



# NEW DIVERSITIES

An online journal published by the Max Planck Institute for the Study of Religious and Ethnic Diversity

Volume 19, No. 2, 2017

## Indigenous Politics of Resistance: From Erasure to Recognition

Guest Editor: Manuela L. Picq (Amherst College)

<b>Indigenous Politics of Resistance: An Introduction</b> by MANUELA L. PICQ (Amherst College)	1
<b>By Whatever Means Necessary: The U.S. Government's Ongoing Attempts to Remove Indigenous Peoples During an Era of Self-(De)termination</b> by KATHLEEN A. BROWN-PÉREZ (University of Massachusetts Amherst)	7
<b>Treaty Relations between Indigenous Peoples: Advancing Global Understandings of Self-Determination</b> by SHERYL R. LIGHTFOOT (University of British Columbia) and DAVID MACDONALD (University of Guelph)	25
<b>Indigenous Lèse-majesté: Questioning U.S. Federal Indian Law</b> by PETER D'ERRICO (Emeritus, University of Massachusetts / Amherst)	41
<b>Everyday Acts of Resurgence: Indigenous Approaches to Everydayness in Fatherhood</b> by JEFF CORNTASSEL and MICK SCOW (University of Victoria)	55
<b>Hobbes' Border Guards or Evo's Originary Citizens? Indigenous People and the Sovereign State in Bolivia</b> by ANDREW CANESSA (University of Essex)	69
<b>On the Sacred Clay of Botany Bay: Landings, National Memorialization, and Multiple Sovereignities</b> by ANN MCGRATH (Australian National University)	85
<b>Weaving Abya-Yala: The Decolonial Aesthetics of Indigenous Resistance</b> by ANTONIA CARCELÉN-ESTRADA (College of the Holy Cross)	103



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**"The Conditions of Modern Return Migrants"**, Vol. 10, No. 2, 2008  
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© MPI MMG (2017)

ISSN-Print 2199-8108  
ISSN-Internet 2199-8116

Published by the Max Planck Institute for the  
Study of Religious and Ethnic Diversity  
Hermann-Föge-Weg 11  
D-37073 Göttingen, Germany

Available online at  
[www.newdiversities.mmg.mpg.de](http://www.newdiversities.mmg.mpg.de)

# Indigenous Politics of Resistance: An Introduction

by MANUELA L. PICQ (Amherst College)

*"To be Indigenous means that the project of the nation-state did not triumph [...], that there is not one single territory, not one single language, not one single citizenship."*

*(Gladys Tzul Tzul, 2015)<sup>1</sup>*

Indigenous peoples breathe diversity. There are over five thousand peoples that speak thousands of languages in different cultural and spiritual systems – about 370 million individuals in ninety countries. Yet the radical diversity of Indigenous peoples lies beyond their own pluralism. Maya scholar Gladys Tzul Tzul reminds us that Indigenous peoples are evidence that the nation state did not triumph despite its efforts to impose one political logic, that there is not one single citizenship or social contract. Indigenous politics transcend the nation-state, and their resistance expands the political imagination beyond the modern state. Indigenous resistance is, in the words of Anishinaabe scholar-artist Leanne Simpson (2017, 10), "a radical and complete overturning of the nation-state's political formations."

The terminology referring to Indigenous peoples can be confusing—Indian, First Nations, Tribal, Native, Indigenous and Orinary peoples. There are many words to refer to Indigenous peoples because their experiences are testimony to many colonial processes leading to state-making. The different terms express a plurality of power relations across colonial experiences. Official understandings have varied over time as states change

definitions through legislation, blood quantum, and census depending on its interest to erase, regulate, or displace indigenous presence (Kauanui 2008). Indigenous belonging is contested in the so-called new world, but the concept is fuzzier in regions that did not experience large amounts of European settler immigration, like Asia (Baird 2016). Many Asian states recognize indigenous peoples with the understanding that they inhabit other regions. The concept is fluid, contested and heterogeneous because Indigenous peoples are as diverse as the processes of colonization they continue to endure.

Already in the sixteenth-century, Indian emerged as an all-encompassing category referring to non-European peoples from the Indies, East and West, constructed as Europe's homogenous other (Seth 2010). To conflate vastly distinct peoples in a homogenizing legal status was an act of colonial governance (Van Deusen 2015). The term refers to a historical process rather than an essential nature. Indigenousness refers less to a constitutive who/what than to the otherness implied by it (Canessa 2012). Cree and Cherokee scholars Taiaiake Alfred and Jeff Corntassell (2005) explain being indigenous today as inhabiting lands in contrast to and in contention with the colonial states that spread out of Europe. They define indigeness as an oppositional identity linked to the consciousness of struggle against dispossession in the era of contemporary subtler forms of colonialism. It is a belonging fueled by contention with colonial states, energized by the priorities of each new generation, and elaborated in a plurality of communities with local agendas. Though local and

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<sup>1</sup> Gladys Tzul-Tzul is a Maya intellectual from Guatemala (Capiberibe and Bonilla 2015, 1).

heterogeneous, Indigenous politics are marked by oppositional identity and internal pluralism worldwide.

Indigenous peoples still stand in defense of their lands, relationships and lifeways: “as they have always done” (Simpson 2017). They continue to resist predatory states and extractive industries invading their territories. Resistance ranges from legal struggles to language revitalization, it is place-based yet engages in international diplomacy. It takes the form of public mobilizations or invisible intimacies. Continuing resistance reveals the ongoing dispossession of Indigenous peoples. Settler colonial studies established that colonialism is a structure, not an event. Patrick Wolfe (2006) argued that invasion is not an isolated historical event because settlers come to stay and proposed to think of it as a structuring principle. Colonialism is an ongoing process that still defines borders between imagined centers and peripheries, and the doctrine of discovery remains foundational to the international system of states built on stolen Indigenous lands. This violent process is not as a left-over from the past, it is a core principle necessary to the survival of the current state system.

Indigenous resurgence is a radical political project with a profound epistemological dimension. It serves to contest hegemonic histories with political cosmologies that denaturalize the state as the sole locus of the political (Beier 2005). Indigenous practices of authority, plural, shared, and unbounded to states, exemplify how to “dispense” with the state system. They allow to provincialize the state, revealing its limits and inadequacy in forms that resonate with calls to provincialize Europe (Chakrabarty 2000). Indigenous resistance offers alternative pathways of action that expands our imaginary beyond the straightjacket of state politics. Its achievements matter as much as the political possibilities that it encompasses.

Indigenous peoples have long been dynamic actors in international politics. When colonial governments invoked the doctrine of *terra nullius* to justify land-grabs, Indigenous peoples pur-

sued diplomatic negotiations, traveled to Europe on Indigenous passports, and signed treaties that settlers repeatedly broke. Indigenous peoples then resisted Westphalian territorialization and the imposition of state-centric politics. After centuries written out of existence and denied land rights by the *terra nullius* doctrine, Indigenous movements successfully framed international law over the last decades. Indigenous politics gained traction in the inter-national legal system with collective rights to self-determination in the ILO Convention 169 (1989) and the UN Declaration on the Rights of Indigenous Peoples (2007). They have created political parties, like Pachakutik in Ecuador, and run for office, electing President Evo Morales in Bolivia.

Recognition has become a principal mode of negotiating political authority between state and Indigenous nations, shaping debates over cultural distinctiveness, legal pluralism, and rights to self-determination over land, law, and culture. Indigenous peoples mostly celebrate international rights as a recognition of self-determination and autonomy from the state. Yet many resist what they perceive as conciliatory rhetoric promoting the collaboration between Indian nations and colonial states. Indigenous politics become ever more complex, as some claim rights to prior consultation and others refuse to be consulted by the states that exercised violence and seek alternative politics of self-recognition.

Indigenous experiences cannot not be trivialized as some remnant of the past or political folklore. They complement official national histories with forgotten narratives; in the process, they contribute new epistemologies. They do much more than expanding history; they revert it, destabilizing state-centric conceptualizations of the political. Spatial imaginaries of the state as modern and global, in contrast to indigeneities imagined as non-political and isolated, miss not only the impact of indigenous politics but the very essence of the state. Indigeneity, as a colonial category central to state-making, provides tools to historicize the state and sovereignty. Indigenous experiences free political imaginaries

ies from the hegemonic episteme of the nation-state.

This special issue explores the complexity and diversity of indigenous resistance. Contributions range from Australia to Bolivia, cover the USA – Canada border, and put Zapatista interventions in dialogue with resistance in Amazonia. The nine scholars offer an interdisciplinary perspective that includes history, political science, and literature; their methodologies range from legal to comparative analysis, some look at aesthetic interventions while others at intimate acts of resurgence in the home. Essays engage debates on the issue of recognition, exploring how Indigenous presence forces the state to articulate itself and to constantly perform its self-arrogated right to sovereignty.

One theme that runs through this special issue is that lasting Indigenous resistance is testimony to ongoing dispossession. The myth of Indian extinction is deeply anchored in settler colonial narratives of modern state-making. Erasing Indigenous presence served a pragmatic goal: denying Indian presence permitted to deny their rights (O'Brien 2010). If Indians did not exist, they could not claim their lands. Nineteenth century narratives promoting the vanishing Indian used racial purity rooted in scientific racism to argue that Indians were mixed blood and no longer truly Indian. In the USA, governors declared that there were no more Indians inhabiting their states; in Guatemala Maya communities were whitened by decree (Castro and Picq 2017). Indigenous dispossession has been a concerted bureaucratic effort.

**Kathleen Brown-Pérez** explains how the US federal government removes Indians from the land through mechanisms of legal dispossession and definitional violence. She summarizes Indian policy as a set of variations seeking termination through assimilation. She first analyzes the doctrine of discovery, a 'God-given' right to establish legal title to non-Christian lands, then Congress's plenary powers over Indians – only Congress has the legal authority to terminate tribes. Brown-Pérez takes us through various

stages of termination through US legal history. She focuses on the case of her tribe, Brothertown Indian Nation (Wisconsin), never terminated by Congress but erased from the list of federally recognized tribes in 1980. The case illustrates arbitrary acts of administrative erasure by the Bureau of Indian Affairs. The dissolution of the Brothertown Indian Nation is not an isolated event; it is part of a structure of dissolution of Indigenous societies. The real problem, she argues, is federal acknowledgment: an expansive, unfair, and arbitrary process that distracts from the real issue of termination.

Taking a legal approach, **Peter D'Errico** tackles the confusing concept of "sovereign exception" in US Indian law. He exposes the contradictions of a law that simultaneously recognize indigenous sovereignty and claims plenary power to regulate Indian tribes. Federal Indian law places Native Nations in a "state of exception" from ordinary sovereignty. He draws on Schmitt's notion of "state of exception" to show federal Indian law as a "sovereign ban" on Indigenous Peoples, placing them in a "zone of indistinction," where rules and decisions are inherently unstable, confusing, contradictory. The analysis is structured in three tempos around John Marshall's legal trilogy to suggest that US sovereignty is a theatrical performance, always in flux. Native peoples, he argues, provide the necessary opposition to the sovereign performance. Thus, the concepts of "tribal sovereignty" is a state of exception that simultaneously constitutes U.S. sovereignty. D'Errico borrows Mark Rifkin's notion of "sovereign anxiety" to discuss the radical possibility of an Indigenous refusal of federal Indian law. Indigenous refusal of the state of exception would constitute *lèse majesté* – "insult to majesty" – an old phrase that highlights federal Indian law as a "secularized theological concept."

Sovereignty is literally performed on stage in theatrical re-enactments of 'discovery.' **Ann McGrath** takes us to the first play of James Cook landing in Australia's Botany Bay by an Aboriginal troupe in 1901. The place-based performance implied symbolic grounds of entitlement, con-



tested sovereignties and contingent histories. McGrath considers how the affective nature of the Aboriginal performances, tangible and intangible, undermined British narratives and disrupted any singular patriotic reading of Australia's national history. Although Australian Aborigines are the world's oldest continuing culture with sixty millennia relating to land, official histories are still trapped in memorializing "discovery dates" that conceptualize settlers as "founding fathers" who "give birth to the nation." Re-enacting the act of taking possession serves both to assert ideas of sovereignty and 'whitewash' colonial violence. The Aboriginal troupe stole the show making a mockery of discovery; their dance embodied a storied exchange that tied together their deep human history and white Australia.

Another theme that contributions emphasize is the vibrancy of Indigenous politics, in relation to or beyond states. To dismiss Indigenous politics on the grounds of minority is misleading because indigeneity refers, first and foremost, to the state. The co-constitutive relation to the state explains the diversity of indigenous claims. It is because indigeneity refers to the state as much as to the people outside of it that indigenous counter-narratives to state-formation vary greatly according to context, time and region. This conceptual contingency is key.

Indigenous politics are significant first because they precede the emergence of the modern state; then because they condition it. **Andrew Canessa** approaches Indigenous politics as co-constitutive of the Bolivian state. For him, Indigenous peoples were not only present through Bolivian history, but were also necessary elements for imagining its modern nation state. The nature of the Indian was more than simply a philosophical problem; it lay at the very heart of the imperial state. Indigenous people were and are actively challenging political boundaries, shaping the contours of the state, and occasionally breaching the wall altogether. In Bolivia, they have long engaged with state in its various forms; there was never a time when they were simply passive subjects. Canessa looks at Bolivia

as an example of how indigenous peoples have through history contributed to, challenged, and molded the various states – from colonial to contemporary indigenous- to offer a radical critique of the sovereign state.

**Sheryl Lightfoot and David MacDonald** look at contemporary treaty relations among Indigenous peoples, with or without state participation. Indigenous nations are entering into treaty relations to reinvigorate their own traditional treaty practices and, in the process, they challenge global understandings of treaty-making as the exclusive domain of states. The authors examine three cases of Indigenous-to-Indigenous treaty to expand the global conversation on the possibilities for plural and multiple sovereignties. In 2014, eleven tribes signed the Northern Buffalo Treaty along the Canada-US border to restore the Buffalo on tribal lands. In 2016, fifty first Nations and Tribes signed the Treaty Alliance Against Tar Sands Expansion to protect lands and water across the US and Canada through collaborative decision making. They trace these examples of a surge in inter-indigenous treaty relations back to International Indian Treaty Council. It was founded in 1974 by 98 Indigenous nations from across the Americas and has held annual Indigenous nation treaty conferences without state participation since. Through these case-studies, Lightfoot and MacDonald demonstrate how Indigenous models of diplomacy can help counter the negative effects of absolute state sovereignty. They also point to the similarities between indigenous knowledge and emerging posthumanist thought on questions of ethics, trans-species communication and the philosophical aspects of animal-human collaboration.

It is precisely because Indigenous politics are intrinsic to the emergence of the state and contest its authority that they may contribute singular, radical critiques. The essays invite the readers to see the invisible, and to consider the process of Indigenous resistance as equally important as its outcome. They approach resistance as methodology and aesthetic intervention. Relationality

with nature and family is central to this process. Essays engage Indigenous relations to water, dreams, and ancestors to tackle the intimate and intangible dimensions of resistance.

**Antonia Carcelen-Estrada** approaches Indigenous resistance in the form of aesthetic interventions. She takes the reader through the aesthetics of resistance in Zapatista, Lakota, and Amazonian resistance. What appear as isolated struggles hide patterns of resistance that use various methodologies to defend land, water, and life. Carcelen-Estrada puts three different spec-time of resistance into conversation. In Chiapas, Mexico, Zapatismo visualizes indigenous autonomy in the story-telling of dreams. At Standing Rock, in the USA, Lakota water narratives go beyond territory to defend water as a source of life- dancing governance into being. In the Ecuadorian Amazon, Kichwa spears engage nature in its totality to show that constitutions are irrelevant to life. Zapatista dreams, Lakota dance and Amazon spears are different aesthetic interventions that all unveil the violence of the neoliberal democratic state from their own place-based cosmologies. They expose the state as fiction, leaving the emperor with no clothes.

**Jeff Corn tassel and Mick Scow** approach political resurgence through everyday actions of Indigenous fatherhood. They suggest that intimate spaces like the home greatly inform relationships to the land, water, and natural world. Everyday intimacies represent important sites of regeneration with transformative potential for personal decolonization in homes, homelands, and waterways. Yet everyday intimacies are rarely examined as alternatives to the state-centric reconciliation discourse. Indian residential schools were fundamental tools of genocide because they broke the daily, place-based transmission of indigenous knowledge. The authors review research on everydayness, quiet and intractable to state appropriation, to understand how nationhood is embedded in relationality, convergences of time and place, politics of intimate settings, and gendered relationships. Writing as Cherokee and Kwakwaka'wakw fathers, they reflect on

their lived experiences for everyday frameworks of resurgence. Speaking Cherokee language to one's children is to breathe life into the language, to the unhurried pace of nature and ultimately challenging western notions of time and place. For Corn tassel and Scow, resurgence is about "renewing, remembering, and regenerating Indigenous nationhood and relationships."

Despite ongoing states efforts to erase native presence, Indigenous peoples continue to influence political life. As Corn tassel and Scow put it, "if settler colonialism is premised on the elimination of Indigenous peoples, particularly the eradication of our nationhood and systems of governance, enduring presence represents a powerful assault on this erasure." This resistance is valuable not as a matter of ethnic, spiritual or linguistic diversity but for the political possibilities it enables, posing some of the greatest challenges to modern nation-states. Indigenous resistance goes on, engaging in radical resurgence to "continuously build and rebuild indigenous worlds" (Simpson 2017, 46).

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# By Whatever Means Necessary: The U.S. Government's Ongoing Attempts to Remove Indigenous Peoples During an Era of Self-(De)termination

by KATHLEEN A. BROWN-PÉREZ (University of Massachusetts Amherst)

## Abstract

Since first contact with Europeans, Indigenous peoples have been in the way. In the United States, the federal government has enacted policies to further the goal of removing them. Initially, the most expedient way to clear the land was physical annihilation. Massacres, Indian wars, starvation, and disease reduced the Indigenous population significantly but not enough to satisfy the federal government or its citizens. Subsequent policies were considered necessary. They had different names and stated goals, but they served only one purpose: eliminate Indians. They can be assimilated into non-Indian culture until their Indianness is unrecognizable. They can be defined out of existence by a government that has taken control of the definitions of "Indian" and "tribe" in a way that excludes many Indigenous peoples. The actions by the U.S. government may have changed over the years, but the result is the same: fewer and fewer Indigenous peoples in the U.S.

**Keywords:** American Indians, federal acknowledgment, Bureau of Indian Affairs, identity, indigeneity, genocide, federal Indian policy, assimilation, settler colonialism, violence

## Introduction

The Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, marks the rise and fall of our democratic faith (Cohen 1953: 390).

Several hundred tribes, bands, and confederations, distinguished by their different, but often overlapping, cultures, traditions, and locations are forever bound together by a moment in time when everything changed: 1492. That was the year they became "in the way." They were in the way of invasion, settlement, expansion, and Europeans immigrants, also known as "progress." Europeans did not move to this land to assimilate

to any Indigenous culture. They had no intention of leaving their own languages, religions, dress, and customs behind. Europeans would not give Indigenous peoples the same choice. Alcohol and smallpox would arrive just as customs and religions, with no signature needed for delivery. Europeans also did not move here with the goal of co-existing peacefully and respectfully with the Indigenous peoples, but they continued to arrive in droves, trampling over everyone and everything that stood in their way. Indigenous peoples and their cultures were expendable.

The Doctrine of Discovery and federal Indian policies, regardless of the name or time period assigned, support the invaders overarching and ongoing goal: destroy to replace (Wolfe 2006). Initially, colonial then federal Indian policies included wars, massacres, and bounties

on scalps, an especially frightening prospect, because “scalping is annihilation; the soul ceases to exist” (Ralph Smith cited in Anderson 2013: 73-74; Pérez 2012). Still, scalping and disarticulation of human remains continued, as Indians and colonists traded many things, from cooking utensils to scalps, hands, and heads (Lipman 2008: 3). As Christine DeLucia noted, “King Philip’s War shaped the Northeast in three years, destroying English settlements and decimating or dispersing diverse native peoples from ancestral homelands, areas already affected by decades of colonial settlement and disease. Like the Civil War in the U.S. South or the Holocaust in Europe, the conflict has lingered in collective remembrance because it forces confrontations with fundamental pieces of identity” (2012: 975). Physical destruction was followed by policies that began with congressional debate before being enacted into federal law.

Over the years, there have been many methods employed to eliminate Indians, with various names being assigned to the policies. These names can be a distraction, giving the impression of progress or of changing times, but their goal remained the same. While colonial governments dealt with Indians as needed, the British government tried to maintain consistency and keep the peace. This became increasingly difficult as the population grew and their need for land increased. The Royal Proclamation of 1763 forbade settlement and land speculation west of the Appalachian Mountains (Holton 1994). After the formation of the new United States, the federal government would quickly take control of all issues relating to American Indians. The former colonists quickly learned the importance of having one Indian policy at a time. Indians were a national problem that required a national solution.

After outright extermination of countless Indigenous peoples, assimilation became the main objective of Indian policy (Walch 1983: 1182). Forced assimilation removes what makes one a particular ethnicity or culture: language, land, religion, dress, customs, food, etc. (McNickle 1957). The smallpox-infested blanket

mindset (Ranlet 2000) eventually changed their tactics from direct violence (physical violence) to less obvious structural violence (Galtung 1990; Farmer 2004).<sup>1</sup> Still, the ultimate goal remained the same: get rid of Indians and their tribes.<sup>2</sup> The government wanted Indians that remained to forsake their Indianness or at least dress, act, speak, and worship like Europeans.

The federal government would serve up assimilation under a variety of names, goals, and effects. Assimilation would bring Indians into mainstream culture until they were no longer distinct and recognizable in the melting pot. They could practice Christianity, farm the land or move to the city, speak English, and give up their tribal lifestyle and affiliation. Assimilation makes Indians invisible. It veils their Indianness, their survivance, in the same way mischaracterizing American history veils their past and erases them from the landscape<sup>3</sup> (Vizenor 1998:15).

Today, the federal government is spearheading assimilation in a way that is arguably insidious. The government has taken control of the definitions of “Indian” and “tribe.” This decreases the number of people the government considers Indian and the number of tribes considered legitimate and worthy of a government-to-government relationship. Definitional violence

<sup>1</sup> In 1763, during Pontiac’s Rebellion, British General Jeffrey Amherst wrote to Colonel Henry Bouquet proposing he use blankets contaminated with smallpox to kill Indians. While many historians doubted the result of his proposal for many years, in 1955 a researcher located evidence of an official attempt to infect Indians. Fort Pitt’s commander, Captain Ecuyer, approved an expense from Trent’s trading firm: “To Sundries got to Replace in kind those which were taken from people in the Hospital to Convey the Small-pox to the Indians Vizt. 2 Blankets 1 Silk Handkerchief and 1 linen” (Ranlet 2000).

<sup>2</sup> Here, the idea of structural violence is being drawn from Galtung’s idea of systemic sociopolitical inequality that is legitimized by the State, along with Farmer’s concept of “structural violence” and Scheper-Hughes’s ideas of “everyday violence.”

<sup>3</sup> Vizenor coined the term “survivance” to describe “more than survival, more than endurance or mere response; the stories of survivance are an active presence” (Vizenor 1998: 15).

(Miller 1994) is at the heart of structural violence. Rooted in a mutigenerational sociopolitical ideology, the goal of this type of violence is to suppress the rights of individuals and tribes through a system of structures that by their very nature are designed to prevent them from achieving agency and their full potential as a society. While each of these types of violence falls along a spectrum of actions, the generative schemes have been consistent: decrease the number of American Indians.

This essay uses the Brothertown Indian Nation (Wisconsin) to highlight the impact of the current policy of controlling definitions. Previously, congressional passage of the Termination Act served to terminate tribes. The federal government has repudiated this action, but no one has repudiated controlling definitions and telling Indians or tribes they do not meet federal definitions. In reality, however, it has the same impact as congressional termination. Additionally, because no one is calling it “termination,” the action is not limited to Congress. However, when the effect is the same, the same standards should be observed.

### *The Doctrine of Discovery*

Then God blessed them [male and female] and  
said to them, be fruitful and multiply;  
fill the earth and subdue it. Have dominion over  
the fish of the sea,  
the birds of the air, the cattle and all the animals  
that crawl on the earth (Saint Joseph 1962: 16).

“Dominion over” and the Doctrine of Discovery go together, especially when non-Christians are seen as non-human (Castanha 2015: 44). Tony Castanha noted, “The Western concept of discovery, as viewed through Christian European eyes, provided the political, legal, and moral framework for the colonial system to be validated in the Americas. ... The large majority of European scholars, theologians, jurists, and monarchs upheld that they had a ‘god-given’ right to establish legal title to non-Christian lands and convert local populations with whom they came into contact” (2015: 45).

To fully understand the continuing impact of the Doctrine of Discovery in the United States, it is essential to turn to *Johnson v. M’Intosh*, 21 U.S. 543 (1823). Johnson had inherited land purchased from the Piankeshaw Indian Nation (Illinois). M’Intosh had purchased the same piece of land under a grant from the federal government (Echo-Hawk 2010: 55-86). They asked the Supreme Court to determine which of them had good title. The Court held the United States, *not* the Piankeshaw Indian Nation, owned the land, having inherited it from Great Britain. As the rightful owner, only the United States could sell the land (*Johnson v. M’Intosh*, 21 U.S. 543 (1823)). To give substance to the decision, Chief Justice John Marshall<sup>4</sup> penned a lengthy history of the European discovery of the Americas and the legal basis for the American colonies. Like a carnival contortionist, he stretched and bent reality to hold that “the United States has the exclusive right to extinguish Indians’ interests in their lands, either by purchase or just war” (Kades 2000:1068).

He detailed charters and treaties to support the British belief in the Doctrine of Discovery (Robertson 1997: 761). European powers that invoked the Doctrine of Discovery had the sole authority to terminate the Indigenous nations’ right of occupancy. The U.S. was not a European power, but, according to Marshall, it had inherited the British right to preemption over Indigenous lands. He went to great lengths to provide a version of history that would serve as beneficial precedent for him and the U.S. government (d’Errico 2000). Despite their flaws, courts continue to cite *Johnson v. M’Intosh* and the other two cases that make up the Marshall Trilogy as a basis of authority (*Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832)).

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<sup>4</sup> John Marshall (1755-1835) was Chief Justice of the United States Supreme Court (1801-1835). His early court decisions laid the foundation for constitutional law, including law involving American Indians and Tribes. In addition to serving as Chief Justice, Marshall was a land speculator (d’Errico 2000).

Marshall's version of history laid the foundation for land ownership in the U.S. (Kades 2000). Since Indigenous peoples remained on the land, policies based on the Doctrine of Discovery would be put forth to deal with the Indian problem, including removal, relocation, reservations, allotment, assimilation, termination, reorganization, and self-determination. The various names barely mask the fact that each policy was about decreasing the Indigenous population.

### **Fables, Fairy Tales, and Cover-ups**

You're not supposed to be so blind with patriotism  
that you can't face reality.

Wrong is wrong, no matter who says it (Malcolm X).

#### *Fables*

Since first contact with the Indigenous peoples of the western hemisphere, Europeans have sought to distinguish themselves from us.<sup>5</sup> They were civilized; we were savage. They were Christians; we were heathens. As the people who defined the words, assigned the labels, enacted (and interpreted) the laws, and wrote the (hi)stories, Europeans and their descendants would always come out on the winning side. They were the victors, the conquerors. We were the victims, the conquered. They encouraged (and defined) progress; we impeded progress. The differences and distinctions continued for centuries, repeated until they were accepted as truth and became imbedded in the collective psyche of non-Indigenous people of the U.S. and around the world. There, they could be used to justify injustices and normalize political and legal abnormalities that would continue unabated into the twenty-first century. There, we could be erased from the American landscape. There, few would notice our absence in textbooks, mainstream media, and conversations. In their world, we would exist only in a time and place convenient to someone else's plan.

<sup>5</sup> I am an enrolled member of the Brothertown Indian Nation (Wisconsin). My ancestors were Mohegan, Pequot, Narragansett, Tunxis, Niantic, and Montauk, as well as Oneida, Stockbridge, and Lenape.

#### *Fairy Tales*

Most people in the United States are reluctant to acknowledge they know little about U.S. history. They had, after all, (reluctantly) studied it for as long as they could remember: "In fourteen hundred and ninety-two, Columbus sailed the ocean blue..." Lessons were often delivered as fun, attention-grabbing cartoons, especially around the time of the American Bicentennial (1976), a year-long celebration of all things red, white, and blue. Schoolhouse Rock featured lessons about westward expansion in "Elbow Room," (1976) and the American Revolution in "The Shot Heard 'Round the World" (1976) on Saturday mornings after "Scooby Doo, Where are You?" (Keyser 2015). Easy-to-remember songs taught children about the Declaration of Independence, the American Revolution, manifest destiny, and how a bill becomes a law. These history lessons were delivered up to a captive audience of children. Their sponge-like brains absorbed every ridiculous frame as if they were well-researched, scholarly accounts rather than oversimplified, fairy tale-like justifications of invasion. They provide a "feel good" version of the story of colonization and genocide.

#### *Cover-ups*

Non-Indians have long controlled the stories of the American Indians, deciding what was important and what was best left unsaid. They peddled their fairy tales to an unassuming public, most of whom wanted nothing more than confirmation of their patriotic ideals of America. Children carry into adulthood songs they learn on Schoolhouse Rock and stories of Betsy Ross's flag, Paul Revere's horse, and the "Come over and help us" version of the first Thanksgiving. The 1629 seal of Massachusetts Bay Colony included a picture of an Indian with a banner espousing the plea "Come over and help us." The Colony used this seal from 1629 to 1686 and from 1689 to 1692.

What does this mean today? Even when confronted with evidence to the contrary, it is difficult to convince those raised on a particular ver-



Seal of the Massachusetts Bay Colony

sion of U.S. history that perhaps it is full of holes and contradictions. These holes and contradictions cause ongoing harm to American Indians that is reflected in federal Indian policies. It is important to keep in mind that most politicians and other policy makers are educated in the same schools and with the same cartoons and textbooks as the rest of America. The laws and policies in place reflect their biased, problematic, and incomplete education.

### Federal Indian Policies

From contact until 1787, the year the founding fathers penned the U.S. Constitution, was an era of “tribal independence” (Pevar 2012; Walch 1983).<sup>6</sup> The new Constitution would end “tribal independence” by including language known as the Indian Commerce Clause that U.S. courts would later interpret as giving Congress plenary power over Indians and tribes. In reality, the land purchased by Johnson and the land purchased by M’Intosh did not overlap. This violates the constitutional requirement that courts hear only cases or controversies. They may not issue advisory opinions.

<sup>6</sup> There is little agreement among scholars as to the names of Indian policies and the periods during which they were prevalent. In this essay, I use Stephen Pevar’s policy names and time periods.

### *Agreements Between Equals (1787-1828)*

Having several independent nations exist within the external boundaries of another is complicated. As the U.S. population increased, the land on which they lived, like the world, seemed to grow smaller. More land was needed on which to raise families, breed cattle, and grow food. The federal government would draft treaties that unilaterally favored non-Indigenous interests and placed the Indigenous population on smaller pieces of land (Spirling 2012).

### *Relocation of Indians (1828-1887)*

The two principles on which our conduct towards the Indians should be founded are justice and fear. After the injuries we have done them, they cannot love us, which leaves us no alternative but that of fear to keep them from attacking us. But justice is what we should never lose sight of, and in time it may recover their esteem. --Thomas Jefferson to Benjamin Hawkins, Indian agent, 13 August 1786 (Keller 2000: 39).

Relocation includes both removal and reservations, because both take tribes off their homelands. In May 1830, President Andrew Jackson signed the Indian Removal Act. The Act authorized the federal government to negotiate with tribes within existing states in the southeast for their removal to unsettled lands in federal territory west of the Mississippi River. In exchange, they would give up their ancestral lands, but according to President Jackson’s message to Congress prior to passage, “This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers, and seek a home in a distant land” (Cave 2003: 1332). Removal would help the young country achieve countless goals. It would remove many Indians, both physically as well as in the minds of mainstream America. It would create a physical as well as a mental buffer between Indians and whites.

The effects of removal were temporary. As white settlers spread west, they would run into tribes. The federal government would need



another method to dispossess Indians of land. The most expedient way was to put tribes on land reserved for them. The land may or may not be the tribe's original homeland. While there are currently 567 federally acknowledged Indian tribes, there are only 326 reservations. Reservations take up 56.2 million acres, ranging in size from the 16 million acre Navajo reservation to the 1.32-acre reservation occupied by the Pit River Tribe's cemetery in California.

Today, within the U.S., one will find the highest concentrations of poverty (Regan 2014; Burich 2016), violent crime (d'Errico 2012), and ill health (Sarach and Spicer 2008) on Indian reservations. There are a number of reasons for the disparities in health, safety, education, and more between American Indians and the general population in the U.S., but nearly all of the differences can be traced to the Doctrine of Discovery and the harmful federal Indian policies that followed it.

#### *Allotment and Assimilation (1887-1934)*

It's cheaper to educate Indians than to kill them.

-- Thomas Jefferson Morgan, U.S. Commissioner of Indian Affairs, speaking at the establishment of the Phoenix Indian School, 1891 (Ault 2009: ii)

By expanding yet again on the definition of "destroy" to include other means of destruction, it was possible to continue with settler colonial goals. Assimilation was another means to this end. Assimilation would become essential as physical separation became a less realistic option. In 1879, with the overarching plan to assimilate Indian children by removing them from their parents, their tribes, their ancestral lands, their religions, and their cultures, Lieutenant Richard Henry Pratt, veteran of the Indian wars and leader of the "Friends of the Indian" group, established Carlisle Indian School. His goal was to disentangle those traits that make one "Indian." At an 1892 conference in Denver, Colorado, Pratt stated:

A great general [Sherman] has said that the only good Indian is a dead one. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian

in him and save the man (Pratt 1973: 261).

Assimilation was about absorbing Indians into mainstream culture until they became invisible, melding into the white masses with no distinction except perhaps skin tone (Gram 2016). Even skin tone differences could be diminished in "before" and "after" photographs at the boarding schools. The "before" photographs showed dark children in native dress. The "after" photographs, sometimes taken as little as a couple hours after the "before" photographs, showed a miraculous lightening of the child made possible with strategically placed lighting and filters that could affect skin tone (Reyhner 2017). Staff at the schools cut the long hair of Indian boys and dressed children in American style clothing. Teachers punished children for speaking native languages or practicing traditional religions.

While Boarding Schools could assimilate children, what was to be done about their parents? In 1887, Congress enacted the General Allotment Act (also known as the GAA or the Dawes Act).<sup>7</sup> The goals of the GAA "were simple and clear cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large" (Pevar 2012: 9). Some might question the effect forced assimilation into another culture might have on identity, but, "At the height of the Dawes-era assimilation program, for instance, in the decade after Richard Pratt penned his Denver paper, Indian numbers hit the lowest level they would ever register" (Wolfe 2006: 399). This decrease does not necessarily mean the Indians were dying off. Assimilated Indians would often not be counted as Indians for census purposes.

The GAA would allot reservation land to individual Indians. However, the reservation was not divided equally between tribal members. Indians, based on Indian blood percentage and definition by the federal government, would receive a small piece of land while the "excess" land

<sup>7</sup> Henry Dawes (1816-1903) was a Republican politician from western Massachusetts and the primary proponent of the General Allotment Act.



(also the most fertile) would go to white settlers (Magoc and Bernstein 2016). In four decades, the GAA would decrease the amount of Indian land from 150 million acres to fewer than 50 million acres (Pevar 2012: 9). The Act's primary proponent, Massachusetts politician Henry Dawes, "... expressed his faith in the civilizing power of private property with the claim that to be civilized was to 'wear civilized clothes ... cultivate the ground, live in houses, ride in Studebaker wagons, send children to school, drink whiskey [and] own property'" (Public Broadcasting Service).

The GAA was the U.S. government's first look at the effectiveness of getting rid of tribal governments. It granted citizenship to Indian allottees but only if they forfeited their tribal affiliation. In 1924, Congress would make citizens of all Indians that were not yet citizens whether they wanted it or not (Indian Citizenship Act, 43 U.S. Stats. At Large, Ch. 233, 1924).

#### *Indian Reorganization (1934-1953)*

The land was theirs under titles and guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship.

-- Congressman Edgar Howard, Nebraska, a principal author of the IRA, 78 Cong.Rec. 11727-11728, 1934)

In 1934, the federal government ended its policy of allotment and assimilation in response to a report commissioned by the Institute for Government Research (now known as the Brookings Institution) and Secretary of the Interior Hubert Work, "Problems with Indian Administration." The Meriam Report, as it is more commonly known, declared the GAA an unqualified disaster. Indian land holdings were reduced from ownership of the entire continental United States to

ownership of 138 million acres. As a result of the GAA, land holdings were reduced to 48 million acres by 1933. 20 million acres was desert or semi-desert lands. Between 1933 and 1949, land holdings were increased 4 million acres (Cohen 1953: fnnt. 58). In particular, it made note of two glaring deficiencies in Indian administration: (1) the exclusion of Indians from managing their own affairs; and (2) the substandard quality of public services rendered by public officials, particularly services relating to health and education (Cohen 1953: 348). In response, Congress drafted the Indian Reorganization Act (IRA), also known as the Indian New Deal. It abolished the GAA and permitted tribal communities to establish their own governments (Landry 2016).

The IRA successfully returned 2 million acres to the Indians, but the government took another 500,000 acres of tribal land during World War II (Newton 2005: 97). With land changing hands regularly, the devastating impacts of the GAA could not be undone. However, for the next twenty years there was a federal Indian policy in place that did not have the *express* goal of eliminating Indians through assimilation.

In 1948, a Hoover Commission report called for the "complete integration" of Indians into white society. The Commission declared that, "support of tribal cultures was unsound policy and that assimilation remained the best solution to the Indian problem" (Landry 2016). The scathing conclusions of the Meriam Report were considered irrelevant (U.S. Congress, Commission on Organization of the Executive Branch of Government, *A report to Congress*, 81<sup>st</sup> Cong., 1<sup>st</sup> sess., 1949). Drawing on the Hoover Commission's recommendation, the Indian policy that would follow IRA was "termination." On July 1, 1949, the House of Representatives passed a resolution charging the Committee on Interior and Insular Affairs with the task of investigating BIA activities and developing legislative proposals "designed to promote the earliest practicable termination of all federal supervision and control over Indians" (H.R. Rep. No. 82-2503).

*Termination (1953-1968)*

At the end of the Truman administration the Indian people were worse off than they were at the beginning, [because Truman's solution to the Indian problem was] to wipe out the reservations and scatter the Indians and then there won't be Indian tribes, Indian cultures, or Indian individuals.

-- Philleo Nash, Commissioner of Indian Affairs under Presidents Kennedy and Johnson, in a 1967 interview (Landry 2016).

