On the Possibility of Justice:
Disrupting the Coloniality of Law

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A Thesis submitted to the Faculty of Graduate Studies in Partial Fulfillment of the Requirements for the Degree of Master of Environmental Studies

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August 2025

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Abstract.

From industrial pig farming to the dredging of ocean floors for sand, our world sanctions the exploitation of nature for the endeavours of humans. To understand why this is, we must be more judicious – *whose world* sanctions this and for *which human*? The thesis investigates this through the discourse of 'modernity/coloniality'. 'Modernity' refers to the hegemonic epistemic frame that unjustly holds a specific kind of world for a specific kind of human over and above other worlds and other humans (coloniality). In regard to legal studies, this begs the question: 'To what extent do dominant ideas of justice and the systems of law they espouse necessarily uphold injustice?' The thesis argues that dominant ideas of justice, referred to as rules-based justice, are insufficient to address the injustice of the coloniality of law. The thesis calls for the intervention of an alternative conception of justice it refers to as place-based justice.

Keywords: modernity/coloniality, decolonial legal studies, place-based justice, poststructuralism

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Dedicated to Sam for our many illuminating discussions.

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Acknowledgements.

I thank the Anishinabek Nation, the Haudenosaunee Confederacy, and the Huron-Wendat as the traditional caretakers of the land known as Tkaronto – the area I have called my home for the past two years while writing this thesis. I also thank the Mississauga of the Credit First Nation, the current treaty holders of the territory. I acknowledge these lands to be protected by the Dish With One Spoon Wampum Belt Covenant and offer my research as evidence of that. My thesis hopes to stand as a reminder that authority does not solely reside in institutions backed by the ability to provide and punish, but also with people and their past and living relationships with each other and the land.

I thank the staff and faculty at the Faculty of Environmental Studies for their support, including my supervisor Mark Winfield who took on my project with an open mind and always provided timely and constructive feedback. I also thank my examining committee, Peter Timmerman and Dayna Scott, who took the time to support me on this step of my academic journey. I am also incredibly grateful to the Social Sciences and Humanities Research Council for the Canadian Graduate Scholarship, and the Government of Canada for enhancing the funding, which has enabled me to pursue my research without additional financial stress.

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INTRODUCTION: A STUDY ON THE CATEGORY OF JUSTICE

Justice is the striving to turn the world into the highest good.
[*Gerechtigkeit ist das Streben, die Welt zum höchsten Gut zu machen.*]

– Walter Benjamin, "Notes to a Study on the Category of Justice," 1916.

A study on the category of justice requires engagement with a seemingly endless reservoir of distinct yet overlapping, and oftentimes conflicting, theories of justice. We might say that there is a spectre haunting society, the spectre of justice, and generations upon generations of thought have attempted to resurrect this spectre—to hold in their hands a determinate set of rules and procedures; a roadmap to the highest good. In following this tradition, we might begin by simply asking: *what does the highest good look like?*' As Rawls reveals, how one comes to answer this is dependent on where they are positioned in society.[1] This is true. Yet, if we only address one's social and political commitments, then we disregard relations of justice that are not captured by the societal unit, those are, relations that exceed or escape 'civil society'.[2] In order to grasp at these relations, we must move beyond the epistemological problem of *how one sees justice* to the ontological problem of *what justice is.* In other words, it is necessary to examine what is being presupposed by empirical theories of justice that are foremostly concerned with the distribution of goods and the expansion of rights. I necessarily enter into this investigation with certain presuppositions of my own; specifically, a strong distrust towards generalized and nonhistorical analyses of social structures. These misgivings are rooted in the theoretical network I situate myself within which includes decolonial thought, French poststructuralism, Critical Theory, and posthumanism.

It was the critical theorists of the Frankfurt School who instantiated my suspicion towards theory that attempts to understand social life-processes according to universal laws. Max Horkheimer (1895–1973) refers to this approach to philosophy and sociology as 'traditional theory'. This type of theory traces to Auguste Comte (1798–1857) who first laid out its epistemological commitments in *The Course in Positive Philosophy*. Comte's ideas emerged as a product of the Enlightenment which is both a philosophical movement and a historical period of major institutional transformation. At this time,

[1] John Rawls, *A Theory of Justice*, Belknap Press of Harvard University Press, 2005.
[2] Here, 'civil society' does not incite a claim to a primordial unit nor to an unproblematic normative horizon (see Jurgen Habermas, *Between Facts and Norms*, 1998), rather, it draws from Michel Foucault's lecture series *The Birth of* Biopolitics *1978-1979* (2008), which specifies 'civil society' as "the correlate of the liberal art of government" (x). It is also aptly described by Deleuze in *Anti-Oedipus*, "society is not first of a milieu for exchange where the essential would be to circulate or to cause to circulate, but rather a socius of inscription where the essential thing is to mark and to be marked" (142).

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disciplines were being reshaped and new disciplines were emerging to reify the supposedly universal structure of modern European rationality.[3] The higher rank of natural science generated a cursory ordering of disciplinary knowledge and modes of inquiry; knowledge was considered more 'true' (or positive) the closer it could conform to the methods of natural science. The discursive dominance of Comte's sociological positivism provoked other disciplines to open their own positivist schools. This shift towards positivistic inquiry is captured by the rift in philosophy between those amenable to metaphysics and those who attempt to abandon metaphysics altogether. This latter group was first represented by the logical positivists of the Vienna Circle in Austria who formed the foundation for the analytic tradition of philosophy dominant in the English-speaking world.

The "positivism dispute" which occurred amongst German sociologists and economists between 1964 and 1970, involved the critical rationalists of the Cologne School, including Karl Popper and a young Hans Albert, and the critical theorists of the Frankfurt School, including Theodor Adorno and a young Jurgen Habermas. The debate is not so aptly named considering that both sides saw themselves as critics of logical positivism. While the younger generation of scholars were more polemic in their arguments, Adorno and Popper would find themselves upon common ground. For instance, like Adorno, Popper was against the claim that the natural scientist was more objective in attitude than the social scientist and should thus be given primacy.[4] Popper's restraint against the 'raw empiricism' developing in positivism meant his work was far less influential to the analytic tradition than, say, early Ludwig Wittgenstein's radical anti-metaphysics. That said, Popper still maintained the devaluation of metaphysics to modern empiricism, believing that "philosophy is not meant to answer the 'what is?' kind of question", but "to solve problems".[5] The critical theory of the Frankfurt School represents an entirely different kind of critique.

While an older Habermas would eventually change the direction of the School, the early Frankfurt School, specifically Horkheimer and Adorno, focused critique on the reduction of philosophy towards instrumental rationality. As Horkheimer explains in *Dialectic of Enlightenment*, instrumental rationality (or the formalization of reason) is the process of stripping reason of its historical and particular context. Simply put, it presumes access to a nonhistorical universalism. This directs reason towards *the means to pre-given ends rather than towards the ends themselves.* Indeed, as Horkheimer states, instrumental

[3] Immanuel Wallerstein, et. at., *Open the Social Sciences: Report of the Gulbenkian Commission on the Restructuring of the Social Sciences* (Stanford University Press, 1996), 5.
[4] R. J. Ormerod, "The History and Ideas of Critical Rationalism: The Philosophy of Karl Popper and Its Implications for OR," The Journal of the Operational Research Society 60, no. 4 (2009): 451, http://www.jstor.org/stable/40206760.
[5] Claudia Ribeiro, "Karl Popper's Conception of Metaphysics and its Problems", Principia an International Journal of Epistemology 18, no. 2 (2014): 209, doi: 10.5007/1808-1711.2014v18n2p209

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rationality is "essentially concerned with means and ends, with the adequacy of procedures *for purposes more or less taken for granted and supposedly self-explanatory*" [emphasis added].[6] This type of reason binds itself to the production of 'irrational' ends by upholding self-preservation over and above 'objective' (or collective) preservation (which is why instrumental rationality may also be referred to as 'subjective reason'). The dominance of this undermines the individual's capacity to critically reflect on the ends in themselves[7]; that is, to use 'objective reason' to concern oneself with "the idea of the greatest good, on the problem of human destiny, and on the way of realization of ultimate goals".[8] In line with this critique of instrumental rationality, the early Frankfurt School reveals the positivistic claim to a nonhistorical universalism to instead be a *historically-specific form of bourgeois ideology*, and further, its uncritical fixation with 'mastery over nature' to perpetuate capitalist reproduction and bureaucratic rule.

While the early Frankfurt School provided initial direction for the project, I was dissatisfied with their underlying extension of the 'highest good' which prioritizes the 'one' over the 'many' even in its materialist renderings. Of course, the inverse—the many over the one—retreats into the problems of instrumental reason posited above. It is Deleuze who provides the philosophical grounds for rethinking the problem of the one and the many altogether. To explore this, let us consider the concept of *Aufklärung [enlightenment]*. The concept of *Aufklärung* can be said to begin with Descartes and Leibniz who formulated its underlying doctrine of "intellectual clarification".[9] Indeed, in returning to the *rationalism* of what would come to be referred to as the 'Classics" (i.e., ancient Greece, particularly Plato and Aristotle), Descartes used 'radical doubt' to ascertain his first principle *Cogito; 'this proposition, I am, I exist, is necessarily true whenever it is put forward by me or conceived in my mind'.*[10] This established the human mind to be the basis of knowledge and guarantor of truth; "in doubting, the I which doubts can at least be known with certainty".[11] From this, Leibniz systematized rationalism to show that only pure deduction could ascertain the truth value of knowledge. Thus, put simply, early modern rationalism showed the human mind to be capable of coming to truth through logical relations (e.g., 'A is B, all Bs are Cs, therefore, A is C').

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[6] Max Horkheimer, *Eclipse of Reason* (Continuum International Publishing, 2004), 3.
[7] See Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment* (Continuum International Publishing, 1991), and Jürgen Habermas, *Toward a Rational Society: Student Protest, Science, and Politics* (Beacon Press, 1987). Whereas Horkheimer and Adorno argued that the technical interest of positivist knowledge (i.e., human control of nature) necessarily led to social domination, Habermas sees it as a natural human interest.
[8] Horkheimer, *Eclipse of Reason,* 4.
[9] Ian Hunter, *Rival Enlightenments Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge University Press), 2.
[10] Rene Descartes, *Meditations on First Philosophy*, trans. John Veitch, 1901 (sources taken from Lancaster University), 22. https://archive.org/details/RMCG0002/mode/1up
[11] Henry Somers-Hall, *Deleuze's* Difference and Repetition (Edinburgh University Press, 2013), 76.

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According to Kant, the essential problem of Descartes was his extension of 'I think' which is determinate, to 'I am' which can only be determined by the intuition of time. Deleuze describes this point in this manner:

> The spontaneity of which I am conscious in the 'I think' cannot be understood as the attribute of a substantial and spontaneous being, but only as the affection of a passive self which experiences its own thought – its own intelligence, that by virtue of which it can say *I* – being exercised in it and upon it but not by it.[12]

Time represents a fracture in the self: the 'I' that thinks and the 'self' that experiences sensory data passively. Recognition of this enabled Kant to ground the idea that we can "transcend the natural process in consciousness, assume a position outside it, and view the process as manifested in those levels of natural integration which were demonstrably non- or prehuman".[13] This is referred to as Kant's Copernican Revolution. Much like how Copernicus caused a paradigmatic shift from the Ptolemaic model of the heavens to the heliocentric model we know today, Kant caused a paradigmatic shift from God at the centre of the empirical world to the experiencing subject at the center of the empirical world. Stated differently, the human mind is not just a passive recipient of sensibility, but also the active agent which applies concepts to create knowledge. This may also be described through Kant's synthesis of the underlying rationalism of Descartes' with the empiricism of Hume; the logical relations of rationalism would become grounded in observation/experience while empiricism could begin to ascertain knowledge beyond crude sensory perception. This is *Aufklärung* in its *critical* form. This critical form of *Aufklärung* underlies the critical self-reflection sustained in Critical Theory.

