

Taking a Moment to Realign Our Foundations:  
A Look at Pueblo Chthonic Legal Foundations, Traditional Structures in Paguante Village,  
and Our Foundational Connection to Sacred Places

by

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## ABSTRACT

Connecting the three pieces of this dissertation is the foundation of our land or Mother Earth. Our relationship with our Mother is key to our indigenous legal tradition, as it both defines and is shaped by indigenous laws. These laws set forth the values and rules for relationships between humans, and between humans and the environment, including non-human beings. How we live in this environment, how we nurture our relationship with our Mother, and how we emulate our original instructions in treatment of one another are integral to our indigenous legal traditions. With this connection in mind, the three parts of this dissertation address the status of Pueblo women in colonial New Mexico, a study of attitudes toward preservation of traditional structures, and the ways in which we seek to protect our sacred places.

The journal article will focus on the impact of Spanish colonial laws on pueblo people in New Mexico, and pueblo women in particular. I propose the usefulness of comparing the Pueblo chthonic legal tradition with that of the colonial Spanish civil legal tradition as an approach to a fuller understanding of the impact of Spanish colonial laws on Pueblo peoples. As pueblo peoples move into the future with a focus on core values, this comparison can assist in determining what traces of the Spanish colonial, often patriarchal, systems might continue to exist among our Pueblos, to our detriment.

The book chapter looks at a survey on attitudes toward preservation of traditional Laguna housing in Paguete Village, at Laguna Pueblo, and its possible uses for community planning. This is done within the context of a community whose traditional housing has been interrupted by 30 years of uranium mining and decades of government

(HUD) housing, both of which worked against Pueblo indigenous paradigms for how to live in the environment and how to live together.

The policy briefing paper makes a case for using international human rights instruments and fora to protect sacred places where United States law and policy cannot provide the degree of protection that indigenous peoples seek. In all three pieces is a question of how we essentially reclaim the gift of our original relationship with Mother Earth.

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## SECTION I: JOURNAL ARTICLE

### An Examination of the Impacts of the Spanish Civil Legal Tradition on New Mexico Pueblo (Chthonic) Women

#### **Introduction: The Need for a Pueblo Addendum to Conversations on Decolonizing: A look at the Spanish Civil Legal Tradition**

Oral histories of Pueblo peoples, written studies of non-Pueblos,<sup>1</sup> and some aspects of contemporary Pueblo life support the belief that prior to Spanish contact in the 1500's, Pueblo peoples lived in an egalitarian structure, which included consensus based decision making that involved both men and women.<sup>2</sup> While there were clearly different gender roles, Pueblo peoples did not employ a blatant hierarchical structure in which women were considered to have a lower status than men.<sup>3</sup> Instead, Pueblo epistemologies directed a life focused on balance, in relationships between humans and in relationships with the environment and other non-human aspects of the world. Thus, one of the major challenges for Pueblo peoples was to what extent this equilibrium could be maintained under Spanish colonial rule. Although there may have been changes in the status of Pueblo women before contact, the clear impact of over two hundred years of Spanish colonialism was to diminish the status of Pueblo women, and to force a dominant male hierarchy into many aspects of Pueblo life. In great perseverance, Pueblo peoples have maintained much of their pre-contact epistemologies. However, the manner in which they have been lived out since Spanish colonialism has represented a departure in some cases into more colonial, patriarchal beliefs and practices. Today this takes varied shapes and forms in the religious (both indigenous and Christian) and secular sectors of Pueblo society.

In the course of contemporary Pueblo projects on self-determination and sovereignty, conversations continue to surface among the Pueblo peoples about what is truly traditional Pueblo or indigenous and what is colonial or Spanish or American about our belief systems and the sectors of our societies, including governance. Two decades ago, in the wave of the American legal profession's interest in alternative dispute resolution, or what Indian attorneys refer to as "traditional dispute resolution" in tribal settings, Indian attorneys and court personnel began to share our traditional forms of justice beyond our Pueblo communities along with other indigenous nations. (Zuni-Cruz, 2000) (Melton, 1995). This comparison tended to take the form of comparing common law to indigenous law, since most if not all Indian attorneys in the United States are trained in the common law tradition. Outside of the court setting and dispute resolution are a whole myriad of indigenous laws that are not formalized in written form, but take shape in the daily lives of Pueblo people. We call these our core values, customs, beliefs and protocols, all rooted in our Pueblo epistemologies, and until recently we have not honored this knowledge as "law" that measures up to so called modern legal systems, arguably because it was so blended into the fabric of our daily lives that we did not see it as law as such. Zuni-Cruz describes this attribute of indigenous law in the following manner:

If one looks at law through a western lens, then the indigenous legal tradition is practicably unrecognisable. But if one looks at "law" from an indigenous perspective, it is in operation everywhere—even in those places where law is not supposed to be, not expected, because it is intertwined with everything else. That is the nature of indigenous knowledge, and the indigenous legal tradition is an aspect of that knowledge. It is to be found in indigenous communities, even where it is declared to be non-existent (Cruz, 2009, p. 318)(citations omitted).

An important consequence of this recognition of indigenous law and legal traditions is that we can begin to compare Indigenous legal traditions with other major legal traditions in the world.

I submit that using the chthonic or indigenous and civil law traditions as frameworks to compare the Spanish colonial legal tradition and Pueblo indigenous law traditions would be a useful supplement to these conversations. First it would support a Pueblo contribution to an important and growing body of literature that validates chthonic law traditions as one of the world's major legal traditions. Second, it would help to understand the process of moving from a purely chthonic legal tradition to one impacted by the Spanish civil law tradition and why some sectors of Pueblo life were perhaps more influenced than others. Third, if we are grounded in the foundations of indigenous law, the ways in which colonialism and its necessary patriarchy become clearer as we continue to work towards sovereignty and self-determination.

One need not look far to locate literature on the impacts of the English common law system on indigenous peoples—especially as interpreted and implemented by the United States. There appears to be much less explored on the impact of the Spanish civil law tradition. Recently there has been much ado about the Doctrine of Discovery in United Nations human rights circles, and the Spanish Papal Bulls are mentioned in these discussions. In 2012, for instance, the special theme of the U N Permanent Forum on Indigenous Issue was the “Doctrine of Discovery: its enduring impact on indigenous peoples” (UNPFII, 2012). However, in all the written and spoken interventions given at this session, virtually no analysis was presented on the specifics of the Spanish civil law

tradition and resulting systems as applied to indigenous peoples, much less on New Mexico Pueblo peoples. Yet in the three centuries between the Bull Inter Cetera of 1493 and Mexican Independence, Pueblo peoples in New Mexico, with their chthonic legal traditions, were forced to contend with a completely different legal tradition.

Given our colonial history--which includes Spain, Mexico and the United States--we would be remiss to leave decolonization out of our agenda as we continue to talk about self-determination as Pueblo peoples. As Linda Smith says, "A constant reworking of our understandings of the impact of imperialism and colonialism is an important aspect of indigenous cultural politics and forms the basis of an indigenous language of critique (Smith L. T., 2012, p. 25). This process is more difficult than it appears at first glance, since we are not always aware of the colonial baggage we carry on this journey. Two of the most obvious traces of Spanish colonialism are the Pueblo governing system, which uses Spanish titles for our Pueblo leadership positions, and the presence of the Catholic Church in nearly every Pueblo. It is not so much the external, physical presence of these institutions as the internalized belief held by some Pueblo people that the patriarchy that both of these institutions brought to our peoples was actually part of our indigenous epistemologies and legal traditions. This position is different than one in which Pueblo people, fully cognizant of colonial influences that may have grown roots in our communities, choose to hold onto these remnants of colonialism, including patriarchy. Knowing the difference, I maintain, is central to decolonization and its implications for self-determination.

To what extent have we institutionalized aspects of Spanish colonialism, including patriarchy, in our domestic lives, in tribal governance, and in spiritual life (both Christian and indigenous)? I believe it will serve us well to honestly examine these aspects of our collective lives and ask whether they are in fact silencing the voices and preventing the participation of members of our community in the same ways the Spaniards and later colonialists intended, so that we continue to do their work. The status and roles that I see Pueblo women have in all aspects of community life, today, are in such stark contrast to the dictates of Spanish colonial treatment of Pueblo people in general and women in particular, that I believe our collective perseverance to maintain what we have is worthy of more scholarly attention.

In this article I set out to do three things: I put forth a case for the importance of reaching beyond the American common law and examining the Spanish civil law tradition as it played out in New Mexico during Spanish colonial years, and how it impacted the chthonic or indigenous legal traditions among Pueblo peoples that had been in place for millennia. Since indigenous legal traditions affect every aspect of our lives, this is not a narrow legalistic look at our colonial past. Spanish colonialism altered the landscape for Pueblo peoples in ways that we continue to address; we were raced, gendered and sexualized as part of the colonial agenda. Much of this came in the form of patriarchal institutions like the military, Spanish government, and the Catholic Church. I believe that the framework of comparing legal traditions can help to expose lingering traces of colonialism in our midst.

My second task in this article is to demonstrate the value of adding a gendered analysis to Pueblo interrogation of colonial paradigms, as other indigenous peoples have begun to do.<sup>4</sup> This would supplement, not replace, considerations of race, class and other lenses through which we examine colonialism. A large part of the colonial agenda was to plant patriarchy in our midst. The examination of Spanish colonial laws in the following section will help to demonstrate that “the imposition of patriarchy within native communities is essential to establishing colonial rule, because patriarchy naturalizes social hierarchy” (Smith & Kauanui, 2008, p. 243). Thus I believe it behooves us to add a layer of gendered analysis in order to uproot the sometimes hidden locations of patriarchy in our midst. Since women have always been contributing and important members of our Pueblos, including rarely addressed gendered analysis is critical for deconstructing colonialism. Not only is colonialism a gendered process, but so is decolonization (Smith & Kauanui, p. 243).

Third, my hope is that this brief examination of Spanish colonial laws will expose the gaps left in the methodologies of the few who have focused on the impacts of Spanish colonialism on Pueblo women and put out a call to other Pueblos to widen the space where historically the written word has been privileged to the exclusion of those whose lives were most at risk.

Framing the main theoretical arguments made here is interdisciplinary literature that combines the legal field with anthropology, history, ethno history, religious studies, and colonial and women’s studies. I reference the recent work of anthropologist and ethno historian Brown (2013) who provides one of the most comprehensive narratives of

pre-contact Pueblo women's status, together with a serious look at the ways in which Pueblo peoples negotiated the challenges posed by Spanish colonial power, especially in 18<sup>th</sup> century New Mexico. I also build on the work of Glenn's (2010) discussion of chthonic legal traditions, as supplemented by other legal scholars such as Zuni-Cruz, and find useful the work of Cutter regarding implementation of Spanish civil laws in New Mexico during Spanish colonial years.

In the pages that follow, I first compare the Spanish civil legal tradition with a chthonic legal tradition, and then discuss the status of Pueblo women under a pre-contact, chthonic legal tradition. One of the inquiries will be to what extent a chthonic or traditional legal system is capable of incorporating change without fundamentally changing itself. Before delving into "the law" itself I discuss the need to identify patriarchy in Spanish colonialism and some helpful contributions from indigenous writers who advocate the use of gendered analysis to examine patriarchy. With these references in mind, I provide a summary of the Spanish civil legal tradition as it came to New Mexico in the form of laws directed at Indigenous or "Indian" peoples. In next looking at the (translated) texts of some of the laws, I provide examples of laws that explicitly addressed Pueblo women, and some that indirectly addressed them but nevertheless had an impact on their status. It is helpful to examine the impact on Pueblo peoples in general, as well as the process by which the Spanish civil law tradition began to replace or undermine the Pueblo chthonic traditions. In offering some analysis on the impacts on the status of Pueblo women, I will focus on select areas of law related to Pueblo women: status in Pueblo society in general, domestic relations, and role in governance and



economic systems. Since the Catholic Church was a major part of Spanish colonialism, I will also briefly examine the impact of the Church on the status of Pueblo women, as found in the literature.

### **Researcher Reflexivity: Pueblo women exploring Pueblo feminisms**

As an “Indian attorney” educated in an American law school, I have studied and worked mostly in a common law legal orientation, with many self-directed forays into traditional legal systems. As a Laguna Pueblo/Diné woman, I have become of late more interested in how Spanish civil law and later systems have impacted/ disrupted the status and role(s) of Pueblo women and other Indigenous women. As an indigenous scholar, I believe this area of research is critical to an expanding and meaningful Pueblo discussion about self-determination and sovereignty and the need to unpack those lingering—and sometimes hidden—traces of colonialism in our Pueblo communities that impede our ability to use all our resources – human, natural, and spiritual.

Given the years of fierce advocacy in Indian country for our most essential rights, it may be that advocates and scholars have not had the luxury of spending more time on questions specifically regarding indigenous women, much less on Pueblo women. Only recently have we begun to see thoughtful, authentic critical writing from indigenous community-centered writers on the need for gender analysis as part of decolonization. Many of these writers self-identify as indigenous feminists. An important and sometimes uncomfortable caveat to note in this exploration is that I have been one of those who has resisted self-identifying as a feminist; I have said my work is about uplifting the rights of all our people, not just some sectors. I have also resisted using the word womanist because most womanists do not have issues of sovereignty and self-determination of

peoples as subjects of their work.<sup>5</sup> I say this but I have watched and read the evolution of some who are more flexible in their understanding of what native or indigenous feminism might look like. Smith (2011), says for instance that Indigenous feminism “centers anti-colonial practice within its organizing:” “Indigenous feminists are also challenging how we conceptualize indigenous sovereignty — it is not an add-on to the heteronormative and patriarchal nation-state. Rather it challenges the nation-state system itself” (Smith A. , p. 157). This is more palatable to me. Much of my work and advocacy has been about indigenous peoples vis-à-vis non-native interests, including private and government interests. However, I have come to appreciate the need to do the decolonizing work from the inside, so that if we want to talk about liberating our nations from colonialism, we need to talk about eliminating patriarchy in our own midst as a necessary part of decolonization. This is one of the important contributions of indigenous or aboriginal feminism (Green, 2007). As Smith and Kauanui say, “not only is colonialism a gendered process, but so is decolonization” (2008, p. 241). I am not sure that this thinking makes me an indigenous feminist, but I certainly am open to using gendered analysis as part of the process.

### **Pueblo Peoples/ Women in a Chthonic Legal Tradition**

Simply put, we cannot fully know the impacts of Spanish colonial thought and law on Pueblo women without knowing what was in place before the imposition of the Spanish civil law system. So how do we know the status of Pueblo women before contact? First, we can look to see what exists in the literature, which is largely anthropological. Second, we can reference what exists today in Pueblo epistemologies and ontologies. Third we can observe what is practiced and lived out by Pueblo peoples

today, because through written and oral history we know that much of our indigenous societal practices survived Spanish, Mexican and United States colonialism. And fourth, I believe that setting a foundational understanding of the Pueblo chthonic legal traditions can be helpful in setting context for understanding pre-contact Pueblo lifeways.

In addition to chthonic law, comparative law theorists (Gagnon, 2013; Glenn, 2010; T Perry, 2011; Tobin, 2014) also identify Talmudic, Civil, Islamic, Common law, Hindu, and Asian as major world legal traditions.<sup>6</sup> For the purposes of this discussion, I will adopt Merryman's (1985) use of the word "tradition:" "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught" (p.2). Legal tradition is distinguished from a legal system, which Merryman defines as "an operating set of legal institutions, procedures and rules" (p. 2).

Chthonic legal traditions are ancient traditions created by indigenous societies that preceded the legal systems created by nation states. Chthonic peoples have been incorporated into the nation states that were constructed from European empires in the Americas, Asia, and Africa (Gagnon, 2013). Among the characteristics of a chthonic legal tradition are that it is oral, so that it is taught or preserved "through the informal, though sometimes highly disciplined, means of human speech and human memory" (Glenn, 2010, p. 58). Second is the idea that "the law is vested in a repository in which all, or most, share and in which all, or most, may participate" (p. 65). Third, chthonic law is "inextricably woven with all the beliefs of chthonic people and is inevitably, and

profoundly infused with all those other beliefs” (p. 65). Fourth, chthonic law is “internal to a particular community, oral, and for the most part, dynamic and not static in nature” (Zuni-Cruz, 2000). And last, chthonic law does not protect purely individual interests; there are no individual rights as we know them in the western sense (Glenn, p. 67). Thus in a chthonic or indigenous legal tradition, marriage, divorce and other aspects of domestic life are not in a domain of institutional control of church and state, but tied to indigenous or chthonic values.

Comparative law scholars have made little to no specific mention of chthonic women, hence the need to fill this gap with contributions from other disciplines. Glenn, who was not indigenous, opined that the chthonic legal tradition, while the most democratic, has not avoided “differentiated and permanent roles” (p. 68), and that “the woman is thus seen largely in terms of productive and procreative potential” (p. 68). The reason more women do not leave this “static role,” according to Glenn, is connected to the relationship in a chthonic legal tradition between the spiritual and the secular, wherein “the religion is regarded as a constant presence” (p. 68). However, Zuni-Cruz might say the opposite in support of a more dynamic and less static character of chthonic law:

There are some who feel that traditional law, such as that contained in creation narratives, for example, can never change. Both these positions [i.e. that indigenous law can be dynamic and yet never change] can be reconciled. “For new rules to be accepted by the members of an affected group, they generally must build upon, and indeed, extend existing rules. That is, the fundamental principles of customary law... do not change. They are simply extended to cover new situations.” (2000, p. 2) (Citations omitted).

Thus for Zuni-Cruz, the “constant presence” of the spiritual in a chthonic tradition is precisely what allows for dynamism rather than stasis.<sup>7</sup>

Moreover, while there may be few references to chthonic women as such, there are numerous references to the “female,” as understood in indigenous epistemologies. This is the important supplement to the comparative law work that indigenous scholars can add. Glenn says that the chthonic tradition is an “unstructured one, seeking to blend into the surrounding landscape” (2010, p. 73). In this vein, Zuni-Cruz (2007-2008) described the chthonic legal tradition, as “grounded in specific ecological orders” (p. 635, citing Battiste & Henderson, 2000, pp. 41-43).

