

Werner Gephart/Jure Leko (Eds.)
In the Realm of Corona Normativities II

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Werner Gephart/Jure Leko (Eds.)

In the Realm of Corona Normativities II

The Permanence
of the Exception



VITTORIO KLOSTERMANN
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Sabine N. Meyer

Covid-19 as a Magnifying Glass: Native America between Vulnerability and (Self-)Empowerment

Introduction

Covid-19 has taken a tremendous toll in Indian country and led to an enormous amount of physical and psychological suffering. As various recent analyses have demonstrated, Native communities have been affected disproportionately by the pandemic. Studies reveal that incidence rates among Indigenous persons are 3.5 higher than those of non-Hispanic/Latinx whites. And a recent report from APM Research Lab states that one in 475 American Indians and Alaska Native populations has died from Covid-19, compared to one in 825 for white Americans and one in 645 for Black Americans. Disproportionate mortality rates are particularly shocking in certain regions such as New Mexico where Native Americans account for 44 % of Covid-19 deaths despite merely constituting 11 % of the state's population. Native communities in Arizona have witnessed nearly 22 % of Covid-19 deaths even though they only make up 2 % of that state's population. And all these numbers, analysts suggest, are underestimates due to a lack of reliable and accurate Covid-19 data.¹ The most vulnerable group within Native communities has been the elder members, whose loss has caused not only great emotional pain but also immense anxieties concerning the future of Indigenous cultures and languages. Tribal elders are keepers of Indigenous languages, knowledge and history, which are passed down orally from generation to generation. As Monica Harvey (Navajo) has put it: »When you lose an elder, you lose a part of yourself. You lose a connection to history, our stories, our culture, our traditions.«²

Harvey's words, along with statistics such as the ones above, are good starting points for an article that endeavors to offer first reflections on the impact of Covid-19 on Native America, with a particular focus on the realms of law, politics, and culture. As I will show, the pandemic has functioned like a magnifying glass:

¹ Cf. Yellow Horse/Huyser: Indigenous Data Sovereignty and COVID-19 Data Issues for American Indian and Alaska Native Tribes and Populations; cf. O'Keefe/Walls: Indigenous Communities Demonstrate Innovation and Strength Despite Unequal Losses during COVID-19; Howard-Bobiwash/Joe/Lobo: Concrete Lessons, p. 3.

² Voice of America News: Native American Tribes Try to Protect Elders.

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it has illuminated the legacy and enduring power of settler colonial policies and laws to create landscapes of disadvantage and discrimination and states of vulnerability. By throwing into relief deficient, unjust, and discriminatory structures, the pandemic has highlighted the necessity and inevitability of legal-political change: the implementation of robust structures of equality and Native self-determination and the consequent acknowledgment of Native sovereignty by federal and state governments. As their fight against the containment of Covid-19 has once again demonstrated, Native communities have the capacity and power to lead and manage their own affairs and to mobilize their members through arts, storytelling, and other Indigenous cultural practices. The comparative analysis of Native practices of resistance to Covid-19 in the realms of law, politics, and culture unearths the inextricable and efficient intertwinement of politics and aesthetics and the power of community in Native America.

1. Federal Indian Law and Its Creation of Landscapes of Neglect and Vulnerability

I would like to start my discussion of federal Indian law and its creation of landscapes of neglect and vulnerability in Native America with a work of art by J. NiCole Hatfield (Comanche and Kiowa) (fig. 1). Hatfield was asked to produce artwork in response to the pandemic by *IllumiNative*, a Native-founded and -led organizational network that seeks to work for the greater visibility of Native Americans by bringing together »Native storytellers, artists, youth, organizers, tribal and grassroots leaders as well as non-Native partners in entertainment, media and social justice.«³ The group of works Hatfield created ended up playing a central role in the network's campaign *Warrior Up*, through which *IllumiNative* sought to mobilize Native peoples and artists to publicly stand up and speak out in the fight against Covid-19.⁴ While being offered to activists for download and sharing, Hatfield's piece below was also chosen for the cover of a recently published report, *The Impact of COVID-19 on Indigenous People*, which was presented by *IllumiNative* and other Native organizations.⁵

Hatfield's artwork is suggestive of the complex ways in which law, culture, and community have interacted in precipitating as well as handling the Covid-19 crisis. At the center of the piece, we see two Native women with masks and gloves, who hug each other in tight embrace. Notably, these two women are drawn on the page

³ *IllumiNative*: Homepage.

⁴ Cf. *IllumiNative*: *Warrior Up*.

⁵ Unbound Philanthropy: *The Impact of COVID-19 on Indigenous People*.



Fig. 1: J. NiCole Hatfield, *Keep Them Safe*, Ledger Art, 2020.
 (Original color artwork reproduced in black and white for publication)

of a historical ledger dating back to the year 1904, with the original handwriting shining through the bright colors of their clothes. In the history of settler colonization, ledger books were used by government agents to make Native lands and lives legible and quantifiable within settler colonial taxonomies and regimes of knowledge. The data collected in these books provided the statistical foundation on the basis of which federal Indian laws and policies such as Removal, Assimilation and Allotment, or Termination were designed. They also served to document how laws and policies were put into action, that is, how *thoroughly* officials

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and settlers on the ground realized the federal government's objectives to expel and dispossess Native individuals and communities, to assimilate them to settler colonial ways of living – in short, to extend its administrative and regulatory control over Native bodies, lands, and lives. Hence, rather than being mere historical documents, many of these ledgers have, until the present day, maintained their efficacy – they are still consulted, often by Native Americans themselves, to determine Native forms of belonging in the contexts of struggles over tribal citizenship or land rights.⁶

Drawing two Native women in their attempt to protect themselves and each other against Covid-19 on the page of a historical government ledger containing federal administrative data, Hatfield encourages us to view the pandemic through the lens of history – to analyze it in light of settler colonial bureaucracy, laws, and policies. Native lives have unfolded themselves against the backdrop of a settler colonial legal-political order, which has determined Native subjectivities, forms of social organization, governance, and health. Hatfield's artwork encourages viewers to reflect on the relation between the drastic impact of Covid-19 on Native American communities and past and present workings of the settler state. These workings may be illustrated best by focusing on federal Indian law.⁷ Federal Indian law, as Native and non-Native scholars, activists, and politicians have pointed out, has been responsible for creating the inequitable structures and disadvantages that have made Native Americans one of the populations most vulnerable to Covid-19. Through federal laws and policies, Native Americans were decimated, deprived of their tangible and intangible property, separated from their kith and kin; such laws and policies also sought to suppress Native culture. The structural and direct violence emanating from these laws and policies has exerted a tremendous psychological toll on Native individuals and communities and has had a devastating impact on their forms of social organization, governance, and landholdings. And even in the era of so-called Indian Self-Determination, which was inaugurated in the 1970s, the federal government has greatly neglected its special trust relation-

