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ARTICLE

PANDEMICS IN INDIAN COUNTRY: THE MAKING OF THE TRIBAL STATE

MATTHEW L.M. FLETCHER*

In late 1881, the Odawa¹ people of Peshawbestown, Michigan, the capital of the Grand Traverse Band of Ottawa and Chippewa Indians, suffered through a vicious smallpox outbreak.² Dozens of people became sick, and at least thirty Odawa people died out of a population of about three hundred.³ Once state health officials learned of the outbreak, they quarantined the village.⁴ Local government did nothing to assist the stricken village.⁵ The quarantine of the Peshawbestown Indians kept out food,

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1. The Odawa (or Ottawa) nations are part of the Niswi-mishkodewinan (Three Fires) Confederacy of the Odawa, Ojibwe (Chippewa), and Bodewadmi (Potawatomi) nations. *See generally* JAMES A. CLIFTON, GEORGE CORNELL & JAMES M. MCCLURKEN, *PEOPLE OF THE THREE FIRES: THE OTTAWA, POTAWATOMI, AND OJIBWAY OF MICHIGAN* (1986).

2. *Smallpox 1881, HONORING NATIVE ANCESTORS* (Aug. 15, 2019), <https://honoringnativeancestors.blogspot.com/2019/08/smallpox-1881.html>; Ryan Johnson, David Ulrich & Tina Ulrich, “We have a terrible sickness here at this place-” *Smallpox on the Ottawa Reservation in Peshawbestown, Michigan, 1881*, *PLAGUE DIARIES: FIRSTHAND ACCOUNTS OF EPIDEMICS, 430 B.C. TO A.D. 1918* (May 25, 2020), [https://human.libretexts.org/Bookshelves/Literature_and_Literacy/Plague_Diaries%3A_Firsthand_Accounts_of_Epidemics_430_B.C._to_A.D._1918_\(Johnson_Ulrich_and_Ulrich\)/01%3A_Chapters/1.06%3A_We_have_a_terrible_sickness_here_at_this_place-_Smallpox_on_the_Ottawa_Reservation_in_Peshawbestown_Michigan_1881](https://human.libretexts.org/Bookshelves/Literature_and_Literacy/Plague_Diaries%3A_Firsthand_Accounts_of_Epidemics_430_B.C._to_A.D._1918_(Johnson_Ulrich_and_Ulrich)/01%3A_Chapters/1.06%3A_We_have_a_terrible_sickness_here_at_this_place-_Smallpox_on_the_Ottawa_Reservation_in_Peshawbestown_Michigan_1881).

3. Letter from George Lee to H. Price (Dec. 19, 1881), *reprinted in* *SMALLPOX 1881, supra* note 2 (“There have been over 30 deaths in this settlement . . .”).

4. Letter from Dr. H. Nelson to George Lee (Nov. 18, 1881), *reprinted in* Johnson, Ulrich & Ulrich, *supra* note 2 (“In accordance with your request, I proceeded next morning in horse and buggy. Two miles from the village I was stopped by a man who told me he was ordered to stop me if I attempted to go to Peshawbestown. I told him that my life was just as precious to me and to my family as any individual had of theirs and as I had not been notified by the board of health of any obstruction to a physician attending to his patients, I should go where I pleased, and I done so.”).

5. *Id.* (“This township of Leelanaw has done nothing for the relief of the Indians, unless it be the place of a man to guard the road [and paying] him for doing so. The Poor Master, refusing to see to their necessities when I told him it was his duty and his district. No such fear of the Indians starving while they have plenty of land and etc. The nearest he visited them was one mile from his own home and 3 miles of the village.”) (brackets in original).

medicine, and medical help. Tribal member Francis Blackman's plea to the federal government went nowhere.⁶ It appears the people of Leelanau County were more than willing to sacrifice Indian lives to save themselves. The United States was nowhere to be found.

