The Power of Definition: Brazil’s Contribution to Universal Concepts of Indigeneity

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INTRODUCTION

In my recent book, Legalizing Identities: Becoming Black or Indian in Brazil’s Northeast,1 I analyzed the process by which groups of black rural workers were reconstituting themselves in relation to their strand of indigenous ancestry and were being recognized as Indians by the Brazilian government.2 Because Brazil is known as a place where indigenous peoples are exemplified by non-European languages, cosmologies, rituals, dress, and pre-conquest histories, it is ironic that over the past few decades Brazil has been pioneering a broadening of the concept of indigenous peoples. In fact, over the past thirty years the Brazilian government has recognized more than forty new “tribes” in the Northeast region alone where the indigenous population was assumed to be fully assimilated into the general population. Many other presumably assimilated people have demanded and received both recognition and access to land as Indians in other parts of eastern Brazil, including the state of Rio de Janeiro, during that same period.3

∗ Please include your biography and any staff whom you wish to thank.

1 JAN HOFFMAN FRENCH, LEGALIZING IDENTITIES: BECOMING BLACK OR INDIAN IN BRAZIL’S NORTHEAST (2009).

2 “In Brazil [the term] Indian has gone through phases of denigration and of regeneration. The indigenous movement of the 1970s and 1980s appropriated the term and infused it with a substantial dose of political agency.” ALCIDA RITA RAMOS, INDIGENISM: ETHNIC POLITICS IN BRAZIL 6 (1998). In fact, the use of the term has come to be considered a “dynamic element[1] of struggle.” MARIA ELENA GARCIA, MAKING INDIGENOUS CITIZENS: IDENTITY, DEVELOPMENT, AND MULTICULTURAL ACTIVISM IN PERU 27 (2005).

3 See generally JONATHAN W. WARREN, RACIAL REVOLUTIONS: ANTIRACISM AND INDIAN RESURGENCE IN BRAZIL (2001) (analyzing the processes of racial formation among “posttraditional Indians” at various sites in eastern Brazil).
These new Indians exist within a larger, flexible, international context of indigenous peoples, made available for theorizing "indigeneity" by the lack of definition in the United Nations Declaration on the Rights of Indigenous Peoples [the Declaration]. 1 To what extent do distinct cosmologies and languages that unquestionably mark Amazonian groups, such as the Wari, Xavante, or Kayapo, affect newly-recognized tribes in the rest of Brazil who share none of these indicia of authenticity? 2 In another register, one should whether it is conceptually defensible from both an ethical and legal perspective of justice to include in a single category, which carries rights to legal status and land, both people who have a clear claim to “difference” and have struggled for generations to gain even limited political autonomy and self-determination, and those who have just recently discovered they have a claim to indigeneity under an expansive view of indigenous peoples. 3

This article is divided into three sections. The first explains the construction of global indigenous identity through the extensive process of negotiating and adopting the Declaration. Ultimately, a definition of indigenous peoples in the Declaration would be counterproductive, thus supporting the decision made by the deliberating body. In the second section, I address the challenge this poses to anthropology, a field superbly positioned to analyze and assist in conceptualizing meanings of indigeneity. Discussions of international legal definitions of indigeneity should be made integral to anthropological perspectives. The third section suggests a justification for a broadened perspective on indigeneity worldwide.

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I. GLOBAL INDIGENOUS IDENTITY CONSTRUCTION

After over two decades of meetings and negotiations, the Declaration was adopted by the 61st General Assembly of the United Nations on September 13, 2007 by a vote of 143-4 with 11 abstentions. According to a United Nations press release, “countries voting against the Declaration said they could not support it because of concerns over provisions on self-determination, land and resources rights and, among others, language giving indigenous peoples a right of veto over national legislation and State management of resources.” The delay in adoption is attributable to two sticking points – the draft Declaration asserts the importance of self-determination and the term “indigenous peoples” is not defined. The adoption of the Declaration was delayed for an additional year as a result of objections and proposed amendments by a group of African states including Botswana, Namibia, and Nigeria. Their fundamental objection was the lack of definition of indigenous peoples. The Aide Memoire dated November 9, 2006, expressed fears of secession and increased tensions among ethnic groups. Although the Declaration is not a legally binding instrument, it is declaratory of