Essential to Kant's metaphysical project is the role of the transcendental ego. As Kant states, "[the synthesis of apperception is] the act of putting different representations together, and of grasping what is manifold in them in one act of knowledge".[14] This entails an ego which can transcend (i.e., detach itself from) the world in order to construct a unified understanding of itself in and of the world. This image is then reflected back on through the process of reason. Such a process enables the enlightened subject to self-legislate what is required for moral freedom (the social political implications of this is discussed later in the thesis). This presumption grounds the Kantian subject as autonomous, self-constituting, and self-willing in its ability to reason:

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[12] Gilles Deleuze, *Difference and Repetition*, trans. Paul Patten (Columbia University Press, 1994), 86.
[13] Hayden V. White and American Council of Learned Societies, *Metahistory the Historical Imagination in Nineteenth-Century Europe* (Johns Hopkins University Press, 1973), 46.
[14] Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith, Unabridged Edition (Macmillan Publishing, 1929), A77/B103.

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> In this respect, Kant opposes the Cartesian view that the faculty of reason is, when operating in accordance with its own interests and without the negative influence of the other faculties, free from error. Rather than renounce the image of thought, however… Kant simply attempts *to determine the bounds of reason, and to delimit its sphere of legitimate employment* (emphasis added).[15]

Deleuze intervenes in the Kantian tradition by nullifying the transcendental ego. Like the 'self' which passively receives sensory data, the synthesis of apperception is also made passive. That is, rather than an active 'I', it is *time* which constitutes thought and the assessment of sensory data.[16] Deleuze explains this through the three syntheses of time, the processes in which habit and memory relate to each other and to the future. Of course, a detailed explication of Deleuze's argument is not possible here. What needs to be emphasized, however, is how the nullification of the transcendental ego opens a way for *difference in itself*, that is, difference unmediated by Kant's predetermined and maximally general categories.

To elaborate, within Kant's transcendental idealism, difference is mediated by the transcendental ego as it applies its categories to sensory perception. For example, a dog differs from a human on account of the fact that a dog is not a human (external-qualitative difference) or my neighbour differs from me on account of the fact that my neighbour is not me (external-quantitative difference). The application of the categories, of qualitative and quantitative properties, can only conceive of difference negatively, i.e., as non-identity. While this is not necessarily 'bad' or 'wrong' per se—and surely does have wide and varied applications—it does deceive us into seeing the world through privileged signs. How does the Yaxche, the 'tree of life' in Mayan culture, differ from the *Ceiba pentandra*, its scientific genus? This is difference in the 'positive' sense, that is, the Yaxche does not differ from the *Ceiba pentandra* externally, but internally through its living relations (cultural, social, spiritual). In other words, the Yaxche is the *Ceiba pentandra* existing *in time*. This is the thrust of Deleuze's transcendental empiricism wherein difference is primary to identity, not subordinate to it; being *is* becoming. The singular is primary to the general, the Yaxche is primary to the *Ceiba pentandra*.

To explain this, Deleuze borrows the term 'multiplicity' from Bergson of which there are two types. The first type of multiplicity aligns with the Kantian subject and Platonic metaphysics; it encompasses difference in degree (i.e., external) and grounds scientific inquiry. It is under this type of multiplicity that the doctrine (or problem) of the One and the many arises. Once again, it is not the case that this type of multiplicity is 'bad' or 'wrong', it is simply that this type of multiplicity only captures one dimension of reality. The other dimension is captured by the other type of multiplicity. This type of multiplicity aligns with Bergsonian metaphysics; it encompasses difference in kind (i.e., internal or intensive differences)

[15] Somers-Hall, *Deleuze's Difference and Repetition*, 109.
[16] Deleuze, *Difference and Repetition*, 87.

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and grounds philosophical inquiry.[17] As exemplified in the Yaxche tree, this type of difference cannot be measured, expressed, or compared through calculations or propositions (whether logical, mathematical, or scientific). Through the concept of multiplicity, the problem of the One and the many undergoes a reappraisal:

> Even the many is a multiplicity; even the one is a multiplicity. ... Everywhere the differences between multiplicities and the differences within multiplicities replace schematic and crude oppositions. ... Instead of the enormous opposition between the one and the many, there is only the variety of multiplicity - in other words, difference.[18]

This justifies reconsideration of, as Dominic Smith puts it, "how deep the normative 'hinges' of common sense go, and to what extent they condition us to implicitly privilege the 'same' or 'general' in encounters with the 'different' or 'singular'".[19] The overdominance of external-multiplicities (i.e., disregard for internal and intensive difference) assumes a world comprised of orderly patterns that transcend the world of manifest difference. This has relegated knowledge production to pattern recognition which upholds the general and abstract over the particular and unique. Through recognition of internal-multiplicities, the world is not characterized by the One nor the many, "but rather an organization belonging to the many as such, which has no need whatsoever of unity in order to form a system,"[20] As such, "the organizing principle that gives structure and unity to plurality" is "immanent cause", i.e., biological, social, cultural, and spiritual processes rather than from an external force.[21] Which is to say, social structures are not accurately captured by the nation state (i.e., 'the highest good') nor the amassing of diverse and conflicting arbitrary wills; rather, they are better conceived of as assemblages of meaning-making which exist and interpenetrate on micro and macro levels.

In regard to the topic of justice, the concept of multiplicity demands receptivity to what is 'the good' in real and particular experience. This requires thinking difference in itself. Thinking difference in itself (i.e., difference which is primary to identity) gives shape to ontological inquiry, i.e., we no longer approach such inquiries by asking 'what something is' but 'what it does' and 'what it is becoming'. Thus, we do not lead our inquiry into the ontological character of justice by asking what justice is, but by investigating what justice does, for who, and what it can become. For those just coming to these ideas, some

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[17] Henri Bergson and Frank Lubecki Pogson. *Time and Free Will: An Essay on the Immediate Data of Consciousness* (George Allen & Unwin, 1910) x-xi, 90-103; John C. Mullarkey, "Bergson's Method Of Multiplicity," *Metaphilosophy* 26, no. 3 (1995): 230–59. https://doi.org/10.1111/j.1467-9973.1995.tb00571.x.
[18] Deleuze, *Difference and Repetition*, 182.
[19] Dominic Smith, "Rewriting the Constitution: A Critique of 'Postphenomenology'," *Philosophy & Technology* 28 (2015): 548. https://doi.org/10.1007/s13347-014-0175-6
[20] Deleuze, *Difference and Repetition*, 182.
[21] Martijn Boven, "A System of Heterogenesis: Deleuze on plurality," in *Phenomenological Perspectives on Plurality*, ed. G. J. van der Heiden (Brill, 2014), 175.

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reservations are expected: 'does this not fall into absolute relativity upon which oppression is justified merely on account of being different?' This question grasps at the problem of the 'beautiful soul' which, according to Deleuze, poses the "greatest danger" for a philosophy of difference.[22] This danger is addressed through a deeper understanding of what exactly a philosophy of difference entails. The beautiful soul "sees differences everywhere and appeals to them only as respectable, reconcilable, or federative… [the beautiful soul] behaves like a justice of the peace thrown on to a field of battle."[23] From the view of the beautiful soul, difference is harmony, thus, it is only be perceived through tolerance and acceptance: "This subjectivity only sees the good, the determined, and the necessary without admitting the actuality of discords and conflicts and differences of intensity."[24] In other words, the beautiful soul has not yet shed the assumptions and commitments of a philosophy of being. Indeed, the ethical tolerance of the beautiful soul is grounded in a *representation* of the world characterized by "determinate cosmic purity and harmony."[25]

The beautiful soul is still trapped in a fixed ontology which assumes that "the quality of living experience [can] be frozen and judged from the perspective of a final harmony",[26] this final harmony being absolute tolerance of difference. However, this overlooks the fact that a philosophy of difference demands an immanent ethics—ethical action unfolds in time, it is contextual and situational. It does not justify apathy nor a retreat to false innocence, rather, it implores us to "*not be unworthy of what happens to us*" (emphasis added).[27] That is, while change in the world is conditioned by the passive synthesis of time (i.e., the accumulation of memories and habits rather than the transcendental ego), it is not the case "…that [change] proceeds harmoniously independent of the existential struggles of lived experience."[28] It is our continuous engagement with problems, development of embodied and traditional knowledge, preservation of past and living relationships, and how we handle new encounters that yields the quality of future events and livelihoods.

With this all said, we might now reconsider the quote by Walter Benjamin above; perhaps the function of justice is not to turn the world into the highest good, but the *striving* to do so without a teleological end. If we accept that the 'good' is imbedded in real and particular experience and thus, access to the good

[22] Deleuze, *Difference and Repetition*, xx.
[23] Deleuze, *Difference and Repetition*, 52.
[24] Russell J. Duvernoy, "Deleuze, Whitehead, and the 'Beautiful Soul'," *Deleuze and Guattari Studies* 13, is. 2 (2019):182.
[25] Duvernoy, "Deleuze, Whitehead, and the 'Beautiful Soul'," 182.
[26] Russell J. Duvernoy, *Affect and Attention After Deleuze and Whitehead: Ecological Attunement* (Edinburgh University Press, 2021), 125.
[27] Gilles Deleuze, *The Logic of Sense*, ed. Constantin V. Boundas, trans. Mark Lester and Charles Stivale (Columbia University Press, 1990), 149.
[28] Duvernoy, "Deleuze, Whitehead, and the 'Beautiful Soul'," 182.

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requires continuous engagement with entangled relations, what theory of justice might we arrive at? This is the purpose of the project at hand. The thesis is split into two parts. 'Part I' examines the 'modernity' gestured towards in much scholarship and central to decolonial scholarship. In accordance with scholars such as Anibal Quijano, Walter Mignolo, and Sylvia Wynter, this thesis holds that 'modernity' is co-constituted by a colonial matrix of power. This conjunction is referred to in the literature as modernity/coloniality. While 'modernity' as a material-historical and philosophical phenomenon finds its origins in Europe, it has been transposed globally through colonial and imperial techniques of power. It is within 'modernity' and its production and reproduction through 'coloniality' that the *idea* of the 'highest good' manifests. Whether or not the idea of the 'highest good' is intrinsically flawed, its manifestation in modernity/coloniality which *is* intrinsically flawed, requires us to approach the topic of justice differently. This is the premise underlying 'Part II'.

In 'Part II', the thesis takes issue with the form of justice dominant within 'modernity' which it refers to as 'rules-based justice'. This form of justice enables the reproduction of modernity by concealing the coloniality of law. To address this, the thesis offers a new conception of justice which it refers to as 'place-based justice'. This is explored through the work of Leanne Betasamosake Simpson, Shiri Pasternak, and Glen Coulthard.[29] To be clear, the project is not intended to be a call for a utopic overhaul of current legal systems. Rather, it is posed as a strategic intervention in service of decolonial justice studies. As such, the actualization of a place-based justice would unfold historically through the realization of Indigenous self-determination. Of course, a greater engagement with Indigenous scholars, individuals, and communities is both desired and necessary for a fuller conceptualization of a place-based justice; however, this project is only meant to provide a foundation and direction for future research. For the next 4 years, I will be attending the University of Victoria's JD/JID program—a program that provides a transsystemic legal education on Indigenous and settler legal systems. My goal is to align the commitments of this thesis with what I learn in the relationships I build with Indigenous lawyers, professors, students, activists, and community members. Indeed, it is only through the building of these relationships that a comprehensive place-based justice can be constructed.

[29] Leanne Betasomoake Simpson, *As We Have Always Done* (Minnesota University Press, 2017); Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (University of Minnesota Press, 2017); Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014).

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PART I: GENEALOGY OF LIBERAL MODERNITY AND THE COLONIAL MATRIX OF POWER

If he ever knew, he has forgotten. 'Move on! Forget what we've done to you. Tomorrow's another day!'
"But it isn't, Mr. Brue." He still had Brue's hand. "Tomorrow was created yesterday, you see.
That is the point I was making to you. And by the day before yesterday, too.
To ignore history is to ignore the wolf at the door."

— John le Carre*, A Most Wanted Man*, 2008.

It is my sympathy with all the past that I see it is abandoned.

— Friedrich W. Nietzsche, *Thus Spoke Zarathustra*, 1883-85.

I. INTRODUCTION.

In much scholarly work today, the concept of 'modernity' is frequently used yet seldomly defined or bounded. This is perhaps due to the concept's presumed status as shared knowledge following its initial conceptualization within postcolonial and 'postmodern' studies throughout the late 20th century. Since then, however, the wide and varied use of the term has devalued its status. For many now, the concept of 'modernity' is too general and therefore conceptually ineffective. In discordance with this, decolonial scholarship has produced a new paradigm for interpreting modernity which is both historically and philosophically specific. In line with this, this section will provide a material-historical and philosophical analysis of modernity as co-constitutive with the colonial matrix of power (or coloniality). The purpose of this 'Part I' is to reveal the structural delusions of modernity/coloniality. In 'Part II', these delusions reveal the dominant approach to justice to be intrinsically insufficient.

