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Performing Climate Justice in Mary Kathryn Nagle's *Fairly Traceable*

Sahar Hamza Bawa (PhD Candidate)
Department of English /College of Arts/University of Baghdad

Asst. Prof. Esraa Jalal Jawad, PhD
Department of English/College of Arts/University of Baghdad

Abstract in English

This study examines Mary Kathryn Nagle's *Fairly Traceable* (2014) as a dramatization of Indigenous environmental justice in the contexts of climate change and settler colonial law. It explores how climate injustice erases Indigenous communities through ecological harm and legal exclusion, and how performance challenges the limitations of the U.S. doctrine of "fairly traceable" causation while staging Indigenous alternatives to dominant legal frameworks. Grounded in Indigenous research frameworks and performance studies, and drawing on Kyle Powys Whyte's concept of spiraling time, the analysis shows how the play enacts intergenerational responsibility and relational ethics. Through nonlinear time, testimonial address, and double casting, Fairly Traceable renders cumulative harms visible and resists settler erasure. Theatrical form becomes a counter-archive that affirms Indigenous continuance beyond legal recognition. Justice in the play is grounded not in redress through settler institutions, but in kinship, presence, and accountability to human and more-than-human communities. The study contributes to environmental justice and performance scholarship by positioning theater as a site of Indigenous survivance and resistance.

Paper Info

Keywords

Indigenous environmental justice, climate change, climate injustice, performance studies, indigenous dramaturgy, Mary Kathryn Nagle

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1. Introduction

Mary Kathryn Nagle (Cherokee Nation of Oklahoma, b. 1983) is both an attorney specializing in Federal Indian Law and a playwright whose works challenge the legal and cultural structures that undermine Indigenous sovereignty and environmental survival. Her legal career has advanced tribal jurisdiction and environmental protection, while her activism at Standing Rock and essays on sovereignty connect ecological harm directly to colonial doctrines such as the Doctrine

of Discovery (Nagle, 2018, pp. 669–670, 674). Her dramaturgy mirrors this political vision. Through collapsed timelines, Indigenous storytelling practices, and an unflinching critique of colonial law, Nagle's plays reveal how settler structures persist in shaping the present.

The framework of climate justice is essential to situating *Fairly Traceable*. At its core, climate justice emphasizes equity and responsibility, that is those who contribute least to global emissions often bear the heaviest burdens. The United Nations Development Programme defines it as recognizing that poorer communities, women, and future generations are disproportionately affected by climate change, while nations and corporations most responsible must shoulder greater responsibility for mitigation and adaptation (United Nations Development Programme [UNDP], 2023). In academic discourse, Schlosberg and Collins emphasize that climate justice encompasses distributive, procedural, and recognitional dimensions—fair outcomes, inclusive processes, and respect for the identities and rights of those most impacted (Schlosberg & Collins, 2014, p. 361).

Indigenous scholars, however, argue that these framings remain incomplete because they obscure the long history of colonial violence. Many maintain that for Indigenous peoples, the apocalypse has already happened, a view grounded in histories of genocide, environmental destruction, and cultural erasure that frame colonialism as an ongoing catastrophe rather than a past event (Estes, 2019, p. 14; Simpson, 2017; Watt-Cloutier, 2015, p. 63). Whyte develops this critique, noting that many Indigenous peoples already inhabit what ancestors would recognize as dystopian futures (Whyte, 2017), and that climate change compounds past injustices through cumulative, systemic effects (Whyte, 2018a, pp. 225–237). He cautions against crisis framings that marginalize Indigenous nations, advocating sovereignty, relational accountability, and long-term continuance (Whyte, 2020). McGregor calls for centering Indigenous legal orders in environmental decision-making (McGregor, 2018, pp. 27–30). The play's title invokes the standing doctrine's "fairly traceable" requirement, a legal choke point that Nagle transforms into a dramatic engine.