customary international law. In fact, while the Declaration was in its draft form, national courts cited it in support of indigenous rights. The International Work Group for Indigenous Affairs, a nongovernmental organization, estimates that "There are over 370 million indigenous people in Africa, the Americas, Asia, Europe and the Pacific." However, the concept of indigenous peoples encoded in the Declaration is left undefined. In the absence of agreement on a definition, the United Nations Working Group on Indigenous Peoples (WGIP) and the Intersessional Working Group on the draft Declaration asserted that an explicit definition of indigenous peoples would reduce the effectiveness of the Declaration. Indigenous representatives in WGIP meetings in the 1990s expressed that a law which does not reach out to the varieties of human existence is stunted and deficient, that, in a profound moral sense, "norms cannot be regarded as universally valid unless they have, or could command, the consent of all those who stand to be affected by them."  


\[13\] See, for example, Dae, supra note 7, at 23, citing the decision of the Supreme Court of Belize, (Consolidated re Maya Land Rights, Claim No. 173, ¶ 131 (2007), available at http://www.belizelaw.org/supreme_court/judge_list/civil_judge_2007.html.


\[16\] The United Nations Economic and Social Council established the WGIP as a “transnational locality,” in the sense that a new political space was created in 1982. See Andrea Muehlebach, "Making Place" at the United Nations: Indigenous Cultural Politics at the U.N. Working Group on Indigenous Populations, 16 CULTURAL ANTHROPOLOGY 415, 415-16 (2001). (“It is the only global institution at which indigenous identity has for years been discussed.”)


The exclusion of an explicit definition of indigenous peoples in the Declaration is an indication that self-identification is considered fundamental to the recognition of an indigenous people on the international level. Self-identification, however, is not the only criteria. Indigenous peoples are not only those who say they are indigenous but also those who are accepted by a global network of nations and communities with similar claims and sources of recognition. Therefore, both self- and other-identification are critical to public recognition.

There is little doubt that the decision to leave the concept open and flexible has contributed to the expansion of the number of groups who self-identify and who are recognized as indigenous by the United Nations and other international bodies. It has also encouraged the growing identification of indigenous activists, representatives, and intellectuals with a global indigenous identity that has influenced the actions of international and state entities. This global indigenous identity does not just adhere to international actors, but is crucial to self-identification in local peoples and settings ranging from the Sami people in northern Europe to the San people in southern Africa.

20 RONALD NIEZEN, THE ORIGINS OF INDIGENISM: HUMAN RIGHTS AND THE POLITICS OF IDENTITY 22 & 227 n.21 (2003) (reporting a definition proposed by indigenous delegates in the United States, the assumption of solidarity among indigenous peoples is not a given. For example, the leadership of the Eastern Band of Cherokee opposes federal recognition of the Lumbee Indian Tribe in North Carolina.

21 See, e.g., NIEZEN, supra note 16 (discussing the indigenism movement as a new global political entity and providing a history of the movement’s relationships with states and international bodies); Marcus Colchester, Indigenous Rights and the Collective Conscious 18 ANTHROPOLOGY TODAY, Feb. 2002, at 1, 2-3; Dues, supra note 7, at 8-11; Justin Kenrick & Jerome Lewis, Indigenous Peoples’ Rights and the Politics of the Term ‘Indigenous,’ 20 ANTHROPOLOGY TODAY Apr. 2004, at 4, 4-9; Benedict Kingsbury, ‘Indigenous Peoples’ in International Law: A Constructivist Approach to the Asian Controversy, 92 AM. J. INT’L L. 414, 414-15, 417-26 (1998); Muehlebach, supra note 7, at 244-46, 254-56, 261-63; Muehlebach, supra note 13 (describing the WGIP’s role in the transnational indigenous movement); Oldham & Frank, supra note 9 (giving a detailed account of the Declaration’s adoption and the history of its drafting and status as a resolution); Viniyanka Prasad, The UN Declaration on the Rights of Indigenous Peoples: A Flexible Approach to Addressing the Unique Needs of Varying Populations, 9 CHI. J. INT’L L. 297, 311-315 (2009). But see Michaela Pelican, Complexities of Indigeneity and Autochthony: An African Example, 36 AM. ETHNOLOGIST 52 (2009) (describing several examples of how countries have ignored global indigenism or used it to harm those the movement intended to protect).

