

The Trans/National Terrain of Anishinaabe Law and Diplomacy

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Introduction: Patrolling Permeable Borders

In his book *The Manitous*, Basil Johnston recounts the story of Maudjee-kawiss, one of the original Anishinaabe ancestors whose task it was to patrol the boundaries of the Anishinaabe homeland. This occupation provided Maudjee-kawiss with the opportunity to see the people who lived in the adjoining lands and to learn their customs, traditions, and practices. In his travels north, Maudjee-kawiss encountered the land of the Bear Nation.

From afar, Maudjee-kawiss observed the customs of the Bear Nation, who were gathered in a conference. Maudjee-kawiss was particularly intrigued by a sash that was draped over the arm of the principle speaker of the Bear Nation. This principle speaker continually pointed to the symbols and images embroidered on the sash throughout the duration of his speech. Maudjee-kawiss had never seen this device and was curious about the purpose it served. Maudjee-kawiss approached the principle leaders of the Bear Nation and indicated that he had come in peace. As Johnston recounts,

Maudjee-kawiss, an accomplished linguist, explained why he was in the Land of the Bear Nation and asked the leading men and women for permission to visit their land and to hunt and fish to feed himself while he was in their country. He hoped the Bear Nation would grant him permission and extend to him the same kind of welcome and hospitality that people of other nations had shown him. While in their land, Maudjee-kawiss would respect and abide by all their customs and laws and act as a guest.¹

The leaders of the Bear Nation consulted with one another to determine whether to allow Maudjee-kawiss to enter into their territory. While the elders were in council to determine their response to Maudjee-kawiss's request to enter their lands, Maudjee-kawiss sat with some of the leaders and inquired what purpose the sashes served. A principal spokesman explained to Maudjee-kawiss that they were the "historical records of the Bear Nation and that the symbols engraved on the sashes reminded the speakers of everything that was important to the people: ideas, beliefs, stories, rituals, codes, festivals, and the succession of events" (21–22). Maudjee-kawiss, enamored with the sash, wrestled it from the speaker's hand and took off running. This led to his pursuit. A great warrior of the Bear Nation was first to catch up with him, but Maudjee-kawiss swiftly struck the warrior, killing him. As the Bear people arrived on the scene where the warrior had been slain, they cried out for vengeance. But others cautioned this approach, instead calling for restorative justice: "Instead of killing the stranger, even though he had wronged the family of the warrior and deserved death, the eldest elder proposed that the family of the deceased adopt Maudjee-kawiss. With the reluctant consent of the slain warrior's family to adopt the Anishinaubae warrior, the elders and leaders officially invited Maudjee-kawiss to be their new war leader, their new champion, and a member of their nation" (23). By bringing Maudjee-kawiss into the Bear Nation, instead of killing him, he would carry certain responsibilities both to the family he had wronged and to the Bear Nation as a whole. On receiving the invitation to become an Ogimaa (chief or leader) of the Bear Nation, Maudjee-kawiss recognized the great responsibility this new duty would entail. Maudjee-kawiss asked the elders of the Bear Nation for time to think about this diplomatic proposal. He assured the Bear Nation that he was not rejecting their invitation to join their nation but that he wanted to discuss the impact this commitment would have for his own family and nation, as his acceptance would necessitate his prolonged absence. Maudjee-kawiss recognized that a newfound commitment to the Bear Nation would not sever his responsibilities and obligations to his own nation.

The Bear Nation gave the sash to Maudjee-kawiss, on his request, to take home to his people, as he greatly coveted the sash. Maudjee-kawiss returned to his family and discussed his possible chieftainship. In addition, he told them of this sash and greatly urged the people to adopt this practice of using sashes to record important events, such as their treaties and alliances with other nations.²

The story of Maudjee-kawiss makes readily available an Anishinaabe narrative regarding restorative justice. Underscoring the deeply interpolitical nature of justice as envisioned within the story, we aim in this article to illuminate the conceptions of nationhood and diplomacy narrated therein. Maudjee-kawiss diligently patrolled the boundaries of the Anishinaabe homeland, indicating that Anishinaabe nationhood is inseparable from the people's relationship to and protection of the land. Through the very actions he took to assert and maintain the integrity of territorial boundaries, Maudjee-kawiss revealed that these borders were nonetheless permeable. Indeed it

was Maudjee-kawiss's position in the border regions that led to his encounters with other nations, encounters that usually provided him welcome opportunities to learn about and from these nations. Yet in the instance of his encounter with the Bear Nation, Maudjee-kawiss's transgressive behavior led to bloodshed, which necessitated a sophisticated diplomatic course of remediation.

Within Anishinaabe practice, a victim of warfare could not be laid to rest unless certain acts had been carried out. This typically involved either the assailant "covering the dead" with elaborate gifts, or the wronged nation avenging the victim's death.³ A third practice that would allow the deceased to be laid to rest was the adoption of the assailant into the deceased's kinship network. This is precisely the diplomatic strategy first elaborated by the Bear Nation in response to their interactions with Maudjee-kawiss. Through the establishment of a kin relationship, Maudjee-kawiss took the place of the warrior he killed, fulfilling both diplomatic and socio-spiritual customs that require the appeasement of the deceased. In doing so, Maudjee-kawiss became a member of the Bear Nation. Kinship systems, restored and enhanced in this case through adoption, allow for bordering nations to cultivate productive obligations toward one another through socio-familial structures that transcend political and territorial lines.

