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**“A Bundle of Silences: Reimagining Interpretive Approaches to the Past”
Webinar Transcript**

Interpretive Theme: Property and Sovereignty

Webinar Title: Property and Sovereignty: Native Americans and the United States

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Webinar Transcript:

Hello, I’m Jimmy Sweet, a professor in the American Studies Department at Rutgers New Brunswick. This lecture, entitled “Property and Sovereignty: Native Americans and the United States,” will examine understandings of Native American sovereignty and the role of the United States in the dispossession of Native American land.

I want to start off by defining the two key concepts. For the purposes of this lecture, property refers to land and its natural resources, individual land ownership, and land or territory owned by a particular nation. Sovereignty refers to the power or authority of a people or nation to govern itself and its land and resources and the right of a nation to govern and regulate property or territory within the nation. Native American tribes were, and still are sovereign nations whose sovereignty long predates the existence of the United States. The federal government recognizes 574 sovereign tribal nations, although the US perceives them as “domestic dependent nations” rather than fully independent nations. However, tribal nations dispute this, maintaining that they are fully sovereign nations. Native American nations certainly had contentious relationships with previous colonial powers like the British, French, and Spanish, but with the birth of the United States with the Declaration of Independence in 1776, this forever changed the trajectory of the history of Native Americans and the land on which they resided. This lecture outlines that long relationship between tribes, the United States, and how Native American land became American land over time.

We will start by introducing the broader history of interactions between Euro-Americans and Native Americans, which largely centered on theft of Native American lands and the various ways that Native Americans resisted. Next, we will look at the case study of the Lenape people in and around New Jersey. Finally, we will examine how Native American nations continue to fight for their land and resources and fight to maintain their sovereignty today.

First we will look at Part 1: an overview of the relationship between the United States and Native American nations and the realities of Native American property and sovereignty in American history

This history starts long before the birth of the United States in 1776 and begins with first contacts in the late 15th century. The Doctrine of Discovery is a legal concept that says that Native American nations do not have rights over their own land. With roots in various Papal Bulls going back to the 1450s, and especially with Pope Alexander VI's Papal bull from 1493, the Doctrine of Discovery says that whichever European nation first discovers land, owns and holds sovereignty over that land, despite the rights of the Native people who had already been living there for tens of thousands of years.

In the following centuries, many European nations used the Doctrine of Discovery to claim land in the Americas, including Great Britain, France, Spain, Portugal, Russia, the Netherlands, and Sweden. Soon after American independence, Thomas Jefferson declared that the US had inherited the Doctrine of Discovery. Since then, despite the obvious bias of the doctrine, the US Supreme Court and numerous lower courts have repeatedly upheld the Doctrine of Discovery and it has become officially codified in US law. By the 1800s, Americans developed the concept into a belief in Manifest Destiny, in which Americans believed they were morally superior and had a duty to spread the American way of life across the continent, no matter what the effect would be on Native Americans.

The Doctrine of Discovery is still the legal basis for the right of existence of the United States and other settler colonial nations, and it is based in racist, medieval beliefs of European, Christian superiority, essentially denying the basic human rights of Native Americans. We will skip forward a bit. Between 1778 and 1871, the new US government ratified nearly 400 treaties with Native American nations.

Treaties are nation-to-nation agreements and nations can't make treaties with their own people. These treaties demonstrate that the US government recognized the national sovereignty of Native nations. Most of these treaties concern land—either Native land cessions to the United States, the creation of Indian Reservations, setting boundaries on tribal lands, or provided the legal basis for the US government to remove Native nations from their traditional homelands.

Many of these treaties are still in effect, and because the US Constitution says that treaties are the "supreme law of the land," the federal government is obligated to continue to carry out its obligations as set out in the treaties. Unfortunately, the US government has largely failed to live up to its end of the bargain in most of these treaties. Knowing that forcing tribes to cede most of their land meant they would not be able to support themselves in the way they had previously, in most of these treaties, the US government agreed to provide support. That support has only grudgingly been given leading to generational poverty among Native Americans.

