how critical race studies bridged the radical critiques of Black nationalists and the rights discourse of the civil rights movement, and from that dialectic developed a critique of merit as a neutral concept and made a bolder case for reparations).

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American law maintains the status quo of racial subordination.¹⁰⁰ Freeman describes American antidiscrimination law as taking a “perpetrator perspective,” meaning that the law sees discrimination only as discrete actions inflicted by individual bad actors against individual victims.¹⁰¹ In contrast, a victim perspective (what Matsuda terms “looking to the bottom”) would encompass all the ongoing conditions of discrimination.¹⁰² The perpetrator perspective assumes a social arrangement that misrepresents reality: “the perpetrator perspective presupposes a world composed of atomistic individuals whose actions are outside of and apart from the social fabric and without historical continuity.”¹⁰³ Consequently, American law views racial discrimination as an infrequent aberration—rather than a systemic social phenomenon.¹⁰⁴ By only recognizing discrete, voluntary actions as discrimination, law fails to remedy broader effects of group subordination. By only looking for individual racists, law fails to identify systemic injustices.

In this way, American law often works to mask power relations and uphold the status quo. In addition to the problematic perpetrator perspective, Mari Matsuda suggests that common law concepts of privity, standing, proximate cause, and laches act as limitations on the legal system’s ability to remedy vast historic injuries.¹⁰⁵ More recently, Guinier and Torres point to colorblindness as a new iteration of the same “fundamental ideology of individualistic democracy” upholding the status quo of white supremacy.¹⁰⁶ Echoing Freeman, Guinier and Torres argue that colorblindness “misdiagnoses racial inequality as a residual individual problem” and thus masks systemic racial injustice.¹⁰⁷ Moreover, colorblindness inhibits democratic mobilization by undermining the legitimacy of identity-based collective action.¹⁰⁸

100. Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

101. *Id.* at 1053.

102. *Id.*; Matsuda, *supra* note 95, at 376.

103. Freeman *supra* note 100, at 1054.

104. *Id.*

105. Matsuda *supra* note 95, at 374, 381.

106. Guinier & Torres *supra* note 92, at 51.

107. *Id.* at 55.

108. *Id.*

Despite this constraining professional commitment to individualist liberal ideology, legal scholars find ways to trace power in legal doctrine. As Maggie Blackhawk argues in *Federal Indian Law as Paradigm Within Public Law*, the empowerment of minorities should be considered foundational to the American legal order.¹⁰⁹ This record of empowerment is particularly evident in federal Indian law, which relies on majority-minority institutions (namely tribal nations) and recognizes that the concentration of minority power is “a necessary solution to certain kinds of minority subordination.”¹¹⁰ Blackhawk’s intervention in American public law uses indigeneity to center power in the broader conversation about American minorities. Using the lessons of federal Indian law, Blackhawk both emphasizes the costs of rights and resists the imperative of integration.¹¹¹ Blackhawk states that “the history of American colonialism offers power as an alternative political mechanism for productive change.”¹¹² The realm of relations between tribes and the United States may be the area of American law where power is most readily observable. In this way, Indian law may offer models for minority liberation.

Although ICC Alaska uses the language of rights at times, their articulation of food security as a matter of sovereignty resonates in Blackhawk’s register of power. Co-management is often framed as a matter of “subsistence rights”—ensured by the federal government under ANILCA. ICC Alaska explicitly rejects that framing.¹¹³ By instead calling for actual power sharing and Inuit control of Inuit resources, ICC Alaska echoes Blackhawk. In other words, the ICC Alaska project implicitly recognizes the weakness of rights without power. Unlike the realization of rights, power does not require permission.¹¹⁴ By insisting on decision-making authority in the sphere of resource management, ICC Alaska seeks not only paper rights to food security, but the power to ensure it.

109. Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1791, 1863 (2019).

110. *Id.* at 1849.

111. *Id.* at 1858 & 1861. Derrick Bell also considers this issue in the context of racial integration. See Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 489 (1976).

112. Blackhawk, *supra* note 109, at 1856 (citations omitted).

113. ICC Alaska Report, *supra* note 32, at 17.

114. Blackhawk, *supra* note 109, at 1868.

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C. *Colonization as the Destruction of Indigenous Ontologies*

Colonization rewrites economic, political, and social relations. It also works to uproot and replace Indigenous Knowledge systems. In *Unsettling the Land*, Paul Burow, Samara Brock, and Michael Dove describe how settler colonialism refashions both the physical and ontological landscapes.¹¹⁵ Indeed, settlement necessarily occurs in both registers: “[The] ontological displacement of Native vision by settler vision makes possible the physical displacement; it underpins the assault on land rights [via the] doctrine of terra nullius.”¹¹⁶ In this quotation, the authors allude to the imagining of empty continents, of land belonging to no one—unpeopled, unsettled, and available to the first explorers who make a claim. In other words, “wilderness.” The doctrine of terra nullius, like the doctrine of discovery, draws upon this imagined land to justify colonization. The ontological assault involves both the erasure of Indigenous civilizations and a preference for a particular conception of land.

American law assumes a conception of land as property and requires litigants to adopt said conception. Land claims, assertions of sovereignty, and matters of survival must be argued in the language of American law. Advocacy within the regime requires translation, a process that fails to accurately express Indigenous claims. As Torres and Kathryn Milun observe, this translation problem is really “the confrontation between irreconcilable systems of meaning produced by two contending cultures.”¹¹⁷ And the confrontation does not occur on even ground. Settler laws and their ontological priors set the terms and name the winners, in a decidedly unequal relation of power. In the words of Torres and Milun: “This untranslatability has a material dimension. Land claims have no true aboriginal foundation but rather have a legal mooring in the state, a mooring subject to change and reevaluation. The developmental priorities are set not by Indians, but by others.”¹¹⁸ In this way, Indigenous claims are limited by the law’s internalization of settler values and beliefs.

Tribes’ adoption of American legal language is a pragmatic imperative. By design, American law is universalizing; it does not leave space for

115. Paul Burow, Samara Brock & Michael Dove, *Unsettling the Land: Indigeneity, Ontology, and Hybridity in Settler Colonialism*, ENV’T & SOC’Y, Sept. 2018, at 57, 63.

116. *Id.* at 64.

117. Gerard Torres & Kathryn Milun, *Translating Yonnonديو by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L.J. 625, 629 (1990).

