World Journal of Advanced Research and Reviews
eISSN: 2581-9615 CODEN (USA): WJARAI
Cross Ref DOI: 10.30574/wjarr
Journal homepage: https://wjarr.com/

(REVIEW ARTICLE)

DECOLONIZING LAW AND INDIGENOUS SOVEREIGNTY: READING AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATE

Amédée NAOUNOU *

English Department, Faculty of Social Sciences and Humanities, Jean Lorougnon Guédé University, Daloa, Côte d'Ivoire.
* Corresponding Author

ORCID Details
Amédée NAOUNOU: https://orcid.org/0009-0001-8117-7101

World Journal of Advanced Research and Reviews, 2026, 32(02), 442–450

Publication history: Received on 27 September 2026; revised on 03 November 2026; accepted on 05 November 2026

Article DOI: https://doi.org/10.30574/wjarr.2026.32.2.2795

Copyright © 2026 Author(s) retain the copyright of this article. This article is published under the terms of the Creative Commons Attribution License 4.0

ABSTRACT

This article examines the relationship between law and Indigenous sovereignty through a critical reading of Roxanne Dunbar-Ortiz's *An Indigenous Peoples' History of the United States*. It explores how the book exposes the enduring structures of settler colonialism embedded within American legal and political institutions and questions the capacity of law to accommodate Indigenous self-determination. Drawing on Critical Legal Theory and Indigenous Critical Theory, the study argues that U.S. law operates not merely as a legal framework but as an ideological mechanism that legitimizes dispossession while marginalizing Indigenous systems of governance and knowledge. The analysis demonstrates that Dunbar-Ortiz's historical narrative challenges dominant legal discourses by foregrounding Indigenous perspectives on sovereignty, relationality, and justice. It concludes that meaningful decolonization requires reimagining law beyond settler colonial paradigms through Indigenous principles of self-determination, reciprocity, and collective responsibility. By situating Indigenous sovereignty at the center of legal thought, the article contributes to ongoing debates on decolonizing legal institutions and rethinking justice in postcolonial contexts.

Keywords: Decolonizing Law; Indigenous Sovereignty; Settler Colonialism; Indigenous Legal Orders; Roxanne Dunbar-Ortiz.

1 INTRODUCTION

The history of the United States has long been narrated through legal and political frameworks that privilege the expansion of settler sovereignty while obscuring the enduring presence of Indigenous nations and their systems of governance. In *An Indigenous Peoples' History of the United States* (2014), Roxanne Dunbar-Ortiz challenges this dominant narrative by demonstrating that the formation of the American state cannot be understood apart from the dispossession of Indigenous peoples and the legal structures that sustained settler colonialism. Her work invites a critical reconsideration of law not simply as an instrument of governance but as a contested site where power, legitimacy, and historical memory are continuously negotiated.

Building on this perspective, this article examines the relationship between law and Indigenous sovereignty through a critical reading of Dunbar-Ortiz's work. It asks whether Indigenous sovereignty can fundamentally challenge the

colonial assumptions embedded in American legal institutions or whether the legal order itself remains structurally resistant to decolonization. To address this question, the study draws on Critical Legal Theory and Indigenous Critical Theory, two complementary approaches that expose the ideological foundations of settler law while foregrounding Indigenous conceptions of governance, relationality, and self-determination.

The work is organized into two sections. The first, Redefining Governance Structures, examines how decolonization requires rethinking legal and institutional frameworks beyond the logic of settler colonialism. The second, Asserting Indigenous Political Power, explores how Indigenous sovereignty reclaims political legitimacy by affirming forms of authority grounded in Indigenous legal orders rather than in the institutions of the settler state.

2 LITERATURE REVIEW

The relationship between law and Indigenous sovereignty has become a central concern in contemporary decolonial legal scholarship. Rather than viewing law as a neutral system of governance, scholars increasingly argue that legal institutions have historically functioned as instruments of settler colonialism, legitimizing the dispossession of Indigenous peoples while marginalizing Indigenous legal orders. This study builds on this growing body of literature by examining Roxanne Dunbar-Ortiz's *An Indigenous Peoples' History of the United States* through Critical Legal Theory and Indigenous Critical Theory.

Among the foundational contributions, Patrick Wolfe (2006) conceptualizes settler colonialism as a structure rather than an event, arguing that the elimination of Indigenous peoples constitutes the organizing principle of settler states.

