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Decolonising Epistemologies, Pluralising Justice

Insights from the Field of Indigenous Studies

Jessika Eichler, Philippe Boucher, Max Virupaksha Katner, Freddy Sebastián Medina Sepulveda, Lorena Albornoz

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Abbreviations

CSICH	Convention for the Safeguarding of the Intangible Cultural Heritage
EMPI	Multidisciplinary Meeting on Indigenous Peoples
IHRL	International Human Rights Law
IK	Indigenous knowledge
IP	intellectual property
IS	Indigenous science
RJ	restorative justice
TCEs	traditional cultural expressions
TK	traditional (Indigenous) knowledge
UNDRIPS	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change

Foreword

Perspectives of Indigenous peoples have been suppressed for a long time through denial, exclusion, marginalisation or even sometimes through extermination to the point of extinction. The legal discipline is no exemption to this practice. A decolonial approach in the judicial practice acknowledges plural forms of rationales, finds ways to reconcile them, and applies them simultaneously. This is not about relativising a current practice as such. Instead, the objective is acknowledging the capabilities of difference and engaging existing judicial practices of Indigenous communities effectively.

As the authors state in this paper, in terms of legal concepts, sources of knowledge, and legal spaces, decolonial claims for more equity are highly relevant in the context of relations between an Indigenous community with the respective State, their territorial autonomy and political self-determination. The cultural rights of Indigenous people are also closely linked to environmental sustainability. As the authors state based on Fa et. al (2020), although Indigenous peoples make up less than 5% of the global population, they steward 40% of the world's protected nature reserves. In International Cultural Relations, this link is even more significant: inclusive participation and respect for the rights of Indigenous communities are crucial in (international) policy discussions and in offering bottom-up alternative visions of sustainable development which can be more accepted by all stakeholders, including the general public.

This publication is based on findings derived from the panels in the 11th edition of the Multidisciplinary Meeting on Indigenous Peoples (EMPI) held in early June 2024 at Sciences Po Paris. The meeting brought together scholars which resulted in co-authorship of this publication. We decided to publish it under the ifa Edition Culture and Foreign Policy publication series as we recognise the challenge to open up the legal discipline to questions of decoloniality—an endeavour which has been soberly taken up by the authors of this paper, including in terms of methodology. However, the authors underline that this publication tackles merely the first steps for opening the legal discipline to questions of power imbalances and a self-reflection of dominant epistemologies and their historical legacies.

This publication is in line with our continuous effort to address the major barriers in achieving more equitable structures of international collaboration and sustainable development, with a focus on the role of culture and international cultural relations. For more information about our work and our publications, please have a look at the ifa Forum for international cultural relations.

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Abstract

One of Indigenous peoples' most vehement demands certainly lies in their collective endeavours to decolonise their relations with (the) State(s) in the most classical sense, including their related efforts to exercise territorial autonomies and political self-determination. Less attention is spent on the very sources of recognised forms of knowledge, on Indigenous knowledge, on Indigenous approaches to science, and also Indigenous peoples' own justice systems, starting with legal terminology. Decolonising efforts hence require a rethinking ('despensar') of key terminology, of pluralising epistemological spaces and with it, they require entire justice systems of States to be critically approached, and to be ultimately transformed into a new, more inclusive framework.

This publication builds on the debates and results emerging from the 11th edition of the Multidisciplinary Meeting on Indigenous Peoples (EMPI) held in early June 2024 at Sciences Po Paris, carrying the title "Indigenous Responses to Global Crisis Contexts: Decolonising the Law, Indigenising Methodologies, Exploring Legal Orders, Pursuing Environmental Justice, Categorising Vulnerabilities". The conference was co-funded by the German Foundation for Peace Research (DSF) and the université franco-allemande (ufa). It brings together scholars from different world regions bringing in distinguished insights from the field of Indigenous studies. Key terminology is introduced, allowing for critical reflection on hegemonic standards, and the eventual pluralisation of epistemes, of justice conceptions and orders, of entire cosmovisions and ontologies.

Executive Summary

This paper pursues an ambitious agenda in that it seeks to decolonise Indigenous relations with (the) State(s), departing from the very sources and forms of knowledge, commonly established logics and structures in the academic world, and by introducing the reader to Indigenous forms of knowledge and heritage, Indigenous proper approaches to science and Indigenous justice systems. These epistemological reflections go hand in hand with a rethinking of legal terminology which the publication strives to indigenise or to 'despensar' classical law, notably by pluralising epistemologies but also through a critical approach taken towards entire justice systems with the objective of transforming these into more inclusive orders.

In the first part 'Towards Epistemological Pluralism', key terminology is introduced by way of pluralising knowledge sources, including relevant debates on Indigenous traditional knowledge, traditional cultural expression and heritage (both tangible and intangible), Indigenous science and technologies, Indigenous intellectual property and biocultural rights, and also legal pluralism. The authors thereby strive to critically reflect upon hegemonic standards, justice conceptions and orders, but also knowledge foundations Western Science builds on, of entire cosmovisions and ontologies. Some major emphasis is placed on traditional knowledge, a term that has come to enjoy wide acceptance; active use is made thereof, for instance, in global intergovernmental forums deciding on environmental issues such as climate change or biodiversity.

By way of making sense of both tangible and intangible forms of heritage, a wide terminological space is being introduced, building on, inter-alia, practices, representations, expressions, knowledge, skills, instruments, artifacts and cultural spaces. The first part of this paper further seeks to build bridges with other pertinent debates including biocultural rights and the opportunities arising for Indigenous environmental rights and earth jurisprudence to find recognition in the law. Yet another further reaching collective claim arises from Indigenous cultural rights, that of developing and adhering to their proper scientific approaches and also intellectual property over these forms of knowledge, expressions and heritage. And if we were to take epistemological pluralism at face, the diversity of knowledge leads us to competing, conflicting legal conceptions on which (the) predominant legal system and Indigenous justice orders build. The question of legal pluralism seems inevitable in that regard, allowing the reader to critically deal with absolute notions of sovereignty

and law and to appreciate the value inherent in Indigenous justice, Indigenous legal authority and subject holdership.

In the second part 'Pluralising Justice: Indigenous Justice Approaches', Indigenous justice approaches are dealt with by taking due consideration of both the historical roots of injustices and the need to alienate ourselves from a singular and definite approach and instead for Indigenous justice to be conceptualised as a multi-layered process with the mobilisation of various actors to deal with harm and to explore avenues for reparation and for harmful practices to cease. The section also traces the origins of Indigenous justice by studying a multiplicity of cosmovisions, including a case study on the Aymara worldviews.

Indigenous justice is then taken to the field of conflict resolution and restorative justice approaches in particular. It is looked at how genocide and colonisation may require distinct responses that ultimately find embedment in decolonial approaches to Indigenous law and self-determination. The section further addresses the question of what space Indigenous law ultimately occupies in this, what possibilities exist for political autonomy as what meaning can be attributed Indigenous customary law as an independent source of norms. And in a final exploration, Indigenous justice approaches and their internal diversity are taken as a subject meriting proper consideration.

1. Towards Epistemological Pluralism

The need to pluralise knowledge sources, to allow for parallel interpretative authorities to gain recognition, for new terminology to be introduced, or for academia to consider a variety of scientific accounts—all these necessary claims for transformation could be subsumed under the conceptual umbrella of 'epistemological pluralism'. A few indicative (though not being exhaustive) foundational principles, terms, and ultimately rights, are introduced here, serving as a basic orientation while doing justice to debates that have arisen in the field of Indigenous Studies, including, inter-alia, Indigenous traditional knowledge, traditional cultural expressions and heritage (material and intangible), Indigenous science and technologies, Indigenous intellectual property and biocultural rights, and legal pluralism.

The present paper builds on the debates and results emerging from the 11th edition of the Multidisciplinary Meeting on Indigenous Peoples held in early June 2024 at Sciences Po Paris, carrying the title "Indigenous Responses to Global Crisis Contexts: Decolonising the Law, Indigenising Methodologies, Exploring Legal Orders, Pursuing Environmental Justice, Categorising Vulnerabilities" (see also: https://www.youtube.com/@EMPI2024). It brought together scholars from different world regions bringing in distinguished insights from the field of Indigenous Studies. Key terminology is being introduced here, allowing for critical reflection on hegemonic standards, and the eventual pluralisation of epistemes, of justice conceptions and orders, of entire cosmovisions and ontologies.

Rather frequently, Indigenous '**traditional knowledge**' (**TK**), '**traditional cultural expressions**' (**TCEs**), '**cultural heritage**', and '**manifestations of indigenous science(s), technologies and cultures**' find common expression, famously in international human rights law (e.g. Declaration on the Rights of Indigenous Peoples/UNDRIPS, art. 31) which establishes a dedicated right to maintain, control, protect and develop these collectively, and to maintain their **intellectual property (IP)** over these forms of knowledge, expression and heritage. International scholarship and legal instruments seem to suggest that **TK** and **TCEs** are to be categorically distinguished from **cultural heritage**, with their distinct features and legal implications (Alves, 2015; see also Adjei, 2020), being a question of distinct legal frameworks (heritage law vs. IHRL) which also qualifies the extent to which TK(E)s and heritage are understood as proper human rights. Indeed, we may want to consider cultural heritage regimes shaped

by yearly selection processes in an intergovernmental setting—hence, inherently politicised—and thus following entirely different logics from the process of rights litigation. Because of this, TK and TCE rather fall under cultural rights, hence allowing cultural rights to become judiciable.

Under yet a different conceptual frame, **TK**—together with genetic resources[1], self-governance, and benefits from the utilisation thereof by third parties—are often considered **biocultural rights**, referring to a right granted to Indigenous peoples to steward their lands and resources in accordance with their procedures and practices (Bavikatte & Bennett, 2015). Indeed, **TK** is commonly understood as a concept that finds its roots and application in Indigenous contexts: by way of defining the term, **TK** is associated with the "intellectual achievements held by indigenous and local communities" (Riffel, 2014, p. 1). A similar (Indigenous) approach is maintained by the Secretariat of the Convention on Biological Diversity in 2007, notably, as concerning the highly pertinent art. 8(j), defining **TK** as forms of knowledge, innovations and practices that are maintained or developed by Indigenous and local communities.

In terms of **cultural heritage**, we will need to further classify this term, taking into account forms of **material cultural heritage** (as in buildings or nature) and **intangible cultural heritage**, including "practices, representations, expressions, knowledge (...) skills as well as the instruments, artifacts and cultural spaces associated therewith", namely those considered by communities, groups and individuals as being part of their cultural heritage (CSICH, 2003, art. 2(1)). We may recall here that **cultural heritage**, tangible or intangible, if placed under the auspices of UNESCO, remains subjected to the decision-making powers of intergovernmental conferences, hence escaping the monitoring competence of international human rights law, with its State reporting system, State visits, its individual submission procedure or inter-State complaints (see e.g. Eichler, 2020).

Indigenous science (IS) similarly assumes a middle or intermediatory position as **IS** connects with and finds its foundation in **Indigenous knowledge (IK)**

[1] Genetic resources or also genetic diversity fall under biodiversity protection and language; genetic diversity is considered one of the three elements of biodiversity (alongside species and ecosystem diversity) under the post-global framework based on the Convention on Biological Diversity (CBD), see e.g. Hoban et. al (2020).

systems. It is based on the view that by virtue of being participants in culture, all peoples "are affected by the worldview and interests of their home communities and homelands" (Snively & Corsiglia, 2016, p. 80). In other words, all (peoples') cultures are vested with their own science which is, in that sense, understood as 'Indigenous science' (Ogawa, 1995). Conversely, **Western Science** is considered the most dominant science on this globe (Snively & Corsiglia, 2016, p. 80). Since commonly being associated with ecological disasters, **Western Science** has come to be viewed as problematic, possibly counterproductive (Snively & Corsiglia, 2016). Indeed, a common thread running through **IS** and **IK** approaches lies in their affinity with and explicit objective to serve environmental purposes, intergenerational needs and sustainability agendas.

