

FORUM

# Are Indigenous conceptions of sovereignty as non-interference patriarchal?

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## Abstract

In the field of International Relations, sovereignty refers to a state's authority to govern itself without external interference, closely tied to the principle of non-intervention. Recent scholarship has illuminated sovereignty as socially constructed and dynamic, yet non-interference remains central to its conception. Catherine MacKinnon's feminist critique exposes the patriarchal implications of fetishising non-interference, silencing marginalised voices, and perpetuating gendered power imbalances. This Forum examines whether Indigenous conceptions of sovereignty that prioritise non-interference are shaped by patriarchal ideologies, particularly through the emphasis on relationality – rooted in kinship – and the central role of consent in Indigenous understandings and practices of sovereignty. By examining the intersection of non-interference with systems of oppression, this paper contributes to a nuanced understanding of Indigenous sovereignty, self-determination, and gendered relations. It concludes with a discussion of the relationship between consent, non-interference, and non-domination.

**Keywords:** conceptions of sovereignty; gender relations; gender violence; Indigenous peoples; Indigenous self-determination; non-interference; non-domination; patriarchy; relationality

## Introduction

Many Indigenous people assert their long-standing sovereignty that stems from their status as politically independent societies or nations prior to contact, governing themselves and their territories according to their own legal systems.<sup>1</sup> Historically, settlers acknowledged Indigenous sovereignty through treaty negotiations, yet contemporary states often disregard it, despite instances where courts have acknowledged the unique nature of Indigenous sovereignty.<sup>2</sup>

Indigenous nations are diverse, with distinct cultures, histories, legal traditions, and relationships to land. This diversity extends to their understandings of sovereignty, which may not align with the Western notion of state sovereignty centred on territorial control and governance. By

<sup>1</sup>For example, Marge Anderson of the Mille Lacs Band in Minnesota, cited in Kevin Bruyneel, *The Third Space of Sovereignty* (Minneapolis: University of Minnesota Press, 2007), p. xii; Irene Watson and Sharon Venne, 'Talking up Indigenous peoples' original intent in a space dominated by state interventions', in Elvira Pulitano and Mililani Trask (eds), *Indigenous Rights in the Age of the UN Declaration* (Cambridge: Cambridge University Press, 2012), pp. 87–109; Arthur Manuel, *Unsettling Canada: A National Wake-Up Call* (Toronto: Between the Lines, 2015).

<sup>2</sup>On the qualified recognition of tribal sovereignty in the United States, see, for example, N. Bruce Duthu, *Shadow Nations: Tribal Sovereignty and the Limits of Legal Pluralism* (New York: Oxford University Press, 2013); David E. Wilkins, 'Tribal-state affairs: American Indian states as "disclaiming" sovereigns', *Publius*, 28:4 (1998), pp. 98–123.

discussing specific Indigenous conceptions, we honor this diversity and avoid imposing a one-size-fits-all definition. Many Indigenous conceptions of sovereignty are relational, emphasising interconnectedness with the land, other beings, and community, rather than solely focusing on state-like authority. For example, some Indigenous frameworks include responsibilities toward non-human entities, recognising the land itself as a sovereign entity. Addressing these specificities can broaden the understanding of what sovereignty means, beyond Eurocentric legal and political paradigms.

Yet it is important to consider both the general and the particular forms of Indigenous sovereignty. General discussions of Indigenous sovereignty are necessary to understand and challenge colonial structures that have historically undermined and continue to disrupt the exercise of Indigenous sovereignties. They help highlight the shared experiences of colonisation across different Indigenous peoples, providing a common ground for further critical analysis and Indigenous theories of sovereignty. Colonialism is not a uniform experience, but it has common patterns, such as the dispossession of land, cultural suppression, imposition of foreign governance structures, and denial of self-determination. General discussions about Indigenous sovereignty help bring these shared experiences to light, illustrating how colonial systems operate across different regions and nations. This shared analysis can be a powerful tool for understanding how colonialism has undermined Indigenous governance and self-determination on a global scale. Moreover, by exploring both the general and the particular, discussions on Indigenous sovereignty can more accurately reflect Indigenous realities and provide a richer, more nuanced foundation for supporting Indigenous rights and decolonisation efforts.

In the field of International Relations (IR), sovereignty refers to the authority of a state to govern itself and control its own affairs without interference from external actors. It is a fundamental principle of the modern state system and is enshrined in international law and norms. Sovereignty is closely linked to the territorial integrity of a state. States have the exclusive right to exercise control over their territory, including land, airspace, and territorial waters. Any external intervention or violation of a state's territorial integrity is generally considered a breach of sovereignty. Sovereignty entails the right to determine the state's own political systems, policies, and decision-making processes without interference from external actors.

The principle of non-interference is a core aspect of sovereignty in international relations. It emphasises that states should refrain from interfering in the internal affairs of other states, including their political, economic, and social systems. Notwithstanding more recent IR scholarship that has demonstrated how sovereignty is in fact socially constructed, contested, dynamic, constantly evolving, and influenced by diverse domestic and international factors,<sup>3</sup> the norm of non-interference remains at the core of the concept.

Catherine MacKinnon, a prominent feminist legal scholar and activist, has suggested that the fetishisation of non-interference is patriarchal. She argues that the insistence on non-interference serves to maintain the unequal distribution of power and privilege by silencing dissent and resistance from marginalised groups, particularly women. By framing non-interference as the ultimate value, the specific needs and struggles of women are sidelined or rendered invisible.<sup>4</sup> There are a number of ways in which non-interference perpetuates gendered power imbalances in society. Non-interference can be used to uphold gender roles within families and households. By arguing that external entities should not interfere with family matters, including decisions related to domestic responsibilities and caregiving, it reinforces the notion that these roles are predetermined based on gender, with women expected to take on subordinate roles. Non-interference can be employed to resist legislative or policy changes aimed at addressing gender inequality, such as laws promoting equal pay or measures to combat gender-based violence. The argument is often framed around

<sup>3</sup>Robert Jackson, *Sovereignty: Evolution of an Idea* (Cambridge: Polity Press, 2007); Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999); Ruth Lapidoth, 'Sovereignty in transition', *Journal of International Affairs*, 45:2 (1992).

<sup>4</sup>Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991).

individual freedom and limited government intervention, which effectively maintains systems that disadvantage women and uphold male dominance. Non-interference can also be employed to preserve traditional social norms and cultural practices that perpetuate gender inequality. By suggesting that external intervention would infringe upon cultural autonomy or personal freedoms, it becomes easier to justify practices that restrict women's rights and reinforce their subordination within society.

MacKinnon's argument about the fetishisation of non-interference as patriarchal highlights how seemingly neutral concepts can be mobilised to uphold and reinforce systems of oppression. Are Indigenous conceptions of sovereignty premised on the idea of non-interference patriarchal? In my earlier work, I have considered the ways in which the dominant discourses of Indigenous self-determination and sovereignty do sideline and render the specific needs and struggles of women invisible. The gender regimes of Indigenous political organisations perpetuate gendered power imbalances and division of labour. There are also specific instances where the insistence on maintaining a 'unitary front' in the name of Indigenous self-determination have served to maintain the unequal distribution of power by silencing dissent and resistance from marginalised groups, particularly Indigenous women, who called attention to sex and gender discrimination embedded in legislation such as the Indian Act in Canada and expressed fear of discrimination becoming entrenched in Indigenous self-government.<sup>5</sup>

Indigenous sovereignty encompasses the right of Indigenous peoples to make decisions about their own communities, cultures, and futures without external interference. It also includes the ability to engage with external entities, including governments, on their own terms. It is important to recognise that Indigenous peoples have diverse perspectives and experiences, and there is no single, unified Indigenous conception of sovereignty. The Indigenous conceptions of sovereignty are complex and vary globally. That said, many Indigenous communities foreground autonomy and self-determination in ways that can be seen as promoting the idea of non-interference. In Indigenous politics, sovereignty is frequently discussed in terms of protecting the territorial integrity of traditional Indigenous territories. What is more, while non-interference is a significant aspect of many Indigenous conceptions of sovereignty, it is not necessarily the ultimate or sole value. Instead, it is a strategic approach that seeks to safeguard autonomy, cultural practices, and governance systems that have been threatened by colonial powers. Indigenous nations may prioritise non-interference to resist further external control, maintain their own ways of life, and uphold the relational values embedded in their governance traditions. However, this does not mean they are rigidly bound to it as an unchanging principle; their approaches to sovereignty can adapt based on specific contexts and needs.

Like mainstream IR, scholarship on Indigenous law and politics also grapples with the complex and contested nature of sovereignty. While some argue that sovereignty rarely implies independence or non-interference for Indigenous communities,<sup>6</sup> others assert that certain Indigenous peoples have maintained their historical sovereignty and independence.<sup>7</sup> Yet another perspective suggests that Indigenous sovereignty presents a paradox because the concept and principles of sovereignty often clash with Indigenous ways of existence, knowledge, and interconnectedness with the world.<sup>8</sup> Instead, these scholars examine the legitimising and dominant role of sovereignty within a global framework characterised by a system of sovereign states, highlighting its significant impacts on Indigenous peoples and their social, cultural, and political structures. Even when

<sup>5</sup>Rauna Kuokkanen, *Restructuring Relations: Indigenous Self-Determination, Governance and Gender* (New York: Oxford University Press, 2019).