I.I The Colonial Matrix of Power

Decolonial critique has become an increasingly prevalent approach to understanding and challenging the realities of global coloniality, imperialism, and notions of race and racism. Its foremost concept, coined by the Peruvian sociologist Aníbal Quijano, is 'modernity/coloniality'.[30] This concept describes the co-constitutive relationship between narratives of modernity and the colonial matrix of power, i.e., "the patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective

[30] Aníbal Quijano, "Coloniality and Modernity/Rationality," *Cultural Studies* 21, no. 2 (2007): 168-178.

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relations, and knowledge production well beyond the strict limits of colonial administrations."[31] The concept rejects the notion that colonialism has ended, whether in settler-colonial or 'decolonized' nations. Since 'coloniality' is embedded in 'modernity' (and vice-versa), it is a global matrix of power with far-reaching and diffuse influence. For this reason, scholars contributing to decolonial critique might organize their work around some manifestation of 'coloniality', for instance, the 'the coloniality of ___' (e.g., 'place', 'gender', 'infrastructure', 'global health' etc.) This thesis is interested in disrupting the 'coloniality of law'. That said, investigation into adjacent relations of coloniality depends upon more fundamental relations, such as the coloniality of being and being-in-the-world. Decolonial scholars argue that the 'modern' ways of being and being-in-the-world have been shaped and informed by colonial violence—physical, psychical, and spiritual. As such, disruption of this necessitates historical analysis. I will introduce this through a brief detour into postcolonial scholarship.

Generally speaking, postcolonial scholars understand 'modernity' to have emerged sometime around the late 18th to 20th centuries. It is at this time that 'core countries' (or the 'colonial core') constructed epistemic justification for organized modernity, industrialism, and imperialism. This justification involved the emergence and formation of the disciplines, including anthropology and Oriental studies. Importantly, whereas world-systems theorists primarily define the capitalist system through economic relations, postcolonial scholars primarily define the capitalist system through cultural relations. This is exemplified in Edward Said's seminal work *Orientalism*.[32] In this, Said investigates the problem of global knowledge production in the narrative of modernity. He takes issue with how Enlightenment-era thinkers drew from an established tradition of 'Orientalism' to produce a discourse of the 'Orient/Other'. This discourse was portrayed as 'natural', 'truthful' and 'accurate' even while premised upon exteriority"

> The Orientalist, poet or scholar, makes the Orient speak, describes the Orient, renders its mysteries plain for and to the West. He is never concerned with the Orient except as the first cause of what he says. What he says and writes, by virtue of the fact that it is said or written, is meant to indicate that the Orientalist is outside the Orient, both as an existential and as a moral fact.[33]

This discourse was then utilized by colonial administrations to enact a system of rule that subordinated the culture of the Orient to Eurocentric cultures, thus making way for racial theory and economic oppression. The 'paternalistic' and 'candidly condescending attitude' of the 'West' is clearly demonstrated in the letters of Evelyn Baring, Lord Cromer, the British controller-general in Egypt in the late 19th century. As Cromer is cited as writing:

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[31] Nelson Maldonado-Torres, "On the Coloniality of Being: Contributions to the development of a concept," *Cultural Studies* 21, is. 2-3 (2007): 243.
[32] Edward Said, *Orientalism* (Vintage Books, 1979).
[33] Said, *Orientalism*, 20-21.

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> Can it be any matter for surprise [Cromer continues] that the Egyptian, with his light intellectual ballast, fails to see that some fallacy often lies at the bottom of the Frenchman's reasoning, or that he prefers the rather superficial brilliancy of the Frenchman to the plodding, unattractive industry of the Englishman or the German? Look, again, at the theoretical perfection of French administrative systems, at their elaborate detail, and at the provision which is apparently made to meet every possible contingency which may arise. Compare these features with the Englishman's practical systems, which lay down rules as to a few main points, and leave a mass of detail to individual discretion. The half-educated Egyptian naturally prefers the Frenchman's system, for it is to all outward appearance more perfect and more easy of application. He fails, moreover, to see that the Englishman desires to elaborate a system which will suit the facts with which he has to deal, whereas the main objection to applying French administrative procedures to Egypt is that the facts have but too often to conform to the ready-made system.[34]

As Said reveals, the discourse of the 'Oriental' generates an 'imaginative geography' that exists to reflectively define the 'Occident'. Michel-Rolph Trouillot argues that this imaginative geography establishes the 'Occident' or colonial core as the "sole legitimate site for the universal, the default category, the unmarked—so to speak—of all human possibilities".[35] This relies on the existence of a marked population: "[as with] all default categories, the West as the universal unmarked operates only in opposition to the populations that it marks".[36] In other words, the hierarchical relationship binds the marked to the unmarked as proof of its unmarkedness; the denigrated status of 'Orient' is needed to reify the superior (or 'enlightened') position of the 'Occident'. Building on this, Johannes Fabian examines how anthropologists have traditionally assessed cultural 'progress' along a politics of time invented by Europe while Dipesh Chakrabarty takes issue with the implication for colonized peoples to wait within the waiting room of history:

> Consider the classic liberal but historicist essays by John Stuart Mill, "On Liberty" and "On Representative Government," both of which proclaimed self-rule as the highest form of government and yet argued against giving Indians or Africans self-rule on grounds that were indeed historicist. According to Mill, Indians or Africans were not yet civilized enough to rule themselves. Some historical time of development and civilization (colonial rule and education, to be precise) had to elapse before they could be considered prepared for such a task. Mill's historicist argument thus consigned Indians, Africans, and other "rude" nations to an imaginary waiting room of history. In doing so, it converted history itself into a version of this waiting room. We were all headed for the same destination, Mill averred, but some people were to arrive earlier than others. That was what historicist consciousness was: a recommendation to the colonized to wait.[37]

[34] Evelyn Baring (Lord Cromer) as cited in Edward Said, *Orientalism*, 212.
[35] Michel-Rolph Trouillot, *Global Transformations: Anthropology and the Modern World* (Palgrave Macmillan, 2003), 2.
[36] Trouillot, *Global Transformations,* 2.
[37] Dipesh Chakrabarty, *Provincializing Europe* (Princeton University Press, 2009), 34.

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Chakrabarty's claims are instantiated by Homi Bhabha who reveals how Eurocentric histories have imposed notions of 'good citizenry' to control the behaviours and actions of colonized peoples—to force them into an image of Europe and enable their succession into the 'modern'.[38]

Altogether, the postcolonial critique commits us to pursuing an alternative form of knowledge production that impedes the discursive consistency of 'Orientalism', i.e., epistemic processes of subalternization. This demands, foremostly, situating the act of representation with the represented. While these themes persist in decolonial critique, decolonial scholars arrive at slightly different assumptions and commitments. This is in part due to their different geographical location and distinct intellectual lineage. Whereas postcolonial scholarship began with diasporic scholars from the Middle East and South Asia who were heavily influenced by French poststructuralist philosophy, decolonial scholarship began with diasporic scholars from South and Central America who were heavily influenced by the revolutionary praxis of anticolonial struggle. For example, Walter Mignolo reveals that "decoloniality has its historical grounding in the Bandung Conference of 1955."[39] That said, decoloniality is not reducible to decolonization nor postcolonial nation-building which have been epistemologically constrained. As Mignolo states, "The limits of all these movements were those of not having found an opening and a freedom of an other thinking."[40] Which is to say, decolonial scholarship is not a contestation against postcolonial scholarship, but a strategic and complementary intervention.

While postcolonial scholars generally critique Eurocentric social theory for its disregard for the subaltern and subaltern history in its claims to the universal, decolonial scholars argue that the striving towards the singular universal is itself Eurocentric. As such, postcolonial critique at times stands as a 'Eurocentric critique of Eurocentrism'—though, as Bhabha shows, the accuracy of this indictment is muddled in the particularities of postcolonial critique. Ultimately, the charge that postcolonial studies is in need of 'decolonization' refers to the fact that disrupting coloniality requires "taking seriously the epistemic perspective/cosmologies/insights" beyond the European intellectual tradition.[41] As such, things such as the extension of rights and inclusion of Indigenous perspectives in European structures of governance is not *sufficient* for decoloniality, though they are *necessary* for decoloniality to unfold historically.

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[38] Homi Bhabha, "Of Mimicry and Man: The Ambivalence of Colonial Discourse." *October* 28 (1984): 125–33. https://doi.org/10.2307/778467; Homi K. Bhabha, "'Race', Time and the Revision of Modernity." *Oxford Literary Review* 13, no. 1/2 (1991): 193–219. http://www.jstor.org/stable/43973716.
[39] Mignolo, 'Geopolitics of Sensing and Knowing', 129
[40] Walter D. Mignolo, "Epistemic Disobedience and the Decolonial Option: A Manifesto," *Transmodernity* 1, no. 2 (2011): 50.
[41] Ramon Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality*," Transmodernity* 1, no. 1 (2011): 4.

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Moreover, it follows that knowledge production from "a truly universal decolonial perspective cannot be based on an abstract universal (one particular that promotes itself as universal global design), but would have to be the result of critical dialogue between diverse critical epistemic/ethical/political projects towards a pluriversal as opposed to a universal world".[42] In other words, decolonial critique problematizes the underlying fundamentality in both Eurocentric and postcolonial social theory. This fundamentality is evident to decolonial scholars who recognise the problematic frame to manifest in the 15th century onwards with the so-called 'discovery' of the 'New World' rather than in the institutional and professional shifts that occurred in the 18th to 19th centuries. By extending the problematic frame, decolonial scholars enable investigation into the development of "the hegemonic Eurocentric paradigms" that—due to their endogenous European origins—"privileges "ego politics of knowledge" over the "geopolitics of knowledge" and the "body-politics of knowledge"."[43] Since these paradigms have hidden their "local and particular perspective under an abstract universalism," they are not as easily recognized when one begins historical analysis in the 18th century.[44]

Furthermore, as Grosfoguel reveals, when these hegemonic Eurocentric paradigms are not enunciated from the view of the 'western/European man', but from, say, the perspective of an Indigenous woman in Guatemala, it is apparent that the colonial encounter did not *only* impose the capitalist world-system, class relations, and an international division of labour, but also "an inter-state system of politico-military organizations", "a global racial/ethnic hierarchy", "a global gender hierarchy", "a spiritual hierarchy that privileged Christians over non-Christian/non-Western spiritualities", and "an epistemic hierarchy that privileged western knowledge and cosmology over non− Western knowledge and cosmologies [which has been] institutionalized in the global university system".[45] As well as various other entangled hierarchies. Which is to say, the colonial encounter brought an entirely new order of being and being-in-the-world that was co-constituted by the physical, material, psychical, spiritual, and cultural acts of colonialism. As such, 'decolonization', i.e., the formal removal of colonial administration and state-sanctioned colonialism, does not remove coloniality. Neither would the institution of an alternative economic system (e.g., communism, socialism, etc.) so long as it does not recognize and address the diffuse and ubiquitous effects of coloniality. It is for this reason that decolonial scholars do not approach the hegemonic world system as merely 'capitalist'; but as the heterogenous, material-historical and philosophical phenomenon referred to as 'modernity/coloniality'. That said, while the coloniality of modernity emerges in the 15th century onwards, the philosophical and ideological grounding of modernity traces back to at least the

[42] Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy," 4.
[43] Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy," 6.
[44] Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy," 6.
[45] Grosfoguel, "Decolonizing Post-Colonial Studies and Paradigms of Political-Economy," 9-10.

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'Ancients'. This section commits itself to an in-depth investigation into modernity's endogenous European origins.

I.II Weak vs Strong Form Of Modernity:

Before the comprehensive analysis can begin, it is necessary to delineate between the weak and strong forms of modernist logic. The weak form of modernist logic is an expression of *being as becoming*. It is the inevitability of change in social, cultural, political, spiritual, and other forms due to the repetition of self-organizing difference. It is the acknowledgement that "we are always modern". This weak form of modernity is apparent in scholarship which argues for the presence or need for 'multiple modernities'.[46] In contrast, the strong form of modernist logic inscribes difference in dualistic relations (modern/unmodern, good/evil, rational/irrational). These dualistic relations function to enforce a particular kind of being by regulating difference and restraining becoming. It is in the critique of the strong form of modernist logic that Bruno Latour claims that "we have never been modern".[47] While the strong form of modernist logic reveals a modernist order abound, the weak form of modernist logic reveals its limits.

