INTERNATIONAL HUMAN RIGHTS INTERNSHIP PROGRAM | WORKING PAPER SERIES

VOL. 11 | NO. 1 | SUMMER 2022

Who Did You Say Your Grandma Was? Indigenous Kinship Webs Giving Rise to Individual Rights and Freedoms

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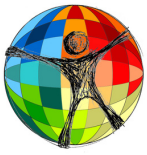

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ABSTRACT

This paper explores the ambiguous encounter between Western human rights frameworks founded on individual rights, and Indigenous kinship networks rooted in relationships. Although wide-ranging in scope and topic, this paper's argument is relatively narrow: Indigenous legalities are not necessarily incompatible with individualistic human rights frameworks, but rather flow from the more basic normative building block of kinship relationships. Although expressions of Indigenous law may be superficially consistent with Western notions of human rights, they tend to be underpinned by a complex web of kinship relationships that breathes life (and coherence) into Indigenous law.

This paper is divided into four sections. The first considers the central patterns characterizing Indigenous conceptions of kinship, with the intention of presenting kinship as an inherently valid and coherent (not simply alternative) mode of legal and social normative construction. The second examines two historic expressions of Métis law, the buffalo hunt laws and Laws of St Laurent, which superficially appear consistent with contemporary human rights understandings but only gain genuine significance through their underpinning of kinship relationships. The third and fourth sections are deliberately brief: the third synthesizes some key insufficiencies of the human rights frameworks in terms of meaningful Indigenous resurgence; and the fourth considers a normative grounding in kinship relationships as a genuine paradigm shift and path forward across disparate but connected issues.

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Introduction: The Ambiguous Encounter Between Human Rights and Indigenous Kinship

In a frequently cited [1] 2007 editorial, Maria Campbell expresses concern about the human rights framework providing the primary path forward for healing Indigenous communities, instead calling for a return to the relational principles of wahkotowin;[2] however, when the Canadian Museum of Human Rights (CMHR) opened its doors in 2014, Campbell was featured as a key figure in the *Indigenous Perspectives* gallery.[3] While this inconsistency may simply represent the ongoing co-optation of Indigenous resurgence [4] by a dominant state rhetoric of reconciliation implicitly grounded in individual rights,[5] it also indicates a fundamental ambiguity, or complex ambivalence, between Indigenous and contemporary Western normative foundations, one grounded in relationships and the other in individual rights. Campbell's measured skepticism of the human rights movement reflects this ambiguity: her gratitude for those engaged in human rights work and affirmation of her own belief

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[1] See e.g. Matthew Wildcat, "Wahkohtowin *in Action*" (2018) 27:1 Const Forum Const 13 at 14; Brenda Macdougall, *One of the Family: Metis Culture in Nineteenth-Century Northwestern Saskatchewan* (Vancouver: UBC Press, 2010) at 8.

[2] See Maria Campbell, "We need to return to the principles of Wahkotowin", *Eagle Feather News* (November 2007), online (pdf): <eaglefeathernews.com/quadrant/media//pastIssues/November_2007.pdf> at 5. Wahkotowin appears with various spellings, sometimes italicized and sometimes capitalized. I follow Campbell in this article and simply use wahktowin as my default.

[3] The CMHR's free app "Journey of Inspiration," offers a comprehensive virtual tour of the Museum's galleries.

[4] I mean Indigenous resurgence in its original radical sense, of Indigenous flourishing beyond state frameworks and politics of recognition, even in the face of inevitable state violence. See e.g. Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (North York, Ont: University of Toronto Press, 2009) [*Wasáse*].

[5] See e.g. Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

in inherent rights[6] implies that she is not *against* the human rights movement, but rather that she believes it to be an insufficient framework for genuine Indigenous healing. Similarly, Mutua's seminal article extrapolating imperialism's savages-victims-saviors metaphor into the human rights framework is punctuated by assurances that he is not contradicting the nobility or good intentions of the movement as a whole.[7] Again, there are simple explanations for these equivocations: that its entrenchment within the colonial context is problematic,[8] not the human rights movement itself; or that working within the dominant paradigm is necessary to effect meaningful, incremental change. However, a still simpler explanation for this ambiguity is that human rights intersect ambiguously with Indigenous normativities—human rights do not contradict Indigenous worldviews, but are embedded within them, flowing from the more fundamental Indigenous normativity of kinship. Western human rights are generally consistent with Indigenous perspectives, but not as the most basic social and legal normative unit: in other words, Campbell and Mutua equivocate because to do otherwise would be inaccurate.

Rather than starting with a critique of the human rights framework, which presupposes both a negative, reactive approach and Western human rights as the default normative path forward, I will instead start from an exploration of Indigenous conceptions of kinship and relationship as the normative basis of social and legal coherence, and then, with these norms foregrounded, move towards their intersection with the dominant human rights paradigm. This paper's first section, then, examines Indigenous kinship as normative foundation, focusing especially but not exclusively on the Cree principle of wahkotowin that often animates Métis worldviews. The second section engages more specifically with Métis buffalo hunt laws and the Laws of St. Laurent, two well-known nineteenth-century expressions of Métis law. This section aims to provide a non-theoretical bridge between relational Indigenous normativity and individual rights: the Métis, often called *ka tipaymishooyahk* (we

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[6] See *supra* note 2.

[7] See Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42:1 Harv Intl LJ 201 at 202, 204, 206, 219, 236.

[8] See *ibid*.

who own ourselves) or *ka tipaymishoshik* (the free people),[9] notably cherished freedom as a central value—but an examination of these expressions of law demonstrates that individual freedom, while perhaps their central value, only took on a social coherence and meaning because of the background relational principles of kinship, often but not always wahkotowin. This is the core of my argument, and hopefully can serve as a lens to illuminate at least some of the ambiguity of the clash between Indigenous and Western normative frameworks. The third section returns to the contemporary human rights paradigm, briefly examining the distortion and fragmentation of Indigenous normativities stemming from well-meaning legal instruments and institutions engaging only superficially with Indigenous communities and peoples. Severed from the kinship ties that lend coherence to Indigenous worldviews, modern institutions tend to duplicate colonial forms, perpetuating rather than alleviating assimilation and colonial violence. Finally, the fourth section considers Indigenous kinship perspectives as a path forward, in terms of clarifying the intersection of reconciliation and resurgence, identity politics, and, especially, as offering both a more optimistic and accurate paradigm for responding to the dual crises of colonialism and the climate emergency. Of course, each of these areas is only briefly sketched out: I intend only to show the framework's broad potential application as a genuine paradigm shift.

Before beginning my paper's first section, I acknowledge my own positionality as white, cis-gendered, heterosexual, male, and of settler background. This is important because—even though I am considering Indigenous kinship from the point of view of non-Indigenous actors more effectively forging spaces for resurgence—it should still be noted and recognized that "there is virtually no room for white people in resurgence. Whiteness is not centered in resurgence."[10] More basically, not positioning myself in a discussion of kinship is ironic and counterproductive, inhibiting accuracy in capturing Indigenous worldviews by formally

[9] See Kelly Saunders & Janique Dubois, *Métis Politics and Governance in Canada* (Vancouver: UBC Press, 2019) at xix.

