

# **Native Americans and the Monitored Retrievable Storage Plan for Nuclear Wastes: Late Capitalism, Negotiation, and Controlling Processes**

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## **Introduction**

In 1990 President George Bush appointed former Idaho Lt. Governor and Attorney General David H. Leroy as the nation's first Nuclear Waste Negotiator. Leroy was mandated to solve the problem of the negative "public perception" of nuclear waste storage by negotiating settlements with interested counties and Native American tribes to store all of the country's civilian high-level nuclear wastes, through the Monitored Retrievable Storage (MRS) plan. Behind Leroy was a nuclear industry which needed a quick solution to the waste dilemma. In his work, taking him to the far reaches of the United States, the name of the game was negotiation. To help him with his task were millions of citizens' dollars and federal plenary authority.

In this paper I examine the negotiation process whereby national nuclear waste policy was both developed and played out by a relatively small group of institutions and individuals in the nuclear industry, and also responded to and shaped by various people affected by the process. Central to this study is a critical examination of the incremental process of negotiation, in which the ideal of negotiation is situated in contexts of power and social and cultural control. It is argued that the ideal medium of negotiation was actually characterized by a coercive, incremental process of consensus building. These processes of control are both overt and subtle in visibility (Nader 1994).

The negotiation process is also situated in the period of "late capitalism." In the Frankfurt School's analysis, this period has been characterized by "a tangential web of bureaucratic control and the interpenetration of government and big business" (Jameson 1991:XIX). In this historical context, this paper will examine the way in which structural relationships between the federal government, Native American tribes<sup>1</sup> and the nuclear industry have shaped and directed the nuclear waste negotiation process.

This paper is divided into four parts. The first section briefly reviews the historical context of nuclear energy and wastes in the United States. There is an examination of the "technical constitution" (Winner 1986) of the congressional act which created the Office of the Nuclear Waste Negotiator (ONWN) with a mandate to implement the MRS plan. The next section deals with Native American communities that have been affected by the MRS plan, including a brief overview of nuclear activities on reservation lands.

The third section focuses on the MRS negotiation process with an examination of the socio-linguistic structure of a retreat meeting entitled "Dialogue on Tribal Perceptions of the Ethical and Moral Bases of Nuclear Energy and Radioactive Waste Management." Sponsored

by the Council of Energy Resource Tribes (CERT) and the Mescalero Apache tribal council, leaders of Native communities possessing potential sites for waste disposal were invited to this meeting at the Cheyenne Mtn. Conference Resort in Colorado Springs. Critics have argued that this meeting “seemed to set the mood for nuclear waste storage in Indian Country” (Taliman 1993:22). The final section provides a brief discussion of negotiation and controlling processes in the MRS plan.

## **The “Technical Constitution” of the Monitored Retrievable Storage Plan**

### *A Brief Overview of Nuclear Waste Storage Projects in the United States*

According to the 1991 Worldwatch report on nuclear waste, “no government has been able to come up with a course of action acceptable to either those dedicated to an expanding nuclear industry or to those determined to stop the production of more nuclear waste” (Lenssen 1991:48). With over 100 reactors operating in thirty three states, the United States receives over 20 percent of electricity from nuclear plants. “Perhaps the most dangerous radioactive waste of all, in its overall threat to life on earth, irradiated uranium fuel from commercial nuclear power plants accounts for less than 1 percent of the volume of all radioactive wastes in the United States but for 95 percent of the radioactivity from all civilian and military sources combined” (Lenssen 1991:9).<sup>2</sup> The nuclear power industry also involves uranium mines and mills, as well as uranium conversion and fuel enrichment plants. Together with the unclear magnitude of military nuclear wastes—revelations of which continue to surprise the public—the problem exists in crisis scale.<sup>3</sup> As we enter the second half of the 1990s, Lenssen’s report continues to ring true, even louder than before.

Not unlike any other nuclear nation, the United States is burdened with a growing volume of radioactive wastes. It may also have “the most dismal history of mismanaging nuclear wastes” (Lenssen 1991:35). Today, most high-level wastes from civilian reactors are being stored in cooling tanks or dry storage casks on-site and in a few cases at contracted facilities and nuclear plants with capacity. Of course, some wastes are waiting to be removed from closed reactors. There have yet to be clear answers to the general problem. Amidst the flurry of debate in search of quickly viable solutions, the important questions concerning a nuclear-based society have not been necessarily been evident to policy-makers either.<sup>4</sup> Although it is far beyond the scope of this paper to detail the whole history of United States nuclear waste policy, it is instructive to at least review the general directions of that policy in order to contextualize the present situation. This will aid in understanding the present day momentum for the MRS project.

Beyond the thought of mismanagement, government agencies have been delegated the responsibility to address “the” issue of radioactive waste disposal: safely storing it somewhere, sometime soon. Since the first International Scientific Conference on the Disposal of Radioactive Wastes in 1959, technical solutions to the problem have shifted throughout the years. Some competing scientific ideas for waste handling that have been abandoned for technical, political and economic reasons include Antarctic ice burial and space disposal—the latter suffering a serious setback in the wake of the Space Shuttle Challenger explosion. Others that have yet to reach feasibility status but are nevertheless being researched by various

governments include technically complex processes such as sub-seabed burial and transmutation through neutron bombardment.

The Atomic Energy Commission (AEC) was established as the United States' overarching agency for civilian and military nuclear programs. Programs for reprocessing high-level nuclear wastes into re-useable energy sources were initiated in the early period of the United States nuclear program. In 1966, the first facility was operated in West Valley, New York, only to be shut down due to seismic design regulations. The process itself was marred by the inherent danger of producing weapons grade plutonium—the by-product of fission necessary for reprocessing—which constituted an international political issue. Hence, its continuation was effectively deferred.<sup>5</sup> Geological disposal experiments were first initiated in salt mines of Lyon, Kansas. By 1972, however, with the discovery of an underground labyrinth resembling a “Swiss cheese” of old oil and gas wells through which groundwater might seep” by local geologists and consultants, the first tests at this site failed to confirm geologic formation integrity (Lenssen 1991:35). Hasty plans to bury wastes here therefore ended a dismal failure.

Following earlier setbacks, two other major events led to a shift in national nuclear waste policy. In 1970 the strongly critical 1966 National Academy of Sciences report on AEC nuclear waste policy was finally made public due to intense pressure from Congress demanding its release. In 1969, a major accident at the U.S. government's bomb-making facility at Rocky flats, Colorado further tarnished the image of the AEC (Lenssen 1991:35). In 1970, the AEC formalized its policy calling for solid waste conversion of radioactive wastes within five years of generation and federal repository transference within ten years thereafter. Geologic repositories became the first sites of intense scientific investigation (MRSRC 1989:F1). Attention was also focused on engineered aboveground structures, the first monitored retrievable storage facilities.<sup>6</sup>

In January of 1975, implementation of the Energy Reorganization Act of 1974 divided the AEC and separated its tasks for two new agencies: the Nuclear Regulatory Commission (NRC) for regulating nuclear power; and the Energy Research and Development Administration (ERDA) for overseeing research, promotion, and military aspects of nuclear energy (Woodhouse 1983:152). In 1976 the ERDA requested funding for a Retrievable Surface Storage Facility at a site to be selected by July 1976, only to quickly withdraw the request and the environmental impact statement due to intense pressure and criticism (MRSRC 1989:F2).

In October 1977, no sooner than it was established as ERDA's successor, the Department of Energy presented a proposal which called for the establishment of federal away-from-reactor (AFR) storage of spent fuel, as well as for research into permanent geological repository prospects. It was essentially a modification of the earlier proposal ERDA proposal for a Surface Storage Facility, with special attention in its wording paid to assuage fears of the AFR becoming a long-term site. The language was surprisingly optimistic, especially in the discussion of the “soon to be available” permanent spent fuel storage facility. Moreover the benefit of the doubt was clearly in favor of the nuclear industry, as federal acceptance of their nuclear wastes were to remove “utilities' uncertainties about indefinite at-reactor storage of spent fuel” (MRSRC 1989:F2).

Once on the nuclear trail, irreversible decisions for producing unmanageable waste were made as a matter of default. On April 7, 1977 due to international non-proliferation issues, President Carter indefinitely deferred spent fuel reprocessing in the country. This left the nuclear industry with few choices: expanding on-site storage capacity, developing temporary storage sites, or shutting down their reactors (Gould 1983:3). Lenssen notes that just a year earlier, states such as California issued moratoriums on new nuclear power plant development until the federal government approved a nuclear waste disposal program. With licenses for on-site expansion pending from the long, uncertain process of DOE approval, "the growth of nuclear power seemed threatened, and the nuclear industry pushed the AEC's successor, the Department of Energy, to bury waste quickly" (Lenssen 1991:36).

The rush for waste storage stemmed from the needs of a particular cluster of interests comprising the nuclear industry. If we consider the interconnection of big business and government, and the various levels of professional responsibilities, economic motivations, and symbolic capital contained therein, it is understandable how nuclear power continued in its progression as a socio-technical system, even during times of crisis and uncertainty. Despite widespread public opposition, the nuclear industry utilized economic and socio-technical models of progress to entrench itself as a "regime of instrumentality"—whereby policy matters are influenced not only through direct social controls such as political dealings and patron-client relations, but also through ideational controls such as linear growth-models and comparative risk/security ideologies, firmly establishing instrumental rationality in a particular way (Winner 1986:122). Therefore, although the federal government is legally responsible for the management of civilian as well as military nuclear wastes, the kind of solutions offered are inseparable from the intricate workings of an instrumentalist regime such as the nuclear industry.

In 1980, Carter's final stand on constructing a viable nuclear waste management policy continued along the same lines: necessarily supportive of permanent disposal, yet in favor of temporary storage sites. Still, the DOE continued to come up with disappointing results in finding long term sites. Their plans for the military Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico were shaken by the discovery of serious geological problems and was subsequently canceled by Carter's executive order, only to be continued under the Reagan administration. Meanwhile, the House and the Senate were at odds on the question of temporary storage. In search of a less controversial technical fix, the DOE continued to research the possibilities for surface-level monitored retrievable storage (MRS) sites. The Reagan administration altered the discourse and practice of nuclear energy and waste management. It strongly supported nuclear power, favored permanent geological burial, lifted the reprocessing deferral, turned the responsibility for storing spent fuel onto utility companies, and narrowed the number of potential repository sites to three. Most importantly, the administration's policies dropped the rhetoric of "public consultation and concurrence" of the Carter administration (MRSRC 1989:F3).

*The Nuclear Waste Policy Act of 1982 and the Ongoing Quest for Temporary MRS and Permanent Repository Sites*

During the reign of the Reagan administration, the first full-time public relations agency for federally monitored radioactive waste storage was created. The DOE's Office of Civilian Radioactive Waste Management was established under provisions of the Nuclear Waste Policy Act (NWPA) of 1982.<sup>7</sup> Lenssen (1991:36) observes that the Act was passed despite the continuing dissent of various factions and most tellingly, characterized by "byzantine political bargaining." Also under the Act, by January 1, 1985, the DOE had to submit proposals for three of at least five possible high-level waste sites, with long term storage on-site as an option. By July 1, 1989, they were to nominate another set of three out of five investigated sites for the second repository. Contracts with utilities companies were to be secured by January 1, 1990. The directive was established to "ensure the continued, orderly operation of the utilities' reactors" (Lenssen 1991:36). With the delegation of authority to the executive branch, national priorities were formally imprinted on the issue.

It would be no easy task for an executive agency to overcome local political conflicts in finding such sites. In the case of the three DOE proposed sites in Tennessee, coalitions of citizens groups such as the National Nuclear Waste Task Force (NNWTF) successfully advocated funding cuts for the DOE plan-45 percent from \$769 million to \$420 million. Moreover, following a suit filed against the DOE by the state of Tennessee, the Tennessee District Court issued an injunction prohibiting the DOE from submitting the Monitored Retrievable Storage (MRS) site proposal to Congress. Nonetheless, the decision was overturned on November 25, 1986, and the state's appeal was denied on March 30, 1987 on the grounds that consultation was not required under the NWPA; the federal government overrode state jurisdiction. Despite the state's continuing objections that the plan was unnecessary, a waste of money, a negative impact on planned economic diversifications, and most importantly, that it was carried out without consultation, the DOE submitted the MRS site proposal to Congress on the following day (MRSRC:F4).

Other site studies did not fare better. For instance, despite government scientific evidence of large-scale groundwater seepage and massive contamination, the DOE continued in its studies for expanding the Hanford nuclear reservation in Washington into a civilian waste site. For decades, voluminous amounts of nuclear wastes had been stored at this weapons-grade fissionable material plant unsafely, such that "the costs and risks of moving the radioactive wastes were so great that the "temporary" storage there may have become irreversible" (Woodhouse 1983:178).<sup>8</sup> Furthermore, it is now known that this facility was closed down in 1987 amid concerns of a disaster close to that of Chernobyl. Although DOE officials claimed that the facility had always functioned in a "safe and essentially accident-free fashion," in July 1990 they finally disclosed that "the weapons facility had been, since the early 1950s, secretly dumping radioactive wastes into the environment at a level at least 2,000 times greater than those officially deemed safe" (Churchill and Laduke 1992:261).<sup>9</sup>

Given the recent history of nuclear energy in the United States, the results from this frantic search for nuclear waste sites were predictable. There was public opposition to all nine proposed sites in Washington, Nevada, Louisiana, Mississippi, Texas, and Utah. In its final mission plan submitted for review, the DOE indefinitely postponed a study into alternative

repositories, delayed the date of permanent repository construction from 1998 to 2003, proposed three permanent sites, and advocated the building of a temporary MRS facility at the Clinch River site in Roane County, Tennessee.<sup>10</sup> As a political concession, the DOE pledged not to receive spent fuel at this site until the NRC approved the planned long-term repository construction. Yet even then, prospects for the permanent repository were clouded in uncertainty, with deadline extensions continuing to this day.

In 1987, reacting to the failure of the 1982 NWPA, the Nuclear Waste Policy Amendments Act (NWPAA) was adopted by Congress. Signed by President Ronald Reagan on December 22, 1987 (Public Law 100-203), it directed the Department of Energy to terminate its site-specific repository plans in Deaf Smith and Hanford, “annulled and revoked” DOE’s proposed Tennessee MRS facility, and over Nevada’s objections, called for continued study into the permanent repository at Yucca Mountain, Nevada. With only controversy and contradiction to show for the proposed long-term site designation, the idea of an MRS facility was seriously questioned by state and local governments, environmental groups, and relevant scientific organizations. The inherent dangers of hastily enforcing solutions prompted the Citizens’ Task Force and other environmental groups to call for a moratorium on the MRS until an independent commission evaluation was completed. While it was clear to such groups that the DOE program had failed, this successfully passed moratorium-commission legislation was strongly opposed by proponents of the nuclear industry, who argued that this source of delay would not lead to a solution to the waste problem, which of course was necessary for the continuation of their operations.

Amidst a barrage of national political criticism, two major proponents of the 1982 law, Representative Johnston and Senator Udall successively introduced new dimensions to the MRS and repository plan, respectively: financial incentives to states or Native American reservations for accepting an MRS and/or a repository site; and the establishment of the Office of the Nuclear Waste Negotiator (ONWN) mandated with negotiating a “reasonable” settlement with an interested state or Native American tribe. Willing hosts for the MRS were entitled to \$5 million/year prior to receiving spent fuel and \$10m/year thereafter; those for the permanent repository were entitled to \$10m/year and \$20m/year respectively. Finally, although the Act authorized the DOE to find and build one MRS site, the ONWN was required to hold off on its search until the Monitored Retrievable Storage Review Commission completed its evaluation of the MRS plan. It would only be a matter of time until the legislative ingenuity of the two congressmen would find its way into the thoughts and lives of millions of people.

“There are no single discriminating factors that would cause the MRS alternative to be chosen in preference to the No-MRS alternative.” So read conclusion no.3 in the Review Commission’s November 1, 1989 final report (MRSRC 1989). But since the report was in no way binding, the ONWN embarked on its search for a willing MRS host community. Moreover, the proposed MRS conditions favored by the DOE—and politically compromised for the 1987 Amendment Act—were reaffirmed by conclusion no.4: “An MRS link [to repository licensing] as provided in current law would not be justified, especially in light of uncertainties in the completion time for the repository. Consequently, the Commission does not recommend a linked MRS as required by the current law and as proposed by DOE.”

Without a linkage provision, a temporary MRS site could legally be built without approved plans for a permanent repository site, thus making it possible for the MRS site to become a *de facto* permanent site.

Plans for siting MRS facilities were not affected by the Review Commission report, with the exception of the linkage issue. The diminishing likelihood of progress on the controversial search for the permanent repository made it clear to nuclear industry and DOE officials that the linkage provision may seriously jeopardize the search for an MRS site. Criticisms from Nevadans were not quelled by the passing of time. Two years after the crushing federal mandate, the state articulated its own forms of agitation and resistance. A bill was passed in the state legislature in 1989 prohibiting the storage of high-level waste in Nevada. Furthermore, the hazards of transporting radioactive waste for some 2,000 miles was considered by many other states to be a serious concern. As the DOE would only examine such issues after the site was considered technically sound, states such as Colorado and Nebraska had good reason for apprehension. In fact, the Yucca Mt. controversy was even described by former Nuclear Regulatory Commissioner Victor Gilinsky as a "political dead end" (Lenssen 1991:36). As has been the norm in the turbulent experience of radioactive waste disposal, uncertainties do not necessarily disqualify urgently needed progress; conditions are built around the greater imperative for quick disposal.

*The New and Improved MRS Project: Changing Public (Mis-)Perception*

When presenting his proposal in 1987, House Interior Committee Chairman Morris Udall argued that the Office of the Nuclear Waste Negotiator was necessary because "a large part of our trouble with siting a nuclear waste repository stems from the public perception that a repository is a source of endless misfortune" (cited in Hancock 1992:100). Hence, the very idea of "public perception" being the "source of endless misfortune" assumed that the most substantive problems did not loom in the nuclear energy and waste programs in themselves. Rather, the pressing issue that needed to be addressed was the way in which the public viewed the idea of nuclear waste storage in their state, county or neighborhood.