Modernist logic, both weak and strong, appears as the outcome of the past; history becomes legible in its overcoming. This means that visions of modernity are inscribed through images of antiquity—either positively (we have always done things this way) or negatively (we no longer do things this way). In this way, 'modernity' does not refer to the so-called 'Modern Era', but the discursive relations that are generated by narratives of becoming or being 'modern', i.e., being fully recognized in society. As suggested above, in contrast to the weak form, the strong form of modernist logic produces and reproduces a particular kind of existence as the *only* kind of existence which is fully recognized. In order to reproduce the pre-eminence of its particular kind of existence, the strong form of modernity (from now on, big-'M' 'Modernity') generates a self-referential system of knowledge which actively seeks out difference in order (re)territorialize it within its self-referential logic. This ultimately impedes becoming, though it does not and cannot halt becoming entirely. By the end of this section, the reader should be in a position to consider what Spinoza once did: "Why do men fight for their servitude as stubbornly as though it were their salvation?"[48]

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[46] S. N. Eisenstadt, "Multiple Modernities," *Daedalus* 129, no. 1 (2000): 1–29. http://www.jstor.org/stable/20027613.
[47] Bruno Latour, *We Have Never Been Modern* (Harvard University Press, 1995).
[48] The question is implicit within the preface of Spinoza's *Theological-Political Treatise* (see Benedictus de Spinoza and Edwin M. Curley, *The Collected Works of Spinoza Volume II* (Princeton University Press, 2016), 68.) The question is made explicit by Deleuze (see Gilles Deleuze and Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia,* trans. Robert Hurley, Mark Seem, and Helen R. Lane (Penguin Books, 2009), 29.)

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II. LIBERAL MODERNITY.

While 'modernity' is typically used to refer to the specific historical and institutional changes that mainly occurred between the late 15th and 19th centuries, this chapter hopes to instill the term with further precision by expanding it's problematic frame. If, as this chapter assumes, Modernity (strong form) is not just historical becoming (which is always present) but a system of knowledge that discursively defines what is *now* true or right, then new genealogies of Modernity can emerge—are emerging—today and in the past. For example, we might consider Christian supersessionism to have been a past form of Modernity while a contemporary example could be Zionism. Of course, it is presumed that 'non-Eurocentric' examples exist; however, there is considerably less research, at least in English, to substantiate this claim. This apparent disparity in historical research, and the supposed authority of English as a neutral language, is explained by the fact that the Modernity which remains dominant today, perhaps the first to have more-or-less globalized itself, is of European origin. This is referred to here as liberal Modernity.

If this reappraisal of Modernity is both possible and desired, then certain conditions must be established for its structure to be recognized. This paper offers three. I identify Modernity as that material-historical and philosophical phenomenon which produces and reproduces: an Idea of world (or universal) history, an Idea of being, and an Idea of being-in-the-world. Together, these generate a relatively closed and self-referential system of knowledge: "This" way of being and being-in-the-world is true and correct because it resulted from an overcoming of "This" history; "This" narrative of history is true and correct because it has manifested in "This" way of Being and being-in-the-world. The success of a Modernity (how 'universal' it can become; how long it can last) will depend upon the contextual limits of historical becoming. For example, two of the biggest threats to the stability of liberal Modernity today are the destabilizing climate and the rate at which certain technologies are advancing. At the same time, however, historical becoming is bounded in part by (past/present/emerging) structures of Modernity. For example, the destabilizing climate and the rate at which certain technologies are advancing (e.g., algorithms, A.I., drones, etc.) are in many ways a consequence of liberal Modernity. In this way, rather than see historical becoming and Modernity as two sides of the same coin, it is perhaps more accurate to view them as a multi-ringed circuit: the micro to the macro, the macro to the micro to the micro, the macro to the macro to the micro, and so on.

II.I The Idea of World History:

'World history' is the branch of history devoted to the study of historical phenomena from a global perspective. While the 1970s saw renewed academic interest in the field, efforts to construct a history that

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transcends one's particular region or nation have long occurred. From *Records of the Grand Historian* written by the Chinese court scribe Sima Qian (c. 145 – c. 86 BCE) to *Histories* written by ancient Greek historian Herodotus (c. 484 – c. 425 BCE) to the historical narratives of M. de Voltaire (1694 – 1778), G.W.F Hegel (1770 – 1831), and Karl Marx (1818 – 1883); composing thematic explanations for large-scale historical events and patterns is by no means new. To investigate the Idea of world history specific to liberal Modernity, we must narrow in on what purpose narratives of history have served in the advent of the so-called 'modern era'. Generally speaking, there are four models used today to cohere the vast collection of historical phenomena: modernization theory, world-systems theory, ecological approaches, and subaltern approaches. While modernization theory internalizes the logic of liberal Modernity, world-systems theory and subaltern and ecological approaches signal a break from this logic.

Modernization theory suggests that world history can be organized along the transition from 'hunter and gatherer clans' to 'religious, rural, agriculturally-based societies' to 'secular, urban, and industrial civilization'. This assumes that all societies will eventually go through these stages which justifies the hegemony of core countries.[49] Moreover, for many writing modernist theory, much less significance is placed on the emergence of agrarian society than the initiation of the Industrial Revolution. This shift toward industrialization first materialized in Northwestern Europe, a region previously "behind" and dependent on the cultural and technological innovations of Italian city-states. In seeking an answer as to why countries such as Holland and England became the forerunners of capitalist development, the German sociologist Max Weber considered the move from Roman Catholicism to Protestantism. This argument is outlined in his seminal work *The Protestant Ethic and the Spirit of Capitalism* published in 1904. In this, Weber argues that the complementary relationship between the Protestant (specifically Calvinist) work ethic and the spirit of capitalism explains why capitalism first emerged in these unlikely countries.[50] However, his account has been criticized at various levels.[51]

Weber had a pessimistic view of modernist history, believing it would inevitably lead to a valueless, meaningless, and dissatisfied society. Other approaches offer a more 'optimistic' view. These can be organized under two frameworks: capitalistic and Marxist. Capitalistic modernization theory embraces the march of 'objective' reason and believes modernity to be evidence of the progression of humanity. Such a

[49] 'Core countries' is a concept found in world-systems theory to refer to those countries which benefit the most from global capitalism due to the transnational division of labour. Unlike modernization theory which takes the unit of analysis to be the nation-state, world-systems theory prioritizes the system of nation-states. The 'core' is contrasted against 'the periphery' and 'semi-periphery'. The thesis deploys the concept of 'core countries' in place of 'the West'.

[50] Max Weber and Stephen Kalberg. *The Protestant Ethic and the Spirit of Capitalism* (Routledge, 2012). https://doi.org/10.4324/9781315063645.

[51] Ephraim Fischoff, "The Protestant Ethic And The Spirit Of Capitalism: The History Of A Controversy." *Social Research* 11, No. 1 (1944): 53–77. http://www.jstor.org/stable/40982001.

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view is assumed by international and state institutions and embraced in the majority of development theory. Under this form of modernization theory, issues such as world poverty, gendered violence, equal access to education, and so on, are primarily explained as a lack of development—especially of 'liberal democracy', i.e., democratic institutions grounded in global capitalism. While Marxist modernization theory also assumes this progressive line and views capitalist industrialization as the catalyst for liberal democracy, it also does not see 'liberal democracy' as the most democratic institution. In other words, whereas liberal democracy is the governmental structure of choice for capitalists, Marx argued for a stronger democracy which could only result from further revolution into communism. When viewed from a world-systems perspective, however, the development of core countries through liberal democracy and the enforcement of liberal democracy globally (through military and 'aid' interventions) actually impedes the development of other countries.[52]

Evidently, both the weak and strong forms of modernist logic are present in these perspectives. Nevertheless, something particular has been revealed about the Idea of world history within liberal Modernity, i.e., that the cacophony of human social life has a particular unified purpose and direction. It progresses, but this progress only presents itself in a particular way. That world (or universal) history is in some way teleological, but this teleology has only been made legible through the particular material and ideological history of Europe. When speaking of historical teleology in the European tradition, one must understand how it transforms from the Judaeo-Christian tradition of divine providence to the historical agency of the secular city. Indeed, it is this transformation which concedes the Idea of world history specific to liberal Modernity. However, since the Modernist system of knowledge is self-referential, before one can fully grasp this particular Idea of world history, it is necessary to establish the particular Idea of being and being-in-the-world it justifies and is justified by. Thus, we turn to the legacy of humanism and the shift toward secular fulfillment. Only then can we understand the liberal Modernist Idea of world history as 'Europe's progressive history'.

II.II The Legacy of Humanism:

The humanist tradition broadly speaking can be traced to the 4th and 3rd centuries BCE in Ancient Greece. Although no such label existed at this time, retrospectively, we can identify a shared focus on the dignity of Man. Indeed, consider the Sophists who first introduced *paideia* ["education or upbringing of

[52] See Andre Gunder Frank, Sing C. Chew, and Pat Lauderdale. *Theory and Methodology of World Development: the Writings of Andre Gunder Frank*. 1st ed. (Palgrave Macmillan, 2010); Walter Rodney, *How Europe underdeveloped Africa* (Howard University Press, 1972); and Immanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the Sixteenth Century* (Academic Press, 1997).

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children"[53]]: an educational program "aimed at the many-sided development of man's faculties and the creation of the highest excellence". While the Sophists extended *paideia* for all who could pay, its continuation through Plato and Aristotle would have it reserved for the "elite of free men of aristocratic background and independent means who had the leisure for the pursuit of excellence".[54] This is due to how Plato and Aristotle related education, or the development of virtue, to obtaining *eudaimonia* [the highest human good]. That is, virtue was not common in society, but rare; it is these few rare persons with the propensity for virtue and the time to develop it who should obtain *paideia* for the purposes of leadership and mentorship, for if paideia is available to all, rhetoric and other oratory skills will be used for purposes that are not virtuous.[55]

This logic is demonstrated in the etymology of the term 'humanism'. In Classical Latin, the primary meaning for *humanus* is not speculated to have been "whatever is characteristic of human beings/proper to man" nor 'benevolent', but '*learned*'.[56] This would be highly influential to the Roman statesman Cicero who, in seeking stability and prosperity in the Roman Republic, put Aristotle's ideas into practice by developing the Stoic *humanitas*. The *humanitas* combined the study of philosophy, history, literature, rhetoric and oration for the purpose of educating the next generation of military leaders, empire-builders, legislators, rulers, and administrators.[57] Significantly, Cicero viewed *paideia* as evidence of human excellence and the bearer of the progress of civilization. That is, a particular kind of education aimed at the elites of a society provides the foundation for the stability and prosperity of the republic; power and authority follow a cohesive logic and this logic resides at the top and is inflicted downwards.[58]

The presumptions and commitments underlying *humanitas* show the terms of the 'human' to have long been defined in its 'mastery'—not only over nature as the early critical theorists of the Frankfurt School prioritize[59]—but also, over the woman, over the slave/'Barbarian', over the citizen, and over passions/the

[53] Timothy J. Bergen, "The Greeks And The Education Of Humanity," *The Journal of General Education* 43, no. 1 (1994): 33. http://www.jstor.org/stable/27797207.
[54] Perez Zagorin, "On Humanism Past & Present." *Daedalus* 132, no. 4 (2003): 87.
[55] Plato, *Phaedrus*, trans. Stephen Scully (Indianapolis: Hackett, 2003).
[56] Vito R. Giustiniani, "Homo, Humanus, and the Meanings of 'Humanism,'" *Journal of the History of Ideas* 46, no. 2 (1985): 168.
[57] Zagorin, "On Humanism Past & Present," 88.
[58] Marcus Tullius Cicero, Miriam T. Griffin, and E. M Atkins. *On Duties* (Cambridge University Press, 1991).
[59] The first-generation Frankfurt School, in particular, Max Horkheimer and Adorno, argued against 'traditional theory' (the permeation of positivism in the social sciences) and its predilection towards instrumental rationality. As Horkheimer explains in Dialectic of Enlightenment, instrumental rationality (or the formalization of reason as mastery over nature) strips reason of its historical and theoretical context. Simply put, it presumes access to a nonhistorical universalism which directs reason towards the means to pre-given ends rather than towards the ends themselves. Ultimately, this results in an absence of reason put towards 'objective' or shared ends, such as the idea of the greatest good. See, Max Horkheimer, *Eclipse of Reason* (Continuum International Publishing, 2004) and Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment* (Continuum International Publishing, 1991).