The trend toward an expansion of the definition of indigenous peoples began well before the Declaration was adopted and is directly linked to the increased participation of representatives from Africa and Asia, places that until recently were excluded from consideration as not having indigenous groups. As standard assumptions moved away from the notion that the existence of indigenous peoples were confined to settler societies such as those in the Western Hemisphere, Australia, and New Zealand, an expanded perspective on the definition of indigeneity began to take hold in United Nations deliberations. The involvement of indigenous participants in deliberations and negotiations leading up to the Declaration’s adoption was unprecedented. In 1982, when the WGIP was established, only thirty indigenous representatives were present, while in 1999, the WGIP meeting was attended by nearly one thousand participants, creating a site of “discursive density.”

The Global Indigenous Peoples’ Caucus, consisting of the group of indigenous delegates present at any given meeting of the WGIP, would meet to hammer out positions on the issues at stake through intense debate and consensus decision-making. Erica-Irene Daes, Chairperson and Special Rapporteur of the WGIP from its founding until 2001 and principal drafter of the Declaration, explains that indigenous peoples were not part of state-building. This reminder makes the indigenous representation at every stage during the 23-year period of drafting, debating, and redrafting the Declaration, even more impressive. Such participation contributed to

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24 See Daes, supra note 7, at 12-13; Muehlebach, supra note 13 (discussing the increasingly visible presence of indigenous delegates in the international arena in a number of contexts); Oldham & Frank, supra, note 9, at 6-8.

25 E.g., Oldham & Frank, supra note 9 (describing in detail the response of the Caucus to the African Group’s Draft Aide-Memoire).

26 See Daes, supra note 7, at 13.
the constitution of a supranational indigenous identification. Patrick Thornberry, a (insert relationship to WGIP here) described the meetings as “[arguments] between government delegations and the indigenous [that] seemed interminable, their position statements incommensurable. But there was also a sense of something shifting, of ideas grinding their way through the morass of argument and rebuttal, storytelling and complaint.”

Yet it is important not to be too celebratory about the upper echelon of indigenous delegates. As anthropologist Jonathan Friedman reminds us, class inequalities are reproduced and the delegates themselves might be considered part of a “global cocktail circuit.” Over a decade ago, when Friedman made this comment, it may have been appropriate to be suspicious of claims to a global indigenous identity. Today, it is necessary to rethink such cautionary reactions because indigeneity and indigenous rights are commonly accepted notions that affect localities around the world. It is no longer a given, nor is it so obvious, that “perform[ing] the always legitimating scholarly gesture of presenting complicated truth against . . . reductive ideology” is the only or best way to approach global indigenous identity, which has rapidly become integral to national and international discussions of the rights to be accorded self-identified indigenous peoples.

Scholarly discussions of the Declaration generally begin with the working definition of indigenous proposed by United Nations Special Rapporteur J. Martinez-Cobo in his “Study of the Problem of Discrimination Against Indigenous Populations” (1983), which states that:

Indigenous communities, peoples and nations are those which, having

29 THORNBERY, supra note 15, at 10. See generally Noel Castree, Differential Geographies: Place, Indigenous Rights and Local Resources, 23 POL. GEOGRAPHY 133, 136 (2004), for reasons why indigenous peoples should have the right “to make their own places rather than have them made for them.”


1 Mary Louise Pratt, Afterward: Indigeneities Today, in INDIGENOUS EXPERIENCE TODAY 597, 400 (Marisol de la Cadena & Orin Starn eds., 2007)
a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.\textsuperscript{32}

The WGIP bore this definition in mind as negotiations proceeded, but did not adopt it.\textsuperscript{33}

Moreover, although there is a definitional provision in the ILO Convention\textsuperscript{169} that went into force in 1991, the indigenous negotiators were insistent that anything short of self-identification would not provide the flexibility needed.\textsuperscript{34}

Components of both the Martinez-Cobo and ILO definitions were problematic from the perspective of self-identification. In the Martinez-Cobo definition, the phrase, "historical continuity with pre-invasion and pre-colonial societies that developed on their territories," presented the problem of excluding peoples living in non-settler societies, as well as displaced


\textsuperscript{33} THORNBERRY, supra note 15, at 33.

