



**Cheyfitz, Eric. *The Colonial Construction of Indian Country: Native American Literatures and Federal Indian Law*. University of Minnesota Press, 2023. 256 pp. ISBN: 9781517911331.**

<https://www.upress.umn.edu/9781517911331/the-colonial-construction-of-indian-country/>

Eric Cheyfitz's new monograph recalls his over-100-page chapter "The (Post)Colonial Construction of Indian Country: U.S. American Indian Literatures and Federal Indian Law" in *The Columbia Guide to American Indian Literatures of the United States Since 1945* (2006). Beginning the lengthy chapter by noting that "postcolonial studies have virtually ignored American Indian communities" (4), Cheyfitz calls upon a (post)colonialist reading of Native literature by situating literary texts in legal contexts and understanding them as responsive to the (post)colonial condition. The parenthesized "post" signals the ongoing colonial regime in Indian Country. Cheyfitz believes that the (post)colonial approach yields more contextualized interpretations than ethnographic and formalist analyses, shows more political and practical concerns than theoretical postcolonial studies, and does not resort solely to tribal intellectual traditions as literary nationalists do. His stance on the conjunction of Native literature and federal Indian law is so strong that one contemporary reviewer wrote, "at times Cheyfitz implies that anything other than a postcolonial approach informed by legal studies is misguided or misinformed" (Weaver 210). Not to depreciate Cheyfitz's tenor of criticism, the quote will prepare readers for his new book.

On the opening page of *The Colonial Construction of Indian Country: Native American Literatures and Federal Indian Law*, Cheyfitz admits that it is "an update and thus a rewriting in significant part" (1) of the chapter just mentioned. As informed by the subtitle, the conjunction between Native literature and law is to be reiterated. But the "(post)" is removed because Cheyfitz finds it no longer applicable, even for the sake of irony, given the continuing settler colonial structure imposed on Native people. The "Native American" in the subtitle suggests that Cheyfitz extends his scope to include Alaska Natives and Native Hawaiians who form different legal relationships with the federal government, even though Indian Country within U.S. borders remains his primary focus. One may wonder then, is this new book worth a serious reading after all? Yes. It promises and gives more than double the length of the initial chapter. Very recent literary works, legal cases, movements, statistics, and academic sources are referenced, and Indigenous communities in Mexico and Bolivia are supplemented to add a comparative lens. Moreover, significant portions of Cheyfitz's original argument - like European imperialism in the Americas, the colonial logic of Indian identity, and the

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translation from oral stories to writings – are reconsidered and rearranged. With greater emphasis on Native literature *per se*, Cheyfitz arrives at a better balance between literary texts and their legal-historical-political contexts. Chapters four to six are freshly written, zooming in on borders – what federal Indian law maintains, whereas Native writing transgresses – and their obliteration. The value of this book-length study lies in its endeavor to pick up, yet again, “the elephant in the room” of Native American (literary) studies, providing timely and immediate answers to age-old questions on colonialism, land, identity, federal Indian law, and borders.

“Native American Literatures” in the new subtitle is Cheyfitz’s subject, refers specifically to alphabetic writing by Native authors. Native alphabetic writing, unlike oral stories, is “a distinct product of colonialism” (166), and hence is a fundamentally literary collaboration; this very idea informs all six body chapters. Cheyfitz raises the keyword “collaboration,” and its nuanced meanings oscillating between coercion and cooperation, by dating the position of Native writing in a colonial situation to the Indian treaty. He regards the Indian treaty, on the one hand, as a “prelude and basis” (5) of federal Indian law and, on the other, “the archetypal American literature” (5) that represents a process of translation where “oral traditions and traditional values have breathed new energy into the adopted language [in the form of alphabetic writing]” (5). Here the conjunction between Native writing and law is also underlined.

