

# Radical Adaptation, Justice, and American Indian Nations

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## ABSTRACT

Climate adaptation strategies typically involve making adjustments to laws about planning, resource allocation, and infrastructure to ensure that the built and natural environments will continue to support human communities. The question investigated here is related but distinct. This essay interrogates the necessary conditions for indigenous communities to survive, and perhaps even thrive, while maintaining their unique cultures in the face of dramatic and/or unknowable material circumstances. In other words, rather than ask how indigenous communities will adjust to the effects of a changing climate, this article asks what the essential conditions are for indigenous communities themselves to consider the extent, scope, and terms of any and all necessary adjustments. The history of the Cherokee Nation's adaptation to their forced removal from their homelands in the Southeast to Oklahoma, explored briefly here, provides an initial set of hypotheses about the core components for successful adaptation to radically different territorial circumstances.

As we sit back and assess these last five hundred years, let us look at what has happened to our people. How have the Indian Nations fared? How have our children? How are our institutions? Are they holding up? We have to look at ourselves because as tough as these last five hundred years have been, the next five hundred or even fifty years are going to be tougher.

—Oren Lyons<sup>†</sup>

## INTRODUCTION

ARTICLES ABOUT CLIMATE CHANGE often begin with a recitation of the effects of global warming—rising sea levels, retreating glaciers, declining species—and then, depending on the subject matter, more details about specific impacts on particular geographies or communities of people. This—the climate change testimonial—was particularly important in the early days of climate change scholarship when the average non-specialist reader had to be persuaded that this was a serious phenomenon about which scientists had achieved a consensus. Today, in the rarefied world of the academic publication, some things have changed. First, the sheer volume of climate change scholarship has reduced

the need for the generalized testimonial.<sup>1</sup> Second, the specificity of scientific information has allowed for more fine-grained discussion of effects on particular regions and peoples. The climate change testimonial has therefore become both shorter and more tailored.

Yet out there in the warming world, much has remained the same. There is still no binding, enforceable national or international regime of greenhouse gas emissions control. Global emissions continue to rise. And the effects of global climate change continue to register, unabated by the mountains of law and policy scholarship proposing all manner of solutions. Not surprisingly, the scholarship has therefore shifted in recent years from a near exclusive focus on mitigation (the reduction of greenhouse gas emissions)

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<sup>†</sup>Oren Lyons, *Sovereignty and the Natural World Economy*, in *GREAT SPEECHES BY NATIVE AMERICANS* 215, 217, Bob Blaisdell, ed. (Dover Publications, 2000).

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<sup>1</sup>The Fourth International Panel on Climate Change Assessment Reports were issued in 2007. Using that as a dividing line, a search of the Westlaw "law reviews and journals" database, last run on Sept. 22, 2010, revealed that 168 articles with the terms "climate change" in the title were published before 2007, and 541 after 2007.

to adaptation (the accommodation of extant and inevitable effects of climate change).<sup>2</sup> In other words, the climate change testimonial has changed, but not because scholarly testifying has had much effect.

I begin in this register of futility because it is painful to write about the effects of climate change on American Indian communities (and any communities disproportionately affected by climate change) when to do so has so little impact. The disparate effects of climate on American Indian nations have been documented,<sup>3</sup> yet for communities facing drought, flooding, and relocation, the mere documentation of their tragedy feels redundant if not exploitative. Margaret Hiza Redsteer, an expert on the effects of prolonged drought on the Navajo Nation, put it this way: "Truthfully, we don't have the luxury of simply discussing the issues any more; time has been squandered on this issue enough already. Alaskan villages continue to sink in permafrost or tumble into the ocean, and homes here in Arizona are still getting buried in sand as the people who live here search for water. [Our work] will only be meaningful if we can use it to accomplish something real."<sup>4</sup> Doing something real is, of course, a perennial challenge for legal scholarship.<sup>5</sup> The problem is not that expertise has no role to play. In the context of adaptation in particular, many legal and policy puzzles remain to be addressed. Yet other than drawing attention to a few key areas of concern, the role of scholarship, as opposed to advocacy or policymaking, is not readily apparent.<sup>6</sup>

