The Limitations and Potential of the United Nations Declaration on the Rights of Indigenous Peoples: An Analysis through the Lenses of Indigeneity and Gender

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"The decolonial future is not the emergence of one people at the expense of another, but a future where everyone's right *to be* is affirmed and the challenges of working together to build with and on the land beyond the limits and definitions of settler-colonialism are embraced."

Eric Ritskes

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Abstract

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the foremost legal instrument that defines and protects Indigenous rights, is groundbreaking because it centers the voices of Indigenous peoples and pushes back on the colonial undertones of the United Nations human rights framework. While this declaration represents a landmark in the fight for Indigenous rights, it is nonetheless rooted in a statist international system and perpetuates patriarchal and heteronormative traditions. This dynamic becomes clear by centering gender. This study utilizes Carol Bacchi's *'what's the problem represented to be?'* approach to policy analysis, feminist, and decolonial theory to explore how the UNDRIP both subverts and upholds the power structures present in the UN human rights framework. Examining this text through a gendered lens and centering Indigenous women in the analysis highlights the systems of power that contextualize this document and the importance of intersectionality in human rights work.

Keywords: Indigenous, decolonial, feminism, gender, human rights

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Chapter 1: Introduction

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an important contribution to the human rights canon and the only international legal instrument for Indigenous[1] human rights. It is to date the longest debated human rights instrument in the history of the United Nations (UN) (Picq 2013, 453). Indigenous activism in the international sphere began in response to colonization with state treaties and failed attempts to gain access to the League of Nations (United Nations). Work to advocate for and draft a document that granted rights to Indigenous peoples based on their Indigeneity began in earnest at the UN in the 1970s. The culmination of these efforts, the UNDRIP, was passed on 13 September 2007 and symbolizes a major victory for Indigenous peoples and decolonial work around the world.

The UNDRIP does not represent the end of the struggle for Indigenous rights but serves as an important milestone in history. The document is a meeting ground for Indigenous human rights and the dominant human rights paradigm founded and defined by the United Nations Universal Declaration of Human Rights (UDHR). It reflects the ongoing struggle between Indigenous self-determination and state sovereignty. The UNDRIP both upholds and undermines dominant human rights discourse. It is important to investigate this paradox to understand the changing nature of human rights as a whole, and centering gender is a useful tool in doing so. Gender has historically been excluded from critical human rights considerations, and feminist scholars have long criticized human rights discourse for being masculinist. Centering gender not only sheds light on the limitations of the UNDRIP, it identifies the ways in which systems of

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[1] Capitalized to emphasize the distinct nature of Indigenous peoples and status of Indigenous identities.

power like colonialism, patriarchy, white supremacy, and capitalism underlie human rights and prevent their universal applicability.

1.1 Research Aims

This paper sets out to answer the question, *How does the UNDRIP simultaneously preserve and subvert the dominant[2] human rights framework*?

The declaration contains both Indigenous and colonial traditions and serves as a bridge between the two ways of conceptualizing human rights. This question is explored using Carol Bacchi's (2009) *'what's the problem represented to be?'* (WPR) approach to policy analysis, with an emphasis on gender. The WPR methodology utilizes discourse analysis and Foucault's genealogy method to investigate how problem representations impact governance and the consequences of such impacts (Bacchi 2009, 7, 10). This approach is useful because it provides multiple points of entry for analysis, is inherently reflexive, and allows for the utilization of multiple theoretical frameworks. WPR also allows for an examination of the UNDRIP outside of a legal context, at the intersection of international studies and feminist understandings of human rights.

This analysis primarily focuses on the UNDRIP document itself, examining its history, content, and limitations. The UDHR is used as a supplemental tool to represent the dominant human rights framework. A coding scheme is used as an entry point into the document, but the WPR approach is the primary methodological tool. Questions addressing knowledge,

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[2] Read: colonialist, heteronormative, patriarchal, white supremacist, capitalist. This framework is represented by the UDHR.

assumptions, exclusions, power, and values in the document are addressed. Gender is a central component, used to examine the text and the document's limitations.

The research question and ensuing analysis are framed within the "imaginal" (Bottici 2010), also known as the mythic, coloniality, feminist theories, and Indigenous feminism. Utilized together, these frameworks allow focus to be placed on the "imaginal" and intersectional nature of human rights, their colonial history and context, and their use as a tool of settler-colonial states. In addition, the combination of feminist theory and the mythic provides a pathway to examining issues of identity and positionality as impacted by human rights. Both human rights and identity constructions exist in the "imaginal." Indigeneity exists in contrast to the colonial subject in the same way women are constructed in opposition to men and humans are constructed in opposition to the non-human. Identities are constant in their presence but changing in their nature. Investigating Indigeneity as an ever-salient identity sheds light on who benefits from this framing and who is harmed.

1.2 Structural Overview

The first section of this paper explores previous scholarship on human rights, activism at the UN, and the international Indigenous movement to lay the groundwork for where this analysis fits into larger scholarship. Next is a discussion of the theoretical framework including the mythic, coloniality, feminist theories, and Indigenous feminism and why these theories were chosen. This section is followed by a detailed methodology including an explanation of the WPR approach, methodological choices, and research ethics. The analysis chapter includes a historical overview of the UDHR and the UNDRIP, a content analysis of the UNDRIP, and a discussion of its limitations—namely how it fails Indigenous women. Finally, the conclusion connects the findings and discusses the limitations and implications of the analysis.

Chapter 2: Literature Review

Universal human rights as understood today is a relatively new field. The founding and defining document of human rights, the UDHR was introduced to the international community in 1948 and continues to shape understandings of rights and humanity. When the UNDRIP was passed in 2007, it continued the UN human rights tradition and expanded it to include new concepts, values, and voices. Though scholarship on the UN and human rights is plentiful, scholarship on Indigenous rights and Indigenous activism within the UN remains more limited. Feminist engagement with these topics is smaller still. Human rights is predominantly a legal field and most analysis of the UNDRIP is conducted through the lens of legal scholarship. Feminist scholars address the experiences of Indigenous peoples throughout the world, in particular Indigenous women, but few have ventured to engage with the UNDRIP as a central document. International relations scholars often relegate Indigenous issues and experiences to the domestic realm despite their inherently international nature. This analysis aims to combine different aspects of feminist and international studies scholarship to analyze the UNDRIP as a document that carries weight outside of a legal framework and addresses in what ways it upholds and subverts the dominant human rights discourse created by the UDHR. Utilized together, perspectives from different scholars and fields help address the UNDRIP in a new way.

The history of modern human rights has been explored extensively through several disciplines. Micheline Ishay (2004) provides a comprehensive and detailed account of the development of rights. Ishay ventures back to the Greek, Roman, Islamic, and Chinese Empires to trace the values and traditions that underly the UDHR, but makes clear that the ideals of dignity, liberty, equality, and brotherhood are proof that European Enlightenment values and thinking have prevailed in modern human rights (Ishay 2004, 3-4, 7). Lynn Hunt (2007)

similarly places the UN human rights framework in the European Enlightenment era but warns of the consequence of this placement. If human rights are solely located in Western ideals and developments, then the history of human rights is at risk of being the history of the West (Hunt 2007, 20). Hunt focuses on the supposed self-evident nature of human rights and traces the changes in public opinion and attitude during the 18th and 19th centuries that allowed for modern human rights to be rooted in inherent human dignity (Hunt 2007, 19-20, 34). Jenna Reinbold (2017) explores the drafting process of the UDHR and the creation of human dignity as a collective myth belonging to all people (Reinbold 2017, 13). Ishay is an international relations scholar, Hunt is a historian, and Reinbold is a religious studies scholar. Together their works provide insight into the multi-dimensional nature of human rights and provide a comprehensive historical overview.

Feminist scholars like Gayle Binion (1995) posit that human rights are hierarchical and that focusing on lived experiences provides new insights into the legal institutions through which they function (Binion 1995, 513-514). Feminist analyses of human rights reveal that they have failed to protect many people from oppression and rights violations (Binion 1995, 514). Feminist theory has implications not only for women's rights, but all rights in that it reveals the ways in which intersecting identities complicate the boundaries between political, economic, and social rights (Binion 1995, 522). Nelson Maldonado-Torres (2017) has also challenged the idea of human rights as a linear development traceable to Enlightenment Europe (Maldonado-Torres 2017, 119). Discussing human rights in the context of coloniality, the founding documents of the UN and its human rights framework become tools of colonial powers. This decolonial lens makes clear that colonized peoples cannot only rely on these documents for liberation, they must push one step further and define their own terms and rights (Maldonado-Torres 2017, 122, 125).

Aileen Moreton-Robinson (2014) furthers this argument by outlining the ways in which settler-colonial states have framed human rights within a virtuous framework to position themselves as the keepers of human rights and the protectors of Indigenous peoples (Moreton-Robinson 2014, 645, 647, 651). The UNDRIP challenges these assumptions.