⁶ The Cherokee Nation, for instance, determines tribal citizenship on the basis of the Final Rolls that were compiled by the Dawes Commission in the context of allotment (cf. Ray: *A Race or a Nation?*). Much more could be said about these ledgers and the tradition of using these ledgers by Native Americans. For recent scholarship on Native ledger art as a practice of resistance; see Fuller: *Critical Hermeneutics and the Counter Narrative of Ledger Art*; see also Pearce, Richard: *Women and Ledger Art: Four Contemporary Native American Artists*.

⁷ Federal Indian law is the body of law developed to govern and define the legal relationships between Native tribes, federal and state governments with respect to treaty rights, issues of real property, jurisdiction, administrative law, criminal law, issues of economic development, health care, etc. The body of laws that constitute the field of federal Indian law encompasses select provisions of the U.S. Constitution, treaties between the United States and Native nations, Congressional statutes, executive orders, and a great number of court decisions reaching back to the early 19th century; see also Duthu: *Federal Indian Law*; Fletcher: *Federal Indian Law*; and Hoss/Tanana: *Upholding Sovereignty and Promoting Tribal Public Health Capacity during the COVID-19 Pandemic*.

ship with the Native nations. Anchored in the U.S. Constitution and specified by numerous treaties between the federal government and Native nations, Supreme Court decisions, regulations, laws, and executive orders, this trust relationship obligates the federal government to advance tribal self-government, to provide services and support to Native Americans, to promote the welfare of Native American communities, and to protect their lands and resources. It is Congress's duty to fund this special trust relationship appropriately via legislation.⁸ As Native Americans have repeatedly pointed out and as the U.S. Commission of Civil Rights has highlighted in its 2018 briefing report *Broken Promises*, the U.S. government has reneged on its trust obligations, having not »provid[ed] adequate assistance to support the interconnected needs of Native Americans such as local infrastructure, self-governance, housing, education, health, and economic development.«⁹ The end result of such failure is »that Native Americans face significant inequities among major criminal and public safety, health, education, housing, and economic measures compared to the rest of the nation and non-Native people.«¹⁰ In the area of health, for example, the government-funded Indian Health Service (IHS) spent \$3,332 per person in 2017 compared to \$9,207 per person in federal health care nationwide. Native lives and communities have been systematically »degraded,« to use the Commission's own words.¹¹

As in other pandemics in the past,¹² Covid-19 has thrown into stark relief the past and present failure of the United States to live up to its trust obligation. Tribal health infrastructure is highly deficient, homes are overcrowded, broadband is missing, and Native communities have poor access to transportation, electricity, and water, and hence are easy prey to the virus.¹³ In a hearing before the Committee on Indian Affairs United States Senate on February 24, 2021, representatives of Native communities and organizations from across the country drew a direct link between the utter vulnerability of Indian country to Covid-19 and the »centuries of colonial violence and neglect.«¹⁴ »Covid-19,« it is said in the statement by the United South and Eastern Tribes Sovereignty and Protection Fund (USET SPF), »is exposing the ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation [...]. The nation and world are witnessing the deadly consequences of [federal] neglect, as Covid-19 spreads

⁸ Cf. U.S. Commission on Civil Rights: *Broken Promises*.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*, pp. 66–67, 203.

¹² See Doshi et al.: *The COVID-19 Response in Indian Country*, for further examples such as the 1918 flu and the H1N1 virus, which hit Indian country hardest.

¹³ *Ibid.*, para. 43; Howard-Bobiwash/Joe/Lobo: *Concrete Lessons*, p. 7.

¹⁴ *Ibid.*, para. 1; see the speeches by Fawn Sharp, President of the National Congress of American Indians and the statement of the United South and Eastern Tribes Sovereignty and Protection Fund, in: *United States Congress: A Call to Action*, pp. 4, 67.

through Tribal communities [...].¹⁵ »The health of American Indians and Alaska Natives,« Hoss and Tanana argue in a similar vein, »is intrinsically tied to federal law and reliant upon the federal government fulfilling its treaty obligations and trust responsibilities.«¹⁶

The inextricable connection between the vulnerability of Native American communities, the workings of federal Indian law, and the U.S. government's neglect of trust responsibilities became blatantly obvious in the first year of the pandemic, particularly in three areas of federal-tribal interaction: conflicts over the degree of Native sovereignty in the context of tribal efforts to contain Covid-19, the federal government's setting up of the Coronavirus Relief Fund, and the issue of data collection for governmental purposes.

After the outbreak of the pandemic tribal governments were quick to implement measures against the further spread of the virus. Some of these measures, in particular the enforcement of travel restrictions, curfews, and the setting up of checkpoints on roads entering reservations, evoked resistance from non-Natives and their political representatives, who were skeptical of the right of tribes to exert regulatory power over nonmembers. Their skepticism has been fed by countless federal court rulings over the years that express doubts of such tribal authority over nonmembers or restrict such authority to situations in which the conduct of the nonmember »threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe«¹⁷ – a formulation leaving it to the courts to decide whose lives matter most. In response to the checkpoints put up by Cheyenne River Sioux and Oglala Sioux in April 2020, South Dakota Governor Kristi Noem threatened them with litigation and asked the White House and the Department of the Interior to end »these unlawful tribal checkpoints/blockades« on state and federal highways. The Bureau of Indian Affairs then reprimanded the Cheyenne River Sioux for not having consulted with the state and »threaten[ed] the Tribe's Public Law 93-638 law enforcement contract through an unlawful emergency reassumption – imperiling Tribal public safety as well as public health,« as tribal leaders point out in the lawsuit they then filed in June 2020. The plaintiffs also claim that the White House Chief of Staff threatened the security of the federal government's relief fund for the tribe if it was used for such containment measures.¹⁸ The actions of Noem and the Trump adminis-

¹⁵ United States Congress: A Call to Action, pp. 67, 72.

¹⁶ Ibid., p. 78.

