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FROM STANDING ROCK TO FLINT AND BEYOND: RESISTING NEOLIBERAL ASSAULTS ON INDIGENOUS, MAROON, AND OTHER SITES OF RACIALLY SUBJECTED COMMUNITY SUSTAINABILITY IN THE AMERICAS

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ABSTRACT

Protests against the Dakota Access Pipeline led by water protectors from the Standing Rock Sioux Tribe in North Dakota have brought human rights violations related to Indigenous sovereignty, environmental justice, and sustainable development into the foreground of political debate in the United States. The struggle at Standing Rock has been strengthened by a coalition formed with activists from other Indigenous Nations, including representatives from the Amazon Basin, and from non-Indigenous movements and political organizations such as the Green Party and Black Lives Matter. This article reflects upon the centrality of Indigenous Sovereignty within the broader struggle for human rights and democracy in their most inclusive and substantive senses, especially in societies whose development has been built upon the violence of colonial expansion, white supremacy, and heteropatriarchy. The article also situates Indigenous rights within regimes of multiple articulated alterities in which the subjugation and dispossession of Indigenous and Afro-descendant peoples have been historically differentiated yet intertwined in the Americas. The article offers a multi-sited framework for understanding the convergent and divergent points of reference in the logics of Indigenous and Afro-descendant identity, the relationship with the State and Market, and connections to the material and spiritual resources of land. Attention is directed to cases in the United States, Honduras, and Suriname (including those of communities that define themselves as "Afro-Indigenous") in which some notion of common ground, affinity, or alliance with past or present-day Indigenous peoples has been mobilized in Afro-descendants' collective claims on rights to land, development, and cultural resources.

Keywords: human rights; Indigenous; democracy; supremacy; heteropatriarchy.

RESUMO

Protestos contra o acesso ao Gasoduto de Dakota liderado por protetores da água da tribo Standing Rock na Dakota do Norte trouxe violações dos direitos humanos relacionados à soberania Indígena, justiça ambiental e desenvolvimento sustentável ao primeiro plano do debate político nos Estados Unidos. A luta em Standing Rock foi reforçada por uma coligação formada por ativistas de outras Nações Indígenas, incluindo representantes da Bacia Amazônica, de movimentos não-Indígena e de organizações políticas como a Green Party e o #BlackLivesMatter (#VidasNegrasImportam). Este artigo reflete sobre a centralidade da Soberania Indígena dentro da luta mais ampla pelos direitos humanos e pela democracia em seus sensos mais inclusivos e substantivos, especialmente em sociedades cujo desenvolvimento foi construído sobre a violência de expansão colonial, a supremacia branca e o heteropatriarcado. O artigo também situa direitos Indígenas dentro de regimes de alteridades múltiplas articuladas, nas quais o subjugamento e a desapropriação de povos Indígenas e Afro-descendentes foram historicamente diferenciados ainda interligado nas Américas. O artigo oferece um enquadramento multi-localizado para o entendimento da convergência e divergência de pontos da referência na lógica identitária de Indígenas e de Afro-descendentes, a relação entre o Estado e o Marcado, e conexões aos recursos materiais e espirituais de uma terra. A atenção é direcionada aos casos nos Estados Unidos, Honduras, e Suriname (incluindo aqueles das comunidades, as quais se definem como "Afro-Indígena") na qual alguma noção básica de solo, afinidade, ou aliança com povos Indígenas do passado o do presente tem sido mobilizada nas reivindicações coletivas Afro-descendentes ao direito à terra, ao desenvolvimento e aos recursos culturais.

Palavras-chaves: direitos humanos; indígenas; democracia; supremacia; heteropatriarcado

RESUMEN

Las protestas contra el acceso al gasoducto de Dakota, lideradas por los protectores del agua de la tribu Standing Rock en Dakota del Norte han conducido al primer plano del debate político en Estados Unidos las violaciones de los derechos humanos relacionadas con la soberanía indígena, la justicia ambiental y el desarrollo sostenible. La lucha en Standing Rock fue reforzada por una coalición integrada por activistas de otras Naciones Indígenas, incluyendo representantes de la Cuenca Amazónica, de movimientos no Indígenas y de organizaciones políticas como la Green Party y el #BlackLivesMatter (#VidasNegrasImportam). Este artículo trata sobre la centralidad de la soberanía indígena en el marco de la lucha más amplia por los derechos humanos y la democracia en sus sentidos más inclusivos y sustantivos, especialmente en sociedades cuyo desarrollo fue construido sobre la violencia de la expansión colonial, la supremacía blanca y el heteropatriarcado. El artículo también sitúa los derechos indígenas dentro de regímenes de alteridades múltiples articuladas, en las cuales el subyugamiento y la desapropiación de pueblos Indígenas y Afrodescendientes en las Américas fueron históricamente diferenciadas a pesar de encontrarse interconectados. El artículo ofrece un encuadramiento multilocalizado para el entendimiento de la convergencia y divergencia de puntos de referencia en la lógica identitaria de Indígenas y de Afrodescendientes, la relación entre el Estado y el Mercado, y las conexiones a los recursos materiales y espirituales de la tierra. La atención se centra en los casos en los Estados Unidos, Honduras, y Surinam (incluyendo aquellos de las comunidades que se definen como "Afro-indígenas ") en los que alguna noción básica de suelo, afinidad, o alianza con pueblos Indígenas del pasado o del presente ha sido movilizada en las reivindicaciones colectivas de los Afrodescendientes relativas al derecho a la tierra, al desarrollo ya los recursos culturales.

