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Table of Contents

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Social Inclusion (ISSN: 2183–2803)
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Editorial

Indigenous Emancipation: The Fight Against Marginalisation, Criminalisation, and Oppression

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Abstract
This thematic issue addresses the challenges faced by Indigenous peoples in protecting their rights and maintaining their unique cultures and ways of life. Despite residing on all continents and possessing distinct social, cultural, economic, and political characteristics, Indigenous peoples have historically faced oppression and violation of their rights. Measures to protect Indigenous rights are gradually being recognized by the international community, but ongoing issues such as illegal deforestation, mining, and land clearances continue to desecrate sacred sites and oppress Indigenous peoples. Indigenous women and youth are particularly vulnerable, facing higher levels of gender-based violence and overrepresentation in judicial sentencing statistics. Land rights continue to be threatened by natural resource extraction, infrastructure projects, large-scale agricultural expansion, and conservation orders. There is also a heightened risk of statelessness for Indigenous peoples whose traditional lands cross national borders, leading to displacement, attacks, killings, and criminalization.

Keywords
criminalisation; displacement; Indigenous emancipation; Indigenous rights; justice; marginalisation; oppression; settler-colonialism

Issue
This editorial is part of the issue "Indigenous Emancipation: The Fight Against Marginalisation, Criminalisation, and Oppression" edited by Grace O'Brien (Queensland University of Technology), Pey-Chun Pan (National Pingtung University of Science and Technology), Mustapha Sheikh (University of Leeds), and Simon Prideaux ((In)Justice International) as part of the (In)Justice International Collective.

According to the United Nations Human Rights Office of the High Commissioner (OHCHR, 2020), Indigenous Peoples reside on all continents, including the Arctic, Asia, Africa, Australia, and the Americas. The United Nations Permanent Forum on Indigenous Issues, cited in Bartlett et al. (2007), states that Indigenous Peoples possess unique cultures and ways of relating to people and the environment that they inherited and practiced over time. Indigenous Peoples maintain social, cultural, economic, and political characteristics that differentiate them from the dominant society in which they live. Despite cultural differences, Indigenous Peoples face similar challenges in protecting their rights as distinct peoples. Therefore, Indigenous Peoples have been fighting for recognition of their identities, way of life, and their right to traditional lands, territories, and natural resources for many years.

Unfortunately, throughout history, Indigenous Peoples' rights have been constantly violated, making them one of the most disadvantaged and vulnerable groups globally. In response, the international community is gradually acknowledging that special measures are necessary to protect Indigenous rights and maintain their distinct cultures and ways of life. However,

practices such as illegal deforestation, mining, and land clearances, as well as the confiscation of lands, have desecrated sacred sites and contributed to the oppression of Indigenous Peoples in countries such as Australia, Papua New Guinea, and Brazil (Poirier et al., 2022). Additionally, the confiscation of lands, either by deception or force (in the US, Australia, and New Zealand) and the imposition of "white" norms and values of the dominant "social" configurations of the "civilised" Western (minority) world, as exemplified by Residential Schools in Canada (1880s–1996) and state sanctioned Missions in Australia (1820–1987), have further contributed to the subjugation of Indigenous Peoples.

Despite ongoing efforts to protect Indigenous rights, Indigenous women and youth remain particularly vulnerable, as they face higher levels of gender-based violence and are overrepresented in judicial sentencing statistics (O'Brien, 2021). To reiterate, Indigenous Peoples continue to face threats to their land rights due to natural resource extraction, infrastructure projects, large-scale agricultural expansion, and conservation orders. In some cases, there is a heightened risk of statelessness and lack of identity for Indigenous Peoples whose traditional lands cross national borders (i.e., the Sámi in Scandinavia and parts of Russia), leading to displacement, attacks, killings, and criminalization (OHCHR, 2020).

In this thematic issue on Indigenous Peoples, several key themes emerge from various contributers, including Indigenous rights and sovereignty, the relationship between Indigenous Peoples and settler colonial states, the impact of extractivism on Indigenous communities, and the importance of truth-telling and Indigenous resurgence.

In her article on Anishinaabe law, Brown (2023) reviews *Restoule v. Canada*, a recent Ontario decision brought by Anishinaabe Treaty beneficiaries who seek to affirm treaty rights as they were signed between the Anishinaabe Nation of Northern Ontario and the colonial officers in 1850. The research highlights the ongoing struggle of Indigenous Peoples to affirm their rights, particularly in the context of resource development. The theme of Indigenous Peoples' treaty rights and their relationship with the Canadian government are key themes that emerge from this important contribution.

Simon and Mona (2023) focus on Taiwan's Indigenous Peoples and their demands for political autonomy. The article examines the impact of liberal indigeneity on Indigenous sovereignty, particularly in relation to hunting and naming rights. They highlight the challenges that Indigenous Peoples face in asserting their sovereignty and the importance of affirming Indigenous nationhood in the face of systemic racism. The themes of Indigenous sovereignty, political autonomy, and systemic racism emerge strongly from their research.

Schwab's (2023) article is an analysis of Ecuador's extractivist model and its impact on Indigenous Peoples. The article highlights the tension between Ecuador's progressive Constitution, which guarantees collective rights to Indigenous Peoples and nature, and the country's strategic reliance on the oil sector. The focus is on the role of extractivism in social mobilization and the challenges faced by Indigenous Peoples in the face of new pressures such as climate change and the energy transition.

Maddison et al. (2023) focus on the process of treaty-making and truth-telling in Australia. Their article examines the potential of truth-telling to transform the relationships between Indigenous Peoples and colonial settlers and lead to Indigenous emancipation. This research presents a circumspect assessment of the possibilities for Indigenous emancipation that might emerge through truth-telling, drawing on international experience and the perspectives of Indigenous and non-Indigenous critical scholars.

McArdle and Neill (2023) discuss the challenges that Indigenous Peoples face in accessing healthcare services, particularly in the context of the Covid-19 pandemic. The article highlights the importance of Indigenous-led healthcare initiatives and the need for healthcare providers to recognize and address the systemic barriers that Indigenous Peoples face.

Finally, Avery (2023), in a powerful rejoinder to an anonymous reviewer, raises important questions around the integrity and legitimacy of the decolonising drive within higher education, especially when led by non-Indigenous academics who themselves act as gatekeepers, blocking Indigenous scholarship from taking its rightful place in the academy. His commentary addresses structural racism, toxic academic cultures, and serves as a call for all involved in the decolonizing drive to "practice what they preach."

Each of the contributions to this thematic issue underscores that the ongoing violations of Indigenous Peoples' rights are a reflection of deeply ingrained historical and contemporary power imbalances, where dominant societies have often sought to assimilate, exploit, or even eradicate Indigenous populations. These power imbalances are often perpetuated by neoliberal policies that prioritise economic growth and development over human rights and environmental protection. The extractive industries, which extract natural resources such as minerals and oil are particularly problematic for Indigenous Peoples, as their territories often overlap with areas of high resource wealth. Many governments and multinational corporations have engaged in extractive activities without obtaining the free, prior, and informed consent of Indigenous communities, which violates their rights to self-determination and to their traditional lands and resources. These extractive industries also contribute to environmental degradation, which disproportionately affects Indigenous communities who rely on the land and natural resources for their livelihoods and cultural practices.

In addition to resource extraction, infrastructure projects, large scale agricultural expansion, and conservation orders have also resulted in the displacement and criminalisation of Indigenous Peoples. These practices

have led to the destruction of Indigenous homes, sacred sites, and ecosystems, as well as the loss of cultural and linguistic diversity. Such displacement has significant negative impacts on Indigenous Peoples' physical and mental health, and their social and economic well-being.

To address these issues, it is crucial to recognise Indigenous Peoples' inherent rights to self-determination, traditional lands, and resources. Governments and multinational corporations must work with Indigenous communities to ensure that their rights are respected and that their perspectives are included in decision-making processes. This includes implementing free, prior, and informed consent mechanisms, which give Indigenous communities the power to make decisions about development projects that may affect them.

There is also a need for greater accountability for the violations of Indigenous Peoples' rights. International organisations, such as the International Criminal Court, must investigate and prosecute individuals and organisations responsible for crimes committed against Indigenous Peoples. Such efforts can serve as a deterrent to future violations and help to restore justice and dignity to affected Indigenous communities.

The protection of Indigenous Peoples' rights and cultures is essential for upholding universal human rights and achieving sustainable development. The international community must recognise the unique challenges facing Indigenous Peoples and work towards the creation of policies that promote their self-determination, empowerment, and well-being. The need for *Social Inclusion* and (In)Justice International to expose and condemn these atrocities against Indigenous Peoples is crucial. This thematic issue is another important step towards this goal.

Conflict of Interests

The authors declare no conflict of interests.

References

Avery, S. (2023). Dear reviewer n: An open letter on academic culture, structural racism, and the place of indigenous knowledges, with a question from one Indigenous academic to the decolonising academics who are not. *Social Inclusion*, *11*(2), 232–234.

Bartlett, J., Madariaga-Vignudo, L., O'Neil, J. D., & Kuhnlein, H. V. (2007). Identifying Indigenous Peoples for health research in a global context: A review of perspectives and challenges. *International Journal of Circumpolar Health*, *66*(4), 287–370.

Brown, T. E. (2023). Anishinaabe law at the margins: Treaty law in Northern Ontario, Canada, as colonial expansion. *Social Inclusion*, *11*(2), 177–186.

Maddison, S., Hurst, J., & Thomas, A. (2023). The truth will set you free? The promises and pitfalls of truth-telling for Indigenous emancipation. *Social Inclusion*, *11*(2), 212–222.

McArdle, E., & Neill, G. (2023). The making and shaping of the young Gael: Irish-medium youth work for developing Indigenous identities. *Social Inclusion*, *11*(2), 223–231.

O'Brien, G. (2021). Disrupting the status quo: A socially just education for Australia's first nations boys. In J. W. Lalas & H. L. Strikwerda (Eds.), *Minding the marginalized students through inclusion, justice, and hope* (pp. 193–209). Emerald.

OHCHR. (2020). *United Nations human rights report 2020*. https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHRreport2020.pdf

Poirier, B., Sethi, S., Haag, D., Hedges, J., & Jamieson, L. (2022). The impact of neoliberal generative mechanisms on indigenous health: A critical realist scoping review. *Global Health*, *18*. https://doi.org/10.1186/s12992-022-00852-2

Schwab, J. (2023). La lucha continua: A presentist lens on social protest in Ecuador. *Social Inclusion*, *11*(2), 198–211.

Simon, S. E., & Mona, A. (2023). Between legal indigeneity and Indigenous sovereignty in Taiwan: Insights from critical race theory. *Social Inclusion*, *11*(2), 187–197.

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Article

Anishinaabe Law at the Margins: Treaty Law in Northern Ontario, Canada, as Colonial Expansion

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Abstract
In 1850, 17 years before the Dominion of Canada was created, colonial officers in representation of Her Majesty the Queen, concluded Treaty Numbers 60 and 61 with the Anishinaabe Nation of Northern Ontario. The Robinson Treaties—so named after William Benjamin Robinson, a government official—include land cessions made by the Anishinaabe communities in return for ongoing financial support and protection of hunting rights. The land areas included in the treaty are vast territories that surround two of Canada's great lakes: Lake Superior and Lake Huron. These lands were important for colonial expansion as settlements began to move west across North America. The treaties promised increased annual annuity payments "if and when" the treaty territory produced profits that enabled "the Government of this Province, without incurring loss, to increase the annuity hereby secured to them." This amount has not been increased in 150 years. This article reviews *Restoule v. Canada*, a recent Ontario decision brought by Anishinaabe Treaty beneficiaries who seek to affirm these treaty rights. A reading of the Robinson Treaties that implements the original treaty promise and increases annuity payments would be a hopeful outcome of the *Restoule v. Canada* decision for it would be the implementation of reconciliation. In addition, the Restoule decision has important insights to offer about how Indigenous law can guide modern-day treaty interpretation just as it guided the adoption of the treaty in 1850. The Robinson Treaties are important for the implementation of treaty promises through Indigenous law and an opportunity to develop a Canada in which Indigenous peoples are true partners in the development and management of natural resources.

Keywords
Anishinaabe Nation; Canada; Restoule; Indigenous law; Northern Ontario; Robinson Treaties; treaty law

Issue
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1. Introduction

In 1850, 17 years before the Dominion of Canada was created, colonial officers in representation of Her Majesty the Queen, concluded Treaty Numbers 60 and 61 with the Anishinaabe Nation of Northern Ontario (Government of Canada, 1850a, 1850b). The Robinson Treaty for the Lake Superior region was signed at Sault Ste. Marie, Ontario, between Anishinaabe Chiefs inhabiting the Northern Shore of Lake Superior from Pigeon River to Batchawana Bay. The Robinson Treaty for the Lake Huron region was also signed at Sault Ste. Marie, Ontario between Anishinaabe Chiefs inhabiting the Northern Shore of Lake Superior from Batchawana Bay to Sault Ste. Marie and the Anishinaabe Chiefs inhabiting the eastern and northern shores of Lake Huron from Sault Ste. Marie to Penetanguishene to the height of land. Together these mirror treaties are known as the Robinson Treaties. The Robinson Treaties—so named after William Benjamin Robinson, a government official who led the negotiations, drafting and signing of the treaties—include land cessions made by the Anishinaabe communities in return for ongoing financial support and protection of hunting rights. The land areas included

in the treaty are vast territories that surround two of Canada's great lakes: Lake Superior and Lake Huron. These lands were important for colonial expansion as settlements began to move west across North America. The Robinson Treaties include an annual annuity payable to beneficiaries under the treaty for an amount of $4 per person that was to be reviewed annually. The treaties promised increased payments "if and when" the territory the plaintiffs had ceded produced an amount that enabled "the Government of this Province, without incurring loss, to increase the annuity hereby secured to them" (Government of Canada, 1850a, 1850b). This amount has not been increased in 150 years.

The Robinson Treaties are just two treaties of over seventy that were concluded between 1701 and 1923 in the colonization of Canada (Government of Canada, 2013). Treaties were concluded between the British colonies of North America, beginning in the 1700s with historic peace and friendship treaties, with upper Canada Land Surrenders, and Williams, Robinson and Douglas treaties following thereafter. Post-confederation, the Government of Ontario concluded eleven numbered treaties covering large tracks of land across six provinces and territories in Canada (Olthius Kleer Townshend LLP, 2018, p. 52). Treaties are agreements that are concluded on a nation-to-nation basis with the First Peoples' of Turtle Island (known also as North America), though they are not adjudicated in Canada as a treaty under principles of international law, but as a unique type of treaty agreement that is recognized and affirmed in Canada's constitution. Sections *35*(1) and *35*(2) of the Constitution protect Aboriginal treaty rights by providing the following statement: "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed….In this Act, Aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada" (Constitution Act, 1982). Treaties contain solemn promises whose nature is sacred (*Nowegijick v the Queen*, 1983, p. 36). Yet, despite the longstanding recognition of the centrality of treaty law to Canada's legal framework, the Canadian government at all levels continues to show reticence, at best, contempt, at worst, in recognition of treaty promises made by the government and owed to Indigenous beneficiaries.

This article reviews *Restoule v. Canada*, a recent decision from the Ontario Superior Courts that concerns land in Northern Ontario, Canada (*Restoule v. Canada (AG)*, 2018a). *Restoule* is a treaty interpretation case brought by the Anishinaabe Treaty beneficiaries that seek to affirm treaty rights which indicate that an annual annuity payment owed to treaty signatories be increased. Furthermore, it is argued that this amount ought to be increased commensurate with resource development in the lands of the treaty. By way of background information, the Restoule litigation has been divided up into three stages. Stage one involved the interpretation of the treaties; stage two considered the Crown's defences of Crown immunity and limitations; and stage three, which has yet to be heard, will determine the remaining issues, including damages and the allocation of liability between Canada and Ontario. This article focuses on stage one concerning the interpretation, implementation, and alleged breach of the treaties' annuity provisions. Stage one has been heard at the Superior Court with the decision released in 2018, and by the Ontario Court of Appeal, with the decision released in 2021. The Ontario Court of Appeal decision addresses claims in both the first and second stages of the litigation. On the 23rd of June 2022, the Supreme Court of Canada granted leave to appeal to the Attorney General of Ontario (*Ontario (AG) v. Restoule*, 2022).

Close reading of the Robinson Treaties—and the Indigenous law that guided their creation—offer an opportunity to develop a Canada in which Indigenous people's laws are centered in the interpretation of treaties. I argue that the *Restoule v. Canada* trial at the Superior Court of Justice was conducted in such a way that it embodies how Indigenous law can and ought to be utilized to guide the interpretation of treaties. In this way, I argue that the decision has the potential to be a breakthrough case in how Canada responds to and respects its' treaty obligations, recent appeals to the Supreme Court of Canada notwithstanding. Importantly, the *Restoule v. Canada* decision demonstrates an approach to Indigenous rights litigation that adopts legal procedure guided by Indigenous law, which in turn guides the arguments and analysis concerning the Aboriginal law of treaty interpretation. I argue that this approach of Indigenous law as procedure is a distinct approach to treaty interpretation that ostensibly relies on and argues Aboriginal law, while simultaneously enacting Indigenous law. My comments in this article are those of an outsider as I am trained as a common and civil lawyer, and not in Indigenous law. I hope that readers will take my comments about Indigenous law, treaty interpretation, and Anishinaabe law with caution and in the spirit of humility.

2. Treaty Interpretation in the Margins of Aboriginal and Indigenous Law

In this article, I discuss Aboriginal law and Indigenous law. Aboriginal law refers to the law created by Canadian courts and legislatures and thus refers to the legal relationship between Indigenous persons and the Crown. Key sources of law in the area of Aboriginal law include Section 35 of the Constitution Act (1982), the Indian Act (1985), and jurisprudence interpreting and implementing the same (Collis, 2022). Aboriginal law is to be distinguished from Indigenous law, which refers to Indigenous peoples' own legal systems (J. Borrows, 1996, 2005; L. Borrows, 2016; Young, 2021). It should be remembered that "presumptions that Section *35*(1) claims are the only recourse available to Indigenous litigations should be

avoided" (Young, 2021, p. 31; see also J. Borrows, 2017) and there is a growing movement across Canada to revitalize Indigenous law and Indigenous legal systems (Gunn & O'Neil, 2021). Particularly notable in this regard is the important work of Indigenous law centres such as the Indigenous Law Research Unit housed at the University of Victoria's Faculty of Law and the Mino-Waabandan Inaakonigewinan Indigenous Law and Justice Institute housed at Bora Laskin Faculty of Law, Lakehead University. The *Restoule v. Canada* decision was argued on the basis of Aboriginal law, specifically treaty law, and not based on Indigenous law. As I will proceed to argue, however, Indigenous law was present throughout the legal proceedings.

Treaty rights are recognized and affirmed in the Canadian constitution. The exercise for Canadian courts is one of interpretation of treaty documents, which can range from historical treaties signed pre-confederation, to historical numbered treaties signed in the years after confederation, through to modern treaties such as the Tla'amin Final Agreement which was concluded as recently as 2014 (Government of Canada, 2014). Treaty interpretation is guided by the Supreme Court of Canada which established in *R. v. Marshall* (1999, paras. 82–87; see also *Restoule v. Canada (AG)*, 2018a, paras. 395–397) that treaties are to be interpreted through, first, the identification of any ambiguities and misunderstandings arising from linguistic and cultural differences, and second, the consideration of possible meanings of the text against the treaty's historical and cultural context (*Restoule v. Canada (AG)*, 2018a, paras. 395–397). Principles of treaty interpretation require that efforts be made to understand the historical record and give effect to the common intention of the parties. There are nine principles of treaty interpretation which are to guide the court in their interpretation of rights and obligations that are contained in a treaty (*R. v. Marshall*, 1999, para. 78). A key principle among these is the requirement of choosing "from among the various possible interpretations of the common intention the one which best reconciles the interests of both parties at the time the treaty was signed" (*R. v. Marshall*, 1999, para. 78; see also *Restoule v. Canada (AG)*, 2018a, para. 397).

Identifying the "common intention" (*R. v. Marshall*, 1999, para. 14) between Indigenous signatories and the British Crown is a troubling task in a colonial context which often misrepresented the words of Indigenous signatories, with colonial officers saying one thing to communities when working towards adoption of a treaty, and recording a different point on the written treaty document. Though differences between spoken negotiations and written records may be due to the colonial officers' norms and practices in the drafting of legal documents which largely followed European style (Walters, 2001), it is foolish to overlook practices of obfuscation. Distinctions between the written treaty document and information about negotiations and understandings between treaty signatories have particular significance for the interpretation of so-called land cession clauses. Writing on Treaty No. 8, which covers lands of the provinces of Alberta, Saskatchewan, British Columbia and parts of the Northwest Territories, René Fumoleau argues that historical record indicates that land was not discussed between treaty signatories though there is a treaty clause which indicates that "Indian…title and privileges" is granted to "Her Majesty the Queen and Her successors forever" (Fumoleau, 2004, p. 107). Of this discrepancy between historical record and contents recorded in Treaty No. 8, Fumoleau (2004, p. 107) writes:

> The haste of the Treaty Commissioner in securing Indian signatures on a piece of paper removes any illusions that the Treaty was a contract signed by equal partners. How to characterize it remains a question, but the fact remains that Government officials in Ottawa, who drafted the terms of the Treaty, had little knowledge or comprehension of Indians, or their way of life in the Northwest. Given the extreme physical hardships which the Indians had experienced through many winters, it is no wonder that the prospect of supplies and cash was a deciding factor for them in accepting the treaty.

The inclusion of land-cession clauses, particularly in historical treaties, remains of concern. Given such inconsistencies between the historical record of treaty negotiations and the final written treaty, the modern-day interpretation of treaties requiring that courts reconcile competing interpretations is a difficult task. Importantly, in its origin, treaty interpretation is neither common or civil law, nor Indigenous law, but both. Mark Walters explains that this legal interpretation requires "the reconstruction of the normative universe occupied by colonists and aboriginal peoples from ambiguous written sources and (where they exist) aboriginal oral histories,'' representing:

> A monumental interdisciplinary, cross-cultural project in which historical, ethnohistorical, and anthropological interpretations must be consolidated from a legal perspective that somehow reconciles aboriginal and non-aboriginal viewpoints. (Walters, 2001, p. 79)

The result of this is a complex process in treaty interpretation cases such as *Restoule v. Canada*, whereby the trial record is built by parties building huge historical records in court, with expert witnesses contributing knowledge of linguistics, anthropological information, history, and others to create an understanding of the intention of both parties at the time the treaty was created. In the *Restoule v. Canada* matter, a particularly important set of knowledge brought to court was oral testimony provided by Anishinaabe Elders. The hearing of Elder testimonies was facilitated by a court order establishing a procedure for taking Elder evidence (*Restoule v. Canada (AG)*,

2018c) which established rules for ensuring that Elders were treated with respect as they gave their testimony on Anishinaabe laws. In addition, the Court permitted the live streaming and archiving of the trial proceedings (*Restoule v. Canada (AG)*, 2018b). These two procedural aspects of *Restoule v. Canada* strengthened the factual record used to interpret the Robinson Treaties and resulted in a rich account of Anishinaabe law and teachings, detailed information about Anishinaabe governance protocols, and how they were present throughout the signing of the Restoule Treaties (along with colonial government protocols), Elders testimony given in Anishinaabemowin (Ojibwe language), and about the ongoing importance of Anishinaabemowin.

3. Implementing the Treaty

Treaties can contain a variety of provisions, typically these would include sections concerning land rights, hunting rights, provisions for healthcare and education, and annual annuity payments payable to Indigenous signatories. The annuity clause contained in the Robinson Treaties is unique among treaties in Canada. The annuity clause contains language that indicates the amounts paid under the treaty will increase—be augmented—under certain circumstances.

The issue in *Restoule v. Canada* is on interpreting the augmentation clause in order to determine amounts owed to beneficiaries under the treaty, whether this annuity amount is to be increased, and how to calculate the same. The augmentation clause reads as follows:

> The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order.

The plaintiffs argue that this augmentation clause promises an increase in the amount of the annuity payments paid by the Crown to be calculated based on a promise contained in the Robinson Treaties. Furthermore, that the increased payments are to be calculated "if and when" the territory the plaintiffs had ceded produced an amount that enabled "the Government of this Province, without incurring loss, to increase the annuity hereby secured to them." The plaintiffs argue that the parties entered into the treaties with the common intention of sharing the wealth generated from the natural resource activities in the territory and that the annuity augmentation clause was meant to implement this intention by allowing the Crown to use its discretion to increase the annuity with the expansion of natural resource activities in the territory.

The Crown argues that the augmentation clause explicitly precluded payments above "the sum of one pound" (or $4) which the treaty beneficiaries had received since the last increase in 1875 and that the Crown does not have a mandatory duty to increase the annuity further.

4. A Matter of Interpretation

At both the Ontario Superior Court of Justice and the Ontario Court of Appeal, the Anishinaabe beneficiary plaintiffs to the Robinson Huron and Robinson Superior Treaties were successful in their claims for an increase in the annuity payments. The Attorney General of Ontario has received leave to appeal to the Supreme Court of Canada (*Ontario (AG) v. Restoule*, 2022).

Concerning the substantive matter of interpreting the annuity clause the trial judge, Justice Hennessy, applied the *R v. Marshall* test and found that the patent ambiguities to the treaty text were many (*Restoule v. Canada (AG)*, 2018a, p. 398). As is often the case with historical treaties, the lack of details contained in the Robinson Treaties means that there is a misunderstanding that goes to the core of the treaty concerning how wealth benefits from the treaty territories shall be shared (*Restoule v. Canada (AG)*, 2018a, para. 398). Justice Hennessy determined there were three competing interpretations of the augmentation clause:

1. One interpretation is that the Crown's promise was capped at $4 per person; in other words, once the annuity was increased to an amount equivalent to $4 per person, the Crown had no further liability (*Restoule v. Canada (AG)*, 2018a, para. 459).
2. A second interpretation is that the Crown was obliged to make orders ("as Her Majesty may be graciously pleased to order") for further payments above $4 per person when the economic circumstances permitted the Crown to do so without incurring loss (*Restoule v. Canada (AG)*, 2018a, para. 460).
3. A third interpretation, which includes the second interpretation, is that the treaties were a collective promise to share the revenues from the territory with the collective; in other words, to increase the lump sum annuity so long as the economic condition was met. The reference to £1 (equivalent to $4) in the augmentation clause is a limit only on the amount that may be distributed to individuals (*Restoule v. Canada (AG)*, 2018, para. 461, 2021, para. 76).

After a lengthy investigation into the histories of the signing of the treaties, the trial judge concluded that the

third interpretation captured the common intention that best reconciles the parties' interests. This conclusion was based on the historical and cultural context of the negotiation and signing of the Robinson Treaties. The factual record showed the centrality of the Anishinaabe perspective on treaty signing which was and remains guided by concepts of respect, responsibility, reciprocity, and renewal, which are found in governance structures, and alliance and political relationships (*Restoule v. Canada (AG)*, 2018a, para. 411). A history of treaty relationships between the Crown and Anishinaabe, as seen in the Covenant Chain alliance and Wampum belt, indicated a mutual understanding of the sacred agreement of the treaty (*Restoule v. Canada (AG)*, 2018a, discussed throughout the decisions; see also in particular paras. 412–423).

An important part of the historical record was that the Robinson Treaties annual annuity amount was less than was being offered in treaties contemporaneously signed. It was found that the entire purpose of the augmentation clause was to offset the low sum immediately offered to the "Chiefs and their tribes" by promising a share of the future wealth of the territory "if and when" such wealth proved to be forthcoming. The trial judge determined that the "if and when" model upon which the augmentation clause was based was central to the understanding, aspiration, and intent of both the Anishinaabe and the Crown (*Restoule v. Canada (AG)*, 2018a, paras. 466–475). As it allowed a treaty to be concluded though, the colonial government did not have money to pay for it. Augmentation of treaty monies in the future captured the idea that the relationship between the parties was seen by the Anishinaabe to be reciprocal and inviting constant renewal while being a pragmatic approach to the financial limits faced by the colonial government.

Analysis was guided by the principle of honour of the Crown as a principle central to treaty interpretation. All parties agreed that the honour of the Crown bound the Crown, but exactly how it was to be engaged was the subject of dispute (*Restoule v. Canada (AG)*, 2018a, paras. 476–477). The trial judge found that honour of the Crown in relation to the Robinson Treaties means that the Crown has the obligation to diligently implement the terms of the treaty with honour diligence and integrity (*Restoule v. Canada (AG)*, 2018a, para. 538). Specifically, the Crown has a mandatory and reviewable obligation to increase the Treaties' annuities when the economic circumstances warranted.

The Superior Court trial decision, a positive outcome for the Anishinaabe Treaty signatories, was appealed by the Ontario government (*Restoule v. Canada (AG)*, 2021). The Government of Ontario argued that the correct treaty interpretation did not obligate the Crown to augment the annuity payment and that, instead, any increase ought to be at the discretion of the government. The Appeal Court unanimously rejected the majority of the arguments raised on appeal (*Restoule v. Canada (AG)*, 2021, para. 7). It affirmed the importance of honour of the Crown as a central principle of Aboriginal law requiring the Crown to act honourably in its dealings with Indigenous peoples (*Restoule v. Canada (AG)*, 2021, para. 87). The majority of the court determined that the honour of the Crown requires the Crown to increase the annuities as part of its duty to implement the treaties diligently (*Restoule v. Canada (AG)*, 2021, paras. 87, 250, 508; justices in agreement as to the duty to increase the annuities were Lauwers and Pardu, JJA, in para. 250, joined by Hourigan, JA, in para. 508). However, the majority also found the general guidance offered by the trial judge concerning how to calculate the owed increase in annuity payments was incorrect. The trial judge had held that increase in the annuity payment was to be calculated based on a "fair share" of net Crown revenues (*Restoule v. Canada (AG)*, 2018a, paras. 555–561). This finding was deleted from the Superior Court judgement (*Restoule v. Canada (AG)*, 2021, para. 94).

