Responsibilities Into Rights

The Settler-Colonial Translation of Native Social Systems into Western Law

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> "What I now understand is that rights discourse is not necessarily or automatically relevant to Aboriginal cultures. A system of responsibility makes more sense to the Aboriginal being."
>
> Patricia Monture-Angus.[1]

Prior to the invasion of the Americas, Indigenous communities, except for the relatively short-lived Aztec, Maya, and Inca city-states, lived entirely in extended, egalitarian kinship systems that included both humans and "other-than-humans" (plants, animals, and the very earth itself).[2] In *The Poetics of Imperialism*, citing the anthropologist Eric Wolf, I characterize kinship societies in the following way:

> Thus, while what we term "hierarchies," or "oppositions," such as, for example, ranks according to gender and age, appear to exist in kin-ordered societies, these "oppositions as they are normally played out are particulate, the conjunction of a particular elder with a particular junior of a particular lineage at a particular time and place, and not the general opposition of elder and junior as classes." Further, "[t]he kin-ordered mode inhibits the institutionalization of political power, resting essentially on the management of consensus among clusters of participants," who are geared to flexibly concentrate or disperse their labor "when changing conditions require a rearrangement of commitments. At the same time, the extension and retraction of kin ties create open and shifting boundaries of such societies."[3]

Such systems are still functioning, though settler colonialism's violence has brought them into conflict with nation-state formations.[4] I think, for example, of the traditional Indigenous communities who subsist in the Amazon rain forest, though under constant threat from corporate capitalism and

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[1] Patricia Monture-Angus, *Journeying Forward: Dreaming First Nations Independence* (Halifax, Nova Scotia: Fernwood Publishing Company, 1999), 55.

[2] I take "other-than-human" from Nick Estes, *Are History Is the Future* (London: Verso, 2019).

[3] Eric Cheyfitz, *The Poetics of Imperialism: Translation and Colonization from* "The Tempest" to "Tarzan" (1991; Philadelphia: The University of Pennsylvania Press, 1997), 53-54.

[4] I use "settler colonialism," following Patrick Wolfe, to distinguish it from traditional colonialism. In the latter, India would be a primary example; the colonial regime governs the country and exploits Native labor for capitalist production, displacing Natives from their land to make way for colonial farms, large and small. In the former regime, the goal is the "elimination" of the Native by whatever means, which includes genocide at one extreme and assimilation at the other. See Patrick Wolfe, "Settler colonialism and the elimination of the native," Journal of Genocide Research (2006), 8(4), December, 387-409.

the neoliberal state; of sociopolitical movements resisting the extractive industries of capitalism and the state like Idle No More in Canada and the DAPL resistance, short-lived as it was, in North Dakota; and of the Zapatista (EZLN) autonomous villages in Chiapas, Mexico, which are based in sustainable economies governed by an Indigenous model of democracy-through-consensus, rule by obeying the people ("'*mandar obedeciendo*'"): "This method of autonomous government was not simply invented by the EZLN, but rather comes from centuries of indigenous resistance and from the Zapatistas' own experience."[5] In the U.S., to take another example, the 1934 Indian Reorganization Act imposed constitutional forms of representative government on federally recognized tribes, which has had the effect in tribal communities of creating conflicts between tribal officials and those in the community holding to traditional forms of governance.[6]

Indigenous kinship systems are based in behavior, not blood, and the behaviors are governed by responsibilities, not rights. The Western property-individual nexus generates rights foreign to Indigenous kinship, where land is the inalienable, original relation of people to the earth, literally "mother earth" or "Pachamama" in Quechua and Aymara, two of the Native languages of the Andes region of Latin America.[7] At Navajo, a matrilineal and matrifocal society, for example, one is born into one's mother's clan and for one's father's clan. The responsibilities that one has within one's mother's clan is to treat every person in that clan as a mother, ideally, treats a child, that is, with unstinting care without any expectation of return. However, if everyone in the clan fulfills her responsibilities then return is reflexive. The responsibilities that one has toward one's father's clan is one of reciprocity; what is given must be returned in some form. The anthropologist Gary Witherspoon epitomizes the Navajo "kin universe" as follows:

> The culturally related kin universe is a moral order because it is a statement of the proper order of that universe—that is, the ideal state of affairs or the way things ought to be. It refers to a condition in which everything is in its proper place, fulfilling its proper role and following the cultural rules. The rules which govern the kin universe are moral rules. They state unconditionally how kinsmen behave toward each other and how groups of kinsmen function. They are axiomatic based on a priori moral premises.... In Navajo culture, kinship means intense, diffuse, and enduring solidarity, and this solidarity is realized in actions and behavior befitting the cultural definitions of kinship solidarity.[8]

Witherspoon sums up the ideal functioning of the kin universe in the sentence: "To put it simply and concisely, true kinsmen are good mothers" (Witherspoon 1975, 64).

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[5] El Kilombo Intergalactico, Beyond Resistance Everything: An Interview with Subcomandante Insurgente Marcos (Durham, NC: PaperBoat Press, 2007), 11, 67.

[6] See Eric Cheyfitz, "The Navajo-Hopi Land Dispute: A Brief History," Interventions: International Journal of Postcolonial Studies, Volume 2, Number 2 (2000), 248-275.

[7] See Thomas Fatheuer, Buen Vivir (Heinrich Böll Stiftung, Publication Series on Ecology, Volume 17, 2011), Trans. John Hayduska, 20-21.

[8] Gary Witherspoon, Navajo Kinship and Marriage (Chicago: The University of Chicago Press, 1975), 12.

The Diné bahanè, literally the "narrative of the people," or more precisely, narratives, tells in various stories the Navajo search for kinship between communities of human persons (resulting in the formation of clans), and between humans and other-than-humans. And the "boundaries" between these categories, following Eric Wolf, previously cited, are "open and shifting."[9] When Naayéé neizghání (Monster Slayer) finishes the task of restoring kinship to the world, he tells his mother Asdzáá nádleehé (Changing Woman or, literally, woman of indeterminate gender), the central figure in Navajo history and philosophy: "Everywhere I go I find that I am treated like a kinsman." And at the end of a tough negotiation in which Changing Woman agrees to cohabit with the Sun, the father of Monster Slayer and his twin brother, the narrative says: "So it is that she agreed; they would go to a place in the West where they would dwell together in the solid harmony of kinship" (Zolbrod 1984, 275).

The Navajo term for the kinship system is "k'e." Witherspoon explains:

> The Navajo term "k'e" means "compassion," "cooperation," "friendliness," "unselfishness," "peacefulness," and all these positive virtues which constitute intense, diffuse, and enduring solidarity. The term "k'ei" means "a special or particular kind of k'e." It is this term (k'ei) which is used to signify the system of descent relationships and categories found in Navajo culture. "Shik'ei" ("my relatives by descent") distinguishes a group of relatives with whom one relates according to a special kind of k'e. (Witherspoon 1975, 37).

That is, one's clans (father's and mother's).

Mohawk political theorist Taiaiake Alfred suggests that the overall form of government that stems from the range of Indigenous kinship systems are all motivated by differing forms of k'e:

> The Native concept of governance is based on what a great student of indigenous societies, Russell Barsh, has called "primacy of conscience." There is no central or coercive authority, and decision-making is collective. Leaders rely on their persuasive abilities to achieve a consensus that respects the autonomy of individuals, each of whom is free to dissent from and remain unaffected by the collective decision. The clan or family is the basic unit of social organization, and larger forms of organization from tribe through nation to confederacy, are all predicated on the political autonomy and economic independence of clan units through family-based control of lands and resources.... The indigenous tradition sees government as the collective power of the individual members of the nation; there is

[9] Paul G. Zolbrod, Diné bahanè: The Navajo Creation Story (Albuqueque: The University of New Mexico Press, 1984), 269.