118. *Id.* at 658.

alternative worldviews within its jurisdiction. And there is a cost to pragmatic assimilation. Speaking, writing, and thinking in the logic of American property law has its consequences. As Burow, Brock and Dove warn, “[i]n accepting colonial recognition of their rights to land, Indigenous nations can end up undermining their reciprocal relationships to that land.”¹¹⁹

It is more than just the law: the predominant conception of history itself is a Western design, premised on Western worldviews. Despite its pretensions of being universal and objective, the academy’s history is tainted by colonialism. In *Decolonizing Methodologies*, Linda Tuhiwai Smith describes history as a modernist project that developed alongside, and in conversation with, imperialist conceptions of the Other.¹²⁰ The ongoing production of history in colonized spaces “[has] meant that not only has the indigenous world been represented in particular ways back to the West, but the indigenous world view, the land and the people, have been radically transformed in the spatial image of the West.”¹²¹ In this way, Western beliefs as to conceptions of space, relationships between people and landscapes, and the very meaning of culture work to refashion Indigenous frames.¹²² This work of history is pernicious. While American law is widely understood to be socially constructed, biased, and at times disconnected from reality, history is more readily naturalized.

Indigenous resistance to ontological colonization either goes unheard in the courts of the conquerors or gets diverted into another product of settler imagination: the romanticized indigene. Indeed, conversations about indigeneity and the environment by conservationists can slip into this practice of romantic idealization, which “draws on a long-standing Western tradition of idealizing primitive native peoples as a foil to European social institutions.”¹²³ In this way, Indigenous identities get co-opted and reduced;

119. Burow, Brock & Dove, *supra* note 115, at 60.

120. LINDA TUHIWAI SMITH, *DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES* 30 (1999).

121. *Id.* at 51.

122. Note that both neoliberal and Marxist conceptions of land and property take part in this totalizing ontological displacement. See Emily Yeh & Joe Bryan, *Indigeneity*, in *THE ROUTLEDGE HANDBOOK OF POLITICAL ECOLOGY* 537 (2015); Burow, Brock & Dove, *supra* note 115, at 59.

123. Yeh & Bryan, *supra* note 122, at 536; see also Juanita Sundberg, *Decolonizing Posthumanist Geographies*, 21 *CULTURAL GEOGRAPHIES* 33, 37 (2013) (“The habitual exclusion of Indigenous scholarship [in post-humanist geography], however, is accompanied by very particular references to Indigeneity.”).

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as Emily Yeh and Joe Bryan observe, “[t]he conjunction of indigeneity and environment also flattens and erases the rich complexity and diversity of practices, beliefs, and worldviews, rendering indigenous peoples generic and one-dimensional.”¹²⁴ This flattening can be understood as a product of history as described by Tuhiwai Smith. Any outsider project seeking to affirm Indigenous ontologies and systems of knowledge must be wary of this expected, static image of indigeneity.

American responsiveness to assertions of tribal sovereignty depends on the articulation of Native claims through languages of history and law. But such engagement threatens to further displace Indigenous ontologies. As I explore in Part IV, the way forward may involve strategic hybridity.

III. CO-MANAGEMENT COMMENTARIES

This Part reviews resource management literature representing various approaches to co-management in the North American Arctic to give greater context to the ICC Alaska Report and underscore its novel contributions to the field. This Part explores three informative descriptions of co-management, as well as one significant critique that must be overcome if co-management is to be a means to food sovereignty.

A. Users and Managers

Research in Arctic co-management practices recognizes the value of Native participation in regulation, but has yet to imagine Native management roles on the scale of the ICC Alaska project. Jack Kruse is the former director of the Institute of Social and Economic Research at the University of Alaska, Anchorage, and he remains a leading scholar in Arctic subsistence research. In 1998, he published a study evaluating the effectiveness of “direct user involvement” in caribou management in two case studies based in Alaska and Canada.¹²⁵ These two programs both involved local, traditional users in caribou herd management. The Canadian program featured a mixed council of eight traditional users and five professional managers that met periodically to discuss management and

124. Yeh & Bryan, *supra* note 122, at 536.

125. Kruse et al., *supra* note 61, at 449. The Alaska case study followed the Western Arctic herd, while the Canadian case study followed the Beverly and Qamanirjuaq herd covering Manitoba, Saskatchewan, and the Northwest Territories. *Id.*

make unified recommendations to relevant government actors.¹²⁶ The Alaskan program featured two separate councils, one for traditional users and one for professional managers, which independently made recommendations to the Alaska Board of Game.¹²⁷ To evaluate effectiveness, the study initially set out to measure how well the management programs responded to shifts in the local caribou population.¹²⁸ Due to stability in the herds during this time, such measurements were unavailable.¹²⁹ Instead, the team decided to measure knowledge of the management system as well as attitudes and relationships between traditional users and government managers.¹³⁰

The study is thoughtful in its alternative measures of effectiveness. The study centers indicators of communication, mutual understanding, and trust between managers and local communities.¹³¹ It recognizes that that traditional users should understand managers' biological models and that managers should consider Indigenous Knowledge in their management plans, such that "[k]nowledge relevant to management flows both ways."¹³² The study even asked participants whether management models increased their sense of control over their own lives—a line of inquiry that gestures toward the ICC goal of self-governance.¹³³ Notably, neither user group took this view, nor did the Alaska managers.¹³⁴ Only the Canadian manager group believed that traditional users gained an increased sense of control.¹³⁵

The study produced intriguing results. The team expected the Canadian model of direct integration to outperform the Alaskan model.¹³⁶ But they were wrong.¹³⁷ Managers and traditional users in Alaska appeared to have

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 450-55.

132. *Id.* at 452.

133. *Id.* at 456.

134. *Id.*

135. *Id.*

136. *Id.* at 456.

137. *Id.*

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better communication,¹³⁸ further evidenced by the finding that Alaska managers were more in tune with community attitudes toward management.¹³⁹ The study points to Alaska managers' presence in traditional-user communities to explain these results: when managers live and work in the communities they serve, they gain a better understanding of local needs and conditions.¹⁴⁰ However, neither program significantly increased traditional users' sense of control over their lives.¹⁴¹

The results are informative, but the ultimate conclusions are limited by a failure of imagination. Although the study's measures of success demonstrate an appreciation for self-determination, overall, the study lacks political analysis. The principle of sovereignty never enters the discussion, nor does the question of power. Natives are classified as traditional users, a category that both obscures political, racial, and cultural dynamics, and ignores longstanding traditions of Native stewardship.¹⁴² The study treats Indigenous Knowledge as a secondary system of information, one that can aid science when professional managers find it useful.¹⁴³ By implicitly subordinating Indigenous Knowledge and distinguishing Natives from managers, the very framing of the study unwittingly plays into a paternalist narrative that justifies colonial oversight.

On its face, the study's conclusion undermines the ICC project. It concludes that it is more important to have professional managers in user communities, rather than traditional users in management roles.¹⁴⁴ To be sure, if outside managers are going to regulate Native food sources, they should live among those Native communities they are meant to govern. This

138. *Id.* at 454-55.

