Parallel Disentanglement: Treaty-based Navigation of Settler-Indigenous Governance Politics

Kenneth Wolkin

A thesis

submitted in partial fulfillment of the

requirements for the degree of

Master of Arts

University of Washington

2022

Committee:

Megan Ybarra, Chair

Steven Herbert

Program Authorized to Offer Degree:

Geography

© Copyright 2022

Kenneth Wolkin

University of Washington

Abstract

Parallel Disentanglement: Treaty-based Navigation of Settler-Indigenous Governance Politics

Kenneth Wolkin

Chair of the Supervisory Committee:

Associate Professor Megan Ybarra

Geography

In this thesis, I outline a treaty-based interpretive and methodological framework for tending to settler-Indigenous governance relationships, while theorizing pathways towards more robust forms of settler solidarity and relational accountability to Indigenous legal geographies. I begin by assessing the incongruity between the U.S. Department of the Interior and Bureau of Indian Affairs' recognition of a configuration of Gayogo̱hó:nǫˀ (Cayuga Nation) leadership that differs from the Nation's leadership as recognized by the Haudenosaunee Confederacy, of which the Gayogo̱hó:nǫˀ are a constituent Nation. Analyzing an archive of U.S. federal executive and judicial decisions pertaining to Gayogo̱hó:nǫˀ law, governance processes, and leadership configuration, I detail the U.S. settler state's attempted apprehension of Gayogo̱hó:nǫˀ

governance and jurisdiction, enabled by its predicate failure to heed the governance authority of Gayogo̱hó:nǫˀ Clan Mothers, and the Great Law of Peace from which their authority flows. Theorizing from ongoing solidarity efforts, grounded in cross-national relationships of care that embody the foundational principles of the Two Row Wampum Treaty, I call for settlers to more actively attune and attend to the quality of settler-Indigenous governance relationships, inviting settlers into what I term a more dynamic inhabitance of settler subjectivity. I suggest that future research take a more capacious approach to theorizing and tending governance and treaty relationships, as this may yet yield additional methodological insight for building more engaged forms of settler accountability to ongoing and future geographies of Indigenous governance.

Table of Contents

Acknowledgments……………………………………………………………………………..6

Chapter One: *Introduction*………………………………………………………………………7

◊ *Orientations*……………………………………………………………………………9
◊ *Scope of Project*……………………………………………………………………….13
◊ *Questions and Methods*………………………………………………………………..…14
◊ *Literature Review*…………………………………………………………………...15
◊ *Structure*……………………………………………………………………………..…23

Chapter Two: *The Attempted Apprehension of Gayogo̱hó:nǫʔ Governance*………..………....26

◊ A settler ethics of refusal……………………………………………………………...28
◊ "every endeavor to bring the Indians under the influence of law" …………………...…32
◊ The overdeterminations of settler law in Gayogo̱hó:nǫʔ governance……………………35
◊ "There is no position of 'Federal Representative' in Gayogo̱hó:nǫʔ governance"………37
◊ The non-justiciability of oral tradition: "Gayogo̱hó:nǫʔ law as "ill-suited for the twenty first century" ……………………………………………………………………………43
◊ "Anglo concepts of pure majority rule" …………………………………………………46

Intermezzo: *an arrival to, and departures within, a critical settler subjectivity*……………..…52

Chapter Three: *The politics of judicial legibility, recognition, and jurisdiction* …………..…...59

◊ #LandBack and back again: The SHARE farm…………………….……………………60
◊ Normative settler scalar politics of recognition and jurisdiction……………………...…64
◊ Settler legal options, for now foreclosed………………….………………………..66
◊ "Halftown is Genocide" Conotocarious (Town Destroyer) in 2020………………..……68
◊ Provocations towards judicial legibility and commensurability…………………...…….72
◊ Legibility as the price of recognition: creation of the "Cayuga Nation Tribal Court"..…76

Conclusion: *Honoring the Two Row: Towards a dynamic inhabitance of settler subjectivity*….80

References……………………………………………………………………………….…89

Acknowledgments

I hope these provisional expressions of gratitude will suffice until I can muster the more commensurate and robust forms of appreciation the recipients deserve.

I'd like to thank the UW Geography Department, generally, and my committee members Megan Ybarra and Steve Herbert, in particular, for their grace, patience, and support as I slowly wound my way here. Even when I didn't know what support I needed, it was always there to be found with each of you. Megan: I always leave your presence feeling boosted and buoyed, my brain abuzz. I feel lucky to have your witness and mentorship. Steve: Your earnest and straightforward counsel, even when I didn't give you much to work with, has been steadying at every turn.

To Sachem Sam and Debbie George: thank you for so kindly receiving me when I stumbled my first set of questions in your direction. I am grateful for each and every of the many doors you've opened for me in this work.

To all the Gayogo̱hóːnǫˀ people I have met over the past two years: thank you for your tireless efforts to educate settlers – myself included – about treaties, the Great Law of Peace, and ongoing Gayogo̱hóːnǫˀ governance. This thesis is a humble and long overdue effort to contribute to that work, from the ship.

To all the co-conspirators, past present and future, alongside whom this work finds its most meaningful expression in the world: I consider it a privilege to learn and take collective action alongside all of you.

To Maddie: Thank you for never charging me fees when I've overdrawn our shared brain account.

To Lyssa: I thank you for your endless encouragement, and for all the ways you call the best 'me' forward into this work.

Finally, to my parents: infinite thanks for your unwavering support through what can only be a constant state of wondering what's next for your wayward son.

Chapter One: Introduction

"Irony" does no justice - it is not solemn enough of a term - in faithfully describing the absurdity of two white, US-American citizens inviting an Indigenous elder and leader on to his Nation's stolen land. Yet this is precisely the uncomfortable phenomenon I and my partner enacted when we invited Sachem Sam and Debbie George to dinner at my family's cottage on Cayuga Lake in late August of 2020. I received them in the gravel parking area across the street. Sam animatedly shared that he had just taken a picture of the New York State Historical Marker at the bottom of the hill leading to my family's cottage - a cast-iron plaque painted blue with yellow lettering, which commemorates an illegal and contested "sale" of land from the Cayuga to New York State in 1799. He had just forwarded the photo to an attorney who represents the Gayogo̱hó:nǫˀ Council of Chiefs, the external facing governing body of the Gayogo̱hó:nǫˀ people, known also as the Cayuga Nation[1]. Sam is one of three Gayogo̱hó:nǫˀ Sachems (or, Chiefs) presently residing on land also claimed by the State of New York; he is the only currently residing on ancestral Gayogo̱hó:nǫˀ territory around Cayuga Lake.

Walking across the street towards my family's cottage, I recognized one of my mother's friends walking her dog towards us. As I prepared to make introductions, my heart sank: I hadn't asked Sam how I should refer to him in such a situation. Sachem Sam? Chief Sam George? Sampa (a riff on "grandpa," and one of the affectionate names by which I've come to know him)? Or, just Sam? Not knowing how to proceed, naturally, I chose wrong, and simply introduced him as Sam George. The interaction was brief, but hardly felt over before Debbie, Sam's wife, whispered in my ear "*Chief* Sam George." As we walked, I stammered my embarrassed apology and explanation, to which she responded, "It's important for people to

[1] Gayogo̱hó:nǫˀ is the autonym of the Cayuga Nation. Similarly, Haudenosaunee is the autonym of the Iroquois Confederacy.

know the Cayugas are still here."

This interpersonal faux-pas reflects a broader, concurrent yet longstanding settler governmental mis-identification of Gayogo̱hó:nǫˀ leadership, one which flows down the hierarchical scales of settler state governance. While Sam's role and authority as a Sachem (also known as a "titleholder") flows from the longstanding governance protocols of the Haudenosaunee Confederacy, of which the Gayogo̱hó:nǫˀ are a constituent nation, neither Sam nor any of the other titleholders of the Gayogo̱hó:nǫˀ Council of Chiefs are formally recognized by the settler state as the rightful leadership of the Nation. Yet the aforementioned Gayogo̱hó:nǫˀ and Haudenosaunee governance protocols have been operative on the land since the Haudenosaunee Confederacy formed - long before the arrival of European settlers, let alone the fledgling United States - with the articulation of the Great Law of Peace, a law centered on responsibilities and obligations to all of Creation, which Sam and other Haudenosaunee people continue to enact and uphold.

The settler colonial state formation of the United States, after violently displacing the Haudenosaunee from their land in the wake of its Revolutionary War, drew inspiration for its own form of governance and Constitution from Haudenosaunee governance protocols and from the Great Law of Peace, acknowledging as much with a Concurrent Resolution of both bodies of Congress in 1988, entitled:

> "A concurrent resolution to acknowledge the contribution of the Iroquois Confederacy of Nations to the Development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution."[2]

[2] Senate Concurrent Resolution No. 76, 100th Congress (1987-1988) Accessed online 28 May 2021 https://www.congress.gov/bill/100th-congress/senate-concurrent-resolution/76

This congressional resolution mirrors Debbie's corrective comment to me, in its affirmation that Native Nations - as political sovereigns with whom the United States continues to relate on a "government-to-government" basis - are still here. This thesis in part explores the mechanisms and relationships by and through which the settler state, at various scales of governance, has come to *mis*recognize Cayuga Nation leadership, such that its recognition of Nation leadership is out of line with that of the Haudenosaunee Confederacy; such that it refers to Sachem Sam George simply as Sam.

Orientations

Before proceeding further, a few words on terminology: by referring to the "settler state," I denote my work's reliance on, and situation within, a vast body of literature which marks state formations such as the United States and Canada as centrally concerned with projecting and maintaining - through violence when necessary - the primacy of legal regimes evolved from Western European common law traditions. This perspective takes seriously the tenuous and contested nature of settler state claims to sovereign authority, by highlighting their ongoing attempts to efface the plurality of Indigenous legal regimes operative across North America, or what is known to many of its Indigenous inhabitants as Turtle Island. My work here directly engages the fact of the simultaneity of settler and Indigenous law, by examining the governance relationships and politics through which these simultaneous claims encounter one another.

Further, in invoking "governance," I refer specifically to the practice of Nation-to-Nation relational politics, a practice which I read into encounters between the Gayogo̱hó:nǫˀ and what political geographers may otherwise cast as the "local" scale of settler state governance. This way of reading Nation-to-Nation relations - one which I view as necessary for understanding

Gayogo̱hó:nǫʔ-settler state governance politics - opens up insights that push understandings of national scale governance within the field of political geographies beyond a "container state" (Agnew reference), International Relations framework that assumes and projects a scalarity within which the federal scale is the exclusive domain for International or Nation-to-Nation governance. Instead, in Chapter Three, I locate the work of Nation-to-Nation governance as taking place in interactions between settler state agents of counties (eg, Cayuga) and municipalities (eg, Seneca Falls) wherein Gayogo̱hó:nǫʔ governance, law, and jurisdiction are actively articulated, robustly operative, and thus particularly salient. Yet, to say that this work of Nation-to-Nation relating frequently takes place at the "local" scale of settler governance is not to obscure the significant role of the US federal government in impacting upon all scales of settler state government-to-government relations with the Gayogo̱hó:nǫʔ.

The US federal government delegates the day-to-day work of carrying out diplomatic relations with Native Nations to the Department of Interior's Bureau of Indian Affairs (DOI; BIA). The BIA is also responsible for administering certain federal obligations to Native Nations based on federal statutes. For example, when Congress passed the Indian Self-Determination and Education Assistance Act of 1975, the BIA assumed responsibility for administering a contracting framework in which Native Nations have the presumptive right to receive and administer themselves any federal funding for PFSA (programs, functions, services, and activities) which would otherwise be provided for the Nation by the federal government. The statute requires that Native Nation contractors designate a "senior official" to serve as a point of contact for contracting purposes; the DOI and BIA refer to this role as that of "Federal Representative." As Native Nations determine who will serve in this point of contact role, the statutory requirement to designate such a representative is not necessarily problematic – at least

mechanically, if not philosophically - for many Native Nations. This process becomes particularly fraught in the face of internal governance and leadership disputes and struggles; such is the case with the Gayogo̱hó:nǫˀ. Chapter Two unpacks the Department of Interior and settler judiciary's role in inaugurating, facilitating, and maintaining a dispute that metastasized out of the above-described delimited form of recognition for purposes of contractual communications, and into a full-blown struggle for mantle of US federally-recognized Gayogo̱hó:nǫˀ governance. Concomitantly, and by extension, I unpack how the DOI's recognition decision actively sidelines the authority and jurisdiction of the Council of Chiefs and Clan Mothers in favor of unaccountable institutions helmed by an individual who has long since been removed from the limited 'point of contact' position by way of the internal governance processes of the Gayogo̱hó:nǫˀ; which is to say by his late Clan Mother, Bernadette Hill. The problem this thesis examines is how a settler state-created 'representative' position now carries outsize power, authority, and meaning with respect to US-recognized Cayuga Nation governance, based on the position holder's exclusive access to federal funding and the ability to conduct affairs - diplomatic, economic, juridical - in the name of the Nation, with the backing and affirmation of the settler state.

Buttressing the settler state's ability to create such a position that subsequently carries great power within Native Nations are two power-laden phenomena developed through early settler state jurisprudence: the Supreme Court's assertion of Native Nations as "domestic dependent" Nations (1831), and its subsequent assertion of Congressional "plenary power" in regard to US-statist relations with Native Nations (1886). While I must point readers elsewhere (eg. Wilkins 1997) for a fuller unpacking of the historical emergence and present-day purchase of these phenomena, some brief context is necessary here for understanding the political and

legal geographical questions I seek to address with regards to settler-Indigenous governance encounters.

In the second of three Supreme Court cases - known collectively as the (Justice John) "Marshall Trilogy" and decided in 1823, 1831, and 1832 - the Court invented the concept of Native Nations as "domestic dependent nation(s)"; essentially holding that Native Nations possess only a limited form of sovereignty, and thus do not hold the same position, power, or status vis-a-vis the United States as do "foreign" sovereign states. Thus, while nominally affirming the sovereignty of Native Nations, the settler state assumed and still assumes the right to define and limit the extent – the *purchase* - of Native sovereignty. While Native Nations, including the Gayogo̱hó:nǫʔ, have consistently challenged and refused the settler state's self-proclaimed power to define and to limit their sovereignty, they are far from unaffected by its brazen and continual efforts, across scales, to do so.

Subsequently, in *United States v. Kagama* (1886), the Court asserted Congress' plenary power vis-a-vis relations with Native Nations; in other words, the Court asserted that Congress has unlimited, nonjusticiable authority to breach Treaty agreements with Native Nations without federal court review. The Court based this assertion of Congressional authority not on the United States Constitution, but on the Court's previous characterization of Native Nations as "domestic dependent nations." While the Court's assertion of Congressional plenary power has since been qualified and limited through many legal challenges brought by Native Nations, the concept (and practice) of settler state plenary power - along with that of domestic dependency - looms alongside the legal and political geographies of Native Nations, while also informing and giving shape to the governance relations and politics between Native Nations and the settler state.

Scope of project

This project is centrally concerned with unpacking the politico-legal means by which the US settler state has come to *mis*recognize Gayogo̱hó:nǫˀ leadership; the effects of this misrecognition; and, the means by which this misrecognition might be corrected. By way of archival analysis, I argue that, notwithstanding the BIA's mission statement, the agency in fact serves to *apprehend* self-articulated 'traditional' Gayogo̱hó:nǫˀ governance. I further argue, extending Pasternak (2017), that this misrecognition serves as a *technique of jurisdiction* by which local settler governmental entities, as well as the federally recognized leadership of the Nation, continually reproduce the apprehension and attempted erasure of traditional Gayogo̱hó:nǫˀ governance.

Beyond archival analysis, I pursue insight into the multivalent struggles over jurisdiction, and the associated governance entanglements (Dennison 2012), through what might be described as participatory action research. This experiential, relational methodology is grounded in ongoing relationships of care, situated within a treaty-based framework that mediates personal and political relationships across national difference (Nagar 2019). This framework grounds my efforts to not only to make meaning of settler archival representations of the above-referenced struggles over recognition and jurisdiction, but to dynamically intervene in the associated governance politics. I thus think and act in treaty-informed collaboration alongside other activists, organizing in dialogue with Gayogo̱hó:nǫˀ citizens and Titleholders, to hold all scales of the settler state accountable to Gayogo̱hó:nǫˀ governance prerogatives; this intervention serves as a core component of the empirical work taking place alongside the archival analysis comprising the bulk of this study. Briefly reflecting on the relationship building and collaborative initiative central to this empirical work, I argue, in the Conclusion, for what I term

a more “dynamic inhabitance” of settler subjectivity, calling on settlers to more actively tend to the quality of governance relationships between Indigenous nations and the settler state. This project thus offers insights for settler scholars and activists alike whose work lies at the ‘grounded’ intersection of settler and Indigenous governance politics, while pushing the field of legal geography towards more engaged forms of accountability to ongoing Indigenous governance in theorizing and representing plural legal presents and futures.

Questions and Methods

This project began with the question: “How does the settler state produce a particular legibility of Cayuga Nation governance?” I initially sought to answer this question through archival analysis and ethnographic interviews. Interventions by mentors and colleagues during my first year of graduate school yielded additional questions, such as: “How has the Cayuga Nation agentially resisted, refused, and eschewed the settler state’s attempts to limit and stymie its sovereignty and self-determination?” Too, their critiques led me to the theoretical scaffolding of the relational methodological framework described in the previous section, emplaced and developed over the intervening two years. Much as I proceeded toward “answering” the above questions, I did so carrying a politico-ethical imperative to build relational accountability (Wilson 2008) to Gayogo̱hó:nǫˀ governance, and to not just understand but to intervene in the associated governance politics.

This project employed two primary methods: first, archival and discourse analysis, which comprise the bulk of Chapters Two and Three; second, reflections borne of ongoing participatory action, community organizing work, which serve as the basis for chapter four. Much of the associated archive is publicly available; all of the material discussed in Chapters 2 and 3 was

obtained either from an online database of past decisions maintained by IBIA, a PACER (Public Access to Court Electronic Records) account for accessing federal court records, a free account with legal research software Casetext. Other sources of information include the Cayuga Nation website, local newspaper articles; and, public statements of the Council of Chiefs and Clan Mothers and the Grand Council of the Haudenosaunee Confederacy.

