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Decolonizing Authority: The Conflict on Wet'suwet'en Territory

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Abstract

One of the leading features of colonialism is the imposition on a given territory and people a framework for what constitutes authority that renders pre-existing governing practices and legal orders unrecognizable as features of legitimate law and governance. Understood in this way, colonialism renders Indigenous law and governing practices invisible. As a result, decolonization requires changing how authority is apprehended and not only how it is distributed. This article compares two frameworks of authority in relation to the conflict on Wet'suwet'en territory: liberal postcolonial statism and relational pluralism. It shows how each framework provides a distinct lens through which to understand the pertinent features of political authority but argues that relational pluralism presents a better account of how to reconceive political authority in the context of real-world conflict.

Résumé

L'une des principales caractéristiques du colonialisme est d'imposer à un territoire et à un peuple donnés un cadre d'autorité qui rend les pratiques de gouvernance et les ordres juridiques préexistants méconnaissables en tant que caractéristiques du droit et de la gouvernance légitimes. En ce sens, le colonialisme a rendu invisibles le droit et les pratiques de gouvernance autochtones. Par conséquent, la décolonisation exige de changer la façon dont l'autorité est appréhendée et pas seulement la façon dont elle est distribuée. L'article compare deux cadres d'autorité au conflit sur le territoire Wet'suwet'en : l'étatisme libéral post-colonial et le pluralisme relationnel. Il montre comment chaque cadre fournit une lentille distincte permettant de comprendre les caractéristiques pertinentes de l'autorité politique, mais soutient que le pluralisme relationnel présente un meilleur compte rendu de la manière de reconcevoir l'autorité politique dans le contexte d'un conflit réel.

Keywords: authority; political and legal pluralism; Indigenous politics; decolonization

Mots-clés : autorité; pluralisme politique et juridique; politique autochtone; décolonisation

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For the first three months of 2020, headlines in Canada were dominated by reports of protests in northern British Columbia by members of the Wet'suwet'en First Nation who blockaded a road on their traditional territory. Their protest has been ongoing for the last 10 years, ever since a gas company began surveying for the purpose of building a pipeline through the territory, which is in the interior of British Columbia, to the port town of Kitimat for export to Asian and American markets. The conflict escalated as construction was set to begin. Coastal GasLink successfully negotiated an agreement with five out of six elected band councils of the Wet'suwet'en First Nation, as well as the councils of other First Nations who live along the pipeline route. The company also secured permission from the provincial and federal governments to begin constructing the pipeline. But 8 out of 13 Wet'suwet'en hereditary chiefs opposed the project. The split between the hereditary chiefs and the elected band councils became the focus of a debate that ensued about who has authority to approve the pipeline.

The BC Human Rights Commission came out in favour of the protesting hereditary chiefs, as did Amnesty International and the United Nations Committee on the Elimination of Racial Discrimination. The UN Committee argued that the "free prior and informed consent" of all affected groups in the Wet'suwet'en nation is required for the project to proceed. Protesters from Mohawk communities in Ontario and Quebec supported the Wet'suwe'ten chiefs and blockaded the transnational railway, stranding thousands of commuters and disabling the transportation and export of goods through ports on the St. Lawrence Seaway. The Royal Canadian Mounted Police (RCMP) arrested protesters on Wet'suwet'en territory and also at government offices in Victoria. The Canadian public appeared to be divided about these arrests. Some considered the protests unlawful and supported arrests until the disruption stopped. Others argued that using police action could backfire given the already fraught relations between Indigenous peoples and the state. As it stands, many Indigenous communities do not accept the authority of Canadian law as legitimate,[1] a fact underlined by some Wet'suwet'en protesters who insisted that they were following Wet'suwet'en law that, in their view, directs them to protect the natural environment on their traditional territory.

The stand-off between the Canadian state and members of the Wet'suwet'en community points to a tension at the heart of struggles over decolonization today about who has legitimate authority over land development and infrastructure projects on the traditional territories of Indigenous peoples. Does authority reside with Indigenous communities, and if so, who within these communities should have the authority to make such decisions? Should the state have final authority? Or should Indigenous peoples and the state share authority in the spirit outlined in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)? This article argues that reforming how legal and political authority is distributed in colonial contexts requires first addressing how colonialism has distorted the way in which authority is recognized and understood. One of the leading features of colonialism has been to impose on a given territory and people a framework for what constitutes authority that renders pre-existing governing practices and legal orders unrecognizable as features of legitimate law and governance. Colonialism has rendered Indigenous law and governing practices invisible. This means that decolonization requires changing how authority is apprehended and not only how it is distributed.

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In political theory, mainstream approaches to understanding political authority ignore the ways in which the concept has been shaped by colonialism.[2] Here, in the first part of the article, I explore approaches to Indigenous–state relations that aim at reforming state authority in response to decolonization. I use the resources of these theories to outline two different frameworks for how legal and political authority might be decolonized. I call these frameworks *liberal postcolonial statism* and *relational pluralism*.

Liberal postcolonial statism rethinks the liberal state in a genuinely postcolonial way. It does this by inverting the onus of justification for the state from one that requires Indigenous peoples to justify their legal and political orders to the liberal state to one that puts the legitimacy of the liberal state into question given its failure to do justice to Indigenous claims.[3] Relational pluralism prioritizes the need to recognize a plurality of legal and political orders that coexist within the boundaries of a state. According to this second framework, authority depends on recognition both by those inside and outside a legal order. In other words, the authority of any legal order is incomplete unless external authorities recognize it.[4]

In the second part of the article, I apply the two frameworks to the conflict on Wet'suwet'en territory to show how each provides a distinct lens through which to understand the pertinent features of political authority. While both frameworks offer important and helpful insights, I argue that relational pluralism presents a better account of how to reconceive political authority in the context of real-world conflict. The relational framework provides clear, non-utopian direction for how authority can be restructured, whereas liberal postcolonial statism provides guidance about how to co-ordinate governance systems without fully contesting state authority.

