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Chapter 12

Environmental Protection Agency Consultations with Indian Tribes: An Intercultural Struggle over Process of “Consent”

Denise Scannell

Introduction

On November 6, 2000, President Bill Clinton signed his final executive order on *Consultation and Coordination with Tribal Governments*. It was his last attempt to establish meaningful consultation processes with American Indians in the development of federal environmental policies.ⁱ Based on ongoing environmental issues between the two cultures and the rising concern for environmental justice, the United States government wanted to identify the necessary improvements in communication and coordination among tribal and federal environmental programs, specifically regarding issues of information exchange, and creating partnerships among stakeholders.ⁱⁱ

Dialectical tension between the federal and Indian governments concerning environmental decisions in Indian Territory is remnant of a long history of broken treaties and betrayals that date back centuries.ⁱⁱⁱ Decades of political lobbying and limited support have not changed the fact that Native Americans are the largest disenfranchised minority on both the national and international level.^{iv} Unfortunately, international environmental justice laws have had little to no impact on how the United States has dealt with the environmental issues regarding Native Americans. In turn, Native Americans do not participate in the international forum because they must constantly focus their attention on domestic actions that threaten their

political and economic survival. Thus, the division between the two cultures over environmental problems is a deep-rooted problem requiring equally complex solutions.

Controversy over scientific arguments and solutions are nowhere more evident than in modern human being's attempts to care for the environment and its inhabitants. Many Westerners believe that a methodological and/or technological approach is the superior way to control nature. However, some believe that these approaches are dehumanizing.^v Disagreement over technological quick fixes and actual changes in behavior is increasing.^{vi} As a result, we discover that ecological communication is not just a matter of discussing the human/nature relationship; it has become an argument about solution—and the endless search for answers evokes a discourse of social tensions. Environmental problems and proposals for appropriate solutions are influenced by cultural views that frame how the natural world should be managed. These views are perpetuated through the rhetorical tactics used by scientists, environmentalists, politicians, and corporations to argue a variety of issues such as sustainable or unsustainable development, human welfare or nonhuman interests, and scientific methods or ecological wisdom. While the dualistic nature of environmental rhetoric has been relatively successful in discussing/analyzing situations and strategies for preserving and protecting natural resources, framing solutions in this manner has proven unsuccessful when applied to situations that have a direct effect on people's lives. Consequently, these either/or solutions foster a competitive win/lose framework that generates conflict among individuals, communities, and cultures. Not only do the losers of these situations have fewer financial and/or technological resources, but also they are typically unaware of or excluded from any decision-making process that affects their surroundings.

Western culture has been guilty of being extremely critical of how Native Americans use and manage their environment. Environmental organizations that enforce regulations, or simply

intervene with traditional means of solving ecological issues, risk altering the biodiversity of that culture and perpetuate environmental injustice. Executive Order 13175 is supposed to ensure that tribal officials will be consulted before environmental policy is enforced.^{vii} Consequently, Congress enacted the executive order, but entrusted the majority of the responsibility for enforcing this order to government agencies, such as the Environmental Protection Agency (EPA).

Immediately following the order, the EPA decided to implement a methodical consultation process. This process would entail discovering effective ways to communicate with over 556 sovereign nations before enforcing environmental regulations and policy. In that same year, the EPA reported that environmental management on Indian land was far below the level of the states.^{viii} Additionally, the EPA acknowledged that their current method of risk assessment was ineffective for measuring the psychosocial and economic characteristics of Native Americans. For example, Native lands subjected to the disproportioned effects of environmental impacts threaten the life of an entire culture, not just a community. As well, while many Native Americans are employed within the dominant Western culture, numerous individuals still obtain income from their land. The degradation of land and water through mining operations, damming rivers, timber, fisheries, sewage, and pesticides depletes tribal resources, thus weakening self-sufficiency and economies. Contamination that occurs as result of land degradation is directly related to the increase of cancer, miscarriages, diabetes, and other serious health problems experienced by Native Americans. Native Americans, who are restricted to reservations or land allotments, often cannot relocate; therefore, harmful environmental impacts on their land are an exigency. Finally, pollution from industrial society alters the social and cultural characteristics of tribal identity. Important to many traditional beliefs systems is the human relationship to the

environment, which is connected to spatial references of home, work, play, worship, and lifestyle. Therefore, environmental issues pertaining to Native Americans are different from those experienced by other vulnerable segments of the population.^{ix}

There are several reasons to explore the cultural dynamics underlying the consultation processes and communication practices between the EPA and Native Americans. The focus on environmental protection, within both academia and the larger society, has promoted a shift towards consultation. According to Stone, the term consultation implies that all parties will participate in the investigation of a given problem.^x If this is true, then the solution to environmental problems lies in the consultative procedures that allow people to participate in the decision-making process. Herein lies the hypocrisy related to consultative procedures. On the one hand, policies and regulations are enforced in order to ensure proper communication. On the other hand, the actual people affected are only presented with the completed design; they are not part of the initial discussion that determines, defines, or develops the consultation, thus creating a one-size-fits-all method of protection and preservation. True consent would require additional resources; however, Congress does not provide the EPA with the financial or political support considered necessary for determining the communication needs of individual tribes. There is also a conflict of interest when the federal government is faced with defending the welfare of Indian Nations and making decisions regarding their interests as trustees.

Legally, Haskew argues that consultation is an “ill-defined” word. Not only do human organizations and groups define the word differently, but also the President, the Supreme Court, Congress, various federal agencies, and policy makers disagree on the legal definition of the word.^{xi} In addition, different branches of the government can employ two legal terms. One is

based on procedures set by federal statute and the other is based on procedures set by executive agency.^{xii} The result is a vague interpretation that holds no real authority or weight.

Since the President and Congress develop the forum of participation for tribes, it would seem that consultation offers a means for participation in federal decision making, but the federal courts have not been consistent with their rulings. Courts are split on whether or not consultations really exist.^{xiii} Likewise, they are split as to whether requirements have been violated. Specifically, Chief Justice Rehnquist is known for “chipping away at the sovereignty of Indian nations.”^{xiv} His policies not only contradict the efforts of Congress, but a long line of Supreme Court rulings as well. Like many other regulations and policies, consultations are simply presented to tribal leaders at summits. For this reason, consultation has become central to federal-tribal relations and a dividing element within the three branches of the federal government.

