

COVID-19, States of Exception, and Indigenous Self-Determination

As the result of the 2020 global COVID-19 pandemic, many countries closed their borders to prevent spreading the coronavirus and to protect their citizens. Some Indigenous Peoples sought to do the same in the name of their self-determination, but in some cases such attempts were strongly opposed by the state authorities. When the Cheyenne River Sioux Tribe and the Oglala Lakota Nation (also known as the Oglala Sioux Tribe) in South Dakota in the United States set up checkpoints onto their lands in an effort to contain the pandemic in their communities, the governor of South Dakota deemed them illegal and ordered them to be taken down immediately.

Conversely, there are a large number of Indigenous Peoples in the world whose territories have been split up by delineating state borders, and they thus felt the pandemic border closures particularly deeply. Among those peoples were the Sámi, whose territories span across present-day Norway, Sweden, Finland, and Russia. Informed by political theory and employing a comparative approach, this chapter asks the question, how do borders during the COVID-19 pandemic relate to the question of Indigenous self-determination? Drawing on Giorgio Agamben's concept of the state of exception as a "space devoid of law," I suggest that borders can serve as a means of either exercising or undermining Indigenous sovereignty, depending on the political status and context of the Indigenous People.

This chapter considers the ways in which Indigenous self-determination is suspended in times of emergency and examines the consequences of that suspension. How do borders on the one hand enact Indigenous self-determination and on the other erode or expose its shaky ground amid the COVID-19 pandemic? The ultimate goal of this chapter is to highlight the multivalence of borders for Indigenous Peoples. Colonial borders have been highly disruptive, but boundary making is not unknown for Indigenous Peoples in the past or present. Indigenous Peoples have had and continue to have their own borders as well as mechanisms to maintain and, in cases of dispute, to arbitrate them.

I have chosen two cases for a closer examination because together they highlight the complex character of borders, remind us of the importance of Indigenous borders, and at the same time expose the volatility of Indigenous self-determination in the state of exception, regardless of the degree of that authority and jurisdiction. The chapter begins by providing an overview of the role of borders in these two cases, first in Scandinavia and then South Dakota. I begin with the border closures in Sápmi, historically and during the current pandemic. Next, I consider the enactment of boundaries by the Cheyenne River Sioux Tribe and the Oglala Lakota Nation as a preventative measure against COVID-19. The chapter concludes with a discussion of the meaning of the suspension of Indigenous self-determination during the state of exception.

The Case of the Sámi

Today, Sápmi is divided by the borders of four nation-states: Norway, Sweden, Finland, and Russia. By far, the Sámi in Russia have been affected the longest by the partition of Sápmi, as they stayed behind the Cold War's Iron Curtain until the 1990s and were denied the same access to interaction and collaboration that the Sámi in the Nordic countries have had since the post-war era, which has made crossing the borders between the Nordic countries relatively easy.¹ Established in 1954, the Nordic Passport Union eliminated passport controls at internal borders of Scandinavian countries, well before the European Schengen agreement in 1985, which abolished internal border controls and currently includes twenty-six European countries.²

The Sámi cultural policy program, adopted by the Sámi Council's conference in 1971, recognizes the Sámi as one people with its own territories, language, and cultural and social institutions. More recently, the Nordic

Sámi Convention, currently under negotiation, is a legislative initiative negotiated between the Sámi and the Nordic countries of Norway, Finland, and Sweden that seeks to strengthen the cross-border interaction of the Sámi people. As an international human rights instrument drafted by an expert working group consisting of Sámi and Scandinavian experts, it aims to affirm and strengthen the rights of the Sámi and minimize the interference of national borders in Sámi society. Among the main measures are harmonizing national legislation in the three Nordic countries and obligating the states to remove obstacles pertaining to citizenship, residence, economic activities, and access to education and health services that may impede the life of the Sámi as one people. The draft Convention was presented to the Nordic governments and the three Sámi Parliaments in 2005, but the negotiations did not commence until 2011. In the final draft released in 2017, the central rights of the Sámi as an Indigenous People have been significantly compromised, and the three Sámi Parliaments agree that the Convention cannot be ratified in its current form and call for further negotiations.³

When the COVID-19 pandemic spread in full force in Europe in March 2020, Norway and Finland, like most European countries, reacted swiftly, issuing lockdown measures and closing down their national borders in mid-March.⁴ In Sápmi, this meant the sudden closure of borders that had hardly been enforced for over sixty years, about the lifetime of most people. Many people in the border regions work or have close family members living on the other side of the border, so the effects of the border enforcement were deeply felt economically, culturally, and personally. Only individuals whose work on the other side of the border was deemed essential were allowed through with documentation from their employer. People's income and access to health services in the Sámi language were at risk. Livelihoods in the service sector and traditional livelihoods such as reindeer herding and handicrafts were hit particularly hard. Community and family relations were unexpectedly suspended, as were all forms of cross-border collaboration of Sámi institutions, for an unspecified time.⁵

The Deatnu River Valley is one of the regions in Sápmi where the international boundary has split a closely knit and historically, economically, and culturally continuous Sámi community across two nation-states, Norway and Finland. The river was made into a border in the first boundary delineation in Sápmi in 1751. Only in the early twentieth century, however, the international border was felt more strongly as Norway and Finland obtained independence (in 1904 and 1917, respectively) and a range of legislative and

political agreements between the two newly established states enforced single-nation citizenship for Sámi along the Deatnu River.⁶