139. *Id.* at 455.

140. *See Id.* at 452.

141. *Id.* at 456.

142. *Id.* at 447. American law has a record of dismissing Alaska-Native land-based practices as mere traditional use, deriding such relationships as unworthy of American property rights. *See Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 278 (1955) (dismissing an Alaska-Native land-possession claim as simply traditional Native usage, not recognizable as a full property claim); *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 308 (Alaska, 1990) (discussing plaintiff's argument that defendant's land usage was simply "consistent with the traditional Native Alaskan system of land use" and therefore cannot establish the hostility element required for land possession).

143. *See Kruse et al., supra* note 61, at 452.

144. *Id.* at 457.

is a modest start; it is not a complete solution. As the study's underlying data shows, the Alaska arrangement is inadequate. Managers' physical and social presence in rural Native communities did not foster trust among traditional users at the village level or a greater sense of self-determination.¹⁴⁵ The study's discussion did not thoroughly interrogate the shortcomings of the Canadian model. However, it did indicate that traditional user representatives on the integrated council lacked support to adequately serve as local communicators in their assigned villages,¹⁴⁶ and that although the professional managers invited traditional knowledge, they struggled to make use of that knowledge.¹⁴⁷

A more critical review of the findings would question the assumptions underlying the co-management programs. As stated above, the very dichotomy between traditional user and manager presupposes a need for external management expertise. If traditional-user representation in management advisory boards cannot substitute local manager presence,¹⁴⁸ perhaps we need to envision traditional users as that local manager presence.

B. Utilizing Indigenous Knowledge

Central to the issue of co-management is the role of Indigenous Knowledge and Indigenous Knowledge holders. To consider the relationship between Indigenous Knowledge and professional resource management in the Arctic, I turn to the work of Gary Kofinas, a University of Alaska, Fairbanks professor who specializes in Arctic communities and ecological systems. In 2001, Kofinas and colleagues published a study on community monitoring programs for caribou herd health, in which researchers designed monitoring protocols informed by Indigenous Knowledge.¹⁴⁹ Kofinas champions this form of Native participation in state management as a novel improvement, and he celebrates Native participants' wealth of traditional ecological knowledge.¹⁵⁰ He characterizes

145. *Id.* at 456.

146. *Id.*

147. *See id.* at 452.

148. *See id.*

149. Gary Kofinas, Phil Lyver, Don Russell, Robert White, Augie Nelson & Nicholas Flanders, *Towards a Protocol for Community Monitoring of Caribou Body Condition*, 14 RANGIFER 43, 44 (2001).

150. *See id.* at 45, 50.

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the incorporation of Indigenous Knowledge into caribou monitoring protocol as a significant step beyond typical data collection.¹⁵¹ And he is justified: by designing community monitoring programs to accommodate and utilize Indigenous Knowledge, the program affirmed the value of Indigenous Knowledge systems and enabled Indigenous Knowledge holders to shape research methods.

The community-monitoring project represents a meaningful start. Although Indigenous Knowledge informed the method of monitoring, Native participants were still more or less data collectors—they did not participate in regulatory decision-making, nor did they participate in setting regulatory goals. Instead, the Indigenous Knowledge they shared was used to further state regulatory goals. Native participants were brought into the existing state regulatory structure. As in Kruse’s study, political considerations were largely absent, aside from an observation of the general lack of trust between Native hunters and managers.¹⁵² Kofinas offers no reference to power, politics, or colonialism. His article tacitly accepts a top-down regulatory system that takes Indigenous Knowledge without relinquishing decision-making authority.

Nonetheless, this kind of earnest attention to Indigenous Knowledge matters. As ICC Alaska study participants reported, too many groups claim the use of so-called “Indigenous Knowledge” without any meaningful relation to Indigenous people.¹⁵³ As one participant stated, “I just received another study in the mail. . . . [T]hey say IK but just say it in passing. They are missing the connectivity between people and the environment, they are missing our Knowledge. What they are doing affects us, and they are not including us.”¹⁵⁴ By taking Indigenous Knowledge seriously, and allowing it to inform methodology, Kofinas’s 2002 article models a positive, if incomplete, form of cooperation.

In a 2008 article, Kofinas took this appreciation for Indigenous Knowledge further by joining a team of interdisciplinary scholars to articulate a need for epistemological pluralism.¹⁵⁵ The collaborative article considers the clash of epistemologies that occurs in interdisciplinary research—between those knowledge systems pertaining to different academic disciplines (e.g. anthropology, ecology, geography) as well as

151. *See id.* at 50.

152. *See id.*

153. *See* ICC Alaska Report, *supra* note 32, at 102.

154. *Id.*

155. Miller et al., *supra* note 31.

Indigenous Knowledge.¹⁵⁶ The article observes that even the most well-intentioned interdisciplinary efforts typically result in a single epistemology gaining dominance, or “epistemological sovereignty,” while the others are subordinated and incorporated in service of the dominant knowledge system.¹⁵⁷ The article claims that such epistemological hegemony limits research outcomes, because any singular way of knowing “is insufficient for understanding the complexity of the world.”¹⁵⁸ They offer the notion of epistemological pluralism, an idea that stands for four propositions: (1) that interdisciplinary research must acknowledge and validate “multiple ways of knowing,” (2) that the integration of multiple “epistemologies results in a more complete understanding,” (3) that achieving a non-hierarchical system for knowledge exchange requires ongoing negotiation, and (4) that researchers must work together “to accommodate each other[’s] approaches rather than compromise them.”¹⁵⁹

The article illustrates the need for epistemological pluralism in rural Alaska.¹⁶⁰ Notably, it characterizes the problems of epistemological sovereignty and epistemological segregation as extensions of colonization, and the article recounts how the imposition of Western science on Alaska Natives is part of a broader American program of assimilation.¹⁶¹ Moreover, the article recognizes that state and federal actors’ failures to consider Indigenous Knowledge have resulted in policy mistakes that have threatened Indigenous culture and livelihood.¹⁶² In this way, Kofinas and the team directly call for a more equal role for Indigenous Knowledge in co-management programs.

As Part IV will demonstrate, the ICC Alaska Report demands the same kind of role for Indigenous Knowledge described by epistemological pluralism. In that discussion, this Note utilizes a highly comparable concept of ontological hybridity.

156. *Id.* at 2, 10.

157. *Id.* at 4.

158. *Id.*

159. *Id.* at 4.

160. *See id.* at 13.

161. *Id.* at 12.

