

EARTHLY INDIGENEITY: THE COGNITIVE AND ETHICAL IMPLICATIONS OF A  
DISREGARDED COSMIC OCCURRENCE

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# Earthly Indigeneity: The Cognitive and Ethical Implications of a Disregarded Cosmic Occurrence

## Abstract

In any form, ‘being indigenous’ has a relational signification. Therefore, what consequences might there be for a conceptualization of indigenism that recognizes the commonality of our being indigenous to the Earth? Could we think of each instance of this common tendency to indigenize the Earth as a vernacularization of a universal inclination to produce indigeneity? In this vein, could we infer that indigenization is nothing but the spatial projection of a universal human inclination to engender culture?

These questions and their implications could have a substantial impact on how we conceive of the relationship between indigeneity and space. Taking the idea of ‘earthly indigeneity’ seriously means reading every place as an epitome of processive threads interwoven through other places and, potentially, originating from every part of the earth. If so considered, the ‘fact’ of indigeneity becomes the result of a dynamic process carried out through a spectrum of planetary semiotic connections, and guided by responsible cognitive action. ‘Ought’ and ‘is,’ the cognitive and the ethical, materiality and immateriality, local and global, can be seen to intermingle within indigeneity in a transformative orbit around the continually self-respatializing life of culture that could be, semiotically speaking, a veritable form of ‘renewable energy.’

## **1\_Prologue: Why Am I Not Indigenous?**

I would like to begin this essay by analyzing the simple and somewhat whimsical question I offer as a title for this prologue. To this end, let me introduce myself: I was born in Sicily, thereby in Italy, to native Italian parents; I do not belong to a decolonized territory, nor am I a member of any minority group or ethnicity. I am a legal scholar, and a full professor at Parma University. I cannot express any serious complaints about my ability to ‘live’ my culture and — flaw of flaws — my professional status ranks highly in Western society.

According to current assumptions about entitlement for claiming indigenous rights, there is no chance I would be recognized as indigenous. Certainly, the current concept of indigeneity is broader than it once was, as our ideas of indigeneity are no longer strictly connected to the misappropriations and plunders perpetrated by European colonizers since the dawn of (Western) modernity. Among those subjects legally entitled to consider themselves ‘indigenous people’ today are Asian, African, and even some European migrant communities or ethnic groups. On the other hand, the United Nations Declaration on the Rights of Indigenous People (UNDRIP) does not provide any definition of ‘indigeneity,’ and does not reference any particular territories or specific geographical areas. Traditional knowledge, cultural identity, communitarian self-aware-

ness rooted in (allegedly) ancestral origins, and so on, constitute the connotative props necessary to claim the ‘right’ to be recognized as indigenous. In short, territoriality and indigeneity are no longer assumed as necessarily coextensive, although the struggle for territory and the related redress are the primary focus of most indigenous peoples’ claims.

Nonetheless, my chances of being recognized as indigenous are pretty much zero to none. I would like to explore the reasons underlying this absence of possibility in order to better understand the anthropological consistency of the concept of ‘indigeneity’ used in political and institutional praxis, at least in recent years. In parallel, I will attempt to probe the degree of influence that political action on behalf of ‘indigenous peoples’ has had on the work of anthropologists and their elaborations of the idea of ‘indigeneity’ more generally.

Before going any further, however, I want to immediately tip my hand, so to speak. By raising the question of my actual potential as a would-be indigenous subject, my intent is to ‘call the bluff’ of the political and historical constraints that currently determine conceptions of the category of ‘indigeneity.’ As a point of departure but also as my endpoint, I assume that indigeneity is, actually, a planetary occurrence, completely coextensive with the advent of a symbolic-cultural species on the Earth that is prone to creatively adapt itself in order to face the massive variety of environmental challenges and stimuli. In short, indigeneity should be understood as a ubiquitous expression of the ‘cultural nature’ of human beings, and their creative tendency to ‘produce culture’ everywhere.

Although I am a lawyer, or perhaps because I am a lawyer, I think the *juridification* of indigeneity has for the most part had a negative influence on the anthropological understanding of this category, a negative influence that has resulted in a pernicious conflation between ‘indigenism’ and ‘indigeneity.’

## **2\_Indigeneity vs. Indigenism: De-legalizing the Concept of Indigeneity, De-colonizing the ‘De-colonial Legal’ Approach to Indigeneity**

The inherent flaw of ‘indigeneity’ as a category coincides, in my view, with its stemming from a context teeming with micro-struggles for survival by actors who have been geographically and historically identified. Actually, the backdrop against which this category took — political and cultural — center stage was the postmodern criticism of colonialism and postcolonialism. The UNDRIP, in the seventh paragraph of its Annex,

anchors the motivation behind its provisions to a concern for the historical injustices suffered by indigenous people that were caused by colonialism. Hence indigeneity and indigenous rights have been intended, even by anthropologists, as two sides of the same coin, or at least closely related. This connection is understandable and even wise, given the necessity of assuring that the needs and claims of indigenous people are effectively met. If and when it listens and gives voice to its weakest subjects, the law is a means of redress that cannot be overlooked. Nonetheless, as a remedy for supporting people entangled in complicated plights — as many indigenous people have been and continue to be — the law sometimes proves to be defective. This is because legal language, especially that of positive law, operates within a kind of contradiction. It is a means to rule and solve conflicts by the recognition of rights, but also through the imposition of duties. In accordance with this dialectical and contrastive structure, subjects and situations are rigorously analyzed and determined. The ensuing game between parts and counterparts induces lawmakers and courts to establish precise requirements identifying which subjects are entitled to rights and which are burdened with specular duties. Most likely, this is why the legal recognition of indigenous rights tends to cast historical and geographical constraints on indigeneity that predispose it to political use. The result, however, is that ‘indigeneity’ becomes an instrumental category, whose phenomenal aspects and potentialities are overshadowed by a set of specific features that are conducive to judicial protection.

Guilt for the misdeeds of colonizers makes the voice of cultural difference much louder and more legitimate in the eyes of international and state jurisdictions. Unfortunately, however, such a psycho-historical vision results in an anthropological analysis of ‘indigeneity’ that is too often overly influenced by certain space-time constraints. Accordingly, the candidates for being ‘indigenous’, even from a purely anthropological point of view, must be non-Western peoples, individuals, or groups who are tied to a proven and dated tradition, even if the dynamics involved are cosmopolitan and/or mobile. Past conditions of exploitation by ‘Westerners’ appear to be the ground note that legitimizes classification as indigenous, in both anthropological and legal terms. Indigeneity, in other words, is latently connoted by difference: difference from the West, its individualism, its capitalist/industrial embodiments, and the polluting consequences of its exploitations.

I think this kind of approach results in an inadvertent conversion of indigeneity-as-a-fact into indigenism-as-political-strategy. If we address the category ‘indigeneity’ as if it were synonymous with ‘indigenism,’ then we can rightly assume that it is a historically situated category, which originates with contemporary criticism against colonialism and postcolonialism, and aims to redress the injustices, misappropriations, plunders, and displacements suffered by many peoples knocked over by the colonial wave and/or marginalized by capitalist world sprawl. I contend, however, that this is an excessively politicized definition of the experience of ‘indigenizing.’

‘Indigenous’ does not only refer to non-modern non-Westerners. Conversely, I think that those who produce ‘indigeneity’ constitute instead a much broader group that includes all those who undertake cultural processes by using symbolic resources to experience and interplay with the spaces they occupy.