The added responsibility of federal agency in environmental regulation places organizations, such as the EPA, in an awkward position to negotiate consent. Research indicates that agencies have found themselves in litigation with parties who are unhappy with particular regulations, especially in environmental and health areas.^{xv} As a multidimensional phenomenon, negotiation entails various communicative expressions, such as verbal messages, nonverbal cues, information exchange, media, symbols, myths, cultural practices, and meanings.^{xvi} In addition, negotiating interaction manifests goals, relationships, and normative practices that are different from other forms of communication.^{xvii} The Regulatory Negotiation Model (Reg-Neg), which is widely used in the environmental arena, includes a need to negotiate several things such as representation, balanced power, clear technical boundaries, commitment to implement, urgency to reach agreement, and decided rules.^{xviii} The EPA frequently uses the Reg-Neg model to solve

environmental issue, but has the power to proceed with a traditional rulemaking process when consensus is unattainable.^{xix} Therefore, the act of consensus is actually a decree to concur.

Regardless of the added responsibility for agencies to implement consultation procedures, there are several trust issues at risk. First, agencies that implement consultation policy may appear to be in full compliance, while actually neglecting their trust responsibility. Second, agency policy includes clauses that deny rights to Native Americans. One participant of the dialogue writes the “EPA manipulates both sides through secret or non-inclusive meetings and 'carefully' worded statements that employ very nebulous words like 'may' or 'could'.”^{xx} Finally, agency policy contains a built-in bias towards its own agenda. In some circumstances, consultations serve as a tool for bureaucratic inaction. There is a statutory duty to consult, but there is no duty to listen to the suggestions of the consultees. The listed reasons are evidence that consultations can be inadequate and archaic systems for protecting Indian interests and violating environmental justice laws.^{xxi}

This study analyzes the critical language surrounding the concept of environmental consultation. The impetus for focusing on the discursive formation of Executive Order 13175 is inspired by Foucault’s writing on the disqualifying nature of disciplinary systems of expertise, specifically in the development of knowledge and discourse. As a cardinal document for agencies, Executive Order 13175 describes a system of structured procedures for the construction, control, and circulation of power that sustains a manufactured knowledge about Native American identity, sovereignty, and federal-tribal communication. The use of any type of technological method designed to manage human interaction is questionable. Once implemented, the consultation method will be used as the guiding policy for setting environmental communication standards for Native Americans. The method will define and describe the

problem, the channel used to communicate that problem, and the timeframe needed for feedback. The political implications for creating such a policy could threaten Indian heritage, just as congressional actions already endanger their political and economic survival. In addition, insights from the work of Eric Kramer provide the theoretical foundation necessary to examine both cultures' perceptions of consultation. The theory of Dimensional Accrual/Dissociation, which seeks to explain the diversity of cultural expression that exists in and influences our world, is particularly relevant and applicable to environmental communication and tribal consultation in Western society.^{xxii}

Negotiated power is essential for intercultural communication. Complicating any attempts at consultation is the fact that each tribe possesses an individual culture and articulates environmental concerns in a distinct manner. A strictly one-sided methodology ignores the varying complexity of consultation, such as the actual goal of the agency, which may be different from what appears on the surface: those affected by the agency's action, and the power both sides bring into the negotiation process.

This study attests to the discursive power of consultation by analyzing the institutional practices of EPA Region 6 headquarters located in Dallas, Texas. The data collected in region 6 consisted of an assortment of drafts of consultation procedures, meetings, conversations, newsletters, field notes, transcripts of their Fourth Annual Tribal Summit, and authorized postings collected from the Online National Dialogue. All responses within the text, which are anonymous, are from the summit and the national dialogue. These artifacts are part of public record and can be obtained from the EPA.

The participants of this study include three groups. The first group included EPA employees from Region 6 headquarters, federal employees from other agencies, tribal officials,

and the public. The second group of participants was selected from the Region 6, Fourth Annual Tribal Environmental Summit. Participants consisted of EPA employees, official tribal members from 24 different nations, and employees from other government agencies who lived in the region. The majority of the summit participants held official titles and were well-versed in the scientific and legal terminology used in discussions. The third group of participants consisted of people from all over the country who joined in the EPA National Online Dialogue to discuss public involvement in EPA decisions. Participants represented a broad range of special interests groups, academia, government agencies, industry, tribal members, and the public. Similar to the Summit, the majority of participants were familiar with the EPA participation process and/or involved in environmental discussions. Many were experts in the field rather than average citizens. This study examines the different forms of power within the data and compares it to similarities found within the formation of consultation discourse.

Opposing Symbols of Knowledge: The Line and the Circle

Eric Kramer's theory of Dimensional Accrual/Dissociation, which follows the work of German philosopher Jean Gebser, seeks to explain the various cultural expressions that exist in and influence our world.^{xxiii} The different ways cultures express time, space, and mood provide explanations for the vast diversity in world expression. "Some cultures quantify, or establish a quantifiable type of space and time, while other cultures establish (through their expressions) spaces and times that are qualitatively different."^{xxiv} Additionally, each culture presents different rationalities or presumptions about time and space, life and death, good and evil, and how to care for the environment. Kramer identifies this expressive diversity in the following categories: (a) the magic/idolic; (b) the mythic/symbolic; (c) the perspectival/signalic-codal. The theory holds that the unfolding of consciousness is an accumulation in dimensionality, but as dimensional

expressivity accrues from magic/idolic to perspectival/signalic-codal, dissociation from origin increases. Kramer warns that the accrual of this third dimension further increases the dissociation between human and world. Hence, the consequence of the perspectival world is dissociation.^{xxv}

In the magic consciousness, where the conceptualization of linear time and space is nonexistent, humans share a community with clan and nature; the whole stands for the part and the part stands for the whole. In a similar manner, the mythic consciousness, which is characterized through nascent spatiality with nature, symbolic polarities, and the soul, shares the existence of a common myth. However, the perspectival human is freed from mythic polar cycles and magical identity, thereby severing his/her connection to the past and relinquishing responsibility for the future. The perspectival world is articulated by time, space, reasoning, and linear direction. The emergent awareness of nature and soul are replaced with the emergent awareness of the mind. Kramer's writing suggests that perspectival humans are obsessed with time, order, measurement, direction, and control (the clock). From this point, individual identity is the center of concern. Unfortunately, there is no shared distinctiveness in the perspectival world. Identity becomes homogenous, and the perspectival human suffers feelings of loneliness and alienation.