162. *Id.*

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C. *Co-Management as Political Mobilization*

In this brief survey of Arctic co-management literature, Joseph Spaeder stands out as a researcher who brings an explicitly political lens to resource management. Spaeder is another leading Arctic researcher and sustainability consultant. Spaeder's 2005 study of Alaskan co-management arrangements engages with the question of power, at least in terms of the creation of co-management schemes.¹⁶³ He applies a political ecology approach to co-management, one that centers the relations between Native communities and the state.¹⁶⁴ He conceives of co-management as a means to resolve resource conflicts produced in part by the forced integration of formerly isolated villages into the global economy via colonization.¹⁶⁵ And he ultimately celebrates co-management agreements as manifestations of collective Alaska Native political power.¹⁶⁶ In this way, Spaeder produces findings that tend to affirm the ICC Alaska project.

Spaeder's approach draws on aspects of indigeneity that lead him to embrace co-management as an expression of Native political will. He reads increased Native participation in regulation as a sign of waxing Native power. However, not all critical co-management commentators share his optimism. In marked contrast to Spaeder, Paul Nadasdy is exceedingly skeptical about the consequences of co-management.¹⁶⁷ He takes aim at co-management literature and lambasts the field's resounding silence on the question of power.¹⁶⁸

D. *Co-Management as Legitimation*

Paul Nadasdy, a professor of anthropology and Indigenous studies at Cornell University, challenges two widely claimed benefits of co-management.¹⁶⁹ First, he challenges the claim that co-management results

163. Joseph J. Spaeder, *Co-management in a Landscape of Resistance: The Political Ecology of Wildlife Management in Western Alaska*, 47 *ANTHROPOLOGICA* 165, 173 (2005).

164. *Id.* at 166.

165. *Id.* at 165.

166. *Id.* at 175.

167. Paul Nadasdy, *The Anti-Politics of TEK: The Institutionalization of Co-Management Discourse and Practice*, 47 *ANTHROPOLOGICA* 215, 216 (2005).

168. *Id.* at 220.

169. *Id.* at 216.

in better management through local regulation and the incorporation of Indigenous Knowledge. Second, he questions the claim that co-management empowers Indigenous Peoples. This Section traces and expands on Nadasdy's critique to identify obstacles to ICC Alaska's food sovereignty project.

First, Nadasdy asserts that the technical framing that dominates co-management research obscures politics in an inherently political field. At root, the real problem is the assumption that co-management means integrating Native people into existing institutional structures of state management. From this assumption, what follows is "a series of technical problems . . . primarily associated with the question of how to gather 'traditional knowledge' and incorporate it into the management process."¹⁷⁰ Both proponents and critics of co-management get transfixed by the discrete technical problems and fail to examine the underlying assumption. They accept the goal of integration into colonial institutions in place of any meaningful transformation of management structures.¹⁷¹ In Nadasdy's words, "[t]his view effectively obscures the political and ethical dimensions of co-management. Indeed, it has engendered and naturalized a discourse that specifically *excludes* political and ethical considerations, which are treated as externalities, if they are considered at all."¹⁷²

Burrow, Brock, and Dove identify similar effects of managerial approaches. According to them, "[s]eeing nature as a complex system under threat invites expert managerial control. . . . Earth system science has given rise to a global green governmentality exercised by ecological 'expertarchy' to map, monitor, measure, and, ultimately, manage nature and population for the public good."¹⁷³ In this description, the academy is responsible for the rise of this technocratic managerialism, which certainly aids the fundamental assumption that Indigenous Knowledge and participation should defer to American government agencies.

Next, Nadasdy asserts that Native participation in state and federal regulation does not guarantee Native empowerment but instead legitimates those settler institutions and their goals.¹⁷⁴ Participatory development often requires participants to agree to existing rules of the game, rules they had no role in creating, rules that constrain their role and maintain existing

170. *Id.*

171. *Id.*

172. *Id.*

173. Burrow et al., *supra* note 115, at 62.

174. Nadasdy, *supra* note 167, at 219.

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institutional goals.¹⁷⁵ Meanwhile, the mere presence of those constrained roles legitimates the enterprise with the guise of democracy.¹⁷⁶

This critique can be understood as a variation of Guinier and Torres's outsider/insider problem. Describing obstacles to political mobilization, Guinier and Torres observe that "[as marginalized minorities] achieve fairer ways of executing the existing rules, they risk legitimating a fundamentally unjust status quo in which resources have been historically hoarded or distributionally distorted in other ways."¹⁷⁷ In particular, they worry about a hollow kind of representation victory, in which select members of the movement gain access to status and power, but their very admittance undermines the movement. "Gains, even for mass movements, are translated into access for the elite within the movement. This admittance to the corridors of power is meant to pacify the activists and mollify their base."¹⁷⁸ Selective participation is tolerated in order to pacify the movement. The actual influence of that participation on the institution may be minimal. "The insider-access strategy may be purely symbolic, a legitimating ritual that permits neither influence nor genuine agency."¹⁷⁹ In other words, selective admission to the structures of governance is a trap designed to stifle political resistance and enshrine the status quo. In the case of Native co-management, "[t]he danger is real that such participation simply camouflages hierarchy."¹⁸⁰

In light of these critical insights, the problems with Kruse's Canadian caribou council become clearer. In that co-management program, Native participants were brought into an existing regulatory regime and asked to act as intermediaries between the professional managers and local communities.¹⁸¹ They were expected to learn and communicate the "management biology model,"¹⁸² and while the program invited them to share Indigenous Knowledge, the professional managers largely failed to use the knowledge or reconcile it with the model.¹⁸³ As a Canadian manager

175. *Id.* at 220.

176. *Id.*

177. GUINIER & TORRES, *supra* note 92, at 119.

178. *Id.*

179. *Id.* at 125.

180. *Id.* at 120.

181. Kruse et al., *supra* note 61, at 451.

182. *Id.*

183. *See id.* at 452.

observed, “managers with western science run the meetings.”¹⁸⁴ Although their status on the council was ostensibly equal, if not dominant—there were eight traditional users to just five government managers—in practice, the government managers ran the program.¹⁸⁵ The council appeared to elevate Native representatives, but its operation failed to value their voices. Their presence legitimated government regulatory actions without producing meaningful change for Native communities. It is no wonder the study found no improvement in community trust or feelings of control.¹⁸⁶

Nadasdy points to bureaucratization as the primary means for circumscribing the effects of participation. Co-management invites the extension of bureaucracy into the lives of Indigenous people. Bureaucratic imperatives ensure the preservation of power relations.¹⁸⁷ Bureaucratization requires that co-management councils are created within existing rules and procedures that enshrine institutional forms and existing social hierarchies in management.¹⁸⁸ For example, Native participation in MMPA enforcement is bounded by both the statutory directive to manage ecosystems species by species (at odds with Inuit management techniques)¹⁸⁹ and the Fish and Wildlife Service’s reluctance to delegate real decision-making.¹⁹⁰ Moreover, bureaucratization “forces [Indigenous peoples] to accept, at least implicitly, a set of Euro-Canadian values and assumptions that constrain the ways in which it is possible to think and act.”¹⁹¹ (In the Alaskan setting, the same point holds if one replaces “Euro-Canadian” with “Euro-American” values.) Participation in species-specific conservation efforts could erode traditional multi-species, holistic approaches and their underlying worldviews.

