Aboriginal Advocacy:
Using Global Human Rights or Localized Perspectives on *Being Human*?

by

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A thesis submitted in partial fulfillment of the requirements for the degree of

Doctor of Philosophy

in

Indigenous Peoples Education
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Abstract

The United Nations' (UN) adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 is broadly viewed as a critical occasion for Indigenous peoples, the UN system, and international law. The UNDRIP was a result of over 20 years of rigorous debate and negotiation between Indigenous representatives, nation states, UN officials, and community organizations over issues of Indigenous survival, dignity, and well-being. Credited as being more comprehensive in substance and more extensive in scope than any other instrument dedicated to Indigenous peoples, the UNDRIP formally recognizes Indigenous as Peoples with associated rights and is substantiated through international human rights machinery.

The fervent process of the deliberations and the suspense of the delayed ratifications by Canada has perhaps negated some difficult questions regarding the content and status of the UNDRIP and its potential to reveal tangible benefits for Indigenous people. This research responds to a perceived need to examine human rights discourses and institutions critically and to situate it within the context of colonization and homogenization of political strategy. The specific research question asks, whether global human rights or more localized perspectives of *being human* can contribute to transformative justice for Indigenous communities.

To deliberate these challenges, this research seeks to evaluate specific lines of inquiry about cultural patterns for social organization and notions of authority, particularly focusing on Indigenous customary law and legal traditions and contrasting these with Euro-Western systems. It then traces the historical development of human rights discourses and institutions to conclude that the overarching paradigm of human right can privilege Western thinking and so may contribute to cultural or political loss for Indigenous peoples.

This thesis comments on the process to fully enliven Indigenous research methodology and its associated responsibilities to Indigenous participants and communities. It draws on the perspectives of Elders as traditional knowledge holders and presents dialogue, reflection, and analysis in tune with Indigenous orality. The research connections are measured for ethical integrity and are guided by protocol to ensure that it is grounded in Indigenous ways of knowing and learning and that it upholds the integrity of Indigenous people. Values of respect, holism, and reciprocity require considerations of varied effects of the research method in carrying out the project and motives are geared so that research participants are equipped and empowered to make educational and policy recommendations beyond these research parameters. The research analysis and conclusions both strengthen Indigenous knowledge and inquiry and broaden notions of academic legitimacy and integrity.

The relatively new correlation between human rights and Aboriginal social justice requires Aboriginal people to understand and articulate what traditional knowledge says about cultural identity as integral to dignity and survival. This is especially true where policy-making processes tend to be grounded in a contemporary conceptualization of community as "globalized", different from that conceptualization of community amongst Aboriginal peoples and derived from Aboriginal knowledge systems. This research expands the analysis of human rights as neutral and universal to probe relationships between Indigenous knowledge, institutional processes, and social transformation.

Preface

This thesis is an original work by Krista McFadyen. The research project, of which this thesis is a part, received research ethics approval from the University of Alberta Research Ethics Board, "Aboriginal Advocacy: Using Global Human Rights or Localized Perspectives on Being Human?", No. Pro00037450, September 23, 2013. No part of this thesis has been previously published.

Acknowledgements

This dissertation has benefitted from the direction and support from many special people.

For generous contributions of time, guidance, and insight, I thank my Supervisors, Dr. Jennifer Kelly and Dr. Cora Weber-Pillwax.

For helpful suggestions and imaginative responses, I think my Dissertation Committee: Supervisors Dr. Jennifer Kelly and Dr. Cora Weber-Pillwax; Chair Dr. Dia Da Costa; Supervisory Committee Member Dr. Rebecca Sockbeson; and Examiners Dr. Lynette A. Shultz and Dr. Susan Brigham.

For editing this work again and again and again, and all those extras in getting me through, I thank my mom, Dr. Kay McFadyen.

For inspiring post-secondary studies just to be with you more, Lakaya and Lillia, thank-you for your patience.

For reminding me what is important, I thank my family and friends.

I was able to conduct this study because of the provision of funding from generous third parties, external scholarship bodies, research granting agencies, and the governments. Thank-you to:

- The Canadian Federation of University Women;
- Edmonton Community Foundation;
- Indspire;
- Métis Nation of Alberta;
- Network Environments Aboriginal Health Research;
- Government of Alberta (Alberta Award for the Study of Canadian Human Rights and Multiculturalism);
- Social Science Humanities Research Centre for the SSHRC Doctoral Student Award; and
- University of Alberta for Indigenous and other community service and recognition awards.

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Aboriginal Advocacy: Using Global Human Rights or Localized Perspective on "Being Human"?

Introduction and Background

> A local Aboriginal woman opened her door to her white Canadian landlord who had a history of harassment and declared, "I know my rights," and he backed right off.
>
> Muriel Stanley Venne, Research Participant, 2014

The harassing landlord took pause and the threatened tenant took courage; a power balance had shifted! This moment of spontaneity in asserting her rights suggests triumph for the Aboriginal[1] woman who summoned her own sense of empowerment and deflated her landlord's sense of certainty. The exchange suggests there is a language or a social system that is powerful enough to shield Indigenous people from insidious forms of harm such as harassment or dispossession, physical violence or murder – all of which pervade Canadian culture. A disregard or denial of rights, whether individual, as for this Aboriginal woman tenant, or collective, as in issues of Indigenous self-protection and self-determination, raises concerns about assuming a correlation between human rights and Indigenous protections that can be both effective and sustainable.

This research began with a hope that human rights institutions and discourses provide substantive protections for Indigenous peoples. This hope was the motivation that propelled an initial research plan to deliberate on the achievements of human rights and its potential for positive impact on Indigenous people. The literature cited human rights as a development of

[1] Throughout the dissertation both terms of "Aboriginal" and "Indigenous" are used: most often "Indigenous" in this research more references Indigenous peoples as an international or global group as an international term that is used in the United Nations Declaration on the Rights of Indigenous People (UNDRIP) while "Aboriginal" is used more to reference those who are native to Canada as referenced in the *Constitution Act, 1982*[1] and Canadian Constitutional law. These terms are contested and, in some circumstances groups have expressed preferences for the language used, which is respected accordingly.

international law with associated institutions such as the United Nations, international human rights tribunals, as well as state-based human rights commissions and tribunals.

My original research celebrated human rights, especially the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP[2]) for its comprehensiveness in providing safety and political options to Indigenous peoples. Accordingly, the research queried curriculum development and education methods to promote: a) human rights so that Indigenous communities could enhance knowledge of substantive protections to hold state institutions accountable as well as b) methods for accessing the United Nations and/or state-based human rights institutions. Part of this motivation came from my specialized human rights training by several advocates and lawyers who were working to have the UNDRIP implemented at the United Nations, well before Canada ratified it, and who convinced me to take the message of hope to more localized communities so as to pressure Canada's government towards ratification.

I had volunteered and worked with an Aboriginal organization, the Aboriginal Commission on Human Rights & Justice (ACHR&J), to advocate for the human rights of Indigenous people through activities such as filing complaints of discrimination with the Alberta Human Rights Commission (AHRC). It was with ACHR&J where the breadth and depth of discrimination against Indigenous people became clearer to me and provided me an opportunity to learn about and to contribute towards Aboriginal justice.

As background, a personal motivation for this research also stems from a matrilineal Métis heritage that was rarely acknowledged or celebrated. Few family members were willing to explore our heritage, and when they did they faced resistance and denials. Why this occurred was perhaps because potential harm outweighed any benefit.

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[2] *United Nations Declaration on the Rights of Indigenous Peoples*, 2 October 2007, A RES 61/295 (statement by Canada to support 12 November 2010).

Historically, my family members settled and established community ties around the Alberta farming community of Stony Plain where, similar to other locations, discrimination existed towards Native people. My family members did their best to fit in in order to participate as equals in the social and business community. At the same time, when aunties or cousins tried to research how our Métis heritage could influence our access to education opportunities they found that there was no support. I personally sought a path of post-secondary study of Indigenous education, accompanied by career experience with First Nations training and Aboriginal Relations with federal and civic organizations, as a means of examining my own individual and broader family history as well as rights and justice.

In 2009, ACHR&J conducted province-wide research on perceptions of human rights to ascertain occurrences of discrimination experienced by Aboriginal people, whether Aboriginal people knew of their human rights, and whether there were barriers in substantiating them. The research suggested that not only do Aboriginal people experience discrimination disproportionately, but they do not report through government services such as the provincial AHRC or the federal Canadian Human Rights Commission (CHRC). In fact, many did not articulate their experiences as discrimination nor use human rights as the language to describe them. This inspired my greater attention to how the language of human rights was used. Indigenous people who participated in the 2009 study seemed to be using human rights in different ways, such as to define personal experiences of trauma or to defend treaty and Aboriginal rights. It seemed the terminology of human rights was used to mean almost anything justice-related. Further, it seemed that human rights processes, tribunals, and international consultations were understood to perform multiple functions, such as to influence local policy or to establish transnational networks.

Simultaneous experiences breathed life into this research, provided alternatives to human rights discourses, and drove the research in other directions. For example, reflections of a young Aboriginal woman who solicited advocacy support from ACHR&J to file a human rights complaint but then experienced isolation, vulnerability, and bullying, to a point of feeling "broken," demonstrates that human rights processes can be dehumanizing. Further, a presentation by ACHR&J's Commissioner, Muriel Stanley Venne, to James Anaya, a Rapporteur to the UN on the conditions of Indigenous peoples, caused me to reflect on what appeared to be a bureaucratic and impersonal process of asserting human rights that seemed misaligned in an Indigenous context where community members were trying to convey the depth of violence against their families and communities and their need for urgent but meaningful responses. These experiences raised questions about assumptions that human rights would inevitably advantage Indigenous people.

At the same time as this study, an Indigenous organization launched an unprecedented human rights complaint to the CHRC that provided a different perspective on this research on human rights. February 2017 marked the ten-year anniversary since the First Nations Child and Family Caring Society (The Caring Society),[3] a national organization overseeing First Nations child welfare organizations, and the Assembly of First Nations (AFN)[4], a national organization representing over 600 First Nations, took an historic step by filing a human rights complaint with the CHRC against the Government of Canada for its treatment of First Nations children. The complaint alleged that the federal government discriminates against First Nations children on

[3] Seeing a need for community-based and culturally-relevant child services, many First Nations have established child welfare agencies on reserves. These agencies, collectively called First Nations Child and Family Service Agencies (FNCFSA), operate across Canada but fall under the jurisdiction of provincial child welfare legislation. The Caring Society is a non-profit organization in Ottawa that acts as the voice for FNCFSA and has worked to raise issues about federal funding formulas and negotiated changes.

[4] AFN represents over 600 First Nations on Treaty and Aboriginal rights and other social issues.

reserve and in the Yukon on the basis of race or ethnicity and provides less government funding for child welfare services on-reserve than is provided to non-Aboriginal children and child welfare services not on-reserve.[5]

The Canadian Human Rights Tribunal (CHRT) rendered its landmark decision on January 26, 2016[6] finding Canada's provision of child and family services to be discriminatory pursuant to s. 5 of the *Canadian Human Rights Act (CHRA).*[7] Canada's failure to meet its obligation to ensure that its funding of child welfare services perpetuates the historical disadvantages to Indigenous peoples such as those brought about by Indian Residential Schools. The CHRT ordered substantive reform to the child welfare policies and funding, including updated funding formulas and policy implementation. This research reviews CHRT's decision that found that Canada discriminates and considers this decision within a larger context of Canadian-First Nations relations. In this instance, a human rights complaint by an Indigenous organization provided some substantive results and raised additional questions on when a human rights discourse can be used for Indigenous political benefit.

In addition to critical questions about reliance on human rights, concurrent observations introduced other more humanizing methods for advocacy. Concurrent study experience in the Indigenous Peoples Education Program at the University of Alberta enriched my connections to Indigenous Knowledge (IK) and introduced notions of "*being* human." It also exemplified Indigenous Research Methodology (IRM) to suggest a research framework with concepts more relevant to Indigenous peoples' own knowledge systems, rather than try to fit it within non-

[5] First Nations Child and Family Caring Society of Canada, "I am a witness" (2009).
[6] *First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016.
[7] *Canadian Human Rights Act*, RSC 1985, c H-6 at s. 5:
> It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
> (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
> (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

traditional discourse of human rights. As a result, I looked to alternatives to the human rights model and reflected on experience as a participant of the Truth and Reconciliation event in Edmonton in 2014 regarding Indigenous processes that advocate for justice but do not use human rights.

As the content of this research began to change form, so too did its methodology. An initial plan was for first research conversations[8] with Elders[9] to offer insight into what traditional knowledge says about human rights and then to speak to human rights "experts" about using human rights frameworks. However, the process of becoming more deeply engaged with critical questions about researcher responsibilities and commitments to IRM impacted the research methodology. True to IRM, where the life of the research emerges, breathes, and transforms the life of the participants, my research took a course away from my original research proposal. It seemed impossible to access IK with Elders through the original emphasis on human rights, which, in turn, prompted me to question the appropriateness of human rights as an aspirational goal for Indigenous communities. If colonization robbed Indigenous people of culture and identity, should decolonization not reinforce what was lost? I sought Elders' views of not *how* human rights can be implemented in Indigenous communities, but *if* human rights should be promoted in Indigenous political advocacy.

In the research conversations, as the Elders "storied around the questions" to touch on how Indigenous people develop a sense of integrity and humanity through IK, how they develop systems for living together, and how they address colonial policies and resulting epistemcide.[10]

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[8] As discussed in Chapter 3, this research uses terminology of "research conversation" instead of the more common "interview" as it more accurately represents what transpires when engaged in IRM and during this phase of the research.

[9] The description and role of Elders in this research, including literature on the emergence of the concept of Elders as a "cultural dialectic", is discussed in Chapter 3.

[10] Epistemicide is explained by Dr. Rebecca Sockbeson as the derogation and destruction of the epistemology of Indigenous Peoples. It is the destruction of "what we know" and "how we know" in Indigenous communities.

This supported a more nuanced understanding about using or promoting human rights in Indigenous communities, and especially an understanding of the integrity of IK within justice-related activities. It opened another vein of inquiry: how to reconcile different terminologies and systems of justice between people with different worldviews, especially between those whose relationships may be hostile. This presented an avenue to explore the concept of "ethical space" (Ermine, 2007),[11] a metaphoric space of engagement where societies or individuals from disparate worldviews are posed to engage with each other. Ethical space is a framework to establish dialogue to examine the diversity and positioning of each other's values and beliefs. Ethical space can reconcile divergent worldviews, value systems, and social/legal systems to address transgressions, should they occur. This research considers whether human rights can establish ethical space between divergent peoples and societies.

The research conversations with Elder participants inspired a revised stream of research questions. How are moral and ethical values defined and promoted in different cultural contexts such as through IK? What is a model for political advocacy that adheres to IK? Do human rights present a congruent model? Can human rights act as a relevant system for creating or reconciling "ethical space" between divergent worldviews? What are the political or historical references invoked by using the discourse of human rights?

This background presents various ways to view the scenario between the Aboriginal woman who summoned the reference to human rights with the harassing landlord. What form of rights was the woman invoking? What are the short and long-term implications of Aboriginal people using or shaping the human rights discourse? Does the human rights discourse strengthen

[11] Ermine (2007) suggests that ethical space of engagement can guide a relevant discussion on Indigenous moral and legal issues particularly at the fragile intersection of Indigenous and non-Indigenous communities and legal systems.

the other's cultural frameworks? What would be the best advocacy strategies for this woman to affirm her integrity as a strong and supported Aboriginal woman? Did the discourse of rights allow the "full humanity" to flourish in each person or allow people to see the humanity in the other?

Understanding Human Rights

This dissertation presents an analysis of political work across culturally-divergent contexts and pays particular attention to using human rights as a framework for Aboriginal advocacy. The research suggests that human rights, when used as a discourse, is entrenched in public consciousness as ideals of equality, freedom, and dignity. Beyond general ideals however, it can have different meanings and can trigger different political solutions. The literature review presents examples of historical uses of human rights to demonstrate that in some contexts, though the language of human rights was used, the precise meaning was more akin to civil rights and, in some Aboriginal contexts, more akin to Aboriginal or treaty rights. Despite the potential for different meaning, human rights institutions, such as those of the United Nations such as the International Criminal Court, adheres to rigid structures and processes.

For me, these observations compelled a more layered analysis of human rights as not just as a legal term to reference institutions of the UN, but also a social term or, in other words, not just an institution but also as a discourse. Institutionally, human rights can be described as a system of various institutional components such as commissions and tribunals that work together to form what can be referred to as a "statutory rights enterprise" (Ellis in Eliadis, 2014, p. 25). As explained by Ellis,

> When governments implement policy through a rights statue, the statue creates the rights, privileges, and corresponding obligations needed to effectuate that policy,

> and it also structures the delivery system – the organizations and mechanisms required to deliver and administer the policy. (p. 25)

In other words, a statutory human rights enterprise is the totality of particular institutional arrangements and structures. This research uncovers the statutory human rights enterprise both in an international context through the United Nations as well as in Canada with its provincial and national human rights commissions.

Sometimes the term human rights is used without attachment to any particular statutory or institutional enterprise and is used as a means to achieve various political goals. In this way, human rights is also a social term or a discourse. My research also examines the discursive elements of human rights – a study of why the particular terminology of human rights emerges in response to social relationships of power and privilege. Human rights may be a term used to mean different things depending upon the subjects who evoke the language and their objectives in using it. As the research reveals, sometimes this discourse is used to evoke ideals of equality, freedom, dignity, and justice and, as will be illustrated, Indigenous communities can invoke human rights to address varied political goals of Aboriginal or treaty rights, decolonization, or sovereignty. This research explores the differences between various intents or meanings of human rights and evaluates substantive political impacts – particularly noting the potential harm in deflating diverse political objectives into a singular objective of human rights.

Human rights can be a concept negotiated within social and political contexts by various social identities and with various impacts and outcomes. So, while the literature often references human rights as universal, there are cultural influences and epistemological characteristics that shape these institutions. As this understanding of human rights developed through the initial research phases, critical questions began to emerge concerning potential motivations for using

human rights over other political discourses. My research explores whether using a human rights language provides more political traction to leverage specific goals or, on the other hand, whether it can deflate concepts such as Aboriginal or treaty rights or decolonization into a generic discourse of human rights. I also consider whether the UNDRIP can overcome the potential to overlook the unique status and rights of Indigenous people.

The research highlights potential consequences of using human rights to negotiate Indigenous concerns and political goals and draws the general conclusion that the overarching paradigm of human rights can still privilege Western[12] thinking, and so should be used with caution. Scholastic literature on human rights seldom identifies the cultural context of its use that includes the epistemic frameworks that may be employed. This is despite being fundamental to how political strategies are employed, objectives identified, or achievements articulated. The alliance of human rights with Western paradigms often presents it as a privileged discourse in that it is seen as less threatening to the majority but offers some political leverage to minority groups and organizations. However, human rights institutions, whether housed internationally or in Canada, can and do reference incongruent knowledge systems and thus the policy and procedure required to negotiate these systems may present challenges or failures for Indigenous people. This research concludes that the potential for political leverage is not sufficient justification for using human rights discourses or institutions by Indigenous people because important aspects of rights may get missed such as fundamental treaty rights for Aboriginal people in Canada. While human rights may appear a more "friendly" discourse in the short term, the long-term implications may be cultural and political loss. The ends must reflect the means, or in other words, the language used throughout political process should be consistent

[12] In this study, the term 'Western' is used to refer to ontologies stemming from Western-European origins.

with the political goal of stronger Indigenous people and communities.

A number of social, political, legal, and economic developments make this an important time for Indigenous research on advocacy and rights: changing demographics, fluid geographical movement, and a greater mix between peoples; efforts to make scholarship and public institutions more inclusive and international; the growth of interest in Aboriginality and struggles to define IK; the prominence of globalization, and some growing allegiance between grassroots advocacy and human rights. These simultaneous trends invite questions of how to maintain and strengthen cultural, political, and legal objectives in a rapidly transforming society.

The relatively new correlation between human rights and Aboriginal social justice requires Aboriginal people to understand and articulate what traditional knowledge says about cultural identity as integral to dignity and survival. This is especially true where policy-making processes tend to be grounded in a contemporary conceptualization of community as "globalized", different from that conceptualization of community amongst Aboriginal peoples and derived from Aboriginal knowledge systems. This research expands the analysis of human rights as neutral and universal to probe relationships between Indigenous knowledge, institutional processes, and social transformation.

The Dissertation

Chapter 1 of the dissertation presents an introduction to the study by providing personal background as well as the experiences, observations, and questions that drove the interest in human rights. It identifies initial assumptions and changing perceptions about the strength of human rights as justice-promoting institution, which inspired a more critical look at human rights as a political discourse.

Chapter 2 offers a review of the literature that explains philosophies of morality to

explore how diverse cultures internalize virtues required to establish functioning communities and to engage in political work when changes or protections are needed. The literature references distinctions between externally-imposed or internally-generated concepts of morality, such as "rationality" or sentiments of "caring" can address conflicts between people. These characteristics are helpful for describing IK that tends to align more with internally-generated moral frameworks and contrast this with human rights that tends to align more with cultures of externally-generated moral frameworks. The literature review then turns to a more in-depth description of what is meant when the discourse of rights is used. Though sometimes it references traditional, customary Indigenous laws, this research suggests that it is not an easily married fit. Aboriginal rights are explained as a confluence of Aboriginal/Canadian law but often interpreted by Canadian courts to Indigenous disadvantage. Indigenous human rights are further distinguished as international in scope, a body of international law, and intended to hold state governments/institutions accountable. It is from Indigenous rights that the UNDRIP emerges.

The literature then turns to a more in-depth exploration of how the epistemic foundations shape institutional models and systems. Specifically, I look at Indigenous theories and strategies for political work, such as the concept of *being human* and the process of reconciliation and compares these to human rights advocacy. It considers practical considerations such as political or economic motivations for adhering to particular discourses, specifically motivations for using a human rights discourse over others. To explore this, I look at a range of literature that addresses theory and practice of advocacy that, in its conception, includes diverse activities such as organizing, lobbying and campaigning. Advocacy is a form of political work as it intends to influence relevant stakeholders to implement actions to address problems or fulfill goals. Human

rights has a wide public use and acceptance within advocacy theory, which seems to support the thesis that human rights is used strategically as a non-radical discourse as it is seen as less threatening and thus tied to greater organizational funding and survival. Debate ensues about the implications of using human rights as an advocacy discourse citing incongruence with community knowledge systems despite the political traction that it may allow.

Chapter 3 provides a background to the conceptual and political development of human rights within international law, its adoption in the formation in institutions such as the United Nations and post-World War developments. The research presented in this chapter was the first stage of this project and it takes on a different tone from other chapters. As mentioned, I assumed the research of human rights uncritically. IRM was also new and I was admittedly using an empirical approach to the topic area. However, as the research increased, I took up more critical literatures to problematize held assumptions.

Chapter 3 reveals that while human rights is often professed as being universal, it is used in multiple contexts to mean different things. That there are multiple meanings attached to human rights highlights the potential fallacy and political diversion when modern notions of human rights are credited as a linear achievement of history, beneficial to all of humanity, and enduring because of its supposed universal values. Identifying the oversimplification of human rights and identifying its historical roots became important to the study because it grounds human rights within Western politics with its parallel knowledge systems. This reinforces the notion that cultural context or epistemology is relevant to politics and if Indigenous communities hope to strengthen their own epistemological foundations, there ought to be more consideration of the congruence between knowledge systems and political process and outcomes. So, while human rights may be a discourse taken up by Indigenous communities, it is important to identify

potential implications of using the discourse. This overview of the historical invocations of human rights suggests that such an alignment may be more opportunistic than synergetic with the actual political goals of localized communities.

The literature review presents the predicament faced by many Indigenous people who have to negotiate difficult options in order to achieve political goals: either follow a path of strengthening cultural identity or follow a path that creates less resistance and seems to potentially leverage more opportunity. The research conversations with Elders provide clear direction about which path Indigenous people should follow, and this will be explored in the following chapters.

Before exploring what Elders discussed, Chapter 4 identifies the methodology, or how the overall research was designed and includes observations of an evolving understanding of methodological commitments to Indigenous Research Methodologies. As relayed, in the study's early stages, the original research plan was to include a variety of community practitioners and human rights advocates, but this changed after the first responses of Elders prompted a re-thinking of the scope and focus of the conversations. The conversations contemplated aspects of community moral development and enforcement within Indigenous knowledge and how this may apply to my proposed advocacy strategies. This transformation of analytical approach is more fully discussed throughout this chapter.

Chapters 5 and 6 present the key themes emerging from the research conversations. Chapter 5 address key themes that emerge from the research questions relating to epistemic foundations for Indigenous political and legal work. It queries links between Indigenous identity, cultural integrity, and advocacy activity. One research participant recounts the story of his friend's guarantee for survival: not through empirical knowledge, codes or rules, but through

the personal relations. So, it seems that sentiments of caring enliven not only integrity and dignity but also basic human survival. Another participant cites observations that, when working with incarcerated men, the strongest source of healing and transition from criminality, addictions, or violence is a sense of cultural identity. Still two other participants speak about Indigenous ways of communication, problem solving, and establishing political processes and draw consistent conclusions that Indigenous methods are intimately tied to values of honour. The analysis presents justifications to abandon a generic list of rules for codes of conduct and instead focuses on humanizing process that are relevant and recognized by Indigenous communities.

Chapter 6 continues the thematic synthesis of research conversations and presents some of the nuance and contradictions when Aboriginal people use human rights discourses and systems. The Elder research participants recount the inhumanity of human rights and suggest that, because of this, Aboriginal people use human rights as a last resort or as a desperate last option and when love and all else fails. In contrasting benefit versus harms, another research participant suggests that while it is one of the only forums available to Indigenous people, it presents vulnerabilities for those who attempt to use it, such as the young Indigenous woman who felt nearly "broken" after submitting her human rights complaint to the AHRC. Other problems such as a lack of implementation and tentative results after engaging human rights institutions led the Elder participants to conclude that there may be more dangers than benefits. Most of the research conversations present cautionary tales about using human rights as a discourse or relying on human rights institutions.

The final Chapter, 7, explores how the research, the use of theory and concepts and the methodological choices produce the analysis and interpretations of this study. It synthesizes the key points raised in the dissertation such as the apparent contradictions in a human rights system

because of its dehumanizing features. It summarizes that a supposed human rights culture can normalize and justify troubled Indigenous-Western relationships and also can rely on a process verbal combat in processes of resolve in order to produce social compliance. The significant success by the Caring Society in holding Canada accountable for discrimination against First Nations children suggests that there have been benefits, so a uniform condemnation would be too simple. Indigenous people can and often must rely on human rights to hold Canada accountable. However, human rights, that is, the use of the various human rights principles and processes, can be foreign to Indigenous knowledge systems and can produce tentative results because of cultural loss and, because of this, Indigenous people should exercise caution in using human rights as a discourse for political work – even if used to reference something very different from the human rights institutions currently available. I tie my conclusions to prospects for future research such as further analysis of Indigenous use of human rights discourse and different examples of political work to tailor the discourse to specific political outcomes.

Chapter 2
A Cultural Account of Ethics, Advocacy, and Human Rights: A Theoretical and Conceptual Foundation

Introduction: A Review of Literature

The goal of chapter two is to provide the theoretical and conceptual foundation of the research. With an initial goal to review the scholarly conversations on the potential use and effect of human rights advocacy in Indigenous communities, I began literature review by mapping the vast range of literature on human rights. It provided an orientation to the range of theories from which human rights are debated and evaluated, as well as a theoretical orientation of rights to understand cultural dimensions of human rights and explore rights-based advocacy strategies for Indigenous communities.

As a framework other than human rights would be required to maintain the goal of centering IK and IRM in theory and practice, a re-evaluation of assumptions about human rights was required -- not to abandon the project, but to proceed with a fuller understanding of the research intent and reflect on the potential impacts of any claims. Therefore, I had to step back back from assuming human rights as universally understood and embraced and, instead, explore what advocates try to accomplish through their chosen political discourse such as human rights. Aligning with the objective of community justice and recognizing the imperative of cultural congruence required a more thorough search into culturally-relevant models of morality as a framework for community justice. This led to literature that explores philosophical and cultural dimensions of morality to understand how justice is defined and potentially how it is inspired in others. The literature covers some of the traditions and debates around morality, ethics, and justice, including those of the dominant neo-liberal, Western knowledge traditions and Indigenous contexts. This compels reflection on how morals are internalized within Indigenous

communities and how transgressions of these morals are addressed within like knowledge systems as well as when they occur between individuals or communities of divergent contexts.

An exploration of advocacy literature offered me insight as to why some political discourses, such as human rights, seems to be promoted more than others. The literature suggested that organizational mandates are influenced by dominant knowledge paradigms that shape forms and modes of advocacy, often in contradiction to grassroots forms of advocacy. This may be the reason human rights, rather than other more "radical" strategies, are promoted and funded. The effects however can be that, on one hand, human rights can discount localized modes of advocacy and may present as "selling out" to constituents; but, on the other hand, it arguably provides entry to "elite" audiences that develops rather than hinders deeper advocacy objectives for political change. These debates will be explored in fuller detail.

In a final section of this review, various legal, political, historical, and social citations of human rights are considered as a platform for Indigenous justice and advocacy. This required the multi-pronged task of: a) identifying theoretic traditions; b) differentiating human rights from other notions of rights within Aboriginal communities; and c) exploring the practical applications for Indigenous people and communities. This research suggests that political discourses may be tailored to different political objectives. For example, human rights of equality may work for a tenant facing discrimination from a landlord and Aboriginal rights to hunting or fishing may clearly define s. 35 constitutional rights.[13] After exploring a critical history of human rights, I shift my inquiry to explore literature that evaluates if human rights are pliable enough to reflect cultural notions of community justice.

This research will help to answer whether it is possible for Indigenous people to enliven

[13] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Constitution Act, 1982*].

IK, or achieve "full humanity," through contemporary human rights practices. The literature demonstrates that scholars are challenging assumptions and promises about human rights with growing confidence. While once the literature on human rights focused primarily on the structures of rights, the work of contemporary scholars such as Moyn (2010), Burke (2010) and Estévez (2011) have introduced a more complex analysis of the discursive practices of rights that are historically and politically contingent.

The literature seems conclusive that human rights references particular theories and institutions though it seems mixed on whether Indigenous peoples benefit from it. These leaders and scholars suggest this is an important avenue for Indigenous communities. Littlechild (2008) and Henderson (2008) suggest that increased cultural recognition has contributed to significant strides in human rights protections, especially for Indigenous people as evidenced by the UNDRIP. Other literature is more neutral. Criticism about under-representation of diverse knowledge systems in defining human rights standards is tempered by optimism that change can and is happening to marginalized peoples (Murithi, 2007; Mutua, 2002). However, some literature rejects human rights altogether for its contradictory objectives of human equality as opposed to Indigenous recognitions. This body of literature tends to suggest that other doctrines such as Aboriginal rights or decolonization can achieve greater justice through culturally-specific and community-based notions of humanity (Kulchisky, 2011). The critical conversations about human rights emphasize the ontological and epistemological dimensions of political advocacy and the need to reevaluate the assumed neutrality and universality of human rights.

This critical view of human rights is important to this study. Some literature reveals that Indigenous people are expected to learn the complex language and processes of asserting human rights to translate community experiences into human rights concepts and to deal with the

emotional and financial toil of negotiating what can be a bureaucratic and dehumanizing process. The literature surveyed explores why some Indigenous people propose more humanizing responses than appeals to human rights systems. There seems to be a deficiency of literature that not just includes but centers IK in the process of naming and reconciling violations of dignity and justice. This study proposes areas where additional scholarly attention may fill such knowledge gaps.

Scope of the Literature Review

This literature review encompasses a range of academic journal articles, books, reflective papers, and reports from various styles and traditions. From philosophy comes a summary of various traditions of moral development. From areas of sociology and political science come concepts of justice and political advocacy. From education comes theory on knowledge systems and methods for teaching and motivating. From Indigenous scholars, legal experts, and Elders comes reflection on morality, justice, and Indigenous models of advocacy. To explore human rights, many publications that are referenced in this research originates in disciplines of sociology, history, and education, which can be seen as a departure from some human rights research that often emphasizes jurisprudence and law. This is a deliberate choice to "ground" rights within the humanities to emphasize the socio-political contexts in which rights emerge. Nevertheless, key publications from Canadian and Aboriginal law, such as Isaac (2012) or Phillips (1997) specify differences among various rights discourses and provide insight on the structural parameters of rights protections as well as evaluate the legal implications for rights strategies.

The geographical scope of the literature is broad given the international scope of human rights that is relevant to Indigenous peoples throughout North, Central, and South America,

Africa, and Australia. Finally, this research is conducted from a Métis/Canadian background from a western prairie province of Alberta in Canada. In Alberta, there are 45 First Nations in three treaty areas of 6, 7, and 8, with Edmonton, my home city, being the capital of the province that is located in Treaty 6 territory. There are 140 reserves in the province, with the closest to me being the Enoch Cree Nation that borders Edmonton's west side, while the Ermineskin Cree Nation, Louis Bull Samson Cree Nation, Montana First Nation, and the Louis Bull Tribe are within one hour's drive. Alberta is also unique for recognizing a Métis land base and the eight Settlements are in the central/northern part of the province. Though there fluid travel between locales and there can therefore be opportunities for exposure to First Nation and Metis (and some Inuit) culture and politics, Edmonton remains an settler society with the colonial political, educational, religious, and other institutions firmly entrenched.

The Relationship Between Human Rights and Morality

This first section of the literature review addresses the research question of how morals are internalized in cultural communities. It seeks to describe how IK defines "justice" in communities, then explores congruence or difference between these and Western notions. As a preliminary focus, this review explores philosophical underpinnings of morality by surveying concepts, approaches, and theories that make up the "moral life." These descriptions are organized by comparing classical and modern traditions that differentiate moral development primarily through "sentiment" or "reason" and whether they are internally or externally-generated. This background is critical in understanding epistemological traditions of morality, to consider where human rights may fit within these traditions, and to evaluate the effect of human rights for Indigenous advocacy. It questions whether paradigms of rights align with Western

rationalist traditions or with those of Indigenous traditions, or whether it can create the ethical space where the two can engage collaboratively and constructively.

Liszka (2002) defines moral competence as "a person's mastery and internalization of the rules, procedures, and use of a language, skill, profession, or a body of knowledge…Moral competence is a mastery that permits general consistency in doing the right thing" (p. xii). Moral competence requires understanding of what should count as "good" behaviour, what makes a person good, what makes a good life, and what rules and principles ought to guide decision-making. The primary distinction between epistemic communities, cited by Liszka (2002) is whether morality becomes normative and regulatory through a process of internalization that is driven by sentiment, or whether morals become normative through externally-generated regulations and rules. These debates have been theoretically differentiated as either classical or modern.

Classical traditions, often credited to religious leaders such as Buddha, Moses, Jesus, or Muhammad, focus on what it means to be a good person or to live the right way and relies on generating wisdom rather than empirical rationalization.[14] Modern traditions, on the other hand, emphasize formal rules for guidance that are determined systematically and justified by exact and rigorous means. Liszka (2002) explains "[b]y finding such a rigorous justification for a principle, then to the extent that such principles can help us decide what to do in any situation, we have a credible guide to action" (p. 7).

[14] Many historical accounts of human rights suggest that human rights emerged out of the classical traditions of ethics such as those of Buddha or Mohammad that guide the *practice* of the good life. However, they suggest that, since the 18th century, human rights have undergone a "modernist" evolution and have become primarily concerned with principles and rules for action. This research argues that it is incorrect to assume this single evolutionary trajectory where "classical" notions of ethics are seen as historical and stagnant and overrun by modernist or empirical traditions or rights.

One of the often-cited differences between classical and modern traditions is whether morals are better enlivened through internalization of norms that stimulate self-control, or if they are externally-imposed through formalized rules and impose punishment for deviance. Internalization promotes a sense of the rightness of an action, which becomes obliging because a person has freely and autonomously chosen the norm for him or herself. The best motivation for internally regulation, argues Hume, Smith, or Hutcheson (in Liszka, 2002) are our sentiments, described as the only foundation for moral behaviour because they drive human behaviour through a sense of benefit or pleasure. According to classical traditions then, sentiments establish perceptions of rightness that are internalized as morals.

On the other hand, modern traditions view moral decision-making as controlled by abstract impartial rules and principles where reason, rational judgment, or matters of fact obligate "right" behaviour. Also called rationalism, credited by Liszka (2002) to Clark and Kant, is the belief that decision-making occurs through contemplation of "objective" principles such as facts, science, and logic, or that assign one side as right and the other as wrong. Rationalists argue that conformity to law and fear of punishment are stronger motivators to do the right thing than rewards of honour or recognition as proposed by the classical-oriented sentimentalists. Rationalists of modern traditions argue that public life and legal institutions require impartiality and objectivity, and that it is in private life such as the family and home where moral sentiment belongs.

These debates occur within politically-charged environments that have resulted in the dominance of reason over sentiment in political and legal theorizing. Classical theories are suggested to be historic and stagnant while "modern" theories are professed as civilized and sophisticated, despite the plethora of cultures that continue to adhere to these value systems.

Further, it is argued that rational and logical assessments are congruent with political contexts such as rights advocacy, while sentiments of caring are more congruent with private domains of home and family. Further, sentiment and caring are associated with feminine identities and roles while rationality and objectivism are associated with the masculine, where the masculine has assumed dominance by controlling or delegitimizing the sentimental frameworks. Women are often framed as lesser moral agents because of emotional rather than rational approaches to their proper roles in familial and community relations.

There is significant debate as to the assumed dominance of modern or rational theory. According to Liszka (2002), rationalism "has altogether ignored the sphere of the emotions and sentiments which serve us in a down-to-earth manner and in our daily, ordinary moral deliberations and encounters with people to whom we are connected in some manner" (p. 63). Feminist theorists such as Baier or Gilligan (in Liszka, 2002) agree that human connection or conflict resolution drives moral concerns and decision-making rather than abstract notions of rights and justice. Feminists may argue that reconciliation requires a sympathetic connection or relationship among disputants to reduce or eliminate harm and focus on improvement.

Feminist philosopher Baier argues that so-called "neutral" and externally-generated rules actually prevent moral behaviour because they force people into a certain framework that disallows compromise and a genuine connection with others (in Liszka, 2002, p. 53). She argues that a rule-based approach can augment difference, distance, and hostility rather than forging relationships. She argues that rationalist moral philosophy and obedience to universal ethical law, such as Kant's, " is wrongheaded because, in reality, morality develops from intimate caring relations and is directed toward particular persons in specific contexts, rather than in terms of abstract universal principles of justice" (in Liszka, 2002, p. 64). Feminist theorist

Gilligan (in Liszka, 2002) likewise argues, "if caring serves as the paradigm, the framework is different" (p. 64) and this framework, often intentionally modeled after the structure of the family, can be appropriately applied to public life such as within the legal system. Arguing that morality develops from caring relations and is directed towards persons in specific contexts, theorists like Baier or Gilligan (in Liszka, 2002) conclude that human connection rather than abstract principles hold people and communities together through "humane" practices.

It is argued that emotions affect us more deeply than formal rules, orders, or commands and are therefore a more effective motivator for ethical behaviour. For example, people are generally found to act with compassion when people sympathize with others.[15] As Liszka (2002) asserts, "when moral sentiment is fully developed in a person, the pleasure of doing what the person believes to be the right thing is *internally* generated rather than *externally* imposed (p. 39). He argues that "the key, then, to motivating people to do the right thing is to create, encourage and enhance the development of moral emotions in ourselves, in our children, and in others" (p. 13). Similarly, some feminist theorists suggest that a caring life is not preoccupied with rights, duties, obligations but with a strong sense of attachment to others and the world (in Liszka, 2002). In other words, human communities establish moral guidance through either rational and sentimental processes and the so-called impartial or universal rules and principles appear to be gendered and cultural conventions. While the Western rationality is often professed as superior or dominant, there is evidence to suggest that the opposite is true. The literature suggests that human communities do not share a common moral philosophy, though some appear to have become legitimized over others.

[15] Sympathy defined by Liszka (2002) is the feeling or emotions when we come to understand the emotional state of another. Sympathy develops when people connect and can identify with each other.

The previous section problematized the notion that classical philosophies are primitive and have ceded to "modern" ones, and further that the modern traditions are the preferred foundation for the intellectual, political, economic, cultural, and social systems and institutions in Western nations such as Canada. The next section will explore the cultural foundations of these traditions more thoroughly and suggest that cultural relevance within systems and institutions is critical to cultural dignity and survival.

Cultural Context of Morality

Whether modern traditions and their objective statements of ethical mores, such human rights, can be appropriately and universally applied to diverse cultural contexts is subject to debate. Literature suggests moral development is culturally contingent and subject to transformation, with examples of morally-guiding emotions that predominate in some societies more than in others. If moral decision-making is developed and shaped according to community thought systems, it becomes critical to question whether any one paradigm or system is universal. Much content suggests that human rights frameworks can adhere to the modern or rational frameworks at the expense of Indigenous ones.

Ermine (2007) suggests that one of the greatest aggravations in Indigenous-settler relations is the deeply embedded belief that settler ontologies are modern and universal. He describes this as:

> [t]he dissemination of a singular world consciousness, a monoculture with a claim to one model of humanity and one model of society… this mono-cultural existence suggests one public sphere and one conception of justice that triumphs over all others…In the West, this notion of universality remains simmering, unchecked, enfolded as it is, in the subconscious of the masses and recreated

> from the archives of knowledge and systems, rules and values of colonialism that in turn will into being the intellectual political, economic, cultural, and social systems and institutions of this country. (p. 198)

Ermine (2007) highlights that our socio-political institutions are human constructions shaped by paradigms of morals and ethics, and that Western concepts have become pervasive, immediate, and subconscious while Indigenous ones have remained invisible and powerless. The structures assumed universal are so embedded that society believes that resulting social inequities and dominant/subordinate relationships are authorized under "laws of nature" or the "will of god" (p. 198).

Ermine (2007) adds that our moral architectures are built through families and cultural communities. Diverse communities have distinct histories, knowledge traditions, philosophies, social and political realities: Indigenous communities have Elders and oral traditions to transmit these collective principles to help shape and balance our moral considerations. Baier (in Liszka, 2002) says "so-called universal moral rules turn out to be cultural conventions, subject to historical variations and change" (p. 64) and that

> moral decision-making works between our traditions and intuitions in response to novel moral situations which require new and challenging ways to address those traditions. Moral decision making always takes place within the context of a community that has some shared values…It is not something that can be handled by a principle, objectively administered by persons supposedly freed from the constraints of their tradition. (p. 15)

Despite a variety of values and norms evident in a community setting, there is a common moral core within most cultures. Without this, a cooperative, mutually-beneficial society would not be possible. Liszka (2002) states

> for a culture to thrive and for a people within it to flourish, a predominance of some virtue and moral order must be the case…Therefore, it would not be surprising to find very same norms present in cultures that have flourished and prospered over time simply because they are the very means to longevity. (p. 6)

Indigenous Elder Kelly (2008) quotes scholar Hallowell who describes how foundational culture derives from one's moral belief system:

> All cultures provide a cognitive orientation toward a world in which man is compelled to act. A culturally constituted world view is created, which, by means of beliefs, available knowledge and language, mediates personal adjustment to the world through such psychological processes as perceiving, recognizing, conceiving, judging, and reasoning…which intimately associated with normative orientation, becomes the basis for reflection, decision, and action…a foundation provided for a consensus with respect to goals and values. (p. 31)

Though Kelly speaks about imperative of his worldview as a guide through a process of healing following his residential school experiences, his notion that culture and worldview are synonymous and shape a consensus of goals and values suggests that culture is the basis for individual and community social structure.

Liszka (2002) reinforces the notion that there is an ontological basis for morality to suggest it is generated through our beliefs, to shape our desire to do the right thing, and to

influence our reactions when harm is done to others. Though there is no evidence to suggest our sentiments are culturally exclusive, he suggests some predominate in a person and society more than others. He looks at cultural associations between a catalogue of moral emotions such as admiration, disgust, remorse, regret, and outrage. This research context focuses on guilt, shame, and honour for their implications on how justice systems such as human rights are created and implemented.

Though emotions of guilt, shame, and honour operate at some level in all contexts, each one is more prominent in certain cultures. Guilt registers as most familiar in Western societies, while shame is more familiar in Eastern and Indigenous ones. According to Williams (in Liszka, 2002), guilt is self-generated and relies more in individual conscience; it promotes individually considered norms or standards and has a tendency to promote allegiance with abstract moral codes, rules, or standards. Shame, on the other hand, makes one focus on one's character and roles in the context of living with others. It relates to community norms, reflects group-based standards and pushes individuals toward "conformity, convention, and acceptance of authority" (Liszka, 2002, p. 21). Shame and honour are correlative: "A sense of honor is the emphatic feeling that a moral person does not engage in certain types of acts, that an individual's identity is bound up with this conduct, which is becoming of certain roles and status, and that it is beneath one to engage in anything less or contrary to it" (p. 40). Shame is bound with a sense of nobility, or the aspiration of goals larger than oneself, in human conduct.

The emotions of guilt, shame, and honour function differently with direct implications for the creation and maintenance of justice systems. With guilt, people may avoid wrongful behaviour for fear of getting caught. With shame, people feel internally motivated whether or not they behave a certain way because of beliefs shared with the group. Addressing the harm,

sometimes seeking forgiveness from the victims, and enduring pre-determined sanctions relieve guilt. On the other hand, proving oneself worthy again relieves shame.

The notion that moral traditions are universal ought be replaced by the notion that they are established through families and cultural communities, which are not all the same. Localized contexts shape beliefs, decision-making and emotive responses. Though not exclusive to particular cultural groups, certain emotions are catalogued to adhere more to modern or classical moral traditions. With modern traditions guilt is pronounced, and with classical traditions shame is pronounced. It would seem a logical assumption that these foundations would therefore shape the political infrastructure and strategies for engagement. For example, in systems where external rules and fear of punishment predominate, punitive institutions of justice would seem to direct and control behaviour. Where internalized norms and guidance through shame predominate, justice-related processes more aligned with education or normative guidance would seem more likely to direct and control behaviour. While this section concludes that ideas of justice and morality vary from one social context to another and reflect the social organization from which they emerge, the next section explores Indigenous concepts of justice and morality.

Indigenous Legal Orders

This section explores Indigenous legal orders – or the values, customs, and institutions that shape Indigenous moral frameworks and social organization. It provides some analysis and contrasts these with Euro-western orders and suggests that adherence to characteristics more akin to classical traditions of morality is a useful gauge as to the relevance of human rights for Indigenous communities. The section then differentiates between different notions of rights

relevant to Indigenous communities then describes notions of ethical space, *being* human, or examples of reconciliation as legal concepts and processes specific to Indigenous communities.[16]

Indigenous Legal Orders as Diverse and Complex

In a project to describe Indigenous legal orders, there is always a danger of essentialism, of imposing a simplicity that can dissolve intricate subjectivities into a simplistic vision.[17] Cowan, Dembour and Wilson (2001) see cultural essentialism occurring when scholars suggest "cultures are discrete, clearly bounded and internally homogenous, with relatively fixed meanings and values" (p. 3). The assumption of common experiences, histories, and opportunities can hide complex social dynamics and stratifications. For example, Cowan, Dembour and Wilson (2001) warn that when power relations remain hidden in essentialized discourses, agendas or biases are also hidden. Rao and Robinson-Pant (2006) specify that collective claims can omit gendered differences in experiences, social locations, economic benefits, or access to rights. Granted Indigenous peoples have multiple and contested identities, notions of morality or justice, and legal orders, this research remarks on some common characteristics and traditions without aiming to reduce complexity.

Both Friedel (2010) and St. Denis (2007) suggest that essentialism can harm Aboriginal people and limit social justice for communities. They suggest cultural essentialism in school curriculum "encourages Aboriginal people to seek out and perform cultural authenticity as compensation for exploitation and oppression" (St. Denis, 2007, p. 1080). Many feel compelled to participate in essentialized discourses that draw on self-blame for felt deficiency rather than interpreting oppression as a product of historical and ongoing colonialism and racism. The

[16] Napoleon (2007) distinguishes between law and legal orders where the former includes state-centered *legal systems* in which law is managed by professionals in institutions. Indigenous *legal orders,* on the other hand, are laws that are embedded in social, political, economic, and spiritual institutions.

[17] Leclair (2016 at p. 181) uses Keegan's monocularism to describe and critique the homogeneity of constitutional and legal theory and instead implores analysis of its various epistemological contributions.

literature referenced here suggest that generalizations about Indigenous morality and resulting legal orders may undermine the complexities of lived experiences and contribute to racialization of Aboriginal people in ways different from self-understandings. Rather than articulating identity with set definitions, these scholars suggests "culture" is situated, contested, and in continuous transformation.

However, Indigenous scholars Smith (2005) and Little Bear (2000) explain why there can be intrigue and even political opportunity in articulating Indigenous identity as collective; when used within contexts of decolonization or rights movements, it can be a political tool used to relate to each other and secure political objectives such as defining Aboriginal cultures as distinct from the colonizer. Kulchyski (2013) suggests that the collective "nation" can consolidate "a national identity that enacts these life ways and values" (p. 35). In other words, identity formation can be embedded in a political goal of justice, including the ability to self-determine as distinct nations. In this light, Indigenous identity can be legitimately framed as having similar experiences of, and resistance to, colonization. Similarities between the many Indigenous philosophies, values, and customs become a means of differentiating from other "threatening" societies and/or substantiating the social and political claims of sovereignty. Indigenous identity, in these contexts, embeds notions of "self" as distinct from the colonial "other".

It seems a balance is required, which necessitates a realization of complexity in individual and collective spheres. Leclair (2016) points out that when articulating a prospect of legal order, terms such as Aboriginal, nations, or peoples "occupy a whole intellectual horizon where there is no unanimity on fundamental issues, single concept or dominating motivation" (p. 188). Borrows (2016) states that Indigenous peoples have multiple identiary and political referents that can operate in translation and negotiation between complex, cross-cutting, parallel,

contradictory, or intersectional ways.[18] Indigenous legal orders are alive to change and invite intellectual deliberation and assessment to ensure its norms address shifting contexts. Speaking on this theme, Borrows (2016) clarifies that "it is misleading to claim that Indigenous societies possess an unalterable central essence or core" (p. 3). These descriptions illuminate Ermine's (2007) suggestion that Indigenous moral architectures are neither essentialized nor stagnant because they are established within and reflective of distinct cultural communities.

This research aligns with the views of Leclair (2016) who asserts that accepting complexity is no defeat but a moral and scholarly imperative. Indigenous identity, pedagogy, and politics have different levels of abstraction; there can be similarity in collective history of colonization but also can be alive to diversity within and between communities including differing political objectives. Little Bear (2000) confirms "no one has a pure worldview that is 100 percent Indigenous or Eurocentric" (p. 85) but suggests that "there is enough similarity among North American Indian philosophies to apply concepts generally, even though there may be individual differences or differing emphases" (p. 77).

