

**“THERE ARE MANY KINDS OF JUSTICE”:
CONFESSING GROWING UP AN INDIAN
LEGAL SUBJECT IN LOUISE ERDRICH’S
*THE ROUND HOUSE***

Cornelia VLAICU*

Independent scholar

Abstract

This paper looks at Ojibwe writer Louise Erdrich’s National Book Award-winning *The Round House* as a novel that mixes and reworks genres from a Native American perspective to narrativize the “(post)colonial” (Cheyfitz) status of contemporary American Indian nations. An autobiographical story that can be read as a “postcolonial *Bildungsroman*” (Nayar), *The Round House* uses crime fiction as a pretext for writing Indian sovereignty. The legal is fully involved in the construction of the Indian colonized subject. Erdrich’s novel can be read as a confession to “a wrong thing that serves an ideal justice” (*RH* 306). The main character’s statement that “[t]he sentence was to endure” (*RH* 317) can be understood both in terms of his admitted moral guilt, and as a proclamation of “survival” (G. Vizenor). The paper approaches the novel in light of the inseparability of U.S. federal Indian law and American Indian literature (Cheyfitz). My reading relies on Lyotard’s “différend” and on Agamben’s “state of exception” to discuss the plot and its *dénouement* as Erdrich’s way to wage a contemporary “Indian war” (E. Cook-Lynn).

Keywords: *autobiography, federal Indian law, tribal law, différend, state of exception, decolonization, sovereignty*

Defining Louise Erdrich’s 2012 National Book Award-winning *The Round House* “is, at first glance, a mixture of crime fiction and coming-of-age novel” (Däwes 431); at a second glance, it is a story about justice in the colonially-formed space that Mary Louise Pratt called a “contact zone.”

* corneliavlaicu@yahoo.com

The novel is the autobiographical narrative of an Ojibwe boy, Joe, who lives on a (fictional) North Dakota reservation and, in the thirteenth summer of his life, goes through a painful experience which is as formative as it is disruptive. Joe is the son of the tribal judge Antone Bazil Coutts; his mother, Geraldine, is a tribal enrollment officer. The peace of the boy's summer vacation of 1988 is violently shattered when his mother gets abducted and raped. The traumatic shock makes Geraldine sever all communication with her family and friends; she isolates herself in silence and in the darkness of her bedroom until she is reduced to "a crease in the blankets" (RH 154). Her husband, the judge, avoids the word "rape" for it is too painfully precise about what happened and uses the term "attack" for its neutrality. Joe is overwhelmed by the awareness that he has irretrievably lost his "before mom" (RH 193) and his childhood as a comfortable space as well. Judge Coutts is legally powerless to achieve justice for his wife due to a cluster of intricate territorial, personal, and subject-matter jurisdictional conflicts which make the prosecution of the perpetrator impossible. Joe gradually gets the understanding that these conflicts are generated by the provisions of federal Indian law which, along the history of Indian-white relations in the colonial context, have been established to limit Native sovereignty. As he takes it upon himself to discover the truth about the rapist's identity and do justice, Joe abruptly matures into an Indian legal subject with the awareness of the complicated collective meaning of this status.

Joe's investigation is a process of negotiating justice in the "contact zone." Mary Louise Pratt's concept refers to

[...] the space of imperial encounters, [...] in which peoples geographically and historically separated come into contact with each other and establish ongoing relations, usually involving conditions of coercion, radical inequality, and intractable conflict. (8)

The first-person narrator of the book is the adult Joe, now a tribal legal professional himself. He gives the account of his unnaturally quick growing up in the aftermath of the attack. The painful series of events he and his family go through matures Joe as much as does his understanding of Indianness to be a shifting personal and collective experience specific of the "contact zone," rather than a stable condition. The attack unbalances Joe's life and triggers an (unwillingly taken) identity quest, a process out of which his way of being Indian emerges as "transformative practice" according to a model of "articulation" as "a singular becoming" (Grossberg, *Identity and Cultural Studies* 88).

The notion of emergence is implicit in the development of the novel's plot even if it sometimes appears unattainable: "I had believed" – Joe says in retrospect – "that my real mother would emerge at some point. I would get my

before mom back. But now it entered my head that this might not happen. [...] Some warm part of her was gone and might not return” (RH 193). No “before” can possibly return, and the colonial experience of the Indian cannot be reversed either. Joe insists that forced aging was induced upon him and his parents by the summer’s events: “And there was the moment when my mother and father walked in the door disguised as old people. [...] At the same time, I found, as I rose from the chair, I’d gotten old along with them” (RH 317). This suggests a reenactment of the colonial story, a similarly forced insertion of the Indian into a history that was, from a Western perspective, necessarily progressive. That implied a traumatic separation from a condition described as savagery at the moment of the first encounter and later interpreted as a form of perpetual childhood.²

Joe’s story is a trauma testimonial, he perceives the attack on his mother as a blow to his teenage world. It dramatically impacts his family and even the community. Erdrich’s choice of the first-person narrative by a character other than the victim is significant in multiple ways. Through the fictional life narrative of Joe’s, who witnesses how the history of Native-white relations gets inscribed upon his family and community, Erdrich places that history itself as a site of trauma for the American Indian. She engages with the autobiographical to give voice to people who have historically been denied it. Narratives of the Other, Sidonie Smith and Julia Watson argue, were not recognized as autobiographies. That is because autobiography has to do with personhood, and that is exactly what was denied to the “marginal, invalidated, invisible” (3) peoples. That Joe tells the story of the traumatic occurrence which silences his mother, and that he makes room for other voices, such as Linda Wishkob’s, Mooshum’s, and his father’s—who contribute stories intersecting with his own—indicates a sense of self that Arnold Krupat terms “synechdochic” (176). He views it as specifically Indian:

[I]nsofar as we would attempt to generalize about the Native American self [...], that self [...] would seem relatively uninterested in such things as the ‘I-am-Me’ experience, and a sense of uniqueness and individuality. More positively, one might perhaps instantiate an I-am-We experience as descriptive of the Native sense of self, where [...] I

² There is a vast critical literature that focuses on the colonially-constructed stereotype of the Indian as “savage,” and on how this representation, vacillating between “benign and hostile” (Bataille 1), but in any case “no less debilitating” (Lyons 210), has constituted the basis for the formulation of Indian policy. An enlightening summary (which is just one of many by a large number of Native authors) of the evolution of such policies directed at solving the “Indian problem” is provided by Scott Richard Lyons in his article “‘Indians’: Constructed and Speaking.”

understand myself as a self only in relation to the coherent and bounded whole of which I am a part. (Krupat 171)

As the hero of his own story, Joe performs an act of (re)subjectification. He is an Indian boy, an Other: “Don’t you Indians have your own hospital over there?” (RH 8) a white woman says to him while he is waiting for news of his mother outside the emergency ward after the attack; the woman’s remark translates the mainstream’s understanding of the Indian as different and inferior, and the fact that Geraldine is obviously injured, her clothes stained with blood, which the white woman later comments might be because of miscarriage, does not inspire a womanly solidarity, for what takes precedence is that she is Indian. Memory “is not only individual but cultural; although private, memory draws on larger cultural narratives and knowledges”; “we remember things in the context of what they mean,” and “memory is political” (Hodgkin and Radstone 5). Joe is aware of the performative nature of his autobiographical storytelling, he addresses his readership at times. In Judith Butler’s view, “a performative is that discursive practice that enacts or produces that which it names” (374). Since – Sidonie Smith argues – “the narrator is both the same and not the same as the autobiographer, and [...] the subject of narration,” it follows that “narrative performativity constitutes interiority” (109). Joe performs to his public a political act of memory. According to W. J. T. Mitchell, “[m]emory is an intersubjective phenomenon, a practice not only of recollection of a past *by* a subject, but a recollection *for* another subject”; it is “a collective recollection of a social past” (193). Out of this performative process of memory, which selects what is culturally meaningful for the private, Joe emerges with an Indian subjectivity, maybe marginal, but certainly validated and visible.

“[O]ne writes in order to become someone other than who one is” (Foucault, qtd. in Simons 96). That suggests a “transgressive practice” (Simons 95), which also operates in Joe’s case. As an Indian boy, he is an anti-hero for what Nayar terms the “classical European *bildungsroman*,” in which the hero’s “internal development ties in with social requirements” (98). Joe’s story is, in Nayar’s terms, a “dissensual *bildungsroman*,” which is “a narrative of the *dissonance* between self-determination and integration” (99). Integration, in Joe’s case, would mean to acquiesce to the disempowerment forced upon the Native, as will become apparent as the story of the Coutts family’s experience with federal Indian law unfurls. According to Nayar,

The dissensual *bildungsroman* may [...] be read as the narrative rupture between the rhetoric of equality, democracy and rights and the lived experience of destitutes [...]. Second, the dissensual *bildungsroman* produces a different kind of subject [...], one whose agency and autonomy have been thwarted but who is beginning to acquire the consciousness that his/ her agency has been thwarted. That is to say, the

dissensual *bildungsroman* maps obstacles in the path of growing up, the social contexts that refuse integration by refusing any sense of self—and this itself is the making of a subject. [...] A third significant component of the postcolonial *bildungsroman* is that the social integration that is central to the sense of self emphasizes a commonality of suffering [...] and shared agony. (Nayar 99-100)

Joe starts out as the tribal judge's son, interested in his father's legal books, in particular Felix S. Cohen's *Handbook of Federal Indian Law*. From it he gets the idea "that our treaties with the government were like treaties with foreign nations. That the grandeur and power [...] wasn't entirely lost [...], still protected by the law" (RH 2). While the *Handbook* is certainly correct about the treaties to formalize "international sovereign to international sovereign relationships" (Wilkins 105), this belief in the "grandeur and power" of the Indian is, however, a symptom of what Gloria Bird calls the "colonization of the mind" of the Native, since these qualities are connected to the mainstream stereotype of the Noble Savage and this figure is by definition relegated to the past—that Indian whose glorious time is gone and who must vanish from history:

I cannot help but view the world around me as evidence that we are living with the results of our colonization: that the image of "the end of trail" is popular back home on the reservation reminds me every time I see that image on a beaded bag, on scarves, or when that image is given a prominent place on a wall that we as a people buy into the notion of ourselves as "vanishing." That image of ourselves as "dying" pervades not only the ways we have all been taught to view ourselves as Othered and vanishing from the outside in, but can also be viewed as the successful colonization of our minds. (Bird 1)

Joe will soon find out that the legal protection he believes in is lost in a "maze of injustice"³ that actually hampers the achievement of justice for the Indian subject.