The dissociative nature of Western perspective leaves everything open to manipulation and rearrangement. The world is perceived as a problem awaiting some type of solution, development, improvement, or correction. Consequently, the depth of vision, understanding, and knowledge seeks a reliable instrument or technique to enhance our ways of seeing. The invention of method provides modern humans with new realities to discover and new worlds to conquer. Kramer explains that the “effort of the modern ‘methodical’ style works to pierce the veil of appearance in order to reveal the true nature of the universe, which is ‘rational’, ‘linearly causal’,

and ‘predictable.’^{xxvi} Problems are in need of “(ab) solution.”^{xxvii} They must be identified and broken down into smaller pieces, so that a solution can be implemented. Solutions must be reliable and valid. To follow the method in an exact manner is to be correct, regardless of the comprehension of the process. Kramer states that increased knowledge presumes shared meaning. The reality of method is that it is contrived “by means of manipulation and mathematical construction.”^{xxviii} It lacks the duality of mythic cycles, so its one-sidedness can only present a single reality. Therefore, method simply represents development, not truth.

The qualitative differences that cultures exhibit when problem-solving are just as diverse as their various modes of communicating. This is nowhere more evident than in the opposing ecological knowledge of Western and Native American culture. Western society expresses significant isolation and dissociation from nature, which ultimately affects interpretations of environmental problems and solutions. In contrast, Native Americans’ involvement with the earth through holistic practices expresses a spiritual relationship with nature. These two opposing views—one governed by the straight line, the other by the circle—first came into conflict with the arrival of Europeans in the Western hemisphere over 500 years ago.^{xxix}

Western perceptions of the earth were as a flat line. To bend a line back twice is a pyramid, which represents a hierarchy of kings, lords, and the ruling class. Eventually, straight lines came to represent land grid allotments, linear thinking, individuality, and the ideology of progress. The line also represents a sense of unending frontier, thus making it easy for humans to use and discard natural resources. As humans ruin the environment, they can look for a new place beyond the next plain or mountain. Kramer believes that constant movement is socially and economically desirable in that movement is intertwined with our notions of time (saving time, making time, and time is money). Finally, Kramer contends that method enables mass

production, consumption, predictability, and conformity—the primary causes of temporal anxiety in the modern world. Western ecological perceptions, which tend to mirror economic and linear advancement, are evidence of the current distancing of modern society. Despite advanced technology, Western society remains unable or unwilling to adapt to the environment. Instead, they adapt the environment to them. As a result, traditional knowledge of the environment is frequently invalidated.

In contrast, Native Americans traditionally emphasize circular knowledge.^{xxx} Circular logic is a self-sustaining method, which is evident in such things as the sustained harvest of crops and forests.^{xxxi} Circular stories, passed down through generations, teach existence and continuance rather than conquest and use. The circle also represents sameness and unity. In traditional culture, no one person or species takes precedence over another.^{xxxii} In fact, traditional Native American extended families include human relatives, animals, birds, plants, and even wind and water.^{xxxiii}

Kramer explains that cultures that use circular logic approach problem-solving through an exploration of possibilities, whereas the Western linear approach toward problem solving is an attempt to reach conclusions.^{xxxiv} The Western world has no use for circular logic because it does not appear pragmatic. Kramer believes the worst thing to happen to indigenous people is that Western linear logic has proven them wrong. To break down their reality is to break down their existence. As a form of technology, method is “only making,” not defining, understanding, or describing human experience.^{xxxv} One-size-fits-all methods ignore the continuance and balance crucial to the survival of many tribes. Any cultural misunderstanding is an impediment to solving environmental issues.

To date, the environmental expressions of Western society and Native Americans are articulated through different perceptions of owning, using, and caring for the earth. Current dialectical tension between the federal government and sovereign Indian nations concerning environmental methods and consultation within Indian Territory may derive from a clash of consciousness. As such, this study will use Foucault's archaeological method to explore the discursive power of Executive Order 13175 and the institutional practices of the EPA.

Foucault's Method of Archaeology

The methodology used to analyze the critical language surrounding the concept of environmental consultation is grounded in Michel Foucault's *Archaeology of Knowledge*.^{xxxvi} Archaeology is understood as an analytical examination of the disciplinary systems of expertise, specifically in the development of human science. In contrast to structuralism, archaeology looks for the productions of truth that produced those systems of knowledge by unearthing the facilitating conditions, as opposed to tracing them through chronology, coherence, and reasoning. In other words, one must understand how claims become claims, what makes them valid, and how they come to represent knowledge within a disciplinary field.

Foucault argues that a specific discourse functions as both a discipline and a system of control. Accordingly, he uses the terms discourse and discipline interchangeably. However, outside and beyond the prohibitive boundaries of disciplines and systems of control are articulations of a different sort, such as low-ranking, popular, differential, silenced, and disqualified knowledge. Each of these elements of counter-knowledge reveal the fluxing nature of power and discourse. Thus, archaeology examines a restructured history of a discipline, science, or institution by considering counter knowledge and interpreting it in a manner heretofore not perceived.

In order to understand Foucault's method, one must understand the formation process that identifies a discourse. Discursive formations are intellectual foundations from which people structure and interpret their world. These foundations are so inherently powerful that only one foundation can be dominant at a time. Foucault contends that the discursive formation of talk is established through objects, concepts, strategies, and enunciative modalities. The formation of objects refers to speech acts, which direct discourse to a common experience. For example, Foucault explains that "madness" is a result of specific statements that describe it as an object in a specific experience. The formations of concepts unify a particular discourse, which "concerns, at a kind of preconceptual level, the field in which concepts can coexist and the rules to which this field is subjected."^{xxxvii} The formation of strategies, are applied to the discontinuities of theories and themes. For instance, Dreyfus & Rabinow explain the theory of evolution is one theme expressed in two different discourses, each with diverse strategies for fields of concepts and objects.^{xxxviii} Finally, enunciative modalities are the rules of production and transformation that govern discourse. Rules include various conditions such as law, competence, knowledge, behaviors, and location. For example, there are rules that control whether a subject can or cannot be discussed. There are rules concerning which individuals can speak and write about a particular subject. There are also rules that dictate the listening to some and the rejecting of others. Finally, there are rules for structuring concepts and theories so that they are considered reliable knowledge.