\textsuperscript{34} In 1989, ILO Convention No. 169 was adopted with the following provision in Article 1:

1. This Convention applies to:
(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

and diasporic indigenous peoples.\textsuperscript{35} Self-identification was a non-negotiable element throughout,\textsuperscript{36} but also retained was the recognition that “membership is about group acceptance and not simply individual declarations.”\textsuperscript{37} A United States proposal in 2006 is illustrative of just how limiting the effort to pin down a definition can be. The U.S. proposal was rejected, but it would have required recognition by a State prior to recognition by the United Nations:

Indigenous peoples have the right to be recognized as such by the State through a transparent and reasonable process. When recognizing indigenous peoples States should include a variety of factors, including, but not limited to, whether the group self-identifies as indigenous; is comprised of descendants of persons who inhabited a geographic area prior to the sovereignty of the State; historically has been sovereign; maintains a distinct community and aspects of governmental structure; has a cultural affinity with a particular area of land or territories; has distinct objective characteristics such as language, religion, culture; and has been historically regarded and treated as indigenous by the State.\textsuperscript{38}

Evident from this proposal is the influence of United States Bureau of Indian Affairs requirements that have restricted federal recognition for many groups over the years.\textsuperscript{39} Such a definition, it was felt, would have been impractical in a transnational context, particularly the requirements of historical sovereignty and treatment by the State as indigenous. Beyond

\textsuperscript{35} See, e.g., James Clifford, Varieties of Indigenous Experience: Diasporas, Homelands, Sovereignties, in INDIGENOUS EXPERIENCE TODAY, supra note 26, at 197, exploring the diversity of claims to indigeneity and arguing for their legitimacy. In this article, I am not directly addressing the issue of connection to land as a defining factor for indigeneity in the Declaration. The tension between a definition that focuses on social and cultural identity and one that is primarily about territory is reflected in the Declaration. Right to land “which [indigenous peoples] have traditionally owned, occupied or otherwise used” is enshrined in Article 26, along with a directive to States to “give legal recognition and protection to these lands.” Declaration, supra note 4, art. 26, ¶¶ 1, 3. However, claim to land or connection to territory is not a prerequisite for coverage by the declaration. For example, “historic injustices” are seen as resulting from “inter alia, their colonization and dispossession of their lands, territories and resources,” Id. \textsuperscript{36} Elsa Stamatopoulou, Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic, 16 HUM. RTS. Q. 58, 70-73 (1994).

\textsuperscript{37} THORNBERRY, supra note 15, at 50.


\textsuperscript{39} E.g., JAMES CLIFFORD, Identity in Mashpee, in THE PRECIPITATION OF CULTURE: TWENTIETH CENTURY ETHNOGRAPHY, LITERATURE, AND ART 277 (1988), describing the history of Massachusetts’ Mashpee Indians and their 1976 lawsuit claim for land, which was ultimately unsuccessful because they did not meet the “tribal” criteria.
impracticality, however, is the general view of the indigenous participants that saw the refusal to define indigenous peoples as a form of resistance to using the language “understood by those wielding power.”[40] Following this reasoning, indigenous peoples might, in fact, “gain voice through cross-national connections that empower their approach to national dilemmas.”[41]

Definitional possibilities allow people claiming indigeneity, international agencies, and even national governments to consider other, morally powerful justifications for such claims.

Political scientist Courtney Jung provides an alternative analysis that identifies the problems with relying on cultural difference to define indigenous.[42] She sees indigenous identity as a “political achievement,” not as “an accident of birth” or a “spontaneous global reaction in defense of cultural preservation.”[43] Jung proposes a “theory of political identity formation” according to which “indigenous people are partly constituted as a potential group because they occupy a common location of structural exclusion from the modern state, not because they possess a common language or culture.”[44] In fact, “the political standing of groups flows not from who they are, but from what has been done to them.”[45] However, such a structural location does not by itself “produce an indigenous rights movement... until the concept of indigenous rights develop[s] sufficient traction to orient, and to open the political space for, indigenous politics.”[46]

This space, from my perspective, is that provided by loosening definitional fetters and considering alternative justifications for indigenous self- and other-identification.[47]

