

# **Breaking Barriers, Building Bridges: An Indigenous Critique of Liberal Multiculturalism**

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## Glossary

- Anishinaabe (plural - Anishinaabeg or Nishnaabeg) - A collective term used to refer to the culturally related Indigenous groups residing around the Great Lakes area in current day Canada and the United States of America. Includes Odawa, Ojibwe, Potawatomi, Mississaugas, and Nippissing nations among others.
- Anishinaabemowin - Language of Anishinaabe Peoples.
- Bureau of Indian Affairs (BIA) - Federal agency in the United States of America established in 1824 to oversee trade and treaty relations with various Indigenous communities.
- Cherokee – Indigenous Peoples who reside in what is now Oklahoma, USA. The term is used to refer to the Peoples, their language, and their ways of life.
- First Nations - A collective term referring to one of the three recognized Indigenous groups in Canada (who are not Métis or Inuit). Includes over 50 nations, 50 languages, and 630 communities (2021 Census of Canada) geographically located south of the Arctic tree line. I use it to refer to First Nations across Turtle Island.
- FNMI - Acronym referring to First Nations, Métis and Inuit Peoples. Commonly used in social and bureaucratic contexts in Canada, has no legal or constitutional basis yet. The terms ‘Indigenous’ and ‘Aboriginal’ are being phased and slowly replaced with FNMI.
- Haudenosaunee - collective term that refers to the Six Nations which include Kanien'kehá:ka, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora nations.
- Inuk (singular), Inuit (plural) - Indigenous Person/People of the Arctic.
- Ktunaxa - First Nations community in Canada, also known as Kootenay or Kootenai, whose

current territory spans southeastern British Columbia, southwestern Alberta, and parts of Washington, Idaho, and Western Montana.

- Métis - One of the three formally recognized Indigenous groups in Canada. Have mixed European and Indigenous, usually Ojibwe or Cree, ancestry and draw lineages to nineteenth century societies, especially around the Red River Settlement.
- Minobimaatisiwiin - most commonly translated as ‘the good life’, it refers to a land-based system of morality that abides by Natural Law and is followed by select First Nations and Métis Peoples. Alternate spellings include - Minobimaatisiwin, Minopimaatisiwiin, Minopimaatisiwin, Minobi, Minopi.
- Navajo - Indigenous Peoples who reside in what is now Southwestern USA. The term is used to refer to the Peoples, their language, and their ways of life.
- Ojibwe (Ojibwa or Ojibway) - Indigenous Peoples that form part of the Anishinaabe nations, whose historical homelands are in the Eastern Woodlands, currently reside mainly in the southern part of Ontario and Quebec and in the northern parts of Minnesota, Wisconsin, and Michigan.
- Ojibwe-mowin - Language of Ojibwe Peoples
- Pueblo - a Spanish colonial term that refers to the agriculture and settlement based Native American tribes in Southwestern USA mainly New Mexico, Arizona, and Texas. There are a total of nineteen Pueblo nations currently. Pueblo Peoples self-refer based on their nations which include Hopi, Zia, Zuni, Laguna and Jemez among others.
- TEKW - Traditional Ecological Knowledge and Wisdom

- Turtle Island - Indigenous reference to the North American continent, based on their origin stories and epistemologies. Widely used in activist and resurgent spaces.

## Abstract

In this dissertation I argue that liberal frameworks of justice cannot adequately identify or address Indigenous concerns for justice because liberalism is complicit in the settler colonial project. Using Brian Burkhart's (2019) idea of locality I point to the structural incompatibility between liberal principles and key elements of FNMI lifeways including their conceptions of agency, personhood, animism, kinship, embeddedness, reciprocity, and the ontological priority of relationships. Classical (Rawls) and multicultural (Kymlicka) forms of liberal justice operate by first arriving at a set of foundational liberal values which are then by 'extension' prescribed as paradigms of justice for Indigenous Peoples. Liberal justice attempts to bridge the gap between liberal and FNMI lifeways by adopting mechanisms such as toleration, accommodation, dialogue, assimilation, or liberalization of 'diverse' groups. I argue that this methodology, at the heart of liberal logic, is flawed; it limits the presence and political participation of Indigenous agents as rooted relational selves, and results in a form of double injustice against Indigenous Peoples. Liberal methods of justice fail to address historical injustices and settler colonial realities, thereby overlooking the complex realities and false binaries in which Indigenous Peoples operate today. As a means to counteract colonial erasure I suggest a method of substantive engagement that pays close attention to the particularities of Indigenous lifeways, their colonial histories and legacies, and the complexities of settler colonialism revealing a richer, more nuanced, conceptual reality within which to situate concerns of Indigenous justice. I suggest an approach of active decolonization, which emphasizes the need for recognizing the uniqueness of Indigenous agents in settler colonial societies, is focused on reconciliation, is aimed at grounding praxis, and acknowledges that the work of decolonization is multifaceted, messy, and non-linear. Non-liberal worldviews in general, and Indigenous lifeways in particular,

are underserved in theories of liberal justice, a flaw that active decolonization aims to rectify.

## Introduction

In my dissertation, I present a critique of liberal justice through an analysis of Indigenous lifeways. I argue that liberal frameworks of justice cannot currently respond to the needs of Indigenous communities because of the structural incompatibilities between liberal principles and key elements of Indigenous lifeways. Frameworks of liberal justice promote and prescribe substantive, not neutral or universally applicable, principles and paradigms for participation in the political sphere, which tend to render Indigenous agents invisible, limit and marginalize their participation, or force them to give up their ways of life and liberalize themselves. I maintain that it is the very structure of liberal principles, moreover, and not their scope or application, that is flawed. Liberal principles are at odds with fundamental notions of agency, selfhood, kinship, embeddedness, locality, rootedness, reciprocity, and the ontological priority of relationships in Indigenous lifeways. Furthermore, the origins and reinforcement of liberal principles are either complicit in the settler colonial project or are complacent in arriving at justice for Indigenous Peoples in such societies.

I show this by critically analyzing two prominent theories of liberal justice: John Rawls' procedural theory of justice as fairness and Will Kymlicka's liberal multiculturalism. Classical and multicultural forms of liberal justice operate by first arriving at a set of foundational liberal values which are then by 'extension' prescribed as public standards for *everyone*, including Indigenous Peoples. Liberal theorists attempt to bridge the gap between liberal and Indigenous ways of life by adopting mechanisms such as toleration, accommodation, dialogue, assimilation, or liberalization of 'diverse' groups. I argue that this methodology is flawed; it has adverse effects on the lives of Indigenous Peoples and excludes the possibility of political participation of Indigenous agents. In place of liberal toleration or liberalization, I suggest an approach of active

decolonization, a project in non-ideal theory that utilizes the methodology of substantive engagement (replacing a ‘veil of ignorance’ method) as a means to combat colonial erasure. It begins with an inquiry into liberal and non-liberal ways of life and then aims to build a political sphere that can address as many aspects as possible of public life in which both Indigenous and non-Indigenous communities may co-exist. The aim is to decolonize the public sphere, which will allow Indigenous agents to show up as themselves, as rooted relational selves embedded in deep webs of kinship. Non-liberal ways of life in general, and Indigenous lifeways in particular, are underserved in theories of liberal justice, a flaw that active decolonization aims to rectify.

I address the following key conceptual questions: How do Indigenous views and concerns currently appear in the public realm of liberal democracies? Are these manifestations coherent with what Indigenous Peoples believe and strive to express? Are contemporary forms of North American liberalism able to comprehend Indigenous Peoples on their own terms? Why is it important for them to do so, and what changes, in narratives and social and political infrastructure, are required? I ask how we can avoid misrepresenting Indigenous views in the public sphere, examining the current gaps between Indigenous concerns and what liberal justice is able to deliver to these communities. It will not suffice to revise and re-apply liberal justice more stringently to Indigenous communities, my analysis demonstrates; more revisionist methods are necessary to properly situate and address the concerns of Indigenous Peoples. In increasingly diversifying and globalizing worlds, it becomes important, and urgent, to revise liberal justice to rid it of its colonial underpinnings and ensure that it is able to respond to the justice demands of all members of its demographic, especially previously colonized peoples. Doing so allows us to learn more about Indigenous nations and their lifeways and arrive at better ways of representing their views and concerns in the public sphere, thereby enabling their fuller

political participation in society. Addressing this set of conceptual questions also points us to some of the larger blind spots in the political theory's methodologies and its means of arriving at principles of justice.

Employing a methodology of substantive engagement through a decolonial lens, I aim to undo stereotypes about Indigenous Peoples and situate their lifeways in proper philosophical context. My analysis is original in that it focuses on a speciesist and Indigenous critique of Rawls' and Kymlicka's theories of liberal justice, pointing to the specific ways in which their theories commit a form of double injustice on Indigenous Peoples. I show that claims to neutrality gloss over important differences to arrive at a flawed sense of universality, by universalizing one set of moral, political, religious, and culturally substantive views. The liberalism of both Rawls and Kymlicka are complicit in the injustices committed against Indigenous Peoples in settler colonial societies. Given liberalism's proximity to empire building (from the sixteenth century onwards), its complicity in the settler colonial project is a prominent blind spot.

By focussing my narrative and analyses on Indigenous lifeways, I also point to the significance of non-liberal views and to the validity of their theorization within liberal discourse. Liberalism, too often, collapses non-liberal and illiberal views and rejects both *en masse*, instead of grappling with the realities, counterarguments, and incompatibilities posed by views and ways of life that may not be congruent with liberal values but are also not simply in contradiction to them. Paying attention to non-liberal lifeways exposes the flaws at the heart of liberal logic and reveals the shortcomings of liberal forms of toleration, dialogue, accommodation, interpretation, assimilation, and consultation.

In place of liberal paradigms in settler societies, I offer a theory of active decolonization that is focussed on colonial, not cultural, difference and aims to overcome the barriers that prevent the political participation of Indigenous agents in the public sphere. My approach of active decolonization is focused on reconciliation, i.e. on righting relations between Indigenous and non-Indigenous members of society. It re-establishes Indigenous Peoples as sovereign nations and sets out to create political space for the manifestation of action from Indigenous ideas of locality and grounded normativity. Active decolonization is a decolonial framework, not an indigenizing one, and rejects multicultural resolutions as relevant to or adequate for addressing matters of Indigenous justice. A framework of active decolonization is necessarily messy, complex, non-linear, action oriented, and ongoing. It dismantles liberal binaries, attacks the logic that resides at the very heart of settler colonial societies, and requires us to revise the ontological status of relationships and sovereign nations, as well as current liberal modes of agency, community, and treaty making, contributing to reconciliation in an increasingly and deeply plural world.

Examining the central belief systems and practices central to FNMI, as well as the metaphysics, ontologies, epistemologies, and moralities that ground them, especially helps to unpack Indigenous relationships to land and to situate them within justice discourse. “Ecological Indian”, “wild children”, “*sauvage*” are all well-known stereotypes about FNMI peoples, but in fact FNMI relationships to land are based on their own metaphysics and epistemology and not on what we could recognize as ecological motivations. This kind of conceptual discernment and inquiry into the specificities of FNMI lifeways is important, especially in the domain of political philosophy, since the presence and participation of FNMI nations are relevant to all domains of public political life. By unpacking the grounds on which FNMI thought and action are based, we

are better situated to theorize about justice, citizenship and other domains of the political through a decolonial lens.

An allied motivation of my dissertation is to present Indigenous belief systems and lifeways in ways that will be accessible to liberal and other non-Indigenous academic and public fora, not as stereotypes or as poetry but as arising from within the context of Indigenous lifeways. When non-Indigenous Peoples come across Indigenous utterances such as “salmon is my kin” or “bison is my brother” or “the stars and I are one”, they often discard them as nonsense, mysticism, or poetry and therefore as a subjective expression irrelevant to the political sphere. Through my project of translation and interpretation, I aim to create a robust intellectual and cultural context in which these forms of Indigenous agency can be understood and seen as relevant in the socio-political domain. Such a project of translation is focused not on finding the adequate English translations of Indigenous expressions but rather on creating normative room for translating between Indigenous and non-Indigenous worldviews. If colonization is viewed as a project in interpretation<sup>1</sup>, it only reiterates the necessity of the project of re-translation and re-interpretation that I undertake in this dissertation, to allow for Indigenous agency to express itself and be understood as such without being mediated through settler colonial contexts and vocabularies.

My focus on FNMI peoples is motivated by recognition of the uniqueness of Indigeneity and Indigenous positionality within contemporary settler societies. Indigenous Peoples are sovereign peoples; they do not form part of the “multicultural” fabric of settler and immigrant societies but

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<sup>1</sup> Thomas Babbington Macaulay, a colonial officer in British India, viewed the project of colonization as a project in translation; enforcing the ways of life of the ‘educated and civilized’ colonizer on the ‘uneducated and uncivilized’ colonized: “We must at present do our best to form a class who may be interpreters between us and the millions whom we govern, -a class of persons Indian in blood and colour, but English in tastes, in opinions, in morals and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population” (Babington, 1935, pp. 7-8).

rather are their original inhabitants. Grappling with this fact is key to addressing Indigenous concerns of justice, which cannot be tackled within a framework of multiculturalism. Instead of ‘managing cultural diversity’, we need to acknowledge the specificity of settler colonial societies and be willing to challenge their foundations through a decolonial lens and praxis. This contributes to decolonizing political philosophy, calling into question the content and scope of some of its core themes and debates concerning justice, citizenship, democracy, and power relations<sup>2</sup>. The aim here is to widen the scope and methodologies of those core themes, to include Indigenous content and epistemologies, bringing into mainstream discourse conversations on Indigenous knowledge systems and decolonial praxis. It is important to consider Indigenous vocabularies on land, community, responsibility, relationality, and Natural Law as philosophically relevant and indeed as essential to political theory in a settler colonial context, rather than treating them as marginal themes or as pre-modern, primitive ideas.

## **Methodology**

As I have noted, my project is rooted in non-ideal theory. It is committed to addressing the question of how the ideal might be achieved in practical steps from the actual, partially just society we currently occupy, in light of history, economy, and other contingencies. Following

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<sup>2</sup> Charles Mills (1997) recognizes this point about political philosophy: “White supremacy is the unnamed political system that has made the modern world what it is today. You will not find this term in introductory, or even advanced, texts in political theory. A standard undergraduate philosophy course will start off with Plato and Aristotle, perhaps say something about Augustine, Aquinas, and Machiavelli, move on to Hobbes, Locke, Mill, and Marx, and then wind up with Rawls and Nozick. It will introduce you to notions of aristocracy, democracy, absolutism, liberalism, representative government, socialism, welfare capitalism, and libertarianism. But though it covers more than two thousand years of Western political thought and runs the ostensible gamut of political systems, there will be no mention of the basic political system that has shaped the world for the past several hundred years. And this omission is not accidental. Rather, it reflects the fact that standard textbooks and courses have for the most part been written and designed by whites, who take their racial privilege so much for granted that they do not even see it as political, as a form of domination. Ironically, the most important political system of recent global history—the system of domination by which white people have historically ruled over and, in certain important ways, continue to rule over nonwhite people—is not seen as a political system at all. It is just taken for granted; it is the background against which other systems, which we are to see as political, are highlighted” (Mills, 1999, pp 1-2).

Charles W. Mills (2005) I reject procedural theoretical normative methodologies as ideological and suggest instead that non-ideal theory is a more robust and practical way to theorize about matters of justice. Mills argues that ideal theory is ideology in the ways in which it promotes the blind spots of a privileged class of people, namely white male philosophers, as universal experiences and universalizable values, where their particular view of the world is taken to be the default experience of the world for everyone:

Ideal theory, I would contend, is really an ideology, a distortional complex of ideas, values, norms, and beliefs that reflects the nonrepresentative interests and experiences of a small minority of the national population-middle-to-upper-class white males-who are hugely over-represented in the professional philosophical population...As theorists of ideology emphasize, this should not be thought of in terms of conscious conspiratorial manipulation, but rather in terms of social privilege and resulting differential experience, a nonrepresentative phenomenological life-world (mis)taken for *the* world. (Mills, 2005, p. 172, emphasis original)

Mills points to the structural flaws contained in ideal normative theory and suggests instead a non-ideal approach in which the actual experiences of marginalized individuals and groups - women, black<sup>3</sup> folks, Indigenous Peoples - are taken into account while arriving at ideas and frameworks of equality, justice and other political values and prescriptions. Instead of an “ideal-as-model” form of theorizing, which Mills argues is ideological and oppressive in its universalization of blind spots and privilege, he suggests an “ideal-as-descriptive-model” that

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<sup>3</sup> I use ‘black’ and ‘white’ (as Charles Mills does) instead of the capitalized ‘Black’ and ‘White’ to refer to a variety of peoples grouped under each of these categories. I refrain from using African American to refer to black peoples, as a way to maintain a distinction between immigrants (African Americans) and formerly enslaved peoples from the African continent and their current day descendants.

begins with the realities and experiences of marginalized groups and builds up an idea of the ideal from that unequal and unjust reality (Mills, 2005, p. 166). His method, Mills argues, has the advantage of being applicable to real life situations, since it begins with those details, and has the added advantage of suggesting ways in which the ideal can be arrived at, if one were beginning with current realities.

Inspired by Mills' critique and methodology, I propose a non-ideal methodology that consists of substantive engagement with FNMI ideas through a decolonial lens, avoiding mediated narratives in order to arrive at an understanding of what might be the right relations between Indigenous and non-Indigenous communities. Rather than turning to Church documents, liberalized commentaries, or cultural media, it is important to look at the self-narratives of Indigenous Peoples, paying attention to how they express themselves, talk about their philosophies and practices, and express their agency in a multitude of ways in cultural, political, social, protest and protection settings. This reveals alternate understandings of Indigenous Peoples as agents of change in their communities, rather than rendering them always as victims of history and colonization. Allison Weir (2024) notes that settler accounts of Indigenous lifeways often "oscillated between savage and saint" and substantive engagement through a decolonial lens attempts to move away from this stereotypical binary (p. 182).

Political philosophy needs to shed its paternalistic attitudes, no doubt holdovers from a colonist era, and view Indigenous lifeways as respectable and Indigenous Peoples as entirely capable of agency, especially relevant in the political sphere. The more unmediated information we have about Indigenous lifeways, the less we are likely to fall into pre-conceived notions about them, their communities, and their reasons for functioning in the way they do. To theorize about Indigenous lifeways in any other fashion would be to do so uncritically and would always carry

with it the threat of inaccuracy, or worse of stereotyping. One may point to the complexities involved in identifying and locating the relevant, and indeed ‘correct’ versions of, Indigenous views to take into consideration while arriving at a conception of justice. Questions such as whose version of the theory or story should be taken as ‘real’ and relevant? The important point here is to not get swallowed into debates around accuracy and authenticity of views (which will only lead us into normative indeterminacy and mired realities) but rather to focus on the non-liberal aspects of Indigenous lifeways, and their relevant contexts and circumstances, arrived at through a substantive engagement in non-ideal theory. Within this method, a decolonized approach would guide us towards Indigenous self-definitions and narratives that are endorsed in the context of Indigenous lifeways rather than views that are expressed or translated using in non-Indigenous vocabularies and paradigms. In addition, as is the structure of the decolonial approach I suggest, this matter is resolved in engagement and action. That is, a decolonial approach that encourages resurgence allows for the existence of a variety of interpretations of Indigenous ideas, stories, narratives which then occupy the intellectual and public domain, much in the same way that there are a variety of non-Indigenous theories of justice all of which debate with each other. A decolonized approach guides us towards Indigenous self-definitions and narratives, endorsed in the context of Indigenous lifeways, rather than views expressed or translated using non-Indigenous vocabularies and paradigms. Recognizing Indigenous agency, it also allows for the existence of a variety of interpretations of Indigenous ideas, stories, narratives, which then occupy the intellectual and public domain, just as there are a variety of non-Indigenous theories of justice that debate with each other. Thus, we need not become mired in debates about identifying and locating the relevant or ‘correct’ versions of Indigenous views.

A decolonial approach is differentiated from an indigenizing one. The former begins by identifying colonial barriers and unfair obstructions created by a non-Indigenous population on Indigenous communities and then focuses on undoing those barriers so as to allow for the unhindered expression of Indigenous agency alongside non-Indigenous communities. An indigenizing methodology, in contrast, is focused on creating infrastructure based on Indigenous wisdom and integrating Indigenous practices into that infrastructure. A project, process, or space can be decolonial without being indigenizing in nature. In fact, it may even be said that the former is necessary for the latter. To indigenize a space without first decolonizing it would lead to appropriation of Indigenous lifeways and thus to a form of double injustice.

Ultimately, my project is oriented towards epistemic justice, recentering the rightful place of Indigenous schools of wisdom within political philosophy in particular, and within philosophy more generally. By focusing on a substantive engagement through a decolonial lens, Indigenous epistemologies, cosmologies, metaphysics, and moralities are revealed which can then become relevant parts of the repertoire of contemporary political philosophy. Indigenous forms of theorizing, narrative methodologies, and oral traditions have much to offer to debates on liberty, equality, justice, citizenship, democracy, and power. Rather than engaging with Indigenous schools of wisdom as “applied” or “alternate” philosophy, it may become possible, through my suggested methodology, to view Indigenous forms of knowledge as part of the core repertoire of political theory.

## **Overview**

In line with the motivations and methodology of my research project, I begin with an elaboration of key elements of FNMI lifeways. In Chapter 1, I point out that land is foundational for Indigenous thought, belief, and action. I focus on Indigenous metaphysics, epistemology,

ontology, and morality to uncover the many paradigms, principles, practices and values contained in Indigenous Peoples' relationship to land. Indigenous conceptions of land begin with the idea that the entire cosmos is animate, which means that human and other-than-human beings have desires, agency, and a capacity for participation in all spheres. This form of animacy gives rise to particular Indigenous ideas of community, agency, embeddedness, relationality, and participation, which all have unique effects on the political sphere of settler colonial societies that are not captured in the categories and vocabularies of classical and liberal multicultural theories of justice. Using Cherokee (and Navajo and Oglala Lakota) philosopher Brian Burkhart's (2019) idea of locality and Yellowknives Dene scholar Glen Coulthard's (2014) theory of grounded normativity to couch Indigenous paradigms and values, I argue that Indigenous views present a unique kind of diversity that remains hidden or unaddressed in liberal theory. In its exposition of key elements of Indigenous lifeways, this chapter serves as a preamble to the Indigenous critique of liberal values that I present in the following chapters of my dissertation.

In Chapter 2, I present an Indigenous critique of Rawlsian justice. I argue that, owing to its procedural methodology and liberal foundations, Rawlsian justice commits a form of double injustice towards Indigenous Peoples. In my analysis of Rawls' procedural liberalism, I show that his contractarian commitments work to actively, even if inadvertently, exclude Indigenous lifeways. The speciesist bias and anthropocentric commitments in his liberalism exclude the consideration and participation of Indigenous agents as rooted relational selves and embedded societies. I point out that these are structural elements in Rawls' liberalism that go unnoticed and unaddressed in his system and yet have exclusionary, not neutral, effects on Indigenous Peoples. As a result, the uniqueness of Indigenous lifeways goes unrecognized, which results in

procedural liberalism's inability to address the concerns of Indigenous Peoples. Importantly, Rawlsian liberalism pays inadequate attention to the reality of settler colonialism and fails to address the injustices arising out of the historical processes of colonialism, since it erases the possibility of non-liberal Indigenous presence in the political sphere. Overall, in this chapter I argue that Rawls' neutrality is substantive and that the content of his neutrality is at odds with the structure of Indigenous lifeways. While a variety of commentators have critiqued Rawlsian neutrality, my critique is unique in that it focuses on the effects of Rawlsian neutrality on Indigenous lifeways.

In Chapter 3 I show that Kymlicka's multicultural liberalism fares better than Rawls' procedural liberalism in that it acknowledges and legitimizes cultural diversity and minority groups in contemporary liberal societies, with a focus on Indigenous Peoples. Kymlicka's theory of liberal multiculturalism can support the self-government rights of Indigenous Peoples because it is able to recognize the uniqueness of their lifeways and their special status in the public sphere, as apart from immigrants and refugees in a settler colonial society. However, I argue that Kymlicka's radar for identifying "illiberal" practices in Indigenous societies is faulty, and I demonstrate that his liberalization project as a resolution to the problem of non-liberal/illiberal practices has negative effects on Indigenous communities. Kymlicka's liberalism, too, seems to commit double injustice in the name of minority justice. It is unable to detect and undo the presuppositions of its own supposedly neutral but in effect substantive principles that have limiting and negative effects on Indigenous Peoples. It is also unable to situate properly the significance of settler colonialism and undo its contemporary effects on Indigenous Peoples, effects that undoubtedly arise from violent and oppressive historical injustice.

In the concluding chapter of my dissertation, I argue that it is necessary for liberal principles and frameworks to be decolonized in order to make them suitable for addressing matters of Indigenous justice. In the first half of this chapter, I build on observations arrived at in the previous two chapters to argue that both Rawls and Kymlicka have serious blind spots when it comes to addressing injustices in a settler colonial society. I show that these blind spots, to a large extent, are structural in nature. The proximity of liberal principles to the project of empire building means that liberalism is structurally complicit in the subjugation of Indigenous Peoples from the start. It cannot deliver justice to them, since it played a role in actively subjugating them in the first place or facilitated the complacency required to look the other way while these injustices occurred. In either case, liberal principles allowed for and facilitated the erasure of Indigenous Peoples, rendering them invisible in the political sphere.

In the latter half of my final chapter, I present my theory of active decolonization which argues for a methodological change and a shift in scope in political theory generally and liberal theories of justice in particular. I argue that a theory of justice that aims to address contemporary forms of diversity must necessarily take into consideration Indigenous Peoples and their unique lifeways and positionality. First, I describe key aspects of Indigenous lifeways relevant for a theory of justice. Then I briefly consider how each of these aspects may be brought into conversation with liberal theory, based on work that is already being done by Indigenous scholars and non-Indigenous allies in various fields. These tenets I would consider to be central to, and the building blocks of, a decolonized theory of justice. Active decolonization unpacks liberalism's false binaries (traditional/modern, human/nature, religious/secular) and brings to light the bifurcated realities that Indigenous Peoples currently face in settler colonial societies. Several decades ago, Lakota philosopher Vine Deloria Jr. stated that the "drama is still

unfolding” for Indigenous Peoples (Deloria, 1974, p. 249). My central purpose in this dissertation is to make a positive contribution to the ongoing journeys of justice for Indigenous Peoples.

### **A note on positionality**

I am not Indigenous to Turtle Island. I am not a member of any First Nations, Métis, or Inuit communities, and consequently I do not claim to have access to the internal lives or internal ways of being of Indigenous Peoples on Turtle Island. I write this dissertation, and I approach this domain of research overall, as an ally, motivated by the well-being of Indigenous communities globally and deeply interested in situating Indigenous lifeways in their proper context in the public political sphere.

As an ally, I want to carve out space for conducting research in responsible ways that make room for both Indigenous and non-Indigenous epistemologies. Current debates and methods in political philosophy have colonially-based blind spots that can be corrected if non-Indigenous allies also lend their voices to these debates. It is not the responsibility of Indigenous scholars alone to point to these deficiencies and aim to correct them. Highlighting the participation of both Indigenous and non-Indigenous scholars in research, Deloria Jr. states that each manifestation of an Indigenous view in literature “should be understood as a call for each of us to enter into the exchange of knowledge” (Deloria & Wildcat, 2001, p. 5). In a similar vein, Annie L Booth recognizes that both Indigenous and non-Indigenous scholars “bring different agendas to the table” and that it is important to recognize the distinctness and contribution that each has to make (Booth, 2003, p. 330). Choctaw philosopher Thurman Lee Hester Jr. stresses this point further and states: “some of the real work of academic native philosophy is going to have to be done by the non-Natives...Not only will they, as the gate-keepers-in-fact, act to police the

discipline, but they really must do it...hopefully discerning academic philosophers will be able to detect [the wisdom in Indigenous lifeways] despite differences in tradition” (Hester, 2004, p. 267). These are significant pointers in the direction of needing Indigenous and non-Indigenous scholars to contribute to the common goal of making Indigenous scholarship more prominent within academia and more accessible to potential non-Indigenous ally scholars. I hope that my dissertation will count as a positive contribution in this regard.

As a non-Indigenous ally, I also have the privilege of only witnessing, and not experiencing, the constant and persistent structural and circumstantial racism that Indigenous Peoples have faced for generations and continue to face today. From this privilege arises a responsibility to contribute to the mitigation of this injustice. As an ally, I strive to undo stereotypes about Indigenous Peoples and make accessible more contextualized, situated, and responsible narratives arising from Indigenous lifeways. In relation to existing scholarship, I would situate my narrative as an alternative to church, liberalized, and other “mainstream” accounts of Indigenous lives, in an attempt to defend Indigenous views against being presented in liberal vocabulary. Delineating non-liberal aspects of Indigenous views and considering liberal limits on indigeneity are crucial ways of foregrounding Indigenous activism and allyship. In this regard, I bring to my academic endeavours my experience of working alongside Indigenous communities, federal governments, political parties, and public stakeholders. I draw on decades’ worth of professional experience to inform my dissertation, which I hope will serve as a necessary theoretical preamble to meaningful and sustainable social change.

### **A note on terminology**

In this dissertation, I refrain from using the terms Aboriginal, Native, Native American, and Indian, on the basis that they are generalizations and racist terms that have been historically used

to marginalize Indigenous Peoples and devalue their ways of life. The only exceptions I make are in cases where Indigenous scholars, Knowledge Keepers, Elders, activists and community members refer to themselves using those terms.

Predominantly, I use the terms Indigenous and FNMI, maintaining a subtle yet important distinction between the two. The term Indigenous is useful in so far as it refers to the collective “principles that underlie [the] philosophical beliefs” of land based peoples (Piccolo, 2024, p. 2). Thus, I use the term Indigenous with global scope, referring to land-based peoples across countries and continents. I acknowledge that the term ‘Indigenous’ too is contested, since it is a generalization, a colonial hangover that groups a variety of lifeways into one category. To overcome this problem, I use the acronym FNMI, which refers to the three specific Indigenous groups on Turtle Island: First Nations, Métis and Inuit nations. Furthermore, FNMI also refers to a collection of nations, and to overcome this ambiguity I refer to the specific Indigenous nations whose lifeways are being discussed. A main tenet of colonialism has been to stereotype through generalizing, and thereby to erase the specificities of different Indigenous Peoples and nations. A decolonial approach that aims to reclaim Indigenous narratives should make space for retracing the specificities of each nation, which I aim to do in my dissertation by referring to the specific nations - Ojibwe, Cree, Taos, or Jemez as the case may be - instead of simply referring to them as the category of First Nations. I retain the use of the term indigenous, however, since it is still used in a large number of resurgent and solidarity spaces, and it serves to highlight the distinction I maintain in my dissertation between Indigenous and non-Indigenous lifeways. What I say about Indigenous Peoples would hold globally for peoples who are land-based, whereas the term FNMI refers specifically to the Indigenous nations on Turtle Island. FNMI is thus a collective term that is a subset of the wider collective term, Indigenous.

I refrain from using the Indigenous/settler binary which is reductive and instead adopt the lens of Indigenous/non-Indigenous as a way to contrast land-based and other lifeways, to point to the core differences between Indigenous and non-Indigenous ways of life. The latter binary is more accurate for my analysis since I am trying to draw a contrast between Indigenous and other ways of life to arrive at political arrangements that can suit both. In this setting, the term settler is not useful since it does not portray the myriad ways in which diverse populations currently “settle” in settler colonial societies such as Canada, USA, Australia and New Zealand. Refugees, immigrants, temporary workers, international students all form part of the non-Indigenous “settler” political arrangement and populations of a settler colonial society, even if they do not form part of the settler community, strictly speaking. A textured understanding of these realities is necessary to arrive at political arrangements that would suit a truly decolonial public sphere. The contemporary use of the category of “settler” obscures the complex realities created by settling land historically: multiple waves of immigration, forced migrations that continue today, temporary residents and workers all form part of the “settler” arrangement. For this reason, I use the term non-Indigenous to refer to all such populations that do not subscribe to a land-based Indigenous way of life. In the Indigenous/non-Indigenous binary the rooted realities of Indigenous Peoples are accounted for while also making space for the contours of non-Indigenous communities.

## Key common elements of FNMI lifeways

### Introduction

...we must listen to the stars, the moon, the wind, the animals, and the trees...The earth is speaking

(Taken from Amazonian leader Txai Suruí's speech at COP26, 2015).

Water is sacred, it's our relative

(Duhamel, 2021).

We have to remember that we are all connected, we are all Indigenous to the earth...Earth gives us life and it is our responsibility to protect that which gives us life

(Taken from Xiuhtezcatl Martinez, speech at UN, 2015).

I have known you when your forests were mine; when they gave me my meat and my clothing. I have known you in your streams and rivers where your fish flashed and danced in the sun, where the waters said 'come, come and eat of my abundance'. I have known you in the freedom of the winds. And my spirit, like the winds, once roamed your good lands

(Taken from Chief Dan George's speech "A Lament for Confederation").

Our Treaties are Sacred. We must protect them! As long as the sun shines, the river flows and the grass grows

(Enoch River Cree Declaration, 2006).

Who among you is going to argue for my brother the fish, my brother the bird that flies? Who among you is going to argue for the four-leggeds that die so that we can live? Who among you is going to argue for clean air and clean water?

(Wilton Littlechild, UNDRIP Press Conference, 2017).

In this chapter I present a brief overview of a few key common components of the cosmologies, ontologies, epistemologies, and moral frameworks of FNMI lifeways<sup>4</sup> as a way to ground statements such as the ones made above, showing that Indigenous utterances contain moral and political ideas relevant for law, policy, and justice, and should not be relegated solely to the spheres of poetry, mysticism, and opinion. In so doing, I would like to highlight different aspects of Indigenous philosophy (including affirming the notion that such a thing exists!) and offer ways in which it can become accessible to non-Indigenous political and philosophical theorizing about the public sphere in a settler colonial society. My aim here is to unpack an idea that we often encounter but one that is not always parsed out: that Indigenous peoples are ‘close’ to the land, that they are ‘guardians’ or ‘stewards’ of the land. Here I show that Indigenous lifeways are a web of cosmological and metaphysical views rather than ‘environmental’ ones. This chapter contains an elaboration of FNMI ideas of land, agency, animism, kinship, the sacred, the ontological priority of relationships, and political responsibilities, and serves as a

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<sup>4</sup> Anishinaabe scholar Basil Johnston states that “Anishinaabe is a verb and a noun; it is something we are and something we do at the same time” (Johnston, 1991, p. 57). Drawing on this, I use the term ‘lifeways’, as opposed to the term ‘worldview’, to describe Indigenous ways of life since it highlights the lived wisdom and traditions of FNMI peoples and better communicates the empirical basis of their ways of being.

preamble for the overarching argument I make in my dissertation which is to show that concerns of justice that arise from within Indigenous lifeways are misrepresented, or worse overlooked, in Rawls' and Kymlicka's frameworks of liberal justice.

### **Land is central**

Land is foundational to the lifeways of FNMI peoples. It plays a central role in all aspects of their life, including thought, action, language, cosmology, metaphysics, epistemology, governance, justice, and morality. Kinship relations and community are defined by the land. Personal identity, notions of agency and personhood are derived from the land. Morality is read off the land, and ethical principles are regulated by it (Burkhart, 2019). Science, beauty, and love are intertwined with land in inextricable ways. For Indigenous communities on Turtle Island, land includes all beings, has agency, includes the web of relationships that ensue between these beings, gives rise to an intergenerational view of the world, and is the foundation of epistemology and morality. In what follows I will present each of these aspects in turn.

An Indigenous conception of land includes *all* beings. Here, land does not mean just that part of the earth not covered by water, nor does it refer to one's immediate territory, state, or residence alone. Cherokee leader Jimmie Durham explains: "when we speak of land, we are not speaking of property, territory, or even a piece of ground upon which our houses sit and our crops are grown" (quoted in Matthiessen, 1984, p. 119). Land includes within its scope all beings that inhabit the world, including humans, and nonhuman animals ranging from the moose and bison to earthworms and butterflies, birds, insects, even micro-organisms like amoeba, bacteria, and viruses. This conception of land is reflected in the Anishinaabe land acknowledgement that acknowledges the presence and gifts of all creatures - four-legged, two-legged, swimmers, and crawlers - in addition to the territory and all the human beings on it. Plants, herbs, and trees are

all equally legitimate referents of the word 'land'. Even rocks, mountains, stars, clouds and entire ecosystems surrounding rivers, mountains, and deserts are included in Indigenous conceptions of land.

Coulthard emphasizes this understanding of land and defines it as a “*system of reciprocal relations and obligations*” (Coulthard 2014, p. 60, emphasis original). Coulthard explains: “it is a profound misunderstanding to think of land or place as simply some material object of profound importance to Indigenous cultures (although it is this too); instead, it ought to be understood as a field of relationships of things to each other” (Coulthard, 2014, p. 61). As a framework for relationships, land is understood as a teacher, guide, and a stencil for how humans ought to build and maintain relationships with human and non-human others, to maintain balance, harmony, and co-existence. Coulthard says: “[p]lace is a way of knowing, of experiencing and relating to the world and with others” (Coulthard, 2014, p.62). This conception is illuminated in his own Dene nation’s articulation and understanding of land. He explains that “the word ‘land’ (or *dè*) is translated in relational terms as that which encompasses not only the land (understood here as material), but also people and animals, rocks and trees, lakes and rivers, and so on” (Coulthard, 2014, p. 61). The implication here is that land encompasses not only the collections of physical and non-physical entities, but also the relationships therein, and the stencils for right relations amongst all beings. Fundamentally, Coulthard points out, “land is a relationship based on the obligations we have to other people and the other-than-human relations that constitute the land itself” (Walia, 2015). In this conception, land ceases to be mere materiality and is revealed to be also a web of relationships. Land is itself a framework for building and maintaining relationships, which gives special status and added meaning to statements such as ‘the land

dictates that...’ or ‘the land guides that...’. Importantly, this conception of land points to its capacity for having and exercising agency.

### **Land is the self**

In a fundamental sense, for FNMI nations, the land *is* the self: “We are the land...that is the fundamental idea embedded in Native American life...the Earth is the mind of the people as we are the mind of the earth. The land is...a part of our being, dynamic, significant, real. It is our self...The Earth is, in a very real sense, the same as our self (or selves)” (Paula Gunn Allen, 1979, pp. 191-2, quoted in Booth, 2003, p. 329). The conception of an Indigenous self is inseparable from land. The materiality of the land, one’s current and historical relationship to the land, and one’s embeddedness in the land all form a part of one’s self-identity (Deloria & Wildcat, 2001; Burkhart, 2019, Wawatie, 2013).

This idea is prevalent amongst FNMI nations across Turtle Island and encapsulates a cluster of ideas and practices. For Indigenous Peoples, stating that the land is the self is to make a foundational ontological claim, in the sense that the materiality of the body is equated with the materiality of the land. Humans and the land are understood to be the same in the sense that they all share spirit, relationship forming capacity, and influence. Burkhart (2019) explains this idea using the example of the Dine landscape where “the wind gives rise to breath and makes the human voice quite literally an extension of the voice of the land” (Burkhart, 2019, p. xvi). In this example, the air that makes up our surrounding is the same air that constitutes breath, animates the body, and hence realizes the conception that land is the self, in literal terms. Another key interpretation of the self as land, Burkhart explains, is contained in the idea of ingesting the land, i.e. ingesting natural entities, and thereby also embodying their gifts, skills, and qualities, because their *wakan* or life-giving force, *nagi* or spirit, and *ton* or potency are also ingested along

with the meat/physical body. He cites the buffalo as an example and explains that when Lakota ingest the meat of a buffalo, with whom they have a material and a spiritual connection, they also ingest the qualities and powers of the buffalo transmitted through the *wakan*, *nagi*, and *ton* “which is why the faster who eats the buffalo meat before prayer fasting carries some of the *ton* of the animal who can face down a forty-below-zero wind in a four-foot snow drift for days without flinching” (Burkhart, 2019, p. 131-2). The same laws, logic, reasoning, and morality that apply to humans then also apply to land understood in its widest sense.

### **Agency**

For FNMI societies to be alive means to have a spirit, a will, to be connected to and in relation with others, and remain in the realm of influence. Burkhart points out that a being’s agency is contained in her capacity for interrelatedness and interconnectedness with other beings, what he refers to as “kinship capacity”:

To have life is to be interconnected to be a multiplicity. To have life is to be a multiplicity and so to exist in a context of deep interconnectedness to everything. Life as interconnected also means having a place and an impact on everything else. This way of thinking about life means that everything is 'alive' at some level. Within this ontology, life is not the possession of consciousness, the ability to experience pleasure or pain, the power of self-movement, or any biological process inherent in a particular organism. It is fundamentally the capacity for kinship. (Burkhart, 2019, p. 194)

The fact that an entity is embedded within an ecosystem, has responsibilities and obligations, enjoys privileges when these obligations are fulfilled and suffers losses otherwise, means that it has agency. Thus, agency is understood here as a being’s capacity to be in relation

with other beings, and the capacity to affect, be affected by, and interact with other beings. In this way, because all natural entities are related to each other, and are dependent on each other for their survival and capacity to thrive, all natural entities are understood as having agency.

Many Indigenous societies have a layered understanding of material bodies and spirits and their interactions. In Lakota ontology, for instance, Burkhart explains that all things have associated with them both invisible and visible aspects. The vital elements of invisible aspects include *woniya* - life or the breath of life, and *sicun* - influence. The nonvital elements of invisible aspects include *nagi* or spirit. The visible aspects of a being are qualities such as the physical element of breath, the physical manifestation of influence, and the physical body. All beings have each of these aspects, and it is the relationality of the visible and invisible aspects of a being that results in our experience of that being. Each of these aspects of a being have their own functions and help to explain a wider variety of phenomena and experiences in the world<sup>5</sup> (Burkhart, 2019, p. 112).

Agency, on this view, is direct, relational, and embedded. It is direct in that it is encountered and verified in experience. It is not mediated. All beings have and express their own agency. In many FNMI societies, plants, animals, rocks, and rivers inhabit societies of their own, and from that standpoint enter into relationships and treaties with human societies. Agency is relational in that it exists in a being's capacity for kinship relations, and it is embedded in that it manifests and operates within a network of obligations and relationships. Any relationship

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<sup>5</sup> Burkhart explains that all aspects of a being, visible and invisible, vital and nonvital are available for and through experience. In certain instances, invisible aspects are turned into visible aspects, and vice versa, through the power of *tun* or *ton*. (Burkhart, 2019, p. 112) This ontological frame validates Indigenous ways of knowing. In addition to oral traditions and education pedagogies, dreams, visions, and hallucinations are valid means of knowledge in Indigenous societies. *Ton* is credited to making the invisible/visible aspects of the world available in experience, through dreams, intuitions, and visions.

requires at least two entities, and in the case of FNMI nations, agency is embedded in a network of relationships and does not occur in isolation. One being's influence on another does not have isolated effects on these two beings alone but has many real and potential effects on all other beings that are directly and indirectly related to the two.