Upon further tightening of the border restrictions in April 2020, many Sámi in the Deatnu Valley were concerned on a daily basis whether they would be allowed to cross the border to go to work and, if not, whether they were eligible for social security benefits in either country. A Sámi man operating a business on one side of the border and living on the other noted that he might have to take bedding with him to work and camp in the premises of his business until the borders opened again.⁷ Another man noted the inconsistency of the situation by pointing out that one cannot visit relatives in the neighboring town but is allowed to travel to Southern Finland where the caseload was much higher.⁸ A Sámi woman, whose mother is in her seventies and lives on the other side of the border, recounted her experiences after the border was shut:

I have been very worried of my mom who lives alone along the river. For months I wasn't able to visit her. When I noticed how the isolation was impacting her mental health, I was compelled to break the lockdown rules in order to visit her. I couldn't leave her on her own for several months and only talk to her on the phone and hear she's not doing well. On several occasions, we met at the border. It was very surreal, like we were in a movie. We were standing and talking on a parking lot near a border while four border patrol and police officers were supervising a few meters away. For mom, it was very distressing and she said it's like in the war.⁹

The woman herself expressed feelings of worry, fear, anger, and frustration — worry about her mother, fear of getting caught and fined for breaking the lockdown rules, and fear for her reputation in case she was caught. She experienced anger toward the state authorities for considering the distinct circumstances in different parts of the country.¹⁰ She called for a more nuanced approach — that as long as there were no COVID infections in the north, it would have not required to close the national borders, but, instead, the borders of certain municipalities or regions could have been closed.¹¹ Because there were no regional lockdowns domestically except in a few time-limited cases, countless southern owners of holiday cabins flocked to the northern parts of the Scandinavian countries to escape the pandemic, potentially exposing Sámi communities to the virus.

When the border between Norway and Finland was partly opened in mid-May 2020, there was a collective sigh of relief in Sápmi.¹² Amid the concerns

of the second wave in September, the borders were closed again, but this time it was done in a much more measured way that sought to account for the circumstances of Sámi society and communities, such as excluding permanent residents of the border municipalities from the border enforcement. The situation and the specific regulations, however, kept changing almost weekly, making it difficult to keep up with the most recent requirements and recommendations.

The Case of the Cheyenne River Sioux Tribe and Oglala Lakota Nation

As the global pandemic spread around the world, many Indigenous societies sought to close their own borders to prevent the virus from entering their communities. In Canada, for example, the Chiefs of Ontario encouraged their member First Nations to limit access to their communities, and the Eskasoni First Nation in Nova Scotia imposed restrictions on movement that were more stringent than those of the province.¹³ Closing Indigenous communities in various countries, however, proved challenging for a number of reasons, including non-Indigenous people willfully ignoring restrictions as well as the mobility of the community members.¹⁴ Among the Indigenous communities closing their borders were the Cheyenne River Sioux Tribe and Oglala Lakota Nation in South Dakota, who, in early April 2020, erected several checkpoints on roads to their reservations as part of their emergency response to curtail the spread of COVID-19. The basis of the checkpoints was to limit the entry of nonessential travelers and to monitor the visitors in their territories for the purposes of contact tracing in a context in which South Dakota was one of the national hot spots for the pandemic.¹⁵

Like those of many other Indigenous Nations in the United States, the tribal leaders in South Dakota sought to protect their citizens and residents from the potentially destructive effects of the pandemic in communities characterized by long-standing, dire socioeconomic, healthcare, and infrastructure inequalities and disparities due to persistent underfunding by the federal government.¹⁶ In early May, there was a COVID crisis unfolding in the Navajo Nation in New Mexico, which had the third highest per capita infection rate after New York and New Jersey and only a minuscule budget to deal with the large-scale outbreak.¹⁷ The outbreak was so severe that the state's Riot Control Act was invoked to close all roads to the town of Gallup

at the edge of the Navajo Nation, which serves as a hub for the Navajo and nearby Hopi pueblos.¹⁸

In South Dakota, the state governor opposed the Cheyenne River Sioux's and the Oglala Lakota's pandemic protection measures and threatened to sue them if the checkpoints were not promptly removed. According to the governor, the tribes failed to consult the state authorities, and thus, their traffic restrictions infringed on state and federal powers. The tribes, however, are sovereign nations, recognized by the US Supreme Court, beginning with the Marshall court's decisions of the 1830s and subsequently upheld—and also curtailed—by other Supreme Court decisions.¹⁹ This sovereignty was emphasized in a statement by seventeen South Dakota congressmen issued as a response to the governor's ultimatum, from which the governor backed down. The congressmen's letter noted that the state has no jurisdiction within the reservation boundaries. Referring to the 1851 and 1868 Fort Laramie Treaties, it mentioned that the governor was mistaken to argue that the tribes are not allowed to establish checkpoints within their territories.²⁰ Notwithstanding common disputes of authority over roads between tribal, state, and federal governments, the letter cites a specific ruling from 1990 stating that the state of South Dakota has no jurisdiction over highways through tribal territories without the tribe's consent.²¹