The final major distinction between the decision on first instance and on appeal was on the central issue of interpretation of the annuity clause. The majority agreed with the lower court. Justices Lauwers and Pardu (JJA), with Hourigan (JA), found that "the Treaties were a collective promise to share the revenues from the territory with the collective; in other words, to increase the lump sum annuity so long as the economic condition was met" (*Restoule v. Canada (AG)*, 2018a, para. 461; see also *Restoule v. Canada (AG)*, 2021, para. 121). They came to this agreement noting that the trial judge correctly applied the principles of treaty interpretation which are guided by common intention, the text, and the historical context of the treaty (*Restoule v. Canada (AG)*, 2021, paras. 105–106). Chief Justice Strathy and Justice Brown (JA), writing in dissent on this point, found that there had been errors of law resulting in an unreasonable interpretation of the treaty promises. In their analysis, they offered a fourth interpretation of the augmentation clause which is in addition to the three interpretations discussed in the reasons of the Superior Court. The fourth interpretation that they offered would find that the augmentation clause meant the following:

> The plain meaning of the augmentation clause is that the annuity was a perpetual one in the stated amount, payable to the Chiefs and their Tribes. It would be increased if economic conditions warranted. The maximum increase would be "capped" at £1 ($4) per person or such further sum as "Her Majesty may be graciously pleased to order." (Government of Canada, 1850a, 1850b)

Essentially the amount listed of $4 was interpreted to be a placeholder only, which could be increased at the discretion of the Crown. This fourth interpretation was mentioned in the trial court reasons but was not pursued (*Restoule v. Canada (AG)*, 2018a, paras. 455–456, 2021, paras. 451–458). Chief Justice Strathy and Justice

Brown (JA) found that the trial judge had erred by not taking into account the "plain meaning of the Treaties' texts and the only interpretation of the Treaties that reconciled the parties' intention in a manner consistent with the historical record" (*Restoule v. Canada (AG)*, 2021, para. 363). Central to this point is the language contained in the treaty text, which states "Her Majesty's graciousness," which would indicate that the Crown could act with discretion.

This split notwithstanding, all justices agreed that there is an obligation on the Crown to increase the annuity payment. Just how that increase will be calculated has not yet been decided.

5. Future of the Litigation

Restoule v. Canada is an important case for the development of Section *35* jurisprudence on treaty interpretation and for Aboriginal law jurisprudence that relates to the lands of the Anishinaabe of Robinson Superior and Robinson Huron Treaties. At the time of writing, the final calculation of the augmentation clause for fulfillment of the Crown obligations vis-à-vis the annuity payment has not been made (as of April 2023, the parties were going through negotiations to settle; see "Robinson Huron Treaty," 2022). In addition, leave to appeal has been granted to Ontario by the Supreme Court of Canada. A central piece of uncertainty is the standard of review for treaty interpretation.

The dissent at the Court of Appeal was written by the chief justice of Ontario. They would find that any increase in the amount of the annual annuity payment through the augmentation clause was discretionary. To come to this conclusion, they had to find that the trial judge had incorrectly interpreted the treaties, and importantly that this interpretation was the "product of an extricable error of law" (*Restoule v. Canada (AG)*, 2021, para. 386), based on the standard of review of correctness and not a standard of review of deference. On this question of the standard of review for treaty interpretation, a third judge joined to make it a majority on this specific point. That is to say that Justice Lauwers switched to concur with Chief Justice Strathy and Justice Brown (JA) that the standard of review was as to *correctness* on the question of law.

The distinction between correctness and taking a deferential standard is important. The distinction is between accepting the trial judge's reading of facts as they gave meaning to the principles of the treaty compared to taking a correctness standard that limits the review to a narrower examination of the law. Taking a deferential standard for review would take into account the substantive and lengthy process of hearing evidence and considering the full factual record as is required for treaty interpretation cases and limit review to circumstances where there was a "palpable and overriding error" only. Thus, a standard of deference recognizes the work that occurred at trial towards the compilation of a huge factual record compiled at trial, the collection of hours of Elder testimony and the first-hand witness to the Indigenous law that guided the legal proceedings. Whereas taking the correctness standard limits review to the narrower examination of law, and here the Chief Justice found that there was a possible interpretation of the treaty promise that could be found based on the plain meaning of the treaty text. This is to say that the chief justice found that the treaty could be interpreted on the basis of the words in the treaty text alone. The question of standard of review for treaty interpretation is a point on which there is a real complexity in the Court of Appeal reasons and something that will arise again, either in *Restoule v. Canada* as the matter proceeds or in other treaty interpretation cases.

Increasing annual annuity payments as is owed under the terms of the Robinson Treaties will be instrumental to effecting meaningful reconciliation. Achieving this requires that the Supreme Court maintain a fulsome approach to treaty interpretation, as the *R v. Marshall* cannons of treaty interpretation require. An equally important aspect of the decisions, if not more important, is the role of Anishinaabe law. Indigenous law and tradition was utilized as a procedural touchstone throughout the Ontario court proceedings, though the case was not argued based on Anishinaabe law. This approach suggests a third way in which legal matters concerning Indigenous communities in Canada may be argued: In addition to, first, Aboriginal law, which is an amalgamation of the colonial legal systems of common and civil law along with Indigenous law, and second, Indigenous law, for which there is ongoing work to revive, in *Restoule v. Canada* the third approach relies on Indigenous law and custom to guide Court interpretation of a historical treaty. This third approach acts as a revival of Indigenous legal tradition and a reaffirmation of treaty obligations as a modern-day reading of the Robinson Treaties is guided by the Indigenous custom and process that occurred at the signing of the original treaty.

6. Indigenous Law and Tradition as Procedure

Restoule v. Canada was argued on the basis of treaty rights contained in and affirmed by the Canadian constitution, and not on the basis of Indigenous law. As was explained in the Superior Court decision: "The Plaintiff First Nations ask the court to interpret the Treaties' long-forgotten promise to increase the annuities according to the common intention that best reconciles the interests of the parties at the time the Treaties were signed" (*Restoule v. Canada (AG)*, 2018a, para. 2). Thus the analysis focused on the principles of treaty interpretation which require that treaties be liberally construed, guided by the honour of the Crown, understood through unique cultural and linguistic differences between the parties (*R. v. Taylor and Williams*, 1982), and any ambiguities be resolved in favour of the Indigenous signatories. This is to say that the analysis in *Restoule*

v. Canada focused on substantive Aboriginal law, not Indigenous law.

Despite this direction, Indigenous law was present throughout the proceedings. The role of Indigenous law in *Restoule v. Canada* was explained in the following way:

> The role of Anishinaabe law and legal principles presented at trial was part of the fact evidence into the Indigenous perspective. The Plaintiffs did not ask the court to apply Anishinaabe law. Rather, the Plaintiffs and Canada submit that the court should take respectful consideration of Anishinaabe law as part of the Anishinaabe perspective that informs the common intention analysis. (*Restoule v. Canada (AG)*, 2018a, para. 13)

Anishinaabe law and traditions were present throughout *Restoule v. Canada* proceedings and were used to guide the trial court, though they were not directly at issue. Aspects of court proceedings that incorporated Anishinaabe law and traditions include:

1. The trial court sat in a location with hearings held throughout the treaty territories, including in Thunder Bay and Baawaating (Sault Ste Marie), which is the location where the Robinson treaties were signed.
2. Cultural practices were adopted to guide proceedings. There was an education on Sweat Lodge ceremonies and Sacred Fire teachings were lit. All of the people involved in the trial, at different times, were involved in these ceremonies and teachings. This included counsel, the presiding judge, Judge Hennessey, community members, and Elders (*Restoule v. Canada (AG)*, 2018a, para. 10).
3. Testimony from Elders concerning Anishinaabe protocol, histories, and laws were centered in the trial process. There were over 30,000 pages of primary sources filed under a joint book of primary documents from both parties to the matter (*Restoule v. Canada (AG)*, 2018a, para. 11).
4. The Court participated in Sweat Lodge ceremonies, Pipe ceremonies, Sacred Fire teachings, Smudge ceremonies, Eagle Staff and Eagle Feather presentations, and Feasts (*Restoule v. Canada (AG)*, 2018a, para. 610).

As a result of these practices, the *Restoule v. Canada* report, court-admitted evidence, and court records contain voluminous teachings of Anishinaabe law and legal traditions, and often information that was once teachings from Elders. The trial court decision in particular details the depth of work that all involved in the matter did to introduce a trans-systemic approach to conducting the trial. Justice Hennessy notes in the trial court decision that, "from the outset, there were occasions when Anishinaabe ceremony came into the courtroom and the court process, through witnesses, counsel, and members of the host First Nations" (*Restoule v. Canada (AG)*, 2018a, para. 602). The collective reliance on these Anishinaabe laws and procedures was not possible "without the cooperation and joint effort of counsel and the parties." Developing a detailed historical record is needed for treaty interpretation cases as the law of treaty interpretation requires that the context in which a treaty was signed be examined. In *Restoule v. Canada*, the depth to which the trial court centered Anishinaabe traditions is beyond that which we have seen in the past, and a signal of how to conduct proceedings moving forward.

The above examples demonstrate the centrality of Anishinaabe practices to the *Restoule v. Canada* court proceedings showing ways in which Anishinaabe law, cultural practices, and ceremonies can be brought to bear on legal proceedings in colonial courts. When viewed together these actions suggest more than singular iterations of Indigenous cultural practices, and law, but instead they represent a substantive and ongoing body of Indigenous law and governance (Doerfler et al, 2013). This body of Indigenous law and governance has existed in the Anishinaabe communities since deep time through to the first colonial encounters between Anishinaabe communities and they are reflective of practices which were used to guide the signing of the Robinson Treaties in 1850. For example, throughout the *Restoule v. Canada* trial, sacred fires were lit. Council fires are a central part of Anishinaabe governance, serving both as a physical place where council met and fires were lit, and also as a metaphor: "When Anishinabek spoke about their councils, they used the word fire, or *ishkode*, as a metaphor for governance" (Bohaker, 2020, p. 118). As a governance structure, council fires are physical places whereby alliances were made, complex arrangements of gift giving were actioned, relationships are built and reciprocal obligations are reaffirmed. As a metaphor, *ishkode* is an evocative reminder of the way in which fire changes and marks that which it touches (Stark, 2012, pp. 121–122). Heidi Bohaker describes the importance of the practice of maintaining a sacred fire at the *Restoule v. Canada* trial as follows: "Fire keepers…ensured that a central symbol of Anishinaabek law was present on the land, adjacent to the court building, burning twenty four hours a day, for the duration of the trial" (Bohaker, 2020, p. xxx). The presence of sacred firers at trial in 2017 mirrored the presence of a burning council fire at the signing of the Robinson Treaties in 1850 (The Royal Commission on Aboriginal Peoples, 1996, p. 110).

The trial proceedings in *Restoule v. Canada* gain particular importance when the central role of *ishkode* to Anishnaabe law and governance structures is revealed. Likewise, the sacred pipe was a central part of the protocol at the council fires at the negotiations and signing of the Robinson Treaties to the extent that "it is obvious that the various proceedings initiated by…[treaty commissioner] W. B. Robinson could not have begun or

ended without a pipe ceremony" (The Royal Commission on Aboriginal Peoples, 1996, p. 109). Later in the trial, the evidence provided by Elder Fred Kelly was, on the Grandfather Pipe ceremony, taught by bringing the pipe into the courtroom and providing detailed teachings on the same (FirstTel Communications Corp., 2017). That the council fire and sacred pipe were present at the signing of the Robinson Treaties and then again present at the *Restoule v. Canada* trial is not simply the sharing of cultural practices or information about laws, but instead an enactment of laws. These court proceedings are more than court ordered exceptions to the conduct of the trial, and instead a reaffirmation of laws that both parties took up at the signing of the Robinson Treaties.

7. Statements of Anishinaabe Law

The substantive content of Indigenous law was not before the court in *Restoule v. Canada* and never at issue. At the trial, Anishinaabe law was recognized and affirmed, and findings of facts about Anishinaabe law were not appealed by any parties to the matter. The Superior Court decision started with the statement that "recognition of Anishinaabe sovereignty…survived the unilateral declaration of Crown sovereignty" (*Restoule v. Canada (AG)*, 2018a, para. 72). That the existence of Anishinaabe law was not at issue from the perspective of any of the parties involved in the matter is alone deeply significant for it recognizes that Canada is a legally pluralistic context (L. Borrows, 2016). The *Restoule v. Canada* Court of Appeal decision followed this approach and did not dispute any reference to or reliance on Anishinaabe law.

Though this case matter was not argued on the basis of Anishinaabe law, it was brought into court by the expert opinion of elders who gave hours of oral testimony. Within Aboriginal legal and cultural traditions, Elders are the knowledge keepers who carry the teachings of histories, relationships and the land, teachings of law, and governance practices. These teachings are central to aiding treaty interpretation matters as they provide information about what would have been the intention and understanding of Indigenous treaty signatories. This taking of these expert opinions, or more correctly, teachings, was facilitated by the adoption of a procedure for taking elder evidence (*Restoule v. Canada (AG),* 2018c). The adopted protocol, the "Elder Protocol," detailed what practices should be adopted when taking testimony from Elders, guiding principles, and guidance for counsel on working with Elders. The guiding principles are:

1. Court Rules must be applied flexibly to take into account the Aboriginal perspective.
2. Rules of procedure should be adapted so that the Aboriginal perspective, along with the academic historical perspective, is given its due weight.
3. Elders who testify should be treated with respect.
4. Elder testimony and oral history should be approached with dignity, respect, creativity and sensitivity, in fair process responsive to the norms and practices of the Aboriginal group and the needs of the individual Elder testifying (*Restoule v. Canada (AG)*, 2018c, p. 1).

Practices adopted by Elders included affirming the truth of their testimony, holding an eagle feather (not an oath nor a solemn affirmation), carrying out a smudging ceremony before the start of hearings, arrangement of seating to be in a circular or semi-circular fashion (rather than in a traditional hierarchical European courtroom setting) and to have a sacred fire continually burning during trial proceedings (*Restoule v. Canada (AG)*, 2018c, p. 2). Lastly, procedures, as they are related to the interaction between Elders and legal counsels, were amended to be responsive to Aboriginal law and protocol in the courtroom. Examination of Elder testimonies can be difficult as communication may occur in modes that are uncommon in European trials. For instance, mechanisms utilized may include storytelling and teachings, as well as the use of sacred objects and prayer. These practices would not ordinarily be the form taken when non-Indigenous witnesses and experts give evidence, and would otherwise be subject to adversarial court processes. A central piece of the adopted Elder Protocol is the acknowledgment that the taking of Elder testimony has historically been poorly handled in colonial courts. The protocols instruct parties to be flexible in relation to European court formalities recognizing that its typically adversarial nature is not in accord with the taking of expert testimony from Elders. For example, during the examination-in-chief, counsel was allowed to sit next to the Elder giving testimony as a way to provide support and this support was particularly helpful for those Elders providing testimony who were hearing impaired. Meanwhile, counsel for the defendants was allowed to choose to defer objections to Elder testimony without prejudice so as to not interrupt the Elder (where ordinarily an objection must be made contemporaneously to the testimony).

8. Conclusion

The *Restoule v. Canada* matter is ongoing. At the time of writing the three stages of the litigation have not been completed; stages one and two have been appealed to the Supreme Court of Canada and stage three—which is the calculation of damages—has not yet been heard. From the courts which have heard parts of the litigation, there is a consensus that the Robinson Treaties contain an obligation that the Crown increases the annual annuity payments and that this obligation is grounded in the principle of honour of the Crown. Looking ahead, two aspects of *Restoule v. Canada* will be important. These are the standard of review for treaty interpretation and the calculation of the increased annuity

amount. How these aspects will be resolved remains to be seen.

The outcome of the three stages of the *Restoule v. Canada* matter will have a direct impact on the beneficiaries of the Robinson Treaty who are parties to the matter. Giving meaning to the "solemn promises" contained in the treaty requires that there be meaningful consideration, and, then, implementation of the treaty annuity payment which was written so as to connect to resource extraction carried out in what is now Northern Ontario. The gamble taken by the original treaty signatories was on the future earnings of the Ontario Government, and now, the annuity payment must reflect that amount. It is likely that the dissent at the Ontario Court of Appeal, which argues against a finding that the standard of review is deferential but adopts, instead, correctness on a matter of law, will be an important aspect of the Ontario Government's argument before the Supreme Court. The dissent's interpretation would have any annuity payment increase be at the discretion of the government.

Regardless of the ultimate outcome of *Restoule v. Canada*, the matter also represents significant strides in how Indigenous law is utilized within the Canadian legal system. As jurisprudence develops on the topic of treaty interpretation, the recognition of Anishinaabe sovereignty in how legal proceedings are conducted will have significant ramifications. Such an approach requires that Indigenous sovereignty be foregrounded in the analysis of treaty rights. It highlights the importance of Indigenous laws and protocols and provides tools for addressing legal matters through a pluralistic lens. As was explained by Justice Hennessy in a statement of gratitude:

> During the ceremonies, there were often teachings, sometimes centered on *bimaadiziwin*—how to lead a good life. Often teachings were more specific (e.g., on the role of the sacred fire, the role of sacred medicines, or the meaning and significance of the ceremonies). The entire court party expressed their gratitude for the generosity of the many knowledge keepers who provided the teachings. I believe I speak for the counsel teams when I say that the teachings and the hospitality gave us an appreciation of the modern exercise of ancient practices. (*Restoule v. Canada (AG)*, 2018a, para. 610)

The "modern exercise of ancient practices" demonstrated throughout the *Restoule v. Canada* trial proceedings is not simply an example of Anishinaabe culture, nor a record of past laws. Instead, the practice of Anishinaabe law used to guide legal proceedings and the detailed accounts of Anishinaabe law offered in the Elder teachings is a modern iteration of the law and governance that guided the initial signing of the Robinson Treaties in 1850. The replication of governance activities from the time of the signing of the treaties, in the modern courtroom is an enactment of Anishinaabe law. It highlights the governance structures that exist within Anishinaabe communities and preserves the right to rely on Indigenous law in the future to decide matters related to Robinson Treaty lands. This reaffirmation also retains the possibility of strengthening or renewing claims to sovereignty and self-governance for the Anishinaabe community. Though *Restoule v. Canada* concerns treaty rights, Anishinaabe law would certainly not be limited to treaty matters. The clear statement from the court recognizing Anishinaabe law lays the foundation for that future.

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Conflict of Interests

The author has no conflicts of interest to declare.

References

Bohaker, H. (2020). *Doodem and council fire: Anishinaabe governance through alliance.* University of Toronto Press.

Borrows, J. (1996). With or without you: First Nations law (in Canada). *McGill Law Journal*, *41*(3), 629–665.

Borrows, J. (2005). Indigenous legal traditions in Canada. *Washington University Journal of Law & Policy*, *19*, 167–223.

Borrows, J. (2017). Challenging historical frameworks: Aboriginal rights, the trickster, and originalism. *The Canadian Historical Review*, *98*(1), 114–135.

Borrows, L. (2016). Dabaadendiziwin: Practices of humility in a multi-juridical legal landscape. *Windsor Yearbook of Access to Justice*, *33*, 149–165.

Collis, S. (2022). W(h)ither the Indian Act? How statutory law is rewriting Canada's settler colonial formation. *Annals of the American Association of Geographers*, *112*(1), 167–183.

Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c 11 (1982). https://laws-lois.justice.gc.ca/eng/const/page-12.html#h-39

Doerfler, J., Niigaanwewidam, J. S., & Stark, H. K. (2013). *Centering Anishinaabeg studies: Understanding the world through stories.* Michigan State University Press.

FirstTel Communications Corp. (2017). *Examination of*

Elder Fred Kelly, witness for Huron plaintiffs [Video]. Live Stream. https://livestream.com/firsttel/events/7903339

Fumoleau, R. (2004). *As long as this land shall last: A history of Treaty 8 and Treaty 11, 1870–1939*. University of Calgary Press.

Government of Canada. (1850a). *Copy of the Robinson Treaty made in the year 1850 with the Ojibewa Indians of Lake Huron conveying certain lands to the Crown.* https://www.rcaanc-cirnac.gc.ca/eng/1100100028984/1581293724401

Government of Canada. (1850b). *Copy of the Robinson Treaty Made in the year 1850 with the Ojibewa Indians of Lake Superior conveying certain lands to the Crown*. https://www.rcaanc-cirnac.gc.ca/eng/1100100028978/1581293296351

Government of Canada. (2013). *Treaty texts.* https://www.rcaanc-cirnac.gc.ca/eng/1370373165583/1581292088522

Government of Canada. (2014). The Tla'amin final agreement. https://www.rcaanc-cirnac.gc.ca/eng/1397152724601/1542999321074

Gunn, K. & O'Neil, C. (2021) *Indigenous Law & Canadian Courts.* https://www.firstpeopleslaw.com/public-education/blog/indigenous-law-canadian-courts

Indian Act, RSC c.1-5 (1985). https://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html

Nowegijick v the Queen, 1 S.C.R. 29 (1983).

Olthius Kleer Townshend LLP. (2018). *Aboriginal law handbook* (5th ed.). Thomson Reuters.

Ontario (AG) v. Restoule, leave to appeal to SCC granted. (2022). https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/19427/index.do

R. v. Marshall, 3 SCR 456 (1999).

R. v. Taylor and Williams, 34 O.R. (2d) 360 (C.A.) (1982).

Restoule *v.* Canada (AG), 2018 ONSC 7701 (CanLII) (2018a). https://canlii.ca/t/hwqxg

Restoule v. Canada (AG), 2018 ONSC 114 (CanLII) (2018b). https://canlii.ca/t/hpx5c

Restoule v. Canada (AG), ORDER (Procedure for Taking Elder Evidence), No. 2001–0673 (2018c).

Restoule v. Canada (AG), 2021 ONCA 779 (CanLII) (2021). https://canlii.ca/t/jk69c

Robinson Huron Treaty annuity negotiations resume. (2022, April 19). *CBC.* https://www.cbc.ca/news/canada/sudbury/Robinson Huron-treaty-negotations-1.6423857

Stark, H. (2012). Marked by fire: Anishinaabe articulations of nationhood in treaty making with the United States and Canada. *The American Indian Quarterly*, *36*(2), 119–149.

The Royal Commission on Aboriginal Peoples. (1996). *The Robinson Treaties of 1850: A case study*.

Walters, M. (2001). Brightening the covenant chain: Aboriginal treaty meanings in law and history after Marshall. *Dalhousie Law Journal*, *24*, 75–138.

Young, F. (2021). Positioning Indigenous law in the legally pluralistic state of Canada. *Cambridge Law Review*, *6*(1), 30–44.

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Article

Between Legal Indigeneity and Indigenous Sovereignty in Taiwan: Insights From Critical Race Theory

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Abstract
Taiwan, home to over 580,000 Indigenous people in 16 state-recognized groups, is one of three Asian countries to recognize the existence of Indigenous peoples in its jurisdiction. Taiwan's Indigenous peoples remember their pre-colonial lives as autonomous nations living according to their own laws and political institutions, asserting that they have never ceded territory or sovereignty to any state. As Taiwan democratized, the state dealt with resurgent Indigenous demands for political autonomy through legal indigeneity, including inclusion in the Constitution since 1997 and subsequent legislation. Yet, in an examination of two court rulings, we find that liberal indigeneity protects individuals, while consistently undermining Indigenous sovereignty. In 2021, the Constitutional Court upheld restrictive laws against hunting, seeking to balance wildlife conservation and cultural rights for Indigenous hunters, but ignoring Indigenous demands to create autonomous hunting regimes. In 2022, the Constitutional Court struck down part of the Indigenous Status Act, which stipulated that any child with one Indigenous parent and one Han Taiwanese parent must use an Indigenous name to obtain Indigenous status and benefit from anti-discrimination measures. Both rulings deepen state control over Indigenous lives while denying Indigenous peoples the sovereign power to regulate these issues according to their own laws. Critical race theory (CRT) is useful in understanding how legislation designed with good intentions to promote anti-discrimination can undermine Indigenous sovereignty. Simultaneously, studies of Indigenous resurgence highlight an often-neglected dimension of CRT—the importance of affirming the nation in the face of systemic racism.

Keywords
critical race theory; Indigenous sovereignty; legal indigeneity; Taiwan

Issue
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1. Introduction

After some twenty-five years of lobbying and deliberation between UN member states and Indigenous peoples, the General Assembly of the United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007. Although the UNDRIP is rightly heralded as a historical milestone in international Indigenous human rights, it also has limitations. One limitation is that Indigenous peoples are promised self-determination, but only a very limited form of internal self-determination. Article 46, added in the final stage of negotiations because of concerns of the "African group" of states (Gover, 2015, p. 354), explicitly states that the UNDRIP does not encourage "any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" (United Nations, 2007). Indigenous nations are thus constrained to assert their sovereignty within the borders of the states that

encapsulate them. Liberal democracies that attempt to integrate UNDRIP into national legislation end up balancing a liberal commitment to non-discrimination against individuals with Indigenous demands for sovereignty. Legal recognition of Indigenous peoples in multicultural states, as noted, for example, by Povinelli (2002) in Australia and Coulthard (2014) in Canada, can undermine Indigenous sovereignty. Demands for Indigenous rights address two variants of social exclusion. Not only are Indigenous individuals often racialized and discriminated against, but the Indigenous nations they belong to are restrained in their ability to exercise sovereignty and self-determination. When there is tension between the goals of anti-discrimination and recognition of sovereignty, liberal states tend to prefer the former. Canada, for example, has given priority to "dis-embodied liberalism" that optimizes income security rather than to the sovereignty demands of Indigenous political movements (Wotherspoon & Hansen, 2013).

Our reflection on legal indigeneity in the lives of Indigenous people emerges from the confluence of legal socio-anthropology and law. We focus on Taiwan, to which both authors have strong personal ties, and believe that Taiwan's experience makes a valuable contribution to this scholarship as a non-Western example. Taiwan, despite its exclusion from the UN system (Simon, 2020), makes great efforts to conform to UNDRIP standards. By liberal standards, such as poverty rates, employment, and education, Taiwan does better in Indigenous social inclusion than most countries, including Canada (Simon, 2023, p. 53). In many countries, Indigenous activists are even targets of violence (IWGIA, 2019, p. 8), a phenomenon unknown in Taiwan. But, even in one of the best national situations for Indigenous rights, indigeneity deepens the social integration of individuals while excluding Indigenous sovereignty claims (Awi Mona, 2019, p. 671).

We explore how critical race theory (CRT), although it emerged from the Black experience in the United States, can be used to better understand social inclusion and social exclusion anywhere, just as Marxism, which originated in Europe, is useful in analyzing economic change and class struggle. Our goal is not to compare Taiwan and the United States. Rather, we use insights from an influential theory about social exclusion to better understand Taiwan as a non-western example of a liberal multicultural democracy. Moreover, CRT has always been informed by the experiences of other dominated groups in the United States, such as Nisei (Japanese-Americans) and Indigenous peoples (Williams, 2005). The experiences of Taiwan's Indigenous peoples can enrichen and internationalize CRT while contributing to international research on how Indigenous peoples view race relations and governance, as has been done in Australia (Habibis et al., 2016). It is important to look at the dynamics of settler colonialism and indigeneity beyond the paradigmatic Anglo-Saxon settler states.

We use CRT to understand two legal interpretations in Taiwan that weighed in on Indigenous rights, yet disappointed Indigenous rights activists because they undermined Indigenous sovereignty. The first was the Judicial Yuan Interpretation No. 803 that, in 2021, upheld existing regulatory laws that restricted hunting. Those laws, in a context where hunting is otherwise illegal, provide exceptions to Indigenous people for subsistence and cultural reasons. Indigenous people alone may hunt, but on the conditions that they use handmade rifles, apply for state permission in advance, and abstain from taking protected or endangered wild animals. Although the decision was represented as a fair balance between Indigenous and environmentalist demands, Indigenous hunters still seek to live in the forests as they have for generations and according to their own socio-political systems. The second judgement was in 2022. The Constitutional Court struck down part of the Indigenous Status Act, which stipulated children of intermarriage between Indigenous and non-Indigenous persons must take the surname of the Indigenous parent or use an Indigenous traditional name in order to obtain Indigenous status and benefit from anti-discrimination measures. Indigenous activists argue that using Han Chinese names weakens Indigenous identity and encourages assimilation into the dominant Han society. This also undermines Indigenous sovereignty as it grants the state, rather than Indigenous nations, the power to determine the Indigenous legal status of individuals.

Our main question is: How does liberal law, even with the best of intentions, contribute to structural forms of exclusion? We use CRT as our theoretical lens to understand what is happening. In the second section of this article, we explain how we came to this topic and how Taiwan fits into the racialized world system. In the third section, we distill the lessons we learned from a reading of CRT texts. In the fourth and fifth sections, we explore how two legal decisions exclude Indigenous sovereignty claims. Finally, returning to CRT in a coda, we suggest that underexplored aspects of this theory are relevant to understanding social exclusion everywhere.

2. Black Lives Matter Meets Indigenous Taiwan

On June 13, 2020, Black people (especially from the United States), sympathetic allies, and Indigenous activists joined forces at a rally in Taipei in support of the American social movement Black Lives Matter after the death of George Floyd to police violence in Minneapolis. Savungaz Valincinan, a Bunun youth activist from the Indigenous Youth Front, took the microphone to describe the discrimination that Indigenous people face in Taiwan regarding rental accommodations and other issues. She said: "We are coming out today to support this movement, not because of sympathy. It is because we have also gone through the hurt of being discriminated against" (Taiwan Black Lives, 2020). Black Lives Matter takes intellectual inspiration from CRT to examine the legal structures of societies that, even if they are intended to end discrimination, end up

contributing to systemic racism. It intentionally blurs the lines between scholarship and activism, with the hope that scholarship can radically challenge and transform society (Cabrera, 2018).

2.1. Taiwan in the Racialized World System

We use CRT and related theory to illustrate the dynamics of oppression in Indigenous Taiwan because we find it limiting to understand Taiwan and North America as if they represent essentially distinct social and cultural worlds. Rather, they are different linked points in the commodity chains that Cedric Robinson saw as making up a racialized world system. Within each node in the system, socially and economically subordinated groups experience oppression within particular sociological contexts shaped by their own unique histories of incorporation into the racialized world system. The dominant groups in the different parts of commodity chains now rule in nation-states which are the normal framework of the bourgeoisie and require a proletariat. Robinson (1983/2020, pp. 225–226) argued that it is necessary to historicize this process, while including consideration of nationality, language and culture, race, and class. CRT draws attention to how these processes become embodied in individual lifeworlds.

