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Painter, Fantasia

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**“Made for Your Benefit”: Prohibition, Protection, and
Refusal on Tohono O’odham, 1912-1933**

by Fantasia Painter

**Department of Ethnic Studies
University of California, Berkeley
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Institute for the
Study of
Societal Issues

“Made for Your Benefit”: Prohibition, Protection, and Refusal on Tohono O’odham, 1912-1933

Fantasia Painter
Department of Ethnic Studies
University of California, Berkeley

fantasia.painter@berkeley.edu

In this paper I examine the Bureau of Indian Affairs’ campaign to suppress liquor-use in Tohono O’odham, a federally recognized tribe whose homelands include southern Arizona, in the early 20th century. Finding purchase in scholarship on Indian-citizenship and governmental power, I adumbrate the BIA’s liquor suppression program as it invoked the language of protection while actively seeking to police, punish, and incarcerate Native people. I argue that “protection” and criminalization were not only interrelated and coordinated, but also part and parcel of the BIA’s project to incorporate Native people as would-be citizens and political agents.

Based on archival research and organized chronologically, this paper touches upon Arizona state prohibition (1915) and national prohibition (1920). It reveals the racialized and paternalistic logics of the BIA that led to the late creation of the Papago reservation (1916), and it examines the ways that the BIA’s prohibition program clashed with the Tohono O’odham Nawait I’i ceremony. Alcohol was after all not a colonial import for Tohono O’odham people but an indigenous and ceremonial substance.

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In March of 1914, Cato Sells, the newly appointed commissioner of the Bureau of Indian Affairs (BIA), sent a letter to each of his 6,000 employees.ⁱ He opened the letter with an excerpt from a speech that he had delivered to a group of field supervisors a month earlier,

‘I believe that the greatest present menace to the American Indian is whisky. It does more to destroy his constitution and invite the ravages of disease than anything else. It does more to demoralize him as a man, and frequently as a woman. It does more to make him an easy prey to the unscrupulous than everything else combined. If I say nothing more to you to-night that leaves an impression, let it be this one thought: Let us save the American Indian from the curse of whisky.’ (3/25/1914; [2/20/1914])

Setting the tone for the agency under his leadership, Commissioner Sells declared in his speech, and re-declared in his letter, that alcohol was a menace to the American Indian.ⁱⁱ It was a danger to both Indian men and Indian women.ⁱⁱⁱ It invited disease. It rendered American Indians into “easy prey” to “unscrupulous” predators. Sells concluded his letter by calling his employees to action: “It is my great desire that every employee in the Indian Service shall realize the tremendous importance of the liquor suppression work, and exert his best efforts and influence for the protection of the Indian from [alcohol], his worst enemy” (3/25/1914).

This paper examines the material realities of the BIA’s “best efforts and influence” in the early 20th century. It begins with Sells’s call to protect the Indians from their “worst enemy,” alcohol, and it follows the BIA’s liquor suppression program as it manifested in the city, in the country, and on the reservation. While centering the Tohono O’odham, whose homelands include what is known today as southern Arizona, this paper not only follows the BIA’s actions in one particular context, but it also examines the broader mechanics of settler-colonial power.

When it came to alcohol, the BIA invoked the language of protection while actively seeking to police, punish, and incarcerate Native people. This paper shows that there was no disjunction between the BIA's rhetorics of "protection" and its practices of criminalization. Instead, "protection" and punishment were part and parcel of the BIA's political, territorial, and cultural incorporation of Native people.

This paper is based on 560 letters, telegrams, and reports housed in the BIA archives at the National Archives at Riverside, dated from 1912-1933, and directly or indirectly related to the Papago agency's attempts to suppress liquor-use among the Tohono O'odham, work identified as "liquor suppression" in the archives and throughout the paper. These documents are primarily communications between the local superintendent who worked out of the Papago^{iv} field office in Arizona and the commissioner of Indian affairs who worked out of Washington DC. However, they also include letters to and from local BIA police officers, privates, field matrons, other superintendents, and the special liquor suppression officer stationed in Denver, CO. Together they reveal a structural and cross-country network of BIA communication.^v

Three factors explain the wealth of primary materials involving the Papago agency's liquor suppression efforts during this time period. First, the Tohono O'odham posed substantial challenges to BIA jurisdiction. In 1912, the majority of the Tohono O'odham did not live on the small, 75,000 acre reservation at San Xavier, 10 miles southwest of Tucson, Arizona. They resided in Tucson, in the mines at Ajo, Arizona, on vast public lands in-between them (see Figure 1), and on both sides of the US-Mexico border. Second, with the advent of Arizona state prohibition in 1915 and national prohibition in 1920, Indian prohibition, which had been federal policy since 1802, had considerable political, ideological, and financial support in the early 1900's as it dovetailed with broader national sentiments. Third, some Tohono O'odham outright

refused the BIA's prohibition policy for Native people. Nawait, later called "saguaro wine" by Ruth Underhill (1946), was a critical part of the Tohono O'odham Nawait I'i ceremony, and some Tohono O'odham leaders held that "if they gave up the making [of Nawait], it would mean starvation for their wives and children, as it would never rain again" (quoted in Booth 2005, 381). Alcohol was not a colonial import for Tohono O'odham people but an indigenous and ceremonial substance. Together, these factors – jurisdiction, prohibition, and refusal – converged in the early 20th century to make the suppression of liquor-use among the Tohono O'odham a priority for BIA officials and the subject of correspondences, which today constitute a rich archive.

To demonstrate the ways "protection" and criminalization were interrelated, and coordinated when it came to the BIA's liquor suppression efforts, this paper is organized chronologically. After contextualizing prohibition in



Indian Country from 1802-1914, the paper employs representative quotes and close reading of archival documents to narrativize the changing purview of BIA liquor suppression efforts in Tohono O'odham communities in three waves that took place between 1912-1933, from discourses of protection to practices of criminalization and back again. In the early 1900's BIA officials concentrated suppression efforts in nearby cities, where they claimed Indians had to be protected from unscrupulous racial others. After Arizona state prohibition was put into effect on

January 1, 1915, BIA officials turned their focus to the US-Mexico border. Invoking images of Indians exposed to unscrupulous bootleggers at the border, consternated BIA officials argued that the Indians living on public land “had little protection under the law,” and they lobbied to and ultimately established the 2.8 million acre Tohono O’odham reservation in 1916. While the new reservation did not give BIA officials the power over the border that they initially sought, it did empower them with the jurisdiction necessary to criminalize the Tohono O’odham “cactus wine,” Nawait, which was and is integral to the O’odham Nawait I’i ceremony. In criminalizing Nawait, BIA officials stopped focusing liquor suppression efforts on outside influences (i.e., the city and the border) and instead focused their liquor suppression efforts directly on Tohono O’odham communities and practices.^{vi} In 1924, BIA officials actively sought the arrest, indictment, prosecution, and incarceration of Tohono O’odham cultural/political leaders who refused to stop making Nawait. Afterwards, as indigenous elders sat in prison, BIA officials asserted to the Tohono O’odham left behind that the laws and regulations made and enforced by the US were made for the protection and benefit of the Tohono O’odham. In terms of liquor suppression, the BIA went from calling for the protection of the Indian to criminalizing Tohono O’odham people and leaders, to insisting to the Tohono O’odham that its actions were for the Tohono O’odham’s own benefit.

In this paper I demonstrate that “protection” and criminalization were two sides of the same coin. The BIA shifted from one to the other, adopting whichever frame best suited its interests at the time. I identify the pivot point connecting the two as paternalism. Paternalism here signifies the assertion and assumption that the BIA knew “what was best” for Native people. The BIA was empowered to enforce its vision for Native people through multiple means. As Michel Foucault has shown, discipline is a mechanism of state power that replaced punishment

as a paradigm of sovereign rule and regulates individuals not through the threat of death and physical pain but through the regulation of the body and soul through surveillance, training, and repetition. Foucault believed that this form of power was especially visible in the prison, the military barrack, the hospital, and the school. Governmentality—a Foucauldian neologism constructed from the terms governing and mentality—identifies a state power that attempts to get subjects to regulate themselves according to what the state deems to be their own best interest. This type of power requires that the subject consents to, believes in, and enacts the state version of the good-life (e.g., sobriety, individuality, Christianity) (Lemke 2001, 2; Foucault 1991; Foucault 1977). BIA officials who oversaw the Papago Agency at various levels sought to discipline and punish Tohono O’odham individuals and communities through juridical^{vii} maneuvers. They simultaneously strove to convince the Tohono O’odham to buy into the government’s program, logic, and beneficence. The BIA wanted Tohono O’odham people to believe that the suppression of liquor, which in practice meant the incarceration and death of indigenous people and lifeways, was for their own good.

Previous scholarship that employs Foucault to theorize Native Americans in the early 20th century has focused on governmentality and discipline in the process of liberal subjectification. In “The Birth of the Reservation: Making the Modern Individual among the Lakota,” Thomas Biolsi (1995) demonstrates that “civilizing the Lakota” in the 1900’s was actually a mundane production of the modern individual subject (subjection). Through policy and practices tied to coercive material realities (property ownership, “competence,” degree of Indian blood, and genealogy) the BIA produced US subjectivity in the Lakota. Keith Smith (2009), in his work on the first nations of Canada, has triangulated the role of surveillance and knowledge production in the liberal subjectification of indigenous peoples from 1877-1927. He writes “surveillance is a

technology of power... constant monitoring and recording of Indigenous people's actions in all aspects of their daily lives inspired behavior that complies" (2009, 18).

