

Comments by Dylan Penningroth, Associate Professor of History, Northwestern University, on Khal Schneider, "Land, Tribes and the State: California's Indian *Rancherías*"

Khal Schneider has given us a fascinating glimpse of Native American history. It is easy to forget that a large proportion of Indians during the nineteenth and twentieth centuries did not live on reservations. Here and in his forthcoming book, Professor Schneider carefully teases out the fascinating history of Indians who made a life for themselves off the Rez, using precious shards of evidence from deeds, government correspondence, and local newspapers. And he does it in ways that shed new light on several important topics in Western and Indian history: Indian land tenure, labor, tribal sovereignty, and shifting bases of "Indian-ness."

The federal government did not make treaties with California Indians. Its policy from the 1850s through the 1920s seems generally to have been to ignore them. Through wage work (largely on white-owned farms and ranches), Indians managed to buy tracts of land (though not necessarily the same lands their ancestors had enjoyed) and settle their extended kin networks on these rancherías. This new phenomenon, what Schneider calls the "off-reservation Indian Country," was founded on ownership of *private* property (land), yet it turned that keystone of Anglo-American "liberal" thinking into the basis for persistent *communal* identity. Indeed, Indian identities and communities were not located in any one place; they were often spread across several rancherías. The rancherías enabled them to start rebuilding the region's Indian population from the devastating epidemics of the previous century. In effect, he argues, Indians (and whites) "recreated Indian land in local courts and government offices" and the "farms and ranches" of

Northern California. Ironically, when the federal government finally got around to recognizing northern California Indians as official “tribes” in the 1930s, it threw into question all those links and identities that Indians had been building up since the 1860s. Schneider argues persuasively that federal policy, which is often taken as the major determinant of Indians’ fortunes, was always subject to – and sometimes overruled by – intensely local institutions and interests.

I specialize in African-American history, not Native American history, so reading Schneider’s paper was a great opportunity for me to undo some of my assumptions. I had always imagined the history of Indian land as a story of westward displacement, where one Indian nation after another was robbed of its land, usually through some action of the federal government, and pushed away. The reservation stands as the logical *denouement* of this process: a creation of the federal government, on land that white settlers did not want, its boundaries spelled out in treaties. But Schneider argues that the federal government was not the only player in the making of “Indian Country,” and might not have been the most important one. It pretty much ignored the California Indians, leaving them to the tender mercies of white settlers and their courts. In addition, he shows that “Indian land” and “Indian country” weren’t just “there;” they had to be *made*. Sometimes, “Indian country” was off the reservation, not on it, and “Indian rights” had less to do with treaty-defined tribal sovereignty than with deeds and mortgages – the language of private property.

When white settlers snatched nine-tenths of their reservation’s land, Indians started *buying* land “for the benefit of the tribe and to be used collectively.” This land, said one man, “belongs to all our folks and nobody can take it” (p. 8). And, to a

surprising extent, the strategy worked. I'll come back to this question of land in a minute. But when the federal government finally started recognizing northern California Indian tribes, it did so in ways that undermined the Indians' hard-won land trusts.

Schneider's paper reminds me in some ways of African Americans' efforts to acquire land after freedom. In fact, as Schneider points out, there is a direct connection. Oliver O. Howard, the army general who opens the story, is most famous for having been the head of the Bureau of Refugees, Freedmen, and Abandoned Land (better known as the Freedmen's Bureau). This was the agency charged with feeding southerners displaced by the Civil War, with "adjusting difficulties" between the freedpeople and the whites, and (most relevant for our purposes) with handling millions of acres of abandoned and confiscated land. In the ruins of the postwar South, the land was unquestionably federal (since the federal army had confiscated it), yet no one really knew who owned it – would the old masters get their plantations back? Would the government deliver on General Sherman's wartime promise of "40 acres and a mule"? In the end, of course, the government broke its promise to the ex-slaves. But in those few years of hopeful uncertainty, the ex-slaves of the South showed a hunger for land, and not just any land – they wanted specific pieces of land associated with their ancestors.¹ As Julie Saville has shown, ex-slaves' desire for land was as much about asserting and maintaining identities (as "St. Helena" people, or "Hog Hammock" people) as it was about the purely economic problem of earning their daily bread. This leads me to my first question: what was the connection between land and identity? Did Indians try to buy particular pieces of land

