

# Contested Nationhood in the United States of America

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Susanne Lachenicht

## 1. Introduction

Article 1 of the purposes of the United Nations states that the UN are to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” (UN Charter, Article 1). Who is a sovereign nation, though? Are indigenous peoples sovereign nations?

In September 2007, after thirty years of debates, conflicts, civil rights movements, and negotiations, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples with an overwhelming majority. It recognizes that indigenous peoples do have *collective* human rights including the rights to self-determination, spirituality, lands, territories, and natural resources (UNDRIPS 2007). While in 2007, the United States, Canada, New Zealand, and Australia had initially opposed the UN Declaration on the Rights of Indigenous Peoples, New Zealand and Australia reversed their positions in 2009, Canada and the U.S. in 2010.

The *United Nations Department of Economic and Social Affairs, Indigenous Peoples* (UNDRIP) holds that this document is “the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental free-

doms as they apply to the specific situation of indigenous peoples” (UN-DRIP 2020). However, as a UN General Assembly Declaration, UNDRIP is not a legally binding instrument under international law. In addition, at UN and many states’ level, indigenous peoples are mostly treated as non-government organizations (NGOs), not as sovereign nations with an autonomous government and sovereignty over their territories and resources.

In contrast to this general view of the rights of indigenous peoples vis-à-vis national governments, Native Americans in the United States of America have claimed for centuries to be treated as sovereign nations. With this, they have drawn on concepts of nationhood that Europeans developed from the fifteenth century onwards. Indigenous peoples thus inscribe themselves into fractured continuities (Lachenicht 2018), with regard to concepts of *the nation* and *nationhood*. Up to the present day, they try to (re-)negotiate their sovereignty rights, at times within the framework of the United States of America, sometimes outside or in between – in a Third Space, as Kevin Bruyneel put it (Bruyneel 2007, xi). Native Americans claim some form of postcolonial sovereign status, that is sovereignty rights within the modern United States of America. For the latter, this threatens its very integrity and sovereignty. Nationhood always implies the potential of resistance, subversion, rebellion, and revolution. Denying peoples nationhood or autonomous government has often been, and still is, a sign of subjugation, dispossession, and a strategy of extinction.

While classic theories on nationhood and nationalism suggest that “the nation” only became important from the later eighteenth century onward, that is with the Age of Revolution, research on the later Middle Ages and the early modern period suggests that nationhood has been a central category of belonging ever since (see below and literature quoted in Lachenicht 2022). Modern notions of the nation and nationhood grew out of these older, early modern ones. Since the Age of Revolution, some nations such as the French and U.S. American ones have been understood as nation states (*Staatsnationen*). Others such as Italians, Poles, or Germans, are defined as cultural nations (*Kulturnationen*), i.e., as nations having inhabited their territories since times immemorial, as sharing

a common history, language, artefacts, and literatures. For quite some time, civilization and modernization theories required that nations had to form a nation state, as nations came to be considered the sole source of legitimate political power. Nations thus had the right and duty to determine themselves in a nation state. Nations which lacked these capacities were to be civilized by others. While most of these notions came with essentialist understandings of nationhood, the year 1983 brought a decisive turn for our understanding of nationhood and nationalisms: it saw the publication of Ernest Gellner's *Nations and Nationalism*, Eric Hobsbawm's and Terrence Ranger's *The Invention of Tradition*, and Benedict Anderson's *Imagined Communities*. These works took the inventedness of nations as "imagined political communities" as a point of analytical departure. They identified nations and nationalisms as the result of meaning-making activities, of performative acts that created the idea of nation in the first place. This so-called anthropological turn in nationalism theory thus problematizes essentializing concepts of ethnicity, nation, and nationhood. It also sheds light on the many varieties of nationhood, the fuzziness and ambivalence of the semantics of "the nation," and opens up horizons for nationhood beyond western ideals (Depkat and Lachenicht 2022).

This chapter tells the story of how European colonists in North America, and after 1776 the United States of America, on the one hand, and Native Americans on the other, made use of European notions of nationhood in the process of colonization, both with subversive intentions and effects, as we shall see. The essay will do so for the sixteenth to the early twenty-first century, zooming into specific moments in this process. The paragraphs will show how and in which periods it was useful for American Indians to appropriate the politically "subversive" elements of the concept of the nation, and when and why colonial governments started denying Native American nationhood.

The chapter starts out with a brief survey of colonial discourse on indigenous nationhood and sovereignty from the sixteenth to the eighteenth century. It will then move to the game-changing Peace of Paris of 1763 and the Early Republic. The major focus of this chapter is on the period of treaty-making with Native Americans in the United States

between the later eighteenth and nineteenth centuries: how did Native Americans try to negotiate their nationhood and sovereignty rights in what some authors have described as the period of new colonialism (Wunder 1994, 27)? I will then look into the politics of removal and termination. The chapter ends with examples from the United States of America today, to analyze how American Indians use present concepts of nationhood and sovereignty in subversive ways to empower themselves as sovereign political entities.