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body.[60] The classic notion of *humanus* suggests that to be(come) human, to actualize one's potential for excellence, it is necessary to *learn* these logics of domination. While such *humanus* was reserved for men of the elite or ruling class, it must be noted that in the context of Ancient Greece and Rome, the denigrated status of women, the institution of human slavery, and the reality of war were taken for granted as "permanent features of human society".[61] This meant they were not viewed as excesses of dominance to be eradicated but as 'inevitable truths' to be managed. The purpose of discussing the so-called "Classics" is not to levy critique outside of historical context, but to bring attention to how these ideas would later ground the structuring of the 'Great Chain of Being' (how the spiritual and material realms would be hierarchically ordered), the state, the citizen, and the understanding of the 'common good'.

Following the death of Roman emperor Marcus Aurelius in 180 CE, the Republic experienced three centuries of instability eventually leading to its demise. This would be aided by various major events, including Constantine's conversion to Christianity in 312 CE—ending the persecution of Christians and eventually leading to the persecution of non-Christians, the establishment of Byzantium as the Eastern capital of the Roman Empire, the widening division between the Western and Eastern regions, the sack of Rome by the Visigoths in 410 CE, the publication of St. Augustine's *City of God*,[62] and lastly, the deposition of Emperor Romulus Augustulus in 476 CE by German warrior Odoacer who would then retitle himself the "King of Italy". In 481 CE, Clovis would become the first king of the Franks (now France) and would later convert to Christianity in 496 CE—initiating the strong ties between the church and the state that would last throughout the medieval period. The mixed-form government and pagan culture of the Republic were overtaken by the oligarchic (then feudalized) government and Christian culture of Western Christendom. This would later be gestured towards as the 'Dark Ages'.

From the view of the Italian humanists of the Renaissance, the 'backwardness' of the medieval period can be explained in part by its lack of humanism, i.e., a lack of focus on the dignity and development of man. With a focus on a supernatural and transcendent God, society was organized under the theological interpretations of centralized papal authority. While the classical philosophy of Plato and Aristotle was studied and taught by the Scholastics, it was only done insofar as it could be reconciled to and utilized in Christian teachings. R. W. Southern reveals the early Middle Ages to have been a time in which "nearly all the order and dignity in the world was closely associated with supernatural power", thus man's place was one of powerlessness.[63] In discordance with Renaissance interpretations, however, Southern argues

[60] Val Plumwood, *Feminism and the Mastery of Nature* (Routledge, 1993), 46; *Plato, Republic, IV, 439d;* Aristotle and Joe Sachs, *Politics*, *I*.
[61] Zagorin, "On Humanism Past & Present," 87.
[62] Augustine and R. W. Dyson. *The City of God against the Pagans* (Cambridge University Press, 1998).
[63] Richard Southern, *Medieval humanism and other studies* (Basil Blackwell, 1984), 33.

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that an identifiable humanism emerged from about 1100 to about 1320. Ironically, a "period which the humanists… most despised".[64] To make his argument, Southern asserts three underlying features of humanism: (1) a focus on the dignity of man, (2) as a corollary to (1), a recognition of the dignity of nature as a whole, and (3) the perception of the universe as available to human reason. As he states, "Nature is seen as an orderly system, and man—in understanding the laws of nature—understands himself as the main part, the key-stone, of nature".[65]

The restoration of man's dignity was initiated by monastic leaders who led inquiry into human experience as a means of knowing God. As demonstrated by participants such as Anselm of Bec (c. 1033–1109), this method of 'introspective analysis' "seemed to show that men could find new truths of the greatest importance simply by looking within themselves".[66] Bernard of Clairvaux (1090–1153), the monastic leader who popularized the method, reserved it for the purpose of spiritual growth. His programme "… begins with man's love of himself for himself alone".[67] As Richard of St. Victor (–1173) stated of the method:

> A man raises his eyes in vain to see God who has not yet succeeded in seeing himself. Let a man first learn to understand the invisible things of himself before he presumes to stretch out to the invisible things of God… for unless you can understand yourself, how can you try to understand those things which are above yourself?[68]

Through introspective analysis, self-love progresses into the experience of friendship which, while perfected by religious life, is located in nature and regulated by *logos* [reason]. Following Aristotle, *logos* is the mental faculty which distinguishes the human from other animals; it is what allows the human to construct logical arguments to determine right from wrong and good from evil. The feelings inspired by love of one's neighbour, grown out of love for one's self, led Christian thinkers to consider a new conception of God: God as a friend of man. As Southern states, "The greatest triumph of medieval humanism was to make God seem human. The Ruler of the Universe, who had seemed so terrifying and remote, took on the appearance of a familiar friend".[69] By the mid-twelfth century, prayers, hymns, meditations, and other devotional practices readily exalted the humanity of God. It is through this friendlier perception of God that the chaos and mystery of the world then seemed *out of place.* This is to say, the desire for secular (read: worldly) knowledge emerged as the desire to uncover the hierarchical

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[64] Southern, *Medieval humanism and other studies*, 31.
[65] Southern, *Medieval humanism and other studies*, 32.
[66] Southern, *Medieval humanism and other studies*, 33.
[67] Southern, *Medieval humanism and other studies*, 34.
[68] Richard de Saint-Victor, *The Twelve Patriarchs or Benjamin Minor,* trans. Grover A. Zinn (Paulist Press, 1997), c. lxxi.
[69] Southern, *Medieval humanism and other studies*, 37.

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structure of all matter and life as decreed by God and through this, uncover man's place and thus his condition. With this, we now turn our eye to the heart of Western Christendom: Italy.

Between the 11th the 14th centuries, monastic schools across the medieval Latin West would give way to the *universitas magistrorum et scholarium* ['guilds of masters and scholars']. (These medieval universities would later develop into the modern university which would eventually become the dominant institute for higher-learning). During the 13th century, the medieval universities of Italy would open study into *humanae litterae* ['classical heritage'] which retrieved Ancient Greek and Roman texts in a manner different than the monastic schools. Which is to say, while the Italian humanists of the coming Renaissance did not question Christian truth—far from it—they did deploy classical models in such a way that challenged Christian dogmas. More specifically, rather than a life of penance, the Italian humanists generally came to agree that the highest form of human activity was one of creation through the 'mastery of nature', and further, it is man's passage into 'master' that characterizes the human condition. To exemplify this, we consider the work of Giovanni Pico della Mirandola (1463—1494).

In his *Oration on the Dignity of Man*, posthumously titled, Pico seeks to determine the justification for man's dignity and excellence as asserted in Christian truth. To do this, he first identifies the commonplace stance amongst his contemporaries. Among them, Pico finds the main justification for man's dignity and excellence to be his position in *regnum hominis* ['the kingdom of man']: as that unique being positioned between the natural and supernatural realms, man is the "king of the things beneath him".[70] Pico, however, was unsatisfied with this justification and contends that "[t]he main justification for human dignity and excellence is not horizontal primacy but vertical tension".[71] Pico believed that accumulating knowledge of universal (Christian) truth would enable man to ascend, not just to master of the earthly kingdom, but to the level of the divine, to the stage of "perfection through his identification with the ultimate reality".[72] This is grounded in his understanding of the human condition. As he writes:

> At length, it seemed to me that I had come to understand why man is the most fortunate of beings and therefore worthy of all admiration, and what finally is the condition that befell him in the universal order, a condition to be envied not only by beasts but even by the stars and the intelligence dwelling beyond this world… God the supreme Father and Architect had already fashioned this worldly home we behold… He had already adorned the supercelestial region with intelligences, enlivened the heavenly globes with eternal souls, and filled the excremental and filthy parts of the lower world with a multitude of forms of animal life. But when the work was finished, the Craftsman still longed for there to be someone to ponder the meaning of such magnificent achievement, to love its beauty and marvel at its vastness… He finally thought to

[70] Giovanni Pico della Mirandola, *Pico Della Mirandola: Oration on the Dignity of Man,* Eds. and Trans. Francesco Borghesi, Michael Papio, and Massimo Riva (Cambridge University Press, 2012), 111.
[71] Borghesi and Riva, "Overview of Text," in *Oration on the Dignity of Man*, 68.
[72] Borghesi, and Riva, , "Overview of Text," *Oration on the Dignity of Man*, 68.

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> bring forth man. But there was nothing among His archetypes from which He could mould a new progeny, nor was there anything in his storehouses that He might bestow upon His new son as an inheritance, nor was there among the seats of the world any place for this contemplator of the universe. Every place was by then filled; all things had already been given assigned to the highest, the middle, and the lowest orders… At length, the Master Creator decreed that the creature to whom He had been unable to give anything wholly his own should share in common whatever belonged to every other being.[73]

This excerpt not only draws out the formation of the Great Chain of Being, it also reveals an underlying tendency in humanistic inquiry as it unfolds from the Christian tradition. That is, it reveals the tendency to recognize difference only insofar as it can be reconciled with the self. Man comes to identify with the 'ultimate reality'—i.e., the ordered world as created by God—through uncovering what is common and erasing apparent disharmony, but if the grounding of the universal is in Christian truth, then it is the Christian self who stands as the point of reference of what is common. This persists in the construction of the 'modern' universal human and united humanity.

Like others, this thesis finds the decisive form of the 'modern human' in the moral philosophy of Immanuel Kant (1724–1804). Of particular significance is Kant's so-called 'Copernican Revolution'. Like Copernicus who shifted understanding of the cosmos from the Ptolemaic model to the heliocentric model, Kant shifted the understanding of knowledge and truth claims from the external world to the human mind. This can be explicated through Kant's conception of the phenomenal and noumenal worlds. The phenomenal world encompasses appearances and comprises the entirety of human experience, while the noumenal world encompasses 'things in themselves' which cannot be accessed in human experience. Kant's critique of pure reason, or transcendent metaphysics, is that it attempts to *prove* claims about 'God, the world-whole, and the soul' (things in themselves) when it can *only think and not know* the noumenal world. Even so, Kant does not believe external reality to preclude what reason commands:

> Even the science of physics entirely owes the beneficial revolution in its character to the happy thought that we ought to seek in nature (and not fictitiously to ascribe to it) whatever reason must learn from nature, and could not know by itself, and that we must do this in accordance with what reason itself has placed into nature. Thus only has the study of nature entered on the secure method of a science, after having for centuries done nothing but grope in the dark.

In other words, the world is constructed in such a way as to enable the application of reason for the purpose of progress. For Kant then, the state of human affairs ought to be constructed in such a way as to enable the ideals of reason to guide us. This requires, foremostly, the protection of individual freedom—the freedom to act on one's subjectively contingent choices—which is of the phenomenal world. For Kant, this form of freedom only emerges in a state governed by the social contract: since the choices of

[73] Pico, *Oration on the Dignity of Man* 115.

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individuals are assumed to be arbitrary, such contractual governance is necessary to enact "the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom".[74] Therefore, and in contrast to the interpretation made by Robert Paul Wolff,[75] the Kantian subject is primarily a legal subject; the principle of autonomy is only made possible through the legal obligations facilitated and regulated by a State.

Kant's moral philosophy was conceived in large part to understand the changing world around him. As such, it has critical implications for the notion of human progress. If human experience only has access to the phenomenal world and all human knowledge is of appearances, then material and moral progress on Earth is not predetermined, but a condition of human nature, i.e., reason and the human's tendency towards political and social organization. This 'enlightened' understanding of the human condition, however, unfolded from an unrecognized parochialism. It retains certain predispositions, such as how reason can be identified (e.g., distinguished from the 'passions') and, as a corollary to this, who is likelier to be reasonable/use reason correctly. It assumes the givenness of humans' 'social unsociability' and the individual's tendency to be self-interested in a particular manner (i.e., the will to govern). Moreover, this specific notion of human nature is complemented by a particular notion of non-human nature as passive and empty, existing only insofar as it is conducive to human endeavours. These predispositions derive from the provincialized generations of thoughts and ideas (i.e., the historical becoming) in which Kant is embedded, and pose a major problem to the credibility of his universal human subject and united humanity.