> no separation between society and state.... By contrast, in the European tradition power is surrendered to the representatives of the majority, whose decisions on what they think is the collective good are then imposed on all citizens.[10]

Imposed, I would add, in the form of rights.

When considering the difference between a system of kinship and a system of rights, the key point is that in the former, "there is no separation between society and state." That is, in systems of k'e there is no sovereign. In contrast, the discourse of rights implies a sovereign who both guarantees these rights but against whose potential tyranny (the state of exception) these rights are a bulwark. In liberal, representative democracies, this sovereign is theoretically "the people" but in practice is the state, which, following Marx, Althusser defines as a "class state, existing in the repressive State apparatus [the police, the army etc.], [which] casts a brilliant light on all the facts observable in the various orders of repression whatever their domains...; it casts light on the subtle everyday domination beneath which can be glimpsed, in the forms of political democracy, for example, what Lenin, following Marx, called the dictatorship of the bourgeoisie.[11]

One of the marks of settler colonialism, then, is the translation of Indigenous kinship systems grounded in responsibilities into systems of rights as codified in declarations and formal legal documents, including constitutions. In the remainder of this paper, I will focus on three forms of this translation: U.S. federal Indian law, the U.N. Declaration on the Rights of Indigenous Peoples, and the Constitution of the Plurinational State of Bolivia.

II: Subordinating Native Sovereignty

U.S. federal Indian law is grounded in the Commerce Clause of the US Constitution, from which Congress derives its "plenary power" in Indian affairs, a power affirmed, though not without question, in the Supreme Court's interpretations of the clause.[12] In *Worcester v. Georgia* (31 U.S. 515[1832]), the third case in the

[10] Taiaiake Alfred, Peace, Power, Righteousness: An Indigenous Manifesto (Ontario: Oxford University Press Canada, 1999), 25.

[11] Louis Althusser, Essays On Ideology (London: Verso, 1971), 13.

[12] See U.S v. Kagama (118 U.S. 375, 1886) in which the Court on its way to affirming the Major Crimes Act (1885), which reversed the jurisdiction of Indian on Indian crime instituted in the Non-Intercourse Acts, questions the extent of congressional power under the Commerce clause: "But we think it would be a very strained construction of this clause…for the common-law crimes of murder, manslaughter, arson, burglary, larceny, and the like, without any reference to their relation to any kind of commerce, [if it] was authorized by the grant of power to regulate commerce with the Indian tribes" (at 378). Nevertheless, the Court proceeded to recognize the "plenary power" of Congress in all Indian matters. In the case of U.S. v. Lara (124 S. Ct. 1628, 2004), Justice Thomas in a concurring opinion that upholds the dual sovereignty doctrine, nevertheless, citing Kagama, raises questions about Congress's plenary power: "I do, however, agree that this case raises important constitutional questions that the Court does not begin to answer. The Court utterly fails to find any provision of the Constitution that gives Congress enumerated power to alter tribal sovereignty…. I cannot agree that the Indian Commerce Clause "'provide[s] Congress with plenary power to legislate in the field of Indian affairs'" (at 1648). Thomas here concurs with the dicta in Kagama that finds the Commerce Clause does not contain a rationale for criminal jurisdiction but he does not agree with the plenary power doctrine, which Kagama locates extra-constitutionally in a broad political power over the Indians. In this, Thomas finds that "federal Indian law is at odds with itself" in both asserting plenary power and yet finding an inherent sovereignty in the tribes that supports the dual sovereignty doctrine (at 1649). "Federal Indian policy is, to say the least, schizophrenic. And this confusion continues to infuse federal Indian law and our cases" (at 1645-46).

foundational Marshall Trilogy,[13] Chief Justice John Marshall, writing the opinion of the Court, noted: "The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense" (at 519).

