

*Healing the Past:  
What does justice look like 151 years after the Indian Island Massacre?*

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## **The Last Dance**

The year is 1860. California has been a state for ten years. Settlers from the frontier town of Eureka have been invited, along with other local native tribes, to the World Renewal Ceremony held on Duluwat Island, a seven to ten day celebration located in the sacred center from which the Wiyot people trace their beginning. It is the last night of the dance—February 25<sup>th</sup>. The able bodied men have departed the island to secure provisions for the final day of the ceremony. The women, children, and elders lie sleeping. Little does anyone suspect that this final night of the dance of a peaceful people, shared openly in their sacred center of the universe, will be the last night most of them will see alive. That night, as many as 250 Wiyot<sup>1</sup> are killed by a group of settlers vexed by the governor's inattention to their demands to be paid for their "services"<sup>2</sup> in hunting down and eradicating the native population from the area. Their motivation? Land.

As with the Miwok, Pomo, Costanoan, Ohlone, and countless other tribes (we know of over sixty native tribes in California from six distinct language groups<sup>3</sup>), the Wiyot were amongst the first peoples of California. They cultivated the land, living in relative peace with neighboring tribes for, what the fossil records show to be, thousands of years before Mexico moved up the coast, placing mission after mission to protect their interests in this rich and fertile land. Against the incursion of these Mexican missions, local tribes labored tirelessly to secure even marginal land rights, while the majority of their land was irretrievably usurped in the process.<sup>4</sup>

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<sup>1</sup> Sources vary from 80-250 – it is unclear whether the inflated numbers include other massacres of Wiyot at Rancherias along the Eel river on the same night. Wiyot sources cite the Indian Island Massacre at "over one hundred" ("Wiyot Sacred Site Fund," nd, accessed 10/28/11, [online resource] available from <http://www.wiyot.com>).

<sup>2</sup> Jerry Rohde, "Genocide and Extortion: 150 years later, the hidden motive behind the Indian Island Massacre," *North Coast Journal*, Feb. 25, 2010, (North Coast Journal Website accessed 10/28/11) [online resource] available from <http://www.northcoastjournal.com/news/2010/02/25/genocide-and-extortion-indian-island/>

<sup>3</sup> CA Indian Library Collections, CA Pre-contact Territories Map [online resource] available from <http://www.kstrom.net/isk/maps/ca/calprecontact.gif> and CA Tribal Linguistic Groups [online resource] available from [http://www.mip.berkeley.edu/cilc\\_images/bibs/maps/lingmap.gif](http://www.mip.berkeley.edu/cilc_images/bibs/maps/lingmap.gif).

<sup>4</sup> Betty Goerke, *Chief Marin* (Berkeley:Heyday Books, 2007), pp. 170-178.

When the United States took over California in 1846, the hard won land rights of the Wiyot and other native tribes were lost,<sup>5</sup> and despite eighteen different land treaties between 1848 and 1852, none were ultimately ratified. Found in congressional storage in 1906, the treaties had to be renegotiated (the original 8.5 million acres had been sold).<sup>6</sup>

### **The Trail of Diaspora**

So, with the tribe's sacred center destroyed, and other Wiyot villages along the Eel river similarly butchered, the last remaining 200 Wiyot (down from 2,000<sup>7</sup> just a year earlier) were scattered to various reservations and military forts, where half of the remaining population died of disease, slavery, and ill treatment. A church group, in the early 1900s, purchased a single 20-acre parcel of land for homeless Wiyot., which was given reservation status by the federal government in 1908 (part of the 1906 treaty renegotiations), and held in "trust" for what was then the last remaining 100 members of the Wiyot people.

But in 1958, the Rancheria "Termination"<sup>8</sup> Act dismantled tribal status in California, effectively heading off any further claims to native lands. As far as the official records were concerned, Native Americans (or American Indians, as many prefer to be called) no longer existed, and you cannot claim land when you do not exist. As tribal elder Cheryl Seidner, granddaughter of the

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<sup>5</sup> Ibid.