Erdrich's choice of a rape case with a Native woman victim for the starting point of the story is, again, multiply meaningful:

[B]ecause the Ojibwe clan system is matrilineal, such contemporary violence constitutes an attack on Ojibwe traditions [...] not only because Geraldine is the primary mother figure in the novel but also because, as the tribal enrollment officer, she is the person who holds community memory and establishes community belonging. (Cheyfitz and Huhndorf 275)

³ "Maze of Injustice" is the title of a 2009 report by Amnesty International, quoted by Erdrich in the Afterword to *The Round House*.

Additionally, there is the suggestion that the violence against Geraldine, the Indian woman, parallels the colonial violence justified by the known image of America as a wilderness to be tamed and the understanding of wilderness as feminine, all compounded with the stereotypical view of the Native woman as possessed by the unrestrained, inviting sexuality of the “savage.”

In an interview given after she received the National Book Award for *The Round House*, Erdrich called it “a suspense novel masking a crusade.”⁴ She thus describes her book as a literary achievement imbued with an activism inherent to contemporary Native American writers: “[f]or most American Indian artists, [...] it is impossible to simply walk away from the social ills that threaten our communities to engage in an art that prioritizes aesthetics at the cost of ignoring the things that are killing us” (Womack, *A Single Decade* 8). Erdrich uses the suspense format (and, for that matter, the Western-born autobiography and *Bildungsroman*) as a way to introduce “a discussion of jurisdictional issues on reservations, of how tribal courts cannot prosecute a non-Native who commits a crime in Indian country” (*10 Questions*) to a wide public. The writer’s speech at the National Book Awards highlighted her sense of a voice making itself heard. She offered her *miigwech* (thanks) in Ojibwe language, and accepted the award “in recognition of the grace and endurance of Native women,” whose experience is “a huge case of injustice ongoing on the reservations.”⁵ In a *New York Times* article – “Rape on the Reservation” – as well as in an interview for the National Public Radio (quoted by Julie Tharp in her article “Erdrich’s Crusade: Sexual Violence in *The Round House*”), Erdrich addresses the overwhelming reality of extensive sexual violence against Native women: “The Justice Department reports that one in three Native women is raped over her lifetime [...]. [F]ederal prosecutors decline to prosecute 67 percent of sexual abuse cases [...] More than 80 percent of sex crimes on reservations are committed by non-Indian men, who are immune from prosecution by tribal courts.”⁶ In the *Afterword* to the novel, Erdrich mentions a 2009 report by Amnesty International, which shows that “1 in 3 Native women will be raped in her lifetime (and that figure is certainly higher as Native women often do not report rape); 86 percent of rapes and sexual assaults upon Native women are perpetrated by non-Native men; few are prosecuted” (RH 319).

⁴ The interview, given to Belinda Luscombe, was published in the *Time Magazine* on January 14, 2013 under the title “10 Questions for Louise Erdrich,” and is available at <http://content.time.com/time/subscriber/article/0,33009,2132753,00.html>

⁵ Louise Erdrich’s National Book Award acceptance speech is available at http://www.nationalbook.org/nba2012_f_erdrich.html#.WfJTDNSLTDC

⁶ Erdrich’s article “Rape on the Reservation” was published in *The New York Times* on February 26, 2013 and is available at <http://www.nytimes.com/2013/02/27/opinion/native-americans-and-the-violence-against-women-act.html>

Statistics come up with scary figures, which concur with Erdrich's interpretation that this kind of violence has become the "norm" (Van Styvendale)⁷, so much so that Indian women have come to regard it as part of life: "I found out that Native mothers prepare their daughters to be raped, how to behave when it happens, you know, that's something considered unavoidable" (Erdrich qtd. in Tharp 28).

Erdrich's choice of the word "crusade" is consonant with the sense of the continuation of Indian Wars—which Elizabeth Cook-Lynn outlines in her book *New Indians, Old Wars*—that is, the employment of literature as a vehicle for decolonization. Cook-Lynn argues, along with a host of other Native American authors, that, in the colonial encounter, "[t]he native occupants who had lived on the continent for thousands of years were curiosities to the newcomers and very soon were considered enemies. [...] A long period of war and death was the consequence" (2). Accordingly, she views writing by contemporary Native American authors as a mission, they have a "sacred responsibility to write" (1). Erdrich's literary "crusade" also resonates with Gerald Vizenor's "postindian" warriorship:

The postindian warriors encounter their enemies with the same courage in literature as their ancestors once evinced on horses, and they create their stories with a new sense of survivance. The warriors [...] counter the manifest manners of domination. (*Manifest Manners* 4)

The timeliness and appropriateness of Erdrich's "crusade" reside in the "(post)colonial" status of the Indian, which Eric Cheyfitz graphically represents by placing "post" between parentheses "to register the particularity of the ongoing colonial regime in Indian country, where Native citizens of the United States are simultaneously colonized citizens of the Indian nations" (3).