Marshall's words here make clear the process of translation by which Indian communities were translated into Western law, by which kinship societies, grounded in responsibilities, were translated into the keywords of U.S. and international law: "treaty" and "nation." Indian treaties, as is the case with all treaties, do outline the responsibilities of the signatories (rights to a certain extent imply responsibilities). However, these responsibilities are based in a vertical system of authority (the treaties were forced on Native communities through an asymmetry of material power in the course of a genocide) not in a horizontal system of kinship, where the intrinsic equality of the participants obviates the need for rights. Translated through treaties into the term "nation" (treaties by definition are signed between foreign nations), kinship communities were translated into the regime of "sovereignty," in which they were recognized by the sovereign as sovereign only in the sense that Glen Coulthard has elaborated in his book *Red Skin White Masks: Rejecting the Colonial Politics of Recognition*. Writing in "the Canadian context" of federal Indian law, which parallels with differences that of the U.S. because of their common origin in British colonial politics, Coulthard notes that "colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the asymmetrical exchange of mediated forms of state recognition and accommodation." Next, following Frantz Fanon's book *Black Skin, White Masks*, he continues to elaborate the argument that animates *Red Skin, White Masks*:

> Fanon's analysis suggests that in contexts where colonial rule is not reproduced through force alone, the maintenance of settler-state hegemony requires the production of what he liked to call "colonized subjects": namely, the production of the specific modes of colonial thought, desire, and behavior that implicitly or explicitly commit the colonized to the types of practices and subject positions that are required for their continued domination. However, unlike the liberalized appropriation of Hegel that continues to inform many contemporary proponents of identity politics, in Fanon recognition is not posited as a source of freedom and dignity for the colonized, but rather as the field of power through which colonial relations are produced and maintained.[14]

[13] The Marshall trilogy is the name given in U.S. federal Indian law to the three generative cases that along with treaties and Congressional acts form the foundation of U.S. relations with Indian tribes in the lower forty-eight states. The three cases, which I discuss in this essay, are Johnson v. M'Intosh (1823), Cherokee Nation v. Georgia (1831), and Worcester v. Georgia (1832). The federal government has a wholly different legal arrangement with Alaska Natives articulated in the Alaska Native Claims Settlement Act of 1971. As yet, there is no formal legal arrangement between the federal government and Native Hawaiians.

[14] Glen Sean Coulthard, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition (Minneapolis: The University of Minnesota Press, 2014), pp. 15, 16.

Fanon's analysis, as Coulthard suggests with his use of the term "hegemony," recalls Antonio Gramsci's definition of the term in his prison writings, where he defines it as "[t]he spontaneous consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group."[15] This "consent" must be scrutinized within the context of ongoing forms of Native resistance to settler colonialism. That is, it is coerced consent, a contradiction in terms. And Coulthard appears to recognize this when he terms Fanonian "recognition" as a "*field of power*."

U.S. federal Indian law is constituted by the form of asymmetrical recognition that Coulthard defines. Under this law, Native sovereignty is a subordinate sovereignty in which Native communities were defined by the Marshall Court as "domestic dependent nations," in *Cherokee Nation v. Georgia* (30 U.S. at 17[1831]), the second case in the Marshall Trilogy, a definition that is constituted by a contradiction and yet still holds today. In international law, a nation is defined precisely by its independence and its foreignness in relation to other nations. Indeed, the Cherokees came to the Marshall Court asserting their position as a foreign nation by virtue of the treaties they had signed with the U.S. Treaties, by definition, are only negotiated between foreign nations. Nevertheless, they left the Court with their status as an independent, foreign nation denied and reconfigured in a contradictory definition, for a subordinate sovereign cannot be sovereign, though it should be noted that Marshall seemed to be aware of this contradiction because he commissioned a dissenting opinion from Justices Thompson and Story that supported the Cherokee claim. Thompson wrote the opinion, which Story joined.[16]

