Nuclear Waste, Environmental Injustice, and Native American Sovereignty

[This is a slightly modified version of “All Used Up and Nowhere to Glow: Goshute Nuclear Waste Siting and Native American Sovereignty” (David R. Keller, lead author), in Peggy Connolly, Becky Cox-White, David R. Keller, and Martin G. Leever, Ethics in Action: A Case-Based Approach. Copyright 2009 Wiley-Blackwell, Malden, Massachusetts. Reprinted with permission of the publisher.]

The question of Native American sovereignty has been an enduring problem throughout United States history.

In the seminal case Cherokee Nation v. Georgia, the U.S. Supreme Court rejected a Cherokee request to be recognized as a “foreign nation.” Instead, and suggestively, the Court defined Indian tribes as “domestic dependent nations” (1831). Chief Justice John Marshall wrote that the Cherokee were a “distinct political society separated from others, capable of managing its own affairs and governing itself” (ibid.). The next year, in Worcester v. Georgia, Marshall added that the Cherokee Nation was “a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia...have no force” (1832).

The political implications of Supreme Court precedence have been profound. The Court recognized the sovereignty of U.S. tribes and checked state intrusion into tribal operations and over tribal lands (Coté 2001, p. 20). For many Native American communities, sovereignty has turned out to be the greatest economic development asset they possess (Cornell and Kalt 1992, p. 45). To these tribes, sovereignty is survival (Egan 1998).

Yet in describing tribes as “dependent,” the Court stipulated that the 554 autonomous “nations” and allied 314 reservations (Egan 1998) cannot exercise powers that conflict with the U.S. government (Coté 2001, p. 20). All Native American tribes are subordinate to Congress (Egan 1998). Thus, practically speaking, Native American “nations” are really semi-autonomous.

The semi-autonomous status of “domestic dependent nations” is intrinsically ambiguous and has led to complex tensions between Indian tribes and their surrounding political jurisdictions. Such tensions are nowhere more evident than in the plans of the Skull Valley Band of the Goshute, a tiny tribe in the desolate Utah desert, to store highly radioactive waste on its reservation.

Roaming the Great Basin of Nevada and Utah for thousands of years, the Goshutes—whose name means “dry earth” or “ashes” (Christensen 1995)—
once numbered 20,000, but by the mid-nineteenth century the tribe had been decimated by disease, violent clashes with settlers of European descent, and encroachment of habitable land by Mormon immigration and development. Goshute leaders signed a treaty in 1863 with the U.S. government (Woolf 1997b) granting sovereignty of a 17,777 acre reservation in Skull Valley, 50 miles and 2 mountain ranges southwest of Salt Lake City. (Another separate band of Goshute live near the Utah-Nevada border.) By the end of the twentieth century, the total number of Goshute had dwindled to 600—the number of Skull Valley Goshute to 120. Diaspora left only a few dozen on the Skull Valley reservation (Wald 1999).

Beautiful to some in its barren sublimity, the valley to most is a wasteland of blistering heat, cold wind, and ashen alkaline dust. In the Goshute community, the windows of houses are broken, roofs sag, pink fiberglass insulation hangs from mobile homes, cars rusting where they quit running (Woolf 1997b)—tangible evidence that economic opportunities on the reservation are scarce.

Like other Native American nations, the Skull Valley Goshute became interested in nuclear waste storage in the late 1980s and early 90s when the U.S. Department of Energy (DOE) began offering Native American tribes with grants to study the feasibility of temporary nuclear waste storage (Rajeev and Easterling 1998), known by the Nuclear Regulatory Commission (NRC) as “monitored retrievable storage” (2007). In a 1992 report describing the findings of the tribe’s investigation into the issue of monitored retrievable storage, Goshute leaders wrote: “European Americans must re-examine their lifestyles and ask how we can co-exist with the environment. They must understand as Chief Seattle warned over a century ago that man is only a strand in the web of life. The real political question which every American politician is avoiding is: Do Americans really need to conspicuously consume energy to have this standard of living?” (Woolf 1992).