Palabras claves: derechos humanos; indígena; democracia; la supremacía; heteropatriarcado.

The mass protest that the Standing Rock Sioux are leading against the Dakota Access Pipeline in the United States has brought to the world's attention how this particular infrastructural development project, along with others like it, inflicts economic, environmental, and spiritual violence against the fundamental human rights of indigenous people as self-determining entities recognized by international law and policy. The Dakota Access Pipeline's failure to consult, gain the consent of the Sioux, and seriously consider their legitimate worries concerning potential hazards to their community's water supply "conflicts with the international human rights standards, norms, and principles found in the Vienna Convention, Geneva Conventions, international criminal law, humanitarian law, and the International Climate Agreement (Paris)" (Red Owl Legal Collective, 2016).

The water protectors' mass demonstrations, which are less than a mile outside of Standing Rock Reservation, have attracted representatives from other U.S.-based Native American tribes and even indigenous communities and movement organizations from the Amazon. There has also been the physical presence and practical solidarity of environmentalists, antiracist activists, and others who see themselves as allies in the struggle for indigenous peoples' rights and the struggle against the interlocking oppressions that adversely affect Native Americans' life chances and well-being. Among the allies who have made their presence felt at Standing Rock are demonstrators involved in Black Lives

Matter or the Movement for Black Lives (Mays 2016). The significance of building mutual alignments between the struggles of Native Americans and African Americans is clearly reflected at Standing Rock as well as in Native American activists' expressions of solidarity with African Americans who are navigating the lead-poisoned water crisis in Flint, Michigan. According to Kyle T. Mays, an urban historian of Black and Saginaw Anishinaabe heritage, working against the grain of conventional assumptions about their distance, divergence, and conflicting interests, Black and Indigenous activists have been reimagining the possibilities for mutual solidarity in the way they have engaged with the water politics of Flint and Standing Rock. Mays writes that

> before Black Lives Matter went to Standing Rock, Indigenous people from Detroit went to Flint. [Hip-hop] [a]rtists like SouFy and Sacramento Knoxx, both Anishinaabe and from southwest Detroit, made protest songs to bring awareness to the FlintWaterCrisis; they also donated water and supplies to the residents of Flint. These Native people have and continue to work in solidarity with New Era Detroit and other Black organizations. Moreover, the Little River Band of Ottawa [based in northwest Michigan] also donated $10,000 to assist with the FlintWaterCrisis. These actions show that Black–Indigenous solidarity is real, not rhetorical (Mays 2016).

This article reflects upon the centrality of Indigenous self-determination and the freedom of Afro-descendants across the African diaspora within the broader struggle for democracy and human rights in their most inclusive and substantive senses. These objectives are especially relevant in societies, such as those in the Western Hemisphere, whose historical development has been built upon the violence of colonial expansion, white privilege and supremacy, and heteropatriarchy. The article argues in favor of situating indigenous rights within the context of regimes that are structured around the logic and articulation of multiple alterities (i.e., otherness, differences) in which the subjugation and dispossession of Indigenous and Afro-descendant peoples, among others, have been historically differentiated yet intertwined in varying contexts across the Americas. The article aims to offer a multi-sited framework for understanding convergent and divergent points of reference in the formation and experience of Indigenous and Afro-descendant identities, their relationship with the state and market, and their connections to the material and spiritual resources of land. Our attention will be directed to cases in the United States, Honduras, and Suriname and will also include consideration of communities that define themselves in terms of the hybrid category of "Afro-Indigenous." In the cases to be discussed, some notion of common ground, affinity, or alliance with past or present-day indigenous peoples has been mobilized in Afro-descendants' collective claims on rights to land, development, and cultural resources. Toward these ends, new insights will be offered for understanding some of the concerns and nuances related to recent trends in the dynamics of new social movements whose motor force is driven by struggles for indigenous and Afro-descendant peoples' human rights and dignity.

Standing Rock and Indigenous Rights in U.S. Politics

The Standing Rock Sioux are a part of the Great Sioux Nation (the *Oceti Sakowin*), with which the United States Government signed the Fort Laramie Treaties of 1851 and 1868. Those historic, purportedly legally-binding agreements codified the indigenous right to self-determination and extended those rights to control of a portion of the traditional territories over which the Sioux exercised stewardship long before colonial expansion deprived them of most of their land and resources. In the historical consciousness and social memory of the Sioux Nation, those 19th century treaties continue to exercise legal authority and efficacy today, in protecting their control over the land and the resources upon which their sociocultural, spiritual, economic, and overall ecological well-being depends. The U.S. government has regularly breached the terms of those treaties, yet claims to be a paragon and leader of liberal democracy in the world community.