## 2. Colonial Discourse and Indigenous Nationhood

There has been some debate on indigenous nationhood and sovereignty in the early modern period. Before we look into this specific aspect of colonial discourse, it might be worthwhile to briefly address early modern concepts of nationhood.

In the early modern period, not only the French, English, Spanish, and Irish were addressed as nations but also Native Americans. In theory, all nations were equal. They were all subject to natural law and as such invested with common sovereignty rights. At the same time, all nations had and developed in history. In early modern times, the term “*nation*” comes with a variety of often entangled meanings: it referred to the same (mythical) origin, the same territory, which had been inhabited by the nation since times immemorial. In many instances, “*nation*” is tied to territory. Be it the English nation, the French, the Spanish or indigenous nations in the Americas: *the nation* is about territorial belonging, territorial and genealogical ancestry, climate, food, bodies, language, and history. Territorial ancestry, that is the idea of having inhabited a given space since times immemorial, meant that the nation united the “natural inhabitants” of a given territory and that those natural inhabitants were its “owners”. Not only European but also indigenous people in the Americas could thus lay claim to being “natural inhabitants” – as among many others Charles de Rochefort writes in his 1681 *Histoire naturelle & morale des îles Antilles de l’Amérique* (Rochefort 1681, 6–7, 9, 11, 39; Labat 1722, vol.1, 60, 227). Ancestry entitled

indigenous nations to sovereignty, to governing their ancestral territory. The *development in history*, however, was a trickier element: Europeans considered some nations “less developed” than others, “less civilized.” From this perspective, the latter needed to be subjected and governed by “more superior nations” (Labat 1722, 135, 209–210; on the concept of early modern nationhood see Lachenicht 2022, Depkat and Lachenicht 2022).

Against this background, colonial discourse of Native American nationhood and sovereignty developed a number of somehow contradictory elements: in early seventeenth-century England, some doubted the lawfulness of colonization. Others held that just wars came with a right of conquest that included rights to seize and subdue land and people. Many colonial charters of the seventeenth and eighteenth centuries show that the respective European crown was thought to be entitled to issue patents to discover, subdue, and own land and people. As Christian rulers, they thought they were summoned to take the land of Native Americans. Conquest, in this reading, was the necessary prerequisite for Christianization and civilization (Banner 2005, 6–8, 10–48).

At times, we find these varied and somehow contradicting *topoi* in one and the same source, such as in André Thevet’s (1516 – 1590) *Singularitez de la France Antarctique* of 1558. Thevet was a French Franciscan friar, explorer and cosmographer who travelled to the Eastern Mediterranean and Brazil. As many other travel accounts, the *Singularitez* are concerned with Europeans “discovering”, gathering, and cultivating the riches of “new lands” which are described as abundant and invaluable. While Thevet concedes that the land belongs to the “savages,” he judges the latter not to be “numerous enough to *properly* cultivate their land.” Europeans are therefore required to take the newly found land from the “savages,” to cultivate it and to thus take indigenous peoples out of barbarism and guide them into more civilized ways of life. The land of plenty, in today’s Brazil, therefore, is in “the wrong hands” – according to de Thevet, a narrative which became a *topos* in European colonial discourse (Thevet 1558, 2, 14, 51).

In many other European texts of the mid-sixteenth to the early eighteenth century, American Indians are viewed as the natural inhabitants

of the Americas who had lived there since times immemorial and who own the land – as we can see from Jean-Baptiste Labat’s *Nouveau voyage aux isles de l’Amérique* of 1722, Charles de Rochefort’s 1681 edition of his *Histoire naturelle & morale des îles Antilles de l’Amérique* and Thomas de Raynal’s famous *Histoire des deux Indes* in its edition of 1780 (Labat 1722, 227; Raynal 1780, vol.1, 226; Rochefort 1681, 6, 9, 11, 39). In some passages, especially those that describe indigenous planting and farming, Native American nationhood and sovereignty rights over lands and territories are not being contested. In other chapters of the same texts, however, referring to social organization, religion, customs, and habits, the Caribs are represented as uncivilized people subject to colonial control. Their land has, as Labat writes in his *Nouveau voyage*, “no proper master,” somehow echoing Thevet, John Winthrop, and other writers who held that the land was too vast to be only populated by a few “Indians” (who had been decimated by European disease). According to many of these authors, European kings needed to take possession of the Caribbean islands and other parts of the *New World* (Thevet 1558, 135). In other words, only if Europeans/Christians took possession of the land would there be full because “civil” sovereignty over these territories.

Colonial discourse on indigenous nationhood and sovereignty thus oscillates between an early modern understanding of nationhood and sovereignty that fully included Native American nations possessing property rights on the one hand and justifications for conquest, land grabbing and, later, subjugation based on the denial of such rights on the other. Both reasonings frequently appear in the same texts.