Probing further into the issue of nuclear waste storage, the idealism of Goshute leaders to vanquish the paradigm of free-market industrialization seemed to collapse into a desire to work within the paradigm of free-market industrialization. Exploring the economic opportunities of using their forbidding desert reservation for monitored retrievable storage, Goshute leaders visited repositories in Canada, France, Britain, Sweden, and Japan (Woolf 1997b). Under the controversial leadership of Leon Bear (Israelsen 1999b, Westby 2001), Chairman of the Skull Valley Goshute, in 1997 the tribe signed a lease with Private Fuel Storage (PFS), a private consortium of electric utility companies (Woolf 1999a) to store high-level radioactive waste for 50 years until a permanent repository opened at Yucca Mountain, Nevada.
Shortly thereafter, PFS submitted an application to the NRC Safety Licensing Board for a permit to build and operate a repository (Israelsen 1997). In 2000, officials of Tooele (pronounced TO-WIL-AH) County, where Skull Valley is located, also entered into an agreement with PFS (Spangler and Kemp 2000).

According to PFS technical manager Scott Northgard, the intent of the plan has been to create a “provably safe” (Claiborne 1999), centralized, and economical storage site until the federal government is ready to take possession of the waste (Northgard 2000).

The plan calls for encasing 40,000 metric tons of spent uranium in 4,000 stainless steel casks (Maddox 1997). The uranium would be engirdled in cement onsite at nuclear reactors throughout the country and then shipped by train to Timpe, Utah, a whistle-stop on a main rail line. At Timpe, the casks would either be loaded onto trucks for the final 26-mile trip down a narrow two-lane highway or transferred to another railway dedicated for the purpose. At the facility, the casks would be placed above-ground in vaults standing on a huge concrete slab, where they would remain until a permanent facility, such as Yucca Mountain, opened.

The estimated cost of the project exceeds $3 billion (Mims 2000). The Goshute’s remuneration remained confidential until 2007 when it was revealed in court documents that the tribe stood to make $1 million or more annually (Winslow 2007). This money, according to Bear, would help the tribe build desperately needed infrastructure such as a fire station, police station, health clinic, and water and electrical utilities (Claiborne 1999). Tooele County, whose officials endorsed the project early, also expected to benefit fiscally. PFS agreed to pay the county $500,000 a year in lieu of property taxes, and $3,000 for each cask brought to the site, eventually totaling $12 million. Prior to completion of the facility, the county was to receive $5,000 per month for education (Spangler and Kemp 2000).

Predictably, the prospect of storing out-of-state nuclear waste ignited intense criticism from a wide spectrum of Utahns: environmentalists, other Native Americans, and most crucially, Utah State lawmakers.

For Steve Erickson of Utah Downwinders, an environmental group dedicated to radioactive waste issues, the Goshute-PFS proposal amounted to nothing more than a “shell game” aimed at getting waste out of the neighborhoods of nuclear power plants rather than finding a long-term solution to the problem of nuclear energy production (Woolf 1997c). Referring to the utilities who are eager to get rid of their waste, Erickson said: “It’s time
Americans stop operating under the misconception that they can deposit whatever they don’t want out in the middle of the American desert” (Scholl 1997).

Perhaps as predictably, the proposal divided the Indian community itself. The Skull Valley Band’s sister tribe, the Confederated Tribes of the Goshute, voiced strong opposition (Woolf 1997c.). Margene Bullcreek, a member of the Skull Valley Band who lives 3 miles from the proposed site, believes that the repository is inconsistent with traditional Indian respect for the land. “It’s about being in harmony with our creator, and showing Him we do not wish to spoil His gift to us” (Miller 1997). “I’m going to stand up and try to have my people understand that nuclear storage is not an economic salvation when in fact it might be the ruin of our land” (Scholl 1997). To Sammy Blackbear, another resident and vocal critic of Bear, Skull Valley is a holy place and should not serve as a nuclear waste dump (Mims 2000).

Asserting that tribal leaders pushed ahead with plans without properly consulting the tribe, in 1999 more than half of the Skull Valley Goshute living on the reservation, led by Bullcreek, joined a lawsuit suing the Department of Interior’s Bureau of Indian Affairs (BIA) to overturn the lease agreement, claiming that the federal government failed to look after the well-being of the tribe (Woolf 1999a).

Independently of intra- and inter-tribal dissension, the nuclear storage site proposal is entirely congruous with the environmental history of the area (Ishiyama 2003). After World War II, Tooele County became home to some of the most notoriously poisonous agents such as deadly sarin and VX nerve gas (Riebsame et al. 1997) in what sociologist Valerie Kuletz has referred to as “national sacrifice zones” created by the federal government (op. cit. 1998). Utah state leaders consented to the hazardous waste facilities of the military, and later actively welcomed the hazardous waste facilities of private industry.