On an FNMI account, all beings, not just humans, have agency. Relationality, influence, and 'spirit' are imbued and present in all beings in Creation. In FNMI thought, agency gives beings the capacity to have desires and intentionality, to act and to modify their actions based on their dynamic desires and interactions: "[t]o be animate goes beyond being alive or acting, it is to be full of thought, desire, contemplation and will" (Watts, 2013, p. 23). Thus, bears, bison, moose, and butterflies are all said to have agency and constitute their own sovereign societies based on the ways in which they organize themselves, move from place to place, act during a hunt, and respond to seasonal change (Mohawk, 1988; Marshal, 1995; Nadasdy 2003, 2007). Similarly, rivers,<sup>6</sup> oceans, trees, and rocks<sup>7</sup> are said to have agency in the ways in which they are present at certain places and times, change their place over time, and interact with other beings based on their intentions. Stories,<sup>8</sup> songs, drums, baskets, and medicine bundles are also said to be 'alive' in that they have the capacity for kinship as well as affectation. While this may sound "absurd" to non-Indigenous audiences Deloria Jr. points out that from time immemorial FNMI

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<sup>6</sup> Burkhart reports that in Cherokee, for example, the life-giving power of a river is referred to as "*yvwi gynahita*, or the long man", which moves through the mountains and valleys and communicates with other beings on its way. (Burkhart, 2019, p. 42)

<sup>7</sup> Burkhart explains that rocks have agency in their capacity to be related: "The rocks that seem to be dead are actually full of life insofar as they are connected to the overall happening of things. They have 'memories' and respond to the events around them" (Burkhart, 2019, p. 199). Burkhart elaborates on the animacy of rocks by explaining their role in the Lakota Sweat Lodge ceremony (Burkhart, 2019, pp. 199-200).

<sup>8</sup> Stories and songs are also considered living things, given to humans by the Creator, and woven into community through oral traditions and relevant obligations. Kimmerer (2013) gives the example of stories; *Aadizookaanag* in Potawatomi refers to "sacred stories or grandfathers". They are told in winter and are understood as having a spirit and being alive. When protocols are broken, i.e. if stories are not treated with respect, told out of turn, shared without permission, or embellished for one's own benefit, then negative consequences ensue for the individual as well as the community.

peoples have had “no problem with this concept because they experienced life in everything, and there was no reason to suppose that the continuum of life was not universal” (Deloria 1999, p. 49).

Botanist and member of the Citizen Potawatomi Nation Robin Wall Kimmerer presents the idea of ‘grammar of animacy’ showing us that the agency of the world is reflected in language. She points out that Indigenous languages are verb (rather than noun) based and that they reflect the world as a network of interrelated persons. A grammar of animacy points to a reality of the world as animated, as a collection of living beings, and as a being that is alive. She uses the English noun ‘bay’ to illustrate:

A bay is a noun only if water is dead. When bay is a noun, it is defined by humans, trapped between its shores and contained by the word. But the verb *wiikwegamaa* - to be a bay - releases the water from bondage and lets it live. ‘To be a bay’ [means] living water has decided to shelter itself between these shores, conversing with cedar roots and a flock of baby mergansers. *Because it could do otherwise*—become a stream or an ocean or a waterfall, and there are verbs for that, too. To be a hill, to be a sandy beach, to be a Saturday, all are possible verbs in a world where everything is alive... This is the grammar of animacy. (Kimmerer, 2013, p. 49, emphasis added)

### **Animism**

The world as a whole is understood to be an animate being. In addition to each of the living members on earth, the earth collectively is also viewed and interacted with as an animate being. Animacy of the earth is referred to as the “power” inherent in the land (Burkhart 2019, p. 42; Deloria & Wildcat, 2001). Like all living beings, land can renew and replenish herself, requires

repair, maintenance and care, will decay and may even perish if her wellbeing is neglected. The ground, waters, and skies are filled with animate beings - agents - capable of acting and reacting on their own behalf and as members of their communities and societies. Land as a whole is considered to have agency in that it is capable of forming, maintaining, and renewing relationships with others<sup>9</sup>. The idea that the world is animate, and that all natural entities are animate, reveals a world in which there is no “vacant land”, no emptiness or wilderness<sup>10</sup>.

The earth’s animacy lends itself to being referred to as a mother, a person, and a conscious being. Mother Earth or *Nimaama-aki* (Anishinaabemowin) ‘to be the earth’ is a verb suggesting agency and action. Mother Earth is seen as a protector, provider, home of all beings, and is a living being herself. As a living entity she is renewed and replenished both by her own actions as well as the contributions of human and other-than-human beings. On this basis the planet is viewed not only as a resource for sustenance, but also as a being that has a right to exist on her own terms, that deserves respect and dignity, and a being for whom consent and gratitude are relevant, applicable, and necessary. Mother Earth is regarded and treated as such; as a body of a mother that requires nourishment and care, without which it will perish and so will her off-spring and dependants<sup>11</sup>.

Like any other living being, land is prone to disease, decay, and destruction. Human activities such as resource extractions, mining, and excavation are factors that contribute to her

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<sup>9</sup> This Indigenous idea of animism has been the foundation to granting legal personhood to natural entities (Cárdenas & Mestokosho, 2023; Bosselmann & Williams, 2025).

<sup>10</sup> Lakota philosopher Luther Standing Bear states that for Indigenous Peoples, there are no barren lands or unoccupied territories, for everywhere life exists: “There was no such thing as emptiness in the world. Even in the sky there were no vacant places. Everywhere there was life, visible and invisible...Even without human companionship one was never alone” (Standing Bear, 1933, p. 14; cf. Hickey et al, 2017).

<sup>11</sup> Jacob Mowegan Wawatie (2013) draws several corollaries between geography, topography and the various organs and functions of the human body. This relation is not merely analogical but is understood to be constitutive. Much like organs, bones, arteries, and veins form the human body so also mountains, rivers, valleys, and waterfalls are understood to be the body of the land.

mutilation and decay while activities such as ceremonies help to maintain and restore wholeness, balance, and proper relations. Ceremonies are best understood as building and maintaining direct relationships with the land as an animate being, as Mother Earth. They are performed so as to replenish and nurture Mother Earth. Ceremonies are the manifestations of agent-to-agent relationships that occur in FNMI societies where human and other-than-human beings engage with and respond to each other's agency and intentionality.

A key implication of the animacy of the world is the lack of a hierarchy between humans and other parts of Creation. The human/nature binary is dismantled on this view. Humans are seen as a part of nature and not as above it: "For the Indian, there is no separation. Man is an aspect of nature" (Matthiessen, 1984, p. 9). Much like trees, rivers, and mountains, humans, too, are an aspect of nature and not considered to be the 'masters' of it. On the basis of animacy, all beings have their own place in Creation, have their own roles to play, and are neither lesser than nor more significant than other beings. Capacities, skills, and talents may vary in impact, but the moral significance of all beings is equated on the basis of their agency. On this view, human-nonhuman relations have the same format, significance, and moral import as human-human relations.

FNMI lifeways are nonanthropocentric; their ideas of agency and animism radically revise the differences between the living and dead, animate and inanimate, and beings and objects. The moral worth and moral standing of humans and other than human beings is equated: "Our brothers, the bears and the wolves and the eagles, are Indians. They are Natives, as we are" (Lyons, 2003, p. 105). On this basis, Indigenous nations argue that humans have no superiority over other natural entities. Nonhuman animals are sovereign nations in their own right and have a right to exist independent of human needs. Indigenous thought highlights the idea that human

societies are one among many communities in the natural world, all of whom have an equal moral right to exist and thrive. The effective practice that flows from this cosmology is one that actively negates the superiority of humans over other-than-human natural entities. Bill Yalup Sr., the chairman of the Yakima Tribe explains: “whenever we have a funeral, we mourn our loved one, yes, but we are also reminded of the loss of our salmon and other traditional foods” (quoted in LaDuke, 1999, p. 4). This example illustrates the deep-rooted connections in Indigenous societies and shows how the human/animal binary collapses in practice. The deaths of human and nonhuman beings are remembered, commemorated, and considered on the same plane.

### **Kinship**

Indigenous ontology, as described above, forms the basis of FNMI kinship. The underlying idea here is that all things are interrelated - beings, communities, species, laws, cycles, seasons. Each part of existence shares a connection of some kind with all other parts of existence. Humans relate and are related to all other parts of existence, i.e. they have a capacity to affect each other directly or indirectly.

In FNMI societies, beings are understood as related in a multiplicity of ways and for a multiplicity of reasons. The most primary sense in which all things are said to be related lies in the survival of individuals, communities, species, and ecosystems. All things are related in that all beings need each other to survive through prey-predator relations. Every living entity from the biggest mammal to the minutest microbe survives by consuming other living entities, and in turn is consumed by different species. Another way in which entities are connected with each other for their survival is by assisting each other for their mutual flourishing. FNMI hunters often tell stories of being assisted by nonhuman animals during a hunt or helping birds and other animals catch prey (Hallendy, 2016, p. 47). In addition, communities and species are seen as

forming associations for each other's mutual survival and flourishing. Natural entities are also related to each other in their capacity to affect and be effected by other beings for their tertiary needs and activities. Thus, living entities may be said to be related to each other in their capacity to affect and be affected by other beings, for their very basic needs, survival, and mutual flourishing. The kind of impact that one being has on another is dependent on the kind(s) of relationships that she is engaged in with other beings, her relatives.

This idea of kinship, that all natural entities are related, is often expressed in the First Nations phrase 'All Our Relations' denoting the establishment and maintenance of symbiotic relationships with and between humans as well as other-than-human beings. The cosmology of deep-rooted kinship finds expression in different ways within each nation. In Lakota nations, kinship amongst all beings is expressed as *Mitakuye Oyasin* - the idea that air, mountains, valleys, trees, animals, etc. are "all our relatives and we are all related" (Burkhart, 2019, p. 109). This phrase is used on a variety of occasions, including ceremonial prayer and everyday salutations, and acts as a reminder of one's kinship relations, responsibilities, and "moral connectedness" to the universe (Burkhart, 2019, p. 192). In Ojibwemowin the principle is called *enawendiwin* and points to the interrelationship and interdependence of all on one another (Geniusz, 2009, p. 57). Anishinaabe scholar Niigaanwewidam James Sinclair describes *enawendiwin* as the spiritual and material connections Anishinaabeg share with entities throughout Creation and states that it is a core principle and "a binding, critical philosophy" which, along with *waawiyeyaag* (the law of circularity), gives meaning and purpose to the universe. Most importantly, the two principles taken together articulate a basis on which Anishinaabeg "understand how the universe moves and is tied together in a great

network... Together, these are the ideological and physical methods that constitute an Anishinaabeg universe” (Doerfler et al, 2013, pp. 105).

Relationships, uncovering those that pre-exist one’s arrival on the planet, and actively learning about, establishing, and maintaining ones with all natural entities, form the very basis of social, political, moral, administrative, legal, and spiritual life for Indigenous Peoples on Turtle Island. The idea that all natural entities are related in forms of deep-rooted kinship is knowledge that arises from the land, from observing how different entities are related to oneself and to one another, and by interacting with different beings from one’s own positionality across the land. All beings are part of this complex, intricate, and inextricable web of relationships which establishes Indigenous societies as embedded societies and as comprising of rooted relational agents/selves. By embedded societies I mean land-based societies that take seriously the idea of Indigenous Natural law and respond to a web of kinship with a relevant set of principles, obligations, and responsibilities that arise from their interrelationships. That all beings are interrelated is given to FNMI peoples in Natural Law. Enshrined in Natural Law are a set of rules, obligations, and information on how to live one’s life so as to co-exist alongside other species in nature and ensure the continuity of existence for future generations. Therefore, Natural Law is viewed as a constitution given to FNMI nations by the Creator.

A rooted relational self refers to two central aspects of an Indigenous idea of personhood. The first is that the self is rooted in land: “The land is who a Native American is and it affects his/her responses to the world” (Booth, 2003, p. 335). Indigenous identity, Burkhart says “must follow the physical and conceptual layering of my locality and its geography and history” (Burkhart, 2019, p. xii). Any version of Indigenous identity that doesn’t arise from or include locality is incomplete, misplaced, and self-negating. On this view, to deny the connection

between land and agents is to deny Indigenous agency and personhood. It is worse than that, it is self-negating and constitutes “a form of auto-genocide” (Coulthard and Simpson, 2016, p. 254). When Indigenous bodies are divorced from their webs of kinship (as was done in processes of colonization such as the Indian Residential School system and the Sixties Scoop), what results is an annihilation of the self because it is relationships that make up the very structure of the Indigenous self. A lack of access to land and community is not only a harm in that it has negative effects on the social, cultural, economic and environmental lives of FNMI peoples but also damages the very integrity of an Indigenous agent. Second, all agents are embedded within a web of kinship, and they are always in active relationships with all other beings in Creation; not just humans, but all nonhuman beings too are in intricate relationships with each other. Burkhart states, “I do not choose the land; the land chooses me. The land is what makes me who I am. It is not a convention. It is a part of my ontological makeup; it is part of my spirit” (Burkhart, 2019, pp. 90-1). The idea is that one does not create or invent their identity from scratch, but receives it from the world, i.e. the network of relationships and obligations they are born into and builds on it in the process of fulfilling their kinship obligations. This idea is echoed in the words of Cree Elder George Brereton, who states that “the world forms relationships with humans and not the other way around” (BearPaw Media, 2016). In this way, a land-based Indigenous self is structurally relational<sup>12</sup>.

Kinship and agency taken together define the boundaries of FNMI communities. All living beings are part of the community. Land is community. All members of the land, all humans,

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<sup>12</sup> Cree scholar Shawn Wilson notes: “we could not *be* without *being in relationship* with everything that surrounds us and is within us. Our reality, our ontology is the relationships” (Wilson, 2008, p. 76, emphasis original). Turtle Clan historian John Mohawk (1988) also emphasizes this point. Deloria Jr. couches this idea in terms of ‘personality’ and states that one’s personality is arrived at by paying attention to the relations and connections that influence who we are and constitute our being (Deloria & Wildcat, 2001, p. 147).

nonhuman animals, plants, fish, insects, birds, rocks, waters, clouds, stars, songs, stories, medicines, have agency, are relatives, form part of the family, and hence fall within the scope of community. Ojibwe scholar Winona LaDuke explains:

Salmon was presented to me and my family through our religion as our brother. The same with the deer. And our sisters are the roots and the berries. And you would treat them as such. Their life to you is just as valuable as another person's would be. (quoted in LaDuke, 1999, p. 2)

Kinship structures the family to include animals, fish, trees, rocks, clouds, as relatives, as brothers, sisters, aunts, uncles, grandparents where one's responsibilities are defined by one's relationship towards others, with closer relations entailing a stronger sense of responsibility.

LaDuke reiterates:

Our relations to reach other, our prayers whispered across generations to our relatives, are what bind our cultures together. The protection, teachings, and gifts of our relatives, have for generations preserved our families. These relations are honoured in ceremony, song, story, and life that keep relations close - to buffalo, sturgeon, salmon, turtles, bears, wolves, panthers. These are our older relatives - the ones who came before and taught us how to live. (LaDuke, 1999, p. 2)

This expanded understanding of community based on kinship relations includes the consideration of intergenerational levels of existence including ancestors, the spirit world, and children yet to be born. Ancestors, beings who were once physically present on earth but have now passed on, are included in an understanding of land and family. In the Haudenosaunee idea of intergenerationality, articulated in the Seventh Generation Principle, kinship and

intergenerationality are inseparable: “we are part of everything that is beneath us, above us, and around us. Our past is our present, our present is our future, and our future is seven generations past and present” (LaDuke, 1999, p, 3). Ultimately, all living beings fall under the scope of community. It is to this understanding of land and community that a rooted relational self belongs and thrives in, is responsible for, and is answerable to.

### **Respect, Responsibility, and Reciprocity**

Respect, reciprocity, and responsibility are the primary relationships that humans have with all beings. The animacy of the world grounds the principle of respect. Kinship relations in embedded societies ground the principle of responsibility. The idea that the world is received as a gift from the Creator grounds the principle of reciprocity. Natural Law plays a regulative role in pointing to the limits and scope of these principles and also suggests which principles would take precedence in cases of conflict. These principles function in interconnected ways such that all respectful relationships must be responsible and reciprocal; all reciprocal relationships need to be respectful and responsible and so on.

Respect, in Indigenous societies, is evoked often and is ubiquitous but has very specific meaning and significance. Fundamentally speaking, respect requires one to acknowledge and respond to the animacy of all living beings. This involves treating all others, human and nonhuman others as persons, to accept their right to coexistence in the web, and in cases where use is involved to ensure that there is no wastage. For instance, respect is an important guide in the ritual of hunting. When a moose or caribou is hunted, all parts of its skin, flesh, organs, sinew, and bones are harvested as a way of showing respect to the animal. No part of the harvest is wasted or thrown away. Respect on the Indigenous view does not advocate a hands-off approach but rather serves as a regulative principle pointing to a particular set of beliefs and

practices which consist in using without abusing or exploiting other living beings, considering multigenerational consequences before acting, using all parts of the harvest, maintaining treaty relations with other nations and being guided by those obligations. Respect also means to uphold one's obligations to other groups and species in the community. That is, respect is contained in the fulfillment of treaty obligations that already exist (or are newly formed) between different human and non-human nations. Relations with all others are guided by these treaties that seek to "establish communication and covenants with other forms of life on a mutually agreeable basis" (Deloria, 1999, 51). To act in a disrespectful way to others, to *any* others, results in a situation of injustice.

Responsibilities arise from being deeply embedded in kinship relations to near and far relatives. The core idea driving responsibility is the mutual co-existence of all beings. All actions are guided by this goal. Humans, having a direct experience of their life alone, would need to design their activities, ceremonies, and professions based on the set of relationships within which they find themselves. These relationships would include a set of responsibilities based on their social location. The Honourable Harvest<sup>13</sup>, for instance, presents a collection of responsibilities on how to navigate the world including protocols for sharing, giving, taking, and accessing resources. Responsibility is guided also by the principle of relevance, demarcating the impact and significance of each action and interaction.

All relationships are reciprocal. Reciprocity in FNMI thought requires agents to build and maintain relationships and exchange goods and services on an equal footing (on account of their agency), ensuring that agent-to-agent and nation-to-nation relationships are maintained. The

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<sup>13</sup> For the full text of the Honourable Harvest, see Robin Wall Kimmerer's *Braiding Sweetgrass*, p. 183.

animacy of the world, the mutual rights of other beings to exist, the idea of the world received as a gift from the Creator that evokes humility and gratitude, all taken together ground the principle of reciprocity. Coulthard (2014) shares a story from Sahtu Dene Elder, George Blondin, of a raven leading a hunter to a moose. Both the raven and the hunter need each other, creating a reciprocal relationship: sharing a mutually dependent relationship of cooperation and reciprocity (Coulthard, 2014, pp. 61-62).

A rooted relational self is grounded in and guided by respect, responsibility, and reciprocity. It is this rooted relational self that we encounter in all spaces - public, private, academic, economic, political, social, religious, and cultural. These aspects of the self are all inseparable. Just as we are accountable to and responsible for our bodies at all times, in the same way Indigenous Peoples are accountable for and represent these set of relations with other parts of nature - including humans and nonhuman beings - at all times. These parts of the self can be differentiated in language but are not separable. The rooted relational self is therefore the very grounds on which all FNMI life takes place. This is the same agent that shows up as the subject and recipient of justice in all Indigenous contexts. It is the self which becomes the unit of operation in justice and is able to identify cases of injustice. The situation of the rooted relational self is crucial to understanding and identifying all overt and covert forms of oppression and injustice.

### **Grounded Normativity, Metaphysics of Space, and Locality**

Coulthard presents a framework of “grounded normativity” that encapsulates land as a web of reciprocal relationships of respect and responsibility. The ethical framework of grounded normativity has at least three important elements: the first is that humans are interrelated with and interdependent on the more-than-human world; second, this interrelationality and

embeddedness demands that humans develop and maintain ethical relationships with others; and lastly, these ethical relationships can be learned and enacted through engagement with the more-than-human world. In his book *Red Skin, White Masks* Coulthard refers to grounded normativity as the ethical framework that arises from “a place-specific practice... a mode of reciprocal relationships (which is itself informed by place-based practices and associated forms of knowledge)” and which “ought to teach us about living our lives in relation to one another and our surroundings in a respectful, nondominating and nonexploitative way” (Coulthard, 2014, p. 60). To be guided by the land or to use the land as the basis for one’s actions means to be guided by the web of responsibilities and obligations that arise from the network of relationships that exist at all levels between individuals, communities, species, and ecosystems.

In a later work (2016), and in collaboration with Anishinaabe scholar Leanne Betasamosake Simpson, Coulthard states:

Grounded normativity teaches us how to be in respectful diplomatic relationships with other Indigenous and non-Indigenous nations with whom we might share territorial responsibilities or common political or economic interests. Our relationship to the land itself generates the processes, practices, and knowledges that inform our political systems, and through which we practice solidarity. (Coulthard and Simpson, 2016, p. 254)

Grounded normativity importantly captures the self-regarding attitudes and actions (one’s relationship to land and the responsibilities that arise from that relationship) and other regarding attitudes and actions (diplomatic relations with others - individuals, species, communities) and importantly, it connects the two. Grounded normativity ties all aspects of ethical and political life

together, is “inherently informed by an intimate relationship to place” and “teaches us how to live our lives in relation to other people and nonhuman life forms in a profoundly nonauthoritarian, nondominating, nonexploitive manner” (Coulthard and Simpson, 2016, p. 254).

A metaphysics of space (Deloria) and locality (Burkhardt) underlie grounded normativity. Deloria argues that Indigenous lifeways prioritize a metaphysics of space over a metaphysics of time. Central to a metaphysics of space is an Indigenous conception of and relationship to land:

American Indians hold their lands—*places*—as having the highest possible meaning, and *all their statements are made with this reference point in mind*. Most Western societies, by contrast, tend to derive meaning from the world in historical/developmental terms, thereby placing time as the narrative of central importance. (Deloria, 2003, p.61, emphasis added)

Here, Deloria highlights the fact that space, rather than time, is the primary reference point of all ideas and actions within Indigenous lifeways. Principles, ideas, and behaviours are valid in so far as they emerge from the land, are congruent with Natural Law, are verifiable in experience, and are in line with the principles of respect, responsibility, and reciprocity. For FNMI agents, space is a primary starting point. This contrasts with western worldviews and knowledge systems where time is the foundation of experience and buttresses all form of validity. For instance, in western thought, a principle is considered to be universally valid if it can hold true across time, independent of the context and situation<sup>14</sup>. Rather than basing their knowledge systems on an abstracted or ‘delocal’ understanding of time that is often invoked in western epistemology and

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<sup>14</sup> Such validity has played a key role in western epistemologies and moral systems. Take for instance the validity of human rights based on human dignity. The idea is that wherever one identifies a human being, basic human rights will automatically apply independent of where this human being is located. In this way, Kantian notions of human dignity and universal validity combine to generate universal human rights and protections.

moral philosophy, Indigenous worldviews are based on space, i.e. land or community and one's relationship to and within it.

Burkhart couches Deloria's analysis of a metaphysics of space in his work in terms of 'locality'. Here, land as materiality, one's relationship with this materiality, and the intricate, irreplaceable web of kinship relations that each natural entity finds itself in is the basis of Indigenous knowing, being, and meaning. Burkhart defines locality as a "way of conceptualizing place in Indigenous philosophy...It is place as land. It is more than a concept; it is a materiality" (Burkhart, 2019, p. xvi). Locality is knowing, being, seeing from, with, to and for the land. Indigeneity, as a way of being and doing, is tied to land. In the concept of locality, Burkhart is emphasizing that place is not understood as an abstraction, but rather is grounded in land, in the *here*.

Contained in Burkhart's conception of locality is the fact that Indigenous ontologies and epistemologies arise from the land. He explains that Indigenous locality means "being-from-the-land" and "knowing-from-the-land" (Burkhart, 2019, p. xiv). Being, meaning, and knowing are rooted in the land - ontology and epistemology are rooted in space, the land. In this way, 'cultural and national voices' or 'Indigenous identities' can only exist in abstraction away from the land. Locality is understood to be not only the embeddedness of human and nonhuman experience but also the origin and substance of it: "Locality is the originary and continual manifestation of being, of knowing, of meaning" (Burkhart, 2019, p. xvii). Several important ideas are contained within Burkhart's concept of locality. Locality involves a direct relationship to land, and in this sense has a certain kind of materiality to it; locality is not a theorization or an abstraction but rather is the direct, material, and active relationship that Indigenous agents have with land. Locality, understood in this way, manifests as ceremonies and hunting; in attitudes and

arrangements such as animism and kinship; and in morality where principles of respect, responsibility, and reciprocity are at the forefront.

FNMI morality arises out of locality (Burkhart, 2019, pp. 283-302). The earth's animacy and kinship relations are the grounds for morality and moral action: "All that exists in nature is imbued with awareness and power...all actions towards nature are mediated by consideration of its consciousness and sensitivity. The interchange between humans and environment is based on an elaborate code of respect and morality, without which survival would be jeopardized" (Nelson, 1983, p. 240 quoted in Booth & Jacobs, 1990, p. 33). Morality emerges from the ground up, literally, as a response to the sentience of the world and is geared towards its peaceful coexistence. Kinship is the context of morality and moral action. Kinship necessitates action through the relationships of responsibility, reciprocity, and respect. Indigenous Peoples move in the world with the awareness that their actions can and do affect all other beings that they are related to, including human and other-than-human beings, songs, stories and medicines, and past and future generations. This means that any activity, profession, plan, or legislation is chosen accordingly, keeping in mind the inter-relatedness and the responsibilities and obligations that come with this world ordering. Burkhart explains: "The idea of interconnectedness reminds people of their kinship with and moral connectedness to the birds, the trees, the rocks, the buffalo, the people, and through this kind of multiplicity to everything there is" (Burkhart, 2019, p. 192-193).

Presenting its contrary notion, Burkhart describes delocality as a violent colonial force that attempts to erase Indigenous locality. On this view, colonization registers as a barrier to locality. Any abstraction away from land; a break or a disconnect from a direct relationship to land results

in delocality<sup>15</sup>. Statements regarding Indigenous agency, kinship relations, animacy of the world, and relationships to Mother Earth are to be understood as arising from within locality. They are not symbolic or analogical statements but rather convey an unmediated lived truth. To interpret these statements and views from the lens of delocality is to misplace them and rob them of their indispensable context. Burkhart points out that the presence of Indigenous agents, and the prevalence of Indigenous lifeways shows that delocality has been unsuccessful in completely erasing Indigenous bodies.

## **Epistemology**

FNMI knowledge arises out of locality and is verified in experience. A thoroughgoing empiricism grounds FNMI epistemologies. Knowledge is contained in what it takes to sustain life; a keen awareness of various characteristics, behaviours, and tendencies of human and nonhuman beings that are meant to co-exist<sup>16</sup>. Knowing how to communicate with other beings, learning about what to listen for, how to express, and how to receive communication with human and non-human others is a central aspect of Indigenous knowledge systems. For instance, as Kimmerer (2013) points out, knowing how to ask for permission before harvesting and learning to listen for whether permission has been granted are crucial aspects of FNMI epistemologies that contribute to living in a good (respectful, responsible, and reciprocal) way. Indigenous knowledge systems are rooted in relationships to land, a metaphysics of space, and community,

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<sup>15</sup> “To articulate the metaphysics of Native philosophy is not to engage in the abstract operations of thinking divorced from the land, but to articulate the groundedness of Native philosophy in the land or from out of the land itself” (Burkhart, 2019, p. 231; see also Burkhart 2004).

<sup>16</sup> “Indigenous knowledges are grounded in the human realisation that the life that surrounds us can teach us valuable lifeway lessons, if we pay attention to our relationships and interactions with the land, air, water, and other-than-human living beings” (Wildcat, 2009, p. 74). “Ontologically, an important aspect of Indigenous knowledge systems... is that we acknowledge the lands and the waters themselves as relatives and teachers, and that they are a significant source of knowledge. We learn from them about how to be in the world, and they also form a critical source of law.” (McGregor, 2021, p. 64)

and are intergenerational and relational. Indigenous knowledge is holistic in that it focuses on establishing a mutual relationship with other beings in Creation, while maintaining a conception of the whole and focusing on balance by not over emphasizing one aspect over another<sup>17</sup>.

Indigenous ways of knowing involve many forms of intelligence, including physical, emotional, interpersonal, and spiritual intelligences so that dreams, visions, stories, and songs are all equally valid means of knowledge.

FNMI knowledge is referred to as Traditional Ecological Knowledge and Wisdom TEKW (sometimes simply as ‘traditional knowledge’ [TK]) and emphasizes knowledge that is cumulative, holistic, experiential, dynamic and is passed down through oral traditions including storytelling, singing, dancing, drumming, ceremonies and teachings (Canada 1996; McGregor 2004). Indigenous knowledge is gained through empirical methods: observation, recording, testing, experimenting, teaching, and sharing over time. Listening to Elders, participating in storytelling (learning stories and narrative traditions over time and then passing them on to future generations), and keeping oral traditions alive are significant means of contributing to the generation and maintenance of TEKW. *Doing* is an important aspect of Indigenous epistemologies; listening, repeating, introspecting, recalling, narrating, and participating in the interconnectedness of all life is to sustain Indigenous knowledges. Knowledge, therefore, is inextricably intertwined with experience. Structurally, lived experience and knowing cannot be separated: “knowing is not something that can be extended or even shared beyond the lived experience itself” (Burkhart, 2019, p. 114). Being embedded in webs of kinship and participating in those relationships means to automatically have and generate meaning (Deloria & Wildcat,

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<sup>17</sup> This is especially emphasized in the First Nations and Métis moral conception of ‘a good life’ - *Minobimaatisiwiin*. For more on this, see Micheal Hart (2002).

2001). Within embedded societies, an important question in Indigenous knowledge then becomes “how am I fulfilling my role in this relationship?” (Wilson, 2001, p. 177).

### **Self-determination and Treaties**

FNMI ideas of self-determination arise directly from an iterative engagement within embedded societies. Deloria Jr. (2001) points out two key aspects of FNMI lifeways that contribute to their self-understandings of self-determination. The first is “power” and the second is “place”; power refers to the agency inherent in land, and place refers to the primacy of a metaphysics of space in manifesting FNMI understandings of self-determination. Yuchi and Muskogee philosopher Daniel Wildcat expands on Deloria Jr.’s ideas, emphasizing the thoroughgoing empiricism on which FNMI self-determination rests. Wildcat points out that “self-reflection” and “synthetic awareness” are essential to FNMI self-determination (Deloria, & Wildcat, 2001, p. 147). Self-reflection requires an Indigenous agent to know herself, as thoroughly as possible, through a process of introspection. Here, introspection is a process of “self-discovery” that does not involve an agent retreating away from the land and community, rather it entails quite the opposite: “in these practices the intention is not escape from the world but to seek out a better connection in the world” (Deloria & Wildcat, 2001, p. 147). FNMI self-reflection requires actively building, maintaining, and uncovering deep-rooted connections with the land; with human and other-than-human beings in the community. Another important empirical basis of FNMI self-determination is “synthetic awareness” which refers to the experience embodied in the expression “I experience therefore I am” (Deloria & Wildcat, 2001, p. 149). At play here is unmediated experience: “a keen sense of awareness that operates without thinking about or paying attention to it” (Deloria & Wildcat, 2001, p. 149). Here, it becomes apparent that FNMI lifeways are grounded in a thoroughgoing empiricism, where an agent’s

empirical realities are prioritized over a rationalistic framework<sup>18</sup>. Self-determination is a result of one's direct relationship with the land understood in its widest sense as a community of human and more-than-human beings, and one's willingness to pay close attention to one's surroundings and uphold one's obligations in interactions with others.

The empirical basis of FNMI self-determination points to FNMI ideas of sovereignty and shows that its justification lies in one's actions; the relationships one is able to maintain and the obligations one is able to fulfil in respectful, responsible, and reciprocal ways. Importantly, FNMI sovereignty arises from locality. FNMI sovereignty is contained in the network of empirically based economic, political, social, ecological, and spiritual relationships and obligations that Indigenous Peoples maintain with their communities and is a result of "synthetic attentiveness" and "reflection" as Wildcat outlines them. While the world is given to all beings as a gift by the Creator, sovereignty is earned and maintained by fulfilling one's relationships within one's community. In this way, FNMI sovereignty is not enshrined in a political or a legal constitution of the nation-state but rather is derived from Natural Law as constitution and is established through continuing to act out of locality. Understood in this way, Wildcat points out that FNMI self-determination is a matter of degree: "how engaged, connected, and attentive are we to our community?... The more attentive one is to their community, the more self-determining they can be; the less attentive, the more selfish and self-destructing they will be" (Deloria & Wildcat, 2001, p. 149).

Accordingly, governance structures and treaties are designed to respond to FNMI self-understandings of sovereignty. Anishinaabe educator and Elder Jacob Mowegan Wawatie (2013)

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<sup>18</sup> Wildcat is explicit about rejecting a western rational framework here when he offers "I experience therefore I am" as an Indigenous alternative to the Cartesian "I think therefore I am" (Wildcat & Deloria, 2001, pp. 135-150; see also Burkhart, 2004).

states that the governance structures of Indigenous nations on Turtle Island are designed to protect against interference with Creation. Knowledge on how to maintain the world as it was received is given in Natural Law and must be implemented through governance structures, whose main purpose is to maintain the co-existence of all beings and ensure that the world is passed on to future generations as it was received (Wawatie, 2013). In this way, the animacy of the world and obligations to future generations inform the structure and design of FNMI governments that determine internal relations to any given nation. Treaties, on the other hand, are inter-national; they are used to forge relationships and arrive at agreements amongst different sovereign nations. FNMI treaties are designed and endorsed as a way to maintain co-existence among different human and non-human sovereign nations. Treaties have a wide scope of relevance: human-human treaties and human-nonhuman treaties amongst FNMI nations, and Indigenous-Settler treaties as a way to arrive at international cooperation and co-existence with non-Indigenous populations. Treaties are geared towards co-existence<sup>19</sup>, and can be arrived at for a variety of reasons including trade and commerce, friendship, and forming cultural, political, or economic alliances. Treaties are understood to be long-term commitments. It is expected for a treaty and its relationships to keep pace with events and evolve over time while retaining the original intentions and agreements of all parties. Mutual respect, cooperation, and ceremonial attestation are all central to FNMI treaty making processes.

Treaties are sacred relationships that bind signatories in solemn and mutual obligations.

FNMI Peoples believe that all things are sacred; all life, beings, ‘entities’, relationships and all of

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<sup>19</sup> The Haudenosaunee Two-Row Wampum is a good example of this. It acknowledges irreconcilable differences at the outset and tackles the goal of coexistence from that standpoint. The treaty stipulates that neither group will force their laws, traditions, customs or languages on each other, but will coexist peacefully as each group follows their own path: “We are strong but not intertwined, we are separate. Forever this is our agreement - that we will be separate and independent and share in the strong values that connect us. We will promise this to each other until the grass is green, the trees keep growing, and the sun comes up. Forever” (Onondaga Nation, 2014).

existence is sacred. Drawing on Chief Seattle's work Burkhart states that the animacy and kinship of all beings gives rise to Indigenous ideas and practices of the sacred: "The connectedness of all things then results in everything being alive and everything being sacred" (Burkhart, 2019, p. 200). Burkhart shows that FNMI ideas of the sacred point to a distinction between value and impact. The value or worthiness of beings is not a matter of degree; all beings have value based on their sacrality, their kinship capacity. There are no degrees of worthiness, just as there are no degrees of sacredness. Impact, on the other hand, is varied in that a being's impact on others is based on her will, skill, gifts, talents, and overall embeddedness. Relationality determines worthiness. The breadth and quality of relationships that one is able to maintain determines their impact. In this way, the framework of kinship is essential to understanding and evaluating responsibilities and obligations in FNMI societies.

The spiritual basis of treaties is central to understanding their significance because "it represents an effort to elevate the treaties, and relations among peoples, beyond the vagaries of political opportunism and expediency" (Senier, 2014, pp. 31-2). The binding power of treaties arises from their locality and sacrality. FNMI treaties are designed to facilitate Indigenous forms of sovereignty whereby the agency of all beings and their interdependence in kinship relations are accounted for. In FNMI lifeways, treaties are agreements that allow for each sovereign nation's locality; responding each to their own practice of ceremonies that they use to maintain relationships. Thus, FNMI treaties are arrangements that make room for differing manifestations of sovereignties more than they are barriers against encroachment or deeds of (land, title, property) ownership.

## **Conclusion**

In this chapter I have presented a few key common elements of FNMI lifeways as a way to provide substantive context for the main argument I make in my dissertation. By parsing out the ontologies, cosmologies, metaphysics, and moral frameworks of FNMI lifeways I have provided much needed context to understand that their beliefs, practices, and utterances arise out of locality. I have shown that FNMI nations are land based societies and operate with a broad understanding of community, which is animate and includes human and other-than-human beings and past and future generations. FNMI societies are embedded societies in that they are connected in intricate webs of interrelated and interdependent kinship relations with all human and non-human others. FNMI ideas of the sacred, their ceremonies, governance structures, principles of respect, responsibility, and reciprocity, practices of self-determination and treaties are all born out of the animated kinship relations into which they are embedded. Agents in such societies I have described as rooted relational selves. My aim has been to provide a holistic functioning view of FNMI lifeways as well as shed light on their practices of agency, animism, and kinship that are often overlooked in liberal theorization of their societies. I use the FNMI accounts presented in this chapter as central to my critiques of liberal justice presented in chapters 2 and 3 of my dissertation. In the final chapter of my dissertation, I present a theory of active decolonization that aims to make room for Indigenous sovereignty, locality, and embeddedness as outlined in this chapter.

## Rawlsian Neutrality and Indigenous Lifeways

### Introduction

In this chapter I show that Rawls' idea of neutrality, which is central to the functioning and success of his conception of justice as fairness presented in *A Theory of Justice* (1999) and *Political Liberalism* (2005), is not neutral. It houses substantive values and notions which are contrary to Indigenous lifeways, and more devastatingly for Rawls' framework, actively excludes Indigenous views and participation from the public sphere. My critique of Rawls focuses on the anthropocentric presumptions on which his theory of justice rests and shows how they actively go against Indigenous forms of agency and community. I also show that inserting non-anthropocentric commitments into his system is both unsuccessful, given his contractarian commitments, and insufficient as it does not resolve the problem of making space for Indigenous agents in the public sphere. I then tackle two counterarguments that could be made from a Rawlsian position. First, I address the possible counterargument that Indigenous views should be dealt with as religious doctrines. Here I show that the metaphysical views of certain religions - i.e. Christianity and Abrahamic traditions - tend to be more compatible with Rawls' framework than the metaphysical doctrines of animism and dynamism that are prevalent in Indigenous lifeways. The former are accepted into the structure of justice and the public sphere while the latter are not, resulting in Rawls' system actively (even if unintentionally) excluding the full participation of Indigenous agents.

Next, I address the objection that Rawls' idea of toleration, as outlined in *Law of Peoples* (1993), would be a better fit to approach Indigenous societies. Here, I show that Rawls' system is not only not neutral but also that it has thick (substantive) liberalizing tendencies. I draw on Rawls' *Law of Peoples* and highlight suggested attitudes towards what Rawls calls "decent" and

“reasonable” peoples. I conclude this section by pointing out that the liberal devices from *A Theory of Justice* still play a regulative role, and in light of *Law of Peoples*’s inadvertent liberalizing tendencies, the idea of toleration seems less than optimal for Indigenous societies. I conclude this chapter by pointing out that the differences between justice as fairness and Indigenous lifeways that I have identified are irreconcilable. Indigenous agents cannot both retain their sense of agency as rooted relational selves and their sense of community as embedded societies and simultaneously qualify to participate in Rawls’ public sphere in order to receive justice within his system. I argue that these irreconcilable differences arise as a result of the incompatibility between the structures of liberal justice and Indigenous lifeways; they are not a result of an improper or incomplete application of the principles of justice to Indigenous Peoples.

My critique of Rawls uncovers the double injustice that occurs for Indigenous Peoples in his framework. Indigenous Peoples have suffered under colonialism in violent and unique ways that other populations of settler colonial societies have not. Consequently, historical injustice is ever-present and at the forefront of justice-related concerns for Indigenous Peoples. In addition to this, the framework of justice offered to them is built on colonial logic, so it turns out that injustice wrapped in colonial attitudes of freedom and autonomy is presented to Indigenous Peoples as a form of justice. On the one hand, if Indigenous Peoples do not accept the liberal ideas of “freedom” and “justice” on offer, they are forced back into modernity’s false categories of primitivism and savage Indians. On the other hand, if they do accept this framework of justice, they are betraying themselves and acting against their own interests in kinship relations, embeddedness in their communities, and ultimately their very existence. Based on these arguments, in the concluding chapter of my dissertation, I argue that it is necessary to decolonize

liberal principles if they are to become relevant for and apply meaningfully to address the concerns of Indigenous Peoples.

## **Rawls' Framework**

### ***A Theory of Justice***

Rawls' magnum opus *A Theory of Justice* is considered to be one of the most influential works in twentieth century Anglo-American political philosophy. *A Theory of Justice* marks a significant shift away from the 'old faith' of utilitarianism as a mainstream political ethic and suggests rather that the political sphere must be based on a set of individual rights and liberties that protect the interests of an individual. Rawls proposes theories of justice as fairness and political liberalism that highlight the importance of individual autonomy and human rights as a means to address and govern contemporary trends of diversity. Justice as fairness is a political conception of justice that gives rise to universally applicable principles of justice – the principle of equal basic liberties and the principle of equal opportunity accompanied by the difference principle – which constitute and regulate the political sphere in a diverse society.

In *A Theory of Justice* Rawls presents his framework of procedural justice, which claims that the principles of justice have universal applicability because they are the products of a fair procedure of construction. That procedure – the original position – is considered to be fair because in justice as fairness, parties are placed behind a veil of ignorance that prohibits them from knowing each other's particularities, such as life-goals, temperaments, psychological propensities, cultural, religious and moral affiliations. In such a situation, when free, equal and rational parties deliberate, Rawls argues that the principles of justice are unanimously agreed upon. The aim of bracketing out all knowledge of substantive commitments is to arrive at a set of unbiased principles that may be applied universally across groups and societies. The aim of the

original position is to sieve out the most appropriate, relevant and successful principles that will lead to a conception of justice that will be applied to the basic structure of society and will facilitate social cooperation among citizens in a society.

