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# Settlers in Indian Country

Charles W. A. Prior



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SETTLERS IN INDIAN  
COUNTRY

*Sovereignty and Indigenous Power  
in Early America*

Charles W. A. Prior

*University of Hull*



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# Settlers in Indian Country

## *Sovereignty and Indigenous Power in Early America*

Elements in Comparative Political Theory

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**Abstract:** The aim of this Element is to foreground Native American conceptions of sovereignty and power in order to refine the place of settler colonialism in American colonial and early republican history. It argues that Indigenous concepts of sovereignty were rooted in complex metaphorical language, in historical understandings of alliance, and in mobility in a landscape of layered interconnections of power. Where some versions of the interpretive paradigm of settler colonialism emphasise the violent 'elimination of the native', this work shows that diplomatic transactions between the Iroquois Confederacy and British colonial and imperial agents reveal a hybrid language of alliance, sovereignty and territory. These languages and concepts of intercultural diplomacy provide contexts that suggest a more nuanced and dynamic relationship between colonialism and Indigenous power.

**Keywords:** law, treaties, sovereignty, colonialism, Iroquois, indigenous political thought

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## 1 Introduction: Rethinking Sovereignty

*Settlers in Indian Country* seeks to foreground Native American conceptions of sovereignty and power in order to refine the place of settler colonialism in American colonial and early republican history. It argues that Indigenous concepts of sovereignty were rooted in complex metaphorical language, in historical understandings of alliance, and in mobility across a landscape of layered interconnections of power. Attending to contexts that do not typically figure in the study of early modern political thought, it seeks to illustrate themes of broad interest in comparative political theory. Specifically, it aims to reposition settler colonialism in relation to political thought by illustrating the interaction of colonial and Indigenous concepts of political power; to refine and complicate ‘statist’ and spatially bounded concepts of sovereignty and territory; and, finally, to shed light on the place of Indigenous concepts of historic sovereignty in juxtaposition to well-studied discourses of colonialism and imperialism in early America

This Element presents an account of political thought in historic context, focussing on the colonial Northeast of America during the eighteenth century. This is a space and period conventionally defined by the ‘imperial crisis’ that was driven by the deterioration of relations between the British Crown and thirteen of its twenty-six Atlantic colonies. This crisis culminated in the American Revolution, a process that produced a new politics that was republican in the sense that it emphasised civic ideals such as the rights of citizens, the rule of law, and the separation of powers. My aim here is to challenge the assumption that early American political thought formed in a context framed exclusively by debates within a British empire of law, producing an American empire of liberty. Colonial conceptions of power, rights, and sovereignty were not exclusively shaped within Anglophone imperial structures, but rather in the context of intercultural diplomatic relations with the Haudenosaunee, the ‘people of the Longhouse’ whom the French referred to as the Iroquois.

To make this argument, I draw on work by historians of Native America that has presented early America as a site of overlapping and contested ‘zones’ of sovereignty, in which colonialism was shaped by encounters with Indigenous power.<sup>1</sup>

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<sup>1</sup> Pekka Hämäläinen, ‘The Shapes of Power: Indians, Europeans, and North American Worlds from the Seventeenth to the Nineteenth Century’, in *The Contested Spaces of Early America*, ed. Juliana Barr & Edward Countryman (University of Pennsylvania Press, 2014), pp. 31–68; Jeffers Lennox, *Homelands and Empires: Indigenous Spaces, Imperial Fictions, and Competition for Territory in Northeastern North America, 1690–1763* (University of Toronto Press, 2017); Michael Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (University of Pennsylvania Press, 2012); Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (University of Pennsylvania Press, 2006); Richard White, *The Middle Ground: Indians, Europeans, and Republics in the Great Lakes Region, 1650–1815* (Cambridge, 1991).

This power can be seen most clearly in the context of diplomacy between Iroquoian peoples and colonial and imperial officials, and preserved in the rich documentary record of treaties and treaty councils. These councils – large gatherings of Native nations and colonial officials from across the Northeast – were regular events that consolidated and focussed the networked power of the Iroquois, revealing the reach of their influence through alliances, kinship, trade, and war. The records of diplomacy allow us to hear the voices of Iroquoian leaders and orators who articulated ideas of Indigenous sovereignty to their imperial and colonial audiences. These records also show us how these audiences, in turn, adopted and employed Iroquoian political metaphors in their communications with each other, infusing colonial ideas with Indigenous idioms.

The material record of diplomacy between Native polities and Anglophone colonial and imperial officials is vast.<sup>2</sup> In order to keep the argument and material under control, in what follows I focus on Iroquoian and Anglophone relations in New York. There are several reasons for this, the most obvious of which is that the principal towns, diplomatic centres, and villages of Iroquoia were within the bounds claimed by New York. The province was the site of the Covenant Chain alliance between the Crown and the Iroquois, and the home of Sir William Johnson, the superintendent of Indian Affairs for the northern district from 1756 to 1774. It was a principal node of diplomacy, commerce, and imperial power. The Iroquois were also the dominant Indigenous social formation of the Northeastern woodlands, with influence reaching into Canada, west into the Great Lakes and Ohio country, and into the south – the territories of the rival confederacy of the Cherokee. Theirs was an extensive domain, comprised of ‘small conquests’, which was insulated by a series of military ‘buffer zones’ within which they controlled the movement of people and goods through a long and complex diplomatic alliance with the English.<sup>3</sup> This alliance

<sup>2</sup> Francis Jennings and William Fenton, eds., *Iroquois Indians: A Documentary History of the Six Nations and Their League* (Woodbridge, CT, 1984–1985). 50 microfilm reels; Alden T. Vaughan, gen. ed., *Early American Indian Documents: Treaties and Laws, 1607–1789*, 20 vols. (Washington, DC: University Publications of America, 1979–2004). Hereafter cited as *EALD*, followed by volume and page; Vine DeLoria and Raymond J. DeMallie, eds., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979*, 2 vols. (University of Oklahoma Press, 1999); Beth DeFelice, ‘Indian Treaties: A Bibliography’. *Law Library Journal* 107 (2015), 241–58; Charles D. Bernholz, ‘American Indian Treaties and the Supreme Court: A Guide to Treaty Citations from the Opinions of the Supreme Court’. *Journal of Government Information* 30 (2004), 318–431; Charles D. Bernholz, ‘The “Other” Treaties’. *Legal Reference Services Quarterly* 24 n. 3–4 (2005), 107–41; Charles D. Bernholz, *Kappler Revisited: An Index and Bibliographic Guide to American Indian Treaties* (New York, 2003); David H. DeJong, *American Indian Treaties: A Guide to Ratified and Unratified Colonial, United States, State, Foreign, and Intertribal Treaties and Agreements, 1607–1911* (University of Utah Press, 2015), p. 8.

<sup>3</sup> Hämäläinen, ‘Shapes of Power’, pp. 45–6.



was very different in character to other relationships between Indigenous and colonial powers on the American continent. It involved the Crown as a personal and symbolic sovereign and was a preoccupation of the Board of Trade and imperial officials, demanding heavy commitments from an under-resourced imperial state. And it persists in present-day understandings of what Walter Bagehot called the ‘dignified Crown’, which is seen by the First Nations of Canada as the guarantor of their rights.<sup>4</sup>

Placing diplomacy at the centre of the frame counteracts the tendency to view Native Americans as stateless nomads who lacked ordered practices of power or rightful claims to territory. Writers on international law referred to Native Americans in wholly negative terms, and their place in histories of law has often been defined by the loss, rather than the exercise of sovereignty.<sup>5</sup> This view has deep roots in texts that were written as colonies themselves were being settled. For Hobbes, ‘the savage people in many places in America’ had no recognisable government and existed in a perpetual state of war. In Locke’s treatises on government, they were ‘rich in Land, and poore in all the Comforts of Life’.<sup>6</sup> And for Emer de Vattel, their ‘unsettled habitation’ and failure to improve their land served as the justification for its seizure by Europeans who ‘were lawfully entitled to take possession of it, and settle it with colonies’.<sup>7</sup> A focus on intercultural diplomacy challenges these assumptions, moving us beyond the position that nascent international law principles ‘vindicated colonialism’, and toward a view that is centred on a ‘hybrid’ legal order that was infused with Indigenous assumptions about power, sovereignty, and alliance.<sup>8</sup>

<sup>4</sup> Daniel K. Richter & James H. Merrell, eds., *Beyond the Covenant Chain: The Iroquois and Their Neighbours in Indian North America, 1600–1800* (Pennsylvania State University Press, 1987); Nathan Tidridge, *The Queen at the Council Fire: The Treaty of Niagara, Reconciliation, and the Dignified Crown in Canada* (Toronto, 2015).

<sup>5</sup> Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford, 1990); Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* (University of Nebraska Press, 2008); Lindsay G. Robertson, *Conquest By Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford, 2005); Stuart Banner, *How the Indians Lost their Land: Land and Power on the Frontier* (Harvard, 2005); Blake A. Watson, *Buying America from the Indians: Johnson v McIntosh and the History of Native Land Rights* (University of Oklahoma Press, 2012).

<sup>6</sup> [Thomas Hobbes], *Leviathan*, ed. Richard Tuck (Cambridge, 1991), p.89; [John Locke], *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960), p.296; Barbara Arneil, *John Locke and America* (Oxford, 1996), ch. 7.

<sup>7</sup> Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (1758), ed. Béla Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), p. 216; S. James Anaya, *Indigenous Peoples in International Law* (Oxford, 1996), ch. 1; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005), pp. 23–8.

<sup>8</sup> Gregory Ablavsky, ‘Species of Sovereignty: Native Nationhood, the United States, and International Law, 1783–1795’. *Journal of American History* 106(3) (2019), 591–613;

While there is an extensive body of scholarship concerned with Indigenous responses to European imperialism, Native Americans do not readily figure in approaches to the history of early American political thought that take the development of republican constitutionalism as the central organising theme. Revolutionary America retains its position as one of the principal stages for the development of ideas of the rule of law, government by consent, and popular sovereignty that distinguish the Anglophone contribution to the broader evolution of democratic theory.<sup>9</sup> The emergence of a republican political order after the Revolution is notable for its inherent colonialism in a Continental space in which its territories bordered, and gradually absorbed, British, French, Spanish, and Native American imperial domains. Outside its borders, the United States was territorially expansionist, while internally it retained a politics of racial exclusion. Both aspects of this posture were shaped by encounters with Native American conceptions of power, sovereignty and territory. Diplomacy, trade, and armed confrontations with Native peoples and others opened up a debate in the new republic over questions of ‘sovereignty, democracy, and community’. Similarly, the legal and juridical questions that occupied the newly established Supreme Court reveal the extent to which Native affairs shaped the development of federal law, and helped to refine key state powers, including war, treaty, and commerce.<sup>10</sup>

### (Settler) Colonialism

The durability of paradigmatic accounts of colonial ideas, particularly those which took centre stage in studies of the ideological origins of the American Revolution, mean that ‘colonialism’ primarily exists as a concept that is associated with ideas about the formation of civil polities and prototypical forms of ‘state’.<sup>11</sup> Broadly speaking, there has been a reluctance to acknowledge the colonialism that is inherent in American projects of state formation and

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J. Marshall Beier, ‘Forgetting, Remembering, and Finding Indigenous People in International Relations’, in *Indigenous Diplomacies*, ed. Marshall Beier (Palgrave, 2009), 11–27.

<sup>9</sup> Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, 2015), ch. 4; James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (Oxford, 2016), chs. 2, 6–7; Steve Pincus, *The Heart of the Declaration: The Founder’s Case for an Activist Government* (Yale, 2016), ch. 3; Eric Nelson, ‘Prerogative, Popular Sovereignty, and the American Founding’, in *Popular Sovereignty in Historical Perspective*, ed. Quentin Skinner & Richard Bourke (Cambridge, 2016), 187–211; Mark Somos, *American States of Nature: The Origins of Independence, 1761–1775* (Oxford, 2019), chs. 5–6.

<sup>10</sup> Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton University Press, 2017), p. 8; Maggie Blackhawk, ‘Federal Indian Law as a Paradigm within Public Law’, *Harvard Law Review* 132 n. 7 (2019), 1800–42.

<sup>11</sup> Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge, 2003), chs. 3, 5; Alexander B. Haskell, *For God, King, and People:*

territorial expansion.<sup>12</sup> The proposition that the Anglophone inhabitants of Britain's Atlantic dominions were *colonisers* rather than *colonised* overturns the narrative of the founding as defined by principled resistance to imperial oppression.<sup>13</sup> The second reason is rooted in work by historians of Native America that foregrounds Indigenous resilience and resistance, rather than the 'logic of elimination' proposed by Patrick Wolfe, a seminal, but latterly controversial, figure in the development of the paradigm of settler colonialism.<sup>14</sup>

The utility of settler colonialism as an analytic device to understand the political formation of early America has been less broadly applied than elsewhere, and has a particular intellectual genealogy. Here, the progenitor is Vine Deloria and a generation of historians influenced by him. Frederick Hoxie, for instance, argued that the study of colonialism assisted with the 'reframing of American Indian history'.<sup>15</sup> Others have pointed to structural reasons for why settler colonialism has not been broadly embraced by historians of early America. In their introduction to a special issue of the field's most prominent journal, the guest editors offered two reasons for this: 'First, history as a field is not theoretically inclined', and that 'storytelling' was preferred as the ideal 'mode of expression'. The editors' second reason for why settler colonialism has not been taken up by early Americanists has to do with the 'enduring political and economic power of Native polities'.<sup>16</sup> As the ethnohistorian Daniel Richter has argued, the 'multi-polar' struggle over land, contested by

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*Forging Commonwealth Bonds in Renaissance Virginia* (University of North Carolina Press, 2017), ch. 4.

<sup>12</sup> For exceptions, see Aziz Rana, *The Two Faces of American Freedom* (Harvard, 2000); Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (Kansas, 2018).

<sup>13</sup> Jack Greene, 'Colonial History and National History: Reflections on a Continuing Problem'. *William and Mary Quarterly* 64 n. 2 (2007), 235–50.

<sup>14</sup> Patrick Wolfe, 'On Being Woken Up: The Dreamtime in Anthropology and in Australian Settler Culture'. *Comparative Studies in Society and History* 33 n. 2. (1991), 197–224; Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native'. *Journal of Genocide Research* 8 n. 4 (2006), 387–409; Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave, 2010); Lorenzo Veracini, "'Settler Colonialism": Career of a Concept'. *The Journal of Imperial and Commonwealth History* 41 n. 2 (2013), 313–33; Edward Cavanagh & Lorenzo Veracini, eds., *The Routledge Handbook of the History of Settler Colonialism* (Routledge, 2016). The place of this trio as *de facto* framers of the paradigm has been challenged. See Jane Carey & Ben Silverstein, 'Thinking with and beyond Settler Colonial Studies: New Histories after the Postcolonial'. *Postcolonial Studies* 23 n. 1 (2020), 1–20, at 5–6.

<sup>15</sup> David Meyer Temin, 'Custer's Sins: Vine Deloria Jr. and the Settler Colonial Politics of Civic Inclusion'. *Political Theory* 46 n.3 (2017), 357–79; Frederick E. Hoxie, 'Retrieving the Red Continent: Settler Colonialism and the History of American Indians in the U.S.'. *Ethnic and Racial Studies* 31 n.6 (2008), 1153–1167, at 1156; John Mack Faragher, 'Commentary: Settler Colonial Studies and the North American Frontier'. *Settler Colonial Studies* 4 n. 2 (2014), 181–91.

<sup>16</sup> Jeffrey Ostler and Nancy Shoemaker, 'Settler Colonialism in Early American History: Introduction'. *William and Mary Quarterly* 73 n. 3 (2019), 363.

metropolitan and Native sovereignties and ‘incipient settler colonial projects’ created an environment in which settler colonialism could not ‘take coherent form’.<sup>17</sup> It follows that analyses of the interaction of Indigenous peoples and settler populations tend to foreground the mixing of colonial with ‘Indigenous customary law’. Where standard accounts of settler colonialism posit the destruction and replacement of Indigenous sovereignty by colonial intrusion, the current approach among early Americanists is to argue that ‘settler and Indigenous violence became crucibles of sovereignty talk’, as an increasingly ordered territorial sovereignty ‘clashed with tenacious pluralities’.<sup>18</sup> Settler polities were ‘suspended’ between ‘processes of colonization, aspirations to self-governance’ and the networks of the British diaspora.<sup>19</sup>

Historians of Native America have long argued that Native polities, by inserting themselves into inter-imperial conflicts, could ‘dictate the terms of settler colonialism’. Ethnohistorical approaches, meanwhile, have shown the degree to which local and cultural specificities actually ‘constituted and transformed’ settler law through the interface of ‘Indigenous and settler legal practice’. Far from being aloof and pre-political stateless nomads, Native polities displayed a ‘mastery of inter-imperial diplomacy that challenged everything that Europeans knew about claiming authority over territory and people’.<sup>20</sup> But this mastery was not founded on the successful adoption of European practices, but rather by the fact that Iroquoian diplomatic customs and protocols were the common language of interior diplomacy. As one historian has argued, ‘North American settlers had to deal with American Indian communities within the norms of borderlands diplomacy and thus acknowledge, at least in part, Indian sovereignty and Indian interests’.<sup>21</sup> Diplomacy was an essential component of imperial statecraft, but its norms were not supplied exclusively by European understandings of the law of treaties. The language, rituals and customs of diplomacy within imperial and colonial settings were Indigenous.

### Settlers in Indian Country

Therefore, this Element is an extended essay on how colonialism and the emergence of ideologies associated with republican states were shaped in

<sup>17</sup> Daniel Richter, ‘His Own, Their Own: Settler Colonialism, Native Peoples, and Imperial Balances of Power in Eastern North America, 1660-1715’, in *The World of Colonial America: An Atlantic Handbook*, ed. Ignacio Gallup-Díaz (New York, 2017), p. 212.

<sup>18</sup> Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Harvard, 2010), p. 3.

<sup>19</sup> Ford, *Settler Sovereignty*, pp. 3, 4; Hämäläinen, ‘Shapes of Power’, p. 37.

<sup>20</sup> Ford, *Settler Sovereignty*, pp. 10, 11, 14.

<sup>21</sup> Leonard Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the Founding of America* (University of Virginia Press, 2010), p. 8.

early America by interactions with Indigenous power and sovereignty.<sup>22</sup> That requires that we do two things. The first is to acknowledge colonialism as an activity and ideology in early America, focussing not on colonies conceived as civic republics and spaces of peaceful property formation, but on violence, the appropriation of territory, and the framing of an account of sovereignty that combined the formation of a territorial empire with republican ideas of government.<sup>23</sup> Second, given that these ideas were framed and deployed in the context of relations between colonies, the British imperial state, and Native polities, an analysis of sovereignty requires that we try to recapture the nature of Indigenous power in this period, ideally by focussing on instances where Indigenous and colonial cultures interacted. In what follows, I locate this interaction in the sphere of intercultural diplomacy between Native groups and colonial and imperial officials. My aim is to add detail and nuance to our understanding of the political dynamic of early America, by placing interactions with Native polities into the local contexts that inform the development of sovereignty, states, and territorial claims – the central components of political thought in imperial locations.<sup>24</sup>

For historians of Anglophone political thought, early America is fertile ground: a context whose intensity of public political argument is matched only by the period of the English civil war, itself a lodestar for eighteenth century writers on government. The big topics and themes in Anglophone political thought – natural rights and law, legal constitutionalism, contractualism, republicanism, self-government, the theorisation of free states and the critique of empire – were all debated at length in hundreds of political tracts, in texts such as Paine's *Common Sense*, and in the *Federalist Papers* that considered, as James Madison wrote in its first number, not the fortunes of a republic but 'the fate of an empire, in many respects, the most interesting in the world'.<sup>25</sup>

The fate of the empire lay in the question of union between states that were sited on a Continent that contained multiple European and Indigenous empires. John Jay argued that the new republic should 'observe the law of nations' in its relations with its Continental neighbours, but he did not explicitly count Indian nations among them. Making a case for the federal control of military forces,

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<sup>22</sup> Charles W. A. Prior, 'Beyond Settler Colonialism: State Sovereignty in Early America'. *Journal of Early American History* 9 n. 2–3 (2019), 93–117.

