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SPECIAL FEATURE

LESSONS FROM RELOCATIONS PAST: CLIMATE CHANGE, TRIBES, AND THE NEED FOR PRAGMATISM IN COMMUNITY RELOCATION PLANNING

*Eli Keene**

Introduction

The first American communities that will be forced to adapt to the new era of rapid global climatic change are some of the continent's oldest. Up and down the coasts of the mainland United States and Alaska, American Indian and Alaska Native tribes are already confronting accelerating erosion and increased coastal flooding. Scientists generally project that sea levels will rise an average of one to four feet by 2100, the upper bound of which would permanently inundate large swaths of U.S. coastal cities such as New Orleans and Miami.¹ But for many coastal tribes, this future is already a reality. Faced with the possibility that their lands and homes are one storm away from being washed out to sea, a number of American Indian communities are already deciding where they will go once their land is no longer inhabitable.

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1. John Walsh et al., *Chapter 2: Our Changing Climate*, in CLIMATE CHANGE IMPACTS IN THE UNITED STATES: THE THIRD NATIONAL CLIMATE ASSESSMENT 66 (Jerry M. Melillo, Terese (T.C.) Richmond & Gary W. Yohe eds., 2014) [hereinafter 3RD NAT'L ASSESSMENT] (providing a medium confidence assessment that "global sea level rise will be in the range of 1 to 4 feet by 2100"); *Sea Level Rise and Coastal Flooding Impacts*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <http://coast.noaa.gov/slr> (last visited Dec. 24, 2016) (providing detailed maps of projected sea level rise across the United States). In early 2017, National Oceanic and Atmospheric Association (NOAA) revised its sea level rise projections to reflect new models of Antarctic ice sheet collapse. The Agency's revised "extreme" scenario shows global mean sea levels rising by up to 8.2 feet by 2100. See WILLIAM V. SWEET ET AL., NAT'L OCEANIC & ATMOSPHERIC ADMIN., GLOBAL AND REGIONAL SEA LEVEL RISE SCENARIOS FOR THE UNITED STATES vi (2017); see also Robert M. DeConto & David Pollard, *Contribution of Antarctica to Past and Future Sea-Level Rise*, 531 NATURE 591 (2016).

The question of where and how to assist Indian communities when coastal armoring measures prove unfeasible presents a number of options. One such option is to do nothing, allowing communities to disperse as flooding and erosion threaten individual homes and communal infrastructure. Alternatively, a community could be “collocated,” meaning it would be wholesale integrated into an existing urban or suburban area. Finally, communities could be voluntarily relocated as a whole, transplanting the entire population to a new site located on safer ground.

The preferred option for many tribal communities is voluntary community relocation. As of 2016, at least ten Indian communities across the United States are seriously considering wholesale community relocation as a means of adaptation to climate change.² Nevertheless, there are a number of obstacles to successfully relocating communities, not least of which is the prohibitive cost of doing so. As a result, state and federal agencies have made little progress on making community relocation a reality.³ With little movement on formulating a national framework for relocation of climate-displaced tribal communities, it is increasingly likely that these communities will face either makeshift collocation or complete dispersal when they are evacuated due to an extreme weather event.⁴

2. These communities are: Kivalina, AK; Newtok, AK; Shaktoolik, AK; Shishmaref, AK; Isle de Jean Charles, LA; the Hoh Indian Reservation (WA); the village of La Push on the Quileute Reservation (WA); the Sauk-Suiattle Indian Reservation (WA); the village of Tahola on the Quinault Indian Reservation (WA); and the community of Tulalip Bay on the Tulalip Indian Reservation (WA). Native communities in Hawai'i and U.S. territories in the Pacific are also considering relocation, but fall outside the scope of this paper. See T.M. Bull Bennett et al., *Chapter 12: Indigenous Peoples, Land and Resources*, in 3RD NAT'L ASSESSMENT, *supra* note 1, at 297-317; U.S. GOV'T ACCOUNTABILITY OFFICE, ALASKA NATIVE VILLAGES: LIMITED PROGRESS HAS BEEN MADE ON RELOCATING VILLAGES THREATENED BY FLOODING AND EROSION, 20 (2009) [hereinafter GAO 2009]. A number of Native villages in Alaska are also pursuing partial relocation efforts, moving individual homes and communal buildings to higher ground within the existing village. There is no comprehensive list of communities engaged in gradual relocation, but they include the Alaska Native villages of Allakaket, Golovin, Hughes, Huslia, Koyukuk, Nulato, Teller, and Unalakleet.

3. GAO 2009, *supra* note 2; Robin Bronen, *Climate-Induced Community Relocations: Creating an Adaptive Governance Framework Based in Human Rights Doctrine*, 35 N.Y.U. REV. L. & SOC. CHANGE 357 (2011).

4. In December 2016, reports quietly surfaced that the Obama Administration had convened an interagency taskforce to begin to develop such a framework. At the time of writing, it remains unclear whether this task force will survive the next presidential administration. See Christopher Flavelle, *Obama's Final Push to Adapt to Climate Change*, BLOOMBERG (Dec. 16, 2016), <https://www.bloomberg.com/view/articles/2016-12-16/obamas-final-push-to-adapt-to-climate-change>.

This Article places the options for government action on climate-induced relocation into the context of the Indian and Alaska Native relocation efforts of the Termination Era of the 1950s. These relocation programs hold important lessons for formulating policies on relocation today. Most importantly, moving communities comes with high social and economic costs that extend beyond replacing physical infrastructure. These costs must be addressed not only in concluding that community relocation is the best-case scenario for affected tribes, but also for addressing the needs of these communities if relocation cannot ultimately be funded.

Part I of this Article presents three short case studies of Indian and Alaska Native communities that are seeking to relocate away from the coast. Part II introduces the advantages and disadvantages of community relocation and collocation, and examines the likely outcomes if no action is taken. Part III places the options for tribal coastal retreat in the context of two 1950s relocation events—the Bureau of Indian Affairs’ (BIA) urban relocation program and the resettlement of the Alaska Native population of King Island to Nome in the 1960s. Finally, Part IV argues that current discussions of relocating climate-threatened Indian and Alaska Native communities do not integrate lessons learned from past relocation efforts and are therefore likely to produce similarly negative results.

I. Tribes and Coastal Retreat

American Indian communities on the coastlines experience the effects of climate change in different ways. While the primary concerns are the same across the United States—accelerated coastal erosion and sea level rise—the legal backgrounds from which American Indian communities approach these concerns vary significantly. These varying legal statuses mean that affected communities have used different forms of leverage with varying degrees of success in attempting to procure funding for relocation and adaptation planning. This Part provides a cross-section of these experiences by briefly introducing three different communities seeking to relocate away from the coast. These case studies introduce the common challenges faced by tribes seeking to relocate, including the problem of obtaining the funds to do so.

A. Isle de Jean Charles, Louisiana

Isle de Jean Charles is a narrow island approximately eighty miles southwest of New Orleans. It is connected to the surrounding Bayou by a single, narrow, un-elevated road. The island has lost about ninety-eight

percent of its total landmass since 1955,⁵ a result of upriver levee construction, wetland degradation, and a gradual rise in sea level.⁶ Any notion that the remaining sliver of land could be saved was abandoned in 2002, when the Army Corps of Engineers concluded that extending an ongoing levee project to protect Isle de Jean Charles was cost prohibitive.⁷ Permanent relocation of the island's residents was first proposed by the Army Corps of Engineers in its 2002 assessment of the levee project.⁸ In 2016, the State of Louisiana received a \$92.6 million resilience grant from the Department of Housing and Urban Development (HUD), \$48 million of which was allocated to relocate the Isle de Jean Charles community to safer ground.⁹

Isle de Jean Charles is thought to have been initially settled sometime in the 1800s by intermarried French and American Indian families.¹⁰ While the island's population grew, at one point, to some 300 people, the damage done by strong hurricanes—in particular, Hurricane Katrina, in 2005—has dispersed most residents and the current population has dwindled to about sixty.¹¹ Most of the residents are members of the Biloxi-Chitimacha-Choctaw tribe, though the United Houma Nation also claims several of the

5. STATE OF LA., NATIONAL DISASTER RESILIENCE COMPETITION: PHASE II APPLICATION 105 (2015), http://www.doa.la.gov/ocddru/ndrc/ndrc_pii_final_eximg.pdf [hereinafter NDR APPLICATION].

6. *Louisiana Coastal Wetlands: A Resource at Risk*, U.S. GEOLOGICAL SERV., <https://pubs.usgs.gov/fs/la-wetlands/> (last visited Dec. 24, 2016); Ricardo A. Olea & James L. Coleman, Jr., *A Synoptic Examination of Causes of Land Loss in Southern Louisiana as Related to the Exploitation of Subsurface Geologic Resources*, 30 J. COASTAL RES. 1025 (2014).

7. Marisa Katz, Comment, *Staying Afloat: How Federal Recognition as a Native American Tribe Will Save the Residents of Isle De Jean Charles, Louisiana*, 4 LOY. J. PUB. INT. L. 1 (2003).