This resonates with Pueblo epistemologies, which intimately connect Pueblo peoples to the land and environment. Many sacred deities and sacred places and landscapes are known by feminine names. These are named in numerous publications on Pueblo peoples. In our Laguna Keres language, some of the words used to describe “our land” or “territory” are the words for “Our Mother.” The female is held important as giver of life and symbolized in many ways in the Pueblo world. Scholars in anthropology (Parsons, 1939) history (Gutierrez, 1991) women’s studies (Allen, 1992) and other disciplines have written on the importance of the female in Pueblo epistemologies. While I am not affirming the accuracy of their accounts, neither do I believe it is necessary at this juncture to offer my version of Pueblo epistemology to confirm the importance of the female. For reasons of “ethnographic refusal” (Smith A. , 2014, p. 213),<sup>8</sup> I will not retell those accounts here. Suffice it to say that fundamental principles of Pueblo chthonic law hold the female in an important and dynamic status. As Pueblo epistemologies, and therefore chthonic traditions, evolve over time, they would include an examination of the role of the female. As applied to pueblo governance, for example if there is no

separation between the sacred and the secular in Pueblo governance, as is often said by Pueblo leaders, then conversations about governance will always include consideration of the role of the female. Socio-culturally, Pueblo women have exercised roles in traditional Pueblo religions, in decision-making about food sustainability, and even in governance in some cases. At many Pueblos, women are the primary caretakers of traditional homes, which are often passed down from female to female. Additionally, it is a commonly understood cultural orientation that Pueblo clan mothers and women societies still exercise a great deal of influence. Furthermore, oral history practiced within all the Pueblos also tells us that these roles and status have existed since before contact with Spanish colonizers.

If the chthonic tradition is an “unstructured one, seeking to blend into the surrounding landscape” (Glenn, p. 73), which in this case would be Pueblo environmental, sociocultural and political realms, how would a chthonic system respond to Spanish colonialism that impacted all these realms? The “open character” of the chthonic tradition, according to Glenn, is what accounts for the tradition’s inability to “define itself in such a way as to preclude entry of non-chthonic information” (p. 75). So would this mean that the Pueblo chthonic tradition was especially susceptible to Spanish civil law influence? Or did fundamental principles of Pueblo chthonic law extend to cover new situations, as Zuni-Cruz might argue? One view, supported by Brown’s work, is that Pueblos were adept at negotiating what was allowed and what was not.

### **Literature on Status of Pueblo Women under Chthonic Tradition**

Among those who have written on the impacts of Spanish colonialism on Pueblo peoples, there is a spectrum of positions on the extent of the impact on Pueblo women

that one might infer. At one end is the position that Pueblo women experienced an erosion of their power (Gutierrez, 1991), and at the other end are those who argue that Pueblo peoples were able to “resist traits that would have altered the main orientations of their culture...” (Spicer, 1989, p. 665),<sup>9</sup> and thus the status of women was not changed. In Spanish society, women were regarded as property and subservient to men (Brown T. L., 2013, p. 149); thus Spanish colonists extended an even lower status to indigenous women in New Spain, as uncivilized infidels who needed Christianity, and as servants to support Spanish households and the *encomiendas*. The largest body of documentation on Pueblo women, as will be shown later, appears to be in the arena where they ventured outside their Pueblo communities and engaged with Spanish individuals in economic exchange. One area in particular is that of witchcraft cases in New Mexico in the mid-18<sup>th</sup> century.

While there is a wealth of writing on Spanish Colonialism and Pueblo peoples, especially (no surprise here) by anthropologists, and increasingly by historians, there is a dearth of critical work on the impacts of the Spanish colonial law on Pueblo women. Two of the better known, but controversial, accounts either portray Pueblo women as “licentious” (Gutierrez, 1991, p. 51) women essentially predisposed to patriarchic systems who offered their bodies to Spanish soldiers as “diplomatic gestures” (p. 52),<sup>10</sup> and therefore easily amenable to Spanish colonial patriarchy, or powerful women who were part of gynocratic governments (Allen, 1992). The former depiction of Pueblo women was criticized as using “same old tired colonialist ‘facts,’ gleaned from Spanish church and state documents” (Dunbar-Ortiz, 1996, p. 143), and using them “unexamined

and uncited” (p. 144). The latter depiction cited no authority but instead transposed conclusions about Eastern United States tribes to the Southwest. Neither of these positions is sufficient to explain Pueblo women.

However, there is general agreement, in historical research, that even among diverse Pueblos, pre-contact society was generally egalitarian, so that the status of women was not below that of men. This was true whether, for example, a particular Pueblo was matrilineal with clans or bilateral with moieties; some had centralized authority and others did not (Brown T. L., 2013). Frequently cited Indigenous Pueblo authors like Dozier (1970), Ortiz (1969), and Sando (1992) have said little about the status of pre-contact Pueblo women in their publications. However in discussions on Pueblo religions they necessarily made reference to female deities.<sup>11</sup> This detail should not be glossed over. As discussed earlier, in a chthonic legal tradition there is no separation of religion from the law, or the spiritual from the legal; because Pueblo epistemologies all or almost all have the presence of sacred female deities, the female represents a central, not subservient place in Pueblo society.

Between the two extreme positions noted earlier some new middle ground has been paved in the recently published work of anthropologist and ethno historian Tracey L. Brown. In *Pueblo Indians and Spanish Colonial Authority in Eighteenth-Century New Mexico*, (2013), Brown reconstructs pre-contact social life of Pueblo communities by “[weaving] discussions of the archaeological evidence concerning pre-contact Pueblo life” (p.2) and “compare[s] those findings with information culled from the post-contact, Spanish documentation” (p. 2). Brown used this methodology to examine, for instance



the roles of Pueblo women in the matter of Pueblo “foreign affairs” and in domestic relations before contact.

In matrilineal and matrilocal Pueblos, Brown (2013) surmised that women had more power or influence. For example, in a matrilineal system, the father did not have a strong claim to the children since the children belonged to the mother and the mother’s family (2013, p. 145). Since clan formed a large part of identity, and since children followed their mother’s clan line, they did not need their father for identity as such. Brown also believes that women exercised much more power in marital relationships, as pre-contact marriages were informal and women could unilaterally terminate the relationship in many Pueblos:

Since husbands have weak status and paternity is not an issue in matrilineal groups, there is no need to ‘tie a woman permanently in marriage to a man.’ Women living in matrilineal groups are typically free to enter and leave marital unions and their sexuality is generally less controlled than, for example, in patrilineal societies where paternity of children is an issue. ... Ethnographers familiar with the kinship practices of matrilineal Pueblo communities make it clear that this was true even into the twentieth century (pp. 145-146).

As discussed below, this kind of power would have been anathema to a Spanish colonial system in which women were essentially treated as chattel. Brown discusses other indicia of the power and status that pre-contact Pueblo women held, such as in the economy in trading with other indigenous peoples. However, marital and family indigenous laws and practices are important to highlight as this arena of Pueblo life was one area in which Spanish colonialism, with its attendant patriarchy, intended to disrupt.

### **Patriarchy in Pueblo Country as a Point of Inquiry**

Patriarchy is generally defined as a social system in which: males hold primary power, males predominate in roles of political leadership, moral authority, and social

privilege and control of property, and, in the domain of the family, fathers or father-figures hold authority over women and children. A (not “the”) feminist definition of patriarchy would be:

[T]he manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general. It implies that men hold power in all the important institutions of society and women are deprived of access to such power. It does *not* imply that women are either totally powerless or totally deprived of rights, influences, and resources (Wilson A. , 2000, p. 1494).

Indigenous or aboriginal feminists have included a connection with colonialism as part of the definition of patriarchy: “Aboriginal feminists invariably see colonialism and patriarchy as inextricably intertwined; they see the two as interdependent processes or sometimes as part of the same process” (Luther, 2010, p. 42).

Heteropatriarchy in turn refers to the social systems in which heterosexuality and patriarchy are perceived as normal and natural, and in which other configurations are perceived as abnormal, aberrant, and abhorrent (Arvin, Tuck, & Morrill, 2013, p. 13).

Embedded within much of the Spanish civil law imposed on Pueblos from the 16th century through Mexican independence in 1821 and beyond, were many patriarchal concepts from Spanish society. Together with the Spanish military and the Catholic Church, the Spanish civil legal tradition left patriarchal imprints on many realms of Pueblo life. The fact that few women have served in positions of Spanish colonial-influenced governmental leadership among Pueblo peoples in the 21<sup>st</sup> century is but one example of lingering patriarchy. In the family realm, the refusal by priests in Pueblo communities to baptize children of unwed women or couples is another example of patriarchy. In this refusal, the priests are imposing their patriarchal values of who is

“legitimate,” which is tied, as we will see later, to issues of male control/ownership of children. Patriarchy has effectively privileged some members of our Pueblo societies over others, based on value systems and legal traditions not our own, to the detriment of all the community members. Thus, it becomes important to seek out the various locations of patriarchy in our Pueblos and ask whether it continues to harm our people.

Legal scholar Robert Williams, Jr, (1989), in recognizing the “continuing and pervasive legacy of four centuries of white patriarchy” (p. 1021) in American society, posits that the legacy of racism, colonialism, sexism and homophobia have left a system of privileges, and that “its hidden and overt traces in all aspects of our contemporary social life distort our very ways of seeing and knowing the world.”<sup>12</sup> Patriarchy is not always obvious, not even to Pueblo peoples. Not only did Spanish colonialism lead to gender stratification, but it also “raced” us as peoples and gave privilege to some members, mainly heterosexual—perhaps also Christian-- males, in our Pueblos. So, in ways that Williams explained, those in our Pueblos who gained privilege in the process of colonialism, and continue to exercise that privilege in our contemporary social life, may not see these as privileges that work against our own traditional indigenous laws. In the greater United States, privilege continues to be white privilege (Caliendo, 2011). Part of the legacy of colonialism among our pueblos is that a higher status was accorded to heterosexual Pueblo males. This privileged status gave them access to more power than they may have traditionally exercised in indigenous or chthonic traditions, at least more power over Pueblo women. In contemporary times other types of privilege, such as “blood quantum” privilege, have been added.

One frequently cited example of patriarchal privilege is the law or rule for some Pueblos that when women marry non-members their children are not eligible for enrollment, whereas the same is not true for men. Does this rule have Spanish colonial roots?

These considerations lead to two points of departure in an examination of patriarchy among Pueblos: One is an examination of how, first, the Spanish civil law regime impacted the roles of and relative power or status of Pueblo women, both within and outside of Pueblo communities. It is difficult to locate serious work on the impact of colonialism on indigenous women from a Spanish civil law regime in a growing field of work that analyzes impacts from a common law regime. My search thus far for work on Spanish civil law during colonial years has yielded only a handful of books and articles from civil law influenced countries, such as Mexico (Kanter, 2008), Peru (Garrett, 2008), Colombia (Zambrano, 2011), and Ecuador (O'Connor, 1997). The search continues; in the meantime I did not locate any writing on the Southwest or New Mexico. A search through the papers of well-known scholar of Spanish colonial New Mexico, which contain Spanish archives from Madrid, contained little mention of Pueblo women.<sup>13</sup> Indigenous writers from former commonwealth colonies such as Australia, Canada, Hawaii, and New Zealand have made rich contributions to this field, all focusing on impacts on mostly English common law influenced colonialism. Much less is written about the impacts of a civil law regime. It could be said that impacts of colonialism and hegemony are the same whether it is common law or civil law, but I am not yet ready to make that concession.

The second point of departure is searching for signs of patriarchy in present day Pueblo life, including governance and contemporary laws and social practices, and then looking back to see if there are ties to Spanish civil law. However, without grounding this search in a specific reference to Spanish civil law, it could be an exercise in futility. Years after the *Martinez v. Santa Clara* case, 436 U.S. 49 (1978), was decided, Milczarek-Desai (2005) critiqued the various positions that legal and other commentators took on the outcome of the case and the associated theories about the origins of the 1939 ordinance (which denied membership to the children of a Santa Clara woman who had married a non-member) in question and whether it was truly connected to Santa Clara Pueblo law or was the result of colonial patriarchy. After searching available anthropological and ethnographic material on the Pueblos of the Southwest, she described her results:

What I found was a wide degree of uncertainty and disagreement among scholars about everything from pre-historical Pueblo society to what constitutes contemporary Pueblo life and culture. These scholarly controversies and inconsistencies are not very significant in and of themselves (except of course to illustrate the futility of the search for authentic Pueblo culture). Their importance lies in demonstrating that Pueblo people, as well as Pueblo women and Pueblo culture, are multiplicitous, and that the difficulties (or perceived difficulties) in acknowledging and discussing their multiplicity make them particularly vulnerable to translation via the binary [universalism vs. relativism] discourse (pp. 275-276, citations omitted).

As part of her search she cites both native and non-native sources on the anthropology and history of Santa Clara. While there is some value in this approach, I believe a search grounded in an inquiry based on Pueblo indigenous legal traditions would have yielded more useful data. With this grounding, the challenges and changes that may have imposed by Spanish (or even more recent American) colonialism would have been easier

to detect. This approach also potentially avoids a linear chronological inquiry and instead gives shape and form to the dynamic ways of a chthonic legal tradition and how it responds to challenges.

### **Foundations for Research: Conversations Thus Far**

First a number of assumptions should be noted. First, patriarchy is essential to establishing colonial rule, because it naturalizes social hierarchy (Smith & Kauanui, 2008). Second, Pueblo peoples, like most if not all indigenous peoples, were not entirely able to resist the impositions of colonial patriarchy, so that it is highly likely that some forms of patriarchy exist in Pueblo communities today. Third, the continued presence of patriarchy is seen as part of the legacy of colonialism, most often to the detriment of indigenous peoples, including Pueblo peoples. Fourth, as racism can be harmful to whites in the United States, patriarchy can be harmful to males as well. So while the focus of this article is on Pueblo women, the assumption is that patriarchy has been and continues to harm the men in our communities as well.

Some of the more helpful approaches for identifying patriarchy have been provided by a growing number of writers who use an indigenous or aboriginal feminist analysis to view decolonization. There is not a unified vision of indigenous feminism (Goeman & Denetdale, 2009). The better term of reference is indigenous feminisms. There is, however, general agreement among indigenous feminists regarding the need to include an analysis of patriarchy and heteropatriarchy when deconstructing colonialism. The argument is that because indigenous peoples were gendered and raced, and indigenous women were additionally subjugated and sexualized by colonial systems, the

decolonizing process must include a gender analysis in addition to looking seriously at racism. As stated earlier, colonialism and patriarchy go hand in hand.

Smith and Kauanui (2008) say that “not only is colonialism a gendered process, but so is decolonization” (p. 241), so that “when Native activists lack a strong analysis of heteropatriarchy, they are less equipped to interrogate some of the colonial paradigms that might be implicit within purportedly pro-sovereignty political projects” (p. 241). Metis writer St. Denis says that when indigenous feminists examine the intersections of race, gender, and nation they can undermine “western patriarchy” (Green, 2007, p. 44)<sup>14</sup> and help lead national and pan-tribal work for decolonization.

In like manner, J. Kēhaulani Kauanui (2008) stresses the need for gendered analysis in the Native Hawaiian nationalist movement for Hawaiian sovereignty. She argues that the recovery of precolonial history for the nationalist struggles, along with a research agenda that focuses on the history of U.S. imperialism and gender oppression in Hawai‘i, is crucial to an engaged politics of decolonization. At the same time she identifies the “risk [of] treating the problem of contemporary forms of gendered oppression as secondary to the restoration of political sovereignty, “as though the recognition of Hawai‘i’s sovereignty claims would be enough to deal with the structural manifestations of sexism and misogyny” (Kauanui, p. 285).

In the words of Diné scholar Denetdale, “feminist analysis sheds light on how patriarchy operates as the structural system of domination, which diffuses questions of discrimination across race and other differences while presenting gender as a bifurcation of feminine and masculine” (2009, p. 136). Denetdale also addresses the impacts of

patriarchy in governance: “Native feminist analysis has also made critical inroads into illuminating the formations of Native nations as primarily patriarchies that perpetuate systems of dominance. A gendered analysis exposes how women are simultaneously invoked as cultural symbols and signifiers of nations and denied equal access to scarce resources and full participation in the political arena” (p. 136).

These indigenous scholars argue that the reach of patriarchy and heteropatriarchy in indigenous communities should not be superficially addressed, but must be examined at its colonial roots. Thus in the Pueblo context, it is important to examine the roots of patriarchy as embedded in the Spanish civil law tradition, and as implemented by the government, military and Catholic Church. In turn, using a gendered lens to do this analysis of the Spanish colonial civil legal tradition is a key part of interrogating colonial paradigms if we want to talk about moving our Pueblo nations beyond colonialism and its legacy.

A few other sources are worth mentioning insofar as they identify the presence of patriarchy in native communities or proactively address the need to be aware of gender inequality in doing decolonization analysis. In *Yakama Rising: Indigenous Cultural Revitalization, Activism and Healing*, Jacob, a Yakama scholar, names native feminisms as a necessary part of a Yakama decolonizing praxis which highlights the important place of women in cultural revitalization movements. In this process, “feminist texts” are used: “each text centers Native women’s experiences, utilizing gender inequality as a starting point for the analysis, and works toward envisioning a society in which our traditional cultural norms, which respect and honor women’s contributions, are upheld” (2013, p.



107). While Jacobs does not use the term “patriarchy,” she clearly makes a connection between colonialism and the diminished status of women: “our common colonial history ... transformed Indigenous societies by diminishing women’s power, status, and material circumstances” (p. 108).

Additionally, Oklahoma Choctaw scholar Mihesuah, in *Indigenous American Women: Decolonization, Empowerment, Activism*, on one hand questions “the new feminist history” (p. 32) as potentially remaking history for political purposes, but then stresses the importance of including discussions about the strength and power of Native women in tribal traditions as part of an American Indian Studies program in which she is engaged.