While Maudjee-kawiss was adopted into the Bear Nation, his Anishinaabe affiliations—along with all responsibilities thereof—were not severed. Instead he returned to his people to solicit their consent and approval of this union. He recognized that his adoption into the Bear Nation would not only place significant obligations on him, it would also inaugurate broader kinship obligations between the Bear Nation and the Anishinaabeg. Indeed Maudjee-kawiss's adoption established no less than a material alliance between the Anishinaabeg and the Bear Nation. In addition, this diplomatic engagement allowed for the exchange of political thought and practice, as reflected in the exchange of sashes. In essence, the adoption of Maudjee-kawiss into the Bear Nation and their gift of sashes as recording devices to the Anishinaabeg was a treaty.⁴ This treaty would entail moral, social, and political obligations and responsibilities to one another.

The kinship-based and diplomacy-oriented mode of restorative justice proposed by the Bear Nation serves as a cornerstone for our project in this article. In order to develop an analysis of Maudjee-kawiss's story and its legacy—and in order to illuminate some of the possibilities and pitfalls that arise when Native American Studies and transnational studies are placed in conversation with one another—the following section of our article configures a conceptualization of critical transnationalism that resonates with the ethical imperatives and intellectual traditions of Native Studies. In the article's third section, we seek to ascertain how the legacies of indigenous diplomacies—along with an affirmative, yet still incisive, emphasis on indigenous nationhood—can unearth new directions for the field of transnational American Studies. We then conclude with a consideration of how the conception of transnationalism developed within this article might illuminate and

enhance the study of settler–indigenous legal relations under the common-law settler colonialisms of North America.

Theorizing an Indigenous Transnationalism

Since at least the late 1990s, leading scholars in American Studies have been summoning the “transnational turn.” Whether it be Janice Radway’s exhortation that American Studies “better foster the study of non-national and transnational forms of identity construction,” Amy Kaplan’s affirmation of the transnational turn as crucial to the work of “decentering the tenacious model of the nation as the basic unit of knowledge production,” or Shelley Fisher Fishkin’s buoyant consideration of what “American studies [would] look like if the transnational rather than the national were at its center,” calls to jettison nation-oriented scholarly approaches in favor of transnational modes have become the norm.⁵

In many ways, transnational frameworks hold significant value for Native Studies in their capacity to help undermine the intellectual and political authority of settler nationalisms. Moreover, transnational theoretical frameworks can serve to illuminate and critique transnational regimes of exploitative and oppressive power, regimes that disproportionately come to bear on indigenous peoples. Transnational power structures facilitate the colonizing atrocities of capitalism, and these same structures often function in reciprocal alignment with nation-states. Depending on the details of its theorization and on the intricacies of its material practice and processes, transnationalism variously confronts, critiques, or colludes with colonization, state power, and/or the force of capital.

Despite several potential points of convergence between transnational studies and Native American Studies, scholars immersed in the latter continue to greet the transnational turn with much skepticism.⁶ First and foremost, many scholars in indigenous studies—especially those working within the common-law settler colonialisms of North America, which serve as the contexts for this article—remain committed to the intellectual and political work that nationhood continues to do on behalf of and within indigenous communities. This commitment compels a rejection of the comprehensive critiques of nationhood and nationalism that often constitute transnationalist scholarship. As Philip J. Deloria has noted, “Many Native scholars have pointed out that the decentering of ‘nation’ comes at a particularly inauspicious time for Indian people, who have invested a great deal of political and intellectual energy building a careful argument in courts, Congress, and regulatory agencies that treaty rights and sovereignty rest upon an acknowledgement of themselves as *nations*.”⁷ The fact that indigenous nations are geographically contained within colonizing states pervades all aspects of their contemporary situations and establishes a scholarly terrain in which nationalisms—whether indigenous or colonizing—cannot be ignored. This unique position of tribal nations—

as nations-within-nations—invites significant reconsideration of the various imperatives and trajectories of transnational inquiry.

In a 2007 essay titled “In Search of Theory and Method in American Indian Studies,” Anishinaabe scholar Duane Champagne argues that the field of Native American Studies should have as its primary focus “supporting the goals and values of American Indian nations.”⁸ In suggesting that Native American Studies should first and foremost serve the interests of Native nations, Champagne concurs with Elizabeth Cook-Lynn’s prior assertion that at its core the field should be “a mechanism in defense of the indigenous principles of sovereignty and nationhood.”⁹ While the position shared by Champagne and Cook-Lynn does not encompass the full range of scholarly perspectives regarding relationships between Native American Studies and American Indian nations, theirs is a widely held conviction that attests to the widespread commitment to nationhood within the subfields of indigenous studies. Because scholarly transnationalism fundamentally seeks to unmoor intellectual work from national(ist) affiliations, the enduring resistance within indigenous studies to the terms and trajectories of transnational scholarly discourse should therefore come as no surprise.

Yet even while transnational modes of scholarly inquiry tend to present trajectories and objectives that run counter to the core commitments of indigenous studies, we suggest that the elaboration and judicious use of particular conceptions of transnationalism can serve the field. Rather than joining a totalizing effort to decenter any and every form of nationhood, our interests lie in seeking to distinguish divergent forms and practices of nationhood and to recenter indigenous nationhood and relations between and across indigenous nations as appropriate orientations for scholarly work. Maintaining indigenous studies’ commitments to nationhood, the theory of indigenous transnationalism we propose intentionally and self-consciously underscores the sophisticated boundaries that differentiate indigenous nations as discrete polities while also emphasizing the transnational flows of intellectual, cultural, economic, social, and political traditions between and across these boundaries.