Similarly, Glen Sean Coulthard (2014) critiques the politics of state recognition in Red Skin, White Masks: Rejecting the Colonial Politics of Recognition. Drawing on Indigenous resurgence and anti-colonial thought, he explains that genuine decolonization cannot be achieved through state recognition alone because colonial legal systems ultimately preserve settler authority.

Leah S. Horowitz (2021) expanded this debate in emphasizing that law, power, and ideology operate as a "triple helix" through which settler colonialism reproduces itself despite the increasing recognition of Indigenous rights.

In *Decolonizing Law: Indigenous, Third World and Settler Perspectives* (2021), Sujith Xavier, Beverley Jacobs, Valarie Waboose, Jeffery G. Hewitt, and Amar Bhatia argue that decolonizing law requires moving beyond reform toward epistemic transformation. They emphasize legal pluralism, Indigenous jurisprudence, and the necessity of dismantling colonial assumptions embedded in legal education and legal institutions.

More recently, Sara Araújo (2024) revisits legal pluralism from a decolonial perspective by challenging the Eurocentric hierarchy that privileges state law over other normative systems. Her work reinforces contemporary calls to rethink legality through multiple coexisting legal orders rather than through the exclusive authority of the settler state.

Collectively, these studies demonstrate that colonial law is not simply an inherited legal framework but an enduring structure that reproduces settler sovereignty while limiting Indigenous self-determination. However, although these scholars provide robust theoretical analyses of decolonization and Indigenous legal orders, relatively little attention has been paid to Roxanne Dunbar-Ortiz's *An Indigenous Peoples' History of the United States* as a text that reinterprets American legal history through Indigenous perspectives. This article addresses that gap by examining how Dunbar-Ortiz's historical narrative contributes to contemporary debates on decolonizing law and Indigenous sovereignty.

3 THEORETICAL FRAMEWORK

This study is grounded in Critical Legal Theory (CLT) and Indigenous Critical Theory (IndigenousCrit), two complementary frameworks that provide the conceptual tools to examine how Roxanne Dunbar-Ortiz's *An Indigenous Peoples' History of the United States* reinterprets American legal history through the lens of Indigenous sovereignty and decolonization.

Critical Legal Theory argues that legal systems are historically and politically constructed and often reproduce existing relations of power (Kennedy, 1976; Unger, 1983). Rather than serving as a neutral arbiter of justice, law legitimizes dominant social, political, and economic interests by presenting them as universal and inevitable.

Within the context of settler colonialism, Critical Legal Theory reveals how American legal doctrines—including property law, sovereignty, and constitutional authority—have historically facilitated the dispossession of Indigenous peoples while legitimizing the territorial expansion of the settler state.

Applied to Dunbar-Ortiz's historical narrative, Critical Legal Theory demonstrates that legal institutions cannot be understood independently of the colonial project they helped sustain.

3.1 Indigenous Critical Theory (IndigenousCrit)

While Critical Legal Theory critiques the ideological foundations of law, Indigenous Critical Theory (IndigenousCrit) extends this critique by centering Indigenous epistemologies, histories, and legal traditions. It argues that colonization remains an ongoing structure shaping political, educational, and legal institutions.

Unlike Western legal theories that often conceive sovereignty as exclusive state authority, IndigenousCrit understands sovereignty as relational, collective, and grounded in reciprocal responsibilities toward land, community, and future generations.

This perspective is particularly relevant to Dunbar-Ortiz's work because her historical account foregrounds Indigenous agency rather than portraying Indigenous peoples merely as victims of colonization.

Through the combined lenses of Critical Legal Theory and Indigenous Critical Theory, the study demonstrates that Indigenous sovereignty is not merely a political claim but an alternative legal paradigm capable of reshaping contemporary debates on justice, governance, and decolonization.

4 REDEFINING GOVERNANCE STRUCTURES

In *An Indigenous Peoples' History of the United States* (2014), Roxanne Dunbar-Ortiz argues that the colonization and dispossession of Indigenous peoples were not peripheral episodes in American history but the structural foundation upon which the United States was built. As she states, "What is called American democracy developed on the basis of a founding genocide and an institutionalized theft of land" (p. 15). From its origins, the United States emerged as a settler-colonial state whose institutions legitimized territorial expansion and the appropriation of Indigenous lands. To examine the role of law in establishing and perpetuating this colonial order, this part is divided into five sections: Colonial law and the foundations of settler colonialism; Constitutionalizing settler sovereignty; Law as an ideological apparatus; Indigenous sovereignty and alternative legal orders; and Decolonizing governance.

