

“Settler Colonialism as a ‘Structural Event’: The Multiple Orders of Indigenous Rights and Political Identity”

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The impact that white settler colonialism has had for the historical development of indigenous populations in North America is at the same time both transnational and meaningfully domestic and local. European empires racialized indigenous peoples with frequently little interest in making anything more than pragmatic distinctions between the nations and communities of people they encountered. At the same time, this transnational process took different directions and trajectories within different domestic and local context. For instance, each colonial nation of North and Central America—such as the United States, Mexico, Guatemala, etc.—have established very different policies engaging, defining, and incorporating indigenous peoples within their sovereignty, following quite different histories of initial encounters, violence, and colonial settlement.

Making sense of this tension between transnational racialization and domestic specification is thorny, controversial, and also with both historical and current-day implications for identity and public policy. The United States, for instance, has—at the broadest level—multiple categories of indigenous populations within its territorial borders. First, the many hundreds of Indian nations whose histories and land expulsion as the result of official federal removal policies, derive specifically from the 48 continental states. Second, those nations with histories and land rights within Alaska and Hawai'i, with histories in important ways entirely separate from the initial 48 and involving histories and ethnic backgrounds that are controversially linked as ‘indigenous’ or ‘Native American.’ Finally, there is arguably the largest population of indigenous people in the United States who have immigrated from Mexico, Central America, and other locations. The United States rarely categorizes this last category of immigrants as indigenous, but instead as immigrants and refugees from other colonial nations such as Mexico, Honduras, and Guatemala. These independent and intertwined histories are further complicated by a racialization that is imposed by white settler colonialism.

But this question is also of great political consequence today. My focus is on those indigenous individuals and communities who are immigrants to the United States. These are among the poorest and least represented laboring populations in the nation. But, because they are identified and classified with nation-state ‘immigration’ and not within the context of indigenous politics, the policy debates are stripped from an understanding of political and institutional development and racial formation, serving to further the invisibility of imperial legacies.

I

First, some priors. ‘Settler colonialism’ references both the act and on-going legacies of nation-states established through the conquest of territory by immigrants who sought to simultaneously remove or eradicate the population indigenous to the land. It is the specific agenda of replacing

indigenous populations with immigrants coming from another place that contrasts settler colonialism from other historical forms of imperialism, particularly those where the motivation of the colonists were not so much to settle on the new land but to coercively exploit the labor of the native population for the extraction of economic resources and political prestige.¹ Settler colonialism “destroys to replace,” writes Patrick Wolfe, and can involve a range of forms of removal from violent acts of genocide to mass state-led biocultural assimilation projects.²

The United States is a quintessential example of a settler colonial state. Its early territorial boundaries were established via treaties with European imperial nation-states and was further settled and populated by European settlers, some of whom also participated in a massive transglobal slave trade to coercively transport hundreds of thousands of Africans to work as slaves on lands throughout much of the nation’s southern region. Whether through violence, purchase, swindle, or treaty, European imperialists declared that they had sovereignty and ownership over territory occupied by indigenous nations. Once asserted, the newly established federal government enacted policies of imperial control, forcibly relocating native people to reservations within a newly constituted Indian Territory.³ Legislators then opened up the land taken from Native peoples to white American and European immigrants via generous land policies such as the Preemption Act of 1841 and the Homestead Act of 1861.⁴ Indian Removal policies remained in place through the 19th century often involving fierce violence by the U.S. military towards Indian nations in western territories such as the Dakotas and New Mexico.⁵ Furthermore, land allotment policies such as the Dawes Act instigated a massive rush of white settlers into the remaining areas of Indian Territory (now the state of Oklahoma).⁶ As Mahmood Mamdani has written, “all the defining institutions of settler colonialism were produced as technologies of native control in North America,” from the modes of coercion, the establishment of reservations, and the formation of a separate, unequal, and oppressive system of governance for Native nations.⁷

¹ Patrick Wolfe, “Land, Labor, and Difference: Elementary Structures of Race,” *The American Historical Review* 106:3 (2001), 868.

² Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8 (December 2006), 387.

³ Bethel Saler, *The Settlers Empire: Colonialism and State Formation in the Old Northwest* (Philadelphia: University of Pennsylvania Press, 2019); Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory* (New York: WW Norton, 2020).

⁴ Paul Frymer, *Building an American Empire: The Era of Territorial Expansion* (Princeton: Princeton University Press, 2017).

⁵ Ned Blackhawk, *Violence Over the Land: Indians and Empires in the Early American West* (Cambridge: Harvard University Press, 2008).