[10] Leanne Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).

rejecting an understanding that truth, too, is a relative concept.[11] The context of kinship also demands that I note my own Mennonite heritage. Ella Deloria notes that "any [Dakota] strangers thrown together by circumstances are generally able to arrive at consistent terms for each other through some mutual relative, no matter how tortuous the path:"[12] I have been the subject of this tortuous process many times at family gatherings. During my internship with the Métis Nation-Saskatchewan (MN-S), my Mennonite heritage certainly helped others more easily and accurately place me, especially due to my dad's family growing up in Saskatchewan. Most notably, Maria Campbell could attach me to the Mennonites she had grown up with in Northern Saskatchewan—and she likely would have bumped into my grandpa if they both were in town at the same time. More subtly, the normativity of Mennonite kinship has inevitably shaped my own viewpoints, despite being raised outside formal Mennonite institutions. Noting this normative overlap is not intended to soften the fact that Mennonites operated three residential schools in Northwest Ontario in the 1970s and 1980s.[13]

Section I: Wahkotowin, and Kinship as the Foundation of Indigenous Worldviews

By starting with Indigenous kinship rather than a critique of the human rights framework's insufficiencies, I intend to re-centre Indigenous normativities. However, state projects aimed at colonizing and severing Indigenous kinship mean that kinship, although positive and pre-colonial, inevitably carries with it the politics of colonial contestation.[14] Kinship has become a central

[11] See e.g. Aaron Mills, "Aki, Anishinaabek, kaye tahsh Crown" (2010) 9:1 Ind LJ 107 at 110–11.

[12] Ella C Deloria, *Speaking of Indians* (Vermillion, S Dak: Dakota Press, 1979).

[13] See *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Library and Archives Canada Cataloguing in Publication, 2015) at 56.

[14] See Allyson D Stevenson, *Intimate Integration: A History of the Sixties Scoop and the Colonization of Indigenous Kinship* (Toronto: University of Toronto Press, 2020) at 53.

feature of the colonial struggle,[15] and so the reconstruction of kinship systems is crucial not just because of their centrality to Indigenous worldviews, but also simply because they were directly assaulted by federal assimilation policies in the USA and Canada, most notably through boarding and residential school systems.[16] When the Canadian government moved the Grassy Narrows Ojibwe in Ontario to a reserve just south of their territory, the community fell into a spiral of alcoholism, dependency, broken families, illness, and crime—with the disintegration of kinship as a root cause.[17] From Indigenous perspectives, reviving Indigenous kinship relationships is inherently crucial, but this same centrality to Indigenous worldviews has also spurred ongoing tactical state efforts to eliminate kinship networks.[18] The academic research surrounding Indigenous kinship unconsciously reflects this contested narrative terrain, as kinship principles are sometimes described in the past tense, supposedly eradicated, and sometimes revived with the present tense. No matter how positively framed, the reanimation of kinship is also an act of decolonial resistance.

My description of Indigenous kinship relationships aims to draw out some common principles between kinship networks, and so will inevitably fall into some degree of inaccurate generalization: I recognize that each conception, as essentially a distinct constitutional framework,[19] gains significance through its specific internal coherence. However, without negating the othering erasure effected through pan-Indigenizing, some degree of generalization may be useful from the point of view of better articulating the ambiguous encounter between human rights and kinship frameworks: as Brenda Macdougall explains, whether expressed as tiyospaye in Sioux, nkonegaana in Anishnaabe, etoline in Dene, or wahkootowin in Cree, "their worldview was,

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[15] See *ibid*.

[16] See Leo K Killsback, "A Nation of Families: Traditional Indigenous Kinship, the Foundation for Cheyenne Sovereignty" (2009) 15:1 AlterNative 34 at 36.

[17] See Raymond J DeMallie, "Kinship: The Foundation for Native American Society" in Russell Thornton, ed, *Studying Native American: Problems and Prospects* (Madison, Wisconsin: University of Wisconsin Press, 1998) 306 at 349.

[18] See Stevenson, *supra* note 14 at 11.

[19] See e.g. Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847.

and is, rooted in family relationships begun on the land, where the marriage of two individuals spread outward to encompass all their relatives."[20] Although variously articulated, Indigenous kinship relationships consistently lie at the heart of individual and communal normative frameworks, as the most basic unit of social ordering. Writing of the Cheyenne, Killsback explains that kinship "is the foundation from which cultural norms, customs, and rules of living were built. One might even say that the Cheyenne kinship system is in fact the foundation of the Cheyenne Nation."[21] Similarly, the articulation of Stó:lō society in the early nineteenth century as "primarily built upon complex extended family kinship networks"[22] reinforces this foundational grounding in kinship principles. Ella Deloria expresses kinship's primacy at the individual level as a simple principle, undisputed by any Dakota: "one must obey kinship rules; one must be a good relative…In the last analysis every other consideration was secondary—property, personal ambition, glory, good times, life itself."[23] More polemically, she writes that to live without the aim of being a good relative according to kinship not only means no longer being Dakota, but no longer being human: in other words, flipping the assimilatory rhetoric of colonizing state, to "be a good Dakota, then, was to be humanized, civilized."[24]

Because of the primacy of kinship in determining "the virtues that an individual should personify as a family member,"[25] kinship relationships performed the crucial and essentially legal function of regulating—that is, making predictable—social interactions: DeMallie argues that kinship was particularly effective in this regard, because "no two people were ever left to figure out all the dimensions of their relationship on their own, as happens in Euro-American society; the kinship system offered guidelines to shape relationships, providing mutually understood expectations

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[20] Macdougall, *supra* note 1 at 9.

[21] *Supra* note 16 at 35.

[22] Keith T Carlson, John S Lutz & David Schaepe, "Introduction: Decolonizing Ethnohistory" in Keith T Carlson et al, eds, *Towards a New Ethnohistory: Community-Engaged Scholarship Among the People of the River* (Winnipeg: University of Manitoba Press, 2018) 1 at 7.

[23] *Supra* note 12 at 17.

[24] *Ibid* at 18.

[25] Macdougall, *supra* note 1 at 8.

for proper behaviour."[26] Kinship relationships are often described as the glue that binds individuals together and transforms them into a nation or people,[27] but kinship also enacts the perhaps more fundamental role of infusing institutions and practices with genuine cultural coherence and meaning.[28] For the Métis, wahkotowin "directed actions and behaviours in a manner that reflected the values, taboos, virtues, and ideals of this society, which, in turn, were the laws by which people lived."[29] Put simply, Indigenous normative obligations analogous to Western law emerge from kinship, rather than a legal superstructure creating and coercively demanding normative compliance: politics for the Métis "are deeply entangled in who we are related to and what obligations, laws, and urgencies flow from our family connections across time and space."[30] This is largely consistent across Indigenous peoples, with kinship determining modes of Indigenous governance and land structure.[31]

Although providing consistent normative guidance, Indigenous kinship frameworks are nonetheless fundamentally active and adaptive rather than prescriptive:[32] kinship norms, especially when embedded in stories, "cannot hold a static, singular meaning; they must evolve and adapt over time to new and changing contexts."[33] In short, a worldview grounded in kinship demands that individuals act according to their active

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[26] *Supra* note 17 at 334.

[27] See e.g. Jean Teillet, *The North-West Is Our Mother* (Toronto: HarperCollins, 2019).

