Against the Law: Indigenous Feminism and the Nation-State

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Abstract

The Native feminist theorizing advocated in this article points to the importance of looking at Native organizing and Native Studies - and by extension ethnic studies as well - as going beyond an intellectual commitment to a politics of multicultural representation. Native feminisms must be oriented less toward questions of representation and more toward questions that interrogate the material conditions that Native women face as subjects situated within a nexus of patriarchy, colonialism, and white supremacy.

Introduction

A good number of non-white women have addressed the women’s movement and decried the fact that we are outside the women’s movement. I have never felt outside of that movement... I have never felt that the women’s movement was centered or defined by women here in North America. That the white women of North America are racist and that they define the movement in accordance with their own narrow perspective should not surprise us... We are part of a global movement of women in the world, struggling for emancipation. The world will define the movement. We are part of the women who will define it... I represent the future of the women in North America, just as any other woman does. That white women only want to hear from me as a Native and not as a voice in the women’s movement is their loss.

-- Lee Maracle²

As Sandy Grande notes, Native Studies is often confined (both by Native and non-Native scholars) to the realm of cultural representation. She asks: “How has this preoccupation [with cultural representation] obscured the social and economic realities facing indigenous communities, substituting a politics of representation for one of radical social transformation?”³ And as Elizabeth Cook-Lynn argues, Native Studies is not seen as an intellectual project with its own integrity that has broader ramifications. Thus, the key questions often posed in Native Studies are, what is indigeneity? What is Indian identity? Such questions

often derail Native Studies into essentializing discourses about indigenous cultures and/or epistemologies.

These trends in turn negatively impact the development of Native feminist theory. First, many works still rely on essentializing claims that Native women cannot be feminists, thus erasing the diversity of thought that exists within both scholarly and activist circles. Second, to the extent that scholars do engage Native feminism, they do so almost solely to demonstrate the racism of white feminism. Such rhetorical strategies limit Native women to a politics of inclusion - let us include Native women in feminist theory (or if we do not think that they can be included, let us reject feminist theory completely). This politics of inclusion inevitably presumes that feminism is defined by white women.

However, if we use Lee Maracle’s above quotation as a starting point, we begin to move from a politics of inclusion to a politics of re-centering. That is, if we were to situate Native women at the center of feminist theory, how would feminist theory itself change? Such a project moves from a narrowly-defined identity politic that ascribes essential characteristics to indigenous womanhood to a revolutionary politic emerging from the nexus of indigenous praxis and the material conditions of heteropatriarchy, colonialism, and white supremacy. Indigenous feminist theory, contrary to what even some Native scholars argue, is not simply a multicultural add-on to “white” feminist theory (which itself is varied and complex). Rather, the theorizing produced by Native women scholars and activists make critical and transformative interventions into not only feminist theory, but into a wide variety of theoretical formations. In this essay, I will not provide an exhaustive account of these interventions because these interventions are the work of collective thought and organizing. Instead, I will focus on Native feminist theorizing about nationalism, the nation-state, and sovereignty in order to demonstrate the significance of Native feminist theory for anyone who engages in political theorizing and activism.

Beyond the Nation-State

Post 9/11, even radical scholars framed George Bush’s policies as an attack on the U.S. Constitution. According to Judith Butler, Bush’s policies were acts against “existing legal frameworks, civil, military, and international.” Amy Kaplan similarly described Bush’s policies as rendering increasingly more peoples under U.S. jurisdiction as “less deserving of ... constitutional rights.” Thus, Bush’s strategies were deemed a suspension of the law. He was said to be eroding U.S. democracy, eroding civil liberties. Under this framework, progressives overwhelmingly called on the state to uphold the law, defend U.S. democracy, and protect civil liberties.
The question this poses, however, is what are we to do with the fact that, as Native scholar Luana Ross notes, genocide has never been against the law in the U.S.? On the contrary, Native genocide has been expressly sanctioned as law. And, as legal scholar Sora Han points out, none of these post-9/11 practices are actually extra-constitutional or extra-legal. In fact the U.S. Constitution confers the right of the state to maintain itself over and above the rights of its citizenry.