4.1 Colonial law and the foundations of settler colonialism

To understand the historical foundations of settler colonialism, it is necessary to examine the legal principles and ideological assumptions that legitimized the occupation of Indigenous lands and the consolidation of colonial authority.

Roxanne Dunbar-Ortiz contends that the legal and ideological foundations of British settler colonialism in North America were laid from the very outset of English colonization. The royal charters granted to colonies such as Virginia and Massachusetts Bay authorized settlers to appropriate so-called "uncultivated" lands under the Doctrine of Discovery inherited from medieval Christian law. By defining Indigenous territories as res nullius, lands without legitimate ownership, this legal framework transformed conquest into a lawful and religiously sanctioned enterprise. Roxanne Dunbar-Ortiz notes that, "the settlers saw themselves as endowed with a quasi-divine mission: to make productive a land perceived as wild and devoid of rights" (p. 45). Thus, from the very beginning, colonial law and British common law functioned as instruments of territorial domination, naturalizing the notion that Indigenous sovereignty could be disregarded.

This interpretation aligns with the critique developed by Robert A. Williams Jr., who, in *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990), demonstrates how the Doctrine of Discovery provided the intellectual and moral foundation for European colonial expansion and, subsequently, for the legitimization of American law. Williams explains that this legal discourse, rooted in medieval Christian theology, served to sacralize the hierarchy between "civilized" and "pagan" peoples, granting the former a divine right to dominate the latter. By bringing together the perspectives of Roxanne Dunbar-Ortiz and Williams, it becomes evident that law did not merely accompany conquest, it was its constitutive instrument, transforming colonial violence into a moral and legal order presented as universal.

With the establishment of the American Republic, this colonial logic persisted and was transformed into a national policy. The newly created institutions, far from breaking with the British imperial framework, instead republicanized it. Congress, the Presidency, and the Supreme Court all contributed to the legal formalization of land theft. The adoption of the Indian Removal Act in 1830 under Andrew Jackson exemplifies this continuity by authorizing the forced displacement of Indigenous nations to the West and thereby legitimizing dispossession through constitutional means. The Supreme Court's decision in Johnson v. M'Intosh (1823) further enshrined the principle that only the United States could hold legal title to Indigenous lands. Roxanne Dunbar-Ortiz confirms that, "the American Republic constituted itself

as a settler-colonial state in which the army and the law worked hand in hand to eliminate Indigenous peoples" (p. 106). Thus, law and politics became complementary instruments in the institutionalization of conquest.

Moreover, the author underscores the decisive role of military institutions in this dynamic. The U.S. Army, she explains, did not initially develop for external wars but rather to secure the internal conquest of the continent. The military campaigns waged against Indigenous nations from the eighteenth to the nineteenth century shaped the structure, doctrine, and culture of the United States Army. Roxanne Dunbar-Ortiz observes that, "the U.S. Army was born as a frontier army, whose primary mission was internal conquest" (p. 120). The militarization of colonization thus reveals the continuity between war, law, and politics as three interconnected instruments aimed at securing territory through the elimination or displacement of Indigenous peoples. These dynamics did not end with military conquest but were subsequently embedded within constitutional and legal frameworks that institutionalized settler sovereignty.

4.2 Constitutionalizing settler sovereignty

The legal consolidation of settler colonialism reached its fullest expression through constitutional law, which transformed the outcomes of conquest into the enduring foundations of state sovereignty and political authority.

Roxanne Dunbar-Ortiz contends that the 1787 Constitution was written in a context where the young Republic's primary goal was to secure the political sovereignty of settlers over the North American continent. From its very founding articles, the constitutional text establishes the legal conditions for an expansionist state. For instance, the clause concerning "commerce with the Indian tribes" (Article I, Section 8) reduces Indigenous nations to mere commercial entities under federal guardianship, denying their political and territorial sovereignty. According to Roxanne Dunbar-Ortiz, this provision made it possible to "confine the Indian question within the administrative rather than the diplomatic sphere," thereby transforming Indigenous nations into internal populations rather than equal powers (p. 95). Thus, the constitutional text does not recognize the plurality of preexisting sovereignties on the continent but instead subordinates them to the exclusive sovereignty of the American state.