¹⁷ Cf. *Montana vs. United States* (1981), qtd. in Fletcher: Indian Lives Matter, p. 41; for further information and examples of court rulings on the issue of tribal civil jurisdiction over nonmembers, see Fletcher: Tribal Civil, Criminal, and Regulatory Jurisdiction.

¹⁸ Cf. United States District Court for the District of Columbia: *Cheyenne River Sioux Tribe v. Donald J. Trump et al.*; United States Congress: A Call to Action, p. 69; for other examples of states undermining Native efforts at containing COVID-19, see Doshi et al.: The COVID-19 Response in Indian Country, para. 16.

tration, as the complaint argues, did not only undermine Native sovereignty and jurisdiction over tribal lands, but also thwarted tribal efforts to contain the pandemic. In the eyes of federal and state governments, Native lives seem to matter less than those of non-Natives.

The power of federal Indian law to determine Native health and degrees of vulnerability became also visible in the federal government's handling of Corona-relief funds. Of all the Covid-19 bills passed by Congress in the first year of the pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law by President Trump on March 27, 2020, was the most significant one. While tribal governments were relieved to receive funds at all, the CARES Act only allocated 5 percent of the \$2.2 trillion in aid to them. Through the Coronavirus Relief Fund that the act established, tribal governments were supposed to receive \$8 billion in direct assistance. In addition, the IHS received \$1.032 billion to fund IHS, Tribal, and Urban Indian Organization programs.¹⁹ Besides pointing out the insufficiency of the funding,²⁰ Native leaders and non-partisan policy institutes criticized the government's management of the allocated funds. Neither did the Treasury Department disburse any money until well after the deadline determined by Congress. Nor did it allocate the full amount of funds (instead only \$4.8 billion). »Data leaks, legal challenges, and inexcusable delays have marred the entire process, forcing tribes to spend money that they don't have to run basic services,« a report of the Center for American Progress summarizes federal government's distribution of CARES Act funds.²¹ Tribal leaders also complained that Native communities were not included in the national vaccine strategy, which resulted in a lack of test kits, protective and medical equipment, and vaccines. In addition, access of tribal governments and the IHS to the Strategic National Stockpile, a stockpile of vaccines, medicines, and medical equipment reserved for public health emergencies, was restricted and not guaranteed.²² Even worse, Native nations had to choose whether to receive vaccines from the IHS or the state; *wrong* decisions could have dramatic consequences.²³ Similar to historical examples of pandemic relief legislation, such as the Indian Vaccination Act of 1832,²⁴ the CARES Act was set up without proper input from and consultation with Native Americans. Federal legislation, critics of the act argued, should be

¹⁹ Cf. United States Congress: A Call to Action, p. 4; Hoss/Tanana: Upholding Sovereignty and Promoting Tribal Public Health Capacity during the COVID-19 Pandemic.

²⁰ The representatives of the NCAI demanded \$15 billion for tribal health and \$20 billion in direct aid to tribal governments, cf. United States Congress: A Call to Action, p. 4.

²¹ Doshi et al.: The COVID-19 Response in Indian Country, para. 6.

²² Hoss: COVID-19 and Tribes: The Structural Violence of Federal Indian Law, para. 6.

²³ Cf. United States Congress: A Call to Action, p. 6; Doshi et al.: The COVID-19 Response in Indian Country, para. 10.

²⁴ For more information on the history of the Indian Vaccination Act, see Pearson: Lewis Cass and the Politics of Disease.

grounded in Native sovereignty and allow tribal governments more self-determination in how to use funding.²⁵ And if we believe the transcript of the aforementioned trial, then the Corona-relief funds of the CARES Act were also used, at least in some occasions, to whip tribal governments into compliance with federal ideas about the extent of Native sovereignty. While the act was presented by government officials as a noble gesture, as a sign of responsibility, generosity, and care on the part of the federal government, such praises must not hide the fact that the act was also a demonstration of federal power over Native nations that – as the checkpoint episode suggests – not rarely, and perhaps not accidentally, brought with it the infringement of Native sovereignty and self-determination.

Hatfield's Covid-19 artwork (cf. fig. 1) also draws our attention to the historical significance of numbers for the incorporation of Native lands and lives into settler colonial bureaucratic regimes and the conception of settler colonial law and policy, in particular during pandemic times. By placing the two Native women on settler colonial data and administrative information, which shine through their clothes, Hatfield alludes to the complex relationship between the (in)visibility of Native lives and state systems of bureaucratic representation. By having their lives translated into numbers and recorded, Native Americans become visible and are rendered intelligible to the state and its representatives and may reap the beneficial aspects of the trust relationship with the government. This visibility, however, comes at a price. The sober numerical representations and well-ordered tables on the ledger page stand in stark contrast to the Native women's multi-patterned and -colored clothes and their uncontainable emotions. And the amount of »baskets,«²⁶ counted to account for economic output and possibilities of trade, does in no way capture the meaning of corn for the lives of the two women. Being represented via the state's bureaucratic and administrative registers entails the risk of being made legible on the state's own terms that, more often than not, contradict Indigenous self-perceptions and self-understandings. By integrating Native lives into Western regimes of bureaucracy and administration, the state exerts its sovereign power over them; it defines what it means to be *Indian*.

In the legal-political debates about the federal government's response to Covid-19 in Indian country, its use of bureaucratic registers and data has been a highly controversial issue. »Government actions,« as Fawn Sharp has argued before the Committee on Indian Affairs United States Senate, »are often data-driven.«²⁷ When determining the distribution of the Coronavirus Relief Fund, the Department of the Treasury chose to rely on census-based data rather than on the enrollment data provided by tribal governments, even though it is common

²⁵ Cf. Doshi et al.: The COVID-19 Response in Indian Country, para. 7.

²⁶ I read »By bask« as an abbreviation of »by basket«.