I fear that the current approach to ‘indigeneity’ is much too political, and inclined toward identitarian interests rather than cognitive ones. The main basis for my view is that the human species gave course to its first act of ‘indigenization’ concomitantly with the initial stages of its dissemination of the Earth. From this perspective, it makes little sense to qualify as ‘indigenous’ only those populations pre-existing colonial invasions, or those affected by contemporary acts of displacement or destruction carried out by Westerners or Westernized governments and majority groups in the rest of the world. Furthermore, the anti-colonialist focus cordons off the experience of indigenization, which I view as a universal human attitude, within a sort of conservative frame that inconsistently separates it from all that occurred before the colonial era and all that might occur in the future. How many people in the precolonial past were displaced or conquered by the same populations that later suffered upset and destructions carried out by colonizers? How many people in present times undertake, or will do so in the future, processes of mobility that lead them to indigenize other spaces, producing unprecedented cultural-spatial dimensions? Or, rather, did human history as well as human nature itself definitively stall with the onset of Western modernity, so that restoring the world as it was before colonialism and contemporary capitalist devastations would be nothing but an eternizing of that presumptive endpoint of history and evolution?

My guess is that ‘indigenism’ is the normative interpretation of a phenomenon of ‘indigeneity/indigenization’ whose empirical substance and semantic potentialities are far broader than its current political and legal renderings. The normative version is, in

my view, highly specious and deeply defective, if only because it is a sign of our inability as human beings to align our behavior to the due respect of cultural difference as such. As a result, unlike some scholars,<sup>1</sup> I do not think that the UNDRIP has usefully served to distinguish indigenous peoples' rights from those of all other minorities. Conversely, I argue that indigenism is a sort of remedy for a past and present unwillingness by the state and local/territorial authorities to give a serious cultural basis to the ideals of democratic pluralism.

I think that indigeneity can only gain its due legal recognition if anthropologists make a serious effort to develop the concept through a 'decolonization' of its scope, and a delegalization of its paths of analysis: that is, a cognitive enfranchisement of its legal implementations. A 'decolonization of indigeneity' would be one in which anthropologists, as well as legal scholars, would work to liberate indigeneity from the current 'decolonizing approach.' I propose, in other words, that all of us — anthropologists and lawyers — undertake a dispassionate commitment to enlarge and generalize our views of indigenizing experience so as to include all cultural experiences inside its semantic borders. Otherwise, if the legal-political mainstream continues to hold its dominant position, I fear that the *differentialist* logic underlying it will end up dialectically and paradoxically subduing indigenous peoples' exigencies to the logic of Western cultural and legal patterns. Evidence of the kind of parabola that follows the dialectic differentializing approach can be seen in the regulatory protection of indigenous peoples' traditional knowledge, and its increasing inclination toward the reification/objectification of cultural experience. The logic of intellectual property protection is pervasive even if its real peril does not consist — as many authors warn — in the superimposition of individualistic property patterns over traditional ways to keep and use knowledge. Rather, the true danger consists in the inevitable ossification of all that is to be considered as simulacra of indigenous identity, which will have to demonstrate authenticity at an immediate morphological and perceptive level now equated with a recognizable and self-evident difference from all that is from the West. On the other hand, differentialism embodies an out/out logic that transforms, sooner or later, into a drive toward an exclusionary use of space, things, symbols, ideas, etc. The search for authenticity, as an instrument to legitimize indigenous claims, gives practical substance to the Spinozian motto '*omnis determinatio est negatio*.'<sup>2</sup> This is precisely the oppositional logic that tends to locate differences along a continuum, thus concealing the

silent imposition of a cultural Procrustes behind the apparent determination and defense of ‘indigenous identitarian features.’ Some attempts to configure holistic understandings of intellectual property have been made, so as to align legal protection with indigenous cosmological understandings of traditional knowledge.<sup>3</sup> But this cannot overcome the morphological stiffness required if indigeneity is to be considered as a ‘good’ endowed with an exclusionary and differentialist regime of legal protection. For better or worse, the legal protection of indigeneity requires a high level of determination, and this can only take a morphological and objectifying form.

The trap of a morphologizing and stiffened reading of indigenous culture is alluring, on the other hand, even to the representatives of indigenous peoples. Legal provisions provide the highest degree of semantic determination when it comes to deciding certain conflicts. And it is no coincidence if under the aegis of legal pluralism, the ancestral star of indigenous customary law has received, in recent times, significant political and academic attention.<sup>4</sup> More and more often the legal recognition of indigenous cultures, namely of indigeneity, morphs toward the assessment and reception by international or state law of the rules produced by customary law. In this way, culture is increasingly equated with customary law, so that political and legal agencies look for evidence of the cultural authenticity of indigenous claims in their traditional or pre-existing legalization. However much customary law proves to be plastic and fluid, or *untainted* by the rigidity that allegedly affects (the use of) statutory law, cultural habits are always different from legal rules, and people are not norms. If the aim of protecting indigeneity turns into a dwindling reduction of indigenous cultures into their legal expressions,<sup>5</sup> this means that the price for obtaining recognition of indigenous rights will be the cultural ossification of indigeneity itself.

The relationships between the varieties of indigeneity and Western cultures or Westernized governments actually seem bound to take the shape of inter-legal accommodations.<sup>6</sup> This means that the possibility of achieving some degree of intercultural translation/transaction is hopeless from the start.<sup>7</sup> Indigeneity will have undergone, in this case, a double process of objectification and reification: its significance would be curtailed to the point of rigidly equating it to the morphological features of cultural habits, the evidence of which is moreover traced to customary legal provisions. Needless to say, this is nothing but a further demonstration that oppositional differentialist logic inevitably tends toward a homogenizing interpenetration of differences within which

the possibility of a mutual creative cultural transaction and co-construction is doomed to be supplanted by a formal homologation, achieved through semantic amputations and instrumental/utilitarian shortsighted compromises.

Following from the above, an (at least) interlocutory de-legalized approach to indigeneity, coupled with a reading of indigenous rights less obsessively driven by the post-modern (Western) ‘decolonizing mission,’ constitutes an essential step towards a genuine intercultural and polyphonic harmonization of all the experiences to which the human attitude to indigenize gives rise, and canopies beneath itself.

### **3\_Noetic Cultural Ciphers and the Dynamic Spatialization of Cultures: Beyond the Oppositional Relationality of Indigeneity**

Indigeneity is a direct implication of the spatializing work of culture. If we consider culture as a dynamic set of signs, then we must appreciate that this set has practical consequences. This means that culture unfolds *through* and *with* space. Through its spatial projections, it transforms space and its components into instruments of signification. Space itself is not something placed *out there*, something that can be grasped by the human body/mind unit as a simple self-evident datum. Conversely, it is always a result of the dynamic interaction between this unit (which is however a relational emergence) and its environment. In this sense, we can say that a ‘void space’ does not exist as an absolute experienced reality; rather ‘void spatiality’ is, in every case, an open horizon of semantic/practical possibilities, which are culturally, even if vaguely, determined. This is because in semiotic terms, spaces and categories horizontally interact along a connotative/signical or chorological *continuum*: there is no representation of space without categorization and no categorization without spatial projections (be they virtual or effective).<sup>8</sup> Such a semiotic approach allows us to overcome the mind/world, culture/nature, symbolic dimension/spatial dimension, material/immaterial divides. All of these assume, conversely, only a heuristic and instrumental signification, extremely important operationally, but devoid of ontological connotations.