A Liberal Postcolonial Statist Framework

Within liberal political theory, legitimate state authority is often justified on the basis of the good reasons citizens have for recognizing and deferring to state authority (Raz, 1985). We have good reasons to defer to state authority insofar as the state secures a context in which we can pursue our life projects, which is something we all want but can't secure by ourselves. The state has the capacity to secure its borders and establish large-scale institutions for our welfare. These are capacities that smaller, substate communities lack. Also, through its monopoly on coercion, the state ensures that we abide by its laws even when doing so is inconvenient or contrary to our immediate self-interests.

In relation to Indigenous peoples, many scholars question the legitimacy of state authority, as it is currently constituted, and seek to develop institutional means that require states to justify the legitimacy of their political and legal orders to Indigenous peoples rather than the inverse. This move can be found in political theories that recognize Indigenous self-determination. It can also be found in efforts in international law to develop instruments such as UNDRIP. These instruments are designed to provide Indigenous peoples with leverage against states by placing pressure on states to defend the legitimacy of their actions toward Indigenous peoples.

The problem with many of these approaches is that they end up relying on state-like ideas that are often unsuited to the circumstances of Indigenous peoples. For

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instance, self-determination is often described as a form of state-like independence that might be secured through federal arrangements, or "nested" forms of sovereignty, depending on the size and functionality of the community. Most Indigenous communities are too small or lack the functionality to be state-like. In a world dominated by the liberal statist conception of authority, Indigenous peoples who strive for self-determination face a dilemma. They can either "uncritically accept the authority of the settler state's constitution and courts," which is "in effect to ask them to accept the legitimacy of their colonization and conquest," or they can opt for autonomy akin to states or provinces, which they either don't want or are too small to effectively exercise (Kymlicka, 1999: 149, 151–52).

A liberal postcolonial statist framework for understanding political authority tries to avoid this either/or dichotomy that forces a choice between Indigenous independent states and assimilation. It does this by emphasizing that in present circumstances, Indigenous and settler communities overlap with each other and often both depend on state institutions. In liberal political theory, Duncan Ivison's *Postcolonial Liberalism* offers one such approach (2002). Ivison reinterprets key liberal values in light of what he has described as a "constellation of normative orders," some of which are Indigenous communities, that exist above and below the state (see also Ivison, 2020). In Ivison's view, each normative order acts as a distinct site of public reason and, in this sense, contains its own political authority (Ivison, 2020: 93–94). Citizens coexist among and travel between the multiple orders with which they are affiliated. The flow of people with multiple affiliations means that no normative order dominates the others, and none, according to this account, should have a lock on sovereign power. Instead, normative orders must co-ordinate with each other to secure and promote people's basic capabilities and establish fair terms for "complex mutual coexistence," which are grounded in institutional arrangements that they agree to through fair discursive processes (Ivison, 2002: 141, 151). From this point of view, the basic capabilities of Indigenous peoples are distinct from those of settler communities and ought to be recognized as grounded in the distinctive interests of Indigenous peoples in land, culture and self-government.

Ivison's view provides a helpful boost to liberal attempts to generate a genuinely postcolonial political theory grounded in liberal commitments and shared authority. For Ivison, the distinctiveness of normative orders is not in tension with liberalism as long as people agree on a baseline of core values and have mutually acceptable ways of resolving their conflicts. He argues that liberal commitments to public reason and justification, and to capabilities and human rights, are consistent with the distinctive interests and governing practices of Indigenous communities. Beyond this, postcolonial governance requires institutional measures to help normative orders co-ordinate and interact with each other.

It's worth highlighting the central role of shared authority in Ivison's view. In the contemporary state, he argues, Indigenous peoples have multiple and concurrent affiliations to their local communities and to the state through their citizenship (Ivison, 2002: 141). Not only do people travel between spheres and consider themselves members of more than one community, but communities and institutions also often overlap, for instance, through marriage, employment, politics and even customs and laws. As Ivison writes about Canada: "There is a kind of coordinate

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sovereignty which exists between Aboriginal people and the Crown" dating back to the historical and constitutional integration of Indigenous and European law since the time of settlement (Ivison, 2002: 151). This suggests that not only do Indigenous communities have their own laws, traditions and customs but also that rarely can any community act in a purely internal manner—that is, without affecting matters important to those outside their communities. As Ivison argues, no group should have a monopoly of control over contested areas of jurisdiction (Ivison, 2002: 143).

One consequence of these overlaps is that Indigenous communities may constitute their own normative orders, but they are unlike sovereign states. This consequence is not central to Ivison's argument, which focuses instead on developing a postcolonial account of liberal values rather than of state sovereignty. But his view carries a few implications for sovereign authority. First, because normative orders are distinct sites of public reason, they are also sites of legitimate law making. Second, the law made within each order cannot be treated as the last word within any shared domain. Since interests and members are generally shared, a community's political authority can only be exercised where communities can co-ordinate their actions and manage conflict. Shared authority requires fair means by which co-ordination is managed and agreed-on procedures by which conflict is resolved.[5] Shared authority requires fair means to co-ordinate decision making.

The view is appealing in many respects. But as a framework for reconceiving authority, it lacks two components. First, the framework is ambiguous about how conflicts are resolved when normative orders have different interpretations of shared core values. For instance, Ivison argues that Indigenous normative orders may legitimately adopt radically different methods of governance, including methods that reject the rule of law, without interference from the state. At the same time, he argues that where conflicts arise between different normative orders, the state should have the authority to protect core interests, such as human rights, and decide on exemptions in cases where peripheral interests are at stake (Ivison, 2002: 141). It is unclear how these different arguments are reconciled and, as a result, what idea of state authority informs this account.