Finally, Nadasdy warns that co-management may be a process of assimilation destructive to Indigenous ways of knowing, thinking, and

184. *Id.*

185. *See id.* at 448.

186. *See id.* at 454, 456.

187. *See Nadasdy, supra* note 167, at 224.

188. *Id.* at 226.

189. *See* INUIT CIRCUMPOLAR COUNCIL ALASKA, THE ROLE OF PROVIDING—INUIT MANAGEMENT PRACTICES: YOUTH, ELDERS, ACTIVE HUNTERS AND GATHERERS WORKSHOP REPORT 11-12 (2019), <https://iccalaska.org/wp-icc/wp-content/uploads/2022/03/YEAH-Workshop-Report.pdf> [<https://perma.cc/2V3T-W29S>].

190. *See* ICC Alaska Report, *supra* note 32, at 18.

191. Nadasdy, *supra* note 167, at 226.

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acting. While many co-management proponents ostensibly seek to affirm Indigenous Knowledge and corresponding Native ontologies, the framework of integration subordinates Indigenous Knowledge to Western science.¹⁹² When Indigenous Knowledge is at odds with American agents' preferred scientific literature, the management professionals are typically at liberty to ignore Indigenous perspectives. And they do, especially when faced with conflict on an ontological level.¹⁹³

ICC Alaska study participants back up this claim: “for years, our testimony before the various boards and commissions that do regulation was taken as anecdotal—because we didn’t have a college degree, what we said wasn’t the gospel’s truth.”¹⁹⁴ Inuit who participated in consultations with official regulators reported feeling as though the decision-makers failed to take their contributions seriously, and that “proving” their expertise was difficult.¹⁹⁵

Considering this systematic subordination of Indigenous approaches, the limitation of actual Indigenous authority, and the legitimating function of shallow participation, Nadasdy concludes, “although on the surface co-management may seem to be giving aboriginal people increased control over their lives and land, these processes might instead be seen as subtle extensions of empire, replacing local aboriginal ways of talking, thinking and acting with those specifically sanctioned by the state.”¹⁹⁶

Again, the ICC Alaska report echoes his concern. Participants reported that “[they] often fe[lt] pressured to step out of our own culture and behave in a way that is more like the outside managers.”¹⁹⁷ The existing framework for cooperation is a force of assimilation. The crucial question remains: is that assimilative effect inseparable from co-management?

In sum, Nadasdy raises several dire observations that should concern any effort to secure food sovereignty through co-management. The following Part seeks to answer these critiques and to chart a theoretical path forward, rooted in the ICC Alaska vision of food sovereignty.

192. *See id.* at 226.

193. *See id.*

194. ICC Alaska Report, *supra* note 32, at 123.

195. *Id.*

196. Nadasdy, *supra* note 167, at 228.

197. ICC Alaska Report, *supra* note 32, at 123.

IV. TOWARD TRUE CO-MANAGEMENT

This final Part sets out two criteria for true co-management: power sharing and ontological hybridity. First, I articulate the need for power sharing, informed by existing schemes of tribal co-management. Second, I articulate the requirement of ontological hybridity. This concept—borrowed from Burow, Brock, and Dove—responds to the most challenging component of Paul Nadasdy’s critique, the destruction of Native ontologies. As I explicate the elements of ontological hybridity, I draw on the ICC Alaska report for examples of the concept in practice.

A. Power Sharing

For co-management to achieve food sovereignty, there must be an actual change in power relations. ICC Alaska observes that the current asymmetry of power in Alaskan co-management schemes is an obstacle to food security, one that stems from the state and federal governments’ unwillingness to give up control.¹⁹⁸ Participation is not the same as power; as Nadasdy warns, participation without power sharing may actually harm Inuit interests. Thus, a basic requirement for “true co-management” is the actual empowerment of Inuit actors.

The sovereign political status of Alaska Natives justifies such a redistribution of decision-making authority. There are 228 federally recognized tribes in Alaska, and many of them are Inuit villages.¹⁹⁹ Although Congress has severely diminished Alaska Native land rights, it has not fundamentally changed Alaska Natives’ political status. Co-management should be approached not only in terms of food sovereignty, but also tribal sovereignty. Co-management arrangements should be understood as sovereign-to-sovereign agreements.

To identify power redistribution, one might look to the circumstances of the creation of co-management programs. Spaeder highlights the various ways management arrangements come into being. He focuses on the instances of co-management “from below,” remarking that “[f]ormal agreements often imply that state-level managers took the lead in developing these management regimes, when in fact, responsibility for

198. *See id.* at 77.

199. Bureau of Indian Affs., *Alaska Region*, U.S. DEP’T INTERIOR (2022), <https://www.bia.gov/regional-offices/alaska> [https://perma.cc/KK7T-ADW2].

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initiating regime formation belongs to local communities.”²⁰⁰ He goes on to observe that these agreements initiated by Alaska Native communities had the effect of altering power relations.²⁰¹ Indeed, there is a marked difference between visions of co-management directed by management agencies and those demanded by local Indigenous people. The agreements Spaeder champions were hard-won concessions from regulatory agencies achieved through the strategic exertion of tribal political power. For example, in a brown bear case study, local Yu’pik leaders successfully launched a multifaceted campaign to reform brown bear management.²⁰² This included initiating a lawsuit, lobbying legislators, appealing to bureaucrats, and ultimately threatening to withdraw from all existing cooperative agreements.²⁰³

On the other hand, the prizes of such campaigns may not always be as they appear: popular movements can be co-opted and subdued through superficial concessions. Perhaps agreements like the brown bear co-management program might be characterized by Mark Tushnet’s critique of rights: shallow, unstable promises that inhibit real advancement.²⁰⁴ Like the liberal theory of rights, Native participation in the abstract is generally considered to be a “Good Thing.”²⁰⁵ But like rights, co-management lacks meaning in the abstract—its utility is contingent on the conditions of the agreement in its particular social and legal context. According to Tushnet’s *Essay on Rights*, rights in practice are unstable and indeterminate, and any pragmatic value they offer is precarious: “[i]f rights are only pragmatically useful, their defenders in foul times will abandon them when the weather changes.”²⁰⁶ If co-management arrangements are similarly indeterminate and precarious, their pragmatic value is minimal, and they cannot hope to achieve food sovereignty. Furthermore, co-management, like rights, might

200. Spaeder, *supra* note 163, at 175.

201. *Id.*

202. *Id.* at 173.