At the crux of most iterations of transnational studies lies an intriguing contradiction that, when illuminated from a particular angle, suggests a moment of inadvertent resonance with Native Studies’ commitments to nationhood. This moment surrounds the perhaps unavoidable tendency of transnational studies to reinscribe the national borders that it is ostensibly critiquing as arbitrary and/or of waning significance. In a sense, this amounts to a tautology: when one emphasizes the transnational, one emphasizes those nations being transversed. For example, the migration of transnational theory into cultural studies that occurred in the 1990s generally took the figure of the immigrant as the archetypal transnational subject.¹⁰ In doing so, this vein of transnational studies inherently emphasized the state borders necessary for defining the immigrant as such.

This ironic emphasis on state borders within conventional transnational studies inadvertently makes for a scholarly terrain in which transnational frameworks become useful for Native American Studies and its commitments to nationhood.¹¹ Because it cannot help but bring distinctions between nations to the fore, transnational discourse can be fruitfully co-opted as an avenue for rhetorical assertions of indigenous nationhood. This is precisely the purpose toward which Renya Ramirez applies the terminology of transnationalism in her book *Native Hubs*. Like many theorists of the transnational, Ramirez deploys a conception of transnationalism that emphasizes the national borders underlying transnational encounter. Unlike most theorists, Ramirez does so intentionally, and the borders that most interest her are those between indigenous nations and settler states, rather than those between multiple states. Just as transnationalism in cultural studies has been used to describe migrants who cross state borders while maintaining links to their home nations, Ramirez applies this same logic to members of indigenous groups who live outside of their home communities. She suggests that in leaving yet remaining tied to their home Native nations, they become “multi-layered transnational citizens.”¹² By tapping into the tendency of transnational scholarly approaches to reinscribe national borders, Ramirez underscores the boundaries of the territorial and political jurisdictions claimed by indigenous nations, arguing that Native nations are “on the same level” as settler states (212). Her transnationalism is thus a patently nationalist transnationalism.

While Ramirez’s nationalist use of transnational terminology is a powerful, productive, and noteworthy rhetorical innovation, this tactic is not without its risks. Ramirez’s nationalist transnationalism, for example, might be taken as willful acquiescence to the legitimacy of colonizing states: Asserting that Native nations are “on the same level” with settler states may be read as an investment in colonizing political structures. In order to mitigate this interpretive possibility while still embracing Ramirez’s affirmative emphasis on tribal nationhood, our conception of indigenous transnationalism takes seriously the modes and means through which Anishinaabe diplomatic relations with other indigenous polities simultaneously affirms the legitimacy and integrity of Anishinaabe nationhood and promotes the establishment of alliances that transcend Anishinaabe borders.

Our conception of indigenous transnationalism is also indebted to Shari Huhndorf, who, in the opening pages of her recent book *Mapping the Americas: The Transnational Politics of Contemporary Native Culture*, offers a compelling definition of transnationalism as a term describing “alliances among tribes and the social structures and practices that transcend their boundaries.”¹³ While Huhndorf does not make sustained use of this definition and instead maintains a critique of nationhood reminiscent of transnational approaches proliferating within American Studies, her gesture toward alliances, social structures, and practices that transcend indigenous boundaries resonates extensively with our approach to indigenous transnationalism. At the same time, our approach departs from Huhndorf’s suggestion that

“transnational dynamics . . . interrupt traditionally tribal concerns” (176; see also 159). Rather than conceiving of the transnational as a paradigmatic departure from Native cultural and political traditions, we understand it as an aspect of and across this diverse and dynamic realm. Indeed, as Maudjee-kawiss’s story indicates, indigenous transnationalism can illuminate interactions that since time immemorial have influenced and affirmed the solidity of Native nations.¹⁴ Our configuration of indigenous transnationalism also departs from Huhndorf’s somewhat puzzling assertion that there is a “lack of sustained critical analysis of nationalism from within indigenous communities” (113). After all, if one recognizes that Native scholars are indeed members of indigenous communities, one need not look far to find the sort of “sustained critical analysis of nationalism” that Huhndorf disregards.

The book *American Indian Literary Nationalism*, cowritten by Jace Weaver, Craig Womack, and Robert Warrior is a volume dedicated to exploring “what nationalism can and should mean within contemporary scholarship on Native literature.”¹⁵ Rather than an uncritical nationalist apologetics that ignores the contradictions inherent in liberatory nationalisms, this text engages nationalism as “a phenomenon that has given rise, on the one hand, to modern democracy and the thirst for liberation of oppressed people around the world, and, on the other hand, some of the worst forms of political repression and xenophobia in human history” (xv). In his contribution to the book, Warrior critiques the ideological and political regulation of intellectual work and suggests that “nationalism is worth engaging in only insofar as concomitant institutions of criticism arise to challenge its excesses and temper its corrupting power” (192). In his book *Our Fire Survives the Storm*, Daniel Heath Justice offers his own account of the fundamental differences between indigenous nationhood and state nationalism (and its emulators), all while remaining wary of the dangers potentially attendant to nationalism in any context.¹⁶ In her afterword to *American Indian Literary Nationalism*, Lisa Brooks likewise distinguishes the “multifaceted, lived experience” of place-based indigenous nationhood from “the theoretical and physical models of the nation-state.”¹⁷ The recently ratified Proposed Constitution of the White Earth Nation stands as a remarkable example of an indigenous community’s critical engagement with nationhood. In consultation with Native Studies scholars Jill Doerfler and David Wilkins, a delegation of forty White Earth citizens—which included the document’s primary scribe, Gerald Vizenor—created a document that offers a vision of indigenous nationhood with a noteworthy critical orientation to nationalism.¹⁸

