

Law, Legend, and Forgotten Histories of Survivance

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Katrina Jagodinsky, [Legal Codes and Talking Trees: Indigenous Women's Sovereignty in the Sonoran and Puget Sound Borderlands, 1854-1946](#) (2016).

In 2016, legal history is a capacious field – one with a catholic view of what counts as law and a willingness to find legal significance in a wide range of places. Katrina Jagodinsky's *Legal Codes and Talking Trees* challenges legal historians to be even more inclusive, especially in the voices we seek to hear and the sources we mine. By pairing underused state and territorial court records with oral histories, legends, local newspaper records, and intricate genealogical research, Jagodinsky offers an all-too-rare glimpse of the experiences and perspectives of Indigenous women in the nineteenth and early twentieth centuries, as they navigated formal legal systems that were not their own.

Legal Codes and Talking Trees centers on the legal encounters of six Indigenous women in “borderlands” communities, spaces marked by competing territorial claims, overlapping legal jurisdictions, and mixed populations. Three of the cases come from the Sonoran Southwest (encompassing parts of present-day Arizona, California, and Northwest Mexico) and three from the Puget Sound region (including parts of present-day Washington and British Columbia). Jagodinsky selected these two regions because of the different approaches that white settlers took to the Indigenous populations there. But when it came to Indigenous women's “bodies, progeny, and lands,” she discovered “remarkably similar demands from [American] citizen men and women” (P. 11).

The demands were those of “settler colonialism”: a type of colonization characterized by the colonizers’ “permanent and intimate residence” among the people they planned to exploit and the resources they hoped to extract (P. 4). Consider, for example, the demands made on Lucía Martínez, the focus of Chapter 2: she became the captive of King S. Woolsey, an Arizona territorial senator and renowned Indian-fighter, when he caught her fleeing a previous set of captors (Apache raiders who had targeted Martínez's Yaqui tribe). Woolsey brought Martínez back to his ranch, where she performed domestic tasks and eventually bore him three children, the first when she was thirteen. Rebecca Lena Graham, profiled in Chapter 5, represents another variation of settler colonialism's demands. Her parents’ consensual interracial union was a legacy of an era of collaboration between the Duwamish tribe and the American settlers who helped build Seattle in the mid-nineteenth century, before Duwamish and American interests diverged so starkly.

Jagodinsky is not the first, of course, to detail the legal practices that facilitated settler colonialism. What is new here is her detailed documentation of “survivance”¹ on the part of the presumed victims of this process. The women in *Legal Codes and Talking Trees* formulated “a legal culture and practice to challenge their dispossession” (P. 11) – apparent, for example, in Lucía Martínez's use of a habeas corpus petition to demand custody of her children and in Rebecca Lena Graham's dogged pursuit of her inheritance in the face of anti-miscegenation laws that disadvantaged her. Another woman whom Jagodinsky profiles triggered a rape prosecution and used her mixed-race status to claim the privilege of testifying (generally unavailable to Native women in her jurisdiction), while a fourth engaged complex federal bureaucratic machinery to attempt to reclaim her family's land. Others practiced legal avoidance, by locating themselves in spaces where the state's jurisdiction over their bodies was ambiguous and contestable.

Sometimes these women succeeded in their aims and sometimes not. To Jagodinsky, however, success is not really the point. The contribution of *Legal Codes and Talking Trees* is critique, in several senses. First, Jagodinsky shows that Indigenous women used the resources available to them to contest and comment upon their own vulnerability. Here, critique is a historical fact, carefully documented and creatively reconstructed. This finding leads to a second critique: of a history of Native legal activism that has privileged battles for political and territorial sovereignty over the claims of corporeal sovereignty that mattered so greatly to women. Jagodinsky demands a Native American legal history in which women figure centrally, not marginally.

Last, Jagodinsky offers a subtle but important critique of the discipline of history itself, in the form of a beautifully written final chapter on her archival journeys. As I read it, this chapter is not only a summary of Jagodinsky's methodology, but also a reminder that historical research is a combination of craft and politics, and that we should continually reflect on both aspects. Jagodinsky writes about how she chose to approach archivists, contemporary Indian communities, and descendants, and what she did when people were not inclined to cooperate with her. She discusses empathy and compassion as "analytical lenses" that, among others, should inform our readings of primary sources. And she is clear and unapologetic about why she pursued this endeavor in the first place: "The women in this book fought the same forces that promote a disregard for Native women's political and corporeal sovereignty today," she writes in the book's concluding paragraph. Recovering their histories is a way of surfacing "the legacies of inequality that remain embedded in the law" (P. 266).

1. Jagodinsky uses this term to refer to "the combined acts of survival and resistance in the face of colonial denigration and dispossession" (P. 4).

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