[28] See Macdougall, *supra* note 1 at 7.

[29] *Ibid* at 6.

[30] Zoe Todd, "Honouring Our Great-Grandmothers: An Ode to Caroline LaFramboise, Twentieth-Century Métis Matriarch" in Sarah Nickel & Amanda Fehr, eds, *In Good Relation: History, Gender, and Kinship in Indigenous Feminisms* (Winnipeg: University of Manitoba Press, 2020) 171 at 173.

[31] See Stevenson, *supra* note 14 at 40.

[32] Adar Charlton, "Kinship Obligations to the Environment: Interpreting Stó:lō Xexá:ls Stories of the Fraser Canyone" in Keith T Carlson et al, eds, *Towards a New Ethnohistory: Community-Engaged Scholarship Among the People of the River* (Winnipeg: University of Manitoba Press, 2018) 39 at 49.

[33] *Ibid* at 52.

familial responsibilities,[34] but it is the expansive, dynamic quality of Indigenous kinship networks that permitted kinship to act as a genuinely sustainable framework within and between peoples, capable of withstanding and diffusing turbulent historical periods of conflict and social upheaval. Demallie explains that the first step in understanding Indigenous kinship is learning to consider biological and kin categories independently of one another,[35] because kinship ties outside of blood relations are just as real even if fictive.[36] The interplay between strangers and relatives, distinct and constantly in flux, allowed for both national identity *and* the potential of healthy relationships between nations or with newcomers. For example, kinship held together all Dakota people within an all-inclusive and co-extensive relationship,[37] with a social kinship system that enabled one's friends, neighbours, and non-Dakota acquaintances—real outsiders—to become relatives.[38] Fictive kinship ties were crucial because outsiders, or strangers, were potentially dangerous;[39] after all, for Indigenous kinship frameworks to respond to historical realities, a place had to be made for everyone to belong: "the principles for creating family were applied to white fur traders when they arrived in Indian territories."[40]

The environment is not a neutral backdrop upon which kinship normativities operate, but rather an indivisible part of the relational framework: relationships "include a sense of place and land as integral to how he understands himself and those around him."[41] Kinship as a fundamental relational normativity so deeply shapes Indigenous encounters with the land that, for example, "Stó:lō people cannot know the land outside of their relationship to it."[42] In a Xe<u>x</u>á:ls story, a woman catches a salmon but selfishly

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[34] See *ibid*.

[35] See *supra* note 17 at 323.

[36] See Macdougall, *supra* note 1 at 10.

[37] See Deloria, *supra* note 12 at 17.

[38] See *ibid* at 19.

[39] See DeMallie, *supra* note 17 at 330.

[40] Macdougall, *supra* note 1 at 10.

[41] *Ibid* at 3.

[42] Charlton, *supra* note 32 at 49.

keeps it for herself and her children instead of sharing with the community: this story teaches collective obligations,[43] but also gestures towards the more general principle of humans and the environmental being so intertwined, at least figuratively, that the notion of crossing from human to environment can hold genuine normative force. According to Maria Campbell, wahkotowin encompasses the whole of creation: "all of creation is related and inter-connected to all things within it…human to human, human to plants, human to animals, to the water and especially to the earth. And in turn all of creation had responsibilities and reciprocal obligations to us."[44] Wahkotowin is a coherent, comprehensive normative framework—what Aaron Mills would call a lifeworld, or "ontological, epistemological, and cosmological framework through which the world appears to a people"[45]—because it captures both the immediate extended family *and* the "larger extended family, the international, universal community picture."[46]

Despite its comprehensive scope and social significance, Macdougall notes that the term "wahkootowin" does not appear in any of the historical records consulted for her history of the Métis from Île à la Crosse.[47] This formal historical absence demonstrates the shift in newcomer attitudes, from a posture seeking community acceptance towards an instrumental use of Indigenous languages to advance colonial agendas, fur trade expansion or missionary work, but also the way in which wahkotowin, or kinship norms more generally, lay behind more obvious cultural expressions: "while men like David Thompson recorded in detail certain types of behaviours or characteristics he found most interesting about a people with whom he lived, he did not search for the underlying purpose or meaning behind

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[43] See *ibid* at 50.

[44] *Supra* note 2 at 5.

[45] *Supra* note 19 at 850, n 6.

[46] Omeasoo Wāhpāsiw & Louise Halfe, "Conversations on Indigenous Feminism" in Sarah Nickel & Amanda Fehr, eds, *In Good Relation: History, Gender, and Kinship in Indigenous Feminisms* (Winnipeg: University of Manitoba Press, 2020) 207 at 224.

[47] See *supra* note 1 at 7.

those behaviour."[48] Macdougall notes that wahkotowin "was (and still is) the foundation for society in the [Île à la Crosse] region,"[49] but was (and continues to be) rendered doubly invisible to outsiders, firstly due to their superficial engagement with the region, and secondly through the colonial assault on matrilineal and matriarchal modes of knowing and living,[50] which sustained, animated, and gave coherence to kinship normativities. Initially hidden from outsiders, older women were the authority figures in the household, with young women entering "a circle of women's kinship."[51]

Zoe Todd recalls that when she asked her father what her great-grandmother was like: he "paused and thought for a moment. 'Oh, she was always present in the background, running everything from behind the scenes.'"[52] She recounts a story that illustrates the background organizing effected by Métis women in their community when—as this version of the story goes—a nameless settler "locked up their communally-held livestock, as it was an affront to a settler-capitalist and individualist farming ethos."[53] This plunged the community into a clear practical crisis, but also a normative one: locking up the animals "meant that principles of private property, enclosure, and settler-colonial domination over lands and animals were imposed upon the community's own formulations of shared labour across kin ties and space."[54] In this telling of the story, it was Caroline LaFramboise, Zoe Todd's great-grandmother, who rallied the community's women—not the men—together in a midnight raid that returned the livestock back to the common pasture.[55] For Todd, Caroline's action embodied Métis kinship ties as a fundamental legal principle, and represented more generally the notion of Métis

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[48] *Ibid*.

[49] *Ibid* at 8.

[50] See e.g. Gwen Brodsky, "McIvor v. Canada: Legislated Patriarchy Meets Aboriginal Women's Equality Rights" in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Halifax: Fernwood Publishing, 2014) 100.

[51] Stevenson, *supra* note 14 at 51.

[52] *Supra* note 30 at 175.

[53] *Ibid* at 177.

[54] *Ibid*.

[55] See *ibid*.

women "working insistently in the background to shape and determine how relationships unfolded across kinship entanglements."[56]

Before moving on from my discussion of Indigenous kinship relationships as foundational normative building block, I note that kinship, like any normative framework, can be deeply flawed in practice. Women may have been running everything behind the scenes, "recognized as the boss within the home,"[57] but this same normative informality, or hidden equality, meant that in cases of private domestic abuse "many women were left to fend for themselves." [58] In her history of Batoche, Diane Payment emphasizes that it was not "an idyllic society. On the contrary, social relations were charged with tensions, sensitivities, and intrigues."[59] Kinship ties meant that people, within and between communities, helped each other in times of needs—but nevertheless, "the actions of outsiders, and sometimes even their own people, were a cause of tension and division."[60] Of course, relational normativities rooted in kinship did not magically eliminate tension, nor were they intended to; similarly, I am not trying to argue that kinship is necessarily even more effective than other normative frameworks in managing healthy interactions. This section's purpose is more simply to establish that Indigenous legalities are fundamentally emergent and indivisible from, and rooted and ensconced in, kinship normativities—for the Métis, often but not always the principles of wahkotowin. By starting with this fairly substantial discussion of kinship normativities in their own right, I hope firstly to acknowledge Indigenous kinship structures as inherently viable paradigms rather than merely as compelling alternatives, and secondly to permit a more insightful and efficient analysis of modern individual rights frameworks' insufficiencies in capturing authentic Indigenous normativities.

