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When Indigenous communities in the United States become involved in a legal effort to reclaim and safeguard ancestral lands, they face a double bind: the process of evidence production runs counter to their structural organization around oral history and cultural secrecy. The research and notational systems presented in this article try to respond to the urgent need for alternative approaches to evidence.

Keywords
Evidence
Land
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Decolonize
The sovereign Indigenous nation of Jemez Pueblo, located within New Mexico, United States, is open to the public only two days a year. Scholars have long described the cultural secrecy of Indigenous Pueblo communities in the Southwestern United States as a defensive tactic reflecting centuries of outsider interference in the free exercise of cultural traditions (See: Spicer, 1962; and Dozier, 1966). Recurrent violence and repressive acts of Spanish, Mexican and U.S. imperialism aimed at cultural change and Christianization forced Pueblo rituals to go underground. Pueblo secrecy, however, is also, and firstly, directed towards the inside and plays a key role in structuring the Pueblo's internal religious, social, and political system (Brandt, 1987). Within Pueblo communities, traditional knowledge is not openly exchanged but disseminated through multiple tightly controlled layers of religious organization. Different religious groups guard different aspects of spiritual knowledge, and no single individual is in possession of it all. In Pueblo belief systems, knowledge of ritual and the spiritual world represents the source of power that can influence nature's forces. When such knowledge is used irresponsibly by people not initiated to its uses, the knowledge loses its power or can turn destructive towards the community. It constitutes highly sensitive information specific to each pueblo and, as such, considered a secret. Restricting the transmission of spiritual knowledge to initiated members thus has the dual function of keeping information from turning destructive through inappropriate use and of keeping the tribe's internal organization in balance. Pueblo secrecy, however, is not only open to the public but needs to be kept very closely, very tightly, has been continuously renewed since ancestral times.

In the summer of 2012, Jemez Pueblo filed a lawsuit against the United States to establish its right to ownership of the area known today as Valles Caldera National Preserve. The preserve is part of the 2,850 km² of western Hemish ancestral homeland, spanning the Jemez Mountains in northern New Mexico. The homeland contains ruins of over forty Hemish villages linked by an extensive network of trails along with agricultural land, thousands of field houses, numerous traditional sites, and Wáävemání Mountain, where the Hemish principal shrine is located. To maintain the Pueblo's spiritual order, these sites need to be visited regularly. The land base of today's Jemez Pueblo consists of barely 564 km² divided into three non-connected parcels, and its population is concentrated in the one remaining village. The Pueblo is now reclaiming a parcel of nearly 400 km² that the U.S. Congress gave to Spanish settlers in 1860 and which has been under non-native ownership ever since. In 2000, the land was purchased by the federal government and turned into a national preserve, which prompted the Pueblo to file the claim. In such a claim to aboriginal title, the burden of proof is on the native claimant to prove his or her title to the lands in question. Evidence of use is required to fully demonstrate traditional significance to the Pueblo – however, the Pueblo must resist such evidentiary proof due to the importance of cultural secrecy. The tribe is placed in a position of double bind. Are they to remain silent because of cultural demands for secrecy, or do they comply with Western evidentiary criteria, hence risking silencing the traditional practices they originally aimed to protect? The criteria of proof upheld by U.S. courts betrays the essence of what needs to be proven, and as Jean-François Lyotard (2011) describes in Le Differend, the plaintiff becomes a victim when he is divested of the means to argue. Although Pueblo nations in the Southwest are among the Indigenous communities in the U.S. with the most distinctive culture of secrecy, Native communities throughout the country face similar issues.

At stake when the Native plaintiff is asked to provide proof to a Western court is not only the complex interrelationship between power and access to knowledge but, on a different level, a dilemma caused by a conceptual and structural change in knowledge transmission. Production of evidentiary documents in Native land and title claims implies a material reproduction of otherwise intangible cultural knowledge – the materialization of oral tradition, on which many Indigenous cultures are based on and often traditionally confined to (See also: Chanthaphonth, 2011). Within Pueblo spiritual belief, there is a direct relationship between categories of knowledge and the verbal and visual forms through which they can be communicated (Brandt, 1981). Oral tradition thereby represents a crucial tool in the regulation of cultural knowledge. When access to information is purely oral, it can be controlled much more rigorously than any other system of information storage or retrieval because it is knowledge irrevocably linked to its carrier, the knowing person, and it requires a social relationship for the transmission of knowledge.