This essay appears to be writing itself into oblivion. To save itself, it will take a leap away from climate adaptation in the traditional sense. If adaptation strategies typically involve making adjustments to laws about planning, resource allocation, and infrastructure to ensure that the built and natural environments will continue to support human communities, the question investigated here is related but distinct. This essay instead interrogates the necessary conditions for indigenous communities to survive, and perhaps even thrive, while maintaining their unique cultures in the face of dramatic and/or unknowable material circumstances. In other words, rather than ask how indigenous communities will adjust to the effects

of a changing climate, this article asks what the essential conditions are for indigenous communities themselves to determine the extent, scope, and terms of any and all necessary adjustments. For some indigenous communities, the changes to their lands and resources will necessitate physical relocation.<sup>7</sup> For others, physical relocation will not be necessary, but dramatic changes to the natural world that shaped their cultures will pose equally dramatic questions about the adequacy of their current political and governing structures.

Framing the inquiry this way is consistent with an appropriate understanding of climate justice for American Indian tribes. First, American Indian tribes have suffered "'palpable and endemic disadvantage' stemming from a long history of discrimination, exclusion and deliberate attempts to destroy their cultural and political communities,"<sup>8</sup> and therefore fit within an accepted definition of an environmental justice community. Second, with respect to climate change in particular, American Indian tribes have contributed very little to the problem, yet are poised to bear profound and widespread effects. As I have written elsewhere, a key component of justice for American Indian tribes is support for their separate political status.<sup>9</sup> Climate justice for tribes, particularly in the context of adaptation, therefore should include support for tribal institutions to chart their own culturally appropriate path.<sup>10</sup>

This essay will proceed as follows. Part I explores the meaning of adaptation for American Indian tribes who face loss of land, resources, and other material conditions that form the basis for their cultures and economies. Part II will suggest that there are historical analogues to the situation that tribes now face, and will explore one particularly salient example, that of the Cherokee Nation after their removal from their homelands in the Southeast to Oklahoma. Part II then concludes by drawing some preliminary lessons from the Cherokee history, and suggests possibilities for additional research to discern the core components necessary to allow for radical adaptation by American Indian tribes. Scholarship won't stop climate change, but it can shed light on whether legal and

<sup>2</sup>A Westlaw search of the "law reviews and journals" database, last run on Sept. 22, 2010, revealed that twenty-eight articles with the terms "climate" and "adaptation" in the title have been published since 2007, whereas only one was published before 2007.

<sup>3</sup>See Sarah Krakoff, *American Indian Tribes, Climate Change and Ethics for a Warming World*; *American Indian Tribes, Climate Change, and Ethics for a Warming World*, 85 DENVER L. REV. 865 (2008); JONATHAN HANNA, NATIVE COMMUNITIES AND CLIMATE CHANGE: PROTECTING TRIBAL RESOURCES AS PART OF NATIONAL CLIMATE POLICY 11–12, 19, 26 (Natural Res. Law Ctr., Univ. of Colo. Law Sch., 2007), <[http://ChangeReport-FINAL%20\\_9.16.07\\_.pdf](http://ChangeReport-FINAL%20_9.16.07_.pdf)>.

<sup>4</sup>E-mail communication from Margaret Hiza Redsteer, July 20, 2010 (on file with author).

<sup>5</sup>See Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (A Report on the State of the Art)*, 97 GEORGETOWN L. J. 803 (2009).

<sup>6</sup>See *id.* (critiquing instrumentalist pretensions of much contemporary legal scholarship as delusional as well as a fundamental betrayal of the idea of scholarship to begin with).

<sup>7</sup>According to a Government Accountability Report, thirty-one Alaska Native Villages face imminent threats due to flooding and erosion caused by climate change, and twelve of these have decided to relocate. See *184 Alaska Native Villages Affected by Flooding and Erosion*, GAO Report 09-551 (June 2009).

<sup>8</sup>Sarah Krakoff, *Tribal Sovereignty and Environmental Justice in JUSTICE AND NATURAL RESOURCES*, Kathryn Mutz, et al., eds., 161, 162 (Island Press 2002).