From a semiotic perspective, cultural space is a proactive production through which living beings actively co-produce their environment. However, all living beings, and humans especially, elaborate signs through symbolic memory, which endows them with the ability to presentify past experiences and their semiotic traces so as to face present environmental challenges. This is the reason all words, images, practices, and habits are to be intended as both epitomes of past experiences and proactive projections of



their future implications. The local, from this perspective and insofar as it is involved in human experience, is intrinsically ubiquitous and is interwoven with a multi-sited signical and relational space. Despite possible appearances, such an understanding of space is anything but an abstraction. It displays, instead, spatialities actually lived by living beings to a much greater extent, as they are symbolic and cultural creatures.

Territory and territorialities can thus be understood as a form of semantization of spatial experience, powered by the universal attitude of human beings to produce and transmit culture. Both the categories ‘territory’ and/or ‘territorial’ are therefore products of this cultural work, which, in setting the coordinates of local experience, always includes signical devices deriving from somewhere else. In this sense, all indigenous experiences are in some sense heterochthonous. This is the mobile and trans-local rhythm of ‘territorialization’ that punctuates the human planetary enterprise. I would propose, then, to term the trans-epochal development of this multi-vocal and omnipresent activity ‘indigenization,’ and to use ‘indigeneity’ as the term for its (interlocutory and relatively) localizable results.

The gist of any experience of ‘indigeneization’ is the production/invention of a territory (or place), which is thus a synthesis of the co-generative relationships between mind and space, immateriality and materiality. Territory embodies human presence in space, and human bodies proactively internalize space.<sup>9</sup> These paths of experience have a semiotic equivalent, in some sense isomorphic to their pragmatic projections, in what we can call ‘noetic ciphers.’<sup>10</sup> They correspond to the processing sequences that the human attitude to produce culture has elaborated throughout the ubiquitous activities of indigenization. Noetic ciphers never have absolute pertinence to only one territory or place. They are, conversely, local and cosmopolitan at the same time, just like the story of humankind’s presence on the Earth. In this sense, we can say that the division between indigeneity and cosmopolitanism is a false dichotomy, in part because today indigenous people are also on the move, and ‘give place’ to hybridizing contacts with other people in places different from those of their origin.<sup>11</sup> We can see the mark of cosmopolitanism within the cognitive core of all indigenous experience.<sup>12</sup> Moreover, I think it is precisely the semiotic ubiquity of the human cognitive attitude that should be at the center of a planetary ethics of ‘indigeneities.’ Such an ethics would be no different from that necessary to negotiate cultural differences — through mutual

recognition/pollination — because there is no cultural experience without attendant processes of spatialization and, thereby, indigenization.

In this regard, I would like to emphasize that the territory<sup>13</sup> involved in, and produced by, all processes of indigeneization should be distinguished from the physical concept of territory/land. If we embrace a semiotic approach to cultural experience, then territory will correspond to the real space engendered by flows of information and their relationships. It should not come as a surprise, therefore, if people craft spatial dimensions of indigeneity that do not correspond to geo-physical land boundaries. Territories or places, in cultural terms, should be understood as points of confluence for complex semiotic streams, of which the material/terrestrial components are only an aspect; the “land” is thus to be considered central or not according to its relational significance, rather than its materiality. Recalling the question opening this essay, the territory of ‘Sicilianity’ is something that is now impossible to situate in a specific physical/geographical place or territory.

From this perspective, even the issue of origins — so often disputed when referencing the cosmopolitanization of indigeneity — undergoes a sort of dialectical inter-spatial transfiguration. Take, for example, one of the worst, even if sadly world-renowned, expressions of Sicilian indigeneity: the Mafia.<sup>14</sup> During the migrations from Italy to the US in the late 19th century, it was born as a cultural reaction against the unification of Italy under the northern Savoy Dynasty, subsequently re-placing itself in America, and becoming the criminal organization ‘Cosa Nostra.’ Filled with traditional or even ancestral habits, in the new location the Mafia transformed so deeply that it eventually became a sort of beacon for its members still living in Sicily. In fact, when the Allied Forces invaded Sicily during World War II, they benefitted from the transnational support of Cosa Nostra and the Sicilian Mafia, something that vastly improved the sprawling expansion of these criminal organizations. In the aftermath of the War, the spatial coordinates of the Mafia/Cosa Nostra became inter-spatial; the territory of this now international organization changed its original location and in a sense, became ubiquitous to such an extent that even Italians now use the terms ‘Cosa Nostra’ and ‘Mafia’ indifferently to refer to the same phenomena spreading all over the world.<sup>15</sup>

I use the example of the Mafia to provocatively draw attention to the possibility that indigeneity, in all its possible forms, is a worldwide occurrence, intrinsically dynamic and capable of trans-local territorializations (spatialized semantizations of cultural

experience). On the other hand, the culturally indigenous connotations of *Cosa Nostra*, as well as ‘*Drangheta*, *Camorra*, etc., are well known by criminal police all over the world. Without a nuanced understanding of the behavioral habits embodied in their actions by the affiliated members of such organizations, it is almost impossible to prevent their criminal activities. At the same time, the code of their communication and practical actions now has multi-sited origins, and corresponds to a territorial dimension that does not coincide with national borders or geo-political areas.

The observations offered so far show, once more, the necessity of moving the issue of indigeneity beyond the ‘West versus Rest of World’ polarization that results from contemporary assessments of the colonial and postcolonial dynamics of destruction and exploitation. Even if colonialism had never taken place, indigeneity would have had *its* place in the field of anthropological, political and legal analyses, with its intrinsic historical dimensions. On the other hand, there is no culture on the planet Earth that does not include a degree of knowledge that comes from some ‘elsewhere,’ and even as *local cultural experience* it re-elaborates those *migrant* sets of information in an idiomatic way, and spatializes them in and through its specific territorial dimension. Consequentially, the process of the recognition of indigeneity should be multi-centered and should focus, if it hopes to be genuine, not so much on the morphological features or products of culture as on the processing of cultural/adaptive solutions, so as to understand and recognize their noetic elaborative ciphers. When so conceived, all ‘indigeneity’ will become cognitively universal and cosmopolitan. In its noetic ciphers, in its idiomatic attitude to elaborate signical relationships along a path of creative semiosis — that is, the process through which the brain/body units engender new meanings and vital methods — all cultures can mirror themselves and learn, in comparative/reflexive terms, something about the significance of their own habits.

A genuinely pluralistic understanding of indigeneity, that is, of the processes of spatialization in the human attitude to produce culture, should newly reveal the ubiquitous plasticity of the symbolic/pragmatic functions inherent in our humanity. This is the same capacity that binds and relates different cultural productions, and is behind the universal inclination to produce culture. In turn, the relational ubiquity of cultural experience, when considered with respect to its noetic ciphers, would result in a polyphonic and multi-centered indigeneity.<sup>16</sup>

Relationality, on the other hand, is also at the core of the self-consciousness of one's own indigeneity. The 'indigenous' can become aware of their indigeneity only when they can look at themselves in the mirror of an alterity that is both cultural and geographical (or better: spatial).<sup>17</sup> One's own indigeneity, in other words, is in any case the outcome of a reflexive action triggered by the encounter with alterity. Were such alterity absolutely absent, one would be unable to conceive one's own indigeneity. In the same vein, searching for an authentic indigeneity would not make sense if there were no contact with the Other. People discover their own indigeneity and its authenticity in connection with, and because of, their relations with Others. Hence, indigeneity cannot be said to be 'authentic' because of its direct coincidence or compliance with an original. This apparently paradoxical occurrence depends on whether the 'original indigenous' results from an encounter with Otherness. Indigeneity, by implication, can be continually reauthenticated through further encounters with other various alterities.<sup>18</sup> In this way, the most authentic indigeneity will always be the last, that is, the one remaining after a cumulative sequence of indigeneities have been determined, the outcome of a series of encounters with Otherness. In the end, we could even imagine that there will be many versions of one's own indigeneity, as various encounters with Otherness occur. In any case, these manifold indigeneities do not dwell inside everyone or each group in a parallel way. They reciprocally contaminate, cumulate, and conflate.