The need to avoid simplicity can then reframe an inquiry into Indigenous legal orders. Indigenous law becomes "a language of interactions" (Napoleon, 2007) guided organically in community. Ultimately, morality, politics, and law can be expressed as collective while also acknowledging localized connotations. Diverse experiences can produce different discourses – including discourses of human rights. There is sometimes importance in naming collective characteristics, but this research also considers what Indigenous law does or how it interacts with particular points of understanding. Specifically, the discourse of human rights may have emerged from particular exposures and adopted meanings that may contain or enliven

[18] A discussion on how Aboriginal worldviews can interact or collide with non-Aboriginal ones follows in Chapter three, see also Little Bear (2000).

Indigenous references while, in other contexts, the human rights discourse may assume less-relevant, even foreign, meanings and political processes. This research tries to explore the problematic when the discourse of human rights is considered as neutral and universal and when it is used and asserted without consideration of its ontological referents.

Three Kinds of "Rights" Relevant to Indigenous Legal Orders

Traditional Political and Legal Orders

In trying to identify traditional notions of morality and justice or "law", it becomes important to articulate how societies are organized and how notions of power and authority display. Many Indigenous social and political orders are based on "spiritual solidarity derived from the moral integration that come from acquiescence to tribunal customs" (Boldt and Long, 1985, p. 168) therefore, legal orders can reflect notions of responsibilities rather than laws and morality is internalized rather than dictated.

Several concepts describe the broad category of Indigenous moral and legal orders, though the notion of "rights" are not typically used in traditional settings. This research uses the notion of *custom* to describe the source of Indigenous legal orders where customary law is a broad term referring to a wide range of traditions and customs. Customs that become part of the legal system are not merely habits but are formalized expectations that instill a sense of obligation.

The notion of "custom" is debated in the literature. According to *Halsbury's Law of England* (in Tobin, 2014, p. 19) customs must have four attributes to be recognized: immemorial origin, reasonableness, certainty of locality and persons, and continuity without interruption since its immemorial origin. Elsewhere, formal criteria used to recognize customary law have

been abandoned because it is acknowledged that the assent of the Indigenous communities is all that is needed to give a custom its validity.[19]

This research recognizes that cultural dimensions are essential elements of customary law as it emerges where Aboriginal cultures are practiced (Kulchyski, 2013). Taylor (in Kulchyski, 2013) calls this a "performative element" as it is grounded in practice. He states, "they could be seen as a special form of customary rights, rights that developed over time, through repeated practice of an activity" (p. 21). For many Aboriginal people, customary law tends to be asserted on the land where the cultural practices include asserting and exercising Aboriginal rights. Kulchyski (2013) explains:

> Aboriginal rights protect what people have done, repeatedly, for many years; the activities or practices that reflect and/or express their culture. This includes how people make decisions and how they produce their livelihood as much as how they celebrate their spirituality or community. (p. 24)

Though frequently used as an all-encompassing term for Indigenous political and legal regimes, it is inaccurate to suggest that either traditional or contemporary Indigenous legal regimes are limited to customary law. Borrows (2010) stresses that customary law is not the root of all Indigenous legal orders as often spiritual element are emphasized and further that Indigenous legal orders can be "positivistic, deliberative, or based on theories of divine or natural law" (p. 12) or, in other words, Indigenous legal orders are widely diverse.

Customary law includes a range of definitions and models that allow flexibility and continuity for diverse sacred teachings, deliberate practices, and naturalistic observations that are applied and enforced in community governance (Tobin, 2014). It reflects and asserts complex

[19] Tobin (2014, p. 19) provides an example used by the Privy Council in the Nigerian case of *Eleko v The Officer Administering the Government of Nigeria & anor*., 1928.

social and political systems that existed pre-contact and continues to present day. It reflects Indigenous worldviews and distinct epistemologies, often rooted in land, spirituality and culture (Tobin, 2014). Indigenous legal organization establishes webs of responsibilities that were embedded in cultural practices such as ceremonies, gifting, child, and Elder care.

Custom and tradition serve as the regulating forces for group order and individual behaviour. Customs "represented the Creator's sacred blueprint for survival of the tribe" (Boldt and Long, 1985, p. 338) and therefore conformity to custom was a matter of spiritual obedience that aligned with the accepted moral standards. It was not deemed necessary to appoint agents with authority to enforce custom. "Custom carries authority of a 'moral kind', that is, it obliges individuals, by conscience, to obey." (p. 338). Customary law tends to be decentralized and collaborative. It takes place horizontally and is internalized among members rather than vertically imposed by governments through coercive institutions. As illustrated by Walters (2006), Indigenous legal orders do not feature sovereignties in the European sense but do recognize simultaneous freedoms and reciprocal duties of respect.

Legal responsibilities and obligations are guided by broad principles, moral underpinnings, and spiritual references. Within Indigenous teachings, everything in creation has its own physical and spiritual laws. Though spiritual laws are not openly discussed nor written about, all laws have a spiritual connection. Part of Cree physical laws, explains McAdam (2015),[20] are the human laws that inform every part of an individual's and a nation's life. All nations have their own laws and legal systems that, except for the colonial disruptions, guide and direct people in interactions with families, communities, and other nations. These laws are connected to community environments, and include protocols around livelihoods (hunting,

[20] McAdam (2015) uses Cree extensively to explain these Indigenous legal concepts, though only the English translation is used here.

fishing, gathering and agriculture) that are carried through the songs and ceremonies. McAdam (2015) suggests that a child is reared to understand and adhere to a nation's obligations and responsibilities. A child is "born into their nation with a distinct 'bundle' of inherent rights and Treaty rights" (p. 28).

The concept of authority is critical to any analysis of Indigenous law and present a strong point of differentiation between Indigenous and Euro-western notions of social organization. Indigenous customary law tends to view authority as diffused whereas modernists recognized a hierarchy of authority or a "natural authority superiority of one over another" (Boldt and Long, 1985, p. 335). Boldt and Long (1985) describe tribal government as collectively ruled, exercising authority as one body with undivided power, sharing and participating equally in all privileges and responsibilities, and collectively performing all functions of government.

This notion of authority and hierarchy is different from a dichotomy of ruler(s) and ruled, a dictated command of law, and a defined sanction. Boldt and Long (1985) provide:

> The European-western notion of a sovereign authority had its origin in the system of feudalism and the associated belief in the inherent inequality of men…In the Hobbesian doctrine of sovereignty, authority was deemed necessary to protect society against rampant individual self-interest. But in Indian tribal society individual self-interest was inextricably intertwined with tribal interests; that is, the general good and the individual good were virtually identical…The political and social experiences that would allow Indians to conceive of authority in European-western terms simply did not exist, nor can sovereign authority be reconciled with the traditional beliefs and values that they want to retain. (pp. 336-337)

Indigenous legal traditions carry beliefs and values that clash with the concept of a ruling entity, or social organization structured by the ruling and the ruled (Boldt & Long, 1985). Native communities ruled collectively "exercising authority as one body with undivided power, performing all functions of government." (p. 337). Boldt and Long (1985) describe:

> The tribe was not the result of a contract among individuals or between ruler(s) and ruled, but of a divine creation. No human being was deemed to have control over the life of another. Therefore, the authority to rule could not be delegated to any one member or subset of members of the tribal group. This denial of personal authority extended even to the notion of transferring the right to govern within specified fixed limits. Any arrangement that would separate the people from their fundamental, natural, and inalienable right to govern themselves directly was deemed illegitimate.
>
> In place of personal authority, hierarchal power relationships, and a ruling entity, the organizing and regulating forced for group order and endeavour in traditional Indian society were custom and tradition. Put another way, Indians invested their customs and traditions with the authority and power to govern their behaviour. In the traditional myths custom had a source and sanction outside the individual and tribe. Customs were derived from the Creator…By unreservedly accepting custom as their legitimate guide in living and working together they alleviated the need for personal authority, a hierarchal power structure, and a separate ruling entity to maintain order. (pp. 337-338)

In other words, Native social structures were a matter of spiritual compliance that accorded to the collective moral standards. There were no authoritative agents to enforce custom. Individuals

were obliged by their own internal conscience. This is obviously quite different from externally imposed written laws or codes that become enforceable through sanction.[21]

Specific laws speak to "matters of stealing, adultery, murder, proper child rearing, sexual offences, hunting laws, environmental laws, and other matters of human interaction" (McAdam, 2015, p. 39). There are also laws that describe the act of breaking different categories of law "breaking of a law(s) against another human being" (p. 43) or "the breaking of a law(s) against anything other than a human being" (p. 44). Of the several categories of laws identified, one of the foundational laws is translated as "having or possessing good relations" (p. 47). The origin of this law is the relationship that one has with the Creator: "It asks, directs, admonishes or requires Cree people as individuals and as a nation to conduct themselves in a manner such that they create positive good relations in all relationships" (Office of the Treaty Commissioner in McAdam, 2015, p. 47). This law defines interpersonal relations that are foundational for all human and political interactions.

There were numerous remedies for broken laws generally found in ceremonies, though it is sometimes argued that generally peaceful relations prevailed and crimes were rare before colonial legal structures replaced Indigenous ones. McAdam (2015) recounts that the general lack of quarrelling or interpersonal conflict in Amerindian communities impressed Europeans, who wondered how peaceful relations could prevail without threat of force in the background. During their initial meetings with Indigenous peoples, the Jesuits observed:

> Besides having some kinds of laws maintained among themselves, there is also certain order established as regards to foreign nations. Amerindians treated any person caught breaking these rules like a thief. They sealed

[21] Boldt and Long (1985) state that rule by custom was possible in traditional society because face-to-face society could maintain order with a few broad rules known to everyone. When large gatherings of diverse bands occurred, it was customary to invest in one of the Indian societies with a temporary peace-keeping role (p. 338).

> these agreements by an exchange of gifts and hostages which led to the formation of blood ties. (Dickason and Nebigging in McAdam, 2015, p. 50)

Some caution is leveled against romanticizing or incorrectly characterizing traditional legal orders. Snyder, Napoleon and Borrows (2015) and Tobin (2014) note that forms of oppression such as patriarchal violence are often embedded in notions of "traditional" that may or may not have characterized Indigenous communities historically.[22] They caution that it may not be accurate to describe Indigenous law as essentialized or romanticized by suggesting a lack of conflict or inequality. Even if Indigenous law, on its face, may seem to be consistently applied to men and women, these laws can privilege, disempower, enable, or restricted opportunities for women according to power dynamics at play (Snyder, Napoleon & Borrows, 2015). For example, in some Indigenous communities, women have been denied leadership positions, equal voice in decision-making, economic opportunities, land ownership, forced marriage and, as a result, Aboriginal women are often politically disenfranchised and the poorest of the poor (McIvor, 2004; Tobin, 2014). So, this literature suggests that power hierarchies may or may not have informed some aspects of indigenous social organization and would have had to be negotiated through the processes and structures of the local.

When the language of traditional rights sometimes refers to traditional legal orders, it often includes the right to traditional or customary legal regimes that protect identity and culture, a spiritual base to the land, and the right to social and political systems. This notion of rights is often referred to as inherent because of Indigenous prior occupation. That Aboriginal rights are inherent highlights that they are not special rights awarded by Canada as other minorities are awarded rights but exist because of unique status as First Peoples. Slattery explains:

[22] McIvor (2004) cites laws and community policy that excluded Indigenous women from membership because of marriage to a non-Indigenous man.

> Aboriginal rights refers to a range of rights held by native peoples, not by virtue of Crown grant, agreement or legislation, but by reason of the fact that aboriginal peoples were once independent, self-governing societies, in possession of the most of the lands now making up Canada. (in Phillips, 1997, p. 1)

Paine (1999) states "rights are pre-contact, in place before the law of the Settler state" (p. 329) and Phillips (1997) suggests that these rights belong to Aboriginal peoples as "minorities whose social, political, and economic systems predated all others" (p. 3),[23] though she describes traditional Aboriginal rights as unique, given the "historical context of their neglect" (p. 2). She argues that traditional Aboriginal rights can never be achieved in the colonial framework because Canadian jurisprudence does not have the forum nor ability to understand articulations of Aboriginal rights and can therefore not protect them (see also Backhouse, 1999; Monture-Angus, 1999; Venne, 1998).

Though the concept of traditional Aboriginal rights is commonly used, the literature does not reference the concept of rights in IK or traditional Indigenous legal regimes. Boldt and Long (1985) explain why western notions of rights is an ill-fit with Indigenous legal traditions.

> The western-liberal doctrine of human rights grew out of the European experience of feudalism and the associated belief in the inherent inequality of men. Concern with constitutionally guaranteed individual rights was in part a reaction to centralization and abuse of power. It reflected the need in western societies to protect the individual against the powers of the state and various forms of personal authority The doctrine of individual rights gained additional relevance

[23] Paine (1999) critiques the consistent correlation of "Aboriginal" people and "minority" groups even though he recognizes "cultural minorities [can] have distinct legal and political status" (p. 331). He argues that a "minority" status positions Aboriginal people at the bottom echelons of the same system as the "majority" which is counter-productive to recognition and goals of sovereignty.

> in western societies because individual initiative and competition were deemed essential for economic development. The capitalist market economy thrived on competitive individualism, and the doctrine of autonomous individualism served both as stimulus and justification for the idea of inherent individual rights in western societies. The modern western capitalism polity and economy represent a society in which the individual is in need of protection against forces that threaten to overwhelm him. In this context, individual rights have emerged as a response to existing objective conditions.
>
> …
>
> In tribal society all members participated in decision-making as a collectivity for the common good. In such a society there is less potential for offences against the individual and less need for individual protection from abuse of authority. Tribal Indians consequently came to define rights in terms of the common interest. Individual rights were perceived by Indians as working contrary to their common interest. Such rights were seen as jeopardizing the collectivity and, by logical extensile, jeopardizing the individual members. (p. 169)

There are references to Indigenous people having a right to traditional or customary legal practices that reflect Indigenous worldviews, though this concept of rights emerges more out of Indigenous human rights rather than traditional notions of rights.

Traditional Indigenous rights reflect distinct epistemologies that underlie systems of law, custom, tradition, and are rooted in land, spirituality and culture. Customary law establishes responsibilities to maintain responsible webs of relationships and are solidified through custom, ceremony, and localized practice.

Aboriginal Rights Defined through Canadian Jurisprudence

The pre-contact political, social, and economic systems establish the premise for Aboriginal rights and title for Aboriginal people in Canada; however, "Aboriginal law" is neither strictly Indigenous customary law nor Canadian law but the body of Canadian law and interpretive canons that define legal relations between Indigenous people and the Canadian such as existing Aboriginal and treaty rights.

Before Confederation, recognition of Aboriginal rights stemmed from recognition of customary law and international legal regimes as evidenced by extensive treaty negotiations.[24] In the process of colonial settlement and the consequent processes of dispossession and marginalization, Aboriginal leadership responded with an array of tactics, ultimately codified through the doctrine of Aboriginal and treaty rights in order to maintain a degree of access to the land. Aboriginal rights are the "legal embodiment" of Aboriginal claims to lands and ability to engage in traditional activities that have been recognized in the development of the legal and statutory framework in Canada (Isaac, 2012; Kulchyski, 2013; Phillips, 1997).

The Royal Proclamation, issued in 1763 following the British conquest of New France, consolidated Britain's domination over North America, reserved tracks of land for Indians, prohibited reserve-land transactions without authority of the Crown, required settlers to vacate reserved Indian land, and issued licensing to trade with Indians (in Isaac, 2012).[25] Sovereignty of Aboriginal peoples over their land and customs did not terminate with the development of Crown

[24] Customary law ensures that a visiting or colonizing state comply with accepted customs of the sovereign state, and only when treaties are ratified can one state bind another to obligations (Venne, 1998). For a discussion on the Treaty 6 negotiations see Venne (1997).

[25] Codified and applied by the British Crown, The Royal Proclamation [the Proclamation] reaffirmed boundaries between the colonies and Indigenous territories after the 1755-63 war in Indigenous America between the French and the British and their Indigenous allies. In its text, the Proclamation refers to Indigenous Peoples as "Nations", as distinct societies with political organization, with inalienable rights to their lands, and with whom treaties had to be negotiated prior to entering lands (Venne, 1998). The recognition of Indigenous territorial sovereignty and unified nationality with existing governmental structures confirmed that the British Crown could not justifiably deny the existence of the rights of Indigenous Peoples as international subjects.

sovereignty; however, the common law status of Aboriginal rights prior to constitutional recognition made them vulnerable to modification or extinguishment by the federal Crown.

The Canadian judiciary has assumed responsibility for defining Aboriginal rights (a contested assumption of sovereignty) and most often applies a concept of Aboriginal rights that accommodates Indigenous legal traditions, but "in a manner which does not strain the Canadian legal and constitutional structure" (*Delgamuukw v British Columbia*, 1997).[26] Accordingly, Aboriginal law is often seen to reconcile Indigenous pre-existence with Crown sovereignty. As in *Van der Peet,* 1996 [at para 49] :

> The definition of an aboriginal right must, if it is truly to reconcile the prior occupation of Canadian territory by aboriginal peoples with the assertion of Crown sovereignty over that territory, take into account the aboriginal perspective, yet do so in terms which are cognizable to the non-aboriginal legal system.

In other words, despite acknowledgement of Aboriginal customs, Aboriginal rights must be translated into "acceptable" Canadian legal structures in order to be recognized by the court, but only to demonstrate pre-existing distinctive societies have reconciled Crown sovereignty.

In *Mitchell v Canada (Minister of National Revenue,* 200,1 the Supreme Court of Canada (SCC) acknowledged the Indigenous meaning of the two-row wampum as a treaty relationship of parallel Crown and Aboriginal sovereignties, but then argued that the "modern embodiment" of this concept is subsumed under Crown sovereignty. Walters (2006) was concerned that the Crown reinterpreted treaty to mean reconciliation with Crown sovereignty though without explanation of how the initial treaty relationship of sovereignties mutually cohabiting changed.

[26] Other cases in which Aboriginal and treaty rights are defined include *R v Sparrow*, [1990] *R v Badger*, 1996, *Van der Peet*,1996, and *R v Marshall*, 1999 (in Isaac, 2012).

While the SCC did acknowledge the possibility that the Canadian state did not entirely destroy Aboriginal sovereignty, it did little to advance a consent-based theory of Crown sovereignty.

The SCC has found that despite constitutional protections, Aboriginal and treaty rights may be infringed upon by federal or provincial legislation if the legislation achieves a legitimate purpose in a proportional manner. The infringement test was first explained in *R v Gladstone*, 1996 and repeated in *Delgamuukw v British Columbia,*1997:

> Aboriginal rights are a necessary part of the reconciliation of aboriginal societies with the broader political community of which they are part; limits placed on those rights are, where the objectives furthered by those limits are of sufficient importance to the broader community as a whole, equally a necessary part of that reconciliation. (para 161, underline in original)

In other words, the SCC suggested that reconciliation means acknowledgement of rights insofar as they do not interfere with those of the broader community.

The SCC has occasionally acknowledged a need for critical reinterpretation of Aboriginal rights. In *R v Sparrow,* 1990 (at paras 1105-1106) it advocated for a "just settlement" that renounces "the old rules of the game under which the Crown established courts of law and denied those courts the authority to question sovereign claims made by the Crown." The Court stated that recognition and reconciliation serve a dual purpose of: a) protecting Aboriginal and treaty rights, and b) recognizing the value and distinctiveness of Aboriginal cultures (Isaac, 2012). This judicial response seemed to demonstrate a willingness to reconsider the national constitutional narrative around Crown sovereignty, through notably, the Court in *R v Sparrow,* 1990 did not deny its dominance.

On rare occasions, the judiciary has contemplated the assertion of Crown sovereignty as

immoral. In the early American decisions of *Johnson v M'Intosh,* 1823 and *Worcester v Georgia*, 1832, Chief Justice Marshall recognized that nations were distinct and had legal orders that implicated the Crown-Aboriginal relationship, and he saw the assertion of Crown sovereignty as a moral indignation. Marshall's interpretation presented options for consequent Canadian courts to consider mutual reconciliation, and indeed this occurred in the cases of *Haida Nation v British Columbia,* 2004 and *Taku River,* 2004 where the SCC alluded to a re-interpretation of Crown sovereignty. In *Haida Nation v British Columbia*, 2004, the Court stated (at paras 20, 25):

> Where treaties [between Aboriginal peoples and the Crown] remain to be concluded, the honour of the Crown requires negotiation leading to a just settlement of Aboriginal claims.... Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982.
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> Put simply, Canada's Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognized and respected.

Walters (2006, p. 513) suggested that these cases presented "a fundamental re-interpretation of the character of Crown sovereignty in relation to aboriginal peoples" as it was the first time the SCC recognized that "Aboriginal sovereignty," not just "distinctive aboriginal societies" or "Aboriginal occupation", must be reconciled with Crown sovereignty. This represented a

substantial step toward mutual reconciliation of sovereign legal regimes.

Not only did the SCC in *Haida Nation v British Columbia,* 2004 articulate Aboriginal sovereignty as the standard for analysis, but it posed questions about the legitimacy of Crown sovereignty in its acknowledgment that it is "asserted" or "assumed" with "*de facto* control." (paras 20, 26, 32). Similarly in *Taku River Tlingit First Nation v British Columbia,* 2004 the Court affirmed "the purpose of s. 35(1) of the *Constitution Act, 1982* is to facilitate the ultimate reconciliation of prior Aboriginal occupation with *de facto* Crown sovereignty" (at para 42). These findings illustrate that without Aboriginal treaty making, Crown sovereignty is "a *factual* reality, not a *legal* one." (Walters, 2006, p. 515). This presents a different concept of Aboriginal law that shifts the constitutional pattern, though in what direction depends on the form of reconciliation that is adopted and applied by the courts.

A new era of Aboriginal rights was ushered in with the *Constitution Act, 1982*. Section 35 provided "a shift to Canada's legal regime" (Isaac, 2012, p. 17) because it "recognized and affirmed" Aboriginal and treaty rights that, arguably, promoted a change in the role of the Crown jurisprudence from conquest and assimilation to recognition and reconciliation (Isaac, 2012). The core concepts of s. 35 are to recognize pre-contact occupation and to provide a legal framework for distinctive elements of Aboriginal culture. Further, s. 25 of the *Charter of Rights & Freedoms (Charter)*[27] determines that the *Charter* cannot abrogate or derogate Aboriginal rights, which establishes constitutional protections for Aboriginal rights that arguably merits stronger protection than through human rights regimes.[28]

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[27] *Charter of Human Rights and Freedoms*, CQLR c C-12, s 10 [*Charter*].

[28] In *Van Der Peet*, 1996 the Supreme Court stated Aboriginal rights cannot be defined on the basis of the philosophical precepts of the liberal enlightenment. Although equal in importance and significance to the rights enshrined in the *Charter*, Aboriginal rights must be viewed differently from *Charter* rights because they are rights held only by Aboriginal members of Canadian society. They arise from the fact that Aboriginal people are Aboriginal (cited in Kulchisky, 2013).

There is some optimism that Canada's *Constitution* and can help assert Aboriginal rights in an effort to reclaim Aboriginal culture, spirituality, and history (Monture –Angus, 1999; Phillips, 1997).[29] Phillips (1997) however acknowledges that Aboriginal rights and protections are not described in any further statute, leaving the jurisprudence continually evolving and subject to interpretation.[30] Canadian jurisprudence seems to be making incremental steps towards acknowledging cultural difference and applying fairer representation of Aboriginal issues because there are cases where select judges appear to be more willing to look beyond old case law to apply "modern indication of Canadian values" (p. 11). On the other hand, Phillips (1997) recognizes that contemporary legal processes see Aboriginal culture through the eyes of European socialization and subject to "English cultural authority" (p. 12). She suggests that the rule of law in general is "one particular cultural expression of social life" (p. 13) where, for example, something as basic and integral to the legal system of "due process" remains culturally specific.

Canadian courts have contributed to significant confusion between Aboriginal rights and human rights. The SCC decisions of *R v Drybones,* 1970 and the *Lavell/Bedard* cases decided in 1974[31] addressed human rights of Indigenous peoples. In *R v Drybones*, 1969 the court considered whether Joseph Drybones's alcohol-related offence under the *Indian Act* violated his

[29] Objections to the *Charter* are leveled on many fronts. There are those, such as Arthurs (2003) who argues that the *Constitution* is not sufficiently defined to be useful, nor has *Charter* litigation been able to "transform deep structures of the economy or society" (p. 19). He argues that equality-seeking groups would be better off devoting resources and energies to political and social mobilization rather than constitutional lobbying. Many Indigenous leaders such as the Assembly of First Nations during the Charlottetown Accord emphasized a return to traditional values and self-governing political arrangements independent from the Constitutional purview. On the other hand, McIvor (2004), who brought her own legal challenge to discrimination in Bill C-31, highlights the barriers for Indigenous women to achieve social change through community leadership and deems *Charter* protections as necessary.

[30] Credited as authoritative for interpreting s. 35(1) are R v *Sparrow*, 1990 and *Van der Peet*, 1996 that established the "framework through which Aboriginal rights can be recognized he reconciled with Crown sovereignty" (quoted in Phillips, 1997, p. 4).

[31] Each case started independently but were heard together at the SCC.

human rights because the punishment was more severe than a non-Aboriginal person under the same law. The majority ruled that *R v Drybones,* 1996 had been discriminated against and essentially used the *Bill of Rights* to overrule other federal legislation such as the *Indian Act*. In 1973, the court faced a similar issue of discrimination, this time against Indian women who lost their legal status through marriage to non-Indian men. Jeanette Lavell and Yvonne Bedard had joint decisions at the SCC that addressed sex discrimination as women lost their status with marriage to Indian men. In the decision, the court reversed its position that the *Bill of Rights* (essentially human rights legislation) could not overrule the *Indian Act* (as cited in Kulchyski, 2013).

Other court decisions at the time dealt with Aboriginal title but the commentary established confusion over different conceptions of rights. The Nisga'a launched *Calder v British Columbia*, 1973 to ask the courts to recognize Aboriginal title to their territory. Though they lost the case on a technicality, the majority of judges established that Aboriginal title is grounded in prior occupancy – a notion that was a significant step forward for Aboriginal rights with legal force in Canada. The first post-constitutional case of *Guerin v The Queen*, 1984 occurred after an Indian Agent leased reserve land below market value and focused on how Aboriginal title presented a basis for the federal government's fiduciary duties. According to Kulchyski (2013), the commentary emerging from the cases confused the meanings of rights. It was thought that Aboriginal rights derived from title, and it was argued that Aboriginal title could then secure the human rights (meant here as the property rights) of Indigenous people. Aboriginal rights was extrapolated to signify a form of human rights.

Consequent cases of *R v Sparrow,* 1990 and *R v Sioui*, 1990 examined Aboriginal and Treaty rights without reference to title, which clarified the distinctions. These cases allowed

political commentators to understand Aboriginal rights as property and political rights and that the latter did not derive from the former. This logic seemed to apply in *R v Van Der Peet*, 1996 around the right to commercially harvest fish. Here the SCC further clarified the differences between human rights and Aboriginal rights where the latter derived from the doctrine of prior occupancy. Chief Justice Lamer stated, "Aboriginal title is the aspect of Aboriginal rights related specifically to Aboriginal claims to land; it is the way in which the common law recognizes Aboriginal land rights" (as quoted in Kulchyski, 2013, p. 41). In this case, Aboriginal rights were defined where "an activity must be an element of practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right" (*R v Van Der Peet,* 1996, para 46). To reference "practices, customs or traditions" affirmed that Canadian courts, as much as they could, related Aboriginal rights to culture. The justices in *R v Van der Peet,* 1996 found that Aboriginal rights cannot be defined on the basis of philosophical precepts of the liberal enlightenment (Kulchyski, 2013).

While Canada's *Constitution* applies to state protections for citizens, human rights laws govern relations in private and public sectors. However, the *Canadian Human Rights Act* (*CHRA*) does not mention Aboriginal Peoples except for reference to the *Indian Act* to suggest "Matters contemplated by the *Indian Act* won't be contemplated by CHRA" (in Phillips, 1997, p. 13), and the *Indian Act* does not address key elements of culture or spirituality. Religion is a prohibited ground of discrimination in the *CHRA*, but most Aboriginal people in Canada are denied this protection due to a differing conception of religion and spirituality. The sign of positive change, as noted by Phillips (1997), comes from Alberta with its amendment to included Native spirituality in provincial human rights legislation, which was the "first of its kind in Canada" (p. 18).

In summary, Aboriginal rights is a culmination of both Indigenous traditional law and Canadian law, though inconsistently interpreted through Canadian jurisprudence. It is the realm of law and jurisprudence that define mutual cohabitation, land use, and resource allocations between Indigenous and non-Indigenous in Canada. Aboriginal rights is clearly distinct from traditional concepts of Indigenous customary law, which is regulated both internally and collectively and result in societies described as having strong relational connections. Indigenous legal and moral frameworks derive from living systems of thought and experience that shape an individual's and a nation's interactions and interrelations with each other, as well as the physical and spiritual world. As the next section will demonstrate, Indigenous rights are also clearly distinct and provide distinct processes and outcomes.

Indigenous Rights

Human rights, emerging after a long history of struggle since 18th century European enlightenment, addressed struggles of workers, women, and some non-European peoples. They generally referred to rights and freedoms that humans enjoy simply because they are human. Everyone, in principle, has human rights and they represent a universalizing notion of humanity: equality between humans. Human rights reflect the notion that all people are equal or the same (Kulchyski, 2013).

Indigenous rights refer to both the global justice networks of Indigenous Peoples as well as to the international mechanisms and institutions of the United Nations that eventually received Indigenous as Peoples in the international human rights "family" and acknowledged their particular circumstances as Indigenous Peoples. The historical perspective and discursive debates around Indigenous rights will be presented in the next chapter of this research through the focus on the UNDRIP.

Many Indigenous advocates bring the concept of sovereignty to Indigenous rights forums in an attempt to bring external political pressure to bear on the Canadian government. As stated by Boldt and Long (1985) "[t]hey feel that the more enlightened norms of international law and the United Nations covenants on political and cultural self-determination will bolster their case for sovereignty and will serve to counteract the negative treatment their claims have received at the hands of Canadian judges and policy-makers" (p. 333). And, because Boldt and Long (1985) identify extensive differences between the European-western idea of "sovereignty" from traditional Indigenous customs, values, institutions, and social organizations, they suggest that "Indians in Canada…want sovereignty not to justify internal authority within their communities, but to exclude the sovereign authority of the Canadian government" (p. 341). While the concept of sovereignty is different between cultures and knowledge systems, Boldt and Long (1985) suggest that many Indigenous make decisions to take up this discourse and appeal to international human rights to claim sovereignty as legitimate. They state "contemporary Indian leaders are reconstructing and reinterpreting their tribal history and traditional culture to conform to the essential political and legal paradigms and symbols contained in the European-western concept of sovereign statehood" (p. 341). While the impact of this uptake of Indigenous rights is debated in the next chapter, it is important to note here that sovereignty is one of the primary, though hotly contested, cornerstones of Indigenous rights advocacy.

Indigenous rights are multifaceted and can reference traditionally-held notions of rights, citizenship rights as defined and protected by the colonial state, and an emerging global membership to a network of Indigenous peoples who share similar social, civil, and political experiences. Indigenous activists and organizations have grappled with rights discourses. As an example, Defenders of the Land rejected the use of "rights" in the wake of using the rhetoric of

rights as justification for state interventions rather than as a tool for marginalized communities (Kulchyski, 2013). Many recall the Federal government *White Paper*, 1969 a policy proposal that would have distinguished Aboriginal and treaty rights to ensure that Indigenous people become "equal" with other communities. Because of this, many saw human rights as a threat to Aboriginal people.

In summary, this section has illustrated that there can be very different reference points within a generic discourse of rights. Each has own institutions of definition and enforcement with associated processes – some being more complementary and others contradictory to traditional social structures. Three notions of rights such as traditional or customary rights, legal rights defined through Canadian jurisprudence, and Indigenous rights within the international human rights context have striking differences between each. Traditional Indigenous legal orders are characteristically horizontally-established through custom rather than vertically-imposed by governments; they are internalized among members rather than externally-generated, and decentralized and collaborative, which distinguish them from both state-based positivist legal orders and human rights regimes. Since colonization and the formation of the Canadian state, Aboriginal people have had to negotiate a discourse of Aboriginal rights that became embedded within legal frameworks of Canada's *Constitution*. More recently, the context of globalization has enabled socio-political identities and collaborations beyond the state to presume an increased use of globalized "human rights" discourse for collective organization and advocacy (Burke, 2010; Moyn, 2010; Risse, Ropp, & Sikkink, 1999). Indigenous rights refer here to these international human rights systems that will be explored more fully in the detailed exploration of human rights systems.

Concepts and Processes within Indigenous Customary Law

Being Fully Human

Human rights presents an ethos for conceiving an individual's and a nation's moral and legal order; that individuals have inherent and universal "rights" as humans and that nations too are obliged to follow basic international guidelines found in various declarations and covenants. However, this research requests that we suspend reliance on human rights for articulating an ethos of morality and justice, and instead consider concepts more localized, more rooted in Indigenous knowledge, and likely more relevant to Indigenous communities. Indigenous legal orders offer well-elaborated systems of customs to define duties and responsibilities, designated to protect human dignity. These did not restrain an individual in autonomy and freedom but had its expression in group-oriented and derived attitudes. Indigenous traditions reference the process of *being* or becoming a whole person as an expression of human moral and legal grounding. Couture (1996) explains, "traditional Native holism and personalism is a culturally shaped human process of being/becoming" (p. 46). This process of *becoming human* fosters a strong sense of responsibility, both toward self and the community, and occurs in the context of the extended family and community.

Indigenous teachings present *being* as different from either *doing* or *thinking* that can be dominant in classical or Western paradigms. Couture (1996) explores differences between "being" and "doing" as cultural manifestations between Native and western ways of life. He explains:

> In the west, classical existentialism stresses the utter validity of subjectivity, i.e., of the feeling, reflective subject who has the freedom to make choices, and to determine thus his/her life. Therefore, what one does is the keystone importance.

> The doing that characterizes the Native Way is a doing that concerns itself with being and becoming a unique person, one fully responsible for one's own life and actions within family and community. Finding one's path and following it is a characteristic Native enterprise which leads to or makes for the attainment of inner and outer balance. This is a marked contrast with general western doing, which tends and strains toward having, objectifying, manipulating, 'thingifying' every one and every thing it touches. (pp. 46-47)

Similarly, in the article *The Power of Being a Human Being*, Trudell (2005) explores the concept of "being" as a spiritual reality, an energy that is different from the physical and temporal reality of western nations. Trudell (2005) discusses how *being* shapes an Indigenous moral architecture because it becomes a source of power: it motivates internal responsibility distinct from adherence to external systems of authority. He claims that *being* is not about submission, obedience, and authoritarianism, it is about taking responsibility to use the consciousness of *being* to "manifest …a coherent balanced reality" (p. 321). In Trudell's words:

> it is the individual experience of *being* and how that being evolves as we go through the human experience; *this* is what's connected to the realities of what power really is. Power is not a man-made device or structure. Power is not a political, religious, or social system. That's not power. Those are systems of authority. The reality of power is an entirely different reality, and that reality is us – human beings; the power of the human *being.* (p. 320)

Reminiscent of Liszka's (2002) explanation of shame vs honour as culturally-embedded, there are also distinctions between *being* and *thinking*. Métis scholar Weber-Pillwax (2004)

considers cultural and spiritual dimensions of *being* as distinct from *thinking* to influence practical processes and negotiations such as, in this case, educational policy. She says:

> Although the role and impact of politics on education is shrouded under 'acceptable' and 'liberal' legislation and public policy which exhorts the highest ideals of personhood and *being*, administrators and educators in general continue to implement such policies in total denial of the *being* of parents and students, especially the *beings* of Indigenous parents and students. The significance of cellular memory in the consciousness of Indigenous peoples brings forward the sharp relief the source of conflicts that Indigenous peoples often experience when confronted with the Euro-Canadian approach to life that gives primacy to *thinking* over *being*. This is not to suggest a dichotomy between Indigenous and Euro-Canadian views because this has not been evidenced in any way. (p. 110)

Weber-Pillwax suggests the pervasiveness of being and the calamity of its repression when new ways are introduced into the cognitive, social, and political terrain. This seems to support the thesis that there are cultural manifestations of being, thinking, and doing, though these do not have to remain culturally exclusive as there is an "indissoluble connection between *being* and *thinking* where *being-in-relationship* is experienced as a characteristic of human existence (pp. 110-111). However, that ways of knowing are embedded in our total selves and that "our most important task is to make such knowledge conscious and available" (p. 106) seems to suggest the importance of synergistic experiences in multiple areas, including political work.

Trudell (2005) also affirms the connection to being human and ancestral knowledge. He acknowledges that "we're all human beings" (p. 319), intricately tied tribal ancestry and genetic memory. He explains:

> Everyone of us has a tribal ancestry and we have a genetic memory. Encoded in that genetic memory is the experience of our individual and collective evolution. You can follow it through ancestry. The information is there, because we're human beings – the knowledge of all those experiences are with us. (p. 319)

This passage reminds us that there are inherent features of our *being* such as guilt, shame, and honour, that speak of whole identities and that ways of knowing draw in the voices and experiences of our ancestors, conscious or not, but that nevertheless remain embedded and embodied in our total selves. This suggests the importance for all peoples and cultures to have the potential to access and achieve culturally-specific moral frameworks.

Connections between loss of identity and dysfunction, deviance or criminality are well established. Trudell (2005) suggests that many barriers and challenges for Indigenous people exist "because almost everything we're doing is a contradiction to the responsibility of *being*" (p. 321). Speaking on criminality, Chief Justice Sinclair (1997) observes that the Canadian judicial system has historically created institutions and laws that dehumanize Aboriginal people. He suggests that "criminality is often a direct result of their inability to function as individuals, as human beings in society" (p. 11). In his opinion, the justice system should be compelled to accept the responsibility to help Aboriginal people confront the questions of identity to find out who they are. He states, "each and every young person who comes before me in court, is weighed down by that burden [of not having a sense of identity]…Many Aboriginal men who stop a life of crime tell us the answer for them was when they learned about their culture…in answering those questions [of identity], each person in society is able to find a way of functioning properly" (pp. 10-11).

The depth and profundity of identity and ways of knowing suggests that it is essential that experiences and processes make IK conscious and available to Indigenous people. This suggests that the expressions of *being* reject generic pedagogical or methodological templates, but can be achieved through localized and specific descriptions that can validate Indigenous paradigms and affirm its complementarities in socio-political or judicial institutions. Indigenous notions of morality and justice seem comparably different to human rights; therefore, it seems possible to predict significant differences between notions of *being human* and human rights.

Ethical Space

Different knowledge systems address the interplay when people of different backgrounds and knowledge systems encounter each other. Ethical space is a framework for dialogue when two societies with disparate worldviews are poised to engage each other. It is a framework for the positioning of Indigenous and Western peoples in midst of a fragile intersection of Indigenous and Canadian legal systems. Excerpts from Indigenous Elders and scholars present similar themes of accepting diversity and striving to establish harmony through respect for each other's distinctness. Elder Kelly (2008) describes his teachings as the following:

> In the beginning, the Creator placed the four colours of mankind in the four directions: the yellow to the east, the blacks to the south, the reds to the west, and the whites to the north. To each was given special gifts and instruction by which to live in harmony with all creation. The people of the four colours would come together and, abiding by their respective instructions, would thrive in the collective prosperity of the human family. While distinct from each other, they were nevertheless equal in life, in will, and in freedom before the one and only Supreme Being; however, each one would understand the Creator. (p. 31)

Elder Kelly suggests he was socialized to live in harmony with diverse peoples as he was taught "to respect the people who were different, and we understood that we could share life with them" (p. 103). He states "it is not surprising that I have lived much of my adult life working to develop right relations between peoples. I believe that justice and peace are the basis of right relations" (p. 103). He was taught to consider "all our relations to affirm connections with all peoples, living beings, and the earth itself" (p. 104) and continues to draw on the original instructions about truth, respect, and love to guide a balanced life.

A practical example of Elder Kelly's (2008) learned philosophy is demonstrated through the treaty process in North America. As one example, the two-row wampum symbolized the agreement and conditions under which the Six Nations of the Iroquois welcomed Europeans and formed the foundation for a new constitutional order. It is indicative of a philosophy of a respectful acceptance of each other's sovereign presence. The beaded rows of the wampum confirmed the understanding that each party was to follow the same river but in separate boats; neither were to interfere in the internal affairs of the other; neither were to try to steer the other's vessel. The beads separating the two rows were representative of friendship, good minds, and peace. The wampum treaty exemplifies a moral and legitimate constitutional law between the Crown and Aboriginal sovereignties.[32] At the time, the Indigenous said to the Dutch:

> We have a canoe, and you have a boat, and in your boat you have many religions and many colors of people and ways of life…In our canoe is our people, our government, our way of life. We'll connect our two boats…with what we'll call the covenant chain of peace. They'll be made of three links, the first link is peace, the second link is friendship, and the third link is how long it will last. (Lyons, 2008, p. 59)

[32] Additional accounts of the Wampum at Niagara are found in Monture-Angus (1999) and Borrows (2008).

The Wampum is described as a confederacy constitution that is based on principles of peace, equity, and power of good minds.

This image of mutual sovereignties is part of Indigenous legal order, and Ermine (2007) describes how it is achieved by illustrating ethical space as that created when societies with disparate worldviews are posed to engage with each other, presenting a commitment between parties to contribute to the development of a framework for dialogue. Ethical space facilitates human relationships despite great diversity such as the positioning of Indigenous and Western peoples in the midst of a fragile web of Aboriginal law. It is a space where Indigenous and non-Indigenous peoples might see each other "full of honour and humanity" (in Walters, 2006, pp. 492-493).

This section has demonstrated that Indigenous legal orders are established within distinct moral frameworks within a circumscribed community that includes protocol for encounters with difference. The wampum is one way of describing the process of ethical space between Indigenous and non-Indigenous; however, the intended political and legal relationship bears little resemblance to relationships today. The two rows of the wampum have figuratively collided, and the Canadian legal order is often narrated as a "shared" Canadian sovereignty, though "no explanation was given as to how or when the treaty relationship changed, and no evidence was cited to demonstrate that aboriginal peoples had consented, even implicitly, to the new arrangement" (Walters, 2006, p. 511). Given these tensions, questions emerge about the moral nature of the Canadian legal orders, the possibility of the resurgence of Indigenous legal traditions, and strategies re-establishing ethical space in politically-sensitive environments.

Truth and Reconciliation

The definitions and processes of truth and reconciliation resonates with and owes much to the concept of being human (Llewellyn, 2008) and is presented here as an example of a culturally-relevant process to assert individual humanity and community justice when transgressions occur. It is a process to reestablish ethical space that is outside of human rights frameworks and Indigenous-owned. This section explores literature emerging out of the truth and reconciliation process related to the residential schools in Canada and helps to address the research question of how IK informs about confronting injustice when it occurs.

Reconciliation generally references restoring relations that have been disrupted or broken, though the mandate, composition, length, and form of reconciliation is shaped by the context and strategies differ from community to community and from individual to individual. Elder Kelly (2008) emphasizes the need to accommodate cultural identity through practice:

> …there are those who believe that a generic reconciliation process is a Western-based concept to be imposed on the Aboriginal people without regard to their own traditional practices of restoring personal and collective peace and harmony. We must therefore insist that the Aboriginal peoples have meaningful participation in the design, administration, and evaluation of the reconciliation process so that it is based on their local culture and language. If reconciliation is to be real and meaningful in Canada, it must embrace the inherent right of self-determination through self-government envisioned in the treaties, and it must be structured to accommodate the cultural diversity and regional differences in concepts, approaches, and time frames of the First Nations in Canada. (pp. 22 – 23)

The literature provides various definitions of truth and reconciliation. Amagoalik (2008) cites a definition of reconciliation from Merriam-Webster's Dictionary of Law "to restore harmony or to bring to resolution", but he as well as Ross (2008) question whether there has ever been a harmonious or respectful relationship between Indigenous and non-Indigenous settlers. They propose an alternative definition: "to overcome the distrust or history of; placate; win over…" (Dictorary.com cited by Amagoalik, 2008) because conciliation has to precede reconciliation.[33]

While there may not be a standard definition or model for reconciliation as models depend on the circumstances, there may be common issues and common adversaries. Elder Kelly (2008) suggests common features:

a) Honest acknowledgement of the harm/injury each party has inflicted on the other;
b) Sincere regrets and remorse for the injury done;
c) Readiness to apologize for one's role in inflicting the injury;
d) Readiness of the conflicting parties to 'let go' of the anger and bitterness caused by the conflict and the injury. (p. 22)

Elder McKay (2008) describes reconciliary work that is rooted in the protocols of respectful sharing and listening. He states:

> The potential for new ways of relating to each other is most likely to be experienced in a sharing circle. Within this circle, the role of the listener is to recognize and accept differences. Verbalization gives the speaker a place in the community to speak his or her truth. Others, who sit in participatory silence, gain an understanding of themselves as they hear the stories of fear, strength, and

[33] I concur that examples of historical phases of good relations between Indigenous and traders/newcomers in Canada are far outnumbered by legal oversights to the treaties and policy applications resulting in genocidal treatments. Why reconciliation is used most in the literature is perhaps as a reminder of the spirit of good relations.

> hope…The respectful act of circle sharing enables us to recognize and transcend our differences. Circle gatherings provide a process for discovering the points of convergence of our visions for the future and our shared humanity. (pp. 107-108)

This protocol ensures an inclusive and respectful process because it enables people across divides the opportunity to hear and be heard. In this way, one's truth can be heard and a process of reconciliation can commence.

Llewellwn (2008) suggests there are many different kinds of "truths" that affect a wide range of personal and social relationships: factual or forensic truth, personal and narrative truth, social truth, and healing and restorative truth She explains, "while the factual approach to truth common within the legal system can strip away complexity and nuance, a focus on social truth and healing and restorative truth can transform social relationships" (p. 183). She describes reconciliation as a process to not only restore personal relationships but also to restore social relationships to achieve meaningful, just, and peaceful co-existence. She describes the process as one of restorative justice:

> Justice on a restorative account requires the restoration of the relationships harmed. Starting from a relational view of the world, restorative justice recognizes the fundamental interconnectedness of people through a web of social relationships. When a wrong is perpetrated, the harm resulting from it extends through these webs of relationship to affect the victim and wrongdoer and their immediate families, supporters, and communities. As a result, wrongdoing also profoundly affects the fabric of the society. (p. 188)

This description calls attention to a full range of relational harms because of the wrongful act and to restoring relationships through a process to foster peaceful human relationships. More than

personal or intimate relationships that can also develop, restorative justice is primarily about social relationships that form broad social, physical, and political networks.

Rice and Snyder (2008) agree that reconciliation takes place in both personal as well as social and political settings. Personal healing is required because "if psychosocial factors that lie at the heart of the conflict are not addressed then the conflict will continue to escalate and erupt" (p. 45). However, they also focus on political and structural relationships and agree with McKay (2008) that "healing is about transformation in Canadian society" (p. 107). Relevant structural issues cited include the legacy of colonialism that impacts the social, economic, and political life of Aboriginal people, the historical and contemporary myths prevalent in Canadian society that rationalize Canada's policies and practices toward Aboriginal people; and the impact of colonial policy and institutions on Aboriginal identities and mental health that requires an additional layer of healing to the reconciliation process. Therefore, in addition to psychosocial healing, structural reform is required to address:

a) the ongoing oppression as the result of hundreds of years of colonization;

b) the denial of truth about relationships with Aboriginal people and ongoing rationalization of exploitation;

c) the destruction of language, culture, and identity resulting in Aboriginal anger towards colonizers and adversaries, as well as internalized self-hatred and abuse in their communities perpetrated by their own community members.

Features about truth and reconciliation that emerge from Indigenous worldviews include acknowledging harm or abuses by perpetrators, responding to needs of the victims, outlining personal and institutional responsibility, and committing to reforms to promote healing. The individuality of the harm as well as collectivity of colonial oppression is considered and

addressed. Truth and reconciliation creates an ethical space for parties to encounter each other through a common process of conversation and action that avoids aggression or combative behaviour. It attends to the wounds of victims, but also acknowledges that perpetrators are wounded in other ways that also require healing. The approach is holistic and spiritually and compassionately-based, not solely a rational process. This is a model of peaceful co-existence where one's humanity is acknowledged and where it can potentially flourish.

In summary, various notions of morality suggest that definitions are not absolute but cultural differences can be identified in how morality manifests and is enlivened. Broad differences include morality that is internally-generated through sentiment or externally-generated through systems and rules. Cultural manifestations of morality that are internally-generated through shame and honour are relevant to Indigenous notions of morality and congruent with Indigenous ways of articulating justice through *being* – that is bringing the whole self and web of extensive relations to considerations of what's right or just. When transgressions occur, truth and reconciliation as a culturally-congruent method of addressing interpersonal, social, and political problems by attending to a personalized process of identifying harm as personalized yet evocative of systemic causes. In other words, definitions of morality, harm, and healing processes are subjective rather than rule-bound and bureaucratic.

This research explores whether human rights can be culturally-relevant for Indigenous communities. It asks whether it can inspire *being human* and invoke the intended outcomes of truth and reconciliation that promote healing and ethical relations. While human rights adheres to rational and modern notions of morality, it is uncertain whether it can promote ethical space across difference. The selected literature may demonstrate that human rights, while it strives to define universal morality, does not automatically encompass the diversity of moral architectures

and thus is not universally humanizing. It may be argued that if applied uncritically, human rights can nullify, rather than promote, cultural references. The observation that human rights defaults to dominant and Western notions of morality often seems at odds with the cultural and ontological foundations of IK. The potential consequences must be evaluated in the context of key ideas contained in European-western doctrines of sovereignty, authority, hierarchy. This seems a likely contributor to the insurmountable divide between peoples and cultures in Canada.

The next section explores how ontological foundations manifests in practical ways by focusing on how communities define and achieve political work. The next section will conclude this chapter by exploring the factors Indigenous groups weigh in making choices about using a human rights discourse or adhering to human rights institutions. A specific look at advocacy strategies supports the thesis that discourses should be critically considered as they can influence political outcomes across a spectrum of stakeholders. It suggests that cultural congruency is but one of many considerations that individuals and groups have to negotiate in choosing discourse and adherence to particular institutions. Other factors such as public perceptions and access to particular audiences or funding, herein referred to as "capital", can influence these considerations. This analysis provides possible insight to why Indigenous people are increasingly using human rights in political advocacy.