Literature Review

Plural Legal Geographies, Jurisdictional Conflict, and Settler-Scholar Accountability

The subfield of legal geography is uniquely positioned to contribute, conceptually and methodologically, to work taking place at the nexus of settler-Indigenous politico-legal engagements. While the field has developed a healthy lineage of skepticism towards settler state power (Blomley et al. 2001); highlighted the conceptual linkages between coloniality, indigenous sovereignty, and settler legal geographies (Blomley 2003; Kobayashi and De Leeuw 2010; Goeman 2013; Hunt 2014; Daigle 2016; Stark 2016; Pulido 2018;); and, acknowledged how the maintenance of settler legal regimes "affirms and protects whiteness" (Blomley 2021), much of this work has remained overdetermined by and cabined within the realm of critique of Western law (Braverman et al 2014). In particular, non-Native geographers working outside of relational contexts at best gesture thinly towards Indigenous geographies and legal orders; for instance, as subsumed in ruminations on international law (Delaney 2016). Meanwhile, much legal geographical work on vital topics such as territory remains principally concerned with Continental, white-Anglo genealogies of thought (see for example Elden, 2013). While conceptually rich, this work doesn't speak to – and much less *with* – Indigenous geographies and legal orders.

Characterizing the post-disciplinary impulse within the field of legal geography, Braverman et al (2014) name legal pluralism as a promising strand of literature centered on a critique of the oft-assumed monism of "law" as a centralized, statist enterprise derived from Western common law traditions, a view that effaces the simultaneity of "customary" or Indigenous law. Legal pluralism refers to the deceptively simple conceptual acknowledgment of the simultaneity of multiple legal orders in operation in a given spatial context; for example, the concurrent spatialities of Indigenous and settler legal orders (see Griffiths 1986; Merry 1988). The framework initially developed mostly outside the disciplinary purview of geography, amongst critical legal scholars and legal anthropologists (Braverman et al 2014). While historians and academic lawyers have recently centered frameworks of legal pluralism in work exploring Indigenous-settler governance and legal encounters in North America (Duthu 2013; Benton and Ross 2013; Owensby and Ross 2018), legal geographers have remained largely ambivalent towards the framework (eg. Pasternak 2017; see Robinson and Graham 2018 for one recent exception).

Despite legal geographers' relative lack of engagement – and criticism of the framework by some for the homogenizing effects of its relatively ahistorical, state-centric analyses (Pasternak 2017) - some scholars have called for a reorientation towards work that frames legal pluralism as a particularly useful analytic in cases of specific jurisdictional conflict (see Valverde 2015; Benton & Ross 2013; Pasternak, 2017). This pivot has yielded the excellent work of Shiri Pasternak, who not only centers jurisdiction and critically interrogates its conflation with scale (building on Valverde 2015), but also works to understand and theorize jurisdiction with respect to a particular Indigenous Nation's claims of authority. While eschewing legal pluralism as a framing in her work, Pasternak nonetheless offers legal geographers engaging Indigenous law

and geographies an excellent point of departure for ethically navigating the interlegalities (de Sousa Santos 1987) that flow from settler-Indigenous governance and legal encounters. However, the call for a shift within studies of legal pluralism to a focus on jurisdictional disputes has yet to be enriched by a methodological shift towards relationally grounded explorations of how those disputes are understood, represented, and navigated, particularly amongst scholars working in the field of legal geographies.

Taking into account the positionalities and subjectivities of legal scholars, even fewer studies conducted by self-identifying white settler legal geographers have taken up calls put forth by Indigenous feminist geographers to prioritize relational methodological frameworks that abide "place-based Indigenous ontologies" (Daigle 2016). Such calls for relational, accountable research methods – calls which may themselves be read as a form of governance – represent more than just the isolated invocations of self-identifying Indigenous feminist geographers; they are a central feature of scholarship on Indigenous methodologies and geographies (see Tuhiwai Smith 1999; Wilson 2008; Dennison 2021). Building on Pasternak (2017) and reflecting on experiences of organizing in cross-National collaboration with Gayogo̱hó:nǫˀ and settlers alike, I suggest that settler legal geographers must go beyond "revealing and interrogating" (Robinson & Graham 2018) the co-constitution of place and law, to actively intervening in their making through engagement with settler governance structures, in ways that make more viable and increase the purchase of Indigenous governance. Doing so, I suggest, requires accountability both to Indigenous communities *and* governance, and to the politico-legal ontologies and governance principles they invoke in structuring the field of possibility for relationships with the settler state and settlers writ large. In my early experience as a scholar and activist working in Haudenosaunee territory, this structuring of relational possibility takes place, again and again,

through instruction on the principles of the Two Row Wampum Treaty.

Two Row – History and Method

In order to accountably engage and represent settler-Indigenous legal and governance geographies, from a settler positioning and through a legal pluralist frame, I draw on the Two-Row Wampum, at once a treaty and normative framework invoked by Haudenosaunee people to structure the field of possible political relationships with settlers on their land. My own familiarity with the Two Row is thanks to the many Gayogo̱hó:nǫˀ and other Haudenosaunee citizens and titleholders, as well as settler-activist mentors, who have acquainted me with its role as a political-philosophical framework for structuring not only the Nation-to-Nation governance relationship, but also its positioning of settlers (including myself) with respect to Haudenosaunee people, land, and governance. I thus suggest that the Two Row, as one place-based modality for navigating and making meaning of cross-national political engagements, offers critical insights to settler legal geographers seeking accountable relationships with Indigenous governance and legal geographies elsewhere.

The Two Row Treaty was a 1613 trade agreement between the Haudenosaunee and the Dutch, often thought to be the first diplomatic agreement between an Indigenous North American peoples and Europeans (Hill 2019, 85). The treaty was materially memorialized by the Haudenosaunee in the form of a wampum belt, made using purple and white wampum shells. The belt consists of two parallel rows of purple wampum positioned between three white rows – one purple row representing the Haudenosaunee in their canoe, the other representing the Dutch in their ships – traveling together along the river of life. The details pertaining to the trade agreement are unclear, and there is general agreement that no written, English-language version

of the original treaty exists. Yet the treaty's presence within and effects on relationships between the Haudenosaunee and Europeans lives on both in settler archival records of diplomatic encounters since 1613, as well as in contemporary politics and foreign policy of the Haudenosaunee (Hill 2019, 86; see also Parmenter 2013). Much more than a mere trade agreement, the treaty's foundational principles of peace, friendship, and mutual respect (represented by the white rows), served and still serve to guide the diplomacy and foreign policy of the Haudenosaunee today (Simpson 2014, 32; Hill 2019, 86). These principles inhere in the intention "to live as peaceful neighbors in a relationship of friendship predicated under an agreement to not interfere in each other's internal business" (Hill 2019, 86); or as this last clause is commonly communicated, "Neither side will attempt to steer the other's vessel" (Onondaga Nation website).

Non-Native scholars – including some geographers – have taken up the Two Row as a theoretical framework and methodological tool guiding and informing their research with Indigenous Nations and communities. Reflecting on a 2013 canoe and kayak trip commemorating the Two Row Treaty's 400th anniversary, in which Native & non-Native participants paddled in the Hudson River in Two Row formation, Jessica Hallenbeck characterized the enactment as "embodying a relational ethic of taking care," centering water *responsibilities* as opposed to *rights* (2015, 355). Nicole Latulippe, in her work with Nipissing First Nation, employs the Two Row as a conceptual framework guiding her research objectives, theoretical framework, and research implementation (2015, 9), noting the Two Row framework's alignment with research imperatives outlined in Margaret Kovach's 2009 seminal work on Indigenous methodologies: "As a conceptual tool, the Two Row Wampum facilitates Kovach's criteria for ethical engagement with Indigenous methodologies: relational accountability, respect

for epistemic difference, and bridging work" (ibid 9). While this demonstrates the methodological utility of the Two Row as a conceptual-theoretical framework for working in cross-National research engagements beyond Haudenosaunee territory, the Two Row is neither here, nor elsewhere, explicitly theorized as a method for tending to governance relationships in ways that directly intervene in and challenge settler statist disavowal of Indigenous jurisdiction.

Building from Pasternak (2017)'s formulation of jurisdiction as "the authority to have authority," I theorize the Two Row in a way that bridges the insights from existing Two Row scholarship and ongoing ally activism with political currents and imperatives in the field of legal geography today. If legal geographers wish to challenge (settler) law's protection of whiteness and the attend to the diverse ways in which legal spatiality matters (Blomley 2021), while respecting Indigenous legal ontologies and governance prerogatives (Daigle 2019; de Leeuw and Hunt 2018), we must dynamize our means of relating to both settler and Indigenous claims of jurisdiction – of the authority to have authority. I humbly suggest that the Two Row offers legal geographers working towards these ends an analytical tool for assessing settler-indigenous governance politics; a methodological framework for tending to settler-indigenous governance relationships; and, a demand for more dynamic forms of settler accountability and solidarity with Indigenous legal geographies.

Two Row as Analytic: U.S. Governmental Attempted Apprehension of Gayogo̱hó꞉nǫˀ Jurisdiction

While the Two Row is a foundational politico-legal philosophical framework with which Haudenosaunee people and Nations structure their relationships with the United States, it represents at best an aspirational state of affairs in the case of present-day Gayogo̱hó꞉nǫˀ-settler state governance relationships. Compounding the U.S. government's foundational fiction (Stark

2016) of the "domestic dependency" of Native Nations, is the Department of Interior and Bureau of Indian Affairs' unwanted imposition into, and thus, entanglement (Dennison 2012) with, Gayogo̱hó:nǫˀ governance. The Two Row offers a relatively straightforward corrective both to the fiction of "domestic dependency" and to overt settler statist imposition into Gayogo̱hó:nǫˀ governance, by way of its visual and performed oral representations of multiple self-determining and reciprocally non-intervening systems of governance, traveling together through shared time and space in a relationship of peace and friendship. Hence the descriptive aptness of the framework of legal pluralism. Yet the Two Row is legal pluralism with a normative component; it not only reflects an undeniable reality of the simultaneous operation of a multiplicity of legal systems, but carries as well the politico-ethical imperative that those systems exist in ongoing relationships of peace, friendship, and, critically, non-interference.

Two Row as Method: Honoring Treaties by Tending to Governance Relationships

As a treaty with no original textual copy to which the United States was a signatory, maintained instead over time through its telling, the Two Row requires a means of interpretation that departs from normative settler legal modes of interpreting treaties as contractual texts conferring a limited set of *rights* (Stark & Stark 2018; Simpson 2017). In making a similar yet broader call for just such a methodological turn in legal research, Turtle Mountain Ojibwe legal scholar Heidi Stark suggests that legal research incorporate an attentiveness to storytelling as a form of law, thereby opening "a rich body of thought containing alternate pathways for Indigenous-state relations" (Stark 2016, 250). More specifically to the case of the settler-Gayogo̱hó:nǫˀ relations, this attentiveness to Two Row storytelling also invites a more careful and caring relational means of treaty interpretation, as well as for ethically navigating the treaty's

principles and implications, particularly in ways that go beyond the limited and limiting modes of settler juridical practice, such as litigation (Stark & Stark 2018). As a foundational politico-legal *relational* framework, the Two Row's principles call for research abiding Stark's reminder that, "a core principle of proper relationships is recognition of these relationships' ongoing nature" (Stark 2016, 254). Commonplace settler scalar politics of jurisdiction engender an aloof deference to hierarchical and exclusive structures of statist engagement with Indigenous legal geographies and governance. The Two Row interrupts these normative practices, instead inviting active attunement to the quality of those governance relationships. Given the harms caused by undesirable and imposed ways of relating, the Two Row also serves as a call for relational forms of accountability in addressing U.S. governmental imposition into Gayogo̱hó:nǫˀ governance.

Two Row as Demand: Towards a Dynamic Inhabitance of Settler Subjectivity

Neither in colloquial nor more formal renderings of the Two Row Wampum Treaty have I heard Haudenosaunee speakers mention – let alone advocate that settlers contest – the role of the US Department of the Interior in violating the Two Row. Advocating any course of action for people in the "other row" would violate the Treaty's core principle of non-interference. And yet, neither do these tellings advocate obsequious deference towards the DOI's purportedly exclusive authority to handle all matters pertaining to the Nation-to-Nation relationship. When confronted with the conceptual and visual clarity and simplicity of the Two Row and its principles, listeners with even the most cursory level of attunement can see that the Treaty framework is categorially nonrepresentative of present-day Gayogo̱hó:nǫˀ-US governance relationships. As a settler seeking to build relational forms of accountability to ongoing and future Gayogo̱hó:nǫˀ governance, I argue that the Two Row ought be interpreted, in such circumstances of its clear

disavowal, as carrying an implicit ethical demand of settlers: that we hold the U.S. settler state accountable for – and work to repair – its violations of both the Two Row and the Great Law of Peace.

I theorize this demand as one calling for a more *dynamic inhabitance of settler subjectivity*. In Gayogo̱hó:nǫˀ territory, at present, this requires refusing the deferential politics of jurisdiction vis-à-vis Nation-to-Nation governance relationships. In the conclusion, I reflect on two recent moments within ongoing settler solidarity efforts to embody and enact a different jurisdictional politics, towards living in accountable relation to Gayogo̱hó:nǫˀ law (Pasternak 2017). While these efforts focus almost exclusively on holding the US federal government accountable to the Two Row and the Great Law of Peace, I build with other scholars (Fujikane 2021; Heynen and Ybarra 2021) to suggest that future legal geographical research take a more capacious approach towards theorizing relational accountability, so as to build more engaged and robust forms of settler accountability to ongoing and future geographies of Indigenous governance.

Structure

Chapters Two and Three unpack the U.S. settler state's repeated and ongoing disavowal not only of the core politico-legal principles of the Two Row Wampum, but also of Haudenosaunee invocations of the Great Law of Peace, which serves as a foundational source of authority for Haudenosaunee governance protocols. I characterize this disavowal as the attempted *apprehension* of Gayogo̱hó:nǫˀ governance in chapter two, unpacking the diplomatic and juridical means by which the settler state creates and maintains the conditions for a purportedly "internal dispute" over Nation leadership. After a brief historical overview of the

Bureau of Indian Affairs' role in undermining traditional Indigenous governance values, processes and structures, I show how the DOI & BIA's collective denial of the governance authority of Gayogo̱hó꞉nǫˀ Clan Mothers - as well as misinterpretations of Gayogo̱hó꞉nǫˀ law - create the field of possibility in which a single individual effectively usurps the collective governance authority of the Nation's titleholders and Clan Mothers. Finally, Chapter two also unpacks a particular politics of tradition, one borne out in scholarly representations of the Haudenosaunee and other Indigenous peoples more broadly, and looks to Indigenous scholarship to chart, albeit uneasily, a self-reflexive course for settler scholars and activists seeking to understand and engage Indigenous governance when struggles over "tradition" are at play. It also articulates a settler ethics of refusal vis-à-vis writing about Indigenous governance in such fraught contexts.

A brief "Intermezzo" piece follows, in which I reflect on my own relationship to the governance struggles I unpack in this project, situating my trajectory and arrival to the questions I am asking through this project. As a white settler researcher steeped in and committed to ethically navigating the political currents now salient within the field of Indigenous Studies, I seek to make my own ties to this very place-based project known. The Intermezzo draws inspiration from Pasternak's (2017) chapter "Autobiography of Territory," and seeks to ensure that I don't dissociate my role as an academic from my settler identity, and my choices in how I inhabit my settler subjectivity.

Chapter Three examines how settler state misrecognition of Nation leadership becomes a "technique of jurisdiction"[3] – a means by which the settler executive and judiciary further efface the rightful governance authority of the Gayogo̱hó꞉nǫˀ Council of Chiefs and Clan Mothers,

[3] This phrasing comes from Pasternak's *Grounded Authority*, in which she discusses *property* as a "technique of jurisdiction" in (2017, Chapter 4)

instead affording legitimacy to an individual the Council of Chiefs characterize as a "terrorist" and "tyrant." The archival analysis in Chapter Three this chapter builds on the work of Valverde (2015) and Pasternak (2017), both in their theorizations of jurisdiction and in the normative politico-legal processes that serve to stymie self-articulated "traditional" modes of Indigenous governance. In the context of Gayogo̱hó:nǫˀ-settler state legal and governance encounters, I name this phenomenon the "normative settler scalar politics of jurisdiction." I demonstrate how, across scales of settler governance, these normative politics and modes of navigating governance politics preclude, through deference to hierarchy, a the more careful and caring tending of governance relationships that the Two Row offers as a method.

In the Conclusion, I demonstrate that despite this state of affairs, Gayogo̱hó:nǫˀ citizens, titleholders, Clan Mothers, and settler allies continue in their attempts to hold the settler state accountable to the shared principles of the Two Row, as well as to Gayogo̱hó:nǫˀ self-determination and governance authority flowing from the Great Law of Peace. I briefly unpack two recent actions from within ongoing efforts to live into the principles of the Two Row as a method for disentangling the knot of competing jurisdictional claims, and tending the associated harms created by the settler state's misapprehension of Gayogo̱hó:nǫˀ governance. I suggest that future research take up the Two Row not only for its utility in analyzing settler-statist denials of Indigenous jurisdiction, but for its methodological utility in theorizing how settler scholar-activists might build more robust forms of relational accountability with Indigenous legal geographies.

Chapter Two: The attempted apprehension of Gayogo̱hó:nǫˀ governance

In trying to make meaning of settler-juridical archival materials pertaining to Gayogo̱hó:nǫˀ governance and leadership - produced across an array of administrative and judicial venues - I immediately confronted a number of conceptual and language-based limitations. They're not new limitations - scholars have long grappled with the ethical dilemmas of working with settler state archives (Hartman 2008) - but I was encountering them anew in my own work. Specifically, I struggled to describe what was happening within the limiting structures and terms of engagement within which the archives were produced. I wanted to spotlight the role of the settler state in creating and facilitating the highly circumscribed field of possibility within which these governance encounters took place, without losing sight of the agency, resistance, and refusal of traditional Gayogo̱hó:nǫˀ leadership vis-à-vis those same limitations.

I first landed with what felt like neutral language of "production," which seemed to recognize the constructed (inorganic), performative nature of these governance encounters, both in setting and in outcome. Certainly, the archival *representations* of Gayogo̱hó:nǫˀ and settler governance and leadership are "produced" through such encounters, at the same time that Gayogo̱hó:nǫˀ and setter governance and leadership is effectuated, agentially exercised. Yet, the representations so "produced" obscure questions of agency, power, and affect – all of which bear upon determining the setting, navigating the process, and relating to the outcomes of these Gayogo̱hó:nǫˀ-settler governance encounters. Considering that the aforementioned outcomes ultimately become memorialized as decisions or determinations of settler state author- and custodianship, the neutral language of production is particularly inadequate. Further reflection yielded what I believe to be a more apt term for what is happening: the "apprehension" of Gayogo̱hó:nǫˀ governance.

