Post-UNDRIP Makes a Difference

UNDRIP Promotes Indigenous Rights in Liberal Democracies

12/4/2013

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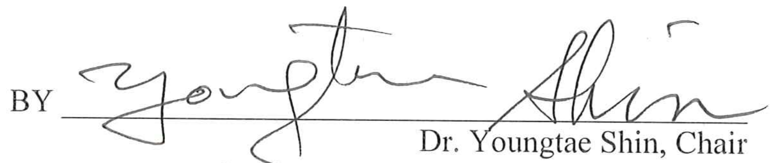
POST-UNDRIP MAKES A DIFFERENCE: UNDRIP PROMOTES INDIGENOUS RIGHTS IN LIBERAL DEMOCRACIES

A THESIS APPROVED

FOR THE DEPARTMENT OF POLITICAL SCIENCE

DECEMBER 13, 2013

BY 

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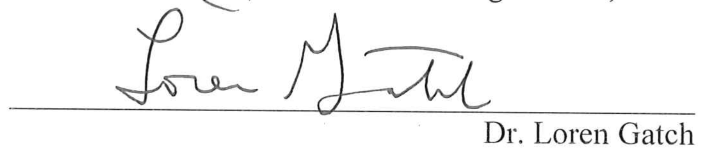

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Abstract

This comparative case study examines the use of Constructivist International Relations theory on indigenous issues in liberal democracies. The thesis focuses on the impact of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on the United States, Canada, and Australia. Indigenous issues hinge upon competing or different state and indigenous definitions of self-determination, sovereignty, indigenous, and human rights. As in the international arena, I attempt to find an internationally agreed upon definitions to base the study.

The literature review focuses on the international relations Constructivist theory, international organization, the creation of indigenous organizations, and strategies of indigenous people. Using a ideas from realism and liberalism, Wendt argues constructivism in the international relations theory that suggests that states base decisions on what is good for their own self-interest; however, it is based off of how other states or others will view their decisions. Indigenous people have used this view of the world to influence the states where they live through international organization and indigenous strategy.

The thesis demonstrates that post-UNDRIP domestic legislation has been introduced in the US, Canada, and Australia that are in line with the indigenous rights in the Declaration. In some instances, the legislation has directly referenced the UNDRIP. The proposed legislation has provided evidence of indigenous advocacy and indigenous rights being strengthened post-UNDRIP.

The findings are significant because it adds to the research of both indigenous theory and constructivist theory. It demonstrates the importance on constructivist theory on nation-state's domestic affairs. The findings provide evidence of the international arena having some influence, while not legally through international law, through social norms on states affairs. It strengthens international constructivist theory and provides insight into indigenous strategies on a large scale.

Since the UNDRIP was signed by the US, Canada, and Australia in 2010, the post-UNDRIP period is rather small and has not had enough time to see if legislation will be passed rather than just introduced. I expect there to be more legislation directly cited the UNDRIP in the future. It would be interesting to see if there are long lasting impacts of the Declaration and if the Declaration will become legally binding in the future.

INTRODUCTION

Modern day communication has led to easily accessible and more frequent contact between peoples of the world. Diverse cultures interconnect as fast as modern technology allows. As more connections occur more relationships are created, more influence is exerted, and as a result information flows can lead to grievances and possible disputes, which can leave a state vulnerable. However, information flows can also create diplomacy between states and groups. In an effort to avoid disputes, states seek peaceful means to engage in international organizations. Throughout history states and indigenous groups have competed for land, resources, and governance. As a result of the ongoing competition, treaties, compromises, and agreements have been made between indigenous groups and states. However not all the treaties, agreements, and compromises have been carried out or fulfilled. Correspondingly, as states have used international organization to create peace, indigenous groups have used international organizations as a peaceful means to advocate for indigenous rights. International organizations in which states are members can provide international justification for indigenous rights and can be used by indigenous groups to influence domestic legislation for indigenous rights. The United States, Canada, and Australia signed the United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP) and each government commitments to UNDRIP. UNDRIP provides a platform for indigenous groups to bypass governments and use international pressure to influence their domestic governments to seek indigenous rights.

Indigenous people from all areas of the world have formed a community based on shared experiences with colonial rule, post-colonial rule, non-dominant cultural preservation, and challenges in modern day institutional representation. Constructivism in international relations theory emphasizes the way government relationships and people can be changed.

Constructivism explains the international stage where indigenous people interact to exert their influence to strengthen indigenous rights and where states exert international influence over other states. This led to states to adopt measures to address and redress grievances of indigenous people and (Keohane 1984) to abide by the international standards to support the government's foreign policy objectives. This thesis will explore the changes in the US, Canada, and Australia in regards to indigenous policy to support my argument for constructivism. These three cases support the idea that the international system is socially constructed and is effective for indigenous rights.

There are several ways states go about maintaining harmony, peace, and efficiency. Government strategies are carried out through international agreements made by governments through bilateral agreements, multilateral agreements, declarations, and/or treaties. While the United Nations is the largest inter-governmental organization, its membership is held by nation-state governments, officially recognized by the international community, with voluntary agreements. The voluntary agreements have a "sovereignty clause" which is significant because the clause allows member states to exercise state sovereignty over any UN agreement, thus resulting in weakened international agreements. However, as communication and transportation is easier than it was when the UN was created, the authority of the state's foreign policy is challenged by non-state actors, such as non-governmental organizations and multinational corporations. Inter-governmental actors have increasingly exerted more influence through the UN on governments' foreign policies. Simultaneously, national governments, especially liberal democracies, are also subject to international actors, such as the UN and other international advocacy networks (Keck and Sikkink 1998). In order to engage in this international arena, states seek not to lose legitimate power and choose to use diplomacy.

International standards are agreed upon by states through voluntary international governance authorities in order to create a more harmonious, peaceful, and efficient world. The creation of the UN was in reaction to the atrocities inflicted on the people during World War II and other violent crimes. Through the agreed upon norms, the UN establishes international laws to hold states accountable. In a globalized world, international norms have an increasing presence in state domestic affairs through international legal or social pressure because of the involvement of other states (Keohane 1984, 51; Skocpol 1979). The international standards expressed in the UNDRIP are based on the human rights standards that are describes in the Universal Declaration for Human Rights (UNDR). Human rights international standards have become the norm in which governments are held while interacting with each other in the international system. When domestic groups use international standards, they use them as a "mechanisms of change" (Mills 1959, 150) for influencing domestic governments. Indigenous people use governments signature on the UNDRIP to pressure their own state governments to protect indigenous rights.

One challenge minority group's face in the world is to find an inclusive way to hold an effective voice in a democratic institution. In order to influence the world political economy indigenous people resorted to the UN. On September 13, 2007, the United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP) was signed. The signing established international norms, created more awareness of and support for indigenous people's rights, and caused changes in governance within states, which resulted in strengthening indigenous rights. Some of the indigenous rights UNDRIP supports are the right to self-determination of political and social structures. Indigenous rights have collective and individual human rights, equality, freedom, strengthening political, legal, economic, social and cultural institutions, nationality,

liberty, security, to be culturally protected from states and society, community, religion, education, diversity, language, labor laws, decision making, representation, improved economic and social conditions, traditional medicines, lands, territories, resources, protecting the environment, determine their own identity, respect treaties, and protecting women children, and elders. (United Nations Declaration of the Rights of Indigenous Peoples 2007) The UNDRIP also explicitly describes the national government's role in protecting indigenous rights. Although the US, Canada, and Australia did not endorse the UNDRIP until 2010, the overall human rights angle of the declaration remains unchanged.

In this thesis, I will examine the UNDRIP indigenous rights implemented in the United States, Australia, and Canada and compare it to one another to provide support for the international socialization of formal mechanisms for indigenous rights specific to the UNDRIP. I chose Canada, Australia, and the United States as comparative studies because of their similarities as well as differences. The Canadian, Australian, and US government have similar internal and external attitudes regarding indigenous people. They are liberal democracies and each has a large, geographically diverse landmass. Each was a former colony of European states, and each has a diverse economy. Furthermore, all three states share the common law tradition. Despite the similarities, there are differences as well. The US is a UN Security Council member and is a larger economic power, whereas Australia and Canada are not UN Security Council members and do not hold the same level of economic power as the US.

In all three democracies, indigenous people are striving for more sovereignty recognition from the states. Among some of their grievances, they would like to have more recognition from their respective states on indigenous land, water, political rights, and cultural rights. Indigenous people's political and social movements are reactions to grievances states have not adequately

addressed. In liberal democracies, people can react to government grievances by forming groups to attempt to change the government. Most indigenous people can organize, as any other group of people in a liberal democracy, to participate in the democratic structure to influence the government in favor of the indigenous perspective. The grievance and the government type influence the kind of organization indigenous people choose. In liberal democracies, most indigenous people choose to form groups that are similar to other minority or specialized groups in the nation-state. For example in the United States, indigenous people formed the National Congress of American Indians (NCAI) to lobby and research on behave of indigenous people.

There are three ways to assess indigenous rights: legislation, advocacy, and litigation (Ivison, Patton and Sanders 2000, 67). I will use these three components to assess the domestic political actions for indigenous rights to see if they align with UNDRIP and to identify how they strengthen indigenous rights in the nation-state. I will compare introduced legislation as it applies to indigenous rights after the signing of the UNDRIP and also the role of advocacy groups that claim the ideals of the UNDRIP for justification of their missions. As previously noted, the three cases of my comparative study are the US, Canada, and Australia. I will use two different time periods to look at each group of indigenous people within each state. The first time period will be the colonization and first interactions with indigenous groups until the signing of the UNDRIP in 2010. The second time period will be after the UNDRIP in 2010. These two time periods were chosen to assess the significant changes in the international agreements with regards to indigenous rights post-UNDRIP.

All three states agreed to foster the rights of indigenous people to create better political structures to address indigenous concerns. After the US, Canada, and Australia signed the UNDRIP in 2010, they introduced legislation the cited the UNDRIP for indigenous rights. The

legislation was proposed to align with international standards to properly address many cultural issues, legal jurisdictional issues, and social issues with the domestic nation-state. Since the signing of the UNDRIP, there has been a strengthening of indigenous rights in promoting more self-determination legislation for indigenous groups. After the example was set by the US, Canada and Australia introduced similar legislation to strengthen indigenous rights within their own countries. Thus, the introduction of indigenous strengthening legislation, illustrates how indigenous groups can use international commitments by governments to influence domestic legislation. While these rights are inherent, they were strengthened through international support by governments agreeing to protect indigenous rights as signatories of the UNDRIP.

A constructivist approach is useful in that it shows how the dominant group's view is reflected in the evolving state attitudes about indigenous rights. Also contributing to indigenous rights are post-colonialism's critical views of international theory. Post-colonialism criticizes the Western view of political structures and seeks to find alternatives to the Western view of political organization. Both constructivism and critical theory look at the world differently and provide alternatives to realism international theory. Constructivism focuses on the active progress of the social construction of norms. The international structure has a dual purpose to create norms and to limit human actions. Constructivism finds things happen at separate times, while critical theory suggests these things happen at the same time (Bobulescu 2011, 58). The structure and the agency shift throughout time periods based on the views of people (Bobulescu 2011, 59-60).