Seen from the distance of 140 years and through the lens of settler colonialism, this public health disaster is no surprise.⁷ The Michigan Odawa nations dominated the western Great Lakes from their home base of Michilimackinac Island for centuries, but by the mid-eighteenth century, had fallen victim to American colonial policy. The Odawa nations executed two treaties with the United States, one in 1836 and one in 1855,⁸ but the government never fulfilled its treaty promises. By the time of the smallpox outbreak at Peshawbestown, the United States had illegally rescinded its promise to fulfill its duty of protection to the Michigan Odawa nations.⁹ The United States would not formally acknowledge the three tribes until the 1980s and 1990s.¹⁰

In 2020 and 2021, the Michigan Odawa nations were confronted with the COVID-19 pandemic. The pandemic cost the lives of several Grand Traverse Band tribal members; over 250 have been infected.¹¹ Compared to the smallpox outbreak of 1881, when about 10 percent of the Odawa population of Peshawbestown died, the COVID-19 pandemic is radically different. This time, there is a tribal government operated by the citizens of the Grand Traverse Band. The tribe received its first shipment of vaccines in

6. Letter from Francis Blackman to George Lee (Nov. 9, 1881), *reprinted in* Johnson, Ulrich & Ulrich, *supra* note 2 (“We have a terrible sickness here at this place. 5 dead more since I wrote to you, and 16 taking sick already 7 dead here at this place, besides 1 at Suttons Bay and 1 at Elk Rapids. The Indians are hard up, can not work to get their provisions all they have to do to give some fire wood, those who are able to go around, one of my brothers house, most every body is sick, he is sick himself except 2 little girls cannot do much anything. We need lots of help at this place.”).

7. JOHN FABIAN WITT, *AMERICAN CONTAGIONS: EPIDEMICS AND THE LAW FROM SMALLPOX TO COVID-19* 15 (2020).

8. Treaty with the Ottawa, etc., 1836, Ottawa-U.S., Mar. 28, 1836, 7 Stat. 491; Treaty with the Ottawa and Chippewa, 1855., Ottawa-U.S., July 31, 1855, 11 Stat. 621.

9. Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Att’y, 369 F.3d 960, 961–62 n.2 (6th Cir. 2004).

10. The Bureau of Indian Affairs acknowledged the Grand Traverse Band in 1980. 45 Fed. Reg. 19,321 (Mar. 25, 1980). Congress acknowledged the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians in 1994. Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub. L. No. 103-324, 108 Stat. 2156 (1994). At least two other Odawa nations who were signatories to the treaties remain unacknowledged. Final Determination for the Burt Lake Band of Ottawa and Chippewa Indians, Inc., 71 Fed. Reg. 57,995 (Oct. 2, 2006); Grand River Band Ottawa Council; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe, 60 Fed. Reg. 8,136 (Feb. 10, 1995).

11. *Announcing Two (2) New COVID-19 Cases, Scheduling for Vaccination of Children Ages 5 to <12*, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, 3–4 (Oct. 12, 2021), http://www.gbndians.org/downloads/newcases_10_21.pdf.

December 2020 and began to vaccinate tribal members immediately.¹² The tribe quickly vaccinated hundreds of tribal members.¹³

This Essay is inspired by the fascinating narrative told by John Fabian Witt theorizing how epidemics make states and how states can also make epidemics. The two stories centered in Peshawbestown, Michigan, during the 1881 smallpox outbreak and the 2020–2021 COVID-19 pandemic seems to play into that story. The state (acting through the local and federal government) made the 1881 outbreak fatal, while the epidemic (acting through the tribal and federal government) made the state (in this case, the tribe) in 2020–2021. The story here seems to be one of sovereignty. In the smallpox era, the tribes exercised almost no sovereignty. Now they are practically self-governing; the incredible success of the Grand Traverse Band is a ringing endorsement. The tribe is acting like a capable and responsive government.

But I argue there is more going on here. Sovereignty—whether liberal or authoritarian, in Witt’s words—is the first step in the analysis, but not the last. Culture is the second step. As I write this, just under 70 percent of all Americans over the age of 18 are vaccinated.¹⁴ In Leelanau County, where Peshawbestown is located, 89 percent are vaccinated.¹⁵ Across the bay in Antrim and Kalkaska Counties, only 63 and 52 percent are vaccinated, respectively.¹⁶ As a sovereign entity, the Grand Traverse Band could have chosen to reject the shipment of vaccines or decline to assist tribal members in getting the vaccine. I will address why I think that option was never a possibility for an Anishinaabe nation with a solid grasp of its history, culture, and tradition.