Understanding Taiwan's place in a racialized world system requires a study of the formation of its bourgeoisie under colonialism, its economic development, and the racial nature of sources of labour and land. Japan, when it ruled Taiwan from 1895 to 1945, pacified the island's Indigenous peoples, nationalized their traditional territories, and began incorporating them (sometimes as forced labour) in an industrializing economy. After Japan lost World War II, the victorious Allies placed Taiwan under the Republic of China (ROC) tutelage, without consulting either the island's Indigenous or non-Indigenous peoples. During the Cold War, the United States supported the ROC, which ruled under strict martial law for 40 years, as a bulwark against Chinese Communism. With US support and market access, Taiwan experienced a widely touted "economic miracle" (Gereffi & Wyman, 1990; Gold, 1986) and then democratization based on constitutional law reforms (Ye, 2016). In the early years of economic growth, Hill Gates examined the apparent paradox of a dependent country that managed rapid development, looking at its particular historical constellation of ethnicity and class formation (Gates, 1979). In the racialized world system, the Cold War project of promoting economic growth in Taiwan, in competition with Communist China, rested on the continued appropriation of Indigenous lands and integration of Indigenous people into the labour market (Simon, 2002).

2.2. Indigenous Peoples on Formosa

Taiwan is home to over 580,000 Indigenous people and 16 state-recognized peoples that the government calls "tribes" in English-language publications (ROC, 2021). These speakers of Austronesian languages, related to maritime peoples across Oceania (Bellwood et al., 2006), live mostly in the central mountains and east coast. The 16 state-recognized peoples, defined by linguistic and cultural characteristics, are composed of hundreds of smaller communities that are also called "tribes" in English (ROC, 2018). This translation itself implies a denial of Indigenous sovereignty and a downgrade from "peoples" in the vocabulary of the UNDRIP (Hipwell, 2019). As the ROC in Taiwan evolved as a liberal democracy, an Indigenous movement with goals of affirming sovereignty and obtaining political autonomy lobbied for and obtained a new framework of law that recognizes the existence of Indigenous peoples and promotes their legal rights.

As in other liberal democracies, Taiwan's policymakers consider the demands of a radical Indigenous movement seeking full recognition of sovereignty and a reformist movement seeking rights for individuals as citizens. Each of the 16 state-recognized Indigenous peoples has a representative at the Council of Indigenous Peoples and gains, for example, access to state funding for language instruction. Non-recognized Plains Indigenous peoples have long sought legal recognition (Hsieh, 2006) and are beginning to attain it. Indigenous peoples are working in rural communities to create institutions for internal political self-determination, as promised in the Basic Law on Indigenous Peoples, by creating such groups as the Seediq National Council. In addition, at least half of Indigenous people live in urban areas and, no matter where they live, struggle to make a living amidst the daily realities of racial discrimination and prejudice. Indigenous rights in Taiwan are thus also a balancing act between principles of anti-discrimination against individuals and affirmation of collective political sovereignty. Even the best-intentioned laws and legal decisions risk further entrenching the marginalized and oppressed status of Taiwan's Indigenous peoples if they are not rooted in the concept of Indigenous inherent sovereignty. The loss of Indigenous sovereignty is part of larger global patterns of Indigenous displacement and genocide. As CRT reminds us, this history formed the intergenerational lifeworlds of today's oppressed peoples.

2.3. The Doctrine of Discovery as Foundation of Indigeneity

The papal Doctrine of Discovery, which Sioux legal scholar Vine Deloria Jr. demonstrated is the conceptual basis of the oppression of North American Indigenous peoples (Deloria, 2006), also laid the foundation for the denial of Indigenous sovereignty in Taiwan (see also Awi Mona, 2019, p. 658) and their eventual incorporation in the racialized world system. After Spain started seizing territory on the justification that Christians could dominate lands they "discovered," they incorporated Northern Formosa (the old name of the island) into

the colonies of the Manila-based Spanish East Indies from 1626 to 1642 (Borao Mateo, 2009). The Dutch East India Company, under the same legal pretexts, made Southern Formosa into a trading colony from 1624 to 1662 (Andrade, 2008). The subsequent history of Formosa differed from the Philippines, other Pacific Islands, and the Americas primarily because Chinese settlers took over the project of violent territorial expansion. By 1895, when the Qing ceded Formosa to Japan, the Indigenous peoples in the mountains, nearly half the island, still lived autonomously from any state control. The Japanese were the first to subdue those communities, placing them in institutions of frontier control of chiefs and tribal councils that were inspired by American models. Historian Paul Barclay characterized Japanese colonial rule on Taiwan as a system of "bifurcated sovereignty" precisely because Chinese settlers and Indigenous peoples were given different sets of rights (Barclay, 2018).

After so many waves of colonialism, Taiwan's Indigenous peoples demonstrate great resilience and great will to protect their territories, political systems, and identities. As Indigenous activists demand greater recognition of their inherent sovereignty, including calls to return land and create self-governing autonomous zones, the state has responded with increased but imperfect incorporation of Indigenous peoples into official Taiwanese multiculturalism (Simon, 2011). The main issue is that the sovereignty of Indigenous peoples, as in North America (Matsuda, 1987, p. 358), was never legitimately extinguished, but is also not sufficiently recognized by the state. All of Taiwan's Indigenous peoples retain knowledge of their sovereignty and state encroachment upon it, which they transmit to future generations through oral narrative and history.

2.4. The Cunning of Recognition

Taiwan's liberal legislation, especially since democratization in the 1980s and 1990s expanded the room for Indigenous social movements to influence law-making, gives special recognition to Indigenous peoples. The Indigenous social movement, in 1994, was launched with the goals of "name rectification," return of land, and inclusion in the Constitution (Allio, 1998, pp. 59–60). The special legal status of Indigenous peoples, the Chinese translation of Indigenous (*yuanzhumin*) having been chosen by Indigenous activists themselves, is recognized in law through the Additional Articles of the Constitution (ROC, 2005), the Basic Law of Indigenous Peoples, and subsequent legislation. The Basic Law has been amended four times since its promulgation in 2005. Article 1 of the Basic Law states: "This Law is enacted for the purposes of protecting the fundamental rights of Indigenous peoples, promoting their subsistence and development and building inter-ethnic relations based on co-existence and prosperity" (ROC, 2018). Like the UNDRIP, the Basic Law says nothing explicit about Indigenous sovereignty but does promise the effective exercise of sovereignty through institutions of self-government and consent, land and natural resources governance, as well as cultural protections. Taiwan's legal framework for Indigenous rights is derived from the ROC Constitution which, in Article 5, proclaims equality between "the various racial groups in the Republic of China" (ROC, 1947). Indigenous rights were constitutionally entrenched in 1997 reforms which, in Article 10, paragraphs 9 and 10, recognized cultural pluralism and political participation of Indigenous peoples (ROC, 1997).

Despite legal equality between racial and ethnic groups, stark disparities remain. Indigenous peoples, compared to the general population, have lower rates of college education, lower household income, and higher unemployment. In terms of health disparities, the average life expectancy of Indigenous people in 2017 was 72.2 years, 8.2 years lower than the national average of 80.4 years (Ciwang & Hsieh, 2023, p. 123). Focusing on health disparities, which are often linked to alcohol use, Ciwang and Hsieh (2023, p. 136) attribute these inequalities to the impact of historical trauma. Historical trauma is rooted in colonialism, but reinforced through contemporary interpersonal discrimination, microaggressions, and violence, as well as exclusion from traditional territories and criminalization of many hunting practices. As in the United States, legal equality is a belief that can render invisible or even rationalize racial economic and health disparities. There is thus a need to understand oppression through racial realism, or begin analysis and action from those stark realities (Bell, 1992).

3. Critical Race Theory

CRT is relevant in Taiwan because, despite legal and formal equality between all citizens of the ROC, race consciousness underpins Taiwanese society. As Savungaz Valincinan testified at the Black Lives Matter rally, Indigenous people face discrimination in the job market, in the search for accommodations, and elsewhere. Sometimes Indigenous people have different phenotypes from the majority Han population. It is not uncommon for police officers to demand identification papers from Indigenous people on the suspicion that they are "runaway" migrant workers. All Indigenous people have heard pejorative epithets used to denigrate them, like the infamous "n-word" in English. In a process of "Othering," the dominant groups perpetuate negative stereotypes of the subaltern group, such as notions that Indigenous people are lazy, drink too much, and do not understand money (Simon, 2004). The customs and lifestyles of the majority group are elevated to the norm of "mainstream" society, which means that "Han norms" can be as oppressive as what Crenshaw calls "white norms" (Crenshaw, 1988, p. 1384). Hunting, an intrinsic element of Indigenous lifeworlds, is reduced to a symbol of savagery. So, just as white supremacy remains a lived reality to Black and other visible minorities in North

America, Han supremacy is a fact of life in Taiwan. Within different nodes of the racialized world system, the Han and Indigenous Taiwanese take structural positions of dominance and oppression that parallel those of whites and visible minorities in North America. CRT maintains that, even if some individuals succeed, and even if the law provides a rhetoric of equal opportunity, people of oppressed groups still experience racism and this racism is systemic.

CRT differs from liberal social theory not because it is rooted in abstract philosophical concepts of justice but because it is radically embodied in lived experiences of oppressed people. It affirms that the painful history of slavery or genocide on Indigenous lands is not historical "background," but rather an intergenerational trauma that lives into the present and creates limits on what individuals can do with their lives. People are not autonomous individuals, as assumed in liberal thought, who create social relations based on free will. Rather, they are "thrown into history" (Peller, 1990, p. 794). CRT shows how liberal and universalist notions of objectivity, rationality, and neutrality emerged from a particular history, and how such language can justify racial domination when employed in contexts where judgements are passed about what is worthy or unworthy (Peller, 1990, p. 778). Liberal social ideas about the civic public exclude those that are associated with nature and the body, rather than with culture (Young, 2011, p. 108). Such judgements happen in everyday social life, in the media, and, as we show below, in court decisions.

CRT also offers methods. Mari Matsuda proposed "looking to the bottom" (Matsuda, 1987). She proposed a phenomenology of law in which scholars seek to learn from the people who have been failed by liberalism. This approach assumes that the oppressed and the marginalized in any society are precisely the individuals who perceive most clearly the contours of power because they need that knowledge to survive. The privileged find it much easier to turn a blind eye to brute facts of social power and racial domination that bring them social status and economic wealth. Qualitative sociologists have been doing this for decades, but CRT brought those insights to law. There is also the method of listening to stories, acknowledging that telling stories is power and that some storytelling can foreclose one version of events over another (Torres & Milun, 1990). Ideally, this means documenting the oral literature and everyday stories of Indigenous people, contextualizing them in webs of power, and then sharing them as widely as possible.

Perhaps the most important contribution of CRT for Indigenous peoples is how it highly values the nation. In the United States, CRT drew forces from the Black nationalist ideas of Malcolm X, and this is precisely what draws the ire or rejection toward the theory among white liberals (Peller, 1990). Kimberlé Crenshaw, who defined the challenge of Blacks as maintaining a special worldview, saw oppression as "being between a rock and a hard place" because there are risks and dangers involved in both engaging with dominant (liberal) discourse and failing to do so (Crenshaw, 1988, p. 1369). The goal for Black people is thus to "create conditions for the maintenance of a distinct political thought that is informed by the actual conditions of Black people" (Crenshaw, 1988, p. 1387). The expression of distinct political thought informed by actual conditions is precisely the goal of 21st-century Indigenous resurgence (Coulthard, 2014) and is just as urgent in Taiwan as it is in North America. This is why we need to use CRT to examine carefully recent liberal court interpretations on issues that affect Indigenous rights and livelihoods.

4. A Legal Ruling on Indigenous Hunting

4.1. Liberalism and Anti-Discrimination in Law

On August 1, 2016, President Tsai Ing-wen apologized on behalf of the government to Taiwan's Indigenous peoples for four centuries of colonialism. She recognized that:

> Taiwan is known as a culturally diverse society. But even today, indicators on health, education, economic livelihood, political participation, and more still show gaps between Indigenous and non-Indigenous peoples. Meanwhile, stereotypes and even discrimination against Indigenous peoples have not gone away. (ROC, 2016)

This well-intentioned discourse illustrates the ontological underpinnings of liberal democratic thought. Taiwan is described as a multicultural society. Within that society, the challenges are defined as differences between Indigenous and non-Indigenous people, in ways that are measured in the lives of individuals, such as life expectancy, education levels, incomes, etc. New policies should thus reduce social stereotypes and discrimination. The limitation is that liberal multiculturalism says nothing about Indigenous sovereignty and self-determination, or collective desires to live differently than mainstream society. Placing everyone in a situation of formal legal equality as citizens also neglects the rights of Indigenous nations to determine their own criteria for membership. Liberal social theory suggests that laws are not discriminatory if they are applied equally to all citizens, but Indigenous people demand self-determination. That goal was thwarted in legal decisions about hunting and Indigenous identity.

4.2. Indigenous Hunting and the Law: Tama Talum's Hunting Case

Legal disputes over Indigenous hunting involve conflicts between Indigenous cultural practices and the state when those practices are criminalized and penalties imposed. Most commonly seen are conflicts related to the Wildlife Conservation Act, the Controlling Guns,

Ammunition, and Knives Act, and the Forestry Act. These laws not only stipulate penalties to control hunting but also establish exception clauses as a way to decriminalize Indigenous cultural practices in a circumscribed way. Although the decriminalizing clauses are intended to protect the cultural rights of individuals, they fail to meet Indigenous demands for collective rights and sovereignty. State law ignores the fact that Indigenous nations already have their own laws for regulating hunting and protecting animal populations. This conflict between state and Indigenous legal orders is of an ontological nature because the state ignores and erases Indigenous lifeworlds. Furthermore, due to different understandings about culture held by law enforcement agents, gaps between the interpretation and application of relevant legal elements may hinder the implementation of Indigenous rights. There are also conflicts between different administrative and judicial levels.

"Tama Talum's hunting case" was first decided on October 15, 2014, by the Taitung District Court. Fifty-four-year-old Talum Suqluman (Tama means "father") of the Bunun Nation had in July 2013 gone hunting at the request of his elderly mother, bringing her back a Formosan serow and a Reeve's muntjac. He was arrested and charged with violating the Controlling Guns, Ammunition, and Knives Act for using a modern firearm instead of a permitted handmade rifle. He was charged with violating the Wildlife Conservation Act on two other charges: taking two protected species and failing to apply for local government permission to hunt for cultural reasons. The Taitung District Court ruled him guilty and sentenced him to a steep fine and imprisonment for three and a half years. His appeal in 2015 was denied, but the sentence was suspended following domestic and international outcry (Simon, 2021). Nonetheless, the court's decision was at odds with other judicial opinions about Indigenous inherent sovereignty. Indigenous and human rights organizations criticized the court's cultural bias and discrimination against Indigenous peoples.

After more than six years, the Constitutional Court of the ROC finally accepted a constitutional interpretation request. The court held an oral hearing with live-streaming to the public on March 9, 2021, and after deliberation, released Judicial Yuan Interpretation No. 803 on May 7. The court concluded that Articles 20, paragraph 1, of the Controlling Guns, Ammunition, and Knives Act (requiring homemade guns), and 21–1, paragraph 2, of the Wildlife Conservation Act (requiring state approval for hunting), as well as prohibitions on hunting protected or endangered species, are consistent with constitutional understandings of Indigenous cultural rights. Nevertheless, some implementing regulations lack the clarity and proportionality needed to ensure that the Constitution can effectively protect Indigenous cultural rights. The court ordered the revision of regulations on hunting rifles and on the applications for permission to hunt, to make the laws clearer and easier for individuals to follow. The court based its decision on the principles of personal dignity, cultural identification, individual cultural autonomy, and the integrity of free development of persons for the purpose of preserving, practicing, and passing down their unique traditional cultures in order to ensure the sustainable development of Indigenous culture. Those rights are nonetheless preserved by the state rather than by the Indigenous peoples themselves.

Interpretation No. 803 recognized that the Indigenous right to hunt is protected by the Constitution as a fundamental individual right to enjoy culture, but continued to obscure the issues of Indigenous sovereignty and the existence of Indigenous legal orders. Povinelli's argument that liberal states only recognize Indigenous customary law to the extent that Indigenous practices are not considered repugnant or shameful (Povinelli, 2002, p. 176) holds here. There are still popular notions in Taiwan that hunting is primitive and a trait of "backwards people" close to nature.

4.3. The Court Decision as a Denial of Indigenous Sovereignty

Interpretation No. 803 is problematic for two other reasons. First is the argument made by the court that the decriminalization of hunting should apply only to self-made rifles used for subsistence. Second, the court argued that hunting endangers wildlife, especially protected species and, therefore, protected species must be excluded from hunting activities unless otherwise approved. The interpretation is based on a balance of interests between Indigenous cultural rights and wildlife conservation. Although the decision was framed in terms of constitutional proportionality, it was made in a broader context of racial discrimination, accompanied by attitudes of superiority and by a projection of Indigenous lifeways as "primitive" and "inferior." Majority views are the continuation of colonial attitudes that regarded Indigenous peoples as inferior, rooted in calling Indigenous peoples *shengfan* and *shoufan* (literally "raw savages" and "cooked savages"; Barclay, 2018, p. 183). In Taiwan, the majority considers that hunting is a practice of pre-agricultural primitive peoples, and is best relegated to the past. This results in discrimination of a dual nature: On the one hand, there is direct destruction of the material and spiritual conditions needed for the maintenance of Indigenous ways of life as many Indigenous peoples have been excluded from their forests. On the other hand, even after President Tsai's apology, majority attitudes that lead to exclusion or negative discrimination persist. The principle that Indigenous peoples have the right even to modest internal self-determination, by controlling their own hunting institutions on their own traditional territories, as promised in the Basic Law, is entirely sidestepped.

The court upholds the notion that the only way to demonstrate "traditional" culture is through the use of outdated technology. Modern hunting rifles, even though they would be safer for hunters, are

strictly prohibited. This is a purely colonial gaze. In fact, Indigenous peoples have been appropriating the most modern arms available and incorporating them into their cultural practices since the first years of colonial contact, and as a means to protect their territorial sovereignty (Lin, 2016). The discourse of putting Indigenous rights and conservation in opposition frames the hunters as destructive of nature because it is based on the assumption that human society or culture rests outside of nature. This ontology, which Philippe Descola calls "naturalism," was transported to all corners of the world during the colonial period (Descola, 2011, p. 91). It is part and parcel of the racialized world system.

Regulations designed to implement cultural rights require hunters to demonstrate that a planned hunt is cultural by submitting a written declaration that it is a practice included on a pre-determined list of rituals furnished by the state. The court overlooked the fact that subsistence hunting is itself a cultural practice and simply denied the possibility of hunting any protected species. It does not take seriously the perspectives of hunters who testify that they must take animals as presented to them, regardless of the species, as gifts from their ancestors. The court does not even recognize that Indigenous communities already have their own rules and institutions to sustainably manage hunting and protect animal populations. In our analysis based on CRT, the decision was consistent with liberal social theory because it was concerned entirely with the individual rights of Tama Talum. It said nothing about Indigenous self-determination, or the rights of Indigenous peoples as sovereign nations to live by their own legal and political norms. The decision even failed to cite the Basic Law on Indigenous Peoples. The decision thus perpetuates systemic racism against Indigenous peoples.

5. The Danger of Assimilation

5.1. The Civilizing Colonial Project

Beginning in the 17th century, successive colonial regimes treated Indigenous peoples as savages, emphasizing a belief in the Manifest Destiny of Han settlers destined to take over the island in the name of a supposedly greater civilization. The Manchurian Qing Dynasty seemed content to leave the Indigenous peoples of the mountainous interior in effective autonomy. They even described them as "beasts" unworthy of governance (Barclay, 2018, p. 76). But, when the camphor trees in those forests became of interest to world markets, everything changed. Japan took Taiwan in 1895. The Japanese military pacified the Indigenous people over the next twenty years and began implementing policies of assimilation and integration. From the state's point of view, integrating Indigenous peoples into the dominant society, even by erasing languages and cultures, was a benevolent way of incorporating Indigenous lands and peoples into the world economy.

In the early postwar period, Taiwan's policy on Indigenous issues began with the mountainous region administration aiming at assimilation and integration. Until the lifting of martial law in the late 1980s, the state enacted a policy of "making the mountains like the plains" (*shandi pingdihua*), which was basically forced assimilation to Chinese norms and the Mandarin language. But the Indigenous peoples were resilient and would start asserting their own rights after democratization.

5.2. Post-Colonial Affirmations of Peoplehood

In the 1990s, following demands of the Indigenous social movement for land return, name rectification, and inclusion in the Constitution, Taiwan began adapting the ROC constitution to local conditions. Article 10 of the Additional Articles of the Constitution incorporated an international vocabulary of indigeneity. In 1994, the amendment stated that Indigenous people (*yuanzhumin*) have political, economic, cultural, and other rights; in 1997, this was further amended to Indigenous peoples (*yuanzhu minzu*). Like adding the final "s" in English, the addition of the suffix "zu" promises rights not only to individuals but to groups.

The Additional Articles frame the Indigenous people as vulnerable, equal to people of remote offshore islands, emphasizing that the state should actively support and promote their development, so as to guarantee the constitutional principle of equality. Historically, these provisions were originally intended for Tibetans, Mongolians, and other frontier groups in China, and only later applied to the situation in Taiwan. It is important to recognize that adding "Indigenous peoples" to the Constitution was intended by legislators and activists to address racism and discrimination. But that is precisely the point where CRT makes its most important contribution to Indigenous Studies. Liberal measures to address discrimination risk undermining the sovereignty of oppressed groups.

In February 2005, the Legislative Yuan enacted the Basic Law of Indigenous Peoples, affirming that Indigenous peoples refer to traditional ethnic groups who originally inhabited Taiwan and are subject to the state's jurisdiction, identifying as an Indigenous person any individual who is a member of an Indigenous people (ROC, 2018). The Basic Law adopts UNDRIP norms by acknowledging that Indigenous individual legal status and identity are based on a relationship with an Indigenous people. According to the UNDRIP, Article 9, all Indigenous people have the right to belong to an Indigenous nation or group. Articles 33 and 35 recognize that Indigenous peoples have the right to determine membership criteria and determine the responsibilities of their members (United Nations, 2007). The challenge is the contradiction between the UNDRIP, which assumes Indigenous peoples are legal persons able to make and enforce decisions about membership, and the reluctance

of Taiwan to recognize the status of Indigenous peoples as legal persons.

In the politics of name rectification, the number of state-recognized Indigenous groups expanded from nine to sixteen, as groups defined their own boundaries and demanded recognition separate from ethnic classifications created during the Japanese colonial era. For example, the Truku became recognized as distinct from the Atayal in 2004 and the Seediq in 2008. Name rectification also included the goal that individuals would again use Indigenous names, instead of the Mandarin names that had been imposed on them since the 1950s. Activists hoped that the use of Indigenous names by individuals would strengthen their sense of belonging to specific Indigenous nations, and part of the goal was that each Indigenous nation would have control over its own membership. Name rectification was legislated in the Indigenous Status Act, as Article 4, paragraph 2, stipulated that individuals of marriages with one Indigenous and one non-Indigenous parent are considered Indigenous only on the condition that they take the surname of the Indigenous parent or use an Indigenous traditional name. The goal was to strengthen individual identity with Indigenous peoples, which would eventually establish their own self-government institutions and membership rolls. This approach proved unsatisfactory to some, especially urban individuals born from one Indigenous and one non-Indigenous parent, and who may have very little attachment to political projects affirming Indigenous sovereignty. Since there are advantages to Indigenous status, including preference in school admissions and employment, some people in this situation began claiming that the obligation to take an Indigenous name is also a form of discrimination.

5.3. Indigenous Status

On April 1, 2022, the Constitutional Court released its first decision on the constitutionality of the Status Act. Judgment 111-Hsien-Pan-4 reinforced norms of Chinese patrilineality by asserting that lineage is prior to the Constitution and the Law, meaning that a Chinese surname passed on from father to children should not disqualify those same children, if the mother is Indigenous, from assuming an Indigenous identity. This decision affirmed individual Indigenous status as a special personality right, closely connected to group belonging. By virtue of the reasoning of human dignity, the legislation was found to violate the Constitution on the ground of rights to personal identity and equal protection. Thus, individual Indigenous status should not be limited by additional legal requirements. Individuals are free to register Indigenous identity with state authorities and receive all of the benefits that come with that status, even if they use a Chinese personal name. This frustrated Indigenous activists, who interpreted the ruling as a weakening of Indigenous identity and a new form of assimilation. The ruling made Indigenous identity a matter of individual choice, under state administration, rather than an affair of membership to be regulated by Indigenous governments. Although the Court couched the decision in a vocabulary of protecting Indigenous culture and Indigenous peoples' authority to their own membership criteria, the ruling creates two types of Indigenous status. One is state-recognized status, as individuals claim identity with local household registration authorities, but with no legal relations to an Indigenous nation. This is independent of the 16 recognized groups that are working on projects to create local self-government. Consequently, it makes Indigenous identity subject more to individual choice than to recognition by a sovereign Indigenous nation. Finally, it weakens Indigenous autonomy, because people without close ties to Indigenous communities may adopt Indigenous identity just to get the economic and social benefits that come with it.

Judicial intervention on these issues undermines projects of Indigenous self-determination and self-government. The fundamental elements of Indigenous peoples' occupation of land and territories prior to the state and the significance of colonial history define the state's legal relationship with Indigenous peoples. That is why the UN Cobo Report (Martinez Cobo, 1972, p. 10) emphasized the definition of Indigenous peoples on their determination to preserve, develop, and transmit Indigenous identity to future generations. Both the UNDRIP and the Basic Law affirm that Indigenous peoples existed prior to the state and that Indigenous status as legal collectivity was unjustly dispossessed by the state. To avoid inappropriate and excessive interference by the state, UNDRIP upholds the rights and principles of self-identification. The Basic Law takes the same approach.

In the above judicial decisions, judges asserted that the core value of a free and constitutional democracy is to protect human dignity and respect the free development of persons. This makes the right to culture a foundational element of individual personhood, which includes the right to recognition of one's cultural practices and one's Indigenous identity. In supporting the right to hunt, the court situates this right in an essentialized notion of culture, framing it as an individual right, but cultural practices are defined by the state and restricted by state law. The same is true of Indigenous identity, which becomes a relationship between a citizen and the state. Both judgements thus ignore the existence of Indigenous legal orders and undermine sovereignty claims.

The policy measures implemented as Taiwan became incorporated into the racialized world system functioned to sever and destroy Indigenous connections with traditional lands, and to subjugate Indigenous peoples in exploitative economies of labour. The forces of assimilation were found in education programs, land redistribution policies, and efforts to incorporate Indigenous peoples into the economy. Education systems were designed

to teach mainstream values and lifestyles, and encouraged the abandonment of Indigenous cultures, values, and ways of life. Eventually, the state adopted multicultural models of national culture and community, but the emphasis remained on the acceptance of and participation of Indigenous peoples as citizens of a state that was imposed upon them in history. Little room remains for Indigenous sovereignty, self-government, and living, emergent culture.

The practices of modern statehood have direct consequences for Indigenous peoples. The modern state logic, especially in a republican democracy, is to universalize its norms through assimilationist policies. The modern state attempts to assimilate Indigenous peoples through education programs and other forms of socialization. The state's goal is to incorporate Indigenous peoples and their lands into the racialized world system, opening up their territories and resources to extraction for the benefit of local and international elites. By reviewing the aforesaid judgements, many so-called "existing cultural characteristics" of Indigenous peoples have long been eliminated by the State. Most hunting practices and even the use of Indigenous personal names have been marginalized and receive no protection in the law. The civilizational project continues, as even the most well-intentioned laws and court decisions uphold the role of the state while postponing meaningful Indigenous sovereignty. There is still a long struggle before ROC law treats Indigenous peoples as subjects rather than objects of law, stops perceiving Indigenous culture as uncivilized and backward, and fully recognizes collective rights, even political sovereignty, for Indigenous peoples.

6. Coda

These legal decisions demonstrate the relevance of CRT to understanding the Indigenous–state relationship in Taiwan. Even the most well-intentioned laws and court decisions in a liberal democratic state have the potential to strengthen racist biases and the hegemony that oppresses racialized minorities. Interpretation No. 803, despite all appearances of court neutrality and constitutional order, ended up othering Indigenous people by portraying them as savages who hunt and endanger protected species. Indigenous activists were very disappointed that the court did not examine the applicability of the UNDRIP or even Taiwan's own Basic Law on Indigenous Peoples in coming to a decision; nor did they consider the laws of Indigenous peoples and Indigenous practices of managing forests in ways that protect animal populations. The court decisions on the Indigenous Status Act further strengthened the ability of the state to determine questions of legal status. None of these decisions questioned how state law blocks the ability to enact full, legal Indigenous sovereignty. By adopting an apparently impartial vocabulary of Indigenous rights and equality, moreover, they successfully eliminate the symbolic manifestations of racial oppression while allowing the perpetuation of material subordination and even incarceration of Indigenous hunters who are merely living their own culture.

None of this should be a reason for Indigenous activists and their communities to give up hope. Rather, it underscores the importance of cultural revitalization, intellectual work, and linguistic survival. In one of the most important essays of CRT, Kimberlé Crenshaw concluded that Blacks can only continue to exist, rather than choose between oppression and co-option, if they maintain "a distinct political thought that is informed by the actual conditions of Black people" (Crenshaw, 1988, p. 1387). The Indigenous peoples of Taiwan do indeed have a rich tradition of political philosophy and institutions that are based on their own ontologies. As scholars, we can keep these realities alive by listening to and sharing the stories that the Indigenous people share with us. A resurgence of Indigenous legal and political thought is precisely the pre-condition that is needed if Indigenous and oppressed peoples in Taiwan and elsewhere are to affirm sovereignty and assert a relationship with encapsulating states that is an equal one between sovereign nations.

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Conflict of Interests

The authors declare no conflict of interests.

References

Allio, F. (1998). La construction d'un espace politique austronésien [The construction of an Austronesian political space]. *Perspectives chinoises*, *47*, 54–62.

Andrade, T. (2008). *How Taiwan became Chinese: Dutch, Spanish, and Han colonization in the seventeenth century*. Columbia University Press.

Awi Mona. (2019). Conceptualizing Indigenous historical justice toward a mutual recognition with state in Taiwan. *Washington International Law Journal*, *28*(3), 653–675.

Barclay, P. D. (2018). *Outcasts of empire Japan's rule on Taiwan's "savage border," 1874–1945*. University of California Press.

Bell, D. (1992). Racial realism. *Connecticut Law Review*, *24*(2), 363–380.

Bellwood, P., Fox, J. J., & Tryon, D. (Eds.). (2006). *The Austronesians: Historical and comparative perspectives*. ANU Press.

Borao Mateo, J. E. (2009). *The Spanish experience in Taiwan, 1626–1642: The baroque ending of a renaissance endeavor*. Hong Kong University Press.