A list of Native scholars, writers, intellectuals, and community members who critically engage with the pitfalls and possibilities of nationhood could go on and on. Not only do these considerations of indigenous nationhood constitute a robust critical engagement with nationalism, but they also point to what Laura Doyle, in an essay published in the inaugural issue of the *Journal of Transnational American Studies*, terms the “transnational production” of nationhood.¹⁹ That is to say, when one takes collective account of the expansive critical, theoretical, and practical

conversations regarding indigenous nationhood, one necessarily engages with a transnational discourse. As Robert Warrior puts it, “In effect our nationalism is born out of native transnationalism, the flow and exchange of ideas and politics across our respective nations’ borders.”²⁰

This type of productive transnational discourse involving the flow of ideas and mutually informing insights between multiple Native individuals and across multiple Native nations constitutes precisely the conception of indigenous transnationalism toward which this essay has been building. While Ramirez figures the transnational at the intersections of Native and settler nations, our conception of indigenous transnationalism primarily locates the transnational in the connections and interactions among various Native nations. And while Huhndorf positions transnationalism in an always uneasy relation to nationhood and in opposition to indigenous traditions, the mode of transnationalism we propose illuminates the transnational processes through which indigenous nationhood is (and long has been) theorized. In our use, then, the phrase “indigenous transnationalism” describes the linkages, conversations, cross-references, and movement of ideas, practices, and obligations between indigenous nations. We thus find ourselves in significant accord with Rachel Adams’s interest in indigenous transnationalisms that “cross borders of many kinds while underscoring the enduring power of the nation form.”²¹ As illustrated with Anishinaabe diplomacy, these transnational networks facilitate—rather than undermine—the ongoing production and maintenance of Native nations and their relationships with one another and with other polities. Centering Native nations in this way suggests a conceptual reconfiguration of transnationalism that dispenses with the primacy of the nation-state as scholarly parameter while also recognizing both the import of indigenous nationhood and the ongoing colonizing impact of settler nation-states.

Transnational Kinship Diplomacy

Throughout the ongoing and always transnational processes of interpolitical negotiations, obligations, and interactions, Native nations continue to retain and express their own ideas of nationhood and exercise their long-standing diplomatic traditions. Whether by establishing or renewing political, economic, and other strategic alliances across the transnational terrains of Native North America and colonialist North America, Anishinaabe diplomacy asserts Native nationhood and disrupts colonizing narratives of discovery and conquest that have served to legitimize settler-state establishment and expansion. Thus, an examination of Anishinaabe diplomacy as illustrated in the opening story of Maudjee-kawiss and the Bear Nation can reveal a particular instance in which Native American Studies challenges, critiques, and contributes to transnational scholarly frameworks.

By centering Anishinaabe nationhood, diplomacy, and intellectual traditions, we inherently enter into the realm of the transnational. The Anishinaabeg, whose

homelands span the Great Lakes and the Plains, have since time immemorial entered into intranational alliances among Anishinaabe bands as well as international treaties with other indigenous nations and colonial states. For example, throughout the eighteenth and nineteenth centuries, the Anishinaabeg tracked how treaty practices were carried out across their bands and utilized this knowledge to their advantage whenever possible.²² Through their engagement across bands, the Anishinaabeg were able to discuss various issues pertinent to their treaty relations with colonial nations, such as how much land was retained, the amount paid for ceded lands, and which hunting and fishing rights had been preserved. Thus, various bands informed one another's political thought and practices when they engaged in treaties with Canada and the United States. In addition, the Anishinaabeg often used treaty-making, especially along the border regions, to both protest and utterly disregard US and Canadian border constructions that would affect the internal affairs of these nations.

Native peoples have long been reckoning with what it means to live in a multicultural and multinational world. Well before the arrival of Europeans, Native nations were participating in social, economic, and political alliances that required engagement across national borders, kinship networks, and differing epistemologies. Carried out through stories told, customs practiced, and commitments fulfilled, these diplomatic interactions were themselves sites of nation-building in which communities articulated their understandings of what they were and imagined what they hoped to become. On their arrivals in the Americas, European nations—all of which depended on political and economic alliances with Native nations—would find themselves needing to engage with and employ indigenous diplomatic practices and discourses.²³

Such diplomatic discourses were thus ironically fundamental to settler-state formation. Treaty-making served as the main practice through which the existence of colonial nations as sovereign states was legitimized. Diplomatic engagements were sites in which nations asserted, negotiated, and recognized competing conceptions of and claims to sovereignty, nationhood, and land rights. For example, the United States could assert to European nations that it was a sovereign state because it had acted as such by making treaties with indigenous nations. These assertions had weight because these indigenous nations had already been recognized through the European states' own treaty-making practices. This treaty-making rationale combined with discourses of "discovery" and "conquest" in a logically fallible but politically expedient pursuit of US and Canadian state-formation.