Furthermore, Roxanne Dunbar-Ortiz emphasizes that the Constitution provided a legal framework for territorial expansion by embedding the logic of Manifest Destiny within the political structures of the state. The recognition of private property rights and the authority granted to Congress over federal territories served as the legal foundation for westward colonization. This expansion was not an accidental deviation but a constitutive principle of the Republic. Roxanne Dunbar-Ortiz writes that, "the Constitution established a legal apparatus that, under the guise of universal rights, sanctified conquest and dispossession" (p. 102). In other words, the universality proclaimed by the Declaration of Independence and the Constitution implicitly excluded non-European peoples, who were viewed as outside the bounds of citizenship and civilization.

This exclusion, as Gerald Vizenor points out, is not a mere omission but a political fiction designed to legitimize colonial supremacy. In his work, particularly *Manifest Manners: Narratives on Postindian Survival* (1994), Vizenor maintains that the founding myth of America rests on a "narrative absence" through the erasure of Indigenous peoples from the national story, thereby sustaining the illusion of a nation born out of freedom. When read alongside Roxanne Dunbar-Ortiz's analysis, it becomes clear that American universalism, far from being inclusive, was constructed upon a geography of emptiness and an ideology of exclusion, where the "Indian" had to vanish for the "American" to exist.

This contradiction between the universality of rights and colonial particularism also manifests in the racial structure of citizenship. Roxanne Dunbar-Ortiz highlights that the constitutional system was based on a restrictive definition of the sovereign "people," limited to white male property owners. Indigenous nations, enslaved Africans, and women were excluded from the political body, even as the rhetoric of the Founding Fathers invoked the natural rights of all men. This paradox, she argues, demonstrates that American democracy emerged from a dual process in which the emancipation of a colonial minority was accompanied by the subjugation of other peoples. In this sense, the Constitution served to naturalize the colonial order within the very discourse of liberty.

It is clear that the author highlights the role of the executive and military powers, consolidated by the Constitution, in the concrete implementation of territorial expansion. The President, as Commander in Chief, inherited decisive authority in conducting wars against Indigenous nations. From Washington to Jackson, this office was used to militarize territorial conquest. Roxanne Dunbar-Ortiz reminds us that the first federal campaigns were primarily aimed at "pacifying" Indigenous territories—that is, imposing colonial law through force (p. 119). Thus, far from establishing a balance between liberty and justice, the constitutional text provided the legal architecture of an internal empire.

For Roxanne Dunbar-Ortiz, the U.S. Constitution cannot be understood merely as a charter of universal freedoms, but rather as an instrument for institutionalizing settler colonialism. Beneath the veneer of law and democracy, it organized the territorial dispossession of Indigenous peoples and legitimized an endless expansion. By inscribing conquest into the language of law, the Constitution transformed colonial violence into a national project, giving the process of

expropriation lasting moral and political legitimacy. According to Roxanne Dunbar-Ortiz, the constitutional history of the United States is inseparable from a continuous process of dispossession; this is the founding paradox of a nation that, while proclaiming the universality of rights, built its prosperity on the systemic exclusion of Indigenous peoples. Within this logic, courts and legislation, particularly the Indian Removal Act of 1830, enshrined this project by denying the full sovereignty of Native nations, relegating them to the status of "domestic dependent nations," as established by the Supreme Court in Cherokee Nation v. Georgia (1831). Beyond institutionalizing settler sovereignty, colonial law also functioned as an ideological mechanism that shaped public understandings of legitimacy, nationhood, and Indigenous identity.

4.3 Law as an ideological apparatus

Having established the constitutional foundations of settler sovereignty, it is equally important to examine the ideological functions of law, through which colonial domination was normalized, justified, and reproduced across generations.

As Dunbar-Ortiz explains, this doctrine established what she describes as a "manufactured colonial legality," a legal framework specifically designed to rationalize dispossession rather than restrain it. Colonial law therefore became an ideological construction that transformed violence into civilization and conquest into lawful occupation. Rather than limiting political power, legality became one of its principal instruments.

One of the clearest illustrations of this process is the Supreme Court decision in Johnson v. M'Intosh (1823). Chief Justice John Marshall argued that the discovery of America granted ultimate sovereignty to European powers and, subsequently, to the United States. Indigenous peoples retained only a limited right of occupancy while legal ownership belonged exclusively to the American state. By incorporating the Doctrine of Discovery into American jurisprudence, the Court converted conquest into a constitutional principle. As Dunbar-Ortiz observes, American law was built upon the legal fiction that land belonged to those who claimed it "in the name of God and progress." The decision thus transformed colonial appropriation into an apparently legitimate exercise of sovereign authority.