In 1953, the first year of Eisenhower's administration, Felix Cohen authored an article that began with the attention-grabbing sentence: "Our 450,000 American citizens who are members of Indian tribes are probably the only racial group in the United States whose rights are more limited in 1953 than they were in 1950" (Cohen 1953: 348). On August 1, 1953, Congress enacted House Concurrent Resolution No. 108, an experiment better known as the Termination Act (Walch 1983: 1186). That same year, Congress passed Public Law 280, which transferred criminal jurisdiction on reservations to states. While it suggested specific tribes for termination, subsequent congressional action was needed to terminate individual tribes. Tribal consultation was not. Between 1954 and 1964, Congress passed 14 acts terminating 109 tribes in eight states (Walch 1983: 1186). This accounted for 12,000 American Indians (3 percent of the Indian population in the United States) and 2.5 million acres of land that had been held in trust by the U.S. government (Wilkins and Stark 2010). While termination had many effects, including losing tax-exempt status for the land, one of the more severe results was that the Act ended the government's recognition of tribal members as Indians (Walch 1983: 1188).

Termination, of course, was also about assimilation. When the U.S. government disbanded tribes and decommissioned reservations, government officials encouraged Indians to move to cities (Joe 1986). Congress passed the Indian Relocation Act in 1956 to encourage Indians to move to cities, learn a vocation, and blend in with the general population. The Act provided

some funding for moving and training. Like earlier policies, the Act was a failure. The idea that centuries of neglect could be fixed by a move to a city such as Chicago, Minneapolis, or Milwaukee must have seemed absurd even in 1956 (Philip 1985).

*Self-determination (1968-present)*

The effects of termination were severe, leaving many Indians in dire straights (Walch 1983: 1181-1190). In 1970, President Nixon declared:

Forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong... The second reason for rejecting forced termination is that the practical results have been clearly harmful in the few instances in which termination actually has been tried... The third argument I would make against forced termination concerns the effect it has had upon the overwhelming majority of tribes which still enjoy a special relationship with the Federal government (Nixon 1970).

In 1994, Congress formally repudiated its termination policy with the Federally Recognized Indian Tribe List Act (108 Stat. 4791, Public Law 103-454, section 103(5)). The Act called for an annually published list of federally acknowledged tribes. It also explicitly stated, "Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously has been terminated" (Federally Recognized Indian Tribe List Act 1994). Rather than terminate tribes, the goal was to encourage self-determination.

**Federally Acknowledged Status (or Not)**

If you can't change them, absorb them until they simply disappear into the mainstream culture...

In Washington's infinite wisdom, it was decided tribes should no longer be tribes, never mind that they had been tribes for thousands of years.

-- Nighthorse Campbell (2007: 2-3).

That brings us to today. Despite the numerous repudiations of tribal termination, there is today crisis that comes from a tribe being classified as either federally acknowledged or not. At the writing of this essay, there were 567 tribes on

the Department of the Interior's official list of federally acknowledged tribes, most of which were always recognized. They did nothing to get this status except to have never experienced the misfortune of being terminated by Congress or removed from the list. Others got their status through treaties, acts of Congress, executive orders, or other federal administrative actions. Now, the Federally Recognized Indian Tribe List Act of 1994 lists three ways to get recognition: (1) by Act of Congress; (2) by decision of a U.S. court; or (3) by administrative procedures (25 C.F.R. Part 83) (Federally Recognized Indian Tribe List Act 1994). Realistically, however, the odds of a non-recognized tribe regaining acknowledgment in the twenty-first century are slim.

While there is a lot of discussion about *gaining* federal acknowledgment, there is little discussion about how a tribe that was previously acknowledged ended up with its name being removed from the official list. The formal Termination Act required explicit action on the part of Congress. The de-acknowledgment process that replaced formal termination, which can be as simple as erasing a tribe from the list, was done under cloak of darkness and a cone of silence. Long after the era of congressional termination had been repudiated, tribes could one day find themselves removed from the list without congressional investigation or hearings. They were, in fact, removed without any congressional action at all.

#### *The Administrative Federal Acknowledgment Process*

Despite the Federally Recognized Indian Tribe List Act specifying three ways an unrecognized tribe can get recognized, it is unlikely to happen via the courts or Congress. Today, when a tribe seeks recognition, it enters the administrative federal acknowledgment process and tries to prove the seven criteria considered evidence that a group is a tribe (*Procedures for Establishing that an American Indian Group exists as an Indian Tribe*, 25 C.F.R. Part 83).

#### *The Brothertown Indian Nation*

My tribe, the Brothertown Indian Nation, is not federally acknowledged. Congress did not terminate us during the Termination Era of the mid-twentieth century. We lost that status in a letter dated March 24, 1980, despite two hundred years of interaction and treaties. One day we were recognized and the next we weren't. While there is official government correspondence to confirm this, I also clearly remember making a trip to Black Hawk Community College with my mother, who was a student there. It was the summer of 1980. She was visiting Mr. David Sprenkle, a financial aid advisor at the school. He explained to her that he received a letter indicating she was no longer eligible for BIA funding for school.

Shortly thereafter, the Brothertown Indian Nation began its thirty-year journey through the administrative federal acknowledgment process. It is an arduous process that sets the bar so high that few tribes will ever meet the seven criteria. Holly Reckord, cultural anthropologist for the Bureau of Indian Affairs, Office of Federal Acknowledgment, once stated, "Fairness is not our eighth criterion" (Miller 2006). Testimony in a Senate record asserted that the federal acknowledgment process is so awful and unfair (Miller 2006) that 72% of the tribes currently on the federally acknowledged list (407 of the 567) could not prove all seven of the criteria (Norwood 2012).

The official purpose of the federal acknowledgment process is to give non-recognized tribes a chance to prove the federal government wrong, to prove that they should be on the list. In reality, the process is an administrative agency's opportunity to confirm that non-recognized tribes do not deserve recognition. A 2001 General Accounting Office report claimed that "the resolution of tribal recognition cases will have less to do with the attributes and qualities of a group as an independent political entity deserving of a government-to-government relationship with the United States and more to do with the resources that petitioners and third parties can marshal to develop a successful political and

legal strategy” (U.S. General Accounting Office 2001).

### Plenary Power over Indians and Tribes

A tribe that enters the process is not recognized, but why isn't it recognized? One answer might be that Congress terminated the tribe during the Termination Era. As noted above, Congress did not terminate the Brothertown Indian Nation during this era. In fact, because of the seventh criterion, tribes that Congress terminated are not supposed to be in the administrative process. The seventh criterion (25 CFR Part 83.7(g)) *forbids* the Office of Federal Acknowledgment (OFA) from recognizing a tribe if it was previously terminated by an act of Congress: Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship (25 C.F.R. Part 83.7(g)).

The analysis of this criterion by the OFA, however, begs the question of which tribes may use the administrative process. Based on the seventh criterion, it is intended for tribes that lost their status in a manner *other than* congressional termination. It is intended for tribes other than the 109 tribes that Congress terminated during the Termination Era. Those tribes can regain their recognized status only by asking Congress for an act of recognition. That is because an administrative agency cannot reverse an act of Congress. So, who terminated the tribes that are in the administrative process? I am asserting with confidence in this essay that the administrative federal acknowledgment process is for tribes that were terminated by an administrative agency, the BIA. They were informal, quiet, and, as mentioned earlier, done under cloak of darkness and a cone of silence.

Greg Sarris wrote in the foreword of *Quest for Tribal Acknowledgment: California's Honey Lake Maidus*, “Tribes have been created – and destroyed – with the stroke of a pen” (Tolley 2006: xiii). Congress, the branch of government that has plenary power over Indians and tribes, does not always hold that pen. Many of those

that are not on the list of federally acknowledged tribes were simply removed at some point – *erased* – by the BIA. This is modern termination. It is not about being forcibly removed off ancestral lands or walking hundreds of miles to a new home; it is not about being assimilated out of Indigenous existence. It is about being removed from the official list of tribes. This would have been particularly easy prior to 1994, when Congress first required that the list be published in the *Federal Register*.

John Shappard, a former BIA official who was a prominent author of the federal acknowledgment regulations, once stated he had not anticipated the acknowledgment process would be used to eliminate recognized tribes: “Traditional wisdom has it that only Congress can terminate a tribe. What is so bothersome about it is the BIA could cut back on its budget by picking off some tribes, just bumping them off. I didn't intend that in the regulations” (Tolley 2006). Possibly even more disturbing is the fact that such erasures were often done without evidence, transparency, or tribal consultation. Every tribe that is not federally acknowledged should know exactly when and how this happened, but many don't. Instead, one day the tribe might have found itself in need of BIA services, like education funding, or they might have contacted the BIA for another reason only to be told, much to their surprise, that they no longer have a government-to-government relationship with the U.S. government; they're no longer on the list; they're no longer recognized as Indian.

In *U.S. v. Kagama*, 118 U.S. 375 (1886), the Supreme Court confirmed Congress' plenary power over Indian affairs. While much of this authority can be delegated to the BIA, Congress may *not* delegate the most devastating action, that of termination. Congress states this explicitly in the Federally Recognized Indian Tribe List Act: “a tribe which has been recognized ... may not be terminated except by an Act of Congress” (Federally Recognized Indian Tribe List Act 1994).

A number of other sources confirm this. Cohen's *Handbook of Federal Indian Law*, unques-

tionably the most important book in the area, states: "Further reflecting this repudiation of the [termination] policy, Congress has announced that once a tribe has been federally recognized, it may not be terminated except by *express congressional action*" (emphasis added). This section of Cohen cites the Federally Recognized Indian Tribe List Act, adding the clarification that, "As a result [of the requirement to publish a list of federally recognized tribes], failure to publish a tribe's name on the list of federally recognized tribes *will not be effective to terminate a tribe*" (emphasis added).

There is no shortage of examples of the Supreme Court's support that only Congress can terminate a tribe:

- *U.S. v. Rickert*, 188 U.S. 432, 445 (1903): "It is for the legislative branch to say when these Indians shall cease to be dependent and assume the responsibilities attaching to citizenship. That is a political question, which the courts may not determine. We can only deal with the case as it exists under the legislation of Congress."
- *U.S. v. Nice*, 241 U.S. 591, 598 (1916): "Of course, when the Indians are prepared to exercise the privileges and bear the burdens of one sui juris, the tribal relation may be dissolved and the national guardianship brought to an end; but it rests with Congress to determine when and how this is done, and whether the emancipation shall at first be complete or only partial."
- *U.S. v. Wheeler*, 435 U.S. 313 (1978): "It is well settled, however, that administrative action cannot terminate an Indian tribe's Federal recognition. This Congress has cured administrative mistakes and legislatively restored the Federal recognition of many ... tribes. ... The sovereignty that the Indian tribes retain is of a unique and limited character... *But until Congress acts*, the tribes retain their existing sovereign powers."

The executive branch supports the Supreme Court's position on termination: "Only the Congress has the power to terminate a tribe from

federal recognition. In that case, a tribe no longer has its lands held in trust by the U.S. nor does it receive services from the BIA" (U.S. Bureau of Indian Affairs 1991: 21). Finally, as if there were any question at this point, Congress asserted its own authority in recent years: "The Bureau of Indian Affairs lacked and lacks the legal authority to terminate a tribe that has been acknowledged by an Act of Congress" (U.S. Congress, House Committee on Resources. *To reaffirm and clarify the Federal relationship of the Burt Lake Band as a distinct federally recognized Indian Tribe, and for other purposes*, 109<sup>th</sup> Cong., 2d sess., Feb. 16, 2006).

Not only is termination limited to Congress, but, should Congress take this extreme (and officially repudiated) step, it must do so with only clear and specific action. Because of the trust relationship between the U.S. government and tribes, canons of construction require a finding of clear and unequivocal evidence of congressional intent to terminate. If there are ambiguities, they must be resolved in favor of the Indians (*Hagen v. Utah*, 510 U.S. 399, 422 (1994) (Blackmun, J., dissenting); *Nance v. EPA*, 645 F.2d 701, 711 (9<sup>th</sup> Cir. 1981); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 586 (1977)).

### Unambiguous Previous Federal Acknowledgment

Congress did not terminate the Brothertown Indian Nation, but we nonetheless ended up removed from the official list of tribes. A rational analysis might question whether or not the Brothertown were ever federally acknowledged. While in the federal acknowledgment process, the OFA asked the same question.

In August 2009, the OFA issued a negative proposed finding for the Brothertown (Brown-Pérez 2012; Brown-Pérez 2013; Office of Federal Acknowledgment, Proposed Finding Against Acknowledgment of the Brothertown Indian Nation (Petitioner #67), August 17, 2009, 5). In the proposed finding, OFA staff first tackled the required preliminary question of whether or not the BIN had "unambiguous previous federal



acknowledgment” (25 C.F.R. Part 83). Evidence includes: (1) treaty relations with the U.S.; (2) denomination as a tribe by an act of Congress or Executive Order; or (3) evidence of being treated by the federal government as having collective rights in tribal lands or funds. Determination of unambiguous previous federal acknowledgment is necessary because it alters the evidence needed to prove the seven mandatory criteria.

The OFA determined that the Brothertown Indian Nation “was previously acknowledged by the United States in a Senate proviso to its approval of the Treaty of February 8, 1831, with the Menominee; in the Treaty of October 27, 1832, with the Menominee; and in the Act of March 3, 1839, which brought that Federal acknowledgment to an end. This previous Federal acknowledgment was clearly premised on identification of a tribal political entity and recognized a relationship between that entity and the United States. Most of the petitioner’s members descend from the previously acknowledged tribe and the petitioner is able to advance a claim that it may have evolved as a group from that previously acknowledged tribe” (Office of Federal Acknowledgment, Proposed Finding Against Acknowledgment of the Brothertown Indian Nation (Petitioner #67), August 17, 2009).

### **The OFA’s Analysis of the Brothertown Indian Nation**

The OFA went on to determine that the Brothertown Indian Nation failed to provide evidence proving five of the seven mandatory criteria, including criterion (g), which, as mentioned earlier, forbids any tribe terminated by Congress from becoming federal acknowledged via the administrative process. As OFA noted in the determination of previous federal acknowledgment, evidence included “... the Act of March 3, 1839, which brought that Federal acknowledgment to an end.” Congress passed the 1838 act in response to a tribal request for U.S. citizenship and allotment of our reservation land (an action we took to avoid force removal). Because of this concern, the attorneys for the Native American

Rights Fund, on behalf of the BIN, asked for guidance from the Department of the Interior. Clarification was necessary, because, if the 1839 act was an act of termination, there was no reason to pursue acknowledgment through the administrative process. Doing so would result in failure, because the BIN could not pass the requirements of criterion (g).

On August 28, 1990, in response to NARF’s request, Marcia M. Kimball of the Office of the Field Solicitor, Twin Cities, provided a six and one-half page analysis to Earl J. Barlow, Area Director of the BIA in Minneapolis, on “whether the [Brothertown Nation] group would be precluded from seeking federal recognition through the federal acknowledgment process contained at 25 C.F.R. Part 83 (1990) because of the Act of March 3, 1839, 5 Stat 349... If the Act of March 3, 1839, is viewed as ‘termination’ legislation, then the Brothertowns would be prohibited from using the process outlined at 25 C.F.R. § 83.7 [because of criterion (g)].” The letter explains that, “the Brothertown Act of 1839 can hardly be viewed in the same light as the termination acts of the 1950s or the acknowledgment regulations which were published in the Federal Register on September 5, 1978. The termination acts of the 1950s were designed to end officially the historic relationship between the tribes and the federal government and to end the federal trusteeship over tribal or individual trust land... The language of the Act of 1839 should not be compared to the twentieth century concept of termination.”

On August 19, 1993, David C. Etheridge, the Acting Assistant Solicitor, Division of Indian Affairs, provided a memo to the Assistant Secretary – Indian Affairs and the Director of Tribal Services regarding the status of the Brothertown Indians of Wisconsin. He again addressed the 1839 congressional act: “If the Brothertown tribe was terminated, only Congress can restore the tribe’s government-to-government relationship with the United States, and the Department is powerless to recognize a group claiming to be the tribe’s successor.” The memo concludes by stating, “Since we believe that the Brothertown



tribe was not terminated by the Act of March 3, 1839, 5 Stat. 349, the group calling themselves the Brothertown Indians is eligible to petition the Department for federal acknowledgment as an Indian tribe pursuant to 25 C.F.R. Part 83.”

So, how is it that the OFA concluded in the 2009 Proposed Finding (and again the 2012 Final Determination) that the BIN had failed on criterion (g)? The OFA staff chose to interpret the 1990 letter and the 1993 memo in a manner that is blatantly inconsistent with the plain meaning of the documents and despite the fact that it was the BIA’s attorneys that reached the conclusion that Congress had not terminated the BIN. That being said, it is now clear that the BIN was terminated, as we are not on the official list of tribes. However, it was *not* in 1839 and it was *not* by Congress.

In August 1978, Donald J. Fosdick, Acting Director, Office of Indian Education Programs, Department of the Interior, sent a letter to Senator Gaylord Nelson (D-WI): “While there has been some misunderstanding on this matter between the Agency and the Minneapolis Area Office, the final determination is that they are federally recognized and entitled to Bureau services.” In March 1979, this status was confirmed in a letter from Edmund Manydeeds, Superintendent of the BIA Great Lakes Agency to Dr. John A. Turcheneske: “Although the Brotherton’s [sic] are Federally recognized, we do not provide extensive services to this tribe at the present.” In January 1980, Manydeeds reiterates this in a letter to the Acting Director, Office of Indian Services (to the attention of Lynn Lambert at the Federal Acknowledgment Project): “We are enclosing copies of two letters which lead us to believe that the Brotherton [sic] Indians are a recognized group of Indians.”

The official position on the status of the BIN changed on March 24, 1980. The following statement was included in a memo from Director, Office of Indian Services, to the Minneapolis Area Acting Director: “The Brotherton [sic] Community is not a federally-acknowledged tribe.” It goes on to note that this is confirmed in the list

of federally acknowledged tribes that was published in the January 31, 1979 *Federal Register*, a list that predates the list mandated in the 1994 act referenced earlier. The only evidence provided is that the Brothertown are not on the list of tribes. What happened between January 1980 and March 1980? A congressional act terminating us? No, an administrative act – an erasure – by an agency *without the authority to terminate a tribe*. The OFA analysis did not dare admit the BIA had terminated us by removing us from the published list of tribes. Instead, the OFA *had to* find a congressional act, and its staff went back to 1839 to find it. They *had to* find a congressional act, because *only Congress may terminate a tribe*.

As noted in Cohen’s *Handbook of Federal Indian Law*, “Congress has announced that once a tribe has been federally recognized, it may not be terminated except by express congressional action” (Newton 2005: 164). In a footnote to this statement, the authors note, “As a result, failure to publish a tribe’s name on the list of federally recognized tribes will *not* be effective to terminate a tribe.” In providing details of “Withdrawal of Acknowledgment or Recognition” in the Federally Recognized Indian Tribe Act of 1994, Congress found that:

- (1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;
- (2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;
- (3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated ‘Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;’ or by a decision of a United States court;
- (4) *a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;*

- (5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;
- (6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;
- (7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and
- (8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians (Federally Recognized Indian Tribe List Act 1994) (emphasis added).

Not only is termination limited to congressional action, but “clear and specific congressional action [is required] to terminate tribal rights and powers” (Federally Recognized Indian Tribe List Act 1994). As David C. Etheridge of the Office of the Solicitor, Department of the Interior stated unequivocally in the aforementioned 1993 memo, “The judicial standard for disestablishment requires a clear expression of congressional intent. The unmistakable terms for the determination of congressional intent must come from the ‘fact of the Act’ or ‘the surrounding circumstances and legislative history.’ *Mattz v. Arnett*, 412 U.S. 481, 505 (1973).” But even “surrounding circumstances” do not permit a reading between the lines to find congressional termination.

### Unilateral and Illegal Termination

I am certain the Brothertown Indian Nation is not unique in having been terminated/removed from the list by the BIA. There are many non-acknowledged tribes, spending money and providing documentation to the point of distraction. The BIA continues to assert authority beyond

that which exists in the Constitution, federal legislation, and judicial interpretation. It has an “Office of Federal Acknowledgment” that apparently exists to correct acts of termination that never should have happened in the first place. But, in order to correct them, tribes must spend excessive amounts of time and money to prove criteria they likely cannot prove in a process they will likely fail. The BIA has imposed the rhetoric of federal acknowledgment on us to the point of distraction. Phrases like “federal acknowledgment” are repeated until they become part of our subconscious, until we think they are normal, until we accept the use of such a phrase to define us, our tribes, and other tribes, and until we use their words and their acceptance of us (their *acknowledgment* of us) to exclude others from the Indigenous conversation because they are somehow less worthy, less authentic. Why? Because the BIA says so.

### *Making Things Right*

Settler colonialism strives for the dissolution of Indigenous societies. It destroys to replace. Invasion is a continuing structure, not a single event (Wolfe 388). We can see the structure in the federal acknowledgment process, especially as it is used to distract us from the real issues. And the real issue with which I am most concerned now is illegal termination by the BIA that happens when they simply leave a tribe off the list in the Federal Register (Tolley 2006: xiv). As stated earlier, John Shappard, former BIA official, was vocal in his observation that, “What is so bothersome about it is the BIA could cut back on its budget by picking off some tribes, just bumping them off” (Tolley 2006).

The Senate Committee on Indian Affairs has held meetings over the years to address “fixing the broken federal acknowledgment process.” I argue that it cannot be fixed; it should be scrapped entirely and tribes returned to the official list as quickly as they were once erased. There are many reasons to do this. It is an unfair, arbitrary, expensive, exhausting, and distracting process. But, more importantly, it is a process available

only to those tribes that lost their acknowledgment because the BIA illegally terminated them. It was not a formal termination or official action. Instead, the BIA terminates by simply removing them from the list or by not putting them on the list once it was formalized in 1994. The federal acknowledgment process is set up to distract us from the real issues, sometimes for decades, as our petitions crawl their way to disappointing outcomes. Removal, relocation, reservations, allotment, assimilation, reorganization, termination, and even self-determination ... different federal policies, same settler colonial goal: destroy to replace. In twenty-first century America, the destruction comes from tribes' failure to meet the federal government's definition of "Indian" and "tribe." If Indigenous peoples do not put a stop to this, we will have stood by silently while another government defines us out of existence.

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# Treaty Relations between Indigenous Peoples: Advancing Global Understandings of Self-Determination

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## Abstract

Nation-states around the world tend to view Indigenous nations' claims for sovereignty and self-determination in zero-sum terms, fearing that any advancement in Indigenous peoples' self-determination means a loss of sovereignty or territorial integrity for nation-states. This article aims to shed light on how Indigenous political actors in several countries are advancing self-determination *in practice* with, within, and across the borders of individual states, while navigating the international system, in assertive, maximal, innovative, and peaceful ways that do not result in a loss of nation-state sovereignty or territorial integrity. Some Indigenous peoples are entering into treaty or partnership agreements with other Indigenous groups, in conjunction with state institutions, or completely outside state purview. We examine several cases of such treaty relations and draw some conclusions about how these types of Indigenous-to-Indigenous treaty relations are enhancing and advancing Indigenous self-determination.

**Keywords:** Indigenous peoples, Indigenous politics, self-determination, treaties, state sovereignty, colonization, Indigenous rights, UNDRIP, plural sovereignty

Settler state governments have long claimed absolute political sovereignty over Indigenous lands, institutions, and peoples – claims that have always been subject to contestation and resistance by Indigenous peoples. Further, nation-states tend to view claims for sovereignty and self-determination by Indigenous peoples in zero-sum terms, fearing that any advancement in Indigenous peoples' self-determination means a loss of sovereignty or territorial integrity for nation-states. Settler states have so jealously guarded sovereignty and self-determination as their exclusive domain that they have even self-proclaimed a right of exclusivity in relations with Indigenous peoples (who are relegated to the domestic sphere), creating and maintaining policy structures that have legally confined and, in practice, attempted to constrain Indigenous

nations so that they conduct their external relations only with and through state institutions. However, Indigenous peoples resist this colonial impulse for control in multiple ways and, in doing so, are driving shifts in global understandings of self-determination.

As Sheryl Lightfoot (2016) has argued, the 2007 UN Declaration on the Rights of Indigenous Peoples ("the UN Declaration"), a global consensus statement of Indigenous peoples' rights drafted by both states and Indigenous political actors, has shifted global understandings of self-determination toward new constructions. All of the old colonial doctrines that justified state domination over Indigenous lands and resources and the subjugation of Indigenous peoples, such as the Doctrine of Discovery, plenary power, and *terra nullius*, have been technically delegitimized

in the international sphere, and Indigenous peoples are recognized as enjoying the right of self-determination equal to all other peoples on Earth. However, the new terms and meaning of Indigenous peoples' self-determination is not so clear. While the UN Declaration states, in Article 3, "Indigenous peoples have the right to self-determination," it also contains Article 46 which states: "nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States." In other words, Indigenous peoples have a right to self-determination, but not necessarily a right to secede from states or the right to declare their independence as states. Since the UN decolonization era began in the 1960s, "self-determination" has been largely understood as the right to independence as a state, and the UN Declaration is clearly pointing toward some new understanding of self-determination that does not equate to Westphalian interpretations of state sovereignty, and a decoupling of sovereignty from self-determination (Lightfoot 2016).

Indigenous peoples, in many respects, are leading the way toward a future global imaging of self-determination that will likely involve sovereignties and other forms of political relations that may be plural and multiple, and are often rooted in the age-old practice of treaty making. Both the global Indigenous rights discourse and the political practices of some Indigenous peoples around the world are, together, altering these old state-centric and zero-sum patterns of Indigenous-state relations and toward a set of political relations that is far more plural and multiple in terms of sovereignties. The global challenge, that Indigenous peoples are helping address, is to re-think and re-imagine how self-determination can be practiced without an exclusive reliance on state structures (Lightfoot 2016).

While the incommensurability of settler state sovereignty and Indigenous self-determination is widely argued (Tuck and Yang 2012; Barker and Batwell-Lowman 2016; Simpson 2016; Coulthard and Simpson 2016), Indigenous peoples, in some cases around the world, are pushing for important practical changes that allow states to peacefully and more justly co-exist with Indigenous nations. In recent decades, Indigenous political actors in several countries have been advancing self-determination *in practice* through treaty relations with, within, and across the borders of individual states. In doing so, they are exercising their self-determination in assertive, maximal, innovative, and peaceful ways that do not threaten nation-state sovereignty or result in a loss of state territorial integrity but are stretching the limits of how state sovereignty has been previously understood.

Some Indigenous peoples around the world are entering into treaty or partnership agreements with other Indigenous peoples, in conjunction with state institutions, or completely outside state purview. Normally, international relations consider treaties as the exclusive domain of sovereign states. The Vienna Convention on the Law of Treaties (1969) defines a "treaty" as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" (Art. 2.1a). However, Indigenous treaty making has always, since time immemorial, involved more and deeper relations than simply an agreement between states or even merely between political entities. Rather, it has embodied the depth and richness of Indigenous relationship making, which have always included responsibilities not only to other political bodies but also to non-human entities such as animals, the environment and the spirit world. Some Indigenous peoples in the contemporary period are drawing on and reinvigorating their own traditional treaty practices in ways that create multiple possibilities for the conventional understanding of "treaty." For example, Heidi

Kiiwetinepinesiik Stark (2017) has articulated how treaties existed well before colonization, in webs of relationships with all creation, those “pre-existing relationships and responsibilities across Anishinaabe *aki* (the Earth) that were impacted by these agreements.” By re-creating and re-defining treaty making for their own purposes, in their own way, and on their own terms, these Indigenous peoples are actively asserting their self-determination in ways that advance its construction well beyond a territorially bounded nation state.

After first examining the concept of Indigenous self-determination and its place in the international human rights discourse, this article will examine several cases of such treaty relations and attempt to draw some conclusions about how these types of Indigenous-to-Indigenous treaty relations are enhancing and advancing Indigenous self-determination as well as leading a global conversation on the possibilities for plural and multiple sovereignties. The three cases to be examined here are:

- Case 1: Indigenous nations along the Canada-US border have signed the 2014 linnii (Buffalo) Treaty.
- Case 2: Indigenous nations signed a treaty in September 2016, to jointly fight pipelines that carry Canadian Tar Sands oil.
- Case 3: The International Indian Treaty Council has held annual Indigenous nation treaty conferences without state participation since 1974.

These cases share some salient commonalities and differences. Each explores Indigenous treaties and governance agreements that exist both within states and across state borders. Cases 1 and 2 are located in North America, while Case 3 initially began as a Western Hemisphere initiative but quickly expanded to a global effort. All cases occur in the context of advanced Western liberal democracies, emerging in regions with a long-documented tradition of historical treaty making. All of the cases have roots in Indigenous activism that is both resistant to colonialism and simultaneously aimed at building new institu-

tions and structures. Case 1 also explores human to non-human treaties, a subtext which implicitly runs through the other cases as well, as many Indigenous peoples see the land and animals as parts of their responsibilities as human beings. The cases also demonstrate how traditional and evolving Indigenous models of diplomacy and treaty can help counter the many negative effects of absolute state sovereignty. Throughout, we also note similarities between Indigenous knowledge and the evolving area of posthumanist thought in the social sciences, which reflects some aspects of what we discuss here.

### Indigenous Peoples and Self-Determination

Existing scholarly debates in the Indigenous rights, politics, and law literatures focus attention on whether Indigenous rights, as articulated in the UN Declaration are an advancement in Indigenous sovereignty and self-determination (Burger 2011; Daes 2011; Stavenhagen 2011; Thornberry 2011), or if they constitute a form of assimilation and domestication (Corntassel 2008). Some critical Indigenous scholars have even argued that the rights discourse itself forms a politics of recognition that subjugates Indigenous peoples to the nation-state, obliging them to practice politics only in ways recognized as legitimate by the settler state (Alfred 2005; Coulthard 2014). In the case of the Yukon, for example, Nadasdy has observed that gaining self-government has entailed tradeoffs for Indigenous peoples, such that: “Land claim and self-government agreements are not simply formalizing jurisdictional boundaries among pre-existing First Nation polities; they are mechanisms for creating the legal and administrative systems that bring those polities into being” (Nadasdy 2012: 503).

While some activist and scholarly voices hold that the UN Declaration recognizes an Indigenous legal right to self-determination equal to all other peoples, with parallels to the 1960 UN Decolonization Declaration (Carmen 2012; Deer 2011), others critique the UN Declaration for diminishing self-determination rights within a colonial matrix of settler state power (Watson

2011). A third path views the UN Declaration's articulation of self-determination as a unique and relational form (Anaya 2009; Lightfoot 2016), requiring ongoing negotiation. International fora, such as the UN Permanent Forum, have long been useful to Indigenous peoples working across state boundaries (Lightfoot 2016), while domestically, organizations such as the Iwi Chairs Forum in Aotearoa-New Zealand and the Assembly of First Nations and provincial counterparts in Canada have promoted forms of self-determination on behalf of their members. Norway, Finland, and Sweden have institutionalized Indigenous legislatures that serve as consultative bodies to the national parliaments (Broderstad 2011; Kuokkanen 2011, 2012).

Some Indigenous peoples exercise self-determination in ways that resemble the external sovereignty of states: issuing and travelling on their own passports (Kuprecht 2013), conducting trade and diplomatic missions (Beier 2009; Kuprecht 2013; Macklem and Sanderson 2016), engaging in international trade (Drahos and Frankel 2012; O'Sullivan 2007), as well as negotiating and entering into treaty-like agreements with other Indigenous peoples (Beier 2009; Henderson 2008; Lightfoot 2016). So, while the UN Declaration seems to offer a novel view of Indigenous self-determination, it may also foreground new and evolving global understandings of the term, decoupling it from sovereignty and territoriality (Lightfoot 2010; Quane 2011), with salient practical implications that move beyond Indigenous peoples to impact wider issues of global governance, a phenomenon that has been inadequately explored in International Relations (Beier 2009, Keal 2003, Tickner 2015).

Self-determination is a common area of theoretical work in Indigenous Studies (Alfred, 2005; Anaya, 2009, 2000; Cornthassel, 2008; Coulthard, 2014; Kuokkanen, 2011, 2012; Simpson, 2014; Simpson 2011), yet is often considered either as cultural/linguistic/spiritual resurgence or in terms of relations between IPs and the state (Deloria and Wilkins, 1999; Lerma, 2014). Few theoretical or empirical examinations explore

political self-determination that operates independently of domestic Indigenous-state relationships or beyond the state. Yet, Indigenous peoples engaged in treaty relations with one another and with non-human entities long before contact with colonizers and generally welcomed such forms of political relations with early explorers and settlers. So, in many respects, it is entirely natural to expect Indigenous people to continue to relate to one another utilizing treaty making. However, with colonial relations dominating over time, it has become natural to think of Indigenous peoples relating only in and through states and their structures. For the past several hundred years, Indigenous treaty making has been solely understood as directed at and through states. This colonial pattern is changing. In recent years, Indigenous peoples around the world have been taking back their old traditions of treaty making as an innovative Indigenous form of political relations that pushes the boundaries of what, for many years, has typically been considered "international relations." We illustrate this trend with three contemporary cases, and then offer some conclusions.

### **The linnii (Buffalo) Treaty**

The peoples of the Northern Plains of North America have used treaty as their primary form of political relations since time immemorial. For thousands of years prior to European contact, the Blackfoot, Cree and Dakota peoples, among others, used intertribal treaties to form agreements and alliances amongst themselves. Traditionally, these groups also often extended the practice of treaty making to include non-human animals, including and especially, the buffalo, who sometimes were seen, Hubbard (2014) recalls, "much like a benevolent grandparent" (294).

Initially, treaties were also the preferred form of European relations with Indigenous peoples of North America. As early as 1613, Dutch settlers formed an enduring treaty with the Haudenosaunee peoples of the Eastern Great Lakes and St. Lawrence River valley, known as the "Two Row Wampum" treaty. This treaty, depicted on

the wampum belt as two parallel blue lines on a white background, intended that the two peoples would co-exist like two parallel rivers, each one independently navigating its own way, without disturbing or disrupting the other. As Wilson (2000) wrote, "This wampum belt confirms our words. [...] Neither of us will make compulsory laws or interfere in the internal affairs of the other. Neither of us will try to steer the other's vessel." (115-116). British colonial policy was also based on treaty making, usually in the form of military alliance which either sought aid or neutrality from tribes or their friendship and peace. For many years, treaty making was satisfactory practice for both Indigenous nations and the colonizers (Leslie & Macguire, 1979).

In the meantime, ancient intertribal practices of treaty making continued, especially in the West and the Great Plains until the second half of the 19<sup>th</sup> century. The *Lame Bull Treaty* of 1855, which established a large common hunting ground, was one of the last of the Northern Plains intertribal treaties to be signed, prior to the colonizers' demand in the late 19<sup>th</sup> century that all Indigenous peoples' external relations be only with the colonizing state (American Bison Society, 2014). Coincident in time, settlers slaughtered buffalo in great numbers, and the once great wild buffalo herds disappeared completely from these lands by the early 20<sup>th</sup> century. Indigenous peoples of the Great Plains were pushed onto reserves, and forced to alter their ways of life, which had previously and traditionally revolved around both the buffalo and treaty making. For more than a century, Indigenous peoples lived with the reserve system and largely (though never fully) accommodated state demands for exclusivity in external relations. The few buffalo that survived the 19<sup>th</sup> century slaughter remained in captivity. But, in the late 20<sup>th</sup> and early 21<sup>st</sup> century, Indigenous peoples' resistance re-emerged on both sides of the Canada-US border, centered on the twin goals of political self-determination and cultural resurgence. Both intertribal treaty making practices and relations with the buffalo needed to return.

On September 23, 2014, representatives from eleven tribes/First Nations in the United States and Canada signed the "Northern Tribes Buffalo Treaty" in Blackfoot territory in Browning, Montana. The first intertribal treaty to be signed on the Great Plains in over 150 years, this treaty was intended to establish an alliance for cooperation among the various reserves to restore the buffalo on tribal or co-managed lands. The signatories included the Blackfeet Nation, the Blood Tribe, Siksika Nation, Piikani Nation, the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the Salish and Kootenai Tribes of the Confederated Salish and Kootenai Indian Reservation, and the Tsuu T'ina Nation. Collectively, these groups own and manage about 6.3 million acres of prairie and grasslands in the United States and Canada. As reported by the American Bison Society (2014), "their goal is to achieve ecological restoration of the buffalo on their respective lands, and in so doing to re-affirm and strengthen ties that formed the basis for traditions thousands of years old."

Leroy Little Bear of the Blood Tribe in Alberta and Professor Emeritus at the University of Lethbridge, describes this treaty process as a lengthy one. Buffalo dialogues, he said, were held among elders in Blood territory over the course of about six or seven years. After about seven years of discussion, the elders declared that they were now of one mind and they wanted the buffalo to come back. But, they also realized that this task, to bring free roaming buffalo back to their lands, was an enormous one, and they needed others to help. The elders suggested a treaty, saying that we used to make treaties not only between ourselves but also between us humans and with other animals. The elders also said that the Blackfoot have had a treaty with the buffalo. But now, Little Bear said, the elders declared that we need a treaty to bring our people together so that we can have a place for the buffalo once again. According to Little Bear, who played a major role in the *linnii* (Buffalo) Initiative to



ensure that the elders' vision for treaty became reality,

Having humans fit themselves into the ecological balance (is) fundamental to the life-ways of Indian peoples. But the buffalo is a major player in this ecological scenario. The near extinction of the buffalo left a major gap. The treaty on buffalo restoration aims to begin to fill that gap and once again partner with the buffalo to bring about cultural and ecological balance" (Alexander 2014).

The 2014 treaty, titled *The Buffalo: A Treaty of Cooperation, Renewal and Restoration*, opens with an acknowledgement of this ancient relationship with buffalo. It reads,

Since time immemorial, hundreds of generations of the first peoples of the FIRST NATIONS of North America have come and gone since before and after the melting of the glaciers that covered North America. For all those generations, BUFFALO has been our relative. BUFFALO is part of us and WE are part of BUFFALO culturally, materially, and spiritually. Our on-going relationship is so close and embodied in us that Buffalo is the essence of our holistic ecocultural life-ways.

The treaty was designed to be enduring and open to new partnerships and supporters. Article VII states that others are invited to join and form partnership with the signatories to make the objectives of the treaty a reality. In August 2015, the first anniversary gathering of the Buffalo Treaty took place, this time in Banff, Alberta, to welcome additional signatories to the treaty: the Stoney Nakoda Chiniki Nation, Bears paw Nation, the Wesley Nation and the Samson Cree Nation. Noting that the treaty aims to restore multiple relationships that existed when buffalo roamed freely throughout their territories, new signatory, Chief Ernest Wesley of the Wesley First Nation (Stoney Nakoda) told the CBC (2015), "For me, it's historic. We've become brothers again with the buffalo." In 2016, at the 30<sup>th</sup> annual Treaty 4 gathering, Indigenous leaders from 10 more First Nations signed the treaty: Sakimay, Star Blanket, Okanese, Ocean Man, Ochapowace, Peepeekisis, Yellow Quill, Pheasant Rump, Wuskwi Sipihk and Sapotaweyak (Radford 2016).