US and Canadian cultural discourses position Native peoples as "savage" while political discourses concurrently acknowledge (even if reluctantly and inconsistently) the sovereignty of Native nations. Even while such trajectories might appear opposed, the legal discourses of both nation-states selectively apply the sentiment of savagery and the recognition of sovereignty toward settler colonial purposes. Robert Williams argues that "these divergent discourses on Indian legal

status and rights were all derivative of the larger and more direct question . . . regarding the rationalization of the land-acquisition process on the colonial frontier.”²⁴ Ultimately, colonial legal theory, which sometimes asserts the sovereignty and property rights of Native peoples, is often overridden by cultural discourses that fabricate legal justifications for US and Canadian assertions of settler sovereignty.

Practical realities and processes on the ground, such as treaty-making, that recognized the status of Native nations compete with national mythologies that derogate Indians as “savages” and justify land acquisition through discovery. The newly formed states were conscious of their need to deal with Native nations as sovereign political entities.²⁵ Nonetheless, as decades passed and treaties continued to be made, national mythologies of conquest, at times, overrode earlier discourses that recognized Native sovereignty because it supported the sovereignty of the young states.

Yet it is clear that many Native peoples rarely saw themselves as a conquered people. This was illustrated by Anishinaabe assertions of their sovereignty at the Treaty of Niagara in 1764. While numerous Native nations had sided with the French against the British, they did not consider their sovereignty to be extinguished by the loss of the war to Britain in 1760. This was recognized by one British colonial official who stated, “The Six Nations, Western Indians & c. [which include the Anishinaabeg] having never been conquered, Either by the English or French, nor subject to the Laws, consider themselves as free people.”²⁶

Anishinaabe assertions of sovereignty and their rejection of conquest were echoed by Anishinaabe chief Minavavana after having allied with France. He asserted, “Englishman, although you have conquered the French, you have not yet conquered us. We are not your slaves.”²⁷ Instead Minavavana drew on Anishinaabe conceptions of sovereignty and land tenure. He argued, “These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance; and we will part with them to none” (75). Minavavana declared that Anishinaabe participation in trade did not diminish their sovereignty. He stated, “your nation supposes that we, like the white people, cannot live without bread, and pork, and beef! But, you ought to know, that He, the Great Spirit and Master of Life, has provided food for us, in these spacious lakes, and on these woody mountains” (75).

After affirming Anishinaabe sovereignty, Minavavana returned to his initial statements, delineating Anishinaabe understandings of warfare and conquest. He explained,

Englishman, our Father, the king of France, employed our young men to make war upon your nation. In this warfare, many of them have been killed; and it is our custom to retaliate, until such time as the spirits of the slain are satisfied. But, the spirits of the slain are to be satisfied in

either of two ways; the first is the spilling of the blood of the nation by which they fell; the other, by covering the bodies of the dead, and thus allaying the resentment of their relations. This is done by making presents.

Englishman, your king has never sent us any presents, nor entered into a treaty with us, wherefore he and we are still at war; and, until he does these things, we must consider that we have no other father or friend among the white man, than the king of France. (75)

Minavavana's speech, emblematic of the transnational kinship diplomacy illustrated in the opening story of Maudjee-kawiss, demonstrates that the Anishinaabeg did not see themselves as a conquered people. Instead he argued that the Anishinaabeg and the British were still at war until the British appeased their slain by presenting gifts.

Minavavana echoed the principles of Anishinaabe diplomacy that depended on the recognition of the political autonomy of each nation while adhering to the obligations and responsibilities outlined to one another in their alliances. Minavavana, asserting the need for respect by both parties, stated that the British should not equate their conquest of France with conquest of the Anishinaabeg. He instead argued for a respect of Anishinaabe sovereignty. He, like Maudjee-kawiss, recognized the important role that kinship could play in establishing diplomatic relations, stating, "You have ventured your life among us, in the expectation that we should not molest you. You do not come armed, with an intention to make war, you come in peace, to trade with us, to supply us with necessities, of which we are in much want. We shall regard you therefore as a brother, and you may sleep tranquilly, without fear of the Chipeways. As a token of our friendship we present you with this pipe, to smoke" (75). Minavavana declared that he would regard this Englishman as a brother. This transnational kinship diplomacy did not collapse one nation into another but instead sought to cultivate productive relationships that could transcend political and territorial lines and allow for the exchange of political thought and practice. This transnational kinship diplomacy, first utilized between Maudjee-kawiss and the Bear Nation and later employed with the French and the British, would continue to inform Anishinaabe treaty-making with Canada and the United States.