8. Rick Bragg, *As the Sea Swallows, the Islanders Hang On*, N.Y. TIMES (June 30, 2002), <http://www.nytimes.com/2002/06/30/us/as-the-sea-swallows-the-islanders-hang-on.html>.

9. Press Release, U.S. Dep't of Hous. & Urban Dev., HUD Award \$1 Billion Through National Disaster Resilience Competition (Jan. 21, 2016), <https://archives.hud.gov/news/2016/pr16-006.cfm>.

10. *Bienvenue, Aiokpanchi, Welcome to Isle de Jean Charles*, ISLE DE JEAN CHARLES, <http://www.isledejeancharles.com/island> (last visited Dec. 24, 2016).

11. Carolyn Van Houten, *The First Official Climate Refugees in the U.S. Race Against Time*, NAT'L GEOGRAPHIC (May 25, 2016), <https://news.nationalgeographic.com/2016/05/160525-isle-de-jean-charles-louisiana-sinking-climate-change-refugees/>.

island's remaining families.¹² While both of these tribes are recognized by the State of Louisiana, neither has ever received federal recognition.¹³ Land on the island has been held in fee since the State opened it for sale in 1876, and is not legally considered Indian Country.¹⁴ This means that the community is not eligible for special treatment afforded to federally recognized tribes, such as the ability to put lands into trust, the ability to apply to certain grants as a tribe, and the general benefit of the federal trust responsibility.¹⁵

Members of the community have advocated for relocation both as a way to preserve traditional practices and bring back those that have already been lost. The community's new site design, for example, includes ceremonial space for pow wows, which the Tribe has not held since Hurricane Katrina hit in 2005.¹⁶ The community has lost significant aspects of its traditional subsistence lifestyle, in part because almost all the land available for agriculture has been washed away.¹⁷ The new site plan will also include large swaths of agricultural land in an attempt to support the growing of subsistence and cash crops to offset current reliance on grocery stores.¹⁸ In this way, relocation is seen as an opportunity not only for enhancing community safety, but also as a way to bolster cultural cohesion and economic stability for the Tribe.

Several community members are resistant to the idea of relocating, even as plans move forward. The first sight off Island Road, which connects Isle de Jean Charles to the nearby community of Pointe-aux-Chenes, is a handwritten sign declaring "WE ARE NEVER MOVING OFF THIS

12. Jacob Batte, *Tensions Arise Between Local Indian Tribes over Effort to Abandon Sinking Island*, HOUMA TODAY (May 11, 2016), <http://www.houmatoday.com/article/DA/20160511/News/608085968/HC>.

13. Katz, *supra* note 7.

14. *Bienvenue, Aiokpanchi, Welcome to Isle de Jean Charles*, *supra* note 10.

15. *See, e.g.*, Morton v. Mancari, 417 U.S. 535, 553 n.24 (1974) (describing "federally recognized tribes" as a political, rather than a racial classification); Carcieri v. Salazar, 555 U.S. 379, 380 (2009) (holding that the Secretary of the Interior is statutorily authorized to take lands into trust only for tribes that were federally recognized in 1934, at the time the Indian Reorganization Act was passed).

16. *The Vision*, ISLE DE JEAN CHARLES: RESETTLEMENT AND SURVIVAL, <http://www.coastalresettlement.org/the-vision.html> (last visited Dec. 24, 2016); Van Houten, *supra* note 11.

17. WORKSHOP REPORT INPUT INTO THE NAT'L CLIMATE ASSESSMENT, STORIES OF CHANGE: COASTAL LOUISIANA TRIBAL COMMUNITIES' EXPERIENCES OF A TRANSFORMING ENVIRONMENT (2012), https://downloads.globalchange.gov/nca/technical_inputs/CoastalLouisianaTribalCommunities2012StoriesOfChange.pdf.

18. NDR APPLICATION, *supra* note 5, at 410; Van Houten, *supra* note 11.

ISLAND.” Nevertheless, there is recognition, even among the few remaining holdouts, that the island will not always remain inhabitable.¹⁹ Today, Chief Albert Naquin, who has spearheaded relocation efforts for the community, estimates that about forty families would initially relocate to the new site, with more to follow as conditions on the island worsened.²⁰

B. Native Village of Shishmaref, Alaska

Located 4000 miles northwest of Isle de Jean Charles on a barrier island in the Chukchi Sea, Shishmaref is one of the most populated Native villages in northwest Alaska and is home to some 600 people. Like many Alaska Native villages, the founding story of Shishmaref is not well documented. Inupiaq communities in northwest Alaska were traditionally semi-nomadic, and local knowledge suggests that Shishmaref became a permanent settlement due to the construction of a BIA School on the island in the 1920s.²¹ Flooding and erosion have been a problem for decades and have become worse as warmer temperatures have caused shore-fast ice to freeze up later in the season, reducing the village’s natural barrier against storm surges.²² The island’s erosion problem has gained national recognition, thanks in part to several harrowing images of houses sliding into the Chukchi Sea in the aftermath of fall storms.²³

The legal status of Shishmaref is defined by the Alaska Native Claims Settlement Act of 1971 (ANCSA). The ANCSA extinguished all Native land claims,²⁴ granting, instead, fee title in certain lands to for-profit

19. See Chris LeBlanc, *Love and Defiance: Few Holdouts Remain on Isle de Jean Charles*, HOUMA TODAY (Mar. 17, 2015) <http://www.houmatoday.com/news/20150307/love-and-defiance-few-holdouts-remain-on-isle-de-jean-charles>.

20. Albert Naquin, Chief of the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians, Presentation at the CEQ Symposium on Climate Displacement, Migration, and Relocation (Dec. 13, 2016) (on file with author).

21. Interview with Percy Nayokpuk, Shishmaref resident, in Shishmaref, AK (Aug. 21, 2016); see also ELIZABETH MARINO, *FIERCE CLIMATE, SACRED GROUND: AN ETHNOGRAPHY OF CLIMATE CHANGE IN SHISHMAREF, ALASKA* 43 (2015).

22. Victoria Herrmann & Eli Keene, *A Continual State of Emergency: Climate Change and Native Lands in Northwest Alaska*, ARCTIC INST. (Nov. 15, 2016), <https://www.the-arcticinstitute.org/continual-state-emergency-climate-change-native-lands-northwest-alaska/>.

23. See, e.g., Christopher Mele & Daniel Victor, *Reeling from Effects of Climate Change, Alaskan Village Votes to Relocate*, N.Y. TIMES (Aug. 19, 2016), <https://www.nytimes.com/2016/08/20/us/shishmaref-alaska-elocate-vote-climate-change.html>.

24. Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601-1629h (2012)).

regional and village-level Native corporations.²⁵ While the ANCSA resolved, with some controversy, the issue of land claims in Alaska, the federal status of Native tribes in the state remained unclear until 1993. That year, the BIA, for the first time, published a comprehensive list of 226 Alaska Native villages that, in the BIA's opinion, constituted federally recognized tribes with "the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States."²⁶

Shishmaref first voted to relocate in 2002, but the effort stalled when the necessary financial resources could not be obtained.²⁷ Sensing a renewed federal commitment to help Alaska Natives following President Barack Obama's visit to the state in 2015,²⁸ the village held another vote in August 2016, where the measure to relocate the village narrowly passed. The village is considering several sites for relocation across the Shishmaref Inlet, where many residents maintain seasonal campsites.²⁹ Shishmaref is heavily dependent on subsistence hunting—mainly the hunting of marine mammals like bearded seal—and the nearby location would allow residents to continue subsistence activities to the extent they are not otherwise impeded by environmental changes.³⁰ While there have been volumes of media reports and even government studies concerning plans for relocating the village, to date there has been no money allocated to begin moving the community to a new site. It is estimated that the cost of relocating the

25. 43 U.S.C. § 1613. The settlement under the ANCSA also included provisions for oil, gas, and mineral revenue sharing with Alaska Native tribes. *See id.* § 1608.

26. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54364-01 (Oct. 21, 1993), 1993 WL 420646.

27. Merrit Kennedy, *Threatened by Rising Seas, Alaska Village Decides to Relocate*, NPR (Aug. 18, 2016), <https://www.npr.org/sections/thetwo-way/2016/08/18/490519540/threatened-by-rising-seas-an-alaskan-village-decides-to-relocate>.

28. *See* Press Release, White House, Remarks by the President at the GLACIER Conference—Anchorage, AK (Aug. 31, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/09/01/remarks-president-glacier-conference-anchorage-ak>.

29. Lisa Demer, *Shishmaref Votes to Relocate from Eroding Barrier Island to Mainland*, ALASKA DISPATCH NEWS (Aug. 19, 2016), <https://www.adn.com/alaska-news/2016/08/18/eroding-village-of-shishmaref-votes-in-favor-of-relocating-to-mainland-a-key-step/>.

