PS SYMPOSIUM

The Political Economy of U.S. Territories and Indian Country

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SYMPOSIUM CONTRIBUTOR

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INTRODUCTION

When it comes to international political economy, U.S. territories both are and are not American. For example: firms sew "Made in America" labels into clothing in the Northern Marianas Islands or Guam, while at the same time those firms operate under the territories' own labor and business regulations. Firms incorporating in the U.S. Virgin Islands are in the United States but can benefit from offshore tax relief. Economic data from American Samoa show up in World Bank country-level databases, requiring scholars to consider what kind of political entity should be included in their analyses. Puerto Rico has benefitted from its American "brand" on international bond markets in good times, but, in bad times, any bailout is subject to the whims of the U.S. Congress since the territory is excluded from bankruptcy law for U.S. municipalities.

In short, U.S. territories often interact with international financial and capital market actors in ways analogous to sovereign states. But, the United States determines the legal boundaries of the U.S. territories' presence on the international stage. The U.S. territories also rely on the United States to provide one of the basic functions of a fully sovereign state: security.

Thus, U.S. territories are not traditional sub-national units, nor are they sovereign Westphalian states. Instead, U.S. territories are "semi-sovereign" entities, enabled by a hierarchical power to act with limited autonomy particularly when it comes to their political economies. Analytically, they lie somewhere between "bringing the state back in" or leaving it out (Evans et al 1985). U.S. territories, and the bigger category of semi-sovereign entities around the world, generate under-explored variation that can allow researchers and educators leverage on the political economy of globalization.

In addition to the U.S. territories focused on throughout this symposium, the United States is home to another set of semi-sovereign entities. Chief Justice John Marshall famously characterized the hundreds of American Indian and Alaskan Native (AIAN) tribes as "domestic dependent nations."[1] According to U.S. law, the lands under AIAN jurisdiction are "Indian Country" – a broad moniker that captures a diverse set of some 326 reservations, pueblos, rancherias, missions, villages, and communities.[2] The 2010 Census identified approximately 2 million AIAN persons living on or near Indian Country, equivalent to about half the population of the U.S. territories (4.1 million).

Under U.S. law, tribes in Indian Country and U.S. territories are clearly distinct. For example, in the majority opinion in *Puerto Rico v. Sanchez-Valle* (2016), the Supreme Court found that Indian tribes "count as separate sovereigns" for purposes of double jeopardy but Puerto Rico does not.[3] Nonetheless, when it comes to their political economies, both tribes and territories share a liminal status that allows them to sometimes imitate sovereigns. Their status has overlapped most clearly since the late twentieth century, thanks to modern federal-Indian relations that focus on maintaining tribal autonomy (rather than threatening it as has been true in the past). Today, tribes have autonomy over membership criteria as well as many issues relevant to political economy, including taxation, regulation, and environmental standards. Many (though not all) have jurisdiction over criminal and/or civil law on their lands. While the particulars of tribes' and territories' semi-sovereignty are different, both are enabled by a hierarchical power to have limited autonomy over their political economies. As such, U.S. territories and Indian Country are comprised of semi-sovereign entities that can interact with external financial and capital markets, with political consequences.

U.S. territories and Indian Country can and do exploit their unique positions when it comes to the management of their political economies. But these semi-sovereign entities often fly under the radar of scholars and of policymakers, in contrast to traditional Westphalian states that find it hard to hide (e.g. Kelley and Simmons 2015). Being overlooked has real consequences. From 2014 to 2016, rapacious actors appear to have effectively stolen US$60 million in tribal bonds from the Oglala Sioux Tribe in South Dakota.[4] This scandal has thrown a semi-sovereign entity (with 40,000 enrolled members) into an existential crisis – though this crisis is invisible to many if not most outsiders. Disgraced lobbyist Jack Abramoff's involvement in the Northern Marianas Islands raised U.S. political interest in labor rights in the territory – but only for a time.[5] The artist Lin-Manuel Miranda, of Puerto Rican heritage, resorted to promising "Hamilton" tickets to Congressional members in exchange for their increased attention to the territory's debt crisis.[6]