The Indian law issue is sharply brought in focus as judge Coutts calls the police after the attack: "Which police?" Joe asks. "Exactly," his father answers (RH 12). The laconic dialogue prefaces Joe's full understanding of the intricacies of federal Indian law as co-opted by the colonial project, the way it operates to shape the "lived experience" (Nayar) of the Indian. The judge calls the representatives of three police jurisdictions – a state trooper, a city police officer, and the tribal police, for one of them will have the legal authority to

⁷ Nancy Van Styvendale writes that a Western definition of trauma as an event, an occurrence outside the norm, as viewed by Cathy Caruth and other authors, runs the risk of not recognizing the "ongoing domestic colonization" (203) which affects the Native people; she argues for looking at Native trauma as "trans/historical" in the sense that the traumatic is the "norm" for Indigenous peoples and that any personal trauma only gets compounded with the intergenerationally transmitted collective suffering of Indian nations.

investigate the attack based on whether it was committed on state or tribal land and by an Indian or a white man.

The fact that the rapist is a non-Indian shifts the focus of the story from the individual traumatic event to the collective colonial experience. In the rapist's case, the justification for his crime is at the same time personal (revenge) and cultural (the Indian's refusal to become extinct, according to the stereotype). The rapist, Linden Lark, is a white man who has links to the Indian community through his twin sister, Linda. She is abandoned at birth because she does not look viable. Saved by an Indian nurse, Linda is raised by this woman's family, the Wishkobs, and grows up as an adopted member of the Native community. Her brother, Linden, has real estate interests on the reservation and becomes resentful of judge Coutts because the latter dismisses his family's land claims under the tribal law. The land issue and Lark's non-Nativeness imply a colonial nature of the conflict. Lark's reasons for the rape, which he discloses in a monologue to Geraldine and another Native woman, Mayla (who requests Joe's mother's support in order to register her child by a white politician as a member of the tribe, and whose life Geraldine seeks to protect by remaining silent about the rapist's identity) stems directly from the discourse of conquest, highlighting the theory of the white man's superiority and entitlement to dominate the Native:

I am one of those people who just hates Indians generally and especially for they were at odds with my folks way back but especially my feeling is that Indian women are – what he called us, I don't want to say [Geraldine manages to testify to her husband as she starts to regain her voice]. He screamed at Mayla and said he loved her, yet she had another man's baby, she did this to him. [...] You should be crated up and thrown in the lake for what you've done to my emotions! He said we have no standing under the law for a good reason and yet have continued to diminish the white man and to take his honor. [...] I won't get caught, he said. I've been boning up on law. [...] He nudged me with his shoe. I know as much law as a judge. Know any judges? I have no fear. Things are the wrong way around, he said. But here in this place I make things the right way around for me. The strong should rule the weak. Instead of the weak the strong! (RH 161)

Lark's speech calls up a whole history of Indian-white relations, intended on silencing the Native. As he tries to set Geraldine on fire, Lark continues: "I don't know what to do with the evidence. Silly me. Maybe I should burn the evidence. You know, they're just evidence" (RH 162). While he appears concerned with his own crime, Lark actually refers to the women as evidence of the continued existence of the Native, which contradicts the doctrine of the *terra nullius* on which colonization was based, as well as the myth of the Indian as the "vanishing" race.

The detective side of the story is a pretext for Erdrich's narrativization of the current status of the Native under the federal Indian law. The narrator and reader get to know soon enough who the rapist is. The remaining half of the novel is about seeking justice in the colonial "contact zone." Joe understands how federal Indian law was historically formulated to serve the colonial purpose. The sexual colonization of Geraldine is about the colonial violence seeking to effect the destruction of the Native spirit. The blinding and silencing of the Native victim of violence are represented in the novel by Lark's blindfolding Geraldine as he guides her to the crime scene, and by threatening to kill Mayla if she speaks. Geraldine is denied eyewitnessing and testifying to her traumatic experience; by getting entangled in the intricacies of the law, she is literally and symbolically rendered inexistent, the "vanished" Native.

Joe memorializes his journey of subjectification, which parallels his quest for justice. He has internalized the discourse of colonization promoted via popular culture. He and his friends cherish the movie series *Star Trek: The New Generation*. That appears normal for a teenager of his time. It suggests Erdrich's engagement with the *Bildungsroman*, a narrative of constructing the hero's quest as a journey of subjectification within the accepted social norm. Erdrich's purpose, though, is not to construct Joe to become a stereotypical "vanishing" Indian, but a Joe who develops a "knowing subalternity," which is Nayar's "term for the emergence of a conscious 'agent'" (105).

Significantly, Joe recounts, "we all wanted to be Worf"-the impressively manly movie character. "We all wanted to be Klingons. Worf's solution to any problem was to attack. [...] Worf didn't enjoy sex with human females because they were too fragile and he had to show restraint" (RH 20). The boys-Joe and his friends Cappy, Zack, and Angus-receive a form of education through mainstream entertainment that seeks to introduce them to a male social role predicated on violence. Nayar writes that "social integration in the classical *bildungsroman* was at least partly achieved through education" (100). The wishful identification with Worf connects to the kind of Hollywood-shaped (past) "grandeur" of the Indian warrior to suggest the "colonization of the mind."