This Essay intends to gently disrupt Professor Witt’s theory by superimposing Anishinaabe political theory on *American Contagions*. The Western notion of sovereignty is foreign to Anishinaabe people.¹⁷ Western political theory insists on the power of a sovereign entity to enforce a social

12. Josh Monroe, *Grand Traverse Band of Ottawa and Chippewa Indians Receive First Shipment of Coronavirus Vaccine*, TRAVERSE CITY RECORD-EAGLE (Dec. 16, 2020), <https://www.9and10news.com/2020/12/16/grand-traverse-band-of-ottawa-and-chippewa-indians-receive-first-shipment-of-coronavirus-vaccine/>.

13. Alex Brown, *In Hard-Hit Indian Country, Tribes Rapidly Roll Out Vaccines*, PEW CHARITABLE TRUSTS: STATELINE (Feb. 9, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/09/in-hard-hit-indian-country-tribes-rapidly-roll-out-vaccines> (“Michigan’s Grand Traverse Band of Ottawa and Chippewa Indians reached members with text messages, postcards and ‘phone tag,’ said Chairman David Arroyo. The tribe has about 1,800 members living in the area, and it’s vaccinated nearly 600 so far.”).

14. *See How Vaccinations Are Going in Your County and State*, N.Y. TIMES (Oct. 22, 2021), <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html>.

15. *Id.*

16. *Id.*

17. Kekok Jason Stark, *Anishinaabe Inaakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin*, 82 Mont. L. Rev. 293, 299, 324 (2021).

contract or else society will collapse. Anishinaabe political theory does not. The difference matters.

I. DICHOTOMIES AND HIERARCHY IN *American Contagions*

Professor Witt's book, *American Contagions*, is an engaging assessment of the law and politics of contagion in the United States. I read Witt as persuasively establishing that epidemics and statehood go hand in hand. To paraphrase briefly, epidemics can create states, and states can create epidemics.¹⁸ Witt offers a fresh take on the current crisis of COVID-19.

A. *Witt's Dichotomies*

I see Witt as establishing several dualities undergirding the overall theory that are critically important to the discussion. In Witt's telling, states vacillate between "sanitationist" and "quarantinism."¹⁹ It would seem to me that a sanitationist state is more preventative and less reactive. Witt concludes that sanitationist states are more liberal, and quarantinist states are more authoritarian.²⁰ Overlaying that dichotomy is whether a state is progressive or conservative, that is, whether the state acted to protect the underprivileged in its approach to epidemics.²¹ A sanitationist state obsessed with prevention of epidemics can be progressive or conservative in its concerns about the underprivileged, just as a quarantinist state could with its reactive governmental methods. These dichotomies are evident in any state, one could suppose.

But the American state adds multiple elements. The first is settler colonialism, which Witt dates back to at least 1662 with the anecdote about the Indigenous peoples of Long Island being forced by colonial law to keep out of English villages.²² Settler colonialism is not just about Indigenous peoples; it is also about slavery, property, and control of the state. It is also not unique to the United States, but it is a driving feature, even to this day. These elements must have played an enormous role in allowing Witt to reach the conclusion that the United States is more sanitationist for those with privilege and wealth and more quarantinist for those without.²³ More on that later.

An additional element central to the United States, Witt shows, is that of individual versus collective rights.²⁴ America is, after all, the nation

18. WITT, *supra* note 7, at 6–7.

19. WITT, *supra* note 7, at 8. Compare WITT, *supra* note 7, at 13–33 (surveying the notion of the "sanitationist state"), with WITT, *supra* note 7, at 35–60 (surveying the notion of "quarantinism").

20. WITT, *supra* note 7, at 8.

21. WITT, *supra* note 7, at 32.

22. WITT, *supra* note 7, at 38.

23. WITT, *supra* note 7, at 9.

24. WITT, *supra* note 7, at 13.

founded on the phrase “Don’t Tread on Me.” Of course, this is myth. The United States was founded on slavery and the dispossession of Indigenous peoples’ resources and lives, not to forget those of women and unpropertied men, as well. Mythology or not, this story is at the core of American libertarianism. Again, more on that later.