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[56] *Ibid* at 175.

[57] Diane P Payment, *The Free People - Li gens libres: A History of the Métis Community of Batoche* (Calgary: University of Calgary Press, 2009) at 42.

[58] *Ibid* at 54.

[59] *Ibid*.

[60] *Ibid* at 87.

Section II: The Free People: Individual Freedom Foregrounded on a Collective Background in Métis Expressions of Law

I have avoided defining human rights so far for two reasons: firstly, to avoid defining Indigenous kinship normativities in opposition to human rights; and secondly, because declaring a narrow, probably legalistic and academic scope artificially sidesteps connotations that have become integral to the framework's normative force. However, this section aims to better articulate the ambiguous encounter between human rights and Indigenous normativities by considering a specific period of Métis history, so I note that by human rights I mean theoretically non-abrogable and non-derogable[61] rights or freedoms held by every individual human being. The individual, along with their dignity, is the basic normative unit of Western human rights: "rights derive from the inherent dignity of the human person."[62] Freedom has become popularly synonymous with Métis, but freedom also has a more literal source in Métis history, because an integral part of Métis ethnogenesis was freeing themselves from direct employment by the North West Company and Hundson's Bay Company: "those who were successful in maintaining good relations with their aboriginal kin were better able to remain outside the direct employment of a trading company and establish themselves as independent traders in the *pays d'en haut*. These *hivernants*…became known as freemen."[63] Speaking literally, kinship relationships allowed for Métis freedom; more broadly, an examination of two famous expressions of Métis law, buffalo hunt laws and the St. Laurent Laws, demonstrate that legal protections of Métis freedom flow from a foundation of relational kinship principles.

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[61] By states, and as opposed to civil rights. See e.g. Andrea Smith, "Human Rights and Decolonization" in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Halifax: Fernwood Publishing, 2014) 83 at 83.

[62] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 Preamble (entered into force 23 March 1976, accession by Canada 19 May 1976).

[63] Heather Devine, *The People Who Own Themselves: Aboriginal Ethnogenesis in a Canadian Family, 1660–1900* (Calgary: University of Calgary Press, 2004).

There is a reflexive Western instinct that kinship's complex web of obligations restricts rather than permits freedom: after summarizing Dakota kinship, Ella Deloria asks: "Now does that sound stuffy and imprisoning? It wasn't one bit. It came natural to a people used to nothing else."[64] In the first paragraph of her history of the Métis at Île à la Crosse, Macdougall writes, "Family is central to Ahenakew's sense of self, which he expresses in his simple yet eloquent statement, 'I'm one of the family.'"[65] In other words, individual identity and family (or kinship obligations), can be understood as mutually constructive; and historically, freedom was at the core of individual Métis identity.[66] Before examining the buffalo hunt laws and Laws of St. Laurent, I recognize that both are particularly notable, because they are internal normative codes safeguarding Métis conceptions of freedom. Like kinship ties—or perhaps partially because rooted in kinship principles—the Métis way of life entailed resistance, and the bulk of Métis political organization looked outward, forced to respond defensively to external colonial threats.[67]

Alexander Ross, an early historian whose work provides an eyewitness account of the 1840 hunt, emphasized that the Métis "cherish freedom as they cherish life,"[68] and "cordially detest all the laws and restraints of civilized life, believing all men were born to be free."[69] Ross, of course, proudly recounts his attempts "to turn their thoughts into a civilized channel…a licentious freedom is their besetting sin;"[70] but if he had lived after the Second World War, he likely would have been struck by the words he chose to describe the kernel of Métis values, "believing all men were born to be free," continuing seamlessly into the rest of the first article

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[64] *Supra* note 12 at 21.

[65] *Supra* note 1 at 1. Lawrence Ahenakew, a Métis man who grew up at Sandy Point, is the narrator of the book's opening quote on ancestral connections across land and family.

[66] See e.g. Saunders & Dubois, *supra* note 9 at 19.

[67] See *ibid* at 39.

[68] Alexander Ross, *The Red River Settlement: Its Rise, Progress and Present State: With Some Account of Native Races and Its General History to the Present Day* (London: Smith Elder and Co, 1856) at 256.

[69] *Ibid*.

[70] *Ibid* at 252.

of the Universal Declaration of Human Rights, "and equal in dignity and rights."[71] The buffalo hunt was the heart of Métis life on the prairies, especially valued by the Métis because they "were free on the Prairie,"[72] and the function of the buffalo hunt laws was roughly equivalent to the contemporary human rights framework—ensuring minimal standards accessible to every individual. Participation in hunts was open to all: Métis trader Louis Goulet recalls that once an expedition was planned, "the news was announced from the pulpit and by criers in as many parishes and missions as possible, telling people that if anybody wanted to join a buffalo-hunting caravan, all they had to do was to be at a certain place on a certain day at a certain time."[73] Similarly, everyone had to wait for a signal before undertaking any hunting,[74] guaranteeing equal opportunities to achieve success. Even the more prohibitive rules, such as those ordering and restricting individual movement, can be interpreted as consistent with human rights, because they were necessary to protect the general safety and freedom of the group, and in turn its composite (from a human rights perspective) individual rights holders. The bulk of the buffalo hunt laws are consonant with the human rights framework because the laws retain their coherence even when reasoning backwards from individual rights holders as the basic normative unit.

However, a more careful consideration of the buffalo hunt laws, especially in their mode of administration, indicates that relational kinship principles lie behind the code's apparent normative consistency with human rights. The hunt's leadership was chosen democratically, with each participant gathering at an initial assembly to vote for a first and second leader, as well as a council of at least twelve.[75] The council immediately assumed its duties, which were wide-ranging and grounded in absolute

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[71] *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 art 1.

[72] Marcine Ferland, *Au temps de la Prairie: L'histoire des Métis de l'Ouest canadien racontée par Auguste Vermette, neveu de Louis Riel*, 2nd ed (Saint-Boniface, Les Éditions du Blé, 2006) at 115 [translated by author].

[73] Guillaume Charette, *Vanishing Spaces: Memoirs of Louis Goulet*, translated by Ray Ellenwood (Winnipeg: Editions Bois-Brulés, 1976) at 18–19.

[74] See *ibid* at 21; Ross, *supra* note 68 at 249.