203. *Id.*

204. See generally Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363 (1984). Tushnet’s piece is a notable landmark of the critical legal studies movement, and a point where critical race theory diverges from its predecessor. For the critical race theory response, see generally Kimberlé Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331 (1988).

205. Tushnet, *supra* note 204, at 1363.

206. *Id.* at 1385.

suffer from a limited imagination. Tushnet’s “Stalinism trap” prevents any consideration of alternatives by insisting our only choice is that of the existing regime or the gulag.²⁰⁷ Unger broadens the notion beyond critical legal studies’ immediate Cold War context, to reject all constraining “illusions of false necessity.”²⁰⁸ One must ask, is the pragmatic call for co-management the result of flawed assumptions about the realm of political possibility?²⁰⁹

Co-management may also fall within the terms of Derrick Bell’s critique of *Brown v. Board of Education*. In *Brown v. Board of Education and the Interest Convergence Dilemma*, Bell asserts that progress for minorities is limited by the principle of interest convergence: “the interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”²¹⁰ Even when equality is written into law, subsequent applications are subject to racial interest-group politics.²¹¹ When ruling groups are threatened, progress stalls. If Bell is correct, the interest convergence principle likely applies to Native claims within the American political system. If interest convergence governs, true co-management requires a broader interest in Native empowerment.

In sum, apparent progress is not always what it seems. Undoubtedly, Indigenous people must play a central role in the creation of true co-management. However, such participation is not sufficient to guarantee real changes in power. It is not enough to say Indigenous people asked for and instigated this change. The resulting structures demand scrutiny.

Token advisory roles are plainly insufficient. ICC Alaska believes that a consultation component could support food sovereignty if the consultation between agencies and Native advisory bodies is “a truly substantive exchange of ideas, knowledge, and views between partners, with increased weight given to Inuit voices, rather than a procedural box-check.”²¹² As this quotation implies, Inuit experiences with current consultation requirements are those of empty procedure—Inuit advisors perceive that

207. *Id.* at 1401.

208. Unger, *supra* note 97, at 60-61.

209. While this Note does not attempt to answer this question, I believe this question is always worth posing.

210. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

211. *See id.*

212. ICC Alaska Report, *supra* note 32, at 33.

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American government officials regard consultation as a burden rather than an opportunity for meaningful partnership.²¹³

While the ICC Alaska report rarely names power directly, it clearly plays a significant role in true co-management. The report states:

True co-management is a shared decision-making process. In practice, however, co-management systems can often be shared decision-making processes in name only. That can make the Inuit role in some established management regimes amount to an advisory one, undermining trust, Inuit food sovereignty, and ultimately, food security.²¹⁴

To ensure shared decision-making, there must be shared decision-making power. Otherwise, the relegation of Inuit voices to inconsequential advisory roles is likely, perhaps inevitable. Such roles are worse than useless—they actively undermine the project for food sovereignty.

While co-management arrangements are necessarily attuned to their distinct circumstances, we can learn from comparable projects. Consider a tribal co-management program that garnered national attention: the Bears Ears National Monument Commission. The Bears Ears National Monument is not only a testament to millennia of Indigenous history, but also a symbol of concerted political action of tribes today. In 2015, leaders from the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Pueblo of Zuni, and Ute Indian Tribe founded the Bears Ears Inter-Tribal Coalition to draft a proposal for the national monument.²¹⁵ At the heart of the project lay the goal of true co-management: “Collaborative Management at Bears Ears offers a first-ever opportunity to truly infuse Native values into public lands administration by pulling upon both Indigenous Knowledge and Western science.”²¹⁶ The Coalition called for Tribes and federal agencies to work together as equals to reach joint decisions, in a partnership premised on a sovereign-to-

213. *Id.* at 41.

214. *Id.* at 49.

215. *Who We Are*, BEARS EARS INTER-TRIBAL COAL. (2021), <https://www.bearscoalition.org/about-the-coalition> [<https://perma.cc/4B6J-72RH>].

216. BEARS EARS INTER-TRIBAL COAL., PROPOSAL TO PRESIDENT BARACK OBAMA FOR THE CREATION OF BEARS EARS NATIONAL MONUMENT 33 (October 15, 2015), <https://www.bearscoalition.org/wp-content/uploads/2015/10/Bears-Ears-Inter-Tribal-Coalition-Proposal-10-15-15.pdf> [<https://perma.cc/56R8-5RVF>].

sovereign relationship.²¹⁷ The final proposal, delivered to President Obama on October 15, 2015, outlined a commission of tribal representatives charged with direct supervisory authority over the monument's managerial personnel and policies, performance standards, and annual reviews.²¹⁸ The proposal also envisioned the development of the Traditional Knowledge Institute.²¹⁹

This robust collaborative management design did not make it into the presidential proclamation. Instead, the Bears Ears National Monument came into being with a commission of elected tribal officers “to provide guidance and recommendations on the development and implementation of management plans and on management of the monument.”²²⁰ Federal agencies were ordered to “meaningfully engage the Commission” and “carefully and fully consider integrating the traditional and historical knowledge and special expertise of the Commission.”²²¹ The procedural articulation of this goal was a process of written recommendations and mandatory explanations when federal regulators chose to depart from commission guidance.²²²

While this beefed-up consultation role might be more substantial than typical tribal consultation processes, it was a far cry from the joint decision-making envisioned by the Coalition's proposal. Although observers lauded the language of collaboration,²²³ the proclamation offered promises contingent on the willingness of federal regulators to value tribal recommendations. Such an arrangement does not safeguard tribal power in management policymaking—it only guarantees a discussion. Nevertheless, coalition leaders celebrated their historic victory and set out to make the most of the proclamation's co-management rhetoric.²²⁴ To be sure, Bears

217. *Id.* at 26.

218. *See id.* at 30-31.

219. *See id.* at 31.

220. Proclamation No. 9558, 82 Fed. Reg. 1139, 1144 (Jan. 5, 2017).

221. *Id.*

222. *Id.*

223. *See, e.g.*, Charles Wilkinson, “At Bears Ears We Can Hear the Voices of Our Ancestors in Every Canyon and on Every Mesa Top”: *The Creation of the First Native National Monument*, 50 ARIZ. ST. L.J. 317, 329 (2018).