For a long time, however, the discursive assumption of ownership heavily contrasted with realities on the ground: during the “old period” of colonization in North America, that is up to the late eighteenth century, Europeans were often too weak to subjugate and govern vast Native American territories. Instead, Europeans were dependent on Native Americans and their knowledge of the land and its resources, as Captain John Smith, among others, readily conceded (Smith 1612). For a rather long period in the history of North America, “taking” American Indian land therefore meant that Europeans purchased land from American Indians and thus entered into treaties with these sovereign nations. These

treaties not only regulated the purchase of land but also alliances, trade, jurisdictions, and territorial boundaries. They formally and legally recognized Native Americans as sovereign nations, with their own governments, territorial boundaries, laws, and jurisdictions (Konkle 2004, 2–3; Hoxie 1994, 87; Harring 1995, 14–15).

Between the seventeenth and the late eighteenth centuries, Native Americans used the language of nationhood and sovereignty in negotiations, conflicts, and treaty-making with Europeans. Native Americans drew on genealogies, ancestry, notions of having inhabited territories since times immemorial, and of related sovereignty rights in their dealings with Europeans. They understood themselves and acted as sovereign nations (Konkle, 2004, 2). Notions of nationhood and sovereignty, adopted from Europeans and transformed *mutatis mutandis*, left Native Americans with some room for interpretation and maneuvering for their survival and their own developing national discourse. They adapted to negotiate in a Third Space, as we shall see.

### 3. The Peace of Paris (1763)

The fourth French and Indian War ended with the Peace of Paris in 1763. Huge landmasses, or, as Francis Parkman wrote, “half a continent” (Parkman 1905, 526), changed their “proprietors”: French territories east of the Mississippi River and in Canada went to Britain – at least from a European perspective. From the perspective of Native Americans, France had sold their territories to Britain, without asking the land’s original and sovereign owners (Calloway 2006, 66). This peace treaty proved to be more than dramatic in its consequences, in particular, as, nominally, Britain became the sole imperial power in the northeastern parts of North America. It was from now on the only power with which Native Americans in these regions had to negotiate their sovereignty rights. With France leaving behind much of mainland North America, Native Americans could no longer play off the two competing imperial states.

During the French and Indian War, American Indians had mostly fought on the French side, to get rid of British settlers menacing their lands. In 1763, however, the latter had come out as victors. To avoid bloodshed, some British colonial authorities meant to separate Native Americans and white settlers: they made attempts to keep “Indian country” clear of European settlements. In many instances, British colonial authorities continued to recognize that, in principle, the land was Native American land and concluded treaties with American Indians as sovereign nations. Newly arriving white settlers, however, increasingly disputed American Indian land and sovereignty rights, often against the colonial authorities’ will (Calloway 2006, 48–55).

From a Native American perspective, the Treaty of Paris of 1763, in which they had not been included as allies and sovereign nations, was no peace treaty but a declaration of war by British colonial authorities and white settlers alike. In addition, the British did not continue diplomatic relations with American Indian nations, as the French had done before. Inspired by the Delaware prophet Neolin’s vision, Pontiac’s war broke out in 1763, the first Native American war of independence – as American Indians later put it. It was a pan-Indian movement against British colonialism, uniting a number of indigenous nations: Ottawa, Potawatomis, Ojibwas, Wyandots, and other. Their united forces tried to take Detroit, laid siege to the town for six months and took a number of British forts between the Appalachian Mountains, the Great Lakes and the Mississippi regions. When a peace treaty was signed in 1764, Native Americans had not driven the British from their lands. However, they had received concessions from the British: the latter had to ask for passports to cross “Indian country”; for rights to erect or maintain forts they had to accept local tribes as equal partners – at least from Native American perspectives (Calloway 2006, 66–91). From a British colonial perspective, establishing a clear border between “Indian” and British territory, as King George III did with his proclamation of 1763, was to establish peace. It was not quite clear whether this proclamation established Native Americans and British colonizers on an equal footing, whether it safeguarded Native American sovereignty or land rights, or whether American Indians had come under British dominion (Calloway 2006, 96). From a Native

American perspective, the proclamation was and still is understood as their Bill of Rights. Especially in Canada, it became a major instrument in land disputes in the centuries to come.

#### 4. The New Republic

With the American War of Independence, Native Americans were in many instances forced to negotiate sovereignty over their land with the United States of America, a newly emerging empire which succeeded Britain without feeling any obligation to further respect the Royal Proclamation of 1763. While the U.S. claimed sovereignty over the territories “acquired” from the British, the federal and the state governments were by no means able to control these territories. In practice, U.S. American sovereignty was limited; the middle ground was still there (White 2010). US Americans had to continue to treat Native Americans as sovereign nations with whom treaties were to be made on an equal footing, that is as sovereign nations with autonomous governments (Gould 2012, 1–4; Konkle 2004, 14–15).