Since his January 2017 inauguration, U.S. President Donald Trump has demonstrated his support for the corporate interests and profit-above-people practices of the Dakota Access, LLC, "a Delaware limited liability company [which is a subsidiary of the Energy Transfer Partners, L.P. This limited partnership business is] authorized to do business in [the state of] North Dakota and [to construct]… the 1,172-mile-long Dakota Access Pipeline … intended to transport crude oil from the Bakken Shale of North Dakota to refineries in Patoka, Illinois" (Red Owl Legal Collective, 2016, p. 1, footnote 1). A former stockholder in Energy Transfer Partners, Trump sought to undermine the temporary moratorium that in 2016 the federal government, with former President Barack Obama's approval, placed on completing the construction of the pipeline adjacent to the unceded traditional territory of the Great Sioux Nation. With most of the pipeline already built, the specific area affected by the 2016 moratorium is located in the vicinity of the Standing Rock Reservation around the Lake Oahe, a reservoir created by a government-built dam on the Missouri River more than 50 years ago. This is the main water source for the Standing Rock Sioux Reservation community. The lake's vulnerability to being contaminated by oil leaks is one of the main environmental objections the Sioux are making against the pipeline. Other objections have to do with the pipeline's violating the spiritual integrity and sanctity of burial sites and other culturally significant landmarks on the territory upon which a Euro-American settler colonial regime encroached in the past and continues to do so in the present.

Beginning in July 2016, the Standing Rock Sioux Tribe took its grievances and numerous appeals to federal court. Initially, the U.S. District Court for the District of Columbia, the nation's capital, ruled that the U.S. Army Corps of Engineers had not complied with the law when it granted a permit to the Dakota Access Pipeline without having undertaken a review of the potential environmental hazards. The court, however, did not concur with the Sioux tribe's argument for an injunction to block further construction of the pipeline. In its October 11, 2017 ruling, it decided not to arrest the pipeline's construction while the Army Corps completes its environmental review by April 2018. In response to the disappointing news, Mike Faith, the Standing Rock Sioux Chairman lamented: "From the very beginning of our lawsuit, what we have wanted is for the threat this pipeline poses to the people of Standing Rock Indian reservation to be acknowledged. Today,

our concerns have not been heard and the threat persists" (Earthjustice 2017).

Compliance with the Declaration of Indigenous People's Rights?

In January 2017, President Trump "signed an executive memorandum directing the Army Corps of Engineers 'to review and approve in an expedited manner' the [Dakota Access] pipeline 'to the extent permitted by law and as warranted'" (New York Times, 2017). In the first several months of his term, Trump reversed the environmental policies that former President Barack Obama's administration put into place on climate change, and will likely undermine the liberal concessions that the former administration made toward complying with the terms of the United Nations' Declaration on the Rights of Indigenous Peoples, a non-binding but morally significant agreement and international standard that went into effect in 2007 without the signature and ratification of the United States along with Canada, Australia, and New Zealand/*Aotearoa*. Since then, however, all four countries have decided to support the Declaration. The United States' opposition to it was reversed, or perhaps softened, in 2010, when Obama and Susan Rice, then the U.S. Ambassador to the United Nations, publicly proclaimed the federal government's endorsement of indigenous rights. However, what did that endorsement really mean?

Social critic Four Arrows (*Wahinkpe Topa*, also known as Don Trent Jacobs), a prolific Native American scholar activist of Cherokee ancestry, emphasizes the unlikelihood that the government will comply with the true spirit and substance of the Declaration, given its contradictory track record (Four Arrows, 2011; Four Arrows, no date). He admits that there are reforms that the Administration has backed (e.g., establishing college scholarships, settling water rights lawsuits, and addressing grievances against the Department of Agriculture's discrimination against native farmers and ranchers). However, he points out that, despite these cursory reforms, "next to nothing has…happened to change the dismal health, violence, poverty, and educational problems on American Indian reservations" (Four Arrows, 2011 [accessed 2017]).

He goes on to claim that: "Private industry still trumps tribal sovereignty," and in the past several years, beginning under President Obama, for the first time in more than thirty years, the State Department has stipulated that citizens of Iroquois or Haudenosaunee Confederacy Nations (i.e., the Onondago, Mohawk, Seneca, Oneida, Tuscorora, and Cayuga) have to hold U.S. passports when traveling internationally. This new ruling was tested in the case of the Iroquois Lacrosse Team. As Four Arrows explains,

> There are many reasons the Iroquois honour their own passports. One has to do with national pride and identity. Another is that the team is competing as a sovereign nation and the competition requires evidence of their own national identity. The Iroquois have been allowed to use their own passports for decades after an agreement among the US, British, Canadian, and other governments.
>
> Why didn't the president—or one of the cabinet members who ha[d] supposedly been instructed to consider Indigenous perspectives and [complying with]… the decision to support UNDRIP—intercede? (2011)

This is Four Arrow's way of saying that the United States' claim to support the UN Declaration for the

Rights of Indigenous People is a "nonevent."