<sup>23</sup> Charles W. A. Prior, 'Settlers Among Empires: Conquest and the American Revolution', in *Remembering Early Modern Revolutions: England, North America, France and Haiti*, ed. Edward Vallance (Routledge, 2018), 79–93.

<sup>24</sup> Lauren Benton, 'Made in Empire: Finding the History of International Law in Imperial Locations'. *Leiden Journal of International Law* 31 n. 3 (2018), 473–8.

<sup>25</sup> *The Federalist with Letters of "Brutus"*, ed. Terence Ball (Cambridge University Press, 2003), p. 1.

Madison argued that the ‘savage tribes on our Western frontier ought to be regarded as our natural enemies’.<sup>26</sup> On face value, Madison seems to be endorsing the racial and spatial logic of settler colonialism, but we should be wary of his insistence on the separation of hostile peoples. Madison’s contemporaries were aware of and participated in diplomatic relationships with Native polities, with Benjamin Franklin suggesting in his draft Articles of Confederation (1775) that the United Colonies should recognise the territorial claims of the Iroquois, and maintain an ‘Alliance offensive and defensive’ by continuing the British model of the Covenant Chain.<sup>27</sup> Second, it is necessary to re-assess Madison’s spatial assumptions about the location of Indian power – arranged along and *outside* the frontiers of nascent American states, rather than entangled by non-territorial bonds of sovereignty, alliance, and commerce.

*Settlers in Indian Country* will position the diplomatic contexts of Indian power in relation to a body of recent work that examines questions of the ownership and occupation of territory, the formation of sovereignty and property, and the foundation of colonial legal orders in ways that emphasise settler agency, but which do not explicitly embrace settler colonialism’s logic of elimination.<sup>28</sup> It follows that the reality of Indian power should lead us to rethink the ways in which Indigenous polities confronted colonialism; how that colonisation was constrained and shaped by Indian sovereign and territorial claims; and the contexts in which colonial and republican state formation took place.<sup>29</sup> The character and conduct of diplomacy in the ‘peculiar political arena’ of early America reveals the complex jurisdictional politics that defined a set of inter-polity zones that were governed by diplomatic norms and practices that blended elements of consensus and conflict.<sup>30</sup>

But the story of early America is not exclusively concerned with an isolated process of state formation. American settlerism conjures a vision of a persistent frontier, a ‘proxy for liberation’ and the engine of a process of westward expansion into spaces that are cleared of their Indigenous inhabitants and

<sup>26</sup> *Federalist*, p. 113.

<sup>27</sup> *The Declaration of Independence in Historical Context*, ed. Barry Alan Shain (Yale, 2014), p. 644.

<sup>28</sup> Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675–1775* (Cambridge, 2011); Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge, 2014); Bethel Saler, *The Settler’s Empire: Colonialism and State Formation in America’s Old Northwest* (University of Pennsylvania Press, 2014); Alan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge, 2018).

<sup>29</sup> Rachel St. John, ‘State Power in the West in the Early American Republic’. *Journal of the Early Republic* 38 n. 1 (2018), 87–94.

<sup>30</sup> David Armitage, *Foundations of Modern International Thought* (Cambridge, 2013), p. 7; Benton, ‘Made in Empire’, pp. 475–6.

wholly transformed into ordered spaces of settlement and law.<sup>31</sup> Instead, colonialism was shaped by Indigenous concepts of sovereignty and territory, and this interaction remains firmly embedded in modern liberal democracies whose political and legal orders are shaped by the colonial past.<sup>32</sup> The modern reality is that Indigenous peoples, customs, languages, spaces, memories, histories, paths, and beliefs are firmly in place in post-colonial contexts. It follows that a history of colonial formation must account not simply for the persistence and adaptation of Indigenous power, but must also consider the ideas that framed this power.

This indigenisation of political thought helps us to move beyond a model of insular and closed off discourses that intersect minimally with the complexity of early America. Colonial political thought in the Anglophone setting is characterised by three dominant strands of ideas: the common law relationship of subjects and sovereign; the constitutional relationship of imperial centre and colonial periphery; and the humanist discussion of colonisation as a moral and civic project. The first deals with the question of rights under law and constraints on power, and while it did feature prominently in the debate on colonial taxation, it is also notably confined to a dispute within a single legal framework whose origins lay in the municipal law of the feudal and monarchical kingdom of England. The imperial constitution is, in essence, the common law expanded in scale to the level of empire, and concerns the jurisdictional relationship between metropolitan and colonial planes of law. Here, the law is less integrative than it is concerned with differentiating insiders from ‘outsiders’ – Scots, Irish, and the sweeping term ‘infidels’.<sup>33</sup> Civic humanism, which underpins republicanism, was a political language that promoted colonisation as a moral and civic project, in which Indigenous peoples existed outside the state of politics and therefore had to be first ‘civilised’ in order to be incorporated into the civic order.

To work their way around the structures of power in early America, historians have considered peripheries and centres, frontiers, and borderlands; they have faced east from Indian country, faced out of it, adopted standpoints at its centre and edges, or perched themselves at the vantage points of waterways and

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<sup>31</sup> Greg Grandin, *The End of the Myth: From the Frontier to the Border Wall in the Mind of America* (New York, 2019), p. 3.

<sup>32</sup> Margaret Moore, ‘The Taking of Territory and the Wrongs of Colonialism’. *The Journal of Political Philosophy* 27 n.1 (2019), 87–106; Philip Petit, *Republicanism: A Theory of Freedom and Government* (Oxford, 1999), chs. 2–3.

<sup>33</sup> Edward Cavanagh, ‘Infidels in English Legal Thought: Conquest, Commerce and Slavery in Common Law from Coke to Mansfield, 1603–1793’. *Modern Intellectual History* 16 n. 2 (2019), 375–409; Richard Tuck, ‘Alliances with Infidels in the European Imperial Expansion’, in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge, 2012), pp. 61–83.

mountains. My interest here is not only in these spaces, but also in the kinds of interactions that took place in them, and how these interactions shaped languages of politics. As John Pocock has written, we should attend to how interactions ‘figured in, and helped shape, the discourse of each polity about itself, and further, whether they generated a discourse of their own’.<sup>34</sup> That is, political societies tell stories about their history as sovereign agents, and the relationship between Indigenous and colonial peoples was in one sense a meeting and melding of histories, which underpinned the interaction of various kinds of customary law, each with its own set of concepts and conventions.<sup>35</sup> The interactions of early America and their politics were centred on ‘common worlds’, expressed through shared and overlapping political languages, contrasting notions of sovereignty, and fluid and evolving political forms – alliances, colonies, egalitarian confederacies, multi-ethnic polities settlements, and states.<sup>36</sup>

These relations took place in locales for the development of international law where states were in the process of formation, and power relations took place in mobile and shifting spaces of power, characterised by zones of overlapping jurisdiction.<sup>37</sup> Diplomacy was a site of the negotiation of power in a context where sovereign claims routinely cut across fluid and porous borders. As Lauren Benton has argued, ‘The history of interpolity relations in such zones [i.e. borderlands], as well as in areas once classified as belonging to “informal empire”, draws our attention to the important role of alliances and treaties in structuring the relation of European and Indigenous law’.<sup>38</sup> The politics of space also influenced the kinds of social formations that evolved and acted in a landscape that shaped politics in fundamental ways: kinetic and nomadic Indigenous empires, but also ‘states’ that were formed by processes of movement driven by trade, exchange, warfare, and alliance with Native peoples.

Finally, my aim in what follows is to refine and enhance the historical framework that serves as a point of reference for contemporary discussions of the persistence of colonialism in contemporary discussions of Indigenous political and territorial rights.<sup>39</sup> This might be described as the coexistence

<sup>34</sup> J. G. A. Pocock, *The Discovery of Islands: Essays in British History* (Cambridge, 2005), p. 135.

<sup>35</sup> Ford, *Settler Sovereignty*, p. 214, note 13. <sup>36</sup> Hämäläinen, ‘Shapes of Power’, p. 50.

<sup>37</sup> Erez Manela, ‘International Society as a Historical Subject’. *Diplomatic History* 44 n. 2 (2020), 184–209.

<sup>38</sup> Benton, ‘Made in Empire’, p. 475.

<sup>39</sup> John Borrows and Michael Coyle, eds., *The Right Relationship: Reimagining the Implementation of Historical Treaties* (University of Toronto Press, 2017); Terry Fenge and Jim Aldridge, eds., *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada* (McGill-Queen’s University Press, 2015); Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto, 2014); Patrick Macklem & Douglas Sanderson, eds., *From Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal and*



and tension that attends the positioning of Indigenous peoples within a treaty history that reveals the depth of Indigenous sovereignty and agency, and also contains the strongly national and colonial histories in which that agency is obscured. Contemporary discussions of Indigenous sovereignty emphasise the historical depths of a ‘right’ relationship, and ground assertions of nationhood and distinct status on historic treaties. Ideas of equality and reciprocity are still historicised in a nation-to-nation relationship signified by the parallel paths of Indian and European peoples in the American Northeast.<sup>40</sup>

It is vital to point out that none of this is intended to somehow deny or diminish the effects of colonialism on Indigenous peoples. Those effects are well understood by historians, but less so by some broader public audiences.<sup>41</sup> The evidence here shows us a long moment of intercultural diplomacy that was abruptly ended by the emergence of the United States as an aggressive settler power. This shift and the paradigm of settler colonialism that is commonly associated with the emergence of a ‘settler’s empire’ obscures a set of historic relationships that complicate the received picture of early American colonialism, and its connection with the formation of a key set of sovereign powers.

Section 2 of the Element is concerned with the metaphorical political languages employed by Iroquoian speakers in diplomatic transactions with representatives of the Crown and colonial governments. It reveals how power was understood within a symbolic language that narrated the origins and use of specific sovereign powers. Section 3 is concerned with sovereignty, and focusses on the Covenant Chain alliance between the Crown and the Iroquois as a particular form of intercultural federalism. This bound parties within a structure of agreement that was defined in terms of a living historic process, rather than being defined and bounded. Section 4 applies a similar perspective to the question of territory, which Iroquoian peoples approached in terms of forms of mobility and use that contrasted with Anglophone preferences for order and security as the basis of settlement. Finally, Section 5 offers a concluding argument that reflects on modern discussions of treaties within colonialism. It suggests that historians of political thought who are concerned broadly with colonialism, settler colonialism, state formation, sovereignty, and territorial formation need to reconsider interactions *within* colonialism in order to reposition its place in the history of state formation in the American context.

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*Treaty Rights* (University of Toronto, 2016); James Tully, *Public Philosophy in a New Key, Vol. 1: Democracy and Civic Freedom* (Cambridge, 2008), chs. 7–9.

<sup>40</sup> Robert A. Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600–1800* (Oxford, 1997).

<sup>41</sup> Ned Blackhawk, *Violence Over the Land: Indians and Empires in the Early American West* (Harvard, 2006); Jeffrey Ostler, *Surviving Genocide: Native Nations and the United States from the American Revolution to Bleeding Kansas* (Yale, 2019).

## 2 Language and History

Studies of Anglophone political thought have revealed a number of highly developed languages of politics that produced varied definitions and conceptions of social organisation. Contemporaries wrote and spoke of commonwealths, plantations, dominions, kingdoms, bodies politic and states.<sup>42</sup> In colonial and imperial contexts, they used this conceptual language to assert claims to territory and channelled these claims through a variety of authoritative bodies of discourse, from Biblical warrants, to the doctrine of *terra nullius*, to the colonising projects associated with civic humanism. Colonisation was presented as an element of state policy and served as the impetus for major texts in the nascent history of international law by Hugh Grotius, Thomas Hobbes, John Locke, Emer de Vattel and William Blackstone, among others.<sup>43</sup>

Historians of political thought, particularly those associated with the Cambridge School of linguistic contextualism, have approached past political thought in terms of languages and in terms of history.<sup>44</sup> In the first instance, they have argued that political writers and speakers operated within a set of paradigms that shaped their discourse in particular ways. In a second sense, politics consisted of a ‘plurality’ of languages, one of which was a history of how a given society existed in time by ‘narrating it in the multiple contexts of historical circumstance and change’. Both the capacity to generate narratives of this kind and the content of them constitute vital components of the sovereign capacities of a political society.<sup>45</sup>

This section examines the rich metaphorical language of Iroquois understandings of ‘power’. These can be found in the records of diplomatic transactions made by English observers, and recorded by clerks fluent in Iroquoian languages. Historians have tended to approach this material in terms of a narrowly construed understanding of treaties as mechanisms that produced the erosion of Indian sovereignty.<sup>46</sup> However, treaties were also a product of the

<sup>42</sup> Kevin Sharpe, ‘A Commonwealth of Meanings: Languages, Analogues, Ideas and Politics’, in *Remapping Early Modern England: The Culture of Seventeenth-Century Politics* (Cambridge, 1999), pp. 1–71.

<sup>43</sup> Armitage, *Foundations of Modern International Thought*, ch. 5; Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard, 2018), chs. 3–4.

<sup>44</sup> J. G. A. Pocock, *Politics, Language, and Time: Essays on Political Thought and History* (New York, 1971); Anthony Pagden, ed., *The Languages of Political Theory in Early-Modern Europe* (Cambridge, 1987); Quentin Skinner, *Visions of Politics, Vol. 1: Regarding Method* (Cambridge, 2002), chs. 4, 6, 9, 10.

<sup>45</sup> J. G. A. Pocock, *Political Thought and History: Essays on Theory and Method* (Cambridge, 2008), p. ix, x.

<sup>46</sup> Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (University of Chicago Press, 1982); Colin Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History* (Oxford, 2013), chs. 1–2.

intensely local texture of colonial affairs that extended far beyond council fires which were both sites of diplomacy and a metaphor for the health of diplomatic relationships.<sup>47</sup> Most importantly, diplomatic records reveal the scope of formal relations between Native polities and colonial and imperial officials in which consensus, the formation of alliances, and the regulation of commerce signify the ‘international quality of relations’ among Indigenous and European sovereigns.<sup>48</sup>

The words of Iroquoian council speakers come to us second hand, through interpreters and others who spent considerable time interacting with Indigenous diplomats in the context of intense and protracted diplomatic meetings.<sup>49</sup> These recorded speeches, which fill hundreds of pages of documentary collections concerned with pre-Revolutionary America, were the product of a complex process of deliberation within and among nations, all replicating the kinship structures of individual clans. The Iroquois claimed primacy over other nations, and used the treaty process to assert and defend this status. When it finally entered into a treaty with the Iroquois in 1677, the Crown designated them as ‘dependents’ who held their lands under the King’s title, a stipulation that exacted Indian recognition of the superior territorial claims of the Crown.<sup>50</sup> Colonial governments used treaties for pragmatic and local reasons: to forge military alliances, to open trade, or to gain access to Indian land, and these agreements sometimes acted as a foil to attempts by the Crown’s servants to implement a uniform Indian ‘policy’.<sup>51</sup>

<sup>47</sup> James Merrell, *Into the American Woods: Negotiators on the Pennsylvania Frontier* (New York, 1999), ch. 7; Colin Calloway, *The Indian World of George Washington: The First President, the First Americans, and the Birth of the Nation* (Oxford, 2018), pp. 1–3; Coll Thrush, *Indigenous London: Native Travelers at the Heart of Empire* (Yale, 2016), chs. 2–4.

<sup>48</sup> Brian Delay, ‘Indian Polities, Empire, and the History of American Foreign Relations’. *Diplomatic History* 39 n. 5 (2015), 939.

<sup>49</sup> Daniel Richter, *The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization* (University of North Carolina Press, 1992), pp. 4–7; James Merrell, “‘I Desire All That I Have Said . . . May Be Taken Down Aright’”: Revisiting Teedyuscung’s 1756 Treaty Council Speeches’. *William and Mary Quarterly* 63 n. 4 (2006), 777–826; Nancy L. Hagedorn, “‘A Friend to Go between Them: The Interpreter as Cultural Broker during Anglo-Iroquois Councils, 1740–70’”. *Ethnohistory* 35 n. 1 (1988), 60–80; James Merrell, ‘Second Thoughts on Colonial Historians and American Indians’. *William and Mary Quarterly* 69 n. 3 (2012), 451–512; Alyssa Mt. Pleasant, Caroline Wigginton, & Kelly Wisecup, ‘Materials and Methods in Native American and Indigenous Studies: Completing the Turn’. *William and Mary Quarterly* 75 n. 2 (2018), 207–36.

<sup>50</sup> Daniel Richter, “‘To Clear the King and Indians Title’”: Seventeenth-Century Origins of American Land Cession Treaties’, in *Empire by Treaty: Negotiating European Expansion*, ed. Saliha Belmessous (Oxford, 2015), pp.45–77.

<sup>51</sup> William N. Fenton, ‘Structure, Continuity, and Change in the Process of Iroquois Treaty Making’, in *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League*, ed. Francis Jennings (Syracuse University Press, 1985), pp. 3–36; Calloway, *Pen and Ink Witchcraft*, ch. 1.

For decades, historians of the colonial and imperial ‘encounter’ with the new world tended to replicate the contemporary emphasis of cultural difference. European jurists were concerned with the legality of the imperial encounter with the ‘new’ world and its peoples, and expansion into Indigenous territory drove discussion of conquest, ‘just war’ and claims concerning the ‘legitimate settlement of uncultivated territory’. Yet the representatives of imperial states on the ground were quickly obliged to ‘enter into a variety of agreements and alliances with non-European peoples and to intervene in the internecine warfare on new continents’.<sup>52</sup> Europeans may have arrived with visions of imperial dominance, but in order to remain in Indigenous political spaces they needed to quickly adapt themselves to the norms of Indigenous diplomacy.<sup>53</sup>

Historians have lately turned to the question of whether there was a commensurate language of law that structured communication between Indigenous peoples and Europeans.<sup>54</sup> Where older studies of diplomacy ‘largely neglected the interface between Indigenous and settler legal practice’, more recent work has sought to define aspects of a common conceptual, juridical and linguistic culture of negotiation.<sup>55</sup> For instance, Andrew Fitzmaurice has described the conflict between the Powhatan and English colonists in early Virginia as a ‘dialogue’ in which each side made claims to land title based on ‘custom, occupation, and conquest’.<sup>56</sup> The Treaty of Lancaster (1744) has similarly been presented as ‘a dialogue between Indigenous and Anglo-American legal arguments’, and as such reveals additional contexts for intercultural political exchange, the articulation of shared concepts and commensurate language of power and sovereignty.<sup>57</sup>

Indigenous political thought had three components. The first was the mythological and cosmological body of memory and story that the Haudenosaunee handed down in their oral traditions; the Iroquois told and retold stories of their political origins.<sup>58</sup> The second was a series of narrations of sovereignty that they

<sup>52</sup> Tuck, ‘Alliances with Infidels’, p. 61; Daragh Grant, ‘Francisco de Vitoria and Alberico Gentili on the Juridical Status of Native American Polities’. *Renaissance Quarterly* 72 n. 3 (2019), 910–52.

<sup>53</sup> Jeffrey Glover, *Paper Sovereigns: Anglo-Native Treaties and the Law of Nations, 1604–1664* (University of Pennsylvania Press, 2014), pp. 2–3.

<sup>54</sup> Daniel Richter, ‘Intelligibility or Incommensurability?’, in *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America*, ed. Brian P. Owensby & Richard J. Ross (New York University Press, 2018), pp. 291–302.

<sup>55</sup> Ford, *Settler Sovereignty*, p. 10.

<sup>56</sup> Andrew Fitzmaurice, ‘Powhatan Legal Claims’, in *Native Claims: Indigenous Law Against Empire, 1500–1920*, ed. Saliha Belmessous (Oxford, 2012), p. 102.

<sup>57</sup> Craig Yirush, ‘“Since We Came Out of This Ground”: Iroquois Legal Arguments at the Treaty of Lancaster’, in *Justice in a New World*, p. 119.