<sup>6</sup>See, for example, Roger C. A. Maaka and Augie Fleras, 'Engaging with indigeneity: Tino rangatinaranga in Aotearoa', in Duncan Ivison, Paul Patton, and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000), pp. 89–111.

<sup>7</sup>Mary Druke Becker, 'We are an independent nation: A history of Iroquois sovereignty', *Buffalo Law Review*, 46 (1998), pp. 981–1000. Becker notes that the Iroquois (Haudenosaunee) made a declaration of sovereignty as early as in 1684.

<sup>8</sup>Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Toronto: Oxford University Press, 1999); Paul Nadasdy, *Sovereignty's Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017).

Indigenous nations do not actively pursue independence, they often find themselves compelled to adopt the dominant symbols and institutions of sovereignty and statehood to navigate within a world predominantly governed by states and state-like entities. This phenomenon is especially observable within Indigenous self-government institutions.<sup>9</sup>

Indigenous scholars who advocate for the principle of non-interference argue that it serves as the cornerstone of their historical treaty agreements with other sovereigns. One of the most significant examples is the Guswentah or Two-Row Wampum Treaty, presented by the Haudenosaunee Confederacy to the Dutch in 1613. The Guswentah is a beaded belt comprising two parallel rows of purple beads separated by three rows of white beads. The common interpretation centres on the two rows of purple beads, symbolising two vessels moving down the river. These two rows never converge, signifying ‘two different paths, two different people’, which encapsulates and affirms the principle of non-interference.<sup>10</sup>

Yet the idea of shared Indigenous territories, jurisdictions, and intersecting or coexisting sovereignties is also widespread.<sup>11</sup> For instance, the historical Dish with One Spoon Wampum Belt Covenant, an agreement between the Haudenosaunee Confederacy, the Anishinaabeg, and allied nations, established a framework for peacefully sharing and stewarding the hunting territories and resources surrounding the Great Lakes.<sup>12</sup>

Returning to MacKinnon’s argument, which posits that non-interference is frequently utilised to uphold male dominance and justify the subjugation of women, we need to ask whether the Indigenous notions of sovereignty advocating non-interference serve similar purposes in maintaining the status quo and justifying subordination in Indigenous communities?

This Forum will explore this provocative question – whether sovereignty inherently implies non-interference and carries patriarchal underpinnings. In doing so, it invites us to examine what embracing sovereignty as non-interference entails, and to consider the reasons and ways we might engage with it. This reflection extends beyond the methodologies we employ to encompass the intellectual and relational positions we take, as well as the responsibilities we acknowledge. The scholars participating in this symposium offer varied responses to this provocation. Sheryl Lightfoot argues that Indigenous sovereignty and self-determination must be critically examined to address the Eurocentric, patriarchal origins of sovereignty, which often perpetuate control and exclusion. By emphasising relational governance and the human rights framework of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Indigenous communities can reclaim governance models that prioritise equality, gender equity, and collective well-being while navigating the complexities of non-interference and self-determination.

Matthew Wildcat discusses non-interference as rooted in Indigenous relationality and emphasises individual autonomy as complementary to collective responsibilities, challenging the colonial and patriarchal norms that have historically undermined Indigenous sovereignty. Applied in contexts like free, prior, and informed consent (FPIC) and global politics, it reframes autonomy and authority as relational, advocating for a balance of distinctiveness and mutual responsibilities rather than hierarchical separation. Finally, Gina Starblanket considers non-interference as a principle

<sup>9</sup>Nadasdy, *Sovereignty’s Entailments*; Kuokkanen, *Restructuring Relations*.

<sup>10</sup>See John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002). See also Jon Parmenter, ‘The meaning of *kaswentha* and the Two Row wampum belt in Haudenosaunee (Iroquois) history: Can Indigenous oral tradition be reconciled with the documentary record?’, *Journal of Early American History*, 3:1 (2013), pp. 83–109.

<sup>11</sup>Michael McCrossan and Kiera L. Ladner, ‘Eliminating Indigenous jurisdictions: Federalism, the supreme court of Canada, and territorial rationalities of power’, *Canadian Journal of Political Science*, 49:3 (2016), pp. 411–31; Borrows, *Recovering Canada*; Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001).

<sup>12</sup>Victor P. Lytwyn, ‘A dish with one spoon: The shared hunting grounds agreement in the Great Lakes and St. Lawrence Valley region’ (paper presented at the Paper of the 28th Algonquian Conference, 1997); Joyce Tekahnawiiaks King, ‘The value of water and the meaning of water law for the Native Americans known as the Haudenosaunee’, *Cornell Journal of Law and Public Policy*, 16:3 (2007), pp. 449–75.

tioned to continuity, reciprocity, and localised contexts and emphasises the protection of relationships with creation and ways of life, particularly in treaty-making. In contemporary contexts, however, Starblanket maintains, its misuse risks perpetuating patriarchal and colonial structures, necessitating critical Indigenous feminist analyses to ensure it aligns with collective accountability and transformative governance.

While the authors share openness to critically assessing Indigenous sovereignty and non-interference vis-à-vis patriarchy, their perspectives diverge on the meanings, potential, limitations, and implications. Three out of four authors are members of Indigenous peoples of Turtle Island/North America, which explains the particular focus on the particularities of Indigenous sovereignty from that location. We now turn to the substance of their arguments to explore the how and why behind their positions.

*Rauna Kuokkanen*

### Disentangling sovereignty from self-determination

To engage with the intricate discourse presented by Rauna Kuokkanen and the broader implications it holds for Indigenous peoples, sovereignty, and gender equity, one must appreciate the historical, political, and cultural nuances that underpin this discussion. The notion of sovereignty, with its European origins, indeed carries the weight of its lineage – a lineage steeped in values that have often perpetuated patriarchy and a form of dominion, based in Judeo-Christian thought, that has historically marginalised and propitised women and children, as well as the non-human, natural world.

At its core, the concept of sovereignty as inherited from the Treaty of Westphalia is not only Eurocentric but also state-centric, implicitly carrying Judeo-Christian undertones of dominion, hierarchies, and control that characterise the European nation-state model. International Relations scholar Robert Jackson drew explicit connections between sovereignty, state-making, colonialism and non-intervention, noting,

Sovereignty is one of the foremost institutions of our world: it has given political life a distinctive constitutional shape that virtually defines the modern era and sets it apart from previous eras. ... It was a formidable tool in the hands of lawyers and politicians, and a decisive factor in the making of modern Europe. And not only Europe: in the past century or two sovereignty has become the cornerstone of modern politics around the world. ... It was originally an institution of escape from rule by outsiders and to this day, it remains a legal barrier to foreign interference. The basic norm of the UN Charter (Article 2) enshrines the principle of equal sovereignty and its corollary, the doctrine of non-intervention.<sup>13</sup>

This Eurocentric conception of sovereignty is incongruent with the more decentralised, relational governance systems traditionally practised by many, but certainly not all, Indigenous peoples around the world.<sup>14</sup> Indigenous systems are often characterised by their emphasis on balance, relationality, reciprocity, and an ethic of care that often places humans within, or at the base of, the interconnected and interwoven circles of Creation. Australian Aboriginal scholar Marcia Langton reminds us that Indigenous governance is premised on a vast Indigenous system of knowledge and

<sup>13</sup>Robert Jackson, 'Sovereignty in world politics: A glance at the conceptual and historical landscape', *Political Studies*, 47:3 (1999), pp. 431–56 (p. 431).

<sup>14</sup>See, for example, Taiaiake Alfred, 'Sovereignty', in Philip J. Deloria and Neal Salisbury (eds), *A Companion to American Indian History* (Oxford: Blackwell Publishers, 2002), pp. 460–74; Margaret Mutu, 'Māori concepts and practices of sovereignty', in Brendan Hokowhitu, Aileen Moreton-Robinson, Linda Tuhiwai-Smith, Chris Andersen, and Steve Larkin (eds), *Routledge Handbook of Critical Indigenous Studies* (New York: Routledge, 2020), pp. 269–82; and Aileen Moreton-Robinson, 'Incommensurable sovereignties: Indigenous ontology matters', in Brendan Hokowhitu, Aileen Moreton-Robinson, Linda Tuhiwai-Smith, Chris Andersen, and Steve Larkin (eds), *Routledge Handbook of Critical Indigenous Studies* (New York: Routledge, 2020), pp. 257–68.

law that is thousands of years old.<sup>15</sup> Māori scholar Annabel Mikawere argues that an important balance between men and women was destroyed by colonisation, as prior to contact women held vital leadership roles in society, as evidenced by the gender-neutral *te reo* Māori language.<sup>16</sup> In the Canadian context, Joyce Green and Kiera Ladner both argue how Indigenous women's roles in Indigenous governance systems were marginalised through processes of colonisation.<sup>17</sup>