Now, if we are to take epistemological pluralism seriously, the diversity of knowledge inevitably gives rise to competing, also conflicting, legal conceptions on which both the predominant legal system and Indigenous justice orders are ultimately built. A common scholarly frame adhered to in these debates lies in '**legal pluralism**', broadly based on the idea that societies may contain several legal systems, that possibly all societies are to be considered legally plural and for that latter criterion to be decisive for gaining an understanding of the relationships between judicial orders and legal subjects (Gover, 2020).

While **legal pluralism** is not as such limited to Indigenous contexts, it proves particularly suitable for a number of reasons. Legal doctrine in States where Indigenous communities reside is commonly based on "absolutist notions of sovereignty and law to deny the independent legal authority of indigenous peoples" (Gover, 2020, p. 847); as a corollary, only those Indigenous laws recognised by the State's institutions (as derivatives from State sovereignty) are also formally understood as 'law' (Gover, 2020). Sally Engle Merry (1988) also traces the origins of **legal pluralism** to the discovery of Indigenous laws with legal pluralism later to also accommodate the pluralistic features of law under contemporary (official) law. In very practical terms, questions of **legal pluralism** become relevant where Indigenous land rights enter into conflict with investment law and relevant property-oriented considerations (Zumbansen, 2017).

1.1 Indigenous Knowledge and Science in Conserving the Environment

The importance of **TK** or **Indigenous science** in achieving environmentally sustainable development has been recognised as essential since the Indigenous world provide many lessons in biodiversity conservation management (Roth-Arriaza, 1996). It is well known that Indigenous peoples inhabit territories with high **biological diversity** and disproportionately affected by extractive projects. In this sense, their role is essential for safeguarding this biological diversity, the benefits of which will be enjoyed globally. Indeed, Indigenous peoples are commonly considered as **stewards or guardians of the earth** (Bennett & Sanjay Bavikatte, 2015), also assuming key roles as translators of non-human species with these occupying central positions in their worldviews and spiritual orientation. **IK** debates in the environmental context also necessarily give rise to questions of duties if assuming an Indigenous cosmogenic approach vis-à-vis Mother Earth, the position of guardians demonstrating a humble position rather than being hierarchically superior to earth and non-human species (Berry, 1999; Solón, 2017). This may give rise to a variety of functions and positions, for Indigenous representatives to act as translators in the legal process, as expert knowledge keepers and witnesses, as being directly affected by resource extraction projects or as advocates and active promoters of the environment.

The survival of Indigenous peoples has been depending on them being able to make use of **Indigenous knowledge (IK)**, as it relates to the qualities or attributes of the natural environment and in that context addressing technological matters as well. **Indigenous technology** is stored in "peoples' memories and activities such as stories, songs, folklore, proverbs, dances, myths, cultural values, beliefs, rituals, community laws, local language and taxonomy, agricultural practices, equipment, materials, and plant species" (Grenier, 1998, p. 2). Indeed, the Inter-American Court of Human Rights in the *Sarayaku* decision most notably referred to not only the physical dimension of collective survival but also cultural survival, giving rise to legally recognised claims.

1.2 Decolonising Classical Legal Concepts

It may be legitimately argued that the very starting point to the debate on legal pluralism lies in conceptuality, often framed as dualisms or diametric opposites, that is, ontological concepts that stand at the opposite side from each other. This may concern, classically, property and land concepts; it may relate to the equality rationale defended in the Global North as opposed to special rights being gradually established which commenced with the adoption of UNDRIPS; it may include Indigenous knowledge claims standing in contradiction with predominant epistemic systems; it would find expression in ecocentric vs. anthropocentric approaches, and also in intergenerational rights opposed to claims limited to the current generation.

Let us concern ourselves with **land rights** for a moment, and its corollary, the idea of **property**. Ever since the colonial age, Indigenous ancestral lands were subjected to the Western idea of land, taking an individualised, property-oriented form (see e.g. Samson & Gigoux, 2017). This would not only concern the forms of land titles recognised (or not), but also completely ignore the proper use of Indigenous lands, subjecting these to the 'terra nullius' doctrine. Indeed, Western legal sources would be considered as the only valid form of law, thereby dismissing Indigenous proper forms of law, while failing to recognise Indigenous legal authorities.

> **Terra Nullius**: With the so-called 'conquista', a new practice would gain common acceptance, that of settling in Indigenous territories, especially resource-rich areas. Indigenous-inhabited land was commonly classified as 'uninhabited' territory on grounds of missing documentation, and as a consequence, such land became subject to entirely new negotiations. These forms of 'no man's land' became part of colonial practice, a classical case of historical dispossession.

Classical legal thought similarly portrays the idea of **equality** as a founding rationale of constitutional frameworks and legal orders generally, initiating with the 18th century *Déclaration des Droits de l'Homme et du Citoyen* and the *Bill of Rights* (US). Especially in its *de jure* sense and its low-scale ambitions in mitigating inequalities, equality may serve as a perpetuating force, that of maintaining the status quo, hence demonstrating a certain ignorance towards

difference. Evidently, this stands in clear contrast with the group-specific nature of claims made by Indigenous peoples or ethnic, cultural, linguistic or religious minorities. Until now, collective rights only enjoy peripherical attention, let alone legal recognition, which not only proves disabling as far as the justiciability of claims is concerned, but also in doing justice to Indigenous communitarian ideas of land issues.

Another commonly referred to conceptual dualism is found in debates on epistemological pluralism – contrasting **Indigenous traditional knowledge (TK)** with predominant forms of knowledge. Most notably, the right to alternative knowledge is understood as a right to distance oneself from some form of 'regulated knowledge', taking the direction of so-called 'emancipatory knowledge' (Sousa Santos, 2013, p. 91). In other words, it is referred to a form of knowledge that precedes from a logic of 'from chaos to order' to a manifestation of knowledge residing in the logic 'from colonialism to solidarity' (Sousa Santos, 2013, p. 91). **Occidental knowledge**, by contrast, would assume a number of functions and formats in the colonisation process: knowledge was notably used to "discipline the colonised", either through "exclusion, marginalisation and denial", or in even more brutal ways, for Indigenous children to be forcibly removed from their parents and adopted in New Zealand and Australia or sent to residential schools in Canada (Smith, 2012, pp. 71-72). The idea of **TK**, it could be argued, also carries implications on how the law is being understood, as the foundation of **TK** lies in its capacity to be attentive to physical and ecological relationships which, in turn, allows to relate the law with the "material interconnectedness of all life systems" (Davies, 2017, p. 260).

Landmark decision on communitarian idea of land and property (IACtHR in *Awas Tingni vs. Nicaragua*): "*Given the characteristics of the instant case, some specifications are required on the concept of property in Indigenous communities. Among Indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centred on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of Indigenous people with the land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival (for Indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations)*". (para.149).

A similar rationale may be found in debates on the position of human beings towards the environment, again finding expression in a conceptual dualism, notably, that of **ecocentrism** and **anthropocentrism**. While critical voices understand the law as anthropocentric, dualistic and positivistic, calling upon the law to concern itself with inter-subject relations (Bagni, 2021), other schools of thought refer to the separation of nature and people becoming apparent in patterns of dominion (Acosta, 2021), occasionally termed 'ecological apartheid' (Shiva, 2011). Further categorisations were introduced by the Colombian Constitutional Court, differentiating between **anthropocentric**, **bio-centric and eco-centric rights** (Ruiz Molleda, 2021). **Indigenous environmental rights** could be considered as establishing a middle ground between allegedly contradictory demands and entire paradigms regulating, for example, relations between humans and other species, finding further expression in so-called 'earth jurisprudence' (Sajeva, 2020; Solón, 2017; Berry, 1999) or Mother Earth laws.

A related debate concerns that of the intergenerational dimension of knowledge transmission: **intergenerational stewardship** (of the earth) (Bennet and Bavikatte, 2015; Winter, 2022; Page 2007) exemplifies such special relation, and relatedly, questions of accountability are raised in that regard. Again, we are witnessing the emergence of two opposing directions taken in the field: intergenerational claims may be understood as standing in contradiction with the exclusive claims raised by current generations as far as subsistence rights and a healthy environment are concerned. Finding its rationale in **intergenerational environmental justice** theory, it was maintained elsewhere that:

> *"X has interests which are sufficiently weighty to impose obligations on others' we can then claim that X is future generations and weighty interests are such things as life, health and subsistence, the living have obligations to protect future generations from environmental damage that threatens their weighty interests. Moreover, we have a basis also for the obligations to Indigenous justice where weighty interests include the right to maintain 'customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs'" (Winter, 2022, p. 135).*

As it is unequivocally demonstrated here, a strong rights-duty nexus is created in the intergenerational context, placing strong emphasis on the integrity and other existential needs of future generations and also current generations of Indigenous peoples.

1.3 Resolving Environmental Problems through Indigenous Methodologies: Some Points of Departure

Unfortunately, Indigenous peoples have largely been excluded from **climate policy decision-making processes** at the international and domestic levels. Some Indigenous peoples are officially delegated to participate in negotiations at the UN, but their leverage is nevertheless very limited. In this framework, some Indigenous organisations have built alliances, made use of special procedures, and eventually developed common positions around, for instance, UNFCCC (United Nations Framework Convention on Climate Change) processes (Jarandilla, 2018). It seems to make sense to engage further with the underlying conceptions Indigenous peoples bring into these debates and, ultimately, the spaces of decision-making.

The origin and anthropocentric conception of climate justice is certainly attributable to the Global North. Indigenous peoples are deconstructing and redefining it through new legal concepts and contributing their voices to climate change based on a **cosmocentric conception of life** (Pacheco, 2013). They have

embraced the conception that human beings are part of **Mother Earth** and coexist with other forms of life; according to their view, the interrelationship among beings is strong and everything has an impact on the whole system (Jarandilla, 2018, p. 4).

Indicative of Indigenous identities in that regard are, inter alia, **respective duties towards communities, 'senti-thinking' (no separation between thinking and doing); biocentrism, the collective concept of individual and collective life, particular ways of inhabiting the land, and dialogue with non-human subjects**. These definitions need to be accommodated and should not occupy an inferior position in the legal system. For example, in the case of the Mapuche people, Melin tells us that Mapuche society uses its own legal system called **'Az Mapu'**, which regulates all aspects of life – spiritual, legal, and moral. Its core function is to establish an order that allows harmony between human beings, nature, and the spiritual world. In this context, the panacea for Indigenous culture is not limited to 'human' rights, since animals and spiritual beings also have rights (Melin et al., 2016). The same case concerns the rights of nature incorporated in Ecuador's legislation.

Indeed, much merit lies with **legal pluralistic** thought in that regard, adopting a methodological function considered to assume a facilitating role when decolonising justice—**decolonising the mind but also knowledge-power relations** (Nursoo, 2018; Smith, 1999). An interesting nexus could be established with environmental protection here, with humanity having developed a hierarchical positioning (Farget, 2016). A communitarian perspective could and should be derived from this creating an atmosphere in which all beings live in community and dependence, with human needs are not to infringe upon the rights of others (Choquehuanca, 2021).