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[40] Kenrick & Lewis, supra note 17, at 9.
[43] Id. at 11, 20.
[44] Id. at 69.
[45] Id. at 33.
[46] Id. at 69.
[47] As one Zapatista activist who was at first reluctant to embrace indigenous identity indicated to Jung, “his concern was never an existential one... Instead, what he hoped was that indigenous identity would reconstitute the terms
Just as with the focus on cultural difference, there has also been a certain fetishization of firstness or priority of settlement with regard to identification of indigeneity around the world. However, a claim to being first in a particular place can be a double-edged sword. Indigenous rights, based on a claim to priority, may be used by those who are structurally in a relatively powerful, and even exploitative, position (such as the infamous Boer appearance at a WGIP meeting discussed by Adam Kuper).\(^{48}\) In fact, there has been an important move away from firstness as a prerequisite for conceptualizing indigeneity, thus providing an opening for a translocal variety of ways of being indigenous.

II. ANTHROPOLOGY AND INTERNATIONAL LAW

Anthropologist Sally Engle Merry has written on the contributions anthropology has made, and can make, to understanding international law.\(^{49}\) Merry's review of the literature, particularly the component that “demonstrates how anthropological theory helps . . . [us] understand how international law is produced and how it works, can be expanded to include indigeneity.”\(^{50}\) International legal definitional discussions, decisions, and contestations should be incorporated into anthropological thinking about indigeneity.

A number of anthropologists evaluating definitional issues surrounding the terms indigenous peoples and indigeneity have concluded that such terms are not useful anthropological concepts from an analytical perspective because they are too essentializing, too tied to the land, or too broadly conceived. However, those same scholars condescendingly agree of struggle.” \(^{147}\) Id. at 78. In other words, his reluctance was not based on his own conception of his personal identity, but stemmed from considerations of his political identity. \(^{48}\) See Adam Kuper, The Return of the Native, 44 CURRENT ANTHROPOLOGY 389, 389 (2003); cf. Kenrick & Lewis, supra note 17, at 4-5 (criticizing Kuper’s mischaracterization of the incident). \(^{49}\) See Sally Engle Merry, Anthropology and International Law, 35 ANN. REV. ANTHROPOLOGY 99 (2006).

\(^{147}\) Id. at 99.
that such terms are useful as legal concepts, as tools for political persuasion, or as meaningful terms “for those who identify themselves as indigenous.”51 Some take a slippery slope approach, arguing that the concepts are in fact dangerous,52 while others, however, distinguish between indigeneity and ethnonationalism.53

There is also a fear that encouraging collective indigenous rights might lead to abuses of individual human rights by a group uncontrolled by the State. This concern is often based on an assumed lack of democratic process in indigenous settings. Again there is a risk of condescension in assuming that people who self-identify as indigenous are also uninterested in, or incapable of, participating in a democratic process.54 There is no reason why international legal processes that call human rights violations into question cannot be applied to recognized indigenous groups.

In fact, increasingly, anthropologists are arguing against the notion that collective rights are intrinsically dangerous.55 Indigenous groups are aware of concerns about potential abuses of individual rights and have begun to address this issue at an international level. The “Manila

51 Pelican, supra note 17, at 54; accord Alan Bernard, Kalahari Revisionism, Vienna and the 'Indigenous Peoples' Debate, 14 SOCIAL ANTHROPOLOGY 7, 13 (2006). John Bowen takes an intermediate position, proposing an alternative two-level analysis for determining indigeneity from an anthropological perspective, Should We Have a Universal Concept of 'Indigenous Peoples' Rights? Ethnicity and Essentialism in the Twenty-First Century, 16 ANTHROPOLOGY TODAY Aug. 2000, at 12, while Michaela Pelican believes that “stripping the concept of ‘indigenous peoples’ of its original connotations of priority in time and historical continuity is debatable,” supra note 17, at 56. Pelican provides the relationship between Cameroon’s Grassfielders and Mbororo people as an example; the latter, despite being relative newcomers “locally perceived as strangers or records, qualify on the international level as indigenous peoples.” Id. at 58. This leads me to raise the question of how much deference international agencies should give to local views (the United States’ desire to impose its definitional requirements is instructive).

52 See, e.g., Friedman, supra note 25, at 58-61; Kuper, supra note 43, at 395; Pelican, supra note 17, at 62.


54 Ironically, scholars of the Iroquois Confederacy for many years touted the myth that the United States Constitution and American democracy itself were based in part on the Iroquois example, although that trend has shifted. Not, however, without Congress weighing in. On July 11, 1988, Congress passed a resolution acknowledging the contribution of the Iroquois Confederacy of Nations to the development of the Constitution.