224. *See, e.g.*, Daniel Franz, *The Subdelegation Doctrine as a Legal Tool for Establishing Tribal Co-management of Public Lands: Through the Lens of Bears Ears National Monument*, 32 COLO. NAT. RES., ENERGY & ENV'T L. REV. 1, 12 (2021).

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Ears saw a rocky start with from President Trump's demotion of the monument (without any consultation with the tribes) and consequent litigation against President Biden's restoration of Bears Ears. Through it all, the Inter-Tribal Coalition has continued to advocate for its vision of collaborative management.²²⁵

The Bears Ears proposal and its watered-down implementation are informative. They underscore the potential distance between co-management rhetoric and actual power sharing. They reiterate the fact that true co-management programs are not easily won—that even with exceptional tribal mobilization and a sympathetic administration, the demand for shared decision-making authority will give way to a lesser guidance role. Meanwhile, the rapid creation, demotion, and restoration of the monument hint at the fragility of gains dependent on fickle national politics. Still, the vision of collaboration articulated in the Inter-Tribal Coalition's proposal remains an inspiring model for co-management. The gulf between vision and execution underlines the principle that the composition of Native decision-making bodies and their procedures must be determined by the Native communities they represent.

Native communities must play a central role in designing management structures. Placing Native representatives into the existing regime is insufficient. Participation in the game is not enough; Native groups must participate in making the rules.²²⁶

B. Ontological Hybridity: Double-Consciousness by a New Name

In any game, the rules constitute both the game itself and the players' roles. The rules may assume values or facts about the universe and may give such assumptions material weight in the context of the game. The rules constrict player freedom and set the terms of victory, and players must fashion themselves after the rules to win. But what if the rules change the players' self-conception, change who they are and how they think outside the bounds of the game? What if the game reaches out and changes how the players engage with the universe?

225. "We reiterate our request that the agencies comply with the government-to-government relationship, by engaging with the Tribes individually and allowing us the opportunity for input and collaboration as encouraged in both the Obama and Trump proclamations." *About the Monument*, BEARS EARS INTER-TRIBAL COAL. (2021), <https://www.bearscoalition.org/about-the-monument> [<https://perma.cc/WM35-2BDZ>].

226. See Torres & Milun, *supra* note 117, at 645.

Forced participation in foreign legal, social, and economic systems does precisely this. Over time, participants internalize the values and beliefs of these systems. The rules we live by affect our self-consciousness. They shape how we interact with each other, and how we understand our place in the universe.

An essential dimension of colonization is ontological and epistemic hegemony. Indigenous participation in colonial structures, whether to assert rights or even sovereign claims within the colonial framework, can further this process. The result is a psychological harm: the dissonance between silenced Indigenous ontologies and a universalizing Western worldview. As ICC Alaska recorded in its study:

Participants express that it often feels like they are being spoken down to, rather than engaged in discussions between equal co-management partners. *That is a byproduct of law, government interpretations of the law, and a feeling of lack of respect for distinct cultural characteristics and ways of life, I[ndigenous] K[nowledge], and expertise.*²²⁷

The harm is both personal and cultural—disrespect based on identity and experience. This ICC Alaska observation evokes a critical body of indigeneity theory, which names the colonization of science and reminds us that ontologies and epistemologies have political context. As Tuhiwai Smith describes, “the Western academy which claims theory as thoroughly Western . . . has constructed all the rules by which the indigenous world has been theorized,” such that “theorizing our own existence and realities is not something which many indigenous people assume is possible.”²²⁸

The colonization of theory is a form of disempowerment. Settler institutions determine fundamental facts of the universe and subsequent methods of knowing, biased by settler experience and goals. As Tuhiwai Smith remarks, “[Indigenous people] are not the final arbiters of what really counts as the truth.”²²⁹ Dispossession in this theoretical register is tied to dispossession in the physical world. In *Decolonization is Not a Metaphor*, Eve Tuck and K. Wayne Yang describe this intellectual colonization as one dimension of the very material project to displace and disappear Indigenous peoples:

227. ICC Alaska Report, *supra* note 32, at 90 (emphasis added).

228. TUHIWAI SMITH, *supra* note 120, at 29.

229. *Id.* at 34.

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Land is what is most valuable, contested, required. This is both because the settlers make Indigenous land their new home and source of capital, and also because the disruption of Indigenous relationships to land represents a profound epistemic, ontological, cosmological violence.²³⁰

For Tuck and Yang, the ontological and epistemic displacement is an attribute of physical displacement. Conversely, any meaningful decolonization of the mind necessarily demands decolonization of the land: namely the return of “sovereign” control over Indigenous lands to Indigenous people.²³¹

Theorists of “Indigenous political ecologies” focus on this issue as well. As Beth Rose Middleton writes, Indigenous political ecology would necessarily feature “attention to decolonizing processes that explicitly dismantle systems of internalized and externalized colonial praxis.”²³² Such processes include the rejection of Western frameworks “by reaffirming the existence of much longer-standing indigenous relationships with the land,”²³³ extricating political ecology from its distinctly Western materialist theoretical setting, and instead situating questions of political economy in Indigenous cosmologies and law.²³⁴

Even as theorists work to decolonize the academy, Indigenous activists and advocates still face the reality of colonial institutions that refuse to listen to Indigenous assertions without translation. Pragmatic participation is a necessity. As Kimberlé Crenshaw advises, critical practice often requires passing over purity for the sake of progress. While we should be concerned with law’s function of legitimating certain existing institutional arrangements, we should not write off law as a hopeless, useless tool.²³⁵ Instead, movements should work to strategically utilize institutional logic to their own ends:

230. Eve Tuck & K. Wayne Yang, *Decolonization is Not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1, 5 (2012).

231. *Id.* at 31.

232. Beth Rose Middleton, *Jahát Jatítotòdom: Toward an Indigenous Political Ecology*, in INTERNATIONAL HANDBOOK OF POLITICAL ECOLOGY 561, 562 (Raymond L. Bryant ed. 2015).

233. *Id.* at 571.

234. *Id.* at 563.

235. See Crenshaw, *supra* note 204, at 1366.

[P]opular struggles are a reflection of institutionally determined logic and a challenge to that logic. People can only demand change in ways that reflect the logic of the institutions they are challenging. Demands for change that do not reflect the institutional logic—that is, demands that do not engage and subsequently reinforce the dominant ideology—will probably be ineffective.²³⁶

To be effective, movements must engage with dominant logics and ideologies. If Indigenous groups are to succeed within the borders of the United States, they must, to some degree, participate in the American legal regime. The key is “to devise ways to wage ideological and political struggle while minimizing the costs of engaging in an inherently legitimating discourse.”²³⁷ In the case of Inuit food sovereignty, ICC Alaska seeks to engage with the American regulatory state to assert power over material resources while resisting the expansion of colonization in the ontological register.