I suggest that a Native feminist analysis could be used to read Judith Butler’s Gender Trouble against her and other scholars’ analysis of Bush’s policies. In Gender Trouble, for example, Butler explicitly challenges theorists who posit a naturalized, prediscursive sexed body as the foundation by which to critique contemporary heteropatriarchal practices. She argues that theorizing a prediscursive body necessarily means that the body cannot be prediscursive and hence its account cannot be made outside of prevailing power relations within a specific discursive economy. But positing the body as prediscursive allows the theorist to disavow her or his political investments because the theorist is supposedly rendering an account of the body prior to power relations. Butler’s critique could then be more broadly applied to a critique of “origin stories.” That is, when we critique a contemporary context through an appeal to a prior state before “the fall,” we are necessarily masking power relations through the evocation of lost origins. “The self-justification of a repressive ... law almost always grounds itself in a story about what it was like before the advent of the law.... The fabrication of those origins . . . thereby justifies the Constitution of the law... making the constitution of the law appear as a historical inevitability.”

In many radical critiques of America’s war on terror, the U.S. constitution serves as an origin story - it is the prior condition of “democracy” preceding our fall into “lawlessness.” The Constitution’s status as an origin story then masks the genocide of indigenous peoples that constitutes its foundation. Certainly, Native feminism should provide a critical intervention into this discourse because the U.S. could not exist without the genocide of Native peoples - genocide is not a mistake or aberration of U.S. democracy, it is foundational to it. As Sandy Grande states:

The United States is a nation defined by its original sin: the genocide of American Indians.... American Indian tribes are viewed as an inherent threat to the nation, poised to expose the great lies of U.S. democracy: that we are a nation of laws and not random power; that we are guided by reason and not faith; that we are governed by representation and not executive order; and finally, that we stand as a self-determined citizenry and not a kingdom of blood or aristocracy... From the perspective of American Indians,
“democracy” has been wielded with impunity as the first and most virulent weapon of mass destruction.\textsuperscript{13}

Thus, the nation-state, particularly the U.S., is not a bastion of freedom, from which some of its ideals were being eroded under the Bush regime - rather the Bush regime was in fact the fulfillment of the ideals of U.S. democracy. Rather than uphold the law, indigenous feminism demands that progressives work against the law.

\textbf{Rethinking Sovereignty and Nationalist Struggle}

In these “postcolonial” times, terms such as “sovereignty” and “nation” have gone out of fashion within the context of cultural studies, postcolonial theory, political theory, feminist theory, etc. Nationalism and sovereignty, it is suggested, inevitably lead to xenophobia, intolerance, factionalism, and violence. All sovereignty or nationalist struggles, it seems, are headed down that slippery slope towards the ethnic cleansing witnessed in Bosnia.\textsuperscript{14} The reason: so-called “ethnic” nationalisms\textsuperscript{15} generally have a “drive for cultural homogeneity and purity.”\textsuperscript{16} If, as Etienne Balibar states, racism is “a supplement of nationalism or more precisely a supplement internal to nationalism, always in excess of it but always indispensable to its constitution,”\textsuperscript{17} then one cannot conceive of a nationalist project that is not based on racial apartheid. Conveniently, academics that live in countries that are not being colonized and who are thus able to exercise sovereignty, suddenly decide that the nations that continue to be colonized and from whose colonization they continue to benefit – for example, indigenous nations – should give up their claims to nationhood and sovereignty. The assumptions behind some of these analyses are that nations can be equated with nation-states or that the end goal of a national liberation struggle must be the attainment of a state or state-like form of governance.\textsuperscript{18}