The U.S. constitution of 1787 recognizes Native Americans as separate political entities. At the time, it was not quite clear, however, whether indigenous nations were to be treated as foreign nations, that is as sovereign states outside the United States of America and beyond its political boundaries, or as the several states of the U.S. Congress became the very institution entitled to deal with foreign nations and the several states. While, in theory, notions prevailed that saw Native Americans as different, primitive, and less civilized than other societies, the colonial practice of treaty-making continued. To some extent, this continuous practice re-established Native American nations on an equal footing with the U.S. American nation (Bruyneel 2007, 11; Konkle 2004, 8–9; Hoxie 1994, 90, 92, 97). With the westward expansion of the United States of America, “fulfilling” its “manifest destiny”, this ambiguity became more and more complex and complicated.

## 5. Treaties and Removal

After 1787, the colonial traditions of treaty-making prevailed. Many of the more than 500 treaties between American Indians and the United States government, concluded between 1778 and 1871, still have legal effect today. From 1778 to 1831/32, the majority of these treaties was mainly negotiated to establish new borders between indigenous and U.S. American territories, including the necessity to hold a passport when crossing American Indian territory. To some extent, these treaties resembled in their structure, concepts, and stipulations international treaties of alliance between European powers.

One good example is the Treaty with the Delawares, signed in Fort Pitt on 17 September 1778. It was the first written treaty concluded between the young and, in this case the (Delaware). It was essentially a formal treaty of alliance allowing U.S. Americans to travel through Delaware territory. From the Delaware or Lenape perspective, as Dan Richter has pointed out in *Facing East from Indian Country*, the agreement was considered as allowing the free passage of revolutionary troops and the building of a protective fort for defending white settlers (Richter 2001). The treaty spoke of the Delaware as a sovereign nation (Treaty with the Delaware 1778, art. III). It recognized their sovereignty rights and encouraged other Ohio Country Indian tribes, friendly to the United States, to form a state headed by the Lenape, with representation in the Continental Congress. It has been suggested that this stipulation had been inserted on request of the Lenape chief, White Eyes, who proposed the measure in the hope that the Lenape and other tribes might become the fourteenth state of the United States. In any case, it was never acted upon by either the United States of America or the Lenape Indians (Treaty with the Delawares 1778).

At the same time, colonial discourse on the state of nature of Native Americans sharpened. It continued with some of the early modern *topoi*, inherited from the “old colonial period”: “Indians” were represented as being different from Europeans or Americans of European descent. The former were unable to rise from their state of nature, were morally depraved, did not want to improve themselves, had no notion of property,

and did not properly cultivate their land. “Indians” had thus to be excluded from the universal human. From this colonial perspective, natural law did not apply to Native Americans. Instead, they were considered to be incapable of forming their own governments (Konkle 2004, 10–11). The US American government was thus trying to use the subversive semantics of “civilization” within the semantic field of “the nation” to deprive Native Americans of their rights as nations. As Frank Kelderman states:

This paradox of indigenous sovereignty shaped the workings of Indian diplomacy in the nineteenth century. On the one hand, by making treaties Indian nations reaffirmed their inherent sovereign status as nations external to the United States. On the other hand, the American government recognized indigenous sovereignty only within the context of the colonial relationship between Native people and the United States: for instance, it did not recognize Indian nations as sovereign powers that could engage in formal diplomatic relations with other foreign powers. (Kelderman 2019, 19)

From the early 1800s, the treaty-making practice between the United States and Native American tribes was increasingly inspired by the perceived necessity of removing indigenous inhabitants from areas east of the Mississippi. In 1830 this new policy ushered in the Indian Removal Act under President Andrew Jackson. The Jacksonian era has frequently been described as the very years when the US American empire shifted the balance of power from indigenous to settler dominance (Snyder 2017, 16). The U.S. federal legal rhetoric on American Indians now turned from “sovereign nations” into “domestic dependent nations,” or later “domestic, dependent tribes” in relation to the U.S. American federal state – a development against which many American Indian nations tried to push back (Kelderman 2019, 5–6). Despite these efforts, the treatment of Indian Affairs moved in 1849 from the U.S. department of War, dealing with international relations, to the Department of the Interior. In terms of the political executive, Indian Affairs thus became part of U.S. American domestic affairs, notwithstanding

the legal ambivalence of the Removal era Supreme Court decisions. The Civil War Period and the re-consolidation of the United States of America after 1865 further pushed towards the end of treaty-making. Increasingly, Native Americans were no longer viewed as independent, foreign entities but rather as a domestic problem – as “domestic dependent nations” or as “domestic traitors” (Bruyneel 2007, 5). In 1871, the House of Representatives decided that the House would no longer recognize individual tribes within the U.S. as independent nations with whom the United States could contract by treaty. All of this put an end to more than one hundred years of treaty-making between the United States of America and American Indian nations. It enhanced what some have called the end of “Old Colonialism” and the beginning of “New Colonialism” (Wunder 1994, 27).