Buffalo restoration efforts as a result of the treaty began on January 29, 2017, when Cree and Blackfoot leaders gathered to bless buffalo journeying on their way from Elk Island National Park to roam freely in Banff National Park. Wesley First Nation Band Councillor Hank Snow told Windspeaker reporter Shari Narine (2017) that he believes it is the first time in many generations that the Blackfoot Confederacy has come together with the Samson Cree Nation to do ceremony. The ceremony, he said, allows a connection with the buffalo and that both First Nations people and the buffalo are together freeing themselves from 150 years of imprisonment under colonization. (Narine 2016).

While the physical and cultural restoration of the buffalo is underway, the multiple political motives and results of the Buffalo Treaty are also apparent. Leroy Little Bear sees the treaty as a new expression of Indigenous sovereignty based on old practices of Indigenous self-determination and political relations. He said,

The whole notion of sovereignty is really a matter of degree. And a phasing-in to greater and greater autonomy, a greater and greater amount of self-decision making. It's kind of like we're taking on more of our own decision making, and that's what everybody on both sides of the border are talking about. (Radford 2016.)

In this scenario, the rigid borders of states are more permeable, allowing buffalo a degree of mobility which they have not had for over a century.

### **Tar Sands Treaty Alliance**

Another inter-Indigenous treaty was born about the same time, also in Western North America. On April 10, 2015, a number of Indigenous leaders, representatives and activists from grassroots organizations across Canada held a meeting, a day ahead of a large climate march in Quebec City. This group of leaders and activists wanted to strategize about how to deal with climate change, which disproportionately impacts Indigenous communities since they are often located in areas hardest hit by such things as rising ocean



levels and wildfires. The consensus of this group was that, in North America, one of the biggest environmental threats is the Tar Sands of Alberta, and the group members all aimed to halt the expansion of Tar Sands production and distribution.

Also in 2015, representatives from the Yinka Dene Alliance of central British Columbia began an awareness campaign. Dubbed the “West meets East” tour, this group spent a month visiting First Nations communities along the Energy East pipeline route to discuss with them how community activism resulted in the earlier “Save the Fraser Declaration” that helped beat a similar project by banning a pipeline under Indigenous Law. Later that same year, in September, the alliance grew when the Union of British Columbia Indian Chiefs invited Grand Chief Serge Simon of the Mohawk Council of Kanesatake, Grand Chief Derek Nepinak of the Assembly of Manitoba Chiefs, and Chief Arnold Gardner of Eagle Lake First Nation to address their 47th annual Chiefs-in Assembly. These Indigenous leaders all expressed a similar frustration – that while “Indigenous peoples have contributed the least to climate change, they stand to lose the most” (Treaty Alliance 2015). Citing Tar Sands expansion as the largest contributor to Canada’s rise in greenhouse gas emissions, they all stood committed to fight new expansion of Tar Sands production and distribution.<sup>1</sup>

Momentum grew over the next year, and on September 22, 2016, a new continent-wide Indigenous treaty, the Treaty Alliance Against Tar Sands Expansion, was signed on Musqueam territory in Vancouver. Fifty First Nations and Tribes from across Canada and the United States signed the treaty committing themselves to “working together to stop all proposed tar sands pipeline, tanker and rail projects in their respective territorial lands and waters.” A press release from the group, issued on September 22, 2016, cites five specific pipeline and tanker project propos-

als that the group collectively opposes: Kinder Morgan, Energy East, Line 3, Northern Gateway and Keystone XL. The document also lists some rail projects associated with distribution of tar sands oil.

Since this is a treaty, meaning it can only be signed by nations, signatories can include only First Nations on the Canadian side and Tribes on the US side of the border. Other organizations, groups, companies, unions and so forth are welcome to sign the Solidarity Accord in support of the Treaty Alliance, if they wish. By November 2016, when the Canadian government announced approval of the Kinder Morgan pipeline, the Treaty Alliance held another ceremonial signing of new members. It had grown to over 100 signatories and numerous supporting groups (Treaty Alliance 2016a). By July 2017, another ceremonial signing included the Great Sioux Nation, Ponca Nation and Blackfoot Confederacy, all on the US side of the border, bringing the total Indigenous nation signatories to over 130 (Treaty Alliance 2017). On the same day, these same groups signed another inter-Indigenous treaty: “The Grizzly: A Treaty of Cooperation, Cultural Revitalization and Restoration,” which aims to safeguard the grizzly bear and fight against the Trump administration’s effort to delist it from the Endangered Species Act (Treaty Alliance 2017a). In May 2017, the group announced an integrated divestment campaign called “Mazaska Talks” (“mazaska” is Lakota for “money”) against the banks funding these Tar Sands pipeline projects (Treaty Alliance 2017b).

The Tar Sands Treaty reveals three principles that illustrate how contemporary Indigenous treaty making is creating novel visions of self-determination. First, the Treaty invokes Indigenous law and ancient treaty making practices as its foundation. Second, Indigenous stewardship of the Earth motivates unified action and provides Indigenous leadership for what might otherwise be framed as a non-Indigenous-led environmental movement. Third, the Treaty envisions and calls for a future of shared decision making authority between Indigenous and non-

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<sup>1</sup> Background on the Treaty Alliance in this section is drawn from the group’s website: [treatyalliance.org](http://treatyalliance.org).

Indigenous peoples and institutions. The text of the Treaty contains expressions of each of these principles. It states:

Our Nations hereby join together under the present treaty to officially prohibit and to agree to collectively challenge and resist the use of our respective territories and coast in connection with the expansion of the production of the Alberta Tar Sands, including for the transport of such expanded production, whether by pipeline, rail or tanker.

*As sovereign Indigenous nations, we enter this treaty pursuant to our inherent legal authority and responsibility to protect our respective territories from threats to our lands, waters, air and climate, but we do so knowing full well that it is in the best interest of all peoples, both Indigenous and non-Indigenous, to put a stop to the threat of Tar Sands expansion.*

*We wish to work in collaboration with all peoples and all governments in building a more equitable and sustainable future, one that will produce healthier and more prosperous communities across Turtle Island and beyond, as well as preserve and protect our peoples' way of life (emphasis added).*

The Tar Sands Treaty is intended for collective action and support against a common, trans-continental threat. "We are in a time of unprecedented unity amongst Indigenous people working together for a better future for everyone," noted Rueben George of the Tsleil-Wauthuth Sacred Trust Initiative (Treaty Alliance 2016b). Kanesatake Grand Chief Serge Simon agreed, stating, "What this treaty means is that from Quebec, we will work with our First Nation allies in BC to make sure that the Kinder Morgan pipeline does not pass and we will also work without Tribal allies in Minnesota as they take on Enbridge's Line 3 expansion, and we know they'll help us do the same against Energy East" (Treaty Alliance 2016b).

The Treaty is based on Indigenous nationhood and Indigenous law, based on protection of the Earth. In fact, text of the Treaty opens with these twin ideas. The Treaty states: "We have inhabited, protected and governed our territories according to our respective laws and traditions since time immemorial." Further, the accompa-

nying Solidarity Accord also states: "We recognize the inherent rights of Indigenous peoples of Turtle Island to govern their territories and uphold their sacred trust to protect their land... (as)...Indigenous peoples have protected and stewarded these lands for millennia." Casey Camp-Horinek of the Ponca Tribe of Oklahoma expressed this sentiment when his tribe signed the Treaty in July 2017. He said, "If you don't think we're nations, if you think we're isolated remnants of a bygone era, just watch us exercise our sovereign right to protect our land and our people by stopping these pipeline abominations from threatening our water and our very future" (Treaty Alliance 2017a).

Indigenous law has always included treaty making among Indigenous nations as well as between Indigenous nations and Europeans. The Treaty text opens with this observation:

We have inhabited, protected and governed our territories according to our respective laws and traditions since time immemorial. Sovereign Indigenous Nations entered into solemn treaties with European powers and their successors but Indigenous Nations have an even longer history of treaty making amongst themselves. Many such treaties between Indigenous nations concern peace and friendship and the protection of Mother Earth.

Chairman Brandon Sazue of the Crow Creek Sioux Tribe, who called together Indigenous leaders to a treaty signing ceremony in July 2017, referred to the Treaty Alliance as "Remaking the Sacred Hoop," an ancient alliance between the Great Sioux Nation and the Blackfoot Confederacy (Treaty Alliance 2017).

Finally, The Tar Sands Treaty expresses a vision of "a clean and just energy future for us all" based on collaborative decision making authority shared by Indigenous and non-Indigenous peoples (Treaty Alliance 2016c). As expressed on the Treaty Alliance website, "Indigenous Nations need to also be equal partners in developing responses and solutions to our climate crisis. And in the course of urgently getting off fossil fuels, it will be critical to ensure that no one is left behind" (Treaty Alliance, 2015). In fact, the

Treaty Alliance demonstrates how Indigenous peoples are working collectively to shift decision making processes from a strictly hierarchical, state-based model, that may include *consultation* with Indigenous peoples and others, toward a model that is based on the principle of free, prior and informed consent, where Indigenous peoples aims to be included as decision making partners in issues that impact them. As Kevin Hart, Assembly of First Nations Regional Chief for Manitoba, noted: “These tar sands pipeline fights...are about protecting our Mother but will also end up being the turning point for relations between our Nations and state powers – the point where we say no more” (Treaty Alliance, 2017a).

As an alternative to the existing model of Indigenous consultation, exercised by both the United States and Canada, the Treaty Alliance is centered on the principle of free, prior and informed consent, which requires not only that Indigenous peoples be consulted about issues and decisions that impact them but that they be actively involved in such decision-making processes, from beginning to end. It also requires that they consent to projects that impact them, in contrast to consultation policies which often provide the means for projects to proceed without the consent of the Indigenous communities directly impacted. Such a normative shift would have tremendous implications not only on the need for governments to interact more collaboratively with Indigenous peoples, but the ripple effects of such a shift may eventually broaden and flatten the notion of self-determination for all peoples, Indigenous and non-Indigenous alike.

### **International Indian Treaty Council**

Despite the surge in inter-Indigenous treaty making in Western North America in the 2010s, the contemporary history of Indigenous treaty making can be traced back to the 1970s when the International Indian Treaty Council was formed at the very first treaty meeting at Standing Rock Reservation in South Dakota in the summer of

1974. A year after the American Indian Movement’s 1973 occupation of/siege at Wounded Knee (South Dakota) had ended, and its principle leaders either jailed or defending themselves in court, the movement for Indian civil rights set about re-orienting and re-organizing itself.

Legal scholar, philosopher, and theologian Vine Deloria, Jr. had published, in early 1974, his fourth book of the more than twenty he would write in his lifetime, *Behind the Trail of Broken Treaties: An Indian Declaration of Independence*. Drawing a direct link between the status of American Indians in the American legal framework and genocide, Deloria encouraged Indigenous peoples to take up several agendas. First, he called for a re-internationalization of their relationship with governments. Logically, if nations had signed “treaties” with tribes at one time, those tribes were considered “nations” by definition and that status could be regained. He also encouraged American Indians to go to the international level, again, as had been attempted earlier, but failed, in the 1920s League of Nations. Deloria encouraged the use that international platform to push for a new agenda: a reinstitution of the treaty process.

Deloria’s philosophy aligned with that of Indigenous activists. In the summer of 1974, a group of more than 5000 elders and traditional leaders representing ninety-eight Indigenous nations from nine countries gathered at Standing Rock Reservation in Lakota territory. These elders and leaders decided to take their treaty issues to the international level, especially the UN, and so they officially founded the International Indian Treaty Council (IITC) as their organizational vehicle. Several years later, in 1977, the IITC was the first Indigenous organization to receive consultative status with the United Nations Economic and Social Council (ECOSOC.) In the decades since, IITC has served as a leading organization in the global Indigenous rights movement. It supports grassroots Indigenous struggles for self-determination and human rights by building, organizing and facilitating “the direct, effective participation of traditional Indigenous Peoples in local,

regional, national and international events and gatherings addressing their concerns and survival" (IITC 2013).

Eight guiding principles of IITC have shaped its work over more than four decades. These range from an emphasis on traditional Indigenous values, to a preference for consensus decision making processes, gender equality, and the recognition and support of individual, unique Indigenous cultures in their unified movement. Crucially important as well is guiding principle number five: "The IITC believes that Indigenous Peoples should speak for and represent themselves before the world community" (IITC, n.d.). Since 1974, this has meant a treaty making process of consensus agreement among Indigenous political actors that then proceeds in a unified way to advocate collectively on the global level.

From the first founding Treaty Conference in June 1974, the International Indian Treaty Council has advocated for the recognition and protection of Indigenous-state treaties and operated on a treaty making model itself. This first Treaty Council of 5000 delegates from 98 Indigenous nations from across North and South America met for eight days of discussion. A single document emerged from these deliberations: *The Declaration of Continuing Independence by the First International Indian Treaty Council at Standing Rock Indian Country, June 1974*. This declaration reflects the twin treaty making goals of the new IITC organization. IITC would itself rely on a treaty making model of inter-Indigenous relations and decision making in order to advocate, on the national and international levels, for respect for Indigenous-state treaties and a future vision of self-determination that centers treaty making both amongst Indigenous nations and between Indigenous and non-Indigenous peoples.

The Preamble of the 1974 Declaration opens with a strong charge against the United States for its ongoing failure to honour its treaty responsibilities:

The United States of America has continually violated the independent Native Peoples of this continent by Executive action, Legislative fiat and Judicial decision. By its action, the U.S. has denied all Native people their International Treaty rights, Treaty lands and basic human rights of freedom and sovereignty. This same U.S. government, which fought to throw off the yoke of oppression and gain its own independence, has now reversed its role and become the oppressor of sovereign Native people.

In addition, the 1974 Declaration also calls for active non-violent resistance, "by *truth* and *action*." Intentionally mimicking some language of the US Declaration of Independence to emphasize a common human desire for freedom from oppression, it continues: "In the course of human events, we call upon the people of the world to support this struggle for our sovereign rights and our treaty rights. We pledge our assistance to all other sovereign people who seek their own independence."

The 1974 Declaration emphasized that the hundreds of existing treaties between the United States and Indigenous nations must not be abandoned or forgotten but rather, be recognized and secured in contemporary times through a "committed and unified struggle, using every legal and political resource." It notes specifically how the Constitution of the United States confirms that international treaties are intended as the "Supreme Law of the United States" and yet, it blatantly ignores and violates hundreds of treaties with Indigenous nations that were to protect the lands and sovereignty of those nations.

Organizationally, the newly formed International Indian Treaty Council was to be non-governmental organization (NGO) with offices in New York and Washington to interface with national and international political organizations. But, IITC would have a flavor not previously seen in the NGO community, given that it was founded on the basis of consensus decision-making amongst many diverse Indigenous nations and would continue to operate on this basis into the future. It was to be a unifying force of collective Indigenous advocacy and information dissemi-

nation that also respected the unique cultures, political circumstances and treaties of each individual Indigenous nation. As the 1974 Declaration states: “The International Indian Treaty Council recognizes the sovereignty of all Native Nations and will stand in unity to support our Native and international brothers and sisters in their respective and collective struggles concerning international treaties and agreements.”

It also declared that the IITC would open diplomatic relations with the US through the Department of State rather than the Department of Interior’s Bureau of Indian Affairs. This demonstrates that the original intention of the group was to push for a new and more assertive form of Indigenous sovereignty, specifically grounded in practices of international diplomacy as opposed to internal, domestic mechanisms. Finally, the 1974 Declaration articulated that the IITC would make application to the United Nations for recognition and membership of “sovereign Native Nations” and pledged its support to any other Indigenous nation anywhere in the world doing the same.

In the years since 1974, IITC has kept to these guiding principles, even as it has expanded. Treaty conferences are held annually in different locations around the world and focus on emerging issues of common concern; each year, inter-Indigenous discussions are held and common consensus resolutions achieved. For example, the 40<sup>th</sup> Anniversary Treaty Conference held in 2014 in Okemah, Oklahoma, issued resolutions on such matters as environmental toxins, women’s reproductive health, and extractive industries. The 2016 Treaty Conference in Hawai’i focused heavily on food sovereignty (IITC 2016). The longstanding IITC movement for Indigenous peoples to represent themselves in the United Nations also had a boost of activity between 2015 and 2017 when the President of the UN General Assembly directed a group of advisors to work on a draft resolution for enhanced Indigenous participation in the General Assembly. (United Nations 2015)

## Conclusions

Our review of these three cases highlights ways in which Indigenous peoples are acting as self-determining political actors dealing with matters which fall within their traditional authority such as buffalo mobility, while in other cases like the Tar Sands, banding together to resist environmental degradation and the spread of hazardous resource extractive industries.

Many Indigenous peoples are exercising their self-determination by defining for themselves what self-determination can and should mean. Their practices move beyond western forms of “internal” and “external” sovereignty, taking a more holistic form, well beyond a legal or juridical framework to also include culture, history, and spirituality. It broadens the practice of self-determination to include not only relations with other humans but also with non-human animals and the environment, in accordance with Indigenous ontologies and lifeways. In practice, self-determination by Indigenous peoples also moves beyond a discrete moment of political decision, like a declaration of independence or a referendum, but rather, is conceptualized as part of an ongoing set of relations and obligations—political, cultural and spiritual.

Indigenous knowledge systems, ways of governing, making treaty, and understanding the world have recently been reflected, and sometimes appropriated, in the posthumanist turn in some of the social sciences. If humanism positioned humans as the centre of all sentient life on earth, the posthumanist turn is attuned to human reliance on and interdependence with the rest of the world. This means, following Audra Mitchell, that posthuman approaches describe “worlds intersected and co-constituted by various kinds of beings: humans, other organisms, machines, elemental forces, diverse materials – plus hybrids, intersections and pluralities of all of the above (and more)” (Mitchell 2017 11). Similarly, since 2015, “Anthropocene” theorists have suggested that since everything is interrelated, bound together by “social power,” “enmeshed”



as “guests on this planet,” we should best see ourselves as “an array of bodies connected and interconnected in complex ways that have little to do with nationality” (Planet Politics 2015, 2).

Unlike many forms of Indigenous knowledge, this posthumanist turn remains human centric, and profoundly Eurocentric as well, such that Jane Bennett, in *Vibrant Matter*, cites only white European male theorists as her inspiration: “Baruch Spinoza, Friedrich Nietzsche, Henry David Thoreau, Charles Darwin, Theodor Adorno, Gilles Deleuze . . .” Her explicit goal is not so much about the world as it is “motivated by a self-interested or conative concern for human survival and happiness,” which translates into “greener forms of human culture and more attentive encounters between people-materialities and thing-materialities” (Bennett 2010 viii).

For Indigenous peoples, the conception of humans being inseparable from the world around them and interdependent with it goes back many millennia. Yet, as Metis scholar Zoe Todd signally notes, European and settler theorists have been advancing Indigenous knowledge systems as if they were European without any mention of Indigenous peoples. This boils down to a conceit where Indigenous thinkers are filtered through “white intermediaries” instead of “citing and quoting Indigenous thinkers directly, unambiguously and generously.” Indigenous peoples, Todd writes (with sentiments we share) must be regarded “[a]s thinkers in their own right, not just disembodied representatives of an amorphous Indigeneity that serves European intellectual or political purposes, and not just as research subjects or vaguely defined ‘collaborators’” (Todd, 2017, 7).

In this chapter, we have sought to better conceptualize how the right to self-determination is evolving and being practiced by Indigenous peoples in new, creative and innovative ways, which fully respect Indigenous laws, traditions, and nation-to-nation relationships with one another and with settler governments. We have considered three cases where we could see Indigenous self-determination as commensurable with the

viability of existing settler states. As such these are examples of complementary practices of self-determination.

They may reflect aspects of a new relationship developing between Indigenous peoples, established state structures, and international institutions. These practices also bring to mind Brunyeel’s (2007) work on the “third space of sovereignty,” spaces where Indigenous peoples, possessed of their inherent sovereignty, do not clearly fit with the spatial and temporal boundaries of settler states any more than those of the settler state fit with their practices and structures (xiv). In the past, such practices were crushed by discriminatory settler state legislation and structural violence. This is slowly changing, as some states mature within the international system and show a willingness to abide by agreements such as the UN Declaration.

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# Indigenous *lèse-majesté*: Questioning U.S. Federal Indian Law

by PETER D'ERRICO (Emeritus, University of Massachusetts / Amherst)

## Abstract

United States “federal Indian law” consists of a body of rules rooted in the colonial doctrine of “Christian discovery.” Viewed through the lens of Carl Schmitt’s concept of “sovereign ban,” Christian discovery creates a “state of exception,” placing Native Peoples both inside and outside the constitutional order of the United States *and simultaneously constituting the claim of U.S. sovereignty*. The instability inherent in this double performance emerges as the “paradox of sovereignty.” Native self-determination efforts appear as *lèse-majesté* – “insults to sovereignty” – heretical acts challenging Christian colonial domination.

**Keywords:** United States federal Indian law, Indigenous peoples, Christian colonialism, sovereignty theory, self-determination, critical theory, legal studies

*The blunt fact...is that an Indian tribe is sovereign to the extent that the United States permits it to be sovereign – neither more nor less.*  
United States v. Blackfeet Tribe (1973).

## Introduction: Federal Indian Law is Disturbing?

Carl Schmitt was not referring to U.S. federal Indian law when he wrote “a jurisprudence concerned with ordinary day-to-day questions has practically no interest in the concept of sovereignty. Only the recognizable is its normal concern; everything else is a ‘disturbance’” (2005 [1922]: 12). Any review of federal Indian law will demonstrate a concern with sovereignty in nearly every court case, statute, and regulation. As a recent guide to litigation practice stated, “One of the most universal issues affecting tribes is sovereignty protection. Tribes have a paramount interest in protecting their inherent authority, and maintaining their ability to exercise their sovereign powers” (Gillett & Ross-Petherick, 2013: 1). Though Schmitt’s description of “day-to-day” law does not apply to federal Indian law, his designation of “the concept of sovereignty” as a “disturbance” and his exposi-

tion of “the sovereign exception” may be used to illuminate ongoing tensions within federal Indian law and provide a framework to understand their roots and significance.

U.S. Supreme Court Justice Clarence Thomas provides a high-level, 21<sup>st</sup> century display of the “disturbing” effects of the concept of sovereignty in his critiques of federal Indian law. In *United States v. Lara* (2004), he wrote, “[F]ederal Indian law is at odds with itself. .... The Federal Government cannot simultaneously claim power to regulate virtually every aspect of the tribes through ordinary domestic legislation and also maintain that the tribes possess anything resembling ‘sovereignty’” (225). In *United States v. Bryant* (2016), he identified “a central tension within our Indian-law jurisprudence” – the contradiction between “tribal sovereignty” and “plenary power” doctrines: On one hand, Thomas wrote, federal Indian law doctrine states “tribes [hold a] status as ‘separate sovereigns pre-existing the Constitution.’” On the other hand, a contrary doctrine states “Congress [holds] ‘plenary power’ over Indian tribes” (1967).

Thomas' critique stands out not only because he sits on the court that originated and maintains the "disturbance" of federal Indian law, but also because his discussion dispenses with superficial characterizations of the field, which describe it as "confusing," "complex," and "complicated." He issued his bluntest statement in *Lara*: "Federal Indian policy is, to say the least, schizophrenic" (219). Contrast that charge with a typical commentary from the legal profession: "American Indian law cases...are interesting because of the inherent complexities in navigating the complicated landscape of federal Indian law. ... the practice area requires mastery of many complex and continually changing areas of law" (Gillett & Ross-Petherick 9). The blandness of "interesting...inherent complexities" in navigating "inherent sovereignty" belies the turmoil of doctrine that Thomas identifies at the core of federal Indian law.

*Dollar General v. Choctaw Indians* (2015) provides a recent notable example of the turmoil. The Dollar General corporation sought to bar jurisdiction of the Mississippi Band of Choctaw Indians over a tort claim against the company, arguing that "Tribal court jurisdiction over non-members is fundamentally incompatible with the United States' 'overriding sovereignty,'" citing a 1978 supreme court decision, *Oliphant v. Suquamish Indian Tribe* (Dollar General Corp. 2015: 17). The company's attack aimed at excluding all corporations from all "tribal" courts. The Choctaw response focused on *Montana v. United States*, a 1981 decision that permitted "tribal jurisdiction" in certain circumstances, as "exceptions" to the general exception diminishing such jurisdiction.

At oral argument, Justice Breyer questioned one of the Choctaw lawyers, but could not recall the foundational federal Indian law doctrine set forth in 1831 in *Cherokee Nation v. Georgia*:

"JUSTICE BREYER: Now, is there any – and – and what is the word in *Cherokee*? I forget. It's 'something dependent nation.' What kind of – it was – there are two words –

"MR. KATYAL: Domestic dependent –

"JUSTICE BREYER: What?

"MR. KATYAL: Domestic dependent nation?

"JUSTICE BREYER: Domestic? All right (United States Supreme Court 2015: 40).

Breyer continued, "So if, in fact, Tasmania had this kind of official situation, and an American went to Tasmania and got a reasonable judgment, I take it our courts would enforce that." To which the lawyer replied, "Correct" (*Id.*) But the *Cherokee Nation* ruling stands for the rule that Native Nations are not "foreign" nations. As Katyal answered, the U.S. would recognize a Tasmanian decision; but federal Indian law places Native Nations in a "state of exception" from ordinary sovereignty. That a supreme court justice could not recall foundational doctrine and then misapprehended that doctrine marks a high (or low) point of confusion; it calls out for a clarification not simply of the confusion, but of the source of the confusion.

*Cherokee Nation v. Georgia* stands in the middle of an early 19<sup>th</sup> century trilogy of U.S. Supreme Court decisions authored by Chief Justice John Marshall. This "Marshall trilogy" – including *Johnson v. McIntosh* (1823) and *Worcester v. Georgia* (1832) – created the doctrinal platform upon which federal Indian law still operates in the U.S. These three cases continue to be cited in decisions at all levels of the U.S. judicial system, parsed by judges and lawyers seeking bases for decisions in an increasingly complicated maze. In this paper, I forego efforts to work within the maze. Rather, I draw on Schmitt's notion of "state of exception" to show federal Indian law as a "sovereign ban" on Indigenous Peoples, placing them in a "zone of indistinction," where rules and decisions are inherently unstable, confusing, contradictory.

In the first section, I explicate the federal Indian law concept of "tribal sovereignty" as a state of exception that simultaneously constitutes U.S. sovereignty – Native Peoples providing the necessary opposition to that which is "not U.S." Thereafter, I examine the founding U.S. supreme court cases, demonstrating how each enacts a specific and integral aspect of the

“sovereign ban” imposed on Indigenous Peoples: “Christian Discovery,” “Peculiar Relation,” and “Plenary Power.” I follow these sections with a look at “states of exception” imposed globally, reflected in the United Nations Permanent Forum on Indigenous Issues. In the final section I borrow Mark Rifkin’s notion of “sovereign anxiety” to discuss the possibility of an Indigenous refusal of federal Indian law. I conclude with a suggestion that Indigenous refusal of the state of exception would constitute *lèse majesté* – “insult to majesty” – using an old phrase to highlight federal Indian law as a “secularized theological concept” (Schmitt 2005 [1922]: 36).

### Performing Sovereignty: The State of Exception

Conventional definitions of sovereignty fail us. They present abstractions of absolute power held by monarchs that resonated at the 1648 Treaty of Westphalia, but are inadequate to our purpose. Indeed, fault lines running through 21<sup>st</sup> century political and economic institutions – evidenced and exacerbated by “humanitarian” military interventions and transnational corporate pressures on state actors – put notions of absolute sovereignty under siege. Rather than seeing sovereignty as an absolute, I work from the perspective of sovereignty as a performance – akin to a dramatic action, where performers do not simply describe, but create (a character, a role). “[I]t is not that sovereignty exists as a possession.... Sovereignty is what is tactically produced through the very mechanism of its self-justification” (Rifkin 2009: 90). From this perspective, I aim to avoid the pitfalls of reification (seeing the “sovereign,” but not sovereignty) and historicism (seeing sovereignty as something established in a unique event, rather than an ongoing activity).

Schmitt’s famous formulation of sovereignty – “Sovereign is he who decides on the exception” – calls into question the self-congratulatory notion of American politics that legitimate authority rests on “a government of laws, not of men.” As Schmitt writes, “authority proves itself not to need law to create law.” I bypass discussions of Schmitt as an “authoritarian” thinker focused on

the 1920s crises of the Weimar Republic. Instead, I follow Mark Rifkin, who explores Schmitt through the lens of Giorgio Agamben, using Schmitt’s theory that sovereignty declares itself into existence through a “performative act,” a “ban” or “sovereign exception” marking a “zone of indistinction” between law and non-law, to illuminate U.S. federal Indian as an inherently ambiguous and contradictory juridical space. Schmitt says, “What characterizes an exception is principally unlimited authority.... The state remains, whereas law recedes. ... The state suspends the law in the exception on the basis of its right of self-preservation, as one would say” (Schmitt 12). He adds, “It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty” (6).

It would be a truism to say that United States “Indian policy” expresses an assertion of U.S. sovereignty over the Indigenous Peoples of the continent. The basic doctrines in the field expressly assert federal power, such that the phrase “federal Indian law” names a body of rules designed to control Indians, who are excepted from regular legal processes. But to read the field only as a set of rules – “juridical regulations” – leaves everything in a muddle that conventional discourse pronounces as “incredible complexity.” Viewed as a “sovereign ban,” federal Indian law becomes starkly coherent. Rather than a set of rules for deciding cases involving Indigenous Peoples, federal Indian law represents a “state of exception” where Indigenous Peoples are simultaneously excluded from and included within a U.S. claim of national sovereignty. The “paradox of sovereignty” – which “consists in the fact the sovereign is, at the same time, outside and inside the juridical order” (Agamben 1998: 15) – mirrors the paradox of “American Indians,” whom federal Indian law places, at the same time, outside and inside the constitutional order of the United States. Felix S. Cohen’s 1942 “Handbook of Federal Indian Law” – generally regarded as the “bible” of the field – illustrates the situation: “The...fundamental principles [of Indian tribal powers] ... are subject to qualification by treaties

and by express legislation of Congress, but, save as thus qualified, full powers of internal sovereignty are vested in the Indian tribes" (Cohen 1942: 122)<sup>1</sup>.

We may begin here to discern a dual performance in federal Indian law, such that "the production of [U.S.] national space depends on coding Native peoples and lands as an exception" (Rifkin 2009: 95); and that "the supposedly underlying sovereignty of the U.S. settler-state is a retrospective projection generated by, and dependent on, the 'peculiar'-ization of Native peoples" (Rifkin 2009: 91). Joan Cocks suggests that "without an actual, potential, or imagined competitor, no assertion of sovereignty would ever have to be made" (Cocks 2014: 3). I suggest no assertion of sovereignty *could* ever be made without a competitor. Sovereignty consists of the act of producing a competitor – an excluded other, positioned in a state of exception. Giorgio Agamben, discussing Schmitt, says, "what is at issue in the sovereign exception is...the very condition of possibility of juridical rule and, along with it, the very meaning of State authority. Through the state of exception, the sovereign 'creates and guarantees the situation' that the law needs for its own validity" (Agamben 1998: 17). In a nutshell, the federal Indian law notion of "tribal sovereignty" names *a zone of Native non-sovereignty that simultaneously constitutes U.S. federal sovereignty*. The development of federal Indian law as a state of exception defines states and Native competitors against and within the domain of a federal sovereignty.

A 1958 decision involving a treaty between the United States and the Standing Rock Sioux provided an enigmatic phrasing of the "specialness" of the state of exception: "By the very existence of the treaty, providing that the reservation land be set aside 'for the absolute and undisturbed

use and occupation of the Indians'... a special situation has been created.... [S]olemn promises to the Indian people by the government of the United States... stand as the highest expressions of the law regarding Indian land until Congress states to the contrary" (*United States v. 2,005.32 Acres of Land, etc.*: 196). The rule that Native sovereignty exists except to the extent it does not exist provides a textbook example of Schmitt's assertion, "The exception does not only confirm the rule; the rule as such lives off the exception alone."

The 2014 case of *Michigan v. Bay Mills Indian Community* provides a recent example of the sovereign exception at work. Bay Mills had asserted its "tribal" sovereign immunity against a suit by the state. Michigan's brief stated, in a gross understatement, "the scope of tribal immunity is a bit muddled," then went on to argue, "Indian tribes have no rights under the United States Constitution to any attributes of sovereignty. Congress therefore has plenary authority to prescribe the limits of – or eliminate entirely – tribal powers of local self-government." The brief added, by way of comparison, that "state immunity is constitutional... The only authority that Congress has over the states is the power the states themselves transferred to Congress in the Constitution" (State of Michigan 2013: 36). Bay Mills responded with a reminder that Native sovereignty pre-exists the U.S. and the states, but immediately capitulated to the state of exception: "Modern-day Indian tribes are 'self-governing political communities that were formed long before Europeans first settled in North America.' ... Although they no longer possess 'the full attributes of sovereignty,' they still retain 'those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status'" (Bay Mills Indian Community 2013: 48). When the court upheld Bay Mills' argument, many commentators described the decision as a "win" for Bay Mills. But in fact, the court only reaffirmed the sovereign exception Bay Mills had already conceded, stating, "If Congress had [acted], Bay

<sup>1</sup> The editorial history of the *Handbook* since 1942 would provide a chapter all its own in elucidating the genealogy and changing contours of the state of exception: "the history of the *Handbook* reflects the pendulum swings in federal policy" (Brown 1983: 148).

Mills would have no valid grounds to object. But Congress has not done so..." (*Michigan v. Bay Mills Indian Community*: 2039).

Law school academic treatment of federal Indian law generally mirrors the practice of litigators and judges, remaining within the discursive space created by the sovereign exception. While some may acknowledge the state of exception – "Natives were subject to a history and a doctrine not of their choosing" (Ablavsky 2015: 1090) – they limit themselves to harmonizing rules within the exception rather than challenging it. On occasion, they try to carve out a new exceptional space for Natives. Savage, for example, after demonstrating the absence of a constitutional foundation for U.S. "plenary power" over Indians, suggests "a committee of Native Americans and congressional leaders could work out how the numerous unconstitutional statutes regulating every aspect of Native American life should be modified" (Savage 1991: 118). I avoid such approaches; instead, I offer a critical view of federal Indian law *tout court*, as a sovereign performance of domination by the U.S. over Indigenous Peoples.

### **Act One: Christian Discovery as a Right of Domination**

*Johnson v. McIntosh* (1823) – first in a trilogy of early 19<sup>th</sup> century U.S. supreme court cases grappling with the presence of Native Peoples in territory claimed by the United States – articulated a jurisprudential foundation simultaneously constituting U.S. federal Indian law and U.S. property law. The parties to the case were competing non-Native claimants of Native land. Their conflict arose against the background of English property law, in which "possession" – actual occupancy of land – took priority over "pretension" – a claim or aspiration – of ownership. As *Ricard v. Williams* (1822) put it: "Undoubtedly, if a person be found in possession of land, claiming it as his own, in fee, it is *prima facie* evidence of his ownership..." (1822: 105). The difficulty for the adversaries in *Johnson*, each with their pretension of ownership, was that Native Peoples were in posses-

sion of the disputed lands. Almost two centuries later, Lindsay Robertson demonstrated that the parties in *Johnson* were not actually adversaries, but conspirators in "a collusive case [between] speculators in Indian lands" (Robertson 2005: xi). The parties filed a "case stated" – a stipulation of facts – to prevent the court from inquiring into the actual circumstances. No Natives were party to the case; their rights would be defined by those claiming their lands.

The plaintiffs' "action of ejectment" alleged a purchase of land from the Piankeshaw Indians. The defendant replied by alleging a conveyance from the United States. The pleadings thus set up competing bases for ownership of lands acknowledged to be inhabited by Indians. Plaintiffs argued, "[Indian] title by occupancy is to be respected, as much as that of an individual, obtained by the same right, in a civilized state," and concluded, "the only question in this case must be, whether it be competent to individuals to make ... purchases [from the Indians], or whether that be the exclusive prerogative of government" (*Johnson* 563). The defendant disputed that Indigenous Peoples held title, asserting, "Discovery is the foundation of title in European nations, and this overlooks all proprietary rights in the natives. The sovereignty and eminent domain thus acquired, necessarily precludes the idea of any other sovereignty existing within the same limits" (*Id.*).

Chief Justice John Marshall opened the opinion for a unanimous court by rephrasing the plaintiffs' question: "The inquiry is, in a great measure, confined to the power of Indians to give, and of private individuals to receive, a title which can be sustained in the Courts of this country" (572). Marshall next elaborated the defendant's argument – the "principle" of "discovery" – as a "right" flowing naturally out of competitive colonization: "discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession" (573). Marshall emphasized the Christian theological foundation of the



"discovery" doctrine, referring to such texts as the 1496 commission to the Cabots, "to discover countries then unknown to Christian people, and to take possession of them in the name of the king of England." Colonizers from Christendom asserted "... a right to take possession, notwithstanding the occupancy of the natives, who were heathens, and, at the same time, admitting the prior title of any Christian people who may have made a previous discovery" (576-577). Marshall acknowledged the "extravagant pretension" of the court's decision, yet insisted on its validity as a sovereign performance, notwithstanding its opposition to "natural right" and in the face of its dubious rationality:

However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned. So, too, with respect to the concomitant principle, that the Indian inhabitants are to be considered merely as occupants.... However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by Courts of justice. (591-592)

Marshall thus invoked Christian Discovery not as a violation of common law rules, but as an exception to them, necessary to defend state sovereignty; to reiterate Schmitt, "The state suspends the law in the exception on the basis of its right of self-preservation." The exception operates as an "inclusive exclusion" (Agamben 27): It excludes Natives from the category of persons whose occupancy gives rise to ownership, while (and so that) Native lands are included in the sovereign order of the pretenders to title. The *Johnson* opinion devolved the sovereign exception of Christian Discovery from the English Crown onto the U.S. federal government: "The power now possessed by the government of the United States to grant lands, resided, while we were col-

onies, in the crown, or its grantees" (587). This jurisprudential move transformed theology into politics, a kind of laundering at the "threshold between 'the political and the religious'" (Rifkin 103).

Not coincidentally, the state of exception disqualifying Native possession assured title of the Marshall family to thousands of acres in Virginia and Kentucky derived from Lord Fairfax under a 1649 grant by Charles II. A passage in the opinion referring to "the sale of that country which now constitutes Kentucky, a country, every acre of which was then claimed and possessed by Indians" (586) provides a clue to Marshall's personal interest in the case: By the end of the 1780's, Marshall claimed ownership of over 200,000 acres in Kentucky. His father and his brothers claimed about twice that amount (Smith 1996: 75n).