1.4 Sources of Indigenous Knowledge

The nature of knowledge is not "confined to Halls or colledges or forum(s)" of formal academia—people produce knowledge independent of such formalised spaces, and Indigenous communities value knowledge by its practicality in living interdependently with the surrounding environment (Davis, 2011, p. 114; Davis, 1998, p. 6).

What exactly is **Indigenous knowledge (IK)**? Broadly construed, it is "all folk or popular knowledge [...] preserved in oral traditions and local practices" of a given community (Coombe, 1998, p. 77). IK is cultivated over "generations of intimate contact by native peoples with their lands," developing rich bodies of information extracted from local environments over millennia (Mauro & Hardison, 1999, p. 1264). **IK** adapts and "evolves as ecosystems and other factors change, but remains grounded in the more enduring aspects of identity, culture, generations, and spirituality" (Coombe, 1998, p. 77). These interdependent dimensions are vital for the planet's ecology. Indigenous people comprise less than 5% of the global population, yet steward "at least 38 million km^2 of land across 87 countries [representing] over 25% of the world's land surface[,] 40% of all terrestrial protected areas, and 37% of remaining natural lands" (Fa et al., 2020).

Indigenous interests over resources include the physical properties of nature, and "closely interconnected [...] intangible knowledge associated with these," forming a wide range of rights encompassing the right to maintain, control, protect and develop "the knowledge of the country in which the items grow[,] topography, landforms, geographical features, seasons, climate[;] spiritual or cosmological aspects[;] environmental and ecological knowledge[, how] this knowledge is practiced and applied;" and especially "control, management, and transmission" to others (Davis, 2001, p. 310). Indigenous "physical products and [cultural] expressions" form an interconnected knowledge system and include funerary, "ceremonial, and ritual objects and performances, artistic designs, works and expressions [such as] song, dance and story, and subsistence and land environment management activities" (Davis, 1998, pp. 6-7). These practices and creations possess untold cultural value; Mayan weavers incorporate cosmological symbols and patterns such that "we dress in books written thousands of years ago," describing their textiles as "the books colonization couldn't destroy" (Elizabeth Chacón, 2020, pp. 51; 59).

Non-Indigenous land 'experts' frequently overlook land-based IK where "'being in place' is much more than living there, occupying, and inhabiting the place [...] it is experience in place that gives [Indigenous people] meaning and depth [encompassing] memory, histories, and a sense of self versus others" (Davis, 2011, p. 119-120, 122). Despite Australian efforts clustering Local Aboriginal Land Councils into distinctly mapped areas, the Wiradjuri for example prefer to

speak of landscape divisions imbued with meaning over "boundaries on a map," such as how "Wiradjuri was no longer spoken as a first language where the open eucalyptus forest gave way to the grassy plains and mallee scrub" (Davis, 2011, p. 119; Macdonald, 1998, p. 163). Yolngu belief claims "people without land are people without identity," while the Tubbah-Gah say they never left their homelands despite living elsewhere, for their **Indigenous land-based identity** is "not anchored to a particular locality [but rather] something we take away from place" within our person; space has "greater plasticity than place" alone (Davis, 2001, pp. 304-305; Davis, 2011, p. 121). The Māori Whanganui Iwi community considers itself and their river as a single, indivisible living entity, embodied in the phrase "*Ko au te awa, ko te awa ko au*" (I am the river, the river is me) (New Zealand Ministry of Education, (n.d.); Te Awa Tupua, 2017). This identity overlap emphasises specialised knowledge about the river's ecosystem and carries "a **consciousness of space**" underlying "a knowledge of place that enables the knowledge of self" (Davis, 2011, p. 122).

Intergenerationally-passed/ancestral knowledge of the collective land one lives in naturally leads to expertise on local biodiversity management and ecological knowledge, such as:

> *"mental inventories of local biological resources, and local plant, crop, and tree species [...] trees and plants that grow well together, and indicator plants, such as plants that show the soil salinity or that are known to flower at the beginning of the rains [...] seed treatment and storage methods and tools used for planting and harvesting" (Craig & Davis, 2005, p. 37).*

The Bangladeshi Khasia community employs a forest-tree cultivation system for betel-leaves within reserve forests they inhabit (Haider et al., 2013, p. 231), supplying 50% of Bangladesh's domestic demand (Saha & Azam, 2005, p. 275). Forest-based cultivation outpaces settler-deforested monocropping by intertwining other plants in mixed-use through "intensive cultural operations [that are] required for attaining" optimal harvests of not just betel-leaves but also "jack fruit, mango, guava pineapple, lemon, etc." (Saha & Azam, 2005, p. 282). This sustainable practice preserves the biodiversity on which the Khasia depend, treating 29 different ailments with 26 species of forest plants and herbs (Uddin & Mukul, 2012).

Some States have begun to legally recognize the importance of IK "as a separate knowledge system [...] intimately weaved into the livelihood and culture of indigenous communities [reflecting a] dialectical relationship with the surrounding biodiversity" (Chowdhury, 2004, p. 4984). **Intellectual property protections for IK** may turn "public goods such as indigenous knowledge and biological resources into private properties" as a way to combat underinvestment and "enable tribal herbalists, shamans, peasant farmers, and governments to profit from indigenous knowledge and conservation activities" (Coombe, 1998, pp. 92-93). Yet the term 'intellectual' implies the knowledge base's universal existence beyond the context of use, as if "medicines and foodstuffs" that are "developed for specific uses in one society" lend themselves to abstraction and when written "in technical form [can be] put to use anywhere" (Coombe, 1998, p. 79). This causes tensions where IK "not fully integrated into market economies" is not readily divisible, distinguishing "the intellectual from the material, texts from their contexts, and knowledge from social relationships" (Ibid.) Many Indigenous communities view such compartmentalisation as a neocolonial tactic to segment traditionally integrated rights, separating Indigenous peoples from their rights to "land and resources on, above, and under" Indigenous territory (Ibid.).

After all, Indigenous interests and claims over biological resources includes the physical items themselves, "plants and animals, parts of these, and products derived from them," as well as the "closely interconnected[,] intangible knowledge associated with these," forming a sizeable 'bundle of rights' that encompasses rights to "the knowledge of the country in which the items grow [...] topography, landforms, geographical features, seasons, climate[;] spiritual or cosmological aspects[;] environmental and ecological knowledge [and how] this knowledge is practiced and applied," especially via the "control, management, and transmission" of this knowledge to others (Davis, 2001, p. 310).

The form by which most IK develops is **cultural and communal**, particularly in the context of Indigenous communities that share "land, material resources, knowledge, ancestors, animate and inanimate beings, and [...] practice of trial and error to meet practical shared needs" (Coombe, 1998, p. 80). Since the duty falls upon the community to use and protect IK rather than upon any specific individual, its transformation, viability, and further flourishing depends on the "sharing and the free flow of innovations within the community"—this is

fundamentally at odds with property regimes that "[freeze] in written form" sources of knowledge that are inherently "dynamic and constantly changing" (Coombe, 1998, p. 81).

After Indian officials discovered entrepreneurs commonly stole IK under the guise of patent filing, Parliament classified IK-derived inventions as non-patentable (Chowdhury, 2004, p. 4986). Indeed, much cultural, linguistic, and associational knowledge "cannot adequately be conserved by setting it aside in a museum, or by recording it on paper or electronically"—it can only endure for future generations' benefit through active use and practice "kept alive" via **generational transmission** (Coombe, 1998, p. 93). Expanding IK protection from the arena of personalised property rights to community-held rights promises an appropriate policy solution in situations where these conflicts of interest arise.

1.5 Epistemological Landscapes: Spaces of Transformation

An often-neglected epistemological concern is that of Indigenous participation in academia, demanding, inter alia, structural change in many aspects, effective ways of allowing for Indigenous authorship, recognition of Indigenous sources of knowledge, consideration of oral traditions and 'unconventional' forms of publishing, as well as language-related considerations. Reasons for launching these debates may also be attributed to "late-modern" and "late-colonial" conditions introducing a "new wave of exploration, discovery, exploitation and appropriation" (Smith, 2012, p. 25). Indigenous scholars have similarly drawn our attention to the inherent dangers of post-colonialism, bearing the potential of "reinscribing or reauthorising the privileges of non-indigenous academics" (Smith, 2012, p. 25). What is of concern here relates to the very portrayal of the subject-matter being studied: Occidental academic accounts have been referring to 'Indigenous problems' to be studied, understanding Indigenous peoples as passive objects of research and vesting the non-Indigenous academic world with power and control while also obtaining profits in a multiplicity of ways from Indigenous knowledge (Porsanger, 2004, p. 108).

Beyond the undoubtedly important epistemological space of the academic world, Indigenous peoples are confronted with unequal conditions in any field related to knowledge creation, transmission or transfer. A major starting-point lies with their very epistemological autonomies and self-determination which are not—as commonly assumed—limited to a territorial or political meaning only, but encompass a pluralism of manifestations.

Challenges to their epistemological autonomy may include integrationist education systems, harmonising language policies, one-sided cultural heritage politics, a singular understanding of cultural expressions tailored to the State's harmonising narrative and discourses, or other forms of cultural expression finding articulation in public life.

The Bolivian and Ecuadorian constitutional orders (see e.g. Yrigoyen Fajardo, 2016; Sieder, 2016) may serve illustrative purposes here, allowing a number of pluralisms to be elevated to constitutional rank, starting with the recognition of Indigenous cultural identities. In the same region Indigenous universities have been established, including the Universidad Indígena Boliviana Aymara Tupak Katari or the Universidad Intercultural de las Nacionalidades y Pueblos Indígenas Amawtau Wasi, allowing students to be educated in Indigenous languages and in subjects of importance to Indigenous communities including degrees in, inter alia, law with a focus on legal pluralism, language and culture, agroecology and food sovereignty, communitarian water management or ancestral knowledge of intercultural and communitarian nutrition. The idea of epistemic justice has become part of the overarching attempt to decolonise the disciplines and universities (Pande, Chaturvedi & Daya, 2023). Some progress may also be noted in terms of society-wide developments with a Bolivian law requiring all public servants to learn an Indigenous language.

Now, epistemic pluralism certainly constitutes a valuable legal category on its own, giving rise to specific rights, and it is indeed its justiciability that we want to shed light on here, often taking the form of political claims to translate proper interests into the public domain. The concept of epistemic injustice may be relevant here, referring to a wronged person in her/his/x's capacity as a knower (Fricker, 2013). It is the infringement of someone's rights but also the preventive potential of the law that we need to consider from a legal perspective. The idea of justice is commonly invoked in such contexts as it is witnessed elsewhere, "to

speak meaningfully of rights politics in most of the world is to necessarily invoke elements of anti-imperial epistemic justice in one way or another" (Madhok, 2023, p. 1). These struggles are inherently political, hence requiring answers beyond the sporadic recognition of the right to maintain and develop traditional knowledge: it is also about unequal representational legitimacy of the State vis-à-vis subaltern groups (Madhok, 2023). Especially procedural rights (usually political rights) provide a noteworthy venue for other rights such as knowledge-related claims to find their way into the justice system. Seemingly however, structural issues, including the very architecture of the State, may need to be reformed in a first, ground taking step.

1.6 Recommendations

Legal Conceptualisations and Legal Pluralism

- Reforming and indigenising laws in domestic orders principally, but also in regional intergovernmental systems and international orders where appropriate
- Introducing legal pluralism and mainstreaming legal pluralistic rights into all fields of law and possible sectors.
- Dealing with the (formal) equality rationale in a critical manner while raising awareness for special rights regimes including collective rights.
- Aligning any forms of policies and regulations to the objectives and safeguards established with art. 31 UNDRIPS for measures to enable Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions as well as manifestations of their sciences, technologies and cultures etc.
- Formalising and codifying intergenerational rights, integrating these into existing legal orders or new laws, establishing respective rights and duties.