This study takes one step away from subjectification as a framework and instead reveals the mechanics of US colonial power as BIA employees sought the liberal subjectification, compliance, and incorporation of indigenous people and peoples. It demonstrates how the US simultaneously positioned Indians as both colonized wards of the government with minimal political power *and* potential political agents (i.e., US citizen-subjects). It expands upon what Beth Piatote (2013) has called the Indian/agent aporia. Of the Indian/Agent aporia Piatote writes, "The virgule, or slanted line, representing 'and-or' ... divides the Indian from the Agent marks the incommensurate nature of both categories during this time: Indian or Agent, ward or guardian, noncitizen or citizen. The slash mark simultaneously connects the two subjects and reveals the chasm between them ... [It] remembers the wounds inflicted upon Indian bodies and histories in the movement across the dividing line" (2013, 47). In the US settler-colonial context, governmentality, discipline, and domination had a great deal of overlap. The "slash" to which Piatote refers is an entangled matrix of negotiations between types of power, types of agency, and types of governance. As the BIA struggled to articulate its own role as guardian and trustee and, further, to articulate and incorporate Indians as wards and political agents (i.e., citizens), it contained and made sense of the Indian/agent paradox in the logic of paternalism, and it enacted its will through the discourse of "protection" and on-the-ground criminalization.

Paternalism herein proves malleable enough to accommodate "protection," coercion, and punishment. Citing Native interests, the BIA acted and instituted policy aimed at stopping Native alcohol. Bolstered by government institutions (schools, churches, courtrooms, and prisons) the BIA taught indigenous people about the sins of alcohol and at the same time threatened them

with removal, death, and incarceration if they did not comply with the BIA's vision for them. And when the jurisdiction of the BIA fell short, it deftly maneuvered to expand its authority.

BIA liquor suppression and the paternalism that fueled it was (of course) multiply tied to race. Though "Native American" is not a racial category per se, Native people and peoples are racialized. Native people, like blacks, were below whites in the racial hierarchy, and they could count on white men in particular to have ideas about what was in their best interest (Fear-Segal 2007), although in those visions they were perpetually unable to achieve the same moral, material, or intellectual status as whites. Liquor was also intimately tied up with racial progress and what was perceived as racial backwardness (Herd 1991; Gaytán 2014). Gaytán (2014) demonstrates that tequila, pulque, and beer were thought of as Mexican alcohols, a pejorative label in the early 1900's. The regulation of Native Americans was thus steeped in racial meaning, especially around the US-Mexico border.

Framed through paternalism, this research contributes to a growing literature on the mechanisms and technologies of BIA power and governance. It supplies insight into the incorporation of Indigenous land and Indigenous individuals, and it reveals the role that the criminalization of Indigenous people, polities, and practices played in the incorporation project.^{viii} Moreover, the data particular to the Tohono O'odham will interest those with a more pointed focus on O'odham histories, and they also constitute an important prologue and context to any understanding of the contemporary relationship between the US-Mexico border and the Tohono O'odham, an Indigenous community whose homelands have been bifurcated by the international line since the 1854 Gadsden Purchase.^{ix}

Background: Prohibition in Indian Country and Indian-Prohibition

Liquor, the regulation of liquor, and the paternalism surrounding liquor-use all have long histories in US-Indian relations. In many Native communities, alcohol itself was a part of the material and cultural invasion of Native America (Unrau 1996; Mancall 1997), and it acted as “a particularly versatile weapon in the invader’s arsenal” (Unrau 1996, 12). Liquor also has a contentious presence in indigenous communities today. While Cunningham et al. (2016) has demonstrated that despite a prevalent belief to the contrary Native Americans do not in fact have a higher rate of alcoholism than the general population, alcohol and alcoholism remains a high-priority issue in and for many Native communities (Prussing 2011; Waddell and Everett 1980).^x

<u>Timeline</u>
• 1802 First Indian prohibition passed
• 1882 Code of Indian Offenses established
• 1887 Dawes Act
• 1914 Arizona Prohibition passes
• 1916 Tohono O’odham reservation established
• 1919 Agency headquarters moved from San Xavier to Indian Oasis
• 1919 18 th Amendment ratified (National Prohibition)
• 1920 Indian Oasis Renamed Sells, AZ after Commissioner Cato Sells
• 1924 American Indian Citizenship Act
• 1936 Tohono O’odham government established as part of the Indian Reorganization Act (IRA)

In many communities, Indian prohibition—legislation banning the sale, consumption, or manufacture of alcohol to/by Indians—has been around nearly as long as liquor itself. Indian prohibition was first instituted in 1802 under Thomas Jefferson,^{xi} who wrote of Native Americans, “[Liquor] has weakened their bodies, enervated their minds, exposed them to hunger, cold, nakedness, & poverty, kept them in perpetual broils, & reduced their population” (Jefferson 1871 [1802], 187). Notably, for Jefferson the problem was neither alcohol itself nor those who used it for coercive ends (see Unrau 1996). It was the improper use of the substance; Jefferson continued, “Spirituous liquors are not in themselves bad. They are often found to be an excellent medicine for the sick. It is the improper & intemperate use of them, by those in health, which

makes them injurious” (ibid). For Jefferson, Indians seemed to be categorically incapable of regulating their own alcohol consumption properly. Thus, in order to protect them from their incapacities, Jefferson thereafter prohibited white traders from selling alcohol to Indians.

In the century between 1802, when Jefferson instituted Indian prohibition, and 1914 when Cato Sells declared whiskey the mortal enemy of Native people, Indian prohibition went from being aimed at outsiders who supplied indigenous communities with alcohol to being aimed at indigenous individuals themselves.^{xiii} By the later part of the 19th century, officials directed prohibition policy at Native individuals. The criminalization of Native people was made possible by the BIA establishment of the Courts of Indian Offenses and the *Code of Indian Offenses* (1883). While the *Code of Indian Offenses* primarily took aim at “heathenish dances,” plural marriage, and medicine men—all of which the commissioner considered “a great hindrance to the civilization of the Indians”—in the ninth and final article the code declared,

Any Indian who shall be found intoxicated, or who shall sell, exchange, give, barter, or dispose of any spirituous, vinous, or fermented liquors to any other Indian, or who shall introduce or attempt to introduce, under any pretense whatever, any spirituous, vinous, or fermented liquors on the reservation, shall be punishable by imprisonment for not less than thirty days nor more than ninety days, or by the withholding of Government rations.

With the new *Code of Indian Offenses* (1883), the BIA officially recalibrated its efforts. It moved away from stopping white traders and toward punishing individual Indians for consuming and distributing alcohol, and in doing so the BIA concretized a new regime that created criminals out of those it previously deemed merely ne’er-do-wells. By 1914, the punishment for drunkenness, the most noteworthy crime documented by BIA officials at the Papago Agency, was a \$10.00 fine (the equivalent of \$250.00 in 2019). When Indian prohibition was instituted under Jefferson

in 1802, Jefferson believed that alcohol was a physical threat to the Indians, but he aimed his legislative efforts at white traders. Over 100 years later, under Cato Sells, a growing portion of prohibition policy and enforcement—what Cato Sells called “the best efforts and influence”—targeted Native individuals.^{xiii}

The changes in Indian prohibition policy reflected the nation’s changing perception of the “Indian problem.” By the time Sells wrote about alcohol and the danger it posed to the Indian, the BIA was no longer interested in keeping Indians separate and isolated, as it was in Jefferson’s time. Instead, Federal Indian Policy had turned to assimilation. The US sought to incorporate Native peoples into the US citizenry. It sought to render them into US subjects and political agents.^{xiv} Prohibition was explicitly linked to the citizenship project. In the same letter quoted at the beginning of this paper, Sells wrote of liquor suppression, “[it will provide] a substantial foundation in solving the Indian problem” and “a long step forward looking toward their equipment for the responsibilities of citizenship” (4/25/1914). Indian-prohibition was intimately tied to an ideal political agency (i.e., US citizenship) for Native people.

The national vision was not only changing in terms of Indians. The prohibition movement had caused the nation to question alcohol (in certain hands) altogether, and it created a unique political opening for Indian prohibition. In 1907, Congress appropriated funds specifically for national liquor suppression. Nearly half of the 1907 appropriation was dedicated to Indian Country^{xv} Also, during the 1907 fiscal year the BIA commissioner created the Special Officer position, “special” because the officer was to be specialized in the enforcement of liquor laws (Ethridge 1975, 35). Thus, national prohibition in the early 20th century dovetailed with the longstanding Indian prohibition, and though the latter predated it (and would continue after

national prohibition was long gone) it created new fiscal opportunities for BIA suppression efforts.

When BIA Commissioner Sells (re)declared whiskey the mortal enemy of the Indian in 1914, he imagined it as the most pressing obstacle on the Indian's path to citizenship.^{xvi} While the discourse of protection of the Indian that he espoused had roots in the time of Jefferson, the language, philosophy, substance, and goals of that "protection" had transformed in the century between the two white men.^{xvii} Where Indian prohibition had started as an attempt to insulate Native people from alcohol for their own physical well-being, and, as a policy, it took aim at white sellers of alcohol, by 1914, prohibition sought to discourage Native intemperance through criminalization of Native individuals. At stake was their perceived compatibility with and capacity for US citizenship. What hadn't changed was BIA concern with what they thought was best for the Indians (paternalism) and the juridical technologies they wielded to realize it (law, enforcement, and jurisdiction). The sections that follow engage with the primary materials from the National Archives at Riverside and zoom in on the Tohono O'odham communities in the city, on public lands, and on the reservation. These sections trace the ways BIA paternalism manifested as both discourses of protection and practices of criminalization.