Rifkin argues that the U.S. jurisdictional imaginary is made possible "only by *localizing* Native peoples, in the sense of circumscribing their political power/ status and portraying Indian policy as an aberration divorced from the principles at play in the rest of U.S. law..." (97). However, the state of exception for Native Peoples resonates with other cases from the same period (e.g., *Huidekoper's Lessee v. Douglass*, 7 U.S. 1 (1805)), where the supreme court asserted federal supremacy to prevent state legislatures from protecting actual possessors (settlers) against land speculators (claimants to title). Agamben's suggestion of "the people as an excluded class" (177) becomes relevant to display the federal Indian law state of exception as part of a broader project: "'people'...always indicates the poor, the disinherited, and the excluded" (176). Marshall's opinion produced a general jurisprudential basis for United States federal sovereignty – including supremacy over the states, the people, and ownership of the continent.

*Johnson* has never been overruled. A search on Westlaw (accessed 25 January 2016) showed 330 cases citing *Johnson*, up to and including July 1, 2015. Many other cases rely on "discovery" without citing *Johnson*. For example, *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*

cited the proposition that “fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign – first the discovering European nation and later the original States and the United States” (2005: 204), but cited intermediate decisions rather than *Johnson*, thereby eliding any examination of the theological justification of Christian Discovery.

Explicit reaffirmations of Christian Discovery still occurred in the mid-20<sup>th</sup> century. In *Tee-Hit-Ton Indians v. United States*, the U.S. government cited *Johnson* to urge the court to deny compensation for lumber taken by the U.S. from Tlingit forests. The brief argued that “The Christian nations of Europe acquired jurisdiction over newly discovered lands by virtue of grants from the Popes, who claimed the power to grant to Christian monarchs the right to acquire territory in the possession of heathens and infidels” (United States Department of Justice 1954: 13). The court agreed: “It is well settled that...the tribes...held claim to...lands after the coming of the white man, under...permission from the whites to occupy”; adding, “It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race” (*Tee-Hit-Ton* 279, 281).

#### **Act Two: Peculiar Relation as Inclusive Exclusion**

*Cherokee Nation v. State of Georgia* (1831), the second case in the “Marshall trilogy,” sought to stabilize the definition of the state of exception within the ambit of regular constitutional discourse. The Cherokee had filed a suit pursuant to the U.S. Constitution, Article 3, section 2, as a “controversy between a State...and a foreign State,” seeking an injunction to protect themselves against invasion by the state of Georgia, and citing the terms of their treaty with the U.S.

Marshall opened with a question, “Has this Court jurisdiction of the cause?” He acknowledged “the character of the Cherokees as a

State as a distinct political society, separated from others, capable of managing its own affairs and governing itself,” and asserted, “The acts of our Government plainly recognize the Cherokee Nation as a State...” (*Cherokee Nation* 15, 16) But he immediately posed a second question, “Is the Cherokee Nation a foreign state in the sense in which that term is used in the Constitution?” This, he asserted, was “A question of much more difficulty” (16). The “difficulty” of the question, Marshall wrote, arises from “the condition of the Indians in relation to the United States,” which “is perhaps unlike that of any other two people in existence. ...[T]he relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else” (16). Marshall summarized the peculiarity in terms of the state of exception created in *Johnson*: “It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. ...They occupy a territory to which we assert a title independent of their will” (17). Marshall then went on to coin an *obiter dictum* that survives to this day as core doctrine in federal Indian law: Indians “may more correctly, perhaps, be denominated domestic dependent nations. ... Their relations to the United States resemble that of a ward to his guardian” (17).

Marshall’s opinion in *Cherokee Nation* was not unanimous. Justice Thompson, joined by Justice Story, asserted the court had jurisdiction to hear the Cherokee complaint and room to provide relief. Thompson cited the discussion of “unequal alliances” in Emer de Vattel’s 1758 “The Law of Nations”: “Testing the character and condition of the Cherokee Indians by these rules, it is not perceived how it is possible to escape the conclusion that they form a sovereign state.” That the Cherokee had “yield[ed] up by treaty, from time to time, portions of their land” did not remove their “sovereignty and self-government over what remained unsold” (53-54). Thompson declared Cherokee possession a property right. Echoing

the common law – and referring obliquely to the doctrine of “discovery” – Thompson asserted, “It is immaterial whether [the Cherokee hold] a mere right of occupancy or an absolute right to the soil. The complaint is for a violation, or threatened violation, of the possessory right. And this is a right, in the enjoyment of which they are entitled to protection...” (70). Thompson and Story saw a basis to “protect” the “unequal sovereignty” of the Cherokee against the assertion of Georgia sovereignty, without, however, undoing the state of exception announced in *Johnson*.

This dissent in *Cherokee Nation* marks a line of fracture, reflecting tectonic stresses still at work today in federal Indian law. But the nature of the state of exception assures that whichever way courts respond to such stresses, their decisions can always be countenanced within the “peculiarity” of the exception itself. *United States v. Kagama* (1886) illustrates: “[W]e are not able to see in...the Constitution...any delegation of power to enact a code of criminal law” [a project of federal “supervision”]; “But this power of Congress...arises...from the ownership of the country...” (379-380). A 1997 U.S. Supreme Court decision, *Idaho v. Coeur d’Alene Tribe of Idaho*, also exemplifies this: *Cherokee Nation* barred the Cherokee suit against Georgia by denying Cherokee status as a “foreign nation”; the *Coeur d’Alene* decision blocked Coeur d’Alene’s suit against Idaho on the ground that “Indian tribes ... should be accorded the same status as foreign sovereigns, against whom States enjoy ... immunity [from suit]” (*Idaho* 268-269). The rules of Native sovereignty still live off the exception!

Meanwhile, a 21<sup>st</sup> century comparison of federal Indian law “guardianship” with ordinary trust law demonstrates how far the state of exception departs from the regular legal order: In *United States v. Navajo Nation* (2009), the Court held that “common law trust duties of care, candor, and loyalty” do not apply to the federal “trustee,” despite the latter’s “comprehensive control” of Indian land (295).

### Act Three: Federalism and Plenary Power

In 1832, Marshall wrote the court’s opinion in *Worcester v. Georgia*, last in the foundation trilogy of federal Indian law. The case arose from the same circumstances the Cherokee had attempted to litigate in *Cherokee Nation* – Georgia’s invasion of Cherokee lands. Samuel Worcester, a citizen of Vermont and a missionary from the American Board of Commissioners for Foreign Missions, was preaching the gospel to the Cherokee and working with Cherokee language and printing press projects. Georgia charged Worcester with violating the state’s effort to control access to Cherokee Territory. A jury convicted him – rejecting his plea that the Cherokee Treaty with the U.S. protected his presence among the Cherokee. The County Court sentenced him to “hard labour in the penitentiary” for four years.

Marshall began his opinion by stating the case involved “the personal liberty of a citizen” – thus distinguishing it from *Cherokee Nation* – though he added the case also included “the rights, if they have any, the political existence of a once numerous and powerful people” – i.e., the Cherokee (*Worcester* 536). Parts of the opinion in *Worcester* have been read as disavowing the doctrine of Christian Discovery and federal domination of Indigenous Peoples. Lindsay Robertson, for example, points to the court’s statement that “Discovery...could not affect the rights of those already in possession,” and asserts that *Worcester* thereby “dismantle[d] the discovery doctrine by overruling that part of the doctrine assigning fee title to the discovering sovereign” (2005: 133). But this reading misapprehends the case as establishing a rule, rather than as elaborating a state of exception – in which Native “occupants” ... retain... their original natural rights as the undisputed possessors of the soil...with the single exception of that imposed by irresistible power...” (544, 559). Marshall’s apparently “pro-Indian” statement in *Worcester* does not depart from, but has its root in *Johnson*, where the court declared, “It has never been contended, that the Indian title amounted to nothing. Their right

of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right..." (603). *Worcester* reaffirmed the exception defined by *Johnson* – the "ultimate right of domain" of colonial "potentate[s]." The supreme court's 2001 decision in *Nevada v. Hicks* demonstrates that statements in *Worcester* appearing to affirm an independent "tribal sovereignty" actually reflect the essential indeterminacy of the state of exception:

It was "long ago" that "the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries." ... [T]he principle that Indians have the right to make their own laws and be governed by them requires "an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other." (361-362, internal citations omitted).

*Worcester's* parameter of "internal affairs," while appearing to constrain U.S. sovereign claims to interfere with Native self-government, actually authorizes ongoing invasion of Native societies through federal "civilizing" programs aimed at what Rifkin calls "the translation of Native peoples into aggregates of individual domestic subjects (as either a race or a culture)" (95). Marshall outlined the "civilizing" project in *Worcester*, quoting from an 1819 Act of Congress "for promoting those humane designs of civilizing the neighbouring Indians": "the President of the United States...in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, [is authorized] to employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation, and for teaching their children in reading, writing and arithmetic..." (*Worcester* 557). In short, *Worcester's* dicta on "internal tribal sovereignty" constitute variations of, not departures from, the state of exception – the "peculiar relation" based on the assertion of Christian Discovery.

The true significance of *Worcester* lies in its careful parsing of the topology of the exception: First, it insists on federal supremacy over the states in dealing with "Indian affairs." Second, it defines a domain of "internal affairs" of the Native Peoples for "their self-government so far as respected themselves only," under "exclusive" federal control of Indian territory (*Worcester* 547). As a side note, the court's emphasis on federal supremacy provoked strenuous manoeuvres behind the scenes, coming as it did in the midst of the Nullification Crisis – South Carolina's rejection of federal tariff authority. *Worcester* and his supporters, in fear of exacerbating the threat of southern states seceding from the Union, accepted a pardon from Georgia's governor, rather than risk continued conflict between the supreme court and the state (Miles 1973).

The three foundational cases of federal Indian law created a template copied around the world: *Johnson* declared the original state of exception – "ultimate dominion"; *Cherokee Nation* positioned the exception within constitutional discourse – an "inclusionary exclusion"; *Worcester* enlarged the exception into a general federal supremacy. Indigenous Peoples face this legacy globally, where they are challenging states of exception and claimed nation-state rights of domination.

### A Global Challenge to States of Exception

In 1923, Haudenosaunee Chief Deskaheh presented a petition to the League of Nations from the Six Nations Confederacy, asking the League to stop Canadian intrusion into Six Nations territory. Deskaheh asked for "international acceptance of Six Nations political and territorial sovereignty," in contradistinction to Canadian federal Indian policy, which was "based on the understanding that Indians were a dying race of wards to the government's guardianship" (Belanger 2007: 30). The petition required a complex strategy, since the League consisted of imperial powers exercising colonial "mandates" – asserting rightful domination over non-state ("tribal") peoples. There-

fore, coupled with his request for sovereignty, Deskaheh called for “protection” of Six Nations’ existence as a people, under terms of treaties with Britain, France, and the Netherlands.

The Six Nations’ simultaneous attack on “guardianship” and appeal for “protection” avoided incoherence insofar as it echoed Vattel’s theory of “unequal alliances,” whereby a weaker state binds itself to a stronger, “without stripping itself of the right of government and sovereignty.” Deskaheh asked Six Nations treaty partners – “stronger states” – to defend the “weaker” Six Nations against Canada. When the League refused to allow the petition, Deskaheh concluded, “my appeal to the Society of Nations has not been heard.” In the last speech of his life, he “more forcefully than ever...hurled defiance at big nations who disregard the claims of smaller peoples” (Akwesasne Notes 1978, 1981: 25). In 1977, the Mohawk Nation at Akwesasne sent a delegation to the Non-Governmental Organization inquiry into the conditions of Native Peoples at the U.N., Geneva, to assert “a place in the international community” (Akwesasne Notes 6). The inquiry ignited three decades of activism among Indigenous Peoples worldwide, until, in 2007, the United Nations General Assembly adopted a Declaration on the Rights of Indigenous Peoples. Article 3 condemns “all doctrines, policies and practices based on...national origin or racial, religious, ethnic or cultural differences” (United Nations General Assembly 2007).

The title of the U.N. Declaration – Rights of Indigenous Peoples – marks the outcome of an argument won by Indigenous Peoples. Their insistence on the plural form – “peoples,” signifying collective self-determination – triggered immense resistance by some states, who argued that Indigenous *people* are individual citizens of the states claiming jurisdiction over their lands, not members of independent *Peoples*. Despite the recognition implied by its title and the Declaration’s rhetoric of “self-determination,” the document does not automatically overturn domination of Indigenous Peoples by states.

Indeed, the Declaration restates the core issue that preoccupied the U.S. Supreme Court at the creation of federal Indian law: “The condition of the Indians in relation to...States.” Every consideration stated in the Declaration was deliberated in the trilogy of Supreme Court opinions: What “degree of sovereignty...[do] the circumstances of [Indigenous] People ... allow them to exercise”? What restrictions, if any, may the State place on “the full use of the lands” of Indigenous Peoples? To what degree, if any, are Indigenous Peoples “dependent on some foreign potentate for the supply of their essential wants and for their protection”? Does a “weaker power ... not surrender its independence – its right to self-government – by associating with a stronger and taking its protection”?

The U.S., a major opponent of the plural “Peoples,” voted against the Declaration. In 2010, facing pressure from Indigenous Peoples and embarrassment in the U.N., it reversed its vote – but with a signing statement from its Department of State (2010-12-16) insisting on the continuance of a diminished status for Native Peoples: “The Declaration’s call is to promote the development of a concept of self-determination for indigenous peoples that is different from the existing right of self-determination in international law” (3).<sup>2</sup> The State Department reiterated the U.S. state of exception asserting a rightful domination of Indigenous Peoples:

The United States recognizes the significance of the Declaration’s provisions on free, prior and informed consent, which the United States understands to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken. (5)

State resistance to the U.N. Declaration demonstrates what Rifkin describes in another context

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<sup>2</sup> The State Department Announcement was removed from the Department’s website, along with other materials related to U.S. Indian policy, following the inauguration of Donald Trump on 20 January 2017. The Reference in this paper provides a link to the document in the Internet Archive.



as sovereign “anxiety” – an “instability of the “settler-state” arising from a “failure to find a normative foundation” for state power in relation to Indigenous Peoples (Rifkin 90, 106, 97). The Declaration, in its final Article, reflects such anxiety and bows to states’ insistence on a continuing “compulsory relation” with Indigenous Peoples, privileging state geopolitical claims against the possibility of “metapolitical” Indigenous challenges:

Nothing in this Declaration may be...construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States (United Nations General Assembly Art. 46).

The U.N. Declaration, despite – and because of – its limitations, has generated continuing attention to the situation of states and Indigenous Peoples. This leads us to explore some implications of the “anxiety” produced by the continuing “disturbance” of sovereignty issues.

### Sovereign Anxiety

Justice Breyer gave no explanation for the reference to Tasmania in his confused question during oral argument in *Dollar General v. Choctaw Indians*. But the reference carries irony: he named a place with its own history of colonization and domination under a state of exception in the name of Christian Discovery. Justice Sotomayor concluded the oral argument in *Dollar General* with a question to the company’s lawyer that revealed her understanding of federal Indian law as a sovereign exception:

What then remains of the sovereignty of the Indians? ...You just want to cherry pick what “sovereignty” means. Because if they’re sovereign, the United States can have treaties with people that basically say in your land, you do what you want; I’m not going to enforce your judgment if I don’t think it’s consistent with due process here. But we don’t dictate to other sovereigns what kind of systems they should have. You’re right we have the power to do that, but it’s still something that we don’t have to exercise. (United States Supreme Court 63)

The Dollar General lawyer replied, in a straightforward affirmation of the state of exception, “The difference is the dependent sovereignty of the Indian tribes” (*Id.*)

Justice Thomas’ call in *Lara* to “examine more critically our tribal sovereignty case law” suggests to “begin by carefully following our assumptions to their logical conclusions and by identifying the potential sources of federal power to modify tribal sovereignty” (223). Notice that he did not encourage a careful analysis of *limitations* on federal power to modify tribal sovereignty. That analysis would have to begin with an acknowledgment of the foundational role of religious doctrine – Christian Discovery – in the state of exception. And it would have to include the present status of that doctrine in international discourse: It has been declared “invalid” under the auspices of the U.N. Permanent Forum on Indigenous Issues, which noted its use “as a framework for justification to dehumanize, exploit, enslave and subjugate Indigenous Peoples and dispossess them of their most basic rights, laws, spirituality, worldviews and governance and their lands and resources. Ultimately it was the very foundation of genocide” (United Nations Permanent Forum I.3).

In *Bryant*, Thomas suggested attention to “tribes’ distinct histories.... to understand the ultimate source of each tribe’s sovereignty and whether it endures” (1968). Whether intended or not, the suggestion to investigate “sovereign endurance” raises a “metapolitical” possibility: namely, that Native peoples might engage in negotiation and self-definition through an “inter/national” (Salaita 2016) process, terminating the state of exception altogether. More likely, Thomas’ formulation only reaffirms the “geopolitical self-evidence [of the U.S.] and its authority to determine what issues, processes, and statuses will count as meaningful within the political system” (Rifkin 91). Thomas’ goal may be to terminate the state of exception by carrying it to its logical conclusion: a sovereign ban like the “allotment” efforts of the late 19<sup>th</sup> century and “termination” efforts of the 1950’s, whereby Native *people*

would be brought within the regular operation of U.S. law and Native *Peoples* would (for purposes of U.S. law) cease to exist.

Meta-political possibilities may indeed arise from increased attention to the doctrinal incoherence of federal Indian law. As Rifkin suggests, “exploiting the kind of logical incoherence and underlying normative crisis toward which Thomas points, the discourse of sovereignty can be mobilized to deconstruct U.S. rule” (108) over Native Peoples. But Native litigants show little inclination to deconstruct the state of exception that constitutes federal Indian law, or to examine its premises. Instead, like a Kafka protagonist struggling to gain access to a mysterious authority, they navigate the maze-way of ever-shifting rules propounded by courts and congress.

As discussed in the Introduction, the Choctaw arguments in *Dollar General* remained within the framework of “overriding U.S. sovereignty” and “diminished tribal sovereignty.” An *amicus* brief submitted by academic historians and legal scholars in support of the Choctaw in *Dollar General*, rather than challenging, also *affirmed* the sovereign exception: “The tribes’ later incorporation into the territory of the United States... restricted their exercise of separate power to the extent that it ‘conflict[ed] with the interests of the [the United States’] overriding sovereignty” (Ablavsky, et al. 2015: 9). Ironically, only the State of Mississippi, in a joint state *amicus* brief supporting the Choctaw, came close to attacking the state of exception, saying it “cast[s] doubt on the inherent rights of all interdependent sovereigns” (2). But Mississippi did not develop the point.

I venture to suggest that the Choctaw and their *amicus* allies failed to challenge the fundamental doctrines of federal Indian law out of fear of provoking the wrath of a Christian polity. The thinking likely goes, “Don’t rock the boat with a fundamental challenge. Take the safe course and pray for the court to let us alone and leave us to our political program in Congress.” But, as Muskogee-Creek Elder Phillip Deere explained, “Many times our Indian People...say that we’re

going to beat [the government] at his own game. But we’re forgetting that we’re in his ballfield and he’s changing the rules right in the middle of the ballgame” (Phillip Deere 2013 [1979]: 25:49). Deere suggested Native Peoples survive only if they proceed on “a spiritual basis.”

### Conclusion

U.S. Federal Indian law consists of a state of exception founded on monarchical despotism – royal prerogative, a right of domination, the “extravagant pretence” of Christian Discovery and its constituents, “peculiarity” and “plenary power.” As John Marshall put it, “The power now possessed by the government of the United States to grant lands [occupied by Indians], resided, while we were colonies, in the crown, or its grantees. The validity of the titles given by either has never been questioned in our Courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with, and control it. ... All our institutions recognise the absolute title of the crown, subject only to the Indian right of occupancy, and recognise the absolute title of the crown to extinguish that right” (*Johnson* 587-588). The supreme court summarized the doctrine in modern parlance in *United States v. Wheeler* (1978) as “the undisputed fact that Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government. ... The sovereignty that the Indian tribes retain...exists only at the sufferance of Congress and is subject to complete defeasance” (319, 323).

Sovereign anxiety acknowledges the possibility of an Indigenous deconstruction of federal Indian law and rejection of the underlying religious-based state of exception. Such an act would question “the validity of the titles [that] has never been questioned.” It would assert rights “which... conflict with” the U.S. claim to power over Indigenous lands. I describe this as an act of Indigenous *lèse majesté* – “insulted sovereignty” – the medieval term for treason against the king and heresy against the church. An Indigenous rejec-

tion of federal Indian law would demonstrate the same “ever active urge to self-government” that opposed theocratic governments in the Middle Ages (Ullmann 1965: 161). Indigenous refusal of federal Indian law would manifest the urge of all peoples to be free of domination, to exercise self-determination in their own territories.

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# Everyday Acts of Resurgence: Indigenous Approaches to Everydayness in Fatherhood

by JEFF CORNTASSEL and MICK SCOW (University of Victoria)

## Abstract

Indigenous activism and resurgence are often analyzed at the state or macro-level because of the high visibility and large-scale nature of these actions. However, as Kwakwaka'wakw scholar Sarah Hunt and Cindy Holmes observe in their 2015 article, "...the daily actions undertaken by individual Indigenous people, families, and communities often go unacknowledged but are no less vital to decolonial processes." These are challenges that we take up in examining the "everyday" – those often unseen, unacknowledged actions that renew our peoplehood and generate community resurgence. This holds important implications for decolonizing our notions of time and place and increasingly Indigenous scholars, such as Maori scholar Brendan Hokowhitu (2009), find that Indigenous discussions of the everyday tend to be framed either in terms of "Indigenous political struggles, especially in regard to jurisprudence, or in terms of 'victimhood' conceived of as the genealogical descendent of the trauma of colonization". How then can we re-imagine and re-assert Indigenous everyday actions that emphasize the intimate, lived experiences of Indigenous peoples? This article examines how the everyday can be an important emancipatory site for Indigenous resurgence against colonial power. Focusing on fatherhood and the everyday shifts our analysis away from the state-centered, colonial manifestations of power to the relational, experiential, and dynamic nature of Indigenous resurgence, which offers important implications for re-thinking gendered relationships, family health and well-being, and governance. These daily acts of resurgence, at the community, family and personal levels, can be critical sites of resistance, education, and transformative change.

**Keywords:** indigenous, resurgence, everyday, decolonization, fatherhood, gender, renewal, micropolitics, intimate spaces

## Introduction

Camas or kwetlal, which is a starchy bulb that has been a staple food and trade item for Indigenous peoples in the northwest region for generations, has a distinct blue flower that blooms in early spring and summer. Despite its prominence as a staple food, camas is invisible to most when it's not flowering. Even when not in bloom, there is so much going on underground with the camas bulb throughout the year that is unseen and yet is critical to its growth as a key food source for Indigenous nations (Corntassel & Bryce 2012).

And while we tend to focus on larger scale events when considering the life span of camas, such as flooding, and storms, which are analogous to the destructive impacts of colonization on land, cultures and communities, less attention is given to the very sources of resilience and strength that camas exhibits in its everyday existence by taking in sunshine and rainfall so that it can thrive in the future. Ultimately the foundations for change, renewal, and resilience can be found in everyday, resurgent actions that allow plant nations,



such as camas, as well as Indigenous nations, to be sustainable for generations. In this same way, focus on high profile events, such as Oka in 1990 and the winter of Idle No More demonstrations in 2012-13, while highly significant as expressions of Indigenous nationhood and self-determination, often obscure the seemingly mundane, everyday actions that families, communities, and others engage in that comprise the core or backbone of Indigenous leadership and nationhood.

This article examines everyday actions in the context of Indigenous fatherhood in order to better understand how larger dynamics of nationhood and resurgence emerge and converge. In other words, the processes that Indigenous peoples assert for self-determination are just as important as the results of that struggle. We contend that how we act in intimate spaces, such as the home, greatly informs and instructs how we approach our relationships with the land, water, and natural world. After all, Indigenous relations to the earth are often viewed through a familial lens: grandmother, grandfather, aunt, uncle, mother, father etc. As Cree scholar Michelle Daigle (2017: 9) points out, "When Anishinaabe people go deer hunting, they are engaging in the renewal of local foodways just as they are simultaneously navigating and resisting settler colonial jurisdictions." Furthermore, a disruption of our homeland relationships significantly impacts every aspect of our everyday kinship, including our home lives. For these reasons, our intimate, everyday moments are just as significant as what we do in public and yet these actions are poorly understood or rarely examined. According to Corntassel (2012: 89), "How one engages in daily processes of truth-telling and resistance to colonial encroachments is just as important as the overall outcome of these struggles to reclaim, restore, and regenerate homeland relationships." Our everyday actions, especially within a familial context, embody processes of leadership, governance and community that help perpetuate our relationships at the interpersonal level as well as with the natural world. Leadership by example has resonance with several Indigenous nations,

which ultimately requires that a person lives out the principles that they espouse in order to mobilize people for change.

When thinking about this article, we were motivated by the question of how will future generations recognize us as Indigenous? Will it be based on the languages we speak? The way we conduct ourselves? How we relate to the land and water? How we engage in ceremony? How we recount our family and community histories? Our everyday interactions with our sons, daughters, nieces, nephews, and other relations? Can fathers mother? Writing as Cherokee and Kwakwaka'wakw men, sons, fathers, uncles, cousins, and land/water-based peoples, we are interested in the way that the struggle for everyday forms of resurgence plays out in familial contexts, such as homes, homelands, and waterways. It is in these everyday actions where the scope of the struggle for resurgence and personal decolonization is reclaimed and re-envisioned by Indigenous peoples. Everyday aspects of life may appear routine but actually represent important sites of regeneration in terms of renewing relationships with community, family, and homelands.

If ongoing colonization can be viewed as the calculated deprivation of Indigenous experiences, examining everyday experiences and their transformative potential offer important alternatives to the state-centric reconciliation and rights-based discourses. Community and family resurgence is about renewing, remembering, and regenerating Indigenous nationhood and relationships. Practicing everyday acts of resurgence and personal decolonization entails having the awareness, courage, and imagination to envision life beyond the colonial state (Corntassel 2012: 89). Indigenous resurgence, which is an emerging field of inquiry, represents "...a radical practice in Indigenous theorizing, writing, organizing and thinking, one that I believe is entirely consistent with and inherently from Indigenous thought" (Simpson 2017: 48). Overall, this article re-frames perceptions of power and resurgence as relational, everyday processes to better under-

stand how to combat the barriers to resurgence within familial contexts as well as how home life impacts our relationships with the natural world and vice versa. In the section that follows, we examine the ways that everydayness has been treated in previous scholarly work and how that research can be used to inform future transformative work on fatherhood and parenting. In the final section, we reflect on our own practices of fatherhood and how these everyday experiences have deepened our understanding of resurgence.

### **Indigenous Everydayness: Daily Acts of Resurgence and Fatherhood**

While literature on Indigenous resurgence has been growing steadily since the early 2000's (Simpson 2017; Coulthard 2014; Goodyear-Ka'ōpua 2013; Corntassel 2012; Simpson 2011; Alfred 2005), research examining everydayness is relatively scarce, especially within an Indigenous context. We begin by reviewing research on the everyday in order to yield some insights into everyday resurgence and how the convergence of everydayness and resurgence can provide deeper insights into Indigenous relationships and radiating responsibilities. Then we review the literature on Indigenous fatherhood with the intention of drawing linkages between everydayness, resurgence, and fatherhood.

In terms of our methodological approaches, we draw on a storytelling and decolonizing methodologies as a way of centering Indigenous knowledge and experiences in our discussion. Community and family stories and experiences help us to honor the complexity of Indigenous worldviews and relationships. As Lyackson First Nation scholar Qwul'sih'yah'maht (Thomas 2015, 183) points out, "...storytelling forces us to keep the teachings and protocols of our Ancestors, culture and tradition alive throughout the entire research process." By decolonizing the research process, we begin to center Indigenous "concerns and worldviews" (Smith 2012, 41) in order to reclaim our voices and relationships in everyday, community settings.

### **Everydayness and Resurgence**

In one of the earliest comprehensive examinations of everydayness, Political Science scholar James Scott (1985, 33) observes that "...everyday resistance is informal, often covert, and concerned largely with immediate, de facto gains." In short, everyday forms of resistance don't tend to make headlines given that "there is rarely any dramatic confrontation, any moment that is particularly newsworthy" (Scott 1985, 36). Instead, it's a quiet, piecemeal process that draws on the "ordinary weapons of relatively powerless groups" including "foot dragging, dissimulation, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so forth" (Scott 1985, 29). These quiet, intentional processes of resistance can form the basis for larger movements and an "ungoverned periphery" that becomes "intractable to state appropriation" (Scott 2009, 6).

As Taiaiake Alfred and Jeff Corntassel (2005, 601) point out, "...it is ultimately our lived collective and individual experiences as Indigenous peoples that yield the clearest and most useful insights for establishing culturally sound strategies to resist colonialism and regenerate our communities." Everyday forms of decolonization and resurgence ultimately result from "...shifts in thinking and action that emanate from commitments and reorientations at the level of the self..." or "one warrior at a time" (Alfred and Corntassel 2005, 611, 613). In short, through small-scale, transformative movements, such as directed mentorship, master-apprenticeship programs, and informal community leadership, meaningful commitments and action toward personal decolonization and resurgence can result.

Maori scholar Brendan Hokowhitu (2009, 101) asserts that the field of Indigenous Studies fails to account for the "immediacy" of everyday Indigenous life and its impacts on Indigenous bodies. Previous scholarship tends to overlook immediacy by focusing on everyday Indigenous political struggles, such as "...jurisprudence, or in terms of 'victimhood' conceived of as the genealogical descendant of the trauma of colonisation" (Hokowhitu 2009, 103-104). There is there-

fore a pressing need to account for “Indigenous existentialism” by examining the “immediacy of Indigenous culture” and everyday life (Hokowhitu 2009, 104).

Anishinaabe scholar Leanne Simpson states that Indigenous stories break through the everyday impositions of jurisprudence and colonial narratives: “Storytelling is an important process for visioning, imagining, critiquing the social space around us, and ultimately challenging the colonial norms fraught in our daily lives” (Simpson 2011, 34). This restorying of Indigenous landscapes occurs in everyday settings to challenge the erasures of ongoing colonization. Furthermore, small-scale, everyday actions at the family level are the sources of resilience and family resurgence. As Simpson (2011, 16) points out, “When resistance is defined solely as large-scale political mobilization, we miss much of what has kept our languages, cultures and systems of governance alive. We have those things today because our Ancestors often acted within the family unit to physically survive, to pass on what they could to their children, to occupy and use our lands as we always had.” Finally, Simpson (2011, 69), by stating that “resurgence cannot occur in isolation”, is demonstrating that acts of resurgence emanate from a web of community relationships and daily responsibilities.

A significant part of everydayness is political awareness regarding ongoing colonization and the intentional, daily processes we undertake to renew our relationships with homelands/waterways, cultural practices and communities. Ultimately, “whether they know it or not (or even want it), every Indigenous person is in a daily struggle for resurgence. It is in these everyday actions where the scope of the struggle for decolonization is reclaimed and re-envisioned by Indigenous peoples” (Corntassel 2012, 89). In line with Simpson’s discussions on relationality and storytelling, everyday acts of resurgence challenge the colonial status quo and attempted erasures of Indigenous peoples from their homelands by disrupting “...the colonial physical, social and political boundaries designed to impede our

actions to restore our nationhood” (Corntassel 2012, 88).

Examining everyday acts of decolonization potentially reveals how Indigenous peoples engage in intimate spaces, such as families. As Kwakwaka’wakw scholar Sarah Hunt and Cindy Holmes (2015, 157-158) point out, “While large-scale actions such as rallies, protests and blockades are frequently acknowledged as sites of resistance, the daily actions undertaken by individual Indigenous people, families, and communities often go unacknowledged but are no less vital to decolonial processes.” Also, looking more closely at everyday acts of resurgence also gives us a deeper understanding of gendered relationships and how they drive resurgence movements. As Hunt and Holmes explain (2015, 158), “we connect these relational decolonial processes to queer, Two-Spirit and trans solidarity, resistance to heteronormativity and cisnormativity, locating these intersections in practices of decolonizing and queering the intimate geographies of the family and the home.” By focusing on intimacy and gendered relationships within an everyday context, our understandings of community resurgence and nationhood are deepened.

Overall, a review of the literature on everydayness and resurgence reveals four key areas that bring analyses of everyday actions to the forefront: relationality, convergences of time and place, politics of intimate settings, and gendered relationships:

1. *Relationality*: Everydayness helps us to see Indigenous relationality in action. By engaging with the everyday actions of Indigenous peoples, we gain insights into how extended kinship networks operate in ways that subvert colonial nuclear family structures. Indigenous nations and communities are strengthened and perpetuated by the everyday actions that express and nurture their relationships to lands, waters, language, sacred living histories, and the natural world. Leanne Simpson (2013) speaks of “radiating responsibilities” which drives nationhood and links our relationships to actions of resurgence and renewal. By

examining lived relational aspects of being and becoming Indigenous, we effectively subvert universal generalizations and localize struggles for family resurgence and personal decolonization.

2. *Convergences of time and place*: Everydayness encourages us to “live in a longer ‘now’ – learn your history and culture and understand that it is part of who you are now.” (Corntassel 2012, 86) This emphasis on a place-based and community-based consciousness allows us to closely examine how everyday struggles relate to the land/waterways and Indigenous concepts of history and time. For example, Cherokee speakers do not view time or distance as linear but instead have a much more flexible worldview. Basically, one can interact with events that are often relegated to the past with the perspective that these events are “immediate and ongoing” (Altman & Belt 230). Everyday acts of resurgence encourage us to remember our relationships and responsibilities to land, culture and community and to act on those remembrances. Additionally, everyday acts of resurgence can challenge attempted erasures of Indigenous peoples from landscapes by reclaiming urban and other Indigenous places (see for example Bang et al 2014).
3. *Politics of intimate settings*: Focus on everyday actions allow us to witness how we relate to each other within intimate spaces, such as families, communities, and close friendships. In a sense, it reveals the politics of peoplehood and how the resilience of our families enables us to share and reinterpret Indigenous knowledges, languages, living histories, and relationships with our relatives. These are the micro-processes of resurgence that can build to larger scale movements and community actions. The family and other intimate sites are places where we practice relational accountability, assert rebellious dignity, navigate/counter the colonial system, and move away from public performativities to embodied practices (Glass & Rose-Redwood 2014).

4. *Gender relationships*: Everydayness helps us to challenge gender binaries and heteropatriarchy by linking decolonization and resurgence to LGBTQ2S movements for social justice. As Hunt and Holmes (2015, 156) explain, “We view “decolonization” and “queering” as active, interconnected, critical, and everyday practices that take place within and across diverse spaces and times.” Additionally, by examining gender and sexuality within intimate, familial spaces, we gain insights into what decolonizing praxis might look like for motherhood, fatherhood, and other forms of parenting. Everydayness also helps us understand the ways that gendered values and decolonial practices are shared with future generations within the context of homes and families.

The four above referenced areas help illuminate both the analytical and applied capacity of everyday acts of resurgence. It should be noted that everydayness in this article entails a detailed examination of place-based consciousness and struggles for resurgence within a familial/nationhood context. Focus on the atomized individual or political/legal deficits created by ongoing colonization is not part of this analysis. Simpson’s notion of radiating responsibilities and kinship (versus atomized individualism) inform our examination of processes by which everyday actions take place and how nationhood is perpetuated.

### **Indigenous Fatherhood**

It is difficult to discuss Indigenous parenting in any meaningful way without talking about our relationships to the lands and waters. After all, it is our kinship networks, and ultimately our families that enable us to honor, nurture and renew the relationships that sustain our nations and promote our health and well-being. In this sense, shape shifting colonial entities have sought to destroy and erode Indigenous families to the point where we may resemble patriarchal nuclear entities and our abilities to share teachings, sto-

ries, living histories, languages, ceremonies etc. with future generations has been compromised. This is coupled with the criminalization of Indigenous men and women in order for the illegalities of the state to be overlooked. As Anishinaabe scholar Heidi Stark (2016, 1) points out, "The imposition of colonial law, facilitated by casting Indigenous men and women as savage peoples in need of civilization and composing Indigenous lands as lawless spaces absent legal order, made it possible for the United States and Canada to shift and expand the boundaries of both settler law and the nation itself by judicially proclaiming their own criminal behaviors as lawful."

In this respect, Indian Residential Schools played an important role in breaking apart Indigenous families as well as the cultural (as well as social, political, and spiritual) transmission of Indigenous knowledges. Designed to strip Indigenous people of their languages and cultures, residential schools were administered by the government of Canada and run by churches beginning in 1874. By the time the last residential school closed in 1996, over one-hundred-and-fifty-thousand Indigenous children had been forcibly removed from their homes. Additionally, the "Sixties Scoop" was another government policy that removed Indigenous children from their families, and attempted to sever their ties to their kin, community and identity. One can also look at the intergenerational impacts of "day schools", the "Millennial Scoop", and even contemporary public schools as continuing threats to Indigenous nationhood.

Despite the formation of the Truth and Reconciliation Commission in 2008 to address the genocidal legacy of Indian Residential Schools, and the completion of a final report in 2015 along with ninety-four recommendations or "Calls to Action",<sup>1</sup> the destructive genocidal legacies persist with regards to Indigenous families. As Sherene Razack (2015, 5) points out, "When inquests and inquiries instruct us in the patholo-

gies of Indigenous peoples, states provide themselves with alibis not only for inaction but also for crimes of overt violence." In the post-residential school era, shape shifting colonial entities, such as the Ministry of Child and Family Development, have found new ways to disrupt Indigenous families. According to Gitksan scholar Cindy Blackstock (2008, 163), "the number of First Nations children in care outside their own homes today is three times the number of children in residential schools at the height of their operation."

Amidst the backdrop of ongoing colonization, Indigenous fatherhood is part of a complicated conversation regarding contemporary realities and community responsibilities. According to Stark (2016, 1), "As Indigenous men's political authority had already been recognized in the public sphere by the United States and Canada via the treaty making process, their domestication into the nation-state required forceful violent constructions of Indigenous men as savages, criminals, and lawless figures." In this section, we recount some of the literature on Indigenous fatherhood across Turtle Island while realizing that there is an extensive literature on parenting across other regions of the world, such as "othermothering" among Embu peoples in Kenya (Wane 2000), Sami in Norway (Javo, Ronning & Heyerdahl 2004), and Indigenous peoples in Australia (Kruske 2012; Ryan 2011; Atkinson & Swain 1999). Overall, the existing literature provides important insights into mothering and fathering but tends to be incomplete. Much of the focus tends to be on Indigenous men in public/macro spaces and yet little has been taken up regarding fatherhood in intimate spaces. Indigenous women, on the other hand, tend to be discussed within intimate spaces but are often neglected in the public sphere. Clearly more work is needed to connect these areas and to challenge the myth of the nuclear family that can enrich our understanding of everyday acts of resurgence.