Citizenship, the Carceral State, and Human Rights

Black Lives Matter demonstrators supporting the water protectors at Standing Rock are part of a movement that mobilizes against the militarized force of police, who defend the security of corporate property, white public space (Page and Thomas 1994), and the state. A parallel situation exists in the case of the encampment at Standing Rock. State sanctioned and complicit violence in the United States has racializing effects within a society organized around the logics and articulations of multiple alterities and modes of producing otherness, through which anti-blackness and anti-indigeneity are manifested along with systemic biases against other racially profiled and surveilled bodies. The latter category implicates the darkening and stigmatization of categories of immigrants presumed to be problem populations, notably, segments of the Latina and Latino (or "Latinx") communities, especially Mexican and Central American migrants, but also Muslims presumed to be potential radical jihadists. The State's war on terror and on undocumented migration along with the longstanding war on crime (and drugs), which is often translated into a war on black and brown people in ghetto and *barrio* communities, feeds into the workings of the neoliberal securitization of the state. This process is increasingly associated with the consolidation of a carceral state that is theorized in critical studies of mass incarceration and the prison industrial complex (Marable, Steinberg, and Middlemass 2007). The securitized state administers the integration of the terror industrial complex (Rana 2016), the immigrant retention or immigrant industrial complex (Golash-Boza, 2009; Ho and Louky, 2012), and the prison industrial complex (Davis, 2003). These three spheres of the penal justice system are rarely addressed together as interrelated facets of the carceral state. An integrated approach is being explored in some recent work on the expansion of police power in the politically manufactured moral panic over private safety and national security (Harrison 2013a, page 4).

The carceral state has grown in tandem with the neoliberal minimalization of the government's responsibility for providing safety nets, social welfare, and other supports for the socioeconomic rights that are delineated in the International Covenant on Economic, Social, and Cultural Rights, one of the two covenants comprising what is called the International Bill of Rights along with the Universal Declaration of Human Rights. The status of economic, social, and cultural rights are still highly contested as universal human rights, although the international human right regime now insists that they are indivisible and interdependent with civil and political rights, considered the negative, first generation rights of individuals (UN Chronicle 2009). They protect individuals from the negative excesses of State power and are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments continue a long democratic legal tradition that dates back to the England's Magna Carta (1215) and Bill of Rights (1689), France's Declaration of the Rights of Man and of the Citizen (1789) and the United States' Declaration of Independence (1776) and Bill of Rights (1789), which represented the first ten

amendments to the U.S. Constitution. The rights delineated in the International Covenant on Economic, Social, and Cultural Rights have been considered positive, second-generation rights (UN Chronicle, 2009). The third generation of human rights encompasses collective rights, such as those related to indigenous self-determination, economic development, natural resources, and a sustainable and healthy environment. These rights are considered to be largely aspirational and have generated a great deal of debate. They are, however, central to the goals and objectives of indigenous and Afro-descendant movements throughout the Americas.

Third generation rights have been difficult to codify and enforce in legally binding documents. Some legal scholars strongly argue that only negative civil and political rights have legitimate status as universal human rights, because most states lack the material wherewithal to deliver positive rights. The indivisibility and interdependence of both negative and positive rights, however, have been recognized by the UN General Assembly since it issued The Declaration on the Right to Development on December 4, 1986 (UN General Assembly 1986). According to Article 6.2 of the Declaration: "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights".

The principle of indivisible and interdependent rights was reinforced in the 1993 Vienna Declaration and Program of Action, which resulted from the World Conference on Human Rights. Since those interventions, the definition of human rights has been expanded, as indicated on the website of the UN Office of the High Commissioner for Human Rights, where it clearly states that:

> All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others (UN Office of the High Commissioner of Human Rights).

The legality of indigenous people's rights, which together constitute dimensions of collective sovereignty, is embedded in international law and progressively codified in UN covenants, conventions, and in softer instruments whose role in the human rights regime is more informal but morally significant. There are also important regional conventions and declarations, such as those ratified through deliberations within the Organization of American States (OAS) and, since June 2016, the American Declaration on the Rights of Indigenous Peoples. The American Convention on Human Rights is the central treaty that guides the workings of the Inter-American Commission on Human Rights and the accompanying Inter-American Court on Human Rights. Court judgments play a significant role in contributing to the legal framework and establishing legal precedents that support the claims-making process that Indigenous and Afro-descendant claimants undertake. As we shall see, important precedents in human rights

court cases have had implications for both of these oppressed populations and their movements for social, economic, and environmental justice.

Regimes of Multiple Racialized Alterities

The analysis here draws on Peter Wade's (2010) concern that *Indígena* and Afro-descendant predicaments are rarely analyzed within a common framework that implicates differential yet interconnected facets of structural racism with its variegated processes of racialization. Building upon his notion of "structures of alterity" (Wade, 2010, p. 37), this article argues that an adequate analysis of Indigenous, Black, and Latinx human rights violations in the United States and in other settings needs to be placed within the context of the *multiple* structures of alterity that configure the relationship between the state and racially othered groups. Within the context of U.S. race and ethnic relations, this approach is an alternative to the once-dominant bipolar perspectives on the "Negro problem" in which black-white relations have been conventionally distinguished from all other ethno-racial relations. There has been considerable resistance to situating Native American and African American predicaments on the same critical analytical terrain (Mays 2016). In this respect, studies of Indigenous and African-descended populations in the United States and in Latin American contexts have developed roughly parallel approaches.

A multiple alterities framework permits the analysis of both similarities and differences across the various social locations and sites of lived experience in which ethno-racial identity formation occurs. This framework is attentive to the plural trajectories followed and the strategies deployed in claiming citizenship and human rights, especially when the strategies and tactics are based on forms of identity that are collective and resonate with concerns expressed in "third generation" human rights. The extent to which collective or group identity is corporate or based on a unified communal subject position varies considerably among Afro-descendants in the Americas. Anthropological research has documented the corporate character of social and economic organization and of political authority among, for instance, rainforest Maroons in Suriname, whose moral and legal status within the national body politic is that of a distinct people and not merely a group or confluence of individuals (Price 2011). Their struggle for human rights gives priority to communally-based territorial sovereignty.