⁶ David A. Chang, *The Color of the Land: Race and the Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010); Angie Debo, *The Still The Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton: Princeton University Press, 1973 [1940]); Vine Deloria, Jr. *Custer Died For Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1969); Frymer, *Building an American Empire*.

⁷ Mahmood Mamdani, “Settler Colonialism: Then and Now,” *Critical Inquiry* 41 (Spring 2015), 608. See too, Circe Sturm, “Reflections on the Anthropology of Sovereignty and Settler Colonialism: Lessons from Native North America,” *Cultural Anthropology* 32 (2017), 340-48.

One feature of settler colonial nations is that the colonizing population fails to recognize their imperial history, instead mythologizing the establishment of ‘immigrants’ as not only the ‘founders’ of the new nation-state but seemingly the original and legitimate possessors of the land.⁸ With the ideological zeal of Lockean Liberalism intertwined with beliefs in ascriptive hierarchies, American settlers saw their territorial occupation divined by a ‘cultivation’ of land they deemed as previously nothing more than uncivilized and empty wilderness.⁹ “Settler colonialism,” Audra Simpson argues, “structures justice and injustice in particular ways, not through the conferral of recognition of the enslaved but by the conferral of disappearance in the subject.”¹⁰ Writes Mamdani, “the American autobiography is written as the autobiography of the settler. The native has no place within it.”¹¹

Labeling the United States a settler colonial nation sharply revises the conventional narrative of a nation born out of a political revolution with England by incorporating the foundational moment of territorial conquest.¹² Such revision implicates the important role of white supremacy in the nation’s formation and development.¹³ It also necessitates centering the presence and acts of indigenous people into the process of state formation, illuminating both the forms of legal and

⁸ Leti Volpp, “The Indigenous as Alien,” 5 *UC Irvine Law Review* 289, 289 (2015).

⁹ Aziz Rana, *The Two Faces of American Freedom* (Cambridge: Harvard University Press, 2010); Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge: Harvard University Press, 2010); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in the United States* (New Haven: Yale University Press, 1997); Michael Paul Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Knopf, 1975); Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (Lawrence: University of Kansas Press, 2018); Alyosha Goldstein, “Where the Nation Takes Place: Proprietary Regimes, Antistatism, and U.S. Settler Colonialism,” *South Atlantic Quarterly* 107 (2008), 833-61.

¹⁰ Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 23.

¹¹ Mamdani, “Settler Colonialism,” 596. See too, Joanne Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Durham: Duke University Press, 2011); Kevin Bruyneel, *Settler Memory: The Disavowal of Indigeneity and the Politics of Race in the United States* (Chapel Hill: University of North Carolina Press, 2021); Eve Tuck and K. Wayne Yang, “Decolonization is not a Metaphor,” *Decolonization: Indigeneity, Education, and Society* 1 (2012); Michelle M. Wright, “1619: The Danger of a Single Origin Story,” *American Literary History* 32 (2020), 1-12.

¹² The means and processes of European empires and United States land conquest are complicated, and rooted not just in violence, but also financial and legal transactions. See, e.g., Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Harvard University Press, 2005); Ford, *Settler Sovereignty*, *Ibid*: Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York: Cambridge University Press, 1991).

¹³ See, e.g., Evelyn Nakano Glenn, “Settler Colonialism as Structure: A Framework for Comparative Studies of US Race and Gender Formation,” *Sociology of Race and Ethnicity* 1 (2015), 52-72; Robin D. G. Kelley, “The Rest of US: Rethinking Settler and Native,” *American Quarterly* 69 (June 2017), 267-76; Rana, *Two Faces of American Freedom*, *Ibid*; Shannon Speed, “The Persistence of White Supremacy: Indigenous Women Migrants and the Structures of Settler Capitalism,” *American Anthropologist* 122 (2019), 76-85.

political legitimacy that European colonizers used to oppress native people, as well as the ongoing struggle of Native nations to resist colonial imposition and maintain/reestablish political sovereignty and cultural autonomy.¹⁴ This lasting legacy and struggle is critical because the impact of settler colonialism is ongoing and permeating: as Wolfe has written, “settler colonizers come to stay; invasion is a structure, not an event.”¹⁵

II

Because of the artifice of the settler colonial project towards pre-existing sovereign boundaries, the establishment of settler nations and borders categorizes some Native nations and legal matters within the field of ‘Indian/Native American’ policy and others within immigration law, where indigenous people are not treated as indigenous but identified with settler nation states such as Mexico, Guatemala, and El Salvador. The importance of the nation-state in shaping identities, whether originally indigenous or immigrant, is not to be discounted.¹⁶ At the same time, ignoring the indigenous reality of so many immigrants within the United States seems theoretically and conceptually difficult to justify, particularly as indigenous immigrants continue to come to the U.S. in large numbers during the 2000s.¹⁷