Advocacy: Theoretical Meanings and Practical Applications

Indigenous groups have multiple considerations when making decisions about the use of political discourses or the adherence to particular political institutions. This section of the literature review offers insights into why some discourses such as human rights may be preferred by organizations. A focus on advocacy is one way to specify trends in the broad area of political work and begins with a brief description of its origins, definitions, and prevalent theoretical approaches. A discussion on key determinants for advocacy strategies such as resource mobilization, financial security, and political access affects advocacy. These strategies include human right approaches because they seem less controversial and can resonate with broad audiences. The research questions whether the current emphasis on human rights has broader implications for individuals or political groups, and whether alliance to human rights can inhibit "humanizing" processes, ignore epistemic backgrounds, and reduce more "radical" strategies that are often seen as more closely aligned with community goals. This raises questions such as whether the human rights discourse or institutions strengthen the integrity of or the *being* of Indigenous people.

Definitions of advocacy are varied and the views on what should be included as defining elements and characteristics also differ. For example, what distinguishes advocacy from other political approaches? There is consensus that the reason for scarce research on advocacy is because of confusion over the term (Mellinger, 2014).[34] "Advocacy" comes from the Latin root that means "to call to" or "calling people to stand by your side." Current dictionaries focus on

[34] In a study of advocacy activities with nonprofit human service organizations in USA, Mellinger (2014) found significant confusion over the term "advocacy" when asked about an organization's advocacy activities. For example, 35% of responding organization said their organizations are not involved in advocacy but then cited activities that are considered part of this category.

the political arena in their definitions: Merriam Webster (n.d.) offers "the act or process of supporting a cause or proposal". Cambridge Dictionary Online (n.d.) says "to speak in support of an idea or course of action", and Oxford (n.d.) poses "public support for or recommendation of a particular cause or policy".

Many studies examining advocacy focus on the political arena: Cohen, de la Vega and Watson (2001) look at the ability to influence decision-makers and to change policy. Gais and Walker (in Almog-Bar & Schmidt, 2013) focus on policy change through collaborative work "inside the system" of mainstream politics and legislatures. Reid (in Greenspan, 2014) alludes to a broader scope of political influence, suggesting that advocacy not only targets and impacts legislative elites but also has political influence through a broad scope of actions. Therefore, advocacy influences social and political outcomes in various institutions of government and corporations, and society. This suggests that advocacy can shape politics through policy, legislation, and public sentiment through collaboration with political leaders, grassroots stakeholders, and opinion leaders.

While most advocacy definitions emphasize legislative change as the main goal and measure of success, others acknowledge that advocacy goes beyond. Almog-Bar and Schmid (2013) distinguish direct from indirect advocacy: direct advocacy is about lobbying key decision-makers by organizational representatives on behalf of others, while indirect advocacy stimulates individuals to take action self-defined as necessary and on their own behalf. According to Cohen de la Vega and Watson (2001), Ven Klassen and Miller (in UNICEF, 2014), advocacy reshapes power dynamics to help the powerless gain enough power to make and shape public decisions. Advocacy strategies include attempts to frame issues, provide information, and include voices of underrepresented and marginalized groups to counter and reshape popular or normative values

through public education, mass media, protests, boycotts, and demonstrations. For example, Andrews and Edwards (in Greenspan, 2013) suggest advocacy "make[s] public interest claims either promoting or resisting social change that, if implemented, would conflict with the social, cultural, political, or economic interests or values of other constituencies and groups" (p. 100). Issues are frequently in contradiction to popular opinion, and only over time may be integrated into the policy domain or the public discourse (Minkoff in Greenspan, 2014). Edging towards a more client-centered perspective, Ezell (in Mellinger, 2014) suggests that advocacy is an action used to bring about change in programs and agencies that will benefit clients. UNICEF (2014) specifies that advocacy reflects goals and strategies emerging from localized definitions for social change and social justice. Thus, nonprofit and grassroots organizations adopt a "contextually appropriate definition" of advocacy to reflect subjective interests. For example,

> [a]dvocacy is a people driven and organized political process through which ordinary citizens, especially the disadvantaged and marginalized, realize their rights and power and use them to effectively and equally participate in the decision making process at all levels with the purpose of institutionalizing systemic equity and justice and positively impacting people's quality of life. (UNICEF, 2014)

Advocacy then is people- and value-based as it helps people realize their ability to participate in political and social processes to achieve a just cause and greater social justice. These perspectives suggest that advocacy can represent the diverse interests of an individual, family, or organizations, but that they remain silent on the epistemic interests of these constituents.

The literature seldom references diverse backgrounds and interests of constituents to shape advocacy strategies, though it may be possible to argue that advocacy can and must attend

to political and structural issues while also ensuring that the process is humanizing. How advocacy can be culturally-relevant becomes paramount in Indigenous communities where there are distinct agendas from the outside to suppress social justice goals of epistemic integrity and political sovereignty.

Definitions of advocacy do not typically address full political dimensions as there are few references to strategies that protect the social and epistemic needs of constituents. However, the view of this research is that if action is taken by or on behalf of constituents who have experienced harm, advocacy must not only reduce individual and community vulnerability but also strengthen solutions. Successful advocacy requires necessary links between the cultural values, community definitions of morality and justice, and advocacy processes employed to achieve desired social change. There are, however, external pressures that influence organizational discourse and behaviours and can steer advocacy strategies in various directions and influence its success.

The literature on possible measures for successful advocacy seems a complex topic for research despite strong rationale for these measures to be defined such as to improve organizational skills and capacities and to help to make informed decisions about time and resource allocation.[35] Onyx et al (2010) look for substantive policy change as evidence of effectiveness. They suggest that "advocacy with gloves on" or strategies that provide access to elite government forums, have only been moderately successful in changing policy. They propose instead using measurement criteria such as its ability to facilitate allegiances with governmental objectives, to build capacity for clients, and to create media space for constituents.

[35] Possible explanations include methodological difficulties involved in examining the ultimate impact of advocacy or the organizations' lack of motivation and interest in investing limited resources to measurement activity, or, due to the likelihood of limited success, organizations may want to avoid criticism from finding sources or constituencies (Hoefer in Almog-Bar & Schmid, 2013).

Other measures of effectiveness are drawn from techniques associated with emergent social movements that include measurements on new ways of public understanding, new ways of working toward a common goal, construction of collective meanings, shared objectives, and changing discourses about social problems (Cress & Snow in Almog-Bar & Schmid, 2013). Mellinger (2014) and Rees (in Almog-Bar & Schmid, 2013) suggest that effective advocacy requires the establishment of lines of communication between diverse actors. Berry and Arons (in Almog-Bar & Schmid, 2013) name both internal and external factors as evaluation criteria for successful advocacy. Internal factors include organizational autonomy, centralization of authority, and power management as well as external factors such as a strong focus on a small number of core issues, sustainability over a long period of time, the production of specialist materials, and development of technical knowledge. In summary, advocacy aims to shape political outcomes for communities and occurs in politically charged environments as it has great organizational and community impact. Requirements for successful advocacy include strengthening cultural identity and humanity of multiple stakeholders. In other words, the process of change is as or more important than the outcome.

The Current State of Advocacy in Nonprofit Organizations

This section will explore different theoretical approaches have been applied to explain advocacy behaviour for non-profit organizations. It looks at certain motivations or pressures that may influence the uptake of certain discourses or adherence to certain institutional processes over others. The literature suggests that often these choices consider an overall weighing of factors both beneficial and harmful to political directives.

Tolbert and Zucker's institutional theory (in Mellinger, 2014) focuses on how the organizational environment shapes organizational behaviour and found that many organizations

adopt particular strategies as a means of organizational survival and public legitimization. For example, political and socio-economic environments in which non-profit organizations operate have changed drastically in the last two decades and have significantly impacted the nature and scope of advocacy activity. The retrenchment of the welfare state in Canada has resulted in increased privatization, devolution, and service contracting to increase the scope of activities for non-profit organizations that are government sourced. In other words, many Canadian organizations have become main social service providers, compete with other organizations for some service provision, and rely on government funding for their survival (Almog-Bar & Schmid, 2013; Onyx et al, 2010). Because of these funding and service models, certain models of advocacy are preferred while others are becoming more marginal and limited in scope.

The Resource Mobilization Theory (RMT) analyzes the relationship between resource availability and advocacy behaviour. The main concern is that external funding influences and controls advocacy activities, usually to reduce the scope and intensity of advocacy. Given that nonprofit organizations are now more dependent on government funding, they are more affected by political fluctuations and subject to regulations as a condition for the funding. Onyx et al (2010) suggest that many non-profit organizations have had to reconsider their "activist" identity that grew out of earlier social movements. Government funders control organizational identities and strategies as a precondition for funding and, in addition, many philanthropic organizations refuse to financially support advocacy activity because it can been seen as a protest against the government (Almog-Bar & Schmid, 2013). As a result, many organizations conform to government requirements to ensure that stable funding streams from both government and civil society. In other words, advocacy that is overtly political is labelled as "radical" and is being replaced by bureaucratic and professional advocacy. The potential conflict between advocacy

and funding often presents dilemmas as organizations consider their mandates, constituents, activities, and effectiveness. For many, the role to enhance social justice of constituents is not lost from the organizational mission, but they struggle to also adhere to political or philanthropic requirements.

However, though some theories acknowledge a direct correlation between political and economic pressures that can result in dilemmas between advocacy strategies and survival, others suggest that more diverse factors can be at work to influence organizational advocacy. For example, Greenspan (2014) meshes the RMT with Bourdieu's Theory of Capital by acknowledging various forms of capital, not merely financial, that advantage organizations within various fields or contexts such as in various environmental sectors, timeframes, constituents or funders. Capital provides organizational power and advantageous positioning, and is described by Emirbayer and Johnson (in Greenspan, 2014) as "not a thing but a social relation" (p. 114). Capital interacts within economic, political, and organizational *fields* as the level of capital that organizations possess, relative to others in the field, determines their ability to shape public perceptions and access decision-making forums.

There are different forms of capital that include (Greenspan, 2014; Onyx et al, 2010):

a) Social, cultural, or symbolic capital: The prominence and reputation of organizational staff to enable social connections through a wide network that will provide stable economic resources to the organization, and support its reputation to influence their access to policy arenas

b) Institutionalized cultural capital: The ability for organizational actors to frame ideological positions as neutral and professional in order to gain an edge in the policy field.

c) Embodied cultural capital: Having characteristics or mannerisms that appeal to the dominant group. With race and ethnicity as dominant markers of social hierarchy, being "white" can bestow social, cultural, and economic privileges while those from "other" groups are either shut out from these privileges or need to negotiate measures to access privileged positions within the state apparatus.

d) Linguistic capital: The ability to use the language that resonates with the mainstream public can also confer access to policy forums and resource security.

Greenspan (2014) suggests that all factors conferring capital should be weighed in relation to economic capital, or the ongoing access to financial resources -- fundamental challenges for every non-profit organization. The more capital an organization has, the more opportunity for funding to carry out its advocacy mission. Onyx et al (2010) propose that a more neutral advocacy agenda is more able to leverage other forms of capital that results in more constructive working partnerships with governments that, in turn, facilitates access to policy-making processes and protection from government repression. In other words, neutralizing advocacy strategies can better facilitate social change objectives.

Many organizations struggle to leverage capital and face dilemmas related to advocacy activity (Almog-Bar & Schmidt, 2013). In some fields capital is distributed unevenly among actors with resulting power struggles. Many organizations compete to attain capital, assuming that all organizations want more of it. The complexity of relations between fields cannot be underestimated. Attention to wider political, legal, or social contexts of advocacy is required as they can affect the perceptions toward advocacy activity. In some fields, certain capital can advantage advocacy activity, while in others it can be perilous. The benefits of capital may include increased access to key players, organizational stability, and policy change; however, the

risks include co-optation and alienation from membership and constituencies. As organizations may come to access capital, they may be seen by others to undermine grassroots initiatives (Onyx et al, 2010).

Some questions around advocacy strategies remain unanswered which calls for further research (Almog-Bar & Schmidt, 2013). This research evaluates fundamental questions relating to the efficacy of using human rights as a framework for advocacy. One form of capital discussed by Greenspan (2014) is the ability to bridge power imbalances or value divides between organizations or between the advocates and the advocated. These imbalances create reluctance to collaborate between organizational initiatives and can divide advocates from the advocated. Therefore, Greenspan (2014) recommends the adoption of a universal orientation because it fits the criteria of an acceptable non-radical discourse where organizations can identify with and support universal norms and values of compassion, solidarity, and minority rights. This civil-egalitarian discourse often resonates with advocacy organizations, constituencies and the wider public.

Almog-Bar and Schmidt (2013) call for a greater understanding of advocacy from a cross-cultural perspective. When considering the context of Indigenous individuals and organizations in a colonial setting such as Canada, individuals and organizations may have different goals in obtaining or using capital. For some Indigenous organizations, securing funding or legitimacy through dominant and neutral methods could require co-opting values and goals. This may be conflicting for constituents. But this too is not always straightforward as in some contexts these co-opted values and goals are accepted, whereas in others they are not. Differences may exist between urban and reserve settings, or between various individuals or organizations.

In summary, this section of the literature review explored definitions of advocacy and determinants for its strategies. Some models, such as "gloves on advocacy" describes non-radical strategies to facilitate governmental collaboration, which is seen as a safe strategy for resource security. "Gloves-on" advocacy recommends the use of discourses that resonate with the wider public that may include a language of universal civil and human rights. However, this model may be viewed by certain segments of civil society as co-opting values of substantial social change for the sake of funding security. A more radical form of advocacy calls for mobilization of minority constituents and substantial social change to disrupt established lines of privilege related to gender, race, class, or other. It can also been seen as prioritizing constituent needs and redistributing power in society. This, however, may challenge attainment of organizational capital and requires consideration of potential long-term impacts. For example, the retention of IK within political processes may not provide the immediate goal sought but the longer-term benefit may outweigh short-term "wins" in Indigenous communities.

There are various pressures on organizations and their decisions require strategic thinking about longer-term goals. Advocacy work is laden with power dynamics subject to pressures of the community, funders, governments, and philanthropists. Strategic decisions must be made to maximize capital such as funds, public image, and ideological positioning. Indigenous organizations need to consider whether its strategies assist retention of IK, whether the goals are relevant to various community constituents. Because many Indigenous organizations lack cultural or social capital, many feel compelled to promote human rights instead of what may be perceived as more "radical" positioning of Indigenous rights or sovereignty. Indigenous organizations must weigh the capital that a human rights discourse provides across various fields.

Chapter two has reviewed philosophies of morality that identify cultural tendencies such as the tendency to emphasize internal or external normalization of notions of morality. It uses these broad classifications to contrast Indigenous social organization and concepts of customary law with Western external rule generation and enforcement systems. Then, in an attempt to determine whether human rights as closer aligned with Indigenous or Western ontologies, the literature first identifies three possible realms relevant to Indigenous communities: traditional or customary Indigenous law, Aboriginal rights, and Indigenous human rights. The research concludes that either Aboriginal rights or Indigenous human rights tends to align more with Western notions of morals, rules, and enforcement institutions. Given this finding, the research then turns to why some Indigenous organizations continue to use a "foreign" discourse or process and finds that many organizations have to measure different forms of capital such as cultural adherence or access to audience, and funding. When faced with decisions of strict adherence to political objectives or organizational survival, organizations are perhaps more likely to align with accepted discourses or institutions such as human rights.

Chapter 3
Human Rights as a Framework for Aboriginal Advocacy

Introduction

Having established criteria for how Indigenous who practice IK internalize moral values and create ethical space between divergent worldviews and proposing a model of reconciliation that adheres to a more "humanizing" model of advocacy, this section turns its focus to human rights. It reviews the historical development of human rights as a model, reviews current practical human rights institutions, and resulting client experiences to evaluate the use and impact of human rights for advocacy in Indigenous contexts. The evaluation considers adherence to IK and resulting political implications. This section will address the research question of whether a human rights platform presents a congruent framework for Indigenous communities, that is, whether it is congruent with the moral development of Indigenous people, or, put another way, whether human rights objectives, processes, and results are "humanizing". A second major research focus of this chapter is whether a human rights forum can be a relevant system for creating or reconciling "ethical space" between divergent worldviews.

The tendency to stress human rights as laudable standards for human morality, the best legal and political standards for society, and therefore the best framework for advocacy, means that the prescribed systems and processes have become a primary solution to address wrongdoing. This, however, is arguably inhibiting, in light of the full range of global cultures that articulate diverse moral, legal, and political processes within localized knowledge systems. This research attempts to demonstrate that, despite its often-stated intent to draw protections for vulnerable peoples, so-called universal human rights ideals can shape notions of justice in dehumanizing terms, and its processes can inhibit the achievement of social justice objectives. To internalize human rights standards as opposed to humanizing standards within local

knowledge systems presents the "standardization" of morals and invokes power dynamics where liberal ideals and capitalist economic systems empower individual notions of rights and justice. As becomes evident in later chapters through the voice of research participants, Aboriginal advocacy through human rights policy takes a narrow view of the potential for advocacy that might otherwise enable parties to realize their full humanity. Though human rights is commonly used as a discursive and political tool, it requires attention to the implications of its use. This section will begin with the theoretical orientations and historical developments of human rights to more fully understand the theoretical framework of human rights in this research.

Theoretical Orientations of Human Rights

There is significant scholarly attention, with a plethora of research and related literature on human rights. Because it is so vast, the first task of this study is to provide a conceptual map to navigate the range of theories from which human rights are debated and evaluated, including the theoretical orientation from which this study proceeds. It begins with a brief historical account of the proliferation of human rights as a research topic within political sociology, then, pursuant to Figure 1, provides a chart outlining various theoretical orientations for human rights.

While human rights has been debated as a topic of legal interest, it emerged also as a social and cultural study in the 1960s . From political sociology, human rights studies first emphasized relations between the state and society. At this time, much attention was devoted to citizenship rights, particularly those of workers (Estévez, 2011). However, in the 1970s scholars shifted the analytic emphasis from state structures towards constructivist theories[36] that explored ontological and epistemological interests of people, seen as "social subjects" who sought and negotiated discourses for collective political organization (Estévez, 2011).

[36] Reich (in Hickman, Neubert, Reich, 2009) explains that political constructivism is concerned with how the world is socially constructed according to actors' identities, interests and behaviours.

Contemporary literature on human rights reveals various theoretical influences that includes four broad and non-exclusive categories into which much of the literature on human rights falls. Dembour's (2010) description of theoretical categories or "schools" are outlined in the following Figure 1 and "should be approached as Weberian ideal-types rather than fixed categories that neatly and perfectly describe single track thought processes" (p. 4). This broad overview will not fully debate the merits or limitations of each category but will identify the theoretical approach from which this research on human rights will be considered as distinct from other orientations to human rights present in the literature.

Theoretical Classifications or "Schools" of Human Rights

Schools of Thought Characteristics	**Natural School** One possesses human rights simply by being born a human.	**Deliberative School** Human rights are agreed upon.	**Protest School** Human rights are fought for.	**Discourse School** Human rights are taken up by diverse actors at particular points in time.
Human rights Law	The development of human rights law is an indication of social and political progress.	Human rights law is entrenched in constitutional principles and allows for democratic decision-making.	Protest scholars mistrust human rights institutions for upholding human rights ideals because they are controlled by the elite and limited by bureaucratization.	Human rights law must be assessed contextually.
Foundations	The universality of rights is derived from "nature" which can stand for God, the universe, reason, or another transcendental source.		Human rights are the product of historical developments such as human rights education.	Any discussion of the foundation of human rights is flawed.
Realization	Human rights law is an indication of progress. Legal consensus of human rights law is the proof for the existence of human rights.	Human rights are realized through political action and good governance.	Individuals are entitled to human rights by virtue of being human but individuals are obligated to ensure and fight for the human rights of others.	Human rights discourse has failed to achieve equality between human beings so "a more solid project of emancipation is needed" (Dembour, 2010, p. 9).
Universality	Human rights are entitlements for every individual simply by virtue of being human. The universality of human rights is a given though their articulations can take different forms over time.	Universal human rights are an ongoing project towards global adoption of liberal values.	The universality of injustice points to the universality of human rights.	Universal human rights are seen as intellectually untenable and the invocation of consensus can obscure power relations.
Overall position on human rights	Natural scholars *believe* in human rights.	Deliberative scholars do not *believe* in human rights but are committed to the idea of trying to spread rights-related values.	Protest scholars believe in human rights though they resent their institutionalization.	Discourse scholars do not reject moral principles but call for re-evaluation of human rights language and associated values in political discourse.
Key Scholars	Jack Donnelly "If human rights are the rights one has simply because one is a human being, as they usually are thought to be, then they are held 'universally' by all human beings…[and] [t]he source of human rights is man's moral nature" (Donnelly in Dembour, 2010, pp. 9 & 16).	Habermas "The citizens themselves become those who deliberate and, acting as a constitutional assembly decide how they must fashion the rights that give the discourse principle legal shape as a principle of democracy" (Habermas in Dembour, 2010, p. 14).	Neil Stammers "…ordinary people--working together in social movements-have always been a key origination source of human rights…[T]he historical emergence and development of human rights needs to be understood and analysed in the context of social movements struggles against extant relations and structures of power." (Stammers in Dembour, 2010)	Shannon Speed "The widespread utilization of human rights as a discourse of resistance reflects the hegemonic position of both Western legal institutions and the liberal ideology of the global market that sustains them…Theoretically, we can learn more by looking at the various reappropriations of the discourse of human rights, and the ways that they emerge in particular interactions: the way the tool is held by particular social actors in particular contexts. Politically, we can even embrace the discourse to support the people we work with when it is necessary, based on our own historically and politically contingent interpretations and understandings." (Speed in Dembour, 2010)

Figure 1: Theoretical Classifications of Human Rights

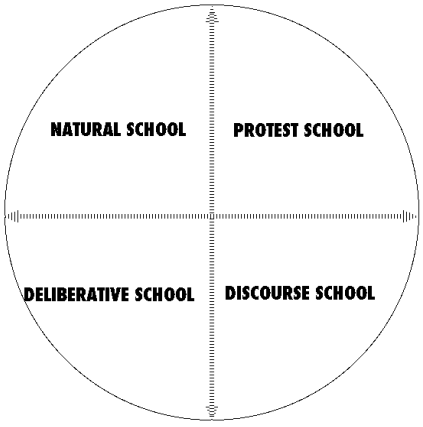

Figure 2:
Human Rights Classifications

Dembour (2010) illustrates the relationships between the human rights orientations (Fig. 2). The top half of the field tends to present human rights transcendentally – that human rights are derived "naturally", while the bottom half presents human rights as society or language-based. The left hand side of the field presents a liberal and individualistic orientation to rights, while the right side presents a more collective orientation.

Some Indigenous communities express different desires to "take up" human rights in their collective political or legal advocacy,[37] have defined human rights in historically different ways, and have experienced differing successes in using human rights to compel social and political change. Therefore, when contemplating the theoretical orientation that would appear most applicable to describe the use of human rights in Indigenous contexts, the Deliberative or Discourse schools, (the bottom half of Figure 2), that present human rights as society or language-based, seems more applicable than the Natural and Protest Schools (top half), that tend to see human rights transcendentally. Human rights, when seen as society- and language-based, may seem to reflect greater diversity in ontological and epistemological interests and histories of people. This compels reflection on the intent and effects of the discourse of human rights within Alberta-based Indigenous communities, which draws the research towards the Discourse school.

[37] There is a lack of consensus that human rights should be used as the framework for Indigenous political advocacy as may be suggested by the Protest School. For example, activists and community members led protests across Canada through the Idle No More movement (2012-2103) to engage the Canadian public and government on issues of treaty rights, land use, sovereignty, and the environment. The discourse that emerged did not reference human rights, which seems to suggest that other frameworks can be seen as more relevant for addressing Indigenous justice issues.

The inclination in this research toward the Discourse School is through a process of elimination of other schools, since many of its claims seem insufficient to address the full context of struggle for Indigenous justice in a Canadian context. Few Indigenous communities or peoples promote individualized notions of human rights that reflect the Western rationalism of the Natural and Deliberative Schools, (left side of Figure 2) as indicators of progress, of good governance, or of democratic decision-making. Further, the persecution of Aboriginal people persists systematically and individually, making it easier to reject the "blind" faith in human rights of the Natural School, the notion that human rights are universally understood, accepted and protected as per the Deliberative School, or that human rights are the best tools for addressing injustice of the Protest School.

A practical example of some of these critiques comes from the research on human rights from the ACHR&J (2009) that suggests not only do Aboriginal people experience discrimination disproportionately but, despite seemingly progressive human rights legislation in Canada, there are significant barriers in substantiating rights through current human rights institutions. Few Aboriginal people report human rights violations through government services such as the AHRC or the CHRC because of numerous barriers that include Aboriginal peoples' mistrust of a foreign and bureaucratic process, lack of trust in government institutions to address structural discrimination, fear of further discrimination such as having government funding eliminated, lack of culturally sensitive services, and, finally, the normalization of human rights violations such that they are seen as "part of life" (Aboriginal Commission on Human Rights and Justice, 2009). One Aboriginal person in Alberta summarized, "[Reporting is a] cumbersome process that is not designed to find discrimination nor compensate the victim." (in ACHR&J, 2009).

The evidence seems to suggest that Aboriginal people can be skeptical that human rights are entrenched in their belief and political systems as assumed by theorists of the Natural and Deliberative Schools. Viewing the Discourse Schools as more relevant, it is potentially the lens through which many of the Indigenous organizations view human rights. This research analysis aligns with the Discourse School of human rights that calls for an evaluation of human rights language, an analysis of the circumstances under which it emerges, and consideration as to what organizations hope to achieve by aligning with it. The use of human rights discourse or institutions affords consideration of capital in fields relative to others as it can provide organizational survival or power or positioning that can influence economic/political outcomes.

However, human rights discourses requires a deep contextual analysis because though it is used frequently, and provide some institutional, linguistic, or economic capital, it has failed to achieve substantive equality for Indigenous peoples. Criticism against human rights is summarized as epistemologically untenable for those wishing to return to or preserve IK, controlled by elites, and obscures power relations, which compels further analysis into the theoretical and institutional development of human rights.

Paradigms that Informed International Law and Human Rights

A primary research goal is to undertake a contextual analysis of human rights institutions to understand its conceptual and political development. The following section explores the paradigm of human rights within the development of international law, its adoption in the formation of the United Nations, and post-World War developments. The point of this research to view human rights discursively, to problematize the universality and consensus of human rights, and to identify associated values as it developed. It includes a brief overview of historical invocations of human rights as well as some of the effects behind its use in the development of

international law. This review attempts to provide greater insights into the foundations of human rights that may be important in identifying any potential fallacy and political diversion when modern notions of human rights are credited as a linear achievement of history, beneficial to all of humanity, and has endured because of its universal values.

Human rights are often assumed an inevitable result of a linear process of moral development that originated with ancient religions to become a cosmopolitan vision of universal humanity (Ishay, 2004). Supporters often credit its origins to ancient civilizations and religious traditions such as Hinduism, Judaism, Buddhism, among others, for creating fundamental "normative standards" (Lauren, 2008, p. 12) around humanism, thereby introducing "universalisms" that were precursors to modern concepts of human rights (Claude &Weston, 2006; Ishay, 2004; Lauren, 2008). Moyn (2010) suggests

> [a]lmost unanimously, contemporary historians have adopted a celebratory attitude toward the emergence and progress of human rights, providing recent enthusiasms with uplifting backstories, and differing primarily about whether to locate the true break-through with the Greeks or the Jews, medieval Christians or early modern philosophers, democratic revolutionaries or abolitionist heroes, American internationalists or antiracist visionaries. In recasting world history as raw material for the progressive ascent of international human rights, they have rarely conceded that earlier history left open diverse paths into the future, rather than paving a single road toward current ways of thinking of acting. And in studying human rights more recently, once they did come on the scene, historians have been loathe to regard them as only as one appealing ideology among others. Instead, they have used history to confirm their inevitable rise

rather than register the choices that were made and the accidents that happen. (p. 5)

This historical overview illustrates the tendency for human rights to be credited for achieving social development and political protections in 18th and 19th century civil wars and revolutions as well as 20th century social movements such as decolonization and self-determinism (Ishay, 2004; Lauren, 2008). However, a critical analysis of the doctrines behind these human rights invocations demonstrate a narrow definition of "humanity" and critiques the assumed evolutionary trajectory of human rights.

The Doctrine of Discovery and Papul Bulls

International law, in broad terms, outlines methods for interstate relations and standards of behaviour. Behind the first articulations of international law were the teachings of the Christian church that effectually designed the earliest legislative framework for colonization. Their characterization of Indigenous peoples as unchristian and savage was seen to justify the conquest and enslavement of Indigenous inhabitants of discovered lands and propelled the Doctrine of Discovery to suggest that voyageurs could justifiably claim their "discoveries" in Indigenous America, as Columbus did in 1492 (Henderson, 2008). Williams (in Venne, 1998, p. 3) states, "Columbus's presumption that he could lawfully claim these discoveries for the Spanish Crown was based on the fact of the natives' divergence from Christian European cultural norms of religious belief and civilization." At the time, theological belief had great power to justify the conquest in the Americas as lawful.

Spanish Queen Isabel and King Ferdinand affirmed their sovereign authority over Indigenous America through the Pope who drafted the Papul Bulls, a formal decree to grant the

privilege of authority over non-Christian peoples and lands. Williams (in Venne, 1998, p. 4) suggests:

> The Pope had convinced Rome that random discovery of peaceful non-Christian not in apparent gross violation of natural law permitted the Pope to exercise his guardianship responsibilities by placing such peoples under the tutelage and direction of the discovering Christian princes.[38]

Earliest articulations of international law therefore were based on racist notions of Indigenous peoples as non-Christian and uncivilized that, for the early Christian explorers, justified the systematic policy and practice of colonization and empiricism. International law then was housed within Western-notions of power and authority clearly distinct from customary practice of authority according to IK. It was used to justify colonization with the most damaging aspects of the imposition of ontological notions of power and authority over others.

Natural Rights and the Enlightenment Era

Significant developments in international law occurred in the next historical era of Enlightenment -- largely informed by a "rise of the West" characterized by a decline of feudalism, (limited) religious pluralism to allow some variants of Christianity as acceptable, the gradual rise of free market capitalism, and imperial expansion that enabled the proliferation and diffusion of a liberal discourse on international law and its evocative ideas of *natural law*, *natural rights*, and *rights of man*. English philosopher Thomas Hobbes described *natural law* as the natural order derived from and governed by God's will was considered "embedded in the fabric of the cosmos" (quoted in Moyn, 2010, p. 21). Those who obeyed God's will were part of

[38] The first Spanish Papal Bull (1493), known as *Inter Caetera Divinai*, "helped to give legitimacy to the colonization of Indigenous America by declaring that non-Christians could not own land in the face of claims made by the Christian sovereigns" (Venne, 1998, p. 4).

the natural order while others were seen as living in a state of "primal anarchy without culture, society, or laws" and inferior to the "civilized" societies of Western Europe (Hobbes quoted in Henderson, 2008, p. 14). This rationalization "projected Indigenous people into the past, creating the vanishing race theory, inventing the ideological constructions of racism, and allowing colonial legal systems to ignore the humanity of Indigenous nations" (Henderson, 2008, p, 14). In other words, natural law provided a Christian definition of natural order, while other ways of being and knowing could be categorized as unnatural--a rationalization to disregard the humanity and rights of Indigenous Peoples and justification for an assumed disappearing people and vanishing race.

Further international legal developments were propelled by concepts of natural rights that are credited to John Locke (1632-1704) of England who elaborated on the relationship between natural law and natural rights to suggest that the former, natural law, established principles for the latter, natural rights (Claude &Weston, 2006; Lauren, 2008).[39] In other words, natural rights aligned according to what was defined as natural and divine orders of the universe. Natural rights invoked revolutionary ideas about constructions of the nation state and membership privileges of the state. Elaborating on natural rights through the newly coined phrase "Rights of Man", Locke presented a list of rights, enforceable by the state, that included rights to life, liberty, and property, and included protection against arbitrary power or oppression (Claude & Weston, 2006; Ishay, 2004; Lauren, 2008). However, natural rights was informed by natural law and maintained

[39] Moyn (2010) disagrees that natural law developed into natural rights. He suggests, if natural law was to be displaced by natural rights, "it had to be made plural, subjective, and possessive" (p. 21). Natural law was originally one divine rule, whereas natural rights came to be a list of separate items (from early Roman legal systems where the primary focus was on constructions of the state and how citizens retained membership in the state). Additionally, Moyn argues that Hobbes, one of the first to marry natural law and natural rights, professed only one natural right of self-preservation -- the right to kill if required to stay alive -- but his argument was to maintain a strong state rule for social cohesion among dissenting citizens. Though it was new to conceive citizens and state as distinct, Hobbes maintained there was no higher authority than the state. Moyn acknowledges that in the next century, Locke and others presented a more comprehensive list of rights, but they too only solidified the alliance between rights and the state.

supremacy of the Christian divine order and notions of humanity that, to them, justified colonial expansion and political control over colonial "subjects" for purposes of their salvation (Moyn, 2010). So while there appeared to be progressive elements of introducing state protections around some rights, natural rights were limited to protection of certain populations. Henderson (2008) maintained that natural law and natural rights maintained the meta-narrative of empire, imperialism, colonialism, and racism. This research concludes that these doctrines of Natural Rights and Rights of Man should not be mistaken for notions of universal rights that exist today (see also Moyn, 2010).

Colonial expansion into the Americas propelled debates on how to apply natural rights to a broader scope of people. At the core of these "great Christian debates" (Henderson, 2008, p. 13) was how to view the humanity of Indigenous peoples of the Americas. Spanish philosophers Francisco de Vitoria and Bartolome de Las Casas, argued against the "savage" characterization of Indigenous and propelled the notion that Indigenous Peoples were human beings with the same rights as others. They argued that the "indigenous inhabitants of Central and South America were humans with souls, that they were the true owner of the lands, that they had legal rights requiring protection by discovering powers, but that they were in need of Christian salvation" (Henderson, 2008, p. 13). These debates were to be determined by the Council of the Indies established by King Ferdinand and populated by non-Indigenous people. This decision, suggests Venne (1998) was "a spiritual battle for the soul of Indigenous Peoples [and] emerged as an objective for states to continue to deny legal rights to Indigenous inhabitants of colonized lands" (p. 7). The decision by the Council of the Indes overruled de Vitoria and de Las Casas and used natural law to reject recognition of Indigenous rights.

The resolution to these debates became formalized with The Treaty of Westphalia (1648), credited as the invention of "modern international law" that formed the basis for the development of international legal norms and principles that remained for the next five hundred years (Henderson, 2008; Venne, 1998). While elements of the previous Natural Law/Natural Rights era remained, some added principles demonstrate greater inclusivity as to who could be included as rights recipients. The first major principle is, in part, credited to Groitus, the "prominent father of public international law" (Henderson, 2008, p. 14), who was one of the first to suggest that natural law was not only imposed by religious doctrine but also from universal reason common to all "men". This turn towards a more positivist and secularized view of international law, no longer based exclusively on natural law, suggested that more secularized states could also create binding rules of law. This idea contributed to the practice of customary law that focused not only on normative rules (what ought to be done) but on actual practices and customs (what is actually being done). Through the enactment of customary law, Hugo Grotius rejected the Doctrine of Discovery and established that consensual treaty relationships must govern the relationship between Indigenous inhabitants and an international entity. This secularization of law, growing prominence of the state, recognition of customary law, and a necessity for colonizing states to establish treaty relationships were important developments in international law, and though they were not consistently applied over time, these principles continue to have implications for contemporary interpretations in domestic and international law.

Customary Law and Treaties

The later phase of the Enlightenment Era propelled some progressive legal developments that acknowledged Indigenous customs and used treaties as the basis for interstate relations. In this context, "customs" refers to the accepted practices of the sovereign state that are legally

protected. A visiting or colonizing state must comply with customary law as a matter of law and under penalty of sanction unless the states enter into treaties that outline obligations between sovereign states. As described by Venne (1998): "the signing of a treaty by a state is an indication to other nations of its intention to be bound by the terms of the treaty" (p. 13). While treaties are negotiated between states, their acceptance under international law occurs only when the state entrenches the principles within its legal mechanisms, which can lead to various levels of commitment that include "consent to be bound" or "entry into force".

These standards were applied in Indigenous North America through The Royal Proclamation (1763), and codified by the British Crown, that reaffirmed boundaries between the colonies and Indigenous territories after the 1755-63 war between the French and the British and Indigenous allies. In its text, the Proclamation refers to Indigenous Peoples as "Nations," as distinct societies with political organization, inalienable rights to their lands, and with whom treaties had to be negotiated prior to entering lands (Venne, 1998). The recognition of Indigenous territorial sovereignty and unified nationality with existing governmental structures confirmed that the British Crown could not justifiably deny the existence of the rights of Indigenous Peoples as international subjects.

In summary, the Enlightenment era led to development of ideas of natural law and natural rights out of Christian Doctrines, including that of Locke. However, what seemed to reflect a growing sophistication of rights recognitions within international law by the acknowledgement of customary law and treaties required for inter-state engagement, was interrupted by heavy critique and conservative application of legal rights in the 19th and 20th centuries and the revolutionary socio-political changes that ensued.

Congress of Vienna Changes International Law

Fundamental change came to international law with the Congress of Vienna (1814-15), a series of meetings hosted by select European ambassadors who contemplated a framework of international politics. It their devising about a new approach to international law, they rejected revolutionary goals, national or liberal sentiments, and customary law thus excluded Indigenous nations, previously-made treaties, and peoples as subjects of international law. Under a "Eurocentric, positivist view of international law" (Henderson, 2008, p. 14), Indigenous peoples were erased from legal protections as non-persons because of European concepts of race or society. Therefore, international law affirmed standards of justice that excluded Indigenous people, and much of the non-Indigenous world came to regard empire and colonialism as natural and progressive rather than unjust and oppressive (Henderson, 2008).[40] The mistaken characteristic of Indigenous people as void of intellectual creativity or rationality, as static and uninventive, or lawless and disorganized contrasted with the European civilization as "centres of progress" (Henderson, 2008, p. 20) to present a single progressive model of humanity that required colonization for its salvation and modernization.[41] Rather than viewing colonization as hostile or genocidal, it was seen as a "gift of civilization" (Henderson, 2008, p. 20) and its ideological modernization as ample compensation for the land and resources that Indigenous peoples were to surrender.

[40] A significant exception to the conservative order of The Congress of Vienna was the *Eight Power Declaration* proclaiming the slave trade repugnant (in Lauren, 2008), though this thinking did not extend to Indigenous Peoples.

[41] The colonial settlement was justified on the belief of *terrus nullius* (empty land) that asserted not only that settlement by Europeans does not displace any or many Indigenous peoples because the land is empty, that European settlement does not violate political sovereignty because inhabitants of these regions are mobile and make no claim to territory, and that Indigenous cultures do not understand private property, so the region is empty of property rights and claims (Henderson, 2008).

The Revolutionary Era

The intellectual developments of the Enlightenment in the first half of the 18th century stimulated political objectives and action in the second half, the Revolutionary Era, when a "wave of revolutionary agitation" (Claude & Weston, 2006, p. 18) spread across continents from Western Europe to North America that resulted in what is referred to as the "greatest revolutions of history", the American and French Revolutions (1765-83 and 1789-90 respectively) (Lauren, 2008, p. 23).[42] Revolutionaries used the discourse of rights to demand state protections, very different from how human rights are evoked to refer to universal rights that transcend the state as in contemporary international law.[43]

The American Revolution resulted in the Declaration of Independence when, on July 4, 1776, Thomas Jefferson proclaimed to the thirteen American colonies, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness" (in Claude & Weston, 2006, p. 18). The Declaration of Independence created a momentum to oppose the British crown and ignited support for independence. With its defeat, colonists then had to establish a legal government through *The American Constitution* of 1787 and the consequent *Bill of Rights* (1791) that added the Ten Amendments guaranteeing civil and political rights against primary sources of power (power of the state and the tyranny of the

[42] The American Revolution began in 1775 when colonists in North America rebelled against tax levies placed upon them from England and was "overburdened by the cost of its colonial possessions" (Ishay, 2004, p. 73). The colonists, who perceived the taxes as inequitable, claimed to be heirs of certain rights brought with them from their homelands.

[43] The American and French revolutions called for citizenship rights that seemed to cause a rippling effect throughout the world and in a single year of 1791, Thomas Paine published *Rights of Man*. Black Haitians led a successful uprising and demanded their natural rights, Olyme de Gouges of France wrote the *Declaration of the Rights of Woman and Citizen*, abolition movements were gaining traction, and in 1807, US and Britain passed acts to prohibit the importation of slaves.

majority).[44] Particularly after the American Revolution, Indigenous People in the Americas experienced the troubling implications of international law that enabled colonial state formation and affirmation of rights for the colonizers within "their" new state.

French soldiers who had fought with American revolutionaries returned home to the *ancien régime*, the system of hereditary privilege and power held by the monarch where enormous national debt contributed to poverty among the "common" people. Inspired by the successful revolution in America, they rebelled. First by a critical mass march to the "tennis court," and then with the storming of the Bastille prison, these rebellions led to the creation of a new legislative National Assembly, which then adopted the Declaration of the Rights of Man and Citizen. Ishay (2004) suggests it is one of the most important human rights documents of the eighteenth century that paved the road for a new French constitution. The American and French Revolutions formalized *The Rights of Man* within the state structure as a set of rights and privileges available to citizens of the state, falling into two general categories of civil and political rights.[45]

Emerging around this time was a growing critique of natural rights though the reasoning was as varied as the sources.[46] While the majority of human rights advocates promoted the discourse of freedom and liberty, they demonstrated selectivity in the actual application of rights, "allowing prejudices to determine who deserved rights and who did not" (Claude & Weston,

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[44] The *Bill of Rights* established a new form of government through the right to vote and hold public office (consent of the governed). Other rights included civil rights such as freedom of speech and religious belief, protection from searches and cruel and unusual punishment, and the right to a trial by jury.

[45] Civil rights included property rights and the rule of law, which outlined immunity from intrusive search, availability of the writ of habeas corpus, the ability to confront one's accuser, a jury of one's peers, the right to life and property, liberty, justice, the rule of law, due process, freedom of expression, religious tolerations, protection against torture. Political rights, required for the operation of liberal–democratic state, included representative government, free elections, rights to free speech, free press, assembly, association, religion, political and social reform (Abella, 2000; Clement, 2008; Lauren, 2008; Claude & Weston, 2006).

[46] The strongest critiques came from Burke and Wilkes who viewed rights as too abstract. Hume (1711-1776) feared rights would result in more social upheaval, and Bentham (1748-1832) leveled a utilitarian critique as "nonsense on stilts" (in Moyn, 2010, p. 31) suggesting that declarations of natural rights would substitute for effective legislation.

2006, p. 27). Some observers felt that rights advantages had gone too far, perhaps because they feared for their own privileged political, economic, or social positions. There was growing controversy about the nature of human rights that were extended in declarations and in new constitutions because of patterns of denying rights for segments of the population that included Indigenous people.

Critical human rights historian Moyn (2010) argues that revolutionary rights related to formations of the state and entitlements under state membership rather than state transcendence as they do today.[47] The divergent definitions of rights during Enlightenment and Revolutionary eras were not personally nor legally secured as rights entitlements of today.[48] For example, Moyn suggests, "in glib terms, revolutionary-era rights were revolutionary: the justification for the creation or renovation of a citizenship space, not the protection of 'humanity'" (p. 26). He also proposes that these notions of rights, aside from providing pacification in a time of civil war at home, were used to justify state invasion, often through violence, such as the "unprecedented colonization of worlds elsewhere" (p. 23). He states:

> when Europeans left their own territory behind, and most especially in the encounter with the disconcerting novelty of American native peoples, they were

[47] For Americans, The *Declaration of Independence* did not include a list of rights entitlements but defined conditions of sovereignty externally from Britain. The French Declaration on the Rights of Man and Citizen stressed the importance of citizenship within the state that was to protect "natural" or "sacred rights" such as the right to vote and hold public office, the right for protection against arbitrary arrest and punishment, the right to hold opinions and beliefs, the right to freedom of expression (in Lauren, 2008). These declarations, according to Moyn (2010), provide further evidence that rights of the revolutionary era were very much embodied in the politics of the state.

[48] Moyn (2010) asserts that religious or philosophic traditions made universalistic claims that do not appear in contemporary notions of human rights. For example, today's assumptions that all humans belonged to the same group did not apply for the Christians or Stoics who were "anything but humanitarians" (p. 21) and defined "human" as an "ideal person of educational distinction" and a "politically irrelevant being" (Arendt in Moyn, 2010, p. 15). Christian-based natural rights derived from God's will and were "embedded in the fabric of the cosmos" (p. 21), suggesting that rights "were attached to 'freemen' rather than all Englishmen (let alone man as such)" (p. 19); therefore, individuals who obeyed God's will were part of the natural order, and other ways were "unnatural" and subject to inhumane treatment. In other words, segments of the population were excluded from rights bearing groups for their "unnatural" ways. Certain social or economic rights are not included in contemporary human rights discourses or appear as "second-generation" principles.

> forced to confront the limits of their assumptions. But, because they relied on the categories of classical philosophy and medieval religion to interpret the radical difference of indigenous cultures abroad, they could make no simple breakthrough to 'humanity'. Contemporary human rights still awaited their own Christopher Columbus. (Moyn, 2010, p. 16)

In other words, despite emergence of human rights discourses, its actual application translated more to civic entitlements within the state for a select few.

The Industrial Revolution and International Law

The Industrial Revolution of the 19th century advanced manufacturing and production, decommissioned small-scale production, and propelled explosive urban migration that created a significant gap between rich and poor. The insufferable conditions ignited rebellions and eventually an international labour movement. Depending on the year, country, and nature of government, these revolts were liberal, socialist, or nationalist in character but nevertheless, all used rights discourse intermittently to address issues of employment, working conditions, and wealth distribution. In response to perceived limitations of liberalist notions of civil and political rights, a socialist "brand" of rights emerged to address economic and social rights to include labour conditions and proposed economic equality.[49] These socialist developments added to the catalogue of rights considerations within the state structure; however, they offered no more protections for Indigenous sovereignty or self-determination and maintained "rights" as a set of privileges afforded to citizens within a state structure.

[49] Socialists focused on the "troubling possibility that economic inequity could make liberty a hollow concept" (Ishay, 2004, p. 9). They challenged liberal notions of individual rights and emphasized economic and social rights, which led to debates of entitlements and minimum basic standards. From the 19th century onward, socialists called for economic equity, the right to organize trade unions, universal suffrage, restrictions on the workday, education, and social welfare. In 1848 Karl Marx and Fredrich Engels published the *Communist Manifesto* that claimed bourgeois liberalism and religious morality ultimately exploited workers, and only through a violent revolution could capitalism be overthrown (Ishay, 2004).

Towards the end of the 19th century, liberals and socialists competed to establish a new social order. Debate intensified as nationalism and the rights to national self-determination moved to the center of world politics, particularly as the Ottoman and Austro-Hungarian empires and newly consolidated states of Italy (1867), Germany (1871), and Japan (1868-1912) vigorously pursued territorial expansion. However, with increased communication technologies, a new global dialogue emerged where previously-excluded people such as the Indigenous became engaged in political arenas, and they mounted resistance to oppressive foreign policies and claimed cultural rights in their defense. These pockets of resistance and mobilization are cited as one of the primary causes for the descent into the First World War from 1914-1918 where at least 10 million people died. At its end, WWI destroyed centuries-old monarchies and shifted the global balance of power (Lauren, 2008),[50] but its end perhaps revealed the inadequacies of international law and inspired new collaborations to develop international institutions to oversee laws related to international relations with hopes of preventing another conflict.

The League of Nations and International Law

Following World War I, the six-month-long negotiation as part of the Paris Peace Conference resulted in the Treaty of Versailles (1919) that provided for the institutionalization of rights through formation of the League of Nations and the International Labour Organization (ILO). Credited as "the great innovation of peace" (in Lauren, 2008, p. 59), the League of Nations expanded definitions of rights in several areas and it also addressed rights of ethnic and racial minorities, women and workers, and others claiming self-determination.[51] For example,

[50] At the end of World War I, the German, Russian, Austro-Hungarian, and Ottoman empires were destroyed, the Soviet Union emerged from the Russian empire, and the map of Europe was completely redrawn into smaller states.

[51] Various groups including women, racial minorities, the poor, and Indigenous peoples who contributed to their country's war efforts were initially promised equal rights when the war ended. They may have been encouraged by Woodrow Wilson's proclamation that WWI was "a war to make the world safe for democracy" (in Lauren, 2008, p. 56) and promises of extension of rights such as the right to be free from foreign conquest and choose

the League of Nations adopted the *Declaration of the Rights of the Child* in 1924, "the first declaration ever adopted by an international organization of sovereign nation-states dealing with human rights" (Lauren, 2008, p. 60).[52]

While this Declaration was uncontroversial, other issues caused considerable controversy and disagreement. When political leaders emerged to propel their rights for self-determination, the League became stagnated and eventually folded.[53] Members of the League of Nations including the U.S. senate stated their reluctance to threaten any nation's sovereignty despite their calls for decolonization so many decisions stagnated so that the League's effectiveness and relevance waned. League members refused to sign declarations proclaiming the potentially more volatile Universal Rights of Man. In the 1930s, the League failed to address open aggression by Italy and Japan, revealing its difficulty in addressing "collective security." The League was unable to construct a viable human rights mechanism to secure rights during the interwar period. The League's inability to impact domestic or global politics provided fertile soil for the spread of fascist trends such as in Russia (Ishay, 2005).[54]

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one's own form of government -- the precursor for the right of self-determination. Many of these groups made important strides. Women in the US, Britain, Germany, Austria, Mexico, Cuba, Brazil, Ecuador, India, and the Philippines achieved the right to vote. Workers improved socially and economically through legislation and the creation of the ILO.

[52] Other advances included outlining rights of soldiers, rights of prisoners of war such as freedom from torture. The League also created the Health Organization to administer vaccines, treat diseases and educate in areas of nutrition and health. Additionally, because the extensive border changes displaced millions from their homes, the League of Nations created the Refugee Organizations, administered by Norwegian Fridtjob Nansen (1861-1930) who is credited as a saint for saving the lives of hundreds of thousands of men, women, and children (Lauren, 2008).

[53] The right to self-determination moved to center stage of world politics with campaigners such as Gandhi in India (1869-1948), Sukarno in Indonesia (1901-1970), Ho Chi Minh in Indochina/Vietnam (1890-1969), and Kwame Nkrumah in Ghana Africa (1909-1972).

[54] Initially, the Bolshevik Revolution (1917) and the 1918 Human Rights Declaration spread hope that workers' rights would solidify in one state and then spread around the world. Foreign Minister Trotsky (1879-1940), speaking for workers rights, rejected state diplomacy in favour of "revolutionary proclamations" (in Ishay, 2004, p. 177). When the socialist revolution failed to expand and Stalin (1879-1953) consolidated his rule, the "dream of international socialist rights yielded in the Soviet Union to a repressive bureaucratic state" (p. 177). Stalin's goal would be a repressive socialism as a stronger force against capitalist aggression.