The above considerations lead us to relativize the exclusiveness of physical territory as a connotative and structural feature of indigeneity. Spatial projections of culture engender their own spaces, that is, the invention of many, various territories. But cultural spatializations and their territorial elaborations are semiotic dimensions that do not necessarily saturate the physical space. A single physical place can be traversed and interactively lived by many cultural spaces and experiences as well as their related territorializations. Spatial incompatibility among different cultures does not depend on the Leibnizian axiom in which two bodies cannot occupy the same space. Instead, if it occurs, such incompatibility is a semantic one; it comes from the lack of translation/transaction between the semantic connotations of the different spatializations proactively drawn by the various cultural categorizations at play.

All the above argumentative steps seek to address the overlapping interplay of multiple indigeneities in both urban and rural contexts.<sup>19</sup> My idea is that the autonomy and the self-determination of indigenous peoples and their cultures is achievable by

combining their conservation and their self-transformation through practices of symmetrical recognition and harmonization with all the ‘other indigeneities’ (namely cultural spatializations) of the world. In this direction, it is not physical isolation that will preserve indigeneity but rather the potential to share material space by ensuring different cultural subjectivities the possibility to creatively produce culture and reciprocally translate/transact their spatial projections. This does not preclude the fact that, in some cases, sole occupation of a territory could be the best way to assure cultural indigenous self-determination. This solution, however, should only be the final outcome of a semantic intercultural effort of translation/transaction between the noetic ciphers encapsulated in the cultural habits and morphological expressions of all the cultures aspiring to live in a specific place, urban or rural.

In saying this, I do not wish to underplay the injustices suffered by people displaced from their lands and dispersed throughout the world as a consequence of colonial devastations/dispossessions and capitalistic exploitations of Others’ living spaces, driven by a compulsory greed for self-enrichment. These tragedies exist and deserve meaningful redress. Nonetheless, I would like to warn against a formalistic use of the ‘territory/self-determination’ argumentative categorical couple. In many cases, the legalization of indigenous claims has spurred people to assert that their ancestral rights come directly from the land because this land and its cosmological significance dictate their customary law. These kinds of claims, above all if recognized in the name of a pluralistic normative conception of cultural difference, run the risk of giving course to an instrumental use of an indigenist argument dramatically doomed to turn into an exclusionary war for power over material space.

Although my following assertions may sound rather provocative anthropologically speaking, I have to say that territory in itself, if considered as material space, does not emanate any law.<sup>20</sup> I think that there is nothing holistic in the attempt to root law in the land. On the contrary, and despite appearances, the rooting assertion enshrines a dualistic division between the nature/thing and cultural/symbolic dimensions. Human beings and territories, conversely, are inseparable because, from the perspective of their significance, culture and ways of spatialization are indistinguishable. Conceptualizations of spaces engender territories, which in turn can be recognized as sources of law. At the onset of this process there is a continuum between nature and culture, and this is to be recognized for indigenous people as well as for Westerners and other cultures.

In my view, the real problem does not lie in the territory itself and its attribution or re-attribution to indigenous people. What should be preserved is the possibility to maintain and re-elaborate the noetic ciphers that join a specific culture to the territory that it engendered through its original, idiomatic experience of space. Actually, remaining in a territory or recovering a territory that no longer allows the implementation and self-transformation of those noetic/cultural ciphers does not make sense from the perspective of a genuine protection of indigeneity. This elementary observation shows how groundless it is to assert that law emanates from the land. As already observed above, territory or land is not a datum but rather is always the cultural result of experience and its inherent categorizations.

What has been elaborated so far, however, in no way undermines, but could instead even strengthen the right to claim redress for territory and its traditional use, at least in some cases. What I mean is that assuming the right to territory as an implication of the right to indigenous difference in itself, and therefore without any justification or attempt to translate its cultural ciphers interculturally, is merely an expression of an idolatrous war waged for physical space taken as an external entity — albeit instrumentally and ex-post crammed with wildly various symbologies. This would be nothing but a morphological/materialistic approach to the human inclination to territorialize/categorize space and experience. But such a view is as immediate as it is deleterious, even if it might appear to be endowed with a sort of dazzling obviousness, such that it becomes a source of legitimation for indigenous claims; if nothing else, it looks like the opposite to the usurping territorialization/categorization superimposed by the colonizing West and its so-called advanced civilization. Nonetheless this is only an equal and opposite reaction, which westernizes Others, the indigenous, precisely by inducing them to objectify and ‘reify’ their culture by assuming the land as its axis. The materialized territory induces the clinging of indigenous hopes to the illusion that it can preserve their culture and avert its end. But I fear that this would be a deeply mistaken approach. Conservation for its own sake would paradoxically relativize indigenous cultures and crystallize their noetic dynamic sources: just a prelude to a future passively undertaken and out of any cognizant control.<sup>21</sup>

International and state rules providing for the participation and consent of indigenous people<sup>22</sup> in all the decisions potentially affecting their interests will serve little purpose if indigeneity is not expressed with reference to its noetic cultural motor, its

capacity to self-transform and remain itself through and by virtue of its self-transformations. If indigeneity is not recognized and treated according to the inherent significance of culture, that is, as a source of renewing and renewable semiotic energy, today's material indigenous victories will soon turn into tomorrow's increasing ineluctable cultural ossification.

Against this danger, it could be observed that UNDRIP includes the 'right to develop' in many of its provisions: see Articles 11, 13, 23, 26.2, 31, and in several of the *considerata* included in the related Annex, for example. Nevertheless, the general aura of the Declaration and the bent of the legal implementation<sup>23</sup> of its guiding principles seem to be pervaded by a prevailing misoneism and conservative spirit. It is possible that future interpretations of this document will enhance the semantic implications of the term 'develop.' For this to happen, however, the change that needs to take place should directly involve a retooled idea of indigeneity, as well as a conflation between 'ought' and 'being' which includes a global, multifocal and polyphonic recognition.

#### **4\_The Convergence of 'Ought' and 'Is' in the Cognitive Significance of Indigeneity: A Path to the Dynamic Harmonization of Indigeneity's Protection and the Intercultural Use of Human Rights**

My basic assumption is that indigeneity is a projection of the human attitude to produce culture, followed by the attendant cultural engendering of spaces. All experiences of indigeneization, in this view, could be considered as targets or extensional projections of the 'indigeneization of the Earth.' According to this view of human cultural action, 'Earthly Space' should be considered as an absolute or comprehensive metaphor for all past, present and future experiences of indigeneization. So that it is, in a sense, the alpha and the omega, the original pattern and the semantic (future) synthesis of human presence on the Earth.