While Kant was a Christian who held great disdain for self-proclaimed atheists, many atheists would set up house in the post-Kantian tradition. Indeed, the Kantian subject would provide the basis for "a purely self-sufficient humanism" which intended to provide a wholly secular and thus 'realistic' account of humanity.[76] This would cause reconsideration of the Church's principle of monogenesis, i.e., the belief that all humans originated from a single ancestral line, Adam and Eve. It is the case that pre-Adamite and other proto-polygenetic arguments had existed before this moment; however, these interpretations did not gain traction since they were deemed heretical by the Church. Moreover, although ethnocentrism (in-group vs. out-group) has existed since antiquity and is a common feature in most societies, modern racism differs because it establishes racial features as indicators of some essential character. The logic of modern racism first appeared during the 13th century when the political tolerance for Jews in Europe, specifically in Spain, declined. As a result of this, Jews were made to wear certain clothes and badges to be easily

[74] Immanuel Kant, *The metaphysical elements of justice: part I*, trans. John Ladd (Bobbs-Merrill, 1965), para 230, pg. 34.
[75] Robert P. Wolff, *In Defense of Anarchism* (Harper and Row, 1970).
[76] Charles Taylor, *A Secular Age* (Belknap Press of Harvard University Press),18.

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identified and outcast. The Spanish Inquisition began in 1480 and while tasked with "attacking heresy and blasphemy", it "soon turned to rooting out Jewish and Muslim converts to Christianity for not being pure Christians."[77] This was done through *limpieza de sangre* [*blood purity*] which 'tested' for any Jewish or Muslim ancestors but was often based on fictive genealogies. Though this thesis takes this as the definitive moment when Western Christendom began to abandon the notion of inclusivity, many instances exemplifying this shift occurred before this moment.

As humanist scholars overtook the thought of the Schoolmen writing from the scholastic tradition, biblical monogenesis would be challenged by scientific polygenism, the construction of race, and the early sciences of human origins. The reactionary renunciation of Christian thought, prototypical racism, and ethnocentrism is starkly apparent in these reformulations. Consider the words the historian, philosopher, and polygenist Voltaire wrote in 1769:

> Our sages have told us that man was made in the image of God; —here is a very pleasant image of the Eternal Being, with a flat and black nose, with very little intelligence, or none at all! A time will doubtless come when these animals will know how to cultivate the earth, to adorn it with houses and gardens, and to follow the track of the stars; — time is required for all things.[78]

It is noted that a large part of Voltaire's wealth came from the shares he held in the slave-trading Compagnie des Indes, which he inherited at the age of 27. Moreover, from 1749 to 1754, Voltaire would be one of the largest financiers of the Gilly Brothers society which was involved in shipping abducted slaves between Cadiz, the West African coast, and Spanish America.[79] Voltaire's vulgar remarks show how early conceptions of the biocentric human had never begun from a neutral nor universal position. Ideas of the 'human' have always been entangled with differential material, political, and social treatment and conditioning.

Although not a proponent of scientific polygenism himself, Kant developed some of the first conceptions of race and racism.[80] Kant imagined there to be four races: (1) "the American people" (Indigenous Americans) who "[acquire] no culture… [have] no incentives" since they lack "affect and passion"; (2) "the [African] race" which is "exactly opposite of the American, "they acquire culture, but only a culture of slaves; that is, they allow themselves to be trained"; (3) "the Hindus" who "have incentives" and "acquire culture in the highest degree, but only in the arts and not the sciences", and (4) "the white race"

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[77] Charles Hirschman, "The Origins and Demise of the Concept of Race." *Population and Development Review* 30, no. 3 (2004): 392. http://www.jstor.org/stable/3401408.
[78] Voltaire, "The Letters of Amabed," in *The Complete Tales of Voltaire*, trans. William Walton (Howard Fertig, 1990), 40.
[79] Gianamar Giovannetti-Singh, "Racial Capitalism in Voltaire's Enlightenment," *History Workshop Journal* 94, no. 1 (2022): *26;* Voltaire, Letter to Countess Lutzelbourg, 12 April 1756, D6822.
[80] Charles Mills, *The Racial Contract* (Carnell University Press, 2022).

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which "contains all incentives and talents in itself".[81] There is no question that these views are abhorrent. Elsewhere, Kant comments on the tendency of those who have never left their country to make unfair judgements of foreigners, ironically, he himself *never left his town of Konigsberg*.[82] All of Kant's 'observations' relied upon his interpretation of travel records from travellers, merchants, slaveholders, and colonialists—records written with their own biases and interests. In other words, the production of a universal human subject and united humanism emerging out of Europe was not only parochial but through this parochialism, Eurocentric and racist.

In examining the antiblack presumptions of early modern European thinkers, Zakiyyah Iman Jackson finds the construction of blackness to be "based on either "the African's" purported physical or mental likeness to nonhuman animals, or as a result of the underdeveloped condition of African humanity".[83] We might consider the former stance to reflect Kant's racist beliefs and the latter to reflect Voltaire's racist beliefs. As is inferred, Kant assumes the dualistic hierarchy between Europe and "The Rest" to be a product of the 'essential' (god-ordained) characteristics of the White vs Black body.[84] The construction of race is an attempt to establish the white bourgeois European's self-proclaimed superiority in universal (i.e., biblical) history. With this in mind, let us review how Kant describes the Enlightened subject:

> The fact that the human being can have the "I" in his representations raises him infinitely above all other living beings on earth. Because of this he is a person, and by virtue of the unity of consciousness through all changes that happen to him, one and the same person – i.e., through rank and dignity an entirely different being from things, such as irrational animals, with which one can do as one likes.[85]

This is a retrieval of Aristotelian philosophy which defines human exceptionality in its capacity for rationality. As such, humanity is not defined as *diametric* to "the animal," but differentiated in its capacity for reason. In other words, appearing like a human was not so important as *performing* as a human—*learning* certain logic and displaying certain behaviours that were coded under reason rather than passion. From the parochial and self-aggrandized perspective of bourgeois Europeans, the presumed markers of rational behaviour were seemingly absent in non-bourgeois Europeans, more so in those who resided outside the provincialized milieu of Europe and Western Christendom. Thus, bourgeois Europeans

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[81] Immanuel Kant, *Lectures on Anthropology*, eds. Allen W. Wood and Robert B. Louden, trans. Robert R. Clewis, Robert B. Louden, G. Felicitas Munzel, and Allen W. Wood (Cambridge University Press, 2012), 320.
[82] Hannah Arendt and Ronald Beiner. *Lectures on Kant's Political Philosophy* (University of Chicago Press, 1989) 44.
[83] Zakiyyah Iman Jackson, *Becoming Human: Matter and Meaning in an Antiblack World* (New York University Press, 2021). https://doi.org/10.18574/9781479834556.
[84] This essentialism is depicted in various ways, e.g., the Hamitic hypothesis, environmental determinism, etc.
[85] Kant, *Anthropology from a Pragmatic Point of View* (M. Nijhoff, 1974), 15.

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constructed the idea of race to denigrate 'non-whites' as less likely to contain or practice rational power.[86] Ideological racism emerged as a handmaiden to the expansion of Western slavery and the development of the world capitalist economy: if all 'non-whites' were potentially "irrational animals", then the modern, rational European 'could do with them as they liked.'[87]

On the other hand, while figures like Voltaire may presume 'non-whites' to have the *capacity* for rational power equal to 'whites', race, specifically 'blackness', is used as evidence of the furthered development of whiteness. Race is constructed to establish the white, bourgeois European's self-proclaimed superiority within world (secular) history. As such, it constructs a 'line of progress' which holds white bourgeois Europeans as *perpetually ahead*. In other words, while Voltaire recognizes human nature to be more mutable than Kant his viewed are still based on the same erroneous presumptions—the effect of which, was even more nefarious in the wake of Darwinian theory. Indeed, while Kant, Voltaire, and their contemporaries could not agree on the origins of cultural and physical diversity among humans, Charles Darwin (1809—1882), by providing an account of the origins of species differentiation, united European intellectuals on thinking about the science of human origins as both monogenetic and secular. Resulting from this, Social Darwinism and eugenics would provide a 'scientific justification' for European slavery, colonialism, and military, economic, and political domination throughout the latter half of the 19th and first half of the 20th centuries. Scientific rationalism adds another veneer of neutrality to the ideology of 'white/European supremacy' by lifting it from a matter of 'common sense' to a matter of 'good sense' (i.e., supposedly empirically verifiable).

To bring this all together, the particular Idea of being which is produced and reproduced by liberal Modernity is referred to here as the 'modern Human'. This subject is assumed to be universal and attempts to universalize itself, yet behind this veneer of secular and scientific objectivity, it is shown to be particular to the provincialized milieu of Europe and Western Christendom. Due to this, the supposed universal human and united humanity of liberal Modernity is predisposed to recognizing certain characteristics as indicative of 'full humanity': white or of European descent, embedded in Christian culture (either Christian or atheistisal, having 'overcome' Christianity/religion), male, property-owning or wealthy, educated in the Western academy, and so on. Those who 'lack' all these characteristics can only obtain those which are extrinsic (e.g., convert to Christianity, buy property/become wealthy, pursue education, etc.) while those who only lack the extrinsic characteristics (i.e., they are white or of European descent and male) have the potential to gain 'full humanity'. As will be shown next, the modern Human

[86] Emmanuel Chukwudi Eze, "The Color of Reason: The Idea of 'Race' in Kant's Anthropology," *Bucknell Review* 38, no. 2 (1995): 200-41.
[87] Kant, *Anthropology from a Pragmatic Point of View*, 15.

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exists in the world as the political and legal subject of the state, but political and legal participation within the state is preceded by one's access to 'full humanity'. This extends onto the international scale among core, peripheral, and semi-peripheral countries.

II.III Secular Fulfillment:

Yet to be discussed in this genealogy of liberal Modernity is the Italian city-state of Florence. Between the 12th to the 14th centuries, Florence grew from a small and overlooked township in central Italy to being the second largest city in Europe by population and a major economic centre. At the end of the 13th century, Florence's political system would undergo major changes, foremostly, the disentitlement of the former governing class, the *milites* ["soldiers"; the highly militarized aristocratic class based on landownership], and the establishment of the *popolo* ["people"; an interest group]. Despite what their name might suggest today, the *popolo* did not represent the interests of all people, but of merchants and artisans (middle to the upper classes). The first generation of government, the *il primo popolo* ["the first people"], instituted a political model organized under guilds. Although this model based itself in public rule, those without property could not join a guild and thus a large segment of the population (including women) had no political voice at all.

With the new political elite came various new political instruments, for example, the creation of political offices and civil servants with precisely defined roles. Additionally, in 1293, the *il secondo popolo* adopted the Ordinances of Justice which barred feudal magnates (nobles) from holding important offices (though this was gradually relaxed, especially as nobles and rich non-nobles intermarried). While a clear political identity existed, Florence was still riddled with political instability—of feuds, conspiracies, and coups d'etats that would lead to mass exile to reinstate social order. The root of this largely lay in the tension between the popolo grasso ["fat people"; the richest, non-nobles] and the popolo minuto ["small or common people"; the middle to lower-middle class of merchants and artisans]. By the 1340s, Florence had reached the height of its economic and demographic growth yet it still faced economic turbulence and reoccurring grain shortages. Then, in 1348, the Black Death struck Florence, killing upwards of 50% of the city's population. The reduction in population led to an increase in wages and overall standard of living which the principal legislative bodies of Florence, the *Popolo* and *Camera del commune* ['House of Commons' which handled the city's revenue[88]] did not attempt to limit. However, in 1349, Florence's councils did pass 'stringent restrictions and fierce fines' on rural labourers. These labour laws, called *contra laboratores* ['against agricultural labourers'], forced these labourers to purchase basic

[88] William Caferro, "Petrarch's War: Florentine Wages and the Black Death," *Speculum* 88, no. 1 (2013): 146. http://www.jstor.org/stable/23488712.