Cabrera, N. L. (2018). Where is the racial theory in critical race theory? A constructive criticism of the crits. *Review of Higher Education*, *42*(1), 209–233.

Ciwang, T., & Hsieh, W. (2023). Carrying historical trauma: Alcohol use and healing among Indigenous communities in Taiwan. In S. E. Simon, J. Hsieh, & P. Kang (Eds.), *Indigenous reconciliation in contemporary Taiwan: From stigma to hope* (pp. 121–144). Routledge.

Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Crenshaw, K. W. (1988). Race, reform and retrenchment: Transformation and legitimation in antidiscrimination law. *Harvard Law Review*, *101*(7), 1331–1387.

Deloria, V., Jr. (2006). Conquest masquerading as law. In Wahinkpe Topa (aka D. T. Jacobs) (Ed.), *Unlearning the language of conquest: Scholars expose anti-Indianism in America* (pp. 94–107). University of Texas Press.

Descola, P. (2011). *L'écologie des autres: L'anthropologie et la question de la nature* [The ecology of others: Anthropology and the question of nature]. Éditions Quæ.

Gates, H. (1979). Dependency and the part-time proletariat in Taiwan. *Modern China*, *5*(3), 381–407.

Gereffi, G., & Wyman, D. L. (Eds.). (1990). *Manufacturing miracles: Paths of industrialization in Latin America and East Asia*. Princeton University Press.

Gold, T. B. (1986). *State and society in the Taiwan miracle*. M.E. Sharpe.

Gover, K. (2015). Settler-state political theory, "CANZUS," and the UN Declaration on the Rights of Indigenous Peoples. *European Journal of International Law*, *26*(2), 345–373.

Habibis, D., Taylor, P., Walter, M., & Elder, C. (2016). Repositioning the racial gaze: Aboriginal perspectives on race, race relations and governance. *Social Inclusion*, *4*(1), 57–67.

Hipwell, B. (2019, January 21). Fighting for justice in translations. *Taipei Times*. https://www.taipeitimes.com/News/editorials/archives/2019/01/21/2003708323

Hsieh, J. (2006). *Collective rights of Indigenous peoples: Identity-based movement of Plain Indigenous in Taiwan*. Routledge.

IWGIA. (2019). *Indigenous world 2019*. International Work Group for Indigenous Affairs.

Lin, P. H. (2016). *Firearms, technology and culture: Resistance of Taiwanese indigenes to Chinese, European and Japanese encroachment in a global context, circa 1860–1914* [Doctoral thesis, Nottingham Trent University]. ProQuest https://www.proquest.com/docview/2392582064?pq-origsite=gscholar&fromopenview=true

Martinez Cobo, J. R. (1972). *Study of the problem of discrimination against Indigenous populations: Preliminary report.* United Nations. https://digitallibrary.un.org/record/768953

Matsuda, M. J. (1987). Looking to the bottom: Critical legal studies and reparations. *Harvard Civil Rights-Civil Liberties Law Review*, *22*(2), 323–399.

Peller, G. (1990). Race consciousness. *Duke Law Journal*, *39*(4), 758–847.

Povinelli, E. A. (2002). *The cunning of recognition: Indigenous alterities and the making of Australian multiculturalism*. Duke University Press.

Republic of China. (1947). *Constitution of the Republic of China (Taiwan)*. Ministry of Justice. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000001

Republic of China. (1997). *Additional articles of the Constitution of the Republic of China*. Ministry of Justice. http://www.taiwandocuments.org/constitution02.htm

Republic of China. (2005). *Additional articles of the Constitution of the Republic of China*. Ministry of Justice. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000002

Republic of China. (2016). *President Tsai apologizes to Indigenous peoples on behalf of government*. Office of the President. https://english.president.gov.tw/NEWS/4950

Republic of China. (2018). *Indigenous Peoples basic law*. Ministry of Justice. https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0130003

Republic of China. (2021). *The Tribes in Taiwan*. Council of Indigenous Peoples. https://www.cip.gov.tw/en/tribe/grid-list/index.html?cumid=5DD9C4959C302B9FD0636733C6861689

Robinson, C. J. (2020). *Black Marxism: The making of the Black radical tradition*. University of North Carolina Press. (Original work published 1983)

Simon, S. (2002). The underside of a miracle: Industrialization, land, and Taiwan's Indigenous peoples. *Cultural Survival Quarterly*, *26*(2), 64–67.

Simon, S. (2004). Learning and narratives of identity: Aboriginal entrepreneurs in Taiwan. *Taiwan Journal of Anthropology*, *2*(1), 93–117.

Simon, S. (2011). Multiculturalism and Indigenism: Contrasting the experiences of Canada and Taiwan. In T. W. Ngo & H. Z. Wang (Eds.), *Politics of difference in Taiwan* (pp. 15–33). Routledge.

Simon, S. (2020). Yearning for recognition: Indigenous Formosans and the limits of indigeneity. *International Journal of Taiwan Studies*, *3*(2), 191–216.

Simon, S. (2021, June 30). The limits of Indigenous hunting rights in Taiwan. *East Asia Forum*. https://www.eastasiaforum.org/2021/06/30/the-limits-of-indigenous-hunting-rights-in-taiwan

Simon, S. (2023). *Truly human: Indigeneity and Indigenous resurgence on Formosa*. University of Toronto Press.

Taiwan Black Lives Matter protest gets Indigenous twist. (2020, November 13). *Reuters*. https://www.reuters.com/article/us-minneapolis-police-protests-taiwan/taiwan-black-lives-matter-protest-gets-indigenous-twistidUSKBN23K0CE

Torres, G., & Milun, K. (1990). Translating Yonnondio by precedent and evidence: The Mashpee Indian case. *Duke Law Journal*, *39*(4), 625–659.

United Nations. (2007). *Declaration on the rights of Indigenous peoples*. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Williams, R. A., Jr. (2005). *Like a loaded weapon: The rehnquist court, Indian rights, and the legal history of racism in America*. University of Minnesota Press.

Wotherspoon, T., & Hansen, J. (2013). The "Idle No More" movement: Paradoxes of First Nations inclusion in the Canadian context. *Social Inclusion*, *1*(1), 21–36.

Ye, J. R. (2016). *The Constitution of Taiwan: A contextual analysis*. Hart Publishing.

Young, I. M. (2011). *Justice and the politics of difference*. Princeton University Press.

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Article

La Lucha Continua: A Presentist Lens on Social Protest in Ecuador

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Abstract
Ecuador has one of the most progressive constitutions in Latin America. It defines the state as plurinational and guarantees collective rights to Indigenous people and even to Nature itself. At the same time, the oil sector has been of strategic importance and "national interest" to both right- and left-wing governments for the last decades, contributing with its rents and revenues to around one-third of the state coffers. Therefore, the extractivist model remains unchallenged and still promises development—while reproducing systemic inequalities and a "continuum of violence." In June 2022, the Indigenous movement called for a nationwide strike to draw attention to the socio-economic crisis following the pandemic. The authorities harshly repressed the mobilization and a racializing media discourse demarcated the "Indigenous" agenda from the needs of "all Ecuadorians," classifying the protesters as "terrorists" and thus, a threat to the nation. Drawing on ethnographic research, this article discusses the role of extractivism in social mobilization. Exploring the future of social protest in Ecuador in the face of new pressures like climate change and the energy transition, it argues that extractivist patterns will change globally and amplify social discontent and mobilization.

Keywords
Amazon; climate change; CONAIE; energy transition; extractivism; Indigenous movement; rentier society; violence

Issue
This article is part of the issue "Indigenous Emancipation: The Fight Against Marginalisation, Criminalisation, and Oppression" edited by Grace O'Brien (Queensland University of Technology), Pey-Chun Pan (National Pingtung University of Science and Technology), Mustapha Sheikh (University of Leeds), and Simon Prideaux ((In)Justice International) as part of the (In)Justice International Collective.

1. Introduction

The Confederation of Indigenous Nationalities of Ecuador (CONAIE) called for an indefinite national strike in June 2022 due to increased costs of living and fuel, unfair pricing of agricultural products, and plans to expand the extractive frontier, among other reasons. The 18-day-long mobilization paralyzed the country, prompting authorities to crack down on protesters, resulting in seven deaths. The tensions within Ecuadorian society were highlighted through a racializing media discourse that not only marginalized the Indigenous agenda from the needs of "all Ecuadorians" but also categorized the protesters as "terrorists" and, hence, a threat to the nation. After several failed attempts at dialogue, the government finally made concessions on some points, with the mediation of the Catholic Church. The strike ended with a peace protocol between the government and CONAIE, and a pledge to enter a 90-day dialogue process to discuss the remaining demands. However, it has also left a polarized society and resulted in over a billion dollars in losses to the Ecuadorian economy, half of which accounts for the oil sector. Half a year after the mobilizations, the roundtables of the dialogue are closed but the CONAIE and other organizations remain suspicious of the government's intentions to comply with the resulting agreements (CONAIE, 2022a). An evaluation of the implementation process will take place together with the grassroots organizations from February to April 2023 to decide if another strike is necessary.

This quick recollection of the events of June 2022 resembles those of the mobilizations in October 2019. The latter paralyzed the country for twelve days as a consequence of former President Moreno's announcement to eliminate gasoline subsidies—a political response to comply with the IMF's austerity measures. By analyzing the parallels between the two events and highlighting the resurgence of the Indigenous movement, I argue that

the protests of 2022 can be seen as a continuation of the social outburst in 2019. Furthermore, I use a presentist lens to frame the recent mobilizations rather as an analytical starting point towards the yet-to-come.

Presentism is a fruitful perspective to give the future an equal weight to the past in analysis. It sheds light on the aspirations, plans, and practices that orient our informants toward the future and actively form their present (Bryant & Knight, 2019). As Nancy Munn observes: "People operate in a present that is always infused…with pasts and futures" (Munn, 1992, p. 115). This is in line with the plea to reject historical determinism and to frame "temporalization" as a contingent and socially contested practice, highlighting the equal influence of both pasts *and* futures on the present (Ringel, 2016).

To frame my analysis, I examine, first, the fundamental tensions between the Ecuadorian state and the Indigenous movement rooted in the extractivist development model by drawing on the simultaneous histories of oil exploitation and emerging Indigenous organization in the Ecuadorian Amazon. Of course, this Indigenous movement is highly heterogeneous and has its own inherent tensions (e.g., between the Sierra and the Amazon regions or the grassroots associations and their regional representations). In addition, there exist internal disputes about resource extraction, and whether to allow or reject it in Indigenous territories (see, e.g., Eisenstadt & West, 2019; Valladares & Boelens, 2017; van Teijlingen et al., 2017). Hence, it is important to conceive "the movement" as a heterogeneous group with varying interests: "Lack of consensus within Indigenous groups disconfirms the assumption of primordial group unity of multiculturalism" (Eisenstadt & West, 2019, p. 80).

Whether welcomed or opposed, extractivism has produced and keeps re-producing a "continuum of violence" (Scheper-Hughes & Bourgeois, 2004), in particular in the Amazon region. However, this deterministic view of a "continuous process of causation" resulting from inert power relations is challenged by a presentist perspective that highlights the "influence the future might have in the present" (Ringel, 2016, p. 24). My analysis frames the protests in June 2022 as a prologue to what might follow in the future. Against this background, I finally discuss the relational futures of extractivism and the Indigenous movement in Ecuador to add a different angle to previous analytical endeavors to understand and read social mobilizations. I argue that the globally induced challenges of climate change and the energy transition towards low-carbon futures will not just have a profound impact on the extractivist development model in Ecuador, but also on the Indigenous movement and social mobilization more generally.

The following analysis is informed by a four-month ethnographic fieldwork study from March to June 2022 with different Kichwa communities and organizations in the Ecuadorian Amazon (Pastaza and Orellana provinces), as well as in the capital Quito during the 18 days of social mobilization. As my research concerns planning and future-making in the Ecuadorian Amazon, I was inspired to explore the future dimensions of extractivism regarding the recent social protests. I translated all quotes from my informants from Spanish into English. Furthermore, newspaper articles and social media posts frame my analysis.

2. Ecuador: A Plurinational yet Extractivist State

Ecuador has one of the most progressive constitutions in Latin America redefining the country as an intercultural and plurinational state (Art. 1) as well as recognizing 21 collective rights for Indigenous peoples and nationalities (Art. 57), the rights of nature (Art. 71) and the idea of *sumak kawsay,* i.e., good living (Art. 14). At the same time, the oil sector has been of strategic importance and national interest for half a century, contributing with its exports to around 30% of the state coffers (author's own calculation based on Banco Central del Ecuador, 2021). In this sense, the Indigenous movement has successfully influenced the general discourse in its favor (Altmann, 2012; Whitten & Whitten, 2011). However, powerful actors constantly undermine and co-opt these constitutional gains (Schavelzon, 2015). This polyphony reflects a contradictory constitution, but also a tense relationship between state and society: The historically grown extractivist development model challenges progressive environmental protection and plurinationality confronts national interests (Gudynas, 2011).

Similar to other countries in the region, Ecuador's extractivist project stems from a developmental promise for modernization through oil exploitation. However, Alarcón (2021) suggests that the urban middle classes—and obviously the national elites—were the actual winners of Ecuador's first oil boom during the second half of the 20th century, while the Indigenous population was excluded even though the oil was exploited from their territories. Oil rent, hence, "(re-)produces social inequalities" (Alarcón & Peters, 2020, p. 256). Beyond the economic dependency generated through resource rents in the "rentier state" (Peters, 2019), oil also acts as an "ideological force" (Perreault, 2013, p. 71; see also Coronil, 1997), shaping the imaginary of the Ecuadorian oil nation and the notion of "petro-citizenship" (Valdivia, 2008). As a socio-cultural force, it shapes "mental infrastructures" around Euromodern production and consumption patterns (Peters, 2017; Welzer, 2011)—a specific constellation of rentier societies within a more general "petroculture" (Szeman, 2017).

Consequently, the extractivist logic pervading the rentier state also dissolves a meaningful distinction between neoliberal or more progressive governments. Oil "petrolizes" (Karl, 1997) Ecuadorian politics, society, and economy and redefines the country as a "petrostate" (Lu et al., 2017). A shift away from neoliberal governance by former president Rafael Correa (2007–2017) and the Montecristi Constitution of 2008 were not able to appease these inherent tensions emerging from

resource-driven development; they rather intensified them. The continuous tendering process for oil blocks (Lessmann et al., 2016) bears witness to the quite literal undermining of constitutional guarantees. The most illustrative example of this is the beginning of drilling in Tiputini in 2016 (buffer zone of the Yasuní national park) after the government's failed Yasuní-ITT initiative in 2013, and a fraudulent obstruction of a popular consultation on the matter (Yasunídos, 2021). In addition, Correa also systematically started to promote and push the expansion of large-scale mining in the Andean region with the help of Chinese investments in order to frame Ecuador as a "progressive pro-mining state" as opposed to the "neoliberal petrostate" (Davidov, 2013).

These neo-extractivist policies emerging in the 2000s promised that social development and economic diversification could be financed through a short-term increase in natural resource extraction (mineral ores and oil). This would allow the country to move forward into a "post-petroleum era" (Silveira et al., 2017, p. 83) where national development and "good living" are achieved (van Teijlingen & Hogenboom, 2016). This is a rather distorted version of an "ecologically balanced" and "community-centered" *sumak kawsay* approach. After the collapse of oil prices in 2014, these promises remain unfulfilled. This shows that the socio-economic dynamics of rentier states are embedded in the global capitalist system and are highly susceptible to volatile price developments (Coronil, 1997; Peters, 2019).

Despite the apparent "commodity consensus" (Svampa, 2015), an assessment of (neo-)extractivism reveals that rentier states face increasing opposition. Socio-environmental conflicts arising in "sacrifice zones" bear witness to the dark side of extractive activities. As extractivism molds economic, social, and political structures, economic diversification is hampered and environmental devastation continues. A shift towards more sustainable development models becomes impracticable. States might be caught in an "extractive imperative" (Arsel et al., 2016): the extractive frontier keeps expanding and intensifying in order to account for "development."

President Moreno (2017–2021), former vice-president of Correa, did not alter the neo-extractivist trajectory of the country. However, he made a 180-degree turn away from the policies of his predecessor toward a neoliberal readjustment of the economy; causing eventually the social outbursts of October 2019. Current President Lasso, a conservative ex-banker from the country's financial capital Guayaquil, currently follows this neoliberal path and even announced at the beginning of his presidency to double oil extraction. A project he needed to abandon, however, after the protests in June 2022.

2.1. Extractivism and the Continuum of Violence

It is crucial to understand that current extractivisms (e.g., oil, copper, gold, and balsa) are intrinsically linked to earlier extractivisms (e.g., rubber, cinchona) since the Spanish *conquista* (Larrea-Alcázar et al., 2021). The historical and current exploitations of nature as well as local and Indigenous communities are interconnected with each other and have shaped Ecuador's role in the global market economy. This has produced geographies—sometimes referred to by politicians like Correa as "uninhabited" (Silveira et al., 2017)—oriented toward the export of raw materials and hierarchical social relations (Galeano, 1973). As Chagnon et al. (2022, p. 760) observe: "Extractivism forms a complex of self-reinforcing practices, mentalities, and power differentials underwriting and rationalizing socio-ecologically destructive modes of organizing life through subjugation, depletion, and non-reciprocity." Noticeably, the organizational principles of Indigenous nationalities are in dialectical opposition to the extractivist modes of organizing life: parity, reciprocity, exchange, redistribution, circularity, and solidarity (Andy Alvarado et al., 2012; Grefa Andi, 2014; Simbaña Pillajo, 2020). Therefore, when analyzing the configuration of sacrifice zones like the Ecuadorian Amazon from a historical perspective, it becomes clear that they have been reconfigured through a process of "internal colonialism" (González Casanova, 1969). At the institutional, social, and subjective level, they are sustained through the "coloniality of being" (Maldonado-Torres, 2007) and the "coloniality of power" (Quijano, 2000) that have been perpetuated by the nation-state (see also Rivera Cusicanqui, 2010). Consequently, Andrew Curley suggests that resources are "just another word for colonialism" (Curley, 2021, p. 79). They are a "violent project of world-making" (p. 86) as "the idea of resources is colonial constructions consistent with genocide, displacement, exploitation, and capitalism" (p. 79).

These complex historical configurations of internal/external colonialism and extractivism reach into the present and reproduce relations of power perpetuating a "continuum of violence" (Scheper-Hughes & Bourgeois, 2004). In such a "vicious violence circle" (Galtung, 1990, p. 295) different forms of violence confluence and come to play with each other, e.g., structural violence (Farmer, 2004; Galtung, 1969), symbolic violence (Bourdieu, 1979, 1991/2002), epistemic violence (Spivak, 1994; Spivak & Guha, 1988), slow violence (Davies, 2022; Nixon, 2011), axiomatic violence (Pipyrou & Sorge, 2021) and temporal violence (Schwab, in press). On a visit to different communities along the Coca and Napo rivers, which have been affected by two ruptures of the same oil pipeline in 2020 and 2022, this continuum of violence became dramatically clear. In the following, I want to share some examples to highlight these different dimensions of violence.

Many of these communities live in complex socio-economic conditions and have difficulties sustaining themselves. Life is expensive; this goes also for Indigenous people living on subsistence farming in the Ecuadorian Amazon. In Moretecocha, for example,

people explained that the (motorized) canoe to go to the next city to sell agricultural products on the market costs 20 USD to transport 50 kg of yuka. There, this yuka is sold for 25 USD (considered a fair price). This means, this person has 5 USD of revenue to spend on clothes, medicine, additional food, internet, transportation, etc. To further illustrate this situation: The children from Moretecocha need to go by canoe to the small education center in a neighboring community. The parents have to save their money to pay around 2 USD per day/child (or buy their own fuel for 4 USD/gallon). This means their whole earnings from the market would need to be spent on transportation to guarantee their children's access to formal education. In short, this is structural violence—and underlines the importance of fuel costs (and fuel subsidies) for rural communities outside the city, a perspective that is often dismissed when analyzing the connection of social protest to gasoline prices and social inequalities.

Another example is the illustrative response of the president of the community San Pablo to the question of how he sees the future of his community: "Fifteen years ago, an oil pipe broke close to Lago Agrio where my sister lives. Now, she has cancer." Another community member added: "I remember how we just started to go fishing again [after the first oil spill]. We put the fishing net and we were so happy that we caught fish there again. And then the next oil spill came." This is temporal violence, as after every oil spill or contamination episode an alternative future gets harder to imagine; the future seems predetermined, colonized, and pessimistic. In general, the extent of contamination impeding the affected communities to drink, wash, or let their children play in the river and cultivate their *chacras* (fields) falls under the category of slow violence; at first, in the case of oil, visible and after a while invisible—but not less harming. Taking into account that the territory itself is part of the community through a relational cosmovision, there is no community without a territory. Thus, it is a fundamental element of the identity and the historical continuity of the community. A dying territory translates into a dying community. Their cultural reproduction through everyday interactions with the territory, knowledge generated from it, and subsistence practices such as agriculture, hunting, or fishing are not guaranteed anymore (Altmann, 2018).

When trying to explain the extent of the contamination, many people described the *sacha* (forest) as their "market" or "pharmacy" to underline the urgency of the matter. I heard this many times, also in the context of deforestation when people tried to explain the significance of what the forest means to them as a community. This is, however, not a mere intent of cultural "translation" but a striking example of symbolic violence, as the categories used to describe the integrity of the forest are borrowed from (or rather imposed by) another set of onto-epistemological categories. Andy Alvarado et al. (2012, p. 38, author's own translation) clarify:

> The forest is not a market nor a pharmacy, but…the symbol of the balanced totality….The force, that manifests it, is *Amazanka* [owner of the *sacha*, protector of the animals], whom many Kichwas claim to have seen in the form of a person.

When hunting or taking care of the *chacra*:

> [There is] a movement of reciprocity produced, based on the respect and care of the forest…returned in abundance of resources for the conservation of human life. *Amazanka* provides what is necessary for life, but disapproves of the waste and misuse of animals, plants, and other elements of the forest (petroleum). (Andy Alvarado et al., 2012, p. 38, author's own translation)

Clearly, extractivism is rather detrimental to this continuum of give and take. As one informant, a forest ranger from a conservation foundation, put it: "It is like a machine that is hungry and eats, eats, eats—but it is never enough for it."

The reciprocal exchange with the forest to maintain balance also explains why many of my informants describe feelings of guilt or shame when they "overuse" the forest. Another brief story underlines this complex interplay of the symbolic violence, putting the *sacha* in monetary terms, and structural violence, creating the need to integrate oneself into the capitalist market in order to make money and change one's future. Once I accompanied a good friend in Arajuno to his piece of land where he was cutting down trees to make space for the cultivation of four hectares of balsa, a fast-growing tree that regenerates soils and protects new trees from pests and solar radiation—besides providing a very light wood used for wind energy generation. After the natural reserves of balsa were cut down but the balsa boom continued, people started to fell other trees to make space for balsa cultivations—for one hectare of balsa, one gets 20,000 USD in return within just three years, a quite lucrative business. While this fact made my friend excited and dream about his own tourist business with some *cabañas* along the river, he also assured me that he would not cut any further forest afterward. He explained: "You know…this is the first time I cut down my forest." When I asked him how he feels about this, he just smiled, agonized, and said: "Sad…out of necessity." In a nutshell, extractivism and its impacts shape and reproduce violent societal structures.

2.2. The Indigenous Movement as Resistance to Extractivism

Where there is violence, there is resistance (Acosta, 2015; see also Foucault, 1978/1990). Extractivism cannot be thought of without the historical Indigenous resistance; and the other way around, Indigenous resistance, in particular in the Ecuadorian Amazon, cannot

be thought of without extractivism as its counterpart. The Indigenous experience with oil explorations since the 1920s has profoundly influenced the social organization of Indigenous peoples into communities (a territorialized compound of the extended family *ayllu*), then into associations, and later into regional and national organizations (Altmann, 2018; Grefa Andi, 2014; Simbaña Pillajo, 2020; see also Pacari, 1984). When I had asked leaders of the Asociación de Comunidades Indígenas de Arajuno (ACIA), why ACIA was founded or what their mission is, I have often gotten the simple answer: The defense of the territory (*la defensa del territorio*). This underlines again the relational character of community/organization to the land they live in.

This organizational blossoming went hand in hand with the first oil boom. Many communities were founded during the 1960s and 1970s. The Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENAIE) was created in 1980 and, shortly after, CONAIE in 1986. The organization of an Indigenous movement brought concrete results: the *Inti Raymi* uprising in 1990, the recognition of ancestral territories in 1992, and the founding of CONAIE's political branch, the Pachakutik Movement, in 1995. During social upheavals between 1997 and 2005, the Indigenous movement was also a driving force in the destitution of three presidents. Lately, CONAIE has contributed to the reform of the guarantees of collective rights in the Ecuadorian Constitution of 1998 and 2008 (Simbaña Pillajo, 2020).

Where there is violence, there is also an alternative view of a desirable future. For the Indigenous movement, such a future "otherwise" (Povinelli, 2012) is the realization of the plurinational and intercultural state; that is to say, a political project for decolonization, Indigenous self-determination, and ethnic-territorial rights while rejecting the idea of a uni-national state, politics of multiculturalism, and neoliberalism (Altmann, 2012; Lalander & Lembke, 2018; Schavelzon, 2015). Mechanisms of resistance, besides social organization itself, have been legal trials (Sarayaku vs. Ecuador in 2012; Waorani communities vs. Ecuador in 2019; Sinangoe vs. Ecuador in 2022; Tagaeri and Taromenane vs. Ecuador in 2022), planning as a decolonial tool (Schwab, in press) and, of course, social mobilization.

It is important to emphasize that the Indigenous movement has never sought secession from the Ecuadorian state and made this clear since the mid-1980s (Altmann, 2012; Sarango, 2016; Schavelzon, 2015). When the integration of the plurinational project was discussed in the context of the new constitution in 2008, however, opponents of the idea spoke disparagingly of a possible "balkanization" to discredit the proponents of plurinationality and portray them as enemies of the nation. Territorial secession would have been particularly threatening because all the subsoil resources in Indigenous territories would no longer belong to the Ecuadorian state. However, since this has not happened, all subsoil resources—namely oil and mineral ores—are the property of the sovereign state, i.e., the property of "all Ecuadorians."

Sawyer (2004), tracing the rise of the Indigenous movement, concludes that Indigenous struggles over land titles and oil extraction in Ecuador were as much about addressing historical injustices as they were about political misrecognition *and* material redistribution. Consequently, the discourse of the Indigenous movement has combined identity aspects with a class critique—until today, as reflected in CONAIE's ten demands. This positions the Indigenous movement as an important social actor within Ecuadorian society as they successfully created a discourse beyond concrete demands with a message that potentially encompasses and represents various sectors of the society (Altmann, 2018).

2.3. The Rebellion of October 2019

The protests of June 2022 cannot be understood without a close look at "the political earthquake" three years earlier (Parodi & Sticotti, 2020, p. 11). A domino effect occurred as a result of the economic and social crises triggered by the end of the oil boom in 2014. President Moreno's government had to account for budget deficits with loans from the IMF. To comply with the austerity measures of the latter, the president did not just downsize the state apparatus, but also decided to eliminate fuel subsidies in October 2019—on the back of "the poor": "The government decided that the poorest 75% of the population, who use public transport, should pay 78% of the cost of eliminating the subsidy, while the richest 25% of the population should pay the remaining 22%" (Ospina Peralta, 2020, p. 40, author's own translation). Furthermore, a fuel price increase of 130% had an inflationary effect on transportation and goods more generally.

This imprudent decision unleashed nationwide protests. The people in the streets were angry because Moreno did not win the elections with a neoliberal program (Serrano Mancilla, 2020, p. 23):

> He [Moreno] was confident that a social outbreak was outdated and that the press would be able to impose a dominant matrix of opinion. He was wrong: the country plunged into its worst political crisis since 2005. (Oliva Pérez, 2020, p. 27, author's own translation)

The leaders of the Indigenous movement themselves were surprised by their capacity for social mobilization; they regained their representative vocation as the "voice of the people" (Stoessel & Iturriza, 2020). Hence, the insurrection of October 2019 repositioned the Indigenous movement as a relevant social actor for the demands of the society at large beyond "Indigenous interests." After the long night of *correísmo,* when the CONAIE was systematically divided and deprived of

influence by the progressive governments (De la Torre, 2010; Lalander & Ospina, 2012), they were back. This fact is exemplified by the book written by Leonidas Iza, now president of the CONAIE, in the aftermath of the October Rebellion (Iza et al., 2020)—a Marxist manifesto for the joint fight of the popular, rural, and Indigenous sectors against the capitalist system.

According to Alarcón and Peters (2020, p. 251), the reaction to the withdrawal of fuel subsidies demonstrates citizens' claim on their fair share of the oil rent, i.e., "the expression of a quasi-naturalized right derived from living in a natural resource-rich country." This interpretation is based on the idea of a rentier society with deeply rooted expectations about the distribution of resource rents (Peters, 2019). Mainstream media fostered a similar narrative about "privileges withdrawn" (Oliva Pérez, 2020). While the argumentation for a quasi-naturalized right for cheap fuels offers a new perspective on the protests in 2019, it does not sufficiently illuminate inner-societal issues of systemic inequalities in rentier societies leading to intersecting forms of violence (and during protests also to physical violence). As other authors highlight, there is dissatisfaction with more systemic issues such as socio-economic inequalities, police violence, biased media coverage, and "everything they are doing to us," as one of Puente-Izurieta's interviewees put it (2021, p. 219). From this perspective, the removal of the fuel subsidies rather seems like the last straw that broke the camel's back; the tip of the iceberg providing insight into the discontent with "the system" or, in other words, state-society relations.

3. From 2019 to 2022: A Reloaded Protest

If Ecuador's situation was bad in 2019, it was even worse in 2022. Two years of the COVID-19 pandemic and the subsequent economic recession have left their marks on Ecuadorian society. Many people have slipped into poverty: while a quarter of Ecuadorians were once considered poor, now it is one-third (Instituto Nacional de Estadísticas y Censos [INEC], 2021). Not only the health crisis but also the socio-economic crisis becomes clear after considering the precarious conditions faced by people in the informal sector during lockdowns (approximately 50% of the population; INEC, 2022). In this situation, Lasso entered his presidency. His neoliberal recipe for overcoming the economic crisis was to double the oil production from half a million to a million barrels a day and to launch a mining plan to attract foreign investors.