<sup>9</sup>See *id.*

<sup>10</sup>The link between tribal self-governance and justice for tribes has been made by many, and is born out by the United States' various failed federal policies for tribes. The worst outcomes for tribes and tribal peoples have occurred under policies aimed at destroying tribes as governments and/or terminating their unique sovereign-to-sovereign relationship with the United States. See ROBERT ANDERSON, ET AL., *AMERICAN INDIAN LAW: CASES AND COMMENTARY*, Ch. 3 (2d. ed., Thomson/West 2010) (providing an overview of various failed federal policies towards American Indians).

political structures can facilitate indigenous peoples' ability to adapt to climate change on their own terms.

## I. RADICAL ADAPTATION

The title of this article, "Radical Adaptation," is itself an adaptation of the title of an astonishing little book by a philosopher named Jonathan Lear.<sup>11</sup> The book, *Radical Hope: Ethics in the Face of Cultural Devastation*, considers the actions of the Crow leader, Chief Plenty Coups, during the time when the Crow were confined to a reservation, forced to abandon their traditional way of life, and therefore faced with the possibility that they might cease to exist as a distinct people.

Indigenous peoples throughout the United States,<sup>12</sup> and most urgently in the Arctic region, face analogous changes to their material circumstances. The causes are different. The cavalry is no longer rounding up Native people and forcing them onto ever-shrinking homelands. Instead (here comes the climate testimonial), Alaska Native homelands are shrinking, or more aptly melting away. According to a GAO Report, 184 Alaska Native villages are at risk from flooding and erosion due to climate change.<sup>13</sup> Of these, thirty-one face imminent threats, and twelve have decided to relocate.<sup>14</sup> One, the village of Newtok, has already begun the process of relocating to a new site, and several more are in the planning stages.<sup>15</sup> The Native Village of Kivalina brought national attention to the challenges facing Native Alaskan communities when they sued ExxonMobil Corp. and twenty-three other energy, oil and gas, and utility companies for their contributions to climate change.<sup>16</sup> In addition to coastal erosion and flooding, the more extreme warming in the Arctic is causing melting permafrost, changing feeding and migration patterns of animals, threats to polar bears and sea lions, earlier and less predictable seasons for native plants, and a range of related cultural and economic secondary effects.<sup>17</sup>

While not yet as dramatic as the Arctic situation, American Indian nations in other regions, including but not limited to the Pacific Northwest and the four corners area of the Southwest, may soon face a variety of climate effects that, when combined with the politics of confronting them, also put long-held economic and cultural

practices at risk.<sup>18</sup> In the Pacific Northwest, the main threats come in the form of changes to the hydrologic cycle that increase the risks to salmon and other fish species central to the cultural and economic lives of many tribes in the region.<sup>19</sup> In the Southwest, increasing temperatures, decreasing snow pack, and the likelihood of longer and more dramatic periods of drought are the likely stressors.<sup>20</sup> Impacts will include increased desertification, migration of native flora and fauna, and water scarcity.<sup>21</sup> As a result, gathering of native plants for ceremonies, traditional livelihoods based on dry-land agriculture and grazing, as well as more recent sustainable ventures such as tourism and recreation will be affected.<sup>22</sup>

Just as the Crow had to grapple with what it meant to be Crow after all that gave their identity meaning had changed, Native villages in Alaska and American Indian tribes throughout the United States will have to sort out how to remain distinct peoples in circumstances that are robbing them of the economic, cultural, and spiritual frameworks for assessing that very question. As Lear put it, "Humans are by nature cultural animals; we necessarily inhabit a way of life that is expressed in a culture. But our way of life, whatever it is, is vulnerable in various ways, and we as participants in that way of life inherit a vulnerability. Should that way of life break down, that is *our problem*."<sup>23</sup> Climate change renders indigenous communities distinctly vulnerable to this kind of breakdown, and the question explored here—what governance structures might provide indigenous peoples with the capability to adapt to radically different climactic circumstances, yet still remain themselves?—is the legal and policy cousin to the more philosophical one that Lear asked.

## II. ADAPTING TO REMOVAL AND RESERVATION POLICIES

Sadly, United States' policies towards American Indian nations provide us with many possible analogies for this moment of vulnerability. If there is anything redemptive in this history, perhaps it can be drawn on here. During the nineteenth century, from roughly 1820 through 1887, the federal government's approach to the stubborn persistence of Indian nations within its borders was to

<sup>11</sup>JONATHAN LEAR, *RADICAL HOPE: ETHICS IN THE FACE OF CULTURAL DEVASTATION* (Harvard U. Press 2006).