The latter 19th century witnessed a resurgence of fascist forces that put any human rights developments on hold with the rise of Stalin (1878-1953), Mussolini (1883-1945), and Hitler (1889-1945).[55] Germany eventually pulled out of the League of Nations, and invasions into Warsaw, London, Eastern Europe, and the Soviet Union marked the start of the deadliest war in human history, WWII (1939-1945), with 50-70 million deaths.[56]

In response to WWII, there arose a resurgence of efforts to create a new world order through human rights.[57] The Atlantic Charter (1941), signed in Newfoundland by U.S. President Roosevelt and British Prime Minister Churchill, illustrated the goals and aims of the Allies after the war and was subsequently the foundation for many international agreements such as the General Agreement on Tariffs and Trade (GATT). This was followed by the Declaration of the United Nations in 1942 by 46 nations that committed to a joint crusade for life, liberty, independence, and religious freedom in their own lands and around the world. In 1945, representatives met at the San Francisco Conference to create the United Nations where nations were hoping to establish a peaceful future, as recounted in the sentiment that "there can be no peace unless there is security, no security unless there is justice, and no justice unless there is respect of human rights" (in Lauren, 2008, p. 72).

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[55] Britain and France not only retained the colonial dominance over Africa and Asia and Indigenous people in North America, but extended their control in the Middle East. In the U.S., despite wartime promises to end racial segregation, lynching, and other racial violence continued, which left social justice advocates such as W.E. B. Du Bois betrayed. The failure to include race as an integral part of human rights sparked riots and instigated deep anger that would continue to plague domestic and international politics. Ishay (2004) suggests, "failure to implement such visions later corresponded to the rise of particularistic perspectives, to fascism, and a renewed descent into total war" (p. 177).

[56] The war was divided between the Allies including France, Poland, UK, U.S., Soviet Socialist Republics, China and others, while the Axis included Germany, Italy, Japan and among others.

[57] Individual nations adopted goals for peace such as U.S. President Roosevelt (1882-1945) in his vision of national societies enjoying liberal and certain socialist rights led by democratic institutions. He told Congress in 1941 that the new world would be based on four essential human freedoms: freedoms of expression and belief, and freedoms from want and fear.

To suggest a unilateral agreement over the creation of United Nations and its Charter would oversimplify the highly-politicized context. The U.S., Britain, and Soviet Union met in advance of the San Francisco Conference to draft their preferred design of the Charter of Human Rights, which did not contain any substantial provisions for human rights nor mention self-determination for colonized people. While not adopted in its entirety, their draft appeared in Article 2 of the UN Charter that reaffirmed claims of national sovereignty stating, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state" (in Lauren, 2008, p. 73). This sparked international outrage from some peoples and countries that had been integral to the Grand Alliance of WWII as well as from NGOs previously mobilized around the abolition of slavery, women's rights, workers' rights, Indigenous people's rights, and those supporting the right to self-determination. Article 2 institutionalized two diametrically-opposed principles of state sovereignty and rights universalisms that presented contradictions that have caused debate over the credibility of human rights ever since.

The Charter of the United Nations is often credited as one of the great triumphs of the 20th century (Claude &Weston, 2006; Lauren, 2008). However, what "human rights" should mean and how these international norms would be articulated and enforced had not yet been determined. Many nations criticized potential contradictions of universal human rights as colonization remained unchallengeable.

In 1946, the United Nations charged the Commission on Human Rights to draft an "International Bill on the Rights of Man" led by Eleanor Roosevelt who coordinated a team of intellectuals and leaders to draft a declaration of rights that was to be applicable to all of humanity. The product, the Universal Declaration on Human Rights, described by Roosevelt as

the "international Magna Carta for all mankind" was adopted by the United Nations on December 10, 1948. However, critical historian Moyn (2010) explains that the Universal Declaration on Human Rights (UDHR), formed by the General Assembly, did not have such broad representation as they were a group of Western-trained intellectuals and did not represent the diversity as claimed, since they had limited scope of what acceptable universalisms they could hone from their search of the world religions.[58] Furthermore, as observed by Moyn (2010), instead of the UNDHR being fueled by outrage and collective revulsion over the Holocaust, it did not figure in the deliberations that led up to its creation. He states, "in real time, across weeks of debate around the Universal Declaration in the UN General Assembly, the genocide of the Jews went unmentioned" (p. 75). According to Moyn (2010), only recently did this historic tragedy become enmeshed within an assumed cause-effect trajectory of human rights. While the United Nations hoped to shape a blueprint for a world order built on human rights, the human rights standards were not as representative as proposed and also were not a moral objection to the horrors of the holocaust.

So, while there may be caution in exalting the universality of human rights, the UNDHR did outline principles and created some institutions that have had impact on social justice initiatives around the world. When the UNDHR passed in 1948, it addressed inalienable rights for all members of the human family and outlined specific rights that ranged from classical political liberties to social and economic rights. It pledged universal respect for and observance of human rights and fundamental freedoms for all, "without distinction as to race, sex, language,

[58] The group of "outside" experts called the Committee on the Philosophic Principles of the Rights of Man were to draw on religious and philosophic traditions from around the world to identify universal normative standards. Moyn (2010) suggests "[f]ar from demonstrating the multicultural origins of the document, however, these facts mainly show the existence of a global diplomatic elite, often schooled in Western locales, who helped tinker with the declaration at a moment of symbolic unity" (Moyn, 2010, p. 66). He further suggests that Christianity primarily defined the worldview of the three main framers, John Humphrey, Charles Malik and Eleanor Roosevelt, and overshadowed the contributions of French-Jewish jurist René Cassin. Supposedly, these actors defined the values and concepts of human rights that impacted who was to be included in the rights bearing family.

or religion" (in Claude & Weston, 2006, p. 19). Signatory states to the Declaration were to acknowledge and be held accountable for certain principles: the universality of rights; that rights are not given nor taken from an individual, and that individuals are free to assert their rights against the state without fear of reprisal; and that there be free, independent, and impartial forums for the resolution of human rights issues (Lamer, 2000). The UNDHR also provided the impetus for the creation of international instruments such as the *International Covenant on Economic, Social and Cultural Rights* (1966) and *the International Covenant on Civil and Political Rights* (1976).

The world community and the United Nations had to confront significant political challenges by the end of WWII. As they contemplated the development of Western dominance in world politics as, for example, the U.S. now produced half the world's goods and had an atomic monopoly that yielded unparalleled military advantage. This also influenced the human rights landscape as U.S. drew support for its liberal internationalism -- a global structure of free markets, political liberty, and collective security, which set the stage for the global implementation of a liberal vision of human rights, with new projects such as the Bretton Woods systems (1944) that established rules for an international monetary system and the Marshall Plan (1947) for European economic recovery. Both spread international free-market commerce as a means for economic development and political stability (Ishay, 2004).

Nevertheless, despite the growth of Western political and economic spheres, socialism posed a significant challenge and pulled many countries into a socialist governance model. For example, in France, Italy, Czechoslovakia, Albania, Yugoslavia, and China, socialism gained support and power, and national leaders were enticed by the potential for self-determination. The Cold War (1947-1991) between American and Soviet superpowers resulted in a race to

secure ideological regimes throughout the world. Both nations easily dropped pretenses or rhetoric of universal human rights when values and power politics clashed. As examples, the U.S.-armed Islamic fundamentalists in Afghanistan and the Soviets provided support to violent regimes that targeted communists in Nigeria, Egypt, or Iran. The USSR abstained from the vote to ratify the Universal Declaration of Human Rights because it objected to Western dominance of the human rights regime that emphasized individualism in political and civil rights. Evidently, human rights values and the UN institution became irrelevant to Cold War powers and their competing ideologies of the time. Moyn (2010) continues to be critical of the supposed humanistic objectives of human rights in this Cold War era and states that because human rights failed to carve out a new option in the mid-1940s, human rights proved to be just another way to bolster one side or the other in the Cold War struggle.

During the Cold War, the discourse of human rights was used to entice political allegiances and world socio-political dominance, which seemed consistent with the historical summary of human rights that problematized its neutrality and representation of "basic" human values. Its development lacked global consensus in purpose and values, which suggests that its current application in Indigenous contexts would propel incomplete or biased notions of rights and freedoms.

Decolonization Not a Human Rights Struggle

Resistance to colonization intensified after WWII and this presented further political challenges to human rights institutions such as the UN as the question of nationhood moved to the centre of the international political debate. Decolonization spread as a political movement throughout Asia and Africa, with Vietnam as an example of the unrelenting determination by

civilians for independence.[59] The Western victors of WWII sought to preserve their colonial possessions, but many were too economically weak to maintain offshore dominions and had to cede political control. Newly independent, post-colonial state leaders had to shape their political and economic structures, and many faced a choice of Soviet or U.S. assistance to do so. While many nations sought to rid themselves of Western colonization and proposed to develop their own national culture, others sought human rights promises such as self-determinism from Western nations, made to bolster their crusade against the Soviet Union. The language of rights was often used by "elite" states to displace earlier wartime promises or to fashion postwar societies along ideological lines.

Former colonies, now independent, began to join the UN in the 1960s and brought new issues for consideration such as cultural and collective rights and self-determination, albeit a version geared to national economic development (Burke, 2010).[60] This caused a shift in the notion of rights as the Western emphasis on liberalism and individual rights gained more prominence. According Moyn's (2010) historiography, decolonization was not initially framed as a human rights issue but instead focused on economic development after colonial liberation.[61]

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[59] After a nine-year battle against the French, Marxist Ho Chi Minh described French colonization: "[They] have built more prisons than schools…They have robbed us of our rice fields, our mines, our forests, and our raw materials… They have mercilessly slain our patriots" (in Ishay, 2005, p. 192). In 1954, Minh sought a plan at Geneva to design post-colonial Vietnam with a resulting split between North and South, which the U.S. responded to with two decades of brutal warfare. In the end, Vietnam withstood more bombs than had been dropped on all of Europe and Asia during World War II, villages were devastated by the chemical agent napalm, and land was defoliated by air drops of herbicides. Significantly, over one million people were killed. Eventually, in 1975, six years after Minh's death, north and south Vietnam reunified under the leadership of the north.

[60] Just as with concept of human rights, that concept of self-determinism has had different meanings throughout history. In this context, self-determinism, as articulated by decolonized nations, refers to economic development of nations upon exit of empirical powers (Lauren, 2008). This is different from concepts of self-determination that emphasize social and political aspects of cultural preservation and self-government such as for many First Nations in Canada that refer to independent "nations within a nation" where proposals range from radical demands for a new constitutional framework to moderate integration within the current federal framework and where it appears most Aboriginal leaders in Canada support a middle way and propose a distinct order of governance that may overlap with federal, provincial, or municipal jurisdictions according to localized needs (Fleras, 2005).

[61] Moyn (2010) also suggests that many social movements such as abolition, decolonization, or women's movements rarely framed their struggles as human rights issues. Specifically, the Haitian revolt sought black

He suggested that only when decolonization resulted in enough new states to matter at the UN, the phrase "human rights" was evoked within the "master principle of collective self-determinism" (p. 85).

Another human rights historian Burke (2010) provided a detailed analysis of documents emerging out of key discussions at UN conferences in the 1950s and suggested that after decolonization spread throughout the world, newly independent nations entered the United Nations and expanded ideas, methods, and priorities of decolonization, rights universalism, and collective self-determinism. Participants from India, Egypt, and Iraq were initially very active participants and, at times, even dominated human rights programs. This dominance was much to the chagrin of American or Soviet members who, despite being in the midst of a Cold War, found solace in each other's company to lament their marginalization at human rights tables (Burke, 2010; Moyn, 2010). The U.S. and USSR argued that human rights were only relevant for select nations, citing perceived problems of "cultural differences" in other countries. To critical observers, these arguments seemed to be driven by a desire to retain control over colonies through the UN network (Burke, 2010); and their arguments were shadowed by some countries that, for a time, became the most powerful and articulate champions of universality, which held hope for inclusion for peoples still unrepresented in the human rights realm.

Emergence of Universal Human Rights

Moyn (2010) presents a compelling argument that although there is ample credit given to human rights as propelling social and political change throughout the world's history (see Ishay,

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inclusion in the state through slave emancipation, as a precursor to the "revolutionary nationalism of decolonization" (p. 32). In this movement, decolonization rather than human rights was the pivotal watchword. As another example, claims for women's inclusion, such as de Gouge's *Declaration of the Rights of Woman and Citizen,* focused on suffrage right of citizenship, and it was not until after WWI when social rights were articulated. Human rights did not propel these movements as each were defined by specific objectives of liberation – either decolonization, women's equality, or abolition of slavery.

2004; Lauren, 2008), contemporary definitions of human rights as universal did not emerge until the 1970s with the advent of international non-governmental organizations to introduce a new consciousness and discourse. The advent of international organizations perhaps propelled human rights into a global arena more than any other factor.[62] International organizations, with membership that crossed borders, were the first institutions to transcend the state, allowing citizens an international forum to claim rights where state leaders seemed unwilling or paralyzed to address conflicts due to "cultural blindspots" or "constitutional limitations" (Fleras, 2005). Indigenous groups or international migrants could now appeal to international non-government organizations to document or to request assistance to improve living conditions or address abuses. If civil society previously lacked the political space to create or expand rights, the emerging global networks could pressure the state "from above" and bolster civil capacities "from below" to expand social and policy solutions (Risse, Ropp, & Sikkink, 1999).

Human rights instruments were also developed to make some rights enforceable through international criminal legal mechanisms such as the International Criminal Court in 2002, a permanent court for investigating perpetrators of war crimes, crimes against humanity, and genocide. This court created a new culture of accountability as national leaders became less able to hide behind claims of national sovereignty as protection from scrutiny. The creation of the International Criminal Court marked a change in rights since human rights forums could now highlight the failure of the state regime to abide by its own enacted rules (Moyn, 2010).

The advent of international institutions created a forum for state observation and accountability and transformed the substance of International law. International law now draws upon judicial decisions by the International Court of Justice, international tribunals, domestic

[62] The first organization credited for creating and using contemporary human rights concepts was Amnesty International, unique in its time for its scope and methods of organizing across borders was detached from any particular government, ideology, or even to the United Nations.

courts, and legal commentaries such as from international organizations such as the UN (and its specialized agencies). These sources help to ensure that international law continues to evolve.

States adopt internal legal mechanisms to reflect international human rights standards. In Canada these include the federal and provincial human rights commissions.

A summary of the human rights developments demonstrates that, from the first incantation in natural law, natural rights, the Papul Bulls through to the Enlightenment and continuing onto 18th and 19th century revolutions the increasing recognition of customary law and requirement for treaty negotiations demonstrated strong influence from Western-based ideologies about what is human, how people should be organized, and what rights people require to fulfill their humanity. Significant world events such as revolutions, the world wars, internationalism, and modernization stimulated unrest as minority groups and colonized peoples began to assert political and economic independence. A lack of cohesive state mechanisms to arbitrate or conciliate multiple claims resulted in the rise of fascist forces that disregarded rights. Resulting world wars created unprecedented destruction and violence, but also provided opportunities for new concepts of rights that became fortified in the international institution of the UN.

A critical historiography suggests isolated and strategic uses of human rights where moral boundaries enveloped "natural" peoples rather than a universal humanity as it does today. Human rights seemed to be used to justify exploitation rather than as protections for decolonized and Indigenous peoples. As this historic summary suggests, human rights (as currently understood) did not emerge until post-1970 when international institutions transcended state boarders and provide a forum for agents to discuss common experiences of state oppression. New rights discourses emerged to adopt different meaning from what was previously meant. Citizens came closer to the universal ideals of rights required for the dignity and survival of

humanity. It remains to be seen how the UN, with its dominant liberal ideology, can apply multiple claims for human rights such as those from Indigenous peoples who advocate, among other issues, the right of self-determination.

The Struggle for Indigenous Inclusion at the UN

In the 1970s, marginalized peoples began to network and develop a stronger voice to critique the 1948 Universal Declaration for excluding many people of the world who it was intended to represent (Burke, 2010; Clément, 2008; Littlechild, 2008). Indigenous peoples were excluded from the drafting the UN Declaration on the Rights of Indigenous Peoples and consequently not considered as Peoples in its contents (Littlechild, 2008).[63] At the Commemorative Session of the 60th Anniversary on the Declaration of Human Rights in 2006, Chief Wilton Littlechild recalled:

> In 1948, Indigenous peoples were not included in the Universal Declaration. We were not considered to have equal rights as everyone else. Indeed, we were not considered as human nor as peoples. Consequently, there were, at times, gross violations of our human rights. Indigenous peoples simply did not benefit from the rights and freedoms set forth in the Universal Declaration. (http://www.youtube.com/watch?v=x9xHbFYOfI8)

In other words, Indigenous peoples were not recognized and did not benefit from the rights and freedoms set forth in the human rights machinery the United Nations afforded to other citizens through legal mechanisms of the state and international law.

[63] According to Hartley, Joffe, & Preston (2010), before the UN Declaration on the Rights of Indigenous Peoples, Indigenous rights had to be embedded in issues of "minority rights"; however, these rights did not recognize the fundamental difference that Indigenous peoples have rights to self-determination with a special relationship to traditional lands and territories.

Indigenous people have tried to use the international arena to address their rights violations. In 1923, Haudenosaunee hereditary Chief Deskaheh, travelling on an Iroquois Nation passport, went to Geneva to submit a complaint about Canada to the League of Nations. His goal was to "defend the right of his people to live under their own laws, on their own land and under their own faith" (UNPFII n.d. quoted in Gunn, 2014). Indigenous inclusions in global politics, observed by Hartley, Joffe, & Preston (2010), only occurred in sincerity in the early 1970s when the Martinez Cabo Report documented severe conditions of Indigenous peoples, instilling public consciousness around Indigenous rights, and thus solidifying the formation of an official UN Working Group on Indigenous Populations that was tasked to draft a Declaration on Indigenous Rights.

The struggle for Indigenous inclusion in the UN continued in 1977, when Chief Wilton Littlechild and other Indigenous delegates approached the closed doors at the United Nations when the spirit and intent of their Treaty 6 was not being honoured (Gunn, 2014). In the forty years since, he and others have advocated for human rights instruments and mechanisms to address issues of Indigenous human rights, self-determination, lands, cultures, knowledge and identity so that their communities might realize social justice. Their struggles resulted in recognitions by the International Labour Organization (ILO) and the progressive interpretations of general human rights interpretations to account for Indigenous concern, notably the interpretation of property rights in the Inter-American System of Human Rights (Gunn, 2014). Many international bodies "recognized a need to interpret their instruments with particular understandings of rights specific to Indigenous peoples" (Gunn, 2014 at p. 196). And, the Indigenous peoples' international presence, with support from broader international human rights systems, culminated in the UNDRIP.

The first substantive win for Indigenous rights was the 1989 amendments to the International Labor Organization that institutionalized recognition of Indigenous as "regulated wholly or partially by their own customs of traditions" and "irrespective of their legal status" (Article 1.1 in May, 2008, p. 275). May (2008) describes this change:

> Central to this change has been the argument of indigenous groups themselves that they are not simply one of a number of ethnic-minority groups, competing for the limited resources of the nation-state, and therefore entirely subject to its largesse, but are peoples, with the associated rights of self-determination attributable to the latter under international law. (p. 276)

May (2008) suggests this was an important milestone for Indigenous peoples because it moved the discourse of Indigenous rights from one that questions the legitimacy of Indigenous collective identity to one where collective Indigenous identity is placed firmly in their own hands irrespective of the state recognition and whose associated rights are protected in international law.

Other achievements resulted from the 1993 International Year of Indigenous Peoples and World Conference on Indigenous Rights and the creation of the Permanent Forum on Indigenous Issues and the two designated Decades for Indigenous Rights (Barsh, 2001; Littlechild, 2008; Stavenhagen, 2011). Then, in 2007, the UN Working Group completed a draft of the UNDRIP that was initially ratified by 143 countries while Australia, New Zealand, the U.S., and Canada opposed.[64] Canada first cited it incompatible with its constitution but reversed this decision three years later. The UNDRIP listed individual and collective rights of Indigenous people and emphasized the right to self-determination, prohibition against discrimination, and the right to

[64] Canada was initially a supporter and even a leader in the creation of UNDRIP; however, with a change of government to the Conservative Party of Canada minority in 2006, UNDRIP was cited it as incompatible with the constitution. This decision was changed in 2010 with Canada's signing.

economic and social development. According to some, the UNDRIP represents 30 years of diligent work and is a profound achievement to be included in the United Nations and recognized as "Peoples" with associated rights under international law (Littlechild, 2008; May, 2008).

After a long struggle for inclusion, Indigenous people are now considered part of the rights-bearing family represented in international human rights circles. Whether Indigenous rights recognitions at the UN presents a significant turning point for Indigenous peoples remains to be more fully explored. The next section will cite literature that evaluates UNDRIP for its potential to eliminate of human rights violations against Indigenous peoples and strengthen Indigenous customary law as a means to begin to remedy colonization and racism.[65]

Discursive Debates about the UNDRIP

The fervent deliberations and suspense of the delayed ratifications by U.S., Australia, New Zealand, and Canada has negated difficult questions regarding the history, content, and status of the UNDRIP and its potential to contribute to justice at the community level. However, mixed reactions have emerged in the literature. On the one hand, UNDRIP was viewed as a critical entry into the UN system (Barsh, 2001; Daes, 2011), is more comprehensive in substance and extensive in scope than any other instrument dedicated to Indigenous peoples (Allen & Xanthaki, 2011), recognizes Indigenous as Peoples with associated rights (Littlechild, 2008;

[65] Henderson (2008) summarizes how European ideologies established and justified the meta narrative of empire, imperialism, colonization, and racism. He suggested the formation of the colonial nation state and treatment of Indigenous peoples has been achieved with two "ideological twins" of violence and imagination: "Violence controls the physical contexts of genocide and legal authority, while imagination controls the intellectual justification of violence in the context of cognitive and cultural imperialism" (p. 15). Violence justified the assumed "progress" or "civilization" of Eurocentric colonization. Violence, punishment, and fear is the "method, discourse, and remedy" for the political and social order and legitimates the systematic control or extermination of others. Canada is no exception where justified violence allowed British and French authority to emerge and continue its dominance at the expense of the Indigenous people. "Advancing colonial powers had oppressed and impoverished Indigenous people to the point of extinction and accepted this as the inevitable consequence of modernity" (p. 16).

Henderson, 2008), and changes public consciousness around rights for Indigenous Peoples. On the other, it is sometimes viewed as a counter to Aboriginal rights initiatives (Kulchyski, 2011) and gives the appearance of state compliance to Indigenous issues without a commitment to implementation (Lightfoot, 2012).

Several observers are jubilant about the potential for the UNDRIP specifically to shape a new public consciousness around Indigenous rights and suggest that it has sparked significant changes in the profile of Indigenous peoples and their rights claims. Aboriginal legal scholar James Youngblood Henderson is among the most "outwardly celebratory of the [Declaration's] endorsement" (quoted in McDonald & Wood, 2013, p. 1). He celebrates the passage of the UNDRIP as "the tipping point in international law and history" (Henderson, 2008 and Green, 2014).[66] Henderson observed:

> A shift of consciousness is required to comprehend both the transformational politics involved in the Declaration and the new global consensus. The politics that surrounded the Declaration was a cognitive struggle, a challenge to existing ways of thinking about humanity. It was a manifestation of shared persuasion. The new, emergent consciousness displaces the familiar discriminatory models of imperialism and colonialism, based on racism. Yet it leaves the poverty and vulnerability of Indigenous peoples intact. (Henderson, 2008, p. 10)

So, Henderson admits, while UNDRIP was credited for shifting public consciousness, it has not been able to transform poverty or other vulnerabilities.

Several authors cite reasons for maintaining a human rights-based approach to Indigenous issues. Smith (2014) and Joffe (2010) argue that human rights protect interests and rights in a

[66] While Henderson (2008) celebrates a new global consensus for new discursive and political spaces, he concedes that material rewards are not an automatic result of such achievements and significant works needs to be done.

more comprehensive and balanced way than other rights regimes. Smith (2014) argues that human rights are favourable because other rights frameworks, such as civil rights, can be abrogated by states, while human rights cannot. Joffe (2010) suggests that a human rights approach ensures "a more coherent and consistent interpretation and treatment of Indigenous peoples' fundamental rights" (p. 73). For example, he contrasts Canada's Supreme Court approach to Aboriginal rights to a human rights approach. The Supreme Court of Canada, he argues, consistently applies policies of extinguishment to Aboriginal rights while two UN committees have linked these extinguishment policies to economic marginalization and dispossession. Joffe (2014) concludes that international law, as opposed to Canadian law, consistently adheres to principles of democracy and rule of law so ensures a more balanced and comprehensive legal analysis.

UNDRIP, specifically, is seen as an opportunity to improve Canadian protection of Indigenous rights. According to Costentino (in Green, 2014), it can counter Canada's abysmal political record on Indigenous rights, guide law and policy reform, and transform state behaviour. Though Canadian courts have occasionally been hesitant, there are also examples when they have stated that Canadian law and statutes must be presumed to be consistent with Canada's international human rights obligations.[67] For example, in *R v Hape*, 2007, Justice LeBel noted that Canadian law must conform to at least two categories of international law: the signed

[67] Gunn (2014) cites examples of when Canadian courts have invoked the presumption of conformity to cite international law when interpreting domestic law, especially when interpreting the Constitution. For example *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 cited *Ordan Estate v Grail,* 1998 that states that Canadian law must be interpreted consistently with Canada's international obligations. Or, in *R v Hape*, 2007 (para 53) LeBel J. wrote "It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law." Likewise in *Daniels v White*, 1968 (para 541) Pigeon J wrote "Parliament is not presumed to legislate in breach of a treaty or any manner inconsistent with the comity of nations and the established rules of international law." In the decision about the *Migratory Birds Convention Act*, the Courts used the international law to interpret Indian hunting provisions in the *Natural Resource Transfer Agreement (British North American Act, 1930)*. Still further, in *Ordon Estate v Grail*, 1998, the Justices held that a legislation is intended to comply with Canada's obligations under international instruments and as a member of the international community (at para 137).

international treaties and the values and principles that underlie customary and conventional international law (at para 53).

UNDRIP can be used to interpret the scope of protected rights under s. 35(1). This was established in *R v Sparrow,* 1990 when Justices Dickson and La Forest identified principles of interpretation, especially when the wording of a law, statute, or right is ambiguous or broad. As Gunn (2014) notes, just as *R v Sparrow,* 1990 directs a purposive and contextual approach, the UNDRIP provides important context for the current state of Aboriginal rights and thus a framework for modern interpretation of Aboriginal and treaty rights protected under s. 35(1).

UNDRIP has also informed domestic law in Canada. In *Canada (Human Rights Commission) v Canada (Attorney General)*, 2012, Justice MacTavish held that "international instruments such as the UNDRIP and the *Convention on the Rights of the Child* may also inform the contextual approach to statutory interpretation" (para 353). Therefore, international norms such as those approved of in UNDRIP provide context for interpretation Canadian domestic law, statutes and the constitution, particularly s. 35(1).

Some authors suggest that human rights can address acute needs of Indigenous peoples. A denial of human rights, argues Smith (2014) or Lyons (2008) has created poverty, heath, and socio-economic problems and human rights can provide for transnational linkages and reformist strategies that ultimately can be used for Indigenous mobilization and decolonization. Finally, Smith (2014) praises the educative and organizing function of human rights because it not only challenges the normalization of Indigenous oppression but also promotes justice within Indigenous communities. Human rights allows many Indigenous to problematize oppressive experiences; for example, in the U.S., increased knowledge of international human rights

protections changed the way many boarding-school survivors perceived their experiences and instilled a sense of entitlement to healing services.

It is further argued by some that human rights provides a framework for sovereignty different from the "heteropatriarchal values" (Smith, 2014, p. 94) that steer much contemporary Indigenous governance. Smith (2014) references debates that emerged during negotiations for the 1992 Charlottetown Accord.[68] Issues of Indigenous women's equality drove many of the debates and highlighted the extent of inter and intra-group diversity. Many First Nations women and women's organizations cited dramatic increases in violence against women, challenged loss of status when marrying outside of their community, argued that the issues had not warranted a sustained institutional response by band councils, and voiced a loss of confidence in male-dominated Indian band councils and some Aboriginal organizations. Feeling abandoned by their Indigenous leadership, many women looked to rights guaranteed by the *Charter.* Many of these women were met with condemnation by their own nations and sovereignty was cast in oppositional terms to gender justice. Smith (2014) argues that human rights standards on gender rights then became a "helpful starting point in calling for accountability to broader principles of justice beyond the immediate self interest of those in leadership roles" (p. 95). She proposes that human rights can continue to hold members accountable and shape community leadership.

While the aforementioned praise for human rights cites specific substantive rights and concrete political opportunity, other areas of praise cite theoretical and discursive benefits of using human rights. For example, the Indigenous inclusions at the UN has propelled the development and implementation of legal norms that recognize Indigenous as peoples and to

[68] Under the Accord, Aboriginal right to self-government was to be enshrined in the *Canadian Constitution*, and Indigenous governments would become a third order of government, constitutionally autonomous from federal or provincial levels. The precise form of self-government was not detailed and opinions were divided over fundamental issues including whether Indigenous governments would be subject to judicial review under the *Charter.*

hold their states accountable, which, according to Venne (1998), changes the discursive constitution of Indigenous peoples, for example how Indigenous people are seen and defined in the public consciousness. According to Ranciére (in McDonald & Wood, 2013) the value of human rights is a radical alteration to the philosophical constitution of a political subject by self-determining goals, struggles, and actions. Specifically, the UNDRIP allows Indigenous peoples to self-define and be recognized as leaders and defenders rather than the passive subjects of international law. Laclau and Mouffe (in Estévez, 2011) suggest that using the human rights discourse allows the subjects to define themselves and gain legitimacy for their demands.[69] Estévez (2011) suggests "human rights are considered social and historical constructions in which social subjects serve as key actors before institutionalized bodies of power…social subjects dispute the position of signified such as liberty, democracy, and social justice" (p. 1148). Douzins (in Estévez, 2011) suggests that human rights have "won the ideological battle of modernity" (p. 1153) because the "human" in human rights (or the subjecthood) can now be expanded to a broader range of populations across a range of political, ideological, and institutional contexts. Accordingly, human rights enables self-identification around political goals and allows subjecthood to be recognized and legitimized by outside actors.

Indigenous peoples became active contributors in international human rights arenas and weighed into debates on how to make human rights institutions more reflective of cultural and political realities such as how to substantiate collective rights while also complementing individual rights (Jones, 1999; Kymlicka, 1996; May, 2008). These Indigenous groups use an

[69] Representative of a European tradition of neo-Marxist analysis, their focus is on how human rights discourse by grassroots groups to contest free trade agreements in Mexico. They reveal differences in human rights positions between grassroots and elite groups that results in different influence in political advocacy around Free Trade of the Americas and the Free Trade Agreement with the European Union.

international forum to propel a collective political identity that strives for rights to protect cultures, livelihoods, and governance systems.

Many scholars do not share the optimism that human rights generally nor the UNDRIP specifically will bring significant change for Indigenous peoples. These scholars suggest, in part, that international law has not fully addressed exclusion and marginalization of Indigenous peoples and adherence to human rights norms may be counterproductive to Indigenous interests. They argue that human rights reinforces the colonial nation state and therefore cannot deliver the protection for rights that Indigenous require for survival and dignity.

Native studies scholar and activist Kulchyski (2013) argues that "aboriginal rights are not human rights" and warns that universal human rights, including the UNDRIP, promotes universalism at the expense of political, social, economic and cultural recognition of Indigenous peoples and politics. So, he argues, while Aboriginal rights are concerned with cultural relationships, human rights frameworks elicit a colonial and capitalist understanding of humanity. McDonald and Wood (2013) echo the belief that Aboriginal rights more accurately reflect Indigenous paradigms and political needs because they emerge out of struggle, resistance, and collective action reflective of cultural practices. Aboriginal rights movements propel self-determination and autonomy rather than current models of state-cohesion.

Kulchyski (2013) also warns that the UNDRIP not only fails to affirm Aboriginal and treaty rights but, because it is merely a tool for equality rights, it acts as a tool for assimilation. UNDRIP fails to affirm the basic human rights of Indigenous peoples because "…universality will always hold the deciding cards over cultural difference, including cultural difference in political and economic spheres of activity" (Kulchyski, 2013, p. 54). Kulchyski (2013) cites comments by Victoria Tauli-Corpuz, then-Chair of the UN Permanent Forum on Indigenous

Issues, that UNDRIP "marks a milestone in its long history of developing and establishing international human rights standards" (p. 56) as an illustration that UNDRIP is only an extension of universal human rights. The goal of equality is part of UNDRIP's various articles; for example, ss. 1 through 3 of Article 46 establish that the *United Nations Charter* and its values of justice, democracy, human rights, equality, and non-discrimination remains paramount which, as Kulchyski (2013) argues, maintains colonial power dynamics and functions as a form of positive discrimination.

Arguably too, the UNDRIP confuses human rights with Aboriginal rights and even deploys the former at the expense of the latter. According to Kulckyski (2013), ss 1, 2, 6, 17, 21, 22, 23, 43, 44, 46 of the UNDRIP speak to human rights while ss 3, 4, 5, 8, 9, 11, 12, 13, 14, 16, 19, 20, 24, 31, 33, 35, 36, 37, 40 speak to Aboriginal rights and ss 7, 15, 18, 34, 38, 39, 41, 42, 45 speak to both. Kulchyski (2013) highlights that UNDRIP avoids using Indigenous languages (though including Latin) and avoids references to Indigenous worldviews to conclude that it will not enable the preservation of Indigenous worldviews and will impede preservation of land and practices that mark the distinctiveness of Aboriginal people.

The human rights framework has been critiqued by those who argue that it cannot lead to desired goal of decolonization because of its reliance on the nation-state; that human rights presupposes the primacy of state sovereignty. For example, the UNDRIP Article 46 states "Nothing in this Declaration may be interpreted as implying…any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States." Smith (2014) describes the inability of human rights to challenge the power of the nation-state "since the forums under which human rights laws are addressed, the United Nations et al., are also bodies of nation-states" (p. 83). Legal theorist Otto, 1995 (in Venne,

1998) notes "[t]he current denial of Indigenous sovereignty will continue to be perceived as the result of a system that has not involved them and only serves the interest of states" (p. 20). Miéville, 2005 (in Smith, 2014) argues that human rights has its foundation in colonial legal frameworks and cannot provide rights protections to Indigenous peoples. So, while many see that that Indigenous require an erosion of state sovereignty, calls to human rights can actually strengthen nation-state sovereignty.

Indigenous scholar Lightfoot (in McDonald & Wood, 2013) describes state endorsement of the UNDRIP as an emerging "grey zone" between state commitment and non-commitment. She suggests that state leaders can "selectively endorse" international human rights norms because they give the appearance of compliance when they adopt the norms but do not commit to further efforts of implementation. In doing so, states can avoid the international and domestic political costs of under-commitment while also preserving their identity as human rights-supporting (Lightfoot in McDonald & Woods, 2013).

Though enthusiastic about UNDRIP's potential, Joffe (2014) is critical of the Canadian government's devaluation of UNDRIP as it ignores its significance and legal effects. The Canadian government did not consult Indigenous peoples prior to and after the adoption of UNDRIP and declared that it had no legal effect. It described UNDRIP as aspirational when it said "the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws" (Aboriginal Affairs and Northern Development, 2010, quoted in Joffe, 2014). Joffe concludes that the Government of Canada repeatedly uses international processes and forums to undermine Indigenous peoples' rights and the UNDRIP "based on narrow self-interest" (p. 223).

Critics such as Kulchyski (2013) cite the danger that human rights and UNDRIP will impair Indigenous sovereignty as its origins are of the liberal human rights agenda of individualism, property rights and state sovereignty. Williams, 2010 (in Smith, 2014, p. 84) goes as far as suggesting that human rights was "developed as a strategy to keep decolonization struggles at bay." So, while there has been significant praise for human rights to create human equality, there are also significant critique that equality is counter to Indigenous political objectives.

Considering Paradigms: Are Human Rights Humanizing?

This research evaluates the ontological congruence between human rights systems and Indigenous knowledge and asks if human rights allows the "full humanity" of Indigenous people. Some research suggests that human rights reinforces a foreign paradigm that emerged out of a long history of oppression and may weaken social justice goals. These arguments suggest that Indigenous people are not humanized by human rights if they have to adopt liberal paradigms of rational, individualistic rights and lose the customary notions of community justice. Other arguments suggest that human rights can absorb difference and be flexible enough to allow subjects to participate in a global political discourse. This debate touches on one of the most important concerns of this research, namely the role of Indigenous subjects in the construction and use of human rights as a vehicle for advocacy. This compels "deeper" questions about advocacy strategies that serve or strengthen the ontological foundations of Indigenous peoples and empowers collective cultural knowledge. This section comments on this debate that emerges in the literature but concludes that human rights does not award "full humanity" of Indigenous people if it does not strengthen the ontological and epistemological foundations or appeal to justice-related processes within these foundations.

Little Bear (1986) contrasts Western and Aboriginal epistemology by describing cyclical and holistic thinking held in Indigenous cultures that creates a consciousness of relationships between peoples and the macrocosms. Western philosophies, on the other hand, contain linear thinking and an occidental conception of time and matter. Linear thinking lends itself to fragmentation, polarization, and singularity where "there is only one 'great spirit,' only one 'true rule,' only one 'true answer.'[70] When contrasting Indigenous from Western pedagogies Little Bear explains, "a cyclical philosophy does not lend itself readily to dichotomies or categorization, nor to fragmentation or polarizations" (1986, p. 245).

One of the often-cited differences between Indigenous and Western notions of rights is its collective versus individual orientation. Western notions of rights promote minimalist guarantees of personal freedom and individual rights exemplified through civil and political rights. For many Aboriginal people, individual rights present as a "strange humanism" because it elevates the individual to the point that the group is forgotten (Zion, 1992, p. 211). Joan Crow, an Aboriginal woman with legal training (cited by Denis in Paine, 1997) is specific about the difference between individual and collective orientations. She suggests:

> The Charter I learned about in white law school is about individual rights. My rights as an individual. That is not how I and many of my people look at ourselves. [We have] another process, a different process…Fundamentally,

[70] According to Little Bear (1986) this linear and singular philosophy of Western cultures and the cyclical and holistic philosophy can be seen in property concepts. Indian ownership is holistic, land is communally owned, ownership rests with the tribe as an entity. Everybody owns the whole inclusive of past and future generations as well as other living things that also have an interest. In contrast, Western societies only human beings have a right to land, and everything else is for the convenience of humans. Little Bear draws attention to how these paradigm differences shaped the meaning of treaties. The Indian concept of land ownership is not inconsistent with the idea of sharing. Little Bear says: "they shared with Europeans in the same way they shared with the animal and other people. However, sharing here cannot be interpreted as meaning that Europeans got the same rights as any other native person, because the Europeans were not descendants of the original grantees, or they were not parties to the original social contract. Also, sharing certainly cannot be interpreted as meaning that one is giving up his rights for all eternity" (p. 246).

> people who espouse these individual values do not accept that we are inherently *connected* to each other. We must first recognize that we are connected. Then our place as an individual is ensured. (in Paine, 1999, p. 332, original emphasis)

Indigenous people have long recognized group-differentiated minority rights consistent with historical struggles for lands, languages, and governance (Kymlicka, 1996; May, 2008). Group rights, says Jones (1999), pertain to subjects who hold joint interests in the right that cannot be held individually. There are distinctions between types of group rights and Kymlicka (1996) cites "good" group rights[71] that provide a collective claim against the larger society in order to protect communities from decisions or policies of the larger society. Self-government rights or rights enshrined in the UNDRIP (Kymlica, 1996) are examples of "good" group rights that protect Indigenous from the Canadian state.

The collective orientation to rights not only presents deliberation on what kinds of rights Indigenous people most adhere to, but whether "rights" is appropriate at all as a framework for community justice and advocacy. Paine (1999) suggests that the paradigmatic difference may be too great to ensure inclusion of Indigenous notions of justice. He cites the decision of Chief Justice Hood in the case of *Peters vs. Campbell,* 1992 that suggests that the Canadian state requires that collective rights be revoked.

> While the plaintiff may have special rights and status in Canada as an Indian…He lives in a free society and his rights are inviolable…His freedoms and rights are

[71] Good group rights are different from bad groups rights. Kymlicka (1996) explains: "Bad" or "intolerable" group rights result in abuses of power when groups make claims against their own members, often to stave off internal dissent. "Bad" group rights support internal restrictions on the individual rights of group members and are almost always unjust because they raise danger of individual oppression. "Intolerable" group rights also restrict individual rights, but are more severe and include gross and systematic violations of slavery, genocide, and mass expulsions. These examples suggest that group rights can limit rather than extend social justice.

not ‘subject to the collective rights of the aboriginal nation to which he belongs’. (in Paine, 1999, p. 331)

This passage critiques state leaders who are “insistent on making ‘cultural sameness’ the price for gaining rights” (in Cowan, Dembour & Wilson, 2001, p. 5).

A similar conclusion can be drawn in the literature of Overmyer-Velázquez (2003) who cites a specific example of the United Nations’ inability to hear Indigenous peoples’ evidence of oppression in Mexico. Describing an unprecedented visit by Erika Daes, the UN Rapporteur on the Right of Indigenous Peoples in Mexico, Overmyer-Velázquez (2003) first critiques the bureaucracy and heavily politicized process for the UN to enter Mexico and gain access to Indigenous communities – made more difficult when Mexican officials tried desperately to undermine the first Indigenous appeals for the visit. When Daes did arrive, many Indigenous organizations were unprepared since many only heard of the visit by rumour days or hours in advance.

Overmyer-Velázquez (2003) also critiques the UN’s rigid structure to hear and analyze Indigenous stories. Many Indigenous peoples did not know how to convey their lived experiences using the UN’s individualistic criteria to assess human rights violations. Many Indigenous reported that they felt undermined and unheard when Daes suggested that a single case could not dispel systemic abuse, when she ignored the larger social context in which the cases occurred, as well as when she dismissed many stories as “difficult to believe” (p. 22). Finally, because of the lack of precise definition of what constitutes “peoples”, Daes was “unable to assess rights violations in their group dimension (as the systematic violation of the rights of an identifiable people) results in the inability to see violations at all” (p. 11). As a result, Overmyer-Velázquez (2003) suggests the Indigenous leadership felt the visit ineffective because the rigid

bureaucratic requirements of UN reporting "flattens out the complexity of the social world in which human rights violations occur and makes it more difficult for victims to make their case before human rights organizations like the UN" (p. 10). These authors demonstrate that epistemic differences can present different notions of rights such as individual rights as compared to collective rights. The different conceptions have substantive results for Indigenous people who are not recognized as peoples and struggle to have collective rights recognized.

On the other hand, scholars have suggested that human rights can retain flexibility to become more diverse and reflective of localized influences. African Indigenous scholar Murithi (2007) observes a likeness between the Indigenous politics of Sub-Saharan African and Canada and cites similar critiques. He notes, "there has not been an adequate recognition of the way in which African thought systems can contribute towards advancing the cause of human dignity for all" (p. 278). He demonstrates that the current international human rights standards were developed through a narrow consultation of non-Western countries such as sub-Saharan Africa, which created a deficit of how other cultural thought systems can contribute towards advancing the cause of human dignity for all. Murithi (2007) also notes the problems when the nation state adopts dominant human rights standards at the expense of other standards. The nation state manages sub-national populations and maintains a culture of "blindness" to specific issues/needs of these marginalized societies. He observes that this permits multiple human rights atrocities.

However, the solution to cultural blindness of human rights regimes, argues Murithi (2007), is not to deny global human rights standards in the affairs of local communities and societies but for human rights to become more representative of localized perspectives. He argues that contemporary human rights can absorb diverse thought systems in order to build a framework for advocacy, monitoring, and promotion of human rights. He agrees with Mutua

(2002) who argues human rights needs to and can account for alternative ways of thinking about human dignity. Mutua (2002) calls for a "multiculturalisation" of human rights in order to make them truly universal – and this entails a wider dialogue on what human rights means to diverse cultural communities (Mutua, 2002).

Murithi (2007) professes that human rights codes would benefit from values drawn from local contexts, including the rich traditions founded on localized notions of human dignity and "humanness". Murithi argues that the African worldview of *ubantu,* that translates as humanness and imparts notions of individual and collective personhood and morality*,* is complementary to global human rights standards and the superior vehicle to inform a more culturally grounded understanding of human rights.[72] He quotes An-Na'im who says "…similar value systems exist, or have existed, in most cultures in the world, and that can in their own way serve to promote and maintain standards for human rights and responsibilities" (An-Na'im in Murithi, 2007, p. 283).

Scholar Lopez (2005) draws a similar conclusion after exploring how Indigenous populations in Chiapas, Mexico have used human rights to contest inequalities in basic needs such as housing, employment, and education. However, she notes, human rights advocacy required localized definitions of human rights standards. Instead of considering human rights as monolithic, localized, community-based organizations referenced their own definitions of civil

[72] The African worldview of ubantu, an "ancient African code of ethics…tries to capture the essence of what it means to be human" (Murithi, 2007, p. 281) and emphasizes values of hospitality, generosity, respect for all members of the community, and interconnectivity. Murithi (2007) grants that ubantu is not universal given diverse Christian and Muslim influences in the region, but he suggests teaching ubantu can be more readily internalized by people in sub-Saharan Africa. These values, he argues, can establish dialogues towards an ethical framework that can assist with the advocacy, monitoring and promotion of human rights on the continent. Tobin (2014) cites the increasing referrals to ubantu in South Aftrican jurisprudence, notably the case of *S v Makwanyane*, 1995 in which the Justice noted this concept focused more on conciliation rather than confrontation is foundational to all rights and can be used to interpret instruments such as the *International Covenant on Civil and Political Rights* 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976).

improvement and, as the discourse became localized, so too did the political strategies to enliven them. Strategiew such as utilizing a generic rights discourse and pacifist strategies such as protests and marches "have proved ineffective in garnering action by the Mexican government" (Lopez, 2005, p. 79). However, localized communities devised methods relevant to them. For example, the Zapatista National Liberation Army (EZLN) engaged Indigenous women to bring a "unique dimension" to the EZLN political strategies and used a localized discourse of rights within its low intensity warfare.[73]

Indigenous people in Mexico have developed autonomous political institutions that promote collective interests "founded on Indigenous values" (Lopez, 2005, p. 86). According to Lopez (2005), "the discourse of rights for all Mexicans has provided an avenue to begin a national dialogue concerning changes that need to occur" (p. 79) and this has addressed much of the political deadlock within the Mexican government and between civil society. So, Indigenous understandings of rights and processes promote substantive change. In Mexico as in various African countries, human rights has become cross-pollinated by different thought systems and, according to these authors, can build strong, localized political movements.

In Canada too, there are scholars who encourage broadened notions of rights despite diverse understandings. Kymlicka (1996) and Jones (1999) state that group rights can supplement and strengthen human rights doctrines "by responding to potential injustices that traditional rights doctrines cannot address" (Kymlicka, 1996, 22). They suggest the UNDRIP has the abiiltiy to recognize broader notions of rights relevant to Indigenous communities and can be an important tool for rights substantiation in Canada.

[73] Other examples include how Indigenous have organized autonomous municipalities with five capitals (Aguascalientes) with own councils based on customary Indigenous law and function as collective assemblies to address community issues of health, education, and justice.

Perhaps the first test of how Indigenous communities can effectively use human rights comes from a 2007 human rights challenge of Canadian discrimination of Indigenous children. In 2007 the Caring Society,[74] a national non-profit organization providing services to First Nations child welfare organizations, and the AFN took a historic step by filing a human rights complaint with the CHRC against the Government of Canada for its treatment of First Nations children. The complaint alleged that the Government of Canada had a longstanding pattern of systematic discrimination against First Nations children on reserve by providing less government funding and child welfare services on reserve than is provided to non-Aboriginal children and child welfare services not on reserve (http://www.fncaringsociety.com/fnwitness/background).[75]

The AFN and Indian and Northern Affairs Canada (INAC) conducted research to find fewer services and less funding for First Nations children on reserve and conclude that First Nations children are in a state of crisis with staggering levels of poverty, health problems, maltreatment, and placement in the child welfare system.[76] Once in these systems, First Nations

[74] Seeing a need for community-based and culturally relevant child services, many First Nations have tried to establish child welfare agencies on reserves. These agencies, collectively called First Nations Child and Family Service Agencies (FNCFSA), operate across Canada but fall under the jurisdiction of provincial child welfare legislation. The First Nations Child and Family Caring Society is a non-profit organization in Ottawa and acts as the voice for FNCFSA and has worked with First Nations communities to raise these issues and negotiate changes to the funding formula.

[75] Child welfare policies are a product of complex jurisdictional divide between federal and provincial provinces. Generally, with exceptions of self-governing nations, provincial/territorial child welfare laws apply both on and off reserves, but provincial governments, in practice, expect the federal government to pay for child welfare services on reserves. When they do not or when funds are inadequate, the provinces do not intervene, resulting in a "two-tiered child welfare system" where First Nations children receive inequitable services. The provinces provide legal standards for their operation but do not provide funding. FNCFSA are funded by the federal government based on a strict funding formula called Directive 20-1. The crux of the concern is that this funding formula does not allow FNCFSA to meet provincial standards and "First Nation children on reserve are not afforded the same protection and services as non-first Nations children off reserve" (Clarke, 2007, p. 81).

[76] Estimates indicate that there are between 22,500 and 28,000 First Nations children in the child welfare system – three times the highest enrollment figures at the peak of the residential school era with numbers rising (in Clarke, 2007). For example, the Joint National Policy Review (2000) found that the average per capita per child expenditure of the federally-funded system provides 22 percent less than provincial counterparts and that child welfare legislative standards of "targeted prevention" and "least disruptive measures" are inadequately funded, creating significant risk for First Nations children.
Statistics taken from first Nations Child and Family Caring Society suggests:

- Average income in reserve is between $6400-$7900

children, youth and families have almost no access to the myriad of social services and quality of life supports of non-First Nations (Nadjiwan & Blackstock, in Clarke 2007). Though the federal government has publicly acknowledged that there are fewer services and less funding for First Nation children on reserves, it has not taken substantive action to resolve these issues.[77]

The Caring Society and AFN did not initially invoke the discourse of human rights to address inequity in the child welfare system. The Caring Society presents a long timeline of activities that started in the 1950s to demonstrate attempts to work with INAC in a process of consultation, discussion, and negotiation (http://www.fncaringsociety.com). However, the numerous round table discussions did not result in any action by the federal government demonstrating "lack of will" rather than "lack of awareness" as a credible reason for the inactivity (Clarke, 2007, p. 93). The Caring Society suggests "the complaint was filed as a last resort after a decade of joint work between First Nations and INAC to document the inequality and develop solutions to redress it failed to inspire the federal government to address the inequity" (http://www.fncaringsociety.com/fnwitness/background). In the resolution to authorize AFN to file the human rights complaint, National Chief Phil Fontaine stated:

> Rational appeals to successive federal government have been ignored. After years of research that confirm the growing numbers of our children in care, as well as the potential

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- Three out of five Aboriginal children under the age of six live in poverty
- Forty-four percent of on-reserve dwellings are considered to be inadequate in condition (in Clarke, 2007, p. 82).