30. Residents report that hunting for bearded seal has become increasingly dangerous as sea ice does not freeze as solid or for as long as in the past. *See* MARINO, *supra* note 21, at 78.

village to one of the new sites would be around \$180 million, for which there is not currently a designated federal funding source.³¹

C. Village of Taholah, Quinault Indian Reservation, Washington

The village of Taholah sits at the mouth of the Quinault river, about 100 miles west of Seattle, on the Quinault Indian Reservation. The village has always been vulnerable to tsunamis, but coastal flooding, mudslides, and erosion have become problematic in recent years.³² In 2014, the sea wall that protects the village was breached in a storm, destroying several buildings and leading the tribe to "declare[] a state of emergency."³³

Unlike the other communities explored in this part, Taholah is located on reservation land. The Quinault, therefore, have access to a range of benefits specifically for federally recognized tribes. At the same time, they also face the numerous difficulties connected to the United States' colonial history. The Quinault Reservation was completely allotted after the passage of the Dawes Act of 1887, leaving the Quinault Nation with no tribal land by 1933.³⁴ Relocation will mean acquiring allotted land and requesting that the Department of the Interior place that land into trust. In order to do this, the tribe plans to use resources from the \$1.9 billion Trust Land Consolidation Fund created by the 2010 settlement of the Cobell class action lawsuit concerning incorrect accounting of Indian trust assets by the U.S. government.³⁵ There is little question that the U.S. government has treaty obligations to the tribe under the Quinault River Treaty of 1855, as well as the general Indian trust responsibility owed to federally recognized tribes. In 2015, Fawn Sharp, President of the Quinault Nation, pressed both of these duties, testifying before Congress that the federal government had

31. U.S. ARMY CORPS OF ENG'RS, SHISHMAREF PARTNERSHIP: SHISHMAREF RELOCATION AND COLLOCATION STUDY app. 1, at 7 (2004), https://www.commerce.alaska.gov/web/Portals/4/pub/USACE_relocation%20plan_shishmaref.pdf [hereinafter SHISHMAREF RELOCATION AND COLLOCATION STUDY].

32. Eliza Hotchkiss, *DOE Assists Quinault Indian Nation with Plans for a Climate-Resilient Community*, U.S. DEP'T. ENERGY (June 15, 2016), <http://energy.gov/indianenergy/articles/doe-assists-quinault-indian-nation-plans-climate-resilient-community>.

33. *Quinault Nation Declares State of Emergency After Taholah Seawall Breach*, INDIAN COUNTRY TODAY (Mar. 26, 2014), <https://indiancountrymedianetwork.com/news/environment/quinault-nation-declares-state-of-emergency-after-taholah-seawall-breach/>.

34. Justine E. James, Jr. with Leilani A. Chubby, *Quinault*, in OLYMPIC PENINSULA INTERTRIBAL CULTURAL ADVISORY COMM., NATIVE PEOPLES OF THE OLYMPIC PENINSULA 99, 109 (Jacilee Wray ed., 2002).

35. See Claims Resolution Act of 2010, Pub. L. 111-291, 124 Stat 3064.

“failed to meet its solemn obligations,” and lobbied for several million dollars in relocation support.³⁶

The tribe estimates that relocating the 700-person village of Taholah will cost about \$60 million, or \$85,000 per resident.³⁷ The relatively low cost per person is, in part, explained by the availability of immediately adjacent land—what is currently known as Upper Village—situated at 120 feet above sea level.³⁸ The nearby site also provides continuity for commercial, subsistence, and ceremonial salmon fishing and seafood harvesting practices that are central to the tribe’s culture and economy.³⁹ While no federal funds have yet been appropriated for the relocation, the tribe completed a master plan in 2016 with the aid of a “\$700,000 grant from the Administration for Native Americans.”⁴⁰

II. Options for Assisting Coastal Retreat

Academics and policymakers working on issues of community adaptation to climate change have settled around three general alternatives for coastal retreat planning for imminently threatened communities. When it comes to Indian and Alaska Native communities, by far the most attention has been given to the process of community relocation—moving an entire community to safer ground. Community relocation has often been presented in contrast to “collocation,” wherein an entire community is moved together into another existing community.⁴¹ The question of what

36. Fawn Sharp, President of Quinault Indian Nation, Quinault Indian Nation Appropriations Testimony: House Interior Appropriations Subcommittee (Mar. 24, 2015), <http://docs.house.gov/meetings/AP/AP06/20150324/102898/HHRG-114-AP06-Wstate-SharpF-20150324.pdf> [hereinafter Fawn Sharp Testimony].

37. Ashley Ahearn, *Facing Rising Waters, a Native Tribe Takes Its Plea to Paris Climate Talks*, NPR (Dec. 1, 2015), <http://www.npr.org/2015/12/01/455745765/facing-rising-waters-a-native-tribe-takes-its-plea-to-paris-climate-talks>.

38. *Taholah Village Relocation Master Plan*, QUINAULT INDIAN NATION, <http://www.quinaultindiannation.com/planning/projectinfo.html> (last modified May 16, 2017).

39. See *Meet Native America: Fawn Sharp, President of the Quinault Indian Nation, President of the Affiliated Tribes of Northwest Indians and Area Vice President of the National Congress of American Indians*, NAT’L MUSEUM OF AM. INDIAN (Feb. 22, 2016) <http://blog.nmai.si.edu/main/2016/02/meet-native-america-fawn-sharp.html>; James & Chubby, *supra* note 34, at 105.

40. Fawn Sharp Testimony, *supra* note 36.

41. The term “collocation” appears to have arisen specifically with reference to Alaska Native communities threatened by climate change. The term is used in order to distinguish relocation—i.e., the moving of a community to a previously unsettled site—from the act of

happens should neither of these responses materialize has received less attention in the context of Indian communities. This “do nothing” option places the question of coastal retreat into the hands of individual community members and disaster response protocols, both of which are likely to result in the dispersal of the community.

A. Community Relocation

What are the benefits of moving a community together to a new, previously unoccupied space? These benefits are not easily quantifiable into academic research. Nevertheless, hints may be drawn from two sources: statements from members of affected communities and the robust available literature on development-induced displacement and resettlement (DIDR), which examines outcomes in communities displaced by large infrastructure projects. The latter of these sources has identified a set of eight risks⁴² faced by displaced communities: landlessness, joblessness, homelessness, decreased access to common resources, marginalization, increased morbidity, food insecurity, and negative social and cultural impacts. Some of these risks directly reflect problems posed by collocation or community dispersion. Resettlement in any form has been suggested to have physical, economic, psychological, legal, cultural, environmental, and other effects, and the factors discussed below are by no means an exhaustive list of the risks populations face in relocating.⁴³

The negative cultural impacts identified in DIDR literature have been summarized as taking the form of “social disarticulation.”⁴⁴ Social disarticulation refers to the breakdown of formal and informal support networks in a community, which can have lasting negative impacts on economic status and general well-being.⁴⁵ The concern about the loss of these social ties is reflected in a number of forms within climate-threatened communities. In Shishmaref, for example, residents have expressed concern that collocating to Nome would cause the “village family” to collapse into nuclear families. This would mean concerns like childcare and care for the

expanding an existing community to accommodate those displaced from another location. See, e.g., SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31.

42. See, e.g., A. de Sherbinin et al., *Preparing for Resettlement Associated with Climate Change*, 334 SCI. 456 (2011); Michael M. Cernea, *Understanding and Preventing Impoverishment from Displacement: Reflections on the State of Knowledge*, 8 J. REFUGEE STUD. 245 (1995).

43. See ELENA CORREA ET AL., POPULATIONS AT RISK OF DISASTER: A RESETTLEMENT GUIDE 55 (2011).

44. Cernea, *supra* note 42, at 252.

45. SCOTT LECKIE, LAND SOLUTIONS FOR CLIMATE DISPLACEMENT 67 (2014).

elderly would cease to be a village concern and fall on individual parents or state facilities.⁴⁶ The maintenance of social bonds was also cited by the Isle de Jean Charles community as a primary reason that relocation should be tackled on the community level, as opposed to at the level of individual residents.⁴⁷

Similarly, community relocation may help address the risks of loss of common resources and food insecurity in certain communities. The most obvious factor in mitigating this risk is that communities can be relocated to an area that is near traditional lands—including hunting and fishing grounds—but out of the hazard zone. Indeed, communities like Shishmaref,⁴⁸ Taholah,⁴⁹ and Isle de Jean Charles⁵⁰ have all sought to resettle on land that was either contiguous or otherwise easily accessible to the original settlement, seeking to preserve access to traditional livelihoods and cultural heritage.

These risks may be further allayed by community relocation in communities that maintain traditions of food sharing and group hunting. It is common practice in Inupiaq communities, for example, to share subsistence foods throughout the community, particularly with elders.⁵¹ Food security may therefore be threatened not only by the difficulty of continuing subsistence hunting in the new location, but by the breakdown in food sharing traditions as well.

But while there are definite benefits to community relocation over the collocation and do-nothing variants, there are also major obstacles to successfully relocating a community. The first, and most serious, of these obstacles is that community relocation is expensive. The cost problem is particularly acute in Alaska, where isolation and a short building season drive up the cost of construction. Relocation costs for the Native village of Kivalina, with a population of under 400, are projected to go as high as

46. PETER P. SCHWEITZER & ELIZABETH MARINO, U.S. ARMY CORPS OF ENG'RS, COASTAL EROSION PROTECTION AND COMMUNITY RELOCATION: SHISHMAREF, ALASKA, COLLOCATION AND CULTURAL IMPACT ASSESSMENT 105-06 (David Broadfoot ed., 2005).