<sup>12</sup>Indigenous peoples face such threats throughout the world, but this article is confined to the unique legal context of American Indian tribes in the United States.

<sup>13</sup>184 *Alaska Native Villages Affected by Flooding and Erosion*, *supra* note 7.

<sup>14</sup>See *Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion*, GAO Report 09-551 (June 2009).

<sup>15</sup>See *id.*

<sup>16</sup>See *Native Village of Kivalina v. ExxonMobil*, 663 F.Supp.2d 863 (N.D.C.A. 2009) (dismissing the suit on Article III standing and political question grounds).

<sup>17</sup>See Susan Joy Hassol, *Impacts of a Warming Arctic*, ARCTIC CLIMATE IMPACT ASSESSMENT 10-11 (Cambridge U. Press 2004) (summarizing key findings).

<sup>18</sup>See HANNA, *supra* note 3, at 5-7 (describing effects in the Northwest), 18-19 (describing effects in the Southwest).

<sup>19</sup>See HANNA, *supra* note 3, at 5-7; see also SWINOMISH TRIBE, OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT, SWINOMISH CLIMATE CHANGE INITIATIVE IMPACT ASSESSMENT TECHNICAL REPORT (2009), <[http://www.swinomish-nsn.gov/departments/planning/climate\\_change/Docs/SITC\\_CC\\_ImpactAssessmentTechnicalReport\\_complete.pdf](http://www.swinomish-nsn.gov/departments/planning/climate_change/Docs/SITC_CC_ImpactAssessmentTechnicalReport_complete.pdf)>; TULALIP NATION, CLIMATE CHANGE IMPACTS ON TRIBAL RESOURCES, <<http://www.tulalip.nsn.us/pdf.docs/FINAL%20CC%20FLYER.pdf>>.

<sup>20</sup>U.S. GLOBAL CHANGE RESEARCH PROGRAM, GLOBAL CLIMATE CHANGE IMPACTS IN THE U.S.: SOUTHWEST 129, available at <<http://www.globalchange.gov/images/cir/pdf/southwest.pdf>>.

<sup>21</sup>See *id.*; see also Richard Seager et al., *Model Projections of an Imminent Transition to a More Arid Climate in Southwestern North America*, 316 *Sci.* 1181 (2007).

<sup>22</sup>See HANNA, *supra* note 3, at 20-22.

<sup>23</sup>LEAR, *supra* note 10, at 6 (2006).

remove them from areas where demand for settlement by non-Indians was high. The policies involved two approaches. First, removal policies forced tribes from all over the country to migrate to the Oklahoma and Kansas territories. The short-lived plan was to create an "Indian territory," where tribes would be left to govern themselves, free from white encroachment.<sup>24</sup> The second approach included the "reservation policies," which entailed greater degrees of confinement and federal control.<sup>25</sup> The reservation approach shrunk the land base promised to tribes, and also imposed federal laws and regulations on some intra-tribal activities.<sup>26</sup>

While these forms of forced relocation are different from the environmental relocations and disruptions occurring or soon to be under way in the Arctic and other regions, they may nonetheless be instructive regarding what enables American Indian nations to make the transition from their aboriginal lands to new terrain. (As the Crow example indicates, "new terrain" does not necessarily mean a wholly different geographic locale. If the natural resource base is decimated due to species loss and other constraints, staying in place can require adapting to new terrain.) A comprehensive study of how all tribes fared under these policies would be ideal, but as a start this article offers a preliminary examination of the Cherokee Nation of Oklahoma in the period after removal and before the Civil War. The Cherokee story provides insight regarding the question of what, beyond money and a new place to live, enables a people not merely to carry on, but to adapt, persist, and perhaps even flourish.

#### A. *The Cherokee Golden Age*

There is a fascinating period in the history of the Cherokee Nation, from 1838 until just before the Civil War, that seems particularly instructive regarding the question of how indigenous peoples might adapt to relocation due to climate change. The Cherokee had been forced to relocate to Oklahoma under President Jackson's removal policy, and yet they managed to reconstitute their society in a way that enabled them, relatively speaking, to prosper. During this period, sometimes referred to as the Cherokee "Golden Age,"<sup>27</sup> the Cherokee managed not only to survive in their new homeland, 800 miles west of the fertile and abundant hills and valleys in the southeast that they had been forced to abandon, but to grow and adapt in a distinctly Cherokee way.<sup>28</sup> To be sure, there were hardships as well as some extremely

violent intra-tribal conflict,<sup>29</sup> but the Cherokee nonetheless managed to foster institution building, governance, and a reasonably prosperous agricultural economy.<sup>30</sup> How and why were the Cherokee able to adapt as successfully as they did? The over-arching structural reason is that they had sufficient political and legal independence to chart their own adaptive path.

