

2023

Unsettling Human Rights Clinical Pedagogy and Practice in Settler Colonial Contexts

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Recommended Citation

Jocelyn Getgen Kestenbaum and Caroline Bishop Laporte (2023) "Unsettling Human Rights Clinical Pedagogy and Practice in Settler Colonial Contexts," *American University Journal of Gender, Social Policy & the Law*. Vol. 31: Iss. 3, Article 4.

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UNSETTLING HUMAN RIGHTS CLINICAL PEDAGOGY AND PRACTICE IN SETTLER COLONIAL CONTEXTS

JOCELYN GETGEN KESTENBAUM* & CAROLINE BISHOP LAPORTE**

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The authors acknowledge that they are situated in the original territories of the Lenape and Miami peoples and pay respect to Lenape and Miami peoples past, present, and future, and their continuing presence in the homeland and throughout the diasporas. The authors wish to thank the participants of the Fifty and Forward Symposium as well as the staff of the *Journal of Gender, Social Policy & the Law*.

ABSTRACT

In settler colonial contexts, law and educational institutions operate as structures of oppression, extraction, erasure, disempowerment, and continuing violence against colonized peoples. Consequently, clinical legal advocacy often can reinforce coloniality—the logic that perpetuates structural violence against individuals and groups resisting colonization and struggling for survival as peoples. Critical legal theory, including Third World Approaches to International Law (“TWAAIL”), has long exposed colonial laws and practices that entrench discriminatory, racialized power structures and prevent transformative international human rights advocacy. Understanding and responding to these critiques can assist in decolonizing international human rights clinical law teaching and practice but is insufficient in safeguarding against human rights clinical pedagogy and practice that contributes to settler colonial violence.

This Article proposes not only decolonizing human rights clinical advocacy but also incorporating Indigenous values in human rights clinical practice and pedagogy in settler colonial contexts. In particular, the authors offer a method of human rights law teaching and advocacy that moves beyond client-centered or community-based lawyering that acknowledges oppressive power dynamics toward a collaborative model of co-creative strategic legal advocacy. At the same time, incorporating Indigenous values in human rights clinical pedagogy and practice transforms human rights practice to counter Eurocentric epistemologies by decentering human beings themselves toward a practice that rejects anthropocentrism and strives for balance with all living things. This method—rooted in epistemic pluralism and in adopting Indigenous worldview concepts of kinship, relationship, and reciprocity—requires a relinquishment of control over the process and a shift away from the dominant worldviews of knowledge production, power, and coloniality.

Incorporating Indigenous values in human rights practice means acknowledging and redressing past and present collective harms, reorienting clinical pedagogy and practice to adopt new methods based on Indigenous epistemologies of familial relationship and reciprocity with one another, and all living relatives, deep listening, authentic trust-building, practicing gratitude and transforming allyship to kinship. With this methodology comes a process of unlearning and relearning (through different modes of learning) and of giving and receiving in a collective, reciprocal struggle in which all are invested and equal co-collaborators toward not only stopping or preventing human rights violations, but also in building community to transform the legal, educational, and other structures at the root of settler colonial violence.

“Decolonization offers a different perspective to human and civil rights-based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an ‘and.’ It is an elsewhere.”¹

I. INTRODUCTION

Our world is multicultural with varied experiences and worldviews. Defined as a collection of attitudes, values, stories, assumptions, and expectations about the world around us, a “worldview” informs individual and collective thoughts and actions.² While Indigenous worldviews are numerous and varied, many Indigenous communities share commonalities in worldviews that differ from Western worldviews. Indigenous worldviews offer alternative epistemologies, or ways of being and knowing, from Western worldviews that dominate and shape our current world order, including our legal systems and practices.³ Though Indigenous worldviews

1. Eve Tuck & K. Wayne Yang, *Decolonization is Not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1, 36 (2012).

2. See generally JAMES W. SIRE, NAMING THE ELEPHANT: WORLDVIEW AS A CONCEPT 2 (2d ed., 2004). The concept of worldviews has been described as mental lenses that are entrenched ways of perceiving the world. MARVIN E. OLSEN, DORA G. LODWICK, & RILEY E. DUNLAP, VIEWING THE WORLD ECOLOGICALLY (1992). Worldviews also have been defined as “cognitive, perceptual, and affective maps that people continuously use to make sense of the social landscape and to find their ways to whatever goals they seek.” Michael Anthony Hart, *Indigenous Worldviews, Knowledge, and Research: The Development of and Indigenous Research Paradigm*, 1 J. INDIGENOUS VOICES IN SOC. WORK 1, 2 (2010). It is also true that not every individual or community internalizes societal worldviews.

3. See Tuma Young, *L’nuwita’simk: A Foundational Worldview for a L’nuwey Justice System*, 13 INDIGENOUS L.J. 75, 78 (2016). The authors are speaking in very general terms in the description of these differences and are in no way indicating that individual Indigenous cultures share the same worldviews, and ditto for generalizations of Western worldviews. By endeavoring to describe an “Indigenous worldview,” the authors are essentializing the experiences and diversity of Indigenous cultures and collectives. While conscious of this problem, the authors’ purpose is not to erase any one Indigenous worldview, but, rather, to juxtapose some of the common threads of Indigenous worldviews against the threads from the dominant Western worldviews imposed presently in settler colonial contexts in the Americas. Also, when thinking about Indigenous worldviews, consider the Antkiowak assertion that tying Indigenous communities to their lands, territories and natural resources forces a “‘cultural script’ with numerous parts: strict observer of customary practices, guardian of nature, and even steward of non-capitalist economies” which is an extremely “unrealistic” and “unsustainable” relationship with their lands, at least in today’s context of settler colonialism and extractive capitalism. See generally Thomas M. Antkowiak, *Rights, Resources and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 U. PA. J. INT’L L. 113, 161–62 (2014) (explaining the ways in which international law is limited, failing to incorporate Indigenous rights into Western conceptions of property rights of

cannot and do not conform to a pan-Indigenous lens,⁴ they differ from Western worldviews in critical ways. Colonial and occupying forces have disrupted and violently usurped Indigenous worldviews since contact and conquest in settler colonial states.⁵

Acknowledging and appreciating differences while recognizing equal validity among both Western and Indigenous worldviews is a necessary first step to begin shifting and transforming clinical pedagogy in settler colonial contexts. It is not enough to work with Indigenous communities, nor is it enough to advocate for Indigenous causes. Human rights educators and practitioners must turn their gaze inward to address their roles in—and continued benefits from—the displacements, dispossessions, and genocides of Indigenous peoples. This reflexive work is particularly important in the United States, where many international human rights law clinics operate within settler colonial spaces. In examining clinical law pedagogy, the best intentions, even in the practice of human rights legal advocacy, still amounts to violence when those intentions and their manifestations perpetuate settler colonial institutions and structures that erase Indigenous communities and devalue their collective ways of being and knowing.

Understanding and incorporating alternative worldviews into human rights clinical pedagogy and lawyering in settler colonial contexts is critical to successfully practicing human rights. Incorporating other worldviews opens up the possibility for reciprocal relationships necessary to succeed both in client representation and in shared social justice goals. Moreover, recovering and maintaining Indigenous worldviews is a liberation strategy for all peoples to be free from oppressive subjugation of colonizing state

the American Convention on Human Rights and forcing Indigenous peoples into a “cultural script”); *see also* Adam Kuper, *The Return of the Native*, 44 CURRENT ANTHROPOLOGY 389, 395 (2003) (making the case that Indigenous peoples’ demands for “recognition for alternative ways of understanding the world” ironically are made in the idiom of Western culture theories).

4. In the United States alone, there are 574 federally recognized Tribes, over 60 state recognized tribes and dozens of unrecognized tribes. Each of these tribes has its own language, customs, traditions, ways of being and knowing, and relationship to place. With regard to place, notably not all Tribes or other Indigenous peoples occupy their ancestral homelands. One need only look to the Tribes in the United States forcibly removed westward to reservations as a result of violent colonial forces and an insatiable appetite to exploit Native lands. For in-depth analysis on these issues as they relate to traditional ecological knowledge, *see* Caroline Bishop LaPorte, *Truth-Telling: Understanding Historical and Ongoing Impacts to Traditional Ecological Knowledge (TEK)*, OCEANS & SOC’Y (Ana K. Spaulding & Daniel O. Suman eds., forthcoming 2023).

5. *See id.*

governments.⁶ To achieve the structural change necessary for such liberation, human rights clinicians must grapple with the ways human rights law and pedagogy further entrench systems of oppression while normalizing certain forms of state violence, including those against Indigenous peoples.⁷

Some Indigenous worldviews have been described as “relational,” which prioritize people and entities coming together to help and support one another in relationship.⁸ As one perspective, Canadian Nishnaabeg scholar Leanne Simpson has outlined seven principles of Indigenous relational worldviews:⁹

1. Knowledge is holistic, cyclic, and dependent upon relationships and connections to living and non-living beings and entities.

2. There are many truths, and these truths are dependent upon individual experiences.

3. Everything is alive.

4. All things are equal.

5. The land is sacred.

6. The relationship between people and the spiritual world is important.

7. Human beings are least important in (and are not at the center of) the world.¹⁰

Relational worldviews also often focus on “communitism,” the sense of community tied together by familial relations and the families’ commitment to these kinship relations.¹¹ They also focus on “respectful individualism,” the enjoyment of self-expression because of a community understanding that

6. Cf. Leanne R. Simpson, *Anticolonial Strategies for the Recovery and Maintenance of Indigenous Knowledge*, 28 AM. INDIAN Q. 373, 373 (2004).

7. For a discussion of the ways in which white supremacy culture is furthered in and through the practice of international justice advocacy, see Alexandra Lily Kather et al., *Reimagining Justice Beyond the Punitive: White Supremacy Culture and Non-Governmental Organisations in the International Justice Space*, 20 J. INT’L CRIM. L. 24 (forthcoming, 2023) (on file with authors).

8. Hart, *supra* note 2, at 3; see also Thomas L. Crofoot Graham, *Using Reason for Living to Connect to American Indian Healing Traditions*, 29 J. SOCIO. & SOC. WELFARE 55, 60–61 (2002).

9. Leanne Simpson, *Anishinaabe Ways of Knowing*, in ABORIGINAL HEALTH, IDENTITY AND RES. 165, (J. Oakes et al. eds., 2000) (describing the fundamental aspects of relational worldviews from an Anishinaabe perspective).

10. *Id.* This offering of one perspective does not mean to limit, essentialize, or discount other perspectives on Indigenous worldviews.

11. Hart, *supra* note 2, at 3. See generally Hilary N. Weaver, *Indigenous Identity: What Is It, and Who Really Has It?*, 25 AM. INDIAN Q. 240 (2001); Jace Weaver, *Native American Studies, Native American Literature, and Communitism*, 1 AYAANGWAAMIZIN, INT’L J. OF INDIGENOUS PHIL. 23, 23–33 (1997).

individuals act on community needs as well as in one's own self-interest.¹² Tribal worldviews often give high import to the relationships that serve to form the unity of nature and the way in which human beings act in harmony with all other living and non-living beings.¹³

Reciprocity is another key element of many relational Indigenous worldviews. The concepts of relationship and reciprocity are deeply interconnected, arising from the fundamental view that land generates and empowers life, including non-material aspects of life, such as language, culture, and dreams.¹⁴ Because all things are both from and of the Earth, which is living, they are related to one another in a profound and reciprocal, familial way.¹⁵ A hierarchy of relationship seldom exists; instead, the roles each being plays are equally important to the health of every human and nonhuman being in the system.¹⁶ Recognition that human beings hold an important place in creation is tempered by the idea that they are dependent on everything in creation for their existence.¹⁷ "People of many Indigenous cultures have certain specific ways they reciprocate, giving back to the plants, water, soil, and animals with which they are in relationships of mutual support, balance, and harmony. These specific means of reciprocation are usually culture-specific and often sacred or at least very private."¹⁸ Therefore, non-Indigenous people cannot engage in these practices or ways of being as a means to distance themselves from their role in or their benefit from settler-colonialism. Attempting to adopt culturally specific practices

12. Hart, *supra* note 2, at 3; Lawrence William Gross, *Cultural Sovereignty and Native American Hermeneutics in the Interpretation of The Sacred Stories of the Anishinaabe*, 18 WICAZO SA REV. 127, 129 (2003); *see also* VINE DELORIA JR., GOD IS RED 87 (2003).

13. DELORIA JR., GOD IS RED, *supra* note 12, at 87.

14. *See id.* at 87; Nicole Redvers et al., *Indigenous Natural and First Law in Planetary Health*, 11 CHALLENGES 29, 30 (2020).

15. *See, e.g.*, DELORIA JR., GOD IS RED, *supra* note 12, at 88; Haunani-Kay Trask, *Coalition-Building Between Natives and Non-Natives*, 43 STAN. L. REV. 1197, 1197 (1991).

16. Nicole Redvers et al., *The Determinants of Planetary Health: An Indigenous Consensus Perspective*, 6 LANCET PLANET HEALTH 156, 156 (2022); *see also* Young, *supra* note 3, at 79.