This conglomeration of governmental and private facilities has made Tooele County one of most concentrated areas of pernicious waste in the nation. Just to the east of the proposed Goshute-PFS siting over the Stansbury Mountains sits the Tooele Army (Deseret Chemical) Depot, home to the nation’s largest stockpile of chemical weapons; Dugway Proving Ground, a biological weapons testing and storage site, is southwest; EngerySolutions (formerly Envirocare), a low-level radioactive waste dump, Grassy Mountain hazardous waste site, as well as several toxic waste incinerators, lay to the northwest; to the north is situated the infamous Magnesium Corporation of America, which has emitted enough chlorine and sulfur dioxide to earn it the
title of the worst air polluter in the nation (Spangler and Spangler 2001) according to the Environmental Protection Agency’s Toxics Release Inventory (2001). Together, these sites make Tooele County, in the words of historian Mike Davis, “the nation’s greatest concentration of hyperhazardous and ultradeadly materials” (op. cit. 1998).

Thus, taken in context, the Goshute-PFS plan is consonant with public policy precedent. It was consequently surprising to many Utahns that the greatest opposition to the plan has come from the upper echelon of Utah State political leadership, who suddenly exhibited interest and vigor in denouncing hazardous waste in Tooele County.

The opposition was led by Governor Michael Leavitt, who grew up in southern Utah in the shadow of mid-twentieth century open air nuclear testing. Explaining his opposition to the Goshute-PFS plan, he recounted: “I’ve seen pink clouds of radiation float over my grandmother’s house. I had childhood friends who died of leukemia and cancer and neighbors who lost entire sheep herds overnight from radioactive fallout” (Claiborne 1999). In light of these experiences, Leavitt vowed, when nascent signs of a Goshute-PFS deal began to emerge in 1993, that the repository would only be built “over my dead body” (Mims 2000). In 1997, Leavitt formed a special task force—the High Level Nuclear Waste Storage Opposition office—with the sole goal of identifying “everything possible” to kill the Goshute-PFS project (Woolf 1997a).

During the duration of his tenure as governor, Leavitt raised several kinds of objections. First, Leavitt reasoned that the waste is extremely dangerous, else the utilities would not be so eager to get rid of it. Second, Utah has no nuclear reactors. The interests of Utahns, albeit citizens of a politically weak state, should not be trounced by the electricity customers of Alabama, Florida, Georgia, Illinois, Iowa, Kentucky, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia, and possibly California (Israelsen 1997), for whom the waste was generated. Referring to the states where the nuclear reactors are located, Leavitt said, “If you create the waste, you take care of it” (Wald 1999). Third, once the waste is ensconced in Skull Valley, there would be no political incentive for the DOE to follow through with building the permanent site at Yucca Mountain (Woolf 1996). Leavitt’s fears that ‘interim’ may become ‘permanent’ were given credence by Arjun Makhijani, President of the Institute for Energy and Environmental Research. The DOE, as Makhijani put it, “never met a repository location it didn’t like. Once you take all the trouble of taking the waste to a certain place, I have a
sneaking suspicion they will find geological virtues nobody knew existed” and end up burying the waste in Skull Valley (Wald 1999).

Hamstrung by Goshute sovereignty and thus unable to prohibit the Goshutes from legally entering into a contract with PFS, Leavitt focused on blocking the waste from getting to the reservation. Buoyed by confirmed reports that casks similar to the PFS design had leaked in Germany (Israelsen 1998), Leavitt emphasized safety apprehensions of transporting nuclear waste, vowing to dig a jurisdictional “moat” around the Goshute kingdom and controlling traffic with a figurative “drawbridge” (Claiborne 1999).

Joining Leavitt’s effort to prohibit transportation of the casks, state Representative Merrill Cook introduced the Hazardous Waste Transportation Act (Maddox 1997). Enacted in 1998, the bill effectively transferred control from the county to the state of the 26-mile highway from Timpe to the reservation (Woolf 1998). PFS officials responded with a proposal to build a railroad from mainline at Timpe, which were immediately countered with concerns that an earthquake could derail trains transporting the waste (Woolf 1999b).