Epistemological Shifts and Traditional Knowledge

- Recognising Indigenous knowledge approaches on environmental protection and transfer of findings to environmental conservation policies; this includes Indigenous cosmocentric conceptions of life and interrelationships with other beings, with human beings constituting an integrative part of Mother Earth.

- Adopting measures to strengthen Indigenous knowledge ties as it relates to land issues.
- Adopting Indigenous knowledge and intellectual property protection regimes that recognise Indigenous communal and collective rights rather than individual rights.
- Strengthen the linkages between scientific and traditional local and Indigenous knowledge related to biodiversity for the benefit of local knowledge holders, scientists and decision-makers upon Indigenous consent.
- Engaging in efforts to strengthen alliances between international community and Indigenous peoples in the management of genetic resources and nature by adopting a rights-based approach and making such information publicly available.
- Strengthening Indigenous ways of maintaining and developing ancestral knowledge of collective land as to, for instance, local biodiversity management and ecological knowledge.
- Taking respective measures to prevent and compensate for exclusion of Indigenous peoples from climate policies and decision-making, also paying due regard to Indigenous worldviews and methodologies.
- Raising awareness of the dangers related to turning Indigenous knowledge into public good, making sure Indigenous communities remain in control of traditional knowledge.

Cultural Heritage and Intangible Forms of Cultural Expression

- Understand cultural heritage as well as intangible cultural expressions in conjunction with environmental protection and its safeguarding role.
- Taking facilitating measures as far as generational transmission is concerned, including policy measures in the education sector and in cultural public institutions such as museums, theatres, cinemas.
- Understanding cultural heritage protection in a rights-based manner rather than a State-oriented regime with only some participatory potential.
- Developing a comprehensive, integrationist understanding of cultural heritage in its material and intangible forms and shapes including respective safeguarding.
- Developing a dedicated pluralist view on cultural heritage and intangible expressions as far as Indigenous specific needs and demands are concerned.

Indigenous Positions in Academia and Epistemological Considerations

- Creating and institutionalising spaces for debates on, inter-alia, the validity of sources, knowledge authorities, academic structures.
- Address persisting challenges including, inter-alia, integrationist education system, harmonising language policies, one-sided cultural heritage politics, singular understanding of cultural expressions tailored to the State's harmonising narrative and discourses or other forms of cultural expression finding articulation in public life by introducing Indigenous methodologies throughout policies that regulate education systems, language practice etc.
- Strengthening Indigenous participation in academic spaces, such as in conferences and authoritative publications.
- Involving Indigenous academics in any decolonising efforts but also any other issue proving particularly pertinent to Indigenous peoples and affecting their lives.
- Collaborating with Indigenous scholars with the objective of drafting measures to enhance Indigenous participation in academia.

2. Pluralising Justice: Indigenous Justice Approaches

The process of colonisation had a significant impact on the **Indigenous justice systems** and their associated social regulation processes. This was due to the imposition of a different normative system based on Western legal concepts. It is crucial to comprehend these historical injustices to facilitate the decolonisation of conflict resolution. As the impacts are not uniform across regions, there is a range of ways in which **Indigenous justice approaches** are either maintained or reimplemented. **Conflict resolution** can occur at the international level between the State and Indigenous peoples, as well as within Indigenous communities. Consequently, there is no singular, definitive approach to be taken; rather, it can be conceptualised as a multi-layered process, necessitating the mobilisation of various actors to address harm and explore avenues for reparations and the cessation of harmful practices.

This section will examine the decolonisation processes of **conflict resolution** to gain a deeper understanding of the role of **restorative justice** and **Indigenous justice**. By examining the concepts of justice and its roots in **Indigenous worldviews**, we question how its integration is possible in settler-colonial systems. We explore how **Indigenous laws** have been mobilised in a variety of ways and how important it is to recognise their wide diversity. By presenting examples from different parts of the world, our aim is to demonstrate why and how Indigenous justice approaches are not only relevant, but necessary to promote equity, healing, and reparation.

2.1 The Concepts of Justice in Indigenous Worldviews: The Case of the Aymara People

What does justice mean? The concept originates from ancient Western civilisation, where Plato established that an act of justice is "to give each their due". Subsequently, some of the leading dictionaries today define it as "fairness in the way people are treated" (Cambridge Dictionary, n.d.), "a moral quality that encourages respect for others' rights" (Larousse Dictionary, n.d.), or "a moral principle that determines everyone should live honestly" (Dictionary of the Royal Spanish Academy, n.d.). It is important to reflect on this question, as in **Indigenous worldviews**, the concept of justice is also present in the notion of equity, although its narrative is associated with paradigmatic situations, which have been recorded orally as legends, fables, and tales. To explore the concept of

justice among Indigenous peoples, Aymara people have occupied a broad region across multiple nation-states as Argentina, Bolivia, Chile, and Peru (INDEC, 2022; INE Bolivia, 2012; INE Chile, 2017; INEI, 2017). As history can reflect, Aymara people has navigated colonialism, republican transitions, and modern state reforms, offering compelling case studies on how Indigenous justice frameworks persist and adapt, and also showing their ability to maintain cultural and linguistic continuity despite national boundaries (Rivera Cusicanqui, 1987).

Moreover, despite many Indigenous languages are endangered, Aymara remains relatively robust as it is taught in local schools in Bolivia, Chile, and Peru (Xavier, 2000; World Bank, 2015). This is particularly relevant as Aymara worldview, or cosmovision, is transmitted orally through fables, legends, rituals, and communal practices (Eisenberg, 2013). Among these transmission ways, there are key Justice principles that could be recognized as equality and the reciprocity, which can also reveal an underlying ethical framework that could shape their notions of justice.

In the case of the Aymara people in Putre, northern Chile, notions of justice emphasize equity and respect for all, regardless of status, wealth, or outward appearance. Two tales—the story of *The Phusiri Hill and the Ragged Old Man* (Serrano et al., 2008) and *The Legend of Lake Chungará* (Melgar et al., 1999)—both depict a ragged old man who is scorned when he arrives at a gathering. Feeling disrespected, he insists that everyone leave immediately without looking back, warning that disobedience will bring dire consequences. In each account, those who do look back are turned to stone.

In the context of **Aymara worldview**, reviewed by Eisenberg (2013), this punishment highlights a principle of justice central to Aymara values: respect must be extended to all individuals, including the elderly and those who appear less fortunate. The disobedience of this command—and the resulting petrification—suggests that when basic respect and equity are violated, the social order is disrupted.

As Serrano et al., (2006) reviewed, in the **Aymara worldview**, animals and non-human beings are also used in legends, personifying inherent human characteristics such as cunning, strength, naivety, and the powers of

Pachamama[2]. Oral tales are called '"*sallqa* of the wild animals"', and mainly relate to animals that inhabit Aymara territories: the condor (*kunturi*), the fox (*achalari, tiwula*), the armadillo (*kirkhinchu*), the hummingbird (*lurinsu*), the vicuña (*wari*), the llama (*kawra*). In fact, they are understood as "those who were once people," like in the case of *kunturi*: "the male condor is called Mariano and the female María, and birds, animals, fish, and insects are attributed human virtues and flaws such as kindness, deceit, greed, and disobedience" (Serrano et al., 2006). From the **Aymara worldview** it is possible to observe conflict situations and the sanctions associated. Consequently, this could be considered to decolonise conflict resolution.

In considering the concept of justice, it can be seen that Aymara people develop a close bond with their territory, thereby establishing a strong relation with the ecosystems with which they interact (Eisenberg, 2013). This can be described as a cultural-natural equilibrium. In the case of the **Aymara worldview**, this balance is described in their traditional tales, through characters who, by interacting with each other in the legends, serve to paradigmatically exemplify that any disruption of this balance could mean profound dysfunction in the socio-ecosystem. The harmony is based on the connection of Indigenous people with their territory by creating a holistic system that unites the cultural dimension and the natural dimension, as a whole (Latour, 2015).

Indeed, if we examine more Aymara tales, we can observe that when humans commit unjust acts, such as trying to separate a pair of lovers, the natural dimension (non-human beings and abiotic factors) takes actions within their capabilities to prevent or at least mitigate these unjust acts. Such is the case with the legend *The Origin of the Payachatas Volcanoes* (Parinacota & Pomerape), which in the Aymara language means twins. Various versions (Delgado, 2018; Equipo Amapola Editores, 2019) recount that a 'prince' and a 'princess'[3] from rival communities fall in love and meet in secret. In response, the ancestral priests of each rival community strive to separate them, invoking spirits and other devices. Failing to achieve their goal, they even decide to attempt to take the lives of the prince and the princess. In response, non-human beings, such as animals,

[2] In Aymara worldview, Pachamama is the deity of the land, also called "Mother Earth" (Eisenberg, 2013).

[3] The concepts of princes arise in association with the presence of syncretism, although in the Aymara worldview there are equivalent concepts such as *Ñusta* for princess.

plants, and abiotic factors like rain, express sorrow for both princes: rain fell so intensely that the Cotacotani lagoons and Lake Chungará are formed, where it is said that years later the princes have been seen sailing together. Years later, the Payachatas volcanoes (Pomerape & Parinacota) emerge on the borders between both communities, symbolising the tombs of the princes.

In summary, reviewing the **Aymara worldview**, it is possible to observe that the broad **concept of justice** is an inherent element of their **Indigenous worldview**. It is present in cultural narratives that describe the origin of significant heritage elements, such as the origin of the Payachatas volcanoes. Meanwhile, the *malkus* (sacred hills) are considered deities in the Aymara worldview. These deities can have a harsh temperament, so offerings are made so that they do not punish or at least their punishment can be mitigated. Understanding worldviews specific to each Indigenous nation help to better conceive their notion of justice and decolonise Western conceptions of justice.

2.2 Decolonising Conflict Resolution in Indigenous Contexts

To decolonise **conflict resolution** between the State and Indigenous communities, we mentioned how important it is to understand the variety of Indigenous principles and worldviews rooted in their diverse cultures. The decolonisation process also implies to take a comprehensive approach to redress the unfavourable situation of Indigenous peoples who have been victims of the process of **genocide** and/or **colonisation** at the global level. If structural injustices are not changed and bridges of dialogue are not built between the Indigenous world and Western legal culture, any decolonial approach to Indigenous law and self-determination may be insufficient.

In this context, the **Restorative Justice** (RJ) approach emerges and seeks to build a 'nation-to-nation partnership' for 'justice and peace', that is, a whole new relationship process that includes a) addressing historical harms of colonisation, b) recognising grievances of Indigenous and marginalised communities about the justice system as genuine, and c) acknowledging that RJ practices funded by State- or International non-governmental organisations sometimes may do more harm than good (Asadullah, 2021, p. 27). To achieve these objectives, it is

essential to undertake a historical analysis in each territory where Indigenous people are present, identifying the parties who were adversely affected and those who benefited because of past events (Breton, 2011). The focus should not only be on the damage but also "on the relational impact of wrongdoings on the individual, group, and community, nationally and internationally" (Llewellyn et al., 2013, p. 298). Ultimately, the creation of relationships between the different groups living in each space is the most important, as they are interconnected and interdependent. The term 'wrong' is understood in relational terms, encompassing actions or behaviours that result in harm to individuals and the relationships in which they are engaged. Understanding and addressing wrongs, which is the work of justice, then, requires attention to these relationships and how they might be restored (Llewellyn & Philpott, 2014, p. 17).