47. NDR APPLICATION, *supra* note 5, at 104.

48. Davis Hovey, *Shishmaref Community Votes to Relocate*, ALASKA PUB. MEDIA (Aug. 18, 2016), <https://www.alaskapublic.org/2016/08/18/shishmaref-community-votes-to-relocate/>.

49. *Taholah Village Relocation Master Plan Project: Neighborhoods*, QUINAULT INDIAN NATION, <http://www.quinaultindiannation.com/planning/neighborhoods.html> (last modified Sept. 7, 2016).

50. NDR APPLICATION, *supra* note 5, at 107.

51. SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31, at 109; GARY KOFINAS ET AL., SUBSISTENCE SHARING NETWORKS AND COOPERATION: KAKTOVIK, WAINWRIGHT, AND VENETIE, ALASKA 51 (2016).

\$400 million. While the costs are not quite as high in the Lower 48, the process of conducting site studies, acquiring land, building up infrastructure from scratch, moving populations, and tearing down the old site is not cheap. The Isle de Jean Charles resettlement has been allocated \$48 million to accommodate an initial population of around sixty people—about \$800,000 per resident.⁵² At this point in time, the State of Louisiana is uncertain that the \$48 million will be sufficient to cover all costs.⁵³

Relocation is further complicated by the fact that no single federal or state agency has authority to coordinate and implement the relocation of communities.⁵⁴ This lack of authority has been thoroughly explored by Dr. Robin Bronen in the context of Alaska. Bronen has identified several impacts of this lack of authority, including the lack of any guiding principles on assisting communities in the relocation process.⁵⁵ Planning and guidelines are important because a badly managed relocation may raise the likelihood that community members will not stay at the new site or that the community may experience cultural or economic loss that the relocation was meant to avoid.⁵⁶

This problem further complicates funding. Today, communities must either seek non-relocation-specific block grants (as in the case of Isle de Jean Charles) or piece together multiple grants from a variety of agencies (as in the case of the Native village of Newtok in Alaska). The latter option raises additional problems in that, under the National Environmental Policy Act (NEPA), any proposal for a major federal action “significantly affecting the quality of the human environment” requires that agency prepare an Environmental Impact Statement (EIS) or a less-intensive

52. Coral Davenport & Campbell Robertson, *Resettling the First American Climate Refugees*, N.Y. TIMES (May 3, 2016), <https://www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html>.

53. Jacob Batte, *Questions Linger over Cost of Moving Island Residents*, HOUMA TODAY (Mar. 26, 2016), http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/questions_linger_over_cost_of_moving_island_residents_-_houma_today_.pdf.

54. Bronen, *supra* note 3.

55. *Id.* at 397.

56. Residents of Shishmaref interviewed by the author in August 2016 often cited concerns that residents would either refuse to leave the island, specifically noting that their ancestors graves were located there, or that they would individually move to Nome or Kotzebue instead of the new site. See also Ted Jackson, *Stay or Go? Isle de Jean Charles Families Wrestle with the Sea*, NOLA.COM (Sept. 13, 2016, 10:24 AM), http://www.nola.com/weather/index.ssf/2016/09/stay_or_go_isle_de_jean_charles_families_wrestle_with_the_sea.html (documenting Isle de Jean Charles residents’ decisionmaking process to stay on the island or relocate).

Environmental Impact Assessment (EIA).⁵⁷ With no lead agency in charge of a single, unified relocation project, piecing together relocation grant funding from multiple agencies would require producing an individual EIS or EIA for each agency involved. Given that a typical EIS ranges in cost from \$250,000 to \$2 million, this approach ultimately raises the cost of relocation efforts even further.⁵⁸

B. Collocation

The option of collocating displaced communities into nearby existing communities has largely been discussed in Alaska. The major advantage of collocation over community relocation is cost. Whereas relocation requires the acquisition of land, the building of access roads for construction, and the building up of infrastructure from nothing, collocation is, on its face, merely a matter of expanding existing housing stock and support infrastructure. Thus, a 2004 Army Corps of Engineers study projected that relocating Shishmaref to the mainland would cost approximately \$179 million, whereas collocating the community with Nome or Kotzebue would cost \$93 million or \$140 million, respectively.⁵⁹

Collocation has a number of anticipated downsides and has thus been squarely rejected as a viable alternative both by communities considering it⁶⁰ and by the Army Corps of Engineers.⁶¹ In considering options for saving the Native village of Newtok, the Army Corps of Engineers concluded, “Collocation would destroy the Newtok community identity,” and noted that the lack of support for collocation would lead many in the community to consider it “forced.”⁶² This conclusion is largely based on past experience. The recent history of resettling Indians and Alaska Natives, as detailed in Part III, exhibited disastrous social and economic effects on collocated communities.

57. National Environmental Policy Act of 1969, § 102, 42 U.S.C. § 4332 (2012); 40 C.F.R. § 1501.4 (2016).

58. U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014).

59. SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31, at app. 1.

60. *Id.* at 146 (citing “strong opposition” among Shishmaref residents to the idea of collocating with Nome or Kotzebue).

61. U.S. ARMY CORPS OF ENGINEERS, SECTION 117 PROJECT FACT SHEET: STORM DAMAGE REDUCTION PROJECT—NEWTOK 16 (2008), https://www.commerce.alaska.gov/web/Portals/4/pub/Mertarvik_Relocation_Report_final.pdf [hereinafter SECTION 117 PROJECT FACT SHEET].

62. *Id.*

C. Do-Nothing Approach

The final approach is for the federal and state governments to do nothing to preserve tribal community in managing coastal retreat. As presented here, the “do nothing” approach does not necessarily mean a complete lack of federal action. Instead there are two basic approaches, both of which will lead to community dispersal. First, the federal government (for tribal lands) or state governments (for land not subject to federal tribal land restrictions) could orchestrate a buyout of vulnerable properties. The approach of paying pre-disaster fair market value for property has been used by states to disperse non-Indian communities living in environmental hazard zones.⁶³ It should be noted, however, that land value in climate-threatened Indian and Alaska Native communities is often quite low, and a buyout program is unlikely to provide the assistance needed to relocate elsewhere.

The second approach is to do nothing until a natural disaster occurs. In this case, a set of state and federal disaster relief laws and protocols will be used to evacuate the affected community. The role of disaster law in climate change adaptation has already garnered some attention from scholars and policymakers.⁶⁴ However, the punting of climate-induced relocation to disaster management protocols does not necessarily have to be an affirmative choice made by policymakers. While climate change itself has been described as a “slow-moving disaster,” its individual effects, such as major flooding and erosion events, are fast-onset.⁶⁵ Unless a community is able to design, fund, and implement a relocation plan before a sufficiently serious flooding or erosion event occurs, disaster response is the default solution.

There is no coherent body of “disaster law” in the United States. As a matter of federalism, emergency response to national disasters is left to state, local, and tribal governments. As a practical matter, however, the federal government has come to play the dominant role in funding and implementing disaster response.⁶⁶ Federal assistance to state, local, and tribal governments is governed by the Robert T. Stafford Disaster Relief

63. See, e.g., ROBERT FREUDENBERG ET AL., BUY-IN FOR BUYOUTS: THE CASE FOR MANAGED RETREAT FROM FLOOD ZONES (2016) (describing the design of buyout and acquisition programs in New York, Connecticut, and New Jersey in the aftermath of Hurricane Sandy).

64. See, e.g., Victor B. Flatt, *Domestic Disaster Preparedness and Response*, in THE LAW OF ADAPTATION TO CLIMATE CHANGE: U.S. AND INTERNATIONAL ASPECTS 481 (Michael Gerrard & Katrina Fischer Kuh eds., 2012).

65. *Id.* at 481.

66. Flatt, *supra* note 64, at 482.

and Emergency Response Act of 1988.⁶⁷ Disaster management is coordinated by the Federal Emergency Management Agency (FEMA), which since 2003 has been a part of the Department of Homeland Security.⁶⁸

For purposes of this discussion, the first action likely to be undertaken during a severe flooding event is an emergency evacuation. The decision to declare an evacuation in the case of emergency rests with state, tribal, and local governments. FEMA provides federal support in evacuating residents to the extent that state or tribal resources are overwhelmed.⁶⁹ Many of these communities have already experienced temporary evacuations. In 2007, residents of Kivalina were forced to escape fall storms by bush planes, all-terrain vehicles and boats. In Louisiana, many coastal communities, have been subject to repeated evacuation orders by parish governments in the face of severe storms and associated flooding.⁷⁰

Evacuations are, in theory, temporary—but what happens after an evacuation is relevant to the community relocation, particularly where uncertainty exists as to the inhabitability of the evacuated community. For disasters that rise to the level of requiring federal assistance, the Stafford Act provides for both immediate life-saving measures and shelter assistance as well as temporary federal housing assistance.⁷¹ This assistance, in the form of rent or hotel cost aid or direct assistance (temporary housing trailers), can be provided for up to eighteen months, or longer if extended by the president.⁷²

In practice, disasters tend to drive people into external support networks, such as family members, before federal housing support is mobilized.⁷³ In

67. 42 U.S.C. §§ 5121-5208 (2012).