The distinction between sovereignty and self-determination is critical, particularly in Indigenous peoples' contexts. Sovereignty, as it is commonly understood in International Relations, is tied to the idea of absolute authority within a given territory, implying a hierarchical structure of power and governance, and ultimately, 'control over'. It has been an established principle of international law since the Treaty of Westphalia that ended the 'Thirty Years' War in 1648. When we speak of 'Westphalian sovereignty', we mean that a territorially bounded state has the ability to claim control over affairs within its borders, including the right of non-interference from others. In contrast to the feudal era, Westphalian sovereignty emphasises exclusive control over a territory rather than the medieval form of relational governance: the bondage of persons to lords.<sup>18</sup>

The concept of sovereignty, and its associated elements of control and dominion, travelled the world during the colonial era, through an international legal framework also grounded in hierarchical power and control: the Doctrine of Discovery, which further emphasised these Eurocentric values.<sup>19</sup> According to the Doctrine of Discovery, and its conceptual twin, *terra nullius*, Indigenous peoples were deemed not fully human, unable to manage their own affairs in the modern world, and incapable of exercising sovereignty. Under the international legal principle of the Doctrine of Discovery, sovereignty could only be held by European, Christian powers, so Indigenous peoples became objects of international law rather than subjects, and thus were deemed unable to invoke any principle of non-interference, which belonged exclusively to the colonial sovereigns.<sup>20</sup> The result in many settler colonial contexts was the assumption of full state control over even the internal, private affairs of Indigenous peoples. In some contexts, Indigenous peoples even required permission from a state agent to marry, to work, or even to leave an Indigenous reserve. For Indigenous peoples, sovereignty became a tool of 'control over' them, meaning their dispossession and oppression. The state apparatus of control over Indigenous peoples during this era was deeply patriarchal and also forced Eurocentric views of family and community relations onto Indigenous peoples.

When Indigenous political rights movements emerged during the 1960s and 1970s, simultaneously in many regions around the world, Indigenous advocates pushed back hard against colonial state control over their lives. One of many tools these movements relied upon was international human rights law, especially the core human rights conventions, which were finalised in the mid-1960s.<sup>21</sup> Both the International Convention on Civil and Political Rights (1966) and the International Convention on Economic, Social and Cultural Rights (1966) each affirmed, in article 1, that 'all peoples have the right of self-determination'. The International Convention on the Elimination of All Forms of Racial Discrimination (1965) had previously established that human

<sup>15</sup> Marcia Langton, *Welcome to Country*, 2nd ed. (Melbourne: Hardie Grant, 2021).

<sup>16</sup> Annabel Mikaere, *The Balance Destroyed* (Ōtaki: Te Tākupu, Te Wananga o Raukawa, 2017).

<sup>17</sup> Joyce Green, 'Constitutionalising the patriarchy: Aboriginal women and Aboriginal government', *Constitutional Forum*, 4:110 (1992), pp. 110–23; Kiera L. Ladner 'Gendering decolonization, decolonizing gender commentary', *Australian Indigenous Law Review*, 13 (2009), pp. 62–77.

<sup>18</sup> Siegfried Wiessner, 'Indigenous sovereignty: A reassessment in light of the UN Declaration on the Rights of Indigenous Peoples', *Vanderbilt Journal of Transnational Law*, 41:4 (2008), pp. 1141–76.

<sup>19</sup> See Robert J. Miller (ed.), *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (New York: Oxford University Press, 2010).

<sup>20</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, 'Preliminary study on the impact on Indigenous peoples of the international legal construct known as the Doctrine of Discovery', E/C.19/2010/13 (2010), available at: <https://documents.un.org/doc/undoc/gen/n10/231/02/pdf/n1023102.pdf?token=8mgOaxw1ITMslAqZN7&fe=true>.

<sup>21</sup> Franke Wilmer, *The Indigenous Voice in World Politics: Since Time Immemorial* (London: Sage, 1993).

rights are universal and peoples cannot be discriminatorily subjugated on the basis of race. The logic of the international human rights system was clear: Indigenous peoples have an equal right to self-determination and control over their own lives, both as individuals and collectively, as peoples. The challenge, in practice, was that the international system at the time – including the human rights system – equated ‘self-determination’ with ‘state sovereignty’ and often used them interchangeably during the decolonisation project, casting Indigenous peoples aside as ineligible for decolonisation as sovereign states, and thus also denying them their right of self-determination.<sup>22</sup> In addition to their ongoing domestic political advocacy efforts, some Indigenous peoples also began to engage the international human rights system, beginning in the mid-1970s, in order to achieve recognition of Indigenous peoples’ human rights, particularly their collective right to self-determination alongside the human rights of individual Indigenous persons. After 30 years of advocacy and negotiation, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was accepted by the General Assembly.<sup>23</sup> Articles 1 and 2 of the UNDRIP affirm the equality of Indigenous peoples to all other peoples of the world. Article 3 of the UNDRIP states:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Then, UNDRIP’s Article 4 states:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Read together, Articles 1 to 4 thus indicate that Indigenous peoples’ right of self-determination is formally recognised as equal to that of all other peoples of the world, and it is not necessary to create an independent, territorially bounded sovereign state to achieve self-determination. Therefore, self-determination is distinctive from the concept of ‘sovereignty’, with some key nuances concerning non-interference in Indigenous peoples’ internal affairs.

Self-determination, as articulated in UNDRIP, emphasises relational governance grounded in universal human rights – the right of peoples to freely determine their political status and pursue their economic, social, and cultural development. As legal scholar Dorothee Cambou notes, ‘self-determination is based on a democratic model of self-determination that is grounded in human rights law and which calls both for the autonomy and the participation of indigenous peoples in decision-making processes that impact them.’<sup>24</sup> While statehood is a requirement for sovereignty, Indigenous peoples’ advocacy began to utilise the human rights framework and, in the process, began to disentangle the concept of self-determination from formal sovereignty.<sup>25</sup> UNDRIP’s omission of the term sovereignty in favour of self-determination is telling. In its progressive interpretation, the UNDRIP signals a wider shift towards a conception of autonomy that is more aligned with Indigenous values and governance structures and relationality. A critical reading of the UNDRIP, however, emphasises that Article 46, which was added to the UNDRIP at a late

<sup>22</sup>See Helena Whall, ‘The challenges of Indigenous peoples: The unfinished business of decolonization’, *The Commonwealth Journal of International Affairs*, 92:372 (2003), pp. 635–59; and Bruce Robbins, ‘Blue water: A thesis’, *Review of International American Studies*, 8:1 (2015), pp. 47–66.

<sup>23</sup>UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, A/RES/61/295, 2 October 2007, available at: <https://www.refworld.org/legal/resolution/unga/2007/en/49353>.

<sup>24</sup>Dorothee Cambou, ‘The UNDRIP and the legal significance of the right of Indigenous peoples to self-determination: A human rights approach with a multidimensional perspective’, in Damien Short, Corrine Lennox, Julian Burger, and Jessie Hohmann (eds), *The United Nations Declaration on the Rights of Indigenous Peoples: A Contemporary Evaluation* (London: Routledge, 2020), pp. 33–49 (p. 33).

<sup>25</sup>Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (New York: Routledge, 2016).

stage, by states, and after Indigenous peoples were no longer in the negotiating room, indicates that states unilaterally reserved the right of sovereignty, and by extension, the right of non-interference, for themselves, while simultaneously denying this right to Indigenous peoples.<sup>26</sup> It is crucial to note, however, the history of Article 46 along with its meaning in international law. In order to address strong concerns from African states that the UNDRIP could potentially be used as a tool of secession, violence, and instability, Article 46.1 was added to the UNDRIP, using text drawn from a portion of the Declaration of Friendly Relations between States, which specifies that nothing in the UNDRIP should be construed as authorising or encouraging violent dismemberment of sovereign states.<sup>27</sup> With the addition of Article 46.1, and their fears of violence and secession assuaged, the African states moved from a position of fear of the UNDRIP to embracing it as a global consensus human rights standard, affirming the centrality of mutual respect and non-interference. A more progressive reading of Article 46.1, grounded in human rights law, thus indicates that while some states certainly defended the norm of non-interference for themselves, a relational expectation was also placed upon Indigenous peoples. They would be expected to respect this norm vis-à-vis states and pursue pathways of negotiated self-determination rather than violent insurrection. Read together with Articles 3 and 4, Indigenous peoples would also benefit from the norm of non-interference in terms of their own self-determination. Article 46.2 further underscores the necessity of respect for human rights and fundamental freedoms for all, in an equal and non-discriminatory fashion, indicating that Indigenous self-determination must also adhere to international human rights standards related to gender equality.

The legacy of World War II, and the rise of the international human rights system, indeed transformed the concept of absolute non-interference, as the international community recognised that certain atrocities demand a collective response, regardless of state sovereignty and the long-held norm of non-interference in other states' affairs. The core human rights conventions effectively 'cracked' the 'hard shell' of state sovereignty and the norm of non-interference, acknowledging that both individuals and peoples hold inherent rights that transcend state sovereignty.<sup>28</sup> This acknowledgement is crucial when considering the rights of marginalised groups, including Indigenous women, who may be doubly disadvantaged by both external colonial powers and internal patriarchal structures imposed through colonial governance.