17. DELORIA JR., GOD IS RED, *supra* note 12, at 86.

18. *Relationship and Reciprocity*, TAPESTRY INST., <https://tapestryinstitute.org/ways-of-knowing/key-concepts/relationship-reciprocity/> (last visited Feb. 9, 2023). *Sumac kawsay*, for example, means a quality of life for Quechua peoples that promotes harmony within the community and the environment that surrounds an individual. *See* Catherine Walsh, *Afro and Indigenous Life - Visions in/and Politics. (De)colonial Perspectives in Bolivia and Ecuador*, 18 BOLIVIAN STUD. J. 50, 56–57 (2011).

into non-Indigenous spaces is at worst cultural appropriation,¹⁹ but is also performative and extractive without addressing root causes of settler colonial violence.

Colonization is a violent process of domination and subordination of peoples and lands that occurs largely for capitalist economic exploitation, resource extraction, and wealth accumulation.²⁰ Colonization actively has suppressed Indigenous relational worldviews to perpetuate Western worldviews based on property ownership, resource extraction, labor exploitation, Christian-autocracy, patriarchy, and imperialism. Western worldviews reflect and further Locke's theory of property: that natural resources are insentient property that individuals can own, consume, or derive benefits at the exclusion of others²¹ under the "sole and despotic dominion of humankind."²² In the United States, similar theories have been used to dispossess Indigenous peoples of their ancestral lands. The "doctrine of discovery," as memorialized in *Johnson v. M'Intosh*,²³ and the concepts

19. See Rosemary J. Coombe, *The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy*, 6 CAN. J.L. & JURIS. 249, 279 (1993).

20. See generally JURGEN OSTERHAMMEL, COLONIALISM: A THEORETICAL OVERVIEW (Shelley Laura Frisch trans., 2005).

21. JOHN LOCKE, SECOND TREATISE OF GOVERNMENT: AN ESSAY CONCERNING THE TRUE ORIGINAL EXTENT AND END OF CIVIL GOVERNMENT 18 (Richard H. Cox ed., 1982).

22. William Blackstone Commentaries on the Laws of England 707 (William Carey Jones ed., 1916). As stated previously, this worldview is antithetical to many Indigenous worldviews that find all living beings sentient and in a web of interconnectedness and interdependence. See also DELORIA JR., GOD IS RED, *supra* note 12, at 88 ("Behind the apparent kinship between animals, reptiles, birds, and human beings in the Indian way stands a great conception shared by a great majority of the tribes. Other living things are not regarded as insensitive species. Rather they are 'people' in the same manner as the various tribes of human beings are people.").

23. "The right of discovery . . . is confined to countries 'then unknown to all Christian people;' . . . to take possession of all in the name of the king of England . . . notwithstanding the occupancy of the natives, who were heathens . . ." *Johnson v. M'Intosh*, 21 U.S. 543, 576–77 (1823); see also Indian Removal Act, Pub. L. No. 21-148, 4 Stat. 411 (1830); *Cherokee Nation v. Georgia*, 30 U.S. 1, 48 (1831); *Worcester v. Georgia*, 31 U.S. 515, 534–44 (1832); ROXANNE DUNBAR-ORTIZ, AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES 197–217 (2015).

of manifest destiny²⁴ and *terra nullius*²⁵ serve as foundational bases for property law in the United States. These legal concepts echo colonialist sentiments: Indigenous peoples did not use the land for its best possible productive use, a legal justification then and now for forced removals and genocides,²⁶ but rarely the case in international law to discuss state sovereignty's historical origins.

In the Americas, colonialism began as an overtly violent conquest that included genocide, land dispossession, and the widespread and systematic rape and murder of Native peoples. Today, these practices continue more subtly through the legal system and state or private action, often in the name of progress, modernity, and development.²⁷ Indigenous individuals and communities experience violence directly through *inter alia* government failures to allow Indigenous sovereignty to protect Indigenous women, girls, two-spirit, and other gender diverse people from murder and other forms of violence,²⁸ and indirectly through the dehumanizing use of Native images as mascots, and discourse that Native people and their communities are of the

24. Manifest destiny was a nineteenth century doctrine or belief that settlers were destined to expand across North America. *See generally* ROBERT J. MILLER, *NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY* (2006) (discussing the influence of the doctrine of discovery during the nineteenth century); *see also* WILLIAM EARL WEEKS, JOHN QUINCY ADAMS AND AMERICAN GLOBAL EMPIRE 183–84 (2002).

25. *Terra nullius* refers to a “territory without a master” and is a public international law term used as a legal fiction to describe a space that, even if inhabited, does not belong to a state, meaning the land is not “owned” by anyone. In fact, the term has oftentimes been used in order to legitimize state occupation and colonization of lands occupied by non-Western peoples. *See generally* ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2004).

26. *See* Indian Removal Act, 4 Stat. at 41; *Cherokee Nation*, 30 U.S. at 34; *Worcester*, 31 U.S. at 551.

27. *See* Aníbal Quijano, *Coloniality of Power and Social Classification*, XI J. WORLD SYS. RSCH. 342, 372–73 (2000). For an excellent analysis as to the continuum of violence and the law's facilitation of such violence from conquest of Native peoples to sexual violence against Native women in the United States today, *see generally* SARAH DEER, *THE BEGINNING AND THE END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA* (3d ed., 2013). This is not to say that Indigenous peoples do not support progress. Often, the idea of modernity or progress is pitted against indigeneity, and, by implication, Native peoples are pitted against modernity and progress.

28. *See* DEER, *supra* note 27, at ix.; URB. INDIAN HEALTH INST., *MISSING & MURDERED INDIGENOUS WOMEN & GIRLS* 13, 20 (2018); ANDRE B. ROSAY, NAT'L INST. OF JUSTICE, *VIOLENCE AGAINST AMERICAN INDIAN AND ALASKAN NATIVE WOMEN AND MEN* 1 (2016); Letter from Nichusak, Lenape Center Activists About MMIW, to Committee on the Elimination of Racial Discrimination (CERD), 107th Sess. (Aug. 2022) (on file with author).

past.²⁹ As Vine Deloria Jr. notes: “To be an Indian in modern American society is in a very real sense to be unreal and ahistorical.”³⁰

Settler colonialism is “an inclusive, land-centered project that coordinates a comprehensive range of agencies, from the metropolitan center to the frontier encampment, with a view to eliminating Indigenous societies.”³¹ In contrast to colonialism, which relies on Indigenous populations for extractive labor to benefit the colonists,³² settler colonialism strives for the genocidal dissolution and destruction of Native communities and cultures, including Indigenous worldviews incompatible with dominant Western worldviews.³³ The pre-colonial universe is attacked, dismantled, and rejected through employing images of uncivilized barbarism and savagery.³⁴

In their place, settler colonial structures erect a new colonial society on the expropriated land base; settler colonizers come to stay and replace Indigenous communities and institutions. Invasion is a structure, not an event,³⁵ and elimination becomes an organizing principal of settler-colonial societies rather than a one-off occurrence.³⁶ Elimination as a tool results in frontier homicides and mass killings; forced removals and expropriation or theft of lands; the breaking-down of native titles into alienable individual freeholds; family separation; child abduction; forced religious conversion; genocidal programs in institutions, such as missions or boarding schools, that

29. See LEANNE R. SIMPSON, *DANCING ON OUR TURTLE’S BACK* 13–16 (2004) (calling these feelings of “colonial shame” while also laying blame on colonial violence).

30. VINE DELORIA JR., *CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO* 2 (1969). Deloria, in *God is Red*, also talks about the ways in which Indigenous people are torn between worldviews: “Many people are trapped between tribal values constituting their unconscious behavioral responses and the values that they have been taught in schools and churches, which primarily demand conforming to seemingly foreign ideals. Alcoholism and suicide mark this tragic fact of reservation life. People are not allowed to be Indians and cannot become whites. They have been educated, as the old-timers would say, to think with their heads instead of their hearts.” DELORIA JR., *GOD IS RED*, *supra* note 12, at 243.

31. See Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. OF GENOCIDE RSCH. 387, 393 (2006) [hereinafter Wolfe, *Settler Colonialism*]; see also PATRICK WOLFE, *SETTLER COLONIALISM AND THE TRANSFORMATION OF ANTHROPOLOGY: THE POLEMICS AND POETICS OF AN ETHNOGRAPHIC EVENT* 1–2 (1999); AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 8–9 (2010).

32. See RANA, *supra* note 31, at 8.

33. See Wolfe, *Settler Colonialism*, *supra* note 31, at 393.

34. See generally MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* (2002).

35. Wolfe, *Settler Colonialism*, *supra* note 31, at 388.

36. *Id.* at 393.

stripped Indigenous children of their identities as Indigenous children; forced sterilization of Native women by the Indian Health Service; and a range of other assimilationist policies and practices.³⁷ Today, the atrocities perpetrated against Indigenous groups fall along a continuum of violence.

Laws, policies, and educational institutions generally operate as structures of oppression, extraction, erasure, disempowerment, and continuing violence against colonized peoples. As part of the colonial legal framework, international human rights laws and institutions perpetuate settler colonial violence as systems of colonial discourse at the international and domestic levels, especially given the sovereignty of the nation-state.³⁸ Human rights practitioners must squarely confront the deficiencies in the international human rights legal system in Indigenous rights protection and promotion. Questions of state legitimacy, sovereignty rights of Indigenous nations, exclusion, and continued processes of genocide, in addition to other atrocities, challenge the human rights framework as being inadequate while perpetuating and entrenching structural and physical violence against Indigenous peoples.³⁹

Clinical legal education and advocacy can often reinforce coloniality—defined as the logic that perpetuates structural violence against individuals and groups resisting colonization and struggling for their survival as

37. *Id.*; see also Pamela S. Karlan, *Lightning in the Hand: Indians and Voting Rights*, 120 *YALE L.J.* 1420, 1449–50 (2011) (describing “assimilation” policies and the violent harms perpetrated against Indigenous peoples in the United States).

38. See generally ANGHIE, *IMPERIALISM, SOVEREIGNTY*, *supra* note 25.

39. See U.S. DEP’T OF STATE, *ANNOUNCEMENT OF U.S. SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (2011). Significantly, Australia, Canada, New Zealand, and the United States initially abstained from the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) because these countries are settler colonial states that have and continue to commit structural and physical violence, including persecution and genocide, against their Indigenous populations. Even after the United States endorsed the UNDRIP in 2011, there were problematic interpretations of the declaration that call into question whether the state will fully implement laws and policies in a way that is compatible with the object and purpose of the provisions of the instrument. In many contexts, Indigenous peoples have always assumed their place as subjects of international law and pursued their rights under international law within their own normative worldviews. See also Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 *CALIF. L. REV.* 173, 200 (2014); Ravi de Costa, *Identity, Authority, and the Moral Worlds of Indigenous Petitions*, 48 *COMP. STUD. SOC’Y & HIST.* 669, 675–85 (2006) (examining petitions brought by Indigenous peoples to the British Empire, the Commonwealth, and the international community in the nineteenth and twentieth centuries).

peoples.⁴⁰ Therefore, human rights clinicians and lawyers must come to the practice of law in settler colonial contexts with the assumption that ongoing discrimination and state violence against Native people is by design in, and throughout, legal and other societal institutions. Additionally, human rights educators and practitioners must confront and dismantle structures of racism, misogyny, homophobia, classism, xenophobia, and settler colonialism through active relinquishment of land, power, and privilege.⁴¹ Individuals in law schools must be acutely aware of how legal education often is inherently violent for Indigenous students and educators, as law schools are spaces in which Indigenous people constantly confront colonial justifications couched as legitimate in Western legal frameworks, including international human rights law.

Thinking through a settler colonial frame is not to blame or accuse settlers; rather, the purpose is to generate thinking toward a plurality of possibilities that move beyond the constraints imposed by the settler state.⁴² The late Professor Haunani-Kay Trask finds “that particular variant of racism . . . [that] vociferous[ly] deni[es] the presence, unique histories and right to self-determination of America’s conquered Natives . . .” as a “cherished ignorance” of American individualism.⁴³ As social justice advocates and educators, clinicians must actively reject these forms of violence against Indigenous peoples. Otherwise, critical enlightenment and awareness through teaching and practicing human rights is nothing more than a way to distract non-Native settlers from feelings of guilt or responsibility for the present-day subjugation and oppression of Native individuals and communities in settler colonial states.⁴⁴

But how does one actually integrate decolonization practices while incorporating Indigenous values into human rights law practice in settler colonial contexts? At a minimum, it requires a critical examination of human rights law frameworks and advocacy tools to understand whether and how

40. See generally Anibal Quijano, *Coloniality of Power, Eurocentrism and Latin America*, in *A COLONIALITY OF KNOWLEDGE: EUROCENTRISM IN THE SOCIAL SCIENCES* 117 (Edgardo Lander ed., 2005); Quijano, *Coloniality of Power and Social Classification*, *supra* note 27, at 342–86; Anibal Quijano & Michael Ennis, *Coloniality of Power, Eurocentrism, and Latin America*, 1 *NEPANTLA: VIEWS FROM SOUTH* 533, 533–80 (2000).