In colonial times, the Cherokee were among the largest of the Indian tribes on the southern frontier of America, living in scattered villages throughout the Appalachian Mountains. The first post-colonial treaty between the Cherokee and United States, the Treaty of Hopewell in 1785, restricted their territory, and subsequent agreements resulted, by the 1820s, in a concentration of Cherokee lands in Georgia and Tennessee. Part of the adaptive strategy of the Cherokee during the post-colonial and pre-removal period was to incorporate the elements of white society that could be made consistent with their own traditions. The Cherokee were remarkably successful in this strategy of taking the best from the two cultures.<sup>31</sup> By the mid 1820s, they had a written Cherokee language that had been taught successfully to many tribal members. They had a court system and written laws. They had a Cherokee newspaper, aptly named the *Cherokee Phoenix*, and in 1827, the Cherokee adopted the first written constitution of any Indian nation.

Yet pressure for Cherokee land did not abate. Despite the Cherokee's deliberate efforts to adapt in order to fend off white encroachment, their success was turned against them. The state of Georgia, perceiving the Cherokee as a growing threat, struck a deal with the federal government in 1802 that it would cede its western land claims in exchange for the extinguishment of Indian title within the state. Thus pressure to remove the Cherokee Nation began not long after they had been promised their lands in perpetuity in the Treaty of Hopewell. In American Indian law circles, the Cherokee's attempts to litigate their way out of Georgia's efforts to terminate the separate legal status of the Cherokee are well known. In two cases that have become cornerstones of American Indian law, *Cherokee Nation v. Georgia*<sup>32</sup> and *Worcester v. Georgia*,<sup>33</sup> the Cherokee argued that the Treaty of Hopewell and the relationship that the Treaty cemented between the Cherokee and the federal government foreclosed Georgia's attempts to impose its laws on the Tribe. The Cherokee Nation lost the first case on jurisdictional grounds. The Supreme Court held that the Cherokee could not bring their case as an original matter in the United Supreme Court because the Cherokee Nation was neither a state nor a foreign nation, but rather a "domestic dependent nation."<sup>34</sup>

<sup>24</sup>See ANDERSON ET AL., *supra* note 10, at 50–53 (describing removal policies).

<sup>25</sup>See *id.* at 80–90 (describing reservation policies).

<sup>26</sup>See *id.* at 103–05.

<sup>27</sup>See ROBERT J. CONLEY, *THE CHEROKEE NATION* 167 (U. of New Mexico Press, 2005).

<sup>28</sup>For a detailed and comprehensive history of this period, see WILLIAM G. McLOUGHLIN, *AFTER THE TRAIL OF TEARS: THE CHEROKEES' STRUGGLE FOR SOVEREIGNTY 1839–1880* 59–120 (U. of North Carolina Press, 1993); see also GRANT FOREMAN, *THE FIVE CIVILIZED TRIBES* 360–76 (U. of Oklahoma Press, 1934) (describing Cherokee efforts to establish educational institutions and other civil society organizations).

<sup>29</sup>See McLOUGHLIN, *supra* note 28.

<sup>30</sup>See CONLEY, *supra* note 27, at 169.

<sup>31</sup>See generally RENNARD STRICKLAND, *CHEROKEE LAW FROM CLAN TO COURT* (U. of Oklahoma Press, 1975) (analyzing the evolution of Cherokee law and including many examples of successful integration of Anglo legal principles into distinctly Cherokee institutions).

<sup>32</sup>30 U.S. (5 Pet.) 1 (1831).

<sup>33</sup>31 U.S. (6 Pet.) 515 (1832).

<sup>34</sup>See *Cherokee Nation*, 30 U.S. at 17.