Conclusion: Toward a Transnational Paradigm of Settler-Indigenous Law

The conception of indigenous transnationalism and the correlated transnational approach to Native American Studies that we have elaborated in this essay—an approach emphasizing indigenous diplomacy as transnational discourse—aspire to be widely relevant to various issues, events, questions, and archives across the diverse and planetary scope of indigenous studies. In order to develop a productive exploration of an ongoing paradigm shift in the Native political realm of North America—and in order to put this conception of indigenous transnationalism to the

test—this article once again returns to the opening story of Maudjee-kawiss in order to comment on the emerging trajectories of settler–indigenous legal studies.²⁸

Maudjee-kawiss and the Bear Nation alike had the choice to engage in a diplomatic accord with the other. Indeed the Bear Nation could have sought revenge and attempted to kill Maudjee-kawiss. Furthermore, Maudjee-kawiss could have returned to his own people and, instead of pledging his commitment to the Bear Nation, he could have gathered additional warriors and gone to war. Yet each nation instead sought to establish peace with one another through a diplomatic accord: the adoption of Maudjee-kawiss into the Bear Nation and the gift of sashes to the Anishinaabeg. This treaty process was lateral, not hierarchical. Through their diplomatic engagement, the Anishinaabeg and the Bear Nation recognized the national character of the other, while also establishing shared kin relations that extended beyond national borders. In doing so, each polity recognized their own and the other’s individual autonomy while creating a collective responsibility to one another.

The diplomatic accords that arise from any treaty process outline reciprocal, moral, political, and legal commitments made between nations. Native nations look to their treaties as the external recognition of their national character, inherent sovereignty, and reserved rights. While treaties have been critical for nation-to-nation relationships and were instrumental in US and Canadian state-building in the nineteenth century and early twentieth century, there are a myriad of meanings attributed to these documents. Indeed the various parties involved not only employ their own distinct meanings for important political concepts and rights but also have their own understandings of what treaty-making entails and the commitments they produce.

Anishinaabe diplomacy, as seen with the story of Maudjee-kawiss, centers on the recognition of national autonomies and the establishment of collective responsibilities. These central principles of Anishinaabe diplomacy have been carried into Anishinaabe political practices with the United States and Canada. Indeed the Anishinaabeg engage in these transnational processes of diplomatic and kinship linkages and the transit of ideas and practices between nations. Furthermore, an analysis of these diplomatic linkages and the exchange of political ideas and practices is a necessarily transnational study. Not only because treaty-making inherently transcends boundaries, but also because it is precisely this type of engagement between nations that allows for the flow of ideas and practices. Treaties and their interpretation were foundational to the field of settler–indigenous law, the major principles having their origins in the treaty process. Indigenous sovereignty was initially recognized in treaties. International law is predicated on the recognition of treaties as diplomatic agreements between nations. It was through the colonial enterprise of territorial expansion and land acquisition that the parameters of international law were originally defined.²⁹

In addition, the trust or fiduciary relationship has roots in the bilateral or multilateral agreements made through the treaty process, as the US and Canada committed to protect indigenous nations from the states/provinces and their citizens in exchange for indigenous acceptance of peaceful relations. Treaty-making, like transnational indigenous diplomacy, created a relationship of trust. Robert Williams has asserted, “By recognizing the central principle of Encounter era Indian diplomacy that a treaty is a relationship of trust, we begin the complex process of rendering a more complete accounting of the importance of Indian ideas and values in protecting Indian rights under US law.”³⁰ This process would be equally fruitful for both Indigenous law and Aboriginal law in Canada. Therefore, an understanding of the parameters and applications of legal principles such as the trust relationship should require an incorporation of Native peoples’ understanding of these important political relationships when they came into existence through the treaty process.

This sentiment is furthered by Rebecca Tsosie and Wallace Coffey, who argue, “The ‘trust doctrine’ should reflect our Ancestors’ understanding of their relationship to the United States government, including their commitment to having their separate political existence affirmed by the United States, and their belief that the treaties entailed a series of moral duties between two groups that pledge to live in peace with one another and act in good faith.”³¹ The trust relationship was initially born out of this pledge to live in peace and act in good faith and has been foundational to settler–indigenous law in the United States and Canada. In *R. v. Sparrow*, the Supreme Court of Canada held that “the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.”³² Yet the definition and scope of this trust relationship has remained open to interpretation. David Wilkins and K. Tsianina Lomawaima, in their examination of the trust relationship, note, “common to many, but not all, definitions of ‘trust’ is the notion of federal *responsibility to protect or enhance* tribal assets (including fiscal, natural, human, and cultural resources) through policy decisions and management actions.”³³

Nonetheless, the trust relationship has been defined and applied in ways that, at times, extend beyond these initial declarations of good faith and protection. At other times, the United States and Canada have too narrowly construed the responsibilities that the trust relationship carries with it. A critical question that often surrounds trust has been whether this relationship carries with it a legal or merely a moral force. In the same way that transnational scholarship has struggled to reconcile the mutual existence of nationhood with the transcendence of national lines, settler–indigenous law has been plagued with the dichotomous relationship that the US and Canada maintain toward Native nations, recognizing indigenous sovereignty while simultaneously carrying out their trust relationship in manners that, at times, subsume indigenous sovereignty within the state.

The trust doctrine is just one example of how the current implementation of settler–indigenous law suffers from a narrow construction of legal principles and doctrines that does not account for indigenous diplomatic practices and legal understandings, and thus it fails to simultaneously recognize the autonomy of Native nations and the treaty responsibilities that the US and Canada have to these nations. We therefore humbly suggest that the application of the critical lens of indigenous transnationalism—a lens consonant with the commitments to nationhood appropriately entrenched within Native American Studies—would benefit the study and practice of settler–indigenous law by decentering the often absolutist inclinations of settler law and recentering the often relational impulses of indigenous law.