²⁷ United States Congress: A Call to Action, p. 6.

knowledge that Native Americans have historically been the most undercounted group on the U.S. census.²⁸ As a consequence, several tribes barely received any funding or received far less funding than they were eligible for according to their own tribal enrollment numbers.²⁹ The Center for American Progress has even argued that state and federal governments »deliberately exclu[ded]« Native Americans from their collection of demographic data relating to Covid-19. In May 2020, nearly half of the states that had published racial demographic data relating to Covid-19 infections did not identify American Indians and Alaska Natives as a distinct group, instead grouping them under the category of »Other.«³⁰ The Centers for Disease Control and Prevention (CDC), the major player in the national fight against Covid-19, refused to give out Covid-19 related data to tribal epidemiologists but readily made this data available to state agencies.³¹ Tribal leaders also complained of »data leaks,« that is, »the unauthorized public release of tribal data during the Coronavirus Relief Fund« and of government agencies transferring tribal datasets amongst each other, using tribal data out of the context they were designed for and without tribal consent.³² State and federal governments' collection and use of data has distorted and downplayed the severity of the Covid-19 crisis in Indian country and occluded existing health disparities and inequalities. It has negatively impacted U.S. policymaking and government action, as well as tribal crisis management. Lack of health data or flawed datasets have made it difficult for state, federal, and tribal governments, as well as Native organizations, to trace and interpret the development of the pandemic in Indian country and to come up with appropriate policies and actions.³³ Lacking or flawed data have thus directly impacted Native lives: the failure of the federal and state governments to produce reliable data reflecting outbreak, development, and the impact of Covid-19 on Native communities and individuals has rendered them, to a great extent, invisible in public health discourse. It has greatly downplayed Native rates of infection and deaths and left unseen the extent to which Native vulnerability to Covid-19 is inextricably tied to the inequities and disadvantages that federal Indian law and policies have produced over the past centuries. The federal government's refusal to respect – what has become known in scholarly jargon as – »Native data sovereignty,«³⁴ that is, its refusal to work with data collected and certified by the tribes themselves, has led to severe underfunding of tribal

²⁸ Cf. Kesslen: Native Americans, the Census' Most Undercounted Racial Group, Fight for an Accurate 2020 Tally.

²⁹ Cf. Doshi et al.: The COVID-19 Response in Indian Country, para. 4.

³⁰ Ibid., para. 4.

³¹ Cf. Yellow Horse/Huyser: Indigenous Data Sovereignty and COVID-19.

³² United States Congress: A Call to Action, p. 12.

³³ Cf. Hoss: COVID-19 and Tribes: The Structural Violence of Federal Indian Law, para. 8.

³⁴ Cf. Kukutai/Taylor: Indigenous Data Sovereignty: Native data sovereignty is here defined as »the inherent authority of Tribal Nations to govern data about their peoples, lands, and resources.«

governments during the pandemic and has left Native communities ill-equipped to contain the pandemic and to shoulder the breakdown of their economies.³⁵

If federal agencies did produce Covid-19 related datasets of Native Americans, these datasets often delivered distorted images of Native American personal and communal efforts to counter the pandemic. Thus, the reports on vaccine series completion rates among demographic groups that the CDC regularly issues during the pandemic stated in March 2021: »The lowest series completion rate (83.7%) and the highest prevalence of missing the second dose (5.1%) was among AI/AN persons.«³⁶ Reported without further comment and without any contextualization, this data suggests the availability of vaccines for Native Americans, on the one hand, and the lack of capability/responsibility among those receiving them, on the other. Read in light of the discourse of »vaccine hesitancy« that has been prominent in American political discourse³⁷ as well as the media, emphasizing that Native Americans are more hesitant to get vaccinated than the rest of the population, such data creates images of Native Americans as adverse to modern science, ignorant, backward-oriented, and unable to manage their own affairs, including their health.³⁸ The CDC's numbers also cover up Native Americans' often limited access to vaccines and the mismanagement of vaccination campaigns by the federal government. As late as April 2021, Congressmen Mike Garcia and Raul Ruiz addressed in Congress the lack of »Covid-19 vaccination equity,« stressing that vaccine access is a far greater problem than vaccine hesitancy. »Communities of color,« Ruiz emphasized, »are receiving vaccines at a lower rate than their White counterparts.«³⁹ Native-led surveys have highlighted other structural barriers to access vaccines, such as distance to clinics and vaccine cost.⁴⁰ Numbers signifying *vaccine incapacity*, together with the discourse of *vaccine hesitancy*, shift the blame for the severity of Covid-19 in tribal communities to the victims themselves and render invisible the enormous efforts and contributions of Native governments and organizations in the vaccine rollout as well as the willingness of individual Native Americans to get vaccinated in order to protect their commu-

³⁵ Cf. Yellow Horse/Huyser: Indigenous Data Sovereignty and COVID-19; United States Congress: A Call to Action, p. 11.

³⁶ Kriss et al.: COVID-19 Vaccine Second-Dose Completion and Interval between First and Second Doses among Vaccinated Persons, p. 389.

³⁷ See the question concerning »vaccine hesitancy« among Native communities asked by the Committee Chairman in the hearing of tribal leaders in February 2021, in: United States Congress: A Call to Action, p. 44.

³⁸ Cf. Coburn: Contrary to Sensational Reporting, Indigenous People Aren't Scared of a COVID-19 Vaccine.

³⁹ United States Congress: Encouraging Cosponsorship of Tri-Caucus COVID-19 Vaccination Equity; United States Congress: Memorializing the Intent of the Tribal Portion of the Coronavirus Relief Fund in the Coronavirus Aid, Relief, and Economic Security Act.

⁴⁰ Cf. Urban Indian Health Institute: Strengthening Vaccine Efforts in Indian Country, p. 7.

nities.⁴¹ The settler state's production and distribution of Native-related Covid-19 datasets thus comes at a high price in that it presents Native communities as desperately in need of federal intervention. As Hatfield suggests in her artwork and as the Covid-19 pandemic demonstrates, being represented via the state's bureaucratic and administrative registers means being represented on the state's own terms. From the point of view of the Indigenous who are represented, state representations are, more often than not, misrepresentations, reinforcing existing hierarchies and power structures.

2. Native Leadership, Managerial Capacity, and Self-Determination during the Pandemic

I would like to begin the second part of my article with a piece of Native art that was also produced for the Warrior Up campaign by *IllumiNative*. In his work of street art, Steven Paul Judd (Kiowa-Choctaw) returns to history, too. While Hatfield reminds her viewers that Native suffering during the pandemic can only be understood against the backdrop of a long history of colonization and oppression, Judd's art focuses on Native acts of survival and resistance in past health crises, such as the smallpox pandemic in the 1830s, with the aim to instill hope that tribal communities will once again persist by fighting Covid-19 with their own Indigenous weapons, which are embodied by the arrows shot by a traditionally clothed warrior.