In May 2020, the governor sought a compromise, suggesting to the two nations that checkpoints on tribal and Bureau of Indian Affairs roads are acceptable, but not on state and US highways.²² The two tribes refused to close the checkpoints, arguing that in the absence of state-mandated procedures, their tribal pandemic protection measures are necessary.²³ In the words of the Cheyenne River Sioux tribal chairman, Harold Frazier, the situation “obligates us to protect everyone on the reservation regardless of political distinctions. We will not apologize for being an island of safety in a sea of uncertainty and death.”²⁴ In June 2020, the Cheyenne River Sioux tribe filed suit against President Trump in Federal District Court for the District of Columbia, asking the court to disallow federal and state officials from removing the tribe's checkpoints and withholding federal funding for the tribal police force.²⁵ According to one of the tribe's lawyers, Nicole E. Ducheneaux, the Trump administration was preventing the Cheyenne River Sioux from exercising their sovereignty in the name of the health and safety of their community.²⁶

The lawsuit suggests that the White House and Bureau of Indian Affairs are “pursuing a political agenda that is not only threatening our lives during

this pandemic, but it is a gross violation of the United States' solemn trust duty to the Tribe," according to Ducheneaux. The press release concludes with Ducheneaux noting that as long as the COVID-19 pandemic threatens the tribal nation, "the Tribe will exercise its sovereign authority to the fullest extent to protect its tribal citizens. We have faced pandemics and we have faced fights with the United States before. We know how to fight and we know to protect ourselves."²⁷ To a great extent, the tribes' approach worked: in spite of a grave shortage of resources, the cases per capita in the two tribes remained considerably lower than that of the state of South Dakota, which, in late October 2020, had the second highest per capita rate of all states.²⁸

Borders and Indigenous Self-Determination: *Siida* Boundaries and "Domestic Dependent Nations"

The significance of Indigenous borders in issues of self-determination cannot be overstated, yet the fact is often overlooked in considerations of Indigenous political authority. Some scholars suggest that the control over a specific territory "should not be viewed as a normative precondition for self-government, self-determination or nationhood."²⁹ Others argue the opposite and maintain that "any regime of political autonomy requires a jurisdictional boundary" and that "no meaningful political autonomy is possible without a distinct territorial base for the population."³⁰ Without a jurisdictional boundary, some scholars submit, Indigenous autonomous institutions are merely symbolic in substance.³¹ The right to collective self-determination *and* to traditional territories is at the core of international law that separates Indigenous Peoples from minorities, whether national, ethnic, religious, or linguistic.

Notwithstanding the fact that jurisdictional boundaries seem to presume distinct geographies and territories, there are a number of examples, particularly in Indigenous North America, of traditions and conventions of sharing of territory while maintaining distinct political authorities and sovereignties.³² The most well-known is the Dish with One Spoon Wampum Belt Covenant, an agreement between the Haudenosaunee Confederacy, the Anishinaabeg, and allied nations that provided for peaceably sharing and caring for the hunting territories and resources around the Great Lakes. In some contexts, exclusive sovereignty has been the outcome of settler colonialism upon Indigenous political orders.³³ In others, clearly demarcated boundaries between autonomous Indigenous polities have been a central characteristic

of the political order, such as the Sámi *siida* system. These and other examples demonstrate the great variation of Indigenous traditions and practices of sovereignty and the role of borders.

Prior to settler colonialism, Sápmi was governed through a *siida* system, a networked structure of local autonomous areas comprising a small number of extended Sámi families and their territories. Each *siida* had a council and many also had a dispute-resolution mechanism. *Siida* boundaries were carefully demarcated, and in cases of disputes or noncompliance, *siidas* often employed the court system to resolve the disagreement. Delineation and changing of colonial borders together with legislative and administrative impositions eroded the *siida* governance, fracturing the *siida* territories and eventually leading to the demise of the system.

One of the oldest existing political borders in Europe was delineated in the 1751 Strömstad Peace Accord by the kingdoms of Denmark and Sweden, splitting through Sápmi.³⁴ The accord contained an addendum called the Lapp Codicil that recognized Sámi nationhood and the transboundary rights of the Sámi to enable the continuation of their livelihoods. The Codicil also included provisions on Sámi internal autonomy, citizenship, and taxation. The conflict in and competition over Sápmi, however, intensified in the nineteenth century, resulting in new border closures and ever-growing restrictions on Sámi transborder movement.

In North America, Indigenous Nations existed as territorially sovereign polities that negotiated treaties with other Indigenous Nations as well as the settler colonial representatives. In the United States, the sovereign status of tribal nations was simultaneously recognized and curtailed by Supreme Court decisions in the nineteenth century known as the Marshall Trilogy in which tribes were classified as “domestic dependent nations.” In the 1970s, the Indigenous self-determination movement gained new momentum, and tribal self-determination became the federal policy, enabling tribal nations to manage their own affairs within their jurisdictions. The 1975 self-determination legislation was augmented in 1994 by the Tribal Self-Governance Act, which, according to some, marked the beginning of the retribalization of Native American government.³⁵ Tribal sovereignty, however, can and has been curtailed by congressional plenary power according to which Congress may restrict, amend, or even abolish tribal powers, including terminating the federal tribal status.³⁶ Still, Indigenous Nations in the United States have considerably greater control over their own affairs than in Canada, where policymaking and service delivery are still largely under federal control.³⁷

The Complex Character of Borders

The two cases studied in this chapter demonstrate that borders are not exclusively settler colonial constructs. As colonial impositions, they have been deeply destructive, but borders are also necessary for asserting Indigenous self-determination. In the context of COVID, exerting borders was a tool of self-determination and sovereignty for the Cheyenne River Sioux and the Oglala Lakota. For the Sámi, however, borders became a painful daily reminder of the lack of recognition of Sámi self-determination and the colonial presence/present and reach of the state, with its tools of governmentality. It poignantly demonstrated the absence of meaning and significance of the Sámi practices of bordering.