Rules not only apply to discourse, but also to material documentation, such as that found in books, texts, accounts, registers, acts, buildings, institutions, laws, techniques, and customs. Foucault argues that material documentation is a consequence of history because it exists in a specific time and place. He explains how geographical metaphors, such as territory, field,

domain, and region serve as forms of verbal domination, designed to control people spatially and perceptively. Such metaphors are evident in science, legislations, politics, economics, military strategies, administration, and the environment. Similarly, time has a way of ordering, describing, and defining relevant information found in document. Eventually, people rely solely on the document in order to interpret what is and is not significant. Itself frozen in history, the document becomes a monument that only traces the remains of what people have done or said.

In particular, Foucault is concerned with how human beings fit into these documents or knowledge systems—especially since the invention of human beings is in itself an episteme. Foss et al., explain that the conception of the human being was the result of changes in the nature of language.^{xxxix} In other words, the human being is a creation of humans talking about being human. According to Kramer, it was not until recent history that humans were situated as the center of knowledge.^{xl} The language of space, time, and humankind were conceived as sameness. Eventually, discourse was formed as the written word, which equated language with representation. This gave rise to knowledge and its object: human. Understanding the systems that produce received knowledge is reflexive in that knowledge and discursive practices are inseparable. Accordingly, when questioning material documents, one must not aim to reconstitute them based on what the documents say, but instead look for the mislaid past from which they originated, in order to rediscover what caused information and document to become the truth.

In relation to environmental communication, archaeology illustrates how environmental discourses are both a discipline and a system of control. On the one hand, archaeology gleans knowledge, solves problems, and disperses information to the public. On the other hand, it serves as a ruling apparatus of industry, politics, and economics. As a discursive formation, institutional

roles, rules, and practices make it impossible to form a unified way to discuss the environment. As a historical document, Executive Order 13175 is an attempt to strengthen the relationship between the United States and Tribal Nations by reducing the imposition of unfunded mandates upon Indian tribes. Executive Order 13175, as a subject for archaeology, reveals power relations found within its discourses and, therefore, must be investigated.

Executive Order 13175

In consideration of Foucault's views, power has the dual effect of both impeding and enabling produced knowledge. Usually, the struggle occurs between dominant scientific knowledge and rejected non-scientific knowledge. For Foucault, disciplinary power disguises itself within the structures of education, information, and reformation. However, he illustrates that the humanitarian interests these disciplines address produce a normalized effect, thereby preventing individuals from seeing the power relations inherent to them.^{xli} For example, even though the U.S. government is taking measures to work out issues of consent, Indian identity, and sovereignty, their institutional practices are defined through the power relations of Western legal discourse. The classification and regulation of federal-tribal consultations initiate and sustain a manufactured knowledge about their relationship. The antagonistic and fluxing nature of power enacted in Executive Order 13175 is grounded in Western legalistic ways of knowing and conceptualizing Indian Law. As a legal discourse, Indian Law is in itself a discipline, but not one developed by Native people. Instead, it is a legal category contrived by Western culture, one that measures and manages Native culture by Western standards.^{xlii} Additionally, research indicates that federal Indian policy was developed and implemented without any recorded input from tribes.^{xliii}

Regarding the discourse of Indian Law, one can assert that the regularity of its practice functions as a system of control. From the onset, it served as a governing discourse that attempted to assimilate Native Americans by providing them with Western legal identities. According to Foucault, the best way to control the “Other” is definition by one's own terms.^{xliv} The invention of the 556 federally recognized Indian Nations, is epistemic in the sense that it not only shapes the ways in which Westerners understand Native Americans, but also the ways in which Native Americans have come to understand themselves within Western society. Prado explains that constructing a human being of a particular nature places the individual as a subject having specific needs, desires, and behaviors.^{xlv} Once the individual accepts the particular identity, his/her behavior is perceived as either conforming to or deviating from the norm. Hence, Indian law and Indian legal identity are intertwined.^{xlvi}

Consequently, Executive Order 13175 regulates power by defining Indian tribes. It states, “Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.”^{xlvii} This Order and others similar to it are material documents contrived from a history of discourse that established Indian Law and ultimately invented the “Indian.”

However, the Western definition of “Indian” does not infer knowledge of “Indian.” The legal definition is merely a categorical stamp. Unfortunately, the regularity of its legal practice validates a field of knowledge about Native Americans, which drives intercultural communication. Since most Westerners believe they have all the knowledge needed to communicate with Native Americans, their interactions seldom proceed beyond the most

superficial level. As a result, the discipline of Indian Law has profound implications for Native Americans.

The documentation of Indian Law institutes Native American's freedom.^{xlviii} Sovereignty is another aspect of power. Placing Native American sovereignty under United States sovereignty in law solidifies the regularity of its social practice. As a result, this power relation within the document defines the United States Federal Government as the ultimate sovereignty and guardian over Indian sovereignty. Section 1. (a) reads:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.^{xlix}

The document mentions the importance of government-to-government relationships. However, the power discussed throughout the text is not a shared one (i.e. government to government), but instead a hierarchical triad of congress-agency-tribe. Agencies that comply with the rules of consultation before implementing policy, rather than tribes, are the primary audience of the document. Section 5. (b) is an example of policymaking criteria:

To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation unless: (1) consulted with tribal officials early in the process of developing the proposed regulation.¹

Here is what one tribal member had to say about the executive order:

Yeah, it's hard to figure this thing out, you know, early we talked about the policy memorandum from president Clinton where I said it didn't have no teeth. What I was thinking about was that there is a nice policy but then where does it come down to enforcement? We are a like county, city government in the eyes of some attorney cause I guess it goes back to some case or statute. And the Statutes are pretty limited when dealing with tribes as far as the EPA is concerned. So, we're kind of lumped in. The way I always described this government to government, it is really not a true government-to-government relationship cause all you're dealing with is a tribe to an agency. You're not really dealing with a government to the United States government because we have to jump through all these hoops and be defined legally. See that's where I think the problem is, if the United States government really wanted to deal on a government to government they have to set aside special statutes. I think that somebody needs to go back and redefine this government to government.^{li}

Overall, the document perpetuates the discursive practice of granting limited power to federal agency in order to interact with tribal members in a manner consistent with congressional policy.

The final power relation in the document is the regularity of consultation discourse. Similar to other federal Indian policies and orders, the supposed novelty of Executive Order 13175 lies in its reappearance, rather than its language. Everything pertaining to consultation, including ideologies, definitions, and applications, is a product of established Western discourse. As usual, Native Americans have had little to no input as to what constitutes a consultation. Although Congress is trying to increase tribal independence, especially in areas of environmental protection, the consultation message is, "We will decide how and when we will talk."