In practice, traditional Indigenous governance structures around the world have often exemplified a form of leadership and decision-making that is vastly different from the hierarchical models of Europe. They have historically been more consensual, community-oriented, and integrative, reflecting a profound connection to the land and to one another, rather than dominion over lands and resources or other human beings. The emphasis is on 'relationships and interdependencies, rather than granting one actor (i.e. the state) the right to make decisions independently without interference by others ... and includes the interdependence between political actors.'<sup>29</sup> Of course, this system of interdependence does not only apply to relationships between human beings but also between humans, lands, waters, and the animal world.<sup>30</sup>

<sup>26</sup>Irene Watson and Sharon Venne, 'Talking up Indigenous peoples' original intent in a space dominated by state interventions', in Elvira Pulitano (ed.), *Indigenous Rights in the Age of the UN Declaration* (Cambridge University Press, 2012), pp. 87–109.

<sup>27</sup>UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV), 24 October 1970, available at: <https://www.refworld.org/legal/resolution/unga/1970/en/19494>.

<sup>28</sup>Dominic McGoldrick, 'The principle of non-intervention: Human rights', in Vaughan Lowe and Colin Warbrick (eds), *The United Nations and the Principles of International Law* (Routledge, 1994), pp. 95–129.

<sup>29</sup>Harald Bauder and Rebecca Mueller, 'Westphalian vs. Indigenous sovereignty: Challenging colonial territorial governance', *Geopolitics*, 28:1 (2023), pp. 156–73 (p. 166).

<sup>30</sup>Chris Hiller and Elizabeth Carlson, 'These are Indigenous lands: Foregrounding settler colonialism and Indigenous sovereignty as primary contexts for Canadian environmental social work', *Canadian Social Work Review*, 35:1 (2018), pp. 45–70.

The adoption of the term ‘sovereignty’ by some Indigenous groups, particularly in the United States, complicates this picture. The use of the term within US legal and political discourse can be traced back to the 1830s Marshall decisions, which framed Indigenous peoples as ‘domestic dependent nations’ rather than fully sovereign nations.<sup>31</sup> This terminology not only diminished the status of Indigenous peoples within the territory of the United States from their previous status as international political actors in their own right to becoming only the objects of international political actors, it simultaneously domesticated Indigenous nations, forcing them into nearly exclusive relations with the US federal government rather than with one another or other international actors.

As Anishinaabe scholar Heidi Kiiwetinepinesik Stark describes, ‘Anishinaabe leaders often sought recognition and protection of their nationhood, and thus their sovereignty and land tenure by engaging with the United States and Canada in treaty making that they hoped would guarantee their status as sovereigns and as proprietors.’<sup>32</sup> At the same time, the concept of exclusive control over territory that was foundational to treaty relations with settler colonial governments was not familiar to most Indigenous peoples, who viewed treaty making in more relational terms than ‘the imposition of fixed boundaries.’<sup>33</sup>

When the Red Power movement emerged in the 1960s, one of the ways that it distinguished itself from other social movements was to ground its claims in treaty rights between the United States and themselves, which also encouraged a conception of sovereignty that mimicked state structures and could, by extension, be a form of politics that invoked the principle of non-interference in the lives of Indigenous peoples.<sup>34</sup> As some scholars have argued, the conception of sovereignty advanced by the American Indian Movement was sexist and imbued with a hierarchical, sometimes toxic, understanding of masculinity.<sup>35</sup> This unique construction of Indigenous ‘sovereignty’ within the US context is less prevalent elsewhere, suggesting that the term’s usage may be inextricably linked to the specific legal history and relationships between the US government and Indigenous nations.

When Indigenous conceptions of sovereignty do align with the principle of non-interference, it raises questions about the perpetuation of gendered power imbalances. If sovereignty is used to shield practices that subjugate women, then even Indigenous applications of the term can be seen as reinforcing patriarchal values. The examples Rauna Kuokkanen provides, such as the Indian Act in Canada, illustrate how the protective shield of sovereignty or self-determination can sometimes be wielded to maintain existing gendered inequalities. Yet it would be an oversimplification to label Indigenous conceptions of sovereignty as inherently patriarchal. Rather, as Kuokkanen argues, it is a centring of control/dominion embedded within the concept of non-interference – imported from the European model of sovereignty – that maintains patriarchy. In reality, Indigenous governance systems are diverse, and many are traditionally more egalitarian and inclusive. Moreover, the principle of non-interference, as exemplified by Kuokkanen’s discussion of the Guswentah or Two-Row Wampum Treaty of the Haudenosaunee with the Dutch, has historically been a foundation for coexistence and mutual respect between sovereign entities, including Indigenous nations.

The real challenge lies in navigating the complex interplay between traditional Indigenous governance, which often promotes gender equity and collective well-being, and the pressures to conform to the dominant state-centric model of sovereignty that may not always align with these

<sup>31</sup>Vine Deloria, Jr. ‘Self-determination and the concept of sovereignty’, in John R. Wunder (ed.), *Native American Sovereignty* (Taylor & Francis, 1996), pp. 107–14.

<sup>32</sup>Heidi Kiiwetinepinesik Stark, ‘Marked by fire: Anishinaabe articulations of nationhood in treaty making with the United States and Canada’, *American Indian Quarterly*, 36:2 (2012), pp. 119–49 (p. 122).

<sup>33</sup>Stark, ‘Marked by fire’, p. 123.

<sup>34</sup>Andrew H. Fisher, ‘Defenders and dissidents: Cooks Landing and the fight to define tribal sovereignty in the red power era’, *Comparative American Studies: An International Journal*, 17:2 (2020), pp. 117–41.

<sup>35</sup>Matthias Andrea Voigt, *Reinventing the Warrior: Masculinity in the American Indian Movement 1968–1973* (University of Kansas Press, 2024).

values. The move towards self-determination and the reaffirmation of Indigenous laws, traditions, and institutions as outlined in the human rights model of the UNDRIP can be seen as a constructive pathway to redressing the imbalances created by colonial impositions, including those related to gender.

UNDRIP is an expression of the collective human rights of Indigenous peoples, including the right of self-determination, autonomy, and self-governance, but it places equal emphasis on the human rights of Indigenous individuals within those collectives. Article 44 of the UNDRIP specifically states, ‘all the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.’ Further, the human rights model of Indigenous self-determination affirmed in the UNDRIP not only places special emphasis on equality and non-discrimination of Indigenous individuals within collectives (Articles 1, 2, 21.1, 22.1 and 24.1), it also specifically charges states with the responsibility of taking measures, including special measures where necessary, to ensure that the rights of Indigenous individuals are equally respected (Articles 21.2, 22.2 and 24.2).

In conclusion, the intersection of Indigenous conceptions of sovereignty, non-interference, and gender is a complex and multifaceted issue. Indigenous sovereignty, as a concept that has been variously interpreted and applied, can either challenge or perpetuate patriarchal structures. It is essential to critically examine the specific contexts in which sovereignty is invoked, ensuring that the principles of self-determination and gender equity remain at the forefront of this discourse. Through the lens of UNDRIP and human rights principles, there is an opportunity, and a responsibility, to redefine and reclaim conceptions of governance that reflect Indigenous values and promote the well-being of all community members, irrespective of gender.

*Sheryl Lightfoot*

### **Is non-interference about separation?**

I take up the question of how non-interference applies to Indigenous sovereignty by examining the question through the lens of Indigenous understandings of relationships – or what is often called Indigenous relationality. Indigenous relationality asks us to make judgements about how to care for others, navigate scarcity, and sort how different conceptions of good or justice can be in tension with each other. Non-interference is a concept that is typically applied to individual agency within scholarship on Indigenous peoples. I’ll start by covering how that term is taken up within the context of Indigenous worldviews on individual agency but in doing so reveal how this thinking might be applied to the context of global politics to explain how the concept of non-interference could be taken up. Indigenous conceptions of non-interference then also help work through questions of patriarchy and colonialism by giving us resources to grapple with difficult questions. Although I do think non-interference could be taken up, an equally important question is *should* it be taken up? Here, I consider the desirability of non-interference in the context of a free, prior, and informed Consent (FPIC) – which I view as one of the major achievements of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – and suggest that non-interference does not necessarily reinforce patriarchy.

We have to go back to the 1980s and 1990s to look at Indigenous scholarship on non-interference in the context of Canada and the United States, or Turtle Island. This era is marked by a research orientation that seeks to articulate Indigenous worldviews so they can shape institutions like emergent forms of Indigenous self-government and justice systems. This scholarship was prone to discussing Indigenous philosophies at large rather than the specific traditions of individual nations.<sup>36</sup> The danger here is discussing Indigenous peoples in general invites non-Indigenous peoples to flatten Indigenous diversity. Nonetheless, I’ve made an interpretive decision to follow the conventions of that era and use the concept of Indigenous while pulling us down to the specific traditions of Indigenous peoples when possible.

<sup>36</sup>Menno Boldt, *Surviving as Indians: The Challenge of Self-Government* (University of Toronto Press, 1993).