Indigenous & Afro-Descendant Convergences & Divergences across Time & Space

A multiple alterities approach to interrogating indigenous rights within the U.S. context could very well lead to a scrutiny of the intersection, interrelationship, and, in some instances, the overlap that exists between Indigenous and other ethnic peoples' rights, such as those of populations classified as Latinx or "Hispanics." This issue is especially significant in those instances in which Latin American immigrants are of mainly indigenous background, such as the case of Guatemalans of Maya descent and heritage (Burns, 1993, 2001; Hiller, Linstroth, Vela 2009). However, the more neglected

intersection between Indigenous and Afro-descendant peoples' rights in the United States and across the Americas will be examined instead. A few cases will be highlighted that should stimulate rethinking along neglected lines of inquiry.

Today, the environmental injustices that preoccupy the water defenders at Standing Rock, North Dakota resonate strongly with the environmental racism that many African American communities confront in both rural and urban settings in the United States, whether in the 2005 Katrina catastrophe in New Orleans, Louisiana and in the surrounding Gulf Coast or in Flint, Michigan, where in January 2016 a federal state of emergency was declared because lead levels in the water supply had reached critical poisonous proportions. The health and the life of residents had become endangered in that disproportionately African American populated rust-belt city of blight, economic displacement, and food deserts.

The rights to life and well-being are also constrained by yet another environmental factor, and that is the factor of violence, which exists in a continuum of structural and intersubjective modalities (Scheper-Hughes, 2002; Scheper-Hughes and Bourgois, 2004). The threat of anti-black extrajudicial killings, whether by police who are rarely held accountable or by armed citizens in fear of black crime (e.g., George Zimmerman in the 2012 Trayvon Martin case), has reached crisis proportions and is being vigorously debated in the public sphere. It is important to point out, however, that Native Americans actually suffer the highest per capita rate of police killing than any other segment of the US population. Although less than 1% of the country's total population, Native Americans killed by law enforcement are nearly 2% of all police killings. Statistically, this is the highest rate that any group experiences although the aggregate numbers are small (*Indian Country Today*, 2016; see also Voice of America, 2015). Public awareness of this trend is virtually nil.

Intersecting Histories

Historically, relations between American Indians and African Americans (and Amerindians and African descendants more broadly) have varied across time and space. The history of inter-group relations, whether focused on conflicting interests or on alliances, has been greatly neglected. The historian and anthropologist Jack D. Forbes (Powhatan-Renapé and Delaware-Lenape) redressed this silencing of the past (Trouillot, 1997) in his seminal *Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples* (Forbes, 1993), a text that takes a decolonial turn from the conventions of Native American and African American studies, which have historically been treated in separate silos.

In the U.S. context, the history of inter-group alliances is exemplified most clearly in the Seminole and Black Seminole confederacy which developed in the state of Florida in the 18th and early 19th centuries. The Seminoles and their Black Seminole allies fought against the U.S. Army in three Seminole Wars during the first half of the 19th century (Howard 2002). An anthropologist who studied the impact of fugitive African Americans on the Lower Creek population that eventually became Seminoles in Florida was Laurence Foster, whose 1931 doctoral dissertation focused on Black-Indian relations in the U.S. southeast (Foster 1931). His multi-sited ethnohistorical

and ethnographic research, conducted most intensively in 1929-30 followed the migratory path mixed groups of Seminoles had taken from Florida to Mexico, Texas, and Oklahoma. The communities that settled in the United States were affected by racial discrimination. Laws in Oklahoma made it illegal for Indians to marry persons with any African ancestry. That worked against the close ties that once existed between Black and "Red" Seminoles.

The anthropologist and ethno-historian William S. Willis, Jr. (1963) wrote about the ways that the 18th century government administration used tactics of divide and conquer in its colonial expansion strategies, pitting Indians against Blacks, who when enslaved were likely to run away from plantations and seek refuge in the wilderness beyond the borders of the plantation zone. To offset the possibility of Indians providing shelter to Maroons (fugitives from slavery), the army and civilian government in the colonies and later in states like Georgia fomented antagonisms between the two subordinate groups, who together outnumbered the Euro-American settlers and, if united, could potentially jeopardize the feasibility of the colonial status quo and political economy. The white colonial authorities enlisted Indians in the role of capturing and returning runaways, and they inculcated within Africans the fear and distrust of Indians. Later in the context of the westward expansion of U.S. settler colonialism, African Americans were conscripted in the frontier army as "Buffalo Soldiers" to fight "renegade Indians," who resisted the Euro-Americans' displacement, pacification and reservation practices, whose effects were often genocidal (Deloria 1984; Dunbar-Ortiz 2015).