Second, the approach is missing an account of what motivates a sovereign state to co-ordinate its decision making with Indigenous communities. Ivison is silent on this question because the focus of his project is to reform liberalism's moral values—that is, to defend what is legitimate, just and fair from a liberal perspective, not to discuss the realpolitik of state authority. So it's difficult to know, on the basis of Ivison's account, what might motivate a state to recognize other normative orders. Without such an account, Ivison's approach can point us in the direction of just relations but cannot tell us how to get there.

If liberalism, as a framework for governance, can be reformed to acknowledge the existence of different normative orders with distinct sites of legitimate authority, then the challenge for liberals is to explain why states, whose authority today is conceived as legitimate and complete, would agree to share authority with these normative orders. What kind of account of authority can facilitate the meaningful reorientation of the postcolonial liberal values that Ivison defends? Such an account must go beyond liberal moral theory to shift the context in which states and mainstream communities apprehend the nature of state authority vis-à-vis Indigenous

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communities. Without such a reorientation, postcolonial liberalism remains wishful thinking about the values liberal states ought to adopt if they behaved justly.

One way to reorient how state authority is understood—albeit a way that remains unambiguously statist—is through international laws that pressure states to reform. UNDRIP, the International Labour Convention No. 169, and the UN International Covenant on Civil and Political Rights all provide leverage for Indigenous peoples to secure their rights against states. These covenants can be interpreted as offering the missing ingredient for a liberal postcolonial statism built on the values that Ivison defends. The aim of these covenants, as Patrick Macklem notes, is to "mitigate the adverse effects of the structure and operation of the international legal order" (Macklem, 2015: 15) by providing Indigenous peoples (and other minorities) with leverage against states. James Anaya, the former UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People and one of the chief architects of UNDRIP, echoes Macklem's assessment. UNDRIP is designed to create opportunities for Indigenous people to mobilize around issues that affect them and to use the leverage of the international community and domestic advocates to keep state authority in check. In Anaya's view, the Declaration mediates between the state and the human rights of Indigenous peoples while incentivizing substantive institutional change. Evidence of such a shift in state behaviour is UNDRIP's requirement that states institute the duty to consult. The hope is that once states agree to such a duty, they will create institutions competent to carry out consultations with Indigenous peoples (Anaya and Puig, 2017: 437). These institutions will create an infrastructure designed to enhance the likelihood of state accountability and transparency in dealings with Indigenous peoples while also providing a means to publicize failures of states to abide by the terms they agree to. Even though these kinds of pressures do not exactly invert relations of authority, they point to how international conventions impel states to treat the legitimacy of Indigenous governance as real and in need of being reckoned with.

International institutions such as UNDRIP share with Ivison's postcolonial liberalism the hope that colonial injustice can be addressed by revising the values of states and incentivizing states to create new institutions rather than through what might be considered grandiose plans to do away with sovereign authority. To sympathize with this position is to recognize that not only do people derive benefits from states but also that it is unclear how some conflicts could be resolved in the absence of sovereign authority. Liberal postcolonial statism points to institutional arrangements that mitigate the authority of the state. But these arrangements may do little to change how the overall structure of authority is apprehended in colonial contexts. This feature was illustrated during the recent protests when legal experts pointed out that UNDRIP does not recognize a veto for Indigenous peoples and that a veto for Indigenous peoples over state decisions, such as the pipeline project, contradicts how international law recognizes state sovereignty.[6] UNDRIP is a postcolonial instrument only in the sense that it indicates the values and interests that postcolonial states ought to protect and establishes the means through which Indigenous groups can have a stronger voice and more power to influence state authority. But it does not fundamentally alter the basic institutions of the state system or how state authority is understood.

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A Relational Pluralist Framework

Before turning to the relational pluralist framework, it is important to clarify why pluralist theories, in general, are considered a natural fit for decolonization efforts. Legal and political pluralism challenges the sovereignty idea according to which the state is the final authority within its borders. Legal pluralists recognize states as one among a possible multiplicity of authorities and show how legitimate legal authority can originate from a variety of sources beyond the state.[7] We have good reasons to recognize that within specific domains, churches make law, as do communes, corporations, trade unions, professional associations and Indigenous communities. A key to the pluralist view is that the authority of the law that emanates from these diverse sources does not rest on state recognition.

By recognizing Indigenous legal and political orders as legitimate sources of law, pluralist arguments are proposed today as a helpful corrective to colonial injustice (see Griffiths, 1986). Many Indigenous legal scholars draw on the principles of legal pluralism to argue that Indigenous communities have internally recognized legal orders that can be legitimatized independently of state recognition.[8] These arguments contribute to more general observations that colonial injustice is rooted in the unjust suppression of Indigenous legal and governance practices and that current international legal norms perpetuate colonialism when they deny recognition to Indigenous legal orders (see Rajagopal, 2003: 263–66).

Pluralism is also attractive because it offers a pragmatic and non-utopian understanding of authority. Despite its appearance as a radical departure from conventional views of state authority, pluralism aims to explain how authority works in real-world politics and actual communities. Legal pluralists argue that pluralism offers a less distorted explanation of legal authority than do conventional statist explanations. Some pluralists argue that customary law is like state law in that it consists of a system of rules that community members recognize as legitimate and to which they defer and a set of officials that communities recognize as legitimate sources of rules and their interpretation.[9] From the vantage of pluralism, when states dismiss the "state-like" authority of these non-state actors and of customary law, they misinterpret the criteria by which their own law is considered legitimate.