68. FED. EMERGENCY MGMT. AGENCY, FEMA B-653, FEMA: PREPARED. RESPONSIVE. COMMITTED. (2008), <https://www.fema.gov/pdf/about/brochure.pdf>.

69. FED. EMERGENCY MGMT. AGENCY, MASS EVACUATION INCIDENT ANNEX TO THE NATIONAL RESPONSE FRAMEWORK 2 (2008), https://www.fema.gov/pdf/emergency/nrf/nrf_massevacuationincidentannex.pdf.

70. See, e.g., Jason Saul, *Lafourche Parish Declares State of Emergency, Issues Partial Mandatory Evacuation Order*, NEW ORLEANS PUB. RADIO (Oct. 4, 2013), <http://wwno.org/post/lafourche-parish-declares-state-emergency-issues-partial-mandatory-evacuation-order>; *Louisiana's Terrebonne Parish Braces for Gustav*, NPR (Aug. 29, 2008, 4:00 PM), <http://www.npr.org/templates/story/story.php?storyId=94118805>.

71. 42 U.S.C. §§ 5170(b), 5174 (2012).

72. *Id.*

73. Elizabeth Fussell, *Help from Family, Friends, and Strangers During Hurricane Katrina: Finding the Limits of Social Networks*, in *DISPLACED: LIFE IN THE KATRINA DIASPORA* 150 (Lynn Weber & Lori A. Peek ed., 2012).

the month after Hurricane Katrina, for example, requests for Stafford Act assistance came from all fifty states.⁷⁴ After a year, just over fifty percent of the population of New Orleans had returned to the city.⁷⁵ Perhaps more importantly for this discussion, studies demonstrated a significant amount of intra-parish displacement, suggesting that communities were likely being fragmented, even where net population figures at the parish level did not reflect significant changes.⁷⁶ Thus, disaster-induced evacuations have the capacity to induce long-term fracturing of communities.

When a disaster leaves no community to return to, it is unlikely that communities would find themselves long-term relocated together. Climate-threatened Indian communities, therefore, have a marked interest in avoiding a disaster management approach to managing climate threats. Disaster management response protocols are poorly equipped to handle the concerns of a community as a group.

III. A Modern History of Indian Relocation

As discussed above, there are several clear advantages to community relocation over other approaches to coastal retreat. But, as also demonstrated, the obstacles of obtaining funding and support for relocation are large. It is important to recognize that merely concluding that community relocation is the best response for Indian communities does not resolve the problem. A community that faces catastrophic disaster before it is able to plan, fund, and implement a relocation will find itself managed by disaster protocols. In cases where collocation is significantly cheaper, communities may find themselves only able to obtain resources to integrate into existing communities.

It is therefore essential to look more closely at the consequences of dispersing communities into cities or other small settlements. This may prove easier in the case of American Indian communities than for any others. The history of American Indians is, in many senses a history of relocation. Beginning with the Indian Removal Acts of the 1800s, the United States has had a long and unenviable record of moving or providing

74. Joe Want & Erin Alner, *From the Graphics Archive: Mapping Katrina and Its Aftermath*, N.Y. TIMES (Aug. 25, 2015), http://www.nytimes.com/interactive/2015/08/25/us/mapping-katrina-and-aftermath.html?_r=0.

75. Narayan Sastry & Jesse Gregory, *The Location of Displaced New Orleans Residents in the Year After Hurricane Katrina*, 51 DEMOGRAPHY 753 (2014).

76. Makiko Hori et al., *Displacement Dynamics in Southern Louisiana After Hurricanes Katrina and Rita*, 28 POPULATION RES. & POL'Y. REV. 45, 58 (2009).

for the movement of Indian populations. Each of these relocation policies comes with its own lessons.

This part contextualizes the options for coastal retreat planning by looking back to this history of relocation. In the interest of drawing upon relatively reliable data and equivalent circumstances, it draws upon two twentieth century case studies from the Termination Era. This Part begins by examining the historical significance of Termination as a federal Indian policy. Next, it explores two examples of Indian policy during the era: the BIA Urban Indian Relocation Program of the 1950s and the relocation of the Alaska Native population of King Island to Nome in the 1960s. Finally, this part presents several qualifications to these case studies and draws lessons for future coastal retreat planning.

A. The Termination Era

In 1953, the U.S. House of Representatives adopted Concurrent Resolution 108, which declared that it was “the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws . . . as are applicable to other citizens of the United States, [and] to end their status as wards of the United States.”⁷⁷ The House Resolution marked a transition in federal policy—from the previous approach of a proactive BIA to a policy of removing any special treatment or disability for Indian tribes. While the Resolution is synonymous today with the Termination Era, the roots of this shift in federal policy date back to the mid-1940s.⁷⁸

In 1928, the U.S. Senate commissioned a fifteen-year, forty-one-part survey on the living conditions of American Indians. At the survey’s conclusion in 1943, Congress accused the BIA of straying from the its original purpose, noting, “While the original aim [of the Bureau] was to make the Indian a citizen, the present aim appears to be to keep the Indian an Indian and to make him satisfied with all the limitations of a primitive life.”⁷⁹ Therein lay the foundation for the termination policy. Over the next two decades, the federal government would terminate 109 tribes, remove

77. H.R. Con. Res. 108, 83rd Cong. (1953).

78. Charles F. Wilkinson & Eric R. Biggs, *The Evolution of the Termination Policy*, 5 AM. INDIAN L. REV. 139, 145 (1977).

79. S. REP. NO. 78-310, at 1 (1943).

2.5 million acres of Indian land from trust, and repeatedly enhance state jurisdiction over tribes.⁸⁰

While debates have raged surrounding the intent of the termination policy, which was denounced by President Richard Nixon in 1970, the conditions on Indian reservations in the mid-1940s were undeniably bleak. In 1948 and 1949, Indians in Navajo country were brought to the brink of starvation by a series of blizzards that exacerbated conditions of poverty.⁸¹ The poverty of the Navajo and Hopi was severe enough to garner national media attention.⁸² In response, Congress passed the Navajo-Hopi Long Range Rehabilitation Act of 1950, designating over \$88 million for career training, social services, and the economic development of the reservations.⁸³ The Rehabilitation Act's emphasis on job placement and creation of a Navajo off-reservation employment service would lay the baseline for a broader Indian relocation policy to come.

B. The Urban Indian Relocation Program

The policy that has come to be known as the Urban Indian Relocation Program was never really a coherent program unto itself. Instead, it developed gradually throughout the 1950s, growing out of the government's experience with the Navajo and Hopi. By the middle of 1951, the BIA had used its experience in Navajo country to expand relocation services to new states like California, Colorado, and Oklahoma.⁸⁴ The Bureau opened up field offices across the country to help place Indians into employment opportunities in major urban centers, beginning with Chicago.⁸⁵ In 1952, the BIA began to provide meager financial assistance to some relocatees, covering one-way transportation to their urban destination and a few weeks of transition assistance.⁸⁶

80. *History and Culture: Termination Policy 1953-1968*, PARTNERSHIP WITH NATIVE AM. (last visited Dec. 26, 2016), http://www.nativepartnership.org/site/PageServer?pagename=PWNA_Native_History_terminationpolicyNP.

81. PAUL ROSIER, *SERVING THEIR COUNTRY: AMERICAN INDIAN POLITICS AND PATRIOTISM IN THE TWENTIETH CENTURY* 124 (2009).

82. *Id.*

83. Ch. 92, 64 Stat. 44 (1950) (current version at 25 U.S.C. §§ 631–640 (2012)).

84. Azusa Ono, *The Relocation and Employment Assistance Programs, 1948-1970: Federal Indian Policy and the Early Development of the Denver Indian Community*, 5 *INDIGENOUS NATIONS J.* 27, 33 (2004).

85. *Id.*; DONALD L. FIXICO, *THE URBAN INDIAN EXPERIENCE IN AMERICA* 10 (2000).

