

Power and Epistemology: How the Western Idea of “Nation” Triumphed Over Its Indigenous Counterparts

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Abstract

The Peace of Westphalia and the French Revolution are two constitutive moments of the modern idea of “nation”. The modern idea of “nation” is linked with the idea of statehood. This idea spread throughout Europe and became dominant worldwide during the heydays of European colonialism. International law, shaped by Western powers, endorsed the idea, and imposed it upon the rest of the world. Nations not claiming statehood existed before the European age of nationalism, while thousands of them still exist today in the form of “nations-within,” but most independent states do not recognize such nations. Independent states call these nations ‘communities,’ ‘societies,’ ‘ethnic groups,’ ‘gens,’ ‘tribes,’ or even ‘confederacies’—anything but nation. This paper argues that the dominance of the western idea of nation happened for two reasons: first, the triumph of European powers who believed in the superiority of western ideas, and second, the resilience and sustainability of European epistemology even after the decolonization. However, it remains a reality that non-state nations demonstrated extraordinary resilience too, surviving perennial threats and assaults from state power. Indigenous nations are prime examples of such resilience. Indigenous peoples of North America are legally recognized as nations, though indigenous peoples of Asia and Africa are denied such recognition. In this article, the author explores different trajectories of indigenous people who encounter with colonizers in settler states and in the Third World and concludes that ‘nations-within’ should be recognized with respect.

Keywords: Indigenous nations, nations-within, nation-states, nation-ness, self-determination, sovereignty.

I. Introduction

Indigenous communities insist that they are not only minorities or ethnic groups; rather they are indigenous “peoples” or “nations.”¹ They justify this claim by presenting their pre-colonial history of independent existence and organized governance. But most independent states reject

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¹ James Tully, *Strange Multiplicity: Constitution in an Age of Diversity*, Cambridge University Press, 1st edition, 1995.

this claim.² Most states recognize only one model of “nation-ness”—nations as synonymous with states, also called “nation-states.” One author called “nation-state” a misnomer.³ However, in international law, the words ‘nation’ and ‘state’ are even used interchangeably. The state-centric Europe-derived concept of nation is now dominant in law and policy, nationally and internationally.⁴ Other models of “nation”, including ethnic, cultural, and indigenous nations, are seen as a threat to the state, and most often these alternative ideas face backlash from “nation-states.”

Interestingly, indigenous people are legally recognized as ‘nations’ or ‘first nations’ in some continents, most notably in North America.⁵ For example, Cherokee Nation, Navajo Nation, Oneida Nation, and many other indigenous nations have been recognized as “nations” in different US Supreme Court verdicts.⁶ Similarly, *Tsilhqot’in Nation*, *Mikisew Cree First Nation*, and *Haida Nation* have been parties to Canadian Supreme Court cases, and are duly recognized as “nations.” Indigenous people of Asia and Africa do not enjoy recognition as nations, though their historical backgrounds are not very different from that of the North American indigenous nations/peoples.

The primary research questions of this paper are; What constitutes a nation and who can determine its criteria in international law? How colonizers treated indigenous nations and why colonizers treated in that manner? What are the implications of the recognition of indigenous groups’ “nation-ness” in international law?

This paper historically analyzes the concept of ‘nation’ and explain how international law and its jurisprudential framework co-opted the concept as defined by European powers excluding its non-European counterparts.

II. European Model of Nation: Two Founding Moments

The writings of most of the sociologists, historians and political scientists on nation and nationalism contend that nation is a modern phenomenon, originating in a comparatively recent epoch of European history; namely, the French Revolution.⁷ They contend that before the Revolution, the present concept of ‘nation’ did not exist. Social and political organizations took

² Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, 1st edition, 2005, pp. 52-65; R. Merino, ‘Reimagining the nation-state: Indigenous peoples and the making of ultranationalism in Latin America’, *Leiden Journal of International Law*, volume 31:4, 2018, pp. 773-792.

³ Walker Connor, ‘Nation-Building or Nation-Destroying?’, *World Politics*, volume 24:3, 1972, pp. 319-355.

⁴ Alfred Stepan, Juan J. Linz & Yogendra Yadav, ‘The Rise of State-Nations’, *J. Democracy*, volume 21:3, 2010, pp. 50-51.

⁵ American indigenous peoples are called ‘Indian.’ ‘Indian’ is also a mis-appellation, which came from Columbus’s original delusion that he was landing in a part of India. Despite being wrong factually, the term ‘Indian’ stuck, and still remains the common appellation for the indigenous peoples of the Americas.

⁶ *Johnson v. McIntosh*, Supreme Court of the United States, 1823, 21 U.S.543, *Cherokee Nation v. Georgia*, Supreme Court of the United States, 1831, 30 U.S. 1.; *Worcester v. Georgia*, Supreme Court of the United States, 1832, 31 U.S. 515.

⁷ Max Weber, *Essays in Sociology*, Routledge and Kegan Paul, London, 1948; Ernest Gellner, *Nations and Nationalism*, Basil Blackwell, 1983; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, New York, 2006.

either the form of tribes or empires.⁸ Explaining as to why nation-ness has been possible in the wake of the French Revolution and not before, some theorists argue that the rudimentary social conditions, that homogenize people, required for building nations were available only in late 18th century Europe.⁹

In the modernist approach, nationalism is seen as the driving force of modern nations, and nations are thought to have come into being during the European ‘age of nationalism.’¹⁰ In such construct, pre-modern collectivities qualify as ‘societies,’ ‘*gens*,’ ‘tribes,’ or even ‘confederacies’ anything but ‘nations.’¹¹ Such understanding of nation and nationalism excludes many nation-like pre-modern social collectivities from the purview of nation-ness. In other word, only modern states could become nations. Therefore, to understand the contours of modern nations, we need to understand two phenomena: the history of modern states and that of their “nation-ness.” In what follows, I discuss, retrospectively, the Treaty of Westphalia and the French Revolution as two constituting moments *per se* event laying the foundations of the modern concept of nation. In doing so, I will conceptually define sovereignty and discuss how it plays prominent role in the real world, giving so-called nations (sovereigns) exclusive power to define and determine the criteria of nation-ness and parameters of its recognition.

A. The French Revolution: the Starting Point of “Nation” or Modern “Nationalism”?

Though the French Revolution is presented as the genesis of the age of nationalism, a deeper look into the revolution reveals that the revolution did not establish the French ‘nation.’ What it did was establish a mono-national state for the first time. If ‘nation’ and the so-called ‘nation-state’ are taken as different phenomena, as should be, the revolution aimed to achieve the latter, not the former. By ‘nation,’ the revolutionaries meant a sovereign state that would have no ethnic stratification.¹² Apparently in that sense, the French Revolution can be said to be the starting point of the ‘age of nationalism;’ and also France was the mere first “nation” in the world.¹³ However, that is a very constricted sense of the idea of ‘nation,’ and a Euro-centric one at that.

The French Revolution created France as a nation-state in the sense that it gave a new “international boundary” to France, setting aside “intra-national boundaries” that existed before the revolution.¹⁴ At the time of the French Revolution, France did not have one nation; rather, it had many. Following the revolution, through various assimilationist policies, France wanted to build a unitary state that would signify a nation. Various incentives as well as disincentives were imposed to make sure that French was the sole language of the state. Recognition of regional cultural differences was totally unacceptable to the revolutionaries, so much so that advocacy

⁸ This sounds like they are talking about modern states as opposed to tribal governments and empires.

⁹ Gellner (n 7), pp. 18, 34, 38.

¹⁰ Gellner (7), p.55.

¹¹ Lewis Henry Morgan, *Ancient Society*, University of Arizona Press, 1985.

¹² Robert R. Palmer, ‘The National Idea in France before the Revolution’, *Journal of the History of Ideas*, 1940, pp. 95 and 97; Brian C. J. Singer, ‘Cultural versus Contractual Nations: Rethinking Their Opposition’, *History and Theory*, 1996, p. 317.

¹³ Ibid, p.318.