I first encountered non-interference through Rupert Ross's discussion (1996) of how the 'ethic of non-interference' shapes Indigenous conceptions of justice.<sup>37</sup> Ross cites a Mohawk scholar, Clare Brandt, who defines the ethic of non-interference as 'a behavioural norm of North American Native tribes that promotes positive interpersonal relations by discouraging coercion of any kind, be it physical, verbal, or psychological'.<sup>38</sup> The ethic of non-interference was familiar because it had been communicated to me many times growing up through expressions like 'you can't make decisions for somebody' or 'you have to let people make their own decisions'.<sup>39</sup> The idea is that it is improper to compel someone to undertake action regardless of the individual or collective benefit you might perceive that action to have.

Russell Barsh provides us with an iteration of this philosophy through the concept 'primacy of conscience'.<sup>40</sup> Drawing on Indigenous authors from the 1800s and on anthropological records, Barsh states the respect for individual autonomy flows from 'a sense of the moral equality of all human beings, regardless of their differences in abilities or beliefs'.<sup>41</sup> In Barsh's account, respect for individual choices and the rejection of any form of coercion to compel behaviour has very few bounds and includes respecting the choices of children and even those who might cause injury to others. In Barsh's account, societies must always be responsible for redressing harms, but unless someone is actively harming others people should be allowed to make their own choices. While this account seems to prioritise the individual, underlying the primacy of conscience as a societal imperative is an order where 'each individual is intensely aware of his accountability for the welfare of others, which he must, albeit in his own way and according to the dictates of his own conscience, attend to'.<sup>42</sup>

The scholarship of Blackfoot scholar Leroy Littlebear also takes up the ethic of non-interference. For Littlebear, the independence and wellness of individuals is a condition of maintaining balance in collective life. Independence involves promoting a principle like 'being a jack of all trades' or what Littlebear also refers to as being a generalist – the idea that knowledge in society was widely shared.<sup>43</sup> Shared values are important but exist in a context where 'diversity is the norm, so deviation from acceptable behaviour is minimized'.<sup>44</sup> This led Littlebear to define non-interference as 'respect for others' wholeness, totality, and knowledge'.<sup>45</sup> Here, the assumption is that one cannot fully understand someone's position, so there has to be a very wide leeway in allowing others to decide how they conduct themselves. From this standpoint, non-interference is as much about the responsibilities people hold to each other as it is about the rights of an individual to not have encumbrances placed on them.

I have a vivid memory of a discussion with an earnest non-Indigenous scholar at the 2010 Native American and Indigenous Studies Association conference in Tucson, Arizona, who was struggling to articulate for themselves why non-interference was different from libertarian articulations of personal freedom. I don't remember being able to help that day because if you just focus on the individual, the ethic of non-interference does square nicely with libertarian ideology that seeks to limit the role that collective institutions play in governing individual autonomy. I still reflect on that brief interaction, and what remains difficult to grasp is how we are often conditioned to view the provision of collective social goods as something that inevitably restricts individual autonomy.

<sup>37</sup> Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality* (Reed Books Canada, 1996).

<sup>38</sup> Clare C. Brant, 'Native ethics and rules of behaviour', *Canadian Journal of Psychiatry*, 35 (1990), pp. 534–39 (p. 535).

<sup>39</sup> Thanks to Kelsey Dokis-Jansen for wording the second expression.

<sup>40</sup> Russel Lawrence Barsh, 'The nature and spirit of North American political systems', *American Indian Quarterly*, 10:2 (1986), pp. 184–5.

<sup>41</sup> *Ibid.*, p. 184.

<sup>42</sup> *Ibid.*, p. 185.

<sup>43</sup> Leroy Little Bear, 'Jagged worldviews colliding', in Marie Battiste (ed.), *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000), pp. 78–85 (p. 79).

<sup>44</sup> *Ibid.*, p. 84.

<sup>45</sup> *Ibid.* p. 79.

In Indigenous thought, however, individual autonomy and collective responsibilities are understood as complementary and mutually reinforcing. The work of Anne Waters on non-discrete, non-binary dualism in Indigenous thought is helpful. Waters defines this in the following way:

A nonbinary, complementary dualist construct would distinguish two things: (1) a dualism (e.g. male–female) that may appear ... as opposites or things different from one another in some respects; and (2) a nonbinary (complementary) syntax that puts together such constructs without maintaining sharp and clear boundary distinctions (unlike a binary system). The maintenance of the rigid distinct boundaries of binary logic enable (though may not necessitate) an hierarchical value judgment to take place (e.g. mind over body, or male over female) precisely because of the sharp bifurcation. A nonbinary (complementary) dualism would place the two constructs together in such a way that one would remain itself, and be also part of the other. In this way, an hierarchical valuing of one being better, superior or more valued than another cannot be, or rather is, excluded by the nonbinary logic.<sup>46</sup>

One might ask if this complementary vision of individual autonomy and collective responsibilities is distinct to Indigenous thought or whether it is just a rehashing of other debates on the relationship between the individual and collective found in the Western tradition. Here, I'm thinking of works like Isaiah Berlin's 'two concepts of liberty' or Jennifer Nedlesky's work on 'relational autonomy'.<sup>47</sup> I want to bracket off getting into that kind of debate. From the perspective of written academic works, the Western tradition has a huge corpus on the interplay between individual and collective that sets up a power imbalance that is impossible for me to mitigate in the space here. Rather, I want the focus on tracing out Indigenous philosophies that are primarily reproduced and expressed within Indigenous communities.

What I'm interested in is reworking non-interference to rest not on separation, but as a mode of autonomy that equally assumes being in relation with others. Seeing non-interference as relational is especially important in Indigenous contexts because the history of colonialism is premised on non-Indigenous peoples interfering in Indigenous communities. For instance, in a comparative study of the United States and Australia, legal scholar Lisa Ford argues that colonial authorities criminalising violence within Indigenous communities marks the transition from colonial to settler colonial rule. Indigenous nations face significant social, economic, spiritual, and political interference. While non-interference is an important hedge against colonial relations, it does not absolve people of considering how we create forms of care and redress within an area like gendered injustice.

Ian Hurd has a useful article, 'Legitimacy and authority in international politics', that examines how sovereignty and related norms like non-intervention are reproduced in a global context.<sup>48</sup> He advances an argument that legitimacy is more compelling for the maintenance of sovereignty than competing explanations such as self-interest and coercion. Hurd makes the point that legitimacy requires internalising norms, and these norms then come to shape how we come to understand how we define our interests. In other words, legitimacy and self-interest are co-constitutive, each having the capacity to influence and, to use Lightfoot's phrasing, *subtly* change each other over time.<sup>49</sup> Hurd explains it as such:

Where an actor internalizes a rule because it perceives it as legitimate, that rule takes on the quality of being authoritative over the actor. The rule is then in some sense hierarchically

<sup>46</sup> Anne Waters, 'Language matters: Nondiscrete nonbinary dualism', in Anne Waters (ed.), *American Indian Thought* (Malden, MA: Blackwell Publishing, 2004), pp. 98–9.

<sup>47</sup> Bruce Baum and Robert Nichols, *Isaiah Berlin and the Politics of Freedom: 'Two Concepts of Liberty' 50 Years Later* (Routledge, 2013); Jennifer Nedlesky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011).

<sup>48</sup> Ian Hurd, 'Legitimacy and authority in international politics', *International Organization*, 53:2 (1999), pp. 379–408.

<sup>49</sup> Lightfoot, *Global Indigenous Politics*.

superior to the actor, and partly determinate of the actor's behavior, by virtue of contributing to the constitution of the actor's definition of its own interest.<sup>50</sup>

Neta Crawford has spent decades arguing that we must take the histories of Indigenous people as serious and substantive interventions within the field of International Relations.<sup>51</sup> Imagining a non-interference that simultaneously accommodates maintaining just relationships and responsibilities in a number of areas is possible if we challenge the idea that non-interference is about collectives drawing discrete boundaries – especially to mitigate armed conflict. Crawford details the Eurocentrism of IR by looking at the stag hunt – an idealised scenario from game theory of how humans would treat each other outside of the state.<sup>52</sup> Here, five parties can satisfy their hunger through cooperatively hunting a stag, but any one of them can defect to hunt the hare to equally satisfy their hunger but, in doing so, allow the stag to escape, leaving the others hungry. According to game theory, the rational move is to be 'self-interested' and defect in order to hunt the hare if given the opportunity. Thus, the implication is that cooperation with other parties is never to be fully trusted.