[77] In January, 2016 The CHRT outlined is remedy as per 53(2) of the *CHRA* for Aboriginal Affairs and Northern Development Canada (name changed to Indian Affairs and Northern Development in 2015) to cease its discriminatory practices, to reform the child welfare program, to reform the funding and policy agreement, and to take measures to implement the full meaning and scope of Jordan's Principle. CHRT found INAC non-compliant with its order to fully implement Jordan's Principle by May 10, 2016. In a consequent report of September 15, 2016 the CHRT found INAC to be in violation of both earlier orders and was "concerned to read in INAC's submissions much of the same type of statements and reasoning that it has seen from the organization in the past." *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada for the Minister of Indian and Northern Affairs Canada,* 2016.

> solutions to this crisis, we have no choice but to appeal to the Canadian Human Rights Commission…I have said all along that I would rather negotiate than litigate… (AFN, 2007)

Fontaine stated that good-faith discussions and negotiations have resulted in little action while the crisis for First Nations children worsened. Clarke (2007) also suggests that other options such as Aboriginal or treaty rights would not have produced the same results as a human rights case. She suggests that because of abundant precedents in denying claims for Aboriginal rights through case law, there would be little chance for any judiciary success for The Caring Society. Potential appeals of fiduciary obligation and Aboriginal rights under s. 35 of the *Constitution* seemed unlikely as case law has previously ruled that control over child welfare authority is not a recognized Aboriginal right under s. 35 (From *R v Sparrow*, 1990 quoted in Clark, 2007). This led Clarke to conclude that fiduciary law and Aboriginal rights under Section 35 are not fertile grounds for advancing the issue of Aboriginal equality under the law. As negotiation and litigation had not provided a platform for change and the AFN and Caring Society considered other options.

Using a platform of inequality provided a hopeful avenue of redress. Clarke (2007) also suggested that The Caring Society would have difficulty substantiating the claims by asserting Aboriginal rights but that a human rights claim may grant political opportunity to pursue a challenge based on citizen's rights as affirmed by the *Charter*.[78] According to Clarke, a claim of

[78] Clarke (2007) believes the greatest opportunity to effect change is a *Charter* challenge under s. 15 with the stated purpose to:

> prevent the violation of essential human dignity and freedoms through the imposition of disadvantage, stereotyping, or political or social prejudice. It is to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally deserving of concerns, respect and considerations. Moreover, the equality rights protected under the *Charter* are substantive in nature. Therefore, the analysis under Section 15 considers the differences among people and communities in an effort to recognize that different people may require different treatment to achieve equality. (p. 93)

government discrimination can target inequitable effects of government policy. A Joint National Policy Review (MacDonald et al, 2000) of child welfare services found that the average child per capita expenditure of the federally- funded system that provides child welfare to First Nations children on reserve issues 22 percent less funding than provincial counterparts, and that child welfare legislative standards of "targeted prevention" and "least disruptive measures" are inadequately funded, thereby creating financial incentives to place children in care rather than to provide supports to families. Once in these systems, First Nations children and youth have limited access to the myriad of social services and quality of life supports that are available to non-First Nations children (Blackstock, 2011).[79] The funding is determined by the Government's Directive 20-1, a national funding formula that requires First Nations child welfare agencies to comply with provincial standards despite strict controls on funding. The *Charter* challenge rests with the offence to human dignity because the Government allows for less funding for children on reserve and reduces their social welfare provisions. By marginalizing or treating Aboriginal children without regard to their actual circumstances, the Canadian government provides glaring inequalities between child welfare on and off reserve.

In 2004, the Caring Society recognized an opportunity to use human rights to support their claims. 2004 was the last year of the International Decade of Indigenous Peoples and the Caring Society used it to report on the lived experiences of First Nations Children in Canada. The research and subsequent report focused on dimensions consistent with the *UN Convention on the Rights of the Child:* poverty, urbanization, substance misuse, education, youth suicide, accidental injury, child welfare, sexual exploitation, and youth justice. In all identified dimensions, First Nations children experienced disproportionate levels of risk without adequate

[79] Blackstock (2011) states that First Nations children in child welfare account for 30 – 40% of all children in child welfare even though they represent less than 5% of the child population.

policies and funding for risk mitigation (Blackstock, Clarke, Cullen, D'Hondt, Formsma in Clarke, 2007).

Pursuing a human rights claim was considered as an "escalation" in the Caring Society's political approach. The public announcement and media attention on the allegations were widely represented as the first step of a more confrontational approach to get the government's attention and stimulate action on a problem that had plagued Canada's Aboriginal communities for decades. At the time, Fontaine suggested that the filing of the complaint may motivate a class-action lawsuit and a *Charter* challenge. Clarke (2007) was optimistic that the human rights complaint would initiating some movement on the issue. In other words, the human rights appeal only became the lever for political action after decades of failed negotiation with the federal government and because of felt opportunity to align with other human rights initiatives, The Caring Society and AFN were hopeful a human rights complaint would provoke attention and federal action on the issue.

Several authors reflect on the impact of using a human rights institution to address Indigenous political issues. Using the case study to reflect upon the use of human rights for political protest, McDonald and Wood (2013) suggest that the value of human rights "rests with our interpretation of the political process by which these rights are enacted, upheld, and enforced" by social subjects (p. 4). In other words, when analyzing the human rights discourse, researchers need to consider the context in which human rights is used and how it impacts the user's political goals. According to these researchers, The Caring Society used human rights to invoke a discourse of rights and created a "scene of dissensus", or a disruption to the "common-sense" narratives of Aboriginal rights in Canada.

The disruptions suggested by McDonald and Wood (2013) relate to the common-held

belief that Canadian governments left behind their colonial legacy with the residential school apology and the striking of the Truth and Reconciliation Commission. It disrupted the dominant negative framing of Indigenous political action as "criminal" and "unlawful" commonly-found in mainstream media (Wilkes et al in McDonald & Wood, 2013) and it disrupted of the colonial narrative that any Aboriginal political movement was an attempt to profit on "special" rights in addition to the special treatment First Nations already receive. Appeals to Aboriginal rights are often met with a backlash against Aboriginal people as "ungrateful," "undeserving" and "unacceptable" (McDonald & Wood, 2013) and that Aboriginal people would be disrupting the perceived level playing field is often considered un-Canadian. The human rights complaint highlighted ongoing discrimination against First Nations children and presented the complainants as informed, empowered, and demanding of equal rights, not special rights, for First Nations children.

The result, suggest some commentators, is that not only did the AFN and The Caring Society disrupt a colonial narrative prevalent in mainstream Canada, but they also shaped a new narrative as empowered subjects and allowed for wider population to participate in the campaign McDonald and Wood, 2013). The Caring Society and AFN highlighted that Aboriginal peoples will not stand for the denial of basic human rights, that they do not have to sacrifice their unique status as First Nations in order to receive basic human rights, and that First Nations children deserve equal treatment to other children in the country.[80] Using human rights discourse allowed

[80] Early in the process, the federal government appealed to the CHRT to dismiss the case taking the position that child welfare on reserve is not a human rights issue because of the "special" relationship between Aboriginal peoples and the state. Initially the CHRT agreed with the federal government and dismissed the complaint arguing that federally-funded child welfare services on reserves should not be compared with provincially-funded child welfare services off-reserves. An appeal reversed the CHRT's decision on the basis that this outcome would "immunize Ottawa from any accountability for inequitable services on reserve" (in McDonald & Wood, 2013, p. 7). The CHRT confirmed that:

> Canadian legislation must be interpreted in a manner consistent with the Charter, that Aboriginal peoples should not be excluded form Canadian Human Rights mechanisms, and that they occupy a

some flexibility in interpretation: some considered the resistance as led by empowered self-determining subjects who resist colonial domination. Others focused only on the issue of funding for children. This flexible construction afforded the organizations significant political opportunity to appeal to multiple audiences. In other words, this case not only contests the normative as First Nations as unjustifiably seeking special privileges, but also led to significant transformation of the subject position, the overall political narrative, and ultimately the specific issue of differential funding.

The CHRT decision, rendered January 26, 2016, found sufficient evidence to establish a *prima facie* case of discrimination under s. 5 of the *CHRA*. As the Panel concluded, "[s]pecifically, they *prima facie* established that First Nations children and families living on reserve and in the Yukon are denied [s. 5(a)] equal child and family services and/or differentiated adversely [s. 5(b)] in the provision of child and family services."[81] The CHRT ruled that AANDC's funding models and federal and provincial agreements are discriminatory and contrary to s. 5 of the *CHRA*. It further found that AANDC's failure to implement Jordan's Principle was discriminatory on the basis of race and national ethnic origin. The CHRT ordered

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unique position within Canada's constitutional and legal structure…and that the interpretation of Canadian laws, including the Canadian Human Rights Act, should reflect the values and principles of international human rights laws (in McDonald & Wood, 2013, p. 7).

Whereas the "dominant" Canadian narrative often portrays tensions or impossibilities of managing both citizenship rights and Aboriginal rights, this case study exemplifies how a human rights discourse justifies both Aboriginal and citizenship rights and challenges the Canadian courts to acknowledge both. It suggests that Aboriginal people do not have to sacrifice their special rights accorded to Aboriginal Peoples in order to receive basic human rights. This also suggests a transformation around the notion of Canadian citizenship that often suggests "equality" of all people. In this way, it justifies and propels a narrative that Aboriginal people can legitimately appeal to both equality and difference in Canadian society.

[81] In its decision, the CHRT relayed three elements that must be demonstrated to make a discrimination complaint:

a) that First Nations have a characteristic(s) that is protected from discrimination;
b) as per s. 5 of the *Canadian Human Rights Act,* that First Nations are denied services or are adversely by the provision of services by AANDC; and
c) that the protected grounds are a factor in the adverse impact or denial.

First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 (at para 456).

substantive reform to the child welfare policies and funding, including updated funding formulas and policy implementation as well as broader definition and application of the Jordan's Principle.

The use of the human rights discourse allowed political opportunity that may not otherwise have been realized. The substantive results for First Nation children have yet to be seen. For example, part of the assumed success of The Caring Society's case launch is that the CHRT acknowledged that Aboriginal peoples should not be excluded from Canadian Human Rights mechanisms and that they also occupy a unique position within Canada's constitutional and legal structure (from McDonald & Wood, 2013). That the Caring Society effectively used localized paradigms to achieve significant political objectives can be arguably one of the significant contributing reasons for their success. On the other hand, despite the ruling, an order for remedies, and two consequent enforcement orders, Canada's response is gradual and ineffectual.[82] Canada has not responded by providing more funding and First Nations children continue to be apprehended and disproportional rates, and then issued less funding and supports than children who are not on reserve.

This section began by questioning whether human rights is humanizing, that is whether it allows for political subjects to participate in and shape the discourse according to self-defined political objectives, whether it strengthens the ontological or epistemological foundations of Indigenous cultures, whether it is primarily Western-dominated and exclusive. It traced the individual versus collective nature of rights and suggested that Indigenous have been on the vanguard of defining collective rights yet have been excluded from the formal processes and human rights institutions. Some African and Mexican researchers suggests that human rights can

[82] *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada for the Minister of Indian and Northern Affairs Canada,* 2016 issued the first compliance order and *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada for the Minister of Indian and Northern Affairs Canada*, 2016 issues the second compliance order, and neither were met with substantive action by the Canadian federal government.

absorb enough diversity to support diverse goals and objectives and Canadian researchers suggest that human rights provides political opportunity to address community issues such as discrimination. In these contexts, it seems that political subjects can use human rights to their advantage though there is no guarantee of substantive results.

Human Rights Processes and Structures in Canada

While the Caring Society provided an example of effective political use of human rights, the next section queries whether this political opportunity is readily available to other or most Indigenous communities in Canada. It looks at other Canadian human rights institutions and suggests that while they have secured recognitions and protections of rights, Indigenous peoples face barriers in accessing these institutions thereby creating a perception of selective human rights protections. In exploring the effectiveness of Canadian human rights in protecting Indigenous peoples from discrimination or other violations, the following section outlines attempts by Canadian human rights to become more relevant and effective for Indigenous communities, but then outlines significant barriers in these processes.

The *CHRA* is a federal law that protects Canadians, and those legally allowed in Canada, from discrimination by a federally-regulated service provider or employer. It contains some protections specific to Aboriginal right such as the non-derogation clause to ensure it does not affect the constitutionally-protected rights of Aboriginal peoples such as s. 35(1) of the 1982 *Constitution Act*. In 2008, the *CHRA* became available to First Nations in order to hold the Government of Canada accountable for human rights violations – a significant event for First Nations who could now file discrimination complaints resulting from the application of the *Indian Act*.[83]

[83] INAC sections affected by the repeal of s. 67 include: education, registration provisions, election provisions, land allocations, wills, mental competency and guardianship decisions, and First Nations Governments such as election

CHRC's seemingly progressive step of inclusion is matched by another initiative to encourage and to facilitate First Nation's legal traditions and customary laws as part of the human rights complaint process. The *CHRA* includes a provision that requires the CHRC, the CHRT, and the courts to consider First Nations customary laws when applying the *CHRA*. The provision states:

> In relation to a complaint made under the CHRA against a First Nation government, including a band council, tribal council or governing authority operating or administering programs or services under the *Indian Act*, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and collective rights and interests, to the extent that are consistent with the principle of gender equality.

Many First Nations communities and the CHRC prefer community-based dispute resolution processes because it allows less involvement by the CHRC and can increase autonomy and accountability. The CHRC cites other advantages as it controls disputes before escalation, it allows parties to feel involved in dispute resolution, it fosters commitment to the process, and it is reduces legal or court costs. The AFN has issued tempered support for *CHRA* as it issued a statement they will follow the *CHRA* until they develop their own institution. It stated "[*CHRA*] is imposed on our Nations and is only applicable until such time as First Nations have developed and implemented their own Human Rights models according to their traditions and inherent

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and membership codes and some by-laws. In order for a discrimination complaint to be made in one of the areas no longer protected by s. 67, a complaint must be able to identify how the person was negatively affected by the clause in the Indian Act. It must relate to one of the grounds of discrimination of the *CHRA*, and it must respond to issues raised by the Canadian or First Nations Government (Canadian Human Rights Commission, 2011).

authority, consistent with the United Nations Declaration on the Rights of Indigenous Peoples" (AFN in Canadian Human Rights Commission, 2011, p. 34).

There are also provincial human rights commissions, though models and philosophies vary. The governing legislation in Alberta is the *Alberta Human Rights Act*[84] that establishes the Alberta Human Rights Commission, an independent body created by the Government of Alberta to foster equality and to reduce discrimination. It fulfills this mandate through public education and community initiatives, resolution and settlement of complaints, and through the human rights tribunal and court hearings.

Though their purpose is to protect all people from discrimination, Aboriginal communities do typically not access these human rights institutions because of numerous barriers (ACHR&J, 2009). ACHR&J (2009) illustrates perceived barriers that are substantiated by McChesney (1992) and Alberta Human Rights Commission (2006) that include a mistrust of a foreign and bureaucratic process, lack of trust in a government institutions to address structural discrimination, fear of further discrimination such as having government funding eliminated, lack of culturally appropriate or culturally sensitive services, and, finally, the normalization of human rights violations such that they are seen as "part of life". One Aboriginal person in Alberta responded, "[Reporting is a] cumbersome process that is not designed to find discrimination nor compensate the victim." (ACHR&J, 2009) and another said, "Our rights do not fit any mold set out by Euro Canadians since all laws governing this country have infringed upon our rights" (ACHR&J, 2009). Alberta and Canada do have human rights instruments, but because of their inability to change the frequency or types of oppression for Aboriginal people, and because processes are cumbersome and stressful, they may be seen as empty tools for rights substantiation. Because of the overwhelming rejection of Canada's human rights reporting

[84] *Albert Human Rights Ac*t, RSA 2000, ch A-25.5

mechanisms by Aboriginal people in Alberta, the majority of those who experience human rights abuses seek help from informal networks of family or friends (ACHR&J, 2009).

Canadian human rights laws can be enforced through the courts but this too can present challenges and involve risks for Aboriginal people. The incongruence between Euro-Canadian and Aboriginal values, languages, and cultures, as well as the racial and power dynamics underscoring these institutions, present challenges and involve risks for Aboriginal people and make the courts an unlikely source for rights substantiation. Backhouse (1999) provides a historical review of cases involving Indigenous claims or claimants to conclude that a perceived European racial superiority became entrenched in Canadian law. She states:

> the law functioned as a systemic instrument of oppression against racialized communities. When the individuals and groups who bore the brunt of racism sought to turn the tables and call upon the legal system for redress, the resisters typically failed in their quest. It was only on the rarest of occasions that certain legislators, lawyers, and judges attempted to stem the systemic discrimination that permeated Canadian law, refuting the excesses of Canadian racism. (p. 15)

This would confirm that the courts played an instrumental role in systematically racializing and stratifying Aboriginal people and justified state-sponsored racism and this stigma still exists today.

There continues to be contradictions for Aboriginal people who attempt to address rights violations through Canadian courts. The few precedent-setting claims demonstrate the significant risk of limiting rather than enhancing rights. In Canadian legal systems, Aboriginal people face the burden of trying to translate systems of knowledge where neither traditional approaches nor Aboriginal concepts of evidence nor rights are considered and this can result in

risks of cultural erosion rather than rights protections. Canadian courts, argues Zion (1992) do not have mechanisms to accommodate Aboriginal concepts of evidence and core values remain untranslatable. Samson (2001) discusses how Western legal "experts" never recorded nor accounted for thoughtful but untranslatable concepts of Innu evidence when negotiating land-use settlements. Monture-Angus (1999) demonstrates how Canada's Crown interprets and minimizes Aboriginal rights as *activities* rather than interpreting their significant social, cultural, and spiritual dimensions. Smith (2014) identifies that courts cannot recognize broader harms to Indigenous peoples such as loss of language or culture and individual lawsuits are not sufficient to address collective harm. Niezen (2003) describes how negotiations within legalistic structures require cultural change. Despite these problems, he adds, many Aboriginal leaders are resigned to these imperfect court processes in order for claims to be heard. He notes the paradox in using Western social, legal, and political constructs that can penetrate and erode the distinct cultures that these groups are trying to protect.

The resounding theme of cultural harm of loss suggest that many domestic courts or human rights institutions that are supposed to substantiate rights have not dismantled oppressive structures within them. Disproportionate occurrences of Aboriginal discrimination may suggest Canadian legal institutions fail to protect Aboriginal people and can normalize human rights abuses in the broader society. Perhaps because western-based human rights processes may not always be correlative with Indigenous processes, they may not universally meet the needs of Indigenous communities. Research such as ACHR&J (2009) suggests there may not be established social agreement around the purpose or effectiveness of human rights.

Human Rights as Citizenship Rights

Citizenship represents a form of inclusion or exclusion from social, political, and civil rights to impact cultural recognitions or economic and political participation and, as such, it addresses the social and legal parameters of community membership. Citizenship struggles involve "a constant struggle for recognition" (Lister in Estévez, 2011, p. 1154) to ensure all members are treated equally. History shows that human rights has often been used to articulate struggles of citizenship to hold the state accountable for those rights that entitle members to full participation. Brysk and Shafir (in Estévez, 2011) note grave human rights violations where there are "citizen gaps" or where certain groups are classified as non-citizens or second-class citizens in the state with few opportunities for addressing or improving their condition.

Estévez (2011) suggests that those who lack full participation and recognition in their state have used human rights to secure full citizenship rights and this expands the model of human rights to global dimensions. Specifically, international migrants have used human rights to advocate for the acquisition of labour rights in the destination country, cultural integration in society, and recognition of rights independently of where they may be located.[85] With increased dialogue and collaborations, the concept of citizenship is taking on a larger dimension, largely propelled by the literature on cosmopolitan human rights and citizenship, that introduces the notion of opening or eliminating borders to achieve a global citizen.[86] This is "a model of global politics in which relations between individuals transcend the state and [are] increasingly

[85] Estévez (2011) suggests this concept of citizenship is frequently used in political advocacy throughout Latin America and advocates frame their goals as equal citizenship rights and focus on the "welfare state [that] does not necessarily distribute goods and services in accordance with citizen's rights, but instead in accordance with corporatism and political patronage" (p. 1154).

[86] Isin and Turner (in Estévez, 2011) make a seldom-heard distinction between cosmopolitan citizenship and global citizenship whereby cosmopolitan citizenship seeks new rights without justifying the need for a global state -- it instead proposes that rights become mobility between states. Cosmopolitanism distinguishes citizenship rights from nationality by suggesting that peoples should enjoy civil, social, and political rights in multiple locations (i.e. in more than one country). They incorporate activism as a central factor in transnational social movements in order to build a truly democratic global state.

regulated by global and legal institutions including human rights regimes" (p. 1159). This literature suggests that the notion of citizenship is increasingly beyond the political grasp of states because of an increasing "global political culture" that both constrains states as well as orients struggles for citizenship.

However, while citizenship rights are becoming increasingly globalized it is still the state that must substantiate these rights. McDonald and Wood (2013) issue warnings that, despite increasing discourse of a theoretical global citizen, it is the state that must substantiate related rights. The state is empowered to define and grant human rights eligibility but often defines citizenship too narrowly and can potentially contradict the universality of human rights. These researchers implore human rights advocates not to attach citizenship, even global citizenship, to rights by virtue of membership in a particular society [because] it forecloses the political process by which groups can make rights-based claims in meaningful ways (p. 4). They warn that if human rights are framed as citizenship rights, there is little or no room to define who constitutes a "citizen" and whether those who are not citizens have any rights. Similarly, Kulchyski (2013) warns of the potential for human rights to only be legitimized when "governments recognize" the rights through supposed state benevolence.[87] These authors seem to suggest that human rights become effective if it provides some oversight of state action and has enforcement mechanisms to sway compliance. This requires that human rights are not just citizenship rights but rights that transcend the state and have some enforcement mechanism to hold it accountable.

On the other hand, there is analysis and suggestions on how human rights can substantiate concrete rights for citizens. Estévez (2011) suggests that much North American literature on human rights is concerned with how transnational networks have influenced the

[87] An example is the 2009 Canadian address from Alex Neve of Amnesty International that tried to celebrate and promote the UNDRIP (in Kulchyshi, 2013).

domestic uptake of human rights, including articulations of new rights. This literature analyzes how transnational social movements have pressured for human rights at national levels. Risse, Ropp and Sikkink (1999) describe a model by which international human rights come to be legitimized by the state and entrenched in the domestic sphere to suggest human rights comes to be normalized in society through a spiral model, a process of state socialization to human rights that begins with dialogue between state actors and rights advocates, strategic bargaining, shaming, moral-consciousness raising, and finally, habitualization. Their model includes multiple phases of state response to these domestic and international activities.[88] If civil society lacks the political space to create or expand discourses of rights, the emerging global discourse pressures the state from above and bolsters civil capacities from below to expand discourses around rights as citizens. In other words, human rights becomes a mechanism to mobilize domestic actors and to pressure states to address citizen gaps.

Using Human Rights to Assert Canadian Citizenship for Indigenous People

It could be said that Indigenous people in Canada experience a citizen gap and that the Canadian state and its wider population has not embraced a human rights "culture" politically or socially. Political advocates have often attempted to extend citizenship rights to Indigenous people through human rights. This discourse has been used to advocate participation in the nation's political systems, or strengthen protections by Canadian institutions and organizations, or achieve other political goals. The worry in this approach is the potential to contribute to equality rights, assumed to strengthen assimilationist agendas at the expense of political objectives such as inherent or Aboriginal rights. This research section contemplates whether

[88] Phase 1: Repression by the state and activation of the international human rights network; Phase 2: State denial of oppression; Phase 3: State-based tactical concessions to avoid further scrutiny with little substantive change; Phase 4: Prescriptive Status; Phase 5: State adhering to rule-consistent behavior (Risse, Ropp, & Sikkink, 1999). For a discussion of how this spiral model may apply to Canada considering the human rights record of Aboriginal People living in Canada (see McFadyen, 2012).

human rights discourses to assert Canadian citizenship are appropriate for Indigenous people. It distinguishes some forms of Aboriginal advocacy from struggles for citizenship as many Aboriginal people resent the mandatory citizenship to which they are subject to.[89] The human rights objectives that many Indigenous people advocate are outside of citizenship rights and in areas the Canadian government is reluctant or refuses to recognize such as rights to land, resources, or political sovereignty.

Broad demographics of people advocacy Canadian citizenship but recognition is awarded to specific subject identities. After speaking with diverse Canadians, including Aboriginal people, about Canadian identity and citizenship, Ontario-based researcher Howard (2007) relayed research findings that while "Canadianness" exists, it does not include Aboriginal people. Many see Canada as a "white man's country" (p. 146) where the "typical" Canadian is "blue-eyed and white-skinned" (p. 139) and where others face exclusion. Howard's study confirmed that many Aboriginal people do not identify as Canadian, or resentfully acknowledge a "compulsory citizenship" (p. 143). She concludes that for many Aboriginal people, the Canadian state is an unwelcome imposition that they want to get out of (see also Fleras, 2005; Jones & Perry, 2011; Paine, 1999).

Part of "Canadianness" often means sharing a narrative about Canada's identity, which is, in part, shaped through state-developed curriculum such as *Discover Canada, A Curriculum for Newcomers* (2013), the first exposure to the "official" story of Canada for newcomers to Canada and used for the citizenship test. Though the curriculum covers some aspects of the Aboriginal

[89] Canada's creation is sketched with images of brutality and war, all of which involved and divided Aboriginal people and impacted their lands and livelihoods. Included in the long list of examples of genocidal intents and effects are the intentional exposure to germ warfare that wiped out entire Indigenous populations (Churchill, 2003), the intentional slaughter and demise of the buffalo (McHugh, 2004), programs of eugenics to sterilize Indigenous women (Dyck, 2013) and the legal imperative for children to be removed from their homes and sent to residential schools where they encountered emotional, physical, and sexual abuse.

history and people in Canada and provides a small snapshot of the overall state treatment of Aboriginal "citizens", it can be critiqued for simplifying Canada's multifaceted history and portrayal of Aboriginal people and issues. For example, it makes little distinction between Aboriginal, English, and French groups in Canada through its narrative of "three founding nations" that suggests equal partnership in the creation of Canada. The guide makes little mention of Aboriginal peoples' distinct position of being Indigenous to the land, even suggesting that Aboriginal people are also immigrants who migrated from Asia a few thousand years ago. In addition, it fails to mention the conflict, exploitation, and war that more accurately captures the building of Canada and the historical decisions that affect all Canadians including the multiple treaty negotiations, the 1876 *Indian Act*, or the enrichment of Aboriginal rights in the 1982 *Constitution* (Jones & Perry, 2011). This minimal and inaccurate attention presents a flawed understanding of the unique cultural and legal place Aboriginal people have within Canada.[90]

Another significant aspect of Canadian identity is multiculturalism, and this too can erode Aboriginal positionality. Multiculturalism came to Canada after explosive growth and political entrenchment of colonial societies, first in trying to bring people west, that created a new sociological category of immigrant as distinct from the colonizer but who nevertheless contributed to the excitement of having newly arrived in a new world (Paine, 1999). In other

[90] Critique to *Discover Canada: A Curriculum for Newcomers* comes from Blogger laura k (2010) who states that the curriculum presents…

> Stephen Harper's, Jason Kenney's and the Conservative Government's Canada. A country that: does not value peace and tolerance; measures its history by armed conflict; does not encourage its citizens to work for social justice; is not concerned with protecting the environment; reveres the monarchy; is mostly Christian; warns immigrants to tame their savage ways; and emphasizes obedience to authority.

Other critique comes from Jones & Perry (2011, p. 5) who state:

> The Canadian government requires a long list of things from people who are applying for citizenship, including a test of their knowledge of Canada. But much of the 'Canada' on which this test is based reflects a nationalistic, militaristic, and racist view of Canada and its history.

words, multiculturalism in these terms does not celebrate a demographic plurality. Since 1867 Canada has reluctantly expanded its multiculturalism through a diverse mix of cultures, languages, belief systems, classes, genders and abilities. The federal government under Prime Minister Pierre Trudeau declared an official policy of multiculturalism in 1971, followed in 1988 by the *Canadian Multiculturalism Act* passed under Prime Minister Brian Mulroney. The political elite of Canada faced a new challenge to "hold it all together" by safeguarding the French/English dominance, but also acknowledging they could not afford to lose the contributions of ethnic groups to the Canadian economy. Multiculturalism emerged as a state-sponsored project, first to reconcile the English and French divide and later to include minority groups within that fabric of Canadian economy without significantly altering the stratifications within Canadian society.

The policy response of multiculturalism has polarized Canadians. It is sometimes celebrated for acknowledging the presence of diverse cultural groups in Canada and recognizing their contributions. However, problems are also identified. Howard's (2007) research suggests that multiculturalism celebrates diversity and recognizes cultural groups may be distinct, but this is within the limits of common citizenship as all must abide by the "Canadian" ground rules. Minority-group response to multiculturalism suggested that their cultural recognition by the state is an important step, yet they still do not have opportunities to participate equally in its structures and institutions.[91] Another dimension is that the Canadian state has used its official policy of multiculturalism to treat Aboriginal people as another ethnic group among the many in Canada citizens, which ignores the uniqueness of Indigenous status and therefore derogates Aboriginal

[91] By the 1980s, communities began to point out the limitations of multiculturalism in making Canadian society more inclusive (Wright, 2000). The message of intergroup harmony was not enough to address the bias, prejudice, discrimination that created concrete socio-economic and political inequalities. Immigrants and ethnic minorities initiated a discourse of anti-racism and expanded analysis of racism from focus on the views or actions of individuals to broader structures and institutions.

politics. For this reason, many Aboriginal communities look to get out of rather than fit into political arrangements of multiculturalism (Fleras, 2005). Many Aboriginal responses to the political and social dimensions of multiculturalism suggest that Aboriginality is more representative of the rights and aspirations of most Aboriginal people.

While some Aboriginal people can support the value of multiculturalism and want it to be included in the Canadian narrative, Aboriginality is distinct from multiculturalism and requires different paths to conciliation (Paine, 1999). Multiculturalism provides a focus for marginalized groups to identify exclusions from dominant players and structure of Canadian society. It can provide focus for minority groups to identify and overcome factors that maintain a minority status within a majority system and to identify differences and exclusions from dominant players and structures. With these goals, it can theoretically provide a path of conciliation for diverse populations through inclusion policies to reduce barriers and to provide equal participation. However, multiculturalism does not always address citizen gaps as it continues to privilege dominant Canadian cultures and values. For example, a national identity that derogates Aboriginal history and rights and assumes that Aboriginal identity is one among many ethnic minorities strengthens Anglo-Canadian dominance and erases the politics of Aboriginal rights. Further to this, though multicultural and Aboriginal communities may share a common experience of exploitation, the path to conciliation is different.

Aboriginality is a distinct concept that recognizes the unique position of Aboriginal people as original inhabitants with unique rights. One of the most important aspects of contemporary Aboriginality is about reinvigorating IK and re-establishing strong communities, disrupting the ongoing subjugation, holding Canada accountable for acts of genocide, breaches of land claims and governance promises, and clarifying Canada's "story". Aboriginality

provides path to conciliation by asserting Indigenous knowledge within structures, processes, and aspects community life. There is no template for this engagement as these strategies and goals are defined within community contexts. While multiculturalism and Aboriginality may have irreconcilable political objectives, they can co-exist in ways that respect the aspirations of both if there is reflection on issues such as inherent rights as a stronger moral basis for shared living in Canada.

In evaluating whether human rights is the appropriate discourse for a political struggle of citizenship rights, it is imperative to consider the potential application, operating power dynamics, and potential outcomes. Human rights may be advocating a form of Canadian citizenship that may include community inclusion or political participation but according to determined stratifications or simplistic notions of multiculturalism. As the Caring Society case study shows, advocating for equal rights between citizens is an important step to address institutionalized inequity that create dire and emergency circumstances such as apprehension of First Nations children in an underfunded child welfare system. However, it may not be able to assert longer-term and community-defined political goals of restoring Indigenous legal traditions.

Human rights can hold a state accountable to the rights of its members but what these rights are requires scrutiny. If human rights is used to advocate citizenship, then the parameters of citizenship need to include the most marginal. Globalization can extend citizenship to global boundaries but, if the narratives are too generalized, specific groups and subgroups can be overlooked. Scrutiny is also required for how advocates define the desired conditions of citizenship. Again, localized objectives can only contribute to international human rights goals if all segments, including the marginalized, can access global political networks. Even then, if marginalized populations can incorporate their specific conditions of rights, it may be futile if

cannot rely on their state to substantiate them. In summary, if human rights is used to assert a limited scope of state citizenship and if enforcement is too remote, Aboriginal people will not benefit as it may limit unique features of Aboriginality.

Human Rights to Create Ethical Space

Does human rights provide possibilities for socially-just collaboration? The third major research focus is on the creation of ethical space between divergent peoples. It asks if human rights can be a "common" language for collaboration for ethnic groups that have different values and different political discourses. Ethical space as the emergent space created when two societies with disparate worldviews are posed to engage with each other and create a commitment to collaboration (Ermine, 2007). This part of the research explores the question of whether human rights can be a potential incubator of ethical space, given the diversity and positioning of Indigenous peoples and Western society, especially in urban spaces with greater opportunity for intersections of diverse people. It asks if human rights can become a common language for advocacy geared towards ethical space.

According to Ramos (2008), collaboration can boost a political cause because it can instill wider support required for substantial change. It has been shown previously that human rights can enhance collaboration as it is seen as less threatening. However, the following examples illustrate the potential nuances as power and privilege continue to influence bias with collaborative discourses. As a witness to a human rights complaint process by an Aboriginal woman who had worked in her place of employment for 20 years but had experienced acts of sabotage by a forceful group of workers employed under the Temporary Foreign Worker (TFW) program, I learned that there are stratifications even among minority and Aboriginal groups who engage the "dominant" Western society. This Aboriginal woman knew her employer was

overlooking Canadian applicants in favour of foreign workers, likely because of the lower wages and longer hours expected by TFWs. This woman felt pushed out of her job and felt more vulnerable than the TFW workers. This demonstrated the potential exploitation and the potential fallacy of advocacy collaboration as it seems to indicate that, in some instances, circumstances of vulnerability can make oppression more fluid and influenced by group affiliation, employment context, or other. Aboriginal women often remain the most vulnerable in Canadian society and it can be Aboriginal women who are asked to concede the most in human rights advocacy.

A second example of caution comes from observing a 2013 project entitled *Shared Communities: Intercultural Dialogue between Multicultural, Aboriginal, and Newcomer Communities,* administered by the ACHR&J that looked at strategies to strengthen the voices of marginalized peoples. It was suggested "we need to be advocates for each other", and examples included establishing critical mass and establish forums to make strong statements against racism or other injustice. While this message seemed optimistic, a news story emerged at the same time where a newcomer to Canada, "Manesha", became a spokesperson for the then-called community of Hobbema[92] that was described in the news as a "troubled". Manesha hoped to "turn the page on its problems" through "Manesha's library" that aimed to "improve literacy" and "keep residents from a life of crime" (Stevenson, 2013). It is noteworthy that "Maneesha", a recent immigrant, became the spokesperson for an Aboriginal community by articulating "literacy" as a solution to criminal elements in the community. Feedback about this news story from ACHR&J project participants suggested resentment about someone speaking for Indigenous people who was not authorized or familiar with root causes of Indigenous problems and potential solutions. This illustrates dynamics of power and privilege where certain groups

[92] The four nations of Ermineskin Cree Nation, Samson Cree Nation, Louis Bull First Nation and Montana First Nation reclaimed the name from Hobbema to Maskwacis in January 1, 2014.

speak for Aboriginal people and in terms may not be congruent with the social justice paradigms of the community.

Ethical space requires that Aboriginal peoples can articulate and strengthen cultural integrity through congruent institutions and political infrastructure. It also requires that the Canadians in majority positions understand multiple aspirations and historical rights. Paine (1999) suggests that Euro-Canadians ask not just how do we live together but "how do we (we of the West) let go and live together?" (p. 339). Similarly, Canadian sociologist Fleras (2005) suggests that we must find ways to support "living together differently" (p. 301). The Royal Commission on Aboriginal People states:

> [Aboriginal people in Canada] entered the twentieth century uprooted, fragmented and dispirited. They are determined that, as the next century unfolds, they will regain their rightful place as self-governing self-sufficient, culturally vibrant Aboriginal people living in a more egalitarian Canadian society.
>
> The tasks we have laid out for renewing the relationship between Aboriginal and non-Aboriginal people are huge – but they pale in comparison to the task of changing Canadian hearts and minds so that the majority understand the aspirations of Aboriginal people and accept their historical rights. (Quoted in Paine, 1999, p. 329)

Given that ethical space requires some potentially difficult concessions for both Aboriginal and Non-Aboriginal Canadians, it may be suggested that human rights can present a common language for achievement. Without a critical lens however, it may be that it can fall short of the breadth and depth of exploitation experienced by Aboriginal people. Exploring more

critical aspects of using human rights to reveal the potential for unexpected or limited outcomes for Aboriginal groups.

Human rights can be used to advocate for others while perpetuating consistent social stratification, where Aboriginal people are at the bottom. The political dimension of conciliation between Aboriginal and other Canadians requires an understanding of the historic legal and ethical breaches that created multi-generational trauma and current goals often articulated as sovereignty. Canadians will have to understand that access to resources, occupation of land, and establishment of its Aboriginal governance are part of inherent rights. While not dismissing the potential for human rights to present ethical space, this research has identified potential cautions. Human rights discourses need be clearly defined so that meanings are not assumed and outcomes unexpected.

This research inquiry has explored how Indigenous people have defined, resisted, and continue to be impacted by international human rights policy as a point of critical engagement and theoretical address. It traced key debates to suggest that human rights, especially, the UNDRIP, invites new opportunities for Aboriginal rights-based politics. Skeptics wonder if the UNDRIP can shed the stigma of human rights (and international law) as an imperial construct that promotes universalism of liberal-democratic ideologies.

The discursive debates found in the literature around the human rights and UNDRIP query how it may influence Aboriginal rights-based politics in Canada, how it can or should transform Aboriginal status as political subjects, and how it may transform categories of citizenship to focus on traditional notions of Aboriginal justice and rights, constitutionally-protected Aboriginal rights, and global Indigenous rights. Aboriginal uses of rights-based

discourses can offer insight on the links between cultural context, international human rights processes, and possibilities or limitations of human rights for community transformation.

This literature review suggests critical attention is required when human rights are used as a leverage for Aboriginal justice. Some are optimistic that human rights will shape a new consciousness around Indigenous rights, while others warn of the potential to diminish rights and reduce the infrastructure to substantiate them. The discourse of rights can assume contradictory meanings as it can simultaneously promote or destabilize localized political objectives. For example, the literature reviews the potential for it to enhance the notion of globalized citizenship or protect the project of multiculturalism in Canada, both have tentative success for Aboriginal justice. On the other hand, the Caring Society used a human rights discourse "from below" to advocate for the state to provide equalized child welfare conditions so there is evidence that human rights can hold the state accountable for its discrimination. In order to reflect a community's political goals, it seems necessary for Indigenous peoples to negotiate object or subject positionality within the employed political discourses; to ensure clarity of objectives by self-defining what human rights means, and to mobilize collective action on mutually-agreed upon terms. This research implores all advocates to resist thinking about essentialized characteristics about human rights, but to continuously ask what it does or how it interacts with particular points of understanding.

Chapter 4
Methodological Approach to Access to Indigenous Knowledge

Introduction

Following discussion of the research questions through relevant literature, Chapter 4 will address a critical aspect of the research, the methodology. Methodology can be explained as the various tools and approaches used during a research process to be able to gather data, often called in "the field". Considerations of the historical, social, and political context of the research all influence methodological considerations such as what approach is appropriate for the topic, how these choices can be logistically achieved, and the potential impact of the research. Further, the inclination towards one approach over others reflects the personal, socio-political, and cultural experiences of the researcher that also exists within a broader context as it presents claims about knowledge and truth (Moosa-Mitha, 2005).

Following the guidance of Indigenous scholars and Elders such as Kovach (2009), Smith (2005), Weber-Pillwax (1999), and Wilson's (2008) call to decolonize research, this study pursues a theoretical and methodological approach articulated as Indigenous Research Methodology (IRM). This choice presents a number of research decisions: ensuring that exploration and presentation of Indigenous knowledge is timely, accurate and respects its integrity; defining personal objectives for its content and format; and finally, engaging with Indigenous knowledge within an academic context as a single voice having considered multiple perspectives. These questions are carefully considered through a process of situating existing, past and current, broad-based and personal knowledge to suggest a transformative purpose and community benefit for the research.

Methodological approaches are considered within broader ethical and political contexts of Indigenous research. Smith (2005) asserts, "Indigenous communities have been historically vulnerable to research and remain vulnerable in many ways, but also have been able to resist as a group and to attempt to reshape and engage in research around their own interests" (p. 86). The hoped-for effects of Indigenous research include affirmation of ancient and complex systems of knowledge(s), disruptions to historical exploitation, and an invigorated pursuit of contemporary Indigenous research (McGovern, 2000). It is inspiring that Indigenous people have been creating their own voices within research domains with methodologies that centralize Indigenous knowledge, engaging with and constructing new knowledge, and affirming identities and values. This had been achieved through methods relevant to Indigenous people so that they can tell their stories in their own ways (Archibald, 1997; Gunn Allen, 1989).

The research focus and methodology took a significant turn during this study since the initial methodological approach was quickly proven insufficient to fully engage with research participants. The initial goal of recording Elder perspectives on human rights was intended to analyze research questions about how Indigenous people determine collective political engagement, especially where identity, politics, and discourse analysis become key underpinnings from which to consider power, dominance, social inequality and the position of the researcher (Estévez, 2011; van Dijk, 1993). The ultimate goals was to better understand Indigenous alignments with human rights to advocate Canada's ratification of UNDRIP and to contribute to Indigenous people's ability to use and benefit from it.

However, the initial plan to articulate IRM proved to be anchored in Western-scholarship traditions. I started the literature review, now as Chapter three, thinking this lens would be sufficient to understand application of human rights in Indigenous communities but came to

realize that it did not meet the second research goal of exploring what IK says about rights. It quickly became apparent that not only does IK not organically speak to human rights, but I required a fuller understanding and enlivening of IRM in order to access IK through the research conversations. IRM is not just about speaking to Indigenous research participants on Indigenous issues; it is about how to access the "thinking" and engagement protocols of IRM. This created somewhat of a methodological maturity to reassess not just the topic but the research approach.

The process of methodological and topical reimagining was mutually reinforced: in order to access IK, it was necessary to move away from human rights. It became apparent I needed to prioritize traditional models of social organization, governance, and Indigenous legal traditions within the research goals in order to access IK. Then, to use this as a starting point from which to evaluate human rights. A commitment to an immersion in IK influenced my a turn away from human rights toward what traditional knowledge says about advocacy using traditional concepts of "being human". The research then explored the ontologies that inform human rights and extrapolated potential gaps when human rights is taken up by Aboriginal communities. From a practical sense, I learned that it is difficult to maintain or strengthen IK systems when immersed in human rights because of its untranslatability.

A fuller understanding of IRM provided greater access to insights of Elders who are at the centre of this research. An additional challenge emerged on how to incorporate these insights within an academic context that is more steeped in Western traditions and methodologies. There is common ground between Indigenous and Western knowledge and methodologies. For example, several qualitative research paradigms require contemplation of how the voices of both researcher and participants provide social and cultural contexts for learning and impact the research. Researchers are considered self-reflexive learners who form a dialogical relationship

with research participants (Moosa-Mitha, 2005). Social identity theories, including critical, feminist, and critical race theories ground their methodology in lived experience and intersecting experiences, recognize subjectivities of lives, and present a snapshot of encounters that are socially- and historically-specific. These are similar approaches to IRM as the Aboriginal researcher engages in a process of self-location to qualify his or her knowledge as subjective, to provide validity in claims as knowledge being Indigenous, but to also acknowledge multiple truths as the researcher's identity and subjective experience may differ from other Indigenous researcher's identities, experiences, and perspectives.

Self-Location

Within Indigenous research methodology, self-location enhances relational aspects of research by revealing motives and purpose, thereby establishing trust and credibility. Self-location is a cultural process that involves articulating membership in or community. It can manifest in various ways, privately or openly, but it permeates research in a manner consistent with the researcher's relationship to the culture (Kovach, 2009).

My urban Métis identity reflected assumptions in articulating initial topical and methodological approach. Though cognizant of this identity, historical separation through residential school experiences and community discrimination severed memory of traditional knowledge and, in its place I assumed discourses of "majority" community such as adherence to human rights. While both my great-grandparents had this ancestry, their heritage was rarely acknowledged in stories or rituals and was not celebrated nor pronounced specifically as Métis. My great-grandmother was raised in a Catholic orphanage in St. Albert, just north of Edmonton. In her 18 years at the orphanage, she somehow maintained the basics of her Cree language, emerged speaking fluent English, but was unable to read or write in either language.

She married a Métis man, my great-grandfather, whose family had migrated West from the Red River area, and together they raised twelve children, all of whom received at least some education in English, either formally at school or informally at home (the eldest boys were sent to school but later tutored all, including their parents). They homesteaded on scrip land West of Stony Plain where they farmed, gardened, fished, hunted and found ways to preserve, sell and barter excess produce.[93]

My grandmother, one few daughters who attended school, seemed indifferent to her Métis heritage and rarely spoke of that background. She once joked, however, about her confusion at parents who spoke to each other in Cree, spoke English to her and her siblings, and understood Latin at church. She married a local German farmer and raised four daughters, none of whom were educated or socialized to Métis culture or history. My mother, one of very few university graduates of her generation, became interested in our Métis heritage and sought family histories, but with limited success among only a few willing family members. She later came to teach in post-secondary Aboriginal education that heightened her interest, and I too became interested in this history. My own journey includes post-secondary study of Indigenous education, accompanied by career experience with First Nations training and Aboriginal Relations with federal and civic organizations.

This Métis identity demands a simultaneous insider/outsider researcher position. I have been spared the overt discrimination that other family members have experienced, related to differences in our physical appearance, and I have enjoyed economic privilege, particularly as related to education. As I sought family stories and met the same resistance as my mother's attempts, what occurred to me was the stark reality of seeking cultural connections that were the

[93] The Government of Canada, pursuant to the *Manitoba Act*, 1870 issued scrip to Métis that was redeemable in land or money. *Manitoba Act, 1870 (UK)*, 33 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 8

very reason for pervasive racial oppression for many Aboriginal lives. For varied and complex reasons, connections have been severed, and my probing seemed a reminder of painful experiences from the past. Despite literature that seldom speaks of these complexities and realities for Aboriginal people, perhaps my own self-location facilitates an understanding of complex lived realities of Aboriginal people today,[94] one that is distinct from racial notions of "historical Métis"[95] that can be shared and encouraged by others. Because I could not remember my ancestral traditions, IK had to be learned and most prevalent curriculum pointed to human rights. This is telling of the lingering inpats of colonization and suppression of IK.

The cultural suppression within my own family may be related to racial discrimination in a broader community and may have caused a conscious disenfranchisement from the Métis culture. Despite efforts to connect personally and professionally to the Aboriginal community, I have had to learn to recognize and use IRM and only then were doors of understanding more open to Aboriginal paradigms and definitions of justice. With a goal to enhance social justice with Aboriginal communities, I joined an Aboriginal human rights organization in an attempt to become closer to communities where I seek acceptance and an opportunity to engage in ways that promote Aboriginal justice. This research is intended to influence whether human rights is an appropriate path to achieve the goals of social justice in my personal quests.

It is in this historical and political context that several considerations regarding Indigenous methodologies lie. In acknowledging an insider/outsider relationship to Indigenous research methodology, there arises a number of decisions: how to ensure that exploration and

[94] That Aboriginal people have differing relationships to culture, place, and language is evident by rapid demographic shifts. Between the 2001 and 2006, the Aboriginal population in Canada increased by 20% and children/youth make up 50% of this population and 54% live in urban settings (Statistics Canada, Aboriginal Peoples of Canada 2006 Census).

[95] Friedel (2009) suggests that in public schools on the Canadian prairies, Métis people were typically portrayed as aids to great explorers such as the 'pack horses' of the fur trade or as people who hindered and obstructed 'progress' due to their rebellious nature, for example, Louis Riel.

presentation of Indigenous knowledge is accurate and respects its integrity; how to engage with Indigenous knowledge within an academic context in which I speak as one single voice, obviously not representative of all Aboriginal people; finally, how to approach the task of defining a research methodology and, in doing so, articulating motives and objectives for the pursuit, and outlining the content and the format of this research.

Indigenous Research and Interactions with other Research Methodologies

Indigenous people have been creating their own spaces within research domains with methodologies that centralize Indigenous knowledge, engage with and construct new knowledge, and affirm identities and values. The hoped-for effects of Indigenous research include a disruption of an historical exploitation and a process of decolonization, with an invigorated struggle for respect within educational settings (McGovern, 2000). Smith (2005) asserts, "Indigenous communities have been historically vulnerable to research and remain vulnerable in many ways, but also have been able to resist as a group and to attempt to reshape and engage in research around their own interests" (p. 86). The challenge is to ensure the integrity of IK, even when housed within western educational institutions that may not recognize the legitimacy of IK.

Institutional control and authority tends to associate with nation states and Western forms of knowledge,[96] and recognition of IK often remains at a level of translating and justifying one knowledge form in terms of the other (Archibald, 1997; McGovern, 2000) thereby reinforcing historical systems of oppression that are entrenched within Canadian history (Friedel, 2009; St. Denis, 2007). On one hand, Indigenous researchers may feel pressure to engage in discourses of authenticity, which are largely abstracted and closely related to colonial racialization (Friedel,

[96] In this study, the term 'Western pedagogy" is used to refer to philosophies of education stemming from Western-European origins; however, a similar discourse also references 'literate' versus 'illiterate' knowledge systems or 'written' versus 'oral' societies where it is presumed that oral traditions do not offer the intellectual capacity that literate ones do (in Archibald, 1997) or 'modern' versus 'premodern' knowledge systems (cited in McGovern, 2000) that assumes knowledge systems exist on a single evolutionary trajectory.

2009). The resulting pressures to reconnect to language and traditional culture may motivate a stereotypical native identity to heighten the impact of a message. On the other hand, researchers may feel compelled to apply Western-based research techniques that are sometimes concessional to relational and spiritual aspects of the intended Indigenous research. For many Aboriginal scholars, it may be a stretch to relate to particular forms of cultural restoration such as the ability to speak one's Aboriginal language, knowing and participating in spiritual practices, and knowing the old stories or cultural/political practices (St. Denis, 2007) and it may also be a stretch to adhere to purely Western notions of ethics and legitimacy. Therefore, in an Indigenous research context, the potential for confusions and contradictions are immense.