Accordingly, technique, time, hierarchy, and law drive the actual “talk” of the consultation. For example, Section 5. (a) states:

Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.^{lii}

The document provides consideration for how Native Americans may experience the environment. Therefore, while the Order may have integrated new concepts, positions, and actions for implementing consultation, these ineffectual mutations have not changed the discursive practices or reality for Native Americans.

The discursive formation of Indian Law and consultation are generally the same; therefore, no true consent is exercised in the order. While agencies must follow specific criteria when formulating and implementing policies having tribal implications, they can still take steps to reach their desired goals. Yet, granting tribes the maximum administrative discretion needed to develop their own policies for environmental protection does not translate into sovereignty—only added responsibility. Haskew argues that is naive to think that years of injustice can be solved by the increased requirements of the policy. It is even more naive to think that consultation can serve as a form of sovereignty, since the ultimate authority rests with the federal government and not the tribes. The misuse of consultation causes dissatisfaction for many Native Americans and environmental justice groups.

Discursive power takes on multiple shapes and forms. In this situation, power is exercised through the discursive formation of consultation. Executive Order 13175 prescribes expectations about federal-tribal communication. It also describes a mechanical system of ordered procedures for the construction, control, and circulation of power. Therefore, Executive Order 13175 is a discursive practice that sustains a manufactured knowledge about Native American identity and sovereignty. Examining the institutional practices of the EPA, specifically the ones pertaining to tribal consultation and collaboration, further reveals the enactment of the consultation process.

The Environmental Protection Agency

Environmental protection is an institution where power is enacted by roles, sets of rules, decision-making procedures, and dialogue that serve to define social practices. As a multi-level organization, the EPA consists of several headquarters program offices, 10 regional offices, and 17 labs.^{liii} The Department of External Affairs, which houses the American Indian Environmental Office, contains numerous projects, programs, official positions, committees, and councils. EPA institutional roles are scripted and guided by a sense of obligation to the public. EPA officials encourage participation in environmental affairs and distribute at-risk information. The EPA is responsible for negotiating any environmental action, which may affect people's lives. The agency must comply with congressional policy and yet be authoritative enough to enforce its own regulation. In addition, the EPA has expanded their roles to meet the demands of recent environmental justice groups' requests to include cultural factors in environmental decision-making. This leads us to the present role of the consultant.

As one of the first federal agencies to adopt formal programs and policies to enhance relationships with Indian tribes, the EPA's Policy for the Administration of Environmental

Programs on Indian Reservations includes nine principles, five of which are specifically related to tribal consultation.^{liv} Moreover, the EPA has organized a staff of communicators at both the regional and national levels. Each communicator has a specific role when conversing with tribes about various programs, polices, technical assistance, and consultations. For instance, in Region 6, the communicators are as follows: (a) Lead Region Coordinator who assists with internal tribal issues; (b) a Field Assistant who handles education, mailings, and training; (c) a Website Graphic person who ensures the technical distribution of information; (d) and a Team Leader/Director who oversees all committees, agreements, programs, grants, funding, publications, employees, and summits. All of these roles exist to support the process of informing Native Americans about the implementation of a particular consultation.

The employees negotiate the consultation and enforce the final policy. In response, it is the responsibility of the tribes to attend meetings and provide feedback on consultation issues. Their institutional roles are determined by the institutional power defining how they must speak and act. In consultation, a combination of Indian Law and environmental law ultimately makes the discourse hierarchical, technical, and formal. An anonymous tribal member describes the boundaries surrounding her ability to “talk” during consultation procedures, “no policy then you can’t do it. And the policy has to fall back on some law.”^{lv} As such, tribes have to create official positions in order to participate. Prado refers to this as “carefully fabricating” individuals into an institution.^{lvi} However, developing institutional roles in order to play out the process is not enough. There must be a shared meaning of consultation between the two cultures. In order to achieve a shared meaning, there needs to be a meta-discourse about the discourse of consent; in other words, rules for how to engage in consultation talk. The following discussion illustrates the dialectic tensions between EPA and tribes:

[Tribal member] Who do we consult with, the chief? This is one of the concerns for the director of the Environmental Department. Do tribes have a technical person? Not always. We were not always sure of how to respond. Was it appropriate to email? We had time constraints. If you do not follow up by 10 days to 15 days then they assume that we agree with the regulation.

[Tribal Member] I think there is a whole lot of confusion across the board. Tribes are talking something and the agencies are talking something else. You never get a really good understanding.

[EPA Employee] I feel it is the responsibility for tribes to do that. We are not mind readers.^{lvii}

Institutional rules regulate internal procedures, insure proper behavior, enforce policy, and produce subjects who can function as part of the institution. The Draft Consultation Procedures (DCP) was regulated by the rules of EPA discourse, which instructed employees on ways to speak and write about consultation. Since the governing discourse at the EPA is based on Western scientific knowledge, the drafts typically followed a very structured, goal-oriented format. For example, the layout for the basic DCP consisted of two or more pages of referencing regional and office consultation regulations and tribal policy. It would also include consultation principles, case studies for successful consultation strategies, and specific models, such as the “low impact rule specific consultation,” the “national broad impact consultation,” and the “short-term fast turn around consultation.” In addition, employees followed the same rules when speaking about consultation. Six months of data, reveals recurring concerns that pertained to temporal, spatial, hierarchical, economic, and cultural issues: (a) are the same Tribes being asked to speak for all Tribes? is Email considered true consultation?; (b) what level of EPA

management should respond to the tribes' questions/input?; (c) how does a regulator writer justify to managing the money and time for consultation, if there is no consultation plan to follow?; (d) if funds are minimal, then does EPA reduce consultation or drop regulations?; (e) how do employees keep up with all 556 tribes?; (f) who is the audience of the document?; (g) how pragmatic is the document?; (h) is face-to-face interaction possible in every situation?; (i) should we look to other examples of consultation?; (j) what are the best practices for consulting?^{lviii}

The rules of the institution not only regulated the internal discourse, but also EPA employee behavior. Consultants were advised to dress “down,” maintain eye contact that is congruent with certain tribal beliefs, and speak in an informal manner. They were also prohibited from purchasing jewelry or anything else that tribal members might be selling. In addition, they were warned not to “go native.” Some employees altered their appearance to mirror the tribal members with whom they had a close working relationship (i.e., braiding their hair, wearing tribal jewelry and clothes). Others unexpectedly claimed to have a low percentage of Indian blood, but this claim was neither proven nor disproved. These types of behaviors were considered inappropriate for employees working in Region 6 headquarters. Consequently, the director of the region developed a training course in order to teach new employees how to avoid these situations.