In *Unsettling the Land*, Burow, Brock, and Dove describe such a strategy for Indigenous groups, one that uses settler institutions to revitalize Indigenous land-based practices and ultimately affirms Indigenous ontologies.²³⁸ They propose hybridity as the guiding principle, namely in the multiple modalities of land—land-as-property alongside Indigenous conceptions.²³⁹ This hybridity is a kind of double consciousness in theory and in practice. It manifests as the partnership of land-as-property legal claims and the land-based practices such claims enable.²⁴⁰ This approach was born of pragmatism: settler state institutions cannot be circumvented in the assertion of tribal sovereignty.²⁴¹ Settler institutions only recognize land-as-property, so tribal nations must speak the language of property relations and ownership. To minimize the ontological harm, to prevent the adoption of Western conceptions of land at the expense of Indigenous understandings, the same tribal groups must practice independent, traditional relations with land. As the authors assert, “land-based practices are essential to reworking the very notion of land underpinning settler colonial domination. Settler modes of thinking about the land are being

236. *Id.* at 1367.

237. *Id.* at 1387.

238. *See* Burow et al., *supra* note 115, at 58.

239. *Id.* at 67.

240. *Id.* at 62.

241. *Id.* at 67.

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appropriated to take the land back while other modes of thinking are being practiced.”²⁴² Land-based practices are the mechanism for thinking and living in Indigenous frames. This method requires a tolerance for dissonance and a willingness to operate in a tenuous space, the “nexus where different modalities of land coexist, often uneasily or in conflict with each other.”²⁴³ In other words, that nexus is the space of decolonization.²⁴⁴

In identifying this need for ontological hybridity, the authors challenge common assumptions of critical environmental disciplines. They take issue with the Western Marxian approach to land featured in peasant studies and political ecology, and they assert that in the colonial context, “[t]he ‘original sin’ that precedes the extraction of economic value is more than the alienation of workers from the means of production: it is the alienation of Indigenous ontologies by settler modes of thinking and controlling land.”²⁴⁵ Once this “original sin” is recognized, the need for work on the ontological register is evident. To the authors, “decolonial praxis is premised on the ability to revitalize Indigenous ontologies through grounded practices.”²⁴⁶ Of course, those grounded practices are bound to be distinctive for different Indigenous Peoples.

This kind of dual approach is comparable to the ICC Alaska framework for food sovereignty and self-governance. Obviously, the proposal to partner with existing regulatory agencies to manage Inuit resources is a pragmatic move—one that recognizes the limits of political feasibility in the United States. Like Crenshaw, the ICC Alaska Report authors appear to make use of existing institutional logic. But this pragmatic proposal is simultaneously radical in its aspirations. From the outset, the authors note that “Inuit cultural values can be undermined during the co-management process,” and they criticize co-management schemes that subordinate Inuit worldviews.²⁴⁷ By framing food security as a matter of cultural, spiritual, and linguistic survival, they subvert settler conceptions of ecological resources. Meanwhile, their rejection of the MMPA’s single-species approach in favor of an interdependent multi-species approach affirms Inuit understandings of ecological health. This implicit embrace of hybridity

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.* at 68.

246. *Id.*

247. ICC Alaska Report, *supra* note 32, at 116.

can be found in the initial framing of the report, when ICC Alaska addresses the term “subsistence.” The report states:

[Subsistence] does not capture the multiple social, cultural, economic, and spiritual dimensions of Inuit food security. Throughout this report, the term “subsistence” is only used in reference to federal/state/territorial laws. The term food security is more frequently used to capture the multifaceted nature of food described by Inuit.²⁴⁸

Through this note on word choice, ICC Alaska highlights the distance between the state’s term and its connotations and that of the Inuit authors. They do not reject the term outright, but delineate its limited, pragmatic use for interfacing with the American legal system. Having set this tool aside, they proceed to articulate an Inuit conception of food security.

While the Report recognizes a need for translation and cooperation, it consciously rejects ontological and epistemic hegemony. It observes a distinction between Indigenous Knowledge and settler science: “IK and science are two distinct knowledge systems. With this in mind, it is important not to force or interpret IK into science, but instead allow the two sources of information to work in coordination with each other.”²⁴⁹ In other words, these worldviews should both be used, but one cannot assimilate the other.

Finally, the use of Inuit languages is an essential method to affirm Inuit ontologies while operating in the structures of American regulation. Indigenous language offers preferred lenses, connotations, and nuances that can work to preserve Indigenous approaches. As ICC Alaska states:

The importance of using Inuit dialects, the pain of lost language (violently taken away through boarding and government-funded schools and forced cultural assimilation), and the ability to speak from truth through one’s own language was expressed through every focus group meeting, workshop, and expert interview.²⁵⁰

Language is both a major dimension of cultural survival and a way to honor past suffering. Resisting translation and sharing Native languages is an important means to maintaining ontological hybridity in a colonial legal regime.

248. *Id.* at 17.

249. *Id.* at 125.

250. *Id.* at 132.

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In all these ways, ICC Alaska models the kind of multidimensional thought and practice essential to the work of decolonization. This dedication to ontological hybridity coupled with the demand for a shift in power relations can protect Native communities from the pitfalls of shallow co-management. If these criteria are feasible, true co-management can be achieved.

V. CONCLUSION

True co-management offers a pragmatic approach to Indigenous food sovereignty. The idea of cooperative management is already commonplace in resource management circles, and ICC Alaska's true co-management model pushes this existing concept to its full potential. By taking a familiar, approachable idea and enhancing its radical edge, ICC Alaska offers a practicable approach to self-governance and food sovereignty within the confines of American law.

This Note has placed ICC Alaska's approach to food sovereignty in conversation with theorists from political ecology and critical race theory to elucidate the promises and pitfalls of co-management. This process distilled key demands of the ICC Alaska project, drawing attention to the distribution of decision-making power and encounters on the ontological register. In particular, the demand for the redistribution of power premised on tribal sovereignty complicates the apparent pragmatism of the co-management approach to food sovereignty.

This intervention demonstrated how major insights of critical scholarship were already present, be it explicit or implicit, in the ICC Alaska conception of food sovereignty. The ICC Alaska framework recognizes the inherent politics of the environment, the importance of power relations in asserting minority interests, and the danger of shallow participation. Moreover, ICC Alaska models a hybrid approach to decolonization to engage with ascendant institutions and resist assimilation. Ultimately, the Note articulated the terms of true co-management in the language of critical theory to vindicate the ICC Alaska framework as a model for Indigenous food sovereignty.