Historically, migration across and within imperial sovereign borders, both voluntary and coerced, has long been a critical part of indigenous histories.¹⁸ In current day society, these indigenous populations represent some of the least represented and well-off migrants in U.S. society. Hundreds of thousands of people regularly seek to migrate to the United States from south of the border searching for employment and political safety. Being of an indigenous background continues to be an important explanation of the migratory process to the United States, and strongly correlates with those who migrate to the United States without documentation.¹⁹

¹⁴ See, Joanne Barker, “Critically Sovereign,” in Barker, ed., *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies* (Durham, Duke University Press, 2017); J. Kēhaulani Kauanui, “‘A Structure, Not an Event’: Settler Colonialism and Enduring Indigeneity,” *Lateral* 5:1 (Spring 2016); Simpson, *Mohawk Interruptus*.

¹⁵ Wolfe, “Settler Colonialism and the Elimination of the Native,” 388.

¹⁶ Indeed, there is preliminary evidence that people of indigenous backgrounds from Mexico and Central America choose to identify as ‘Hispanic’ and not ‘Native American’ when filling out U.S. census forms. See, Anna B. Sandoval Giron, Center for Survey Measurement, U.S. Census Bureau, “Central and South American Indigenous, American Indian or Hispanic/Latino Respondents? Navigating Racial Identity Categories in U.S. Census Forms,” <https://www.census.gov/content/dam/Census/newsroom/press-kits/2017/aapor/2017-aapor-sandoval.pdf> (2017).

¹⁷ Geoffrey Decker, “Hispanics Identifying Themselves as Indians,” *New York Times* (June 4, 2011), A16.

¹⁸ See, e.g., Barker, *Native Acts*; Juliana Barr, “Geographies of Power: Mapping Indian Borders in the ‘Borderlands’ of the Early Southwest,” *William and Mary Quarterly* 68 (2011), 5-46; Pekka Hämäläinen, *The Comanche Empire* (New Haven: Yale University Press, 2008); Lim, *Porous Borders*; Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004); Simpson, *Mohawk Interruptus*; David J. Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992).

¹⁹ Asad L. Asad and Jackelyn Hwang, “Migration to the United States from Indigenous Communities in Mexico,” *The ANNALS of the American Academy of Political and Social Science* 684 (1): 120-45. (2019); Asad L. Asad and Jackelyn Hwang, “Indigenous Places and the Making of Undocumented Status in Mexico-US Migration,” *International Migration Review* 53(4), 1032-77 (2018); Jonathan Fox, “Reframing Mexican migration as a Multi-Ethnic Process,” *Latino Studies* 4(1): 39-61 (2004).

These populations are legally and formally represented by the nation-state with which they left: Mexico, Guatemala, El Salvador, and the like. But substantial percentages of these migrants identify with their indigenous heritage, culture, and a significant number primarily speak their indigenous language. These percentages are likely even larger than government surveys such as those conducted by the Bureau of the Census and the U.S. Department of Agriculture, because, as I discuss below, the numbers have been historically under counted and identified due to politics within both the United States and within the Central and South American states from which they migrate.²⁰ If we are to continue to use the lens of settler colonialism to understand the United States and its relationship with native populations, it seems appropriate that we examine this significant and growing presence of indigenous populations, populations whose presence in the United States is hardly independent from the United States imperial involvement in North America.²¹

Challenging the legal boundaries of indigeneity draws importantly on Wolfe's notion that settler colonialism "is a structure not an event," and illuminates some of the ways that the U.S. legacy as a settler imperial nation continues to take new forms. Settler colonialism continues to develop temporally through institutions and politics, often moving distinctively, but nonetheless in multiple directions and with different clockworks and political paths.²² Among them is to recognize that settler colonial formation in the United States was and is part of a transnational process of European empires invoking the Discovery Doctrine across multiple continents and effecting indigenous populations across those continents. This has led not just to the seizing of sovereign native lands, but to establish new economies, nation-states and their hegemonic political and cultural reach. This settler colonial process did not stop with the establishment of new nation states. As settler colonialism continues to evolve and expand its reach, it continually encapsulates new populations, particularly those indigenous to the American continents, from Alaskan and Hawaiian Natives to Mayans and Zapotec; all along, the interpreted boundaries of Native peoples are alternatively expanded, narrowed, and re-articulated.²³