I prefer "apprehension" to "production" due to its multiple meanings within a framework critical of settler state intervention into Indigenous governance. Per Merriam Webster, "apprehension" has three definitions that all have bearing on what is happening in and through the "production" of this archive: (1) "suspicion or fear, especially of future evil"; (2) "seizure by legal process"; and (3) "the act or power of perceiving or comprehending something." Each of these three meanings have bearing on the ways in which the US state engages Gayogo̱hó:nǫˀ governance: the settler state (1) fears claims to authority and sovereignty that both predate and unsettle its own; (2) actively seeks to stymie Gayogo̱hó:nǫˀ territoriality that invokes sovereign law, authority, and jurisdiction; and, (3) does this in part by way of its limited and limiting comprehension and memorialization of Gayogo̱hó:nǫˀ governance processes and structures. In other words, I read the governance encounters between the US and the Gayogo̱hó:nǫˀ for the ways in which the settler state *apprehends* Gayogo̱hó:nǫˀ governance. Having explored the fear-based apprehension of settler residents of Gayogo̱hó:nǫˀ territory previously (Wolkin and Nevins 2016), I focus here on the second two forms of what I term *structural and interpretive apprehension*.

It is incumbent, at this juncture, to acknowledge that this apprehension is neither uncontested nor uniform. The Gayogo̱hó:nǫˀ refuse all forms of settler state claims of authority and jurisdiction over their affairs. Of particular interest here is their refusal of the proclaimed authority of the Bureau of Indian Affairs to require leadership structures and positions (such as that of "Federal Representative") that attempt to individuate and alienate their collective forms and processes of governance. Complicating the BIA's imposition into Gayogo̱hó:nǫˀ governance, as well as local and state legislative efforts to delimit Gayogo̱hó:nǫˀ sovereignty, is the highly equivocal settler judiciary. Across the scales of settler governance, the judiciary has yielded a

checkerboard of decisions at times affirming and at times rejecting the former two branches' interpretations of and actions related to Gayogo̱hó:nǫˀ governance. Thus, not only the Gayogo̱hó:nǫˀ but also the settler judiciary at times serve to remind the settler state of its indeterminacy, its tenuously projected nature. Ultimately, the vacillations of settler jurisprudence with regard to acknowledging Gayogo̱hó:nǫˀ law led to decisive action on behalf of the "federal representative," whose efforts to consolidate his federally recognized authority compounds the settler law-based apprehension of Gayogo̱hó:nǫˀ governance. I unpack these developments through a critical reading of the archive of settler jurisprudence related to the Nation's leadership dispute below, but first turn to a statement of humility and principled refusal.

A settler ethics of refusal

I refuse to make representations of Gayogo̱hó:nǫˀ governance that read with any degree of authority, knowledge, or expertise. I do not seek to present Gayogo̱hó:nǫˀ governance as an object for readers to "know" or "understand" – there will be no typology, no static columns-and-rows presentation of a structure rooted in some distant past. In short, my goal is not to make Gayogo̱hó:nǫˀ governance legible to a settler audience. Instead, I seek to make legible the ways in which settler governance structures and processes intervene in, and make less viable, Gayogo̱hó:nǫˀ governance as citizens desire to practice it. I will show this interference – this apprehension – to be both an active, agential phenomenon, as well as one that occurs more insidiously, through the inherently coercive federal practices of Native leadership recognition. Finally, this story of apprehension is avowedly opposed to BIA intervention into Gayogo̱hó:nǫˀ governance, and seeks a nuanced understanding of this intervention only so as to foster more nuanced means of contesting it.

This legal and interpretive apprehension is carried out to great degree in settler executive-administrative and judicial venues, and memorialized in the associated archival production. There, Gayogo̱hó:nǫʔ governance processes are assessed and questioned, with leadership effectively coerced into articulating "traditional" Gayogo̱hó:nǫʔ governance practices, with legibility the cost of recognition. Importantly, these articulations are registered exclusively in adversarial settler judicial settings, and are effectively placed *against* those more legible processes articulated by the current federally recognized "Federal Representative."[4] This manifests a problematic politics of tradition, through which settler state weaponizes its own interpretive apprehensions of Gayogo̱hó:nǫʔ governance in order to effectively deny the Gayogo̱hó:nǫʔ any degree of dynamism and elasticity in how they respond to the exigencies of colonialism by way of governance processes. In other words, the BIA uses its own interpretation of Gayogo̱hó:nǫʔ law to referee and effectively decide the outcome of a dispute over leadership recognition – an outcome which defies the governance authority of Clan Mothers and the Council of Chiefs while constraining their ability to govern the Nation's external affairs.

Refusing to partake in this interpretive apprehension requires a rejection of the politics of tradition on which it is based. Yet, rather than wholesale abandoning the fraught concept of "traditional" governance – one that is explicitly mobilized by the Gayogo̱hó:nǫʔ Council of Chiefs, Clan Mothers, and community with whom this work unfolds – such a refusal instead requires a more careful engagement with articulations of "tradition" than those that predominate in federal administrative agency proceedings. To move towards a more nuanced understanding

[4] See the website of the "Cayuga Nation Tribal Court," which lists Criminal Codes and Rules of Civil Procedure identical to those of New York State.
https://cayuganationpolice.com/cayuga-nation-tribal-court.html

of "tradition," I look to the work of Indigenous scholars who help dynamize the long-accreted, limiting meanings that adhere to the term.

In *The Sea is My Country*, historian Joshua Reid details the opposition the Makah Tribe faced when, in the late 1990s, they announced plans to resume hunting gray whales, a treaty-protected practice that their forebears engaged in for thousands of years prior. Many non-Natives – invoking frames of environmentalism and animal rights – mounted significant opposition to the Makahs, in part by suggesting their use of high-powered rifles and motorboats represented a rupture of the "traditional" cultural practices they invoked. In making a categorical distinction between Indigenous tradition and modernity, those opposed to Makah gray whale hunting "locked indigenous peoples and their customs in the past and denied them a place in the modern world" (Reid 2015, 278). This is problematic not only because, as Reid notes, "Indigenous traditions and customary practices are not static cultural components frozen in time. They change over time" (ibid 281). It is also problematic for the way in which settlers position themselves as arbiters of what constitutes a traditional Makah practice. Worse yet, settlers subsequently mobilized these interpretive apprehensions of "tradition" to attempt to deny the Makahs the ability to use their customary practices "to reclaim their maritime space while protecting their sovereignty and charting a course for a particular identity in the modern world" (ibid 18). Thus what presents as a conflict around a traditional Indigenous cultural practice and sense of identity represents as well an attempted apprehension of their sovereign prerogative, an affront to their *political* self-determination.

Explicitly addressing the work of "tradition" in the realm of governance, Jean Dennison and Meredith Drent reflect on historical changes in form and process of Osage Nation government, suggesting that such changes *reflect*, rather than dilute, Osage tradition. More

broadly, they helpfully shift the focus of "traditional" Indigenous governance away from limiting notions of enduring structures and processes, and towards a recognition of the values that persist throughout changes in the form and means of governance. While they show how values such as order and unity inform the intentional, deliberative changes in structure and process that Osage leadership has made over time, they are careful in stating an intention not to "create any static truths about Osage culture," but instead "to offer nation's leadership grounded guideposts for making their many hard decisions" (Drent and Dennison 2021, 64). These reflections are shared explicitly for the benefit of other Indigenous peoples navigating change imposed from without. However, they also offer settlers a more nuanced framework with which to assess and contest the settler state's efforts both to impose unwanted changes in Indigenous governance, and to subsequently justify its actions in doing so.

In relation with the Gayogo̱hó:nǫˀ, this form of settler state apprehension takes shape in the way the BIA mobilizes an articulated Gayogo̱hó:nǫˀ value ("consensus") into a limiting expectation around governance process, denying the Gayogo̱hó:nǫˀ the ability to dynamically govern in the present day using traditional values. This apprehension of self-articulated traditional Gayogo̱hó:nǫˀ governance in turn underwrites the ability of a single individual, Clint Halftown, to make claims and representations in the name of the Nation – claims afforded settler politico-legal purchase simply by dint of BIA affirmation of their legitimacy. This usurpation of the mantle of Gayogo̱hó:nǫˀ governance is thus facilitated by, and perpetuates, the effective criminalization of those Gayogo̱hó:nǫˀ leaders and community members who labor to bring their traditional values and governance protocols into the future. I expand on this phenomenon in Chapter Three.

Those unfamiliar with the struggle over Gayogo̱hó:nǫʔ governance often ask the question of how the dispute over US-federally recognized leadership began. In my relational orbit, this often sounds something like "how did Clint even get in this position, in the first place?" A cursory review of the settler archives unpacked below indicate that Halftown's designation as "Federal Representative" began in 2003, though this designation – and the extent of its powers - quickly became contested (and memorialized) within adversarial processes overseen by the federal Bureau of Indian Affairs (BIA), and the related though independent Interior Board of Indian Appeals (IBIA). Before unpacking these decisions, I first provide historical context to help readers understand the institutional-relational precedence of the role the BIA – and settler state more generally – in creating and maintaining certain conditions within which the Nation's leadership dispute thrives. I weave connections to present-day Gayogo̱hó:nǫʔ experience with the BIA throughout the section of historical context.

"every endeavor to bring the Indians under the influence of law"

Of the few legal histories that unpack the role of the Bureau of Indian Affairs vis-à-vis Indigenous governance, most center the experiences of Indigenous tribes and Nations residing on reservations in the US-American west. This is in no small part due to the state-sponsored perpetration of genocide, displacement, and formal removal of many peoples and Nations indigenous to the east coast of the US. In the wake of the Sullivan Clinton Campaign of 1779, for instance, the Gayogo̱hó:nǫʔ resided primarily on the reservations of the Seneca (in particular, Cattaraugus), as well Fort Erie and then Six Nations Reserve in Ontario, Canada. Due in no small part to this forced displacement, as well as to the purported (and contested) sales of the entire Gayogo̱hó:nǫʔ reservation to the State of New York in 1795 and 1807, there is no robust

archive of the government-to-government relationship between the Gayogo̱hó:nǫˀ and the US settler state in the late 18th and 19th centuries. However, given the current entanglement of Gayogo̱hó:nǫˀ governance within the claimed authority of the BIA, it is worth parsing the characteristics of the relationships between Native Nations and the BIA as they developed in the US-American west.

In tracing the BIA's role back to its inception, one is struck by the polarity of its mission from its founding to the present day. Currently housed within the Department of Interior, the BIA avowedly advances a mission to "enhance the quality of life" of American Indians, by carrying out a responsibility to serve "as a partner with tribes to help them achieve their goals for self-determination." At its founding in 1824 by then- US Secretary of War John C. Calhoun, the Bureau was housed within the War Department. The BIA describes how its role evolved over time, "as Federal policies designed to subjugate and assimilate American Indians and Alaska Natives have changed to policies that promote Indian self-determination." This shift in the BIA's role has accompanied a shift in the degree of oversight exercised with regard to BIA operations.

The Bureau operates with a great deal of discretion in how it interfaces with and impacts upon Indigenous governance; as an executive administrative agency, it is afforded such latitude as it is administering federal policy well beyond the expertise of federal legislators. Any BIA decision can be appealed to an independent review board, the Interior Board of Indian Appeals (IBIA), consisting of two Administrative Judges whose decisions represent the Department of Interior (DOI)'s final position on any given issue. The Administrative Procedure Act of 1946 theoretically provides one final layer of accountability, allowing for challenges to Agency actions in federal courts. This seemingly robust system of oversight and accountability stands in

stark contrast to the BIA's relationship to Native Nations residing on newly created reservations in the mid- to late- 1800's. Acting outside explicit mandates of federal law and without judicial oversight, the BIA and DOI imposed and oversaw an extralegal system of police and courts to surveil and criminalize Indigenous customary practices (Hagan 1966; Harring 1994).

During the 1870's and 1880's the BIA and DOI established a set of rules specifically pertaining to Indigenous peoples' on-reservation conduct, and applied those rules by means of enforcement apparatuses designed, imposed, and overseen by the BIA. The Indian Police – organized by non-Native "Indian Agents" of the BIA assigned to oversee newly established reservations – received Congressional funding for the first time in 1879 ("Indian Law Enforcement History" 1975). However, such entities had long been operating extralegally under the oversight of Indian Agents on a number of reservations, with highly variable mandates and results (Harring 1994, 175). In 1883 the DOI promulgated the Code of Indian Offenses, also known as the Religious Crimes Code, and instructed Indian Agents to adjudicate infractions in so-called Courts of Indian Offenses. As Harring contends, "These were 'police' and 'courts' in name only. They could claim no legal status under either U.S. or tribal law. Rather, they were designed to perform important social control functions to force assimilation of the tribes under the authority of the BIA, through its Indian agents" (ibid, 175). However even the most biting criticism and analyses of scholars and critics such as Harring pale in comparison to the words of the Commissioner of Indian Affairs. In an 1885 Annual Report to the DOI, the Commissioner commented on both the eliminatory intent and the extralegal status of the Courts of Indian Offenses:

> "The policy of the Government for many years past has been to destroy the tribal relations as fast as possible, and to use every endeavor to bring the Indians under the influence of law…without such a court [of Indian Offenses] many Indian reservations would be without law and order, and the laws of civilized life would be utterly

disregarded" (1885 Report of Commissioner of Indian Affairs, XXI).

Of particular concern here is the impact that these BIA impositions had on ongoing "traditional" Native practices and governance processes. As Vine Deloria Jr. and Clifford Lytle argue, while these courts actively aimed to sidestep the existing customs and leadership protocols of Native reservation communities, "the administrative creation of institutions does not really supplant the old institutions but simply *creates a very powerful competitor for them*" (Deloria and Lytle 1984, 31, emphasis added). Further, it is important to acknowledge, per Drent and Denison 2021, that particular Indigenous Nations may well have "used" the imposed institutions of Indian Police and Courts of Indian Offenses as vehicles to continue living their traditional values (of order or accountability) in furtherance of their cultural preservation and self-determination. However, acknowledging that some Native Nations navigated BIA imposition without outright refusing it need not preclude criticism of US-American intervention and imposition elsewhere. In the case of the Gayogo̱hó:nǫˀ residing and governing on Treaty-guaranteed reservation lands, BIA imposition is a relatively new phenomenon, one robustly resisted and refused.

The overdeterminations of settler law in Gayogo̱hó:nǫˀ governance

Since at least 2004, the BIA, the IBIA, and settler judiciary have collectively served as facilitators and arbiters of what they often cast as an "internal" Gayogo̱hó:nǫˀ leadership dispute. While there is undoubtedly a struggle between Gayogo̱hó:nǫˀ people over the composition of the Nation's council, that struggle is (1) created by, and largely apprehended within, the processes of settler governmental recognition of Nation leadership, and (2) exacerbated by the broad power that flows from this recognition. Indeed, the power that flows from settler state recognition –

including access to funding for housing, education, and infrastructure – is exceptional and meaningful enough that an ongoing struggle of over 17 years has resulted in many thousands of pages of settler archival document production. Yet, to the Gayogo̱hó:nǫʔ folks I've gotten to know through the course of this work, settler state recognition, in the abstract, is meaningless: their governance authority flows from Kayanerenkó:wa ("The Great Law of Peace"), which predates by centuries US law, that fickle enterprise that vacillates and equivocates in its efforts to articulate its relationship to Indigenous law. Thus, while this section focuses on the determinations of settler administrative and judicial entities, I proceed with caution and a healthy skepticism towards the overdetermining power settler law, both "out in the world" and in this narrative.

Much as I militate against being lulled into debating these administrative agencies on the terms of their own *interpretive* apprehensions, however, I acknowledge I cannot entirely avoid the *structural* apprehension to which the entire archive – and thus my discussion of it – is subject. I willingly step into the muck of this structural apprehension in part because there are certain moments of interpretive apprehension so egregious, so impactful, that they demand naming and contesting. Thus, the following discussion centers on this settler legal archive produced between 2003 and 2021. In some of these decisions, settler governmental recognition of Nation leadership is the explicit issue contemplated; in others, settler arbiters are forced to reckon with the question of Nation leadership in their adjudication of some other issue (eg., a local municipality's ability to enforce a gaming ordinance against a Nation-owned enterprise). My aim is to locate and name moments of interpretive and structural apprehension, while simultaneously highlighting the concomitant failures on part of the settler administrative and judicial apparatuses to engage the realities of legal pluralism in accordance with the principles of

the Two Row Treaty.

"There is no position of 'Federal Representative' in Gayogo̱hó:nǫˀ governance"

In May of 2009, the Interior Board of Indian Appeals issued a decision in *Samuel George et al v. Eastern Regional Director, Bureau of Indian Affairs (49 IBIA 164)*, affirming the BIA's May 2006 recognition of Clint Halftown as the federal representative for the Nation, a decision appealed by Sachem Sam George and other members of the Traditional Council of Chiefs and Clan Mothers. Referred to thereafter as the 2009 *George* decision, the 31-page IBIA determination carries a great deal of weight throughout the remainder of the archive, by way of the analytical and epistemological foundation and precedent set by the judges. While the IBIA's claims regarding the necessity of interpreting Nation law and of recognizing a particular configuration of leadership (so as to not hamstring Nation governance) read as eminently reasonable based on relevant administrative case law, the effect of the decision was a further erasure of the Gayogo̱hó:nǫˀ Council of Chiefs, Gayogo̱hó:nǫˀ Clan Mothers, and the Great Law of Peace from which they derive their authority. Rather than offering alternative case law, or arguing against the IBIA judges on their own terms, I instead illuminate where and how the BIA and IBIA violated the Two-Row Treaty, effectively steering the affairs of the Nation, while apprehending the governance prerogatives of self-identifying "traditional" Clan Mothers and condoled Chiefs.