RJ has an international and a local dimension in each space. It is not possible to speak of a single mechanism that can be applied globally, since there are thousands of Indigenous peoples around the world who each have their own specific worldviews (Walker, 2022). While there are similarities in the encounters between the Indigenous and the Western world, each encounter is unique. For instance, some Indigenous peoples identify with a specific State while maintaining their ethnic identity, while others do not feel a sense of belonging to a particular State. This is one of the most significant challenges in developing a theory of justice that permits both restoration and reconciliation.

From another perspective, there are internal legal issues at the State level due to the presence of Eurocentric legislation which defines what is legal or illegal in each territory. This legislation often conflicts with the legal visions of Indigenous peoples, who may engage in actions that contravene these rules of law. It is conceivable that well-established mechanisms, such as national pluralism or legal pluralism, could be deployed to address these situations. However, this is not the focus of the present discussion, as the problem is much broader and is a situation of structural injustice, which must be addressed to repair these injustices. In brief, it is crucial to emphasise the significance of the relationship to decolonise conflict resolution in accordance with Indigenous justice approaches. The space occupied by Indigenous justice approaches are mobilised in decolonisation processes within and outside the Western justice system.

2.3 The Spaces Indigenous Law Occupies

Roman Law, and its historical derivations into the various authorities of European, African, and Levantine legal structures, generally accepted the '**natural law**' concept where title and sovereignty, and thus legal authority, arose from the "continuous use and possession of land from time immemorial" (Mauro & Hardison, 1999, p. 1264). However, the dynamics of power and authority inherent in the colonisation of Indigenous lands, and the subjugation or removal of the Indigenous inhabitants of such lands, largely flouted that legal canon. Nevertheless, Roman Law had it correct; Indigenous peoples' continuous land use, of "hunting, fishing, and gathering as customary activities," forms the backbone of **Indigenous knowledge**, and the "practice or application of knowledge of traditional resources [forms] the basis for customary law" (Davis, 2001, p. 316).

From the perspective of Indigenous communities, the legal orders they employ (and from which their legal systems develop operable frameworks of enforcement) maintain a legitimacy and authority derived from its use since time immemorial. The legitimacy of **Indigenous law** is historically embedded in "customs and life structures [in] deep coordination with customary behavioural patterns," resulting in a body of practices that conveys "greater authenticity than mere law in books," for it is alive and used actively (Thornhill & Calabria, 2018, p. 442).

Many nation-States incorporate Indigenous authority within their formal legal structures. Integration corresponds to a socio-cultural process in which an individual or a group of individuals of similar origin is admitted, attached, and/or invited to become part of another, generally larger, group. For the integration process to occur, a difference between the two or more groups to be integrated must first be recognised. Consider the component systems inherent in establishing the rule of law as it currently prevails in most countries since Charles de Montesquieu first coined the tripartite separation of governmental authority and powers into the functions of legislative consensus, executive enforcement, and judicial explanation. When legislating or executing public policy, the integration and consideration of the broad concept of justice as conceived by Indigenous peoples is necessary to inform judicial review. Integrating concepts from the worldview of the communities inhabiting the land

upon which the fundamental concepts of law and public policies of public bodies (the 'State') are applied can confer robustness and greater coherence to the application of the State's laws, especially when such application is taken for granted as domestically universalisable across a given State's jurisdiction. Such considerations enable Indigenous peoples greater access these laws, which ideally should have already integrated the concepts and elements of the Indigenous worldview if the State wishes to retain and confer the concept of legitimacy and authority over territory and population in its broadest sense.

There are many examples of this integration process across the world. For instance, Ecuador's Constitution mandates the setup of Indigenous territorial districts (art. 257, 2008) as does Colombia's (art. 246, 1991). Bolivia does likewise and enforces Indigenous customary law through its State judiciary (arts. 289-96; 192(3), 2009). The United States' Constitution permits Congress to "regulate Commerce with [...] the Indian Tribes," a foundational clause establishing a system of treaty-based government-to-government diplomacy used by 574 federally-recognised Indigenous nations to exercise **political autonomy** through their own governments and courts (art. 1 § 8, 1787). Canada's Constitution affirms "existing Aboriginal and Treaty Rights of the Aboriginal people of Canada" by formal recognition of 634 First Nations, as well as Métis and Inuit communities. The Central African Republic's Constitution recognises Indigenous rights (arts. 6, 148, 2016), and Ghana's permits ethnic groups to practice customary law, especially relating to land ownership (art. 11(3)). Mali, Burundi, and South Africa similarly constitutionally acknowledge linguistic and cultural rights for Indigenous communities (Thornhill & Calabria, 2018, p. 481).

The global recognition of Indigenous legal authorities extends not only on national or constitutional levels, but also in local, municipal and provincial contexts. Many legislative and judicial bodies have co-opted Indigenous legal systems in attempts to expand and harmonise States' legal reach in a legitimised way. In New Zealand, Māori traditional law, or Tikanga Māori, is legally recognised in Supreme Court decisions and Parliamentary legislation as an origin of legal rights and interests that form a coherent source of New Zealand law (Jones, 2021). Kenyan courts recognise **Indigenous customary law** which protects community land (Thornhill & Calabria, 2018, p. 481). South Africa's Constitutional Court and Supreme Court of Appeal recognise **Indigenous**

customary law as "an independent source of norms within the legal system" that forms a basis for community-based collective rights, whether the community is fixed in permanent habitation or pastoralist and nomadic in nature (South Africa Constitutional Court, 2003).

Within these national frameworks which incorporate Indigenous law, many experiments seeking to improve and fine-tune plurinational federalism are ongoing. In the wake of the United States Supreme Court's *McGirt v. Oklahoma* decision (2020) implemented in the State of Oklahoma, 14 of the State's 38 federally-recognised Indigenous nations enjoy treaty-based jurisdiction over crimes committed in their territories or committed by their citizens (Kickingbird, 2023). Further north in the Great Lakes region, the seven Chippewa Bands collectively enforce their **land-usufructuary rights** to hunting, gathering, and cultivating on ceded Chippewa territories through an intertribal political board called the 1855 Treaty Authority and via tribal courts (1855 Treaty Authority, 2018). Where State authority cedes areas of power to Indigenous authorities, Indigenous communities show a willingness to apply their legal order or legal system to meet new or expanded obligations.

Despite the success of these top-down approaches, legitimisations of Indigenous law are not free from tensions nor colonial elements. Bolivia's Constitutional Court permits Indigenous communities to deliver their own justice, but Bolivian courts maintain the final say on what actions under Indigenous law are enforceable. South African courts likewise place limitations on Indigenous authorities by striking down **Indigenous laws** where they infringe on constitutional fundamental rights, despite **customary law**'s integration through art. 211(3) (South Africa Constitutional Court, 1995). Under the guise of preserving "the supremacy of constitutional and fundamental rights", most States do not permit Indigenous law to eclipse sources of national law such as the Constitution (Thornhill & Calabria, 2018, p. 476). U.S. federal judges exercise wide judicial discretion in evaluating whether evidence is probative or relevant, yet significant hurdles exist preventing the admission of testimony from Indigenous parties into court proceedings (Katner, 2021). Granting space for Indigenous legal thought is paradoxically conditioned upon such spaces not threatening the imposed order forced upon Indigenous communities.

Whether granted co-sovereignty or co-authority enmeshed with a State power apparatus, or existing on the fringe or entirely outside of such, Indigenous communities' practice of their own laws and customs involves making an active choice between adjudicating disputes using settler-sponsored or Indigenous instruments. Oftentimes, localised customs, adapted over time to suit the community and land, win out against received law from authorities that lack such specialised knowledge. In India, **tribal and customary law** among Scheduled Tribes and Adivasi communities is largely unrecognised and unenforced by State power. Impositions of local civil administration and the Panchayat representative system extensively used in non-Indigenous communities have largely eroded **Indigenous governance**, creating tensions within tribes (Kurup, 2009, pp. 108-109). Jharkhand State law runs parallel to the Manki-Munda system preferred by Adivasis for its "emphasis on collective and consensual decision-making" (Kurup, 2009, p. 109). Many Adivasi communities underutilise or outright ignore Indian-imposed governance structures and imposed law, especially where traditional legal authority already operates successfully to solve interpersonal legal disputes.

Ultimately, what space exists for **Indigenous justice systems** to thrive and develop? Some States recognise that they may comprehensively establish authoritative legal order by actively incorporating Indigenous systems into theirs. Where Indigenous communities and their legal orders have State backing and support, working models of **Indigenous justice** exist, even if tentatively at the whim of State power. In instances where State power actively suppresses or seeks to replace **Indigenous legal authority**, many Indigenous societies continue to operate their own legal orders parallel to official State-sanctioned avenues or in open defiance of them. Given this reality, it is paramount for policymakers, legislators, and jurists who regularly grapple with settler-Indigenous issues to better understand and identify Indigenous legal institutions. Failure to do so will inevitably devolve into conflicts of authority, legitimacy, and trust that undermine both Indigenous and settler-State institutions.

2.4 Indigenous Justice Approaches: Diversity over Homogeneity

The conceptualisation of justice within Indigenous communities is informed by their **epistemological and ontological frameworks** (Przybylinski & Ohlsson, 2023). In light of the considerable diversity among Indigenous cultures, environments and lifestyles, no single justice approach is applicable to all Indigenous peoples. Although these justice approaches are frequently linked with **restorative justice** and **reconciliation**, there is a danger of romanticisation of **Indigenous laws**. This section focuses on the nuances of **Indigenous justice approaches** and the tensions between settler-colonial State and **Indigenous laws.**

In attempting to describe **Indigenous justice approaches**, scholars emphasise the importance of restoring relationships and **healing**, rather than punishment. For example, in numerous nomadic societies, the collective was of paramount importance, with the well-being of each individual being contingent upon the maintenance of harmony within the group (Lacasse, 2002). Therefore, many **Indigenous approaches** aim to repair the harm caused to victims and communities by identifying solutions and preventing the recurrence of the offence (Cunneen and Tauri, 2017). For example, in Innu culture, the roles of *Tshishennuat* (Elders) and *Utshimau* (leader) are of particular significance in the restoration of harmony, as community members are aware of their interdependency for survival and access to food (Lacasse, 2002; Ward et al., 2021). Thus, **conflict resolution** implies most of the time a **healing** component (Boucher, 2023).

The concept of **Indigenous healing** is central to understanding **Indigenous justice approaches** and there is a wide variety of methods that may be employed to foster healing. In numerous **Indigenous legal traditions**, the role of the land and non-humans is prominent (McGregor, 2018). In the Innu communities, for instance, knowledge holders explain that "the land nurtures our spirit" (Ward et al., 2021, p. 8) and the "land is a healer" (Redvers, 2020, p. 95). However, Chartrand and Horn (2018) argue that **Indigenous justice approaches** are not necessarily restorative in nature. In instances where an individual is repeatedly engaging in deviant behaviour, demonstrating an inability or unwillingness to

alter their conduct, and posing a threat to the lives of others, some Indigenous communities have resorted to the practice of **deterrence** and **retribution** such as corporal punishment and, in rare cases, to banishment or execution (Rouland, 1979; Chartrand and Horn, 2018; Napoleon and Friedland, 2014).