The pandemic crisis was deepened further by the war in Ukraine. The high oil prices hurt oil revenues as Ecuador does not have a sufficient refining capacity, i.e., the country has to import most of the refined fuel from abroad at a higher cost than its crude oil was sold. Consequently, fuel subsidies get more expensive for the state—a vicious circle. This is exemplified by the fact that fuel subsidies are still a higher expense in the state's budget than healthcare or social programs that would be very much needed as well (Tapia, 2022). This highlights the crisis-prone nature of the extractivist development model. After several reforms, Lasso's government froze fuel prices in October 2021.

In this context, CONAIE called for an indefinite national strike for June 2022. It is important to mention that CONAIE had already been trying for a year to establish a dialogue with the government to discuss its demands (CONAIE, 2022b). Since these attempts failed, pressure had to increase, and the Indigenous movement announced a national strike. In retrospect, this almost seemed unavoidable considering the analysis by Iza of false "dialogue" as a governmental "tactic" to maintain the privileges of the rich and the state's power (Iza et al., 2020, p. 85).

The ten demands put forward by CONAIE reflect a systemic and anti-capitalist critique (CONAIE, 2022c). In the cry to "fight for our rights," a convergence of main concerns can be identified: Fuel prices, high prices for staple foods, low prices for agricultural products on the national market, debt release, more investment in education and health, and the extractivist frontier were particularly highlighted among my informants. Again, fuel prices are a centerpiece of the demands; however, as explained above, this demand needs to be understood beyond fuel subsidies themselves, and rather as an expression of a desperate, unequal, and violent (rentier) society not being able to loosen the firm grip of extractivism. A leader of the CONFENAIE put these demands into perspective:

> All these things not only affects the Indigenous peoples but all the Ecuadorian people….We have so many needs, so much poverty, so much inequality, so much inequity….The government does not know how to distribute the resources entering the state in an equitable way.

Adding to this, an informant from Arajuno stressed the necessity they felt to make use of their right to protest:

> Here it was not about politics, it was not about belonging to a specific social organization….If you are Kichwa or Shuar, or if you are Mestizo or Colono. Here the important thing was that it was a collective fight, of all the people who are from the lower class here in Ecuador….Because all the people, all Ecuadorians were demanding according to our needs, according to the constitution of the republic….Because we needed it!

Compared to the (pre-pandemic) protest in October 2019, however, participation had diminished in the post-pandemic, economically shaken situation of June 2022. A leader of CONFENAIE confirmed this:

> I think, for my part, in 2019 the strike was stronger, more social sectors joined. In this strike, not many

> social sectors joined….The other year the universities opened their doors to us. Now only two universities opened their doors. In addition, not all the transport workers joined the strike.…Doctors almost did not join…the businesses did not join either. So, some did not give this effort in this strike.

In fact, many non-Indigenous people supported the strike but were not actively participating in it. The reasons for this were primarily economic. Many reported their precarious situation, especially after the pandemic, and that they were unable to leave their work and join the protests. The people I have talked with (taxi drivers, vendors, and small-business owners) explained, however, that the situation in Ecuador had become unbearable in the last year and that they support CONAIE's demands. Therefore, their discontent was directed at the government rather than the protesters. Some even expressed anticipation about the possible destitution of President Lasso. In general, in both strikes, there was an overwhelming wave of solidarity supporting the Indigenous protesters in Quito, as one of my informants expressed:

> I do have some good memories about the humanitarian support of the people of the city of Quito, some institutions, and NGOs; [they] always knew how to support us in terms of food, clothing, and medicine. Therefore, I am grateful to all these people who supported us in these two strikes [where] I was, in 2019 and 2022.

3.1. From Repression to Resuming "Dialogue": The Course of the Protest 2022

On June 13, 2022, the city of Quito woke up to several roadblocks paralyzing the traffic in the capital. Mainstream media saw this as a possible interference with the right to free mobility, with the conclusion that legitimate protest is tolerated as long as it does not affect the rights of all other citizens (see Teleamazonas Ecuador, 2022). This argument ties in with President Lasso's statement the previous evening:

> The pandemic forced us to be locked down…now that we are beginning to reactivate our country…we cannot allow political groups seeking to destabilize and fish in troubled waters to paralyze the country once again….I call on CONAIE to reconsider and respect the right of the great majority who do not want chaos. (Lasso, 2022)

By discrediting CONAIE's agenda as opportunistic and political, this narrative obscures and deflects from rights and duties that are currently violated or neglected by the state. The Amazon is an emblematic example as illustrated above. Oil spills exacerbate the situation of the population: Between 2015 and 2021, about 900 oil spills were reported (Rojas Sasse, 2022). When it is dramatic enough, these contaminating events make it into the news. A leader of CONFENAIE claimed:

> The governments in power are always with their ideas of exploitation, with their ideas of consumerism, but not with the idea of how to change…their way of thinking. So, through strikes, unfortunately, with deaths, we have to achieve many things….We are the most affected of the many laws…that they create in favor of each government but [also] in favor of the destruction of nature, of the Indigenous peoples…of the abandoned peoples.

This contrasts with the defamatory tweet of Interior Minister Carrillo:

> The announced mobilization or demonstration, in practice, is a week of blocked roads and oil wells, kidnappings of police and military personnel, looting, etc. They will disguise it as a social struggle to provoke victimization. Who benefits from another protest without limits? (Carrillo, 2022)

This criminalization narrative was later continued with the accusation that the protesters were financed by drug trafficking—a ridiculous accusation, as many of my informants found. Instead of de-escalating the situation, President Lasso's government escalated the situation early on when Leonidas Iza, president of CONAIE, was illegally detained for alleged crimes of rebellion and paralyzing a public service—just 24 hours after the strike began. Some of my contacts were also criminalized for similar charges. The unlawfulness of Iza's detention was confirmed in September when the proceedings were formally annulled (CONAIE, 2022d). A day after his arrest, Iza was released. However, this led to a hardening of the fronts and provoked the mobilization of the local/regional organization to Quito. A state of emergency was declared in several provinces of the country. Meanwhile, the mainstream media was eager to show the discontent of the "average citizen" who just wanted "peace" and to be able to "go after their work and lives." On social media, comments were openly racist, insulting the Indigenous protesters, and telling them "to go back where they came from."

The rapid intensification of the conflict, the repressive measures against the protesters, and the defamation campaign fueled polarization within the population. The "Ecuadorians" were diametrically opposed to the "Indigenous" in media and government narratives, creating an irreconcilable incompatibility between the two categories. This is exacerbated by accusations of terrorism and insinuations of illegality. The "Indigenous" protest is, thus, not only racialized but also becomes an internal enemy, a danger to "the nation." To use President Lasso's words: "They intend to seize the peace of the Ecuadorians…we will not negotiate with those

who hold Ecuador hostage!" (Primicias, 2022). The police did not hesitate to apply the progressive use of force. One contact shared the following experience, which is representative of other stories:

> The police were attacking; throwing tear gas bombs into what was supposed to be a peace zone!…In one occasion, when people came to donate food…we were about 20 meters from the peace zone and two motorcycles came and shot at us, three shots, and one of those just passed my left foot. That was….I got psychologically damaged….[During the whole strike] two friends from Arajuno were wounded, another one almost lost his eye.

The anticipation felt when my informants sent videos from their journey from the Amazon to Quito, showing the solidarity of people they encountered on their way, changed into firm determination during the strike. The same contact explained:

> And they [armed forces/police] did attack, they did evict sometimes, they did drop gas bombs. Everything to [threaten us]. But the people are united. The idea was to die in the struggle because it was clearly a struggle of all of us.

This describes the war-like situation my informants experienced during the protests. One informant from Arajuno I have met during these days had tears in her eyes when she explained that she does not know if all of her friends will return from this mobilization. The fight (*la lucha*) was clearly about life and death in the eyes of my informants; or in other words, about their future. A leader from CONFENAIE asserted:

> We will always be in struggle, in resistance. We are not going to let ourselves be convinced, how can I say, easily, no? Always since [the time of] our ancestors, they have always [achieved things] through wars resulting in many of the gains that we have had, not for the Indigenous people, for everybody.

After 16 days of failing dialogue, narrowly averting a political crisis, a stalemate was reached: The government returned to the negotiating table—not the president himself, however, but his ministers, a fact that was not taken well by the protesters; they classified it as cowardice and a sign of dishonesty. The parties agreed to a 90-day dialogue in a peace protocol to discuss CONAIE's ten demands and resolve remaining disagreements. As one informant from Arajuno concluded:

> I really and sincerely am not happy…because people really were dying, it was a crisis, total chaos, and everybody was joining us. So, I think the government bought certain leaders there, I would say, or threatened them. The big ones, the leaders of the [regional/national organizations]….We are really doing worse, with more economic crisis, the fuel went down just ten [sic] cents. That hardly helps us at all. There are really no results from this strike.

He is referring to the price of gasoline, which was eventually reduced by 15 cents instead of the requested 40 cents (the government had initially proposed 10 cents). There is a general criticism that most of the government's concessions were minor, such as increasing a social program for poorer families from 50 USD to a symbolic 55 USD. Arguably, the most important agreement was a temporary moratorium on all new oil and mining concessions. This halts the country's plans to double oil production and increase mining investment for at least 12 months; or until a law on free, prior, and informed consultation (already guaranteed in the Constitution, Art. 57.7) and a comprehensive environmental law have been passed. While CONAIE generally calls for a wholesale moratorium on current oil and mining production and the cancellation of all new concessions, the agreement is a first step to prevent extractive projects from being approved without consultation of Indigenous communities. However, it also shows that a constitutional guarantee is apparently not enough for protection, and a new law will not necessarily change this situation.

Compared to the protests in 2019, the protesters did not leave the mobilization with an overall feeling of victory. My informants—exhausted from sleep deprivation, a constant mode of alertness, even in the designated safe spaces where tear gas bombs were dropped as well, and not having their own food (a deep connection to their territory) to give them the strength to keep fighting—were happy to return home to their families and communities. They were looking forward to their own food and being in their territory again. One reason for this less victorious ending of the strike is definitely the agenda of ten demands, rather than the clear claim about just fuel subsidies in 2019. This underlines the fact that this is rather a "fight for the long run." As one informant expressed: "The fight will continue [*la lucha continua*] until sometime, some government listens to the needs of our people." Thus, the episode of June 2022 can be seen rather as a cliffhanger, leaving us wondering what will happen next.

3.2. La Lucha Continua: *An Exploration of the Yet-to-Come*

If we talk about "entangled histories" (Conrad & Randeria, 2002, p. 17) in post-colonial theory, futures should be conceived as relational as well (see, e.g., Yazzie, 2018). This ties to the conceptualization of futures as open, but at the same time colonized by the past and present (van Asselt et al., 2010, p. 8). Critical futures studies consider asymmetrical power relations. However, they also underline the possibilities of a future otherwise, an alternative to the dominant status quo and the

continuum of violence. Inayatullah (2013, p. 37) concludes: "The identification of alternative futures is thus a fluid dance of structure (the weights of history) and agency (the capacity to influence the world and create desired futures)." So, what can be expected from Ecuador's adaptive and self-reproducing structures of extractivism? And how will these developments influence social protest? Or in other words: How will this "fluid dance of structure and agency" turn out?

As recently as May 2022, President Lasso announced that "now that the world is about to move away from fossil fuels, it is time for us to extract every last drop of oil we have left" (El Universo, 2022). Consequently, the oil and emerging mining industries stay the backbone of the state's coffers. The logic is obvious: Mining replaces oil, and oil rents finance the transition to a low-carbon future. This was confirmed by a representative of the sub-ministry for mining who enthusiastically calculated how much money the Ecuadorian state is projected to generate until 2030 with mining royalties, patents, and job generation from large-scale mining projects like Fruta del Norte (gold), Mirador (copper) and Cascabel (silver, gold, and copper). He assured a bright future for the mining sector in Ecuador due to the rising demands for these critical minerals for the global energy transition: "We must turn our back to the hydrocarbon sector and replace it with the mining sector."

Regarding the energy transition, one of the head planners of the Ecuadorian Decarbonization Plan commented:

> It is true that more oil may be exploited, but it will be only in the short term, to be able to finance other activities that allow us to reach this balance, the sustainability that we are looking for. I do not see it as contradictory but as part of the transition process. Part of the transition process is to fund ourselves a little bit in order to then start to fund other activities that will allow us to reach this decarbonization of the economy.

The neo-extractivist logic used by former President Correa seems to revive. This time, however, not with the promise of a post-neoliberal but a low-carbon future. Regarding the original announcement to double the oil production, the planner calls for more understanding:

> The issue of the doubling of oil exploitation, it's obvious where this exercise of empathy comes in, isn't it?…Let's say that this government's main objective is to eradicate child malnutrition—that is one of its main objectives, so obviously this has to be done with economic resources. The current economic resources in Ecuador come mostly from the oil sector.

This is a rather distorted view of how oil rents are actually distributed. In Arajuno, one of the most affected cantons by child malnutrition (Secretaría Técnica Ecuador Crece Sin Desnutrición Infantil, 2021), not many of these oil rents are arriving as there are not as many active oil blocks operating. The annual budget of the municipality is 6,800,000 USD. After paying for salaries and running costs, there is not much left, says the Mayor: "800,000 dollars to do projects—this is nothing!…We will manage [with resources from the international cooperation and NGOs]. If we wait for the state, we will not do anything."

To conclude, the reproduction of the extractivist development model—as well as the reproduction of related problems such as corruption, lack of economic diversification, and environmental degradation (Acosta & Cajas Guijarro, 2016)—is cemented under President Lasso's government. This highlights that the (neo-)extractivist development model is very adaptive to changing contexts. Even the climate crisis itself seems to be an accelerator for oil exploitation in what some authors call a "green paradox" (Sinn, 2012). In addition, governments from both left and right have pushed mining further. This is what Alarcón et al. (2022) call a "reloaded extractivism": an intensified fossil extractivism paired with a "green extractivism" to enable the energy transition towards a low-carbon future—in particular in the Global North, which is in need for critical (and cheap) minerals from the Global South for renewable energy systems. This green extractivism is, importantly, not just limited to mining, but also encompasses the deforestation of balsa used for the construction of light-weighted aerogenerators, especially in China (Bravo, 2021). This also possibly applies to the generation of green hydrogen, a much-praised future technology for which Ecuador is currently elaborating a roadmap in coordination with the Inter-American Development Bank, following the example of other countries in the region (Ministerio de Energía y Minas, 2022).

How will this influence the social mobilizations of the future? As shown by authors in the region and beyond (Knuth et al., 2022; Lehmann & Tittor, 2021; Martínez Alier, 2020; Zografos & Robbins, 2020), mining and renewable energy projects related to the "green transition" are not less controversial than other resource-related conflicts. These new projects operate in post-colonial spaces and thus, build on historical marginalizations and exclusions of rural, peasant, Black, and Indigenous populations. Therefore, an intensified conflict panorama can be expected, especially locally. Extractivism serves as a lens to understand social protest in the streets as a "hot" expression of the otherwise invisibilized, everyday violence taking place out of sight of the cities. The increased mobilizations in 2019 and 2022, as well as the probable announcement of more mobilizations for 2023 after the evaluation of the dialogue process between CONAIE and Lasso's government, can be read as a hint that a transition is on its way. Not just towards a low-carbon future, which is unavoidable, but potentially also towards a post-extractivist society model. The Indigenous movement, with its proposal of a plurinational state, Indigenous self-determination, and

ethno-territorial rights, combined with an anti-capitalist discourse, has the potential to influence the transition towards a low-carbon future and reunite different societal sectors beyond it. In the recent national referendum on security issues, democratic institutions, and extractive practices in February 2023, CONAIE was able to influence the consultation in their favor and critically inform the population about the rather confusing framing of some questions. So far, discourses on a "just transition" or a "just transformation" (see, e.g., Alarcón et al., 2022) are not used by CONAIE to frame their proposals. However, the regional and local organizations in the Amazon have used the climate change discourse in their favor to attract foreign investment for conservation and alternative, non-extractive development projects, e.g., at the Conferences of the Parties in Glasgow or more recently in Sharm el-Sheik. As the Amazon is commonly known as "the lungs of the Earth," Indigenous communities and organizations use the strategic location of their territories to lobby in their favor and against the expansion of the extractive frontier. A leader from CONFENAIE said about the protests of 2022 that this mobilization was, in fact, not just for Indigenous people or the Ecuadorian people, but also for the planet itself:

> We, the Indigenous peoples, have always been taking care of biodiversity, fauna, and water, haven't we? We, the Indigenous sector, have 20% of the fresh water in the world….We are giving air too, purifying the air of the world, of the great powers who have companies.

This underlines the relational temporalities of past and future and the interconnections of different regions in the world. It highlights issues of (climate) justice and responsibility—and in fact, that the protests in Ecuador are significant far beyond the country's borders.

4. Conclusion

Several conclusions can be drawn from a presentist lens on the social mobilizations of 2022. First, the social protests lead by the Indigenous movement in recent years can be understood as an intent to break with the logic of the neo-colonial rentier state and thus seek a societal transformation away from the rentier society that produces insurmountable inequalities and injustices in its reproduction of coloniality. In the eyes of protesters and segments of the non-Indigenous population, this is not just a fight for Indigenous nationalities, but for all Ecuadorians, as many citizens experience the system's constraints in some way. While anti-extractive mobilizations are associated with "Indigenous issues" (Davidov, 2013), this more holistic critique and questioning of state-society relations can mobilize broader segments of society—beyond mere claims of a quasi-naturalized right to oil rents. Along with the forging of alliances, however, this transition also provokes resistance in the form of societal polarization rooted in historical patterns of exclusion, racism, and repression by the threatened rentier state itself.

Second, Ecuador has once again shown in the pandemic that the extractivist development model is not only crisis-prone but also has a detrimental effect on already vulnerable populations in these times. The coming years, marked by accelerating climate change, an inevitable energy transition, and a slowly approaching oil phase-out, will present the country with numerous challenges. On the one hand, recent governments have invested heavily in framing Ecuador as a "progressive promining state" as opposed to the "neoliberal petrostate" (Davidov, 2013). Most recently, this "green extractivism" has been reflected in a balsa deforestation boom and the development of a green hydrogen strategy. On the other hand, the climate crisis and the related energy transition could be an important impetus for the Indigenous movement. The transformation it demands coincides with the need for economic diversification when exiting oil extraction. The "oil nation" will have to redefine itself in political, social, and cultural terms. In addition to the Indigenous movement, other social groups are organizing to resist extractive projects, i.e., to actively shape an alternative imaginary of the Ecuadorian nation. One example is the current initiative of Quito Sin Minería aiming to block new mining projects in the capital's province. As of February 2023, they have collected more than the 200,000 signatures necessary to call for a referendum in the province. After an almost ten-year legal battle, the Yasunídos collective has also finally won the holding of a national referendum on the future of Yasuní National Park.

It can be concluded that "the realities of long-term extractive dependent economies" not only limits the government's room for maneuver, as path dependency hinders economic diversification, "but also fuels continued social protest" (Kohl & Farthing, 2012, p. 225). Whether these frictions in the form of social protest are productive and lead to more profound changes or whether they are stifled by socio-economic exhaustion and increasing polarization remains to be seen in the future. One thing is for sure though: *La lucha continua*.

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The author declares no conflict of interests.

References

Acosta, A. (2015). Amazonía: Violencias, resistencias, propuestas [Amazon: Violences, resistances, proposals]. *Revista Crítica de Ciencias Sociais*, *107*, 39–62.

Acosta, A., & Cajas Guijarro, J. (2016). Patologías de la abundancia: Una lectura desde el extractivismo [Pathologies of abundance: A reading from extractivism]. In H. J. Burchardt, R. Domínguez, C. Larrea, & S. Peters (Eds.), *Nada dura para siempre: Neoextractivismo tras el boom de las materias primas* [Nothing lasts forever: Neo-extractivism in the aftermath of the commodities boom] (pp. 391–427). Abya Yala.

Alarcón, P. (2021). *The Ecuadorian oil era*. Nomos.

Alarcón, P., Combariza, N., Schwab, J., & Peters, S. (2022). *Rethinking "just transition": Critical reflections for the Global South* (Policy Brief No. 01). Transnational Centre for Just Transitions in Energy, Climate and Sustainability (TRAJECTS).

Alarcón, P., & Peters, S. (2020). Ecuador after the commodities boom: A rentier society's labyrinth. *Cadernos do CEAS: Revista crítica de humanidades*, *45*(250), 251–278.

Altmann, P. (2012). Interculturalidad y plurinacionalidad como conceptos decoloniales—Colonialidad y discurso del movimiento indígena en el Ecuador [Interculturality and plurinationality as decolonial concepts—Coloniality and the discourse of the Indigenous movement in Ecuador]. In H. Cairo Carou, A. Cabezas Gónzalesz, T. Mallo Gutiérrez, E. Del Campo García, & J. Carpio Martín (Eds.), *Actas Congreso Internacional América Latina: La Autonomía de una región* [Proceedings of the International Congress Latin America: The autonomy of a region] (pp. 131–138). HAL.

Altmann, P. (2018). Tierra o territorio: La constitución de un actor político por el movimiento indígena [Land or territory: The constitution of a political actor by the indigenous movement]. In J. M. Waldmüller & P. Altmann (Eds.), *Territorialidades otras: Visiones alternativas de la tierra y del territorio desde el Ecuador* [Other territorialities: Alternative visions of land and territory from Ecuador] (pp. 213–239). Universidad Andina Simón Bolívar; Ediciones La Tierra.

Andy Alvarado, P., Calapucha Andy, C., Calapucha Cerda, L., López Shiguango, H., Shiguango Calapucha, K., Tanguila Andy, A., Tanguila Andy, D., & Yasacama Aranda, C. (2012). *Sabiduría de la cultura Kichwa de la Amazonía Ecuatoriana* [Wisdom of the Kichwa culture of the ecuadorian Amazon]. Universidad de Cuenca.

Arsel, M., Hogenboom, B., & Pellegrini, L. (2016). The extractive imperative in Latin America. *The Extractive Industries and Society*, *3*, 880–887.

Banco Central del Ecuador. (2021). *Análisis de la proforma del presupuesto general del estado año 2022* [Analysis of the proforma of the general state budget for the year 2022].

Bourdieu, P. (1979). Symbolic power. *Critique of Anthropology*, 4(13/14), 77–85.

Bourdieu, P. (2002). *Language and symbolic power*. Harvard University Press. (Original work published 1991)

Bravo, E. (2021). *Energías renovables, selvas vaciadas: Expansión de la energía eólica en China y la tala de balsa en el Ecuador* [Renewable energies, empty forests: Expansion of wind energy in china and the logging of rafts in Ecuador]. Acción Ecológica; Naturaleza con derechos.

Bryant, R., & Knight, D. M. (2019). *The anthropology of the future*. Cambridge University Press.

Carrillo, P. [@CarrilloRosero]. (2022, June 11). *La movilización o manifestación anunciada, en la práctica, es una semana de carreteras y pozos petroleros bloqueados, secuestros de policías* [The announced mobilization or demonstration, in practice, is a week of blocked highways and oil wells, kidnappings of police] [Tweet]. Twitter. https://rb.gy/8j54j

Chagnon, C. W., Durante, F., Gills, B. K., Hagolani-Albov, S. E., Hokkanen, S., Kangasluoma, S. M. J., Konttinen, H., Kröger, M., LaFleur, W., Ollinaho, O., & Vuola, M. P. S. (2022). From extractivism to global extractivism: The evolution of an organizing concept. *The Journal of Peasant Studies*, *49*(4), 760–792.

CONAIE. [Conaie Ecuador]. (2022a, November 30). Rueda de Prensa Conaie [Press conference Conaie] [Video]. https://www.facebook.com/watch/live/?ref=watch_permalink&v=1761077224255666

CONAIE. [@conaie]. (2022b, June 23). *#URGENTE Se declara la nulidad de todo el proceso en contra de Leonidas Iza Salazar* [#URGENT It is declared the nullity of the entire process against Leonidas Iza Salazar] [Photo]. Instagram. https://www.instagram.com/p/Ci-taYTup0p

CONAIE. [@conaie]. (2022c, September 26). *e viene la gran #MovilizaciónNacional el próximo 13 de junio* [The great #NationalMobilization is coming on June 13] [Photo]. Instagram. https://www.instagram.com/p/CejZQ37vX5C

CONAIE. [@conaie]. (2022d, September 26). *El diálogo para los pueblos indígenas es sagrado* [Dialogue is sacred for Indigenous peoples] [Photo]. Instagram. https://www.instagram.com/p/CfJ4VakrDGR

Conrad, S., & Randeria, S. (2002). Einleitung: Geteilte Geschichten—Europa in einer Postkolonialen Welt [Introduction: Shared stories—Europe in a postcolonial world]. In S. Conrad & S. Randeria (Eds.), *Jenseits des Eurozentrismus. Postkoloniale Perspektiven in den Geschichts- und Kulturwissenschaften* [Beyond eurocentrism. Postcolonial perspectives in history and cultural studies] (pp. 9–50). Campus.

Coronil, F. (1997). *The magical state: Nature, money, and modernity in Venezuela*. The University of Chicago Press.

Curley, A. (2021). Resources is just another word for colonialism. In M. Himley, E. Havice, & G. Valdivia (Eds.),

The Routledge handbook of critical resource geography (pp. 79–91). Routledge.

Davidov, V. (2013). Mining versus oil extraction: Divergent and differentiated environmental subjectivities in "post neoliberal" Ecuador. *The Journal of Latin American and Caribbean Anthropology*, *18*(3), 485–504.

Davies, T. (2022). Slow violence and toxic geographies: "Out of sight" to whom? *EPC: Politics and Space*, *40*(2), 409–427.

De la Torre, C. (2010). Rafael Correa's government: Post-neoliberalism, confrontation with social movements and plebiscite democracy. *Temas y Debates*, *20*, 157–172.

Eisenstadt, T. A., & West, K. J. (2019). *Who speaks for nature? Indigenous movements, public opinion, and the petro-state in Ecuador.* Oxford University Press.

El Universo. (2022, May 24). *Informe a la nación del presidente, Guillermo Lasso* [Report to the nation by the president, Guillermo Lasso] [Video]. YouTube. https://www.youtube.com/watch?v=GkNcQCztU1U

Farmer, P. (2004). An anthropology of structural violence. *Current Anthropology*, *45*(3), 305–325.

Foucault, M. (1990). *The history of sexuality: An introduction.* Penguin Books. (Original work published 1978)

Galeano, E. (1973). *Open veins of Latin America: Five centuries of the pillage of a continent*. Monthly Review Press.

Galtung, J. (1969). Violence, peace, and peace research. *Journal of Peace Research*, *6*(3), 167–191.

Galtung, J. (1990). Cultural violence. *Journal of Peace Research*, *27*(3), 291–305.

González Casanova, P. (1969). *Sociología de la explotación* [Sociology of exploitation]. CLACSO.

Grefa Andi, F. R. (2014). *Maccuruchu: Acercamiento al conocimiento indígena y la planificación en la Amazonía norte del Ecuador* [Maccuruchu: Approaching Indigenous knowledge and planning in the Northern Amazon of Ecuador]. Abya Yala.

Gudynas, E. (2011). Desarrollo, derechos de la naturaleza y buen vivir después de Montecristi [Development, rights of nature, and good living after Montecristi]. In G. Weber (Ed.), *Debates sobre cooperación y modelos de desarrollo. Perspectivas desde la sociedad civil en el Ecuador* [Debates on cooperation and development models. Perspectives from civil society in Ecuador] (pp. 83–102). Centro de Investigaciones Ciudad; Observatorio de la Cooperación al Desarrollo.

Inayatullah, S. (2013). Futures studies: Theories and methods. In BBVA (Eds.), *There's a future: Visions for a better world* (pp. 37–131). BBVA.

Instituto Nacional de Estadísticas y Censos. (2021). *Encuesta nacional de empleo, desempleo y subempleo 2021: Indicadores de pobreza y desigualdad* [National employment, unemployment and underemployment survey 2021: Poverty and inequality indicators].

Instituto Nacional de Estadísticas y Censos. (2022). *Encuesta nacional de empleo, desempleo y subempleo, enero 2022: Mercado laboral* [National survey of employment, unemployment and underemployment, January 2022: Labor market].

Iza, L., Tapia, A., & Madrid, A. (2020). *Estallido: La rebelión de Octubre en Ecuador* [Outbreak: The October rebellion in Ecuador].

Karl, T. L. (1997). *The paradox of plenty: Oil booms and petro-states*. University of California Press.

Knuth, S., Behrsin, I., Levenda, A., & McCarthy, J. (2022). New political ecologies of renewable energy. *Environment and Planning: Nature and Space*, *5*(3), 997–1013.

Kohl, B., & Farthing, L. (2012). Material constraints to popular imaginaries: The extractive economy and resource nationalism in Bolivia. *Political Geography*, *31*, 225–235.

Lalander, R., & Lembke, M. (2018). Territorialidad, indigeneidad y diálogo intercultural en Ecuador: Dilemas y desafíos en el proyecto del Estado plurinacional [Territoriality, indigeneity and intercultural dialogue in Ecuador: Dilemmas and challenges in the project of the plurinational state]. In J. M. Waldmüller & P. Altmann (Eds.), *Territorialidades otras: Visiones alternativas de la tierra y del territorio desde el Ecuador* [Other territorialities: Alternative visions of land and territory from Ecuador] (pp. 213–239). Universidad Andina Simón Bolívar; Ediciones La Tierra.

Lalander, R., & Ospina, P. (2012). Movimiento indígena y revolución ciudadana en Ecuador [Indigenous movement and the citizen revolution in Ecuador]. *Cuestiones Políticas*, *28*(48), 13–50.

Larrea-Alcázar, D., Cuvi, N., Valentim, J., Diaz, L., Vidal, S., & Palacio, G. (2021). Economic drivers in the Amazon after European colonization from the nineteen century to the middle of the twentieth century (the 1970s). In United Nations Sustainable Development Solutions Network (Eds.), *Science panel for the Amazon: Amazon assessment report 2021* (Part 1, pp. 3–26). United Nations Sustainable Development Solutions Network.

Lasso, G. [@ComunicacionEc]. (2022, June 13). *#No PodemosParar tenemos que unirnos y trabajar fuerte para sacar al Ecuador adelante* [#Wecannotstop we have to unite and work hard to move Ecuador forward] [Tweet]. Twitter. https://rb.gy/8j54j

Lehmann, R., & Tittor, A. (2021). Contested renewable energy projects in Latin America: Bridging frameworks of justice to understand "triple inequalities of decarbonisation policies." Advance online publication. *Journal of Environmental Policy & Planning*. https://doi.org/10.1080/1523908X.2021.2000381

Lessmann, J., Fajardo, J., Munoz, J., & Bonaccorso, E. (2016). Large expansion of oil industry in the Ecuadorian Amazon: Biodiversity vulnerability and conservation alternatives. *Ecology and Evolution*, *6*(14), 4997–5012.