When Indigenous researchers present a more varied and non-authentic identity, they may experience a second dilemma: they may feel compelled to translate or justify Indigenous research within Western research domains that are steeped in Western literacy and academic analysis (Kovach, 2009; Wilson, 2008). When Western-based critique applies to Indigenous knowledge, questions may arise about reliability, testability, and authenticity of the study. Others may question the broader applicability of the personal and subjective nature of knowledge. The Indigenous researcher may feel compelled to seek legitimacy externally and to introduce Western elements of analysis or critique in the work, creating tensions around relational aspects of the research, with potential compromise to personal or spiritual integrity.[97]

Indigenous scholars suggest that knowledge is most meaningful within the societies in which it was created and posit that Western knowledge has not benefited Indigenous people because it has been presented out of this community context. Part of the decolonization process

[97] Indigenous researchers also walk in two worlds with regards to definitions and practices that exemplify ethical and respectful research. Whereas ethics are inherent in Indigenous epistemology where internal guidelines regulate notions of respectful conduct, Western academia frames ethics within externally imposed regulations that are enforced through ethics review boards that may not reflect diversity of researchers (Smith, 2005; Weber-Pillwax, 2004).

of Indigenous research requires articulating Indigenous methodology without comparison to or translation of dominant traditions that emerge from outside Indigenous philosophies. Wilson (2008) suggests moving away from articulating Indigenous perspectives on Western research paradigms and moving towards Indigenous paradigms that follow an ontology, epistemology, methodology, and axiology that is Indigenous.[98]

Researchers must reflect on how research texts are positioned to ensure integrity of multiple thought systems that avoids polarization and placing one dominant over another. Urion (in Archibald, 1997) points out that it is not useful to put First Nations and academic discourses in polarized positions so that one is either chosen over the other, ignored, trivialized, or translated in terms of the other. He advocates scholarly work that reflects First Nations values in discourse and which "deny no one's integrity; they hold no one culpable; they exclude no one from the discourse. They let us laugh a little. They recognize that learning is a transcendent experience, a kind of play" (p. 25).

These reflections imply that research is highly political where centering Indigenous epistemology is not to preclude the validity of other worldviews, but rather constitutes first steps for Indigenous researchers to articulate something that feels and looks quite different from other ways of knowing and feels at home with the communities in which we are working. Kovach (2009) summarizes:

> A significant site of struggle for Indigenous researchers will be at the level of epistemology because Indigenous epistemologies challenge the very core of

[98] According to Denzin and Lincoln (2000), a research paradigm includes four concepts: axiology (ethics), epistemology, ontology and methodology. Axiology is guiding the morals and ethics. Epistemology is how one thinks of one's reality. Ontology is the nature of one's existence, and methodology is how a researcher intends to gain knowledge. Within an Indigenous ontology and epistemology multiple realities are characterized through relationships. An Indigenous axiology is built upon the concept of relational accountability where the researcher has roles and responsibilities in the research relationship. Indigenous methodology must be a process that adheres to the axiology where respect, reciprocity, and responsibilities form and maintain healthy research relationships (Wilson, 2008).

> knowledge production and purpose. While this is not a matter of one worldview over another, how we make room to privilege both, while also bridging the epistemic differences, is not going to be easy. Indigenous methodologies prompt Western traditions to engage in reflexive self-study, to consider a research paradigm outside the Western tradition that offers a systematic approach to understanding the world. It calls for the non-Indigenous scholar to adjourn disbelief and, in the pause, consider alternative possibilities. Given these challenges, how do we situate Indigenous inquires within qualitative research? Or do we even try? (p. 29).

Kovach (2009) asks whether there can be common ground with other research methodologies from different traditions given the tensions within a highly political environment.

Common Ground in Qualitative Research

Research within Aboriginal communities means engaging with an epistemology that is highly interpretive and connects to holistic meanings through relationships with people. Knowledge-making connects the mind, heart, and spirit that invites inquiry into memory, and imagination, and contributes to fuller personal and community understandings and transformation. Indigenous methodologies seem to align with aspects of qualitative tradition that acknowledges the intimate and political aspects of research where reflexive approaches set it apart from other research frameworks. Denzin and Lincoln (2003) summarize: "Qualitative research stresses the socially constructed nature of reality, the intimate relationship between the researcher and what is studied, and the situational constraints that shape inquiry" (p. 13).

Indigenous research methodology can find common ground with several qualitative research frameworks including anti-oppressive theories and theories of racialization and racism

that invite critical reflexivity and acknowledge personal and political location and power. Nevertheless, Kovach (2009) suggests that Indigenous researchers must assume responsibility to maintain integrity of and educate others about Indigenous methodologies so that all academics can recognize complexities and diversities of Indigenous epistemology, for "what cannot be seen is often not acknowledged, and what is not acknowledged is dismissed" (p. 32). Integrity can be achieved through self-location and epistemological grounding and, with continual reflection, resistance can provide welcome learning opportunities. The researcher must therefore find a way to honour Indigenous epistemology within Western academies to create a discourse where all scholars can learn from one another (Archibald, 1997).

Indigenous Epistemology

All research arises from a basic foundation of knowledge and truth that, in turn, influences the methodology through various researcher roles and methods used to acquire knowledge. Epistemology is the nature of knowledge with connections between knowledge and power (Denzin & Lincoln, 2000; Moosa-Mitha, 2005). It describes how societies view, behave, and think in their world and how individuals relate to their social and material structures of communities.

There are many ways to consider Indigenous epistemologies, and no descriptions are universal because knowledge "originates from the extraordinary, is deeply personal and particular" (Battiste & Henderson in Kovach, 2009, p. 56). Descriptions that consistently emerge include relational aspects where reality is not fragmented or objectified but considered a process of relationships that extend between all life forms (Kovach, 2009; Weber-Pillwax, 2004; Wilson, 2008). Indigenous knowledge is rooted with the spirit and acknowledges experience, interconnectedness, and holism. It is adaptable and living and reflects active responses to

changing relationships with environments and political contexts. It is deeply personal because it is grounded in lived experience (Archibald, 1997; Augustine, 2008).[99] These aspects of epistemology provide guidance to the researcher on how to define Indigenous knowledge and potentially construct new knowledge. To uphold the integrity of Indigenous people and the shared knowledge, the researcher must consider why and how research connections are made and define transformative aspects of the research outcomes (Weber-Pillwax, 1999).

Indigenous epistemology demands responsibilities for its outcomes but also speaks to the research approach. Values such as holism, group cohesiveness, extended kinship, strength, honesty, kindness, and reciprocity are to be upheld. These values are internalized and compliance is through one's honour rather than through external forces such as rules or laws such as research ethics guidelines (Little Bear, 2000).

Considerations for personal research on Indigenous people's education will demand situating knowledge, defining cultural relationships, and suggesting transformative purposes. While some elements of Indigenous epistemology feel "like home", other aspects require additional learning or experience to gain fuller understanding. Despite exposure to new knowledge, meanings are not always known immediately but arise and settle over a lifetime. As Indigenous epistemology is situated and is contextual, researchers must comprehend multiple

[99] One way to understand Indigenous epistemology is through oral traditions, inclusive of language, such as stories, narratives, songs, and ceremonies, as well as behaviours, relationships, and belief systems conveyed throughout social, economic, and spiritual life processes of people (Ortiz, 1992). Maracle (in Archibald, 1997, p. 34) provides a description of orality:

> Oratory: place of prayer, to persuade. This is a word we can work with. We regard words as coming from original being - a sacred spiritual being. The orator is coming from a place of prayer and as such attempts to be persuasive. Words are not objects to be wasted. They represent the accumulated knowledge, cultural values, the vision of an entire people or peoples. We believe the proof of a thing or idea is in the doing. Doing requires some form of social interaction and thus, *story* is the most persuasive and sensible way to present the accumulated thoughts and values of a people.

layers of Indigenous knowledge to understand multiple perspectives within the stories that may emerge.

Enlivening Indigenous Research Methodology

While Weber-Pillwax (1999) suggests that IRM elicits significant intrigue, it nevertheless remains elusive and indefinable, partly because it is so personal. Of the several principles of IRM articulated by Weber-Pillwax (1999), select ones guided and enlivened a personal methodological response to these research questions and even the questions themselves. These principles shaped the research relationships as well as the process of engaging with shared teachings.

One of the principles that shaped this methodology and consequent research outcomes is that research activities must align with personal and community goals. This principle of alignment aims to ground research within community needs, which may change or be articulated differently throughout the process. This ability to change highlights the relevance of Weber-Pillwax's (2004) observation that it is a community that shapes research methodology, sometimes in unanticipated ways: "the method itself stands apart and has its own life, initiating and carrying along a research strand that I never anticipated" (p. 81) and underlines Wilson's (2008) guidance for researchers to be open to the multifaceted strategies of inquiry rather than a singular methodological choice. Denzin and Lincoln (2003) agree that a research framework cannot be entirely established in advance but "depend on the questions being asked which, in turn, depend upon their context, what is available in that context, and what the researcher can do in that setting" (p. 6). Adhering to community wants speaks to the need for methods to change and adapt to the context of the research participants.

It was a welcome opportunity for research participants to guide new research goals for this

project. The initial goal was to shape the discourse of Indigenous justice through a human rights framework for application to political organizations. I anticipated that human rights findings would potentially guide decisions on advocacy strategies. Despite attempts to introduce balance between pro human rights advocates and those who opposed human rights, it became apparent that the human rights framework could not dominate the research objectives. The first interview with Elder John Crier established mutual goals for enhanced justice, though the framework for achieving this was not. He spoke critically of using human rights systems and provided guidance for effective and compassionate processes firmly rooted in cultural knowledge. He helped me to see that the research goal of articulating Indigenous notions of human rights presented a foregone conclusion that human rights can align with IK, which he did not seem to agree with. The principle of alignment with community goals allowed other possibilities for this research that resulted in a move away from a human rights framework, toward exploring Indigenous paradigms of justice through *being human*.

It was through the enlivening of the second principle that this research began to take shape in unexpected ways and with greater integrity for its methodological commitment to IRM. A principle of prioritizing community transformative so that it strengthens sovereignty, nation-building, and the actualization of tribal consciousness confirmed the need to ground the research in IK. Weber-Pillwax (1999) suggests the creation of IK is achieved through active engagement with its keepers and teachers. This principle directed decisions on who and how to engage in the research process, and suggested additional Elder perspectives including Myrtle Calahasien, someone who had limited knowledge of human rights but who speaks Cree and provided another entry to Indigenous ways and knowledge.

This principle not only shaped with whom, but also how, to engage with the Elders as the research assumed trial, error, and much reflection on how to honour Elder's comments. By learning how to let go of an expectation that the conversations would speak directly to these research objectives, it instead invited an openness to our conversations that allowed for participant stories to speak for themselves. This required personal learning on how to provide space for the stories to unfold, but also to consider personal, emotional, and intellectual responses as an active participant in the conversations and in the research as a whole. How this unfolded depended on a personal relationship with the Elder and was specific to each research context: at times active engagement and active dialogue ensued, while at other times it was more appropriate to listen quietly. How this principle of enlivening tribal knowledge became more fully implemented is better understood after describing the next guiding principle of IRM that proved transformative.

Another principle articulated by Weber-Pillwax (1999) that proved foundational is that research processes engage with actual experiences and "not in the world of ideas" or, in other words, that research is not just theoretical. This meant realizing the disconnect between a theoretical knowledge of human rights and actual experiences in human rights as a political strategy. Research participants shared accounts of personal and professional experiences with justice systems that confirmed that human rights can be dehumanizing. This required rethinking the foundations of human rights theory and troubling personal assumptions and hopes.

Basing research on real and lived experience centralizes voice while at the same time strengthening tribal knowledge. It requires commitment to personal and deep thinking and counters the criticism within some academic circles that lived experience research is not as integral as research based on the scientific method. Changing focus might be seen as

diminishing or as reducing the ability to compare data, but the decisions allow deepening engagements with participants who share their experiences and understandings of justice. The decision to turn away from human rights helped promote the research intent to further understand Indigenous models of political advocacy through research dedicated to IRM.

From "Thinking in English" to "Thinking in Cree" to "Being Cree"

One research conversation clarified and enlivened principles of IRM that this project aimed to achieve. A process unfolded that became the quintessential "aha" moment in an understanding of IRM that profoundly shaped the research. I underwent a transformation starting with a reseracch process I name as *Thinking in English to* became *Thinking in Cree*, and better*, to Being Cree.*

The interview with the second research participant, Elder Myrtle Calahasen, began with an explanation of the research objective to study human rights as a method of political advocacy. Elder Calahasien's response was polite as she searched for a connection to the topic through a somewhat patchy memory of a colleague who appealed to human rights laws in a case of discrimination and had proceeded to court over the matter. This phase of the research conversation was *Thinking in English* because it led Elder Calahasien to think of the current Canadian laws, systems, and practices instead of her own understanding of justice. The conversation was strained and it was a struggle to get answers to the research questions.

Sensing the disconnect, we explored Cree language to see if there are words or phrases that translate into "human rights". When I asked, "How would you say… in Cree" or "Is there a concept in Cree that translates as "rights" or "justice"?" Elder Calahasien again kindly searched for a response and presented some words in Cree she thought might offer an acceptable translation. This became *Thinking in Cree* as I asked Elder Calahasien to translate between

multiple paradigms. I asked her to think within an English-Western paradigm through using references to human rights but then to translate responses into Cree words and phrases. This became the moment that clarified what Little Bear (2000) refers to as "jagged worlds colliding" (p. 156) when Aboriginal people are reconciling two clashing paradigms and are forced to negotiate the relevant knowledge system and language or the context. It reveals the tensions between *thinking* and *being* that compelled a reevaluation of the methodology to allow and invite *being* and *being fully human* to Indigenous participants.

Because of the disconnect in translating English to Cree, a new strategy had to be employed; to let go of the envisioned path to these research objectives and to invite a more comfortable flow of conversation by asking, "tell me where you grew up". No longer locked in the world of ideas, this approach finally opened a floodgate of memories and stories and allowed a segway to the conversation that had been previously blocked. Elder Calahasien could now paint vivid pictures of her experiences of *being* Indigenous through stories of trials and tribulations with family and community. While the stories stood on their own, they were in many ways personally relatable and helped shape the research.

This conversation clarified how it is possible to create a more genuine application of IRM, even if intending to direct research ultimately to an assessment of human rights. Understanding the methodology to access IK required enlivening principles of basing research community benefit, strengthening tribal consciousness, and engaging in the "real world" rather than just theory. This methodology incidentally steered the research away from a strict focus on human rights to a concept of justice more rooted in IK.

Some Indigenous scholars suggest that part of the empowering process for Indigenous research requires articulating Indigenous methodology without comparison to or translation of

dominant traditions that emerge from outside Indigenous philosophies. Initially Indigenous research participants were asked to translate between Western and Indigenous research methodologies. Then, to translate between human rights, a Western concept, and Indigenous concepts of justice, despite their different ontological traditions. Then, to share life stories. This required immediate reflection on how to consider IK without translation or comparison.

A shifting and fluid methodology is a situated response to the dynamics of the research in Indigenous communities in light of the long history of research conducted *on* rather than *with* Indigenous people. As the relationship to IRM deepened, it became possible to embrace principles of community benefit, tribal consciousness, and engagement in the real world in response to emergent needs of the community. While the study did not begin with a concept of being human as a paradigm for political advocacy, it became clear that *being*, or *becoming fully human,* was a significant concept in Indigenous teachings that was more relevant for some than was human rights. Elders as research participants talked with understanding about Native identity as a source of personal integrity and made it clear that this needed to be at the center rather than the periphery of the study.

Research Design

This research was intended to centralize participants in a process to allow for flexibility and fluidity. Participants were made aware of my original intent and ethical commitment regarding collection and presentation of data. My explanations of changes to the research focus and methodology was met with knowing smiles by most of the Elders, and this made it easier to begin the conversation about paradigmatic disconnect. The following section describes the process for inviting participants for the study and the approach for analysis that again highlights how it was transformed as the research progressed.

Choosing Participants

The initial methodological plan was to draw on diverse perspectives to probe specific foci of the project that related to human rights. The plan was to solicit perspectives from men and women, from rural, on-reserve, and urban contexts. Initially, one participant was to be an Elder who could share traditional ideas about Indigenous justice; a second was to be one of the drafters of the UNDRIP at the UN; a third was to be a Métis human rights advocate who acted as a Commissioner with the Alberta Human Rights Commission; and a fourth was proposed to identify the political strategy and variable results in bringing a claim of Canadian human rights abuses to an international human rights audience; a final fifth participant was to be interviewed regarding Aboriginal rights advocacy that deliberately omitted references to international human rights who may suggest tensions or inequities with human rights systems and propose alternate advocacy and educational measures.

What transpired was very different -- with a decision to invite only Elders as research participants. I planned to have the first research discussion with an Elder to explore congruence between IK and human rights, and what transpired was to continue with another Elder. One of the most challenging aspects to learn in this project was understanding what IK teaches about identity, individualism, social organization and authority and, for this reason, I decided to prioritize Elder perspectives as the dominant perspective on the topic.

Cognizant of the social phenomenon of Elders becoming the focus of the "cultural dialectic" (Brumble in Couture, 1996), it was important to consider potential implications or pitfalls. Indigenous scholars such as Couture (1996) insist that Elders are central to discovery and research on Native positioning, since the presence and function of Elders are required "to learn the 'how and why' of the traditional Native stance" (p. 41). However, there are also

contradictory or unusual issues that emerge.

How Elders have been viewed in mainstream society and academia has undergone a transformation. With the first waves of European colonization, Elders were forced into retreat and hiding, ceremonies were banned, IK was delegitimized, and practitioners punished. Then, because of a strong wave of resistance, many Aboriginal people wanting to return to their roots, or non-Native social scientists using Elders for their research, researchers began seeking Elders indiscriminately for research purposes. They were asked to speak on themes such as culture, identity, and survival and "the paradoxes regarding the nature of the Native world and the fundamental issues about the world in which humans live" (Couture, 1996, p. 42). However, one difficulty that emerged, suggests Couture, is that both the Native and non-Native researchers were confused by the rarity of "true" Elders and the possible immaturity and unsteadiness of younger spiritual teachers and ceremonialists, which was compounded by those researchers unaware of the Aboriginal community.

Cognizant of these issues, it is important to share a personal description of what constitutes an Elder and why particular Elders were sought for this research. The concept of Elder contains a multitude of characteristics and functions that may be encapsulated by a perceived way of living and relating to others, having philosophical and spiritual perspectives of the world, and commitment and expertise in an area experientially attained. As identified by Boldt and Long(1985) Elders play a pivotal role in social organization of Native society. For example,

> Elders performed an essential and highly valued function by transmitting the Creator's founding prescriptions, customs, and traditions. But they had no authority; they merely gave information and advice, and never in the form of a

> command or coercion. The elders were revered not because of their power or authority but because of their knowledge of the customs, traditions and rituals and because of their ancestral links with the sacred beginning. (p. 338-339)

An Elder approaches his or her role as a teacher and counselor as an informant of the past though aware of the current situation and thus a catalyst for insights for the future.

The qualities of intuition, memory, imagination, and a sense of humour are common qualities held by Elders, but also important for this research is understanding of the dynamic between "jagged worldviews colliding" (Little Bear, 2000) between Western scholarship and IK. Often Elders are expected to live IK but must attain and master new modes of thought and dialogue between each. According to Couture (1996), Elders are capable of "paradigmatic alteration" (p. 51) and can present understandings non-dualistically. Couture suggests Elders can "focus on needed connections between two general cultures, urging discerning openness and selectivity over distrusting and closed defensiveness" (p. 46). Elders can remain grounded in the essence and importance of Native culture but can also embrace others and becaue of this can imagine and create ethical space. In this research that explores the duality between a rational rights model and a strong moral-spiritual dimension of *being human* as a basis for political advocacy, the sense of dual worldviews was imperative.

An important attribute in what constitutes an Elder also relates to how he or she makes others feel. Elders inspire a feeling and response of patience, kindness, love, and a responsibility to aspire to the greatness of human potential, to act in purity or the right way. With Elders, Couture (1996) observes, "one effectively learns how to become and be a unique expression of human potential" (p. 45). In other words, Elders inspire feelings of hope, calmness, striving to become better people.

In summary, this research attempts to define the qualities held by Elders such as the ability to teach diverse and holistic knowledge and to inspire the same in others. Their sense of the past gives insight into the future because of sensitivity to what has benefitted their families and communities while also cautioning against harsh or destructive aspects of colonial contexts. They can speak to the complex realities of the present, they can assist with decision-making, and they can spark insights about the future. Elders in this research provide connections between knowledge systems yet remain steadfast on perspectives on future needs.

Elders' Connection to Research Questions

The decision to invite only research participants with whom I had a personal or a professional relationship served to limit options, but this was offset by their rich experiences and knowledge-base that contributed to a significant depth of the research. The first interview was with Elder John Crier resulted from meeting through the Indigenous Peoples Education (IPE) graduate program. One of his class presentations inspired thought on various states of knowledge systems or states of mind (he termed this as "Ego" or "Cree" thought-patterns) that Indigenous students have to negotiate both on and off campus. It provided an opportunity to speak about Indigenous epistemology and potential divergences from a Western one. Further, his position as the resident Elder for incarcerated men in Maskwacis also provided insight on current Canadian justice systems, particularly on how men struggled in Canadian justice institutions and on ways that men found strength and healing through culturally-relevant processes.

To provide additional perspectives on traditional knowledge about justice-related work, I asked Elder Myrtle Calahasien—a friend for several years--if she could provide a Cree language-translation for justice concepts as well as any traditional approaches to developing morals and

resolution processes when conflicts occur. I do not speak Cree but find language-learning a helpful lens for IK. As described, this aspect of the research provided the most insignt on IRM.

I had worked very closely with Muriel Stanley Venne for several years and consider her a close friend. Stanley Venne, who is the Chair of ACHR&J, does not consider herself an Elder but is someone perceived to be a "political Elder" in that she has devoted tireless energy over many years to addressing political inequities and discrimination against Aboriginal people, particularly women. She has advocated human rights as a Commissioner for the ACHR&J for several decades and is an Order of Canada recipient. She offered perspectives on using human rights in advocacy in Aboriginal communities in Alberta.

The connection with Elder Eber Hampton also resulted from the Indigenous Peoples Education Program, though his perspectives at a university-wide Truth and Reconciliation event sparked a brief but poignant discussion about human rights discourses and an invitation for further reflection. At the time, he commented that human rights presents a stark duality between "us and them" that lacks potential for reconciliation. This seemed a relevant entry to explore the humanity within human rights systems, and whether Aboriginal people should consider alternatives. Eber Hampton graciously accepted the invitation to comment further on these themes.

Conducting Research Conversations

In all research, power is at play in methodological steps that include the choice of topic, data collection, research interpretations, summaries and presentations. What the researcher hears, what the researcher edits, and how the researcher steers the investigation are all examples of control. In other words, the researcher has significant influence in the knowledge generation and presentation throughout the research process. Especially for an Indigenous researcher

conducting studies through IRM, these are not trivial concerns but are personal as well as academic, which is another distinguishing feature between IRM and Western research methodologies. What can be deemed rigorous scholarship within traditional academic circles often features methods that separate the researcher from research subjects and qualify information shared as data. The researcher can be expected to remain a neutral observer so as not to bias the study. This research attempts to emphasize processes of Indigenous inquiry that are distinct from traditional academia with its embedded hierarchies.

While the research relationship can reinforce power dynamics, the potential power hierarchies can be tempered by realizing that aspects of the research are uncontrollable and positioning participants as co-creators of knowledge. This was experienced personally, as it was common to feel humbled and gratuitous for the generosity of time and energy of Elder research participants who influenced significant aspects of this research, including its turn away from the human rights framework. Also, the approach to begin research conversations by expressing personal challenges in using human rights established my attempts to collaboratively address a problem rather than as a researcher trying to prove a particular stance or trying to convince others to follow.

According to Denzin and Lincoln (2003) the interview is not a neutral tool as it is "a site where power, gender, race and class intersect" (p. 48). My approach to the research interviews within this research study was to more equalize power hierarchies by using dialogic methods. Using a style more akin to a research conversation from within the oral traditions of Indigenous peoples helped to engage with real-life stories that generally referenced the research questions. I recorded and transcribed the in-depth conversations, then reflected upon them for analysis, to

explore intersections or divergences of participant experiences, to discern emerging themes, and to enhance related theory.

More reflective of Indigenous ontologies, the research conversation presents a more reliable description of this research process with the Elder participants. Orality is part of many Indigenous peoples' *being,* and though "personal and particular" (Battiste & Henderson in Kovach, 2009, p. 56), it is one way to characterize Indigenous ontology and provides a framework for IRM. Indigenous orality is a much larger concept than cultural adaptations of talking instead of writing, but is inherent to social and material structures, belief systems, and consciousness of individuals and communities (Hulan & Eigenbrod, 2008; Little Bear, 2000; Piquemal, 2003; Ortiz, 1992).

Orality consciousness does not infer that Indigenous peoples are static in thinking or unable to switch mental modes to function in a more Western, rational, or ego-centered way (Crier, 2011), nor does it suggest that technologies for reading and writing were not adopted as evidenced by the development of Indigenous syllabics.[100] Further, orality is much more than a set of technical skills that can be taught, learned, or easily adopted as it is both hard and soft-wired, meaning it occupies blood or genetic memory as well as part of social processes of child growth and development (Bleich, 1988). Orality speaks to memory, socialization, and cognitive functioning characteristic of Indigenous existence (Weber-Pillwax, 2004) or, for some, understood as being human.

Orality requires time to engage with people, to develop relationships, to let natural courses of events play out, and to develop cumulated experiences. Orality engages cognitive functions that require nurturing and practice in order to maintain its integrity. The primacy of

[100] The history of the creation and development of Cree syllabics is multiple and contested. Oral history suggests that Cree syllabics came through a dream, whereas written documentation credits James Evans (MacLean, 1890).

the relational qualities invites mutual sharing and storytelling to allow meaning to emerge. Researchers socialized in orality may be more inclined to appreciate experiences, storytelling, and/or *being* together that enhances emotion and thus brings life to the learning process. For learning to be meaningful, it must acknowledge life experiences that are more easily remembered and shared in interpersonal settings.

When Indigenous stories are shared in academia, they can challenge previous notions of academic position and authority. Stories can enhance reader involvement and transform "the usually solitary reading experience into a more cooperative and responsive act of listening" (Dickinson, 1994, p. 320). Indigenous scholar Kovach (2009) states,

> [a]n open-structured conversational method shows respect for the participant's story and allows research participants greater control over what they wish to share with respect to the research question. It is an approach that may take longer and require more sessions than with highly structured interviews…It becomes less about research participants responding to the research questions, and more about the participants sharing their stories in relation to the question. (p. 124)

Both the story teller and story recipient play roles in power equalization. While the storyteller shares literal and figurative stories, the audience interprets them based on their own experiences, identities, and perceptions. As such, the recipient of a story has a responsibility to enter the story as a whole person that is to feel holistically with the heart, mind, body, and spirit. This attentiveness stimulates a dialogue, most often internally, with the story and storyteller where the audience cannot help but share stories in return. In summary, the process of relationship-building through orality shifts the objective location of the researcher into the subjective sphere of the participants and equalizes their power.

Interpretation and Presentation of Research Data

How knowledge is produced and presented is as important as decisions around what counts as research (Pink in Friedel, 2009) and requires researchers to explore interpretations and representation as we co-produce stories we relay through the research (Fine, Weis, Weseen & Wong in Friedel, 2009). Though principles of IRM include egalitarianism and relationality, the researcher nevertheless has control over presentation and interpretation of the research stories, which invites consideration on how research is presented in a manner that is congruent with Indigenous epistemologies while also being understood by the non-Indigenous community.[101] While researchers consider political and ethical issues in presenting research through required channels and according to required conventions, they also have obligations and responsibilities to make Indigenous knowledge concrete. They must consider how the researcher's presence may alter events (Kovach, 2009; Friedel, 2009). The Indigenous research must decide how to use, edit, and interpret the research stories while carefully measuring their intended purpose.

Writing the Dissertation: From Oral to Written Text

Orality is one way to characterize the relational approach to the research conversations and this section addresses the method of transcribing and writing the stories as part of the research analysis. As the foundation from which many Aboriginal researchers operate, features of orality may show regardless of the methodological approach to the research.[102] While Indigenous writing may not be uniform or clearly definable, elements of orality appear in writing the dissertation. As illustrated, challenges for Indigenous writers include the use of oral protocol while maintaining its full integrity while also being accessible to non-Indigenous scholars and

[101] Western research analysis usually require grouping of data that is assumed to be immediately comprehended, coded, and analyzed. The display of data patterns is a primary means of explanation (Kovach, 2009).

[102] Studies have demonstrated linguistic properties and discourse patterns specific to geographical and cultural groups (Bleich, 1988).

these challenges are reflective of a historical struggle for academic legitimacy. The Indigenous researchers must contextualize their research within a larger framework of Canadian-Indigenous relations.

This debate is framed as one between Western and Indigenous knowledge systems. The classifications are not absolute, and one must proceed with caution in describing Western traditions so as not to place either in comparison or in opposition to one another. For example, characteristic of Western traditions such as rationality, linear thinking and literacy functions in the lives of Indigenous peoples and the reverse is also true -- orality functions in Western societies too (Tannen in Bleich, 1988). However, these knowledge paradigms are not mutually exclusive, they do not equally constitute each other. Western knowledge systems come to constitute a basis for academic expression and culture that is influenced by complex political, economic, and social dynamics. One example is its framing in North America where dominant paradigms of reading and writing came to be associated with modernity and progress while other ways of knowing and being, such as the orality of Indigenous peoples, became associated with tradition and obsolescence. The interactions between knowledge systems underscore the complexity of introducing Indigenous orality and oral traditions within research and scholarship.

The Anglo-Canadian founders of schools and universities established standardized criteria for legitimate scholarship that had strong roots in the ability to think with deductive logic and to express this through reading and writing.[103] Evaluations of contemporary academic legitimacy has firm roots in Canada's colonial past that influence norms and standards for research. In contemporary contexts, many institutions continue to be characterized as mono-

[103] Scholar Steeves (2010) has looked at the emphasis of literacy as a standardized pedagogy at the expense of other knowledge paradigms such as orality. She notes that colonial founders "facilitated an inflation of the concept of literacy and facilitated the terms' meaning to become synonymous with competence in or possession of a body of knowledge in countless areas of interest, study or skill" (p. 69).

cultural, parochial, and predominantly English (Fleet & Kitson, 2009; Rihn, 2007). The knowledge esteemed in many post-secondary systems privileges positivist and reductive reality that emphasizes fractured, individualized, dichotomized, and competitive ways of thinking (Bleich, 1988; Morgan in Fleet & Kitson, 2009; Piquemal 2003). Writing is often considered competent if it is complex, lacks emotion, and contains standardized problem-solution based structures.[104]

As Western traditions were powerful in educational institutions, alignment with it can bring a sense of legitimacy and power and as a result researchers feel they have to comply with conventions that may compromise the integrity of their knowledge systems. That many Indigenous researchers come from orality backgrounds creates tensions and vulnerabilities if they are required to translate their oral knowledge into Western academic contexts, especially for those aiming to rekindle or privilege traditional knowledge systems. Couture (1996) speaks of challenges of "writing like a storyteller" for "print-literate readers, especially of social science and professional education perspectives" (p. 43). In such cases, research and writing becomes an exercise of compliance. Indigenous student Windsor (in Okawa et al., 2010) reflects on past cultural suppression when her language and expression were not appropriate in her academic world. She reflects, "…writing in academically correct language, even in personal essays, was the only way in which I allowed myself to write. I did not put any of myself into my writing. What resulted was writing that came from my hand but was not my own" (p. 49). Windsor, like other Indigenous students, felt she could only succeed in academia though cultural loss: "I was

[104] The rubric for authoritative writing mirrors historical valuation of deductive logic to emphasize what is "objectively predictable" (Bleich, 1988, p. 62). Deductive logic suggests legitimate knowledge is value-neutral, unbiased, and unaltered by the identity or experiences of the researcher/student.

not allowing my home culture to exist in hopes of gaining academic validation… I had to leave my culture behind in order to be successful" (p. 49).

Other research confirms that Windsor's feeling of loss is common for Indigenous students in Western schools. The technology of writing, a relatively recent vehicle for Indigenous peoples, presents the potential for cultural loss and should prompt reflection on academic expectations. Ong's influential work *Orality and Literacy* (1982) affirms that orality creates culturally-specific patterns of memorization and thought. Though his theories erroneously espouse the evolutionary, technologically-deterministic, and ethnocentric notion that literacy is superior to orality and is the inevitable development of a modernizing brain, it useful to consider how writing may profoundly impact orality-based cognition. While Windsor may have felt she could not put herself in her writing, Ong suggests that there may be deeper cognitive impacts in forcing compliance with Western traditions. In other words, Indigenous students remain vulnerable within contemporary academic settings because they may feel compelled to align with Western research traditions, resulting in cultural loss. This should influence research approaches for the researcher interested in maintaining the integrity of IK.

This review has outlined characteristics of orality and contrasted these with Western traditions that have become the foundations for legitimacy and esteem in educational institutions. The author voice is a descriptive narrative about personal stories rather than analytical, persuasive, and evidentiary. It has made the case that orality is engrained in many Indigenous researcher's *being*, and there are significant effects in suppressing its existence. Through this research, I have tried to recognize and encourage IRM by bringing elements of orality to this writing.

There are recognizable features of orality in this academic writing. The features, that may seem to operate subtly, include multivalent and polyphonic narratives that layer meaning within texts. For example, the self-location presents an entry to the study as personal before theoretical and with express relationships between experience and theory. As is common with Indigenous scholarship, writing begins with lived experience, is personal, and theory lives in the shared stories to culminate a rich and collaborative narrative.[105]

Other Indigenous writers explained their own writing approaches. Indigenous Australian writer Morgan (in Dickinson, 1994) describes writing her recorded and transcribed thesis as a first-person narrative that also included the presence of multiple family members in dialogue. She suggests this layering of voices and dialogue defers her narrative authority and "creates the context for further stories to be told" (p. 326).

The layers in academic writing may include the story voice and the analytical voice in the presentation of theory. For example, I began the thesis by identifying how personal experiences shaped the research assumptions and approach. I then used the combination of theory and research dialogue to trouble assumptions and to create new research questions. This shifted the purpose of inquiry away from universal or abstract phenomena to more detailed studies of the specific and contextual.

Further to this, I had to learn that a significant element of IRM is that the theory is embedded in story so the story voice and analytical voice operate together. Métis writer Maracle (in Dickinson, 1994) explains the connection between theory and story:

> There is a story in every line of theory. The difference between us and European (predominantly white male) scholars is that we admit this, and present theory

[105] Personal experience as a graduate-student instructor of an Aboriginal and multicultural classroom confirmed that written submissions by Aboriginal students seemed to have elements of orality, even from students with diverse identities and experiences.

> through story. We differ in the presentation of theory, not in our capacity to theorize. (p. 322)

In other words, research writing can present layers of theory through story. Maracle's stories weaves multiple elements to her layered narrative. The relationship between story and theory was one of my most significant learnings about IRM. I learned that it was going to be difficult, if not impossible, to attain theory about human rights while *thinking in English* or *translating to Cree* but that I had to create an environment when Indigenous research participants could practice *being*. For Elder Calahasien, this meant *being Cree* where there was room for her stories to flow. This presented an opportunity for me to absorb, share, analysis, and theorize from these stories.

Regarding content, Indigenous writing often challenges objectivity by recounting meaningful and lived experiences that also supports the transformational purposes that benefit communities (Fleet & Kitson, 2009; Weber-Pillwax, 1999; Wilson, 2008). For example many Indigenous authors write about hard-to-read or painful accounts of personal or familial trauma -- often connected to residential school experiences and its intergenerational effects. For this reason, Indigenous writing effectively challenges the dictates of objectivity by connecting the mind and heart, and inviting inquiry into surroundings, memory, and imagination (Fleet & Kitson, 2009; Weber-Pillwax, 1999).

For students committed to decolonization and the fostering of unique knowledge systems, Western paradigms may be attractive for their goals of access to legitimacy and the skills of critical thinking can be welcome, necessary, and seen as complementary to orality, though not to replace researchers' own knowledge systems and voice. The epistemic *being* of many Aboriginal students is learned, rekindled, and/or practiced when in sync with the ontological

being which is cognitively and spiritually based in orality. This may inspire possibilities to create spaces within the academy to recognize diverse knowledge and affirm identities and values. This can occur if it adheres to the ways of being that are engrained because of memory, socialization, and cultural interactions. This implies acknowledging the "indissoluble connection between *being* and *thinking"* where "*being-in-relationship"* is experienced as a characteristic of human existence (Weber-Pillwax, 2004, pp. 110-111). This suggests that the expressions of *being* reject generic pedagogical or methodological templates, but that can be achieved through specific descriptions that validate Indigenous orality and affirm its complementarities in educational institutions.

In summary, the social and political context for the formation of educational institutions in Western Canada featured a "common" literacy steeped in colonial-based positivist thinking and an ability to read and write. The standardization of Western form in Canadian society frames contemporary Indigenous inclusions in post-secondary institutions as experiences of assimilation may be alluring though perhaps risky and not entirely possible. Academic traditions can create vulnerabilities for Indigenous students who are expected to function under these academic standards but come from different cognitive and knowledge traditions.

Orality is a cultural and cognitive way of *being* that has been subject to pressures of delegitimization, despite policy that encourages diversity in scholarly settings. While Western literacy conventions may still be commonplace, Indigenous research may push the conventional boundaries of academic writing through practices that encourage cultural expression and textual relationship-building. Theorists illustrate writing that is multilayered and dialogical and can invite participation in larger meaning systems. The emergence of cultural voice relates to issues of history and power and the ability to resist pressures of assimilation and assert culturally-

relevant education. When educators and researchers link these issues to dignity and survival, they may not only disrupt historic tragedies, but may promote socially-just futures.

Data Analysis and Presentation

A basic principle for this research analysis follows what Kovach (2009) identifies as a key principle of IRM: to value the stories shared in the research as purposeful and released with respect for their significance. While there may be a tendency to analyze, censor, or assign value to another's stories, the researcher risks egalitarianism and inclusiveness. Following what Hanohano (in Steinhauer, 2007) suggests, "I might do the work, write up the findings, and determine the themes or patterns from the information shared; that knowledge did not originate with me, and thus does not belong to me" (p. 96). The research must think carefully about the story, interactions with the story, and possible impacts of releasing the story. This research requires decisions on how to use, edit, and interpret the emerging themes while carefully measuring the purpose and sacredness of the gifted reflections. Wilson (2008) explains,

> if reality is based upon relationships, then judgment of another's viewpoints is inconceivable. One person cannot possibly know all of the relationships that brought about another's ideas. Making judgment of others' worth or values then is also impossible. (p. 92).

With respect for what has been shared, this research acknowledges that stories are gifts that present responsibilities for interpretation and presentation.

In this research analysis, I surveyed each interview for like themes them grouped them into two different chapters. Chapter five addresses IK and methods of internalizing morals and addressing transgressions. All of the research conversations discussed Indigenous identity and cultural integrity as an imperative for advocacy and a means to address conflict when it emerges.

These conversations touched on traditional notions of social organization and strategies for dignity and survival. In the next chapter, Chapter six, I focused on parts of the research conversations that either praised or critiqued human rights. These addressed potential harms to individuals but also noted opportunities and successes.

In welcoming collective participation and ownership of the research, it is expected that another audience may derive different meanings. The interpretations shared in this dissertation are meant to be read as a relationship to the research stories, rather than a researcher's conclusions about them. They are a reflection of researcher engagement with the knowledge at this juncture, but personal meanings may also emerge at a later time. This dissertation attempts to highlight Indigenous methodology and knowledge that connects the research stories to larger discourses associated with history, power, and knowledge revitalization. I tried to connect the study to everyday lives, as well as to larger structures, social forces, and opportunities. In doing so, I hope to contribute to a research conversation about how colonial settlers established definitions of legitimate scholarship but to also re-imagine how it could be expanded to reflect different knowledge traditions.

Research Ethics

In choosing any research methodology, particularly that using IRM, it becomes imperative to consider responsibilities and accountabilities beyond the institutional requirements to include reflection on impacts to participants and communities. Issues of permission, acknowledgement, verification, and copyright are critical, but Indigenous research also requires responsibilities to engage with Indigenous research in a way so that stories and teachings are shared through an extended research relationship (Archibald, 1997; Kovach, 2009). This amplifies the need to consider the authority, sacredness of voice, and potential outcomes.

To explain the ethical commitments for this research, I sent a letter of information that outlined researcher responsibilities and ethical obligations to participants, such as issues of anonymity and confidentiality and provisions for opting out of the research (see Appendix A). Before engaging in the research conversations I gave a personalized gift and small cash gift as a small recognition of thanks. With consent, I recorded all interviews and, again with express permission, I transcribed the recordings using first and last names, with participant knowledge that full names would be published. In all cases, I emailed the transcriptions for participants' review, though there were few changes.

Part of the ethical commitment as a researcher is the collective value of giving back that does not end with the completion of the dissertation. This responsibility includes sharing results with research participants, but also with key individuals and organizations that may benefit and which may occur in the form of publishing or presentations if the research fits a need. Sharing my observations at conferences or to research groups became an important aspect of meeting responsibilities to the research goals of community benefit. It provided a forum to share the research, to gather feedback, and therefore to refine analysis. A goal of this research is to present findings that will influence a broad audience and meet community desire for further action that ensures that recommendations were heard and taken seriously and fulfills the goal of community transformation. It is hoped that this research will provide a roadmap for individuals, community organizations, and political entities on making decisions around political goals, challenges, and opportunities.

In summary, this chapter has summarized various aspects of methodology such as allegiances between IRM and qualitative research. It explains my progression in understanding IRM; first through thinking according to Western conventions, then to the perils of translation

between knowledge systems, and finally to land with *Being* as an expression of IK in IRM. I then addressed aspects of research design and explained reasons for my directional change after the first research conversations with Elders. Part of my allegiance to a study grounded in Elder's perspectives comes from reflection on their essential role of knowledge transmission and I realized that this grounding is a necessary precursor to understanding congruence or contradictions between IKand human rights, which is a topic that is already widely researched. The most significant benefit of this research for me has been the articulation of IK that had been forgotten and where there is less opportunity for study.

Academic research is subject to cultural structures and ideologies and Indigenous researchers have to frame the discussion for contemporary Indigenous research within the standardization of Western knowledge (Cooper, 2008; Kilborn, 2008; Piquemal, 2003). I commented on the research conversation as an expression of orality, as a means of equalizing the power hierarchies, and of broadening notions of academic legitimacy.

Part of the researcher's personal and academic accountabilities in selecting appropriate methods includes considerations of making Indigenous knowledge concrete. Decisions around interpretation, analysis, and presentation of research data are political and the ethical issues that include considerations about researcher identity and experience. This chapter outlines how I learned how to interpret research in a manner that is congruent with Indigenous epistemologies while also being understood by the non-Indigenous community. Writing that is simultaneously narrative, analytical, personal and theoretical is typically Indigenous and its contribution of richness and complexity inevitably broaden usual academic standards.

The ethics of Indigenous research go beyond institutional requirements and include accountabilities to research participants and whole communities – particularly in light of

potential contradictions around Indigenous research objectives (Kovach, 2009). With a goal of transparency, I provided a letter of introduction and consent form and with a goal of informed choice, I sought permissions in aspects such as naming. Further, with a goal of community benefit, I took advantage of opportunities to gather feedback in public forums. The inclination toward a reformed methodology reflects personal, socio-political, and cultural choices that are considered within broader ethical and political contexts of academic research. In this way, this research became resistance as it challenged dominant structures and it became ceremonious as it became a means to remember Indigenous identity and knowledge.

Chapter 5
Indigenous Knowledge: Internalization of Morals and Addressing Transgressions

Introduction

This chapter presents themes that emerge from participants in response to broad research questions relating to Indigenous political methods and systems. It queries the role of moral values and sentiments in political and legal advocacy and how morality is developed and internalized through IK systems. Finally, it examines Indigenous models for addressing transgressions of these morals.

The literature review in Chapter 2 highlights the relationship between ontology and morality and suggests that one's socio-cultural context has strong implications for how morality is understood and practiced. It concludes that advocacy strategies are highly political and become meaningful when the goals and strategies are culturally-congruent. The Elders confirm the necessity for culturally- appropriate processes of instilling morality or addressing wrongdoing and suggest that a strong sense of identity provides a stronger commitment to the moral structures of the self and community. Further, when the political processes reflect these morals, there can be stronger commitment that potentially strengthens the humanity of each other and thus the fabric of community. What is gained through such an analysis is an understanding of how a strong sense of Indigenous identity and cultural integrity is an important starting point for any advocacy activity. The analysis presents justifications to abandon a generic list of rules for codes of conduct and instead focus on humanizing process that are relevant to Indigenous communities.

“Because I Have More Friends”

This section begins with a vignette shared by Elder and scholar Eber Hampton in a research conversation that captures the theme of the section -- the profound impact of a localized approach to realizing our full humanity. Here he is recalling a previous conversation with an Elder-friend:

> One of the Elders, Howard Luke, talked about this whole operation [of our current survival] that depends on these lines of food distribution... He says everything that we need to live comes from a long ways away, and, because of this, at some point it's going to fail and die. Then he mused: "I'm going to have an easier time surviving than you are.”
>
> I thought he was talking about how he still lives on the same island he was born on, he catches his own food, that he has all the old technology for surviving. But you know what he said? He said, "Because I have more friends."
>
> That's the wisdom: “Because I have more friends!” He has an extensive network of people who love him and [offer] mutual support. I think, “Oh my goodness, yeah. That's the piece in the old culture, that it's more important than being able to catch fish, moose and caribou even. It is about who’s going to look after the little children, the old people, what's the network?” That's what I thought of when you mentioned humanizing the human rights process.

Hampton’s story suggests that the most effective process for achieving dignity and survival is the personalized network of support and establishment of community. This is shared in the literature by Armstrong (2008) who observes, “The realization that people and community are there to sustain you creates the most secure feeling in the world. When you feel that and

you're immersed in that, then the fear starts to leave. When that happens, you're imbued with hope that others surrounding you in your community can provide" (p. 72). While Armstrong suggests that community provides emotional security and hope, Hampton suggests it also provides tangible assurance that one's needs will be met. Gilligan (in Liszka, 2002) argues that if caring is the paradigm, the framework for political action is different, which compels thought on how to humanize processes to support and sustain Aboriginal communities. Hampton's framework for survival was friendship rather than tools or technologies. This vignette introduces the theme of localized care and support that is prevalent throughout Chapter 5.

Personal experience with an Aboriginal rights organization, the ACHR&J presents similar personal insights. In 2013, a young woman, "Sawdo", approached ACHR&J after allegations of discrimination as an employee of Victim Services Unit of the Edmonton Police Service (EPS). While employed, she was instructed to stop wearing her beaded earrings, to take down pictures of her children, and to stop using her Aboriginal language in emails. It seemed she was, in effect, "too Aboriginal" for her colleagues and managers. She tried to appeal for resolution as policy instructed; first with a direct manager, then with the human resources department, and finally with her union; however, each avenue she sought for redress resulted in further victimization as she felt bullied, isolated, and eventually pushed out. Sawdo came to ACHR&J to assist lodging a complaint with the Alberta Human Rights Commission. This resulted in a formal investigation and an eventual claim by the Alberta Human Rights Commission (AHRC). Throughout this, Sawdo felt under-represented and unsupported related to inefficiencies, delays, a perceived unwillingness of the AHRC to take a strong stand for her interests, and eventual minimal monetary settlement. This experience presented insights of the

limitations of appealing to human rights systems, when a cumbersome process revealed little regard for Sawdo's dignity, rights, and remedy.

In response to Sawdo's discrimination within in the EPS, resolution processes that were deemed inadequate and in fact led to further bullying, the ACHR&J accompanied her through numerous formal and informal meetings with EPS and the AHRC. ACHR&J then made policy recommendations for EPS aimed to minimize a reoccurrence of abuse, to promote more respectful environments that prevent discrimination, and to ensure policy and procedures can support resolutions are meaningful and effective. At the end of the four-year process of meetings, investigations, presentations, and hearings, Sawdo suffered significant financial and emotional hardship, eventually settled with minimal compensation and felt "broken" after the process.

In the following email exchange that is shared with permission, Sawdo reflects on her experiences and her real advocacy needs through this process.

March, 2014
Krista,

Holy cow, it's been four years since the whole police debacle. It's time for me to go home. I knew it would take me four years to heal from that, which is why I asked for a settlement that would help in my healing. These are things the Human Rights Commission has absolutely ZERO understanding of. While the organization claims to solve human rights disputes, they themselves have really no understanding of what that really means. Actually, I would be as bold to say that the Human Rights Commission is discriminatory/racist in that their processes do not accommodate (I don't know if that is the correct word to use) the cultural rights of those they claim to help.

From – (Sawdo)

To – (Sawdo),

You have created a life-changing process in my human rights advocacy and I think a major turning point for the Commission. We have to be aware of the difficulties in trying to negotiate and maneuver this language and these systems. The Elders have suggested the focus of "humanity" and "being human" instead of human rights is a better approach because, after all, is within us even though our human race may not be living up to our own potential (I don't always have the optimism of these loving Elders). Sometimes it becomes so clear to me that the best advocacy is through simple acts of love. Of course this leads to more questions and, especially when I think back to your experience, I wonder how the loving wisdom of the Elders would or could be transferred into the processes you experienced with the Edmonton Police? I

wonder if the best advocacy would have been for the community and Elders to be more available and willing to support you as a powerful and beautiful Aboriginal woman, rather than through that ineffective human rights process. Anyway, through it all, thank-you for your insights and lessons.

- Krista

Hello Krista

You made me cry a little with your email (but in a good way). You hit it right on the nose: the best advocacy would have been for the community and Elders to be more available and willing to support people in a similar situation as mine as a powerful and beautiful Aboriginal woman. THAT IS IT EXACTLY! I only ever felt support from Muriel and yourself, and I hope in future the next person will get supported by the community here.

I will definitely stay in touch.

- (Sawdo)

This experience created doubt about appealing to the ACHRC and sparked interest in pursuing the topic of what form of advocacy would have supported Sawdo. In a theme that resonates with Hampton's Elder friend who required friendship, Sawdo taught me that the most effective process for advocacy and support is to establish a caring community network. Indeed, as Gilligan establishes, when people employ a paradigm of "caring", political work is different and the results are likely more impactful.

"A Strong Identity is Where Growth Begins"

Elder John Crier of Muskwacis explains that a caring paradigm begins with a strong sense of identity. Crier listened to a description of human rights observations and was not surprised to hear of misgivings about the effect of discrimination on the Aboriginal victim and observations that sometimes it feels as if we are recreating the very system that is doing so much harm.