Of course terminology may differ greatly from theorist to theorist. For instance, Anthony Smith argues that nations are quite distinct from nation-states and that there actually very few nation-state states, since most encompass several nations.\textsuperscript{19} Thus, most states are actually “multicultural” or “multinational” states. However, I would argue, borrowing from David Kazanjian and Elizabeth Povinelli, that even the liberal multicultural state is still a nation-state that disavows its nationalist project - a nationalism based on white supremacy, for instance, in the United States.\textsuperscript{20} Further, while distinguishing between nation and nation-states, such theorists do not seem to proffer an alternative to “nations” other than to become “nation-states” or live under a multicultural state. However, as theorists as diverse as Richard Day, John Holloway and Taiaiake Alfred have argued, the
nation-state (or multicultural state) is itself a form of governance based on social hierarchy, domination, violence and coercion.\[^{21}\] It is this form of governance (whatever a theorist might term it) that is assumed to be either desirable or inevitable by those who generally condemn nationalist struggle as inherently destructive.

In addition, many postcolonial and transnational feminist theorists contend that “the nation-state is no longer an appropriate socioeconomic unit for analysis.”\[^{22}\] When the question of the nation-state is not put on the table, critics tend to implicitly theorize while presuming the givenness of the colonial nation-state. Take Gayatri Spivak’s work as an example. She argues:

> Let us learn to distinguish between internal colonization... the patterns of exploitation and domination of disenfranchised groups within a metropolitan country like the United States ... and the colonization of other spaces.\[^{23}\]

Essentially, Spivak uses internal colonization as a substitute for racial hierarchy within the U.S. and then presumes the status of indigenous peoples can be subsumed within this logic. The dispossession of indigenous lands becomes naturalized because their colonization is not what Spivak describes as “pure” colonization. Essentially, this analysis again presumes the legitimacy of the U.S. as a settler colonial state that simply has to address the problems of “oppressed minorities within its borders.”\[^{24}\] She further argues that it “must” be the goal for indigenous peoples to seek inclusion within the state polity that houses them. This is not to invalidate the contributions of Spivak for the development of Native feminist theory. However, throughout A Critique of Postcolonial Reason Spivak rather specifically does not allow for any political vision for indigenous sovereignty that is not captured by the colonial state apparatus. I suggest that a Native feminist analysis could, as with Butler, read Spivak against Spivak. In A Critique of Postcolonial Reason Spivak provides a broad-ranging literary, historical and philosophical analysis which demonstrates how the “third world woman” consistently serves as the silent Native informant that buttresses Western imperialist discourse. Similarly, we could argue that the Native peoples become the subalterns that normalize the colonial state within Spivak’s work.

Native feminism provides a helpful vantage point from which to destabilize normative notions of nations and nation-states. That is, the colonial context under which indigenous women live provides them an opportunity to critically interrogate the contradictions between the U.S. articulating itself as a democratic country on one hand, while simultaneously founding itself on the past and current genocide of Native peoples on the other. When we do not presume that the U.S. should or will always continue to exist, we create the
space to reflect on what a just form of governance might look like, not only for Native peoples, but for the rest of the world.

Any cursory examination of the field reveals that many Native women activists have begun articulating spiritually-based visions of nation and sovereignty which challenge the nation-state form. Whereas nation-states are governed through domination and coercion, indigenous sovereignty and nationhood is predicated on interrelatedness and responsibility. These models of sovereignty are not based on a narrow definition of nation which would entail a closely bounded community and ethnic cleansing. Take, for example, the following distinction made between a chauvinistic notion of “nationalism” versus a flexible notion of “sovereignty”:

To me, nationalism is saying our way is the only right way... [whereas] a real true sovereignty is a real, true acceptance of who and what’s around you. Sovereignty is what you do and what you are to your own people within your own confines, but there is a realization and acceptance that there are others who are around you. And that happened even before the Europeans came, we knew about the Indians. We had alliances with some, and fights with some. Part of... sovereignty was that acceptance that they were there.  