<sup>6</sup> Paula Giese, "California Indian Treaties" (Native American Indian Resources Website, 1997, accessed 10/28/11), [online resource] available from <http://www.kstrom.net/isk/maps/ca/caltraties.html>.

<sup>7</sup> Estimates range from 1500-2000 tribal members in 1860 prior to the massacres (Wiyot Tribal Website, nd, accessed 10/28/11), [online resource] available from <http://www.wiyot.com/cultural>.

<sup>8</sup> Cheryl Seidner, interview with North Coast Journal in "The Return of Indian Island – Restoring the center of the Wiyot World" (North Coast Journal Website, 1 July 2004, accessed 10/28/11) [online resource] available from <http://www.northcoastjournal.com/070104/cover0701.html>.

famous infant survivor of the Indian Island massacre, recounts, “at the stroke of a pen, my people were made extinct, but we were not dead.”<sup>9</sup>

The tribe filed an unlawful termination lawsuit against the Federal Government in 1975, starting an uphill battle that continues to the present day, as Wiyot descendants, along with descendants of “extinct”<sup>10</sup> Native American tribes all over California, struggled and still struggle for recognition—and then struggle again for rights to ancestral lands that hold remains of their culture and of their ancestors themselves. The Wiyot tribe would finally be legally reborn in 1990 with federal recognition and trust status reinstated, yet it would be another eleven years before the tribe would see their first glimmer of hope in reacquiring Duluwat Island.

### **Elusive Justice**

The Tuluwat settlement on Duluwat Island was home to a thousand-year-old, six-acre clamshell mound (middens) containing the layered cultural history and ancestral remains of the Wiyot people. In the 130 years following the 1860 massacre, the island was diked, drained, and rechanneled first for agriculture and dairy land, then from 1870-1990 as a dry dock for ship repair. The dredging and rechanneling of the salt marsh and bay surrounding the island caused irreparable erosion to the shell mound.<sup>11</sup> A century and a half of un-policed grave robbing has further depleted the wealth of sacred history from the Wiyot’s most holy and sacred site.<sup>12</sup> Add to this the fact that those

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<sup>9</sup> Cheryl Seidner, interview with Austin Leininger, “Avenue of the Giants Mission Trip” (Unpublished personal notes, 17 June 2010).

<sup>10</sup> Ibid.

<sup>11</sup> An estimated 2000 cubic yards had been lost between 1913 and 1985 - more recent estimates have not been found to be published. (“Tuluwat Project,” Wiyot Tribal Website, nd, accessed 10/28/11 [online resource] available from <http://www.wiyot.com/tuluwat-project>).

<sup>12</sup> A single individual “amateur archeologist” is said to have looted over 500 gravesites (Ibid.).

responsible for the massacre (though known by name and by previous incidents<sup>13</sup>) were never formally accused nor tried for their crimes, and the injustices continue to multiply.

On the flip side of the coin, California's history as a state is over 160 years old. Land acquisition, sale, purchase, and inheritance have now covered over six generations since the first European settlers of the state made their claims. Samoa Bridge, an integral part of State route 255 completed in 1971, now bisects what today is simply known as "Indian Island," connecting the Samoa peninsula, Duluwat Island, and Eureka on the mainland. So while it is clear that justice has been denied to the Wiyot people, the question that lies before the millions of Californians both past and present who lay claim to this land is: what does justice look like 150 years after the "Indian Island Massacre"?

### **The Long Road to Justice**

According to renowned justice theorist John Rawls, a just society must be premised on mutual consent—only after which can the structure of society be decided upon by those choosing to live together as a society.<sup>14</sup> There was no consent given by the Wiyot tribe—they were not historically invited to be a part of society with settlers; they were forcibly displaced, murdered, swindled by un-ratified treaties, and ultimately assimilated as "Americans."<sup>15</sup> The state, with its foundations in coercion, not consent, is in no position, therefore, to offer terms of justice and reconciliation. Those terms can come only from the party originally denied consent.