The IBIA based its decision in *George* on a 2003 letter signed by four individuals, including Clint Halftown, who at the time and for some time prior, served as "benchwarmers" on a Nation Council alongside then recently-deceased condoled Chief Vernon Isaac.[5] Before

[5] Per Haudenosaunee attorney Kayanesenh Paul Williams, in his interpretation of traditional Haudenosaunee governance protocols based on the Great Law of Peace, benchwarmers are individuals who, after the death of a

Vernon's death, in poor health, he designated Halftown to serve as his "eyes and ears," an informal, assistive role focused on relaying communications and other day-to-day duties. Upon Vernon's death, the four seat-warmers signed and sent a letter to BIA on August 11th, 2003, designating "Clint C. Halftown as the Representative of the Cayuga Nation in its government-to-government relationship with the United States of America" (49 IBIA at 169). Just over a year later, BIA received a November 14, 2004 letter signed by Sharon LeRoy (Halftown's mother) as Nation Secretary, purportedly authorizing Halftown to negotiate settlement of the Nation's pending land claim lawsuit against the State of New York. The dispute before the IBIA in *George* arose, in part, over Halftown signing a November 17th settlement agreement with Governor Pataki that would: limit the monetary award the Nation could receive through ongoing litigation; set a cap on the amount of land they could buy in Seneca and Cayuga Counties and apply to place into federal trust (10,000 acres total); require payments to Seneca and Cayuga Counties to compensate for diminished tax revenue; and, allow the Nation to build and operate a casino in the Catskills region ("Catskills Casinos" 2004). Refusing the broad relinquishment of Nation sovereignty that the settlement represented, "members of the traditional and lawful government of the Cayuga Indian Nation" intervened (Dec. 13, 2004 letter from Jimerson, *et al.*, to Halftown, quoted in 49 IBIA at 170). Their claims to an authority beyond the legibility and apprehensions of settler law sparked the ensuing (and ongoing) settler governmental apprehension of Gayogo̱hó:nǫˀ governance.

Rather than trace chronologically the 17 years of archival production, I reflect on three key features permeating the archive: (1) the fixation, in *George* and elsewhere, on discerning and

---

condoled Chief, temporarily hold positions on Nation councils until a new Chiefs is selected by a Clan Mother to replace the deceased Chief (Williams 2018, 363). Condolence, in this context, refers to the ceremonial process which takes place once Clan Mothers, after consultation amongst members of their clan, choose new Chiefs, who are "condoled" and take the place of the deceased Chief (ibid, 364).

applying the meaning of "consensus" within Gayogo̱hó:nǫʔ law, at once misconstruing the articulated value of *unity* in Council decision-making as requiring *unanimity*, while effectively sidelining the authority of the Clan Mothers in Gayogo̱hó:nǫʔ governance processes; (2) the false claim that the Nation *lacks* law for the panel to interpret, as well as means to resolve the leadership dispute; and, (3) the application of liberal governance values (majority rule) and processes (plebiscite) to the Gayogo̱hó:nǫʔ dispute over the settler-created position of "Federal Representative."

The *George* decision reads as a debate over the meaning of the term "consensus" as regards Nation Council decision-making, and particularly around the Nation's designation of a "Federal Representative" for purposes of contracting with the federal government. The BIA and IBIA assert that, in order to satisfy the federal government's contractual obligations under the 1975 Indian Self-Determination & Education Assistance Act – and thereby to disburse vital funding to the Nation – the BIA must recognize an individual chosen by the Nation as the point of contact for contracting purposes.[6] Appellants assert, meanwhile, that "under the Nation's system of governance, 'there is no role of "Nation Representative,"'" and, further, "that the 'sole authority for the temporary role of "Nation Representative" came from the late condoled Chief [Isaac]…'" (*Appellants Opening Brief* at 9, quoted in 49 IBIA at 183). Thus the federal government claims that for the smooth administration of its role in the colonial relationship as defined under its own legislation, the Gayogo̱hó:nǫʔ must designate a federal representative; the Gayogo̱hó:nǫʔ refuse such a position as meaningless and further state that any authority Halftown

[6] At the time of the appeal in *George*, and all times since, the Nation received funding under a federal contract for providing services pursuant to Public Law No. 93-638 (the Indian Self-Determination and Education Assistance Act of 1975). These contracts are often simply referred to as "638 contracts." In order to apply for these contracts, a Nation "must identify a representative within the tribe with which the Federal government may communicate for purposes of contract matters, *as well as the tribal authorization permitting it to enter into the contract*" (49 IBIA at 164, emphasis added). It is this "tribal authorization" that is at dispute in *George*.

had while recognized by BIA in such a role flowed *only* from the authority vested in condoled Chief Isaac.

In December of 2004, less than a month after Halftown abused this purported authority and signed an unfavorable land claim settlement agreement with the State of New York, six "members of the traditional and lawful government" of the Nation (including the five appellants in *George)* sent Halftown a letter. In it, they reminded and advised him that he: had been removed from his position by Nation governance processes (by his Clan Mother, Bernadette Hill) in July of 2004; no longer had authority to act on behalf of the Nation; was no longer a member of Council; and, had no authority to settle the land claim litigation (49 IBIA at 170). Upon receiving a similar communication from this six-person Council, the BIA was forced to reckon with its own position of recognizing Halftown as the Nation's federal representative. By soliciting information from "both sides"[7] as to the meaning of the term "consensus" and the process by which the Nation Council makes decisions around leadership, the BIA (and by extension IBIA) tacitly asserted their roles as *arbiters* of the Nation's leadership dispute, rather than as mere functionaries receiving notice and acknowledging by default the validity of the Nation's sovereign decision-making prerogative.

After reviewing information from the various parties to the *George* dispute, the BIA Regional Director asserted his understanding, upon information and belief, that Clan Mothers do not take part in Nation Council decision-making processes, and therefore could not form part of the legitimate governing body that the six individuals put forth to the BIA as "members" of the lawful and traditional governing body of the Nation. Instead, he communicated to all parties in a

[7] This phrase – and the false equivalency on which it is based (that between a system of governance in operation for thousands of years, and an individual claiming six years' service in a role created by U.S. federal statute) – reverberates in the halls of settler governance to this day; see Chapter Three

March 2005 letter a Council composition *not identified in any of the parties' own submissions* as the Nation's governing body. This council nominally included three Clan Mothers, but as nonvoting members: "while Clan Mothers make recommendations, they do not have a voice in the decision-making process for matters before the Council" (March 15 2005 *Letter of Regional Director*, quoted in 49 IBIA at 173). The Council composition as outlined by the Regional Director included six individuals, only three of whom signed the December 2004 letter revoking Halftown's designation as Federal Representative, thus falling short of the Regional Director's understanding of "consensus" within Nation law: "I…understand that a consensus can be reached with some opposition from Council members to the final decision…but it stands to reason that a favorable action would not take place unless *at least a majority of the Council either supports it or does not object to it*." (49 IBIA at 174). While in January 2006, five of the six Council members as identified by the Regional Director signed a Resolution revoking Halftown's federal representative status (with the sixth member not signing being Halftown), two later reneged and withdrew their consent to the Resolution. The remaining three Council members argued that, under Nation law, a consensus decision can only be vacated by way of another consensus decision. Meanwhile, Halftown and his purported council asserted that "consensus" requires unanimity. The appellants in *George* responded to what they deemed "newfound confusion" over the term by arguing that consensus as unanimity is contrary to Cayuga practice, and "would give Halftown a permanent veto over his own removal" (49 IBIA at 183).

It is unsurprising that, in an adversarial setting with stakes as high as federal legitimation of the capacity to: apply for ISDEAA grants; apply to place land into federal trust; settle land claim litigation with states; and commence litigation in the name of the Nation, among other

things, differing interpretations of "consensus" will be articulated – particularly when the outcome of the adversarial process is made to hinge on the BIA and IBIA's understanding as to whether a consensus Council decision occurred. Yet, rather than determining that a consensus decision did *not* occur as communicated in the January 2006 Resolution, the BIA Regional Director instead refused to reach any conclusion as to the validity of Resolution, "because he could not find a definition for consensus," stating "the Nation has not been able to inform the BIA as to specifically what constitutes a consensus for Nation governmental purposes" (49 IBIA at 180). The IBIA affirmed the Regional Director's decision with the caveat that, despite the Regional Director's claim that "[a]ll [that BIA] has done is to determine that [BIA] has not been provided with a reasonable basis for discontinuing its relationship with Mr. Halftown," his decision *did* have the effect of interpreting and wielding Nation law regarding "consensus" to deny the Appellants' January 2006 Resolution. (49 IBIA at 185). "We affirm his rejection of Appellants' position that a majority opinion has been shown to be a consensus opinion under the Nation's law" (49 IBIA at 189).

In sum: in reaching the above conclusion, the BIA and IBIA combined to interpret Nation law to mean that consensus requires unanimity, despite arguments to the contrary from condoled Chiefs and Clan Mothers, and despite this interpretation affording Hafltown a permanent veto over his removal from the role of "Federal Representative". The agencies also refused to acknowledge the 2005 condolence of two Chiefs, Sam George and William Jacobs, instead privileging the protests of Halftown, his mother, and other purported Council members – none of whom are or even claim to be Clan Mothers or condoled Chiefs – that the condolences were not legitimate. Finally, they refused to acknowledge Clan Mother Bernadette Hill's July 2004 removal of Halftown from his role as federal representative, and later from the Nation Council.

This despite acknowledging that all parties agree that Clan Mothers have the sole authority under the Great Law of Peace for choosing – and removing – male leaders, whether as benchwarmers or as condoled Chiefs. Despite receiving notice directly from Clint Halftown's Clan Mother, Bernadette Hill, that she removed him from his position as Nation Representative in July of 2004, the IBIA inexplicably privileged Halftown's contention that this removal was only "temporary." In each of these interpretive apprehensions, they built out the superstructure of the structural apprehension of traditional Gayogo̱hó:nǫˀ law, a structure which Halftown used (and continues to use) to consolidate his power over those Gayogo̱hó:nǫˀ citizens and titleholders who continue to articulate their authority *irrespective* of claims to authority by both the settler state and the Halftown Council.

The non-justiciability of oral tradition: Gayogo̱hó:nǫˀ law as "ill-suited for the twenty-first century"

Despite avowing to interpret and apply the meaning of "consensus" within Nation law, the BIA and IBIA in *George* also assert, contradictorily, that requisite Nation law either does not exist, or does not provide an appropriate venue for resolving the dispute over leadership. A sampling of such statements in *George* includes references to: "…a lack of tribal law to interpret…" (49 IBIA at 181); "The lack of clarity in tribal law (i.e., the disputed meaning of "consensus")…"(ibid 189); "The absence of any viable tribal forum…" (ibid). Such statements stand in contrast to the purported purpose and outcome of the Board's decision; surely the Board can't simultaneously claim to have interpreted and applied a concept within Nation law while also questioning whether such law exists. In characterizing a previous Board decision, and establishing the administrative legal precedent for acting under such circumstances, the Board

explains that "there may be times when BIA and the Department will be required to interpret tribal law to make a decision on which tribal officials to recognize, *even if no cognizable interpretation of tribal law has been presented*" (ibid, emphasis added). Thus, rather than reflecting on the existence of Nation law, if we read this discrepancy as an issue of *legibility*, we can see more easily the ways the settler state fails to receive and navigate sovereign legal claims that trace their authority to a source other than settler legal precedent and principles. In other words, we see how the settler state fails to humbly and respectfully navigate the plurality of legal orders that operate simultaneously across Gayogo̱hó:nǫˀ territory. By instead supporting an increasingly (and strategically) legible form of governance put forth by the Halftown Council, the state not only violates the Two Row, but severely undercuts the ability of the traditional Council of Chiefs and Clan Mothers to govern their territory.

While the BIA Regional Director briefly, in 2011, decided to recognize the traditional Council of Chiefs and Clan Mothers for government-to-government purposes upon receiving a consensus Resolution from the Nation's Council of Chiefs and Clan Mothers regarding the Council's composition, the IBIA overturned the decision in January 2014. With brazenly cruel irony, the Board asserted that the Regional Director "impermissibly infringed on the sovereign rights of the Nation by intruding into tribal affairs" (58 IBIA at 186) in recognizing the unanimous consensus decision of the traditional Council of Chiefs and affidavits from all three Clan Mothers. Per IBIA and settler judicial precedent, the BIA is only authorized to make determinations regarding tribal leadership recognition if and when an immediate federal purpose (funding an ISDEAA contract, for instance) is at stake. In other words, the BIA refuses on principal to concern itself with any potential error in its leadership recognition decisions unless

and until that error impacts upon some settler governmental policy mandate or contractual obligation.

This unflinchingly unapologetic and seemingly unaffectable state of affairs led traditional Gayogo̱hó:nǫˀ citizens living on their territory to take matters into their own hands. In April of 2014, supporters of the traditional Council of Chiefs and Clan Mothers took possession of a number of properties owned and operated by the Halftown Council in the name of the Nation, including a gas station, ice cream shop, and administrative office building, located on their Treaty-guaranteed reservation lands in Seneca Falls, New York. Not long thereafter, Halftown sued various of these individuals in State Court, claiming trespass and seeking a court order for the defendants to vacate the properties. The Seneca County Supreme Court Justice found that the court lacked jurisdiction, because deciding in favor of Halftown would carry an implied acknowledgment by the Court of his rightful status as the Nation's leadership. Citing to *George* as well as to the 2011 BIA recognition of the traditional Council of Chiefs and Clan Mothers, the Judge found the Court could not adjudicate the claims as presented because both parties to the dispute have sufficiently defensible claims to being the rightful leadership of the Nation, and thus rights to possess and occupy the properties in question. Despite the appropriate deference to principles of sovereign immunity and tribal self-determination, the Justice's scathing assessment of Nation law merits quoting at length:

> A sorry aspect of this matter is that the Cayuga Nation has a great deal of responsibility for this situation by its failure to set forth the specific requirements or procedure to change leadership within the Nation. While trumpeting its right of self rule, as observed in the IBIA decision, 49 IBIA 164(2009), the Nation "... has no written law, Court or body other than the Council itself for resolving disputes within the Council." Counsel's comment at oral argument that the law "resides in the hearts and minds of the Cayuga People" is, as this long standing dispute shows, hardly conducive of rational adjudication. Reliance upon oral tradition and ruling by consensus, however that is defined by the

> Cayuga Nation, may have served the Nation well in pre-colonial or colonial times. It is clearly ill suited for the twenty-first century.[8]

Chiding the Nation for failing to legibly contort its law to the adjudication of an issue flowing from the imposition of a federally created position, the Court asserts that the problem isn't so much a *lack* of law, as its disutility in the face of "modern" problems and jurisprudence. Seeking to present a more recognizable form of governance, as well as a release from the incertitude of settler recognition of his leadership, Clint Halftown moved to bring Nation governance into Justice Bender's modernity – and he turned to the BIA for help.

"Anglo concepts of pure majority rule"

At the same time that Halftown repeatedly represented to the BIA and IBIA that any determinations as to the composition of Nation's Council require unanimous consensus of Council itself, he moved to legitimize his BIA-enabled positioning through a mechanism widely accepted as "suited for the twenty-first century": majority vote. The archive contains many references to attempts on behalf of Halftown to secure BIA approval of electoral mail-in survey campaigns to determine the composition of the Nation's Council, despite his own 1997 contention to the BIA that Council composition is determined "according to traditional Cayuga law and the clan system, rather than Anglo concepts of pure majority rule" (quoted in Plaintiffs' Motion for Summary Judgment, *Cayuga Nation v Zinke* 2018, 12). These attempts are best summarized in the pre-trial Motion submitted by the Cayuga Nation Council of Chiefs and Clan Mothers in a 2017 lawsuit brought against the Department of Interior and Bureau of Indian Affairs, alleging improper support and validation of a Statement of Support (SOS) campaign

[8] *Cayuga Nation v. Jacobs*, 2014 N.Y. Slip Op. 31277 (N.Y. Sup. Ct. 2014)

carried out by Halftown in 2016. While a detailed accounting of the circumstances of the 2016 SOS campaign, and the opposition of the traditional Council of Chiefs and Clan Mothers (plaintiffs), is beyond the scope of this chapter, the plaintiffs' Motion for Summary Judgment includes a thorough discussion of the deeply flawed nature of the SOS campaign materials, as well as the BIA's well-established precedent of declining to accept or acknowledge similar campaigns in 2005, 2012, and 2014 (ibid, 22-23). The traditional Council of Chiefs and Clan Mothers thus brought suit claiming that, by both materially supporting and validating the results of Halftown's 2016 SOS campaign, the federal government violated the Nation's right to self-government under its own law. By arbitrarily and capriciously reversing the course of its well-established precedent of declining to recognize the results of such efforts, plaintiffs claimed that the federal government violated the Administrative Procedure Act, and sought to have the agencies' decisions vacated along with a permanent injunction against reliance on them.

BIA's reversal in course from established precedent, the SOS campaign's many flaws, and the Halftown Council's contradiction of its prior position regarding majority rule are all remarkable phenomena in their own right. Yet it is all too easy to get mired in debating these issues within the logic of administrative legal precedent, rather than reflecting on the structural apprehension of traditional Gayogo̱hó:nǫˀ governance the agencies' and Court's decisions represent. That a Native Nation was compelled to bring claim under the Administrative Procedure Act – a piece of federal legislation governing the actions and operations of federal Administrative agencies – is remarkable in its own right. The mere fact of the suit suggests the BIA and IBIA possess outsize influence in the outcomes of matters involving Native governance. We might productively ask why it is that a sovereign Nation should ever be compelled to uphold its sovereignty by alleging improper procedure on behalf of another? federal government. The

agencies posit that, in relation to the Gayogo̱hó:nǫˀ, their reluctant involvement in determining Nation leadership is predicated on the *lack* of an appropriate "tribal venue" to resolve the conflict according to Gayogo̱hó:nǫˀ law. A radically different conversation is possible if we consider that, *there is no leadership dispute* within Gayogo̱hó:nǫˀ governance, and that this legal action on behalf of the Council of Chiefs and Clan Mothers is simply another waypoint in their continual struggle to hold the federal government accountable to their already-articulated removal of Halftown, as well as to the principles of the Two Row Treaty. This perspective invites a reading of the archive that centers a settler governmental *mis*identification of Gayogo̱hó:nǫˀ leadership, along with a concomitant provision of material support to a leadership structure privileged for its legibility to settler - rather than Gayogo̱hó:nǫˀ - law.

Unsurprisingly, this is not the analytical framework chosen by the Federal District Court Judge who, methodically proceeding through each of plaintiffs' claims, affirmed in each case the Defendants' actions as "reasonable." Thus the BIA and IBIA were affirmed in their "extrapolation" from a 1916 transcription of the Great Law of Peace that the SOS campaign was consistent with Cayuga law, as well as in their dismissive treatment, on procedural grounds, of the only expert evidence submitted regarding the mechanics of the SOS campaign itself, which revealed a "deeply flawed method of assessment from which no information may be confidently gathered" (Memorandum Opinion, *Cayuga Nation v Zinke* 2018, 24).