While scholarship relating to Indigenous parenting has been scant, there are at least two major projects to have investigated fatherhood roles within Indigenous communities: the American

<sup>1</sup> Available at: <http://www.trc.ca/websites/trcinstitution/index.php?p=890>



Indian Fatherhood Project in the United States and Jessica Ball's Fatherhood Project focused on Canada. The American Indian Fatherhood Project (AIFP), based out of the University of Oklahoma in the late 1990s, interviewed 375 people, 80% of whom identified as men, on fatherhood and masculinities. In summarizing the AIFP findings, anthropologist Margaret Bender (2005, 2) states, "accepting the existence of multiple masculinities is an important step toward responsible scholarship in this area. Masculinity is not a permanent characteristic of biological males, but rather is always changing, produced through the meaningful, transformative actions of situated individuals".

Lisa Lefler's 2005 research entitled "My Boys Act Like Midwives" further examines the AIFP study, but only focuses on questions relating to how fathering has changed for Native Nations across generations. Both of these articles effectively demonstrate changes to fatherhood over the last few generations, which can be traced to assimilationist institutions, state policies and laws, residential schooling, technology and media, amongst other factors. Both Bender and Lefler acknowledge the transformative potential of Indigenous fatherhood for Native men, families, and communities. However, neither of their work delves into what this might look like on a daily basis, with little to no focus on the resurgence of Indigenous lifeways or relationships to the land. In fact, this absence persists through all of the literature on Indigenous parenting prior to Leanne Simpson's (2011) *Dancing on Our Turtle's Back*, which will be taken up later in this section.

The second major project to focus upon Indigenous fathering is the work of Child and Youth Care scholar Jessica Ball, whose Fatherhood Project and her subsequent writings represent a significant contribution to our understanding in this small but growing field. Smaller in scope than the AIFP, Ball's Fatherhood Project interviewed eighty Indigenous fathers, with a focus mainly on communities across British Columbia, Canada. Ball (2009, 38-39) aptly notes that while "it is probably not helpful to understand

Indigenous fathers within what some have called a 'deficiency paradigm', at the same time, Indigenous fathers' accounts suggest that their challenges should not be underestimated". Following Ball, we agree that the Canadian government has criminalized Indigenous men (as well as women, see Stark 2016) throughout colonial history and currently fails to provide funds to enable Indigenous men and communities to move ahead with self-identified goals for the revitalization of men's roles in family life. So, while Ball clearly seeks to extend fathering theory beyond predominant colonial perspectives, we must also consider that centering of the colonial state might be counterproductive at times and misses much of what happens in the everyday, especially in terms of family resurgence dynamics.

Similar to Ball's research, Nicole Muir and Yvonne Bohr (2014, 67) note a dearth of research of Indigenous child rearing, contending that much of the literature on fatherhood and families "has focused on the 'deficient', non-mainstream parenting which was practiced by Aboriginal parents". While child rearing has been significantly disrupted by colonialism, whether through residential schooling or foster care, Muir and Bohr (2014, 72) seek to understand why some aspects of "traditional Aboriginal parenting are still being practiced while other aspects have disappeared". This is certainly an important question to consider moving forward, especially in an area as under-researched as Indigenous fathering. Additionally, it is worth remembering that many aspects of our beliefs and practices about parenting persist and can be seen in the ways we organize our families.

After reviewing several works that examine Indigenous fatherhood, there just isn't much writing on (or by) Indigenous fathers. The literature that exists all too often fails to consider the intricacies of Indigenous and masculine subjectivities, including the ways they intersect with each other. Unfortunately, there is scant scholarship rooted within Indigenous thought, drawing upon our own understandings of what it means to be a man and a father (Innes and Anderson

2015). Moreover, much of the research has focused on the material factors that have separated Indigenous men from their families.

Another significant gap in the literature is the failure to examine fatherhood in the context of Indigenous resurgence movements. In this respect, Leanne Simpson's (2011) examination of parenting and resurgence is significant work. We've tended to envision resurgence as a large-scale process and were struck by the following statement: "the primary responsibility of parents is that of provider; so during this life phase, contributions to the wider community and nation are kept to a minimum" (Simpson 2011, 128). Simpson's work challenges us to focus on the roots of parenting and the daily actions that strengthen family and kinship relations. Decolonizing parenting techniques, as Leanne Simpson reminds (2011, 16) us, "means figuring out the citizens we want to create, the kinds of communities we want to live in, and the kinds of leaders we want to create, then tailoring our parenting and schooling to meet the needs of our nations." Overall, Indigenous feminist and resurgence scholarship makes key contributions to our understanding of parenting, queering resurgence, and combatting heteropatriarchy (Simpson 2017; Green 2017; Hunt & Holmes 2015; Goeman 2013; Anderson 2011).

After reviewing the literature on everydayness and fatherhood, it is important to reflect on our lived experiences as fathers and see how an everyday framework potentially yields important insights into fatherhood and resurgence. In the sections that follow, and drawing on a similar format as Hunt and Holmes' (2015), we examine parenting and resurgence through our own family relationships.

#### *Jeff and Daily Acts of Renewal*

When Mick and I first thought of writing this article, we had started arranging monthly visits as fathers so that our daughters and sons could play while we talked. Over time, that changed to getting together for pipe ceremonies and food. And the dynamics with our children changed as

well. When they saw the behavior we modeled, they wanted to get more involved in ceremony and began to emulate our actions. Through observation and example, another amazing thing happened – our kids began to teach themselves and others about what they experienced. Even though Mick and I are from different Indigenous nations, there were several commonalities that we built on, including our desire to embody family resurgence through our actions and words. And our children, including my daughter Leila, bonded together through our everyday actions, which caused me to think more deeply about how infrequently we often notice or regard the daily ways that we share knowledge with our little ones. Whether through other-fathering, other-mothering, or other forms of parenting, the ways that share our thoughts, emotions, and humor have tremendous impacts on youth and the ways that they think about being Indigenous and acts of resurgence. For me, resurgence is grounded in love for my daughter, family, and the relationships that nurture and promote our health and well-being.

When speaking of everydayness, we should not romanticize these actions. It is a luxury to even have the time to consider what we do everyday with our children/relatives given the urgency and violence of everyday life. Furthermore, these moments with our children may feel thankless and can be exhausting and frustrating at times. To a single parent struggling to put food on the table, everyday life might seem overwhelming. But everyday acts of resurgence persist amidst these hardships and occur despite ongoing colonial and neo-liberal impositions on our lives. They can be very simple practices that appear mundane. Ever since she was two or so, I've asked Leila three questions pretty much everyday: Osiyo Tohi'tsu (hello, how are you)?; Gado usdi gawonihisdi hewoni (what language are you speaking)?; and, Tsalagi hiyosgitsu (are you a Tsalagi warrior)?

Leila answers these questions in Cherokee and even if our conversations are short, they are significant. They help us focus on things that matter.

Embedded in the word Osiyo (the first question), which is often translated as “hello”, is the word “osi”, which means being upright, forward-facing, and existing on a single point of balance (Altman & Belt 2011). When I speak to my daughter in Cherokee, I’m really asking her if she’s aligned and balanced with the unhurried pace of nature. Just one part of one word in the Cherokee language carries so much with it. I’m also ensuring that Cherokee is spoken on a daily basis. These questions attempt to breathe life into the language, even in a small, seemingly insignificant way. They are unseen acts of renewal – oral commitments to our lands, language and communities. We start with these basic questions and continue to build on them. In doing so, we’re also giving breath to the unhurried pace of nature and ultimately challenging western notions of time and place.

How we convey Indigenous values and practices to future generations is sometimes just as important as what we’re teaching. When a child asks why something is done a certain way, how do you respond? Do you say “because it’s traditional”, “it’s how we do things” or just “because”? Those are unsatisfying answers for anyone to hear, whether as a child or adult. After all, community ‘traditions’ are constantly changing and evolving. Even our community notions of complementarity in terms of gender roles need to be rethought and considered from queer or two-spirited perspectives. Future generations demand better answers to their questions as they weigh their obligations to re-interpret Cherokee teachings alongside a renewal of their commitments to them.

Part of the everyday is fostering awareness of Indigenous notions of place. Leila and I are living outside of Cherokee homelands and on Lekwungen and W̱SÁNEĆ territories. What does that entail for us in our everyday actions? There is a need to honor our Cherokee relatives while also supporting the daily struggles of the Indigenous peoples of this area. One of the ways that Leila and I have found useful is taking direction from Cheryl Bryce and working with the Lekwun-

gen Community Tool Shed, which focuses on the removal of invasive species from Songhees First Nations homelands and to revitalize Indigenous food systems, such as kwetlal or camas (Corntassel & Bryce 2012). This is hard work that is not making headlines but it is noticeable when one sees resurgent Indigenous landscapes dotted with camas instead of Scottish broom and ivy.

Remembering is also an important part of family resurgence. Whenever Leila and I travel back to Oklahoma it’s all about jogging her memory about where people live, where our family territory is in Westville, and where her birth cord is buried. These are the daily acts of resurgence through remapping relationships both geographically and personally. It’s about promoting land-centered literacies (Goodyear-Ka’ōpua 2013, 36) so that future generations can thrive. Additionally, as Leanne Simpson (2011, 69) reminds us, “resurgence cannot occur in isolation.” It is through our familial and kinship networks, our aunties, uncles, grandmothers, grandfathers and so on. that we can enact our deepest love and resurgence Indigenous nationhood. Through our everyday acts of resurgence, we are carving out new spaces where the rebellious dignity of our children can regenerate and ultimately flourish.

#### *Mick and Daily Acts of Re-membling*

While the reconstitution of Indigenous nations can be quite daunting, these processes begin with, and are informed by, the revitalization of Indigenous families. As fathers, it is our responsibility to share what we know of ourselves, of our communities, with our children. I endeavor to share what I know with my children as often as I can, whether it is the bits of language that I have picked up, songs that have been shared with me, or any knowledges or ceremonies that I have been blessed to be a part of. Having lived outside our territories for much of my life, I have had to be deliberate in immersing myself, and now my kids, within the familial relations that I was excluded from as a child. While we have reconnected with so many aunties and uncles, grand-

mothers and grandfathers, who have brought us back into what Jessica Ball calls “circles of care”, the nature of rebuilding intimate extended kinship networks is hard work.

Unfortunately, my partner’s and my parents live in another province, and most of my aunts, uncles, and cousins live hours away up island. So while the reconstitution of such familial networks is crucial in combatting the colonial, heteropatriarchal, nuclear family and its ill effects, most of the day-to-day child rearing continues to fall to my partner and me. In seeking to resist the confines of the nuclear family, we have relied upon what Castellano (2002) calls “families of the heart”, which includes a plethora of close friends who have become “aunts” and “uncles” or other-mothers and other-fathers to our three children. These supportive networks of people who have become family to my children have eased many of the stresses related to the nuclear family model that we find ourselves in.

As parents, we are responsible for conveying Indigenous values and practices to our children. We are always trying to find new ways to address the countless questions our children ask of us. To do so, we have relied upon Hul’qumi’num language and conceptual meanings as much as possible. As our children have gotten older, we have begun to think about the ways in which we will teach them about colonization, both historical and contemporary. To instill this political awareness in an everyday sense, we have taken a storied approach that relies upon Hwulmuw stories. One set of stories that we have found to be tremendously powerful are those about hwunitum, a Hul’qumi’num term that translates as “the hungry people”, which is often used to refer to the settlers who have come to our lands. While the phrase originally referred to American prospectors who flooded our territories in search of gold in the 1850s, we now use it to identify colonial mentalities that exist in settler cultures, and have seeped into our own communities.

Rather than being a racialized term, hwunitum is powerful because it highlights colonial mentalities as they have manifested on our home-

lands. By teaching our children about hwunitum mentalities, they have come to understand the ways in which being “hungry people” can disrupt meaningful, loving relationships in our home. In doing so, we reinterpret coastal knowledges and living histories alongside our relatives. Our extended family has begun to incorporate these understandings of colonial mentalities into their interactions with our children, allowing a sharing of knowledge and wisdom that are powerful, yet familiar and culturally-relevant.

If settler colonialism is premised on the elimination of Indigenous peoples, particularly the eradication of our nationhood and systems of governance (whose power is drawn from the strength of our families), then our enduring presence represents a powerful assault on this erasure. Colonization has sought, in many ways, to remove Native fathers from our rightful place within our families. Raised by a single mother (before the arrival of my social father, who later left as well), there was an absence of father figures in my life. This has presented many difficulties in my own fathering. Being a student has allowed me to be around my kids everyday, being present in ways that my fathers never were. However, presence is so much more than just being there physically. Thankfully, our children have incorporated these teachings into how they hold us accountable as parents. They now tell me when I am acting like a “hungry person”, which inevitably causes me to reflect upon my own actions as a father. They demand an emotional and spiritual presence that was not always there in my own childhood. In this way, our children’s rebellious dignity is a driving force in ensuring our integrity as a family.

As such, my children have been the catalyst for me really thinking about the power of the everyday, especially as it relates to parenting. Upon looking into what was out there on Indigenous fathering, I found there to be a dearth of literature, especially from the perspective of an Indigenous man, an Indigenous father. There is precious little in terms of work dedicated to the resurgence of Indigenous fathering, particularly

as it relates to the reconstitution of our communities and nationhood. So, not finding what I was looking for in existing fatherhood literatures, I have dedicated myself to working on these topics and issues, setting out to build alternatives to the toxic, colonial masculinities that currently plague our families in so many ways.

For me, Indigenous fatherhood is about our relationships; how we relate to the world; how these relationships have been deformed by colonialism, and how they might be transformed in service to Indigenous resurgence. They are about how we relate to and communicate with each other, as Indigenous peoples, as men, as parents. They are about how we relate to the women in our lives; how we relate to our children; and how we relate to the lands and waters on which we dwell. Colonization has long sought an intimate realignment of Indigenous social relationships. As such, decolonization is about reclaiming, reconstituting, and (re)creating these relationships in ways that provide meaningful change in our families, communities, and nations.

### Conclusions

It is through our everyday actions that we seek to restore and perpetuate Indigenous nationhood, homelands, and cultural practices. Focusing on the everyday allows us to promote family resurgence that takes us out of the classroom to kitchens, backyards, and other land/water-based activities where our families can remember and thrive together. It has been our contention that these everyday acts, when practiced within a familial context, embody Indigenous processes of leadership, governance, and community. As Leanne Simpson (2011, 127) reminds us, as parents we are our children's first and most often profound experience with leadership. While much of the work we do as parents often goes unnoticed, reconstituting our families provides the healthy soil out of which our children, and our nations, will bloom. As with camas, this takes constant care, whether through removing invasive species or providing a healthy environment for our nations to thrive.

A Cherokee notion of leadership starts with a person having a vision or dream. That person begins to embody that vision by putting it into everyday practice. While implementing it, the person also has a responsibility to make that vision understandable to other people through her/his words and actions. After gaining this experience, the person offers some direction for people to mobilize around that vision. In short, this is leadership by example that is common to most Indigenous nations. Key to this process is making the vision relatable to other people. This is encompassed in the ways we honor and nurture our families and homelands everyday. It is about moving beyond performance and/or symbolic gestures to meaningful everyday practices of decolonization. These everyday actions give life to our visions for family resurgence.

Our understanding of the previous work on everydayness helps illuminate both the analytical and applied capacity of everyday acts of resurgence. This takes us away from performativity to more direct embodiments of relationality, gender, home, and convergences of time and place. The intimate spaces and relationships that we embody everyday are often overlooked but help guide our relationships with the natural world and more public relationships. We hope to provide more insight into these larger, critical interrelationships. Understanding the everyday may also provide deeper insights into how daily actions can lead to larger-scale Indigenous movements and vice-versa. Everyday actions define the scope of Indigenous struggles for resurgence and personal decolonization, and highlight the micro-processes of what it means to reclaim and re-envision family resurgence. While everyday aspects of life may appear routine, they represent important sites of regeneration in terms of renewing relationships with community, family, and homelands/waterways.

When our families come together, whether to feast, to sing and play, or to enter into ceremony, we see the seeds of resurgence. Our children's laughter fills the air with the sweetest of sounds, uniting us in our love for each other and



the diverse communities we carry with us. It is in these moments that our ancestors would recognize us. These convergences of resurgences have pushed us to continue to do what we do in spite of colonial attempts to reframe and erase us. In an everyday kind of sense, this is Indigenous resurgence in action. It is our responsibility to work towards these moments and make them last, so that we can live in a longer, Indigenous present.

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# Hobbes' Border Guards or Evo's Originary Citizens? Indigenous People and the Sovereign State in Bolivia

by ANDREW CANESSA (University of Essex)

## Abstract

Thomas Hobbes was the first major thinker to locate an imagined pre-political State of Nature in the Americas. Even his critics such as Locke and Rousseau followed him in seeing native Americans as living in a world which they imagined existed in pre-historic Europe and, most importantly, beyond meaningful dialogue. These and other thinkers used America as a tool through which to think the status of the individual political subject and his relationship with the state. This article argues that indigenous people were much more than rhetorical tools but, rather, were necessary elements for imagining the modern nation state; they were in Shaw's words, Hobbes' 'border guards' (2008: 38). Indigeneity, however, does more than act symbolically as a 'border guard' facing the 'other' across the parapet of the boundaries of the sovereign state; indigenous *people* were and are actively challenging those boundaries, shaping its contours, and occasionally breaching the wall altogether.

In this article, I look at Bolivia as an example of how indigenous peoples have through history contributed to, challenged, and moulded the various states – from colonial to contemporary indigenous --- over the past half millennium. I also explore the contemporary indigenous state and the ways in which the indigenous subject is imagined as the canonical citizen but ask if this move forecloses the possibilities of a radical critique of the sovereign state.

**Keywords:** Hobbes, Evo Morales, indigenous people, state

## *Waiting for the Barbarians*

Why this sudden bewilderment, this confusion?  
(How serious people's faces have become)  
Why are the streets and squares emptying so rapidly,  
everyone going home lost in thought?

Because night has fallen and the barbarians haven't  
come.

And some of our men just in from the borders say  
there are no barbarians any longer.  
Now what's going to happen to us without barbarians?  
These people were a kind of solution.

C. P. Cavafy

## Introduction<sup>1</sup>

When considering the position of indigenous peoples in the Americas, the most readily available lens through which to see 500 years of history is one which offers the image of myriad

peoples conquered by Europeans and then enduring centuries of struggle to maintain their identities and their very existence. By the end of the 19<sup>th</sup> century, the Mapuche had succumbed in Chile, the War of the Desert sounded the death knell of indigenous independence in Patagonia, and the nomadic peoples of the North American Plains were finally defeated. In countries such as Mexico and Peru the much larger farming populations were absorbed in the colonial and then

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<sup>1</sup> I would like to thank Peter Dorward, Laura Pountney, Amaru Villanueva and the two anonymous reviewers of *New Diversities* for their many helpful comments on earlier versions of this article. The responsibility for any errors remains, of course, mine.

republican states as subordinated ethnically differentiated peasantries. Some indigenous groups maintained their autonomies longer than others by fleeing ever further upriver or by occupying sparsely populated areas that Europeans didn't want but by the 21<sup>st</sup> century there are very few indigenous peoples who live an autonomous life-style beyond the nation state.

One way of understanding indigenous peoples then is as survivors of history and of enduring because they have managed to subsist, to eke out an existence, on the margins of the state. On this reading indigenous peoples have little, if any role, in the development of the state and can only be understood as existing outside modernity if not actually antithetical to it. Modern political theorists who are concerned with indigenous people often explicitly define indigeneity as a condition outside that of the modern sovereign state (e.g. Skinner 1996; Tully 1993; 1995) and the progressive political project is inclusion within the sovereign state. They thus share a position with Locke and Hobbes in seeing indigenous people as *fundamentally* outside the development of a political form that arose out of the double collapse of ecclesiastical and feudal authority in the early modern period in Europe.

I heed James Scott's (2009) caution against being blind to the complex relationship between the state and those that it somehow hasn't quite managed to control. In many cases, he argues, ethnicity is a product of a conscious effort by people to escape state control. Egalitarian political structures that are often features of people considered to be indigenous or tribal are not simply cultural forms *sui generis* but active strategies in avoiding the state. Scott quotes Ernest Gellner's work who argues that the political autonomy and tribalism of the Berber population of Morocco "is not a tribalism 'prior to government' but a political and partial rejection of a particular government" (Gellner in Scott 2009:29). In Scott's own words: "ethnicity and tribe began, by definition, where sovereignty and taxes ended" (2009:30) and this is not far from Pierre Clastre's formulation which sees

indigenous peoples as societies 'against the state' (1977). One is also reminded of Fredrik Barth's seminal (1969) work on ethnicity where he notes that the substantive difference between Pathans and Baluch in Pakistan and Afghanistan is not language (since many people speak both) or cultural traditions but essentially political: Pathans are independent and to become politically subordinate is, inevitably, to change one's ethnic affiliation.

The work of Scott and others is instructive because it shifts attention away from indigenous groups as 'survivals' to a more dynamic model of relations with a state. Indigenous people are not, however, only constituted by the rejection of the state but the state itself is constituted by the rejection of and by the indigenous or indeed by the rhetorical devices it adopts for the absorption of indigeneities. Following James Scott (2009), states need to imagine marginal indigenous people as a dramatic counterpoint to legitimate state rule. Anna Tsing (1993:26) states this rather more strongly when she writes that the "Merana construct the state locally by fleeing it." This is true of the Merana and Indonesia today; it was also true in the sixteenth century when Europeans were developing their own modern states: indigenous peoples were *necessary* to how Europeans imagined the nation state and, especially in the Americas, played a major role in its development right up to the present day, which is why Karena Shaw describes indigenous people as Hobbes' "border guards" (2008: 38) and argues that:

'savages' and the other 'others' without sovereignty are produced as 'different,' as marking the outside, the margins, of 'our' new political imaginary. It tells those of us 'inside' how to think about the world (and those 'outside'); it provides for us the limits that enables us to evade the problem of 'infinity' or 'difference'. Most remarkably it does so openly, explicitly, self-consciously. *Op. cit.*

Much has been written about the role of the Americas in the works of European philosophers such as Hobbes, Rousseau and Locke as they



posited a 'State of Nature' against which modern, civilized, society could be measured (Kurasawa 2002; Seth 2010) and the particular position of indigenous people within these philosophies (Skinner 1996; Tully 1993). However, in developing their ideas of modern citizens, that is, how individuals relate to the state, it is also clear that they are developing ideas of the nature of the state. Indigenous peoples' role in modern state formation is beyond simply functioning as a rhetorical tool but, rather, a dynamic, if usually invisible, force that moulds the contours of the state over time. Indigeneity, in other words, informs the nature of the State.

It does, however, do more than act symbolically – even though this symbolic act is powerful – as a 'border guard' facing the 'other' across the parapet of the boundaries of the sovereign state; indigenous *people* are actively challenging those boundaries, shaping its contours, and occasionally breaching the wall altogether. To continue with Shaw's metaphor, these border guards are not always facing the way they are supposed to.

In this article, I will focus on the case of Bolivia, which is one of these settler states which has long had to 'deal' with Indians on its margins and in its midst. Beyond this, it provides a useful hermeneutic tool for discussing indigeneity and the state, since it has recently become an 'indigenous State' (Postero 2017) and thus appear to confound a Hobbesian sovereign state constructed in contrast to indigeneity. I examine the role of Indians in the colonial state, the republican state and the post-revolutionary twentieth century state where Indians were legislated out of existence, and I argue that indigenous people were constantly probing, challenging the boundaries of the state – from its margins but also its very centre. Finally, I look at the contemporary indigenous state of Bolivia and consider the conflicting and even contradictory roles the indigenous people have, not only in how the state is imagined, but also how it is governed. I hope to demonstrate that in all periods, and in all state formations, indigenous people – symbolically and materially – played a foundational role. First,

I will look at the role of Indians in the early modern period.

### Modernity and its Indians

In the beginning, all the world was *America*.

John Locke, *Two Treatises of Government* II: 49

The idea that European modernity developed *sui generis* has by now been widely challenged. Enrique Dussel (1995:66-7), was perhaps the first to point out that Europe developed with explicit reference to the non-European, and specifically the Americas, which was a 'New' World that acted as a foil to European endeavours; it thus played a profoundly important role in the development of Western modernity. He was accompanied by postcolonial scholars such as Aníbal Quijano (1990) and Walter Dignolo (2000) who argue that it is insufficient to see the Americas as on the periphery of modernity but, rather, at the very centre of how modernity developed and was imagined. In this way, they seek to displace Europe as the centre of modernity.

It is not, however, that European modernity is unimaginable without the Americas but, specifically, unimaginable without Americans. Scholars such as Peter Mason (1990) have noted how the European idea of the 'wild man,' a forest dwelling, hirsute, savage creature against which civilization was contrasted and transposed to the Americas where physical characteristics such as exuberant body hair and activities, most notably cannibalism, were transposed onto bodies and cultures where they did not exist. This is why, for at least a century after landfall in the Americas, Europeans were widely depicting scenes of the American natives with hirsute bodies, large pendulous breasts, and the almost *de rigueur* description of cannibalism (see Hulme 1986). Mason's key point is that Europeans arrived in the New World with a very clear view of the 'other' which they almost effortlessly transposed onto the denizens of the New World. In Vanita Seth's words, the European imagination was "mapped onto the social geography of the New World, enveloping the Indian into a repertoire of images that long preceded their discovery" (2010: 53). Shaw notes that

“savage people are explicitly present in Hobbes’ text as the ‘savages of America,’ but they are implicitly present as his neighbours, those ‘mad’ enough to kill their fellow citizens” (2008:34). Various scholars, such as Walker, have noted that, “Hobbes’ famous narrative depends on and produces an outside” but what is less widely acknowledged is that “it is an outside internal to a specific account of insides and outsides; just as what we call ‘nature’ has been produced within a specific account of culture and nature” (Walker 2010: 144-5). Hobbes’ savages were intrinsic to the very discourse which sought to exclude them from the discourse of sovereignty and politics.

It is not surprising then, as Pagden (1982:98) records, that in the sixteenth century, Indians were not only those natives of the East and West Indies, but also domestic Europeans ‘savages’ which at times might include marginalised peasants, Sicilians, or even Asturians in Iberia itself. Rousseau drew on these medieval motifs in his development of the Noble Savage (Seth 2010: 103) and Geoffrey Symcox suggests that “the wild man merely changed his name to the Noble Savage” (Symcox 1972 in Seth 2010:103).

Thomas Hobbes in particular, drew on the idea of a pre-social being and located him in the Americas. He imagined a modern, civilised nation, which for him was a monarchy to which free men relinquished their sovereignty for an enlightened and civilised existence. To do this he had equally to imagine a condition where humans existed without civilisation and king:

In such condition, there is no place for Industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters, no Society; and which is worst of all, continuall feare, and danger of violent death; and the life of man, solitary, poore, nasty, brutish, and short (100).

Here, Hobbes is imagining a ‘State of Nature,’ but he does not only posit its existence in some remote European past, but in the present and that present is, above all, America:

It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America...live at this day in that brutish manner. *Op Cit.*

America thus moves Hobbes’ theoretical framework from one based on supposition to one with empirical foundation.<sup>2</sup> America was the proof that there was no morality, no ethics, no peace, without a social contract, without a State based on rationality and European civilization.

Hobbes was concerned with laying the foundations of a modern state based on rights and rationality. As Carole Pateman (1988) has pointed out, these sovereign rights of man really are the rights of *men* as they are predicated on the dominance of men over women; it is equally the case that they are predicated on the rights of Europeans over racialised others (O’Connell Davidson 2001). Kurasawa (2002), in turn, notes that for Hobbes, Locke and Rousseau America provided evidence of a primitive condition against which a European developmental framework could be measured and, by extension, offering a clear justification for European conquest of America. The notion of the ‘primitive’ – the American Indian -- lies at the very heart of the development of modernity and the sovereign state.

Hobbes is quite clear that Europeans had the right to colonise the world and bring people into a civilised existence but he did not advocate genocide since he was a firm believer in the *natural* rights of man:

The multitude of poor, and yet strong people, still increasing, they are to be transplanted into Countries not sufficiently inhabited: where nev-

<sup>2</sup> Barry Hindess (2007) underlines the importance of America offering for Locke empirical evidence for the state of nature.

ertheless, they are not to exterminate those they find there; but constrain them to inhabit closer together, and not to range a great deal of ground, to snatch what they find; but to court each little Plot with art and labour, to give them their sustenance in due season. (255).

Here, Hobbes presents the *only* way the inhabitants of new worlds can possibly exist is as small scale farmers but what, exactly, is the problem of allowing indigenous people to inhabit the forests as free beings? Hobbes is quite clear: in such a state of nature people are in a constant war with each other. It is evident that Hobbes uses native Americans as a rhetorical tool (Bagby 2007:30; Seth 2010:74) but it is more than simply that: Hobbes needs Americans to be savages in order to make any sense of his political project. In Shaw's analysis, Hobbes' misrepresentation of indigenous Americans is a "necessary consequence of his production of the conditions under which we can think about or imagine politics" (2008:34). Here Shaw echoes James Tully's work on Locke when he argues the latter *intentionally* misrepresented Indians, not only because his theoretical framework required a particularly indigenous subject but also to justify their conquest (Tully 1993: 151). The project of Enlightenment *required* Indians; had they not existed in the Americas, they would surely have to be invented. Of course, other peoples around the world would have sufficed as images of alterity but the Americas were especially useful precisely because they were so new and, apparently, untouched by history. If was Hobbes who first located this essential 'other' in the Americas and, following him, "it was to the indigenous Americans that future contractarians returned in their representations of pre-political society" (Seth (2010: 77)).<sup>3</sup>

<sup>3</sup> For political philosophers such as James Tully concerned with developing a political philosophy of the state that can accommodate the diversity of contemporary nations, this was particularly tragic (1995:116) because Hobbes' philosophy resolutely shuts down any possibility of dialogue with indigenous others: there is nothing we can learn from them and to some extent he lays at Hobbes' feet no small part of the

It is far beyond the scope of this paper to explore in depth the important differences between Locke, Hobbes, and Rousseau in how they imagined and constructed a state of nature and the role of indigenous people in such a construction – this would require not simply another paper but a substantial book – but here I simply wish to underline the point that indigenous people were not only fundamental in how Europeans imagined citizenship and the state but that their *active* existence played a constant and crucial role in the development of states.<sup>4</sup> This is true for states in Europe who depended on 'primitives' across the globe for their economic and political existence; it is even more true for those settler states with substantial indigenous populations within their borders.

I now move to Bolivia and explore the ways in which Indians and the indigenous have been central to state building projects since Europeans arrived and the ways in which they formed the nature of the state.

### **Being Indian, being Indigenous in Bolivia**

In most of the colonial period, Indians, as the very diverse groups of peoples were called by the Spanish, constituted a separate 'republic' (along with the republic of Spaniards). For much of this period the term 'Indian' denoted a fiscal status (Harris 1995:354) with attendant labour obligations such as the *corvée* in the mines, much more than an ethnic one. It is unsurprising that, in the first decades after conquest, Indians and Spaniards should be so divided, but the colonies were organised around such distinctions until the end of the colonial period. Spaniards, in turn, were differentiated between those born in the New World (*criollos*) and those in Iberia (*peninsulares*) and only the latter could occupy key positions in the administration.

responsibility of cultural misunderstandings that accompanied the conquest and incorporation of peoples outside the modern sovereign state.

<sup>4</sup> Precisely because they have this role they are in a privileged position to challenge the sovereign state (Shaw 2008).

When Europeans first arrived in the Americas it was very clear who was an Indian (a term which very quickly homogenised a vast population of highly differentiated people) and who was a European but this clarity didn't last very long at all. Conquistadores successfully argued for their children born of Indian women to be considered Spaniards and, as van Deusen (2015) shows in ample detail, there was considerable legal debate in 16<sup>th</sup> century Castille itself as to who was or wasn't an Indian. In the latter context, the key issue was whether one could be enslaved, particularly after the Ley de Burgos (1542) abolished slavery for Indians. Here, as elsewhere, the distinction was not simply an ethnic or racial one but, rather, what rights and obligations accrued to that status.

In the colonies, many Indians escaped the status of being Indian by moving to cities or simply elsewhere in Spanish America and presenting themselves as mixed race *mestizos* or converting wealth and marriage to change their status (McCaa 1984). *Mestizos*, as part of the Republic of Spaniards were not obliged to attend *corvée* labour in the mines, nor were they liable to tribute to the Crown (Stern 1993). The Crown, in fact, was financially dependent on Indian tribute to administer the colonies. Advantages could, however, go the other way: some leaders of indigenous communities, *curacas*, who collected tribute from Indians lived sophisticated urban lives and married into *criollo* society. Wealthy and phenotypically European, they were not liable to the same taxes as others because they were legally Indian.

During the Colonial Period, Indians were not simply subjects of the Crown on whom much of the colonial project was resting but relations with Indians was at the heart of how the colonial state was conceptually as well as practically configured. The very nature of these Indian subjects and the Crown's duty towards them was such a compelling issue that the Emperor Charles V suspended trade with the American Colonies until he had resolved the issue of the nature of the Indian subject which culminated in the famous

debate in Valladolid in 1550-51 between the clerical jurists Las Casas and Sepúlveda. As van Deusen points out the nature of the Indian soul, and particularly the morality of Indian slavery, was debated at a "key moment, when an awareness of a Castilian imperial 'self' began to emerge" (2015:102). The nature of the Indian was more than simply a philosophical problem, it lay at the very heart of the imperial state.

Independence from Spain brought formal citizenship to Indians but, in practice, Indians continued to be excluded from power and were still required to pay tribute. Olivia Harris argues that it was only in the mid nineteenth century that the distinction between those (Indians) who paid tribute to the state and people who "enjoyed access to their labour as intermediaries of the state" became increasingly an ethnic one (1995: 361). Thomas Abercrombie's (1992) historiography demonstrates the degree to which metropolitan elites depended on the existence of indigenous people with which to contrast their white, civilized, nation state and, as such, they were actively complicit in creating indigenous identities on which, after all, they depended for the legitimacy of their rule. With independence, political legitimacy could not come from the colonial state and white elites who had just overthrown the Spanish soon overcame their liberal ideas of a nation of equal citizens— except when it came to recognising collective land title— and spared little time in disenfranchising and dispossessing the majority Indian population.

The 'Indian Problem' was much debated in Bolivia (Larson 2005) and elsewhere, the 'problem' being how one could be modern with such a large number of peasants and hunter gatherers living in pre-modern social and cultural conditions. Abercrombie's (1992) point is that the agrarian and mining elite of this period absolutely depended on Indian labour, which, because it drew on peasant communities, could be paid a wage rate lower than which would normally be needed to reproduce labour (i.e. support families) (vis de Janvry 1981). In the nineteenth century, and well into the twentieth, Indian commu-

nities were thus not only necessary for the 'modern' economy, but they actually subsidised it.

If in the colonial period Indians were subjects to the Crown and funded the colonial state through tribute, in the nineteenth century the Republican state denied Indians full citizenship even as it was constructed on a distinction between Indians and citizens. This operated on an ideological level (providing the legitimacy to rule) as well on a practical political and economic level: the army, agriculture, and industry all depended on there being a distinction between Indians and non-Indians; the state was constructed around this difference.

Although with Independence and the foundation of a liberal republic Indians were formally citizens of the nation-state the political and judicial reality remained very far indeed from actually granting Indians full citizenship rights. As Erick Langer (2009: 539) points out, during the nineteenth century the state used categories such as *indígena*, *indígena contribuyente* o *indígena originario* (indigenous, contributory indigenous, originary indigenous) – all of them essentially fiscal categories – to designate Indians, they were never referred to as citizens (a term reserved for creoles and *mestizos* (2009: 538). Rosanna Baragán explains that the first Bolivian constitution makes a distinction between 'Bolivians' and 'citizens': "The requirement [of being a citizen] to read and write, to own property or have a minimal annual income, and of not being a servant, consequently divided the nation between Bolivians and citizens, and excluded the great majority of the population [from the latter category]" (1999:23).

Nevertheless, in many cases Indians maintained a relation with the state, insisting on paying tribute in order to continue the colonial contract (Platt 1982). When the state attempted to abrogate Indians' rights the latter appealed to maintain the colonial contract, not because they were conservative or because they were incapable of participating in a liberal state, but because the colonial documents they possessed were the only ones they could use in their defence (Baud

2009:25). Even if the state denied Indians a role in the nation, that is, refused them citizenship rights, for their part the Indians continued to fight for a relationship with the state even as the state continued to dispossess and marginalise Indians throughout the nineteenth century (Langer 2009).

Taking an historical perspective, Baud (2009) demonstrates that there is a long history of indigenous engagement with the state that makes it difficult to sustain the argument that indigenous politics is somehow radically different and antagonistic to modern statecraft. He offers a persuasive argument that the history of indigenous struggles has certainly challenged the state but has also contributed to its formation. Indigenous people have more often argued for inclusion than separation: "indigenous movements...tried to compel the state to enforce its own constitutional pledge of citizenship and to comply with its own legislation" (p.34).

Towards the end of the nineteenth century, there were concerted efforts to dispossess the 'free' Indian communities of their lands, including the fertile areas around Lake Titicaca (Larson 2004:216-19). This was not simply an avaricious land grab but an equally avaricious attempt to acquire Indian labour. Indians, as had often been the case, resisted—such as in the uprising led by Zárate Willka in 1899 (Condarco Morales 1982) and this, in turn, led to elites questioning the role of Indians within the state (Bigenho 2006:267): the combined effects of dispossession, dislocation of markets due to the Pacific War (1879-84), and a new racism which saw Indians as biologically inferior (Demelas 1980; 1982) led to highland Indians being pauperised and increasingly marginalised from a state in which they had hitherto played an active if subordinated role (Langer 2009; Platt 1993).

It is obviously difficult to know exactly what Indians thought of these processes, but Platt (1993) suggests that they wished for a productive and dynamic relationship with the state. The uprisings of the last decades of the nineteenth century and the beginning of the twentieth have



generally been interpreted as struggles for land which rejected any role of the state in Indians' lives. Even if the appropriation of land was a clear motive for these uprisings they obscure the wish on the part of indigenous people to participate fully in the life of the nation. In the words of Marta Irurozqui, "The indigenous population did not limit itself to expressing its antagonism to the society which enveloped it, rather, through combining insurgency with other modes of public intervention such as petitions for Spanish language schooling, the right to address tribunals or participation in elections, they expressed a wish for an active, and not tutelary, role in the construction of the Bolivian nation state" (2000:367).

The Bolivian creoles imagined themselves as forming part of a modern, white, and developed nation but they were confronted, rather inconveniently, with the unpalatable fact that they formed but a small minority in the Bolivian nation-state.

The result was a rather ill defined national identity in which the construction of a homogeneous white nation became an ideal that was ever more difficult to realise given that the *mestizo* solution was equally unviable as this implied a cultural homogenisation which would necessarily include *cholos*, who would not only endanger the social hierarchy and order which currently reigned, but the international respect to which the nation aspired (Irurozqui 2000:118).

The ruling classes, thus, neatly projected upon the Indians their own incapacities and inability to create a civilized and functioning society. All this rhetoric was accompanied by 'scientific' evidence that the Indians were congenitally stupid, had smaller brains, were predisposed to indolence and treachery and so on, marshalled to 'prove' that the Indians were quite inimical to the development of a civilized society (Demelas 1981).