Sylvanna Falcón (2016) has explored the role of the women's and antiracist movements at the UN. Falcón posits that women's spaces at the UN are dominated by white, Western feminism and that antiracist spaces are more productive and inclusive. The agenda on racism allows for more intersectional work and for more voices from the Global South and women of color in the Global North to be heard (Falcón 2016, 5, 8, 13). Falcón utilizes transnational feminism to discuss how examining the antiracist and women's movements within the UN reveals how activism can adapt to the nation-state framework of the institution while also subverting it (Falcón 2015, 17, 19). While Falcón does not address Indigenous women, this framework is useful in addressing their struggle for solidarity with the international Indigenous movement and the international women's movement.

Falcón (2016) provides a thorough overview of the gendered and racialized history of the UN, starting with its founding. This history reveals that the UN has always been colonial and patriarchal and that activists from non-Western contexts have long been battling this truth (Falcón 2016, 52). When it comes to human rights, there is a constant mediation between the dominant discourse based in legal structures and what Falcón terms the counter-public approach more focused on solidarity, relationality, and anti-subordination (Falcón 2016, 84-86). The counter-public understanding of human rights acknowledges their imperial and colonial origins and how they have been denied to many groups while also trying to exercise and assert those

rights in the present (Falcón 2016, 85). This balance is precisely the work of the UNDRIP, though this is not Falcón's focus.

Joyce Green (2017) explores the fraught relationship between Indigenous women, communities, and feminism. She claims that despite this tension, feminism is useful to the liberation of Indigenous peoples. Her book explores feminism as both an ideology and a methodology (Green 2017, 7) and highlights the ways in which Indigenous feminism uniquely recognizes colonialism as a gendered and racialized process (Green 2017, 12-13). The contributors to this work focus on a variety of specific issues and experiences, but together form a useful narrative on resurgence (Starblanket 2017, 25, 35), violence against Indigenous women and girls (Kuokkanen 2017, 103-15), self-determination as both an individual and collective right (Glenn and Green 2017, 133), colonialism as an ongoing process (Green 2017a, 173; Altamirano-Jiménez 2017, 223, 230), and the importance of Indigenous women's participation in liberation movements (Green 2017a, 174; Blaney and Grey 2017, 249). The volume creates a diverse conversation on the importance and impact of Indigenous feminism, providing a framework and toolbox for its application to a plethora of issues. The UNDRIP is mentioned throughout the book, but not focused on as a central topic.

Scholars have investigated the drafting and negotiation process of the UNDRIP, but outside of law and legal studies little examination of the document itself exists. Stamatopoulou (1994) studies the evolving relationship between Indigenous peoples and the UN and emphasizes the importance of tracing the development of Indigenous human rights against the dominant framework to highlight their changing and adaptable nature (Stamatopoulou 1994, 61-62). Indigenous rights have a long and contentious history, one that is not yet done (Stamatopoulou 1994, 64-65). The UNDRIP is critical not because it questions or challenges the UDHR, but

because it seeks to explicitly apply and expand the document to the unique situations of Indigenous peoples (Stamatopoulou 1994, 70). It serves as a tool that Indigenous peoples can use in advocacy, relations, and dialogue with each other and nation-states (Mazel 2009, 147).

Alexandra Xanthaki (2007) provides one of the most comprehensive examinations of previous legal instruments pertaining to Indigenous human rights and the major themes of the UNDRIP. Her book covers issues of land rights, collective rights, cultural rights, and self-determination (Xanthaki 2007, 13, 29, 107, 109) and discusses their central roles in defining Indigenous rights. The book is focused on Indigenous participation in the drafting of the UNDRIP and previous documents and how Indigenous rights preserve international law norms (Xanthaki 1007, 102, 105). Xanthaki touches briefly on how Indigenous women are represented in the document (Xanthaki 2007, 113), but does not spend time examining its intersectional nature, or lack thereof. Because the work was published before the UNDRIP was adopted, there is also little discussion of its text itself.

This analysis aims to connect scholarship on the history and nature of dominant human rights discourse, intersectional work at the UN, feminist and decolonial analyses of human rights, Indigenous feminism, and Indigenous rights. There is scholarship in each of these areas, but little study of the connection between them, especially in relation to a direct analysis of the UNDRIP. This analysis aims to contribute to filling this gap.

Chapter 3: Theoretical Framework

This analysis is framed within the mythic, coloniality, feminist theories, and Indigenous feminism. The mythic refers to the idea that human rights exist in the "imaginal" (Bottici 2010), in a realm of collective social consciousness. This idea has its roots in human rights scholarship as well as history and religious studies. In the context of this project, coloniality includes colonialism and decolonization. Feminist theories include critical theory, intersectionality, poststructuralism, postmodernism, and transnational feminism. Indigenous feminism incorporates how colonization and gender uniquely impact Indigenous women. As a gender studies analysis, the most important of these concepts are feminist theories (including Indigenous feminism). Putting feminisms in conversation with human rights, the mythic, and coloniality centers gender to shed light on how the systems of power present in human rights underlie the UNDRIP and impact the lived experiences of Indigenous peoples, particularly Indigenous women.

Theories advance perspectives of time and space. They embody the political and cultural contexts in which they are created and always serve a purpose (Cox 1981, 128). All theories are implicated with power and politics (McClure 1992, 1992). Coloniality, feminism, and the mythic are all human centered and utilized together allow for analysis of the consequences and implications of human ideas and myths. They show that human constructions are no less consequential than concepts rooted in science. Myth justifies not only human rights, but colonial structures and processes of domination. Much of the work of decolonization is dismantling myths of superiority. Feminist theory provides tools for examining the ways in which these structures and processes impact individuals and communities based on their positionality.

These theories are useful because they provide the framework for acknowledging the mythic nature of human rights, the power structures of the UN, and the ways in which Indigenous communities and activists have worked within these dynamics towards decolonization and liberation. For the purposes of this analysis, the theoretical framework centers gender to show how colonial, heteronormative, patriarchal, white supremacist, and capitalist systems frame human rights. These power structures are oppressive and thus human rights, including those defined in the UNDRIP, fail to protect many groups, including Indigenous women.

3.1 The "Imaginal" AKA the Mythic

Myth can serve to generate meaning, solidarity, and order (Reinbold 2017, x). It functions to explain the things people cannot rationally understand, uphold social dynamics and institutions, legitimize dominant moral and ethical codes, and contextualize traditions (Reinbold 2017, 31). Human rights incorporate social dynamics, dominant moral codes, and traditions; thus myth is useful in understanding them. Though it is widely agreed upon that human rights are a creation of humanity, it can be dangerous to discuss them in such terms. To say human rights are a construction implies the possibility of a reverse, a deconstruction. However, the language of myth, or the "imaginal" (Bottici 2010) offers no such opposite process. The "*imaginal"* is the product of individual and societal context and imagination (Bottici 2010, 114); it derives much of its strength from the fact that people and societies choose to buy into it, whereas the *imaginary* brings with it a fictitious connotation (Bottici 2010, 115).

This framework allows adaptability in human rights and for them to transcend one monolithic category (Bottici 2010, 120). While there are widely agreed upon foundations in human rights, their mythic nature allows the specifics to be perceived differently by different

actors. The UNDRIP is a good example of this. It reaffirms many of the rights laid out in the UDHR while adding new components important to Indigenous peoples. In this way human rights both uphold the status quo and provide an emancipative space for imagining the world as it should be (Bottici 2010, 112).

Human rights exist at the boundary between cosmopolitan and nationalist ideas of the world order and belonging. They are situated where local attachments (state projects of citizenship and belonging) expand into the transnational (Yuval-Davis 2011, 147). The UN provides a space for expansion while maintaining the state-centric world order. All political communities are acts of imagination (Green 2017b, 170), and the imagined community of the universal human family is no exception. Myth provides the framework to justify and legitimize this global community, embodied by the UN, in which human rights are situated. The UDHR and the framework it created exist because the international community believes they exist (Stamatopoulou 1994, 62), and myth creates the space in which this belief is founded, protected, and perpetuated.

The "imaginal" is also useful in understanding how human rights discourse shapes its subjects based on identities. The different notions of universality in the history of human rights were all based on different understandings of who was considered human. For much of history, people of color, women, LGBTQ+[3] folk, and differently abled individuals were constructed as less than human and thus excluded from the protection of human rights. As human rights have inched closer to being genuinely universal, the idea that certain groups like women require unique protection places them in a disadvantaged position, stripped of autonomy and

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[3] This includes those who identify outside of the gender binary as well as non-heterosexual individuals.

empowerment. The mythic nature of human rights allows them to change and expand, but it also allows exclusions based on the "imaginal" nature of its subjects.

3.2 Coloniality

Coloniality is not simply colonialism; it incorporates the "logic, culture, and structure of the modern world-system" (Maldonado-Torres 2017, 117) though it almost always implies some sort of structural domination (Mohanty 2003, 18). It is not an event, but a structure (Carrillo Rowe and Tuck 2016, 6). It is historic and continuing, both economically and politically, and relies on an appropriation of sovereignty and resources (Falcón 2016, 173). Coloniality particularly remains unfinished in settler-colonial states (Moreton-Robinson 2014, 642). Because coloniality is unfinished, so too is decolonization. Decolonization is an ongoing, radical project in which the colonized subject steps into the role of the questioner and the embodied agent. It is composed of two basic steps: identifying colonization as a problem and acknowledging that the work of decolonization is never done (Maldonado-Torres 2017, 118, 124). It also requires a constant battle against the internalization of colonial hierarchies of power and structures (Starblanket 2017, 36) like heteronormativity, patriarchy, white supremacy, and capitalism.

