

**LIVING IN TWO LEGAL WORLDS: A LITERARY CASE STUDY
OF INTENDED MISCOMMUNICATION IN
LOUISE ERDRICH'S *THE ROUND HOUSE***

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Abstract

My paper suggests a reading of Louise Erdrich's novel The Round House using Lyotard's notion of the differend. I discuss how, in The Round House, the differend is born in the encounter between two legal systems, tribal law and federal Indian law, in a colonial context, and how the book negotiates the possibility of recovery and continuation for the American Indian.

Keywords: American Indian, federal Indian law, differend, politics

Ojibwe (Chippewa) writer Louise Erdrich's National Book Award-winning *The Round House* (2012) is, "at first glance, a mixture of crime fiction and coming-of-age novel" (Däwes, 431); a second glance will reveal the narrator's autobiographical story as dealing with traumatic cultural memory and racial/ social (in)justice.

On a (fictional) North Dakota reservation, Joe, who has just turned thirteen, is peacefully and boyishly living his summer vacation of 1988. Joe is the son of the tribal judge Antone Bazil Coutts; his mother, Geraldine, is the tribal enrollment officer. A quiet day ends abruptly when Geraldine is abducted and raped. As Joe's mother seals herself up in silence and isolation behind the closed door of the bedroom, the traumatic shock affects the whole family: the boy is painfully aware that he has lost his "before mom", while his father avoids the word "rape", and prefers the more neutral term "attack" instead. As the story unfurls, judge Coutts is rendered legally powerless due to a multitude of jurisdictional conflicts which preclude the prosecution of the perpetrator. Joe gradually gets the understanding that these conflicts stem from the way federal Indian law was shaped along the history of Indian-white relations in the colonial context; he takes it upon himself to achieve justice.

In an interview² given after she received the prestigious literary prize, Erdrich referred to *The Round House* as "a suspense novel masking a crusade"; the suspense format is intended to cloak "a discussion of

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jurisdictional issues on reservations, of how tribal courts cannot prosecute a non-Native who commits a crime in Indian country” (*10 Questions*) to make it palatable, and therefore communicable, to a large readership. Indeed, the writer’s speech at the National Book Awards highlighted her sense of a voice making itself heard. She worded 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.”³ Erdrich’s article “Rape on the Reservation” addresses the grim reality of pervasive sexual violence against Native women, relying on official data from governmental bodies:

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, according to the Government Accountability Office. [...] More than 80 percent of sex crimes on reservations are committed by non-Indian men, who are immune from prosecution by tribal courts. (Erdrich, Feb. 26, 2013)⁴

Erdrich’s interview and article are imbued with a sense of conflict, which she terms “19th century ferocity.” Such a psychic disposition towards Native Americans is revealed by the act of code naming Osama bin Laden (or his actual killing, as the controversy about this issue has it) after the legendary Apache warrior Geronimo (*10 Questions*). Erdrich’s example evokes a whole history of colonial relations which invented Indian Wars – a misnomer, just like the term “Indian” itself – through a projection (in Otto Rank’s sense) of violence that obfuscated “the defensive nature of the Indian participation,” and justified genocidal “peace policies” by “deem[ing] Indians as ‘recalcitrants’” (Robbins 91). In “Rape on the Reservation,” Erdrich quotes a 2009 report on violence against Native women in Minnesota, according to which “rapes on upstate reservations [by non-Native men] increase during hunting season”; this denotes a non-Indian fantasy of masculinity predicated on a predator impulse consubstantial with the colonial drive.

A dictionary definition has the term “crusade” as “a remedial enterprise” (Merriam-Webster)⁵. Erdrich’s crusade resonates with the sense of the continuation of Indian Wars, which Elizabeth Cook-Lynn outlines on the onset of her book *New Indians, Old Wars*: it is “a sacred responsibility to write” (Cook-Lynn 1). Its appropriateness resides in a “(post)colonial” status of the Indian nations in a “political-historical context” that Eric Cheyfitz views as the contemporary mode of existence of the Native American: “I place the ‘post’ in 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 Indian nations” (Cheyfitz). The legal, many Native-American authors argue, has been fully implicated in the construction of this status. Native literature, an act of resistance performed by virtue of “sacred responsibility”, becomes part of the decolonial project. Writing *by* the Indian, in response to writing (*of, for*) the Indian will by necessity construct land, community, and (hi)story as contested spaces, and will exist in an indelible connection with federal Indian law which, by permanently undermining Indian nations’ sovereignty, “has been the indispensable but obscured text and context to an understanding of U.S. Native American oral and written expression” (Cheyfitz).