Relatedly, the third dichotomy I see involves individual property rights and collective interests. Witt’s description of how the public health solutions of the mid-twentieth century, where Jonas Salk would refuse to patent his polio vaccine,²⁵ shifted around the time of the AIDS crisis to favoring private property interests like Big Pharma.²⁶ For those of us with a view that the Constitution was designed by the Founders to create a space for the development of wealth, followed by the preservation of that wealth,²⁷ this is no surprise. What is a surprise is that Salk’s generation did not seek to maximize their wealth through their achievements, though Witt explains that perhaps this is explained by the public versus private character of their research.²⁸

A final dichotomy vital to understanding the United States’ response to epidemics is federalism. The Constitution is silent as to the scope of federal powers over public health, leaving the states and localities in charge, mostly. As Witt points out, the federal government still retained significant powers on borders and ports.²⁹ A balance of sorts existed, rooted in the differing purposes of the state and the federal government under the Constitution.³⁰

Witt’s narrative weaves a compelling story drawing from these threads, helping to explain why the American response to COVID-19 is so complex and, in many ways, a horrific failure. I depart ways a bit from Witt here to offer my own gloss on Witt’s narrative and, ultimately, on the American polity.

Witt’s dichotomies offer a rare glimpse into the hierarchies in play in the United States. Those hierarchies are racial, they are gendered and sexualized, and they are rooted in class and privilege. And they are absolutely intentional. Start with the Hobbesean state of nature, from which flows much American political theory. Hobbes’s narrative is dark. Humans are roughly equal in skill and selfishness, and the things that they desire are limited, leading to competition, conflict, and war without end.³¹ The only

25. WITT, *supra* note 7, at 98–99.

26. WITT, *supra* note 7, at 100–04.

27. E.g., Matthew L.M. Fletcher, *Erasing the Thin Blue Line: An Indigenous Proposal*, MICH. STATE L. REV. (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3680899.

28. WITT, *supra* note 7, at 99.

29. WITT, *supra* note 7, at 47–53.

30. WITT, *supra* note 7, at 54.

31. Charles Edward Merriam, *Hobbes’ Doctrine of the State of Nature*, 3 PROC. OF THE AM. POL. SCI. ASS’N 151, 151 (1906).

solution was the social contract, by which humans would surrender their absolute freedom to a sovereign entity in exchange for justice and security.³² Of course, Hobbes was wrong about the inherent evil of humans, after all, there would be none of us here if humans of the ancient past did not develop “social qualities.”³³ But Hobbes’s theory was a convenient one for those interested in power. In that aspect of the story, the inherent evil of humans can only be cabined by a wise few, or one, the Leviathan, themselves cabined by a social contract.

B. *The Social Contract and Hierarchy*

We have a social contract in America, the Declaration of Independence representing the most obvious manifestation.³⁴ Building on Hobbes’s Leviathan, Locke theorized government that would, for example, punish law-breakers in the place of individual citizens.³⁵ A contract is an agreement between parties; in this case, a closed circle of elites that excludes the majority. The key feature of this social contract, then, is exclusion. The lawful are in—the lawmakers, as well, it goes without saying. All others are out, subject to the whims of those who are in. Even those who are in can lose that status if they violate the law.

The founding American documents enumerate which persons are in and which are out. Indigenous peoples, described as “merciless Indian Savages,” most certainly are out.³⁶ Slaves, too.³⁷ The Constitution confirmed that Indians and slaves were out, but also confirmed by omission that women were out, too.³⁸ We’ve amended the Constitution to include all persons born in the United States (except Indians)³⁹ and women.⁴⁰ Leave for another day the boundary lines between those who are included and excluded from the social contract, the point being that there is yet another dichotomy in play established in the social contract.

The dichotomy of the social contract ensures a hierarchy. The privileged elites protected in the text of the Constitution occupy the top of the

32. *Id.*

33. *Id.* at 152.

34. Dan Himmelfarb, *The Constitutional Relevance of the Second Sentence of the Declaration of Independence*, 100 YALE L.J. 169, 169–70 (1990).

35. *Id.* at 184 n.87.

36. Gregory Ablavsky, *The Savage Constitution*, 63 DUKE L.J. 999, 1013–14 (2014) (quoting THE DECLARATION OF INDEPENDENCE para. 29 (U.S. 1776)) (citing John R. Wunder, “*Merciless Indian Savages*” and the Declaration of Independence: Native Americans Translate the *Ecunnamuxlee Document*, 25 AM. INDIAN L. REV. 65, 65–73 (2000)).

37. Annette Gordon-Reed, *America’s Original Sin: Slavery and the Legacy of White Supremacy*, 97 FOREIGN AFF. 2, 2 (2018).