¹⁴ Roger Brubaker, ‘Citizenship and Nationhood in France and Germany’ *Harvard University Press*, 1992, p. 44,

for federalism was made a capital offense in France.¹⁵ Yet, the French state could not achieve full assimilation of all nations, though it made tremendous progress towards assimilation. As Brubaker noted, “[t]he French state did not fully assimilate Bretons, Basques, Corsicans, and Alsatians....”¹⁶ France still remains a state with people speaking different languages; for example, Basque, French Flemish, Corsican etc.¹⁷

The main aim of the French Revolution was to create a state where there would be no privileged class, no seigniors, and no intendants, i.e., absence of vertical social stratification. Everyone was to be equal in the eye of the law; everyone was to be an equal citizen—and together a “nation.” People of different races, ethnicities, origins, and nationalities were now to have only one identity: members of the French nation. Other national or tribal identities and affiliations were to yield to the French national identity. The revolutionaries did not intend to build a state with many nations in it; they intended to build one nation with no interpersonal and inter-tribal boundaries within.¹⁸ The outer boundary of the ‘(nation-) state’ was there to separate it from other ‘(nation-) states,’¹⁹ but the intra-national boundaries were to wither away. Thus, the new French state sought to merge into one nation erstwhile multiple nations.

Homogeneity and assimilation of people were central features of the new French nation. The unique context of France warranted those with a history of centuries of feudal hierarchy repressing commoners and interestingly the clarion call of the revolution was to end class-based society.²⁰ The legal and institutional backing of feudal lords during the *ancient regime*²¹ was to be ended once and for all. Any type of classification, casteism, and tribalism was seen as a potential threat to building a uniform society with equality and non-discrimination. The revolution hit hard to the very foundation of institutions and symbols of power, which for centuries maintained a heavy yoke on commoners at the behest of the nobility. Now there was to be “a social and political organization marked by more uniformity and more simplicity....resting based on the equality of all ranks.”²² There was to be only one status for all citizens of France: within the boundary of the nation, everyone was to become “*égaux en droits*”—an equal citizen. Internal homogeneity was, thus, necessitated by the unique historical context of the French nation. Thus, the new French nation was understood in civic-political terms, and citizens were to be individuals first rather than members of any ethnic group or internal nation.

The French Revolution reflected the twin principles namely ‘individualism’ and ‘social contract’ as preached by Hobbes, Locke & Rousseau. Rousseau viewed nation/state as the result of a ‘social contract,’ where individuals agree to abide by state laws by sacrificing a bit of freedom for the general good. Despite doing so, individuals do not cease to be individuals and free. One writer aptly remarked as follows: “In the less mechanical thinking of Rousseau, the

¹⁵ Stepan, Linz & Yadav (n 4).

¹⁶ Brubaker (n 14), p. 5.

¹⁷ Adeed Dawisha, ‘Nation and Nationalism: Historical Antecedents to Contemporary Debates’, *International Studies Review*, 2002.

¹⁸ Leon Thiry, ‘Nation, State, Sovereign and Self-determination’, *Peace Research* p.15, volume 13:1, 1981, available at: <https://www.jstor.org/stable/23685021>, Accessed on 17 December 2023.

¹⁹ Brubaker (n 14), p. 48.

²⁰ Alexis De Tocqueville, John Bonner & Joseph Meredith Toner, *The Old Regime and the Revolution*, Harper and Brother Publishers, New York, 1856, p. 35.

²¹ The pre-revolutionary social and political system of France is known as *Ancient Regime*.

²² Tocqueville et.al. (n 20), pp. 35-36.

individual by the social contract gains for himself the protection of the whole force of the community and yet obeys only himself (i.e. his “common self”) and remains as free as before.”²³

Nation in European parlance is not an antithesis of individualism. Singer writes:

“Finally, the contractual nation is individualist in that, as it is formed of the confluence of separate wills, the individual (in terms of his or her existence, integrity, and interests) can be said to precede collectivity in a chronological and ontological sense. The implication is that one is an individual first, an *abstract exemplar of humanity dissociated from all particular attributes; and that one's social determinations, whether those of ethnicity, gender, class, family, or status, are without relevance to the determination of one's national citizenship. In this sense, nationality does not, strictly speaking, constitute a social determination, for it remains, contingent upon the individual's accord. And it follows that the nation itself is to be considered a contingent fragment of abstract humanity.*”²⁴

Nation-ness was not communitarian in the individualistic philosophy of French nationalists wherein Nation-ness refers to citizens who were, first and foremost, individuals.

In this pretext, it was the mere goal of revolutionaries to achieve liberty, equality, and fraternity but not the ethno-cultural identity that drove them into creating nation through their saffron surge of revolution. Eugene Kamenka notes that to those who participated in the revolution

“[a] nation.... was a political-administrative unit, an aggregate of individuals able to participate in a common political life through their use of a common language and their propinquity to each other....The basic concept of the French Revolution was not that of the Frenchmen, but that of the citizen.”²⁵

The French model of nation-state, i.e. building homogenous ‘(nation-) states’ by aligning political and cultural boundaries of the state became the ideal for modern states. Homogenization and assimilation, rather than diversity of cultures and nations within the boundary of a state became the most avowed policy of states despite the fact that historical contexts of many countries in other parts of the world are very different from that of revolutionary France.²⁶ For example, in Africa, integration into community was more spontaneous than the conscious European policy of assimilation. In Michael Rogin’s words,

“Negro African society is collectivism or, more exactly, communal, because it is rather a communism of souls than an aggregate of individuals....In our traditional African society, we were individuals within a community. We took care of the community and the community took care of us....In Africa we and you are the State.”²⁷

²³ David G. Ritchie, ‘Contributions to the History of the Social Contract Theory’, *Political Science Quarterly* p.556, 1891, pp. 556-572.

²⁴ Singer (n 12), pp. 310-311.

²⁵ Eugene Kamenka (ed), *Nationalism: The Nature and Evolution of an Idea*, International Book Services Inc., 1974.

²⁶ Roland Axtmann, ‘The State of the State: The Model of the Modern State and Its Contemporary Transformation’, *International Political Science Review*, volume 25:3, 2004, pp. 259-264.

²⁷ Michael Rogin, *Rousseau in Africa*, Indiana University Press, 1963, pp. 23-25, available at: <https://www.jstor.org/stable/2934455>, accessed on 17 December 2023.

People in other parts of the world are met with completely different contexts and realities compared to revolutionary France, and they might maintain different ideals and ways of life. In recent times, diversity in place of assimilation and tolerance in place of exclusion have been devised by various countries, though the reverse is also true in some cases. For example, the recent ban on Muslim headscarves in France (in 2010) is not matched with the diversity allowed in Canada and the United States regarding choices about what to wear, eat, or practice. A certain type of freedom in one country may amount to oppression in other countries.

Unlike the French revolutionaries, others may well prefer communitarianism over individualism, diversity over homogeneity. They may feel more comfortable identifying with their ethno-cultural nations. Yet, the French model of 'nation', replicated by the rest of Europe, is projected as the only model to be reified by the rest of the world. With the influence and dictation of power during European colonialism, Europeans succeeded in establishing their model of nation as the dominant model by setting it up as the only kind recognized by international law. Consequently, only such nations were and/or are being eligible to become part of the international community of nations. State, nation, or sovereign—the criteria of these concepts were determined by European powers exclusively, and once established as the master models, other models were sidelined. Antony Anghie drove this point home when he wrote:

“In effect, Europe is the subject of sovereignty and non-Europe the object of sovereignty. Acceptance of these premises—the primacy of sovereignty and the identification of Europe as exclusively sovereign—creates a conceptual framework within which the only history of the non-European world which might be written by the discipline (international law) is the history of its absorption into the European world in order to progress towards the ultimate point of acquiring sovereignty.”²⁸

B. The Westphalian Model of State: Precursor of Conception of Modern Nations

The French Revolution was not the original event aiming to dissolve the concept of pre-modern nations; it all started with the Westphalian Peace Treaty, which established the European model of states. The Treaty of Westphalia, also known as the “Peace of Westphalia” of 1648, effectively ended the internecine wars in Europe and established the framework of the “European... States.”²⁹ One of the factors of the 'Thirty Years' War that led to the Peace of Westphalia was religious intolerance (between Catholics and Protestants) and to settle the conflict provisions for religious tolerance were logically included in the treaty. The implication of the Treaty was far-reaching, *per se* it was the beginning of modern nation-states. With careful analysis of the given context, Jason Farr notes in light of the historical background of that time as follows:

“Prior to the Peace of Westphalia, most polities in Europe were ruled by an emperor, a leading clergyman, or a feudal lord. Although the Papacy and feudal aristocracy retained some power, after Westphalia the Holy Roman Empire’s ability to enforce its ecclesiastical and political hegemony was virtually destroyed. To that effect, Spain began acknowledging the independence of the Netherlands, German states began gaining political autonomy, and Austria fails to seize the control of central Europe. With this the most dominant

²⁸ Anghie (n 2), p. 102.