More recent trends in historical research on "Afro-Indians" or "Black Indians" demonstrate that inter-group mixing was not uncommon, although disincentives were imposed from above, stigmatizing Black-Native families and denying them recognition as indigenous (Miles, 2015 [2005]; Brooks, 2002). The one-drop rule or hypodescent jeopardized the legal status of native communities with mixed-heritage, especially those with Black admixed members. White admixture did not carry the same stigma, a symptom of the hegemonic weight of white supremacy even in "Indian country." The wedge constructed to divide Indigenous people and Africans had a negative effect on families and on the rights of African descendants who were once legally recognized citizens of those Indian nations originally concentrated in the southeast which settler colonialists characterized as the five "civilized" tribes. These so-called civilized natives of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole nations were incorporated into the plantation mode of production, which depended on the exploitation of enslaved laborers. When coercively removed westward to Oklahoma territory (via the "Trail of Tears"), these tribes were accompanied by their freedmen, who were recognized as citizens in post-bellum (i.e., post-Civil War) treaties between the U.S. government and the tribal polities. Decades later and into the present era, that citizenship would come to be contested. Older generations of African American freedmen, however, often had competence in Indigenous languages and cultures, reflecting ethnic if not "racial" commonalities shared with their Indigenous counterparts (Sturm, 2002).

Recently, there have been a number of court battles over the status of the descendants of freedmen, their rights to Indian benefits and the tribal

ballot, and access to heritage archives and other resources because of their de jure, treaty-based citizenship within Indian nations dating back to the aftermath of emancipation. Even when Indian ancestry has been a component of the Freedmen's court claims, it has rarely been adequately documented. When the Dawes Rolls determining tribal membership were compiled, as was stipulated by the 1887 Dawes Act which converted communal land ownership into individualized allotments, freed African Americans were usually presumed to be (only) Black rather than Indian by virtue of the prevailing "one-drop" rule, even when their families included members who were recognizably Indians. Mixed-heritage individuals were not included on the Dawes Roll but on a separate list for freedmen. Genealogical information on Black Indians' ancestry and heritage was, therefore, not recorded in those cases (Native Heritage Project, 2014; Sturm 2002). This partial, skewed documentation contributed to the erosion of freed people's eligibility for substantive citizenship, since the Dawes Roll is the legal point of reference determining eligibility for tribal membership and belonging.

By the 1980s, the Cherokee Nation amended its legal criteria for citizenship, denying Freedmen's votes in tribal elections (Cherokee Phoenix, 2006). At that time, voting rights were determined by blood quantum. This required the documentation of descent from someone listed on the Dawes Rolls as "Cherokee by blood." This rule change disenfranchised the descendants of Cherokee Freedmen.

Today, more African Americans are publicly claiming their Indigenous heritage and organizing around their cultural and legal interests as Indians or Black Indians. This trend is gaining momentum at a historical moment when hegemonic racial classifications and the cultural principle of hypodescent are being questioned and resisted. Federally recognized Indian tribes do not necessarily welcome African descendants' claims to Indigenous ancestry and rights to tribally administered resources and services. The Descendants of Freedmen of the Five Civilized Tribes Association is one organization that has advocated for African Americans whose foreparents' status as Freedmen was recognized by the 1866 treaty. After many years of back and forth litigation, a U.S. District Court ruled that the historic treaty had indeed granted Freedmen "all the rights of native Cherokees" (PRI [Public Radio International] 2017). In the judgment rendered in the *Cherokee Nation v. Nash* case,

> The Cherokee Nation can continue to define itself as it sees fit but must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees (PRI, 2017).

The Cherokee Nation's legal counsel has issued a statement that it will respect the rule of law and will not seek to appeal the court's decision.

Afrodescendant and indigenous convergences in the circum-Caribbean

The Garifuna of Honduras

In other parts of the Americas, Afro-descendant and Indigenous contact and interaction have been integral to many societies' historical development, particularly in the Caribbean and Latin America (Forbes, 1993; Wade, 2010). A key example is the Garifuna or Black Caribs whose heritage is Arawak, Carib and African. The Garifuna's unique ethno-genesis resulted from an alliance between Maroons and Caribs who resisted European domination in St. Vincent in the Eastern Caribbean. In 1797 the British forcibly relocated them to Central America, where their descendants are now found along the Atlantic or Caribbean coast, from Belize (formerly British Honduras) to Nicaragua, with communities found in Guatemala (Gonzalez 1988) and Honduras (Anderson, 2009). There are also other indigenous populations with documentable (albeit understated or denied) African heritage, but the Garifuna are the most iconic case of dual African and indigenous cultural heritage, reflected especially in their language, which is of Arawakan origin. Some Garifuna in Honduras even define themselves as indigenous, Afro-Indigenous, or autochthonous. Others emphasize their blackness and align themselves with other Afro-descendants. These alignments are also reflected in the wider regional networks to which Garifuna civil society organizations and social movements belong (Anderson, 2009).

The activists who emphasize the ethnically autochthonous character of the Garifuna seek to expand the meaning of Indigenous so that it is not conflated with or restricted strictly to Indian. By claiming autochthonous status, Garifuna activists have asserted their identity and social location as "long-standing occupants of territory who bear non-European linguistic and cultural 'traditions' and the same collective rights as indigenous peoples" (Anderson, 2009, page. 124). The language and ideology of autochthony have facilitated the Garifuna's pursuit of a political agenda perceived as equivalent to that of indigenous people in their common preoccupation with issues related to rural communities' vulnerability to displacement and to having their communal rights to land discounted. These convergent interests lie at the heart of the politics of indigeneity, despite the fact that the two populations have been differently racialized as Black and Indian.