In order to better understand indigenous rights, the term "indigenous" needs to be defined. Yet while indigenous groups are influential, there is only so much they can achieve domestically. International organizations like the UN are major actors in the world political

system. States act within the international environment and in the UN, thus making the UN a great institution to approach a unified indigenous definition. In order to look at how indigenous people interact in the international system, this paper will, first look at the three state's relationship with indigenous people. Second, this thesis will explore how indigenous people interact with governments in the international community and what changes have taken place domestically with regards to indigenous rights as a result of states trying to adhere to international norms. Finally, I will look at indigenous issues through a social lens in order to analyze the environments in the US, Canada, and Australia that lead to indigenous appeal to international organization.

Definitional Problems of Indigenous Peoples

The UN definition of indigenous people has evolved over time. In 1972, it started with a "salt-water" definition of colonization and indigenous for U. N. Special Rapporteur Jose R. Martinez Cobo conducted the *Study on the Problem of Discrimination against Indigenous Populations* for the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Kuppe 2009, 105). The 1972 definition only included groups that were colonized with a discovery colony across a body of water.

Indigenous populations are composed of the existing descendants of the people who inhabited the present territory of a county wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world…(Kuppe, 2009, 14)

At the end of the study, the definition of indigenous people evolved over time due to state and indigenous group's interests. For example the newer definition focuses on current colonization and areas of the world that were not previously included, such as Asia and Africa (Kuppe 2009, 105). Cobo's methodology examined indigenous definitions from states all over

the world and included indigenous impute. In 1982, the Working Group on Indigenous Populations (WGIP) was established by the U.N. Sub-Commission on the Promotion and Protection of Human Rights to form a declaration for indigenous rights. More than 100 indigenous groups from around the world participated.

In 1986, the definition changed to:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors: (a) Occupation of ancestral lands, or at least of part of them; (b) Common ancestry with the original occupants of these lands; (c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.); (d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language); e) Residence in certain parts of the country, or in certain regions of the world; f) Other relevant factors. On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group) This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference. (Cobo 1986, 29)

The definition of indigenous people was accepted by government signers of the UNDRIP and indigenous groups that participated in the WGIP. This definition is still the most commonly cited definition for international indigenous issues because of the general agreement. In order to explore the state and indigenous relationship and to distinguish between indigenous groups and other groups, there needs to be a commonly defined definition or working definition of indigenous. Cobo created this definition to clarify for international actors what makes indigenous people distinct from other groups, specifically, ethnic minorities (Kuppe 2009, 104).

Ethnicity is determined by group acceptance and self-identification by an individual with the group. The definition of ethnicity does not take into consideration time and the preservation of traditional lifestyles. The definition of indigenous hinges on indigenous group existence prior to the creation of nation-states in the international system, in indigenous claims to land and traditional culture. It also hinges on historical claims to territory prior to colonial experience. Moreover, non-dominant traditional cultural preservation sharply distinguishes indigenous from ethnicity. Indigenous groups preserve their traditional culture against the mainstream culture, while ethnic groups do not have to maintain a distinct culture. Additionally, indigenous describes a group, while ethnicity is an attribute of an individual. While some groups may adhere to certain aspects of this definition, there must be a counter culture distinction and a historical presence to identify as indigenous.

This distinction between ethnicity and indigenous can be found within other working definitions for indigenous rights outside of the United Nations such as the Minorities at Risk (MAR) definition. The MAR dataset at the University of Maryland makes a distinction between the categories for ethnoclass, ethnonationalist, and indigenous.

Ethnoclass, as used by the MAR data set, is a group of:

> "…ethnically or culturally distinct peoples, usually descended from slaves or immigrants, most of whom occupy a distinct social and economic stratum or niche" (Center for International Development and Conflict Managment 2008).

Ethnonationalist definition is a group and is:

> "…regionally concentrated peoples with a history of organized political autonomy with their own state, traditional ruler, or regional government, who have supported political movements for autonomy at some time since 1945" (Center for International Development and Conflict Managment 2008).

The indigenous definition is a group and incorporates time:

"… conquered descendants of earlier inhabitants of a region who live mainly in conformity with traditional social, economic, and cultural customs that are sharply distinct from those of dominant groups" (Center for International Development and Conflict Managment 2008).

When attempting to define the distinctness of indigenous people, the definition needs to be focused on present day issues and not historical injustices. Creating a definition of "indigenous" without looking at the past can prove to be difficult and most definitions include some mention of conquest but include modern day cultural distinctions as well.

The MAR dataset definitions for ethnic identity and indigenous identity differ because of the claims to the homeland territory and a traditional culture that is separate from the majority culture in today's world. Identity can be constructed through political, social, historical, cultural, spiritual, and economic means. Groups contribute to group identity by defining who the group is and how they are represented in the world.

Ultimately, this brings up the debate over identity in an individual versus a group. Group and individual interests are constantly in conflict in political systems throughout the world. The dilemma found in government is how to reconcile group interests. Many studies have been devoted to the power of collective action groups and the progress of the state (Olson 1986). While indigenous groups may seem like they have special interests, indigenous people can provide benefits to governments and peoples outside the indigenous identity. Public goods maintain by indigenous groups can include: defense contracts with governments, maintenance and preservation of natural resources, and multiculturalist governance opportunities for other states to mimic. Indigenous groups in the democratic countries of New Zealand, Canada, and the United States are minority groups with their distinct traditional cultures and historically first claims to territory. Ethnicity is a group identity based on various criteria, while the criteria for

indigenous identity is based on original or first land claims and modern day claims to traditional culture. Culture includes spirituality, language, social organization, social customs, and political organization.

Despite additional work on the definition for indigenous, Cobo's definition is widely cited and accepted in the international community. The indigenous groups in this study will rely on the UN definition for indigenous identification. The 1986 definition has changed from the 1972 definition to include indigenous groups around the world that were previously excluded due to salt water colonization. There is a clear separation of indigenous from ethnicity because of the colonization aspect for indigenous. I will be using the 1986 Cobo UN definition of indigenous for the indigenous groups within my study because it is more universal and this study spans multiple jurisdictions. However, it is important to keep in mind the indigenous groups for the chosen cases are minority groups.

While the term "indigenous people" is a debated term, liberal democracies did not vote for the UNDRIP in 2007 because of the term self-determination. Signing in 2007 would have eroded the identity of the state (Ryser 2012, 18). Governments wanted to have a definition of self-determination that was clear and consistent with domestic definitions (United Nations General Assembly 2007). The definition of indigenous people has evolved over time due to these disagreements from the ILO agreement in 1957 to the modern day UNDRIP definition.

The complexities in indigenous rights are carried out in the defining of the terms used in the issues. Disagreements with states over definitions can occur for many domestic reasons: land disputes, monetary budgets, economic disputes, and political reasons both domestic and foreign. Governments do not want definitions that will create additional costs or conflict with its political

agenda. Governments can be reluctant to sign an international agreement because it could strengthen groups deemed terrorists or groups that will domestically cause the status quo to change. For example, Russia was hesitant to sign the UNDRIP because of conflicts with Chechnya (Henriksen 2008, 31).

Thus there is not a universally agreed upon definition of indigenous people and the definition has had some evolution. There exist various definitions for indigenous people because not one single definition is agreed on by all groups. There needs to be more research in the area of indigenous people and indigenous rights. However, the lack of an agreed upon universal definition can be a concern for further representation of indigenous people in the international community.

Other Disputed Terms:

This topic is complex and many of the terms used to justify indigenous and human rights are disputed and carry meanings subject to interpretation. Sovereignty, self-determination, and human rights in and of themselves can be and have been discussed at length. The following are attempts at reigning in some of those discussions to move to a greater discussion about indigenous rights influence on the national liberal democratic governments.

Sovereignty:

Sovereignty is a disputed term and can have multiple definitions when used in indigenous rights discussions. Sovereignty means having jurisdiction over a certain area of land. Sovereignty is compromised when *terra nullius* is no longer used as a legitimate legal term for establishing sovereignty. There are three ways of establishing sovereignty: discovery, conquest, and through treaties (Ivison, Patton and Sanders 2000, 12-13). All three of these approaches were used by

European countries when exploring and colonizing outside of their borders. Discovery is one of the weaker claims of sovereignty because most land discovered was already inhabited. Under *terra nullius* land was not occupied by a previous group. Discovery falls under the *terra nullius* claims, which are no longer accepted by liberal democratic states as a justification because land was taken away from indigenous people. Conquest is the weakest claim because it is rarely used alone to justify sovereignty (Ivison, Patton and Sanders 2000, 13). Lastly, treaties are the most solid approach to establishing sovereignty. However, treaties with indigenous people are often questioned because of the language barrier and ability to demonstrate if there was a clear understanding or an effort to provide a clear understanding of signed treaties. Thus the establishment of treaty relationships with indigenous groups can be the key factor in sovereignty for indigenous groups. Just as values can questioned within international liberal theory, so is the concept of sovereignty (Ivison, Patton and Sanders 2000, 12).

In the 16th century land around the world was "discovered" by Europeans. The US, Canada, and Australia were also discovered by European countries. However, the newly "discovered" land was already inhabited by groups of people. These people ultimately became colonized by the European settlers. In the case of the US, settlers removed themselves from the power of the mother state and formed their own independent state. Canada and Australia are still formally a part of Great Britain but they no longer require formal government approval from the British Parliament to conduct their own affairs. While this decolonization process for liberal democracies was occurring in the 1950s, the indigenous groups that were discovered during colonization remained under the control of the newly formed states. Due to the history of the creation of these states, the government politics have been criticized and governments search for political mechanisms to include the diverse groups that reside within the state. Sometimes, these

are referred to as critical theories. Critical theories are those that challenge mainstream political theories. Often times mainstream political theories are thought to have European values, such as progress and economic power, that do not take into account the culture and values of the indigenous groups that were colonized.

Self-Determination:

One of the main focuses for indigenous people is the ability to manage their own affairs. In order to do so, they have to have the right to be self-determinant. Self-determination is a concept introduced by President Woodrow Wilson in the formation of the League of Nations (the predecessor to the United Nations), in order for nations and states to have peaceful relations (Ryser 2012, 208-209). The International Labor Organization (ILO) sought to provide some parameters for a definition in 1989 to establish international labor regulations for indigenous groups. The ILO seeks to promote internationally social justice and human and labor rights for people. Ultimately, indigenous people have the freedom to self-identify as an indigenous group but according to the ILO definition they must lead a traditional lifestyle, be culturally distinct from other national populace, have their own social organization, traditional customs and traditional laws, and have historically lived in the area in which they reside before others came to the area (International Labor Organization 1989). The document assumes the dominance of the state, thus giving the state the responsibility to determine indigenous people and to limit indigenous sovereignty to certain areas in regards to labor (Duthu, 2008, 203). The ILO was developed without the consent of indigenous people and lacks a base for indigenous self-determination to build because it is defined by a group with no indigenous input. There is no agreed upon definition by governments for self-determination and it is left up to each group to define for itself.