²⁹ Rudolph C. Ryser, *Indigenous Nations and Modern States: The Political Emergence of Challenging State Power*, Taylor & Francis, 1st edition, 2012.

*empire in Europe was severely disrupted. As a result, the very nature of European politics changed following Westphalia. This ended any chance of Europe being united under an emperor, nor would the Roman Catholic Church ever again enjoy a monopoly on political and spiritual power. After 1648, national sovereignty, characterized by autonomy and interstate competition, became the primary governing system among European states.*³⁰

The Peace of Westphalia is now correctly marked as an important “epoch in the evolution of international law.”³¹ The European model of nation-states established with Westphalia became the prototype of nations which was overwhelmingly followed and installed in most part of the world during the heydays of European colonization. Ryser writes, “[t]he system of states first defined in crude terms in the 17th century spread from Europe as a set of idealized standards to embrace virtually all the peoples and lands in the world.”³²

In a sense, the whole world now consists of European states and European-type states. These states called “nations” from the French revolution onwards now exclusively enjoy the pride of “nation-ness”. Hence, the current world political order which started with the Peace of Westphalia took a quantum leap with the French Revolution, and together these two epochs cemented the concept of nation-states as the exclusive ‘sovereigns’ under international law.

Before Westphalia, “human societies were mainly nations,” Ryser writes.³³ By nation, Ryser means “people with a distinct culture (who) evolved as a product of human interaction with their environment and with the spiritual realm.”³⁴ Many thought that the Westphalian state system would bring about the final demise of nations, but it did not. The Westphalian state system failed to fulfill its very purpose of establishing nation-states due to emergence and reemergence of nations within states. It is now evident that nations cannot be stopped by violent wars or uses of force. Ryser calls the policies of states to completely assimilate nations ‘simplistic solutions.’ Many empires and states came into existence and collapsed but nations have survived. Generally, when empires and states end, the nations that were annexed by those empires and states reemerge. Therefore, the true solution lies in acknowledging the failures of state systems and recognizing diverse nations and cultures in the state and accommodating mature nations in the global political system.³⁵

III. The Dominant Conception of Nation: How European Power And Epistemology Established And Sustained It

How did the dominant concept of nation and nationalism become successful and omnipresent? The dominance of concepts and discourses does not happen automatically; power and incremental but sustained efforts of dominant people work in tandem in achieving dominance of ideas. Among such efforts is narration and establishment of powerful discourses justifying

³⁰ Jason Farr, ‘Point: The Westphalia Legacy and the Modern Nation-State’, *International Social Science Review*, volume 80:3, 2005, p. 156.

³¹ Leo Gross, ‘The Peace of Westphalia, 1648-1948’, *The American Journal of International Law*, volume 42:1, 1948, pp. 20-26.

³² Ryser (n 29), p. 17.

³³ Ibid, p. 11.

³⁴ Ibid, p.47.

³⁵ Ibid, p. 30.

ideas. Discourses always have power implications, as Edward Said demonstrated in his celebrated book *Orientalism*.³⁶

A. The Interplay of European Power and Ontology

The rise of Europe-derived concepts of nation and nationalism and its universalization is inextricably linked with Europe's colonization of almost the rest of the world. Edward Said in his *Orientalism* mentioned that from 1815 to 1914, European colonization expanded from 35% to 85% of the world's surface. This period of colonization coincided with the period of orientalism—i.e. glorifying the West and the western ideas and demonizing the East and the eastern ideas.³⁷ Coincidentally, the same period also saw snowballing of the concepts of nation and nationalism along with other European concepts and ideas. Be it the concepts of nation and nationalism or other concepts and ideas, Europe imposed their understanding of society over the rest of the world, as if theirs were the only desirable civilized models to be emulated by non-European peoples. According to Said, imperialism had an important bearing on the production of discourses justifying the superiority of European ideas.³⁸

Writing from the standpoint of the colonized, Frantz Fanon demonstrated in his celebrated book *The Wretched of the Earth* how the hegemon through their discourses purposely create a sense of inferiority in the minds/psyche of the subjugated and force the latter to believe and act according to the former's designs and molds. He even went on to say that only violence could break the shackles created by the colonizers.³⁹ Similarly, AimeCesaire in his *Discourse of Colonialism* exposed colonizers' design of 'othering' the colonized and the former's ability to adopt any means—brutality and discursive—to continue with its designs.⁴⁰ Both Fanon and Cesaire also demonstrated how "double consciousness" afflict the minds of the members of the dominated nations.

So far as the concept of nation is concerned, Europe imposed its version of nation-ness as the ideal type of civilized political collectivity to be reckoned for statehood and membership in the international community of nations. Therefore, other societies had to compulsorily reify this model. The haste with which the non-western world emulated, so to speak, the western concept of nation talks volumes about the nexus between power and (the legitimacy of) knowledge/idea. According to Benedict Anderson, between 1776 and 1838, all newly emerging political entities in Latin America, except Brazil, self-consciously declared themselves as nations.⁴¹ One author emphatically notes that "once the core western societies had defined themselves as nation-states, the model was set for other societies as well."⁴² It was during the European colonial rule that the Western brand of 'nation' was planted in non-European soil.⁴³ Vattel in his treatise on international law used nation and state as synonymous, while

³⁶ Edward W. Said, *Orientalism*, New York: Random House Inc., 1979.

³⁷ Ibid, p. 41.

³⁸ Ibid, p. 25.

³⁹ Frantz Fanon, *The Wretched of the Earth*, New York: Grove Press, 2005.

⁴⁰ AimeCesaire, *Discourse on Colonialism*, NYU Press, 2000, pp. 29-78.

⁴¹ Anderson (n 7), p. 48.

⁴² FelicitaMedved, 'Nation and Patria in the Emerging World Order', *GeoJournal*, 1997, pp. 5-11.

⁴³ Subrat K. Nanda, 'Cultural Nationalism in a Multi-National Context: The Case of India', *Sociological Bulletin*, 2006, pp. 24-25.

Grotius and his disciples upheld this principle in developing modern international law.⁴⁴ Although there is no harm in accepting good ideas originating from Europe, Robert A. Williams and Antony Anghie explained why we should be wary of certain European ideas and ideals. Williams and Anghie in their respective books argue that the European vision of spreading its version of the truth through a so-called “civilizing mission” was the byproduct of their ontology—that Europeans and their ideas were superior.⁴⁵ Non-European ideas, beliefs, and systems of life and governance were considered perennially inferior and uncivilized when compared to European concepts and ideas. Therefore, these inferior ideas and institutions were considered to be unworthy unless drastically transformed aligning with western prototypes.⁴⁶

Europe succeeded in protecting the Europeanised international system from the cataclysm of decolonization movements.⁴⁷ Therefore, according to Anghie, “[i]n effect, Europe is the subject of sovereignty and non-Europe the object of sovereignty.”⁴⁸ Anghie shows that independent Third World countries are suffering from various weaknesses under Europeanised international law. Hence, indigenous peoples—the “Fourth World”⁴⁹—can hardly have a fair chance of achieving recognition and well-deserved respect as “nations” within the framework of present-day international law.