What is more, there is a pronounced difference between Indigenous and settler colonial borders, which has become ever more evident during the pandemic: whereas the existence of state borders is taken for granted, Indigenous borders are persistently disputed and objected to. In the case of COVID-19, border closures by states were generally viewed as inconvenient but necessary emergency measures, while Indigenous border closures for the same reason were called into question or deliberately breached. Indigenous restrictions were snubbed, notwithstanding that for many Indigenous communities lacking the resources and capacity to respond to a COVID-19 outbreak, closing borders was their only line of defense against the spread of the virus.³⁸

Borders existed as important structures of demarcation and territorialization well before the encroachment of the imperial powers and demarcation of state borders. In the case of Sápmi, borders existed in the form of well-established and maintained *siida* boundaries. As the *siida* borders have never been annulled, contemporary circumstances in Sápmi resemble a palimpsest: the current structure of international boundaries exists as an overlay on an earlier, largely forgotten system of territorial demarcation that was, in addition to the *siida*'s own institutions, upheld by the colonial court system of the Swedish Crown.³⁹ Today, the *siida* borders play no role in Sámi governance, except in reindeer herding. Yet they continue to exist in the landscape, marked by carefully crafted columns of stones erected hundreds of years ago after a painstaking process of *siida* negotiations and surveying the territories.

The COVID-19 pandemic threw the complex character of borders globally into sharp relief. As states of emergency were declared nationally, regionally, and locally, a range of borders were closed, and the movement of

people was restricted on an unprecedented scale. In the case of the Cheyenne River Sioux and the Oglala Lakota Nation, borders were shut to each reservation because of the lack of adequate emergency measures at the state level in South Dakota. Yet asserting the territorial boundaries in the name of preventing a large-scale spread of the virus in their communities was challenged by the same state authorities who failed to protect their own people from the pandemic.

In considering tribal borders, we must not forget that the present-day reservations and their boundaries are creations of settler colonialism and a far cry from the breadth of Indigenous Nations' traditional territories. Dispossession of Indigenous lands in the United States goes back to the Indian Wars that began in the seventeenth century, augmented by treaties and legislation such as the 1887 General Allotment Act and 1934 Indian Reorganization Act. In the Plains, the Lakota and Nakota peoples had, in 1868, secured the Great Sioux Reservation in the Second Treaty of Fort Laramie that comprised half of the present-day state of South Dakota. The large territory, however, was soon fractured and carved up into six smaller reservations by a congressional act in 1889.⁴⁰

Today, both the Cheyenne River Sioux and Oglala Lakota Nation reservations are highly "checkerboarded" due to their history of allotment, with many non-Indigenous residents holding fee simple lands and leasing lands within the boundaries of the reservations. Regardless, today's reservations are considered "homelands of a sort," forming the hearts of Indigenous Nations.⁴¹ Accordingly, contemporary reservation borders carry significant social, political, cultural, and jurisdictional weight, not least because within their bounds Indigenous Nations continue to practice their sovereign authority and self-determination powers. Yet both borders and sovereignty within those borders are under constant attack by the settler state and its institutions.

Suspension of Indigenous Self-Determination in Times of Exception

The global COVID-19 pandemic exposed the tenuousness of Indigenous self-determination and its foundations within the framework of national and international law. Declaring a state of emergency in the name of the public health crisis, states suspended their established policies and practices to enable the exercise of Indigenous self-determination. In places such as

the United States, tribal sovereignty was called into question in exceptional ways, and in Scandinavia, the Sámi people's right to self-determination was not taken into account when the decisions on border closures were made in national legislatures.

Conditions of emergency implicate a state of exception, which, for Agamben, implies the indefinite suspension of law that creates a “zone of anomie,” the disappearance of the usual social norms.⁴² Yet suspension does not mean abolishing the underlying norms. Rather, it implies the creation of a space devoid of law that enables the decrease of constitutional and other rights of individuals and groups. Agamben disagrees with conflating the state of exception with dictatorship, noting that the state of exception “is not defined as a fullness of powers . . . but . . . an emptiness and standstill of the law.”⁴³ According to him, the difference between totalitarianism and democracy is thinner than argued by Carl Schmitt, and the deployment of the state of exception much more common than we tend to think.⁴⁴

It is the sovereign, Agamben suggests, who declares the state of exception. This is exactly what the Cheyenne River Sioux and Oglala Lakota did, based on their tribal sovereign status. In the absence of adequate measures by the state or federal governments, they exercised their sovereignty and exerted their own state of exception. In the case of the Sámi, the state of exception was unilaterally deployed by the Nordic states, implicitly and explicitly denying Sámi sovereignty. Only after concerted efforts by Sámi political bodies was the state of exception, in the form of firm border closures, then adjusted—something that could be read as state recognition of the residual Sámi sovereignty (although it was never discussed in terms of sovereignty or self-determination).