The veil of ignorance plays a crucial role in ensuring that the deliberations that occur in, and the principles that emerge out of, the original position are just, i.e. not favoured towards any one particular individual or community, without a rational basis and unanimous consensus. In order to achieve this, the veil of ignorance brackets out any substantive and “politically irrelevant” features of the deliberating parties, including knowledge of their own and others’ race, sex, religion, culture, age, civilization, generation, social circumstance, economic status, political leanings, personal or professional inclinations, aspirations, particular conceptions of the good, metaphysical commitments, and life goals. Participants are also unaware of any natural fortunes and capabilities, and psychological propensities like intelligence, strength, resilience, aversion to risk, tendencies for optimism or pessimism etc. that they or others may possess. Speaking more generally, participants are also unaware of the contingent characteristics of the society they will encounter when the veil is lifted, i.e. they will not know its economic or political situation, or the level of civilization and culture it has achieved. Knowledge of these aspects is bracketed out because Rawls argues that they are “*irrelevant* from the standpoint of justice...One excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices” (Rawls, 1999, p. 17, emphasis added). The purpose of bracketing out this information is to ensure that the principles arrived at are just, and no compromise can be made in this regard: “The restrictions on particular information in the original position are, then, of *fundamental importance*” (Rawls, 1999, p. 121, emphasis added).

Of course, participants in the original position do not deliberate in a vacuum. They retain certain essential and basic knowledge - “general facts about human society” - which allow them to unanimously agree upon the principles of justice (Rawls, 1999, p. 119). Parties are understood to be similar in physical and mental capacities and are thus understood to have roughly similar needs and interests. Rawls states that individuals and agents deliberating in the original position are aware of basic economic laws (the principle of efficiency, for example), basis of social organization, the scarcity of natural resources, laws of human psychology, the species to which they belong, and that they will all belong to the same generation. Other human tendencies are also assumed to be true of deliberating parties: faulty or short memory, varying levels of attention span and reasoning capabilities; judgments are assumed to be affected by biases, prejudices, selfishness, negligence etc. For Rawls, these are all aspects that are understood to be a part of “men’s natural situation” (Rawls, 1999, p. 110).

Furthermore, participants are also aware that they each possess conceptions of the good and rational life-plans but have no idea what the particularities of these life plans may be. Hence, they deliberate with the knowledge that circumstances of justice will prevail when the veil is lifted, i.e. many people and communities might be cooperating for or fighting over a limited set of natural and social resources in order to legitimately fulfil their life goals. Of note here is the presumption that nature is understood primarily, and exclusively, as a source of exhaustible raw materials. Rawls calls this the situation of “moderate scarcity” where “natural and other resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down” (Rawls, 1999, p. 110). Keeping these circumstances of justice in mind, parties need to arrive at principles that can regulate public institutions so as to deliver justice for all. In this way, the veil of ignorance is

both necessary and complete; it is necessary in that without it the principles of justice can neither be just nor can they be universally applicable, and it is complete in the sense that Rawls is very clear about the things that agents in the original position do and do not have knowledge of and access to.

In sum, Rawls' conception of justice as fairness is a political conception of justice that may be said to have the following fundamental features. First, justice as fairness applies to the basic structure of a democratic society, i.e. the basic political, social, and economic institutions of a democratic society. Second, it is arrived at completely independently of any metaphysical, moral, or religious doctrine, and even though "it may be derived from or related to several such doctrines, it is not worked out in that way" (Rawls, 1993, p. 37). The contents of justice as fairness are expressed in terms of "ideas seen as implicit in the public political culture of a liberal society" (Rawls, 1993, p. 37). By a political conception of justice, Rawls means a conception that is not morally loaded or biased. For Rawls the domains of the political and the moral stand in contrast. A political principle of justice is one that is neutral and therefore universally applicable, as it rightfully belongs in an unbiased way in the public political sphere of a democracy.

### ***Political Liberalism***

A political conception of justice as a "freestanding view" takes centerstage in Rawls' *Political Liberalism* where he tackles the "problem of diversity" (Rawls, 2005, p. 10). In *Political Liberalism* Rawls' primary focus is on securing stability and legitimacy in a diverse society. In a society that contains varying and competing ideas of the good, Rawls asks what it would take for citizens to willingly consent to being governed by a common conception of justice. In exploring this question Rawls reiterates the democratic structure of society which

accounts for the consent of the demos. The power in a democracy resides with the demos, the people. If the people consent to a rule, then it can be said to legitimately apply to them.

According to this principle, political power may only be used in ways that all citizens can reasonably be expected to endorse. Rawls also refers to constitutional essentials to ground his principle of legitimacy. Constitutional essentials in Rawls' system include two basic components: first, the outline of a basic structure of government including a legislature, executive, and judiciary and second, a list of basic rights and liberties that would apply equally to all citizens. The principle of legitimacy must also fulfil the criterion of reciprocity, that is citizens must believe that all citizens can reasonably accept the enforcement of a particular set of basic laws.

Stability in a diverse society addresses the question of divergence between a citizen's commitment to their substantive conception of the good, their comprehensive doctrine, and their consent to being regulated by a conception of justice that may or may not be similar to their idea of the good. Rawls addresses this gap by offering the mechanism of an overlapping consensus. Critically, an overlapping consensus is instituted to address the questions of political stability in the context of a diverse society. An overlapping consensus provides a distinctive set of substantive comprehensive doctrines (moral, religious, other) endorsing the liberal order (Rawls, 2005, p. 134). This is crucial for Rawls' system as he states that an overlapping consensus provides not only stability but also "stability for the right reasons" (Rawls, 2005, p. 394). An overlapping consensus plays a key role in maintaining a political conception of justice; one that is consented to by free and equal agents.

Primarily in *Political Liberalism* Rawls is attempting to answer the following question: "how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical and moral doctrines?" (Rawls,

2005, p. 4). Rawls responds to this question by offering the doctrine of reasonable pluralism. Reasonable pluralism is the idea which grounds the claim that the exercise of political power must be publicly justifiable. Rawls expands on this by laying out the “liberal principle of legitimacy”, the “criterion of reciprocity”, and the ideal of “public reason” (Rawls, 2005, pp. xlvi, 217; xlvi, li, 446–447; l, 226). A reasonable person is one who is willing and is able to reason with others in good faith and also be guided by the results of these deliberations. A reasonable doctrine is one which a reasonable person can adhere to, as a result of reflection and deliberation. The obstacles that arise between reasonable persons, Rawls refers to as the burdens of judgement. On this view, reasonable persons recognize the burdens of judgment and accept the idea of society as a fair scheme of cooperation between free and equal persons (Rawls, 2005, pp. 48–54).

Commentators note a “political turn” in Rawls’ work, marked by a methodological shift from intuitionism in *A Theory of Justice* to Kantian constructivism in *Political Liberalism*. Samuel Scheffler (2023) observes that in *Political Liberalism* Rawls consistently moves towards clarifying the domain of the political, a preoccupation that, he states, is not as prevalent in *A Theory of Justice*. Rainer Forst calls this the “method of insulation” where he describes Rawls’ attempt to arrive at a political conception of justice by isolating it from dependence on any moral comprehensive doctrines (Forst, 2023, p. 140). Onora O’Neil (2015) observes that in *Political Liberalism* Rawls’ focus is on the political conception of the person as a citizen of well-ordered society; there is a move away from the abstract individual of the original position to the focus on a concrete citizen of a liberal democratic state. Despite these shifts noted by commentators, there still remains strong continuity in Rawls’ work from *A Theory of Justice* to *Political Liberalism*, in his commitments to liberal logic, the validity of the original position, principles of justice, the

rational and reasonable, and the primacy of individual rights, all of which are structures aimed at supporting stability in a diverse society. However, in what follows I will show that these building blocks of Rawlsian justice have the effect of structurally eliminating the full and equal participation of Indigenous agents in the public sphere.

### *Idea of Neutrality*

Rawlsian neutrality has several key moments. The first occurs in *A Theory of Justice* in the original position. A veil of ignorance is instituted in order to maintain neutrality, to create a condition that is free from bias and prejudice so that principles that are generated as a result of human deliberation and consent are yet unbiased. This condition of neutrality is created by bracketing out all contingent particularities, ones that are irrelevant or counterproductive to justice, and only those conditions are left behind - rationality, moral agency, individualism - that are useful in creating universally applicable principles of justice. Rawls' achievement here is a product of proceduralism; by constructing a fair procedure, the fairness of the outcome is also guaranteed. In such a state of neutrality, Rawls argues, a liberal conception of justice that guarantees equal basic rights and liberties to all humans will be chosen, since it is this conception that will enable humans to secure their liberties and fully actualize their moral powers. The conditions in the original position Rawls refers to as "higher order interests", which contribute to the development of participants' moral powers. In this way, Rawls argues, participants are able to maintain the conditions of neutrality since they do not favour one conception of the good over another.

In *Political Liberalism* Rawls endorses neutrality explicitly by stating that "the state is not to do anything intended to favour or promote any particular comprehensive [religious, philosophical, or moral] doctrine rather than another, or to give greater assistance to those who

pursue it” (Rawls, 2005, p. 193). Here Rawls is endorsing neutrality of intent rather than neutrality of effect. Neutrality of effect, he argues, is neither achievable nor desirable. Instead, he argues in favour of neutrality of intent, which is arrived at and maintained by not favouring any one particular kind of substantive or comprehensive doctrine. This enables Rawls to generate a conception of justice that does not discriminate against certain conceptions of the good by favouring some and not others. For Rawls, neutrality facilitated by reasonableness achieves fairness.

Rawls’ commitment to neutrality is reiterated in his idea of the political that supports what he calls “duty of civility” (Rawls, 2005, p. 217). The idea of the political appears in many places including a political conception of the person, the political idea of justice, political principles, political liberalism. In all these instances, Rawls uses the term “political” to distinguish his theory and proposals from substantive, moral, religious, philosophical and other contingency-ridden comprehensive views. By focusing on the political realm, and by thinning out conceptions to include only liberal ideas and neutral ideas, Rawls secures the domain of the political to justify his theory. However, included in the Rawlsian realm of the ‘political’ are several particular ideas, such as well-ordered societies, constitutional essentials, contractarian commitments, liberal individualism, separation of Church and state, and reasonableness, among others, that are not as universally applicable as Rawls supposes and yet are crucial elements of his theory of justice. These suppositions about neutrality hold Rawls’ system together and are central to ensuring the success of his justice- and diversity-related mechanisms.

In what follows, I show that these elements contain substantive commitments and pose contrary situations for Indigenous groups.

## **Critique of Rawlsian Neutrality**

### ***Speciesist Bias***

Rawls does not directly include animals within the scope of a theory of justice; not as deliberating agents in the original position, not as recipients of justice, nor as citizens in a well-ordered society. They are considered only as “problems of extension” of justice to whom the principles of justice do not apply (Rawls, 2005, p.21). In light of this, several theorists of environmental ethics set out to rectify Rawls’ theory by attempting to include the concerns about (some) nonhuman animals and the rest of nature within the scope of justice as fairness. My aim in considering these arguments at this point is twofold: first, to see if it will become possible to include Indigenous concerns once environmental considerations are inserted into the structure of justice as fairness, and, second, to see if nonhuman animals themselves can be placed in the original position as deliberating parties, in which case Rawls’ idea of agency might have expanded enough to include Indigenous forms of rooted relational selves. Given that environmental concerns are one domain of (some) overlap between Indigenous and non-Indigenous lifeways, this would be a good place to start to find some reconciliation. I will argue that neither of the above-stated options are tenable within Rawls’ system, so that it cannot withstand the critique I am posing simply by including within its scope obligations towards nonhuman beings.

One proposal to allow for environmental commitments into Rawls’ system is to make room for them through primary goods. Russ Manning (1981) suggests that health be regarded as one of the social primary goods in society. Manning reasons that, in an immediate sense, the environment has an impact on primary goods like health and opportunity. In a more long-term sense, he argues in support of increasing structural considerations for future generations since

future generations have an “equal right” to natural resources and this requires us to be able to address delayed environmental impact. In doing so, Manning is departing from Rawls by including health as a social primary good rather than as a natural primary good. Rawls describes primary goods as those things that any rational person will want independently of whatever else they might want. Manning’s point is that health is, at least in part, under human control. He refers to resource consumption and resource pollution as domains where human activity directly affects health. But there are also aspects of health, as Rawls seems to think, that are outside of the scope of human control; they are natural contingencies and therefore not constitutional essentials of justice. While the effects to which Manning is referring are direct, they are not localized and hence are harder to delineate so as to be included within the scope of Rawlsian justice.

Another line of argumentation involves altering Rawls’ original position and revising his contractarian commitments. Pritchard and Robison (1981) argue that the principles of justice conflict with the duties of “compassion and humanity” that Rawls assigns for animals (TJ, p. 448). Moral agents who are rationally self-interested, and deliberate independently of any moral or substantive values, cannot also abide by duties of compassion and humanity for animals because they can view animals only as resources: “Since those who can take part [in the original position] are presumed to be exclusively self-interested, they cannot consider the interests of nonparticipants except insofar as it is in their self-interest to do so. But they are choosing under conditions of moderate scarcity and cannot therefore treat animals, for example, in any other way than as resources” (Pritchard & Robison, 1981, p. 57). They suggest, in line with Peter Wenz, that to rectify Rawls’ initial situation he could “lower” or “thicken” the veil of ignorance such that once the veil is lifted, participants might turn out to be animals (Pritchard & Robison, 1981;

Wenz, 1988). Donald VanDeVeer (1979) and Brent Singer (1988) arrive at a similar suggestion for the original position but from the view of marginal cases. They argue that if “encephalic infants, Tay-Sachs children, and serious psychotics”, can be included in the original position then so can several nonhuman animals. In his analysis Singer notes that the original position is biased in favour of humans from the very start, since by excluding animals from the original position and from the scope of justice Rawls’ theory “prejudices the question of the just treatment of animals from the outset” (VanDeVeer, 1979, p. 369). Thus, it can be said that Rawls’ original position has a speciesist bias, since once the veil is lifted all agents turn out to belong to the same species: humans. A speciesist bias makes the veil of ignorance non-neutral and weakens the universal applicability of the principles that emerge from it.

Ultimately, the suggestion to lower or thicken the veil of ignorance is a sincere yet unsuccessful attempt at making Rawls’ theory of justice more friendly towards environmental ethics and nonhuman animals. Responding to Wenz’ argument about thickening the veil of ignorance, Robert Garner (2013) states that it cannot be done coherently from within a strictly contract tradition. He argues that thickening the veil to include nonhuman animals (or people from future generations) as agents of deliberation in the original position or lowering the veil to eliminate the speciesist bias is untenable because nonhuman animals cannot fulfil the conditions of Rawlsian moral persons and cannot be meaningfully included in the original position; and ultimately, they cannot carry out the contract in a meaningful way. Garner classifies as “wishful thinking” those views which argue that humans will advocate for justice and the right treatment of animals once the veil is lifted (Garner, 2013, p. 43). He points out that altruistic attitudes do not carry the same weight as the actions that emerge from the principles of justice.

Contra Garner, Mark Rowlands (1997) argues that several strands of contractarian theory, including that of Rawls, are able to withstand objections and provide protections for animals. Rowlands takes on a central critique of contractarianism; namely, that the theory fails to provide justice and protections for animals because animals are not rational agents. In response, he presents a revised understanding of the contract theory and argues that while only rational agents are part of the deliberations which generate principles of justice, that does not limit the scope of application of those principles to rational agents alone. Rowlands locates within Rawls' work what he calls the "intuitive equality argument", which states that "if a property is underserved in the sense that its possessor has done nothing to merit its possession, then its possessor is not morally entitled to whatever benefits accrue from that possession. Possession of the property is a morally arbitrary matter, and, therefore, cannot be used to determine the moral entitlements of its possessor" (Rowlands, 1997, pp. 238-9). On this basis Rowlands argues that logically there is nothing within Rawls' system which necessitates that only rational agents will be the benefactors of the principles of justice: "there is no reason to think that the bearers of the rights derivable from the original position are restricted to rational agents" (Rowlands, 1997, pp. 242). Rowlands emphasizes that while Rawlsian contractarian commitments cement the structure for rational agents, the intuitive equality argument that supports his liberty principle allows for non-rational agents to come under the scope of the principles of justice. But Rowlands' argument still leaves unanswered how principles that are conceived of in entirely human terms can be applied to animals whose interests, even if equally important, are determined differently than human ones. Since the concerns for nonhuman beings are not included within the original position, only an instrumental view of nature is operative, and that is the framework within which principles of justice will apply to animals. In this way, animals are seen as recipients of justice but are still

seen primarily as resources for humans, and justice applies to them within the scope of that larger instrumentalist view. In response to this line of argumentation, Ruth Abbey (2007), in accordance with Rawls, argues in favour of looking outside the scope of justice to address the concerns of nonhuman animals, suggesting that moral, not political, doctrines are better suited for this task. She shows that while both *A Theory of Justice* and *Political Liberalism* have resources for the welfare of nonhuman animals, Rawls provides stronger normative devices in *A Theory of Justice* which can be developed to arrive at a proper set of duties towards nonhuman animals.

Wenz raises an important objection, when exploring the possibility of thickening the veil of ignorance to include nonhuman agents and future generations. He asks whether the veil can be thickened to include “the rest of nature - animal species (as opposed to individual animals), plants, plant species, rivers, mountains, lakes, oceans, and the like” (Wenz, 1988, p. 249). Wenz argues that the considerations here are different from those that concern nonhuman animals because the latter, unlike plants and species, “have emotions” (Wenz, p. 250). He says: “I can make sense of the question, ‘How would I feel if I were a calf living my entire life in extreme confinement?’ I cannot similarly make sense of the question, ‘How would I feel if I were a mountain, river or ocean?’” (Wenz, p. 250). In response to this question, Rowlands suggests that rational agents in the original position will not consider the ‘rest of nature’ in their deliberations. They will only care about nonhuman animals since “we know what it is like to be them”, whereas “plants or cars” are not sentient (Rowlands, 1997, p. 246). Daniel Thero (1995) responds to Wenz’ critique by arguing that the exclusion of the ‘rest of nature’ from Rawls’ theory is not a fatal flaw, since one cannot meaningfully consider what it means to be a plant or even a “lower animal such as a mollusk” (Thero, 1995, p. 100).

My aim in reviewing the debate above was to see if Indigenous concerns could ride on environmental concerns to be included within the scope of justice. However, I have shown in my analysis that, due to the speciesist bias in Rawls' theory, the concerns of nonhuman animals and the rest of nature cannot be included within the scope of justice as fairness. No amount of tweaking or modifying the original position can allow for the structural inclusion of obligations towards nonhuman animals in this model. My attempt here is simply to find any possible common ground between the scope of Rawls' liberal justice and Indigenous lifeways, while maintaining an ontological distinction between environmental concerns and Indigenous concerns. I juxtapose the environmentalists' debate with Indigenous lifeways to point to the contrasting ways in which the understanding and presence of nonhuman beings is theorized for the purposes of the political sphere. Rawls' oversight in matters of justice concerning the nonhuman world and Wenz' and Rowlands' debate above are revealing in equal measure of the strong metaphysical views that guide liberal theory in matters of human ecology. It is irrelevant (for Rawls) and beyond the imagination (for scholars like Wenz and Rowlands, for instance) to even fathom what it could mean to consider the sentience and interests of the 'rest of nature' as agents. In Indigenous lifeways, by contrast, the agency of nonhuman beings is central to all aspects of their socio-economic and political life. As I will argue later on in this chapter, there are several structural barriers arising from Rawlsian liberal justice that are incompatible with Indigenous ontologies.

### ***“Problems of Extension” and structural incompatibilities***

Rawls mentions four “problems of extensions” as matters that are important to society but that “do not fall within the scope of justice as fairness as a political conception” (Rawls, 2005, p. 21). These cover duties to a) future generations, b) law of peoples and international law c) those

who do not meet the criteria of citizens and d) animals and the rest of nature (Rawls, 2005, pp. 20-1). In what follows, I elaborate on each of the themes in relation to Indigenous ideas of agency, citizenship, society, Natural Law, and obligations to future generations. I will show that these elements are integral to the structure and ontology of Indigenous lifeways and are not merely “problems of extension” that can be dealt with after justice has been arrived at. Most importantly, Rawls’ conception of neutrality and his liberal commitments lead to structural incompatibilities in these areas for Indigenous Peoples, thereby either marginalizing or excluding their presence and participation in the public sphere. I conclude this section by pointing out that Rawls’ commitments to the contract theory tradition form the basis for his being able to separate out matters of justice that are fundamental, versus ones that are considered as “problems of extension”.

**Indigenous Natural Law and Constitutional Essentials.** Rawls’ instrumental view of nature is a non-neutral commitment in his theory. The ways in which Rawls refers to nature as a set of resources to be mined and extracted for human use suggests that he is operating with a particular, substantive view of nature, where it is understood mainly as a collection of resources “to further the good of ourselves” (Rawls, 2005, p. 245). All the reasons Rawls provides for protecting nature are anthropocentric in that they are geared towards advancing human life and interests.<sup>20</sup> Rawls also points out that this view “has been the traditional view of Christian ages” denoting clearly that his view of nature is not entirely neutral in that it originates from, or is

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<sup>20</sup> Rawls states: “Animals and nature are seen as subject to our use and wont. This has the virtue of clarity and yields some kind of answer. There are numerous political values here to invoke: to further the good of ourselves and future generations by preserving the natural order and its life-sustaining properties; to foster species of animals and plants for the sake of biological and medical knowledge with its potential applications to human health; to protect the beauties of nature for purposes of public recreation and the pleasures of a deeper understanding of the world. The appeal to values of this kind gives what many have found a reasonable answer to the status of animals and the rest of nature” (Rawls, 2005, p. 245).

supported by, a particular religious (Christian) view of the world (Rawls, 2005, p. 245). Rawls cites Keith Thomas' *Man and the Natural World* (1984) in support of his view and suggests that following Thomas would be the most mainstream approach to the problem of animals and the rest of nature. Thomas' work traces the transformation of a purely anthropocentric attitude towards nature to one that is less so, but still within the confines of a framework that is unable to anticipate or accommodate Indigenous attitudes towards nature. Thomas links stewardship of nature to ideas of a Christian God. The extent of the "non-anthropocentric" ideas detailed in his work relate to the preservation of nature for its beauty and aesthetic enjoyment, which arguably still falls within anthropocentrism.

Rawls' commitment to an instrumental view of nature gives rise to structural incompatibilities between his theory and Indigenous lifeways on matters of constitutional essentials. For Rawls, the idea of nature is not a constitutional essential: "the status of the natural world and our proper relation to it is not a constitutional essential or a basic question of justice...It is a matter in regard to which citizens can vote their *nonpolitical* values and try to convince other citizens accordingly" (Rawls, 2005, p. 246, emphasis added). However, not all societies live on the premise that there is a strict separation between the natural and political realms. For FNMI nations, one's obligations to the natural world are at the forefront of their political life, and these obligations are laid out in Natural Law. Natural Law is the constitution of Indigenous nations and is the source of all political obligations; primary among them are one's responsibilities towards all natural entities. Natural Law dictates that all beings have agency, are

interrelated<sup>21</sup> and interdependent<sup>22</sup>; that animals, plants, birds, fish, insects, and humans are each their own self-governing sovereign nations<sup>23</sup>; that all beings, human and nonhuman, are created equal<sup>24</sup> and human nations need to co-exist alongside their nonhuman kin; that obligations stated in treaties and covenants must be honoured; that the principles of respect, responsibility, and reciprocity across nations are vital to maintaining equitable and just relations with human and nonhuman others<sup>25</sup>, that harvest cycles must be followed and respected<sup>26</sup>; that relationships with ancestors should be maintained<sup>27</sup> and the world preserved for future generations<sup>28</sup>. These

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<sup>21</sup> Vine Deloria Jr. highlights this point: “everything in the natural world has relationships with every other thing and the total set of relationships makes up the natural world as we experience it” (Deloria, 1999, p. 34).

<sup>22</sup> Gregory Cajete (2000) states that laws of interdependence, taken together, form native science. Referring to *mitakuye oyasin* the Lakota idea that “we are all related”, Cajete emphasizes that all Indigenous knowledge arises from, and all Indigenous action takes place within a context of interrelatedness, which is of prime importance. (Cajete, 2000, p. 86). This interconnectedness forms the basis of relationships that are to be maintained by all beings, human and nonhuman alike.

<sup>23</sup> Mohawk (1988) explains that in Indigenous societies nonhuman animals are viewed as sovereign nations and should be related to as such. Nonhuman animals, much like human beings, have the capacity and desire to organize themselves into intricately ordered societies, and act on their desire to interact (or not) with human societies, based on their will and agency.

<sup>24</sup> Kimmerer (2013) highlights the egalitarianism contained in Natural Law. The idea is that Natural Law’s jurisdiction includes all living beings, and all beings are provided for equally under this Law. Kimmerer points out that all living beings “eat from the same bowl”, meaning that each living being dips into the same set of resources to survive and has an equal right to those resources. Summarizing Kimmerer’s view, Awāsis states: “When the bowl reaches me in the circle, I look to my relations and may only take a single berry or small handful to ensure everyone in the circle can have an equal share” (Awāsis, 2021, p. 2).

<sup>25</sup> Article 1.8 of the Anishinaabe constitution states: “Our Territories’ refers to the fire, water, earth, and wind of the inherent, traditional, treaty, and unceded lands of those First Nations identifying as the Anishinabek Nation” (Anishinabek Nation Governance Agreement Information Package).

<sup>26</sup> Sākihitoiwān Awāsis (2020) highlights the governance structures, principles, and guidelines enshrined in Natural Law. She talks especially about *Gwaabaw* the Anishinaabe principle of harvesting that is derived from Natural Law that guides an understanding of harvesting and informs the structure of decision-making in society. She also mentions *Dodemiwan* or clan governance which is a bottom-up, consensus based, leadership model that emerges directly out of Natural Law: “Actively involving nonhumans in decision making and the co-production of knowledge involves broadening what is predominantly understood as a legitimate form of knowledge. Anishinaabe knowledge provides powerful ways of living that situate how humans can relate to energy sources in a sentient landscape and expands human notions of justice to include the rights, responsibilities, and reciprocal relationships of nonhuman beings” (Awāsis, 2021, p. 20).

<sup>27</sup> The Preamble to the Anishinaabe Constitution states: “Whereas, we, the Peoples of *Deshkan Zībīing Anishinaabe Aki* honour our Ancestors’ strength, guidance and inspiration to connect with *Mino Bimaadaziwin*” (Anishinabek Nation Governance Agreement Information Package).

<sup>28</sup> The preamble to the Anishinaabe constitution states: “Whereas, we, the Peoples of *Deshkan Zībīing Anishinaabe Aki* have inherent rights to our land, our water, our culture, our language, our traditions and the responsibility to preserve our inherent rights for future generations” (Anishinabek Nation Governance Agreement Information Package). Deborah McGregor (2021) highlights this point in her work stating the significance of abiding by harvesting principles in order to uphold one’s contributions to future generations.

principles and values collectively form constitutional essentials in Indigenous societies<sup>29</sup>. Matters of justice and public political life are adjudicated on their basis. LaDuke highlights the fact that Natural Law is supreme: “Indigenous, land-based societies fundamentally understand that all life is accountable to natural law: cycles are natural, and reciprocity - the balance of taking and giving - is essential to maintain the equilibrium of humans with the environment...Laws made by nations, states, provinces, and cities are subject to this supreme law” (LaDuke, 2010). It overrides other political and social laws established in the course of governance<sup>30</sup>, in much the same way that constitutions in non-Indigenous governance systems would have the power to override provincial or state laws.

Anishinaabe legal scholar John Borrows elaborates on how Natural Law forms the foundation of the domain of Indigenous law. He states that Natural Law, in addition to Sacred Law, is a collection of “positivistic proclamations, deliberative practices, and customs” and forms one of the many sources of Indigenous law (Borrows, 2010a, p. 24). Borrows highlights the ecological foundation that delivers political principles in Natural Law:

Law in this vein can be seen to flow from the consequences of creation or the ‘natural’ world or environment. Indigenous Peoples who practise this form of law might watch how a plant interacts with an insect, and draw legal principles from that experience.

Others may study how an insect interrelates with a bird, and take legal guidance from that

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<sup>29</sup> This stands in stark contrast with Rawlsian constitutional essentials that include a set of basic individual rights and liberties, and the provisions for a democratic society requiring independent legislative, executive, and judiciary bodies; and actively excludes human obligations to the natural environment.

<sup>30</sup> Article 1.1 of the Anishinaabe constitution states that it is the “Supreme Law”. Article 1.3 states: “In the event of a conflict or inconsistency between this *Chi-Inaakonigewin* and any law, by-law, policy, regulation or code enacted by *Deshkan Zibiing Anishinaabe Aki*, *Chi-Inaakonigewin* [the Anishinaabe Constitution] shall prevail”. Article 1.4 reiterates this point: “All other *Deshkan Zibiing Anishinaabe Aki* laws, by-laws, policies, regulations or codes are subject to this *Chi-Inaakonigewin*” (Anishinabek Nation Governance Agreement Information Package).

encounter. Some might examine how a certain bird relates to an animal or another bird and see standards for judgment in this relationship. There might also be analogies drawn from the behaviours of watersheds, rivers, mountains, valleys, meadows or shorelines to guide legal actions. As such, these laws may be regarded as *literally being written on the earth*. (Borrows 2010a, p. 28-9, emphasis added).

Borrows' work is significant because it points to the ontological nature of the relationship between the natural environment, law, and political obligation. Indigenous Peoples' relationship with the land is not an environmental concern or a cultural practice, rather it is an ontological element of their being and their way of life<sup>31</sup>.

Thus, for Indigenous nations the status of the natural world and their proper relation to it is not only within the scope of their public political life, but is foundational to it. Indigenous Peoples' obligations to their natural environment are a matter of constitutional essentials. Rawls' theory assumes that there are no peoples for whom the realm of the natural and the realm of the political overlap, not as a matter of culture but as a matter of ontology. In so doing, he inadvertently propagates a colonial attitude that reiterates the erasure of Indigenous lifeways in the public sphere. Within the terms of Rawls' argument, Indigenous Peoples would receive the principles of justice in a well-ordered society and utilize them (and other liberal political infrastructure) to make their case, through deliberation and negotiation, to convince others of the importance of their relationship to the natural world, and as a result of those deliberations arrive at means to support their lifeways. On Rawls' view, the political principles that Indigenous Peoples derive from Natural Law would be seen as components of a comprehensive cultural or

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<sup>31</sup> For a detailed analysis on the cosmological and ontological differences between environmental ethics and Indigenous lifeways, see Deborah McGregor (2021, 2016,) and Kyle Whyte (2021, 2020, 2018).

religious doctrine, which require justification in the ‘non-political’ domain. But Indigenous kinship and obligations to their more-than-human kin are political values that structure what it means to be a person and a citizen. They are not a matter of ‘culture’ that can be separated from politics; they determine what counts as a fully functioning agent in Indigenous society. In addition, comparison with this Indigenous view shows Rawls’ own argument to be a comprehensive doctrine. What Rawls considers as neutral, mainstream, and universalizable precepts are actually culturally and religiously substantive ones, supported by anthropocentric commitments and tenets compatible with a Christian understanding of the world. Rawls’ argument creates an unfair burden on Indigenous Peoples to justify their ways of life, whereas his own position, which is far from neutral, is taken to be the “default” or “mainstream” view. It is important to note that these substantive ideas have been universalized through unjust projects of colonization and imperialism, rendering them as mainstream views in certain parts of the world and as “neutral” elements of Rawls’ theory. This oversight on Rawls’ part leads to structural injustice that prevents Indigenous Peoples from showing up as rooted relational selves in the public sphere. The inequity, internal to Rawls’ theory, needs to be addressed in a structural manner; that is, the structure of a theory of justice needs to be revised to suit all peoples, rather than insisting on a more thorough application of liberal principles on nonliberal lifeways. Otherwise, the burden would continue to fall disproportionately on Indigenous Peoples, who are faced with a dilemma to either “fit in” (i.e. to become liberalized or assimilated) or continue to be marginalized and remain underrepresented in the political sphere. In either case, the very integrity of Indigenous selves and their basic interests such as right to life are compromised, which on Rawls’ own terms is unjust.

**Agency.** In what follows I identify further structural incompatibilities between justice as fairness and Indigenous lifeways in the areas of agency, citizenship, and idea of society. In Rawls' original position, the moral agency relevant for justice is contained in two things: a person's capacity for having a conception of the good and a sense of justice. A conception of the good is evidenced by one's capacity to form and revise their rational life plans. A sense of justice consists in having a general idea about things that are just and unjust and being able to support these intuitions with reasons. It includes the idea of reciprocity: there is a general motivation to act according to these reasons and expect the same of others. One's motivations for abiding by justice are reasonable in that the expectation is that others, too, are willing to abide by the principles of justice. Within Rawls's conception of justice as fairness, all deliberating parties in the original position and citizens in a well-ordered society are human beings. Consequently, the principles of justice arrived at will apply to humans alone; for dealing with the concerns of nonhuman animals Rawls suggests that we turn to "duties of compassion" (Rawls, 1999, p. 448). Justice as fairness does not apply to nonhuman beings and the rest of nature.

As noted in Chapter 1, however, Indigenous agency consists in locality, a ubiquitous, reciprocal, and enduring relationship with land<sup>32</sup>. Here, land is understood in its widest sense of a community of human and other-than-human beings, intricately woven in a web of interrelated obligations and privileges. One's relationship to land is constitutive of Indigenous personal identity; the conceptual and material integrity of the person is held together by this relationship to land. Burkhart says: "Native culture and Native nationhood, as concepts that float free from

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<sup>32</sup> Speaking of an Indigenous idea of human agency as originating in the land, Burkhart says: "Human beings are not generic delocalized phenomena that can be understood through universal ideas of human health any more than sand paintings are just artistic expressions in sand. Human beings are originary and continual manifestations in locality or out of the land" (Burkhart, 2019, p. 131).

the land, have political and normative features that are not always functions of lived Indigenous experience as rooted and localized in the land. My effort to...work through the layers of my identity...must follow the physical and conceptual layering of my locality and its geography and history” (Burkhart, 2019, p. xii). Therefore, being an Indigenous moral agent means having a relationship to land and being committed to the reciprocal privileges and obligations that arise from locality. As noted in Chapter 1, this relationship to land implies that more-than-human beings have agency, and that ideas of rationality, dignity, and worthiness are not limited to the human realm alone. On both these counts, Indigenous agency is incompatible with the Rawlsian idea of a moral agency. In the original position, Indigenous agents cannot participate in deliberations without becoming structurally disintegrated. As noted above, matters pertaining to the environment and considerations about animals and the rest of nature cannot be inserted into Rawls’ original position. For this reason, Indigenous agents will need to check their locality - their relationship to land, their obligations to nonhuman animals and the rest of nature - at the door, although doing so threatens the very integrity of their personhood and their personal identity. An Indigenous self cannot and does not exist outside of their relationship to land. Locality gives substance to the self and sustains it in community. This holds true for human and nonhuman beings. Nonhuman animals, plants, rocks, rivers, and trees are viewed as being born into a web of relationships and obligations, and each of these beings belongs and acts out of their locality within society.

Thus, Rawls’ conception of the political person does not have room to accommodate an *Indigenous* person, a rooted relational self. From a liberal viewpoint, buttressed by a Christian/Abrahamic view of the world, relationships with nonhumans are placed outside the realm of justice; they are either cultural or religious views that can be separated from the

‘political’ idea of the person. But this is not a universal or a universalizable understanding of the self; and, within a Rawlsian framework, it only works to limit the participation of Indigenous agents in deliberations designed to arrive at the principles of justice. Indigenous agents are at the receiving end of structural injustice in this way, since they are required to omit a central structure of their self - namely, their relationship to land - in order to participate in the original position. As noted above, this requirement is also lopsided, in that non-Indigenous deliberating agents would not need to omit such integral elements of their identity to participate in the original position.

**Citizenship.** What are the options for Indigenous Peoples once the veil is lifted and they are placed in a well-ordered society? As I have argued, injustice has already been committed at the starting point, since those following Indigenous lifeways are not accepted as agents in constructing the principles of justice but will now need to be “accommodated” within the framework. This in itself is problematic because there is nothing inherently unjust about the structure or substance of Indigenous societies that justifies their exclusion from deliberations to arrive at the principles of justice. However, for the sake of argument, if we grant Rawls that exclusion, then we can ask what options Indigenous Peoples might have nonetheless to live as equals in a well-ordered society. These structural incompatibilities remain when the veil is lifted, and one confronts the scope of citizenship in a well-ordered society. For Rawls, citizens are free and equal, and reasonable and rational. Citizens are free in that they are not enslaved, are able to form and revise their rational life plans, are able to make claims on social institutions in their own right and are able to maintain their social status without being dependent on others for it. Most importantly for my analysis, citizens are free in that they are able to have public/political identities that are independent of their comprehensive doctrines. The political rights and liberties of citizens are maintained as is throughout any modifications and transitions that may occur in

their comprehensive doctrines. Rawls has designed the system as such to suit the dynamic nature of human societies and to protect the freedoms of citizens, ensuring that such protections are enduring. But his design presupposes that ‘political’ identities can be separated or disconnected from ‘comprehensive’ identities to become relevant for matters of justice. This poses a structural difficulty for Indigenous citizenship. Indigenous kinship, based on the ontological priority of relationships, determines the structure and scope of Indigenous citizenship. Borrows suggests that human citizens should think of themselves “as an ally with the fish and the birds and the trees. We are citizens together because we are part of a community that is mutually participatory” (Borrows, 2020). Kinship, understood as a web of intricately intertwined relationships, grounds this idea of citizenship. In such a view, agents are born into a web of relationships, obligations, responsibilities, and privileges which determine their personal identity, national/tribal membership, and social location. Simpson highlights the fact that inter-relationality with the more-than-human world defines the scope of Anishinaabe citizenry and the political domain. Primary duties as an Anishinaabe citizen include learning about and maintaining relationships with animal nations and the territory (Simpson, 2008, p. 33). To this Kimmerer adds the importance of plant nations as citizens. Providing the examples of moss, tobacco, sweetgrass, and maple trees called “the standing people”, she outlines the various ways in which they make contributions to humans and non-humans in society throughout the year and outlines the respect-responsibility-reciprocity that guides interactions and relationships with them (Kimmerer, 2013, p. 168). On the basis of plant nations’ contributions to society, their agency, and their embeddedness, Kimmerer shows that they are Anishinaabe citizens alongside humans and nonhuman animals (Kimmerer, pp. 163-174). As citizens, animal and plant nations are subjects and recipients of justice. The interests of nonhuman beings are taken into account while arriving

at principles of Indigenous justice; the definition and scope of respect, responsibility, and reciprocity are defined in terms that include both human and nonhuman beings. In this way, both in terms of defining and arriving at the principles of Indigenous justice, as well as implementing them to include the scope of nonhuman animals, the interests of both human and nonhuman beings play an equally important role in an Indigenous conception of justice as healing<sup>33</sup>. For Indigenous lifeways, human and non-human beings are on equal footing as citizens of a society.

Indigenous citizens, as described in the Anishinaabe examples above, are committed to maintaining their reciprocal relationships with their nonhuman others. This aspect of their citizenship is not apart from their social, economic, or political sphere or from their conception of justice; it is a structural element internal to the idea of what it means to be a citizen. An Indigenous citizen is born into these obligations and responsibilities and in this sense is not “free” in the way that Rawls requires citizens to be. For Indigenous citizens to not uphold their obligations to animal and plant nations means to be incomplete, inadequate, and unjust citizens. This way of operating in the political sphere would render Indigenous Peoples as “unfree” in Rawlsian terms, since Indigenous Peoples do not have separate or separable political and comprehensive identities. The idea that personhood and citizenship would apply equally to nonhuman animals and plants is also structurally untenable in Rawls’ contractarian theory of justice. Here, Indigenous Peoples face a dilemma about their freedom: either they are regarded as unfree for living in accordance with their Indigenous lifeways, or they are rendered unfree by being required to untether their ideas of political personhood and citizenship in a society governed by a liberal idea of justice. In either case, Indigenous agents end up being unfree.

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<sup>33</sup> For more on the Indigenous idea of justice as healing, see Wanda McCaslin (2005) *Justice as Healing Indigenous Ways*.

**Society.** Indigenous societies are multi-species and constitute a set of treaties and covenants that exist between human and non-human communities. Indigenous ideas of agency and kinship ground the sovereign status of nonhuman animal and plant nations, who are entitled to their own set of rights, responsibilities, and privileges. Elaborating on this view within Anishinaabe lifeways, Simpson states:

Animal clans [meaning nonhuman animals themselves] were highly respected and were seen as self-determining, political ‘nations’ (at least in an Indigenous sense) to whom the Nishnaabeg had negotiated, ritualized, formal relationships that required maintenance through an ongoing relationship...Moreover, traditional Nishnaabeg political culture was based on our clan system and also reflected our basic ethics and philosophy for living. (Simpson, 2008, p. 33)

Here, society is not a system of mutual cooperation geared towards human flourishing, but a system geared towards the co-existence of all natural entities. Political infrastructure is established to inform and guide humans’ capacity to co-exist alongside their more-than-human kin.

On this schema, both human and nonhuman nations have an equal right to exist, and there is no default priority of human needs in society. Society is understood as a network of treaties between human and nonhuman nations, passed down through oral traditions. These treaties are formulated based on TEKW and are maintained through story, song, and ceremony. Political and juridical infrastructure is geared towards enabling different nations to achieve their goal of coexistence. To maintain these treaties means to be a citizen in good standing<sup>34</sup>. The triad of

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<sup>34</sup> Wawatie (2013) expands on this conception in his teaching.

respect-responsibility-reciprocity is at play here to determine right conduct in society, and to distinguish just acts from unjust ones. Deloria Jr. points out that acting in a respectful way, in part, means to abide by one's covenants made to other nations (Deloria, 1999). Failing to do so means to act disrespectfully, weakening societal relations, which results in injustice. Similarly, Kimmerer elaborates on how the principles of responsibility and reciprocity are codified in the framework of Honourable Harvest. To act according to this framework means to act in responsible and reciprocal ways. To act otherwise, she says, results in an enactment of injustice, since it breaks the promises made to others on how one is expected to conduct themselves in society (Kimmerer, 2013, pp. 175-201).

This stands in sharp contrast to Rawls' conception of society defined as a system of mutual cooperation and flourishing, viewed entirely in human and 'rational' terms. For Rawls, society is a "more or less self-sufficient association of persons" who abide by an agreed set of rules designed to advance the good of the persons involved (Rawls, 1999, p.4). In order to ensure an appropriate and fair distribution of the benefits and burdens of social cooperation, Rawls suggests applying principles of social justice to the basic institutions of society. But because this is a society composed exclusively of human beings, if Indigenous Peoples insist on their multi-species conception of society, they run the risk of being marginalized and labelled as "un-cooperating" or "illiberal" members. Once again, they will either need to be liberalized to align with Rawls' framework or they would be recipients of "special accommodations" or "toleration" attempting to bridge the gap from a liberal standpoint. In either case, they would have limited scope of participation in the public sphere. In all public political conversations and negotiations, they would need to clarify, in each instance, that their idea of society is multi-species. This would put Indigenous Peoples on guard; they would need to employ this reasoning in every single

instance where Indigenous non- anthropocentrism comes in contact with liberal anthropocentrism. This will lead to epistemic injustice and the marginalization of Indigenous Peoples as second-tier citizens who require “accommodations”, when in fact there is no moral or deliberate fault on their part, only a structural incompatibility between a liberal “mainstream” understanding and Indigenous conception of society.