It is not a maneuver to subsume men; rather students must be taught that colonialism and patriarchal thought affected--and still affect-- indigenous women. Native men, therefore have also been negatively affected. Political policies, Christian ideologies, forced removal, physiological changes, psychological stress, and population and land loss from warfare and disease disrupted women’s powerful economic, political, social and religious positions within most tribes. (2003, p. 34)

So, while they may not all choose to use the term “patriarchy,” most serious scholars of colonialism and indigeneity agree that colonialism had mostly negative impacts on the power and status of native women. They also appear to agree that in moving forward in one form or another, whether it is in designing curriculum for an American Indian Studies program, defining a particular tribal decolonizing praxis, or working towards native nationhood, the impacts of patriarchy on native women must be taken into account. Some would go further and say that one must be intentional about using an indigenous feminist analysis and looking at patriarchy, to truly decolonize. I

note that not one of these scholars is or discusses patriarchy in the context of Pueblo women.<sup>15</sup>

One of the few pieces which addressed indigenous feminism in the context of a Pueblo, Santa Clara, was native attorney Skenadore (Oneida Tribe of Indians of Wisconsin/Prairie Band Potawatomi of Kansas). She provided a slightly different take on “Indian feminism” in a 2012 article on the *Santa Clara v. Martinez* case, in defense of “why the case does not present a problem for Indian women:”

For Indian feminists, every women's issue is framed in the larger context of Native American people. This means that an Indian woman is acutely aware of her tribal identity first, both as an Indian and as a member of a particular tribe.

.....  
These Indian feminists have captured the seemingly accepted belief among most Indian women, and in particular those women who have been raised in and near tribal communities, that tribal sovereignty underlies most ideas of feminism because an Indian woman's identity is inextricably connected to the existence of her tribe. As a consequence, "Indian feminists have rejected the Western feminist approach to gender equality by retaining the cultural framework and a commitment to the tribal nation's autonomy." The result is a greater focus on tribal identity and less on gender equality, which ensures the continued existence of a woman's particular tribal culture and society (p. 353-354, citations omitted).

For this proposition, however, she cites only three “Indian feminists”<sup>16</sup> outside of others who have written about the case in the legal field, and leaves out the decolonizing dimension of indigenous feminist analysis.

### **How Do We Measure Impacts of Patriarchy on Pueblo Women?**

While the literature does contain accounts of changes in the power and status of indigenous women, most of this writing is focused on women impacted by common law colonial powers. Allen, writing in 1986, said that material about the status of women in North American groups was lacking beyond the “chronicles of the overthrow of the

[Iroquois] gynocracy” (p. 32). She summarized historical accounts of changes in status for women from the Iroquois Confederacy, the Cherokee Nation, and a number of lesser known Eastern tribes such as the Pocasset, the Sakonnet and the Montagnais-Naskapi. Anderson (2003), a Cree/Metis writer and educator, also looked at several nations in North America and examined changes in women’s status in the areas of gender division of labor and economic authority, women’s role in politics, and the spiritual power of women. It is becoming common knowledge that early colonizers did not want to negotiate with Indigenous women in treaty negotiations with Indigenous peoples and so insisted on the presence of men and exclusion of women.

Most scholars tacitly agree that the documentation is scarce. Mihesuah offers some thoughts on the historical erasure of indigenous women:

How much prestige and power women actually held will never be known. Most observations of Indian women in traditional societies were written by Euro-American men, who judged them by the same standards that they judged Women of their own societies. Many non-natives misunderstood tribal kinship systems, gender roles, and tribal spiritual and social values. Their observations also reflected their biases, and perhaps their desire to manipulate reality to accommodate their expectation that Native women were held in lesser regard in their tribal societies because women were subservient to men in European societies (2003, p. 45).

The obvious question is “what exactly changed with the imposition of patriarchy?”

Without the proper documentation as described by Mihesuah, this is difficult to answer.

In the case of Pueblo women, most if not all Spanish documentation was destroyed during the 1680 Pueblo revolt, so what exists now is post 1692 Spanish records for New Mexico, written of course from a Spanish colonial perspective.

In 1986, Allen set forth what she termed as four objectives that are essential to “effecting the social transformation from egalitarian, gynecentric, systems to hierarchical, patriarchal systems” (p. 41): (1) displacing the primacy of the female as creator with male-centered creators; (2) destroying tribal governing institutions and the philosophies that are their foundation; (3) pushing the people off their lands, depriving them of their economic livelihood, and forcing them to curtail or end altogether pursuits on which their ritual system, philosophy and subsistence depend; (4) and replacing the clan structure if not in fact, in theory by the nuclear family, and thereby replacing women clan heads by elected male officials (pp. 41-42). While not all four objectives may apply to all indigenous peoples, this delineation was probably helpful in 1986 for many to understand how patriarchal systems work to undermine indigenous systems. What I am advocating in this article is a look at all or similar aspects of indigenous life ways in a wholistic manner, as part of indigenous legal traditions that were challenged by the Spanish civil legal tradition in New Mexico.

## **Spanish Civil Law in Colonial New Mexico**

### **Journey of Civil Law Tradition from Spain to New Mexico**

Most of the references to Spanish civil laws in this paper will be provisions or laws in the *Recopilación de Leyes de los Reynos de las Indias* (1841), which were published as a collection of compiled laws in 1681. However there were precursors to this body of law. By the time of contact in 1539, Spanish jurists had already debated over the treatment of Indians or indigenous peoples in the New World. The first comprehensive Spanish code which specifically addressed Indigenous peoples of the New World was the *Laws of Burgos*, promulgated on December 27, 1512, and revised in

1513 (Simpson, 1960). These laws were adopted in response to Queen Isabella's displeasure upon learning that Columbus returned from his voyage with Indians who had been enslaved; she ordered that they be returned. After her death in 1503, King Ferdinand, who also heard stories of mistreatment of the indigenous peoples, sanctioned the laws.<sup>17</sup>

The Laws of Burgos were followed by the New Laws of 1542, under King Charles I, after the return of Bartolomé de las Casas from New Spain. Convinced by the Las Casas School of Thought, King Charles I was determined to end the use of Indians as slaves, and to improve conditions for the Indians under the encomienda system; eventually it would have eliminated this system. The encomienda system, until 1549, was essentially a labor grant that gave its holder the right to require labor and tribute (Dunbar-Ortiz, 2007).<sup>18</sup> However after King Charles attempted to curtail the system, serious revolts occurred in Peru, involving the killing of officials by landowners under the encomienda system. Peruvian encomenderos prepared arguments against ending the encomienda which were sent to Spain by their attorneys. As a result, the King had to slow down the process envisioned by the New Laws of 1542-43. Bartolomé de las Casas argued against Sepulveda and others in defense of the Indians. Hanke (1949) characterized this debate as the last important event in the controversy on Indian capacity that bitterly divided Spaniards in the sixteenth century.

The Decree of 1549 forbade new conquests, in part due to the efforts of Las Casas; however it was revoked in 1556. Then Phillip II replaced the 1556 decree with the ordinance of mode of "discovery" to one of "pacification." This codification became

Book IV of the *Recopilación de leyes de los Reynos de las Indias*, which was the greatest compilation for the colonial period. It was published in four volumes in Madrid in 1681 (the year after the Pueblo Revolt), after being started nearly 100 years earlier. The purported purpose of the laws in the *Recopilación* was protection of rights for the “Indians.” However, written history has since told us it was not necessarily the law on the ground. The impact of the laws was actually an assault on the Pueblo chthonic legal traditions.

Some sectors of Spanish society recognized that the “Indians” or indigenous peoples had some preexisting form of law. Francisco de Vitoria, noted jurist and theologian noted in 1583 “there is a certain method in their affairs, for they have politics which are orderly arranged and they have definite marriage and magistrates, overlords, laws and workships, and a system of exchange, all of which call for the use of reason; they also have a kind of religion” (Vitoria, 1917, p. 86). Writing in 1947, historian Haring noted that because of the difficulties encountered by the Spanish government in forcing an Indian population to be reduced to Spanish norms, “the Crown tried to incorporate into its American legislation some of the juridical customs of the aborigines (pp. 110-111). Thus the language in Book 2, Title 1, Law 4 of the *Recopilación* provides that “the laws and good customs that the Indians had in antiquity for good government and general welfare, as well as the uses and customs observed and retained since they became Christians, shall be respected and enforced as long as they do not conflict with our Sacred Religion, nor with the laws of this book of the new laws which have been

ordered and commanded.” In practice the Spanish colonizers make the maximum use of the conflict of laws language so that Spanish law norms were accorded greater status.

### **Spanish Civil Law Tradition and Pueblo Chthonic Law Tradition Meet**

By the time of contact with Pueblo peoples in the sixteenth century, Spain had experienced in its legal tradition a shift from community, corporate thinking of chthonic peoples to centrality of the person:

Change in the expression of law thus follows from the necessity of placing explicit human rationality above the interstitial rationality of the chthonic or talmudic traditions. And this place for explicit rationality follows from the necessity of ensuring that humanity would subdue the world and not be subdued by it (Glenn, 2010, p. 132).

This alone constitutes a major shift from a chthonic legal tradition, which emphasized relationship with Mother Earth, and where there was little or no space for individual rights. The civil legal tradition also included a separation of church and state, so that by the time of contact there was a different set of laws for the church (canon law). This would also represent a departure from the chthonic connectedness of the secular and the religious or spiritual.

The positive law was an instrument of human rationality, so that the civil law tradition introduced posited law grounded in a presumed norm (Glenn, p. 140). These norms were contained in the 19 books of the *Recopilación de Leyes de Los Reynos de las Indias* (Tyler, 1980). These *leyes*, or laws, of course contained the norms of seventeenth-century Spanish colonial society.

The Spanish civil law tradition brought with it a construction of states and citizenship. A national identity was forged in the process, over regional and other identities. According to Glenn: “Identities get protected in the civil law world,

particularly the constructed ones. They're the most fragile. They depend on formal law, and have to be protected by formal law" (p. 150). Given the hierarchical class and caste system that Spain imported into "New Spain," the importance of a civil law system to support the identities is easily understood.

### **Select Laws from the Recopilación**

Part of the irony about the Spanish civil legal system that addressed indigenous peoples in New Spain, was that these laws, as discussed earlier, were adopted to afford certain protections to Indigenous peoples and individuals. The problem of course was that it was done in a paternalistic manner, so that many of these laws imposed Spanish society values on the Indigenous peoples, notwithstanding the law in Book 2 to accommodate the "laws and good customs of the Indians."<sup>19</sup> Thus a reading of 16<sup>th</sup> and 17<sup>th</sup> century Spanish laws that were supposed to protect Indians in New Spain can easily become an exercise in reading the subtext. For instance, a provision of the law forbade navigators and travelers from taking Indian women with them (Book VI, Title 1, Law 48). This of course suggests that Indigenous women had been forcefully taken by navigators and travelers. Some laws are explicit about the reasons for their creation, as will be seen below. Tyler (1980) describes much of the law for New Spain as Spain's response to misdeeds and atrocities committed by subjects of the King and Queen of Spain. This premise allows us to make fairly educated guesses about events or acts that led to enactment of these laws.<sup>20</sup>

Book VI of the Recopilación or New Laws contains laws specifically addressed at "Indians" in New Spain; however several other books, including Book IV, specifically mention Indians and Indian women. Book VI contains 19 titles, which reference issues



such as the Freedom of the Indians (Title 2), Reducciones and Towns of Indians (Title 3), Tributes and Taxes (Title 4), Caciques (Title 5), Service in Farms, Vineyards, Olive Plantation, Workshops, Mills, Pearl Fisheries, Inns, Pack Trains, Wagon Trails, Homes, Livestock, and Rowing (Title 13). Other laws contained in other books did not mention “Indian women,” but they clearly had an impact on the lives of Pueblo women. Examples are provided below. This section contains a sampling of the New Laws as translated into English. Books IV and VI, and portions of others have been translated from Spanish to English.

Many of the New Laws are prefaced with text that suggests the reason for passage of the new laws. For instance, Title 1, Law 3 provides that “Indian women not be permitted to marry unless they have reached legal age.” As a preface the law states the following:

Some Encomenderos, in order to collect the tribute which is not required from unmarried Indians until such time as they have reached the appropriate age, force young girls to marry, thus offending God our Lord, harming their health, and hindering their reproductive potential.

Title 1, Law 48, “That the Viceroy and Governors provide that navigators and travelers not take Indian women with them,” contained the following reason for its adoption:

Navigators and travelers by land or sea are accustomed to taking married or single women with them, which is a disservice to God our Lord and a peril to decency. And because it is just that this transgression be prohibited, We order the Viceroy and Governors to provide the necessary correction so that all bad examples will be prevented.

This law was originally dated 1541, which likely indicates that Spaniards were kidnapping Indian women by the mid-16<sup>th</sup> century. Title 12, Law 2 provides that “action

be taken against Ministers who have Indians carry burdens, or who take away their properties or wives.”

### **Marriage and Family**

Other laws specifically addressed the status of Pueblo women in the family or the domestic realm of Pueblo life. Title 1, Law 7 provides that “the married Indian woman shall go to her husband’s town and live there even though he may be absent or may have run away; and if she be left widowed, that she may remain in her husband’s town or return to her own, whichever she wishes, so long as she leaves her children in her husband’s town, if they have been raised there for at least three years.” First, this forced the institution of a Spanish colonial marriage on Pueblo peoples. Second it clearly worked against Pueblo chthonic laws that children belong to their mother and a man who marries must go to live in the house of the woman. This would also upset the economic status of a Pueblo woman who was taken outside the economic unit of her clan.

Law 10 in the same Title went further and provided clear patriarchal rules:

We declare that the children of married Indian women shall be presumed and are considered to be those of her husband, evidence to the contrary not being admissible; that, being the children of the said Indian man, they shall remain in their father’s town, even if it is claimed that they are the children of a Spaniard; and that the children of unmarried Indian women shall remain in their mother’s town.

The subtexts here are multiple. Contrary to many Pueblo indigenous traditions, which determined identity from the mother’s side or clan, this law would have bestowed more status on “legitimate” children than on “illegitimate” children, a concept foreign to Pueblos before Spanish contact. Placing them in different towns would clearly break up a family unit. This law also appears to provide “cover” for situations in which Spanish

men raped Indian women and children were born as a result. They “legally” became the children of a Pueblo husband. The assaults on the Pueblo family through imposition of these laws are numerous.

### **Encomenderos and Repartimiento**

By act of February 22, 1549, obligations of the Indians were limited to tribute only and personal service or labor was forbidden. However, because there was still a demand for labor, the Repartimiento came into existence as an institution. This was the right of Spaniards to use Indians for forced but paid labor, in mines, for agriculture or public works (Jenkins, circa 1983, p. 6). The Repartimiento was used and abused in New Mexico, as evidenced in part by an order from the viceroy to Governor Juan de Eulate demanding that he work more closely with the religious sectors and stop abuses with the Pueblo Indians (Jenkins, p. 8). The Repartimiento was to be used only for tilling and cattle herding by Indians close to the Spanish lands and only two percent of the Indians of any Pueblo were to be used at any time.<sup>21</sup>

Some laws clearly indicate that Pueblo women, many of whom were conscripted to servitude in Spanish homes under the Repartimiento, were not safe outside of their homes. Since heads of household in the Spanish civil legal system were men, they were often subjected to abuse. Greenleaf (1985) chronicles an Inquisition case that began in 1729 against Pedro de Chavez, a wealthy settler. Charges were made that he “took [sexual] liberties with Indian women of his household” (Greenleaf, p. 37), and one of his Indian woman servants complained that “he forced her to give him sexual favors in order to protect her younger sister from him” (p.37). Title 9, Law 20, provided that “[t]he Encomenderos shall not have in their houses Indian women of their repartimientos; nor

shall they make use of them for another purpose.” The subtext here appears to be abuse of Pueblo women servants. Law 21 in the same title provides that Encomenderos shall not prevent marriages of Indians, with the added explanation that “In no way, directly or indirectly, is it proper that the Encomendero, or any person who has an Indian woman in his house, shall have the authority to object to her marriage, or to have her marry against her will, because in such marriages, which have the pretense of being legitimate, there is constraint.” Title 10, Law 15 provides that “No Encomendero or other person shall force Indian women in any situation or in any way to be confined to enclosures or other places to spin and weave cloth for purposes of tribute.” Title 13, Law 15 purported to provide protection against forced servitude of married Indian women: “No married Indian woman may agree to serve in the home of a Spaniard, nor shall she be forced to do so, unless her husband serves in the same home. Nor shall single Indian women serve in the home of a Spaniard, if they wish to remain and reside in their towns.” Of course the subtext is that Indian husbands were needed to protect their wives from abuse in Spanish households, and that single Indian women were particularly vulnerable and therefore could not serve in the home of a Spaniard.

According to Cutter (1995), who has provided the most comprehensive and helpful overview of the day to day workings of the Spanish colonial legal system in New Mexico, the “laws” enforced by mainly local magistrates in colonial New Mexico consisted of the fundamental laws and ordinances, as well as legal commentary, contrary to assertions by some historians that frontier magistrates operated without legal texts (Cutter, p. 34). However, written law figured more prominently than doctrine and the

fundamental compilation of laws and ordinances, including the 1681 Recopilación. Additionally there was a “never ending stream of cédulas, orders and decrees sent to all jurisdictions of New Spain” (Cutter, p. 37), and local officials had the duty to make proclamations of new laws. However, a peculiarity of the Spanish legal system forbade local magistrates from issuing a written explanation of their decision; thus the historical record does not provide much in the way of legal reasoning (Cutter, p. 36). This is not unusual for a civil legal system, as opposed to a common law system in which case law is central.

### **Impact of Spanish Colonial Law on Status of Pueblo Women**

The next question is how did the Spanish civil law system impact the status of Pueblo women? In this section I review several arenas in which the status of Pueblo women arguably was diminished by the impact of Spanish civil law: governance, domestic relations and the economy. In line with the civil law tradition, much of Spanish colonialism was about state-making in New Mexico and ostensibly creating new identities, so that Pueblos were expected to become citizens of Spain and leave behind their chthonic traditions. Indians—Pueblos-- were considered vassals of the Crown as well as wards (Jenkins, circa 1983). After a review of the literature and given my knowledge of (some) Pueblo oral history and contemporary praxis, I would posit that gender roles in the Pueblo home were not as greatly impacted as gender roles in external Pueblo relations. I would also venture to say that the status of Pueblo women in general, as evidenced in governance and in Pueblo economies, was greatly impacted by the imposition of a Spanish legal tradition, together with a Catholic church, that subjugated the status of women.