As shown above, the Covid-19 pandemic has thrown into relief existing landscapes of vulnerability in Indian country that have resulted both from a long history of settler colonial violence and oppression and from ongoing federal mismanagement and neglect. Yet at the same time, the pandemic has enabled the world to see tribal governments' and organizations' effective crisis management and hence Native capacity for leadership, resistance, and survival. Native suffering and tribal measures taken against the spread of the virus have led to heightened coverage by major media outlets and have sparked public interest in the issue of tribal sovereignty. The pandemic and its representation in the media have thus opened up a discursive space Native leaders have been using effectively to demand the expansion of tribal self-governance and – what has been called – the overhauling of the trust relationship. Finally, the pandemic has provided fertile ground for Native digital activism. What is most noteworthy about the online campaigns against Covid-19 is their moving far beyond the medical and educational spheres. Native individuals, networks, community organizations, and activist groups have turned

⁴¹ See, for instance, the results of the survey conducted by the Urban Indian Health Institute: *Strengthening Vaccine Efforts in Indian Country*.



Fig. 2: Steven P. Judd, Street Art, 2020.
(Original color artwork reproduced in black and white for publication)

to Indigenous artwork, comedy, and storytelling to empower Native Americans across the United States.

Native efforts of curbing the spread of the virus have included the implementation of laws and policies as well as public health measures by tribal governments, such as incident command systems, call centers, stay-at-home orders, road blockades, and curfews.⁴² In addition, tribal health organizations, community centers,

⁴² For more examples of the COVID-19 management of tribal nations, see Native Governance Center: How Does Tribal Sovereignty Operate during COVID-19?

persönliches Exemplar für
Frau Sabine N. Meyer

and nonprofits have been playing a critical role in stopping the spread of the virus by providing information, distributing educational materials, and hosting informational events.⁴³ Native political representatives and organizations have also worked hard to replace the discourse of Native vaccine hesitancy by one of Native vaccine acceptance. In the hearing before the Committee on Indian Affairs United States Senate, Native leaders emphasized the high vaccination rates among their constituents. In Alaska, for instance, Julie Kitka from the Alaska Federation of Natives argued, the »tribal health system leads the nation in vaccination rates.«⁴⁴ In January 2021, the Urban Indian Health Institute (UIHI), one of twelve Tribal Epidemiology Centers in the United States serving urban Indigenous health programs nationwide, presented the results of a survey titled »Strengthening Vaccine Efforts in Indian Country,« which it had conducted in December 2020. While the UIHI grants that »historic distrust, rooted in the legacy of colonialism, genocide, and medical experimentation, *may* contribute to vaccine hesitancy,« its survey results emphasize »Covid-19 vaccine acceptance.«⁴⁵ UIHI emphasizes that seventy-five percent of all Native survey participants positioned themselves in favor of getting vaccinated out of responsibility for their community and due to their wish to preserve Native culture:

»Participants shared that vaccination was a way to protect Native communities and preserve cultural ways. Many shared that their decision to be vaccinated stemmed from a sense of duty, respect, and love for community. Some even thought of vaccination as a form of resistance to longstanding colonial and racist violence. Many participants felt or understood others' hesitancy towards getting the vaccine. Despite systemic injustice and skepticism of vaccine development, their love for Native people and wish to prevent unnecessary deaths and illness ultimately outweighed potential risks from the vaccine.«⁴⁶

Participants who declared unwilling to receive the vaccine, the survey points out, expressed their great trust in tribal clinics and doctors. Thus, they were not against vaccination per se but rather skeptical of the vaccine efforts of federal government organizations, such as the CDC, Food and Drug Administration, and the National Institutes of Health.⁴⁷ What is most noteworthy about this study, however, is its employment of an »Indigenous research methodology,« which combines qualitative data analysis with Native »stories of strength and resilience.«⁴⁸ By creating

⁴³ As one of many examples, see the activities of the National Council of Urban Indian Health as described on their website; National Council of Urban Indian Health: Coronavirus Resource Center.

⁴⁴ United States Congress: A Call to Action, p. 42.

⁴⁵ Urban Indian Health Institute: Strengthening Vaccine Efforts in Indian Country, p. 7; italics by the author.

⁴⁶ Ibid., p. 34.

⁴⁷ Cf. *ibid.*, pp. 2, 22–24.

⁴⁸ Ibid., p. 34.

a visual contrast between the abstract, sober numbers on the ledger page and the Native women's colorful clothes and their emotional embrace, Hatfield's artwork (fig. 1) points viewers' attention to the way in which data alone is unable to create an understanding of the actual suffering of Native people and their lived experiences during the pandemic. By embedding its datasets in personal stories, UIHI contributes to such understanding. One survey respondent, for instance, describes their attitude toward the vaccine as follows:

»It [the vaccine] is the only real precautionary and preventative step the US Federal government is providing the people. Although the US government should have and could have done so much more for all people living here, if we turn down the vaccine, we not only risk our lives and the lives of others [...] we undermine all the struggles our tribes have gone through to keep our people safe. Even when the US government has directly worked against our tribal checkpoints and safety efforts. To not get vaccinated, is to say the US government's failure to protect the people is right, and our tribal efforts, wisdom, and courage is wrong.«⁴⁹

This response, as well as many others, demonstrates that being vaccinated means much more to a great number of Native Americans than protecting one's own or one's family's health or being able to return to one's professional or social lives. Getting the vaccine serves to protect entire communities: their members, culture, language. It is seen as an act of resistance against past and ongoing acts of colonization and oppression and as the only way to make possible Indigenous futures.⁵⁰ From the respondent's viewpoint, to refuse the vaccine is a slap in the face of hundreds of years of Native resistance to settler colonial violence and oppression and a nod to past and ongoing federal Indian laws and policies. By referencing the smallpox (fig. 2), Judd's art similarly conceptualizes vaccination as an act of survival and resistance: for the smallpox could only be uprooted by Native Americans' acceptance of the government-administered vaccines. Overall, Native-led vaccine campaigns, such as that by UIHI, have supported the vaccine effort in Native communities and have demonstrated that getting vaccinated is, for many Native Americans, both medical and political praxis. Native vaccine rollout campaigns have not only worked against the further spread of Covid-19 but also against allegations of Native vaccine hesitancy. They have sought to replace assumptions of backwardness, irresponsibility, and ignorance by evidence of tribal leadership, self-governance, and sovereignty.⁵¹

The media's frequent reports about pandemic exercises of tribal sovereignty, in combination with those about the federal government's continuous infringement

⁴⁹ Ibid., p. 37.