Some States are creating space for **Indigenous laws**, but critics of this 'politics of recognition' consider that Indigenous peoples remain dependent on State recognition to enact their laws (Coulthard, 2014). For instance, in Canadian criminal courts, Indigenous people's historical and individual circumstances and alternatives to incarceration are supposed to be considered in different forms such as Gladue reports. However, it does not disrupt **settler-colonial authority** as judges always have the final say. Nevertheless, some **self-determination legislations** have been implemented, such as the Canadian Bill C-92 which was crafted in collaboration with Indigenous nations to transfer authority over youth protection services directly to Indigenous communities (Michel, 2023). Implementation of **Indigenous law** is possible, but it implies to navigate tensions between Indigenous justice approaches and the imposed settler-colonial system.

Gladue reports are a type of pre-sentence report that can be ordered in Canadian criminal courts for any Indigenous person accused of a crime and facing a custodial sentence. The main objectives of these reports are to inform the judge about the community, family and personal circumstances of the individual, as well as to propose alternatives to incarceration. These reports have been created to respect the Supreme Court of Canada decision in *R. v. Gladue* (1999) and to comply to section 718.2 e) of the *Criminal Code* which requires the sentencing judges to consider "particular attention to the circumstances of Aboriginal offenders". Gladue reports are supposed to include references to Indigenous peoples' unique legal traditions and worldviews when proposing culturally appropriate procedures and sanctions (Ralston, 2021).

In conclusion, it is essential to acknowledge the diversity of justice approaches within Indigenous communities and to recognise that **contemporary justice practices** are not always unanimously endorsed within these communities. Best practices advance the rights of self-determination by developing and maintaining **Indigenous justice systems**, alongside adequate funding, training and flexibility to respect the needs and desires of Indigenous communities. While the

politics of recognition can be criticised, creating and implementing rights specific to Indigenous peoples contribute to advancing Indigenous' claims of justice and overall well-being.

2.5 Recommendations

Integration into State Law

- Creating more space for Indigenous defendants to share information with the court about their stories and take into account the impacts of colonialism on their lives (i.e. Gladue reports in Canada).
- Educating and promoting public awareness about Indigenous justice systems and Indigenous cultural diversity.
- Paying due consideration to Indigenous worldviews, also since justice operates as an inherent element to Indigenous cosmovisions, including tales about non-humans and the role of land.
- Taking into account Indigenous peoples' bond with their territory and also the need to unite the cultural and natural dimensions.
- Enhance the role and leverage of Indigenous law and Indigenous authority within formal legal structures, reinforcing Indigenous customary law through the State judiciary, while also paying due regard to treaty-based jurisdiction.
- Adopt measures for policy makers, legislators and jurists to better understand and identify Indigenous legal institutions.
- Ensure greater involvement of Indigenous peoples in the legal system and the implementation of Indigenous laws.
- Contributing to a wider and more comprehensive acknowledgement of diversity of justice approaches.

Indigenous Law as Autonomous Orders

- Respecting and recognising Indigenous legal systems by funding the revitalisation and implementation of Indigenous justice approaches and Indigenous legal traditions.
- Structuring resources, capacity building and resource allocation to allow Indigenous communities to create their own laws that supplant government laws.

– Recognising legal pluralism and implementing structural changes to allow self-determination of Indigenous justice systems with effective participation of Indigenous peoples in the development, implementation, and monitoring of policies related to justice, in order to ensure the recognition, support, and protection of Indigenous legal actors, including Elders, knowledge keepers, and community leaders.

Interplay of Legal Orders and Questions of Legal Pluralism

– Creating diversion or an alternative programme to remove cases from the classical justice system to transfer them to Indigenous justice systems.
– Implementing a decolonial approach in the resolution of conflicts and Indigenous justice based on 'restorative justice': focus should not only be on the damage in the Indigenous people but also on relational impact of wrongdoings on all parties involved, hence restoring relationships and healing, considering the variety of its methods.
– Decolonising conflict resolution by paying due regard to Indigenous justice approaches, particularly the principles of equity, healing and reparation.
– Addressing structural injustice and bridging dialogue.
– Making sure limits to the implementation or effectiveness of Indigenous law do not exceed those limits related to fundamental rights guarantees.

References

1855 Treaty Authority. (2018). *Resolution Establishing Rights of Manoomin on White Earth Reservation and Throughout 1855 Ceded Territory*, Resolution No. 2018-05, §1(a) (Dec. 2018).

Acosta, A. (2021). Los derechos de la naturaleza como una necesidad global. Paper presented at the Jornadas Internacionales Derecho y Naturaleza: Simposio Latinoamericano de la Alianza Global por los Derechos de la Naturaleza on 3.-4-.6.2021, Universidad Andina Simón Bolívar.

Adjei, P. (2020). *Implementing the UN Declaration on the Rights of Indigenous Peoples: Protecting Traditional Cultural Expressions and Traditional Knowledge*. In UNDRIP Implementation - Comparative Approaches, Indigenous Voices from CANZUS: Special Report. Waterloo: Centre for International Governance Innovation. https://www.cigionline.org/static/documents/documents/UNDRIPIII_web_mar27.pdf.

Agrawal, A. (1995). Dismantling the Divide between Indigenous and Scientific Knowledge. *Development and Change* 26, 413-439. https://dx.doi.org/10.1111/j.1467-7660.1995.tb00560.x

Agrawal, A. (2002). El conocimiento indígena y la dimensión política de la clasificación. Alves, A. (forthcoming). Article 31. In: Eichler, Jessika, Doyle, Cathal and Howard, Seánna (eds.) *The United Nations Declaration on the Rights of Indigenous Peoples: A Commentary (Article-by-Article)*. Baden-Baden, Oxford, Munich: Nomos•Hart•Beck.

Asadullah, M. (2021). Decolonization and Restorative Justice: A Proposed Theoretical Framework. *Decolonization of Criminology and Justice* 3 (1), 27-62.

Bagni, S. (2021). Derechos de la Naturaleza e Interculturalidad en Europa. Paper presented at the Jornadas Internacionales Derechi y Naturaleza: Simposio Latinoamericanode la Alianza Global por los Derechos de la Naturaleza on 3.-4.6.2021 Universidad Andina Simón Bolívar.

Bennett, T., and Bavikatte, K. S. (2015). Community Stewardship: The Foundation of Biocultural Rights. *Journal of Human Rights and the Environment* 6 (1), 7–29. https://doi.org/10.4337/jhre.2015.01.01

Berry, T. (1999). *The Great Work*. New York: Three Rivers Press.

Breton, D. (2011). *Decolonizing restorative justice*. Unsettling America: Decolonization in theory and practice. Retrieved on February 26th, 2025 from https://unsettlingamerica.wordpress.com/2011/09/13/decolonizing-restorative-justice/.

Boucher, P. (2023). *Napeuat tipatshimitishuat : Récits d'hommes autochtones sur l'arrêt de la violence en contexte conjugal* [Mémoire de maîtrise, Université de Montréal]. Papyrus. doi.org/1866/32194

Cambridge Dictionary. (n.d.). Justice. In Cambridge Dictionary. Retrieved on August 25th, 2024, from https://dictionary.cambridge.org/dictionary/english/justice?q=Justice

Chartrand, L. N., & Horn, K. (2018). *A report on the relationship between restorative justice and indigenous legal traditions in Canada*. Department of Justice Canada.

Chowdhury, N. (2004). Patents Bill: Protecting Indigenous Knowledge. *Economic and Political Weekly* (Jan.), 4984-4986.

Coombe, R. J. (1998). Intellectual Property, Human Rights, & Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conservation of Biodiversity. *Indiana Journal of Global Legal Studies* 6 (1), 59-115.

Coulthard, G. S. (2014). *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.

Craig, D. & Davis, M. (2005). Ethical Relationships for Biodiversity Research and Benefit-Sharing with Indigenous Peoples. *Macquarie Journal of International and Comparative Environmental Law* (2), 31-74.

Cunneen, C., & Tauri, J. (2016). *Indigenous Criminology*. Bristol: Policy Press.

Davies, M. (2017). Plural Pluralities of Law. In: Roughan, Nicole, and Halpin, Andrew (eds.) *In Pursuit of Pluralist Jurisprudence.* Cambridge: Cambridge University Press.

Davis, M. (1998). Biological Diversity and Indigenous Knowledge. Science, Technology, Environment, and Resources Group. https://www.researchgate.net/publication/245587717_Biological_diversity_and_Indigenous_knowledge

Davis, M. (2001). Law, Anthropology, and the Recognition of Indigenous Cultural Systems. In: Kuppe, René & Potz, Richard (eds.) *Law and Anthropology: International Yearbook for Legal Anthropology*. The Hague: Martinus Nijhoff.

Davis, M. (2011). Chapter 7 – "I Live Somewhere Else But I've Never Left Here": Indigenous Knowledge, History, and Place. In: Sefa Dei, George J. (ed.) *Indigenous Philosophies and Critical Education: A Reader* (pp. 113-126). New York: Peter Lang.

Delgado, A. M. (2018). *El origen de los Payachatas* (1st ed.). Santiago: Imactiva SpA. Retrieved on August 15th, 2024, from https://www.imactiva.cl/pdf/el_origen_de_los_payachatas_vista_previa.pdf

Dictionary of the Royal Spanish Academy. (n.d.). Justicia. Retrieved August 30th, 2024 from https://dle.rae.es/justicia?m=form.

Eichler, J. (2020). Intangible Cultural Heritage, Inequalities and Participation: Who Decides on Heritage? *The International Journal of Human Rights* 25(5), 783-814.

Eisenberg, A. (2013). *Aymara Indian perspectives on development in the Andes.* Tuscaloosa: University of Alabama Press.

Elizabeth Chacón, G. (2020). Material Culture, Indigeneity, and Temporality: The Textile as Legal Subject. *Textual Cultures* 13 (2), 49–69.

Equipo Amapola Editores. (2019). *El origen de los Payachatas: Una leyenda del norte de Chile*. Santiago: Editorial Cafuné.

Fa, J. E., Watson, J. E., Leiper, I., Potapov, P., Evans, T. D., Burgess, N. D., Molnár, Z., Fernández-Llamazares, Á., Duncan, T., Wang, S., Austin, B. J., Jonas, H., Robinson, C. J., Malmer, P., Zander, K. K., Jackson, M. V., Ellis, E., Brondizio, E. S., & Garnett, S. T. (2020). Importance of Indigenous Peoples' Lands for the Conservation of Intact Forest Landscapes. *Frontiers in Ecology and the Environment* 18 (3), 135–140.

Farget, D. (2016). Colonialisme et pollution environnementale: prolongement et effets sur les droits des peuples autochtones. *Criminologie* 49 (2), 95–114.

Fricker, M. (2013). Epistemic Justice as a Condition of Political Freedom? *Synthese* 190 (7), 1317–1332. https://doi.org/10.1007/s11229-012-0227-3.

Gover, K. (2020). Legal Pluralism and Indigenous Legal Traditions. In: Schiff Berman, Paul (ed.) *The Oxford Handbook of Global Legal Pluralism*. Oxford: Oxford University Press.

Grenier, L. (1998). *Working with indigenous knowledge: A guide for researchers.* Ottawa: International Development Research Centre.

Haider, R. M., Khair, A., Rahman, M. M., & Alam, M. K. (2013). Indigenous Management Practices of Betel-Leaf (*Piper betle L.*) Cultivation by the Khasia Community in Bangladesh. *Indian Journal of Traditional Knowledge* 12 (3), 231–239.

Hoban, S. et al. (2020). Genetic diversity targets and indicators in the CBD post-2020 Global Biodiversity Framework must be improved. *Biological Conservation* 248.

Hardesty, D. (1977). *Antropología Ecológica*. Ediciones Bellaterra.