One problem with pluralist approaches is that they often lack a credible approach to conflict resolution. Legal pluralists have been criticized for "finding legality everywhere" (Muñiz-Fraticelli, 2014: 136) and for advancing a theory that allows for the proliferation of conflict among multiple, incommensurable authorities without any means of resolution. Recognizing the legitimacy of Indigenous law might seem like a pyrrhic victory if it is accompanied by recognition of the legitimacy of conflicting laws of the colonial state. Some pluralists "grasp the nettle" by arguing that conflict, and especially the "incommensurability of authorities," is a virtue of pluralism because it indicates pluralism's commitment to offering an ethics and approach to authority compatible with deep diversity.[10]

But for other pluralists, the pragmatic appeal of pluralism as an approach to legal authority is undermined by the absence of a credible means to resolve conflicts between groups. The difficulty to which pluralism points is that any definitive means of resolving conflicts among multiple authorities would, ipso facto, diminish

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the authority of these multiple authorities and would, in effect, reproduce a legal centrism akin to state sovereign rule. If, for instance, a state court is charged with resolving conflicts between plural authorities, then it is the state, via its own institutions, that has final authority. With multiple authorities comes conflict to which pluralists offer no uniquely "pluralist" solutions.

Despite this drawback, a key virtue of pluralist approaches is the normative sharpness they bring to bear on what is at stake in colonial conflicts. Pluralism clarifies that one of the wrongs of colonialism is the domination of one legitimately constituted legal and political order by another and, through this, the disempowerment of a community, which is prohibited from living according to the legal and political order to which it is committed.[11] A pluralist approach reveals that many Indigenous legal and political practices have been rendered invisible by the colonial legal frameworks that have sought to supplant them. Often these orders and the practices that constitute them continue to exist, albeit overshadowed and overlaid by state law and governance. Decolonization requires a framework in which the authority of an Indigenous community, and the practices by which this authority is manifested, can be rendered apparent to those within and outside the community. This suggests that colonialism cannot be addressed through state-guaranteed rights insofar as these rights fail to address that facet of colonial injustice that lies in the attempt to erase sources of authority asserted, in different ways, by colonized peoples.[12] In this respect, the differences between statist and pluralist approaches could not be greater than they are in cases about colonial injustice. Whereas pluralists see solutions in reforms that treat sovereign state authority over Indigenous people as illegitimate and unjust, statists see solutions in reforms that help states govern Indigenous peoples more legitimately and justly.

But the clarity that pluralism offers about what is morally at stake in colonial conflicts does not compensate for the, arguably, naive depiction of authority that most pluralist approaches offer. Pluralism is, after all, a theory about the nature of legitimate authority. Its depiction is naive insofar as it abstracts the realities of political relations between communities today. What is missing from traditional pluralist accounts is a way to reconcile the theoretical lens that pluralism offers with the political reality of colonial contexts. It is not enough to suppose that when an Indigenous community has legitimate authority over its members it then follows that outsiders and other political orders must recognize its authority. Why, we may ask, would one community recognize the authority of another in cases where the claims of different communities conflict? In the absence of an overarching authority, what, other than sheer power, allows one community to exercise its authority in contexts where other authorities have overlapping claims? The Wet'suwet'en's claim to legal and political authority cannot alone prevent the construction of the pipeline. The state also claims authority over the territory. Without a deeper account of the relations between legal and political orders, which explains how authority can be exercised, pluralism offers no means to understand how authority is fully constituted.

Relational pluralism goes one step further than traditional pluralist approaches by reconciling the moral direction of pluralism with the political realities of colonial states today. It does this by shifting away from a view in which communities are understood to be discrete sources and containers of authority. Instead, it begins,

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like Ivison's account, by recognizing that communities have overlapping claims to the same domains, territories and resources; they often share members; their projects often implicate the welfare of outsiders, and over some matters—such as environmental well-being—their welfare is connected to others, whether they like it or not. Interdependency among communities is difficult to avoid or deny. Yet once such routine interdependence is recognized, a pluralism that denies the relational nature of authority founders.

According to a relational pluralist framework, a community can plausibly claim to be a legitimate authority, properly constituted by its members, to make decisions over a particular domain. We might hope that outsiders will respect its authority. But unless outsiders recognize its authority, it may not be able to authorize the values and pursue the projects for which its authority is constituted. This point is in line with the insightful analysis of Ralf Michaels, who argues that recognition of a legal order is always internal and external. With only internal recognition, a legal order can pass law but may be powerless to enact it over matters other than those that are purely internal to the community. Law can exist but lack authority. Without external recognition, a legal order lacks the authority to act on matters that implicate those outside its boundaries (Michaels, 2017: 106, citing Lauterpacht [1947]). The requirement of external recognition indicates the manner in which authority is ultimately relational.

According to relational pluralism, no community can retreat from others if it hopes to exercise its authority. This observation resonates with one of Ivison's important insights that no group should have a monopoly of power over its members or over domains it claims as being within its authority.[13] Relational pluralism goes further to suggest that the full authority of any legal and political order to act on matters, other than those which are strictly internal, is incomplete in the absence of its recognition by others. Authority is interdependent and mutually constituted by politically legitimate communities through relations of recognition with each other. This is less a normative prescription than a fact about how authority works.

Because the relational pluralist framework works through recognition, it maintains an idea of authority that is not "contained" in communities but instead generated via relations among community members and between communities. The nature of a community's authority depends on the norms and rules through which a community establishes relations with other communities. These rules provide what Nico Krisch (2010: 285–96) calls, in the context of international law, an "interface" by which the authority of one community can be made commensurate with that of another community.[14] Interface rules link complete and different systems of authority to each other for the purpose of enabling them to act where their domains overlap. These norms and rules help to constitute the authority of communities that are recognized by their members as legitimately constituted. The notion of "interface" hints at the reasons why legitimate authorities rely on treaties. Treaties allow the internal authority claimed by one community to be exercised over matters within domains that overlap with another authority. Within the framework of relational pluralism, treaties provide one way to constitute and complete authority. They are the means by which legal orders access authority.

Michaels draws on international legal principles to observe that states depend on other states to recognize their authority as legitimate within a given domain.