The state of exception declared in the wake of the COVID pandemic, however, also suspended Indigenous sovereignty or self-determination on two critical counts. It enabled the disregard of central norms of international law and the attack on the sovereign powers of polities considered “less” (less sovereign, less legitimate, less important)—that is, Indigenous Nations. International treaties and norms, such as International Labour Organization Convention 169, Article 32, and UN Declaration of the Rights of Indigenous People, Article 36, recognize the utmost significance of cross-border relations and interaction for peoples straddled on and divided by nation-state boundaries. Yet the state of exception allowed states to disregard these provisions, disrupting and harming Indigenous communities located across colonial, nation-state borders. The border closures between the Nordic countries

disrupted both daily life and Sámi political, cultural, and economic cooperation in an unparalleled manner. The Sámi people were harshly reminded of the fragile nature of the already-limited Sámi self-determination, established cross-border cooperation arrangements, and practices.

In the United States, regardless of the federally recognized sovereign authority that “includes the right to promote and protect the health and welfare of their communities,” the sovereignty of Indigenous Nations was challenged, scrutinized, and repudiated by state and federal authorities.⁴⁵ Once again, the limitations of tribal sovereignty were exposed—not only with regard to the right to erect checkpoints on roads leading to Indigenous communities but also more broadly in terms of the tribal governments’ ability to respond to major public health crises. The existing legislation and economic and political systems are neither capable nor inclined to address the deep-seated structural inequalities or the inadequacy of healthcare resources combined with the relatively high occurrence of preexisting conditions among community members that have left Indigenous Nations more vulnerable to pandemics.⁴⁶

The suspension of Indigenous self-determination in the name of a global health emergency may at first seem to be a temporary aberration. As Agamben reminds us, however, the state of exception is not an anomaly but very much in line with the established order. In short, with regard to Indigenous self-determination, the state of exception is not so much an interruption as it is a continuation of settler colonial policy and practice. On the other hand, Indigenous self-determination has gained new traction in cases where Indigenous Peoples took their own innovative measures and decisions and acted on them rather than waited for government action, even if they went against the official response. This was certainly the case in the Cheyenne River Sioux and the Oglala Lakota Nation in South Dakota—though arguably they were not doing anything extraordinary, simply exercising their normal jurisdictional authorities—and also in Indigenous communities with a much smaller degree of sovereignty, such as in Australia.⁴⁷

Conclusion

This chapter examined borders and their function in relation to Indigenous self-determination in the context of the most recent global pandemic, COVID-19. I focused on two distinct cases: that of the Sámi people in Scandinavia, whose

territories are divided by four international boundaries, and two Indigenous Nations in South Dakota in the United States. I argued that the state of exception revealed the vulnerability not only of Indigenous communities but also of Indigenous self-determination. Following Agamben, I maintain that the state of exception is not a deviation from the established practice but an extension of settler colonial practices seeking to eliminate Indigenous Peoples.

Further, the chapter raised four key issues with regard to borders and Indigenous Peoples. First, any consideration of Indigenous Peoples and borders must include a discussion of the significance of Indigenous borders for implementing and exercising Indigenous sovereignty and self-determination. Without jurisdictional boundaries, there is no political autonomy. Having said that, besides illustrating the complexity and polyvalence of borders for Indigenous Peoples, this chapter demonstrated the heterogeneity of Indigenous forms of jurisdiction and border practices.

Second, the global COVID-19 outbreak demonstrated the need for borders but also showed that, without heeding the existing sovereignties and established norms and practices of Indigenous self-determination, border closures invariably undermine Indigenous societies and advance settler colonialism.

Third, global crises and the subsequent creation of states of exception painfully demonstrate the contingent nature of Indigenous self-determination within the settler colonial presence. This response to crises impacts even those Indigenous Nations with a considerable degree of sovereignty and jurisdictional powers over their own matters, but it is particularly damaging to those with limited self-government authority.

Fourth, Indigenous Peoples with governance authority and jurisdiction are in a better position to protect their communities and citizens through operationalizing their self-determination.

Finally, more work is needed to understand and appreciate Indigenous borders and border practices, past and present. A particularly generative area of study would be the relationship between Indigenous practices of border enactment, governance, and legal orders. Examples, such as the Unist'ot'en Action Camp for the Wet'suwet'en in British Columbia, where Indigenous People have implemented and operationalized their own laws and governance in exercising their border practices, give rise to interesting and important questions about enacting Indigenous borders and its meaning for self-determination and sovereignty.