<sup>58</sup> William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (University of Oklahoma Press, 1998), chs. 12, 13.

related to Europeans in the context of diplomatic encounters. The third was their own recollection of the substance of these agreements, the conditions under which they were violated, and the need to restore them.<sup>59</sup> Indian council speakers used metaphors and images to describe their understandings of power: they could see, hear and reach long distances through the woods; they demanded that paths and roads be respected and kept open; they claimed the power to decide when negotiation would give way to war; they sought to hold English diplomats to their agreements and employed clerks to record their own accounts of councils.<sup>60</sup>

What emerges from these records is a process of the formation of a shared language of politics, of power, and of history. As John Pocock argued with reference to the Treaty of Waitangi, 'there occurred an encounter between inhabitants of two cultures, one possessed of a complex and sophisticated language of law, sovereignty and state, the other of a language no less sophisticated but ordering its moral universe in very different terms'. He continues by arguing that the treaty negotiation itself should be seen as an encounter between histories, and that each party 'will bring to the treaty, and retain after it, a history of its own which recounts and justifies the sovereignty by which it has entered into the treaty, and which it must continue to relate and enact if it is to survive as a sovereign (that is a self-affirming) entity or community after entering into the association'.<sup>61</sup> On this reading, treaties and diplomacy are instances of deep intercultural mixing of layered historic accounts of sovereignty.

The oral culture of the Haudenosaunee was deeply infused with historical accounts of political formation, their place in the natural world, and the foundation of core social values such as peace and reciprocity.<sup>62</sup> Interactions with European powers generated another kind of narrative, which centred on an account of the arrival of ships whose lines were fastened to mountains. Over time, a line of bark was replaced in phases until it became a chain of silver, known as the Covenant Chain. This symbolised the English relationship with the Iroquois, and around it accrued a set of concepts and rituals that were

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<sup>59</sup> Jon Parmenter, *The Edge of the Woods: Iroquoia, 1534–1701* (Michigan State University Press, 2010), ch. 4; Gail D. MacLeitch, *Imperial Entanglements: Iroquois Change and Persistence on the Frontiers of Empire* (University of Pennsylvania Press, 2011), chs. 1–2.

<sup>60</sup> *EAIID*, vol. 3, p. 254; Edmund B. O'Callaghan et al., eds., *Documents Relating to the Colonial History of the State of New York*, 15 vols. (Albany, NY, 1853–57), vol. 7, p. 291. Hereafter cited as *NYCD*, followed by volume and page.

<sup>61</sup> J. G. A. Pocock, 'A Treaty between Histories', in *Histories of Power and Loss: Uses of the Past – a New Zealand Commentary*, ed. Andrew Sharpe & Paul McHugh (Wellington, NZ, 2001), pp. 76, 80.

<sup>62</sup> Jon Parmenter, 'The Meaning of *Kaswentha* and the Two Row Wampum Belt In Haudenosaunee (Iroquois) History: Can Indigenous Oral Tradition be Reconciled with the Documentary Record?' *Journal of Early American History* 3 (2013), 82–109.

performed in treaty councils between 1677 and the death of William Johnson in 1774, and partially renewed by Timothy Pickering, the federal commissioner to the Iroquois. This is why the Iroquois recited the narrative of the Covenant Chain at major treaty councils: it explained their own understanding of their sovereign position among Europeans in a relationship which they initiated and explained in their own terms.<sup>63</sup>

These terms took the form of narrations of encounter that stressed the formation of a diplomatic relationship, rather than colonial intrusion. The narration took a broadly standard form, beginning with the arrival of the newcomers by ship and the subsequent fashioning of a formal alliance signified by the Covenant Chain. What is notable about these narrations is that they are presented explicitly in terms of a remembered past that is told and retold. In a conference between the River Indians and George Clinton, governor of New York in 1748, the spokesman related the story of the origins of the alliance:

Our forefathers told us that before any white people came among them they saw a Vessel in the River, for Some time they were afraid to go to it, but at last they ventured on board and found them to be White men, who treated them Civilly and Exchanged mutually presents to each other, with promises that they would return the next Year; which accordingly happened, when they came again the White people they Entered into a Covenant together that they would live on these Lands.

This is an account of the first contact with Europeans, and it agrees broadly with the story of the English arrival in the Chesapeake and contact with the Secotan, when gifts and hospitality were exchanged. The English entry into the Covenant Chain came nearly a century later, and so the narration can be read as encompassing the entire remembered history of interaction. Given this, the point of this narration is not to affirm the alliance of the Covenant Chain, but to contrast the relative positions of Indigenous and colonial peoples over a long period, one which the council speaker characterised as a dramatic reversal of power:

When you came first to this Country You were but a small people and we were very numerous, we then assisted and Protected you, and now we are few in number you become Multitudes like a large Tree whose Roots and Branches are very Extensive, under whose Branches we take our Shelter, as we have theretofore done.<sup>64</sup>

<sup>63</sup> Calloway, *Indian World of George Washington*, ch. 17; Heather Hatton, 'Narrating Sovereignty: The Covenant Chain in Intercultural Diplomacy'. *Journal of Early American History* 9 n. 2–3 (2019), 118–44.

<sup>64</sup> *EAIID*, vol. 9, p. 530.

This concept of protection was intrinsic to the relationship between the Crown and the Indigenous peoples of the Northeast. Partly this was a function of the fact that Northeastern Indians appealed to the Crown as the ultimate sovereign in disputes with colonial governments, which adopted a profoundly aggressive stance with native populations within their borders. After periods of brutal intercultural violence in New England and Virginia in the 1670s, the Crown intervened in colonial affairs by concluding articles of peace with the Haudenosaunee that recognised that the ‘violent intrusions’ of settlers was a spur to violence.<sup>65</sup> The 1677 articles both initiated the Covenant Chain relationship between the Crown and the Iroquois, but also opened up a fundamental tension between the Crown and its colonial subjects who demanded protection from attacks on their settlements, and who couched these demands in the language of law.<sup>66</sup>

Settlers had their own narrations of these events that came to form the corpus of a self-generated body of colonial history.<sup>67</sup> In these narratives, Native Americans and even the land itself functioned as antagonists. For example, William Bradford characterised the landing of the ‘pilgrims’ at Plymouth in 1620 in ‘a hideous and desolate wilderness, full of wild beasts and wild men’.<sup>68</sup> A century and a half later, Thomas Jefferson’s justification for taking up arms against Britain predicated colonial political identity on a historical narrative that shared elements of Bradford’s early account:

Our Forefathers, Inhabitants of the Island of Great-Britain, left their Native Land, to seek on these Shores a Residence for civil and religious Freedom. At the Expence of their Blood, at the Hazard of their Fortunes, without the least Charge to the Country from which they removed, by unceasing Labour and an unconquerable Spirit, they effected Settlements in the distant and inhospitable Wilds of America, then filled with numerous and warlike Nations of Barbarians. Societies and Governments, vested with perfect Legislatures, were formed under Charters from the Crown, and an harmonious Intercourse was established between the Colonies and the Kingdom from which they derived their Origin.<sup>69</sup>

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<sup>65</sup> *Articles of Peace between the Most Serene and Mighty Prince Charles II . . . and several Indian Kings and Queens* (London, 1677), pp. 5–6; Jenny Hale Pulsipher, *Subjects under the Same King: Indians, English, and the Contest for Authority in Colonial New England* (University of Pennsylvania Press, 2005).

<sup>66</sup> Lauren Benton & Adam Clulow, eds., *Protection and Empire: A Global History* (Cambridge, 2017), ch. 3.

<sup>67</sup> Richard Slotkin, *Regeneration through Violence: The Mythology of the American Frontier, 1600–1800* (University of Oklahoma Press, 1973), chs. 1, 3.

<sup>68</sup> William Bradford, *History of Plymouth Plantation* (Boston, 1856), p. 78.

<sup>69</sup> Thomas Jefferson, ‘Declaration of the Causes and Necessity of Taking up Arms’ (1775), in *Jefferson: Political Writings*, ed. Joyce Appleby & Terence Ball (Cambridge University Press, 1999), p. 81.

In Jefferson's narrative, the impetus for migration is framed by the creedal account of the voyages of religious radicals, seeking refuge from domestic religious persecution in a broader context framed by the European wars of religion. Settlement was a generative as opposed to destructive process, defined by the clearing of a natural and human landscape, and its substitution with ordered forms of government. Native Americans figure in this narrative as military obstacles, and no mention is made – though Jefferson knew them well – of their meetings with colonial officials around council fires. Instead, the peaceful relationship is with Britain. In short, Jefferson's text presents a version of colonial history that embeds an argument about colonies as independently formed polities, rather than as dependencies of the Crown.

Taken together, these two narratives present us with sharply contrasting origin stories, in which an opposing culture is presented as a foil to the opportunities and development of the narrator's people. The Iroquoian narrative is remarkably subtle in its handling of relationships of power as temporally flexible. Implicit in all Covenant Chain recitals was the idea that the ship-borne newcomers were invited on land by their Indigenous hosts, that early relationships were defined by reciprocity, and that the colonists were initially sustained and protected, and now simply sought land without reciprocity. Jefferson's argument is with Britain, and in his narrative Indians do not have either a legitimate presence or agency beyond the capacity to wage war.

Diplomacy reveals the complexity of Indigenous political intentions and action, expressed in a language of historical metaphor and alliance. In other contexts, such as Wales and Ireland, English imperialism was characterised by the suppression of indigenous languages and laws. By contrast, in New York and elsewhere in the Northeast, it was stipulated that the ideal colonial negotiator should be someone who 'well understands the Indian language' and 'such as may be relied on'.<sup>70</sup> Moreover, they had to be 'esteemed' by Indian nations, and a mark of this esteem is that Iroquoian peoples frequently requested to be supplied with interpreters, as well as gun smiths and other artisans.<sup>71</sup> Speech was the conduit of diplomacy: treaty councils were events at which carefully chosen speakers gave and responded to long and detailed orations that were punctuated by the presentation of strings or large belts of wampum – finely worked quahog shells strung together with sinew. In the course of a long memo to the Lords of Trade, William Johnson observed that 'Good interpreters are

<sup>70</sup> *NYCD*, vol. 6, pp. 250, 361. Elsewhere, interpreters were described as: 'such as are well acquainted with the Indian Language and men of ability and integrity', p. 801.

<sup>71</sup> *EAD*, vol. 5, p. 131. Advice to negotiators before Logstown council, 1751; *NYCD*, vol. 7, pp. 71, 92, 96, 100,



very necessary here' since 'the Indians always expect to be treated with an Interpreter'.<sup>72</sup>

Interpreters were required to contend with several layers of complexity in Iroquoian language, notably the use of metaphor.<sup>73</sup> English and European political thought was also metaphorical, for instance in the figure of the body politic, the 'tree of commonwealth', the Great Chain of Being, the theory of the king's two bodies, or Hobbes' personification of the state as an 'artificial man'. Iroquoian political speech was similar in the sense that it incorporated the cosmological, natural and physical world into political speech. At a council held at Albany in October 1696, a Mohawk speaker noted that the colonies enjoyed the peace that the Covenant Chain provided, but failed to join the effort to repel renewed French attacks: 'their hands hang down straight, and their arms are lame; we see none mind the war but the brethren of New Yorke'.<sup>74</sup> Council speakers who sought to reassure the English about their ability to persuade other nations to join in war or alliance pledged to 'shake any nation by head who behaved amiss', and warned those nations over whom they claimed sovereignty that 'we now shake you by the heads, to bring you to reason'.<sup>75</sup>

Treaty councils began with a greeting and ritual that was concerned with restoring order and peace to the metaphorical body politic.<sup>76</sup> The Delaware leader Teedyuscung's opening address at Easton in 1757 thanked the Governor of Pennsylvania for performing this ritual for a delegation that had travelled many miles to the council:

[O]bserving them fatigued with their Journey and their faces covered with sweat, you kindly wiped it off with an handkerchief, then looking at their legges and seeing them torn and bloody with briars and thorns you picked the Briars out of their legs, and anointed them with some of that good oil as Your Forefathers were used to do with ours when they met together to renew their Leagues.<sup>77</sup>

The ceremony of cleansing was a necessary preliminary to any diplomatic transaction. It focused on the senses and the voice: the eyes, ears and throat were cleared, and the feet were washed to symbolically remove thorns picked up on the journey. The imperative was to remove any obstacles to open discussion, and to ensure that it was frank and free of deceit. Council speakers likened

<sup>72</sup> NYCD, vol. 7, p. 579.

<sup>73</sup> 'Glossary of Figures of Speech in Iroquois Political Rhetoric', in Jennings, *History and Culture*, pp. 115–24.

<sup>74</sup> NYCD, vol. 4, p. 240. <sup>75</sup> NYCD, vol. 7, pp. 553, 556 (1763).

<sup>76</sup> Timothy J. Shannon, *Iroquois Diplomacy on the Early American Frontier* (New York, 2008), pp. 81–7.

<sup>77</sup> NYCD, vol. 7, p. 287.

this condition to having a ‘a clean and pure heart’ in order to ‘discover to one another what we know and therefore desire’.<sup>78</sup>

Indian orators also used the body as a way of speaking about the extension of their power over distance. At a council led by Johnson with the Six Nations in March of 1768, the speaker drew attention to the influx of white settlers who ‘came from the Sun rising up our Rivers to the West’. He continued:

We have large Wide Ears and we can hear that you are going to Settle Great numbers in the heart of our Country, and our Necks are stretched out, and our faces set to the Sea Shore to watch their motions . . . our Legs are long, and our sight so good that we can see a great way thro’ the Woods, we can see the Blood you have spilled and the fences you have made.<sup>79</sup>

The Iroquois were one of several prominent ‘networked’ Indigenous social formations, extending their power and influence horizontally over space using filaments of kinship, trade and alliance.<sup>80</sup> In this example, the council speaker employs a metaphor that extends the senses of hearing and sight over expanses of space, penetrating areas of settlement, the enclosure of land, and violence.

Where colonial and imperial officials paid scrupulous attention to terms of address in their written correspondence, in the Iroquoian mind their titles vanished. Sir William Johnson was *Warraghiyagey*, which signalled his grasp of the ‘great things’ that concerned the Iroquois. The Governor of New York was *Corlear*, derived from the name of Arendt van Corlear, a Dutch merchant admired by the Iroquois. It was given to Edmund Andros but skipped Benjamin Fletcher (1692–8), who was called *Cayenquitago* ‘Swift Arrow’. Governors of Virginia were called *Assaryquoa*, ‘Big Knife’, which dated to 1684 when Lord Howard presented the Iroquois with a cutlass. Finally, the Governor of Pennsylvania was called *Onas*, or ‘Feather’ – a translation of Penn’s name, that was also a pun on quill.<sup>81</sup>

The Iroquois referred to themselves and others almost exclusively in terms of kinship, with a hierarchy of rank: father, sons, brothers, uncles, nephews, cousins. Europeans were quick to adopt this, referring to the Crown as ‘the King Your Father’ and the Iroquois as ‘his Children’. In the context of diplomacy, colonies were ‘our Brethren’, children of the same royal father.<sup>82</sup> Subordinate peoples, such as the Delaware and Shawnees, were referred to as ‘nephews’, and this language was picked up by colonial officials in correspondence with the Lords of Trade that referred to Iroquoian ‘Nephews and Dependents’ who were urged to ‘lay down the Hatchet’, that is, to cease making war.<sup>83</sup> The Delaware

<sup>78</sup> *EAIID*, vol. 9, p. 137. <sup>79</sup> *NYCD*, vol. 8, p. 47. <sup>80</sup> Hämäläinen, ‘Shapes of Power’, p. 50.

<sup>81</sup> See Jennings, *History and Culture*, p. 230. <sup>82</sup> *EAIID*, vol. 9, pp. 481, 486.

<sup>83</sup> *NYCD*, vol. 7, pp. 49, 56, 59. Governor Hardy to Lords of Trade, May 1756; *NYCD*, vol. 7, p. 80.

themselves adopted this language of rank, adding to it the dimension of gender: 'We are women, our uncle must say what we must do, he has the Hatchett and we must do as he says'.<sup>84</sup>

Iroquoian council orators were not necessarily leaders, and were most often chosen by clan mothers within the matrilineal and matrifocal structure of Iroquois society to give voice to collective deliberations that took place outside of formal councils. This deliberative community was present at the council, and signalled its assent by means of a chant that was phonetically rendered as 'the Yo Hah', and what Johnson characterised as a 'universal Shout of applause'.<sup>85</sup> Cadwallader Colden, author of a major history of the Haudenosaunee, vividly recorded hearing it at a council in 1721, following an address by a colonial official:

Immediately as a token of their being pleased with what was said every Nation gave distinctly their assent . . . Beginning an articulate sonorous noise which I cannot describe in Letters the rest of the nation repeating the same after him in a body and soe every nation successively till they had all declared their satisfaction.<sup>86</sup>

English observers admired the skills of Iroquoian council speakers, with one text noting 'Their orators, like those of Homer, express themselves in a bold figurative stile'.<sup>87</sup> William Smith, in an account of travels into the Ohio Country in 1764, observed the effect of military setback on Delaware council speakers, whose 'speeches seem to exhibit but few specimens of that strong and ferocious eloquence, which their inflexible spirit of independency has on former occasions inspired'.<sup>88</sup> Smith was evidently alert to the characteristics of council oratory, and its variations in tone, intonation, and physicality employed by Iroquoian chanters.

Although some native leaders employed English clerks to make written records of treaty councils, their orations emphasised the power of memory. An observer at a meeting in 1721 noticed that the Iroquois took the treaty between William Penn and the Delaware in 1683 as,

still fresh in their memories. Though they cannot write, yet they retain every thing said in their Councils with all the Nations they treat with and preserve it as carefully in their memories as if it was committed in our method of writing.<sup>89</sup>

<sup>84</sup> *NYCD*, vol. 7, p. 48.

<sup>85</sup> *EAID*, vol. 10, p. 88; Merrell, *Into the American Woods*, pp. 274–5. <sup>86</sup> *EAID*, vol. 9, p. 91.

<sup>87</sup> William Guthrie, *A New Geographical, Historical, and Commercial Grammar; And Present State of the Several Kingdoms of the World* (London, 1770), p. 553.

<sup>88</sup> [William Smith], *An Historical Account of the Expedition against the Ohio Indians in the Year 1764* (Philadelphia, 1765), p. 17.

<sup>89</sup> *EAID*, vol. 1, p. 207.

Memory was used as an argument against written assertions by English negotiators, particularly around historical contexts that were disputed. One of these was the account that the Iroquois were conquered peoples, who became agents of the Crown to expand royal territory on the western reaches of the colonies. This was firmly rejected on the grounds of collective memory: ‘Tho’ great Things are well remembered among us, yet we don’t remember that we were ever conquered by the Great King, or that we have been employed by that Great King to conquer others; if it was so, it is beyond our Memory’.<sup>90</sup> For the Iroquois, memory was to be used to bind the English to agreements made in previous councils, and diplomats either spoke while gesturing toward wampum belts or recalled the substance of the agreements they symbolised and codified. One speaker asked his audience to ‘seriously remember the promises made by us by this Belt & exactly perform them, and we promise to do the same, though we have no records but our memory’. At other times the speaker turned to his audience of kin and relatives to appeal to ‘their memory’ as a ‘witness for me’.<sup>91</sup> Johnson himself recognised the power of combining memory with community ancestry when he urged a council of the Onondaga nation to consider ‘the memory of your faithful wise and brave forefathers’, a direct invocation of the Iroquois succession of founders and chiefs.<sup>92</sup> Memory contained both the history of diplomacy but also the counsel of the elders.

The political language of the Iroquois was dominated by the concept of peace, the central element of the ‘great law’, and a political condition that was sought in the balance of the natural world and was therefore eternal, lasting as ‘long as the sun itself’.<sup>93</sup> The tree of peace symbolised the stability of the alliance between the Iroquois and the Crown, in a context of disruptive inter-imperial war between Britain and France for control of the Great Lakes and Ohio. The Iroquois occupied a delicate middle space of neutrality between these competing European powers and gradually moved toward an alliance with the English that would protect Iroquoia from the disruption of war:

We are here planted under the great Tree of the King of Great Britain’s protection, and shall never be affrighted tho’ the sky should thunder and lighten . . . and tho’ the Earth and Trees should shake.<sup>94</sup>

The metaphor could be applied to individuals, as it was to Johnson himself in 1751 when he briefly stepped away from his role as an intercultural broker. An Iroquois council speaker likened him to a tree ‘that grew for our use, which now seems to be falling down, tho it has many roots; his knowledge of our affairs

<sup>90</sup> *EAID*, vol. 5, p. 71, (1744).    <sup>91</sup> *NYCD*, vol. 7, pp. 56, 64

<sup>92</sup> *NYCD*, vol. 7, p. 139; Fenton, *Great Law*, ch. 13.    <sup>93</sup> *EAID*, vol. 1, p. 181, (1718).