To address the critical problem of "public perception", then, the ONWN began full-scale operations upon President Bush's August 1990 appointment of former Idaho Lt. Governor and Attorney General David H. Leroy as the nation's first Nuclear Waste Negotiator. In May 1991, although Congress had only authorized the selection of one MRS site, letters were sent to every state and territory Governor, and to tribal leaders of all federally recognized Indian tribes. The availability of feasibility study grants was published by the DOE in the June 1991 *Federal Register*.

In October 1991, no sooner than when formal invitations for dialogue and participation had gone out, the Mescalero Apache tribe of New Mexico had applied for a \$100,000 feasibility study grant. It was immediately approved. By the twice extended June 30, 1992 deadline, a total of sixteen tribes, four counties, and one (ineligible) development corporation, all in twelve states, had applied for Phase I feasibility study grants. For a more site specific study, Phase IIA grants of \$200,000 required the state/tribe to work with the DOE to identify at least one preliminary site. Then, Phase II-B grants of up to \$3 million could be requested to formally establish an MRS site, and to enter into a formal agreement with the

Negotiator. Finally, once the environmental, judicial, public, Congressional, and NRC reviews are passed, the MRS host was entitled to \$5 million/year for actual construction. The acceptance of spent fuel on site entitled them to \$10million/year.

What exactly were they applying for? According to official documents provided by the ONWN, the MRS facility would require at least a 450 acre parcel of land to temporarily store for 40-50 years. more than 10,000 metric tons of radioactive wastes. The DOE's planned "integrated waste management system" would require the repackaging and consolidation of 12-14ft. long uranium contaminated fuel rods-estimated to be a million times more radioactive than enriched uranium fuel itself-for storage and transportation purposes.

### *The Negotiable Flexibility of the MRS Project*

"Negotiation only fails, and fails miserably if, for whatever reason, we choose not to talk." –United States Nuclear Waste Negotiator David Lero, April 30, 1991, speaking at the 1991 High Level Radioactive Waste Management Conference and Exposition, Las Vegas, Nevada (ONWN 1991).

Reviewing the information provided to the public by the Office of the Nuclear Waste Negotiator, however, major socio-technical implications of nuclear waste transport and storage are missing, with even the technical aspects ambiguous.<sup>11</sup> Control is somehow assumed to be immanent, such that thorough descriptions are assumed not to be necessary. In the ONWN's *Information Sourcebook* (1991)–self described as "consistent with the desire to provide access to a broad range of information, and often competing views and perspectives"–only a few references to in-depth, critical resources and information are *listed*, and therefore are not directly accessible to the reader. Such aspects of the ONWN's public relations practices seem to be consistent with its general discourse of negotiation.

Perhaps learning from the sordid history of radioactive waste disposal, the ONWN articulated its desire for "an open, honest, and credible dialogue that recognizes our mutual concerns and interests." In his October 1991 letter to state governments and tribal councils, Negotiator David Leroy confided that "the opportunities presented by this initiative represent the federal government's genuine commitment to seek a truly voluntary host." The MRS program was touted as an "opportunity for developing a new and innovative relationship with the federal government." In the documents enclosed with the letter, the ONWN insists that "the process must and will be truly voluntary", that "there are no irrelevant issues", and that "this process can only work with participation."

"Broad public participation" is emphasized, as is the overall goal of "credibly empowering all States, Indian tribes, and the public to openly discuss and independently evaluate the prospects for their own voluntary participation in controversial and environmentally sensitive siting issues." The ONWN made it clear that it is an independent federal entity not affiliated with the DOE or any other federal agency. Since it responded strictly with the Office of the President, there would not be any pressure from federal entities for the prospective host to enter an agreement or to continue dialogue. In the ONWN's view, it is strictly up to the voluntary will of the host community. In this ideal setup, local peoples are



negotiating directly with the executive office. Unlike those citizens of the NIMBY (Not-In-My-Backyard) persuasion, they are assumed to be deciding "on their own backyard."

The central message is that the Negotiator negotiates flexibly. He is aware of the "special needs and concerns of the host." Besides negotiable amounts of money, he offers highways, airports, hospitals, educational institutions, recreation projects and even environmental remediation programs. Such rewards, the ONWN notes, are due because the host is *truly* "entitled to achieve an equity for helping to solve a national problem." Yet the most basic questions are ambiguous: *Who* is negotiating *what* on behalf of *whom*? Such unquestioned abstractions may serve to veil widespread dissent to the MRS project. In its preoccupation with articulating this vision of flexible negotiation, critical issues are either overlooked or only briefly mentioned by the ONWN.

Thus significant implications of the storage process such as public health and safety are not examined in the discussions. They are simply mentioned in relation to the word "standards." One basic problem that should be significant to the public is the risk and uncertainty of the new technology associated with MRS, and the potential for accidents and radiation releases in handling such wastes on-site.<sup>12</sup> There are also critical questions regarding transportation. With highly radioactive wastes coming from over one hundred reactors from thirty three states by way of truck or train—mostly from the eastern half of the United States to the Southwest—security and safety risks should be high on the agenda for every state on the "nuclear trail."

Similar to the Yucca Mt. permanent repository case, the MRS site selection process does not deal with such questions.<sup>13</sup> Moreover, the inherent danger of radioactive material and the complex operations required for dealing with these wastes on-site require ever stringent security measures, leading some to argue that nuclear power is *inherently* authoritarian (Winner 1986). The absence of sustained debate on such matters is curious when one considers the controversy surrounding the proposed high-level permanent repository at Yucca Mt., shaken by the resignation of the chief scientist, fault lines, a twelve year (and ever rising) delay, a secretive "scientific truth" campaign to suppress potential whistle-blowing, a budget that has soared to \$32.5 billion, and an earthquake on June 29, 1992 (Taliman 1993:35).

In addition, the permanent repository's uncertain existence may potentially make the MRS site a *de facto* permanent facility. As Natural Defense Council lawyer Dan Reicher pointed out in a letter of concern to Fremont County Commissioners (Dec. 26, 1992), there are no "legal, political or financial mechanisms that will ensure that a 'temporary' MRS facility will not become a permanent disposal site." In fact, the 1987 NWPAA provides a different set of insurances. Once a benefit agreement is secured, the tribe must waive its rights to "disapprove the recommendation of a site for the repository." More alarming is a provision which requires MRS recipients to waive their rights to sue the federal government if for some reason the permanent repository is not in operation by the end of the MRS contract period of 40-50 years. None of these elements are evident or implied in the dialogue of the Negotiator. In fact, as evidenced in the meeting analyzed below, the *place* of such issues in the overall discursive norm arguably has as formidable an effect as their mere absence in the actual dialogue.

Also lacking is critical attention to the continuing lobbying by the nuclear industry for legislation which would effectively “break the linkages” between the MRS and the permanent repository. Moreover, when the possibility of breaking linkages is openly discussed, the concern shifts to “what kind of language can be used in an MRS agreement to acknowledge the need for a permanent repository?” In this way the public is supposedly assured that formal, scientific scrutiny is involved at the highest levels of discussion and hence legitimate administration from both sides of the matter (federal-Native) is presumably all that is necessary. As such, the rules and order of the “negotiation game” may remain ambiguous and unclear at best, and given necessary circumstances, they may easily be subject to change. With self-interests in mind-be they ideal constructions of tribal sovereignty or economic development-this general pattern of flexible negotiation is difficult to discern.

Countering the flexible negotiations-owing much to the tarnished national image of the nuclear industry in the United States-coalitions of residents, environmental organizations, and politicians became actively involved in disputing their counties’ MRS applications. In effect, all four counties that had applied for MRS grants have been terminated. The governor of Arizona almost immediately withdrew the Apache County application. In Fremont County, Wyoming, Governor Sullivan vetoed the Fremont County Commissioners’ bid for an MRS, as he was “absolutely unpersuaded that Wyoming can rely on the assurances we receive from the federal government” (Western Network 1992:4). In Grant County, North Dakota, county commissioners who had applied for the plan were replaced by “anti-MRS” commissioners who promptly terminated the process. In San Juan county, Utah, with over half of its residents Native American, the active opposition of one of three county commissioners, Mark Maryboy, a Navajo, backed by a coalition of environmentalists, community activists, politicians, and other citizens, paid off in the long run, as they pressured the 1993 incoming governor to cancel the MRS plan.

Although new in its symbolic public relations and improved in its substantive financial offerings, the MRS plan has proven to be similar in socio-political design and outcome with previous federal plans. As in the past three decades of hasty project planning and implementation, grassroots pressure in all four potential counties prevailed over symbolic constructs which veiled and did not adequately address the historical inconsistency, institutional ambiguity, and scientific uncertainty of nuclear energy and wastes. However, the innovation of offering money and other benefits such as symbolic political authority—termed “sovereignty”—to economically and politically marginalized American Indian communities led to results quite different from the case of counties.

### **American Indian Communities and Nuclear Waste: Toxic and Nuclear Natives**

In front of a roadside convenience store on the 18,000-acre Skull Valley Goshute Indian Reservation in Utah, sits a large 50,000 ton nuclear waste casket. If all had proceeded as planned it would have been one of many radioactive caskets being shipped into this economically depressed reservation for processing and storage, at a site just two miles from the community hall and the homes of 25 tribal members (Taliman 1993). Its presence should not be taken lightly, certainly not in a historical sense. In the early 1990s, over one hundred

proposals for toxic and nuclear waste dumps have been proposed to reservation communities.<sup>14</sup> Behind these four years, there is a longer story to be told.

*Colonialisms: Old and New*

The constitution of the national Native American situation is some five hundred years in the making. Treaties have been instrumental in this gradual yet decisive process. Considered the "supreme law of the land" (U.S. Constitution, Article VI), a legally binding treaty assumes the sovereignty of the involved nations. Legal scholar Vine Deloria (1992:89) argues that European powers entered into diplomatic relationships with Native Americans as a matter of legal principle due to international implications in Europe and in the New World. Treaty agreements with European Crowns conferred onto indigenous nations sovereign status, which the "outlaw state" of the colonies lacked. As a way to help legitimize its own sovereignty, the federal government also entered into treaty agreements with indigenous nations.<sup>15</sup>

Along the course of history, however, there have been a "trail of broken treaties." For instance, the U.S. federal government "has failed to uphold even one of more than 800 treaties that it negotiated with Indian nations inside the borders of what is now the U.S., 370 of which were ratified by Congress and then violated" (Taliman 1993:25). Treaties were also questionably constructed, with cases involving misinterpretation and deliberate alteration of negotiations, as well as coercion in local representative processes, including the forgery of signatures (e.g., 1861 Treaty of Fort Wise). The failure to uphold treaties was rationalized in *Lonewolf v. Hitchcock*, 187 U.S. 553 (1903), when the United States government was considered to have discretionary power to regard or disregard treaties with Indian nations.

The legacy of this continuing aberration of some basic tenets of international law can be evinced in the overall socio-economic and political position of Native Americans in the United States, although such a generalization smooths over major differences and disparities between tribes (Deloria and Lytle 1984). To get a basic idea of the contemporary socio-political situation of Native communities, it is crucial to examine the gradual transformation of these international treaty agreements through federal Indian law that came to define the general course of settler state-Native relations.

The massive displacement and relocation of Natives from their lands was codified in federal laws such as the 1830 Indian Removal Act. Organized warfare and scattered settler conflicts were rationalized under the "Doctrine of Discovery." Even though Native Americans were considered to be holding "original land title," the federal government *entrusted* itself with administrating growing settler occupations, as elaborated in *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823). In the case of *Cherokee Nation v. Georgia*, 30 U.S. (5Pet.) 1 (1831), Chief Justice John Marshall acknowledged the sovereign status of the Cherokee Nation, but also established that they, thus all Indian nations, should more accurately be "denominated domestic dependent nations," and that "their relation to the United States resembles that of a ward to his guardian" (Deloria 1985). Interpretive flexibility has followed this precedent setting case. If Indian Nations are considered "wards", in addition to implying the "guardian's responsibility" of the federal government to uphold Native sovereignty, it could also be interpreted to mean that Natives do not have the capability for self-governance, thereby undermining their sovereignty. This tenuously constructed "trust" status continues to this day.

Following the push for removal of tribes from east to west of the Mississippi under the 1830 Indian Removal Act, the Bureau of Indian Affairs (BIA) was moved from the War Department—serving the purpose of federal liaison with sovereign Indian Nations since 1824—to the Department of Interior in 1849, clearly denoting a shift from diplomatic relations to federal administration and control. With Congress busy creating new legislation to expedite the process of land appropriation and outright colonization, the socio-political situation of Native communities was rapidly changing. In 1871, Congress passed the Suspension of Treaty Making statute, which determined that no Indian Nations could “henceforth be recognized as an independent nation, tribe or power with whom the United States could contract by treaty” (Churchill and Morris 1992:14).

Sovereign but domestic dependent Indian Nations were thus legally subjected to federal plenary power. In the course of the next two centuries the idea of sovereignty as formally understood in relation to federal authority attained new levels of meaning. The real and imagined role of tribal sovereignty were affected by cultural and social changes in other spheres of everyday life. Some major events in this process of change were: the establishment of civil and criminal legal codes for reservations; forced compliance with BIA programs, including mission schools; and the Dawes Allotment Act, which individuated and privatized land holdings in Indian communities, severely upset preexisting land use practices and concomitant social structures.

The intervention of the federal and local governments in reservation communities reinforced the legal doctrine deeming Natives to be in a dependent trust relationship to federal “plenary power.” Sovereign rights were thus limited by federal legislative authority. The process of administering federal laws was also replete with problems. For instance, since the executive Interior Department included land, mining, wildlife, and forest management interests, their concurrent jurisdiction over Indian Affairs was a considerable source of conflicts of interest. Between 1887 and 1934, Indian-held land decreased from 138 million acres to 48 million acres, with some 20 acres of that remaining land being desert or semi-desert (Canby 1988:21).

The 1934 Indian Reorganization Act (IRA) effectively “ended the trust period for existing allotments still in trust” and instead, reestablished reservation sovereignty (Canby 1988:23), albeit in a particular way. Tribes that acknowledged the IRA had to form tribal governing bodies based on “constitutions and/or charters drafted by the Bureau of Indian Affairs” (Ibid), and all decisions had to be approved by the Secretary of Interior. A “permanent divisiveness” was further created with the legitimacy of “democratic majority rule” and electoral politics, by overriding “traditional” forms of consensual decision-making and leadership appointment by knowledgeable elders (Robbins 1992:95). To force the issue closed, public referenda affirming local governance were allegedly “systematically rigged by Commissioner of Indian Affairs John Collier” (Churchill and Morris 1992:15), thereby resulting in a split between “progressives” (pro-IRA government) and “traditionals”—which in some cases have continued in some form or other to this very day (Ibid).<sup>16</sup>

Battles over sovereignty and political representation have been at the root of major civil conflicts in reservation communities. For instance the internationally publicized case of the Pine Ridge Lakota Sioux involved a complex power-struggle between the BIA approved

tribal council, traditional elders, and American Indian Movement activists. But the intense, protracted and violent aspects of the struggle would be incomprehensible without an understanding of the role of the federal government and mining corporations in reservation administration and everyday socio-political affairs. Heated debates over reservation casinos have also been split between "progressive" and "traditional" factions—as in the case of the Akwesasne Mohawk reservation in the 1980s—and certainly the labeling of "traditional" and "progressive" has inherent political implications in itself.<sup>17</sup> Also at the root of such cases are varying configurations of federal and corporate involvement.

Even in cases where traditional forms of social organization have been used as models for tribal constitutions and laws, federal trust status provides the Secretary of the Interior and the Commissioner for Indian Affairs overarching authority to intervene and exercise plenary authority over Indian affairs (Holm 1985). Moreover, as reported by the U.S. Commission on Civil Rights some years ago, the approval process for decisions made by more traditionally based councils is "often unnecessarily protracted and obstructionist" (in Morris 1992:69-70).<sup>18</sup> Even in cases where self-governance has been successful, tribal members have always had to put up a long, protracted and sometimes violent struggle against federal, state and corporate bodies with conflicting agendas (Delacruz 1989; Minugh et al 1989).

Such problems of course do not discount the heterogeneity of reservation socio-political affairs (O'Brein 1989). Political representation is an inherently problematic process anywhere, and conflicts over development programs in reservation communities are not always divided between "progressives" and "traditionals," with one side aligned with federal and corporate interests for their own self-serving economic and political purposes, and the other side siding with "the people." The point here is simply that local political structures—often involving tribal councils that are a direct result of the IRA—have decisive effects on reservation life because of their oftentimes exclusive relationship to economically and politically powerful interests. In the case of large-scale development programs, the veritable centralization of decision-making, mutually constituted with the coercive power of political and financial capital, may serve to hinder the democratic process by making participation inaccessible and/or difficult to a large percentage of the reservation community.

In recent years, some of the most visibly detrimental effects of IRA-inherited governing structures are evident in the case of socio-culturally and ecologically disastrous development projects in reservation communities (Deloria 1979). Federally negotiated dispute resolutions in such projects is one problematic area. Native Americans first experienced negotiated settlements with the 1946 Indian Claims Commission Act. Under its provisions, illegally expropriated land was compensated by the estimated "price per acre" of the land, thereby providing minimal settlement for however much was taken. Many Indian Nations have refused to accept any such compensation as a matter of principle and interest continues to accrue in the federal reserve. In sum, such acts have led to great land expropriations in this century. Between 1936-1976, "over 1.8 million acres of land were removed from the control of indigenous nations by the federal government" (Morris 1992:68).

The format of the negotiated settlement for resolving otherwise "extensive and prolonged litigation"—dealing with everything from ancient land claims, water rights, and child welfare agreements" (Deloria 1992:270)—has expanded considerably and indeed has witnessed

a dramatic upsurge in recent years.<sup>19</sup> For Native communities, this has sometimes meant trading off legal principles for inadequate monetary payoffs and other settlements. By failing to address root structural causes, such processes exacerbate the endemic problems of reservation inequality and poverty. Settlements are often carried out with the consent of tribal council members who may well find themselves in a structurally disadvantageous position to adequately assert their political and economic sovereignty. In addition to such basic structural concerns raised by negotiated settlements, there is the broader, historical problem of corporate and government unaccountability in the unchecked extraction of reservation resources (Jorgensen 1978; Miner 1976; Owens 1978). The involvement of tribal governments in such processes signals a continuity with past orders of political discourse and practice (Johansen and Maestas 1979).