Joe is thus disappointed to see his father powerless to achieve justice for his mother. According to Nayar, "in the [classical European] *bildungsroman* the father or some other figure of cultural authority works as the bridge between the individual and the cultural context" (100). The boy had endowed his father with the powers of a "movie shaman," another Hollywood allusion. Joe's anger at his father's failure to prosecute the rapist explodes in a piece of "juvenile sarcasm" (RH 92): "All you catch are drunks and hot dog thieves. [...] You've got zero authority, Dad, one big zero, nothing you can do" (RH 226). Joe rejects his father as a figure of authority because he constructs him within the framework of the mainstream "grandeur" of the Native, not understanding that this image also erases the Indian as a living person. He will, however, understand that these

were “stupid words” (RH 226) when he gets to realize that the Great White Father⁸ (the U.S.) is the one allowing his mother to be raped with impunity and his father to be emasculated through the denial of any real authority.

The “postcolonial *bildungsroman* works at the rejection of such figures of authority” (Nayar 100). In this version of the genre,

[...] the individual has to reject both, the figures of authority as well as the social order represented by the figures. It is in the rejection of any harmonious social integration (which, in the classical *bildungsroman*, is the key component in the emergence of the hero’s personality) into an oppressive and unjust social order, and the choice of identification with fellow-victims, that the protagonist discovers a subjecthood. (Nayar 100)

Joe will reject the authority of federal Indian law and regain his trust in his father when the judge explains to him the purposefully instituted legal complications that deny justice to Geraldine. It is this understanding that forms a “knowing subalternity” in Joe, who becomes conscious of Indian agency being “thwarted.”

In one of their episodes together, judge Coutts draws a map of the place where the attack took place:

There is nowhere to stand. No clear jurisdiction, no accurate description of where the crime occurred. [...] He made a map. Here’s the round house. Just behind it, you have the Smoker allotment, which is now so fractioned nobody can get much use out of it. Then a strip that was sold – fee land. The round house is on the far edge of tribal trust, where our court has jurisdiction, though of course not over a white man. So federal law applies. Down to the lake, that is also tribal trust. But [...] a corner of that is state park, where state law applies. [...] We can’t prosecute if we don’t know which laws apply. (RH 196-7)

The fact that “three classes of land” (RH 160) meet at the crime scene is the result of the fragmentation of the Indian land base in the course of colonial history, through the operation of legal provisions issued precisely to produce that effect, “to eliminate all vestiges of genuine sovereignty among Indian nations”

⁸ The Great Father was the appellation used by Indians for the President of the U.S.: “He personified the majesty and strength of the United States to the Indians, who called him the Great Father in keeping with the seeming magical powers of the white man. He was never known as the Great White Father; Indians did not think in racial terms. Although the expression is commonly used today, not a single instance has been found in which Indians [...] referred to the president as the Great White Father. The expression probably entered the popular lexicon sometime early in the twentieth century, perhaps as a contribution of the dime-novel industry” (Viola 94).

(Robbins 92). If maps are vehicles for political statements, this is surely a statement of legally perpetuated Indian disempowerment.

In another kitchen episode, the judge, overwhelmed by his powerlessness to enforce the law, builds “a weird sculpture” out of a casserole with rotten food and cutlery, which he “balanced precariously on top of the other silverware” (*RH* 227). That illustrates how the legislative architecture works to practically limit the right of Indian nations to deal with their internal affairs according to tribal law, even though a formal recognition of tribes as nations exists-based on treaties with the U.S. Indian law, Joe realizes, is based on “rotten decisions” (*RH* 228). History shapes legal language, and what Lyotard called historical “grand narratives” are equally politically constructed:

It's 1823. The United States is forty-seven years old and the entire country is based on grabbing Indian land as quickly as possible in as many ways as can be humanly devised. Land speculation is the stock market of the times. Everybody's in on it. George Washington, Thomas Jefferson. As well as Chief Justice John Marshall, who wrote the decision for this case and made his family's fortune. [...] Justice Marshall went out of his way to strip away all Indian title to all lands [...]. He basically upheld the medieval doctrine of discovery for a government that was supposedly based on the rights and freedoms of the individual. [...] we were savages living off the forest, and to leave our land to us was to leave it useless wilderness, [...] our character and religion is of so inferior a stamp that the superior genius of Europe must certainly claim ascendancy [...]. (*RH* 228-9)

To Joe's question why his father does not abandon all hope, the judge responds by rearranging the same pieces of kitchenware into “an edifice that stood by itself” – a resistance statement about the tribal judge's role to preserve tribal sovereignty through “solid decisions [...] crafted keenly” (*RH* 229).

In this context, Geraldine's case perfectly matches what Lyotard calls a “différend”:

As distinguished from a litigation, a differend [différend] would be a case of conflict between [...] two parties, that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments. One side's legitimacy does not imply the other's lack of legitimacy. However, applying a single rule of judgment to both in order to settle their differend as though it were merely a litigation would wrong (at least) one of them [...]. Damages result from an injury which is inflicted upon the rules of a genre of discourse but which is repairable according to those rules. A wrong results from the fact that the rules of the genre of discourse by which one judges are not the rules of the judged [...]. (Lyotard, *The Differend* xi)

A *différend* occurs “when one language game imposes its rules and values on another and prevents it from retaining its own, autonomous way of speaking” (Malpas 61). Language games are based on “phrases,” which are any of our options to communicate, silence included (Malpas 63). Phrases are inherently relational: “The social is always presupposed because it is presented or copresented with the slightest phrase” (Lyotard qtd. in Malpas 65). The phrase cannot be ignored (ignoring is itself a phrase), it solicits, and always receives, a response—another phrase. They construct, and are constructed by, “phrase regimens” that get organized into “genres of discourse,” of which the legal is one. “Genres [...] supply rules for linking together heterogeneous phrases” (Lyotard xii); they “determine the stakes, they submit phrases from different regimens to a single finality” (Lyotard qtd. in Malpas 64), they give “validity to certain forms of linkage and organiz[e] phrases into a body of knowledge” (Malpas 65). Genres of discourse construct “language games”. A legal system is a language game with its internal coherence.