The UNDRIP is a step in the decolonization of the UN and human rights. The UDHR is a crucial document, but the human rights ideology it created is Euro-centric, hegemonic, and plays a role in the colonization of the past and present. The dominant human rights discourse has resulted in the creation of human rights experts who tell marginalized communities what rights they have and how to defend them but in the process of trying to affirm rights, become demeaning (Maldonado-Torres 2017, 130, 132). The UNDRIP pushes back on the assumption that Indigenous peoples need to be told what their rights are. It disregards that these communities can rely solely on Western institutions and documents as tools in their fight for self-

determination (Maldonado-Torres 2017, 124). In putting Indigenous rights in Indigenous hands, the UNDRIP contributes to reshaping human rights through decolonial acts.

Because human rights are situated in the UN, they are inextricable from international politics and law. The international sphere has an entrenched coloniality by nature of its Western-centrism (Picq 2013, 447). This hegemonic structure restricts understanding of the international realm to one comprised of and organized by states. Some scholars question whether it is possible for international structures to be more inclusive of other actors (Picq 2013, 450). It is not the goal of this analysis to answer this question, but the UNDRIP is an interesting battleground between nation-states and Indigenous communities as global actors.

3.3 Feminisms and Feminist Theories

Feminist theories encompass many meanings, approaches, subcategories, and perspectives. Feminism is both a movement and an academic discipline (Green 2017c, 7) and often bridges the gap between the two spheres. This paper is particularly interested in feminist critical theory, feminist postmodernism, feminist poststructuralism, and transnational feminism and how they are applied to international relations and human rights. All of these aspects center on a critique of positivism and objective truth (Binion 1995, 78) and emphasize the impact and specificity of context (Frost and Elichaoff 2014, 42). Operationalizing these theories centers gender in discussions of coloniality and human rights. It makes clear the ways in which systems of domination[4] function in intersectional ways through the UNDRIP and the UDHR and provides pathways for dismantling them.

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[4] Colonialism, heteronormativity, patriarchy, white supremacy, capitalism

Feminist postmodernism pushes back on binaries and offers a tool for deconstructing these oversimplified categories (Frost and Elichaoff 2014, 43). Deconstruction of binaries goes hand in hand with feminist poststructuralism's emphasis on the socially constructed nature of reality and the power of language (Frost and Elichaoff 2014, 43-44). Feminist discourse analysis focuses on how discourses are thought of as "practical ideologies" in that they make experiences meaningful and perpetuate systems of belief (Frost and Elichaoff 2014, 47). In other words, they do not simply describe the world or lived experiences; they construct them through the shaping of different identities and positionalities. This is useful in examining the UNDRIP and UDHR because the relationship between the two is revealed and the dominant and subversive aspects of the UNDRIP can be identified. For example, dominant international relations discourse (i.e. masculinist dominance and rhetoric) (Picq 2013, 445) can be found in both documents, but the focus of the UDHR is on masculine individuals whereas the UNDRIP perpetuates masculine logic by generalizing the experience of Indigenous peoples to advance collective rights.

Feminisms cannot be included without acknowledging the importance of intersectionality. The UNDRIP recognizes that Indigenous communities around the world are oppressed and disempowered in a myriad of ways because of their Indigeneity. This is crucial to advancing these rights and working towards equality. However, treating the group as homogenous is dangerous and can be harmful to individuals and subgroups. Intersectionality not only references individual identities and experiences, but structures that exist in society at large (Falcón 2016, 128). These two components, while distinct, are connected and interact dynamically to place people in different positionalities throughout time and space. Within the identity category of Indigenous, there are different gender identities, sexualities, abilities, geographies, cultures, and socioeconomic statuses. Intersectionality provides a path to

understanding the ways in which differential situatedness of individuals impacts social, economic, and political projects (Yuval-Davis 2011, 4). This is important to understand because of potential impact on solidarity and the Indigenous identity. Identity is both individual and collective (Yuval-Davis 2011, 14) and while the former is often informed by the latter, collective identity is not homogenous. Ignoring difference within groups leads to conflicts among groups (Crenshaw 1991, 1242), a tension to which Indigenous peoples are not immune. Drafting and passing the UNDRIP required a level of unity on the part of Indigenous activists, and intersectionality is a critical tool in identifying who benefited and who was harmed by this homogenization.

Transnational feminism highlights how geographic and sociopolitical axes intersect to shape political position, particularly in the context of the UN (Falcón 2016, 17). It moves feminist theory beyond the confines of the Western- and state-centric international order to recognize the importance of context and global power imbalances. In particular, relational positionality identifies how systems and structures of power intersect to "position individuals and collectivities in shifting and often contradictory locations within geopolitical spaces, historical narratives, and movement politics" (Falcón 2016, 19-20). Transnational feminism recognizes the simultaneous importance of local and global contexts at the UN and the need to move beyond the constructed identities that place people in opposition to each other. Applied to human rights, transnational feminism can center the conversation on the systems of oppression that exist globally but have local consequences. These systems construct and perpetuate the identities that entrench individuals and communities in oppressed positionalities and create obstacles to solidarity and liberation.

Feminist scholars recognize that legal institutions are hierarchal and exclusionary, and question the social conditions, possibilities of transformation, benefits, and harms of such systems (Binion 1995, 510, 513). Feminist analysis has implications for all human rights, not just women's rights, in that it examines issues of power and oppression, pushes back on the state as the main enforcer of human rights (Binion 1995 515-516), and utilizes intersectionality to consider geopolitical space, historical narratives, and political dynamics in the formation and framing of human rights (Falcón 2016, 156). Further, feminist critique of human rights posits that there is no real separation between political and social/economic rights (Binion 1995, 522) because these different aspects of people's lives are all connected.

3.4 Indigenous Feminism

When considering the UNDRIP within a feminist framework, Indigenous feminism appears to be a nearly perfect fit. It incorporates Indigenous knowledges and methodologies often excluded from the processes of knowledge production in the international realm (Picq 2013, 452), and centers the voices of Indigenous women and nonbinary folk. However, the fraught relationship between Indigenous women, communities, and feminism complicates its application to the subject. While more Indigenous people are claiming the label of feminist, historically it has carried a negative connotation because of its association with white feminism (Hernández Castillo 2010, 541; Dulfano 2017, 85). Few Indigenous activists who worked on the UNDRIP identified as feminist (Green 2017, 7), therefore attempting to analyze the document as a feminist text or label its various drafters as feminist activists would be an act of historical revisionism.

Nonetheless, Indigenous feminism provides a lens relevant to this analysis. In particular, it links colonization with gender and sexuality, and critiques colonialism as a gendered and racist

process and institution (Green 2017, 4-5). Indigenous feminists have voiced and written about sexual and gender-based violence as a tool of colonization but also of the necessity of holding Indigenous men and leaders accountable for violence within their own communities (Kuokkanen 2017, 105; Green 2017b, 174). It is crucial to recognize the unique nature of violence against Indigenous women as a specific and traumatic experience (Kuokkanen 2017, 104) and to ensure that no one speak on behalf of Indigenous women on matters that relate to them (Blaney and Grey 2017, 249).

The idea of resurgence is a central tenet of Indigenous feminism. Resurgence refers to action and practice grounded in the revitalization of tradition and culture (Starblanket 2017, 25). The UNDRIP is a product of, embodiment of, and a step in the process of Indigenous resurgence and it is important to view it as such. The UNDRIP not only affords the rights of the UDHR to Indigenous communities, it adds to the human rights framework in a uniquely Indigenous way. It makes Indigenous peoples equal at the UN, and defines and creates new terms for respect and equality (Green 2017b, 174). While this is undoubtedly a victory in Indigenous liberation and decolonization, Indigenous feminism sheds light on the ways in which groups like Indigenous women continue to come second to the overall goal of collective self-determination.

Chapter 4: Methodology

This is an analysis of how the UNDRIP fits into the dominant human rights discourse defined by the UDHR, centering gender to focus on how systems of power underlie these two documents. This paper utilizes the '*what's the problem represented to be?*' (WPR) methodology, developed and refined by Carol Bacchi (2009, 2012, 2017), to explore these themes. Bacchi is a feminist political theorist who has focused her career on gender in public policy. The WPR approach lends itself well to gender analyses because of Bacchi's background. This methodological approach incorporates discourse analysis and Foucault's genealogical approach as tools for identifying problematizations in policy and the contexts in which they are created. Human rights and their framework are myths—they are "imaginal" (Bottici 2010)—and the WPR approach allows for further investigation of this framing process and a tracing of its origin and development. The methodology is inherently reflexive and self-problematizing (Bacchi 2017) because the guiding questions and principles are also applicable to the researcher's personal assumptions.