Notes

1. Henriksen, *Saami Parliamentary Co-operation*.
2. In the 1980s, there was a brief period when Norway and Finland issued permits to local Sámi in the Deatnu River Valley with which they were allowed to cross the border (in most cases, the river) anywhere they wanted rather than only at the official border crossing points. Very few Sámi cared to apply for such a permit and it was soon discontinued.
3. It should be noted that several legal scholars considered the previous draft a groundbreaking instrument in international law as well as a global example of good practice of Indigenous rights. See Åhrén, “Saami Convention,” 36; Scheinin, “Rights of an Individual”; Koivurova, “Draft Nordic Saami Convention,” 292; Fitzmaurice, “New Developments,” 126.
4. Sweden approached the pandemic very differently than most other European countries did, with no general lockdown and with a focus on mitigation and so-called herd immunity. The COVID-19 infection rate and deaths in Sweden were considerably higher than neighboring Finland and Norway, which had stricter measures.
5. There are a number of cross-border enterprises, such as a joint school in the Deatnu Valley and a range of special Sámi-language healthcare facilities that operate on the Norwegian side of Sápmi but admit Sámi clients and patients from Finland and Sweden as well. With the pandemic border enforcement, access to sometimes critical health services, such as mental healthcare in the Sámi language, has been denied to Sámi living elsewhere than Norway.
6. Müller-Wille and Aikio, “Deatnu.” I discussed the long-lasting relative insignificance of the border along Deatnu in the introduction of Kuokkanen, *Reshaping the University*.
7. Susanna Guttorm, “Tero Paltto Lea Ráhkkanan Páhkket Bolstara Fárrui Bargui—Suopma Lea Čavgen Otné Rádjajohtima Ruota Ja Norgga Rájáid Alde,” *Yle Sápmi*, April 7, 2020, https://yle.fi/uutiset/osasto/sapmi/tero_paltto_lea_rahkkanan_pahkket_bolstara_farrui_bargui_suopma_lea_cavgen_otne_radjajohtima_ruoa_ja_norgga_rajaid_alde/11295526.
8. Kaija Länsman and Linnea Rasmus, “Rádjebargit Ballet Iežaset Láibbi Ovddas, Jus Suopma Čavge Rájáid—Marjo Paltto: ‘Juohke Iđit Lea Eahpesihkkar, Beaságo Šat Bargui,’” *Yle Sápmi*, April 3, 2020, https://yle.fi/uutiset/osasto/sapmi/radjebargit_ballet_iezaset_laibbi_ovddas_jus_suopma_cavge_rajaid_marjo_paltto_juohke_iit_lea_eahpesihkkar_beasago_sat_bargui/11288232.
9. Personal communication, September 27, 2020.
10. In the Deatnu Valley, there were very few cases of COVID-19 diagnosed in spring 2020. In both countries, most infections were in the southern regions.
11. Personal communication, September 27, 2020.
12. Due to Sweden’s very different approach to the pandemic, the border to Sweden stayed closed longer and with more restrictions for crossing.
13. “Ontario Regional Chief Encourages First Nation Communities to Close Borders,” CBC News, March 26, 2020, <https://www.cbc.ca/news/canada/sudbury/ontario>

- regional-chief-covid-19-1.5511167; Wendy Martin, “Eskasoni Imposes Curfew, Erects Barricades to Prevent Spread of COVID-19,” CBC News, March 25, 2020, <https://www.cbc.ca/news/canada/nova-scotia/eskasoni-first-nation-curfew-barricades-1.5509979>.
14. Dirk Meissner, “Quebec Couple Who Fled to Remote Indigenous Community to Avoid COVID-19 Sent Back: Chief,” Global News, March 31, 2020, <https://globalnews.ca/news/6758430/coronavirus-quebec-couple-indigenous-yukon/>; Chonon Bensho and Pedro Favaron, “Pandemic Perspectives: The Peruvian Shipibo-Konibo People’s Response,” *Terralingua*, August 5, 2020, <https://terralingua.org/2020/08/05/pandemic-perspectives-the-peruvian-shipibo-konibo-peoples-response/>; Mauricio Savarese, “Indigenous Protesters Block Highway in Brazil to Demand COVID-19 Protection,” AP News, August 17, 2020, <https://apnews.com/article/virus-outbreak-caribbean-lifestyle-latin-america-international-news-26d0cf5154149296519df383c9f178a2>.
 15. Nina Lakhani, “South Dakota Governor Threatens to Sue over Sioux’s Coronavirus Roadblocks,” *Guardian*, May 14, 2020, <https://www.theguardian.com/us-news/2020/may/14/sioux-coronavirus-roadblocks-south-dakota-governor>; Pam Louwagie, “South Dakota under Fire for Stance on Fighting COVID-19,” *Star Tribune*, April 24, 2020, <https://www.startribune.com/south-dakota-s-stance-on-fighting-covid-19-draws-criticism/569897642/>.
 16. According to a National Congress of American Indians report, the federal government “has never adequately funded [the] treaty provisions” found in many treaties signed in the nineteenth century, including healthcare, education, housing, and economic development. National Congress of American Indians, *Tribal Nations and the United States*, 16. For example, many reservation households are overcrowded and lack basic necessities such as running water and electricity.
 17. Nina Lakhani, “Navajo Nation Reels under Weight of Coronavirus — and History of Broken Promises,” *Guardian*, May 8, 2020, <https://www.theguardian.com/world/2020/may/08/navajo-nation-coronavirus>.
 18. Simon Romero, “New Mexico Invokes Riot Law to Control Virus Near Navajo Nation,” *New York Times*, May 4, 2020, <https://www.nytimes.com/2020/05/04/us/coronavirus-new-mexico-gallup-navajo.html>.
 19. See Wilkins, *American Indian Sovereignty*.
 20. Alaina Beautiful Bald Eagle, “State Legislators to Noem — State Has No Jurisdiction over the Highways Running through Indian Lands, Cite 1990 Ruling,” *West River Eagle*, May 10, 2020, <https://www.westrivereagle.com/articles/breaking-state-legislators-to-noem-state-has-no-jurisdiction-over-the-highways-running-through-indian-lands-cite-1990-ruling>.
 21. Crepelle and Murtazashvili, “COVID-19”; Beautiful Bald Eagle, “State Legislators to Noem.” See also Tweedy, “Validity of Tribal Checkpoints.”
 22. Chris Boyette and Jason Hanna, “South Dakota’s Governor Will Allow Checkpoints on Tribal Roads, but Not State Highways in a Possible Compromise,” CNN,