On occasion, the agency's actions perpetuated a pervasive management that restricts and prohibits Native Americans from taking real action. For example, Region 6 headquarters generated an *Indian Program-Weekly Activity Report* to inform EPA employees and tribes about a variety of activities, issues, and concerns in Indian Country. The overt motive behind the reports is to “share” information. However, a tribal member criticized the newsletter for

reporting inaccurate and irrelevant information concerning tribes, and suggested that the EPA retrieve their information at the tribal level rather than from secondary sources. The director responded with a written rebuttal that defended the agency's hard work and effort, and then threatened to terminate the entire publication. In this situation, the EPA acted quickly to control Indian behavior that produces power. The rules of production decide who can speak or write about a particular subject, hence keeping Native Americans in their place. The EPA's exercise of Foucauldian power is aimed to prevent Indians from believing that they have power.

In the knowledge/power dyad, EPA employees are specialized in various areas, such as physics, biology, communication, law, engineering, and accounting. The imbalance of power should be eliminated through negotiation, but if one looks closely at the logistics of the process, there is an increase in technology and expertise invested in consultations. Native Americans are not to become successors of the agency who confers with them, nor are they to become equals in terms of environmental expertise. The rules of production state that only those qualified to speak are heard. Thus, it appears as if the distinction between the disciplined and the disciplinarian and between the subject and expert are the same. Native Americans are aware of the stipulations, and, in turn, attempt to exercise their power by learning to use the same scientific terminology that the EPA uses in order to voice their desires or debate EPA policy. The following section discusses the community practices used by the EPA to invoke participation.

The Summit

On October 18 -19, 2000, Region 6 hosted their Fourth Annual Tribal Environmental Summit. The summit participants consisted of EPA employees from Region 6, representatives from other federal agencies, and members of twenty-four tribes. For two days, participants attended panel sessions concerning various environmental issues, such as waste, water,

pollutants, laws and policy, health, and consultation. The participants of the consultation session exchanged information, debated consultation issues, discussed solutions, and questioned EPA policy. The primary concern for most tribal members was how Executive Order 13175 would affect their lives. The following is a summary of their solutions. First, consultation should be more about getting tribes to participate and not simply presented without any input. Second, a few tribes should not speak for all tribes. Third, the EPA must be honest and treat tribal consultation with the same professionalism as they would any other business transaction. Fourth, consultation must be based on cultural issues, which means that Congress will have to provide the necessary resources for intercultural consultations. In addition, not all tribes have the same technological recourses, so the EPA should consider different methods of consultation, such as face-to-face interaction or conference calls. Direct mail has proven to be too slow for feedback, especially when the window for refuting a policy can be as short as 10 days. Finally, tribes must not be inundated with numerous consultation methods from different government organizations. The EPA panel respondent acknowledged these concerns by first agreeing that tribes need to contribute to the process and then suggesting that the EPA could analyze tribal responses.

The summit is a socially constructed space that allows tribal members to meet face to face with EPA officials in order to voice their views on environmental policies and procedures. Because the final policy is not always representative, many tribal members believe that forums/summits are a waste of time. From an EPA perspective, the purpose of the summit is to educate and inform tribes on environmental issues. The EPA spends a great deal of time, effort, and resources discussing issues with people, but changes within the institution are gradual. Part of the problem is that the EPA cannot implement any program or make any modification without the political or financial support of Congress.

The National Dialogue

From July 10-20, 2001, the EPA held an online public forum that attracted people from all over the United States to participate in public discussion. The dialogue involved a broad range of participants from government agencies, special interests groups, scholars, and professionals, to name a few. Pertinent issues discussed varied from public needs, permits, funding, participation, rulemaking, and consultation. In regards to consent, the primary concerns under negotiation were channels of communication, environmental justice, traditional knowledge, sacred space, and public participation. The following excerpts reveal the development of consultation discussed online.

Channels of Communication

Finding effective channels for increasing tribal communication and participation requires investigating different modes of consulting and distributing information. Such modes include traveling in order to meet face to face with tribal officials, corresponding through mail, phone, or email, holding meetings and public forums. However, these modes of communication are as complex as the people with whom they are trying to communicate. The following excerpt is an example of the various difficulties a consultant will encounter:

During my 4-state inspection/outreach activities with the EPA, I frequently came into contact with small business owners who could not read or write. Unbelievable as it sounds in today's modern America, it still exists. These people never volunteer this information because, in most cases, they are embarrassed about it. The only reason that I learned this fact was in following up on several owners who did not respond to our official certified Violation Action letters. More recently, while managing our Household Hazardous Waste program with our multicultural educators, I have learned that, in many

of these communities, the adult immigrants do not learn our language, but prefer to preserve their language and culture as much as possible. In that sense, also, they read newspapers and listen to radio in their own language.^{lix}

This example represents a serious problem when it comes to outreach efforts. Overall, people recognized that consultations needed to be flexible enough to adapt to the unique characteristics of each situation.

Environmental Justice

Despite the 1984 Policy for the Administration of Environmental Programs on Indian Reservations, federal funding for tribal environmental programs and environmental enforcement within Indian country has been less than desired.^{lx} If EPA consultants cannot communicate with each tribe in the most effective manner possible, then environmental decisions are not fully representative of all parities. The problem is that consulting with 556 Nations is an ongoing and expensive process. There can be as many as sixty environmental regulations to employ in one year. Nevertheless, inadequate funding for tribal programs is an environmental justice issue. An anonymous participant of the National Dialogue supports this argument:

Congress should provide more resources for the EPA to do consultation. Because it is a reality, that consultation takes a lot of resources and funding and if we do not have that, we cannot consult properly and I do not think its fair to anyone whose going to be affected by the regulations. You must give them a chance or good opportunity to provide input.^{lxi}

Incidentally, tribal liaisons in Regions 6 had exceeded their travel funds for that fiscal year, which temporally suspended all face-to-face communication.