Against this backdrop, we could define in cognitive terms the reciprocal recognition of all 'indigeneities' and their actual and virtual spatial projections. My argument is as follows: if each indigeneity stems from a universal human function, the 'production of culture and space,' then all indigeneities will feature noetic ciphers that reveal something about human cultural nature and the different ways of engendering an all-encompassing 'Earthly Space.' Recognition requires respect and dialogue; but dialogue, in turn, presupposes the possibility to exist and express oneself. If the manifold indigeneizations are variations of the universal attitude to produce and semantize space, then

each of these experiences can teach something to the others and their human actors about their sense of Earthly enterprise. A refusal of this kind of learning can result in the physical and cultural genocide of indigenous targets, and of course also effects a self-defeating lack of self-knowledge. I would like to propose calling this condition a 'defective embodiment of earthly indigeneity.' From this perspective, recognition of Otherness is an activity that simultaneously pertains to both the realms of 'ought' and 'is.' It could be taken as a value or an end, but at the same time and insofar as it is embodied in current experience, it deploys itself as a means of knowledge. Our understanding of what earthly indigeneity 'is,' namely, our terrestrial Being, is a consequence of the act of recognizing Others. But, most importantly, this means that (human) Being depends, at least to a considerable extent, on what humans know about the interactions between themselves and the world. Through the spectrum of 'indigeneity,' then, 'ought' and 'is' show a tendency to converge. This tendency toward cognitive convergence should be assumed as a renewed ground for elaborating the overall discourse on indigenous rights.

From this perspective, I would like to return to the term 'noetic cipher' to better describe its significance and function. To begin, we can observe that all cultural products are semiotic-experiential syntheses of the interplay between mind, body, and the environment. What ultimately connotes this interactive process does not coincide with its final form or perceptive properties. These are only contingent expressions of a process, an experiential habit at work.<sup>24</sup> The inner significance of cultural products consists precisely in the compositional ciphers, namely in the noetic and behavioral patterns of adaptive adjustment underlying the birth of the 'thing' (objects, conducts, symbolic expressions, etc.). Given that space is not distinguishable from the experiences and objects that populate and punctuate it, and furthermore, that indigenization can be assumed as the meta-category for the human semantization of space and environment, then all indigeneities should be understood and recognized through the noetic ciphers they include as a means of producing related and idiomatic spatial cultural experience.

Noetic ciphers are habits, processive schemas of adaptation, that only occasionally coincide with specific things, objects, physical territories, and so on. These and their external manifestations are projections, and consequences, but they do not exhaust in themselves all the significance of the noetic ciphers from which they stem. On the contrary, such noetic ciphers hold an inner attitude to be metaphorically 'transduced' and



implemented by the use of other material and spatial components. For example, a reindeer fur is a very useful garment if I am in Sweden or Finland during the winter; conversely, it would be a kind of torture device were I to wear it on a summer's day in the middle of the Saharan desert. The noetic cipher of 'wearing garments' can, however, remain the same in both locations and be recognized as such, notwithstanding the preferable choice of wearing a linen tunic in the Sahara Desert, for example. Paradoxically, if I were Swedish or Finnish, and determined to wear the reindeer fur also in the Sahara Desert so as to maintain my cultural indigenous roots, precisely by maintaining the morphological and objectified connotations of my habits, I would invalidate their significance.

When we think of the intercultural recognition of indigeneity, we have to assume the possibility of a multilateral understanding of the noetic ciphers at work in all the habits embodied by people who are party to the intercultural encounter.<sup>25</sup> What must be avoided are the morphological reification and objectification of one's own cultural noetic cipher as well as the tendency to reciprocally translate by means of the alleged discovery of functionalist equivalences.<sup>26</sup> It must be made clear: the intercultural translation/transaction between different noetic ciphers should always be carried out as an original act of cultural creation.<sup>27</sup> Which connotations are to be selected in order to serve as a metaphorical ground for intercultural understanding and interplay between different indigeneities/cultures cannot be unilaterally or aprioristically identified. It is primarily for this reason that functionalism does not work. It usually proceeds through the identification of a particular set of connotations and uses them to support the idea that the common end shared by different cultural habits and their material expressions is a specific one. In most cases, we observe a tendency to convert Otherness into a regime that is compatible with one's own habits, obviously accompanied by the unending pervasive action of an ethnocentric gaze. Conversely, a genuine intercultural understanding requires a holistic and dynamic appreciation of the noetic and contextual components underlying the cultural habits and subjectivities being compared. At the same time, the cultural subjects' freedom to choose what to leave behind and what to acquire through the process of intercultural transduction must be assured.

Against the foil of 'Earthly indigeneity,' a polyphonic dialogue between the different indigeneity and indigeneization operations in action on our planet could be designated an 'inter-indigenization process.' This is — I argue — an existential task for human-

kind, one that recognizes that each culture contains noetic ciphers of adaptation to the earthly environment that could be helpful to understanding the sense of and future possibilities for human life on Earth.

The inherent translatability and transducibility of indigenous existential approaches is proven, on the other hand, by the legal regime — specifically as applied to intellectual property — provided and in some cases already jurisdictionally implemented to protect so-called indigenous and traditional knowledge. If this knowledge and its practical/objectifying implications are viewed, in the eyes of the same modern culture, to have universal utility, then why on earth would it need to be protected by intellectual property law? I raise this question even if it blatantly demonstrates a deep inconsistency. For what sense does it make, from a perspective of all-encompassing Earthly indigeneity, to assume that knowledge of universal significance can be ruled by a legal regime that allows for its exclusionary use and/or economic exploitation? This paradox and its constitutive elements, I contend, should be seen as the problematic kernel nestled within current conceptualizations and implementations of indigenism and indigenous peoples' rights. I think that until we humans understand that the main task within the need to recognize the value of indigeneity is the very cognitive function on which our existence on the Earth depends, then all political and legal attempts to assure indigenous rights will devolve into a self-destructive logic of appropriation and power, involving westernized cultures as much as indigenous ones. This is not a direct consequence of the individualistic quality of the western concept of intellectual property, as it is so often argued. As matter of fact, Western iterations of private property also recognize many possibilities for collectivization, multi-personal use, functionalization to communitarian interests and values, and so on. To make use of these semantic variations of the Western idea of property within the spectrum of an intercultural translation of indigenous claims for territories, traditional knowledge, etc., global thought must wriggle free from identitarian and reifying conceptions of culture.<sup>28</sup> Examples of the inconsistent and culturally dissociative behaviors that an inadequate understanding of noetic ciphers underlying indigenous habits<sup>29</sup> provokes can be found, among the myriad of similar cases, in two different stories respectively related to the Nuaulu people of South Asia<sup>30</sup> and the Kantu' of Kalimantan.<sup>31</sup>

I observed something similar during my fieldwork in Calabria, specifically in Riace, where a project for the repopulation of local villages was carried out by means of a plan

of integration for migrants/refugees and the parallel recovery of traditional autochthonous knowledge and habits. Unfortunately, though the initial efforts were carried out with genuine inventiveness, the attempt to merge and co-pollinate Calabrian East Coast traditional knowledge and the cultural habits of new arrivals broke up on the reefs of economic, political and media exploitation of this social experiment. By and by, the focus on noetic ciphers and the possibility of their intercultural transduction/transaction lost its central positioning, and was eventually replaced by economic and identitarian accommodations between the interests of the natives and the foreign newcomers.<sup>32</sup>

The importance of centering the recognition and protection of indigeneity on its noetic ciphers is also proven by the current trend for harmonizing indigenous habits/behaviors and human rights. Ordinarily, the cultural differentiation of indigenous people is ruled by a double-faceted standard of self-determination/compatibility, which places — as dialectical poles — indigenous habits on one side, and state statutory law/international human rights regimes on the other. The tendency to interpret the relationships between indigenous cultures and the other cultures in identitarian terms leads to a reading of indigeneity that primarily orbits around the morphological features of peoples' conduct.<sup>33</sup> These morphological features, then, are taken as indices to calculate their compatibility with human rights. At the same time, indigenous people try to include their claims to differentiate and self-determine their identities, taken in their material and practical consequences, under the semantic dome of human rights. No attempt at semantic translation takes place in these wars over the signification and guarantee implications of human rights enunciations. In these semantic struggles, there is no traceable justification of differences; rather they are presented as self-bounded units to be considered as such, for their (alleged) empirical *givenness*. Needless to say, within this contrastive game, human rights can only play the role of imposing hierarchical standards, which are thereby dangerously exposed to political instrumentalization.