Emboldened by the Court's decision, the Halftown council moved to further consolidate its power, by again bringing suit in State Court against Gayogo̱hó:nǫˀ citizens occupying Nation-owned properties in Seneca Falls. The Seneca County Supreme Court, departing from its 2014 decision in *Cayuga Nation v Jacobs* discussed above, found in this instance that it could simply defer to the BIA's 2016 recognition of Halftown's Council, and thus avoid an improper

implication of the Court's determination of Halftown's status as the rightful leadership of the Nation. After the State Supreme court's Appellate Division upheld the lower Court's holding on appeal, the State Court of Appeals reversed the two lower Courts' decisions, holding that the BIA's recognition decisions were limited to matters of federal contracting within the government-to-government relationship. Deciding in favor of Halftown's purported Nation Council would "embroil" the Court in the Nation's leadership dispute; "Because the Halftown Council's legal claims depend on its allegations that it speaks for the Nation, and the Jacobs Council does not, the Nation's leadership dispute permeates its claims and New York state courts lack the constitutional or statutory power to adjudicate them" (Opinion, *Cayuga Nation v. Campbell* 2019, 20-21). Thus, the State of New York's highest Court held that it had no jurisdiction to intervene on behalf of the BIA-recognized "federal representative" in his efforts to criminalize Gayogo̱hó:nǫˀ citizens he casts as "dissidents." What at this juncture was a clear victory in settler State Court for the traditional Council of Chiefs and Clan Mothers was merely a harbinger for redoubled efforts on behalf of Halftown to criminalize members and supporters of the traditional government of the Nation. These renewed efforts represent the cumulative effect of settler state equivocation: between federal administrative *legitimation* of Halftown's authority, alongside state and local judicial *refusals* to act on that purported authority against traditional Gayogo̱hó:nǫˀ community members and titleholders occupying Nation-owned properties on Nation land.

In the early morning hours of February 20, 2020, Nation Police[9] raided the disputed properties in Seneca Falls, removed those individuals present, and razed them to the ground,

[9] Halftown commissioned a Nation police force in 2017, whose marked vehicles patrolling Nation territory prompted heated discussion in both Seneca and Cayuga County legislatures, and a Resolution of the Cayuga County legislature denying that the Cayuga Nation police have any authority or jurisdiction within the County. The

leaving multiple structures half-demolished for over a year. One of the structures was being used for teaching and practicing Gayogo̱hó:nǫʔ ceremonies; a series of garden beds behind this building were also destroyed. Both the local Town of Seneca Falls Police, as well as New York State Police, were apprised of this action by Halftown beforehand, and were present in the street during the police operation, purportedly to keep the peace while Nation police demolished the buildings.

One week later, the Gayogo̱hó:nǫʔ Council of Chiefs and Clan Mothers issued a written statement calling for the prosecution on charges of terrorism any and all US-, New York State-, and local governmental agencies that assisted Halftown in raiding and demolishing the buildings. To date, unsurprisingly, no settler state agency has taken up the Council on its demand for such prosecution; nor has a formal investigation been commissioned. Shortly thereafter, in one of the violently re-possessed buildings, Halftown established what he calls the "Cayuga Nation Tribal Court" – an entity as meaningless to Gayogo̱hó:nǫʔ community members and titleholders as the BIA position of "Federal Representative." In January 2021, this entity began issuing money judgments against Nation citizens living in Nation-owned homes, for purported failures to pay rent. Following a brief Intermezzo piece, Chapter Three unpacks and historicizes the role of the settler state in facilitating this brazen attempt by Halftown to manufacture a "viable tribal forum," in which he seeks to disappear the continued claims that his leadership only flows from settler state recognition, and exists in defiance of the Great Law of Peace. In response to Halftown's escalating efforts to criminalize traditional Gayogo̱hó:nǫʔ citizens, the Council of Chiefs and Clan Mothers issued another statement in May of 2021. In it, they requested assistance across the metaphorical waters of the Two Row, urging settlers to call upon their

Cayuga Nation police force is comprised of non-Gayogo̱hó:nǫʔ former New York State police officers; the Superintendent is a non-Gayogo̱hó:nǫʔ former state police commander.

elected representatives to help secure the Council of Chiefs a meeting with the President, as per Article VII of the 1794 Treaty of Canandaigua. The Conclusion details efforts on behalf of settlers to heed this call, while theorizing the relationship building entailed in these efforts as living enactments of the Two Row Treaty, offering a methodological and conceptual framework to settler engagements with Indigenous legal orders.

Intermezzo:

an Arrival to, and Departures within, a Critical Settler Subjectivity

> "I do not – I cannot – detach myself from my settler colonial homelands…my love for these places is constitutive of my identity, violence and all, and to disavow them is to choke off the attachments that give our lives their rich and challenging meanings and form the anchors that tether our responsibilities. What are the grounds of authority upon which we rely to make sense of our relationship to the world? It is this ground that demands questioning" (Shiri Pasternak, *Grounded Authority*, xxvi)

Growing up in Western, upstate New York places one within a relatively short driving distance of the "Finger Lakes" region, so named for the grouping of north-south running lakes that, using one's cartographic imagination liberally, may be said to look like fingers. My family owns a dwelling on leased land on the northeastern shore of Cayuga Lake – the longest and second deepest of the Finger Lakes, for those who keep account of lakes in such ways. The land on which our dwelling sits is part of a small peninsula known as Farley's Point (colloquially, "the Point") which juts out into the lake and forms a series of coves, the shorefront of each dotted with small, intimate dwellings referred to by residents as cottages. Serving primarily as summer vacation homes, many of the cottages still retain a rustic, camp-like character – to the extent that a second home can ever bear markings of humility. This veneer of humility dissipates altogether, however, in the face of the intergenerational wealth that serves to fix the land and many of the dwellings upon it in lineages of possession and use by a small number of mostly white families.

While these families own the cottages, they do not own the land on which they sit; all of the land on Farley's Point is owned by Farley's Point Corporation, an entity which leases the lots to the owners of the cottages in five-year contracts. Included in these lease agreements is a provision defining lessees' dwellings as "temporary"; thus, as I learned this summer Year,

homeowners are not allowed to build poured foundation basements. The corporation's concern over the (im)permanence of lessees' residences, and the lessees' collective acknowledgment of and acquiescence to the temporary nature of their residency on Farley's Point, ironically betrays a broader apprehensiveness over settler land tenure and residency in the area.

While residents of Farley's Point are most often to be found indulging in unencumbered leisure – the Point may well hold the world's most concentrated collection of "It's 5:00 somewhere" signs - one needn't travel far from the Point to encounter much more visible manifestations of settler anxiety over residing on land the federal government acknowledges as Treaty-guaranteed Gayogo̱hó:nǫˀ (reservation) land. Many yards and ends-of-driveways along State Route 90, which runs north-south along the eastern side of Cayuga Lake, and off of which Farley's Point Road departs, are adorned with signs reading "No Sovereign Nation, No Reservation." Some appear faded and long-forgotten, overgrown with tall grass and weeds; others show signs of fresh paint and upkeep. As a child, driving to the cottage, I remember asking my family what these signs meant, and being told, essentially, 'It's about the Indians. Don't worry about it.' For most of my upbringing, that's what I and others on Farley's Point did: neglected to actively concern ourselves with the legal- and political-geographical conflict the signs reference. Farley's Point serves as a place of refuge from these politics – from the troubling ethical quandaries of considering one's position as a settler occupying stolen land.

During the early 2000s, as the Cayuga and Oneida Nations' respective land claim lawsuits proceeded through the federal courts, a group of non-Indigenous, mostly white residents of the area organized a local chapter of the Upstate Citizens for Equality (UCE). These citizens groups served primarily as a vehicle for expressing white settlers' anxieties over - and disapproval of - legal claims brought by Haudenosaunee Nations seeking various forms of

redress for the many harms caused through state-sponsored genocide and the ongoing settler occupation of their lands. The Seneca-Cayuga chapter of UCE raised funds and the aforementioned painted signage, expressing their position that the Gayogo̱hó:nǫˀ are not sovereign, and that their reservation no longer exists[10]. While none of the lessees on Farley's Point played an active role in the local chapter of UCE, through our passive silence, we abetted and benefited from UCE's work of defending white supremacy – and its associated configurations of land use and possession. The Supreme Court's legal interpretive alchemy[11] mirrored certain of UCE's concerns – that finding in favor of the Gayogo̱hó:nǫˀ would be too "disruptive" to the "settled expectations" of non-Native, settler landowners and their polities. Without projecting any determinative effect of UCE's rhetoric onto the Court's decision, we may still see the group's work as an example of what Roxanne Lynn Doty terms "statecraft from below" – a form of grassroots statecraft which "begins with the fears and insecurities of those people on the winning side of statecraft's visible and invisible lines" (Lynn Doty 2001, 528). In taking this form of statecraft seriously, the apprehension of settler residents becomes just as important to the reproduction of settler law and polities as are the decisions of their Courts.

Long before being shielded by the Court in 2005 from any "disruptive" effects of a finding in favor of the Gayogo̱hó:nǫˀ, most residents of Farley's Point experienced, to some degree, the sense of apprehensiveness around which the UCE more actively organized. While working on my senior thesis - itself a sprawling exploration, inspired by the aforementioned UCE road signs, of the question "When did Cayuga territoriality become a 'problem,' for whom,

---

[10] Both of these positions are contradicted by the federal executive and judiciary: Gayogo̱hó:nǫˀ inherent and Treaty-based sovereignty is acknowledged through formal recognition on behalf of the federal executive, while the continued existence of the Gayogo̱hó:nǫˀ Treaty-based reservation was supported by the US Department of Justice - and affirmed by the federal Court's decision - in *Cayuga Indian Nation v. Pataki*.

[11] See Kathryn Fort (2009) and Meredith Alberta Palmer (2020) on the Supreme Court's radical re-interpretation of the equitable defense of laches as a means to slam the door on federal land claim litigation in New York State

and why?" - my late grandmother gave me a manilla envelope with the handwritten words "Articles on Land Claim." In it, she had amassed a collection of just over fifty articles cut out of various newspapers from across the region, all concerning the Cayuga land claim case. I took great care to ensure that her willingness to share this carefully curated archive of settler apprehension of Gayogo̱hó:nǫˀ governance wasn't threatened by an open, forthcoming sharing with her of my own developing political sensibilities. Hurriedly leafing through the Introduction of my thesis not long thereafter, she turned to me and, in an attempt to make light of her apparent anxiety, said with a nervous chuckle "I see you're on their side and not ours!"

Much as I distanced myself from her discomfort with my work, we were simultaneously struggling, albeit in divergent ways, within a locally specific "settler structure of feeling," one in which Gayogo̱hó:nǫˀ presence and claims were challenging the "particular affective formations" that had served to "normalize [our] settler presence, privilege, and power" (Rifkin 2011, 342). There was even an unintended synergy between our divergent means of navigating that apprehensiveness; while she nervously clipped and stored newspaper articles, I later mined this archive in co-authoring an article examining the discourse of the Upstate Citizens for Equality. Yet the more I learned about the Gayogo̱hó:nǫˀ struggle to effectuate their governance prerogatives in the face of overwhelming settler state and grassroots opposition, the more I resented my own failure to find expression beyond the realm of academic journal readership. Within my family, amongst folks on Farley's Point, and, needless to say, within the surrounding communities in which I had no meaningful relations, I remained silent.

What I unwittingly created through this silence was a never-complete, never fully untroubled, but nonetheless very real disassociation of my own enjoyment in spending time with family at Farley's Point from my developing political sensibilities and nascent settler

subjectivity. While I experienced a growing sense of unease around my and my family's privileged enjoyment of that land, I had no active, dynamic, or relational sense of what other constellations of relations Farley's Point makes unviable. And so I persisted, cultivating a detached political awareness of the struggles over land, jurisdiction, and territory, while also cultivating a slow-burning resentment of my and many others' silence in relation to that struggle.

* * *

In the intervening years, I remained attuned to various settler archives of the struggles over law and governance in Gayogo̱hó:nǫˀ territory, keeping up through reading local newspaper accounts, settler court decisions, and Bureau of Indian Affairs and Internal Board of Indian Appeals documents, letters, and decisions. Around 2011, I began to seek out opportunities to learn directly from Gayogo̱hó:nǫˀ folks directly involved in the political and governance struggles about which I was overinforming myself with textual, settler archival materials. By equal parts happenstance and intention, I repeatedly found myself in spaces learning from the traditional leadership[12] of the Gayogo̱hó:nǫˀ of their stories as a people, their connection and re-connection to their homeland, and to some of the specific struggles they face in effectuating their governance on their land. During this time, I listened. I critically reflected and refracted what I was reading, seeing, and hearing through the mostly white-Anglo critical geographical lens I cultivated through my undergraduate studies.

Resolving to more actively engage in local organizing work, in 2018 I joined in working alongside other settlers and Indigenous peoples in Rochester to push for the City to recognize Indigenous Peoples Day instead of Columbus Day. At the same time, I trained to work as a

[12] By "traditional leadership" I mean to denote the condoled Sachems recognized by the Haudenosaunee Confederacy as the governing Council of Chiefs of the Gayogo̱hó:nǫˀ (referred to herein as the Gayogo̱hó:nǫˀ Council of Chiefs). They trace their authority to the Haudenosaunee Confederacy's Great Law of Peace, as opposed to recognition by the federal Bureau of Indian Affairs.

facilitator for a participatory-experiential workshop on the history of Native and non-Native encounters on Turtle Island; I first met Sachem Sam during one of these workshops in Ithaca. It was through these organizing and community education initiatives that I first worked in diverse, cross-national collaboration with Indigenous and non-Indigenous peoples to raise awareness of Haudenosaunee (and Indigenous, more broadly) presence and history within the region. Yet, I soon realized that while these projects both provocatively and vitally centered Indigenous *presence,* neither explicitly grappled with the fact of *ongoing Indigenous governance*, nor of the *ongoing political relationships* connecting settlers to those regimes of governance. While this by no means nullifies the importance of the work these groups continue to engage in, I decided to seek out and learn with and from folks whose work more explicitly engaged with Indigenous governance, while focusing my energy on more practically mobilizing all I had learned about the Gayogo̱hó:nǫʔ governance struggles to date.

This project is the result, and a mere waypoint in an uphill life's work of countering the damage that Kyle Whyte, in the context of climate change, characterizes as an already crossed "*relational* tipping point." As the world rushes (or doesn't) to address climate change, Whyte argues we must first recognize that "the qualities of relationships connecting indigenous peoples with other societies' governments…are not conducive to coordinated action that would avoid further injustice against indigenous peoples…"(Whyte 1). Rather than advocating we simply throw our hands up in surrender, Whyte instead argues that "urgency must be aimed at addressing ecological and relational tipping points together" (ibid 6). As with climate change work, so too with the work of Nation-to-Nation governance. There is much work to do in overcoming the now multi-generational damage to the qualities of governance relationships between settlers and the Gayogo̱hó:nǫʔ, and, as the concluding chapter reveals, many points of

entry through which we can do so. As I will argue, (we) settlers can most radically inhabit our settler subjectivities when we work to repair these relational harms *through careful, intentional relationality* that *actively supports* Indigenous governance prerogatives and *directly challenges* our own governance systems to acknowledge, redress, and desist from ongoing forms of relational harm.

Chapter Three: The politics of judicial legibility, recognition, and jurisdiction

In this chapter, I move from the archival analysis of Chapter Two to discussing the more grounded, viscerally felt impacts of the settler state's misrecognition of Nation leadership on Gayogo̱hó:nǫˀ community and governance. In Chapter Two, I presented a thorough (though not exhaustive) accounting of a settler legal archive which, I argue, reflects a US-statist attempt to *apprehend* Gayogo̱hó:nǫˀ governance. This apprehension reflects the settler state's failure to respectfully and accountably navigate the ongoing operation of Gayogo̱hó:nǫˀ law, most notably occurring through its sidelining of the governing authority of Clan Mothers. I situated my analysis of the settler legal archive in relation to the work of Indigenous political theorists who both demonstrate and call for careful scholarly engagements with articulations of "tradition" as they relate to the representation of Indigenous governance politics.

This chapter ties the analysis from chapter two to the work of Valverde and Pasternak, examining the effect of settler statist recognition politics on both Gayogo̱hó:nǫˀ and local settler statist exercises of jurisdiction - understood here as "the authority to have authority" (Pasternak). I trace these downstream effects of US federal misrecognition through two stories of re-dispossession: first, through an act of foreclosure by the County of Cayuga, and then through an act of ejectment and demolition carried out by the Halftown Council's police force. In telling these stories, I highlight the operation of what I call the 'normative settler scalar politics of jurisdiction,' endeavoring to show how US federal recognition of the Halftown Council as the Nation's leadership overdetermines the outcomes of competing claims to jurisdiction.

I also dig further into the concomitant US federal executive and judicial misapprehension of Gayogo̱hó:nǫˀ law and legal process. As discussed in Chapter two, these (mis)apprehensions both reflect and perpetuate a problematic marginalization of the governance authority of Clan

Mothers, as well as of the Great Law of Peace, within the overdetermining confines of settler state judicial and other decision-making venues. This chapter explores how this marginalization is materialized; for example, by creating the opportunity for the Halftown Council to conjure and masquerade wholly unaccountable law enforcement and judicial institutions, with the legal and political affirmation of the settler executive and judiciary. While the stories involve different constellations of claims to authority (jurisdiction) – by the settler state, by the Gayogo̱hó:nǫˀ Council of Chiefs, and by the Halftown Council – the outcomes reflect a similar, outsize impact of US federal recognition of Gayogo̱hó:nǫˀ leadership and attempted apprehension of Gayogo̱hó:nǫˀ *law* – the Great Law of Peace.

#LandBack and back again: The SHARE farm

The first property deed to carry the name "Cayuga Nation" on the "owner" line - ever since the County of Cayuga incorporated and took its name from the Nation in 1799 - is a 70-acre agricultural parcel with a dwelling and a barn, known as the SHARE Farm. The property, located in the Town of Springport just two miles inland from the northeastern shores of Cayuga Lake, was purchased in the early 2000s by a group of allies of the Cayuga Nation, working under the name SHARE - Strengthening Haudenosaunee-American Relations through Education. SHARE was comprised of non-Native and Native residents of the 64,000-acre Treaty-guaranteed Cayuga reservation, who organized to voice and enact support for the Cayuga Nation during the time its land claim lawsuit was proceeding through the federal Courts. SHARE also sought to counteract the anti-Native rhetoric and organizing work of the Upstate Citizens for Equality (discussed briefly in Chapter Two). In the early 2000s, SHARE members raised the funds required to purchase the farm from an organic farmer, and in 2005, the property was deeded to

the Cayuga Nation, with Sachem Sam George serving as one of two signatories on behalf of the Nation. The transaction serves not only as a pre-hashtag instance of #LandBack, but as an key moment in Gayogo̱hó:nǫʔ rematriation efforts within their homelands.