Compare their inconspicuousness with perceptions of small Westphalian states, which have unquestioned international recognition and access to international institutions. For example, multiple financial pyramid schemes rocked Albania's economy and politics in 1996-1997. This state of about 3 million people found international sympathy and received long-term assistance from the International Monetary Fund (IMF) and the World Bank in its recovery (Jarvis 2000). Even microstates like San Marino, Andorra, and Liechtenstein are members of the Council of Europe, and, while not European Union members, the EU recognizes and interacts with them on the inter-state stage. These sovereign states benefit from both autonomy and recognition, while semi-sovereign entities have both limited autonomy and limited recognition. The British Overseas Territory Gibraltar, a semi-sovereign entity, surely wishes its access to international institutions were not conditional on the U.K.: 94 percent voted against Brexit.[7] Puerto Rico's semi-sovereignty is not sufficient for it to access an IMF bailout. The fact that semi-sovereign entities do not have clear access to global governance institutions – particularly in a time of crisis – highlights exactly how useful sovereignty is in an era of globalization. More scholarly attention to semi-sovereign entities can both illustrate the consequences of inattention and better characterize the upsides of full sovereignty.

The next section illustrates how U.S. territories and Indian Country act like sovereigns with respect to trade, investment, finance, and migration. The following two sections delve into two topic areas in international relations for which the study of U.S. territories and Indian Country are particularly well-suited: first, our understanding of international hierarchy, and second, the boundaries of the state under globalization. The final section highlights how U.S. territories and Indian Country can illustrate a bigger class of semi-sovereign entities while also informing scholarship on the political economy of traditional, Westphalian states.

"INTERNATIONAL" POLITICAL ECONOMY

"International" trade, investment, finance, and migration – the key elements of international political economy – manifest in U.S. territories and Indian Country. As such, these semi-sovereign entities can provide foundations for fruitful research agendas while at the same time generating points of departure for courses on international political economy.

First, with regard to trade, U.S. territories and Indian Country benefit from their American brand when trading with other countries as well as with the 50 U.S. states and the federal government, because their goods qualify as "made in America." At the same time, they are not necessarily constrained by federal U.S. law.[8] For example, contracts with AIAN tribes are exempt from the Obama administration's executive order for a minimum wage increase to US$10.10 per hour for federal contractors and subcontractors.[9] The U.S. Congress varies in its willingness to let U.S. territories set their own labor regulations. Guam's 2016 minimum wage (US$8.25) is above the federal floor (US$7.25), although the minimum wage in American Samoa is as low as US$4.60. Variations in tax law in the U.S. territories have run afoul of the World Trade Organization (WTO). In response to a complaint by the European Communities, the WTO ruled in 2000 that preferential U.S. tax treatment of "foreign-sales corporations" incorporated in the U.S. Virgin Islands and Guam amounted to an illegal export subsidy.[10] Of particular relevance to international relations curricula, semi-sovereign entities like the U.S. territories and Indian Country test the limits of arguments that there is an international "race to the top" in regulatory standards, rather than a "race to the bottom" dynamic (e.g. Mosley and Uno 2007, Prakash and Potoski 2006).

Second, direct investment plays a role in semi-sovereign entities' political economies. Tribes in Indian Country have made their mark in recent years by using their special sovereign rights to grow the gaming industry, usually through tribal joint ventures or service contracts with "foreign" (non-Indian) gaming firms. Tribes have also exercised sovereignty in imposing environmental regulations on fracking and other natural resource extraction on tribal lands – though sometimes these regulations are more lax, sometimes more strict than those in neighboring U.S. municipalities. Puerto Rico famously built its economy in the last decades on the back of subsidies to pharmaceutical manufacturing, which combined with the territory's attractive access to the U.S. market. But mirroring the experience of many developing countries (and U.S. municipalities), Puerto Rico's onetime incentives have not prevented the pharmaceutical industry from moving on en masse to other locations. U.S. territories and Indian Country illustrate the kinds of political tools that even semi-sovereignty can provide in the competition for direct investment, as well as the limitations of those tools.[11]

Third, between the Puerto Rican debt crisis and the Panama Papers' data on the role of territories (U.S. and otherwise) in investors' search for low-tax jurisdictions, semi-sovereign entities are shaping the future of international finance. Indian Country, too, has its run-ins with finance. Tribal governments issue bonds as sovereigns, but in order to find buyers and keep prices down, tribes execute "waivers of sovereign immunity." These waivers specify that, in the event of a bond claim against the tribal government, proceedings will take place in a U.S. and not a tribal court.[12] Interestingly, tribal governments sometimes get around difficult and expensive market access by borrowing from each other, though these loans fly under the radar of traditional financial markets. Individual credit, too, is under-provided in Indian Country, although AIAN borrowers with recourse to American civil law – rather than tribal law – can find better off-reservation rates (Wellhausen 2016). Semi-sovereign entities can provide fodder for understanding the politics of economic crisis as well as more general insights into the determinants of access to external capital.