Yet, what Western legal judicial systems accept as reliable evidence is mostly limited to empirical facts. Indigenous oral histories often remain unheard, reduced to hearsay status, since they cannot be validated according to Western scientific methods. Within aboriginal title cases in the United States, facts are commonly admitted as archeological, ethnographic, and geospatial data and maps that pinpoint locations of spiritual sites. Space and territory ended up being mapped as understood by Western culture rather than as narrated, perceived, and lived by indigenous groups. In the United States, there is still very little discussion in native communities about the form and content of legal evidence. This, however, is a conversation that needs to happen. A plaintiff’s evidence, which remains secret and invisible, can, according to the logic of truth applied in U.S. courts, only appear as an unreasonable and false assertion, and there seems to be no alternative to conventional modes of factual documentation. Since the disclosure of traditional, often secret practices is currently the only viable way to win a Native land claim, many Indigenous nations decide to yield to court requirements, which results in lasting damage to cultural traditions. This has left several nations debating whether to appeal to the U.S. legal system at all.

How then to imagine a mode of evidentiary production that does not encourage misappropriation of Indigenous knowledge and does not demand a decision between the claim to their ancestral homeland (and physical protection of cultural sites) or the protection of religious secrets? How can legally admissible speech be made to include traditions of secrecy and instances of silence? Can architectural tools produce a notational system that manages the demands of exposure and concealment?

The set of alternative evidentiary documents presented in this article was produced in collaboration with Jemez Pueblo members within the context of the, by then, ongoing land claim and in reaction to the requests to respond to evidence production. By producing...
Leyenda / Legend:

- Asentamiento ancestral
- Ancestral Village
- Casa de campo ancestral
- Ancestral Field House
- Fuente natural
- Natural Spring
- Límite de la Reserva Nacional Valles Caldera
- Valles Caldera National Preserve Fence

03 Ruta Espiritual Hemish, detalle. Dibujo: Nina Kolowratnik, con el apoyo de Pah-Tow-Wei Paul Tosa y See-Shu-Kwa Christopher Toya. / Hemish Spiritual Pathway, detail. Drawing: Nina Kolowratnik, with support of Pah-Tow-Wei Paul Tosa and See-Shu-Kwa Christopher Toya
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documentation that negotiates the demands of transparency and disguise, these notational systems are an attempt to unsettle the conditions under which Indigenous land claims are currently negotiated. The drawings demonstrate the traditional, spiritual, and daily practices linked to what is today the Valles Caldera National Preserve, claimed by the Hemish people, and avoid revealing details of the Pueblo’s secret culture. While concealing information about the location, organization, timing, and meaning of the rituals, the drawings also try to satisfy the demands currently required to qualify as evidence in court.

My two main collaborators for the set of alternative evidentiary documents were Pah-Tow-Wei Paul Tosa, Hemish traditional leader and also three-time governor of the Pueblo of Jemez, and See-Shu-Kwa Christopher Toya, archaeologist and current tribal historic preservation officer for the Pueblo of Jemez. Antony Armijo and Steven Gachupin provided additional information for a drawing on traditional runs.

To create proof of the ceremonial use of the claimed Valles Caldera area by the Jemez tribe, one of the produced drawings documents the Jemez ceremonial trail Nuns Somol Colay Pon [Fig. 02]. The trail represents the path Hemish religious groups take when they walk from Jemez Pueblo to their primary sacred shrine, located on Wāawemá Mountain. The journey takes two and a half days and includes several predefined stops at sacred sites and ancestral villages to pray and give offerings. The exact location of the trail and the places of ritual along the journey, as well as the ritual order, timing, manner of performance, and meaning of the rituals, can only be known by the members who walk the trail.

The drawing is not a guide or a GPS route, but it includes descriptive facts. To fragment and thereby occlude the specific locations of the pilgrimage, the continuous space of the walking ceremony is broken into discontinuous horizontal slices. The trail is represented through a series of sectional drawings that cut through the topography at precise moments of the ceremonial pilgrimage. Rather than oriented to the north, the cuts show the horizon of the surrounding landscape as seen from the perspective of the walker. Since the information in a section is confined to two dimensions, and the sections cannot be traced back to their original location in the landscape, it is possible to visualize relatively detailed factual information about locations significant to Hemish tradition and spiritual culture without risking exposure of knowledge or allowing an outside reader to use it as a map. These section drawings are indexed temporally rather than spatially. The spatial gaps between the section drawings are filled with the measure of time elapsed between walking from one point, or section, to the next. This tactic indicates spatial continuity without representing it directly.