In April of 2019, the County of Cayuga illegally foreclosed on the SHARE Farm. The property was one of many foreclosed upon in perfunctory fashion by the County. Such proceedings take place on a yearly basis with a list of properties that have reached a certain threshold of time in property tax arrears. This foreclosure was unique, however, in multiple respects. First, the property was owned at the time by the Cayuga Nation, a sovereign, federally-recognized Indigenous Nation that does not pay local property taxes. Further, the property is located within the Cayuga Nation's 1794 Treaty of Canandaigua-guaranteed 64,000-acre reservation – a reservation that the United States Court of Appeals affirmed as "intact" and unextinguished by way of a 2005 federal court ruling.[13] Finally, the Cayuga Nation is legally exempt from such local and New York State tax law enforcement actions, based on the legal phenomenon of sovereign immunity. This common law principle's application to the legal geography of the Gayogo̱hó:nǫʔ was well-established in lower state and federal courts at the time of the foreclosure, despite both Cayuga and Seneca Counties continuing to seek a higher federal

[13] The US Department of Justice submitted an amicus brief in support of the Cayuga Nation's legal claims that the purported late-18th & early-19th century New York State purchases of the 64,000-acre reservation were illegal under federal law at the time. Coupled with the finding of fact that the reservation was never formally extinguished by US Congress' (judicially invented) "plenary power," the US federal District Court for Northern New York, in 2004, found in favor of the Cayuga Nation that its reservation remains "intact." (See *Cayuga Indian Nation v Pataki).* A jury subsequently awarded the Nation $247 million in damages, payable by the State of New York. Despite the US Appeals Court's subsequent 2005 application of Justice Ginsburg's damning reasoning in *Sherill v Oneida* to deny the Cayuga Nation (1) any financial *remedy* to their successfully proven claims and (2) the sanctioned ability to re-assert their sovereignty over parcels of land they purchase in fee simple, the Court's underlying holding regarding the reservation in *Cayuga Nation v Pataki* stands. In other words, both the US federal executive & judicial branches concur that the 64,000-acre Cayuga Nation reservation remains "intact." This has significant repercussions for the exercise of local, state, and Gayogo̱hó:nǫʔ jurisdiction, as this chapter will detail.

court ruling allowing them to foreclose on Nation-owned properties up until finally exhausting their legal avenues (in failure) in 2021 and 2020, respectively.

What follows is an unpacking of this foreclosure procedure and an analysis of what it reveals as to the snarl of jurisdictional claims to authority in Gayogo̲hó:nǫˀ territory. It will show how the federal government's recognition of the Halftown Council as Cayuga Nation governance, detailed in the previous chapter and elaborated here as a *technique of jurisdiction*, effectively precluded the Gayogo̲hó:nǫˀ Council of Chiefs from exercising their jurisdiction in order to challenge the flagrant and illegal foreclosure action taken by the County. It also shows how the constellations of jurisdictional power that flow from the federal government's recognition of the Halftown Council pose significant challenges to broader efforts at #LandBack. Finally, I show how local and County governments participate in replicating the harm of BIA misapprehension of Gayogo̲hó:nǫˀ governance, and how this harm manifests at every step of the foreclosure process.

In addition to the previously mentioned uniquities, another alarming aspect of this particular foreclosure proceeding is that neither the occupant nor rightful owner of the property were aware that the foreclosure was taking place. This in part reflects a benign error, in that the PO Box mailing address of the Cayuga Nation at the time of the 2005 deed transfer was no longer in use by 2019. Thus, the Council of Chiefs simply did not receive the County's notices regarding the foreclosure. Yet, the perfunctory foreclosure notice mailing was not the only opportunity for the Nation to learn of the foreclosure. That the Council learned of the foreclosure by happenstance reflects just another in a long line of downstream consequences of the federal government's misrecognition of Nation governance and leadership.

While the tax foreclosure took place in April of 2019, the Council of Chiefs did not learn of the foreclosure until summer of 2020. While searching the County of Cayuga's Real Property online database in August of 2020, I was alarmed to see that the SHARE Farm property's owner was listed as "County of Cayuga," and that, pursuant to an April 16th, 2019 Cayuga County Supreme Court order authorizing County foreclosure of a long list of properties, the County Treasurer summarily transferred the SHARE Farm deed to the County on April 25th with a listed sale price of $1.00. I shared this information with Sachem Sam, and an attorney who works on behalf of the Council of Chiefs. Further personal correspondence with a Cayuga County Legislator revealed that the County affords the Halftown Council – as the Nation's federally recognized leadership – the annual opportunity to screen the County's list of properties slated for foreclosure, so that they can remove from the list any properties belonging to the Nation. Ironically, then, it was through an act of *deference* to the Nation's sovereign immunity that the County of Cayuga both replicated the federal government's sidelining of the Council of Chiefs, leaving them unaware of the foreclosure proceeding, and effectively *re-dispossessed* the Nation of the SHARE Farm.

That the SHARE Farm property ultimately proceeded to initial foreclosure proceedings indicates that the property was not removed from the County's list by the Halftown Council. This is unsurprising, as the property has been under the effective control and stewardship of the traditional Council and community – cast as "dissidents" by the Halftown Council – since its fee simple acquisition by the Nation in 2005. The persistence of traditional Council governance processes, along with community-building efforts aligned with the Council of Chiefs and Clanmothers, represent an ongoing challenge to the power and legitimacy of the Halftown Council. As discussed briefly in Chapter Two, the Halftown Council has demonstrated a pattern

of attempting to separate Gayogo̱hó:nǫˀ people from their housing and land; this was merely one early instance of the Halftown Council using settler state judicial processes to effectuate the removal of traditional Gayogo̱hó:nǫˀ community and governance from their territory. These efforts are discussed in greater detail, below.

Normative settler scalar politics of recognition and jurisdiction

It is worth pausing to reflect on the scalar politics at play in the mechanics of this particular foreclosure, and what they say about the multivalent struggles over recognition and jurisdiction. On one hand, the situation is a simple reflection of normative settler scalar politics. The federal government recognizes the Halftown Council as the leadership of the Cayuga Nation, and the Cayuga Nation is immune from local tax law enforcement. Thus, the County is obliged to engage in an act of double deference: first, deferring to the federal government's recognition of the Halftown Council as the Nation's leadership, and second, proactively affording the Halftown Council the opportunity to enact the Nation's sovereign jurisdiction on its territory by designating land not subject to settler state foreclosure proceedings. Deferring to the federal government's recognition of the leadership of another nation intuitively makes some sense[14] when considering Cayuga (or any) County's ability to break from federal governmental recognition of the sovereign leadership of, say, Malaysia.[15] Yet, in regards to recognizing the

[14] This was also the position taken by the Second Circuit US Court of Appeals in *Cayuga Nation v. Tanner (*a case discussed at length below), in which the Court of Appeals affirmed a lower court's decision to defer to the BIA's recognition of the Halftown Council's authority to commence litigation in the name of the Nation. Citing to the Supreme Court's holding in *Zivotofsky ex rel. Zivotofsky v. Kerry*, the Court in *Tanner* notes that, "in the analogous context of foreign relations, recognition of foreign nations 'is a topic on which [the United States] must speak with one voice,' and that voice must emanate from the Executive" (*Cayuga Nation v Tanner* 2016, 5).
[15] Though I am wary of suggesting a politics of recognition dependent on proximity, ala Massey's critique of commonplace practices and politics of care as manifesting, metaphorically, similarly to a set of Russian nesting dolls. Certainly any scale of 'local' governance might righteously choose to break with the federal government's recognition of foreign Nation leadership for any number of reasons not dependent upon proximity.

leadership of the Indigenous Nation with which a given settler municipality shares a geography, this is an incredibly problematic phenomenon that merits scrutiny and contestation.

While the federal government delegates much of the work of the Nation-to-Nation relationship to the purported subject-area expertise of the BIA, the Agency's knowledge of and familiarity with particular Indigenous Nations' leadership and governance processes is not borne of frequent engagement, nor of collaborative navigation of shared (if differentially), place-based concerns. Rather, the BIA's "knowledge" of Indigenous Nation governance affairs reflects an arms-length, bureaucratic encounter and colonialist apprehension (as described in Chapter Two). Meanwhile, based on proximity (indeed, "overlapping" though not coterminous jurisdiction), local municipalities and Counties stand to have much closer working relationships and more intimate familiarity with the governance politics of the Indigenous Nations on whose lands they live and govern. Yet, normative settler statist politics of recognition and jurisdiction discourage local towns and counties from effectuating (inhabiting) those relationships, instead encouraging a deferential, aloof approach to matters pertaining to the Nation-to-Nation relationship. The Seneca Falls Town Supervisor, for instance, recently told constituents that if they didn't like the fact that the Town was liaising with the Halftown Council, that they ought to go talk to the BIA – rather than offering to do so himself, on behalf of his constituents, in his official capacity as Town Supervisor. This phenomenon of abdicating relational accountability to the distant bureaucratic and juridical venues of the BIA is repeated in myriad moments and encounters; and serves as one example of the exigency of rupturing these commonplace practices and the normative settler scalar logics on which they rest.

Settler Legal Options, For Now Foreclosed

Because the Council did not learn of the foreclosure proceedings until over a year after they took place, the statute of limitations for contesting the foreclosure in Seneca County Supreme Court had lapsed. In other words, given the passage of time, New York State law protected the County from legal liability for effectuating a foreclosure of questionable legality, hearkening back to the state's invocation of the equitable defense of laches in the Nation's federal land claim lawsuit. However, New York State tax foreclosure law was not the only consideration barring the Council of Chiefs from taking legal action to contest the foreclosure. Here again, federal recognition served as an underlying technique of jurisdiction, effectively precluding the rightful governing body of the Nation from exercising its sovereign jurisdictional authority.

First, because any challenge to the foreclosure would need to be initiated by the owner of the property as listed on the deed ("Cayuga Nation"), the Council of Chiefs was barred from bringing suit against the County, as the settler state does not recognize the Council of Chiefs' authority to act (in this case, to commence litigation) in the name of the Nation. Hence the Council of Chiefs' May 2021 call for the Halftown Council to immediately cease using the name and collective rights of the nation. Further, even were the Council to initiate a claim against the County using the name "Cayuga Nation," such an action would risk intervention on behalf of the Halftown Council which, due to DOI & BIA recognition, presently enjoys exclusive capacity to use the name of the Cayuga Nation in settler judicial venues. The Halftown Council could either seek to have the case dismissed, or formally intervene as a Plaintiff, claiming sole authority to act in the name of the Nation.

In order to avoid the foregoing possibilities, and to ensure that the property was not sold at foreclosure auction in April of 2020, non-Gayogo̱hó:nǫˀ allies of the Nation organized an online GoFundMe donation page to raise the purported back taxes claimed by the County. The campaign was fiscally sponsored by a nonprofit organization in Ithaca, and took place alongside a concurrent fundraiser auction, organized by Debbie George and members of the Neighbors of the Onondaga Nation, an ally group in Syracuse. The attorney for the Council of Chiefs served as the passthrough between the organization in Ithaca and the County of Cayuga; thus, the Council of Chiefs did not collect or transfer the money. While this approach shielded the Council from having to play any role in collecting or remitting State property taxes, and ensured that they can continue to steward the SHARE Farm land, one might question whether the nearly $150K raised by the campaign might better support the Gayogo̱hó:nǫˀ in ways other than satisfying an illegal debt collection attempt by the settler state. How might the Gayogo̱hó:nǫˀ use nearly $150K (less than half of one percent of the land claim award vacated by the Court of Appeals) towards effectuating their sovereign governance and community prerogatives, if not for the coercive compulsion to use it to cancel an illegally demanded debt?

While the Council of Chiefs are presently unable to commence litigation in settler state courts using the name “Cayuga Nation,” the resultant challenges posed to the Council’s ability to secure the Nation’s governance prerogatives (and contest those of the Halftown Council) pertain exclusively to struggles within and against the limited and limiting U.S. settler state framework of the Nation-to-Nation relationship. Otherwhere and otherwise, Gayogo̱hó:nǫˀ governance and community building continues unabated. The restrictive demands of the U.S. settler state’s framework for nation-to-nation governance relationships has in no way deterred Gayogo̱hó:nǫˀ people from inhabiting relationships (of governance, of community) that eschew entirely the

apprehensions of the U.S. settler state. Yet these efforts, too, face challenges, in the form of raw, unaccountable jurisdictional power enacted by the Halftown Council, and legitimized and protected by means of DOI recognition. It is in the face of these jurisdictional struggles – disingenuously cast by DOI as an "internal leadership dispute" – that DOI recognition is seen most clearly as a technique of jurisdiction empowering the Halftown Council not only to use its own law enforcement and judicial institutions, but to call on those of the settler state in order to criminalize and erase Gayogo̱hó:nǫˀ community and Nation-building efforts.

"Halftown is Genocide": Conotocarious (Town Destroyer) in 2020

On the western side of the lake, along State Route 89 in a town called Seneca Falls, is a metallic, prefab building that Gayogo̱hó:nǫˀ folks refer to as "the boathouse." In April of 2014, Gayogo̱hó:nǫˀ citizens and families opposed to Clint Halftown's effective usurpation of the mantle of the Nation's US-recognized governance took control of the boathouse, which served at the time as the Nation's office building, along with a number of other nearby buildings, including a gas station and an ice cream shack. These actions came in the wake of an IBIA determination reversing a 2011 BIA decision in which the Eastern Regional Director both recognized and heeded the governance authority of Gayogo̱hó:nǫˀ Clan Mothers and the Haudenosaunee Confederacy-recognized Council of Chiefs. The 2011 decision resulted in BIA rescinding recognition of Halftown and other members of his Council, instead conferring recognition on two titleholders amongst the Council of Chiefs, including Sachem Sam George. In 2014, the IBIA reversed the BIA's 2011 decision on the procedural ground that there was no "federal need" for the BIA to make a change in its recognition of Gayogo̱hó:nǫˀ leadership at the time of its 2011 decision. Frustrated with the DOI's continued intransigence in its misrecognition

of Nation leadership, its active disavowal of the governance authority of Clan mothers and the Council of Chiefs; in short: its active perpetuation of the supposed "leadership dispute," Gayogo̱hó:nǫʔ citizens and families locked the Halftown Council out of the boathouse and gas station. Thereafter, these Gayogo̱hó:nǫʔ citizens and families stewarded both the office space and the gas station in support of community building efforts in the area, providing vital income to the families - in Seneca Falls and elsewhere - whom the Halftown Council cut off from all forms of financial support from the Nation. In addition, the community built a structure that was used both as a daycare and as a place to teach the Gayogo̱hó:nǫʔ language and ceremonies; many citizens looked forward to the day that the structure would be formally recognized by the Grand Council as a Longhouse.

On February 22, 2020, Clint Halftown ordered the Cayuga Nation Police to carry out an overnight demolition of these buildings – save for the 'boathouse.' Nation Police (staffed entirely by non-Gayogo̱hó:nǫʔ men) raided the buildings, cleared them of Gayogo̱hó:nǫʔ inhabitants, and used heavy machinery to demolish them. Even the garden and raised beds – built in the shape of the Hiawatha Wampum Belt – were destroyed. Traditional Gayogo̱hó:nǫʔ community members have attributed to Halftown, on more the one occasion since, the name "Town Destroyer" (Conotocarious) – originally bestowed on George Washington after he ordered the Sullivan-Clinton campaign of 1779. A sign hangs on a fence in a nearby Gayogo̱hó:nǫʔ citizen's yard reading, "Halftown is Genocide."

And yet, Halftown's police weren't the only law enforcement officers on scene during the overnight raid and demolition. Both Seneca Falls and New York State Police officers mobilized to form a defensive perimeter, standing in the road looking on as the demolition took place. Similarly, during a press conference organized by the Council of Chiefs and Gayogo̱hó:nǫʔ

community one week after the demolition, Seneca Falls police were on site, plainly visible in the many cell phone videos taken of the fracas that broke out after the press conference. Even so, in a December 2021 letter released to the public via the local press, the Seneca Falls Chief of Police, Seneca County Sheriff, and Seneca County District Attorney sought to clarify their role in the February 2020 demolition in order to contest the local public perception "that the police did nothing." Their self-positioning betrays their positioning within, and contributions to, a normative settler scalar politics of jurisdiction, while masking their actions as neutral and unassailable.

With respect to the February 2020 demolition, Peenstra et al. make clear that their involvement was carefully planned in consultation with a task force organized by the Seneca Falls Chief of Police including local, state, and federal law enforcement agencies, originally convened to address "public safety issues and events involving the Cayuga Indian Nation." While they are careful to position themselves as proactive in their efforts to ensure public (crucially, here meaning non-Gayogo̱hó:nǫˀ) safety, they also seek to dispel the assertion that they actively assisted Halftown's police in the raid. As they assert, "At no time did law enforcement condone, support, or facilitate the raid." Yet, mere sentences before this, they state, "A multi-agency command post was established…approximately 50 police officers staged at the command post…A perimeter was established, and response teams were formed to handle any complaints received or rescue persons in distress. Emergency medical units were also staged on the perimeter, and fire services were coordinated." While Seneca Falls Police didn't go so far as to button Cayuga Nation Police officers' jackets or help them put their boots on, their actions betray a significant mobilization of resources to ensure that the raid and demolition could be carried out with as little disruption to the non-Gayogo̱hó:nǫˀ "public" as possible.

The letter speaks as well to local law enforcement's self-positioning more broadly with respect to the governance and jurisdictional disputes involving the Cayuga Nation. Referencing the DOI's 2019 letter to Halftown's legal counsel, in which DOI expresses its view that "the Halftown Council is the Nation's government for all purposes," Peenstra et al. state:

> Matters escalated when the federal government recognized Clint Halftown as the leader of the Cayuga Indian Nation. Before, both factions claimed to be the legitimate government of the Cayugas, and law enforcement remained neutral on that issue. Once Halftown received Federal and B.I.A. recognition, the stalemate was broken.

Here again, we see a thoroughly deferential approach to federal recognition of the Halftown Council, an approach reflective of the normative settler scalar politics of recognition and jurisdiction. Obscured as common-sense - as best and necessary practices within Nation-to-Nation relating - these politics shape local law enforcement's contributions to the material and viscerally felt subjugation of Gayogo̱hó:nǫˀ spatiality.