The most comprehensive examination of New Mexico Pueblo women under Spanish colonial influence before Mexican independence appears in Brown's book. I found it useful as one of the few secondary sources that devoted some attention to Pueblo women in this time period and with similar inquiries. While she did not cite particular Spanish laws such as the Recopilación laws, she did reference Spanish civil concepts such as the encomienda in her discussion of Pueblo responses to eighteenth century Spanish colonial authority.

Brown reviews methodologies of earlier ethnographers about Pueblo response to Spanish colonial authority and observes that "compartmentalization paired with upstreaming is not an adequate theoretical and methodological basis upon which to explain how Pueblo people responded to Spanish domination" (pp. 14-15). Brown argues that Pueblo peoples used many tactics, other than compartmentalizing, to negotiate Spanish colonial power and authority:

They were sometimes secret about their beliefs and practices, much in the way Spicer and Dozier described. They also expanded political, economic, ritual, and other social traditions to meet new demands and burdens placed upon them by contact; feigned loyalty to Spanish authorities and the teachings of the Catholic Church; tolerated Spanish practices and beliefs, especially those that paralleled their own; adopted those practices and beliefs that they found useful or attractive; and circumvented Spanish influence, or even resisted it outright, when it was not to their liking (p. 19).

Brown relies on eighteenth-century Spanish documents since so much was destroyed in the 1680 Pueblo Revolt. In particular she discusses the role of Pueblo women in external relations, in the economies of the Pueblos, in domestic relations, and in selected cases involving accusations of "sorcery." She argues that while the status of Pueblo women

may have diminished before contact, the impact of Spanish colonialism was to deepen them to the detriment of Pueblo women.<sup>22</sup>

Other helpful discussions, though not directly on point, are found in a few primary and secondary sources. In *Weaving the Past: A History of Latin America's Indigenous Women from the Prehispanic Period to the Present*, Kellog (2005) offers a comprehensive and interdisciplinary history of Latin America's indigenous women, including the impacts of Spanish colonialism on their status in family and religious life, women's labor roles and the economy, and the participation of indigenous women- as plaintiffs, defendants and witnesses--in litigation in the 15<sup>th</sup> and 16<sup>th</sup> centuries. However, lest one be tempted to apply her work to Pueblo women in New Mexico, she provides a good reason to apply caution:

But two other factors also proved significant for an analysis of the gendered impact of Iberian conquest and colonization. First, geographic location and cultural traditions matter deeply. Where a group lived, how Iberians chose to exploit that region, which particular group one belonged to, and that group's traditions shaped an individual's experiences (p.86).

This reinforces the earlier discussion about the nature of chthonic legal traditions and how they are tied to specific ecological orders.

Yannakakis (2013), in a review of literature on indigenous people and the legal systems in colonial Mexico, argues that the Spanish legal system “facilitated the negotiation of colonial rule, including the growth and transformation of legal institutions and practices, and the relationship between Indian and Spanish jurisdictions. The legal system also provided an arena for cultural encounter in which Spanish and native forms of law and knowledge were circulated and constructed” (p. 931).

This is consistent with Cutter, who describes the implementation of the Spanish civil laws in colonial New Mexico—the northernmost area of New Spain and therefore geographically isolated from the center in Mexico City. He describes how geographic reality and political ideology “confronted one another” (p. 30) in New Mexico but also how both helped to shape the legal culture of New Mexico. Factors such as the remoteness of New Mexico, the scarcity of trained legal personnel, and the cost of the legal books all influenced the way the law was implemented in colonial New Mexico.

### **Theories of Impact on the Status of Pueblo Women**

While there may have been some changes in the status of Pueblo women before contact with Spain, it is fair to say that under Spanish colonial influence, their status was considerably diminished. Gutiérrez (1991) would say that they experienced an erosion of power, as “conquest by a patriarchal society meant that Pueblo women lost their exclusive rights to land, to child labor, to seeds, and even to children” (p.79). He was criticized for over generalizing about Pueblos. However, if the same laws were applied to all Pueblo women in Spanish colonial New Mexico, there were likely similar impacts among Pueblo women, depending on their ability to resist Spanish intrusion. Brown and others have surmised that the Western Pueblos, being farther away from Santa Fe than the Eastern Pueblos, were more able to resist Spanish intrusions by virtue of the distance.

Some anthropologists maintain there was a loss of status for some Pueblo women before contact, due to the development of “intensive production and heavy investment in agricultural improvements” (Brown T. L., p. 59), among other reasons, including the increasing size of Pueblo communities. Brown cites evidence of increasing violence against women in the eleventh through fourteenth centuries, as well as studies of the



imagery employed in petroglyphs and rock art, and the disassociation of kivas from Pueblo households from AD 1100 to 1300; she interprets this as losing access to these ceremonial spaces (pp.59-61). As authority she cites several anthropological studies, but nevertheless concludes by saying “[i]n short, pre-contact gender relations were inherently ambiguous and complex, making it difficult to generalize about them” (p.58). Brown focuses on anthropological and archaeological “evidence” in making these observations. Even if there was some loss of status before contact, the fact the Pueblo chthonic legal traditions (which held the female in an important status) remained intact through these periods is important. The foundation of the chthonic legal traditions was not, I would argue, fundamentally challenged until contact with a system that clearly placed women in a diminished status.

With regard to women’s roles in governance, Brown argues that the choices Pueblo individuals and “elites” made in response to pressures from Spanish pressures to change their lives and adopt Spanish practices resulted in “an expansion, segmentation, and, ultimately, reinforcement of male-dominance and class segregation of the political sphere” (p. 21). In most Pueblos, where corporate-based leadership strategy dominated, and consensus building was key, women had at least a consultative role as either matriarchs or members of the community, in decision-making. This would be strange to the Spanish, who believed that the proper sphere of the woman was the home. I could not locate Spanish laws that specifically address women’s participation in governance; however, it was clear that women in a Spanish civil law regime were not to participate in

corporate decision making. In return for the husband's support and protection, Spanish women and children owed absolute obedience to him.

Regarding the economic sphere, Brown argues that the gendered division of labor in Pueblo communities changed little after contact. Spaniards were somewhat successful in getting men to stop weaving, and women to stop hunting for example, but not so successful in getting men to plaster houses instead of women. Perhaps this speaks to Pueblo adherence to chthonic laws that connect women to the home as primary caretakers in matrilineal systems in which women inherit homes. She also pointed out that Pueblo women contributed a great amount of labor to the economy, especially in the making of pots for Spaniards. This is no small amount; Kenagy (1989) cites a statistic that "seventeenth and eighteenth-century Hispanic sites derived 97 to 99 percent of their ceramics from the Pueblos (Kenagy, p. 326).

The Pueblo household was one area where Pueblo men and women resisted the pressures to conform to Spanish law and practices. Unlike in the political sphere, Brown contends, there is little archaeological or documentary evidence to suggest a strong commitment to an ideology of male dominance in Pueblo families before Spanish contact. Contrary to the values and expectations of a matrilineal society, marriage could mean taking a woman away from her family and economic support, so that she would become dependent on her husband and lose her independence. Brown argues that despite similar exposure to Spanish ideologies, a majority of Pueblos continued to cohabitate and most probably retained kinship practices that did not include a bias toward male inheritance or power. In 1714, the Governor of New Mexico issued a detailed order to

address cohabitation (or “concubinage” as it was known under Spanish Catholic values) in Pueblo communities; the penalty for not following this order was “fifty lashes in the pillory and two months in prison for the first offense; for the second offense the person would be sent to an *obraje* (workshop) for four years of hard labor” (p. 142).

Despite Pueblo resistance to Spanish ideologies, Brown indicates that by the eighteenth century, some Pueblo women were living under conditions of “intensive” male domination in patriarchal households:

The documentation from the colonial periods shows what happened in Pueblo communities experiencing a shift to patriarchal social relations: women sometimes lost control of their ability to make decisions for themselves (such as where they would live after marriage), to provide for themselves, or to end their intimate relationships. As a result of these shifts, violence in intimate relationships may have become more common in Pueblo communities, as occurred across Latin America more generally during the colonial period (p. 158).

This loss of influence or control may explain in part why some Pueblo women chose to go outside the Pueblo to marry non-Pueblos or conduct business outside of the Pueblo.

### **Witchcraft Cases in Colonial New Mexico Involving Pueblo Women**

One area where Spanish civil laws were apparently enforced was that of witchcraft or sorcery in the 1700s. Documentation exists on Pueblo women being charged with witchcraft under Spanish civil authority in cases heard between 1700 and 1730.<sup>23</sup> Brown argues that commoner men and Pueblo women used ritual as possible ways to achieve material wealth and status in the Spanish colonial world, and in doing so they were “negotiating restrictions placed upon them by Spanish domination in tandem with Pueblo power structures that were gendered and classed in nature” (p. 136).

Charges of witchcraft or sorcery under Spanish colonialism could have been pursued by the Catholic Church under the Inquisition, or under Spanish civil laws. The

Apostolic Inquisitors were prohibited from bringing actions against the Indians. However, Pueblo people often got caught in the crossfire between the Church and civil authorities. In the late 1600's and early 1700's, priests often lodged charges against Spanish civil officials under the Inquisition. Greenleaf (1985) discusses the use of the Inquisition in clashes between clergy and civil government in 17<sup>th</sup> and 18<sup>th</sup> century New Mexico. Both parties leveled charges against each other for mainly political purposes. In a similar manner, Brown suggests that witchcraft charges against Indians may have been politically motivated.

Book VI, Title 1, Law 35, of the Recopilación provided that “[p]unishment of sorcerers, who kill with their spells and use other curses as well, shall be carried out by [the] Royal Justicias.” However, it is not clear which laws were involved in the cases Brown discusses as she does not cite the laws applied in her discussion.<sup>24</sup>

Actual implementation of the civil law system involved an emphasis on fact finding. Glenn notes the discovery of facts, and the resultant notion of “solemnized reality, that which the law would presume to be true” (p. 137). In the civil law tradition, facts essentially take on a life of their own and the quest for facts (as in Inquisition) becomes a key part of the process. This was evident in the way the Spanish colonialists handled cases in New Mexico, as is illustrated by Brown in her discussion of these cases.<sup>25</sup>

Finally, Brown suggests that commoner Pueblo men and women had different paths to power; “commoner men sought power in the political sphere while women sought power, prestige, and authority in other spheres (such as ritual), perhaps due to

their exclusion from politics” (p. 136). Because women had power in this area before contact, in the opinion of Brown, ritual was “an arena that extended their influence in this sphere to include women in Spanish communities” (p. 136). Further research in this area would analyze the reasons for Spanish persecution in addition to the motivations for Pueblo women pursuing this “path to power” and how persecutions might have been connected to witchcraft trials in New England and Europe that challenged women perceived as having power or influence in patriarchal societies.

### **Role of Spanish Catholic Church and Impact on Pueblo Women**

Related to both the issues of cohabitation and witchcraft was of course the role of the Catholic Church, which was part of the Spanish civil law system which forced patriarchy on Pueblo peoples. When considering the impacts of Spanish colonialism on Pueblo women, there was arguably a more direct impact by the Church, which had a presence in almost all Pueblo villages. Pueblo women in the pews and outside the church had to contend with the theology of the time, which included patriarchal beliefs about women, and even more so, non-Christian women. Again, there is scant literature on the impact of the Catholic Church on New Mexico Pueblo women during Spanish colonial years. However, related sources on the church’s presence in Latin America at the same time provide some insight. Asunción Lavrin, in her article, “*Indian Brides of Christ: Creating New Spaces for Indigenous Women in New Spain*”(1999), provides an interesting discussion of the interplay of class, gender, and race in the definition of a policy of admission of indigenous women to membership in religious orders in Mexico, one of the highest positions of status in Spanish society. It is also informative about the Church’s theological underpinnings, which I argue negatively impacted the status of

Pueblo women in New Spain. I was most interested in what Lavrin labels “the definition of a spiritual script suited to meet the circumstances of Indian women and the requirements of the Church” (p. 226). It took two centuries to overcome biases that Indigenous women were not fit due to weak intellectual and spiritual capacity.

By the eighteenth century the Catholic Church had deeply embedded doctrine about the role of women in society in general, and in the church’s belief system. Christianity, as a monotheistic religion, had promulgated patriarchal gender relations.

According to Raday (2003):

[T]he Old Testament of the three monotheistic religions, forcefully frames gender as a patriarchal construct in the story of creation: ‘And Adam said, this is now bone of my bones and flesh of my flesh; she shall be called Woman because she was taken out of Man.’ This story constitutes the paradigmatic expression of the ‘otherness’ of woman... (pp. 671-672).

According to church doctrine, women were meant to be helpmates of men, to serve men and to be chaste. So Pueblo women, who knew an indigenous religion that honored female deities, were subjected to an entirely new paradigm about the status of women in religious life.

Gorecki (2013) finds indigenous feminist analysis useful in proposing that “[t]he history of the concurrent patriarchal belittlement of nature and women cannot be explained without the powerful influence of Christianity in Western Europe during the modern era” (p. 9):

The best example of the relationship of women, men and nature in the construction of the patriarchal structures of Christianity is the teaching of Adam and Eve. Eve’s transformation into the inferior and “evil sex” is not only due to her disobedience of God’s word, but also because it is God’s word that establishes the Earth and nature as ungodly. Eve’s similitude to nature leads her to her “earthy” submission of eating the apple of Eden, and the archetype of women as

the origin of evil in Christianity's creation story. The Christian message of God as transcendent and superior, and woman as earthly, material and thus inferior, would be the spearheading doctrine of the European colonization of the new world (p.9).

Anderson (2003) writes about the "spiritual dislocation of Native women with the arrival of Christianity," and how the male creator displaced the primacy of the female creator, so that women's spirituality was "limited to the troublesome role of Eve or the impossible role of the Virgin Mary" (pp. 76-77).

Spicer (1989) maintained that the Pueblos never accepted the concept of the Christian god. However, I would argue it is entirely possible that Spanish patriarchal practices in the church affected the status of Pueblo women nevertheless. Maori scholar Smith (2012) explains how Christianity, when organized into a system of power, brought to bear on the basic concepts [of the soul and human morality] a focus of systematic study and debate which could then be used to regulate all aspects of social and spiritual life" (p. 51). She also emphasized how gender and social hierarchy are deeply embedded in colonial languages. The theological script that the Catholic Church used in colonial New Mexico almost certainly used the language of patriarchy and worked to displace the primacy of the female beings in the Pueblo world.

### **Potential for Further Research**

As stated earlier, there is a wealth of literature on Pueblo peoples, with the vast majority of it written by non-Pueblo and non-Indigenous authors. Rarely does this literature directly address issues of the presence and impacts of Spanish colonial civil law tradition and patriarchy on Pueblo women. This leaves an approach for those who are willing to comb through the literature with a "read between the lines" approach towards

making determinations about the impacts of patriarchy on Pueblo women. For example, anthropologist and folklorist Elsie Clews Parsons visited some Pueblos in the early 1900s and wrote extensively on Pueblo women. Her numerous publications on Pueblo peoples, none of which are titled to suggest she conducted a pointed examination of the impact of Spanish civil law systems on Pueblo peoples, might contain more information with more time to cull through them.<sup>26</sup>

Further research would need to distinguish between Spanish colonialism, with its civil law regime and the Catholic Church, and American settler colonialism, with its tool of common law. The two legal regimes were used for two different agendas; in general Spanish colonialism needed and used Pueblo labor while American colonialism was more interested in Pueblo land and water. It remains a challenge to demonstrate what existed before Spanish colonialism in terms of power and influence of Pueblo women, hence the need to gather what oral history exists today. This in turn highlights the need to supplement the accounts of early anthropologists and Spanish writers (including priests and court cases) with oral history of Pueblo peoples.

This appears to be an area wide open for exploration. I have only touched the tip of the Pueblo iceberg in doing this research. As I have read texts such as *Laguna Genealogies*, by Elsie Clews Parsons (1924), an early 20<sup>th</sup> century anthropologist who visited a number of Pueblos, I have begun to see the messages between the lines. Clews says, for instance, in 1919 that Laguna Pueblo women traditionally have inherited homes and a few men are beginning to inherit houses, and lays out the main clan lineages of Laguna Pueblo, documenting the presence of a matrilineal belief system and way of



regulating home ownership. At the same time she devotes a section to “illegitimacy” and makes her biased observations that it is taken lightly, without perhaps realizing that in a matrilineal society there is no such concept as “illegitimacy.”

Finally, more time spent in researching literature on indigenous women impacted by Spanish colonial laws in Latin American could be helpful. Much of this literature will be in Spanish. There is more documentation in this area than exists in pre-1680 New Mexico. And while it is true that the Spanish civil legal tradition took on a different tone in New Mexico than Mexico, valuable clues might be found for certain areas such as the role of the Catholic Church.

### **Conclusion**

As useful as Brown was in this research, she admits that “no unmediated Pueblo voice, or set of voices exists in the documentation” (p. 6). However, her solution to this gap is that historians need to find a way to interrogate and negotiate the biases in the documentation. This is an opportune time for Pueblo peoples to fill that gap with their voices and their oral histories, not more “objective” academics. She was forthcoming about this issue but Gutiérrez had to be called out for his inability to see beyond the colonial texts. His work is also in need of supplementing by insider researchers who can tell the Pueblo women stories that were silenced. And although Cutter, who was aware of pre-existing Pueblo indigenous legal traditions and the recognition in the *Recopilación*, mentions the many ways in which accommodation was made in implementation of the Spanish civil law in New Mexico, he does not cite one case in which a decision was molded to accommodate a Pueblo Indigenous law. Here too is room for contributions by Pueblo scholars. What aspects of Pueblo chthonic law were non-negotiable and where

have we given in to colonial, patriarchal ways of thinking and being in ways that are harmful to our well-being?

All three of these scholars who share their research on various aspects of Spanish colonial life in New Mexico, fail to fully appreciate the existence of a wholistic, complex and ancient chthonic legal tradition that was in place before Spanish colonialism. Even though Cutter states the Spanish recognition of a legal system before contact, his discussion on colonial Spanish civil law misses Brown's point about the ways in which Pueblo peoples negotiated their way through the impositions of Spanish colonialism. Brown provides useful archaeological and historical (colonial) data on Pueblo women, but also misses the backdrop of a Pueblo chthonic legal tradition which governs relationships with other humans and the environment. I believe that using the framework of a chthonic legal tradition would help to fill many of the gaps and help to better understand the ways in which Pueblo peoples both accommodated and rejected the norms which the Spanish civil legal tradition attempted to impose on their lifeways.