4.1 The 'what is the problem represented to be?' Approach

Bacchi formulated WPR to provide an alternative to the traditional problem-solving approach of policy analysis (Bacchi 2009, xvii). Problem-solving theory, contrary to popular opinion, is not value free but rather "takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organized, as the given framework for action" (Cox 1981, 128-129). Within the status quo, solutions to social problems are limited because they cannot question the institutions and processes in which they are created. The WPR methodology seeks to provide a different approach based on the assumption that policy is value-laden and cultural (Bacchi 2009, ix). Because policy is created within certain contexts (national,

historical, political, international, etc.), so too are the problems it seeks to address. It is not reactive (Bacchi 2009, 33)—it does not simply address problems, but plays a role in creating them (Bacchi 2009, x). We are not governed through policy, but through problematizations (Bacchi 2009, 25). The WPR approach is concerned with how social issues are problematized. Representations of problems are simplified, and issues of inclusion and exclusion are always at play (Bacchi 2009, xii). How a problem is represented determines what action is subsequently taken, who benefits, who is harmed, and which discourse becomes dominant (Bacchi 2009, 155). This approach is subversive because in considerations of benefit and harm, it takes sides with the harmed (Bacchi 2009, 44).

WPR is rooted in poststructuralism, social construction theory, feminist theory, and governmentality studies (Bacchi 2009, 34, 264). The methodology is a good fit because this analysis is grounded in many of the same theories. These theories allow institutions, ideologies, and discourses perceived as a given to be challenged through analysis on political influences, lived experiences, and patterns of thought. The emphasis on the different epistemologies that influence policy and its formulation (Bacchi 2009, 26) is also compatible with the wider framing of this paper. One of the main discussions about the UNDRIP is its situatedness at the intersection of colonial and Indigenous knowledges. Part of the power of the UNDRIP lies in its emphasis on different ways of knowing and being; different from the epistemology underlying most human rights discourse, though a centering of gender reveals that this delineation is not so clear.

The WPR approach comprises six questions that guide the analysis (Bacchi 2012, 21):

1. What's the 'problem' represented to be in a specific policy or policy proposal?

2. What presuppositions or assumptions underpin this representation of the 'problem'?

3. How has this representation of the 'problem' come about?

4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

5. What effects are produced by this representation of the 'problem'?

6. How/where has this representation of the 'problem' been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted, and replaced?

These questions can be applied independently and in order or in an engrained manner, and Bacchi points out that not every analysis need include all the questions (Bacchi, 2009, 101). Emphasis in this analysis is on questions two, three, and four as they contribute the most to the objectives of this analysis. These questions align with the importance of context, textual analysis, and focus on gender and systems of power.

4.2 Operationalization

Taking into consideration Bacchi's explanation and groundwork for her methodological approach, this analysis will explicitly focus on questions two, three, and four to highlight how the UNDRIP expands the human rights framework, builds off of past developments, and subverts dominant assumptions in human rights. These explorations also shed light on the UNDRIP's limitations. Starting with question three allows for contextual and historical placement of the UNDRIP within the broader human rights framework and sheds light on the developments that ultimately formed the document and gave it legitimacy. Building off of the genealogical examination of the text, question two is utilized to identify specific themes present in the

document that reveal its underlying assumptions and values in contrast with the paradigm set by the UDHR. Finally, question four addresses the limitations of the UNDRIP. These limitations provide insight into who benefits and who is harmed by the document and how human rights still fail to protect all people. All of these questions are answered through a feminist theoretical framework and with gender as a central component.

Question three (How has this representation of the 'problem' come about?) utilizes Foucault's genealogy approach to reflect on past developments and decisions that led to the formation of dominant discourses and the shaping of problem representations. It also allows for competing discourses to be identified (Bacchi 2009, 10-11). It is important to trace the development of Indigenous rights at the UN against the development of the dominant framework (Stamatopoulou 1994, 61) so this section of the analysis incorporates a brief history of the UDHR, centering the mythic and "imaginal" nature of human rights. Tracing this history shows that the development of human rights has not been linear (Maldonado-Torres 2017, 119) and is necessary to fully understand the UNDRIP. Examining the history of the UNDRIP sheds light on where it preserves and diverges from the dominant discourse and reveals from where the document's legitimacy is derived. Considerations of gender are largely absent from these histories, a reflection of the perpetuation of gendered systems and erasure of gendered experiences as the norm in human rights.

Question two (What presuppositions or assumptions underpin this representation of the 'problem'?) focuses attention on the deep-seated values present in problem representations and how policies are elaborated through discourse (Bacchi 2009, 5, 7). The discourse of human rights is associated with the institution of the UN and thus is incredibly powerful (Falcón 2016, 82) and important to investigate. This analysis focuses on the discourse of the UNDRIP, honing in on the

ways in which the language conforms to and differs from the dominant human rights paradigm

and the consequences of these dynamics. This is accomplished through the use of a coding

scheme, applied to both the UNDRIP and the UDHR.

The coding scheme was designed based on major themes identified in previous

scholarship and theories (Xanthaki 2007; Green 2017a; Maldonado-Torres 2017; Binion 1995;

Picq 2013; Moreton-Robinson 2014) and applied equally to both the UNDRIP and the UDHR.

The coding scheme included the binaries of collective versus individual rights, decolonial versus

colonial language, Indigenous versus statist language, self-determination versus sovereignty

language, and secular versus religious language. As a tool of textual analysis, binaries provide an

entry point into examining issues of power, inequalities, and ideologies. Binaries serve as a way

to identify meaningful language and preserve hierarchies. Feminist postmodernism and

poststructuralism are useful in identifying important binaries and examining the ways in which

they frame issues and imbue them with uneven power dynamics through the lens of gender. In

this coding scheme, the side aligned with the UN's statist, masculinist structure are given value.

Assigning value in this way recognizes the context of the UN and allows the subversive aspects

of the UNDRIP to be identified. However, binaries inherently simplify the topics they categorize

and while they are useful in identifying where value is situated, can cause harm by exclusion and

erasure (Bacchi 2009, 184), especially of gendered experiences. To avoid this, gendered

language, land, human dignity, cosmopolitan language, and intersectional identities were coded

for as open-ended themes.

Ultimately, not all coding categories were included in the analysis. Decolonial versus

colonial and Indigenous versus state language were combined into one category and self-

determination versus state sovereignty was folded into this new section. Land is discussed in

terms of collective rights rather than as its own category. Human dignity, cosmopolitan language, and secular versus religious language were left out of the analysis because they applied more to the UDHR than the UNDRIP. The coding categories ultimately included in the analysis were chosen because of their insights into gender and power systems. This is particularly true of gendered language and intersectional identities as they incorporate different manifestations of gender in the texts.

Question four (What is left unproblematic? Where are the silences? Can it be thought about differently?) addresses the limits of specific problematizations and brings to light perspectives and knowledges that have been silenced by the dominant discourse (Bacchi 2009, 12). One tool in this step is cross cultural analysis (Bacchi 2009, 14). This is relevant because the UNDRIP provides a cultural perspective on human rights that differs from the dominant discourse. By considering both contexts, the relative and universal nature of human rights is revealed. Feminist theory and coloniality are both useful in identifying silences and new ways of thinking about human rights. Feminism sheds light on how human rights discourse benefits and harms based on intersectional identities, and decolonization and resurgence provide frameworks for new ways of conceptualizing and defining human rights including within the dominant paradigm. This analysis focuses specifically on the limitations of the UNDRIP for Indigenous women. The unique experiences of Indigenous women with the systems of power that underlie the document place them outside its core protections and not all their needs are included.

4.3 Ethical Considerations

An asset of the WPR approach is that it necessitates reflexivity. As a feminist researcher, this is an important and necessary part of the research process. I am a member of the Chickasaw Nation. I am also white, a cisgender woman, middle class, able-bodied, and well educated. Blood

quantum and tribal citizenship are complicated issues, but I know and accept that my status as a Chickasaw is entirely dependent on the Chickasaw Nation choosing to include me as a member. My interest in this topic and the UNDRIP comes from a personal connection, but not necessarily lived experience. In a way this reflects the feminist notion that the personal is political. In this case, it is a matter of both what I have and have not experienced as a result of my positionality.

I have been socialized and educated in Western colonial systems and it is inevitable that this will permeate my thought process and my work. There is privilege that comes from being in the Global North, especially in the context of the UN, even in Indigenous communities. While I have tried to center Indigenous scholarship and knowledge in this analysis, sources pertaining to the UN are often centered in European or settler-colonial states and my research, analysis, and conclusions reflect this imbalance. Despite my status as a Chickasaw, I am also a white woman analyzing an Indigenous document and there is a power imbalance embedded in my research as a result.

Feminist research ethics prioritize reducing and minimizing harm (Bell 2014, 84). All of my materials and resources are previously published and publicly accessible which implies a degree of consent for further use and interpretation. Still, it is important to remember that I am addressing issues pertaining to Indigenous communities that have been subjected to violence, oppression, and marginalization for much of their history. Throughout the research process I have tried to avoid tokenizing or treating this subject in a trivial way.

Flexibility is another important feminist research practice (Bell 2014, 79) which I have kept in mind throughout this process. While I had ideas and assumptions about the direction of the paper, as I encountered new information and perspectives, my questions, analysis, and ideas

shifted. My analysis reflects the themes advocated for by the drafters of the UNDRIP as much as it does my own ideas.