The logistics of establishing indigenous rights is a delicate balance between already existing international law and creating a means for certain groups to determine their own affairs without threatening the national government. In the UNDRIP discussion, "self-determination" was favored by indigenous groups because it stayed consistent with international law (Ryser 2012, 208). However, the term was not favored by the US because it was inconsistent with already existing definition for tribal groups in the United States. Self-determination, as defined by international law, sought to give indigenous groups the ability to have a political status without the need for the United States. The sovereignty of the United States would have been at stake (Ryser 2012, 208-209). Despite the disagreement upon the terms of the UNDRIP, states use UNDRIP to decide their own domestic affairs. However for the purpose of the UNDRIP, self-determination is exercised through political status and economic, social and cultural development.

Human Rights:

The UNDRIP seeks to proclaim indigenous rights and the protection from discrimination for indigenous people. It is a declaration for clarifying the cultural distinction of human rights for indigenous people (Stamatopoulou 2012) and attempts to create a group right out of a traditionally individual right. States do not grant rights but re-enforce already existing rights. Thus human rights are inherent but are able to adapt over time because they have been socially constructed (Dunne and Wheeler 1999, 3-4). While culture can change, indigenous rights must have a group acceptant and rejects cultural relativism, thus making the UNDRIP collective group rights. Human rights are those that are given to individuals and groups that have been accepted by most states since 1948 in the Universal Declaration of Human Rights. Human rights violations are those that do a "human wrong".

The UNDRIP creates an international standard for liberal democracies to close a compliance gap (Dunne and Wheeler 1999, 2). In this case, the compliance gap is a comparative measure that compares states acquiescence with the voluntary measures of the UNDRIP. States will use international human rights agreements as a foreign policy tool to attempt to erode sovereignty from other national governments (Dunne and Wheeler 1999, 14-16). Human rights were not originally created for this purpose but have been used by states and indigenous groups as political tool. Human rights have become something groups can define for themselves, thus providing diversity into an already existing international community that works within a human rights framework (Dunne and Wheeler 1999, 6-12).

Literature Review Indigenous Groups in the International Arena

Indigenous people from the U.S., Canada, and Australia have used state's signatures to the UNDRIP to advocate for changes to domestic legislation regarding indigenous people's rights. As a result changes have occurred to domestic legislation that support the ideals captured in the UNDRIP. While states have modeled indigenous legislation after each other's, the UNDRIP is a more formal structure used by governments with the consent of indigenous people. It standardizes nation-states social practices in advocating for indigenous rights legislation.

Constructivism is socially constructed structure and agency (Bobulescu 2011) that is shaped by nation-states and international actors that are not nation-states, like peoples in the form of indigenous groups. This view of international relations focuses on the causes of how things develop in the world (Ruggie 1998). While states are not the only international actors, state interactions are motivated by what is best for the state and not for indigenous groups. The social construction theory of the international relations argues that states interests are created and explains why state's interests exist. States use social interactions to gain influence (Wendt, 1992). Security is the prime interest for states and in order to create a secure state, threats need to be reduced. While the world may be an anarchical world, states can shape the world they live in. (Wendt 1992, 394) States recognize each other's sovereignty but they need rules of engagement to interact with each other (Wendt 1992). Wendt says states engage in power politics, which according to him are socially constructed. Social construction can be divided into two classifications: 1.) interactions are based upon shared ideas instead of materialism; and 2.) identities and interests of "humans" are created by shared ideas instead of natural causes (Wendt, 1999).

Constructivism includes multiple international actors because the international arena is not shaped just by nation-states. Therefore, international indigenous issues have to be discussed among multiple actors. The major actors for indigenous groups are the states, indigenous advocacy groups, and the United Nations. Wendt considers himself a Structurationist (Wendt 1992, 28). Structurationalism is when structures are used to reproduce a social system. His definition of constructivism merges materialist and individualist angles. The individualist angle is the point of view of a state (Wendt 1999). Constructivism is a bridge between the realist and idealist arguments. The constructivist argument seeks to find how and why states identity and interests are socially constructed (Wendt, 1999: 34). In this sense, the social constructionist approach understands that power and interest are shaped with human thought and are created based on human relationships (Wendt, 1999). Indigenous groups use the world's social construction in their attempt to create international standards to influence states to advance indigenous rights in UNDRIP (Stamatopoulou 2012).

UNDRIP combines indigenous players, international organizations, and states to establish standards for states, as opposed to only states individually consulting each other of their own accord. States advance their own interests by adhering to UNDRIP standards; therefore, states will make domestic legislation changes based on these standards in order to create peaceful relations and avoid human rights violations amongst each other. The UNDRIP includes input from indigenous non-state actors across the globe and in multiple states. Indigenous groups are more easily able to organize through international networks can use modern communications to exchange information to help shape the international arena (Keck and Sikkink 1998, 2-10). Indigenous people use of the UN has contributed to a successful human rights approach to indigenous rights (H. M. Cleaver 1998).

Indigenous Groups and International Organization:

States and indigenous groups have many conflicting interests. States and indigenous groups competing interests include: resources, military power, economic power, and social stability. The competition is created when indigenous groups try to exhibit more self-determination than a state is comfortable with. The goal of a state would be to allow for indigenous group to have the right to self-determination without threatening the state's resources, military and economic power, and social stability, while indigenous groups want greater ability to determine their own affairs in all areas.

This study focuses on the indigenous groups of the U.S., Canada, and Australia. The indigenous groups in the US, Canada, and Australia reside in states which were former colonies but have achieved independence. While the colonial settlers underwent a form of release from the mother state, the indigenous groups did not have a role in the formation of the new government.[1] At the creation of the state's government, they were excluded from the formal political process in the formation of these liberal democracies. Indigenous peoples remained the colonized groups.

During the early 20th century while other parts of the world were undergoing decolonization, the indigenous groups in U.S., Canada, and Australia were not decolonized as other European colonies in Asia and Africa were. Over time, some groups were accepted into the government through legislation or through treaty relationships but there are still many negative consequences because of this exclusion. One consequence includes groups that are not recognized by the government and as a result have no relationship with the government.

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[1] While this can be disputed, it is commonly accepted there was no formal role of indigenous groups in establishing the government of each state.

Currently, indigenous groups are minority groups in liberal democracies. While advocating for indigenous rights there are unique circumstances for indigenous groups in addition to already inherent minority group representation challenges. Liberal democracies have mechanisms, through political organization, for minority group representation. However, the United States, Canada, and Australia share one thing in common, most of the time, indigenous groups want to work within the state's liberal democratic framework. While this has had some success domestically, indigenous groups have had greater success by using political organizations at the international level to influence the states' domestic affairs and majority domestic politics.

In 1982 an international group for indigenous people was formed. The Working Group on Indigenous Populations (WGIP) was established by the U.N. Sub-Commission on the Promotion and Protection of Human Rights to form the declaration for indigenous rights. More than 100 indigenous groups from around the world participated. Currently indigenous groups can participate in the UN in an advisory role. The United Nations Permanent Forum on Indigenous Issues (UNPFII) is an international forum established in 2002. The UNPFII is made up of eight government and indigenous nominated members. The forum is responsible for promoting indigenous rights through education, policy recommendations, developing accountability mechanisms, re-defining policies, and encouraging indigenous participation. As a monitoring member of the UN, the Forum requested suggestions on the UN World Heritage Sites in 2011. Indigenous groups would like to contribute to the conversation of what is considered important to human existence. In 2001, the UN did not allow indigenous groups to give suggestions for sites considered for World Heritage Sites.

Formation of Organizational Networks:

Over the course of history, indigenous groups have realized the power of international organization in influencing domestic politics on indigenous issues. So they have advocate for specific indigenous rights in the international community and seek to achieve these goals. Despite the diverse cultural practices, indigenous groups have been relatively able to organize international network systems because of advanced communications. Through this organization, indigenous people can put pressure on international organizations to influence state's decisions to further indigenous rights. For this reason, indigenous groups have sought to form national, regional, and international organizations throughout the world to improve indigenous lifestyles.

International indigenous groups participate in the organizations like the UN to establish a working definition of indigenous people, thus to help determine their own affairs (Shuktomova 2013). In Finland and Norway, the Sami Parliament takes an advisory role in indigenous affairs, while still being a formal part in the Swedish government (Henriksen 2008, 34). The Nordic Sami Convention is an international organization that influences the domestic policy of Nordic countries toward the indigenous groups. The Sami use international organizations in the Nordic region to pressure their domestic governments. This summer the Cherokee Nations hosted a discussion with UN Special Rapporteur James Anaya in order to address the concerns of indigenous people in adjusting to the governance challenges while implementing the UNDRIP standards. Advocacy groups use the UNDRIP, as a means of international support to legitimize their domestic efforts of indigenous rights. Indigenous groups are influencing state politics through endorsing world social standards nation-states signed and using it to promote indigenous policy from the state. Domestic indigenous groups are encouraged to take more action because of UNDRIP. International organization makes it easier for indigenous groups to protest and peacefully challenge a state.

Furthermore, indigenous organizations have utilized the internet to communicate with each other and to establish international advocacy networks (Keck and Sikkink 1998, 9-10). To connect with each other, indigenous groups use informal existing loose networks created through NGOs (H. M. Cleaver 1998, 622-623). One of the first examples of successful use of indigenous communications network was the Mexican Zapatista's gaining international support for their resistance to the North American Free Trade Agreement (NAFTA). In 1996, indigenous groups used the internet to engage in an intercontinental meeting to address alternatives to neo-liberal capitalist policy (H. M. Cleaver 1998, 622-623).

The goal of the U.N. is to achieve good human rights standards and norms. Indigenous groups want indigenous rights to be incorporated into the international system and then incorporated through their own nation-states. However, indigenous rights may be conducted with different mechanisms for indigenous groups in each nation-state, thus the UNDRIP provides a broad guideline for some of the most common struggles for indigenous groups.

Strategies of Indigenous Groups:

The UNDRIP has provided a backbone for indigenous groups to advance indigenous rights. The agenda of indigenous groups have evolved from self-determination to sovereignty then to human rights. While each strategy is not wrong, the human rights approach is more generally successful. Indigenous groups will attempt alter liberal democratic institutions to incorporate indigenous ideas. Ultimately, the identity of the state must change in order to incorporate indigenous rights.

While indigenous groups organize internationally, scholars study various indigenous political theories that explain the factors that influence states. Looking back at the evolution of

“indigenous”, we can see that three political indigenous theories have developed over time: liberal neutrality, liberal tradition, and multiculturalist democracy (Ivison, Patton and Sanders 2000).

Liberal neutrality seeks to assimilate indigenous peoples into the mainstream liberal democratic organization without regards to their distinct culture (Ivison, Patton and Sanders 2000, 6). The first ILO document No. 107 in 1957 is an example of this approach. The ILO No. 107 document attempts to create opportunities for an indigenous people to incorporate themselves into the already existing the mainstream cultures. It does not allow for indigenous culture to work alongside mainstream culture. It tried to address the social discrepancies of indigenous communities, but it did not allow a role for cultural preservation standards. Liberal neutrality was the starting point for indigenous theory and established indigenous theory as a separate approach to politics and government.