**Obligations to Future Generations.** The structures, foundations and purposes of obligations towards future generations in liberal and Indigenous thoughts are different and, I will argue, incompatible. For Rawls, matters concerning justice between generations are guided by what he calls the “just savings” principle, instituted in the original position to inform deliberations about the amount of resources that should be saved up and passed on to future generations (Rawls, 1999, pp. 251-9). Rawls conceives of this principle in almost entirely economic terms, considering the relationship between wealth accumulation, taxation, and interactions with private markets to deliver a framework of savings that can be considered fair across generations. The purpose of the just savings principle is not the accumulation of wealth but the independent and continued functioning of the basic structure of society: “Justice does not require that early generations save so that later ones are simply more wealthy. Saving is demanded as a condition of bringing about the full realization of just institutions and the equal liberties” (Rawls, 1999, p 257). In this way, obligations to future generations are geared towards maximizing the reach and efficacy of the principles of justice, and this obligation is calculated primarily in economic terms.

In Indigenous thought and practice, obligations to future generations are embedded in an entirely different set of values and principles, since the very conceptions of self and community are multigenerational. Leech Lake Band Ojibwe Elder Mary Lyons says: “When we talk about land, land is part of who we are. It’s a mixture of our blood, our past, our current, and our future.

We carry our ancestors in us, and they're around us" (quoted in Lynch, 2024). In Haudenosaunee thought, the implications are enshrined in the 'Seventh Generation Principle' which states that "in each deliberation we must consider the impact of our decisions on the next seven generations" (quoted in Graham, 2008, p. 47). The Seventh Generation Principle plays a crucial role in regulating all matters of Haudenosaunee life, including the realms of justice, governance, policy, spirituality, commerce, and culture. It informs the construction of their basic structure of society (to use a Rawlsian phrase) and is reflected in their clan system, extended family system, decision-making through consensus, socio-political division of labour, family structure, and survival (Simpson, 2014). Oren Lyons states that this principle "installs in government the idea of accountability to future life and responsibility to the seventh generation to come" (quoted in Graham, p. 47). Anishinaabe nations have similar manifestations of this principle. Wawatie (2013) states that the very purpose of setting up a structure of governance is to help maintain the status of the earth and of all existence so that it can be passed on to future generations. All political, social, and economic systems, responsibilities, and obligations are structured to meet this goal using Indigenous science, TEKW, ceremonies, and oral traditions. Here, the world is thought of as being borrowed from future generations.

Linda Clarkson and Vern Morrisette, authors of the report on 'Our Responsibility to The Seventh Generation' note that the seventh generation principle "tells us that what we do today will affect the seventh generation and because of this we must bear in mind our responsibility to them today and always...The investment we make is not measured in dollars or in material wealth, it is measured in terms of our ability to insure that what is here for us today is here for our children and our children's children tomorrow" (Clarkson et al, 1992, p. 24). This quote highlights the importance of not measuring the obligation in economic terms alone. Obligations

to future generations informed by the seventh generation principle are manifested in actions, guided by the frameworks such as the Honourable Harvest. Kimmerer describes Honourable Harvest as a collection of guidelines that govern one's relationships with the natural world; namely, the actions of taking, sharing, harvesting and consumption, so that: “the world might be as rich for the seventh generation as it is for our own” (Kimmerer, 2013, p.180). The principles of respect, reciprocity, and responsibility are key in maintaining one’s obligations for future generations. Making sure to use and not waste, to use in a way that does not cause harm, and only to take what is needed - these are some of the ways in which obligations to future generations are practiced every day in all aspects of Indigenous life. To act outside of these guidelines results in an enactment of injustice.

There is an overlap between this conception and of Rawls in so far as justice as fairness and Indigenous lifeways both take into consideration the interests of future generations. The difference lies, however, in priority and scope. For Rawls, it is not an ever-present obligation to think about future generations; it is one aspect of justice. But in Indigenous lifeways, it is ever present, so that imagining an Indigenous agent in the original position means giving up the priority of this principle. For Indigenous Peoples, that amounts to giving up their personal identity and membership in their community.

Even if one allows Indigenous Peoples to retain the Seventh Generation Principle in the original position, while non-Indigenous participants adhere to the just savings principle, the scope of each is different and leads to different outcomes and obligations. The Seventh Generation Principle is extensive and includes all natural entities as well as ancestors. The kinds of respectful-responsible-reciprocal obligations that thereby arise are not the same as accumulating wealth or cultural resources to ensure the independence and continuity of a basic

structure of society. Given the nature and scope of Indigenous obligations to future generations, one cannot quantify in economic terms alone what it would mean to ‘save enough’ for future generations to have access to knowledge, skills, and ontological and cultural resources so that they may lead respectful, responsible, and reciprocal lives. Rawls is preoccupied with arriving at a fair amount of “real capital” that, once accumulated, is “the good of all subsequent generations... Each passes on to the next a fair equivalent in real capital as defined by a just savings principle” (Rawls, 1999, p. 256). This way of looking at obligations to future generations does not capture the cosmological and ontological bases of Indigenous lifeways; the soft capital, strong oral traditions and education required for the sustainability of the Seventh Generation Principle.

Rawls mentions in passing, and in parenthesis that “(It should be kept in mind here that capital is not only factories and machines, and so on, but also the knowledge and culture, as well as the techniques and skills, that make possible just institutions and the fair value of liberty)” (Rawls, 1999, p. 256). He fails to elaborate, however, on what that would look like. With respect to Indigenous lifeways, how would one quantify the amount of capital required to ensure that oral traditions, or certain cultural tenets of communities, are preserved for future generations? Rawls’ just savings principle is designed to arrive at a fair calculation of what it means to ensure the longevity of the principles of justice, alongside the difference principle, so that they could continue to apply to the basic structure of society without being usurped by private financing. However, it could not address key aspects of the Seventh Generation Principle, with its holistic view of a world that includes ancestors, future generations, animals, and the rest of nature. Thus, once again, Indigenous agents in the original position either have to give up their obligations to

future generations of animals and other species or opt out of initial deliberations. In either case, they are excluded from the scope of justice as fairness.

In my analysis presented thus far, I have outlined some of the structural incompatibilities that can be identified between Rawls' justice as fairness and Indigenous lifeways. I highlighted the point that what Rawls considers as external to matters of a political conception of justice are in fact central to Indigenous lifeways leading to structural incompatibilities. I have shown that Rawls' speciesist bias has limiting effects on the lives of Indigenous agents. Most importantly, I have pointed out that ideas of agency, society, and citizenship are not freestanding political or cultural aspects of Indigenous life make up the integrity of the self, based on the ontological priority of relationships. Admittedly, Rawls recognizes that a variety of competing doctrines form part of a plural society. In *Political Liberalism*, he provides a collection of mechanisms to address the demands of diversity. He suggests the device of overlapping consensus, for example, which allows groups to attest to the political conception of justice as fairness from within their own comprehensive doctrines of the good, by limiting their reasoning, in form and in content, to the ideal of public reason. The problem is that the political conception about which they are allowed to reason is not neutral between competing comprehensive doctrines. As Ashwani Peetush writes:

the very idea that a conception of justice should only apply to the economic, social, and political domain of a society, and that this can and ought to be distinguished from the "non-political" domain, is itself a comprehensive doctrine integral to Western liberal secular society and not found in many other traditions of thought...this is a culturally

embedded view that privileges liberal secular modes of social organization (Peetush 2014, p. 157).

In a well-ordered society, varying and competing conceptions of the good are held to a Rawlsian liberal standard, but calling that standard neutral makes it invisible as a comprehensive doctrine. Comparison with Indigenous lifeways reveals its cultural specificity, its “thick” features. As I have argued, moreover, Rawls’ way of addressing “problems of extension” does not resolve the problem of the incompatibility between his, metaphysically thick, view and that of Indigenous lifeways. In extending the scope of justice as fairness to matters that are not constitutional essentials, Rawls suggests that “in each case we start from the status of adult citizens and proceed subject to certain constraints to obtain a reasonable law...We can do the same with the claims of animals and the rest of nature” (Rawls, 2005, p. 245). Here he is methodologically committed to the social contract tradition to maintain legitimacy and neutrality and replicate the process that gave him success with arriving at the principles of justice in the first place. But, just as the method of construction of justice as fairness is flawed for Indigenous agents, so is extending its scope to outside “problems” of nonhuman beings.

Rawls anticipates some of these limitations to his theory but hopes (believes) that they will not be detrimental to the structure of justice as fairness:

A correct conception of our relations to animals and to nature would seem to depend upon a theory of the natural order and our place in it. One of the tasks of metaphysics is to work out a view of the world which is suited for this purpose; it should identify and systematize the truths decisive for these questions. How far justice as fairness will have to be revised to fit into this larger theory it is impossible to say. But it seems reasonable

to hope that if it is sound as an account of justice among persons, it cannot be too far wrong when these broader relationships are taken into consideration. (Rawls, 1999, pp. 448-9)

Rawls predicts that justice as fairness would need to be revised in light of the considerations to do with human ecology but guesses that the revisions would be possible and perhaps even be minor ones. In *Political Liberalism* when talking about problems of extension, he claims that “perhaps we simply lack the ingenuity to see how the extension may proceed” (Rawls, 2005, p. 21). Here, Rawls seems to claim that justice as fairness is a structurally sound concept whose scope can be expanded on a case-by-case analysis. However, as I have tried to show in my analysis thus far, human ecology, obligations to nonhuman beings and to future generations are elements of political justice as well of Indigenous ideas of agency and selfhood. They are core elements that cannot be bracketed out for political or other considerations. The construction of the moral agent in Rawls’ original position excludes not only nonhuman beings but also human agents that have a relational identity with nonhuman beings as agents. It is hard to imagine how justice as fairness could be revised to include such agents. Rawls’s framework also excludes historically marginalized and colonized populations in ways discussed earlier, thereby doubling the forms of injustice against such communities. The considerations Rawls brackets as moral, metaphysical, unimportant, or irrelevant for core issues of justice reveal much about the conceptual and structural content of Rawls’ own biases. In what follows, I present Charles Mills’ idea of the racial contract, which is a critique of the social contract tradition and highlights racial hierarchies internal to it. I use Mills’ argument to show that Rawls’ uncritical use of the social contract tradition undermines the scope of justice as fairness and its relevance for Indigenous agents.

### *The Racial Contract*

In *The Racial Contract* (1999), Mills uncovers the racially-based power relations internal to the social contract tradition. He argues that its format and legacy are racist and that it is actually built on the exploitation and extermination of racialized people. While Mills makes brief references to other peoples of colour - Latino, Asian American, and Native American - his work focuses on black-white relations and the deliberate erasure of the former within moral and political systems designed by (and paradigmatically for) the latter. In employing his arguments, I want to show that what holds true of black-white relationships also holds true of white-Indigenous relationships and hierarchies in the public political sphere. I will argue that as black peoples are excluded from the social contract due to the racial contract, so also Indigenous Peoples and their lifeways are excluded on similar bases.

Mills states that while the social contract arises between all humans as a way to organize society, the racial contract arises between “just the people who count, the people who really are people (‘we the white people’)” (Mills, 1999, p. 3). The racial contract stands in opposition to the social contract in that the latter is a hypothesis, but the former is “global historical fact” (Mills 1999, p. 20). It has political, moral, and epistemological effects, is a historical fact and an exploitation contract. He identifies that the invasion of Indigenous lands in creating the “New World” also created a ‘subpersonhood’ of Indigenous agents who were designated as inferior in character. This idea is related to ideas about the state of nature, where colonizing peoples did not see a distinction between the “Indian” and the lands they inhabited. The colonizing population maintained a strict separation of man and nature and the superiority of man over nature. Through this lens, the “Indians” or “savages” did not count as people since they lived on the land, off the land, as one among many natural entities that were seen as part of the land. Understanding

Indigenous lifeways in this way allowed for Lockean ideas of labour and property, based on the Genesis, to justify colonizing practices in the New World (Squadrito, 1996; Arneil 1992). Mills views race as the “common conceptual denominator that gradually came to signify the respective global statuses of superiority and inferiority, privilege and subordination” and sees culture as incorporated into the racial contract to produce a hierarchy between “civilized” and “savage” populations, as well as religion (Christians vs. heathens) (Mills 1999, p. 21). All white people benefit from the racial contract, Mills states, even if they have not directly or deliberately signed it.

The racial contract embodies an “inverted epistemology”; namely, an epistemology of ignorance constituted in a deliberate misunderstanding of the world and the power hierarchies constructed on the basis of race and culture. In such a world, the racial contract constitutes “an agreement to misinterpret the world” (Mills, 1999, p. 18). This misunderstood, misrepresented, and incongruent worldview enables and sustains processes of colonization and oppression. Mills writes that this is not accidental but is deliberate and a necessary component of the racial contract “which requires a certain schedule of structured blindness and opacities in order to establish and maintain the white polity” (Mills, p.19). The racial contract creates what Mills calls a transnational white polity, “a virtual community of people linked by their citizenship in Europe at home and abroad (Europe proper, the colonial greater Europe, and the “fragments” of Euro-America, Euro-Australia, etc.), and constituted in opposition to their Indigenous subjects” (Mills, p. 29).

Mills views the racial contract as a gulf between two separate worlds, those of racialized and white peoples:

on the one hand, the world of mainstream (i.e., white) ethics and political philosophy, preoccupied with discussions of justice and rights in the abstract, on the other hand, the world of Native American, African American, and Third and Fourth World political thought, historically focused on issues of conquest, imperialism, colonialism, white settlement, land rights, race and racism, slavery, jim crow, reparations, apartheid, cultural authenticity, national identity, *indigenismo*, Afrocentrism, etc. (Mills 1999, p. 5, emphasis original)

This tendency is exhibited also in my analyses presented in the chapter so far, with Rawls' emphasis on a liberal framework of justice as fairness, including a universalizable set of basic individual rights and liberties, opposed by Indigenous arguments arising from a network of empirically informed lifeways, set within the background of colonialism and imperialism. Speaking specifically of Rawls' use of the contract tradition to arrive at justice as fairness, Mills states that his "methodological decision can plausibly be argued to have been a significant factor in influencing the whole subsequent direction of the field, though I would also claim that his decision and its general endorsement also reflect deeper structural biases in the profession" (Mills, 2005, p. 169). Rawls arrives at his framework of justice through a process of abstraction and deliberately chooses ideal theory because it provides "the only basis for the systematic grasp of" matters of social justice (Rawls, 1999, p. 8). This methodology, Mills argues, functions as ideology, since it excludes and marginalizes the actual and is so removed from reality that it ends up being a discourse structured around white normativity (Mills, pp. 168-172). What counts as mainstream and is taken to be valid in Rawls' original position as a part of the "general facts about human society" is curated by narratives of colonialism, imperialism, and racism which go unidentified in Rawls' theory (Rawls, 1999, p. 119). But it is the explicit identification and

undoing of these very narratives that begins the work of delivering justice for formerly colonized peoples.

The emphasis on universalist justice, based on supposed neutrality, conceals racial silence, colonial attitudes, and the erasure of Indigenous bodies intrinsic to the social contract tradition. This tradition makes it appear as though Indigenous Peoples (and other racialized agents) who do not ‘succeed’ under the terms set by the social contract do so as a result of their own failures rather than the conditions (confines) established by the social contract itself. Mills’ argument shows that racial hierarchies, an ordering of the world into the “savage” and the “civilized”, or an erasure of certain agents (and not others) are not symptoms of the failure of the social contract; they are manifestations of its structure and the very tools with which it is built. For Indigenous Peoples, Rawls’ theory becomes a framework of injustice and unfairness, since it is based on a tradition that is compatible with colonialist thinking and is unable to undo its colonial baggage. Thus, it commits a form of double injustice towards Indigenous Peoples; first, by failing to undo historical injustices, and second by reiterating and re-presenting them as paradigms for justice that they need to abide by.

Thus far in the chapter, I have argued that Rawls’ theory of justice as fairness and its components including the original position, his veil of ignorance, and his contractarian commitments are structurally incompatible with Indigenous lifeways. In pointing out the incompatibilities, I have tried to expose the religious underpinnings of Rawls’ theory, emphasizing that it is not neutral or universal but is, rather, a substantive view, the product of a specific cultural tradition intertwined with religion. In what follows, I will show that Rawls’ discussion of religion and religious tolerance are oriented towards Abrahamic religions and

disrupted by consideration of Indigenous religions. I also show that Rawls' idea of toleration is inadequate to address the gap between Indigenous lifeways and his liberal theory of justice.

## **Counterarguments**

### ***Rawls' Religion***

One may argue that the nonanthropocentric commitments I point out in Indigenous lifeways would be better addressed if they are viewed and treated as religious doctrines or religious views under Rawls' system. After all, Rawls does provide mechanisms - overlapping consensus and public reason under reasonable pluralism - for addressing differences that arise from comprehensive moral and religious doctrines. But Rawls' own metaphysical and religious commitments are rooted in specific religious systems, despite his claim to religious neutrality. While he argues in favour of complete metaphysical neutrality, "Rawls was not the product of a secular background" (Dombrowski, 2015, p. 718). While Rawls does not explicitly make any religious commitments, his theory is nonetheless better suited to address components of Abrahamic traditions than to understand or even tolerate key elements of Indigenous lifeways. In setting the limits of what counts as metaphysical and what passes as political or neutral, Rawls' own metaphysical biases (and his troubled relationship with his own religion) are exposed.

Rawls' thoughts on religion and the attitudes that led him to a political conception of justice appear most explicitly in his posthumously published works, *A Brief Inquiry into the Meaning of Sin and Faith* (2010) and his essay 'On My Religion' (2010). Christianity's influence and its effects are clear on Rawls' life, but they also played a major role in how he arrived at his political conception of justice:

Being a religion of eternal salvation requiring true belief, the Church saw itself as having

justification for its repression of heresy. Thus I have come to think of the denial of religious freedom and liberty of conscience as a very great evil, and for me it makes the claims of the Popes to infallibility impossible to accept. True, the Church claims infallibility only in questions of faith and morals; the doctrine is not that the Pope as a man is infallible but that God will see to it that the man who is the Pope does not speak falsely. Yet if freedom of religion and liberty of conscience are not questions of faith and morals, what are? *These freedoms and liberties became fixed points of my moral and political opinions. Eventually they also became basic political elements of my view of constitutional democracy, realized in institutions by the separation of church and state.* (Rawls, 2010, pp. 264-5, emphasis added)

Rawls is clear about the background in which he is operating and is occupied with maintaining a separation between church and state. This separation is crucial to ensuring that his conception is a political, not a comprehensive, conception of the good. He is also influenced by the work of Jean Bodin in the field of religious toleration that Rawls then extends to the domain of the political. Rawls recognizes in Bodin's work that toleration is

part of a religious doctrine and distinct from political ideas. And from there we might take the steps of political liberalism and say that the religions...are each reasonable, and accept the idea of public reason and its idea of the domain of the political. Part of the significance of this is that a person's religion is often no better or worse than they are as persons, and the idea of the reasonable, or some analogous idea, must always be presupposed. (Rawls, 2010, pp. 266-7)

In *A Theory of Justice* and *Political Liberalism*, the format of discussions about religion are best suited for Abrahamic religions. In *A Theory of Justice*, Rawls assumes that deliberating parties in the original position will not choose religious intolerance. They have an idea of religion and religiosity but have no particular details about which religions agents might follow once the veil is lifted. The reason for instituting this assumption is to ensure that religious convictions do not influence or overpower justice. In this assumption, though, religious diversity seems to encompass only Abrahamic traditions. In *Political Liberalism*, when discussing “natural religion”, the kind that comes closest to what Indigenous Peoples have, it becomes a matter of a comprehensive doctrine that is not central to justice and should be handled as a “problem of extension” (Rawls, 2005, pp. 245-6). It is not a matter of constitutional essentials and public reason does not apply to it; it becomes part of the nonpolitical domain. Rawls states,

suppose our attitude toward the world is one of natural religion...human beings should assume a certain stewardship toward nature and give weight to an altogether different family of values... Yet there is this important difference: the status of the natural world and our proper relation to it is not a constitutional essential or a basic question of justice...It is a matter in regard to which citizens can vote their nonpolitical values and try to convince other citizens accordingly. The limits of public reason do not apply.

(Rawls, 2005, pp. 245-6)

The fact that these assumptions are loaded seems to go unnoticed in his work. Rawls also gives no explanations for why certain assumptions about religion help to build a political conception of justice (e.g. tolerance, separation of church and state) and others (such as locality, rooted relational agency, and embeddedness) are relegated to moral and religious comprehensive doctrines, to be treated as “problems” outside of a scope of justice. Rawls comes close to

considering something like Indigenous lifeways within his framework but immediately rejects it as a comprehensive doctrine and suggests that the matter be “resolved by public reason” (Rawls, 2005, p. 229).

In *Political Liberalism* Rawls institutes reasonable pluralism to ensure that religious comprehensive doctrines do not take over the public sphere in a society and on balance claims that democratic institutions need not regulate how religious associations and institutions carry out their affairs (Rawls, 2005, pp. 148, 170, 195–199). Daniel Dombrowski explains: “When thinking about opposition to this reasoning, Rawls has in mind issues like religious reasons grounding abortion bans, and salvationist ends seeping into democratic institutions and goals” (Dombrowski, 2015, p. 720). Rawls, of course, allows for the relevance of religious diversity in the public sphere, but all such comprehensive doctrines must be reasonable, and in deliberations they must be translated into terms that other reasonable agents can comprehend and accept. Given his thesis in *A Brief Inquiry into the Meaning of Sin and Faith* and his inclinations in *A Theory of Justice* and *Political Liberalism*, I suggest that Rawls is writing within the background of Christianity and Abrahamic traditions and caters his theory to those who fall within this scope.

Indigenous expressions of the sacred are vastly different from the operative idea of religion that grounds Rawls’ framework. As Indigenous scholars Deloria Jr. (2001, 2003), Wildcat (2001), and Burkhart (2012, 2019) note, a metaphysics of space and kinship are the bases of Indigenous ideas of the sacred. Deloria Jr. observes that space is prioritized over time in Indigenous ideas of the sacred. A central feature in Indigenous sacrality is that place contains power, and a combination of this gives rise to the experience and knowledge of all agents. He explains that in relation to sacred spaces, the timing of the events is not as important as the substance of the event itself. He discusses various First Nations’ methods of calendars and time-keeping - the

Navajo winter count, calendar sticks of the Pimas and Tohono O'odhams of Arizona, *Wlaum Olum* of the Delaware - to show that the event is more important than when it occurred. History, chronology, and a detailed causal account are central to Christian religions, whereas Deloria Jr. explains: "'The way I heard it' or 'it was a long time ago' usually prefaces any Indian account of a past tribal experience, indicating that the story itself is important, not its precise chronological location" (Deloria, 2003, p. 97).

Wildcat emphasizes the significance of kinship in Indigenous spirituality:

At the most fundamental level this interconnectedness and relatedness of human beings to the earth provides the first principle for our rich spirituality. A spirituality that is literally grounded in our experience of the natural world as full of creation's power; a spirituality that denies the dichotomies that most often define Western religions. This is not romanticism; it is acknowledgment of a living people's experience. (Deloria & Wildcat, 2001, p. 14).

Burkhart points out that kinship capacity and sacrality are two sides of the same coin. Relationships are central to FNMI formulations of sacrality, and since kinship permeates all aspects of life, consequently, all realms of FNMI life are considered to be sacred. He states that a being "is alive and sacred...insofar as it is in relation to the things around it...But every single thing there is seems to have this feature, and so everything is alive and sacred" (Burkhart, 2019, p. 202). This points to the idea that there is no distinct realm to which ideas and practices of the sacred apply, and sacrality cannot be clearly separated out from economic, political, social, cultural, and ceremonial aspects of FNMI life.

Deloria Jr. contextualizes this idea within FNMI epistemologies and states that

[t]he broader Indian idea of relationship, in a universe that is very personal and particular, suggests that all relationships have a moral content. For that reason, Indian knowledge of the universe was never separated from other sacred knowledge about ultimate spiritual realities. (Deloria & Wildcat, 2001, p. 23)

A proper understanding of the idea of the sacred in Indigenous lifeways reveals, then, that it is different from the religiosity of monotheism, and different also from the structure of religion that shows up in secular understandings of the separation of church and state. The sacred, in Indigenous lifeways, is interconnectedness or kinship arising from the agency of all beings. This is not mystical, religious, or divine in the same way that monotheistic or Christian conceptions underlying state formations require. It may be argued that the word and concept of religion itself cannot be applied uncritically to describe the spiritual lifeways of Indigenous Peoples, since the realm of the spiritual permeates all aspects of their life<sup>35</sup>. Michael McNally (2020) argues that Indigenous Peoples have no *one* word for religion: “what might be understood capaciously as ‘religion’ informs Native lifeways in multiple registers: their economies, their politics, their law, and their ways of inhabiting lands and waters” (McNally, p. 305). If it were to be stated in “secular” and “scientific” ways, Kimmerer’s expression of biogeochemical reciprocity comes closest to translating Indigenous kinship and sacrality into non-Indigenous terms.

Biogeochemical reciprocity refers to the elemental way in which each being is connected to and dependent on another, even for its very basic functions, whether it is aware of this connection or not. Kimmerer (2020) gives the example of living in urban centres and still participating in the interconnectedness of all life. She talks about trees and plants that photosynthesize, release

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<sup>35</sup> Vine Deloria Jr. elaborates on this theme in chapter 9 of his book *God is Red: A Native View of Religion* where he systematically outlines the differences between Christian religions and Indigenous conceptions of the sacred.

oxygen into the air which humans consume for their functions, and the carbon dioxide that humans breathe out which in turn is useful for photosynthesis. This biogeochemical reciprocity is one way of describing the inextricable interconnectedness and interdependence of all beings and elements, and Kimmerer uses this description to situate the kinship that exists between all beings in all situations, emphasizing that a relationship with the land is not only for the times that one lives “in the bush”. In cities, urban or rural areas, while flying or sailing, one is always connected to the land, by participating in, responding to and remembering the mechanics of biogeochemical reciprocity.

Given this interrelatedness, “secularity” as Rawls’ system requires is only achievable through what Burkhart calls delocality and describes as a “violent colonial force”, the “attempted unmooring of the roots of being, meaning, and knowing from out of the land itself, or the attempted breaking apart of being-from-the- land and knowing-from-the-land” (Burkhart, 2019, p. 44). For Burkhart, delocality emerges from European and Eurocentric colonizing methods rooted in western epistemologies and ontologies. He argues that the abstraction away from space and particularities, the focus on time as the basis of universalization constitute key elements of delocal knowledge systems. Delocality has been successful in marginalizing Indigenous bodies at large and at creating barriers against which Indigenous Peoples have had to struggle, protest, protect, and sacrifice to safeguard and preserve locality. Burkhart points out, however, that the presence of Indigenous beings and the prevalence of Indigenous lifeways shows that it has been unsuccessful in completely erasing Indigenous bodies<sup>36</sup>.

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<sup>36</sup> Burkhart develops his view using Walter Mignolo’s thesis on how secularity is arrived at: “Secularization was able to detach God from Nature (which was unthinkable among Indigenous and Sub-Saharan Africans, for example; and unknown among Jews and Muslims). The next step was to detach, consequently, Nature from Man (e.g., Frances Bacon’s *Novum Organum*, 1620). ‘Nature’ became the sphere of living organisms to be conquered and vanquished

Thus, although Rawls denied the support of any one particular religion in his political philosophy, his work makes assumptions more compatible with one set of religions than others. Adherents of Christianity or Abrahamic faiths might be able to accept Rawls' political project of justice. Indigenous agents cannot do so while remaining themselves, since justice as fairness makes no room within its structure for those who act from locality and for those whose personal identity is defined by (their relationship to) land.

Agents participating in the process of achieving an overlapping consensus must translate their comprehensive doctrine into terms that any reasonable person could understand and accept. This requires them to frame their reasons in ways that are compatible with the liberal idea of the self, the priority of the principles of justice of equality and liberty, reciprocity and reasonableness, based on self-interestedness and mutual disinterest. None of these conceptions allow for acting from locality. A way of life that emerges from and is embedded in grounded normativity cannot be forced into liberal categories without fatal distortion, yet it is the very basis of life and community for Indigenous nations and the grounds of their justice, governance, and political organization.

Liberalism's logic therefore puts Indigenous communities in a difficult position. When Indigenous agents express their views, they do so from locality, and these views and utterances are understood and received as religious and comprehensive doctrines and relegated to the realm of the non-political. But when their views are translated into liberal terms, they become delocal views and are no longer substantive or meaningful. Expressed as delocal views, Indigenous Peoples end up ascribing to their own lifeways a colonial logic that misrepresents them and goes

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by Man. Secularity then hides the particular religious function of the civilizing mission of "Man" conquering and civilizing nature/Indigenous Peoples" (Mignolo, 2009, p. 87, quoted in Burkhart, pp. 15-16).

against their interests, and worse, it leads to their self-negation. Neither of these options available to Indigenous Peoples within Rawls' system are adequate or suitable.

### ***Rawlsian toleration***

So far, we have seen that Rawls' system is not neutral and is incapable of ensuring the full and equal participation of Indigenous Peoples in the public sphere on several fronts. Justice as fairness provides a framework and a set of principles for social justice, but it is only able to apply to a demographic that is already liberal or one that is able and willing to adhere to thick or thin principles of liberalism. In response to my critique, one might argue that Rawls' idea of toleration, as expounded in his *Law of Peoples*, is a more suitable approach for nations that are not liberal in the Rawlsian sense. Ashwani Peetush (2014) argues that, in the *Law of Peoples*: “the normative architecture Rawls provides is much more open to an intercultural/religious dialogue with various non-Western communities, such as the First Nations” (Peetush, 2014, p. 155). But Peetush is also quick to point out limitations, noting that Rawls' overlapping consensus is political and not comprehensive and that his idea of dialogue excludes substantive or religious reasoning. The latter is especially problematic because, in order to address Indigenous concerns, public reasoning “will invariably implicate discussion of deeper philosophical doctrines...Dialogue is the key here, but it cannot proceed in the way it needs to without access to comprehensive and deeply philosophical doctrines” (Peetush, 2014, pp. 163-4).

In *Law of Peoples*, Rawls is concerned primarily with taking his theory of justice as fairness to the global level and exploring its contributions to international law: how would a society whose public sphere is governed by justice as fairness approach other decent, reasonable, liberal, nonliberal, and illiberal/outlaw societies? In response, Rawls suggests an idea of toleration especially designed to maintain relationships with well-ordered societies that are nonetheless

nonliberal. He proposes that well-ordered societies, even if they are not liberal, should be tolerated, can sustain engagement, and should be included into a “Society of Peoples”.

Distinguishing between “decent” i.e. non-liberal societies and illiberal or “outlaw states”, Rawls argues that tolerating decent societies means not only to “refrain from exercising political sanctions” but also to “recognize these non-liberal societies as equal participating members in good standing of the Society of Peoples” (Rawls, 1993, pp. 59-60). He argues that for liberal societies not to make room for nonliberal ones means to deny respect to those peoples who are worthy of it. Toleration of “decent” non-liberal societies preserves the independent and varied idea of the self-determination of peoples (Rawls, 1993, p. 62).

While Rawls does not require that all societies adopt liberal values in *Law of Peoples*, he continues to insist that political reasoning be devoid of any religious, metaphysical, or moral doctrines, so that comprehensive doctrines play no role in reasoning about justice. This requirement would again exclude the justifications that Indigenous Peoples can provide for their ideas of agency, land, and community and how incongruent liberal ideas and ideals are to their own views. “On Rawls’ account of public reason,” as Peetush says:

one would have to argue that such views have no place in a discussion of human rights or self-determination. They are not a legitimate matter for the discussion of public policy surrounding essentials of justice. These are, to use Rawls’ own words, attitudes of natural religion, involving deep philosophical questions of value. (Peetush, 2014, p. 162)

In his critical appraisal of Rawls, Peetush is clear to point out *Law of Peoples*’s strengths. He shows that *Law of Peoples* allows for nonliberal peoples, Indigenous Peoples in this case, to exist on their own terms as long as they meet the criteria of “decent peoples”, namely that they are

nonaggressive, have systems of political accountability, and provide a basic set of human rights (differentiated from liberal individual human rights) to all members of their community. While this is a step forward in recognizing the cultural particularities of nonliberal communities, Peetush rightly maintains that such a “consensus is potentially too fragile”, since it excludes substantive Indigenous reasoning and “privileges liberal conceptions...of self, agency, property” (Peetush, 2014, p. 162). Given Rawls’ idea of the political, buttressed by his idea of neutrality, all substantive Indigenous reasoning becomes unacceptable in the public political sphere, further marginalizing already historically marginalized groups. In addition, Peetush points out that Rawls’ overlapping consensus in *Law of Peoples* comes “rather close to a modus vivendi” since “differences in substantive views will lead to continual differences in practice” (Peetush, 2014, p. 163). Therefore, there is no meaningful space in Rawls’ *Law of Peoples* for a sustainable resolution between liberal and nonliberal views and values.

Ultimately, Rawls states: “when offered due respect by liberal peoples, [a non-liberal society] may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming liberal on its own” (Rawls, 1993, p. 62). In the context of settler colonial societies this liberalizing tendency reinforces the injustice that Indigenous Peoples have faced. Through processes of colonization, Indigenous ideas of self and identity, community, culture and religion, science and education were all deliberately dismantled, destroyed, and marginalized. To consider Indigenous Peoples as independent nations who can come together under a Rawlsian conception of Society of Peoples means that they would need to advocate for their identities while access to substantive reasons arising from their lifeways is banned. This seems eerily to repeat colonial forms of marginalization, rather than creating room for justice.

## **Analysis: Rawls and Settler Colonialism**

“Neutrality” does a lot of the heavy lifting in Rawls’ conception of justice: it keeps the real world at bay; it keeps “diversity” at bay; it holds together the integrity of liberal values; and, in the name of fairness and equality, it justifies its liberalizing tendencies. But couched within neutrality are unrecognized colonial attitudes that do not come under scrutiny. Behind the veil of ignorance, Rawls takes as known some “general facts about human society” to allow for deliberations within the original position (Rawls, 1999, p. 119). Perhaps historical injustices like settler colonialism are, inadvertently and uncritically, included in this category of things that are known and agreed to by deliberating parties as part of a general background of society. Such historical injustices are not made explicit and addressed. Consequently, they end up forming part of the background against which justice as fairness is arrived at and implemented. In this way, neutrality subsumes unjust conditions, presenting principles of justice constructed on their basis to groups who have already been historically disadvantaged by similar attitudes. Rawlsian liberalism ends up being a form of ‘propagated colonialism’ for Indigenous Peoples and is far from meeting its own objectives of social justice. Through my argument in this dissertation, I propose that introducing expanded conceptions of agency and kinship will help to undo this dynamic, enabling us to better understand, even if not just yet to accommodate, Indigenous lifeways.

Rawls needed to take into consideration the realities of settler colonial societies in North America, the very context in (and for) which he was writing. In fact, all peoples in The United States of America and Canada inhabit settler colonial societies; this has a varied effect on the lives of Indigenous and non-Indigenous Peoples. A majority of the current population are descendants of a formerly colonizing and settling population, who had the upper hand in

determining the socio-political structures of society. They continue to benefit from that ‘default’ position of privilege today, as do later immigrants. Overlooking the structural make up of settler colonial societies has devastating effects for Indigenous Peoples because the unjust power structures and hierarchies, as well as archaic attitudes that were once prevalent, continue in their socio-cultural, economic and political lives. Take, for instance, the Indian Act of 1876 that still regulates how Indigenous populations move, live, earn, die, and thrive on their lands. Given the ubiquitous effects of settler colonial structures and attitudes it becomes important to revisit the conversations that happen at what Rawls calls the very basic structure of society in order to identify, understand and begin to undo these colonial tendencies.

Instead, Rawls constructs a theory of justice that consistently excludes Indigenous Peoples and overlooks the uniqueness of their lifeways. In this regard Rawls’ liberal theory of justice mirrors the colonial erasure of Indigenous presence. Historically, that erasure was connected with an uncritical view that ‘Indians are ecological’, ‘primitive’ or ‘one with nature’. In practices of colonization, as well as theorizing about Indigenous views, it is common to come across the stereotype that Indigenous Peoples live in nature as nature and hence are savages: wild, beastly, and lacking order, religion and rationality. European ideas about nature (as opposed to humans) are attributed automatically to Indigenous Peoples because they live on the land, as the land. The complex and intricate Indigenous worldview comprising of their kinship, agency, metaphysics, and epistemology are negated, ignored, and dismissed. This view was so deeply entrenched in the European mindset that Indigenous Peoples often did not even register as humans, since they were thought to lack the capacities for reason, salvation, and order. This view of Indigenous societies rendered the territory they inhabited *terra nullius*, vacant of human occupation, and justified colonization. Coulthard points out that *terra nullius* is a “racist legal fiction that

declared Indigenous Peoples too 'primitive' to bear rights to land and sovereignty when they first encountered European powers on the continent, thus rendering their territories legally “empty” and therefore open for colonial settlement and development” (Coulthard, 2014, p. 175). The colonial project was deemed as a way to bring culture, religion, and civilization to the “savages” or “wild ones”. *Terra Nullius* signals two opposing views of society: the European idea where society is coextensive with the human community and is based on a strict human-nonhuman binary, and the Indigenous idea of society that is structurally multi-species and multigenerational. Many ideas of human ecology that emerge from European ideas of society, such as anthropocentrism, an instrumental view of nature, and a stadial view of progress form the dominant and default paradigms in settler colonial societies, the often-invisible background within which debates around justice and diversity take place. An automatic superiority of human beings continues to inform current structures of economy, finance, development and progress. On this view of the world, Europeans had arrived on land and ‘resources’ that were simply being wasted away since no humans were mixing their ‘labour with the land’<sup>37</sup>. As Mauro Barelli (2018) states, this Lockean logic, guided by Genesis, was used to settle the Virginias and forms the basis and justification of colonial state formation. He says of the settlers that they used

... the doctrine of *terra nullius* to justify their expansions, the idea that an empty land (defined as empty either because it was uncultivated or ungoverned) could be occupied by others was commonly invoked during the colonial era...Not surprisingly, the very international system that developed following the Westphalian settlement endorsed theories of property based precisely on the capacity of a government to effectively control its territory, leading to the imposition of the Western model of the Nation-State.

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<sup>37</sup> Burkhart (2019) points out that this is also the source of the stereotype that ‘Indians are lazy’.

The latter strongly contrasted with the Indigenous models of society grounded on kinship ties, centred on a community-based approach to politics, and lacking a centralized authority and a delimited territory. As a result, Indigenous Peoples were, first, subjugated and forcibly deprived of their sovereignty, and, later, doomed to be excluded by the newly constituted international State system. (Barelli, 2018, pp. 125-6)

Burkhart discusses the settler coloniality of power and states that it is “embedded in the modern concept of property as requiring subduing, enclosing, cutting off land, of people from land, all with the clear intention of removing the locality from the land (the power of the land) in order for colonizers to be able to settle it” (Burkhart, 2019, pp. 42-3). Justice and decolonial action would lie in reclaiming the power of the land, then, allowing the land to recover its power and agency. As I have argued, the agency of land is a necessary feature of Indigenous personal identity, morality and justice, all of which are expressed through kinship, an ontological priority of relationships. This route to justice is unavailable in Rawls.

Rawls claims that the “correct regulative principle for anything depends on the nature of that thing”, yet he fails to apply this reasoning to building his system (Rawls, 1999, p. 29). To include Indigenous Peoples under an umbrella of regulative principles should mean, by Rawls’ own logic, that the nature and intricacies of Indigenous lifeways have been taken into account. As demonstrated in my analysis in this chapter, however, the substantive views of Indigenous lifeways - their relationship to land, conceptions of humans and nature, principles of nation-to-nation relationships, moral and political agency - are almost completely absent from or contrary to Rawls’ system.

## **Conclusion: differences are irreconcilable**

In this chapter, I have critiqued the conception of neutrality that buttresses Rawls' theory of justice as fairness and his political liberalism. I have argued that conceptions of justice and principles based on neutrality not only lead to comprehensive doctrines themselves but also actively exclude the full and equal participation of Indigenous agents in the public sphere. I have shown this by uncovering anthropocentric commitments in Rawls' theory and drawing out detailed implications of this critique for Rawls' system, highlighting structural incompatibilities; namely, the conditions that his system creates which preclude the full and equal participation of Indigenous Peoples in the public sphere. A conception of justice as fairness is unable to locate, identify, and respond to injustices faced by Indigenous Peoples because of its own assumptions and structure, which caused these injustices in the first place and contribute to oversight of the plight of certain 'diverse' groups. I concluded by pointing out that the colonial underpinnings of liberalism need to be undone if liberal frameworks are to achieve any kinds of meaningful justice with regards to formerly colonized peoples. Rawlsian neutrality is false neutrality, whose anthropocentric, metaphysical, and liberal commitments exclude and marginalize certain views, groups, and ways of life in democratic societies, even if unintentionally.

There are no tools within Rawls' system that can be used to make room for Indigenous lifeways. Rawls institutes a veil of ignorance to create conditions of neutrality, free from bias, and prevent agents from choosing principles that would suit and benefit their own advantages. But in adopting the social contract tradition without undoing or acknowledging its colonialist foundations, assuming liberal conceptions of the self and agency, and presupposing an anthropocentric view of nature, Rawls is committed to a substantive worldview that stands in opposition to Indigenous agents, despite his claims to neutrality and universalizability. I have

shown that Rawls' theory thereby commits a form of double injustice towards Indigenous Peoples; first, by failing to recognize the unique ways in which Indigenous Peoples are negatively affected by liberalism's colonial baggage and erasing their unique presence through this oversight; and second, by failing to be actively antiracist in recognizing and undoing some of those racist underpinnings, recommending instead liberal forms of toleration and dialogue as resolutions to Indigenous concerns of justice. In contemporary settler societies that are multicultural by design, Rawls' theory fails the test of diversity because it is not able to facilitate the full and equal participation of Indigenous agents in society. In the next chapter I will look at Kymlicka's liberal multicultural model that addresses diversity directly as it attempts to undo some of the limitations of classical and procedural liberalism *vis-a-vis* Indigenous Peoples.