²⁰ This misidentification is further enhanced by the fact that Latin American nations have their own definitions of indigenouness, all influenced in part by their own legacies of settler-colonialism, which almost uniformly serve to narrow the potential numbers of the populations involved. See, e.g., Alan Knight, "Racism, Revolution, and Indigenismo: Mexico, 1910-1940," in *The Idea of Race in Latin America, 1870-1940* (Austin: University of Texas Press, 1990); Michael Kearney, "Borders and Boundaries of State and Self at the End of Empire," *Journal of Historical Sociology* 4(1), 52-74 (1991); Carmen Martínez Novo, *Who Defines Indigenous? Identities, Development, Intellectuals, and the State in Northern Mexico* (New Brunswick: Rutgers University Press, 2006); Pavel Shlossberg, "Heritage Practices, Indigenismo, and Coloniality: Studying-Up into Racism in Contemporary Mexico," *Cultural Studies* 32(3), 414-37 (2018).

²¹ See, e.g., Lisa Lowe, *The Intimacies of Four Continents* (Durham: Duke University Press, 2015); Roxanne Dunbar-Ortiz, *Indigenous Peoples' History of the United States* (Boston: Beacon Press, 2014).

²² Karen Orren and Stephen Skowronek, "Beyond the Iconography of Order: Notes for a 'New Institutionalism,'" in Lawrence C. Dodd and Calvin Jillson, eds., *Dynamics of American Politics*, (Routledge 1994); Deborah J. Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (New York: Cambridge University Press, 2005).

²³ See Barker, *Native Acts*; Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2006); J. Kēhaulani Kauanui, *Paradoxes of Hawaiian Sovereignty: Land, Sex, and*

Arguably, this might lead to a rethinking of the boundaries and definitions of our current understanding of Native American politics, expanding it to incorporate the broader processes, domestic and transnational, that have denied sovereignty, power, and representation to indigenous peoples. But this move raises many questions about domestic indigenous politics and the broader concept and meaning of indigeneity in the United States. There are powerful and important reasons for why such expansion of terminology may be outright inappropriate. In part, this is based on a historical specificity of the colonial experience within the United States towards those people who were immediately confronted, removed, and killed by American settlers and armies. Indian law is grounded in the taking of Native lands by the U.S. government and nation state. There is a specific agency and moral blame that the United States must recognize for its direct actions against people living within the borders of a colonial occupier.

Moreover, as many scholars of indigenous peoples and rights are quick to emphasize, the confluence of Native people who lost their lands and sovereignty on what is now considered United States territory ought not to be reflexively subsumed within a broader category of 'indigeneity,' or within existing categories of race and national origin as understood by Equal Protection laws and civil rights scholars studying racial formation of minority populations.²⁴ Drawing from "a shared experience around distinct historical processes," many Native people resist employing the concept of racial formation, arguing that they represent not a race but people from sovereign nations who constitute separate political, legal, and cultural entities that inhabit "specific territories over which they wield some governmental control or jurisdiction."²⁵ As Audra Simpson notes, indigenous people in the United States have been forcibly focused on "care for and defense of territory."²⁶ Writes Joanne Barker, "'Indigenous' is embedded conceptually in a geographic alterity and a radical past as the Other in the history of the West."²⁷ How we think about indigenous categories and boundaries are absolutely critical for the granting

the Colonial Politics of State Nationalism (Durham: Duke University Press, 2018); Shannon Speed, *Incarcerated Stories: Indigenous Women Migrants and Violence in the Settler-Capitalist State* (Chapel Hill: University of North Carolina Press, 2019).

²⁴ With regards to Equal Protection, see, e.g., Bethany R. Berger, "Reconciling Equal Protection and Federal Indian Law," 98 *California Law Review* 1165 (2010); Krakoff, "They Were Here First." With regards to racial formation, see Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1994).

²⁵ Words in first quotation marks is Raymond Orr, *Reservation Politics: Historical Trauma, Economic Development, and Intratribal Conflict* (Norman: University of Oklahoma Press, 2017), 8; the second quotation is David E. Wilkins and Heidi Kiiwetinepinesiiik Stark, "Indigenous Peoples Are Nations, Not Minorities," in *American Indian Politics and the Political System* (Lanham, Md.: Rowman & Littlefield, 2002), 55. See, too, Kevin Bruyneel, "Challenging American Boundaries: Indigenous People and the 'Gift' of U.S. Citizenship," *Studies in American Political Development* 18 (2004), 30-43.

²⁶ Simpson, *Mohawk Interruptus*, 3.