In 1871, Congress said it would no longer ratify treaties with Native American nations, because the US was no longer willing to treat tribes as sovereign nations, but that did not end American obligation for those treaties already in effect. All of these treaties involved coercion in some way. Tribal leaders were sometimes threatened with violence or threatened that their land would be taken from them anyway. At other times they were lied to about what was in the treaty, or the Senate unilaterally changed the treaty before ratification. Treaties are controversial, but Native American nations continue to uphold them and fight for the US government to uphold their treaty obligations.

Throughout this period, tribes resisted by going to court, harassing invaders on their land, or going to war with the United States, which often resulted in the US Army slaughtering hundreds of Native American men, women, and children to get them to comply with American demands.

Over the course of US history, there have been numerous governmental policies aimed at taking more Native American land and attacking the sovereignty of Native American nations. An important concept here is dispossession, which refers to the tactics the US government has used over the years to take Native American land and resources. In the past 250 years there have been numerous such policies, but we will examine 3 of them today: Indian Removal, which refers to the forced removal of Native American nations from their homelands; allotment, which is the division of Native-owned land into individual land ownership; and Termination, a policy meant to destroy Native American sovereignty.

Indian Removal policy gets its name from the Indian Removal Act of 1830, in which the government enacted a law permitting the US government to forcibly remove Native American nations from their ancestral territories. Most people have heard of the Cherokee Trail of Tears, but many tribes, from all over the US, experienced similar removals for the next 60 years. Beyond the southeast, numerous tribes from the northeast, Midwest, the Great Plains, the southwest, and the Pacific Northwest experienced removal from their homelands, against their will. Many of those tribes were removed to what was called Indian Territory, modern day Oklahoma and parts of Kansas. The government removed other tribes to places like Wisconsin and Minnesota, or, in cases like the Apache, were held as prisoners of war in Alabama and other places for years.

This map shows an example of just one nation, the Ho-chunk people, also known as the Winnebago. Over a generation, from the 1830s to the 1860s, the federal government forced them to leave their homelands in Wisconsin and Illinois and placed them on various reservations in the Midwest. As settlers wanted their land, the government would remove them again to yet another reservation. Some managed to return to their homelands and today the federal government recognizes two Ho-Chunk nations, one on a reservation in Nebraska, the other on a reservation in Wisconsin. This case study demonstrates just how much removal disrupted the lives of Native Americans. Imagine having to build a new home and new farm every few years when you were forced to move against your will. Removal also split Native nations, forcing them to create separate sovereign governments, rather than try to govern land and people separated by great distances.

It was during this period of removal, 1830 to 1887, when the vast majority of Indian Reservations were created on the remnants of Native American land. By the end of this period, the vast majority of Native Americans lived on reservations. Some people resisted removal by hiding out or sneaking back into their homelands later. Others, like the Cherokee, unsuccessfully tried to use the American legal system to uphold their rights. The Removal Era was difficult for Native Americans, many were disconnected from their sacred sites, from the cemeteries of their relatives, the places where their traditional foods and medicines grew, and the only homes they had ever known. To make the problem worse, they were not removed to empty land, they were placed on the homelands of other tribes, greatly disrupting those Native nations in the process.

Indian Removal policy was replaced in 1887 by Allotment Policy, through the passage of the General Allotment Act, also called the Dawes Act. The government shifted their policies toward Native Americans every few decades or so to change with new political realities, but also to find new ways to acquire Native American land and limit tribal sovereignty.

By 1887, the government had already forced the vast majority of Native Americans onto reservations and there were no unsettled areas left to remove them to. The federal government then focused their efforts on reducing Native American reservation lands by forcing them to accept individual land ownership. Allotment was an attack on Native American sovereignty. It forced tribes to dispose of their common landholdings and made it more difficult for tribal governments to control what little land and resources remained to them.