## Kymlicka's Liberal Multiculturalism and Indigenous Lifeways

### Introduction

In this chapter I present a critical analysis of Kymlicka's framework of multicultural justice, concluding that it places liberal limits on minority groups and encourages the liberalization of Indigenous lifeways. Both these tendencies, I argue, undermine the self-determination of Indigenous Peoples in a diverse polity. I begin this chapter by identifying an empirical error that occurs in Kymlicka's analysis in *Multicultural Citizenship* (1995). In his discussion of self-government rights for Indigenous Peoples, Kymlicka identifies Pueblo<sup>38</sup> societies as imposing "illiberal internal restrictions" on minority members of their community and concludes that Pueblo societies constitute a theocratic society (Kymlicka, 1995, p. 40). By employing a method of substantive engagement, looking closely at the character of Pueblo societies<sup>39</sup> and impacts of colonialism, I challenge both these claims, showing that what register as illiberal internal restrictions on Kymlicka's view are in fact expressions of Indigenous agency against assimilationist forces. Furthermore, what appear as theocratic Indigenous societies are the result of colonial legacies and Indigenous agency wielded to withstand the pressure to assimilate into mainstream Anglo-American societies. I argue that these nuances are important to determine

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<sup>38</sup> A note on nomenclature: 'Pueblo', a Spanish word meaning "town", was the name given by Spanish colonists to a group of Indigenous communities in what is now Southwestern USA, literally to refer to their sedentary nature and to distinguish them from their nomadic neighbours such as the Apache and the Navajo (Dozier, 1970, p. 11). Pueblo nations, unlike their neighbouring Indigenous communities, were a sedentary, agricultural society with intricate irrigation systems, large towns, and urban architecture. Today 'Pueblo' is a blanket term used to refer to a diverse set of peoples including Hopi, Tewa, Taos, Santo Domingo, Isleta, Zia, and Jemez among several others. The case that Kymlicka refers to, and as discussed in my chapter, has to do with Jemez Pueblo whose lifeways and governance structures today differ from other Indigenous communities lumped under the name "Pueblo". Even among the Pueblo, Jemez are seen as outliers in certain aspects of religion and governance (Dozier 1970). In the remainder of my analysis, wherever relevant, I will refer to each nation by their Indigenous names so as to maintain a distinction between their independent lifeways.

<sup>39</sup> For my analyses of Pueblo lifeways and colonial histories I draw mainly from Santa Clara Pueblo anthropologist Edward P. Dozier's (1970) work which was the first (and remains the only) non-colonial comprehensive account of Pueblo lifeways. In its historical and analytical account of Pueblo lifeways, Dozier's work remains invaluable and unparalleled.

matters of Indigenous justice but are not brought to light in Kymlicka's analysis because of his structural commitments to a liberal form of minority rights.

The liberal limits to Kymlicka's idea of self-government rights for national minorities are most discernible in his liberalization project, which is proposed as a means to close the gap between illiberal and liberal groups in a diverse society. I show that Kymlicka's liberalization project is flawed in that it implicitly operates with a stadial idea of progress and has assimilationist effects on Indigenous Peoples. Kymlicka suggests a rights framework to manage diversity in a multicultural society and emphasizes the importance of individual autonomy in regulating cultural diversity. In response, by expanding on the experiences of Jemez, Taos, and Santa Clara Pueblo nations, I show that a rights discourse is not neutral, limits Indigenous agency, distorts Indigenous lifeways and hence is inadequate and unsuitable for addressing concerns of Indigenous justice in multicultural societies.

In my analysis, I show that Kymlicka's approach is unable to detect historical injustices or address inequalities inherent in settler colonial realities faced by Indigenous Peoples. Instead, the liberal commitments in his theory only serve to perpetuate existing colonial inequalities and thereby commit a form of double injustice with regards to Indigenous nations. Ultimately, what Indigenous nations require is access to self-determination, but Kymlicka is only able to offer them self-government within a liberal polity, which is inadequate at best and assimilationist at worst. I highlight the structural inadequacies of a multicultural framework to address Indigenous concerns of justice, point out the need to make and maintain a distinction between cultural and colonial differences, and suggest that a decolonized liberal multiculturalism will be better suited to tackle matters of Indigenous justice by maintaining a distinction between the fact and narrative of colonial difference.

Admittedly, Kymlicka talks only briefly about Pueblo societies in his analysis, using them as a main counter example to show that some illiberal Indigenous groups pose a challenge to granting self-government rights to national minorities (Kymlicka, 1995, pp. 40, 153, 164, 165, 166). However, it is important to pay attention to this aspect of Kymlicka's analysis because it highlights deep-rooted weaknesses in his theory; namely, an inadequate understanding of Indigenous lifeways that fails to see the fissures between them and liberal justice, as well as an insufficient attention to the contours of colonial history. As a method, substantive engagement with Indigenous lifeways allows us to uncover the contours of colonial history and Indigenous agency, revealing the complex realities and false binaries in which Indigenous Peoples operationalize their agency and practices of justice today. This enables us to uncover (prior) injustices existing at this foundational level, so that justice arrived at in a multicultural and multinational settler colonial society is able to deliver justice for all populations, including formerly colonized populations alongside settler communities. As a means to counteract colonial erasure I offer the method of substantive engagement with Pueblo lifeways, including some detailed description of Pueblo colonial history (for which I ask the reader's patience).

### **Kymlicka's theory of liberal multiculturalism**

Kymlicka begins his project of liberal multicultural justice by pointing out that a human's capacity to exercise her individual freedom is a core liberal principle. This consists of being able to make decisions about her life-plans and includes the capacity for revising and altering those plans as time goes on. The principle and exercise of individual freedom in this choice-making activity is central and foundational; it not only constitutes one's liberty but also serves as a principle that sets the limits of culture and diversity: "The basic principles of liberalism, of course, are principles of individual freedom. Liberals can only endorse minority rights in so far

as they are consistent with respect for the freedom or autonomy of individuals” (Kymlicka, 1995, p. 75).

In *Liberalism, Community, and Culture* (1989) Kymlicka argues that culture and cultural membership are essential components of an agent’s capacity to exercise her individual freedoms. This idea is enshrined in his famous theory of ‘culture as a context of choice’. Culture, Kymlicka says, is comprised of and provides a range of options that are available to an agent as the background for her ability to exercise her individual autonomy. This he terms as ‘background culture’ or ‘societal culture’. Societal culture consists of a collection of beliefs, practices, moralities, and paradigms to which agents have access in researching, developing, finalizing and modifying their life plans, as well as manifesting their choices and individual freedoms. Kymlicka defines a societal culture as one which “provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres”, where “these cultures tend to be territorially concentrated, and based on a shared language” (Kymlicka, 1995, p. 76). Based on this idea of societal culture, Kymlicka classifies Indigenous Peoples and Québécois as national minorities: “American Indian tribes and Puerto Ricans, like the Aboriginal peoples and Quebecois in Canada, are not just subgroups within a common culture, but genuinely distinct societal cultures” (Kymlicka, 1995, pp. 79-80).

Kymlicka’s work is a shift away from the classical liberal tradition mainly in that it takes contemporary forms of diversity seriously. Unlike Rawls (as seen in the previous chapter), Kymlicka sees culture as central, indeed as essential, to the framework of justice rather than as an afterthought. At the same time, he builds his framework of multicultural justice as a “distinctively liberal approach to minority rights” (Kymlicka, 1995, p. 75). His method of

arriving at such a framework of justice is top-down, in that it moves from the normative realm of liberal principles to the practical realm of the beliefs and practices of groups that he calls ‘cultural minorities’ to see how they can adopt liberal principles: “We need to lay out the basic principles of liberalism, and then see how they bear on the claims of ethnic and national minorities” (Kymlicka, 1995, p. 75).

Kymlicka argues that respect for cultural diversity is compatible with, and even a necessary implication of, the core liberal values of individual autonomy and individual political rights. By recognizing culture as a necessary backdrop to an agent’s capacity to exercise her basic individual freedoms, Kymlicka intertwines the realms of culture and the core values of liberalism, and in doing so makes a pioneering contribution to the liberal tradition. Classical liberalism, up until this point, and as seen in Rawls’ theory, was focussed on the proper terms of relationship between the individual and the state. Kymlicka draws our attention to the fact that contained within liberalism is also an account of the relationship between an individual and society. Kymlicka (1989) presents a systematic account of the value of community and culture to an individual, basing his analysis on the liberal mechanics of individual rights and state neutrality. In *Multicultural Citizenship* he focuses on the resources that societal cultures provide for actualizing individual freedoms:

Our capacity to form and revise a conception of the good is intimately tied to our membership in a societal culture, since the context of individual choice is the range of options passed down to us by our culture... Deciding how to lead our lives is, in the first instance, a matter of exploring the possibilities made available by our culture. (Kymlicka, 1995, p. 126)

On this basis, Kymlicka argues that liberals not only can but indeed should support group-differentiated rights, since doing so would not compromise liberty and social equality but actually work to advance it. He says:

My aim is to show that the liberal value of freedom of choice has certain cultural preconditions, and hence that issues of cultural membership must be incorporated into liberal principles...such rights can be seen as putting the various groups on a more equal footing, by reducing the extent to which the smaller group is vulnerable to the larger. (Kymlicka, 1995, pp. 36-7)

This forms the basis of his argument that “group-differentiated rights for ethnic and national minorities fit within a larger theory of liberal justice” (Kymlicka, 1995, p. 76).

Thus, the right to access one’s societal culture forms the basis of Kymlicka’s theory of group-differentiated rights. In *Multicultural Citizenship* Kymlicka develops a liberal theory of minority rights where he differentiates between national minorities (such as Indigenous populations and Québécois in Canada) and immigrant groups. He recognizes that Indigenous Peoples in North America and the Québécois in Canada are the result of an “involuntary” multi-nation state formation, i.e. they were incorporated into the larger state without their consent, and they maintain their distinct societal cultures (Kymlicka, 1995, p. 12). Kymlicka states that national minorities qualify for self-government rights since that is what they need in order to protect, preserve, participate, and pass on their societal culture to future generations. Self-government rights provide autonomy from the majority society’s culture and morality and allow nations to regulate their institutions based on their own worldview. They are subject to the basic minimum liberal standards but are not geared towards assimilating the minority group into the

majority's society. Immigrant groups, on the other hand, are awarded polyethnic rights which are measures provided to minority groups so that they may express and practice their cultural particularities (such as wearing the turban while serving in the military, wearing chadors in schools etc.) without being discriminated against in the socio-economic and political spheres of the dominant society. Like self-government rights, polyethnic rights are also permanent in nature, but they are designed to help integrate the minority group into the "larger" majority culture (Kymlicka, 1995, p. 31).

As a way to ground his theory of group-differentiated rights, Kymlicka recognizes two kinds of claims that minority groups make in order to secure the stability of their societies: internal restrictions and external protections. The former refer to claims internal to a cultural group that involve rules and limitations placed on its own members. Kymlicka describes internal restrictions as demands through which groups seek "the use of state power to restrict the liberty of its own members in the name of group solidarity" (Kymlicka, 1995, p. 36). He recognizes that all democracies employ internal restrictions to some extent - mandatory voting, mandatory military or community service, and taxation - but argues that these are justified on the basis that they uphold democratic values. Internal restrictions become a problem for liberal societies when they are wielded to restrict the freedoms and liberties of individuals in minority groups. The scope of internal restrictions extends to intra-group relations only, and for Kymlicka they raise the threat of "individual oppression" in the name of "cultural tradition or religious orthodoxy" (Kymlicka, 1995, p. 36).

External protections, on the other hand, are claims made by cultural groups against the larger society, and manifest in the form of protections for the group. The problem that external protections pose for a liberal idea of equality is that they raise the danger of inequality and

unfairness between groups where “[o]ne group may be marginalized or segregated in the name of preserving another group's distinctiveness” (Kymlicka, 1995, p. 36). Rights arising from external protections, however, are justified when they are aimed at bringing different groups in society to a more equal footing by closing the gap of inequality that exists between the majority and minority groups. External protections form the basis for Kymlicka’s “equality argument” in his liberal theory of minority rights. The main critique from the classical liberal tradition, against a theory of group-differentiated rights, is the idea that certain people and groups, based on their cultural affiliation, have access to rights, privileges, and accommodations that others do not. This, it is objected, creates a situation of inequality on an arbitrary basis, i.e. cultural membership. To this, Kymlicka responds by arguing that cultural membership is a crucial and ubiquitous aspect of one’s life and a necessary background to and component of one’s freedoms. Second, he shows that by exercising external protections minority groups can be brought to the same level footing as the majority society, enjoying the rights and freedoms available to all. Where significant inequalities exist due to cultural membership, external protections in the form of group differentiated rights aim to provide a level playing field, rather than giving minority cultural members an advantage as classical liberal opponents seem to think. In this way, Kymlicka’s equality argument critiques the attitude of benign neglect for culture, upholds the idea of a cultural marketplace, while crucially bringing groups to an equal footing in the public sphere. Thus, Kymlicka’s liberal theory of minority rights supports external protections where inequalities between groups are minimized and disallows internal restrictions where individual rights and freedoms are curbed or infringed upon.

## **Pueblo nations and “illiberal” internal restrictions**

To be clear, Kymlicka recognizes that different cultural groups would want to organize their societies based on their beliefs and as a result will have restrictions pertaining to their members, and he allows for this. On this basis, he argues in favour of self-government rights for Indigenous groups so that they may organize and govern themselves in line with their societal cultures. However, what is disallowed in a liberal state is the use of state power to restrict the rights and liberties of any citizens, whether they belong to a majority group or a minority culture<sup>40</sup>. In line with this reasoning, Kymlicka identifies Pueblo societies as imposing illiberal internal restrictions on their members, mainly in denying their minority Protestant members the right to practice their religion on reserve land. Kymlicka understands Pueblo societies as theocracies, as being exclusive of religions other than “tribal religion” and on this basis he calls into question the eligibility of some ‘illiberal’ Indigenous groups for self-government rights. He writes,

One relatively clear case of internal restrictions amongst self-governing Indigenous groups involves the Pueblo, an American Indian tribe, and freedom of religion. Because they are not subject to the Bill of Rights, tribal governments are not required to obey its strict separation of church and state. The Pueblo have, in effect, established a theocratic government that discriminates against those members who do not share the *tribal religion*. For example, housing benefits have been denied to those members of the community who have converted to Protestantism. In this case, there is little question that

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<sup>40</sup> Kymlicka says, “The problem arises when a group seeks to use governmental power to restrict the liberty of members. Liberals insist that whoever exercises political power within a community must respect the civil and political rights of its members, and any attempt to impose internal restrictions which violate this condition is illegitimate” (Kymlicka, 1995, p. 204).

self-government powers are being used to limit the freedom of members to question and revise traditional practices. (Kymlicka, 1995, p. 40, emphasis added)

Kymlicka's reasoning is as follows: While Indigenous Peoples as national minorities are formally eligible for self-government rights as a means to protect and preserve their societal cultures, there are "important exceptions" (Kymlicka, 1995, p.40). There are groups like the Pueblo, who impose their "tribal religion" on all members residing in the community (i.e. on reserve land) in ways that members who convert to another religion, Protestantism in this case, are denied certain basic individual rights and access to communal resources (Kymlicka, p. 40). On Kymlicka's understanding this is a case where a few members comprising a minority have rejected "tribal religion", meaning Pueblo ways of 'religious' life, and have adopted Christianity, in this case Protestantism, which any person should be able to do without punishment in a liberal polity that upholds justice. Since Protestants in Pueblo communities are being punished for their religion by losing access to residency rights and community resources, Kymlicka concludes that this is a violation of a basic right to religious freedom, a right that is otherwise constitutionally granted equally to all citizens. He locates the source of this problem in the self-governing status of Pueblo communities, seeing that power as enabling groups to inflict internal restrictions on their community members, which restrict their basic liberties.

On the face of it, Kymlicka's conclusion appears to be right. It is true that a few minority Protestant members of the Pueblo community were denied access to territory and communal resources and were prohibited from practicing their Protestantism on Pueblo reserve land. This conflict amongst Pueblo community members escalated and was taken to court. While Kymlicka himself does not refer directly to the court case, he bases his analyses on Warren Weston's (1971) short essay on the topic. The case itself reads:

Specifically, the plaintiffs complain that the Pueblo has refused them the right to bury their dead in the community cemetery; denied them the right to build a church of their own on Pueblo land; prohibited them from using their homes for church purposes; refused to permit Protestant missionaries freely to enter the Pueblo at reasonable times; deprived some of them of the right to use a communal threshing machine which threatened the loss of their wheat crop. They also allege that the officials of the Pueblo threatened them with loss of their birthrights, homes and personal property *unless they accept the Catholic religion*. All this was done, it is alleged, despite the fact that the Pueblo had validly adopted an ordinance recognizing that every member of the Pueblo should have freedom to worship as his conscience dictates and that no member of the Pueblo should be molested in person or property by the Pueblo on account of his or her mode of religious worship (*Toledo v. Pueblo De Jemez*, 1954, emphasis added).

Taken at face value, the case is pointing to the discrimination against Protestant members of the community and a violation of some of their basic individual rights. If the Pueblo governing council is committed to religious diversity on one hand and is simultaneously using their access to self-governing rights as a way to reject Protestant presence on their land, then it can be said that there is a violation of both a normative constitutional right (the right to self-government) as well as the transgression of a particular right (the right to religious freedom). However, it is not clear that that is what is happening. Something else is at play.

It is interesting to note that neither “tribal religion” nor “Pueblo theocracies” appear in the case itself, although both these concepts appear in Kymlicka’s analysis of the case. Instead, the case establishes the conflict as occurring between Catholics and Protestants on Pueblo reserve land, clarifying that the dispute is not between the “Catholic and Protestant Churches or faiths as

such but is one between the civil authorities of the Pueblo and the plaintiffs who adhere to various Protestant denominations” (*Toledo v. Pueblo De Jemez*, 1954). The conflict, then, is not between “tribal religion” and Protestants as Kymlicka’s analysis seems to suggest but rather concerns resistance that a few Protestants seem to be facing from the Catholic elements of the community, who also play a role in tribal governance. In order to better understand Catholic and Protestant presence on Pueblo land, the overlap between Catholics and tribal governance councils, as well as the current case of discrimination against minority Protestant members, it is important to understand the contours of Pueblo colonial history and legislation that buttress the current case of discrimination.

Both Spanish Catholic and American Protestant missionaries had a strong colonizing presence on Pueblo land. However, they each had a different set of objectives, techniques, and effects on Pueblo lifeways. Active Spanish colonization<sup>41</sup> of Pueblo communities lasted for about 200 years, during which period the Pueblo population was reduced by half, slavery was rampant, Pueblo towns and architecture were abandoned or destroyed, and Catholicism was forced upon Pueblo peoples. Over time, Pueblo nations realized that overthrowing missionary presence was impossible (a strong and united Pueblo rebellion against the Spanish in 1680 was futile), and resistance was futile (the colonists and missionaries out resourced the Pueblo). Instead, Pueblo nations devised ways to co-exist alongside Catholic missionaries without relinquishing their Indigenous lifeways or submitting to the authority of the church entirely. Pueblo peoples did this by adopting Catholic imagery and by packaging their traditional ceremonies in Catholic garb.

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<sup>41</sup> Starting in the mid 1500s, through Spanish colonization, Catholicism was forced upon Pueblo peoples. Spanish *entradas* (expeditions) first made contact with Pueblo (Zuni) communities in 1540. By 1580 Spanish colonization efforts were in full swing: “Priests and soldiers were moved by Christian ideals [and] service to the King” and penetrated several Pueblo communities including Acoma, Zuni, Hopi, and Tiwa peoples (Dozier 1970, p. 44).

They participated in both religions simultaneously; Pueblo would partake in the sacraments without renouncing their traditional dancing, prayers, and ceremonial life. While churches and chapels in Pueblo towns were often the biggest and grandest buildings, *kivas* were still the centre of governmental and socio-ceremonial life for Pueblo communities (Dozier, 1970, p. 65). Pueblo nations conducted mass, Saints Day celebrations, *velorios*, and Christmas and Lenten seasons in a way that combined aspects of Indigenous lifeways. For instance, horse dances and Kachina dances, which were once central to Pueblo lifeways, after Spanish colonization were performed on important Saints Days in which “the whole pattern of songs, dances, and costuming is obviously non-Pueblo, and relationships to Mexican or Spanish patterns are clear” (Dozier, 1958, p. 445). Dozier explains that Spanish Catholic elements are “grafted on as a coexisting system which is essentially distinct from the native system, but the purposes and objectives of both systems of cultural and social practices *appear* to be the same” (Dozier, 1958, p. 442, emphasis added). In order to ensure the safety of the community and of the individuals, Pueblo would often carry out their Indigenous ceremonies in secret or after dark so as to avoid being caught and punished by missionaries. Dozier calls this coping mechanism “compartmentalization”, where Pueblo peoples “adopted the externals of the Spanish-Catholic religion but behind this convenient screen they continued to practise their own Indigenous patterns of culture and society” (Dozier, 1960, p. 146-7).

Compartmentalization should not be misunderstood as syncretism (as found in Métis spirituality<sup>42</sup> or Rainbow Spirit Theology<sup>43</sup>). Compartmentalization is a survival mechanism, and it is not a consensual blending of Pueblo and Catholic religions: “Under constant coercion to

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<sup>42</sup> See Préfontaine et al (2003) and Fiola Chantal (2023).

<sup>43</sup> See Rainbow Spirit Elders (2011).

give up their ceremonies, the Indians concealed practices which were disapproved or prohibited by the Spaniards. Generation after generation learned to hide such rites, for their very lives depended upon how well they concealed them” (Dozier, 1958, p. 444). Thus, Catholicism was forced<sup>44</sup> on to Pueblo populations, and Pueblo peoples responded by exercising agency through compartmentalization. Rather than abandon their lifeways, convert fully to Catholicism, or immigrate and integrate into neighbouring Indigenous nations, Pueblo peoples held on to their lifeways by dressing their Indigenous intentions and practices into ways that were acceptable to Catholic missionaries.

Compartmentalization should also not be confused with a willingness on the part of Catholics to coexist alongside Pueblo lifeways. To be sure, the aim of Catholic missions was to eradicate Pagan beliefs and educate the non-believers in the Word of God. There was a strong Catholic resistance against Pueblo beliefs and practices, which only served to harden the practice of compartmentalization to such an extent that it has lasted to date: “Indians still believe that they will be penalized for any display of ceremonial knowledge. They conceal their native ceremonial system from all outsiders, offering only the Spanish-Catholic system and other less sacred aspects of the native system to public scrutiny” (Dozier, 1958, p. 447). Compartmentalization has meant that Pueblo peoples have become “expert at this form of deception” and their intentions, rituals, and lifeways are deeply embedded under Catholic imagery and vocabulary (Dozier, 1958, p. 447). Dozier points out that as a result of these violent colonizing methods

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<sup>44</sup> This is not to exclude consensual Pueblo conversions to Catholicism or any other form of Christianity (which may have occurred later on). My aim here is to point out that from the very beginning the relationship between Pueblo peoples and Catholic missionaries was adverse and that there was no scope for peaceful exchange of ideas. The “resolution” of coexistence that Pueblo nations have devised is within the context of violent colonization and is not the result of consensual blending of Indigenous and Catholic religions and cultures. Anthropologist Edward Spicer confirms that missionary work among the Pueblo was “superficial and forced” and that there was “no period of native request for missionaries with a waiting interval during which Indian leaders could prepare their people for receiving the missionaries” (Spicer, 1962, p. 167 quoted in Dozier, 1970, pp. 48-9).

Pueblos have been so successful in concealing important parts of the native system and the set of priests responsible for them, that their Spanish-American neighbours know virtually nothing about the system. They have seen the public aspects of some of the ceremonies, but remain ignorant of the vigorous and complex set of beliefs and rituals which underlie them. (Dozier, 1958, p. 445)

Another crucial component of Catholic missionary presence on Pueblo land involves the superimposition of Spanish forms of governance on Pueblo tribal councils, which explains the proximity (almost equivalence) that is now observed in Pueblo communities between Catholicism and governance councils. In Pueblo lifeways, governance is conducted by Summer and Winter *moieties* (or groups) who are in charge of maintaining harmony in economic, political, and social aspects of Pueblo life. Superimposed on traditional Pueblo governance structures was the Spanish civil government system whose main purpose was to assist in the “civilizing and christianizing efforts of the Spaniards” (Dozier, 1970, p. 153). A Royal Decree in 1620 failed to recognize the existence of distinct and nuanced leadership and management systems within Pueblo communities and instead required the Pueblos to select members from their community to form a government so that Spanish civil authorities<sup>45</sup> could coordinate their colonizing efforts in an efficient way. Given that Pueblo communities already had a clear system of governance, the *moiety* system, this was not hard to do. Pueblo nations operationalized this new Spanish civil government system in a way that would best protect their Indigenous interests. Unbeknownst to Spanish colonists, these positions were filled by members “who owed primary

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<sup>45</sup> The Spanish civil government for Pueblo nations consists of a governor who is the head of the Pueblo and represents the town in all communication with Spanish authorities, a lieutenant governor who steps in when the governor is unavailable, war captains who were required to maintain law and order within the Pueblo communities, sacristan as an assistant to the priest, *fiscales* for enforcing mission discipline, and *mayordamas* as ditch superintendents.

allegiance to native customs” and were chosen by the *moiety* association (Dozier, 1970, p. 154). In this way, while still under the claws of Spanish colonial rule, Pueblo communities were able to exercise their agency without threatening the security of their communities. Thus, the ‘new’ officials became an executive extension of the traditional government and publicly carried out Spanish colonial orders while still being able to protect core Indigenous interests. In this way Catholicism came to inform the official structure of Pueblo governance councils that we encounter even today. This explains the Catholic nature of governance councils as described in the case above. In order to understand Catholic opposition to Protestant presence on Pueblo land, one must understand the second wave of colonization that took place in Pueblo communities.

Compartmentalization was successful in so far as Pueblo communities were able to preserve their lifeways while simultaneously resisting relinquishing control over to Catholic authorities. For decades after the Pueblo revolt this system of Spanish-Pueblo-Catholic coexistence continued, until it was tumultuously disrupted with the introduction of Protestant missionaries who vied for access to Pueblo communities and were backed by the Anglo-American governmental system, especially the Bureau of Indian Affairs. Protestant missionaries had equal vigour but less success establishing themselves in Pueblo communities, and their efforts to convert members of Pueblo nations to Protestantism were frustrated both by Catholic missions as well as by Pueblo peoples’ resistance. The main difference between Catholic missions and Protestant missions on Pueblo land were the kinds and amounts of structural change that these missionaries wanted to bring about in the lifeways of Pueblo communities. Unlike Catholic missionaries, Protestant missionaries required Pueblos to completely abandon their ways of life and adopt Christian beliefs and practices, and they aimed to bring about deep-rooted structural “economic and technological change” within Pueblo communities (Dozier

1970, p. 25). With the introduction of Protestant missionaries, backed by the Bureau of Indian Affairs, Pueblos were no longer flawed for being pagan, but rather were regarded as brutes, savages, backward, uncivilized, “obscene or immoral” and as requiring Protestant education to be civilized and worthy of American citizenship (Wenger, 2005, p. 93). Protestant reformers and missionaries who dominated nineteenth-century U.S. Indigenous policy acted on the belief that

true religion cultivated ‘civilized’ standards of conduct and morality, understood in exclusively Anglo-Protestant terms, and made its adherents fit for American citizenship. In this sense, only Christianity—and often only Protestant Christianity—qualified. Indigenous traditions of any kind could be seen only as an impediment to the civilizing process. Convinced that civilization relied on the one true religion, Protestant leaders prescribed Christian missions as the most effective way to achieve the government’s civilizing goals. (Wenger, 2005, p. 93)

A number of methods and mechanisms focused on the “eradication of ‘UnAmerican’ Indian customs and practices” were deployed including appointing of “investigators”, the Grant’s Peace Policy<sup>46</sup> (GPP), Religious Crimes Code, and Indian Residential Schools (IRS) (Dozier, 1970, p. 115). In the early 1900s investigators were sent into Pueblo territory to study and report on any “immoral” or “anti-Christian” practices of the Pueblos. These non-Indigenous officers recorded several instances of customs and practices which “violated Anglo-American standards of decency and morality” (Dozier, 1970, p. 115). Once these practices were reported, officials were sent into Pueblo communities to forcefully put a stop to them. Under the Religious Crimes

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<sup>46</sup> Grant’s Peace Policy (GPP) was a strong assimilative move initiated by then President of the USA Ulysses S Grant to replace Indian agents with largely Protestant missionaries. In this move, some Indigenous communities that had Catholic missions for over a century were allocated to henceforth be led and managed by Protestant missionaries. This created resentment amongst Catholic missions already existing on reservations, and it created an added layer of oppressive government that Indigenous Peoples now had to fight against.

Code,<sup>47</sup> Indian Service officials were instructed to stop Indian ceremonial practices which might be contrary to accepted Christian standards: “These acts of the missionaries and Indian Service officials forced the Pueblos to retreat into their *kivas* to carry on in secret the ceremonies disapproved by the Americans” (Dozier 1970, p. 115; Dozier, 1958, p. 446-7). GPP created a board of Indian Commissioners who were all Protestant and actively excluded the participation of Catholic missionaries or Indigenous members at their meetings. GPP rested on the belief that American society had the right to dispossess Indigenous Peoples of their lands and rights, and that Indigenous Peoples were required to succumb to Protestant missionaries who would “teach them how to farm, read and write, wear Euro-American clothing, and embrace Christianity” (Wenger 2009, p. 29; see also Trafzer 2009). Members of Indigenous communities who resisted this move were met with violence (made permissible by GPP) and were forced off their homelands by soldiers (Trafzer, 2009). The Indian Residential School system was mandatory for children of all Indigenous communities and was instituted with the specific aim of the “aggressive civilization” of Indigenous Peoples by erasing the content of and their access to Indigenous wisdom: “...[I]f anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within the circle of civilized conditions” (Davin, 1879). In line with this policy, Pueblo children were forced away from their homes and families and sent to Indian Residential Schools where they were taught Christian ways of life. In these schools, Indigenous languages, customs, traditions, practices, rituals, and celebrations were prohibited, and transgressors faced severe physical and psychological punishment. This collection of attitudes and policies instituted by the Bureau of Indian Affairs has led Dozier to

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<sup>47</sup> Religious Crimes Code of 1883 was a policy instituted by the Bureau of Indian Affairs, which authorized superintendents to use force and imprisonment to halt any Indigenous religious practices that they saw as immoral, subversive of government authority, or an impediment to the government’s “civilizing” policies.

remark that “the Bureau of Indian Affairs has undoubtedly affected the Pueblos more profoundly than any other single source of influence from the Anglo-American world” (Dozier, 1970, p. 15).

This set of colonial legislations and policies fuelled a general distrust between Catholic and Protestant missions on Pueblo land. Catholic missionaries blamed Protestant presence for the Pueblo’s lack of proper education, complaining that Pueblos were now in the “grasp of Protestantism” and that “missionary work” was prioritized over education, resulting in children “being raised like little animals, without fear of God or respect for their parents or even their priest” (Wenger, 2009, p. 52). Protestant missionaries responded by pointing out that under Catholic influence Pueblos were “heathens” and that Protestant Christianity was the true foundation of American civilization (Wenger, 2009, p. 33). They urged that, in order to not be left behind, Pueblos should agree to the educational and civilizational progress that was being offered them through Protestant missions.

This sets the context for understanding the background to the Catholic and Protestant presence and conflict on Jemez territory that is cited in the case above. The assignment of Protestant missionaries to Jemez Pueblo (through the GPP) created heightened conflict between Catholic and Protestant missionaries. Caught in this tussle, Jemez responded by acting strategically in terms of what would best protect their Indigenous lifeways. Dozier reports: “Protestantism invaded with force only Jemez and Zia; these pueblos solved the problem of conflict by simply expelling the Protestant converts” (Dozier, 1970, p. 25). In the early part of the 20<sup>th</sup> century, the Catholic head priest at the time, Father Barnabas Meyer, recruited the support of members of the *principales* (Jemez governance council) to sign a petition against Protestant presence at Jemez reserve. At Meyer’s request all but one member of the Jemez governance council signed the petition expressing their opposition to any “Protestant, non-

Catholic or non-denominational” religious presence on their land, and their desire “to remain true members of [the] Roman Catholic Church, and . . . to have our children instructed in said Roman Catholic Church” (Wenger, 2009, pp. 51-2). It must be noted here that Catholic missionaries and Pueblo leadership joined forces to defend against Protestant incursions by arguing that Pueblo peoples were Catholic. While this was a mutually beneficial strategy for both Catholics and Pueblo peoples, on the part of the Pueblo nations, this was a purely strategic move. As mentioned above, Protestant presence was invasive and aimed to bring about structural change that would mean a loss of traditional lifeways for Pueblo nations. Their best chance of retaining their Indigenous lifeways, then, was to join hands with the Catholic missionaries and portray themselves as Catholic so as to have a strong footing for their protest. Members of the Jemez governance council supported Meyer’s petition considering it to be the lesser of two evils. Jemez Pueblo were resistant to Protestant entry into their territory and in light of their choices preferred Catholicism’s restrictive presence because “Catholicism had been a part of Pueblo tradition for so long. Presenting themselves as good Catholics helped them to resist the incursions of Protestant missionaries who demanded far greater changes in Pueblo life”. (Wenger, 2009, pp. 51-2). The Jemez vote against Protestant missionaries should not be seen as their adherence to Catholicism, but merely as a preference over another objectionable option.

The main point in Kymlicka’s analysis about this case has to do with internal restrictions. He understands Pueblo societies as imposing theocratic internal restrictions on their minority community members who disagree with the majority religion of the group. And he sees self-government as facilitating this discrimination when he argues that “[I]n this case, there is little question that self-government powers are being used to limit the freedom of members to question and revise traditional practices” (Kymlicka, 1995, p. 40). Kymlicka’s presentation of the case

makes it appear as if a) the conflict is between “tribal religion” and Protestant minorities and b) the minority Protestant presence on Pueblo reserve land is completely a result of choice (understood and made in the liberal sense) devoid of violence and oppression, where adult human beings decided to change their religious beliefs from “tribal” or traditional ones to Protestantism. If this is how things had really occurred, then they would fit the liberal mould of individual autonomy where each human being has an equal right to determine and revise her rational life plans, and accordingly other liberal principles and resolutions might apply to this case. But key relevant details of Pueblo colonial history, which I outlined above, illustrate that this is not at all how Protestantism came to be a part of current day Pueblo societies. Current day Pueblo Protestants are descendants of those Pueblo members who were forcibly placed in Indian Residential Schools where they received education that condemned Indigenous lifeways and required them to adopt Protestant religious and cultural lifeways. Pueblo children, alongside other Indigenous children, were taught that Protestantism is superior to Indigenous religion. One explicit purpose of the Indian Residential Schools was to create a generation of people that could go back to their reserves and educate their communities about modern ways of living and prepare them for assimilating into mainstream Anglo-American society. Settler agencies and officers viewed this generation of children as their aid and instruments who would assist in their mission to educate and assimilate the millions of Indigenous Peoples living on reserve land.

Indigenous children, including ones from Pueblo territory, were forcibly taken away from their homes, families, and communities and raised with little or no contact to Indigenous culture, religion, language, education, ceremonies, and lifeways. For at least a decade and a half, children spent time in school, away from their communities, coerced into learning that modern civilization was good, and their own Indigenous lifeways were backward and bad. Having never

been introduced to and initiated in the ways of the Pueblo, these children returned to communities that were at once home and foreign, and expressed their ‘educated’ opinions, which often echoed assimilationist brainwashing rhetoric that they received in their missionary schools. The assimilative Protestant<sup>48</sup> project was successful in so far as it was able to brainwash a generation of Pueblo children against their lifeways and created a generational rift between older “traditionalists” who remained in the community (and therefore continued to have strong ties with Indigenous lifeways) and younger “progressives” who were placed in the Indian Residential School system and returned as strangers to their own families, who struggled to develop relationships with family and community members that they barely understood and viewed as uncivilized.

Immediately upon returning to their reserve lands, Protestant progressives often opposed ceremonial dancing and traditional lifeways as backward and uncivilized. Pueblo progressives were also backed by well-funded federal agencies, including the Bureau of Indian Affairs. After Spanish colonization, once again Pueblos were facing opposition to their lifeways. Only, this time it was from Anglo-American society disguised in Pueblo form. Several Pueblo nations struggled with Protestant presence, since Protestant members constantly required Pueblos to give up their Indigenous lifeways and adopt Anglo-American ones. It became clear to the Pueblo tribal governance councils that they would not be able to overthrow or protect themselves against a strong assimilative onslaught, given the economic and technological resources available to federal agencies such as the Bureau of Indian Affairs and to Anglo-American society at large. Furthermore, compartmentalization that worked in the case of Spanish Catholic colonialism

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<sup>48</sup> While a majority of Indian Residential Schools were run by Catholic missionaries, the ones in New Mexico where Pueblo children went were predominantly run by various denominations of Protestant missionaries (Resource Database Centre).

would not work in this case because Protestant missions, unlike Spanish colonists, demanded changes in the economic and social infrastructure of Pueblo societies. Allowing for these changes would mean a complete dismantling of Indigenous lifeways. Pueblos, especially the Jemez, were not prepared to convert or give up their Indigenous lifeways and hence decided to “expel” the Protestant members as a way to protect themselves against eradication, and extinction.

In the case as Kymlicka discusses it, this important information is missing: the fact that Protestant presence threatens Indigenous ways of life because it brings with it a necessary assimilative aim and impulse and requires community members to ‘modernize’ themselves in ways as seen fit for Anglo American society. As a reaction against Protestant assimilative forces and as a means to protect their own lifeways, some Pueblo nations like the Jemez have chosen to refuse Protestants entry into their communities and have denied them access to their communal resources. What Kymlicka describes as a case of discrimination against Protestant members of the community therefore needs to be revisited and understood in light of the colonial history of the community as well as the contours of conflict that still result from that dynamic today.

Considering the various layers of colonial history clarifies the conflict in important ways, even if it does not immediately resolve it. Taking colonization and settler coloniality into account means gaining clarity on key components of the case that were not apparent earlier, which will necessarily transform our perspective in light of current realities. What appears as an act of discrimination on a liberal account of justice, now through a method of substantive engagement (by looking at the specific content and contexts of Indigenous lifeways) can be understood as an expression of Pueblo agency to protect their lifeways. Understanding the case in this way reveals a more complex and complicated reality, which is necessary for arriving at multicultural justice, especially in settler colonial societies. The terms of deliberation are now informed by more

robust complexities that pertain to both Catholics and Protestants in this case. The case is not about Pueblos exercising internal restrictions on their community members, but rather about Pueblo Indigenous agency and exercising it successfully to protect their lifeways within a colonial context, where decisions are made under conditions of violence and duress. An added layer of complexity here is that current day Pueblo Catholics carry on their life in strictly compartmentalized ways, as noted above, and continue to resist Catholic authority on their territory<sup>49</sup>. On the other hand, are minority Protestant members living the only life they know and were taught in residential school, bringing with their religion and culture (knowingly or unknowingly) a complex worldview that erodes Indigenous lifeways.

This is not to claim that there are obvious wrong-doers or winners in this case. The point of the analysis is to clarify the main concerns in the case and properly situate them within settler colonial realities and the exercise of Indigenous agency. Rather than a liberal approach to justice that tends to flatten the historical, moral, and substantive landscape, I offer a method of substantive engagement with Indigenous lifeways that allows us to parse out layers of relevant reality that are otherwise erased, which need to be explicitly situated in order to arrive at justice in a plural society, especially when addressing Indigenous concerns. Otherwise, a theory of justice will simply reiterate historical injustices, including colonial and assimilative policies. In this case, a proper assessment must take into account settler colonial realities: compartmentalization, Protestant presence (a legacy of the IRS and of assimilationist policies), and the expression and exercise of Indigenous agency through the practice of religion(s) on reserve land - Pueblo, Catholicism, and Protestantism. It thereby makes room for locality and

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<sup>49</sup> Wenger (2009) gives examples to show that Pueblo communities continue to resist Catholic authority on reserve lands.

allows Indigenous agency to express itself without duress, outside a colonial, assimilative, or liberal framework. We see here how a decolonial lens, one not committed to a prior colonizing framework, is necessary to unpack, reveal, and address the various issues of justice embedded in this case.

### **Pueblo nations, “tribal religion”, and historical injustices**

At this juncture, it becomes important to clarify what Kymlicka means by “tribal religion” in his analysis of the Pueblo case (Kymlicka, 1995, p. 40). He does not expand on his use of the phrase but simply uses it to mean the “traditional” religion of the Pueblo peoples, suggesting that this religion is being used in theocratic ways: “the tribal government of the Pueblo Indians discriminates against those members of the tribe who reject the *traditional religion* of the group” (Kymlicka, 1995, p. 153, emphasis added). But by ‘tribal religion’ or ‘traditional religion’, is Kymlicka referring to the pre-colonial sacred lifeways of Pueblo peoples or to forms of compartmentalized Catholicism practiced by Pueblo peoples today? If he is referring to compartmentalized Catholicism, then more relevant matters of justice than are currently apparent rise to the surface. A multicultural theory of justice must also consider the justice or lack thereof in the development of compartmentalized Catholicism in the first place. The onus is on Kymlicka’s liberal theory of minority rights to explain why the injustice inherent in compartmentalized Catholicism is not a matter of consideration for a theory of justice and why only Protestant concerns and their (lack of) access to religion are taken as relevant for justice. For a theory to focus only on the latter is to make choices about what it considers are matters of minority justice, and which ones are not. An explicit explanation will be required for why only concerns of some minority groups (Protestants in this case), and not others (compartmentalized Catholics), are matters of justice.

This way of looking at the case reveals a shortcoming in the decontextualized approach of liberal multiculturalism, which fails to recognize and address historical injustices. While compartmentalized Catholicism is a result of Spanish colonialism that occurred centuries ago, the practice is a current one and is still a result of injustices in the past. A proper theory of minority rights needs to recognize and address such legacies of colonialism, but Kymlicka's evaluation of the case overlooks them.

To be sure, if the fact of compartmentalized Catholicism is brought to light, Kymlicka would no doubt recognize it as a case of injustice. Kymlicka's liberal multiculturalism is clearly grounded in individual autonomy, where all individuals must be able to form and revise their life plans without oppression or duress. Following this principle, compartmentalized Catholicism will clearly register as a case of injustice needing redress, since Pueblos have had to appear to adopt or adhere to Catholicism in order to survive and protect their own Indigenous lifeways.

The problem is that Kymlicka's methodology prevents this reality from coming to light in an analysis of the case, since liberalism is not interested in any substantive views or in the historical processes leading up to injustice. The initial approach through a liberal lens means Kymlicka does not ask why Protestants are being denied communal and residency rights on Pueblo reserve land. It does not appear as a relevant question. It is only relevant that they are facing discrimination based on their religion, that a basic individual right has been violated, and a minority group's religion is being discriminated against in support of the majority. Based on this consideration, Kymlicka argues that Pueblo governance councils are unjust towards Protestants. While this case of injustice may remain in the eventual analysis, it is important to point out that a) Pueblo governance councils are exercising their agency to protect their lifeways and communities against assimilation and, more importantly, b) the Catholicism inherent in

governance councils is itself a result of injustice: Spanish colonialism. In so far as the latter form of injustice is completely overlooked in Kymlicka's analysis, his approach reiterates injustice against compartmentalized Catholics in the name of liberal justice. Kymlicka's liberal multicultural lens does not see historical injustices that are essential to understanding the situation.