Lu, F., Valdivia, G., & Silva, N. L. (2017). *Oil, revolution,*

and Indigenous citizenship in Ecuadorian Amazonia. Palgrave MacMillan.

Maldonado-Torres, N. (2007). On the coloniality of being: Contributions to the development of a concept. *Cultural Studies*, *21*(2), 240–270.

Martínez Alier, J. (2020). A global environmental justice movement: Mapping ecological distribution conflicts. *Disjuntiva. Crítica de Les Ciències Socials*, *1*(2). https://doi.org/10.14198/DISJUNTIVA2020.1.2.6

Ministerio de Energía y Minas. (2022, December 1). *Ecuador diseña la hoja de ruta para uso de Hidrógeno Verde con el objetivo de avanzar hacia la transición energética* [Ecuador designs the roadmap for the use of green hydrogen with the aim of advancing towards the energy transition]. https://www.recursosyenergia.gob.ec/ecuador-disena-hoja-de-ruta-para-la-produccion-y-uso-de-hidrogeno-verde-con-el-objetivo-de-avanzar-hacia-la-transicion-energetica

Munn, N. (1992). The cultural anthropology of time: A critical essay. *Annual Review of Anthropology*, *21*, 93–123.

Nixon, R. (2011). *Slow violence and the environmentalism of the poor*. Harvard University Press.

Oliva Pérez, N. (2020). Crisis en Ecuador: De protestas y privilegios [Crisis in Ecuador: Of protests and privileges]. In C. Parodi & N. Sticotti (Eds.), *Ecuador: La insurreción de octubre* [Ecuador: The October insurrection] (pp. 26–30). CLACSO.

Ospina Peralta, P. (2020). Ecuador contra Lenín Moreno [Ecuador against Lenín Moreno]. In C. Parodi & N. Sticotti (Eds.), *Ecuador: La insurreción de octubre* [Ecuador: The October insurrection] (pp. 36–42). CLACSO.

Pacari, N. (1984). Las culturas nacionales en el estado multinacional ecuatoriano [National cultures in the Ecuadorian multinational state]. *Cultura: Revista del Banco Central del Ecuador*, *6*(18), 113–123.

Parodi, C., & Sticotti, N. (2020). *Ecuador: La insurreción de octubre* [Ecuador: The October insurrection]. CLACSO.

Perreault, T. (2013). Nature and nation: Hydrocarbons, governance, and the territorial logics of "resource nationalism" in Bolivia. In A. Bebbington & J. Bury (Eds.), Subterranean struggles: New dynamics of mining, oil, and gas in Latin America (pp. 67–90). University of Texas Press.

Peters, S. (2017). Beyond curse and blessing: Rentier society in Venezuela. In B. Engels & K. Dietz (Eds.), *Contested extractivism, society and the state: Struggles over mining and land* (pp. 45–69). Palgrave Macmillan.

Peters, S. (2019). *Rentengesellschaften: Der lateinamerika-nische (Neo-)Extraktivismus im transregionalen Vergleich* [Rent societies: Latin American (Neo)extractivism in transregional comparison]. Nomos.

Pipyrou, S., & Sorge, A. (2021). Emergent axioms of violence: Toward an anthropology of post-liberal modernity. *Anthropological Forum*, *31*(1). https://doi.org/10.1080/00664677.2021.1966611

Povinelli, E. (2012). The will to be otherwise/The effort of endurance. *South Atlantic Quarterly*, *111*(3), 453–475.

Primicias. (2022, June 28). *PRIMICIAS en directo | Pronunciamiento del presidente sobre el paro nacional* [PRIMICIAS en directo | President's statement on the national strike] [Video]. YouTube. https://www.youtube.com/watch?v=ePDonnQgjiI

Puente-Izurieta, F. (2021). La protesta juvenil en las jornadas de octubre 2019 en Ecuador: Contexto, motivos y repertorios [Youth protest in the October 2019 days in Ecuador: Context, motives and repertoires]. *Universitas*, *2021*(34), 215–234. https://doi.org/10.17163/uni.n34.2021.10

Quijano, A. (2000). Colonialidad del poder, eurocentrismo y América Latina [Coloniality of power, Eurocentrism and Latin America.]. In E. Lander (Ed.), *La colonialidad del saber: Eurocentrismo y ciencias sociales. Perspectivas latinoamericanas* [The coloniality of knowledge: Eurocentrism and social sciences. Latin American perspectives] (pp. 201–246). CLACSO.

Ringel, F. (2016). Beyond temporality: Notes on the anthropology of time from a shrinking field site. *Anthropological theory*, *16*(4), 390–412.

Rivera Cusicanqui, S. (2010). *Ch'ixinakax utxiwa: Una reflexión sobre prácticas y discursos descolonizadores* [Ch'ixinakax utxiwa: A reflection on decolonizing practices and discources]. Tinta Limón.

Rojas Sasse, E. (2022, January 31). Derrames de petróleo en Ecuador: Un mal crónico [Oil spills in Ecuador: A chronic evil]. *DW*. https://www.dw.com/es/derrames-de-petr%C3%B3leo-en-ecuador-un-mal-cr%C3%B3nico/g-60615653

Sarango, L. F. (2016). El estado plurinacional y la sociedad intercultural: Una visión desde el Ecuador [The plurinational state and the inter-cultural society: A vision from Ecuador]. *Revista Direito E Práxis*, *7*(13). https://doi.org/10.12957/dep.2016.21821

Sawyer, S. (2004). *Crude chronicles: Indigenous politics, multinational oil, and neoliberalism in Ecuador*. Duke University Press.

Schavelzon, S. (2015). *Plurinacionalidad y vivir bien/buen vivir: Dos conceptos leídos desde Bolivia y Ecuador post-constituyentes* [Plurinationality and living good/good living: Two concepts read from post-constituent Bolivia and Ecuador]. Abya Yala.

Scheper-Hughes, N., & Bourgeois, P. (2004). Introduction: Making sense of violence. In N. Scheper-Hughes & P. Bourgois (Eds.), *Violence in war and peace* (pp. 1–32). Blackwell.

Schwab, J. (in press). Temporalities in friction: Planning and temporal violence. *Investigación y Desarrollo*.

Secretaría Técnica Ecuador Crece Sin Desnutrición Infantil. (2021, August 25). *La lucha contra la desnu-*

trición crónica infantil se prioriza en Pastaza [The fight against chronic child malnutrition is a priority in Pastaza]. https://www.infancia.gob.ec/la-lucha-contra-la-desnutricion-cronica-infantil-se-prioriza-en-pastaza

Serrano Mancilla, A. (2020). Fin de ciclo (corto) en Ecuador [End of (short) cycle in Ecuador]. In C. Parodi & N. Sticotti (Eds.), *Ecuador: La insurreción de octubre* [Ecuador: The October insurrection] (pp. 22–26). CLACSO.

Silveira, M., Moreano, M., Romero, N., Murillo, D., Ruales, G., & Torres, N. (2017). Geografías de sacrificio y geografías de esperanza: Tensiones territoriales en el Ecuador plurinacional [Geographies of sacrifice and geographies of hope: Territorial tensions in plurinational Ecuador]. *Journal of Latin American Geography*, *16*(1), 69–92.

Simbaña Pillajo, F. (2020). Resistencia y lucha social indígena en los Andes ecuatorianos: Paro nacional 2019 [Resistance and Indigenous social struggle in the Ecuadorian Andes: National strike 2019]. In R. Salas (Ed.), *Luchas sociales, justica contextual y dignidad de los pueblos* [Social struggles, contextual justice and dignity of hte peoples] (pp. 141–155). Ariadna Ediciones.

Sinn, H.-W. (2012). *The green paradox*. MIT Press.

Spivak, G. (1994). Can the subaltern speak? In P. Williams & L. Chrisman (Eds.), *Colonial discourse and post-colonial theory* (pp. 66–111). Columbia University Press.

Spivak, G., & Guha, R. (1988). *Selected subaltern studies*. Oxford University Press.

Stoessel, S., & Iturriza, R. (2020). Repliegue sectorial y representación universal: Formas del diálogo durante el octubre plebeyo en Ecuador [Sectoral withdrawal and universal representation: Forms of dialogue during the plebeian October in Ecuador]. In R. Gallegos (Ed.), *Octubre y el derecho a la resistencia: Revuelta popular y neoliberalismo autoritario en Ecuador* [October and the right to resistance: Popular revolt and authoritarian neoliberalism in Ecuador] (pp. 249–271). CLACSO.

Svampa, M. (2015). Commodities consensus: Neoextractivism and enclosure of the commons in Latin America. *South Atlantic Quarterly*, *114*, 65–82.

Szeman, I. (2017). Conjectures on world energy literature: Or what is petroculture? *Journal of Postcolonial Writing*, *53*(3), 277–288.

Tapia, E. (2022, October 14). Subsidio a los combustibles superará al gasto en salud de 2022 [Fuel subsidy to exceed health spending in 2022]. *Primicias*. https://www.primicias.ec/noticias/economia/subsidio-combustibles-superara-gasto-salud

Teleamazonas Ecuador. (2022, June 13). *Noticias Quito: Noticiero 24 horas* [Quito News: Newscast 24 hours] [Video]. YouTube. https://www.youtube.com/watch?v=tnVzVnmtZY4

Valdivia, G. (2008). Governing relations between people and things: Citizenship, territory, and the political economy of petroleum in Ecuador. *Political Geography*, *27*(4), 456–477.

Valladares, C., & Boelens, R. (2017). Extractivism and the rights of nature: Governmentality, "convenient communities," and epistemic pacts in Ecuador. *Environmental Politics*, *26*(6), 1015–1034.

van Asselt, M., Faas, N., Van der Molen, F., & Veenman, S. (2010). *Exploring futures for policymaking: Synthesis of "out of sight: Exploring futures for policymaking."* WRR; Scientific Council for Government Policy.

van Teijlingen, K., & Hogenboom, B. (2016). Debating alternative development at the mining frontier: Buen Vivir and the conflict around the El Mirador mine in Ecuador. *Journal of Developing Societies*, *32*(4), 382–420.

van Teijlingen, K., Leifsen, E., Fernández-Salvador, C., & Sánchez-Vázquez, L. (2017). *La Amazonía minada: Minería a gran escala y conflictos en el sur de Ecuador* [The mined Amazon: Large-scale mining and conflict in southern Ecuador]. USFQ; Abya Yala.

Welzer, H. (2011). Mentale Infrastrukturen: Wie das Wachstum in die Welt und in die Seelen kam. *Schriften zur Ökologie* [Mental infrastructures: How growth came into the world and souls. Writings on ecology] (Vol. 14). Heinrich-Böll-Stiftung.

Whitten, N. E., & Whitten, D. (2011). *Histories of the present: People and power in Ecuador*. Illinois Press.

Yasunídos. (2021). *Cronología de hechos: Defensa del Yasuní* [Chronology of facts: Defense of the Yasuní]. https://www.yasunidos.org

Yazzie, M. (2018). Decolonizing development in Diné Bikeyah: Resource extraction, anti-capitalism, and relational futures. *Environment and Society*, *9*(1), 25–39.

Zografos, C., & Robbins, P. (2020). Green sacrifice zones, or why a green new deal cannot ignore the cost shifts of just transitions. *One Earth*, *3*(5), 543–546.

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Article

The Truth Will Set You Free? The Promises and Pitfalls of Truth-Telling for Indigenous Emancipation

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Abstract
First Nations in Australia are beginning to grapple with processes of treaty-making with state governments and territories. As these processes gain momentum, truth-telling has become a central tenet of imagining Indigenous emancipation and the possibility of transforming relationships between Indigenous and settler peoples. Truth, it is suggested, will enable changed ways of knowing what and who "Australia" is. These dynamics assume that truth-telling will benefit all people, but will truth be enough to compel change and provide an emancipated future for Indigenous people? This article reports on Australian truth-telling processes in Victoria, and draws on two sets of extant literature to understand the lessons and outcomes of international experience that provide crucial insights for these processes—that on truth-telling commissions broadly, and that focusing specifically on a comparable settler colonial state process, the Canadian Truth and Reconciliation Commission. The article presents a circumspect assessment of the possibilities for Indigenous emancipation that might emerge through truth-telling from our perspective as a team of Indigenous and non-Indigenous critical scholars. We first consider the normative approach that sees truth-telling as a potentially flawed but worthwhile process imbued with possibility, able to contribute to rethinking and changing Indigenous–settler relations. We then consider the more critical views that see truth-telling as rehabilitative of the settler colonial state and obscuring ongoing colonial injustices. Bringing this analysis into conversation with contemporary debate on truth-telling in Australia, we advocate for the simultaneous adoption of both normative and critical perspectives to truth-telling as a possible way forward for understanding the contradictions, opportunities, and tensions that truth-telling implies.

Keywords
Australia; Canada; Indigenous–settler relations; reconciliation; truth and justice; truth and reconciliation; truth commissions; truth-telling

Issue
This article is part of the issue "Indigenous Emancipation: The Fight Against Marginalisation, Criminalisation, and Oppression" edited by Grace O'Brien (Queensland University of Technology), Pey-Chun Pan (National Pingtung University of Science and Technology), Mustapha Sheikh (University of Leeds), and Simon Prideaux ((In)Justice International) as part of the (In)Justice International Collective.

1. Introduction

In 2022 the state of Victoria established the Yoorrook Truth and Justice Commission, marking a new era in Australian truth-telling focused on the history of invasion and colonisation of First Nations' territories (*yoorrook* is a Wemba Wemba word meaning "truth"). Although there had been previous truth-telling processes in Australia, until the creation of Yoorrook none had been explicitly labelled as such. Yoorrook has a mandate to investigate "past and ongoing injustices experienced by Traditional Owners and First Peoples in Victoria in all areas of life since colonisation" with aims to:

- Establish an official record of the impact of colonisation on Traditional Owners and First Peoples in Victoria.
- Develop a shared understanding among all Victorians of the impact of colonisation, as well as the diversity, strength, and resilience of First Peoples' cultures.
- Make recommendations for healing, system reform, and practical changes to laws, policy, and education, as well as to matters to be included in future treaties (Yoorrook Truth and Justice Commission, 2022a, p. 75).

The demand for truth-telling in Australia re-emerged in 2017 as a component of the Uluru Statement from the Heart, a collective call from a broadly representative group of Aboriginal and Torres Strait Islander people for a "fair and truthful relationship with the people of Australia and a better future for our people based on justice and self-determination" (Referendum Council, 2017, para. 10). Work towards the Uluru Statement was led by the government-appointed Referendum Council, which staged a series of regional, deliberative dialogues around the continent designed to seek Indigenous views on proposals to "recognise" Aboriginal and Torres Strait Islander peoples in the Australian Constitution. The process leading up to the Statement has been much lauded, and there was certainly a consensus among the delegates at the final convention at Uluru in May 2017. It should be noted, however, that some delegates had earlier walked out of some regional dialogues claiming that their dissenting views were being ignored. The Uluru Statement calls for "the establishment of a First Nations Voice enshrined in the Constitution," complimented by "a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history" (Referendum Council, 2017, paras. 9 and 11)—a call that is captured by the slogan "Voice, Treaty, Truth." The federal government elected in 2022 has committed to "Voice" with plans for a referendum to be held in 2023. The 2022 federal budget also committed a modest amount to begin the work of establishing a Makarrata Commission. Significantly, there are also now treaty processes underway in several sub-national jurisdictions, and each of these treaty processes is accompanied by a commitment to truth-telling work. Thus, while Yoorrook is the first official truth-telling commission of its kind, others seem likely to soon follow in the Northern Territory (2022), Queensland (2021), and Tasmania (Warner et al., 2021). Indeed, in each of these jurisdictions, truth has been posited as an essential element of the treaty. As Kate Warner, who was appointed to consult about the treaty process with Aboriginal people in Tasmania, argued: "Once people understand the truth—the ongoing effects of dispossession—that will make it easier to accept terms of a treaty and the need for some remedy" (as cited in Blackwood, 2021).

Truth-telling, then, has become a central tenet of imagining Indigenous emancipation and the possibility of transforming relationships between Indigenous and settler peoples. As Appleby and Davis (2018, pp. 503–504) contend, the demand for truth in Australia is explicitly linked to the demand for political transformation. First Nations on this continent, they suggest, are not just seeking clarification of facts or recognition for victims but are instead seeking to renegotiate the foundations of the relationship between Indigenous people and the state. Truth, it is suggested, will enable changed ways of knowing what and who "Australia" is, forcing settler Australia to confront the legacies of its ongoing and illegitimate occupation of First Nations territories. This assumes that truth-telling will benefit all people, but most especially First Nations.

This article examines whether truth will in fact support the emancipated future for Indigenous peoples that is implied in public calls for truth-telling work. In what follows, we consider how truth-telling has the capacity to transform the relationship between Indigenous and settler peoples. We draw on what is known about the transformative potential of truth-telling and seek specifically to understand the kind of emancipation that may be possible for Indigenous peoples by considering outcomes of a similar process in a comparative settler colonial context: the Canadian Truth and Reconciliation Commission (TRC).

The tensions between Indigenous and settler aspirations for truth reveal two approaches at play: a normative view that foregrounds the promise of truth and a critical view that suggests truth-telling might contribute to sustaining settler colonialism. A normative approach to truth-telling sees such work as a potentially flawed but worthwhile process imbued with possibility, able to contribute to rethinking and changing Indigenous–settler relations. The normative approach, which we describe below as "the promise of truth" seeks to "foster a more inclusive democratic dialogue by providing official spaces for previously marginalized or silenced populations to share their stories" (Leebaw, 2008, p. 112). Truth, in this view, is positioned as a kind of agreement between Indigenous and settler peoples, rather than as a process centring the state and its violence (Henry, 2015). By contrast, we also consider a critical approach to truth-telling, described below as "the colonisation of truth." From this critical view, truth-telling is seen primarily as rehabilitative of the settler colonial state while obscuring ongoing colonial injustices. In advocating for this dual critical/normative view of truth-telling we are acknowledging that no truth-telling process will be perfect. Truth will involve what we consider a process of "important mistakes" that should not be understood as a failure of truth-telling but rather as opening a space that might instead become a site of refounding—of trust and validation of the work that is required, always between Indigenous peoples and the settler state.

In the following sections, we first provide some background on the place of truth-telling in the transitional

justice literature, highlighting the different aspirations that Indigenous and non-Indigenous peoples might bring to such processes. We then examine the promise of truth for transformation in Indigenous–settler relations, followed by a more critical analysis of how truth-telling may be colonised and function to sustain settler colonialism. In our analysis of both the promise of truth and its colonisation in practice, we examine the key themes of narrative and memory, trauma and healing, and responsibility and justice. We then look back to consider what Australia may have learned about truth-telling through past experience on this continent. Through this analysis we develop the normative/critical approach to truth-telling, suggesting where truth might lead to Indigenous freedoms and where it is more likely to shore up colonial control. We conclude by arguing that proponents of truth-telling must hold both the normative and critical perspectives in view in order to fully appreciate and manage the contradictions, opportunities, and tensions that "truth" suggests for Indigenous freedom.

2. Truth-Telling and Indigenous Peoples

Truth commissions are temporary, state-sanctioned inquiries that typically last from one to five years, and are intended to investigate particular events and examine a specific series of violations over a defined period of time (Hayner, 2010). Often led by high-profile figures with a respected human rights record, their work usually involves collecting testimony from victims and (sometimes) perpetrators, through a team of investigators and other support staff (Hamber, 2012, p. 329). Conceptually, truth commissions tend to be complex, political, and moral enterprises that "both invoke and recast history and law" (Du Toit, 2000, p. 122). Beginning in the 1980s, truth commissions have emerged as a popular method of dealing with the past in deeply divided societies. As a result of this focus, however, analysis of truth-telling processes in established Western democracies has rarely been considered from a settler colonial perspective (Henry, 2015). This means such analyses are only marginally relevant in settler colonial societies where resolution of conflict is not possible (by definition, the settler society will continue to occupy Indigenous lands), but where structural transformation in the relationship (through treaty or other means) remains an aspiration. It is only relatively recently that truth-telling processes have been used as a response to settler colonial violence—most notably via the Canadian TRC.

What First Nations seek from truth-telling is often markedly different from the desire for unity and reconciliation that motivates the state. Indeed, rather than a transition towards a shared, integrated society, Indigenous peoples may seek a transformation of settler societies to enable their freedom and the exercise of their sovereignties as distinct and self-governing peoples (Maddison & Shepherd, 2014, p. 16). And rather than seeing truth-telling as an end to a process of relational transformation, Indigenous peoples may be seeking to record their truths as a way of (re)opening a conversation about contested sovereignties and self-determination (Keynes, 2019). In other words, First Nations and settler states may pursue truth-telling processes for quite different ends. While settler governments may try to use the conclusion of a truth commission to "draw a line through history," taking responsibility for human rights abuses that it now emphasises are "firmly in the past," First Nations may be seeking to build "not a wall but a bridge," using truth-telling to "draw history into the present, and to draw connections between past policy, present policy, and present injustices," highlighting the complex ways in which "present policies reinscribe historical injustices and relations of oppression" (Jung, 2011, p. 231).

These differing aspirations reveal a deeper dynamic at play. There is considerable risk attached to the settler state's hopes for truth-telling. Historian Penny Edmonds has described such hopes in Australia as the seeking of "affective refoundings of the settler state" (Edmonds, 2016, p. 2); refoundings that might be understood as "settler moves to innocence" (Tuck & Yang, 2012, p. 10). Through truth-telling, the state seeks a moment of colonial completion, a moment in which it can place the harms of colonisation in the past and move forward as a notionally postcolonial, newly legitimate political order.

The Canadian TRC, which advanced a clear political commitment to the transformative potential of truth, has proven instructive for Australian jurisdictions seeking to establish truth-telling processes focused on Indigenous–settler relations here. The Canadian TRC, which ran from 2008–2015, is discussed as a model for both Victorian and Northern Territory treaty processes (First Peoples Assembly of Victoria, 2021; Northern Territory Treaty Commission, 2021). The focus of Canadian truth-telling was on promoting healing, reconciliation, and providing reparations by creating a platform for survivors of assimilationist residential schools (MacDonald, 2019). The mandate for the Canadian TRC, contained in Schedule N of the Indian Residential Schools Settlement Agreement (2006, p. 1), posited the Commission as the product of "an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future.''

Mixed views about the effects of truth-telling processes have been evident in Australia. While the Yoorrook Truth and Justice Commission is the first process to be labelled a truth commission, there have been three "truth-commission-like" processes that have contributed to Australian efforts to deal with the past: the Royal Commission Into Aboriginal Deaths in Custody (1989–1991), the Inquiry Into the Separation of Aboriginal Children From Their Families (1995–1997), and the work of the Council for Aboriginal Reconciliation (1991–2000). Although each of these processes followed quite different methodologies, each was commissioned to investigate forms of historic violence against

Aboriginal and Torres Strait Islander people and to educate the wider population about their contemporary impacts (Read, 2010, pp. 186–187). The Inquiry into the Separation of Aboriginal Children From Their Families, for example, received written submissions and oral evidence from Indigenous organisations, government representatives, former government employees, church representatives, and NGOs, including confidential evidence taken in private from Indigenous people affected by the policies and from adoptive and foster parents. The inquiry report, titled *Bringing Them Home*, included harrowing evidence of the forcible removal of Indigenous children that, it charged, constituted an act of genocide contrary to the UN Convention on Genocide (Short, 2008, pp. 93, 98). Read (2010, p. 288) describes the accusation of genocide as opening a "hornet's nest." The federal government contested the report's findings, unleashing a period in Australia known as the "history wars" (Macintyre & Clark, 2004).

Despite official government resistance to the findings of the report, however, the subsequent debates were influential in opening political space for a renewed examination of Indigenous–settler relations. Nevertheless, political intransigence ensured that Australia's truth-telling processes did not produce significant transformation in terms of reparations, legal reforms, or in advancing towards genuine recognition of Indigenous sovereignty. Crucially, both Indigenous deaths in custody and high rates of child removal remain key concerns. These failures are important reminders of the difficulty of securing justice and emancipation through processes like commissions. Indeed, in its report to the newly announced Yoorrook Truth and Justice Commission, the First Peoples Assembly of Victoria (2021, p. 7) insisted that this new process "cannot follow the mould of past Royal Commissions." Indigenous control of truth-telling is seen as essential for creating different outcomes in future truth-telling work, with the Northern Territory process highlighting the significance of the fact that it would be "Aboriginal people creating the terms" for the process there (Northern Territory Treaty Commission, 2021, p. 6). So, while there is past disappointment there is also much hope that new processes of truth-telling in Australia will provide a genuine pathway towards Indigenous emancipation. We explore some of these hopes in the next section.

3. The Promise of Truth

3.1. Narrative and Memory

In emergent Australian processes, the promise of truth-telling is expressed in terms of its potential to change national narratives and produce a new, shared collective memory that acknowledges crimes of the past. As Dutton (2022, p. 312) has written, "one of the central tenets of the colonial project is the way control is used to maintain a narrative of dominance, white superiority and so-called truth." Overturning the colonial narrative and replacing it with narratives that centre the harms of colonisation will, it is hoped, generate momentum for emancipatory change. This view was evident during the Referendum Council's dialogue processes where, for example at the Dubbo dialogue, the record of the meeting reports one group as noting:

> It was important to correct the record. Delegates spoke of the need to acknowledge the illegality of everything done since colonization, the first act of aggression on first contact, the extreme cruelty and violence of the government, and the impact of the forced removals. (as cited in Appleby & Davis, 2018, p. 504)

Similarly, the First Peoples Assembly of Victoria (2021, p. 7) has supported the potential for the Yoorrook Truth and Justice Commission to create "a new public narrative." The Northern Territory Treaty Commission (2021, p. 30) states that "fragments of Aboriginal truth-telling" are "scattered throughout mainstream interpretations of history" and explain their desire to place Aboriginal people at the centre of a Northern Territory narrative, "on their own terms," to generate better outcomes in the treaty process.

Similar aspirations attended the Canadian TRC. In essence, the TRC process sought to inform all Canadians about what had happened in Indian Residential Schools. Nagy (2013) makes a direct link between the call for truth and the creation of a new narrative, arguing that because the TRC was established following First Nations' advocacy, the debate should focus on how meaningful findings—such as one of genocide—could spur structural transformation in Indigenous–settler relations. As we will see next, this aspiration has partially been realised.

3.2. Trauma and Healing

Another of the possible merits of formalised truth-telling through commissions—as opposed to more strongly justice-focused approaches such as trials or criminal tribunals—is their possible contribution to the healing and recovery of victims. Where trials focus on the motivations of perpetrators, commissions are more focused on the feelings and experiences of victims (Daly & Sarkin, 2007, p. 61). Victims are supported to tell their own stories of atrocity and injustice, framed from their own perspectives, recognising them as "legitimate sources of truth with claims to rights and justice" (Du Toit, 2000, p. 136). Commissions allow for the excavation and expression of raw emotions of fear and anger, expressions of painful struggle, defeat, and survival (Villa-Vicencio, 2009, p. 75). As Martha Minow suggests: "Tears in public will not be the last tears, but knowing that one's tears are *seen* may grant a sense of acknowledgment that makes grief less lonely and terrifying" (Minow, 2000, p. 244).

The Letters Patent that established the Yoorrook Truth and Justice Commission expressed this aspiration, stating that "Hearing First Peoples' stories and acknowledging the truth about their experiences is essential for healing and justice for First Peoples" (State of Victoria, 2021, p. 2). The Northern Territory Treaty Commission (2021, p. 10) also expresses such aims, arguing that truth-telling "works to restore dignity and to begin a process of healing from the past…promoting individual and group healing through acknowledgement and validation of past trauma." There is also clear awareness of the risks involved for Indigenous people who share their experiences with a commission. The Yoorrook Truth and Justice Commission (2022), for example, has committed that all hearings will involve counsellors, health professionals, and other support staff. There is a strong focus on preventing re-traumatisation and ensuring Indigenous control over processes.

3.3. Responsibility and Justice

Finally, in this section, we consider the hopes that truth-telling will lead to settler responsibility and justice for First Nations. For many Indigenous people, truth holds out the promise of emancipation because it may compel settlers and settler states to take responsibility for the harms of colonisation. There is the hope that with responsibility there will come justice; that truth will lead colonisers to return land, make reparations, and enable Indigenous self-determination. This view was evident throughout Australia's official decade of reconciliation, during which the education of non-Indigenous peoples to "change their hearts and minds" was positioned as the first step towards change (Keynes, 2021). This strategy rested on the belief that the telling of truths was a crucial step towards further structural or institutional change. As Davis (2022, p. 26) argues: "Nascent truth-telling processes in Australia have charted a course expressly aligned with transitional justice, a global industry of theory and practice aimed at transitioning societies from conflict to democratic peace."

Almost a decade on from the end of the Canadian TRC, there remains much optimism about its transformative potential through a commitment to the 94 Calls to Action (rather than recommendations) addressing "legacy" (redress for past harms) and "reconciliation" (future actions) issues. These Calls to Action are being taken up by a range of public and private institutions and most notably through the passage of Bill C-15, which responded to Call to Action number 43 by implementing the United Nations Declaration on the Rights of Indigenous Peoples into domestic legislation. In the last decade, the Canadian national government's Indigenous rights, recognition, and implementation framework has led to the establishment of a national Reconciliation Council, a Cabinet Committee to "decolonise" Canada's laws, and reforms to improve land and self-government negotiations and fiscal policy (King & Pasternak, 2018). Not all of these changes can be directly attributed to the TRC, but it is reasonable to consider that at least some of these outcomes have been enabled by growing public awareness of, and support for, historical injustices against First Nations across Canada made possible through the work of the TRC (MacDonald, 2019).

4. The Colonisation of Truth

The hopeful, normative analysis we have outlined above suggests some of the aspirations for truth-telling in terms of Indigenous emancipation and the transformation of Indigenous–settler relations. Counter to this promise, however, is a more critical analysis that points not only to the potential shortcomings of truth but also to the further harms that truth-telling processes might enact. In this section we consider the ways in which truth has been colonised by and, at times, serves, the interests of the settler colonial order, leading not to Indigenous emancipation but to the consolidation of the colonial status quo. As with our analysis of the promise of truth, here we consider how truth has been "colonised" across the domains of narrative and memory, trauma and healing, and responsibility and justice.