Resource development on reservations began with the discovery of commodities such as gold, and later, energy resources such as coal, oil, and uranium (Miner 1976). The 1982 Mineral Development Act, developed during the Reagan administration, rationalized the larger process of land and mineral appropriation and exploitation. It encouraged tribes to engage in wholesale mining of their lands—often with environmental safeguards waived, and in arid or semi-arid locales that are not subject to reclamation once mined—in order to become economically self-sufficient (Jorgensen 1984). Because such developments involved larger capital-intensive corporations, profits did not necessarily stay within the tribe. Similar to the case of nuclear waste regulations, the Act secured a particular outcome not necessarily from any single standpoint or initiative, but from a cluster of political and corporate interests. Just as they were created, then, both pieces of legislation were implemented according to the organizational logic of late capitalism, dictated largely by intricately related political and corporate interests.

The most recent phase of the violent, unequal extraction of resources from Indian land has been termed by some critics as “the new colonialism” (Davis and Janis 1973; see also Bodley 1990). The “new” is meant to signify the period of the late twentieth century, as capital accumulation has intensified, along with the increasing rationalization of resource exploitation in various schemes through well-established legal means and newer forms of corporate intervention. The structure of the colonialism is therefore nothing new. The centralized administration or facilitation of commercial resource extraction and labor exploitation has been practiced for centuries, in all four corners of the world (Mintz 1988; Wolf 1982). Compliance of local governing structures has been necessary for effective control of such ventures and institutional schemes necessary for nuclear resource exploitation on Indian land.

Occupying approximately four percent of the United States, Indian reservations hold approximately one-third of all western U.S. low sulphur coal, 20 percent of known reserves of oil and natural gas, and over one-half of all U.S. uranium deposits. In the case of uranium, Indian reservations have *much* higher production rates than the rest of the country. In 1974, reservations were the sites of all federally controlled uranium production. In 1975 there were approximately 380 uranium extraction leases on reservations, compared to four on both public and acquired land. Canada has comparable rates (Garrity 1990). The negative effects of resource extraction on local populations and environment is a story well known and easily accepted as the natural state of affairs in the developing world, but less obvious in the context

of a developed country such as the United States, despite plenty of problematic examples. This adds to the significance in examining commensurate experiences in resource rich Indian lands.

The new "radioactive" colonialism is the process whereby the military and nuclear industry have been carrying out every aspect of the nuclear fuel and weapons cycle—uranium mining, milling, and processing; nuclear plants; reprocessing for weapons, and most recently nuclear waste disposal—on or in the vicinity of Indian lands. These activities have taken place with little or no benefits but with widespread environmental and health effects. In their review of "radioactive colonialism," Churchill and Laduke (1992) outline problematic aspects of industrial resource extraction on Indian land. The Navajo experience with uranium mining and milling illustrates this view.

By 1980, under the leadership of Tribal Chairman Peter MacDonald—a staunch advocate of energy development and founder of the Council of Energy Resource Tribes (CERT)—the Navajo council had allowed forty-two uranium mines and seven uranium mills to be located on or immediately adjacent to the reservation. Some fifteen new uranium-oriented projects were in the construction stages on Navajo land. Additionally, four coal-stripping operations, averaging approximately 30,000 acres each, and five coal-fired power plants have been built on the reservation. Much more is in the planning stages. As the U.S. uranium industry undergoes a temporary depression in the early '90s, such non-nuclear energy facilities will remain and burgeon, continuing the development of infrastructure upon which "the new colonialism" depends (Churchill and Laduke 1992:248).

Such resource development projects increased the political and economic capital of authorized tribal council members. Since federal regulations did not always apply in reservations, mining and utilities companies were able to sidestep safety, health and environmental measures. For example, the Kerr-McGee Corporation, which has been exploiting resources and Navajo labor with low wages and substandard safety and health measures since the 1950s—joined in the late 1970s by Mobil, Exxon and United Nuclear—kept production costs low while increasing output at all of its mining sites. Their activities severely polluted the land, air and people of the area (Churchill 1993:268-269). In one of the nation's worst release of radioactivity, a mill pond at Church Rock burst and released more than 100 million gallons of highly contaminated water. After five years of foot-dragging, the case was finally settled with a \$525,000 out-of-court settlement to the victims (Ibid).

The experience of the Laguna Pueblo provides another case in point. From 1952 until profitably extractable ore was used up in 1981, approximately 7,000 of 41,800 acres of their land was leased by the Anaconda Corporation for uranium stripping operations (Churchill and Laduke 1992:258). The workforce on the pueblo rose from 350 in 1952 to a peak of 650 in 1979, with unemployment averaging approximately 25% through the 1970s, much better in comparison to the average U.S. reservation unemployment rate (Ibid). Although economically beneficial in the short term, most of the employment positions open for local people were high risk, low paying jobs with minimal skills development. Skills attained were not easily transferable to other occupations, except perhaps in different forms of waste management (Churchill and Laduke 1992:257).

Assessments of environmental damage after mining operations make it clear that it will “probably cost the pueblo more to repair environmental havoc wrought by the corporation than it earned during the life of the mining contract” (Churchill and Laduke 1992:258). The land was considerably affected: spanning 2,800 acres, the Jackpile-Paguate Mine was the largest in the world, requiring an estimated “400 million tons of earth—enough to cover the entire District of Columbia 45 feet deep—to fill it in” (Churchill 1993:271).

Moreover, the Environmental Protection Agency obtained evidence of widespread groundwater contamination throughout the Grants Mineral Belt underlying Laguna land. In 1978 all water sources were considered dangerously contaminated by radioactivity (Ibid:271). The tribal council building, community center, and the newly constructed Jackpile Housing—ironically paid for in substantial portion by project royalties—were also found to be radioactive. In addition, the Anaconda corporation had used low-grade uranium ore to improve the road system leading from their mines to the villages. Significant patterns of cultural life such as self-sufficiency were further degraded in the process. As a result of this operation, Anaconda had obtained some 80 million tons of good grade uranium ore and close to \$600 million (Ibid:270).

In central Washington, the DOE’s Hanford Nuclear Reservation was the military’s primary site for the production of weapons-grade fissionable material. In its forty years of operations, the massive nuclear facility has been a major point of contention for the bordering reservations of Yakima, Nez Perce, Umatilla, and Warm Springs tribes. In April 1991, short of one year after the DOE publically revealed that “weapons facility had been, for over 50 years, secretly dumping radioactive wastes into the environment at a level 2000 times greater than those officially deemed ‘safe,’” plant officials explained that such contamination involved the dumping of some “444 billion gallons of water laced with plutonium, strontium, tritium, ruthenium, cesium, and assorted rare earth elements” (Churchill and Laduke 1992:261). They also admitted massive seepage of the contaminants into groundwater sources, and “estimated that the contamination will reach the Columbia River by the end of the decade” (Ibid). The environmental problems have in turn affected the health of local reservations’ populations (Taliman 1993: 22).

Scores of examples from other reservations may follow. In the worst cases, corporations and associated local professionals and administrators accrue the lion’s share of the profits of development while the majority of citizens gain short term benefits but also incur longer term socio-cultural and ecological costs. To critics such as Churchill and Laduke (1992:261), there is only “expendability, destruction and grief” under this new colonization process. It is important to note here that this critical picture of resource development on Indian lands is not always black and white. Benefits have certainly been distributed in different cases, and certainly tribal councils are not necessarily in some sort of conspiracy with outside corporations to pollute land and people. I have mentioned the most extreme cases of unequal development because such have been the experiences of nuclear projects in Indian country.<sup>20</sup>

Processually, nuclear energy extraction and production on Indian land echo significant familiarities with nuclear and toxic waste dumping/storage on Indian land. Because of their similarities, local movements and networks against such processes employ similar tactics and share a common discourse of resistance. They are composed of various grassroots



organizations and a network of indigenous environmentalists, many of whom began to develop networks and coalitions in response to the massive influx of the toxic and nuclear industry into reservation communities in the 1980s-1990s. The pro-development structure is composed of the Council of Energy Resource Tribes (CERT), certain tribal councils, the nuclear industry and a handful of government agencies. These two sides have been the dominant voices in this new phase of economic development on Indian land.

*The Nuclear Native: The Politics of Economic and Political Blackmail*

*Nuclear Natives: Proposed Storage of High Level Nuclear Waste on American Indian Reservations.* runs the ironic header for the feasibility report published by the Skull Valley Goshute Tribe Executive Committee. It does capture the debate quite well. As a community already severely contaminated by uranium mining and milling, these Natives are arguably already nuclear. As noted above, there is indeed a continuity to the nuclear presence on Indian land. As with the activity, institutions and actors have not changed either. Below I analyze the configuration of major players and institutions facilitating the MRS plan in Indian Country, as well as the "radical elements" of resistance.<sup>21</sup>

In December of 1991, Mescalero Apache Chairman Wendell Chino presented the MRS plan to an audience of some 600 tribal officials gathered for the annual meeting of the National Congress of American Indians (NCAI), the oldest American Indian organization consisting solely of IRA established tribal chairpersons. Explaining how easy it was to receive the new wave of federal grants from \$100,000 up, Chino shared the experiences of his own tribe in being the first to sign onto the MRS plan. The Negotiator David Leroy also gave his well-rehearsed sales pitch at the meetings. "We can be as flexible as the winds and tides with these benefits," he insisted. Although every tribal council had received personal letters from his office in October, the forceful directness of these assurances in *the* major political forum for national Native affairs helped get the real idea of the project out to the far corners of Indian country.

The question of nuclear waste storage, however, was nothing new to the NCAI. Between 1986-1990, they had received close to \$1 million in DOE Nuclear Waste Grants, over a quarter of their total revenue. "To provide assistance services to ensure participation of Indian tribal governments in the planning and development of siting and transportation of high level nuclear waste," a non-profit branch of NCAI was established for the management of a Nuclear Waste Program, providing tribes information to study nuclear waste storage options" (Laduke 1994:47). In addition the DOE signed another five year, \$1.8 million Cooperative Agreement in 1992 (*ibid*).

Still, the NCAI is but one organization related to a network of corporate and federal interests tied to resource exploitation on Indian lands. The Council of Energy Resource Tribes (CERT) has played an instrumental role in facilitating past, present, and future energy exploitation projects in Indian Country, including mining, milling, reprocessing, utilities plants, and waste disposal (Jorgensen 1984). In 1977, at the height of the last U.S. uranium boom, CERT was founded from Federal Energy Administration seed money of \$250,000—an amount increased to \$24 million annually in 1979 by the DOE—"to create an entity capable of both coordinating and creating a more plausible facade of Indian consent to such exploitation"

(Laduke 1993:11). In 1987, 55% (\$2.5 million) of their total revenue came from federal nuclear waste grants; in 1992, it made up 80% of all CERT federal grants (Ibid).

CERT's chief architect was none other than Navajo chairman Peter McDonald. Indeed, CERT was comprised of federally created tribal council chairpersons "on what were already known to be the 25 most mineral-rich reservations in the country (the number of "participating tribes" has now grown to 43)" (Churchill 1993:304). They proceeded to catalogue all known potential energy sources on Indian land—the "Sears Roebuck catalogue of reservation resources"—and assisted in "conceiving and implementing a plan by which more efficient corporate penetration might be accomplished (Ibid). This placed CERT—over strong objections by a majority of those whose interests it supposedly represented—in the position to serve as "central broker and liaison in virtually all Indian energy resource transactions, a matter which quickly attracted millions in ongoing corporate funding" (Ibid).<sup>22</sup> As with fossil fuel exploitation, uranium mining, and nuclear energy reactors, CERT has been instrumental in negotiating radioactive waste storage on Indian reservations.

#### *The Politics of Representation: National Tribal Environmental Groups*

The Federal Administration of Native Americans (ANA) and the Department of Commerce, who "provide funding for Indian consulting firms which are actively promoting the waste industry in Indian country," also contribute a large percentage of the CERT budget (Laduke 1994:47). Furthermore, with startup grants from the EPA, ANA (\$750,000), and the Ford Foundation (\$80,000), CERT, NCAI and the Native American Rights Fund (NARF) recently established the National Tribal Environmental Council (NTEC), soliciting funding on the basis that it was "the only national tribal environmental entity" (Ibid). In Indian country, this political representation is deeply problematic.

Troubled by the obvious conflicts of interest, Tom Goldtooth, a spokesperson for the Indigenous Environmental Network (IEN), a coalition of over 50 Native grassroots groups, asks "[h]ow can an organization established by CERT and NCAI have any credibility on environmental issues after their record with the nuclear waste industry" (cited in Laduke 1994:48)? Together with the community-based organizations Native Americans for a Clean Environment (NACE) and Native Action, IEN has since challenged NTEC to "clean house or get out" (Ibid).<sup>23</sup> Their concerns are not unfounded: NTEC's law firm Winthrop, Stimson, Putnam, and Roberts, is the same one that represented Sequoyah Fuels in their licensing proceedings. In a letter to NARF, CERT, and NCAI, Lance Hughes from NACE stated that "working with a law firm that assists in the killing of our Indian people is not the way to set up an Indian environmental entity" (Ibid). In response, the law firm simply stressed that Sequoyah Fuels had made "efforts to ensure an environmentally safe facility", and called for "an open and increasingly frequent dialogue among our various organizations" (Ibid).

Despite such rhetoric, however, the general pattern of exclusive secrecy among the questionable entities ensues. For instance, the key January 1993 NTEC strategy meeting was closed to all grassroots indigenous organizations, and attended by CERT, NARF, and closely associated tribal council members. In fact, grassroots groups lobbied for participation, only to be denied. At the same time, NTEC and its associates submitted proposals such as "Building

Environmental Equity through Empowering Traditional Community Participation” and promised to “establish a program for participatory/consensus based decision-making” (Ibid).

Addressing such contradictions, IEN, NACE and the United Church of Christ Task Force on Racial Justice sent a letter to NTEC calling for greater accountability to “the people who were affected by their decisions, not simply represent themselves as the national native environmental organization” (Laduke 1994:48). NACE called for NTEC’s disbanding, stating, “Environmental justice and problem solving can’t go forward in a valid way until those who are directly affected have a voice in designing a resolution to their problems.” The response? NTEC director Sam Winder, upon expressing his concern of “children that are dying” and “corporations that are out there who are destroying Indian lands”, quipped that “maybe our approach is a little different. We believe that the best way to get tribes from accepting dumps, is to get them information to let them decide. I’m confident that 99% of the time, if that information is given to tribal government, they will make the right decisions” (cited in Laduke 1994:48).

Tom Goldtooth (IEN), Lance Hughes (NACE), and Gail Small (Native Action) are left concerned. Goldtooth asks “how can that information be neutral when the whole history of these organizations is to promote development and, for the most part, host industry?” In conclusion, Gail Small argues that what is really needed is money for local initiatives, not more national organizations (Laduke 1994:48). After all, the organizations have shown no intentions to involve the people that they are supposed to represent. Instead they have carried on with their business plans, simply dictating to the people what was to come. Such has been the case for the MRS plan.

### *The MRS and Native Communities*

Grace Thorpe first learned of her tribe’s MRS application by reading the *Oklahoman Daily*.

Nobody in the tribe knew anything about it. I was shocked. The treasurer of the tribe told me that they got more phone calls that day in the history of the tribe...I knew didley squat about radioactivity. I went to the library right away and got some books out. When I read that you can’t see it, can’t smell it, and can’t hear it, but it was the most lethal poison in the history of man, I knew that we shouldn’t even be associated with it—our Sac and Fox tribe. I’m on the health council and am part-time district court judge in our tribal court. So, I started talking with everyone about it. So finally we brought it to a vote of the people, and there were 75 votes in attendance of the special meeting. Seventy voted against it, five were for it. The five who were for it were the tribal council. We voted them out. The money was there, they had to return the check. I was kind of tickled. All of a sudden, I was a kind of hero. Now I’ve been getting calls from all over asking me to talk to their community about what they did (cited in Laduke 1994:46).

As with the variance of local actors and other social, economic, and ecological factors, different tribes have had varying experiences and outcomes. The process of

Negotiator-tribal council interaction, however, has been a consistent trend for the rest of the MRS applicants. Tribal Councils, questionably representative of their respective tribes, have acted on their own fiat in pursuing what appeared to be an attractive offer. Subsequent interactions with the Negotiator have in many cases resulted in varying degrees of coercion.

By December 1993, out of a total of 16 original tribal applicants, only four had advanced to Phase II. Twelve tribes had either withdrawn from the process or were denied funding by the Negotiator. Like the Sac and Fox, many tribes were pressured by their local peoples to withdraw. However, the two Alaskan tribes with traditional councils were rejected by the Negotiator because they had wanted to use the money to prove that the MRS plan would not be feasible on their land. It was to potentially bolster already existing conditions of rampant ecological destruction in an area affected by the military/nuclear industry. This did not suit the Negotiator as relevant. Similarly, the Yakima Nation in Washington and the Prairie Island Mdewantakon Sioux Community in Minnesota were denied Phase IIA funding for such reasons. They have both had experiences with nuclear wastes over the past few decades. There needs to be little comment about the Yakima Nation as their land includes the Hanford Nuclear Reservation.

In the 1960s the Prairie Island Dakota were forced to share their one square mile sandbar reservation at the mouth of the Mississippi River with two Northern State Power (NSP) nuclear plants, despite early protest occupations and the presence of 2000-year old ancestral burial mounds on the site. The site is also marred with safety hazards. A major earthquake fault runs along this section of the Mississippi River. The site has been underwater in a 1965 flood, and more recently the 1993 floods put the plant in an emergency situation (Wasserman 1993:302). Not surprisingly, accidents have already been numerous, and have led to fatalities and serious health defects. In fact, the Sioux may have to leave their land because of massive contamination due to the plant's on-site radioactive storage facility (Taliman 1993).