86. Ono, *supra* note 85, at 34.

The program grew slowly at first. By July 1956, the BIA had relocated 12,625 Indians from reservations to cities.⁸⁷ But in 1956, Congress provided for a massive shift in relocation efforts by passing Public Law 959, the Indian Vocational Training Act, which injected \$3.5 million a year into relocation efforts.⁸⁸ As the Act's name might suggest, the Bureau would place renewed focus on job training, and was authorized to provide up to two years of free vocational training to reservation Indians.⁸⁹ As the emphasis on job skills development became integrated into broader relocation efforts, BIA officials negotiated directly with urban employers to hire Indian workers.⁹⁰ By some counts, these efforts aided some 160,000 rural Indians in relocating to urban areas between 1952 and 1967.⁹¹

The focus of the relocation program was on providing a basic level of transition assistance. BIA employees in Indian Country coordinated with urban field offices to place applicants into fitting employment in the city of their choosing.⁹² The financial assistance provided to a relocatee was generally minimal, consisting of a bus ticket, first month's rent, clothing, and one month of groceries and other essentials.⁹³ Relocatees had ongoing access to job counseling.⁹⁴ The relocation program was heavily marketed on reservations, with one BIA brochure, in seeming homage to socialist realism, picturing smiling Indians operating heavy machinery and studying at a school desk with the promise of "good jobs" and "happy homes."⁹⁵

Little consensus has emerged on the outcomes of the BIA's urban relocation efforts, a fact due in part to the BIA's shoddy record keeping on

87. FIXICO, *supra* note 86, at 16.

88. Act of Aug. 3, 1956, ch. 930, 70 Stat. 986 (current version at 25 U.S.C. § 309 (2012)).

89. *Id.*

90. FIXICO, *supra* note 86, at 17.

91. ALFRED G. ELGIN ET AL., TASK FORCE EIGHT FINAL REPORT: REPORT ON URBAN AND RURAL NON-RESERVATION INDIANS 23 (1976). It should be noted that statistics on the program are wildly inconsistent. Other sources have reported the total number of relocates as around 61,000. *See, e.g.*, Ono, *supra* note 85, at 44. The BIA's inaccurate and sometimes willfully distorted recordkeeping on Indian relocation during the Termination Era has made analysis of the ultimate effects of the relocation program contentious.

92. FIXICO, *supra* note 86, at 11.

93. *Id.*

94. *Id.* at 19.

95. *See* Come to Denver: The Chance of a Lifetime! (n.d.) (promotional image from BIA brochure), https://www.nlm.nih.gov/nativevoices/assets/timeline/000/000/074/74_w_full.jpg (last visited Dec. 26, 2016).

relocatees.⁹⁶ A wave of recent scholarship has underlined the importance of these policies in shaping modern Indian demographics, as over two-thirds of the country's total Indian population now lives in urban areas.⁹⁷ These scholars have viewed the voluntary urbanization process as an important first step in escaping the crushing poverty of many reservations and the overbearing paternalism of the BIA.⁹⁸ The BIA itself declared the program a success, asserting (rather dubiously) that only thirty percent of relocatees returned home within a year of relocation.⁹⁹

But most evaluations of the BIA's urban relocation policy were not so forgiving. In early 1975, Congress passed a joint resolution establishing the American Indian Policy Review Commission, consisting of nine task forces established to review specific areas of federal Indian policy.¹⁰⁰ The next year, the Commission's Task Force Eight delivered its *Report on Urban and Rural Non-Reservation Indians*.¹⁰¹ The *Report* gave a damning account of the struggles of relocatees in adapting to their new urban environments. In sum, Task Force Eight found that:

Indian people in substantial numbers came to urban areas because of a lack of employment . . . but have failed to make a desirable transition because of a lack of necessary and sufficient, continued support from the Federal Government, coupled with the indifference and misunderstandings, by and large, existing in the communities in which they have chosen to live.¹⁰²

In particular, the comprehensive review of the Urban Indian Relocation Program presented by Task Force Eight repeatedly identified three problems newcomers encountered in cities: substandard living conditions, unstable employment, and cultural isolation. The confluence of underfunded accommodations and rampant housing discrimination quickly led to the creation of "Indian ghettos."¹⁰³ The report noted that relocatees were often placed into squalid conditions, sometimes with an entire family

96. Ono, *supra* note 85, at 39 ("Universal statistical data had never been available, primarily because of inadequate records and reports prepared by the BIA.").

97. Donald L. Fixico, *Foreword* to AMERICAN INDIANS AND THE URBAN EXPERIENCE at ix (Susan Lobo & Kurt Peters eds., 2001) [hereinafter Fixico, *Foreword*].

98. Kenneth R. Philp, *Stride Toward Freedom: The Relocation of Indians to Cities, 1952-1960*, 16 W. HIST. Q. 175, 177 (1985).

99. FIXICO, *supra* note 86, at 20.

100. S.J. Res. 133, 93rd Cong. (1973) (enacted).

101. ELGIN ET AL., *supra* note 92.

102. *Id.* at 2.

103. FIXICO, *supra* note 86, at 81; *see also* ELGIN ET AL., *supra* note 92, at 34.

occupying a one-room apartment.¹⁰⁴ The shortage of adequate, affordable housing was compounded by the fact that most Indians did not qualify for public housing assistance in their new cities.¹⁰⁵ In Denver, for example, the municipal housing authority placed a six-month residency requirement on applicants for public housing, leaving new arrivals with few places to turn other than slums.¹⁰⁶

The employment arranged for the relocatees did little to alleviate these conditions. The vocational training arranged by the BIA failed to open up opportunities for advancement—with reported hourly wages for training participants hovering at \$2.40 an hour, even lower than the \$2.59 an hour received by Indians who were placed directly into jobs without training.¹⁰⁷ Low on the employment ladder, Indians would often be let go during financial downturns, and the BIA did not have adequate funding to support laid off workers in these circumstances.¹⁰⁸ Furthermore, many relocatees lost any opportunity they may have had to pursue higher education. College education was not built into the relocation program and the scholarships that were generally available to Indians were not made available to those living off-reservation.¹⁰⁹

The conditions of the urban relocatees produced widespread feelings of social and cultural isolation. It is difficult to pin down a specific cause of this isolation, though scholars and policy reports have identified slum-like living conditions,¹¹⁰ culture shock,¹¹¹ racial segregation,¹¹² and lack of community space to hold cultural activities¹¹³ as contributing factors. Isolation was seen as a major contributing cause of alcoholism among urban Indians.¹¹⁴ Problems with alcohol, and resultant problems with the law, often caused relocatees and their families to return home.¹¹⁵

While the Urban Indian Relocation Program did create some long-term positive effects, including aiding the growth of stable urban Indian

104. ELGIN ET AL., *supra* note 92, at 34.

105. *Id.*

106. Ono, *supra* note 85, at 42.

107. ELGIN ET AL., *supra* note 92, at 36-37.

108. *Id.* at 38.

109. *Id.* at 37.

110. Fixico, *Foreword*, *supra* note 98, at ix.

111. FIXICO, *supra* note 86, at 14.

112. *Id.* at 24.

113. ELGIN ET AL., *supra* note 92, at 75.

114. *Id.*; FIXICO, *supra* note 86, at 24.

115. JAMES B. LAGRAN, *INDIAN METROPOLIS: NATIVE AMERICANS IN CHICAGO 1945-75*, at 133 (2002).

populations, when viewed in the context of its aims, the program was a failure. The program did not result in the rapid assimilation of Indians into the general population of U.S. cities. Nor did it raise the general standard of living for Indians, who largely failed to find the comfortable middle class lifestyle that had been marketed to them. Relocates instead often found themselves in unfamiliar cities, thousands of miles from home with insecure jobs and no emergency government assistance available.¹¹⁶ Critics of the program (who were themselves accused of manipulating statistics) claimed that as many as seventy-five percent of relocates returned home within the first year.¹¹⁷

C. *The Resettlement of King Island*

In 1930, the BIA completed construction of the first ever day school on King Island.¹¹⁸ The island—a mile-wide dot of steep rock cliffs in the Bering Sea, thirty miles off the coast of mainland Alaska—was at one point home to some 200 residents. The King Islanders were Inupiat subsistence hunters: harvesting walruses, seals, and polar bears as ice conditions permitted. Residents called the tiny rock island home for most of the year, traveling to a makeshift village outside of Nome only in the summers in order to sell ivory carvings, buy goods, and see friends and relatives living on the mainland.¹¹⁹

In 1959, this semi-nomadic existence came to an abrupt end when the BIA announced the closure of the King Island school. The result was, effectively, the closure of King Island. That year only sixty-four residents returned to the island after summer's end, and by 1966 the island had been abandoned.¹²⁰

The experience of King Island is perhaps the best example in recent U.S. history of collocation. But tragically little has been written about it. Indeed, there is only one complete account of the history of the King Islanders' move to Nome—a 2004 master's thesis by Nicole Braem, then a student at the University of Alaska Fairbanks.¹²¹ Despite the limited scholarly study,

116. FIXICO, *supra* note 86, at 77.

117. *Id.* at 20.

118. Nicole M. Braem, *Leaving King Island: The Closure of a Bureau of Indian Affairs School and Its Consequences* 38 (Aug. 2004) (unpublished M.A. thesis, University of Alaska Fairbanks) (available from ProQuest Dissertations & Theses Global (305207068)).

119. *Id.* at 4.

120. Deanna Kingston & Elizabeth Marino, *Twice Removed: King islanders' Experience of 'Community' Through Two Relocations*, 69 HUMAN ORG. 119, 122 (2010).

121. Braem, *supra* note 119.

the experience of King Islanders served as the baseline for both government agencies and affected Alaska Native communities in rejecting the collocation alternative.

While analyzing the impact of the King Islanders' collocation to Nome is made difficult by the lack of data and contemporary reporting, existing sources help highlight two conclusions. First, the King Islanders faced many of the same issues as urban Indian relocatees, largely brought about by lack of resources to aid the transition. And second—a unique lesson from the King Island case—is that once a community has collocated it can be extremely difficult to build up the political will to move that community to a new site.