<sup>94</sup> *EAID*, vol. 9, pp. 53, 109.

made us think him one of us'.<sup>95</sup> Colonial officials adopted the metaphor in their own addresses and used it to frame an argument for alliance. The Governor of South Carolina, faced with French incursions and the fracturing of alliances between the nations of the Lower South, expressed his wish that the tree may 'always be Green Like the Laurel, may its Roots grow so Strong in the Earth, that no Wind from the Great Lakes or Great Rivers, where the French are Setled, Shall be able to Blow it down'.<sup>96</sup> Similarly, Johnson in 1753 expressed concern that the tree 'planted by your forefathers . . . should be now leaning, being almost blown down by Northerly winds' and promised to 'set it upright'.<sup>97</sup> As tension between England and France tilted toward war, Johnson repeatedly used the metaphor to characterise the long standing alliance, in order to ensure that the Iroquois did not align themselves with the French.<sup>98</sup>

Behind the metaphor lay a serious issue of geo-politics, and contemporaries keenly recognised the extent to which the colonial project depended on retaining and leveraging Native American power. The Pennsylvania Governor James Logan wrote to William Penn that 'If we lose the Iroquois, we are gone by land', while Peter Wraxhall of New York noted that the preservation of alliances with Indigenous confederacies was 'the ruling Principle of the Modern Indian Politics'.<sup>99</sup> Colonial officials stressed the necessity of unity, cohesion, and strength, and did so using metaphors that complemented Iroquoian usage. Speaking at the diplomatic hub of Albany in 1740, a council speaker noted that, 'you compared us to a rope which being twisted together is difficult to be broken . . . All the Indians which were formerly our enemies are now entered into the Covenant with us, almost as far as the river Mississippi'.<sup>100</sup>

Actual sticks were frequently taken up and broken in councils in order to provide a physical demonstration of the strength of a multi-party alliance that was like a 'great Bundle of sticks'.<sup>101</sup> On one occasion, Johnson presented his interlocutors with a bundle of sticks, and recalled this gesture in a later meeting, explaining the need for 'a strict Union among you all . . . like the Bundle of Sticks I gave you last year which while together could not be broken.'<sup>102</sup> This was not a didactic device to bridge a language barrier: instead, it was an enactment of metaphor and an adoption of a practice that originated in the rituals observed by Iroquoian council speakers.

<sup>95</sup> *EAIID*, vol. 9, p. 574. <sup>96</sup> *EAIID*, vol. 9, pp. 582–83.

<sup>97</sup> *EAIID*, vol. 9, p. 627. The full account is in *NYCD*, vol. 6, pp. 808–15.

<sup>98</sup> *EAIID*, vol. 10, p. 87; *NYCD*, vol. 7, p. 246.

<sup>99</sup> Logan to Penn, 2 March 1702, in *Correspondence between William Penn and James Logan*, ed. Edward Armstrong (Philadelphia, 1870), p. 88; Charles H. McIlwain, ed., *Peter Wraxhall's Abridgement of the New York Indian Records* (Harvard University Press, 1915), p. 219.

<sup>100</sup> *EAIID*, vol. 9, p. 315. <sup>101</sup> *EAIID*, vol. 10, pp. 87–8. <sup>102</sup> *NYCD*, vol. 7, p. 146

A more potent metaphor was the weapon of war, the hatchet or tomahawk, a synthesis of natural and manufactured elements. In the language of diplomacy, the word hatchet did flexible work. It could represent the war-making prowess of the Iroquois, evidenced by their conquest of smaller nations: ‘this hatchet is the hatchet which we have used of old against our Indian enemys whereby we made their dwellings a wilderness’.<sup>103</sup> It could also be employed to express latent power and the potential to wage war, if necessary. As the Seneca speaker known as ‘the Belt’ informed Johnson, ‘Brother, we have got a small axe of our own with which we have conquered many nations, but by lying so long without using it, tis become rusty’.<sup>104</sup> Impending conflict was signalled by the arming of Indian allies, ‘our brother Corlaer will grind our hatchett: meaning that he will give us arms and ammunition’; a pledge to ‘take up the Hatchet’ signified a willingness to wage war on the enemies of the English.<sup>105</sup> Symbolic hatchets were occasionally depicted on ‘war’ belts, which were dark purple in colour, and presented at councils in order to signal a declaration of war. At the Mohawk ‘castle’ at Canojoharie in 1759, Johnson presented a delegation with ‘a Belt of Wampum with ye figure of Hatchet work on it’.<sup>106</sup>

For the Northeastern Algonquian and Iroquoian peoples, wampum was the currency of war, peace, and alliance.<sup>107</sup> It was therefore highly valuable and sometimes scarce. If strings or whole belts were not available, other objects would be substituted, as at Albany when the Iroquois gave a ‘stick, which they will make good with a Belt of Wampum haveing none ready for the present’.<sup>108</sup> The disruption of trade, the spread of disease, and the challenges of negotiating French power meant that Indians lacked wampum, which placed a strain on diplomacy since wampum signified past agreements, confirmed intentions, and indicated good faith. At Albany in 1717, an Iroquois delegation acknowledged that ‘it is customary among us to lay down strings or belts of wampum upon such occasions as this but desire to be excused because we have none and cannot procure or purchase any; but what we relate is the truth’.<sup>109</sup>

Like bundles of sticks, wampum belts were exchanged and spoken of as symbols of alliance. A single string was easily broken, but a belt is so strong ‘that it must be a strong hand that can break it’.<sup>110</sup> Former alliances were publicly repudiated by throwing wampum belts away from the council fire. The Oneida leader Scarouady demonstrated the permanent breach between the Iroquois and the French by casting old belts aside: ‘we shall throw it behind us’, with the clerk

<sup>103</sup> *EAIID*, vol. 9, p. 21, (1715).

<sup>104</sup> *NYCD*, vol. 7, p. 142. His Seneca name was Kaghswoughtaniyonde.

<sup>105</sup> *EAIID*, vol. 9, p. 28; *NYCD*, vol. 7, p. 19. <sup>106</sup> *NYCD*, vol. 7, p. 385.

<sup>107</sup> Fenton, *Great Law*, ch. 16. <sup>108</sup> *EAIID*, vol. 9, p. 20. Albany, 1715.

<sup>109</sup> *EAIID*, vol. 9, p. 51. Albany, 1717. <sup>110</sup> *EAIID*, vol. 2, p. 166, (1747).

adding that ‘here he made Signs of throwing away the Wampum with great Contempt’.<sup>111</sup> Belts that signified historic agreements were carefully preserved and brought to councils to serve as reminders of earlier agreements. On several occasions Iroquoian delegations displayed the large ‘union’ belt agreed at Albany in 1754, while at Johnson’s final council in July 1774, Serihowane (Seneca) displayed the belt from the ten-year-old Treaty of Niagara, in order ‘to convince you that we keep fresh in our memory the engagements entered into, with you’.<sup>112</sup> It was at this meeting, which was concerned with disputes along the Pennsylvania and Virginia borders, that Johnson died. The gathered Iroquois diplomats ‘appeared very uneasy and proposed to send off alarming Belts thro’ all the Nations’.<sup>113</sup>

It is important to stress that eighteenth-century America existed in a more or less constant state of war. Diplomacy was not simply a benign process of intercultural mixing: it was the linchpin of a multifaceted and complex struggle for power, land, trade, and resources. The British position on a Continent that was claimed as part of the dominions of the Crown was precarious, with settlements hemmed in by a line of French fortifications, and under threat by coordinated assertions of Native American sovereignty. In a speech before the Odawa chief Pontiac and the Western Confederacy, Johnson was unable to speak in the language of European power, but was obliged instead to frame his plea for peace in the language of the Continent’s dominant powers:

We are very glad to see so many of our Children here present at our Antient Council Fire, which has been neglected for some time past, since those high winds has arose & raised some heavy clouds over your Country, I now by this Belt dress up your Antient Fire & throw some dry wood upon it, that the blaze may ascend to the Clouds so that all Nations may see it.<sup>114</sup>

He continued his remarks with the principal metaphors that comprised the condolence ceremony, pledging to disperse black clouds, to gather the ‘Bones of your deceased friends’, to ‘take the Hatchet out of your Hands’ and ‘pluck up a large tree & bury it deep’, and in its place ‘plant the tree of Peace’.<sup>115</sup> Johnson, unable assert English power over the Western Confederacy through conventional military means and also unable to secure money from a cash-poor state to purchase peace, was obliged to adopt the language of the country, and to work within the Iroquoian language of politics.<sup>116</sup> At a treaty conference in 1768, he

<sup>111</sup> *EAD*, vol. 2, p. 370; also, *NYCD*, vol. 7, p. 138.

<sup>112</sup> *NYCD*, vol. 8, p. 475; *NYCD*, vol. 7, pp. 243, 558. <sup>113</sup> *NYCD*, vol. 8, p. 479.

<sup>114</sup> *NYCD*, vol. 7, pp. 782–3. <sup>115</sup> *NYCD*, vol. 7, p. 783.

<sup>116</sup> William Johnson to Thomas Gage, 3 January 1765, in *The Papers of Sir William Johnson*, ed. Milton W. Hamilton, 14 vols. (Albany, 1921–65), vol. 11, p. 521.

spoke on black and white wampum belts, and buried the hatchet beneath the tree of peace, ‘So that the Axe may no more be found’.<sup>117</sup>

Iroquoian political language was comprised of a coherent set of metaphors and accompanying rituals and reached back to the origins of the League of the Iroquois as a sovereign political formation. It was the cultural conduit by which the sovereign capacities of war, peace, and alliances were preserved and transmitted. Anglophone colonial officials and diplomats were themselves products of a culture that expressed its politics in the form of metaphor, albeit at a lower level of complexity and frequency in comparison to the Iroquois. Unable to mould the language of diplomacy exclusively around their own registers of political speech, colonial diplomats worked within and adopted the language that structured the ancient norms of Indigenous diplomacy. In the process, they were drawn into a model of sovereignty that was not associated with a state or a particular body of law, but rather expressed through a set of rituals, obligations, and stories.

### 3 History and Sovereignty

When Europeans disembarked on the Atlantic coast, their assumptions about Indian ‘savagery’ – articulated in profusion by elite intellectuals with little experience of Indigenous America – blinded them to the fact that, in reality, they were entering a Continental network of empires that operated according to a complex and ritualised processes of diplomacy.<sup>118</sup> English settlers were part of a larger European population that, for the most part, remained confined to a coastal strip of perhaps 250 miles in width. The Continent remained in Indian hands even as American negotiators at Fort Stanwix (1784) extended sovereign claims west to the Mississippi. The languages of war, peace, and alliance in this Indian Continent were deeply rooted in Indigenous culture and memory, recorded on belts and hides, and drawn in chalk and charcoal on stones and the walls of longhouses; they were spoken with care around council fires and sealed in memory through ritual and repetition.

Very different but no less complex languages of sovereignty were prevalent in Anglophone political thought at the time of colonisation. The early seventeenth century and civil war period were dominated by conflicts over competing understandings of the power of the Crown, the legal supremacy of parliament, the nature of popular sovereignty, and the supremacy of the common law. Classic interpretations of the ideological origins of the American Revolution draw heavily on this context, and are led to it by eighteenth-century political

<sup>117</sup> *NYCD*, vol. 8, p. 39.

<sup>118</sup> Calloway, *Pen and Ink Witchcraft*, and titles cited therein at p. 288 n. 4.



pamphleteers who employed the civil war of the 1640s as a lens to make sense of a new constitutional crisis that was driven by resistance to an aggressive new imperial policy.<sup>119</sup> In this tradition of interpretation, colonists were defined by their status as defenders of rights derived from the traditions of English law, who turned revolutionaries when they rejected these traditions in favour of a theory of rights grounded in natural law.<sup>120</sup> Finally, a state-centred account of sovereignty was available in the writings of the French jurist Jean Bodin, whose works were translated into English in 1606. Bodin delineated nine ‘marks’ of sovereignty, including the power to give law; to make war, peace and contract alliances; commerce; as well as laws of allegiance and punishment.<sup>121</sup> These specific powers – rather than a single source of authority – were the marks of sovereignty listed by Jefferson in 1776 when he declared the independence of states ‘among the powers of the earth’.

Settler colonial accounts of sovereignty are less easy to define and have received very little theoretical attention. Some interpretations identify settler sovereignty as the gradual transformation of Indigenous social spaces into ‘perfect’ settler domains through the extension of legal jurisdiction over territory.<sup>122</sup> The link between the activity of settlement and the formation of sovereignty was made, for example, by Massachusetts Bay in response to assertions of parliamentary authority over England’s overseas dominions in the 1650s. Self-government, they argued, stemmed from a set of actions that ensured the secure possession of territory: ‘building, fencing, warre with the Indians, fortifying, subduing the earth in making it fit for culture’.<sup>123</sup> Others foregrounded a Lockean theory of property that underpinned a ‘settlement doctrine’, defined as the creation of social spaces within and among Indigenous domains and the possession of distinct natural rights within empire. Another approach to settler sovereignty isolates the republican elements of ‘self-government and suzerainty’, or ‘self-rule’, and a commitment to territorial empire.<sup>124</sup> Like so much imperial political thought, the historic roots for this position lie in the Roman law categories of *imperium*, that is, the right to rule

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<sup>119</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution: Fiftieth Anniversary Edition* (Harvard, 2017), ch. 1; Jack Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2011), chs. 2–3; William E. Nelson, *E Pluribus Unum: How the Common Law Helped Unify and Liberate Colonial America* (Oxford, 2019), chs. 12–15.

<sup>120</sup> Somos, *American States of Nature*, chs. 5–6.

<sup>121</sup> Jean Bodin, *Six Bookes of a Commonwealth*, ed. Kenneth McRae (Harvard, 1962), pp. 162–3.

<sup>122</sup> Ford, *Settler Sovereignty*, ch. 8.

<sup>123</sup> ‘Copy of a Petition to the Parliament in 1651’, in Thomas Hutchinson, *A History of the Colony of Massachusetts Bay* (Boston, 1764), pp. 516, 517.

<sup>124</sup> Ford, *Settler Sovereignty*, pp. 3–4; Fitzmaurice, *Sovereignty Property, and Empire*, ch. 5; Greer, *Property and Dispossession*, chs. 7–8; Yirush, *Settlers, Liberty, and Empire*, ch. 1; Veracini, *Settler Colonialism*, p. 54; Rana, *Two Faces of American Freedom*, pp. 11–12.

within a given territorial jurisdiction, and *dominium*, the right to possess and rule territory.<sup>125</sup> On this view, settler political thought is part of a larger project of creating an international legal order based on Roman law and interior spaces of politics that embody the virtues of classical republics.

Yet there is a striking paradox in the account of settler sovereignty as it related to the internal and external relations of states, the question that both underpinned disputes about the power of colonies within the British empire, and which defined the question of federalism in the new republic.<sup>126</sup> As Aziz Rana puts it, ‘Internally, settler communities were based on legal and political limits, while the external condition was that of conflict’.<sup>127</sup> Citizens in settler states insisted on limited government and broad scope for individual autonomy while, externally, republican states pursued territory using means – including rights of conquest – that were not subjected to legal restraint.

The focus on violence and conquest that define some versions of the settler colonial paradigm runs the risk of embedding an assumption that sovereign formation in colonial contexts is inevitably rooted in conflict. As is the case with the fascination of eighteenth century political writers with England’s civil war past, the contemporary preoccupation with intercultural violence shaped how colonial sovereignty was understood. For example, early colonial Virginia, a place of endemic war between the struggling colony and the Powhatan Confederacy, came perilously close to destruction in a coordinated attack in 1622. In response, the colony pursued a policy of ‘perpetual war’ that was also a mechanism for expanding and securing settlement. As one contemporary observed, ‘since the Massacre, the Savages have been driven far away, many destroyed of them, their Towns and houses ruined, their clear grounds possessed by the English to sow Wheat in’.<sup>128</sup> Here, settlement and territorial possession were preceded by ‘just’ war.

Indian warfare and violence were deeply embedded in colonial memory, and forms a dominant theme in imperial and colonial writing from Richard Hakluyt to Chief Justice John Marshall, who noted that Indians’ ‘chief occupation was war’.<sup>129</sup> Jefferson’s Declaration of Independence memorialised Indian violence by concluding the list of ‘facts’ that furnished evidence of the tyranny of George

<sup>125</sup> Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire 1576–1640* (Cambridge, 2006), ch. 1.

<sup>126</sup> Alison L. LaCroix, *The Ideological Origins of American Federalism* (Harvard, 2011).

<sup>127</sup> Rana, *Two Faces of American Freedom*, p. 97; Eliga Gould, ‘The Question of Home Rule’. *William and Mary Quarterly* 64 n. 2 (2007), 255–8, at 257, 258.

<sup>128</sup> *A Perfect Description of Virginia. Being a Full and True Relation of the Present State of the Plantation* (1649), p. 6.

<sup>129</sup> Aziz Rana, ‘Settler Wars and the National Security State’. *Settler Colonial Studies* 4 n. 2 (2014), 171–5, at 171, 172, 173.

III by noting that the King had ‘excited domestic Insurrections amongst us, and has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages’. Jefferson went on to emphasise the perceived ruthlessness of Native American war practices, defined by the ‘undistinguished Destruction of all Ages, Sexes, and Conditions’.<sup>130</sup> In the Turnerian epic of American expansion, frontier wars between settlers and Indians produced arguments that linked security with ‘full sovereignty’, and framed the necessity of government to deliver ‘protections during wartime’. A mainstay of both Hobbesian and Lockean strands of state power was that legitimate governments provided security for their people, which in the American setting justified wars of preemptive conquest in order to prevent the wholesale destruction of colonies. On those grounds, a ‘total war’ against Indians would be permissible, owing to the fact that Indians ignored ‘the classic rules of military engagement’. Because these wars were considered to be ‘pacifications’, officials refused to formalise them with formal declarations of war or the authority of legislatures.<sup>131</sup>

Law was the second prominent element of colonial memory, and was often explicitly juxtaposed with violence and disorder.<sup>132</sup> For the English, the common law, a deeply historicised political language which existed ‘time out of mind’, constituted an authoritative a body of immemorial custom. However, as Paul McHugh has written, the theorisation of the ancient constitution as ‘immemorial’ meant that ‘The rules and doctrine of the constitution were thus disengaged from its history’. To say that it was ‘immemorial’ was to say that ‘the details of, and the formative influences in, the past of the constitution did not much matter . . . knowledge of its development was irrelevant to knowledge of its perfection’.<sup>133</sup> Or, as Daniel Hulsebosch has explained, ‘Whether or not the ancient constitution existed time out of mind, it did not extend to land out of sight’. Instead, common law rights such as property tenures and the right to representative government followed English migrants wherever they ventured, and were not annulled by distance.<sup>134</sup> The civil war past became a history in which the ancient constitution’s status as a guide to resolving political conflicts was effectively demonstrated.<sup>135</sup> Yet North American settler societies generated very different histories, and McHugh, following Pocock, notes that ‘It was only

<sup>130</sup> Jefferson: *Political Writings*, p. 104. <sup>131</sup> Rana, ‘Settler Wars’, 172, 173.

<sup>132</sup> Eliga Gould, ‘Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772’. *William and Mary Quarterly* 60 n. 3 (2003), 471–510.

<sup>133</sup> P. G. McHugh, ‘A History of Crown Sovereignty in New Zealand’, in *Histories of Power and Loss*, p. 191.

<sup>134</sup> Daniel J. Hulsebosch, ‘The Ancient Constitution and the Expanding Empire: Sir Edward Coke’s British Jurisprudence’. *Law and History Review* 21 n. 3 (2003), 439, 440.