Yet, it is also entirely unsurprising that settler law enforcement, predicated as it is on hierarchical modes of structuration and operation, would dutifully protect "the public" while simultaneously facilitating the criminalization and effective erasure of traditional Gayogo̱hó:nǫˀ community-building and governance practices. Absent significant public and political pressure, it seems futile to expect local settler law enforcement to refuse to participate in the normative settler scalar politics of recognition and jurisdiction, particularly when their purported jurisdiction is explicitly granted by federal law. Before turning to just such an effort to build pressure, I address one final means by which the settler state, this time through New York Unified Court System, has strengthened the purchase of Clint Halftown's claims to jurisdictional authority. By juridically legitimating the Halftown Council's performances of jurisdictional authority, the State court system enables Halftown to enjoin local settler law enforcement to

assist his efforts to silence, impoverish, and unhouse traditional Gayogo̱hó:nǫˀ citizens.

Provocations towards judicial legibility and commensurability

In order to understand the settler judiciary's role in empowering Halftown through normative practices of recognition and jurisdiction, it is helpful to briefly review a few moments within the jurisdictional conflict that for years resulted in a see-sawing of outcomes in legal disputes between the Council of Chiefs and Clan Mothers, on one hand, and the Halftown Council, on the other. This so-called "stalemate," as referenced above, is most clearly reflected in the back-and-forth, wavering positions articulated across New York State and federal court decisions involving the Cayuga Nation between 2003 and late 2019. In cases concerning matters as disparate as the application of zoning laws to Nation-owned properties; the application of local gaming ordinances to Nation-owned businesses; the ability of the state, local municipalities, and counties to tax Nation enterprises; and, requests for settler judicial and law enforcement intervention on behalf of the Halftown Council, New York State and federal courts vacillated in their decisions of whether to offer relief or otherwise decide disputes in ways that required even tacit acknowledgment of the Nation's purported leadership dispute. Consider the divergence between the Second Circuit Federal Court of Appeals' 2016 decision in *Cayuga Nation v Tanner*, and the New York State Court of Appeals' 2019 decision in *Cayuga Nation v Campbell*.

Tanner was a case brought by the Halftown Council (as Cayuga Nation) against the Village of Union Springs, seeking relief from the Village's efforts to regulate a gaming facility operated by the Halftown Council. The Court in *Tanner* concurs with the Halftown Council's argument that the Court must defer to BIA recognition of the Halftown Council, and can do so without resolving questions of tribal law:

> Like the BIA, which must determine whom to recognize as a counterparty to administer ongoing contracts on behalf of the Nation, the courts must recognize someone to act on behalf of the Nation to institute, defend, or conduct litigation. Lacking jurisdiction to resolve the question of governmental authority under tribal law, and lacking the authority under federal law (not to mention the resources and expertise of the BIA) to question the decision of the Executive about whom the federal government should recognize as speaking for the Nation, the only practical and legal option is for the courts to consider the available evidence of the present position of the Executive and then defer to that position. (Cayuga Nation v. Tanner 2016, 7).

Here the Court insinuates that the Nation would be hamstrung if unable to access and use settler Courts, while also articulating its own deferential position to the purported expertise of the BIA. The Court goes on to reject the Village's assertion that the question of whether the Halftown Council has the authority to commence litigation is a matter of tribal law beyond the scope of the Court's jurisdiction, suggesting that such a finding would leave tribes vulnerable to the mere suggestion that they do not have authority to commence litigation.

In 2019, however, the New York State Court of Appeals in *Campbell* declined to defer to the federal Court's 2016 holding in *Tanner*. The *Campbell* case comprises a series of tort claims brought by the Halftown Council (as Cayuga Nation) against a group of traditional Gayogo̱hó:nǫˀ citizens (glossed as the "Jacobs Council"), seeking injunctive relief requiring the Jacobs Council to vacate the aforementioned Nation-owned properties in Seneca Falls. The State court of Appeals notes that while that *Tanner* raised the question of the Halftown Council's ability to defend the Nation's sovereign prerogative from claims brought by a third party (the Village of Union Springs), in *Campbell*, the Halftown Council "seeks to enforce the Nation's property rights against a long-recognized competing faction" (Opinion, *Cayuga Nation v. Campbell* 2019, 20). The majority thus tacitly registers uncertainty in DOI and BIA recognition of Nation leadership, concluding that, "Because the Halftown Council's legal claims depend on its allegations that it speaks for the Nation, and the Jacobs Council does not, the Nation's

leadership dispute permeates its claims and New York state courts lack the constitutional or statutory power to adjudicate them" (ibid, 20-21). In a welcome reprieve, the Court thus rightfully recognizes and heeds the limits emplaced within settler legal and statutory constructions of jurisdiction, and declines to offer relief to the Halftown Council out of principled deference to the Nation's self-determining governance authority. Yet, this position represents a divergence from the otherwise highly paternalistic concerns expressed by the settler executive and judiciary with respect to the form and function of Gayogo̱hó:nǫˀ law.

Underlying the federal and State Court vacillations in these and other cases is the settler state's preoccupation with the Cayuga Nation's purported "lack" of a cognizable tribal judiciary apparatus, specifically one that is readily commensurable with the judiciaries now common to Western, liberal Nation-states. Here even the DOI and BIA, self-avowed partners to Tribes supportive of Tribal self-determination, have joined the settler judiciary in commonly opining on the Cayuga Nation's *lack* of such an institution. Recall first Seneca County Supreme Court Justice Bender's insulting admonishment from Chapter Two: that the Cayuga Nation's law, because it is unwritten, is "hardly conducive to rational adjudication," further characterizing its "reliance upon oral tradition and consensus" as "ill-suited for the twenty-first century." While avoiding the insulting, colonialist pretension of Bender's language, the Department of Interior (in the *George* decision discussed at length in Chapter Two) lamented that the Cayuga Nation, "…has no written law, Court or body other than the Council itself for resolving disputes within the Council" (49 IBIA 164 at 167); while the Regional Director of the BIA's Eastern Regional Office in 2016 said that "Most of the cases discussing federal deference to tribal resolutions of intratribal disputes invoke deference to decisions of tribal courts. The Cayuga Nation has no tribal judiciary."

These settler statist concerns over the Nation's judiciary and dispute resolution processes came to a head in *Campbell.* When the Halftown Council sought New York State judicial and law enforcement intervention into Gayogo̱hó:nǫˀ affairs, the Court declined, citing its own lack of jurisdiction, even going so far as to make a relatively strong statement in favor of Gayogo̱hó:nǫˀ self-determination:

> "We reject the implication that the Nation is disadvantaged or left 'entirely without recourse' [citing to dissent] by its inability to rely on New York courts to determine which faction is the leader entitled to possession and control of certain real and personal property. This paternalistic view fails to appreciate that the use of dispute resolution mechanisms other than courts is itself an exercise of the right to self-govern in a manner consistent with tribal traditions and oral law" (Opinion, *Cayuga Nation v. Campbell* 2019, 16)

The Court's deference to the Nation's self-determined methods of dispute resolution is a welcome reprieve from prior characterizations of the Nation as *lacking* such methods. It also provides a model for judicial and jurisdictional *humility* in the navigation of a plurality of legal systems not entirely cognizable to, or commensurable with, one another. Specifically, the Court recognizes its own authority as being *limited by* the otherwise operation of "tribal traditions and oral law," without making normative claims as to the ontological or epistemological inferiority of such non-cognizable forms and operations of Nation law. Instead, the Court actively sees, names, and heeds the limits of its own "authority to have authority" vis-à-vis Gayogo̱hó:nǫˀ authority.

Legibility as the price of recognition: Creation of the "Cayuga Nation Tribal Court"

In hindsight, the decision also foretold the Halftown Council's move to make Cayuga Nation law legible – and thus cognizable – to the settler state's judiciary and law enforcement apparatuses. As the Halftown Council states in a "Myth vs. Fact Sheet," a document made available to passersby during a Village of Union Springs Chamber of Commerce event in August of 2021, "the Court of Appeals stated that the Cayuga Nation needed to resolve the dispute concerning the properties on its own." It is no coincidence, in other words, that 2019 marked the year that a new sign was erected outside the Boathouse, declaring it the "Cayuga Nation Tribal Court and Justice Center." In order to understand the significance of this development for the operations of the normative settler scalar politics of jurisdiction, we must turn briefly to a joint initiative among Tribal, New York State, and federal Courts, organized to achieve mutual understanding and establish procedures towards the commensurability of Tribal and settler state courts.

The Halftown Council's ability to call upon settler state courts and law enforcement for assistance in both criminalizing and attempting to evict Gayogo̱hó:nǫˀ citizens from their homes traces, in no small part, to an initiative proudly claimed and described by the New York State Unified Court System. The initiative's website carries the heading "New York Federal-State-Tribal Courts and Indian Nations Justice Forum." The website's 'About the Forum' page accords credit to a previous New York State Chief Judge for establishing the forum as a means to "explore how different justice systems might collaborate to foster mutual understanding and minimize conflict." The Forum thus presents as a logical means to address the complexities born of shared (if differentially) navigation of a plurality of legal systems with overlapping (if incommensurable) jurisdictional claims.

Multiple exploratory meetings resulted in a formalized list of six priorities in 2004, including "To develop mechanisms for resolution of jurisdictional conflicts and inter-jurisdictional recognition of judgments." Further background on this particular prong reveals that, at the behest of the Forum, the Chief Administrative Judge of the New York Unified Court System signed section 202.71 of the Uniform Civil Rules of the Supreme and County Courts on May 26, 2017. The section is entitled "*Recognition of Tribal Court Judgments, Decrees and Orders,*" and establishes a uniform procedure by which New York Courts recognize judgments initially rendered "by a court duly established under tribal or federal law by any Indian tribe, band or nation recognized…by the United States." Thus, federal recognition is both required for and central to any Indigenous Nation's ability to have its judgments recognized and registered by New York State courts. Further, the original judgments must be rendered by a tribal judiciary "duly established" under federal or Nation law. Already enjoying US federal recognition as the leadership of the Nation, all that remained in order for the Halftown Council to secure New York State court legitimation of its criminalization of traditional Gayogo̱hó:nǫˀ citizens was to conjure a Tribal Court. The Halftown Council did just this in 2019, hiring a non-Native, former County Court judge to preside over the Nation's "Tribal Court," housed in the building that Gayogo̱hó:nǫˀ citizens and Titleholders still simply refer to as "the boathouse."

None of the Gayogo̱hó:nǫˀ citizens with whom I have spent time working to address the federal government's recognition of the Halftown Council are familiar with the laws and procedures of the purported Tribal Court, nor with how they were developed. A brief perusal of the "Cayuga Nation Penal Code," as well as its "Rules of Civil Procedure," reveals a striking correspondence to New York State codes and procedures, as noted in a collaboratively created

community statement, read by Gayogo̱hó:nǫˀ citizen and community organizer Dylan John at a January 26th, 2022 press conference:

> The Great Law of Peace and the Two Row Wampum heavily influence Gayogo̱hó:nǫˀ Nation governance. Clint Halftown, and his Council, in 2015, created their own version of Cayuga Nation Law; one that resembles New York State's codes of Civil, Criminal, Real Property and Judicial Laws. These laws are foreign to the Traditional Gayogo̱hó:nǫˀ as they were created by the colonizers, meant for the colonized.

Beginning in January of 2021, many of the Gayogo̱hó:nǫˀ citizens in Seneca Falls who authored the January 2022 statement were served summonses and packets of paperwork, all related to purported back-rent owed to the Halftown Council (acting as "Cayuga Nation") for living in Nation-owned housing. A steady stream of such paperwork continued to flow well into the late summer and fall. Notably, this paperwork first arrived from the Halftown Council's "Cayuga Nation Tribal Court," and then from Seneca County Supreme Court. This was one of the first instances of the Halftown Council procuring judgments against Gayogo̱hó:nǫˀ citizens in its "Tribal Court," and then registering those judgments in Seneca County Supreme Court, per the process referenced above. In addition to allowing the Halftown Council to avoid a similar adverse outcome as occurred in the 2019 *Campbell* decision, the process of registering tribal court judgments in New York state court also affords them the option of enjoining settler law enforcement to enforce the judgments against Gayogo̱hó:nǫˀ citizens.

While the paperwork and proceedings related to money judgments, as opposed to evictions, many Gayogo̱hó:nǫˀ citizens nonetheless feared the possibility of the Halftown Council carrying out overnight evictions and demolitions of their homes, in a manner similar to the February 2020 demolitions. This situation led to a community gathering and sharing of citizens' experiences of Halftown and his Council's many forms and instances of judicial and police suppression of traditional Gayogo̱hó:nǫˀ community and Nation (re-)building. This

sharing garnered a broad response from non-Gayogo̱hó:nǫʔ allies, to which I now turn as a means to theorize otherwise ways of navigating jurisdictional conflict.

Conclusion: Honoring the Two Row: Towards a dynamic inhabitance of settler subjectivity

> "Normativity is surely the heavy reality of the law. But law is also imagination, representation, and description of reality. Where, then, is the non-normative dimension of the normative?"[16]

Two Convenings, Two Row Style

On February 20th, 2022, non-Gayogo̱hó:nǫʔ activists gathered for a demonstration in front of Seneca Falls Police Department, in protest of the Department's violent February 8th arrest of a Gayogo̱hó:nǫʔ citizen, occurring on Gayogo̱hó:nǫʔ-owned property within the Treaty of Canandaigua-guaranteed Gayogo̱hó:nǫʔ reservation. One participant held a sign reading "SFPD DON'T ENFORCE CLINT'S TYRRANY"; another, "NO NYS [New York State] JURISDICTION ON GAYOGO̱HÓ:NǪʔ LAND." Multiple signs simply read, "HONOR THE TWO ROW." An associated March 1st social media post on the "Halftown Must Go" Instagram, Facebook, and Twitter pages, contextualizing the protest for followers, read: "Traditional Gayogo̱hó:nǫʔ citizens have long been working to end US government assistance of Halftown's attempts to destroy Gayogo̱hó:nǫʔ livelihoods, suppress community-building efforts, and erase traditional Gayogo̱hó:nǫʔ governance…As non-Gayogo̱hó:nǫʔ people living on Gayogo̱hó:nǫʔ land, we MUST say NO to our courts and law enforcement acting to legitimize and facilitate Clint Halftown's violence."

Two and a half months later, on May 16th, another group – this time comprised of Gayogo̱hó:nǫʔ as well as other Indigenous and non-Indigenous participants – gathered outside the Department of Interior, holding purple and white umbrellas in Two Row-formation (see photo below), painted with the message "BIDEN MEET THE SACHEMS." After marching in the streets from the DOI building, the group displayed the same message in a park across the

[16] de Sousa Santos 1987.

street from the White House, before some participants (including myself) left to meet with staff members in U.S. Senators Schumer & Gillibrand's offices. We urged the senators to request that the Department of Interior: deny the Halftown Council's application to place Nation-owned land into federal trust; meet with the Council of Chiefs straightaway; and, cease recognizing and liaising with Clint Halftown and his Council.

These mobilizations reflect waypoints in an ongoing process of collective capacity-, knowledge-, and relationship building taking place, in turns, in cross-National collaboration and dialogue, as well as amongst settlers organizing within our row of the Two Row. In both messaging and method, the convenings represent refusals of the normative settler scalar politics of jurisdiction. They also reflect a grounded, place-based approach for legal geographers seeking to take up Pasternak's framework of settler legal and political responsibility to "honor treaty relations…build alliances between settler and Indigenous societies, and…respect Indigenous law" (Pasternak 2017, 44). In the face of the settler state's "refusal to see particular legal geographies," and the "the legal denial of Indigenous law" (Blomley 2021, xviii), I reflect below on the ways in which the above mobilizations, and the growing networks of care out of which they arose, offer critical insight to both settler legal geographers and activists, illuminating pathways out of the deeply rutted patterns and hierarchical flows of power at the nexus of settler-Indigenous governance politics and jurisdictional conflicts.

A Look Back Upstream

Chapters 2 and 3 focused on U.S. settler governmental (mis)apprehension of Nation law and leadership, and the downstream effects of this misrecognition, particularly in creating a gnarled constellation of jurisdictional claims within which settler statist recognition plays an

outsize role in the material and legal outcomes of each passing conflict. These chapters make abundantly clear that, despite ongoing Gayogo̱hó:nǫʔ efforts and processes of traditional governance and cultural revitalization, these efforts and processes are adversely affected in ongoing and intensifying ways, due to settler governmental misrecognition of the Halftown Council as Nation leadership. This recognition then serves as a technique of jurisdiction in settler legal venues, leveraged to stymie the ability of the Nation's Clan Mothers and Titleholders to have their own exercises of jurisdiction affirmed and legitimated by the settler judiciary. Instead, the Halftown Council is afforded the exclusive capacity to conduct political, economic, and juridical affairs in the name of the Nation, with the affirmation and legitimation of the settler state.

I discussed how this state of affairs is enabled by the operation of what I've termed the normative settler scalar politics of jurisdiction, which I characterize as an inherently aloof and deferential approach to tending the government-to-government relationship, particularly on behalf of state and local settler governmental bodies and actors. Despite having a more intimate, relational understanding of the struggles over U.S.-recognized Gayogo̱hó:nǫʔ leadership and jurisdiction, these local governmental and law enforcement actors are both actively discouraged and inherently disinclined to intervene of their own volition, due to their location within the normative political matrix outlined above. Further, the commonly articulated Two Row principle of non-interference in one another's governance exacerbates the misleading and politically demobilizing representations of the conflict as an "internal dispute"; settlers are told (by other settlers, as well as by Haudenosaunee people) to stay in "their row," and not interfere in the internal affairs of the Gayogo̱hó:nǫʔ. This creates a dynamic in which many settlers – even those who are concerned by what they read and hear of the Halftown Council's actions –choose to

inhabit a principled yet misguided refusal to act, problematically eliding inaction and non-interference. Finally, and particularly in activist spaces, this proclivity to inaction is amplified by the circulation of social justice mores which tell us that those who are not "directly affected" by a given issue ought simply step back and follow the lead of those directly affected. Thus, many settlers carry a cultivated wariness towards taking any action or position that could be seen as inappropriately interfering or paternalistically acting out of turn.