Traditional Knowledge

The deep-rooted argument of qualitative verses quantitative is resurfacing in consultation discourse. From what perspective should experts approach consulting: traditional or scientific? Which perspective constitutes a truth for consultation? Which perspective will obtain funding? One EPA director said that science gets things accomplished at the EPA. Hence, “what gets measured gets done.”^{lxii} Consequently, the EPA generally bases their decisions on facts and analysis. For example, a database is used to document Alaskan tribes’ perceptions of ecological contamination. While some claim this approach is practical, others argue that more qualitative approaches are needed:

Consultation should carefully consider or not violate the spiritual aspect of their [Native Americans] beliefs. But before we can talk about the ground, the earth, the water, everything is back here in the spiritual consciousness. Tribes believe that everything “back here” is gone and that is why they want to protect it. They must safeguard anything that is in their system of beliefs. The local government set standards on what our belief entails. Consultation must be based on cultural issues.^{lxiii}

As long as competing truths about consultation exist, then both qualitative and quantitative perspectives should be taken into consideration. To disqualify one over the other is exactly what Foucault believes is wrong with disciplinary knowledge. Thus far, the scientific truth is the dominant truth. This is nowhere more evident than in Executive Order 13175 request for a coherent and homogeneous method of consulting. The EPA sustains this truth by exercising specific social practices that prescribe roles, rules, and expectations regarding consultation.

Sacred Space

Because some Native Americans have a land-based identity, their magic relationship with the natural world makes them attentive to rhythms, resources, and spirituality of the earth. However, the value of their sacred space is changed by the modernization of the dominant Western culture. Understanding their spatial values enhances the negotiation climate. Accordingly, participants of the dialogue expressed such concerns:

Often the significance of cultural sites and the sacredness of the land to the Tribes are overlooked.....Perhaps the lack of response to Native American interests is due to a lack of understanding of why environmental impact can be extremely devastating to a Tribal community. Due to the intrinsic connectedness of Native American culture with the environment, the degradation of natural aspects of Tribal land results in risk to the preservation of the impacted Tribal culture.^{lxiv}

Public Participation

According to Donohue and Ramesh, a balance of power between parties increases cooperative communication and generates successful outcomes.^{lxv} People cannot negotiate if they do not have the ability to participate. The participatory process was of major concern for the participants of the dialogue. Consequently, the discussion of this topic exceeded all others. An anonymous participant of the National dialogue wrote, “I am really interested in learning about what others might consider best practices for tribal governments in promoting public participation. I am not aware of any comprehensive effort to gather and analyze such information.” Another participant explained, “My experience leads me to believe that, when an EPA decision affects Indian country, government-to-government consultation with the tribe is a necessary prerequisite to effective public participation.”^{lxvi} Low levels of participation are caused

by inequitable access to the process. Participants find participation to be an environmental justice issue. In summary, the way in which participants perceive and discuss consultation is dictated by the rules of the discipline that describe how the process must be experienced, unified, and strategize in order to implement the final product.

Conclusion

In regards to environmental consultation, there appears to be no shared meaning between the United States and Indian Nations. The theory of Dimensional Accrual/Dissociation seeks to explain the diversity of expression that each culture brings to the consultation. For Western civilization, a consultation strategy is successful if the proper procedures are followed in order to reach a desired outcome. For Native Americans, collaboration is a critical part of the consent process. In addition, consultation, which derives from the term “consent,” is a Western technique. Everything ranging from the creation and knowledge of the word, to the language used to discuss the word, to the procedures that implement the word is indicative of modern society. Since there never has been any real “consent” exercised between the United States and tribal nations, it is no surprise that Native American’s ecological experience, language, knowledge, and customs are left out of the development process. Native Americans simply enter the equation during final stages of implementation. This practice is disconcerting given the fact that there is much to be gained from understanding the ecological wisdom of other cultures.

The overt motive behind Executive Order 13175 is to improve the relationship between the two governments. However, the environment is an institution that prohibits and restricts how people use their surroundings. Executive Order 13175 creates discursive power, which leads the EPA to enact formation practices over Native Americans, and, in turn, they struggle to exercise their power. As a technology, new consultations appear to be masking, not solving, the deep-

rooted problems associated with Indian identity and sovereignty, ultimately contributing to the mistrust between the United States and tribal nations. In addition, the process of consultation methods is dangerously teetering between one-sided and multiple perspectives for solving environmental issues. The outcome has great implications for environmental impacts within both Western society and Indian lands.

Foucault's *Archaeology of Knowledge* suggests that individuals, agencies, and governments unearth the disqualified ecological wisdom of Native Americans in order to recognize how knowledge is understood. Clearly, from a Western perspective, the economic and political resources put into the development of consultation; along with the efforts of the EPA is a step in the right direction. Westerners are discovering that if they truly want to consult in an equitable manner, they must not simply present people with a consultation plan, but consider the various ways in which people conceptualize consent and negotiate power.

This study demonstrates that understanding various forms of environmental perspectives and knowledge can lead to the discovery of culturally sensitive indicators that will distinguish the different interpretations of consultation from one culture to another, expose power formations, as well as identify the social interactions that occur during decision-making. There is not only a lack of intercultural consultation research, but, more specifically, there is a lack of research focusing on consultation as a form of technology used on indigenous peoples.

Currently, the consultation method is still a work in progress. Each region of the EPA is tailoring their own method to fit the needs of their unique situations so they can effectively communicate with the specific tribes in their area. This study only discussed consultation development regarding region 6, which includes Oklahoma, Texas, New Mexico, Arkansas, and Louisiana. Avenues for future research would be to investigate whether EPA consultations in

other regions are as equally problematic. After observing the dialectic tensions between EPA employees and tribal members, communication appears crucial to the process and, ultimately, social change.

NOTES

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- ⁱ Presidential Documents, Executive Order 13175 Consultation and Coordination with Indian Tribal Governments. *Federal Register Publication*, 65, 2000 : 218.
- ⁱⁱ United States Environmental Protection Agency, Principles of Scientific Integrity Site, 10 March 2000] available from <http://es.epa.gov/program/exec/eo-12898.html#projdev>; Internet; accessed 10 March 2000.
- ⁱⁱⁱ Haskew, D.C. 1999/2000. "Federal Consultations with Indian Tribes: The Foundation of Enlightened Policy Decisions or Another Badge of Shame?" *American Indian Law Review* 24(1): 21-75.
- ^{iv} Ibid., 25.
- ^v Kramer, E.M. 1997. *Modern/Postmodern: Off the Beaten Path of Antimodernism* (Westport, Connecticut: Praeger) 54.
- ^{vi} Spangle, M. and Knapp, D. "Ways We Talk About the Earth: An Exploration of Persuasive Tactics and Appeals in Environmental Discourse" In *Earthtalk: Communication Empowerment for Environmental Action* (Westport, CT: Praeger, 1996) 3-26.
- ^{vii} Presidential Documents, Executive Order 13175 Consultation and Coordination with Indian Tribal Governments, 218.
- ^{viii} United States Environmental Protection Agency, Principles of Scientific Integrity Site, 10 March 2000] available from <http://es.epa.gov/program/exec/eo-12898.html#projdev>; Internet; accessed 10 March 2000.
- ^{ix} Environmental Protection Agency, Principles of Scientific Integrity, online. Vulnerable segments of the population include indigenous people, the poor, the elderly, the unemployed and other groups which are racially, ethnically, culturally, or politically distinctive.
- ^x Stone, Public Participation in Great Lakes Environmental Management: Seeking Participation Equity through Ethnographic Inquiry, online
- ^{xi} Ibid, 56.