Complicated Jurisdiction, Insidious Racial Others, and the Exposed Tohono O'odham in the City 1912-1915

This section discusses the first wave of BIA liquor suppression efforts affecting the Tohono O'odham during the time period covered (1912-1933), when BIA officials concentrated suppression efforts in nearby cities. From 1912 (and most likely before though the records are inconsistent) until 1915, when Arizona passed prohibition, local BIA officials focused their

attention on the Tohono O’odham in Tucson, Arizona and in Ajo, Arizona (see Figure 1 above). BIA officials argued to their superiors that the Tohono O’odham had to be protected from booze in the city. A close look at these documents reveals that officials specifically imagined racial others in the city to be the carriers, conduits, and ones truly culpable for the booze that was falling into Native hands. However, rather than seeking control over the racial others who seemed to BIA officials to be supplying Native people with alcohol, BIA officials sought to incarcerate Tohono O’odham offenders from the cities in the BIA jail. Compelled by what they saw as racial others and insidious racial mixing in the city and insufficient and ineffective disciplinary regimes in the local jails, BIA officials sought to extend BIA jurisdiction, which at the time was limited to the spatial confines of the reservation, to Native bodies beyond the reservation. While couched in technical jurisdiction issues, letters concerning Native people in the nearby cities proffer insight into not only the ways in which BIA officials imagined the city as a space the Tohono O’odham had to be protected from through disciplinary action, but also the ways BIA officials imagined the city as a threat to the moral progress of the Tohono O’odham because of its racial landscape. They also reveal the first in a series of expansions of power that the BIA sought in the name of protection.

As is still the case today, in the early 1900’s the majority of the Tohono O’odham did not live on the San Xavier reservation, the small reservation established in 1874 and located about 10 miles southwest of Tucson, Arizona.^{xviii} Instead, the Tohono O’odham lived throughout their homelands: in the city of Tucson, at the mining camps in Ajo, Arizona, in the vast desert landscape between the two cities, and on both sides of the US-Mexico border.^{xix} Thus, most of the Tohono O’odham were located off of the San Xavier reservation and outside of the San Xavier Agency’s jurisdiction.^{xx} Stationed at San Xavier BIA officials could only look on as their

charges, who were not at the time US citizens and were not entitled to a drink, partied with their neighbors in the cities.

For BIA officials it seemed like the onus of the immoral insobriety in the city lie with racial others. The superintendent often expressed concern and alarm over interracial contact facilitated by the city. This sentiment was put succinctly sometime later, regarding the 500 Indians living in the outskirts of Tucson. Of them the superintendent wrote, “Their village is located in a most undesirable part of the city, where they are thrown in contact with Mexicans, Negroes, Chinese and people of other nationalities. There are numerous bootleggers in this locality who prey upon the Indian people, and conditions are very bad” (1/8/1932).^{xxi}

Insobriety seemed, to BIA employees, to be merely a small piece of a general unchecked immorality facilitated by racial others. In many missives liquor, sex, race, and immorality were often conflated and irretrievably entangled. Concerning the Tohono O’odham in Ajo, Arizona, the superintendent wrote to the commissioner about alcohol, but quickly and without warning he switched to a discussion of prostitution. He wrote of “Indian women being kept there for clandestine prostitution who were very likely brought over from Mexico, and who really are Mexicans.” He elaborated further, “The women were Mexico Indians, but they would tend to demoralize the Indians working around Ajo.” (3/3/1915). Fears of racial mixing and chemical vice dovetailed, for the superintendent, with threats of compromised sexual morality of the Indians. Alcohol was not only a threat but also a slippery slope.

Whether alcohol or prostitution (and these were associated for the superintendent), immorality was associated with Mexico. Of course, calling Mexico-Indians “really Mexicans” was especially shortsighted considering that not 60 years prior, the land he referred to was part of Mexico. Moreover, Tohono O’odham communities, the very Indians he oversaw, resided on both

sides of the border, a fact that appears in the archives on occasion. Still, the Mexican-female-indigenous bodies, which to the superintendent were “really” or actually Mexican, seemed to demoralize the innocent and authentic Tohono O’odham. Between prostitution and alcohol, Mexico seemed to have, for the superintendent, a racial life of its own that threatened the Indians. Perhaps this threat speaks to the BIA’s investment in the Tohono O’odham as would-be US citizens. The city thus represented not only a space of insidious racial mixing and a trifecta of moral dangers: alcohol, racial mixing, and promiscuity, but also, possibly, a dangerous national mixing.

The superintendent imagined contact with non-whites as a danger in itself; racialized bodies acted, for him, as media for alcohol and the immorality that alcohol served as a proxy for. While recycling Cato Sells’s metaphor of prey and predator (quoted at the paper’s opening), by asserting that bootleggers preyed on Indian people, the superintendent projected the danger posed by whiskey onto racial others, “Mexicans, Negroes, Chinese and people of other nationalities,” the conduits of liquor. It was thus racial others, those of other nationalities, the superintendent believed, that the Tohono O’odham had to be protected from.

Whites also threatened Native sobriety to an extent. In 1912, the superintendent wrote of white picnickers, who were attracted to the reservation by “the large trees and running water available for picnic parties” (3/26/1912). These picnickers, the superintendent believed, threatened to expose the double standards between Indians and neighboring white communities: “if they see white people are allowed to drink on this reservation, this evil of their drinking will be still harder to curb” (ibid). The superintendent posits the evil in the city as coming from without and the evil on the reservation as coming from within Native people, providing a stark contrast that suggests a racial triangulation at work. “Mexicans, Negroes, and people of other

nationalities” threatened native people, but whites merely threatened to reveal the literal and moral deficiency of the Native. Natives were, after all, not yet citizens and they weren’t, in the BIA’s estimation, morally capable of using alcohol responsibly.

Faced with the threats in the city, the BIA mobilized the discourse of protection in an effort to gain material power over Indian people. The superintendent argued that the necessary protections for the Indians would materialize through the law. The superintendent implored the commissioner for the authority to do more off of the reservation. In a 1914 letter he wrote,

The County authorities have taken up a great many drunken Indian cases but the light fines and imprisonments given them by the Justices do not seem to materially deter them, and it is desired to punish them more severely in the agency jail with the hope of at least checking this demoralizing and nefarious practice. (4/16/1914)

While trying to extend his jurisdictional reach to city-Indians, the superintendent revealed the integral role criminalization played in BIA articulations of protection. Using the discourse of protection, the superintendent argued that bringing city-Indians under his jurisdiction and into the agency jail, where the punishments could be more severe, would protect them through material deterrence.^{xxii} A few weeks later, the superintendent elaborated on the importance of punishment by returning to the specter of racial mixing, one that now included incarcerated whites. He wrote, “In order to do any real good it is necessary to give them a more severe punishment... turn them over to me [from the city]. By this method the Indians are not thrown in contact with the low class of Mexicans and whites who infest the city and county jails and where they would undoubtedly learn more wickedness” (4/27/1914).^{xxiii}

The BIA imagined booze as a threat, menace, and form of predation and infestation that was specifically associated with racial others. Physical access of Indians to these abject bodies in

the city threatened contamination. The Indians had to be protected or better yet, controlled. Two correspondences concerning one local resident's complaint about interracial fiestas suggests that beneficent "protection" was consciously tied to control. To the complainant, a local resident, the superintendent wrote, "The Indians living in the village near Mexicans and Negroes, are subjected to a great deal of temptation" (7/9/1915). To the commissioner, about the same complaint he wrote, "It is extremely difficult to control the Indians living near Tucson, and off the Reservation" (7/9/1915).

The BIA claimed that it sought to punish Native people for their own good. If the purpose of the prison is to get prisoners to regulate themselves and to make them productive for the US nation-state as would-be citizens, as Michel Foucault suggests, then the fact that the BIA sought control over the incarceration of Indians suggests they had a specific vision for Indian regulation, production, and citizenship. The Papago agency also had a lot to gain from such an arrangement. The superintendent tellingly wrote of the labor completed by Native prisoners: "A large quantity of labor is also performed on the reservation by the prisoners with small cost" (7/9/1915). By bringing Native people into the BIA jail officials would have also shored up business, creating more paperwork, staff-needs, and points of rehabilitative contact with Indian wards.

Up until 1915, the superintendent was largely focused on the city. While he knew the term "Nawait"—which he labeled a "mild intoxicant [made] from the crushed fruit [of the Saguaro cactus] for old semi-religious reasons" (2/14/1913)—he viewed it as a trivial substance made by few. Conspicuous for the directed and systematic attack on Nawait in western Tohono O'odham communities that would follow, in one letter he noted that they, "seem to be well protected because of their remoteness from white settlements, their own good habits, the vigilance of Agency officers, and the influence of the missionaries. The Indians living near [the

cities] are much more exposed to temptation and are too often demoralized and vicious” (2/19/1915). With the advent of Arizona prohibition, the superintendent’s sense of Navajo triviality and Tohono O’odham innocence and isolation quickly disintegrated.