By the beginning of the twentieth century most Indians were tied as serfs to large estates and attempts to introduce schooling for Indians were violently repressed. In the lowland areas, the Rubber Boom Indians were rounded up and forced to work in the most violent and brutal conditions (Taussig 1987). It was in these

decades that the image of the Indian became closely associated with atavism, poverty and ignorance (Larson 2004).

The Chaco War with Paraguay (1928-35) was a watershed moment as many *mestizo* ('mixed race') officers found they did not share a language with their Indian troops. This mutual incomprehension was widely credited with contributing to large scale bloody chaos and, ultimately, defeat. This experience of the largely *mestizo* officer class in the Chaco War fed their sense of frustration against the small oligarchy as well as sharpened their sense of a divided Bolivia and ultimately led to a revolution in 1952 which overthrew the oligarchy.

The revolutionary government of 1952 eliminated the literacy requirements for voting and in one stroke quintupled the voting population (Klein 1982: 232); the army was purged of 500 officers and its role dramatically reduced to a point where civilian militias effectively replaced it; and two thirds of Bolivia's principal industry, mining, was nationalized (*ibid.* 233). By the end of the year the peasants were armed and mobilised to destroy records and seize land. Herbert Klein likens this rural violence to the movement known as the 'Great Fear' of the French Revolution (*ibid.* 234). It was Indian peasants who forced the issue on Agrarian Reform obliging the government to recognise a *de facto* land distribution at least in the areas around Lake Titicaca and the Valley of Cochabamba. The 1953 Education Reform Act followed by the end of the decade ensured there were schools in almost every village.

Once again, a new state is compelled to re-imagine Indians, but in this case they are imagined in their absence. Elites, now largely *mestizos*, also saw Indians as atavistic and overnight abolished the category of 'Indian' declaring that all would be undifferentiated citizens: in 1953 Indians were declared to be *campesinos*, or peasants, there would be Indians no longer in Bolivia.<sup>5</sup> Indian identity was not to be erased in its

<sup>5</sup> This, however, was widely used as a euphemism. *Mestizo* peasants then and now do not refer to them-

entirely, however, but set resolutely in the past: it was valued heritage but not an identity around which modern people could ever coalesce.<sup>6</sup> In practice this meant representing Indian culture as national folklore (often performed by *mestizos*<sup>7</sup>) and turning Indians into cultural *mestizos*, modern and Spanish-speaking and it was to this end the rural education was primarily directed. Indian identity was thus converted from a racial/ethnic one to a class one (*campesino*) and simultaneously intermediate racial/ethnic and cultural identity (*mestizo*) notionally shared by all Bolivians.

### The Indian is Dead! Long Live the Indian!

Between the 1952 Revolution and the 1990s, the ruling class fantasy that the Indian population was gradually but inexorably disappearing seemed to be confirmed. The small and largely ineffectual Indian political groups seemed utterly marginal to national politics. Successive censuses marked the decline in indigenous languages and this was seen as an indication of the progressive disappearance of the Indian in Bolivian life. This was also apparently confirmed by the fact that in the post-revolutionary period there were very few occasions when Indians mobilised across regional and ethnic lines and the predominate ideologies of justice and change were an array of leftist discourses. It was becoming increasingly clear, however, that leftist groups were in political retreat culminating in the collapse of Soviet communism. In addition, there was a growing sense of pervasive racism against people of indigenous descent that had long been ignored by class based political discourses. Until this point, Indian struggles were local and fuelled by a deep

sense of historical injustice and the struggles of the late twentieth century were very different from those even just a few decades previously, much less those of previous centuries and certainly people identified as Indians or indigenous in radically different ways. In fact, by the 1980s there were very few people in Bolivia who self-identified as either.

On one level, Indians were largely invisible in Bolivia during this period, on the other hand they were *everywhere*. Although there was no public space for Indians, 'the Indian' was at the heart of the Bolivian state since it expended so much energy in erasing it and there is no question that racism was rife during this period and euphemisms for Indians were thin and poor disguises for the disdain and contempt that was visited on people with indigenous origins. Continued political underrepresentation and poverty created the conditions for a new imagining for indigenous people.

The final decades of the century saw a growing international awareness of the plight of indigenous peoples. In preparation for the UN declared Decade of Indigenous Peoples (1995-2004) the UN appointed a Special Rapporteur on Indigenous People, Martínez Cobo (1986). The UN's recognition of indigenous issues was followed by other international bodies such as the International Labour Organization which, in 1989, passed resolution 169 recognising indigenous and tribal peoples for the first time in international law. The actions of both the UN and ILO opened up the possibilities for peoples in Africa and Asia where there was not a significant history of European settlement to identify as indigenous. This was soon followed by a series of World Bank directives that recognised the particular plight of indigenous people.<sup>8</sup>

It is in this globalised context that scholars noted an 'indigenous awakening' or 'resurgence' in Latin America (Albó 1991; Brysk 2000; Stavenhagen 2002; Van Cott 1994). It is no coincidence

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selves as *campesinos* but *agricultores* – small scale farmers.

<sup>6</sup> In this it was similar to *indigenismo* movements across Latin America, beginning with Mexico after the Revolution. *Indigenismo* was concerned much less with contemporary indigenous peoples who were encouraged to assimilate but to absolve emerging middle classes of the 'problem' of racial impurity and indigenous descent.

<sup>7</sup> See, for example, Bigenho (2005).

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<sup>8</sup> Today, the World Bank recognises that the majority of the world's indigenous people live in Asia.

that a new globalised indigeneity emerges at the very moment that the Western nation state was facing its greatest challenge, quite possibly since the Treaty of Westphalia established the modern rules of relations between states in 1648.

The rising international profile of indigenous people and especially its the development of a parallel environmental and ethical discourse contributed greatly to the two most celebrated success stories of indigenous mobilisation in Latin America: the Zapatistas who declared war against the Mexican state in 1994 and the rise of Evo Morales in Bolivia. In both cases they were explicit critiques of the state and economic globalisation

Morales, not unlike the Zapatistas, uses inclusive language and takes indigeneity to articulate a wide range of social causes as well as the defence of natural resources for the nation. In fact, especially in the first years of his presidency, he was rather fond of quoting their slogans (Albro 2005). Manifestly influenced by the Zapatistas, he declared indigenous people to be the “moral reserve of humanity” (Goodman 2007). The association of indigenous people with social ethics, morality generally, politically progressive ideologies, and environmental consciousness is not only modern but explicitly constructed as a counterpoint to the globalised world where the local is sacrificed for the global. In the context in which many people feel the state is subordinated to a globalised economy and multinationals, indigeneity offers a powerful and explicit critique.

These Mexican and Bolivian examples underline the ways in which modern indigenous movements arise out of critiques of globalisation and in themselves form critiques of the nation state.

### **Contemporary indigeneity and the international order**

Although contemporary indigenous identities usually draw on historical local struggles for justice, in practice, it is very often the case that people come to identify as indigenous through a

dynamic and dialectic engagement with international actors, reflecting their interaction with the discourses of global networks of international institutions and NGOs. This is most obviously true in areas of the globe such as Africa where indigenous discourses appear as very recent phenomena (Hodgson 2010).

The Bolivian 1990 *March for Territory and Dignity*, which many (e.g. Albó 1996) see as an important turning point in indigenous mobilisation, was a landmark for indigenous mobilisation for a number of reasons. The residents of the capital city were stunned to see thousands of lowland indigenous people descend on their city and this appeared to contradict the idea that lowland indigenous people were inexorably disappearing from history (Albó 1995). It was this moment that punctured the myth of Bolivia as a *mestizo* nation state with Indians resolutely consigned to the past.

This combination of mobilisation around local issues, NGO involvement and international media recognition proved to be a potent recipe for a critique of nation states that excluded subaltern peoples within it. Such successes were not only achieved in Bolivia but around the world where a variety of people challenged the idea of a homogeneous nation state and achieving recognition in court cases and even in constitutional reform. Aside from the Zapatista rebellion mentioned above, in Brazil some Afro-Brazilian groups developed new indigenous identities (French 2009); in Africa marginal and threatened groups such as San in Botswana (Nyamnjoh 2007), Maasai in East Africa (Hodgson 2010), and Ogoni in Nigeria (Watts 2004) positioned themselves as indigenous people with concomitant discourses in their struggle for land and other rights (see also Rupp 2011); and in Asia a number of subaltern people successfully argued for their rights as indigenous peoples (Karlson 2003) and, in some cases, even setting up their own individual autonomous regions (Shah 2010).

There are many examples of people recognised as indigenous in, say, Geneva or New York,

but not in their home countries.<sup>9</sup> This recognition and support has enabled local groups to use international connections in similar ways to put pressure on national governments, resulting in a 'boomerang effect' (cf. Keck and Sikkink 1998; see also Hodgson 2002). Once again, these processes are both products of the weakening of the autonomy of the nation-state as well as examples of how it is accelerated.

The process by which Evo Morales embraced indigeneity as a political ideology remains obscure. Whatever the reason, even if he was a relative latecomer to the politics of indigeneity, Evo Morales embraced the concept with energy and consummate skill and immediately used the language of indigeneity to challenge the nation state as it was currently constituted. Indigeneity was used to undermine the elites' legitimacy to rule by placing indigenous people as the guardians of the national patrimony and shifting the terms of the right to rule from globalised modernity to indigenous subaltern sensibility. For example, he publically staged an unofficial inauguration among the ruins of the pre-Incaic Tiwanaku civilization. Although unofficial in the sense of not being constitutional, it had much more pomp and ceremony than the official version (Salman and de Munter 2009). It was in this context that he laid out his principles of governance and made clear that he received his mandate, not just from having handsomely won an election, but by receiving the staff of office from three *amautas*, indigenous wise men, and the indigenous population in general. Morales has returned to Tiwanaku many times to renew his mandate and underline the indigenous basis of his political legitimacy and fashion an explicitly indigenous state.

Indigeneity has also been used instrumentally by Morales in lobbying internationally against the war waged against coca producers, where he presents coca as a traditionally indigenous

product. Morales has also argued for the state control of natural resources based on the argument that indigenous people hold a privileged position in being able to defend national patrimony. Finally, Morales introduced a new constitution which reflects this; it not only recognizes indigenous rights but places indigenous values at the very core of the nation-state. Indigeneity encapsulates the values of the nation especially those of 'living well' (*vivir bien*) enshrined in the constitution which is in opposition to free market neoliberal capitalism; indigeneity also operates on the international scale as a language through which it is possible for Morales to lobby against the West in general and the US in particular. It is significant that indigeneity has been transformed from being the language of resistance to the state by people on the political margins to the language of the state in expressing its legitimacy and has also become integral to the language of governance. This is evidenced in his inauguration, when he announced national indigenous New Year celebrations (Canessa 2012) and sponsored<sup>10</sup> a national indigenous wedding ceremony (Postero 2017: 64-88). Indigeneity, therefore is clearly being mobilized by Morales to create a new set of national and indeed nationalist values and through these to imagine a new kind of state but still very a sovereign state in the Lockean sense.

Perhaps it is not surprising then that there was a massive drop in the number of Bolivians who identified as indigenous between the censuses of 2002 and 2012 – from 66% to 41% (INE 2003; INE 2012) – as a growing rural and urban middle class (Pellegrini 2016; Shakow 2014) making claims on the state as citizens reject their hitherto common identity with marginalised people who continue to make claims against the state (Canessa 2014). In some measure, the Vice President, García Linera (2014), is right: the drop in

<sup>9</sup> There are also many cases where leaders articulate a strong indigenous identity but the people they represent are uncomfortable with the label. Boulosa (2017) offers an Argentinean example.

<sup>10</sup> His sponsorship did not only extend to initiating and presiding over the procedures but acting as a formal ritual sponsor the *padrino*, a role usually reserved for respected married members of the community. This sponsorship creates important fictive kinship ties.

the number of people identifying as indigenous is a mark of the 'success' of the indigenous state but it is also a mark of its failure: in imagining an indigenous sovereign state – perhaps even creating one – it foreclosed the possibility of a truly radical critique of the state. Recognising, or even creating, public indigenous culture will only go so far in addressing the concerns of Hobbes' 'border guards.' Some of these may very well have been assimilated into a citizenry but, as I have argued elsewhere, this only creates a new politics of exclusion (Canessa 2014) or as Nancy Postero puts it: "increasingly, performances of indigeneity serve as tools of state legitimisation rather than as sites of liberation" (Postero 2017: 182). The role of 'border guards' simply gets shifted to more marginal groups.

This analysis echoes Shaw's work in Canada where she argues if indigenous demands are understood in terms of 'recognition' within the sovereign state then this implies a rejection if not a violence against other forms of being political: "if some Indigenous groups sign on to and legitimate such a project [of state recognition], and there is a commitment on the part of Canadian people to it, those who do not play along will be marginalised even further" (Shaw 2008:151). Many scholars (e.g. Burman 2014; Laing 2015; Postero 2017) have noted a watershed moment in Evo Morales' politics of indigeneity when he was in open conflict with indigenous people in the TIPNIS nature reserve as they protested the building of a road through their territory in 2011. This was not the first time the inherent contradictions of Evo's politics were laid bare (Canessa 2014) but it was certainly the most public and the most consequential. It is interesting to note that in the 2012 census the only areas which showed an increase in identification as indigenous were those, such as TIPNIS, where there was conflict with the 'indigenous' state (Schavelzon 2014).

This new indigenous state is not without its detractors, perhaps unexpectedly from the eastern areas dominated by white owned large scale agribusiness and oil and gas production (Fabri-

cant 2009). It is also challenged by a variety of indigenous groups. It is beyond the scope of this paper to explore these complexities in detail (see Canessa 2014) but they can perhaps most clearly be seen as competing visions of indigeneity and the state. Morales and his government see indigeneity as a language and tool of governance which seeks to absorb large sections of the population, if not quite its entirety, under the banner of indigeneity and within a decolonised state (Albro 2005; Canessa 2014). Other groups see the state as continuing to engage with them in a colonial relation and seek autonomy from the state with indigeneity as a language of contestation and protest. Nancy Postero (2017) has followed the shift of emphasis of the 'Indigenous State' towards a greater emphasis on class politics and a growing exclusion of marginal indigenous group. Postero offers an important interrogation and evaluation of the success of Morales' indigenous state but even if one adopts the most critical position there is no doubt that indigeneity is at the heart of how the contemporary state is imagined even if it has become 'a tool of policing' (Postero 2017: 182). What is clear is that at the root of these conflicts are competing visions of how indigeneity relates to the state (Burman 2014; Laing 2015; Sánchez López 2009). Whereas some groups seek to make claims on the state in the sense of co-opting the state to their own agendas, others seek to make claims against the state and keep the state from encroaching on their autonomy. Understanding indigeneity in this way – as different modes of laying claim to the state – places indigenous people at the heart of continued state development, and not simply in places such as Bolivia (Canessa 2018).

### Conclusions

From Europeans' first encounter with America, its natives have been imagined and configured as counterfoils and rhetorical tools with which to explore the nature of the modern human. Thomas Hobbes was not the first major thinker to posit a primordial 'state of nature' from which humans developed, but he was the first major thinker



to associate this state so closely to some of his contemporaries: indigenous Americans. In this he was followed by his critics, such as Rousseau and Locke, whose vision of the original state of humanity was less bleak but they nevertheless joined him on seeing Americans as embodying these characteristics and in seeing indigenous people as irredeemably 'other.' Karena Shaw is surely right in not only noting (after Tully) that Hobbes' particular vision of the sovereign state excluded any kind of dialogue with the 'other' but in interrogating *why* this exclusionary model was adopted when others were available (2008: 145). Shaw argues that Hobbesian sovereign state in the context of European expansion *necessitates* the closing off of dialogue and the narrowing of the terrain of the political: even as the modern state is critiqued by scholars such as Tully, they are doing so without moving from the terrain of the political defined in terms of the sovereign state. Indigenous demands are distilled "to a singular relationship – the relationship between citizens and a sovereign authority, or constitutional state" (2008: 144).

In Bolivia, indigenous people have always engaged with the state in its various forms; there was never a time when they were simply passive subjects. Despite the state being largely deaf and blind to their concerns, perhaps born out of a constitutional inability, they nevertheless did more than occasionally rebel but actively challenged the very form of the state. Even at points when the state posited the total erasure of indigenous identities and subjectivities, they were still present in challenging the foundations of the sovereign state. The apotheosis of this struggle would appear to be the advent of the Indigenous State under Evo Morales. However, notwithstanding the heady optimism at his election after his commitments to decolonise the state, and create a constituent assembly, Morales has arguably failed in changing the fundamental institutions and structures of the sovereign state. This is not to detract from his successes in other areas such as the considerable success in improving the economic lot of many poor Bolivians.

The case of Bolivia— as it developed from a colony to republic, to a postrevolutionary *mestizo* nation and then, in this century, to an indigenous state – shows that indigenous peoples were always present and active in the formation of those states. As the state changed, so too did the ways in which its indigenous inhabitants were understood: different republics, fiscal categories, non-citizens, non-existent, and finally the canonical citizen – but not all. In assimilating the originary indigenous subject into the sovereign state Morales has merely reproduced the state with a different symbolic language. It appears the sovereign state, even a self-styled indigenous one, continues to require its Hobbesian border guards and forecloses the possibility of an alternative politics.

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# On the Sacred Clay of Botany Bay: Landings, National Memorialization, and Multiple Sovereignties

by ANN MCGRATH (Australian National University)

## Abstract

To mark the federation of the Australian colonies in January 1901, a re-enactment of the landing of British navigator Captain James Cook was performed at Botany Bay, New South Wales. This involved not only the arrival of Cook's 'discovery' party ashore, but also a violent conflict with the local Gweagal/Dharawal people. The Landing Play brought together costumed professional actors and a troupe of Aboriginal performers from many parts of Australia. As indelible as the Cook landing story may seem as a foundational narrative replete with British flag raising performances, Australia's national story has never been entirely unified, homogenous or settled. Spectacularly adorned in animal skins and bird feathers, the Indigenous troupe used sacred white clay to paint their faces and bodies in distinctive designs, signifying the deep history narratives of their respective Indigenous nations. Both the European and Indigenous Australian actors re-enacted histories associated with their respective ancestral heroes on lands they deemed sacred. These contested performances of sovereignty, of 'landings' and of history, were mutually witnessed and in conversation with each other. Yet, while contemporary politicians and elites were reifying Captain Cook's legacy, much of the general audience ignored expectations, invading the VIP tent and cheering not the pompous Captain Cook oratory, but the Aboriginal actors who charged and attacked Cook's party. A Maori Native Affairs Minister from New Zealand and three Maori chiefs watched the 1901 spectacle. In contrast to the Indigenous recognition enjoyed in neighboring New Zealand, the Australian government today continues to resist a constitutionally recognised Indigenous advisory body, let alone to discuss discrete parliamentary representation or a Treaty. Yet then, as now, multiple parallel sovereignties and their sacred histories continue to be enacted and re-enacted across the Australian continent..

**Keywords:** memorialization, landing, re-enactment, Indigenous sovereignty, Botany Bay, Australia, Captain Cook, sacred places, nationalism, violent conflict, Colonialism

On the first of January 1901, after a peaceful but drawn out debate and negotiation process, the six Australian colonies federated into a nation. Queen Victoria signed the papers that authorised the Constitution of the new Commonwealth of Australia. Representatives from across the continent and the world came together to witness festivities to mark the beginning of the new nation. Suitable foundation narratives had to be invented and enacted. After all, a scattered population had to be transformed into a 'senti-

mental nation' united by common feeling (Hirst 2000). By 1901, that liminal national identity was in full flight. New historical imaginings, set in particular sites in the landscape, promised to bridge conflicting local, national and imperial agendas and identities. Ancestral heroes had been selected, and their actions positioned upon symbolic grounds of entitlement.

Along the white sandy beaches and the clayey hinterlands of Botany Bay, on the seventh of January in 1901, the new nation's first histori-



cal re-enactment was about to take place. It was *The Landing of Lieutenant James Cook, R.N. at Botany Bay, 1770* (Gapps 2000:112). Despite concerted efforts to inscribe a unifying, homogeneous plotline, those attending the events participated in competing visions of the national past and future. On a continent that shared multiple, complex and contested sovereignties,<sup>1</sup> Botany Bay had long been a meeting place of contingent histories (Nugent 2005).

This article explores how diverse performers and audiences engaged in an interpretation of the 'discovery moment' in surprising ways. In the theatre of *plein air*, unpredictable things happened. The formal Landing script is examined in the light of nationalist agendas, then we will consider what actually took place on the day between various participants – including politicians, dignitaries, diverse actors and audience members. Of particular interest is how the Indigenous Australian troupe played a key role, creating a multi-layered performance of nation. Their presence alone, with muscular physiques and Australian ornamentations on display, undermined any singular rendition of a British 'great man' narrative. Beyond binary questions of whether the Aboriginal performers were captives or agents (Poignant 2004; Taylor 2003), I consider the affective nature of their performances (Edmonds 2016) and what they brought with them. Tangible and intangible, what was that repertoire? In what ways did the live performances of the Landing Play and its audiences disrupt a singular patriotic reading of Australia's national sovereignty and history?

### Landings

The outdoor re-enactment of the Captain Cook landing scene was to be the highlight of the nation's inaugural celebrations. Two sets of actors were required for the performance – a landing and a landed group. Leading the land-

ing group ashore in a small dinghy, the Cook actor cut an impressively noble figure. He wore a gold-braided uniform with a blue cutaway coat, white knee breeches, silken hose and a gold-laced three-cornered hat. Actors playing the British scientist Joseph Banks and the Swedish naturalist and Linnaean acolyte Dr Daniel Solander wore more muted costumes, though Banks' aristocratic status was indicated by finer cloth and golden ornamentation. A band of men in marine uniforms paced up and down, carrying antique muskets. According to the *Sydney Morning Herald*, the cast of sailors lolled around looking like they were out of a scene from the *Pirates of Penzance* (SMH 8 Jan: 5). An actor from a local Comedy company played Tupia, the voyage's navigator, artist and mapmaker from Raiatea, Society Islands (Thomas: 2010). His was an intermediary role: to attempt communication with and to offer European trade goods to the Aboriginal group.

The already-landed group comprised twenty-five Aboriginal men who had travelled from Queensland, the state adjoining the northern border of New South Wales and extending in the far tropical north to the Torres Straits. At first hidden from the crowd by thick bushes, the Aboriginal troupe applied clay and ochres to their torsos, arms and faces. Then, armed with fifteen-foot-long barbed spears, nullah nullahs, boomerangs and woomerahs, they suddenly appeared, charging down the hill, yelling loudly and holding their spears high, ready to throw. Spectacular in fine possum skins, the feathers and wings of parrots, cassowary, emu, galahs, black and white cockatoos, they wore neckpieces of kangaroo teeth and nautilus shells. Beneath their human hair waistbands were 'Siberian trunks' for modesty (Meston to Under Secy, Queensland, 15 Jan 1901).

The *Australasian* wryly captioned its photo: 'Queensland Aboriginals in Full War Paint: Captain Cook's Reception Committee'. As one newspaper reported, the Aboriginal men looked 'marvelously picturesque and warlike, and would be ugly customers to meet in a hand-to-hand fight'

<sup>1</sup> Aboriginal Australia comprised hundreds of distinctive landed and linguistically distinct groups that they understood as governing entities, polities or nations. For a discussion of why the term 'nation' is helpful see McGrath 2015; for useful discussions of Indigenous sovereignty, see Moreton-Robinson 2007.

(TSM 12 Jan 1901: 80). With athletic, powerful physiques, some were over 6 foot 4 inches tall. Their white clay and red ochre body paint, their agility, liveness and dramatic talents greatly impressed the audiences (Australasian 12 Jan 1901:26, The Mercury 10 Jan 1901:2). The plot-line of the 'landing' play was of mutual threat, attempted conciliation, then a violent exchange of fire and spears. After an Aboriginal man is wounded his group retreats. It is a stand-off. Unlike William Penn's much-mythologized story of the foundational settlement in North America, no treaty signing is involved.

### Constituting a Nation

In mid 2017, the National Constitutional Convention of Aboriginal representatives at Uluru in Central Australia delivered a 'Statement from the Heart'. It demanded a treaty, a representative body to advise government, and a truthful telling of Australia's national history. It explained that their sovereignty was based upon spiritual ancestral ties with lands, in a continuum of ancestral time and trans-generational connection. The Statement proclaimed: "This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown. How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?" (National Constitutional Convention: 2017). In the geographic heart of the continent, Uluru is imbued with layers of sacredness for both white and Aboriginal Australia. Since the mid twentieth century, it has come to symbolize the wider Australian nation and its red centre. Previously known as Ayers Rock, the federal government handed ownership back to the Anangu people in 1985. Indigenous Australians celebrate it as a pan-Aboriginal meeting place of potent Indigenous ancestral song-lines and *Tjukurrpa* or 'law'.<sup>2</sup> Increasingly, it is also

viewed as a place of reconciliation between black and white Australia (McGrath 1991; 2015b).

Australian politicians reacted to the Statement from the Heart as if it was a radical plan. Yet, amongst most British colonies, including the United States, New Zealand and Canada, treaties had been negotiated. Australia was different; it was not conquered, but 'settled' – later argued to be on the legal basis of *terra nullius* – unoccupied or wasteland. As reflected in the 2017 Statement, Aboriginal Australians saw their sovereignty, or authority over land, as a sacred entitlement. They did not concur with European assumptions that it had been annulled by colonization. Their proposed treaty would be a *Makaratta*, a Yolgnu (eastern Arnhem Land) word for a process of reaching agreement after a conflict.

Although Aboriginal and non-Aboriginal Australians alike proudly boast that Aborigines are the world's oldest continuing culture, historians have paid little attention to the deep human history of the continent. As if still caught up in the 1901 Landing Play, academic histories often begin in 1770 with the 'discovery' or in 1788 the 'first settlement'.

Under the federal Constitution of 1901, Aborigines were excluded from the Australian Census, so they were not counted amongst the people who would enjoy the benefits of the new Commonwealth. The states, not the federal government, retained authority over lands and over Aboriginal people. The colonies had introduced diverse legislation to ostensibly 'protect' Aboriginal people, which often meant tight surveillance, bureaucratic control and forced migration to 'Aboriginal reserves', which remained Crown Lands. Only after the nation-wide Referendum of 1967 did the Australian constitution comprehensively acknowledge Aboriginal people as citizens. In the 1970s, land rights legislation was introduced and in 1992 the High Court's Mabo judgment declared *terra nullius* a fiction, paving the way for greater Indigenous recognition and native title rights. Today, Aboriginal people still suffer discriminatory legislation and income controls. The trauma of their history runs deep, with

<sup>2</sup> For a discussion of 'song-line' and 'dreaming' conceptualizations, see Jones 2017: 21-30.

shocking ill health and incarceration rates (ABS 2016; McGrath 1995).

To the New Zealand's 1901 delegation that was amongst the audience watching the landing re-enactment, the 2017 Statement that called for a treaty and parliamentary representation would not have seemed radical at all. Representatives of the British Crown had signed the Treaty of Waitangi in 1840. Although New Zealand had decided against joining the Commonwealth of Australia, they attended the Sydney celebrations in force. Their contingent included the Premier Mr Seddon, other Parliamentarians and three influential Maori chiefs, Ratana Ngahina, Nireaha Tamaki, Tamahau Mahupuku. In the preliminaries prior to the Landing re-enactment, James Carroll, Maori leader and first Minister for Native Affairs, made a formal speech. At an associated event aboard a large boat on the harbour, the contingent did the Haka, the impressive dance of war (TSM 12 Jan 1901:80; *The Australian Star*, 7 Jan 1901:3; Paterson 2013: 23).

The Maori delegation was interested in making comparisons. Minister Carroll observed that Aboriginal people spoke English much better than they did, so were well ahead in that way. In order to assess the men's character, strength and weaponry, the Maori Chiefs approached the Aboriginal performers as closely as possible. Mahupuku stated: "I judged that they seemed to be a hardy set of men, but as to their faces I was unable to see them, as they were all covered with some kind of paint, so I was unable to judge" (cited in Paterson 2013: 23).

### Firstings

Settler-colonizer nations used stories of the 'first' landings by white men to mould homogenizing narratives of racial and gendered conformity. These eventually became the key tropes and motifs of settler-colonizer nationalism. Picture the Mayflower landing at Plymouth and William Penn's negotiation of a Treaty with Indians in Philadelphia. In Australia, it was Captain James Cook's landing at Botany Bay and Captain Philip and the First Fleet's landing at Port Jackson.

In turn, their main actors became the 'founding fathers' of nation. Re-enactments revisited and memorialized certain moments of people arriving in a certain place as appropriate 'beginning' points and sites for the new nations. The parcels of land where 'firsting' and/or pioneering events reportedly happened became associated with a special kind of historically endowed sacredness. This land gained exceptional status on the basis of past events that took place there.

As Ojibwa historian Jeani O'Brien demonstrated for the local histories of New England and the United States, if settler-pioneers are to claim 'firsting', an existing people must qualify for 'lasting' (O'Brien 2010). Commandeering the 1770 Cook Landing as the rupture or turning point that marked the commencement date of national history meant that the 'multiple and enduring' times of Indigenous Australia were contained (Schlunke 2013: 231-2; 2015). Underwritten by a New World narrative that relied upon the actions of European navigators, the Cook Landing story promised to displace the long *durée* of the continent's Aboriginal past.

Over most of the twentieth century, repeat performances, anniversary events, plaques, naming, history paintings, school texts, official histories and many other forms of interpretation and memorialization ensured that patriotic accounts of national days became ingrained in the collective psyche of white Australians (Healy 1997). After 1770, Captain Cook's journals soon became popular and remarked upon in both Europe and in Australia. By the mid nineteenth century, Cook imagery was featuring in Australian public events. John Gilfillan's 1859 painting 'Captain Cook taking Possession of NSW in Botany Bay, 1770'<sup>3</sup> was printed in the *Illustrated Sydney News* in 1865 and several leading artists drew upon this image to create transparencies for public buildings and scenic backdrops (Callaway 2000:48). With the Duke of Edinburgh's visit

<sup>3</sup> The painting was given other similar names, such as Possession of Botany Bay, Possession of the continent and so forth.

in 1868, the Lands Department featured a transparency of Britannia crowning Captain Cook with a laurel wreath (Callaway: 2000: 46). In 1879, a statue of Cook was erected in Sydney's Hyde Park (Gapps, 2000: 106). The following decade, newspapers issued special prints commemorating the moment of Cook's landing.

For many Indigenous students, these 'discovery dates' were a betrayal; history was telling them lies. To believe those school lessons was to distrust their loved ones and their epic stories of enduring connection. How else to explain the ancient Sydney rock engravings of giant stingrays, sharks, emus, star diagrams and the epic stories of heroic ancestors like Baiame, who arrived from the sky, and was widely known across the lands now known as New South Wales? Indigenous people had lived around the Botany Bay region for at least twelve thousand years; they were there when its ancient riverways cut off Kurnell, before the Bay took on the dimensions that Cook was to draw on his maps (OEH 2013).

By 1901, however, two Captains of the Royal Navy – Captain Cook and Captain Arthur Phillip, the first governor of the convict colony, shared a conflated origin story. The two became so fused in the Australian psyche that they were frequently mixed up or seen as one. Both men were mythologized and memorialized as ancestral heroes who 'gave birth to the nation' (Grimshaw et al 1994; Lake 2000; Gapps 2000:108-10). Cook's 'discovery' of Botany Bay and Phillip's 'first fleet' and 'first settlement' at Sydney Cove eighteen years later had another thing in common: landings on the south-eastern shores of the Australian continent, where the lands beyond had generated great wealth. The names of their ships also vied for hallowed status, with numerous replicas later built. In the 1901 re-enactment, an amateurishly painted 'Endeavour' sign on an old sailing boat had to suffice. Although his stay was short, the Cook landing was favoured over Phillip's, as its story less burdened with convict associations. Although a change was in the air, the convicts had not yet become fully romanticized ancestors.

### Captain Cook Creates an Archive

Both Cook and Phillip were self-consciously 'making history' and crafting an archive to support it. In Cook's meticulously kept journals, he recorded calendar dates, technical data and measurements. He measured latitude and longitude and counted and recorded time in ways not previously known in this southern hemisphere land. He calculated the directions and speeds of winds and tides, and keenly mapped the coastlines; he observed 'natural history' – the storied science of the natural world. He knew that every word inscribed would be soon published and rapidly circulated amongst British elites.

During Cook's days at Botany Bay between late April to May 1770, he also recorded summaries of his encounters and skirmishes with the 'natives' and their 'dartts', which he had initially thought were poisoned. When it came to the sightings of geographical features, Cook used metaphors from the world he knew, paying the required homage to the authorities, to his patrons and their aristocratic networks (Carter 1987). Describing unfamiliar people was more difficult. Harder still was working out how to interact with them; he had no science for this.

When it came to asserting the sovereignty of the British Crown, in contrast Cook had a well-honed repertoire to follow. For settler colonizer states, key dates would later serve to reinforce ideas of sovereignty, Australian citizenship and belonging. After leaving Botany Bay, Cook soon realized he had omitted something important. So he added in his journal: 'During our stay in this Harbour I caused the English Colours to be display'd a shore every day and an inscription to be cut out upon <sup>one</sup> of the trees near the watering place setting forth the Ships name, date & C<sup>a</sup> –' (Cook, 6 May 1770). In other words, in 1770, Cook's crew carved the tree trunks at Botany Bay with notations of the day, the month, the century and the ship that visited there from late April to early May. By flying the English flag and inscribing 'historical' details on the trees of Botany Bay, Captain Cook was asserting British sovereignty over this southern land. By transporting

his journal record back to England, he publicized each performative moment and useful observation; Cook's last entry expressed his compelling interest in the Bay's tides.

Through the sightings of the *Endeavour* crew, places were bestowed new names. In order to overlay British sovereignty, determining a fitting English name was important. Upon departing on the 6th May, Cook had decided on Stingray Harbour, inspired by the fish caught in their large seines. He also considered the bland name of 'Harbour Bay', though with the skirmishes, it was no harbour of peace. Inspired by Banks and Solander's exciting sightings and collection of many 'new' plants and animals – such as cockatoos, lorikeets, pelicans, waterbirds and a strange furred animal – Cook had proposed 'Botanist Bay'. Almost a week after the *Endeavour* sailed out, Cook finally decided upon its name. It would be 'Bottany Bay' or 'Botany Bay' (Cook; various entries, April-May 1770). Cook retrospectively amended his earlier journal entries accordingly. Perhaps the name had become a matter of group discussion and hot debate amongst himself and the botanists. Naming was a process Cook took seriously. Crucial to his navigational maps, naming was an art that would leave a lasting legacy. Cook chose something suitably melodic that lent itself to English rhyming (Nugent 2005), including, as it turned out, to many damning convict laments in the century to follow.<sup>4</sup>

As tangible proof of their travels, Cook's party also collected Aboriginal-made objects to be exported back to England. After the Gweagal/Dharawal men fled his musket fire, they grabbed spears from their encampment. As Cook put it: 'We found here a few Small hutts made of the bark of trees in one of which were four or five small children with whome we left some strings of beads &c<sup>a</sup> a quantity of darts lay about the hutts these we took away with us'. In Joseph

Banks' Journal, he concurred: they: "threw into the house to them some beads, ribbands, cloths &c. as presents and went away". He added: "We however thought it no improper measure to take away with us all the lances which we could find about the houses, amounting in number to forty or fifty" (Cook 28-9 April 1770; Banks 1 May 1770). Considering the labour involved in crafting these essential hunting implements, this constituted a significant loss to their makers.

Despite the violent clash upon landing, Cook remained keen to investigate the resources of the lands beyond the beach in safety. On their Pacific travels to different islands, Cook had encountered people connected by common linguistic threads and cultural traditions. Depositing Pacific and European trade goods in Aboriginal camps – this time 'Cloth, Looking glasses, Combs, Beeds, Nails' – they made a second effort to start a negotiation or exchange process. However, their material 'conciliations', which included random thefts, failed. The decision of Cook's party to help themselves, removing equipment without permission, does not marry well with a conciliation process. Whether in the name of science or self-defence, Banks rationalized this with the half-hearted excuse of taking 'no improper measure'. They soon found that most of the wooden and resin 'lances' collected were fishing and hunting equipment rather than weaponry. On another occasion, the *Endeavour* crew helped themselves to large numbers of fish and to a cooked meal of oysters and mussels from a hastily vacated hearth site (Banks; Cook, 29 April 1770). Particularly surprising to them was that 'neither us nor Tupia could understand one word they said.' And, as Cook had lamented on the on 30<sup>th</sup> April: 'All they seem'd to want was for us to be gone' (Cook: 29-30 April, 1 May).

### **Cook's Landing Spot Becomes Sacred**

Leading up to Federation, Cook would be a trespasser no more. With Cook and Banks' journals to hand, in 1864, Thomas Holt of the Australian Patriotic Association had organised annual excursions to Botany Bay and in 1871 he instigated the

<sup>4</sup> In December 1901 a controversy over the name broke out, with historian James Bonwick arguing that Captain Cook had not named the area Botany Bay, but rather it was his editor/annotator Hawkesworth (See *The Advertiser* 9 Dec 1901: 7).



erection of a stone monument at the landing site (Gapps 2000: 199). By 1899, Cook's landing place was to be carefully regulated. An agreed site was declared a public reserve named Captain Cook's Landing Place. At pains to justify the appropriation of private land for this national purpose, Joseph Carruthers, the New South Wales Minister for Lands, noted that local colonizers would no longer 'be *trespassers* when they visit this *sacred ground* [author's italics]' (Yarrington et.al. 1901:7).

At once, Botany Bay became a special category of land and of history. Cook himself was about to undergo an apotheosis. The New South Wales Minister for Works, E.W. Sullivan urged that the 'classic soil' on which Cook trod should be walked with the same reverence as 'the halls of Westminster Abbey' (SM 8 Jan 1901:5). His comparison was not with any ordinary Christian church. This was the venue for English coronations, the burial place of past Kings and Queens through the ages and the weddings intended to continue the royal line. Westminster Abbey was nothing less than a key site for performing English sovereignty – associated with church and state – not only with the Church of England but also with the Crown and Sovereign. Cook's landing site, too, was to do the spiritual and historical work of sovereignty.

A collusion involving state government Ministers responsible for Lands and Public Works, and intellectuals, scientists, the clergy, authors, artists and poets promoted the cult of Cook. Elite scholarly societies became actively engaged in his memorialization. The Philosophical Society, a local group promoting the study of science in Australia, with links to the local Royal and Linnaean societies (Chisholm 1976), erected a commemorative plaque at Botany Bay. Two visiting English Dukes planted a tree there to commemorate Cook's landing. Visiting Earls and overseas dignitaries were brought in to authorize and bless the national memory work of nation. By 1901, a towering cenotaph, fenced off for security and looking rather like the grave monument of a noteworthy, loomed nearby.