The WPR approach allows for investigation and analysis that considers multiple interlocking components. Bacchi recognizes that discourse, problem representations, and historical developments provide stronger conclusions when taken into consideration together. This methodological approach affords this analysis the space to consider feminist theory, the mythic nature of human rights, Indigenous knowledge and feminism, and coloniality in concert with each other and produces an inherently intersectional and interdisciplinary analysis through the lens of gender.

Chapter 5: Analysis

This analysis explores the UNDRIP in conversation with the UDHR to examine how the two documents are similar and how they differ. Before moving to an examination of the documents themselves, it is necessary to discuss the historical context in which they were written and adopted. Though taking time to explore these histories can seem tangential and irrelevant to the gendered analysis, utilizing a historical approach clarifies how decisions and developments shaped the two documents. Analyzing the texts of the UNDRIP and the UDHR themselves through a coding scheme makes apparent the underlying themes and discourses that frame the documents. Importantly, identifying the underlying values and contexts sheds light on their limitations.

Gender is a central component but is primarily discussed in terms of the limitations of the UNDRIP. This is because gender is largely absent from the history of the UNDRIP and the UDHR and is not given careful consideration in the documents. This absence is reflective of their histories and contexts and telling of the priorities, values, and systems framing them. It is difficult to arrive at conclusions about the two documents and their implications today through the lens of gender without exploring and acknowledging their histories.

5.1 Historical Context (WPR Question Three)

Bacchi's third question utilizes Foucault's genealogical approach to reflect on specific developments that have formed a representation (Bacchi 2009, 10). In this analysis, the genealogical approach provides historical background and context for the UNDRIP and the UDHR. It is important to link these histories and examine them together (Stamatopoulou 1994, 61) because put in conversation, their similarities and differences become evident.

The United Nations Universal Declaration of Human Rights

Many great empires have believed in some form of universalism and granted rights to their citizens and subjects (Hall 2020), but European Enlightenment understandings are the most influential framework for human rights at the UN (Ishay 2004, 7, 64; Reinbold 2017, 36). Rights to life, property, religious freedom, suffrage, and liberty were all conceptualized in new and expanding ways during the Enlightenment (Ishay 2004, 65, 73-74), but were based on nationality and citizenship status (Hunt 2007, 17, 176). These rights almost exclusively applied to white, protestant, property-owning men, and thus were far from universal.

By the end of World War I and the founding of the League of Nations, human rights expanded somewhat but were still limited on gender, sex, sexuality, race, ethnicity, class, ability, and religion. The human rights aims of the League of Nations included humane working conditions, prohibition of human trafficking, prevention and control of disease, and self-determination (Ishay 2004, 207). Though self-determination was a human rights goal, the League did not address colonization or endorse the right of self-determination for Indigenous peoples (Ishay 2004, 182, 188).

The atrocities of World War II and the need for an international space of communication and negotiation influenced the founding of the UN in 1945. Nazi Germany became the foil of the new world order and a reference point against which the UN framework of human rights was situated. The Third Reich highlighted more than ever that the rights of the 18th and 19th centuries were civil rights, not human rights (Reinbold 2017, 45-46, 100). They were given by the state and could just as easily be taken away by the state. Acts of barbarity had long been committed by Western powers, particularly as tools of colonialism and imperialism but were viewed as strategies for civilizing the colonized, not crimes against humanity (Maldonado-Torres 2017,

128). The Holocaust gave a new perspective on barbarity (Hunt 2007, 200) because it was perpetuated by Europeans, against Europeans, on European soil.

This was the history against which the first UN Human Rights Commission worked to create a human rights framework that could not be violated or erased as the civil rights of the past had. The Commission "faced the problem of articulating a set of evocative, universalizable principles in the absence of shared ontological and metaphysical foundations" (Reinbold 2017, 13). In short, they had to utilize the power of myth to ground human rights in something possessed by all people. Human dignity became the anchor for these new rights. While human dignity was not a new concept, utilizing it in this way was and the Commission leaned into the power of myth to generate meaning, solidarity, and order around the UDHR (Reinbold 2017, x). Ultimately, the UDHR enshrines human dignity without locating it in one specific tradition (Reinbold 36, 39). There are countless ways to justify and uphold dignity, and because the Commission was crafting a tradition based in the "imaginal," it would have been counteractive to root it to one culture. That being said, the UDHR was conceived within the colonial, heteronormative, patriarchal, white supremacist, capitalist UN and carried with it this context.

The Commission knew passing a legally binding document would be nearly impossible because of the protection of state sovereignty in the UN Charter (Hunt 2007, 204). Without a binding international mechanism, the onus fell on existing legal systems to enforce the rights in the UDHR (Reinbold 2017, 99). A necessary component to nonbinding enforcement was public knowledge and support. Without widespread support amongst the general public, the UDHR would have failed. For a person to know their rights have been violated, they must know what their rights are in the first place (Reinbold 2017, 73-74) and must buy into those rights (Hunt 2007, 34). Finding legitimacy through state systems and the world's population, the UDHR

essentially bridged the divide between the legal and the moral, balancing legal rights and cosmopolitan notions of the human family bound by shared dignity (Reinbold 2017, 116; Bottici 2010, 116). This balancing act would not have been possible without the use of the mythic.

When the UDHR was adopted on 10 December 1948, it became the moral compass for the new world order and new era of human rights. The declaration was not a fast and sweeping victory and work towards its full realization is still in progress. Human rights are hierarchical and continually fail to protect many (Binion 1995, 514). The UDHR represents a step in the process of human rights, not their end (Hunt 2007, 206) and though it is not truly universal, one of its strengths is adaptability rooted in its "imaginal" nature. Because the document is vague, it allows for interpretation that changes with history and context. While this can result in limiting and exclusionary interpretations, it also affords expansions and inclusive readings. The UNDRIP is one example of the latter.

The United Nations Declaration on the Rights of Indigenous Peoples

The UNDRIP is an example of the counter-public approach to human rights (Falcón 2016, 84-86). It acknowledges the colonial roots of the UDHR but utilizes the structure for expansion and liberation. Like the UDHR, the UNDRIP is often painted as a sweeping success (Mende 2015, 224-225). While the existence of an Indigenous rights document is undoubtedly a milestone achievement, a brief look into the history of the work and activism behind the UNDRIP shows that it was not an easy journey.

The first international Indigenous activism started in the 1920s when Haudenosaunee Chief Deskaheh and Maori religious leader TW Ratana traveled to the League of Nations in Geneva to advocate for self-determination and protest the violation of the Treaty of Waitangi,

respectively (United Nations). Both were turned away because colonial powers successfully

argued that Indigenous issues were domestic, not international in nature (Moreton-Robinson

2014, 642). Indigenous peoples countered this claim by citing treaties that proved colonial states

viewed them as autonomous entities with the right and ability to exercise sovereignty

(Stamatopoulou 1994, 77) but found little success. Indigenous peoples never gained entrance to

the League of Nations.

Despite past exclusions, Indigenous peoples have put faith into international law and the

UN because it provides a venue to work around domestic constraints and rally global solidarity

(Xanthaki 2007, 2; Venne 2011, 557). Indigenous activism at the UN began in earnest in the

1970s. At the 1977 Conference on Discrimination Against Indigenous Peoples, over 150

Indigenous representatives spoke about exploitation of natural resources, genocide, repression,

and harmful development projects (Venne 2011, 559; Mazel 2009, 144; Xanthaki 2007, 1). This

opportunity was groundbreaking at the UN and was afforded because Indigenous peoples were

recognized as "long-standing communities with historically rooted cultures and distinct political

and social institutions" (Xanthaki 2007, 4) rather than a segment of civil society.

The next major step on the path of Indigenous rights at the UN was the 1981 Martínez

Cobo Study. The study recognized the distinction between collective and individual rights and

asserted that Indigenous peoples should be involved in matters that concern them (Venne 2011,

561, 565). Perhaps most importantly, it provided a working definition for the term Indigenous:

> Indigenous communities, peoples and nations are those which, having a historical
>
> continuity with pre-invasion and pre-colonial societies that developed on their territories,
>
> consider themselves distinct from other sectors of the societies now prevailing on those
>
> territories, or parts of them. They form at present non-dominant sectors of society and are

determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

On an individual basis, an indigenous[5] person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference (UN Commission on Human Rights, 1982).

This definition allowed Indigenous peoples to define their own identities for the first time at the international level (Stamatopoulou 1994, 67). The report took into account definitions from around the world, centering ancestry, culture, language, group consciousness, acceptance by the Indigenous community, residence, and legality (UN Commission on Human Rights 1982, 6-57). However, it is criticized for failing to recognize Indigenous peoples as sovereign and for not directly involving them as participants (Venne 2011, 262-263).

Following the Martínez Cobo study, the UN established the Working Group on Indigenous Populations (WGIP) in 1982 as a venue for direct Indigenous participation and to review and develop international standards on Indigenous rights (Alfredsson 1989, 256; United Nations). The WGIP first starting drafting a declaration in 1985 with a strong Indigenous presence (Xanthaki 2007, 102). Hard work and incessant activism ensured that strong language was pushed through in the version of the text completed in 1993 and adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Venne 2011, 572). It

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[5] Indigenous is not capitalized in UN documents.

was then sent to the Commission on Human Rights which formed its own drafting group to elaborate on the text (Oldham and Frank 2008, 5; Xanthaki 2007, 3).