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Without this recognition, state laws, even those that apply only within state borders, would be violated all the time by other states and transnational actors. This suggests that, from a relational perspective, the refusal of one community to recognize another community as having a legitimate legal order indicates not that one legal order is invalid but instead that its law has no authority for the community that refuses it. When applied within a colonial context, the relational approach to authority suggests that the state has no authority over what counts as law for an Indigenous political order. In this way, relational pluralism maintains space for a plurality of unique legal and political orders. But without external recognition, these orders have no access to authority outside their boundaries. Norms of external recognition are crucial to all communities that seek to avoid conflict. They have little authority without them.

Without this added relational dimension, the value of traditional pluralist approaches is limited. The crucial move for the traditional, non-relational pluralist is to insist that group authority does not depend on state recognition. Authority is conceptualized as internally generated and internally complete, and groups are imagined to be containers of their own complete authority, which is constituted only by their members. Such a conception of authority leads to unmanageable conflict. It also strengthens, rather than challenges, how colonialism has structured relations of authority. For instance, colonial states established their authority over Indigenous territory partly by pretending their authority was internally generated and complete. Terra nullius is a way to deny the presence of other peoples with legal orders of their own. Terra nullius offers a clear example of a "pathology of law" that belies the interdependent nature of legal authority.[15] Within a relational pluralist framework, terra nullius is a way to deny the existence of other legal orders (and peoples) so that the colonial state can assert the completeness of its authority, which otherwise would require recognition by pre-existing legal orders.

According to a relational pluralist framework, the authority of both state and Indigenous legal orders is incomplete where one fails to recognize the other. Without state recognition, Indigenous communities are inhibited from acting on the practices and values conveyed through their laws and governing practices other than those that are strictly internal. Also, without external recognition of their legal orders, Indigenous legal practices lack visibility to those outside the community and can appear to be ungrounded acts of defiance and disobedience. In a similar way, without the external recognition of the state's legal order, assertions of state authority can appear to be mere assertions of power that lack legitimate authority. Despite the powerful framework of state sovereignty, which foregrounds the state's legal order and bestows on state law the semblance of independent authority, state authority is incomplete and weakened where colonial states fail to secure full recognition from Indigenous political and legal orders. The incomplete nature of state authority can be more difficult to apprehend where state sovereignty is the accepted framework of authority, but it is nonetheless a feature of enduring colonialism.

As described so far, a relational pluralist approach has some affinities with liberal postcolonial statism. Like postcolonialism statism, relational pluralism aims at inverting the legitimacy of the liberal state vis-à-vis Indigenous legal and political orders in a genuinely postcolonial way. The framework shares with Ivison's account

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an awareness of the overlap between settler and Indigenous communities and the need for co-ordination and co-operation. At the same time, the relational framework is more than a normative guide to postcolonial values. It explains how the interdependence of communities and peoples is what makes legal and political authority relational, whether states or communities like it or not. The framework trains our focus on one of the leading wrongs of colonialism, which is the erasure of Indigenous authority and the destruction or near destruction of Indigenous political and legal orders and practices. It points to the invisibility of Indigenous (and potentially other) legal and political orders within existing sovereign states and thereby establishes the need to change how we understand authority as one of the leading aims of decolonization.

Political Authority on Wet'suwet'en Territory

We can now turn to the details of the pipeline conflict on Wet'suwet'en territory and see how it appears from these different perspectives. The comparison to follow indicates the important role played by the interdependence of political and legal orders in providing a framework in which conflicts are understood and resolved. By focusing on legal and political orders rather than communities with distinctive normative values or interests, relational pluralism offers a clearer sense of what is at stake in efforts to decolonize relations of authority and how the framework can be deployed to pressure states to act according to the postcolonial values to which they claim to be committed.

Liberal postcolonial statism

From the vantage of liberal postcolonial statism, standard interpretations of liberal values fail to reflect the nature and status of Indigenous communities, which are better understood as distinctive "normative orders" or separate sites for reasoning and governance. The framework consists of efforts to reform liberal values and the approaches to democratic engagement. Its aim is to mitigate the undesirable effects of state sovereignty by relying on institutions that recognize the status of Indigenous communities as co–decision makers with the state. To accomplish these reforms requires, first, creating decision-making processes that allow multiple communities to live according to their distinctive values and practices and, second, establishing the means by which they can interact and co-ordinate with each other given that their membership and interests overlap. In these ways, liberal postcolonial statism is a helpful and necessary corrective to a tradition of liberal theorizing that ignores the colonial premises of many liberal arguments.

Key elements of the liberal postcolonial statist approach are reflected in how adversaries understood the pipeline conflict. To begin, the conflict coalesces with demands that the state consult properly. The Canadian government is criticized for failing to adhere to mandated decision-making processes. The government is accused of choosing compliant consultation partners, a choice it mandates itself through legislation that directs project proponents, such as Coastal GasLink, to consult with specific actors within First Nations communities (British Columbia Environmental Assessment Act [SBC 2018] c. 41, s. 11). Amnesty International,

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the UN Committee on the Elimination of Racial Discrimination, and BC's Human Rights Commission criticize the government's failure to consult all the relevant parties, including the hereditary chiefs and the Unist'ot'en clan, who are encamped and blockading an access bridge on the territory. The UN Committee argues that the "free prior and informed consent" of all affected groups in the Wet'suwet'en nation is required for the project to proceed. In these ways, the problem is framed in terms of appropriate institutional arrangements for decision making and the state's responsibility to ensure that decision making respect the plurality of interests within the Wet'suwet'en community.

By emphasizing the need for broad consultation, these actors unintentionally put pressure on the internal conflict within the Wet'suwet'en community about who has the authority to consent to the project. On one hand, the elected band councils and their supporters, who endorsed the pipeline project, claim legitimate authority based on their elected status and argue that the pipeline will bring employment and other resources to the community. On the other hand, the hereditary chiefs and their supporters claim they possess legitimate jurisdictional authority over the traditional territories and their preservation for future generations. A leading spokesperson for the Unist'ot'en clan, Freda Huson, argues that by ignoring the authority of the hereditary chiefs, government and industry have divided the Wet'suwet'en nation. She warns her community of the dangers of division: "We are not fighting our own people" (as quoted in Barrera, 2020).