Still, the NRC, EPA and—in a long fought out battle—the Minnesota legislature, have all approved the building and operation of dry cask storage on-site, which is the exact equivalent to the MRS.<sup>24</sup> Although seeking to use the MRS grant money to bring about full public participation and understanding of the many complex technical issues of hosting a site—including the building of a community nuclear information center—the reservation's Environmental Committee was denied Phase IIA funding allegedly for not complying in “good faith” with the Negotiator.

Prior to receiving legislative approval, NSP carried out its storage expansion in virtual secrecy, such that Joseph Campbell, the Prairie Island Environmental Committee Coordinator had to charter an airplane to see that 48 storage casks were already in place and ready for storage. According to Campbell, the erstwhile tribal council had made an agreement with NSP for their plans. In return for consent to the dry-cask storage, the tribe was apparently promised an old train station off the island. Right after the MRS issue made headlines in 1992, the tribal council closed down the Environmental Committee, which Campbell nonetheless continued to actively lead.

Finally, four tribal councils advanced their applications to Phase IIA. The Fort McDermitt Paiute Shoshone Tribe in Nevada/Oregon and the Tonakawa Tribe of Oklahoma were in the process of completing their Phase IIA studies when Congress, led by New Mexico Senator Jeff Bingaman, defunded the entire MRS program in Summer 1993. The Skull Valley Band Goshute Indian Community of Utah had originally stated that their studies would be carried out towards proving that the MRS option is unsafe for the people, since their land was already severely contaminated by toxic and radioactive material. In fact, they signed onto a 1992 Indigenous Environmental Network resolution opposing the storage of nuclear wastes on Indian land. But after using Phase I money to travel all over the country and the world hosted by nuclear utilities, the tribal executive committee reversed their decision. In their feasibility study, tribal chairman Leon Bear stated that the committee had decided "the project is safer than the military toxins they are currently surrounded by." Such statements would come up again in different contexts, but always linked to the concept of "comparative risk." They were eventually rewarded with a recommendation for advancement to Phase IIB before the program was defunded.

The Mescalero Apache Tribal Council successfully completed Phase IIA and were able to move on to the Phase IIB site identification stage shortly before the program was defunded by Congress in June 1993. However, most members of this economically depressed community in New Mexico, with an extremely wealthy core of land and resort developers, were against the idea of "economic blackmail." Such was the consensus so that in a tribal referendum held in 1994, the tribe voted against the idea of an MRS. Nonetheless, community based-organizations such as Concerned Citizens of Mescalero and Humans Against Nuclear Waste Dumps, led by indigenous activists such as Ruffina Laws, had scant success in countering the information campaign and political strategies of the tribal council. When another referendum was held just months later, the tribe voted in favor of the project.<sup>25</sup>

Even after the federal MRS program was defunded, the Mescalero tribal council continued consultations with federal and industry representatives on continuing with the MRS project, only this time, as a private, non-governmental contract between their tribe and nuclear utilities. On February 7, 1994, an agreement between the Mescalero tribal council and thirty three utilities, led by none other than Northern States Power, was publicly announced (Wasserman:302). The announcement was made at the Minnesota legislature, where Senate Committee hearings were being conducted on whether to grant legislative approval to NSP's plans for dry-cask storage. This Mescalero agreement was critical in NSP's eventual success in the hearings, since it guaranteed that the dry cask storage on Prairie Island would be moved to the Mescalero site. As expected, it continued to draw criticism and much resistance from Mescalero tribe members and various indigenous and mainstream environmental groups, as well as strong public opposition from New Mexico Governor Bruce King and the state's legislature and Congressional delegation.

In the process of seeking MRS grant money, successful tribal councils have oftentimes skirted the issue of "public participation." They have proceeded with the plan in close consultation with the cluster of interests constituting the "pro-MRS" faction, including representatives from the nuclear industry, waste management industry, government agencies, and the energy development tribal councils. Contesting the issue at both the local and the

national level, grassroots indigenous environmental organizations have worked to garner support from local reservation people, other community-based organizations, and national environmental organizations.<sup>26</sup>

In sum, the MRS plan was presented to Native tribes under the rubric of historically established tribal governing structures. Compounded with a legacy of polyarchic governing institutions, the question of democratic decision-making in Indian country is complex and tenuous. Regardless of such fundamental contradictions, developments have ensued. Furthermore, it is clear that reservation conditions differ, sometimes markedly. Some communities are economically better off than others; some already have a nuclear waste problem on their land. These factors are helpful in discerning the different implications of the MRS plan for varying situations. The “pro-MRS” faction, having clearly formed around previously existing institutional networks, has sought to appropriate or control local political situations according to their needs for expedient nuclear waste storage. As such, larger political issues that have brought up in debates, such as sovereignty and “appropriate economic development” have been pieced into a general framework of control.

#### *Sovereignty as Social and Cultural Control*

The question of sovereignty, as related to economic development and political authority, is indeed the overarching issue implied in contemporary debates concerning the status of Native Americans. As briefly reviewed above the issue is tenuous at best. As Churchill (1993:379) sums it up, “Indian nations are simultaneously fully sovereign (in the abstract sense) for purposes of treaty-making and transferring land title to the United States, but less than sovereign (in the practical sense) for purposes of allowing “legitimate” federal control (“exercise of trust”) over Indian land, water and other resources, regulation of trade and diplomatic relations, form of governance, recognition of citizenry, jurisprudence, and virtually anything else striking the federal fancy.”

At its worst, sovereignty may serve as a misnomer for exactly the kind of social and cultural controlling processes that may be intricately linked to federal and corporate needs rather than those of local populations. These questions therefore need to be grounded in the ethnographic realities of different reservation communities. In Mescalero, for instance, Ruffina Laws, a leader in the opposition to the MRS site has the following view of the legacy of the IRA.

The MRS issue and the private storage of nuclear waste on reservations that we are facing today is a direct result of the 1934 Indian Reorganization Act, in which the U.S. government forced Native American tribes throughout the U.S. to accept the tribal constitutions which they drew up. These constitutions do not provide for a checks-and-balances system; all power rests in the Tribal Council. All too often this has allowed greedy, self-serving politicians to take over and garner all the political strength for themselves and a few cronies (cited in Hanson 1994:7).

Ultimately, the problem of sovereignty must be weighed by what is exactly at stake; in which case, there are plenty of urgent issues that need attention. The Waste Isolation Pilot

Project (WIPP) for nuclear waste continues to affect Native lands, water, and resources in New Mexico. Other reservations are also deeply affected, as the DOE is purportedly using the "least possible resistance" factor to transport low-level radioactive civilian and military wastes; the nuclear trails invariably snake through Indian reservations. Local indigenous environmental coalitions such as the New Mexico Alliance have formed to address the multiple implications of such practices, both ongoing and foreseeable. The Western Shoshone have been involved in uranium test bombing on their lands since its very beginning, and their struggles for environmental justice and government/corporate accountability continue; most recently of course, they are claiming the land on which the Yucca Mountain permanent repository site is located.

In another case, there are over 90,000 uranium mine claims near and in the Grand Canyon. Many mines have already contaminated the land and water of the Havasupai, who live in the valleys of the canyons. They have taken their case as far as the U.S. Supreme Court, only to be refused a hearing, because they supposedly did not have enough evidence that their water would be contaminated from the mining. They are simultaneously pursuing a lawsuit against the National Forest Service for giving companies mining permits without public consent. Since the beginning, they have firmly said "no" to bribes, such as new schools and clinics from the mining industries and have been very clear on how to proceed with their ideas of cultural sovereignty.

At the moment, there are federal initiatives underway to implement more traditional forms of governance. The 1988 amendment of the Indian Self-Determination Act has enabled a "self-selected group of ten indigenous nations to begin serious planning for self-governance on their own terms" (Robbins 1992:109). It is also evident that affected Indian communities must develop strategies for survival, even if it means foregoing ultimate principles of "national sovereignty" in utilizing existing channels for effective legal action (DeLaCruz 1989). Tom Goldtooth (1993) argues that critical environmental issues *must* be addressed in terms of national sovereignty, also using, if necessary, federal environmental legislation to assert rights for health and survival.

The vision of sovereignty that those such as Goldtooth present is understandably different from that projected by pro-development tribal councils, who argue that the MRS is a step in the right direction for American Indian sovereignty. The point is not whether or not one side is telling the "truth", but rather, it is what effects certain claims to truth will have on the general populace. In this regard, a closer examination of the truth-making process illuminates the complex interplay of industry interests, federal and state authority, and environmental politics. In the MRS case, clearly conflicting notions of sovereignty form the centerpiece of debate, and they do so around claims to an authentic "Indian" identity framed in the contingencies of late capitalism. The contradictions are evident, among other places, in the politics of the language used by competing actors. This process reveals different forms of social and cultural control, whether they are played out as a matter of public policy in the nation or at a small gathering in a resort town.

## **The Socio-linguistic Construction of “Tribal Perceptions of Ethics and Morality”: The Colorado Springs Meeting**

Juan Hernandez (1994) of the Center for Investigative Reporting in San Francisco has reported that federal officials and Native advocates are actively trying to find linguistic, ethical, moral, cultural and political traditions that could be used to sell nuclear waste disposal to Native Americans. This was very clear in the Negotiator’s first speech to an auditorium full of American Indian leaders, entitled “Federalism on Your Terms: An Invitation for Dialogue, Government to Government.” Leroy began his speech by acknowledging that Chief Seattle’s “prophetic words foretold many things,” then continued by repeatedly using the Duwamish Chief’s words to illuminate the negotiable, credible, and hopeful position of the federal government. They were taken completely out of context, leaving one to wonder whether “Ind’n humor” held its sway among the crowd. He finally ended his speech by offering “the New Federalism” (radioactive waste dumping) as the answer to the Chief’s query, “We may be brothers after all. We will see...”

The “Native advocates” clearly joined the Negotiator side by side. On April 6-8, 1991, the Council of Energy Resource Tribes and the Mescalero Apache Tribe jointly sponsored a conference in Colorado Springs. It was entitled “Dialogue on Tribal Perceptions of the Ethical and Moral Bases of Nuclear Energy and Radioactive Waste Management.” This conference is significant for several reasons: it highlights the agenda of the Council of Energy Resource Tribes; it allows me to construct at least the rough discursive outlines of relationships between industry, government, and the aforementioned Indian representatives; and it reveals the power dynamics of a formal dialogue between all of these groups.<sup>27</sup>

So far, I have situated the MRS program in the context of historical federal-Indian relations, the “new radioactive colonialism,” and the general trend toward hazardous waste disposal on Indian land. Accordingly, I begin this section by describing the established framework of this meeting’s dialogue between the nuclear industry (utilities and advocacy organizations), government, and Native American representatives. To contextualize the meeting, I first discuss some dimensions of the agenda of the “Native advocates” as provided in their framing of the dialogue. After analyzing a part of the actual dialogue in section two, I conclude with a recap of general issues concerning the controlling processes inherent in the dialogue.

### *The Political Framework of the Meeting: Setting the Agenda*

The agenda for the conference was outlined in the *Sourcebook for the Dialogue*, numbering fifteen pages in all, given to all participants by the hosts.<sup>28</sup> The general idea is made clear in the first page header. Cited is a brief exchange between Socrates and Crito from Plato’s *Dialogues* where Socrates responds to Crito’s concerns that Socrates was doomed if he did not consider the “opinion of the many,” by stating, “I am and always have been one of those natures who must be guided by reason, whatever the reason may be which upon reflection appears to me to be the best.” In the radioactive waste context, this passage seems to articulate the need for rational minded individuals, guided by reason, to go against the sterile



and unprincipled fears of the many. Or essentially: fighting the horror of NIMBYism by accepting radioactive waste sites in her/his backyard.

The introductory section of the *Sourcebook* goes on to provide a narrative of events that have led to the MRS plan. Given the space constraints, it lacks a thorough chronology, or any coherent discussion thereof, of the crisis of nuclear waste management. In fact, the issue seems quite benign if contrasted with the standards of anyone familiar with the history of the crisis. Moreover, the presentation is top-down: everyday, local experiences concerning the issue are ignored. Still, keywords such as “consent,” “ethical,” “moral,” “cultural,” “honest,” and “ethics” are invoked in unsubstantiated statements. Such a presentation suggests consideration of an idea, albeit without substantive depth. Most importantly, the danger of presenting anything, as opposed to nothing, is that issues become framed in analyses which appear to bear the stamp of authenticity however technically inadequate they may be.<sup>29</sup> As such, before the dialogue even begins, certain parameters are established and an agenda is clear; controlling the reasonable limits of a dialogue amounts to the intent to manufacture an outcome.

For instance, by constructing an analysis without the slightest hint of relevant information, the second section’s short two paragraph overview of “Tribes and Radioactivity” is clearly constructed with an agenda. While stated that Indian tribes “have direct and strong connections to nuclear energy and radioactive waste operations, the problematic issues are skirted with the facile observation that they also have “strong concerns over the shipment and storage of spent fuel rods.” To further marginalize the concerns, the next statement notes that “on the other hand, revitalization of the uranium industry and development of the uranium reserves on the Navajo and Hualapai Reservations can contribute to the development of tribal economies.”

In the second and final paragraph, “other tribal considerations to the use or non-use of nuclear energy and to radioactive waste” are reduced to its contrast with other energy development sources. Even then, such “less direct,” but “potentially more compelling” issues are the “fish stocks and treaty rights” and the “most valuable lands of the Tuscarora in New York and of the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Indian Reservation”—all “jeopardized by hydroelectric development.” This seems to suggest that contaminated water, though *potentially* a problem, is not really a problem since it pales in comparison to the perils of hydroelectric development. Nothing else is mentioned in this section purported to be about “tribes and radioactivity.”

The rest of the *Sourcebook* provides an outline of the six sections which served as the thematic frames for the three day conference. On day one, the two afternoon discussions were on 1. “Ethics and Morality Defined: Tribal, Mainstream, American, Scientific, and Institutional Perspectives”; and 2. “Dialogue on Ethical and Moral ‘Balkanization’: Or, ‘Is There a Common Good?’” The next day’s morning sessions were on 3. “Dialogue on Striking a Balance” and 4. “Am I My Brother’s Keeper? A Dialogue on Responsibility.” The final two afternoon discussion sections focused on 5. “Who Pays? A Dialogue on Equity” and 6. “Is There a Moral Basis to Radioactive Waste Management?” The final morning session of the conference was set aside for “Summary and Next Steps.”

Each section is comprised of a few questions related to the respective topics, followed by brief passages from various books and articles on ethics, philosophy of science, American Indian cultures, risk analysis, and national, international and tribal politics. These books included, among others: (conference participant) Thomas McCullough's *The Moral Imagination and Public Life: Raising the Ethical Question*; Maguire and Farnoli's *On Moral Grounds*; Bronowski's *Science and Human Values*; Pillar's *The Fail Safe Society*; Blowers et al.'s *The International Politics of Nuclear Waste*; Kluckhohn and Leighton's *The Navajo*; and even Saint Thomas Aquinas' *Summa Theologica*. Also included was a now classic quote from Chief Seattle, allegedly stated upon surrendering in 1855, "[t]o us the ashes are sacred and their resting place is hallowed ground."

What is also striking about the *Sourcebook* is the manner in which various passages from the aforementioned texts are taken out of context and arranged, seemingly to address the hypothetical questions posed for each section. Indeed, this may serve to reveal a larger structure of how the organizers intended to approach the dialogue on tribal perceptions of the ethics of nuclear energy and wastes. For instance, the second to last section on "justice and equity," much like the purported overview of "tribes and radioactivity," is filled with citations dealing with the hazards and tragic experiences of fossil fuel, hydroelectric and wind power projects.

Their intentions and strategic positioning also come across clearly in the section on the final session. The topical question "Is there a moral basis to nuclear energy and radioactive waste disposal?" is followed by a passage from the DOE's *Environmental Restoration and Waste Management Five Year Plan, Fiscal Years 1993-1997*. The passage highlights (in bold-type) one important goal of the DOE's Environmental Management programs, namely "implementing a new organizational culture founded on the principles of openness, responsiveness, and accountability. The institution of this new organizational culture should prevent this Nation from ever having to face an environmental problem of this character and size again." Presumably, then, the moral basis of nuclear energy and radioactive waste disposal need only be addressed by creating a more friendly institutional culture.

Further iterating this point, this passage is tellingly followed by a series of passages from Pillar's *Fail-Safe Society*. Regarding the issue of "aggressive outreach" to the local community, the advice of Richard Gimello, a Nimby activist turned toxic-waste regulator now working for the waste industry is cited, "[y]ou have to have a presence in the community from the very beginning...You have to be able to go to the ugly public meetings and take a beating." The next passages deal with the issues of: "full disclosure" whence "[s]ecrecy in any form is the enemy"; moving "beyond talk," so that "[a]uthorized, trained community representatives should be given carte blanche for enforcing specific, pre-negotiated performance standards"; and creating "a new measure of health and safety," so that "the adoption of public-and worker-interest standards on health and safety can begin to address the source of Nimbyism," in short, articulating a "go-slow approach designed to build support."

With such passages being considered the guiding framework for the moral dilemma of nuclear energy and radioactive waste disposal, *the* important moral and ethical questions largely appear to concern issues of institutional responsibility and responsiveness in project construction and implementation, rather than more fundamental ethical issues arising from the

particular history and political-economy of nuclear energy and wastes. If every section is carefully considered in this context, the *Sourcebook* itself reveals a particular amalgamation of ideas and experiences, intentionally constructed to ultimately equate the moral responsibility of "traditional" Indians to taking care of industrial society's most poisonous material. Not unlike the *Sourcebook*, then, the political construction of structure and context was clearly evident in the dialogue.

### *Establishing a Presence*

The conference was attended by representatives from the Department of Energy, the Negotiator's Office, Edison Electric Institute, U.S. Council for Energy Awareness, Pacific Nuclear (MRS contractor), National Tribal Environmental Council, and fourteen tribal councils. This configuration made for a one-sided representation; the nuclear industry and their federal and tribal counterparts constituted *the* dominant "interest group."