38. *Cf.* Ruth Bader Ginsburg, *Gender and the Constitution*, 44 UNIV. CIN. L. REV. 1, 2–4 (1975) (describing the views of 19th century thinkers on women’s rights).

39. U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States”), § 2 (“excluding Indians not taxed”).

40. U.S. CONST. amend. XIX.

hierarchy. Unquestioningly, they are entitled to due process before their property is taken by the government and just compensation thereafter.⁴¹ They are entitled to equal protection under the law,⁴² the freedom of speech and religion,⁴³ and the writ of habeas corpus.⁴⁴ They are so well protected that it is rare they ever have to enforce those rights.⁴⁵ Women and discrete minorities classified by race, sexual orientation, and disability, for example, are next. This group is similarly protected by the same provisions of the Constitution but remain subjected to the distinct possibility of losing those rights. Many have wealth and power, but others do not. Many persons in this category are always defending their rights. Last are those who are excluded—prisoners and immigrants, for example. Their rights under the Constitution are porous at best and nonexistent at worst.

America is driven by hierarchy. Our founding documents established that hierarchy, and our law enforces that hierarchy. Professor Witt certainly is well aware of that reality. *American Contagions* is a powerful scholarship that works well within that reality.

But, as Carol Gilligan once told me when I was a very junior scholar back in Grand Forks, North Dakota, wherever there is a hierarchy, there is an underground.

II. ANISHINAABE POLITICAL PHILOSOPHY AND THE FUTURE OF THE AMERICAN REPUBLIC

In my own book, I tell the sacred story, or *aadizookaan*, an origin story of sorts, of Nanaboozhoo, the trickster god of the Anishinaabe.⁴⁶ When Nanaboozhoo was a small child, his village, his nation, of Anishinaabe people was destroyed by a giant. There was no one left but Nanaboozhoo and his grandmother, Nokomis. The giant left *Anishinaabewaki* (the land of the Anishinaabe) and walked to his compound beyond the great lake. As Nanaboozhoo grew up, he kept having dreams of the *manidowaag* (spirits) that told how he would eventually be strong enough to defeat the giant. His grandmother prepared him for his journey as he grew stronger.

Nanaboozhoo did grow to be powerful, but he could not defeat the giant alone. He needed the animals like the *waawaashkeshi* (deer) and *amickwaag* (beavers). They would give themselves to Nanaboozhoo for his sustenance on his long journey. He needed *mukwaag* (bears) for their fur,

41. U.S. CONST. amend. V.

42. U.S. CONST. amend. XIV, § 1.

43. U.S. CONST. amend. I.

44. U.S. CONST. art. I, § 9, cl. 2.

45. See generally Khiara M. Bridges, *White Privilege and White Disadvantage*, 105 VA. L. REV. 449, 456-62 (2019) (describing “white privilege” as a kind of immunity from race discrimination but acknowledging that the privilege does not extend to poor white people).

46. MATTHEW L.M. FLETCHER, *GHOST ROAD: ANISHINAABE RESPONSES TO INDIAN-HATING* vii–ix (2020).

stomachs for storage, and grease to seal his *jiimaan* (canoe). He crossed the sea but needed to bribe the *name* (sturgeon) to secure safe passage. When he arrived at the giant's compound, he was confronted by two *mukwaag* (bears) who guarded the gate. Nanaboozhoo treated the bears with respect and offered them *semaa* (tobacco). In return, the bears let him through and advised him where to shoot his arrow when he fought the giant. Inside, he needed to bribe the *bineshiinh* (birds) with beautiful colors and *migiziwaag* (eagles) with talons. When Nanaboozhoo finally reached the center of the compound, the giant was asleep, making the endgame easy for the trickster god. But there was an *ajidamoo* (squirrel) there too, who pointed out the way that Nanaboozhoo could bring back all the Anishinaabe people from the dead.

The point of this *aadizookaan* is not so much the story, but the way that Nanaboozhoo succeeded. He was already a powerful god, but he needed the help at various stages of virtually every creature before he was strong and wise enough to defeat the giant. And there is the core of the story. At the heart of Anishinaabe political theory is cooperation, respect, and harmony.

Think of it this way—the giant is like the Hobbesian state, and Nanaboozhoo with his group of allies is like the Anishinaabe state.