This approach to sovereignty also coincides with a critique of western notions of land as property. For instance, Patricia Monture-Angus contends that indigenous nationhood is not based on control of territory or land, but is instead founded on relationship and responsibility for land. Although Aboriginal Peoples maintain a close relationship with the land... it is:

not about control of the land... Earth is mother and she nurtures us all... it is the human race that is dependent on the earth and not vice versa....

Sovereignty, when defined as my right to be responsible... requires a relationship with territory (and not a relationship based on control of that territory).... What must be understood then is that Aboriginal requests to have our sovereignty respected is really a request to be responsible. I do not know of anywhere else in history where a group of people have had to fight so hard just to be responsible.

It is largely within the realm of state-sanctioned legal and cultural battles for recognition that Native peoples are forced to argue for their right to control their land base. That is, in order to fight encroachments on their lands, indigenous peoples are forced to argue in courts that it is “their” land. What they cannot
question within this system is the presumed relationship between peoples and land. That is, should land be a commodity to be controlled and owned by peoples? While such short-term judicial strategies may be necessary at times, it would be a mistake to presume that this is the most beneficial long-term political goal for Native peoples. As Glen Coulthard notes, the subjectifying terrain of this battle for recognition can make Native peoples forget that they have alternative genealogies for their relationship to land, relationships based on respect for land rather than control over territory, genealogies that fundamentally question nation-state forms of governance with are premised on control, exclusivity, domination and violence. Coulthard writes:

[The] key problem with the politics of recognition when applied to the colonial context... [is that it] rests on the problematic assumption that the flourishing of Indigenous peoples as distinct and self-determining agents is somehow dependent on their being granted recognition and institutional accommodation from the surrounding settler-state and society... [Within in this scheme.] not only will the terms of recognition tend to remain the property of those in power to grant to their inferiors in ways that they deem appropriate, but also under these conditions, the Indigenous population will often come to see the limited and structurally constrained terms of recognition granted to them as their own. In effect, the colonized come to identify with “white liberty and white justice.”

**Indigeneity as Borderlands**

Many indigenous nation-building projects represent a direct intervention against pro-nation-state models of governance built on exclusion and chauvinism. These theories situate indigeneity as flexible, shifting, and inclusive. Borderlands theory, which often situates the borderlands as the place of change, indeterminacy, and flux, is frequently contrasted with indigeneity, which is seen as static, unchanging and inflexible. Viewed from this angle, indigeneity is posited as a tributary to the new and improved mestizo identity. Below I want to briefly problematize the alignment of indigeneity with stasis and simplicity by some proponents of borderlands theory.

Gloria Anzaldúa’s *Borderlands*, the foundational text on borderlands theory, situates Indians and Europeans in a dichotomous fashion, a dichotomy that can be healed through *mestizaje*. To accomplish this Indian culture must be posited has having “no tolerance for deviance”. This intolerance is then contrasted with the “tolerance for ambiguity” that mixed-race identities “necessarily possess.” Thus a rigid, unambiguous Indian becomes juxtaposed unfavorably.
to the mestiza who “can’t hold concepts or ideas in rigid boundaries.” This theme is continued in Sonia Saldivar-Hull’s reading of Anzaldua where she describes mestizo identity as one that is “empowered to embrace an indigenous heritage” while breaking “down dualisms.” This articulation presumes that indigenous identity constitutes a premodern precursor to mestizo identity. According to Saldivar-Hull, “New mestiza consciousness illuminates how to enact a (border) crossing from marginalized other to whole woman who constantly shifts, crosses, and gains power from contradiction and ambiguity.”

From this vantage point, indigenous women are implicitly posited as non-“whole” – as subjects who supposedly do not live and work though contradiction and ambiguity as well. This tendency is also apparent within the “mixed-blood” discourse within Native Studies, in which “mixed-blood” identity attains a teleological status as the new and improved indigenous identity, as though indigenous identity in and of itself is incapable of addressing the challenges and complexity of contemporary life. As Maria Josefina Saldana-Portillo argues: “We can no longer uncritically celebrate mestizaje [and I would argue mixed-bloodedness] in Chicana/o and other social formations as a positionality of radical, postmodern hybridity but must recognize it is a racial ideology with its own developmentalist history.” In such formulations we see indigenous peoples not only posited as more primitive, but also as less complicated than those situated at the “borderlands.