55 See, e.g., Colchester, supra note 17, at 3; Kenrick & Lewis, supra note 17, at 9.
Declaration” of the International Conference on Conflict Resolution, Peace Building, Sustainable Development, and Indigenous Peoples, held in December 2000, recognizes justice as universal and acknowledges that a revitalization of traditions should not lead to oppression of women and children. Moreover, the notion of “culture,” as conceptualized by anthropologists, has shifted to an active process of self-making and production of identity. In the international indigenous rights context, a consensus is growing that such identity construction is central to “building global alliances to resist global processes of dispossession.” A number of legal scholars have begun to take the position that issues of representativeness and possible abuses of individual rights should neither be ignored nor privileged when considering who should have collective indigenous rights.

At the same time, most anthropologists dealing with these matters mention international law definitional discussions, but do not incorporate such definitions into anthropological consideration. For example, Alan Bernard equates indigenous peoples with other legal categories and insists that this phrase should not be “in our glossary of technical terms.” Bernard’s is a short-sighted approach to a term that, since the 1970s, has become embedded in theoretical discussions at all levels. In other words, it is not simply an “ideological construct” or

58 See, e.g., Klint A. Cowan, International Responsibility for Human Rights Violations by American Indian Tribes, 9 YALE HUM. RTS. & DEV. L.J. 1 (2006) (arguing that because the U.S. is subject to international human rights norms, and American Indian tribes are a political sub-unit of the U.S., the U.S. is responsible for violations of individual rights that take place on tribal lands and has an obligation to rectify such situations); Kingsbury, supra note 17, at 425-26, 439-41; Luis Roniger, Citizenship in Latin America: New Works and Debates, 10 CITIZENSHIP STUD. 489, 500-02 (2006).
59 See, e.g., Bowen, supra note 46 (arguing that the emphasis on prior occupation and universality in international law’s definitions is inadequate to fully satisfy considerations of equality and self-governance, and proposing a more locally sensitive analytical framework instead).
60 Bernard, supra note 46, at 12.
“a useful tool for political persuasion,” as suggested by Bernard. Accordingly, anthropologist Sidsel Saugestad has observed, “anthropologists writing about indigenous issues need to take heed of the codification of the concept taking place within the UN system.... If anthropologists want to reconceptualize ‘indigenous peoples,’ the point of departure must be this present use.”

This approach also considers how the success of the global indigenous movement might affect the epistemological assumptions underlying anthropological definitions of indigeneity and indigenous peoples. Anthropologists are dedicated to specificities as the crux of much of their work, but a focus on specificity should not lead anthropologists to ignore the global framework of indigenous rights, including international legal considerations, now accepted and utilized in local discourse and praxis. As the category of indigenous peoples is adopted by groups around the world as a claim to recognition, self-conceptualization as indigenous has become crucial to identity formation and visions of the future. Since the 1960s, when an epistemological shift took hold, sociocultural anthropologists have distinguished between how practices and beliefs are explained by the people being studied (called emic or folk explanations) and how anthropologists explain those same practices and beliefs (called etic or analytical explanations). This division, though important at the time it was theorized, should be reconsidered. The use by peoples of the discourse of indigenous rights challenges the emic/etic and folk/analytical dichotomy.

62 Id. at 77.
64 Anthropologists who have confronted this crucial issue include Joanne Rappaport, Intercultural Utopias: Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Columbia 64-65 (2005); Anna Lowenhaupt Tsing, Friction: An Ethnography of Global Connection 159, 205-06 (2005); Tania Murray Li, Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot, 42 COMP. STUD. SOC'Y AND HISTORY 149, 155-57, 169-70 (2000).
emic and etic are merely two poles of a continuum in which varying degrees of self-definition are intertwined with previously purely analytical concepts, such as indigeneity. Just as the imbrications of global and local reveal transnational and translocal connections between international and local identities, it is critical that anthropologists not be dismissive of indigeneity as an identity simply imposed from above, but rather as a process of self-identification. This provides an opening to consider in a different way the original question posed in this article: how to honor the long-term struggles for political autonomy and self-determination of unquestionably (in the eyes of the world) indigenous peoples, while at the same time expanding the definitional heft of indigeneity to encompass those who have come to self-identify as indigenous more recently.