The history of US federal Indian law teaches us that kinship regimes of responsibility were translated into rights regimes in order to implement the settler colonial project of disappearing Indians, in this case socially and culturally, under cover of law, just as Indian land, the literal ground of Native kinship, was translated into property in *Johnson v. M'Intosh* (21 U.S. 543[1823]), the first case in the Marshall Trilogy, in order to steal that land under the same cover. I argue that the translation of kinship into rights is a way of disappearing Indians in the sense that it is a form of assimilation, just as I would argue that the Congressional Act of 1924 that translated all Indians into citizens of the U.S. and thus formally if not actually bearers of constitutional rights was an act of assimilation, which has, significantly, been resisted by Native nations that recognize themselves first of all as the primary source of citizenship for their people, even though the U.S refuses this recognition.[17]

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[15] David Forgacs, ed. *The Antonio Gramsci Review: Selected Writings1916-1935* (New York: New York University Press, 2000). 306-307.

[16] See Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight For Sovereignty* (1996; Norman: The University of Oklahoma Press, 2003), 108-109.

[17] See, for example, the Haudenosaunee (Iroquois) Nationals lacrosse team's passport conflict with the British government in 2010. Writing about the conflict in *The New York Times* on July 16, 2010, Thomas Kaplan notes: "The dispute has superseded lacrosse, prompting diplomatic tap-dancing abroad and reigniting in the United States a centuries-old debate over the sovereignty of American Indian nations. The Iroquois refused to accept United States passports, saying they did not want to travel to an international competition on what they consider to be a foreign nation's passport." Thomas Kaplan, "Iroquois Defeated by Passport Dispute" at https://www.nytimes.com/2010/07/17/sports/17lacrosse.html.

The translation of Native land—understood across Indigenous cultures, as the nonfungible, literal matrix, of the community, the basis of kinship in "mother earth,"—into property, which is by definition a fungible commodity, is not simply a way of stealing that land, rendering it in effect transferable to other parties, of which the federal government was the primary recipient as the *Johnson* case asserts. But this translation enacts a primal violence on Native communities seeking to tear them from the very ground of identity. In that sense, this translation is genocidal. The translation of kinship responsibility into rights must be understood in this settler-colonial context.

A key manifestation of this translation is the history of the Indian Civil Rights Act of 1968 (ICRA), discussed in what follows. As Marshall's words in *Worcester v. Georgia* cited previously make clear, the language of "sovereignty" implied in the terms "nation" and "treaty" was imported into the language of federal Indian law from international law, not to recognize the full sovereignty of foreign nations in the Indian tribes. However, as the Marshall Trilogy makes clear to consign them to a sovereignty subordinate to the United States. Recently, critical questions have been raised about using the term "sovereignty" in a Native discourse of liberation because of its hierarchical meaning in European discourse. For example, Taiaiake Alfred remarks:

> But few people have questioned how a European term and idea…came to be so embedded and important to cultures that had their own systems of government since the time before the term *sovereignty* was invented in Europe. Fewer still have questioned the implications of adopting the European notion of power and governance and using it to structure the postcolonial systems that are being negotiated and implemented within indigenous communities today.[18]

What this critique points to is the way the language of sovereignty/rights has displaced the language of kinship in Native governance under the regime of federal Indian law, which increasingly structured the governance of these communities hierarchically. Here I want to quote at length a passage from a previously published essay of mine that incapsulates the history of this displacement:

> …beginning with [the Supreme Court case] *Talton v. Mayes* [163 U.S.376, 1898] formal issues of individual civil rights began to emerge in conflict with issues of sovereignty within tribal communities. While the Supreme Court's decision in *Talton* affirmed tribal sovereignty in the matter of making tribal laws over an individual tribal member's federal appeal to constitutional rights, the conflict between sovereignty and individual right persisted and intensified. This conflict culminated, in the first instance, in the Indian Civil Rights Act of 1968 (ICRA), Title I of which

[18] Taiaiake Alfred, "Sovereignty," in Joanne Barker, ed. *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: The University of Nebraska Press, 2005), 39. See also, Alvaro Reyes and Mara Kaufman, "Sovereignty, Indigeneity, Territory: Zapatista Autonomy and the New Practices of Decolonization," in Eric Cheyfitz, N.Bruce Duthu, and Shari M. Huhndorf, eds. *Sovereignty, Indigeneity, and the Law* (South Atlantic Quarterly, 110:2, Spring 2011), 505-525.