41. See Tuck & Yang, *supra* note 1, at 21.

42. See Dean Itsuji Saranillio, *Haunani-Kay Trask and Settler Colonial and Relational Critique: Alternatives to Binary Analyses of Power*, 4 *STUD. IN GLOB. ASIAs* 36, 36 (2018).

43. See Haunani-Kay Trask, *Coalition-Building Between Natives and Non-Natives*, 43 *STAN. L. REV.* 1197, 1204 (1991).

44. Tuck & Yang, *supra* note 1.

such frameworks and tools reinforce and entrench colonial structures of violence through a Western worldview of extraction and transactional interactions rather than in Indigenous worldviews that center all living and nonliving beings in relationship, reciprocity, and balance. Such an examination may lead to pursuing or foregoing particular human rights law advocacy strategies with regard to securing Indigenous rights and redress for violations.

At most, it is a complete unlearning and relearning,⁴⁵ drawing upon traditions and knowledge of Indigenous peoples to advance transformative practices of reciprocal, relational lawyering that is co-creative and prioritizes processes that promote Indigenous relational worldviews.⁴⁶ Importantly, this must be accomplished without co-opting Indigeniety or engaging in performative acts of “Indianness” as it has come to be defined by—or as it has become beneficial to—whiteness.⁴⁷ It requires Native people leading these processes. It requires non-Native people to relinquish power and trust that non-settlers will not perform empire when that power shifts.⁴⁸ It requires envisioning an Indigenous future where Indigenous peoples govern,⁴⁹ not

45. See MADINA V. TLOSTANOVA & WALTER D. MIGNOLO, *LEARNING TO UNLEARN: DECOLONIAL REFLECTIONS FROM EURASIA AND THE AMERICAS* 7, 7 (2012) (“‘learning to unlearn’— [is] to forget what we have been taught, to break free from the thinking programs imposed on us by education, culture, and social environment, always marked by the Western imperial reason”).

46. See LaPorte, *supra* note 4, for an in-depth discussion of traditional knowledge. The problem with talking about Indigenous relational worldviews as a solution, however, is the assumption that it remains wholly intact despite ongoing efforts to eradicate Indigenous people from their lands and to strip systematically, intentionally, and violently Indigenous people of what it means to be Indigenous. The erasure of Indigenous worldviews and knowledge is extremely profound. Thinking of traditional knowledge as whole or safe ignores the fact that it is under constant threat. Traditional knowledge of Indigenous communities is often rooted in language, story, and ceremony. See ROBIN WALL KIMMERER, *BRAIDING SWEETGRASS* 56–57 (2002). In the United States, however, Indigeniety has been deeply disrupted by ongoing colonization and genocide.

47. See PHILIP J. DELORIA, *PLAYING INDIAN* 187 (1998) (noting that since the arrival of colonists in America, “Indian-white relations and Indian play itself have modeled a characteristically American kind of domination in which the exercise of power was hidden, denied, qualified, or mourned,” and that there exists a “mostly imagined Indianness spoke in compelling ways to issues of class, gender, and nationalism within white America”).

48. See George J. Sefa Dei, *Revisiting the Question of the “Indigenous,”* 491 *COUNTERPOINTS* 291, 305 (2016) (“[Decolonization] calls for engaging discomfort and de-stabilizing knowing. It is about going where we have not been before and asking new questions. Decolonization is also about contesting futures, and there are no guarantees with a decolonization project.”).

49. See G.A. Res. 61/295 United Nations Declaration on the Rights of Indigenous

just where the idea of (Indigenous) self-determination is respected or advanced as a distant, future goal. In terms of immediate steps for human rights practice, it requires foregrounding struggles for self-determination, cultural survival, land rights, and decolonization, even when other rights seem to be foregrounded in present struggles for social justice.⁵⁰

This Article offers critical insight into the ways in which international human rights law clinical pedagogy and practice perpetuate coloniality while offering practical ways to begin unsettling clinical law education and advocacy toward a lawyering that incorporates Indigenous values and relational worldviews. Part II reviews existing critiques of human rights law and human rights lawyering while offering additional insight into the circumstances in which these critiques manifest in particularly problematic ways when working with Indigenous client-partners in settler colonial contexts. Part II also examines decolonial lenses as necessary, yet insufficient methods for changing harmful practices in these contexts. Part III offers insight into ways human rights clinicians can incorporate Indigenous values in human rights law pedagogy and practice toward transformative advocacy that prioritizes relational worldviews and skills that emphasize anti-colonial, trauma-informed, co-creative lawyering to “unsettle” colonial structures—even well-meaning structures—that perpetuate harm. Part IV examines challenges and possible paths forward, stressing the importance of *process* and reinforcing the imperative to improve clinical practices as achieving true inclusive human rights advocacy in and through practice.

II. CRITIQUES OF INTERNATIONAL HUMAN RIGHTS LAW, PEDAGOGY & PRACTICE

Critical legal theory, including Third World Approaches to International Law (“TWAIL”), has long exposed colonial laws and practices that reinforce and entrench discriminatory, racialized power structures and prevent transformative international human rights advocacy.⁵¹ Further, human rights

Peoples, at 3, 4, 18, 20(1), 23 (Sept. 13, 2007)) [hereinafter UNDRIP]. Indigenous peoples around the world claim self-determination in their legal relations *vis a vis* the nation-state. See James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Extractive Industries and Indigenous Peoples*, ¶ 28–29, U.N. Doc. A/HRC/24/41 (July 1, 2013); see also JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 98 (2nd ed., 2004).

50. See Dei, *supra* note 48, at 305.

51. See generally KRIZNA GOMEZ & THOMAS COOMBES, *BE THE NARRATIVE: HOW CHANGING THE NARRATIVE COULD REVOLUTIONIZE WHAT IT MEANS TO DO HUMAN RIGHTS* (2019); ELORA HALIM CHOWDHURY, *TRANSNATIONALISM REVERSED: WOMEN ORGANIZING AGAINST GENDERED VIOLENCE IN BANGLADESH* (2011); SARAH DE JONG,

practitioners, including human rights clinicians, have advanced critiques of human rights practice toward reforming our pedagogy and clinical practice.⁵² This Article builds on these important critiques, offering additional insights into the ways clinical pedagogy and human rights advocacy perpetuates harm toward Indigenous students and client-partners in settler colonial contexts.

A. *International Human Rights Law*

In the past few decades, scholars have increasingly revealed some of the cracks in the foundation of international human rights law, including those that expose its design and selective implementation as furthering

COMPLICIT SISTERS: GENDER AND WOMEN'S ISSUES ACROSS NORTH-SOUTH DIVIDES (2017); SHAREEN HERTEL, UNEXPECTED POWER: CONFLICT AND CHANGE AMONG TRANSNATIONAL ACTIVISTS (2006); Malcom Langford, *Critiques of Human Rights*, 14 ANN. REV. L. SOC. SCI. 69 (2018); Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics* 15 HARV. HUM. RTS. J. 1 (2002); Hilary Charlesworth, *The Hidden Gender of International Law*, 16 TEMP. INT'L & COMP. L.J. 93 (2002); Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 171 (1998); Frederic Mégret, *Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes*, in NEW APPROACHES TO INTERNATIONAL LAW 3 (Jose Maria Beneyto & David Kennedy, eds., 2012); HUMAN RIGHTS FROM A THIRD WORLD PERSPECTIVE: CRITIQUE, HISTORY AND INTERNATIONAL LAW (Jose-Manuel Barreto ed., 2013); Louis Bickford, *Transnational Advocacy and Human Rights Activism in the Global Middle*, in TRANSNATIONAL ADVOCACY NETWORKS: TWENTY YEARS OF EVOLVING THEORY AND PRACTICE (Peter Evans & César Rodríguez-Garavito eds., 2018); Interview by Lucia Nader with Salil Shetty, Former Sec'y Gen., Amnesty Int'l, (July 2014); Barbara Klugman et al., *Finding Equity: Shifting Power Structures in Human Rights*, OPENGLOBALRIGHTS (Nov. 30, 2017); MAKAU MUTUA, HUMAN RIGHTS STANDARDS: HEGEMONY, LAW, AND POLITICS (2016); Dustin Sharp, *Human Rights Fact-Finding and the Reproduction of Hierarchies*, in THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING (Philip Alston & Sarah Knuckey eds., 2015); Malak El-Chichini Poppovic & Oscar Vilhena Vieira, *Reflections on the International Human Rights Movement in the 21st Century*, 20 SUR INT'L J. ON HUM. RTS. 17 (2014); Mona Younis, *The Hazards of International NGOs Going Local*, OPENGLOBALRIGHTS (May 22, 2018), www.openglobalrights.org/the-hazards-of-international-ngos-going-local/; Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination—An Essay*, 16 YALE HUM. RTS. & DEV. L. J. 1 (2013); STEPHEN HOPGOOD, THE ENDTIMES OF HUMAN RIGHTS (2013); MUTUA, *supra* note 34.

52. See, e.g., Laurel E. Fletcher, *Power and the International Human Rights Imaginary: A Critique of Practice*, 14 J. HUM. RTS. PRAC., 1, 6–7 (2022); Sarah Knuckey et al., *Power in Human Rights Advocate and Rightsholder Relationships: Critiques, Reforms, and Challenges*, 33 HARV. HUM. RTS. J. 1–55 (2020); César Rodríguez-Garavito, *The Future of Human Rights: From Gatekeeping to Symbiosis*, 20 SUR INT'L J. ON HUM. RTS. 499, 501 (2014); Bonilla, *supra* note 51, at 1.

imperialism.⁵³ In *Human Rights: A Political and Cultural Critique*, Professor Makau Mutua argues that human rights law's normative universe is a largely liberal and Eurocentric continuum of the colonial project that privileges certain actors and subordinates others.⁵⁴ In his critique, Mutua argues that human rights movements are built on an imperial metaphor of "savages, victims, and saviors" in which "other" cultures that fall outside the liberal democratic political ideology—often deviant states or subnational groups—are "savages" in need of redemption and "civilization" by "saviors."⁵⁵ These savage cultures perpetuate human rights abuses against "victims" also in need of rescue by saviors.⁵⁶ In Mutua's metaphor, the

53. *But see, e.g.*, Carpenter & Riley, *supra* note 39, at 173 (finding that Indigenous peoples' participation in international human rights law has begun to move international law away from being deployed as a tool of imperial power and conquest). While the authors agree that bringing Indigenous norms and values in human rights advocacy is potentially transformative, this Article posits that the settler colonial violence in and through law, including international law, is still very much present and ongoing. Thus, this period is not a "post-colonial" one. *See* MISHUANA GOEMAN, MARK MY WORDS: NATIVE WOMEN MAPPING OUR NATIONS 32–39 (2013) (describing colonization today as a process that is "ongoing"). The authors do, however, hope to contribute to a "jurisgenerative moment" in human rights law and practice. *See* Carpenter & Riley, *supra* note 39, at 173 (drawing upon Robert Cover's work with regard to the jurisgenerative nature of certain lawmaking communities, and Bruce Ackerman's work coining the term "constitutional moment").

54. MUTUA, *supra* note 34, at 11–12; *see also* INT'L LAW ASS'N, HAGUE CONFERENCE, RIGHTS OF INDIGENOUS PEOPLES 1 (2010) ("Traditional international law, Eurocentric in origin, has worked to largely ratify the attempts at the cultural, if not physical, eclipse of indigenous peoples."). *See generally* ANGHIE, IMPERIALISM, SOVEREIGNTY, *supra* note 25.

55. *See* MUTUA, *supra* note 34, at 8, 10, 23 (characterizing the savages-victims-saviors construction as a multi-dimensional metaphor with complex layers); Henry J. Steiner, *Do Human Rights Require a Particular Form of Democracy*, in DEMOCRACY, RULE OF LAW AND ISLAM 193, 200–01 (Eugene Cotran & Abdel Omar Sharif eds., 1999) (discussing state attacks on human rights rooted in the West's deeply flawed forms of democracy and limited conceptions of rights). Similarly, David Kennedy has argued that the human rights field juxtaposes "heroic" advocates with "passive" victims of human rights violations while erasing self-expression of varied individual experiences of abuse. David Kennedy, *International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 111–12 (2002).

56. *See* MUTUA, *supra* note 34, at 8 (calling on human rights advocates to reform the framework of universal human rights). Scholars have deepened this critique of human rights advocacy as constructing passive, disempowered "victims" in need of assistance. *See, e.g.*, Nandita Sharma, *Anti-Trafficking Rhetoric and the Making of a Global Apartheid*, 17 NWSA J. 88 (2005) (discussing the problematic passive trafficking victim narrative); Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002) (finding an overemphasis on violence against women in the

savior is the human rights corpus—which includes Western governments, international governmental organizations, and non-governmental organizations—that furthers norms based in Western liberal and Christian values while subjugating and rendering inferior non-Western worldviews.⁵⁷

What can be overlooked is how the imperial “savage-victim-savior” metaphor continues to play out within settler colonial states against colonized peoples resisting dominant Eurocentric worldviews imposed upon their communities through laws, policies, and institutions. In the same way that international human rights advocacy can shame non-Western states as departing from “civilized” liberal values, human rights advocacy within a Western settler-colonial state context can stigmatize Indigenous practices and responses in the form of resistance to colonization and its lasting consequences.⁵⁸

International human rights law also upholds unilateral assertions of sovereignty of nation-states as the primary subjects of international law and Western notions of sovereignty that reinforce the supremacy of the nation-state to the detriment of Indigenous peoples’ collective rights.⁵⁹ International

feminist movement that has reinforced stereotypical images of women as helpless victims).