Fourth, residents of semi-sovereign entities deal daily with the political economy of migration and remittances. Leaders in Indian Country struggle to keep tribal members living, working, and spending their income within tribal lands. Tribal members balance cultural and economic factors that pull them to stay on tribal lands or push them to look for employment in U.S. municipalities while sending some money back. Internal migrant communities in the U.S. coming from territories like Puerto Rico often retain close financial ties to home, too.[13] However, residents of U.S. territories and Indian Country receive some welfare benefits from federal U.S. programs. Thus, their remittances need not substitute for otherwise absent social safety nets, as remittances sent home to developing countries commonly do (Duany 2010). Such variation can inform the ongoing debate about whether remittances complement or substitute for political action in recipient states. In general, remittances to U.S. territories and Indian Country can illustrate understudied (and under-taught) aspects of the push-and-pull of economic globalization around migration.

APPLICATION: HIERARCHY

How specifically might U.S. territories and Indian Country make it onto an international relations or international political economy syllabus? One point of entry is in the consideration of international hierarchy in this, the post-colonial and post-Cold War era. Hierarchy is a topic of renewed interest in international relations that is on syllabi in a variety of guises, such as in the study of empire, the international projection of power, and great power dynamics. Much of the recent work on hierarchy in international relations has made progress by building theory around the role of security (e.g. Lake 2011, McCormack 2015, McDonald 2015). U.S. territories and Indian Country can provide inroads to the political economy of hierarchy in the international system. Hierarchy allows U.S. territories and Indian Country to be semi-sovereign with respect to their political economies, without providing for their own security.

A specific focus on U.S. territories and Indian Country can help illustrate the scope of U.S. power in today's global economy as well as the dynamics of political economy within a given hierarchy. Particularly in U.S. classrooms, material on the U.S. territories and Indian Country can provide a bridge to introducing other hierarchies, in which other Westphalian states like the United Kingdom or France allow their semi-sovereign entities to experiment with economics while relying on an external source of security.

Further, a consideration of Indian Country under the guise of hierarchy in international relations would draw an important link to a body of work on the political economy of indigenous peoples, whether in the United States, Canada, Australia, or elsewhere. Scholars illustrate how economically disadvantaged indigenous groups can access national institutions (e.g. Evans 2011a, 2011b), how historical compromises and injustices shape indigenous opportunities today (e.g. Spirling 2011), and how interest group dynamics work in indigenous communities (e.g. Hansen and Skopek 2011, Wilkins and Stark 2011), not to mention a plethora of other related topics of inquiry (Evans 2014). Considering Indian Country in international relations curricula and scholarship can keep this relevant literature from being sidelined.[14]

APPLICATION: BOUNDARIES OF THE STATE

A second key point of entry for U.S. territories and Indian Country into international relations and international political economy syllabi is via the debate over the boundaries of the state under conditions of globalization. Puerto Rico's dire economic circumstances perversely illustrate one upside of being a traditional state or a traditional sub-national unit – but not something in-between. If Puerto Rico were fully sovereign, it would be able to more clearly "declare bankruptcy" and then rely on international institutions like the IMF to smooth painful restructuring processes. If Puerto Rico were clearly treated as a U.S. municipality, it would have access to Chapter 9 protections and could restructure in that way.[15] As neither, actors on international markets that trade in Puerto Rican debt have little clarity about how Puerto Rico will become healthy again, which only exacerbates the crisis. The speed and certainty with which the U.S. Supreme Court and the U.S. Congress determine the political economic boundaries of Puerto Rico's semi-sovereignty, now that crisis has made those boundaries salient, have real consequences for Puerto Ricans' individual welfare.

Work on "forum shopping" in international trade or the growing phenomenon of "nationality shopping" when it comes to accessing international investment protections also explores the boundaries of the state in the global economy (e.g. Busch 2007, Davis 2009, Wellhausen 2015). Here, too, U.S. territories and Indian Country can be illustrative. When firms incorporate in U.S. territories that exist within the hierarchy of the United States, they can benefit from U.S. market access while still reaping the benefits of being outside traditional U.S. jurisdiction. Such liminal cases allow scholars to hold constant some variables – like the effect of an American "brand" – while exploring the consequences of legal and institutional variation. Additionally, historically fraught federal-Indian relations have generated complexities in property rights (e.g. "checkerboarding") as well as civil and criminal law in Indian Country (e.g. Akee 2009). Here, too, scholars and educators can exploit the impact of political boundaries on the behavior of firms and governments, illustrating core concepts in international relations without going outside the greater United States.