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commodities at hyper-inflated prices and levied enormous fines to those who left working farms without permission.[89]

By the start of the 15th century, a new political vision was floating amongst the Florentine humanists. At least two later interpretations present themselves (though both are controversial if taken in isolation and without caveat): On one side, those convinced by Jacob Burckhardt's interpretation identify, foremostly, the emergence of an apolitical humanism, comprised of detached intellectuals, and greedy and amoral 'individualists'.[90] On the other side, those convinced by Hans Baron's interpretation identify, foremostly, a time "in which citizens and scholars had worked together to serve the *bonum commune*" [*common good of the community*].[91] Whereas Burckhardt saw "… a traditional society breaking apart under the pressure of egoistic individualism and illegitimate power",[92] Baron emphasized Florence's isolation during Giangaleazzo Visconti's power grab across Italy. For Baron, this political and military instability brought together the studious, apolitical humanist tradition with the unrefined Florentine civic tradition. The revival of *humanus*, *paideia*, and mixed governance directed towards the city-state produced what Baron referred to as 'civic humanism'.[93]

In contrast to the Scholastics who believed knowledge beyond oneself begins with introspection into oneself, the civic humanist philosopher (following Baron) gave rise to "the idea that the universal was immanent in participation in the web of life and language".[94] From this, it follows that "the highest values, even those of nonpolitical contemplation" are "seen as attainable only through conversation and social association".[95] Moreover, "… association was itself a high and necessary good, a prerequisite for attaining the universal, and the entire Athenian and Aristotelian tradition was emphatic that the highest form of human association was political, the community of distribution, decision, and action which Aristotle had seen in the polis".[96] Thus, "one development of the style of civic humanism… [reconstructs] history as the story of republics existing in time".[97] Stated differently, since virtue is a relational

[89] Samuel Cohn, "After the Black Death: Labour Legislation and Attitudes Towards Labour in Late-Medieval Western Europe." *The Economic History Review* 60, no. 3 (2007): 468. http://www.jstor.org/stable/4502106.
[90] See Jacob Burckhardt and S. G. C Middlemore. *The Civilization of the Renaissance in Italy* (Modern Library, 2002 [1860])
[91] James Hankins, "The 'Baron Thesis' after Forty Years and Some Recent Studies of Leonardo Bruni," *Journal of the History of Ideas* 56, no. 2 (1995): 312. https://doi.org/10.2307/2709840. For direct access to the 'Baron's Thesis', see Hans Baron, *The Crisis of the Early Italian Renaissance: Civic Humanism and Republican Liberty in an Age of Classicism and Tyranny* (Princeton University Press, 1993). https://doi.org/10.1515/9781400847679.
[92] Hankins, "The 'Baron Thesis'," 317
[93] Baron, *The Crisis of the Early Italian Renaissance.*
[94] J. G. A. Pocock and Richard Whatmore, *The Machiavellian Moment : Florentine Political Thought and the Atlantic Republican Tradition* (Princeton University Press, 2016), 64. https://doi.org/10.1515/9781400883516.
[95] Pocock, *The Machiavellian Moment*, 64.
[96] Pocock, *The Machiavellian Moment*, 64.
[97] Pocock, *The Machiavellian Moment*, 59-60.

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endeavour, the political animal is the only animal that is truly virtuous since it is the political which attains the common rather than particular good. Thus, for the civic humanists, it is the political health of the republic which ensures the freedom of the individual (i.e., freedom to act on one's subjectively contingent choices) and it is the civic nature of the individual which ensures the political health of the republic. However, while the civic humanists came to an idea of the republic as the stable, universal structure of virtue, they faced the seemingly insoluble problem of constituting such a republic in the world of particularity. That is, if the republic is to be universal, then its existence cannot be contingent on things such as 'fortune' and 'corruption'. J. G. A. Pocock explores the development of this through 'the Machiavellian moment'.

In 1512 Florence, with the Medici family's return to power, Niccolò Machiavelli is deposed from his position as civil servant, imprisoned outside of Florence, then tortured under suspicion of collusion before being released. After this, Machiavelli began his repatriation and reintegration into the political and diplomatic world of Florence. His seminal work, *The Prince*, was not written as a philosophical meditation, but as a strategic means to gain favour with Florence's new political elite. This is indicated by the fact that Machiavelli dedicates the book to Lorenzo de Medici and writes it as a guide or blueprint on how best to run a state—or rather, how best to stay in power. Since politics represented the structure in which the individual could express their moral autonomy, legislation was wholly concerned with producing and reproducing this structure. From Leonardo Bruni (1370—1444) to Machiavelli, then James Harrington (1611—1677), Pocock identifies an intellectual lineage which provides "… a set of norms for the attainment of stability which reduced the totality of virtue to concrete and manageable terms."[98] This required, foremostly, a reappraisal of fortune:

> Many have held and hold the opinion that events are controlled by fortune and by God in such a way that the prudence of men cannot modify them, indeed, that men have no influence whatsoever. Because of this, they would conclude that there is no point in sweating over things, but that one should submit to the rulings of chance.... None the less, not to rule out our free will, I believe that it is probably true that fortune is the arbiter of half of the things we do, leaving the other half or so to be controlled by ourselves.[99]

Thus, the antithesis of virtue shifted away from fortune to corruption.

> Those states consequently stand surest and endure longest which, either by the operation of their institutions can renew themselves, or come to be renewed by accident apart from any design… Now the way to renew them is, as I have said, to bring them back to their beginnings, since all beginnings of sects, commonwealths, or kingdoms must needs have in them a certain excellence, by virtue of which they gain their first reputation and make their first growth. But because in

[98] Pocock, *The Machiavellian Moment*, 402.
[99] Niccolò Machiavelli, *The Prince* (Toronto Metropolitan University, [1532] 2022), 79

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> progress of time this excellence becomes corrupted, unless something be done to restore it to what it was at first, these bodies necessarily decay.[100]

Recognition of this expanded historical understanding, however, change was evaluated negatively "as a movement away from the norms which defined it, as they defined stability, rationality, and virtue".[101] Limited by the Aristotelian and humanist tradition which concerned itself in the production and reproduction of the polis and political life, the creative exercise of governmental power could not yet be imagined. According to Pocock, this expression of governmental power would not fully emerge until the transplantation of civic humanism to England and then the United States.

It is the development of civic humanism into the modern administrative state which details the transference of "the energies that had formerly been attached to the other-worldly goal of the church" to the state's "essentially mercantilist-political goal". It follows that "the earlier imperative of eternal salvation" becomes "securing above all else the good of the state in competitive rivalry with all other European states".[102] The consent of the political and legal citizen, which is directly correlated with the stability of the state, is continuously restored through the promise of prosperity. Thus, the stability of the state relied upon its ability to realize the desires and satisfy the wants of its citizens. And for those not located within the provincialized milieu of Europe? These people "became perceivable only in terms of their usefulness to the European states in securing their this-worldly goal of power and wealth".[103] With this said, we can now begin to piece together the genealogy of liberal Modernity as Europe's 'progressive' history.

II.IV Modernity as Europe's Progressive History:

To start this final section, let us return to the construction of the Great Chain of Being. With its precursory structure granted by Aristotle, the Great Chain gained its definitive form in Medieval Christianity. This was led by the Scholastics, i.e., Christian thinkers who reconciled patristic literature—especially of St. Augustine, with Classical philosophy—especially of Aristotle. The thought of Anselm of Bec produces the original ontological argument for God which purports the existence of God within its concept. That is, similar to how one can know the impossibility of a circle with a right angle (without empirical evidence), one can know the impossibility of an absolutely perfect being, God, that does not exist. This new thought relationship to God as one of introspection led to the gradual reconceptualization of 'God' as a friend

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[100] *Niccolò* Machiavelli, Julia Conaway Bondanella, and Peter Bondanella. *Discourses on Livy* (Oxford University Press, [1531] 2008), *Book III, 1.*
[101] Pocock, *The Machiavellian Moment*, 402.
[102] Sylvia Wynter, "1492: A New World View," In *Race, Discourse, and the Origin of the Americas: A New World View*, eds. Vera Lawrence Hyatt and Rex Nettleford (Smithsonian Institution Press, 1995), 17.
[103] Wynter, "1492: A New World View," 17.

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rather than as a spiteful foe. This newfound friendship with God led to the gradual reconceptualization of 'the universe/world' as conducive to human ends rather than chaotic and unknowable. This reconceptualization of the universe relied upon the Neoplatonist 'principle of plenitude': the idea that *all possible* (non-contradictory) things exist in the universe.[104]

The principle of plenitude entails two derivative concepts: one of continuity and one of gradation. As Lovejoy argues, this led to Scholasticism's preoccupation with explicating the "necessity of imperfection in all its possible degrees", and ultimately, a concrete formulation of the Great Chain.[105] This classificatory order holds God at the top, angels and other divine beings at his feet, humans in the middle, followed by animals, plants, and then 'non-beings' including bodies of water with rocks and minerals at the bottom. The Great Chain circumscribed all beings as closer or further from God and thus from 'goodness'. As Arthur Lovejoy cites Christian thinker Thomas Aquinas (1225—1274) as stating "*if things were not ordered into 'good' and 'evil'"*:

> All possible grades of goodness would not be filled up, nor would any creature be like God in having pre-eminence over another. Thus the supreme beauty (*summus décor*) would be lost to the creation, if there were lacking that order by which things are dissimilar and unequal… If there were a dead level of equality in things, only one kind of created good would exist, which would be a manifest derogation from the perfection of the creation… It is no part of divine providence wholly to exclude from things the possibility of their falling short of good; but what *can* thus fall short, sometime *will* do so; and the lack of good is evil.[106]

In accordance with patristic literature, all humans are located at the same position of the Great Chain. As St. Augustine asserts:

> Whoever is anywhere born a man, that is, a rational, mortal animal, no matter what unusual appearance he presents in colour, movement, sound, nor how peculiar he is in some part, or quality of his nature, no Christan can doubt he spring from that one protoplast… if they are human, they descended from Adam.[107]

Even so, societal positioning was important. Indeed, since a king was thought to be a minister of God, a common person would fall under both king and God. That said, both king and common person fall under God and ultimately, under the law. As Henry de Bracton (c. 1210—1268), one of the most significant figures in the development of common law, reveals:

> The king, since he is the vicar of God on earth, must distinguish jus from injuria, equity from iniquity, that all his subjects may live uprightly, none inure another, and by a just award each be

[104] Arthur Lovejoy*, The great chain of being: a study of the history of an idea* (Transaction Publishers, 2009)*,* 67.
[105] Lovejoy, *The great chain of being,* 340.
[106] Lovejoy, *The great chain of being,* 76-77.
[107] As cited by Nancy Stepan*, The Idea of Race in Science: Great Britain 1800-1960* (Palgrave Macmillan, 1982), 1.

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> restored to that which is his own. He must surpass in power all those subjected to him, [He ought to have no peer, much less a superior, especially in the doing of justice, that it may truly be said of him, 'Great is our lord and great is his virtue etc.,' though in suing for justice he ought not to rank above the lowliest in his kingdom.] nevertheless, since the heart of a king ought to be in the hand of God, let him, that he be not unbridled, put on the bridle of temperance and the reins of moderation… Let him, therefore, temper his power by law, which is the bridle of power, that he may live according to the laws, for the law of mankind has decreed that his own laws bind the lawgiver… it is a saying worthy of the majesty of a ruler that the prince acknowledge himself bound by the laws. Nothing is more fitting for a sovereign than to live by the laws, nor is there any greater sovereignty than to govern according to law, and he ought properly to yield to the law what the law has bestowed upon him, for the law makes him king.[108]

At this point, the legal system in Europe was a complex mix of old and new traditions (which, of course, was not the same across the region): the civil law from Classical Rome was in the midst of being retrieved by the Italian humanists and taught in medieval universities, customary law continued to play a pivotal role in administering justice and resolving disputes, an early common law based on the doctrine of precedent was developing amongst the English, and, encompassing each of these, was canon law which refers to the law of the Christian Church and its members. The dominance of canon law and the authority of patristic literature established and upheld the principle of monogenesis. To recall, this meant that while representations of human 'savagery' existed—for instance, from the travel logs of Marco Polo (1254—1324), literary works such as Mandeville's *Travels,* and the journals of Christian missionaries including the Franciscans and Dominicans, all of which shaped Europe's emerging perception of physical and cultural diversity in India, sub-Sahara Africa, and the Muslim world[109]—they remained largely symbolic without a specific referent since humans were considered the product of a single act of creation.