Had the state consulted a broader set of interests, this internal conflict might have been averted. But in this case, consultation takes place in the absence of Canada recognizing the Wet'suwet'en legal and political order and therefore in the absence of the state knowing whom, in the community, must be consulted, or how disputes internal to the community are resolved according to Wet'suwet'en law. Instead, the question of "who has authority?" is posed in the midst of a debate about a specific project in which billions of dollars are at stake. Adversaries within the Wet'suwet'en community criticize each other for being "sellouts" and internal colonizers or radicals and bullies (as quoted in Barrera, 2020). Those outside the community exacerbate these divisions. For instance, spokespeople for the oil and gas industry accuse the Wet'suwet'en of displacing three female chiefs with three men who oppose the pipeline (Pierce, 2020). News outlets report that community members who support the pipeline are silenced out of fear (Barrera, 2020). Climate activists fuel these divisions by arguing that Indigenous peoples have more respect for the natural environment, despite the fact that part of the community supports the pipeline. Greta Thunberg epitomizes this way of thinking about the conflict with her tweet that "Indigenous Rights = Climate Justice" (Thunberg, 2020).

Against this background of government failure to consult properly and Indigenous community dissension, Wet'suwet'en protesters are joined by climate activists and others sympathetic to their cause in blockading bridges and occupying government offices—actions that appear aimed at stopping the pipeline. The RCMP arrest some protesters but eventually is directed by government to stop the arrests. Climate activists point out that the pipeline will violate Canada's Paris Agreement targets. Others argue that the pipeline violates the rights of children and future generations protected by Canada's Constitution.

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In these many respects, pressure is placed on the Canadian government to resolve the matter and halt construction of the pipeline. But proposals to relocate the pipeline do not resolve the crisis. Nor does the offer to relocate it dissolve divisions within the community partly because the dispute about the pipeline is symptomatic of a different problem. As long as the state is considered the legitimate broker of different interests, solutions will focus on how the state should best address the conflict. Yet the state's willingness to reconsider its decision and decision-making processes—that is, to consult more widely or relocate the pipeline—does nothing to appease the Wet'suwet'en protesters who resist being characterized as a set of interests seeking to sway state policy. Where state sovereign authority persists as the framework within which the values and interests of all actors are situated, solutions will amount to no more than temporary stand-offs between parties whose authority is ignored.

Colonialism persists in the present day through the framework by which relations of authority between the state and Indigenous peoples are understood. Within this framework, states are often criticized for their failures and biases. They are often required to make amends for their unjust pasts. But even this requirement does not, by itself, challenge the authority states are viewed as vested with.

The concern with any statist framework, even one that makes room for different normative orders, is that without challenging how authority is apprehended, "postcolonial" values can be recognized alongside statist conceptions of authority without the appearance of contradiction. Indigenous rights can be embedded in international and domestic laws, and states can agree to obtain the "free, prior and informed consent" of Indigenous peoples, without this diminishing state authority. As helpful as various measures in place are to ensure against the gross violation of Indigenous rights and to mitigate state power, none of them fundamentally challenges the framework of authority that sustains the state as uniquely positioned to decide how fundamental conflicts ought to be resolved. Evidence in the Wet'suwet'en dispute that seems to suggest otherwise—for instance, claims that the Canadian state is too closely aligned with the interests of capital and industry to be a fair broker, or that it has failed to fulfill its UNDRIP obligations—may be compelling and must be taken seriously. But it can be taken seriously while presupposing, rather than questioning, the authority of the state.

Relational pluralism

To consider the conflict on Wet'suwet'en territory through the lens of relational pluralism points, in the first instance, to the general mistake of assessments that focus on divergent interests about the pipeline within the Wet'suwet'en community. A plurality of interests is an inevitable feature of any democratic community. To vest special significance in the divergent interests within Indigenous communities can have a corrosive effect on these communities and, as we have seen, exacerbate internal divisions. External perspectives about what constitutes "authentic" values for community members essentialize vulnerable communities. This, in turn, renders invisible and potentially overwhelms the internal governance practices and institutions by which different interests are managed within Indigenous communities. Communities are thereby made to appear divided and dysfunctional.

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Instead of focusing on the contest between different interests about the pipeline, relational pluralism considers the conflict in terms of rival claims to authority by legally constituted orders, each with legitimate jurisdiction over overlapping domains.[16] These legal orders conflict because they each refuse to recognize the authority of the other over the construction of the pipeline. To consider the conflict in this way highlights four features of the debate, which are otherwise less apparent.

First, the Wet'suwet'en community claims that their authority is being unjustly ignored. The hereditary chiefs repeatedly refer to Wet'suwet'en law, which they claim prevents them from endorsing the pipeline project. Their protests are directed at the offices of government ministers and the provincial legislature rather than in public squares or at Coast GasLink headquarters in order to underline the Wet'suwet'en claim to be recognized as a legal order that seeks to address another legal order. Community spokespeople explain to public media that the responsibility of hereditary chiefs within Wet'suwet'en governance is to protect the well-being of the community's traditional territories for future generations whereas the role of elected chiefs is primarily to govern the reserves. In these different ways, the Wet'suwet'en seek to highlight that the conflict is not merely about divergent interests about the pipeline but rather about Wet'suwet'en governance and law.

Second, within a relational pluralist framework, a contrast appears between the different kinds of support for the Wet'suwet'en protests. On one hand, the hereditary chiefs seek support from other Indigenous communities who they know to have similar concerns about political and legal authority. When the Mohawk Nation at Kahnawake blockade the railway and the Trans-Canada highway in Ontario and Quebec, they explain their actions by referring to the wrongful attempts by the state to erase Mohawk political and legal authority. Their statement reads: "Our land was stolen for the railway." The pipeline is thus positioned as a symptom of the larger problem they share with the Wet'suwet'en about the erasure of their legal and political authority by the state. On the other hand, climate activists support the hereditary chiefs because they want to stop the pipeline. They direct their demands at the Canadian government.