⁵⁰ Not incidentally, UIHI's Vaccination survey is part of a greater survey called Indigenous Futures.

⁵¹ See also Jones: COVID-19 Vaccine Rollout among Indigenous Communities Seen as a Model for Others.

of rights of Native self-governance and its neglect of the trust relationship, have created a discursive space for representatives of Native nations and organizations to voice their demands for greater federal responsibility, the recognition of tribal sovereignty, and the expansion of tribal self-governance. For instance, in its statement prepared for the hearing before the Committee in Indian Affairs United States Senate in February 2021, the USET SPF stated:

»The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship. This change is urgently needed, as the global pandemic exposes for the whole world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations in the fight against COVID-19 [...]. Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dates the founding of the Republic. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold [sic] the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decisionmaking [sic] in the management of our own affairs and governmental services, including jurisdiction over our lands and people. However, the full extent of our inherent sovereignty continues to go unacknowledged and, in some cases, is actively restricted by other units of government, including the federal, as well as state and local governments.«⁵²

This statement once again demonstrates that the Covid-19 pandemic has worked like a magnifying glass, having made visible health disparities, federal neglect, and the ongoing curtailment of Native sovereignty by federal, state, and local governments. USET SPF takes Covid-19 as an opportunity to lay out broad areas of governmental reform: first, the federal government should »provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation« and implement – what USET SPF calls – a »Marshall Plan for Indian Country« through which tribal infrastructure is rebuilt and restored. Because federal funding has resulted from »clear legal and historic obligations,« the trust obligation »exists in perpetuity.« Hence, USET SPDF emphasizes, federal funding cannot and must not be viewed as a grant and tribal governments not as grantees, who need to prove that federal investment is justified. Second, the move away from government paternalism can only succeed through changes in federal Indian law itself, through the passage of laws that remove the »limiting language« of current law and comprehensively expand tribal self-government. Tribal self-governance needs to be expanded »to all federal programs where Tribal Nations are eligible.« Third, USET SPF speaks out in favor of a »Tribal Nation-defined consultation

⁵² United States Congress: A Call to Action, p. 68.

model with dual consent as the basis for strong and respectful diplomatic relations between two equally sovereign nations.« And the requirement of such consultation must be implemented via statute and not via executive order, as it has so far been practiced.⁵³ USET SPF and other critics of federal Indian law argue that such changes in federal Indian law and policy would also have a positive effect on the evolution of the Covid-19 pandemic in Indian country. They would enable Native nations to determine themselves how to use Covid-19 relief funding – an approach that also caters to the diversity of Indian country.⁵⁴ They would encourage federal, state, and local governments to respect Native data sovereignty. Such data sovereignty would entail the use of tribal enrollment data for distributing (relief) funding; the production of datasets that highlight the effect of the pandemic on Native communities; and the empowerment of Native communities to control the use and spread of their own data.⁵⁵ Finally, improved forms of consultation, in particular, would guarantee tribal involvement in the conceptualization of laws and programs affecting Native communities. This would not only give them a meaningful voice in their own governance but it would also heighten the quality and efficiency of these programs. USET SPF even resorts to international law, to the language of Indigenous rights, to strengthen its demands for sovereign equality and tribal consent to government actions: »In the long term, we must return to the achievement of Tribal Nation consent for federal action as a recognition of sovereign equality and as set out by the principles of the United Nations Declaration on the Rights of Indigenous Peoples.«⁵⁶ On July 20, 2020, UN Special Rapporteur on the Rights of the Indigenous Peoples, José Francisco Calí Tzay, had already explained to the international community what the standards and principles of the United Nations Declaration on the Rights of Indigenous Peoples meant during the Covid-19 crisis:

»The essential element for an efficient State response to the pandemic for indigenous peoples is to respect the autonomy of indigenous peoples to manage the situation locally while providing them with the information and the financial and material support they identify as necessary. Coordination between indigenous and non-indigenous authorities as equals is essential to the overall effort to respond to the pandemic. Unfortunately, indigenous peoples appear to have been largely left out of the COVID response. While the level of preparedness for the pandemic was low around the globe, indigenous peoples were even less likely

⁵³ United States Congress: A Call to Action, pp. 71 f.

⁵⁴ Cf. *ibid.*, pp. 68–71.

⁵⁵ Cf. Doshi et al.: The COVID-19 Response in Indian Country, para. 4, 5; cf. Yellow Horse/Huyser: Indigenous Data Sovereignty and COVID-19 Data Issues for American Indian and Alaska Native Tribes and Populations.

⁵⁶ United States Congress: A Call to Action, p. 71; during the Obama presidency the United States eventually signed the Declaration. Even though it is not a legally binding document, this signature expresses a commitment to its principles and standards for the treatment of Indigenous peoples.

to be included in any form of national pandemic contingency plan. Nationwide measures to stop the pandemic were applied to indigenous territories without their free, prior and informed consent and did not take into account the systemic barriers faced by recipients.«⁵⁷

It cannot be assessed to what degree Tzay's appeal has strengthened Native American demands for greater participation, inclusion, and self-determination during the pandemic. Neither can it be gauged to what degree the changes in federal Indian law and policy that we have witnessed since the beginning of the year 2021 are a result of the Covid-19-magnifying glass and the ensuing Native domestic interventions or of the Biden administration taking up work. What can be assessed with certainty, however, is that the American Rescue Plan, the \$1.9 trillion economic stimulus bill passed by Congress and signed into law by President Joe Biden on March 11, 2021, is »a momentous step forward,« to cite Nick Tilson, Oglala Lakota.⁵⁸ For this Rescue Plan differs from the Coronavirus Relief Fund in various ways that can, within the scope of this article, only be sketched out: Its investment of \$31.2 billion into tribal communities represents »the single largest investment in the tribal nations in U.S. history.« Such investment can be viewed as – what Senate Indian Affairs Chairman Brian Schatz has called – »a down payment on the federal government's trust responsibility to Native communities [that] will empower American Indians, Alaska Natives, and Native Hawaiians to tackle COVID-19's impacts on their communities.«⁵⁹ Of the overall sum, \$20 billion is, at the moment of this writing, being distributed to tribal governments to fight the pandemic, with the allocations being, at least in part, based on tribal enrollment data.⁶⁰ Moreover, there will be funding, for instance, for Native health systems, including money for vaccines, testing, tracing; for education and housing programs; Native language preservation; and tribal community efforts to combat domestic violence.⁶¹ While Native representatives are, of course, excited about »the comprehensive nature of federal funds« allocated through the Rescue Plan, they endow the act with a meaning transcending the monetary realm: pieces of legislation such as this, they emphasize, have the potential to inaugurate a new era in the relationship between tribal communities and the federal government. Not only does the federal government, for the first time in the pandemic, fulfill its trust responsibility but it also treats Native nations as sovereign entities and equal partners.⁶² This is why Tilson, full of optimism and hope, sees this financial in-

⁵⁷ Tzay: Report of the Special Rapporteur on the Rights of Indigenous Peoples, pp. 13 f.