The first two chapters investigate the colonization of Native land and identity respectively. Cheyfitz agrees with Linda Hogan that “what happens to people and what happens to the land is the same thing” (Hogan, qtd. in *The Colonial* 15). Land for Natives is “the inalienable ground of the communal, defined exclusively in terms of extended kinship relations” (46). Land forms Native identity and participates in economic, social, and cultural life as kin, which has been systematically sabotaged by the capitalist conception of land as a fungible property that defines an individual in material, moral, social, and metaphysical senses. Opposing conceptualizations of land result in and are reflected in other aspects. For instance, Native governance is grounded in kinship responsibility, a horizontal and egalitarian system that manages conflicts through community consensus, whereas the dominating nation-state centralized governance pushes a vertical system of rights. Cheyfitz finds more examples in how Natives and Westerners regard justice and warfare differently. As land becomes property, Western terms like “country,” “nation,” “treaty,” and “sovereignty” are rigidly applied to Indigenous peoples. Within U.S. borders, Natives are granted subordinate sovereignty and dual citizenship, meaning that they are both tribal and nation-state citizens. Cheyfitz holds that colonial politics and policies are perpetuated by the Bureau of Indian Affairs (BIA), which is doomed “to be a certain kind of classic colonial bureaucracy” (26) despite it being primarily run by Natives nowadays. Meanwhile, contemporary worldwide efforts to subvert ongoing colonial construction are highlighted. For example, the Zapatistas in Mexico implement autonomy through



“rule by obeying” that “draws on the community practices of self-organization through assembly” (61-62).

In chapter two, Cheyfitz stresses that the political history of the question asked in *The Night Watchman* (2020) – “Who was an Indian? What? Who, who, who? And how?” (Louise Erdrich, qtd. in *The Colonial* 84) – must be recognized. He raises two prongs of Native identity: the traditional cultural logic held by Native people is “based on a relationship between kinship and land” (65) and open to the adoption of non-Natives, while the biologic of blood quantum has achieved increasing autonomy through constant legitimation and rationalization, since the early eighteenth century. The two logics are vexingly imbricated. For instance, Cheyfitz reads William S. Roger’s self-identification with “Cherokee Indian” in *U.S. v. Rogers* (1846) as, on the one hand, “Cherokee Indian” that suggests an emphasis on his cultural acceptance into the Cherokee community, and on the other, “Cherokee *Indian*” that “incorporates a biological term of race, ‘Indian’” and “represent[s] the invasion and displacement of cultural by biologic” (73, emphasizes original). The historic shift from the cultural logic to the biologic and the coupling of the two are sharply observed here. The profound complexity of Native identity in ethnological, political, and legal senses is also visible as shown in quoting the latest answer to “Who is an American Indian or Alaska Native” on the BIA website. Cheyfitz avoids any circular definition of Native identity such as Charles Larson’s selection of Native authors based on their general tribal acceptance; he also rejects the ahistorical and standard trope of mixedblood upheld by Louis Owens who “bypasses its importance by situating [it] outside the colonial history of cultural and biologic” (93). Cheyfitz’s approach to Native identity is to historicize it. For instance, he corrects that Tayo in *Ceremony* (1977) is a Laguna Indian “not positioned between two worlds but ceremoniously searching for his balance *within* Laguna society after being unbalanced by the trauma of World War II” (91, emphasis added) by referencing the Laguna Constitution ratified in 1958 that determines membership through the mother and has no such designation as “mixedblood.” His discussions on the two prongs of Native identity in this chapter appear much more focused than in his long chapter mentioned at the beginning of this review.

Chapter three of *The Colonial Construction of Indian Country* explores the collaborative nature of Native literary identity. By historicizing collaborative Native writings, Cheyfitz unveils in them arrays of Native literary resistance to restrictive legal definitions of identity. For example, at the time of the production of *Black Elk Speaks* (1932), Black Elk was a complex figure of modernity with mixed religious beliefs mediating and encompassing Neihardt, who was later adopted into Black Elk’s kinship as an Indian of cultural logic. Quoting Vine Deloria Jr.’s note that the contemporary young Natives read