From the U.S. American colonial perspective, Native American leaders tried to use the semantics of nationhood, civilization, and sovereignty in subversive ways to uphold and renegotiate their rights. In his reassessment of American Indian literatures, Frank Kelderman has shown for the nineteenth century how Native American leaders and writers “were apt readers of institutional networks and discourses” (Kelderman 2019, 6). They brought their tribal, national, and international understandings of sovereignty and landownership to the table to negotiate with an empire increasingly hungry for other sovereign nations’ land. Through the use of the expanding print culture in nineteenth century North America, Native Americans published their understandings of sovereignty and nationhood in their own newspapers but also used the well-known newspapers of settler society to argue their causes (Kelderman 2019, 6–7).

The Cherokee nation is a good example for these endeavors. Already in 1794, the Cherokee nation, with its territories in today’s Georgia, founded a National Council. In 1808, the Cherokee codified their laws in the English language and declared themselves to be a republic in 1817. This was followed by the foundation of New Echota as the Cherokee’s republic capital city, and the call for a constitutional convention in 1827. It brought about a government and constitution with a bicameral national council, courts and one principal chief, at that time John Ross.

The Cherokee held that as a “modernizing nation,” they had to be considered a “civilized tribe” (Konkle 2004, 49) and therefore recognized as a sovereign nation.

In 1818, the Cherokee nation was close to being removed from its ancestral homes in Georgia. Nancy Ward (1738–1822), a Cherokee elder, drafted her petition to the Cherokee National Council. She held:

We have heard with painful feelings that the bounds of the land we now possess are to be drawn into very narrow limits. The land was given by the Great Spirit above as our common right, to raise our children upon & to make support for our rising generations. We therefore humbly petition our beloved children, the head men, and warriors, to hold out to the last in support of our common rights, as the Cherokee nation have been the first settlers of this land; we therefore claim the right of the soil ... Our Father the President advised us to become farmers to this advice we have attended in every thing as far as we are able. Now the thought of being compelled to remove to the other side of the Mississippi is dreadful to us, because it appears that we shall be brought to a savage state again. (Cherokee 2000, 29–30).

Nancy Ward made use of the concept of the “civilizing mission”, arguing that the Cherokee used their land “properly”, were therefore “civilized” and as such, according to European-American logics or the semantics of the concept of the nation, not to be removed from their ancestral land. Other Cherokee leaders, such as Elias Boudinot, John Ridge or John Ross, also emphasized the civilized nature of the Cherokee, as a literate and Christianized nation, with a government based on republican principles, a nation that was in a process of “improving” itself through its own schools and imported farming techniques. Cherokee writers and political leaders insisted that the era of treaty-making had proven the Cherokee nation to be sovereign, that natural law and the rights of nations to autonomy and sovereignty, and therefore to form their own government, had to be applied in their case, especially as they had lived on their lands since times immemorial. They also insisted that they had history, that as a nation they were developing in history. *Cherokee Nation v. Geor-*

*gia* (1831) and *Worcester v. Georgia* (1832) show impressively how this battle for sovereign nationhood failed. It was followed by the Cherokee removal treaty in 1835 and the Trail of Tears in 1838 (Konkle 2004, 17, 20, 36–37, 42–96).

During and after the Civil War, the Cherokee nation was divided on the question how they should deal with the reinforced efforts of the U.S. federal state to “domesticate” Native Americans. The Cherokee nation now lived in the Indian Territory. The territory was governed by American Indian nations who had been resettled, in particular the Cherokee, Choctaw, Chickasaw, Creek and Seminole nations. In this context, the Cherokee became divided into a northern (full-blood) and a southern (mixed-blood) Cherokee nation. While the northern section under the leadership of John Ross wanted to “secure Cherokee autonomy in the ‘third space’ between domestic and foreign status” (Bruyneel 2007, 47), the southern section of the Cherokee led by Stand Waitie, which had sided with the Confederate States of America during the Civil War, wanted to disunite the Cherokee nation and was ready to agree to the conditions of the colonial U.S. settler state. In the end, the treaty of 1866 secured the Cherokees’ needs as a nation: up to 1898, they became exempt from the land allotment policy in Indian Territory, but only for one year, up to 1898 (Bruyneel 2007, 29, 47–53, 63–65). Other Native American nations had used a language of subordination much earlier than the southern part of the Cherokee nation: in the 1818 Pawnee treaty, Pawnee nations declared themselves “under the protection of the United States of America, and of no other nation, power and sovereign, whatsoever” (Treaty with the Great Pawnee 1818, 156–7).