B. The Sustained Onslaught of European Epistemology

Postcolonial thinkers noted that the prime evil about ‘nation’ is its ideological nature, and its identification scheme through citizenship (virtually eliminating all other cultural and national identities), and in providing political space for capital accumulation.⁵⁰ Quoting Ahlwalia, Swati Parashar and Michael Shulz, they rightly note on how all-invasive the power of European epistemology is as follows:

“It is not only our ideological foundations, conceptual frameworks, and methodological orientations – which are deeply embedded within the Eurocentric knowledge systems – that determine our approaches to knowledge acquisition. Rather, the inquiries on contemporary Africa are informed by the fundamental, structural, enduring and normative transformations impelled by the colonial era practices, which continue to shape the ideas of ‘self’, ‘modernity’, ‘rationality’ and even ‘indigeneity’ and ‘traditional’ within formerly colonized societies. In that spirit, it is vital that to understand contemporary postcolonial societies, we invoke postcolonialism as ‘a counter-discourse that seeks to disrupt the cultural hegemony of the modern West with all its imperial structures of feeling and knowledge.’”⁵¹

⁴⁴ John Hutchinson & Anthony D. Smith, *Nationalism*, Oxford University Press, 1994.

⁴⁵ Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, Oxford University Press USA, 1990; Anghie (n 2).

⁴⁶ Morgan (n 11).

⁴⁷ Anghie (n 2), p. 195.

⁴⁸ Ibid, p.103.

⁴⁹ George Manuel & Michael Poslun, *The Fourth World: An Indian Reality*, The Free Press, 1974.

⁵⁰ Epifanio San Juan Jr., ‘Nation-state, Postcolonial Theory, and Global Violence’, *Social Analysis: The International Journal of Anthropology*, 2002, pp. 11-12.

⁵¹ Swati Parashar & Michael Schulz, ‘Colonial legacies, post-colonial ‘self-hood’ and the (un)doing of Africa’, *Third World Quarterly*, volume 42:5, 2021, pp. 867-869.

As the tangible European power and European ontology of self-supposed superiority subsided after the fall of European Empires, European epistemology proved resilient and sustainable.⁵² Like their claim of racial superiority during the heydays of colonialism, European epistemology bases itself on the claim of being the only valid (scientific) way of creating knowledge. Erin A. Cech and her colleagues called it “epistemological imperialism.”⁵³ Epistemological imperialism delegitimizes non-dominant peoples’ epistemologies, as Cech and her colleagues write: “One element of that content-epistemologies may serve as a seemingly benign but deeply consequential source of structural and cultural disadvantages for underrepresented groups.”⁵⁴ In such an intellectual paradigm, the superiority of western knowledge and ideas over non-western knowledge and ideas is ensured. Non-European ideas are regularly discarded for having little to no validity. As the “universal knower,” Euro-American epistemology is institutionally and culturally valorized in such a way that it denies other epistemological perspectives.⁵⁵ In European epistemology, indigenous styles and social criteria stand vilified and de-recognized.⁵⁶ The result is the continuity of colonial-day European ideas. Not only is the continuity of this “coloniality of knowledge” out there, rather it is naturalized in the psyches of both the erstwhile colonizers and of the hitherto colonized.⁵⁷ Post-colonial domination is directly linked with this “coloniality of knowledge.”⁵⁸

Even nationalists in third-world countries seem to have conceded to the superiority of European epistemology.⁵⁹ Dipesh Chakrabarty showed that post-modern states more readily and uncritically accepted colonial paradigms of development, modernization, and pursuit of technology.⁶⁰ Chakrabarty rightly mentioned that even to an anti-colonial intellectual like Aime Cesaire, the colonizing west remained “a model for everyone to follow.”⁶¹ Despite the enthusiasm during the Afro-Asian Conference of 1955 in Bandung, Indonesia and hopes of weaving a strong post-colonial alternative to European dominance in various fields, European ascendancy in the epistemic field remained. In similar tone, Michael Adas notes as follows:

“Not only did Indian and African intellectuals draw on the languages of Western thinkers such as Tolstoy, Bergson, Thoreau, and Valery, but the issues they addressed were largely defined by European and, to a lesser extent, American participants in the global discourse. In this sense, the postwar Indian and African assault on the civilizing mission was as reactive as Antenor Fermin’s nineteenth-century refutations of “scientific” proofs for African racial inferiority or Edward Blyden’s defense of African culture. Even the essentialized stress on

⁵² Sabelo J. Ndlovu-Gatsheni, ‘The Cognitive Empire, Politics of Knowledge and African Intellectual Productions: reflections on Struggles for Epistemic Freedom and Resurgence of Decolonisation in the Twenty-First Century’, *Third World Quarterly*, volume 42:5, 2021, pp. 882-901.

⁵³ Erin A. Cech, Anneke Metz, et al., ‘Epistemological Dominance and Social Inequality: Experiences of Native American Science, Engineering, and Health Students’, *Science, Technology, & Human Values*, volume 42:5, 2017, pp. 743-774.

⁵⁴ *Ibid*, p. 744.

⁵⁵ *Ibid*, p. 747.

⁵⁶ Duncan Ivison et al., *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, 2000, p. 37.

⁵⁷ Lisa Åkesson, ‘European migration to Africa and the coloniality of knowledge: the Portuguese in Maputo’, *Third World Quarterly*, pp. 922-938, 2021.

⁵⁸ *Ibid*, p. 923.

⁵⁹ Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse?*, Zed Books Ltd, 1986.

⁶⁰ Dipesh Chakrabarty, ‘Legacies of Bandung: Decolonisation and the Politics of Culture’, *Economic and Political Weekly*, volume 40:46, 2005, pp. 4812-4818.

⁶¹ *Ibid*, p. 4812.

*the spirituality of Indian civilization or the naturalness of African cultures was grounded in tropes employed for centuries by European travelers, novelists, and Orientalists.*⁶²

Thus, the universal acceptance of European epistemology explains how unfair international structures and criteria was, that were founded during the colonial era which reinforced and sustained its legacies. According to Partha Chatterjee, colonizers claimed three privileges: *ethnic privilege*, *moral privilege*, and *epistemic privilege*. These three worked in tandem in ingraining the European concept of nation in the non-European world as the universal model to be emulated by all. Even as ethnic and moral privilege was challenged and diminished, European epistemic privilege survived. Chatterjee writes,

*"[W]hen all of these privileged positions are challenged [i.e., ethnic and moral privilege] with the spread of anti-colonial movements, it is the epistemic privilege that has become the last bastion of global supremacy for the cultural values of Western industrial societies. It is a privilege that sanctions the assertion of cultural supremacy while assiduously denying at the same time that it has anything to do with cultural evaluations."*⁶³

Imposition of the norms of one culture in assessing another culture, as had been a feature of anthropology in its initial days, is how Western epistemology has worked in assessing the nationhood of non-European social and political collectivities. Western epistemology claims universal validity and application irrespective of the culture to which it is applied. Thus, when the West determines the criteria of nation-ness, the criteria are applicable to Europeans and non-Europeans alike; and the non-European people have no option but to fall in line, and prove their worth as per the 'universal' European criteria.⁶⁴ Thomas Biolsi concludes as follows:

*"The hegemonic effect of the modern episteme of nation-state sovereignty "in shaping our imaginations" is that "it becomes increasingly difficult to think in terms of a geographical order that is not state-based". This is true to such an extent, Anderson argues, that the nation-state became a "modular" form available for "pirating" by all sorts of imaginable communities the nation-state, in other words, is in circulation not only as an obligatory but also as a liberatory category in the global public sphere: It structures both political realities and subversive political imaginaries"*⁶⁵

IV. Other Models of Nation

Apart from the dominant model of 'nation', there are other models of 'nation', which do not fit into the modern concept of 'nation'. Ethno-cultural nations, indigenous nations, and nations fighting against colonialism are the most prominent examples of non-dominant nations. Ethno-cultural nations existed in pre-modern times and still exist "within" Civic nations.⁶⁶ Indigenous nations lived in their ancestral territories according to their cultural norms and system of

⁶² Michael Adas, 'Contested Hegemony: The Great War and the Afro-Asian Assault on the Civilizing Mission Ideology', *Journal of World History*, volume 15:1, 2004, pp. 31-63.

⁶³ Chatterjee (n 59), p. 17.

⁶⁴ Ibid, p. 10.