The second theory, liberal tradition, seeks to protect the self-determination of indigenous groups and return land to indigenous peoples. It extends international law into indigenous issues and uses the already established international law framework within liberal democracies to advance the indigenous cause (Ivison, Patton and Sanders 2000, 7). The self-determination approach focuses on legally creating self-determination for indigenous groups. However, this approach is the most controversial because states are afraid to create legal backing that allows indigenous groups the legal ability to secede from the state. Legal self-determination is more extreme group claims to social and cultural self-determination (Corntassel and Primeau 1995). Since states are wary of legally strengthening indigenous governance through written documents, a social human rights approach is less invasive and more peaceful. Indigenous groups have sought to promote self-determination through legal, political, and other means in order to

preserve culture. This has been a very challenging goal because self-determination needs to be recognized by states and it is not in the interest of the state. It is not a state interest for two reasons: states lose power when first inhabitants are able to self-determine and land lost is the government's loss in natural resources and other profitable ventures. Land and legalist self-determination goes hand in hand. Many indigenous traditions are connected with the land in which they reside. In order to preserve their traditions, they need to have access to the land and rights to preserve culture. As giving up complete control of land to indigenous groups is counter to state interest. A legal self-determination is a dead-end approach because it harms the self-determination of indigenous groups to preserve culture, use resources, and manage social services.

The third approach, multiculturalist democracy, is the most recent theory for an indigenous international organization and seeks to change and reshape the liberal democratic political framework to better fit indigenous issues. It rests on the concepts of sovereignty, land, and cultural distinctiveness (Ivison, Patton and Sanders 2000, 8-9). In order for this approach to be understood, the term sovereignty and the distinctness of indigenous people must be clearly defined. A disadvantage of establishing a cultural distinctness is, that it can lead to incorrect or stereotypical views of indigenous culture (Ivison, Patton and Sanders 2000, 10), however the UNDRIP has been able to form a base for indigenous norms and institutions. The multiculturalist framework approach seeks to incorporate justice and cultural distinctness into an already existing liberal democracy. The US in particular is viewed as a model for multicultural institutional inclusion (Kymlicka, American Multiculturalism and the 'Nations Within' 2000, 216).

In order to go about the best approach for change, indigenous groups must assess the strengths and weaknesses of each state. States have the dominance on military power or violence therefore indigenous group's best option is not to use force but to rely on diplomacy to change their political status. Non-state actors can still influence state's use or non-use of violence or military power (Wendt, 1999, 9). Changes in political governance will reap greater benefits for indigenous groups by seeking greater protections for indigenous rights, and then social and economic changes will take place as well (Cornell, Jorgensen, et al. 2007, 217).

Indigenous groups have tried to mold into the overall existing liberal democratic framework, by linking indigenous rights to human rights. The approach of linking indigenous rights to human rights allows for indigenous groups to have some informal influence over their own affairs (Corntassel and Primeau 1995). In order to achieve indigenous rights, various indigenous groups have organized international indigenous networks based on common political, social, cultural, and economic experiences (H. Cleaver 1998, 626).

The greatest influence a group can have on a state is on the state's identity. Changes in state identity can be accomplished by altering its institutional framework or by using the political framework theory. National governments will alter their identity based on international institutions in order to appear as a more valuable international player (Wendt 1992). In this case, the U.S., Canada, and Australia identify as liberal democracies. Based on their internal political structures, they hold themselves to high human rights standards. High human rights standards give these countries legitimacy to conduct foreign policy in the world arena. Governments will hold each other to these standards. If governments do not adhere to the standards foreign governments can decrease international appeal of the violator state by criticizing its human rights practices. If multiple national governments view a violator state as obstructing human rights in

an intolerable way, then the international community might intervene or ignore the violator government. Thus the violator government has decreased its influence in the international arena. As signatories of the UNDRIP, it is in the best interest of each government to have similar domestic indigenous right policies when compared to each other so that one state does not have a foreign policy disadvantage (Dunne and Wheeler 1999, 14). An important issue is a creating a political system that takes into account indigenous values. Indigenous groups seek forms of politics and governance that accommodates traditional values and political systems.

Historically, the relationship between indigenous groups and the state has been defined through a relationship found on paper, sometimes found in treaties (Barry and Porter 2011, 175). The textual relationship is one established through written documents. In order be more self-determinate indigenous people have fought to capture and emphasize their own values in a written constitution, modern commerce, and international standards. Indigenous groups still want to be able to determine their own values for governance.

Indigenous people have used international organizations for several reasons: one, because the standards of the largest international organization, the UN, focuses on human rights; two, because states have sought similar methods of dealings effectively with indigenous groups, therefore, influencing all states at the same time using an international organization will be more effective; and three, because indigenous groups seek to act outside the state (Keck and Sikkink 1998) as a means of expressing self- determination. Furthermore, indigenous rights take a similar approach to human rights standards. Indigenous rights are more adaptable to the existing international framework by not threatening state's sovereignty because states have already recognized international human rights standards (Corntassel and Primeau 1995, 344, Barry and Larson, 2011, 171).

Liberal democratic states seek to achieve the democratic values and liberties promised to all citizens. One way that liberal democracies show democratic values is by protecting and promoting human rights of all citizens. Often times this ideal is achieved through a direct democracy. A direct democracy is when citizens are able to openly create legislation and policy themselves and it is not done through representatives.

States do not want to concede power to indigenous groups; however states do not want to abandon the majority views of the international community by violating the spirit of the human rights agreements they voluntarily signed and lose standing in that international community. The negotiations in determining the definition of indigenous shows the different groups at play in the international arena to create standards by which to influence domestic affairs. Lastly, South American countries have made attempts to include multicultural institutional mechanisms for liberal democracies. Bolivia, Colombia, and Argentina have had successfully used multicultural institutions keeping in mind the spirit of the ILO agreement in order to include indigenous groups in liberal democracies.

The negotiation of the UNDRIP definition of self-determination is a perfect example of states and non-state actors interacting together to create an international norm most acceptable to all player involved. Nation-states, the UN, and indigenous groups agreed upon a common, voluntary norm for indigenous treatment. Part of government interest in agreeing to a non-legally binding human rights standard for indigenous rights is to use international agreements and standards to gain legitimacy in the international arena. By being viewed as a just and lawful international player, states have the potential to gain influence over other states by demonstrating they have adhered to international human rights norms.

For indigenous governance to be self-determinate, it needs to be created without states interfering. The UN inclusion of indigenous groups in the creation process of standards is an example of influence. Indigenous groups are also left to determine how or if they want to adhere to the standards. They have been attempting to fit their own distinct forms of governance into Western governance structures of the world (Ivison, Patton and Sanders 2000, 1-4). Besides common international human rights standards, indigenous people are also mentioned in several international agreements in order to assure their own rights. There are two major international documents multiple governments have signed for indigenous rights, the UNDRIP and the ILO documents. The UNDRIP is voluntary with large international players and the ILO is legally binding with smaller nation-states. The major liberal democracies are signers of the voluntary agreement. If they have uniformed domestic policies that strengthen the national identity and values, then liberal democracies can be a model for other nation-states to follow and can be a leader in indigenous rights around the world.

In the case of the Ainu, the Ainu people have tried to get legal indigenous status within Japan for years. Japan never recognized the Ainu as indigenous people; therefore, the Ainu choose to use diplomacy to influence their affairs rather than violence. As previously discussed, “indigenous” is a politically controversial word. The Ainu consider themselves indigenous because they are in the minority of the larger culture within Japan. Even though they have not been historically colonized by the majority culture, the Ainu were accepted by the indigenous community because they are the minority culture in a state that has a high culture (Gellner 2006). In this example, the high culture and counterculture are ethnically the same. Additionally, Japan does not have an internationally legally binding obligation to protect indigenous groups. However, the Sapparo Court decision (Kayano and Kaizawa 1997) to address indigenous

concerns with a domestic ruling with pressure from international norms (Larson, Johnson and Murphy 2008) demonstrates the indigenous relationship and the value of international human rights by altering domestic politics in order to better comply with the UNDRIP.

Japan's internal structures conflict with the indigenous group's human rights by preventing indigenous social, political, and economic culture from flourishing. As a result of Ainu participating in UN Indigenous Working Groups and seeking international support of other indigenous groups, such as the Inuit, Japan accepted of the international definition of the indigenous (Larson, Johnson and Murphy 2008, 7). Even though liberal democracies vote for international agreements states may "over comply" with the UNDRIP (Lightfoot 2010, 89). "Over complying" means voting for indigenous policy on an international level but not implementing it at the domestic level (Lightfoot 2010, 89). I find this is not exactly the case.

International indigenous group organizations are not the only actors seeking influence over state affairs. States domestic issues also influence international affairs and how states deal with indigenous people. Most often times the direct interest of the state and indigenous groups are in direct conflict with each other but indigenous groups try to use the existing framework to promote indigenous rights in their own states.

International Law and International Organizations:

American Indian law resides on treaties signed between indigenous groups and the US being viewed as two sovereign nations engaging in an agreement that will be honored always. Every liberal democracy does not have a treaty relationship with the indigenous groups in the area, but those that do call upon agreements to make a case for sovereignty. Honoring treaty promises is one of the claims that indigenous people hope to remedy when home states sign onto

international agreements such as the UNDRIP (Wiessner 2010); however, UNDRIP is not legally binding. Canada and Australia do not have a treaty relationship but because of their political structure attempt to use the US as a model for their indigenous policy and incorporation of indigenous rights. Since these two states are similar to the US and not as militarily or economically powerful as the US, the US is more likely of the three to viewed as a hegemony, which each state will strive to be like (Bobulescu 2011, 40-41) .

The only legally binding international documents representing indigenous peoples are from the ILO. The ILO is an organization within the UN that aids in labor rights for people in member countries. The ILO has two documents pertaining to indigenous peoples: the ILO No. 107 and the ILO No. 169. The ILO No. 107, or the Indigenous and Tribal Populations Convention 1957, was ratified by 27 countries. The strength of this document was to protect and integrate tribal and indigenous people in independent countries. The weakness is that this document does not recognize indigenous groups as being independent actors of the international community. As international law became more developed, the ILO No. 107 was revised and became the ILO No. 169 or the Indigenous and Tribal Peoples Convention 198. It was signed by 20 states mostly in South America and it incorporated UN human rights. Indigenous groups were allowed to develop economically and culturally according to the states in which they live. The US, Australia, and Canada are not parties of these two agreements due to conflicts in wording. The terms “peoples” or “populations”, “self-determination”, “land” or “territory”, or “consent” or “consultation” (Gray in Ryser 2012, 206) was not in those states’ interest. The newly proposed definitions brought the gap between international standards and domestic standards too close together for states to be able to not fear secession from indigenous groups with international legitimacy and nation-state support (Ryser 2012, 210).

Universal human rights were created for individuals to have an advantage over the state and to avoid persecution. The UN has endorsed human rights standards, which are norms agreed upon that are fundamental to human's existence (Eriskine 2010, 47). States interact with each other and adjust their domestic perspectives to avoid human right violations. Since human rights are an internationally recognized standard, indigenous human rights violations create problems for liberal democracies. The international arena, in the realist view, is anarchy and therefore, actors have to navigate in this anarchical world (Waltz 1959), however, the socially constructed responses to anarchy allow actors to pressure states for actions. In other words, states can be socialized to create rules of engagement and norms in which states interact with each other (Wendt 1992).