57. See MUTUA, *supra* note 34, at 11, 31 (citing to Enlightenment’s universalist pretensions, which perpetuated Eurocentric worldviews); see also Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L. J. 201, 201–10 (2001) (characterizing the savages-victims-saviors construction as a “damning metaphor” authored by Western states). International law itself is built on these assumptions. See generally Makau Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 VILL. L. REV. 841 (2000) (explaining international law has been the preferred vehicle for conquest and subordination of non-European groups); see also MAKAU MUTUA, PROCEEDINGS OF PROC. OF THE 94TH ANN. MEETING OF THE AM. SOC’Y OF INT’L L., WHAT IS TWAIL? 31 (2000) (tracing the roots of TWAIL to the decolonization movement and explaining that the framework functions in opposition to international law).

58. Beyond the scope of this Article, but important to note, is the way in which international law is premised on the conquest and colonization of Indigenous peoples. See Robert J. Miller, *The International Law of Colonialism: A Comparative Analysis*, 15 LEWIS & CLARK L. REV. 847, 887–88 (2011); see also ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW, *supra* note 49, at 16–19, 36 (explaining how the doctrine of discovery was used to strip Indigenous people of their property rights).

59. A serious critique of international human rights law and systems is the elevated priority placed on the role of the nation-state without a critical look at the philosophical gaps in the definition and modern application of sovereignty or the clear conflict of what bodies determine the validity of statehood. Rather, bodies such as the United Nations have affixed the doctrine of sovereignty at the top of their legal hierarchy. This becomes a clear issue for instance in the example of the United States, where Indian tribes undergo federal recognition for sovereign status, and where only federally recognized tribes

law regards Indigenous peoples as subjects of the exclusive domestic jurisdiction of the settler state regimes that invaded their territories and established hegemony through conquest and colonization.⁶⁰ Human rights forums have begun to include Indigenous people as individuals, yet they continue to systematically exclude Tribal Nations and Indigenous governments. These exclusions render their inclusion of Indigenous peoples within these forums to be largely performative, focusing on individual rights and collective access to such individual rights.⁶¹ Power-sharing in nation-to-nation relationships with Tribal Nations is not possible and has been actively suppressed and rejected in the current international legal order.⁶²

possess a legal nation-to-nation relationship with the United States. See Lillian Aponte Miranda, *Indigenous Peoples as International Lawmakers*, 32 U. PA. J. INT'L L. 203, 203 (2010) (examining Indigenous peoples' involvement in international law as a challenge to the state-centric model). Of the 574 federally-recognized Indian tribes in the United States, each one constitutes a nation within a nation, but no tribe is recognized as a sovereign nation-state within the UN system. The colonizing government, which is inherently oppressive, determines which tribal governments are deemed sufficient within its legal and political framework. See generally National Congress of American Indians, *Indigenous Nations Call for Full and Effective Participation of Indigenous Nations in United Nations*, NCAI (Jun. 18, 2013), <https://www.ncai.org/news/articles/2013/06/18/indigenous-nations-call-for-full-and-effective-participation-of-indigenous-nations-in-united-nations> [hereinafter NCAI Statement]. Moreover, a strict understanding of sovereignty would be the idea that a nation can reject the power to consent to infringements on its sovereignty rights. See Curtis A Bradley & Jack L. Goldsmith, *My Prerogative*, 80 FOREIGN AFF. 188, 188–90 (2001).

60. See Robert A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 1990 DUKE L. J. 660, 662 (1990) (emphasizing that the emergence of Indigenous peoples' human rights on the international stage provides a window of opportunity from which to transform legal thought, rights discourse, and storytelling in the legal field).

61. An example of this is the exclusion of Indigenous peoples in the creation of the International Labour Organization's Indigenous and Tribal Peoples' Convention, 1989 (ILO Convention No. 169), an international convention for Indigenous populations. This exclusion further entrenched assimilationist views of treaties with Indigenous peoples. See ALEXANDRA XANTHAKI, *INDIGENOUS RIGHTS AND UNITED NATIONS STANDARDS: SELF-DETERMINATION, CULTURE AND LAND* 49 (2007) (discussing state responses and objections to ILO Convention 107, which established for the first time on the international level specific state obligations towards Indigenous peoples); see also G.A. Res. 71/321, U.N. GAOR, 71st Sess., Supp. No. 65, U.N. Doc. A/Res/71/321 (2017) (framing Indigenous participation within the UN as below that of non-governmental organizations); HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER* 26–40 (1993) (critiquing America's cultural and political hegemony of Indigenous interests through the lens of international human rights and pointing to the fact that while the UN has 'condemned' colonizing ideologies as unacceptable, the United States continues to undermine Hawaiian self-determination and control of a Native land base).

62. See UNDRIP, *supra* note 49, art. 46 (discussing the UNDRIP and a modification

Furthermore, because victims must be constructed as sympathetic and innocent, while savages must be viewed as evil perpetrators,⁶³ Indigenous communities in settler contexts are often rendered invisible and erased in the human rights dominant narratives. If Indigenous communities are visible, they are often forced into roles of “uncivilized savages” that threaten the “progressive development” of the nation-state or modern ways of life for the settler society.⁶⁴ Moreover, the savior-missionary-colonizer in Mutua’s human rights narrative⁶⁵ reflects the deeply problematic ideas of Eurocentric superiority and manifest destiny⁶⁶ that characterize settler colonialism’s ongoing violence—the “othering” project that degrades and dehumanizes as it purports to save—*vis a vis* Native individuals and communities.

Further, Mutua encourages a shift toward addressing racial hierarchies and power differences in human rights advocacy that is “multicultural, inclusive, and deeply political.”⁶⁷ Here, the starting point is not centering Western worldviews as “universal” and rendering all other worldviews to the periphery; rather, the place of departure must begin with all cultures and worldviews as equally valid, respected, and nurtured.⁶⁸ Calling for epistemic

of self-determination rights of Indigenous peoples); *see also* JAMES (SA’KE’J) YOUNGBLOOD HENDERSON, *INDIGENOUS DIPLOMACY AND THE RIGHTS OF PEOPLES: ACHIEVING UN RECOGNITION* 27–28 (2008) (acknowledging Indigenous peoples’ disappointment with the decolonization movement of the 1950s and 1960s, which focused too heavily on the separation and independence of colonized peoples rather than their liberation within colonial governments); S. JAMES ANAYA, *INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES* 4–7 (2009) (discussing a case in which the Iroquois Confederacy submitted a petition to the League of Nations, but Canada blocked them from being heard).

63. *See* MUTUA, *supra* note 34, at 29 (explaining that public moral outrage against the perpetrator is easier to mobilize with an innocent victim than one who is violent or aggressive); James Gathii, *International Law and Eurocentricity*, 9 *EUR. J. INT’L L.* 184 (1998) (noting how international law was formed through European and non-European encounters).

64. *See, e.g.*, Lily Grisafi, *Prosecuting International Environmental Crime Committed Against Indigenous Peoples in Brazil*, 5 *COLUM. HUM. RTS. L. REV.* 26, 31–32 (2020) (collecting incriminating statements from former President Jair Bolsonaro regarding the need to bring development to the Indigenous peoples of the Amazon).

65. *See* MUTUA, *supra* note 34, at 33 (juxtaposing eurocentric norms perpetuated by colonialism and the human rights movement).

66. *Id.* (explaining the white savior’s need to justify his superiority through positivist language and denigration of non-European peoples).

67. *See id.* at 13–14. (reiterating that power imbalances must be addressed within the human rights movement to move past Eurocentrism); *see also* Knuckey et al., *supra* note 51, at 1–4 (critiquing power imbalances in human rights advocacy relationships).

68. *See* MUTUA, *supra* note 34, at 13, 32 (acknowledging the role of the sword and the cross in conquering non-Europeans and remaking them in the white man’s image);

pluralism⁶⁹ is a start to begin valuing Indigenous worldviews and breaking down colonial racial hierarchies of power toward true inclusive advocacy. Universal claims to shared pasts or to collective knowledge are often Eurocentric in nature.⁷⁰ Thus, the international human rights framework must be deconstructed through an anti-colonial lens toward epistemic pluralism and away from a notion of universality that devalues and erases “othered” ways of being and knowing. Indeed, the best way to challenge “Eurocentricity masquerading as universal” is to offer multiple forms of knowledge production and include multiple experiences and voices as valid and equal.⁷¹ Such a critique of the human rights framework is necessary to ensure that Indigenous worldviews are not simply incorporated into Western liberal legal prisms.⁷² Human rights advocacy has achieved short-term gains but potentially has pushed long-term transformation further out of reach.⁷³

Another important critique of the human rights framework is the emphasis on individual rights, sometimes to the detriment of important collective or group rights.⁷⁴ Even minority or group rights such as the right to religion or

see also Anthony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT’L L. J. 1, 59, 70 (1999) (discussing ethnocentric perspectives of international law).

69. Redvers et al., *The Determinants of Planetary Health*, *supra* note 16, at 156 (discussing a multidimensional approach to sustainability and livelihood rooted in Indigenous-specific forms of knowledge).

70. Dei, *supra* note 48, at 306 (suggesting that “multicentric ways of knowing” is the solution to Eurocentric legal and political frameworks underlying the human rights movement).

71. *Id.* (acknowledging that Indigeneity is intertwined with a sense of being dispossessed and tied to historical narratives of the past).

72. A recent example of this attempt to retrofit Indigenous worldviews into the liberal human rights model is the push for the “rights of nature” in order to protect the environment. To personify rivers and other non-human beings continues the anthropocentric worldview that requires nature to be preserved for human sustainability and consumption, as well as reinforces individuality, rather than seeing the interconnectedness between and among all living things. See Paola Villavicencio Calzadilla & Louis J. Kotzé, *Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia*, 7 TRANSNAT’L ENV’T L. 397, 424 (2018) (critiquing “rights of nature” from an Indigenous perspective).

73. For instance, advocating for an Indigenous customary law conception of property rights in the Inter-American system for the protection of human rights may indeed further entrench the Western legal conceptions of property rights as the only legitimate conception of peoples in relationship to land, which is still based in ownership, productive use, and exclusion of others enforced by the police state. See Miller, *supra* note 58, at 847, 887–88.

74. Will Kymlicka has long engaged the tensions at these intersections toward reconciling individual and collective rights. See, e.g., WILL KYMLICKA, MULTICULTURAL

belief or the right to vote—rights that have very little meaning without the collective—are couched as individual rights.⁷⁵ The collective right to self-determination, affirmed in the UN Charter and enumerated in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), is fundamental to the notion of sovereignty.⁷⁶ Indigenous self-determination rights, however, diverge from the self-determination rights of peoples more generally under international law, providing a poignant example of the ways in which the rights of Indigenous peoples are subordinated structurally within the international human rights system.

For Indigenous peoples, the right to self-determination is key to collective survival and resistance given their ongoing struggles against genocide and erasure in settler colonial nation-states. In examining the United Nations

CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 166–70 (1995); WILL KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE 196–98 (1989). Isabelle Schulte-Tenckloff argues a “two-fold reductionism” in the human rights discourse. The first is to equate Indigenous peoples and minorities as the same, while the second is to limit the notion of collective rights to the rights of individuals in community with other members of their group rather than group rights claimed by non-state groups as such. Isabelle Schulte-Tenckloff, *Treaties, Peoplehood and Self-Determination: Understanding the Language of Indigenous Rights*, in INDIGENOUS RIGHTS IN THE AGE OF THE UN DECLARATION 64 (Elvira Pulitano ed., 2012) (discussing a twofold reductionism of Indigenous rights, specifically “to limit collective rights to their least controversial aspect, namely human rights exercised by individuals in community with other members of their group, as opposed to group rights claimed by non-state groups as such”).

75. See G.A. Res. 2200 (XXI), International Covenant on Civil and Political Rights, 21 U.N. GAOR, Supp. (No. 16) at 52, arts. 18, 25, U.N. Doc. A/6316 (1966) [hereinafter ICCPR] (declaring that all individuals should have the right to freedom of religion, and providing for “universal and equal suffrage”). Minority rights are another example of rights that have collective aspects but are framed as individual rights. See G.A. Res. 47/135, annex, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Language Minorities (Dec. 18, 1992) (framing concept of minority rights in international law as individual rights); see also S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*, in THE RIGHTS OF MINORITY CULTURES 321 (Will Kymlicka ed., 1995) (noting that the minority rights framework under international law does not address many of the collective rights concerns of Indigenous groups).