The second case, brought by a non-Indian missionary who had been convicted of the state crime of failing to obtain a license to enter the Cherokee reservation, raised the same substantive issues. This time, the Court ruled against Georgia, and Chief Justice John Marshall outlined the contours of American Indian tribal sovereignty that remain the foundations of much of American Indian law today. As peoples whose sovereignty pre-dated the United States, tribes relinquished only the powers of external foreign relations and the right to convey legal title to property to anyone other than the United States. Otherwise, according to *Worcester*, tribes have control over their members and their territory, and state laws “shall have no force.”<sup>35</sup>

These cases form part of the story of how the Cherokee constructed a bridge between the world that they had created in the Southeast with the world that they would have to start anew in Oklahoma. The story includes a very strong belief in and reliance on law, both the development of Cherokee law and faith in the white man’s adherence to his own rules of law, a faith that was tested repeatedly.<sup>36</sup> Indeed, the Cherokee’s legal efforts were not enough to stave off the forces of removal. Congress passed a removal bill, and the unceasing pressure on the Cherokee eventually resulted in a faction, led by Major Ridge, his son John Ridge, and Elias Boudinot, signing the Removal Treaty of 1835, which acceded to abandoning the Cherokee lands in Georgia in exchange for lands in the Indian Territory.<sup>37</sup> Still, the majority of Cherokee, led by John Ross, refused to leave until, with the threat of military coercion hanging over them, most Cherokee remaining in Georgia were organized into Cherokee-led detachments that left their homelands in the fall of 1838.<sup>38</sup> The march, known as the Trail of Tears, was cruel and brutal; at least four thousand Cherokee died along the way.<sup>39</sup> Yet after they arrived in the Indian territory, despite intense and violent intra-tribal conflict and persistent pressure from an array of outside forces to concede even more land, the Cherokee Nation was able to reestablish its laws, including its Constitution, its schools, its press, and cultivate a stable agrarian and trading economy.<sup>40</sup>

Why were the Cherokee able to adapt to a new territory, amidst intra-tribal turbulence and ceaseless pressure from outside forces? Surely there are answers rooted in various disciplines.<sup>41</sup> But the stories that each of these disciplines might tell is made possible by an over-arching

structural reality that existed for the Cherokee: their legal status as domestic sovereign nations, which provided a measure of political independence. The Cherokee Nation’s sovereignty, recognized in the Cherokee treaties, the Supreme Court’s Cherokee cases, and exercised with vigor on the ground during their brief respite in Oklahoma, allowed Cherokee leaders like John Ross and others, in concert with the people, to chart a path that allowed them to face relocation and upheaval while crafting definitions of how to be Cherokee in changing times. Before removal, political independence allowed the Cherokee to frame their strategy of defending their separate status by adapting and incorporating many Anglo norms and institutions.<sup>42</sup> After removal that foundation carried with them, notwithstanding the many obstacles that had to be overcome, not least of which was reuniting a people that had been riven by different responses to the removal policies.<sup>43</sup> In short, political independence, (a function of tribal sovereignty) gave the Cherokee the breathing room to forge a uniquely Cherokee path that could succeed even in radically different circumstances.<sup>44</sup> Success did not mean complete assimilation. Rather, for the Cherokee it meant internalization of some rule of law norms and forms with simultaneous retention of core Cherokee values.<sup>45</sup> And importantly, it also meant securing the very same political independence that had made adaptation in a new land possible.<sup>46</sup> Devastatingly for the Cherokee, this political independence was short-lived. The Civil War, followed by the government’s policies of allotment and assimilation, unraveled the advances of the Golden Age and put the Cherokee in a situation, politically, economically, and culturally, of nearly starting from scratch in the twentieth century.<sup>47</sup>

### B. Preliminary implications and directions for research

The Cherokee Golden Age, explored only preliminarily here, provides reason to think that additional research might illuminate the various components necessary for American Indian tribes to adapt to climate change. Removal and Reservation policies affected virtually all American Indian tribes in the lower forty-eight states.<sup>48</sup> Comprehensive study of the tribes that fared relatively well, and comparison with those that did not, might reveal key components of success. I hypothesize here that one component is the legal structure and *de facto* exercise

<sup>35</sup>See *Worcester*, 31 U.S. at 561.