⁶⁵ Thomas Biolsi, 'Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle', *American Ethnologist*, volume 32:2, 2005, pp. 239-240.

⁶⁶ Nanda (n. 43), p. 27.

governance for centuries.⁶⁷ Surprisingly, states often do not recognize indigenous peoples' 'nation-ness', since 'one state one nation' is the dominant norm.⁶⁸ In the mainstream discussion of nations, non-dominant models of 'nation' are simply ignored. Since the 1960s the discussion of alternative models of 'nation' has begun.⁶⁹

If 'nation' is understood to be the cultural unit that creates an intense sense of identity irrespective of having a state of its own or not, nations existed before modern times. One author called them 'nations before nationalism.'⁷⁰ Even those authors who think that nation is a modern phenomenon concede that the roots of modern nations can be traced back to pre-modern times.⁷¹

In their different expressions—as ethno-cultural nations, indigenous nations etc.—these non-dominant nations are based on the argument that despite the historical proximity of the concept of nation with state, the latter should not eclipse separate meaning and existence of 'nations.'⁷² Taken as a concept in its own right, nation-ness is not bounded up by statehood.

Indigenous nations are the most vocal opponents of the exclusivity of the idea of civic nation. Indigenous nations want to be identified as nations on par with civic nations due to their prior presence and historic national existence in their homelands since pre-colonial times. Most indigenous groups of Africa and Asia were denied the advantage of decolonization during the decolonization waves of the 1960s and 1970s. Decolonisation happened along the line of administrative units created by the colonizers, which reads:

“Not only gave rise to a disjuncture between culture and territory, but also eventually led to the domination by one nationality over another in a given provincial unit. The dominant nationalities responded by asserting their distinct national identities in separatist terms. The political manifestation of such assertion varied from the demand for a culture-congruent provincial unit to a separate sovereign state. The situation exploded after independence. The arrival of freedom, the introduction of self-government, and the establishment of democratic institutions and civil-political rights provided the requisite platform for the arousal of national consciousness among the hitherto subdued and neglected nationalities.”⁷³

Shiv Visvanathan, in his essay *Interrogating the Nation* speaks about how “creation of nation has been fraught with a marginalization of other groups and voices, with pains and sufferings”⁷⁴ and Sanjay K. Ray demonstrated how elite nationalists subjugated minor nations. Ray writes: “[T]he freedom-seeking nations take recourse to a similar path of colonization and subjugation of other minor nations that live in worse socio-economic and political space.”⁷⁵ The reason behind following the same path of colonizers is, according to Benedict Anderson, the national elite's dependency on the European models of 'nation';⁷⁶ and according to AshisNandy, it is because the hitherto

⁶⁷ Ibid, p. 36.

⁶⁸ Tully (n 1), p. 3.

⁶⁹ Kymlicka (n 2).

⁷⁰ John A. Armstrong, *Nations before Nationalism*, The University of North Carolina Press, 1982.

⁷¹ Smith (n 7), p. 196.

⁷² Medved (n 42), pp. 7-8.

⁷³ Subrat K. Nanda (n 43), p. 26.

⁷⁴ Shiv Vishvanathan, 'Interrogating the Nation', *Economic and Political Weekly*, volume 28:23, 2003, p. 2295.

⁷⁵ Sanjay K. Ray, 'Conflicting Nations in North-East India', *Economic and Political Weekly*, volume 41:48, 2005, p. 2176.

⁷⁶ Satish C. Aikant, *Rethinking the Nation*, Indian Literature, 2006, p.169.

colonized elites of the Third world have internalized the Western ideas. In Nandy's words, "The West is now everywhere, within the West and outside; in structures and in minds."⁷⁷

The 'salt-water thesis,'⁷⁸ framed by Europeans, made sure that small indigenous groups did not claim independence. Apart from the salt-water thesis, western democracies denied and suppressed the nation-ness of indigenous peoples on two more grounds: *first*, on the ground that indigenous people were backward people or 'savages' and therefore unworthy of nation-ness,⁷⁹ and *second*, the fear that if recognized as 'nations,' they might aspire to establish their own independent states.⁸⁰

However, in some regions of the world, indigenous nations are already recognized legally, though not on par with civic nations. In what follows, I discuss instances of recognition of indigenous nations of North America and compare them with the "non-recognition syndrome" of Asian and African states.

A. Indigenous Nations in North America

Most of the indigenous groups in North America predate even the invention of the modern concept of nation. Some of the indigenous peoples, like those in North America, lived in their territories in a nation-like social set-up for centuries—in Tully's terms, as "separate stateless nations." According to Tully, at the moment of European invasion, "they met the criteria of free peoples and sovereign nations in the law of nations, and so, they were equal in status to European nations."⁸¹

The dominant European settlers came up with a *sui generis* term—*domestic dependent nations*—in the USA to downgrade indigenous peoples' nation-ness. But in theory, the indigenous peoples of the USA and Canada were never denied nation status fully; they were recognized as nations—as "Indian Nations"⁸² and "First Nations" respectively.

1. Nation Status of American Indians

The nation status of indigenous peoples of the United States is recognized by the US Supreme Court. Ever since the first Chief Justice of the United States, John Marshall, decided three founding cases on the status of indigenous peoples of America, the question of the national status of American Indians was settled in law. Known as the 'Marshall Trilogy,' the cases of

⁷⁷ AshisNandy, *The Intimate Enemy: Loss and Recovery of Self under Colonialism*, Oxford University Press, Delhi, 1983.

⁷⁸ Tully (n 1), pp. 54-55.

⁷⁹ RashwetShrinkhal, "Indigenous sovereignty" and right to self-determination in international law: a critical appraisal', *Alter Native*, 2021, p.71; Peter C. W. Gutkind, 'The Passing of Tribal Man in Africa', *International Studies in Sociology and Social Anthropology*, 1970, p. 45.

⁸⁰ Thomas Flanagan, 'The Sovereignty and Nationhood of Canadian Indians: A Comment on Boldt and Long', *Canadian Journal of Political Science*, 1985, pp. 367-371; Gidon Gottlieb, 'Nations without States', *Foreign Affairs*, 1994, pp. 100-105.

⁸¹ Tully (n 1), p. 52.

⁸² Steven Paul McSloy, 'Back to the Future: Native American Sovereignty in the 21st Century', *NYU Review of Law & Social Change*, 1992-1994, pp. 217-218.

*Johnson v. McIntosh*⁸³, *Cherokee Nation v. Georgia*⁸⁴ and *Worcester v. Georgia*⁸⁵ acknowledged that before Europeans arrived, the indigenous peoples of what is now the USA had been living a very organized life in the American continent as independent nations.

In *Worcester v. Georgia*, Chief Justice Marshall made it clear that the indigenous peoples of America lived on American soil from time immemorial as ‘nations’—‘nations’ in the European and international sense of the term. Marshall said,

*“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who can make treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.”*⁸⁶

One of the parties to the second case of Marshall Trilogy, (i.e. *Cherokee Nation v. Georgia*) was an indigenous nation, namely, the Cherokee Nation. The record of the US Supreme Court shows many such cases where the Supreme Court did not dispute the nation status of the indigenous peoples concerned. Not only does the US Supreme Court accept nation status of indigenous peoples, but the court also acknowledges that Indian Nations are “sovereign” in their territories. Within their territories, Indian nations enjoy various attributes of sovereignty. Therefore, besides the federal union and states, Indian nations are considered “the Third Sovereign” in the United States⁸⁷

The powers of the indigenous peoples that have been curtailed significantly since the late 19th century onwards demonstrates clear deviations of the USA from its earlier position *per se* indigenous nations. Of course, fluctuations in the US federal Indian policy happened only in practice, whereas in theory, the nation status remained intact.

In practice, the US policy suffers from remarkable ambivalence and confusion. The Dawes Act of 1887 (sanctioning allotment of Indian lands)⁸⁸ and the Termination Policy⁸⁹ adopted in 1953 were drastic attempts to extinguish Indian nations and to assimilate them with the civic nation of the USA. During and after the termination era, civil and criminal jurisdiction of indigenous nations was also curtailed. But the extraordinary resilience of Indian nations saved their status, though Indian nations lost 80% of their land base since the allotment policy was adopted.