76. See ICCPR, *supra* note 75, art. 1 (stating that “[a]ll peoples have the right of self-determination”); G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 1 (Dec. 16, 1966) [hereinafter ICESCR] (same). The Human Rights Committee, in its interpretation of self-determination rights under the ICCPR, has recognized that this collective right of all peoples may have no remedy in law; rather, the remedy is contemplated as a political one. See generally U.N. Office of the High Commissioner for Human Rights, General Comment No. 27, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

Declaration on the Rights of Indigenous Peoples (“UNDRIP”), an international consensus document in which representatives of Indigenous communities participated in the drafting and negotiation process, the primacy of self-determination rights is woven throughout the document’s provisions. For instance, articles enumerate *inter alia* rights to access ancestral lands, rights to “self-governance” (Article 4), “rights” to a nationality, the “right” to not be subjected to forced assimilation or destruction of culture (Article 8), the “right” to belong to an Indigenous community or nation (Article 9), the prohibition of forced removed from lands or territories (Article 10), or the right to maintain and develop political, economic and social systems or institutions (Article 20).⁷⁷

In the same breath, however, Article 46 of the UNDRIP effectively limits sovereignty rights of Indigenous peoples, stating that nothing in the Declaration may be interpreted as “authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.”⁷⁸ The United States government emphasizes these limitations in its interpretation of the UNDRIP.⁷⁹

In this way, the self-determination rights of Indigenous peoples expose the founding dilemma of settler colonial states.⁸⁰ Many settler-colonial nation-states recognize the legality of treaties with Tribal Nations to demonstrate lawful acquisition of territory while denying Indigenous communities their lawful status as “peoples” under international law to exercise rights to self-determination.⁸¹ States resist Indigenous peoples’ self-determination because governments fear political destabilization and movements triggering secession.⁸² Thus, the UNDRIP, the instrument to protect Indigenous rights,

77. See UNDRIP, *supra* note 49, arts. 3, 4, 18, 20(1), 23 (declaring that Indigenous peoples possess the inherent right to self-determination, to participate in decisions that impact them, and the autonomy to govern internal affairs).

78. *Id.* at Art. 46 (placing limits on Indigenous sovereignty by foreclosing separation or independence from colonial governments). See also CHARMAINE WHITE FACE & ZUMILA WOBANGA, *INDIGENOUS NATIONS’ RIGHTS IN THE BALANCE: AN ANALYSIS OF THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* 104–06 (2013) (finding the Article 46 edits to be “offensive” and more generally finding the Declaration’s process to be legal cover for genocide and plunder of Native peoples’ resources and rights).

79. *Announcement of US Support for the United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 39.

80. See Schulte-Tenckoff, *supra* note 74, at 64–86 (discussing the paradox upon which superior title to lands inhabited by Indigenous peoples rests).

81. *Id.* (underscoring the importance of treaties to Indigenous peoples in legitimizing their nation-to-nation relationships with the countries in which they reside).

82. See Rebecca Tsosie, *Tribalism, Constitutionalism, and Cultural Pluralism*:

limits the self-determination rights of Indigenous peoples to a detrimental and discriminatory effect.⁸³

B. Law School Pedagogy & Practice

Teaching human rights lawyering that incorporates Indigenous values requires reforming clinical pedagogy and rethinking the way we teach the law more generally, with a specific emphasis on human rights law and practice. Clinicians must examine pedagogical methods and teach from a place of factual truths about historical and present harms perpetrated against Native peoples in all contexts, especially in settler colonial contexts.

In examining law school education in the United States, Professor Christine Zuni Cruz critically reflects on the way that U.S. law schools, mostly predominantly white institutions (PWIs), perpetuate structural oppressions and reinforce societal inequalities in the educational institution's structures and curriculum choices.⁸⁴ She explains the conflicts between Native and Anglo-American legal principles, as well as the focus on teaching Federal Indian Law—what she names “outsider law which affects Indians”—to the exclusion of Tribal law, or “insider law” of Indigenous peoples in the United States.⁸⁵ Furthermore, most law schools teach various legal doctrines through cases—such as the “doctrine of discovery” through *Johnson v. M’Intosh*—in first-year property classes, that justify colonial conquest, the expropriation of Native lands, and the extinguishing of Native title, often without critical reflection.⁸⁶ If property law class discussions

Where Do Indigenous Peoples Fit Within Civil Society?, 5 U. PA. J. CONST. L. 357, 376 (2003) (explaining that the affirmation of cultural and political rights by larger nation-states is a primary goal of tribalism).

83. Duane Champagne, *UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights*, 28 WICAZO SA REV. 9, 20 (2013) (explaining that UNDRIP does not incentivize nation-states to recognize Indigenous peoples’ rights under international law); see also Schulte-Tenckoff, *supra* note 74 (suggesting that the key difference between international and internal agreements turns on the legal domestication of Indigenous peoples by larger nation-states).

84. See generally Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 563–64 (1999) (explaining the tendency of law schools to focus too much on “outsider” law which affects Indigenous communities, while losing out on the benefits that flow from covering “insider” law which covers internal community affairs).

85. *Id.* at 561 (finding that there is not much “Indian” about “Federal Indian Law”); see also Carpenter & Riley, *supra* note 39, at 214; Vine Deloria Jr., *Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law*, 31 ARIZ. L. REV. 203, 203 (1989) (finding that US federal Indian law is not focused on justice and morality and reflects a fictional view of American history).

86. See DUKEMINIER ET AL., PROPERTY 3–13 (10th ed. 2022) (discussing acquisition

critique the case or the doctrine of discovery as anti-Indigenous and rooted in white supremacy, students still walk away with the understanding that the case is good law and the racist doctrine that provides legal cover for land dispossessions and genocides stands today, upheld and enforced as the law of the land.

If students are taught that *Johnson v. M'Intosh* was not an actual case in controversy, that the plaintiff paid for the defendant's legal representation, that the Chief Justice had a serious financial conflict of interest, that documents were forged, or even just tested the case against the legal doctrine of "standing" or the importance of necessary parties, students might build a sharper critique of our reliance on these colonial legal systems.⁸⁷ However, many law schools do not teach case law this way. These, and other glaring omissions of historical truth, render law schools, whether intentionally or unintentionally, as institutions that promote the settler colonial project that devalues Indigenous ways of being and knowing and perpetuates the erasure of Indigenous peoples. This erasure continues due to many law schools failing to recruit and retain Native students and faculty. So, individuals who would and do provide valid experiences and counter-narratives are missing from law school colonial discourses.

Even in teaching human rights law, professors spend little, if any, time questioning the Western liberal legal model on which international law is based. While human rights law courses generally engage in the debated question as to whether human rights law is universal or culturally relative, human rights law practice certainly stresses the universal application of human rights in contexts globally.⁸⁸ In working with Indigenous peoples in settler colonial contexts, human rights law practice must be acutely aware of cultural differences, both in understanding client-partners' needs and in co-

of lands through discovery and conquest). *But see* MATTHEW L.M. FLETCHER, FEDERAL INDIAN LAW 33–44 (2016) (including critical commentary on *Johnson v. M'Intosh*). In fact, the *Johnson v. M'Intosh* case is not taught at all in context. This was a case that was wrought with fraud, lacked a true case in controversy, and hosted numerous conflicts of interest.

87. *See, e.g.*, WALTER R. ECHO-HAWK, IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED 56 (2010) (delineating classic "Indian Law" cases that are not as simple as they seem); Eric Kades, *The Dark Side of Efficiency: Johnson v. M'Intosh and the Expropriation of American Indian Lands*, 148 U. PA. L. REV. 1065, 1091–93 (2000) (describing the inconsistencies in *Johnson v. M'Intosh*).

88. *See generally* DINAH L. SHELTON, ADVANCED INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW 108–10 (2020); Fletcher, *supra* note 52, at 7 (critiquing the ways in which human rights fact-finding and report-writing advocacy practices emphasize the universal and often are colonizing forms of violence against local advocates).

creating a narrative based in mutual understanding, especially because the assumption is that the settler-advocates and Native rightsholders share cultural understanding, an assumption that can further processes of assimilation and erasure. Oppressed peoples must understand and navigate dominant cultures for survival and resistance. Imperialist privilege—what one Indigenous scholar calls “an outright insensitivity to the vastness of the human world”—does not require the occupation of two cultural worlds because non-Native advocates often are beneficiaries of colonialism.⁸⁹ As a result, advocates must intentionally understand historical and present realities of settler colonialism to become more aware of the double consciousness in which Indigenous rightsholders and communities navigate context.⁹⁰ Such understanding must come from learning about the continuum of settler colonial violence and the accompanying human rights violations perpetrated against Indigenous communities from the time of contact and conquest that have been largely left unredressed and continue today.

Another problem that reflects Anglo-American imperialism in international human rights law is the priority that is placed on advocating for individual rights and freedoms. Emphasis on individual rights presupposes a Western anthropocentric worldview⁹¹ that deemphasizes the interrelationships between individual rightsholders, between individual rightsholders and their communities,⁹² and between individual rightsholders and their non-human and non-living relatives that characterize many non-Western, Indigenous worldviews.⁹³ The individualistic approach, for

89. Haunani-Kay Trask, *Feminism and Indigenous Hawaiian Nationalism*, 21 SIGNS 906, 911 (1996).

90. Double consciousness refers to “a ‘sensation’, a consciousness of one’s self, but which falls short of a unified, ‘true’ self-consciousness.” *Double Consciousness*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/double-consciousness/> (Feb. 16, 2023). The term was coined by W.E.B. Du Bois to describe a feeling of “twoness” caused by the oppression and “disvaluation” of African Americans in a white-dominated society. *Id.*

91. Marc Pallemmaerts, *International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process*, 15 J. L. & COM. 623, 642 (1996) (finding that environmental law has taken a Western worldview based in anthropocentrism, focusing on whether humans can continue to use or benefit from a natural resource, rather than on the natural resource itself). *But see generally* CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT* (3d ed. 2010) (arguing that non-human life can be incorporated into the American rights-based framework).

92. Zuni Cruz, *supra* note 84, at 568.

93. The Rights of Nature movement differs from the traditional Western legal perspective on the environment in that it is ecocentric, which centers the rights of the

example, is embedded in the client-centered approach to lawyering that many human rights clinicians have adopted as the best practice in clinical pedagogy without considering implications for collective human rights.⁹⁴ Such emphasis on individual rights also disguises structural causes—including colonialism, racism, and empire—as the roots of oppression and consequent individualized harms, such as low levels of healthcare and education, and high levels of poverty and incarceration.⁹⁵ While the international human rights legal framework does include collective and group rights, advocacy and norm development tend to prioritize individual rights frames hierarchically over collective rights.⁹⁶

Moreover, human rights advocacy tends to focus on engaging with national and supranational state-centric systems in which human rights norms become actionable. Such advocacy further entrenches the legitimacy of the settler colonial state as sovereign to the detriment of colonized peoples.⁹⁷ The Western gaze has also turned attention to non-Western states as states that violate human rights, while overlooking human rights violations in Western state contexts. To respond to this phenomenon, international human rights law clinics can intentionally recognize and commit advocacy efforts to address human rights violations through a decolonial lens in Western settler colonial contexts.

Recent scholarship examining critically responsive human rights lawyering has touched upon advocate-rightsholder relationships even within “subnational advocacy where the dominance of national narratives may fail to appreciate localized realities.”⁹⁸ Often, advocates have privileged their

environment itself, rather than humans. The Rights of Nature, however, is not necessarily furthering Indigenous values and worldviews.

94. Zuni Cruz, *supra* note 84, at 568.

95. Trask, *Feminism and Indigenous Hawaiian Nationalism*, *supra* note 89, at 911; *see also* Kather et al., *supra* note 7, at 7–8 (noting the problem of a lack of systemic critiques in international justice practice).

96. MUTUA, *supra* note 34, at 109, 154.

97. *See* Glen Coulthard, *Place Against Empire: The Dene Nation, Land Claims, and the Politics of Recognition in the North*, in *RECOGNITION VERSUS SELF-DETERMINATION: DILEMMAS OF EMANCIPATORY POLITICS* 147, 169 (Avigail Eisenberg et al. eds., 2014) (criticizing the state-driven, rights-based recognition process as entrenching the colonial status quo, as opposed to adopting an approach that is founded on Indigenous worldviews and values); *see also* Joel Wainwright & Joe Bryan, *Cartography, Territory, Property: Postcolonial Reflections on Indigenous Counter-Mapping in Nicaragua and Belize*, 16 *CULTURAL GEOGRAPHIES* 153, 153–54 (2009) (recognizing human rights advocacy to secure rights to territory and property as nothing more than legitimizing state-centric legal systems and reworking colonial relationships).

98. Knuckey et al., *supra* note 52, at 11.

own identification of human rights problems and have incorporated methods that subjugate rightsholders as powerless victims while entrenching structures that sustain existing power imbalances.⁹⁹ Sarah Knuckey et al. discuss rightsholder participation in diagnosing human rights problems and building strategies for solutions as imperative to do no harm and to avoid further entrenching abuses or undermining rightsholders' agency and rights.¹⁰⁰ The authors point to resulting harms that include "trust deficits" in advocate-rightsholder relationships when human rights lawyering is top-down and devoid of meaningful participation.¹⁰¹

III. INCORPORATING INDIGENOUS VALUES IN HUMAN RIGHTS CLINICAL PEDAGOGY & PRACTICE

A. *Prioritize Process as Successful Human Rights Practice*

In settler colonial contexts, critically responsive human rights lawyering may be subnational in the dominant state-centric model on which the human rights framework is based. In any event, for Indigenous peoples, the dominant narratives intentionally devalue and erase local realities. Not only must advocates and rightsholders use participatory models in all aspects of the collaboration, but they must also prioritize the relationship and co-creative processes above all else in the advocacy strategy and implementation. Honoring and respecting the process becomes *the* critical human rights work and Indigenous rightsholders in relationship with one another thriving as agents of social change is the resistance to the erasure of Native people and communities in settler colonial contexts. The successful process of relational lawyering consequently becomes successful human rights advocacy.