I will continue this process, using the tools I have discussed earlier, especially with regard to Laguna Pueblo. Although we know that many of the Pueblos had adopted more common law by the time they began to adopt tribal codes in the 1970's, some remnants of Spanish colonial law still may exist in laws concerning, e.g., governance for a given Pueblo. For example, the Pueblo of Laguna until 2014 had a prohibition against "cohabitation" in its legal code,<sup>27</sup> and the Tribal Court does not yet have jurisdiction to grant divorces. The 1908 Pueblo of Laguna Laws provided that "no divorces shall be granted by the Officers of the Pueblo of Laguna," but that the officers could "examine the

case and try to mutually adjust the matter if possible, by giving wholesome advice to the parties concerned.”<sup>28</sup> I would submit that these provisions and lack of delegation to the Pueblo court are remaining vestiges of Spanish colonialism that seem to fall under the radar. They hark back to the colonial prohibition against cohabitation and the patriarchal obsession with determining legitimacy of children. There is a great need for Pueblo scholars to pay similar attention to historical texts on other Pueblos.

Native Feminism writers have provided some valuable tools with which we can examine the impact of Spanish colonial laws on Pueblo women. In the words of Denetdale:

The goals of decolonization are intertwined with those of Indigenous feminists who are committed to the retention of Indigenous land, the realization of sovereignty, and the recovery of tribal languages, educations, and cultural practices. In moving toward Indigenous governance, it is important to interrogate the creation and perpetuation of modern tribal governments; as such, feminist praxis is proving useful in unveiling the ways in which tribal governments have sustained colonial practices and attitudes (p. 137).

However these tools are not absolutely necessary for Pueblo peoples who have knowledge of our chthonic past and can see the remaining vestiges of colonialism in our midst and see it as harmful for our future. In my experience these are very few, which is why I will continue to do the work.

Earlier I stated that it is important to identify the presence of patriarchy and heteropatriarchy in our Pueblos, and that identifying patriarchy is a necessary part of decolonization. I need to state at this point that the purpose of this analysis would not be just to focus on our chthonic past. This is only part of what some scholars refer to as the process of liberation. My point is that we realign our foundation in our chthonic or

indigenous Pueblo legal traditions and work from there to determine what parts of Spanish colonialism and patriarchy we may have internalized to the detriment of our peoples. With this grounding we can move on. As Smith (2014) so rightly says, “Decolonization entails not going backward to a precolonial past but a commitment to building a future for indigenous peoples based on principles of justice and liberation” (p. 230). I might, however, substitute “Pueblo core values” for the words “justice and liberation.”

I also see this work as being part of what Smith calls the “politics of decolonization” (p. 231) which “requires the proliferation of theories, knowledge, ideas, and analyses that speak to a ‘beyond settler colonialism’ and are hence unknowable. Hopefully, as Pueblo peoples continue the conversations on a sovereign future, the voices of our pre-contact grandmothers and mothers will resound in this process. We can honor their place in our peoples’ existence by methodically excising what vestiges of Spanish colonialism (and later colonialisms) keep our peoples from using all the resources that our Creator gave us to continue as peoples.

## SECTION II: BOOK CHAPTER

### A Study of Paguete Village Beliefs and Attitudes on Preservation and/or Renovation of Traditional Structures: Reminding Ourselves, Re-membering Ourselves

#### **Introduction**

It is not an exaggeration to say that this project started because I saw the core of our Village falling down piece by piece, with little or no evidence that we, the people in my home Village of Paguete, collectively had the physical or emotional will to stop this process. Traditional structures built of adobe and rock, which form the core of the Village and which define us as people connected to the land and to each other, were becoming ruins as if to signal that the once vibrant core of the village was losing its vitality. These structures that have connected us to Mother Earth for hundreds of years were increasingly compromised through erosion and lack of maintenance. I returned in 2003 to Paguete Village to live and work, after living away from the Village for school and work for nearly twenty years. During my time away, I returned often for family and community events. However, I never really quite managed to sense the magnitude of change to traditional structures as when I lived in the Village again, I distinctly recall one afternoon in 2008 when I took a walk through areas of the village where I visited friends as a child. These once well-kept adobe and rock homes and yards were now empty and in terrible disrepair and, in some cases, even ransacked with broken windows. To add to this state of affairs, Paguete Village leadership had recently announced their intention to knock down some old buildings in the Village because they had become “a hazard.” The final straw for me was in 2010, when Village leadership decided to hire a non-Native contractor to expand our kiva – one of the most central and sacred places in our Village. I understood

that part of this decision was about frustration with the lack of will and ability among Village residents to complete this project, as they would have done voluntarily 50 years ago. Still, it was sobering to realize that in my lifetime enough change had occurred that my community could not accomplish this task.

This work is prompted by that realization and as such, addresses several major themes through an exploration of the status of traditional structures and community member attitudes towards traditional housing in Paguate Village. I argue that as traditional housing is central to the cultural tenets of Laguna people, it is more complex than physical infrastructure and involves a discussion that links traditional structures with Pueblo epistemologies, history, sociocultural identities, and Village planning considerations.

In this chapter I share my experience with examining traditional housing, both as a Laguna Pueblo community member and as an emerging Justice Studies scholar interested in Indigenous research that is useful to Indigenous people. This work demonstrates one approach towards capturing the values we clearly hold about our traditional Laguna building structures and their place in our collective being. These are beliefs and values that have been passed on from generation to generation as our people have lived in community, physically and spiritually. Often we assume these are values we all hold, and so we think there is no need to voice them as planning priorities as such. The result is that these values could become submerged and superseded by other values, such as U.S. government-provided affordable housing, which detracts from any community-based housing planning process. Outside of planning, I believe there are larger emotional

and spiritual losses that are connected to the loss of each structure that disappears or deteriorates. In order to share these perspectives, this chapter offers the following: context on the somewhat unique situation of Paguate Village; gaps in literature that prompted the study; a discussion of the survey design, methodology, and outcomes; and finally, reflections on the use of a survey as a possible tool to maximize community input, and as a possible community education tool.

My goal is not to put forward a “thesis” as such, but to demonstrate the value of a survey as a tool for community research and for planning. Since this research will be shared with the community, I have no intention of using this project to “convince” the community to adopt my particular opinion on preservation of traditional structures. Rather, I believe there is value in sharing with a community what it said without perhaps knowing the power of the message, and working from there to see how this research might otherwise be useful for the community.

### **The Building Project that Led to the Study: A Researcher Emerges**

After many conversations with community members and hours of searching for federal, state or tribal housing or building programs that could assist with this situation, I found no such existing programs to address these specific issues. Encouraged to look for other sources of funding, I proposed a project to create an apprenticeship to teach traditional building skills in Paguate Village to the McCune Foundation. The Laguna-Acoma Coalition for a Safe Environment (LACSE), a small community organization that was formed in the early 1980’s to address uranium mining legacy issues, agreed to sponsor the project.<sup>29</sup> With a grant of \$15,000, LACSE worked with others in the community to create an 8 to 10 week apprenticeship, for men and women that was

designed to teach traditional building skills, and build a corps of apprentices who could assist in preservation of traditional homes and other structures. Over three summers (2011-2013), we built and repaired structures that would benefit the community. The response of Village residents and leadership was generally positive and supportive.

Additionally, this project coincided with a Pueblo-wide comprehensive planning process, coordinated by the Pueblo of Laguna Planning Program, which began approximately in 2010, and included all of the Pueblo's six Villages. The process included convening of community meetings and focus groups in each Village. In Paguate Village, elder interviews were conducted on different topics to supplement the focus groups (Hausam, 2013). Some elders voiced a desire to revitalize the center of the Village, which includes the plaza (or Ga' Kaatdye in Keres, meaning "the opening place"), surrounded by mostly adobe and rock homes (Hausam, 2013).

After the third summer of the LACSE program, in 2013, I realized that to make this restoration project sustainable, Paguate Village would need to take ownership of this or a similar project rather than remain dependent on outside funding. I also realized that we had been proceeding with an assumption that the majority of Village residents supported this project. If we were to approach the Village leadership and membership with a proposal to fund a similar project, it would be important to first establish what level of support might actually exist for continuing this type of project. So, in the fall of 2013 I chose a pilot class project for a Community Research course in my doctoral studies that could assist with shaping this goal. I proposed to study the beliefs, desires, and current attitudes about preservation and restoration of traditional adobe and rock



structures in Paguete Village, amongst adults who are eligible to vote in Village matters. My hope was that this study would assist the Village in future decision-making and planning regarding preservation and restoration of the Village core. In the process I also hoped to gain a greater understanding of the level of emotional, spiritual, and physical support that exists in the Village to accomplish a restoration of our Village center or core.

### **Methodology**

From November to December 2013 I conducted a survey focused on these issues in Paguete, among adults 18 and older. The survey, designed in consultation with other community members, included questions that would lend themselves to both quantitative and qualitative analysis (Survey on Paguete Traditional Buildings, 2013). At the time, survey results were reported with only a basic tabulation of responses. Encouraged by the results, I planned to present the findings to the Village membership. Before administering the survey, I did not know if Village residents would consider the deterioration of traditional structures in the Village core as a loss for us. This is a critical point to mention because there are now at least two generations in Paguete who have not experienced living in what we refer to as the traditional homes in the Village. In the meantime, several developments in the Pueblo's housing program had opened the possibility of Pueblo-sponsored funding for preservation and renovation of traditional buildings. This provided an extra incentive to continue with this project. The 2014-2015 academic year was used for analysis of quantitative data from the survey.

### **People and Place**

Paguete Village is one of six Villages that comprise the Pueblo of Laguna in northwestern New Mexico. It is the second oldest, after our mother Village of Laguna,

and the second largest. The Pueblo of Laguna enrollment is roughly 8,000, and the most recent 2010 census revealed that nearly half of enrolled Lagunas live away from the Pueblo lands. For governance purposes, every Laguna member affiliates with one of the six Villages, even if they live away from the Pueblo lands. As of August 2011, Paguete Village had 1,751 enrolled members.

Laguna Pueblo's government, like other Pueblos in New Mexico, is influenced by Spanish colonialism. Since at least the early 1800's, the Pueblo has used leadership titles given by the Spanish. The Pueblo is governed by a Governor, five Staff Officers (1<sup>st</sup> Lieutenant Governor, 2<sup>nd</sup> Lieutenant Governor, Head *Fiscale*, 1<sup>st</sup> *Fiscale* and 2<sup>nd</sup> *Fiscale*) and a Pueblo Council, totaling 21 persons with the Pueblo Secretary, Treasurer, Interpreter, and Council representatives from each Village.<sup>30</sup> Each Village elects two Council representatives, and each Village has their own Staff Officer. Villages are somewhat autonomous, so that decisions made on matters such as Village finances, Village planning, land assignments and residency of Village members are made at the Village level. Each Village in turn has local officials, *Mayordomos*, who work under the guidance and authority of the Staff Officer. Thus when I refer to Village leadership I am referring to the Paguete Village Staff Officer and the Village *Mayordomos*.

Like other Laguna Villages, Paguete was an agricultural community, with most families farming or ranching until the 1950's. There were also a number of Lagunas who had moved away from Laguna to work for the Santa Fe Railroad and had established sizeable Laguna communities in Winslow, Arizona, and Barstow and Richmond, California (Vicente Carpio, 2011).

The center of Paguate Village consists of a plaza, which is surrounded by adobe and rock homes, the kiva, community buildings including two churches (Catholic and Presbyterian) and other traditional structures such as barns. Until the early 1900's there were a number of two story homes standing on the south side of the Village; now only a few uninhabited two story buildings stand near the plaza. These were all constructed of traditional materials, cut rock and adobe mud. Not far from this site are other community buildings, including the kiva, used for traditional/religious activities and community gatherings.

I grew up on the north side of the Village. My father and grandfather built our home in the 1960's with cut rock and cement mortar. In those days, if a family wanted a home, they had to build the home themselves. Because this is trust land, the standard way of getting a home building loan was not an option for most Laguna people; banks were unwilling to give loans for structures on land they could not foreclose on. In general, trust land means land in which the title is held in trust by the United States for the benefit of an Indian or Indian tribe, and it is inalienable (25 U.S.C. § 177).<sup>31</sup> Pueblo lands are not alienable except with the permission of the United States, i.e., the Bureau of Indian Affairs. Thus my orientation to a house as I grew up was that it is a place for family and gathering, and not just an "investment" as so many people speak of homes today. I also lived in a cluster of houses consisting of extended family on my father's side, and nearby were interconnected adobe structures for livestock and poultry. There was an understanding of collective responsibility for all these structures, and a sense that we all had a stake in the maintenance and upkeep of these structures.

In my observation as a resident of the Village, the state of disrepair that led to the building project was not due simply to neglect, but was a result of major intervening events that have interrupted historic patterns of community life. Two of the major events were uranium mining and the introduction of federal government housing. Both of these external factors have greatly impacted the relationship between residents and traditional structures in the Village. Either some people eventually moved out of their traditional homes due to damage from the blasts of the extractive activities or other Village residents may not have ever lived in a rock and mortar home due to the influx of federal government housing, and may have no appreciation or interest in preservation. Still, many in our community believe that the core of the Village, which is mostly rock and adobe structures, is central to our community life and a large part of who we are as Laguna people. This belief goes back to our stories about why we are called to live where we live, and the importance of maintaining relationship, in community, with the ones that give us life and breath. In our teachings, the center of the village, the plaza or Ga' Kaatdye, is the embodiment of our connection.

### **30 Years of Uranium Mining: A Lasting (and Toxic) Legacy**

Beginning in the late 1940's/early 1950's, Laguna Pueblo and Pagate Village in particular was seriously impacted by large-scale uranium extraction. Between 1959 and 1983, Anaconda Minerals Company conducted open pit and underground mining at a site located less than half a mile away from the Village, known as Jackpile uranium mine. For years it was the largest open pit uranium mine in the world. During those years, acres and acres of land used for farming and grazing were reduced to rubble in order to extract the high grade ore. Pagate Village residents were exposed to the dust from daily blasting

that took place very close to the Village. This blasting caused damage to many of the traditional rock and adobe homes; a common complaint by residents was cracked walls in their homes. The side of the Village with the plaza and two story buildings dating back over 100 years was closer to the uranium mine than other areas of the Village, and so sustained a lot of damage. Decades later we learned that some homes retained radon contamination from years of exposure to dust from blasting. Additionally, some Village residents used radon contaminated rocks to build homes during the years of mining. While some people received minimal compensation from the mining company, few if any actually restored their homes completely. (Lorenzo, 2006) Not until 2012, nearly 30 years later, did the U.S. EPA take measures to assess the radon contamination.<sup>32</sup> In 2012, the EPA tested a number of homes in Paguete but did not test uninhabited homes or structures in the village.

Adobe homes need periodic plastering, inside and outside. Thus to have a home built of rock and adobe meant a continued relationship with the home. I have been told by a number of elders over the years that it was common practice for members of the Village to take turns helping each other with plastering the homes. Before the Spanish came, women as the owners of homes, did the plastering inside and outside. (Brown T. , 2013) Our people had relationship with their homes, in part through an epistemological understanding of rock and adobe homes as an extension of Mother Earth. Maintenance of homes was closely connected to community. Adobe homes fostered a strong relationship with the environment, as all the materials for adobe homes were provided by Mother Earth, or our Mother, as our people say. Our people have said that our Mother

provides all that we need, and that it is up to us to honor those gifts by how we live, in every aspect of our lives. Taking care of our community structures is our collective responsibility.

### **An Interruption to Traditional Housing: HUD Homes**

Disruption to community life from the uranium mining was compounded by the introduction of federal government or “HUD” (U.S. Department of Housing and Urban Development) housing beginning in the 1970’s. The demand for housing at Laguna Pueblo was due in part to members returning to the Pueblo from Laguna colonies such as Winslow and Barstow for employment at the uranium mine, in addition to growth in population at Laguna Pueblo in general. With the government housing came a government-labeled value judgment that the traditional homes were “substandard” because they did not have, e.g., have running water. However, the need for affordable housing was dire, so Laguna Pueblo worked with HUD and other federal agencies to provide hundreds of homes for families among the six villages. In 1969 the Pueblo had requested 500 units of Mutual Self- Help housing of which 200 were desperately needed ( National Council on Indian Opportunity - Office of the Vice President, 1970). These homes were not built with traditional materials but from wood and metal, and the fact that they were built for and not by Paguante residents, further separated them from the connection with our Mother.

In Paguante, a few homes were built within the existing Village housing areas, but most were built in a newly created “subdivision” away from the Village, now known as the Paguante Subdivision. So not only were homes built with different materials, but this influx of HUD homes altered the traditional pattern of layout of homes. For instance,

families usually built extended family homes in clusters. With the HUD homes, families could not always make the same arrangements.

Only recently has Laguna Pueblo begun to realize what a devastating impact this development has had on the life of the Pueblo, in several realms of community life.<sup>33</sup> As early as 1970, Laguna Pueblo and other tribes began to raise issues of cultural appropriateness of HUD homes; unfortunately this did not change the types of homes provided by HUD.<sup>34</sup> In Paguate Village, many families moved out of their adobe and rock homes into “modern homes” and stopped maintaining their traditional family homes. As a result, today few people live in the core of the Village, and very few people have the skills to build with rock and adobe, or even to provide needed maintenance on their homes, such as plastering the exterior and interior walls.

Another dimension of community life impacted was traditional ownership of homes. Rather than homes passing from female to female, as is Laguna’s matrilineal practice, the HUD rental or ownership system operates outside of this traditional system. While there are not numbers to cite, it is clear that the status of women, who traditionally own and inherit homes at Laguna, has been disrupted with the introduction of different rules for ownership in the government housing programs. In my experience, both as a tribal judge for the Pueblo and an attorney in private practice, I am aware of both divorce and probate cases in which the ownership of a HUD home by a Laguna woman was (legally) contested by a male. HUD rules are based on “American” values of home ownership which contain no preference for Laguna traditional inheritance rules.