Hence, there is a stark contradiction between the theory and practice of the USA when it

⁸³ *Johnson v. McIntosh*, 1823, Supreme Court of the United States, 21 U.S. 543.

⁸⁴ *Cherokee Nation v. Georgia* (n 6).

⁸⁵ *Worcester v. Georgia*, 1832, Supreme Court of the United States, 31 U.S. 515.

⁸⁶ *Ibid*, p. 559.

⁸⁷ Sandra Day O'Connor, 'Lessons from the Third Sovereign: Indian Tribal Courts', *TULSA L. J.*, 1997, pp. 1-6.

⁸⁸ David H. Getches, Charles F. Wilkinson et al., *Cases and Materials on Federal Indian Law*, West Publishing Co., 2011.

⁸⁹ *Ibid*, p. 200.

comes to the recognition of indigenous political status. The main reason for such contradiction lies in the Eurocentric concept of nation and sovereignty. Due to divergent ontological and epistemological approaches to nationhood that European settlers and American Indians hold respectively, the US recognition of indigenous nationhood fluctuated, creating confusing judgments on indigenous political status, so much so that one Justice of the US Supreme Court called these judgments “schizophrenic.”⁹⁰ Giorgio Agamben’s concept of “inclusive exclusion” becomes relevant here. Agamben writes “that sovereign can always have the ultimate say as to who to be included and who to be excluded, to what extent and to what time.” By analyzing Agamben’s “inclusive exclusion” concept, Mark Rifkin writes that so long as sovereignty is at the hand of the state, nationalism of minority nations does not make a difference. The solution, he suggests, is dialogue.⁹¹ However, American Indians have never ceased to consider themselves “nations” as “sovereigns.”

Describing different understandings of ‘nationness’ by American Indians, Vine Deloria, an indigenous intellectual, writes: “Indians had a good idea of nationhood, but they had no knowledge of the other attributes of political existence that other people saw as important. Most of all, Indians had no awareness of the complexity that plagued the lives of other peoples, in particular the Europeans.”⁹² The Indian understanding of nationhood revolved around peoplehood and freedom that they enjoyed from time immemorial in their lands, not around the complex political system that Europeans considered as the hallmark of ‘nationness’.

According to Deloria, American Indian tribes enjoy many of the powers of nations despite limitations imposed on them. Those limitations to Indian nationhood derived from Chief Justice Marshall’s ingenious but confusing characterization of indigenous nations as “domestic dependent nations.”⁹³ Such confusing branding was the byproduct of the notion of indivisible sovereignty of the civic nation, in this case, the United States.

The uneasiness of Eurocentric writers to accept indigenous nationhood is evident from Lewis Henry Morgan’s *Ancient Society*. Morgan is not ready to reckon American Indian tribes as nations. He thinks that the highest level of Indian tribal organization was the ‘confederacy.’ Nationhood requires greater coalescence than the confederacy. In his words:

“A nation [is] an assemblage of tribes who had coalesced in a gentile society upon one common territory, as the four tribes of the Athenians in Attica, and the three Dorian tribes in Sparta ... Coalescence was a higher process than confederacy. In the latter case, the tribes occupied independent territories.”⁹⁴

Morgan mentioned that whereas unification is the essence of ‘nationness’, in the case of American Indians, tribes were created through segmentation of the same people by their dialectical variations.⁹⁵ Commenting specifically on American Indian nations, Morgan wrote:

⁹⁰ *United States v. Lara*, 2004, 541 U.S. 193, 219.

⁹¹ Mark Rifkin, ‘Indigenizing Agamben: Rethinking Sovereignty in Light of the “Peculiar” Status of Native Peoples’, *Cultural Critique*, 2009, pp. 88-124.

⁹² Vine Deloria Jr. & Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* University of Texas Press, 1998.

⁹³ *Cherokee Nation v. Georgia* (n 6), p. 17.

⁹⁴ Morgan (n 11), pp. 66-67.

⁹⁵ Ibid, p. 101.

“The instances are extremely rare, among the American aborigines, in which the tribe embraced peoples speaking different dialects. When such cases are found, it resulted from the union of a weaker with a stronger tribe speaking a closely related dialect, as the union of Missouri with the Otoes after the overthrow of the former... Only a small portion had attained the ultimate stage known among them, that of the confederacy of tribes speaking dialects of the same stock language. A coalescence of tribes into a nation had not occurred in any part of America.”⁹⁶

Morgan’s understanding of nation-ness is both evolutionary and Eurocentric. He believed in stages of social and political development. In his worldview, American Indian tribes built pre-modern types of social and political institutions and had not graduated into modern nations. On the other hand, he considered that European civilization beginning with Greek and Roman political institution-making represented political institutions, worth calling nations. Though many American Indian nations built sophisticated governing institutions and rules, even confederacies, Morgan is not ready to recognize them as nations on par with European-type nations.

Whatever Morgan and other writers seem to suggest, judicially indigenous peoples of the United States have always been nations. Obviously, the fluctuations in US federal Indian law and policy regarding the powers of Indian nations reflect all-pervasive influence of the Eurocentric notion of nation and sovereignty that resulted in uneasiness in grappling with the concept of “nations within.”

2. Nation Status of the First Peoples of Canada

In Canada, indigenous peoples have nation status. They are called “First Nations.” By mentioning the pre-existence of First Nations, whom he called “Nations within,” Will Kymlicka writes,

“[t]hese ‘nations within’ were originally self-governing, and like other conquered or colonized people around the world, have consistently fought to gain (or rather regain) their autonomy, so as to maintain themselves as separate and self-governing societies. They call themselves ‘nations’ and assert national rights.”⁹⁷

Since their arrival in Canada, the British Crown entered into treaties with First Nations, though many of those treaties were not honored by the Crown.⁹⁸ These treaties indicate that indigenous peoples were accepted as independent nations—as nations proper. The Royal Proclamation of 1763 issued by the Crown, King George III, after the 7-year war with France reads as follows:

“And whereas it is just and reasonable and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.”⁹⁹

⁹⁶ Ibid, p. 103.

⁹⁷ Duncan Ivison et al., *Political Theory and the Rights of Indigenous Peoples*, Cambridge University Press, 2000.

⁹⁸ Bradford W. Morse, ‘Common Roots but Modern Divergences: Aboriginal Policies in Canada and the United States’, *St. Thomas L. Rev.*, 1997-98, p. 115.

⁹⁹ The Royal Proclamation of October 7, 1763, U.K. 3 G.E.O. 3, reprinted in R.S.C., App. I, 1985, 4-5.

This approval of nation-ness continued ever since the Royal Proclamation was adopted. Judicially also, nation-ness of First Peoples is now recognized. Justice Judson of the Supreme Court of Canada in *Calder v. Attorney-General of British Columbia* admits that “when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries.”¹⁰⁰ One finds little reason to not give nation status to people who lived organized lives before Europeans arrived.¹⁰¹

In another decision in 1990, the Supreme Court of Canada mentioned that “The papers of Sir William Johnson ... who was in charge of Indian affairs in British North America, demonstrate the recognition by Great Britain that *nation-to-nation relations* had to be conducted with the North American Indians”¹⁰² [Italics added]. The court made it clear that once European nations arrived, the extent of power enjoyed by the First Nations diminished.¹⁰³

In spite of the fact that the British North America Act 1867 gave exclusive legislative power regarding Indians to the federal government of Canada, under which the Indian Act of 1876 was enacted, the treaty-making with First Nations continued, indicating that the nation-to-nation relationship survived the British North America Act. One author notes,

*“The intense period of treaty negotiations from 1871 to 1910 would suggest that the recognition of nationhood, including the capacity to make treaties, was alive and well. After the enactment of the Indian Act and various laws of general application, however, the effective exercise of the right to self-government was severely curtailed without Aboriginal consent, giving rise to many of the difficulties still experienced in relations between Aboriginal nations and Canada.”*¹⁰⁴

Like in US, the First Nations in Canada have very limited powers in practice; they enjoy governmental powers akin to municipal governments under provinces.¹⁰⁵ Though there had been no formal allotment policy in Canada like in the USA, Canadian First Nations are given less self-government power compared to their US counterparts.