The information each section contains speaks to the importance of the Valles Caldera area for the Hemish people: the duration of the walk, the purpose of walking (as opposed to driving, for instance) up Wāawemá Mountain, the trail’s relationship to ancestral homeland and villages, and the time spent within the national preserve during the walk.

Another drawing documents the spiritual connection between the Hemish people and the shrine on Wāawemá Mountain by focusing on the ceremonial dances [Fig. 03]. These dances structure the traditional Hemish calendar year and are performed on specific days at the Jemez Pueblo plaza. Each dance sequence has a specific role in soliciting the blessings of the spirits; thus, dance movements and sequences are seen as a communication system and spatial manifestation of the spiritual pathway. All dances – except for two – are closed to the public, and the days they are performed remain undisclosed to outsiders. Dancers, ritual masks, clothing, and the meaning behind the symbolism and dance movements are excluded from visual representation. The notational system adheres to what anthropologist Elizabeth Brandt has outlined as the lowest category of traditional knowledge: the knowledge a non-Pueblo spectator gains when witnessing a ceremonial dance (Brandt, 1977:14-15). Since the non-Pueblo spectator is unable to understand the meaning of the dance and its role in the culture, this knowledge remains incomplete and fragmented, hence harmless to Hemish tradition.

To an outsider and legal audience, the only “accessible” components of the drawings produced are the encrypted representations, which, in this case, provide the proof, perhaps paradoxically, of secret knowledge. Hemish people, on the other hand, can read and fill in the blank spaces, “completing” the drawings by linking individual traditional knowledge with the meanings of the notational elements. The central aim of these alternative documents is to highlight the pressures put on Indigenous communities when asked to produce evidence according to Western legal standards and thus rethink the demands placed on evidentiary documents, their formats, and possibilities to perform. Equal access to justice for Indigenous communities requires calling into question the prevailing Western evidentiary regimes and instigating a dialogue where there is currently none – a dialogue between Western and Indigenous paradigms of truth.

Denying Indigenous representational structures is another form of denying Indigenous sovereign claims, as juridical structures are crucial components to claims of sovereign control. Upon consultation requests to document sacred sites within the framework of U.S. federal government schemes aimed at native culture protection, we have seen repeated refusals and instances of silence by native communities. These must be seen as valuable examples of claiming the place of Indigenous truth in the current U.S. legal arena. Aware of the power their knowledge holds within both their community and U.S. courts, Indigenous communities refuse to disclose sensitive information and thereby actively take part in the U.S. legal system’s power-knowledge game by bringing in their own power-knowledge system – one that is based on secrecy.

Rather than seeing secrecy as an impediment to understanding native societies, it is necessary to accept and value it as an integral part of the power-knowledge organization on which many Native cultures are based. Forcing Indigenous peoples to assimilate to Western legal customs amounts to epistemic violence. It is only when indigenous claims are recognized in their own terms – and cultural secrecy is addressed as valid legal communication – that a dialogue can become possible.

NOTES

1. The research project this article builds on has been published as a book by Stemberg Press in 2019. For a more elaborate exposition of the research, see Kolowratnik (2019).

2. In 1909, the U.S. Board on Geographic Names named the Hemish people’s town “Jemez,” which derives from the Spanish colonial pronunciation, although the Indigenous nation calls its people, traditional land, and culture “Hemish.” Following the advice of See-Shu-Kwa Christopher Toya, tribal historic preservation officer for the Pueblo of Jemez, in this article, I use “Hemish” when referring to the people, traditional land, and culture; and “Jemez” when referring to legal and political matters.

3. Today there are a total of nineteen Pueblo communities in the Southwest of the United States, among which Taos, Acoma, Zuni, Jemez and Hopi are the best-known. They share common agricultural, material, and religious practices to which scholars refer to as Pueblo culture. Pueblo, which means “village” in Spanish, originated from Colonial Spanish and refers to the people’s particular style of dwelling.

4. Anthropologist Elizabeth Brandt uses Taos Pueblo as a case study for exploring the sociology of knowledge in southwestern Pueblo culture, expressing confidence that the general model, including cultural secrecy, is applicable to all southwestern Pueblo communities. See Brandt (1977).

5. Pah-Tow-Wei Paul Tosa, conversation with the author, Jemez Pueblo, NM, March 6, 2017.

6. Pah-Tow-Wei Paul Tosa, conversation with the author.

7. The eastern Hemish ancestral homeland surrounds historic Pecos Pueblo in northern New Mexico. The western and eastern homelands are not adjacent.