This study enters performance studies and Indigenous dramaturgy to argue that *Fairly Traceable* does more than represent these crises. It performs them. Drawing on Kyle Powys Whyte's concept of "spiraling time," alongside his articulation of "epistemology of coordination," which emphasizes collective, land-based modes of responding to climate disruption (2021, p. 2), the analysis shows how the play enacts intergenerational responsibility and relational ethics as live practice. At the same time, the study reads the play's formal strategies through Diana Taylor's repertoire, Rebecca Schneider's account of what remains, and Jill Carter's theorization of Indigenous dramaturgies as practices of re-collection (Taylor, 2003; Schneider, 2011; Carter, 2008). These devices conscript the audience as witnesses, transforming spectatorship into a juridical and ethical act. Nagle's play stages an Indigenous environmental justice that exceeds settler legal recognition and centers continuance, kinship, and obligation.

2. Performing Climate Justice Beyond Traceability

The phrase "fairly traceable" comes from Justice Antonin Scalia's majority opinion in *Lujan v. Defenders of Wildlife* (1992), which demands plaintiffs prove a direct causal link between injury and a defendant's conduct (504 U.S. 555). For climate and environmental justice cases marked by cumulative and intergenerational harm, this requirement functions as a barrier to redress. *Fairly Traceable* turns that barrier into drama. Erin Verdin, a lawyer from the Pointe-au-Chien Tribe, argues traceability against a judge's demand for single-source causation. In *Verdin et al. v. Murphy Oil, et al.*, she frames centuries of extractive industry, dispossession, and rising seas as fairly traceable to a group of corporate defendants, with Murphy Oil named first among nineteen companies. The courtroom scenes expose those layered harms on stage, making visible what the law insists on narrowing.

The courtroom exchange between Erin and Judge Carol crystallizes this clash of worldviews

> CAROL/JUDGE: You want me to find that your tribe, which isn't even federally recognized, is entitled to the same special solicitude as Massachusetts, a State?
>
> ERIN: My Tribe existed as a sovereign Nation long before Massachusetts — (Nagle, 2014, p. 83-84).

The exchange embodies the violence of a system in which sovereignty must be proven through structures that deny it. As Mhayyal and Hasan argue in a related context, state power often registers Indigenous communities with apathy that dehumanizes and neglects them (Mhayyal & Hasan, 2024, pp. 21, 37). When the Judge tells Erin that her tribe "isn't even federally recognized," the denial is not just legal, it's ontological. Erin's existence as a representative of her Nation is rendered invalid before she can even speak. However, Erin does not ask for inclusion. Instead, she affirms her Nation's sovereignty as pre-existing and unbreakable. Erin refuses eligibility logic and refuses to collapse her people's legitimacy into settler legal frameworks. The court's metric is single-source causation and federal recognition. She answers with prior and ongoing sovereignty. Her line resets jurisdictional time in which recognition does not found her Nation's authority; it belatedly misnames it.

Erin's commitment to relational ethics extends beyond the courtroom. One of the reasons behind her lawsuit against oil companies is because animals also losing their homeland due to climate change. When she explains to Randy's sister Annie why she refuses to harm a displaced alligator, when she saw it eating her cat, Erin underscores a relational ethic grounded in shared vulnerability:

> ERIN: I stood on my porch and watched. I couldn't do anything. I wasn't going to shoot it. They're losing their homes just like we've lost ours. Every year the sea levels rise and they have to move further inland (Nagle, 2014, p. 73).

Erin's refusal to kill the alligator, even after it devours her cat, is a deliberate rejection of the settler-colonial logic that ranks life by utility and disposability. The alligator, displaced by rising seas and pushed inland by the extractive violence of the

oil industry, is a fellow refugee, a co-victim of environmental injustice. In choosing not to shoot, Erin refuses a system that constantly displaces or eliminates what it deems less valuable in order to protect what it prioritizes. This moment resonates with Indigenous critiques of Western environmental logic that isolates harm, traces liability, and responds with punitive control. Instead, Erin enacts an Indigenous ethic of care, one that recognizes shared vulnerability across species and honors obligations within an interconnected web of life. McGregor et al. observe, "a just path to a sustainable future must consider all relations," human and more-than-human alike, a vision rooted in mino-mnaamodzawin, or "living well with the world" (McGregor 10). This ethic moves beyond injury and redress, centering ongoing accountability to the whole network of life, a principle at the heart of the environmental justice *Fairly Traceable* imagines.