States and the international community will recognize indigenous rights through a human rights lens better than with a self-determination approach. It allows for the social benefits of self-determination without the physical conflict of separation. The social benefits are extended the indigenous groups within the nation-state political framework. Furthermore, indigenous rights can fit into the already existing international human rights framework (Corntassel and Primeau 1995) and many liberal democracies' values of governance. However, self-determination is cannot be completely disregarded in indigenous rights still has a part in the human rights framework; however, it is not the main focus. The emphasis on indigenous rights is less on legally defining the term, but allowing self-determination practices to occur to promote human rights. While there are many groups in the world, the challenge is to create a better and more democratic world by incorporating culturally diverse mechanisms into democracies (Ivison, Patton and Sanders 2000, 4).

The norms and UNDRIP are agreed upon by member states with the advice of other non-state actors. The members of the UN agree to uphold these values within their own states and when interacting with other states. Thus in this way, the UN has been influential on the individual government's domestic affairs and support states that abide by international standards and their ideals and goals. UN human rights standards are created based one the perceptions and practices of international actors, both of states and non-state actors, however, not all state by into it. For example, Japan only signed the United Nations Delegation for Indigenous People in 2006 after originally wanted to abstain due to a conflict with the Ainu over natural resources and the lack of an objective definition of indigenous people. In order to influence Japan, the Ainu participated in the global indigenous movement in order to get international support due to lack of national channels of addresses their social concerns. By being accepted into the global indigenous movement, the Ainu was accepted by indigenous groups. Part of the Cobo definition of indigenous includes group subjectivism or being accepted by the group. Receiving indigenous identity from the international group gives the Ainu the ability to participate in the UN Permanent Forum for Indigenous People. The involvement of the Ainu in the UN helped Japan decided to domestically to work with the Ainu as an indigenous group, after not doing so prior to international pressure. It caved under international pressure after receiving a UN notice that Canada and Russia received international disapproval after voting "No". In 2007, Russia was reluctant to sign but did and used its signature to confront Japan. Japan conformed to international norms, after its own self-image was threatened and not in the interest of the indigenous people (Larson, Johnson and Murphy 2008). Although the United Nations membership is composed of states which are voting members, there are still influences from non-member states. This relationship is most evident in indigenous rights.

Sometimes indigenous groups can use traditional customs to better preserve the environment and use indigenous rights as a justification to use land for their own affairs and thus preserve natural resources. Preserving land for hunting was originally why the Samai of the Nordic countries originally wanted to secure international hunting rights. In order to accomplish this goal, they form a regional international organization to influence the domestic affairs of the countries in which they reside. The Sami people span the borders of Russia, Sweden, Norway, and Finland and are avid hunters. The Nordic Sami Convention was formed in 2002 and includes the Sami from Finland, Norway, and Sweden. It was formed partly due to the issues raised with transnational hunting of reindeer. The Sami in Russia are not permitted to be a part of the Sami Parliament. After 2006 when the Sami formed an international council, Nordic policy toward indigenous groups changed in their favor. Sweden adopted the Sami Act of 1992 to establish a Sami parliament (Henriksen 2008, 34) and joint trust land was given to the Sami in Norway (Henriksen 2008, 32). States have expressed the right of indigenous groups to be self-determinate as it pertains to international law (Henriksen 2008, 34-39).

The next logical development after regional efforts to secure indigenous rights is to set international standards through international law for all states concerned. The UNDRIP is moving in that direction. The UNDRIP was signed by the majority of states in 2007; however it did not include some of the biggest countries (i.e. the United States, Australia, Canada, and New Zealand) with large indigenous populations partly because of the different understanding of self-determination (Duthu 2008, Toki, 2011).

The signing of the Declaration was originally voted “No” by four countries, New Zealand, Australia, Canada, and the United States. Nevertheless, the 1957 ILO international agreement of self-determination for indigenous people was agreed upon by the liberal

democracies and resulted in their signing on UNDRIP in 2010. ILO self-determination is defined as being left up to each state determine. Therefore indigenous groups are allowed to be self-determinate in accordance with the role as the state sees appropriate. Unlike the ILO agreement, the Declaration is not a legally binding document. Even without it being legally binding it is ha significance. It shows a human rights obligation to international indigenous norms, contributes to having a written agreement upon international norms by states, and contributes to liberal democracies engaging in indigenous policy based off of their social interactions. It has potential to become legally binding in the future (Toki, 2011).

The UNDRIP seeks to establish a much needed, normative vision for state interaction with indigenous groups and eliminate human rights violations (Henderson 2008, 22-23). The process took twenty years to accomplish and three more years for the US, Canada, and Australia to sign onto to the agreement. The UNDRIP hopes to create a practical document which shapes the national policy for state's interaction with indigenous groups. Human rights are a standard by which states can use to measure their practices in domestic affairs. The state that has the best measurement will have the most international legitimacy and can use that power to further state interests in the international arena.

There are many areas that the UNDRIP calls for action but two areas of focus will be further strengthening of indigenous rights using standards set by the UNDRIP. There are three ways to measure progress in indigenous rights: legislation, advocacy, and litigation (Ivison, Patton and Sanders 2000, 67). In these areas, liberal democracies post-UNDRIP have made some domestic changes to adhere to the UNDRIP standards. When we assess the impact of the international agreement on these liberal democracies there have been domestic institutional changes that fit into indigenous rights in proposed legislation, advocacy methods, and litigation

after they signed the UNDRIP . Institutional changes in legislation, advocacy, and litigation which are categorize this as "hard rights" (Lightfoot 2010, 104). These "hard rights" are a ways to measure to what extent national governments recognize indigenous rights without being forced or legally obligated to do so.

The Cases

United States

Before the creation of the United States as a nation-state, the North American continent was inhabited by indigenous people. Indigenous people lived in groups based on similar language, spiritual, and cultural practices. The indigenous groups had their own sovereign nations and they practiced in their own political organization and social structures to create freedom and peace. The Iroquois, for example, had a confederacy. The confederacy consisted of six Nations that were distinct in culture and structure but came together to establish peace in the region (Duthu 2008, 192-93). While the indigenous groups recognized each other, European groups did not recognize the indigenous groups as sovereign equals. If they engaged in treaty relationships with indigenous groups, the agreements were no always honored. When European immigrants came to North America, indigenous people engaged in treaty relationships with other Europeans representing the countries of Great Britain, France, and Spain (Fixico, 2008, 50). Today, many indigenous groups are still present in the United States.

Indigenous people in the US can be placed in two groups. The two types are indigenous people those that are not federally recognized and federally recognized tribes. American Indians are individuals who are citizens of the U.S. and can be either a member of a federal recognized tribe or a non-federally recognized tribe. Federally recognized tribes are those that have a government-to-government relationship with the U.S. government. In order to be federally recognized, indigenous groups must follow the outlined criteria in 25 Code of Federal Register (CFR) Part 83, Procedures for Establishing that an American Indian Group exists as an Indian Tribe. Under the statute, indigenous groups must: 1.) state they have been in existence since

1900; 2.) provide they have been a distinct community and have political authority from historical to present eras; 3.) provide a copy of a governing document including criteria for membership (e.g. blood quorum); 4.) provide a petition must be from members of the tribe and members with no other federal tribal recognition; and 5.) members must not be from tribes that have been formally denied federal recognition (BIA 2013).

Prior to the Indian Citizenship Act of 1924, Native Americans did not hold U.S. citizenship. When the Act was passed, it meant individuals of a tribal group were allowed to become U.S. citizens, however; the law did not mean indigenous groups had to renounce tribal status. The Indian Citizenship Act was passed for individuals to make a choice. The Indian Citizenship Act was not passed for the protection of group rights or for specifics of indigenous groups but focused on individuals.

All in all, the U.S. and indigenous people have had high points and low points in their relationships. Groups that have a treaty or government-to-government relationship with the U.S. have been able to secure federal support for their communities. Some indigenous groups in the United States are recognized through federal recognition or those that have legal tribal status with the U.S. government carry out a government-to-government relationship with the U.S. The United States has over 565 federally recognized tribes. Those indigenous groups without federal recognition have been left out of federal support and can use dissent mechanisms in the US or partner with large indigenous groups or groups with state recognition. In reaction to non-federal recognition, groups may seek federal recognition in order to boost indigenous community support.

Most U.S. legislation is focused on indigenous groups that are already federally recognized. An important piece of legislation in strengthening the government-to-government relationship with American Indians and the U.S. was the Indian Education and Self-Determination Act of 1975. The Act allowed tribal governments to contract and subcontract with the government for a wide variety of services (Fixico 2008, 36). The U.S. acknowledged federally recognized tribes right to self-determination, by defining self-determination as a right to state building (Duthu 2008, 203), and indigenous communities were able to have more control than previously over the course on education, health, and other social services.

While sometimes indigenous groups can be dissatisfied with the government-to-government relationship, U.S. indigenous groups do make efforts to use the federal governmental structure to address concerns and conflicts. U.S. indigenous groups choose to participate in U.S. politics through federal government, lobbying efforts, and in their own political organizations. The more tribal people are involved in indigenous organization, the better able they are to address the needs of the indigenous community. The UNDRIP supports indigenous self-determination and allows indigenous group self-determination to be the standard for indigenous relations with the state. The UNDRIP focuses on providing a human rights standard for indigenous groups that may or may not be federally recognized in the U.S. For example, there was a Congressional hearing held in 2012 about the UNDRIP. Congressional hearing are used examine proposed legislation and conduct oversight into already existing legislation.

Indigenous groups are looking to incorporate a human rights strategy into already existing democratic framework. UNDRIP creates formal international norms for democratic states, thus reinforcing international practices among states in regards to indigenous groups.

States have interacted to make formal and informal agreements, since the Treaty of Westphalia in 1648. The treaty recognized state's sovereignty. Each state recognized each other's right to self-rule and as a result each state could conduct treaties to end conflict. As significant as the Treaty of Westphalia was, it did not provide formal criteria that could be replicated for making treaties (Fixico, 2008) and it did not establish a means of enforcing treaties. The indigenous people of the North America were not present for the establishment of formal treaty making in 1648. Nevertheless, indigenous people engaged in treaties with each other in North America.

Prior to the formation of the US, tribes also engaged in treaties with colony communities in North America. The first treaties were oral but were later written down due to the European need for formal legalization (Fixico, 2008, 50). As there was not a formal process or established protocol for creating treaties (Fixico, 2008, 50), a verbal or written treaty would have been customary. The treaty process is crucial to the US indigenous people seeking self-determination. While tribes engaged in treaties with each other, they also engaged in treaties with the U.S. The practice of establishing treaties demonstrates an acknowledgement of governance and establishes a government-to-government relationship where both the tribal government and nation-state government is sovereign. In this way United States indigenous governments do not want to lose control over their own affairs.

Most of the treaties that were signed with tribes are recognized; however there are about 47-87 treaties that were not ratified by the Senate. Due to lack of understanding of the US government's congressional ratification process, many tribes still honor the agreements that were not ratified (Fixico, 2008). The end of the US creating treaties with indigenous groups came before the formation of the League of Nations or the United Nations. Prior to 1944, the nation-

state was the major unit of international interaction and treaty making occurred between states as an informal process to international interaction.