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- xii Ibid.
- xiii Van Tuyn, P. and Everett, C. 1992. "The Endangered Species Act and Federal Programmatic Land and Resource Management; Consultation Fact or Fiction" *The Public Land Law Review*, 13: 99-113.
- xiv Haskew, 1999/2000, 34.
- xv Harter, P.J. 1992. "Assessing the Assessors: The Actual Performance of Negotiated Rulemaking," *New York University Environmental Law Journal* 9 (2000): 32-56.
- xvi Putnam, L.L. and Roloff, M.E. 1992. *Communication and Negotiation* (Newbury Park, CA: Sage) 21-46.
- xvii Ibid.
- xviii Taylor, J.G., Burkardt, N. and Lamb, B.L. "Rules for Success in Environmental Negotiation" Site, 16 March 2002, available from <http://www.mese.usgs.gov/edps/success.html>; Internet; accessed 16 March 2002.
- xix Pritzker, D. and Dalton, D. *Negotiated Rulemaking Fact Sheet Site*, 7 August 2001, available from: www.network-democracy.org/epa-pip/; Internet; accessed 7 August 2001.
- xx United States Environmental Protection Agency, The National Dialogue on Public Involvement Site, 30 January 2003, available from: <http://www.network-democracy.org/epa-pip/>; Internet; accessed 30 January 2003.
- xxi Ibid, 74.
- xxii Kramer, 1997, 54.
- xxiii Gebser, J. Ger. 1949/Eng. 1985. *The Ever-Present Origin* (Trans. Noel Barstad and Algis Mickunas, Athens, OH: Ohio University Press) 41.
- xxiv Kramer, 1997, x.
- xxv Ibid, 54.
- xxvi Ibid, 57.
- xxvii Ibid, xix
- xxviii Ibid, 87.

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- xxix Bruchac, J. III. "The Circle of Stories" In *Buried Roots and Indestructible Seeds* (Madison, Wisconsin: University of Wisconsin Press, 1994) 9-21.
- xxx Blaeser, "An introduction," in *Buried Roots and Indestructible Seeds*, 5.
- xxxi Bruchac, 9.
- xxxii Blaeser, 5.
- xxxiii Ibid.
- xxxiv Kramer, 114.
- xxxv Ibid, 114.
- xxxvi Foucault, M. 1972. *The Archaeology of Knowledge* (Trans. Alan M. Sheridan Smith, London: Tavostock) 64.
- xxxvii Ibid., 60.
- xxxviii Dreyfus and Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, 75.
- xxxix Foss et al., *Contemporary Perspectives on Rhetoric*, 360.
- xl Kramer, 114.
- xli Gebauer, S. 1999. *The Regulation of Women's Sexuality and Female Prostitution: A Theoretical Analysis of Foucault and Makcinnon* (Unpublished maters thesis, Norman, Oklahoma: University of Oklahoma), 206.
- xlii Haskew, 1999/2000, 25.
- xliii Taylor, Burkardt, and Berton, 2002.
- xliv Foucault, 72.
- xlv Prado, *Starting with Foucault: An Introduction to Genealogy*, 50.
- xlvi Haskew, 1999/2000, 25.
- xlvii Presidential Documents, 218.
- xlviii Haskew, 1999/2000, 20.
- xlix Presidential Documents, 218.

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- ¹ Ibid.
- ^{li} United States Environmental Protection Agency (2001). The National Dialogue on Public Involvement Site, 30 January 2003, available from the World Wide Web: <http://www.network-democracy.org/epa-pip/>; Internet; accessed 30 January 2003.
- ^{lii} Presidential Documents, 218.
- ^{liii} United States Environmental Protection Agency, Principles of Scientific Integrity Site, 10 March 2000 available from <http://es.epa.gov/program/exec/eo12898.html#projdev>; Internet; accessed 10 March 2000.
- ^{liv} The EPA recognizes a need for a government-to-government relationship among tribal and federal governments. The EPA understands that tribal governments are central to the making of environmental policy decisions, as well as to managing programs for reservations. They also acknowledge federal trust and encourage cooperation among tribal, state, and local governments, along with incorporating Indian Policy goals into its programs.
- ^{lv} EPA, Region 6, Fourth Annual Tribal Environment Summit, 18 October 2000, Consultation Panel, EPA Dallas, Texas.
- ^{lvi} Prado, *Starting with Foucault: An Introduction to Genealogy*, 67.
- ^{lvii} EPA, Fourth Annual Tribal Environment Summit.
- ^{lviii} Other groups, such as the National Environmental Justice Advisory Council (NEJAC), a federally mandated council, provided the EPA with recommendations for what they believe constitute humane ways to consult. Their suggestions included several qualitative components, such as spirituality, ritual, and cultural diversity. EPA, Fourth Annual Tribal Environment Summit.
- ^{lix} United States Environmental Protection Agency, 2001, 2003.
- ^{lx} National Environmental Justice Advisory Council, (2002). The National Dialogue on Public Involvement Site, 29 January 2003, available from: <http://www.network-democracy.org/epa-pip/>; Internet; accessed 29 January 2003.
- ^{lxi} EPA, National Dialogue on Public Involvement, online.
- ^{lxii} Ibid.
- ^{lxiii} Ibid.

lxiv Ibid.

lxv Donohue, W.A. and Ramseh, C.N. "Negotiator-Opponent Relationships" In *Communication and Negotiation* (Newbury Park, CA: Sage, 1992) 209-233.

lxvi EPA, National Dialogue on Public Involvement, online.