The government saw this is a kind of assimilation policy. American policy makers believed individual landownership would force Native Americans to become farmers and assimilate into American culture. It was also intended to break down tribal governments and institutions. Not all reservation lands were allotted, but in the period from 1887 to 1934, Native Americans were dispossessed of nearly 100 million acres, or two-thirds of the land they held in 1887. This map shows the reservation of the Cherokee Nation of Oklahoma, with the orange representing the lands still owned by Cherokee people after allotment. Many individuals were then cheated out of their lands or were forced to sell to feed their families.

Some Native American nations resisted allotment by organizing their tribes to fight against it and some individuals refused to accept allotments. Just like the previous Removal Era, the Allotment Era between 1887 and 1934 further shattered the lives of Native Americans. After World War II, American policy makers shifted to a new policy, called Termination. The purpose of the policy was to extinguish the sovereignty of Native American nations, end the existence of Indian reservations, abolish tribal governments, end the federal government's costly treaty obligations, and encourage Native Americans to assimilate into the broader American culture.

The federal government terminated over 100 tribes during this period, with devastating results for those tribes. They lost their land, their tribal governments no longer held legal standing, and tribal members were quickly reduced to poverty. In the years following, the federal government has restored some of those tribes, but most are still unrecognized and have been stripped of all the rights of sovereign nations. At the same time, the government passed other laws to try to get Native Americans to leave their reservations and assimilate into American culture.

One of the most significant of these laws was the Indian Relocation Act of 1956, which encouraged Native Americans to move to cities approved for the program. In the following decades, hundreds of thousands of Native Americans moved to cities hoping for a better life, and by 1980 the majority of Native Americans lived in cities rather than Indian reservations. However, the program failed to adequately uphold its promises to help Native families find housing, jobs, and educational opportunities when they arrived. Many Native Americans found the support insufficient or nonexistent and had difficulty finding housing and jobs due to anti-Native American racism. This period saw additional loss of Native American land and the additional breakdown of sovereignty for those nations that experienced Termination.

Termination and the previous policies were so devastating to Native American nations, that by the 1960s, inspired by the Civil Rights Movement, many Native Americans began to fight back in new ways. Broadly called the Red Power Movement, Native Americans resisted by founding various activist organizations like the National Congress of American Indians, the American Indian Movement, and the American Indian Youth Council. They participated in protests and civil disobedience across the country. These images are from two of the most famous events of the Red Power Movement, the occupation of

Alcatraz Island in California from 1969 to 1971, and the occupation of the town of Wounded Knee in South Dakota in 1973. These protests, along with the larger changes brought on by the Civil Rights Movement, effectively ended Termination Policy. While conditions for Native Americans have generally improved over the last 50 years, as we will see later in this lecture, they still fight to protect their land and their sovereignty.

Now we will look a little closer to home and examine property and sovereignty of the Lenape Nation in and around New Jersey. New Jersey is the homeland of the Lenape people, which they call Lenapehoking. The Lenape, also called the Lenni Lenape or Delaware people, were historically a loose association of autonomous groups with a similar culture and language. The history of property and sovereignty is largely different for each tribe, and East Coast tribes often experienced pressures on their lands and cultures much earlier and for a much longer period of time than tribes further west. For this case study, we will travel back in time and look at Lenape history over a broader timeline.

This is a deep and complex history, but I want to illustrate the role of property and sovereignty among the Lenape people. This is just one example of the many ways that settlers would cheat, coerce, intimidate, or threaten to acquire Native land. In 1737, the leaders of the Pennsylvania colony worked out a deal with the Lenape to acquire a piece of land west of the Delaware River in modern-day Pennsylvania. The Lenape leaders agreed to cede a small tract of land the length of which was to extend the normal walking distance of a man for a day and a half. The Lenape entered the deal with the understanding that this was meant to be a normal walking pace. Instead, Pennsylvania leaders tasked three of the colony's fastest runners to run the distance as fast as they could. One of the three ran 70 miles, and the settlers marked that as the boundary.