4.4 Indigenous sovereignty and alternative legal orders

While colonial law sought to establish the exclusive authority of the settler state, Indigenous nations maintained distinct legal orders and systems of governance that predated colonization and continue to affirm their inherent sovereignty.

This contradiction reached its clearest expression in Cherokee Nation v. Georgia (1831). Faced with the Cherokee Nation's attempt to challenge the encroachment of the State of Georgia upon its territory, the Supreme Court refused to recognize the Nation as a foreign state entitled to constitutional protection. Instead, Chief Justice John Marshall introduced the doctrine of "domestic dependent nations," defining Indigenous nations as distinct political communities placed under the guardianship of the federal government. Although this doctrine acknowledged the existence of Indigenous nations, it simultaneously denied them full international sovereignty. Native nations were neither independent states nor fully integrated citizens; they occupied an intermediate legal status that subordinated their authority to the American state.

For Dunbar-Ortiz, this doctrine constituted one of the defining moments in the institutionalization of internal colonialism. By transforming sovereign nations into administratively dependent communities, the Supreme Court deprived Indigenous peoples of their capacity to exercise diplomacy, defend territorial rights before international law, or negotiate with other sovereign powers on equal terms. The legal fiction of "domestic dependent nations" therefore became a powerful instrument for reducing Indigenous political autonomy while maintaining the appearance of constitutional legitimacy.

This transformation illustrates the fundamental contradiction at the heart of American democracy. While the United States justified its own independence by invoking the universal principles of liberty and self-determination, it simultaneously denied these principles to the Indigenous nations already inhabiting the continent. As Dunbar-Ortiz observes, "the idea of a sovereign people was constructed in opposition to Indigenous sovereignty" (p. 95). American nationhood therefore emerged not alongside Indigenous political communities but through their systematic exclusion. The sovereignty claimed by the Republic depended upon the denial of competing sovereignties.

Beyond constitutional doctrine, federal policy consistently sought to dismantle Indigenous systems of governance. The General Allotment Act (Dawes Act) of 1887 illustrates this strategy. Presented as a policy of modernization and integration, the Act divided collectively held tribal lands into individual allotments while declaring remaining territories "surplus" and opening them to white settlement. This policy not only facilitated one of the largest transfers of Indigenous land in American history but also undermined the communal political structures upon which Indigenous governance rested. By replacing collective territorial stewardship with individual ownership, the federal government attempted to reshape Indigenous societies according to liberal notions of private property and citizenship.

A similar critique is developed by Glenn Sean Coulthard in *Red Skin*, *White Masks: Rejecting the Colonial Politics of Recognition* (2014). Rejecting what he describes as the "colonial politics of recognition," Coulthard argues that contemporary state recognition often reproduces rather than dismantles colonial relations. Legal recognition granted by the settler state remains conditional upon Indigenous acceptance of state sovereignty and constitutional authority. Consequently, decolonization cannot be reduced to greater participation within existing institutions; it requires the reassertion of Indigenous political autonomy and the revitalization of Indigenous legal traditions independent of colonial frameworks.

4.5 Decolonizing governance

Recognizing Indigenous legal orders as a starting point, the analysis now turns to the broader challenge of decolonizing governance by reconsidering the political and legal foundations upon which the American settler state was constructed.

Roxanne Dunbar-Ortiz maintains that the American nation-building project emerged from the ideological transformation of European colonialism into a political and legal framework that sustained U.S. territorial expansion. In this perspective, legality does not function as a guarantee of justice or equality but as a mechanism through which domination was institutionalized. By tracing this historical continuity, Dunbar-Ortiz exposes the concealed foundations of American law: a legal order that, under the rhetoric of justice and civilization, legitimized the dispossession of Indigenous peoples and elevated territorial conquest to a constitutive principle of the American nation. As she observes, the process of "remodeling institutions" was not simply a matter of establishing new laws; it entailed the refoundation of American democracy upon a political order grounded in private property, settler sovereignty, and the supremacy of European colonists.

Roxanne Dunbar-Ortiz emphasizes that American institutions were not conceived as a radical break from the European colonial model, but as its reinterpretation within a republican framework. The Founding Fathers, while rejecting the British monarchy, preserved the ideological backbone of the colonial world: land belongs to those who "cultivate" and "civilize" it, following Lockean notions of property. In this sense, refounding American democracy entailed redefining citizenship and freedom around land ownership, effectively excluding Indigenous peoples, who were seen as obstacles to territorial development. Property thus became the primary condition for political participation and the right to national existence, transforming democracy into a selective system based on exclusion.