<sup>36</sup>See GRANT FOREMAN, *INDIAN REMOVAL* 234–36 (U. of Oklahoma Press, 1989) (describing Cherokee reactions to the *Cherokee Nation* case as well as their subsequent hope that Congress would stave off removal).

<sup>37</sup>See MORRIS L. WARDELL, *THE CHEROKEE NATION* 8–10 (U. of Oklahoma Press, 1938).

<sup>38</sup>See FOREMAN, *supra* note 36, at 294–312.

<sup>39</sup>See THEDA PERDUE AND MICHAEL D. GREEN, *THE CHEROKEE NATION AND THE TRAIL OF TEARS* 116–40 (Viking, 2007).

<sup>40</sup>See CONLEY, *supra* note 27, at 167–68.

<sup>41</sup>See, e.g., RUSSELL THORNTON, *THE CHEROKEES: A POPULATION HISTORY* 87–89 (U. Nebraska Press, 1990) (noting Cherokee population recovery starting after 1852, but also comparing the removed Cherokee numbers to the more stable population growth of the eastern Cherokee).

<sup>42</sup>See PERDUE AND GREEN, *supra* note 39, at 20, 34–36, 38–41 (describing Cherokee cultural and governmental innovations and reforms).

<sup>43</sup>See WARDELL, *supra* note 37, at 47–61 (describing conflict between the three groups of Cherokees reunited in the Oklahoma territory—the Old Settlers, the Treaty Party, and John Ross’s followers).

<sup>44</sup>See ANDREW DENSON, *DEMANDING THE CHEROKEE NATION* 49–50 (U. of Nebraska Press 2004).

<sup>45</sup>See *LAWS OF THE CHEROKEE NATION PASSED DURING THE YEARS 1839–1867* (Scholarly Resources, Inc. 1973: 1868).

<sup>46</sup>See DENSON, *supra* note 44, at 50.

<sup>47</sup>See CONLEY, *supra* note 27, at 179–206.

<sup>48</sup>See COHEN’S *HANDBOOK OF FEDERAL INDIAN LAW* 45–54, 64–69 (LexisNexis, 2005 ed.).

of tribal self-governance. Another might be a tribe's self-narration of their survival and success as a people. How much difference, for example, does the story of the "Trail of Tears" itself make? Today, the Cherokee Nation commemorates the Trail of Tears in song, through dramatic reenactment, and various other events of cultural significance.<sup>49</sup> Like the biblical tale of Exodus, it is as much about the formation and strengthening of identity as it is about the losses endured on the trail of exile. Certainly other recurring factors—strong leadership, sufficient natural resources, relative insulation from non-Indian encroachment—will emerge. When the challenge posed is climate change, which entails pervasive effects on land and resources, one of the most important factors to consider will be the land's ability to sustain a people, its culture, and its economy. The remarkable stories of tribal survival, despite the many federal policies aimed at eradicating the separate existence of Indian nations, provide ample territory for research.

### CONCLUSION

What are the lessons for the Native villages and other indigenous peoples throughout the country as they face these modern versions of forced relocation and/or shrinking of their reservation resources? If the goal is to perpetuate indigenous peoples as such, then adaptation must include support for Native self-governance. Certainly funding for relocation, acquisition of new land, and related adaptive strategies are necessary.<sup>50</sup> But monetary

and technical support is not sufficient. Given that we are already well into the phase of having to adapt to climate change's increasingly intense and pervasive effects, we should support governance structures that will allow indigenous peoples to chart their own path in a world that has no precedents. Research, in cooperation and consultation with tribes, concerning what enabled them to survive earlier relocations and disruptions might be a key component of formulating appropriate sovereignty-promoting policies today. The Native Village of Newtok, as it adapts to a new location, will simultaneously have to adapt (again and again) to the Arctic's changing ecology. When the material circumstances of a culture and economy are up for grabs, strengthening the community's ability to ride that rough wave may be the best, perhaps only, adaptation policy that matters.

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The author disclosed no conflicts.

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<sup>49</sup>See Cherokee Heritage Center Website, <[www.cherokeeheritage.org](http://www.cherokeeheritage.org)> (last visited April 29, 2011), listing several such events, including a Trail of Tears Art Show.

<sup>50</sup>See *Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion*, *supra* note 14. In addition, federal coordination and designation of a lead agency would help. *See id.*