De-Essentializing “Tradition”

Positing Native nations as places of change and indeterminacy is also important for addressing heteropatriarchy within Native nationalisms. That is, Native women are often told (even by other Native women) that Native feminism is not “traditional.” This mantra speaks to the politics of who defines what is tradition. Consider Lakota Harden’s story:

In trying to piece together our history, and our stories, and our legends, it seems that much of what we remember has actually been tainted and changed by colonization. We do not actually remember what happened before colonization because we were not there. So we have to ask ourselves, how much of what we think is tradition was really originally ours; and how much of it is Christian-influenced? Knowing how powerful Native women are now, how could we have ever accepted anything less then? How could we have let ourselves be ignored or degraded? I’m not saying that I know, because I don’t. But those questions have brought me to wonder how much of [what is professed as] tradition is really ours, and how much does that even matter?
I remember at our school, all us were preparing a sweat lodge in our backyard. Our backyard was huge, the plains. And I remember one of the boys saying, “Women can never carry the pipe.” “Women never used to do this or that.” (Now I realize that all of this comes from Christianity). And I remember feeling very devastated because I was very young then. I was trying to learn these traditions. I was quite the drama queen and going to the trailer and my aunt was making bread or something. “Auntie, this is what they’re saying!” She said, “Well you know, tradition, we talk about being traditional. What we’re doing now is different. When we talk about trying to follow the traditions of say our ancestors from 100 years ago, it’s probably different from 300 years ago. If when the horses came, what would have happened had we said, “Oh we don’t ride the four-legged, they are our brother. We respect them; we don’t ride them?” Where would we be? Hey man, we found those horses and we became the best horse riders there ever were…. So tradition is keeping those principles, the original principles about honoring life all around you. Walk in beauty is another interpretation. Respecting everything around you. Leave the place better than you found it. Those were the kind of traditions that we followed. But they change as we go along.”

And in a few minutes [after talking to my Auntie], then I went back to the room. Now, being a pipe carrier means that you don’t drink alcohol, you don’t smoke marijuana, you don’t take drugs, you don’t fight with people, and you don’t abuse anyone. And I was really trying to follow that because that’s what my uncle taught me. So I went to the middle of the room, and I said to the guys in the room, “I want everybody here who is following the tradition, who has given up the things I just named to stand here in the circle with me.” And no one did. I said that until this circle is filled with men, when it’s filled with men, I’ll do something else like learn to cook. But until then, there has to be someone standing here doing this, and if you’re not going to do it, I will. And no one ever said anything to me or anything about women not doing these things ever, at least from that group.36

A similar concern animates Lee Maracle’s query: Is “tradition” an Indian tradition? At the 2005 Native Women and Feminism conference in Edmonton, Alberta, some participants argued that feminism was not “traditional.” To this Maracle replied: “Who defines what is traditional?” She then went on to
describe how her tribe had a system of slavery prior to colonization, but then abolished the system. So what is traditional in her tribe, she asked -- slavery, or the abolition of slavery? Maracle then suggested that prior to colonization tribes always adapted to changing circumstances. So, is our current relationship to “tradition,” actually traditional? Or is it the product of colonialism in which any change can seem threatening? Here, Judith Butler’s previously described critique of origin stories is a helpful contribution for Native feminist theory. That is, the appeal to “tradition” often serves as the origin story that buttresses heteropatriarchy and other forms of oppression within Native communities by disavowing its political investments.