Additionally, due to the scarcity of housing, Pueblo residents are leaving their home villages due to unavailability of HUD homes. This is beginning to wreak havoc with the governmental structures and authority of village officials over residents who may claim affiliation with another village. Traditionally, every male who lives in a village is required to contribute to community work as called by village officials. Many males who move to other villages take their village affiliation with them, so that they do not identify with the village in which they reside. Although some may continue to contribute community service to their village of origin, this works against the value that all residents should contribute to community work. Every year, all the heads of households must “present” themselves to the village officials under traditional protocol, and offer themselves (and their families) for any community work that should come up during the year. This system ensures accountability to the officials and supports the collective way of being so that even though we may now live in nuclear family units in the village, we are still a community.

There are, of course, other factors that led to the gradual demise of traditional structures in the Village, but these two in particular seemed to have had the greatest impact in a relatively short period of time. Today there are families who continue to live in traditional housing structures in the Village, but there is general agreement in Paguate that the number of homes in disrepair is increasing.

### **What Others Have Said on this Topic: A Brief Literature Review**

Searching for literature on preservation and renovation of traditional Pueblo housing for current habitation and community living, and not for tourism, can lead to



three different directions: preservation, planning, and community-based participatory research.

### **Preservation**

Under the rubric of “preservation,”<sup>35</sup> searching for literature on what is occurring in other Pueblo communities yields a few gaps. While preservation and/or restoration of traditional structures is a conversation of many Pueblos, there is only limited literature specifically addressing preservation of an existing Pueblo village core intended primarily for the purposes of community life. These resources should be distinguished from literature on preservation or restoration of ancestral Pueblo ruins at various sites, generally written from an archaeological perspective and often focused on the building methods used. A literature search on preservation of currently inhabited Pueblo communities yielded material focused mainly on preservation for purposes of tourism. For example, Acoma Pueblo is listed on the National Register of Historic Places, and Taos Pueblo has been declared a UNESCO World Heritage Centre. Both Pueblos have relied heavily on tourism for economic development in the past.

In the literature, there are two recent Pueblo renovations of central areas: the Pueblo of Ohkay Owingeh in Northern New Mexico, and Zuni Tribe. Around 2003, Ohkay Owingeh, previously known as San Juan Pueblo, built a whole new Village area of traditional looking homes to meet a desperate need for housing: *Tsigo bugeh* Village. Related to this is a major renovation project in the core of the Pueblo: *Owe’neh Bupingeh*.<sup>36</sup> Notable in the HUD case study is mention of conflicts between Pueblo rehabilitation principles and federal preservation standards in the course of the project. Ohkay Owingeh and HUD apparently resolved this conflict by applying Ohkay Owingeh

community and cultural values in the construction of the buildings to ensure the project was culturally appropriate. Both Pueblo home owners and construction crew members learned traditional methods of construction in the process. Unlike Laguna Pueblo, however, Ohkay Owingeh Pueblo is one village, and thus their planning process was quite different in that their situation allowed more centralization of planning. At Laguna, each of the six villages has autonomy to determine their own planning priorities

The Zuni Tribe also took on a preservation and restoration program in the core of the Village.<sup>37</sup> This preservation and rehabilitation program was funded by a federal grant, under the justification that the center of the Village was under “imminent threat,” (M. Bowekety, 2013). Because Zuni is on the National Register of Historic Places, they too faced problems in meeting preservation standards when they attempted to renovate existing homes in their plaza area. Among the lessons from these two projects is the importance of community voice in planning, and the need to drive the project from tribal or Pueblo values in spite of constraints placed upon them by non-Pueblo funding sources.

Late in this process I located a 1979 National Park Service project report on the Pueblo of Laguna. The Pueblo apparently invited the Heritage Conservation and Recreation Service (HCRS) to “to study the potential for housing rehabilitation” in Laguna villages (Baer, 1979, p. 1). The goal of the project was to “develop ways of using the pueblo’s historic resources to perpetuate a sense of cultural identity and tradition” (p. 1). The project used historic preservation and recreation planning tools for a three pronged strategy aimed at “housing rehabilitation, reuse of public structures and village-wide recommendations which include buildings, open space and public

improvements” (p. 19). Apparently the Pueblo Council invited the HCRS out of a concern about abandonment and loss of traditional homes. By then hundreds of HUD homes had been built among the villages of Laguna Pueblo and stood in stark contrast to dilapidated buildings around the Pueblo. The report is an interesting read on one approach to preservation, and there was recognition of the importance of buildings surrounding the plaza. However, it does not appear that the recommendations as presented for three villages were ever implemented.

### **Indigenous Planning**

Indigenous Planning or Native American Planning searches generated some helpful literature on the role of the community in planning. While there is a growing body of writing on Native American Planning, only a small subset of that literature is Pueblo-focused. This literature seeks to redefine planning for indigenous communities as native-driven, against an historic wave of government-driven planning that has rarely honored traditional values and practices of indigenous peoples.<sup>38</sup> According to Jojola (2001), the essential differences between “conventional planning” and tribally driven planning are that the former rests on a premise of the “orderly progression of development as well as anticipation of future needs for a place” (p. 3), based on a “need to manage growth and regulate land use in a manner that protects public health” (p. 3), while indigenous planning “has the additional goal of pursuing a style of sustainable development that balances its ecological and cultural value system with that of its economic pursuits” (p. 3). Indigenous planning “reformulate[s] planning approaches in a manner that incorporates ‘traditional’ knowledge and cultural identity” (p. 6). While this literature offers a different paradigm for planning, most of it juxtaposes non-Indigenous planning

with indigenous planning in indigenous communities. The study conducted in Paguate was less focused on tension between world views and more focused on full community participation in a Pueblo Village, to supplement tribal government decision-making and planning.

### **Research Approaches and Methods**

The third area of literature that lent itself to this project was focused on the methodology of research.<sup>39</sup> There is an array of literature in the area described as community based participatory research or CBPR. In general, CBPR is described as “[a] collaborative approach to research that equitably involves all partners in the research process and recognizes the unique strengths that each brings.” (Community-Campus Partnerships for Health, 2013). CBPR begins with a research topic of importance to the community and has the aim of combining knowledge with action and achieving social change.<sup>40</sup> Over the last decade, the use of CBPR in Native/tribal settings has increased substantially.<sup>41</sup> However, most of this literature appears to relate to the health and education fields. It focuses on methodology, highlighting the importance of community voice and input. This is especially important at the planning stage, after a community decides to take certain action. At this time, there is no current or historical literature available on the link between CBRP and Native American housing, and thus not on preservation or restoration of Pueblo structures. If Paguate were to engage in a Village-wide plan that involved restoration or preservation of structures, CBPR could be a helpful methodology towards engaging community members.

In sum, most of the literature available regarding Pueblo traditional housing or any related search themes is contextualized as either indigenous resistance to non-

indigenous ways of doing, whether it was preservation construction or planning or methodologies for engaging community in research. Still, literature from different disciplines was helpful to taking a multi-faceted look at the traditional structure issues in Paguete. For example, literature that combines and addresses studies of housing through history, cultural geography and legal constraints on land status can yield vital and sometimes comparative information that is useful to intersecting issues in the Pueblos. Combined with articulations of our Laguna epistemological beliefs about our relationship to our homes, these considerations can be helpful in determining what traditional housing represents in Laguna. Furthermore, the goal in my literature exploration and in this study was to benefit real life cases—living in and using existing Village structures for everyday life, and not for the benefit of tourists or to promote or cultivate a tourist industry. This goal in turn makes the following stakeholders in the scenario of Paguete critical: Village residents, Village leadership, and Pueblo leadership.

### **The Survey and Results: An Exercise in Creating Reliable, Representative and Understandable Information**

#### **Relevant Demographics on Paguete Village<sup>42</sup>**

According to the 2010 Census, the Paguete Census Designated Place (CDP) total population was 421; down from a 2000 total of 474.<sup>43</sup> The Paguete CDP resident population had 195 males (46%) and 226 females (54%). As stated earlier, the number of enrolled members affiliated with Paguete Village as of 2013 was 1,751. The enrolled Paguete population is overall somewhat older than the Pueblo population. Paguete also has a larger-than-expected share of “older” female elders.

As of 2012, the total number of housing units (livable and unlivable) in Paguate is most likely between 288 and 343.<sup>44</sup> The smaller number corresponds to those homes that were counted by the Pueblo's addressing program in 2012, and the larger number was taken from a 2003-2004 assessment of homes in the Pueblo. In 2003 and 2004, the Laguna Housing and Development Management Enterprises (LHDME), the former housing authority, contracted with Native American Housing Consultants (NAHC) to complete a Physical Needs Assessment (PNA) of all housing stock in the Pueblo, with a goal of determining overall needs for housing rehabilitation. Since the addressing program came into place in Paguate only in 2012-2013, the housing assessment that occurred in 2003- 2004 did not include physical addresses. (Encino, 2014).

### **The Survey: A Target Audience Rather than a Random Sample**

The survey on attitudes toward traditional housing in Paguate Village was conducted from November to December of 2013 and among Paguate Village residents.<sup>45</sup> After gathering demographic information, the intent was to first understand what Paguate residents believe the core of the Village is, or what parts of the Village are most important, and what values are related to their responses. The second intent was to try to gauge the level of support towards preservation of traditional structures in the Village, and in doing so, try to see what parties are considered to be the most responsible for making this happen, i.e., individual homeowners, the planning committee, or the Village itself. Another intention was to explore whether there were generational differences in attitudes toward preservation. Questions on level of education, employment status, location in the Village, and home materials were included in the survey to see if these independent variables would lead to significantly different responses regarding

preservation of traditional structures. Paguate Village has distinct areas, some of which do not contain any traditional homes, areas such as Pork Chop Hill and Paguate Subdivision. Thus question 8 (see Survey in Appendix) contained the following categories for type of home materials: rock and adobe mud; adobe bricks; rock and mortar (e.g., cement and concrete); wood frame house; mobile home; prefab house; other.

The target population was Paguate Village residents, 18 years and older, which included those who currently live in the Village and those who may live in places such as Albuquerque or Grants but have family homes in Paguate and still affiliate themselves with Paguate for Pueblo of Laguna governance purposes. While the sampling was convenience sampling, it was intentional, not just because the individuals were within easy access. Only Paguate Village member responses to the survey were sought since questions connected to the Laguna customs, traditions, life ways, and epistemologies were constructed in the research design.

The survey instrument was two pages long with 21 questions. Given a 2010 resident population of 421, a distribution of 100 surveys would create a valid sample. Surveys were distributed at Paguate Village meetings and at locations around the community such as the local convenience store or individual homes and were also sent by email and the U.S postal service to a few individuals who currently live in nearby cities and other states. Village meetings are generally held every other week; the average attendance is 30 to 40 people. Approximately 100 surveys were released, and 69 were returned. 69 responses is 16.4 percent of the Village resident population:  $N = 421$ ;  $n = 69$ .

In this work, it is also critical to note here the importance of respecting and maintaining relationships with other members of the Village and leadership. When the survey was designed for the targeted population, my home community, I thought about a potential concern regarding researcher objectivity in this project. Literature on Indigenous research methods and researcher reflexivity requirements address this issue (Smith 1999; Wilson 2009). Wilson addresses the concepts of relationality and relational accountability: “In essence this means that the methodology needs to be based in a community context (be relational) and has to demonstrate respect, reciprocity, and responsibility (be accountable as it is put into action) (p. 99). Given the historical context and the fact that no one, including local leadership, had taken a comprehensive look at the situation of traditional structures in Paguate Village, I felt strongly about making this contribution to future planning in the Village. This enthusiasm did not however give me free license to exercise less diligence in this project. Because I do know the Village residents and am mindful of mostly unwritten protocols for addressing elders and leadership in the Village, for example, I was able to do research that a so-called objective or impartial outsider could not do. Furthermore, the story of connectedness is critical here, which is where insider research can prove particularly useful. Nicholas (2009) and other Indigenous researchers who do critical Indigenous fieldwork in their own communities also refer to this advantage to the research as being “epistemologically privileged” (Nicholas, p. 325) and in Indigenous spaces (Huaman, 2014). This knowledge of relationships with other members of the community and a desire to maintain respect



for them both informed my research methodology and strategies of inquiry and served as guides for limitations that might exist in gathering data.

### Findings and Outcomes

Whether the sample was representative of the Paguete Village population was an important issue. Table 1, below, shows a comparison of the survey sample to US Census and Pueblo of Laguna enrollment data. On available measures we can assess that the sample is a little older than the population at large in Paguete Village, but still fairly representative of the Paguete Village population.

*Table 1*

<i>Sample and Population Characteristics: Gender and Age Groups</i>			
	<u>2010 US Census</u> <sup>a</sup>	<u>POL Enrollment 2011</u> <sup>b</sup>	<u>Sample 11/2013</u> <sup>cd</sup>
<u>Gender</u>			
% Male	46	50	43
% Female	54	50	57
<u>Age Groups<sup>e</sup></u>			
% 20-54		47	52
% 55 plus		33	32

<sup>a</sup> N = 474

<sup>b</sup> N = 1,726

<sup>c</sup> N = 69

<sup>d</sup> For purposes of this chapter the census and survey age groups were combined.

<sup>e</sup> 68 of 69 surveyed responded to the gender question.

Other indicators of whether the sample was representative of Paguete Village included representation from every area of the Village, from individuals living in different types of homes (e.g. adobe and rock or mobile home), and with different educational backgrounds. Table 2 indicates the representation of each of these groups in the survey respondents. So for instance, the largest percentage of respondents (30 percent, 20 respondents) had “some college.” All levels of education, all locations of the village, and all types of home materials were represented in the survey responses.

Table 2

<i>Sample Characteristics</i>		
	%	n
<u>Education</u> <sup>a</sup>		
HS or less	22	15
Some college	30	20
Jr. Coll or Voc	25	17
BA / BS	7	5
Graduate	15	10
<u>Location in Village</u> <sup>b</sup>		
Old Village	41	26
Paguate	21	13
Subdivision	19	12
Pork Chop Hill	2	11
Other	2	11
<u>Home Materials</u>		
Rock and Adobe	35	24
Adobe Bricks	1	1
Rock and Mortar	17	12
Wood Frame	14	10
Mobile Home	25	17
Prefab House	3	2
Other	3	2

<sup>a</sup> Two respondents did not answer this question.

<sup>b</sup> Five respondents did not answer this question.

Since one goal of this study was to get a reading on the level of support for preservation of traditional structures in Paguate Village, four questions (14, 15, 16 and 17) specifically addressed the level of support for preservation of traditional structures in Paguate, as well as attitudes on where the responsibility for preservation lies, i.e., with the owners or the Village (See Survey in Appendix). It was also critical to determine from the survey sample whether there were statistically significant differences between males and females, between different age groups, between those with different levels of

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*Because almost every one of us has been to one of these three areas (plaza, kiva, church)*  
*It is a core values area*  
*It is an area of historical significance*  
*It is important for both past and present history*  
*Shows our history of how long the Village has been there*  
*Area where we pray*  
*Where our grandparents lived, they knew tradition and its importance*  
*Where our culture is learned, practiced*  
*Our places of worship, where we learn to conduct ourselves respectfully*  
*Our unique place of practicing our beliefs*  
*Where we conduct our traditional ceremonies to ensure our well being*  
*It is my identity*  
*Tells who we are as a people*  
*It is where I return to when I go home*

---

education, between residents of different areas of Paguate Village, and between residents living in different types of homes (e.g. adobe or mobile home).

To begin with, the study was careful not to assume that everyone considered the “core” of the Village to be the same area. Thus Question 13 asked survey participants to “Describe the area [he or she] considers to be the most important part of Paguate Village.” A follow up question asked, “Why?” These responses were important to assess the attitudes about the Old Village, the area that has the most rock and adobe structures. Responses to these questions represented almost overwhelming agreement that the community buildings or surrounding areas in the center of the Village represent the core. Thus an assumption that people in the Village generally considered the core to be that area that has the most rock and adobe structures would be an accurate one.

In the follow up “why” question, responses revealed some important values that are not always stated in public meetings. Some responses were noteworthy:

These responses best represent the majority of opinions expressed in response to this question and actually lend themselves to an argument for why there is a need to complement quantitative and qualitative data to tell a fuller story of what is happening in Paguate. It is one thing to say that community members support preservation; it is quite another to do so for our collective sense of well-being and identity, as opposed to doing this for external reasons such as appearance for outsider tourism.

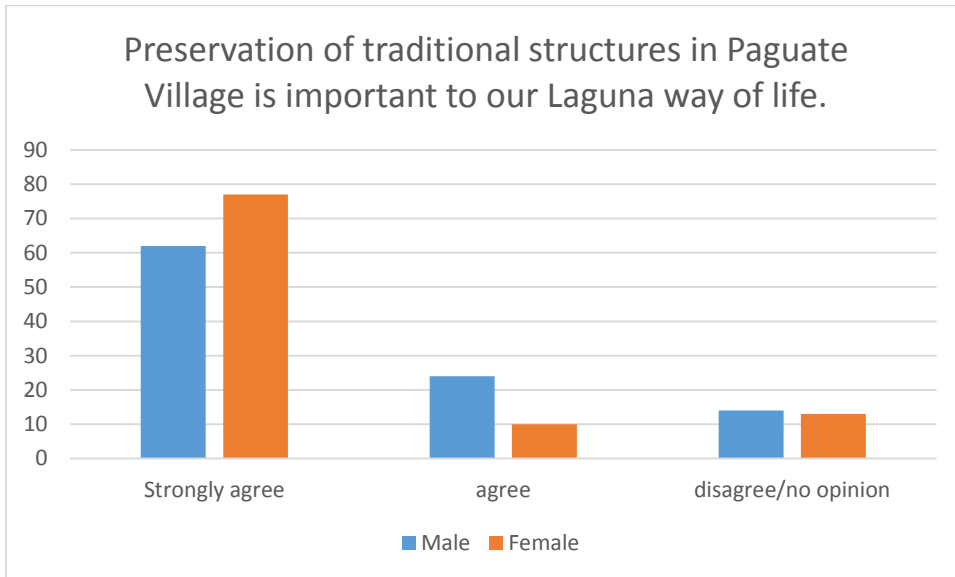
As a lifelong resident of Paguate Village, a personal observation was my own realization of how much about the significance of the center or core of the Village is unspoken. Perhaps several generations ago, when most people in Paguate lived in the main Village, there was no need to say such things, to actively articulate and reinforce cultural identity through community places. But as people have moved away and have moved out of the traditional structures in many cases, perhaps it has become more important to articulate these values about our places. There is an important footnote to consider here that merits its own study, which is that the Laguna language, Keres, has many descriptions of our relationship with place, but for many who do not speak the language these concepts may not always be so easily introduced into daily life in an English-speaking world.