Lumbee scholar Robert Williams suggests that “our own survival in our multicultural world may well depend on our learning to understand the responses of indigenous tribal peoples to the challenge of achieving justice among different peoples. We must learn what it means to link arms together, according to American Indian treaty visions of law and peace.”³⁴ An account of treaty-making as a lateral transnational endeavor in which nations exchange political knowledges and negotiate legal practices might, in turn, engender the emergence of a broadly transnational mode of law that would more effectively reflect the commitments and facilitate the obligations necessarily shared between polities existing in just relation to one another. Reimagining community in this way is an imperative project to which a transnational American Studies should have much to contribute. This is certainly the case when it comes to the distinct yet interconnected legal traditions of indigenous nations.

Notes

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¹ Basil Johnston, *The Manitous: The Spiritual World of the Ojibway* (St. Paul: Minnesota Historical Society Press, 2001), 21.

² For additional information on how gifts function in diplomacy, see Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan’s Native Americans* (Ann Arbor: University of Michigan Press, 1992); Gilles Havard, Phyllis Aronoff, and Howard Scott, *The Great Peace of Montreal of 1701: French–Native Diplomacy in the Seventeenth Century* (Montreal: McGill-Queen’s University Press, 2001); Harold Hickerson, “The Feast of the Dead among the Seventeenth Century Algonkians of the Upper Great Lakes,” *American*

Anthropologist 62, no. 1 (1960): 81–107; and David Murray, *Indian Giving: Economies of Power in Indian–White Exchanges* (Amherst: University of Massachusetts Press, 2000).

³ For further discussion on how gifts function in appeasing the deceased, see Cary Miller, “Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820–1832,” *American Indian Quarterly* 26, no. 2 (2002): 221–45.

⁴ We utilize David Wilkins’s definition of a treaty: “A formal agreement, compact, or contract between two or more sovereign nations that creates legal rights and duties for the contracting parties. A treaty is not only a law but also a contract between two or more nations and must, if possible, be so construed as to give full force and effect to all its parts.” David E. Wilkins, *American Indian Politics and the American Political System* (Lanham, MD: Rowman & Littlefield, 2002), 339. Treaty-making is a long-standing practice among the Anishinaabeg, far preceding contact with European nations. Anishinaabe nations entered into numerous treaties with other tribal nations, often formalized through the exchange of wampum, pipes, drums, and other ceremonial items. See Leanne Simpson, “Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships,” *Wicazo Sa Review* 23, no. 2 (2008): 29–42; and Heidi Kiiwetinesiiik Stark, “Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada,” *American Indian Culture and Research Journal* 34, no. 2 (2010): 145–64.

⁵ Janice Radway, “What’s in a Name? Presidential Address to the American Studies Association, 20 November, 1998,” *American Quarterly* 51, no. 1 (1999): 22; Amy Kaplan, “Violent Belongings and the Question of Empire Today: Presidential Address to the American Studies Association, October 17, 2003,” *American Quarterly* 56, no. 1 (2004): 11; and Shelley Fisher Fishkin, “Crossroads of Cultures: The Transnational Turn in American Studies—Presidential Address to the American Studies Association, November 12, 2004,” *American Quarterly* 57, no. 1 (2005): 21.

⁶ For a discussion of this skepticism, see Robert Warrior, “Native American Critical Responses to Transnational Discourse,” *PMLA* 122, no. 3 (2007): 807–8; and Robert Warrior, “Native American Scholarship and the Transnational Turn,” *Cultural Studies Review* 15, no. 2 (2009): 119–30.

⁷ Philip J. Deloria, “American Indians, American Studies, and the ASA,” *American Quarterly* 55, no. 4 (2003): 672, emphasis original.

⁸ Duane Champagne, “In Search of Theory and Method in American Indian Studies,” *American Indian Quarterly* 31, no. 3 (2007): 353.

⁹ Elizabeth Cook-Lynn, “American Indian Studies: An Overview—Keynote Address as the Native Studies Conferences, Yale University, February 5, 1998,” *Wicazo Sa Review* 14, no. 2 (1999): 14, 20.

¹⁰ See Linda Basch, Nina Glick Schiller, and Christina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States* (New York: Gordon and Breach, 1994), which defines transnationalism as “the process by which immigrants forge and sustain multi-stranded social relations that link together their societies of origin and settlement” (7).

¹¹ This relates, also, to the North American orientation of this article—an orientation that might strike some readers as itself ironic. This intentional orientation helps make clear that the transnationality of indigenous transnationalism arises in relation to distinctions between discrete indigenous nations, not in relation to state borders, oceans, and the like. While, as we mention elsewhere within the piece, we certainly hope that our conception of indigenous transnationalism resonates with scholars addressing contexts well beyond North America, we also maintain that (like many other contexts) the provincial realm of North America—or even that circumscribed by the borders of the US—is, from a perspective that acknowledges indigenous nationhood, inherently and exceedingly transnational. For a nascent discussion of these issues, see Carter Meland, Joseph Bauerkemper, LeAnne Howe, and Heidi Stark, “The Bases Are Loaded: American Indians and American Studies,” *American Studies* 46, no. 3–4 (2005) and *Indigenous Studies Today* 1 (2005–2006): 391–416.

¹² Renya K. Ramirez, *Native Hubs: Culture, Community, and Belonging in Silicon Valley and Beyond* (Durham, NC: Duke University Press, 2007), 23–24.

¹³ Shari M. Huhndorf, *Mapping the Americas: The Transnational Politics of Contemporary Native Culture* (Ithaca, NY: Cornell University Press, 2009), 2.