The US stopped creating Senate ratified treaties with tribes in 1871, with the passage of the Act of 1871. The Act of 1871 had no formal indigenous participation. There are 374 ratified treaties and 16 agreements (Fixico, 2008). However, the US government still continued to negotiate agreements with indigenous people. For example, land settlements need to be ratified by the Congress. They are not considered treaties because they were passed with the US approval of both the Senate and the House of Representatives, thus not entailing the formal recognition of sovereignty (Fixico, 2008, 5-6).

Now the US Congress passes resolutions in regards to indigenous people. There are two problems with national legislation passed before the UNDRIP. Previous legislation was not passed with the intent of: 1.) preserving cultural governance and 2.) with respect to human rights. Historically, the US policy has allowed natives to have land for a small time period and then hoped to assimilate native people into mainstream culture. The long term policy goals of the legislation that was passed in the United States between 1940-1970 was to assimilate indigenous people and hopefully someday they would disappear (Volcaire 2011).

One of the most significant agreements between the US and indigenous tribe was an agreement between the US and the Cherokee Nation. The US and Cherokee Nation entered into an alliance, where the US provided military protection to the smaller Cherokee Nation (Duthu, 2008 197). The Marshall Court used international law to argue the case for the aggression of the state of Georgia against the Cherokee Nation. Only the federal government could engage in international affairs. Federal policy did not aim to promote humanitarian efforts on the behalf of

the Cherokee people, but involved a dispute over federalism. The Marshall Court protection of federalism was a significant triumph for the Cherokee Nations by use of international law.

In 1944, natives came together to create the National Congress of American Indians (NCAI). According to the NCAI website, over 50 tribes and associations were represented at the first meeting. The NCAI is an advocacy organization (www.ncai.org 2013) made up of voluntary tribal governments, tribal citizens, and native organizations. It was formed in order to unify Native American policy in regards to land rights, economic development, and education. Tribal members of the NCAI are elected to executive positions. Although it is not a formal body of the US government it works as a lobbyist group to the US Congress. It engages in international indigenous issues as well. The organization was present during the formation of the World Council of Indigenous Peoples, which is a monitoring and observer member of the United Nations. Tribal governments interact with the US government on an individual basis asserting their sovereignty rights and the NCAI lobbies on behalf of multiple tribes. The NCAI continues to work to improve American Indian status on these issues.

Post-UNDRIP:

As a testament to the influence of the UNDRIP on national legislations, the Violence Against Women Act (VAWA) was passed in 2013. The UNDRIP specifies protecting indigenous women (UNDRIP 2010). It was significant for showing UNDRIP adherence because it allowed tribal jurisdiction to take precedence over tribal and non-tribal members in violence against women including sex trafficking, rape, and domestic violence, thus helped protected indigenous women (VAWA 2013).

While this act has been passed before in 1994 under the Democratic Clinton Administration with a Congressional Democratic majority, it was removed in 2000 under the Republican Bush Administration. The VAWA was under consideration again in 2005, only this time with provisions for tribal jurisdiction but it did not pass a Republican Congress. Previous to the 2013 VAWA it did not include international standards in which indigenous rights were agreed upon by states. In 2013, the VAWA Act did include a tribal jurisdiction aspect that supports more tribal self-determination. It was passed at a time post-UNDRIP when there was support in the international community for indigenous rights. The VAWA of 2013 strengthens protections for indigenous women and gives tribal courts jurisdiction over non-tribal residents that commit domestic violence crimes on tribal land. The NCAI was instrumental in getting Senators to create Native jurisdiction on domestic violence cases (Violence Against Women Act Held Up By Tribal Land Issue 2013). It was passed under the Obama administration with bipartisan support in Congress. Bi-partisan support demonstrates a shift in values that transcends domestic party politics.

The UN Special Rapporteur in 2012 met with indigenous groups in the US to assess the influence of UNDRIP on human rights. The purpose of the UN Special Rapporteur is to assess, report, and provide recommendations for a state. As Special Rapporteur James Anaya met with several indigenous groups and discussed indigenous issues that need more assistance (UN 2012). The report suggested that the UNDRIP could be used to strengthen indigenous and state relations.

The UNDRIP has provided international support for U.S. indigenous groups to lobby and take issues to the government. The UNDRIP provides a reason for the U.S. to address indigenous issues and elevates the issues to an international level. From the international

community perspective and U.S. foreign policy perspective, indigenous issues have international implications for the United States. NCAI supports of the United Nations World Conference on Indigenous People to be held in 2014 (www.ncai.org 2013).

The two parts of the UNDRIP that are mentioned as indigenous rights are the protections for women and the use of more self-determination. In 2010, H. RES. 1551 was introduced in the House of Representative, it states the US should comply with the full application of values of the UNDRIP. Even though it did not pass Congress, the UNDRIP has altered the type of legislation that is introduced to Congress and made it more consistent with indigenous rights.

Canada

On the North American continent there is another liberal democracy, Canada. Like the U.S., it was created after the European "discovery" and settlement. In Canada, there are three types of indigenous groups that are recognized: Inuit, Metis, and Aboriginals or First Nations. The Inuit and Metis are two distinct groups while all other tribes are categorized in the aboriginal group or First Nations by the Canadian government. Aboriginals or First Nations is used as a catch all for all other indigenous people not falling into the Inuit or Metis groups. First Nations can be federally recognized or not recognized by the Canadian government. The Canadian government only creates legislation for the three indigenous groups that have federal recognition or aboriginal status. First Nations are indigenous people who have Indian status or non-Indian status. Indian status criteria are decided by the state of Canada to establish tribal membership. In 1876, Canada passed the Indian Act of I-5, an amendment to the Constitution to establish a system and criteria for indigenous registration and for reserve systems. In order to receive Indian status from the Canadian government,

1. "A person was entitled to registration prior to the changing of the *Indian Act* on April 17, 1985;
2. You lost your Indian Status as a result of your marriage to a non-Indian man (s. 12(1)(b)), including enfranchisement upon your marriage to a non-Indian man (s. 109(2));
3. Your mother and father's mother did not have status under the *Indian Act*, before their marriage and you lost your status at the age of 21 (s.12 (1)(a)(iv) – referred to commonly as the double-mother rule);
4. Your registration was successfully protested on the grounds that your father did not have status under the *Indian Act*, however your mother had status;
5. You lost your registration because you or your parents applied to give up registration and First Nation membership through the process known as "enfranchisement"; or
6. You are a child of persons listed in 1 to 5 above" (Canada 2013).

To maintain Indian status, the person must live in a reserve. Thus a First Nation person may live on or off a reserve. A reserve is an area of land that was set aside by the Canadian government for indigenous groups to live. The ability of the state to decide aboriginal status,

rather than the indigenous people, has caused controversy for individuals belonging to indigenous groups, especially those who do not live on a reserve. While indigenous people have a culturally distinct government and other culturally practices that are tied to the land, not all indigenous people live on a reserve. A reserve differs from an American reservation because its purpose is to glorify the Head of State who is the Queen of England, whereas reservations are held in trust by the US government. The absence of allegiance to the Head of State makes the US reservations and land in trust structurally more adaptable for indigenous sovereignty and self-determination. While tribal governments and reservations must also be "patriotic", there is not a provision in the Constitution that requires land to be used for the service of the country.

This was put into place in 1876, with the passing of the Indian Act or I-5. In 1985, the Act was amended to state that indigenous women married to non-indigenous men were allowed to maintain aboriginal status. There was never an elimination of status for indigenous men who married non-indigenous women.

Another complication for aboriginal status occurs in the second largest indigenous group: the Metis. The Metis people are of French and indigenous ethnicity that wish to remain culturally distinct. The French were among the first Europeans to interact with the indigenous people in the northern part of North America. (Fixico, 2008 236). As they are derived from a mixed background, their homeland is scattered throughout Canada and the Northern part of the United States. To be recognized by the government, one must be able to trace his or her heritage. Metis do not have to live on a reserve and they cannot be registered as an Inuit or other aboriginal tribe (Canadia Metis).

Unique to Canada, First Nation people are recognized as one of the three founding groups of the state. Today, Canada treats indigenous groups like an advisory or lobby that provides the

Canadian government with suggested government practices for indigenous issues. The largest advisory group is the Assembly of First Nations. While the Assembly is the informal political incorporation as an advisory role, there is no direct recognition from the Canadian government. First Nations people lived among the French and English settlers. From 1883 to 1887, First Nations were allowed to participate in the Canadian Parliament, but indigenous representation was taken away in the 1990s. Cultural practices that include group organization, such as potlatches and powwows, were prohibited under an 1885 amendment to the Indian Act. The amendment prevents indigenous groups from preserving their culture. The amendment was not consistently enforced until 1922. It was later more broadly interpreted to keep indigenous people from forming political groups and participating in the parliament. From 1883 to 1887, First Nations were a small part of the population but were allowed to formally participate in the Canadian Parliament. Indigenous representation was taken away in the 1990s due to the potlatch law of 1927. Potlatch gathers were considered threatening to the state because it encouraged indigenous groups to gather. From the states point of view any type of gathering could turn into a threat to state security.

Despite no formal recognition, in 2006, the First Peoples National Party was formed in Canada. The Party was formed to promote collegiate educational curriculum in Indigenous Studies and to establish a second indigenous House in the Canadian parliament to replace the current Canadian Senate. For all other purposes, First Nations and aboriginals are indigenous people. The First Nations of Canada can be classified under the UN definition of indigenous people for the uses of this thesis.

Reserves have a similar governance structure to Canadian territories. There are two main areas that are under the government of Canada: territories and provinces. Provinces are more

locally controlled and exercise constitutional powers locally. Territories receive power from the Canadian Constitution and have weak local governance. Territories and reserves are similar in structure because reserves are given power directly from the federal government (Cornell 2007, 70)). Territorial Lands Act and Public Lands Grants Act gives the Northern territories there power.

An American reservation differs from Canadian reserves for two reasons: 1.) the use of land for the Crown criteria; and 2.) the lack of numbers in certain bands for full functioning governments to exist. Additionally, Canada did not have a revolution but rather evolved as a state (Fixico, 2008, 9). The United Kingdom passed the Canada Act in 1982. It created independence from the British government and allowed Canada to amend the Constitution without having to gain approval from the UK. This is commonly called “patriation”. Canadian citizens are subject to the royal crown of the United Kingdom; however it is just formally recognized and not practiced. All the same, it remains a source of identity crisis for Canadians (Smith 2007) and adds to indigenous identity issues within the state. During proposed legislation, First Nations were included in negotiations, but the amendment did not include First Nations people specific political status or include the right to self-government. The lack of clarity has caused a legal debate as to the rights of indigenous peoples within Canada (Steinman 2005, 109-113).

When Canada was developing a case for its independence, it engaged in treaties with indigenous groups. Engaging in indigenous treaties was one of the most significant ways Canada could establish its own sovereignty from the British government (Fixico, 2008, 375). There are three time periods of aboriginals treaties with Canada: 1.) 1763 and the Pre-Confederation treaties, 2.) historic treaties 1871 to 1921 and 3.) contemporary treaties, those

after 1921. Canada participated in the Numbered Treaties with indigenous groups. The government executes aboriginal legislation through the Aboriginal Affairs and Northern Development department. The department was designed to improve social standing and condition for aboriginal groups. It also processes Indian status paperwork and conducts day to day relations with the First Nations people.