On the contrary, if the starting point of the protection of indigeneity focused instead on the noetic ciphers of the cultural parties at play, then the axiological connotations of human rights could be situated in the midst of the translational/transactive process so as to foster the collaborative creation of intercultural solutions. If all parties considered themselves as equal and full-fledged interpreters of different indigeneities, they could trace, in the connotative landscapes underlying their habits, the semantic components to use for calling into play human rights as translational interfaces. In this way, human

rights could leave their hierarchical pyramidal positioning, and instead locate themselves on a horizontal plane, where they could function as a semantic bridge between different cultural and spatial universes.<sup>34</sup>

This intercultural use of human rights could give rise to the production of inter-spatial translations and therefore create new inter-spaces of experience, which in each specific place could give shape to a general formula of coexistence between indigeneities amenable to be implemented at an all-encompassing Earthly level. Rather than being trapped in a claiming/compensatory, reifying and anti-Western script, the discourse on indigeneity should endorse and include the view that, at least in absolute terms, there is no better or worse way to live on — and supported by — the Earth. It is true, colonialism and, more recently, the combination of contemporary technology and neocolonialism have caused and continue to cause great ecological changes and imbalances in bio-diversity. But human presence on Earth has also produced huge catastrophes in the past, especially if we consider human action from a deeply ecological point of view.<sup>35</sup> There is no indigenous people that is completely innocent if judged from this perspective. Human beings, as well as other creatures, are part and parcel of transformations that nature impresses on itself; this simply because the human being is itself nature, beyond and notwithstanding all possible dualisms. We should consider — with an appreciation for the paradox — that a conservative and museifying misoneism was born under modernity, and it cannot alter the trans-epochal process of cosmic signification that the appearance of humankind on Earth assumes. I argue that we, the humans, should modestly come to terms with this impossibility and, at the same time, with the innumerable and unforeseeable variations that the attitude to ‘indigenize’ space produces in all times. This is a task that can no longer exempt anyone from its accomplishment. Therefore, invoking the universal logic of human rights only to see the triumph of unilateral or conservative/identitarian claims for redress is a contradiction that cannot long survive its consequences. In the human creative production of earthly spatialities, we must act all together, polyphonically, from the common understanding — even visually proffered by images from outer space — that the Earth is finite.

## Endnotes

- <sup>1</sup> Will Kymlicka, “Beyond the Indigenous/Minority Dichotomy,” in *Reflections on the UN Declaration on the Rights of Indigenous People*, eds. Stephen Allen and Alexandra Xanthaki (Oxford: Hart Publishing, 2011), 99; Brendan Tobin, *Indigenous Peoples, Customary Law and Human Rights – Why Living Law Matters* (London/New York: Routledge, 2014), 41–45. For a critical assessment of the current legalizing approach to indigeneity see Benna Bhandar, “Plasticity and Post-Colonial Recognition: ‘Owning, Knowing and Being,’” in *Law and Critique* 22.3 (2011), 227–249; Kathleen Birrel, *Indigeneity: Before and Beyond the Law* (London/New York: Routledge, 2016), 9 ff.; Frank Hirtz, “It Takes Means To Be Traditional: On Recognizing Indigenous Cultural Communities in the Philippines,” in *Development and Change* 34.5 (2003), 887–914.
- <sup>2</sup> My English translation: “All determination is negation.”
- <sup>3</sup> See Tobin, *Indigenous Peoples*, 158 ff., 164 ff., and *ibid.* (250, nt. 25) as for the referrals to the instrumental political-legal instruments adopted to protect indigenous peoples’ traditional knowledge, biological diversity, access to genetic resources, and sharing of benefits arising from their utilization (Nagoya Protocol 2010) and the work of WIPO and its IGC. With specific regard to intellectual property regime implementation on behalf of indigenous people, see, most recently, Daniel F. Robinson, Abdel-Latif Ahmed, and Pedro Roffe, eds., *Protecting Traditional Knowledge: The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (London/New York: Routledge, 2017). See, furthermore, Kristen A. Carpenter, Sonia K. Katyal, and Angela R. Riley, “In Defense of Property,” in *Yale Law Journal* 118.6 (2009), 1022–1125, here: 1027 ff.
- <sup>4</sup> See Tobin, *Indigenous Peoples*, 57 ff.; UNDRIP art. 34; ILO convention 169 and the process of an increasing codification of customary law.
- <sup>5</sup> Remarkably enough, this reduction, although politically understandable, completely overlooks the fact that custom, and even more culture, cannot be considered to be exhausted by customary legal rules or directives. See, in this regard, Alison Dundle Renteln and Alan Dundes, “What is Folk Law,” in *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*, Vol. 1, eds. Alison Dundle Renteln and Alan Dundes (Madison: University of Wisconsin Press, 1995), 3–4.
- <sup>6</sup> I have addressed the limits of the “legal accommodation” approach to intercultural relationships in Mario Ricca, “Errant Law: Spaces and Subjects,” in *SSRN* (June 30, 2016), accessed June 30, 2016, <<https://ssrn.com/abstract=2802528>>, 1–54; Mario Ricca, “Ignorantia Facti Excusat: Legal Liability and the Intercultural Significance of Greimas’ ‘Contrat de Vèridition,’” in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique* 31.1 (2018), accessed October 16, 2017, <<http://link.springer.com/article/10.1007/s11196-017-9529-6>>, 101–126.
- <sup>7</sup> Concerning my approach to intercultural translation/transaction, see Mario Ricca, “Intercultural Law, Interdisciplinary Outlines: Lawyering and Anthropological Expertise in Migration Cases: Before the Courts,” in *E/C Rivista italiana di Studi semiotici* (March 3, 2014), accessed March 3, 2014, <<https://ssrn.com/abstract=2800575>>, 1–53; Mario Ricca, “Klee’s Cognitive Legacy and Human Right as Intercultural Transducers: Modern Art, Legal Translation, and Micro-Spaces of Coexistence,” in *Calumet – Intercultural Law and Humanities Review* (September 6, 2016), accessed September 6, 2016, <[http://www.windogem.it/calumet/upload/pdf2/mat\\_51.pdf](http://www.windogem.it/calumet/upload/pdf2/mat_51.pdf)>, 1–40. I refer to these articles for further bibliographical references.
- <sup>8</sup> I developed a chorological approach to the relationships between categories and spaces in Mario Ricca, “How to Make Law and Space to Interact Horizontally: From Legal Geography to Legal Chorology,” in *SSRN* (March 2, 2017), accessed March 2, 2017, <<https://ssrn.com/abstract=>

[2926651](#)>, 1–35, here: 6 ff. I refer to this essay for further literature on legal spatialities, spatial justice, and legal geography.