“Little Protection Under the Law”: Arizona Prohibition (1915), The US-Mexico Border, and Indigenous Agency

This section discusses the second wave of BIA liquor suppression efforts affecting the Tohono O’odham during the time period covered (1912-1933), when BIA officials turned their focus to the US-Mexico border. After Arizona state prohibition went into effect in 1915, the BIA’s suppression efforts, which were previously focused on the cities and the racial bodies in them, were redirected toward nation-state spaces, specifically Mexico and the US-Mexico border. These larger and more amorphous entities appeared to BIA officials to threaten both Tohono O’odham individuals and entire Tohono O’odham communities, which occupied the desert landscape split by the border. Concerned with “the Line” and the smugglers it portended, the BIA moved to protect Native people not just from racialized bodies in space (the city) but from racialized extra-national space itself (the border), a project that again resonated with the simultaneous campaign to turn Native people into political agents (US citizens). As part of this changing focus from the city to the border, the BIA was forced to acknowledge indigenous agency in seeking out liquor. In response, the superintendent began to emphasize punishment over protection. The BIA’s changing focus, brought on by Arizona prohibition, led directly to the establishment of the 2.8 million acre reservation in 1916.

In November of 1914, Arizona became one of the many states to vote dry before national prohibition took effect in 1919. On Christmas Day of 1914 the superintendent mused on the newly emboldened black market that the new year would bring:

As you know Arizona has voted dry this last election and while this may be enforced in some counties of the state, I am very much afraid that as the sentiment of this county is so much against prohibition, that much illegal sale of liquor will be winked at for a while at least... I am very much afraid that the consumption of liquor will not be curtailed to any extent... I am very much afraid that there may be more liquor sold to Indians than before by means of this nefarious traffic. The saloon-keepers in Tucson have been careful not to sell to any Indians the past couple of years through sheer fear but the law-breakers that may spring come, will not quibble over going either to Florence or to Atlanta, if convicted. (12/24/1914)

The superintendent repeated the phrase “I am very afraid” three times in this short excerpt, revealing the power of affect in the mobilization of danger. The superintendent imagined that new, more menacing, and more emboldened bootleggers in the city were on the horizon. The Indians had to be protected; the superintendent therefore requested more personnel and funding for enforcement, a request higher ups sympathized with but ultimately denied due to funding shortages.

Nearly a year later, the specter of emboldened and hardened criminals in the city failed to materialize. The superintendent wrote to the commissioner, “The liquor traffic among these Indians has changed to a marked degree in this State since January 1st. There has been a vast improvement so far among the Indians around the city...” (10/13/1915). In a statement markedly different from his harrowed prediction, the superintendent hailed prohibition as an unexpected

and happy resolution to the dangerous urban landscape. He continued, “Prohibition has advanced many of these Indians as nothing else could and I see that it is a great blessing to many in the city who were thrown in contact with it and could not be prevented from drinking otherwise...” (10/13/1915).

With the same breath, however, the superintendent identified the new biggest danger to the Indian, access to Mexico. His letter continued, “... but I believe the Indians living west where there is no fence or patrol along the international line should be assiduously protected against this nefarious [bootlegger] traffic now” (10/13/1915). He clarified later in the letter; “The evils resulting from the liquor traffic have apparently shifted from the city of Tucson to the country West along the border” (ibid). Stoking new racial fears, the superintendent continued, “I have heard reports that some of the ripe mescal roots are being brought across the Line, with which Indians could make their own drink” (ibid). Mescal, a type of alcohol related to tequila and made with the roasted heart of the blue agave plant, was steeped in racial subtext that identified it as working class Mexican (Gaytán 2014). Faced with a calm in the city wrought by state prohibition, the superintendent identified Mexico as the new threat to Native sobriety;^{xxiv} he believed that Indians needed to be protected from Mexican booze and the ingredients of that booze.^{xxv} BIA concern had moved from the city to the border.

The superintendent’s language also reveals that his perception of Native individuals had shifted. He viewed them no longer as hapless victims but as shifty agents. In the letter quoted above he fretted about Native people making their own mescal. Ten days later, in a letter to Special Officer, Henry Larson, he wrote,

There are several Mexican settlements in the irrigable country just South of the Boundary and these places as a rule all have a Cantina and some a still to make mescal. There are

frequent carousals out through the County West when some Indian will bring up a few [containers] and distribute it among his friends. There is more danger of the Indians out there drinking liquors and becoming addicted to their abuse than the Indians around Tucson who heretofore have been the principle offenders. (10/23/1915)

The danger the superintendent identified, whether imagined or real, suggests a repackaged but familiar racialization. While he no longer imagined Mexicans in the city as the biggest threat to Native sobriety, he transposed that danger onto the country of Mexico, which provided access to liquor, and liquor still threatened the Indians. Importantly, the superintendent could no longer avoid the agency of Indians. Ironically, as the BIA maneuvered to produce Indians they could deem worthy of US citizenship, Indians were demonstrating that they were already capable of a certain agency, a transgressive agency. Indians were not just drinking due to their proximity to or because they were “being thrown into contact with” bad racial influences; they were active participants in their own “transgressions.” They were seeking booze out, and they were crossing international lines to get it. What hadn’t changed was the fact that the superintendent had no jurisdiction and therefore no means to “protect” the Tohono O’odham from either Mexico or from themselves.

In a surprising turn—surprising because Congress and the BIA were working at the time to reduce the size of reservations through allotment policy and the sale of “surplus” reservation land—the superintendent began to campaign for a new reservation that would incorporate the remote Tohono O’odham living on the public lands. He did so in the name of controlling liquor but also in the name of getting a grip on crime, immorality, and the Indians in general. After the commissioner had rejected a request for two additional policemen to curb the smuggling of intoxicants from Mexico, the superintendent wrote again, this time recounting other cases that

were just out of jurisdictional reach. The superintendent wrote, “with further reference to the agency work here, I beg to advise you that there are many more or less serious cases coming up among the Indians living on the public lands west, in which I am unable to mete out justice on account of their being off a reservation” (12/13/1915). The superintendent then enumerated various crimes committed by the Tohono O’odham including adultery and witchcraft. He concluded his letter,

I write the above to give a faint idea of the anomalous situation here, and how difficult it is to administrate the affairs of this agency at this time, and to request renewed efforts be made to create a reservation for these Indians who are living on the public domain here with little protection under the law. (12/13/1915)^{xxvi}

The superintendent, after being denied the police force increase, sought an increase in power over the Tohono O’odham another way. He campaigned for the creation of a reservation by mobilizing once again the discourses of protection. While reservation creation would ostensibly run counter to the entire BIA program at the time (which,



again, through the Dawes Act and boarding school system sought to whittle down Indian Country and render indigenous people into land-owning citizens), the impulse to protect/punish Native people “under the law” won out.^{xxvii} With the support of the Commissioner of the BIA, the Governor of Arizona, and, eventually, the President of the United States, in 1916, the superintendent’s efforts materialized in the establishment of a 2.8 million acre reservation (see

Figure 2), the third largest Indian reservation in existence today (Executive Order 1/14/1916).^{xxviii}

The importance of the relatively late incorporation of the Tohono O’odham reservation cannot be overstated. Whereas in places like Pine Ridge, allotment had already enabled the BIA to sell “surplus land” (Biolsi 1995, 32), Tohono O’odham did not become a reservation until the allotment policy was already falling out of political favor. From 1912-1915, an allotting agent visited the Papago Agency and Tohono O’odham country, but plans for allotment were dropped in favor of the reservation. This is not a coincidence. Whites were by and large uninterested in homesteading Tohono O’odham land, a seemingly untenable desert. In Southern Arizona, cattle was king. Although white ranchers did have their eye on Tohono O’odham land for grazing (a fact that caused more than a few disagreements), the Tohono O’odham were already proficient and prolific cattle ranchers. The late establishment of the Tohono O’odham reservation produced a uniquely truncated timeline from incorporation to US citizenship. Through the Indian Citizenship Act of 1924, Indians became US citizens only nine years after the Tohono O’odham reservation was established. Thus, BIA officials were not afforded the time for the systemic subjectification visible in other communities (Biolsi 1995). They instead were faced with a need to simultaneously pacify and subjectify. Because of this truncated timeline, the mechanics of BIA subjectification and discipline is conspicuous.

The quiet of the city brought on by Arizona prohibition enabled the superintendent to look west. What he found was the border and the booze it gave access to. Interestingly this turn also forced the superintendent to acknowledge indigenous agency in the form of general lawlessness. In an attempt to bring the scattered Tohono O’odham into the fold and *protect* them “under the law” from the immorality threatened by the porous US-Mexico border, the

superintendent spearheaded efforts to establish the massive Tohono O’odham reservation. His dreams of control, however, because of the land and the people and the time, would never come to fruition.

Finding and Prosecuting Nawait: The New Papago Reservation, 1916

This section discusses the third wave of BIA liquor suppression efforts affecting the Tohono O’odham during the time period covered (1912-1933), when BIA officials stopped focusing liquor suppression efforts on outside influences (i.e., the border and the city) and instead focused their efforts on suppressing Tohono O’odham practices and thereby the Tohono O’odham themselves. During this period officials, enabled by the creation of the reservation, honed in on Tohono O’odham Nawait, later called “cactus wine” by anthropologist, Ruth Underhill. While intended to expose the border to BIA authority, in reality, the creation of the reservation exposed the western Tohono O’odham and Nawait to BIA governance. However, in the face of BIA paternalism, the Tohono O’odham refused to give up Nawait, and instead ran headfirst into a confrontation of authority, law, and life with the BIA. Newly empowered, the BIA discourses of “protection” quickly took a backseat to punishment as officials sought to criminalize Native people to the fullest extent of the law while maintaining that their actions were in the best interest of the Indians.