> sought to set limits on the sovereignty of tribes over their members, thus modifying *Talton*. In the second instance, however, the conflict culminated in *Santa Clara Pueblo v. Martinez* [436 U.S. 49, 1978], which, citing *Talton* as precedent, argued tribal sovereignty's precedence over civil rights, except in the case of habeas corpus appeals to federal courts sanctioned under 25 U.S.C. §1303 (ICRA), although in this case *Martinez* makes it clear that the respondent is not the tribe but the individual tribal official holding the prisoner. Thus, today the ten constitutional rights of Indian in their tribes, as enumerated in 25 U.S. C. § 1302 come under the sole authority of tribal courts; and the tribes are protected from federal lawsuits in this area through the principal of "sovereign immunity," which the *Martinez* decision reasserts.[19]

Traditional Native governance systems of kinship-consensus now become, under federal Indian law, systems of sovereignty but subordinate to the federal government's sovereignty ("domestic dependent nations"). Concomitantly, systems of communal kinship responsibilities become systems of *individual* rights that ironically are subordinated to a subordinated sovereignty. The settler-colonial agenda of erasing the Native is manifest in this legal agenda.

III: UN Translating Responsibilities

In 2007, the UN General Assembly ratified The Declaration on the Rights of Indigenous Peoples. The Declaration is meant to recognize, because it has no power to redress legally, "that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests" (Preamble). In effect, what the Declaration recognizes implicitly in its very form is that colonization has forced the translation of kinship responsibilities to land, human, and other-than-humans into rights. These rights, as articulated in Article 46 (1), are subordinated to the "rights" of the colonizer, that is, to the rights of the states in which Indigenous communities due to colonial violence are now located:

> 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.[20]

[19] Eric Cheyfitz, "The Colonial Double Bind: Sovereignty and Civil Rights in Indian Country," University of Pennsylvania Journal of Constitutional Law, Volume 5, Number 2, January 2003, 223-240.

[20] EUNDRIP. (2007) Article 46 paragraph 1 of the United Nations Declaration on the Rights of Indigenous Peoples was inserted at the last stages of Human Rights Council consideration and is widely interpreted by states' governments as intended to clarify that the rights recognized in the Declaration are subject to the principles and purposes of the United Nations Charter, which include respect for the sovereignty and territorial integrity of states. It is also intended to ensure that the Declaration is not interpreted as authorizing or encouraging any actions that would threaten the unity or integrity of states.

The irony here is that a significant number of the states that formed the U.N. (including, of course, the United States and Canada) were created precisely by the subordination of the autonomous Indigenous kinship systems of responsibilities that the Declaration now promises to protect through the extension of a set of rights that can only be enforced by the very states that claim prior rights over and against Indigenous responsibilities.[21] In effect the Declaration is a contradiction in terms. In the first place, because in translating kinship systems into a system of rights it enacts the assimilation of these egalitarian Indigenous systems into a hierarchical system of Western sovereignty, even as Article 8 states: "Indigenous peoples… have the right not to be subjected to forced assimilation or destruction of their culture." One could argue, of course, that the Declaration is not based in "forced" but in "consensual," or strategic, assimilation, with the caveat I suggested previously about the term *consensual*, remembering that there was (is) resistance to this form of the Declaration.[22] The Declaration is, then, following Coulthard, a system of recognizing the "other" not as an equal sovereign, even as it declares in Article 2 that "Indigenous peoples… are free and equal to all other peoples" but as a subordinate. It is worth noting in this respect that the term *sovereign* is not used in the Declaration in relation to Indigenous communities. However, *nation* is used but only once in Article 9.