This resistance as successful human rights advocacy is especially true if

99. Barbora Bukovská, *Perpetrating Good: Unintended Consequences of International Human Rights Advocacy*, 5 SUR INT'L J. ON HUM. RTS., 7, 8, 10, 13 (2008) (explaining that the methods of human rights advocates can harm victims by suppressing "their independence, competence, and solidarity," presenting victims as "powerless," and relying on and sustaining existing power imbalances); Gay J. McDougall, *Decade of NGO Struggle*, 11 HUM. RTS. BRIEF 12, 15 (2004) (noting that elite human rights organizations often ignore "the priorities and aspirations of the great mass of sick, impoverished, or marginalized groups in that country"); Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW J. INT'L HUM. RTS. 7, 8 (2011) (critiquing "a top-down approach, making decisions about people's need without obtaining meaningful input from the communities receiving the aid.").

100. Knuckey et al., *supra* note 52, at 15.

101. *Id.*

the Indigenous rightsholders in relationships are holding the power, have the space to exercise agency fully, and lead the outcomes in co-creative, collaborative spaces. Our experience in human rights practice is that, oftentimes, Indigenous peoples are negotiated on behalf of, even by well-meaning actors in so-called progressive spaces, which results not only in a reduction of agency, but has often resulted in the perpetuation of private and state-perpetrated violence with impunity. Successful human rights advocacy must avoid paternalism and requires non-Indigenous people to stop claiming expertise on Indigenous people.¹⁰²

B. Reject Extractivism & Promote Relational Lawyering

Clinicians must intentionally interrogate and reject extractive, transactional lawyering skills taught in human rights law practice when incorporating Indigenous values and relational lawyering practices. The assumption in human rights practice amongst Indigenous rightsholders and advocates that incorporates Indigenous values is that the relationship *begins* with trust deficits which must be overcome through relationships and reciprocal trust building. In addition to the internal work of interrogating one's own colonial practices as perpetuating harm, one of the largest barriers that clinicians will face in human rights practice is building and maintaining trust in authentic partnership relationships. Mass intergenerational collective trauma, the entire arc of colonial history, continued perpetration of genocide against Native peoples, colonization, and occupation have all resulted in a severe fracturing of relationships between Indigenous and non-Indigenous communities.¹⁰³ State and non-state institutional violence perpetrated against Indigenous peoples in the name of “development” and “progress” has resulted in a justifiable distrust of those institutions on the part of Indigenous people.¹⁰⁴

102. DELORIA JR., CUSTER DIED FOR YOUR SINS, *supra* note 30, at 10 (discussing how whites have historically postured themselves as “Indian experts,” as people who claimed to have devoted their lives to helping Indians).

103. See, e.g., NATIONAL LEAGUE OF CITIES, ROADMAP TO REPAIR: A GUIDE TO HOW CITIES CAN ACKNOWLEDGE AND ADDRESS THE HISTORY OF HARM TO INDIGENOUS PEOPLES, REBUILD TRUST AND REPAIR RELATIONSHIPS 34 (2022), available at REAL-MAG-Roadmap-Repair-Report.pdf.

104. See *id.*; see also Alia Wong, *The Schools That Tried—But Failed—to Make Native Americans Obsolete*, THE ATL. (Mar. 5, 2019), <https://www.theatlantic.com/education/archive/2019/03/failed-assimilation-native-american-boarding-schools/584017/> (noting that the state-funded, church-run boarding schools throughout the United States with the purpose to “kill the Indian, [and] save the man” have resulted in untold suffering and trauma for American Indian, Alaska Native and Native Hawaiians that continues today).

Consequently, Indigenous students and clients-partners in settler colonial settings may experience the human rights law clinic as an extension of educational and legal institutions that dehumanize and devalue Indigenous peoples while erasing Indigenous experiences and worldviews.¹⁰⁵ Incorporating Indigenous values in clinical pedagogy and practice should include actively working to transform the larger educational institutions within which clinics operate. Law schools continue to perpetuate, and benefit from, structures of colonialism while fostering environments that degrade Indigenous experiences and knowledge.

Indications that law schools require foundational institutional transformation include but are not limited to: the existence of historical or ongoing anti-Indigenous clubs or groups on campus; the lack of Indigenous faculty and students (or their exploitative treatment); the lack of Indigenous studies programs or courses; the investment in anti-Indigenous forms of commerce or capitalism (i.e., fossil fuel or other extractive industries); the continued use of dehumanizing and degrading mascots or seals;¹⁰⁶ the lack of engagement with Tribal governments or organizations; the lack of truth-telling or redress for historical university land theft, theft of Indigenous cultural items, patrimony, or remains;¹⁰⁷ and the existence of performative actions (i.e., land acknowledgments) without ongoing relationships with local Tribal governments and meaningful commitments to the stated needs of Indigenous people.¹⁰⁸ These examples show that, as educational institutions, law schools can and do perpetuate structural violence against Indigenous faculty, students, staff, and communities; thus, part of the human

105. See generally, Roderick A. Macdonald & Thomas B. McMorrow, *Decolonizing Law School*, 51 ALBERTA L. REV. 717, 717–20 (2014) (explaining the need to address colonial practices and pedagogy in law schools that impact Native students).

106. See generally DELORIA, *PLAYING INDIAN*, *supra* note 47, at 10–37 (discussing the ways in which playing Indian is a harmful and intentional act by settlers in early U.S. formation years); Preston Taylor Stone, *Playing Indian: What Superbowl LIV and Iron Arrow can Teach us About American Colonialism*, MIAMI HURRICANE (Feb. 3, 2020), <https://www.themiamihurricane.com/2020/02/03/playing-indian-what-superbowl-liv-and-iron-arrow-can-teach-us-about-american-colonialism/> (comparing two examples of mascot imagery at institutional levels and connecting both to American colonialism past and present).

107. See Logan Jaffe et al., *America's Biggest Museums Fail to Return Native American Human Remains*, PROPUBLICA (Jan. 11, 2023, 5:00 AM), <https://www.propublica.org/article/repatriation-nagpra-museums-human-remains> (stating that the remains of hundreds of thousands of Native American, Native Hawaiian and Alaska Natives' ancestors are still held by museums, universities, and federal agencies in the United States).

108. For examples of land acknowledgment practices, see NATIONAL LEAGUE OF CITIES, *supra* note 103.

rights work becomes active institutional transformation for accountability, redress, and healing.

As law school clinics are part of legal educational institutions, clinicians must approach rethinking clinic structure and clinic design with the presumption that clinics, too, may be constructed as institutions in furtherance of settler colonial harms against Native clinic students and Native rights holder clients-partners. The ethics of non-exploitation and non-extraction¹⁰⁹ must reimagine the clinic and relationships to clinic students and clients-partners, as well as the relationships between and among all participants, including clinicians themselves.

Clinicians must reject the practice of solely incorporating Indigenous methodologies within the settler colonial institution's governance structures, as such incorporation may amount to no more than a creative adaptation of colonial power sustaining colonial subjugation.¹¹⁰ For example, clinicians might question and reconsider the methods and means by which clinicians set their dockets, choose their clients-partners, select their students, and assign students to cases and projects. An anti-colonial, non-extractive, relational lens might consider these design decisions as sites for structural transformation, relinquishing power and control over decision-making processes and permitting clients-partners to exercise power and control over such procedural matters that determine advocate-rights-holder relationships.

Relatedly, lawyer-advocate and client-partner relationships that revolve around funding streams or grants enabling initial advocacy projects to begin or to continue can be sites for transformation from extractive to relational advocacy spaces. If a clinician is partnering with Indigenous peoples and Indigenous-led organizations, the clinician might consider ensuring that *both* parties agree *ex-ante* on funding sources and allocations of grants. Clinicians and their institutions should avoid applying for funding intended to benefit Indigenous populations. While there are instances in which a non-Indigenous organization or clinic applies for this funding already with meaningful relationships with Indigenous populations, Tribes, or

109. Zuni Cruz, *supra* note 84, at 561–62.

110. Scott Lauria Morgensen, *Destabilizing the Settler Academy: The Decolonial Effects of Indigenous Methodologies*, 64 AM. Q. 805, 807 (2012); see also Nopera Isaac Dennis-McCarthy, *Reconciliation and Self-Determination: Incorporating Indigenous Worldviews on the Environment into Non-Indigenous Legal Systems*, 6 PUB. INT. L. J. N.Z. 163, 164 (2019) (“First, that the incorporation of Indigenous perspectives into a non-Indigenous legal system may foster reconciliation between a people and a system who have often been at odds, but that this potential will only be realized if the process is conciliatory and mutually respectful. Secondly, that while effective incorporation may allow for reconciliation, it does not necessarily provide Indigenous peoples the right of legal self-determination to fully realize and enforce their worldview.”).

organizations, applying for funding and subsequently finding an Indigenous person or organization to sign onto a letter of support or a memorandum of understanding, or to provide training or other assistance is extractive and reduces the capacity of already strained Indigenous individuals and Indigenous-led organizations.

C. Embrace Epistemic Pluralism

Another method for incorporating Indigenous values toward relational lawyering is to recognize that Indigenous communities hold important knowledge and are superior epistemic sources on the nature of their oppressions in settler colonial contexts, their lived experiences, their traditions, culture, and practices, their frameworks for addressing disputes and conflict (which may or may not resemble Western approaches), the historical narratives of our shared space, and the solutions to entrenched, complex human rights problems.¹¹¹ Centering Indigenous knowledge, as well as truly valuing lived experiences, will lead to relational practice to name and frame human rights violations and on what the priorities ought to be in the approach and execution of the strategies to fight oppression toward liberation (i.e., co-creating solutions that do not legitimize or entrench settler colonial violence and being very intentional about this anti-colonial methodological lens).

Clinicians must acknowledge, understand, and fully support through action that Indigenous peoples hold the necessary knowledge and abilities to address issues and create solutions to these issues in their communities. Practicing critically in this way requires a further acknowledgment that Indigenous peoples' solutions have been intentionally oppressed via sustained settler colonial state violence. Clinicians are not going to solve this problem (nor is that necessarily their role or entirely within their control) through uncritical use of Western, colonial systems that intentionally and actively subjugate and erase Native epistemologies and communities.

Furthermore, clinicians might question the role of the lawyer-advocate in the advocate-rights-holder relationship itself. Clinicians should ask critical

111. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. REV. 323, 324 (1987) (arguing that the notion of “[l]ooking to the bottom — adopting the perspective of those who have seen and felt the falsity of the liberal promise” is vital to knowledge production seeking to define and achieve justice); E. Tendayi Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*, 28 SUR INT’L J. ON HUM. RTS. 1, 6 (2018) (“The work of achieving racial equality is work that must be done by all, but must be led and guided in close participation with representatives of communities who suffer on the frontlines of racial discrimination, subordination and exclusion.”).

questions such as “Why am I advocating in this space?”, “Who is already leading advocacy in this space?”, and “How can I support these advocacy efforts rather than supplant them?” In general, lawyer-advocates and client-partner-rights holders tend to prioritize outcomes of particular advocacy strategies and the tactics employed to reach those outcomes rather than prioritizing the relationship between and among lawyer-advocates and client-partner-rights holders. To counter transactional models of lawyering and incorporate relational models of lawyering, rethinking processes of practice becomes as critically important as the subject matter of the collective, strategic human rights advocacy. Through the process, clinicians can begin to co-create, rather than reform, spaces to diminish hierarchies in the classroom as well as in human rights practice.

D. *Prioritize Self-Determination Rights*

One practice strategy that will lead clinicians closer to anti-colonial, relational lawyering is to ensure that human rights advocacy prioritizes Indigenous self-determination rights. As mentioned previously, self-determination rights are grounded in the idea that all peoples are entitled to control their own destinies and is foundational to working with Indigenous rights holders in settler colonial contexts.¹¹² Unless self-determination rights and principles are understood and incorporated into all aspects of human rights advocacy with Native peoples, advocates risk quickly deteriorating work and relationships without free consent and full participation.¹¹³ For instance, when working to secure land rights with Indigenous populations, focusing on the obligations of states and private actors, including corporations, to engage in meaningful consultation in good faith to obtain Indigenous peoples’ consent when any proposed project affects their rights is fundamental toward securing self-determination rights.¹¹⁴ However, as

112. S. James Anaya, *Self-Determination as a Collective Human Right Under Contemporary International Law*, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION 1, 7–8 (Pekka Aikio & Martin Scheinin eds., 2000); Zuni Cruz, *supra* note 84, at 563.