III. PRODUCTIVE CONTRADICTIONS

When considering a contradiction based on a presumed opposition, it is often productive to “loosen” that opposition, as proposed above regarding the emic/etic divide. James Clifford suggests reconsideration of the dichotomous “poles of autochthony (we are here and have been here forever) and diaspora (we yearn for a homeland . . . ).”67 Focusing on “indigenous experience,” he sees the “diasporic dimensions” of displaced and migrating indigenous peoples as an aspect of an “uneven, continuum of attachments.”68 Examples include those who have moved to urban areas, as well as people who have been expelled or forced to move from their rooted places, all of whom are “improvising new ways to be native.”69

67 CLIFFORD, supra note 34, at 205.
68 [at 198].
69 [at 215].
Acknowledging the emotional and theoretical weight of the concept of diaspora, it still provides a useful metaphor in this case. In considering the question first posed in this article, it is fruitful to imagine how diasporic indigeneity and the reconstitution of indigenous identity by people like those living in the Brazilian Northeast actually differ and to what extent. The first difference is a movement through space and the second is a movement through time. Both involve a yearning and desire for place, distant or immediate. Anthropologist Tom Biolsi reviews the varieties of “indigenous political space” in the United States, and describes one in which Indian people carry “portable rights beyond reservations” (more Indians live off than on a reservation, and primarily in urban areas). He analyzes this variety in relation to the diaspora concept and considers it an “indigenous cosmopolitanism” because its participants do not confine themselves to indigenous territory, but instead situate themselves both physically and culturally throughout the national space.\(^70\)

Under this analysis, time can stand in for space. Just as one might consider the notion of diasporic indigeneity as an alternative way to inhabit “indigenous political space,” a temporal diaspora might be an appropriate way to think about those who are reconstituting an indigenous identity based on presumed settlement in a particular place before disease, assimilationist policies, and Catholic Church resettlement of surviving members of distinct tribes to missions, where they were put to work on the Church’s land, displaced prior generations. In the case of the “new” indigenous groups in Brazil, the term used to refer to them from the beginning of the renewal process (1970s) was *remanentes*, (translated variously as remnants, remainders, or...)

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When recognizing these groups and providing them with land and rights reserved only for Indians, the Brazilian government is recognizing a previously unacknowledged link to a historical crime committed by the colonial authorities, the State, and the Catholic Church. This decision, made by both the State and the Church, represented the recognition that a “claim to indigeneity is a claim to justice based not simply on historical priority but a sense of historical injustice”; such indigenous identities are “dynamic and processual and rooted in contemporary social relations, even as people may invoke an historical perspective to make sense of who they are.” After all, it may be unjust from a historical perspective if the descendants of those who had their identity stolen are denied rights while those who happened to live beyond the reach of the colonial powers (although not disease), thus retaining an “authentic culture,” are unquestionably recognized as indigenous.

Brazil’s solution to this potential injustice came about as an unintended consequence of the Indian Statute of 1973. Brazil’s military government, which ruled from 1964-1985, enacted this law to regularize property rights in the Amazon region to protect the country’s outer reaches from invasion by foreigners. The intention of the statute was to remove Indians from areas that could be developed and to place them in legally demarcated territories called reservas. Although this led to the destruction of indigenous communities in the Amazon, it also “broke political

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72 In 1971, Bishops’ Councils of the Catholic Church in the Amazon and the Northeast issued statements condemning historical and continuing dispossession of indigenous peoples in Brazil. French, supra note 1, at 36-37. The following year, the Church created the Indigenist Missionary Council (CIMI), which is still active today supporting groups throughout the country. Id. at 37.


74 French, supra note 1, at 25.
ground for Indians to stake their claims.75 As it turned out, that law not only helped Amazonian Indians in their demands for demarcation of lands and provision of resources, it also inadvertently provided an opening for previously unrecognized descendants of “reduced” Indian mission communities to demand their newly-conceived rights as Indians and not simply remanescentes.