### **What the Numbers Tell Us**

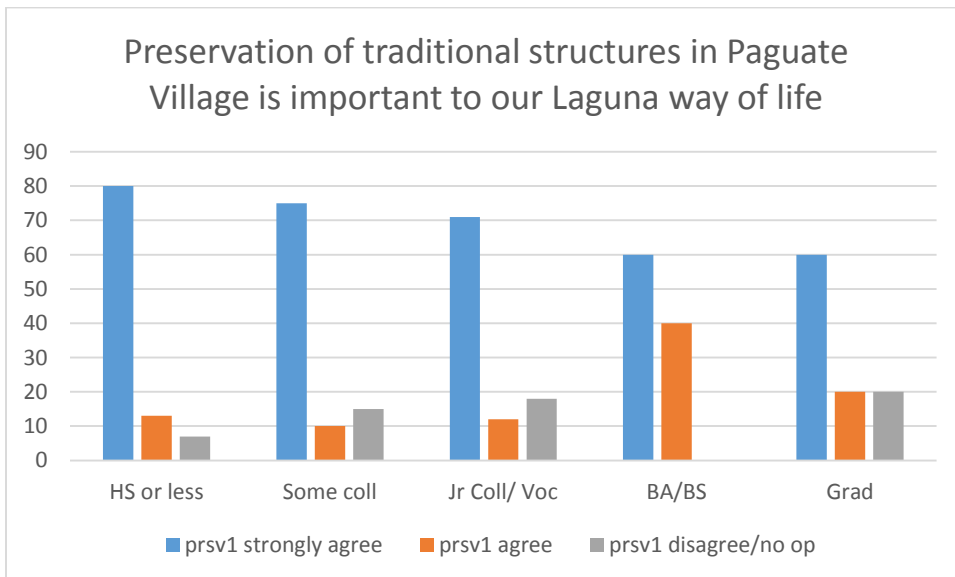
Survey results showed that there was great support for the concept of preservation and/or renovation of traditional structures by all sectors of the Village. 87 percent of the respondents strongly agreed or agreed that “Preservation of traditional structures in Paguate Village is important to our Laguna way of life;” one percent disagreed and 12

percent had no opinion. Graphs 1-4 show the breakdown of the responses to this question by gender, education, location in the village and type of home.

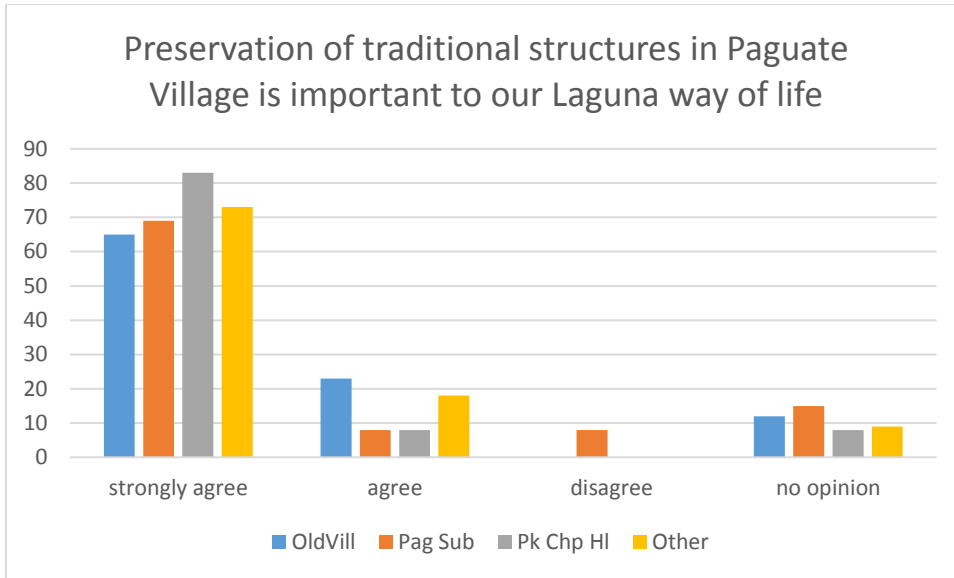
Graph 1. Breakdown of Responses to Question 14 Between Male and Female



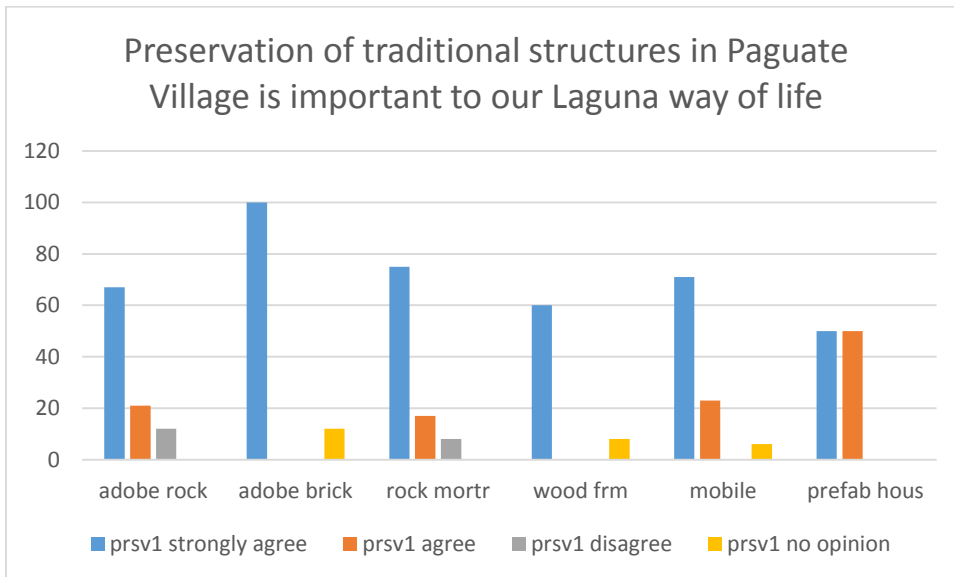
Graph 2. Breakdown of Responses to Question 14 by Level of Education



Graph 3. Breakdown of Responses to Question 14 by Location in Paguate Village



Graph 4. Breakdown of Responses to Question 14 by Type of Home Materials

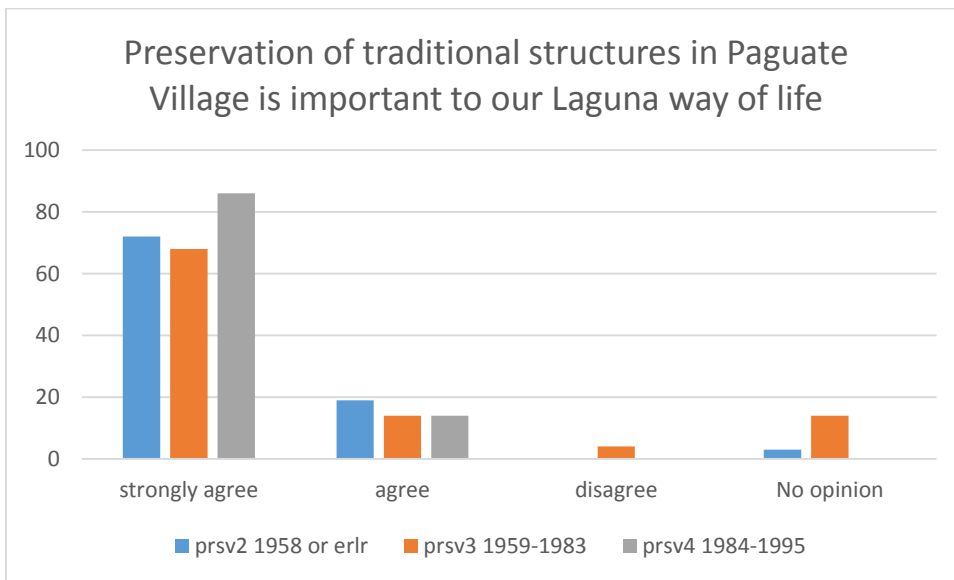


In a comparison of responses by gender (Graph 1), there was no statistically significant difference between males and females ( $\chi^2_{(3)} = 3.93, p = .269$ ). This was true for levels of education (Graph 2), ( $\chi^2_{(12)} = 7.79, p = .80$ ); between those living in different areas of the

Village (Graph 3) ( $\chi^2_{(12)} = 3.36, p = .34$ ); and between those living in different types of homes (Graph 4) ( $\chi^2_{(21)} = 15.17, p = .814$ ).

Were there differences between age groups? One speculation during the research was that those born after 1983, who may never have lived in traditional homes in the main Village, might be apathetic about preservation. There were no significant differences between the age groupings: 1958 or earlier; 1959-1983; and 1984-1985. ( $\chi^2_{(6)} = 3.00, p = .808$ ), as shown in Graph 5.

Graph 5. Breakdown of Responses to Question 14 by Age Group



There was a bit more variation in the responses to questions addressing respective responsibility for preservation of traditional structures in Paguate Village, questions 15-17. Tables 3, 4 and 5 show the responses by percentage to each of the questions.

Table 3

*Responses to Question 15: “Preservation and/or rehabilitation of traditional structures should be a priority for the Paguata Planning Team”*

	Sample %	Sample n
Strongly agree	45	31
Agree	41	28
Disagree	1	1
No opinion	13	9

Table 4

*Responses to Question 16: “Preservation or rehabilitation of traditional homes and structures (e.g. barns) in Paguata is the responsibility of the owners and not the village”*

	Sample %	Sample n <sup>a</sup>
Strongly agree	31	21
Agree	37	25
Disagree	21	14
No opinion	11	7

<sup>a</sup> 2 survey respondents did not answer this question.

Table 5

*Responses to Question 17: “Paguate Village should take some responsibility for the preservation and/or rehabilitation of traditional homes and structures in Paguata”*

	Sample	Sample n <sup>a</sup>
Strongly agree	43	29
Agree	37	25
Disagree	6	4
No opinion	1	9

<sup>a</sup> 2 survey respondents did not answer the question.

There were small but not significant differences in attitudes toward the homeowner’s responsibility for preservation ( $\chi^2_{(3)}=4.05, p=.256$ ). Overall it appears there is a strong



support for the Village planning team or the Village itself taking responsibility for preservation of traditional structures in Paguate Village.

In summary, these numbers confirm an initial hypothesis that the majority of residents in Paguate Village do feel strongly that traditional structures should be preserved and/or renovated as this is important for our Laguna way of life. There are a few differences of opinion about the most important part of the Village, and there are slight differences in attitudes about who—the Village planning team, the homeowners of the Village—should take primary responsibility for preservation of traditional structures in the Village. However, the bottom line is that the majority of those surveyed feel strongly about preservation of traditional structures in Paguate Village.

#### **Discussion: Thoughts on Looking Forward**

According to this data set, there were no significant differences between men and women, age groups, where people presently reside in the Village, or the type of home they may live in. This could indicate that support may exist for a Paguate Village program that would continue the apprenticeship for traditional building in the Village. More immediately, this survey could serve as a helpful planning tool as the Village moves to finalize its Comprehensive Plan. Perhaps the Village leadership would be interested in using similar survey instruments as major decisions are made about the Village.

The Village of Paguate is in the process of finalizing a Comprehensive Plan that will include housing issues. A complementary part of this process could be discussions about the particular values of traditional structures, such as their ecological sustainability (materials are still abundant in and near the Village and easily obtained) capacity for

heating, cooling, self-sufficiency. Since the survey was taken in 2013, the Pueblo has created a loan program which may allow building with traditional materials. Also, one of the Pueblo entities recently purchased an adobe machine, and Pueblo residents have been encouraged to experiment with adobe building. Planning for the Core of the Village could also involve discussions on preserving aesthetics and some uniformity as it was in the past. For instance, homeowners in the village areas near the plaza could be encouraged to maintain flat roofs rather than retro-fitting pitched roofs on traditional buildings. Another consideration certainly is village settlement patterns that honor community life in plans for future housing development. The survey and data set can be viewed as building blocks or tools to use with other useful data on housing to assist the Village or other Pueblos in planning for the future. Attendance at Village or community meetings is often less than 50 people; this type of survey could be helpful in getting a more accurate reading on Village resident opinions on matters such as preservation and renovation of traditional buildings, as well as the methods and materials used to accomplish this. It could also help to finalize a fledgling code to regulate the types of homes to build or locate in the core of the Village. Some Village members have talked about the possibility of bringing elders back into traditional homes. Leadership has made statements about the challenges of lower attendance, since the traditional way of making decisions is in a Village meeting setting. From time to time, they make decisions which they represent as “Paguete Village” decisions when in fact only a minority have participated in decision making, thus causing some residents to question whether these decisions are truly representative of the Village. So the challenge would be to find ways

in which a survey instrument such as this could assist but not challenge or replace traditional decision-making.

This project involves much more than the physical structures in the Village. I was taught by my family and community—something re-learned during our summer apprenticeship program—that it is up to us as to how we further our relationship with our Mother. She is always there waiting for us. Given our core values which engender our matrilineal system for inheritance of traditional homes, and the connection of living and being to our Mother through structures in which we live, worship and further community, the importance of preserving these structures for our continued existence as a people becomes clear. What also becomes clear are the threats posed by HUD housing and other programs that work against core values and our connection to our Mother, such as disturbance of traditional inheritance systems for homes and accountability of village residents to Village leadership as some individuals move to other villages due to scarcity of housing. With the overwhelming support for preservation and restoration that exists among Pagate Village members now, I believe we would do well to express our sacred connection to our Mother in our plans for the future of Pagate Village, as well as our actions to honor this relationship.

### SECTION III: POLICY BRIEFING:

#### Toward an Understanding of the Use of International Human Rights Instruments to Protect Sacred Places When Domestic Law and Policies Fall Short

##### **Issue: Need for Substantive Protection for Sacred Areas**

On every continent, Indigenous Peoples are fighting for protection for their sacred sites and sacred places. One of the lasting legacies of colonialism was dispossession of our lands, including sacred places that we, in our belief systems, may never have intended to occupy but are places with which we have centuries old and sacred relationships. We also know that we have a collective responsibility to care for these places for generations to come. And yet there exist virtually no domestic laws on any continent that provide the kind of protection for these places that is necessary.

In the United States, a number of sacred places are under threat of irreparable damage: Mt. Taylor in New Mexico, San Francisco Peaks in Arizona, Mt. Shasta in California, and others. Burial grounds of several Southeastern Native Nations in Arkansas and Florida are also threatened by development. Many sacred sites are located on public lands that were once part of our traditional territory. This includes National forest lands, BLM lands, and in Hawaii, lands under the jurisdiction of the US military. Threats are posed by development of numerous types: ski resorts, geothermal energy, uranium and copper extraction, and casino development.

Tribes in the United States have nearly exhausted legal avenues for protection of sacred places in the United States. While federal and state officials cite a plethora of federal statutes purporting to protect sacred areas, in practice it is private interests and development that the law privileges when the two conflict. In the case of extractives, the

US Forest Service has cited the 1872 Mining Act as a law which obliges them to grant mining permits. Despite the presence of laws like the National Historic Preservation Act, the National Environmental Protection Act, the American Indian Religious Freedom Act and the Religious Freedom Restoration Act, government agencies continue to privilege private interests over the interests of indigenous peoples and other citizens who support protection of these sacred sites.

Executive Orders that require government to government consultation with tribes contain a caveat that is “not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.” This language is found in Executive Order 13007 on Indian Sacred Sites, as well as in Executive Order 13175 on Consultation and Coordination with Tribal Governments. Additionally, this right to consultation is guaranteed only to federally recognized tribes in the United States, which effectively shuts the door on consultation for many state-recognized tribes and other native nations.

The legal regime in the United States still privileges private rights, individual rights, and Judeo Christian centered rights when it comes to religious freedom protections. Indian leaders are familiar with cases that demonstrate these truths, such as the San Francisco Peaks case, Navajo Nation *et. al.* v. U.S. Forest Serv. No. 06-15455, (9th Cir. *en banc*, 2008); the Oregon v. Smith case, 494 U.S. 872 (1990), and others.

### **Use of International Human Rights Instruments**

Where domestic law falls short, international human rights standards can help to define substantive protection for sacred places. In 2007, after nearly 30 years of

negotiations, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly. Although four nations including the United States initially voted against it, the United States has since issued a statement of support. Enshrined in the Declaration (UNDRIP) is an internationally accepted universal framework of minimum standards for the survival, dignity, well-being and rights of the world's Indigenous Peoples. Human rights bodies have recommended that the United States in fulfilling its treaty obligations, use the UNDRIP as a guide when it comes to indigenous peoples. This applies to all indigenous peoples—not just federally recognized peoples. Articles 11, 12 and 25 of the UNDRIP specifically address rights related to sacred place.

Article 25 spells out the unique relationship that Indigenous peoples have with lands and their environment:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

The UNDRIP also sets forth in several places the right of indigenous people to their free, prior, and informed consent. This is a stronger standard than consultation.

The United States is a signatory to two important human rights treaties that could provide protection for sacred places: the International Covenant on Civil and Political Rights (ICCPR), as well as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Both of the UN monitoring bodies for these conventions have issued recommendations to the United States regarding protection of

sacred places, based on language contained in these conventions. In 2014 and 2015 the United States has undergone reviews of its compliance with these treaties.

A growing number of indigenous peoples around the world are looking to international human rights laws and standards for protection of their sacred places. This is creating a critical mass of people who are calling on the United States and other states to be accountable not just to indigenous peoples but to other nations who must also abide by these human rights treaties.