*Black Elk Speaks* for “affirmation of the continuing substance of Indian tribal life” (Deloria, qtd. in *The Colonial* 111, 112), Cheyfitz holds that the collaborative dynamics assure the book of a “situational identity” through the “practice of a pantribal, Indian community’s resistance to the erosion” (112) of tribal life. Black Hawk’s autobiography, where Black Hawk himself plays no role for the most skeptical critics, is placed by Cheyfitz along with *Johnson v. M’Intosh* (1823) and the Indian Removal Act (1830). He argues that the autobiography is a countercolonial force because the cultural identity of its voice is a Native one that expresses Sauk ways of life, their bravery, eagerness for economic survival, sense of irony, and central values of kinship. Other collaborative works like *Narratives of the Life of Mrs. Mary Jemison* (1824) and *Cogewea* (1927) are also within Cheyfitz’s reach.

In chapter four, Cheyfitz concentrates on the ongoing colonization in Indian Country by criticizing U.S. federal Indian law as a structure of settler colonialism that aims for “the elimination of the native in order for the colonizer to possess the land and work it” (138) through denaturalizing, establishing, and enforcing legal and political borders. Tribal Judge Coutts, Erdrich’s character in *The Round House* (2012), uses an oozing and thawing casserole to account for the rotting superstructure of tribal toothless sovereignty. The superstructure, as well as *Oklahoma v. Castro-Huerta* (2022), yet another recent attack on tribal sovereignty cited by Cheyfitz, force him to interpret Judge Coutts’ vision – “We want the right to prosecute criminals of all races on all lands within our original boundaries” (Erdrich, qtd. in *The Colonial* 143) – as a wishful hope. Theoretical rumination on sovereignty follows with Kevin Bruyneel’s notion of the third space of sovereignty at the center. Cheyfitz interprets the “third space” as a construction of “American colonial ambivalence” arising from the temporally different emphasis of the federal agenda that defines Native nations “as being neither entirely domestic nor foreign but both at once spatially” (145). Bruyneel’s concept, for Cheyfitz, acknowledges the legally driven settler colonial structure but “implies, contradictorily, that it is possible for indigenous sovereignty to be achieved within the settler state” (147); hence, Bruyneel is still caught in the discourse of hierarchical sovereignty.

Eager readers expect Cheyfitz’s insight into Native sovereignty, but he turns instead to literature, a deliberate choice to which this review shall return. Chapters five and six explore what Cheyfitz terms “trickster logic” and its potentiality as a literary theory. Trickster is “related to everyone and everything by kinship terms” (162); its comic violation strengthens kinship and suggests the (de)constructedness of all boundaries, surely including legitimized settler colonial borders. Trickster narratives, more than being informational, pedagogical, and philosophical, offer invaluable teaching on what Cheyfitz calls “reciprocal responsibilities of kinship” (161). Trickster logic is an oral strategy, foregrounding we-centered, comic, communal, and curative value and power that figures prominently in Native alphabetic writing to oppose the logic of capitalism and individualism driven by the agonistic structure of federal Indian law. Native writing,



in multiple senses, sees the collaboration between trickster logic, a strategy arising from kinship ethics, and alphabetic writing, an immediate product of colonialism.

The last chapter is a close reading of Gerald Vizenor's *Bearheart* (1978) to reinforce conjunctions between law and literature, oral tradition and writing, as well as trickster logic and the erasure of borders that imbue *The Colonial Construction of Indian Country*. *Bearheart* is read as a trickster novel envisioning the obliteration of not only territorial boundaries set by U.S. federal Indian law but also long-established borders between human and other-than-human beings, life and death, winning and losing, nature and culture, as well as law and stories/literature. Cheyfitz is particularly intrigued by the novel's eventual return to orality, which he interprets as a "linguistic decolonization" (Paul Pasquaretta, qtd. in *The Colonial* 195) of federal Indian law. Cheyfitz notes a disciplinary border between law and literature for Westerners, the former being functional with "a particular political or judicial force" (198) and the latter being aesthetic and nonfunctional. By re-establishing Native myths as the center of meaning, *Bearheart* and its trickster logic resist the compartmentalization of knowledge, uncover the fictionality of law, and praise the practical power of storytelling.