Apply this comparison to the COVID-19 pandemic. The Hobbesian state, that is, the United States, deals with pandemics from a top-down perspective. Professor Witt's cogent analysis of the powers of the state in public health is rooted in Supreme Court decisions. State governments dominated over the federal government, primarily because of choices made by the administration rather than the input of ordinary Americans. But the federal government likely could impose its will on issues of national public health.

A. Tribal Governmental Structure

Structurally, Anishinaabe tribal governments like the Grand Traverse Band employ hierarchies similar to that of state and federal governments. There are elected officials who form the tribal council, which exercises the legislative powers of the tribe.⁴⁷ Within the council, four members serve as executive officers.⁴⁸ Tribal governments' bureaucracies are hierarchical as well. Tribes contract with the federal government to provide services to reservation residents.⁴⁹ But the tribal hierarchical structure usually does not dictate policy.

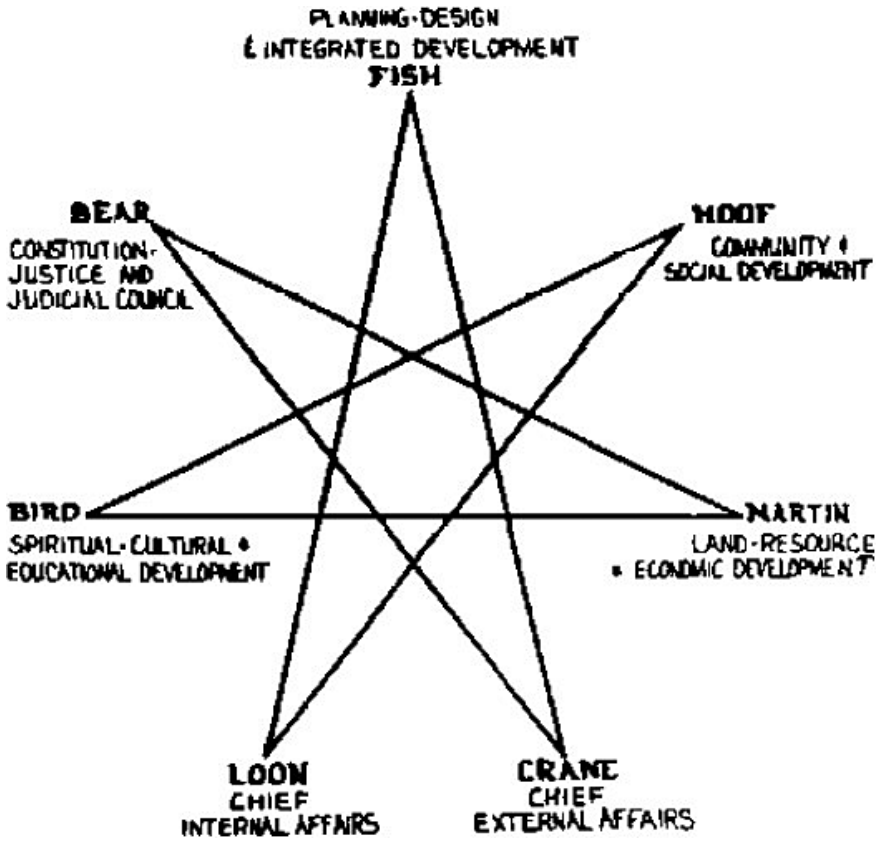
47. GRAND TRAVERSE BAND CONST. arts. III, IV.

48. GRAND TRAVERSE BAND CONST. art. III, § 3.

49. See generally Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1 (2014).

Anishinaabe nations tend to govern in a less linear manner. In all respects, the tribal elected officials are far more accountable to the voting constituencies than are high-level state or federal officials. In most tribal elections, voting margins are tiny. Individuals and small groups have enormous influence. Additionally, tribal elected officials govern far less than the heads of the tribal agencies. Many agency directors are tribal members themselves. They are doubly accountable to both the elected leaders and to the tribal citizenry. As government contract managers, they are also accountable to the federal government, yet another level of accountability. In these ways, structurally, tribal government is more circular and organic than linear and hierarchical.