According to Mark Anderson, mobilizing around an indigenous rights paradigm or model has enabled the Garifuna to

> address cultural and linguistic oppression and claim rights to cultural and linguistic difference. It helped turn stereotypes of Garifuna primitiveness into valorized traditions. The paradigm brought to the fore the problems of access to land and resources, rendering rural communities the center of political concern. Like (other) indigenous peoples, Garifuna would mobilize an image of themselves as stewards of the environment, protecting that which Western modernity destroyed. Indigeneity thus provided a language through which collective claims could be made and heard; it made Garifuna a collective subject that the state and other actors could recognize as legitimately distinctive. Garifuna, though identifying and identified as Black, became 'visible' as a collective subject to the state, indigenous and environmental organizations, international NGOs, multilateral institutions, and the public media by appearing in the same metacultural frame as indigenous peoples (Anderson, 2009, page 134).

During the 1990s, Hondoran multicultural discourse, as reflected in

"legislation and presidential accords[,] employed the phrase 'etnias autóctonas'." Later, the legal language shifted to "*pueblos indígenas y afrohondureños,"* recognizing that state policies on the indigenous should also include or apply to Afro-Hondurans. These shifts in government policy and action resulted from the relatively effective mobilizations the Garifuna undertook to be recognized as a distinct people politically and legally convergent with indigenous citizens. This approach gave them greater leverage in combatting displacement from ancestral territories whose communal stewardship was being eroded by the increasing encroachments from real estate development, projects in tourism and agribusiness, and mestizo peasant land occupation (Anderson, 2009, page 27, 225).

Although the relationship between blackness and indigeneity continues to be debated, the Garifuna's status as a distinct people is firmly established in Honduras' multicultural regime. Their collective subject position is no longer questioned, even when it is argued that the Garifuna can be more accurately characterized as *mestizos*—that is, as descendants of Caribbean Island Arawaks and Caribs as well as of black Africans (Anderson, 2009, page 137) in a society in which the hegemonic category of *mestizo* is traditionally reserved for descendants of Spaniards and Indians.

The Maroons of Suriname

Another historical case of Afro-descendant and Indigenous contact and exchange which did not lead to a Garifuna-like cultural and linguistic fusion, is found in the case of Maroon societies, especially those of Suriname's rainforest Maroons, formerly referred to as "Bush Negroes." Richard Price (2011) has thoroughly documented how Maroons developed some aspects of their adaptation to the rainforest from their contact with their indigenous neighbors, who were sometimes allies but often rivals over land, resources, and women. During what is called the historic "First-Time," when the Saamaka (called Saramaka in the literature), for instance, fought against the 18th century Dutch colonialists for their autonomy, there was a paucity of women runaways (Price, 2002; 2011). Consequently, Maroons raided indigenous villages for women whom they abducted to adopt into their settlements. Price recounts a number of stories about Amerindian women whose Saaamaka descendants retain the "memory" of their partial indigenous ancestry, which is integral to their sense of authenticity as sovereign rainforest inhabitants and communal stewards of ancestral territories.

Claiming Collective, Tribal Rights: Important Legal Precedents

The struggles of Afro-descendants often have implications, legally and politically, for indigenous peoples—and vice versa. One clear instance of this lies in Surinamese Maroons' petitions to the Inter-American Commission on Human Rights and the subsequent litigation for rights via the Inter-American Court of Human Rights (Price, 2011). The Maroons filed their grievances against the "destructive resource exploitation that the state and transnational corporations promote in their relentless pursuit of development at the expense of Maroon and indigenous wellbeing" (Harrison, 2013b, page 128). The court judgments have been important legal precedents that have benefited indigenous and tribal human rights

claims. As we shall see, tribal status is roughly equivalent to the autochthonous status that Garifuna have achieved in Honduras.

Richard Price's (2011) award-winning *Rainforest Warriors: Human Rights on Trial*, along with many articles in legal journals (e.g., Antkowiak, 2007), have documented how the Ndjuka and particularly the Saramaka/Saamaka have taken their rights claims to the Inter-American Court on Human Rights and won important judgments. Three consequential Surinamese Maroon cases are: the 1993 *Aloeboetoe et al. v. Surname*; the 2005 *Moiwana v. Suriname* case, which built upon the 1993 case as well as the 2001 *Awas Tingni v. Nicaragua* (which was the "first binding judgment recognizing indigenous peoples' property rights as being grounded in custom," page 102); then in 2007 the *Saramaka People v. Suriname* case, which was made around the time of a shift in favor of indigenous rights due to the ratification of the UN Declaration on the Rights of Indigenous Peoples. Each of these cases (which implicated the Suriname state for military incursions, massacres, and economic and environmental assaults against Maroon communities) built on earlier judicial precedents, taking the question of communal self-determination a step further in human rights jurisprudence.

There has been a mutuality and symbiosis between indigenous (Amerindian) and tribal cases. Key indigenous cases that have been particularly relevant to the jurisprudence are: *Awas Tingni v. Nicaragua*, 2001; *Yakye Axa v. Paraguay*, 2005; and *Sawhoyamaxa v. Paraguay*, 2006. The more recent judgment for the 2012 case of the *Sarayaku v. Ecuador* clearly drew upon the 2007 Saramaka case, which set an important international precedent for stipulations of consent and prior consultation (Fasken Martineau, 2012). According to one source:

> The standard regarding the need to obtain consent of indigenous peoples has already been established by the Inter-American Court in the sentencing of the case *Saramaka v. Surinam*, in which the court said that whenever large-scale development or investment plans have a significant impact within indigenous territory, the State has the obligation to consult, but also to obtain free, prior and informed consent, respecting their culture and traditions (Amazon Watch, 2012).