Third, relational pluralism foregrounds Indigenous resistance to state law as a central and enduring feature of colonial conflicts and as further evidence that these are disputes about legal and political authority. Whereas in postcolonial statist accounts, protest may be considered a regrettable consequence of conflicts between Indigenous normative orders and the state, within a relational pluralist framework, resistance to state law plays a functional role. In colonial contexts, Indigenous resistance is not "extra-legal" or "disobedience" but rather an indication that the law of one community is not recognized by another (Borrows, 2016: 50–102). Protest and resistance may indicate that a legal and political order acts in a domain where its law is not recognized as having authority.

Legal decisions about land title in colonial settings have sometimes recognized the functional role of Indigenous resistance. For instance, in a 2014 case between the Tsilqhot'in First Nation and the Government of British Columbia, the Supreme Court of Canada ruled that the state did not have the authority to move ahead with a forestry project in light of a long recognized history of persistent resistance by the Tsilhqot'in to other people on their land and the absence of a treaty with the Tsilqhot'in (Supreme Court of Canada, *Tsilhqot'in Nation v. British Columbia*,

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2014: 26 and 270). The Court held that land title is based partly on evidence of a community's intention and capacity to control the land it claims.[17] From a relational perspective, resistance displays this intention. In the absence of external recognition for its legal order, successful resistance is one of the only ways in which the Tsilhqot'in can render visible its "capacity to control the land" (see McCrossan and Ladner, 2016). Within a relational pluralist framework, resistance prevents one legal order from asserting authority within a domain claimed by another.

One final feature of relational pluralism is that treaties are crucial to conflict resolution. Because authority is found in the relations between communities rather than contained within communities, moving a pipeline or broader consultation cannot settle the conflict. Rather resolution must involve the mutual recognition of authority and the establishment of an interface between the legal orders. Some recognition of this solution occurred in early May 2020 when the governments of British Columbia and Canada signed a Memorandum of Understanding (MOU) with the Wet'suwet'en hereditary chiefs that outlines the government's intention to transfer control of Wet'suwet'en territory to the Wet'suwet'en's traditional political order. The MOU makes no mention of the pipeline. Instead it establishes terms by which the Wet'suwet'en and Canada will recognize each other's legal orders—that is, it potentially establishes what Ivison calls "coordinate sovereignty" so that the authority of state and Wet'suwet'en law can be thereby completed.

The MOU requires the Wet'suwet'en people to repair the rift dividing their community by clarifying their system of laws and governance structures and seeking community ratification for their clarified legal order. The community's legal order can only be recognized as legitimate by the state and other legal orders once this is settled (Stefanovich, 2020). The MOU also states that "transparency, accountability and . . . mechanisms to remedy and address grievances pertaining to shared and exclusive jurisdiction" are prerequisites to transferring control to the community (Canada, 2020). Elected chiefs were not consulted about the MOU. Even so, the agreement is considered a victory by the Wet'suwet'en community, which hopes to gain recognition by the Canadian state of its jurisdiction over its traditional territory.

The MOU has attracted a range of reactions from the Wet'suwent'en community. Some people see the agreement as ushering in a new relationship with the state. Others see the agreement as "manufacturing community consent" by reducing the Wet'suwet'en nation to an "ethnic municipality" (Turner, 2020). According to this latter view, the MOU is a means to bargain with the hereditary chiefs, some of whom agreed to an alternative route to the pipeline in the past, and who will be more likely to agree to the pipeline now in light of a promise for a renewed relationship with the state. If this interpretation is correct, the MOU amounts to an invitation from the state to engage in the usual state-directed consultations and negotiations. In other words, the MOU may simply reaffirm state authority by containing the authority of the Wet'suwet'en community. Whether or not these fears come to fruition, they indicate, once again, that the conflict about the pipeline is primarily a conflict of authority. Resolving this conflict requires setting aside frameworks that highlight different values and interests in order to establish a genuine interface with which the state and the Wet'suet'en can mutually recognize and co-ordinate their political and legal orders.

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Conclusion

Decolonization requires rebuilding Indigenous legal and political orders that have been damaged or destroyed by colonialism. This article seeks to show that how authority is conceptualized and apprehended is also crucial to decolonization.

Conventional statist frameworks of authority can render invisible Indigenous political and legal orders and distort the practices and actions that inform these orders. Laws become mere interests; community division becomes dysfunction or evidence of assimilation; protest becomes defiance; solutions remain temporary. A statist framework, even one informed by postcolonial values, highlights demands for the state to direct processes more fairly and often in ways that recognize the distinctive values and interests of Indigenous peoples. Within a liberal postcolonial statist framework, different normative orders must be somehow co-ordinated. Instruments of international law can help by boosting the political power of Indigenous communities, amplifying Indigenous demands, exposing the bad behaviour of states and drawing into question the legitimacy of state decision making that excludes Indigenous input. But the state remains the final broker.

Missing from most postcolonial accounts is recognition that one of the legacies of colonialism is the erasure of Indigenous governance practices. A framework that decolonizes authority must render these practices recognizable to mainstream society as practices of law and governance. Relational pluralism, as a way to decolonize authority, reframes conflicts, such as the one on Wet'suwet'en territory, by setting aside the fact that people have different interests or values about land and about pipelines. Instead, the framework focuses on Indigenous claims to authority. It distinguishes between those who support Indigenous interests and those who support Indigenous legal orders. It highlights that the failure of one party to recognize the legal and political order of another justifies protest, resistance and stand-offs. And it points to the need for interface between legal and political orders as a necessary prerequisite to resolve conflict.