The superintendent initially imagined the creation of the reservation as a victory for liquor suppression and, thereby, the protection of the Indians. In January of 1916, he confidently penned a response to the commissioner’s inquiry on the Tohono O’odham’s relationship with Tulapai—a fermented corn drink made most notably by certain Apache groups. He wrote, “These Indians do not make tulapai yet but only a form of tiswin, which they prepare from the

ripe fruit of the giant cactus and call ‘naaiwak’” (1/22/1916). Then, after explaining the manufacturing process, the superintendent asserted that his newfound jurisdiction would deliver precisely the remedy required: “Since this country is made a reservation now by Executive Order the liquor situation can be handled by the agency force alone and I believe that very little drinking will be indulged in after this” (1/22/1916). The superintendent envisioned the newly created reservation as a means to better control the Tohono O’odham, protect them from Mexican booze and curb what he saw as their primitive wine-making.

While the creation of the Tohono O’odham reservation did mark a significant turning point in BIA liquor suppression efforts among the Tohono O’odham, the change was not what the superintendent expected (1/22/1913). In 1919, the superintendent officially moved the agency headquarters from San Xavier to Indian Oasis, Arizona (2/26/1919). Shortly afterwards, he renamed the town Sells after Commissioner Cato Sells, the commissioner who oversaw the creation of the reservation in the name of law and order.^{xxix} Unfortunately for the superintendent, who was suddenly 60 miles from Tucson and in the heart of Tohono O’odham land and communities, he was completely incapable of controlling the expansive US-Mexico border on the reservation.

The superintendent quickly realized that his staff, despite what he had told the commissioner, was not enough to patrol the border. Typical in the Papago archives is a 1920 letter from the superintendent to the commissioner that read, “The police force at this Agency is wholly inadequate. The present force being 1 Police Officer and 5 Privates. These men have to travel over a territory of nearly three million acres and it is impossible for so few Police to keep proper discipline in this jurisdiction.” The superintendent went on, “the reservation borders on the Mexican line for fifty miles and this Mexican country being ‘wet’ a considerable amount of

‘tequila’ and ‘mescal’ is smuggled across onto the Reservation and from now on a closer watch than ever will have to be kept on the Border if this liquor traffic is to be handled the proper way” (3/14/1920).^{xxx} Still concerned with discipline, letters from the superintendent during this period invoke less the image of the hapless Indian (in the city jail or at the unsavory mining camp). Instead they invoke a concern with the vast space of the reservation. What had before seemed just out of reach in terms of jurisdiction now seemed an incorporated but no-less intractable desert landscape. Unfortunately for the superintendent, because of national prohibition in 1920, the funds for Indian-specific suppression had dried up.^{xxx} The new reservation, once imagined as a quick-fix to Indian immorality and intemperance, primarily exposed the impotence of the BIA police force and agency.^{xxxii}

The creation of the reservation and the accompanying extension of the superintendent’s jurisdiction not only failed to give him the control he desired, it also brought a new challenge to liquor suppression to light, the traditional practices of the Tohono O’odham themselves. Putting a stop to Nawait production was not as simple as the superintendent had imagined. Some Tohono O’odham refused to give up their traditional ways of life. A letter from 1917, written by a white agency officer, after he destroyed 53 ollas—bulbous storage/cooking pots some of which were employed in Nawait production—provides a stark contrast with earlier characterizations of the substance as trivial and gives insight into the changing stakes of Nawait suppression efforts:

In reply to yours of the 16th inst., in regard to breaking ollas at Santa Rosa Indian village, will say that I did break as many as 53 in all... These Indians have a great many ollas. Some of them they use for water and others to store their stuff in... I examined every one carefully. The odor [of Nawait] from every one I destroyed was very strong... I remember of one Indian who had a small grocery store and who claimed to be a chief that

had 3 ollas filled with wheat... telling me that he had used these ollas to make his wine and that he would not make any more if I would let him keep them. I then at a loss as to what to do told him that I had broken a good many ollas for the other Indians and that I would not be treating right by letting him keep his ollas... He helped empty his ollas, and after we had them emptied I asked him if he would destroy them. He said 'no'; that if I wanted to break them to do it. (4/21/1917)

The systematic reaction of the officer reveals the alarm that Nawait raised among Papago Agency officials and it exposed a conflation of punishment and prevention in the name of protection. The meticulous care the officer employs: inspecting, smelling, and checking "every one," suggests the severity with which he approached, and was told to approach, Nawait. The officer's reaction also reveals a dedication beyond the strict letter of the law. The response of the officer was not "by the book." Notably, none of the ollas had Nawait in them, only residue. Faced with his untimely arrival (the Nawait had already been consumed), the officer sought to prevent Nawait in the future. Thus, when faced with the elder's promise that he would not make tiswin in the future if he could keep his olla, the officer is "at a loss as to what to do."

Rather than getting a greater hold on the US-Mexico border or stopping Nawait, once relocated the superintendent found liquor suppression to be an unwieldy, bordering on futile, task. It certainly was not as easy as he had assured the commissioner it would be. Limited BIA resources and the refusal of the Tohono O'odham seemed to thwart the superintendent at every turn, and although he was now in the center of Tohono O'odham territory and closer than ever to the border and to the Western Tohono O'odham, the superintendent struggled to protect, control, or punish them.

In September of 1922, the superintendent wrote to the commissioner concerning the attempted arrest of one Tohono O’odham leader, Tapia. The superintendent described Tapia, a tribal leader at Big Fields, as “non-progressive and opposed to anything that has anything to do with the white man’s ways” (9/18/1922). Tapia was accused of producing and distributing Nawait, crimes that came to light while two (Indian) BIA policemen (Hugh Norris and Juan Louis) were searching the village for truant children for the Fort Yuma Indian School. When the two policemen arrived, Tapia was in the middle of ceremony. The superintendent wrote, “They found that Tapia had made a couple of large ollas of tiswin, an intoxicating drink made from the fruit of the giant cactus, and there were between two and three hundred Indians – men and women – drinking this wine. Some were already intoxicated” (ibid). When confronted, Tapia “informed Hugh Norris that he had made it [Nawait] and was giving it away in order to make it rain and that he always did it and always would” (ibid). As Tapia was being arrested, he called out for help and Tohono O’odham community members rushed in, grabbed Tapia, and dragged him away from the police. The Tohono O’odham were not only refusing “protection” but also resisting arrest/enforcement, and in doing so they would test the limit of “protection.”

Just over a month later, the superintendent wrote again to the commissioner concerning another Tohono O’odham leader, Jose Pablo. Pablo was arrested for and pled guilty to making tiswin. He passed away in custody while serving his 90-day sentence (11/2/1922). Later, while reporting on his liquor suppression efforts, the superintendent recalled the incident:

I have been trying hard to eliminate [Nawait], but it is a difficult task... I have convicted three of the main ones but unfortunately one of these men died while serving out his sentence in the county jail. Immediately after this all the head man of the reservation called on me and wanted to know what I expected them to do. If they gave up the making

of [Nawait], it would mean starvation for their wives and children, as it would never rain again. They claim that when the creator put them here he told them to make this drink in order to have rain, and the old timers firmly believe in this. (1/23/1923)

As the arrest and death of Jose Pablo and the attempted arrest of Tapia indicate, the stakes of liquor suppression were incredibly high for both the Tohono O'odham and the BIA. For the BIA, at stake was authority, control, and a sober US citizenship for the Indians. For the Tohono O'odham, whether dead in custody for making Nawait or dead by starvation because they didn't, death was on either side.^{xxxiii} Liquor suppression had come to threaten Tohono O'odham lives and a Tohono O'odham way of life. The superintendent was faced with a problem: liquor on Tohono O'odham was endemic. It was not a new influence that the Tohono O'odham needed to be protected from, but an old (savage) tradition to be rooted out. Recalling Tapia's arrest once again, the superintendent wrote,

During the month of September 1922, at an Indian village about fifteen miles west from the Agency, the police, sent by the Agent to prevent further manufacture of intoxicants by the Indians of that village, were defied, assaulted and driven off. About 50 miles of this reservation borders on Mexico, and a large amount of smuggling is carried through it, especially liquor... While the Papagos as a tribe are law abiding and good citizens, it is also true that perhaps twenty-five per cent, one fourth the population, look with disfavor upon the Agent's attempts to enforce law and department regulations. This is particularly true with regard to the manufacture of intoxicating liquor. For hundreds of years the different Indian tribes have manufactured some sort of intoxicants. With nearly all the tribes the process is in connection with some religious rite, but the use of the product by the Indians afterwards shows a result very similar to that of white man's whiskey, and

under its influence the Indians become dangerous, and the lives of white people on the reservation are endangered. (3/8/1923)

In his appeal to the commissioner, the superintendent triangulated liquor suppression through the civilizing mission of the BIA, the threat of Mexico, and the utterly manufactured threat to white lives; no white injuries were ever tied to Nawait in the archives.^{xxxiv} Indians, in the mind of the superintendent, were both threatened and the threat. They had to be protected and controlled. Ending on the threat to white lives that they represented, the superintendent reveals that he was quickly losing interest in protecting the Indians. He instead sought to prosecute them.^{xxxv}