This resulted in a land cession to Pennsylvania settlers of over 1.2 million acres, many times larger than the Lenape had intended to cede. The Lenape protested and looked to their allies, the Iroquois, to help them, but the Iroquois refused to get involved. As a result of the deception of the settlers, the Lenape were forced to abandon a large portion of their land. With the start of the American Revolution in 1776, the first official treaty the US negotiated was with the Lenape Nation in 1778. The treaty was meant to create a military alliance between the US and the Lenape Nation. The US would have right of passage over Lenape territory to attack the British. In return, the US promised weapons, clothing, and other goods, and the US promised to build a fort in their territory to protect Lenape women and children while Lenape men were fighting against the British.

The treaty recognized the Lenape as a sovereign nation, but it also said that if they so chose, the Lenape could organize a state, headed by their own people, and could send representatives to the Continental Congress. However, ill treatment by the US, such as failure to provide the promised goods, harassment of Lenape people, and the assassination of a Lenape chief, led the alliance to collapse the next year. From the signing of its very first official treaty, the US set a precedent of quickly renegeing on its promises and treaty obligations to Native nations.

The final nail in the coffin in the Lenape-US alliance was the Gnadenhutten massacre in 1782. Gnadenhutten was a village of Christian Lenape people in Ohio, one of several such villages that had been pushed westward. The name comes from German missionaries who lived among them. American militia members suspected that some of the Lenape men in the village had been conducting raids on settlements in Pennsylvania, which they had not.

The militia members held a vote and decided to kill all of the inhabitants of the village, nearly 100 people, most of whom were women and children. This slaughter had the opposite effect and pushed many Lenape people to side with the British against the Americans. Most of the remaining Christian Lenape in the region moved northward into modern-day southern Ontario soon after and their descendants live on Reserves in Canada. In this case, violence enacted American militia members forced some Lenape to abandon their lands in the US and move to British occupied Canada. Beyond treaties and policies, the US acquired much of its land through sheer violence and intimidation of Native Americans.

Now I will talk about the broader history of the land dispossession of the Lenape people. The Dutch and the Swedes were the first European colonial powers to settle in what is now New Jersey but the main influx of settlers began after the English defeated the Dutch in 1664. While the Dutch were in power, they tried to violently subjugate the Lenape, leading some to start moving westward into Pennsylvania by the mid-1600s. But after 1664, much larger numbers of settlers began pouring into the area, and through stealing and squatting on Lenape land and trying to destroy the Lenape way of life, settlers made life unbearable for many Lenape, and many more began moving westward to get away from the new settlers.

For generations, the US periodically forced the Lenape to abandon their homes and move ever westward. Sometimes they moved to maintain their cohesiveness as a sovereign nation and to maintain their culture, at other times they were forced off by coercive treaties or even violence. From New Jersey, they moved into Pennsylvania and then Ohio by the mid-1700s. From there, the Lenape split and moved several directions. Some were forced to move into Indiana, then Kansas, and finally Oklahoma. Another group moved southward into Missouri by the early 1800s then Texas, then Oklahoma. With each move though, some families broke off and managed to hold on in many places, creating a large diaspora of Lenape people across the continent.

This constant attack on Lenape land and sovereignty divided the Lenape who now reside in Oklahoma, Wisconsin, Ohio, and in Canada. But some Lenape people stayed in New Jersey and went into hiding for generations. Their descendants are still here and are recognized by the State of New Jersey. New Jersey recognizes three tribes: the Ramapough Lenape Nation, the Nanticoke-Lenni Lenape Tribal Nation, and the Powhatan Renape Nation. Over the centuries, the US and previous colonial powers carried out some of the most extreme and relentless tactics of dispossession and attacks on the sovereignty of the Lenape people.