Non-Heteronormative Nationalisms

Jennifer Denetdale’s work does an excellent job deconstructing this “tradition-as-origin-story” paradigm, going so far as to argue that Native communities reproduce a heteronormative, Christian Right agenda in the name of “tradition.” Denetdale critically interrogates the gendered politics of remembering “tradition” in her germinal analysis of the office of Miss Navajo Nation. Denetdale notes that this office is strictly monitored by the Navajo Nation to ensure Miss Navajo models embody “‘traditional’ Navajo women’s purity, mothering and nurturing qualities, and morality [which] are evoked by the Navajo Nation to extol Navajo honor and are claimed on behalf of the modernizing project of nationalism.” Denetdale notes that “when Miss Navajo Nation does not conform to the dictates of ideal Navajo womanhood, she is subjected to harsh criticism intended to reinforce cultural boundaries. Her body literally becomes a site of surveillance that symbolically conveys notions about racial purity, morality, and chastity.” Meanwhile male leaders, who may be guilty of everything from domestic violence to embezzlement are rarely brought before any tribal committees. She argues that the ideals that Navajo women are supposed to represent are not simply “traditional” Navajo values, but also unacknowledged European Victorian ideals of womanhood. She asserts: “Navajo leaders, who are primarily men, reproduce Navajo nationalist ideology to re-inscribe gender roles based on Western concepts even as they claim that they operate under traditional Navajo philosophy.”

Thus many indigenous feminists are challenging how we conceptualize indigenous sovereignty - it is not an add-on to the heteropatriarchal sovereignty model associated with the state-form. First, as I have argued elsewhere, the notion that we can separate gender justice from sovereignty struggles does not take into consideration the fact that it is precisely through gender violence that colonialism and white supremacy works. Gender violence operates to not only destroy indigenous peoples, but to destroy their sense of being a people. Gender violence also inscribes patriarchy onto the bodies of Native peoples, thus naturalizing social hierarchy and colonial domination. That is, patriarchy is
the logic that naturalizes social hierarchy. Just as men are supposed to naturally dominate women on the basis of biology, so too should the social elites of a society naturally rule everyone else through a nation-state form of governance that is constructed through domination, violence, and control.

Conclusions

The Native feminist theorizing advocated here points to the importance of looking at Native organizing and Native Studies - and by extension ethnic studies as well - as going beyond an intellectual commitment to a politics of multicultural representation. As Povinelli has so aptly demonstrated, the liberal state depends on a politics of multicultural recognition that includes “social difference without social consequence.”39 She further argues:

These state, public, and capital multicultural discourses, apparatuses, and imaginaries defuse struggles for liberation waged against the modern liberal state and recuperate these struggles as moments in which the future of the nation and its core institutions and values are ensured rather than shaken.40

Native feminisms must be oriented less toward questions of representation and more toward questions that interrogate the material conditions that Native women face as subjects situated within a nexus of patriarchy, colonialism, and white supremacy. That is, as Kimberle Crenshaw would say, what difference does the difference Native women represent make?41 And as we have seen, the colonial condition that Native women are forced to navigate have compelled many to think beyond the heteropatriarchal nation-state in our vision of liberation for everyone. And by extension, ethnic studies could be seen as a coalitional intellectual and political project designed to dismantle the multiple logics of white supremacy and colonialism, which necessarily requires a critique of the heteropatriarchal state as central to this project if we are not to, as Denetdale warns us, inadvertently reinscribe a neo-colonial project in the name of sovereignty or racial justice.
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Op. Cit., Grande, (pp. 31-2).


I would not characterize indigenous nationalism as ethnic, but the critiques of nationalism generally collapse indigenous nationalism into ethnic nationalism.


For instance, Mark Beissinger argues that a nation whose existence is not affirmed through "state action" "can hardly be said to exist. Beissinger, Mark How Nationalisms Spread - Eastern Europe Adrift the Tides and Cycles of Nationalist Contention. In Op. Cit., Spencer and Wollman, (p. 264).


Ibid., (p. 360).

Interview with author, Quito, Ecuador, March 15, 2001,


Ibid., (p. 30).

Ibid., (p. 79).


Ibid., (p. 62).

Ibid., (p. 66).


40 Ibid., (p. 29).