Testing trickster logic on a trickster novel, despite its neatness, makes one ask if erasures of settler colonial borders could only be realized in/through trickster stories. In fact, Cheyfitz aims beyond trickster stories. He grounds trickster logic in Native land and kinship systems. He conceptualizes it as an oral strategy and Native epistemology carried on by alphabetic writing, a "thinking from a different place" (194), and a hermeneutical approach to Native literature. It would appear less genre-restrictive and more applicable and far-reaching if there were a more in-depth study of a non-trickster story. For example, a detailed reading of Tommy Orange's *There There* (2018), a novel mentioned several times and candidly praised by Cheyfitz for "erasing the boundary between reservation and urban Indian life, between tradition and modernity" (112), would suffice.

Bruyneel's theory of the third space of sovereignty is among a plethora of sovereignty discourses referenced by Cheyfitz; others include thoughts from Taiaiake Alfred, Chief Justice John Marshall, Alvaro Reyes and Mara Kaufman, Justice Clarence Thomas, and Vizenor. Cheyfitz intends to make a compelling case that any limited, subordinate, or dual sovereignty is highly ironic, oxymoronic, and inherently hierarchical within a nation-state power and cannot be properly applied to Native communities. That is, he seeks a "post-sovereignty" (96) discourse and a linguistic decolonization. However, he does not forgo the introduced word "sovereignty" but stays with the use of Indigenous sovereignty, incorporates into the concept Native values regarding kinship, land,

balance, and trickster logic, and, without lingering on theoretical exploration, he shifts to Native literature decisively. Among the cited discussions of sovereignty, the following sentence from Vizenor's *Heirs of Columbus* (1991) appears three times: "The essence of sovereignty is imaginative, an original tribal trope, communal and spiritual, an idea that is more than metes and bounds in treaties" (Vizenor, qtd. in *The Colonial* 59, 151, 181). The imagination and vision of sovereignty stressed here is, in fact, furthered by Vizenor in *Fugitive Poses* (1998), where he writes, "Native sovereignty is transmotion, and the rights of motion are personal, totemic, and reciprocal; not base line surveys, futurity, or possessory" (16). Vizenor does provide a "post-sovereignty" (96) discourse, namely, transmotion, and readers do have good reasons to believe that the idea of transmotion must have been on Cheyfitz's mind at least three times. But why does Cheyfitz not borrow it?

It must be admitted that, like Vizenor's other coinages, such as survivance, the theory of transmotion is "elusive and imprecise by definition and in translation," but practices of it are "obvious and unmistakable in native stories" (*Native Liberty* 1). For David Murray, one contributor to *The Columbia Guide* edited by Cheyfitz, transmotion "avoids the limitations inherent in white definitions," but "this antimaterialist and idealized approach would seem to downplay one of the strongest legal and political tools available to contemporary Indians for the sake of a rather airy definition" (346). The theory of transmotion is as "airy" as it is encompassing. Cheyfitz may find the use of it not confronting the contradictions implicit in Indigenous sovereignty as Bruyneel's theory suggests. It is perhaps for a more focused and immediate argument for the conjunction between federal Indian law and Native literature that Cheyfitz avoids mentioning transmotion at all, opts for the word "sovereignty" despite its notorious flaws, and dives into Native literature for more imaginings of "post-sovereignty" (96).

*The Colonial Construction of Indian Country* presents arrays of linguistic decolonization. Cheyfitz is particularly cautious of master discourses applied without differentiation to Native communities, especially those regarding identity and sovereignty. His new book will inform newcomers to Native American (literary) studies of ubiquitous nuances, ambivalences, and racial ideologies embedded even in the most everyday diction. Those who want to be updated on the latest discussions on enduring topics like (post)/post-/settler-colonialism, individual and communal identity, land and border, visions of sovereignty, law and literature, and orality and writing will also find it helpful. Moreover, it is also friendly to public readers, advocating a communal/public criticism of Native literature and a communal/public reasoning of Indigenous sovereignty and law. Native stories, both aesthetic and functional, breathe and thrive when their communal/public value is duly recognized.

Yifei Jing, Peking University



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