¹ Julie Saville, *The Work of Reconstruction: From Slave to Wage Laborer in South Carolina, 1860-1870* (New York, 1994), p. 18 (citing Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (London, 1964); and Elizabeth Ware Pearson, *Letters from Port Royal, 1862-1868* (Boston, 1906).

that meant something in their precolonial worldview? And if Indians in the 1870s were pinning their identities to particular pieces of land they had bought – “the Pinoleville Indians” – was this something new? In a way, I am asking about what Indian identities looked like before white settlement, because this would help me better understand the kinds of change Schneider’s story describes.

My second question is about the white settlers. It is fascinating that these people, who are normally the “bad guys” in Indian history, ended up defending Indians’ “rights.” It was a self-serving kind of defense, but Schneider urges us to take seriously the idea that Indians might see local whites as allies and “fellow citizens” (19). Now, we know from the history of black emancipation that moments of upheaval in social relations tend to politicize the stuff of everyday life; that is why a shove on the sidewalk could lead to a shoot-out, and why white southerners could seriously believe that letting black men vote would mean handing over their daughters. Is there any way to see how Indians and whites interacted in ordinary life? If “Indian identity” was worked out in the mundane world of hops-picking and family visiting, what were the implications for local politics – including the politics of law? Of course, this was not the first time a state had defied a federal decision about Indians: Georgia did it to the U.S. Supreme Court in 1832 (encouraged by President Andrew Jackson, who supposedly said “John Marshall has made his decision, now let him enforce it”), and encouraged white settlers to run the Cherokees off their land. The Cherokees, famously, had tried to fend off white land-grabbing by adopting all the trappings of white “civilization”: a written constitution, a Cherokee alphabet, and African slavery. It didn’t work for them. Here, we see California Indians embracing one of the hallmarks of “white civilization,” and it works. Why did California whites react so

much different from their Georgia forbears? The answer might be hidden in the evidence of their everyday interactions.

Finally, I have a question about the legal relationship at the heart of this “reconstituted Indian country,” the thing that makes possible this notion of “citizen Indians”: the “trust.” I looked it up in a law dictionary. A trust is the right to enjoy property that another person holds the legal title to; it is a property interest held by one person (the trustee) at the request of another person (the settlor) for the benefit of a third party (the beneficiary).² It is essentially a three-way relationship about a piece of property. Why does this matter? Well, to me the way the Indians used the trust is fascinating, because it seems to have combined notions of private property with communal identity. As Schneider says: they bought “private property” “for the benefit of the tribe and to be used collectively” (8). I would like a little more information about how these “private trusts” worked in real life. Were there ever any disputes between trustees and beneficiaries? People must have been angry when the trustee William Duncan mortgaged and lost the whole Coyote Valley rancheria. Then there’s the question of inheritance, which is always a moment when identities get clarified and disputed. And that, I think, might be an archival window. If, as Schneider says, the point was to make sure that “Indians themselves held the land for future generations of tribal members,” how was the land inherited? When tribal members had children with non-members (married or not), this question would have had implications for “tribal” boundaries. The trusteeships are the other side of the relationship. How did Captain Jack and the others pass down their trusteeship? If things went as they did in other states, then when Captain

² *Black's Law Dictionary*, 8th ed., 1546.

Jack died, somebody would have had to go to a local court (specifically an equity court) to petition for new trustees to be appointed. And that might have left a paper trail.

As Schneider hints at the end, these are “high stakes questions” today. You only have to think of a place like Mohegan Sun casino to realize the big money and politics that are tied up in the question of “Indian land.” These debates seem to come out of nowhere, but Schneider shows that they actually draw from longstanding processes of adaptation and redefinition in “Indian land tenure” and Indians’ relationship with state and federal governments. I thank him for giving me a chance to read and think about this important part of human history.