²⁷ Barker, *Native Acts*, 7.

of rights and privileges, including citizenship; as Barker aptly reminds us, it is “the erasure of the sovereign (that) is the racialization of the ‘Indian.’”²⁸

Land and sovereignty and the political quest for a restoration of pre-colonial demarcations has long been the critical battleground between Native activists and the settler state. At the same time, these boundary definitions have never been straightforward or static. Territorial boundaries have been established and manufactured by European empires, and they have also always been importantly crossed and contested. As the settler colonial state continues to evolve and re-form, it is vital that we explore how its interactions with indigenous people evolve with it. This is not meant to lump indigeneity into a single historical experience or category, nor to deny the specific experiences of some nations versus others, but to continue our understanding of indigenous law, whether via Indian Law or immigration law or something else as a way to confront ongoing realities of inequalities and exploitation.

III

Indigenesness can and is defined in quite dramatically different ways. It can rest in political definitions and claims to sovereignty and citizenship; it can be defined by quantum blood; and it can be seen as a racial category. It can be defined narrowly and expansively. It is a term that has changed over time, within different contexts and sovereignties. Since ‘indigenous’ is not a term that originates from indigenous communities, it is loaded with the biases of the colonizer, but also takes on meaning and context when used by activists to refer to themselves and their communities. Many attempts at definition are importantly politicized, driven by historical acts, legislation, nation-states, and within societal categories of racial formation, sometimes as a term that is specific United States Indian tribes or transnationally with the incorporation of North American indigenous migrants seeking asylum, work opportunities, and citizenship within the United States. Indian law and policy in the United States incorporates the former, focusing specifically on the complicated and diverse politics and cultures of Indian tribes and nations within the United States. Recently, scholars have begun to emphasize a broader encompassing within the theoretical understanding of settler colonialism.

It is also widely recognized that race is a construction, shaped by historical, political, and legal contexts.²⁹ But, as mentioned in the introduction, indigenous populations fit in uneasily within this category. In part, this is because Indian categories in the United States are governed by law.³⁰ There is no universal definition, many statutes give definitions for purposes of particular laws and distribution of benefits, and federal agencies like the Bureau of Indian Affairs, the Departments of Agriculture and Labor generate their own definitions. Only with Spanish

²⁸ Joanne Barker, “For Whom Sovereignty Matters,” in Barker, ed., *Sovereignty Matters* (2005), 9-17.

²⁹ Paul Gilroy, ; Omi and Winant; Ian Haney López, *White By Law: The Legal Construction of Race* (New York: NYU Press, 1996); Gerald Torres and Kathryn Milun, “Translating *Yonnonidio* by Precedent and Evidence: The Mashpee Indian Case, 1990 Duke L.J. 625.

³⁰ Eve Marie Garrouette, “The Racial Formation of American Indians: Negotiating Legitimate Identities with Tribal and Federal Law,” *American Indian Quarterly* 25(2), (Spring 2001), 224-39.

conquest that the notion of an “Indian” was established: for instance, lacked the rigid racial separation of the United States³¹ The Bureau of the Census opened further the opportunity to cast indigenes in broader categories.³² The Supreme Court in *Montoya v. United States* (1901) held that a tribe is “a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory.” The Indian Self-Determination Act of 1975 defines an Indian tribe as “any Indian tribe, band, nation, or other organized group or community... which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” They use a political-legal definition of tribe, based on recognition by the federal government. In 2010, Department of Interior recognized 565 indigenous entities—335 Indian nations in the lower 48 states, 230 are Alaska Natives.

The Bureau of Indian Affairs offers Native nations the right as sovereign entities to determine their own membership. The Indian Reorganization Act of 1934 made blood the legal marker on Native identity. Because of the Constitution’s silence on the issue of who is an Indian, Congress, the BIA, and the courts have great latitude for specific situations, and blood quantum (usually one-fourth), member of federally recognized indigenous community, residence on or near a reservation, or being a descendant of a recognized Indian nation are the most common criteria. These are frequently contested and political: the Cherokee nation decisions in early 2000s restricting citizenship to “Indian blood,” for instance, excluded 2867 Freedmen descendants and nine intermarried white descendants. Kauanui argues it is “original occupancy, or at least prior occupancy” that typically dominates the defining, even while recognizing that “indigeneity is a category of analysis that is distinct from race, ethnicity, and nationality—even as it entails elements of all three of these.”³³

To a certain degree, Native peoples in the United States have joined with other indigenous populations around the world in the promotion of transnational rights, frequently using similar language in promoting their right to self-determination, sovereignty over land, and autonomy from colonizing powers.³⁴ Native Americans have been leaders in promoting greater rights of indigenous people before the United Nations, and some indigenous organizations, such as the

³¹ Mara Loveman, *National Colors: Racial Classification and the State in Latin America*; Alan Knight, “Racism, Revolution, and Indigenismo: Mexico, 1910-1940,” in *The Idea of Race in Latin America, 1870-1940*, ed., Richard Graham, (Austin: University of Texas Press, 1990).