On the other hand, if by "tribal religion" Kymlicka is referring to pre-contact and pre-colonial sacred lifeways of Pueblo nations, then an entirely different set of justice-related issues rise to the surface. The main import of Kymlicka's argument here is that Pueblo tribal governments impose illiberal restrictions that arise from their traditional religion, and this essentially results in Pueblos exercising a theocratic form of government. My next step of inquiry will be to clarify if there are any theocratic elements in the pre-colonial and non-colonial sacred lifeways of Pueblos. Pueblo nations themselves view their societies as maintaining a distinction between the "religious and secular" aspects of their life (Dozier, 1970, p. 152). In what follows, I provide a brief overview of Pueblo socio-ceremonial life to show that it should not be confused to be a theocracy, and I also point to certain aspects of Pueblo lifeways that can be easily confused with theocracies. It is important to pay attention to this aspect of Kymlicka's argument because the objections he raises against Pueblo lifeways on the grounds of their traditional religion potentially have implications for all Indigenous nations on Turtle Island. If Pueblos are understood as theocracies based on their "traditional" religion, then potentially all Indigenous societies can be categorized as theocracies, thereby undermining Kymlicka's larger argument for liberal diversity and the basis on which he awards self-government rights to Indigenous Peoples.

As presented in chapter 1, Indigenous ideas of the sacred arise from locality and kinship. This is true of Pueblo peoples as well. Agriculture is the mainstay of Pueblo communities, and the socio-ceremonial structure of their society is designed to ensure the maintenance of agricultural cycles and irrigation methods to secure a good harvest. Much of the infrastructure pertaining to their societies, including social relations and hierarchies, governance methods, rituals, and ceremonies, is centred around irrigation systems and their efforts to ensuring a successful harvest. Pueblo religiosity therefore centres on rainfall, healthy crops, and sustainable living (Eggan, 1973, p. 89; Schaafsma, 2000, p. 3; Tyler, 1964, p. 289). Understanding this is key to understanding why it is inaccurate to characterize pre-colonial Pueblo societies as theocracies.

For Jemez, located in the arid and semi-arid regions of what is now Southwestern USA, spirituality is closely tied to their access to a good harvest, and to governance structures designed around the building and maintenance of irrigation structures essential to this purpose, such as dams, canals, and ditches. For Jemez, balance and reciprocity are key principles in ensuring a successful harvest, and in maintaining good health both for the community and the individual. A reciprocal relationship with the cosmos, all beings in it including spirits and ancestors, is felt to be necessary to ensure smooth agricultural cycles and a peaceful community. This is done by making offerings of prayer, worship, song, dance, theatre, and ceremonies at appointed times and places, which serve as a commitment to maintaining a connection with *Kachinas* (alternate spelling *Katsinas*) or Spirits who mediate humans' relationship with the Gods (Tyler, 1964, p. 289; Schaafsma, 2000, p. 1). Jemez have designed their governance infrastructure to facilitate their socio-ceremonial life. Their societies are divided into Summer and Winter *moieties*

(governance groups), which are identical in structure and function, and each *moiety*<sup>50</sup> takes turns performing their governmental and ceremonial duties according to their designated season. The nucleus of a *moiety* is the *moiety* association that consists of three adult initiated members of the nation who are entrusted with agricultural<sup>51</sup>, ceremonial<sup>52</sup>, and governmental<sup>53</sup> tasks required to sustain the community and ensure its longevity. While *moiety* associations perform several curing and healing functions, Dozier confirms that “their more obvious and primary functions are governmental and religious” (Dozier 1970, p. 152). There are also the heads of the Kachina associations who are responsible for all major and community-wide ceremonies. In addition, Jemez have several medicine associations, a hunt association, two clown associations, two women’s associations, and a council of heads association. Each of these associations has their own leadership, holds separate monthly retreats, conducts ceremonies as required including at least one large communal ceremony annually<sup>54</sup>. Hence, there are governance officers and

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<sup>50</sup> All members of a Pueblo society belong to one of the two *moieties* and are formally inducted into the *moiety* when they are still children.

<sup>51</sup> The moiety association performs several agricultural tasks including organizing and supervising planting and harvesting activities and coordinating and supervising communal hunts conducted by the hunt association.

<sup>52</sup> Key ceremonial tasks performed by the moiety association include the maintenance of the solar, lunar, agricultural, ceremonial and civilizational calendars, announcement of key dates and times for large group dances and ceremonies, coordinating with the medicine association to ensure the proper conduct of cleansing rites and purification ceremonies, construction, repair, and maintenance of *kivas* for ceremonial use, and ensuring that the secrecy and esoteric nature of Pueblo rituals and ceremonies are maintained.

<sup>53</sup> The governance related tasks of the moiety association include supervising the construction and cleaning of dams, canals, and irrigation ditches, co-ordinating warfare ceremonies conducted by the war association, appointment of officers to oversee the proper participation of Pueblo members in all communal activities, both religious and secular, and imposition of fines and punishment in cases where violations are detected.

<sup>54</sup> Medicine associations provide individual cures. Hunt association conducts prayers for hunting, game success and fertility. Clown associations are mainly associated with the Kachina association and communal dances. In the Kachina ceremonies and in large communal dances the clowns prescribe conformance to pueblo *mores* by ridiculing individuals who have been reported to them for deviant behaviour. Clowns ‘shame’ such individuals by reference to their behaviour or transgressions by mimicking them in front of an audience. The women’s associations are responsible for ceremonies for human and plant fertility. The council of association heads forms the locus of ceremonial and sociopolitical control, and their functions include weather control, communal works, ceremonies, hunting, and defence (Parsons, 1939, pp. 909-10; Dozier, 1960, pp. 55-6; Dozier 1970, pp. 192-5)

structures in place to oversee and guide all aspects for socio-cultural, political, and ceremonial life in the community.

Pueblos maintain a distinction between what they see as their religious and secular life by assigning different governance heads to each of the associations<sup>55</sup>. The governance structure ensures some distance between the core governmental activities of the *moiety* association and the religious activities of the Kachina association. In addition, a system of checks and balances is built into the governance process where leaders of different associations need to coordinate and cooperate to operationalize decisions for the community. However, given the nature of communal life and the framework of spirituality in Pueblo societies, it can also be said that there are several layers of overlap between various governance and spiritual responsibilities. For instance, the *moiety* association, the main governmental nucleus in Pueblo societies, is ultimately responsible for all aspects of Pueblo life. Its members are simultaneously responsible for keeping track of calendars, seasons, and harvest cycles, for managing construction projects and all ceremonial life of the community. In addition, they act as guiding figures for the prayers led and ceremonies conducted by the medicine, hunt, women's, and clown associations. In this way, *moiety* associations are guided by traditional lifeways and have an impact on all aspects of Pueblo life. In their governance operations, there is no separation between law, medicine, religiosity, governance, and knowledge generation so that *moiety* association members are lawyers, doctors, priests, bureaucrats, scientists, and teachers all at once.

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<sup>55</sup> For example, while the wider membership of the *moiety* and *Kachina* organizations overlap the leadership of the two groups is different. Each of the *Kachina* associations are under an independent supervisor called the *Kachina* Father who works closely with the *moiety* association during ceremonial activities. The position of a Kachina father is held for life but the position is appointed by the *moiety* association. In its functioning, the Kachina association is independent of all other associations, and coordinates closely with the clown association and the leaders of the *moiety* association for its communal activities.

Pueblo societies then may be called 'theocracies,' in a sense, since at the apex point of governance is a council that operates in the religious and the bureaucratic fields with equal authority (although with a system of checks and balances from other council heads and members). If Pueblo nations are considered theocracies because there is no strict separation between the realms of religion and governance, since all epistemology, spirituality, bureaucracy, law, and medicine are contained in an interconnected way of being, then all Indigenous societies on Turtle Island would be classified as theocracies. As noted earlier, land-based Indigenous ideas of the sacred are not separate from other aspects of life; they are all integrated and expressed in locality. Anishinaabe peoples, for instance, believe that the world and all existence is received as a gift from the Creator. In addition, the Creator has given to all beings the Natural Law as a means to live in the right way, and to learn to co-exist amongst other beings in Creation. Political principles such as responsibility, reciprocity, and respect are given in Natural Law, and are situated within this cosmology of viewing the world as a gift. The role of government is to maintain the upkeep of Creation by ensuring that responsible, reciprocal, and respectful relationships are maintained between human and other-than-human societies, so that it may be passed on to future generations in the state in which it was received (Wawatie, 2013). Anishinaabe societies, much like Pueblo ones, see no clear distinction, therefore, between religion and other realms of life such as governance, law, and morality. All are interconnected and interdependent<sup>56</sup>.

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<sup>56</sup> At this point, I am not claiming that there is a presence or lack thereof of a religious or spiritual sphere in Pueblo societies or saying what the nature and limits of those spheres might be. While this is undoubtedly interesting work, it is not the focus of my current project. For a detailed and interesting take on the genealogy of the word 'religion' and how it has historically and categorically excluded Indigenous lifeways see Brent Nongbri's *Beyond Religion* (2015). For the purposes of my argument here, I simply want to point out that Pueblo societies, much like other Indigenous societies that act out of locality, have a holistic approach to knowledge and governance, such that there is no clear distinction between the realms of religion, law, medicine, knowledge creation, and governance. For

To apply Kymlicka's liberal theory of minority rights consistently would then mean to call into question the eligibility of all land-based Indigenous societies, not just that of Pueblo peoples, who do not maintain a liberal format of separation between their religious and secular spheres of life. In this sense, Pueblo societies align with the norm of other Indigenous societies on Turtle Island and do not constitute what Kymlicka sees as "important exceptions" in their being 'theocratic' in structure. Hence, Pueblos are either as eligible to be self-governing units as any other Indigenous nation in Kymlicka's theory or that theory intends to reject self-governing status for Indigenous Peoples as a whole, since they do not make a clear distinction, as liberal principles demand, between their ideas of the sacred and their governance structures.

In fairness, Kymlicka would likely concede this point, admitting that it is an empirical error to categorize Pueblos as theocracies and that Indigenous societies at large have the right to self-government in accordance with their societal cultures, which in this case means a lack of clear separation between religion and secular aspects of individual and communal life. But Kymlicka's main argument here is pitched against illiberal internal restrictions imposed by self-governing nations. The connection between theocracies and internal illiberal restrictions in the case of Pueblo societies, however, is an instance of Pueblo agency exercised strategically as a means to protect against Anglo-American assimilationist forces. It does not in fact represent or correspond to their Indigenous lifeways accurately and is not a case of an illiberal internal restriction, as is registered on Kymlicka's analysis.

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now, it will suffice to note that various spheres of Indigenous life are all intertwined and separated in ways that do not map clearly on to liberal demarcations of religious and secular realms.

## **Pueblo nations and religious freedom**

Tisa Wenger (2005, 2009) provides a detailed outline of how Pueblo societies coopted the categories of religion and religious freedom to describe their lifeways. As noted in the previous section, Pueblo nations, like other Indigenous groups, faced a multiplicity of threats to their survival from missionaries, government employees, and reformers: assimilative policies aiming to render Pueblos landless, limits to the sovereignty of their governments, suppression of their ceremonial life of dancing and theatre, and restrictions on children's participation in initiation rites and ceremonies which would have rendered future generations of Pueblos without leaders. Most significant for the Pueblos were objections and bans that were placed on their ceremonial dances (specifically, a circular issued in 1923 by the Bureau of Indian Affairs categorically banning all Pueblo ceremonial dancing).<sup>57</sup> In response The Council of All the New Mexico Pueblos came together and made a strategic decision to adopt the language of religion to define and the category of religious freedom to protect their ceremonial dancing. The Council of All the New Mexico Pueblos stated: "... our most fundamental right of religious liberty is threatened and is actually at this time being nullified . . . our religion to us is sacred and is more important to us than anything else in our life" (quoted in Wenger, 2005, p. 89). By framing their main concern in the form of religion and religious freedom, Pueblo nations were reframing their lifeways in entirely new ways, using "an English-language category that had no parallel in their own languages" (Wenger, 2005, p. 89). They were aware of the importance that the idea of religious freedom held to Anglo-American officers and chose to express their lifeways in categories that would be comprehensible to Bureau of Indian Affairs officials. As foreign as this vocabulary was

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<sup>57</sup> The circular encouraged Indigenous Peoples to voluntarily give up their "useless and harmful performances...or else some other course will have to be taken" (Wenger, 2005, p. 93) This threat reflected the violent language of the Religious Crimes Code, which worried Pueblo nations.

to Pueblo lifeways, as a strategy it was successful. Once the dances were presented as a part of Pueblo religion, the Bureau of Indian Affairs agreed to the continuation of ceremonial dancing “for religious reasons” (Wenger 2005, p. 106). It was agreed upon by the Bureau of Indian Affairs, on grounds of religious freedom, that they would not interfere in matters of ceremonial dances. In return, Pueblo tribal governments promised to uphold the individual right of religious freedom and conscience of all members of their communities and to not force their members to participate in ceremonial dances if they wished not to. In this way, both sides - Pueblos and Bureau of Indian Affairs - resolved the conflict by agreeing to uphold religious freedom.

A year later Pueblo lifeways were under threat again, especially Pueblo tribal sovereignty. The Bureau of Indian Affairs, motivated by real estate and economic aims, argued in favour of instating an Anglo-American commissioner in each Pueblo nation, stating that traditional forms of Pueblo governance were “undemocratic” and “contrary to the spirit and practice of the American people” (Wenger, 2005, p. 107). Pueblo nations responded, in vain, by arguing that their governance structures were democratic and that their leaders were in fact elected officials. Already, the tribal council, as noted earlier, is a Spanish civil governmental superimposition on traditional forms of Pueblo government. To add another layer of external governmental influence through a commissioner’s post would, the Pueblo opined, be detrimental to their communities, especially in light of unrelenting assimilation attempts and land grabs. So, Pueblo nations resorted to a tactic that was successful in the past and argued that their governmental structures were “part of their religion” (Wenger, 2005, p. 107). Since Pueblo forms of government and Pueblo socio-ceremonial lives are intertwined, the Pueblo claimed religious freedom as a legitimate way to defend Pueblo governance structures and sovereignty. Once this governance issue was cast in terms of ‘religious freedom’ Bureau of Indian Affairs officials were quick to

take a hands-off policy and refused to interfere for as long as possible. The category of religious freedom played a key role in the resolution of this conflict. When asked about it, Bureau of Indian Affairs officials stated: “[w]e oppose very vigorously any drastic steps” to change their system of government because it is “a part of their...religious organization” (quoted in Wenger, 2005, p. 109). There are several discernible factions who each played key roles in shaping the debate around Pueblo religious freedom. The traditionalists argued in favour of religious freedom as a way to protect their dances, ceremonies, and communal structures; and the progressives who wielded the right to religious freedom for contrasting ends, arguing that they felt prosecuted by the ‘traditional’ and ‘tribal’ forms of religion. This led to a rift in Pueblo societies between traditionalist and progressives, one that exists to date, and manifests also in the *Toledo v. Jemez De Pueblo (1954)* case.

Under duress from assimilationist forces, Pueblos came to call their lifeways "religious" and hence, inadvertently, categorized themselves as what liberal theory defines as a “theocracy”. While their strategy was successful in protecting their lifeways, it was only a strategy, wielded to protect against assimilation, and "theocracy" is not in fact an accurate description of their lifeways or societies. It should be highlighted, though, that, in using the categories of religion and religious freedom, Pueblo societies were exercising their agency, given the tools available to them, to protect their lifeways. Pueblo efforts were undoubtedly successful in so far as they were able to keep assimilationist forces at bay. The Bureau of Indian Affairs was pleased with Pueblo response and commented that Pueblos were “getting more and more tolerant” in their views and that their ceremonial life was no longer “forced upon those unwilling to recognize it as community obligation” (Wenger, 2005, p. 111). However, Pueblo societies paid (and continue to pay) a heavy price for utilizing the categories of religion and religious freedom to identify and

protect their lifeways. The introduction of a rights framework and liberal vocabulary into Indigenous communities distorts the meaning, significance, and portrayal of Indigenous lifeways, creates fissures within Indigenous communities, and precludes the possibility for Indigenous Peoples to act out of locality. Attention to these points reveals further the limitations of Kymlicka's theory of liberal multiculturalism as applied to the self-determination of Indigenous nations.

Wielding the category of religious freedom meant the introduction of individualism into Pueblo societies and kinship networks in ways that did not exist before. In order to present their requests to fit with the format of a basic individual right, in this case freedom of religion and conscience, Pueblo societies have had to reframe their ceremonial responsibilities in individualistic terms. Wenger reports that the language of religious freedom introduced "new elements of individualism" that "altered Pueblo norms of ceremonial participation" (Wenger, 2005, p. 92). Prior to assimilation, Pueblos understood their forms of worship, offering prayers, and ceremonial dances as communal events. Activities and ceremonies including dancing, building *kivas*, churches, houses, irrigation channels, harvesting crop and storing away grain involved everyone's participation and were performed in communal spaces accessible to all, with the understanding that everyone in the community would benefit from this engagement. Based on this reasoning, the socio-ceremonial structure of Pueblo societies is determined into moieties, associations, and councils. Pueblo nations considered communal dances to be communal work in the same way that construction and agriculture were communal activities. They did not think of their ceremonial life as religion, "a matter of individual conscience that could be separated from the rest of Pueblo life" (Wenger, 2005, p.105). Instead, all communal activities were understood to benefit and protect the entire community by providing adequate rainfall, good agricultural

seasons, and maintaining balance and harmony with all beings. Therefore, Wenger notes, “the tribal leaders had every right to assign, and the governor to enforce, tribal members’ participation in the dances” (Wenger, 2005, p.105).

The Bureau of Indian Affairs portrayed Pueblo dances as a form of coercion, given that dancers were not allowed to choose if they would like to participate. To this, one member of the Taos nation responded by stating that Pueblo ceremonies, rituals, and communal activities are means of educating the young on how to live and fend for themselves. In this way, he stated, he saw Pueblo lifeways as no more or no less coercive than “English school”; there was simply an expectation that one would attend, and learn, and Pueblo societies and their infrastructure were designed accordingly to facilitate Indigenous education (Wenger, 2005, p. 104). With the introduction of progressives and assimilationist tendencies to the community, however, the focus has wavered from communal welfare to individual welfare. What were once communal prayers, based on the principles of balance and reciprocity, are now transformed into individual prayers based on an individualized idea of thriving that centres self-interest. Even dissent came to be stated in terms of consent and rights, replacing Indigenous norms of kinship and reciprocity.

In adopting a rights framework and utilizing the categories of religion and religious freedom, Pueblo nations are in fact trying to find means to preserve their Indigenous lifeways within a liberal and assimilative polity. Legal scholar Mary Ellen Turpel<sup>58</sup> (1989-90) points out that a rights framework is incongruous with Indigenous lifeways, but in cases where Indigenous nations do adopt the language of rights, it is usually “the only (or last) resort” and is “a plea for

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<sup>58</sup> Turpel claims to have Cree lineage, and in this essay identifies herself as “an Aboriginal woman” (Turpel, 1989-90, p. 5). In 2023 her Cree identity and claims to indigeneity were called into question and remain unresolved. By using her work to support my argument I do not condone her false claims to indigeneity and strongly support scholars and community members who stand up against those who misuse Indigenous identities. Here, I use Turpel’s work to represent legal scholarship and not as constituting Indigenous legal scholarship.

recognition of a different way of life, a different idea of community, of politics, of spirituality” (Turpel, pp. 44, 33). Indigenous rights claims are best understood as responses to liberal mainstream or “European” calls for toleration within cultural diversity but do not in fact represent Indigenous lifeways, their needs or concerns, in accurate ways. As seen in the case discussed in this chapter, Pueblo nations made use of a strategy available to them and continue to pay the price. As seen in Kymlicka’s theory of multiculturalism, for instance, as well as in liberal scholarship more generally,<sup>59</sup> Pueblo societies are often discussed as theocracies, which is not only a misrepresentation of who they are as a Peoples but also prevents informed study of their actual Indigenous lifeways. This in turn leads to misconceived ideas of justice that actually reiterate colonial *in*justice rather than undoing it. In addition, a liberal approach that precludes or is hesitant to engage with the substance of worldviews and lifeways prevents the correction of this miscategorization by not seeing as relevant and or necessary the kind of examination that would lead to reconstructing the narrative of Pueblos as exercising their agency under duress rather than being structured as theocratic societies.

A further harm caused to Pueblo societies by adopting the language of rights includes the marginalization or erosion of the community’s capacity to harness its traditional mechanisms for conflict resolution. Instead of building community ties when conflicts arise and drawing from traditional knowledges based on balance, reciprocity, and relationship with the land, Indigenous Peoples will be forced to take matters to court and to use an alien and incommensurable set of resolutions to address disputes. Within Pueblo societies, this emphasis on rights risks deepening the fissures between the traditionalists and the progressives, further undermining communal

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<sup>59</sup> See Warren Weston (1971), Frances Svensson (1979), Leah Dilworth (1998), Avigail Eisenberg (2004), Lucas Swaine (2005).

harmony, creating fault lines along colonial lines, and setting up barriers to the work of reconciliation. Hence, traditional knowledges and mechanisms are undermined, and a rights framework can “break down community methods of dispute-resolution and restoration, or place limits on the re-establishment of such methods” (Turpel, 2016, p. 41).

Communal harmony and strength within communities can also be eroded. As Deloria Jr. and Lytle (1984) argue “[p]eople did not have to confront one another before their community and resolve their problems; they had only to file suit in tribal court” (Deloria & Lytle, 1984, p. 213; quoted in Turpel, 2016, p. 42). A rights framework then becomes a barrier that stands between an Indigenous person and her agency to connect with her community through her knowledge systems and redirects her instead to a rights claim within a court system. Here, an Indigenous agent is prevented from acting out of locality, since she no longer has access to her community or to her land-based knowledge and practices as a first recourse but is instead redirected to the system of rights and courts that are a European superimposition on Indigenous societies. According to Deloria Jr. and Lytle, this rights framework has attempted to replace Indigenous duties and responsibilities in the community, thereby eroding traditional ways of being and relating.

Scholars Lori Beaman (2002) and Sonia Sikka (2024) argue in a similar vein pointing to the limitations of the vocabulary of religious freedom to couch Indigenous spiritualities. Surveying key Supreme Court decisions in both Canada and the United States of America, Beaman argues that “Aboriginal spirituality is legally constructed outside of the boundaries of religious freedom” (Beaman, 2002, p. 136). Beaman provides three main reasons in support of this claim. First, she states that the religious landscape is dominated by a Christian framework which leads to a “narrow interpretation” of religion and religious freedom, emphasizing that

“Native spirituality cannot be adequately understood in these [Christian] terms” (Beaman, 2002, pp. 136-137). Second, she points out that the legal framing of religious freedom distorts an understanding of Indigenous spiritualities. She gives a Canadian example where ‘religious’ rights of First Nations’ peoples are cast instead as treaty rights and are debated in terms of hunting and fishing rights, resulting in the “minimization or marginalization of issues concerning religious freedom” (Beaman, 2002, p. 136). Finally, she argues that using a rights framework to understand and address Indigenous spiritualities continues colonial legacies and categorizes FNMI peoples as “abnormal” and as requiring “special rights” (Beaman, p. 136). Here, she explains that Christianity is taken to be the “baseline or ‘normal’ against which other religions or spiritual practices are referenced” (Beaman, p. 147). Such a framework only goes to perpetuate rather than undo colonial attitudes in which Indigenous Peoples are viewed as “an ‘abnormal’ group to be either tolerated or accommodated by the benevolent ‘normal’ majority” (Beaman, p. 136). This is precisely the framing that occurs in Kymlicka’s theory, where the liberal “we” is taken to be the ‘benevolent’ and ‘normal’ majority and rights are granted to minority ‘others’. Such a framework completely overlooks Indigenous sovereignty and perpetuates colonial attitudes, creating barriers for justice.

Sikka focuses her discussion on the *Ktunaxa Nation v. British Columbia* case and points out that a rights framework distorts Indigenous claims to land. In an attempt to prevent the development of a ski resort on their sacred lands, the Ktunaxa nation petitioned the Supreme Court of British Columbia appealing to ‘freedom of conscience and religion’. However, the courts denied the petition since they understood these claims to constitute a conflict where “religious beliefs [are] allowed to trump property rights” (Sikka, 2024, p. 117). She explains: “The religious freedom framing...misrepresents what should be recognized as a conflict of

worldviews, involving fundamentally different understandings of land and the relation between human and nonhuman beings” (Sikka, p. 117). She argues that Indigenous lifeways and Indigenous sovereignty are overlooked when the case is cast within the framework of religious freedom. She points out that Indigenous societies are “respectable...dynamic intellectual traditions” and should be treated as such by settler law (Sikka, p. 127).

Ultimately, it has to be acknowledged that the rights discourse is a substantive and non-neutral framework that arises from a particular historical and cultural context. Individual rights, as they manifest in liberal political theory today, are derived from the natural rights theories of seventeenth century Europe. Private property, exclusive (male) ownership, primacy of individualism, and a focus on negative freedoms form constitutive bases of rights that have been universalized and uncritically applied to Indigenous Peoples as well. Indigenous communities are kinship and land-based, communally oriented societies whose interactions are guided by a network of duties, responsibilities, and obligations maintained through relationships with the human and other-than-human world. There is no corresponding counterpart for the kinds of individualism or rights that arise within liberal societies. Turpel summarizes this incongruence well:

The collective or communal basis of Aboriginal life does not...have a parallel to individual rights: the conceptions of law are simply incommensurable. The duty to the Creator is the duty of the people. There are no “rights”. To try to explain to an Elder that...there are carefully worked-out doctrines pertaining to who has proprietary interests in every centimetre of the territory, sky, ocean, ideas and various other relationships would provoke disbelief and profound skepticism. (Turpel, 2016, p. 30)

This is the same attitude that is reflected in the Taos response to the Bureau of Indian Affairs regarding Pueblo education and ceremonial dancing (noted above). Individual rights are a culturally inappropriate means of resolving disputes that arise within Indigenous nations and the resulting conflict between individual and communal rights are conceived of in inaccurate and unhelpful ways, introducing the cumbersome and uncritical binary of individual versus collective or communal rights. An important point often overlooked in liberal analyses of communal rights is that collective rights in Indigenous societies are communal in at least two ways. First, collective rights refer to the set of rights that groups hold as a whole, with reference to their culture, their continuity, and their existence as a group. This is the primary and only way in which Kymlicka understands Indigenous societies to hold collective rights. He says:

...when some Indigenous leaders say that they value community rights above individual rights, what they often mean is that they attach profound importance to their recognition as a distinct culture and society with inherent rights of self-government. They want to be recognized as a distinct national community, and, in that sense, demand a 'community right', not just individual rights...The claim that Indigenous Peoples favour collective rights over individual rights is often a claim about the importance of Indigenous self-government *vis-a-vis* the larger society. (Kymlicka, 1995, p. 172)

However, there is an additional sense in which rights are communal in Indigenous societies, involving rights that apply across the board to all members of the community or to land, understood in its widest sense of a web of inter-relationships between human and nonhuman members. Rights such as the right to life, to exist, to thrive, to congregate, to liberty, equality, and justice apply to human as well as other-than-human beings of the community, including plant, animal, fish, insect nations as well as the waters, mountains, and skies. Here, rights are not

‘human’ or ‘individual’ but communal in the sense that the *same* rights apply *equally* to human as well as non-human members of the community. This reasoning arising from TEKW subverts the individualism central to the rights framework, while highlighting Indigenous forms of kinship. An acknowledgement of this idea of communal rights as applying to all members of the community is absent in Kymlicka’s liberal theory of minority rights<sup>60</sup> as well as from communitarian critiques of liberal individualism<sup>61</sup>.

Recognizing the two kinds of communal rights that occur in Indigenous societies does not automatically resolve the conflict between individual and communal rights. However, this recognition is helpful in so far as it reframes more accurately and with more nuance the conflicts that arise between individual and collective rights. It points to the specificities of Indigenous lifeways, the mechanics of their wisdom and the substantive nature of the rights discourse on both sides of the debate. That sets the stage for a more equitable discussion and resolution of the matter, rather than simply enforcing an (alien) individually-centered rights paradigm on to Indigenous societies. Moreover, individual rights, especially when viewed in binary opposition to communal rights, tend to be exclusionary. Liberal theorists, Kymlicka included, seem to understand communal rights as precluding, or at least as weakening the case for individual rights. Rather than discarding the presence of individual rights in communal settings, these two traditions need to be brought into conversation to ensuring that the “oppressively hegemonic”

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<sup>60</sup> The discussion of Indigenous rights as communal in the latter sense is generally missing from liberal scholarship. See for instance Will Kymlicka (1991, 2015), Yael Tamir (1999), Lesley Jacobs (1991), Jan Narveson (1991) and Leslie Green (1991) who discuss individual vs collective rights but fail to acknowledge the latter sense in which rights are collective for Indigenous nations.

<sup>61</sup> ‘Communitarian’ scholars such as Michael Sandel (2008), Charles Taylor (1994), Alasdair MacIntyre (1977), and Michael Walzer (1983) critique liberalism’s ‘atomistic individualism’ and point to cultures, communities, communal ties, and a sense of belonging as fundamental resources to ensure that individuals and societies can thrive. However, absent from all these ‘communitarian’ accounts are discussions of Indigenous forms of community and basic rights that include other than human beings within their scope.

framework of a liberal rights-based paradigm is not at play in arriving at a resolution in this matter (Turpel, 2016, p. 44).

At this juncture I want to briefly address the liberal fear that emphasizing communally centered belonging and goals erodes, or worse eliminates, protections for individuals in such societies. This seems to be Kymlicka's fear, driving his argument and analysis regarding the Pueblo case. Kymlicka views the communally-oriented 'tribal religion' of Jemez as tyrannical for precisely this reason — that individual rights, such as a right to religion and conscience, are superseded for the sake of communal goals. For this reason, some aspects of communally oriented societies are called into question as being unqualified for self-government in multicultural democracies. However, Kymlicka's worry is misplaced in the case of Indigenous communities for a variety of reasons. First, Indigenous communities do have and operate with ideas of freedom and equality, but ones that are structurally incongruent with Anglo-American categories and hence are not always recognized as such. Liberal accounts tend to overlook or erase Indigenous manifestations of freedom and liberties rather than recognize the different forms these take in various nations<sup>62</sup>. What is needed in this case is a decolonized understanding of freedom, equality, and rights, to see that Indigenous peoples operate with their own paradigms that are, however, incompatible with liberal ones. In such cases, a theory of justice should be able to provide categories that are capable of responding to both liberal and non-liberal requests for justice, that are framed in fundamentally different ways.

Second, it must be noted that within Indigenous communities individual rights and freedoms and communal obligations are not in direct opposition to each other, as is often construed in

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<sup>62</sup> For narratives articulating Indigenous ideas of freedom and liberties see Allison Weir (2024), John Borrows (2010b, 2016), Taiaiake Alfred (2005), and Georges E. Sioui (2008).

liberal debates. In Indigenous communities, individual identity and belonging are viewed as two sides of the same coin, where one cannot sustainably exist without the other. As noted in chapter 1, Indigenous formulations of personal identity, what Deloria Jr. calls personality, exemplify this point. The structural, material, and moral integrity of a self is arrived at and maintained by the relationships she builds and sustains with all other human and nonhuman beings. In this way, to exist is to exist-in-relation, and to be is to belong within a community. Burkhart refers to this as kinship capacity, and sees it as the basis of all existence and agency. To buttress this way of being and belonging, Indigenous societies have, internal to their political and social ordering, structures of accountability that are designed to uphold Indigenous formulations of individual liberties and freedoms. This is exemplified, for instance, in the socio-ceremonial lifeways of Pueblo societies. While membership in *moieties* and communal activities are obligations prescribed to all members in society, consensus in decision-making is still sought out. Regular moiety meetings are held for this express purpose (Dozier, 1960). Additionally, individuals have room to negotiate the extent and timing of their involvement in communal activities based on their individual circumstances. *Moiety* and societies' leadership responds to such requests by reallocating obligations or by allowing for exemptions (Dozier 1960, 1970).

Finally, in cases where individuals find that both dissent and opting out of ceremonies or communal activities are insufficient, they may invoke a right to exit the nation. Indigenous Peoples have a right to exit from their nations at any time of their choosing. In pre-contact times, for Pueblo peoples, exiting their communities meant that they shed all ties with their current families and *moieties* and joined neighbouring nations such as the Apache or Navajo and, over time, willingly adopted and were trained in the customs of their new adoptive communities (Dozier 1960). Special ceremonies and protocols existed for both parts of this process; exiting

one's community was a ceremonious process and being inducted into a new community or nation also involved a series of rituals and protocols. In contemporary times, exit has meant that individuals and families willingly leave their traditional territories and communities and move to cities or urban centres where they usually start afresh to build a community and life of their choosing<sup>63</sup> (Dozier, 1970). Hence, in Indigenous communities there are a network of internal mechanics and safeguards - Indigenous manifestations of freedoms and liberties, belonging and accountability, and a right to exit - which work together to preserve an individual's integrity and her right to choose.

## **Liberal Toleration and Liberalization**

### ***Liberal toleration***

Kymlicka rightly anticipates that there will be illiberal and non-liberal elements alongside liberal populations in a multicultural society. As a means to stabilize the political sphere of a diverse society, Kymlicka offers his theory of liberal toleration, arguing that “a tolerance-based liberalism can provide a more secure and wider basis for the legitimacy of government” in comparison to a Rawlsian-style autonomy based liberalism (Kymlicka, 1995, p. 154). However, the idea of toleration is not neutral; it has origins in Christian European history and contexts and takes autonomy to be a grounding principle. Kymlicka acknowledges that the liberal value of toleration is inextricably intertwined with autonomy both historically and conceptually, and liberalism is seen as an extension of the religious principle of tolerance. Historically, Catholics

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<sup>63</sup> The right to enter into and exit Indigenous nations as citizens or community members is not unique to Pueblo peoples. Across First Nations, Métis, and Inuit communities, ceremonies of inducting new members into communities continue to occur today where non-indigenous members or Indigenous members from other nations are customarily ‘adopted’ into a nation or a community by a series of protocols and ceremonies focused on building and maintaining relationships with all human and nonhuman others in the community (Lara di Tomasso & Sandrina de Finney, 2015).

and Protestants agreed that one cannot have a peaceful stable order on the basis of a shared religion. In more contemporary terms, Kymlicka points to Rawls showing that this logic applies to other areas, including conceptions of the value and purpose of human life (Kymlicka, 1995, p. 155). This has resulted in religion being expressed and safeguarded in the form of a right: the right to religious freedom and the right to individual conscience. For Kymlicka's liberal multiculturalism, any way of life that prevents an individual from having or exercising this right is illiberal and unjust<sup>64</sup>.

As Kymlicka explains, the individual right to conscience, couched in terms of liberal toleration, works at two levels. At the level of the individual, it allows her to "freely express, question, and revise her religious beliefs" (Kymlicka, 1995, p. 158). It also works to limit "the power of illiberal states to restrict the liberty of collective worship" (Kymlicka, p. 158). Thus, Kymlicka argues that liberal toleration is geared towards protecting both "the right of individuals to dissent from their group, as well as the right of groups not to be persecuted by the state" (Kymlicka, p. 158). However, Kymlicka's theory does not tell us how to resolve cases where individual conscience comes into conflict with collective worship, as it is understood and operates within Indigenous societies. That is, if Pueblo societies want to continue to worship based on *moiety* and association divisions, maintain a close relationship between communal work and communal dancing, and work out their ideas of consent, dissent, and religious participation in communal ways (as has been the historical practice) then what recourse do they have within a liberal polity, especially one that upholds individual autonomy as a paradigm for

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<sup>64</sup> Kymlicka states that "religious tolerance in the West has taken a very specific form—namely, the idea of individual freedom of conscience. It is now a basic individual right to worship freely, to propagate one's religion, to change one's religion, or indeed to renounce religion altogether. To restrict an individual's exercise of these liberties is seen as a violation of a fundamental human right" (Kymlicka, 1995, p. 156).

cultural diversity and the right to religious freedom as a yardstick for justice? Kymlicka anticipates this conflict, stating that Pueblo societies are “seriously deficient from a liberal point of view” (Kymlicka, p. 165). In such cases, he proposes a liberalization move which involves a non-aggressive, incentive-based process of convincing illiberal groups of the benefits of adopting liberal principles, values, and ways of life in order to modernize themselves. In what follows, I will show that such a process actually occurred in Pueblo societies and conclude by pointing to the dangers of liberalization for Indigenous nations, in light of colonial histories and settler colonial realities.

### ***Liberalization project***

In order to close the gap between illiberal and liberal groups, Kymlicka puts forth what I recognize as a ‘liberalization project’, couched within his theory of liberal toleration. While liberal toleration is in place to regulate the public sphere of a multicultural society, the specific aim of liberalization is to close the gap between liberal and illiberal societies. The overarching response is that illiberal groups need to liberalize themselves by adopting liberal values and practices. Kymlicka is clear, however, that liberalism should not be enforced through aggression or violence on such communities, but rather should be the result of “education, persuasion, and financial incentives” (Kymlicka, 1995, p. 166). Referring to illiberal Indigenous societies, Kymlicka observes that liberal values and practices are likely to be successfully introduced and stay sustainable only when they are suggested in peaceful ways and not thrust forcefully upon peoples.

To note here is a key feature of Kymlicka’s liberal multiculturalism; namely, that the communication between Indigenous groups and the liberal state in this regard is one of “peaceful negotiation, not force” (Kymlicka, 1995, p. 167). For Kymlicka, Indigenous groups are societal

cultures and have a right to exist as such, thereby necessitating negotiations with the main liberal state. In cases where negotiations between the liberal state and the illiberal self-governing minority group does not result in an adoption of liberal practices by the latter, Kymlicka states that the liberal majority will simply have to “learn to live with” the violation of individual rights within their society, just as they can do little to prevent illiberalism that occurs in other countries (Kymlicka, p. 168). In such cases, however, Kymlicka is quick to point out that liberals do not have to be inactive bystanders to such injustices. They can lend their voice to support the liberalization of illiberal groups. Liberalization, as Kymlicka sees it, is an expression of liberal agency. He states that when liberal members of a society come across illiberal practices, they have a “right” and a “responsibility” to speak up against illiberal practices<sup>65</sup>. (Kymlicka, p. 168)

The mechanics of a liberalization project as Kymlicka envisages it are as follows: It is within the realm of liberal agency to educate, convince, and incentivize illiberal peoples to see the light and move towards liberalizing their values and practices. The main initiative, however, needs to come from ‘liberal reformers’ inside the illiberal group<sup>66</sup>. Liberal reformers are members inside illiberal groups who believe in liberal values and are fighting against illiberalism from within the minority group. Liberal allies, located outside of the minority group, should lend their voice and support to strengthen the efforts of liberal reformers. This mechanism, according to Kymlicka, is the preferred way for liberals to add strength to the liberalizing efforts of illiberal

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<sup>65</sup> Kymlicka writes: “This does not mean that liberals should stand by and do nothing. A national minority which rules in an illiberal way acts unjustly. Liberals have a right, and a responsibility, to speak out against such injustice. Hence liberal reformers inside the culture should seek to promote their liberal principles, through reason or example, and liberals outside should lend their support to any efforts the group makes to liberalize their culture. Since the most enduring forms of liberalization are those that result from internal reform, the primary focus for liberals outside the group should be to provide this sort of support” (Kymlicka, 1995, p. 168).

<sup>66</sup> Kymlicka states: “In the end, liberal institutions can only really work if liberal beliefs have been internalized by the members of the self-governing society, be it an independent country or a national minority”. (Kymlicka, 1995, p. 167).

groups. Thus, liberals will always make non-violent and non-aggressive efforts to liberalize illiberal cultures. Kymlicka sees this as a valid and necessary commitment on the part of liberal members of a society<sup>67</sup>.

### *A Liberalization project within Pueblo nations*

Interestingly, the impetus that led Pueblo nations to adopt the language of religious freedom and individual rights to protect their lifeways (as outlined in a previous section of this chapter) was in fact a result of a liberalization project, much like the one Kymlicka outlines, that occurred in their communities. When the Bureau of Indian Affairs circular banning ceremonial dancing reached the Pueblo nations, it split the community in two: traditionalists who opposed it and progressives who supported it. Wenger (2009) reports that both traditionalists and progressives recruited the aid of ‘reformers’, members of the white settler population whose views seem to align with that of the Pueblo peoples. The categories of religion and religious freedom made Pueblo nations’ concerns accessible to settler populations who had little knowledge about Indigenous lifeways but were immediately concerned once they knew that ‘religious freedom’ was under threat. Reformers supported Pueblos by assisting with garnering support, hiring attorneys, and most importantly in helping the Pueblo frame their request in the liberal language of rights and religious freedom. The traditionalists garnered support from ‘moderate reformers’ who were a settler artist colony, attracted to the region by Pueblo art. Moderate reformers believed that Pueblo Indigenous lifeways should be protected in their “authentic” state for historical, aesthetic, and economic reasons. Many of them belonged to the American Indian Defense Association (AIDA). AIDA worked on convincing the US government

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<sup>67</sup> Kymlicka says: “Liberals need to think more deeply about how to promote the liberalization of societal cultures, and about the role of coercive and non-coercive third-party intervention in that process” (Kymlicka, 1995, p. 172).

to meet “its treaty and contractual obligations” by ensuring that Indigenous Peoples like other Americans had the same “rights to life, liberty, and property,” including “religious freedom”<sup>68</sup> (Wenger 2009, p. 113). Ostensibly, moderate reformers supported self-government rights for Pueblo and advocated on behalf of the traditionalists to be able to retain their Indigenous lifeways. But their motivations for offering support were questionable. Moderate reformers had assimilationist motivations: “Moderates placed themselves in a kind of shepherding role, hoping to gently introduce the Indians to the benefits of Euro-American civilization while encouraging the ongoing development of authentically Indian culture” (Wenger, 2009, p. 126). There was also the Santa Fe artists' colony, comprised entirely of white settlers, who argued that Pueblo territory was “one of the greatest business assets of the Southwest” (Wenger, 2009, p. 98). By the early 1900s, Pueblo dances were performed in state festivals, and there was an interest from the municipal governments and museums that the ban be lifted, since it was affecting tourism and their local economy.