PFS officials steadfastly rejected assertions about the dangers of the plan, characterizing worries as uninformed and irrational. Northgard argued that state officials contradicted themselves, pointing out that in 1996 officials concluded, in their own words, that “from a technical standpoint, spent fuel can be safely stored. However, a significant issue exist [sic] in public perception and acceptance of such storage” (Woolf 1997c). “People’s perceptions have been skewed,” Northgard maintained. “There’s a lot of fear-mongering going on out there. This storage facility will be safe, environmentally sound and benign” (Scholl 1997). As Northgard contended, “Each train will be followed by an emergency-response team prepared to arrive and take charge of any incident within minutes. Thanks to the robust design of the transportation casks, there is less risk in spent-fuel transportation than in transporting chemicals and other hazardous materials” (op. cit. 2000). The PFS system is designed the withstand the most adverse conditions, Northgard claimed, including fire, flood, earthquake, adding—apparently in response to fears that an Air Force fighter jet flying over a nearby bombing range could crash into a cask (Wald 1999)—“impacts” (Northgard 2000).

Especially galling to Utah politicians were assertions of Goshute sovereignty, who until the PFS plan had been virtually ignored by the Utah citizenry. Representative Cook, whose district bordered Skull Valley, lambasted the Goshute-PFS plan as a repudiation of majority will. “Something is dead
wrong when a small group of people can ignore the will of 90% of our state,” Cook said. About the political autonomy that made the deal possible, he added, “I don’t think this is what the Founding Fathers had in mind. It’s just not right, this use of sovereignty. The implications are frightening for us as a nation” (Egan 1998). Asked about Goshute autonomy, Leavitt responded that he was “more interested in the 2 million people who live nearby” (Miller 1997).

That made no difference to Bear, progeny of a legal-savvy generation of leaders known for asserting the rights of Native Americans and promoting economic development in the name of sovereignty more forcefully than their forebears. “I don’t belong to two nations,” Bear said. “I belong to one—the Skull Valley Goshute Nation” (Egan 1998); “we don’t feel we’re part of Utah. We’re a sovereign nation” (Christensen 1995).

This feisty and flippant attitude induced Utah politicians to cast aspersions on Native American sovereignty, echoing the sentiment of some members of Congress that tribal autonomy is "un-American" (Egan 1998).

Numerous observers of the controversy noted on the apparent incoherence of Utah lawmakers on the Goshute-PFS plan. Brigham D. Madsen, a professor of history at Brigham Young University who opposed the plan, said: “When the Mormon settlers moved in, the hills were covered with wheat grass, one of the main sources of food for the Indians[.]. When the pioneers moved in, they brought their cattle herds and destroyed these grasslands. Now you have Skull Valley and it looks like a desert[.]. Why can’t the federal and state government help them out in other ways? After all, we took their homeland from them” (Claiborne 1999).

Similarly, David R. Keller, a professor of philosophy and environmental studies at Utah Valley University, 50 miles from the proposed site, wrote that “attempts by Utah political leaders to derail the Goshute-PFS plan are simply the latest chapter in a long story of injustices to Native Americans. Unless taxpayers are willing to provide economic support, the Goshute are legally and morally justified in pursuing the right to self-determination in overcoming the marginalization they have long suffered” (op. cit. 2002). Far from being “un-American” as politicians have contended, Keller held that the Goshute’s plan to receive the noxious dross of industrial civilization for profit is in fact “very-American” (ibid.).

Utah State officials had a hand in approving every single hazardous waste facility encircling the Skull Valley reservation and making Tooele County a
toxic waste dump (Claiborne 1999). “Only when the tribe wants to do it they suddenly have endless objections,” Northgard cynically observed (ibid.).

In this role as Chairman, Bear was most pointed in his criticism of state officials. Bear accused Leavitt of “selective discrimination, which is hypocritical and unfair” (op. cit. 1998). “People talk about environmental justice, but in Skull Valley we talk about environmental injustice. The impact [from the repository] will be a lot less than all the hazardous sites we already have around us” (Mims 2000).