The Inuit are a distinct aboriginal group that is recognized as separate from other aboriginal groups in Canada. The Inuit reside in the Arctic region of Canada. Traditional cultural identity is in part preserved through hunting and fishing. Inuit success in cultural preservation can be associated with negotiated treaties between the Canadian government, the Inuit, and companies in the Arctic region. Some of these treaties have resulted in sovereign territory for Inuit and legal support of Inuit' created environmental standards that must be met by those that use the land in the Artic region.

The Inuit have three treaties with the state of Canada, which were signed in two time periods for treaties: contemporary and pre-Confederation treaty. Only one treaty with the Inuit is a pre-Confederation treaty. It was signed on April 8, 1765, between the Inuit and the Europeans in Labrador, a region that was able to stay intact after the Treaty of Paris in 1763. It was a peace and friendship treaty, which brought the Inuit under the protection of the king. This was a common practice in European treaty making (Castellino, 2010, 396). The conditions for the Inuit were: 1.) to convert to Christianity; and 2.) to integrate Inuit trade into the community. The Labrador region was promised the ability to trade freely under the Treaty of Paris in 1763 (Fixico, 2008, 279).

The Nunavut Agreement of 1999 is a contemporary treaty that establishes as a sovereign territory the Nunavut Territory. Territories and provinces differ from each other based on the

origin of governance. Territories are under jurisdiction from the Constitution of 1867, whereas provinces obtain their authority from the federal government.

The Cree are one of the largest groups of First Nations that are federally recognized. Cree have engaged in ten of their own treaties with the Canadian government. Most of the early treaties between the Canadian government and indigenous groups are considered by Canadian legal authorities to disadvantage indigenous groups. For example, land was exchanged for small amounts of money and vague language was used. It is commonly agreed upon by Canada and indigenous groups that there were oral parts of these treaties that were not written down and large language barriers that hampered the treaty process.

Some of the numbered Treaties are exclusive to Canada and the Cree. In treaty number 6, the Cree agreed to move to a reserve in exchange for common law protection by the Canadian government. Treaties were negotiated to incorporate mechanisms to address concerns of the Cree. Non-indigenous people were committing treaty violations through illegal hunting practices. The Canadian government was not addressing the indigenous concerns (Fixico, 2008 375-391), therefore; the Cree took part in two modern-day treaties signed in 1975 and 1999 (Fixico, 2008 204) to address the hunting violations. The treaties clarified indigenous group's rights to hunt and fish in the James Bay region, to use hunting and trapping for income security, self-government in accordance to the Quebec's Cree-Naskapi Act, and the ability to participate in an environmental and social protection plan (Fixico, 2008, 240).

Prior to 2006, First Nations people had attempted to form political organizations many times before success. They attempted to form multiple political organizations after World War I with one being the League of Indians. The League of Indians failed to make large amounts of progress on their goals, although the organization did inspire other indigenous political

organizations. There were two more attempts: one after World War II, by the North American Indian Brotherhood (N.A.I.B.), which disbanded in the 1950s, and the second in the 1960s by the National Indian Council (NIC), which split due to diverging interests among the tribes. The two groups that formed under the NIC split were the National Indian Brotherhood (NIB), for those tribes that receive formal state recognition, and the Native Council of Canada, for those tribes that are not formally recognized by the state. NIB enjoyed much success. However, it felt that it did not represent all First Nations in Canada. In 1982, it formed the Assembly of First Nations (Assembly of First Nations) to represent all federally recognized and non-federally recognized First Nations in Canada. The advocacy groups can gain more international support with an international document. Human rights groups can use the UNHR as a means of acceptable practices to influence states human rights practices. Similar to pressure human rights groups have used in the past with the UNHR, indigenous groups can mimic the actions of human rights groups to advocate for indigenous rights.

While the Inuit participate in the Assembly of First Nations, the Inuits also have their own national political organization. It is called the Inuit Tapiriit Kanatami (ITK) and represents the Inuit people from the various regions in Canada. The Canadian government does not conduct individual relationships with each indigenous group in the U.S.

All of these organizations have had mixed results in achieving their missions; however, they were all formed to provide an effective response to the Canadian government in regards to negotiation and implementation of indigenous treaties. As many indigenous groups were undergoing negotiations, there were many treaties that were discussed with the same concerns of the Cree being voiced; however, they were not being addressed (Fixico, 2008, 375-391). Treaty violations in regards to hunting were being made by non-indigenous people.

Nunatsiavut is an autonomous region that was given as a result of the Labrador Inuit Land Claims Agreement and is autonomous for the Inuit in 2005. This was passed under Prime Minister Paul Martin from the Liberal Party. This is a step in establishing land for indigenous groups, it does not incorporate an indigenous self-determinate government into an already existing liberal democracy. Rather than adopting a means of incorporation of an indigenous government, Canada gave the Inuit its own territory, which is under the jurisdiction of the federal government. While this is beneficial and works for the Inuit in this situation, it is not practical for all indigenous groups in countries that were discovered.

Post UNDRIP:

Since the signing of the UNDRIP, Canadian parliament has introduced a bill to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Since there is an ambiguity in the term aboriginal rights, the potential legislation would more clearly define what aboriginal rights means. As a signer of the UNDRIP, Canada has the opportunity to be even more clear by consistently defining “aboriginal right” domestically and internationally. However, the legislation has not passed the Parliament. It is an example of the UNDRIP’s influence on national government legislation.

Historically, indigenous groups in Canada have not seen advancements in developing political structures to incorporate indigenous rights. Indigenous groups did have their own political party, but it was taken away in the 1990s under a strict implementation of the Potlatch law that was passed in 1921 to keep indigenous groups from gathering. As an alternative, First Nations use international recognition to gain support for their causes. Advocacy groups, such as Idle No More, cite the UNDRIP as a reason for their organization.

There has been a tumultuous relationship between Canada and indigenous groups. However, comparing both time periods, before Canada signed the UNDRIP and after Canada signed the UNDRIP, there have been changes to Canadian politics in legislation and advocacy. The changes that have taken place adhere to the wording and essence of the UNDRIP. The changes to state legislation do not go any further than the UNDRIP. After the UNDRIP, Canada creates and introduces legislation to bring indigenous rights up to UNDRIP standards.

In 2012, non-violent social movement group was established called Idle No More. It cited UNDRIP on the official webpage of the social movement as a justification for the means of the movement. Idle No More seeks to sustain water and land rights for First Nations and advocates to sustain already existing legislation that protects indigenous rights. Prior to this Canada had not seen a grassroots indigenous movement. In the 1970s, when the US was experiences American Indian social and political movements, most Canadian indigenous groups were engaged in "patriation" negotiations (Steinman 2005, 108). Additionally, Canadian law does not allow rioting or unlawful organizations; therefore, law enforcement can have a harsh reaction to protests. Simultaneously while Canada supports the UNDRIP, Canada does not support the political organization of indigenous people (Indian Act 1884). The UNDRIP has affected the Idle No More movement by giving the group international legitimacy and confidence to protest in Canada.

Australia

The final case in this study is Australia. It was chosen to compare to the United States and Canada. It has a similar history with indigenous groups and is also a liberal democracy. As of 2006, Aboriginals and Torres Strait Islanders consisted of approximately seven percent of the Australia population (Australian Government 2013). Australian indigenous groups are distinct from other people in Australia because they descend from the first inhabitants of Australia. First inhabitants are the first people to live on the island that is modern day Australia and do not include European discovery of the island.

When moving forward in examining Australia, aboriginals are indigenous groups that are not distinctly Torres Strait Islanders. The Torres Strait Islanders consider themselves distinct because, like the Inuit, they have preserved large amounts of the traditional hunting and fishing culture. The Torres Strait Islanders are distinct from other aboriginal groups in Australia and reside primarily on the Torres Strait Island and in Queensland. There are about 600 different groups of aboriginal groups in Australia (Australian Indigenous Cultural Heritage 2013). In 1992 Mabo v Queensland (No. 2) court case established indigenous title or indigenous descent. Indigenous title was culturally distinct and indigenous people have rights that are tied to the land. Land is important to many of the Aboriginal people. The ties to the land mark an alteration in the state's approach to make indigenous people culturally distinct, while working with the Australian government.

The most common Australian term for indigenous people is aboriginal. Aboriginals consist of all other indigenous groups in Australia. While aboriginal people are located in all seven of the territories of Australia, the Northern Territory has the highest population. Unlike

Canada and Australia, they do not live in reserves or reservations. One of the largest groups of Aboriginals is the Anangu Pitjantjatjara, which can be found in the Southern territories (www.waru.org 2013). Historically, indigenous groups did not have treaty relationships with the Australian government. Furthermore, indigenous groups did not have representation in the parliament because the state did not include them.

Australian government is modeled after the United States governance system by having a House and Senate, but is a still liberal parliamentary democracy. The legislature consists of two branches: the Senate and the House. Indigenous group and Australian relations are conducted through the Department of Aboriginal Affairs. The Department was created in 1995 and is responsible for the delivery of services, facilitation of programs, and improved environment and social aspects in the indigenous communities. Once again one of the greatest concerns for indigenous groups in liberal democracies is that there has been no indigenous participation in governance.

There have been many indigenous political organizations that have organized in Australia. One of the first, the Australian Aboriginals League (AAL), was formed in 1936 in order to advocate for full citizen rights and equality for indigenous people. In 1958, the Federal Council for the Advancement of Aborigines (FCAA) and the Cairns Aboriginal and Torres Strait Islander Advancement League (CAATSIAL) made in 1960. Each was created with a mix of indigenous and non-indigenous members and was established for different reasons. In 1963, the two groups cooperated very closely with each other. The FCAA was formed to increase the aboriginal rights by creating a Federal council for states and aboriginal people to work together. The FCAA was formed to demonstrate to the London's Anti-Slavery Society's and the Lady Jessie Street association to gather information to present to the UN about indigenous people.

The FCAA and other groups meet at the Adelaide Conference in 1958 to determine an approach to best suit aboriginal people of Australia. The conclusion was to have the Australian government legislation for the aboriginal group of people. The US uses this same approach for its indigenous people. The FCAA was later changed in 1964 to the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI). The change was made to include the distinct aboriginal group the Torres Strait Islanders. The FCAATSI came under sole indigenous organization in 1973. Its primary concern has been with relationships and operations between indigenous groups and the Department of Aboriginal Affairs.

CAATSIAL was an “aborigine’s advancement league” (National Museum of Australia 2013) with indigenous and non-indigenous membership and was formed in order to protest the Queensland Aboriginal Acts. It is most known for exposing police violence. CAATSIAL later joined with the FCAA. Indigenous political organization in Australia created by indigenous people is few. The largest political groups had mixed origins and /or were sponsored by non-indigenous people. One of the sole indigenous originating political organizations is the Kingstown Land Claims (KLC). KLC was established in 1978 to deal with land rights and social issues specific to indigenous needs. It was crafted by several aboriginal groups. It was not until the 1970s that aboriginal political and social organizations started to do so without non-indigenous guidance. Once the state started to address indigenous issues through political legislation and judiciary cases did advocacy groups find the confidence to organize to address other indigenous issues within the state (National Museum of Australia 2013).