In the second place, the Declaration is contradictory on the level of the articles themselves. So, for example, Article 3 states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." But it is evident throughout the Declaration that this "self-determination" is subordinated to the sovereignty of the states in which Indigenous peoples live. It is, then, a limited self-determination. Thus Article 4 states: "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." It would seem that declaring the right to "self-determination" as Article 3 does would automatically include "the right to autonomy or self-government in matters relating to their internal or local affairs." For how can a community exercise self-determination without self-government? So why the need for Article 4 except a kind of unconscious admission that "self-determination" in this document is one limited to the internal affairs of the community, which is the status quo in U.S. federal Indian law. In all honesty, then, Article 4 should read: "Indigenous peoples, in exercising their right to self-determination, *have* only the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."

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[21] See Eric Cheyfitz, "Native American Literature and the UN Declaration on the Rights of Indigenous Peoples," in Deborah L. Madsen, ed. The Routledge Companion to Native American Literature (London: Routledge, 2016), 192-202.

[22] See note 21: my discussion of the "Alta Outcome Document" in Madsen, which in effect represents Indigenous resistance to the Declaration even as it affirms it, pp.194-195.

Similarly, Article 26 (1) states a right that is virtual and utopian, if it refers to precolonial lands: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" while Article 28 (1) states the colonial status quo that contradicts or compromises article 26(1), if Article 26 (1) does refer not to the lands left to Indigenous peoples after colonial dispossession but to the "lands" occupied by Indigenous peoples prior to colonization: "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." It is quite clear from the history of settler-colonial nations that "restitution" in any significant sense is not a possibility because of the conversion of most Indigenous lands into state-owned property. The ambiguity in Article 26(1), probably unintentional, blurs the boundary between a revolutionary and a conservative right, which is representative of the entire Declaration. In its very form, then, the Declaration tells us that stating a right and realizing that right are two entirely different matters mediated by the real politics of settler-colonialism, to which the Declaration subordinates itself in its formulation.

IV: Bolivia's Fragile Translation of Responsibility

After an Indigenous and worker-led revolutionary movement in Bolivia from 2000-2003, Evo Morales, an Aymara Indian, was elected, in 2005, president of the country, 62% of whose people identify as Indigenous. Subsequently elected twice more (2009-2014 and 2014-2019), he was deposed by a right-wing coup supported by the United States in November 2019. Then in October 2020 his political party, MAS (Movement To Socialism), was returned to power in the national election, and in November 2020, Morales returned to Bolivia from exile in Argentina.

Under the Morales government,[23] the Constitution of the Plurinational State of Bolivia was enacted by national referendum in 2009, though its drafting in the preceding three years by a popularly elected Constituent Assembly was complicated in terms of representation but, to quote Miguel Centellas, "There can be no denying that the 2009 Constitution [recognizing 35 Indigenous languages (Article 5, Paragraph 1)] is a significant advancement for multiculturalism in Bolivia—and for the rights of indigenous peoples in particular,"[24] rights, I would emphasize, grounded in Indigenous kinship responsibilities. There is an attempt, then, in the Bolivian Constitution to reconcile what I have been describing as the conflict or contradiction between kinship responsibilities and rights. Article 8, Paragraph II of the Constitution reads: "The State is based on the values of unity, equality, inclusion, dignity, liberty, solidarity,

[23] I am using the translation of the Bolivian constitution by Luis Francisco Valle V. No publisher is given.

[24] Miguel Centellas, "Bolivia's New Multicultural Constitution: The 2009 Constitution in Historical and Comparative Perspective," in Todd A. Eisenstadt, Michael S. Danielson, Moisés Jaime Bailón Corres, and Carlos Sorroza Polo eds., *Latin America's Multicultural Movements: The Struggle Between Communitarianism, Autonomy, and Human Rights* (New York: Oxford University Press, 2013). Kindle Edition, 100.

reciprocity, respect, interdependence, harmony, transparency, equilibrium [balance], equality of opportunity, social and gender equality in participation, common welfare, responsibility, social justice, distribution and redistribution of the social wealth and assets for well-being." We recognize here the key terms representing the values that generate kinship responsibilities such as "solidarity, reciprocity…interdependence, harmony…equilibrium [balance]…social and gender equality in participation, responsibility… distribution and redistribution of the social wealth and assets for well-being." In comparison, the key Navajo term, *hozho*, for example, represents the state of harmony, balance, and well-being, all of which are contained in the idea of "beauty."