113. Anaya, *supra* note 112.; Zuni Cruz, *supra* note 84, at 563.

114. See S. James Anaya (Special Rapporteur on the Rights of Indigenous Peoples) *Extractive Industries and Indigenous Peoples*, ¶ 28–29, U.N. Doc. A/HRC/24/41 (July 1, 2013) (stating that the obligation of Free, Prior, Informed Consent (FPIC) requires that any entity seeking to engage in any activity that will impact indigenous peoples’ lands, resources or other fundamental rights must first obtain the peoples’ free, prior, and informed consent); see also JENNIFER FRANCO, TRANSNAT’L INST., RECLAIMING FREE PRIOR AND INFORMED CONSENT (FPIC) IN THE CONTEXT OF GLOBAL LAND GRABS 13, 16 (2014); Philippe Hanna & Frank Vanclay, *Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent*, 31 IMPACT ASSESS. & PROJ. APPRAISAL

Part II *supra* examines, Western liberal legal frameworks of human rights law and advocacy provides a limited, imperfect short-term solution to full realization of self-determination for Indigenous peoples.

Within the human rights clinic space, the processes by which participation and co-creation occur must be co-created and incorporated—even prioritized—to reflect Indigenous values and cultural practices.¹¹⁵ Processes become equally or even more important than outcomes. The final decision as to whether and how the co-creative relational lawyering process with non-Native human rights clinics moves forward rests squarely with Native rights holders-partners.¹¹⁶ This means that Native people must not simply serve to inform human rights clinical advocacy. After all, co-creative processes *are* the practice of adhering to the principles of self-determination and, thus, uphold the self-determination rights of Indigenous peoples in and through human rights pedagogy and practice.¹¹⁷ Human rights clinical practice, therefore, must move forward at what Indigenous partners have called the “speed of trust.”¹¹⁸

As part of incorporating Indigenous values into human rights advocacy, human rights clinicians should also consider shifting clinical pedagogy and advocacy to models based on community-centered lawyering to challenge the individualistic approach embedded in client-centered lawyering, especially when seeking remedies for collective rights violations.¹¹⁹ Indeed, community-centered lawyering is essential to the anti-colonial representation of Native communities in human rights pedagogy and

146, 150 (2013); Andrea Carmen, *The Right to Free, Prior, and Informed Consent: A Framework for Harmonious Relations and New Processes for Redress*, in *REALIZING THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: TRIUMPH, HOPE, AND ACTION 120* (Jackie Hartley, Paul Joffe, and Jennifer Preston eds., 2010).

115. See Trask, *supra* note 15, at 1207–09.

116. See Trask, *supra* note 15, at 1212.

117. See Zuni Cruz, *supra* note 84, at 563 (adhering to the principle of self-determination, where communities and clients determine and prioritize legal needs). See generally Phyllis E. Bernard, *Community and Conscience: The Dynamic Challenge of Lawyers’ Ethics in Tribal Peacemaking*, 27 U. TOL. L. REV. 821, 823–24 (1996) (discussing how communal values can be used in dispute resolution and when addressing the ethical obligations of a lawyer and how the apparent gap between the individualistic values of lawyers’ ethics and communal values evidenced by tribal peacemaking can be bridged).

118. Many partners have expressed this sentiment over the years, but I can point specifically to my work in the United States with non-governmental organizations working on the Missing and Murdered Indigenous Persons (MMIP) Crisis.

119. Zuni Cruz, *supra* note 84, at 575–76.

practice.¹²⁰

Further, clinicians should develop norms of engagement around kinship rather than allyship. Allyship denotes an “us v. them” relationship and implies a transaction to clients with whom these authors have worked. Clients-partners in settler colonial settings have asked us as collaborative partners to see each other as kin—relatives with commonalities and a shared future. In this way, kinship relationships adopt the idea that partners are collectively working toward a shared future in which Indigenous worldviews and ways of life are respected—and centered as beneficial to all.

E. *Reject White Supremacy Culture*

International human rights law practice, rooted in coloniality, has been dominated by white supremacy.¹²¹ Thus, lawyering practices and skills that are valued, taught, desired, or even required in human rights professional spaces must be questioned, potentially abandoned, and rethought through a critical lens.¹²² Clinicians might consider interrogating how clinical education and lawyering entrench white supremacy culture in clinical teaching and advocacy spaces. Examples that the authors have encountered include but are not limited to: unilaterally setting meeting agendas and hierarchically conducting meetings; separately developing legal strategies and tactics; lack of trauma-informed lawyering knowledge and skills, not only when clinicians and students interact with clients and partners, but also

120. *Id.* at 564 (“[C]ommunity lawyering approach is superior to the client centered lawyering approach and, indeed, is essential to the competent and non-colonial representation of native communities.”).

121. See Tema Okun, *White Supremacy Culture*, DRWORKS, www.dismantlingracism.org/uploads/4/3/5/7/43579015/okun_-_white_sup_culture.pdf. White supremacy culture “is the widespread ideology subsumed into the beliefs, values, norms, and standards . . . teaching us both overtly and covertly that whiteness holds value, whiteness is value.” According to Kather et al., white supremacy culture “disconnects and divides us, and undermines and erases the knowledge, wisdom and communal solidarity of our ancestors, including Indigenous and other (non-white) traditions.” Kather et al., *supra* note 7, at 5.

122. Kather et al., *supra* note 7, at 5. There are certainly instances in which white supremacy appears overtly throughout legal education and Western law traditions in general, but there are also seemingly innocuous ways in which white supremacy and oppression present in our daily thought and action. Overt examples include how the law is taught (as addressed earlier with regard to the Marshall Trilogy), how legal education is inaccessible for many systemic and endemic reasons, the ways in which our colleagues and peers are treated, tokenism, and the organizations, ideologies, and foundations that our respective institutions find themselves deeply entrenched within. These issues are clearer to the eye, but incredibly difficult to address (though that does not abrogate responsibility and duty to do so).

when clinicians interact with students and students with one another; unilaterally setting project goals and expectations; encouraging students and lawyer advocates to detach emotions from their lawyering practices; placing a sense of urgency on the work through deadlines or defining the problem through crisis frames that demand immediate responses; deemphasizing the importance of learning relevant history and context without extracting emotional labor from Indigenous clients and partners; lack of transparency and gatekeeping in relationships or processes;¹²³ co-opting or not sharing credit for collaborative work product; communication styles and feedback that presuppose one singular method for engaging in the work; the expectation or sense of entitlement to clients' time and energy; and separately applying for and receiving funding intended to support the project work when Indigenous partners should co-manage or manage the funds.

Clinicians might consider open, honest communication reflexively with Indigenous clients and partners to understand and rethink together alternative practices toward transforming pedagogy and practice, decolonizing clinical spaces while incorporating Indigenous values into the relational lawyering work. For instance, setting the expectations around conducting meetings should be a shared exercise, and the relational lawyering model would value the process toward sharing control over the agenda as well as developing prescriptions for the legal strategy. Another practice to incorporate is to allow clients-partners, students, and clinicians to bring their whole selves into case and project work, especially permitting students to feel and process emotional responses to their work. Clinicians might consider flipping the script on soft skills (i.e., interpersonal communication, deep listening, problem-solving, empathy, and cultural humility) as the practice skills to prioritize.¹²⁴ Clinicians and student advocates might also consider embracing a willingness to engage in practice or project work that does not require law degrees or legal expertise to prioritize client-partner needs. Allowing students and ourselves as clinicians to feel vulnerable, to make mistakes and own imperfections might also be considered a more intentional,

123. Rodríguez-Garavito, *The Future of Human Rights*, *supra* note 52.

124. For example, critical human rights practice requires an awareness of one's outsider status in relation to the community. No amount of information you learn, or time you spend living or working in a community will change that outsider status. Therefore, cultural humility should be the practice skill to achieve over any false notion of cultural competency. This might go without saying, but non-Indigenous people can never become Indigenous. Thus, clinicians preparing themselves and their students to advocate in Indigenous community spaces must impart "humility, politeness, persistence, and awareness of the need to actively involve the client and others supportive of the client (including family and service providers) in both obtaining information and suggesting the approach and the sources of information." Zuni Cruz, *supra* note 84, at 578.

reflective part of the lawyer-advocate and client-partner relationship as well as clinical pedagogy. Finally, self-care must be complemented with community (collective) care for reciprocal, relational processes to flourish.¹²⁵

In practicing relational lawyering, clinicians might consider taking many of the skills and practice of trauma-informed lawyering¹²⁶ and teaching. Engaging with Indigenous clients and partners requires that clinicians and educators implement trauma-informed practices. In part, trauma-informed teaching and practice acknowledge that trauma is widespread. For Indigenous populations, in addition to experiencing trauma from individual experiences, trauma is also historical,¹²⁷ intergenerational, and collective. Practitioners should seek to resist re-traumatization, which can trigger trauma responses and can result in emotional and or biological stress. These triggers can come in the form of microaggressions (the use of pejorative phrases or words), ignorance of or failing to acknowledge historical events, negotiating on behalf of clients or partners without their express consent, failing to be transparent, cultural appropriation, sensationalizing experiences, extractive practices, white supremacy culture, and so on. Additionally, lawyering and advocacy strategies must focus on transforming structures and institutions that perpetuate and entrench settler colonialism. Trauma-informed lawyering means thinking critically about what must be transformed about structures and institutions so that clinicians and practitioners are not perpetuating the ongoing, present-day, structural harms of settler-colonialism in their teaching and practice. If clinicians are engaging with Indigenous people only for fact-finding interviews or shadow reports, for teaching classes, for syllabus development, or otherwise having

125. Lisa Chamberlain, *From Self-Care to Collective Care*, 17 SUR-INT'L J. HUM. RTS. 215, 218 (2020).

126. See, e.g., Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 384 (2016) (discussing the methods to incorporate trauma-informed lawyering into clinical pedagogy and practice). See generally *The Trauma Informed Lawyer*, SIMPLECAST, <https://thetraumainformedlawyer.simplecast.com> (last visited Mar. 5, 2023).

127. Historical trauma is defined as the cumulative and generational emotional, physical, and psychological harm stemming from mass trauma exposure. See Maria Yellow Horse Brave Heart & Lemyra M. DeBruyn, *The American Indian Holocaust: Healing Historical Unresolved Grief*, 8 AM. INDIAN & ALASKAN NATIVE MENTAL HEALTH RSCH. 60, 68 (1998). Examples of historical trauma events include internment camps for Japanese Americans during WWII, United States and Canadian Boarding/Residential schools for Indigenous populations, the separation of parents and children at the United States border, experiences of trauma by survivors and their descendants of the Holocaust, and descendants of slavery.

Indigenous representation in name only, then the advocacy is engaging in extractive rather than relational lawyering *vis a vis* Indigenous client-partners.

F. Redefine Success

Clinicians also might begin to redefine what “success” in legal advocacy means, where Native partners and key stakeholders lead the process and outcome. In this way, clinics and client-partners can co-imagine the process of advocacy without non-Natives directing strategy or leading outcomes. Again, the process of co-creation must be prioritized over the outcomes of human rights strategic advocacy. Here, a first step is to reconsider practices that stem from the legal systems and processes that perpetuate violence against Indigenous peoples through declaring “winners” and “losers,” while moving toward healing spaces that are restorative and reinforcing of the humanity and dignity of clients-partners in the advocacy-rightsholder relationships.

Finally, incorporating Indigenous values into human rights clinical practice requires that clinicians prioritize the focus on local Indigenous peoples’ human rights concerns, while uplifting and centering local Indigenous voices in human rights advocacy. Clinicians should start with the assumption that Indigenous peoples are present and experiencing human rights violations in local spaces. However, clinicians should be mindful that Indigenous people’s experiences may not map on to other forms of oppression and discriminations. Native experiences of state violence and other harm is not homogenous. There is a significance of place and connection to place that should be centered. While Native people also are minority groups and have racialized experiences, historical and contemporary experiences of genocide and dispossession add layers of complexity that often are overlooked and must be confronted in settler colonial contexts. Engaging in intersectional analyses assists advocates in understanding toward combating erasure of Indigenous experiences of discrimination.

Additionally, in working with Indigenous communities in settler colonial contexts, human rights clinicians may consider focusing on building power with and among communities in and across geographies, communities with similar structural oppressions at play at the root of the human rights violations they face. Moreover, clinics may begin to engage in relationship-building with the original peoples of the lands on which the human rights clinic stands to practice connecting people to place as well as to avoid

Western exceptionalism in human rights advocacy.¹²⁸ Engaging in ongoing relationships to local Native peoples is imperative for human rights clinical practice in settler colonial contexts because the urge to globalize Indigenous peoples, particularly within academic institutions situated on ancestral lands, contributes heavily to Indigenous peoples' experiences of erasure. Forgetting the significance of place allows non-Indigenous peoples to distance themselves from the historical and contemporary harms against Indigenous peoples from which non-Indigenous peoples individually and collectively benefit as recipients of imperialist traditions.¹²⁹

Shifting pedagogical focus from national and global spaces to local contexts and identifying Indigenous-led organizations and subject matter experts and advocates (both of whom should be Indigenous) to ensure the centering and uplifting of Indigenous expertise to address Indigenous issues. The Cardozo human rights clinic, for instance, has begun to develop a collaborative relationship with the Lenape (the original peoples of Manhattan), partially as a vertical history exercise to connect people—students, faculty, and community—to place toward anti-colonial, relational lawyering, partially as a “living land acknowledgment”¹³⁰ toward building trust and healing relationships, and partially to incorporate different, non-extractive relationships with client-partners, building a future imagined together in partnership.