Nagle pushes this ethic even further through Suzanne, Erin's mother, whose rejection of settler legal authority grounds sovereignty in living bodies and enduring stories. Suzanne's stance rejects validation from the court, insisting that value and obligation precede and exceed the law:

> We don't need your 'environmental law' to tell us our homes are worth saving. We've known that since we came into existence. Under our law, we recognize the Earth as our Mother because we come from her. She gives us life. And as Native women, we give life…So we, Native women, we're the environment. We're inseparable. Without us, our Nations cease to exist (Nagle, 2014, p. 94).

This refusal displaces colonial legal authority by re-centering Indigenous ontologies, affirming that sovereignty is lived through relational obligations rather than granted by settler institutions. On stage, Suzanne's words function as ritual testimony. Jill Carter describes Indigenous dramaturgy as "recovering, collecting, reconstituting, and re-inscribing" fragments of memory across body and space (Carter, 2008, p. 170). Suzanne embodies that process, making the performer's body the living site of law and sovereignty. In doing so, she denies the court the power to erase her Nation's authority, affirming that authority exists because it is performed and remembered and not because it is recognized.

The play's temporal frame heightens this performance of justice. By beginning and ending in Randy's 2042 classroom, *Fairly Traceable* situates its audience in a future-present from which the past is already narrated. Each "Scene 0" flash pulls spectators back into this frame, reminding them that they are not watching a linear series of events but receiving testimony—memory already marked by loss, displacement, and return. Randy's lectures enact what Diana Taylor terms the repertoire: "a system of learning, storing, and transmitting knowledge through bodily practices" (Taylor, 2003, p. 16). His address becomes more than narrative; it becomes performance-as-survival, a live act of memory that obligates both his students and the audience to serve as witnesses. The repertoire, Taylor writes, "requires presence: people participate in the production and reproduction of knowledge by 'being there'" (Taylor, 2003, p. 20). By staging memory as a repeated, live act, the classroom frame refuses erasure and keeps

the past from being archived and closed, insisting it be carried forward through each retelling.

Indigenous epistemologies hold past, present, and future in active relation. Nagle uses nonlinear time to reflect this philosophy and unsettle legal frameworks. The play shifts constantly between decades 1990s, 2005, 2011, 2015 and a speculative 2042. This structure embodies what Kyle Whyte calls "spiraling time," (Whyte, 2018a, p. 225), an Indigenous temporal logic where history remains alive, with present decisions shaped by ancestral legacies and carrying responsibility for descendants. The characters relive the past. The flood that drowned Erin's community endures, echoed in every legal hearing and personal loss, with 2042 already embedded in the injustices of the present. While Western ideologies center time, particularly a linear, progressive model of history, Vine Deloria Jr. Argues, Indigenous philosophies center space, where land carries spiritual, historical, and epistemological significance (Deloria, 2003, pp. 61–62). *Fairly Traceable* stages this philosophy dramaturgically, collapsing past, present, and future into a shared theatrical space.

From its opening scenes in 2042, *Fairly Traceable* establishes a nonlinear frame. Randy, now a law professor, recounts the story of his younger self and Erin's legal battle to a new generation of students. This act of narration transforms the theatrical space into a classroom and the audience into witnesses. What appears to be a distant future is already saturated with memory, with New Orleans submerged, Pointe-au-Chien lost, yet the struggle is retold and reanimated. Time here is structured relationally rather than chronologically. Randy's storytelling thus becomes a political act of survivance, what Gerald Vizenor calls "an active sense of presence" (Vizenor, 2008, p. 1). When Randy tells his students, "Today, hurricanes twice the size and strength of Rita are something we expect to make landfall every summer—sometimes in the winter" (Nagle, 2014, p. 37), catastrophe is normalized. Climate change is the present-tense condition of Indigenous life, an already dystopian reality of climate injustice where colonial harm is accumulated into everyday survival.