4.1. Narrative and Memory

When considering the promise of truth in relation to narrative and memory, the critical view contends that no "truth" of historical injustice—indeed, no history at all—will ever be stable or uncontested. To assume otherwise is to misread the way in which historical conflicts, such as the conflict produced and sustained by invasion and colonisation, are (re)produced in narratives that, as Little (2014, pp. 12–13) contends, enables "disparate details and events" to be "brought together into a single narrative" that "pushes contradictions and complexities to one side." Despite the inherently fragmented nature of narrative and memory, there is a persistent desire attached to truth-telling work that seeks to record a single, official historical truth. This is evident, for example, in the Yoorrook objective noted above, i.e., to establish an official record of the impact of colonisation on Traditional Owners and First Peoples in Victoria.

For First Nations, this desire for an official truth may be driven by the need to establish a basis for negotiating treaties and reparations. Documented historical losses of land, people, language, and culture are an important evidentiary element in such negotiations. But while Indigenous peoples might desire a single official record in order to "inscribe their own historical experience in the history of the nation" (Jung, 2011, p. 242), as state institutions, truth commissions may seek this official history in order to restore aspects of settler legitimacy.

Indeed, in their focus on historical narratives, truth commissions may contribute to an understanding that the injustices inherent to the formation of modern state institutions are located firmly in the past rather

than acknowledging them as ongoing colonial structures (Wolfe, 2006). As Coulthard (2014, p. 127) argues in relation to the Canadian TRC, rather than acknowledging the ongoing nature of Canadian settler colonialism, the commission "temporally situates the harms of settler-colonialism in the past and focuses the bulk of its reconciliatory efforts on repairing the injurious legacy left in the wake of this history." Or as Strakosch (2016, p. 29) suggests in relation to Australia, creating an official record can be a means through which the colonial order draws a line under the past in order to "move forward as an inclusive Australian nation." This tension is evident in the temporal framing of colonisation outlined in a report to the Yoorrook Truth and Justice Commission from the First Peoples Assembly of Victoria (2021, p. 12), which reflects on the objectives of the commission as set out in the Letters Patent that created it:

> Some of these [goals] look "back" to acknowledge First Peoples' lived experiences of colonisation, the[ir] ongoing impact, and identify who was responsible for the harms. Other objectives look "forward" to create a new public narrative that includes positive stories of resilience and identifying what changes are needed to repair and prevent new harm.

Such a statement acknowledges ongoing, contemporary injustice while also suggesting that many of the harms of colonisation are situated in the past. The suggestion here is that truth-telling about this past will inform a more emancipated future for Indigenous Peoples, brought about by the act of truth-telling itself.

It is evident, however, that the outcomes of truth commissions are generally far more complex, ambivalent, and ambiguous than the production of a singular narrative of past harms that will function to prevent future harms from being perpetrated. In a comparative study of the outcomes of the Canadian TRC and outcomes of truth-telling on Japanese internment in Canada, Matsunaga (2021) argued that by producing events as unique instances of harm rather than systemic violence, the state aims to protect itself from much more significant acts of restitution. There is the risk that the truths told during formal processes may focus on individual circumstances at the expense of a focus on the ongoing structures of colonialism (Hobbs, 2018), which have always been, and continue to be, the greatest source of harm for Indigenous peoples. In their discussion paper on designing their truth-telling process, the Northern Territory Treaty Commission (2021, p. 20) recognises this issue and proposes to "not just examine atrocities, but the socioeconomic and institutional conditions that allow these to occur."

4.2. Harm and Trauma

A second area of critical analysis concerns the hope that truth will promote healing through an acknowledgement of harm and trauma. Truth-telling work inevitably involves the recounting of harmful and traumatic events, in the hope that reading these onto the public record will help to shape a wider public consciousness. Schaffer and Smith (2004) argue that the proliferation of life stories and personal narratives has come to define modern narratives of human rights. Along these lines, Reynaud (2014, p. 370) explores the "feelings rules" of the Canadian TRC, where the commission sought to create an authentic emotional expression of hurt and pain while at the same time shoehorning this into dialogues of reconciliation. There is deep ambivalence here as the significance of telling an individual or family story may have deep meaning for the teller, but in receiving these truths the settler state may diminish their impacts. The telling itself might be constructed as the reparative act, as though it is enough to merely establish an institutional mechanism for listening to narratives of harm and trauma without commitment to reparative acts that might lead to emancipation.

There is also risk attached to any process in which Indigenous peoples must represent themselves as victims of the colonial order. Tanana Athabascan scholar Dian Million argues that the discursive and subject-forming logic of trauma is counterintuitive to calls for recognition of Indigenous polities as self-determining, self-governing entities and suggests that the public embrace of "trauma" may in fact work to sidestep challenges to state sovereignty (Million, 2013). She is not alone in imploring critique of a preoccupation with trauma narratives that turn personal suffering into stories of universal horror in ways that can obscure broader processes and ameliorative strategies beyond "listening" (Feldman, 2004; Henderson, 2015). Coulthard (2014, p. 126) suggests that the expectations of Indigenous peoples in the wake of a truth-telling process centre on what the settler state sees as their "seemingly pathological inability to get over harms inflicted in the past." Counter this view, Coulthard suggests that this refusal to "move on" is a manifestation of Indigenous peoples' "righteous resentment," an expression of their "bitter indignation and persistent anger at being treated unjustly by a colonial state both historically and in the present," a sign of "critical consciousness" and "awareness of and unwillingness to reconcile ourselves with a structural and symbolic violence that is still very much present." For Coulthard (2014, p. 127), the risk in truth-telling is that, in relaying their experiences of harm and trauma, Indigenous peoples become "the primary object of repair, not the colonial relationship.''

The First Peoples Assembly report to the Yoorrook Truth and Justice Commission recognises some of these potential risks, arguing that the commission must be a "safe space" for Indigenous people (First Peoples Assembly of Victoria, 2021, p. 7). The report acknowledges that "the risk of re-traumatisation is ever present" in truth-telling work and contends that "the Commission must avoid replicating systemic injustices itself" by not protecting Indigenous peoples from potential harms.

A critical analysis of truth commissions also considers the ways in which such institutions define the types of harm and trauma that they will consider by framing the dimensions of a conflict. Commissions tend to define the category of "victimhood" in ways that are less challenging to the contemporary political order. The South African TRC was explicitly criticized for its narrow focus on particular types of harm and trauma—limited to gross violations of human rights that were already illegal under apartheid—which rendered the apartheid era a story of specific human rights violations rather than one about "long-term, systemic abuses born of a colonial project with economic objectives" (Miller, 2008, p. 280). The Canadian TRC has faced similar criticism for its exclusive focus "on the tragedy of residential schools" rather than the ongoing harms of settler colonialism (Coulthard, 2014).

4.3. Responsibility and Justice

This limited view of the harms of colonisation also directs us to a critical analysis of the limitations of truth-telling as a means of achieving Indigenous emancipation through settler responsibility and attention to justice. There are two elements to this critical view that we consider here.

The first element concerns the widespread debate about the capacity of truth commissions to hold the perpetrators of colonial harm and violence to account. The Canadian TRC excluded the possibility of prosecuting any individual implicated in testimony. There are mixed views on this institutional design choice. Nagy (2013) points to the positive possibilities that the absence of prosecution powers might enable, specifically by providing space for survivors to share their stories without pressure to "prove" these truths or meet other legal obligations and requirements. Stanton (2011) suggests that the Canadian TRC's lack of judicial power and ability to prosecute could encourage participation by "perpetrators" and that the formality and coherence of the TRC could create real force to challenge the dominant narrative. However, Stanton also concedes the limited outcomes from truth-telling that might be possible once prosecution has been excluded, suggesting that the practical impact could be limited to a national apology (which had already been delivered in 2008) and individual reparation payments (which were linked to the TRC's process). Indeed, often when injustices are identified as matters for redress through truth-telling processes, these truths are merely to be "recognised," "apologised for," and "reconciled." The completion of a truth commission may suggest to some that the important work of redress is already done.

This view of the limits to justice and responsibility that truth-telling might enable leads to our second element of concern: How is the justice that might flow from truth conceptualised? In Canada, "truth" was explicitly tied to the idea of "reconciliation." James (2017, p. 362) argues that reconciliation has become a "master keyword" in Indigenous–settler relations in Canada. In a study of media use of the term across Canada, James concludes that understandings of reconciliation are "primarily affective," focused on producing "harmonious relations achieved by a combination of survivor healing through truth-telling and settler knowledge acquisition through learning" (pp. 3–6). While these understandings may be used as a bridge to more substantive forms of emancipation for Indigenous peoples, such as through the return of land, legal jurisdiction, and access to resources, for the most part, the reduction of settler and state responsibility to "listening" and "healing" directs attention away from addressing the colonial roots of harm. Critical Indigenous scholars continue to warn of the limitations of this approach. For example, a report from the First Nations-led Yellowhead Institute (King & Pasternak, 2018, p. 4) found that the Canadian government reforms ostensibly arising from the TRC recommendations in fact served to "emphasize the supremacy of the Canadian constitutional framework" and de-link land rights and service provision, ultimately neglecting land restitution and treaty obligations.

5. Truth and Freedom

This normative and critical analysis of truth-telling suggests the deep complexities that lie behind what is often assumed to be an unproblematically good thing. Truth is painful and difficult to control. History tells us that to think otherwise is foolish. Truth assumes a form of validation that the settler state has never in reality been able to offer Indigenous people. To pursue freedom through truth requires releasing these expectations while continuing to do this urgent work anyway. Keeping both the normative and critical perspectives in view may provide a space through which truth can also make mistakes; a space in which to voice otherwise unsayable, difficult and transient ideas and experiences, a space to understand the historical and lived experience of Indigenous people's lives, which exist alongside and despite the settler state.

The emerging truth-telling processes in Australia are not the first attempts to grapple with colonial harms on this continent. We can see elements of all the hopes and concerns about truth-telling that we have outlined above in Australia's past experiences, particularly through the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families. It was through this inquiry and in subsequent debate about its findings that Australia came to know of the Stolen Generations (Read, 1999)—those Aboriginal and Torres Strait Islander people removed from their families at the hands of the settler state.

This early truth-telling process in Australia had significant impacts. Knowledge of the Stolen Generations is perhaps the only publicly accepted (although certainly not by everyone) narrative of significant wrongdoing

towards Aboriginal and Torres Strait Islander peoples (Read, 2010, p. 288). The 2008 state Apology to the Stolen Generations (Rudd, 2008) was an eventual acknowledgement that these experiences had been heard and believed and, for those individuals and families, the Apology was truly meaningful. In hindsight, however, perhaps the Apology holds an unworthy gravitas, a watershed moment that in fact allowed the nation to proceed as usual (taking children away from their families) rather than a moment of new freedom for Indigenous families wanting to live without fear of their children being removed.

This inquiry also led to further harms. Tony Birch recalls the experience of a friend who is a part of the Stolen Generations, and who had hoped that "big change" would result from the truths recounted in the *Bringing Them Home* report (Birch, 2021). The reality, however, was the experience of re-traumatisation at the hands of raging right-wing media fanning the flames of the history wars, those who denied the experience of child removal as "false memory syndrome" and an exaggeration of what really happened in the Australian colony. Not only was Birch's friend dispossessed of their family; they were also dispossessed of their right to truth-telling and their freedom to remember.

This experience of truth-telling also did not lead to responsibility and justice. Removing Indigenous children from their families remains an industry in Australia. Aboriginal children removed from their family account for 40 percent of children in the child protection system nationally (Weston, 2022, p. 15) and since the *Bringing Them Home* report was released twenty-five years ago rates of Indigenous child removal have only increased. In 2022, Aboriginal and Torres Strait Islander children are eleven times more likely to be removed from their families than non-Indigenous children (Chamberlain et al., 2022, p. 253).

It is not surprising then that, in October 2022, the Yoorrook Truth and Justice Commission announced its intention to deliver a critical issues report in June 2023 on systemic injustice experienced by First People in child protection systems (and in criminal justice), stating action on these issues cannot wait. The number of Indigenous children in child protection is predicted to more than double by 2029. The document stresses that Yoorrook will not duplicate the work of the "many reports and inquiries that have already been undertaken in this area….Rather, Yoorrook will [draw] on its unique perspective as a First Peoples' led inquiry" (Yoorrook Truth and Justice Commission, 2022a, p. 3). Yoorrook's statement insinuates the limitations of the *Bringing Them Home* report and the 2008 apology as only historical and suggests that there is an alternative way to "tell the truth."

For truth to lead to genuine emancipation, however, remains a daunting prospect. The truths told in the *Bringing Them Home* report are not truths that can be reconciled with and sustained alongside the contemporary Australian settler state. Indeed, the truth of child removal as a practice common to settler colonial states seeking to eliminate the future of Indigenous populations undermines entirely the foundation of Australia's liberal-democratic order.

For Yoorrook and other emerging truth commissions in so-called "Australia" to move beyond the status quo, a wide framing of stories will be important to grasp the totality of ongoing colonisation as well as diverse community experiences. The question, for now, is how much the new and emerging institutions focused on First Nations' truth-telling will be able to transcend past experiences. We are not advocating that the critical analysis of truth-telling should mean that we abstain from such processes in the future. Rather, we are suggesting that holding both normative and critical analyses in view can inform cautious participation in both official processes and in extra-official campaigning and mobilisation.

6. Conclusion

Truth is not linear or representative of all lived experience. Truth is tricky. It can appear to open spaces for new understandings while simultaneously shutting these spaces down and reinforcing the colonial status quo. We offer this framework of both critical and normative analysis in the hope that it will support a new history of Indigenous–settler relationality that is reflective and self-critical; in the hope that through truth-telling we may begin to know ourselves in our entirety, in our diverse experiences, while also knowing that truth is never finished and has yet to begin in Australia. This, surely, would be a kind of freedom.

The Canadian and Australian examples above demonstrate the ways in which truth-telling can be reduced to the performance of old antagonisms in a civil forum over highly specific events, for the purpose of being able to "move on" from the past. Truth-telling processes that deny structural conflict by focusing only on particular cases of wrongdoing (such as the residential schools in Canada or the Stolen Generations in Australia) have multiple effects, not all of which lead towards Indigenous emancipation.

Whether or not the new momentum around truth-telling in Australia will contribute to Indigenous emancipation is not yet clear. There is hope, certainly, and there is concern that the state will—knowingly or otherwise—co-opt such processes for their own ends. As Australia navigates this complex terrain we advocate for the simultaneous adoption of both normative and critical perspectives on truth-telling as a possible way forward for understanding the contradictions, opportunities, hopes, and tensions that are in play.

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Conflict of Interests

The authors declare no conflict of interest.

References

Appleby, G., & Davis, M. (2018). The Uluru Statement and the promises of truth. *Australian Historical Studies*, *49*(4), 501–509.

Birch, T. (2021, July 29). The Yoo-rrook Justice Commission: Seeking truth and justice. *IndigenousX*. https://indigenousx.com.au/the-yoo-rrook-justice-commission-seeking-truth-and-justice

Blackwood, F. (2021, October 10). Tasmanian treaty to navigate complex path of truth-telling, Aboriginal identity and land return. *ABC News*. https://www.abc.net.au/news/2021-10-10/aboriginal-treaty-tasmania-talks-underway/100492656

Chamberlain, C., Gray, P., Bennet, D., Elliott, A., Jackomos, M., Krakouer, J., Marriott, R., O'Dea, B., Andrews, J., Andrews, S., Atkinson, C., Bhathal, A., Bundle, G., Davies, S., Herrman, H., Hunter, S. A., Jones-Terare, G., Leane, C., Mares, S., . . . Langton, M. (2022). Supporting Aboriginal and Torres Strait Islander families to stay together from the start (SAFeST Start): Urgent call to action to address crisis in infant removals. *Australian Journal of Social Issues*, *57*(2), 252–273.

Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Daly, E., & Sarkin, J. (2007). *Reconciliation in divided societies: Finding common ground*. University of Pennsylvania Press.

Davis, M. (2022). Speaking up: The truth about truth-telling. *Griffith Review*, *76*, 25–35. https://www.griffithreview.com/articles/speaking-up

Du Toit, A. (2000). The moral foundations of the South African TRC: Truth as acknowledgment and justice as recognition. In R. I. Rotberg & D. Thompson (Eds.), *Truth v. justice: The morality of truth commissions* (pp. 122–140). Princeton University Press.

Dutton, M. (2022). Disrupting the colonial narrative. *Griffith Review*, *76*, 312–323. https://www.griffithreview.com/articles/disrupting-the-colonial-narrative

Edmonds, P. (2016). *Settler colonialism and (re)conciliation: Frontier violence, affective performances, and imaginative refoundings*. Palgrave Macmillan. https://doi.org/10.1057/9781137304544_1

Feldman, A. (2004). Memory theatres, virtual witnessing and the trauma-aesthetic. *Biography*, *27*(1), 163–202.

First Peoples Assembly of Victoria. (2021). *Tyerri Yoo-rrok "seed of truth": Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria*. https://www.firstpeoplesvic.org/reports-resources/tyerri-yoo-rrok-seed-of-truth-report-2021

Hamber, B. (2012). Transitional justice and intergroup conflict. In L. R. Tropp (Ed.), *The Oxford handbook of intergroup conflict* (pp. 328–343). Oxford University Press.

Hayner, P. (2010). *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2nd ed). Routledge.

Henderson, J. (2015). Residential schools and opinion-making in the era of traumatized subjects and taxpayer-citizens. *Journal of Canadian Studies*, *49*(1), 5–43.

Henry, N. (2015). From reconciliation to transitional justice: The contours of redress politics in established democracies. *International Journal of Transitional Justice*, *9*(2), 199–218.

Hobbs, H. (2018). Constitutional recognition and reform: Developing an inclusive Australian citizenship through treaty. *Australian Journal of Political Sciences*, *53*(2), 176–194.

Indian Residential Schools Settlement Agreement, 2006. https://www.residentialschoolsettlement.ca/settlement.html

James, M. (2017). Changing the subject: The TRC, its national events, and the displacement of substantive reconciliation in Canadian media representations. *Journal of Canadian Studies*, *51*(2), 362–397.

Jung, C. (2011). Canada and the legacy of the Indian Residential Schools: Transitional justice for Indigenous people in a nontransitional society. In P. Arthur (Ed.), *Identities in transition: Challenges for Transitional Justice in Divided Societies* (pp. 217–250).

Keynes, M. (2019). History education for transitional justice? Challenges, limitations and possibilities for settler colonial Australia. *International Journal of Transitional Justice*, *13*, 113–133.

Keynes, M. (2021). *From courtroom to classroom: Transitional justice and history education in Australia* [Unpublished PhD thesis]. University of Technology Sydney.

King, H., & Pasternak, S. (2018). *Canada's emerging Indigenous rights framework: A critical analysis* (Vol. 5). Yellowhead Institute Toronto.

Leebaw, B. A. (2008). The irreconcilable goals of transitional justice. *Human Rights Quarterly*, *30*(1), 95–118.

Little, A. (2014). *Enduring conflict: Challenging the signature of peace and democracy*. Bloomsbury Publishing.

MacDonald, D. B. (2019). *The sleeping giant awakens: Genocide, Indian residential schools, and the challenge of conciliation*. University of Toronto Press.

Macintyre, S., & Clark, A. (2004). *The history wars* (2nd ed). Melbourne University Press.

Maddison, S., & Shepherd, L. J. (2014). Peacebuilding and the postcolonial politics of transitional justice. *Peacebuilding*, *2*(3), 253–269.

Matsunaga, J. (2021). Carefully considered words: The influence of Government on truth telling about Japanese Canadian Internment and Indian Residential Schools. *Canadian Ethnic Studies*, *53*(2), 91–113.

Miller, Z. (2008). Effects of invisibility: In search of the "economic" in transitional justice. *The International Journal of Transitional Justice*, *2*, 266–291.

Million, D. (2013). *Therapeutic nations: Healing in an age of Indigenous human rights*. University of Arizona Press.

Minow, M. (2000). The hope for healing: What can truth commissions do? In R. I. Rotberg & D. Thompson (Eds.), *Truth v. justice: The morality of truth commissions* (pp. 235-260) Princeton University Press.

Nagy, R. (2013). The scope and bounds of transitional justice and the Canadian Truth and Reconciliation Commission. *International Journal of Transitional Justice*, *7*(1), 52–73.

Northern Territory Treaty Commission. (2021). *Final report*. https://treatynt.com.au/__data/assets/pdf_file/0005/1117238/treaty-commission-final-report-2022.pdf

Read, P. (1999). *A rape of the soul so profound: The return of the stolen generations*. Allen & Unwin.

Read, P. (2010). Reconciliation without history: State crime and state punishment in Chile and Australia. In F. Peters-Little, A. Curthoys, & J. Docker (Eds.), *Passionate histories: Myth, memory and Indigenous Australia.* ANU Press.

Referendum Council. (2017, May 26). *Uluru Statement from the heart*. https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF

Reynaud, A.-M. (2014). Dealing with difficult emotions: Anger at the Truth and Reconciliation Commission of Canada. *Anthropologica*, *56*(2), 369–382.

Rudd, K. (2008, February 13). *Apology to Australia's Indigenous peoples*. House of Representatives, Parliament House.

Schaffer, K., & Smith, S. (2004). *Human rights and narrated lives: The ethics of recognition*. Springer.

Short, D. (2008). *Reconciliation and colonial power: Indigenous rights in Australia*. Ashgate.

Stanton, K. (2011). Canada's Truth and Reconciliation Commission: Settling the past? *International Indigenous Policy Journal*, *2*(3).

State of Victoria. (2021). *Letter patent establishing the Yoorrook Truth and Justice Commission*. https://yoorrookjusticecommission.org.au/wp-content/uploads/2021/09/Letters-Patent-Yoo-rrook-Justice-Commission-signed-10-1.pdf

Strakosch, E. (2016). Beyond colonial completion: Arendt, settler colonialism and the end of politics. In S. Maddison, T. Clark., & R. de Costa (Eds.), *The limits of settler colonial reconciliation* (pp. 15–33) Springer.

Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.

Villa-Vicencio, C. (2009). *Walk with us and listen: Political reconciliation in Africa*. Georgetown University Press.

Warner, K., McCormack, T., & Kurnadi, F. (2021). *Pathway to truth-telling and treaty: Report to Premier Peter Gutwein*. Department of Premier and Cabinet. https://www.dpac.tas.gov.au/__data/assets/pdf_file/0029/162668/Pathway_to_Truth-Telling_and_Treaty_251121.pdf

Weston, R. (2022). *Special report under section 139(2) of the Children's Guardian Act 2019: Family is Culture Review.* Office of the Children's Guardian, New South Wales Government.

Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, *8*(4), 387–409.

Yoorrook Truth and Justice Commission. (2022a). *Interim report*. https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/06/Yoorrook-Justice-Commission-Interim-Report.pdf

Yoorrook Truth and Justice Commission. (2022b). *Issues paper 2: Call for submissions on systemic injustice in the child protection system*. https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/10/Issues-paper-2-Systemic-Injustice-in-the-Child-Protection-System.pdf

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Article

The Making and Shaping of the Young Gael: Irish-Medium Youth Work for Developing Indigenous Identities

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Abstract
Identity exploration and formation is a core rumination for young people. This is heightened in youth where flux and transition are characteristic of this liminal state and intensified further in contexts where identity is disputed and opposed, such as in Northern Ireland. In this post-colonial setting, the indigenous Irish language and community recently gained some statutory protections, but the status and place of the Irish-speaking population continue to be strongly opposed. Drawing on focus group data with 40 young people involved in the emerging field of Irish-medium youth work, this article explores how informal education offers an approach and setting for the development of identities in contested societies. Principles of emancipation, autonomy, and identity formation underpin the field of youth work and informal education. This dialogical approach to learning and welfare focuses on the personal and social development of young people and troubles those systems that marginalise and diminish their place in society. This article identifies how this youth work approach builds on language development to bring to life a new social world and space for Irish-speaking young people. It identifies political activism and kinship development as key components in strengthening individual and collective identity. This article proposes a shift in emphasis from the language-based formal education sector to exploit the under-recognised role of informal education in the development of youth identity, cultural belonging, and language revitalisation.

Keywords
Gaelic; identity; Indigenous; informal education; Irish language; Northern Ireland; youth work; youth

Issue
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1. Introduction

As a result of centuries of colonial force and plantation in Ireland, Northern Ireland inhabits the status of one of the legal jurisdictions of the UK. This political and social scenario is fiercely contested, providing the backdrop for this study where Irish language use is contentious, with limited protections and advancements for the language (Sharma, 2020).

The specific context under scrutiny in this article is the Irish-medium youth work (IMYW) sector—a relatively new mechanism of informal education for Irish-speaking young people. Drawing on focus groups carried out in 2020 with 40 young people, this study seeks to capture the specifics of this new youth work approach which upholds and promotes this marginal identity, prioritises association, and fosters political activism.

This article uses the lens of youth identities to view the phenomenon of IMYW. We outline the factors involved in the creation of a social Irish-speaking world for young people and the role herein for informal education approaches. Next, we consider how political engagement and the reclamation of indigenous language and culture intersect in this unique youth work setting.

Finally, we identify the potential to shape strong youth identities through this youth work approach, with transferability beyond the Irish-language sector.

2. Youth Identities, Language, and Performance

The complexity of identity formation presents the backdrop for this article. Identity is conceptualised as fluid and malleable (Lundgren & Scheckle, 2019, p. 53) with multiple aspects of the self developing rather than a single bounded entity (Bucholtz & Hall, 2010, p. 19). The liminal identity of youth has salience here with the formation of selves inhabiting the "between space" of adult and child. Drummond (2018, p. 171) reflects on this experimental and experiential period of identity-testing, with youth involved in "the negotiation, construction and performance of emerging identities." The formation of identities is iterative, involving both the central actor and the social witness, or "other," and invokes multiple "performances'' to create a public identity or self (Goffman, 1959). Ideas of "being" and "becoming" thus can be practised in social interactions and settings as a way of testing different impressions of self in a public world (Furlong, 2013, p. 125).

Whilst youth identities are ostensibly moulded by culturally and institutionally defined age-related milestones (Furlong, 2013), this influence is finite. Jones (2009, p. 61) notes that youth as identity is "partly self-achieved and partly ascribed by social background." Moving outside the specific ascribed labels allows for an affinity or affinities *towards* an aspect of self, rather than a fixed identity. However, these conceptualisations of youth formation do not make explicit the added complexity of identity-shaping within a contested political and post-colonial context.

Although fluidity presents as a feature of identity development, it is boxed within context and culture, "shifting and responsive to perceived boundaries and positions" (Bhabha, 1994, as cited in Lundgren & Scheckle, 2019, p. 53). Within Northern Ireland, the local context is of colonialism, whereby one state takes political control of another independent sovereignty, typically by force and sows hegemonic roots of economic, cultural, and linguistic sovereignty and dependence (Mac Ionnrachtaigh, 2021, p. 367). The ownership and reproduction of the language of the dominant class provide a pervasive legitimacy to the colonising incumbent (MacKenzie et al., 2021, p. 7). The power of language in this context is symbolic and the associated "symbolic violence" is realised through the normalisation of the English language in everyday social and economic structures of contemporary society (Bourdieu, 1991, p. 167).

Vandeyar (2008, p. 233) proposes that identity is "always influenced by history, culture and power" but that iterations of cultural reclamation are not solely straitjacketed by the past. Rather than culture as a fixed entity of "strategic essentialism," Vandeyar's conception is of culture as a creation being constructed, with ties rather than chains to the past. Furthermore, language variation and evolution are viewed as "not just a reflection of the social, but essential to its construction" (Eckert, 2016, p. 70). This opportunity for language variations and twists by new young Gaels allows for this contemporary Irish language to form part of the "social performance" of identity (Drummond, 2018, p. 173).

3. Language Loss and Restoration

Language is an indicator of both social and cultural vitality (Pine & Turin, 2017). Chandler and Lalonde (1998, pp. 209–210) set forth a series of factors involved in sustaining Indigenous communities, termed "seven cultural continuity factors"—characterised as social, political, and cultural spheres that the Indigenous community *feel* in control of or have influence in (Hallet et al., 2007, p. 392). Language is but one of these factors, with similar weight given to a degree of self-governance and having the "resources to preserve and promote cultural artefacts, traditions and histories" (Hallet et al., 2007, p. 393).

The value of language is both operational and symbolic—for communication and as a gateway to a cultural identity. Chandler and Lalonde (1998) propose that culture is symbiotic with personal strength of identity, so sought after in youth; whereby a waning culture erodes the stability of identity and self. This notion of "cultural distress" refers to the erosion of cultural histories, influences and connections (Hallet et al., 2007, p. 394). When juxtaposed with "cultural continuity," the suggestion is that distress can be experienced in two ways—first by distance from the primary culture and way of life; second, through a sense that the Indigenous community has a fragile or waning sense of control over their future. Thus, cultural distress can be both retrospective and future-minded. Lanza and Svendsen (2007, p. 293) note how "language might become important for identity when a group feels it is losing its identity due to political or social reasons.''

For Irish-language speakers on the island of Ireland, the status, policy, and practice of the Irish language is markedly different between North and South. While Irish is the first national language of the Republic of Ireland, embedded in the formal education system, with mainstream support and resourcing, within Northern Ireland the language is framed as contentious and debates over its protection and usage remain unresolved. The language has often been used as a political football (representing points "won" or "lost" in an overly simplistically unionist and republican binary). NicCraith and McDermott (2022, p. 3) purport that "the very speaking and/or promotion of a particular language by an individual or a community can…be viewed as a hostile political act." Affording language rights to one community is widely posited as the privileging of one over the other (NicCraith & McDermott, 2022, p. 3). Statutory instruments and legal provisions for the Irish language and

Irish-medium education do exist; however, the recommended protections contained in the Belfast Agreement of 1998, the St. Andrews Agreement, 2006, and the New Decade, New Approach of 2020 have been sparsely implemented. Even where the statutory duty exists for the Department of Education in Northern Ireland to "encourage and facilitate Irish-medium education" (Government UK, 1998, Article 89), its implementation is at best "imperfect" and at worst "discourage[s] and impede[s] Irish-medium education growth" (McVeigh, 2022, p. 50). To counter these faltering legal directives, the public pressure associated with An Dream Dearg ("The Red Gathering") grass-roots campaign has been instrumental in publicly agitating for Irish language structures, resources, and legislation (Mac Ionnrachtaigh, 2021, pp. 394–403); and in 2022, it successfully lobbied for Irish language legislation through Westminster (Government UK, 2022). It is within this precarious legal and political context that IMYW sits, with young Irish speakers inhabiting an awkward marginal position across policy, legislation, resourcing, and rights.