In *The Round House*, the “rule of judgment” applied to Geraldine’s case is that of the federal Indian law. The case is treated as a “mere litigation,” for the system has both parties in conflict compete for legitimacy according to the rules of that discourse genre. The novel evokes several major pieces of legislation and Supreme Court decisions that support the structure of the legal system in which the Indian victim is supposed to make her voice heard. The fact that an FBI agent is involved in the investigation “went back to *Ex Parte Crow Dog* and then the Major Crimes Act of 1885” (*RH* 142). In the *Ex Parte Crow Dog* case (1883), the Supreme Court ruled that only a tribal government had the authority to prosecute a crime committed by an Indian against another Indian, in light of its decision in the *Worcester v. Georgia* case (1832), where “the Marshall Court” had recognized “Indian nations as distinct political communities, with territorial boundaries within which their authority [was] exclusive” (Carlson 29). Yet, the decision in the *Cherokee Nation v. Georgia* case, made one year before, had developed the “concept of limited sovereignty for tribal nations” (Carlson 29), according to Justice Marshall’s known definition of the Natives as “domestic dependent nations”. The Marshall decisions – writes Carlson – “highlight one of the deep sources of frustration in Indian country, the fact that definitions of tribal sovereignty remain remarkably unstable in U.S. Indian law.” Thus, the Major Crimes Act (1885) “expressly restricted tribal sovereignty by unilaterally transferring criminal jurisdiction in the case of seven major crimes [rape among them] into federal hands” (29); any such crime should be analyzed in terms of where it occurred, its nature, as well as the race of the criminal and, in the process, “many cases get lost, dropped, or endlessly deferred” (Owens, qtd. in Tharp 26). In the *Lone Wolf v. Hitchcock* case, which lies, in the rotten casserole episode, “at the bottom of the mess” (*RH* 229), “the Supreme Court dismissed once again the idea of Indian sovereignty and upheld the plenary power of

Congress to exercise full legislative authority over them” (Carlson 30). According to the Supreme Court’s decision in the *Oliphant v. Squamish* case (1978), which judge Coutts wishes he could “abolish right this minute” (RH 229) if he indeed had the powers of the “movie shaman” his son invests him with, Indian courts “do not have inherent criminal jurisdiction” over non-Indians, so they may not prosecute non-Indian criminals unless “specifically authorized” by Congress. Public Law 280 (1953) transfers criminal jurisdiction from federal government to state government (for several states), so that the states must cover the costs of legal action; this “has proved to be a disincentive for prosecuting many cases” (Tharp 27).

The clash between the language games that federal Indian law and the tribal law are will result in Geraldine’s “impossibility to testify”; she suffers a “wrong”: “a damage [*dommage*] accompanied by the loss of the means to prove the damage. [...] [T]o the privation constituted by the damage, there is added the impossibility of bringing it to the knowledge [...] of a tribunal” (Lyotard 5).

The differend in which Geraldine and, by extension, the Native are seemingly inescapably locked is perpetuated by the colonial “apparatus” (Foucault 194) through the conscious and purposeful maintenance of a “state of exception” – to quote the title of one of Agamben’s works - as regards Indian sovereignty.

In Agamben’s rendering, exception is based on a state of necessity, in close relation to “civil war, insurrection” and-significantly-“resistance” (2). The state of necessity can be “fictitious or political” (4), thus the sovereign can declare a state of siege without it being necessary. Agamben comments that the choice of terms is not “neutral” (4) for the siege suggests war, and that sounds consonant with Cook-Lynn’s idea of continuing Indian Wars, especially in light of Agamben’s idea of “modern totalitarianism” establishing “by means of the state of exception of a legal civil war that allows for the [...] elimination [...] of entire categories of citizens who for some reason cannot be integrated into the political system” (2). The state of exception, which “constitutes rather an emptiness of law” (6), can be, even in “so-called democratic states”, a “voluntary creation of a permanent state of emergency”, not limited—in a sovereign dictatorship—to suspending an existing constitution; it “aims at creating a state of affairs in which it becomes possible to impose a new constitution” (33). According to an analysis of several Supreme Court decisions by Mark Rifkin, “continued Native presence pushes against the presumed coherence of the U.S. territorial and jurisdictional imaginary”; it thus constitutes a threat and justifies—politically—an endlessly maintained state of exception stemming from the “‘peculiar’-ization of Native peoples” (91).

Haber contends that “there is nothing to preclude the natural pull of the imagination to expand its own territory thereby violating the sovereign boundaries of each individual language game. Such violations necessitate a

different kind of justice, namely a justice of multiplicity” (29). Quoting Lyotard, Haber argues that justice “does not consist merely in the observance of the rules; as in all games, it consists in working at the limits of what the rules permit in order to invent new moves, perhaps new rules and therefore new games” (Lyotard qtd. in Haber 29).