Carol and Annie embody spiraling temporality in an exchange that fuses dream, memory, and historical trauma. Annie describes a recurring dream: "When I close my eyes… I see a giant hurricane. Except it's not a hurricane. It's a giant cloud of wind. Like a funnel. It heads straight for us. And then I wake up" (Nagle, 2014, p. 23). Annie's recurring dream of a massive, unnamed funnel cloud is a haunting, an inherited intergenerational trauma surfacing as atmospheric violence. The dream fuses ecological collapse with colonial memory, a storm that erases, displaces, and repeats. Carol's response invokes ancestral trauma, recounting how their relative, Chief Standing Bear, buried his daughter Prairie Flower on the Trail of Tears, only to bury her daughter again the same night after a tornado. This moment collapses time, linking climate violence with colonial genocide.

Annie's paintings collapse colonial and climate violence into visual archive that settler law cannot reach. Her final painting, depicting Standing Bear burying his daughter Prairie Flower, fuses personal and ancestral loss into an act of insurgency. "They can't haunt you, if you paint them" (Nagle, 2014, p. 69), she tells Erin, claiming

the authority of art to animate the past as a living presence. These images counter the erasures of courtrooms and archives, keeping grief active rather than sealed. Art becomes a counter-archive that refuses disappearance and insists that survival itself is testimony.

The vision of time and justice where memory becomes an act of resistance and art a form of testimony extends beyond narrative content into the play's very form. *Fairly Traceable* embodies Indigenous ways of knowing through its dramaturgical techniques. One of the most powerful of these is double casting, which Nagle deploys as a deliberate challenge to settler structures of identity, authority, and time. By having actors portray multiple roles often crossing lines of family, institution, and temporality the play collapses the distance between past and present, harm and healing, colonizer and colonized. Through this embodied strategy, the play enacts its own alternative environmental justice not just in content, but in form.

Annie, who dies in 2011 Joplin tornado, is later portrayed as Charlotte, the daughter of Randy and Erin in 2042. This casting choice signifies that grief and regeneration coexist, emphasizing the persistence of Indigenous life and the continuity of memory and identity across generations. In Indigenous temporal logic, where ancestors and descendants share the same space, this casting becomes a visual assertion of continuity. Charlotte is Annie re-incarnated, memory and futurity embodied at once.

Characters like Carol are double cast as figures of institutional authority such as a judge, a doctor, and media personalities like Wolf Blitzer. This multiplicity exposes how Indigenous individuals often navigate and sometimes internalize the very systems that marginalize them. In one scene, Carol appears as the maternal figure urging Randy to conform to family tradition and industry loyalty, telling him, "It's who you are. I didn't raise you to be an environmentalist" (Nagle, 2014, p. 30). In the next, she embodies settler legal authority, denying Erin's tribal standing and environmental claims. This duality dramatizes how settler colonial power is both institutional and intimate, woven into family, identity, and memory. Carol's body becomes the site of contradiction. She is a caring matriarch, yet she upholds the very structures that erase hers and people's heritage. Through this casting choice, Nagle refuses any neat separation between personal and political, complicity and care.

Fairly Traceable stages the collapse wrought by settler colonial climate violence alongside the quiet, determined continuance that rises within and against it. This shift unfolds through the evolving relationships within Randy's family, whose journey from denial to responsibility enacts an Indigenous environmental justice rooted in ancestral memory, relational obligation, and the activation of story as resistance.

Carol begins the play as the industry's staunchest defender: "I'm the third generation to work at the company that built our schools, fed our families, and made us who we are today." (Nagle, 2014, p. 30). For her, to challenge the company is to "turn on your people." Randy, though more aware of environmental injustice than the rest of his family, clings to neutrality and distances himself from the struggle. He resists being labeled a "Native environmentalist," insisting, "I wanted to get into law school because I'm qualified. Not because I'm Native" (Nagle, 2014, p. 9). By refusing to "check the

box" on his law school application, defending oil companies in court, and holding himself apart from his people's cultural and environmental battles, Randy becomes entangled in the very legal logic that erases Indigenous harm. Erin's confrontation after he stands in court, exploiting the loopholes that dismiss their suffering, forces a reckoning. In this moment, the myth of neutrality shatters. By defending a doctrine that has historically silenced Indigenous claims, Randy participates in his community's ongoing dispossession:

> ERIN: We live where we've always lived. On the bayou. Only now, the bayou's disappearing. We know why. We know the oil companies carved up our homes beyond recognition. .. And you argued it. You stood in a courtroom and argued that this doctrine, this awful doctrine, prevents my Tribe from protecting the lands we've lived on since time immemorial. You argued in favor of MY Trail of Tears. So exactly what part of you is Native? The part that represents oil companies? The part that attacks my Tribe's sovereignty? (Nagle 90).

Annie's death in a tornado shatters this ambivalence. Her loss marks a personal tragedy and a breach in the family's temporal denial. Carol recalls: "Growing up in Ponca City, seemed like just about every family had someone who was sick, even if they didn't work at the refinery. Everyone had someone with cancer. They still do" (Nagle, 2014, p. 115). She tells Randy: "We're descendants of Chief Standing Bear. His blood runs through our veins. That's not a stereotype. It's who you are" (Nagle, 2014, p. 115). No longer simply an apologist for industry, Carol urges Randy to leave corporate law and begins to see legal resistance as part of their ongoing survival. Her sense of community expands, no longer limited to kin, but encompassing the land itself. For Carol, environmental justice becomes inseparable from cultural continuity, memory, and the fight for a future beyond erasure.

Randy's transformation is subtle but radical, marked by a growing sense of ethical responsibility. His resignation from the corporate firm is a conscious break from the legal apparatus that perpetuated harm. Teaching becomes his act of resistance, stepping from the sidelines into a role of witness and guide. His movement away from corporate law and into memory work reflects what Mohammed and Sharif describe as the redemptive power of return: "Going back to one's roots can be a powerful means of restoring a deep and genuine sense of the self" (Mohammed & Sharif, 2024, p. 68). Native Voices director Randy Reinholz interprets Randy's journey, "as he matures, he realizes that as an empowered adult he has to speak, he can't sit on the sidelines" (qtd. In McBride). In the final scene, Randy brings his and Erin's story alive for a new generation. The law school shifts from a site of exclusion to a space for Indigenous memory and responsibility.

The culmination of Erin's legal battle lands as ambivalence. In the play's final scene, set in 2042, Randy announces that Erin wins Verdin v. Murphy Oil, overturning the Lujan traceability bar and marking "the biggest victory in the history of environmental law" (Nagle, 2014, p. 122). But the verdict arrives too late, a bittersweet success. As Erin reflects, "Yeah, *after* we lost Pointe-au-Chien. Manhattan. Miami… And we still lost New Orleans" (Nagle, 2014, p.123). The system recognizes the harm

only after the irreparable has occurred. Her win marks a historic moment in environmental law, yet the material and spiritual damage, the submerged bayou, the lost community, the ancestral graves, cannot be undone.

This victory does not redeem the law; it exposes the price of playing by its rules. Erin's win lays bare the crushing burden imposed on Indigenous plaintiffs forced to navigate a system built to erase them. The courtroom validates what indigenous communities have always known, that is environmental harm is real, systemic, and traceable, but only after land, life, and memory have been submerged. In this light, the verdict is not justice fulfilled, instead injustice belatedly named.

Yet Erin's responds to this legal hollowing by turning to futurity as an act of resistance. Earlier in the play, Erin expresses her refusal to have children in a world on fire: "I refuse to bring a child into a world I know is going to be destroyed" (Nagle, 2014, p. 49). But by the end, this refusal is transformed and redirected. She reframes motherhood as an obligation, not a retreat. "Climate change isn't the reason I can't have kids. It's the reason I have to" (Nagle, 2014, p.121). Leanne Betasamosake Simpson calls this *generative refusal*, which means not only refusing colonial paradigms but also "generating different worlds–worlds that centre the material and spiritual needs of the community" (Simpson, 2018). Erin's choice is rooted in a profound sense of responsibility to community, ancestors, and future kin on one hand and a counter action against native erasure on the other hand. Her child, Charlotte, becomes a carrier of continuity, a living refutation of disappearance.