In *The Round House*, Joe’s brutal encounter with the reality of federal Indian law occurs when judge Coutts calls the police to start the investigation and obtain a victim’s statement from Geraldine while in hospital after the rape: “Which police?” the boy asks; “Exactly”, the father answers (*RH* 12) The elliptical dialogue introduces Joe to the intricacies of federal Indian law, which he is not prepared to see at work,

² 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>>: 20 October, 2017

³ Louise Erdrich’s National Book Award acceptance speech is available at <http://www.nationalbook.org/nba2012_f_erdrich.html#.WfJTDNSLTDc>: 20 October, 2017

⁴ 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>>: 20 October, 2017

⁵ This definition can be found at <<https://www.merriam-webster.com/dictionary/crusade>>: retrieved 25 October, 2017

even though he is a fervent reader of Felix S. Cohen's *Handbook of Federal Indian Law*, the Bible - his father calls it - of a tribal judge's decisions. The judge calls the representatives of three police jurisdictions: "a state trooper, an officer local to the town of Hoopdance, and Vince Madwesin, from the tribal police" - one of them would have authority to investigate depending on whether the crime was committed on state or tribal land, and by an Indian or a non-Indian:

I already knew [Joe reflects autobiographically] that these questions would swirl around the facts. I already knew, too, that these questions would not change the facts. But they would inevitably change the way we sought justice. (RH 12)

Geraldine's silence is a symptom of a rape victim's trauma. But the fact that the attacker is identified to be a non-Indian shifts the paradigm from the individual to the collective. Linden Lark, the rapist, is a white man who has connections with the Native community through his twin sister, Linda, who gets abandoned at birth for she appears to be retarded and, anyway, not viable. Raised by a Chippewa family - the Wishkobs - on the reservation, Linda becomes a fully integrated member of the Indian community. Lark has real estate interests on the reservation, and becomes resentful of judge Coutts when he dismisses the Lark family's land claims and protects Linda's right to occupancy under the tribal law. The land issue and Lark's non-Nativeness imply a colonial nature of the conflict. He discloses his reasons for the rape and attempted murder in a monologue to Geraldine and another Chippewa woman, Mayla (whom he treats as an object of his desire and will: he wouldn't allow her to leave him, and seeks to seize the money she gets in exchange for not making public the name of her baby girl's father, a high-ranking, non-Indian politician):

I suppose 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 testifies to her husband]. He screamed at Mayla and said he loved her, yet she had another man's baby, she did this to him. But he still wanted her. [...] You should be crated up and thrown in the lake for what you did 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. [...] 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! [...] But I won't get caught. (RH 161)

Lark's "speech" calls up a whole history of Indian-white relations. Says Lark to Mayla's girl as he tries to set Geraldine on fire: "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). Evidence of the existence of the Indian, he means, which challenges the *terra nullius* doctrine at the heart of colonization and contradicts the myth of the vanishing Indian. Geraldine's sexual colonization by Lark is about the violence of the colonial objectification of the Native. The detective side of the novel is a pretext, for we get to know who the criminal is about midway through the book. The remainder of it is about seeking justice. From this perspective, Geraldine is literally and symbolically rendered voiceless. She doesn't know where exactly the rape happened (and that is important) because Lark covers her eyes and guides her to the place.

Through his gesture of blinding and silencing the Native, Lark performs a ceremony of domination, for the crime takes place at the round house. This is a sacred, ceremonial place, a site of resistance to the "colonization of the mind" (to borrow Gloria Bird's known formulation):

During the old days when Indians could not practice their religion - well, actually not such old days: pre-1978 - the round house had been used for ceremonies. People pretended it was a social dance hall or brought their Bibles for gatherings. [...] By the time the priest or the BIA superintendent arrived, the water drums and eagle feathers and the medicine bags and birchbark scrolls and sacred pipes were in a couple of motorboats halfway across the lake. The Bible was out and people were reading aloud [...]. (RH 59-60)

This fragment from one of the stories Joe hears from Mooshum, a family's elder, witness and survivor of an oppressive history, reflects the link Cheyfitz identified between oral literature – storytelling – and law: 1978 is the year the American Indian Religious Freedom Act was passed, a federal Indian law that protects the Indians' right to traditional religious practices.

The round house is also a place 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. Another 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).

Erdrich places the legal case of Geraldine's rape within the context of a colonial history that displaced tribal law. An expression of the inherent sovereignty of Native communities by virtue of their having developed a system of thought derived from their connection with their land, tribal law had "rules that respected us and forced you to work together," as Mooshum tells Joe (RH 214). The judge also explains his son that "[t]his was in fact [...] the first system of Ojibwe law" – "thus you knew your place in the world and your relationship to all other beings" (RH 154, 153). Federal Indian law instills confusion into the order of relationships and leaves open the possibility of injustice. On a visit to his father's office, Joe realizes that "[t]he problem with most Indian rape cases was that even after there was an indictment the U.S. attorney often declined to take the case to trial for one reason or another" (RH 41). The reason, as Erdrich's novel puts it, is that the law was formulated to serve the colonial purpose of undermining tribal sovereignty. While a rape is legally deemed a crime and must be prosecuted, the law operates (or, rather, fails to operate) differently for the Native. It is the "Indian" qualifier that totally changes the nature of the case.