Following the BIA school closing, the King Islanders faced a severe housing crisis in Nome. The small village that had been built for Nome's short summers was ill equipped to handle the harsh Alaskan winters, and houses were unequipped with electricity or running water.¹²² Discrimination blossomed as a result of this collocation. King Island children were harassed in schools and the slur "K.I." came into use as a derogatory term referring to the newcomers.¹²³ Alcohol never made inroads onto King Island, where strong social mores and tough environmental conditions left little room for drinking.¹²⁴ These barriers broke down in Nome. Poverty, discrimination, and a plethora of bars allowed alcoholism to grab hold of many in the community.¹²⁵

Perhaps the most dramatic aspect, however, was the economy. Most available jobs in Nome at the time were seasonal—in mining or construction—and even those sectors were struggling.¹²⁶ But while low-paying jobs had been a problem for the urban Indians in the Lower 48, in Nome the issue was compounded by the loss of subsistence. In the past, King Islanders would earn enough money selling ivory carvings in Nome over the summer to buy basic provisions, obtaining the rest of their diet through the subsistence hunting of seals, polar bears, and walrus.¹²⁷ But the sea mammal yield from Nome was minimal, and different sea ice patterns in Nome meant that hunters would have to travel great distances in harsh

122. *Id.* at 151.

123. *Id.* at 156.

124. *Id.* at 55; Interview with Vince Pikonganna, former King Island resident, in Nome, AK (Aug. 28, 2016).

125. SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31, at 55.

126. Braem, *supra* note 119, at 154-55.

127. *Id.* at 161.

conditions to harvest these animals.¹²⁸ The loss was both economic and cultural. Not only was the community forced to resort to expensive store-bought food for sustenance, the community also lost much of its traditional hunting knowledge in the process.¹²⁹

Braem's study of the King Island move underlines a secondary conclusion—that once the community had established itself in Nome, it was unlikely to receive assistance in moving elsewhere. Already in 1959, the King Islanders had begun to lobby for the establishment of a new village for them at Cape Woolley, a small campsite due east from the Island and with limited road access to Nome.¹³⁰ The idea received substantial support from both the Alaska offices of the BIA and the Alaska state legislature, which passed a resolution calling on the Secretary of the Interior to assist with the relocation project.¹³¹ Braem's review of correspondence reflects a belief among the King Islanders and the Association on American Indian Affairs that, at least in 1961, the Cape Woolley relocation was a sure thing.¹³²

But the Cape Woolley plan quickly stagnated. Looming over the project was the cost to resettle the 150 King Islanders in Nome at the time, estimated at \$750,000.¹³³ By 1962, a variety of forces were already undermining the move away from Nome. That year the BIA began to raise questions about whether the community as a whole really desired the relocation or whether the campaign was the work of individual activists.¹³⁴ But even after the commissioning of a survey in 1963 demonstrating overwhelming desire to relocate to Cape Woolley, bureaucratic foot-dragging between Washington and Alaska meant no progress was made on resolving questions of obtaining money, building materials and land.¹³⁵ The BIA offices in Alaska, meanwhile, had decided that despite the results of the survey, the King Islanders had decided to delay relocation due to the potential establishment of an ivory carving workshop in Nome.¹³⁶ By 1964,

128. SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31, at 58.

129. Interview with Vince Pikonganna, *supra* note 125.

130. Braem, *supra* note 119, at 94.

131. *Id.* at 98.

132. *Id.* at 104 (citing Letter from Laverne Madigan, Executive Director, AAIA, to Paul Tiulana, Anchorage, AK (Dec. 20, 1961) (on file with Seeley G. Mudd Manuscript Library, Princeton University)) (“[Acting BIA Commissioner] John Carver told me definitely that you King Islanders will get your new village.”).

133. *Id.* at 94.

134. *Id.* at 111.

135. *Id.* at 119, 125-26.

136. *Id.* at 126.

the BIA turned its attention to the possibility of resettling King Island by opening an air strip on the island itself, something it ultimately concluded was cost-prohibitive.¹³⁷

In the final death knell of the Cape Woolley project, the BIA contracted with Frances Ross, an academic who had previously lived on King Island, to produce a study on what would be best for the community.¹³⁸ By the time the Ross study was commissioned, six years had passed since the Cape Woolley relocation was first proposed, and reports from Nome suggested that the unanimity of the King Islanders' desire to relocate had frayed.¹³⁹ The BIA awaited Ross's report, which never came. By 1967, the Bureau had still not received a draft and, indeed, never succeeded in locating Ms. Ross again.¹⁴⁰

D. Qualifications and Lessons

In seeking to draw lessons from the cases of the Urban Indian Relocation Program and the King Island resettlement, it is important to start with the question of what these case studies are not. Most importantly, they are not direct analogues to the socio-economic condition of Indians and Alaska Natives today. First, economic conditions among Indians have improved somewhat. While twenty-seven percent of Indians still live below the poverty line,¹⁴¹ Indian income per person has grown rapidly since the 1990s, in part due to the advent of gaming in the Lower 48.¹⁴²

But the change of conditions is not just a matter of income. As recent scholars of the Urban Indian Relocation Program have noted, more than two-thirds of American Indians now live in urban areas.¹⁴³ This stands in stark contrast to the BIA's urban relocatees, many of whom had never before left the reservation.¹⁴⁴

The final word of caution in analyzing these case studies is that background federal Indian policy matters. Both the urban relocation

137. *Id.* at 134-43.

138. *Id.* at 143.

139. *Id.* at 148.

140. *Id.* at 150.

141. SUZANNE MACARTNEY ET AL., U.S. CENSUS BUREAU, ACSBR/11-17, POVERTY RATES FOR SELECTED DETAILED RACE AND HISPANIC GROUPS BY STATE AND PLACE: 2007-2011, at 2 (2013).

142. Joseph P. Kalt et al., *The State of the Native Nations Conditions Under U.S. Policies of Self-Determination* 363 (2007), http://isites.harvard.edu/fs/docs/icb.topic177572.files/SONN_Final_01_09_07.pdf (draft manuscript).

143. Fixico, *Foreword*, *supra* note 98, at ix.

144. ELGIN ET AL., *supra* note 92, at 35; Philp, *supra* note 101, at 184.

program and the King Island relocation played out against a background of Termination, where the fundamental drive of federal policy was to assimilate Indians into white American society. The inherently harmful effects of Termination have led some commentators to suggest that the urban relocation program was not in and of itself bad for Indians, but that its execution against a backdrop of cost cutting and cultural destruction intensified negative outcomes.¹⁴⁵ Federal Indian policy today is dramatically different than it was in the 1950s and 60s. While it remains possible that this policy might change dramatically following the results of the 2016 presidential election, at the time of this writing in late 2016, the federal government has embraced an Indian policy that emphasizes an increased voice for tribes and respect for tribal sovereignty.¹⁴⁶

With these qualifications in mind, there are still several important lessons to be gleaned from these two mid-century relocations. The most obvious of these is that moving populations into existing communities can be extremely problematic for the newcomers. However, many of the problems that displaced communities do face are discrete issues rooted primarily in underinvestment in the relocation process.

Investment in the case of collocation or dispersal is needed both to compensate for existing states of poverty in relocating populations and to help recipient communities absorb relocatees successfully. In both cases examined here, relocatees faced dire conditions that reflected underinvestment in their success in their new community. Slums proliferated quickly in all recipient communities, a direct result of the nearly complete lack of housing assistance offered to relocatees by federal, state, and municipal governments. Low quality housing had cascading effects on the lives of relocatees, and was repeatedly cited as contributing to alcoholism and depression.

Similarly, relocating people from economically depressed communities requires major investment in job training and job creation. The case of King Island demonstrates the severe poverty that can result when a recipient community is unable to absorb newcomers into an already stagnant job market. Even where jobs exist, the urban Indian program demonstrates that problems might persist for relocatees. Racial discrimination and lack of adequate job training or education kept urban Indians in the 1950s in low-paying, insecure jobs. Without investment in vocational training, higher

145. Philp, *supra* note 101, at 188-90.

146. See Editorial, *Candidate Obama Kept His Promise to Native Americans*, N.Y. TIMES (Sept. 30, 2016), <https://www.nytimes.com/2016/09/30/opinion/candidate-obama-kept-his-promise-to-native-americans.html>.

education, job placement and social services counseling, this is likely to continue to be a problem for relocatees today. The cost of coastal retreat, should therefore account for more than just physical infrastructure; it also must account for the various programs needed to assist relocatees transition.

A second takeaway from these case studies is that relocatees consistently cited a sense of cultural loss or isolation after moving. Preserving culture in relocation is, perhaps, a more difficult problem than boosting living conditions, because it cannot be fully resolved through financial support. For example, little could have been done to preserve traditional subsistence hunting practices for King Islanders in Nome, given the geographic distance they had moved. Recognizing that some relocation efforts will produce irreparable cultural loss is, in itself, an important consideration when addressing relocation planning.