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<sup>13</sup> "Genocide and Extortion," researched by Jerry Rohde in Humbolt Times from 1854-1861, Northern Californian 1860, SF Daily Evening Bulletin 1860, Butte Democrat 1860, and personal interviews with massacre survivor, Jane Sam.

<sup>14</sup> The Contractarian basis for Rawls theory, stemming from John Locke's definition of the social contract insists that members contracting to be in society do so as free and consensual rational agents (John Rawls, A Theory of Justice, [Cambridge:Belknap Press, 1999, orig. Harvard University Press, 1971], p.10).

<sup>15</sup> Seidner, North Coast Journal, 2004.

In fact, strides have been made, but only by the leadership of the victims themselves. While early efforts successfully focused on political rights, tribal elder Cheryl Seidner began to focus on cultural rights in 1992, beginning with the Indian Island Candlelight Vigil. The vigil is held on the last Saturday in February, the historic annual date of the World Renewal Ceremony, and is intended both as a memorial for the hundreds who were killed in the massacre, as well as “a healing ceremony, to help heal the rift in the society locally and around the country.”<sup>16</sup> Bridging the gap between irreparable injustice and the fact of mutual social cohabitation, the victims have become, in a sense, the victors over history, offering what could never be offered by the state—precisely that bond of cooperative social compact fundamentally required for a “just” society.

With that foundational requirement met, justice then demands the fair distribution of political and economic rights and resources. With the successful bid for Tribal status achieved in 1990, the Wiyot received the long overdue protections that gave them tribal sovereignty, land trusts (which at the time amounted only to the 20 acres purchased on their behalf in 1900), and equal liberties as citizens of both the U.S. and of the Wiyot nation. These rights have given them the necessary equalities and legal protections to begin the battle for the final element of distributive justice in land rights and, by extension, rights to their own history in cultural and human artifacts.

Also begun in 1992, the Sacred Sites Fund has been seeking donations and applying for grants to purchase back parts of Duluwat Island for almost 20 years. By all accounts, the Wiyot have a right to demand their land back. And yet, for the sake of cooperation and benevolence, they offer to *purchase* the land stolen from them. In 2001, 141 years after the massacre, the Wiyot tribe was successful in purchasing back the first 1.5 acres of the island—the site of the village of Tuluwat

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<sup>16</sup> Wiyot Blue Lake Tribal Business council, “Wiyot History,” (Wiyot History Webpage, 1996, accessed 10/28/11) [online resource] available from <http://www.kstrom.net/isk/art/basket/wiyot/wiyot.com>.

where the massacre had occurred. Subsequently, the City of Eureka, in a landmark decision unparalleled anywhere else in California, gifted back 40 acres of land to the tribe in 2004, and returned another 20 acres in 2006. To date, the tribe now owns the 61.5 acres of land north of the span of Highway 255. Yet the city still owns the majority of the island. There is only a small portion of the island (10%) that is privately owned, and as Tribal Spokesperson Cheryl Seidner has said: whatever holdings the city still has, “we [eventually] want it.”<sup>17</sup>

Is it enough? The Wiyot land holdings, cultivated, planted, and responsibly kept up until its unlawful seizure in the first half of the 19<sup>th</sup> century, extended “from Little River to Bear River, out to Chalk Mountain and to Berry Summit.”<sup>18</sup> By all accounts of even European standards, these 600 square miles (384,000 acres) were inhabited and owned by the Wiyot people.<sup>19</sup> They never offered to sell the land, nor were they given just recompense for its unlawful seizure. In the aftermath of the near obliteration of their people and nearly total usurpation of their lands, they have rebuilt their Tribe (today numbering 600 on the tribal registry), and have been granted an 88 acre reservation alongside the original 20 that was purchased for them. They have bought back 1.5 acres of Duluwat Island, and were gifted back another 60 acres by the city of Eureka. With the Yurok and Hupa people, they have been granted a further 31 acres five miles east of Arcata, yet the governmental holdings of even the sacred center of their world still vastly surpass what they themselves have been “gifted” back.