³² Anna B. Sandoval Girón, “Central and South American Indigenous, American Indian or Hispanic/Latino Respondents? Navigating Racial Identity Categories in U.S. Census Forms, (US Bureau of the Census, 2017), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2017/aapor/2017-aapor-sandoval.pdf>. According to the 2010 U.S. Census, Mexicans are the fourth largest Native population in the United States. United States Census Bureau, “The American Indian and Alaska Native Population: 2010,” (January 2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>. According to the OMB, the category of American Indian or Alaska Native used by the Census in 2010 refers to a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

³³ Kauanui, “A Structure, Not an Event.”

³⁴ Thomas Biolsi, “Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle,” *American Ethnologist* 32:2 (2005), 239-59.

Indian Law Resource Center, both within and outside the United States, see their mission as transnational and have encouraged Native American leaders to engage with the opportunities provided by the protections proffered from the United Nations to protect tribal lands, sovereignty, and cultures.³⁵ *Indian Country Today*, a leading news outlet for Native people in the United States, regularly covers indigenous people that spans the North American continent.³⁶ But, as Thomas Biolsi notes, even these transnational elements does not “produce indigenous space beyond individual indigenous nations, and the world indigenous movement is very much akin to an indigenous ‘united nations’ in which the common colonial situations of each individual and autonomous indigenous nation is recognized but the mosaic of separate and autonomous Native sovereignties is never questioned.”³⁷ At the same time, he importantly reminds us, “to have or to claim particular rights—that is, to be a political subject of any kind—is necessarily to inhabit particular forms of imagined or achieved—even if unstable or contested—political space.”³⁸

So, a broader understanding of indigenusness is both important and difficult to formalize, particularly in the frame of immigration. We think of migrants by the origin of their country. In so doing, we necessarily miss the degree of indigenusness as its own category. But simply asserting this point is with complications. Indigenous immigrants are frequently not counted or severely undercounted, whether by the United States or by the nation state with which the people originated from. One study estimated from a collection of different data sources that there were more than 120,000 indigenous Mexican agricultural workers in California, with another 45,000 children; they also draw from the US Department of Labor’s National Agricultural Workers Survey (NAWS) found a surge of Mexican immigrants coming from its southern and largely indigenous regions.³⁹ But the USDA data, as well as that from the Department of Labor, only categorize by nation, not by ethnicity or race or indigenous identity.⁴⁰

Further complicating this effort is that these immigrants’ nations of origin also undercount indigeneity, often quite significantly. Indigenous populations are not defined similarly across nation-states, with some nations constructing definitions focusing on blood, others culture, others defining indigenous only for people who reside on reservations or other territorial space. North and Central American nations differently define indigenusness, with some like the US

³⁵ See Biolsi, *Ibid*.

³⁶ See, e.g., Indian Law Resource Center, “Advancing Indigenous Rights After UNDRIP,” (January 27, 2016); <https://indianlaw.org/wcip/advancing-indigenous-rights-after-undrip> Indian Law Resource Center, “Minnesota Tribes Learn about Engaging in the UN,” (September 6, 2016) <https://indianlaw.org/wcip/minnesota-tribes-learn-about-engaging-un>. See Biolsi, *Ibid*, for making me aware of this.

³⁷ *Ibid*, 250.

³⁸ *Ibid*, 253.

³⁹ www.indigenousfarmworkers.org

⁴⁰ National Agricultural Workers Survey, <https://www.dol.gov/agencies/eta/national-agricultural-workers-survey/research>. See, too, “Stop Child Labor in Agriculture:” Contribution to the Prevention and Elimination of Child Labor in Mexico in the Agricultural Sector, with Special Focus on Migrant Indigenous Children,” DOL, <https://www.dol.gov/agencies/ilab/stop-child-labor-agriculture-contribution-prevention-and-elimination-child-labor>.

emphasizing DNA and others such as Mexico focusing on the active use of an indigenous language and culture.⁴¹ In order to understand the context in which Americans and the U.S. government understands and recognizes the demographics of the population migrating from south of the border requires an understanding of how Latin America, and particularly states in Latin America have constructed its own racial visions. State formation involves different efforts to unify a nation, whether along class, ethnic, and racial lines; in the process, some identities are elevated and others are suppressed. There is nothing in this process that is inherent or natural to the idea of nation.⁴² For much of the 19th and early 20th century, understanding race was focused on mestizo identity. This was in response to European and American colonization and aggression, with the strong effort by Latin American nation states at encouraging/forcing indigenous assimilation into a category of mestizo, a category that varies from country to country but most frequently privileges, and as a bi-product racializes, a common national identity bound by an Hispanic culture, history, and language.⁴³ This itself was part of a broader project at harmonizing through denying the extensive diversity and power differentiations, based on history, colonialism, slavery, genocide, and economic inequality.