- May 13, 2020, <https://edition.cnn.com/2020/05/13/us/south-dakota-sioux-tribes-checkpoints/index.html>.
23. Kalen Goodluck, "Tribes Defend Themselves against a Pandemic and South Dakota's State Government," *High Country News*, October 2, 2020, <https://www.hcn.org/articles/indigenous-affairs-covid19-tribes-defend-themselves-against-a-pandemic-and-south-dakotas-state-government>.
 24. Harold Frazier, "Statement on Governor Kristi Noem Letter Regarding Health Checkpoints on Reservation," news release, May 8, 2020.
 25. Big Fire Law and Policy Group LLP, "Tribe Fights Back against Retaliation for Protecting People from COVID-19 Pandemic in Suit against President and Federal Officials," news release, June 23, 2020, <https://www.bigfirelaw.com/tribe-fights-back-against-retaliation-for-protecting-people-from-covid-19-pandemic-in-suit-against-president-and-federal-officials/>.
 26. Mark Walker and Emily Cochrane, "Tribe in South Dakota Seeks Court Ruling over Standoff on Blocking Virus," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/us/politics/coronavirus-south-dakota-tribe-standoff.html>.
 27. Big Fire Law and Policy Group, "Tribe Fights Back." As of this writing, the lawsuit is underway.
 28. Florey, "Toward Tribal Regulatory Sovereignty"; Statista, "Rate of Coronavirus (COVID-19) Cases in the United States as of October 30, 2020, by State (Per 100,000 People)," <https://web.archive.org/web/20201101004856/https://www.statista.com/statistics/1109004/coronavirus-covid19-cases-rate-us-americans-by-state/>.
 29. Dubois, "Beyond Territory," 1.
 30. Sanders, "Is Autonomy a Principle of International Law?," 20.
 31. Bauböck, "Territorial or Cultural Autonomy?"; Coakley, "Conclusion."
 32. See, for example, Drake and Gaudry, "Lands . . . Belonged to Them"; Wildcat, "Weaving Our Authority Together."
 33. Wildcat, "Replacing Exclusive Sovereignty."
 34. Müller-Wille and Aikio, "Deatnu."
 35. Johnson and Hamilton, "Self-Governance for Indian Tribes."
 36. See Coulter, "Denial of Legal Remedies"; and Wilkins, "U.S. Supreme Court's Explication."
 37. Borrows, *Freedom*.
 38. Leonard, "Medicine Lines," 165.
 39. Korpijaakko, *Saamelaisten Oikeusasemasta Ruotsi-Suomessa*.
 40. Ostler, *Plains Sioux*.
 41. Simpson, *Mohawk Interruptus*, 16.
 42. Agamben, *State of Exception*, 50–51.
 43. Agamben, *State of Exception*, 48.
 44. He argues that "the state of exception has today reached its maximum deployment" (Agamben, *State of Exception*, 87). Agamben's examples range from Hitler's Nazi rule of Germany to the detainment camps of Guantanamo Bay and Italian Bari.
 45. Hoss and Tanana, "Upholding Tribal Sovereignty."