¹⁴ To suggest that indigenous nations have existed since time immemorial is not necessarily to suggest that they are nonhistorical, always-already existing phenomena.

¹⁵ Jace Weaver, Craig S. Womack, and Robert Warrior, *American Indian Literary Nationalism* (Albuquerque: University of New Mexico Press, 2006), xv.

¹⁶ Daniel Heath Justice, *Our Fire Survives the Storm: A Cherokee Literary History* (Minneapolis: University of Minnesota Press, 2006), 23–24.

¹⁷ Lisa Brooks, afterword to Weaver, Womack, and Warrior, *American Indian Literary Nationalism*, 244.

¹⁸ “Proposed Constitution of the White Earth Nation,” *Anishinaabeg Today*, September 2, 2009, special pullout section, available online at <http://www.whiteearth.com/data/upfiles/files/Sept22009.pdf> (accessed April 30, 2012).

¹⁹ Laura Doyle, “Toward a Philosophy of Transnationalism,” *Journal of Transnational American Studies* 1, no. 1 (2009): 1, <http://escholarship.org/uc/item/gvr1k8hk>.

²⁰ Warrior, “Native American Scholarship,” 125.

²¹ Rachel Adams, *Continental Divides: Remapping the Cultures of North America* (Chicago: University of Chicago Press, 2009), 35. While Adams's configuration of the transnational is predominantly state-oriented, ours is not. Even so, her illuminating and complex consideration of various transnational "networks of filiation" (35) acknowledges relations reaching across multiple tribal nations (and the deep historical presence thereof).

²² We utilize the term "band" to refer to the divisions among the Anishinaabe collective. Bands were originally constituted by a number of families that lived together and often became known by their locations: their villages. Today, the Anishinaabeg continue to divide along band lines yet maintain a shared identity through common ancestry as Anishinaabe people. These separate bands are primarily recognized as separate nations that maintain their own governments and laws. For example, many Anishinaabe nations were recognized by their band names in their treaties and continue to employ these names today (e.g., Turtle Mountain Band of Chippewa Indians and Red Lake Band of Chippewa Indians). Some bands were brought together in treaty-making, and/or vis-à-vis a variety of policies and statutes and are dealt with by the United States as a single nation (e.g., White Earth Nation). In Canada, many Anishinaabe nations maintain names that pertain to their locations. In addition, "First Nation" is common usage in Canada to refer to Native nations and many Anishinaabe First Nations do not use "band" as part of their official national name.

²³ See Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (New York: Routledge, 1999), 9. For additional information on how indigenous nations utilized their own diplomatic practices in treaty-making, see William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998); and Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991).

²⁴ Williams, *Linking Arms Together*, 287. See also Robert A. Williams, Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis: University of Minnesota Press, 2005).

²⁵ See Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA: Belknap Press of Harvard University Press, 2005); and David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001).

²⁶ William Johnson, letter to the Lords of Trade, October 8, 1764, in *Documents Relative to the Colonial History of the State of New-York*, vol. 7, ed. E. B. O'Callaghan (Albany: Weed, Parsons and Co., 1856), 665. Quoted in John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*, ed. Michael Asch (Vancouver: UBC Press, 1997), 157.

²⁷ Wilbur R. Jacobs, *Wilderness Politics and Indian Gifts: The Northern Colonial Frontier, 1748–1763* (Lincoln: University of Nebraska Press, 1966), 75.

²⁸ Because the phrase “Federal Indian Law” is particularly associated with the United States and the phrase “Aboriginal Law” is likewise associated with Canada, we tentatively propose the phrase “settler–indigenous law” to collectively connote these and other contexts. Settler–indigenous law names a subset of each of the legal regimes that constitute settler states and outlines the legal and political responsibilities and obligations that settler states have to indigenous nations and peoples. We do not mean to use this tentatively proposed phrase to reference the unique bodies of law generated by indigenous peoples themselves, which are sometimes labeled, for example, “American Indian Tribal law” or “Indigenous law,” or as a body of law oriented to a particular indigenous group such as “Anishinaabe law.”

²⁹ See Felix S. Cohen, “The Spanish Origin of Indian Rights in the Law of the United States,” *Georgetown Law Journal* 31, no. 1 (1942): 1–21; David E. Wilkins, “A Constitutional Conundrum: The Resilience of Tribal Sovereignty During American Nationalism and Expansion: 1810–1871,” *Oklahoma City University Law Review* 25, nos. 1–2 (2000): 87–118; and Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990). Joanne Barker notes that “the two primary vehicles that served for the articulation of international legal precepts about nationhood, and so of the sovereignty with which such a character was defined, were the national constitution and the treaty.” She finds that “custom within international law emerged around the treaty as a mechanism for both the exercise of nationhood and the recognition of national sovereignty.” Joanne Barker, “For Whom Sovereignty Matters,” in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*, ed. Joanne Barker (Lincoln: University of Nebraska Press, 2005), 4.

³⁰ Williams, *Linking Arms Together*, 133.

³¹ Rebecca A. Tsosie and Wallace Coffey, “Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations,” *Stanford Law and Policy Review* 12 (2001): 204.

³² *Ronald Edward Sparrow v. Her Majesty The Queen* [1990] 1 S.C.R. 1075, 1108.

³³ Wilkins and Lomawaima, *Uneven Ground*, 65, emphasis original.

³⁴ Williams, *Linking Arms Together*, 13.

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