This is exactly what Joe does as he decides to kill Lark and achieve a justice unattainable by the rules of the federal policy’s legal game. It is significant that the attack on Geraldine takes place at the round house, a sacred, ceremonial place of the tribe, established to honor the tribe’s history of survival, and remembered as a place for legislating the right approach to the community’s living together. One of Mooshum’s stories reveals that the round house was built “so that the people could do things in a good way” (RH 187) after a painful episode in the tribe’s history when a clan mother was about to be unjustly killed by her own family, driven to despair by the force of federal Indian law during the removal period – “the reservation year” (RH 179).

Joe’s story memorializes his movement, which Nayar argues is specific to the “postcolonial bildungsroman,” from “eyewitnessing to bearing witness” (99), that is, from suffering the pain to writing it as the specific experience of the (still) colonized Native. He gains the voice of the “knowing subaltern,” the voice refused to his mother, and he also gains agency. Not only does Joe come to appreciate his father for his work to “build a solid base” for Indian sovereignty. Like his father, Joe gets to “write” community history by inserting his own story into the (hi)story of his tribe. His decision to kill Lark stems from his consciously assumed tribal background and it is not “vigilante justice,” but something “more nuanced than mere revenge” (Bender and Maunz-Breese 143). His is a trickster move, combining wisdom and idiocy: he carefully plans on shooting Lark although he aims badly, goes to the Catholic church pretending to be interested in the Catechism, but hopes he’ll be able to use the priest’s gun to practice shooting, and after he kills Lark he hides the (stolen) gun where it is easy to find. The killing itself signals Joe’s tricksterism-it is an ambivalent gesture: “Murder, for justice maybe. Murder just the same” (RH 280). He transgresses the boundaries imposed for the Indian construction of the self, and resubjectifies through an imaginative move that resorts to traditional tribal justice, into the alternative language game of tribal law. The community validates his Indian identification by supporting his choice of “phrase” in response to that of being ignored by the federal Indian law. A number of characters find ways to get rid of the evidence linking Joe to the killing of Lark. And judge Coutts agrees that “Lark’s killing is a wrong thing which serves an ideal justice. It settles a legal enigma. It threads that unfair maze of land title law by which Lark could not be prosecuted. His death was the exit” (RH 306). He means the settlement of the *différend*, the possibility to move on, what Gerald Vizenor calls “survivance,” which is “more than survival, more than endurance

and mere response; the stories of survivance are an active presence” (*Fugitive Poses* 15). The judge makes the decision to “protect the person who took on that task” (RH 306) not because the murderer is his own son, which he doesn’t know for sure, but because “with no other recourse, [Lark’s] killing fulfilled the requirements of a very old law” (306). According to that ancient tribal law, the community can agree to kill someone who has turned “windigo”- the Native concept describing the person (like Lark) touched by the insatiable instinct to consume, a selfishness actually related to the colonial impulse-in order not to take revenge, but to reestablish balance. The trickster, Gerald Vizenor explains, “is not a real person or being [...] Tricksters are created in a language game and liberate the mind” (*Literary Chance* 44). Joe matches Vizenor’s image of the “postindian warrior”: while the “indian is a simulation, the absence of natives, [...] has no referent, memories, or native stories” (*Fugitive Poses* 15), “the postindian warriors hover at last over the ruins of tribal representations and surmount the scriptures of manifest manners with new stories” (*Manifest Manners* 5).

Works Cited

- Agamben, Giorgio. *State of Exception* (translated by Kevin Attell). Chicago and London: University of Chicago Press, 2005. Print.
- Bataille, Gretchen M. *Native American Representations: First Encounters, Distorted Images, and Literary Appropriations*. Ed. Gretchen M. Bataille. Lincoln and London: University of Nebraska Press, 2001. Print.
- Bender, Jacob and Lydia Maunz-Breese. “Louise Erdrich’s *The Round House*, the Wiindigoo, and *Star Trek: The Next Generation*.” *The American Indian Quarterly*, Vol. 42, Number 2, Spring 2018: 141-161.
- Bird, Gloria. “Towards a Decolonization of the Mind and Text 1: Leslie Marmon Silko’s *Ceremony*.” *Wicazo Sa Review*, University of Minnesota Press, Vol. 9, No. 2 (Autumn, 1993), pp. 1-8.
- Butler, Judith. “Introduction to *Bodies That Matter*.” *Women, Autobiography, Theory. A Reader*. Sidonie Smith and Julia Watson, eds. Madison: University of Wisconsin Press, 1998: 367-379. Print.
- Carlson, David J. *Imagining Sovereignty: Self-Determination in American Indian Law and Literature*. U. of Oklahoma Press, 2016. Print.
- Cheyfitz, Eric. “The (Post)Colonial Construction of Indian Country: U.S. American Indian Literatures and Federal Indian Law.” *The Columbia Guide to American Indian Literatures of the United States since 1945*. Eric Cheyfitz, ed. New York: Columbia University Press, 2006: 1-126. Print.
- Cheyfitz, Eric and Shari Huhndorf. “Genocide by Other Means: U.S. Federal Indian Law and Violence against Native Women in Louise Erdrich’s *The Round House*.” *New Directions in Law and Literature*. Elizabeth S. Anker and Bernadette Meyler, eds. New York: Oxford University Press, 2017. Print.
- Cook-Lynn, Elizabeth. *New Indians, Old Wars*. U. of Illinois Press, 2007. Print.