International Labor Organization (ILO) Convention 169 went into effect in 1991 (Xanthaki 2007, 67). The ILO had been researching the situation of Indigenous workers for some time, but its previous work implied Indigenous backwardness, benefits of assimilation, and responsibilities for governments to intervene (Xanthaki 2007, 52, 59). ILO Convention 169 established the first bona fide rights exclusive and specific to Indigenous peoples (United Nations) and acknowledged the harmful and assimilationist language of previous conventions (Xanthaki 2007, 69). Convention 169 was the first international legal document to use the word "peoples" to describe Indigenous communities and emphasized the need for self-identification and cooperation with Indigenous communities. However, like the Martínez Cobo study, it lacked consultation with Indigenous peoples, leaving it largely illegitimate among Indigenous populations (Xanthaki 2007, 68-70, 73, 77).

While these successes were taking place, behind the scenes the draft declaration faced serious obstacles. In 2005, the Chairperson of the Commission on Human Rights unilaterally pushed a diluted version of the text through to the General Assembly (GA) (Xanthaki 2007, 120). The GA rejected it, a major win for Indigenous peoples. Had that version of the declaration been approved, as settler-colonial states were hoping, it would have been a fatal blow for the Indigenous rights movement. At this point, Indigenous leaders at the UN had to decide if it was better to amend the compromised text or continue to fight for the stronger original (Xanthaki 2007, 120). Ultimately, they chose the latter path and the UNDRIP was adopted by the GA on 13 September 2007.

Summarizing Thoughts

The UNDRIP was not drafted or passed in a vacuum. The broader history of human rights informs the document. These histories are about control, voice, and empowerment and are rooted in systems of power that hinder their successes. The UNDRIP carries oppressive systems and values that cause harm to Indigenous peoples, including Indigenous women. The fact that the UNDRIP was largely written by Indigenous activists shows that human rights are changeable and contestable. Despite Indigenous peoples' past exclusion, they managed to harness the framework for their own use because of its "imaginal" nature. Though an Indigenous approach was necessary (Falk 1988, 32), the UNDRIP is a complement to existing human rights standards and instruments, an expansion, not a reversal or replacement (Hanson 2009).

5.2 Underlying Assumptions and Values (WPR Question Two)

No text, document, policy, or discourse exists in a vacuum. Human rights are no exception. They are constantly contested, negotiated, and shaped through dynamic interactions of dominant and competing actors and ideas (Mende 2015, 224). Bacchi acknowledges the need to identify values underpinning representations in the WPR methodological approach (Bacchi 2009, 5). This analysis uses feminist postmodernist and poststructuralist understandings of discourse and binaries to examine how the UNDRIP interacts with the dominant human rights paradigm. A coding scheme was applied to both documents to put them in conversation with one another and highlight their differences. The categories coded for and discussed shed light on coloniality, the state-centric nature of human rights, identities, and gender. Considered together, these themes emphasize the power systems present in human rights. Emphasis is placed on discussing the contents of the UNDRIP though the UDHR is discussed intermittently to provide context.

Collective versus Individual Rights

Prior to the UNDRIP, there was no instrument at the UN that could be used to protect a group as a collective (Venne 2011, 261). The human rights framework as defined by the UDHR is set up to protect the rights of individuals above all else. The UNDRIP, on the other hand, is premised on collective rights being just as important. This divergence is perhaps the most subversive aspect of the UNDRIP and to this day is a point of contention. Collective rights have roots outside of Western, liberal ideas and some states oppose them because they claim that if a right belongs to a community, it can be denied to an individual (Xanthaki 2007, 32).

Despite state opposition, Indigenous peoples succeeded in advancing the collective nature of the UNDRIP. Throughout the document, rights are given to peoples and the default pronoun used to describe the subject of these rights is the plural they/them/theirs[6]. This contrasts the UDHR which affords all rights to individuals. Importantly, the collective framework of the UNDRIP does not erase individual rights entirely. Paragraph 22 of the preamble reads,

> *Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples (United Nations 2007, 3),

This is followed by Article 1 which states that,

> Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United

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[6] They/them/theirs is also a singular pronoun and can be used to refer to individuals in place of he/him/his or she/her/hers, but in the context of the UNDRIP it is used in the plural.

Nations, the Universal Declaration of Human Rights, and international human rights law

(United Nations 2007, 3).

These two statements affirm the importance of collective rights to Indigenous peoples while also ensuring that nothing in the UNDRIP strips Indigenous individuals of the rights given them in previous human rights documents. The collective rights defined in the UNDRIP are additions to the individual rights given in the UDHR, not replacements.

The UNDRIP does specify some individual rights, like the rights to "life, physical and mental integrity, liberty and security of person" (United Nations 2007, 4) which complement the collective right of Indigenous peoples to "live in freedom, peace and security as distinct peoples" (United Nations 2007, 4). Other rights given to both Indigenous peoples and individuals are the right to be free from assimilation (Article 8), the right to belong to an Indigenous community or nation (Article 9), and the protection of domestic and international labor laws (Article 17). Indigenous individuals are afforded the right to education (Article 14), health care (Article 24), and state citizenship (Article 33) as compliments to the collective rights of establishing Indigenous education systems, practicing traditional medicine, and determining Indigenous membership (United Nations 2007, 4-7, 9).

Perhaps the most notable collective right given in the UNDRIP is the right to collective land ownership and use in Articles 26 and 29 (United Nations 2007, 8). This goes directly against Western ideals of private wealth and capital which fuel the economies of settler-colonial states. Individual right to property was important to include in the UDHR (Article 17) because capitalist states rely on individualism to function. Additionally, dividing Indigenous lands for individual and private use is a tool in assimilationist and colonial projects. In this reading, the UDHR is a tool of colonial powers (Maldonado-Torres 2017, 122). The inclusion of collective

land rights, a stark alternative to private property, in the UNDRIP shows that those projects failed in eliminating this aspect of Indigenous cultures, and that the international Indigenous movement succeeded in challenging the dominant human rights framework (Mende 2015, 224).

Different approaches to land ownership, stewardship, and use also have a gendered component. Indigenous feminism (and ecofeminism) believes in a complementarity between humans and the natural world that parallels complementarity between genders (Hernández Castillo 2010, 540). In this line of belief, the natural world and the feminine side of the gender spectrum are equated and thus the treatment of the earth equates the treatment of women and vice versa. Western, colonial understandings of the natural world are rooted in capitalism and thus the earth is viewed as a means for profit and in need of domination (Jahanbegloo and Shiva 2013, 47). It is feminized by the masculine state. Because Indigenous communities are equal with the earth, they are feminized in contrast to colonial society and are utilized and treated in the same way as the earth—with little respect. Going one step further, the violence against Indigenous women can be interpreted as a parallel to the violence perpetrated against the natural world by colonizers.

Colonial versus Decolonial Language

The existence of the UNDRIP in a form created by Indigenous representatives and activists is a decolonial act. The Indigenous movement has resisted the nation-state (Dixon 2014, 25) because of its alternative social, political, and economic structures. Because colonization is continuing, decolonial work is ongoing (Moreton-Robinson 2014, 642). Though previous human rights documents have in large part evaded addressing colonization head-on, the UNDRIP does not shy away from it. Paragraph 6 of the preamble identifies colonization as a source of harm to Indigenous peoples, reading,

> *Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests (United Nations 2007, 2).

This statement identifies colonialization as a structure, not an isolated event in history (Carrillo Rowe and Tuck 2016, 6) and lays the groundwork for ensuing decolonial aspects of the UNDRIP. Without an acknowledgement of colonization, the UNDRIP would have less legitimacy because the cause of violations and erasure of rights would be invisible in the text.

The drafters of the UNDRIP wasted no time in denying any legitimacy to supremacist or racist ideas. The fourth and fifth paragraphs of the preamble read,

> *Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust (United Nations 2007, 2),

> *Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind (United Nations 2007, 2),

The concrete denial of this attitude sets the tone for the entire document. Immediately, it becomes clear that the UNDRIP was crafted by Indigenous peoples with Indigenous peoples in mind. The UNDRIP not only refuses to accept constructed hierarchies, it decidedly dismantles the myth of superiority on which they are based.

Another decolonial aspect of the UNDRIP is the inclusion of the right to self-determination. Without the right to self-determination, the other rights granted in the document would have no foundation. Articles 3 and 4 state,

> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development (United Nations 2007, 4).

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (United Nations 2007, 4).

This right is bolstered by the acknowledgment that Indigenous communities have the right to practice their cultures, be free from genocide and assimilation (Articles 7, 8), restitution and repatriation (Articles 11, 12), determine their own education systems (Articles 14, 17), be depicted accurately in state education systems and media (Articles 15, 16), give prior and informed consent and/or make decisions on matters that concern them (Articles 18, 19), determine their own membership and identity (Article 33), and develop their own juridical systems (Article 34) (United Nations 2007, 4-6, 9). All of these articles center and specify the meaning of self-determination for Indigenous peoples. By defining self-determination in specific and expansive ways, the UNDRIP shows that Indigenous peoples could not rely on the UDHR to reclaim this right (Maldonado-Torres 2017, 124).