In 1901, the government printer published a booklet for the Botany Bay commemorations entitled: 'The Landing of Lieutenant James Cook, R.N. at Botany Bay'. It featured the Landing Play script, along with political speeches and historical notes. The booklet opened with a quote from acclaimed Australian poet Henry Kendall:

"Here, in the hour that shines and sounds afar,  
Flamed first old England's banner like a star;  
Here, in a time august with prayer and praise,  
Was born the nation of these splendid days."

Unabashedly, this poem propounded a sacred claim to sovereignty based upon the arrival of the British flag and British feet – or at least footwear – at this site. The booklet included the speech by the Lieutenant Governor of New South Wales (NSW) which declared that Captain Cook had "set foot upon the spot we now stand on", hoisted the English flag and "took possession of the land for the Crown of England" (Yarrington et.al.1901: 9). The Minister for Lands summed up the key themes: 'In Praise of Captain Cook', 'Sacred Ground' and 'Breaking the Flag' (Yarrington et.al.1901: 5-7,13-15). In poems, speeches, paintings and imaginative recreations, this repertoire was to be repeated and this site was to be claimed many, many times.

### A Nation Born of History

In the Landing play script, Cook's monologue ordains Australia as a rich and prosperous land, the equal of North America. In "voyages of old", Columbus "crossed the mighty main/To find an unknown World" (Yarrington et.al. 1901: 22). The playwright was clergyman and poet, W.H.H. Yarrington. Born at Norwich, England in 1872, he studied arts and law at University of Sydney, where he won a prize for a poem entitled: 'Cook, Meditating on Australia's Future'.<sup>5</sup> In the Land-

<sup>5</sup> Yarrington went on to write many other poems lauding white male pioneers, including 'Crossing the Mountains', 'The Antarctic Heroes', 'La Perouse Botany Bay', 'Matthew Flinders', plus sonnets and a religious poem that merged ideas of Aristotle's 'Ideal Perfection' with Christ, God and ideas of 'moral beau-

ing booklet published nearly three decades later, Yarrington's Cook continues his future forecasting:

"By Nations yet unborn this splendid hour,  
With its events historic, yea, this spot  
Which now we tread, shall e'er remembered be:-  
Cherished as sacred in the annals bright  
Of that New World which we this day have found".

Included in the Landing brochure, Australia's 'Commonwealth Hymn' was dedicated to the 'Great Father of the Universe' who had ordained "this Island Continent our own" (29). Cook's monologue also refers to Providence, a concept associated with the will of a Christian God and firmly entrenched in American memory.

That other, more established New World offered useful borrowings of grandeur and sacred entitlement. One politician described federation as "the greatest event, with the exception of the American declaration of Independence, in human history" (ATCJ 19 Jan 1901: 13). Unlike Americus, Captain Cook did not have a continent named after him, – so lamented the NSW Minister for Lands, but he would fix this by gazetting the land as a special category: "As the Plymouth Rock is the *most sacred ground* to the Americans, so may this *historic place, rich in its traditions*, be the one place in our island continent *more consecrated* than another to the *great man* who here first set foot upon our shores, and in his foresight secured for the empire, our country and our people, a territory unsurpassed in the whole universe!" (Yarrington et.al.1901:13). Sacred land, historic, the great man, first steps, territory, empire, foresight, traditions – it was to be a seamless identity narrative.

As Yarrington admitted, however, his Landing play took some liberty with the facts. On the one hand "[T]he whole representation would be as near as possible a true picture of the hoisting of the British flag on Australian soil over 100 years ago." Expressing a desire for historical accuracy,

an "old union flag" was to be flown, as in 1770, Ireland had not yet joined the union (SMH 7 Jan: 8). However, in regard to the "formal act of taking possession", a "certain amount of poetic license" was taken because it "occurred some weeks after leaving Botany Bay" (Yarrington et.al. 1901; 21,16). Actually it was some months; Cook left Botany Bay in early May and did not make the proclamation until late August. The aptly named Possession Island was where, on behalf of King George III and the Empire, Cook declared possession of the east coast of Australia. Although the island was part of the Torres Straits in far north Queensland, even this state's *Brisbane Courier* uncritically referred to the Botany Bay flag- hoisting re-enactment as the "formal taking possession of the new land" (BC 8 Jan 1901:4).

Like Cook, Yarrington was well aware of the correct sequence by which the British had to take possession. For sovereignty to be recognized in the 'international law' of the European naval powers, it had to be physically performed, audibly declared and witnessed. Yarrington's Landing Play was imbued with legal and contractual meanings. Not only did it denote Cook's triumphal arrival after a long ocean journey, it also signalled a 'momentous' instance in law – the 'authorized' taking over land with colonizing potential by a European power. Sovereignty had been carefully dated and marked across many mediums and then repeatedly performed for posterity. Raising the flag signalled the gaining of considerable assets. Each flag raising and each speech was another reminder of the centrality of this act in the nation's foundation narrative. To some audiences, founding narratives read as clichéd exemplars of grand narrative traditions, while others hold them dearly. Cook's considerable achievements should not be overlooked, for he was an exemplary navigator on the high seas. However, in recognizing and respecting Indigenous peoples, he is not necessarily a good model of successful practice.

Popular Landing tropes have 'whitewashed' history in multiple ways, often effectively. They

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ty'. (Yarrington, 1919; <https://www.austlit.edu.au/austlit/page/A35993> (accessed 17 Aug 17)

downplay violence, and by associating whiteness with the future, with modernity, racial superiority and civilization, they repeatedly justify the displacement of Indigenous landowners. In proclaiming Cook's Landing Place, Lieutenant Governor Darley's speech urged: "that the Australian people may prove themselves to be worthy descendants of that race of which Captain Cook was so notable an example" (Yarrington et.al.,1901:11). Against such white pride, indigeneity was not awarded an inheritance; it was associated with the past, with barbarism and race inferiority.

Following Cook's journals, the Landing Play script had included Aboriginal women and children, with one woman in the key role of 'espionage' the Endeavour (SMH 7 Jan 1901:7). Their omission from the later re-enactment was left unremarked. Although no white woman was present at the historic landing, in the Play, one female actor, Miss Lilian Bethel of the Hawtrey Comedy Company, appears.<sup>6</sup> She "assumed the character of Australia, a nymph" (Yarrington, et.al. 1901). The allegory of a curvaceous, semi-robed woman to embody the nation had become a convention in North America and elsewhere, commonly used through the eighteenth and nineteenth century. Greek goddesses and their mythologies were borrowed to stand for the values of western civilization. As allegory for Australia, the Nymph was known as 'Hope', foretelling the future colony's material wealth and prosperity.<sup>7</sup>

The Landing play booklet was buttressed with a historical section written by the librarian and researcher F.M. Bladen. Humbly entitled '*Notes on the Discovery of Botany Bay*', its main content follows the fateful and anxious encounter between the British men and an unfamiliar local people. Broken up into chronological sub-sections, the longer chunk, *28<sup>th</sup> April, 1770* describes the human encounters: observations of smoke

from native fires and the clash between two different peoples and their weaponry. Bladen describes how when Cook fired at the legs of an Aboriginal man, the Indigenous people's spears and shields did not win out against his muskets.

At federation, Australian history did not exist as a distinctive field, but was subsumed under the history of the British Empire. The authors of the Landing pamphlet played founding roles in the study of a distinctive national history. Bladen, an archivist and librarian, was keen to preserve an archive of international quality for the new nation. In 1901, he helped found the Australian Historical Society (later the Royal Australian Historical Society), and in 1903 Yarrington became its President. This patriotic organisation, still going strong today, was founded to promote the noble memory of the founding fathers and other white male pioneers.

In this light, it is not surprising that Yarrington's Landing Play cast Aboriginal people as belonging not to 'history' but to an out of time state of "ignorance and sin". Via the monologue of Captain Cook, the "poor, dusky savages", who in their "native dwellings lowly stand", were destined to die out:

"As shadows flee before the dawn of day,  
So the dark tribes of Earth I terror flee  
Before the white man's ever onward tread."

The noble Cook is humane enough, however, to acknowledge those who "bravely" defended "their land" "Gainst our invading steps" (Yarrington et.al.1901: 26-7). Reflecting the 'doomed race' thinking of the day, Aboriginal people then exit the historical stage forever.

### A United Nations, 1901

The twenty-five Aboriginal men who travelled to Sydney by train from Queensland included experienced performers (BC 1 Jan 1901:6; 3 Jan 1901:2). Some had previously worked with the organiser Archibald Meston, an entertainment entrepreneur who had staged a Wild Australia show along the lines of Buffalo Bill's Wild West. The troupe was representative of many Aborigi-

<sup>6</sup> The talented 'Miss' Lilian Bethel left Sydney in 1904 to pursue a professional career in London (SMH 11 Feb 1904:7).

<sup>7</sup> The author is preparing a longer piece on the Nymph Hope.

nal nations from south-east Queensland to the Gulf of Carpentaria. The 1901 Landing Play performers included men from Woodford in the Sunshine Coast hinterland, Caboolture north of Brisbane, and Fraser Island. Most resided on government gazetted Aboriginal reserves on the adjoining lands of the Gubbi Gubbi, Toorbul, Undambi, Dalla, the Butchilla and other peoples. Aboriginal people from tribal nations from all over Queensland were beginning to be concentrated on the lands of others. The group also included two men from South Australia – one from Sturt's Desert and one from the central region, and another from near Coolgardie in Western Australia (SMH 10 Jan 1901:5).<sup>8</sup>

While no representative body for Aboriginal people or discrete parliamentary representation was allowed in the new national Constitution, the visiting troupe comprised a kind of united nations. The irony was noticed by at least one Sydney journalist: 'In fact one might almost say that Mr. Meston has brought together *a federal representation of the blacks of the Australian continent*' (my italics; SMH: 10 January: 5).

Although Aboriginal residents had a continuing and growing presence at La Perouse and around Botany Bay, they were not invited to join the performance. Once sought for 'eye-witness' accounts (Nugent 2006), by now they were insufficiently 'authentic' – not 'real blacks' or 'black blacks' (TSM 19 Jan 1901:143). Sydney Aboriginal people spoke English well and were lighter skinned. Although they had long intermixed and intermarried amongst the newcomers, the newly

launched White Australia preferred to keep evidence of 'illicit love' across the colonizing boundaries as a national secret (McGrath 2015a). Nonetheless, local Aboriginal people attended and participated in the celebrations (Nugent 2015: 210-2; Argus 8 Jan 1901). Like the rest of the audience, they witnessed exciting mock battles, spectacular twirling and flaming boomerang throwing and other skilful displays.

Not all distant Indigenous nations were as remote from each other as might be presumed. Meston's Wild Australia troupe had performed in Sydney previously (McKay and Memmott 2016: 190). In the deep past, Indigenous marriage routes or song-lines extended from southern New South Wales coastal peoples all the way up to the southern Queensland coast. Many Indigenous nations had met up across vast distances at Bunya festivals, corroborees (dance festivals) and other large gatherings (See Connors 2015:ix, 60, 210). Trade goods, ritual objects, images, songs and news were exchanged over thousands of kilometres. Choreographed dances conveyed newcomer stories such as that of Captain Cook's stops along Queensland's northern coastline – at those places now known as 1770, Cooktown and Possession Island. Under restrictive colonial regimes, however, large gatherings were becoming increasingly difficult to hold in the old ways. Colonizer and native police violence and forcible removal onto reserves had pushed Queensland Aboriginal people onto 'sovereign lands' belonging to other Indigenous nations (McGrath 2015a). In order to survive these developments, Aboriginal leaders had had to expand and expedite strategies for communication and negotiation with Indigenous nations from afar.

Although not a complete Australia-wide representation, the modern Aboriginal troupe could be valuable emissaries for their own countries and nations. Their male and female elders would have played key roles in deciding who would go and who would not. Unfortunately writers continue to label the troupe as 'Meston's Aboriginals'. Certainly, Meston was the producer of their shows, but with Indigenous expertise at its core,

<sup>8</sup> Their places of origin also included Warrego River, Fraser Island, Mount Esk, Booner (Boonah), Wilson River, Bulloo River, Paroo River, Muramba Dundoo, Stradbroke Island, Logan River, Burnett River, Georgina River and Cooktown. The names of participants in the woomerah spear throwing exhibitions were also given – Tingeroo (warrego River) Narallie (Fraser Island), Joon Joon Binda (Mount Esk), Coogee Biah (boomer), Breeleeyama (Georgina River) and Purburree (Dundoo) (See SMH 10 Jan 1901 p 5). Photographer Kerry took "firelight photographs of the aborigines in warlike groups" (McKay 1998, 244). Members from further afield reflected Indigenous mobility occasioned by work in the pastoral and maritime industries.

the Aboriginal performers were co-directors and choreographers.

The male-only Aboriginal cast of 1901 meant that they were perceived as warriors – painted up, battle-ready, hostile, threatening, and thereby highlighting the bravery and kindliness of white men. Given, however, that Aboriginal women and children were in the script of the Landing play, why were none included in the visiting troupe? In the late nineteenth century, frontier violence in the form of massacres and sexual exploitation by colonizers was so rife in Queensland that humanitarian calls for change could no longer be ignored. The 1897 Aboriginal Protection and Restriction of the Sale of Opium Act consequently aimed to segregate Aboriginal people from Asians and Europeans. Reserves were designed to prevent the mixed sexual and familial relations taking place on the ‘marital middle grounds’ of the Queensland frontier (McGrath: 2015a). Meston, who had contributed to the drafting of the 1897 Act, was now in the senior government position of Protector of Aborigines for the southern half of Queensland. Given his policies for ‘protection’ of Aboriginal women against the predations of white men, it would have been difficult for him to justify their travel.

We might expect that contemporary humanitarians would view the all-male 1901 troupe as conscripts – unhappy victims of Meston’s authoritarian personality and an oppressive colonizer regime.<sup>9</sup> But the overall response of the general Sydney public was akin to what would be expected for an intercolonial delegation. According to the local papers, Queenslanders, too, were proud of how well their state’s men were going over in Sydney; they looked forward to their show impressing the Imperial troops when the group returned to Brisbane (BC Dec 4 1900:6). Of their statesmen, Meston reported to authorities that: ‘The Aborigines performed their duties to the satisfaction of the public and the press... and

were treated everywhere with all possible hospitality’ (SMH 10 Jan 1901: 5; Meston to Undersecretary, Queensland, 15 Jan 1901).

The politicians’ speeches at the Captain Cook site had emphasised a land ‘unstained by blood’ and ‘enjoyed in absolute peace’ (Yarrington et.al., 1901: 10-12). And although the Landing Play featured conciliation as well as conflict, there was no hedging around the fact that these ‘well-behaved’ Aboriginal representatives were to enact an emblematic story of violent confrontation. Charging with long spears, the Aboriginal troupe delivered a far more exciting performance for the audience than the Cook party actors, who, although professional actors, relied upon tedious speeches inaudible to most of the crowd (BC 12 Jan 1901: 7). Unless they stopped heckling the landing crew actors, one of the main organisers threatened to halt the show. Several newspapers were critical, describing the performance as a ‘historical farce’ with a real-life ‘farcical conclusion’ (TSM, 19 Jan 1901: 152; BC 12 Jan 1901:7). Sarcastically noting that NSW Premier Sir William Lyne was ‘not a Shakespeare’, the *Australian Town and Country Journal* criticized the “ridiculous dramatic re-enactment of Cook’s landing at Botany Bay”. Worse, the play took place in the “open glare of day, under the eyes of 5000 laughing sight seers” (ATCJ 19 Jan 1901:13). The dramatization of Cook’s arrival was referred to as ‘the joke’ and the politician’s speeches and toasts to the Queen were ridiculed.

In contrast, the acting ability of the Aboriginal men was repeatedly praised. In the scene when Cook’s shot hit an Aboriginal actor, he reportedly rolled around in a frighteningly convincing performance of shock and agony (Argus 8 January 1901:5). According to an article in Hobart’s *The Mercury* newspaper, the Aborigines took “an intelligent interest in their part of the show.” When they charged down the hill screeching, it was so convincing that the crowds fled, upsetting a photographer and “even the police disappeared temporarily” (10 Jan 1901:2). When the troupe unexpectedly took to the stage after their performance for an encore, they disrupted the

<sup>9</sup> A team of researchers including Michael Aird, Paul Memmott and Maria Nugent started a new project on the Wild Australia show and their findings will offer deeper insights into the troupe.



formal itinerary, making a mockery of its pomp and ceremony. Again they stole the limelight from Captain Cook. A theatre academic summed it up: "The crowd cheered the mock battle charge of the Aborigine, who understood perfectly the theatrical nature of the re-enactment and at the conclusion disconcerted many by joining the other actors lined up behind Captain Cook to receive their share of the applause" (Fotheringham 2000: 136). Audiences noted the all-male troupe's muscular physiques, height, athleticism and ability, and their high degree of professionalism. Indeed, the Aboriginal troupe stole the show.

### **Sacred Clay?**

A *Sydney Mail* journalist offered a 'backstage' view of their preparations, describing: "a more interesting scene was taking place on the top of a small hill, and hidden from the public gaze by a clump of small bushes...They were busily engaged in putting the finishing touches to the war paint on their bodies. This was done by means of red and white ochres" (TSM, 19 Jan 1901:152). Although many of troupe's props were imported from Queensland, there is no mention of any ochres in their long list of supplies (QSA COL/144-5 1900-1). As clay pits of these hues were located around Botany Bay, it is probable that they were applying accessible local clays, which would also lend historical precision. Captain Cook had remarked upon the many uses of the 'white pigment' or clay that the people used to adorn their bodies in the locality. Sought and traded across the wider region, the Gweagal people valued certain clays in pits at Kurnell and the vicinity as holding special ritual significance. (Cook, 6 May 1770; Nugent 2009; Schlunke 2015).

As part of the re-enactment, several of the 1901 dancers wore ochre designs with an uncanny semblance to antique British soldiers' uniforms. These emulated Joseph Banks's 1770 eyewitness account: 'their bodies [were] painted with broad strokes drawn over their breasts and backs resembling much a soldiers cross belts, and their legs and thighs also with such like broad strokes drawn round them which imitated broad garters

or bracelets' (Banks Journal 28 April 1770). For the Landing Play, numerous other configurations were also used, so labelling their body designs as 'warpaint' greatly oversimplified matters. Observers noted that their painted motifs were "as various as the tribes represented" (The Australasian 1901; TSM, 19 Jan 1901:152). When preparing for dance performances, Aboriginal people generally applied richly storied designs that signified personal and group identities associated with specific plants, animals and geographical features. Precious symbols represented epic ancestral journey stories of creation and connection known as Dreaming stories or song-lines, which linked and transmitted stories between different Indigenous nations across great tracts of land.

The Queensland troupe also wore more permanent badges of status.<sup>10</sup> Cicatrices – large raised scars across torsos and upper arms – served as proof that men had been initiated through their 'law'. Having passed through secret ceremonies, elders conferred them with senior authority over land and the sacred. As graduates in advanced Indigenous knowledge, they carried significant stories, songs and dances, and had important obligations. Just because the men were performing for largely white audiences did not mean that they stopped thinking according to learnt belief and value systems.

In January 1901, the charging, dancing feet of the Queensland visitors connected with the sand and clay of Botany Bay someone else's 'country' or nation. As an embodied practice in a particular place, these shows took on multilayered cultural and historical meanings beyond simple entertainment. We do not know how much communication took place between local Botany Bay Aboriginal residents and the visiting Queenslanders. If the troupe had not sought their permission to dance there, the Gweagal/Dharawal people could have thought the dancers were attempting to extend a sacred hold over their lands. As the Aboriginal troupe was enacting a potentially

<sup>10</sup> For example, Aborigines wrestling, NSW 7 January 1901; Accession No H20338/6 image no a13436 SLV.

dangerous performance on the land of strangers, to protect all concerned, the visitors had to follow the right protocols. In Indigenous belief systems, the magic of distant Aboriginal strangers could be threatening; distant places of origin and lengthy travels could enhance their powers. Consequently, local people could sicken or die or the country could be poisoned. We are left with many questions unanswered by the state archives and the contemporary newspapers. However, Indigenous dance inherently involved storytelling, re-enactment and association with specific landscapes. We therefore cannot exclude the possibility that the dances they developed and performed represented a storied exchange – ones especially designed to address the spirits and the nation upon whose lands they danced. Inevitably, the 1901 visitors were creating new connections with Gweagal/Dharawal country, and to an extent, sharing the power of their own deep history stories in conversation with those of white Australia. This is certainly what took place at La Perouse, Botany Bay during the 1988 Bicentennial of Phillip's Landing, with Aboriginal people from around Australia dancing out sacred sequences on Gweagal land.

### Divided Nation

The 1901 public displays of nation at Botany Bay provided an opportunity to enact multiple sovereignties. British sovereignty benefited all of white Australia, but the Landing Play reinforced the knowledge that it was unequally shared. The largely white audiences consisted of at least 1000 invitees and over 4000 other women, men and children. The general audience did not behave according to plan. The Landing spot was difficult to keep clear for the Cook actor's arrival, as "policemen, politicians, pressmen, and photographers were mixed up with the aboriginal warriors of Australia" (*Mercury* 10 Jan: 2). During the day, the invited guests – parliamentarians, the visiting intercolonial representatives, aristocrats and other VIPs – were to have access to the best seats to view the Landing performance. These dignitaries were well covered in formal day wear

– the women in large netted hats and long white dresses gathered tight at the waist, the men in dark suits, white shirts and cream boater hats (TSM 19 Jan 1901:152). Wine, champagne and a large luncheon feast were provided in a comfortable timber and canvas pavilion luxuriantly decked out with white tablecloths, fine china and leafy table decorations.

Waiting in the hot summer sun for the show to begin, the general public were becoming fed up. To entertain themselves, they let off rockets, fire balloons and other fireworks and sent peculiar inflated objects into the sky. Then, suddenly, a mob stormed the roped-off VIP area, surging through to get the best viewing spots, while others grabbed meats and fine foods. One man who ran off with leftovers was seen gnawing at a massive turkey carcass. Others asked the waiters to serve them beverages and at least one may have succeeded. For when the actor playing Captain Cook finally arrived, one spectator offered him a whiskey and soda (TCJ, 19 Jan 1901:13; BC 12 Jan 1901:7).

Although the politician's speeches promoted the Lieutenant James Cook saga as a rags-to-riches story that evoked a New World land of opportunity (Yarrington et.al 1901: 9-10), the staging of the Landing performance reflected social and political hierarchies, including deference to British aristocrats. Cynical about syrupy prose and all the pomp and ceremony, the crowd's disorderly behaviour expressed an egalitarian, anti-authoritarian impulse. Their confidence in disobeying rules, despite a strong police presence, revealed that they enjoyed a strong sense of liberty.

For one thing, they were no longer convicts. By 1900, colonists were struggling to shake off the stigma of the convict past, with some demanding to change the name of Botany Bay, notoriously popularized in convict ditties. Lyne, the Premier of New South Wales retorted that few convicts were serious criminals, many having only shot a rabbit or pheasant (ST, 19 Aug 1900:7). But the evolving convict romance obscured the colonizing violence against Aboriginal people com-

mitted by colonizers across all classes (Griffiths 1987). Lyne himself had sheep farms in the frontier conflict zones of far north Queensland and the Riverina district of New South Wales (Cunneen 1986). In his birthplace, Tasmania, the Aboriginal population was decimated. For Aboriginal people in 1901, these frontier legacies, alongside continuing police surveillance, forced caution, including 'good behaviour' and speaking 'proper English' rather than their own languages at public events.<sup>11</sup>

It must have been gratifying for the Aboriginal performers when the largely non-Aboriginal crowd excitedly applauded their mock-attack on Cook's party. The audience looked on appreciatively at the Aboriginal people, admiring their technical accomplishments, including precision spear throwing (SMH 9,10 Jan 1901:7, 5; BC 10 Jan 1901:5). Perhaps they were simply acknowledging their excellent showmanship and agility rather than necessarily siding with the underdogs. Nonetheless, the play had not been designed to encourage cheering and barracking for the Aboriginal side. The crowd's response contained hints of popular protest – at once directed against English heroes, snobbish aristocratic elites, and the politicians promoting their own glory.

Colonial audiences were diverse – in origin, class, gender, religion and more. Many of their traditions hailed from England, with its legacies of Anglo-Saxons, Romans and its evolving notions of 'civilization', with ideas of high culture often drawn from the ancient legends of Greece and Rome. Others, like many of the Irish, with their Celtic and Catholic traditions, were sceptical of everything English and Anglican. They boasted a history of rebellion, resenting aristocratic pretensions. There were multiple other ethnicities present, including people of mixed Aboriginal

descent, Scottish, Welsh, Europeans, Chinese and south east Asians.

Colonizers and politicians had divided views on who would receive the fair share of the nation's spoils. Nor had they been united on the politics of Federation. The Australian Republican movement was strong in the 1880s, being disrupted in part by the timing of the Boer War and the propaganda about loyalty to the English 'motherland'. Australian feminists, the suffragettes and women's advocates splintered over Federation. Some, like leading feminist Rose Scott, thought it would entrench male political power in an even more centralized arena. Other feminists lobbied for Federation as a way of introducing the women's vote beyond the two colonies that already enjoyed it (Lake 2000).

The status of all women as citizens and their relationship to sovereignty was confusing. Queen Victoria still sat on the throne, yet colonial women were virtually invisible in the performances of sovereignty. Englishmen did brave deeds and Aboriginal men resisted, and the one woman in the Landing performance was the actress who played the Nymph called Hope. While white women were struggling to obtain full citizenship, the only woman was cast in the role of an allegorical character standing on a rock. The nymph may have given men hope and some kind of thrill, but for Australian women, Aboriginal and non-Aboriginal, the nymph of nation offered an impossible role model and a hopeless symbolics. Feminists, still trying to find an equitable place for women in the new nation, must have despaired. What could possibly be done with this fantastical woman, alluringly inviting seamen to shore?

### Multiple Histories

We have seen that the main show at Botany Bay haltingly attempted to launch a noble past. Australian national mythologies drew upon historical and sacred journey stories that started in a distant Europe. Oft repeated with differing scripts and casts in the years following, Landing Plays attempted to promote a homogenous image of a

<sup>11</sup> On the anniversary of Phillip's Landing in 1938, because local people refused, a group of Aboriginal people from a NSW reserve was forced to re-enact the landing scene. Aboriginal leaders staged a Day of Mourning in Australia Hall, Sydney, demanding citizenship rights and parliamentary representation.

white Australian nation. Cook's Landing became an action narrative that demarcated a 'beginning' of what was to come, with its modern/colonial conceptualization of historical time. In this sense, the Landing play aimed to memorialize a moment in which Indigenous history is stilled, becomes absent, and a new historical era is commenced (Schlunke 2015; 2013: 231-2). Although the VIP audience approved the Landing Play's hyberbolic patriotism, the general public was sceptical. Nor could Aboriginal people and their nations be fully 'contained', for they continued to enact sovereignty using old and new mediums, thereby expanding the circulation of landed narratives in important places and fostering a pan-continental Indigenous connectedness.

By contrast, the colonies were still novices at sharing a unified national sentiment. Some missing costumes used by the Aboriginal troupe created interstate tensions that escalated to the level of two state Premiers. Twenty-three 'opossum skins' valued at 2 pounds, 17 and sixpence were last seen at the Joseph Banks Botany Bay Hotel where the Aboriginal troupe had resided in January 1901. Two years later, the Premier of NSW wrote to the Premier of Qld about the disappearance of these 'hired' skins (Premier of NSW, 2 Feb 1903). Did Meston's son Harold swindle NSW out of a couple of pounds? Or had the Aboriginal troupe engaged in a trade of their own? While we may never know what became of them, possibly the troupe members decided that the skins were worth keeping, taking them back to Queensland in their luggage. After all, they had been given them to wear. Plus their distant Sydney provenance and their role in the ceremonies of the new nation imbued them with particular cultural value.

The Landing performance contained not only the seeds of consensus but also of dissent. It provided opportunities for the Aboriginal troupe to enact a form of sovereignty that went back into deep time. Like the Cook Landing story, Indigenous stories brought together epic narratives of ancestral heroes, and land-endowed ideas of the sacred that linked and in ways united the heri-

tage of many other nations. Their bodies daubed in ochres, and wearing the feathers and shells from Queensland rainforests, the 1901 Aboriginal troupe traded in deep histories of journeying.

In this light, the Indigenous performers represented a vital new engagement with national history telling. Dancing on Gweagal lands and wearing the sacred clay of Botany Bay on their bodies was transformative; as their feet connected with the earth, they recreated histories, creating binding new kin and land connections. In their embodied presence at Botany Bay, they inevitably carried their Law, with its deep land-based narratives. Their dancing added another layer to the sacredness of Botany Bay, further empowering local stories of the modern Australia that Indigenous Australians now shared.

Through their journeys, they opened up new highways of Aboriginal knowledge exchange and expedited knowledge transfer between multiple nations. They carried the sacred song-lines of their own nations to Dharawal country, thereby expanding their reach and strengthening their authority. In turn they took back the power of Dharawal land and its origin stories on their long return journey north. Via the routes of trains and steamers, song lines joined up. Via deeply embedded journey routes, some would connect the Botany Bay Cook stories of violent clash and land takeover with their own. At Botany Bay, that highly visible theatre of nation, Indigenous representatives thus challenged the notion of any straightforward noble 'beginning'. As Aboriginal men of the law, they enacted multiple agendas that had much less to do with European history than with narratives of their own deep transnational pasts.

Ever since, Aboriginal Australians on the east coast of Australia have creatively engaged with landing narratives, dismantling dominant foundational stories and crafting their own (Nugent 2005; 2009:105). The Gurindji people in the far north perform stories of Captain Cook as an immoral man destructive of the Dreaming (Hokari 2011). Indigenous artists have made Captain Cook paintings a popular genre. Paddy Wain-



burranga's entitled his 1988 ochre on bark painting 'Too Many Captain Cooks' (Nugent 2009:119). Gordon Bennett's powerful acrylics, influenced by Jackson Pollock, Mondrian and Basquiat, dismantled conciliatory tellings of the Cook legends. Other portraits portray Cook as a Pirate, complete with eye patch and a parrot on his shoulder (Nugent 2009, Plates 25-9). Numerous subversive critiques of Cook and Phillip's Landing narratives have emerged in performative genres – plays, dance, film and satirical television classics such as *BabaKiueria* (1986).<sup>12</sup>

As declared by the 2017 National Constitutional Convention that met in the heartland of Australia, the land is not ceded and its people remain undefeated. On sites of deep connection in the landscape, competing parties continue to re-enact sacred histories associated with ancestral heroes. Contested performances of sovereignty and of history are mutually witnessed and in conversation with each other. In each historical enactment, national stories are critiqued and evolve, incorporating new actors, stories, contests and connections. Captain Cook has become hero and anti-hero. Recently, certain Aboriginal representatives have campaigned for the British Museum to return a shield that Cook supposedly collected from Botany Bay. It shows what they believe are the markings of musket fire.<sup>13</sup> At stake in this saga and in the 1901 re-enactment is the kind of history that recalls a past that, on behalf of all Australians, intervenes in the present and the future. The Cook Landing Play of January 1901 reverberates well beyond Botany Bay and Possession Island. Yet, as indelible as that landing story may seem, Australia's national story has never been entirely unified, homogenous or settled. Then, as now, multiple parallel sovereignties and their sacred histories continue to be enacted and re-enacted.

<sup>12</sup> Despite ongoing protests, the 26 January, the Landing Day of Governor Phillip and the convict ships at Sydney Cove, is still celebrated as Australia Day. After first arriving at Botany Bay, Phillip found it unsuitable and moved on to Port Jackson.

<sup>13</sup> Its provenance remains unclear and evidence that Cook collected it is lacking.

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# Weaving Abya-Yala: The Decolonial Aesthetics of Indigenous Resistance

by ANTONIA CARCELÉN-ESTRADA (College of the Holy Cross)

## Abstract

From Mexico to the United States and Ecuador, indigenous uprisings inspire fear in the nation, which in turn sees itself forced to redefine its current formation. National projects expire, but peoples' resistance continues, regardless of the form the state takes. Indigenous protest sporadically reaches the national stage and haunts the nation. Throughout Abya-Yala [America], indigenous aesthetic interventions, like dances, story-telling, gardening, and other practices of re-existence, seek to indict bad governance and localize other forms and meanings to ensure local communities outlive liberal and neoliberal national formations. Although indigenous resistance is socially and culturally encoded as eruptive, peoples have resisted the long night of coloniality all along, although indigenous resistance has been considered isolated incidents and not formative moments of the nation-state, peoples have resisted the long night of coloniality all along. Their common struggle for autonomy and self-determination also seeks good living with Nature. By comparing the Zapatista, Lakota, and Amazonian struggles to protect land, water, and life from each settler nation's liberal beginnings into the neoliberal present, I show how these seemingly "isolated incidents" fit into continental patterns of indigenous solidarity. I weave these three examples to explore how indigenous peoples use decolonial aesthetics to defy conceptions of territory, property, and governance.

**Keywords:** Indigenous resistance, decolonial aesthetics, cultural and political rights, the rights of Nature, Sumak Kawsay, Abya-Yala, history

## Introduction

One early morning in September 2016, I heard on the radio that people assembled in resistance at Standing Rock were holding mirrors along the riverbank that separated them from the militarized police. They hoped to protect themselves by deflecting the brutal image, and projecting back its brute-force. I immediately called Marina Kaplan and claimed: "It's 'The Story of the Lion and the Mirror!'" Two years after the Zapatistas took San Cristóbal de las Casas, the Mexican Government and EZLN (Ejército Zapatista de Liberación Nacional) reached a peace agreement (San Andrés Accords), which the government never ultimately implemented. Instead, the state's

low-intensity warfare was prolonged and culminated in the paramilitary massacre of Acteal on December twenty-seventh, 1997, where forty-five Tzotzil people were killed. President Zedillo (1994-2000) refused to investigate this attack and continued his counter-insurgency operations, so the EZLN remained silent. They broke their silence on July seventeenth, 1998, releasing their *Fifth Declaration*, in which they reaffirm the Zapatista commitment to peace. Marina and I, along with Zack Zucker and Margaret Cerullo, have been translating Zapatista stories as a *collectivo* since 2011. We had debated for years over the use and meaning of the mirror in this story.

Zapatista stories can sometimes feel like labyrinths where meanings remain elusive and endings, disorienting. Decolonial aesthetics propose other ways to “perceive and sense visual, aural, and textile arts” (Ramos and Daly 2016: xvi). Daily life practices encode a “system for the creation of re-existence and decolonization” (Achinte 2010:20). Story-telling, dancing, weaving, or any everyday aesthetic practice of re-existence challenges Eurocentric conceptions of time and space, designed to control labour legally and economically. Alternative modernities operate “from the margins and beyond the margins of the modern/colonial order” (Mignolo and Vásquez 2013), to incorporate a plurality of worlds and critical interventions, which rename places and localize struggles. Indigenous aesthetics invite us to “sense otherwise [...] in temporal, identitarian, affective, and aesthetic terms” (Ramos 2018:2). The sensing is multiple in Abya-Yala, the name today’s indigenous peoples use to refer to America. This allows for the rejection of the “logic of genocide” that historically marks indigenous peoples as absent and about to disappear (Smith 2005).

When early-modern Renaissance aesthetic models settled over the New World, a new way of sensing reality descended on the peoples inhabiting Abya-Yala’s many worlds (Mignolo and Gómez 2012, Ramos 2018). The multiple in Abya-Yala became one in America, where a multiplicity of peoples were homogenised as ‘Indians.’ To enact Abya-Yala’s epistemic erasure, modern-colonial law and order (and their imperial grammar), encoded indigenous bodies as insignificant, so that each time ‘Indians’ speak, they sound like cacophony to the state. This has political and socioeconomic implications: Indigenous demands amount to an unsettling noise, to a haunting (Pratt 2002). Through each self-conscious rhetorical articulation, the haunting cacophony of indigenous protest erupts into modernity, generating a certain chaos to stage aesthetic interventions loaded with local memory. They indict imperial meaning itself. Abya-Yala’s histories, with their localized construc-

tions of time, space, and memory, live in fragments invisible to a modern citizenry focused on a material present and on the false promise of future utopias. By resisting a modern/colonial organization of time-space, decolonial aesthetics imagine escapes from the trap of modernity as they dismantle the theatricality of power of a violent state, like the mirror does with the lion.

The Zapatista story explains how to kill a “brutal, bloody, and powerful” lion without using a gun; instead, a mirror is used, not to reflect the indigenous image, but to deflect the lion’s force, directing it against itself (Marcos 2008:27). To defeat the lion, the elders choose Antonio, a child, to climb a Ceiba mother-tree, which in the *Popol Vuj* Mayan scriptures connects the youth to the ancestors. The child kills a lamb, fills its heart with nails, and covers it with broken pieces of mirror. As the “night of justice” descends, the lion comes and eats the lamb’s heart: “the more the lion chewed, the more he wounded himself, and the more he bled, the more he chewed” (29). After the lion dies, Antonio brings it to the elders who remind him that the mirror is the prize, not the paws (EZLN 1994: n. p.). The mirror is the essential countervailing force to the brutal war the state unleashes against indigenous peoples; against military forces murdering women and children in places like Acteal, Mexico, and Wounded Knee, the 1890 massacre of three-hundred Lakota. Those dead haunt me, demanding that I tell their story.

Zapatista, Lakota, and Amazonian communities engage in democracy’s game of mirrors to share their patterns of resistance and defy conceptions of territory, of property, and of governance that benefit a liberal or neoliberal agenda at the expense of the environment and their livelihood. Indigenous politics seek to break up modern temporalities to relocate knowledge and power within local communities. Over two hundred Abya-Yala nations stood in solidarity with the water protectors at Standing Rock in the fall of 2016. Among them, the Amazonian Sarayaku travelled to the camp in September stating, “water is life, oil is death.” In 2012, the Sarayaku

had won their legal battle against Ecuador's government for imposing oil-drilling on their territory without previous consultation and were there to tell their story. The Zapatistas, on their part, expressed their support of a shared "dignified struggle" in October. In November 2016, the mirrors shielded the water protectors from the brutal police, which is the story I heard on the radio. The itinerant nation is periodically reminded that indigenous people have always and will always occupy those spaces with distinct meanings.

In this article, *me tomo la palabra* and I weave in fragments three masked stories of Abya-Yala, not so much to share their meanings as to engage the reader in the decolonial aesthetics of indigenous resistance. While mirrors trick the lion that attempts to eat the heart of Zapatista, Lakota, and Amazonian communities, indigenous resistance defends with dreams, dances, and spears their land, water, and life.