In these ways, relational pluralism offers an attractive and powerful framework for decolonizing authority. Yet this is not to suggest that relational pluralism is a panacea for decolonization or for good decision making. Two features of the framework, in particular, suggest some shortcomings. First, not all Indigenous communities have well-established legal and political orders that they can reconstitute. In some cases, communities are starting de novo. Rebuilding Indigenous legal and political orders requires efforts beyond those explored in this article. A relational framework for understanding authority is useful for empowering laws and governance practices once they are reconstituted.

Second, in the relational framework proposed here, recognition is the "oxygen" of political and legal authority. In the context of colonization, this oxygen relies on powerful colonial states recognizing relatively powerless Indigenous legal orders. In addition to having more power, these states are built on ideologies that ground their sovereign right to govern and anchor hegemonic understandings of what good governance and law consists in. How can such states be expected to recognize Indigenous legal and political orders fairly and without distortion?

Two features of the relational pluralist framework as described here address this question. First, the framework locates authority in relations between actors and

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thereby maintains that authority is mutually constituted. It reconstitutes state authority as incomplete without external recognition. States can pass law, but their law can lack authority. At the same time, it recognizes the legitimate use of protest by vulnerable groups whose legal and governance claims have been ignored. The framework thus rebalances the onus of justification for legitimate rule and places the legitimacy of the liberal state, as currently constituted, into question.

Second, the question here to which relational pluralism has been proposed as an answer is "What does decolonization require?" In addressing this question, the relational pluralist framework provides no guarantees that actors will make good decisions—either about their relations with each other or about external matters such as pipelines and land use. Rather, the point of the framework is to disclose that what is often at stake in conflicts between states and Indigenous peoples is the recognition of legal and political orders. In the absence of recognition, authority is incomplete. The relational framework aims to combat the erasure of Indigenous laws and governance practices by colonial states. The framework recognizes that Indigenous laws and practices have to be recognized by those within and outside of Indigenous communities in order to escape distortion. Whereas the employment of this framework by state actors would be ideal, the framework is also a means by which non-state actors, including publics and news media, can better comprehend colonial conflicts in order to advance, independently of the state if necessary, a decolonized understanding of political authority. According to relational pluralism, authority relies on recognition; it does not rely on the state's recognition alone.

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Notes

1 Indigenous rejection of state authority is publicly recognized in Canada. See, for instance, Coyne (2020).

2 See, for example, Friedrich (1958) and Pennock and Chapman (1987). These two important collections make no mention of colonialism. Other leading theorists of authority who also do not mention colonialism in their accounts include David Estlund, Leslie Green, Joseph Raz and A. John Simmons.

3 My thanks to the journal's anonymous reviewer for pointing to this as an inversion.

4 Recognition as the basis for legal authority has been developed primarily in the context of international law. See, for example, Lauterpacht (1947). For an account of recognition as negotiated in transnational settings, see Roughan (2013). Here I draw primarily on the account of Michaels (2017).

5 Three measures proposed by Ivison for conflict resolution are 1) assessing whether controversial laws protect "core" or "peripheral" interests, and protecting mainly the former; 2) resolution through fair deliberation; and 3) institution mechanisms by which members can exert leverage over laws that violate basic capabilities of vulnerable group members. In the case of this last measure, Ivison has in mind conflicts that are internal to groups rather than conflicts between groups (see Ivison, 2002: 141–43, 154–57).

6 UNDRIP's Article 19 requires that states "consult and cooperate with the indigenous peoples . . . *in order to* obtain their free, prior and informed consent" (emphasis added). John Borrows explains that UNDRIP provides principles, standards, signposts, guidelines and measures to guide parties through the resolution of issues, but it does not sanction an Indigenous veto (see MacCharles [2020]; see also Anaya and Puig [2017: 437]).

7 See, for example, Cover (1983); Merry (1988); Muñiz-Fraticelli (2014). For a helpful overview of legal pluralism, see Griffiths (2015). For a philosophical discussion, see Allard-Tremblay (2018).

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8 Essays by leading Indigenous scholars have been collected in "Indigenous Law and Legal Pluralism," special issue, *McGill Law Journal* 61, no. 4 (June 2016).
9 For example, Michaels (2017) relies on Hart's (1976) theory of primary and secondary rules to explain legal pluralism. Muñiz-Fraticelli (2014) draws on Raz's (1985) approach to authority to argue for his version of pluralism.
10 On incommensurability and political pluralism, see Muniz-Fraticelli (2014: 14–17). On incommensurability and ethical pluralism, see Hutchings (2019).
11 Different ways of understanding the distinctive wrongs of colonialism have been explored by Moore (2019) and Ypi (2013).
12 For this reason, Borrows (1997) argues that Indigenous claims to authority are nested within Indigenous cultural interests. See also Pasternak (2017) for an account of Indigenous cultural practices that establish jurisdictional authority.
13 For a similar claim in relation to religious authority and state law, see Shachar (2001). See also Levy (2017) for a historical reassessment of the liberal tradition that places this feature of pluralism at its center.
14 See also Michaels (2017: 102–3).
15 A legal system is pathological when its domestic legal order incorporates and uses legal rules, which are legitimately constituted and validated by its own legal order, to circumvent and subvert its obligations under international law. See Hart (1976: 121).
16 My thanks to Kelty McKerracher for helping to clarify my thoughts about relational pluralism. See McKerracher (2021) for an insightful application of relational pluralism to the *Indigenous Utilities Relation Inquiry*.
17 As the Court states, this evidence is established by "proof that others were only allowed access to the land with the permission of the claimant group. The fact that permission was requested and granted or refused, or that treaties were made with other groups, may show intention and capacity to control the land. Even the lack of challenges to occupancy may support an inference of an established group's intention and capacity to control." (*Tsilhqot'in Nation v. British Columbia* 2014: 285)

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