SA Instituto Nacional de Estadística (INE) de Bolivia. (2012). *Censo Nacional de Población y Vivienda 2012.*

Instituto Nacional de Estadística e Informática (INEI) del Perú. (2017). *Censos Nacionales 2017: XII de Población, VII de Vivienda y III de Comunidades Indígenas.*

Instituto Nacional de Estadística y Censos (INDEC) de la Argentina. (2010). *Censo Nacional de Población, Hogares y Viviendas 2010.*

Instituto Nacional de Estadísticas (INE) de Chile. (2017). *Censo 2017: Resultados generales de la población.*

International Labour Organization. (1989). Convention on Indigenous and Tribal Peoples.

Jones, C. (2021). Lost from Sight: Developing Recognition of Māori Law in Aotearoa New Zealand. *Legalities* 1 (2), 162–186. http://dx.doi.org/10.3366/legal.2021.0015

Katner, M. V. (2021). Native American Oral Evidence: Finding a New Hearsay Exception. *Tribal Law Journal* 20 (1), 20–54. https://dx.doi.org/10.2139/ssrn.3323923

Kickingbird, K. (2023). The Jurisdictional Landscape of Indian Country After the McGirt and Castro-Huerta Decisions. American Bar Association. Retrieved on February 26th, 2025 from https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-end-of-the-rule-of-law/jurisdictional-landscape-of-indian-country-after-mcgirt-and-castro-huerta-decisions/.

Kurup, A. (2008). Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better. *Indigenous Law Journal* 7(1), 87-126.

Lacasse, J.-P. (2002). Autonomie Gouvernementale et Justice Pénale Innue: Notes, Information et Documents. *Revue Generale de Droit* 32 (3), 809–820. https://doi.org/10.7202/1028094ar

Larousse Dictionary. (n.d.). Justice. In Larousse Dictionary. Retrieved August 24, 2024, from https://www.larousse.fr/dictionnaires/francais/justice/45236.

Latour, B. (2015). *Face à Gaïa: Huit conférences sur le nouveau régime climatique*. Paris: La Découverte.

Lévesque, F., & Plante-Fréchette, E. (2024, January 13). Un modèle qui fait ses preuves. *La Presse*. Retrieved on February 26th, 2025 from: https://www.lapresse.ca/actualites/un-modele-qui-fait-ses-preuves/2024-01-13/les-enfants-se-sentent-plus-ecoutes-plus-respectes.php.

Llano Franco, J. V., & Velasco Cano, N. (2023). El derecho al territorio indígena: protección internacional y reivindicaciones locales. *Novum Jus*, 17(3), 402-429.

Llewellyn, J. J., & Philpott, D. (2014). *Restorative justice, reconciliation, and peacebuilding*. Oxford: Oxford University Press.

Llewellyn, J., Archibald, B., Clairmont, D., & Crocker, D. (2013). Imagining success for a restorative approach to justice: Implications for measurement and evaluation. *Dalhousie Law Journal* 36 (2), 281–316.

Macdonald, G. (1998). Master Narratives and the Dispossession of the Wiradjuri. *Aboriginal History* 22, 162-179.

Madhok, S. (2024). Anti-Imperial Epistemic Justice and Re-Making Rights and Justice 'After Rights'. *The International Journal of Human Rights* 28 (8–9), 1478–1500. https://doi.org/10.1080/13642987.2023.2299669

Mauro, F., & Hardison, P. D. (1999). Traditional Knowledge of Indigenous and Local Communities: International Debate and Policy Initiatives. *Ecological Applications* 10 (5), 1263–1269. http://dx.doi.org/10.1890/1051-0761(2000)010[1263:TKOIAL]2.0.CO;2

McGregor, D. (2018). Mino-Mnaamodzawin: Achieving Indigenous environmental justice in Canada. *Environment and Society: Advances in Research* 9 (1), 7–24.Melgar Calderón, M., Ancoma Humire, O., Sepúlveda Chavera, L., & Varas

Ahumada, M. (1999). Recopilación de leyendas, cuentos, tradiciones y costumbres andinas Aymara. Escuela "El Marquez" de Ticnamar, Chile. Research conducted under the sponsorship of the Plan de Mejoramiento Educativo (PME) "Reconociéndonos Aymara, mejoremos nuestra autoestima y aprendizajes" by the Ministry of Education of Chile (1998–1999).

Melin Pehuen, M., Coliqueo Collipal, P., Curihuinca Neira, E., & Royo Letelier, M. (2016). *Azmapu. Una aproximación al sistema normativo mapuche desde el rakizuam y el derecho propio*. Instituto nacional de derechos humanos. http://bibliotecadigital.indh.cl/handle/123456789/984

Merry, S. E. (1988). Legal Pluralism. *Law & Society Review* 22 (5), 869–896. https://doi.org/10.2307/3053638.

Michel, M. (2023). Indigenous Self-Government and Criminal Law: The Path Towards Concurrent Jurisdiction in Canada. *Dalhousie Law Journal*, *46*(2), 1–33.

Napoleon, V., & Friedland, H. (2014). Indigenous Legal Traditions: Roots to Renaissance. In: Dubber, Mark & Hörnle, Tatjana (eds.) *The Oxford Handbook of Criminal Law* (pp. 225-247). Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199673599.013.0011

New Zealand Ministry of Education. (n.d.). *Te Kete Ipurangi*. Retrieved on February 26th, 2025 from https://maorihistory.tki.org.nz/en/videos/ko-au-te-awa-ko-te-awa-ko-au/.

Nuñez, A. J. (2018). Mother Earth and climate justice: Indigenous peoples' perspectives of an alternative development paradigm. In: Jafry, Tahseen. (ed.) *Routledge Handbook of Climate Justice* (pp. 420-430). London: Routledge.

Ogawa, M. (1995). Science Education in a Multiscience Perspective. *Science Education* 79 (5), 583–593. http://dx.doi.org/10.1002/sce.3730790507.

Pacheco Balanza, D. (2013). *Vivir Bien en Armonía y Equilibrio con la Madre Tierra: una propuesta para el cambio de las relaciones globales entre los seres humanos y la naturaleza*. La Paz: Universidad de la Cordillera/Fundación de la Cordillera.

Page, E. A. (2007). Intergenerational Justice of What: Welfare, Resources or Capabilities? *Environmental Politics* 16 (3), 453–469. https://doi.org/10.1080/09644010701251698.

Pande, A., Chaturvedi, R., & Daya, S. (eds.) (2023). *Epistemic Justice and the Postcolonial University*. Johannesburg: Wits University Press.

Porsanger, J. (2004). An Essay about Indigenous Methodology. *Nordlit* 15, 105–129. https://doi.org/10.7557/13.1910.

Przybylinski, S., & Ohlsson, J. (2023). Indigenous Approaches to Justice. In: *Theorising Justice* (pp. 107–123). Bristol: Bristol University Press.

R. v. Gladue, 1 SCR 688 (Supreme Court of Canada 1999). Retrieved on February 26th, 2025 from https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1695/index.do.

Ralston, B. (2021). *The Gladue Principles: A Guide to the Jurisprudence*. BC First Nations Justice Council. Retrieved on February 26th, 2025 from https://indigenouslaw.usask.ca/publications/the-gladue-principles.php.

Redvers, J. (2020). "The land is a healer": Perspectives on land-based healing from Indigenous practitioners in northern Canada. *International Journal of Indigenous Health 15*(1), 90–107. https://doi.org/10.32799/ijih.v15i1.34046

Riffel, C. (2014). *Traditional Knowledge. Max Planck Encyclopedias of International Law*. Oxford Public International Law.

Rivera Cusicanqui, S. (1987). *Oppressed but not defeated: Peasant struggles among the Aymara and Qhechwa in Bolivia, 1900–1980*. Geneva: UNRISD.

Robyn, L. (2002). Indigenous knowledge and technology: Creating environmental justice in the twenty-first century. *American Indian Quarterly*, 26(2),198–220.

Roth-Arriaza, N. (1996). Of Seeds and Shamans: the appropriation of the scientific and technical knowledge of indigenous and local communities. *Michigan Journal of International Law* 17 (5), 919–965.

Rouland, N. (1979). *Les modes juridiques de solution des conflits chez les Inuit*. Québec: Association Inuksiutjiit Katimajiit.

Ruiz Molleda, J. C. (2021). *¿Tiene cobertura constitucional el reconocimiento de los derechos de la naturaleza?.* Lima: Área de Justicia Constitucional del Instituto de Defensa Legal.

Saha, N.& Azam, A. M. (2005). Betel Leaf Based Forest Farming by Khasia Tribes: A Sustainable System of Forest Management in Moulvibazar District, Bangladesh. *Forests, Trees, and Livelihoods* 15, 275–290.

Sajeva, G. (2020). Earth Jurisprudence: New Paths Ahead. *Diritto e questioni pubbliche* 20 (2), 7–11.

Samson, C. & Gigoux, C. (2017). *Indigenous Peoples and Colonialism: Global Perspectives*. Cambridge: Policy Press.

Secretariat of the Convention on Biological Diversity (2007). Article 8(j): Traditional Knowledge and the Convention on Biological Diversity.

Serrano, B., Navarro, H. & Muñoz, T. (2008). *leyendas aymara*. Fundación de Comunicaciones, Capacitación y Cultura del Agro, FUCOA. https://fucoa.cl/wp-content/uploads/2023/06/Leyendas-aymara.pdf

Serrano, B., Navarro, H. & Muñoz, T. (2006). *Parlama amawt'aña Pachamama: Cuentos de la Madre Tierra*. Iquique: Aalten.

Shiva, V. (2021). La importancia de los derechos de la naturaleza en este momento de transformación. Paper presented at the Jornadas Internacionales Derecho y Naturaleza: Simposio Latinoamericano de la Alianza Global por los Derechos de la Naturaleza on 3.-4.6.2021, Universidad Andina Simón Bolívar.

Sieder, R. (2016). Indigenous Peoples' Rights and the Law in Latin America. In: Garavito, Rodríguez (ed.) *Law and Society in Latin America: A New Map* (414-423). Abington: Routledge.

Smith, L. T. (2012). *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books. Snively, G. & and Corsiglia, J. (2016). Chapter 6 – Indigenous Science: Prove, Practical and Timeless. In: Snively, Gloria, and Williams, Wanosts'a7 (eds.) *Knowing Home: Braiding Indigenous Science with Western Science.* Victoria: University of Victoria.

Solón, P. (2017). *Systemic Alternatives: Vivir Bien, Degrowth, Commons, Ecofeminism, Rights of Mother Earth and Deglobalisation*. La Paz: Fundación Solón, Attac France, Focus on the Global South.

Sousa Santos, B. (2013). *Descolonizar el saber, reinventar el poder*. Santiago: LOM Ediciones.

South Africa Constitutional Court. (2003, October 14th). *Alexkor Ltd and Another v. Richtersveld Community and Others* (CCT19/03).

South Africa Constitutional Court. (1995, June 6th). *S v. Makwanyane and Another* (CCT3/94).

Te Awa Tupua (Whanganui River Claims Settlement) Act (2017). Available at: https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html.

Thornhill, C. & and Calabria, C. (2018). Legal Pluralism? Indigenous Rights as Legal Constructs. *The University of Toronto Law Journal* 68 (3), 440–493.

Uddin, M. B., and Mukul, Sharif A. (2012). Ethnomedicinal Knowledge of Khasia Tribe in Sylhet Region, Bangladesh. *Indian Journal of Tropical Biodiversity* 20 (1), 69–76.