### The Zapatista Dream

On January first, 1994, the EZLN took San Cristóbal de las Casas, Chiapas, and toppled the eponymously named conquistador's statue, declaring war against the Mexican *mal gobierno*. It was a "rebellion of memory," a fight for an indigenous history and an affirmation of their capacity to live in temporalities other than the neo-liberal present. By summoning the past, or the fragments of it, the Zapatista project exploits the cracks in the walls of modernity, prying them open into windows, and eventually into doors that open onto possible futures (Baschet 2012:207-211). The Zapatista historical memory and its invitation to dream opposes the "geograph[ies] of time and space that cover the earth" as well as heroes' statues, "which hide under their stone their incapacity to prove anything" (EZLN 2010:281). The Zapatista political project undermines the Eurocentric dichotomy between myth and history, and proposes in its place coexisting indigenous, national, continental, and intercontinental temporalities.

In the 1980s, Antonio served as cultural mediator between the EZLN and indigenous commu-

nities. Similarly, in the 1990s Subcomandante Marcos mediated between the EZLN, the media, and those in solidarity with the Zapatista autonomous communities. Antonio was his mentor on indigenous philosophy since 1985, when the guerrilla still hid in the silence of the Lacandon Jungle (Vos 2012:325-326). Antonio died after the 1994 uprising. The source of Marcos's folkloric repertoire is Old Antonio's ghost, which stands at the crux of two winds, where the fragments of myth and history converge. On January twenty-seventh, 1994, Marcos shared the content of Old Antonio's dream about waking from the nightmare of colonial history. Marcos had originally transcribed it in August 1992, prior to the uprising, with the purpose of recruiting members and invigorating Zapatista fighters (EZLN 1994:66). He then revived the dream to conclude a communiqué entitled "Chiapas: The Southwest in Two Winds" in hopes of illustrating the motivations behind the Zapatista revolt: enough of poor vice-regal governments! Old Antonio's dream of justice is the viceroy's nightmare of his own downfall. Will Mexico wake up from its colonial nightmare? When the EZLN enunciate their *Ya Basta!* (Enough!) from co-existing, but fragmented temporalities, they draw windows and open doors for other people to wake up from their own historical nightmares.

The Zapatista revolt triumphed by its use of guerrilla warfare and due to its decolonial aesthetics, which had a political impact on the "global economic order" (Stephen 2002:148). Fax and the internet turned a local rebellion into a global event. Although the Zapatistas waged armed conflict, weapons are ancillary to their multiple strategies of resistance. The EZLN organizes through encounters with various sectors of society, such as teachers, journalists, students, union workers, etc. They form *caracoles* (assemblies of autonomous communities) and initiate referenda on justice and democracy (i.e. the 1995 International *consulta* on Democracy or the Ratification of the Peace Referendum, following the San Andrés Accords). They produce a journal, *La Jornada*, deliver communiqués interspersed



with stories and postscripts (distributed online or as pamphlets and translated throughout the world) and communicate through myriad masked envoys who speak on popular stages where the Mexican national identity is performed (i.e. celebrations of Emiliano Zapata's legacy or Columbus Day at the capital) (Stephen 2002:148-175). One main spokesperson for decades was Comandanta Ramona who organized Zapatista communities prior to the uprising and was the strategist behind the San Cristóbal takeover, the Women's Revolutionary Law, the San Andrés Accords, the 1996 national dialogues, and *La Otra Campaña*, which was underway at the moment of her death in 2006.

This project's decolonial aesthetics intertwine naming with memory and history to oppose a neoliberal present. Emiliano Zapata (d. April 10, 1919), leader of the southern militia in the Mexican Revolution (1910-1920), was simultaneously fighting the first Marxist revolution of the twentieth century and an indigenous battle from colonial times. The Tzotzil uprisings of 1528 and 1712 found echoes in the larger 'Indian Movement' (1867-1869) to resist the liberal modernizing project, which expropriated communal indigenous lands, formerly organized as colonial *haciendas* (Le Bot 1997; Stephen 2002). When the liberals expropriated the Church in 1855, rebellious priests transferred titles to the indigenous communities who, through the war against French troops and the Maximilian occupation, never stopped toiling the land (Condearena 1997:30). The liberal project sought to export vanilla, cocoa, and other crops for an industrializing global market. The privatization of land and of agricultural production led Mexico to import rice, beans, and corn, which further impoverished indigenous communities (33). Zapata's image threads a national consciousness from various moments of Mexican history when indigenous peoples defended their land against the state. This territorial protection was upended with Salinas de Gortari's 1992 neoliberal constitutional reforms to privatize education, land, and resources and pave the way for free trade (NAFTA).

At the dawn of the twentieth-century, Zapata's cry of "Land and Liberty!" summoned millions who took up arms to resist a liberal imperialism and Dictator Porfirio Díaz's scientific rule. The Constitution's Article 27 guaranteed legal rights for the collective property of communal lands (*ejidos*). Other agrarian reforms followed throughout Latin America, but each time, within national politics the *mestizo* leftists sought a popular base, so indigenous populations came to play as 'peasants' in the electoral game. In a larger Cold War context, a Marxist *campesino* discourse erased the indigenous component from national politics. State violence intensified during the 1970s and 1980s coffee crises. Fractured Mayan communities took refuge in the darkness of the Lacandon Jungle, where they formed a clandestine indigenous left, inspired by guerrillas in Central and South America and by African liberation struggles (Le Bot 1997:199-200).

In 1984, during his first encounter with Marcos by a river, Antonio responded to poor synthesis of Zapata's revolution (as recorded in the books of Mexican history), which excluded the "specificity of the indigenous question" (Stephen 2002:159). Antonio tells Marcos the "real history of Zapata," who is just another manifestation of opposite Tzeltal deities, Ik'al and Votán, two who walk as one, "together, but separate and in agreement" (161). Zapata's appearance on the national stage with his Plan de Ayala in 1911 or at the Zapatista uprising in 1994 are different facets of the same long Mayan battle. Thus, Votán-Zapata, "guardian and heart of the people," reappeared on April 10, 1992, when four thousand indigenous people marched to the municipality of Ocosingo, where they danced before his painted image. Votán-Zapata resurfaces in a 1994 EZLN communiqué that celebrates the 75<sup>th</sup> anniversary of Zapata's assassination, but condemns Article 27's constitutional reform. This historical-mythical fusion provides an atemporal signifier for any Votán-Zapata who defends their land against an illegitimate government (Baschet 2012:215).

Zapata's image taught Antonio to "ask questions and walk" together but separate with those

who are different, an essential component in the formation of a multiethnic EZLN. Antonio gave Marcos his picture of Votán-Zapata so that he could also walk together with others (Stephen 2002:162). In 2001, the 'March for the Colours of the Earth' walked Zapata's path (Baschet 2012:216), rewinding time and space, as Cortés did when walking from Veracruz into Tenochtitlan over the Tolteca-Chichimeca path, the path of Black and Red Tezcatlipoca. In Mesoamerica, walking the path of history resets time to inaugurate new governance. In Mayan versions, two competing histories and their competing winds must learn to walk together in their difference, like Tzetal deities Ik'al and Votán and the twin heroes of the *Popol Vuj*. Similarly, Zapata's winds move between two national stages where historical meaning is constructed: the museum and the street. Decolonial aesthetics are always political. Within this configuration of polyvalent textualities and identities, Zapata himself becomes a hybrid version of a historical-mythical figure: Votán-Zapata. Mexico's different temporalities and historical dimensions coalesce in him.

Old Antonio's stories are themselves embedded within letters and communiqués to civil society, but recounted as if the lessons of good governance from the *Popol Vuj* and of early-modern mirrors for princes had perfectly converged in contemporary Chiapas. Behind their masks, the Zapatistas remain faceless and assume the names of fallen combatants. Subcomandante Marcos (now Galeano, since that combatant died in May 2016) uses ghosts and talking animals to speak to Mexican and international civil societies and weave transnational networks of solidarity. For example, Durito [the little tough one], is Marcos's mentor on political economy and philosophy. This smoking beetle makes his public entrance on the anniversary of Zapata's assassination. Durito first appeared to Marcos on December 25, 1985, in his "asphyxiating solitude" to "alleviate the cold dawns of a combatant" (Marcos 1999:27). Among EZLN documents that reaffirmed Zapata's revolutionary legacy as a fight for the land, Marcos uses Durito's story to

respond to a letter written by Mariana Moguel, a Zapatista child. Durito, Marcos's small friend, comforts him in moments of doubt as he refines his understanding of neoliberalism, the new enemy that threatens memory and the imagination of any other mode of living and being.

This story (and the coloured markers he sends along with it) might also comfort Mariana and help her imagine (and draw) alternative ways out of the Mexican nightmare. In March 1995, Durito reappears during the EZLN retreat from sustained government attacks and shows up again on December 25, 1995 to celebrate his tenth anniversary. In each appearance, he takes on a different intellectual persona, but in each case, he serves as a comfort. Durito assuages the painful memory of Zapata's assassination and illustrates how to implement decolonial aesthetics to rectify indigenous legacies.

In *Story of the Cat-Dog* (2014), whose release coincides with celebrating thirty years of EZLN insurgency against *el mal gobierno*, Marcos ponders the repetition of history and its connection to deterritorialization, nation building, and peoples' subjugation by means of ontological categorizations. For him, fanatics of modernity "pigeonhole the world in closed boxes with exclusive options: 'if you aren't this, then you must be its opposite.' [...] But they ignore the fact that the problem is with the system [...] All categorical options are a trap" (Enlace Zapatista 2013, n. p.). The Zapatistas suggest that ontological possibilities based on race, class, gender, sexuality, and geographical origin are a trap of modernity. The trap is ubiquitous, reified, and repeated through the repetition of history. Yet, the possibility remains that, by performing alternative histories and geographies, marginalized people might confound this logic and escape the trap of modernity.

Alternative, invisible histories can be found hidden beneath coloniality, [P]erhaps on a still *distant calendar in an uncertain geography*, she, the light that both unveils me and keeps me from sleeping, will understand that there were *hidden lines*, drawn for her, that *maybe only then* will be

revealed or recognized in *these words now*, and she will know in that moment that *it didn't matter what path my steps tread*. Because she was, is, and will always be the only *worthwhile destination*. (Emphasis added; *ibid.*)

Ambiguous relations between time, space, and inter-subjective interactions expose veiled alternatives and Marcos goes on to refer to Zapatista history as what is “not perceptible,” conveyed only through hidden images, which cannot be captured with smartphones (objects of progress and civilization), but can only be perceived with the heart: “That which is *not seen* in the daily comings and goings *is the history that we are*” (emphasis added, *ibid.*). Veiled alternatives cannot be seen by the modern Eurocentric eye, blinded by time, space, and ontology at the service of modern history, geography, and labour identities. Indigenous worlds are revealed by following footsteps on local paths in uncertain geographies where the “then, now, and tomorrow” can intertwine to show alternative societal models that are conceived otherwise.

Throughout the dictatorships of the 1980s, Latin American guerrilla movements and peasant struggles (from Shining Path to the Sandinistas) failed one by one, as governments became increasingly dependent on foreign capital, which brought corporate and state militarization to assert control over indigenous lands. The Zapatistas are among many movements of resistance to extractive mining and crop exports led to variously figured armed struggles (Maoist, Guevarist, Evangelist, Theology of Liberation, and the Emiliano Zapata's National Independent Peasant Alliance, ANCLIZ). The Zapatistas stood out from other movements because they did not simply expose the neoliberal crisis, but showed that repression and racism are central to modernity.

Today, Zapatistas are playing the ultimate national game of mirrors with an envoy, Marichuy, as their spokeswoman and candidate for the 2018 Mexican presidency. These EZLN spokesmen under the General Command of the CCRI (*Comité Clandestino Revolucionario Indígena*) continue to walk “unnamable and faceless”

the geographies of a haunted Mexico (Stephen 2002:168). In their autonomous communities, they walk separate and in agreement, and govern by listening to those who join their historical path or stage their own decolonial aesthetic intervention. The masked Zapatista communities invoke Votán-Zapata, paint murals, build *caracoles*, and live autonomously so that others can dream with Old Antonio and join with the Zapatista dignified struggle against *el mal gobierno* and in defence of the land.

### The Lakota Dance

While the Zapatistas share their dreams over *caracoles*, Lakota people do it through dancing ceremonies whereby images and meanings materialize in a collective celebration of life. Lakota cosmovisions involve elements from all four quarters of the Universe: western black/blue thunder/rain; northern white wind/dreams; eastern red morning star/wisdom; and southern yellow growth/life. The story goes that when Wise Woman came from the East, she burned the foolish boy who desired her body, turning him into a carcass. But as she turned into a buffalo, she gave songs and the sacred pipe to his friend who understood her sacredness. The Lakota walk their path of history in her “sacred manner” (Black Elk, 3). A continental United States became possible after the Treaty of Guadalupe-Hidalgo (1848) and the end of the Civil War (1861). The Black Hills battle was among the last ones fought for a Manifest Destiny to expand an “American” border across the Missouri River and into the Pacific Ocean. The 1868 Fort Laramie Treaty between the Lakota Nation and the *Wasichus* [the U.S. Government] closed the Bozeman Trail to the Black Hills and purportedly guaranteed Lakota's right to hold ancestral lands west of the Missouri River, “as long as grass should grow and water flow” (14). Grass and water underlie an indigenous governance in the Buffalo Nation. But the *Wasichus* act like the foolish boy who failed to recognize what is sacred.

Black Elk met with anthropologist John Neihardt at Pine Ridge Reservation in the 1930s to

share the “things of the other world” that came to him as visions for those who “have lived and shall live that story, to be grass upon the hills” (1979:1). He recalled life before the 1890 Wounded Knee massacre, where “a people’s dream died in bloody snow” (ibid.). But this dream did not die; Black Elk’s visions belonged to a common Lakota repertoire rehearsed through repeated performances of their forbidden dances. The Buffalo Nation dances and sings as practices of re-existence and to build the archives of their oral history, that the American nation muffles behind an archive of its own, like the faces of four presidents on the Black Hills.

When Black Elk was nine, he understood the hills’ meaning through a dream. First came two men with thunder-spears who gave him bows and arrows. Then, horses from the clouds rode over the hills and he walked into a rainbow tipi where six elders, “old like hills, like stars” (20), revealed their knowledge one by one to him: 1) water gives life; 2) bows destroy life; 3) dreams are medicine; 4) the sacred pipe helps them “walk with a people’s heart”; 5) understanding guides the Lakota on the Black Road, on the Red Road (22). The eldest, old like the Earth, warned him, “your nation on the earth will have great troubles!” (23). He sees warriors riding horses, screaming “*Hoka Hey!*” as their bows transform into spears, themselves into turtles, and a village into the sacred hoop. Life moves around the sacred tree, which, like the Ceiba tree in Chiapas, connects the past to the future. As the Lakota continued walking, Black Elk sees starvation and people without a tree. All the universe falls silent when he hears a song: “They will dance!” (32). Then, the Black Hills turn the colours of Heaven.

*Pahuska* [Gen. Custer]’s geological expedition to the Black Hills preceded their sale to the *Wasichus* in an imposed Treaty, signed in October 1876. He sought gold (70), which was “not good for anything” (60). Unlike water, it does not produce life, but forces people into the Black Road/war, into square houses and towns, and away from circular tipis, from the sacred hoop. Black Elk recounts how during a blizzard on March 16,

1876, U.S. soldiers killed Lakota men, women, and children, and set their tipis on fire (69). Then, on June 17, 1876, Gen. Crook fought Lakota soldiers at the Rosebud Battle, while dancers offered their skins to the cottonwood tree at their Sundance on the Greasy Grass. *Wasichus* came like rivers. They selected Spotted Tail as the new Lakota leader (140), took away people’s guns and horses, built the Pine Ridge Agency (1881), and forbid the “barbaric” Sundance, which was henceforth secretly performed at the Little White River (253). Meanwhile, in an attempt to save his people confined to Pine Ridge, Black Elk made pictures of his vision and performed his Horse Dance. In June 1882, the *heyoka* fools performed the Dog Vision of Lamentation to provide some laughter for the despairing Lakota at Pine Ridge. Yet, in 1883, the Lakota again performed their Sundance, “for nothing can live well, except in a manner suited to the way the Power of the Earth lives and moves to do its work” (163). Lakota resistance through circular dance, like the Zapatista rebellion of memory, conceives a local governance that begins with decolonial aesthetics.

Black Elk left Pine Ridge and travelled Europe with the Buffalo Bill Show. Later, while living with *Wasichu* friends in Paris and working for the Mexican Joe Show, he suddenly felt dead inside. Across the Atlantic, his people were starving because the food promised in the 1876 treaty was underprovisioned while measles and whooping cough abounded. When Black Elk returned in 1889, he heard of a new vision from Nevada, which prophesized an indigenous world without *Wasichus*. Ghost Dances performed this vision and spread like fire across the cultural corridor connecting Lakota land to the Midwest and to Mexico, the *peyotl* route. They reached Wounded Knee in 1890 and provoked hysteria among U.S. soldiers, who killed Sitting Bull, arrested Big Foot, and surrounded the Lakota camp. On December 29, Big Foot’s guard shot a soldier, so 300 Lakota were massacred during morning coffee, “all frozen in ghostly attitudes, thrown into a ditch like dogs” (Crow-Dog 1990:7).

When recalling this traumatic event, Black Elk's and Mary Crow-Dog's narratives of resistance evoke a common image of a baby sucking on her dead mother's breast.

Following Wounded Knee where "a people's dream died in bloody snow" (Neihardt 1979:1), rape, forced sterilizations, and constant assaults on indigenous peoples are hardly ever prosecuted. To solve "the Indian problem," Generals Sherman and Sheridan proposed boarding-schools to create "farmhands, laborers, and chambermaids" (Crow-Dog 1990:30). After the Indian Reorganization Act of 1934, the Reservation, "a place without hope" (15), became the privileged site where military attacks, Tribal Councils, BIA bureaucracy, and missionary schools, "kill the Indian to save the man" (23). Lakota trauma led to high levels of alcoholism and suicide, which they attribute to *maza skan-skan*, the "whiteman's time as opposed to Indian time" (29). Mount Rushmore (1927-1941) is a reminder that a new time was imposed on an old place.

He-Dog, a flute maker, held Ghost Dances in caves and kept alive "the little sparkle under the snow" (Crow-Dog 1990:10). The first Crow-Dog got his name when coyotes healed him after being wounded while protecting the hills before the 1868 Treaty. The Lakota "fight for our land is at the core of our existence" (11). Names encode their history and territories, while people's visions, performed as dances, renew Lakota life. The Ghost Dance was revived in 1974, when AIM's "new wind" brought the eagle's message, rekindled behind the "Buckskin Curtain" (74). Peyote's visions "renew the substance of things long forgotten" (96). When FBI, BIA, and paramilitary forces suspended their 1973 Calico's dance, the Lakota walked right through them in silence and reached Wounded Knee to join their ancestors. They were surrounded for 71 days. The birth of Mary Crow-Dog's son, Pedro, and repeated dances brought life and peace to *Canke Opi*, their ancestors' mass-grave.

During the 1973 siege, the protesters declared these bleeding hills, "sovereign territory of the independent Oglala [Lakota] Nation" (140). Those

present at Wounded Knee were later imprisoned, tortured, mutilated, murdered, or disappeared. Leonard Crow-Dog was charged with conspiracy for saying, "Don't sell your grandmother earth, don't sell your water!" (216). Leonard Peltier serves two life sentences accused of murdering two FBI agents during the 99<sup>th</sup> celebration of Gen. Custer's 1876 illegal seizure of the hills. In November 1975, Micmac Annie Mae was found dead. Her hands were cut off; she had been raped. She was Peltier's dear friend. But Huichol Mayans and Oaxaca Nahuatl attended the Ghost Dance of 1975 at the Crow-Dogs, and life continued. The Lakota defend water and life and pay the prize with their lives and livelihood, yet through decolonial aesthetics they transform the haunting into dignified living.

While deterritorialization breaks the sacred hoop, dancing around the cottonwood tree allows the Lakota to feel "Indian again" (83). In the 1876 Sundance at Standing Rock, Sitting Bull gave skin offerings for the regeneration of life, and in 2016, thousands joined the Lakota there to peacefully protest the \$3.7 billion Keystone XL Pipeline project to transfer oil from Canada to the Gulf Coast across the Missouri River passing by their sacred sites (and not by the settlers' town, Bismarck). Hundreds of indigenous nations, US military vets, farmers, and activists stood in solidarity above the pipeline's path. In September 2016, a Sarayaku delegation travelled to Standing Rock to deliver a sacred message to unite the Southern Condor to the Northern Eagle and together protect life and the earth from oil companies that are blind, unable to understand the language of nature. The Zapatistas, on their part, declared that "their dignified struggle is also our own" and sent an offering from Chiapas to the Sacred Stone Camp (Enlace Zapatista 2016 n.p.). A month later, buffalos came running down the hills and the Lakota received them with a tremolo and raised fists. The Buffalo Nation lives on; the sacred hoop is not broken.

Militarized police responded against water protectors with dogs, gas, rubber bullets, massive arrests, and water cannons at below freez-



ing temperature on Thanksgiving 2016, risking freezing people to death and contributing to a longer repertoire of Lakota memory. The lion had arrived with its brute-force. By November, the protest's solidarity reached 20,000 at Standing Rock. To defend land and water, the Lakota wielded thirty-six mirrors made by students of artist Cannupa Hanska Luger at the Institute of American Indian Art (IAIA) and 2,000 veterans joined them to deflect military violence with mirrors that reflected the soldiers' (in)humanity back at them. By December, President Obama and the U.S. Army Corps of Engineers momentarily halted the construction. President Trump's 2017 executive action reversed the engineers' decision; but Trump's reversal has already been declared illegal due to lack of previous consultation and to possible environmental threats. Like Pedro at Wounded Knee in 1973, a Lakota baby named *Mni wiconi* [Water is life!] was born in October 2016 at Standing Rock to renew Lakota life once again. The Lakota danced. The camp was finally razed and tipis burned during a February blizzard in 2017. But their resistance lives on. Indigenous nations walk together in their difference to defend water and life.

### The Spears of the Living Forest

*Imágenes de Identidad* (Ortiz 2005) features 140 watercolours of daily moments from nineteenth-century Quito, Ecuador, from a book found in Spain's National Library in 1997. One of the watercolours depicts a masked dancer ready for carnival, covered with mirrors that refract a colonial theatricality of power (FONSAL 2005:70). With masks and mirrors, indigenous peoples deflect an epistemic and corporeal violence, awaiting the right conditions for overt resistance. The "Napo Indian" watercolour features an Amazonian carrying on his back a woven basket covered with plantain leaves (26). He hikes from the Amazon through treacherous mountains and holds a long spear in each hand, both to support his movement and to protect himself against threats. The state has always sponsored the visual construction of the savage Indian, but it also has

disseminated the image of an indomitable landscape. Since *La escuela quiteña's* founding in 1588, Andean churches and state buildings were dressed in images that encoded the new modern state's social norms by erasing the "Indian." During the Enlightenment, Alexander Von Humboldt travelled to Ecuador on a scientific expedition and built on this colonial gaze for the world to look at indigenous people as surrounded by a savage landscape, supposedly empty and readily available for colonial settlers. This scientific gaze found echoes in colonial North American images that stage a Manifest Destiny to expand the nation's Western border into the Pacific Ocean at the expense of indigenous lives and livelihoods.

Peoples from the *Kawsak Sacha* [Living Forest] have climbed the Andes for trade since pre-Columbian times. During colonial times, Spain consumed Napo's cinnamon, so Kichwa people who migrated as servants for the mestizo settlers came to be known as *Canelos*, 'cinnamon people' (Carcelen-Estrada 2010:66). They worked as indebted servants for the new *haciendas*, whose settlements encroached on Waorani and Záparo territories in the hinterlands of the Curaray and Napo Rivers and on the Shuar's and Ashuar's territories to the South. After Ecuador's liberal revolution (1895-1912) and Rockefeller's Brazilian adventures, the United States began consuming Amazonian rubber and oil. The promises of an Amazonian development contrasted with a Kichwa displacement from struggling Andean agricultural and mining economies. Upon moving to the Amazon and with their vision and language, Kichwa settlers encoded for the state the Waorani and Shuar people as barbarians with spears, 'Aucas' and 'Jíbaros,' respectively. The Kichwa were mediators between the Andean and Amazonian worlds.

After Ecuador's independence from Spain in the nineteenth-century, liberal elites collected folklore to encode a national identity, mimicking social practices among early industrial societies, such as France, Germany, and Great Britain, that confined citizens to their value as workers for imperial markets. Similarly, indigenous cultural

practices were reduced to Ecuadorian folklore – visual decorations for the nation-state, devoid of indigenous meaning. To engineer a working class and a modern citizenry, the liberal elites “civilized” Ecuador through universal education and the development of a national culture, forcing migration and acculturation among indigenous populations. Juan León Mera explicitly opposed “enlightened people” to Indians, and thought of them as separate spheres of the state (Carcelén-Estrada 2012:12). At the turn of the century, President Luis Cordero Dávila, “motivated by the rise of folkloristic studies and anthropology in Europe, compiled dictionaries and attempted Kichwa literacy programs” (ibid.). Like their colonial antecedents, postcolonial elites appropriated indigenous culture, yet assumed that “savages” were not citizens until they adopted labour-based identities, such as “peasants” or “workers.” But when President Plaza gave the protectorate of Ecuador’s “savages” to North American missionaries, the latter were fighting a battle for the Amazon in a Cold War context. The missionary presence sought to put an end to spears and open the jungle for oil exploitation. A Waorani and Shuar forced deterritorialization ensued, solidifying a Kichwa presence in the region.

When the first American missionaries entered Shuar territory at the dawn of oil exploration in the Ecuadorian Amazon, Bible translators attempted to translate into the local languages “the righteousness of God;” the Shuar proposed their model of a “well-cleared garden,” of “manioc free of weed,” metaphors also guiding a Kichwa conception of a proper way of speaking [*alli rimana*] (Nuckolls and Swanson 2014: 49). In an Amazonian cosmovision, speaking mimics proper gardening. A Kichwa way of sensing transmuted into an Amazonian regional cosmovision, which binds nations together, despite their linguistic difference. Another thing they share: their fight against oil companies and for an ancestral, cultural, territorial, and economic integrity that begins with the recognition of peoples’ dignities and of the sustenance of the *Kawsak Sacha*.

While the Zapatista dream incorporates decolonial aesthetics that fuse multiple temporalities to remap national space and Lakota dances weave visions of a prophetic future, in the Amazon, Waoranis, Shuars, and Kichwas conflate space and being as they “evoke concrete memories for interactions that, in their turn, give rise to memories of key experiences” and sense the world through “the sounds and movements of the Forest” (ibid.). Zapatistas move as they listen to other people’s walking, but Amazonians merge with the *Kawsak Sacha* to renew life through the sound and movement of the Forest itself. The embodied experience of speech displaces thought and referent as the sources of meaning to centre daily practices of re-existence as the enunciating sites where language and action together produce meaning from concrete, skilful analogies from nature. To live with and within nature, Ecuador’s Amazonian social order emerges from the “earthy concreteness of native experience with rivers, plants, birds, and garden patches” (ibid.). There is no division between nature and people. Like Votán-Zapata, Amazon’s beings are not single, but always exist in relationship to one another, not by weaving mythical with historical times as much as by casting a net of all life within the *Kawsak Sacha* itself. Amazonian enunciation belongs not to a people, but to the voice of the strong gardening mother [*sinchi chakramama*], whose “sounds and movements” reproduce in human speech the forest’s message with its same rich aesthetic complexity. Life [*Kawsay*] takes plural meanings in nature’s archives of history.

An Amazonian “immanent alterity and the dialogical constructedness of reality” produces ‘fractal’ meaning from the forest as well as from performing bodies “in an aesthetic dialogue with their environment” (Uzendoski 2014:29). For example, when missionary François Pierre asked for the Záparo meaning of the verb ‘to load’ [*astana*], his interlocutor responded with skilful analogies to nature that encoded a historical consciousness. The action starts with a canoe which leaves their ancestral place [*ñukanchik*

tampokamak], Piwi Pond, to pursue a dream of sustenance [*aswa puñuna*] (Nuckolls and Swanson 2014:49). After cutting down corn and plantains, a combination of Andean [corn-*sara*] and lowland [plantain-*palanta*] agricultural epistemologies, the Záparo 'load' these bundles on baskets like those in the old watercolour, and load the bundles on the canoe along wood split thinly like snakes [*tsalinchik*] (ibid.). 'Astana' simultaneously signifies from various dimensions: an original migration; the merging of agricultural models [corn/plantain]; overlapping ontologies [snakes/trees, people/baskets]; and a Záparo fluvial movement. People move through history even in the simple act of loading. Understanding action without understanding decolonial meanings, amounts to reducing words to their value in a global market, turning an epistemic language into useless speech [*yanka rimana*] (Carcelen-Estrada 2012; Uzendoski 2014). The Záparo ancestral language died and they speak Kichwa today, but their orality shares the cultural archives from Napo to Paraguay.

Amazonian decolonial aesthetics include walking the forest in silence and speaking from the forest. For example, onomatopoeic sounds are central to Amazonian speech. The Kichwa phrase for "here they come lost through the jungle, *taras, taras, taras*" [*taras, taras, taras pantasha, witata shamushkakuna*], includes cultural norms in the use of the 'taras' ideophone, which mimics the sounds of machetes chopping down the *Kawsak Sacha* as opposed to the people who, inhabited by it, can walk through it in silence. Amazonian Kichwa, Huao Terero, and Shuar, coalesce into a single Amazonian cosmology.

The Sarayaku [corn/water] tell as their foundational myth the story of a pregnant mother who, lost in the jungle, *taras, taras, taras*, stumbles into the jaguars' house. This common Amazonian story describes how jaguars eat the woman, but Jaguar-Grandmother saves the twins inside her, loads them into a basket, and raises them as her own. Once grown, Cuillur and Dociru find out about their mother's murder and transform all jaguars into stones, except one pregnant jaguar

who escapes to repopulate the earth. On Judgment Day [*ishuk puncha*], the jaguars will come from beneath the stones to "devour humanity" (Uzendoski 2014:30-34). Today, the Twins' decedents are defending the *Kawsak Sacha* to prevent this prophetic human destruction. While Waorani meanings hide in isolation and silence, Záparo and Sarayaku stories validate migration and trade for the regeneration of life, but, in all cases, nature's sounds and movements reproduce their fractal meanings. Signification occurs at various dimensions that are activated through daily actions. They begin at dawn, drinking *wayusa* tea while sharing dreams to collectively make sense of experiences and keep the community united and well-informed. In 2012, the International Court of Human Rights in Costa Rica condemned the Ecuadorian government for oil exploration in Block 23 and recognized the Sarayaku's right to defend their ancestral territories from international corporations. So, they travelled to Standing Rock to help the Lakota fight a common struggle.

Ideophones encode historical moments; in the Záparo case, *taras* marks an intruder to the Amazon. In 2006, I went to the Amazon looking for the Bible that Summer Institute of Linguistic (SIL) missionaries translated into Huao Terero with the support of Texaco and the Ecuadorian state, but instead I found silence in a cave, protected by a roaring waterfall. I was staying at the elders Gaba's and Karoe's *maloca*, when Mengatowe, Karoe's father, invited me to follow him through the jungle. Without knowing our destination, I trailed him for miles in complete silence. The 'taras' of my boots contrasted with his silent footsteps. He never spoke a word. Mengatowe helped me down the last cliff, which dropped 30 feet into a waterfall. I washed my face, we had some water, and he broke his silence. When American rubber hunters came at the turn of the twentieth century, the Waorani hid from *cowudi* [cannibal] invaders in silence for decades inside the cave behind that waterfall. While I was concerned about the "first contact" linguistic and cultural consequences, Mengatowe reminded

me that the Forest remembers a longer resistance that remains invisible and silent to intruders. Like Mayans, Amazonians walk along older paths to find in the forest archival sources for a collective memory. They demand autonomy and a sustainable future free of silence and invisibility. The Living Forest, *Kawsak Sacha*, encodes historical memory in a very concrete way. We trekked back to the *maloca* house in time for dinner. The family sat to eat to the sound of Gaba's songs about the forest. She tells me, "when the Forest is razed, the songs are forgotten."

After SIL completed its work in the 1970s, the Waorani were divided. Some joined the *cowudi*'s journey and settled in oil towns, among Kichwas, or on riverbanks, like Karoe and Gaba in Chiripuno. The Taromenane, however, chose the depths of the Living Forest, an "intangible" area in the Yasuní, a euphemism for an autonomous indigenous territory beyond the grasp of the state. China funds today's expanding resource extractivism in the Amazon. To prepare for its coming, a Taromenane genocide had to take place. It was so quiet, almost imperceptible, narrated as a strife among tribal people, irrational and inherently violent. The state denied it ever happened. In 2013, the Tagaeri and Taromenane walked back the path taken in the 1970s to escape from SIL towns and demanded tools from the Waorani elders who still lived there. The elders Ompure and Buganey, from the closest *maloca* to Tagaeri territory, tried in vain to explain how *cowudi* companies no longer provided them with food or tools; they had lost all leverage to get them anything. The Tagaeri did not believe the elders because they knew oil companies were back, venturing into their territory, and assumed that the Cold War paternalistic model for corporate development was still operational, even if wearing a different mask.

Throughout their prolonged historical relationship with other ethnic groups – Inca, Habsburg, Bourbon, those caught up by Ecuador's settler programs, and US imperial policies, the Waorani chose voluntary isolation to avoid foreigners and defend the *Kawsak Sacha* from the *cowudi* who venture into the Amazon looking to transform

"natural resources" into "value." The *cowudi* seek mythical warriors, magical fountains, cinnamon, gold, rubber, petroleum, wood, palm-oil, land, water, oxygen, or whatever fancies of progress drive them to raze the Amazon and destroy the concept of life itself, as per a Waorani cosmology. "Waorani meaning is protected in the depths of silence, waiting for the right time to emerge with an overt resistance" (Carcelén-Estrada 2010:85), and today this overt resistance is local as well as transnational.

Amazonian decolonial aesthetics move away from indigenous and collective rights to place nature itself as intervening for her political rights. In the 1990s, the Waorani won their case against Texaco for an oil spill one and a half times bigger than Exxon-Valdez's in Alaska, but the cleaning of the forest never took place (75). In 2012, the Sarayaku won their human rights case at International Courts and defended the rights of nature. Amazonians as one with nature, bring nature to the courts to demand her constitutional rights. Indeed, the 2008 Constitution guarantees the rights of nature and of people to live in harmony and sustain a good life, *Sumak Kawsay* (Art. 14) and to decide over the destiny of their *Sumak Kawsay* (Art. 275). But even if written in a constitution, indigenous meanings remain elusive to a state built on the premise that their lives and livelihoods are dispensable and their lands, readily available for appropriation. Since the 1990s, indigenous marches have repeatedly paralyzed the capital, taking over the political stage, causing regime change, and forcing constitutional reform. President Correa already gutted the *Sumak Kawsay* Constitution through his authoritarian reforms, and the Waoranis, Shuar, Kichwas, Záparos and many others continue to march together in the defence of life, as they have always done. Indigenous resistance outlives the nation-state regardless of the constitution that shapes it.

Since its first liberal constitution (1830), Ecuadorian democracy reinvented itself twenty times until the 2013 Tagaeri massacre. The time had come for overt resistance against corpo-

rate encroachment on their *Kawsak Sacha*. The Tagaeri broke their silence with spears. When the deadline came and the Waorani elders failed to deliver, approximately twenty Tagaeri pierced them through the chest with long spears. Ompure was pierced twelve times and Buganey, six. The elders' slow death was recorded on a phone and disseminated online, an image that found echoes in that of the five missionaries pierced in the late 1950s, the event that opened the door to Texaco's oil production. This image reinforces the stereotype of the Amazonian savage with spears, ignoring its meanings within the forest. To avenge their death, Araba and other Waorani relatives entered Tagaeri territory, *taras*, kidnapped two young girls, and killed 30 people, right there, at the centre of the universe, where once their mythical serpent, *tente*, had fallen from the sky and split into humans and cannibals, the latter driven to run after fancies in the four directions of the earth, while the former stay to protect the *Kawsak Sacha* from any incoming *cowudi*.

The Tagaeri massacre cleared Ecuador's Yasuní Forest for oil extraction. The government dropped its ecological promise to keep oil underground in exchange for 3.6 billion dollars in international donations. President Correa ignored the demands of organized urban 'citizens,' the *Yasunidos*, who first protested the abandonment of the Yasuní project, but later came against his venture for indefinite re-election and amendments to laws on inheritance. Like in 1998, the year that marked Bahía's first earthquake, Plan Colombia, Ecuador's dollarization, and the beginning of the uprisings that put Correa in power to implement the *Sumak Kawsay* Constitution, the *mestizo* citizens joined indigenous movements to force a *Pachakutik*, a turning of the world upside-down. By 1995, a national indigenous mobilization that had begun as cacophony to the state in their march to the capital in January 1990, had become the main political force, *Pachakutik*, which led the way to Correa's rise to power (Becker 2010). Ironically, their revolutionary power was precisely their demise. The

revolutionary state violently repressed protesters, ignored claims of river pollution, increased its economic dependence on China, closed the indigenous university *Amautay Wasi*, and evicted indigenous leaders from their CONAIE headquarters in Quito. The state mocked mestizo solidarity as Pachamamismo and indigenous protesters as poncho losers, imprisoning many, including 26 Saraguro political prisoners. Yet, mestizo protesters also mocked in social media Salvador Quishpe, Governor from the Amazon province of Zamora-Chinchipe, calling him "stupid monkey," "dumb Indian," "trash" and some even suggesting Indians kill themselves.

While different peoples may walk together, the *Sumak Kawsay* and democracy may not coexist on the same stage. The Indian's mask inevitably muffles indigenous meanings, Kichwa, Shuar, Waorani, or any other. Yet, it is still easier to conceive an autonomous community than an autonomous environment. Yasuní will now begin to die, but the stones are moving. Another earthquake hit Bahía in 2016, reminding the national government that, like in 1998, time has come today for another *Pachakutik*. Will the jaguars return to eat humans? Are mirrors enough to protect us or do we need spears? When will it be too late to understand the political demands of the *Kawsak Sacha*?

### Conclusions

The Zapatista rebellion of memory, Lakota dances, and Amazonian fractal signification draw from their own haunting archives, but together resist the theatricality of power behind today's neoliberal present. Decolonial aesthetics politically resist bad governments and their national organizations of territory and property, while unveiling their theatricality of power in their liberal, industrial, and post-industrial or neoliberal formations. While indigenous meanings remain evasive behind Indian masks and mirrors that deflect state violence, reflect on a shared humanity, and refract dreams into political action in each act of re-existence – whether by hiding in silence, speaking, telling stories,



gardening, dancing, painting murals, or building *caracoles* – indigenous communities reproduce life with its aesthetic complexities, as they connect to the land, and the land to the law. States come and go, expand, shrink, rise, and fall, but peoples' dreams of freedom and their ancestral memory remain. Dreams awake forests and hills alike to provide life and water to Abya-Yala. Their materialization into dance or narrative suture fragmented memories from heterogeneous archives into a continental pattern that reveals a global solidarity, to hold the state accountable for guaranteeing individual human rights, collective ancestral rights, and the rights of Nature.

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