This logic of property is closely intertwined with an ideology of racial supremacy. For Roxanne Dunbar-Ortiz, the purported universality of American democratic principles is constructed upon a racial hierarchy inherited from the colonial world: European settlers embody reason, civilization, and progress, while Indigenous peoples are associated with backwardness and savagery. From this perspective, "remodeling institutions" also meant establishing a political order that guaranteed the perpetuation of white domination and the structural marginalization of other peoples. American democracy, therefore, presents itself not as an inclusive model, but as a political architecture designed to protect the racial and economic privileges of a dominant minority.

By emphasizing this fundamental contradiction, Roxanne Dunbar-Ortiz reveals that American democracy was never conceived for all, but rather to preserve a social order grounded in European supremacy. "Reshaping institutions" thus meant transforming the colonial society into a modern state without abolishing the relations of domination that underpinned it. Behind the myth of egalitarian democracy, the author uncovers a historical reality: that of a nation founded upon dispossession, racial hierarchy, and the sacralization of property as an instrument of power. The educational system, the military, and the national imagination embodied in the frontier myth were all institutionalized to legitimize and normalize the illegality of colonization.

Roxanne Dunbar-Ortiz notes that "colonial legality" finds its foundation in doctrines such as the Doctrine of Discovery, later incorporated into American jurisprudence, which granted the United States sovereignty over Indigenous lands and populations. The law thus appears as a language that conceals the true balance of power, representing the illegitimate appropriation of territories and the marginalization of Indigenous peoples as the natural consequence of history and civilization. Treaties and legislative texts, often presented as fair and consensual, serve to lend an appearance of legitimacy to acts of dispossession that, without this legal framework, would be recognized as crimes.

Through this analysis, Roxanne Dunbar-Ortiz reveals that structural violence—whether military, economic, or cultural—is systematically codified and normalized. By institutionalizing this colonial legality, the American state transforms conquest into an orderly and rational process, erasing the moral and human dimensions of its actions. Legality thus becomes a strategic tool of domination: it enables the control of historical narratives, the naturalization of injustice, and the presentation of colonization as a legitimate political and social order. "Colonial legality" is therefore not merely a legal framework, but an instrument of power and a mechanism for legitimizing violence, revealing the central role of law in the construction of the American nation upon the ruins of Indigenous societies.

This idea resonates with the critique developed by Glenn Sean Coulthard in *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (2014), in which he demonstrates that law and political recognition continue to reproduce colonial relations in modernized forms. According to Coulthard, colonial power no longer manifests itself solely through armed conquest, but through legal and institutional mechanisms that redefine domination in terms of "recognition" or "partnership." In dialogue with Roxanne Dunbar-Ortiz, this perspective underscores that colonial legality does not belong solely to the past; rather, it remains a structuring principle of state modernity, perpetuating the erasure of Indigenous sovereignties under the guise of democratic dialogue and legal progress.

5 ASSERTING INDIGENOUS POLITICAL POWER

The assertion of Indigenous political power constitutes a central dimension of contemporary decolonization. By reaffirming their inherent sovereignty, legal traditions, and rights to self-determination, Indigenous nations challenge the legal and political foundations of settler colonialism. Drawing upon Critical Legal Theory, Indigenous Critical Theory, and the work of Roxanne Dunbar-Ortiz, this chapter examines Indigenous political authority and its role in advancing decolonial governance. It is organized into five sections: Reclaiming Indigenous Sovereignty Beyond Settler Law; Indigenous Legal Orders as Alternative Governance; Resistance as Political and Juridical Practice; Internationalizing Indigenous Self-Determination; and Toward a Decolonial Theory of Indigenous Political Power.

5.1 Reclaiming Indigenous Sovereignty Beyond Settler Law

Any discussion of Indigenous political power must begin by recognizing that Indigenous sovereignty predates the formation of the United States and exists independently of settler legal recognition.

Dunbar-Ortiz illustrates this process through foundational legal doctrines such as Johnson v. M'Intosh (1823), where the Supreme Court recognized Indigenous peoples as possessing only a limited "right of occupancy" while ultimate title remained with the United States. This doctrine did not simply regulate property ownership; it denied Indigenous jurisdiction over their own territories by transforming sovereign nations into occupants of land claimed by the colonial state. Indigenous Critical Theory reveals that such jurisprudence represents a profound legal fiction because sovereignty was not absent prior to colonization but was instead legally erased to legitimize settler occupation.