One might ask, what does theoretical recognition of indigenous ‘nationness’ entail if their powers as nations are so curtailed and diminished that in some cases indigenous nations come down to the level of municipal governments? The answer is, the formal recognition of ‘nationness’ is of great significance since it proves indigenous peoples’ historical existence as distinct nations, and demonstrates the gap between what the First Nations’ powers are and what their powers ought to be. Based on their nation status, claims of other rights and privileges can be made. Moreover, their status as nations strengthens their just demand for self-determination,¹⁰⁶ no

¹⁰⁰ *Calder v. Attorney-General of British Columbia*, 1973, S.C.R. (Can.) 313, 328.

¹⁰¹ Kymlicka (n 2), p. 221.

¹⁰² *R. v. Sioui*, 1990, S.C.R. (Can.) 1025, 1053.

¹⁰³ Morse (n 98), p. 118.

¹⁰⁴ Ibid, p. 119.

¹⁰⁵ Erich Steinman, ‘Indigenous Nationhood Claims and Contemporary Federalism in Canada and the United States’, *Pol’y and Society*, pp. 98-115.

¹⁰⁶ Rebecca Anita Tsosie, ‘What Does It Mean To “Build A Nation”? Reimagining Indigenous Political Identity in an Era of Self-determination’, *Asia-Pacific Law & Policy Journal*, 2006, p. 38; Erich Steinman, ‘The Contemporary Revival and Diffusion of Indigenous Sovereignty Discourse’, *Indigenous Studies Today*, Issue 1, Fall 2005/Spring 2006, p. 89; Ward Churchill, ‘A Travesty of a Mockery of a Sham: Colonialism as ‘Self-Determination’ in the UN Declaration on the Rights of Indigenous Peoples’, *Griffith L. Rev.*, 2011, p. 526.

matter what kind and degree of self-determination they want.¹⁰⁷ Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, 2007 says, “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.”¹⁰⁸

As of now, there are 565 federally recognized Indian Nations in the USA and 633 federally recognized First Nations or Bands in Canada.¹⁰⁹ The indigenous nation-ness is built on unique features that deviate from the standard European narrative on nation-ness:

First, the nation-ness of American Indian nations and Canadian First Nations predates the age of nationalism. The indigenous nations of North America led an organized life much before Europeans came up with the concept of “nations” i.e. “nation-states.”¹¹⁰ In the European narrative, nation-ness is the result of nationalism. In fact, nationalism of indigenous peoples in the European sense is of recent origin, while their nation-ness is much older.¹¹¹

The armed nationalism of American Indians in the early and mid-1970s and the armed face-off of Mohawks and the Quebec Police and Canadian Army in 1990¹¹² are violent expressions of indigenous people’s pre-existing national consciousness. The recent waves of nationalism among indigenous peoples of North America are proof of indigenous nationalism’s coming of age, transcending their earlier struggles only for “rights.” Now “indigenous peoples are seeking their inclusion in national and multilateral decision making.”¹¹³

Secondly, Indigenous nations in most cases, do not aspire to establish independent states, as the dominant national understanding would suggest being the case. In fact, their struggles are focused on, though not limited to, achieving greater autonomy within their own boundaries.

Thirdly, they do not conform to the post-ethnic cosmopolitan model of civic nations. They are self-consciously ethno-cultural and primordial. Maintaining of their ethno-cultural distinctiveness is emphasized so that the dominant society cannot assimilate them by obliterating their unique cultural distinctiveness.

Finally, they assert their collective identity, not satisfied with the citizenship of the state alone. They understand that non-recognition of their collective identity is at the root of policies that are aimed at obliterating their history and distinctive culture.¹¹⁴ They maintain that indigenous

¹⁰⁷ Mark Bennett, ‘Indigenous Autonomy and Justice in North America’, *New Zealand Journal of Public and International Law*, 2004; Hurst Hannum, ‘Sovereignty and Its Relevance to Native Americans in the Twenty-First Century’ *American Indian Law Review*, pp. 487-495; Menno Boldt & J. Anthony Long, ‘Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada’s Native Indians’, *Canadian Journal of Political Science*, 1984, pp. 537-53.

¹⁰⁸ *United Nations Declaration on the Rights of Indigenous People*, 13 September 2007, available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf, accessed on 29 January 2022.

¹⁰⁹ Getches et al. (n 88)

¹¹⁰ Patrick Macklem, ‘Distributing Sovereignty: Indian Nations and Equality of Peoples’, *Stan. L. Rev.*, 1992-93, p. 1311.

¹¹¹ Steinman (n 107), p. 96.

¹¹² *Ibid*, p. 108.

¹¹³ B. Denis Marantz, *People or Peoples; Equality, Autonomy and Self-Determination: The Issue at Stake of the International Decade of the World’s Indigenous Peoples*, International Centre for Human Rights and Democratic Development, Montreal, 1996.

¹¹⁴ Amanda Barratt & Ashimzo Afadameh-Adeyemi, ‘Indigenous peoples and the right to culture: The potential significance for African indigenous communities of the Committee on Economic, Social and Cultural Rights’ General Comment 21’ *AFR. HUM. RTS. L.J.*, 2011, pp.560-565.

individuals are members of their indigenous nations first; then they are citizens of the state. This is a challenge to the Westphalian model of “nation-states.” Non-state nations want to remember their past and base their claim on it.

B. Indigenous Nations in Africa and Asia

Europeans not only colonized North America, but also big chunks of Asia and Africa. Interestingly, while Europeans recognized the nation-ness of American indigenous peoples, they refrained from recognizing the nation-ness of Afro-Asian indigenous peoples.¹¹⁵ Alan Cairns rightly pointed out that “it is crucial to focus the difference in context between overseas colonialism leading to anti-colonial nationalism, leading to independence, and internal colonialism, leading to anti-colonialism, leading to frustration of indigenous peoples and the impasse...”¹¹⁶ In other words, the contexts of colonial encounters in settler states and in overseas colonies are different. As an Asian, it is important for me to understand the British policies not recognizing indigenous peoples in Asia and Africa as nations. Is it because of the conscious European classification between the necessity of recognizing ‘indigenous nations’ in settler states where they had to live together, and the need for ‘divide and rule policy’ in overseas colonies where recognizing major indigenous groups as nations would suffice for their colonial ends, leaving behind without recognizing smaller indigenous groups? From a comparative assessment of European colonial policies towards indigenous nations in settler states and that of the Third World countries of Asia and Africa, it appears that Europeans’ strategies varied based on the circumstances they encountered. Certainly, the circumstances of Asia and Africa were different from that of America and Oceania, as discussed below.

1. Africa and Asia Presented Different Socio-political Scenarios

Whereas localism and autonomous village communities were the characteristic features of indigenous peoples in other parts of the globe, in Asia and Africa, the British colonizers faced bigger empires and states. For example, in India, the *Mughal Empire* was reigning for several centuries before the Europeans arrived, though the Mughals themselves had failed to centralize diverse indigenous societies. As the British were dealing with the Indian sub-continent politically, their main focus was the larger political establishment, although they faced insurrections and fighting from indigenous groups from time to time, viz., Santal rebellion of 1855, defiance of the CHT peoples in the immediate aftermath of the annexation of the CHT into Bengal, and so on. Similarly, in Africa, the British faced larger states and empires that combined several semi-autonomous provinces and tributary states. For example, Mane, Great Fulo and Mali in West Africa, and Kongo and Loango in Central Africa were not localized nations; rather they were a combination of local nations.¹¹⁷ In both Asia and Africa, many smaller groups/nations remained outside the larger empires and states as the British arrived.

¹¹⁵ Caitlain Devereaux Lewis, ‘Policies of Inequality—A World Apart: A Comparison of the Policies toward Indigenous Peoples of a Post-colonial Developing Nation to Those of A Post-Industrial Developed Nation’, *American Indian Law Review*, 2012-13, pp.423-432.

¹¹⁶ Alan Cairns, ‘Afterword: International Dimension of the Citizen Issue for Indigenous Peoples/Nations’, *Citizenship Studies*, 2015, pp. 497-498.