Culturally, tribal governments are not hierarchical either. Built into the traditional governmental structure is the circle. Each of the seven (or so) governing *dodemaag* (clans) is directly and indirectly accountable to specific clans. This illustration from James Dumont of the Shawanaga First Nation helps describe how the traditional governmental structure functioned⁵⁰:



50. James Dumont, *Justice and Aboriginal People*, in *ABORIGINAL PEOPLES AND THE JUSTICE SYSTEM* 42, 78 (1993).

The overlay of the traditional government structure onto the modern tribal government structure is not exact, to be sure. American Indian tribal governments remain hierarchical, but the culture runs through the government like a bloodstream.

Consider the history of the Michigan Odawa nations, starting with the 1836 and 1855 treaties. In those times, there was no Odawa tribal government that resembled anything like now. Each Odawa village was a separate nation unto itself.⁵¹ Some villages banded together to negotiate collectively, leading to the tribes we know today, such as the Grand Traverse Band. The treaties are forward-looking. The Odawa treaty negotiators insisted on permanent reservations and protection by the federal government.⁵² More than a century passed under the ravages of administrative termination, but now those forward-looking promises are beginning to be implemented. Odawa people know discrimination. They know poverty and disease. They also know kinship and responsibility to a community.

B. Tribal Governmental Response to the Pandemic

All of this helps explain why the Grand Traverse Band and other Indian tribes around the country reacted the way they did.⁵³ Interacting on a government-to-government relationship with the State of Michigan, primarily between tribal elected officials and tribal attorneys and the governor's office of legal counsel, the tribes in Michigan were quick to close down their governmental and commercial activities. For most of the tribes, the casino revenues were the main source of revenue for the tribal government and income for tribal members; the shutdown was devastating.⁵⁴ Given the impacts, tribal elected officials were under a great deal of political pressure to reopen their casinos; some did, some did not.⁵⁵

More importantly, no Michigan tribe questioned the threat of the pandemic. There were no tribal leaders publicly talking about hoaxes or blaming China or espousing internet conspiracy theories. Tribal leaders followed

51. MATTHEW L.M. FLETCHER, *THE EAGLE RETURNS: THE LEGAL HISTORY OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS* 13–14 (2011).

52. *Id.* at 22–24.

53. The following narrative derives from my observation of the interactions between the State of Michigan and the Michigan tribes during the COVID-19 pandemic during the calendar year 2020. My spouse and colleague Wenona Singel served in the Michigan governor's office of legal counsel during this period.

54. Andy Balaskovitz, *Tribal Enterprises Persist as Gaming Revenues Tank During Pandemic*, MIBIZ (July 18, 2021, 1:19 PM), <https://mibiz.com/sections/economic-development/tribal-enterprises-persist-as-gaming-revenues-tank-during-pandemic>; David Lyden & Kaleb Vinton, *Northern Michigan Tribes Discuss COVID-19 Impact on Native American Communities*, 9&10 NEWS (Dec. 8, 2020), <https://www.9and10news.com/2020/12/08/northern-michigan-tribes-discuss-covid-19-impact-on-native-american-communities>.

55. Justine Lofton, *6 Tribal Casinos Close, Most Remain Open Amid New Michigan COVID-19 Restrictions*, MLIVE (Nov. 18, 2020, 12:49 PM), <https://www.mlive.com/news/2020/11/6-tribal-casinos-close-most-remain-open-amid-new-michigan-covid-19-restrictions.html>.

the direction of their experts, their public health and safety agency heads—science is real in Indian country. So is kinship, which in a pandemic can be deadly. When Anishinaabe communities are in crisis, we come together. For a time, that was a deadly prospect, leading to several super-spreader events. But the most important constituencies in Indian country are children and elders, constituencies that tend to be the *least* important for state and federal elected officials. As a result, Michigan tribes were quick to accept delivery of the vaccines and efficiently vaccinated as many tribal members as possible. When the tribal members were vaccinated, the tribes opened up their health centers to non-Indians.⁵⁶ Some tribes even set up vaccination stations in urban areas where there was a shortage of the vaccine.⁵⁷ The success of Michigan tribes in vaccinating their citizens was consistent with the success of tribes nationally in this regard.⁵⁸

C. Tribal Governments and Witt's Dichotomies

How do the tribes fit into Professor Witt's theoretical structure? Superficially, one could say the tribes fit the model pretty well. Tribes reacted in the classic quarantinist manner but were far from authoritarian. Tribes mostly followed the requests and guidance of the State of Michigan and imposed pandemic restrictions. Completely missing from the tribal governments was the polemical narratives about individual freedom and governmental sovereignty. Anishinaabe people will not pay to watch that kind of political theater in this crisis. And when the federal government came through with vaccines, the same government that dishonored Odawa nations for more than a century, the tribes gratefully accepted the help.