IV. CHALLENGES & WAYS FORWARD

Despite the vital need and the myriad benefits of decolonizing while incorporating Indigenous values into clinical human rights pedagogy and practice, many challenges remain.

First, one challenge obvious to the authors in writing this Article lies in the enormity of the tasks at hand. Human rights clinics are situated within larger institutions and structures that perpetuate settler colonial violence

128. The pull of imperialism is strong within American institutions, with universities acting as “living symbols of colonization” and “bastions of white power.” TRASK, FROM A NATIVE DAUGHTER, *supra* note 61, at 151–52.

129. See No’eau Woo-O’Brien, 2- *Hauani-Kay Trask vs. Racist Caller*, YOUTUBE (Dec. 7, 2019), <https://www.youtube.com/watch?v=Pzb9dABdWMk> [(RP)].

130. According to the practices of Cardozo’s Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic partner the Lenape Center, a “living land acknowledgment” is much more than a plaque on a wall; it is an ongoing, collaborative relationship with Indigenous peoples of the land on which one stands. *Programs on Creating a Living Land Acknowledgment Held with the Lenape Center*, BROOK. L. SCH. (Apr. 27, 2022), <https://www.brooklaw.edu/News-and-Events/News/2022/04/Programs-on-Creating-a-Living-Land-Acknowledgment-Held-with-the-Lenape-Center>.

against Indigenous students, faculty, and communities, and human rights clinicians are not always perched in positions of authority to effectuate larger, structural changes at the law school institutional levels. As stated, Indigenous peoples' advocacy toward transformative change challenges Westphalian notions of sovereignty, nation-states, and governance toward anti-colonialism and the incorporation of Indigenous values and worldviews. The challenge of addressing colonialism through a colonial system, including a human rights system, is inherently difficult and daunting.¹³¹

Understanding and acknowledging that addressing anti-Indigeneity, racism, and oppression is a lifelong commitment that requires deliberate daily self-work is a solid first step forward. This Article has already provided some guidance for evaluating institutions; however, individuals must resolve to address these markers both internally and externally. Learning about Indigenous solutions from Indigenous people, creating relationships without succumbing to the urge to extract from those relationships academically or otherwise, is a necessary but heavy lift.¹³²

Second, limitations of the international human rights legal framework provide additional challenges to engaging in transformative human rights

131. The authors are not sure that "daunting" is strong enough of a term here and feel that this challenge while working within Western systems might be impossible. It was Audre Lourde who questioned relying on the system of oppression as a limited tool for liberation: "What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow parameters of change are possible and allowable . . . For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this fact is only threatening to those women who still define the master's house as their only source of support." Audre Lourde, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110–12 (2007).

132. For example, the authors of this Article have a relationship that is rooted in being their genuine and authentic selves: one is an Indigenous person (Bishop LaPorte) and the other is non-Indigenous (Getgen Kestenbaum). This relationship began prior to their professional partnership. The human rights clinic directed by the non-Indigenous person provides direct support to the Indigenous person's project, and does so at the direction of the Indigenous person. The non-Indigenous person does this absent monetary or other gain, which is not necessarily required. The work exists because the work is needed, requested, and reflected upon toward co-creative next steps. That reflection and co-creation has built even more trust. The professional partnership is constantly reassessed and remains strong for that reason. There is not only reciprocity built into the work of the authors; there is a deep commitment to learning, supporting, and growing in mutual and shared responsibility to the goals defined by the clinic's Indigenous partners. It is not paternalistic. It is not Eurocentric. Most importantly, it is a relationship where mistakes can be made and vulnerabilities can be expressed without fear of judgment or detriment to the relationship.

advocacy in settler colonial spaces. Understanding and generating a practical approach to realizing self-determination and sovereignty rights is limited by a Western legal perspective and framing of each of these doctrines.¹³³ These legal concepts themselves are Western in nature; thus, advocates continue to understand and frame these issues in a context that centers the relationship between the nation-state and its citizenry or between the nation-state and other nation-states. If human rights clinical approaches and practice continue to emphasize the role of individual rights, which originate from foundational legal writings (i.e., constitutional texts or charters), we place entirely too much trust in inherently flawed premises and philosophical theories of governance.

What role can individual rights or the even legal recognition of governmental sovereignty and self-determination have in non-colonized or decolonized spaces? How can clinicians, practitioners, and even the legal education system resolve to address the needs of Indigenous communities, especially when occupation and dispossession is active—even required—for Western states to exist in the current global order?¹³⁴ What abilities do clinicians have to critique legal language and frameworks as limiting our vision for an anti-colonial future that incorporates Indigenous worldviews? Currently, Indigenous rights advocacy tends to focus on sovereignty and self-determination to the exclusion of collective responsibility and duty.

133. Indigenous rights movements consider self-determination in several theoretical camps, with certain advocates pushing for territorial integrity and the right to separate from states. Patrick Thornberry, *Self-Determination and Indigenous Peoples: Objections and Responses*, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION 39, 52, 54 (Pekka Aikio & Martin Scheinin eds., 2000). Other camps push for self-determination rights as self-governance within the settler colonial state. ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW, *supra* note 49, at 84–85 (“[s]ecession . . . may be an appropriate remedial option in limited contexts . . . where substantive self-determination for a particular group cannot otherwise be assured or where there is a net gain in the overall welfare of all concerned”); *see also* Anaya, *supra* note 112, at 7–8. All of these views, however, remain within the imagination of the liberal legal state model.

134. This is seen clearly within dispossessed American Indian and Alaska Native Tribes and within occupied territories of the United States. The annexation of Hawai’i in 1898 required the overthrow and usurpation of its government, as well as its admission as a state in 1951, is active occupation and colonization. Trask argues that because Hawaiians never surrendered their political rights through treaties or through a vote on annexation, that they should fall under the United Nations category of a non-self-governing people and that “dependent status has been maintained through state (rather than native) control of Hawaiian trust lands.” Trask further states that “Hawaiians had their nationality forcibly changed in their own homeland.” TRASK, FROM A NATIVE DAUGHTER, *supra* note 61, at 29–30.

Often, advocates and their rights-holder clients or partners root their understanding of reciprocity in what is exchanged rather than focusing on what can be offered or given. Instead, they should consider ways to focus on collective responsibility and duty toward reciprocal relationships with clients-partners in human rights clinical teaching and advocacy models.

A third challenge is to realistically assess the investment of time and resources required for meaningful advocacy and whether capacity exists for all parties to meet those requirements. Moving at the speed of trust is painstaking and difficult at the beginning stages of building a collaborative, reciprocal relationship. Often, non-Indigenous individuals engage in work with Indigenous movements in highly temperamental and impermanent ways. This “touchdown, tornado approach” to short-term human rights advocacy can result in additional labor for Indigenous advocates, burden Indigenous rights movements, erode trust, and ultimately impede successful advocacy. Though defining the scope of the advocacy and establishing an adequate understanding of issues prior to engaging in the work is a best practice, it requires a lot of process and co-creation upfront.¹³⁵

A “long arc of the moral universe”¹³⁶ approach to advocacy is a way forward, requiring an understanding of the ways in which all forms of settler-colonialism, including the colonial logics embedded within the human rights framework itself, are antithetical to indigeneity and the continued existence of Native peoples. The necessary unlearning and relearning to focus on decolonization is a monumental task, one that requires individuals to consider how the law’s foundations are entangled in colonial thought as well as their roles in radical political advocacy.¹³⁷ Human rights clinicians must

135. Additionally, while clinician-advocates and client-partners should define the scope and parameters of the partnership, the relationship should be reassessed consistently as needed. Being intentional in the relationship means that the longevity of the project is considered, student training and turn-over is addressed, it is clear who will speak on National and local platforms, and that institutional limitations are acknowledged, addressed, and mitigated. For example, prior to the authors of this Article engaging on a key project of the Indigenous author’s organization, the Indigenous author committed to helping train clinical students on the historical and legal context of the issue to be addressed. The clinical director, in turn, had these same interns engage in the work as defined by the scope of the authors’ MOU. There was a clear understanding of what was required prior to embarking on the work and the scope of work was clearly defined for completion.

136. The oft cited quote in human rights advocacy is from Dr. Martin Luther King, Jr.: “The arc of the moral universe is long, but it bends toward justice.” Dr. Martin Luther King Jr., *Remaining Awake Through a Great Revolution* (Mar. 31, 1968).

137. See, e.g., FOLUJE ADEBISI, *DECOLONISATION AND LEGAL KNOWLEDGE: REFLECTIONS ON POWER AND POSSIBILITY* (2023).

be willing to deconstruct their own understandings of power and learn to shift agency with humility in a form of self-transformation. These are larger and more difficult conversations to be had with oneself, and from there with students and then the institutional actors and systems within which human rights clinicians operate for transformational human rights advocacy.

Even national reconciliation processes require recognition of an oppressive, colonizing state's authority while simultaneously accepting redress as defined by the same oppressor state. Failing to recognize and address Indigenous perspectives and truths of imperialism, the continuation of which is fatal for Indigenous peoples and their governance structures, will likely render any effort as performative, and will result in largely transactional relationships. Recognizing the atrocities perpetrated against Indigenous groups along a continuum of violence assists in understanding the connections to human rights violations happening today, and the need to connect the historical to the present to truly understand the nature and consequences of the harm to Native individuals and communities.

A fourth challenge is knowing with whom the clinic is partnering and their place in the larger Indigenous rights movement in which the clinic is operating. Often, non-Indigenous organizations purport to work on Indigenous rights advocacy and center themselves within Indigenous rights movements. These organizations endeavor to speak for Indigenous peoples absent meaningful consent, erasing and displacing Indigenous voices within their own work and movements. Clinicians might consider taking time to vet potential clinic partners and causes before engaging in any meaningful advocacy efforts.

Another challenge is to avoid making Indigenous peoples novel academic subjects of study while ignoring immediate needs and epistemic value of lived experiences. Indigenous client-partners frequently express this frustration, especially given historical harms and their oft overlooked lived experiences as survivors of genocide and other forms of state violence, with solutions to address human rights concerns. Vine Deloria Jr. critiques this trap excessively in his book, *Custer Died for Your Sins*, illustrating the phenomenon with examples of task forces and the tens of millions of dollars spent on "studying" Indigenous peoples as specimens afflicted with the "Indian plight" versus utilizing that funding to actually assist Indigenous people experiencing historical and active colonization and genocide.¹³⁸ Professor Zuni Cruz has found that outsider scholars and academics have subjected Native peoples to unethical study and inappropriate information

138. DELORIA JR., *CUSTER DIED FOR YOUR SINS*, *supra* note 30, at 93.

disclosure.¹³⁹ At the very least, as a way forward, academics must address structural violence and systems gaps¹⁴⁰ and should uphold Indigenous data sovereignty as an essential part of human rights fact-finding efforts.¹⁴¹

V. CONCLUSION

Process matters to get us—all of us—to that “elsewhere” decolonization requires. This relational lawyering process requires us to evaluate our willingness to be equal co-creators and disruptors of logic. It requires us to deconstruct and relearn. It requires a total shift in mindset and a willingness to dismantle structures that uphold previous iterations of ourselves and the societies from which we need to detach and divest. It requires us to leap forward—together—to a future unseen and unknown.

Clinical educators and practitioners should, where appropriate, incorporate Indigenous values into their human rights advocacy toward co-creating spaces that do not perpetuate harm, while avoiding engaging in base performative acts that appropriate culture and displace Indigenous people and voices. Rather than re-inscribing Western notions of rights and pitting individuals against one another or against the collective, is it possible to strive for human rights clinical pedagogy and practice to be a means to support reciprocal relationship-building and collective healing? What restorative practices can we implement? How can non-Indigenous people consider implementing the worldviews and practices of Indigenous peoples without co-opting Indigenous values or further entrenching settler colonial structures as legitimate forms of state violence? If Indigenous is a birthright word,¹⁴² what role can non-Indigenous peoples have in healing our shared spaces, including our shared human rights spaces? Robin Wall Kimmerer, a Potawatomi scholar, discusses a way forward in her work, *Braiding Sweetgrass*: “be useful, fit into small spaces, [learn to] coexist with others . . . [and do your part to] heal wounds.”¹⁴³

139. Zuni Cruz, *supra* note 84, at 561.

140. DELORIA JR., *CUSTER DIED FOR YOUR SINS*, *supra* note 30, at 93.

141. Indigenous data sovereignty is the ability for Indigenous peoples, communities, and Nations to participate, steward and control data that is created with or about themselves. For an in-depth look at the reasons for the movements to ensure data sovereignty and the ways in which research must be transformed, see LINDA TUHIWAI SMITH, *DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES* 3–4 (2008).

142. KIMMERER, *supra* note 46, at 213.

143. *Id.* at 221.

Sweetgrass: “be useful, fit into small spaces, [learn to] coexist with others . . . [and do your part to] heal wounds.”¹⁴⁴

144. *Id.* at 221.