A true symbol of state power is the military. In settler-colonial states, the military has been used as a tool to commit genocide and ethnocide, enforce assimilation, and control Indigenous communities. The military is also an embodied representation of the masculine nature of colonialism. It exerts total dominance through force and violence against feminized Indigenous communities and territories. The gendered nature of this relationship highlights the power imbalance between Indigenous peoples and states. Without demilitarization,

decolonization is impossible. Paragraph 12 of the preamble affirms the need for demilitarization reading,

> *Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world (United Nations 2007, 2),

Article 30 solidifies this claim stating,

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities (United Nations 2007, 9).

The UNDRIP does not accept that military action, presence, or involvement is necessary or beneficial to Indigenous peoples and their relationship with the state.

The UNDRIP is undoubtedly an Indigenous document but is complicated by a reliance on states for enforcement. At multiple points in the document, states are given a responsibility to collaborate and cooperate with Indigenous peoples in affording them rights. This is concretely stated in Articles 38 and 39,

> States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration (United Nations 2007, 10).

The call for state cooperation is furthered by attention to preexisting treaties and agreements. Often neglected or weaponized against Indigenous peoples, these agreements nonetheless show that colonial states viewed Indigenous peoples as sovereign. The UNDRIP places treaties and agreements as matters of international concern to be affirmed and recognized by states and the UN and posits that nothing in the UNDRIP erases those rights (United Nations 2007, 2, 10). Ultimately, the responsibility for enforcement and protection of treaties, agreements, and rights is placed on the shoulders of states and the UN (United Nations 2007, 11), a reality that feminist scholars have critiqued (Binion 1995, 515-516). While there is not a better alternative at the moment, this reality distills the content and success of the UNDRIP as Indigenous peoples are forced to rely on the actors and systems that have oppressed them as partners in their liberation.

The final article of the UNDRIP asserts that interpretation of the document should be based in democracy, good governance, and good faith (United Nations 2007, 11). This harkens back to the UDHR and reinforces the statist and colonial nature of the UN and its human rights framework (Picq 2013, 447). State sovereignty continues to have the highest protection at the UN. To be recused from responsibility, a state simply has to argue that Indigenous rights threaten sovereignty. While this does not erase the power and successes of the UNDRIP, it does highlight that it exists in a statist and colonial context.

The UDHR human rights framework is statist, colonial, and masculine (Maldonado-Torres 2017, 122; Binion 1995, 515-516; Picq 2013, 447). Emphasis on self-determination, demilitarization, rejection of racism and superiority, and affirmation of past treaties give the

UNDRIP a decolonial bent, but do not free it of its broader context. Indigenous-state relations are inherently gendered because of the masculine nature of the state and the feminization of Indigenous peoples. Because the UNDRIP does not address these dynamics and is forced to exist within this gendered context, it cannot fully break free of the interrelated systems of power that prevent all human rights from being truly universal.

Gendered Language

The masculinist nature of human rights has long been critiqued by feminist scholars (Yuval-Davis 2011, 172; Picq 2013, 445). Because of the gendered nature of Indigenous-state dynamics and human rights, gender underlies many parts of the UNDRIP though it is more obvious in some places than others. One of the most apparent differences between the UNDRIP and the UDHR is the use of gendered language. The UNDRIP does not use masculinist pronouns. With its focus on collective rights, it uses the plural they/them/their when referring to its subject. At no point in the document is a singular pronoun used. This is likely to maintain emphasis on the collective, but the use of the plural subject does allow the document to avoid gendered language. However, the UNDRIP perpetuates colonial understandings through heteronormative and patriarchal themes. Article 44 grants the rights of the UNDRIP equally to "male and female indigenous individuals" (United Nations 2007, 11). This language muddles gender and sex and excludes those with other sex identities, non-cisgender, and nonbinary individuals. In addition, it erases different understandings of gender in some Indigenous cultures in favor of colonial ideas. This is an example of how ideologies not only describe but create experiences (Frost and Elichaoff 2014, 47). Because colonial understandings of gender are so pervasive, they define Indigenous experiences with gender. Many Indigenous individuals looking to the UNDRIP for affirmation might not find it because of this specification.

In comparison, the UDHR, with its focus on individual rights, uses a singular subject. Throughout the document, the subject receiving rights is referred to in the masculine he/him/his and in an effort to emphasize cosmopolitan empathy and relationality, the UDHR upholds a "spirit of brotherhood" (United Nations 1948, 2). Despite the preamble granting "equal rights to men and women" (United Nations 1948, 5), the repeated use of masculine pronouns and language reflects the masculine tradition of human rights (Picq 2013, 445). Additionally, Article 16 focuses on family rights, positing that the family is the fundamental unit of society (United Nations 1948, 5). The assumed family is the heteronormative, patriarchal family unit because the right to marry, divorce, and have a family is only given to men and women (United Nations 1948, 5). In this model, the wife/mother is an embodiment of the nation (Yuval-Davis 2011, 94) in need of protection. This family model excludes not only same sex couples, but single parent households, dual breadwinner households, and multi-generation households, all of which pose a threat to the public/private divide and Christian family that serve as the bedrock of Western, capitalist, patriarchal societies. The specification of men and women also enforces essentialist and binary ideas of gender and sex.

It is worth noting that today's understanding of gender and sex as separate and existing on spectrums did not exist in the dominant cultural consciousness in 1948 and was only starting to emerge in 2007. Transferring modern labels, understandings, and theories onto past contexts in which they did not yet exist can be dangerous and result in historical revisionism. That being said, these documents are meant to stand the test of time and maintain their universal nature as the world changes. Though the UNDRIP and the UDHR were conceptualized and written in different historical contexts, the exclusionary nature of their language has repercussions today. The explicit masculine language of the UDHR continues to exclude women and nonbinary folk,

and because both documents specify men and women as the beneficiaries of rights, people with other gender and sex identities cannot turn to them for protection in the same way that cis-gender individuals can.

Intersectional Identities

The UNDRIP is a document specific to Indigenous peoples. It separates them from the broader population and affords rights solely based on Indigeneity. Because of this, mention of other identities inherently implies some degree of intersectionality and diversity of experiences. When women are mentioned, the declaration is referring to Indigenous women, when children are mentioned, the declaration is referring to Indigenous children. The first acknowledgement of unique Indigenous experiences comes in paragraph 23 of the preamble which recognizes,

> That the situation of indigenous peoples varies from region to region and from country to country and the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration (United Nations 2007, 3).

This explicit acknowledgement of geopolitical differences is very important. The international Indigenous movement is based on a set of shared claims and has been somewhat uniform throughout its history (Xanthaki 2007, 1), but that does not overshadow the unique experiences of Indigenous communities and individuals based on geographic location. Transnational feminism is a useful tool in finding this balance. Through this lens, global solidarity can exist without erasing localized experiences and needs (Falcón 2016, 17).

Article 21 states that "Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities" (United Nations 2007, 7). This is the only list of subgroups mentioned in the UNDRIP. With the exception of children,

who are given the right to education and protection from labor exploitation (United Nations 2007, 6), none of these groups are referred to specifically and the nature of their unique needs is not defined. While identifying these groups as higher need does prevent the complete homogenization of the Indigenous identity, no unique rights are granted, and the hierarchal nature of human rights is perpetuated. Careful attention to individual experiences is necessary to ensure universal rights (Binion 1995, 514). In addition, the list of identities does not mention sexuality or non-binary gender meaning that these groups cannot turn to the UNDRIP for special protection.

In comparison, the UDHR grants freedom of religion (United Nations 1948, 5) and special protection to mothers and children (United Nations 1948, 7). Aside from these groups and the right to marry for men and women (United Nations 1948, 5), no identities are granted special protections or given particular acknowledgment. This was likely to bolster the universal nature of the UDHR but has resulted in widespread exclusion. People of color, Indigenous peoples, women, LGBTQ+ individuals, and differently abled individuals have all been subject to violations of human rights since 1948. The UNDRIP brings Indigenous peoples into the fold of human rights, but still falls short of protecting other groups because it fails to break free of heteronormative and patriarchal systems.

Again, transplanting today's understandings of identities on these texts can be revisionist. However, human rights are malleable, adaptable, and changeable and it is worth noting the areas where expansion is needed.

Summarizing Thoughts

Themes of coloniality, decolonial work, collective rights, individual rights, statist values, gendered language, and intersectional identities appear in the UNDRIP. Putting the UNDRIP in conversation with the UDHR makes the ways in which it diverges and parallels the dominant framework through these themes more obvious. Approaching the documents in this way makes it clear that the UNDRIP can be considered both a competing discourse within human rights and a contribution to the existing framework. Ultimately, it does not replace the paradigm created by the UDHR, it expands it and moves it forward within the same context. The UDHR placed human rights within human dignity, but understandings and constructions of who qualifies as human for the purpose of these documents is not consistent. Marginalized people excluded from human rights discourse have long managed to claim rights despite their exclusion (Yuval-Davis 2011, 172). Neither the UNDRIP nor the UDHR constitute the end of a path; they are markers of their times. They can change because they exist in the "imaginal," and shift with our understandings of identities and lived experiences.