<sup>135</sup> Alan Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450–1642* (Cambridge, 2006), chs. 4, 8.

as the settler polity came to feel itself living in time that its members felt the attendant need to explain that dimension of its experience'. That history underpinned a distinct strand of settler political thought that focussed on migration and the subsequent formation of civil polities in a 'wilderness'. Jefferson gestured toward this history in the Declaration, when he asked his British readers to recall 'the circumstances of our emigration and settlement here'.<sup>136</sup>

As I have argued, the 'circumstances' of settlement were not defined by a demonstration of European superiority, nor could the newcomers live, trade, and defend themselves from the position of atomistic republics. The same was equally true of the twelve colonies that convened in 1774 to consider a collective response to the perceived constitutional violations of the statutes and acts intended to reform Britain's imperial administration. In his draft Articles of Confederation in 1775, Benjamin Franklin recommended a 'perpetual Alliance offensive and defensive' with the Iroquois, which also entailed ensuring that 'their Limits' were 'ascertain'd and secur'd to them; their Land not to be encroach'd on'. All land purchases, he continued, were to be made between 'the Great Council of the Indians at Onondaga and the General Congress'.<sup>137</sup> For Franklin, the deepening rift with Britain did not transform the Iroquois into adversaries, but preserved their status as strategic partners with recognised sovereign powers.

The interior sovereignty that formed in the context of relations between Native polities and their colonial neighbours was concerned with the recognition and regulation of the sovereign capacities of each power, in an 'inter-polity' space with overlapping jurisdictional claims. In this context, the Covenant Chain emerged as the most effective mechanism for structuring this alliance. Similar to the common law, it contained an historical account of the formation of a conjoined species of sovereignty. But unlike unitary and state-centred European conceptions of sovereignty, the Covenant Chain bound its partners in ways that constrained independent actions that weakened the alliance. In that sense, it exerted a powerful check on both settler colonialism and the incipient independence of individual colonies.

Where European commentators persisted in their description of Native Americans as peoples without 'Laws and Government', colonial writers and diplomatists knew otherwise.<sup>138</sup> Describing a treaty council in 1721, Cadwallader Colden observed the 'gravity' and 'order' that characterised the Iroquoian approach to politics and diplomacy:

<sup>136</sup> *Jefferson: Political Writings*, p. 105.

<sup>137</sup> *Declaration of Independence in Historical Context*, p. 644.

<sup>138</sup> *Jasper Maudit: Agent in London for the Province of Massachusetts Bay* (Massachusetts Historical Society, 1918), p. 41.

[T]his is the more to be admired because there is not that superiority among them which is in the meanest republic among the christians their sachems can use no force to putt there commands in execution their superiority consists only the good opinion the rest of the Nation has of their wisdom & experience . . . they maintain their authority only by force of their reason & arguments.<sup>139</sup>

Colden portrays a form of rule that is based on the creation of consensus through ordered processes of deliberation, and contrasts it negatively with the hierarchies that emerge in republican forms of government among Europeans. Similarly, George Clinton, in a set of instructions to Colden, stressed the importance of maintaining good relations with the Iroquois, which was of ‘the greatest consequence to the Safety and Prosperity of the British Colonies in North America’. There were two reasons for this, and both were linked by the fact that the British imperial presence in North America relied on co-operation as opposed to dominance. Clinton, in common with many English commentators, remarked on the ‘Warlike Genius’ of the Iroquois, by which he meant the capacity and skill in military affairs, as opposed to unrestrained violence. But more important than this was the fact that the Iroquois exerted a ‘general influence on the other Indian Nations and the Vast Extent of these British Colonies towards the Indian Countries’.<sup>140</sup>

For imperial officials, it made sense to articulate a harmony of interest between themselves and the Haudenosaunee. British territorial claims in Northeastern America were protean and speculative, expressed through charters and letters patent which were largely artefacts of the imperial constitution of the early seventeenth century.<sup>141</sup> Indian alliances therefore became the bedrock of imperial sovereignty in the American interior, for the British as well as the Iroquois. Council speakers increasingly historicised the Covenant Chain as something that linked to an ethos that bound them to consider actions from the vantage point of future generations, and across the space occupied by the united nations of the confederacy. The Conestoga referred to the alliance with William Penn that would last ‘three or four Generations’ and though ‘most of their ancients are also dead, the League still remains’.<sup>142</sup> In the Iroquoian understanding of sovereignty and history, the Covenant Chain was an example of Indigenous power being extended from the interior toward the coast, a point

<sup>139</sup> *EAD*, vol. 9, p. 92. The full document is in *The Letters and Papers of Cadwallader Colden* (New York, 1917), vol. 1, pp. 128–34.

<sup>140</sup> *EAD*, vol. 9, p. 513; *The Letters and Papers of Cadwallader Colden* (New York, 1920), vol. 4, pp. 34–44; *NYCD*, vol. 6, pp. 738–47.

<sup>141</sup> Ken MacMillan, *The Atlantic Imperial Constitution: Center and Periphery in the English Atlantic World* (Palgrave, 2012), ch. 1.

<sup>142</sup> *EAD*, vol. 1, p. 190.

of view of ‘facing out’ of the interior that gave it a spatial extent as well as an historical one. As related at Albany in 1722, with the European arrival ‘our Ancestors fastened the ship that brought them behind a Great Mountain’, located in the territory of the Senecas. The metaphorical chain was guarded against any attempt to attack the ship, which would ‘alarm all the 5 Nations who are bound to defend this ship’. This pledge of protection was the ‘foundation of the Covenant Chain’.<sup>143</sup> In 1754, William Johnson echoed this view, when he observed that the Iroquois ‘have frequently desired that the covenant Chain might reach from New York to Chenondoanah in the Senecas Country, and that all the people who live within it, may be secure from the attempts of an Enemy’.<sup>144</sup> In Johnson’s formulation, the Chain was an alliance of protection and support that extended across overlapping and inter-mingled colonial and Indigenous spaces.

The basis of the power of the Covenant Chain lay in a foundational layer of unity between the nations that comprised the confederacy. Historians have remarked on the federal model of the Iroquois, but have engaged in sometimes bitter disputes about its influence on colonial politicians.<sup>145</sup> It is clear that council spokesmen were themselves keenly aware of the power of unity within the confederacy. The prominent Onondaga diplomat Canasatego observed that ‘Our wise Forefathers established Union and Amity between the Five Nations . . . this has made us formidable’.<sup>146</sup> Iroquois speakers at Albany made strong and repeated recommendations for union and presented wampum to symbolise it. One remarked, ‘you our Brethren should be all united in your Councils . . . let this Belt of Wampum serve to bind you alltogether’.<sup>147</sup> Within the confederacy, union was employed as a means of presenting a powerful and unified sovereignty among the nations who were ‘assembled together as one Man . . . and what is now to be spoken by one Mouth are the joint and Sincere thoughts of every heart’.<sup>148</sup> Contemporaries, aware of the weakness of the British colonies, could not fail to be struck by the example of their closest allies. In the context of the attempt to forge a proto-federal union of colonies at Albany in 1754, Benjamin Franklin argued the case for a union of colonies on a ‘voluntary’ basis on the model of ‘six Nations’.<sup>149</sup> That plan ultimately failed, but William Johnson continued to argue for the necessity of some form of alliance between colonies, particularly on the crucial matter of Indian affairs:

<sup>143</sup> *EAIID*, vol. 9, p. 113.      <sup>144</sup> *EAIID*, vol. 10, p. 64.

<sup>145</sup> Gordon Wood, ‘Federalism from the Bottom Up’. *The University of Chicago Law Review* 78 n. 2 (2011), 705–32; Bruce E. Johansen, *Debating Democracy: Native American Legacy of Freedom* (Santa Fe, 1998).

<sup>146</sup> Quoted in Yirush, “‘Since We Came Out of This Ground’”, p. 137.

<sup>147</sup> *EAIID*, vol. 9, p. 447.      <sup>148</sup> *EAIID*, vol. 9, pp. 457, 468, 483; *NYCD*, vol. 6, p. 299.

<sup>149</sup> *EAIID*, vol. 9, p. 571.

'Here I cant help observing that for want of a strict correspondence between the several Governments as above, in regard to Indian affairs, that the Indians must think there can be no union in our Councils'.<sup>150</sup> For Johnson, the Covenant Chain came to represent not only an alliance between the British and the Iroquois, but a mechanism that bound individual colonies in common interest.

It is an indication of the rapid shifts of power in the American interior that the Crown entered the Covenant Chain in 1677 with the aim of protecting native sovereignty from the violence of land-seeking settlers. By the 1750s, the Covenant Chain had evolved into an instrument that secured the British presence in the trans-Appalachian, and opened conduits of trade into the Great Lakes interior – the imperial domains of the French and their Native allies. As Clinton remarked in his opening address to a conference at Albany in 1751, the Covenant Chain increased the 'power and Authority of the Six Nations', making their domains the principal conduit for the movement of goods between the interior and coastal ports. After presenting wampum belts that symbolised the opening of a path through Iroquoia, Clinton continued by declaring that the alliance also demonstrated their power among the Native polities east of the Mississippi:

[T]hey see and understand the Strength and numbers of your Bretheren, all over this great Continent, united together in this Covenant Chain, they must have a high Opinion of your power; as the keeping the path Open to this place, from all the Indian nations to the Westward of you, is of so great Benefit to you, as well as to the Common Interest of us all.<sup>151</sup>

The Covenant Chain, rather than a settler's empire, was a mechanism for extending British power to the west. That power ran along Indigenous networks of kinship, alliance, commerce, and communication. Constructed and controlled by the Iroquois, these networks and the activities they carried served to channel the sovereign powers of war, peace, alliance, and commerce.

The fact that British officials recognised the sovereignty of the Iroquois did not alter the fact that, in the logic of the Covenant Chain alliance, the Crown acted as the presiding sovereign, whose power ensured the Iroquois 'full scope and Liberty in their Settlements'.<sup>152</sup> This position, articulated in the 1677 articles of peace, neatly cohered with 'dominion theory', which held that the Crown, rather than parliament, was the supreme lawgiving and protecting power in its overseas territories.<sup>153</sup> On this view, the Crown, its dominions, and its Native allies formed a cohesive body. At the large treaty council held at

<sup>150</sup> *EAID*, vol. 10, p. 63.    <sup>151</sup> *EAID*, vol. 9, p. 578, (1751).    <sup>152</sup> *EAID*, vol. 1, p. 245.

<sup>153</sup> Pauline Maier, 'Whigs against Whigs against Whigs: The Imperial Debates of 1765–76 Reconsidered'. *William and Mary Quarterly* 68 n. 4 (2011), 578–82.

Albany in 1754, the commissioners presented the Iroquois with a wampum belt made specifically to show these inter-relationships.<sup>154</sup> The belt was decorated with the letters ‘G. R.’ to signify the Crown, and represented colonies and the Six Nations as human figures. The commissioners’ address adopted the Iroquois technique of ‘speaking on’ the belt, describing the alliance as one of fictive kin, which could be expanded to include additional members:

This represents the King our common Father. This line represents his arms extended, embracing all us the English and all the Six Nations. These represent the Colonies which are here present and those who desire to be thought present. These represent the Six Nations, and there is a space left to draw in the other Indians. And there in the middle is the line represented which draws us all in under the King our common Father.<sup>155</sup>

The Albany belt represented a melding of dominion theory as a means of expressing royal power within a composite and loosely federal empire of colonies, and the Iroquoian narrative of sovereign relations, portrayed on the principal medium of political communication. Perhaps wary of the implications of affirming the Crown’s sovereignty so explicitly within a council, the Iroquois delegates pledged to take the belt to Onondaga, the sacred site of the council fire of the confederacy and its diplomatic centre, and ‘there we will consult over it’.<sup>156</sup>

Sovereignty in the colonial context was firmly grounded in diplomacy and what contemporaries called ‘Indian Affairs’. Reporting to the Crown at the conclusion of the Albany conference, the Board of Trade was clear on the centrality of the Iroquois to the stability of the empire: ‘The management of Indian Affairs and strengthening the Frontiers are, in general points, of the utmost consequence to the very being and preservation of Your Majesties Colonies’.<sup>157</sup> But it did not follow that colonies themselves exercised sovereignty over diplomacy within their borders. This was a power that belonged to the Crown and which could be delegated if necessary. It is on this point that the local interests of colonies, particularly those that bordered Indian country, came into conflict with the mandate of the imperial state to ensure the security of all of the Crown’s dominions. In another memo prepared for the King, the members of the Board of Trade urged that ‘to maintain a good Correspondence with the Indians is undoubtedly an object of great importance’. But they took pains to clarify that it was necessary for the Crown alone to continue to attend to the ‘general interests of the Indians, independent of their connection with any particular colony’ on matters that ‘cannot be provided for by the Provincial Laws, such as the renewal of antient Compacts or Covenant-Chains’.<sup>158</sup> As

<sup>154</sup> *NYCD*, vol. 6, pp. 853–92. <sup>155</sup> *EAID*, vol. 10, p. 25. <sup>156</sup> *EAID*, vol. 10, p. 32.

<sup>157</sup> *EAID*, vol. 10, p. 70; *NYCD*, vol. 6, pp. 916–20. <sup>158</sup> *NYCD*, vol. 8, p. 23.



articulated by Johnson, the Covenant Chain bound the King and ‘all his American Subjects’ and had to be regularly renewed ‘that it may appear bright to all Nations’, urging his audience to ‘have it always before you & keep it fast’.<sup>159</sup> For the Crown, the Covenant Chain was a mechanism for a kind of federalism that ‘cross-cut the demands of shared rule between provinces and central administrations, and between the Dominions and metropolitan Britain’.<sup>160</sup> The struggle to control the culture of diplomacy was an issue of tension between Britain and its colonial dominions that was far more consequential to rule in America than the question of the constitutional legitimacy of parliamentary legislation.

Johnson’s appointment as superintendent of Indian affairs was confirmed in 1756, and Johnson Hall became a node where the power of the Crown and the Iroquois converged. To announce his confirmation, Johnson requested that a specially fashioned wampum belt was dispatched ‘to your Bretheren on the Ohio and else where to invite them to put their hands into it’.<sup>161</sup> The same year, advances by the French, who captured Oswego and mounted a successful defence of a key maritime position at Louisbourg, elevated the question of Indian alliances to significant strategic importance. Speaking to a delegation of Iroquois at Johnson Hall, the new site of the council fire, Johnson once again renewed the Covenant Chain that ‘has so long linked us together in mutual friendship’, and expressed his hope that it would continue in the face of ‘our old and perfidious enemies’ who, if they succeed in breaking the alliance, ‘may in the event root out the remembrance of your name, and Nations from the face of the earth’.<sup>162</sup> In reply, the Iroquois council speaker acknowledged that the alliance formed ‘Roots’ that ‘reach to the remotest Habitations of the Confederacy’.<sup>163</sup> At these war councils, wampum became the conduit for carrying the alliance and its agreements deep into the interior. Johnson structured his orations around belts he commissioned for specific purposes, and used them as stable points of reference before ensuring that the belts themselves were carried out to do their work among distant villages and nations. ‘Let me again put you in mind of the Belt I have given you, and which you have promised to show to all those nations of Indians with whom you have any acquaintance’.<sup>164</sup> He also appealed to Iroquois tradition, reverence for ‘your wise and brave forefathers’, and the unbroken connection between the present, past, and future generations in an alliance that was like ‘immovable Mountains’.<sup>165</sup>

<sup>159</sup> NYCD, vol. 8, p. 118.

<sup>160</sup> David Armitage, ‘We Have Always Been Federal’, in *The United Kingdom and the Federal Idea*, ed. Robert Schütze and Stephen Tierney (London, 2018), p. 283.

<sup>161</sup> NYCD, vol. 7, p. 158. <sup>162</sup> NYCD, vol. 7, p. 59. <sup>163</sup> NYCD, vol. 7, p. 61.

<sup>164</sup> NYCD, vol. 7, p. 251. <sup>165</sup> NYCD, vol. 7, p. 139.

Yet agreements carried obligations, particularly in a context of war. The Board of Trade applied direct pressure to ensure that the Iroquois remained allied to the British interest, urging Johnson to make every effort that ‘success may attend your endeavours to fix the Six Nations steadfast in our interest and to renew that ancient covenant Chain’.<sup>166</sup> Johnson’s speeches at this crucial point of the conflict reveal his aim to clearly articulate the reciprocal logic of common defence; that is, ‘He that wounds my friend and brother wounds me’. He continued, ‘The Covenant Chain between us speaks this language, and if you do not prevent or properly resent such violences, you will be guilty of breaking the Covenant Chain’.<sup>167</sup>

The capitulation of the French in 1760 shifted the alliance between the Crown and the Haudenosaunee into a new phase. Britain gained extensive territories as part of a formal cession in the Treaty of Paris, and the Royal Proclamation of 1763, in turn, designated large segments of this land as reserved territory for Native polities within what were designated as the Crown’s ‘Dominions and Territories’.<sup>168</sup> Yet the boundary line that separated colonial from Indigenous domains was simply that; as Benjamin Franklin reminded the House of Commons a few years later, the empire was ruled by ‘ink and paper’.<sup>169</sup> Settlers poured across the invisible boundary and land speculators sought to claim rich planting ground in the Ohio River Valley. The Iroquois were faced with the retreat of an empire and the onslaught of a multitude that disrupted their carefully constructed networks of sovereignty. In this context, they insisted that treaties be concluded ‘according to all the forms of Compact and Alliance in use or subsisting amongst the several Nations of Indians’.<sup>170</sup> In other words, the customs and rituals of the Covenant Chain ensured that the logic of intercultural federalism acted to constrain the individual claims of settlers seeking to form spaces of sovereignty.

This reassertion of the diplomatic norms of the Covenant Chain required that the historical account of their emergence be articulated, and then declared to other sovereign powers. The council held at Fort Stanwix in 1768 assembled to consider the question of the boundary line between the British dominions and the territories ‘reserved’ to the Iroquois and their tributaries by the Proclamation of 1763. An Iroquois speaker addressing the council began with a narration of

<sup>166</sup> NYCD, vol. 7, p. 221. <sup>167</sup> NYCD, vol. 7, pp. 240, 261.

<sup>168</sup> Clarence S. Brigham, ed., *British Royal Proclamations Relating to America, 1603–1783* (Worcester, MA, 1911), p. 215.

<sup>169</sup> ‘Examination of Franklin in the House of Commons’, in *The Works of Benjamin Franklin*, ed. Jared Sparks (Boston, 1840), vol. 4, p. 169.

<sup>170</sup> NYCD, vol. 8, p. 50.

the Covenant Chain that contrasted powerfully with the version presented to George Clinton at Albany in 1748:

We remember that on our first Meeting with you, when you came with your ship we kindly received you, entertained you, entered into an alliance with you, though we were then great & numerous and your people inconsiderable and weak . . . we entered into a Covenant Chain.<sup>171</sup>

In this version, it is the Europeans who are ‘received’ – in essence permitted to come ashore onto the sovereign territory of the Haudenosaunee. The second significant difference is that in this version, it is the European newcomers who are inconsiderable and weak. In the context of the rapid expansion of settlement across boundaries of protection, this version of the Covenant Chain narrative can be seen as a reminder that the Iroquoian position within the alliance is not affected by changes in the colonial population – on this view, power is not conveyed by numbers.