The progressives allied with like-minded people in the settler community, the “assimilationist reformers”, who believed that Pueblo progressives were “coerced” by traditional Pueblo religion (Wenger, 2005, pp. 100-1). Assimilationist reformers argued that progressives were “well-educated” and “Christian” members of society who found Pueblo “ceremonies repugnant to their religious convictions” (Wenger, 2005, p. 101). On this basis, they were in favour of banning dances and replacing them with more educated, civilized and Christian rituals. Unsurprisingly, each brand of reformers had their own biases, economic interests, and

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<sup>68</sup> AIDA member Ina Sizer Cassidy suggested to Taos Pueblo that they present their response to the ban in the language of religious freedom. The Commissioner of AIDA, John Collier, followed up by giving a famous speech in which he declared that Pueblo peoples must have “the same constitutional rights as Catholicism, Judaism, or any other religion”. Furthermore, he urged Pueblos to “demand their religious freedom in court if necessary” (Wenger, 2005, p. 99).

assimilative agendas, which created demographic fissures and long-lasting problems for the Pueblos. Most notably, the progressives received support from assimilationist reformers in two ways, through the Indian Rights Association (Indian Rights Association) which advocated for the ban on Pueblo dances, and a Bureau of Indian Affairs member named Clara True who was instrumental in forming the Progressive Pueblo Council. The Indian Rights Association was an organization formed by Protestant Christian reformers who were committed to the “complete civilization of the Indians and their admission to citizenship” (Indian Rights Association Records). The Indian Rights Association led the efforts in this area. Believing that Christianity and civilization went hand in hand, the Indian Rights Association advocated to discourage and suppress Indigenous dances, Pueblo dances in particular, so as to promote education, civilization, and assimilation (Wenger, 2009, pp. 95-6).

True, a former Bureau of Indian Affairs school teacher, played an instrumental role amongst Pueblo progressives in helping them frame their request in terms of religious freedom. Under True’s initiative and leadership, Pueblo progressives organized themselves as the Pueblo Progressives Council and “encouraged its emphasis on religious freedom” (Wenger 2009, p. 191). True’s efforts were guided by assimilationist aims. In her view, the “bad Indians” were the ones who clung to their traditional customs, and the “good Indians” were the ones who renounced them. These views formed the basis on which she was able to side with the progressives and encourage them as “good Christians” to support the ban on ceremonial dancing (Jacobs, 2001, p. 106). True worked to get Indian Rights Association interested in the Pueblo case, so she followed up by arranging meetings between the Pueblo Progressive Council and key Indian Rights Association officials. True informed the Indian Rights Association that a group of “well-educated and Christian Pueblo Indians” found the dances and ceremonies repugnant to

their “religious convictions” (Wenger, 2005, p. 101). She encouraged the progressives to highlight themselves as “Christian Indians” who were facing “religious prosecution” at the hands of their tribal councils (Wenger, 2009, p. 181).

Influences emerging from Pueblo allyship with white settler reformers contributed to the rift between traditionalists and progressives on reserve land. Progressives were often at loggerheads with traditionalists on the issue of Pueblo ceremonies and lifeways. Progressives laid the (Protestant/Bureau of Indian Affairs/Anglo-American) charge that traditionalist Pueblos were not being good Christians because they conduct ceremonies and dances that are “obscene” and “immoral”. The traditionalists responded with the (Spanish-Catholic) argument that that was an “absurd” claim to make because “virtually all of the Pueblos were Christians” (Wenger, 2005, p. 100). The Council of All Pueblos of New Mexico responded to the Progressive Pueblo Council by saying:

As you know, we are all Christians—those few men who proclaim themselves Christian Progressives are no more Christian nor different Christian than we, and we cannot make out how they are more progressive than we, except that they are following after White men who are against us on the land question. (quoted in Wenger, 2005, p. 100)

To be clear, those who supported retaining Pueblo lifeways were not opposed to American culture “and they certainly did not exist in a realm apart from it”, but they did actively resist Bureau of Indian Affairs policies that required them to assimilate into mainstream Anglo-American society (Wenger, 2005, p. 91). On the other hand, it is important to see the context where progressives, as children, were forcibly placed in the IRS system and were educated and raised in (largely Protestant) Christian missionary schools where they were barred from learning

Pueblo ways of life and from having access to their languages and communities. This meant that they were Christianized, educated, and civilized into an Anglo-American way of life, as was the aim of the IRS. When Pueblo youth returned from the IRS system, they were confronted with a culture and way of life that was not only alien to them but also was one that they were actively taught to despise, reject, and rise above through their educated and civilized ways. As a result, they felt “enslaved” to a traditional Pueblo way of life (Wenger, 2005, p. 100). One traditionalist member of the Santa Fe nation stated: “The caciques don’t harm you... You don’t want to obey your pueblo governors... If you were really progressive you wouldn’t try to destroy your people’s unity” (quoted in Wenger, 2005, p. 100). Furthermore, by calling these dances “immoral” and the dancers “uneducated and uncivilized”, the progressives, much like Bureau of Indian Affairs and other governmental bodies, only furthered assimilationist rhetoric. Once these ‘progressives’ had a chance to learn about their Pueblo lifeways, things changed. This is evidenced by the fact that a year after True convened the first meeting of the Progressive Pueblo Council, membership dropped by over sixty percent (Jacobs, 2001).

It is important to note that progressive Pueblos did not reject Pueblo traditions all together. Santa Clara and Laguna progressives still participated in their ceremonial dances and deliberately hid this fact from their non-Indigenous allies (Wenger, 2005, pp. 102-3). Progressive Pueblos saw Pueblo ceremonial life as an impediment to economic prosperity, not as something inherently objectionable and immoral. Their concern had to do with their access to “advancing Pueblo fortunes in the modern world” and the only way they could do this was to assimilate into mainstream society (Wenger, 2005, p. 103). One member of the Taos Pueblo stated that he wanted his children to abstain from ceremonial dances “not because they were immoral” but rather because he wanted them to “go to school” and get an education and “make a good life”

(Wenger, 2005, p. 103). In practice, what they meant by “tribal coercion” refers more to their limited access to assimilationist policies and less to the ‘objectionable’ content of the ceremonies themselves (Wenger 2005, p. 104). This rift between traditionalists and progressives was new, and artificial in a way, given that it was created not by a bifurcation resulting through a natural evolution internal to Pueblo communities but rather was introduced by a Protestant majority society with overtly settler colonial aims and interests in labour and land. Assimilationists used, or at any rate understood, this reality to mean ‘religious prosecution’ and framed a resolution in terms of the ‘right to religious freedom’. In the allyship that formed between the assimilationists and progressives, there was no room for deliberating on the nuances that existed within the views of the progressives, who were interested in ‘modernizing’ their lives but also not willing to give up their land or their ties to community. From the assimilative perspective, this is a contradiction since their idea of modernization was built on the idea of assimilation through coopting the land of Indigenous communities while simultaneously erasing their Indigeneity.

### **Analysis - Limiting effects of Assimilation and Liberalization**

#### ***Liberalization’s limiting effects on Indigenous nations***

Paying close attention to the operationalization of a liberalization project makes apparent the artificial binaries and their unjust origins in which formerly colonized peoples find themselves today. Progressives find themselves stuck between traditional (i.e. communally oriented Indigenous lifeways) and modern (or Anglo-American) ways of life, whereas traditionalists find themselves caught between trying to maintain their lifeways and retain relationships with populations who were estranged through colonization and assimilation. Kymlicka’s theory of liberal multiculturalism is unable to identify and address this complex situation. Kymlicka’s solution here is to simply insist on individual autonomy, without accounting for the specificity of

Indigenous Peoples' realities. The kind of liberalization project he favours in reality leads to an erosion of Indigenous lifeways, because it insists that illiberal Indigenous practices be given up and exchanged for liberal ones. Rather than requiring them to give up one for the other, what is needed is a framework that will take into account their colonial history, their settler colonial realities and chart out a course that allows for Indigenous agency to navigate this new reality.

For instance, there is a clear right to exit in Pueblo societies. Members who no longer wish to follow a Pueblo way of life have historically moved to neighbouring nations such as Apache or Navajo, or in more recent times move to urban centres and cities, thereby willingly relinquishing the responsibilities as well as the privileges that come from living a communally oriented Pueblo life (Dozier 1960, 1970). However, what recourse do progressives have who were forcibly removed from their communities due to colonization, replaced within a context of Anglo-American assimilation, and are now trying to straddle a new reality that consists of both worlds and the complex power relations therein? This is the reality that several Indigenous Peoples face today and is also the context in which traditionalists and progressives are operating, as discussed in the *Toledo v. Pueblo De Jemez* case in this chapter. Owing to Kymlicka's insistence on a liberal framework of rights, his theory is unable to uncover and respond to the complex realities that Indigenous Peoples confront today, despite his overt commitments to diversity. This new reality, along with its colonial and assimilationist history, requires a new decolonial framework to address the matters of injustice in the choices that current day Pueblo nations face. This new framework will need to prioritize Indigenous agency ensuring that that there is room for TEKW,

treaty formation, justice as healing, and Indigenous practices to deal with a community that is practically bifurcated in its current state<sup>69</sup>.

The methods of Kymlicka's liberalization project seem to leave national minorities open to bias, exploitation, and assimilation from liberal allies. This is especially true for Indigenous Peoples. Take for instance the case of True, who was an ally to the progressives. At best, True is a controversial figure. She believed firmly in and was committed to the assimilationist project of the Anglo-American government at the time. As a Bureau of Indian Affairs school teacher, she supported violence against Pueblo children, believed that Pueblo lifeways were immoral, obscene, unworthy of retaining and advocated for their being replaced by 'decent' Christian practices (Wenger 2009). Margaret Jacobs (2001) notes that True was fighting against male power and privilege in the Bureau of Indian Affairs at the time, and felt a sense of accomplishment by wielding power over Pueblo communities to act as their "saviour".<sup>70</sup> True says: "Few of the [Indian] people I am to spend time with seem more interesting or spiritual than a brickbat, yet they are said to have souls. I'll see if they can be made conscious that they have" (Jacobs, 2001, p. 104). Towards the end of her career, she achieved perhaps her biggest financial success, and her greatest betrayal of the Pueblos, when she hired the same lawyers who drafted the first set of resolutions of the Pueblo Progressives Council to help her successfully fight against a Pueblo land claim, and appropriated hectares of farmland that was Pueblo (San Ildefonso and Santa Clara) territory. Jacobs notes that True's life illustrates the ways in which "white women's empowerment often came at the expense of the Native Americans they targeted

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<sup>69</sup> A bifurcated reality is not unique to Pueblo nations. All Indigenous nations on Turtle Island that have been colonized through the Indian Residential School system, the formation of reservations, the Indian Act and the Sixties Scoop in Canada face this fractioned reality.

<sup>70</sup> Margaret Jacobs (2002) notes True as embodying a "maternalistic" attitude, which included "a commitment on the part of white, middle-class women to mothering those they perceived as less fortunate than themselves". (Jacobs 2002, p. 102).

in their assimilation efforts... assured by their own upbringing that they knew what was best for the Indian” (Jacobs, 2001, p. 100) This harmful influence spilled over to deepen fissures between traditionalists and progressives in the community. As Wenger (2005, 2009) notes, the very presence of the Pueblo Progressives Council deepened the rift between traditionalist and progressives on reserve land, since it worked to weaken the Pueblo stand against Bureau of Indian Affairs in land disputes. Traditionalists would often accuse the progressives of weakening their stance, calling attention to the white settlers who were clearly motivated by land sales.<sup>71</sup> The traditionalists’ point was, unfortunately, proven right when True deceived the progressives and bought several hectares of Pueblo land. This only worked to deepen the divides between the traditionalists and progressives.

In defence of the progressives, though, their intention was not to weaken but rather to strengthen the Pueblo voice for land claims. But the very fact that they formed alliances with assimilationist settlers - like True and the Indian Rights Association - worked to weaken a united Pueblo front. Optics in this case were not in favour of the progressives, since traditionalists still viewed them with suspicion. While the progressives/assimilationist alliance was useful, it still turned out that the progressives paid the price in losing relationships in and access to their communities. This nuance is not accounted for in Kymlicka’s liberalization project, which tends to flatten the power relations landscape. There are unequal power relations resulting from external influence (colonialism, imperialism, assimilation) within and among Indigenous communities that are not accounted for in Kymlicka’s theory of multicultural justice. Here, Kymlicka’s theory seems to be unaware of the ways in which liberal mechanisms and attitudes are complicit in creating and feeding these power imbalances in the first place. This has

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<sup>71</sup> Tisa Wenger (2005, 2009) presents detailed evidence in support of this claim.

implications for Kymlicka's prescribed idea of allyship as well. The ways in which Indigenous and non-Indigenous Peoples experience and relate to colonial legacies in a settler colonial society are vastly different. The inequities and inequalities in the power relations and the baggage that Indigenous and non-Indigenous Peoples have when they come together in reconciliation is rendered void in liberal multiculturalism. Indigenous Peoples' lives, families, lands, and communities have been torn apart by colonial legacies such as the IRS, sixties scoop, the formation of reservations, and the Indian Act. Their realities today - where they live, what they eat, how they pray - are all influenced and regulated by these colonial legacies. Non-Indigenous communities in the same society are not affected by these colonial legacies in their day-to-day functioning in the same way (which perhaps contributes to their general ignorance about the specificities of Indigenous lifeways and related Canadian history). A theory that advocates allyship between the two communities as part of a liberalization project needs to take these differences in burden into account in order to arrive at a just format of relations and outcomes, and to avoid exploitation.

There are several drawbacks with regards to the aims and mechanics of Kymlicka's liberalization project itself. First, his liberalization project has a policing effect on Indigenous Peoples. This points to the hierarchy that exists in this case, where Indigenous nations are expected to live up to liberal standards and translate their lifeways into liberal categories and vocabulary as a way to survive (or even be understood). Kymlicka's liberalization project thus points to a deep-rooted principle in the liberal canon, the idea that liberal principles are the paradigms of the public sphere, and that 'minority' others need to live up to them. The liberal "we" is pervasive in Kymlicka's liberal multiculturalism, informed by colonialist and Euro-western ideas of the self and individuated rights and contrasted against 'minority others'. These

minority groups are then required to educate or civilize themselves up to the standards of “western civilization”. This places the onus on Indigenous nations to present and package their lifeways to a non-Indigenous, largely settler, population which already has little understanding of the substance of Indigenous lifeways.

Second, Kymlicka’s liberalization project seems to be functioning against the backdrop of a stadial view of progress, where Indigenous and liberal societies are viewed on a spectrum of primitive to modern societies. Critiquing Kymlicka’s liberal multiculturalism, Peetush notes that “the characterization of the relationship between liberal and non-liberal cultures (most of whom happen to be non-Western) [is] in terms of a morally progressive continuum, with liberal nations at the just end of the spectrum” (Peetush, 2003, p. 292). This is indicated in Kymlicka’s proposal of the liberalization project as a way to “reform”, “modernize” and “liberalize” minority groups such as Indigenous societies (Kymlicka, 1995, pp. 94, 76-7, 168). This view, and its implications for Kymlicka’s theory, reflect a colonial hangover and points to a persistent paternalism that often shadows Indigenous-nonIndigenous relationships and interactions. Despite Kymlicka’s insistence on staying away from “paternalistic colonialism”, his theory falls back into the assimilationist logic of trying to make Indigenous Peoples more like members of liberal/settler communities and to help them rise to liberal standards (Kymlicka, 1995, p. 167). Kymlicka seems to think that by avoiding an aggressive enforcement of liberal values on minority groups, his theory overcomes colonial logic. He says: “there is an important difference between coercively imposing liberalism and offering various incentives for liberal reforms” (Kymlicka, 1995, p168). While offering education and economic incentives to Indigenous Peoples might turn out to be less overtly violent than, say, waging war on their communities in the name of liberal principles, what remains the same and firmly intact in both approaches is the inherent

supposition of liberal superiority, unequal power relations, hierarchies, and paternalism. Here, the aims and ends of Kymlicka's liberalization project come uncomfortably close to assimilation.

Third, this kind of liberalization framework is unable to maintain a distinction between illiberal and non-liberal societies, collapses the distinction between the two, and hence rejects both non-liberal and illiberal societies in the same move (Kymlicka, 1995, pp. 154, 155, 158, 164-165; 1989, pp. 243, 153-4; Peetush 2003, p. 306). I argue that a distinction needs to be made and maintained between the two, so that a liberal theory of multicultural justice can reject illiberal societies but still respond to the needs and concerns of non-liberal ones.

Fourth, in the process of liberalization as Kymlicka outlines it, non-liberal societies end up needing to distort or misrepresent their worldview in order to be understood, recognized, and protected by a liberal society/state. This in itself is a form of injustice which needs to be rectified. This is especially true of Pueblo nations who had to reframe their communal Indigenous lifeways in terms of religion and religious rights to be "identified" and understood as worthy of protection. This miscategorization is not undone in Kymlicka's theory of minority rights, and the misidentification and misrepresentation are further perpetuated by the liberalization project.

To avoid any misplaced impositions or cases of paternalistic colonialism it is important to ensure that the identification of illiberal societies and practices is done accurately. Here, Kymlicka's theory seems to falter since it miscategorizes Pueblo nations' response to injustice as a case of illiberal internal restrictions. This is not surprising given the lack of substantive engagement in Indigenous lifeways on Kymlicka's part. I have argued that it is essential to understand Pueblo communal lifeways as well as colonial history in order to arrive at a fuller, more accurate, understanding of Catholic and Protestant reactions as presented in the *Toledo v. Pueblo De Jemez* case. Doing so shifts the nature and focus of justice related questions. Instead

of adjudicating Indigenous realities from a liberal point of view, a decolonized approach of justice will be able to ask: Given compartmentalization, colonial histories, and ideas of the sacred in Pueblo what would justice entail? A method of substantive engagement allows us to flip the questions of liberal justice by focusing on Indigenous agency rather than on the narrative of colonial difference.

Applying Kymlicka's liberalization project to Indigenous societies across the board is only likely to yield more empirical errors, leading to doubling down on colonial injustices rather than bringing them to light and resolving them through relevant justice measures. Liberals have long maintained a procedural distance from substantive cultural reasoning, and Kymlicka's theory is a pioneering break in the liberal tradition, in that it centres reasoning based on culture and cultural commitments. But it needs to go one step further and ensure a decolonial engagement, given the complex realities of Indigenous Peoples within settler colonial societies. Unless Kymlicka's theory of liberal multiculturalism is able to make room for substantive engagement and decolonial approaches, it is likely to continue to misfire in addressing concerns of Indigenous justice.

### ***Self-government vs. self-determination***

Paying attention to the mechanics of a liberalization project also highlights the inadequacies inherent in the self-government rights that Kymlicka awards to Indigenous Peoples. Scholars differentiate between self-government rights and self-determination rights, pointing out that Indigenous Peoples require the latter but are usually granted the former in liberal discussions of Indigenous rights (Turner, 2014; Turpel, 2016). Kymlicka views self-government rights as ones that are granted to minorities by the state so that they may determine key governance and societal factors for their groups based on their cultural understanding of the world but are still

required to conform to the majority state's overall political structure and culture. Fundamentally, self-government rights operate within the majority-minority framework where they are conceived of as mechanisms for minority groups to exercise a particular set of freedoms within a majority state. Within this framework, Kymlicka views federalism as being the best suited governmental format to facilitate self-government rights for Indigenous Peoples (Kymlicka, 1995, p. 40). Self-determination rights, on the other hand, acknowledge a people's sovereignty and lead nations to arrive at treaties, negotiations, and inter-national laws that do not require responding to the norms of a majority state. Instead, self-determination rights are designed to protect and preserve the sovereignty of a peoples based on their self-understandings of their societies and socio-cultural, political, and economic purposes. From the standpoint of their own lifeways, peoples then choose (or not) to have treaties and negotiations with other nations on an equal basis, not requiring *a priori* conformity to liberal or other norms of the larger state. In this way, self-determination rights, unlike self-government rights work outside of the majority-minority framework and are geared to respond to Indigenous understandings of self-determination (outlined in chapter 1). A part of Kymlicka's theory seems to recognize this aspect and aims to respond to it. He recognizes that when conflicts arise over liberal principles, the conversations that will ensue between the majority state and the and minority group will be "a result of negotiation" (Kymlicka, 1995, p. 167). However, the very fact that Kymlicka requires minorities to live up to the majority state's liberal values and sets up a project of liberalization to facilitate this where necessary and possible points to the inherent hierarchy and liberal superiority he maintains as the backdrop to his theory of minority rights. This liberal requirement firmly places Indigenous Peoples as minorities, fails to recognize their sovereignty, questions

their qualification for status as self-governing peoples and limits what their self-determination can look like within a liberal polity.

Dale Turner (2000, 2014) argues that Kymlicka's version of self-government rights can be viable only if they include the sovereignty of Indigenous Peoples. He turns his attention to the fact that Indigenous groups were self-governing at the time of what Kymlicka refers to as the "involuntary incorporation" into the now multinational liberal state (Kymlicka, 1995, p. 11). Kymlicka views Indigenous Peoples as national minorities because they are societal cultures. Turner suggests instead that Indigenous Peoples should be viewed as national minorities because "normative weight is given to the fact that Aboriginal peoples occupied Canada first, and therefore they were self-governing societies" (Turner, 2000, p. 142). Sovereignty, Turner states, "lies at the very core of Aboriginal existence, and history is the main source for understanding the meaning of the complex nature of Aboriginal political sovereignty" (Turner, p. 145). This emphasis on Indigenous sovereignty points to an inconsistency in Kymlicka's theory of self-government rights for Indigenous Peoples. On the one hand, he is determined to grant self-government rights to Indigenous Peoples. But on the other hand, he is committed to liberal principles of individual autonomy, is wary of illiberal commitments within minority groups, and requires them to be liberalized. These two tenets create a contradiction in his theory. As I have shown, Indigenous self-government arises from kinship relations, is communally based, and responds to rooted relational selves. This is a way of life that does not prioritize individual autonomy;<sup>72</sup> indeed, as noted above, there is no counterpart to a framework of rights within

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<sup>72</sup> As Patrick Macklem notes, Indigenous self-determination involves: "more than the conferral of special rights to engage in particular activities: It also involves rights to determine how, when, where and by whom such activity can occur, and the possibility that such decisions will be made in ways that conflict with non-Indigenous political values, such as equality of individuals. The principles used to assess the recognition of Indian forms of government ought to reflect the dimensions of sovereignty implicit in Indian government. Equality of individuals, however

Indigenous communities. The two lifeways are incommensurable in this regard. Due to this incongruence, Indigenous Peoples register as illiberal in Kymlicka's view, since their lifeways are understood to condone the de-prioritization of individual rights and liberties. Given the very nature of Indigenous lifeways and their understandings and practices of self-government, how can Kymlicka simultaneously hold both claims? Peetush's critique of Kymlicka highlights this paradox well:

If Kymlicka is right that liberalism is and ought to be defined by a commitment to individual autonomy as the core value, and if Kymlicka is right and liberals ought to be concerned with cultural membership insofar as it contributes to the individual autonomy of each member in a community, then one cannot see how Kymlickian liberals can (or ought to) accommodate the demands of these communities for the power to be able to organize themselves according to their more communal self-understandings. (Peetush, 2003, p. 298)

Kymlicka cannot hold both requirements at the same time. He has to either expand (or abandon) his idea of self-government rights for Indigenous Peoples or he has to revoke his liberal limits to diversity.

Moreover, Kymlicka's view of Indigenous Peoples as national minorities undermines their decades-long struggle to be recognized as sovereign peoples (Notes, 2005). What is worse, Kymlicka groups them with other settler colonial nations such as the Quebecois. Doing so undermines the uniqueness of Indigenous Peoples and their sovereignty in two important ways.

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modified by viewing cultural membership as morally arbitrary, does not do justice to the nature of the claims being advanced by Indigenous people, nor to the value of sovereignty itself" (Macklem, 1993, p. 1355).

First, it fails to recognize that Indigenous Peoples, unlike Quebecois, were self-governing nations, and have been for several millennia, before (French, Scottish, Irish, Dutch) settlers arrived on these lands. Second, by grouping a formerly colonized nation along with a settler colonial nation, the colonialism experienced by Indigenous Peoples, and their colonial history, is negated or rendered irrelevant on this framework of justice. Here, Kymlicka's argument is that the same set of self-government rights will apply to Indigenous nations as well as to Quebecois and that will suffice for each of the national minorities. But this arrangement erases the cosmological, ontological, and epistemological uniqueness of Indigenous Peoples (that makes them fundamentally different from the Quebecois), and the colonialism experienced by Indigenous Peoples at the hands of French settler communities. In this case, at the very least, Kymlicka's theory should be able to differentiate the bases of granting national minority rights to each of these groups based on their fundamental differences in lifeways and histories, especially since the histories are colonial in nature and involve complex power relations and enduring legacies of inequality amongst national minorities themselves. Patrick Macklem states:

By viewing the moral or political issue implicated by Indigenous difference as one that requires the justification of unequal distributions of political rights and responsibilities within a particular nation-state, Kymlicka includes Indigenous people in the very political structure from which they seek a measure of autonomy. (Macklem, 1993, p. 1355)

Here it is useful to invoke the distinction that Burkhart maintains between the fact of colonial difference and the narrative of colonial difference. The fact of colonial difference constitutes the differences that exist between Indigenous and settler communities, differences in ontologies, epistemologies, metaphysics, and cosmologies. A priority of space over time, a thoroughgoing empiricism verses overt and subversive forms of rationalism would constitute

facts of colonial difference<sup>73</sup>. The narrative of colonial difference, on the other hand, “is a key feature of coloniality itself” and works to “divert, reconstruct, and reimagine a set of differences that are best suited for the (settler or other) colonial project” (Burkhart, 2019, pp. 44-5). A narrative of colonial difference in the North American case, Burkhart points out, would involve views such as Indigenous peoples as being backward, lazy, primitive, and in need of modernization. This difference between the fact of colonial difference and the narrative of colonial difference is seen very clearly in the Pueblo case and Kymlicka’s response to it. By adopting the rights framework, what Pueblo nations are in fact trying to do is respond to the fact of colonial difference. Kymlicka’s narrative of colonial difference lies in ignoring Indigenous agency in this case and instead labelling Pueblo responses as “illiberal internal restrictions”, theorizing about their societies as theocratic governments, and requiring that they live up to liberal standards in a multicultural polity.

Recognizing Indigenous Peoples as sovereign nations necessitates a nation-to-nation relationship between Indigenous Peoples and (various elements of) the settler state. There are limited avenues for this in Kymlicka’s theory, since he is committed to a federal structure of government and is looking for ways to operationalize self-government within the existing settler colonial liberal polity. Self-determination rights force us to take Indigenous sovereignty seriously, however, which means that we need to revise our understandings of multinational

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<sup>73</sup>Coulthard (2007, 2014) distinguishes between cultural and colonial difference, arguing that Indigenous claims do not constitute ‘cultural’ differences but rather constitute ‘colonial’ differences. By cultural differences Coulthard has in mind debates surrounding identities and practices that usually take center stage in theories of multiculturalism and a politics of recognition, which, he argues, are “limited and constrained” and work to “preserve the colonial *status quo*” (Coulthard, 2007, p. 451) Colonial differences, on the hand, refer to the metaphysical, epistemological, ontological, and moral bases of Indigenous lifeways, which were deliberately marginalised and oppressed through processes of genocide, colonization, and assimilation. Coulthard points out that addressing colonial differences requires us to “challenge the racist origin of [a settler state’s] assumed sovereign authority over Indigenous peoples and their territories,” an aspect that is not often viewed as structurally necessary or relevant to addressing ‘cultural’ differences within multicultural frameworks (Coulthard, 2007, p. 451).

polities where Indigenous nations are understood as minorities and be willing to ask what Indigenous and settler colonial governmental relations will look like outside of a colonially derived majority-minority framework. Given the liberal commitments of Kymlicka's theory of multicultural justice, this seems impossible. Any framework of multicultural justice that is unable to locate and properly situate historical colonial injustices as well as the resulting and enduring settler colonial legacies is "particularly threatening, perhaps even ethnocidal" for Indigenous Peoples (Turpel, 2016, p. 42). Unless a liberal multicultural framework is decolonized and is able to make room for colonial difference, it is unsuitable as a justice framework for Indigenous Peoples.

## **Conclusion**

In this chapter, I have uncovered various relevant aspects of colonial history to reveal how the exercise of Indigenous agency is affected in matters of justice. By portraying Pueblo nations' 'illiberal internal restrictions' and 'theocracies' in new light, I have tried to show how Kymlicka's liberal multicultural account of justice fails to pay attention to the textured realities in which Indigenous Peoples operate. Kymlicka's oversight of settler colonial realities results in a theory of justice that is unable to recognize and address historical injustices. This is a major drawback for Indigenous Peoples who continue to operate their daily lives in the legacies of colonialism.

Kymlicka's liberal theory of minority rights is a pioneering move in the right direction, as it centers the significance of cultural membership within liberal theory. However, I have shown that self-government rights are inadequate for Indigenous nations since they do not entail Indigenous sovereignty and self-determination and require Indigenous communities to operate in an overarching liberal paradigm. Also missing from Kymlicka's work is a proper situating of

justice concerns within settler colonial realities. Due to this inadequacy, his theory overlooks several barriers to Indigenous justice in settler colonial societies created by a liberal paradigm. I argue that a liberal multicultural framework of justice is inadequate to address Indigenous concerns; it needs to be decolonized before it can address matters of Indigenous justice. In the following and final chapter of my dissertation I demonstrate that this oversight is structurally founded. The origins of liberal principles are intertwined with empire building and imperial expansion, therefore erasing violent colonialism from view and subsuming it under liberal principles. As an alternative to this framework, I present a theory of active decolonization that aims to address, both conceptually and practically, the complex realities of reconciliation in settler colonial societies today.

## **Liberal Justice, Settler Colonialism, and Indigenous Lifeways - A Decolonial Turn**

### **Introduction**

In this chapter I focus on the unique ways in which liberalism is complicit in the settler colonial project; that is, I outline the ways in which liberal principles help to ground and support settlement aims and methods. I show that liberalism and liberal principles either actively played a role in the subjugation of Indigenous Peoples or that they were (and still are) complicit in the colonization of Indigenous nations and do little to reverse those injustices. In the early stages of the development of liberal principles, the framework is driven by its proximity to trade, commerce, and settlement in empire building and expansion. For instance, as can be seen in Locke's work, the idea that Indigenous Peoples are inferior to Europeans, that they are in need of

civilization and salvation is central to the justification of settlement of the New World. This creates an epistemic rift between Indigenous Peoples and colonial settlers, the latter being unable to recognize and respond to the lifeways of the former. During the eighteenth and nineteenth centuries, liberal principles evolve alongside racist Eurosupremacist narratives and are geared towards a linear idea of progress in which colonies are backward, in need of education and civilization. Principles of liberty and equality are formulated and operationalized in ways such that they are compatible with a rule of law while simultaneously subjugating and enslaving non-European peoples in the colonies.

Certainly, liberalism as a framework and the scope and application of liberal principles has evolved over the centuries. But what seems to go uncriticized in liberal logic, which is at the heart of contemporary forms of liberalism, is the baseless superiority of Europeans over Indigenous Peoples. In contemporary forms of liberal theory this manifests in a variety of ways. As seen in the chapter on Rawlsian procedural liberalism, it manifests as viewing Indigenous lifeways as a “problem of extension”. This indicates that the particularities of Indigenous lifeways are not worthy of consideration while arriving at the basic structure of liberal principles of justice; for this process, only settler intuitions about what counts as reciprocity and self-interest will do. The result is a set of liberal principles - equality and liberty - that are universalizable if one’s horizons only consist of settler experiences and vocabularies. Indigenous lifeways are only considered to be relevant *post facto*, after the structure of justice has been established. In this way, Indigenous Peoples are once again on the receiving end of a structure (of justice, this time) built by settler intuitions that do not address or map the lifeways of Indigenous Peoples. Indigenous Peoples are then expected to live up to these principles and standards, and the expectation is that they will mould their ways to suit this structure of justice. Once laid out in

this manner, it can be seen that this logic is deeply hierarchical. Given the contexts of its origins and development, and the effect it has on Indigenous Peoples, this logic can also be seen as racist, supremacist, oppressive and exclusionary.

Even in friendlier versions of liberalism, like Kymlicka's multicultural liberalism, there is a clear "us" or "we" signifying the mainstream society and a "them" referring to diverse or Indigenous others who require "special rights" or "accommodations" and for whom assimilation is a worthy goal. The hierarchy between a liberal "us" and an illiberal or non-liberal "them" is taken at descriptive value and the power relations therein are not explored in theories of liberalism. This indicates the legitimacy of using a liberal framework and paradigms to ground justice and dialogue in the public sphere. In such a context, the rights of Indigenous Peoples appear as "special" rights and require justification in light of universalizable and universalized ideas of equality and liberty. Rather than viewing these rights as a measure of justice for the injustices that settler colonialism (and in part liberal principles) caused, their justification as something special is discussed as a "bonus" feature that requires justification in light of rights and freedoms to which other settler and non-Indigenous members of society do not have access. This is a key problem that arises out of the 'veil of ignorance' approach; it prevents curiosity and education and frames crucial aspects of justice as "special" features.

A combination of these factors works together to gloss over the colonial origins and underpinnings of assimilationist projects. Until recently, assimilation was generally viewed as a preferred goal for Indigenous Peoples within liberal theory. The reasoning is that the settler "mainstream" society seems to be faring well - economically, politically, socially - as compared to Indigenous populations in a settler colonial society. The immediate and uncritical conclusion arrived at is: "If only 'they' did what 'we' do: work hard and follow the rules, then they too, like

us, will prosper”. This attitude is embedded in the public political sphere<sup>74</sup>. Education, civilization and progress in assimilationist programs are structured on this logic which, of course, is flawed in its application for Indigenous Peoples on at least two important counts. First, the structure of society is designed for the thriving of settler communities and works against Indigenous Peoples. Hence, no matter how hard Indigenous Peoples work, they are still swimming against the current at best and are self-negated at worst since they are unable to show up as themselves, as rooted relational selves embedded in networks of significant and multilateral kinship. Second, assimilationist polities do not undo but rather reinforce the racist logic of colonialism, that Indigenous Peoples are innately inferior and in need of education and civilization. Theories of liberalism that endorse assimilation are therefore enforcing this logic, not eroding it. In what follows, I provide an overview of the evolution of liberal principles over the centuries and their main exclusionary effects on Indigenous Peoples as a way to provide a clearer insight into why categories of “us” and “them” or recommendations towards assimilation in contemporary theories are ridden with racist logic and are hence detrimental to the complete participation of Indigenous agents in the public sphere of any settler colonial society.

I point to the structural reasons why liberalism is unable to detect and address Indigenous lifeways and concerns. I draw on the observations I noted in chapters 2 and 3 and conclude here that procedural liberalism is unable to detect the concerns of Indigenous Peoples because of its origins and developments that are mired in justifying empire building and colonial expansion. I argue that classical and procedural liberalism is unable to recognize Indigenous lifeways as

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<sup>74</sup> In a 2008 CFRA News Talk Radio Show Canadian Conservative Member of Parliament Pierre Poilievre argued against “compensation for those who partook in the residential schools” and stated that “some of us are beginning to ask...are we really getting value for all of this money? My view is that we need to engender the values of hard work and independence and self-reliance” for Indigenous peoples (CBC News, 2008). Mr. Poilievre has been the leader of the Conservative Party of Canada since 2022 and is currently running to be the Prime Minister of Canada.

legitimate components of and Indigenous agents as legitimate participants in the public sphere because it is structurally intertwined with colonial and imperialist aims and methods.

Multicultural liberalism as seen in Kymlicka's work, signals remarkable progress in this regard, as it is able to recognize the uniqueness of Indigenous lifeways as national minorities. However, it remains limited in its capacity to properly situate settler colonialism and address the concerns of Indigenous Peoples because of its structural (racial and trade-focussed) developments that form the foundation of settler colonialism in North America. Moreover, liberal principles themselves are informed by culturally specific contexts and were largely built for responding to the European (and later global) threat of fascism. Subsequently, within liberal thought is a disproportionate preoccupation with keeping tyranny at bay and a commitment to a stadial idea of progress. A combination of these culturally substantive features of liberal principles results in Indigenous Peoples being marginalized and as requiring 'modernization' within settler colonial polities.

To expand on my argument, I will briefly show how Britain's commerce-related expansion into the New World provided the justification for settling Indigenous homelands, as well as providing the foundations for liberal rights and freedoms which become a paradigmatic and universalized value system geared towards a rule of law while simultaneously creating "backward Indians" and "civilized settlers". This hierarchy is not undone in the consequent development of liberalism in later centuries and continues to exist today. Eighteenth and nineteenth centuries' liberalism is premised on Eurocentric and Eurosupremacist beliefs (John Stuart Mill, for instance) which are not entirely undone in the contemporary forms of liberalism - procedural or multicultural - that we encounter today. I will show this by relying on the work that

Bhikhu Parekh has done in this area and conclude this section with my list of observations on the ways in which liberalism and colonialism are ideologically and structurally intertwined.

In the latter half of this chapter I argue that a theory of justice that aims to address contemporary forms of diversity must necessarily take into consideration Indigenous Peoples and their unique lifeways and positionality. I do this by first listing out key aspects of Indigenous lifeways that become relevant for a theory of justice. Then I briefly consider how each of these aspects may be brought into conversation with liberal theory, based on work that is already being done by Indigenous scholars and non-Indigenous allies in various fields. These tenets I would consider to be central to, and the building blocks of, a decolonized theory of justice that would be more suitable for addressing the concerns and realities of Indigenous communities in light of frameworks that are currently available. I conclude this chapter, and my dissertation, by pointing to some of the larger implications of my work for methodologies in the fields of theorizing justice and of political theory in general, while anticipating and remaining mindful of some of the limitations of the theoretical approach presented in my dissertation.

### **Summary of conclusions**

In my analysis of Rawls' procedural liberalism (Chapter 2), I show that his contractarian commitments work to actively (even if inadvertently) exclude Indigenous lifeways. To demonstrate this, I highlighted the speciesist bias in his work and the anthropocentric commitments in his liberalism that exclude the consideration and participation of Indigenous agents as rooted relational selves and embedded societies. These are structural elements in Rawls' liberalism that go unnoticed and unaddressed in his system and yet have exclusionary (not neutral) effects on Indigenous Peoples. As a result, the uniqueness (animism, reciprocal relationships, Natural Law etc.) of Indigenous lifeways goes unrecognized, and so procedural

liberalism cannot address the concerns of Indigenous Peoples. It also fails to address the injustices arising out of the historical processes of colonialism, since it erases their presence in the political sphere. Thus, Rawls' procedural liberal theory of justice as fairness is doubly unjust towards Indigenous Peoples.

Kymlicka's multicultural liberalism fares better than Rawls' procedural liberalism in that it acknowledges and legitimizes cultural diversity and minority groups in contemporary liberal societies. Kymlicka's theory of liberal multiculturalism can support the self-government rights of Indigenous Peoples because it is able to recognize the uniqueness of their lifeways and their special status in the public sphere, as apart from immigrants and refugees in a settler colonial society. However, as I argued in chapter 3, Kymlicka's radar for identifying "illiberal" practices in Indigenous societies is faulty and his liberalization project as a resolution to the problem of illiberal practices has negative effects on Indigenous communities. Kymlicka's liberalism, too, seems to commit double injustice in the name of minority justice. It is unable to detect and undo the presuppositions of its own supposedly neutral but in effect substantive principles that have limiting and negative effects on Indigenous Peoples. It is also unable to situate properly the significance of settler colonialism and undo its contemporary effects on Indigenous Peoples, effects that undoubtedly arise from violent and oppressive historical injustice.

In what follows, I argue that liberalism and liberal principles are unable to detect, rectify, or undo their presuppositions that exclude or erase the significance of Indigenous lifeways because of the proximity and structural intertwining of liberal principles and colonialism. The anthropocentric and religiously substantive commitments of liberal principles (identified in chapter 2) and the ill-effects of a liberalization project, i.e. using liberal principles as a paradigm for Indigenous communities to live up to in the public sphere (identified in chapter 3) can be

attributed to the proximity that the origin of liberal principles had with colonial aims and methods. Liberalism is not able to address historic injustices or undo the strategic undervaluing of Indigenous Peoples because it is complicit in their colonization. Liberal ideas of freedom and equality form the foundation of assimilative practices that serve to further marginalize and oppress Indigenous Peoples and reiterate hierarchies, rather than undo them. A very particular kind of sociopolitical culture and historical context informs the formation of liberal ideas of equality and freedom contributing to their substantive nature, thereby calling into question their universalizability across generations and communities.

### **Liberalism and Colonial Expansion**

It may be said that the very idea of liberty, which later becomes a foundational value in liberalism, arose as a necessary and concomitant factor for empire building and colonialist expansion. Simply put, the argument was that trade was foundational to empire building, and liberty was essential for trade, therefore liberty was a necessary feature of successful and lasting imperial expansion. As David Armitage (2000) observes of Florence, Venice and the Dutch empires, liberty and commerce are directly proportional. That is, the more free an empire was and the more it worked towards a state of freedom, the more it prospered economically, since freedom was believed to create the political and social stability required for commerce (Armitage, 2000, pp. 125-45). To support his observations, Armitage quotes English economist Charles Davenant as stating that “industry has its first foundation in liberty” (quoted in Armitage, p. 142). This meant that absolute monarchies were doomed to fail, since their tyrannical tendencies would only serve to undermine their economic interests rather than promote them: “the territorial monarchies of Europe, for all their designs on universal monarchy, would inevitably fail because their hegemonic power would lead to institutional absolutism and hence

economic decay” (Armitage, p. 142). According to this view, tyranny was incompatible with trade, absolute monarchies were doomed to “degenerate into tyranny, with which trade is incompatible”, while empires that created and supported freedom were on the path to economic and imperial successes (Armitage, p. 142).

I want to highlight two key ideas contained in this argument. First, liberty is seen as necessary for and compatible with trade and commerce in empire building; and second, an implication of the first point is that tyranny and liberty become polar opposites such that any lack of liberty is viewed as tyranny and as a threat to a stable society and to the act of empire building. Armitage’s work is significant in that it sheds light on the transition of empire building from a slave-based or tyrannical enterprise to one that welcomes the idea of liberty and employs it as a foundational value of commerce and enterprise. Seeing liberty as a necessary precondition to sustainable and long-lasting trade relations partly explains liberalism’s dichotomy with tyranny. Any threat to liberty was seen as tyranny that would prevent commerce and thereby threaten imperial interests and a host of other aspects dependent on this relationship. So much was riding on empire building - nationhood, identity, economic progress - that it would be imprudent to allow for a lack of liberty in the social and political spheres. It came to be that tyranny was a threat to imperial establishment and expansion, and liberty was an able respondent to such a threat. A lack of liberty then is a lack of economic prosperity, signalling a significant threat and therefore requiring robust protections.