Joe's disappointment and anger grow as the investigation stagnates, so much so that he gives his father a piece of "juvenile sarcasm": "All you catch are drunks and hot dog thieves" (RH 226). His appreciation for his father's role as a preserver of the tribal law is shattered by the realization that Lark's crime is "[w]ay beyond [his] jurisdiction" (RH 92). Two significant episodes reveal judge Coutts as a disempowered representative of tribal authority and a fatherly figure divested of his authority as an elder to his son: "You've got zero authority, Dad, one big zero, nothing you can do," yells Joe (RH 226). Still, the judge remains faithful to his mission of resisting family and community dissolution: he maintains the kitchen, the site of the family's ritual dining together, as the place for getting together with his son and discussing the impossible legal construction that denies justice to the Indian victim of crime.

In one of their episodes together, judge Coutts draws a map of the place where the attack took place and outlines the consequences of Geraldine not knowing the precise spot:

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 just to one side, a corner of that is state park, where state law applies. On the other side of that pasture, more woods, we have an extension of round house land. [...] 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, each with its own legal status, 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. The judge's explanation of the current situation allows one to recall a number of major federal Indian policies shaped "to eliminate all vestiges of genuine sovereignty among Indian nations" (Robbins 92). One of those was the General Allotment Act, in

the aftermath of the removal, which was predicated on the Euro-American understanding of land as property, contrary to the Native tradition, and granted Indians individual ownership of land, the title different according to whether one was “full-blood” or “mixed-blood”, while “surplus acreage” was “opened to non-Indian homesteading or conversion into the emerging system of national parks, forests, and grasslands” (Robbins 92), with the purpose of devising a wide economic dependency of the Indians, who would thus be forced into assimilation. Judge Coutts’s is a map of legally induced Indian disempowerment.

In another kitchen episode, the judge, maddened by his powerlessness to justly apply 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 is Indian law, Joe understands, based on “rotten decisions” (RH 228). History shapes legal language, the judge’s lesson for his son reads, and historical “grand narratives” – in Lyotard’s terms – are no less politically shaped:

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. Speculators are acquiring rights on treaty-held Indian land and on land still owned by Indians – white people are literally betting on smallpox. [...] 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 and on and on. (RH 228-9)

To Joe’s question how his father can continue to work in this impossible legal landscape and “stay here”, the judge responds by rearranging the same pieces of kitchenware into “an edifice that stood by itself” – a lesson for his son that the tribal judge’s task is to preserve tribal sovereignty through “solid decisions [...] crafted keenly” (RH 229). Resistance by speaking the colonial oppressor’s language back to him.

Within a legal system such as this, justice is unattainable for Geraldine and, by extension, for the Indian, dispossessed of tribal sovereignty. Geraldine’s case resonates with Lyotard’s notion of the *différend*:

*As distinguished from a litigation, a differend [différend] would be a case of conflict between (at least) 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 (and both of them if neither side admits this rule). Damages result from an injury which is inflicted upon the rules of a genre of discourse but which is reparable 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 genre or genres of discourse. (Lyotard, *The Differend* xi)*

Geraldine’s voicelessness, as well as her husband’s powerlessness to properly voice her case in a court of law, signals an utter impossibility to communicate within the rules of the legal system.

In Lyotard’s view, the minimal unit of communication is the phrase. It is not just an utterance that qualifies for a phrase, but “[i]t is the case of the transfer of information of any sort,” including silence (Malpas 63). Phrases form phrase universes, by bringing together four elements: the “addressor”, the “addressee”, the “reference”, and the “sense”. Phrases are inherently relational, in the sense that “[t]he social is always presupposed because it is presented or copresented with the slightest phrase” (Lyotard 139); the phrase cannot be ignored (the act of ignoring is itself a phrase), it solicits, and always receives, a response – another phrase. Phrases link to form “regimens” – “different sets of relations between the four instances that are marked in a phrase” (Malpas 64). From this perspective, the existence of the subject outside language and, in fact, outside communication, is an impossibility, the subject is constituted in the

linkage of phrases. Phrase regimens are organized into genres of discourse according to certain “rules of linkage”; genres “determine the stakes, they submit phrases from different regimens to a single finality” (Lyotard 29). Genres of discourses are “means of giving validity to certain forms of linkage and organizing phrases into a body of knowledge” (Malpas 65). From this perspective, the legal is a genre of discourse.