Winona Laduke has observed that the meeting "seemed to set the mood for nuclear waste storage in Indian country" (cited in Taliman 1993:22). As of yet "undecided" or "simply interested" tribal councils were invited to engage in what was purported to be an open dialogue. But given the obvious conglomeration of interests and the implicit ideology of the *Sourcebook*, it is safe to conclude that the intention was to somehow persuade these councils to host radioactive waste sites. The methods employed dealt closely with language, culture and power, and the proceedings from the conference are worth examining in these terms.

Also present were tribal representatives who vehemently opposed the nuclear industry complex based on personal experiences. Indeed, one key participant in the dialogue was present by way of fateful mishap. Among the tribes invited to the conference was the Prairie Island Mdewakanton Sioux Community. But the tribal chairman became ill with cancer at the last minute and therefore had to send an alternate representative. To the surprise of the CERT organizers and their industry cohort, Prairie Island Environmental Protection Committee Director Joseph Campbell arrived at the conference. Not only were his ideas clear and to the point, he also had the experience of literally living next door to Northern States Power nuclear reactors on his reservation for the past few decades.

In an interview, Campbell's recounted to me some basic controlling aspects of the conference proceedings. On the van ride from the airport to the resort, he had spoken with various tribal representatives. Most of them had stated that they were only there to confirm their general views that the MRS idea was not a positive one for their communities. However, by the end of the conference, according to Campbell, some of these very people exhibited an interest in examining the possibility of hosting an MRS site. Simply by accommodating the cultural and historical differences of Native American representatives, "tribal perception" had somehow shifted from suspicion to trust, from hostility to some measure of openness.

Indeed, with the establishment of presence, CERT, federal government, and nuclear industry representatives had set the mood of the dialogue itself. Intentionally or not, this cluster of "pro-waste storage" interests directed the dialogue to secure a desirable outcome. Despite the eloquent and straightforward interjections by Campbell and other tribal

representatives, detailing their unpleasant experiences with just those interest groups, the dialogue was controlled with the maintenance of relative socio-linguistic harmony.

I analyze the dialogue not to illustrate how people were coerced and manipulated by the nature of the conversations. Nor am I making the claim that this dialogue was *the* pivotal event that brought on MRS applicants. Instead of pursuing such misleading and inadequate questions, I am interested in what this meeting represents in the larger picture. Following Laduke, in what way did it “set the mood” for nuclear waste dumps in Indian reservations? What set of in/formal relations can be read from the dynamics of this dialogue? In this particular articulation of business and economic development, how are formal relationships to be distinguished from informal ones?

These relationships seem to be constructed, reinforced, blurred and/or changed by dialogues such as this one. In this sense, an analysis of the dialogue highlights the acceptable forms of interaction accorded to different types of people. Dialogues are embedded in social structures (Bloch 1975), but structures themselves may be (re)constructed as much as reinforced by the conversations themselves. To make this theoretical framework clearer, I will discuss some basic models of linguistic exchange. Once I have outlined the significance of the intrinsic relation between language and symbolic power, I will turn to the dialogue.

#### *Language and Symbolic Power*

In *Language and Symbolic Power*, Pierre Bourdieu (1991) criticizes what he terms the “illusion of linguistic communism” implied by modern structural linguistics. He argues that “the linguistic model was transposed with such ease into the domain of anthropology and sociology because one accepted the core intention of linguistics, namely the *intellectualist philosophy* which treats language as an object of contemplation rather than an instrument of action and power” (Bourdieu 1991:37). In Bourdieu’s view, there is no ideal common medium for discourse since all linguistic interactions are constrained by social structures. Words are therefore meta-references to the set of relationships structuring everyday practice.

The central concepts in conventional Saussurian socio-linguistics are *langue*, the self-sufficient system of signs and *parole*, the situated realization of the system by particular speakers. Bourdieu criticizes the Saussurian differentiation of *langue* and *parole* into an ideal model of social interaction. Similarly, he argues that Chomsky’s notion of linguistic competence and performance lacks an integrated view of language as a practical activity. Although Chomsky allows room for more creativity in his theory of generative grammar, Bourdieu criticizes his basic idealization of a particular set of linguistic practices (historically/social conditions) as “too abstract.”

In Chomsky’s terms, Bourdieu would argue that the competence of speakers is actually the capacity to produce expressions *a propos* to the social context. Moreover, the practical competence appropriate to the circumstances at hand are tacitly adjusted to relations of power between the speaker and the audience. The capacity to make oneself heard, believed or obeyed is directly related to one’s position in “political fields.” Hence, one’s linguistic performance is constrained by the context of the utterance. Here, Bourdieu draws on Austin’s

notion of the “speech act,” whence the individual is *authorized* to speak by institutional arrangements and is therefore *recognized* by others as such.

In Bourdieu’s view, the notion of an ideal competence is problematic. All communication draws on the construction of models of competence, whether agreed upon or not—that is, whether persuaded, coerced or imposed. Pushing this socio-linguistic model further, Bourdieu points out that social conditions are embedded in language itself. Therefore, the meanings implied by an utterance has a context in the social structure in which it is heard. He also argues that the ideal system of competence is not necessarily something that is instrumentally used by agents. For instance, when a teacher tells a student what is true, the relation is not necessarily instrumental on the part of the teacher or student, but rather, it is shaped by particular socio-cultural contexts. So the ideal system, as the locus of control and power, does not necessarily have to be consciously motivated. How does this make a difference? It normalizes the ideal of “proper conduct,” but also leaves space for continuous reinforcement of power relations through past orders of discourse and also through new strategies, constructed as the conversation continues.

Bourdieu’s ideas about language stem from his general theory of practice. Discontent with both the “objective limits of objectivism” and the ideal voluntarism of subjectivism, Bourdieu articulated a middle way, so to speak, between the two extremes. Structures of social interaction exist, but they do so with certain conditions. They also exhibit the propensity to change. In his terms, the *habitus* is a “set of dispositions inclining agents to act and react in certain ways. Such dispositions generate practices, perceptions and attitudes which are regular without consciously being co-ordinated or governed by any rule” (Bourdieu 1977).

They exhibit various characteristics. They are inculcated (learned), structured (class, race), durable (preconscious life-long), generative (generate multiplicity of practices without intent) and transposable. The relevant structures, then, are actually fields of what he terms “capital.” He does not, however, use the metaphor as a direct economic translation. Rather economic capital is to be differentiated from symbolic capital, such as prestige, and cultural capital, such as various forms of knowledge. Fields of capital do exchange. For instance, a medical doctor commands high cultural capital in the form of institutionally accepted expertise, and earns much economic capital, or money.

Therefore, practices exist within one’s *habitus* and the specific fields of power relevant to the situation at hand. Through linguistic exchanges, power relations between speakers or their groups are reflected as well as actualized, and also reconstructed as well as deconstructed; they are constantly in flux. In short, dialogues do not take place in an ideal common medium. Participants are endowed with different forms of capital which constrain and control--consciously or not--the parameters of the dialogue.

Following Bourdieu, then, the practical sense of competence should be problematized. How is it that certain utterances are legitimate? How are they constructed as being legitimate by the position of the speaker? In this sense, pace Habermas, there is no ideal rational communication that transcends the specificity of the situation. Feyerabend (1978) thus characterizes the idea of a “rational discussion” as cloaked in the guise of total control. Hence,

the task at hand is to elucidate the various structures implicit in the dialogue, as well as the fields of power from which the truths are spoken. I undertake this task in the following section.

*The Dialogue at Cheyenne Mt. Conference Resort, Colorado Springs*

The dialogue took place in the conference rooms of this resort. But as several participants noted, conversations continued into every possible break. Again, it is not possible—nor desirable for the purposes of this essay—to delve into questions of total causality, direct control or coercion *per se*. For instance, it would be utterly false to claim that this meeting forced the Native participants into accepting nuclear wastes; such a claim would also devoid them of their agency in contesting and negotiating the terms of the dialogue. Quite simply, there are too many variables involved to make a black and white analysis. I simply ask what it is about the dialogue, ideologically and structurally, that “set the mood” for the MRS program.

Since the Negotiator’s work must be considered processually, the dynamics of the dialogue relates directly to fundamental institutional arrangements. Hence, one should note both subtle and overt changes throughout the dialogue, as well as the continuity of differently articulated forms of controlling processes. The control implicit in moderating the dialogue is closely related to the usage of language by particular speakers at specific times. I argue that controlling processes—whether consciously calculated by the speaker or not—are inherent in the dialogue itself. In this sense, control does not take the form of “one group over another,” rather it is manifested in various totalizing representations—of Indian spirituality, Western Reason, history, nuclear wastes, ethics, and morality. The aim of this exercise is to place such representations into their proper context of institutional power relations.

Below, I closely review the two sessions on the first day of the dialogue and highlight key moments when controlling processes and their roots in particular forms of power relations become evident through speech acts. That is, I consider the implications of particular moments and utterances in the minds of the participants. Rather than seeking their “psychic constitutions,” I simply draw relations between each person’s institutional ties and their speech acts. Therefore I ask, “what kind of a *metamessage* is articulated in the direct dialogue?” It is evident that references were made to idealized symbols and analogies, all without concrete substance. As noted above, such acts are not unrelated to directly controlling the dialogue: setting, limiting, and maintaining the “agenda”; establishing the boundaries of acceptable discourse; and referring to “experts.”

*Welcome and Introductions*

The dialogue began with a traditional invocation by Herman Reuben, Chairman of the General Council for the Nez Perce. His words were not recorded in the transcripts, but the general idea of a traditional invocation was immediately explained by David Lester, executive director of the Council of Energy Resource Tribes in his welcoming introduction. CERT General Counsel Mervyn Tano then laid out the ground rules for the dialogue. He affirmed Lester’s role as moderator, and noted that those who wished to speak were expected to hold up their name tags to him. The press were not invited and the dialogue was transcribed by two court reporters.

In his opening remarks, Lester articulated some basic principles of a traditional gathering. Following Reuben, he noted the directly proportional significance of acknowledging the Creator before an important dialogue. The Creator had given humans the gift of speech to communicate and pray to the Creator primarily, and also to communicate with one another, "to understand what our neighbor needed and to also ask in return that which is needed for our family's survival." He also noted that one doesn't listen with one's ears/brain, but rather with one's heart, which is "the primary organ of consciousness." The understanding would then be at a deeper spiritual level. This was taught to young David Lester, an Oklahoma Creek, by his grandmother.

Given this traditional way of listening/understanding, Lester called for a holistic larger vision, toward a higher uniting principle. This would come about from an open, honest exploration of the issues. Each person would contribute to the dialogue with the gift of wisdom accorded by both one's "cultural context" as well as "the institutional perspective of one's official position (employment)"; this dichotomy is one critical assumption upon which the entire dialogue was centered. Lester further argued that "given the fact that tribes have survived millennia upon millenia, this tribal custom of reaching consensus before acting was a very effective way of governing, however inefficient it may seem at any particular moment." To Lester, the intent of the effective dialogue of consensus building was "to move information to knowledge and then knowledge to wisdom."

It is important to note the way that Lester articulated the relevance of such a consensus building process to the work of a multi-tribal organization such as CERT. Once again, as noted earlier, he asserted a dichotomy between traditional Indian ways (culture, language) and non-Indian ways (business/ management/ scientific/ technical knowledge). The problem, then, lay in overcoming this polarization with a vision of a higher uniting principle "that brings them together into parts of a single whole, rather than an either/or position that we may perceive in the beginning." Such wise, unifying decisions, he claimed, were at the basis of CERT's success in the past. The survival of a tribe, then, required both traditional ways and modern non-Indian expertise, much like that held by CERT's lawyers, accountants, and managers.

Asserting both his work as a CERT developer and his cultural heritage as an Oklahoma Creek, Lester was thereby claiming his success in overcoming the dichotomy between tradition and modernity.<sup>30</sup> Lester then ended his introduction with the assurance that the dialogue must be open: "no one has a wrong perspective; but rather, a perspective that we all should understand and appreciate as we move forward in the dialogue." It is worth examining, then, the two central features of a trustworthy consensual dialogue according to Lester: the openness of the dialogue; and the search for highest common principles rather than the "lowest common denominator."

Lester had also noted that due to transportation difficulties, representatives of the Mescalero Apache, cosponsors of the dialogue, would not arrive until later in the day. Tribal President Wendell Chino's welcome speech was therefore canceled and it was unclear whether he would even be joining the dialogue. Moving around the table from Lester, the participants introduced themselves, along with their choice baseball positions. In this list below, I have also included each person's background/occupation.

1. **David Lester:** CERT Executive Director, Oklahoma Creek; umpire.
2. **Miller Hudson:** Pacific Nuclear (technical consultants to the Mescalero Apache for the MRS project); outfield.
3. **Duane Schmoker:** Pacific Nuclear (Vice President of MRS projects); 1st base.
4. **Ted Martinez:** 2nd Lieutenant Governor for the Pueblo of Acoma; a fan “chewing them hot dogs.”
5. **Brian Vallo:** Tribal Secretary of Acoma Pueblo; griping spectator.
6. **Jenny Felmley:** University of California at Berkeley political science graduate student; “join the guys in the stands.”
7. **Sol Burstein:** Retired electric utility engineer, involved with “industrial and business and utility folks in connection with waste management, nuclear power plants...”; no position.
8. **Ernie Labelle:** Director of State and Constituent Relations for TRW, Inc.; shortstop.
9. **Jerry Saltzman:** Director of External Relations at Office of Civilian Radioactive Waste Management-Dept. of Energy (OCRWM-DOE); “up in the booth doing background color.”
10. **Tom E. McCollough:** Professor of Religion, Duke University; center.
11. **Antone Minthorn:** Chairman of the General Council for the Confederate Tribes of Umatilla (Oregon), near Hanford Nuclear Reservation; catcher.
12. **Rod Ariwite:** Administrator for National Tribal Environmental Council; shortstop.
13. **Bob Terrel:** OCRWM-DOE employee; club owner.
14. **Faith Williams:** Special Assistant to the Deputy Commissioner of Indian Affairs (BIA); batboy or assistant coach.
15. **Curtis Kinnaird:** Project Manager for Cherokee Superfund (Tahlequah, Ok); 3rd baseman.
16. **David Brown:** Lieutenant Governor of the Chickasaw Nation of Oklahoma; 3rd baseman.
17. **Al Sedik:** Bureau of Indian Affairs (Albuquerque area office), oversight on reclamation project on Laguna reservation; catcher, since “the BIA is always catching it.”
18. **Steve Simpson:** Office of Environmental Safety and Health-DOE; right field.
19. **Marie Monsen:** Intergovernmental Affairs Office-DOE; catcher.
20. **J. Herman Reuben:** Chairman of Nez Perce General Council, Director of Data and Research, worked with Hanford project since 1984; pitcher, “to throw spitballs at the BIA.”
21. **Jeanne Rubin:** attorney in private practice (Denver); co-owner.
22. **Deward E. Walker, Jr.:** UC-Boulder (Anthropology) Professor, worked with Northwest tribes on “nuclear matters”; pinch hitter.



23. **Earl Havatone:** Hualapai Tribal Chairman, retired BIA education specialist; 2nd baseman.

24. **Joseph Campbell:** Prairie Island Mdewakanton Sioux Community Environmental Protection Committee Director; manager.

25. **David Leroy:** U.S. Nuclear Waste Negotiator, former Lieutenant Governor and Attorney General of Idaho; left field.

26. **Charles Lempeis:** Chief of Staff for Negotiator's Office; concession owner.

27. **Ferris Romero:** 5th Chair of Laguna Pueblo tribal government, "world's greatest reclamation project after the largest open pit uranium mining operation shut down in 1982"; pinch runner.

28. **Richard Aiken:** Director of Planning in Environmental Cleanup and Waste Management Program-DOE; 2nd baseman.

29. **Loring Mills:** Vice President, Nuclear Activities, Edison Electric Institute (trade association for the electric utilities), "worked on nuclear issues for over 30 years"; catcher.

30. **Jim Reed:** Senior Policy Specialist on High-Level Waste Transportation Task Force-National Conference of State Legislatures (NCSI); utility infielder.

31. **Judy Zelio:** Staffperson in State-Tribal Relations Task Force-National Conference of State Legislators, also "liaison with a fledgling coalition of Native American Legislators"; stadium owner.

32. **Augustine Howard:** Assistant Secretary for the Tribal Council of the Acoma Indian Nation; center fielder.

33. **Mervyn Tano:** General Counsel of CERT; utility man.

*April 6, Afternoon Session 1 (2-3:30) "Ethics and Morality Defined: Tribal, Mainstream American, Scientific and Institutional Perspectives."*

Taking up his role as moderator, Lester opened the discussion by inquiring about the divergence and convergence of the participants' ideas on ethics and morals. He asked, "What is our sense of ethics and morality as defined by our traditions, religion, law, and policies, and how do our actions define our ethics and our morality?"

Once the question was pushed further by a Native participant, Merv Tano of CERT turned the floor to Professor of Religion Tom McCollough. Just as he does in his book *The Moral Imagination and Public Life*, McCollough defined morality as a community's values-spoken or not—and ethics as "a more rational, analytical, and critical exercise in which one tries to discern the principles that underlie the morality, and that would justify the moral beliefs and practices." He also cited a passage from Maguire and Fagnoli's *On Moral Grounds*, stating that moral "means what befits or does not befit persons as persons." From this liberal communitarian perspective, McCollough supported the "beautiful example of the moral beliefs of the tribes that are gathered here expressed by David Lester." From this expert insight, he took the dialogue's purpose to be to make that tribal morality explicit and apply it as the

underlying ethical principles of “policy proposals,” in this case, that of a nuclear waste program.