Two years after his notorious encounter with the reservation police, Tapio (despite the change in spelling I believe it is the same person, as the O'odham "o" is somewhere between an a and an o) reappears in the archive, once again resisting arrest but this time revealing that liquor suppression efforts and Tohono O'odham resistance had come to a head:

On August 5, I sent Juan Louis and Abe Pablo, two Indian police to arrest Tapio at the Big Fields village for making [Nawait] at his fiesta... When the police arrived at Tapio's house and informed him why they had come he walked into the house and returned with this cartridge belt on and his rifle in hand. He said to the police 'Now get me if you can'. (8/17/1924)

As the superintendent, once again, was forced to write the commissioner about Tapio, he, like the officer in Santa Rosa, was at the end of his rope. The impetus to protect the Tohono O'odham was gone. He wrote, "I have gone to the limit with them in patience and trying to avoid trouble and recommend that the US Marshal be instructed to make the necessary arrests in this matter immediately" (8/14/1924). The commissioner responded almost immediately with a telegram that read, "do not precipitate trouble" (8/16/1924). A couple of weeks later the

commissioner suggested that the Indians who were charged with making and giving away intoxicating liquor be brought before a grand jury rather than arrested via warrant from the commissioner of Indian Affairs. This way, he wrote, “the Indians will realize that they are directly violating the law” (9/6/1924). Even the commissioner imagined that by bringing the full weight of the US court system upon the Indians, they might be taught a lesson (9/6/1924). They had to be punished in order to garner a respect for the law, to realize themselves as subjects of the US and subject to US law.

Tapio and eight other leaders who were charged with making Nawait and dodging compulsory education were indicted on the 24th of August, 1924.^{xxxvi} However, even after the indictment, the commissioner wrote a letter that sought to convince Native people of the BIA’s beneficence:

It has been reported to the Office that each of you are opposed to the actions of superintendent McCormick in attempting to stop the making of [Nawait] and his attitude on education of young Indians... Thus you can see that you are not only violating the state law but you are also violating the Federal law... Since the above law was enacted citizenship has been granted to the Indians. This makes the education of the children even more important than before because the Indians must have more education to meet the new duties and obligations which have been bestowed upon them... These laws and regulations are made for your benefit and when you violate them you not only harm yourselves, but cause superintendent to take action which he does not desire but must take. (10/2/1924)

Deeply invested in its perceived benevolence, the BIA held that the Federal and State laws were made for the Tohono O’odham’s benefit, in order to keep them from self-harm, even as Tohono O’odham leaders/elders were incarcerated.

The Indian/agent aporia and the work of governmentality come into sharp focus as the BIA sought to convince Tohono O’odham people of its good intentions through the language of citizenship. In 1924 the Tohono O’odham and all Native people had been “granted” US citizenship (see Simpson 2014, 22 on the “gift” of citizenship). The BIA sought to assert to the Tohono O’odham that the Tohono O’odham were political agents enough to be capable and accountable for their own transgressions, although their status as governmental wards loomed in the background. The BIA maneuvered to set an example for the Tohono O’odham through the prosecution of some of their leaders; it flexed its power to reveal the extent of US power and the punishment regime that supported it, and to insist to the Tohono O’odham that it was the BIA’s prerogative to incorporate, discipline, and punish them. In indicting the Tohono O’odham leaders, the superintendent and the commissioner sought to stress the power of US over Native law (traditional customs and political structures), and the power of US law over Natives.

Jose Tapia, Louis Foot, Helino, Helise, Geronimo, and Waukatch (it is unclear in the archives what happened to the other three leaders who were indicted) stood trial for making Nawait.^{xxxvii} Ultimately, the testimony from the Native BIA police would lead to the conviction of Louis Foote, Jose Tapia and Helino.^{xxxviii} In the conviction of Tohono O’odham leaders, the superintendent had achieved a victory of jurisdiction and ostensibly for the Indians themselves. Resonating with the commissioner’s letter, which asserted that the laws were made for the Tohono O’odham’s own benefit, as the Tohono O’odham leaders sat in a Prescott prison, the

superintendent distributed a letter to the “The Chief and Inhabitants” of seven Tohono O’odham communities.^{xxxix} It read,

The making of Tiswin or other intoxicating drink in the above named village or at any other place on the Papago Indian reservation is hereby expressly prohibited and all Papago Indians are hereby warned not to make or drink Tiswin or other intoxicating liquor. All persons violating the Laws of the Unites States and the Regulations of the Department of the Interior pertaining to the making or use of intoxicating liquors on the Papago Indian Reservation will be prosecuted and punished in accordance with the said laws and regulations. (7/31/1926)

BIA paternalism had finally manifested into a full-on threat of prosecution and punishment.

Conclusion

Like most of the superintendent’s presumptions, his belief that all would be settled after the arrest of traditional leaders never came to fruition. Although Nawait never made such a grand appearance in the courts again, jurisdictional complexities kept the superintendent from completely stamping out liquor.^{xl} At times it must have seemed that the landscape itself was conspiring in an attempt to thwart the superintendent’s plans. The lack of water and the sheer size of the reservation proved hostile to any meaningful control. In 1921 the young agency threatened with a shut down due to lack of water (4/26/1923; 4/27/1923; 5/19/1923). The superintendent was in danger of learning the hard way what the Tohono O’odham already knew about the rain.

Predictably, once national prohibition ended in 1933 the superintendent recalibrated his efforts back toward the city. The remnants of his program in the heart of Tohono O’odham

territory, however, did not fade away. Three years later, in 1936, the BIA sanctioned Tohono O’odham government was established through the Indian Reorganization Act (IRA), and just as national prohibition came to an end the Tohono O’odham began their own liquor suppression program. The new Tohono O’odham council asserted, “[numerous unscrupulous persons] preying upon our people, particularly the younger men of the tribe, by selling them liquor. Thereby doing them untold harm” (11/11/1933). Simultaneously, with the arrival of anthropologist Ruth Underhill, from Columbia University, the value of Native American traditions and Papago songs surrounding “cactus wine” in particular were increasingly valuable for white anthropologists. Underhill’s research further suggests that despite the superintendent’s best efforts and the new policy of the Tohono O’odham Nation, at least some of the Tohono O’odham were undeterred.

The BIA’s suppression of liquor among the Tohono O’odham began in the city. It turned to the US-Mexico border, and it ended up in Tohono O’odham communities. While the BIA had sought the punishment of the Tohono O’odham people throughout, by the end, the BIA was focused on suppressing not just liquor but the Tohono O’odham themselves.

The mechanics of BIA liquor suppression efforts among the Tohono O’odham from 1912-1933 has important implications for scholarly understandings of settler-colonial governance in the early 20th century. By tracing the BIA’s interplay between the rhetoric of “protection” and the force of criminalization, this paper shows the work that BIA paternalism was capable of in indigenous communities. The BIA believed it knew what was best for indigenous peoples and it was empowered (and became empowered) to realize that vision. As BIA officials sought to subject and incorporate indigenous people they also incorporated indigenous land, to the detriment of Tapio and other indigenous leaders. The fact that once the

indigenous elders were removed from their communities the BIA reverted back to an assertion of its beneficence and good intentions, lays bare the reality that protection and criminalization were two sides of the same coin. The BIA could wield an incredible amount of punitive power if Indians failed to comply with what the BIA thought was best. Paternalism proved to be capacious and an especially insidious technology of BIA power.

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ⁱⁱ Further down in the letter Sells wrote, "I especially request that on the Sixth Day of April, Nineteen Fourteen, the same be read to the student body of every Indian School, including those under Government, Mission or private supervision." Thus, bureau-wide, to non-Native BIA employees and Native students alike, Sells declared that Native people had to be saved.

ⁱⁱⁱ The Bureau of Indian Affairs (BIA), originally called the Office of Indian Affairs (OIA), is a United States (US) agency established in 1824. It was established within the Department of War to oversee the "trade and treaty" relationships between the US and Native American nations. In 1849, one year after the treaty of Guadalupe Hidalgo, the BIA/OIA was moved from the Department of War to the newly created Department of the Interior. Cato Sells was the Bureau of Indian Affairs (BIA) commissioner from 1913 to 1921. He was succeeded by Charles H. Burke (1921-1929) and Charles J. Rhoads (1929-1933).

^{iv} Papago is an outdated exonym for the Tohono O'odham.

^v Importantly, BIA letters offer inherently limited insight to researchers. As official BIA communications, their depictions of reality ostensibly represent only their individual personal and official/professional positions. Further, the indigenous voices and actions depicted within are primarily hearsay. Despite these limitations, given the consistency of prohibition discourse disseminated by the three commissioners and the multiple local superintendents at Tohono O'odham during the time period covered (1912-1933), this paper assumes that these letters

expose the BIA's official, organizational, *and* structural discourse. The criminalization of indigenous people was not a result of a few officials but a logic of paternalism constitutive of the BIA itself. This assumption is reflected in the author's decision to identify the superintendents and commissioners—with the exception of Cato Sells—solely by their office in the body of the paper. See table of relevant BIA Officials below. Furthermore, the author uses the terms Indian, Native American, and American Indian interchangeably to reflect the BIA's own terminology and understandings of indigenous people or Natives (two other terms I use).