4. Youth Work, Informal Education. and Political Development

Youth work within the UK and Ireland is viewed as a distinct form of practice, different to other methods of working with young people (Hammond & Harvey, 2021). Its unique character is as an informal experiential approach to learning and development outside the formal educational curriculum. These informal approaches emphasise the personal and social development of young people and are easily integrated into contemporary policy and practice. What is often less integrated is youth work's concern with political development, described by Forrest (2010, p. 68) as "a level of collective empowerment [that] seeks to problematise the world, and to activate individuals into challenging existing social policies and political decisions."

Hurley and Treacy (1993), in their sociological analysis of youth work, outline the gradations of practice, ranging from the sociology of regulation (teaching young people how to take their rightful place in society) through to the sociology of radical change (teaching young people action skills for social transformation). For youth workers who are drawn to the ideology of radical change, their practice seeks to illuminate the structural and social issues constraining or limiting the growth of young people rather than individualising blame for social problems that have emerged from the unequal distribution of power. Within this tradition, the drive is to "try to examine ways in which…control and domination can be counteracted" (Hurley & Treacy, 1993, p. 6). The practice, both personal and political, requires a two-pronged attack: "changing human consciousness" and "changing structures" (Hurley & Treacy, 1993 p. 6). This Freirean pedagogy of conscientization works to demythologise the accepted illusions of our given realities and to awaken consciousness of oppressions (Dawson & Avoseh, 2018) with a view to using these insights towards action. For youth work, this approach is promoted and practised to deliver emancipatory learning.

5. Study Background and Methods

This work is a partnership between researchers from Ulster University and the IMYW sector. This article is derived from qualitative research, carried out in 2020, with young Irish speakers who attend Irish-medium youth clubs.

Researchers used purposive sampling, with urban and rural representation from Belfast (n = 12), Derry (n = 11), and Omagh (n = 17), with a total of 40 young people participating in focus group interviews. The sample comprised of 17 young men and 23 young women, aged 11–16 years. On average participants had been involved in IMYW for four years.

The study was designed and conducted in line with research integrity policies and granted ethical approval by the School of Applied Social and Policy Sciences at Ulster University. Participant and parental information sheets and consent forms were distributed and completed to grant permission for participant data to be used for this academic article. A coding framework was developed that enabled the data to be analysed thematically, identifying patterns of meaning and experience across the data set (Braun & Clarke, 2006) while also allowing for individual experiences to be retained.

This research process utilised a community-based participatory approach (Schubotz, 2019). This methodology is "mutually empowering" (Schubotz, 2019, p. 43) for both researchers and the respective community in generating new academic insights on contemporary youth work and new practice knowledge for application in IMYW.

6. Findings and Discussion

The findings build a picture of the development of a strong young Gael identity against a backdrop of political, social, and cultural marginalisation. Whilst IMYW practice is seen to contribute to this distinct identity, this investigation seeks to identify significant elements within this approach. Here we explore three intersecting phenomena of note in the process: first, the building of linguistic competence and confidence; second, the formation of an Irish social world for young people; and lastly, the practice of youth political activism and resistance as a response to exclusion.

6.1. The Drive to Keep the Language Alive

While the Irish-medium youth club was seen as useful in educational terms for those attending an Irish-medium post-primary school, it was particularly important amongst those no longer attending Irish-medium

schools as a means of keeping the language "alive outside of the classroom":

> I don't go to an Irish-speaking school so I could go a whole week and not speak in Irish. It's [the youth club] the only place I can get to speak in Irish, it's just great practise for me. It means I won't lose it.

This idea was repeated by a number of young people who talked about how, through attending the club, they could "keep the language up." Notions of not "losing" the language were deemed important without a clear articulation of why this was the case:

> I think it has helped me not to lose my Irish and lots of other people. This is the only chance we get to speak Irish. If you don't use it, you are going to lose it. I just think it's important that we do use it.

> I come to the club 'cause it means I can keep up [with] my Irish.

> It's good for speaking Irish if you don't go to an Irish school.

For some research participants, the importance of improving their Irish held a deeper significance tied to identity and status. According to Crystal (2000, p. 195), being a "keeper of the language" is significant, with a status *and* a responsibility attached. The status and identity of keeping the language act as drivers. Others, who did not transition to Irish-medium secondary schools, expressed their frustrations at being denied opportunities to continue their Irish language use, with one young person stating: "We will just have wasted eight years of our lives." While young people expressed the importance of keeping the language and culture alive, they also bear the burden and guilt of being part of the generation who fail to pass it on to the next (Sallabank, 2010, p. 192).

6.2. A Language That Binds

For young people navigating concepts of belonging and their place in a social world, ideas of uniqueness and similarity to others become prominent for identity formation. Self-concept here was connected to young people's shared usage of the Irish language, which offered a sense of belonging but also heightened their difference and marginalisation. Young people made a connection between their Irish language use and the intimacy created with their peers:

> When you speak Irish and you don't know anyone else that, like, does, it makes you, like, closer.

A central concept within youth work is association. Essentially, this refers to the value of belonging to something and the significance of "playing one's part in a group or association" (Doyle & Smith, 1999, p. 44). While association is less explicit within contemporary youth work generally, it was more apparent in IMYW. Young people describe it thus:

> Everyone knows each other.

> I go to the Irish club because I feel more comfortable here. If I were to go to another club, I would feel out of place but here everyone knows Irish, so I feel comfortable.

> It was like a safe zone for me.

Although young people had links to one another in the usual ways (e.g., from the same area or same school) their use of the language and their shared desire to see the language flourish elevated these connections. Being an Irish speaker brought young people into a community of other Irish speakers:

> You've a connection with people as well, with other people that have Irish. You've got, like, something in common and when you see each other in the street you can just talk it there.

> Yeah, there's a big sense of togetherness.

Community and kinship are alluded to here by the young people. Johnston-Goodstar (2020) recognises the role of Indigenous values and philosophies such as these in re-imagining of ancient cultures for contemporary living. Kinship is one such ancient ideal that is heavily nurtured and cultivated through IMYW. This notion of kinship recognises how these young Gaels inhabit a minority identity that encounters inherent tensions—the push and pull of majority and minority identity, alongside the polarities within youth identity of belonging and uniqueness.

For these young Gaels, being the bearer of the Irish language strengthens their youth identity and communal identity, generating a sense of belonging so greatly sought after in youth. It is the symbolic power of the language that yields such pride, with its connections to Indigenous roots. Being part of this language and culture offers supplementary outcomes, as it "provides its members with meaningful ways of life across the full range of human activities" (Kymlicka, 1995, as cited in McDermott & NicCraith, 2019, p. 163).

6.3. "Loose Space" for an Irish Social World

Beyond the formal school setting young people noted the significance of being able to engage with their peers in the casual, everyday engagements of "playing games," "team building," and "making food" together in the IMYW setting. The importance of having unstructured time with others was emphasised:

> The rooms to chill out, there's sofas and tables, and you can make cups of tea and you can relax.
>
> We are all friends here. No one cares here if you are acting the wag. It's a better way to get on with one another. It's not like school, you are not stressed. You can come here for a couple of hours and do whatever you want.

Whilst the environment and activities appear unremarkable, their significance lies in the creation of a social Irish-speaking world that young people can inhabit. While some live in Irish-speaking homes and attend Irish-speaking schools, what made this space distinct was how it exhibited the characteristics of what Franck and Stevens (2007) note as "loose space." These spaces move beyond the "rigid rules of curricula" (Killakoskis & Kivijarvi, 2015, p. 49) whereby negotiation and navigation of interaction become the modus operandi. The ambivalence of this informal learning environment enables change, adaptability, and non-conformity (Killakoskis & Kivijarvi, 2015, p. 49). This informal space allows for the norms of traditional formal learning to be "troubled," not just in terms of the rules of social interaction and engagement but also the rules of right and wrong that usually form the basis for formal education.

6.4. Loose Approach for a Living Language

IMYW provided a space that was not necessarily associated with the "proper performance" of the language. Speaking Irish in this setting was said to feel "more natural." Unlike school it was not about being corrected should you get it wrong, rather it was about learning through the everyday usage of a language. One young person noted:

> Because in school you are just doing boring work all day but then you get to come here, and you can get to meet with all your friends and have fun and still speak Irish.

The non-formal setting, the youth work methodologies employed, and the approach of staff and volunteers created new and vastly different learning environments from what young people were familiar with. The following illustrates what young people noted as the distinctions between school and the club:

> The way you have to talk to teachers is different from the way you talk here, to your friends in Irish. You've to be more sensible around teachers, what you say to them….I talk differently to the workers here than I would to my teachers in school.
>
> In school it's more like *you have to*, but [here] it's more like you are choosing to, so it's more better [sic].

While Killakoskis and Kivijarvi's (2015) application of "loose spaces" were related to parks and unsupervised spaces, in this case, the loose space is created by a specific approach to learning the language that permeates this informal space. Young people can have experiences of doing ordinary things in the Irish world of the Irish-speaking youth club, offering a contrast to the Irish-medium school space.

The "loose" nature of the settings (Franck & Stevens, 2007, p. 4), the shared interest in the language, and the comfort afforded through engaging with a youth programme in your primary language were significant. The informal approach of IMYW holds underdeveloped potential for language revitalization. The key lies in the creation of an Irish social world, where the young Gael can flourish.

6.5. Unique or Weird? Dual Perceptions of Marginal Communities

Young people noted feeling different to their peers because of their Irish-speaking identity. This presents a juxtaposition between being unique and special or being peculiar and at odds with societal norms. Feelings of being unique were noted by young people:

> It's something different from everyone else and, I mean, you've more than one language as well.
>
> Some people, like, friends in the English school…some of my friends be, like, "wow, it's class the way you can speak Irish."
>
> I feel special because I get to talk to people in a language that nobody else understands.

Part of this uniqueness lay in the exclusivity of their language. Being able to communicate with others in private added a furtive edge to their identity. This was mentioned here in jest but was reflective of their feelings of being part of something special: "It's like a secret club."

Being "strange" was also conveyed. They noted that some people "think it is weird" or that people in their English-speaking school would refer to them speaking in Irish as "jibber-jabber." Outside of the classroom also, young people commented that they were sometimes cautious when speaking Irish in public for fear that they would be "judged" for it. As one young person noted:

> Yeah, 'cause when you are out in public you want to speak it less, 'cause you think you'll be judged for speaking it because it's not the normal language that everyone is used to hearing.

For these young people, membership of Irish-medium youth clubs counters the prevailing sense of isolation or strangeness they might experience in an English-speaking club:

> Yeah, I think it is [better] 'cause if we were to walk into an English-speaking club we'd be out of place and we wouldn't feel how we do when we are around people who know the language that we know. You're able to get on easier.

> I think 'cause there's less of us we are more close. I think if it was an English group, there'd be more of them and you'd have friendship groups but with us, we are all friends with each other. It's better 'cause we are all friends with each other.

Reflecting this, McDermott and NicCraith (2019, p. 161) highlight the significance for minority communities in having their language recognised, as it "can be seen as a gauge by which the minority is accommodated and accepted within the majority community." They further note that the corollary also holds true—that non-recognition undermines the value, worth, and place of the minority community and identity (p. 163).

6.6. Squeezed In and Squeezed Out: Finding Space in a Hostile Place

Space, as presented by Lefebvre, is a "complex social construction" (as cited in Robinson, 2009, p. 505) whereby layers of social meaning are associated with the space, as a result of perceptions and the depth of relationship to place. These aspects of space are to be found in how young people describe and attribute meaning to the spaces they inhabit for IMYW.

For those who attended an Irish-speaking youth club in a dedicated Irish-language space, they noted how they did not have to "squeeze Irish into" non-Irish spaces—rather, this aspect of individual and collective identity was fore-fronted and celebrated. More often the Irish-speaking clubs met in rented or temporary spaces, usually populated by English-speaking clubs. Many young people made comparisons between having your own space and having a space belonging to others. They highlighted the value of a space that spoke to them in their primary language—from the posters on the wall to the chit-chat of the staff. On every level, belonging was prominent or absent:

> Where it had other youth club names up on the wall, it wasn't our hall but now this will be ours. Like the things on the wall will be in Irish. The names and things like that will be Irish. You'll feel more comfortable.

> Like what she said, like on the walls of other clubs there's this one wee page about us in Irish, but now everywhere we can just put whatever we want.

Where the space given for IMYW was felt to be squeezed into existing English-speaking youth centres, young people and workers interpreted this as undermining of their culture and identity. This "peripheral space" assumed further social significance, of an identity which is also peripheral, described by Thomassen (2009, p. 19) as "betwixt and between, home and host."

The squeeze into the space is reflective of the squeeze of funding and resources. The underfunding of IMYW was understood by many young people as an "attack" on the Irish-language sector. This perspective perceived a hierarchy within youth services, with IMYW on the bottom rung. Young people saw other English-speaking clubs open more regularly, with better-resourced centres and a wider range of programmes available:

> Like so we don't open five nights a week.

> We don't get the funding like [local statutory youth centre]….They got funding for a new club and we didn't and we've been waiting on funding for a long time, [for] an extension to our club.

> And…they go on, like, better trips than us as well, and they went to America and all.

This perceived funding hierarchy holds further significance for young people. They saw a relationship between the funding of the club and its stability and security, with the IMYW clubs "waiting on funding for a long time" in an even more precarious position. Similarly, a place that does not display the symbols, language, or markings of an Irish language identity has the capacity to erode the very values it intends to embed. This becomes a place of dissonance wherein ownership, language and the youth club participants are simultaneously belonging and outsiders. The club is not your own:

> It doesn't feel good, 'cause, like, it feels like you are being contained. So, you can't really say what you want or do what you want.

6.7. Rights, Resistance, and Fight: The Rise of Political Youth Work

Young people were aware, to varying degrees, that their Irish-medium club was not part of the mainstream, and that campaigning, protesting, and lobbying were often required to highlight the need for the funding of such provisions. As such, young people recognised that their clubs were not a guaranteed resource but rather something that had to be agitated for. They noted how they engaged with funders and policymakers as a means of raising awareness and lobbying for resourcing and protections:

> We went to the E.A. [the Education Authority has statutory responsibility for the funding of youth services in Northern Ireland], like the E.A. place, and we did a protest outside and sat down, done notes. We went down and we left, like, all notes.

> We wrote a letter about if it [Irish-medium youth club] closed down they'd have nowhere else to go.

While lobbying may have initially been instigated out of concern for their own clubs and services, the focus soon expanded as young people campaigned and protested to protect and preserve the very language itself:

> We are coming together to support the Irish Language Act.

> I think it's important that more people know about the Irish language and that they start learning it….In the club we talk about it and plan out what we are going to do. We talk about why we need it [Irish Language Act] and what we need it for.

Their engagement in various protests over cuts to funding and the status of the Irish language increased their understanding of protest, culture, heritage, and rights more generally. Through this, they developed an understanding of local politics, representation, and democracy. Having increased awareness of the differential services they experience, they exhibited greater empathy and understanding of other groups within society that were treated unequally. This was evident in projects undertaken that explored issues such as marriage equality and other social justice topics. The engagement of young people with political processes and structures is complex and often unfairly characterised as apathetic (Pontes et al., 2018). However, what was evident here was how the personal nature of their struggle enhanced their interest in and engagement with local political systems and the sense of belonging to the wider community.

Political engagement and youth activism are dominant methodologies within IMYW. The impetus for these emerges to combat the status and non-recognition of this marginalised community. However, the focus which began with the protection of Irish-medium youth services expanded into wider issues of social justice. Whilst the benefits of political development through IMYW are evident here, this approach is absent from youth work policy in Northern Ireland (Department of Education for Northern Ireland, 2013). This omission in the policy framework and subsequent funding of youth services underestimates the developmental opportunities that youth activism and political engagement offer young people.

7. Conclusion

IMYW has embraced many concepts of identity—a personal identity and a cultural identity connected to a collective identity. Kinship and belonging add to this sense of collective identity. Whilst this might ostensibly develop through a common connection to the language, this common bond tightens with the creation and sharing of a social world. Acts of resistance, political consciousness, and action add an element of resolve to this community of young people. The approach is fearless—it is not a polite youth work nor a polite approach. Fundamentally, it takes a systems-based analysis of the issues facing young people, challenging the structures and systems that exclude them. In doing this, the work is action-oriented and outward-looking, with young people feeling a strong sense of ownership and responsibility to act on their own behalf and on behalf of others. The consequence of this is a politically engaged youth population, with activism burgeoning from their own self-interest into acting for wider social justice issues. These approaches run counter to current neo-liberal individualistic hegemony and lifestyles; yet present a methodology to strengthen youth populations and youth voice.

This article proposes a missing link for language revitalization of how to create a social world for young Gaels. Language is a central element of IMYW but not the only defining feature. The development of a social world through loose space and loose approach brings the language and the language-speakers to life. For language revitalization, the teaching of language through formal education is but one strategy. Greater opportunities for growing a living language lie in the complementary non-formal education approach here outlined.

IMYW has too often been viewed as a political proxy for those language revivalists wishing to indoctrinate a new generation of young people into a collective Irish identity. This oversimplified analysis of IMYW has obscured unique approaches for youth development and identity formation, much sought after in youth culture. These approaches, rather than innovations in youth work, hark back to Indigenous philosophies of identity, kinship, and political engagement reclaimed for contemporary young people—not new ideas but ones that have lost favour in a contemporary neo-liberal society.

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Conflict of Interests

The authors declare no conflict of interests.

References

Bourdieu, P. (1991). *Language and symbolic power*. Polity Press.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, *3*(2), 77–101. https://doi.org/10.1191/1478088706qp063oa

Bucholtz, M., & Hall, K. (2010). Locating identity in language. In C. Llamas & D. Watt (Eds.), *Language and identities* (pp. 18–28). Edinburgh University Press.

Chandler, M. J., & Lalonde, C. (1998). Cultural continuity as a hedge against suicide in Canada's First Nations. *Transcultural Psychiatry*, *35*(2), 191–219.

Crystal, D. (2000). *Language death*. Cambridge University Press.

Dawson, R., & Avoseh, M. B. (2018, September 30-October 2). *Freire's conscientization and the global student: Towards emancipatory transformation* [Paper presentation]. Commission for International Adult Education, Myrtle Beach, USA https://files.eric.ed.gov/fulltext/ED597497.pdf

Department of Education for Northern Ireland. (2013). *Priorities for youth: Improving young people's lives through youth work*. Department of Education for Northern Ireland.

Doyle, M. E., & Smith, M. K. (1999). *Born and bred: Leadership, heart and informal education*. YMCA George Williams College; Rank Foundation.

Drummond, R. (2018). Maybe it's a grime [t]ing: Th-stopping among urban British youth. *Language in Society*, *47*(2), 171–196. https://doi.org/10.1017/S0047404517000999

Eckert, P. (2016). Variation, meaning and social change. In N. Coupland (Ed.), *Sociolinguistics*: *Theoretical debates* (pp. 69–85). Cambridge University Press.

Forrest, D. (2010). The cultivation of gifts in all directions: thinking about purpose. In T. Jeffs & M. K. Smith (Eds.), *Youth work practice* (pp. 54–69). Palgrave Macmillan.

Franck, K., & Stevens, Q. (2007). Tying down loose spaces. In K. Franck & Q. Stevens (Eds.), *Loose space* (pp. 1–33). Routledge.

Furlong, A. (2013). *Youth studies: An introduction*. Routledge.

Goffman, E. (1959). *The presentations of self in everyday life.* Penguin Press.

Government UK. (1998). *Education (Northern Ireland) Order 1998*. https://www.legislation.gov.uk/nisi/1998/1759/contents

Government UK. (2022). *Identity and language (Northern Ireland) Act 2022*. https://bills.parliament.uk/bills/3168

Hallet, D., Chandler, M. J., & Lalonde, C. E. (2007). Aboriginal language knowledge and youth suicide. *Cognitive Development*, *22*(3), 392–399.

Hammond, M., & Harvey, C. (2021). *Reclaiming youth work: A return to the founding principles of youth work during the Covid-19 pandemic.* ARK. https://www.ark.ac.uk/ARK/sites/default/files/2021-03/policybrief16.pdf

Hurley, L., & Treacy, D. (1993). *Models of youth work: A sociological framework*. Irish Youth Work Press.

Johnston-Goodstar, K. (2020). Decolonizing youth development: Re-imagining youthwork for Indigenous youth futures. *AlterNative: An International Journal of Indigenous Peoples*, *16*(4), 378–386.

Jones, G. (2009). *Youth*. Polity Press.

Killakoskis, T., & Kivijarvi, A. (2015). Youth clubs as spaces of non-formal learning: Professional idealism meets the spatiality experienced by young people in Finland. *Studies in Continuing Education*, *37*(1), 47–61.

Lanza, E., & Svendsen, B. A. (2007). Tell me who your friends are and I might be able to tell you what language(s) you speak: Social network analysis, multilingualism, and identity. *International Journal of Bilingualism*, *11*(3), 275–300.

Lundgren, B., & Scheckle, E. (2019). Hope and future: Youth identity shaping in post-apartheid South Africa. *International Journal of Adolescence and Youth*, *24*(1), 51–61.

Mac Ionnrachtaigh, F. (2021). Promoting sedition: The Irish language revival in the North of Ireland—Power, resistance and decolonization. In N. C. Gibson (Ed.), *Fanon today: Reason and revolt of the wretched of the earth* (pp. 365–414). Daraja Press.

MacKenzie, A., Engman, M., & McGurk, O. (2021). Overt and symbolic linguistic violence: Plantation ideology and language reclamation in Northern Ireland. *Teaching in Higher Education: Critical Perspectives*, *27*(4), 489–501.

McDermott, P., & NicCraith, M. (2019). Linguistic recognition in deeply divided societies: Antagonism or reconciliation? In G. Hogan-Brun & B. O'Rourke (Eds.), *The Palgrave handbook of minority languages and communities* (pp. 159–179). Palgrave Macmillan.

McVeigh, R. (2022). *Irish medium education and "the statutory duty": A rights perspective*. Conrad na Gaeilge.

NicCraith, M., & McDermott, P. (2022). Intracultural dialogue as a precursor to cross-community initiatives: The Irish language among Protestants/Unionists in Northern Ireland. *Identities: Global Studies in Culture and Power*. Advance online publication. https://doi.org/10.1080/1070289X.2022.2063498

Pine, A., & Turin, M. (2017). *Language revitalization.* Oxford Research Encyclopaedia of Linguistics. https://oxfordre.com/linguistics/view/10.1093/acrefore/9780199384655.001.0001/acrefore-9780199384655-e-8?rskey=e2SOSI&result=3&print

Pontes, A., Henn, M., & Griffiths, M. D. (2018). Towards a conceptualisation of young people's political engagement: A qualitative focus group study. *Societies*, *8*(1), 1–17. https://doi.org/10.3390/soc8010017

Robinson, C. (2009). Nightscapes and leisure spaces: An ethnographic study of young people's use of free space. *Journal of Youth Studies*, *12*(5), 501–514.

Sallabank, J. (2010). The role of social networks in endangered language maintenance and revitalization: The case of Guernesiais in the Channel Islands. *Anthropological Linguistics*, *52*(2), 184–205.

Schubotz, D. (2019). *Participatory research: Why and how to involve people in research*. SAGE.

Sharma, A. (2020). Whither the Irish Language Act: Language policies in Northern Ireland. *Current Issues in Language Planning*, *22*(3), 308–327.

Thomassen, B. (2009). The uses and meanings of liminal-

ity. *International Political Anthropology*, *2*(1), 5–27.
Vandeyar, S. (2008). Shifting selves: The emergence of new identities in South African schools. *International Journal of Educational Development*, *28*, 286–299.

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Commentary

Dear Reviewer *n*: An Open Letter on Academic Culture, Structural Racism, and the Place of Indigenous Knowledges, With a Question From One Indigenous Academic to the Decolonising Academics Who Are Not

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Abstract
This is an open letter on academic culture, structural racism, and the place of Indigenous knowledges.

Keywords
Indigenous knowledge; sovereignty; structural racism

Issue
This commentary is part of the issue "Indigenous Emancipation: The Fight Against Marginalisation, Criminalisation, and Oppression" edited by Grace O'Brien (Queensland University of Technology), Pey-Chun Pan (National Pingtung University of Science and Technology), Mustapha Sheikh (University of Leeds), and Simon Prideaux ((In)Justice International) as part of the (In)Justice International Collective.

Dear Reviewer *n*,

I am writing this open letter to you in response to your latest review of an Indigenous-themed article written by me, a deaf and Indigenous scholar writing on Indigenous community leadership of disability research by applying Indigenous values and methodology. You may remember me as the one whose work you deemed unfit for publication, lacking in scientific rigour and originality. I had wanted to reply to you personally, but you did not leave your name, so I write this as an open letter in order that you might recognise yourself.

By way of context, you were one of five reviewers who had their say on one of my papers. Reviewers of my work have remained silent regarding their positionality and placed my research within a range from *good* to *excellent*. *You* were the one who reported that they were not Indigenous, qualifying your position in the Indigenous research space by citing an extensive network of Indigenous collaborators. By coincidence, a self-identifying non-Indigenous reviewer is also the sole dissenting voice on my scholarly worth.

For the benefit of spectators who have wandered into this clash of cultural values within learning institutions, here is what I understand to be the essence of your criticism. You start your assessment by signalling the "originality" of my work as *poor*, its "scientific soundness" as *very poor*, and you recommend declining the submission. You then make your "constructive recommendations" by making your way through my article and providing a non-comprehensive list of structural and grammatical defects where I have failed in my clumsy attempts to make Indigenous community knowledge recognisable to institutional research. Closing your act of tough love, you leave some encouragement to "have another go" at salvaging it by restructuring the article using a form and language that is recognisable in the "Western way" of doing research. "Remove its soul," you infer, "and I shall reconsider."

Your review is the *n*th occasion that I have observed or been told by academics who are not Indigenous themselves of the legitimacy of Indigenous research within higher education. "At what point does the retelling of other Indigenous Peoples' stories constitute original research?" one lamented. "What you are doing [with community-led truth-telling] is not *really* research," stated another in an apologetic, protracted twang (being deaf as well as Indigenous, I also encounter the version that ponders whether deaf people have the *capacity* to participate in research, but let's save an account of

ableism in the academy for the next thematic edition). Having heard it all before, it was tempting to discard your review from the outset. However, its value lies in its representativeness of an anonymous view within academia that an undetermined number of others would not put their name to, remembering, of course, that the peer-review process protects you from having to put your name to it either.

If the Indigenising and decolonising agendas of universities are to be accepted in good faith, then there needs surety over the rightful place and purpose of Indigenous scholarship within them. In the spirit of accountability and reciprocity, you are as deserving of tough love as I, and my act of tough love is to draw attention to the contradiction between how you act and write when in private compared to your demonstrations of decolonisation and Indigenous allyship in public.

On one hand, the manner in which you conduct yourself in private sets and sustains Western scientific rigour as the standard of acceptance for an Indigenous researcher. Western science has not been kind to Indigenous people and people of colour. Yet Indigenous scholars are expected to suspend their values and history and conform to the Western way in order to find a home within the academy. It starts with the systematic literature review, where Indigenous scholars must first pay homage to prior research as a foundation for their scholarship, even if the prior research has actively excluded their people. Then, knowledge that comes from communities must be categorised as "grey literature," a "not quite white, not quite black" moniker that is oblivious to the odious terminology of "half-caste," "quadroons," and "octoroons" found in the types of social engineering policies that led to the removal of Indigenous children from their communities, amongst other things. The research methods must be structured and remain within the defined scope, and any issue that Indigenous people might see as important that sits outside that scope is to be left for future research. To have "impact," research must be presented within the institution as a "discovery" of knowledge, irrespective of what was well known by Indigenous people before you went into their communities with your list of research questions. These are the institutionalised artifacts that came from an era that did not have the participation of Indigenous people in the academy in mind. In uncritically regurgitating them, you are merely replicating the ways of thinking and acting that enable colonising power structures to be preserved.

Your public persona paints a different picture. As a champion for social justice within your institution, you have remonstrated for the inclusion of groups within universities. You have stood at the forefront of Indigenous rights and equality, leading the research teams that have brought Indigenous people on as advisors, acting as the mentor who guides their navigation through the university system. You are relentless in your pursuit of Indigenous people to add to your program of research. You cite select readings from the leading Indigenous scholars in critical feminism (although bypassing their criticisms of white women's privilege and assertion of Indigenous intellectual sovereignty). Your publications lament the absence of Indigenous voices in research, and you are the staunchest advocate for the next research grant that you will lead to find out why. You are an unabashed decoloniser within your institutions and you are celebrated for it.

The contrast between your publicly espoused championing of Indigenous rights with your private acts creates a dilemma that I have trouble reconciling. Your aura as a leading decoloniser is so bright that it casts a shadow over the independent sovereign voices of Indigenous scholarship that you purport to advocate for. If your future leadership credentials in the Indigenous space are to be considered, yet you are seen to abide by the power structures within Western knowledge, I have one question for you: *Where is your theory of change?*

When you have been asked this via a challenge to your institutional ways, you reply: "It is the way of the academy, as it has always been, and there is nothing to be done about it." You appear so deeply conditioned by the institutional parameters of your upbringing that there is no room for self-reflection, no accommodation of Indigenous ways of thinking and being. It is the parable of the frog and the scorpion crossing a river together: "Why did you sting me?" the frog asks as they both sink to the depths. The scorpion replies: "Because it is in my nature."

This is not change and does not cultivate the conditions that will allow for Indigenous advancement. Indigenous scholars come to learning institutions with the gift of their cultural knowledge that can contribute an understanding of social problems that Western ways of thinking have found themselves incapable of solving. You are welcome to accept this gift up to the cultural boundaries in which it can be offered. But if you are true to your decolonising aims, then this gift of knowledge is not yours to exploit, appropriate, or stand in front of.

As the frog and the scorpion find themselves interlocked in a death spiral, both are as deserving of tough love as each other. In the spirit of reciprocity, my survival message to you, Reviewer *n*, is to step back and accept the knowledge that Indigenous people bring for the gift that it is and allow it to be expressed in their own voice and exist within their own cultural values and beliefs. The harder you resist by attempting to recreate Indigenous scholarship in your own image, the less relevant you will be.

Ngarranga, djurumi (listen, and I will see you again)

Dr. Scott Avery,

deaf, Worimi

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The author acknowledges the collective body of Indigenous scholarship, both published and unpublished, that stands in solidarity in decolonising learning institutions through their sovereign voice and according to their cultural beliefs and values.

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