For Crawford, the logic of the fictionalised stag hunt should be treated as particular to the context of Western Europe rather than illuminating a universal understanding about the nature of human self-interest. Instead, archaeological evidence from 9,000 years ago, preserved underwater in present-day Lake Huron, shows an elaborate series of human-made land drives that funnel herds of caribou. Winter survival would have required disaggregating into small groups, but the archaeological finding demonstrates that smaller groups would have undertaken long-range planning with each other to build and use these drive lanes to hunt.<sup>53</sup> Here, we have ancient evidence that directly contradicts the stag hunt game theory. Crawford is direct in laying out the implications:

While not denying high levels of violence in parts of Asia, Africa, and the Americas, Europe may have been more violent than other regions and Europeans may have thus shaped their institutions to assume that violence and distrust were the norm. Assuming that this high level of distrust and violence were natural and inevitable may have led us to create institutions that do not protect us from ourselves so much as they promote or at least replicate distrust and violence.<sup>54</sup>

I want to give a final example of how the norm of non-interference is applied in a context of Indigenous relationality. I grew up in a community called Maskwacis, a group of four Plains Cree First Nations. In Canada, First Nations hold federal recognition as a government with related citizenship and land bases (both reserves and larger traditional territories). Maskwacis then has four separate governments but also reserve lands that are contiguous with each other. While we share a common language, culture, and history, for the most part we choose to run our governments separately. Building on growing cooperative practices in elementary and secondary education, we held a commission from 2016–18 that explored whether we should unify four separate school systems into a single system. The commission, in significant ways, revolved around the Cree concept of *wahkohtowin* that directly translates as kinship but is a fundamental concept to Cree worldviews that sees all elements of the natural world as related and compels people responsible for maintaining healthy relationships among the various interrelated parts of existence in all aspects of decision-making.<sup>55</sup> It was also a significant commitment because each government would see approximately

<sup>50</sup>Hurd, 'Legitimacy and authority in international politics', p. 400.

<sup>51</sup>Neta C. Crawford, 'A security regime among democracies: Cooperation among Iroquois nations', *International Organization*, 48:3 (1994), pp. 345–85.

<sup>52</sup>N. C. Crawford, 'Native Americans and the making of international society', in T. Dunne and C. Reus-Smit (eds), *The Globalization of International Society*, 1st ed. (Oxford University Press, 2017).

<sup>53</sup>*Ibid.*, pp. 107–8.

<sup>54</sup>*Ibid.*, p. 105.

<sup>55</sup>Matthew Wildcat, 'Wahkohtowin in action', *Constitutional Forum*, 27 (2018), pp. 13–24.

30 per cent of their monetary transfer from the federal government of Canada redirected to the unified school system.

The end result was the creation of a Maskwacis school system that began operation in the autumn of 2018. The four governments of Maskwacis collectively passed an education law that governs the operation of the school system, which included selecting a Board of Governors to a four-year term. In the spring of 2022, I was asked to chair the Board Selection Committee composed of the four Chiefs of Maskwacis, with each bringing a representative of their choosing. The Chiefs were required to select four representative from each nation<sup>56</sup> to sit on the board, appoint two at-large members who have board expertise, and select an elders circle that would appoint their own representatives to the board. My concern was that each Chief would revert to selecting individuals from their nations who would act as a watchdog on the board as opposed to the sense of unity that guided the selection of the first Board in 2018.

In my role as chair of the Board selection committee and having been involved in designing the board structure, I wanted to emphasise some of the norms that had guided the process.<sup>57</sup> Everyone should respect that each other may have a preferred choice for a board representative from their nations. But equally important was that when each nation put forward a preferred choice, they had a responsibility to the other Nations that they were selecting someone who would act in the best interest of all of Maskwacis and someone capable of carrying out their board duties in the best interest of the school system. Here, the design of the board selection committee is purposeful. By convening a board selection committee, the Chiefs have to work collectively in appointing a board, which in part involves building norms where their responsibilities to each other exist alongside their responsibilities to their own Nations. The spirit of both individual autonomy and collective responsibility was capable of effectively guiding the process, and I view this being an applied example of how non-Interference is also relational.

Applying non-interference in the context of Indigenous politics also requires us to take a relational understanding of non-interference. On the one hand, non-interference can be an important tool for Indigenous nations, governments, or communities seeking to mitigate and transform the legacies of colonialism. But that does not mean non-interference shields Indigenous collectives from addressing patriarchal norms and practices within our communities. The questions of jurisdiction and rights that non-interference entails clearly has the potential to entrench patriarchal norms if we equate questions of jurisdiction with the position and experiences of Indigenous men. For example, in relation to how Aboriginal rights in Canada has been litigated, the danger has been flagged that ‘Practices or traditions elevated to rights under Van der Peet will inevitably – in large part because of colonial influence – be framed in a way that advantages the interests of Aboriginal men over those of Aboriginal women.’<sup>58</sup>

Extrapolating Indigenous understanding of non-interference at the individual level to the level of International Relations provides a basis for articulating a relational non-interference. The question is whether non-interference is a feasible project within our current world. After all, Indigenous collectives, for the most part, are not recognised as being international actors, or as marginal ones at best. So, is it overwrought to believe there can be a relational non-interference based on Indigenous philosophies? I want to provide at least one reason why it may be worthwhile for Indigenous peoples and others to pursue a relational non-interference.

The language of FPIC occurs in articles 10, 11, 19, 28, 29, and 32 of the UNDRIP.<sup>59</sup> The purpose of this language is to establish standards around the way states and corporations should respect the

<sup>56</sup>To explain the nomenclature, when I use the term Nation I am referring to the federally recognised First Nation governments that have a defined membership, reserve lands, Aboriginal title to traditional territory and hold treaty and Aboriginal rights within the Canadian legal system. In Maskwacis, Nation is the most commonly used term when talking about relations between the four governments.

<sup>57</sup>Wildcat, ‘Wahkohtowin in action.’

<sup>58</sup>Emily Luther, ‘Whose “distinctive culture”? Aboriginal feminism and *R. v. Van der Peet*’, *Indigenous Law Journal*, 8:1 (2010), pp. 27–53 (p. 47).

<sup>59</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007.

political authority of Indigenous peoples around resource development. Part of the rhetoric that has emerged from settler society has been a fear that this will lead to a veto power for Indigenous peoples. If we imagined a context where colonial hierarchies were erased, FPIC should most certainly act as a veto power. What FPIC should implicitly recognise is that Indigenous sovereignty can supersede the authority of nation-states, in particular that the consent of Indigenous peoples eclipses other resource development goals.

But is it useful to equate FPIC with having a veto power? My concern with rendering FPIC in the language of veto power is that such a move pulls the conversation back to the implicit philosophical terms of settler societies. Here, political authority is treated as something that is ideally discrete and hierarchical – a clean ordering of who can decide what, when. Even if this discrete ordering of authority is never the case in reality, the fear expressed when invoking the notion that Indigenous peoples will hold veto power over development is to tacitly suggest that Indigenous peoples are stubborn and anti-development and will unreasonably prevent authoritative decision-making. All of this leads settler society back to the conclusion that settler sovereignty must retain its supremacy to prevent an Indigenous veto. But Indigenous peoples are not asking for a delineation of discrete hierarchical authority. Rather, we are asking for a relationship where we maintain distinctiveness but have responsibilities for each other as well – a relationship that has felt overwhelmingly one-sided, with settlers receiving significant benefits and Indigenous peoples experiencing significant harms.

In similar ways, the history of the global Indigenous rights movement has always been a conversation about how to have a conversation.<sup>60</sup> In other words, the global Indigenous rights movement always exists in a two-stream conversation where people both challenge existing international laws and their application, while also having to maintain a dialogue about the implicit norms, philosophies, and understandings Indigenous peoples bring to bear when creating and applying laws. From this vantage point, a focus on articulating a relational non-interference might be a necessary and important aspect of respecting Indigenous collectives as global actors. Such a view would mean teaching others to see that claims for Indigenous sovereignty are not about separation but about being able to balance the autonomy of collectives while at the same time having conversations about the responsibilities groups have towards each other. From this vantage, non-interference can be a norm that provides opportunities for Indigenous peoples to push back against colonial interference while also realising that collectives are equally responsible for addressing gendered injustice. This may be a tall task in a world heavily marked by significant hierarchies, but it may be a necessary road Indigenous peoples have to travel down in order to advance different ways of thinking about political power and authority.

*Matthew Wildcat*

### **Non-interference in relation**

In the introduction to this forum, Rauna Kuokkanen asks whether Indigenous notions of sovereignty advocating non-interference can operate in ways that maintain the status quo and justify gendered subordination in Indigenous communities. The query raises important considerations surrounding Indigenous conceptions of sovereignty and of non-interference – including questions relating to non-interference as a concept, as well as its implications, limitations, and its surrounding conditions of possibility. Through reference to Indigenous practices of treaty-making in the Canadian prairies, the following offers a brief commentary on the notion of non-interference, reviewing the operations, merits, and risks of the concept and contemplating whether and how it might represent an appropriate principle to extend to the contemporary context of Indigenous sovereignty.

<sup>60</sup>In addition to Lightfoot, *Global Indigenous Politics*, see also James Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition* (Purich Publishing, 2008).

Within the parameters of the current conversation, Indigenous ideas and practices of non-interference are engaged as a political matter (specifically in relation to conceptions of sovereignty). However, I note that non-interference in Indigenous contexts exists not just as an isolated political ideal or practice; it also forms part of an overarching way of life. Non-interference is born in a world of deep relationality; corresponding practices exist against this backdrop and can't be separated out and/or engaged in isolation. Consider how Indigenous treaty partners will always situate our treaties as treaties with one another *and* with creation. No principle or practice of governance, either interpersonal or within political formations, can be adequately contemplated or understood absent consideration of the entirety of a way of life that is relational.