Now I will go into the ongoing fights over Native American land and sovereignty. This situation is not a thing of the past for Native Americans. They continue to fight against continued theft and destruction of their lands and continue to fight to strengthen tribal sovereignty. There are many ways that Native American land and sovereignty are still endangered and under attack. I will now highlight two modern examples, but keep in mind there are many others.

First, we will look at environmental devastation. Numerous industries look to Native American lands as dumping grounds or prime lands for exploitation. Such industries often use Native lands because they can get around state laws prohibiting the dumping of toxic materials. The federal government then approves various mining and other environmentally destructive activities on Native American lands, and has done so for decades. From the dumping of toxic waste, pollution of water, and the building of dangerous oil pipelines, many Native American lands have been rendered unusable for

residential or agricultural purposes. Many of the dams built in the 20th century were built in a place so that they would primarily flood Native American lands. Some Native lands were used for bombing ranges and nuclear test sites.

Closer to home, the Ramapough Lenape Nation of northern New Jersey have seen some of their ancestral lands become an Environmental Protection Agency Superfund Site because of years of dumping of toxic paint sludge by the Ford Motor Company. This dumping has caused the deaths of tribal members and is an ongoing health hazard. At the same time, the Ramapough and their allies successfully fought off the Pilgrim Oil Pipeline that was planned to go through their ancestral lands.

Native Americans continue to fight against environmental devastation of their lands and American land more broadly. One of the most visible protests was the Dakota Access Pipeline protests in North Dakota in 2016 and 2017. Oil pipelines threatened the primary water source of the Standing Rock reservation, and the protests attracted Native Americans and their allies from all over the country. However, the pushback by various police forces resulted in 6 deaths, hundreds of injuries and hundreds more arrests of activists trying to protect Native American lands. Native American protest continues, but rarely do their protests receive national attention like their protests did at Standing Rock.

I want to reiterate that tribes are sovereign nations, they have their own political systems, governments, constitutions, and court systems. However, the legal jurisdiction of tribes has been muddied by various laws, which serves to limit the sovereignty of tribal nations to prosecute crimes. In 1885, Congress enacted the Major Crimes Act, which took jurisdiction away from tribes for major crimes and put that jurisdiction in the federal government to prosecute those crimes. Major crimes include murder, attempted murder, rape, arson, burglary, and a few others. Another law, in 1953, Public Law 280, put jurisdiction for most crimes into the hands of state governments, but only about a dozen states have this jurisdiction.

This has created a patchwork of legal jurisdictions on tribal lands. When a crime is committed, the tribe, state, or federal government might have jurisdiction depending on the crime, or what state the tribe is in. Tribes have limited jurisdiction depending on whether the crime happened on or off the reservation, the perpetrator was a member of the tribe or not, or who the crime was committed against. This often creates massive confusion of jurisdiction and causes many crimes to fall through the cracks. Additionally, because the federal government often has limited resources on rural tribal lands, many crimes the federal government is responsible for go unpunished. This murky jurisdictional situation limits the sovereignty of tribal governments whose courts are often prohibited from prosecuting crimes against their people.

We're coming to the end of this lecture and I want to reiterate several points. The United States exists only because it upholds racist concepts like the Doctrine of Discovery and through the theft of Native American land over the past 250 years. This does not erase the fact that Native Americans still exist as sovereign nations and that the U.S. has treaty obligations to many of those tribes as guaranteed in the U.S. Constitution. Finally, there are three tribes still in New Jersey, recognized by the state, that still hold sovereignty, and continue to fight the destruction and loss of their lands.

Most Americans view the founding of the United States with an uncritical eye, but we must understand that for Native Americans, the foundation of the US has had tremendous costs: the theft of their land, murder of their people, and attacks on their cultures and tribal sovereignty has done

irreparable harm to Native American nations. But Native Americans have always resisted. They have persevered, and are still here. We can both celebrate the founding of the United States, while also fighting to protect and restore Native American lands.