This legal transformation reaches its clearest expression in Cherokee Nation v. Georgia (1831), where the Supreme Court categorized Indigenous nations as "domestic dependent nations." By assigning Native nations a subordinate constitutional status, the Court did not merely redefine their relationship with the federal government; it fundamentally reconstituted their political identity. Dunbar-Ortiz explains that this doctrine institutionalized colonial domination by denying Indigenous peoples the full exercise of self-determination while preserving federal authority over their territories. From an Indigenous Critical Theory perspective, the decision illustrates how colonial law simultaneously acknowledges Indigenous political existence and deprives it of sovereign authority, producing what may be understood as a legal paradox of recognition without autonomy.

Patrick Wolfe's theory of settler colonialism provides an important framework for understanding why sovereignty occupies such a central place within colonial law. Wolfe contends that settler colonialism is "a structure, not an event," organized around the "logic of elimination." This logic extends beyond physical violence or territorial conquest. Because Indigenous sovereignty represents an enduring alternative source of political legitimacy, it constitutes the principal obstacle to settler claims over land. Consequently, eliminating Indigenous sovereignty becomes a structural necessity for the settler state. Colonial law therefore functions not merely to administer conquered populations but to dismantle Indigenous political orders and replace them with the sovereign authority of the settler state.

5.2 Indigenous Legal Orders as Alternative Governance

The assertion of Indigenous political power extends beyond the recognition of sovereignty to encompass the revitalization of Indigenous legal orders as enduring systems of governance that challenge the presumed universality of settler law.

The colonial restructuring of legal authority was further consolidated through Supreme Court jurisprudence, particularly in Cherokee Nation v. Georgia (1831). As Dunbar-Ortiz explains, the Court classified Indigenous nations as “domestic dependent nations”, thereby denying their status as fully sovereign political communities while simultaneously acknowledging their existence as distinct peoples. This legal category fundamentally altered the constitutional relationship between Indigenous nations and the United States by placing Native governments under federal guardianship.

5.3 Resistance as Political and Juridical Practice

The persistence of Indigenous sovereignty is inseparable from the practices of resistance through which Indigenous nations have defended their lands, political authority, and legal traditions against colonial domination.

This relationship between sovereignty and territory becomes particularly evident in the movement against the Dakota Access Pipeline at Standing Rock. Estes demonstrates that Standing Rock represented the continuation of more than five centuries of Indigenous resistance to settler colonialism rather than a single environmental protest. The slogan "Mni Wiconi—Water Is Life" expressed a political philosophy rooted in Indigenous legal traditions that recognize reciprocal obligations between human communities, water, and the natural world. Resistance at Standing Rock therefore challenged not only a pipeline project but also the colonial legal framework that privileged corporate property rights over Indigenous treaty rights and territorial jurisdiction.

5.4 Internationalizing Indigenous Self-Determination

Indigenous political power has taken on a new dimension through the internationalization of self-determination, which challenges the historical confinement of Indigenous sovereignty within the legal structures of settler states.

Sébastien Grammond further deepens this analysis through his theory of "Indigenous legal pluralism and treaty constitutionalism" (2014). He claims that Indigenous legal traditions possess equal legitimacy alongside common law and constitutional law because they originate from independent political communities whose legal authority predates European settlement. Rather than viewing treaties as instruments through which Indigenous sovereignty was surrendered, Grammond interprets them as constitutional agreements establishing ongoing nation-to-nation relationships based upon mutual recognition and reciprocal obligations. This perspective fundamentally challenges settler constitutionalism by demonstrating that the legal foundations of states such as the United States and Canada cannot be understood independently of Indigenous legal orders that continue to exist despite centuries of colonial domination.

5.5 Toward a Decolonial Theory of Indigenous Political Power

The culmination of Indigenous struggles for sovereignty, legal recognition, and self-determination requires a broader theoretical framework capable of understanding Indigenous peoples not as subjects seeking inclusion within the settler state, but as political nations asserting enduring forms of authority.