Tribal Designation Recognized

Drawing on jurisprudence developed from earlier court precedents and established policies such as the World Bank Group's policies on indigenous and tribal peoples adopted in 1982 (Price, 2011, page 210), the Inter-American Court strengthened the determination that the Saramaka constituted a:

> tribal community whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with their ancestral territories, and because they regulate themselves, at least partially, by their own norms, customs, and/or traditions (Price 2011, page 212, quoting the Court).

According to ESCR-Net [or the International Network for Economic, Social, Cultural Rights] caselaw database, "The Court decided [on November 28, 2007] that although the Saramakas were not an indigenous community, they had certain resemblances with traditional indigenous communities and therefore enjoyed the same rights. As a

consequence, they did not need a title in order to own the lands (possession was sufficient)" (ESCR-Net, no date).

Price writes that some legal scholars claim that the Saramaka case "was the first binding international decision to recognize tribal peoples' rights to the natural resources located in their lands, indicating that tribal peoples are more akin to indigenous communities than they are to other ethnic, linguistic, or religious minorities" (Price, 2011, page 234). However, Price explains that the Suriname Maroons gained recognition as "tribal peoples" before the 2007 decision. Their tribal character was acknowledged in the 1993 judgment of *Aloeboetoe v. Suriname*, which was informed by the Court's use of definitions in ILO (International Labor Organization) Convention No. 169, "a treaty ratified widely in the Americas and which applies to both indigenous and tribal peoples" (Price, 2011, page 234). Moreover, in *Moiwana Village v Suriname*, the court recognized and "upheld Ndjuka Maroon land and resource rights, though in a more limited context than in *The Saramaka People v. Suriname*" (Ibid.).

Broader Implications of Human Rights Court Judgments

According to Price, the broader implications of the 2007 decision and the Interpretive Judgment issued the very next year is

> that for the first time the Court addressed a people's *corporate* (collective) rights, instead of viewing them merely as an aggregation of individuals or as a community/village. In this case, the Court established the Saramaka people's right to recognition as a corporate legal identity, despite the lack of such a possibility under current Suriname law. In addition, the Court awarded monetary damages for the first time to an indigenous or tribal people for a State having caused environmental harm to its lands and resources (2011, page 235).

Territorial rights include "recognition of '*their right to manage, distribute, and effectively control such territory*, in accordance with their customary laws and traditional collective land tenure system'" (page 235). Price points out that indigenous and tribal peoples (whose territories contain "large stretches of rainforest") should be participants in negotiating policies and programs related to climate change, the reduction of carbon dioxide emissions ("caused by deforestation," page 236), and the development of low carbon development strategies. This can only be the case if states can be held accountable to the human rights principles emphasized in *The Saramaka People v. Suriname* and the UN Declaration on the Rights of Indigenous Peoples. However, it is much more common for indigenous and tribal peoples to be excluded from these high stakes discussions. This continues to be the case in Suriname, where the government and the transnational corporations with which it colludes have refused to comply with the Court's ruling (Price, 2012; Human Rights Brief, 2013). The 2012 French edition of Price's book ends with an updated and expanded afterword in which the author provides details on the ways that the Republic of Suriname has repeatedly repudiated the Inter-American Court's mandates. His discussion underscores the limitations of the international neoliberal human rights regime.

Concluding Remarks

Indigenous peoples and Afro-descendants have had trajectories of struggle that at times overlap or intersect in significant ways. It is important to recognize the convergences as well as the divergences in these histories and in present-day predicaments that inform human rights politics and legalities. The interrelationships and interdependence between black and indigenous struggles are transnational in salience and scope. We need to map them from Standing Rock and Flint to San Jose, Costa Rica where the Inter-American Commission and Court on Human Rights does its adjudication, juridical work that is absolutely necessary but clearly insufficient, as the outcomes of positive judgments have revealed. The international community has to find more effective ways enforce human rights law by compelling states, transnational corporations, and global civil society to comply with the judgments and recommendations of regional and international human rights courts. Otherwise, the international human rights regime, as it is constituted now, cannot effectively operate to curtail the persistence of a global status quo in which humanity, human rights, and human dignity are—despite the universalist claims to the contrary—differentially calibrated. This results in some lives mattering more than others due to the racialized workings of modes of sociopolitical disciplining and tactics of population management that result in the division of the world's population into full humans, not-quite-humans, and nonhumans (Weheliye 2014).

We are facing many crises throughout the world, but those of highest priority are ecological and political-economic, implicating environmental injustices along with widening disparities of power, wealth, health, and life expectancy. The survival and sustainability of the Earth and human life are seriously at stake. The world's growing disparities cannot be adequately interrogated without the critical insights provided by an intersectional understanding of racializing processes. Indigenous and Afro-descendant communities are among those that bear the brunt of the convergent crises that these processes engender. The movements that have arisen from these peoples' predicaments can potentially offer decolonial visions and sensibilities for forging paths toward a more humane and sustainable future. Engaged scholars should be encouraged to illuminate and give voice to those critical insights.

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