Worse than hypocrisy, Bear alleged that opposition of Utah politicians to the Goshute-PFS plan was “blatantly racist” (Claiborne 1999): “Before Utah was even a state, in 1863, my people signed a treaty with the federal government. We were granted a small reservation in Skull Valley—a piece of land no one wanted. We were placed out of sight and out of mind. During the past 50 years, the Utah and U.S. governments have built many hazardous-waste facilities and disposal sites near our reservation, even burying sheep killed by nerve gas on our tribal lands. Did either government ask for our permission? Of course not” (op. cit. 1997). “The federal government once tried to isolate us from the rest of the world when they put us on this remote reservation land which no one else wanted,” Bear wrote. “Now when we see some prosperity, Utah’s governor wants to again isolate us…” (op. cit. 1998).

The issue for Bear was nothing less than the survival of his tribe. Denying Goshutes the right to pursue financial prosperity is tantamount to denying the Goshute the right to self-determination. The PFS facility could provide 40 permanent and 500 temporary construction jobs, jobs which could draw displaced Goshute back home and revitalize the community (Claiborne 1999).

In spite of the best efforts of Utah’s political elite to stamp out the Goshtue siting, plans continued to move ahead. In Leavitt’s opinion, money generated an unstoppable inertia: “It’s pretty clear that utilities are willing to spend billions to move [nuclear waste] out of their back yard and into ours. They were able to satisfy the needs of the Indian tribal nation—with money. They were able to satisfy the needs of...private landowners—with money. They were able to satisfy the needs of the county—with money” (Woolf 2000).

By 2000 Leavitt admitted that the state may not have the power to stop the project and appeared resigned to defeat (Kemp 2000). In 2006, nearly 9
years after submitting an application, the NRC granted PFS and operating license (Struglinski and Bauman 2006).

But then, as often in politics, a bizarre twist unfolded which changed the course of the conflict.

Utah Republican lawmakers, who typically have been adversarial to environmentalist causes suddenly become advocates of wilderness—most markedly, Representative Jim V. Hansen. A reliable foe of wilderness designation (Jenkins 2006), Hansen once disparaged national park legislation as unwarranted on the reasoning that “if you’ve been there once, you don’t need to go again” (Smith 1995). Nonetheless in 1999 Hansen inserted language into legislation proposing that a wilderness study area, which the proposed Timpe-Skull Valley rail spur would transect, become federally-protected (Israelsen 1999a).

Building on Hansen’s earlier work, Representative Rob Bishop initiated legislation to create the Cedar Mountain Wilderness Area. Utah Senators Orrin Hatch and Bob Bennett help shepherd the bill through Congress in 2005 (Gehrke 2005b) and President George W. Bush signed into law in January 2006 (Gehrke 2006)—the first federally-designated wilderness to be created in Utah in over two decades (Gehrke 2005a).

As a result of the new wilderness status of the area, the Bureau of Land Management (BLM) was unable to approve construction of the rail line across the federal land (Gehrke et al. 2006). Subsequently, the Department of the Interior, which exercises authority over the BIA invalidated PFS’s lease with the Skull Valley Goshute nation in September 2006 (ibid.).

In the summer of 2007, PFS and the Skull Valley Goshute filed a lawsuit in U.S. District Court in Salt Lake City asking the court to throw out the Department of the Interior’s decision, which the plaintiffs characterized as “arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and otherwise fatally flawed” (Fahys 2007). Untoward political pressure by Utah politicians drove the decision, the suit alleges. Court papers reveal that the tribe was to have benefited by payments from PFS at $200,000 a year until deliveries commenced, and $1 million a year after that, as well as opportunities in “profit sharing” with PFS (Winslow 2007).

Lawrence Bear, the uncle of Leon Bear who was elected Goshute Chairman in 2006 (Bulkeley 2006), said of the legal action: “The Goshute people are tired of being treated unfairly. This lawsuit was brought to vindicate the rights of
the Skull Valley Band to decide how best to use our own land for economic development” (Fahys 2007). The issue of sovereignty for the Skull Valley Goshute remained fundamental.

Legally, there is no ambiguity that some degree of sovereignty was given to Native American tribes in general by the Supreme Court in 1831, and to the Goshutes in particular by treaty 32 years later. Native American polities, as “domestic dependant nations,” are free from state intercession but subject to congressional control.

Not so clear is the degree to which state lawmakers are justified in exerting their influence in federal policy and procedure regarding Indian affairs. As the Goshute nuclear waste siting demonstrates, the line between sovereignty and subjugation is, more than ever before, fuzzy.

References