Up to 1832, many land cession treaties use the language of *nation* and *sovereign nation* with regard to their American Indian treaty partners, even in removal treaties such as the *Treaty of Dancing Rabbit Creek* which was signed on 27 September 1830 between the “Choctaw nation” and the U.S. government in today’s state of Mississippi. It is considered to be the first removal treaty carried into effect under the Indian Removal Act, ceding 45,000 square km of Choctaw nation territory to the U.S. government in exchange for about 61,000 square km in the Indian Territory, that is today’s state of Oklahoma. While the Choctaw are still

approached as a sovereign nation, “forever exempt from laws of any U.S. state,” the latter serves the Choctaws as a protectorate state. Also, the U.S. negotiated that it would be allowed to establish post-offices, military posts, and roads in the Choctaws’ territory, which meant the implementation of U.S. state institutions and U.S. infrastructure in Native American territory (Treaty of Dancing Rabbit Creek, 1830).

In more and more instances, the United States of America ignored or denied that American Indians made “proper use” of their land. From the colonial settler state’s perspective, American Indians therefore only had temporary titles to their lands and needed to be replaced by “civilized” white settlers. In addition, Native Americans were now described as vulnerable people who had to be removed from white settler societies for their own protection and benefit (Kelderman 2019, 59). This last addition to colonial rhetoric on Native American land titles slowly turned American Indians into domestic dependent nations. In their publications and oratory, Native Americans objected to this status of “vulnerable people” who were on their way to natural “extinction”. Furthermore, some Native American diplomats, somehow echoing the Cherokee nation’s arguments, claimed their readiness to implement “western civilization”, however on their own terms (Kelderman 2019, 64–66, 69, 93).

With the process of removal continuing, American Indian nations lost their status as sovereign nations as the treaties of the 1850s to 1870s show. For instance, the *Treaty of Traverse des Sioux*, signed on 23 July 1851 between the U.S. government and Sioux Indians, regulating land cessions in today’s Iowa and Minnesota, no longer used the term *nation* for the American Indian treaty “partners”, as most treaties had done prior to the 1850s. American Indians were now approached as “bands”, or “tribes”.

With or during their removal, some American Indian nations, or more precisely, some of their leaders, such as Peter Pitchlynn (1806–1881), or Hatchoctucknee, of the Choctaw nation, tried to renegotiate, or as he put it, “rebuild” the Choctaw nation. The latter was like the Cherokee part of the “Five Civilized Tribes”, together with the Chickasaw, Creek, and Seminole nations. European-American colonists classified these “tribes” as “civilized” as they had adopted Christianity,

centralized governments, written constitutions, literacy, nineteenth century market economies which included European forms of agriculture and plantation slavery. Pitchlynn, with a mixed background and coming out of the landed Choctaw elite, attempted to assimilate to U.S. American narratives of nationbuilding: Pitchlynn's aim was the educational, governmental, and economic reorganization of the Choctaw nation, along the lines of modern nation-building, as promoted by U.S. American institutions in the mid-nineteenth century. His endeavor, however, was to have the Choctaw nation do it on its own, not guided by U.S. American institutions but rather by the Choctaw elite. Through "modernization" efforts, that is drafting a constitution, building institutions, law-making in written form, an educational system, establishing social rules for marriage and other, Pitchlynn sought to regain control over his nation's future, to undertake these steps towards "modernity" on its own, without colonial control (Snyder 2019, 124–131, 145, 165). Pitchlynn's nationalism did not build on Choctaw traditions and ancestry but aimed at the building of a "modern" Choctaw nation in Indian Territory. This nation, however, did not consist of equal and free members but was divided into unfree and free, into different social strata, invested with class privileges (Kelderman 2019, 147). As other American Indian nations' leaders, Pitchlynn also adopted the Western concept of civilization: as the Choctaw nation was willing to become "civilized", they also had more/better claims to Indian Territory than other American Indian nations who were – according to European-Americans – on a lower level of civilization (Snyder 2017, 131). Pitchlynn thus readily took on a narrative of white settler exceptionalism, by using it for to the "civilized" Choctaw nation (Kelderman 2019, 137). According to this narrative, Indian Territory was "vacant", or only populated by "non-civilized", "barbarian" nations.

Some Native Americans took a different line of argument. A number of chiefs and diplomats saw the frontier, quite contrary to Frederick Jackson Turner's interpretation in "The Significance of the Frontier in American History" (1893), not as separating "wilderness" from "civilization", but rather as two differing economic systems that needed to be reconciled (Kelderman 2019, 102–103). Much of this reasoning still in-

forms Native American claims to sovereignty over land and their forms of land usage today.