Joseph Campbell then began to make his presence felt with a long monologue about traditional (creation) story-telling as the basis of Indian morality, and its stark comparison to Western ways. He criticized the dominant Euro-American society for lacking ethics and morality, and certainly went into great detail. Beginning with first contact, he referred to the continuing devastation of the land and peoples of America. He contrasted storytelling, through which moral values are written in one’s heart, to the Bible, and similarly, to contracts. To him, such texts are simply written down, and never adhered to or understood by people. By way of this critique, he chastised accountants for lying, the educational system for teaching people how to lie elaborately, and the legislature and judiciary for being “just as crooked as the paper that the stuff (laws) is written on, because they interpret it the way they want to interpret it, for who they want to interpret it for.”

The last point would have been especially relevant to a dialogue on trust and responsibility, since the law is delegated the role of securing trust and instilling responsibility in citizens. Moreover, both nuclear waste storage in general and the legal status of Indian tribes deal directly with such problems. However, Tano, “as an attorney,” immediately felt compelled to speak on behalf of lawmakers and judges. In defense, then, he cited the Clean Water Act, the Safe Drinking Water Act, and the Clean Air Act, and argued that “inherent in all of those standards that are promulgated by the EPA under these laws is an underlying moral principle that demonstrates that this nation values human life, health, and safety.” Tano then concluded that such laws are “moral judgments—value judgments about the worth of human beings, about the concern that this country has for the health and safety of human beings, and therefore...are a reflection of our sense of morality.” This is an abstract realist claim about environmental legislation. Since they are “environmental”—reflecting a moral concern for human health and safety—such acts and their architects must therefore be considered “essentially” moral. Nothing more presumably needs to be said on the matter. The absolute causality inhibits further debate.

What followed was a series of exchanges between critical minded Natives and pro-waste apologists. The rift became very clear; intra-group solidarity became obvious. Yakima councilwoman Howard first explained her tribe’s experiences with the Department of Energy and the Hanford Nuclear Reservation. She criticized the desecration of sacred areas such as Gable Mountain as well as the related payoff schemes. She rejected such “legalized” claims. Laguna Chair Ferris Romero continued with a criticism of American foreign policy, political “sellouts,” and racists of all shades. Perhaps based on his experiences with the (Laguna) world’s largest uranium mine open pit, he also criticized the very idea of nuclear waste storage on Indian land. To him, the morals behind the Indian’s “caretaking” role in the United States amounted to “[y]eah, I’ll take your burden, brother and then, I’ll die for you, but you can go on living.” Or conversely, “Brother, I want to kill you so I can live.”

Such a critique went straight to the heart of the MRS program, and in particular, to this dialogue. After all, “the” Indian’s close reverence for the land was supposed to qualify him to handle all high-level nuclear wastes. Rather than discuss this idea, Lester immediately made the inquiry abstract:

Ferris raised, and not to overdramatize, but I think you used the words “kill to live.” Yet on a certain level, that is how life survives. Life feeds on life. You know, the food chain, in other words, the little fish are food for the fish that are bigger than it, obviously.

Lester then asked for personal comments on the reciprocal responsibility of the hunter to the prey. Wittingly, Romero immediately pointed out that the Bible says to “love thy neighbor as thyself.” Then Shoshone NTEC administrator Rod Ariwite brought in the experiences of his people. Their hunting and fishing practices were practically destroyed with the onset of dams, agricultural runoff, private legal restrictions, and the general denigration of treaty (hunting and fishing) rights. He related the downfall of their central subsistence production to widespread poverty and alcohol and drug abuse on reservations. To him, nuclear waste would follow this pattern, and it troubled him to even think about the possibility.

Lester then claimed to pose “another question, that is, the question of the hunter-prey responsibility.” Campbell immediately replied with stories dealing with people’s respect for all living things, including hunted animals. He once again criticized Judeo-Christian institutions for seeking to control others, and in the process destroying such a holistic worldview. Finding value in all living things was not exactly what Lester seemed to have in mind: “[a]nd so it isn’t just that we’re responsible for taking care of nature, but nature is responsible for sustaining us as well.” Is his insistence just an honest exploration of traditional worldviews? Or could there possibly be implications for the significant matter at hand: nuclear energy and waste? The diversions were clearly made here, and the dialogue continued.

Then, Loring Mills, Vice President of Edison Electric (a utilities trade association) Nuclear Activities Division, discussed his own experiences of taking care of the land as a young farmer, and remembered his wife looking out their kitchen window at wild swans with respect. He made some abstract statements about how there was constant change in the world, that people all over the world were different, and that morality should guide understanding and relationships with one another. Coming from one who clearly had an interest in the nuclear waste issue, it is worth noting the highly abstract, universalizing tone of his comments.

In contrast, Hualapai Chairman Earl Havatone followed by outlining the practices, both historical and ongoing, of the “dominant society.” He took the hunter-prey relationship to imply that of the dominant industrialized society and Indian peoples, and therefore, that the former is essentially asking the latter to take care of the wastes. Hitting the analogy straight on, he went on to criticize the notion that Indians *have to* do anything. Perhaps uncomfortable with the directness of Havatone’s observation, Lester moved on to yet another fascinating inquiry: “[w]hat is it to be a human being?”

Once again, he directed the question to the professor of religion. Reason, according to McCollough, “fueled the machine of the white man’s progress as much as it did destroy a good part of the world.” The problem then is to reconcile these two worlds: the reasoned West and the Native Americans. Reason in this sense is ideal, and the Indian simply exists in a natural state of practice, without real Reason. According to philosopher of science Paul Feyerabend (1978), this dichotomy between naturalism and idealism underlies the constraining framework of Western thought. As such, it legitimates the dominant position accorded the

institution of “Business Science” (Feyerabend 1988). This framework seemed to serve as the normative boundary of the dialogue, wherein the implications of reservation nuclear waste dumps were to be conceptualized. Once articulated by a scholar endowed with symbolic and cultural capital, such an ideology could be considered as being extremely powerful.

Lester then articulated his view that in all life processes there is both stability and change. This follows from McCollough general idea that reason fueled technical progress as much as it did genocide and ethnocide. Progress leads to the better; one only needs to deal with the consequences in some rational manner. Within such an abstract universe, structural relations among institutions (educational, scientific, national, etc.) would lose their opacity. Indeed, it is considered “natural” law that things change in this manner and therefore rules out, or at least trivializes, the central role of human agency in constructing the ideology and the materiality of progress itself, not to mention the stability of just those institutions (industrial, scientific, state, legal) which thrive on the ideology.

Once again, abstractions did not hinder Campbell. He criticized the dominant society for changing the ways of his people by imposing strictly authoritarian, linear rules of life; something, he pointed out, victorious Indians never did. He concluded by making quite a clear proclamation:

We’re not fighting this nuclear issue to save our people. I can die today, tomorrow and I’m going to go where I go to, We’re trying to save the rest of the people and the rest of the things that have agreements with us: the plants, the animals, the birds, the fish, and even our enemy, the insect. And that’s what it’s about because there will be no more future when those things are destroyed.

Lester’s immediate reaction was to turn to Sol Burstein, a retired electric utility engineer with connections in waste management, nuclear plants, etc. Upon equating morality to “goodness, righteousness, justice,” and of course making the critical reference to Dr. McCollough’s view, Burstein asserted that “technology and science and engineering have contributed to our welfare by making the use of our resources more, more moral.” He then goes on to credit science and technology for increasing longevity, comfort and security in the world. The generalization is summed up in his conclusion. “Technology is here as are those five and a half billion people. And we’re not going to use it, if we can avoid it, in wiping them out. So we’re going to live with both of those things as well as with ourselves.” By reducing his historical analysis to three essential variables—society, technology and science—Burstein’s abstractions were supported by a logical causality which, once deconstructed with real experiences taking place in particular institutional arrangements of peoples, would mean little outside of his own worldview. The fascinating genealogy of this decontextualized ideology is presented by historical studies of the development of industrial capitalism (Noble 1977). The point here is to note the ideological salience of such abstractions. As one endowed with cultural capital himself, Burstein may have been granted the position to speak in such a way, indeed to acknowledge the religion expert as being on par with his thinking.

Even more striking, then, is the comment made by Ernie Labelle of TRW, Inc. immediately afterwards. He observed that “something exciting may be happening.” The two

opposing strands—Western science and technology and Indians spiritual practices—seemed to be “coming full circle now.” So he asked, “is it not possible that we are finding our way toward a marriage now of these two very important fundamental realities?” What Burstein’s reductionist history did to a constructed image of science and technology, Labelle’s enthusiasm did to Campbell et al.’s struggles. The realities were frozen into abstractions with a supposed correspondence to fundamental natures. Following Feyerabend (1978) on this matter, the trouble is that the two reductionist constructions—rooted in naturalism and idealism—are mirror images of one another. In the context of nuclear waste dumps on Indian land, this dichotomy is very problematic. In one reading—implicit throughout this dialogue—spiritual Natives and the reasoned West had much to benefit from one another, as indeed a “new coming together” seemed to be in sight. Perhaps this implied that Indians could learn the virtues of Reason by *spiritually* taking care of radioactive wastes. By inculcating particular worldviews, such abstractions served to benefit the dominant side in a field of power; after all, Indians need economic development. Therefore, they need to catch up with the West.

The first session of the dialogue then ended in a consistent pattern. Umatilla Chairman Antone Minthorn, being an elected leader, spoke of the significance of being guided by the moral values of his tribe. He also pointed out that “there are very deep differences between the way that the white people think and the way that the Indians think about the environment and about how to use that environment.” Laws, such as those set out by leaders such as Chief Joseph, must show respect for the environment. A leader, then, had to take the responsibility of protecting the land and his people; it was a moral obligation held to seven generations. He further argued that there “has to be some real substance to how we do this.” Accordingly, laws, teachings, and practices simply must reflect these basic moral values.

In response, Lester ended the dialogue with a very tenuous correlation. Following Minthorn, after pointing out the mutual obligation or responsibility that exists between leader and follower, Lester turned immediately to his by now common analogy. In his own words then:

And I know from my point of view, as a follower, I look to leaders to help me define what are the moral parameters of my life. And it just resonated, again, a reciprocity. Not a one-way street between leader to follower or follower to leader, but, a kind of a mutual obligation or a mutual responsibility exists. Just as we discussed, a mutuality of responsibility the animal that was to provide the food and the hunter who went to harvest the animal; both having to take care for one another and a mutual responsibility. Exchange, if you will, contract.

From leader-follower to hunter-prey, Lester was claiming that humans are bound by contract and exchange. The abstract point was made; what constitutes that contract, and who takes the stance of hunter and leader, or follower and prey, are presumably not of great interest. As we have seen thus far, Lester turned to this analogy whenever a substantial critique was made by Indians who have had experiences with the nuclear industry and the federal government. He seemed to be striving to naturalize the historically contingent relationship between the Indians and the government/industry by reverting to such basic analogies of social contract.

At the same time, nuclear industry officials and apologists alike pushed the dichotomy of Reason (West) and Practice (Indians) to the extreme. Indeed, everyone acknowledged the spiritual dimensions of the Natives, but never their practical reason; and if Reason is, according to experts on the matter, something fueling the progress of the West, there is no rational reason why it needs to be critiqued. In short, while the Natives were talking about particular institutions, those on the side of just such institutions turned the discussion to an abstract level. In this way, the entire system of development and regulation (law, morality) was considered intact; the structure thereby evaded criticism.

This general pattern would continue throughout the dialogue. The idea was clearly to build trust; attention then needed to be steered away from the unpleasant experiences of the represented Native tribes. So unlike open pit uranium mining, hydroelectric dams, and fossil fuel burning, the MRS program would be negotiable, flexible, and most importantly, ethical. This implied a different sort of relationship between Indians and corporate industries as well as the federal government. In this view, things could only get better.

*Afternoon Session 2 (4-5:30): "Dialogue on Ethical and Moral Balkanization: Or, Is There a Common Good?"*

In many instances, the aforementioned description of the dialogue is not at all encoded or subtle. This session began with (new participant) Kaibab Paiute Vice-Chairman Ralph Castro criticizing the authoritarian control characteristic of waste management companies and local governments: "[t]hey say what they want to say and if you go against them, it's wrong."

David Lester immediately followed through by acknowledging "the history of our dealings with the outside world. And, frankly, I guess to lay it out, the underlying supreme law of the land is that it ain't quite fit for us to compete politically, economically, or culturally with America." Then he conceded to Castro, "you're quite right in that respect, that's been our history." He also noted that Indian communities have "a long history, in which suspicion and distrust is well founded in historical record." But then, he pointed out that the Department of Energy is a new institution, a "very young department" in the federal government. Once Indians and non-Indians alike get their "hidden sentiments or ideas" out on the table, the dialogue could begin to build trust and really get moving on the issue. As Lester seemed to occupy both spaces, he was the ideal facilitator of such a dialogue.

Indeed, as a member of CERT, Lester clearly had an interest in building trust between government agencies, corporate industries, and Indian people. In a sense, that is the essence of his job; the papers, after all, must be signed by someone. He therefore existed in a particular field of power, and his utterances must be understood in that context. For instance, when Augustine Howard went into a detailed history of how the federal government (DOE) ceded (cheated) land from the Yakima, and turned it into a big wasteland (Hanford Nuclear Reservation), Lester made a "proper" response. He simply reverted to a joke about the government: "you can always tell the people from Washington are not telling the truth when their lips are moving." At this moment, his work with just those "liars" was rendered transparent. As an Indian, he presumably had the inherent power to make such claims, to speak from a collectively shared experience of struggle.

This sort of irony was presented by the federal negotiator as well. After Lester's show of rapport, Chickasaw Lieutenant Governor David Brown claimed that the debate was really about adaptability. Since Indians needed to adapt to survive, but did not have the "expertise" to succeed in the modern world, they needed to trust the whites that had the expertise. Here Lester turned the table around by expressing concern for the "traditional mistrust that Indians have for non-Indian institutions." To address this pressing issue, he then turned to none other than Chuck Lempeis, chief of staff of the Office of the Nuclear Waste Negotiator.

Lempeis began by imitating the other, "[b]ecause I want to speak from my heart a little bit in terms that I don't want to speak on behalf of the United States of America for a moment; because they wouldn't want to own what I'm going to say." He went on to point out that white people also do not trust the United States government, and that they too are concerned about nuclear waste. He then claimed affinity with the other by noting his two close Indian friends. He shared a conversation that he had with one of them on the issue of nuclear wastes. Here, the MRS project was equated with Indian self-determination, therefore implying a break from the past. In this roundabout manner, he confessed to the participants: "[i]'m going to tell you on my behalf that what's going on in this country, whether it's with the Bureau of Indian Affairs, the Department of Energy, the United States Congress today, or any other aspect of our heritage as a nation, that has been a disaster, has an opportunity in this process, for the first time, to do something decent." The voluntary nature of the MRS program therefore set it apart from land appropriations, mining cessions, and boarding schools. Lempeis claimed that he stands apart from that past as well. He had taken that hat off; he was then a government critic.

Lempeis further argued that given this history, the government has "learned more in 40 years." He put the hat back on. Since the MRS program would grant resources to applicant tribes to better understand the issue "on their own terms," it was respectful of the Indians' intelligence. Moreover, unlike accusations of "bigotry or environmental racism," the MRS program had the potential to build trust between historically conflicting groups in this respectful manner. Since "negotiation" as a process was ideally distinct from past governmental processes of manipulation, regulation and control, the MRS program would be different in quality. The terms of the negotiation and the substantive issues being negotiated were never discussed. Negotiation presumably existed in a political-economic vacuum, since the concept remained abstract. It was presumably better than "irrational" accusations of racism and bigotry, no matter the substantive issues.

As evident in the first session, the turn to abstract principles can be considered a strategic ploy. Wittingly or not, attorney Jeanne Rubin made this turn after Minthorn once again insisted on talking substantively about trust and responsibility between the government and Indian tribes. Minthorn named names: the Bureau of Indian Affairs, the Army Corps of Engineers. Remaining abstract and in those particular ways, unassailable, Rubin made an interesting connection, one that appeared to resolve the structural power relations between individuals belonging to different institutions (tribes, government, corporations).

I don't have that same concern to a particular place, but I still have a deep-felt concern for the environment. And I think part of Mr. Campbell's connection to the earth is that same kind of deep-felt concern for the

environment. And so while the histories are different, and we may perceive each other's actions differently, I think a forum like this is extremely beneficial because it lets us put on the table what some of these underlying morals and philosophical issues are. I think the fact that everyone here came to talk about the moral and ethical underpinnings of decisions related to nuclear energy and waste management indicates that everyone here shares a concern about the environment, about limited resources, about how resources are developed, about what we leave for future generations. So, I think, there's probably more common ground than differences. Some of the comments made earlier were focusing on the cultural conflict, and I think this is probably a good opportunity to identify some common cultural grounds.

This idea of a common ground was actually the focus of this session; hence the title "Is There a Common Good?" The other extreme, of course, was termed "moral balkanization." Once Rubin made the connection of a common good so clear, the others simply added to the momentum. Upon stating that basic human needs are one clear example of common cultural grounds, Lester turned the floor to Marie Monsen of the Department of Energy. She talked about her experiences with bridging cultural differences during her years of study at the East-West Center in Hawaii. She then noted that the meeting was more of an Indian meeting than a government meeting, since "people are sitting back...listening to each other very thoughtfully." She also connected when people were talking about nature. Hence she concurred with Rubin that there were more similarities emerging in the meeting: "[w]e're coming to a point where we're starting to realize that there are a lot of points that are converging."

The industry apologists immediately took the dialogue on their own. To make the conclusion that once resources were used in a compatible way, "[we could] work with another and actually compete" so that "we in turn all gain," Loring Mills of the Edison Electric Institute had to make some problematic generalizations. He first equated selfishness to motivation and then to competitiveness, which he defined as "one of those lubricants for our machinery that tends to allow us to achieve that comfort and safety which is part of my value system." He seemed to be implying that competitiveness is only for the betterment of humanity, and then he chastised those "sheepskin environmentalists" who are supposedly "using the word environmental to achieve their own ends." His own intent was made clearer as he subsequently equated the pro-efficient development outlook with Indians as well as with a "common" humanity. In fact, he naturalized nuclear energy. "And when you talk about nuclear as if it is a brand-new thing, uranium has been on this earth since it was formed. Uranium has actually operated its own little naturally formed reactor in the Oklo mines in Africa millions of years ago."<sup>31</sup>

Environmentalists, then, are by default anti-science and anti-technology; they do not believe in the virtues of "safety, comfort and security" for the common population. They are therefore also a hindrance to Indian survival. If one considers the problems that Indians have had with majority culture environmentalists—particularly in the ceding of land for natural "reserves"—the correlations become clear. Although conceding that resources were not used



efficiently in the past, that “we have wastes we shouldn’t have generated,” and that “we have excesses in the use of electricity”—of course asking, “how can I say that? That’s what supports my livelihood, selling electricity”—Mills was unabashedly pro-development: “[w]e must find a way to use whatever resources that are here on this earth.” Whatever the circumstances and impacts, development would be carried out, we are left to assume, for the “common good.”