5.3 Limitations (WPR Question Four)

There are two major limitations of the UNDRIP. First, it is not a legally binding document. Second, it does not adequately protect certain intersectional identity groups. Though many groups are left out of the UNDRIP, this analysis focuses on Indigenous women because of their unique experiences with gender and colonization. These limitations are connected through their roots in harmful systems like heteronormativity, patriarchy, white supremacy, colonialism, and capitalism. Examining individual experiences and systems through the lens of gender makes these intersectional connections clear.

Legal Limitations

State sovereignty is enshrined in the UN Charter above all else. As such, it continues to be the right of the state (masculine) to subject Indigenous peoples (feminine) to the law of the land (Moreton-Robinson 2014, 650). Human rights are rooted in the cosmopolitan ideal of the human family, but are reliant upon a state-centric system because domestic legal systems are the main enforcement mechanism (Yuval-Davis 2011, 155; Mazel 2009, 152). Settler-colonial states, often the perpetrators of rights violations against Indigenous peoples, are responsible for the enforcement of the same rights. The UNDRIP provides an Indigenous tool and framework for advocating and asserting Indigenous rights but does not provide an Indigenous enforcement mechanism. This parallels the reliance of some strands of feminism on the patriarchy for success.

Despite not being legally binding, the UNDRIP has power through its legitimacy among both Indigenous populations and states. The document was largely drafted by Indigenous representatives and so has authority among Indigenous peoples. The four major settler-colonial states (USA, Canada, Australia, New Zealand) who opposed the document in 2007 have all since voiced ceremonial support, adding to the existing support among other states (Mazel 2009, 147). This dual legitimacy gives the UNDRIP power as an advocacy tool, if not as a binding legal instrument.

Lack of Support for Indigenous Women

The second major limitation of the UNDRIP is the homogenization of the Indigenous identity. While the document does specify subgroups that require special attention and acknowledges different Indigenous experiences based on geopolitical context, it largely fails to address how systems and structures of domination like white supremacy, capitalism, patriarchy,

and colonialism interact to impact Indigenous lives, particularly the lives of Indigenous women. This analysis does not claim that the UNDRIP is a feminist text because those involved in drafting the document would not have done so. That being said, Indigenous feminism is a useful tool for examining the ways in which the declaration fails to protect Indigenous women because of its grounding in gendered power systems.

The UNDRIP places absolute precedence on the right to self-determination. Most of the ensuing rights are either reliant on or expansions of this pillar. The push for self-determination has often come at the expense of other goals, like gender equality. Self-determination is a right of individuals, not just groups (LaRocque 2017, 133) and this should be taken seriously when considering and advocating for it (Kuokkanen 2017, 104). Frantz Fanon pointed out that goals of collective self-determination can be riddled with internalized patriarchy and colonial structures of domination (Ishay 2004, 196). Internalized systems of power and oppression in Indigenous communities can come at the expense of individual autonomy for women. In the fight for liberation, neither collective nor individual self-determination should come at the expense of the other (Starblanket 2017, 2, 23) or both lose meaning. The UNDRIP does not place self-determination and equality on the same level, leaving Indigenous women behind.

Indigenous women face disproportionate amounts of violence around the world from Indigenous and colonial communities. Colonization and victimization are used to excuse violence perpetrated by Indigenous men and state violence is often broadened to the whole community, erasing Indigenous women's unique experiences (Kuokkanen 2017, 104). This is often represented as a small-scale social issue, not a large systemic one (Starblanket 2017, 35), a reflection of the gendered public/private divide. Because gender-based violence often takes place out of the public eye and is committed against women who exist in the private sphere, it is

framed as something that should be dealt with in private. This is in contrast to issues like land and labor rights that are framed as masculine because they take place in the public sphere. The UNDRIP does not mention or acknowledge the specific experience of Indigenous women with violence and they are left without a bargaining chip in international law. If an Indigenous woman utilizes the rights given her in the Convention on the Elimination of Discrimination Against Women (CEDAW), her Indigeneity is overshadowed by her gender; if she utilizes the UNDRIP, her gender identity is erased by her Indigeneity. For Indigenous women, this is a real problem because their experiences with violence are a direct result of their positionality at the intersections of their identities.

Finally, because Indigenous women are identified as requiring special attention, they are automatically framed as needy and stripped of autonomy. They are constructed as helpless and in need of Indigenous men and states (masculine) for empowerment. However, their specific needs are not mentioned and so attempts to aid Indigenous women can be harmful and address the wrong issues. Indigenous women are constructed as instruments rather than beneficiaries of Indigenous rights through this process (Kuokkanen 2017, 117). Because their specific experiences are not acknowledged, their needs come as afterthoughts and they do not reap the full benefits of UNDRIP protections.

Summarizing Thoughts

This analysis centers gender as a major limiting factor of the UNDRIP primarily because of its lack of attention to intersectionality. This reasoning can also be applied to age, sexuality, socioeconomic status, geographic location, race, and ability. All people exist at the intersection of multiple identities, and assuming that one will always be the most salient, as the UNDRIP assumes of Indigeneity, is inaccurate and potentially harmful. This is elevated by the fact that the

UNDRIP is the only comprehensive Indigenous legal tool that specifically and exclusively addresses Indigenous rights. Those excluded from its protections do not have another direction to turn and maintain acknowledgement of their Indigenous identity. The human rights paradigm, despite its adaptability, has yet to account for intersecting identities in a meaningful way.

Chapter 6: Conclusions

This analysis examines the UNDRIP in context with the UDHR, exploring how the UNDRIP undermines and preserves the dominant human rights framework through a gendered lens. The focus is on the broader societal, systemic, and institutional factors that contextualize the UNDRIP and human rights. Utilizing previous scholarship and theories in human rights, coloniality, feminist theories, and Indigenous feminism reveals how systems of power like colonialism, patriarchy, capitalism, and white supremacy uniquely intersect to inform the human rights needs of Indigenous peoples. Examining these systems through the lens of gender reveals the UNDRIP's main limitation, its lack of attention to intersecting identities and experiences, particularly those of Indigenous women.

To understand these dynamics, it is important to look at the histories of the UNDRIP and UDHR to identify how each came to be and where they connect. This provides clarity for understanding the text itself. Putting the UNDRIP and the UDHR in direct conversation sheds light on where they align and diverge. The most obvious divergence comes with collective rights and the right to self-determination. Much of the UNDRIP relates back to these two overarching concepts that directly resist the dominant understanding of human rights as individual and the power of state sovereignty. Through these claims, the UNDRIP challenges the colonial, white supremacist, capitalist nature of dominant human rights. Notably, the UNDRIP aligns with the UDHR in its perpetuation of the gender binary, essentialist understandings of gender and sex, and lack of intersectionality. It fails to challenge the heteronormative and patriarchal nature of human rights, leaving many, including Indigenous women, behind.

This analysis could have been approached differently. A true discourse analysis is applicable to the UNDRIP and would provide insights into the details of the language used and

its broader implications but would not allow for historical considerations. An examination of the impact of the document would provide concrete examples of where it has made positive, negative, or no impact at all. However, this analysis would necessitate a legal approach. WPR is rooted in political science rather than international studies or gender studies, but because Bacchi herself is interested in gender, the methodology incorporates considerations necessary in feminist research. While the questions range in nature, they are connected and can be tailored to the researcher's aims. Ultimately, the WPR methodology is appropriate for this project because it focuses on the broader forces at play in policy and governance. It acknowledges the importance of context and encourages critical engagement with its repercussions.

Utilizing the WPR methodology in combination with an interdisciplinary approach uniquely places this analysis within the broader field. It expands previous research in human rights and feminist scholarship to shed new light on the UNDRIP and broader discussions of human rights. This analysis cannot stand alone, it relies on the research that came before it and hopefully creates a path for new research in the future.

My own positionality and relationship with the research is another limitation. First, although the coding scheme is derived from other scholarship, it carries my personal bias and considerations of what is important. Incorporating other categories may have afforded different conclusions, but that does not mean that the conclusions of this analysis are inaccurate. Second, my center of knowledge, particularly of Indigenous issues, is in the United States. This informs how I view Indigenous rights struggles, the UN, and human rights. Third, I am a feminist and hold that feminism has strong emancipative powers. I see it as a tool in addressing the limitations of the UNDRIP, but recognize not everyone shares this belief, certainly not all Indigenous peoples.

The UNDRIP does not overhaul the dominant human rights framework. It pushes back on the colonial, capitalist, and white supremacist aspects but upholds the heteronormative and patriarchal. It reflects its context as an Indigenous document situated in a statist institution. The UNDRIP and UDHR's shortfalls do not delegitimize them. These documents are necessary in the continuing expansion of human rights, but without acknowledging their limitations, progress cannot be made. The expansion of human rights rests on an intersectional approach to their examination and enshrinement. Without considerations of how identities and systems interact to uniquely place individuals and communities, human rights instruments will continue to fail in reaching the goal of universality.

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