Crier recounted his own experience of guiding incarcerated men through a process of healing and political engagement that begins with a very personal approach of appealing to an inner sense of integrity rather than appealing to an existing dehumanized system. His objective to connect the men to their identity spiritual and emotional work requires inner strength and commitment but, when this begins to happen he says, the men begin to care, to develop some kind of compassion within themselves that becomes a source of pride and self-esteem, to feel that their life has a purpose -- a sense of personal integrity. He suggests, "a strong identity is where growth begins." Crier suggests that Aboriginal identity is one of the strongest sources of individual and community integrity.

Crier suggests that this inner sense of identity is a spiritual strength that is achieved through cultural and traditional ways. Many incarcerated men he meets "have never experienced the greatness, the spiritual strength, the strength of the ceremony because they always experience the negative, stereotypical Aboriginal identity." So when they do experience this, "it becomes a rite of passage or an initiation to a sense of identity that becomes real. This is where healing begins to happen and growth begins." It becomes an important process for healing, says Crier, "because it's based on truth."

One of the effects of developing this Indigenous integrity is that it becomes part of the moral architecture to guide individual actions, and it remains a source of strength regardless of oppressive or unjust experiences. Crier observes, "If an Indigenous person has internalized his or her identity and integrity, and they would have to relinquish this sense of integrity if they were to do any kind of wrongdoing." This sense of identity becomes solidified as an internalized moral order, so to breach it is to breach the fundamental sense of identity. Furthermore, personal integrity cannot easily be compromised by others. Crier states, "[personal integrity is]

an attitude that they can't be controlled or constrained by anybody. They can be constrained physically, within the lawful boundaries, but they can live their life in a way that does not subject themselves to suppression …'what I have and what I care for in my life cannot be incarcerated.'"

Crier believes that once this process of developing integrity is initiated, "things begin to happen in a good way". He speaks of attracting like-minded people to build relationships that are also integral, and says, "people who have integrity with themselves, even if they're working for the institution, make connections with another person who have integrity with themselves… People develop an intuition about those who speak the truth…This is what I mean when doors begin to open for you." He asks the men he works with to trust that good opportunities emerge when positive life choices are made. This is similar to Armstrong's (2008) sentiments: "When we start to take care of our humanity with each other, everything else will naturally follow" (p. 73).

This resonates with the literature from Lizska (2002) that states that morals are better enlivened through their internalization and easily become obliging because a person has freely chosen this for him or herself. Baier (in Liszka, 2002) also argues that emotive approaches foster human connection, which drives moral concerns. Trudell (2005) discusses how *being* shapes an Indigenous moral architecture because it becomes a source of power; and finally, Sinclair (1997) argues that a significant cause of criminality is the inability to connect with identity and function as human *beings* (emphasis mine). All argue that abstract notions of rights or external rules prevent caring relations and thus prevent advancement towards community or political justice. It seems there is a common thread between Hampton's recollection of his Elder friend whose survival was ensured through his friendship networks and Crier's experience in developing identity and integrity with incarcerated men: the common insight is that moral life is not

preoccupied with rights, duties, or obligations but with a strong sense of attachment to the self and to others in the world.

"It was Really Based on Respect for Them as Human Beings"

The literature explored ways that people or cultures define and express their moral codes and suggests that human rights can trigger certain frames of reference. The research conversations also indicate that human rights can reference a broad range of meaning. It may be possible to conclude that even though the language of human rights is used by many Indigenous people, it can be from a frame of reference of "respect" to one another.

Stanley Venne recalls that some Aboriginal leaders cannot articulate their formal human rights ideas but can articulate basic protocols of respect for human interaction. She relays, "The leadership that I knew from the remote communities, the northern communities, the isolated communities, [who had minimal formal education] didn't know what their rights were and knew that it was really based on respect for them as human beings." She recounts that much of the work by established human rights leaders is to assert respect rather than rights:

> I asked Willie, [Wilton Littlechild, renowned human rights lawyer and advocate] 'What is it that separates the Indigenous people from the rest of the world or the community?' He said 'It's respect…If we had the respect that we are entitled to, there would be no problem. There would be a coming together of nations and peoples and so on.'
>
> …
>
> When that respect is withdrawn or not there, then the violations begin. If I didn't respect you as a human being and further, if I didn't want you around and I hated you, I could do anything. I could deprive you of food, I could deprive you of

> knowledge and all kinds of things that you, in my mind, didn't deserve. That's where, I think, the inherent rights are coupled together with respect. It's where that respect does not exist, where the member states…don't respect the Indigenous people, then they've got the fight, the push of the Indigenous people, to attain those rights and exercise their rights, and part of the humanity of the world, that stops and is blocked.

The value of respect emerges frequently in literature by Indigenous scholars. Trudell (2008) speaks to the fundamental value of respect that is often instilled through traditional teachings. He says, "I understand that they can take the ceremonies away and they can take the rituals away and they can take certain things away, but tradition is based up on respect. Somehow, though, in the brutalization and the trauma of genocide, we lose that perspective" (p. 319).

This section may suggest that the fundamental or underlying value for many Aboriginal people is respect, but when exposed to non-Indigenous institutions such as formal education, the language undergoes a change. Stanley Venne suggests that northern or remote Aboriginal community members who may be more immersed in traditional culture most often articulate traditional values of respect and struggle to articulate their goals in ways understood by mainstream institutions. She speaks to the difficulties of trying to fit into a foreign mold when she states

> Indigenous people [know] what should be done and must be done. But to fit that, somehow, into the lexicon of the accepted way of saying things and doing things is where the blockage takes place… It causes me a lot of pain, because I ask myself 'why aren't you fitting into that mold that is there for you to step into, if you wish to?' I'm saying, no, I'm resisting it, because I know what I

> know. What I feel, what I believe, and it's caused me difficulties. I'm sure I must reflect the agony of many Indigenous people, where they know their rights. They know them, inherently, they know their rights. They know human rights. But getting from knowing to operationally having the rights that they are entitled to on paper is where the difficulty is.

Trudell (2008) suggests that deculturalization processes may remove references of respect and instead replace it with the language of human rights. It may be possible to extrapolate that many Aboriginal people who have been exposed to Canadian mainstream institutions may feel compelled to use what may be considered a more sophisticated human rights language and have adopted human rights as the primary language for their morality. This seems to support the conclusion that human rights can trigger the formal definition and processes but it also may be used to reference different meanings. This seems to support the need to ascertain how the language of human rights is being used, what goals the speaker intends to achieve, and what process he or she may need.

"It's About Speaking your Truth"

Whereas the previous section discussed the imperative for an internalized sense of integrity as a starting point for developing and substantiating a moral life, this section describes a process that supports the integrity of human connection. Elders John Crier and Myrtle Calahasien spoke about Indigenous ways of addressing transgressions of individual dignity and moral values, and, in separate conversations, described a gentle and patient process of engagement, about speaking one's truth and emerging from the process as changed people. Crier described speaking openly by saying "it's about speaking your truth…it's identifying something that is not right, and doing it in a way…not about accusing, but speaking to the action, to the

behaviour, or whatever is potentially detrimental to the community." These insights provide a guide to how to achieve a more ingenious method than human rights to achieve political goals of conflict resolution, behavioural accountability, and community survival.

Elder Calahasien recounts lessons from her grandmother who advised her on how to talk through conflicts. She advises to be a "liking person" that means that "no matter if you don't like the person…put your feelings aside and talk, no matter how much you're guarding your life or your feelings, talk to them." She describes a gentle, and patient process to gain mutual understanding. First, "they'll have that look of distraction. They're unhappy, they're angry…and their body is going, going, going." She tells them, 'stand still' or 'be still' then starts to talk. After some talk, they settle down.

The process she describes is about gaining understanding about why the other person is unbalanced to have acted harmfully. She advises, "ask for help in understanding why the other person treated you in this way… Ask the other person 'what happened to our respect?' Try to understand the true meaning of what's happening in their life." Further, she advises. "You'll have to go around explaining that two or three different ways so they'll understand…by the time it's finished, it's about an hour or two after…you might drain yourself by the time you finally get out of that conversation."

Finally, she would say, (in Cree) "Do you understand, have you heard me?" And if [the other person] looked confused she would think about her words and start again. You just about have to be drained out of your body to make them aware and make them understand. If you're a true person, you want them to understand. It comes within you if you want them to understand."

Elder Calahasien recounts that the compassionate process is not complete until each person feels understood in their talking and mutual compassion has been gained. She explains

"in the end if you see their face and their body relax, then you know you got through to them…In the end, we would be laughing. The next time you see that person, they seem to be in a different style of life. They're jollier, they're more talking. You know they have a different attitude…a bit friendlier; they feel: I'm a better person today from her talking to me."

The process described by both Crier and Calahasien is a direct and personal encounter between the wrongdoer and the victim. It requires talking openly and truthfully to understand what went wrong and come to a mutual understanding about how to move forward. This description matches that of McKay (2008) who describes the root of reconciliary work as respectful sharing and listening that enables people across great divides the opportunity to hear and be heard. Llewellwn (2008) also suggests that truth-sharing is needed to achieve justice, but distinguishes between factual truths common within legal systems and social truths that can transform social relationships and create peaceful co-existence. In other words, an Indigenous process of political work requires a process of articulating a law as not a breach of a rule but as a breach of a truth – an articulation of what is important and why.

It seemed a difficult task to apply this depth of truth-sharing for reconciliation in divergent settings and posed the question of how it is actually done. To the question of whether there were people to help mediate or facilitate the truth-sharing process, Crier responded that traditionally there were not people appointed to address wrongdoing, "there was a sense that whoever was around at the time would be able to speak for the community," or "the natural leaders could speak for that situation." However, in another research conversation, Hampton painted a picture of what may be a broader political setting, such as for example, in a diverse and multicultural community, where the processes of restorative justice, "work so much better when there is an Elder in the room," which led him to comment, "every people has in their old culture,

their old history, and the role of Elders in the processes." He recalled the Six Nations and their great Law of Peace where there is a nation named whose role is to watch the decision-making process "to make sure that all the viewpoints were expressed and that there is consensus to go forward." Therefore, it seems the process of resolving conflicts and addressing injustice is undertaken by individuals who have a sense of patience and compassion for a peaceful resolution; however, if help is needed, the Elders are trusted to oversee the process.

This is reminiscent of Armstrong's (2008) description of components of her Okanagan community's participatory decision-making process that is inclusive and creates deeper understanding of what is needed to create harmony within community. The first component is to find every possible mechanism to bring that minority group into balance with the majority. Second, there are people who are trained to be the community speakers. Third, there are those who look specifically at relationships and how the decision is going to impact the people. Finally, visionaries are requested to share new ways to look at things or provide creative solutions. In other words, it seems different contexts for political work requires different levels of guidance from skilled people. In some cases, members of the community were called to perform specific roles such as speaking, evaluating relational impacts, and providing vision. Taking care of these multiple realms and roles seems a more holistic advocacy strategy that is humanizing. This suggests that "speaking about one's truth" is an Indigenous way of addressing wrongdoing that preserves or enlightens respect and humanity.

"The Treaties Were About How to Live Together"

Calahasien speaks to a process of resolving misunderstandings and addressing conflicts using a personal and truth-telling approach. This is an expression Indigenous epistemology as it demonstrates culturally-specific ways to achieve interpersonal and community harmony. Other

research conversations touch on how this epistemic foundation exists in Indigenous political models such as treaty-making, which is model of engagement that maintains personal integrity through truth-telling while also obliging the differences in others in a process of establishing can be considered a political system.

Elder Hampton describes treaty making as a process of establishing the terms for engagement between divergent peoples in a common territory. He states:

> The treaty was a meeting of people and an agreement to share this beautiful country and territory. The Elders said, the treaties were not about money or law, they were about natural forces. They were about nature. I have to think that he may have included human nature in that.
>
> …
>
> From our old cultures points of view, we weren't that separate from nature. The treaties were about how to live together. Those of us that are alive today, and for the non-Indigenous person, they have a right there to be there because of the treaty.

This passage highlights unique features about treaty making as developing a political system. First, it is a process and living rather than a stagnant article or rule. It is enlivened and changed through interacting and responding to the diverse needs in the context of the community. Second, treaties are not an empirical law or set of rules but rather an extension of natural law or, in other words, spiritually-based. Treaty-making is a process that acknowledges and preserves the humanity of people because it allows for truth-telling and establishes mutually-acceptable terms. Treaty-making therefore is a process of coming to agreement that occurs both within and across communities.

Treaty–making involved a process of establishing ethical space in which diverse peoples can establish shared communities. However, Indigenous and Euro-Canadians brought different meaning to treaty processes and Indigenous people were often surprised by the outcomes. Treaty-making in Canada exemplifies different epistemic approaches to political work. Stanley Venne illustrates these different approaches through her contrast of the application of "honour" between Indigenous and Euro-Canadian political leaders. She illustrates that Indigenous honour has been upheld and contrasts this from Honour of the Crown within Euro-Canadian law, "which is written in law but has not been honoured at all." Liszka (2002) provides that honour is one marker of epistemic differences between cultures and peoples. He defines honour as "the emphatic feeling that a moral person does not engage in certain types of acts, that an individual's identity is bound up with this conduct, which is becoming of certain roles and status," (p. 40) so it seems that there are different approaches to honour and these may create very different political processes and with very different results. Stanley Venne suggests that the different approaches to honour has resulted in different rights, perhaps insinuating that because Canadian negotiators did not perceive honour as part of the negotiations and was not embedded within a sense of integrity and identity, that their terms were negotiated to their advantage. On the other hand, Indigenous people use and value honour as integral to identity and a strong bind in the process of negotiations. Because Indigenous honour was not recognized, many Indigenous peoples ended up with fewer rights and protections.

In summary, this chapter presented some of the Elder responses to research questions relating to Indigenous epistemology that grounds political and legal methods and systems. Hampton's story of "because I have more friends" and Crier's assertion that "a strong identity is where growth begins" suggests that strengthening relational bonds and enlivening cultural

identity both staves off the need for robust political and legal protections but, if needed, can better ensure the humanity of those involved. Calahasien and Stanley Venne provided insights on a model for addressing transgressions and establishing agreements, of speaking truths and treaty- making, which continued the theme that advocacy strategies become meaningful when the goals and strategies are culturally-congruent. These research conversations suggest that a strong sense of identity provides a stronger commitment to the moral structures of the self and community and, when the political processes reflect these morals, the humanity of each other and the fabric of community become stronger. The analysis predicted that relational process would be more relevant and recognized by Indigenous communities; this knowledge will inform the next chapter that looks specifically at human rights.

Chapter 6
Is Human Rights Humanizing?

Introduction

"You'll never believe what happened" is a great way to begin a story says Thomas King (2003) in his transcribed recording of *The Truth About Stories.* King lures readers to co-travel through his stories and share moments of discovery that unhinge our expectations, allow us to question what is taken for granted, and to open our eyes to the contradictions of having once believed in a certain version of "normal".[106] An experience through the course of this research became one of the stories that unhinged my thinking around human rights and helped change the research direction.

In October, 2013 The UN Rapporteur on the Rights of Indigenous People, James Anaya, visited Alberta to consult with Aboriginal people about their conditions and experiences as part of a larger Canadian tour. I travelled to the First Nations community of Hobbema[107] with Stanley Venne for two-day event that began with a full-day training on how to make the presentation, followed by a full-day of "hearings" when the UN team would hear from registered speakers.

Upon arrival at the Elders Centre in Hobbema, the facility where the training was to be conducted, we found out that the room had been double-booked and an Elders group had already assembled in the room. After hearing the suggestion from one of our human rights training organizers to continue the training with the Elder's group, one Elder became angry, stood up, and stated, "No, *our* meeting is important," he said, "it is about our survival." Our embarrassed group then scrambled to find a free room in an adjacent building.

[106] The research dissertation by Friedel (2009) makes a similar observation.

This moment unhinged my expectations for the meeting in particular, and perhaps human rights in general, as it made me question the potential for human rights to be embraced by communities. This exchange opened my eyes to the possibility that this Elder, and perhaps others who assumedly had been working on community issues did not adhere to human rights in Hobbema. This was a poignant message that human rights was obviously not embraced uniformly in the community and was seen to impede the real work of the Elders.

Stanley Venne's presentation to James Anaya also instigated the "you won't believe what happened" sentiment because, despite the intensive training of proper protocol for the presentations, the speakers seemed to reclaim the process by speaking about personally-impactful experiences in their own ways. The main purpose of the training was to help a small group of Chiefs, organizational representatives, or concerned individuals to prepare our presentations to Rapporteur Anaya. The training was led by Danica Littlechild, a resident of then-called Hobbema and human rights lawyer, who advised to use the previous treaties, reports, and event sponsored by the UN as a roadmap for how to present during the consultation that would result in the report. We were encouraged to reference the UN Declaration, various thematic reports that appear throughout the UN website as Rapporteur Anaya would base his comments through reference to these previous reports.

Throughout the morning of training, it was very easy to get wrapped up in the need to adhere to a standard protocol for how to share our experiences and observations of human rights violations. This presented two conflicting sentiments; first, how to ensure that the people sharing could feel engaged and valued. It was learned from the truth and reconciliation processes that participants needed to be able to tell their stories in their own way. The human rights hearing raised the question of whether participants could feel this ownership. A second question was

what significance the process would have for substantive change. The trainees were assured that a report would result, but what would happen to this report and how it could impact policy or procedure was less clear. Ms. Littlechild captured sentiment by sharing that "unless the legal documents are implemented, they are not really impacting our lives" (Littlechild, 2008).

The formal consultation hosted as many as 150 people and, after many dignitary speeches, the hearings began and speakers began appeals to the panel of chiefs, lawyers, Rapporteur Anaya and his assistants. Very few of the presenters followed the protocol as trained the previous day and instead focused on topics relevant to respective communities and through predominantly personal and heartfelt speeches. The appeals were largely around Canadian derogation of First Nation treaties and issues of land use, resource extraction, and industry pollution were predominant. It seemed that the Indigenous presenters used the Human Rights forum to articulate abuses of Aboriginal Rights and to appeal to the UN to hold the Canadian state accountable. This moment helped to solidify the notion that perhaps human rights does not present a congruent moral or political framework in Aboriginal communities. This chapter captures a predominant theme articulated by research participants that human rights can present as an adopted framework for Indigenous communities that can be a last resort, may stray from familiar cultural references, and carries significant risk for Indigenous users.

"When love fails, then we have human rights"

Hampton recalls an Eastern-based teaching that first reads "when love fails then we have …" and the proverb goes through a list that eventually gets to "law" and he then draws a similar analogy: "When everything else has failed, we've got human rights commissions." He alludes to the likelihood that human rights does not address humanity's survival needs of a loving and caring network and instead plays a role as a last resort when all other channels have broken down.

This suggests the inhumanity of human rights because though it may provide basic or core rights protections, it may not foster love and dignity for the individual.

Other research conversations also mentioned that Aboriginal advocates appeal to human rights as a last resort, either because other avenues have been tried and failed, or because they do not exist. Stanley Venne suggests that conditions for Aboriginal people are so bad and protections so few that human rights are seen as the last resort and an only escape. She says, "It seems that if the United Nations weren't there, then there would be no recourse whatsoever…that is our only escape…The United Nations offers a venue and a voice for Indigenous people …" This resonates with the example of the Caring Society that initiated a human rights claim after negotiations had failed due to ill-will and appeals to Aboriginal and treaty rights were seen as untenable. Aboriginal advocates appeal to human rights because of dire need for protection from the Canadian state that systematically justifies violence.

The juxtaposition of Hampton's reflection of "when all else fails" and the Caring Society's robust human rights case highlights different roles for human rights. The first scenario seems more relevant when an individual has suffered harm and requires advocacy that adheres to cultural and emotional needs. In this case, human rights is impersonal and not culturally-congruent. In the second scenario, however, the Caring Society uses human rights as an effective strategy of personalizing the impact of human rights abuses by highlighting individual profiles of children in its publicity. This had the effect of increasing public appeal but was not actually representing any specific individual. It instead addressed the structural inequalities of differential support for children on-reserve and off. This approach elicits the questions of whether it matters that human rights is not grounded in any Aboriginal rights paradigms nor whether it supports the humanity of Aboriginal peoples. If it can be used to reduce inequalities

or to promote political change desired by the community, then should it not be promoted as an option for Aboriginal political work? It could be that human rights is one option among several for political advocacy. In the case of the Caring Society, there had been political traction in bringing the case to the Canadian Human Rights Tribunal, which begs the question of whether, or in what forums, human rights can be relied upon as a tool for structural change even though it may be outside the cultural or humanity needs of individuals.

Stanley Venne spoke to some of the nuances with regards to the actual influence of human rights; on one hand, she acknowledges the limitations of the UN because the Canadian government seems limited in its adherence to human rights declarations, reports, and recommendations; however, part of its strength is its influence on public opinion. As a chair of the ACHR&J, Stanley Venne made a 2013 appeal to the UN Special Rapporteur on the Rights of Indigenous Peoples in Hobbema and Anaya was to issue a report on the topic.[108] It had recently been reported that Prime Minister Steven Harper had denied a meeting with Anaya and would likely not acknowledge nor address his report. When asked whether Stanley Venne had hope the process would result in political change, she responded, "I hope that their voice will be heard by the United Nations and somehow, shame Canada into…I don't know the answer…It's the only forum. There is no other…" She says further because Métis do not have treaties, they have to assert their rights for any chance of political change. It seems that Muriel is realistic that any political influence will not be direct nor easy but, because there are few other forums, it is the only forum for political influence.

These sentiments are similar to those of Overmyer-Velázquez (2003), who suggests:

The UN's weapons to secure Indigenous rights are censure and public shaming,

[108] United Nations General Assembly. (2014). Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya.

> which can be assumed to work (without material sanctions) only in a situation where state governments actually care about such measures taken against them. As we will see in the Mexican case below, a government may indeed appear to care but only enough to restore its good image on the international stage. (p. 17)

In other words, if the state government choses to ignore the concerns brought forth through human rights mechanisms, there is little hope that direct action by these governments will occur. This suggests that human rights mechanisms are powerless to influence substantial change. However, there is a hint that some influence is possible. Publicity about human rights abuses can shame political leaders and potentially influence public action. The same political leaders may or may not actually care, but they may strive to avoid negative publicity. This is described as phase 3 of the spiral model presented by Risse, Ropp and Sikkink (1999) that means that, even though reluctant, governments are engaged in human rights concerns.

In summary, by stating that "when love fails, then we have human rights", Hampton suggests that human rights become an avenue to address conflict and injustice when all options have broken down. Perhaps when some Indigenous people do use human rights it is because the situation is so desperate and options for recourse so few that it is a last or an only option.

"It becomes a slippery slope"

The literature review presents an historical account of how human rights developed and came to include Aboriginal people. It highlighted the long history but with only a recent inclusion of Indigenous people, as the UNDRIP was only adopted in 2007. It also highlighted that though some Indigenous people participated in its creation, it cannot be fully credited as a grassroots process because it takes significant learning to understand its bureaucratic matrix and

it is not open to public appeals. In short, it can be perceived as being distant from Aboriginal people and thus can be seen to invite some risk to Indigenous people.

The literature is divided on the impact of human rights. Kulchyski (2013) suggests that Aboriginal rights are more culturally congruent and reflective of political aspirations and some literature that described the Caring Society's appeals to Aboriginal rights suggested that it held traction with the broad public but, arguably, resulted in limited substantive success. The literature review suggests that human rights can be evaluated according to differing objectives.

There were also contradictory characterizations of human rights throughout the research conversations. Stanley Venne identifies a nuanced evaluation of human rights. On one hand, she identifies some benefit in using human rights, as it can inform a broader population of Canadians about our oppressive history, thereby creating positive change. She says, "Getting back to what the government has done, they hanged the leaders and chiefs…Canadians don't know that…I believe that if the Canadian people knew, truly knew of the policies and the direct assault upon Indigenous people, the Inuit, the Métis, and the First Nations, they would demand action. Not 100 percent, but the majority of Canadians, I would say 51%." Stanley Venne suggests the greatest impact of human rights mechanisms is through public knowledge that can instigate some demand for greater justice on Indigenous issues.

In several research conversations there was praise for the hard work that has gone into establishing Indigenous rights at the international level; though this praise was often shrouded with uncertainty of how to substantiate these so-called gains. Stanley Venne speaks about the struggle to have Indigenous rights articulated at the UN and credits the hard work of Wilton Littlechild to draft the UNDRIP. She states, "I give total credit to Willie for pursuing this without fail through the years, and being absolutely patient. It took him 24 years just to get the

paper written, and they would be held up for two or three years on one sentence." Stanley Venne identifies some "wins" for Indigenous peoples because of these international developments and cites that not only in Canada, but across the world, Indigenous people have been winning their cases in the courts. However, Stanley Venne also notes the problems of implementation as, even when the courts have made favourable rulings, member states have been refusing to implement the judicial orders or recommendations. Therefore, though Stanley Venne credits the international developments for leveraging rights recognitions for Indigenous, there appears a gap between the international recognition and domestic implementation.

Stanley Venne recounts a personal example of having hopes for the human rights process but becoming disillusioned by what appeared to be the state's unwillingness to take concrete action and thus have a substantive impact for the Indigenous people involved. Stanley Venne had been personally invited by then-Premier Lougheed to act as a Commissioner for the first-ever Alberta Human Rights Commission, but her experience was difficult. She recalls "I was almost destroyed," and gives an example: When an Aboriginal baby died in Edmonton, the dismembered body of the baby was placed in separate plastic bags and sent back to the home community of Slave Lake. The AHRC at the time assured her that they were addressing the issue "behind closed doors" but neither allowed her to participate in the process of redress nor made any public statement. Later, they assured her a similar incident would not happen again. But when the horror was repeated again, Stanley Venne recalls, "It was highly emotional…and a total disillusionment of any sincere effort." She recalls; "I was so distraught that at a public celebration of human rights in Alberta, I went there and I told them they had nothing to be proud of." So, on the one hand, Muriel felt that human rights at the international level was an opportunity for Indigenous rights recognitions but "on the ground" efforts left her "almost

destroyed" because the callous insensitivity to the Indigenous families involved and blatant disregard for human rights mechanisms.

Hampton too acknowledges the "hard won" progress at the UN but seems unsure about the next steps. He acknowledges his "hope for human rights and for the International Declaration of Indigenous Rights" but then asks, "And then…? How do we…? What's the next step?"

Crier is more tentative about the potential benefits. He describes the risk for Indigenous people who may try to appeal to human rights because it detracts from the real work that needs to be done and can create vulnerabilities. He explains that human rights processes do not address to the inner work that is required for people to heal such as building strong identity. He warns that using human rights "becomes a slippery slope, because there is no personal integrity within that person."

Crier critiques the foreign and hostile process that creates vulnerabilities for the users and backlash from the others after using it. He explains:

> the rules of the system are used against the people. They are asked to divulge information, they have a hard time believing they will be safe or that they are going to have an outcome. They can expect the system to respond and fight back and the people within the system have a lot of power, resources, and numbers to suppress anyone who wants to fight their institution. It takes a lot of resources, personal motivation, and skill of vocabulary - a gift of speech.

Crier suggests, "the men have been burnt so many times…they don't trust anybody…who represents them or who comes from the institution." He has seen men face consequences from their peer group or community after using the justice system such as being labeled a rat,

informant, or trouble-maker. Crier concludes, “I'm not suggesting that we should do away with asserting Aboriginal rights, but using them becomes a slippery slope.”

In summary, Indigenous people acknowledge international human rights recognitions were hard fought. Respected scholars, leaders, and lawyers such as Wilton Littlechild are praised for perseverance to see the UNDRIP created then ratified by Canada. However, how these mechanisms translated to the local level presented apprehension for several reasons; it was unknown if this should or could be enacted at the local level; or the troubling history of the Alberta Human Rights Commission that was silent on Aboriginal issues, which demonstrated a systemic reluctance to address them; finally, there was worry that the Aboriginal users would remain vulnerable when trying to access the rights mechanisms.

“What is it About Us Humans?”

Elder Hampton notes the paradox when humans create dehumanizing systems. He draws on personal experience of a five-year research project on Indigenous management that explored problems of current management systems as well as a model for Indigenous management. He describes observations based on this research: “the bottom line, it turned out, we were talking about humanizing management. It's not as if these systems are so good for non-Aboriginal people. It’s the elitist, they're suffering too, but it's kind of like, there’s this talk about male privilege, white privilege, financial privilege, all the kinds of privileges. But there's still a core of human suffering that comes from not being fully human.” Hampton attests to many human systems as similarly dehumanizing as he recalls speaking to a health service-provider who lamented, “The only humanity in this system is what an individual worker puts into it”. And, because he sees the pattern repeated in other education and justice systems, he comments, “We haven’t learned how to do a large-scale human social system that is enlivening rather than

deadening." He then questions, "What is it about us humans that we do that?...is it just that we haven't learned how to do it yet? He laughs, "Why would humans create a system that is dehumanizing? It's a real work in progress, I guess. The great spirit or evolution, or whatever it is, the great mystery is not done with us yet. And we're not done with it."

How do human systems become dehumanizing? Merriam-Webster's Online Dictionary (n.d.) suggests an entity becomes systematic when it becomes orderly, planned, established, or methodical and the definition includes examples as diverse as solar or educational systems. Systems are not homogenous and exist in a variety of cultural contexts so it seems plausible to suggest that not all systems are inherently dehumanizing but can become so. It is easy to fathom some interactions that require orderliness and consistency but it is difficult to think of human interactions that do not compel a respect for the *being* of the other. Particularly when the interaction involves a repair after being wronged or the framework for community living, it seems a paradigm of caring should be more pronounced. In other words, socio-political systems that enable dehumanization may be those that exclude the *being* of individual users.

Helpful for understanding *being* is the movement, interaction and irregularities inherent in human life. Interactions and spaces are living, in flux, and subject to ebbs and flows of emotion, abilities, and other aspects of the human condition. Both Crier and Calahasien speak about the integrity of identity as a first step to humanization. Calahasien speaks of the need for personalization and communication that probes the heart of the issue in order to resolve conflict. A concrete example presents in the scheduling of the research conversation with Crier. We had scheduled a time to meet but, because he had a call from a man who required his support, he arrived one hour later than scheduled. As he stated in our conversation, "Those things don't happen by appointment, they happen when a person needs it..."

It is difficult to imagine an effective child welfare system that does not respond to individual needs of children, an education system that does not respond to individual needs of learners, or a political system that does not respond to the needs of communities. The literature review draws a distinction between social systems governed by rights, duties, and obligations that are developed from rational paradigms on the one hand, and those developed by a strong sense of attachment to others in the community or the *being* on the other. Human rights systems function as a set of external rules that are applied to a large-scale, indeed a global, population. The UN requires conformity to a rigid structure and process, bureaucratic and complex in nature.

Hampton and Weber-Pilwax (2004) suggest human systems are exclusive though they would likely agree with Liszka's (2002) belief that tendencies do exist along cultural lines. Because *being* lends itself more to classical and Indigenous ontologies, it seems that a particular form of human system can be more or less aligned to the cultural context. The values behind the system, such as whether there is the ability for individuals to enliven their identities or whether there are opportunities to respond to the personal needs of individuals may make the difference between an inhuman and human system.

Hampton asks "what is it about us humans?" when he probes the paradox that humans create systems that do not have mechanisms to ask about or account for our identities, values, or particular grievances or needs. The resulting dehumanizing systems may not be a concern for some routine activities, though it seems a concern when people need to address difficult or traumatic experiences. This seems to justify the need for a fundamentally humanizing system for addressing discrimination or other interpersonal conflict that the current human rights system intends to do.

"We've Been in This Bad Relationship for So Long"

Part of this research considers what culturally-congruent systems may look like. Some of the literature in the review suggests that there are cultural propensities for how morals are defined and internalized and how to act when transgressions occur so it seems unlikely to conclude that a human rights system would satisfy these characteristics. This is not to presume that human systems are homogenous and closed. The attempt to create ethical space seems to require systems that are open, diverse and accommodating even when diverse peoples confront each other. This section explores how research participants characterize Canadian – Indigenous relations and how power imbalances are or could be resolved to create or enhance ethical space between each.

Elder Hampton cites scholar Stanley Diamond (year unknown) who said that all civilizations have a common history of repression at home and exploitation abroad, and he describes the North American empire-building as dehumanizing despite being taught it is a great accomplishment. Muriel Stanley Venne does not mince words in her characterization of Canadian-Indigenous relations as genocidal. She describes the goal of colonization as "total annihilation" of the Indigenous people. She says in the research conversation,

> When I think of how the rights of Indigenous people, all Indigenous people including the Métis, have been trampled on over and over again, I realize now that the master plan is annihilation. Whether you do it by killing them off physically or killing them by withholding food or funding so they cannot progress, there are various ways.

Stanley Venne describes the extent of the brutality in the colonial encounter: "With colonization, [Indigenous people] were deprived of every right that every human being is entitled

to: the right to think, the right to their culture, the right to live in peace and not be harassed…" She describes that the colonizers established systematic genocide through "not only the withholding of food but the total annihilation of their source of food and livelihood…" She recounts that the Canadian government hanged the chiefs and leaders such as Louis Riel, the political leader of the Métis people, and suggests "the whole trial of Louis Riel was a complete farce of Canadian legislation."

Further, Stanley Venne recounts evidence that that the goal of annihilation continues to present day. She says,

> The honour of the Indigenous people has been upheld but not the honour of the Crown. The honour of the Crown is written in law but it has not been honoured at all…Canada proclaims human rights of all people…I say that Canada is a good country for most people, but not for the Indigenous people…I see not only the deaths of our people, the violent deaths, the calculated deaths, the huge number of Indigenous people in the jails…the unwillingness to right anything, to right any of those wrongs.

Crier also speaks of the troubled relationship between Indigenous –Western peoples and observes that hostile engagement has become normalized. He cites that even children react to each other with hostility. "We've been in this bad relationship for so long, we think it's the only way to be with each other…It works against Aboriginal people, because our young kids think that they have to react automatically, by default, to white people in a negative way." He observed that when the boys from the minor hockey league traveled from (then-called) Hobbema to neighbouring towns, they faced racism through name-calling and a "war of words." Crier laments that "the kids fight ugly word for ugly word." He feels that if kids were taught to

enliven their internal strength and self-worth through a strong send of identity, they would learn how to respond without hate.

Crier clarifies that the relationship is not between equals: Aboriginal people are subject to the power and dominance of Western people and institutions that prevents the ethical space between each. With reference to the men who he works with during and after incarceration, he sees that "many men are bullied by white people, bullied by the system and the institution, or by the police, so they've grown up with the energy of either responding to that energy in some violent, negative way, or the downside of this is responding through some kind of depression, shame, guilt, and a sense of unworthiness." Hampton shares a similar observation that cumulative effects of frequent offences can wear the spirit of an individual. He recalls Chester Pierce who, in his *Stress Analogues of Racism and Sexism*, (1995) talks about the incidences of racism and sexism as micro-aggression and draws an analogy "like death of a thousand cuts or oppression by a thousand cuts that wear people down". He recalled a Harvard student of his who, when he overheard a single racist comment, was so upset that he had to take a break from his studies. He observes that often small racist comments are ignored or normalized because they become "built in", but the cumulative effect of these micro-aggressions is devastating. With this in mind, he asks, how would a human rights system address these micro-aggressions? What he seems to be insinuating is that the incidences, when taken alone, do not fit the criteria set out for a formalized investigation – especially if it is a "hidden" or "normalized" incident. However, the effects are personally felt and require a response that can address the social and spiritual needs of the person.

The Indigenous-Western encounter is characterized, in part, as an encounter of between knowledge systems. Hampton described the differences between Cree and Western paradigms

through different language structures. He referred to Cree as being a verb-based language different from Western noun-form language. The literature referenced examples of Western thought as being rule-based, externally motivated, and rational, rather than emotional, and this shapes the Canadian justice system to be bureaucratic and "objective". Calahasien confirms that not only are the languages different but so is the thinking. She recounts the story of how her Cree-speaking grandmother talked to the Indian Agent at ration time. She describes them as "totally different people" who not only face the challenge of explaining what different words mean, similar to the challenge of translating the counting of the rations, but also the *thinking* that is different that "makes it extra hard for them to understand." She says, "every word in English is different in my head."

One of the most oppressive features of the colonial encounter is that Western knowledge is touted as universal or, at least, the most legitimate. One of the greatest aggravations in Indigenous – settler relations is the deeply embedded belief that settler ontologies and resulting social and political systems are modern and universal. As Ermine (2007) suggests,

> [t]he dissemination of a singular world consciousness, a monoculture with a claim to one model of humanity and one model of society… this mono-cultural existence suggests one public sphere and one conception of justice that triumphs over all others…In the West, this notion of universality remains simmering, unchecked, enfolded as it is, in the subconscious of the masses and recreated from the archives of knowledge and systems, rules and values of colonialism that in turn will into being the intellectual political, economic, cultural, and social systems and institutions of this country. (p. 198)

Ermine infers that many Canadian social and political systems and resulting institutions are shaped by paradigms of Western morals that have become pervasive, immediate, normalized, and subconscious at the expense of Indigenous ones.

Often the current Canadian legal system, which includes the quasi-legal processes of human rights is touted as universal. However, this research critiques this approach and cites others. Hampton notes the Western process for legal resolve is through "trial by combat" and explains: "We hire the best lawyer available to do verbal combat, which may be in some ways a step up from hiring a champion to fight it out. We are hiring champions to fight it out, only verbally. That is no more conducive to fairness and justice really." Hampton muses that our current rule and law imposes "us" and "them" binaries that divide rather than bridge spaces between peoples but, nevertheless, is seen as "a form of advancement." He is not convinced that this is achieving our human potential, but few other options exist because of the presumed universality of Western notions of justice.

Other processes such as the those used in the Truth and Reconciliation hearings implemented aspects of Indigenous being. Hampton also cites the relevance of medicine wheel teachings that balance intellectual, emotional, spiritual, and physical realities within the restorative justice processes. Similarly, Calahasien draws distinctions between Aboriginal and Western paradigms and the effect on Indigenous people when they have to negotiate a foreign system. Recall Calahasien's characterization of conflict resolution through a long process of understanding that is juxtaposed with an approach taken the by the ACHR&J that tries to solve problems through an appeal to a list of laws, either the human rights grounds for discrimination or the articles of the UN Declaration, and then a undertake a formal process of lodging a human rights complaint on the advice of a lawyer. This requires that reference to objective rules rather

than feelings to determine "appropriate" behaviour. To this, Calahasien shares a poignant response:

> Yes, [appealing to emotions] would be a better approach. These papers you have that list 1 to 10 items that you should follow. We never accomplish this. It makes the person more irritable. Makes you feel degraded in their words. This is not the way of life - to follow this piece of paper. We have a mind to think what's right and wrong. As long as I understand the problem or what you are trying to tell me, to make me understand. Then I'll be able to do it differently…What would be better? I know for myself when I'm handed a paper, I don't read the top part…they're trying to tell you, all prettied up, trying to caution you to pick the right words, they're trying to make you feel degraded by the words they use in there. It makes you leery. You really don't want to talk.

In this passage, Calahasien references the difference between oral and written traditions, external and internal motivators for behaviour, and rational and emotional responses to conflict resolution. She suggests that the adherence to Western paradigms prevents problem solving because it presents an unequal relationship and creates distrust. A better way of communication, she suggests, is to put the paper away and simply talk. When stated as such, it did not seem such a complicated or novel solution to simply talk as humans and, in doing so, recognize the humanity in the other.

Part of this research explores how to create ethical space between different worldviews. Ermine (2007) reminds us "[s]hifting our perspectives to recognize that Indigenous-Western encounter is about thought worlds may also remind us that frameworks or paradigms are required

to reconcile these solitudes" (p. 201). He elaborates: "For example, how do we reconcile the oral tradition with the writing tradition, the two embedded traditions that we confront and must reconcile?" (p. 201).

Hampton's project on humanizing management systems provides insight. He recounts that many streams of information from a diverse research team developed a collective understanding that fed into the proposed management model. The research team consisted of Elders, health directors, Indian Affairs representatives, Aboriginal leaders, university and community representatives -- all providing streams of information that ended up as a "spiral of collective understanding" where ethical space can be formed. He was hopeful that this kind of collaboration could extend throughout multiple systems in the future.

In summary, this chapter began with a wake-up call from Elders in Hobbema who condemned our human rights meeting as unimportant and set the tone for the rest of the chapter that emphasized some contradictions of human rights systems. Hampton and Stanley Venne recount the inhumanity of human rights and suggest that, because of this, Aboriginal people use human rights as a last resort as a desperate last option and when love, and all else, fails. Other problems such as lack of implementation, and creation of vulnerabilities by those who rely on human rights and tentative results when these processes are engaged, lead the Elder participations to conclude that there may be more dangers than benefits in engaging with human rights institutions to address problems or establish systems of political engagement.

Chapter 7
Research Summary and Conclusion:
Indigenous Advocacy to Become Fully Human

Introduction

This final chapter provides a reflection on the process of writing this dissertation, a description of the research theory and methodology, the key points of the research topic, as well as prospects for further research. It has been a goal to draw out new understandings, engagement, and critique about shortcomings or benefits of human rights as a form of political advocacy, and it remains a goal for the study to contribute to enhanced freedoms and for positive relations between Indigenous and non-Indigenous peoples. It was a privilege to have the generous guidance from the Elder research participants for the study, and though current understandings are presented in this written account, its depths may continue to unravel.

Theory and Methodology Revisited

As part of a research endeavour with Indigenous topics and communities, this study involves choices around theory, methodology, analysis, and epistemology. It is not possible to separate this work from aspects of my identity, being multiple Euro/Canadian and Indigenous. Learning to implement IK through academic study invited thought on identity, a sense of legitimacy, and the quandary of authentic. My non-traditional background provided little exposure to IK or IRM and required reflection on whether it was appropriate to identify specifically as Indigenous and whether to comment on cultural or political references for various Indigenous communities. I devoted significant time to a rights-based community organization where I found community and feelings of contribution. The study represents several years of interaction between personal identity, the scholarly world of political and legal theory and writing, as well as IK and IRM.

The methodological strength of this study lies in the development of IRM understanding, and the associated obligations and responsibilities. Being simultaneously the "researcher" and the "learner" grounded a personal articulation of identity and methodology in a dialogical way: an identity, a research topic, and a methodology that is both part of and apart from Canadian educational, legal, and political colonization. The study is both a product of Western academia and IRM. Finally, it is an articulation of Indigenous advocacy that can be both meshed with, and independent from, human rights discourses.

Aspects of Indigenous research, especially when housed in a Canadian public institution, must reference both historical and contemporary effects of colonization. Significant attention needs to be paid to the historic severing of relationships integral to IK systems: the separation of children from their parents and community, the physical displacement of Aboriginal peoples from the land and its associated spiritual and emotional connections, the formation of the Canadian dominion as a society and state, the minimization of Indigenous history and identity, the normalization of violence against Aboriginal people, and the state's refusal to acknowledge Indigenous political, legal, and educational regimes as legitimate. Aboriginal people find themselves at a confluence of pressures: a normalization of Euro homogeneity, the "battle of legitimacy" of IK in academia, and the difficulty in bringing alternate notions of justice, reconciliation and rights to a popular consciousness. These issues are part of this research topic that emphasizes cultural protection throughout legal and political advocacy.

A number of social, political, legal, and economic developments make this an important time for Indigenous research on advocacy and rights: changing demographics, fluid geographical movement, and a greater mix between peoples; efforts to make scholarship and public institutions more inclusive and international; the growth of interest in Aboriginality and

struggles to define IK; the prominence of globalization, and some growing allegiance between grassroots advocacy and human rights. These simultaneous trends invite questions of how to maintain and strengthen cultural, political, and legal objectives in a rapidly transforming society.

The study began with my assumption that reconciliation and human rights are interwoven harmoniously and, as such, the initial questions of the inquiry were related to how to enliven human right for Indigenous people so they may embrace human rights as the discourse within advocacy strategies, to use human rights institutions more readily, and to encourage the federal government to ratify UNDRIP. My initial goal of the dissertation was to research the history of UN, UNDRIP, and to suggest ways that human rights can be adapted to address Indigenous community objectives. I considered as part of the research to develop educational curriculum to enhance the realization and use of human rights in Indigenous advocacy.

This stream of research inquiry required my immersion in empirical literature related to human rights and Indigenous ethics, justice, law, and politics that was presented in Chapter 3. The literature within this part of the literature review focused on the hard-fought wins of Indigenous human rights and created hope for further rights developments. This hope motivated my premise that the human rights protections are or can be congruent with IK and therefore are reliable protections for Indigenous peoples.

However, exposure to more critical literature and the first research conversations revealed various personal assumptions about human rights and ways of engaging IRM. During the course of the research, Canada did ratify UNDRIP and this shifted personal focus to the possible implications. My focus on the struggle to ratify perhaps detracted from critical questions of potential gains or losses when Indigenous people rely on human rights in political discourses. The research presented examples of localized/community-based use of human rights with

variable results. Exposure to the nuance around human rights solidified for me that human rights is discursive – it is a terminology that is negotiated in response to socio-political relationships of power and privilege. In this context, the human rights terminology is seen as a less-threatening to mainstream societies, but I suggest that the opportunity for immediate political leverage may not justify the long-term effects of cultural or political loss. While human rights is professed as being universal and is often used in multiple context to mean different things, ultimately, it is tied to Western ideologies and results in Western-based socio-political structures and models of enforcement. Indigenous people have to learn the complex language and processes of asserting human rights, to translate their community experiences into this language, and to deal with the emotional and financial toil of negotiating what can be seen as a bureaucratic and dehumanizing process.

I challenged the assumption that settler ontologies, and its human rights programs, are modern and universal and presented cultural dimensions of Indigenous political and legal traditions as complex, unique, and enduring. Indigenous legal traditions contrast significantly in how individual morality and collective customs emerge, change, and are taught. Speaking to responsibilities to self and the collective rather than codified laws, to customs grounded in social practice rather than neutral and universal, and education through custom, ceremony, and Elders rather than through a centralized, elite educational authority, I distinguished the knowledge paradigms of each.

I found, in summary, that Indigenous legal traditions are grounded in and evolving with community. Indigenous notions of *being human* ensures the integrity of the whole person because it recognizes his or her full identity as well as his or her commitment to a collective community. This contrasts with human rights, which casts the individual person as a

homogenous and global equal. According to Boldt and Long (1985) the difference between *being human* and human rights "implies more than a linguistic or semantic analysis, it goes to the very heart of Indian culture" (p. 333). The ability to use Indigenous terminology and institutions that enhance *being human* touch on the very dignity and survival of Indigenous peoples.

The research methodology evolved as I gained fuller understanding of responsibilities and commitments to IRM. My initial plan conformed to Western standards of acceptable knowledge transmission and was not a function of IK. The goal to interview Elders on human rights was researcher-proposed and epistemologically-foreign and thus could have been seen as disrupting IK and contrary to research objectives. This methodology indeed proved insufficient for engaging with and understanding Elders' comments, most notably engagement with traditional notions of *being human*. It became apparent to me that there could be a disconnect between IK and human rights because of paradigm differences and when the language of human rights was used there were often multiple frames of reference. As the study proceeded, an exploration of new methodological approaches, an expanded literature search, and a new conversation approach enabled access to IK and assisted in making sense of the study. In response to these processes, new research questions emerged such as:

> What is the framework for developing and internalizing moral and ethical values and sentiments within IK?
>
> What is an Indigenous model for addressing transgressions of these frameworks?
>
> How do Indigenous models become systemic?
>
> Do human rights present a congruent framework to IK? Can human rights act as a relevant system for creating or reconciling "ethical space" between divergent worldviews?

What compels Indigenous communities to take up a human rights discourse?

The Elder participants directed the refinement of research focus and, while these new questions remained guidelines for the research, I had to learn to access related answers through IK such as through orality. My commitment to IRM presented a unique challenge to conduct the research in a way that was respectful to Indigenous teachings and knowledge. Free from the confines of thinking in English and translating between Western and Indigenous concepts, I learned what it meant to come to the research conversations *being human*, that is to allow and participate in the storytelling, to reflect on how this knowledge interacts with personal understanding, and to be open to change. I presented a lawyered narrative between the Elders' comments and stories, personal experiences, and the literature. These multiple points of interaction may seem a disruption to usual dynamics and hierarchies within academia but it acknowledges commitments to strengthening tribal processes and community benefit. IRM is underrepresented in research literature because of its relatively recent entry into the halls of academia, though the content and methodology merits recognition as powerful. This study demonstrates the process of learning how to access IK, which changed the parameters of this topic and provided understanding about how to work with Indigenous communities from within IRM.

Indigenous Knowledge and Legal Advocacy

In this research, I query cultural relevance to the internalization of moral values and offers comment on how this shapes social organization and political advocacy. Cultural congruence remains a key theme as the study explores ideas about morality, conceptions of law, as well as the advocacy strategies that are used to achieve political objectives. In the first section of this research, I highlight differences between classical and modern traditions and reflects on

how these influence political and legal traditions. Indigenous moral and legal orders fit more easily into descriptions of classical traditions as Tobin (2014) explains, they are "ephemeral, constantly open to change and resistant to the constraints of written legal systems…[Indigenous legal orders are an] evolving body of evolved practice adapting to the conditions of the time in an organic fashion, creating law as it adapts to the lived reality of those bound by it…" (p. xvii). Indigenous moral orders are internalized and stimulate self-control, which differs significantly from legal systems that are externally-imposed through formalized rules accustomed to systematic punishment for deviance. Decision-making on legal process and advocacy strategies occur in the context of community and reflect the subjective experiences of the local.

The research explores the principle of *being human* as nurturing one's whole identity to enhance a sense of dignity and belonging. Nurturing self-knowledge and care becomes part of practical processes and negotiations in the process of being-in-relationship with the other. *Being human* is markedly different than an objective and rational approach of relying on external rules and dissolving subjective experience into a universal experience as required by human rights. *Being human* is present in such processes as the Truth and Reconciliation that requires difficult truth-telling and transformation. *Being human* gives insight on how both the process and outcome of legal and political activity can be humanizing.

The research highlights how Indigenous concepts shape culturally-specific strategies and systems. It looks at traditional Indigenous legal orders that contain performative elements as custom and ceremony specific to the land and peoples. It is different from rights within Aboriginal law that is neither strictly traditional nor Canadian but a canon of legal relations that embody Aboriginal claims to land and culture and recognized both by Indigenous governments as well as in the legal and statutory framework in Canada. Nevertheless, because Aboriginal

rights are interpreted through the Canadian court system, they are steeped in Western legal traditions and can limit Indigenous concepts of evidence or legal traditions. Finally, Aboriginal rights are different from Indigenous rights that emerged within International law that includes human rights declarations such as the UNDRIP. Indigenous rights have advocated for rights to sovereignty, cultural, and language, and therefore are evaluated for its protectionary abilities. I hope to stimulate thought about the consequences of using different rights terminology because such decisions using certain discourses of political or legal engagement can trigger certain historic and epistemic agendas.