Rather than calling for principled inaction, I argue instead that the foundational principles of the Two Row Wampum Treaty – peace, friendship, and non-interference – require that settlers actively row against the currents of settler statist politico-legal denial of Gayogo̲hó:nǫˀ law and jurisdiction – currents that are renewed and maintained at every turn in the ongoing struggles over jurisdiction on Gayogo̲hó:nǫˀ land. In other words, staying in our row does not – indeed, *can not* – mean deferring to the normative settler politico-legal processes that continue to disavow the principles of the Two Row Wampum Treaty, along with Gayogo̲hó:nǫˀ governance and jurisdiction. Instead, we must creatively tend to governance relationships in ways that respect, embody, and recreate Two Row principles. This includes building relationships of care, in a spirit of friendship, with Gayogo̲hó:nǫˀ citizens. Drawing on the two brief actions highlighted above, I show how Two Row principles serve to construct paradigms for cross-national collaboration that: center legal as well as onto-epistemological pluralism; invite embodied, participatory, non-hierarchical and non-contractual approaches to honoring treaties and tending government-to-government relationships; and, call for a more dynamic inhabitance of settler subjectivities.

Rowing Forward Against the Currents

One means by which settlers can more dynamically inhabit their settler subjectivity is by collectively denouncing and refusing settler statist exercises of jurisdiction that inherently violate treaties and Indigenous jurisdiction. When Seneca Falls Police violently detained a Gayogo̱hó:nǫˀ citizen on what is simultaneously Gayogo̱hó:nǫˀ fee simple *and* reservation land, the Town police were in breach of both the Two Row Wampum Treaty, as well as the 1794 Treaty of Canandaigua. In spite of U.S. federal legislation[17] summarily granting concurrent jurisdiction to the State of New York within "Indian Country," settlers gathered outside SFPD headquarters to communicate their simultaneous refusal of SFPD's exercise of such claimed jurisdiction, as well as of the purportedly authorizing source of federal law proclaiming New York State jurisdiction in the first place.

Dynamic inhabitance requires settlers to creatively address the downstream consequences of U.S. federal statutory violation of treaties, irrespective of the scale at which these consequences arise. Demonstrators' calls for "NO NYS JURISDICTION ON GAYOGO̱HÓ:NǪˀ LAND" demand a reckoning with local acts of complicity with the U.S. federal government's attempted apprehension of Gayogo̱hó:nǫˀ jurisdiction; their chants of "SFPD: DON'T ENFORCE CLINT'S TYRANNY" lay bare the otherwise obscured – yet extensive – degree of choice and discretion available to local law enforcement in their exercises of claimed jurisdiction. While this demonstration played out at what might be termed the "local" scale, participants' embodiment of the Two Row principle of non-interference refused settler statist claims to jurisdiction across and irrespective of settler scale(s). This, and countless other eschewals of the normative settler scalar politics of jurisdiction, comprise a core component of

[17] 25 U.S. Code § 232 – Jurisdiction of New York State over offenses committed on reservations within State

dynamic inhabitance as it relates to settler solidarity efforts to "HONOR THE TWO ROW" and respect Gayogo̱hó:nǫˀ law and jurisdiction.

Gayogo̱hó:nǫˀ and non-Gayogo̱hó:nǫˀ participants marching from the Department of Interior to the White House on May 16th carried a banner reading, "CLINT HALFTOWN MUST GO. HIS CLANMOTHER SAID SO." It would be all too easy to read this banner's message as a violation of the Two Row principle of non-interference: whether as a group of non-Indigenous people meddling in the internal affairs of the Gayogo̱hó:nǫˀ, or as an improper demand upon settler governance by Gayogo̱hó:nǫˀ people. Instead, the message represents months of cross-national relationship- and trust-building work, entailing careful efforts to tend not only to the well-being of one another, but also to the quality of governance relationships through which we relate across national difference. The message itself is a mere reminder, a simple yet subtle a corrective to decades of settler statist disavowal of Gayogo̱hó:nǫˀ law and jurisdiction. By demanding that the U.S. federal government heed Gayogo̱hó:nǫˀ Clan Mother governance authority and removal of Clint Halftown from Nation Council, participants refuse the status quo of settler statist intransigence over its ongoing violation of the Two Row Treaty. Participants instead called for deference to Gayogo̱hó:nǫˀ sovereignty and self-determination, and thus, settler humility in engaging and respecting Indigenous legal and governance ontologies (Daigle 2019; de Leeuw and Hunt 2018). Bringing these calls for humility and corrective action into the offices of U.S. senators is just one example of how settlers can "take our place in toxic…state spaces" (Fujikane 2021, 15) as one means of the careful and caring attendance to governance relationships at the core of dynamic inhabitance of settler subjectivity.

A core component to the work of enacting a more dynamic inhabitance of settler subjectivity, in Gayogo̱hó:nǫˀ territory and elsewhere, is the process of building relationships of

care while prefiguring futures in which settlers, individually and collectively, honor and abide Indigenous governance and jurisdiction. Yet, it is vital to acknowledge – and for future research to more adequately theorize – the heretofore unremarked fact that there is no singular settler subjectivity; that rather, settler subjectivities are differently positioned and inhabited. While there is value in theorizing ways in which differently positioned settlers can build community and collectivity in efforts to more robustly abide Indigenous legal geographies, doing so with a flattening conception of settler subjectivity is antithetical to vital modes of dynamic inhabitance scholars are developing elsewhere (Fujikane 2021; see also Heynen and Ybarra 2021). As Candace Fujikane outlines in *Mapping Abundance for A Planetary Future*, settler solidarity requires "opposition to all forms of oppression mobilized by the . . . settler state" (Fujikane 2021, 14), including the many forms of oppression not explicitly contemplated in U.S. settler-Indigenous Treaty frameworks. While I have outlined a mode of settler solidarity that calls for tending to governance relationships, we might ask how – if at all – the Two Row informs efforts to tend other relationships, across differences that don't find collective expression in Treaty relationship? Given that common tellings of the Two Row re-instantiate a Haudenosaunee (canoe) – European (ship) binary, how are we to account for arrivant, or, involuntary settler subjectivities (Byrd 2011, Jackson 2012)? Future research, along with ongoing processes of relationship building, can tell us whether this binary marks a limit to the Two Row's utility as an analytical framework, or an opportunity for it to stretch. In either case, I suggest that a methodology of more faithfully and dynamically inhabiting Two Row principles may yet yield additional pathways in tending relationships across differences – including and beyond those finding expression at the Nation-to-Nation nexus.

Parallel disentanglement: Two Row futures on Gayogo̱hó:nǫˀ land

Looming over these reflections concerning U.S. federal recognition of Gayogo̱hó:nǫˀ leadership is the paradox of the simultaneous meaningfulness and meaninglessness of this recognition to the Gayogo̱hó:nǫˀ people I have come to know through this work. The meaningfulness is perhaps most simply and aptly captured in a footnote in Pasternak's (2017) *Grounded Authority*. Pasternak quotes Haudenosaunee attorney Aaron Detlor, who deadpans as to why Haudenosaunee people – with a law and source of authority their own – even bother to show up for and engage settler courts and legal proceedings: "they impact us." And yet, there is a simultaneous profundity not only of antipathy, but of *apathy*, towards the U.S. settler state, its Bureau of Indian Affairs, and the import of federal recognition of Nation leadership. In a conversation with Sachem Sam during summer of 2020, I asked him whether the "Federal Representative" status is important to him. His response was that it is important in large part because this recognition - and all that it affords - is presently vested in an individual who has long since been removed from his position of authority by Gayogo̱hó:nǫˀ governance protocols. While wresting federal recognition away from this individual is important to Sachem Sam, the Council of Chiefs, the Clan Mothers, and other self-identifying traditional Gayogo̱hó:nǫˀ people, Sachem Sam stated that, "as soon as we get it…" and, joining his hands into the shape of a bowl, then split them apart, indicating that as soon as Halftown is no longer federally recognized, the Gayogo̱hó:nǫˀ will drop entirely all investiture of their energy into the farce that the "Federal Representative" position represents to them. In other words, the meaning of that form of recognition will shift in an instant from urgent and meaningful to utterly meaningless.

Once the Bureau of Indian Affairs heeds the governance authority of the Gayogo̱hó:nǫˀ Clan Mothers and Council of Chiefs, correcting its misrecognition of Nation leadership, the

present urgency with which settlers are organizing to hold the U.S. federal government accountable will dissipate. What will become of the Nation-to-Nation relationship, and of governance relationships between the Gayogo̱hó꞉nǫʔ and the settler state, more generally? What new forms will dynamic inhabitance of settler subjectivity take in relation to Gayogo̱hó꞉nǫʔ law and governance, and how will settlers continue to build - through the state or otherwise - relationships that affirm and abide Gayogo̱hó꞉nǫʔ governance and the Great Law of Peace? When the immediacy, the vice-grip of needing to intervene in the settler state's misrecognition of Gayogo̱hó꞉nǫʔ leadership lifts, a vital, if presently somewhat obscured, question comes into focus: what will be required of settlers seeking to live in accountable relationship with Gayogo̱hó꞉nǫʔ law, in the future in which Gayogo̱hó꞉nǫʔ governance of the 64,000-acre treaty area (and beyond) proceeds unencumbered and unabated? Part of the answer to this question undoubtedly depends on factors and considerations beyond the influence and purview of settlers, whether as individuals or as polities. Yet, another part of the answer may well depend on how we choose to row alongside the Gayogo̱hó꞉nǫʔ on the shared waters that carry us there.

References

Benton, Lauren, and Ross, Richard J., eds. 2013. *Legal Pluralism and Empires, 1500-1850*. New York, NY: New York University Press.

Blomley, Nicholas. 2003. "Law, property, and the geography of violence: the frontier, the survey, and the grid." *Annals of the Association of American Geographers* 93 (1)**:** 121-141.

---. 2021. "Foreword: What is legal geography? Why, and why now?" in *Handbook on Space, Place, and Law.* Ed. Robyn Bartel and Jennifer Carter. Northampton, MA: Edward Elgar Publishing: xvii-xix.

Blomley et al. 2001. *The Legal Geographies Reader*: *Law, Power, and Space.* Malden, MA: Blackwell.

Braverman, Irus et al. 2014. "Introduction: Expanding the Spaces of Law" in *The Expanding Spaces of Law: A Timely Legal Geography*. Stanford, CA: Stanford University Press.

Byrd, Jodi. 2011. *The Transit of Empire: Indigenous Critiques of Colonialism.* Minneapolis, MN: University of Minnesota Press.

Cayuga Indian Nation of N.Y. v. Pataki, 413 F.3d 266 (2d Cir. 2005)

Cayuga Nation v. Campbell, 2019 N.Y. Slip Op. 7711 (N.Y. 2019)

Cayuga Nation v. Jacobs, 2014 N.Y. Slip Op. 31277 (N.Y. Sup. Ct. 2014)

Cayuga Nation v. Tanner, 824 F.3d 321 (2d Cir. 2016)

Cayuga Nation v. Tanner, 6 F.4th 361 (2d Cir. 2021)

Cayuga Nation v. Zinke, 324 F.R.D. 277, 99 Fed. R. Serv. 3d 1492 (D.D.C. 2018)

Cayuga Nation of New York, Clint Halftown, Tim Twoguns, and Gary Wheeler v. Eastern Regional Director, Bureau of Indian Affairs. (58 IBIA 171). January 2014.

The Cherokee Nation v. the State of Georgia, 30 U.S. 1 (1831)

City of Sherrill v. Oneida Indian, 544 U.S. 197, 125 S. Ct. 1478 (2005)

Daigle, Michelle. 2016. "Awawanenitakik: The spatial politics of recognition and relational geographies of Indigenous self-determination." *The Canadian Geographer* 60 (2): 259-269.

---. 2019. "The spectacle of reconciliation: On (the) unsettling responsibilities to Indigenous

peoples in the academy." *EPD: Society and Space*. Vol. 37, No. 4. 703-721.

De Leeuw, Sarah and Sarah Hunt. 2018. "Unsettling colonizing geographies." *Geography Compass*. 12 (7): e12376.

de Sousa Santos, Boaventura. 1987. "Law: A Map of Misreading. Toward a Postmodern Concept of Law." *Journal of Law and Society* 14 (3): 279-302.

Delaney, David. 2017. "Legal Geography III: New Worlds, New Convergences." Progress in Human Geography 41 (5): 667–75.

Deloria, Vine and Lytle, Clifford. 1984. *The Nations Within: The Past and Future of American Indian Sovereignty.* New York, NY: Pantheon.

Dennison, Jean. 2012. *Colonial Entanglement: Constituting a Twenty-First-Century Osage Nation*.University of North Carolina Press.

Drent, Meredith and Jean Dennison. 2021. "Moving to a New Country Again: The Osage Nation's Search for Order and Unity through Change." *Journal of the Native American and Indigenous Studies Association*. 8(2): 62-91.

Duthu, Bruce. 2013. *Shadow Nations: Tribal Sovereignty and the Limits of Legal Pluralism*. New York, NY: Oxford University Press.

Elden, Stuart. 2013. "How Should We Do The History of Territory?" *Territory, Politics, Governance.* Vol. 1, No. 1. 5-20.

Fort, Kathryn. 2009. "The New Laches: Creating Title Where None Existed." *George Mason Law Review*. 16(2): 357-401.

Griffiths, J. 1986. What is Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law.* (24) 1-56. Originally published 1981.

Goeman, Mishuana. 2013. *Mark My Words: Native Women Mapping our Nations*. Minneapolis, MN: University of Minnesota Press.

Hagan, William T. 1966. *Indian Police and Judges*. Lincoln, NE: University of Nebraska Press.

Hallenbeck, Jessica. 2015. "Returning to the water to enact a treaty relationship: the Two Row Wampum Renewal Campaign." *Settler Colonial Studies*. 5(4): 350-262.

Harring, Sidney. 1994. *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*. Cambridge, MA: Cambridge University Press.

Hartman, Saidiya. 2008. "Venus in Two Acts." *Small Axe*. 12 (2): 1-14.

Hill, Susan. 2017. *The Clay We Are Made Of: Haudenosaunee Land Tenure on the Grand River*. Winnipeg: University of Manitoba Press.

Hunt, Sarah. 2014. *Witnessing the colonialscape: lighting the intimate fires of indigenous legal pluralism*, PhD thesis, Simon Frasier University.

"Indian Law Enforcement History." 1975. Bureau of Indian Affairs Law Enforcement Services. Theodore R. Quasula, Director. Available online: http://web.archive.org/web/20000226013721/bialaw.fedworld.gov/history/index.htm

Jackson, Shona. 2012. *Creole Indigeneity: Between Myth and Nation in the Caribbean*. Minneapolis, MN: University of Minnesota Press.

Kovach, Margaret. 2009. *Indigenous Methodologies: Characteristics, Conversations, and Contexts.* Toronto: University of Toronto Press.

Latulippe, Nicole. 2015. "Bridging Parallel Rows: Epistemic Difference and Relational Accountability in Cross-Cultural Research." *The International Indigenous Policy Journal*. 6(2): Art. 7. DOI: 10.18584/iipj.2015.6.2.7.

Lynn Doty, Roxanne. 2001. "Desert Tracts: Statecraft in Remote Places." *Alternatives: Global, Local, Political.* 26(4): 523-543.

Massey, Doreen. 2005. *For Space*. London: SAGE.

Merry, S. E. 1988. Legal Pluralism. *Law and Society Review* 22(5), 869-896.

Nagar, Richa and Roozbeh Shirazi. 2019. "Radical Vulnerability." *Keywords in Radical Geography:Antipode at 50*, edited by Antipode Editorial Collective, John Wiley & Sons, 236-242.

Owensby, Brian and Ross, Richard. 2018. *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America*. New York, NY: NYU Press.

Palmer, Meredith Alberta. 2020. "Rendering settler sovereign landscapes: Race and property in the Empire State." *EPD: Society and Space* 38(5): 793-810.

Parmenter, Jon. 2013. "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(1): 82-109.

Pasternak, Shiri. 2017. *Grounded Authority: The Algonquins of Barriere Lake Against the State*. Minneapolis, MN: University of Minnesota Press.

Peenstra, Stuart, et al. 2021. "How we handle Cayuga Nation issues." *The Citizen*, Auburn NY. 3 Feb 2022. Available online: shorturl.at/nFIP8

Reid, Joshua. 2015. *The Sea is My Country: The Maritime World of the Makahs*. New Haven, CT: Yale University Press.

“Report of the Commissioner of Indian Affairs.” 1885. Department of the Interior, Office of Indian Affairs. J.D.C. Atkins, Commissioner.

Rifkin, Mark. 2011. “Settler States of Feeling: National Belonging and the Erasure of Native American Presence” in *A Companion to American Literary Studies*. Eds. Caroline Levander and Robert S. Levine. Blackwell Publishing.

Robinson, Daniel F., and Nicole Graham. 2018. "Legal Pluralisms, Justice and Spatial Conflicts: New Directions in Legal Geography." *The Geographical Journal* 184 (1): 3–7.

Samuel George et al. v. Eastern Regional Director, Bureau of Indian Affairs (49 IBIA 164). May 2009.

Semple, Kirk. 2004. “Catskills Casinos are Closer After Land Claim Accord.” The New York Times. 19 Nov. 2004, Section B, Page 5.

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

---. 2017. “The ruse of consent and the anatomy of ‘refusal’: cases from indigenous North America and Australia.” *Postcolonial Studies* 20 (1): 18-33.

Stark, Heidi K. and Kekek J. Stark. 2018. “Nenabozho Goes Fishing: A Sovereignty Story.” *Daedalus* 147 (2): 17-26.

Tuhiwai Smith, Linda. 1999. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books.

“Unified Statement from the Community.” 2022. Read by Dylan Seneca to Press. 23 January. Waterloo, NY. https://youtu.be/7y1MhVP5BdM.

United States v. Kagama, 118 U.S. 375, 6 S. Ct. 1109 (1886)

Valverde, Mariana. 2009. “Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory.” *Social and Legal Studies* 18 (2): 139-157.

---. 2015. *Chronotopes of Law: Jurisdiction, Scale, and Governance*. New York: Routledge.

Whyte, Kyle. 2019. “Too late for indigenous climate justice: Ecological and relational tipping points.” *WIRES Clim Change.* 11:e603. https://doi.org/10.1002/wcc.603.

Wilkins, David. 1997. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice.* Austin: University of Texas Press.

Williams, Kayanesenh Paul. 2018. *Kayanerenkó:wa: The Great Law of Peace*. Winnipeg: University of Manitoba Press.

Wilson, Shawn. 2008. *Research is Ceremony: Indigenous Research Methods*. Black Point, Nova Scotia: Fernwood Publishing.

Wolkin, K. and Nevins, J. "No sovereign nation, no reservation: producing the new colonialism in Cayuga Count(r)y." Territory, Politics, Governance. Vol. 6, No. 1, 2016: 42-60.

Zivotofsky v. Kerry, 576 U.S. 1, 135 S. Ct. 2076 (2015)