The above-stated portrayal of the connection between liberty and empire immediately raises two questions. First, empire building is a necessarily violent endeavour, so what does it mean to reconcile the conceptual incompatibility between liberty and empire? Second, related and equally important, whose liberties are considered to be morally and politically worthy here, which allow

us to declare an empire as freedom seeking, or a society as free? In response to the first quandary, Armitage suggests that the ostensibly incompatible values of liberty and empire building were made compatible by redefining the meaning of empire, as a trade based maritime pursuit rather than a land based conquest of territory: “Empire could only be compatible with liberty if it were redefined as maritime and commercial, rather than territorial and military” and Britain was upheld as a successful pioneer in both aspects of this redefinition of empire (Armitage, 2000, p. 142). A deliberate move away from territorial annexation moved attention to the seas and evolved into a blue water policy that formed the basis of empire building at the time<sup>75</sup>. The maritime aspect of this development played a key role in establishing Europeans as superior to the Indigenous populations they encountered in their voyages<sup>76</sup> while simultaneously establishing Britain as a superpower in Europe<sup>77</sup>. Whether or not defining empire in terms of maritime and not territorial conquest was successful in reconciling the principles of liberty and empire is debatable. What is more certain is that empire now came to be defined largely in terms of commerce than in terms of conquest, especially for Britain, and this forms the key context within which settler colonialism needs to be understood and analyzed *vis a vis* Indigenous subjects.

For dealing with the second question, namely whose freedom counts so as to establish an empire as free or at least as one that supports freedom, I turn to Julie Evans’ (2004) work on the idea of the British subject defined in opposition to the Indigenous subject. Evans’ work sheds

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<sup>75</sup> Armitage says, “The vision of a maritime trading empire, and the diagnosis of England’s fitness to capture it, identified the success of a trading nation with the liberty of its government, distinguished territorial conquest from the unlimited potential of empire upon the sea, and thus laid the foundations for a blue-water policy designed to enrich England while defeating universal monarchy in Europe” (Armitage, 2000, p. 144).

<sup>76</sup> For more on this see Paul Stock’s *Europe and the British Geographical Imagination, 1760-1830*.

<sup>77</sup> Christopher Brooks (2020) argues that Spanish and Portuguese empires, reigning until the time, based their trade mainly in bullion but were unable to keep up with Britain whose focus in trade had shifted to real estate.

light on the fact that what sovereignty meant for the British subject is different from what it meant for the Indigenous British subject. Evans argues that the concept of the British subject as free was used to justify settler colonialism and continues to inform the realities of settler colonial states today: “The umbrella designation British subject signified Britain’s theoretical commitment to upholding the rights and freedoms not only of British settlers but also of the Indigenous Peoples they dispossessed, appearing to reconcile the classically incompatible ideas of liberty and empire” (Evans, 2004, p. 70). Operating in the background of this logic was the idea that in order to be worthy of rights and liberties, Indigenous agents would need to educate themselves up to the level of Europeans and improve themselves to be able to harness these political goods. This distinction was racially drawn and motivated by economic interests in land. So another significant and rather ironic way of reconciling the classically incompatible values of liberty and empire seems to be through the project of settler colonialism itself. Settler colonialism required the justification of the oppression of Indigenous agents and yet required the upholding of equality and freedom. Settler colonialism was motivated by trade, commerce, industry and real estate, grounded in ideas of European racial superiority, and facilitated by the logic that this oppression and education was for the benefit of Indigenous Peoples who were, in comparison, uneducated, uncivilized and primitive. A conglomeration of these ideas established Indigenous Peoples as inferior to white settlers and this facilitated a long-drawn process of colonial settling, which later evolved into assimilation. In assimilation it was important to show that the measures were for the benefit of the Indigenous Peoples. This is how colonialism was transformed into assimilation.

The rule of law, a cornerstone of liberal justice, contains within it an anti-Indigenous stance. Inherent in the rule of law is a racist structure so that upholding the rule of law is compatible

with the erasure of Indigenous agents: “The history of the American Indian in Western legal thought reveals that a will to empire proceeds most effectively under a rule of law” (Williams, 1990, p. 325). Robert Williams argues that the concept of rule of law is based on the Doctrine of Discovery which denies territory, fundamental rights, and self-determination to Indigenous Peoples. Contained in the idea of rule of law is a racist logic that promotes and supports that aim of conquest of land and peoples as it “vests superior rights of sovereignty” and “its vision of truth” on Indigenous Peoples (Williams, p. 325). The Doctrine of Discovery is a racist doctrine that forms the legitimizing background for establishing rule of law: “Under the rules and principles of federal Indian law derived from the doctrine, the United States acquired a continent ‘in perfect good faith’ that its wars and acts of genocide directed against Indian people accorded with the rule of law” (Williams, p. 325). This attitude is manifested in the ways in which treaties were formed and violated, reservations were announced and operationalized, and in the legal responses to Indigenous concerns. Williams points to the ways in which the Supreme Court has allowed the federal government of the United States to “control Indian affairs unrestrained by normal constitutional limitations...In case after case, the Supreme Court in the late nineteenth and early twentieth centuries simply refused to check Congress's free rein in matters where it was thought that broad discretionary powers were vital to the solution of the immensely difficult “Indian problem” (Williams, p. 325).

Padraic Scanlon (2021) puts it precisely when he says that “Britons *believed* in justice and freedom, and enjoyed how their beliefs made them feel. But what justice and freedom meant, and Britain’s responsibility to carry them around the world by force, if necessary, were shaped by imperial power” (Scanlon, 2021, emphasis original). Scanlon’s remarks reflect the mechanics and justification of settler colonialism. In addition to industry and religion, race played an

important role in establishing and justifying superiority, an argument that was yet compatible with a certain interpretation of liberty. As noted in Chapter 2 of my dissertation, Mills recognizes the racial foundation of this equation, which he claims is couched in the settler contract that is a part of the settler colonial equation and justification. White stability is threatened without liberty since it is the foundation of life and livelihood for white settlers in North America. This racially informed idea of liberty had, and continues to have, detrimental effects on the lives of Indigenous Peoples.

One of the most immediate effects of this racial attitude is that of epistemic injustice on Indigenous Peoples. This racist logic locates Indigenous Peoples as backward, primitive, in need of education, acculturation, and refinement, and therefore as “inherently” inferior to Europeans and settlers. This logic can be traced back to Locke who states that “Indians are like idiots and children” because “their reason has not developed to the extent of that of the Englishman” (Locke, 1821, p. 48). Locke views Indigenous Peoples as living in an actual state of nature, as “natural men”, where there is a lack of a clear distinction between that which is cultivated through reason and order - man - and that which requires cultivation - beasts and rest of nature. Indigenous Peoples lack the main source of reason that promotes growth towards civility: Christianity. What they also lacked, crucially, is the rationality to understand their apartness, their difference, and their outstanding status in society *vis a vis* other natural entities. The attitude, or worse insistence, of Indigenous Peoples that they are an equal component of the web of nature, that they have an equal right to exist and thrive on earth, like other natural beings - animals, birds, fish, rivers - makes them, according to Locke, especially incapable of structuring society based on a rule of law. Liberalism and liberal values have done little to undo or erase these racist

paradigms. Remnants of this attitude can be found today in a variety of legal and political settings:

Most of this understanding of American Indians generally or severally is utterly ridiculous and wholly manufactured by Locke within the already existing settler colonial imagination. These mythological constructions of Indian reality burden American Indian people from the moment of contact to the present, as they even play foundational epistemic roles in current Indian law and current Supreme Court decisions about tribal sovereignty. (Burkhart, 2019, p. 40)

Another significant implication of colonization on Indigenous Peoples is its ecocidal effect on land. Colonization has had a simultaneous effect of genocide on humans and ecocide on the land. Burkhart refers to ecocide as the “darker logic” hidden inside of genocide and colonization (Burkhart, 2019, p. 43). In bringing our attention to this aspect of colonization, Burkhart is trying to point out that capturing land and transforming it into a resource - raw material, real estate, bullion - is as grave an injustice as eliminating humans from the land. Indigenous animism equates the sovereignty of all natural entities so that humans and non-human beings all have an equal right to exist in accordance with the Natural Law. From an Indigenous point of view, to capture land and to give it primarily, or solely, instrumental use is to rob it of its locality, of its agency, and bind and enslave it: “the violence against Indigenous people in order to save them also operates on the land in order to root out the savage nature of land, its wildness, which is in reality nothing more than its power in locality” (Burkhart, 2019, p. 44). This kind of capture also disrupts and prevents Indigenous relationships to land that arise out of locality and forces Indigenous Peoples to adopt non-indigenous, and inauthentic, means of relating to and coexisting alongside the land. This form of ecocide continues in liberalism for two main reasons. First, the

framework of liberalism renders nature irrelevant because it maintains a clear epistemic disconnect between humans and nature and is concerned only with humans and their social/political relations. Second, liberalism fails to recognize ecocidal tendencies in its principles and fails to be actively anti-racist in this regard and therefore ends up perpetuating rather than arresting this form of oppression.

To be fair, Kymlicka recognizes that early forms of liberalism were racist:

In fact, the history of ignoring national minorities in the New World is inextricably tied up with European beliefs about the inferiority of the Indigenous Peoples who occupied the land before European settlement. Until recently, they were seen as 'wards' or 'subject races', lacking the political development to qualify as nations, incapable of self-government, and needing the paternalistic protection of their white 'superiors'... These racist attitudes are slowly fading, but they have often been replaced, not with the recognition that Indigenous Peoples are distinct nations, but with the assumption that they are a disadvantaged 'racial minority' or 'ethnic group' for whom progress requires integration into the main stream of society. While government policy toward Indians has run the gamut of genocide, expulsion, segregation, and assimilation, the one constant is that governments have never 'genuinely recognized Aboriginal peoples as distinct Peoples with cultures different from, but not inferior to, their own'. (Kymlicka, 1995, p. 22)

However, his acknowledgement of this racist history fails to recognize the deep rootedness of racism in liberal principles and that racism is structural, not coincidental, to liberal principles. Kymlicka falters in ascribing his liberalizing project as a means to resolve "illiberal" practices

amongst minority groups. Kymlicka's liberalizing project is aimed at assimilation, which ends up having a colonizing effect on Indigenous Peoples.

### **Liberalism, assimilation, and colonialism**

In his work, Parekh (1994a, 1994b, 1997) pays close attention to the racist foundations of liberalism, with a focus on the development and justification of liberal principles in the eighteenth and nineteenth centuries. He states that "the colonial experience deeply shaped nineteenth century liberal thought... Liberalism became missionary, ethnocentric and narrow, dismissing non-liberal ways of life and thought as primitive and in need of the liberalizing civilizing mission" (Parekh, 1994b, p. 11). Parekh points out that Mill's liberalism was built in deeply Eurosupremacist views of the world and racist views of other countries. It was aimed at justifying colonial expansion as a way to bring liberty, education, and progress - the wisdom of the west - to the colonies: "the logic of colonial justification required a perfect match between British gifts and colonial needs, between British strength and native deficiency" (Parekh, 1994a, p. 86). Mill's liberalism, Parekh points out, centered on individuality as a symbol of progress, arguing that to lack individuality means to return to a state of nature (Parekh, 1994a, p. 89). For Mill, any peoples lacking in individuality also lacked the potential for progress. On this basis, Indigenous Peoples would classify as lacking the potential for progress. In such cases, British interference and involvement was completely justified in bringing education and improvement to Indigenous lands.

For Indigenous Peoples on Turtle Island, a liberally informed "education", "improvement", and "progress" arrived in a set of assimilative practices including Indian Residential Schools, Sixties Scoop, Indian Act, and treaties as agreements, all of which - independently and collectively - had and continue to have a colonizing effect on Indigenous Peoples and their lands.

Colonial attitudes and practices evolved into assimilation projects through the adoption of liberal ideas of universal equality and liberty. This is what shows up in assimilation and assimilative practices and projects, especially in the early twentieth century in North America. Missionary work, salvation, education, patriarchy and maternity, legal infrastructure and even contemporary ideas of consultation are all aimed at assimilation which is simply an evolution of colonial thinking with the aid of liberal ideas of freedom and equality. Assimilationist policies are problematic because they are colonial in nature but use the language of liberty and are ostensibly liberal. Assimilation is colonialism in liberal garb: “the British wrapped their gifts in the language of civilization, which had utterly replaced Christianity as the dominant idiom in Europe and taken over its universalist and proselytizing mission” (Parekh, 1994a, p. 86).

The idea of liberty, tied in with progress and development conceived of independently of nonhuman beings, works to justify assimilationist aims and projects, seen especially in North America in the early twentieth century. Hence assimilation, much like colonialism, is not free of injustice towards Indigenous agents and their lifeways. Assimilationist aims, methods, projects, and processes are a product of colonial rule and the need to justify it in public terms. As a way to ensure that colonial expansion can be carried out, the message had to be - both at home and abroad - that settler colonialism was a benefit to the “needy” and “uneducated” Indigenous populations. All assimilative practices are thus aimed at an erasure of those parts of Indigenous identity - agency, relationality, rootedness - that pose an obstruction to becoming part of the liberal and modern mainstream. In this way, assimilationist tendencies are compatible with the colonial practices that allowed for the landlessness of Indigenous Peoples, their oppression under a rule of law that endorses a doctrine of discovery and *terra nullius*, a lack of access to practice their religion, and education to erode their lifeways.

Assimilation as a political goal can only be taken seriously once it is decolonized; that is, once the principles and aims of progress, development, education, civilization and growth are stripped of their colonial baggage. If the colonial roots of assimilation are not recognized and their oppressive ends are not exposed and decolonized, then assimilative projects will continue to have paternalistic and colonial impact on Indigenous groups. Religion, race, commerce, development and progress all came together to make colonization a success. All of these factors come together again to collectively uphold the principles of liberalism and the projects of assimilation. Hence, all three - colonialism, liberalism, and assimilation - need to be held accountable for their share of injustices towards Indigenous Peoples.

Take for instance the Indian Act of 1876 that governs the lives of registered Indians and their bands and reservations in Canada. This act features uncritically in Kymlicka's work as a source of justice for Indigenous Peoples (Kymlicka, 1989, 1995). On the face of it, this line of argumentation seems benign, almost obvious. The Indian Act is, after all, understood as the primary source of power and legitimacy for Indigenous communities today in managing their affairs in governance, sustenance, hunting and fishing rights, healthcare, taxation among other vital individual and community functions. However, it must be noted and properly situated in liberal debates that the Indian Act is a piece of colonial legislation both in its origin and in its effect on Indigenous Peoples today. The Indian Act of 1876 is an amalgamation of two colonial pieces of legislation. The first is the *Gradual Civilizational Act of 1857*, which was aimed at erasing the social, cultural, and political distinctiveness of Indigenous Peoples and was designed to encourage enfranchisement. The second is the *Royal Proclamation Act of 1763*, foundational in the formation of reserve lands, which are predetermined tracts of land to where Indigenous groups would be relocated. The creation of reserve land was crucial for settlers to gain control

over continuous tracts of land so that they could settle their communities and carry out their interests in real estate on pieces of land unhindered, undisturbed, and unbroken by Indigenous presence and activity. Reservations were designed and remarked especially as a way to keep Indigenous Peoples away so that larger pieces of uninterrupted land could be sold and resold as part of the real estate industry, central to settlement. The primary motivation for drawing up reserve land was real estate and little, if any, attention was paid to land as the homeland of Indigenous nations. This is a crucial component of settler colonialism: while Indigenous labour is useful and necessary, land for its own sake is of utmost importance in the mechanics of settler colonialism since it is the trade of land on which the empire of settler colonialism is built (Evans, 2004). Thus, the Indian Act of 1876 was able to establish and operationalize a key component of settler colonialism: the creation and maintenance of the reservation system in Canada on a more permanent basis, one that continues to date. Reservations were not formed as a result of consent or at the request of Indigenous nations and the treaties signed at this point in time were not done so in good faith. Several liberal scholars, including Kymlicka, use the Indian Act as a paradigm of Indigenous justice, which it is not. Contemporary Indigenous narratives that are critical of the Indian Act and its legacies exist today (Milloy, 2008; Cardinal, 1999). My aim in bringing up this discussion here is to point out that a critical lens is essential while debating the lifeways of Indigenous Peoples. The Indian Act of 1876 was and continues to be a deeply assimilative force in the political lives of all Canadians. However, given the way it is referenced in most liberal debates, the assimilative features of the Act seem to be glossed over. What is required instead is a critical and decolonial approach to justice that is able to detect these oft overlooked legacies of colonialism and steer the conversation towards a more inclusive approach to justice.

I hope my dissertation works as contributing to literature in this domain. My aim is to get the two separate, and sometimes opposing, sets of debates - Indigenous and non-Indigenous narratives - to enter into conversation on elements of structure and epistemology. A crucial way to do that would be for liberal narratives to understand that liberally based dialogue and toleration arrive at a conceptual dead-end, and what is needed is rather to pay closer attention to Indigenous narratives and lifeways. This would require a structural move to decolonizing liberal theory and opening itself up to reconciliation and Indigenous epistemologies. I am not suggesting an indigenization of liberal theory; that is, I am not arguing that liberal conceptual, cosmological and moral structures need to be converted to Indigenous ones. Rather in pointing to a move to decolonize, I aim to hold liberalism accountable to its presuppositions and the limiting effects it has on Indigenous communities. I am suggesting that liberal theory take seriously the effects it has on Indigenous Peoples, recognize its unique historical and current impact on Indigenous Peoples, and open itself to adopting decolonial methodologies and principles of reconciliation to replace (or at least inform) liberally based mechanisms of dialogue, toleration, accommodation, and assimilation. One of the main implications of this view will be to swap the current hierarchy, so that the onus is on liberalism to prove why Indigenous communities need to meet liberal paradigms. Liberalism needs to introspect and take seriously the limiting effects it has on Indigenous communities. That would be an important starting point to decolonizing liberalism.

The discussion thus far shows that essential to the idea of liberty was the automatic and decided inferiority of Indigenous nations since they stood in the way of colonialist expansion, namely the free trade of lands. The lands that Indigenous agents inhabited for millennia were now sought after by colonists for resource extraction, settlement, and real estate. In this case the idea of liberty worked as a double-edged sword, it was successful in repackaging empire

building as an activity centred around trade and commerce rather than a tyrannical endeavour based on territorial expansion, while simultaneously erasing the significance of Indigenous agents and their lifeways. In doing so, the idea of liberty changed how imperial interests were viewed and disseminated. Empire building was no longer a tyrannical activity but, through trade and commerce, was oriented towards growth, prosperity and progress. The simultaneous colonization and oppression of Indigenous Peoples was legitimized through the pursuit of progress and continues to be publicized as a good through the language and logic of assimilation. In what follows, I will elaborate on the idea that liberal principles are unable to undo the racist structure of colonization because they are themselves built on that racist logic and argue that colonization has now evolved into assimilation through the language of liberalism.

### **The need for decolonization**

Historically, liberal principles were used to, and were successful in, justifying colonization, empire building and expansion, imperial trade, and the oppression of Indigenous Peoples. These tendencies are not undone in liberalism, as viewed in chapters 2 and 3 of my dissertation where I showed that religious, speciesist, and culturally substantive views underlie liberal principles of liberty and equality which prevent Indigenous Peoples from showing up as themselves, as rooted relational and embedded selves. Rawls' procedural liberal framework and Kymlicka's liberal multiculturalism both commit double injustice towards Indigenous Peoples - first by failing to recognize the unique ways in which Indigenous Peoples are negatively affected by liberalism's colonial baggage, by erasing their unique presence through this oversight, and second by failing to be actively antiracist in recognizing and undoing some of those racist underpinnings and instead recommending assimilation (itself a colonial enterprise) as a resolution for Indigenous concerns in justice. Furthermore, liberal principles can coexist alongside racist oppression, can

endorse a doctrine of discovery, slavery, *terra nullius*, and a lack of rule of law for Indigenous Peoples.

Liberalism as a project is unsuitable for Indigenous Peoples because the ways in which liberty operates within Indigenous and non-Indigenous societies is vastly different. In Rawls and Kymlicka, the basic principle of liberty shows up as the inalienable individual right that a person has to form and revise her life goals - symbolizing the potential for growth and progress - conceived as an endeavour independent of and irrelevant to other non-human beings. What it means for an Indigenous agent to form and revise goals is to take into consideration her relationships with all significant others which includes other human and nonhuman beings that form part of her 'community', part of the land. But liberalism as a framework has no room for this iteration of forming and revising goals; that is, it has no room for rooted relational agency. Furthermore, liberalism fails to recognize animistic lifeways and the ontological priority of relationships in Indigenous lifeways. Liberal principles have been an ally in the genocidal project of settler colonialism, failing to recognize the injustice in occupying Indigenous lands and ecocide, prioritizing private property, individual rights and liberties, human/nature binary thereby classifying Indigenous Peoples as in need of modernization. Lastly, liberalism's mechanics to resolve differences and injustices for Indigenous Peoples involve liberally based dialogue, toleration, accommodation, and assimilation, all of which have their share of colonial baggage.

What we need in place of assimilation is decolonization. Any theory of liberalism that supports, implies (Rawls), or endorses (Kymlicka) uncritical assimilationist policies also furthers the colonial project in the name of liberal justice. Liberal structures of dialogue, toleration, accommodation and assimilation all carry enough colonial baggage so as to make them structures of injustice for Indigenous Peoples and their lifeways. What is needed, instead, is for

liberalism to reckon with a project of reconciliation. Principles of reconciliation should play a more central role in liberal theories of justice for Indigenous narratives to be understood and included. If Indigenous concerns are to be addressed from within a liberal framework of justice, then the theory needs to allow Indigenous views to be expressed on their own terms, rather than their being liberalized or translated into whatever vocabularies are suited for the “mainstream” political culture. Only then can Indigenous views be understood rather than misunderstood. Principles of decolonization would allow for addressing concerns faced by Indigenous communities by paying attention to their agency and embeddedness within a settler colonial context, rather than positing them as (or requiring them to be) liberal agents within a liberal society. In what follows, I offer my theory of ‘active decolonization’. I briefly discuss my decolonial approach and show how it would modify the lens and structure of what it means to address Indigenous concerns of justice in a non-liberal way, by highlighting key non-liberal characteristics of Indigenous societies especially ones that come in conflict with liberal paradigms.

As I have shown in my dissertation, Indigenous locality is at odds with liberal frameworks of justice. Expressly, Indigenous forms of agency, embeddedness, rootedness, reciprocity, kinship, and the ontological priority of relationships are most in conflict with the liberal frameworks discussed in this dissertation. Contemporary liberal solutions, in the form of dialogue, assimilation, or accommodation are superimposed on settler colonial objectives, and fail to undo the injustices inherent in the mechanics and operation of settler colonialism itself. Liberal ‘resolutions’ emerge after the basic structure of justice has already been arrived at and even operationalized to some extent. In that sense, Indigenous nations and their lifeways are instances of “diversity”, “special cases”, or “exceptions” that need to be included or dealt with

by a theory of justice, *post facto*. In light of this, I argue that liberal theories of justice need to be decolonized. I present my theory of active decolonization as a means to address some of the key limitations that arise from liberal attempts to address Indigenous corners. In what follows I present several key elements of active decolonization.

### **Key components of active decolonization**

First, active decolonization will prioritize recognizing and addressing historical injustices which would allow for the proper situation of the settler colonial context in contemporary diverse societies. Doing so, would also allow for a critical view of the settler colonial history and realities and making space for the messy work of decolonization. Highlighting both the context and the history of injustice will make room for understanding and identifying colonial legacies that continue to this day. In a decolonial inquiry, the Indian Act of 1876 (as discussed above), the inadequate adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>78</sup> and the government's "duty to consult" would need to be situated in the context of settler colonialism. These currently register as "resolutions" to the 'Indian problem', but in a decolonial analysis the settler-Indigenous deadlock in these measures will come to light and become relevant as a matter of justice. To elaborate, consultations are a good example to uncover how current settler colonial attitudes plague any attempts to arrive at justice for Indigenous Peoples without decolonization. While the government of Canada is committed to its 'duty to consult'<sup>79</sup>, it does so only within a settler colonial framework, without any acknowledgment of how past injustices continue to affect Indigenous Peoples, with the express objective of gaining

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<sup>78</sup> UNDRIP was adopted by the UN General Assembly in 2007 by a majority vote with only four states opposing it: Canada, USA, Australia and New Zealand. In 2021, fourteen years after the initial resolution was passed in the UN, the Canadian government adopted the framework but is still reluctant on the issue of Indigenous sovereignty. For more on this, see Ken Coats' and Carin Holroyd's (2014) report 'Indigenous Internationalism and the Emerging Impact of UNDRIP in Aboriginal Affairs in Canada'.

<sup>79</sup> See Government of Canada (2012) for an updated list of CIRNAC's guidelines on a 'duty to consult'.

access to land and resources. These attitudes, especially prevalent in projects undertaken by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Natural Resources Canada (NRCAN), truncate any intended progress towards justice.

Second, active decolonization will make room for recognizing colonial difference and not confuse it with cultural difference. It would be essential to have a special focus on Indigenous and non-Indigenous relationships, ensuring that there is enough space for several kinds of cosmologies, ontologies, and epistemologies. In contemporary forms of theorizing diversity, the cultural, historical, cosmological, epistemological - uniqueness of Indigenous Peoples is often lost or confused as another form of diversity. Indigenous Peoples' operation from locality and their actions as emerging from grounded normativity are not properly situated. The decolonial approach I am suggesting will make space for highlighting the uniqueness of Indigenous nations and their grounded normativity, not to be confused with other forms of cultural difference. This would allow for addressing the long-standing power imbalances between Indigenous and non-Indigenous Peoples in settler colonial societies. This is not a call for sameness, but a call for equity, constructing political infrastructure to create balance in currently imbalanced power relations.

In line with the above, central to active decolonization is the incommensurability and the non-equivalence of environmental and Indigenous pedagogies, goals, methods, aims, and processes. My decolonial approach would reject outright the idea of an 'ecological Indian' and maintain a distinction between Indigenous views and environmental philosophies. Indigenous lifeways are not "ecologically conscious" or "environmentally friendly" lifeways. Their practices to do with the natural world are a result of their cosmological and metaphysical views. This distinction becomes especially important to maintain when "borrowing" from TEKW systems to

resolve situations of conflict, design governments, or address climate crises. If non-Indigenous approaches do not apply a decolonial lens, then such “borrowing” of Indigenous wisdom at worst furthers the oppression and exploitation of Indigenous Peoples, and at best remains a form of appropriation that still prevents Indigenous agency in these matters.

Importantly, active decolonization will include the natural world as a core component of justice, not just as the (invisible) background of justice. A decolonial stance will pay attention to human ecology, without adopting an Indigenous view in this matter. That is, the political space needs to establish and justify what relationships humans have with natural entities alongside their deliberations about their relationships with other human communities. “Core” political philosophy concepts of citizenship and political participation need to be revised in light of this stance. Communities may continue to endorse anthropocentric or non-anthropocentric views (or anything in between and beyond this spectrum) but they will do so openly and publicly so that all views are on a level playing field. This will also include an interdisciplinary participation so that scientists, policy makers, politicians, and academics are involved in debates surrounding these issues that pertain to the core of human and nonhuman existence. This will ensure that some of the current epistemological barriers are lowered and that a variety of epistemologies can then be legitimized in the public sphere. The natural environment, other than human beings and the ‘rest of nature’, do not appear as relevant factors in establishing the theory of procedural or multicultural liberalism. In contrast, a decolonial approach to justice would argue that it is imperative to include non-human beings in core considerations of justice. Not doing so excludes certain populations that should otherwise be included within the scope of justice, and, in light of current climate crises, it would be prudent to question and revise age old tendencies to maintain a strict human/nature binary. This will be extended to the scope of political theory as well. That is,

core concepts in political theory - citizenship, political participation, constitutional essentials - will be revised in light of human ecology, paying close attention to the ways in which human and non-human lives do interact rather than maintaining a strict and untenable separation between those realms.

A significant implication of this move would be to open up the methodological space in political theory to include multiple forms of agency. Most immediately, this draws our attention to Indigenous forms of agency that are not yet “mainstream”. Active decolonization will push towards a revision of the concept of political participation making way for more than human beings - rivers, moose, maple trees - to be active political participants in the public spheres of diverse societies. Paying close attention to the ways in which Indigenous Peoples express their agency, that is how they relate to land, conduct their affairs, respond to injustice are crucial ways of informing us about the cosmological, metaphysical, and moral relationality in their worldviews. For instance, the fact that Indigenous Peoples manifest as *protectors* of the land and not as protestors at a pipeline construction site is a crucial and relevant detail for justice, bringing to light Indigenous forms of kinship. Active decolonization will reveal that these aspects of Indigenous lifeways are relevant for considerations of justice in the public sphere of a plural society, and it will also guide us towards a substantive engaged approach to diversity and justice (instantiated in chapters 2 and 3 of my dissertation). These are central aspects to an engaged approach to political theory and non-ideal theory.

In active decolonization, the scope of the political community would be expanded to include all relevant and significant others, human and other than human beings, to make room for the life-sustaining relationships that humans have with all others. Doing so will pave the way to reconsider and revise our conception of individual human rights. The decolonial approach I

am suggesting will recommend prioritizing relationships over rights, adjudicating the results of relationships that one has maintained rather than accounting for one's rights as absolute entitlements. In this sense, my decolonial approach is dynamic; it is active and recognizes the ongoing living nature of justice. Ultimately, a theory of decolonial justice will also call into question the background idea of linear progress that supports the trade-slave-empire triad and dismantles it to make room for hitherto marginalized populations.

Active decolonization will make room for reconciliation, resurgence, and indigenization as necessary, always maintaining a distinction between these resolutions. The Truth and Reconciliation Commission of Canada (TRC) defines reconciliation as “establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. In order for that to happen, there has to be awareness of the past, an acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour” (Truth and Reconciliation Commission of Canada Report, p. 7). In its broadest interpretation reconciliation can be seen as not only making room for Indigenous lifeways and agency but also acting on an informed idea of the past and working towards repairing Indigenous - non-Indigenous relations. Reconciliation needs to be differentiated from resurgence, which refers to the strengthening of Indigenous lifeways, practices, rituals and cultures as the oppressive structures around them continue to erode away, and from indigenization which refers to adopting Indigenous epistemologies and practices. Active decolonization does not adopt any one particular approach. Rather, it leaves itself open to all these methods to be deployed where relevant. It must be emphasized that a call to decolonize does not imply an automatic indigenization of the public sphere, but rather to ensure that a public sphere is compatible with reconciliation, resurgence, and indigenizing and more importantly that

it does not pose any structural obstructions to these undertakings. Ultimately, the goal of active decolonization is to recognize and make room for liberal populations as well as non-liberal lifeways, including Indigenous Peoples, in the public sphere of a settler colonial society.

I view active decolonization as offering epistemic justice at two levels: at the level of the larger narratives that inform how we come to understand ourselves and our place in the world, as well as at the individual level. At the normative level, the theory would be able to situate Indigenous agents within the historical, current, and forward-looking narratives of sexism, ageism, racism, and ableism among others. Doing so involves bringing to light the ideas that have the power to shape the public sphere and also asking why they do so, while paying attention to the historical context and development of those ideas. This would reveal the ways in which colonization surreptitiously claimed and erased Indigenous agents, while liberal principles and values continue to shape current realities. In this way, active decolonization carves out space for bringing out the nuance that historical marginalization actually is a result of the strategic devaluing of Indigenous Peoples on the basis of race for economic motives. Making this explicit is crucial for moving forward in addressing power imbalances amongst groups in a settler colonial society. This will help to address the epistemic injustice that occurs at the level of the individual knower, reinstating the Indigenous agent as a legitimate knower and producer of knowledge in the world. Rather than invalidating lived experience, my decolonial theory of justice will be willing to inquire into the everyday as one important source of agency. In this way, active decolonization aims to make conceptual and practical contributions to contemporary plural societies by promoting engagement in normative philosophy, and by contributing to the realms of social work, anti-racist movements, intersectionality, and civic building exercises.

Active decolonization is multifaceted, interdisciplinary, non-linear, and essentially a messy process. A decolonial approach is complex, dynamic, and one that simultaneously builds and dismantles; it is constantly undoing the stability of settler colonial structures while building a public sphere that includes non-liberal peoples in more meaningful ways. One of the messy aspects of decolonization is that it requires us, each and every one of us, to confront our own privilege while holding settlers and those with settler mentalities accountable for their actions. The term ‘settlers’ no longer refers to only white people; it has evolved to include all those people whose life experiences are built on the erasure of Indigenous agents and whose privileges rest on the ignorance of such erasure. A crucial and abiding component of active decolonization would be to undo colonial erasure through education about Indigenous lifeways thereby planting the seeds to erode settler privilege. Substantive engagement as a theoretical methodology is suggested as a way to combat ‘a veil of ignorance’ approach, and the colonial erasure that comes with such approaches. Doing so opens up avenues for effective decolonial dialogue.

Decolonization of a liberal framework, unlike its diversification, is a structural activity and not one concerned with the extension of liberal principles to ‘diverse’ cases. Rather, it involves restructuring the nature and content of liberal principles themselves. Active decolonization moves away from a procedural methodology, actively lifts the metaphorical veil of ignorance, and targets the conflicts between liberal justice and Indigenous lifeways. By arguing in support of substantive engagement with the lifeways of Indigenous Peoples, I suggest adopting an attitude of curiosity to replace a veil of ignorance. It is no longer viable, or just, to ignore or bracket differences and ‘substantive’ aspects of our lifeways in order to arrive at peaceful means of communication in the public sphere and coexistence in society. Rather than relegating religion, culture, and ritual to the private sphere, we need peaceful ways of communicating about

these topics with each other, however high or low the stakes might be. Importantly, active decolonization unsettles the heart of liberal logic, which is racist, hierarchical, and oppressive and aims to restructure attempts to arrive at concepts of justice. To carry out this project active decolonization grapples with the incommensurability of Indigenous lifeways and non-Indigenous views of the world. In this way, my suggested approach is deliberately anti-racist and is unwilling to be complicit in racist implications of principles, procedures, and projects. Another significant implication of this anti-racist stance is a shift in what counts as diversity. A decolonial approach necessitates the reformulation of stereotypical and racist examples of diversity and inquires rather into the processes of world-making and being-in-the-world that result in practices that are viewed as diverse. In contrast to Kymlicka's presentation of diversity, active decolonization will not allow the lumping of a settler nation and Indigenous nations into a single category of national minorities. The uniqueness of Indigenous lifeways will need to be maintained, as will the differentiation between Indigenous groups, immigrant groups, and refugees. A decolonial theory of justice will inquire into the historic injustices that groups have suffered and consider what justice looks like accordingly. In the case of Indigenous Peoples this will involve paying attention to settler colonialism, as noted above. This will require removing Indigenous Peoples from the broader category of minorities, and placing them as "Peoples", as sovereign and as carrying out nation-to-nation relationships with others. Treaties, agreements, and new negotiations will all flow from this understanding of Indigenous communities as Peoples. For immigrant groups and refugees this will involve paying attention to what role, if any, the country had played in creating these immigrants and refugees in the first place.

Active decolonization has a limited 'land back' approach. One of the overlaps that my theory of decolonization has with liberal theories of justice is the permanence of the cohabitation

and the coexistence of Indigenous and non-Indigenous populations in settler colonial societies. This stands in contrast with decolonization as presented in Eve Tuck and Wayne Yang's (2012) work in which they argue that one element of decolonization is to imagine "Native futures, the lives to be lived once the settler nation is gone" (Tuck & Yang, p. 36). In contrast, my approach begins where we are, with the recognition that due to colonization, imperialism, and immigration a diverse set of communities now exist within a settler colonial society, and that is continued to be shaped by a variety of cooperative and competing interests. Given this, what does it mean for us to move forward recognizing that a variety of people have differentiated claims to calling this place home. This requires us returning to the basic questions about who gets to govern these lands, how, and why. While operationalizing these processes it is important to centre the thoroughgoing empiricism that is central to Indigenous lifeways. Liberalism, with its rationalistic basis, is not equipped to deal with the extensive and intensive empirical bases of Indigenous lifeways and hence requires it to be bracketed off or dealt with outside of the liberal framework as "special" or "marginal" cases. Agency, kinship, and self-determination are all premised on Indigenous empiricism. Wildcat identifies "self-reflection" and "synthetic attentiveness" as being central to Indigenous self-determination (Deloria & Wildcat, 2001, p. 149). FNMI self-reflection necessarily involves actively building, maintaining, and uncovering deep-rooted connections with human and other-than-human beings in the community. Active decolonization would focus on allowing for this kind of Indigenous agency to operate in building nation-to-nation relationships.

Doing so allows us to centre Indigenous sovereignty and locality and opens up opportunities to establish new treaties and renew responsibilities in existing ones. Treaty formation, structured on Indigenous sovereignty, needs to take centre stage in decolonial praxis.

This idea needs to move from theoretical and rhetorical promises to actualization so that Indigenous Peoples can live more freely, and in a just world. Active decolonization strives to make this possible by locating the issue within its historical context, focussing on Indigenous ‘self-reflection’, kinship, and locality. The aim is to make room for debates and practices around decolonization to become mainstream; to introduce them into the public political intellectual sphere. Doing so will break some of the isolation that currently exists in Indigenous-nonIndigenous decolonization efforts. Public debate could include discussions around instituting a Department of Decolonization<sup>80</sup> (or such) or including Earth Rights<sup>81</sup> within North American constitutions as other countries have done. Introducing these structural elements into the public political sphere ensures inbuilt systems of accountability that are severely lacking. Consider, for instance, Canada’s Leaders Debates (2019 was an especially stark example) where questions of Indigenous rights are discussed solely in terms of resource extraction and environmentalism (CBC, 2019). As I have shown in my dissertation, these kinds of confusions and evasions amount to injustice for Indigenous Peoples. Hence, bringing debates and practices about decolonization into the public sphere, and advocating for education around Indigenous lifeways combined with structures to introduce accountability would be necessary to unpack the power inequalities inherent in settler colonial dynamics. This will constitute the practical arm of active decolonization.

While the focus of my argument and analysis in my dissertation has been on Indigenous populations of Turtle Island, the thrust of my argument about the coloniality of liberal principles

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<sup>80</sup> In Bolivia, for instance, The Ministry of Cultures, Decolonization, and Depatriarchalizing was formed in 2009 and was re-established in 2020.

<sup>81</sup> Ecuador and Bolivia recognize the rights of the Earth in their national constitutions. Ecuador was a pioneer in this movement, and at the forefront were Quechua peoples who advocated for the legal rights of ‘*Pachamama*’ Mother Earth.

and their need to be decolonized holds true for all settler colonial states, the classical ones like Canada, USA, Australia, New Zealand, and more recent ones like Tibet, Kashmir and Palestine among others. In all such instances I argue that it is imperative to disentangle the colonial and imperial baggage of the liberal principles of equality and liberty before applying them or transporting them to the populations of these states. Doing so will not only expose the colonial baggage of these principles but also bring to light any current economic and political aims that have been surreptitiously included in the “liberalizing” project.

## **Conclusion**

Will liberalism survive the decolonial turn? This is yet to be seen and is certainly worthy of future work. There are a varied set of responses to this question in current literature. There is immediate awareness of the ubiquitous nature of liberalism as a political philosophy, so it seems unthinkable, even meaningless, to question if it can be revised as a whole. Current literature seems to be flirting with the idea of rejecting liberalism *en masse* but seems to be holding back based on the fact that such a view might seem absurd given how politically and morally ubiquitous liberalism is as a guide to the public sphere in contemporary democracies across the globe (Ivison 2020; Bell, 2016). While I am well aware of this fact, I want to lean on the (self-aware) provocative claim that if active decolonization, as I have outlined above, were to become operational then certain core elements of liberalism would be phased out. I would venture to guess that over the next generation or two we would witness the eroding of the significance of liberal values in light of decolonial approaches within settler colonial states. This should not be regarded as catastrophic as it first seems since some of the foundational values of equality and liberty will eventually find their homes nestled, in evolved and revised forms, in light of developing ideas of community and diversity.

To clarify, the decolonial approach I am suggesting is not motivated purely by an anti-liberal stance but by a pro-inclusive decolonial stance while keeping in mind the limitations that liberalism imposes on the health of Indigenous communities. That is, it is less important whether and in what ways liberalism and liberal principles survive. It is more important to ensure that the framework is able to meet communities on their own terms and start from there to evolve and facilitate coexistence. This might mean that liberalism is reinterpreted, that only some of its principles remain intact or that it becomes obsolete and that its main success lies, in retrospect, in delivering us from a world of fascism. What is central to the decolonial stance that I have presented in my dissertation is that it forces frameworks like liberalism to inquire into their mired pasts and colonial baggage. My critique of liberal justice poses two important questions: what mechanisms, if any, does liberalism have for understanding and responding to a) empirically based lifeways and b) ways of life that are metaphysically, cosmologically, (radically) different from a liberal view? In my analysis above, I have tried to show that liberalism, even in its earliest formations, deliberately devalued, erased, or ignored lifeways that were radically different from its own, and arrived at principles that were then deemed universal for 'all' moral subjects. Specifically, liberalism was built on the erasure of Indigenous bodies and continues to legislate and theorize based on that erasure. My attempt in my dissertation has been to uncover this foundational injustice and show that a multi-faceted active decolonization is essential for its resolution.

I acknowledge that in its current formulation my theory is intention-oriented and does not yet provide a robust system of concrete and practical checks to prevent transgressions such as appropriation of Indigenous knowledge systems. While active decolonization would in principle disallow appropriation and marginalization of Indigenous knowledges, there are no concrete

steps in place to deter offenders. It also remains unclear what the fallout will be when my decolonial approach makes contact with the capital element of the triad. That is, what will a decolonization of capitalism entail? This question remains unanswered but is a significant aspect of decolonization, and worthy of a follow-up study in its own right. The decolonization of liberal principles cannot happen independently of the economic structures that support them, so a complete decolonial approach will need to outline the main components of that contact too, between capitalism and liberal principles. Finally, it may be said active decolonization does not offer concrete steps or resolutions to problems like land back movements, protests against land developers, and to issues of pipeline justice. However, it must be pointed out that the strength of my decolonial approach lies in its not needing to predetermine what the results of that engagement will be. Concerns, principles, issues, and results are necessarily a result of substantive engagement and dialogue amongst various parties, with a focus on including Indigenous locality. In this regard, fertile avenues for future work would include diversifying epistemologies in political participation and inquiring into modalities of decolonial dialogue.

The domain of political theory can, and should, play a role in active decolonization by a) conceptually taking as central and opening up the hitherto defined core concepts and methods of political theory; this will require epistemic diversity and b) in more practical terms by simply diversifying the arena itself, a much needed turn, by encouraging and creating space for non-Indigenous ally theorists to amplify Indigenous voices and engage with Indigenous narratives so that the two realms are not as polarized as they are right now. Indigenous and non-Indigenous philosophies, cultures, epistemologies, lifeways and struggles seem to exist in parallel, save for a few occasions when they come in contact. We need a structural and systemic, not sporadic, coming together of Indigenous and non-Indigenous views. To facilitate building and

strengthening these sorts of relationships, I have suggested a theory of active decolonization that will work to structurally revise current systems so that bridges can be built between Indigenous and non-Indigenous Peoples across all domains in society. We need to recognize that we have three solitudes, not two, and the time has come for us to braid the sweetgrass.

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