¹¹⁷ Martin Danton & Rick Halpern, *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850*, University of Pennsylvania Press, 1999.

In dealing with these large Afro-Asian empires and states, the British attributed nation-ness to the empires and states that looked like European-type civic nations,¹¹⁸ while many small indigenous nations that were not a part of these empires or forcefully annexed into these empires and states previously were ignored by the British. In dealing with these smaller nations, thanks to their subaltern position of power, the British were not interested to treat them as nations. Rather they were treated as “backward groups,” not deserving recognition as nations.

One example as to how the British treated indigenous groups of the Indian Sub-continent as compared to how they treated the ambient colony itself was that the colonial state branded indigenous areas for administrative purposes as “Non-Regulation Areas,”¹¹⁹ “Backward Tracts,”¹²⁰ “Scheduled Districts,”¹²¹ “Excluded Areas” or “Wholly Excluded Areas.”¹²² While these indigenous populated areas enjoyed special administrative treatment and limited autonomy from the colonizers, there is no indication that the British treated them as nations. Moreover, the isolation created in these areas kept them away from the pan-Indian nationalist movements that culminated in the independence of India and Pakistan in 1947. They could not participate in the national movements of India, nor could they gain recognition as nations in post-colonial states. One author noted that “[m]any communities inhabiting frontier and excluded areas had little or no contact with the rest of India. The British policy of exclusion, a near absence of administration, and the lack of proper road connectivity allowed the survival of traditional tribal relations.”¹²³

While the Indian nationalist leaders from bigger nations were part of the freedom movement and decolonization negotiations, the smaller indigenous groups living in the “Backward Tracts” and “Excluded Areas” could not participate in the negotiations. On the contrary, territories of smaller indigenous groups/nations were allotted to either India or Pakistan without their consent, and in some cases, despite their strong objections and dissent. One author writes: “Fears were expressed on the eve of Independence that joining India would lead to Hindus and Muslims dominating those that follow Christianity or their traditional faiths.”¹²⁴ It is mentionable that not only did the bigger nations enjoy the status of “nations” from the British, but they also enjoyed “indigenous status.” According to Bayly, between 1760 and 1860, the concept of “indigenous peoples” was created as an epistemological tool to be applied to “a series of comparable categories across the globe.”¹²⁵ In attaching the indigenous label, the British were driven by strategic goals and power equations.

In the British understanding, there are two categories of indigenous peoples: indigenous peoples who persisted in keeping their distinct way of life and those who practiced agriculture and maintained a strong sense of territoriality. The British exploited both kinds of native groups but in very different manners. The non-agricultural societies were simply looted and killed, while the

¹¹⁸ Dwight G. Newman, ‘The Law and Politics of Indigenous Rights in the Postcolonial African State’, *Am. Soc’y Int’l L. Proc.*, 2008, pp. 69-70.

¹¹⁹ Indian Council Act, 1861, India

¹²⁰ The Government of India Act, 1870, India.

¹²¹ The Scheduled Districts Act, 1874, India.

¹²² The Government of India Act, 1935, India

¹²³ H. Srikanth, ‘Who in North-east India Are Indigenous?’, *Economic and Political Weekly*, volume 5, 2014.

¹²⁴ Ibid.

¹²⁵ Martin Danton and Rick Halpern, *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850*, University of Pennsylvania Press, 1999.

more agricultural societies were subjected to harsh revenue extraction. The agricultural groups still maintained enough control over their capital and production, and the white settlement over them was superficial. But the non-agricultural groups faced genocide and aggressive white settlement first by the whites, and then in postcolonial states by non-white neighbors.¹²⁶

The British system of indigenous taxonomy invoked scientific racism, at times with reference to “Britain’s universities and learned societies” and at times directly by the military and naval academies. “Indigenous peoples” as a term is, therefore, an epistemic product of the British administrators and soldiers, which was used as a strategic tool. In reality, the taxonomy of indigeneity was informed by convenience. According to Bayly, “British understandings of indigenous peoples and attempts to categorize them for the purposes of government were generated both out of such widely held sociological ideas and also by fractious issues arising from cultural and military clashes across the colonial frontiers.”¹²⁷ No wonder, the British did not recognize small indigenous groups as nations, since they recognized them as less indigenous than the agricultural societies.

2. Why are Afro-Asian Communities Less Interested in ‘nationness’?

African and Asian indigenous peoples are still struggling for acquiring the recognition of their indigenous status. Therefore, they are less interested in claiming the nation status, given that claim of nationhood is more suspect than the claim of indigenouness in present-day international politico-legal setup.¹²⁸ Independent states oppose claims of ‘peoplehood’ and “nationness” more forcefully than the claim of indigenouness of smaller groups because, in the dominant state-centric view of nationhood, the claim of nationhood is a prelude to the claim of statehood.¹²⁹ Especially in Africa, the post-independence history of ethnic tensions made states very cautious about ethno-national activism for fear of friction and divisiveness.¹³⁰

One must not lose sight of the fact that Asia and Africa are two vast continents, and there are thousands of indigenous groups. Some of these groups are poised to invoke nationalistic rhetoric in their struggle while others would prefer not to. Therefore, invoking nation-ness is not a common trend in Asia and Africa, there are indigenous groups, such as the CHT indigenous peoples, who invoked nationalism before indigenism.¹³¹ Whether an indigenous group invokes nation claim or not will depend on the national consciousness of the group concerned. In the ultimate analysis, nationalism has to do with national consciousness more than any other indicators like commonness of language or religion or ethnicity.

There are indigenous groups, like the *Masaai* of Tanzania, who deliberately keep themselves away from the indigenous nationhood claim, and confine themselves to equal citizenship claims.¹³²

¹²⁶ Ibid, p. 30.

¹²⁷ Ibid, p. 33.

¹²⁸ Stephen Cornell, ‘Processes of Native Nationhood: The Indigenous Politics of Self-government’, *Int. Ind. Pol’y J.* 1, 2015.

¹²⁹ Bengt G. Karlsson, ‘Anthropology and the ‘Indigenous Slot’: Claims to and Debates about Indigenous Peoples’ Status in India’, *Critique of Anthropology*, 2003, volume 23:4.

¹³⁰ Dorothy L. Hodgson, ‘Becoming Indigenous in Africa’, *African Studies Review*, volume 52:3, 2009, pp.1-18.

¹³¹ SekharBandyopadhyay, AbhijitDasgupta& Willem van Schendel, *Bengal Communities, Development andStates*, New Delhi, 1994.

¹³² Hodgson (n 131), p. 24.

But there are other indigenous groups, like the *Masaai* of Kenya who seek recognition of treaties that they entered into with the British colonizers.¹³³ Assertion for such recognition is an indication of the claim that the British engaged with them as nations. When will indigenous groups invoke nation-ness depending on the strategic potentials and political dynamics of the country concerned?

V. Analysis and Conclusion

Many indigenous groups around the world claim that they are nations. Some of these groups, especially those from North America, are already recognized as nations, while others, mostly from Asia and Africa, aren't. Historically, nations and nation-like communities existed way before Europeans witnessed their great 'age of nationalism,' though the dominant version of national understanding now derecognizes those nations. The dominant concept of 'nation' is bounded by statehood, though non-dominant nations aim to achieve greater autonomy and internal self-determination rather than independent statehood.

The dominant concept of nation was born in Europe in the unique context of their need for greater individual freedom and equality, whereas other parts of the world have their own unique needs and contexts vis-a-vis nation-ness. Communitarian philosophies of Asia and Africa demand recognition of smaller nations within states. Since present world order is modeled upon European nation-states, nation-ness is seen with suspicion as a potential threat to independent states.

Thousands of communities worldwide claim themselves as nations, though there is no possibility of establishing so many sovereign states. In fact, nation-ness and statehood need not be coeval with each other. The history of North American indigenous nations demonstrates that within independent states, other nations within can enjoy greater autonomy and internal sovereignty without staking claim of statehood.

¹³³ Jim Egoe, 'Becoming Indigenous Peoples: Difference, Inequality, and the Globalisation of East African Identity Politics', *African Affairs*, volume 105:420, 2006, pp. 399 and 414-415.