The Constitution, a voluminous document at 130 pages, encountering the present while projecting a yet-to-be-realized future, repudiates in its Introduction "the colonial, republican, and neo-liberal State" of the past in order to "found Bolivia anew" on the values of kinship elaborated above. The complication, indeed the contradiction, in this promise is the problem of founding a state (a vertical system of rights) on kinship (a horizontal system of responsibilities); the problem of founding a sovereign unitary structure on a structure of heterogeneous autonomous communities (plurinationalism) without the state becoming a neocolonial force privileging its own rights over those of the nation's within the nation, that is, without those nations becoming a version of U.S. Indian "domestic dependent nations."

Under Morales, Bolivia has faced from its beginning as revolutionary state conflicts with Indigenous communities arising from the incompatibility of the responsibilities within the rights model. This condition of conflicts has centrally come into play in the Amazon basin over the conflict between the state's right to development versus the community's responsibility to sustain the biodiversity of the environment, with the former taking precedence, even though Article 289 of the Constitution reads: "Rural native indigenous autonomy consists in self-government as an exercise of free determination of the nations and rural native indigenous peoples, the population of which shares territory, culture, history, languages, and their own juridical, political, social and economic organization or institutions."

In theory, the Bolivian Constitution, in contrast to U.S. federal Indian law and the UN Declaration, offers us a faithful translation of kinship responsibilities into nation-state rights. In practice, the two forms remain in conflict. Centellas puts it this way:

> Looking explicitly at the relationship between Bolivia's indigenous peoples and the state, there is little evidence of a multicultural consociational model. Indigenous peoples are now constitutionally granted autonomy, but in a rather limited way: it is restricted by preexisting territorial boundaries; it is limited to small rural communities; it places significant restrictions on the

> use of *usos y costumbres* ; and it does not grant communities veto rights on decisions involving their resources. Like people in many other countries, Bolivians have been forced to wrestle with potential conflicts between practices that fall under *usos y costumbres* and their commitments to human rights. Thus, for example, one can understand restrictions on the use of capital or corporal punishments—a practice sometime defended as falling under the category of *usos y costumbres*. However, it is less understandable why far less controversial elements of usos y costumbres—such as traditional ways of selecting community leaders—should be brushed aside. (106)

In sum, Centellas understands Indigenous autonomy within the Bolivian nation-state as follows:

> Overall, the evidence suggests that despite indigenous autonomy originating as a grassroots demand, the application of indigenous autonomy is still primarily understood as structured and applied 'from above' in ways that privilege the central state. Despite legal and constitutional assurances, indigenous autonomy is still very fragile in Bolivia (Centellas 2013, 90).

From the models I have analyzed, it would appear that a regime of responsibilities, an egalitarian kinship regime, is not, finally, compatible with regimes of rights, grounded as such regimes necessarily are in nation-state sovereignty. The moment we move from a kinship to a nation-state regime, from responsibilities to rights, is the moment we move from democracy to something the nation-state calls democracy but is more accurately a majoritarian form of representative politics in which power is not circulated horizontally and thus equally but is distributed vertically and unequally from the top down. We move, that is, from regimes of sustainability to regimes of growth, production, and consumption, based on extractive industries, which are engineering climate collapse today. The western European thought calls this "progress." Thinking from a different place, a place of responsibility, one might understand it as "regress." Put another way; we need a regime of not only human but environmental rights because we have abandoned a regime of responsibility to the living world.

This Article may be cited as:
Cheyfitz E., (2023) Responsibilities into Rights: The Settler-Colonial Translation of Native Social Systems into Western Law. *Fourth World Journal*. Vol. 23, N1. pp. 01-13.

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