Notions of non-interference are also not universal; they form part of the normative behaviour of the individuals who comprise a particular community. Even if they represent a shared characteristic across certain pre-contact Indigenous communities, the way in which non-interference is understood and manifests varies from context to context. Inquiries into non-interference, then, should be contemplated in ways that are grounded within a specific temporal and localised frame, as the context gives rise to the interconnected set of norms that enable its operation. Non-interference as a concept is simply too varied, indeterminate, and subjective to evaluate in ways untethered or abstracted from the context in which it emerges.

From my understanding of oral histories, in the context of Treaty 4 of the numbered treaties in Canada, continuity and survival (not just of present but of future generations) were paramount and at the fore of our approaches to and practices of governance. Survival did not just entail the physical survival of human bodies but depended upon the continuity of an entire way of life informed by the specific ways humans have come to survive in that place. In other words, our ways of life are configured by our interrelationships with creation, even if the particularities of how those relationships manifest can vary from context to context as the conditions and needs of survival, and thus of governance, look different across geographies.

Non-intervention can provide a useful vocabulary to interpret the commitments that Indigenous signatories sought from settler parties to treaty to ensure that our relationships with creation, central to individual and community wellness and survival, would be protected against interference from newcomers. Indigenous people did not want the commitments undertaken in treaties to interfere with our ways of life, or the ability of future generations to practise those ways of life. Indeed, as Cardinal and Hildebrandt observe, '[The Elders] emphasized that the First Nations' first and foremost objective in the treaty-making process was to have the new peoples arriving in their territories recognize and affirm their continuing right to maintain, as peoples, the First Nations relationships with the Creator through the laws given to them by him.'<sup>61</sup> In negotiating Treaty 4, for instance, negotiators sought explicit acknowledgement from Crown negotiators that their relationships with creation would not be jeopardised, but also that the ways of life involved in sustaining this relationship would remain intact. Elder Danny Musqua recalls his Grandfather (Kakakaway or Light Standing Ready) asking Alexander Morris during treaty negotiations 'What about the things that I eat what about the way that I speak? ... What about the way that I govern myself? What about that? What about the lands that I hold sacred to me?'<sup>62</sup> Elder Musqua further explained that his grandfather was talking about his hunting territories, the fishing territories, and the gathering territories, and all those things that were sacred to the survival of the people.

To these questions posed above, Morris replied: 'Nono, no, no, no my son, I don't want your food. I don't want those things that are sacred to you which is your water. ... We don't want that.'<sup>63</sup> Notions of survival and continuity, then, were understood to include various dimensions of a way of life that flow from our relationship with creation. In the context of numbered treaties with settlers, the late Elder Dolly Neapetung also emphasised the need to keep our ways of life alive: 'the Creator

<sup>61</sup>Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (University of Calgary Press, 2000), p. 7.

<sup>62</sup>Gordon Oakes, *Treaty No. 4 Elders' Forum* (Wapiimooostosis Reserve, Saskatchewan, 22–4 May 1997), pp. 18–20.

<sup>63</sup>*Ibid.*

gave us ways to live, and we must take care never to lose them and to keep using them.<sup>64</sup> Because treaty relations with settlers involve sharing the land and have the potential to impact present and future survival, the notion of settler non-interference in our ability to continue our way of life in relation to creation was and remains a crucial, if chronically violated, part of treaty.

Non-interference, in the context of treaty, should also be understood alongside notions of non-domination, non-hierarchy, and other relevant values and principles relating to coexistence. Non-interference can be about recognising difference, allowing for other ways of being, prompting us to question our own perspectives and viewpoints, making space for multiple systems to flourish in relation to one another, and accounting for our own unique gifts and contributions. These commitments can manifest in a range of forms in practice, as the ways in which communities find themselves responsible for ensuring the survival of present and future generations vary in relation to localised, place-based factors. And if scholars are to contemplate the forms and conditions in which non-intervention emerges in Indigenous contexts, we should also recognise and be attentive to practices of interference that exist within those same contexts.

Contributing to the survival of creation certainly entails an ethic of non-interference relative to the living earth and to others whom we share it with, in recognition of the diversity of gifts that individual elements bring to the continuity of the whole. Yet this is not to say that Indigenous notions of non-interference were or are absolute; historically, Indigenous people have had to intervene in various ways when the actions of individuals represented a serious risk or harm to the survival of the community. Survival and continuity require a range of relational practices, not all of which are non-interfering. Some contexts necessitate immediate or eventual forms of interference, such as practices of collective accountability and/or justice, in the face of potential harm or violence within a community. While we must not interfere with the continuity of creation, we do have a responsibility to protect against the efforts of those who stand to harm our relatives, past and future. These include forms of harm against other living beings and forms of harm against creation. Indigenous people understand ourselves as interrelated to and holding responsibilities towards other living beings, not as individuals who may share a space but exist autonomously within it. Notions of non-interference, then, are inextricable from notions of reciprocity and relational accountability. Non-interference may be a significant principle but it is not a principle without exception; in the face of ongoing harm or violence and thus an absence of reciprocity or accountability towards our relations, interference may be warranted. Depending on the context, it could also form a subsequent response following an initial period of non-intervention within a collective. Levels and scales of interference were not uniform, but appropriate to the nature and duration of the action/behaviour and the surrounding context in which it occurred.

Non-interference in pre-contact contexts must be engaged against a different backdrop from today, as law and governance operated differently than in Western societies. In Indigenous contexts prior to contact, individuals embodied the worldview and attendant teachings that informed a relational orientation. In other words, individuals carried what might be perceived as law and governance within their bodies, hearts, and minds, because these emerged from the ground up and were transmitted to future generations through our everyday practices, our words and actions. If we understand ourselves as part of this ground, the principles are held and grow within us over time. The embodied and collective nature of law and governance, then, enabled non-interference as a normative ethos. We are simply not in the same context, or facing the same conditions within today's social and political terrain, where questions of Indigenous self-determination in a neoliberal era have shifted the focus of political transformation onto individual Indigenous bodies and largely individual-level behaviours, taking attention away our collective responsibilities for health and wellness. Notions of non-interference within Indigenous communities traditionally (alongside other principle of law and/or governance) formed part of a broader way of life and should be engaged within that frame. In other words, relational accountability

<sup>64</sup>Dolly Neapetung, *Exploratory Treaty Table Justice Symposium* (Saskatoon, Saskatchewan, 28–30 October 2002), pp. 173–6.

and reciprocity within collectives should be understood as necessary accompanying conditions to temper non-interference.

To the question of whether articulations of sovereignty that implicitly or explicitly draw on notions of non-interference in the contemporary context can involve the perpetuation of patriarchal dynamics or a harmful status quo, the answer is a resounding, unqualified yes. If we are attentive to the contexts in which non-interference functions and can identify embodiment, relationality, collective accountability, and reciprocity as only a few of the conditions that historically enabled it, then it easily becomes apparent that non-interference cannot be brought across to the contemporary context given the absence of those attendant factors. While recognising diversity across Indigenous communities and the many vibrant forms of egalitarian and matriarchal social and political practice alive today, it is also true that heteropatriarchal forms of social and political practice are a reality across many contemporary Indigenous communities.<sup>65</sup> We must also contend not just with other governments today, but with shifting global economic forces that advocate ways of life and politics of self-determination that further alienate us from our relations with one another and with creation. This is not to say that non-interference should be abandoned as a political idea or practice, but that it must be contemplated and approached within broader frameworks of relationality, with mechanisms to ensure reciprocity and accountability in our engagements and practices.

We should all be attentive to the possibilities of bringing forward more relational worlds; the project of imagining how we might draw inspiration from and renew Indigenous ways of governance into the future is a crucial one. Because non-interference can easily be invoked as a principle to legitimatise harmful behaviour or insulate it from criticism, we require analytical approaches and practices that allow for critical evaluation of the operations of power within various articulations of sovereignty that employ the vocabulary of non-interference. Indigenous feminist analysis has long interrogated how political formations and containers can serve to implicate Indigenous peoples in harmful ways and can provide important tools to contemplate a return to systems of relational accountability and reciprocity to temper non-interference today. Indeed, Indigenous feminists have an established history of critique relative to the political pursuits of our communities, whether towards sovereignty, self-determination, or nationalism.

Indigenous feminist analyses deployed across contexts and periods in time have problematised the ways that Indigenous political thought and practice can become deeply gendered and anti-relational, arguing for anti-violence strategies and a return to relationality within our movements.<sup>66</sup> Indigenous feminists have also interrogated the limits of invoking elements of Indigenous culture and tradition as a way of demarcating our contemporary political positions and identities.<sup>67</sup> Such critical analytical frameworks remain crucial as scholars continue to contemplate the possibilities, conditions, and implications of various practices of governance in contemporary contexts.