Though the strict standards of distributive justice have by no means been satisfied, the Wiyot seek to restore Duluwat Island one parcel at a time, spending as much time, effort, and funds as needed

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<sup>17</sup> Seidner, North Coast Journal, 2004.

<sup>18</sup> Ibid. (map available from <http://www.humboldt.edu/cicd/map.html>).

<sup>19</sup> According to property acquisition defined by John Locke, they improved the land and put their labor into it before anyone else, thereby acquiring it justly (John Locke, *Second Treatise of Government* [Kindle Edition, 2011], 13).

to rehabilitate the soil,<sup>20</sup> repopulate native species of plants, rebuild a cultural center, and a dance hall, and to someday reconvene the World Renewal Ceremony and Dance—which hasn't been danced since February 25, 1860.

### **Time for the United States to Step Up**

I am convinced that a deeper commitment is owed to our first peoples. UC Berkeley alone stores over 10,000 native Californian artifacts,<sup>21</sup> likely including human remains robbed from graves on Duluwat island itself. Local governments, the State Government, and the Federal Government still retain an incredible wealth of Native lands—it is neither protected for national park use, nor is it in use. Lands that can be returned should be. Lands that cannot be returned should be justly (as much as can be achieved 150 years or more after the fact) transferred<sup>22</sup> through an agreed upon price. Relics and remains removed from Tuluwat and other Native Californian lands and burial grounds must be returned, “loaned,” or purchased by un-coerced agreement. The balance of distributive justice in this case does not simply lie in the gratitude of a people our state nearly succeeded in destroying; it lies in our collective willingness to act in accord with our own conceptions of what is right, and to establish policies that ensure that justice is accomplished.

From the start, policy makers must be equally represented from tribal and non-native populations, and we must be willing to look at the establishment of these policies as if the tables were turned,

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<sup>20</sup> Dioxin is the main issue, contaminating over 300,000 tons of topsoil that has to be removed to remote toxic storage – a lasting effect of the ship yard. The land underneath (also contaminated) must then be geocapped before the soil can be replaced from an outside source. (“Avenue of the Giant’s Mission Trip,” 2010).

<sup>21</sup> Alan Leventhal, Bureau of Indian Affairs (July 30, 2001 report, accessed 9/9/2010), [online resource] available from <http://www.bia.gov/idc/groups/xofa/documents/text/idc-001659.pdf>.

<sup>22</sup> According to the social contract (both Locke and Rousseau) just transfer of property is premised on just acquisition (Locke, 20-21). Rawls affirms the right to inheritance (Rawls, 245) as well as the right to buy and sell just holdings in free commerce via “legal definition of property rights” (Ibid., 247) – this, he suggests, fulfils the first principle of justice in equal liberty. The Wiyot are the only claimants to have come about the acquisition of their land justly. They must therefore agree to a price for its transfer before the series of historic transfers can be justified and the current owners legitimated. (While Rawls also suggests ideal institutions to help ensure wide distribution of property, this is attached to the second principle of justice [Ibid.], which is subordinate to the first principle first having been fulfilled [Ibid., 53]).

as if we did not know whether we were Wiyot or of non-native descent. How would we like it if someone dug up our grandparents, stole their rings and necklaces, and put their bodies and clothes on public display? How would we feel if we came home one day to find strangers had taken up residence in our homes, and that the government allowed it—even sanctioned it? How would we want to be treated in the formation of policies dealing with these injustices? Perhaps, as Rawls suggests,<sup>23</sup> this classic reversal could offer a real way to judge the justice of policies fairly. I for one would not want to be treated as we have treated Native Californians. It is simply and classically unjust.

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<sup>23</sup> The Veil of Ignorance, (Rawls, 118-119).