Post-war councils not only served as fora to reassert the power of the Haudenosaunee, but also to publicise the continuity of the Covenant Chain alliance in the reordered imperial politics of the trans-Appalachian. As the council speaker at Stanwix continued, the Chain would be renewed so that ‘it has looked bright and is become known to all Nations’.<sup>172</sup> In a speech concluding a treaty council in 1770, Johnson invoked the ‘alliance entered into between our ancestors and yours’, pledged that the King and ‘all his subjects’ would adhere to their agreements, and urged the Iroquois to ‘make public the transactions of this Treaty throughout all the Nations’.<sup>173</sup> However, the removal of the French did not mean that the Iroquois could comfortably align themselves with the Crown, particularly given that by 1765 resistance to imperial measures such as the Stamp Act opened a rift between Crown and colonies. For some imperial officials, native allies were bound to aid the Crown, even against its own people. Writing to Johnson’s son-in-law, William Legge, the Earl of Dartmouth, raised the necessity of securing the aid of the Iroquois ‘in the present state of America’. Dartmouth instructed Johnson to ‘lose no time in taking such steps as may induce them to take up the hatchet against his Majesty’s rebellious subjects in America’.<sup>174</sup>

For their part, as Franklin’s draft Articles of Confederation revealed, colonial leaders sought to persuade Iroquoian groups to recall that the great Covenant Chain belt depicted colonies joining hands with Native polities. At the council in Albany in 1775 between the Iroquois and the ‘Twelve United Colonies’, the councillors invoked Canasatego’s words concerning union, and applied this to

<sup>171</sup> *NYCD*, vol. 8, p. 126.      <sup>172</sup> *NYCD*, vol. 8, p. 126.      <sup>173</sup> *NYCD*, vol. 8, p. 242.

<sup>174</sup> *NYCD*, vol. 8, p. 596.

the new ‘strong confederacy, composed of twelve provinces’ which have ‘lighted a great council-fire at Philadelphia’.<sup>175</sup> The Continental Congress declared its independence from Britain, and the first sovereign nation to formally hear of this were the Micmac at Watertown on the 19th of July 1776. Although these eastern Algonquian peoples were not part of the Covenant Chain, its structure of alliance and mutual protection is evident in their pledge to ‘aid and assist’ the colonies ‘against their public enemies’. The commissioners parsed the text of the final paragraph of the Declaration of Independence in which Jefferson listed the marks of sovereignty that accrued to ‘states’ as a means of acquainting their audience that a new federal order had emerged out of the Covenant Chain:

Whereas the United States of America in General Congress assembled have in the name, and by the authority of the good people of these Colonies, solemnly published and declared that these United Colonies are, and of right ought to be free and independent states . . . and that as free and independent states they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.<sup>176</sup>

In councils with the Haudenosaunee, commissioners for the United States declared themselves the ‘sole sovereigns’ within the domains formerly claimed by the Crown, and then – in a deft appropriation of metaphorical speech – declared their intention to hold the Iroquois accountable for aiding the Crown:

The hand of the thirteen United States is not short. It will reach to the farthest extent of the country of the Six Nations; and while we have right on our side, the good spirit whom we serve, will enable us to punish you, and put it out of your power to do us farther mischief.<sup>177</sup>

At a conference with the Six Nations at Johnstown, the Iroquois speaker Tenhghskweaghta observed that, ‘Times are altered with us Indians’. The historical continuity of the Covenant Chain had been profoundly disrupted by a civil war within the structure of the alliance itself: the Iroquois divided as nations, and the colonies divided from the Crown. After a century, the elders of the Onondaga Council ‘let go their Hold of peace: extinguished the Council Fire, sunk the Tree of peace into the earth and caused a total Darkness to overspread the Confederacy’.<sup>178</sup>

The death of William Johnson and the assembly of the Continental Congress restructured relations of power between the Iroquois and a confederation of colonies that advanced historic rights to sovereignty and the possession of

<sup>175</sup> *NYCD*, vol. 8, p. 615.    <sup>176</sup> *EAIID*, vol. 18, pp. 40–1.    <sup>177</sup> *EAIID*, vol. 18, p. 61.

<sup>178</sup> *EAIID*, vol. 18, pp. 67, 78.

territory within the Crown's dominion as a basis for independence. With the end of the Covenant Chain, Native Americans ceased to be allies within an historic alliance, and became competitors to settler projects that were expressions of popular sovereignty, and impelled by processes of state-formation. Sovereignty in the new republic coalesced around state legislatures and the Congress; older forms of hybrid intercultural sovereignty were subsumed under a new federal order. This all points to what Gregory Ablavsky has described as the 'erosion of hybridity', where Native leaders like Joseph Brant and Alexander McGillivray began to speak in the conceptual vocabulary of international law.<sup>179</sup> Such an erosion, in turn, set the stage for deliberations in the nascent US court system that took up the question of whether Indian nations were sovereigns in their own right, or domestic dependent nations.<sup>180</sup>

#### 4 Sovereignty and Territory

In the eyes of European jurists and statesmen, Native Americans were stateless nomads, who did not occupy fixed habitations and who therefore possessed none of the attributes of the inhabitants of territorially bounded states. However, in focusing on the claim that Native Americans did not settle (which they did), these observers overlooked one of the key attributes of Indigenous power, which is movement. For Emer de Vattel – whose seminal text appeared in English in 1760 – the failure to settle on and improve the land served as the justification for its seizure by Europeans:

Their unsettled habitation in those immense regions cannot be accounted a true and legal possession; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies.<sup>181</sup>

For Vattel, Indigenous mobility negated rather than defined claims to territory, while legitimate possession by Europeans was signalled by fixed settlements. Even as imperial and colonial officials engaged in diplomatic relationships with Indian confederations in America, European theorists persisted in seeing Indian land as empty, uncultivated, and without order. Nor did these writers approach Indigenous spaces as vessels of belief or as sites of continuous historical memory.

The European and colonial concept of land and territory was intimately bound up with arguments about sovereignty, and fed into the ideology and process of

<sup>179</sup> Ablavsky, 'Species of Sovereignty', p. 594.

<sup>180</sup> Gregory Ablavsky, 'Sovereign Metaphors in Indian Law'. *Montana Law Review* 80 n.1 (2019), 11–40.

<sup>181</sup> Vattel, *Law of Nations*, p. 216.

state formation. Charles Maier has argued that, if we subtract ‘legislative capability’, then sovereignty is determined by territoriality: ‘Inclusion within a boundary line alone defines the power and limits of sovereignty’.<sup>182</sup> Yet this exclusively ‘statist’ and bounded concept of sovereignty does not reflect the jurisdictional politics of early America.<sup>183</sup> Colonial and imperial powers used a variety of means to establish boundaries, not as fixed and firm borders, but as descriptions of bounds in colonial charters, or lines on a map.<sup>184</sup> Native Americans understood and used the landscape as one of connections and paths between peoples, in which movement – raiding, trading, diplomacy, and itinerant settlement – marked out an idea of sovereignty that was mobile and flexible, as opposed to fixed and bounded.<sup>185</sup> Yet more than this, the land was the centre of their cosmology, a ‘cultural and moral space’ and the site of their connection to the environment that shaped and sustained them; mapping was bound up with cultural memory and survival, even as Indigenous spaces were layered over with new stories.<sup>186</sup>

The colonial and Indigenous worlds of the seventeenth and eighteenth century were worlds in motion, whose dynamism is easy to miss if we look at lavishly produced European maps without also considering the motion they contain, yet fix in graphic suspension. Canonical maps of early America produced by John Mitchell, Edward Bowen, and Abel Buell all position Native Polities on their respective homelands, trace their paths of war and peace, and locate their principal towns and settlements.<sup>187</sup> Early American history has long foregrounded movement in space: motion defined the rationale of Atlantic history, and the

<sup>182</sup> Charles Maier, *Once Within Borders: Territories of Power, Wealth and Belonging since 1500* (Harvard, 2016), p. 76; Benjamin Mueser, ‘The Nation and Property in Vattel’s Theory of Territory’, *Global Intellectual History* 3 n. 2 (2018), 140.

<sup>183</sup> Jordan Branch, *The Cartographic State: Maps, Territory, and the Origins of Sovereignty* (Cambridge, 2014), chs. 4–5; Michael Biggs, ‘Putting the State on the Map: Cartography, Territory, and European State Formation’. *Comparative Studies in Society and History* 41 n. 2 (1999), 374–405; Neil Brenner, ‘Beyond State-Centrism? Space, Territoriality, and Geographical Scale in Globalization Studies’. *Theory and Society* 28 n. 1 (1999), 39–78; Joe Painter, ‘Rethinking Territory’. *Antipode* 42 n. 5 (2010), 1090–1118; Saskia Sassen, ‘When Territory Deborders Territoriality’. *Territory, Politics, Governance* 1 n. 1 (2013), 21–45.

<sup>184</sup> Paul Mapp, *The Elusive West and the Contest for Empire, 1713–1763* (University of North Carolina Press, 2011), chs. 1–2; Jordan Branch, ‘“Colonial Reflection” and Territoriality: The Peripheral Origins of Sovereign Statehood’. *European Journal of International Relations* 18 n. 2 (2012), 277–97.

<sup>185</sup> G. Malcolm Lewis, ‘Maps, Mapmaking, and Map Use by Native North Americans’, in *The History of Cartography*, gen. ed. J. B. Harley, 3 vols. (Chicago, 1998), vol. 2, bk. 3, pp. 51–182; Pekka Hämäläinen, ‘What’s in a Concept? The Kinetic Empire of the Comanches’. *History and Theory* 52 (2013), 84; Hämäläinen, ‘Shapes of Power’, pp. 49–50.

<sup>186</sup> James Taylor Carson, ‘Ethnogeography and the Native American Past’. *Ethnohistory* 49 (2002), 769–88.

<sup>187</sup> S. Max Edelson, *The New Map of Empire: How Britain Imagined America before Independence* (Harvard, 2017), chs. 1, 4, 7.

connections of movement across wider spaces was the impetus for the widening of perspectives toward cis, circum and trans-Continental history.<sup>188</sup>

One of the most generative contributions made by historians of Native America concerns non-state spatial conceptualisation: middle grounds, Native grounds, divided grounds, shatter zones, borderlands, memory lands, middle waters, saltwater frontiers. These approaches cross-cut and complicate the paradigmatic Atlantic, Pacific, Oceanic, and Continental frameworks of imperial regionalism and globalism. In a series of startling inversions, historians have demonstrated the cohesiveness of Indigenous power in juxtaposition to fragmented and decentred imperial and colonial jurisdiction. Imperial intrusion is portrayed as being ‘situated on islands of occupation and surrounded by a sea of land’, as ‘a networked nodal world of trade, diplomacy, dispossession, coercion, and cross-cultural mixing and violence’. Like its colonial antecedent, the United States was an ‘archipelago of settler islands’ and imperial possession was a fabric ‘full of holes’.<sup>189</sup> Within and between these islands ranged the ‘kinetic regimes’ of Native polities that ‘revolved around mobile activities’ – raids, diplomatic missions, commerce, and seasonal settlement.<sup>190</sup> Indigenous societies *moved* through settler spaces, across colonial and imperial boundaries, and within other Indigenous spaces: it follows that their politics was expressed in kinetic forms.

The philosopher Thomas Nail takes up a theory of borders from the standpoint of ‘kinopolitics’, which does not treat societies as ‘primarily static, spatial, or temporal’ but as ‘regimes in motion . . . directing people and objects . . . and striving to expand their territorial, political, juridical, and economic power through diverse forms of expulsion’. These regimes in motion are characterised by three categories of movement. The first, ‘flows’, are processes of movement that are multi-directional and which can not be constrained by territorial or legal regimes of restriction. Second, this movement of flows is clustered around what Nail calls ‘junctions’, social nodes that are neither points of departure nor destinations, but places where flows intersect. The third process is defined by

<sup>188</sup> Alison Games, ‘Atlantic History: Definitions, Challenges, and Opportunities’. *The American Historical Review* 111 n. 3 (2006), 741–57; David Armitage, ‘Three Concepts of Atlantic History’, in *The British Atlantic World*, ed. David Armitage & Michael Braddick (Palgrave, 2002), pp. 11–27; Rachel St. John, ‘Contingent Continent: Spatial and Geographic Arguments in the Shaping of the Nineteenth-Century United States’. *Pacific Historical Review* 86 n. 1 (2017), 18–49.

<sup>189</sup> Tamar Herzog, *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Harvard, 2015), p. 1; Samuel Truett, ‘Settler Colonialism and the Borderlands of Early America’. *William and Mary Quarterly*, 76 n. 3 (2019), 437, 438; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010), p. 2.

<sup>190</sup> Hämäläinen, ‘Shapes of Power’, p. 49.

movements that Nail terms ‘circulations’ – the regulation of flows through junctions’.<sup>191</sup>

It is not particularly difficult to apply these concepts to early America. Native polities, colonial governments, the imperial state were all to some extent ‘regimes in motion’, all seeking to expand their influence by the projection of sovereign power across space. Early America was also a world of ‘flows’: of weapons, conflict, commerce, diplomacy, goods and commodities, diseases, ideas, communications, people. Points of stability (what Nail defines as ‘junctions’), are easy to spot – for example, urban centres, council fires, Johnson Hall, principal hubs of Native diplomacy such as Canojoharie, Chota, resource nodes such as the Oneida Carry, riverine confluences, mountain passes, fortifications – and through these junctions we see the circulation of flow through a set of ‘ordered’ networks of economy, the structure of diplomatic alliances and inter-colonial and imperial relations.<sup>192</sup> But of course movement and the control of movement is not politically neutral: it carries politics with it, and in its settler and Indigenous iterations, movement is a conduit of power.

To contemporaries, frontiers were merely a ‘parchment boundary’, that bore little relation how the jurisdictional politics of sovereign domains were understood.<sup>193</sup> Instead of being bordered and bounded, land was approached from the vantage point of the natural infrastructure of empire, where the rivers and mountains were conduits to focus and accelerate the colonisation of the Continent. As John Jay observed, ‘This country and this people seem to have been made for each other’. He continued:

It has often given me pleasure to observe, that Independent America was not composed of detached and distant territories, but that one connected, fertile, wide spreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and mutual transportation and exchange of their various commodities.<sup>194</sup>

Jay’s landscape is not one of ordered homesteads, but rather an expanse of territory that is tied together by a set of natural flows, junctions, and circulations.

<sup>191</sup> Thomas Nail, *Theory of the Border* (Oxford, 2016), pp. 25, 27, 29.

<sup>192</sup> François Furstenberg, ‘The Significance of the Trans-Appalachian Frontier in Atlantic History’. *The American Historical Review* 113 n. 3 (2008), 647–77.

<sup>193</sup> Anon, *The State of the lands said to be once within the bounds of the charter of the colony of Connecticut, west of the province of New-York, considered* (New York, 1770), p. 12.

<sup>194</sup> Federalist No. 2 (Jay), in *Federalist Papers*, pp. 5–6.



That the land was somehow ordered by and opened to Europeans by the hand of Providence is an idea with a traceable pedigree in European ideas. But Jay's assessment is more than an echo on the language of sacred geography. It contains a clear link between the liberty gained by Revolution and the opening of the west as a territorially based republic. But what is most striking (and also easy to miss) is that Jay's elegy to the land is actually concerned with water, particularly rivers, which not only gives the new republic its borders, but drives its commerce and communication.<sup>195</sup> Jay understood that movement through a network of connections was the basic ingredient of the new imperial power.

For colonial observers, who approached territory and space to be measured, surveyed, mapped, and bounded, Indigenous notions of territoriality were puzzling. In a letter to the Earl of Dartmouth, William Tryon of New York noted that,

as the Indians have no Record but the memory, and no idea of figures or measurement, a misconception of the Boundary in such a multitude of different Tracts, must prove a perpetual source of jealousy and discontent; against which there is no effectual expedient but to consult nature, and so bound their sales by remarkable Mountains and streams of water, or some land mark notorious among themselves.<sup>196</sup>

The Indigenous landscape was approached in a manner of wayfinding: a landscape differentiated by natural boundaries and landmarks, by sacred sites, and reckoned in terms of the time it took to travel from one point to the next. Scholars have emphasised that, whereas in the colonial mind spaces of settlement were highly ordered, the Indigenous landscape was envisioned as a series of nodes and connections: it was a space in which to move, rather than merely to settle.

Native Americans also had clear understandings of possession. The European understanding was that territory was gained according to a series of proofs derived from authoritative sources like the Justinian *Digest*, a Roman law text of the sixth century. Ownership of territory was demonstrated by the occupation of empty land, continuous possession over time, cession from another sovereign or by treaty, or through possession from a conquered state.<sup>197</sup> Native articulations of sovereignty over territory shared some of these characteristics. For example, the Iroquois claimed control over lands and peoples in the western reaches of Virginia and Pennsylvania by what contemporaries interpreted as right of conquest. At the Albany conference of 1754, a colonial official acknowledged

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<sup>195</sup> John Nelson, 'The Ecology of Travel on the Great Lakes Frontier: Native Knowledge, European Dependence, and the Environmental Specifics of Contact'. *Michigan Historical Review* 45 n. 1 (2019), 1–26.

<sup>196</sup> *NYCD*, vol. 8, p. 374, (1773). <sup>197</sup> MacMillan, *Sovereignty and Possession*, ch. 1.

that, ‘Your Fathers by their valour above one hundred years ago, gained a considerable Country, which they afterwards of their own accord put under the protection of the King of Great Britain’.<sup>198</sup> This argument was typically traced back to the 1680s, when the then Five Nations granted the Crown protective rights over lands claimed by the Confederacy as part of its westward expansion during the seventeenth century ‘mourning wars’.<sup>199</sup>

By contrast, in memos to the Board of Trade, Johnson reported that the Iroquois repeatedly rejected the claim that their lands had been conquered by either France or England, and that they ‘consider themselves a free people’.<sup>200</sup> At Albany, spokesmen for nations in the Ohio raised the issue of purchase, noting previous agreements that settlers would purchase only lowlands,

[B]ut now we see people living all about the Hills and woods, although they have not purchased the lands. When we enquire of the people who live on the[se] lands, what right they have to them, they reply to us that we are not to be regarded, and that these lands belong to the King; but we were the first possessors of them, and when the King has paid us for them, then they may say they are his.<sup>201</sup>

The logic of the Covenant Chain is evident in the stipulation that the purchase of land is the exclusive right of the Crown. Even then, as the Mohawk spokesman ‘Abraham’ informed a council in 1770, the territorial claims of the Iroquois were ‘indisputable’, and that they retained the freedom to sell or cede territory to whomever they chose: ‘you may assure the King, that it was our property we justly disposed of, that we had full authority to do so’.<sup>202</sup> The Iroquois realised that the colonial practice of land surveys was something that could be used to their advantage. In 1760, the Conojoharie Mohawk petitioned Johnson concerning the ‘boundaries of our Lands’ and the ‘Division between us & our neighbours’. They asked to have the lines ‘renewed & surveyed, in the presence of our Young Men and Boys’ in order to establish a ‘lasting Memory to our young ones and prevent future Difference’.<sup>203</sup>

This cultural and historical understanding of territory formed an essential part of how the Iroquois responded to the incursion of settlers as the colonial population doubled in the first half of the eighteenth century. They did not see settlement as the English did, in terms of contiguous blocks of bounded territory, but as the formation of new paths. At Albany they asked colonial officials to explain why settlers ‘have made paths through our Country to Trade and built

<sup>198</sup> *EAID*, vol. 10, p. 25.      <sup>199</sup> Parmenter, *Edge of the Woods*, chs. 3–4.

<sup>200</sup> *NYCD*, vol. 7, pp. 575, 665; Francis Jennings, *The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies* (New York, 1984), ch. 2.