## 6. Extinction and Termination

After 1871, U.S. politics and that of the Bureau of Indian Affairs in particular turned to “assimilation”, to the “extinction” of American Indian nationhood, self-government, and culture. Among many other measures, boarding schools were established, where American Indian children were separated from their families, often abused, and even killed. In addition, these institutions prohibited Native Americans from using their languages, practices, and cultures. From 1887, the allotment era, land was distributed among individual tribal members, which virtually abolished the collective ownership of land by “tribes”. In 1924, Congress unilaterally declared all Native Americans as citizens of the United States of America. All of this culminated in the Indian termination policies of the United States from the mid-1940s, with the Indian Termination Act in 1953. Its purpose was to end the existence of Native American nations and their governments and to turn all Native Americans into assimilated U.S. citizens. The Termination policy thus nominally abolished the remnants of the U.S. government’s recognition of the sovereignty of American Indian nations and the U.S. trusteeship over Indian reservations. For Native Americans, however, it did not end the legal significance of the treaty-making period.

This clashed with American Indian aspirations to more collective rights and to their reinvigoration as sovereign or semi-sovereign nations with land titles and extensive rights to self-government within their reservations. Again, Native Americans used arguments from the “old colonial period”: that the British and later the United States federal government had recognized Native Americans as sovereign nations through the politics of treaty-making. These treaties, though broken, were still legally binding, the tribes claimed.

The U.S. Termination policies started changing in the 1960s. Rising American Indian activism resulted in the coming decades in claims for

the restoration of Native American rights. According to Tóth, referring to the work of Benedict Anderson, nationhood is not natural but *performed* in cultural representations, government policy, and international diplomacy. Indian diplomacy thus increasingly became “the performance of the nation through ‘representation’ – the standing in of an individual or a team for the interests and positions of a larger ‘imagined community’” (Tóth 2016, 15). Performing the sovereign nation, both in the U.S. and in Canada, culminated in *cross-border* initiatives, with the Trail of Broken Treaties in 1972 as one of the most visible endeavors to push for a renewed negotiation of treaties and the enforcement of treaty rights (with the occupation of the Department of Interior headquarters from November 3 to 9, 1972). With regard to the U.S. government (Nixon was on the verge of being re-elected), the aim of the movement’s *Twenty-Point Position Paper* was to re-establish and legally protect American Indian sovereignty rights, which meant to abolish the 1871 Act and to reinvigorate *Indian Nations’* power (so the position paper went) to contract treaties with the U.S. as *other foreign powers* would (Deloria 1998, 25–31). Among many other related stipulations, the position paper asked the U.S. government to restore by 4 July 1976 a permanent Native American land area of no less than 450,000 square kilometers. This area was meant to be perpetually non-taxable by the federal and state governments and exempt from U.S. federal law. In addition, the petition demanded that the Termination Acts of the 1950s and 1960s be repealed, and the Bureau of Indian Affairs dismantled by 1976 with the purpose of establishing a new institution governing American Indian-U.S. federal relations at an equal level with international relations. While the American Indian Movement activated the language of nationhood, sovereignty, and equality, the language used on part of the United States Congress and the Bureau of Indian Affairs preferred the term “tribes” to “nations.” This unilateral definition notwithstanding, Native Americans were seeking no less than full decolonization and independence from the United States of America, as according to Vine Deloria Jr. and others, American Indians had never ceased to be sovereign nations (Deloria 1988, 38). The declaration of the Independent Oglala Nation at Wounded Knee in 1973 was meant to re-establish political sovereignty beyond the legal framework of the United

States, recognized by other nation-states. It was a clear act of re-territorialization, accompanied and followed by multiple processes of nation-(re-)building throughout North America. As much as other political performances, the militant takeover was meant to force the United States of America to treat Native Americans again as independent nations and to recognize treaties as international treaties. In the mid-1970s, these initiatives resulted in Native Americans and Canada's First Nations gaining NGO-status with the United Nations (Tóth 2016, 6, 34, 39, 46–47, 50–52).

## 7. Subversive Semantics since the 1970s

Today, indigenous peoples in the United States of America draw on modern critical interpretations of colonial treaty-making in the eighteenth and nineteenth centuries. They try to negotiate their rights as sovereign nations between the federal state, the individual states, and their own territories, moving – as Kevin Bruyneel put it – on the spatial and temporal boundaries set by the colonial state. The conflicting parties operate not only with different notions of sovereignty but also with different notions of spatial and temporal boundaries. Indigenous nations in the U.S. claim that their rights as nations and as such their sovereignty rights do not stem from the colonial powers but can be traced to times immemorial. They thus draw on early modern European notions of legitimizing nationhood and national sovereignty, also claiming that the treaty agreements of the eighteenth and nineteenth centuries were still in place. They thus adopt a concept of nationhood that is close to that of the *Kulturnation*. While this can indeed be derived from the acceptance of those agreements in the U.S. constitution, the Marshall Supreme Court rulings and subsequent laws have left Native Americans legally in a Third Space, not fully inside and not fully outside of the U.S. American federal state. From Native American perspectives, this uncertainty with regard to their rights as sovereign nations is interpreted as the colonial state, the U.S., holding them back from advancement, from moving forward in time. It is thus the colonizer who is “holding back”, who is static, not

the to be colonized, quite contrary to colonial notions of time with regard to the “static” indigenous people (Bruyneel 2007, XI–XVII, 1–2).