In the final moments of *Fairly Traceable*, Charlotte presents Randy with a painting of the bayou, depicting it as it once was—"before. When it wasn't underwater. When [they] could still visit grandma's grave." This gesture, situated in a submerged future, reanimates what has already been lost. The painting becomes a performative act, a counter-archive that asserts continuity against settler erasure. Charlotte does not merely remember; she makes the loss erupt in the present. Schneider writes that when we treat performance as that which "remains" rather than disappears, "the body... becomes a kind of archive and host to a collective memory... disappearing but resiliently eruptive, remaining through performance like so many ghosts at the door marked 'disappeared'" (Schneider, 2011, pp. 101–102). Charlotte's act invites Randy, and the audience, to "reparticipate" in submerged memory and relational responsibility. What the courtroom could not preserve, her painting does—not by fixing it in time, but by staging it as a haunting, a trace, a demand. In Schneider's terms, the performance does not vanish; it refuses closure, and remains.

3. Conclusion

Mary Kathryn Nagle's Fairly Traceable demonstrates that climate injustice is inseparable from settler legal structures and memory. By centering the Pointe-au-Chien Tribe's erasure under the "fairly traceable" doctrine, the play exposes how causality and recognition function as instruments of exclusion, turning cumulative and intergenerational harms into legally invisible losses. Through nonlinear temporality,

Randy's testimonial framing, and the embodied repetition of double casting, the play refuses to let these losses settle into silence. Annie's paintings and Charlotte's final gift function as counter-archives that reactivate submerged memory, while Suzanne's speech grounds law in living presence, rejecting erasure at the level of the body. Together`, these devices transform performance into a site of justice, a practice embedded in kinship, accountability, and continuance across human and more-than-human communities. Fairly Traceable performs climate justice by refusing disappearance, keeping memory in motion, and turning stage and body into living instruments of survivance.

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Abstract in Arabic

تمثيل العدالة المناخية في مسرحية" قابل للتتبع " لماري كاثرين نايغل

الخلاصة

تتناول هذه الدراسة مسرحية "قابل للتتبع" (2014) لماري كاثرين نايغل بوصفها تجسيداً للعدالة البيئية من منظور الشعوب الأصلية، في سياق تغيّر المناخ والقانون الاستعماري الاستيطاني. تكشف الدراسة كيف يؤدي الظلم المناخي إلى محو المجتمعات الأصلية عبر الأذى البيئي والإقصاء القانوني، وكيف يوظّف المسرح آلياته لتحدي قيود مبدأ "قابل للتتبع" في القانون الأميركي، مقدّماً بدائل قانونية تنبع من رؤى ومعارف الشعوب الأصلية. تستند الدراسة إلى أطر بحثية أصيلة ودراسات الأداء، وتستحضر مفهوم "الزمن الحلزوني" لكايل باويس وايت لإبراز الكيفية التي تجسد بها المسرحية المسؤولية بين الأجيال والأخلاقيات العلائقية. من خلال

البنية الزمنية غير الخطية، وخطاب الشهادة، وازدواج الأدوار، تجعل المسرحية الأذى التراكمي مرئياً وتقاوم المحو الاستيطاني. يتحول الشكل المسرحي إلى أرشيف مضاد يؤكد استمرارية الشعوب الأصلية خارج الاعتراف القانوني الاستعماري. العدالة في هذا النص تتجلى عبر مفاهيم القرابة والحضور والمسؤولية تجاه البشر وغير البشر، لا عبر السعي إلى الإنصاف في مؤسسات الدولة الاستيطانية. وتقدّم الدراسة إسهاماً في دراسات العدالة البيئية ودراسات الأداء بإبراز المسرح بوصفه فضاءً للبقاء والمقاومة الأصلية.

الكلمات المفتاحية :العدالة البيئية للشعوب الأصلية، تغيّر المناخ، الظلم المناخي، دراسات الأداء، الدراماتورجيا الأصلية، ماري كاثرين نايغل