For the first time in 1973, the term “Indian” was legally defined.76 Previously, indigenous people in Brazil were referred to as forest-dwellers (silvícolas), with the assumption that there was no need to set out a definition since the only indigenous groups were isolated Amazonian tribes, each with its own language and cultural practices. Although the new definition codified an assimilationist perspective (Article 4), it also allowed for those of “pre-Columbian origin and ancestry” to identify themselves as Indian, so long as they were “identified as belonging to an ethnic group whose cultural characteristics distinguish [them] from the national society” (Article 3).77 Within a decade of its enactment, Article 3 of the statute was being used independently of Article 4, which defined stages of acculturation, and had taken on a life of its own. In practice, the origin and ancestry clause of Article 4 has been finessed in part because of the universal Brazilian belief that all rural people have some indigenous ancestry along with African and Portuguese (and Dutch in the Northeast).78 In fact, the statute does not mention racial characteristics as conditions of Indian categorization. Paradoxically, in light of the spate of recognitions of people who could be classified as “integrated” under Article 4, it is precisely that article, with its potential and legally permissible transformation of ethnic Indians into non-Indians, which requires the origin and ancestry clause of Article 3 to be virtually

76 FRENCH, supra note 1, at 66-67.
77 Id. at 66-67 & 198 n.42.
78 Id. at 67, 69.
If some people can cease being Indians, there is no impediment for others to become Indians. In the twenty-five years since redemocratization, it should be noted, the assimilationist perspective has been rejected and indigenous people who move to the city are no longer stripped of their legal identities as Indians. With the newly-recognized tribes, the overall indigenous population has increased dramatically.

Illustrating the power of definition (or lack thereof), in the case of Brazil, adding a definition performed the same function as excluding a definition in the Declaration on an international level. Thus, with Brazil as one example of a broadened definition of indigenous peoples, the undefined term in the Declaration permits a range of groups existing along a spatial-temporal continuum to claim indigenous rights. In other words, the newly-recognized, previously assimilated, northeastern Brazilian tribes, peoples in Africa and Asia who would not otherwise meet a definition that requires European colonization or firstness in time, and those, such as the Roma or Gypsies, who do not have a homeland (even an imagined one), can claim indigeneity.

IV. Conclusion

So long as there is no restrictive definition, a group could be recognized as indigenous on an international level, because indigeneity should be “sufficiently flexible to accommodate a range of justifications” and should not be about a list of characteristics or firstness. In terms of

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79 Of course, one should not take the continuum metaphor too literally. In each case, a group’s history is marked by varying relationships to a particular space and/or identifications. I would like to thank environmental and labor historian Tom Rogers for making this observation.
81 Kingsbury, supra note 17, at 418. For example, Kingsbury proposes an approach that “treat[s] historical continuity as an indicator rather than a requirement,” thus emphasizing a “commonality of experiences, concerns and contributions made by groups in many different regions.” Id. at 457. This would “establish a unity that is not dependent on the universal presence of historical continuity,” which traditional analyses have, to date, almost always considered a justification intrinsic to indigeneity. Id. He argues that such a justification “does not accurately capture
justifications rather than characteristics, it might be possible to recognize as indigenous “groups [that] draw upon the international concept of ‘indigenous peoples’ in constructing their own identities.” In this way, groups “whose self-concept might not have centered on prior possession may come to identify themselves as indigenous peoples with experiences and worldviews shared with other indigenous peoples.” Such an approach is reinforced by the successful assertion by representatives from Africa and Asia of their status as indigenous in the negotiations leading up to the adoption of the Declaration and by recognition of reconstituted Indian tribes in Brazil.

Firstness in time and place is less important than the common conditions of people who consider themselves to be indigenous and claim rights as such. Although a common reaction when discussing this issue is incredulity that a legal document could lack a definitional section, upon further reflection it becomes apparent that a lack of definition can serve as an impetus for common struggle. Further, the success of peoples currently self-identifying as indigenous in being accepted by the international community should be more fully incorporated into anthropological analyses of identity formation, especially as it is connected to supra national and state entities and practices. In fact, the decision to exclude a definition from the Declaration brings that document closer to an anthropological perspective on cultural practices and identity formation. Finally, I would endorse anthropologist Mary Louise Pratt’s perspective that identities and outlooks in some regions not structured by waves of recent invasion and migration,” specifically India and China. Id. at 456.

indigeneity should be viewed “not as a condition but [as] a force;” a “bundle of generative possibilities.”\textsuperscript{85}

\textsuperscript{85} Pratt, \textit{supra} note 25, at 400, 402.