Roxanne Dunbar-Ortiz fundamentally challenges the legal and political foundations of the settler-colonial state by rejecting the classification of Indigenous peoples as merely "ethnic minorities" within multicultural societies. Instead, she affirms that Indigenous peoples are sovereign nations whose political, territorial, and legal authority predates the establishment of the United States. This position extends beyond a historical correction; it exposes the colonial assumptions embedded within modern state law and provides the basis for an alternative jurisprudence. Read through the combined lenses of Critical Legal Theory (CLT) and Indigenous Critical Theory (ICT), Dunbar-Ortiz demonstrates that Indigenous sovereignty is not merely a historical claim but a continuing and living legal order that contests the legitimacy of settler colonial sovereignty itself.

Critical Legal Theory indicates that law is never politically neutral but functions to institutionalize existing relations of power. From this perspective, settler colonial law did not simply regulate territorial expansion; it actively produced the legal fiction that Indigenous territories constituted vacant or conquerable lands while transforming colonial occupation into legitimate property. The reduction of Indigenous nations to "ethnic minorities" therefore represents a legal strategy rather than an objective classification. It depoliticizes Indigenous nationhood by relocating Indigenous claims from the domain of international relations and treaty obligations to that of domestic minority rights, thereby subordinating Indigenous legal orders to the exclusive sovereignty of the settler state.

6 CONCLUSION

This work has examined the relationship between law and Indigenous sovereignty through a critical reading of Roxanne Dunbar-Ortiz's *An Indigenous Peoples' History of the United States*, demonstrating that American law has historically functioned as an instrument of settler colonialism, legitimizing Indigenous dispossession and subordinating Indigenous political authority. Drawing on Critical Legal Theory and Indigenous Critical Theory, it has shown how legal institutions transformed colonial violence into legal legitimacy and reinforced settler domination.

However, Indigenous sovereignty remains a living political and legal reality, grounded in distinct legal traditions, governance systems, and relationships with land and community. Indigenous legal orders challenge the exclusive authority of the settler state and invite a reconsideration of sovereignty, justice, and legal pluralism. Genuine

decolonization therefore requires more than institutional reform or state recognition; it demands the acknowledgment of Indigenous self-determination and the legitimacy of alternative legal orders.

Future research could explore Indigenous legal revitalization in Canada, Australia, and New Zealand, as well as the intersections of Indigenous sovereignty, environmental justice, and international human rights law. Ultimately, rethinking legal history through Indigenous perspectives is essential to imagining more just and genuinely decolonial forms of governance.

REFERENCES

[1] Alfred, Taiaiake. *Peace, Power, Righteousness: An Indigenous Manifesto*. 2nd ed., Oxford University Press, 2009.

[2] Araújo, Sara. "Decolonizing Legal Pluralism: Rethinking Law Beyond Eurocentric Hierarchies." *Journal of Legal Pluralism and Unofficial Law*, vol. 56, no. 1, 2024.

[3] Brayboy, Bryan McKinley Jones. "Toward a Tribal Critical Race Theory in Education." *The Urban Review*, vol. 37, no. 5, 2005, pp. 425–446.

[4] Coulthard, Glen Sean. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. University of Minnesota Press, 2014.

[5] Deloria, Vine, Jr. *Custer Died for Your Sins: An Indian Manifesto*. University of Oklahoma Press, 1988.

[6] Dunbar-Ortiz, Roxanne. *An Indigenous Peoples' History of the United States*. Beacon Press, 2014.

[7] Echo-Hawk, Walter R. *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided*. Fulcrum Publishing, 2010.

[8] Estes, Nick. *Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*. Verso, 2019.

[9] Henderson, James (Sákéj) Youngblood. *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society*. Native Law Centre, University of Saskatchewan, 2006.

[10] Horowitz, Leah S. "Law, Power, and Ideology in Settler Colonialism: A Triple Helix." Settler *Colonial Studies*, vol. 11, no. 3, 2021, pp. xx–xx.

[11] Kennedy, Duncan. "Form and Substance in Private Law Adjudication." *Harvard Law Review*, vol. 89, no. 8, 1976, pp. 1685–1778.

[12] United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations, 2007.

[13] Unger, Roberto Mangabeira. *The Critical Legal Studies Movement*. Harvard University Press, 1983.

[14] Vizenor, Gerald. *Manifest Manners: Narratives on Postindian Survivance*. Wesleyan University Press, 1994.

[15] Williams, Robert A., Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford University Press, 1990.

[16] Wolfe, Patrick. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research*, vol. 8, no. 4, 2006, pp. 387–409.

[17] Xavier, Sujith, et al., editors. *Decolonizing Law: Indigenous, Third World and Settler Perspectives*. Routledge, 2021.