At this point, the debate had to shift to some other issue; Mills seemed to have sealed off any possible criticism with the logic of his abstract causality. The pattern stayed the same. Once Minthorn and Castro attempted to discuss concrete issues of management, equity, and accountability—in response to Aiken’s praise for none other than the DOE, his agency—Lester raised yet another fascinating query: “[h]as there really been a moral balkanization?” And conversely, “[i]s there a common good?” He himself answered the questions by suggesting that “the NIMBY reaction” represents a moral and ethical balkanization, perhaps even denying a “common ground.” He also historicized this selfish fear, in asking “hasn’t this been a human concern from going back into the ages?”

Then, after Augustine Howard began a discussion of employment, equity and history, Lester simply acknowledged her points, and then proceeded to support his colleague Merv Tano, as he equated the problem of the MRS to halfway houses. That is, both issues are characterized by an irrational reaction against a siting. He went on to equate the “Nimby movement” with some “spirit of individualism” pervading American culture. He did not stop there. He somehow argued that environmental statutes are reflections of the “high regard of individualism in this country.” Again, I let the Native speak: “[w]e accord the individual a right and opportunities to get involved—to intervene in the processes by which policies and regulations of the highest significance are developed. If you plan to put up a dam with federal funds or on federal lands, the National Environmental Policy Act, again, as a manifestation for the kind of respect we accord the individual, permits participation, delay and perhaps cancellation of the project.”

This abstract reasoning assumed first of all that the government stands for the common good, and secondly that any critique of “federal” activities must be motivated by individualism. But his standpoint was very clear; he concluded that Nimbyism ultimately results from “a failure of government to engage the community—whether tribal, state, or national—in a process to construct consent.” Once again, such insights assumed that the structure of institutional relations was not problematic. Indians, like any other citizen, needed only to adapt to the paradigm of top-down control as evident in social institutions. Since individualism leads to dissent, a “common” consent must be constructed in order to have social harmony.

Unhindered by such reasoning, Romero delved back into the experiences of the Pueblo Lagunas, and inquired about the health effects of radiation. Joe Campbell immediately followed up with a turn to some essential questions concerning accountability, equity and power. Based on his tribe’s experiences with Northern States Power’s nuclear reactors, he critiqued the notion of trust when dealing with powerful institutions. He noted that the Sioux community in Prairie Island was not notified when contaminants were accidentally released, even when area residents were being evacuated. NSP also maneuvered their way around the problems of an Environmental Impact Statement; they lowered the cancer rate of the

reservation simply by relocating a few people. Hence, Campbell queried, who owns the reactors, who makes the profits and who has to pay for storing the wastes? He also questioned the need for dry cask storage. He pointed out that some industries will profit from an MRS program, since legally, storage must exist for operations to continue. He named names. Again I let the Native, Joe Campbell speak:

I don't like that—you can do it to me because I'm past where I can help anybody anymore, or do anything for anybody, but my grandchildren have the right to live just as good as one of them shareholders of that power plant.

And I think that's what we're here to discuss if you're talking about trust and the morality and ethics and all the other stuff that goes with it is the way that some people are being treated. They're not being told the truth and then they run and hide, a little manipulating the words and stuff. And there you are, well, this is all right to have a bunch of non-elected officials going to sit on a deciding board over there. And then you find out later on that the deciding board is practically controlled by Westinghouse or General Electric, the people that are providing the fuel for this place. They don't want to see that. They want to see those dry casks filtered. They want to make sure that they're full to put someplace so they can sell some more.

And it don't make any difference whose life they're taking. And that's exactly the way it is. That's the trust thing we're talking about. No more.

In response to Romero's health concerns, Mills of the Edison Electric Institute cited *Trashing the Planet*, written by then Washington state governor Dixie Lee Ray. He cited her because "she does address some of the questions of what is reasonable radiation, along with good radiation in the sense of health benefits and how we're using more nuclear in medical diagnostics as well as treatment." Among her authoritative comments, he cited "[f]or all those who do not like radioactivity the earth is no place to live." Not unlike his earlier reference to natural uranium mines in Africa, Mills was attempting to normalize radioactivity. This of course had nothing to do with high-level wastes, which is markedly different in hazards by orders of magnitude. It is also worth noting that Mills claimed to disagree with Ray, but once again, it had little to do with Romero's inquiry. He simply disagreed with her views on the economics of reprocessing.

To address Campbell's more direct attacks, Mills resorted once again to generalizing the work of the U.S. government. Without ever acknowledging the turbulent history of nuclear energy development and waste disposal, he assumed that the government is doing its best to providing a solution. The only problem in his analysis is the public; without dissent, the process would have been carried out scientifically and effectively. He evaded the question of government subsidies, frames the significance of nuclear energy by comparing it to fossil fuel energy, and thereby avoided the profit-making and conflict of interest question brought up by Campbell. The only problem Mills considered in regard to private industries was that their \$6 billion nuclear waste fund—which he conceded (and supported) has come from the consumer's pockets—had not been used properly by the authorities. Again, his discussion was over-generalized if not vague, and a causal logic permeated his overall claim that everything was all

right. In short, his view was total, closed. Although referring to Romero and Campbell, he did not address their concerns at all.

Nonetheless the dialogue continued, as Mills answered some technical questions regarding federal policies. If Campbell's insistence had been taken seriously, the discussion would have taken quite a different face. Instead, Lester returned to the essential question, "[i]s there a common good?" Minthorn suggested that bribing impoverished communities to host nuclear waste dumps may be bad for the larger society, even though they may be good for a group of people. His suggestion is not appropriate. Thus DOE 5-Year Waste Management Plan Director Richard Aiken went on to equate cold war nuclear deterrence as having been for the "common good." Once again, fellow DOE director followed up with some technical comments; Negotiator Chief of Staff Lempesis affirmed this move with yet another technical query. The regulation was complete; dissent was controlled.

Just as it began, the first day of the dialogue ended with a bizarre twist. Once again, David Lester carried out some fancy historical maneuvering. He first discussed the idea of balkanization in relation to his own tribe and those of others in the Americas, noting that his people, much like the Iroquois or the Aztec warriors, were victims of a divide-and-conquer strategy. "The hidden imperialist hand has in its self-interest to create the Balkanization to achieve an end that is hidden." Then, following Mills' critique of those individualistic "sheepskin environmentalists," Lester warned of a "new manifest destiny."<sup>32</sup> To him, Nimbyism represented a "new kind of American imperialization"—undoubtedly propagated by the environmental movement. He then brought his claim even closer to home, "[i] know that it is not a movement that had been friendly to tribal interests in the past."

It is difficult to tell whether Lester truly believes in what he claims. Throughout the dialogue, he seemed to be in touch with the history of Native American peoples, but then he would come to extremely problematic conclusions about their present situation. Regardless of intent, it seems plausible to note that his insistence in concentrating on certain ideas over others reveals a particular worldview. This is clearly evident in his comments concluding the first day of the dialogue, as he asked whether interested communities (in nuclear waste disposal) could possibly represent "the modern pioneer willing to take a risk? To explore uncharted territory?"

#### *The Dynamics of Controlling Processes: Direct and Indirect*

As outlined above, there are a few general patterns of controlling processes that are evident in the dialogue. Starting with the title, it is evident that the underlying intention of the dialogue was to somehow construct or delineate the idea of "tribal perceptions of ethics and morality" so as to be amenable to the interests of nuclear waste storage on reservation land. This was accomplished through several procedures.

As facilitator, Lester maintained direct control of the dialogue. When issues became concretized and hence "too hot to handle," Lester turned to someone to either change the subject or to provide a perspective that would in effect end further critical thinking. As evident most clearly in the first session, Lester was also insistent on taking the dialogue to an abstract level. Every focus question for the sessions was abstract, making it easier for Lester and others

to regulate the dialogue. Lester also timed a few recesses at moments when issues became too specific and therefore problematic.

This direct control was supplemented by less direct or indirect controlling processes. Industry representatives often supported the views of their colleagues either by affirming their positions or defending them when under attack by others such as Campbell. They frequently refer to one another; whether they really know the person or not, they have a practical sense that their languages will be commensurable. This sort of support did not require both participants (referrer, referee) to willingly agree on providing the support; oftentimes, other people's ideas were appropriated to fit into the larger scheme of supporting nuclear waste disposal. For instance, McCollough noted at the end of the dialogue that he was strongly against the entire idea of the MRS program. But throughout the dialogue, his presence was used by others such as Lester and Tano to affirm their own positions. This was especially the case when abstract terms such as reason, morality, or ethics were discussed; in which case, there was enough ambiguity in the dialogue for an agenda to be imputed.

Overall, a general feeling of social harmony was maintained by keeping as much of the dialogue as abstract and personalized as possible. Abstractions tended to reiterate a notion of a "common good." Values became personalized, and thus particular institutions which tend not to exhibit such values—such as the ones that the individuals were working for—were rendered transparent. So for instance, when Campbell directly attacked GE or Westinghouse, Mills generalized the issue to one of all nuclear utilities companies. Moreover he painted a pretty portrait of the utilities; in his view they were doing everything positive to control the problem of nuclear wastes. Also, when Howard criticized the "outside experts" at Hanford for being dishonest to her community, nuclear engineer Sol Burstein defended the "white man's business" world. This brought Howard's comments to an abstract and personal level. Moreover, by confessing one's feelings of honesty and morality, a sense of harmony was maintained. In this way an apologist for the nuclear industries was considered morally on par with an Indian leader whose lands were desecrated by unchecked open pit uranium mining.

The content of the utterance is an important variable in all of these patterns. For instance, Campbell's attack on legislators and attorneys was answered directly by the argument that environmental regulations reflected the moral purity of just those people. This indirect, abstract defense of the present legal and regulatory apparatus dealing with nuclear energy and wastes could thereafter be taken for granted. Another claim explicitly constructed and implicitly adhered to was the dichotomy between Western Reason and Native American traditions. The synthesis of both strands was considered to be ideal for Indian survival. Since CERT representatives were the only "pro-development" officials in this sense, they were by default heralded as "the" successful ones. This secured Reason, safety, a better lifestyle, and indeed sovereignty in the control of the represented "experts."

Moreover, at numerous points, a participant would claim that the discussion had come "full circle," in that a synthesis between science and tribal philosophy was successfully made. This idea was even more salient when industry and federal officials claimed to share the wisdom of Native morality. Indian identity was up for grabs in this abstract sense; those in positions of power benefited from it. Lester for instance based many of his claims on his Indian identity. This way he was able to claim that all environmentalists were imperialistic

conquerors, threatening to divide the common will of the Indians, just as the French or the English had done centuries ago. Of course this also assumed that there is something like a "common will" today in similar form as there arguably may have been when Europeans first came to this land.

These apparently transposable identities allowed those endowed in different positions of power to make peculiar utterances to temporarily render transparent exactly their positions. For instance, when the Negotiator dissociated himself from the U.S. government and even criticized its very practices, he was negating his primary role as a member of that very institution. The situation is similar to one example presented by Bourdieu (1984) in *Distinctions*, in which the mayor of Bearn, a small town in southern France, addresses the townspeople on the occasion of honoring a local poet. He gives his speech in the regional dialect, which, if any ordinary citizen had done, would have been looked down upon since Bearnais was considered patois, on a plane lower than Parisian French. But since he was the mayor of the town, his act was rewarded with great applause from the people.

Although not exactly parallel in context, David Leroy, an executive level government representative, managed to suspend his professional identity and speak on a level on par with the Natives. In criticizing his own institution of origin, then, his cultural capital allowed such a speech act to be interpreted as a bold and applaudable one. In similar fashion, "pro-development" Natives gained respect by dissociating themselves from their institutional ties and criticizing the very development models that are otherwise encouraged and implemented through their work. For instance, Lester's frequent criticisms of the U.S. government and other participants' critiques of the Bureau of Indian Affairs made their positions more familiar to other Native participants. Criticisms from those not endowed with such cultural capital, however did not carry the same weight. Thus Campbell's outbursts did not qualify as reasonable, because he did not have the professional experience to make such a judgment. In addition, he did not possess the cultural capital to strategically suspend, if only for one critical comment; thus there was nothing special in what he had to say. This mechanism also served to constrain attempts at a critical discussion of the MRS program. In this way, rapport, or a sense of community was gradually built in the dialogue.

It has been argued that an analysis of the timing of particular utterances and speakers' cultural political positions in relation to utterances reveals an underlying agenda to construct agreement on the definition of meta-references such as morality, ethics, and Indian spirituality for the ultimate goal of selling the idea of nuclear waste storage on reservation land. Moderation of the dialogue was partly accomplished as participants utilized concepts and identities at specific moments. For instance, symbolic referents such as Indian identity, Biblical morality, scientific progress and reason, institutional responsibility, and so on were used to keep the dialogue as abstract as possible. By disciplining emergent concrete issues in this manner, the dialogue was in effect regulated by those who had the most to benefit from the matters at hand. Indeed, this was precisely the point as outlined in the *Sourcebook*. Thus, if we take the dialogue at face value, the answers to the six sessions' focus questions might be as follows:

1. Ethics and Morality Defined. "Traditionally, Indians have a high sense of morals."

2. Is There A Common Good? “American society needs a sense of community that counters the irrational fragmentation of NIMBYism; Indians must be at the center of such a reformation.”
3. Striking A Balance. “Traditional Indians must catch up with the West (science) by transcending the limits of ‘cultural rationality’; by default the MRS program represents one way of articulating one’s ‘technical rationality’; coincidentally, it also paves the way for economic development.”
4. Am I My Brother’s Keeper? “Traditional tribal beliefs teach us to plan ahead for seven generations; this means taking care of nuclear wastes (MRS) now, and not leaving it for the future.”
5. Who Pays? A Dialogue on Justice and Equity. “Wind, hydro, and fossil fuel energy exploitation are destructive for Indians; they are not just or equitable, thus conveniently placing nuclear on the positive end of the spectrum.”
6. Is There a Moral Basis to Nuclear Energy and Radioactive Waste Disposal?

*A Moment for Reflection*

I conclude this final section with at least a partial answer to the last question above, by discussing the conclusion of the dialogue. On the third and last day, each participant was granted a few moments to reflect on the dialogue. The general reactions were extremely positive. On the non-Indian side, there was a pervasive idea that the dialogue had been very “Indian” in that everyone’s viewpoints were listened to patiently. There was also a general feeling of intra-group solidarity; much sympathy was directed towards the Indian participants for sharing their distinct world views and corresponding social philosophies. The solidarity was expressed by one participant in terms of a “hero’s journey.”

Similarly, much was reported to have been learned on the “Indian” side. Most importantly, it was observed that the dialogue had been about building trust for the MRS, and that that itself was reason enough to return home with a positive outlook. Participants were enthusiastic about reporting back to their communities this new sense of trust that could be part of a new relationship with the federal government and with corporations. Cathy Roche, a representative of the U.S. Council for Energy Awareness, affirmed this view by stating that in her experiences with Indian communities, there was “an extra layer of mistrust” based on a historical relationship with the government. This was layered on top of the usual mistrust of technology and of Big Business. She then pointed out another barrier to building trust: “political activism.” It is important to note, then, that her views were immediately supported by Indian participants, who realized that the pragmatic principles of survival had to be centered on building trust.

Trust must, of course, come from an understanding of a common ground. Since they are both abstract concepts, they must have some empirical support. In this instance, historical institutional relations were not considered. By virtue of this dialogue, new relations were constructed in the minds of the participants. There are, however, two general factors behind the success of the MRS idea: 1. Reservations are impoverished; 2. By law, nuclear utilities need

a central storage site to continue their operations. The second factor was not considered in the ideal configuration of trust. Without consideration of this factor, which involve relations of economic and political power, this sense of trust was purely symbolic. At any rate, this symbolism was considered adequate enough to believe in a supposedly newly emergent federal-Indian or corporate-Indian relations.

Lester ended the dialogue with a good recap of the ideas discussed above. Indeed, to summarize the points that were made through the dialogue, one need only consider his closing remarks. First he reaffirmed the historical injustices perpetrated on Indian peoples. He portrayed the nuclear waste crisis in terms of a collective crisis. "This nuclear issue is just a microsymbol of the challenges that we face as human beings living on a single living organism, the earth, to find a way to live together as Black Elk said, as children of a single mother and a single father."

Then, after criticizing the policies of control and administration of the past, he cast the American political system in a positive light. "I don't think it's necessarily bad that we send who we send to Congress to improve your neighborhood." This allowed him the space to bring in the teachings of his Grandmother, as he himself applies them in his work. Respect for other people, honoring their differences, and a compassion for the human condition "can serve us as we look at building trust and building relationships that allow us to get to solutions." This then might imply that those who would accept a nuclear repository of any kind may actually be showing "an act of high responsibility providing a service to all of society."

And since the management of such wastes require extremely long time frames, who should we expect to best take care of the wastes? Again, I let the Native, David Lester speak:

There's no reason to expect the American empire is going to last millenia upon millenia any more than did the Roman or the other empires of the great western civilization or the traditions that it possesses. On the other hand, there are political units in the world who have endured millenia and those are Indian tribes. They're stable, and they endure, and they carry out their functions not motivated by money, but by responsibility, the responsibility of the hunter to the hunted.

If the hunter, the prey, the game offers, it's life so that we may live. Then we have a responsibility to give life in return... You'll find that in all of the great religions, all of the great philosophy, the concept of mutual responsibility of life to itself. One form of life feeds on another form of life but has to leave something in return so that it can continue in the same way in the process.