[75] See Charette, *supra* note 73 at 18–19.

community trust in its legitimacy and integrity: Goulet emphasizes that he cannot "remember ever having first-hand knowledge of, or even hearing about, a case where the authority or decision of a council was ever even discussed, let alone challenged. And yet there must have been some areas of dispute, especially on the question of punishments varying according to the gravity of the crime."[76] After all, the council's discretionary authority extended well beyond the strict administration of the expedition's agreed-upon rules: "the council's decisions were law, entirely and everywhere, for the duration of the journey."[77] The buffalo hunt rules' general consistency with human rights, as a legal code that can be interpreted as emerging from individual freedoms as a basic normative unity, is not contradicted by the presence of underlying kinship normativities; however, these kinship relationships must be considered necessary to the proper functioning of a code apparently based on individual freedoms. A coherent framework centred around protecting individual freedoms is possible because of a more general entrenchment in kinship principles.

The absolute community trust in the legitimacy of the hunt's governing council reflects the position of relational normativities as the basic social and legal building block. Firstly, everyone considered an insider took on an assumed default posture of responsibility rather than selfishness;[78] and secondly and more importantly, the primacy of kinship ties meant that temporary governing roles only held meaning if consistent with established binding familial and fictive relationships. In other words, kinship ties resulted in a radical connective equality between community members, which then permitted individuals to take up temporary positions of authority with full community trust and legitimacy. However, an underlying foundation of kinship relationships does not, of course, result in a seamless unification of relational and individual rights frameworks. Although certain individual freedoms (here, access to full and equal participation in hunts) were explicitly protected as a fundamental good that all community members had a right to access, the significance of

[76] *Ibid* at 21.

[77] *Ibid*.

[78] Specifically, the assumption that basic individual striving tends to be oriented towards fulfilling relational obligations. See e.g. Deloria, *supra* note 12 at 25.

sustaining harmonious kinship relationships inevitably tended to undermine individual rights, especially in procedural terms. Most strikingly, Goulet recounts an instance of a whole family put to death in their sleep: the Deschamps, apparently "well-known as a bad lot," had "been caught red-handed breaking all the rules including the ones about robbery and immortality," even attacking a member of the council, and were found dead in their tent one morning.[79] Less shockingly, I note the large-scale waste of a typical eighteenth-century hunt: Ross is loose on details, but estimates that two-thirds of harvested buffalo meat was wasted;[80] and Payment asserts that less-tender meat was simply left behind on the prairies.[81] There is a problematic tendency, especially in Western accounts, to consider the Métis as a kind of abstract experiment that blends Western and Indigenous worldviews:[82] I do not mean to imply that the Métis embody an idealized, romantic synthesis of individual and collective normativities, but more simply that the Métis's coherent individual rights framework flows from a grounding in kinship normativities.

The same apparently paradoxical picture, of formal individual freedoms deriving from background kinship obligations, characterizes the Laws of St. Laurent,[83] crafted in 1873 after Canadian persecution drove the Métis westward from the Red River Valley.[84] The great Métis leader, Gabriel Dumont, explained that "we left Manitoba because we were not free, and we came here, to a country that was still wild, to be free;"[85] and again, this freedom was entrenched in a positive legal code broadly consistent with the human rights framework. The Laws performed the classical human rights functions of safeguarding individuals from excessive state infringement on their rights, and

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[79] Charette, *supra* note 73 at 21.

[80] See *supra* note 68 at 264.

[81] See *supra* note 57 at 167.

[82] See e.g. Marcel Girard, *The Métis in the Canadian West*, translated by George Woodcock (Edmonton: University of Alberta Press, 1986).

[83] *Copy of the Laws and Regulations Established for the Colony of St. Laurent on the Saskatchewan*, 10 December 1873, online (pdf): <metisnationsk.com/wp-content/uploads/2019/09/MN-S-Laws-Regulations-St.-Laurent.pdf>.

[84] See e.g. Teillet, *supra* note 27.

[85] Denis Combet, *Gabriel Dumont, Mémoires/Memoirs* (Saint-Boniface: Éditions du Blé, 2006) at 47.

ensuring that basic needs are at least minimally met: the code's first articles prescribed checks and penalties on the elected council, with steeper penalties attached to higher positions;[86] while access to key cultural activities within the community was guaranteed.[87] The code was silent on violent crimes, however, and demanded that nobody appeal any council decision, especially not to a colonial court: "no one is permitted to enjoy the privileges of this community except on the express condition of submitting to this law."[88] These two apparent deficiencies can be explained as symptomatic of a fledgling constitutionalism, but Woodcock's account in his rather romantic biography of Dumont hints at the code's underlying foundation of kinship as a more satisfying answer: "the assembly felt it politic to leave such difficult matters to existing custom, trusting their laws to reduce the incidence of excuses for violence."[89]

Kinship, of course, is not haphazard custom, but rather a long-standing, principled normative core responsive to the most significant criminal violations and existential threats. James Sákéj Youngblood Henderson explains that *wáhkôtowin* "is not entertained as ideals of doctrines, but as relationship or attitudes that generate particular behaviours, as a spirit or mentality, which establishes its central beliefs and unifying teachings;"[90] and the general assembly that established the St. Laurent Laws, and the community's leaders, is perhaps best understood as a commitment to relational normativities as the core—or from a Western point of view, constitutional—organizing principle. According to Woodcock, the assembly began with choosing the leaders: the community elected Gabriel Dumont as president and an accompanying council of eight—and when the assembly asked the council to take an oath "to carry out their duties faithfully and give judgment according to the dictates of their consciences…Dumont answered that he would do this only if the members of the

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[86] See *supra* note 83, 1–5.

[87] See *ibid*, 23, 24, 28.

[88] *Ibid*, 19.

[89] George Woodcock, *Gabriel Dumont: The Métis Chief and His Lost World*, ed by JR Miller (Toronto: Broadview Press, 2003) at 113.

[90] James Sákéj Youngblood Henderson, *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* (Saskatoon: Native Law Centre, University of Saskatchewan, 2006) at 110.

assembly swore to support him and his colleagues in word and deed in maintaining whatever laws might be passed."[91] The next year, this ceremonial but almost playful reassurance of reciprocal responsibilities was repeated, with Dumont and the council temporarily resigning, begging others to take their place—and then of course carrying on with full community approval.[92] Kinship relationships, then, could be recentred as a constitutional core, from positions of radical equality unencumbered by temporary political roles.

This section, an examination of two expressions of formal law from a historical moment, is the core of my attempt to illuminate, or at least articulate, some of the ambiguity of the encounter between Indigenous and contemporary Western normative foundations. Attempting to square the two frameworks at a purely theoretical level is both doomed and pedantic, often leading to the uncharitable and incoherent position of arguing *against* inherent rights. In any case, both frameworks only gain significance through real-world application. The Métis, a people who (put simply) value freedom above all, produced legal codes broadly consistent with contemporary human rights frameworks; but their apparent gaps and insufficiencies are only satisfactorily explained through reference to underlying relational kinship principles. By starting with a fairly substantial description of Indigenous kinship frameworks, I have tried to adopt a more constructive approach to articulating the normative clash between Indigenous and Western worldviews: Indigenous law may be superficially consistent with individual rights frameworks, but their normative starting points are distinct. Put simply, from Indigenous points of view, individual rights flow from a more fundamental grounding in relational kinship normativities. Severed from their underlying web of kinship relationships, Indigenous expressions of individual rights become hollow and incoherent, emptied of their normative coherence—and attempts to rebuild them through individual rights leave the root cause unaddressed.

This paper's final two sections are deliberately brief. The next, on the insufficiency of modern institutions and rights frameworks in capturing Indigenous normativities, is already the subject of an extensive literature; and the final section, on

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[91] *Supra* note 89 at 111–12.