Nevertheless, even in the 1950s, individual efforts sprung up in urban centers to provide cultural support to relocatees. During the urban relocation program, private donors and volunteers helped establish “Indian centers” in major relocation destinations.¹⁴⁷ These centers served not only as a place to provide economic, social, and legal assistance to urban Indians, but also as a place for cultural programming and recreation aimed at reducing the feeling of isolation.¹⁴⁸ Such cultural centers can continue to play a role in protecting against cultural degradation today. Indeed, one King Island elder in an interview in 2016 cited the lack of adequate space for cultural programming as contributing to the loss of traditional knowledge among the King Island population still living in Nome.¹⁴⁹

Finally, the King Island example, in particular, demonstrates the inadequacy of stop-gap fixes. Once the King Islanders were in Nome, a range of forces conspired to keep them there, and the perception of the Cape Woolley project turned from a solution, to a problem, to an additional problem unto itself. The King Island case demonstrates that money is not likely to become available to people whose immediate needs are perceived as being met. Further, community consensus regarding relocation may erode as time drags on, particularly if additional stop-gap measures (like the ivory workshop in Nome) are floated. Communities that aim for a specific relocation outcome, therefore, would do well to exercise caution when accepting any ‘temporary’ fix.

147. ELGIN ET AL., *supra* note 92, at 41.

148. *Id.*; NAT’L URBAN INDIAN FAMILY COAL., URBAN INDIAN AMERICA: THE STATUS OF AMERICAN INDIAN AND ALASKA NATIVE CHILDREN AND FAMILIES TODAY (2012), http://caseygrants.org/wp-content/uploads/2012/04/NUIFC_Report2.pdf.

149. Interview with Vince Pikonganna, *supra* note 125.

IV. Learning Lessons from the Past

This article is primarily an appeal to pragmatism. As the above case studies show, community relocation can address a number of the harmful effects that accompany the displacement of climate-threatened communities. But community relocation is also expensive, and obtaining funds to relocate has proven exceedingly difficult. If sufficient funding cannot be obtained, a variety of factors are likely to push community members to disperse into existing cities or settlements. Whether the displaced community moves into existing settlements as a group or as individuals, the Termination Era case studies underline that displaced individuals will likely face a number of social and economic problems in their new homes. In planning for coastal retreat, Indian communities set on relocation must therefore plan for and pressure federal and state governments to prepare for what will happen if the community ends up displaced or dispersed. This will mean seeking support for addressing the anticipated problems of collocation and dispersal even while *continuing* to advocate for wholesale community relocation.

The most obvious of these issues, and the most frequently identified issue by federal agencies working with climate threatened communities, is physical infrastructure. In both the case studies discussed in the previous part, relocatees were confined to substandard housing due, in part, to underinvestment in expanding adequate housing stock in the recipient community. In considering alternatives for Shishmaref, the Army Corps of Engineers factored in the cost of moving houses from Shishmaref to Nome and constructing new modular homes for residents, as well as building the support infrastructure to tie these homes to utilities.¹⁵⁰ The Army Corps of Engineers also attempted to identify potential funding for the construction of these homes, noting that HUD would be a likely vehicle for funding, and in particular noting that the Native American Housing and Self Determination Act of 1996 (NAHASDA) allows Alaska Native villages to determine how HUD grants will be applied in their communities.¹⁵¹

But the Army Corps of Engineers, in considering the cost of physical infrastructure, also arrives at misleading conclusions as to the cost of relocation. The report estimates that collocating Shishmaref with Nome would come to a total cost of about \$93 million, representing a savings of \$86 million over relocating the community to a new site across the

150. SHISHMAREF RELOCATION AND COLLOCATION STUDY, *supra* note 31, at 47-48.

151. *Id.* at app. 2.

Shishmaref lagoon.¹⁵² But these savings are inflated, because they do not account for non-infrastructure investment in the collocated community.

This oversight ignores the lessons of the Termination Era programs. Participants in the Urban Indian Relocation Program, for example, found themselves stuck on the bottom rung of the ladder in a competitive job market for which they were poorly trained. Job training at the time was not adequate and job counseling even less so. Thus, analyses of costs surrounding displacing community members to a site, other than a new village site, should account for the costs of training them to function in the economy of their destination.

Similarly, there has been little effort to address cultural loss for potentially displaced Indian communities. Relocation has been repeatedly touted as the only means of preserving community identity among climate-displaced tribes,¹⁵³ with one prominent scholar branding it “the only immediate and permanent solution to protect people facing climate-induced ecological change.”¹⁵⁴ Thus, the natural conclusion is that the choice for communities is to either relocate as a community or assimilate.

But the experiences of Indian and Alaska Native communities in the mid-twentieth century suggest that this conclusion does not tell the whole story. Indeed, while some aspects of culture were and remain irreplaceable—such as the traditional subsistence practices of the King Islanders—other relocatees faced cultural losses that could have been ameliorated by additional investment. The upcropping of Indian Centers in American cities and their use to support cultural programming demonstrate one way in which cultural isolation can be addressed. Aspects of culture and community can be preserved, as they have been in diaspora communities around the world, by investment in these types of spaces, to continue cultural practices as well as educational programs to pass down traditions to a younger generation. But this type of cultural investment takes both funding—possibly from federal sources participating in the overall coastal retreat of affected tribes—and planning by the tribes themselves.

Finally, the experience of the King Island community in Nome underlines the need to establish set timelines for the relocation or collocation process. As described in the previous part, King Islanders lobbied for years for support to move to Cape Woolley, where they could reestablish their community, only to have the project die a gradual, quiet

152. *Id.* at app. 1.

153. See SECTION 117 PROJECT FACT SHEET, *supra* note 61, at 6-8.

154. Bronen, *supra* note 3, at 360.

death. This example should be a matter of concern for all Indian and Alaska Native communities seeking to relocate. Shishmaref first voted to relocate in 2002, but has not moved past the stage of federal government studies.¹⁵⁵ While the commissioning of studies is an important first step, every year without additional action pushes a community closer to emergency. If studies drag on long enough, they can come to delay the taking of action which might require millions of dollars and several years to implement until it is too late.

Avoiding the worst consequences of climate-induced displacement will require action from both tribes and government. This will mean recognizing that, if current trends continue, many communities that would have elected to relocate will be displaced before a relocation can be funded and effectuated. Thus, affected tribes and government agencies supporting them should plan for how to preserve these communities in the event that they are forced to disperse.

This is not an easy task. It means devoting focus to a Plan B without concluding that Plan A has failed. Moreover, as demonstrated by the urban relocatees of the 1950s, it will mean addressing a wide range of complex social, cultural and economic problems that can be difficult to anticipate *ex ante*. Addressing these issues will take planning and funding. And with global temperatures continuing to trend upwards, there is little time to lose.

Conclusion

Relocation is deeply intertwined with the history of Indian Country. The history of the United States is replete with episodes of settling, uprooting, and resettling Indian tribes—often to areas with no connection to their homelands. And while government strategies have changed from the forced migrations under the Indian Removal Acts to voluntary and semi-voluntary urbanization in the mid-twentieth century, these varied efforts have nevertheless repeatedly proven disastrous for affected tribes and individuals.

As global climate change hurries the erosion of U.S. coastlines, we are on the verge of a new era of Indian relocation. But as of yet, few decisions have been made about what this era will look like. The failure of the federal government to delegate either the funds or the authority to coordinate the

155. A 2003 report by the GAO describes Shishmaref as “in imminent danger from flooding and erosion.” U.S. GEN. ACCOUNTING OFFICE, GAO 04-142, ALASKA NATIVE VILLAGES: MOST ARE AFFECTED BY FLOODING AND EROSION, BUT FEW QUALIFY FOR FEDERAL ASSISTANCE 4 (2003), <https://www.gao.gov/assets/250/240810.pdf>.

resettlement of climate-displaced tribes means that the country has no coherent policy on how this relocation will occur. Today, many Indian communities are left planning to relocate using funds that may never materialize. As this planning process drags on, possibly for decades in some communities, it becomes increasingly likely that these communities will disperse to different locations in the aftermath of a disaster-induced displacement.

The need for government clarity on a climate-induced relocation policy has long been established.¹⁵⁶ But until funding and authority are delegated to support relocation efforts, affected Indian communities must attempt to address the uncertainties of what will happen if they are displaced by a severe storm or erosion event. Addressing these uncertainties means that both tribes and government agencies must take a hard look at the history of Indian relocation. This history demonstrates a series of destructive outcomes rooted in underinvestment in collocated communities and individuals as well as consistent discounting of the importance of culture and traditional practices to Indian community resilience.

The consequences of this underinvestment can, in many cases, be countered. But this requires planning. It is imperative that communities electing to relocate focus not only on their Plan A—moving as a community—but also on a Plan B—how community and cultural bonds can be maintained if the community is displaced by a disaster. While it is tempting to conclude that tribal identity will be completely destroyed absent wholesale community relocation, this ignores the lessons of past relocations. Indian communities that are forced to disperse will undoubtedly sustain some irreplaceable cultural losses. However, a pragmatic approach to addressing Plan B alternatives will allow tribes and government agencies to work together to alleviate many of the inevitable burdens of displacement.

156. *See id.*