46. Crepelle and Murtazashvili, "COVID-19."
47. Smith, "Governing the Pandemic."

Bibliography

- Agamben, Giorgio. *State of Exception*. Translated by Kevin Attell. Chicago: University of Chicago Press, 2005.
- Åhrén, Mattias. "The Saami Convention." *Gáldu Čála — Journal of Indigenous Peoples Rights*, no. 3 (2007): 8–39.
- Bauböck, Rainer. "Territorial or Cultural Autonomy for National Minorities?" In *The Politics of Belonging: Nationalism, Liberalism, and Pluralism*, edited by Alain Dieckhoff, 221–58. Lanham, MD: Lexington Books, 2004.
- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016.
- Coakley, John. "Conclusion: Patterns of Non-territorial Autonomy." *Ethnopolitics* 15, no. 1 (2016): 166–85.
- Coulter, Robert T. "The Denial of Legal Remedies to Indian Nations under United States Law." *American Indian Journal* 3 (1977): 5–11.
- Crepelle, Adam, and Ilia Murtazashvili. "COVID-19, Indian Reservations, and Self-Determination." Mercatus COVID-19 Response Policy Brief Series. Arlington, VA: Mercatus Center at George Mason University, July 2020.
- Drake, Karen, and Adam Gaudry. "The Lands . . . Belonged to Them, Once by the Indian Title, Twice for Having Defended Them . . . and Thrice for Having Built and Lived on Them': The Law and Politics of Métis Title." *Osgoode Hall Law Journal* 54, no. 1 (Fall 2016): 1–52.
- Dubois, Janique. "Beyond Territory: Revisiting the Normative Justification of Self-Government in Theory and Practice." *International Indigenous Policy Journal* 2, no. 2 (2011): Article 1. <https://doi.org/10.18584/iipj.2011.2.2.1>.
- Fitzmaurice, Malgosia. "The New Developments Regarding the Saami Peoples of the North." *International Journal on Minority and Group Rights* 16, no. 1 (2009): 67–156. <https://doi.org/10.1163/157181109X394380>.
- Florey, Katherine. "Toward Tribal Regulatory Sovereignty in the Wake of the COVID-19 Pandemic." *Arizona Law Review* 63, no. 2 (2021): 399–437.
- Henriksen, John B. *Saami Parliamentary Co-operation: An Analysis*. Translated by Marie Bille. Guovdageaidnu: Nordic Sámi Institute, 1999.
- Hoss, Aila, and Heather Tanana. "Upholding Tribal Sovereignty and Promoting Tribal Public Health Capacity during the COVID-19 Pandemic." University of Utah College of Law Research Paper No. 391. Originally published in *Assessing Legal Responses to COVID-19*, edited by Scott Burris, Sarah de Guia, Lance Gable, Donna E. Levin, Wendy E. Parmet, and Nicholas P. Terry, 77–82. Boston: Public Health Law Watch, 2020.
- Johnson, Tadd M., and James Hamilton. "Self-Governance for Indian Tribes: From Paternalism to Empowerment." *Connecticut Law Review* 27, no. 4 (1995): 1251–80.

- Koivurova, Timo. "The Draft Nordic Saami Convention: Nations Working Together." *International Community Law Review* 10, no. 3 (2008): 279–93. <https://doi.org/10.1163/187197308X346814>.
- Korpijaakko, Kaisa. *Saamelaisten Oikeusasemasta Ruotsi-Suomessa: Oikeushistoriallinen Tutkimus Länsi-Pohjan Lapin Maankäyttöoloista Ja-Oikeuksista Ennen 1700-Luvun Puoltaväliä*. Helsinki: Lakimiesliiton kustannus, 1989.
- Kuokkanen, Rauna. *Reshaping the University: Responsibility, Indigenous Epistemes, and the Logic of the Gift*. Vancouver: University of British Columbia Press, 2007.
- Leonard, Kelsey. "Medicine Lines and COVID-19: Indigenous Geographies of Imagined Bordering." *Dialogues in Human Geography* 10, no. 2 (2020): 164–68.
- Müller-Wille, Ludger, and Samuli Aikio. "Deatnu. River United, River Divided: Living with the Border in Ohcejohka, Sápmi." In *The North Calotte: Perspectives on the Histories and Cultures of Northernmost Europe*, edited by Maria Lähteenmäki and Päivi Maria Pihlaja, 40–53. Inari, Finland: Kustannus Puntsi, 2005.
- National Congress of American Indians. *Tribal Nations and the United States*. Washington, DC: Embassy of Tribal Nations, January 2015.
- Ostler, Jeffrey. *The Plains Sioux and U.S. Colonialism from Lewis and Clark to Wounded Knee*. Cambridge: Cambridge University Press, 2004.
- Sanders, Douglas. "Is Autonomy a Principle of International Law?" *Nordic Journal of International Law* 55, no. 1–2 (1986): 17–21.
- Scheinin, Martin. "The Rights of an Individual and a People: Towards a Nordic Sámi Convention." *Gáldu Čála—Journal of Indigenous Peoples Rights*, no. 3 (2007): 40–51.
- Simpson, Audra. *Mohawk Interruptus: Political Life across the Borders of Settler States*. Durham, NC: Duke University Press, 2014.
- Smith, Diane. "Governing the Pandemic: Implications for Indigenous Self-Determination and Self-Governance." In *Indigenous Australians and the COVID-19 Crisis: Perspectives on Public Policy*, Topical Issue 1/2020, edited by Francis Markham, Diane Smith, and Frances Morphy, 10–13. Canberra: Centre for Aboriginal Economic Policy Research, Australian National University, 2020.
- Tweedy, Ann E. "The Validity of Tribal Checkpoints in South Dakota to Curb the Spread of COVID-19." Preprint, submitted June 9, 2020. <http://dx.doi.org/10.2139/ssrn.3622836>.
- Wildcat, Matthew. "Replacing Exclusive Sovereignty with a Relational Sovereignty." *Borderlands* 19, no. 2 (2020): 172–84.
- Wildcat, Matthew. "Weaving Our Authority Together: Transforming the Prairie Indigenous Political Order." PhD thesis, University of British Columbia, 2020.
- Wilkins, David E. *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. Austin: University of Texas Press, 1997.
- Wilkins, David E. "The U.S. Supreme Court's Explication of 'Federal Plenary Power': An Analysis of Case Law Affecting Tribal Sovereignty, 1886–1914." *American Indian Quarterly* 18, no. 3 (1994): 349–68.