Indigenous sovereignty claims from the 1970s to the 1990s sought support in a transnational perspective. American Indians were supported by Central European peace, environmental, anti-nuclear and Marxist movements west and east of the Iron Curtain, national liberation, and decolonization activists on a global scale. In forging diplomatic relations with other NGOs, Indigenous Americans performed as sovereign nations. The International Indian Treaty Council was highly successful with its petitions to the United Nations, through its correspondence networks, mass media, political and cultural actions, seeking recognition that they alone, and not the United States of America, were entitled to represent Native Americans as sovereign nations among other nations. Aiming to move from NGOs to sovereign nations with their own territory deeply challenged what the U.S. Government thought to be the integrity of the nation-state and their full sovereignty rights over territory and people (Tóth 2016, 1–6, 149–152, 155–167).

In other colonial states, such as Canada, this language of *nation* and *nationhood* among indigenous peoples is today even more pronounced than in the U.S.: since the 1980s, the term First Nations has become common language not only among indigenous peoples but also in the political language of Canada. First Nations is now used for Canadian indigenous peoples with a common government and common languages, however not for Métis or Inuit peoples.

One of the strongest and best-known examples of what nationhood and sovereignty for American Indians respectively First Nations mean is provided by Haudenosaunee or Iroquois confederacy inhabiting the borderlands between the United States and Canada. Their territory stretches from upstate New York to the U.S. American border into modern-day Quebec and Ontario. The Haudenosaunee people use their own passports for international travel. I quote from the website of one of the Haudenosaunee nations, the Onondaga:

Although physically situated within the territorial limits of the United States today, native nations like the Onondaga Nation and

the other members of the Haudenosaunee, or Six Nations Confederacy, retain their status as sovereign nations. Like the United States, the Haudenosaunee is a union of sovereign nations joined together for the common benefit of its citizens. Governed by a Grand Council of Chiefs who deliberate and make decisions for the people concerning issues both domestic and international, the Haudenosaunee began as a confederacy of sovereign nations aligned to deal with other native nations surrounding their lands and, later, to negotiate with Europeans when the latter came into their territories beginning in the early 1600's. [...] It is the contention of the Onondaga Nation, then, that it maintains and has never relinquished either its national or collective sovereignty as a member of the Haudenosaunee. [...] There has never been any provision for transferring that sovereignty to any other entity, nor have the traditional chiefs of the Haudenosaunee ever consented to such a transfer. Like the individual states of the United States, each member nation of the Haudenosaunee retains the authority to govern its own internal affairs. Within the framework of the Great Law and its own specific laws, each individual nation reserves the right to adjudicate internal disputes, pass laws for the welfare of their own community, assess fees, regulate trade and commerce, control immigration and citizenship, oversee public works, approve land use, and appoint officials to act on its behalf. Every member of the Haudenosaunee has the authority to defend its citizens against internal and external dangers and to advocate for the peaceful resolution of conflict and the equitable distribution of collective resources (Onondaga website).

From an U.S. American federal government perspective, American Indians are today – as scholars put it – in an in-between space: they are “extraconstitutional,” “domestic dependent nations,” there is a “two-tiered structure of Federal Indian Law” and “measured separatism” – which Bruyneel interprets as a Third Space, with uncertainties but also room to re-negotiate American Indian status in the U.S. (Bruyneel 2007, 5).

## 8. Conclusions

This chapter has tried to show how Europeans developed colonial notions of nationhood and how these changed with the on-going process of colonization in North America. In the “old colonial period” indigenous peoples were practically treated as sovereign nations. In the later seventeenth and throughout the eighteenth century, Europeans still recognized Native American nations as allies and independent nations. In the nineteenth century, the United States of America sought to turn American Indians, first, into dependent nations, then tribes and bands up to the dissolution of any kind of collective indigenous nationhood and collective rights to self-government.

Throughout all phases of old and new colonialism, American Indians have tried to make use of European concepts of nationhood and national sovereignty to uphold and make claims to self-government and territories within the legal framework of the United States. With adaptiveness and legal-political agency, Native Americans have used the colonial master’s arsenal of ambivalent semantics of nationhood to defend sovereignty rights and to develop nationalisms that are more than just strategic. Aware of the changing languages and semantics, aware of historical change, Native Americans now trace their integrity as sovereign nations not only to the beginning of the colonial period, when this terminology was first introduced to them, but project their nationhood back into pre-Columbian times, thus adopting primordial notions of nationhood. They thus borrow from early modern and modern European concepts and performances of nationhood and sovereignty, they demonstrate the subversive power of language and semantics, which can be reloaded to both assert and question the integrity and sovereignty of political entities or the modern colonial state.

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