<sup>201</sup> *EAID*, vol. 10, p. 45.      <sup>202</sup> *EAID*, vol. 10, p. 586.      <sup>203</sup> *NYCD*, vol. 7, p. 434.

houses'.<sup>204</sup> The Seneca, who occupied the western 'door' of the metaphorical longhouse, asked why settlers entered their territory when 'our Boundaries are so well known & so remarkably distinguished by a range of high Mountains'.<sup>205</sup> Pathways of communication carried rumours of settlement, the seizure of land, and of plans to erase Indigenous possession. Johnson overheard a party of Mohawk diplomats discussing settlers taking their hunting grounds and growing places which were now 'the property of the people of Albany'.<sup>206</sup> Iroquois council speakers reported hearing colonists say that England and France 'had agreed to cut off all the Indians of North America and to settle the Continent with their respective Subjects, but as this Account did not come to them with any present according to the Indian Custom, they doubted the truth of it'.<sup>207</sup>

John Jay's emphasis on the riverine character of the republic's territoriality focusses attention on connections and movement. To English eyes, the American landscape was utterly foreign, in terms of its scale and the density of its woodlands. Colonial officials struggled with woodlands which were foils to attempts to impose order on colonial spaces. William Keith expressed his frustration at his inability to prevent settlers from surging across colonial boundaries: 'the Country is so wide, the woods so dark and private, and so far out of my sight'.<sup>208</sup> By contrast, Indigenous speakers perceived woodland as a site of security. Pennsylvania – literally, 'Penn's woods' – was regarded by the Delaware as a place whose woodlands should be ruled by a 'happy peace', where they 'will lift up their heads in the woods without danger or fear'.<sup>209</sup>

I have mentioned that movement and the control of movement was a significant element of Iroquois power. This importance is reflected in the ways in which pathways, routes, and connections figure in diplomatic records. Paths had a general meaning that indicated the freedom to move through territory. For instance, the Five Nations in 1710 spoke of a 'path' that allowed peoples 'to come through our country as far as Albany'. Paths could also denote an alliance in the sense of an open corridor of diplomatic communication, a path that 'would remain clear and open for a free passage between both nations'. Conversely, paths were spaces and routes of conflict, a 'path of going to warr', a 'bloody path'. Conflict was the result of lapses in diplomacy, and such paths were described as 'almost quite grown over'. The best paths were 'open', allowing 'the far Indians to come hither and trade'. The chief aim of diplomacy was to preserve free and orderly movement, and so there were ceremonies to 'Sweep the Path clean', and to ensure that no party took steps to 'stop the Path' to the free movement of peoples and goods. Contemporaries thought carefully about which path to take.

<sup>204</sup> *EAID*, vol. 10, p. 33, (1754). <sup>205</sup> *EAID*, vol. 2, p. 195.

<sup>206</sup> *EAID*, vol. 10, p. 372, (1760). <sup>207</sup> *EAID*, vol. 9, p. 60, (1717).

<sup>208</sup> *EAID*, vol. 1, p. 212. <sup>209</sup> *EAID*, vol. 1, p. 133.

On one journey, Colden could easily have taken the direct 200 mile path between Albany and Montreal, ‘but as this path has been thought extremely prejudicial to the Interests of this Colony’ he would ‘go on another’ and went significantly out of his way.<sup>210</sup>

The Iroquois were wary of disruptions to a landscape of peaceful movement, diplomacy, and exchange, and used diplomatic speeches to call for the restoration of customary patterns of movement. At Albany in 1714, the Five Nations reported receiving wampum from ‘Indians who live at the back of Maryland’ that told them that the English were going to ‘cut them off’. On the basis of this information, itself conveyed over Indigenous diplomatic networks, they demanded that the ‘Path may be free and open’ between them and the Five Nations.<sup>211</sup> They also drew attention to any restrictions on Indian movement in colonial territory that was the result of treaties made between individual colonies and rival nations, and insisted on a ‘free Liberty to Pass and Repass’ along designated routes.<sup>212</sup> Contemporary accounts sometimes offer us fleeting glimpses of how extensive Indigenous routes of communication were. In a report of a visit to Schenectady, Cadwallader Colden was shown a drawing of a ‘Crocodile very well designed which shows that they travel very far to the southwards’. He asked his hosts where this strange creature lived and ‘The Indians pointed to the southwest as the place where these animals are found’.<sup>213</sup>

The pathways of the interior were the infrastructure of the Covenant Chain, the conduits by which it was extended across the Iroquoian world. Managing movement and mitigating conflict in these spaces of transit took a prominent place in diplomatic negotiations, discussions that reveal the scope of contemporary understandings of movement and space. Pathways figured to structure specific diplomatic positions. At Albany in 1715, Iroquois pledged to ‘stop up that path’ that took them to war in the Carolinas, while the western tribes noted that it had been some time since they visited Albany ‘and the path was almost grown quite over with bush; but they do now open the path and make the same clearer’.<sup>214</sup> In 1727, as traders, settlers and missionaries ranged through the Indigenous territories adjacent to western Virginia, Indian speakers noted that ‘all Paths should be kept open and free to both Christians and Indians’.<sup>215</sup> Pathways were used as a means to use diplomacy to narrow the spaces of separation between peoples, as they were by a Pennsylvania official who sent a message to the Delawares that ‘you are too far distant, we shall become Strangers by not seeing and speaking to each other’.<sup>216</sup> As diplomacy expanded and new nodes of power emerged, new pathways were required. The Iroquois

<sup>210</sup> *NYCD*, vol. 5, pp. 224, 375, 437, 441, 446, 572, 637, 669, 729.

<sup>211</sup> *EAID*, vol. 9, p. 5, (1714). <sup>212</sup> *EAID*, vol. 1, p. 263. <sup>213</sup> *EAID*, vol. 9, p. 89, (1721).

<sup>214</sup> *EAID*, vol. 9, pp. 20, 28. <sup>215</sup> *EAID*, vol. 1, p. 286. <sup>216</sup> *EAID*, vol. 1, p. 33, (1731).

request that ‘there be an open Road between Philadelphia and the Towns of the Six Nations’ reveals the town’s emergence as a principal node of communication, linking the urban and coastal centres of the east with the military and commercial hubs of the interior.<sup>217</sup>

Diplomatic discussion of pathways also illustrates the status of the Iroquois as superintendents of movement along networks that connected colonial and Indigenous spaces. A council speaker at Albany declared their intention ‘to keep open all the paths that Lead to Oswego not only our own Paths but all those of the far Indians’, and to ‘all the settlements’ of the Crown’s subjects. Oswego was a prominent node of trade in the upper reaches of Iroquoia that, in turn, linked it to a series of commercial and defensive sites to the west.<sup>218</sup> Iroquoian control of movement extended east toward the coast, with New York officials asking them to ensure that ‘the Path between the Massachusetts Bay & Your Country may be kept clear and open, so that there may be a constant & free Intercourse between us’.<sup>219</sup> Officials understood that Iroquoian power resided partly in the superintendence of a range of colonial and Indigenous kinetic activities that gave other nations ‘to the Westward of You’ a ‘high Opinion of your power’.<sup>220</sup> An element of that power was knowledge of the strategic landscape of the interior, which was publicly shared in treaty councils, where on one occasion a Miami scout ‘laid down with Chalk the courses of the Mississippi’ and the location of French forts, showing the ‘ready Road’ through their territory.<sup>221</sup>

In the context of war, Indigenous control of movement was crucial to the ability of the British to contend with a widely dispersed and strategically embedded network of French power. At a council in 1753, after clashes between settlers and Indigenous war parties in the Ohio, the Mohawk delegation, speaking for the confederacy, informed Clinton that, despite their attempts to ‘keep the Roads amongst our Nations open and clear’ recent violence meant that ‘that Road seems now to be spoiled’.<sup>222</sup> The uncontrolled movement of settlers was, next to complaints about the practices of traders, the issue that most strained the bonds of the Covenant Chain. At the Albany conference in 1754, the Iroquois were explicit that intrusions on their territory represented direct challenges to their sovereignty. The colonies of Virginia and Pennsylvania ‘have made paths thro’ our Country to Trade and built houses without acquainting us with it’.<sup>223</sup> Colonial officials used the language of pathways to secure peace, for example, at Pittsburgh in 1759 when General Stanwix presented a two-row wampum belt to mark the peace. He described it as a ‘Road Belt of

<sup>217</sup> *EAIID*, vol. 1, p. 356. <sup>218</sup> *NYCD*, vol. 6, p. 104. <sup>219</sup> *NYCD*, vol. 6, p. 448.

<sup>220</sup> *NYCD*, vol. 6, p. 718. <sup>221</sup> *EAIID*, vol. 2, 182. <sup>222</sup> *EAIID*, vol. 9, p. 613.

<sup>223</sup> *NYCD*, vol. 6, p. 870.

Wampum’, and expressed his hope that ‘we may all Travel this Road in Peace as your fathers formerly did from the Sun rising to the Sun setting’.<sup>224</sup> The belt signified the parallel paths that were the spatial expression of the Covenant Chain alliance.

For colonial officials, the nodal network of interior pathways was not separate and abstract from the ritualised metaphorical speech of the Covenant Chain, but its projection onto a spatial plane. William Johnson knew very well the advantages the French derived from their use of the landscape, which explained the centrality of the Iroquois as ‘of the highest consequence’ to the preservation of British colonies:

The French being under the necessity of taking their Route through their Country in their march to the Southward, in order to perfect that fatal line of communication between their most distant settlements, by means of which to lessen our Borders and to make continual discents upon our defenceless Frontiers, and crowding us into the sea.<sup>225</sup>

Writing to the Lords of Trade in 1764, Johnson argued for a more pragmatic approach to diplomacy, one that ensured that the northern and western confederacies did not coalesce in a way that posed obstacles to movement, particularly through the Seneca-controlled carrying place at Little Niagara: ‘I would humbly think it advisable, that each confederacy, with whom peace be made, should separately guarantee to the English a secure Trade and free passage thro’ their several countries, as also the possession of necessary outposts. By treating with them separately, we will prevent too strict a union amongst them’.<sup>226</sup>

Indigenous pathways coalesced into a domain of power, a strategic band of territory that contemporaries could plainly see. English commentators described the Iroquois as a ‘bulwark’ between English and French imperial domains, and an empire in their own right: ‘they goe as far as the South Sea the North-West Passage and Florida to Warr’.<sup>227</sup> This combination of mobility and military prowess, an attribute of the Comanche and Lakota peoples, led colonial officials to see the Iroquois not as a threat, but a ‘constant barrier of defence’, a ‘Stone Wall’, a ‘Barrier against the designs and encroachments of the French’, and an ‘immediate Barrier to several of his [the King’s] other Colonies and Provinces against the Enemy’.<sup>228</sup> A Virginian official speaking at the landmark 1744 Lancaster conference noted that Indians were a ‘Frontier’ to some

<sup>224</sup> *EAIID*, vol. 3, p. 519.

<sup>225</sup> *EAIID*, vol. 10, p. 62. Full document in *NYCD*, vol. 6, pp. 897–99.

<sup>226</sup> *NYCD*, vol. 7, p. 600. <sup>227</sup> *EAIID*, vol. 8, p. 103, (1687).

<sup>228</sup> *EAIID*, vol. 8, p. 573, (1703). 1703; *EAIID*, vol. 1, p. 137; *EAIID*, vol. 9, p. 328, (1742); *EAIID*, vol. 9, p. 538, (1748).

settlements and, 'if Friends, are capable of defending their Settlements'.<sup>229</sup> The Iroquois themselves reminded colonists that 'we are a frontier Country between your enemy and you'.<sup>230</sup>

The elision of land and security assumed a prominent place in discussions at treaty councils held on the eve of the outbreak of the Anglo-French war. The English portrayed themselves as purchasers of Indian land and partners in diplomacy. For instance, at Logstown in June 1752, the English delegation invoked ties of common kinship to reassure the Ohio Indians that 'the King, our Father, by purchasing your Lands, has never any intention of taking them from you'. At a second council in the summer of 1753, the delegates heard of the French intention to 'take Possession of all the Lands' beyond the Allegheny mountains, an intention signified by placing metal plates 'at the Mouth of several of the Creeks' and on trees. This marking of the landscape with symbols of imperial possession led the Delaware 'half king', Tanaghrisson, to predict that the Europeans 'were going to divide the Land between them'.<sup>231</sup> The frequency of treaty councils increased as tension escalated. William Fairfax of Virginia was warned by an Oneida chief that the warriors of the Six Nations 'fought for the lands, and so the Right belongs to us'. Benjamin Franklin was present at the council which met at Carlisle in the autumn of 1753, where the Ohio Indians asked the English to 'secure Us and the Ground', while the Governor of Pennsylvania responded that the French threatened the 'Independency of the Indian Nations' and their property 'in their own Lands'.<sup>232</sup>

Throughout these diplomatic meetings, the Covenant Chain served as a point of reference for the historical defence of territorial claims, arguments that cohered with Roman law arguments for continuous possession. Council speakers made small revisions to the narrative to explicitly establish their status as the original occupants of the land. At Albany in 1720, the orator informed his audience that, 'Wee were here before the Christians Came being the antient Inhabitants of those parts and when the Christians first Came we made a Covenant with them'.<sup>233</sup> The most well-known example of this argument was delivered by Canasetego at Lancaster in 1744:

When you mentioned the Affair of the Land Yesterday, you went back to old Times, and told us, you had been in Possession of the Province of Maryland above One Hundred Years: but what is One Hundred Years in Comparison to the Length of Time since our Claim began? Since we came out of this Ground? For we must tell you, that long before One Hundred Years our Ancestors came out of this very Ground, and their Children have remained here ever since. You came out of the Ground in a Country that lies beyond the

<sup>229</sup> *EAIID*, vol. 5, p. 53.    <sup>230</sup> *EAIID*, vol. 2, p. 204, (1749).    <sup>231</sup> *EAIID*, vol. 5, pp. 138, 171.  
<sup>232</sup> *EAIID*, vol. 2, pp. 282–6, 302, 305, 307.    <sup>233</sup> *EAIID*, vol. 9, p. 72, (1720).

Seas, there you may have a just Claim, but here you must allow us to be your elder Brethren, and the Lands to belong to us long before you knew any thing of them.<sup>234</sup>

Historians have focussed on this example for the directness of its challenge to the territorial claims of the proprietary colony of Maryland. But it is more than this, for it contains the essence of the Iroquoian story of origins in which the land formed on the back of a turtle and was then peopled by Hah-gweh-di-yu.<sup>235</sup> The records of council minutes in the Northeast do not contain many substantive references to Iroquoian cosmology, either because clerks homogenised this material, or because council speakers did not structure their negotiations from that standpoint.

The Treaty of Fort Stanwix (1768) codified a significant cession of Iroquois territory to the Crown.<sup>236</sup> Its effect was that British officials were able to leverage Iroquois claims to territorial sovereignty to form the basis for a new phase of colonial expansion. As an Iroquois spokesman at the council made clear, ‘we have given him [George III] a great and valuable Country’.<sup>237</sup> Notwithstanding, the Covenant Chain remained a layer of alliance that some parties hoped would continue to structure alliance within this new imperial domain. Like every other imperial claim before it, the territory circumscribed by the new boundary line represented a largely aspirational dominion, which imperial officials were unable to defend against an expanding influx of settlers, and which remained cross-cut by Indigenous routes of power.

The political independence of British colonies was driven as much by the assumption of plenary power over diplomatic affairs with Indigenous nations, as it was by declarations of constitutional principle. While political writers engaged in debates on British constitutionalism with their counterparts across the Atlantic, colonial officials presented their case in very different terms to Iroquoian delegations. At Albany in late August 1775, the commissioners sent by the twelve colonies likened the Continental Congress to a ‘great council’, and used the meeting at Albany to explain the ‘situation of our civil constitution, and our disposition towards you’. What followed was a sustained use of the rhetorical structures of Iroquoian political speech to describe the bonds that tied subjects to the Crown, and which advanced an argument for the possession of territory based on the aggregate actions of lone settlers:

<sup>234</sup> *EAID*, vol. 5, p. 59; *EAID*, vol. 9, pp. 399–401. <sup>235</sup> Fenton, *Great Law*, ch. 2.

<sup>236</sup> William J. Campbell, *Speculators in Empire: Iroquoia and the 1768 Treaty of Fort Stanwix* (University of Oklahoma Press, 2012), chs. 5–6.

<sup>237</sup> *NYCD*, vol. 8, pp. 127, 481.



When our fathers crossed the great water, and came over to this land, the King of England gave them a talk; assuring them that they and their children should be his children, and that if they would leave their native country, and make settlements, and live here, and buy and sell and trade with their brethren beyond the water, they should still keep hold of the same covenant chain, and enjoy peace; and it was covenanted that the fields, houses, goods and possessions which our fathers should acquire, should remain to them as their own, and be their children's forever, and at their sole disposal. Trusting that this covenant should never be broken, our fathers came a great distance beyond the great water, and laid out their money here, built houses, cleared fields, raised crops, and through their own labor and industry grew tall and strong.<sup>238</sup>

The colonial diplomats combined the language of fictive kinship with geography to describe England as the 'father' and 'this island may be compared to the son'. Urging the Iroquois to stay neutral in this 'family quarrel' – in effect, a civil war – and to keep the path open between peoples, colonial diplomats linked the future of an independent and Indigenous America firmly together, using the metaphor of the tree of peace as a device to create legal meaning:

We live upon the same ground with you. The same island is our common birth-place. We desire to sit down under the same tree of peace with you. Let us water its roots, and cherish its growth, till the large leaves and flourishing branches shall extend to the setting sun, and reach the skies.<sup>239</sup>

In effect, colonial diplomats were extending the first offer of peace and alliance between the fledgling republic – still ten months from formally declaring its place 'among the powers of the earth' – and the representatives of a sovereign nation in the context of formal diplomacy.<sup>240</sup> They used their speeches to explain to the Iroquois the causes of a significant reordering of Anglophone power in the Northeast, and the transformation of a common world of alliance that began with the Crown's entry into the Covenant Chain in 1677. This world now had a new council fire and a new form of Covenant Chain:

When we perceived this island began to shake and tremble along the eastern shore . . . we kindled up a great council-fire at Philadelphia; and we sat around it until it burnt clear, and so high that it illuminated this whole island. We renewed our hold of the old covenant chain, which united and strengthened our ancestors . . . We have now taken fast hold, nor will we let it go until a mighty struggle, even unto death. We are now Twelve Colonies, united as one man. We have but one heart and one hand. Brothers, this is our Union Belt. By this belt we, the Twelve United Colonies renew the old covenant

<sup>238</sup> NYCD, vol. 8, p. 616. <sup>239</sup> NYCD, vol. 8, p. 619; Williams, *Linking Arms Together*, ch. 4.

<sup>240</sup> Sadosky, *Revolutionary Negotiations*, pp. 59–73.

chain by which our forefathers, in their great wisdom, thought proper to bind us and you, our brothers of the Six Nations, together, when they first landed at this place.

The commissioners continued by predicating amity between nations on a ‘free and mutual intercourse’ and declared that they would remove every obstacle from ‘the great road that runs through the middle of our country’, along which Indigenous peoples might pass ‘as freely as the people of the Twelve United Colonies themselves’.<sup>241</sup>

The councillors asked neutrality from the Iroquois, fully aware of the power of historic alliances to bind them to the Crown. The Six Nations’ reply was given by the Mohawk orator Abraham, who affirmed the Iroquois intention to remain neutral. However, the focus of his reply was not defined by an attempt to refute the commissioners’ claims about settler possession, but on the much larger question of the combined status of the Covenant Chain and the networks of power and communication over which it extended. Embedded in his statement was a clear warning that these newly opened but ancient paths should not be sites of war:

As you had renewed the ancient covenant, you thought proper to open the path, and have a free communication with this place. As the fire had for some time been put out, the path had got stopped up. You removed all obstructions out of the great roads and paths, all stones and briars, so that if any of us choose to travel the road, we should neither meet with any obstruction or hurt ourselves. Brothers, we thank you for opening the road. You likewise informed us you were determined to drive away, destroy and kill all who appeared in arms against the peace of the Twelve United Colonies. Brothers attend. We beg of you to take care what you do. You have just now made a good path; do not so soon defile it with blood.<sup>242</sup>

For the Mohawk, having reaffirmed the pledge of neutrality originally given to their kinsman William Johnson, the constitutional crisis between Crown and colonies paled in comparison to the question of land. Colonial attempts to portray themselves as brothers of the Iroquois inhabiting the same island would have intruded on Iroquoian understandings of their origins, both in a political and cosmological sense.<sup>243</sup> It was in this sense that Abraham, while acknowledging the renewal of the Covenant Chain, insisted that such a renewal had to be established on the proper grounds of amity with respect to the possession of land. On this view, colonialism in violation of treaties would lead to war:

<sup>241</sup> *NYCD*, vol. 8, p. 619.    <sup>242</sup> *NYCD*, vol. 8, pp. 622–3.

<sup>243</sup> Fenton, *Great Law*, ch. 2; Jeffrey Glover, ‘Going to War on the Back of a Turtle: Creation Stories and the Laws of War in John Norton’s *Journal*’. *Early American Literature* 51 n. 3 (2016), 599–622.