[92] See *ibid* at 115.

relational frameworks as a path forward, is meant to merely gesture to their broad range of application, as a genuine paradigm shift, across a wide range of issues.

Section III: The Incapacity of Contemporary Human Rights Frameworks to Capture Indigenous Normativities

Contemporary Métis provincial governments continue to recognize freedom as a fundamental principle, often embedding freedom in their constitutions:[93] for example, the Métis Nation-Saskatchewan Constitution states that the "inherent dignity to equality and rights which can never be taken away from Métis people is the foundation of Freedom, Justice and Peace in the Métis Nation."[94] This constitutional language, of rights rather than kinship as the foundation of freedom, reflects the reality of a web of Métis kinship obligations stretched to its breaking point by colonial policies.[95] The absolute, unquestioned legitimacy of Métis leaders, validated and re-validated through assemblies, and held in place by kinship bonds that flowed across political roles, has slipped into a crisis of legitimacy: in her exposé of crooked Manitoba Métis Federation (MMF) political activity, journalist Sheila Jones Morrison states simply that "membership never had control of the MMF."[96] The messiness of modern Métis politics is extensive and well-documented, notably characterized by corruption and animosity between governments.[97]

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[93] See Saunders & Dubois, *supra* note 9 at 41–42.

[94] *Constitution of the Métis Nation-Saskatchewan*, 2008, online (pdf): *Métis Nation-Saskatchewan* <metisnationsk.com/wp-content/uploads/2019/03/MN-S-Constitution-2008.pdf>.

[95] See Stevenson, *supra* note 14 at 53.

[96] Sheila Jones Morrison, *Rotten to the Core: The Politics of the Manitoba Métis Federation* (Winnipeg: J Gordon Shillingford Publishing, 1995).

[97] See e.g. Kelly Geraldine Malone, "Métis National Council takes former president, Manitoba Métis to court", *Saskatoon Star Phoenix* (30 January 2022), online: <thestarphoenix.com/news/national/metis-national-council-takes-former-president-manitoba-metis-to-court>.

Of course, this persistent political infighting is symptomatic of their entrenchment in a colonial and colonizing terrain—or more cynically, it is by design: Métis governments, like all federally-recognized Indigenous orders of government, are simulacra, or replica of colonial administrative structures.[98] First Nations continue to have their government structures imposed by the Indian Act,[99] while the Métis, outside of formal federal or provincial frameworks until 2016 when the Supreme Court included the Métis under s. 91(24),[100] register their governments as non-profit corporations.[101] For Indigenous peoples in Canada, dealing with colonial governments continues to entail adopting state-sanctioned forms, and an engagement with the state on the state's terms. Morrison recognizes the systemic root of the MMF's issues, explaining that "new people would have faced exactly the same dilemma faced by the people who first created the MMF. To continue to take the government's money, they'd have to play the game."[102] The crisis of legitimacy faced by state-recognized Indigenous governments, then, becomes a matter of perspective: structurally and practically, they represent the state's interests, and depend on the state's approval rather than their citizens' for legitimacy.

Kanien'kehá:ka scholar and central figure of Indigenous resurgence, Taiaiake Alfred, characterizes this search for approval through state mechanisms as aboriginalism, defined as "the ideology and identity of assimilation, in which Onkwehonwe are manipulated by colonial myths into a submissive position and are told that by emulating white people they can gain acceptance and possibly even fulfillment within mainstream society."[103] From this point of view, state-sanctioned Indigenous governments are not simply insufficient in representing Indigenous interests, but

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[98] See Achille Mbembe, "Provisional Notes on the Postcolony," (1992) 62:1 Africa: J Intl African 3. For a discussion of Indigenous governments mimicking colonial structures in a Canadian context, see Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (New York: Oxford University Press, 2009).

[99] *Indian Act*, RSC 1985, c I-5.

[100] *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12.

[101] See Saunders & Dubois, *supra* note 9 at 88.

[102] *Supra* note 96 at 116.

[103] *Supra* note 4 at 23.

represent an existential threat by foreclosing authentic and meaningful paths forward outside of the state framework: "Acceptance of 'Aboriginal rights' in the context of state sovereignty represents the culmination of white society's efforts to assimilate indigenous peoples."[104] The image of the Canadian melting pot thus adopts new and threatening meaning, as does the reconciliatory, instinctively noble goal of "leveling the playing field."[105] The question of whose pot cultures should be melted into, or whose game is the one everyone plays, is obscured by an assumed (or imposed) neutrality of state sovereignty embedded in a default global normativity of individual rights.[106] While aboriginalism "manages to gently step through the minefield laid by formal definitions of genocide in international law,"[107] its effect, the erasure of a distinct normative framework, is the same.

In terms of this paper's focus, aboriginalism, or the incorporation of Indigenous worldviews as one ingredient within a larger Canadian multicultural melting pot, is so effectively assimilative because Western individual rights frameworks cannot satisfactorily capture Indigenous kinship normativities. The two diverge, although with characteristic ambiguity, at the fundamental point of natural justice. From a Western legal perspective, natural justice entails two sub-rules: the right to be heard (the person must know the case against them, and have the opportunity to respond); and the rule against bias (nobody can be a judge in their own cause);[108] while from Indigenous points of view, natural law rests more fundamentally on "the requirement that we accept the way things (nature and environment) are,

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[104] Taiaiake Alfred, "'Sovereignty'—An Inappropriate Concept" in Roger CA Makka & Chris Andersen, eds, *The Indigenous Experience: Global Perspectives* (Toronto: Canadian Scholars' Press, 2006) 322 at 325.

[105] See e.g. Andrew Stobo Sniderman & Douglas Sanderson (Amo Binashii), *Valley of the Birdtail: An Indian Reserve, a White Town, and the Road to Reconciliation* (Toronto: HarperCollins, 2022) at 277. Note that the authors do not simplistically hold this view: they present it so as to problematize it in context.

[106] See Smith, *supra* note 61 at 84.

[107] Alfred, *Wasáse*, *supra* note 4 at 132.

[108] See Simon Ruel, "What Is the Standard of Review to Be Applied to Issues of Procedural Fairness?" (2016) 29 Can J Admin L & Prac 259 at 260.

whether we fully understand them or not, and relate to all things in a respectful manner."[109]

Resurgence can at least partly be understood as a struggle to protect the meaningful survival of this basic normative building block, explored in this paper's first section, which starts from an acceptance of nature, and the relational ties between parties rather than the parties' rights themselves. This relational space *between* tends to be a blind spot for Western human rights discourse: for example, a wide-ranging article by Peter Jones considers the oppositional theoretical poles of collective rights, starting from individuals, and corporate rights, in which the group *qua* group takes on rights-holding status as a surrogate individual.[110] Both ends of the spectrum, and apparently the space between them, ignores the relational space between rights-holding entities out of which Indigenous normativities arise; more specifically, Jones explains that that "the objection that is most commonly advanced against group rights is that groups have no moral standing that is not wholly reducible to the moral status of the individual persons who make them up."[111] Reconciliation, then, if understood from the perspective of Indigenous resurgence, effectively forecloses authentic Indigenous flourishing by embedding Indigeneity in a normative space incapable of recognizing Indigeneity.