BIA Officials 1912-1933

- **1913** Cato Sells appointed BIA Commissioner, replacing Robert G Valentine (1909-1913)
- **1916** J.D Martin replaces H.J Mc Quigg appointed Papago Superintendent
- **1917** T.F. McCormick appointed Papago Superintendent
- **1921** Charles Burke appointed BIA Commissioner
- **1927** E.S. Stewart appointed Papago Superintendent
- **1929** Charles Rhoads appointed BIA Commissioner
- **1930** J.W. Elliot replaces E.S. Stewart Papago Superintendent
- **1933** John Collier appointed BIA Commissioner
- **1935** T.B. Hall appointed Papago Superintendent

^{vi} Jurisdictional issues loom in the background of this paper; for some this will require clarification. The legal status of Native American peoples was determined in the three Supreme Court decisions, known in Native American Studies (NAS) as “the Marshall trilogy.” Marshall refers to John Marshall, the fourth chief justice from 1801-1835. In *Johnson v McIntosh* (1823) the Supreme Court determined that tribes had no right to sell lands to anyone without the approval of the federal government, because of European right of discovery. In *Cherokee Nation v Georgia* (1831) it established that Native Nations were dependent nations with a relationship to the U.S “as wards to its guardian.” One year later, *Worcester v Georgia* (1832) determined that States had no jurisdiction in Indian Country. Native American peoples and lands are recognized as “domestic dependent nations.” The reservations fall under federal and not state jurisdiction.

^{vii} Juridical here is not limited to the law but constitutive of the courts, police, enforcement, the agency, etc.

^{viii} On incorporation see Simpson (2014). Deloria and Lytle (1998); A considerable portion of scholarship on criminalization centers the boarding schools (see Adams 1995; Child 1998; Churchill 2004). Other scholarship has explored the criminalization of peyote (Dawson 2018) and the ghost dance (Fenelon 2014). However, the criminalization of alcohol has remained relatively unexamined in the US context. Sagers (2001) and Simons (1992) examine alcohol in Australian and Canadian indigenous relations. One exception, is Ishii (2003), who examines the ways alcohol factored into the Cherokee struggle for sovereignty around removal.

^{ix} Tohono O'odham has historically been a major interlocutor in US state formation, especially as US international borders have become metonymic sites of “national security.” Most recently, in 2016, as presidential candidate Donald Trump promised to the American people that he would “build the wall,” Tohono O'odham Nation chairman Verlon Jose retorted, “over my dead body.” Indeed those of us in and from Indigenous communities must wonder if The Wall will come at the cost of individual and political Native bodies in the US. Thus, while the border acts as a shadow character in the liquor suppression story that follows, it comes to embody the racialization along the Border traced by Kelly Lytle Hernández (2010) and Rachel St. John (2010).

^x It is also worth noting that some Native communities have higher rates of alcoholism than others and that such broad population statistics elide critical cultural, economic, and geographic differences among the diverse breadth of Native peoples and nations. Further, Fisher (1987) suggests that alcohol abuse is most likely rooted in the group's relations to the means of production in North America.

^{xi} Liquor has undergirded a surprising amount of US Federal Indian policy. As Francis Paul Prucha writes, "a strong argument for segregating the Indians [removal] has always been the curse of drunkenness afflicted Indians who were in contact with frontier whites" (653). William Unrau expounds on this by quoting an 1830 commission ordering the negotiation of Miami removal. It reads, "if you continue here... and let the white people feed you whiskey... [i]n a little while where will be the Miami Nation? They will all be swept off... Your Great Father cannot prevent his white people from coming among you. He wants to place you in a land where he can take care of you" (quoted in Unrau 1999). Concerns about alcohol falling into Indian hands were also at the heart of technical-legal definitions of "Indian Country," and "Indians." Liquor-concerns and legislation not only can be found in much of Indian Policy but also are at the heart of technical-legal definitions of Indigeneity. It is around liquor suppression and prohibition that the fraught landscape of wardship codified. Supreme Court decisions *US v Celestine* and *US v Sutton* elucidated the relationship between allotments (which came with citizenship for Native allottees) and wardship; *US v Four Bottles of Sour Mash Whiskey* held that patented lands were under the jurisdiction of the State: "It is not unlawful to introduce intoxicating liquor upon patented land in an Indian reservation. Or in other words the lands that are patented are under the jurisdiction of the State" (12/4/1913; 1/7/1914); These cases constituted a tricky jurisdictional line that superintendents had to walk, adjudicating citizenship, land, and Indian country.

^{xii} Indian prohibition went through other iterations. In 1834, as part of the reorganization of the Indian Department, Congress targeted Indian assets. As Francis Paul Prucha notes, No annuities could be paid to Indians while they were under the influence of intoxicating liquor or while there was reason for paying officers to believe that liquor was within convenient reach. The chiefs, too, were to pledge themselves to use all their influence to prevent the introduction and sale of liquor in their country (1986; p. 310).

^{xiii} If according to the BIA sobriety was "a long step forward" toward citizenship, ironically, one of the unintended consequences of the BIA's assimilation efforts was new jurisdictional challenges to Native liquor suppression. BIA enforcement power was intimately tied to space. While "Indian Country" was well defined in earlier Indian prohibition policy (e.g. the Intercourse and Trade Act of 1834 was often cited as the first prohibition law "in Indian Country"), ongoing treaty negotiations, the annexation of Mexico's northern territory in 1848, and the creation of Indian reservations had transformed what was once a uniform Indian Country into a fractured concept. Moreover, as part of allotment policy Congress passed the Dawes Act (1887), an act better known as the General Allotment Act. The act enabled the BIA to assign a plot of land, "an allotment," to Native individuals and at the same time to bestow upon them US citizenship. The allotment was originally "held in trust" for 25 years, until such time as the individual was deemed to be competent, at which time he/she received fee-simple title to the allotment. Many believed that this meant that the reservation or "Indian Country" had been diminished by the size of one allotment--usually 160 acres. Thus as of 1912, 25 years after the Dawes Act of 1887, "Indian Country" was quickly changing shape.

^{xiii} BIA jurisdiction vis-à-vis liquor suppression relied upon complicated jurisdictional questions: where an Indian was and, until 1906, if he or she had already become a citizen. US law (jurisdiction, legislation, citizenship) and normative morality (protection, sobriety, potential citizenship) were thus hopelessly entangled.

^{xiv} An impetus for the broader assimilation project in the 19th and 20th centuries, which sought to bring Native peoples into the American fold, was lawmakers' and their constituents' belief that extermination, removal, and containment had run its course. Deteriorating Native communities—long kept separate, for their own protection—were seen as a financial burden, and as a result national sentiment and its political arm re-envisioned the “Indian solution” through charity, civilization, moral instruction, and, ultimately, incorporation (see Hoxie 1984). These efforts were intimately tied up with a very particular conception of morality, of which sobriety was critically imagined a part. As Canadian scholar, Robert Campbell writes of the similar Canadian program, “Aboriginal peoples would become citizens but they had to demonstrate sobriety first” (Campbell 2008, p. 105). Thus, while originally conceived of as a mode of protection, in the assimilation era, liquor suppression worked in concert with allotment and the boarding school system to render Native people into a population amenable to the greater American citizenry.

^{xv} Indian Country had been explicitly defined in the 1834.

^{xvi} For more on indigenous citizenship and sovereignty during this era see Bassett 2011, Sakiestewa 2009, and Fear-Segal 2007.

^{xvii} The logic of protection at all costs, which materialized in BIA liquor suppression efforts, also had roots further back in the Jeffersonian era which sought to “save the Indian from himself” (Sheehan 1973, 5). As Bernard Sheehan has demonstrated in his text *Seed of Extinction: Jeffersonian Philanthropy and the American Indian* (1973), legislators and philanthropists believed that “the white man had a moral obligation to himself and to his posterity to see that the tribesman survives. If the Indian were transformed, if he adopted civilization and lived like a white man, his savage ways would disappear and he would endure to become a useful member of the white man’s world” (5). The goal of Jeffersonian era philanthropists was to civilize Native people “for their own good” and for their own survival. However, , as Sheehan points out, while philanthropists may have been filled with good intentions they ultimately killed Native people with kindness.

^{xviii} Tucson was a major trade center by Southwestern standards of the day.

^{xix} For more on the history of the Tohono O’odham see Meeks (2010); Marak and Tuennerman (2013).

^{xx} In 1876 the Papago agency was dissolved, and Papago affairs were administered through the Pima agency in Sacaton, Arizona. In 1902 Papago affairs was moved back to San Xavier.

^{xxi} The presence of Chinese people in this setting represents a key element of the dawn of the US policing its border with Mexico, which began in earnest as a response to the passage of the 1882 Chinese Exclusion Act. Prior to that legislation, the primary goals of policing the border involved the taxation of goods; after it, however, the focus shifts to ensuring that Chinese immigrants were not entering the US via Mexico (St. John, 2012).

^{xxii} Importantly, the superintendent’s vision for more severe sentencing complemented the commissioner’s, which centered a more liberal subjectification program. The commissioner’s program included a pledge-signing campaign (7/7/1915) and a letter campaign to “progressive Indians” (4/28/1914; 5/13/1914; 12/31/1915)

^{xxiii} The “BIA protection of the Tohono O’odham” is not a hermetic/complete narrative. The Tohono O’odham community landscape was not monolithic. While many Tohono O’odham

people felt the wrath of the superintendent's program, a few seized a small window of opportunity to align themselves with the BIA. After receiving one of the commissioner's boilerplate letters about the dangers of whiskey, one such Native, Domingo Franco, composed a response:

I am glad that I do not touch any whiskey because I know it will do a great harm to my body. I am telling you the truth. I am sorry to say that these other fellows can't stop drinking liquor. I will tell you the truth that I have never asked a Mexican to do such thing as to buy whiskey for me. Of course I got drunk 2 times just because a fellow that had whiskey told me to take a drink. No, I said. The fellow was drunk. He was very mad after telling me to have a drink, so of course I had to take it because he might hurt me...