Past hesitation by indigenous leaders to engage in these international forums has been in part a perception that the human rights conventions are not “hard law.” However, together with the UNDRIP standards, the combination of these instruments can provide substantive protection for sacred areas. The Inter American Court, using international instruments, has recognized the unique relationship that Indigenous peoples have with their lands in several important cases in Nicaragua, Belize and Paraguay.

At this time in our history, it is important for indigenous peoples to seek their rights as peoples and based on principles that recognize their self-determination and sovereign right to protect those places most sacred to them, rather than trying to fit into the narrow confines of current US law. The difference is that many US laws such as NEPA and the NHPA were not designed to provide the kind of protection that indigenous peoples want for their sacred places, whereas UNDRIP was negotiated by indigenous peoples who were clear about the intent of UNDRIP provisions on protection of sacred places.

## NOTES

<sup>1</sup> See discussion on Pueblo egalitarianism in Brown, T.L. (2103). *Pueblo Indians and Spanish Colonial Authority in Eighteenth-Century New Mexico*. Tucson: University of Arizona Press, pp. 25. Brown concludes: “Archaeologists have largely agreed that Pueblo communities occupied an intermediate position between egalitarianism (rule by consensus) and stratification in the pre-contact Southwest because their methods of governance often contained elements of both (citing Barbara Mills (2000) *Alternative Leadership Strategies in the Prehispanic Southwest*. Tucson: University of Arizona Press, and Gary Feinman, Kent Lightfoot and Steadman Upham (2000). *Political Hierarchies and Organizational Strategies in the Puebloan Southwest*, *American Antiquity* 65, no.3.).

<sup>2</sup> Id., p. 50: “With regard to women specifically, an observer of Pueblo life who came to New Mexico with Oñate noted in 1601 that ‘they did not reach any decision without first consulting the women and getting their opinion’” (citing George Hammond and Agapito Rey (1953), eds. and trans. *Don Juan de Oñate: Colonizer of New Mexico, 1595-1628*, 2 vols. Albuquerque: University of New Mexico Press, p. 635).

<sup>3</sup> Id., p. 58-59: “In short, pre-contact gender relations were inherently ambiguous, thus making it difficult to generalize about them. Nevertheless, archaeologists have concluded that although there is a lack of evidence ‘for clear-cut, intensive male domination’ in the Southwest generally, females ‘were more likely to suffer from lack of power than males’” (citing Crown, Patricia (2000). *Gendered Tasks, Power and Prestige in the Prehispanic Southwest*, in *Women and Men in the Prehispanic Southwest: Labor, Power, and Prestige*, ed. Patricia Crown. Santa Fe: School of Advanced Research Press, p. 40).

<sup>4</sup> See discussion, *infra*, pp. 21 *et. seq.*

<sup>5</sup> In saying this I am familiar with the work of scholars such as Kathryn Manuelito, who says that “womanism, as [Alice] Walker utilizes the concept, provides a basic framework of the experiences of woman of color including indigenous women,” and goes further to situate indigenous womanism in indigenous philosophy and epistemology, so that these “provide[] theory of women/womanism for each indigenous group” (p. 181). While I do not dispute what she says, I have observed that womanists do not include sovereignty as a major part of their work, as do indigenous feminists.

<sup>6</sup> One variation on the theme of chthonic law is that “as described in the literature, [it] is really a variation of the Noble Savage Environmentalist dating back to Montesquieu and Rousseau” (Gagnon, 2013).

<sup>7</sup> Importantly, Zuni Cruz also distinguishes between external and internal recognition of indigenous legal traditions, with the former not being “accurate, complete, fair or unbiased” historically, pp. 321-324.

<sup>8</sup> See discussion in Smith, pp. 212-214, which discusses Simpson’s call for refusal as a “refusal of colonial intelligibility.” I agree with Smith that the project of decolonization “includes insisting on the right *not* to be known.”

<sup>9</sup> This position is labeled “compartmentalization” as first used by Spicer. Others such as Dozier described this as a Pueblo “iron curtain.” *Spanish Catholic Influences on the Rio Grande Pueblo Religion*. *American Anthropologist*, pp. 447.

<sup>10</sup> This book created a furor of controversy among Pueblo peoples, so much so that an entire section of the *American Indian Culture and Resource Journal* was devoted to criticisms of his work. See *Commentaries on When Jesus Came, the Corn Mothers Went Away: Marriage, Sex, and Power in New Mexico 1500-1846* by Ramón A. Gutiérrez, 17 *Am. Indian Culture and Res. Jour.* 141(1993).



<sup>11</sup> Ortiz, in *The Tewa World: Space, Time, Being and Becoming in a Pueblo Society*, (1969), refers to “the first mothers of all the Tewa:” Blue Corn Woman or the Summer Mother, and White Corn Maiden, or Winter Mother (p. 13). Dozier, in *The Pueblo Indians of North America* (1970), in a section entitled “General Pueblo Characteristics,” notes a common reference to an original being--- creator of all things, often called ‘mother’ (p. 204). J.S. Sando, in *Pueblo Nations: Eight Centuries of Pueblo Indian History*, (1992) uses both masculine and feminine pronouns when discussing sacred deities (pp. 22-30).

<sup>12</sup> Williams, in his article, is discussing white patriarchy in the context of what he labels “outsider jurisprudence,” but I find that his analysis on the manner in which privilege is hidden in these systems and how it distorts our ways of seeing the world:

For those of us who would practice outsider jurisprudence, understanding this common tendency "to treat one's own perspective as true, rather than as one of many possible points of view," is particularly complicated by the continuing and pervasive legacy of four centuries of white patriarchy in our society. This legacy of racism, colonialism, sexism and homophobia has engendered and sustained a system of privileges in our society which accepts white, heterosexual male superiority as a basic norm of human organization (citation omitted).

The power in this system of privileges, its hidden and overt traces in all aspects of our contemporary social life, distorts our very ways of seeing and knowing the world. As Professor Minow has shown in her powerful essay, the insinuating presence of white patriarchy stands as a major obstacle confronting all of our efforts towards mutual consciousness raising. Our ability to understand how this complex system of oppression might operate in contexts less familiar than our own is radically subverted by our inability to escape totally its meaning in and for our lives (p. 1021, citing Minow (1988). *Feminist Reason: Getting It and Losing It*, 38 *J. Legal Educ.* 47, pp. 51-53.)

<sup>13</sup> This does not necessarily mean they do not exist in Spanish archives, but that he may not have considered archives mentioning Pueblo women worthy of duplicating in his search for documents in the 1930's. See France V. Scholes (1492-1979). France V. Scholes Papers. MSS 360 BC. University of New Mexico Center for Southwest Research, Albuquerque, New Mexico.

<sup>15</sup> Although Paula Allen Gunn, who is not a Laguna Pueblo member but apparently claims descendancy or ancestry, is cited in, e.g. Mihesuah, she is not cited for any text specifically on the impacts of patriarchy on Pueblo women.

<sup>16</sup> She cites Gunn Allen (1992), Kate Shanley (Assiniboine Sioux/Irish) *Thoughts on Indian Feminism, in A Gathering of Spirit*, 213 (Beth Brant ed., 1984), and Rayna Green (Cherokee/German) *Native American Women*, 6 *Signs* 248, 264 (1980).

<sup>17</sup> A summary of these laws is provided in Tyler (1980). *The Indian Cause in the Spanish Laws of the Indies*, pp. xxxviii-xlii.

<sup>18</sup> According to Dunbar Ortiz, the *encomienda* was originally created to maintain the Spanish Crown's political control over lands taken from the Moors on the Iberian Peninsula. Though it did not take the form of a land grant in Spain, it took on a different form in New Spain and “tended to establish *encomendero* lordship over indigenous peoples within its bounds, creating a more feudal-like land tenure in America than existed in Spain” (p. 182, note 19).

<sup>19</sup> In this section I will use both Indigenous and Indian since the language used in the *Recopilación* was Indian or “indio.”

<sup>20</sup> This raises another research issue in this field. Since much of the documentation is in old Castilian Spanish, a certain level of fluency in Spanish is required, or at the very least consultation and collaboration with Mexican or Spanish scholars. Only two of the *Recopilación* books have been translated into English.

<sup>21</sup> For a detailed account of the encomienda and its roots in Spain, see Ruth Kerns Barber (1932). Indian Labor in the Spanish Colonies, *New Mexico Historical Review*, 7, pp. 105-132.

<sup>22</sup> See note 3, *supra*.

<sup>23</sup> See, e.g., Laura A. Lewis, “*Hall of Mirrors: Power, Witchcraft and Caste in Colonial Mexico*,” (2003), cited in Brown; Kellog, *supra*, at 80.

<sup>24</sup> Further research would be necessary in other books, perhaps Book VII, Criminal and Penal Laws.

<sup>25</sup> For a description of judicial procedure, see Cutter (1995), pp. 105-146.

<sup>26</sup> See, e.g., “*Pueblo mothers and children: Essays by Elsie Clews Parsons, 1915-1924*,” Ed. Barbara A. Babcock (1991).

<sup>27</sup> Pueblo of Laguna Code, Section 15-9-8. Illicit cohabitation.

A. *Offense*. A person commits the offense of illicit cohabitation if that person resides with or takes up residence with another person not his spouse. For purposes of this offense, it will not matter what the length of time is for the individuals to have resided together, as long as it can be proven that such individual did reside with another not his spouse.

<sup>28</sup> Laws of the Pueblo of Laguna in effect January 1, 1908,”Sec. 3, 1908, appearing as Appendix A, Sec. 4., in Pueblo of Laguna Code (2010).

<sup>29</sup> Since LACSE is not a 501 (c) (3) organization, VOCES, Inc., an organization that assists small organizations in New Mexico, was wonderfully supportive and graciously willing to serve as our fiscal sponsor.

<sup>30</sup> For a discussion on Spanish titles given to Pueblo officials, see *Cycles of Conquest: The Impact of Spain, Mexico and the United States on the Indians of the Southwest, 1533-1960*, pp. 388-392.

<sup>31</sup> See background discussion in *Felix Cohen's Handbook of Federal Indian Law* (1982 ed.) pp.510-522.

<sup>32</sup> In 2012 the Jackpile Mine was designated as a Superfund Site. Before this designation, EPA representatives tested a number of homes in Paguete and other villages for evidence of radon contamination. Where the levels were unsafe, EPA installed devices on homes to ensure enough ventilation. For information on the status of activities see: <http://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0607033>

<sup>33</sup> According to Dr. Ted Jojola, Professor of Community and Regional Planning at UNM, “no other Federal program has had a bigger impact in changing the settlement and socio-economic patterns of native communities.” (Jojola, 2001).

<sup>34</sup> National Council on Indian Opportunity - Office of the Vice President, pp. 20-22, found at <http://files.eric.ed.gov/fulltext/ED042522.pdf> The report section on HUD and Indian Housing lists some of the frustration Indian tribes experienced in 1970; some of these issues persist to this day:

Frequent examples exist of tribes who have finally overcome the coordination problems of the various agencies, and had construction authorized on a limited number of desperately-needed homes only to see the houses constructed in quadrangle-shaped areas in the most barren part of the reservation, chosen solely for its convenience to the agency, with identical box-like houses meeting agency specifications as to choice of construction materials, but not necessarily local weather conditions. Usually, no consideration has been given to the cultural patterns of the people

who must, out of desperation, live in these houses, so that the architectural design, arrangement and clustered location of such projects is not only non-Indian, but decidedly anti-Indian.

<sup>35</sup> See, for example, the HUD website on Best Practices, a case study on a project at the Pueblo of Ohkeh Owingeh to provide housing with traditional architecture, at :

[http://www.sustainablenativecommunities.org/fieldnews/wp-content/uploads/2013/07/130611\\_16\\_CS-HUD-OweNeh-Bupingeh.pdf](http://www.sustainablenativecommunities.org/fieldnews/wp-content/uploads/2013/07/130611_16_CS-HUD-OweNeh-Bupingeh.pdf)

<sup>36</sup> Information from the HUD website on Best Practices, a case study on this project, outlines the process used by the Tribal Council: [http://www.huduser.org/portal/bestpractices/study\\_08082013\\_1.html](http://www.huduser.org/portal/bestpractices/study_08082013_1.html) This was a \$7.1 million project, funded by five different sources, including federal, state and private funds.

<sup>37</sup> Since I could not locate literature on this program at Zuni Pueblo, I was fortunate to locate a former Zuni grant writer (who now works for the Pueblo of Laguna), Malcom Bowekety.

<sup>38</sup> In June 1995, a group of planners set out some fundamental considerations in their first issue of *The Indigenous Planning Times*:

[I]ndigenous planning. . . is a direct response to the racist notion that people and communities of color are not capable of planning and controlling their own lives. Indigenous planning begins with recognizing that a community's most important resource is its people. People in the community are entrusted to decide their planning objectives and the appropriate planning processes to achieve them. The professional's role is not to direct or control planning in a community, but to provide the technical expertise to empower the community to make its own decisions, to develop and control its own resources. The Story of Indigenous Planning with its basic principles. *The Indigenous Planning Times*, p. 6.

<sup>39</sup>I sought the advice and suggestions of Dr. Laura Harjo, Appointed Assistant Professor of Planning at the University of New Mexico, who was helpful in directing me to CBPR literature.

<sup>40</sup> This is a definition provided by the Community Health Scholars Program, a WK Kellogg Foundation-funded post-doctoral fellowship program in CBPR, accessed at <https://depts.washington.edu/ccph/commbas.html> on March 15, 2015.

<sup>41</sup> In 2012 the National Indian Education Association recommended CBPR along with many other Native American organizations in a publication that responded to numerous requests for recent (2002- 2012) research, sample studies, and suggestions for Native educators and tribes who wished to use CBPR approaches in Native/tribal settings; the publication provided helpful annotations and citations.

<sup>42</sup> Census information in this Pagate Demographics report is based on information from the U.S. Census and the Pueblo of Laguna Enrollment office. Thus "enrolled" numbers in this section refer to figures from the Pueblo of Laguna Census office.

<sup>43</sup> The 2010 U.S. Census data indicate that of the 421 residents of Pagate Village, 8 identified as "white alone" or "some other race alone (unspecified)," so the number of Native American/Laguna Pueblo residents of Pagate was closer to 414.

<sup>44</sup> As of January 2012 the Pueblo of Laguna addressing program counted a total of 224 homes in Pagate, 187 of which had received official address certificates. There were an additional 119 structures that may have at one time been houses but are no longer habitable, for a total of 343 housing structures.

<sup>45</sup> I received helpful feedback from Professor Wendy Cheng, Professor Laura Harjo at UNM, and fellow Pagate Village residents in designing the survey.

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APPENDIX

SURVEY ON PAGUATE TRADITIONAL BUILDINGS: NOVEMBER 2013

**Thank you** for your participation in this survey. I am conducting this survey to learn about Paguate residents' attitudes and beliefs about traditional housing and the core of Paguate Village. The results of this survey will be shared with Paguate Village and may assist in future planning for the village.

Please answer the following questions about yourself:

1. What is your date of birth? (indicate year, e.g. 1980) \_\_\_\_\_
2. What is your gender?   \_\_\_ Male   \_\_\_ Female
3. What is your level of education?
  - a.   \_\_\_ High school or less
  - b.   \_\_\_ Some College
  - c.   \_\_\_ Junior college or vocational school
  - d.   \_\_\_ University -Bachelor's degree
  - e.   \_\_\_ University- Graduate degree
4. Where do you currently **work**? Check one.   \_\_\_ **Within** Laguna Pueblo lands   \_\_\_ **Outside** of Laguna Pueblo lands (e.g. Albuquerque or Grants)   \_\_\_ Retired   \_\_\_ Self-employed   \_\_\_ Unemployed
5. Do you **currently live** in Paguate Village?   \_\_\_ Yes   \_\_\_ No
6. If the answer to question 5 is Yes, please state **where** you live:   \_\_\_ Old Village  
\_\_\_ Paguate Subdivision   \_\_\_ Pork Chop Hill   \_\_\_ Other (please describe)
7. What materials is your **current** residence home made of?

___ Rock and adobe mud	___ Mobile home
___ Adobe bricks	___ Prefab house
___ Rock and mortar (e.g. cement or concrete)	___ Other (Please describe):
___ Wood Frame home	

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8. Do you own or rent your current residence?   \_\_\_ own   \_\_\_ rent
9. How long have you lived in this residence?   \_\_\_ years   \_\_\_ months
10. If you do **not** currently live in a rock and adobe home, do you have a family home in Paguate Village that is made of rock and adobe?   \_\_\_ Yes   \_\_\_ No
11. Please describe the types of homes you have lived in during your lifetime, using the types identified above in question 7 (for example, "HUD house for 18 years and before that rock and adobe home for 10 years"):  

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Please answer the following questions about Paguate Village:

12. Describe the **area** you consider to be the most important part of Paguate Village:

\_\_\_\_\_

**Why?** \_\_\_\_\_

Please indicate whether you agree with the following statement: "Preservation of traditional (rock and adobe or rock and cement) structures in Paguate Village is important to our Laguna way of life." \_\_\_\_\_ Strongly Agree \_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ No opinion.

13. Please explain **why** you agree or disagree with the statement in Question 12:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Please indicate whether you agree with the following statement: "Preservation and/or rehabilitation of traditional structures should be a priority for the Paguate Planning Team." \_\_\_\_\_ Strongly Agree \_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ No opinion

15. Do you agree with the following statement? : "Preservation or rehabilitation of traditional homes and structures (eg. barns) in Paguate is the responsibility of the owners and not the village." \_\_\_\_\_ Strongly Agree \_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ No opinion

16. Do you agree with the following statement: "Paguate Village should take some responsibility for the preservation and/or rehabilitation of traditional homes and structures in Paguate." \_\_\_\_\_ Strongly agree \_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ No opinion

17. If you could envision Paguate Village at its best, describe what that looks like:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Do you support preservation and/or rehabilitation of traditional structures in Paguate Village? \_\_\_\_\_ Yes \_\_\_\_\_ No

19. If you answered **No**, please explain your answer.

\_\_\_\_\_  
\_\_\_\_\_

20. If you answered **Yes**, what are you willing to do to make this happen? What resources or efforts are you willing to contribute to this effort?