You say you are uncertain of holding your possessions, and that you do not know who may enjoy the product of your labor. Now therefore, brothers, attend . . . Our brothers of Albany have taken two pieces of land from us, without any reward, not so much as a single pipe. We therefore desire you will restore them, and put us into peaceable possession again. If you refuse to do this, we shall look upon the prospect to be bad; for if you conquer, you will take us by the arm and pull us all off.<sup>244</sup>

The exchange at Albany reveals the extent to which Anglophone officials and diplomats were drawn into the conceptual registers of Iroquoian diplomatic speech. It might be tempting to dismiss these examples as instances of cynical cultural appropriation, but the fact remains that the Board of Trade as well as colonial and then state governments devoted considerable resources and attention to what one contemporary called the ‘peculiar Specie of Politics’.<sup>245</sup> Officials in the nascent United States were divided on the question of diplomacy with the Iroquois. A year after independence, the Loyalist commissioner of Indian affairs Daniel Claus wrote to Henry Knox, who would become secretary of war in the new republic. Claus observed that Native polities that lived away from zones penetrated by European settlement ‘consider themselves a free and independent people, liable to no subjection or subordination and consequently must be managed and ruled, either by persuasion or influence or some kind of awe’. He continued that the British model of diplomatic relations was by far the best option, with the caveat that anyone charged with the conduct of Indian affairs should be ‘well acquainted with their customs manners and language’.<sup>246</sup>

The fate of Indigenous nations was not determined solely by treaties as instruments of territorial dispossession. To construe the history of diplomatic relations solely in these terms is to miss something more important, which is that in so much of what is called the colonial period, no one power exercised a monopoly on sovereign control or was in a position to establish a binding form of universal legal jurisdiction. Colonial law did not replace Indigenous law, and throughout much of the nineteenth century the Continent was shaped by the interaction of a range of Indigenous and non-Indigenous formations of power, in which nodes of settler law and jurisdiction remained islands in a broader sea.<sup>247</sup>

## 5 Rethinking Colonialism

In a powerful set of essays, James Tully has argued that contemporary North American Indigenous peoples exist on two planes: the treaty relationship, which

<sup>244</sup> *NYCD*, vol. 8, pp. 623–4.

<sup>245</sup> ‘Some Thoughts on the British Indian Interest in North America’, *NYCD*, vol. 7, p. 26.

<sup>246</sup> *NYCD*, vol. 8, p. 700.

<sup>247</sup> Gautham Rao, ‘The New Historiography of the Early Federal Government: Institutions, Contexts, and the Imperial State’. *William and Mary Quarterly* 77 n. 1 (2020), 97–128.

sees them as political communities that held and retain sovereignty and the right of nation-to-nation diplomacy; and the colonial relationship, where Indigenous peoples are inferior and represented obstacles to ‘expansion’ and ‘settlement’.<sup>248</sup> Each mode of relationship is present in the history of early America, and they formed part of a broader process of the transformation of Indigenous spaces of power, sometimes through negotiation and at others through recognisably settler colonial modes of violent dispossession. However, attempts to reconcile them have produced interpretations that are polarised: either Indigenous and colonial peoples inhabited a middle ground that was regulated by the laws of peace, or they existed in a constant state of warfare that signalled the inevitable triumph of settler colonial states.

The treaty relationship underpins the broad argument that is made by historians of the colonial encounter, which holds that the first contacts between Indigenous people and colonial powers were governed by law, and therefore ‘potentially just’. As Eliga Gould has argued, Europeans claimed that their war and diplomacy was defined by a ‘propensity to temper the question for power with the rule of law’.<sup>249</sup> They recognised that colonial legal spaces were ‘law bound’, and this inflected their relation with Native Americans. However, an initial period of orderly and peaceful interaction was disrupted by settler colonial processes: the pursuit of land, racial exclusion, and the creation of regimes of domination.<sup>250</sup> That historical account underpins the juridical history of colonialism, and serves as the framework for discussion of Indigenous rights. However, that historically grounded framework is more applicable to the Canadian context than in the United States.<sup>251</sup> In the post-revolutionary republic, the framers of the Constitution and the Justices of the Supreme Court struggled with the question of whether Indian polities were sovereign, or – like the British colonies – ‘domestic dependent nations’. This question persists in contemporary legal debates about, for example, the relationship between tribal and non-tribal governments, or the jurisdiction of the former over non-Indigenous peoples.<sup>252</sup>

<sup>248</sup> Tully, *Public Philosophy in a New Key*, vol. 1, p. 226.

<sup>249</sup> Eliga Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Harvard, 2012), pp. 16–17.

<sup>250</sup> Ian Hunter, ‘Vattel in Revolutionary America: From the Rules of War to the Rule of Law’, in *Between Indigenous and Settler Governance*, ed. Lisa Ford & Tim Rowse (Routledge, 2013), p. 12.

<sup>251</sup> Colin G. Calloway, ‘The Proclamation of 1763: Indian Country Origins and American Impacts’, in *Keeping Promises*, pp. 33–48.

<sup>252</sup> Gould, *Among the Powers of the Earth*, p. 3; Jay Gitlin, ‘Private Diplomacy to Private Property: States, Tribes and Nations in the Early National Period’. *Diplomatic History* 22 n. 1 (1998), 65, 69, 94, 99; Delay, ‘Indian Polities’, 934; N. Bruce Duthu, *American Indians and the Law* (New York, 2008).

The common law tradition alone, argues Paul McHugh, provided the means by which Indigenous claims to sovereignty and territory were vindicated. The basis for these rights was not an inherent claim that derived from a pre-colonial condition of sovereignty, but rather from the ‘legalism’ of the British Crown’s relations with Indigenous peoples within territories that it claimed as part of its overseas imperial domains.<sup>253</sup> In that sense, the treaty relationship expressed in the Covenant Chain is also a ‘constitutional relationship’ that, argues Mark Walters, ‘seeks *right* in its broadest sense’.<sup>254</sup>

The Covenant Chain alliance between the Crown and the Iroquois fits within this framework, but not entirely. That lack of fit is rooted in the fact that the common law was municipal in its orientation, and early legal theorists argued that it ‘meddles with nothing that is done beyond the seas’. Within the framework of England’s unwritten constitution, the capacities of war, peace, and treaty were part of the ‘extra-ordinary’ powers of the Crown.<sup>255</sup> Given that distinction, treaty relationships with Indigenous peoples were not originally within the ambit of the common law. Instead, in the Crown’s American dominions, Indigenous peoples were either recognised as independent nations or ‘protected’ peoples, in the sense that the Crown prohibited its colonial subjects from violating the territorial sovereignty of Indigenous nations. Within this pluralist model, Native polities retained their ‘customary’ political organisation, and were acknowledged as sovereign within the treaty process.<sup>256</sup>

The Proclamation of 1763 and the Treaty of Niagara (1764) are emblematic of this position, and continue to serve as points of historical orientation in legal discussions of Indigenous sovereign claims. More than this, for Native peoples – particularly the First Nations peoples of Canada – what appear to be laws imposed by an imperial power are actually expressions of a historic and still living and ‘right’ relationship that continues to structure relations between tribal governments and the symbolic ‘Crown’ in Canada.<sup>257</sup> However, the Proclamation in particular contains elements that jar with this vision. The Crown, employing a version of plenary power over Indian affairs, exercised the sole right of ‘pre-emption’, and stipulated that newly acquired territories

<sup>253</sup> Paul McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-Determination* (Oxford, 2004), p. 1.

<sup>254</sup> Mark D. Walters, ‘Rights and Remedies within Common Law and Indigenous Legal Traditions: Can the Covenant Chain be Judicially Enforced Today?’, in *Right Relationship*, p. 191.

<sup>255</sup> MacMillan, *Sovereignty and Possession*, pp. 33, 30–1.

<sup>256</sup> McHugh, *Aboriginal Societies*, p. 103.

<sup>257</sup> John Borrows, ‘Canada’s Colonial Constitution’, in *Right Relationship*, pp. 17–38; Penelope Edmonds, *Settler Colonialism and (Re)conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings* (Palgrave, 2016), ch. 1; *Keeping Promises*, chs. 5, 7; Mark D. Walters, ‘Brightening the Covenant Chain: Aboriginal Treaty Meanings in Law and History after Marshall’. *Dalhousie Law Journal* 75 (2001), 88, 89.

would be granted rent-free to military personnel: 5,000 acres for officers, 50 for privates. All Indigenous lands were effectively annexed to the Crown's domains, and 'reserved' to the nations that occupied those domains under the 'Sovereignty, Protection, and Dominion' of the Crown.<sup>258</sup> The Proclamation contains both the elements of the Indigenous 'Magna Carta' and the embryo of removal, reservations, and forced acculturation.

Tully's second plane, the colonial relationship, is where settler colonialism is positioned. But if the treaty process contains a juridical history of colonialism, what work does the political history of colonialism do in relationship to current claims to sovereignty and territory? These are tangibly political things, but it is striking that it is difficult to place settler colonialism within understandings of Anglophone political thought. These understandings are concerned with topics such as 'natural jurisprudence', defined by the possession of rights, and classical republicanism, defined by the capacity for civic action.<sup>259</sup> Settler colonialism needs to be fully recovered as a coherent strand of thought within Anglophone political discourse to the extent that it sits alongside established paradigms that constitute coherent strands of political thought. For instance, it is evidently concerned with power and law, and is underpinned by normative questions of rights and justice as they pertain to the rightful ownership of land, and the right of self-defence. From a theoretical standpoint, it was conceived narrowly as a form of colonialism and a system of power that is wholly concerned with the 'elimination' and 'replacement' of Indigenous spaces, and sometimes also with casting off imperial claims to jurisdiction over settlers themselves. A rapidly proliferating body of scholarship is adding complexity and dimension to these topics. It is in this sense that the American Revolution has been described as the first 'full-throated expression of settler colonial ideologies'. On this view, settlers ultimately pursue a framework of independent government that eliminates legal pluralism and establishes exclusive territorial claims.<sup>260</sup>

These capacities of sovereignty and self-government are central to some theoretical accounts of the ownership of territory. For instance, Louis Hartz, in common with many early modern commentators who subscribed to a doctrine of 'empty land', claimed America was 'virgin ground' on which to build a liberal order of government.<sup>261</sup> Subsequent generations of theorists have sought to recover and integrate the history of territorial dispossession into the debate on

<sup>258</sup> Brigham, *Royal Proclamations*, pp. 215, 216.

<sup>259</sup> Mark Goldie, 'The Ancient Constitution and the Languages of Political Thought'. *The Historical Journal* 62 n. 1 (2019), p. 5.

<sup>260</sup> Gregory Evans Dowd, 'Indigenous Peoples without the Republic'. *The Journal of American History* 104 n. 1 (2017), p. 22; Ford, *Settler Sovereignty*, ch. 1.

<sup>261</sup> Kevin Bruyneel, 'The American Liberal Colonial Tradition'. *Settler Colonial Studies* 3 n. 3–4 (2013), 314.

territorial rights, but a persistently statist inflection in this work has tended to obscure the colonial and imperial processes of territorial formation.<sup>262</sup> Similarly, the centrality of Lockean ideas to articulations of *both* early American settler political thought and property formation, and contemporary liberal accounts of territory had the effect of diluting the violence of colonialism within a benign formulation of the rightful occupation of land based on labour or purchase.<sup>263</sup>

A possible way forward is to approach Tully's concepts of colonialism and treaty less in terms of a binary pairing, but as part of a process where relationships of alliance were also relationships of power. A suggestive model for the shift back to colonialism is evident in recent work on the character of federalism and the paradigm of Indian law that exists within federal jurisprudence. Recent work has shown the extent to which creedal narratives of the American founding that emphasise republican values and the gradual self-fulfilment of the ideals of the Revolution are gradually giving way to a broad paradigm of colonialism that is embedded in modern legal and constitutional orders.<sup>264</sup> That shift is alert to the ways in which the colonial and imperial posture of the early American state was shaped in the course of both peaceful and violent interactions with Native polities.<sup>265</sup>

In her important reframing of American history, Roxanne Dunbar-Ortiz argues that the principal challenge for scholars crafting new narratives of American history 'in the context of colonialism' is not a question of sources or methodology, but rather 'the fundamental problem is the absence of the colonial framework'.<sup>266</sup> The question is: what was this colonial framework? If we take the settler colonial model as it has been (sparingly) applied to what is now 'early' – as opposed to 'colonial' – American history, then the framework consists narrowly of the violent annexation of Indian land and the 'genocide' of Indian people. But that is simply one aspect of the colonial experience of North

<sup>262</sup> Burke A. Hendrix, 'Memory in Native American Land Claims'. *Political Theory* 33 n. 6 (2005), 774; David Miller, 'Territorial Rights: Concept and Justification'. *Political Studies* 60 (2012), 259.

<sup>263</sup> Yirush, *Settlers, Liberty, and Empire*, pp. 12–13, 21–4, 131–2; Fitzmaurice, *Sovereignty, Property and Empire*, ch. 5; Jack Greene, 'The American Revolution'. *American Historical Review* 105 n. 1 (2000), 93–102; Moore, *Political Theory of Territory*, ch. 3; Cara Nine, 'A Lockean Theory of Territory'. *Political Studies* 56 (2008), 148–65; Bas Van der Vossen, 'Locke on Territorial Rights'. *Political Studies* 63 (2015), 713–28; David Miller, 'Lockeans versus Nationalists on Territorial Rights'. *Politics, Philosophy & Economics* 18 n. 4 (2019), 323–35.

<sup>264</sup> Blackhawk, 'Federal Indian Law', p. 1804; Aziz Rana, 'Constitutionalism and Colonial Memory'. *5 U. C. Irvine Law Review* 263 (2015), 263–88; Gregory Ablavsky, 'The Savage Constitution'. *Duke Law Journal* 63 n.5 (2014), 999–1089; Gregory Ablavsky, 'Empire States: the Coming of Dual Federalism'. *128 Yale Law Journal* 1792 (2019), 1792–1868.

<sup>265</sup> Frymer, *Building an American Empire*, chs. 2–3; Pekka Hämäläinen, *Lakota America: A New History of Indigenous Power* (Yale, 2019), chs. 1–4.

<sup>266</sup> Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (Boston, 2014), p. 7.

America. The colonial framework has to include the British imperial state, its mechanisms of rule, its laws and constitutions, the structures of plantation slavery and the wider systems that supported it, as well as the role of the Privy Council and Board of Trade in shaping colonial policy. It would also need to situate the powers of colonial governments in relation to the imperial state, and particularly those instances where local sovereignty was retained – sometimes in explicit contravention of imperial policy and directives – over land, law, and diplomacy. And finally, the very phrase ‘colonial framework’ implies a kind of rationalised organisation, a plan, that is hard to recognise over two and a half centuries of British imperial activity in the American east. Such continuities, as historians have discovered, relate exclusively to ideological debates within a common law–structured imperial constitution, which in turn furnish the basis for studies of the ideological origins of the American Revolution.

If there was a framework of ‘colonial’ America, a period that ends with Independence in 1776, then it was shaped by diplomacy. Structured relations between Native Americans and representatives of imperial and colonial powers is a field that historians of political thought have tended to overlook. There is no doubt that individual settlers waged attacks on Indians, but to focus purely on this overlooks the much more complex and prevalent context of relations of war, peace, alliance, and commerce between Indian nations and Anglophone colonial and imperial powers. This leads to a second point, that the frameworks of power relations in early America were the product of the interaction of ‘nodes’ – the Crown, colonies, Indian social formations – with settlers positioned within and between these nodes.

The historical context that I have traced here provides some necessary correctives to these accounts. The first is that the political languages employed by Anglophone writers and speakers in the early American context did not exist in neatly sealed paradigms inflected by common law constitutionalism, civic humanism, or Lockean theories of property. David Armitage’s apt characterisation of the ‘peculiar political arena’ in which ideas of internationalism gestated was also the local site of a complex metaphorical and historical exchange of commensurate languages of law, power, and alliance.<sup>267</sup> Diplomatic transactions between Native and Anglophone diplomats were carried out with a scope and intensity that profoundly shaped political relationships in the American interior and between colonies and the imperial centre. For too long, studies of colonial political thought have attended to a single set of voices, assuming that

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<sup>267</sup> Armitage, *Foundations of Modern International Thought*, p. 7.



colonialism as a project overlaid and largely erased Indigenous epistemologies, rather than being infused by them.

Second, if we accept that diplomatic encounters were the principal forum for the discussion of intercultural relations across a set of imperial inter-polity zones, then it follows that some core political concepts – sovereignty, for one; territory, for another – need to be regrounded in contexts other than those dominated by ‘the state’. Lauren Benton has alerted us to the fact that formerly fixed concepts like sovereignty become ‘contingent’ and ‘fluid’ in imperial locations.<sup>268</sup> Much has been written about the struggle for sovereignty within empire, but the contexts briefly sketched here reveal a further dimension of negotiation of sovereignty as a shared power that is not structured by the precepts of an external body of law, but rather by the intercultural alliance of the Covenant Chain. In the Iroquois perspective, Europeans did not extend sovereign powers over them, but were drawn into Indigenous networks of power, kinship, exchange, and alliance. Likewise, while the logic of colonial charters and cognate *de jure* claims to sovereignty emphasised bounded lines of property, Native territoriality was mobile and kinetic: sovereignty was not fixed, either as a concept or as a set of powers applied within a defined territory.<sup>269</sup>

Finally, this work has challenged the assumptions of ‘foundational’ theoretical accounts of settler colonialism. The concept of the ‘elimination’ of the Native has the effect of erasing the possibility of Indigenous presence in the present, except as refracted through colonialism. In that sense, ‘classic’ settler colonialism’s historical erasures risk eliminating the layers of historical experience that it claimed to illuminate. What is more, it sidesteps the challenge of contending with the prevalence of Native resilience in the past, and the continuing relevance of that past to the self-understanding of Indigenous communities within post-colonial liberal democracies where there is no clear break between colonial and post-colonial moments.<sup>270</sup> The settler colonialism we have now is more nuanced around the proposition that it is concerned with the ‘political and geographic contexts in which the settlers never left’.<sup>271</sup> But it is also the case that settler presence has not succeeded in obscuring the Indigenous landscape. Land acknowledgements serve as important public reminders that Indigenous communities view the land as a ‘cultural and moral space’, a place of layered

<sup>268</sup> Benton, ‘Made in Empire’, p. 474, 475.

<sup>269</sup> Kent McNeil, ‘Factual and Legal Sovereignty in North America: Indigenous Realities and Euro-American Pretensions’, and Richard Pennell, ‘Sovereignty Negotiated from Below and Above: Native Personalities and European Law’, in *Sovereignty: Frontiers of Possibility*, ed. Julie Evans, et al. (University of Hawai‘i Press, 2013), pp. 37–59 & 136–62.

<sup>270</sup> Kirsty Gover, ‘Settler-State Political Theory, ‘CANZUS’ and the UN Declaration on the Rights of Indigenous Peoples’, in *The European Journal of International Law* 26, n. 2 (2015), 345–73

<sup>271</sup> Carey & Silverstein, ‘Thinking With and Beyond Settler Colonial Studies’, p. 1.

histories and stories that connect past and present.<sup>272</sup> The inescapable facts of colonial violence and dispossession – paired with abundant examples of nation-to-nation relationships and Indigenous resilience and survival – are not alternate routes into the past but part of the same complex history. Those who gathered around council fires on the American Northeast knew this all too well.

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<sup>272</sup> Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (Oxford, 2007), ch. 1; Lisa Brooks, 'Awikhighawôgan ta Pildowi Ôjmowôgan: Mapping a New History'. *William and Mary Quarterly* 75 n. 2 (2018), 265, 277; Mac Chapin, Zachary Lamb, and Bill Threlkeld, 'Mapping Indigenous Lands'. *Annual Review of Anthropology* 34 (2005), 619–38; Anna J. Willow, 'Doing Sovereignty in Native North America: Anishinaabe Counter-Mapping and the Struggle for Land-Based Self-Determination'. *Human Ecology* 41 n. 6 (2013), 871–84; Christine M. DeLucia, *Memory Lands: King Philip's War and the Place of Violence in the Northeast* (Yale, 2018); Chad Anderson, *The Storied Landscape of Iroquoia: History, Conquest, and Memory on the Native Northeast* (University of Nebraska Press, 2020).

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## Elements in Comparative Political Theory

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