In the 1960s, liberal democracies began to address some civil rights. They modeled their decisions off each other. The legislation passed to strengthen civil rights in the 1960s and 1970s were due to international pressure and disregarded traditional liberal and conservative domestic

political parties. Australia began to seek reconciliation with indigenous groups to resolve the past treatment of Aboriginals. The Constitution Alteration (Aboriginal People) in 1967 allowed the parliament to make legislation for all people within Australian territory, including indigenous people. Also reconciliation included the Land Rights Act of 1976 which protects significant land for aboriginal people. This was introduced under a Liberal coalition under Prime Minister Harold Holt and a Liberal majority in the House. The act demonstrates that Liberal leaders in states were willing to support more land rights legislation for indigenous peoples prior to an international standard. Under the Holt government in 1967, the Council of Aboriginal Affairs was formed in order to fulfill an indigenous voice.

One way the government started to support indigenous land to strengthen Aboriginal mechanisms for indigenous land issues to be addressed. The Aboriginal Land Rights Legislation Amendment Act of 1982 amends both the Aboriginal Land Rights (Northern Territory) Act of 1976 and the Aboriginal Land Rights (Northern Territory) Amendment Act of 1979. The amendment changes land claims so that there need not be a special lease, but common law is sufficient to provide a solid legal backing. This amendment was created under Prime Minster Malcolm Fraser of the Liberal Coalition and a Liberal majority in the House.

There has been important litigation in regards to indigenous land rights and status. In 1992, the Mabo v. Queensland (No. 2) marked a legal improvement in Aboriginals and government relations. The decision was made under Prime Minister John Hewson of the Liberal party. Once again the actions of the state show that domestically the Liberal Party have an interest in establishing indigenous land rights. In reaction to the court case, the Native Title Act 1993 was passed. The Native Title Act 1993 provides a means for the Australian government to determine who receive Native title or Aboriginal status.

One problem with Australian indigenous legislation is that it exists but it is sometimes ignored within the community. For example, the Aboriginal and Torres Strait Islander Heritage Protection Act of 1984 was ignored in regards to the Broken Hill Proprietary (BHP) mine in Coronation Hill (Ivison, Patton and Sanders 2000). The women of were not allowed to tell traditional stories about the land because of cultural rules that did not allow the women to share the stories outside of the culture. The telling of traditional stories would have aided in the development of the area by identifying areas that would have been okay to develop. The law was supposed to protect the secrecy of the traditional stories that were only known by the community women. Keeping traditional stories inside the indigenous community preserves the indigenous culture and protects the women. It was later discovered that Ian McLachlan, a business developer, violated the privacy of 35 women to obtain these secrets. The secrets held by the women produced an economic problem for the min because they would not reveal the locations that were okay to mine. McLachlan violated the Aboriginal and Torres Strait Islander Heritage Protection Act of 1984. The violation was ignored by the Australian justice system and parliament (Ivison, Patton and Sanders 2000, 158-162). The Australian government dismissal of the McLachlan violation demonstrates how the cultural perception of the majority in a democracy can affect the justice system for a particular group (Ivison, Patton and Sanders 2000, 160).

In 1998, the case of *Members of the Yorta Yorta Aboriginal Community v Victoria*, the Australian court decided that aboriginal traditional law was no longer relevant and was lesser than Australian common law. It eroded the legitimacy of indigenous law and weakened indigenous rights. It was based off of the Australian government having sovereignty over the territory or land (Dorsett and McVeigh 2012).

Post UNDRIP:

Prior to the UNDRIP, political parties had a stronger influence in the strengthening of indigenous rights and there was a lack of indigenous participation. After the UNDRIP, aboriginals have formed the National Congress of Australia's First Peoples (NCAFP), which is an organization that advocates for indigenous rights. Its responsibility is similar to that of the NCAI in the US. The Congress was established in 2011, after the UNDRIP, and it uses the UNDRIP as a foundation for its organization (National Congress of Australia's First Peoples 2013). It advocates for indigenous rights based on the rights describes in the UNDRIP and uses that foundation on the domestic legislation. One of the priorities of the UNDRIP is to find the best means of including indigenous participation in Australian politics.

Also the Council of Australian Governments (COAG) has produced a statement to provide support for a means of incorporating indigenous governance into the Council. COAG is made up of the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. The COAG uses the Closing the Gap program to encourage leadership and governance within indigenous communities. The minutes of the April 2013 meeting show the Council allocating money for the education of Aboriginal people (Council of Australian Governments Meeting – Communiqué 2013).

The Australian government passed the Native Title Amendment Act of 2011 legislation in order to streamline the process for obtaining aboriginal title. The government cites the UNDRIP human rights standard of self-determination for indigenous peoples as a reason to provide better mechanisms for obtaining aboriginal title within the government (Parliament of

Australia 2013). Native title legislation seeks to find a common ground between common law and indigenous law jurisprudence (Dorsett and McVeigh 2012).

The Aboriginal and Torres Strait Islander Peoples Recognition Act of 2013 was signed in April 2013. The Act recognized that these people are the first inhabitants of Australia and expresses the need to make constitutional changes for the inclusion of indigenous Australians (Austrailan Parliament 2013). This was passed in hopes of adding aboriginal and Torres Strait Islander people to the constitution. While the Act does not specifically cite UNDRIP, it is an example of the changes national governments are making in order to strengthen indigenous rights. It was advocated for the by the NCAFP and the Expert Panel formed by the national government recommended Aboriginal and Torres Strait Islander people be recognized in the Australian Constitution (National Congress of Australia's First Peoples 2013).

The indigenous component of the Council of Australian Governments was introduced to Australia under Prime Minister Julia Gillard of the Labor Party. Currently, the Senate and the House of Representatives enjoy a Labor Party majority. The Labor Party has 71 members. The Liberal party has 59 members. The opposition coalition in the House beats the Labor Party 72-71 and the opposition coalition in the Senate is greater by 34-31 (Parliament of Australia 2013). Previous government responses to Aboriginal issues have supported two separate societies, co-existing; however, this new legislation supports political structural changes to address indigenous rights. The changes include providing government funded toolkits for indigenous governance and public support for indigenous communities to strengthen their own governance (www.indigenous.gov.au 2013). Australia is another example of the international influence the UNDRIP has on state's domestic indigenous affairs. When comparing post-UNDRIP periods,

there are significant changes in states addressing legislation toward indigenous policy.

Conclusion

Previously, the liberal democracies have used assimilation policies in order to eventually terminate indigenous cultures because they saw the cultural challenges as impossible to overcome. The response to historical practices of assimilation led indigenous groups to appeal to international organizations to seek incorporation into state institutions rather an elimination of indigenous people. Indigenous people sought the establishment of indigenous rights in a human rights framework in order to use international norms to pressure states to improve their indigenous relations. Indigenous groups also seek to provide states with information to carry out the most humane relationship with indigenous groups in order to avoid any further human rights violations. Indigenous people seek changes in their relationships with the state through international means and they have been very effective in influencing their national governments. Indigenous people have used international organization to alter the states identity and to incorporate indigenous rights through an international influence. Indigenous people have used nation-states liberal democratic and foreign policy objectives to preserve a positive human rights identity to seek indigenous rights within their own nation-state.

All three of these cases show the state's interest in addressing the needs of indigenous people by increasing indigenous rights in their own states. After the UNDRIP was signed by these countries, there emerged legislation proposals to support democratic institutional changes in each large liberal democracy. The legislation demonstrates the national governments attention to indigenous rights and the influence of advocacy groups for indigenous rights within the state's democratic system. The UNDRIP has an indigenous-influenced human rights standard for the treatment of indigenous people by states. States can use the indigenous human rights standard to influence one another and advocacy groups can use the indigenous human rights standard to

influence states. The difference the UNDRIP makes is that establishes formal indigenous rights at the international level. The UNDRIP encourages state domestic support of indigenous international standards. The UNDRIP formalizes the process that liberal democracies were using to produce policy toward indigenous people. The UNDRIP is different than from the previous national government relations because it incorporates the indigenous voice into the formal process and the document embodies the spirit of indigenous rights. The UNDRIP has provided encouragement for indigenous groups to address the governance issues within their states by providing international legitimacy to the indigenous rights cause. States that have signed the UNDRIP also have a foreign policy advantage for embracing indigenous rights. The standard was developed with the consultation and advice of indigenous groups appealing to the United Nations. Therefore, when states align their domestic policies with the international standards of the UNDRIP they are catering to indigenous desires while enhancing their own security interests and international human rights appeal. It is not constraining because the UNDRIP gives indigenous people the opportunity to use an international mechanism to support human rights claims domestically, that was not explicitly spelled out prior to the creation of the UNDRIP. Since the UNDRIP carries the signature of the US, Canada, and Australia, then indigenous people in these governments can call on each government to adhere to the spirit of UNDRIP.

The Canadian and Australian governments are modeled after the US. Therefore, similar governments with similar histories have identities that resemble each other. Each look at each other's interactions with indigenous groups to seek to find the best method to keep the national government identity while incorporating indigenous rights. Prior to the signing of the UNDRIP, states were slowly making progress giving more rights to indigenous peoples by incorporating an indigenous model, rather than just allowing for rights to be given to indigenous groups by the

state. The US VAWA 2013 has shown the greatest movement in capturing the spirit of the UNDRIP. Constructivist international theory suggests that the social environment of the international arena had an impact on the US to make this decision.

States engage in multinational agreements in order to make international standards for trade, war, and banking and now are paving the way for cultural international agreements. While the US, Australia, and Canada are all liberal democracies each has a differing relationship with indigenous people. States communicate to pursue the best practices for indigenous people. Simultaneously, indigenous groups search to use diplomacy through international organizations to provide states with information about the best ways to engage in relationships with indigenous peoples.

The UNDRIP has become the formal international document for liberal democracies to standardize international norms. After the US signed the UNDRIP in 2010, Canada and Australian followed suit and signed the UN document. The UNDRIP is not legally binding therefore liberal democracies act independently to make the changes to their domestic institutions and mechanisms. The governance structure of Canada and Australia is similar to each other and they engage in similar practices. States do this on their own accord however they share similar interests and identities. Advocacy is a liberal democratic tool used for alternative group inclusion into the political process. Indigenous people use advocacy to influence the nation-state's domestic affairs by using an international model that bypassed the national government to provide international legitimacy to the indigenous cause. It is apparent in liberal democracies because their identity is based on liberal values like freedom, peace, and justice. The identity of liberal democracies can be used as a foreign policy tool to influence the nation-

state to become a more perfect example of a political system that incorporates those liberal values.

States have an inherent nature of competition with indigenous groups. The state and indigenous people competition is played out in human rights adherence. While there is competition between indigenous groups and the national government, there is competition between each national government. Each state wants to have the best human rights practices and democratic system, so it can use as a justification for foreign policy (Dunne and Wheeler 1999, 16).

The UNDRIP has formalized the social interaction between the US, Australia, and Canada in regards to domestic indigenous policy and has included indigenous group's voice in the process. Indigenous voices have an international aspect and have strengthened their own rights. The UNDRIP has strengthened indigenous rights in liberal democracies by linking indigenous rights to human rights. It has made liberal democracies have an incentive in their domestic and foreign policy to include indigenous rights into policy. The UNDRIP has only been signed by the US, Canada, and Australia for three years, I expect there will be more pressure and passed legislation directly related to indigenous rights.

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