⁵⁸ Sy/Kuhn: Why Native Americans Are Excited about the American Rescue Plan, and their Future.

⁵⁹ For this and further information of the allocation methods used by the federal government, see Indianz: American Rescue Plan Act.

⁶⁰ Cf. *ibid.*

⁶¹ Cf. American Indian Policy Institute: An Overview of the American Rescue Plan for Indian Country.

⁶² Trahant: \$31 Billion Represents »a Massive Opportunity.«

vestment as »begin[ning] to open a conversation about entering into a brand-new policy era« – an era he tentatively calls »an era of consent.«⁶³

3. (Self-)Empowerment as a Path Forward

In the course of the Covid-19 pandemic, the language of empowerment has been increasingly used by Native politicians and activists in their interactions with the federal government. In the Hearing before the Senate Committee, Carmen *Hulu* Lindsey from the Office of Hawaiian Affairs framed her demands for greater self-determination for Native Americans in terms of empowerment. Thus, she asked the federal government »to empower all Native Americans [...] with the same opportunity to choose their own path – understanding that each tribe, band, nation, pueblo, village, or community is best-served through their unique, self-determined means.«⁶⁴ The language of empowerment has also been used outside the legal-political arena. Rather than waiting to be empowered by the federal government, Native American individuals and communities have worked toward empowering themselves, both by effectively managing the pandemic through legal-political and medical interventions, geared particularly to protect the elders, and by engaging in Indigenous cultural practices. In fact, the coronavirus pandemic has spawned Native cultural production and storytelling to a massive degree. Using their own websites and social media channels to reach Native communities across the nation, Native networks, community organizations, and activist groups have through the production and distribution of Native artwork, film, and comedy sought to instill hope and to raise community spirit. *IllumiNative*, for instance, whose campaign *Warrior Up* I mentioned at the beginning of this article, has partnered with prominent Native artists to create Covid-19-related Indigenous artwork that can be freely downloaded throughout Native America and beyond to embolden Native individuals and communities to fight against the spread of the virus. The network also supported the production of a film including prominent Native Americans who emphasize the significance of Native community responsibility and the power of »standing together« in the struggle against Covid-19. *IllumiNative* also put up its own news channel, »Low Rez News,« in which the Native comedy group 1491 presents »coronervirus news« in four episodes, which, by means of humor, seek to alleviate existing anxieties and suffering.⁶⁵

⁶³ Cf. Sy/Kuhn: Why Native Americans Are Excited about the American Rescue Plan, and their Future.

⁶⁴ United States Congress: A Call to Action, p. 36.

⁶⁵ Cf. *IllumiNative*: *Warrior Up*.



Fig. 3: Warrior Up campaign, IllumiNative, 2020.
(Original color image reproduced in black and white for publication)

Native Americans have also turned to the internet to continue engaging in cultural practices that require people coming together. Virtual beading circles, drum socials, along with other forms of online engagement, have been viewed as a means to promote the mental well-being of community members, which is inextricably intertwined with communal practices of Indigenous culture.⁶⁶ Some Native communities, such as the Mashantucket Pequot, have used virtual formats to host intergenerational gatherings where the elders tell traditional stories, or to host Pequot language bingo nights to work toward preserving both Pequot lan-

⁶⁶ Howard-Bobiwash/Joe/Lobo: Concrete Lessons: Policies and Practices Affecting the Impact of COVID-19 for Urban Indigenous Communities in the United States and Canada, p. 10; see also Allaire: How Virtual Beading Circles Are Empowering Indigenous Women; Therien: »Social Distance Powwow.«

guage and culture.⁶⁷ The Facebook group *Social Distance Powwow*, which was established on March 16, 2020, and which has more than two hundred thousand followers, is a particularly prominent example of Native online activism during the Covid-19 pandemic.⁶⁸ Created by Dan Simonds (Mashantucket Pequot) to alleviate the pain and fear the virus caused in Indian country, this Facebook initiative has allowed Native dancers of all ages, across and even beyond North America, to share photos and videos of themselves dancing in their regalia in their backyards, homes, on basketball courts, and has created a platform for Native vendors to sell their crafts and arts. Besides powwows, the group has also hosted theme weeks from Native communities across North America, centering on storytelling, Native history, and culinary practices. The Facebook group, Yvette Leecy (Confederated Tribes of Warm Springs, Oregon), a Native vendor and grandmother of two young dancers, said, is »a healthy connection. Instead of building fear, we're building faith. We're going to do our social dance for healing, for our lands, for our people, for the sick, for the people that can't dance. We hope that this helps everybody.« Whitney Rencountre, a Crow Creek Sioux tribal citizen and one of the administrators of the page, explains the reach and attractiveness of *Social Distance Powwow* in similar terms: »It's a way to connect with people, and it's a way for us to kind of pass time and maybe divert from the fear of this Covid-19. This is a way to express ourselves while social distancing.«⁶⁹

The telling of Native »stories of strength and resilience«⁷⁰ has played a particularly central role in Native efforts of self-empowerment. Native health organizations have circulated Native stories that negotiate the experience of the pandemic in order to provide mental and psychosocial support to Native American individuals, particularly children. The children's storybook *Our Smallest Warriors, Our Strongest Medicine: Overcoming COVID-19*, published by the Center for American Indian Health and distributed via its website free of charge, »seeks to reach Indigenous peoples across Turtle Island and portray a sense of communal efficacy, strength and hope in the face of the Covid-19 pandemic.«⁷¹ Covid-19-related stories of resilience and strength have also been shared during the online production of crafts and via the *Social Distance Powwow* Facebook group. Another prominent outlet of Native stories of coping with the pandemic has been the digital project »Indigenous Impacts: How Native American Communities Are Responding to COVID-19« (fig. 4). On the website of this project there can be found coronavirus stories contributed by Native Americans across northern Minnesota, rang-

⁶⁷ Cf. Voice of America News: Native American Tribes Try to Protect Elders, Their Knowledge from Loss to Coronavirus.