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,” in Lyotard’s sense, 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 function as a skeletal structure of the legal system of which the Indian is the addressee.

The fact “[t]hat Bjerke [an FBI agent] was here 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 the 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 – comments 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” (29). 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” (Carlson 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, 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 again dismissed the idea of the sovereignty of Indian nations 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), Indian courts “do not have inherent criminal jurisdiction” over non-Indians, so that they may not prosecute non-Indian criminals unless “specifically authorized” by Congress. To complicate matters even further, 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 instead of the federal government; this “has proved to be a disincentive for prosecuting many cases” (Tharp 27).

To correctly place Geraldine’s case within this web of conflicting legal provisions is an endlessly difficult endeavor. There is a flawed connection between the four instances of the “phrase universe”. In terms of “reference” and “sense”, what qualifies a rape as such may be similar in federal law and in tribal law, from a denotative point of view. But in the prescriptive regimen, the “addressor”, that is, the legislating authority for the federal Indian law fails to link consistently to its “addressee”, for this category is not homogeneous; the law complex itself constructs the addressee groups differently in the denotative, and thus, the non-Indian addressee is exempted from fully participating in the prescriptive. It is the genre of discourse that dictates the rules of linkage for phrase regimens, and confers validity to some linkages, according to a purpose, while excluding others. Thus, tribal law is not actually recognized as belonging to the legal genre, since it stems from a tradition transmitted through storytelling, with different organizing rules. Lark’s monologue, quoted above, is expressive of this de-legitimation: the Indian has “no standing” under the law because of the inferiority ascribed to the Native by the colonial “scientific” genre of discourse.

Geraldine cannot prove the violence perpetrated against her, since, by not knowing where the crime occurred, she cannot prove that Lark is the “addressee” of any law, federal or tribal. Lark’s status as the

perpetrator can be valid, under the “linkage rules” of the federal Indian law, only on the basis of a known place where the crime was committed. In the absence of this, there cannot be “an agreement about the sense of [the] referent,” nor is a “dialogue” possible to try and reach such an agreement (Lyotard xii); the reality of the crime itself cannot be proved in the eyes of the law. Geraldine experiences the impossibility to communicate as “impossibility to testify”. “This is what a wrong [*tort*] would be: 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 lack of legal response to Geraldine, the fact of her being ignored, translates as a denial of her existence under federal Indian law; she is a denied subject, a vanished Indian. This kind of miscommunication is intended, given the way the law is formulated, therefore it is political.

Joe decides to achieve justice for his mother. With the help of his best friend, he shoots and kills Lark. His choice “about how to link on to a phrase” (Malpas 66) is also a political act, in that it opens possibilities for further linkages to emerge. While he has to suffer the trauma of having committed a murder, Joe liberates his family and, by extension, his Native community, from the stagnation of the differend.

References and bibliography

Carlson, David J. 2016. *Imagining Sovereignty: Self-Determination in American Indian Law and Literature*. U. of Oklahoma Press.

Cheyfitz, Eric. 2006. “The (Post)Colonial Construction of Indian Country”, in Cheyfitz, Eric (ed.), *The Columbia Guide to American Indian Literatures of the United States since 1945*, Columbia UP: 1-127.

Cook-Lynn, Elizabeth. 2007. *New Indians, Old Wars*. U. of Illinois Press.

Däwes, Birgit. 2017. “Louise Erdrich, The Round House”, in Muller, Timo (ed.), *Handbook of the American Novel of the twentieth and Twenty-First Centuries*. Walter De Gruyter GmbH.

Erdrich, Louise. 2012. *The Round House*, HarperCollins.

_____. 2013. “Rape on the Reservation”, in *New York Times*. <<http://www.nytimes.com/2013/02/27/opinion/native-americans-and-the-violence-against-women-act.html>>: retrieved 20 October, 2017

Luscombe, Belinda. 2013. “10 Questions for Louise Erdrich”, in *Time Magazine*. <<http://content.time.com/time/subscriber/article/0,33009,2132753,00.html>>: retrieved 20 October, 2017

Lyotard, Jean-François. 2002. *The Differend: Phrases in Dispute* (translation by Georges Van Den Abbeele). U. of Minnesota Press.

Malpas, Simon. 2003. *Jean-Francois Lyotard*, Routledge.

Robbins, Rebecca L. 1992. “Self-Determination and Subordination: The Past, Present, and Future of American Indian Governance”, in Jaimes, M. Annette (ed.), *The State of Native America: Genocide, Colonization, and Resistance*. South End Press.

Tharp, Julie. 2014. “Erich’s Crusade: Sexual Violence in the Round House”, in *Studies in American Indian Literatures*, 26 (3): 25-40