The literature review presents a closer view of advocacy work with Indigenous communities. I ask why some Indigenous peoples take up discourses such as human rights, and I illustrate that there can be multiple pressures and the sometimes-difficult choices to balance public engagement and Indigenous political and legal goals. However, I issue a warning: the tendency to present human rights as enabling access to capital and thus the preferred legal and political discourse can reinforce other discourses as peripheral. For centuries positive law has displaced and dominated Indigenous customary law and consigned customary law to the margins of state-based and international law. Tobin (2014) states:

> …[d]enigration of [Indigenous] legal regimes and their classification as customary law by colonial and post-colonial governments has led many Indigenous peoples to reject the utilization of the term to describe their legal regimes. This is very understandable, especially when taking into account the many different sources of law that go to make up Indigenous peoples' legal regimes. (p. 7)

Biased representations of Indigenous paradigms as historical, stagnant, or primitive are evident in discourses that uphold Western institutions as superior. Understanding these foundations

helped to clarify how these are perpetuated in contemporary discourses around political advocacy strategies, and the seemingly benign focus of human rights focus in this work.

The manner in which the study unfolded compelled thinking about paradigms of morality and humanity including differences between Indigenous and Western frameworks for social cohesion, conflict resolution, and also for addressing racism, sexism, and counters to colonialism. Worth consideration are the implications in failing to recognize the legitimacy of IK in moral and political orders as it brings into question the legality of state laws and policies – especially those national laws and policies relating to land sales, development projects, licensing, access to genetic resources, traditional knowledge and arts (Tobin, 2014). Fuller (1969) in his *Morality of Law* suggests that the lack of justification of how the relationship between Canadian and Indigenous changed from sovereign treaty-partners to Indigenous reconciliation to Canadian sovereignty--and lack of evidence that Indigenous peoples consented to it--raises questions about the overall legitimacy of Canadian constitution and laws. This resulting "disequilibrium" (Tobin, 2014, p. 12) has allowed abuses of peoples, their rights, and, according to Tobin (2014), has promoted human rights as a primary counter to these abuses.

The research focus on Indigenous moral and legal traditions highlights key principles relevant for many Indigenous peoples, but it also speaks to political work across cultural divides. It disrupts the uniformity of positivist legal concepts and broadens consideration of legitimate strategies of advocacy when objectives may be unfamiliar. Human rights may not be the presumed common language. Perhaps a more welcoming paradigm would be *being human,* which is in tune with IK and provides a process that can respect the humanity of the other and facilitate dialogue between systems and peoples. Instead of proposals for universalizing morals

and values, it provides for differences and sovereignty in political and legal structures. Indigenous models of advocacy therefore builds an awareness that legal pluralism is possible.

The meaning, importance, legitimacy, and durability of Indigenous moral and legal regimes are integral parts of a functional contemporary legal system (Bederman quoted in Tobin, 2014, p. 2) and have the power to influence future political and legal advocacy. In many nations, including Canada, Indigenous legal traditions have formal constitutional recognition; in others, mere tolerance; while still in other contexts, they are seen as counter to state laws. The confluence of Indigenous and Canadian legal orders has required negotiation of multiple legal traditions. This research reminds us that Indigenous people have moral and legal rights to practice and to protect their legal traditions, which can be key to substantive protections of lands, resources, cultures, and knowledge systems. In uncovering the rich moral foundation and legal traditions that Indigenous people have to contribute to Canadian legal reconciliation and pluralism, this research be considered to have achieved its goal.

Human Rights

This study covers two aspects of human rights: first, as a discourse used by Indigenous and others to effect political goals that may or may not align with the established human rights institutions. Second, as a range of institutions that can address individual harms or political goals.

Human rights is often presented as a "neutral" framework to appeal to the universality of humanity. Recent developments such as the UNDRIP acknowledge specific socio-political backgrounds of Indigenous people and, because it developed with some Indigenous legal and political participation, it more aligns with the Indigenous paradigms of justice. However, I provide examples throughout the dissertation that, despite inclusions of Indigenous peoples, the

framework continues to compel aspects of Western morality as: a) externally generated rules of conduct; b) objective institutions and process for resolution; and c) under the guise of universality. Further, the assumed neutrality and universality about human rights may maintain ongoing oppression by upholding a deeply entrenched political and justice system reflective of Western values and ideals.

The literature review suggests the foundations of human rights were not universal but developed from an English philosophical reflection about the rights of man and natural rights. The law outlined associated rights through force of the sovereign and backed by rules and command. The historic evocations of human rights born out of this positivist trajectory were limited to civic rights related to inclusion and citizenship and not synonymous with human rights that exist across borders and can hold states accountable, as we know them now. Human rights currently is embodied in provincial, federal and international law and largely governed by legislation related to limited grounds of discrimination in contained areas. The United Nations institutions or various human rights commissions are governed by own rules and legislation and require significant knowledge of its required administrative procedure.

Human rights evoked contemporaneously have different theoretical orientations though the most compelling for this research is that human rights is discursive or, in other words, is contextual and influenced by power relations, which requires re-evaluation of associated values as a political discourse. Discourse theorists tend to see human rights as flawed because it reflects the hegemonic position of Western legal institutions and liberal ideology of the global market that sustains them (Dembour, 2010).

Human rights finds some attachment to a history of Indigenous colonization and assimilation because it can reflect a positivist paradigm that has been imposed as dominant at the

expense of IK within Indigenous political and legal traditions. Processes to make use of the human rights institutions are challenged to fit in to the dominant paradigm of morality and face the burden of having to accommodate Western processes and the expert language of this form of advocacy. The contradictory aspect of human rights is that it can encourage rights by favouring Western values and denigrating IK. With the noted exception of the Caring Society's successful human rights challenge against Canada, Indigenous people can occupy a position in the dominant imagination as passive recipients of externally-imposed rights protections, which presents the research challenge to evaluate if or when Indigenous people can become active subjects, define and shape the discourse, hold Canada accountable, or promote self-defined legal objectives. The thesis for this research is that the integrity of IK must remain a priority, which precludes dominance or even equality of alternate paradigms, even if seen as a means to an end. Opting to analyze human rights within the context of colonization is to shed light on the human rights discourse, to disrupt oppression (when used against the "other"), and to understand how it may also be perpetuating patterns of cultural suppression. The emphasis on the alternate paradigms and processes for addressing transgressions proves important for understanding many contradictory outcomes of human rights advocacy.

The Elder research participants commonly spoke about *being human* through Indigenous identity and integrity and expressed a desire to stand apart from the framework of rights that has been constructed out of the dominant paradigm of Western rationalism. This helped illuminate reasons for the restrained manner in which they took up the topic of human rights and draws attention to the ways that dominant discourses can become admired without critical reflection. While I had initially hoped to provide justification for human rights as an advocacy strategy, the Elders provided greater understanding and appreciation of IK. This close examination of

perspectives therefore reveals hesitation in adopting human rights as an advocacy strategy and uncovers the importance of humanizing social relations, and in particular, the reality of *being human* in social spaces where diverse worldviews meet.

The research has largely been critical of the uptake of human rights by Indigenous organizations but it does acknowledge that human rights and Indigenous practices are not mutually exclusive and, in some instances, one can compliment the other. The discourse of human rights may offer hope for protections for Indigenous people against the colonized state. Research participant Stanley Venne has used human rights for reasons cited by scholar Venne (1998) that human rights has been a largely uncontroversial method for enabling political protections across Indigenous communities. This has been particularly relevant in urban contexts where there are multiple nations and communities that are also in close proximity to Indigenous governments with their own political and legal agendas.

Further, this research also recognizes that human rights law has itself been transformed. As Tobin (2014) notes, the resurgence of customary law has accompanied major advances in international human rights law. Article 34 of the UNDRIP recognizes that the right to self-determination protects a wide range of social, cultural, economic, civil, and political systems by providing that:

> Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs spirituality, traditions, procedures, practices and in the cases where they exist, juridical systems of customs, in accordance with international human rights. (p. 1)

In other words, human rights can provide the political protection and a language to enable localized systems and strategies. Numerous international human rights instruments recognize

Indigenous peoples' rights to their own legal orders and institutions and affirm the status of Indigenous legal orders and a source of any national laws and constitution. Worth consideration too, is the advance of human rights laws that may allow Canadian constitutional law to recognize a wider range of constituent legal traditions and a recovery of Indigenous legal orders.

Further evidence of international human rights developments are a shift from individual rights protections to collective rights protections and recognition of Indigenous as "peoples" entitled to rights such as self-determination. Perhaps most profound is the inclusion of Indigenous peoples at the human rights tables and their ability to influence process and outcomes (Tobin, 2014). This has allowed localized definitions of human rights to emerge that reflect concepts relevant to their specific knowledge systems. Examples of judicial willingness to expand the scope and enforceability of human rights through treaty bodies, national courts, and regional human rights bodies demonstrate the expansive potential of human rights regimes.

This research proposes that despite the doctrine of universal values, Indigenous peoples in some circumstances should resist reliance upon the discourse of human rights because it can threaten traditional norms that are embedded within IK. Human rights can dissolve structures of distinctiveness or dilute fundamental customs and meaning-making. Indigenous people can shape the encounter between multiple positivist and Indigenous legal traditions as one that is not assimilationist or oppressive. A new approach from outside the constraints of western training such as an openness to ethical space can create a new legal and political ethos of relationship-building across cultural divides. A level of optimism is emerging through increased dialogue between diverse systems with a reconciliatory intent.

Further Research

I do not presume that a return to IK is the solution to all problems that Indigenous people encounter, nor that all Indigenous people have problems. Yet, Indigenous peoples have tailored frameworks relevant to each land, language and cultural setting and have defined viable solutions based on these. Indigenous epistemology is important, given that it implicates not only Indigenous individual integrity, but it acknowledges the humanity of diverse individuals in society. In other words, Indigenous discourses and processes offer valuable contributions to enliven the very essence of humanity.

The nature of the world in the 21st century is such that IK, the knowledge of being and of *being human*, will become increasingly important for all of humankind. Ermine's (2007) call for ethical space is based upon the fact that peoples and societies are mixing in unprecedented ways, and this research seeks a framework for achieving full humanities of all societies. Mohawk (2008) speaks of the Peacemaker Dekanawidah whose philosophy of peace helps adversaries acknowledge the humanity of the other: "the process starts by looking for common ground with the enemy" (p. 56). Armstrong (2008) is more specific about how to address injustice to bring balance between minorities and majorities. She says, "If we think about ourselves as human beings with minds…we should be able to take into consideration how we can meet the needs of those minorities. [Our teachings say] if we can't do that in our community then our humanity is at stake, and our intelligence is at stake" (p. 70). In this sense, creation of ethical space requires seeing the humanity in each other.

IK offers a re-conceptualization of Canada's cultural politics. More than historical, simple, or private ways of knowing and being, Indigenous epistemologies lie at the foundation for models of being in good relations and have much to offer to reinvigorating reconciliatory

connections. The breadth and depth of IK provides a rich field of inquiry to which we can look for an understanding of how to address the ongoing oppression of Canadian society and create space for Indigenous intellectualism and cultural integrity.

The research also provides findings regarding the intersection of IK and contemporary advocacy. Subsequent research may examine how Indigenous people participate in advocacy activities based on an Indigenous pedagogy of being human. It would be useful to carry the findings into the advocacy spaces and reflect upon the practical applications for an advocacy mandate for Indigenous organizations. Research focused on this approach can bear out its potential for empowering advocacy organizations to serve Indigenous clients through recognizing humanizing processes.

A vast amount of research in human rights continues to be tied to ideas about liberal multiculturalism (equal participation in Canadian socio-political sphere) and globalization (global communities uniting from above to pressure states to extend rights to its citizens). Documentation of how Indigenous paradigms differ from each is becoming more readily understood. However, the benefits of Indigenous theories of community justice are not well documented, so it would seem that further research is necessary to gain greater appreciation of both the intended and unintended effects of such efforts. This study explores how cultural subjectivities may be imposed through justice initiatives and how this may implicate (harm or benefit) IK and ways of knowing. Future studies in advocacy organizations would allow for a more long-term research engagement than did this one.

Further, analyzing how diverse non-Indigenous audiences may take up and benefit from Indigenous paradigms may provide a greater sense of transformative possibilities for institutional change. One of the initial theses of this research was that public education about human rights

would help normalize human rights culture and provide an avenue for greater safety and an avenue for addressing transgressions. This research suggests that this approach needs to be more nuanced. When speaking about public education, research participant Hampton talks about the work of the Saskatchewan Treaty Commissioner's Office that emphasized treaty education through the notion that we are all treaty people. As he describes, this inclusive approach presents

> …a meeting of people and an agreement to share this beautiful country and territory…the treaties were about how to work together, about our future…for those of us that are alive today and for the non-Indigenous person, they have a right to be here because of the treaty.

It seems relevant to explore how Indigenous paradigms and processes can be developed for the benefit of non-Indigenous communities. This research direction may query how a caring or humanizing model of advocacy may cater to the spiritual and cultural needs of diverse individuals and address transgressions of these moral-based laws.

However, such a focus should not ignore potential power dynamics. Reminiscent of the discussion of how academia can encourage the delegitimization then commercialization of IK, Simpson (2004) issues a similar warning that sanitizing traditional knowledge of "the ugliness of colonization and injustice" only makes it more palatable to scientists, enabling them to "potentially engage with the knowledge but not with the people who own and live that knowledge" (p. 378). In this context, Indigenous knowledge thus becomes another resource to be tapped by corporations in conjunction with governments and a topic area that educators, employers, and institutional leaders can easily add to the curriculum to make it more diverse and "inclusive". Thus, it would be beneficial for further research to enliven anti-oppressive strategies.

Another avenue worthy of study is how to implement humanizing frameworks when the possibility of reconciliation seems remote, especially in situations where the offenders are hostile, mentally-ill, or could manipulate the process by feigning conviction. Would this not invite the potential for multiple victimization? It would be important to research whether, even under these circumstances, reconciliation is possible in the presence of trusted Elders and leaders who can infuse compassion in political work. It would be affirming to conclude in the future that legal and political reconciliation is possible, and indeed necessary, to achieve a vision of humanity even in difficult circumstances.

Future research would also be beneficial to explore the longer-term results of Indigenous advocacy such as substantive political and legal change. It would query the applicability of Indigenous law and advocacy for communities, lawyers, judges, legislators, and communities whose activities affect Indigenous people, to widen the awareness and applicability of Indigenous legal traditions. This may propose a discursive process of legal and constitutional reconciliation that may be neither strictly Indigenous or non-Indigenous, but may arise from a mutual commitment to ethical engagement, which can create a morally just and legitimate constitutional and legal order. This type of research would explore processes to challenge one-sided notions of legitimate legal orders. It would contest the belief that Indigenous have resigned to Canadian positivist legal and political traditions, and instill an understanding of reconciliation as enlivening constitutional plurality acknowledging the sovereignty of its constitutive elements (Macklem, 2016).[109] This would widen the boundaries of Canadian political and legal positivism by inviting epistemic plurality, "decentralizing interpretive authority" (Greene, 2005, p. 1408), and presenting a view of Canadian legal orders as plural, moral, and legitimate.

[109] Macklem (2016) suggests constitutional pluralism exists where there are diverse sources of constitutional validity.

Significant to any future research on Indigenous-Canadian legal and political reconciliation is a recognition that Indigenous people interact with Canada's Constitution in diverse ways. Some groups, such as the Haudenosaunee parties to the wampum treaty, refuse admission into Canada's Constitution, preferring to define their relationship as allied rather than subjected to Crown sovereignty. Others, such as the Nisga'a, parties to the 1998 land claim in Nass River, regard themselves as "having negotiated their way into Canada" (Borrows, 2016, p. 110). Other groups simultaneously reject and embrace different aspects of the state. Because variations contribute to the constitutional narrative in conflicting, cooperative, *and* cross-cutting ways, there is no essential perspective, but this is "not problematically dichotomous or incongruous" (Borrows, 2016, p. 103). Future study on how political and legal reconciliation demands recognition of Indigenous peoples' sovereign interests as unwilling participants, independent allies, or willing participants of multiple legal orders.

Future study on doctrinal opening for legal and political reconciliation may include attention to the language and discourses of legal and political reconciliation: Do they reflect multiple legal and political orders? Can they be morally-laden and in synchronization with IK? Are they alterable? Borrows (2016) illustrates that legal and political engagement around Canada's constitution is "open ended – a perpetual work in progress, a living tree. It is comprised of various written texts, an assortment of established conventions, and a diverse array of oral traditions" (p. 105). Rather than being frozen or locked, notions of the legal orders as a living tree are woven in the context of society and are adaptive to change. This uncertainty, according to Greene (2005), "makes it easier to see sovereignty as permeable rather than complete." He states:

> It might seem paradoxical, but only by recognizing sovereignty, even in a liberal democracy, as incomplete and struggling for the hearts and minds of the citizens at every turn, can we begin to provide the grounds for political obligation to such a sovereign. (p. 1414)

In other words, the constitution as open-ended and living invites a discursive tradition of sovereignty, which presents a morally responsible relationship with constituents.

Conclusion

Final reflection of this research returns to Indigenous people who negotiate their identity, rights, responsibilities, and multiple moral and legal traditions in practical circumstances. The local Aboriginal woman who opened her door to her Canadian landlord declared "I know my rights" and was able to temper the harassment of her landlord and receive a level of protection that perhaps could not have been achieved through other means. In this case, this research recognizes that knowledge of multiple discourses may leverage individual and immediate protection. However, Hampton's friend's declaration "I will survive because I have more friends" is also relevant in advocacy, both as a process and as an ultimate goal, as it presents a humanizing model of justice. The challenge is to apply diverse models in legal and political systems across cultural divides. While friendship may be unrealistic, perhaps models of caring can be implemented towards more humanizing ends. Hampton reminds us that "*being* is the purpose…We're so busy being "human beings" that we forget that we're *being*.,." Ongoing reflection of multiple legal and political models provides insight into potential reconciliation of the legal and advocacy systems that can complement rather than contradict one another.

References

Abella, R. S. (2000). The Responsibilities of the state. In G. Bhatia, J. O'Neill, G. Gall, & P. Bendin (Eds.), *Peace, justice, and freedom* (pp. 321-326*)*. Edmonton, AB: University of Alberta Press.

Aboriginal Commission on Human Rights and Justice. (2009). *Aboriginal perspectives on human rights and justice.* Edmonton: Author.

Advocacy. (n.d.) In *Merriam-Webster Dictionary online.* Retrieved from: https://www.merriam-webster.com/dictionary/advocacy

Advocacy. (n.d.) In *Oxford Living Dictionaries.* Retrieved from https://en.oxforddictionaries.com/definition/advocacy

Advocate. (n.d.) In *Cambridge Dictionary Online*. Retrieved from https://dictionary.cambridge.org/dictionary/english/advocate

Alberta Human Rights, Citizenship and Multiculturalism Education Fund. (2006). Creating inclusive communities – Stakeholder consultation: What we heard. Edmonton: M. Cooper and D. Bartlett.

Allen, S. & Xanthaki, A. (Eds.). (2011). *Reflections on the UN Declaration on the rights of Indigenous Peoples.* Portland, OR: Hart Publishing.

Almog-Barr, M. & Schmidt, H. (2014). Advocacy activities of nonprofit human service organizations: A critical review. *Nonprofit and Voluntary Sector Quarterly, 43*(11), 11-35.

Amagoalik, J. (2008). Reconciliation or conciliation? An Inuit perspective. In M. Castellano, L. Archibald & M. DeGagné (Eds.), *From Truth to reconciliation: Transforming the legacy of residential schools.* (pp. 91-100). Ottawa, ON: Aboriginal Healing Foundation.

Archibald, J. (1997). *Indigenous storywork: Educating the heart, mind, body, and spirit.* Vancouver, BC: UBC Press.

Armstrong, J. (2008). An okanagan worldview of society. In M. Nelson (Ed.), *Original Instructions: Indigenous teachings for a sustainable future* (pp. 66-74). Rochester, VT: Bear & Company.

Arthurs, H. (2003). Constitutional Courage. *McGill Law Journal, 49*,1-9.

Assembly of First Nations. (2007). http://64.26.129.156/article.asp?id=3374

Assembly of First Nations/Department of Indian and Northern Affairs Development. (2000). *First Nations Child and Family Services: Policy Review Final Report*. Ottawa, ON: MacDonald,R. J. et al., online: < https://fncaringsociety.com/sites/default/files/docs/FNCFCS_JointPolicyReview_Final_2000.pdf> [*NPR*].

Augustine, S. (2008). Preface: Oral history and oral traditions. In R. Hulan & R. Eigenbrod (Eds.), *Aboriginal oral traditions* (pp. 13-43). Halifax, NS: Fernwood Publishing with the Gorsebrook Research Institute.

Backhouse, C. (1999). *Colour-coded: A legal history of racism in Canada, 1900-1950.* Toronto, ON: University of Toronto Press.

Barsh, R. L. (2001). A "new partnership" for Indigenous peoples: Can the United Nations make a difference? In S. Lobo & S. Talbot (Eds.), *Native American voices: A reader* (pp. 533-534). Upper Saddle River, NJ: Prentice Hall.

Berger, T. R. (1982). *Fragile freedoms: Human rights and dissent in Canada.* Toronto, ON: Irwin Publishing Inc.

Bhatia, G., O'Neill, J.S., Gall, G., & Bendin, P. (Eds.). (2000). *Peace, justice, and freedom: Human rights challenges for the new millennium.* Edmonton, AB: University of Alberta Press.

Blackstock, C. (2011). The Canadian Human Rights Tribunal on First Nations child welfare: Why if Canada wins, equality and justice lose. *Children and Youth Services Review*, 33, 187- 194.

Bleich, D. (1988). *The double perspective: Language, literacy and social relations.* New York, NY: Oxford University Press.

Boldt M. & Long J. A. (1985). Tribal philosophies and the Canadian Charter of Rights and Freedoms. In M. Boldt & J. A. Long, (Eds.), *The quest for justice: Aboriginal Peoples and Aboriginal rights* (pp. 165-179). Toronto, ON: University of Toronto Press.

Boldt M. & Long J. A. (1985). Tribal traditions and European-Western political ideologies: The dilemma of Canada's Native Indians. In M. Boldt & J. A. Long, (Eds.), *The quest for justice: Aboriginal Peoples and Aboriginal rights* (pp. 333-346). Toronto, ON: University of Toronto Press

Borrows, J. (2008). Wampum at Niagara: The Royal Proclamation, Canadian legal history, and self-government. In M. Asch, (Ed.), *Aboriginal and treaty rights in Canada: Essays on law, equality, and respect for difference* (pp. 155- 165). Vancouver, BC: UBC Press.

Borrows, J. (2016). *Freedom and Indigenous Constitutionalism*. Toronto, ON: University of Toronto Press.

Burke, R. (2010). *Decolonization and the evolution of international human rights.* Philadelphia, PA: University of Pennsylvania Press.

Canadian Human Rights Commission. (2011). *Human rights handbook for First Nations: Rights, responsibility, respect.* (Cat. No. HR4-10/2011). Ottawa, ON: Minister of Public Works and Government Services.

Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, and Social Sciences and Humanities Research Council of Canada, (2010). *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans.* Ottawa, ON: Author.

Churchill, W. (2003). An American Holocaust? The Structure of Denial. *Socialism and Democracy*, 17(1) 25-42.

Citizenship and Immigration Canada. (2012). *Discover Canada: The Rights and Responsibilities of Citizenship.* Ottawa, ON: Canadian Government Printing Office.

Citizenship and Immigration Canada. *Backgrounder: Comments about Discover Canada.* Retrieved from http://www.cic.gc.ca/english/department/media/backgrounders/2011/2011-03-14b.asp.

City of Edmonton, Aboriginal Relations Office, (2005). *Declaration: Strengthening relationships between the City of Edmonton and urban Aboriginal people.* Edmonton: Author.

Clarke, S. (2007). Ending discrimination and protecting equality: A challenge to the INAC funding formula of First Nations Child and Family Service Agencies. *Indigenous Law Journal, 6*(1), 79-100.

Claude, R. & Weston, B. (Eds.). (2006). *Human rights in the world community: Issues and action.* Philadelphia, PA: University of Pennsylvania Press.

Clément, D. (2008). *Canada's rights revolution: Social movements and social change, 1937 - 82.* Vancouver, BC: UBC Press

Cohen, D., de la Vega, R., & Watson, G. (2001). *Advocacy for social justice: A global action and reflection guide.* Bloomfield, CT: Kumarian Press.
Cooper, M. (2008). Really useful knowledge: A cultural studies agenda for writing centers. In R. Barnett and J. Blumner (Eds.), *The Longman guide to writing center theory and practice* (pp. 335-349). New York, NY: Pearson Longman.
Couture, J. (1996). The role of Native Elders: Emergent issues. In D. Long & O. Dickason (Eds.), *Visions of the heart: Canadian Aboriginal issues* (pp. 41-56). Toronto, ON: Harcourt Brace & Company.
Cowan, J. K., Dembour, M., & Wilson, R. (Eds.). (2001). *Culture and rights: Anthropological perspectives.* Cambridge, UK: Cambridge University Press.
Crier, J. (May, 2011). Revitalization of Indigenous Languages. *EDPS 539 Revitalization of Indigenous Languages*. Lecture conducted from University of Alberta, Edmonton.
Daes, E. I. (2011). The UN declaration on the rights of Indigenous Peoples: Background and appraisal. In S. Allen & A. Zanthaki (Eds.), *Reflections on the UN declaration on the rights of Indigenous Peoples* (pp. 11-40). Portland, OR: Hart Publishing.
Dembour, M.B. (2010). What are human rights? Four schools of thought. *Human Rights Quarterly 32*(1), 1-20.
Denzin N. K. & Lincoln, Y. S. (2003). *The landscape of Qualitative research: Theories and issues.* Thousand Oaks, CA: Sage Publications.
Denzin N. K. & Lincoln, Y. S. (2000). *Handbook of Qualitative research (2nd Edition).* Thousand Oaks, CA: Sage Publications.
Dickinson, P. (1994). Orality in literacy: Listening to Indigenous writing. *Canadian Journal of Native Studies,* 14(2), 319-340.
Dyck, E. (2013). *Facing Eugenics: Reproduction, Sterilization, and the Politics of Choice*. Toronto: ON: University of Toronto Press.
Eliadis, P. (2014). *Speaking out on human rights: Debating Canada's human rights systems.* Montreal, QC: Queen's University Press.
Ermine, W. (2007). The ethical space of engagement. *Indigenous Law Journal 6*(1), 193 – 203.
Estévez, A. (2011). Human rights in contemporary political sociology: The primacy of social subjects. *Human Rights Quarterly 33*(4), 1142-1162.
First Nations Child and Family Caring Society of Canada. (n.d.). I am a witness: Canadian human rights tribunal hearing. Retrieved from http://www.fncaringsociety.ca/i-am-witness.
Fleet, A. & Kitson, R. (2009). Rethinking assessment in an Indigenous specific program. *Alberta Journal of Education and Research, 55*(3), 297-413.
Fleras, A. (2005). *Social problems in Canada: Conditions, constructions, and challenges.* Toronto, ON: Pearson Prentice Hall.
Friedel, T. L (2009). Indigenous youths' perspectives on identity, place, and place-based learning and the implications for education. (Doctoral Dissertation). University of Alberta, Edmonton.
Fuller, L. (1969). *The morality of law*, rev. ed. New Haven, CT: Yale University Press.
Green, J. (2014). From colonialism to reconciliation through Indigenous human rights. In J. Green (Ed.), *Indivisible: Indigenous human rights.* (pp. 18-42). Winnipeg, MB: Fernwood Publishing.
Greene, A. S. (2005). Can we be legal positivists without being constitutional positivists? *Fordham Law Review, 73*(4), 1401-1414.

Greenspan, I. (2014). How can Bourdieu's theory of capital benefit the understanding of advocacy NGOs? Theoretical framework and empirical illustration. *Nonprofit and Voluntary Sector Quarterly 43*(1) 99-120.
Gunn, G. L. (2014). Getting it right: The Canadian constitution and international Indigenous rights. In J. Green (Ed.), *Indivisible: Indigenous human rights.* (pp. 194-216). Winnipeg, MB: Fernwood Publishing.
Gunn Allen, P. (1989). *Spider Woman's granddaughters*. Boston, MA: Beacon Press.
Hacker, K. (2013). *Community based participatory research.* Thousand Oaks, CA: Sage Publications Inc.
Hartley, J., Joffe, P. & Preston, J. (Eds.) (2010). *Realizing the UN declaration on the rights of Indigenous Peoples: Triumph, hope, action.* Saskatoon, SK: Purich Publishers.
Henderson, J. Y. (2008). *Indigenous diplomacy and the rights of peoples: Achieving UN recognition.* Saskatoon, SK: Purich Publishers.
Hickman, L.A., Neubert, S., & Reich, K., (Eds.) (2009). *John Dewey between pragmatism and constructivism*. New York, NY: Fordham University Press.
Howard, R. E. (2007). Being Canadian: Citizenship in Canada. *Citizenship Studies 2*(1) 133-152.
Hulan, R. and Eigenbrod, R. (Eds.). (2008). *Aboriginal oral traditions: Theory, practice, ethics.* Halifax, NS: Fernwood Publishing.
Ignatieff, M. (2001). *Human rights as politics and idolatry*. Princeton, NJ: Princeton University Press.
Ishay, M. (2004). *The history of human rights: From ancient times to the globalization era.* Berkeley, CA: University of California Press.
Isaac, T. (2012). *Aboriginal law: Commentary and analysis.* Saskatoon, SK: Purich Publishers.
Joffe, P. (2014). Undermining Indigenous peoples' security and human rights: Strategies of the Canadian government. In J Green (Ed.), *Indivisible: Indigenous human rights* (pp. 217-234). Winnipeg, MB: Fernwood Publishing.
Joffe, P. (2010). Canada's Opposition to the UN Declaration: Legitimate Concerns or Ideological Bias? In J. Harley, P. Joffe, and J. Preston (Eds.), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (pp. 70-94). Saskatoon, SK: Purich Publishing Limited.
Jones, P. (1999). Human rights, group rights, and peoples' rights. *Human Rights Quarterly, 21*, 80-107.
Jones, E. & Perry, A. (2011). *People's citizenship guide: A response to conservative Canada.* Winnipeg, MB: ARP Books.
k. l. (2010, April, 23). "discover canada": the harper government's vision of canada and of immigrants. [Blog comment]. Retrieved from http://www.wmtc.ca/2010/04/discover-canada-harper-governments.html
Kelly, F. (2008). Confessions of a born again pagan. In M. Castellano, L. Archibald & M. DeGagné (Eds.), *From Truth to reconciliation: Transforming the legacy of residential schools.* (pp. 13-42). Ottawa, ON: Aboriginal Healing Foundation.
Kilborn, J. (2008). Cultural diversity in the writing center: Defining ourselves and our challenges. In R. Barnett and J. Blumner (Eds.), *The Longman guide to writing center theory and practice (*pp. 391-400). New York, NY: Pearson Longman.
King, T. (2003). *The truth about stories: A Native narrative.* Toronto, Ontario: House of Anansi Press.

Kovach, M. (2009). *Indigenous methodologies: Characteristics, conversations, and contexts.* Toronto, ON: University of Toronto Press.
Kulchyski, P. (2011). Human rights or Aboriginal rights: Reflections on the UN Declaration on the rights of Indigenous Peoples. *Briarpatch*, *40*(4), 33-35.
Kulchyski, P. (2013). *Aboriginal rights and not human rights: In defence of Indigenous struggles.* Winnipeg, MB: ARP Books.
Kymlicka, W. (1996). The good, the bad, and the intolerable. *Dissent*, *43*, 22-30.
Lamer, A. (2000). Towards a Human Rights Culture in G. Bhatia, J. O'Neill, G. Gall, & P. Bendin (Eds.), *Peace, justice, and freedom* (pp. 15-19). Edmonton: University of Alberta Press.
Lauren, P. G. (2008). *The rights of man: Great thinkers and great movements.* Chantilly, VA: The Teaching Company.
Leclair, J. (2016). Military historiography, warriors, and soldiers: The impact of epistemological choices. In P. Macklem & D. Sanderson (Eds.), *Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal and Treaty Rights* (pp. 179-206). Toronto, ON: University of Toronto Press.
Lightfoot, S. (2012). Selective endorsement without intent to implement: Indigenous rights and the Anglosphere. *The International Journal of Human Rights*, *16*(1), 100-122.
Little Bear, L. (1986). Aboriginal rights and the Canadian 'grundnorm'. In J R. Ponting (Ed.), *Arduous journey: Canadian Indians and decolonization* (pp. 228-242). Toronto, ON: McClelland and Stewart Limited.
Little Bear, L. (2000). Jagged worldviews colliding. In M. Battiste, (Ed.), *Reclaiming Indigenous voice and vision* (pp. 77-85). Vancouver: UBC Press.
Littlechild, W. (2008). Commemorative Address. *United Nations 60th anniversary of the declaration of human rights.* Retrieved from http://www.youtube.com/watch?v=x9xHbFYOfI8
Liszka, J. J. (2002). Moral competence: An integrated approach to the study of ethics. Upper Saddle River, NJ: Prentice Hall.
Lopez, L. (2005). Advancing human rights policy: Does grassroots mobilization and community dispute resolution matter: Insights from Chiapas, Mexico. *Review of Policy Research 22*(1), 77-92.
Lord, J. E. & Stein, M. A. (2008). The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities. *Washington Law Review*, 83, 449-479.
Lyons, O. (2008). A Democracy based on peace. In M. K. Nelson (Ed.), *Original instructions: Indigenous teachings for a sustainable future (*pp. 59-65). Rochester, VT: Bear & Company.
Macklem, P. (2016). Indigenous Peoples and the Ethos of Legal Pluralism in Canada. In P. Macklem & D. Sanderson, (Eds.), *Recognition to reconciliation: Essays on the constitutional entrenchment of Aboriginal and treaty rights* (pp. 17 -34). Toronto: University of Toronto Press.
MacLean, J. (1890). *James Evans: inventor of the syllabic system of the Cree language.* Toronto, ON: W. Briggs. Retrieved from Early Canadian Online: http://www.cnadiana.org/ECO/mtq?doc=30336
May, S. (2008). *Language and minority rights: Ethnicity, nationalism and the politics of language.* New York, NY: Routledge.

McAdam, S. (2015). *Nationhood interrupted: Revitalizing néhiyaw legal systems*. Saskatoon, SK: Purish Publishing.

McChesney, A. (1992). Aboriginal communities, Aboriginal rights, and the human rights system in Canada. In A. Ahmed An-Na'im (Ed.), *Human rights in cross-cultural perspectives: A quest for consensus* (pp. 221-252). Philadelphia: University of Pennsylvania Press.

McDonald, F. and Wood, B. (2013). [Human rights, the Declaration on the Rights of Indigenous Peoples]. Unpublished manuscript, University of Manitoba, Winnipeg, MB.

McFadyen, K. (2012). An Aboriginal Perspective on Canada's Human Rights "Culture". *Cultural and Pedagogical Inquiry* 4(1), 27-42.

McGovern, S. (2000). Reclaiming Education: Knowledge practices and Indigenous communities. *Comparative Education Review*, 44(4), 523-529.

McHugh, T. (2004). *The Time of the Buffalo*. Edison, NJ: Castle Books.

McIvor, S. D. (2004). Aboriginal women unmasked: Using equality litigation to advance women's rights. *Canadian Journal of Women in Law /RFD, 16*, 106-136.

McKay, S. (2008). Expanding the dialogue on truth and reconciliation – In a good way. In M. Castellano, L. Archibald & M. DeGagné (Eds.), *From Truth to reconciliation: Transforming the legacy of residential schools.* (pp. 101-118). Ottawa, ON: Aboriginal Healing Foundation.

Mellinger, S. M. (2014). Beyond Legislative Advocacy: Exploring Agency, Legal, and Community Advocacy. *Journal of Policy Practice,* 12(2), 45-58.

Ministry of Indian Affairs and Northern Development. (1969). Statement of the Government of Canada on Indian Policy 1969. Retrieved from the Indigenous and Northern Affairs website: https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/cp1969_1100100010190_eng.pdf

Mohawk, J. (2008). The Iroquois confederacy. In M. Nelson (Ed.), *Original instructions: Indigenous teachings for a sustainable future* (pp. 54-58). Rochester, VT: Bear & Company.

Monture-Angus, P. (1999*). Journeying forward: Dreaming First Nations' independence.* Halifax, NS: Fernwood Publishing.

Moosa-Mitha, M. (2005). Research as resistance: Situating anti-oppressive theories within critical and difference-centred perspectives. In L. Brown & S. Strega (Eds.), *Research as Resistance: Critical, Indigenous & anti-oppressive approaches* (pp. 37 - 72). Toronto, ON: Canadian Scholars Press.

Moyn, S. (2010). *The Last Utopia: Human rights in history*. Cambridge, MS: Belknap Press of Harvard.

Murithi, T. (2007). A local response to the global human rights standard: The ubuntu perspective on human dignity. *Globalisation, Societies and Education*, 5:3, pp. 277-286, DOI: 10.1080/14767720701661966.

Mutua, M. (2002). *Human rights: A political and cultural critique*. Philadelphia, PA: University of Pennsylvania Press.

Napoleon, V. (2007). Thinking about Indigenous Legal Orders. Research paper for the *National Centre for First Nations Governance*, pp. 1- 23.

Niezen, R. (2003). *The origins of Indigenism: Human rights and the politics of identity.* Berkeley, CA: University of California Press.

Okawa, G., Fox, T., Chang, L. J. Y., Windsor, S. R., Chavez F. B. Jr., & Hayes, L. (2010). Multi-cultural voices: Peer tutoring and critical reflection in the writing centre. *Writing Center Journal, 30*(1), 40-65.

Ong, W. (1982). *Orality and literacy: The technologizing of the world.* New York, NY: Routledge.

Onyx, J. et al. (2010). Advocacy with gloves on: The "manners" of strategy used by some third sector organizations undertaking advocacy in NSW and Queensland. *Voluntas*, 21, pp. 41-61.

Ortiz, S. (1992). *Woven stone*. Tuscon, AZ: The University of Arizona Press.

Overmyer-Velázquez, R. (2003). The self-determination of Indigenous peoples and the limits of United Nations advocacy in Guerrero, Mexico (1998-2000). *Identities: Global studies in culture and power, 10*, 9-29.

Paine, R. (1999). Aboriginality, multiculturalism, and liberal rights philosophy. *Ethos*, *64*(3), 325-349.

Pal, L. (2010). *Beyond policy analysis: Public issue management in turbulent times.* Toronto, ON: Thompson/Nelson.

Phillips, W. (1997). *Recognizing Canadian history: An analysis of the inclusion of native spirituality in human rights law.* Unpublished manuscript.

Pierce, C. (1995) Stress analogues of racism and sexism. In C. Willie, P P. Rieker, B. M. Kramer & B. S. Brown (Eds.), *Mental health, racism, and sexism* (pp. 277-294). New York, NY: Routledge.

Piquemal, N. (2003). From Native North American oral traditions to Western literacy: Storytelling in education. *Alberta Journal of Educational Research, 49*(2), 113-122.

Ramos, H. (2008). Aboriginal protest. In S. Staggenborg (Ed.), *Social movements, (*pp. 55-70). Don Mills, Ontario: Oxford University Press.

Ranciére, J. (2004). Who is the subject of the rights of man? *The South Atlantic Quarterly*, *103*(2/3), 297-310.

Rao N. & Robinson-Pant, A. (2006). Adult education and Indigenous People: Addressing gender in policy and practice. *International Journal of Educational Development 26*(2), 209-223.

Rice, B. & Snyder, A. (2008). Reconciliation in the context of settler society: Healing the legacy of colonialism in Canada. In M. Castellano, L. Archibald & M. DeGagné (Eds.), *From Truth to reconciliation: Transforming the legacy of residential schools.* (pp. 43-63). Ottawa, ON: Aboriginal Healing Foundation.

Ross, R. (2008). Telling truths and seeking reconciliation: Exploring the challenges. In M. Castellano, L. Archibald & M. DeGagné (Eds.), *From Truth to reconciliation: Transforming the legacy of residential schools.* (pp. 143-162). Ottawa, ON: Aboriginal Healing Foundation.

Rihn, A. (2007). Not playing it safe: tutoring an ethic of diversity within a non-diverse environment. *Praxis: A Writing Center Journal, 5*(1), 1-5.

Risse, T., Ropp, S., & Sikkink, K. (Eds.). (1999). *The power of human rights: International norms and domestic change.* Cambridge, UK: Cambridge University Press.

Samson, C. (2001). Rights as the reward for simulated cultural sameness: The Innu in the Canadian colonial context. In J. K., Cowan, M. Dembour, & R. Wilson (Eds.), *Culture and rights: Anthropological perspectives* (pp. 226-245). Cambridge, UK: Cambridge University Press.

Simpson, L. R. (2004). Anticolonial strategies for the recovery and maintenance of Indigenous knowledge. *American Indian Quarterly*, *28*(3/4), 373-384.
Sinclair, M. (1997, April). The historical relationship between The Canadian justice system and Aboriginal People. Presentation at the Aboriginal Justice Learning Network Constituency Group Meeting, Aylmer, Quebec.
Smith, A. (2014). Human rights and decolonization. In J. Green (Ed.), *Indivisible: Indigenous human rights.* (pp. 83-96). Winnipeg, MB: Fernwood Publishing.
Smith L. T. (2005). On tricky ground: Researching the Native in the age of uncertainty. In N. Denzin and Y. Lincoln (Eds.), *The sage handbook of qualitative research* (pp. 85-107). Thousand Oaks, CA: Sage Publications.
Snyder, E., Napoleon, V. & Borrows J. (2015). Gender and violence: Drawing on Indigenous legal resources. *UBC Law Review, 48(2),* 549 - 694.
St. Denis, V. (2007). Aboriginal education and anti-racist education: Building alliances across cultural and racial identity. *Canadian Journal of Education, 30*(4), 1068-1092. Retrieved from http://www.proquest.umi.com
Statistics Canada. Aboriginal Peoples of Canada 2006 Census.
Stavenhagen, R. (2011). Making the Declaration on the Rights of Indigenous Peoples work: The challenge ahead. In S. Allen & A. Zanthaki (Eds.), *Reflections on the UN declaration on the rights of Indigenous Peoples* (pp. 147-170). Portland, OR: Hart Publishing.
Steeves, P. (2010). *Literacy: Genocide's silken instrument.* (Unpublished doctoral dissertation). University of Alberta, Edmonton, Alberta.
Steinhauer, E. (2007). *Parental school choice in First Nations communities: Is there really a choice?* (Unpublished doctoral dissertation). University of Alberta, Edmonton.
Stevenson, S. (Producer). (2013, June 10). The nightly news hour [Television broadcast]. Hobbema, AB: Canadian Broadcasting Corporation retrieved from www://cbc.ca/news/Canada/Edmonton/librarian-hopes-to-open-hobbema-s-1st-public-library-1.1320919.
Stoecker, R. (2013). *Research methods for community change: A project-based approach.* Thousand Oaks, CA: Sage Publications.
Systematic. (n.d.) *Merriam-Webster Online Dictionary.* Retrieved from: https://www.merriam-webster.com/dictionary/systematic.
Tobin, B. (2014). *Indigenous Peoples, customary law and human rights: Why living law matters.* New York, NY: Routledge.
Trudell, J. (2008). The power of being a human being. In M. K. Nelson (Ed.), *Original instructions: Indigenous teachings for a sustainable future* (pp. 318-323). Rochester, VT: Bear & Company.
UNICEF "What is Advocacy" (2014). http://www.advocate-for-children.org/advocacy/laying_a_conceptual_foundation/what_is_advocacy
United Nations General Assembly. (2014). *Report of the special rapporteur on the rights of indigenous peoples, James Anaya.* HRC, 27(3). Available http://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.27.52.Add.2-MissionCanada_AUV.pdf.
Van Dijk, T. (1993). Principles of critical discourse analysis. *Discourse and Society*, *4*(2), 249-283.
Venne, S. (1998). *Our elders understand our rights: Evolving international law regarding Indigenous rights.* Penticton, BC: Theytus Books.

Venne, S. (1997). Understanding Treaty 6: An Indigenous perspective. In M. Asch (Ed.), *Aboriginal and treaty rights in Canada* (pp. 173-207). Vancouver, BC: UBC Press.

Walters, M. D. (2006). The morality of Aboriginal law. *Queen's Law Journal*, *31,* 470 – 492.

Weber-Pillwax, C. (1999). Indigenous research methodology: Exploratory discussion of an elusive subject. *Journal of Educational Thought*, *33*(1), 31-45. http://vnweb.hwwilsonweb.com

Weber-Pillwax, C. (2004). Indigenous researchers and Indigenous research methods: Cultural influences or cultural determinant of research methods. *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health*, *2*(1), 77-90. http://www.pimatisiwin.com/uploads/1470824524.pdf

Wiessner, S. (2008). Indigenous sovereignty: A reassessment in light of the UN Declaration on the rights of Indigenous Peoples. *Vanderbilt Journal of Transnational Law*, *41*(4), 1141-1176.

Wilkes, Rima, et al (2010). Nationalism and media coverage of Indigenous People's collective action in Canada. *American Indian Culture and Research Journal, 34*(4), 41-59.

Wilson, S. (2001). Self-as-relationship in Indigenous research. *Canadian Journal of Native Education, 25*(2), 91-93. http://proquest.umi.com

Wilson, S. (2008). *Research is ceremony: Indigenous research methods.* Halifax, NS: Fernwood Publishing.

Wright, O. M. (2000). Multicultural and anti-racist education: The issue is equity. In T. Goldstein and D. Selby (Eds.), *Weaving connections: Educating for peace, social and environmental justice* (pp. 57 – 98). Toronto, ON: Sumach Press.

Zion, J. W. (1992). North American Indian perspectives on human rights. In A. Ahned An-Na'im, (Ed.), *Human rights in cross-cultural perspectives: A quest for consensus* (pp. 191-220). Philadelphia, PA: University of Pennsylvania Press.

Cases

Attorney-General of Canada v Lavell, [1974] SCR 1349.
Calder v British Columbia (Attorney General), [1973] SCR 313.
Canadian Foundation for Children, Youth and the Law v Canada (Attorney General), 2004 SCC 4.
Canada (Human Rights Commission) v Canada (Attorney General), 2012, FC 445.
Daniels v White, [1968] SCR 517.
Delgamuukw v. British Columbia, [1997] 3 SCR 1010.
Eleko v The Officer Administering the Government of Nigeria & anor. (1928) 6 NILR 19.
First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2.
First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada for the Minister of Indian and Northern Affairs Canada, 2016 CHRT 10 [Compliance Order 1].
First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada for the Minister of Indian and Northern Affairs Canada, 2016 CHRT 16.
Guerin v The Queen, [1984] 2 SCR 335.
Haida Nation v. British Columbia (Minister of Forests). [2004] 3 SCR 511.
Johnson v. M'Intosh. [1823] 21 U.S. (8 Wheat.) 543.
Mitchell v. Canada (Minister of National Revenue), [2001] 1 SCR 911.
Ordan Estate v Grail, [1998] 3 SCR 437.
*Peters v Cambell,*1992 BCSC.
R v Badger, [1996] 1 SCR 771.
R v Drybones, [1970] SCR 282.
R. v. Gladstone, [1996] 2 SCR 723.
R v Hape, 2007 SCC 26.
R v Sioui [1990] 1 SCR 1025.
R v Sparrow, [1990] 1 SCR 1075.
R v Van der Peet, [1996] 2 SCR 507.
R v Marshall, [1999] 3 SCR 456.
S v Makwanyane, 1995, (6) BCLR 665 (CC)
Taku River Tlingit First Nation v British Columbia (Project Assessment Director) [2004] 3 SCR 550.
Worcester v. Georgia, [1832] 31U.S. (6 Pet.) 515.

Appendix A: Consent Form

Background and Purpose
You are invited to participate in a research project that will consider traditional notions of rights and justice and its relationship with Aboriginal rights and human rights. The results of this study will be used to prepare the thesis component of a PhD program in Indigenous Peoples Education and may be subsequently used for possible publications, presentations, or workshops. The potential benefits to community include a contribution to greater understanding of the relationship between these rights dimensions and provide comment on considerations Aboriginal people in using one or more of these rights discourses of rights in political work.

Study Procedures
This research adheres to values and principles of Indigenous Research Methodology that includes a methodological approach of conducting in-depth discussions for the duration of time and at a place that works for you. This research will invite five persons who have worked with Aboriginal communities and have experience around these issues.

If you agree to be interviewed, you will be asked to meet at least once. You will decide whether or not you want your name used or disclosed in any writings, including the thesis or subsequent publications. Your complete anonymity can be guaranteed. The interview may be recorded (audio, video, or handwritten) according to your choice and the information shared will be used as the basis of the thesis. You will be given an opportunity to review the recordings or transcriptions for accuracy before I use them. If the recording is transcribed, the person transcribing will be required to sign a form indicating compliance with confidentiality requirements according to University of Alberta standards of research ethics.

Benefits and Risks
As stated in the purpose, the potential benefits to community include a contribution to greater understanding of the relationship between these rights dimensions and provide comment on considerations Aboriginal people in using one or more of these rights discourses of rights in political work.

There are currently no known risks to participating in this study. If anything is learned during the research that may affect your willingness to continue being in the study, you will be informed as soon as possible.

Voluntary Participation
You are under no obligation to participate in this study, your participation completely voluntary. If you do withdraw from the research, you can inform me either verbally or in writing and tell me what data can or cannot be used for the study.

Confidentiality & Anonymity
The results of this study will be used to prepare the dissertation component of a PhD program in Indigenous Peoples Education and may be subsequently used for possible publications, presentations, or workshops. If you do not care to be identified in the research other options are the use of a pseudonym, anonymous, or identifying you only through your work affiliation. I will be the only person with access to the data and will be kept confidential until the dissemination of the dissertation.

After the thesis is submitted, the data will be given to Dr. Cora Weber-Pillwax, research supervisor, who will store it securely in a locked file cabinet in a locked office for a minimum of five years. Release of the recording may be requested for additional educational/teaching purposes only but the material will only be released on receipt of your signed permission. The data may be used in future research subject to your approval as well as approval by the Research Ethics Board.

Further Information
Any questions you may have about this study may be directed to Krista McFadyen, Cora Weber-Pillwax, Co-Supervisor and Coordinator Indigenous Peoples Education 780-492-7606 and/or Jennifer Kelly, Co-Supervisor and Chair, Educational Policy Studies 780-492-4229.

The plan for this study has been reviewed for its adherence to ethical guidelines and approved by Research Ethics Board 1 at the University of Alberta. For questions regarding participant rights and ethical conduct of research, contact the Research Ethics Office at (780) 492-2615.

Consent Statement
I have read this form and the research study has been explained to me. I have been given the opportunity to ask questions and my questions have been answered. If I have additional questions, I have been told whom to contact. I agree to participate in the research study described above and will receive a copy of this consent form. I will receive a copy of this consent form after I sign it.

_____	_____
Participant's Name (printed) and Signature	Date
_____	_____
Name (printed) and Signature of Person Obtaining Consent	Date