American Contagions ends with a cliffhanger—how will the United States deal with the COVID-19 pandemic over the coming year and more? We know more now than Witt did when he published his book and we know more now than when the *St. Thomas Law Journal* hosted the symposium last year. There is a new president, but the politics appear to be the same. As I write this, nearly three-quarters of a million people have died of COVID-19 in the United States.⁵⁹

56. Laina G. Stebbens, *Michigan Tribes Help Lead the Charge Against COVID-19 with Mass Vaccination Efforts*, MICHIGAN ADVANCE (Apr. 20, 2021, 4:52 AM), <https://michiganadvance.com/2021/04/20/michigan-tribes-help-lead-the-charge-against-covid-19-with-mass-vaccination-efforts>.

57. Glennisha Morgan, *How Are Michigan Tribes Ensuring Mass Vaccines? Mobile Clinics.*, THE GANDER (May 12, 2021, 4:27 PM), <https://gandernewsroom.com/2021/05/11/how-are-michigan-tribes-ensuring-mass-vaccines-mobile-clinics>.

58. Sukee Bennett, *American Indians have the Highest Covid Vaccination Rate in the US*, PBS: NOVA (July 6, 2021), <https://www.pbs.org/wgbh/nova/article/native-americans-highest-covid-vaccination-rate-us>.

59. *Coronavirus in the U.S.: Latest Map and Case County*, N.Y. TIMES (Oct. 27, 2021), <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

Where are the Michigan Odawa nations in all this? The tribes are back, albeit in a limited fashion. A few months back, the Grand Traverse Band tribal court held its first jury trial since the beginning of the pandemic. They held it in the Leelanau Sands Casino Showroom; instead of Mötley Crüe or Tig Notaro on stage, Judge Ken Akini presided over a socially-distanced, plexiglass-protected trial.

The Grand Traverse Band is doing far more than governing the reservation. Along with other Odawa and Ojibwe nations throughout the western Great Lakes, the tribe is using every political and legal tool to defeat the Enbridge Line 5 pipeline.⁶⁰ The tribe opposes freshwater withdrawals from the groundwater in Michigan by bottled water companies.⁶¹ Tribal leadership supports the new effort of the Department of the Interior to investigate the Indian boarding school history.⁶² This is just a snapshot of the initiatives of the tribal government; tribal government is like an alternative universe where people matter more than politics. For the tribal leaders accountable to their citizens, these are not controversial positions. There are few to no Anishinaabe people who want to risk the Great Lakes to a catastrophic oil spill, for example. Sadly, the history of settler colonialism suggests that the tribe will not ultimately prevail on many of its positions. This is my own cliffhanger, I suppose.

I conclude with what a Grand Traverse Band elder said upon being vaccinated, explaining why he was so excited at the prospect: “I want to be a good human being.”⁶³ This is kinship personified. Built into Anishinaabe culture, language, law, and tradition is this exact notion. In *Anishinaabemowin*, the language of the Anishinaabe people, the notion is often expressed as *Mino-Bimaadiziwin*, the act of living a good life, a good human being.

60. *E.g.*, Grand Traverse Band of Ottawa and Chippewa Indians Res. 15-33.2602 (Feb. 18, 2015), http://www.gbindians.org/downloads/tribal_council_line_5_resolution.pdf (opposing Line 5).

61. Beth LeBlanc, *Nestle Drops Permit for Increased Michigan Water Withdrawals*, THE DET. NEWS (Oct. 20, 2021, 5:17 PM), <https://www.detroitnews.com/story/news/local/michigan/2021/10/20/nestle-drops-permit-increased-michigan-water-withdrawals/6104414001/>.

62. Sierra Clark, *Investigation to Probe Painful History of Native American Boarding Schools*, TRAVERSE CITY RECORD-EAGLE (July 3, 2021), https://www.record-eagle.com/news/investigation-to-probe-painful-history-of-native-american-boarding-schools/article_81e90a8e-d5d4-11eb-acc9-477a2b43becf.html.

63. *Id.* (quoting Al Pedwaydon).