Walker, P. O. (2022). Restoring Balance and Harmony to Peace and Conflict Studies: Engaging Indigenous Paradigm Research in Collaborations of Integrity. In Maihāroa, Kelli Te; Ligaliga, Michael; Devere, Heather (eds.) *Decolonising Peace and Conflict Studies through Indigenous Research* (pp. 41–56). Singapore: Palgrave Macmillan. https://doi.org/10.1007/978-981-16-6779-4.

Ward, L. M., Hill, M. J., Antane, N., Chreim, S., Olsen Harper, A., & Wells, S. (2021). "The Land Nurtures Our Spirit": Understanding the Role of the Land in Labrador Innu Wellbeing. *International Journal of Environmental Research and Public Health* 18 (10), Article 10. https://doi.org/10.3390/ijerph18105102.

Winter, C. J. (2022). *Subjects of Intergenerational Justice: Indigenous Philosophy, the Environment and Relationships.* Abington: Routledge.

World Bank. (2015). *Indigenous Latin America in the Twenty-First Century.* Washington, DC: World Bank. [Creative Commons Attribution CC BY 3.0 IGO]

Xavier, C. (2000). Aymaras entre Bolivia, Perú y Chile. *Estudios Atacameños: Arqueología y Antropología Surandinas* 19, 43–74.

Yrigoyen Fajardo, R. Z. (2016). The Panorama of Pluralist Constitutionalism: From Multiculturalism to Decolonization. In: Garavito, Rodríguez (ed.) *Law and Society in Latin America: A New Map.* Abington: Routledge.

Zumbansen, P. (2017). The Rule of Law, Legal Pluralism, and Challenges to a Western Centric View: Some Very Preliminary Observations. *Osgoode Legal Studies Research Paper Series* 193. https://doi.org/10.2139/ssrn.2869190.

Appendix

EMPI 2024 Programme

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Sciences Po Paris Law School
Peace Research Institute Frankfurt
Goethe Universität Frankfurt

co-funded by
Université franco-allemande
German Foundation for Peace Research

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XI Edition of the MULTIDISCIPLINARY MEETING ON INDIGENOUS PEOPLES

« Indigenous Responses to Global Crisis Contexts:
Decolonising the Law, Indigenising Methodologies, Exploring Legal Orders,
Pursuing Environmental Justice, Categorising Vulnerabilities »

June 4, Tuesday (evening)	Kick Off
Location: Sciences Po Paris Law School (28 rue des Sts. Pères)	
19:15 – 20:15	**Conference Launch & Opening Keynote by Damien Short** "Indigenous Peoples, Extreme Energy and the Genocide-Ecocide Nexus"
20:15 – 21:15	Finger Food Reception

June 5, Wednesday (all day)	Environmental Justice
Location: Sciences Po Paris Law School (28 rue des Sts. Pères)	
9:00 – 10:30 (H201)	**Session I** Indigenous Peoples and Environmental Justice *(chair: Zérah Brémond, discussant: Christina Binder)*
9:00 – 10:30 (H202A)	**Session II** Self-Identification and Definitional Issues *(chair: Maria Sapignoli, discussant: Mariana Monteiro de Matos)*
Tea break	
10:45 – 12:15 (H201)	Session III Listening to Indigenous Worlds in the Conceptualization and Criminalization of Ecocide as the 5th International Crime in the Rome Statute *(chair: Christina Binder, discussant: Zérah Brémond)*
10:45 – 12:15 (H202A)	Session IV Crisis Contexts *(chair: Felipe Gómez Isa, discussant: Jonas Wolff)*
Lunch & Book Fare	
14:00 – 15:30 (H201)	**Session V** Environmental Justice and Indigenous Epistemologies – Empirical Perspectives *(chair: Christina Binder, discussant: Zérah Bremond)*
14:00 – 15:30 (H202A)	**Session VI** Une Amitié pour un Destin Commun *(chair : Carolina Sánchez de Jaegher, discussant : Maria Sapignoli)*
Tea break	
16:00 – 17:30 (H201)	**Doctoral Skills Session A** Introduction to Indigenous Studies *(chairs: Jessika Eichler & Felipe Gómez Isa)*

17:30 – 19:00 (H202A)	**Doctoral Skills Session B** Situating Your Work in the Field of Indigenous Studies and Wider Debates *(chairs: Jessika Eichler & Christina Binder)*
19:15 – open ended	**Documentary on/by Indigenous Peoples and Dinner** (cinema-compatible)

June 6, Thursday (all day)	**Decolonising Academia**
Location: Sciences Po Paris Law School (28 rue des Sts. Pères) and Musée de l'Histoire de l'Immigration	
8:45 – 10:15 (H201)	**Session VII** Indigenous Methodological Encounters and Decolonial Theory *(chair: Sarah Imani, discussant: Carolina Sánchez de Jaegher)*
8:45 – 10:15 (H202A)	**Session VIII** Legal Personality and Subject-Holdership *(chair: Leslie Cloud, discussant: Maria Sapignoli)*
Tea Break	
10:45 – 12:15 (H201)	**Session IX** Legal Anthropological Encounters and Legal Pluralism: Latin American Perspectives *(chair: Mariana Monteiro de Matos, discussant: Raúl Marquez)*
10:45 – 12:15 (H202A)	**Session X** Court Cultures and Constitutional Law *(chair: Amelia Alva Arévalo, discussant : Sarah Imani)*
Lunch & Book Fare	
14:45 – 17:00	**Guided Visit "Musée de l'Histoire de l'Immigration"**
17:00 – 18:00	**Post-Museum-Visit Debate** FAQ with Museum Guide(s) How to Decolonise Academia Ways to Deal with Colonial Heritage Self-Determination and Indigenous Representations

June 7, Friday (all day)	Self-Determination and Other Pressing Matters
Location: Sciences Po Paris Law School (28 rue des Sts. Pères)	
8:45 – 10:15 (H201)	**Session XI** Legal Anthropological Encounters and Legal Pluralism: Multi-Level Orders *(chair: Rodrigo Céspedes, discussant: Raúl Marquez Porras)*
8:45 – 10:15 (H202A)	**Session XII** Indigenous Self-Determination: Decolonising the State and State-Building *(chair: Marco Aparicio-Wilhelmi, discussant: Pablo Barnier-Khawam)*
Tea Break	
10:45 – 12:15 (H201)	**Session XIII** Environmental Justice and Indigenous Epistemologies – Empirical Perspectives *(chair: Mariana Monteiro de Matos, discussant: Leslie Cloud)*
10:45 – 12:15 (H202A)	**Session XIV** Indigenous Self-Determination: Definitional Encounters *(chair: Pablo Barnier-Khawam, discussant: Marco Aparicio Wilhelmi)*
Lunch & Book Fare	
14:00 – 15:30 (H201)	**Session XV** Vulnerable Groups & Intersectionalities: Contexts of Violence *(chair: Carolina Sánchez de Jaegher, discussant: Leslie Cloud)*
14:00 – 15:30 (H202A)	**Session XVI** Genocide and Other Serious Violations *(chair: Sarah Imani, discussant: Paulo Ilich Bacca Benavides)*
Tea Break	
16:00 – 17:30 (H201)	**Session XVII** Vulnerable Groups & Intersectionalities: Struggles and Forms of Organisation *(chair: Leslie Cloud, discussant: Carolina Sánchez de Jaegher)*
16:00 – 17:30 (H202A)	**Session XVIII** Reparation and Restitution *(chair: Felipe Gómez Isa, discussant : Rodrigo Céspedes)*

16:00 – 17:30 (H202B)	**Session XIX** Indigenous Self-Determination : Development and Land Questions *(chair: Zérah Brémond, discussant: Pablo Barnier-Khawam)*
18:00 – 19:00 (H201)	**Doctoral Skills Session C** Publishing and other Formats *(chairs: Jessika Eichler & Lieselotte Viaene)*
18:00 – 19:00 (H202A)	**Doctoral Skills Session D** Your Thesis at a Glance *(chairs: Jessika Eichler & Felipe Gómez Isa)*
20:00 – open ended	**Farewell Dinner**

PANELS and PRESENTERS

SESSION I: Indigenous Peoples and Environmental Justice *chair: Zérah Brémond, discussant: Christina Binder*		
Balancing Indigenous Peoples' Land Claims and Environmental Conservation	Nyambunde Samuel Matundura	University of Dar es Salaam & Maasai Mara University
Climate Change, Migration and Health in the Native Indigenous Peoples Living in the Madidi Region	Vicente Waldo Aguirre Tarquino & Roberto Ingemar Salvatierra Zapata	Universidad Mayor de San Andrés
Las Nuevas Nociones sobre Justicia Ambiental y las Luchas por Alcanzarla: Un Análisis Comparado de Dos Casos en la Amazonía Peruana	Miguel Angel Loayza Evangelista	Pontificia Universidad Católica del Perú
Impacto Socio-Ambiental por el Cambio de Explotación de las Tierras Originarios del Pueblo Guaraní de la Cuenca del Plata	Priscila Lini, Ricardo Ortega-Ruiz, Sara Velásquez	Universidade Federal Mato Grosso do Sul, Universidad Isabel I, Instituto de Formación Profesional en Ciencias Forenses
Los Efectos de la Movilización Legal Mapuche ante el Avance de la Frontera Minihidroeléctrica en la Araucanía	Sergio Vidal Parra	Universidad de Deusto

SESSION II: Self-Identification and Definitional Issues *chair: Maria Sapignoli, discussant: Mariana Monteiro de Matos*		
Mexico's Intromission of Indigenous Self-Identification through the 'Qualified Self-Identification' in the Electoral Sphere	Diana Alicia López Vázquez	Sciences Po Paris
La Autoidentificación Étnica (indígena) como Determinante del Voto en las Elecciones Presidenciales en Países Andinos	Isaac Armando Lau Lingán	Pontificia Universidad Católica del Perú
Le Dédoublement du Droit des Peuples à l'Autodétermination: Du Droit à l'Indépendence au Droit à l'Autonomie	Martial Manet	Université de Paris-Saclay
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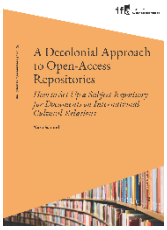

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Decolonising Epistemologies, Pluralising Justice

Insights from the Field of Indigenous Studies

One of Indigenous peoples' most vehement demands certainly lies in their collective endeavours to decolonise their relations with (the) State(s) in the most classical sense, including their related efforts to exercise territorial autonomies and political self-determination. Less attention is spent on the very sources of recognised forms of knowledge, on Indigenous knowledge, on Indigenous approaches to science, and also Indigenous peoples' own justice systems, starting with legal terminology. Decolonising efforts hence require a rethinking ('despensar') of key terminology, of pluralising epistemological spaces and with it, they require entire justice systems of States to be critically approached, and to be ultimately transformed into a new, more inclusive framework.

This publication builds on the debates and results emerging from the 11th edition of the Multidisciplinary Meeting on Indigenous Peoples (EMPI) held in early June 2024 at Sciences Po Paris on "Indigenous Responses to Global Crisis Contexts: Decolonising the Law, Indigenising Methodologies, Exploring Legal Orders, Pursuing Environmental Justice, Categorising Vulnerabilities". The conference was co-funded by the German Foundation for Peace Research (DSF) and the université franco-allemande (ufa). It brings together scholars from different world regions bringing in distinguished insights from the field of Indigenous studies. Key terminology is introduced, allowing for critical reflection on hegemonic standards, and the eventual pluralisation of epistemes, of justice conceptions and orders, of entire cosmovisions and ontologies.

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