- <sup>9</sup> As for a proactive and non-representational approach to the production of space see Ben Anderson and Paul Harrison, “The Promise of Non-Representational Theories,” in *Non-Representational Theories and Geography*, eds. id. (Farnham/Burlington: Ashgate, 2010), 1–36. The proactive approach to spatial experience allows for a criticism of traditional space/place dualism: in this regard, I proposed some possibilities in Mario Ricca, “Ghostly Spatialities in Condominiums: Nuisance Law, Legal Geography, and Intercultural Chorology,” in *SSRN* (October 10, 2017), accessed October 10, 2017, <<https://ssrn.com/abstract=3050729>>; see *ibid.* for further bibliographical references on this topic.
- <sup>10</sup> In this sense, see Richard Handler, “Cultural Property and Culture Theory,” in *Journal of Social Archaeology* 3.3 (2003), 353–365, here: 355 ff.
- <sup>11</sup> Notwithstanding his usual deep insight in reading anthropological phenomena, this is nevertheless the core of the indigenous/cosmopolitan connection that James Clifford proposes in *Routes: Travel and Translation in the Late Twentieth Century* (Cambridge, MA: Harvard University Press, 1997), 31 ff. For a bird’s-eye overview of the different approaches to cosmopolitanism/indigenism relationships and interpenetration see, however, Maximilian C. Forte, “Introduction: Indigeneities and Cosmopolitanism,” in *Indigenous Cosmopolitans: Transnational and Transcultural Indigeneity in the Twenty-First Century*, ed. id. (New York: Peter Lang, 2010), 1 ff. On the other hand, as Hannerz also observes, geographical mobility does not imply, in and of itself, an automatic conversion to cosmopolitanism: see Ulf Hannerz, “Cosmopolitanism,” in *A Companion to the Anthropology of Politics*, eds. David Nugent and Joan Vincent (Oxford: Blackwell, 2004), 69–85, here: 71 ff.
- <sup>12</sup> I think that this interplay among indigeneism, trans-locality of cultural experience, and cosmopolitanism can emerge even in a trans-epochal fashion from a combined reading of, for example, Jack Forbes, “The Urban Tradition among Native Americans,” in *American Indian Culture and Research Journal* 22.4 (1998), 15–27; William W. Quinn, Jr., “Intertribal Integration: The Ethnological Argument in Duro and Reina,” in *Ethnohistory* 40.1 (1993), 34–69; and Ulrick Beck, “Cosmopolitical Realism: On the Distinction between Cosmopolitans in Philosophy and the Social Sciences,” in *Global Networks* 4.2 (2004), 131–156. Of course, the interplay between indigeneity and cosmopolitanism can overcome the dialectical opposition that the mainstream drove as a wedge between them if one accepts that ‘cosmopolitanism’ can be intended in cognitive/experiential terms rather than exclusive and tightly ideological terms as a doctrine embodying the imperialist universalism passed off by the colonizing West. For a de-ideologizing and de-Westernizing reading of cosmopolitanism see, to begin with, Kwame A. Appiah, *Cosmopolitanism: Ethics in a World of Strangers* (New York: Norton, 2006); Vered Amit and Nigel Rapport, *Community, Cosmopolitanism, and the Problem of Human Commonality* (London: Pluto Press, 2012), Part II, chapters 5–9, exclusively authored by Rapport.
- <sup>13</sup> See, regarding the web of projections of indigenous contemporary experience, Kyra Landzelius, “Introduction: Native on the Net,” in *Native on the Net: Indigenous and Diasporic Peoples in the Virtual Age*, ed. Kyra Landzelius (London/New York: Routledge, 2006), 1–42; but also see, on the multi-site semiotic experience of space, Madhavi Mallapragada, *Virtual Homelands: Indian Immigrants and Online Cultures in the United States* (Urbana: University of Illinois Press, 2014).
- <sup>14</sup> With a plea to the reader to avoid assuming that in my consideration Sicilians are all members of the Mafia or, even worse, that I myself, because of my origin, am a ‘mafioso’ too!
- <sup>15</sup> This is the same phenomenon also outlined in general terms by Sheldon Pollock, “Cosmopolitan and Vernacular in History,” in *Cosmopolitanism*, eds. Dipesh Chakrabarty et al. (Durham, NC: Duke University Press, 2002), 15–53, here 39.

- <sup>16</sup> See Cristina Y. A. Inoue and Paula F. Moreira, “Many Worlds, Many Nature(s), One Planet: Indigenous knowledge in the Anthropocene,” in *Revista Brasileira de Política Internacional* 59.2, e009 (2016), 1–19, here: 14–17; Fikred Berkes, *Sacred Ecology*, 3rd edition (New York/Abingdon: Oxon, 2012), 265 ff.; Angela Cavender Wilson, “Reclaiming Our Humanity: Decolonization and the Recovery of Indigenous Knowledge,” in *Indigenizing the Academy: Transforming Scholarship and Empowering Communities*, eds. Devon Abbot Mihesuah and Angela Cavender Wilson (Lincoln/London: University of Nebraska Press, 2004), 71 ff.
- <sup>17</sup> The pivotal signification of relational self-reflexivity is proved by the failing genetical attempts to interpret/normativize indigeneity: see Kim TallBear, “Genomic Articulations of Indigeneity,” in *Social Studies of Science* 43.4 (2013), accessed on May 30, 2013, <<http://sss.sagepub.com/content/early/2013/05/30/0306312713483893>>, 509–533, here: 9–12, 17–18.
- <sup>18</sup> In this sense, see Jim Goe, “Becoming Indigenous Peoples: Difference, Inequality, and the Globalization of East African Identity Politics,” in *African Affairs* 105.420 (2006), 399–420, here: 403 ff.
- <sup>19</sup> On this topic, see in an expansive literature Philipp J. Deloria, *Indians in Unexpected Places* (Lawrence: University Press of Kansas, 2006); and the collection of essays included in Susan Lobo and Kurt Peters, eds., *American Indians and the Urban Experience* (New York: Altamira Press, 2001).
- <sup>20</sup> See *Permanent Forum on Indigenous Issues, Report on the Sixth Session (14–15 May 2007)*, Economic and Social Council Official Records Supplement, No. 23, UN Doc E/2007/43, E/C.19/2007/12, para 4; Erica I. Daes, “Indigenous Peoples and their Relationship to Land: Final Working Paper” (2001), accessed June 11, 2001, <<http://www.refworld.org/docid/3d5a2cd00.html>>; Jérémie Gilbert and Cathal Doyle, “A New Dawn over the Land: Shedding Light on Collective Ownership and Consent,” in *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, eds. Stephen Allen and Alexandra Xanthaki (Oxford/Portland, OR: Hart Publishing, 2011), 279–328, here: 291 ff.; Tobin, *Indigenous Peoples*, xix. A very interesting discussion on the derivation of Law from the Land in worldwide indigenous (self-)representations can be found in Daniel Coleman, “Toward an Indigenist Ecology of Knowledges for Canadian Literary Studies,” in *Studies in Canadian Literature/Études en littérature canadienne* 37.2 (2012), 1–31, here: 15 ff.; Marie Battiste and James (Sákèj) Y. Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon: Purich, 2000), 45, 67. Drawing on non-dualistic assertions, Battiste and Henderson (45, 67), share and develop their idea that the indigenous category “land” is synonymous with law. This follows because nature, from an indigenous view, is the final result of a series of “contracts” between human activities and nature. This ancestral occurrence would make indigenous law very different from Western law, which would be rigidly rooted in an inflexible human/nature divide. The question arises: how much humanity is there in the law of indigenous land? And what about the Modern Doctrine of Natural Rights and its origins in medieval natural theology? Some historical insights from European legal history — I would suggest — could be useful to the cause of indigenous peoples’ rights, and the possibility of engendering effective intercultural translations of their needs.
- <sup>21</sup> What, following Beck, could be defined as ‘an unconscious and/or passive cosmopolitization.’ see Beck, *Cosmopolitical Realism*, 134.
- <sup>22</sup> On the participation and consent of indigenous people to the decisional processes regarding their territories and the maintenance of their cultural habits as tied to their ‘living the land’, see, in a vast literature, Cathal M. Doyle, *Indigenous People, Title to Territory, Rights and Resources: The transformative role of free prior and informed consent* (London/New York: Routledge 2015).
- <sup>23</sup> In any case, UNDRIP has no mandatory effect on the political action of national states.