Greg Grandin, for instance, argues that 19th century elites in Guatemala believed national and economic progress was dependent on importantly assimilating indigenous people into a broader nation-state.⁴⁴ In different moments, it was also importantly a response to U.S. imperialism by providing a national unity that could not be subject to Anglo-Saxon political and economic intrusion or outright efforts at conquest. Lorgia García-Peña's describes the efforts of Dominican officials to criminalize Afro-religious practices and more broadly treat black Dominicans through the racist US experience, something that continued throughout the dictatorship of Rafael Leónidas Trujillo. (60-92). during U.S. occupation in the early 20th century. Guatemala's intersecting history with indigenous racial formation and U.S. imperialism is similarly apt.

The United States also has a history of undercounting. Being of an indigenous background continues to be an important explanation of the migratory process to the United States, and

⁴¹ See, e.g., Alan Knight, "Racism, Revolution, and Indigenismo: Mexico, 1910-1940," in *The Idea of Race in Latin America, 1870-1940* (Austin: University of Texas Press, 1990); Michael Kearney, "Borders and Boundaries of State and Self at the End of Empire," *Journal of Historical Sociology* 4(1), 52-74 (1991); Carmen Martínez Novo, *Who Defines Indigenous? Identities, Development, Intellectuals, and the State in Northern Mexico* (New Brunswick: Rutgers University Press, 2006); Pavel Shlossberg, "Heritage Practices, Indigenismo, and Coloniality: Studying-Up into Racism in Contemporary Mexico," *Cultural Studies* 32(3), 414-37 (2018).

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⁴³ Lorgia García-Peña, *The Borders of Dominicanidad: Race, Nation, and Archives of Contradiction* (Durham: Duke University Press, 2016); Juliet Hooker, "Indigenous Inclusion/Black Exclusion: Race, Ethnicity and Multicultural Citizenship in Latin America," *Journal of Latin American Studies* 37, 285-310 (2003); Juliet Hooker, *Theorizing Race in the Americas: Douglass, Sarmiento, Du Bois, and Vasconcelos* (New York: Cambridge University Press, 2017); Dixia Ramírez, *Colonial Phantoms: Belonging and Refusal in the Dominican Americas, From the 19th Century to the Present* (New York: NYU Press, 2018); Mark Q. Sawyer, *Racial Politics in Post-Revolutionary Cuba* (New York: Cambridge University Press, 2010); Deborah Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (New York: Cambridge University Press, 2001).

⁴⁴ Greg Grandin, *The Blood of Guatemala: A History of Race and Nation* (Durham: Duke University Press, 2000).

strongly correlates with those who migrate to the United States without documentation.⁴⁵ Indeed, the United States role in continually reaffirming and re-enforcing indigenous categories extends well beyond the initial historical moment of state formation. The U.S. has consistently engaged in the defining of populations throughout the continent, whether through economic and foreign policy, or by invoking its own racial categories and conventions in defining those who attempt to engage the country via migration or economic participation.⁴⁶ For instance, its relationships with Mexico and Mexican history is of a specific quality given the war between the two countries in the late 1840s, the large land and population conquest by the United States, and the subsequent debates in the US over the racial categorization of Mexican Americans and the indigenous populations amongst them. *In re Rodriguez* (1897), Supreme Court reinforced Treaty of Guadalupe Hidalgo that granted citizenship to Mexicans in ceded territories. [Webb, “the Mongolian or Mongoloid Race” 1930]. In 1930, the Census Bureau added “Mexican” to the list of choices in the “Color or Race” category, arguing that “practically all Mexican laborers are of a racial mixture difficult to classify....all persons born in Mexico, or having parents born in Mexico, who are definitely not white, Negro, Indian, Chinese, or Japanese, should be returned as Mexican.”⁴⁷ Mexicans, and the Mexican government, protested this claiming that they should be labeled as ‘white.’ In response, the Census Bureau retreated from its classification, deciding that “Mexicans are white.”⁴⁸

Race foregrounded debates about whether to include indigenous populations who resided outside of US borders during the 1920s debates over immigration reform.⁴⁹ The debate centered on whether indigenous and mestizo Mexicans could be granted citizenship in light of national boundaries over the constructed black-white racial divide that dominated US law and policy at the time. When Mexicans were finally categorized as non-white, it had direct consequence, excluding them from immigration opportunities under section 13 of the Immigration Act which restricted immigration to those eligible for citizenship.