Lastly, before moving to this paper's final section, I note the entrenchment of an adversarial system as a key obstacle to sufficient contemporary recognition of Indigenous relational normativities. Without meaning to fall into romanticism, Indigenous conceptions of natural justice *do* tend to look outwards towards a focus on obligations, while the adversarial system starts from a default position of protecting interests: not only do these two frameworks clash at a fundamental normative level, but the practical effect is also that change occurs begrudgingly (if at all) at every level of implementation. The United Nations Declaration

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[109] Deborah McGregor, "All Our Relations: Aboriginal Perspectives on Environmental Issues in Canada" in David Long & Olive Patricia Dickason, eds, *Visions of the Heart: Issues Involving Aboriginal Peoples in Canada* (Don Mills, Ontario: Oxford University Press Canada, 2016) 21 at 30.

[110] See Peter Jones, "Group Rights and Group Oppression" (1999) 7:4 J Pol Phil 353.

[111] *Ibid* at 366.

on the Rights of Indigenous Peoples (UNDRIP),[112] for example, was introduced in 2007; but Canada, along with the USA, Australia, and New Zealand, dragged their feet in endorsing and ratifying UNDRIP.[113] Eventually, UNDRIP became codified under federal law in 2021,[114] but still, the default posture of the adversarial system, adopted by each cog within the colonial legal structure, continues to bar UNDRIP's effective implementation: moving towards the specific context of my internship at the MN-S, the Saskatchewan provincial government is now taking its turn to dig its colonial heels in against UNDRIP.[115] Even more fundamentally, Saskatchewan courts were forced to remind the province that section 35 Aboriginal rights could not simply be ignored.[116] From the point of view of Indigenous resurgence, the establishment of Indigenous institutions as simulacra, or duplicative forms of colonial administrative structures, is key to neo-colonialism's project of assimilation. State-sanctioned Indigenous institutions ultimately derive their legitimacy from state approval rather than their membership—and embedded in state normativities blind to Indigenous kinship networks, and systemically situated to oppose their substantive revival at every stage, the state is able to foreclose meaningful expressions of Indigeneity.

Section IV: Relational Normativities as an Optimistic but Accurate Path Forward

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[112] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, 46 ILM 1013 (2007).

[113] See e.g. Craig Benjamin, "Free, Prior and Informed Consent: Defending Indigenous Rights in the Global Rush for Resources" in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Halifax: Fernwood Publishing, 2014) 168.

[114] See the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021 c 14.

[115] See Pratyush Dayal, "As Saskatoon explores UNDRIP implementation, Indigenous voices want more from federal and provincial leaders", *CBC* (18 November 2021), online: <cbc.ca/news/as-saskatoon-explores-undrip-implementation-indigenous-voices-want-more-from-federal-and-provincial-leaders-1.6251125>.

[116] See *R v Boyer*, 2022 SKCA 62.

The clash between reconciliation and resurgence, like that between Indigenous and Western normativities, only gains meaning through its real-world manifestation—which is, of course, overlapping and ambiguous. Still, I do not mean to conflate reconciliation and resurgence, because resurgence is situated both as Indigenous flourishing as a self-standing good *and* in fundamental opposition to state rhetoric around reconciliation: considering the two as interlocking or sides of the same coin simply demands a re-articulation of resurgence.[117] However, when approached with a recognition of kinship relationships as the core Indigenous normative principles, the two frameworks' intersection can be more clearly articulated. The position of reconciliation, understood according to its popular definition as healing the relationship between Canada and Indigenous peoples through and within state institutions, corresponds roughly to that of individual rights in relation to Indigenous kinship networks: reconciliation may be considered as lying on top of a more foundational layer demanding resurgence. In dispassionate logical terms, reconciliation, like individual rights, could be considered necessary but not sufficient for meaningful healing; and in more metaphorical language, reconciliation and individual rights can be considered instrumental tools, wielded to uncover space through which Indigenous flourishing can more easily emerge.

Starting from a grounding in Indigenous relational normativities permits a clearer articulation between Western and Indigenous frameworks—which in turn can more clearly determine the contours of meaningful action. For example, Indigenous language initiatives,[118] worthwhile in their own right, gain additional significance as a foundational source of kinship normativities.[119] However, relational normativities themselves, not just as tools, represent a promising paradigm shift as a path forward, both as applicable to distinct, wide-ranging and complex

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[117] As an example of the almost reflexive co-optation of Indigenous resurgence, see John Borrows & James Tully, "Introduction" in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Buffalo: University of Toronto Press, 2018) 18. For the identical re-articulation and re-framing of resurgence as radical resurgence, see Simpson, *supra* note 10.

[118] See e.g. Sniderman & Sanderson, *supra* note 105 at 262.

[119] See e.g. Killsback, *supra* note 16 at 36.

issues, and as a unifying approach that cuts across these seemingly disparate issues. Firstly, as discussed in this paper's opening section, kinship normativities are by their very nature adaptive, expansive, and, if stretched to their limit, capable of visioning a posture of obligations that takes in the entire cosmos. In this sense, they are also fundamentally trained towards accuracy through an ongoing relational exchange with the entirety of existence. Secondly, although this paper's focus is on Indigenous kinship, the notion of rights arising from relationships is obviously not inherently invisible or inaccessible to Western thought. Jennifer Nedelsky, for example, demands a "dialogue of democratic accountability, where the rights to be protected derive from an inquiry into what it would take to create the relationships necessary for a free and democratic society."[120] Similarly, in their examination of relational rights in the context of family law, Minow and Shanley argue that progress "seems most likely to develop from a political and legal theory that focuses on the relationships that constitute family life and the preconditions necessary to sustain such relationships."[121] From the issue's reverse side, Métis politician Joe Sawchuk explains that those within simulacra understand that state-sanctioned Métis politics are "not simply a microcosm of the larger Canadian political process,"[122] and that "inside the boundaries, there is no need to define who is a Metis or when a person is a Metis; everyone knows everyone else."[123]

Although from Indigenous perspectives tautological, the current crisis of Indigenous identity demands a brief discussion of kinship normativities as a path forward. Devine notes that "ethnic identification, at its most elemental, is rooted in ties of kinship, which are strengthened by geographical proximity and shared religious beliefs, cultural practices, values, and history. By nature

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[120] Jennifer Nedelsky, "Reconceiving Rights as Relationships," (1993) 1:1 Rev Const Stud 1 at 26.

[121] Martha Minow & Mary Lyndon Shanley, "Relational Rights and Responsibilities: Revisioning the Family in Liberal Political Theory and Law," (1996) 1:1 Hypatia 4 at 25–26.

[122] Joe Sawchuk, "Politics Within the Metis Association of Alberta" in Roger CA Makka & Chris Andersen, eds, *The Indigenous Experience: Global Perspectives* (Toronto: Canadian Scholars' Press, 2006) 307 at 319.