- Däwes, Birgit. "Louise Erdrich, The Round House." *Handbook of the American Novel of the twentieth and Twenty-First Centuries*. Timo Muller, ed. Walter De Gruyter GmbH, 2017. Print.
- Erdrich, Louise. *The Round House*, HarperCollins, 2013. Print.
- _____. "Rape on the Reservation", in *New York Times*. (February 27, 2013) <http://www.nytimes.com/2013/02/27/opinion/native-americans-and-the-violence-against-women-act.html>: retrieved 20 October, 2017
- Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Colin Gordon, ed. New York: Harvester Press 1980. Print.
- Grossberg, Lawrence. "Identity and Cultural Studies: Is That All There Is?" *Questions of Cultural Identity*. Stuart Hall and Paul duGay, eds. London: SAGE Publications, 1996: 87-107. Print.
- Haber, Honi Fern. *Beyond Postmodern Politics: Lyotard, Rorty, Foucault*. New York, London: Routledge, 1994. Print.
- Hodgkin, Katharine and Susannah Radstone. "Introduction: Contested Pasts". Katharine Hodgkin and Susannah Radstone, eds. *Contested Pasts. The Politics of Memory*. London, New York: Routledge, 2003: 1-22. Print.
- Krupat, Arnold. "Native American Autobiography and the Synechdochic Self." *American Autobiography: Retrospect and Prospect*. Paul John Eakin, ed. Madison, University of Wisconsin Press, 1991: 171-194. Print.
- Luscombe, Belinda. "10 Questions for Louise Erdrich", in *Time Magazine*. <http://content.time.com/time/subscriber/article/0,33009,2132753,00.htm>: retrieved 20 October, 2017.
- Lyotard, Jean-François. *The Differend: Phrases in Dispute* (translation by Georges Van Den Abbeele). U. of Minnesota Press, 2002. Print.
- Lyons, Scott Richard. "'Indians' Constructed and Speaking." *A Companion to American Literature and Culture*. Ed. Paul Lauter. Wiley-Blackwell, 2010. Print.
- Malpas, Simon. *Jean-Francois Lyotard*, Routledge, 2007. Print.
- Mitchell, W.J.T. "Narrative, Memory, and Slavery." *Picture Theory: Essays on Verbal and Visual Representation*. Chicago: University of Chicago Press, 1994: 183-208. Print.
- Nayar, Pramod K. Chapter "The Postcolonial *Bildungsroman*, 'Knowing Subalternity' and the Citizen-Subject." *Writing Wrongs: The Cultural Construction of Human Rights in India*. New Delhi: Routledge, 2012, pp. 97-131. Print.
- Pratt, Mary Louise. *Imperial Eyes. Travel Writing and Transculturation*. Second edition. New York and Abingdon: Routledge, 2008 (1992). Print.
- Rifkin, Mark. "Indigenizing Agamben: Rethinking Sovereignty in Light of the 'Peculiar' Status of Native Peoples." *Cultural Critique*, Number 73, Fall 2009: 88-124.
- Robbins, Rebecca L. "Self-Determination and Subordination: The Past, Present, and Future of American Indian Governance." *The State of Native America: Genocide, Colonization, and Resistance*. Ed. Annette M. Jaimes. South End Press, 1992. Print.
- Simons, Jonathan. *Foucault and the Political*. London: Routledge, 2002. Print.
- Smith, Sidonie and Julia Watson. *Reading Autobiography: A Guide for Interpreting Life Narratives*. Minneapolis: University of Minnesota Press, 2nd edition 2010. Print.

- Smith, Sidonie. "Performativity, Autobiographical Practice, Resistance." *Women, Autobiography, Theory. A Reader*. Sidonie Smith and Julia Watson, eds. Madison: University of Wisconsin Press, 1998: 108-115.
- Tharp, Julie. "Erich's Crusade: Sexual Violence in the Round House." *Studies in American Indian Literatures*, 26 (3), 2014: 25-40.
- VanStyvendale, Nancy. "The Trans/Historicity of Trauma in Jeannette Armstrong's 'Slash' and Sherman Alexie's 'Indian Killer'." *Studies in the Novel*. 40.1&2 (Spring and Summer 2008): 203-223.
- Viola, Herman J. *Diplomats in Buckskins. A History of Indian Delegations in Washington City*. Rivilo Books, 1995. Print.
- Vizenor, Gerald. *Literary Chance. Essays on Native American Survivance*. Universitat de Valencia, 2007.
- _____. *Manifest Manners: Narratives on Postindian Survivance*. University of Nebraska Press, 1999. Print.
- _____. *Fugitive Poses. Native American Indian Scenes of Absence and Presence*. Lincoln and London. University of Nebraska Press, 1998. Print.
- Wilkins, David E. "A History of Federal Indian Policy." *Native American Voices. A Reader. Third Edition*. Eds. Susan Lobo, Steve Talbot, and Traci L. Morris. Pearson Prentice Hall, 2010. Print.
- Womack, Craig S. (Creek/Cherokee). "A Single Decade: Book-Length Native Literary Criticism between 1986 and 1997." *Reasoning Together: The Native Critics Collective*. Womack, Craig et al., eds. Norman: University of Oklahoma Press, 2008: 3-104. Print.