⁶⁸ Cf. Therien: »Social Distance Powwow.«

⁶⁹ Abourezk: »We're building faith.«

⁷⁰ Urban Indian Health Institute: Strengthening Vaccine Efforts in Indian Country, p. 34.

⁷¹ Center for American Indian Health: Our Smallest Warriors.

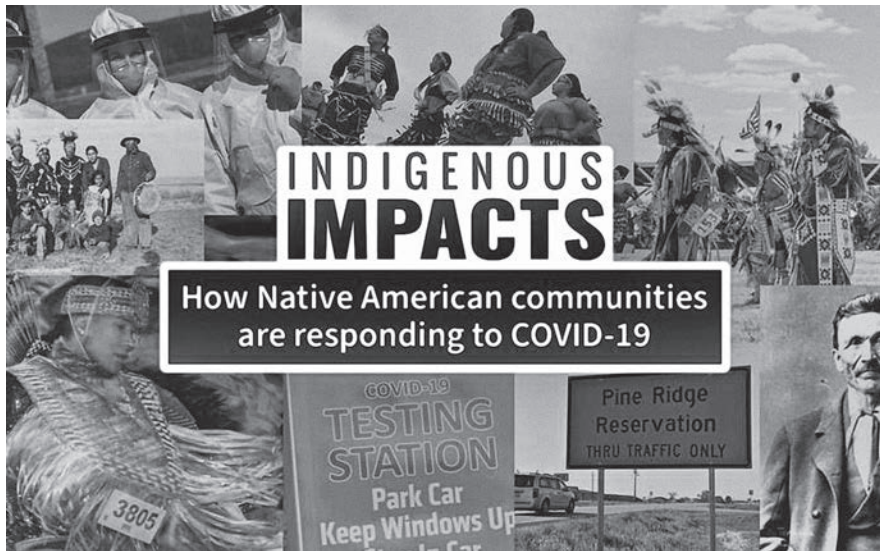


Fig. 4: Indigenous Impacts, Website, 2020. (Original color website graphic reproduced in black and white for publication)

ing from personal reports about Native community efforts against the pandemic, to poetry, essays, songs, and films.⁷² The emotional depth and generic breadth of the stories assembled on this website cannot be done justice to within the scope of this article. It can be stated with certainty, however, that by assembling such a great variety of Native »voices«, as the website calls them, representing unique, and sometimes contradictory, views and experiences, *Indigenous Impacts* strives to make Native lives visible in their multifaceted nature and complexity. Just as the tight embrace of the two colorfully clad Native women in Hatfield's artwork embodies their refusal to be regulated, controlled, and understood via the reductive data of settler colonial administration (fig. 1), the Native voices and stories of resilience on this and other websites attest to the failure of settler taxonomies to grasp the emotions and suffering of Native individuals, the experience of vulnerability by Native communities, and their collective efforts of perseverance and resistance.⁷³

As this article has suggested and as the photo montage of the *Indigenous Impacts* website illustrates so lucidly, Native *weapons* against Covid-19 have been manifold, ranging from legal-political and medical interventions to the use of

⁷² Cf. *Indigenous Impacts: How Native American Communities Are Responding to COVID-19*.

⁷³ In the fall of 2021, another website featuring Indigenous »stories of strength and resilience« will be launched: *Indigenous Stories of Strength*.

Indigenous community work, cultural production, and the telling of stories about both past and present. What holds all these efforts together is the strong belief in Native empowerment. Native individuals and communities have used the Covid-19 pandemic to highlight the necessity of empowerment from without, that is, the empowerment of tribal communities by the settler nation. Through their interventions in the federal government's law and policy making during the pandemic, Native representatives and think tanks have consistently positioned themselves in favor of greater Native self-determination and have asked for the recognition of Native leadership and management. As a report of the Center for American Progress so succinctly puts it:

»The solution is, and has always been, to defer to the tribes themselves on how best to handle social issues in a culturally competent manner. Treaty obligations mandate that the federal government not only respect their ability to do so but also direct funding and resources toward that end. For too long, the federal government has been an aggressor when it should respect tribal sovereignty and absent when it has the responsibility to act. It has never been more apparent or urgent that this double-headed disaster be reversed and redressed. [...] In the long run, the federal government needs to acknowledge and internalize that the best it can do for Indian Country is to listen and work with tribes and tribal leaders. This is not only the most effective but also the lawful path forward.«⁷⁴

These Native efforts to secure empowerment from without have gone hand in hand with Native efforts at empowerment from within. Such self-empowerment has taken on forms that extend beyond the realms of law, politics, and institutionalized activism to also encompass Native creativity, knowledge, and cultural practices, first and foremost storytelling.

To go back to where I started, the Covid-19 pandemic has thus functioned as a magnifying glass in a threefold manner. It has thrown into relief Native vulnerability in the face of past and present forces of settler colonial oppression, which have become manifest in federal Indian law and policy. The pandemic has also highlighted tribal governments' and organizations' effective crisis management and hence Native capacity for leadership, resistance, and survival. What is more, by posing a threat to the lives of Native elders – pillars of tribal knowledge and language – and by disrupting communal practices of Indigenous culture, Covid-19 has highlighted the tremendous importance of Native culture and community for the majority of Native individuals, irrespective of whether they live on reservation lands, or in urban or diasporic Native communities. During the pandemic Native culture and community have been the bedrock of Native self-empowerment. And community has in those past months been understood by Native Americans as a verb rather than as a noun, as ways of doing rather than a state of being. Engaging in Native cultural ways and working toward preserving these ways, the pandemic

⁷⁴ Cf. Doshi et al.: The COVID-19 Response in Indian Country, para. 14–15.

has shown, is essential for community health and resilience, and hence, ultimately for cultural, even physical, survival.

I would like to close with a quotation from the essay *Amidst Dark Times, Resilience* that Curtis E. Rogers, a community services officer with the White Earth Police Department in White Earth, Minnesota, contributed to the *Indigenous Impacts* website. For this quotation stands out in the way it captures the simultaneous sense of vulnerability and (self-)empowerment that has been prevalent in Native America in these pandemic times: »One thing that has not changed during these dark times has been the resilience of my people. We have survived boarding schools and removal from our lands. We have survived forced assimilation and genocide. We have survived and we will survive this.«⁷⁵

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