Starting in the late 1920s, the CJIC advocated the exclusion of Mexican immigrants on the basis that they were not white or black and therefore could not become citizens. Mexican Indians were thought to be “of the Mongolian or Mongoloid race” and were therefore ineligible for American

⁴⁵ Asad L. Asad and Jackelyn Hwang, “Migration to the United States from Indigenous Communities in Mexico,” *The ANNALS of the American Academy of Political and Social Science* 684 (1): 120-45. (2019); Asad L. Asad and Jackelyn Hwang, “Indigenous Places and the Making of Undocumented Status in Mexico-US Migration,” *International Migration Review* 53(4), 1032-77 (2018); Jonathan Fox, “Reframing Mexican migration as a Multi-Ethnic Process,” *Latino Studies* 4(1): 39-61 (2004).

⁴⁶ See, García-Peña, for a focus on how U.S. slave policies shaped Dominican racial formation, and in particular efforts by Dominican writers and elites to differentiate themselves from both Dominican and Haitian black populations. In particular, Dominican elites, actively aided at times by U.S. military involvement, emphasized racial mixtures as a contrast to Haiti’s blackness.

⁴⁷ Hochschild and Powell, 80.

⁴⁸ Mae Ngai argues that the whiteness of Mexicans at this time was specifically for naturalization. (2004, 54). Members of Congress focused their definitions of whiteness towards the leaders and elite of Mexico, and not the part of population that was clearly seen as indigenous. (Calderón-Zaks, 335)

⁴⁹ Natalia Molina, “‘In a Race All Their Own’: The Quest to Make Mexicans Ineligible for U.S. Citizenship,” *Pacific Historical Review* 79(2)(2010), 167-201.

citizenship. The CJIC followed the message up in October of that year with a press release bearing the headline “Mexican Indians Not Eligible for American Citizenship.”

In 1920s, state department used a political definition of Indian to enforce treaties while INS used a racial definition to enforce immigration policy and restrict indigenous populations from entering the US; this led some indigenous people to be excluded while other members of their family were simultaneously allowed to become citizens.⁵⁰ Senator Hiram Johnson of California introduced legislation to enable North American Indians born outside the US to be eligible to naturalize. Senator Clarence Dill of Washington introduced S. 3998 making eligible to citizenship North American Indians born outside the United States. “At the present time North American Indians born on this continent outside the borders of the United States are not admissible to citizenship under the immigration laws. I do not believe it was the intention of Congress to make such people ineligible to citizenship, and the purpose of the bill is to correct that condition.”⁵¹

Many decades later, during the 1980s and 90s, numerous Central American countries—notably Guatemala, El Salvador, and Nicaragua, were engaged in devastating civil wars with widespread human rights abuses. Much of the violence centered around indigenous communities in the more rural mountainous regions, with paramilitary groups committing massacres and widespread violence. During the 1980s, nearly one million Central Americans sought asylum in the U.S. Roughly 90 percent of Central American immigrants come from the Northern Triangle of El Salvador, Guatemala, and Honduras, estimated to be nearly two million people in the last two decades of the 20th century, and now estimated at 3.5 million.⁵²

Dating back to the Reagan era, there has been great resistance from U.S. immigration policy in providing opportunities for Mayans to achieve asylum and residence. Mayan immigrants, who continue to work in agriculture and meat packing plants throughout the United States, have been targeted repeatedly by raids from ICE agents. For example, in 2008, 900 ICE agents raided, arrested, and deported hundreds of Mayans from the Agriprocessors meat-packing plant in Postville, Iowa. Nearly half of the Mayans arrested did not speak either English or Spanish, and the US government was not equipped to provide them translators; many of the deportations occurred after these workers waived critical rights.

To be continued... 😊

⁵⁰ Marian L. Smith, “The INS and the Singular Status of North American Indians,” *American Indian Culture and Research Journal* 21(1)(1997), 131-54, 138.

⁵¹ *Congressional Record*, April 16, 1926, 7556-57.

⁵² Allison O’Connor, et al., “Central American Immigrants in the United States,” *Migration Information Source*, <https://www.migrationpolicy.org/article/central-american-immigrants-united-states-2017> (August 15, 2019).