That is what my friend did to me while I was trying to keep off the whiskey. (6/27/1914) Domingo Franco mobilized the BIA narrative of morality and danger. Domingo had been tempted, and fearing for his life he was forced to drink. Underscoring truth-telling explicitly twice, he underlined these expositions through the mobilization of the confessional. Whether or not the narrative was in earnest or was meant to convince the superintendent that he would be a good employee, Domingo's bid was effective in gaining the tentative trust of both the commissioner and the superintendent; later that year, at the recommendation of the commissioner, the superintendent hired Domingo onto the Indian Police force (7/13/1914; 9/22/1914). A later bid for employment was less successful. In a letter to the superintendent, the Field Matron stationed in Tucson explained,

Joseph Smith came here about 2 o'clock Sat. morning, he had a man with him but left him standing out in the street, I said to Joe where have you been? He said working, I said where? He said up at the University, that he had worked until 11 o'clock. Well I doubted it by the smell of his breath, he said he wanted to tell me he had a man to be policeman now, Jose Domingo... by this time the fellow came up on the porch. Joe went to him and said something in Indian, The fellow was very drunk, I said, Is that the man? Joe said no and got him away as fast as he could, I have not seen either since. (2/19/17)

Domingo's letter along with other documented Native-BIA police communications at Papago suggest the complexity implicated in the enforcement of prohibition on Tohono O'odham. Further, the story of Joseph Smith suggests that Native people maneuvered to thwart BIA efforts. Though some Native people were able to align themselves with BIA authorities, the majority of them were exclusively BIA targets. For more on the Tohono O'odham See Meeks (2010), Booth (2015) and Booth (2000).

^{xxiv} His use of the passive voice removes the verb, smuggling, from the racialized smugglers.

Notably, while the articulation of danger transitioned from urban-miscegenation to border-smuggling, both held Mexico (as either individual nationality or nation-state) as the central moral threat to indigenous sobriety.

^{xxv} The superintendent's letters quickly conflated the US-Mexico border with the existing black market and the vast public lands to the West. (10/23/1915) Turning to the Border is not a conceptual move uncommon for the era. See Stephen Moore's *Bootleggers and Borders: The Paradox of Prohibition on a Canada-U.S. Borderland* (2016); Rachel St. John's *Line in the Sand* (2011), and Robert Buffington, "Prohibition in the Borderlands: National Government-Border Community Relations" (1994).

^{xxvi} From the records it appears that a previous effort was undertaken in 1913, however documentation of that effort, let alone the logic of that effort, was missing from the archive.

^{xxvii} It is worth noting that, at times, the superintendent did write about encroaching white ranchers, which the superintendent also had no power over. However, this letter and those that preceded it exclusively enumerate the various crimes committed by the Tohono O’odham. The fact that the superintendent asks for officers first and jurisdiction second may suggest that even though the Papago agency had no de facto jurisdiction off the reservation, when it came to alcohol they may have exercised de jure jurisdictional powers.

^{xxviii} The largest reservation is Navajo Nation. The second is Uintah and Ouray.

^{xxix} Today Sells, Arizona, is the capital of the Tohono O’odham Nation.

^{xxx} See also (4/25/1921).

^{xxxi} In response to this, there are numerous letters in the archive that tell of funding shortages, lack of authority, and try-again-next-years.

^{xxxii} This was only made worse with budget cuts engendered by the simultaneous rise of national prohibition (1919). In addition to budget cuts, the massive land mass itself proved unwieldy. Everyday operations like communication, travel, and supplies became logistical nightmares. Tucson was over a full day’s ride on horseback away (60 miles), an especially long distance when compared to the former headquarters in San Xavier (10 miles).

^{xxxiii} For the Tohono O’odham to make Nawait was to break US law, but to forgo it was to break O’odham law.

^{xxxiv} Conflict between whites and the Tohono O’odham centered on cattle and the grazing land and water needed to sustain them.

^{xxxv} Although the Tohono O’odham had little control over the official narrative relayed to the commissioner, the archives suggest that the Tohono O’odham maneuvered to test and contest the limits of BIA authority in a number of ways. They had little interest in being “protected” from ceremony. In a letter to Antonio Lopez of Florence, Arizona, the Superintendent wrote, “You are claiming that the letter written on June 7, 1923, by Commissioner Burke in answer to yours of May 20 gives you and the people among whom you live permission to go on and do whatever you like or have been doing, including the making of a wine called ‘Tiswin’ for use at your fiestas. You have a wrong impression about this matter.” (9/29/1923) While just a fragment in the archives, this letter reveals that Native people sought to use the bureaucracy of the BIA against itself. Natives appear to have been proclaiming to what the reader imagines is police, that they made Nawait under the auspices of the commissioner. Going right over the superintendent’s head, Natives drew upon the chain of command to at the very least buy themselves some more time to finish ceremony. In another letter, this time to the commissioner, the superintendent writes, “I had two policemen at the border searching the Indians as they crossed the line [the US-Mexico border, following the Magdalena Fiesta] and one crowd that was horseback would not stop and one of them fired two shots in the air” (1/15/1924). The Tohono O’odham at the border, refused to stop for BIA officers at the US Mexico Border. Charging through, they physically avoided search and seizure. Shooting a gun into the air, they dared officials to follow. Native people thus attempted to use the power of paper and physical flight to gain the upper hand.

^{xxxvi} While beyond the scope of this paper, the case of Tapio and other Tohono O’odham leaders reveals interesting maneuvers for power. However, Tapio and 3 other leaders (most notably those who weren’t already confined in Tucson) refused to surrender to the superintendent until the return of a Tohono O’odham delegation to Washington. The superintendent wrote, “They refused to surrender at this time their excuse being that they are awaiting the return of Louis Foote from Washington. They stated if Louis brought the message that it was wrong for them to make tiswin, they would voluntarily surrender, but if Louis brought word that the commissioner

said it was all right for them to make it, they would not surrender” (9/30/1924, see also 9/20/1924) It wasn’t until later that the superintendent discovered that Louis Foote did not go to Washington to ask about the permissibility of Nawait but to negotiate the release of his *hemajkam* (comrades) being held in Tucson.

The Tohono O’odham sought to outmaneuver the superintendent’s authority. Going over his head, they attempted in various ways to maintain their ways of life with real or accepted authority. In addition, and no doubt exacerbating the superintendent’s frustration, was the fact that the Tohono O’odham leaders who refused to surrender revealed that they had been getting some legal advice from a mysterious source. The superintendent wrote to another Agent, “There is an Indian on your reservation that seems to be acting as legal advisor for these Papagoes [sic] that want to make the wine. I am told from other Indians that this Apache says that as long as it is their religion that I cannot stop it. There are about a dozen Papagoes [sic] over there now consulting him and I wish you would find out for me who this part is and where he is getting all his information from” (9/4/1924). Prior to appointing the two attorneys to defend these men the superintendent wrote, “Judge Sawtelle asked Tapia if he had an attorney, and through the interpreter Tapia answered ‘yes.’ The judge then asked him where his attorney was, and Tapia turned around and pointed to Louis Foote” (11/25/1924). It’s unclear if Tapia intended to reveal the US court system as a racket or if he simply didn’t understand what he was being asked. Importantly, in O’odham the word for lawyer is the same as “council man,” “wise one,” and “elder.” Regardless of his reasoning, Tapia’s comical assertion that his fellow defendant was in fact his lawyer belied the pomp and circumstance the BIA sought to stress.

^{xxxvii} However, the trial proceedings and the conviction of Jose Tapia and his cohort, which proceeded on January 6, 1925, centered around the question: Was Nawait really for religious purposes? (12/20/1924; 9/24/1924; 9/30/1924). Juan Louis, Abe Pablo, and Hugh Norris (all notably on the payroll) completed an interview with the superintendent:

Supt: Did you ever hear any of the Indians in the olden days claim that this was their religion?

Sam: No, I never heard of it being religion.

^{xxxviii} A letter from a prohibition officer, just three months later suggests that not everyone agreed on the morality of imprisoning O’odham elders for participating in ceremony. The prohibition officer suggested that the commissioner seek a pardon from the State in light of the fact that Nawait had a deep religious significance. The commissioner replied, “it appears that the religious use of the liquor is not as great as the Indians would have it appear.”

^{xxxix} The letter was addressed to “achchim, achi, anegam, Big Fields, Camababi, Iloidek & Sicalhumat-ker Villages & Cababi Village.”

^{xl} For example, one offender (drunkenness), Jesus Vasquez, was tried under the Volstead act (national prohibition) and released. The superintendent once again found himself writing to the commissioner about jurisdiction:

“I respectfully request that immediate action be taken to have the liquor law so amended that we can get some action in the Courts. At the present time the Volstead Act is not applicable to the Indians residing on the Indian Reservation and possession of liquor by an Indian on an Indian reservation is not a crime. We are absolutely helpless to suppress the liquor traffic” (6/1/1926).



Institute for the
Study of
Societal Issues

2420 Bowditch St. # 5670
Berkeley , CA 94720-5670

tel: 510-642-0813

fax: 510-642-8674

email: issi@berkeley.edu

web: <http://issi.berkeley.edu>