Uniquely, semi-sovereign entities can illustrate dynamics specific to both state and non-state actors in the international political economy. Semi-sovereign entities' neither-in-nor-out status means they can be conceptualized as entities being acted upon in the global political economy as well as political economic actors in their own right. In what ways are the United States, Guam, the Navajo Nation, and Wal-Mart on the same spectrum? How are they different? Asking such a question in the classroom can allow an educator to push student understanding of the meaning and consequences of sovereignty in the global economy.

CONCLUSION

Semi-sovereign entities illustrate dynamics around trade, finance, investment, and migration in the modern global economy. What is more, they speak to at least two foundational theoretical concepts in international relations – the political economy of international hierarchy and the boundaries of the state under conditions of globalization. U.S. territories and Indian Country can certainly provide anecdotes pertinent to otherwise Westphalian-state-centered international relations courses. But as representatives of a broad class of semi-sovereign entities in the world, U.S. territories and Indian Country are more than novelties. Scholars and educators would do well to recognize the variation in sovereignty such entities generate and, accordingly, work to explain the consequences of that variation. In a world marked by debate over the economic relevance of political borders, we should explore the political economy of variation in those borders.

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[1] *Cherokee Nation v. Georgia* (1831). Native Hawaiian communities, too, are worthy of study as entities with their own political economies, but they fall under different U.S. law and do not participate as clearly in the international political economy.

[2] Not every of the 567 federally recognized AIAN tribes has jurisdiction over land, although some lands are home to multiple tribes. The Bureau of Indian Affairs counts 326 tribal jurisdictions, although they acknowledge this as an approximate number as definitions vary.

[3] Docket no. 15-108, 2016. Justices Thomas and Breyer both raised concerns about this interpretation of the status of Indian tribes in their opinions.

[4] “South Dakota Oglala Sioux Tribe caught up in $60 million scam.” Rapid City Journal: 13 May 2016.

[5] Weisman, Jonathan. "Minimum-Wage Bill Stirs Controversy in Pacific Islands." Washington Post: 9 January 2007.

[6] Lin-Manuel Miranda, on *Last Week Tonight with John Oliver*. "Puerto Rico." HBO: 24 April 2016.

[7] Eight hundred twenty-three Gibraltarians voted to leave. Moss, Stephen. "I am a rock: how it feels to be a Brexit voter in Gibraltar." Guardian: 28 June 2016.

[8] Nonetheless, U.S. territories cannot sign trade treaties. Puerto Rico last attempted to do so with Japan in the 1980s, but Governor Rafael Hernandez Colón was barred from doing so by the U.S. federal government. I thank a reviewer for this point.

[9] "This order shall not apply to grants; contracts and agreements with and grants to Indian Tribes" Section 7(f), Executive Order – Minimum Wage for Contractors (12 February 2014).

[10] WTO Dispute DS108, United States – Tax Treatment for "Foreign Sales Corporations," brought by the European Communities (Appellate Body Report 24 February 2000).

[11] Along these lines, the experiences of U.S. territories and Indian Country also speak to those of sub-national units like cities that use incentives but do not have semi-sovereign status (e.g. Jensen, Malesky, and Walsh 2015).

[12] Only the Navajo Nation (174,000 enrolled members) is known to have issued debt on U.S. markets without such a waiver; observers attribute this to the development of Navajo tribal law and the Nation's willingness to incur higher costs at the time of issue.

[13] Persons born in the U.S. territories (except American Samoa) acquire birthright citizenship. However, from a financial point of view, money sent from, say, New York state to Puerto Rico is an unearned capital flow from outside the domestic economy of Puerto Rico. This surely affects (and is intended to affect) the opportunities available for individuals in – not to mention the government of – Puerto Rico.

[14] Looking at Indian Country from an international history point of view, Gilbert (1975) argues, "ignoring this whole area of diplomatic and semi-diplomatic history causes enormous distortions" (239). See also Cullather and Foster 2015.

[15] See the 5-2 decision of the U.S. Supreme Court with regard to Puerto Rico and Chapter 9 in *Puerto Rico v. Franklin California Tax-Free Trust* (Docket no. 15-233, 2016).