Indigenous feminist theory and analysis hold the analytical tools to engage the intricate relation between the personal and political, problematising matters often considered to reside in a social, interpersonal, or individual domain, and how these are paralleled at a broader scale in terms of Indigenous social and political life in contexts of settler colonialism. We see this within the discourse on Indigenous masculinities, where Indigenous men are positioned in perpetual cycles of healing at an individual level without accompanying practices of relational accountability. The need

<sup>65</sup>Joyce Green, *Making Space for Indigenous Feminism*, 2nd ed. (Fernwood Publishing, 2017); Gina Starblanket, *Making Space for Indigenous Feminism*, 3rd ed. (Fernwood Publishing, 2024).

<sup>66</sup>Haunani-Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i* (University of Hawaii Press, 2000); Dian Million, 'Felt theory', *American Quarterly*, 60:2 (2008), pp. 267–72; Nellie Carlson and Kathleen Steinhauer, *Disinherited Generations: Our Struggle to Reclaim Treaty Rights for First Nations Women and Their Descendants* (University of Alberta Press, 2013); Kuokkanen, *Restructuring Relations*; Joanne Barker, *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies* (Duke University Press, 2017).

<sup>67</sup>Joyce Green, 'The difference debate: Reducing rights to cultural flavours', *Canadian Journal of Political Science*, 33:1 (2000), pp. 133–46; Emma Larocque, 'Métis and feminist: Ethical reflections on feminism, human rights and decolonization', in Joyce Green (ed.), *Making Space for Indigenous Feminism*, 2nd ed. (Fernwood Publishing, 2017), pp. 53–71.

to heal from colonial violence should never be contemplated without deep reflection on the interconnected need to transform heteropatriarchal structures that Indigenous men simultaneously benefit from, as the promotion of individual healing is limited when contemplated in a vacuum, as something that can occur in an instant without an accompanying renewal of ways of life where collective and relational support, justice, and accountability are normative rather than exceptional. It leaves settler domination and dispossession intact, decoupling transformation from decolonisation and a return of land, by promoting notions of individual healing and care.

Indigenous feminist scholars such as Eva Jewell demonstrate that it is particularly important in era of reconciliation to attend to the ways that colonial and heteronormative orders, and the logics, categories, and concepts that they rely upon, have refitted themselves to new social and political contexts, producing ongoing and new pressures for Indigenous women and creating conditions that bolster rather than transform existing power dynamics between Indigenous people and settlers.<sup>68</sup> In her analysis of feminist discourses of 'care', Jewell explains that we must remain particularly cautious in the post-Truth and Reconciliation Commission era, as colonial presumptions of care can become feel-good exercises for settlers that are not necessarily attentive to the liberatory goal of relationality. Indeed, she problematises settler misinterpretation of relational kinship orders that were common in Indigenous diplomatic practices prior to contact and cautions against extractivist dynamics among settlers, where Indigenous and women of colour feminisms are mined for resources to save care theory from white feminism, all the while failing to honour the social and kin contracts, or treaties, that allow for their presence here. Jewell calls on settlers to reflect on their daily practice of how they embody, normalise, and contribute to the perpetuation of settler colonial conditions, with space for considering how care can transform rather than reproduce settler colonial structures within care work.

Engagements with the possibilities and practices of non-interference today require critical historical accounts that are attentive to the continuity of intersecting structures of oppression in Canada and how these continue to materially impact Indigenous concepts and practices of governance. Further, they must be actively geared towards transforming the foundational structures and conditions of Indigenous subordination and land dispossession in Canada that Indigenous people are expected to somehow, individually and automatically, heal from even as they remain intact. Lastly, we require analyses that recognise the ways in which contemporary contexts produce ongoing and new forms of pressure and expectations for Indigenous women and femmes, working to create conditions that bolster rather than transform male power and privilege in Indigenous contexts.

*Gina Starblanket*

## Conclusion

Non-interference, as associated with principles of Indigenous sovereignty and self-determination, posits that external actors, such as governments or corporations, should refrain from intervening in the affairs of Indigenous communities without their consent. This principle recognises Indigenous peoples' inherent right to govern themselves and make decisions that affect their territories, cultures, and futures autonomously. As the discussion in this Forum so vividly illustrates, for many Indigenous nations, sovereignty is not solely about non-interference, but about actively cultivating and sustaining relationships based on mutual respect, responsibility, and consent. Relationality, derived from kinship and cultural values, is at the core of Indigenous governance. In this view, non-interference serves as a means to foster healthy relationships by allowing space for self-determination while still recognising the interconnectedness of all beings. This relational approach to sovereignty goes beyond an isolated notion of autonomy, suggesting that Indigenous governance

<sup>68</sup>Eva Jewell, 'Towards an anti-colonial feminist care ethic', in Gina Starblanket (ed.), *Making Space for Indigenous Feminism*, 3rd ed. (Fernwood Publishing, 2024), pp. 163–92.

is more about protecting the integrity of these relationships than about an absolute commitment to non-interference.

We may note that what may appear as an inflexible stance is often a protective response to colonial governance's original and ongoing interference. For many Indigenous communities, the insistence on non-interference is an act of resistance against continuous encroachments and attempts to diminish their sovereignty. Calling Indigenous nations' emphasis on non-interference a 'fetishisation' may even risk trivialising Indigenous experiences of colonial violence and their strategic efforts to defend their autonomy. Non-interference may not, after all, be about romanticising isolation but about asserting the right to govern themselves according to their own laws, values, and traditions. Nevertheless, the gender disparities and gendered marginalisation and discrimination continues to be an issue also in Indigenous communities, organisations, and political bodies.

As we can infer from the above conversation, both concepts of non-interference and free, prior, and informed consent (FPIC) are central in discussions surrounding Indigenous rights, sovereignty, and self-determination, but they operate within different frameworks and carry distinct implications. Both seek to protect Indigenous rights and promote self-determination, but they often operate in different contexts and address different aspects of Indigenous–state or Indigenous–corporate relations. Non-interference is a broader principle that asserts Indigenous sovereignty and autonomy, while FPIC provides a specific mechanism for ensuring meaningful Indigenous participation and consent in decision-making processes. In practice, FPIC can be seen as a tool for operationalising the broader principles of non-interference, as it facilitates respectful engagement and collaboration between Indigenous and non-Indigenous actors while upholding Indigenous rights and sovereignty.

FPIC is a more specific and proactive framework aimed at ensuring that Indigenous peoples have the right to participate in decision-making processes that affect them directly. FPIC requires that Indigenous communities be provided with accurate and relevant information about proposed projects or policies well in advance, have the opportunity to express their opinions freely, and give their consent before any actions are taken. Unlike non-interference, which emphasises non-intervention, FPIC focuses on active engagement and meaningful dialogue between Indigenous communities and external actors, such as governments or corporations, to reach mutually acceptable agreements.

I would argue that consent is closer to non-domination rather than non-interference. Non-domination emphasises the prevention of relationships of domination or subjugation and that no group or individual can exercise undue control or authority over others. In this context, consent aligns with principles of non-domination because it involves actively seeking permission or agreement from another party before taking a certain action. Consent ensures that decisions are made collaboratively and that individuals or communities are not subjected to decisions made by others without their input or agreement.

While non-interference also involves respecting the autonomy and agency of others, it may not necessarily require active engagement or seeking consent in every instance. Non-interference primarily focuses on refraining from external intervention or interference in the affairs of others without their consent, whereas consent involves a more proactive and collaborative approach to decision-making.

What is more, in the context of Indigenous peoples, individual and collective consent are closely interrelated and mutually constitutive. Individual consent refers to the autonomy and agency of each person to make decisions about their own bodies, relationships, and lives. Collective consent, on the other hand, involves the shared agreement or consent of a community or group regarding collective actions, decisions, and governance processes.

Within Indigenous frameworks, individual consent is often embedded within broader collective consent mechanisms that prioritise community well-being and relationality. Decisions made by individuals are understood to impact the collective, and vice versa. Therefore, individual consent does not exist in isolation but in relation with the consent of the community or collective. At the

same time, collective consent relies on the participation and affirmation of individual members within the community. Without the consent of individuals, collective decisions and actions may lack legitimacy and moral authority. Thus, individual and collective consent are mutually constitutive, each influencing and shaping the other within Indigenous contexts.

In essence, the relationship between individual and collective consent reflects the interconnect- edness and interdependence that characterise Indigenous worldviews, emphasising the importance of both individual autonomy and collective well-being in decision-making processes. Consent, when rooted in Indigenous conceptions, serves as a powerful tool in challenging patriarchal systems. Indigenous understandings of consent prioritise respect for autonomy, agency, and relational harmony, offering an alternative framework for navigating relationships and power dynamics. By centring consent in discussions and actions aimed at combating patriarchy, we empower marginalised groups and individuals, particularly Indigenous women, to assert control over their bodies, relationships, and futures.

In moving forward, it becomes imperative to transcend the confines of Indigenous discourses centred on sovereignty as non-interference. While acknowledging the historical significance and ongoing relevance of both concepts, it is crucial to recognise the more dynamic, relational frame- works, grounded not only on the history and lived political realities but importantly also on kinship that extends to more than human realm, premised on collaboration and collective deliberation. In these frameworks, consent is a critical element. By extending our analysis, we are able to more carefully scrutinise the particular situations where sovereignty is referenced, and the way in which the principles of self-determination and gender equity are prioritised (or not) in this dialogue.

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