- <sup>24</sup> The theoretical roots of this approach to the nature of things can be traced in Peirce's semiotics. See Charles S. Peirce, "Man's Glassy Essence", in *The Monist* 1 (1892/1893), 19–22, <[https://isidore.co/misc/Res%20pro%20Deo/Peirce/The%20Monist%20papers/4.%20Man%27s%20Glassy%20Essence%20\(1893\).pdf](https://isidore.co/misc/Res%20pro%20Deo/Peirce/The%20Monist%20papers/4.%20Man%27s%20Glassy%20Essence%20(1893).pdf)>, where seminal cues regarding the chorological continuity between mind and matter, category and space can be found.
- <sup>25</sup> An interesting example of co-grafting and co-pollination can be traced in the work of the South-African dancer and choreographer Dada Masilo. She merges classical and contemporary Western ballet traditions and techniques with South-African dances, and re-interprets the classical ballets — recent examples include *Swan Lake*, *Carmen* and *Giselle* — with the Dance Factory ballet company in Johannesburg. Interestingly, South Africa recently enacted the Protection, Promotion, Development and Management of Indigenous Knowledge Systems Bill (2016) to protect traditional indigenous knowledge of local indigenous communities from illicit use and misappropriation and, *inter alia*, to promote the commercial utilization of indigenous knowledge. To this end, the Bill creates the National Indigenous Knowledge Systems Office, with the official task of recording and certifying indigenous knowledge, as well as penalizing violators of its prescriptions. How should Masilo's choreography be classified? Are her ballets a development of, or rather a betrayal of South African indigenous knowledge? Meanwhile the Embassy of the Republic of South Africa advertises Masilo's ballets on its official websites in all the countries where they are performed.
- <sup>26</sup> For a very thoughtful and, at the same time, icastic demonstration of the flaws inherent in the functionalist approach see Webb Keane, *Christian Moderns: Freedom and Festish in the Mission Encounter* (Berkeley/Los Angeles/London: University of California Press, 2007), 223 ff.
- <sup>27</sup> See Ricca, "Intercultural Law, Interdisciplinary Outlines;" id., *Culture interdette: Modernità, migrazioni, diritto interculturale* (Torino: Bollati Boringhieri, 2013); id., *Oltre Babele: Codici per una democrazia interculturale* (Bari: Dedalo, 2008).
- <sup>28</sup> See Naomi Mezey, "The Paradoxes of Cultural Property," in *Columbia Law Review* 107 (2007), 2004–2046; John Comaroff and Jean Comaroff, *Ethnicity, Inc.* (Chicago: University of Chicago Press, 2009). As for the risk of objectification and reification resulting from the intellectual property regimes on indigenous traditional knowledge see, in a massive literature, Rosemary J. Coombe, "The Expanding Purview of Cultural Properties and their Politics," in *Ann. Rev. Law. Soc. Sci.* 15 (2009), 393–412: here, 405 ff.; id., "Frontiers of Cultural Property in the Global South," in *The Routledge Companion to Cultural Property*, eds. Jane Anderson and Haidy Greismar (London/New York: Routledge, 2017), 373–400; and *ibid.* for further bibliographical references.
- <sup>29</sup> See, regarding the idea of noetic ciphers the consonant considerations laid down by Roy F. Ellen, "The Cognitive Geometry of Nature: A Contextual Approach," in *Nature and Society: Anthropological Perspectives*, eds. Phillippe Descola and Gísli Pálsson (London/New York: Routledge, 1996), 118–120.
- <sup>30</sup> See Roy F. Ellen, "Forest Knowledge, Forest Transformation: Political Contingency, Historical Ecology, and the Renegotiation of Nature in Central Seram," in *Environmental Anthropology: A Historical Reader*, eds. Michal R. Dove and Carol Carpenter (Malden, MA/Oxford/Carlton, Victoria: Blackwell, 2008), 321 ff.; and especially 326, where Ellen insightfully observes: "How people conceptualise nature depends on how they use it, how they transform it, and how, in so doing, they invest knowledge in different parts of it."
- <sup>31</sup> See Michal R. Dove, "Rubber Kills the Land and Saves the Community: An Undisciplined Commodity," in *Beyond the Sacred Forest: Complicating Conservations in South East Asia*, eds. Michal R. Dove, Percy E. Sajise, and Amity A. Doolittle (Durham/London: Duke University Press, 2011), 91 ff. I addressed diffusely the cases treated in the articles cited here and in the above note in Mario Ricca, "Natura inventata e natura implicita nel diritto. Incursioni interculturali," in *Semiotica della*



*natura (natura della semiotica)*, ed. Gianfranco Marrone (Milano/Udine: Mimesis, 2012), 320–328. The negative remarks proposed by Dove and Ellen are echoed, in terms of indigenous peoples' rights protection, by Bridget Love, "Treasure Hunts in Rural Japan: Place Making at the Limits of Sustainability," in *American Anthropologist* 115 (2013), 112–114, here: 116 ff.; Erich Hirsch, "Mediating Indigeneity: Public Space and the making of Political Identity in Andean Peru," in *Political and Legal Anthropology Review* 39.1 (2016), 95–109, here: 103 ff.

- <sup>32</sup> For more information about this case, see Mario Ricca, *Riace, il futuro è presente. Naturalizzare il 'globale' tra immigrazione e sviluppo interculturale* (Bari: Dedalo, 2010). Notwithstanding the major attention given to the 'Riace case' by the newspapers and other media — even Wim Wenders made a film titled 'Il volo' — the mayor of Riace is now under investigation for misappropriation of funds and fraud against the Italian State and the EU.
- <sup>33</sup> In this sense, the morphing of cultural heritage from ownership into stewardship can also be a form of instrumentalization and objectification of indigenous noetic ciphers. Against Carpenter et al.'s criticism of Mezey's arguments about the cultural defectiveness of indigenous property regimes we can observe that what law should protect, what should be recognized/shared, is the knowledge encapsulated in indigenous agricultural, animal breeding, and other habits, rather than their diversity or material usefulness in themselves. In this sense, see Wilson, *Reclaiming Our Humanity*, 71. See, moreover, Carpenter et al., *In defense*, 1083–1084; Mezey, *The Paradoxes*, 2004 ff. In this regard, see also the FAO Conference Resolution no. 5/1989 about so-called 'Farmers Rights.'
- <sup>34</sup> See Ricca, "Errant Law;" Id., "Intercultural Use of Human Rights and Legal Chorology," in *SSRN* (July 9, 2016), accessed July 9, 2016, <<https://ssrn.com/abstract=28074244>>.
- <sup>35</sup> On the anti-ecological consequences of traditional indigenous habits and agricultural practices, see Coombe, *Frontiers of Cultural Property*, 390 ff.; see also Bruno Latour, *Politics of Nature* (Cambridge, MA: Harvard University Press, 2004), 232 ff.