And so dealing with the nuclear waste issue is, in fact it seems to me part and parcel of that same concept. What must we give since we've taken? What's our mutual responsibilities to one another and to all of creation, not just the two-legged or the human part of creation? And we can deal with a philosophical level, a spiritual level, and we have to deal with it on a technical, scientific level as well.

And so I don't see the conflict that what appears to be conflict is that we haven't thought it through yet, and how it all comes together for the whole integrated picture. And I think that's the challenge, that's the hero's journey, if you will, that we face.

### *Discussion*

From the analysis, it is clear that the dialogue was structured and controlled in a complex, oftentimes ambiguous manner; it was not a simple exercise of outright coercion and social control. As mentioned earlier, the dialogue was certainly not *the* pivotal event for the MRS project. It was a small but symbolically significant part of a broader, far reaching project delegated to the Negotiator by the President of the United States, a project that was carried out with no inconsiderable success through cooperation between the Negotiator, the nuclear industry and Native development stakeholders.

As such, the dialogue affords a glimpse of the in/formal relations between groups which have constructed, negotiated, and contested the socio-cultural dynamics of the MRS project. Indeed, the socio-linguistic dynamics of the dialogue can be extended to the myriad places reached by the stakeholders: from community meetings in the Prairie Island reservation to the meetings of the National Congress of American Indians; from nuclear reactor tours in France and Japan to DOE public relations campaigns in Yucca Mountain; and from the boardrooms of powerful utilities to the log cabins of Native environmentalists in Oklahoma. The MRS plan has affected the lives of millions of people scattered across the United States. The analysis presented here, then, has been an attempt to make sense of the underlying structure of the project in its various manifestations, rather than an exhaustive account of its complexities.

### **The MRS, Negotiation and Controlling Processes**

The MRS plan has been decades in the making. Beginning with the first ever nuclear waste generated by human activities, through the overly-confident years of nuclear weapons and energy proliferation, and finally to the present era of non-proliferation treaties and test bans, the nuclear issue in the United States has had a significant affect on states with nuclear utilities eager to capitalize on the world nuclear market. As a consequence of this frenzied development, the MRS program was established at a time when the nuclear industry desperately needed quick solutions to continue their operations. At present, scores of reactors across the country are still burdened with high-level wastes, increasing in volume with the passing of each business day.

In addition, the federal government needed to transform the public relations dilemma created by previous nuclear waste programs, which for the most part lacked accountability on the government and industry side, and democratic input from citizens. The "New Federalism" offered to Native American tribes through a planned, incremental process of negotiation quickly became institutionalized as *the* nuclear waste storage program in the country. Just as the Colorado meeting had an established political structure with a desirable outcome determined, so too did the broader MRS plan.



In the meeting, several key forms of controlling processes—namely, the language used by the participants, the metaphors employed at particular moments in their discussions, and the mediation of the dialogue by particular actors in the network—all strongly indicate that the ideal of negotiation was situated in contexts of power and social and cultural control. Similarly, in their two year quest to sell the idea of nuclear waste storage to the national Native community, the Negotiator et al. carefully manipulated cultural variables of language, heavily loaded concepts such as tradition and sovereignty, and indeed the social world of local communities, in order to accomplish their goal of establishing a host community.

Although the main goal to identify and begin construction on a nuclear waste site was cut short by Congressional defunding, the process set in motion by the MRS program has been key to the continuing cooperation between the Mescalero tribal council, CERT, nuclear utilities, and federal regulators. Although short-lived, the MRS program paved the way for future agreements between nuclear utilities and Native tribes, as seen in the Mescalero case. Using government funds, it brought together like-minded professionals from the nuclear industry and Native reservation and urban communities for the explicit goal of mutual cooperation and economic success.

There were also unintended outcomes which have not benefited the nuclear industry or development organizations such as CERT. The MRS project was a critical issue which helped galvanize support for the growth of the broader indigenous environmental movement across Indian Country. In addition every Native American community involved with the MRS had already been affected by energy development and/or waste disposal on their lands. Although such issues were not new to Native communities, that the federal government and nuclear utilities attempted to store *all* the nation's high-level radioactive wastes in Indian Country, with a *formal bribe*, and utilizing a key concept such as *tribal sovereignty* no doubt engendered the deep resentment of history-conscious Native communities.

Hence, the establishment of industry-funded development organizations such as CERT has been matched by the growth of various grassroots indigenous groups operating on shoestring budgets mostly subsidized by member and community support as well as by funding from environmentally and socio-economically focused foundations. Both sets of organizations have been vying for public support of their particular vision for the future of Native American communities. The MRS issue has also brought about greater cooperation between indigenous groups and mainstream environmentalists, not to mention the support of state and federal government officials critical of the waste storage program. With the proliferation of Indian gaming as "the new buffalo," it remains to be seen whether these newly formed groups will broaden their agenda to navigate and perhaps direct the next century of capital's articulations in Indian country.

#### *The Worsening Nuclear Waste Problem*

Even without the MRS program, the nation must deal with the very real nuclear waste quagmire. Clearly, an emphasis on quick temporary storage reflects the desire for continued operations. But who should pick up the responsibility for all high-level wastes? As with low-level wastes, some argue that a better solution might be to force states and then utilities to individually deal with their own high-level wastes. This would require federal and state

legislative battles which have already been fought out many times before. Moreover, even if all nuclear plant operations were to be phased out immediately, there would still be an immense amount of wastes to deal with.

In a recent book on this issue, social philosopher Shrader-Frechete (1994) criticizes the idea of a permanent repository because of technical and ethical issues, and concludes by endorsing the MRS, including the idea of financial compensation. In her view, informed consent by the host community would make the program equitable and the best possible solution. In actual practice, however, there is a fine line between coercion and informed consent. As the MRS experience reveals, however, the ideal of negotiation differs from its practice, steeped in contexts of power and social and cultural control.

Indeed, with all of the institutional elements present for a “negotiated” agreement, there does not need to be a grand scheme to how events will unravel. Federal, state, and reservation politics need not necessarily stand in the way. Although it is possible for concerned citizens to intervene—sometimes with great influence—much effort on behalf of such committed individuals is needed. The problems are by no means readily accessible and much has to be investigated and researched exhaustively. Networks must be established. Sources of funding must be attained. For the industries that want to forge ahead, however, it is all just another day at work. The MRS case is but one small example of this inequitable play of power and controlling processes in the late capitalism of this century’s end.

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## **Notes**

- 1 Although I use the category “Native American” here, the terms “American Indian,” “Native,” or “Indian” are also used in this paper, just as “tribe” will be used interchangeably with “nation.” Socio-linguistically, there are historical and political dimensions to these differences. Although these issues are significant in theory and practice, I do not attempt any sustained analyses of them. It will be evident that there are differential uses of the terms by different people.

- 2 Lenssen further notes in this report that “the world’s 413 commercial nuclear reactors, producing about 5 percent of the world’s energy, created some 9,500 tons of irradiated fuel in 1990, bringing the total accumulation of used fuel to 84,000 tons—twice as much as in 1985. The United States is ‘home’ to a quarter of this, with a radioactivity of over 20 billion curies. Within eight years, the global figure could surpass 190,000 tons.”
- 3 On December 10, 1993, Energy Secretary Hazel O’Leary announced to the public that there were over 200 underground radioactive waste sites and hundreds of deteriorating sludge pools that had been kept from public knowledge. Even more fascinating is the lack of records revealing exact site locations in some cases.
- 4 As Woodhouse (1983:178) noted over a decade ago, the lack of democratic procedures concerning the usage of radioactive resources for weapons or energy has resulted in little sustained consideration of pressing issues such as “alternatives to nuclear-generated electricity, dangers of nuclear theft and terrorism, the possibility of a reduction in citizens’ ability to comprehend their society, growth of the federal government at the expense of states and localities, vulnerability to fanatical social-religious movements in the event of major panics from nuclear accidents, diminished prospects for democratic control, and increased authority for experts.” The basic issue of public health has also been neglected due to the technological momentum of nuclear projects.
- 5 Even after reprocessing and power production, there is still radioactive waste to deal with; in fact, the volume of wastes increases greatly, involving by-products with extremely long half-lives (Lenssen 1991:11).
- 6 In February 1972, the AEC began designing surface storage facilities for high-level and low-level civilian and military wastes at the Hanford, Washington nuclear weapons complex. In 1973, AEC chairman James Schlesinger disclosed that in addition to the temporary facility, the major push was for the development of a permanent repository to be ready by the early 1980s. In September of 1974, two months after the AEC issued a draft environmental impact statement on the civilian nuclear waste program, the U.S. Environmental Protection Agency, along with political leaders and various organizations, criticized the statement for its overall technical deficiencies and, perhaps more significantly, for its underemphasis on the development of a permanent geological repository (MRSRC 1989: F1).
- 7 A thorough study of the NWPA can be found in Jacob (1990).
- 8 Lenssen (1991:15) reports that the steel tanks storing waste at Hanford and South Carolina’s Savannah River Plant have “a history of leaking radioactive liquids and accumulating internal buildups of explosive hydrogen gas. Although DOE pledged to clean up these facilities (at a projected cost of \$300billion), its continuing efforts to build a nuclear stockpile have led it to downplay the severity of the problems to government regulators and Congressional overseers.”
- 9 As early as the 1950s, General Electric, one of the nation’s three largest nuclear reactor manufacturers, neglected to warn residents near their Hanford Nuclear Reservation of ongoing releases of radioactive wastes (Lenssen 1991:24).
- 10 The original nine sites were: Cypress Creek Dome and Richton County in Mississippi; Vacherie Dome, Louisiana; Swisher Site and Deaf Smith County in Texas; Lavander Canyon and Davis Canyon in Utah; Yucca Mountain, Nevada; and Hanford Washington. The three proposed sites were Yucca Mt., Hanford, and Deaf Smith County.
- 11 The ONWN generously sends out “supplemental material” such as *Preliminary Site Requirements and Considerations For a Monitored Retrievable Storage Facility* (8/91)

and *An MRS Facility: Technical Background Information* (7/91), both issued by the DOE. From their publications alone, it was difficult to get an in-depth understanding of what constituted specific site characterization studies. Touting sole executive relations with the President's Office, their media associate gives the ONWN the impression of an autonomous, independent, and scientifically "neutral" mediator between two coherent, stable interest groups. Partiality or expediency in such matters is therefore considered to be irrelevant.

- 12 During my field research at one approved MRS site, the utility's public relations officer pointed out that transportation arrangements would not be made public for security reasons. Even after suspending judgment on the implications of such secrecy, I was quite surprised at how undeveloped the plans for transportation and retrieval were, this just three months before operations would begin.
- 13 One representative from a potential MRS community pointed out that such issues are mentioned in tours provided by DOE and utilities of already existing dry cask storage facilities, but not in any systematic fashion. The feasibility studies provided by potential hosts did not discuss the exact technology and risk assessments for the MRS.
- 14 One estimate holds that over 200 indigenous communities have been approached by the waste disposal industry to date, many with numerous proposals over the years (Angel 1992).
- 15 There is also a strong argument that the idea of democratic governance itself was first imprinted on settlers' minds by indigenous councils and confederacies, such as the Confederacies of the Iroquois, the Muskogee (Creek) and the Lakota Nation. See for instance, Johansen (1982).
- 16 Although continuing the legislative tradition of establishing federal hegemony over all spheres of Native life, the IRA was significant in the consolidation of state control at the reservation level. Its historical passage was not without complexity. At the time of Roosevelt's appointment of the Commissioner of Indian Affairs, John Collier was deeply involved in promoting the sovereignty of Native groups, working for the Pueblos in this regard, and more generally in establishing an Indian defense organization. Commissioner Collier quickly proposed a five title bill, which promoted the ideas of preexisting sovereignty, local governance, land collectivization, traditional courts, etc.—being labeled by some Oklahoma Natives, who had profited from selling and leasing land plots, as being "communist"—only to watch it be torn apart by Congress and reconstructed in the form of the IRA. Nevertheless, Collier subsequently imposed the IRA governance by way of force, deceit, and coercion (Philp 1977). "By 1938, 189 Indian nations (encompassing some 130,000 people) *acquiesced* to organization, while seventy-seven (90,000) rejected it outright, usually as a gross violation of their treaty-guaranteed sovereignty" (Robbins 1992:95-97). For a detailed analysis of the IRA, see Taylor (1980).
- 17 Hornung's (1991) account of the Akwasasne struggle reveals the complex interplay of the reservation community, federal and state agencies and casino interests in the construction of competing notions of Mohawk tribal sovereignty.
- 18 There were of course other laws which even more directly undermined tribal sovereignty. The Termination Act of 1953 severely disrupted daily life on reservations dependent on federal aid. The effects of the termination acts are sorely evident to this day. Brown (1993) reports that there are an estimated 500 unrecognized Nations, comprising a total of 80,000 to 100,000 Natives. Public Law 280 (1954) further diminished the political sovereignty of many tribes by placing them under state jurisdiction. The 1956 Relocation Act cut reservation funding substantially and directed it to economic opportunities in

urban areas, leading to a diaspora of more than half of the total reservation population (1.6 million) into major cities (Robbins 1992:97).

- 19 The negotiated settlement can also be considered in a broader national and international context, as Nader points out in her contribution to this volume (See Chapter 1 of this volume).
- 20 For further references on Native American resource development see Jorgensen (1984) and Geddicks (1992).
- 21 For background to the MRS project on reservations, I have relied on the work of Randal Hanson (1994), Valerie Taliman (1993), Juan Hernandez (1994), *The Eagle's* Elmer Savilla, and frequent reports from the Minneapolis-based Native newspaper *The Circle*. Almost all of the material on Native environmentalism can be found in Laduke (1994), although I have added material from my work as necessary. Together with many other dedicated writers, they have been providing detailed studies of the ongoing process of mining and waste storage on reservations.
- 22 For early critiques of CERT, see Deloria (1982) and Peres and Swan (1980).
- 23 Native Americans for a Clean Environment, consisting of some 700 entirely voluntary members (mostly Cherokee) have taken on the NRC and Sequoyah Fuels for over 15,000 violations of federal state law at their uranium reprocessing facility, including radioactive releases into the Illinois River and the groundwater, direct fuel injection into the ground, and fatal plant explosions. NACE's continued pressure increased coverage and publicity on the plant, leading to regular coverage in the nuclear industry publication *Nuclear Fuel*, the withdrawal of international contracts, and finally, with its fatal November 17, 1992 accident, the new owner General Atomics closed the plant. Similarly the Northern Cheyenne community organization Native Action, with an average of four employees, have been instrumental in protecting "the Cheyenne reservation from the impact of the Powder River Coal fields and the industrial wonders of Colstrip, host of the largest coal generating and gasification complex in the nation" (Laduke 1994:47). Such organizations have sprung up in virtually every place on the Indian land resource exploitation map.
- 24 After over half an year of debate in the Minnesota legislature, NSP was finally approved for MRS storage shortly after closed door meetings with key politicians—including the intervention of then Energy Secretary Hazel O'Leary, former executive vice president for corporate affairs at NSP—in the final moments of deliberation. As Joe Campbell recounted to me: "We thought we had it pretty much in the bag but they have things called 'back room deals' we haven't learned how to deal with yet. Maybe one of these days we'll have the good fortune to get into one of those back room deals and come out on top. In that case, it won't be because the government wants us there, but it will be because we want to go there and do it." For a critical review of the debate, as well as that of alternative energy plans for the whole state of Minnesota presented by the Prairie Island Coalition Against Nuclear Wastes, see Wasserman (1994). In spite of the setbacks, the coalition managed to force NSP to concede to shut down the reactor in 2002.
- 25 See Taliman (1993) and Hanson (1994) for a discussion on the alleged political heavy-handedness of certain tribal council members. More alarming is a provision in the 1987 NWPAA which requires MRS recipients to waive their rights to sue the federal government if for some reason the permanent repository is not in operation by the end of the MRS contract period of 40-50 years.
- 26 Sociologist Randel Hanson of the University of Minnesota has been conducting his research on these very issues.

- 27 For context I have relied on Laduke (1984) and my interviews of indigenous activist groups and reporters that have followed the development of CERT since its creation in 1979.
- 28 I received the minutes for the entire conference, including the sourcebook, from a participant, Joseph Campbell, who received his copies from the Department of Energy. According to Campbell, he had to make many important corrections in the minutes, some of them quite crucial in representing the biased control of the hosts, *twice* before he approved its accuracy. Even in its final form, he has pointed out some problems with the text. I have used the final text at face value, and leave the issue of inaccuracy for later work on Indian environmental activism and participation in federal waste management issues.
- 29 Similarly, Chomsky and Herman (1988) note that news media—wittingly or not—regulates information by “framing” an issue in a particular way; oftentimes, polarization works as a filter by constraining possible points of view between two problematically constructed extremes.
- 30 This claim deserves contextualization and problematization, especially because much intellectual effort has been put into the tradition/modernity debate by anthropologists, sociologists, philosophers, and historians over the last century. In some ways it is *the* central claim upon which the entire negotiating dialogue is based, and will be discussed later in light of philosopher of science Paul ’s critical work.
- 31 Indeed, the Oklo mines in Gabon has fascinated scientists interested in the prospects of permanent repositories. As their interpretations have it, naturally formed highly radioactive materials much like those found in reactors, “have moved less than six feet since they were formed 20 million centuries ago” (LWVEF 1993: 44).
- 32 The idea of manifest destiny was actually brought up earlier, when Minthorn equated manifest destiny to “positive ethic,” “to profit motive.” His was a critique of the nuclear industry, of dominant society interests in sustaining maximum profits without taking human costs into full consideration. Howard supported his criticisms by relating it to the Yakima’s historical relations with the Department of Energy. She advocated the training of local Indian “experts” to monitor the dominant society’s affairs. At that point making his role as apologist for nuclear utilities clear, retired engineer Sol Burstein quipped that the white man’s business has morals too. Followed by support from Lester, this simple comment closed the debate. Once a historically specific observation was countered with other examples, the “general theory” was considered dead and critique lost its original effectiveness.

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