[123] *Ibid*.

ethnicity is fluid…"[124] This fundamental fluidity, however, has been hamstrung by an individualistic normativity that swings between slack self-identification and strict membership in state-sanctioned Indigenous governments. Obscured by the Carrie Bourrassa scandal, an academic whose fictitious Indigenous heritage grew increasingly expansive throughout her career, [125] was the University of Saskatchewan's rejection of Réal Carrière's application, because he refused to seek Métis membership in the MN-S. [126] He, unlike Bourrassa, is unanimously recognized as Métis, both because of his heritage *and* his kinship ties to the community. At a systemic level, the Supreme Court similarly grappled with Métis membership in *R v Powley*,[127] and in their characteristically formalistic manner opened the door to a slew of applications, especially from Eastern Canada, by individuals and groups that were and are patently *not* Métis. [128] Approaching identity from a kinship perspective does not necessarily mean rejecting heritage (however it is understood) as a necessary condition for Indigenous—here, Métis—identity, but clarifies *Powley's* demand for community acceptance. [129] From this perspective, kinship and identity are tautological because of the more basic formula of Métis being those who are Métis: although not everyone can know everyone,[130] interlocking webs of kinship accurately sustain a self-defined, self-balancing, and flexible membership.

Deborah McGregor explains that failure to adhere to Indigenous conceptions of natural law "could cause life as we

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[124] *Supra* note 63 at 208.

[125] See Geoff Leo, "Carrie Bourassa, who claimed to be Indigenous without evidence, has resigned from U of Sask.", *CBC* (1 June 2022), online: <cbc.ca/news/canada/saskatchewan/carrie-bourassa-resigns-1.6473964>.

[126] See Jason Warick, "Indigenous scholar says he was rejected by University of Sask. over lack of documentation", *CBC* (9 June 2022), online: <cbc.ca/news/canada/saskatoon/real-carriere-rejected-university-saskatchewan-documentation-1.6482089>.

[127] 2003 SCC 43 [*Powley*].

[128] See e.g. Michael Bouchard, Sébastien Malette & Siomonn Pulla, eds, *Eastern Métis: Chronicling and Reclaiming a Denied Past* (Lanham, Md: Lexington Books, 2021).

[129] *Powley*, supra note 127 at para 33.

[130] See Sawchuk, *supra* note 122 at 319.

know it to perish. This life-or-death aspect of natural law was much more immediate for societies in earlier times."[131] She clarifies that "there is nothing romantic about this view of our relationship to the Earth: it is based quite simply on the will to survive."[132] Speaking broadly, James Tully proposes an argument based on an equivalent normative basis, that the climate crisis, and relationship between Indigenous and non-Indigenous peoples, must be conceived of and tackled together.[133] Obviously, this is an extensive topic, and I am just gesturing towards it to portray the broad potential application of Indigenous kinship normativities as a genuine paradigm shift—from identity politics, to resurgence and reconciliation frameworks, and even to global and interlocking existential crises. Tully's argument emerges from the Gaia hypothesis, which, in scientific language echoes much of the descriptive content of Indigenous kinship: the Gaia hypothesis is symbiosis and symbiogenesis on a planetary scale, with symbiosis "the immense complex webs or networks that link all forms of life in relationships of reciprocal interdependence;" [134] and symbiogenesis, the ensuing emergence of new life systems.[135] Put simply, Tully explains that "if we wish to live well, we should live so that our way of life supports the ways of life of those with whom we are related, and they should do the same in reciprocity. We also realize that if we are suffering, it is probably because we are not living in ways that support such mutually supportive networks."[136]

The Gaia hypothesis is consistent with Indigenous treaty-making at both international levels, between First Nations, and between First Nations and colonizing states. From Indigenous points of view, the Gaia hypothesis is not radical, but simply consistent with the multidirectional obligations arising from the

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[131] *Supra* note 109 at 30.

[132] *Ibid* at 31.

[133] See James Tully, "Reconciliation Here on Earth" in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Buffalo: University of Toronto Press, 2018) 187 ["Reconciliation"]; James Tully, "Sustainable Democratic Constitutionalism and Climate Crisis" (2020) 65:3 McGill LJ 545 ["Constitutionalism"].

[134] Tully, "Constitutionalism", *supra* note 133 at 557.

[135] See *ibid*.

[136] Tully, "Reconciliation", *supra* note 133 at 187–88.

normative foundation of kinship principles. The famous treaty between the Nishnaabeg and the Haudenosaunee, Gdoo-naaganinaa or Dish with One Spoon, explicitly includes the earth in formal diplomatic relations;[137] while the Kaswentha, or Two Row Wampum, more implicitly refers to the land. The two parallel rows, popularly understood to depict the Haudenosaunee in their boat and the Dutch in theirs,[138] correspond to genuine pluralism, the co-existence of independent and interrelated peoples: but of course, the two peoples are symbolically and actually embedded in relationships with the earth as well as each other. For Tully, the Gaia hypothesis—or its normative counterpart, kinship obligations—is not merely a *promising* path forward, but rather a *necessary* path forward, because it accurately captures the situation's complex, interlocking nature.

Conclusion: Individual Relationships at the Heart of a Cosmic Web

Although I have tried to maintain a broad analytical scope, especially in the previous section, the core of my argument, or core of what I hope is at least somewhat insightful, is simple: that for many Indigenous peoples, individual rights derive from, and adopt their meaning and coherence from, the underlying normative foundation of kinship obligations. During my internship with the MN-S, I cannot recall a single mention of human rights: we neither anchored our work to human rights, nor reacted in opposition. In this spirit, of *not* centring human rights as a default framework against which all other normativities should be judged, I started from a substantial description of typical characteristics of Indigenous kinship normativities. This relational framework, or dynamic web of social obligations, breathes life into the historical examples of Métis buffalo hunt laws and the Laws of St. Laurent. From this point of view, both codes become coherent and complete: they do not haphazardly ignore questions of legitimacy

[137] See e.g. Leanne Simpson, "Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships" (2008) 23:2 Wicazo Sa Rev 29.

[138] See Alfred, *supra* note 4 at 266.

and criminal conduct, because these central—or sometimes constitutional—normative issues are simply referred to kinship obligations. I have attempted to avoid overly romanticizing kinship networks, because both individual and relational frameworks, taken towards either extreme, are similarly unhealthy and dangerous.

Perhaps what is most convincing about kinship normativities, however, is the way in which the global—or cosmic—is united with the individual, the family, the community, and the environment through a normative posture beginning with relationships. Of course, the instinctive if false paradox of *not* approaching life as a zero-sum game must be surmounted. Deloria explains that the traits of unselfishness, kindness, sincerity, and courtesy "have to be learned. And they can be learned, but only by scrupulous repetition, until they became automatic responses; until, in the case of the Dakotas, the very uttering of a kinship term at once brought the whole process into synchronic play—kinship term, attitude, behavior—like a chord that is harmonious."[139] The paradigm shift represented by relational kinship normativities is, simply, the understanding that life promotes life: Leanne Simpson recounts Nishnaabeg Elder Robin Green-ba's explanation of the compromising notion of sustainable development: he said that "sustainable development thinking is backwards, that we should be doing the opposite. He explained that what makes sense from a Nishnaabeg perspective is that humans should be taking as little as possible…he felt that we should be as gentle as possible with our Mother, and that we should be taking the bare minimum to ensure our survival. He talked about how we need to manage ourselves so that *life can promote more life*."[140]

[139] *Supra* note 12 at 25.

[140] Leanne Simpson, *Dancing on our turtle's back* (Winnipeg: Arbeiter Ring Publishing, 2001) at 141.

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