For the reasons discussed above, this began to change, especially after the 18th century. Indeed, following the Enlightenment, knowledge production coming out of Europe functioned to reify the image of the 'modern' European as the "lone spectator surveying and adjudicating, from a withdrawn and superior vantage point".[110] During this time, disciplines were reshaped and new disciplines emerged to actualize the supposedly universal structure of modern European rationality. Moreover, while scholars of philosophy and natural science once saw little distinction between themselves in their common search for secular truth, as natural scientists began to lean towards the validity of experimentation, philosophy began

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[108] Henry de Bracton, *Bracton De Legibus et Consuetudinibus Angliae: Bracton on the Laws and Customs of England*, eds. George E. Woodbine, trans. Samuel E. Thorne (Belknap Press of Harvard University Press, [between 1275 and 1299] 1968), II, fol. 107b, 305.
[109] Annette Yoshiko Reed, "Beyond the Land of Nod: Syriac Images of Asia and the Historiography of 'The West,'" *History of Religions* 49, no. 1 (2009): 48–87. https://doi.org/10.1086/605902; Ewa Kocój, "European Representations of Others: Reflecting on the 'Us and Them. An Intricate History of Otherness' Exhibition and Book," *Anthropos* 108, no. 1 (2013): 273–77. http://www.jstor.org/stable/23510281.
[110] David E. Cooper, "Humanism and the Scientific Worldview," *Theoria: A Journal of Social and Political Theory*, no. 93 (1999): 8. http://www.jstor.org/stable/41802111.

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to be seen "more and more a mere substitute for theology, equally guilty of a priori assertions of truth that were untestable."[111] This was even as philosophy moved towards an ethos of 'objectivity' based in leading natural theories (e.g., Kant and Newtonian physics). To be sure, the increasing division between philosophy and natural science and the drive for philosophical positivism are correlated. Nevertheless, the devaluation of philosophy to natural science would become linguistically established by the beginning of the nineteenth century when natural science came to be referred to as 'science' exclusively.[112] This division would inform the order of the newly emerging disciplines. On one end sat mathematics and the experimental sciences and at the other end sat philosophy and the study of fine arts. Between these two poles arose the social sciences—sociology, political science, economics—which were seen as closer to the natural sciences, and then history, which was seen as closer to the humanities.[113]

The practice and development of the social sciences were initially confined to the five European states they originated in: Great Britain, France, the Germanies, the Italies, and the United States. As such, these disciplines emerged as a study of these specific societies, their politics and economies. In contrast to this, the discipline of anthropology dedicated study to non-European (or derivative) societies, specifically those which lacked indicators of 'high civilization', i.e., written records, centralized authority, commercial economy, etc. Written records were especially important in colonial appraisal. As Eric Wolf reveals, societies that followed an oral tradition were devalued as "people without history" and thus marginalized or eliminated from dominant historical accounts.[114] As a counterpart to anthropology, the discipline of Oriental studies, initially developed by the Church for the purpose of evangelization, studied the other type of non-European society; those with 'high civilization' such as the Arab-Islamic World, India, and China. The secularization and institutionalization of Oriental studies was preceded and informed by study of the 'Classics':

> The civilization of antiquity was explicated as the early phase of a single continuous historical development that culminated in modern "Western" civilization. It was thus seen as part of a single saga: first antiquity, then with barbarian conquest the continuity provided by the Church, then with the Renaissance the reincorporation of the Greco-Roman heritage and the creation of the modern world. In this sense, antiquity had no autonomous history; rather, it constituted the prologue of modernity.[115]

In following this logic, the 'Other civilizations' of interest in Oriental studies, like the civilization of antiquity, appeared frozen in time without a progressive history culminating in modernity. Due to this,

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[111] Immanuel Wallerstein et. al., *Open the Social Sciences: Report of the Gulbenkian Commission on the Restructuring of the Social Sciences* (Stanford University Press, 1996), 5, 11.
[112] Wallerstein et. al., *Open the Social Sciences,* 5.
[113] Wallerstein et. al., *Open the Social Sciences,* 9-12.
[114] Eric Wolf, *Europe and the People without History* (University of California Press, 1982).
[115] Wallerstein et. al., *Open the Social Sciences*, 23.

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Oriental studies focused on uncovering the values and practices of a civilization rather than reconstructing diachronic sequences (as was the case for European history).[116] This meant the discipline resisted the emerging scientific ethos; its methods were akin to those found in the humanities rather than the social sciences (i.e., close reading of text vs conducting empirical research). Anthropology, on the other hand, could be made to fulfill the requirements of scientific studies. It did this by implementing the methods of fieldwork and participant observation, i.e., ethnography. Moreover, whereas Oriental studies dedicated study to 'civilizations stuck in time', anthropology dedicated study to 'peoples backwards in time'. That is, the discipline sought to provide scientific justification for the self-supposed superiority of 'modern' (i.e., bourgeois) Europe by supplying evidence of 'unmodern' subjects and societies.

The formation of the modern disciplines reveals the culmination of what has been discussed thus far. It corporealizes the *paideia* of liberal Modernity. The hierarchical ordering of the disciplines and each discipline's *raison d'etre* exposes how liberal Modernity reproduces its self-referential system of knowledge in implicit and explicit ways. First, much like how the Great Chain ordered being as more 'perfect' the closer it was to God, modern knowledge is ordered as more 'positive' (i.e., 'true') the closer it is to accessing 'objective reality'. Which is to say, while the Great Chain as a theoretical tool was more-or-less abandoned by the nineteenth century, it inheres in secular knowledge as the prioritization of universals over particulars, forms over matter, and fixity over flux. Second, it is upon this approach to knowing that the self-referential knowledge system of liberal Modernity is made overt. As discussed, the liberal Modernist Idea of being and of being-in-the-world, i.e., the 'modern Human' as the political, legal, and economic subject of the sovereign nation-state, emerges through the historical becoming of (bourgeois) Europe. Through discursive practices, these Ideas are established as the standard of what is 'modern' or 'acceptable', yet this gap in the valuation of different kinds of being and being-in-the-world is concealed by a veneer of 'universalism'. This then justifies and is justified by the establishment of Europe's historical becoming as the historical line of Modernity.

Lastly, the structuring of knowledge towards the production of universals leads academics to neglect the disparity between 'Ideas' ('the abstract') and 'living reality' ('the concrete'). To be clear, this tension is not between 'metaphysical' and 'empirical' knowledge, but between the strong and weak form of modernity. Both metaphysical and empirical knowledge contribute to understanding of the real, but the strong form of modernity can only *represent* the real whereas narratives of historical becoming, i.e., the shared act of reflecting on the past, is the process of *actively engaging* with the real. By enfolding 'the real' in representation, liberal Modernity necessarily perceives 'difference' negatively, i.e., as something

[116] Wallerstein et. al., *Open the Social Sciences*, 24.

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to be reconciled—for if it is not, the liberal Modernist claim to universalism is overturned. Moreover, since it is historical becoming—i.e., one's situated and particular history—that produces difference, the reconciliation (or reterritorialization) of difference within liberal Modernity entails the process of generating a- or nonhistorical categories. However, by starting with the nonhistorical claim that 'we are all human', liberal Modernity conceals the varying material realities humans experience and the immaterial ideas on being and being-in-the-world that other humans have. Ultimately, the disruption of liberal Modernity as coloniality is not only a normative demand, but also a practical one since the reproduction of liberal Modernity's self-referential knowledge system impedes knowledge production (scientific and otherwise) by devaluating all other knowledge systems and precluding the possibility transsystemic learning.

III. HISTORY BEYOND IDEOLOGY.

As mentioned early in this paper, the renewed desire for narratives of world history is a somewhat recent turn. Prior to this renewal, academic historians generally directed methodological focus towards the quality of sources and evidence as a self-reflexive move away from interpretation and the construction of large-scale narratives. The reason for this is embedded in the epistemic transformations discussed above, i.e., the hierarchical ordering of disciplinary knowledge in regard to how well its methodologies could fulfill positivist obligations. Through this, history, which was once an element of moral philosophy, sought to separate itself from the 'speculative' level of the humanities to the more positivistic status of the social sciences. This long-term 'professionalization process' led to the abandonment of macro perspectives for a 'myopic approach'. The desire for a 'scientific history' "… was based on the study of new source materials… by means of the development of precise rules for source criticism".[117] As a modern academic discipline, history presumed the teleological formation of the nation-state and narrowed focus on understanding their respective trajectories.

In the 1930s, historians began to relate historical processes to the findings of other disciplines, specifically sociology, economics, anthropology/geography, and psychology. This, alongside the growing interest in Marx's theories, re-initiated interest in large-scale social and economic history. Investigation into this opened up the presumed exceptionality of European nation-states for critique. Such is exemplified by the *Annales* School, a group of French historians who produced a style of historiography to study *la longue durée* ['the long term']. That said, the application of social science theories by these historians did not *critically* confront the presumed exceptionality of European nation-states; rather, it propped up modernization theory, i.e., the idea that the 'backwardness' of non-European states is not

[117] Bo Strath, "Ideology and History," *Journal of Political Ideologies* 11, no. 1 (2006): 24. https://doi.org/10.1080/13569310500395859.

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explained by deterministic models but by a lack of development.[118] This justified 'humanitarian intervention' into peripheral and semi-peripheral countries for the purpose of establishing liberal democracy (i.e., democratic institutions based in global capitalism). For example, the 'developmental' loans provided by the IMF and the hundreds of military operations authorized to depose 'dictators'. The nefarious and paradoxical outcome of these interventions has been established by others and need not be detailed here.[119] The point made is that while dominant history was becoming more reflexive at this time, it worked to confirm the 'givenness' of the emergence of the nation-state and Europe's furthered progression rather than critique it.

It was not until the 1980s that the historical academies of core nations began to internalize postmodernism and its critiques against modernity. This is broadly understood as the 'linguistic turn' (or 'rhetorical turn') in history. This turn deviated from the canon of historical objectivity by rejecting its central tenet: that there is a 'real' past which exists outside our textual representations of it. For historians of the linguistic turn, historiography and myth-making are joint endeavours (at the furthest edge of the turn, they are identical). Historical narratives necessarily contain a particular arche, that is, "… context of legitimation or doxa of everyday life that right and wrong are defined and laws which separate the proclaimed communities of destiny from the arbitrary and capricious are promulgated".[120] And while this arche is not simply a collection of falsehoods, "the truths [it] convey(s) are truths constructed from the *ex post* ['after the fact'] position" (translation added).[121] This helps to clarify the intent of this 'Part I'. The aim was not to critique the historical becoming of Europe as insignificant, ruinous, and malicious, but to demonstrate how the production and reproduction of any particular arche as universal impedes historical becoming by reterritorializing difference. In contrast to European thinkers who assume their methods of observation make them arbiters of truth, and in opposition to the tenets of positivism which assumes that a certain kind of observer can stand above the processes it studies, this thesis holds that 'objectivity' can only be grasped through complexifying not simplifying. The acquisition of peace and prosperity that goes beyond privilege requires the participation of all beings—human and otherwise—that constitute our world.

One of the difficulties in critiquing liberal Modernity is that it is intertwined with historical becoming. For this reason, when I say that true peace and prosperity requires participation, one might rightfully point out

[118] As Strath states: "This social science orientation of academic historiography broke through in the 1960s and the 1970s. An important battle in this break-through dealt with positivism and the issue of objectivity. Ironically, rather than critically confronting master narratives of national greatness, the social theory connection had the unforeseen effect of confirming such histories about the emergence of the European welfare states as national communities of destiny, and they did it just before or when the welfare state began to crumble." ("Ideology and History," 25)
[119] See David Graeber, *Debt: The First 5,000 Years* (Melville House, 2014); Vincent Bevins, *The Jakarta Method: Washington's Anticommunist Crusade & the Mass Murder Program That Shaped Our World* (Public Affairs, 2021).
[120] Strath, "Ideology and History," 29.
[121] Strath, "Ideology and History," 29.

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that this very notion was central to the thought of Enlightenment thinkers, particularly leading up to and following the French Revolution. Indeed, constraining state and tyrannical power is a fundamental theme to classical liberalism. The colonial compulsion arises when the active form becomes pacified through its representation—for example, 'participation' is dis-imbedded from living relations and becomes a property of the administrative nation-state. This is problematic in two ways: first, it enforces a particular kind of participation (engagement with the bureaucratic order) which limits engagement since it requires one to present and perform as a particular kind of subjectivity (political and legal/economic citizen); second, as a corollary to the first, it alienates individuals from their living relations and ultimately leads to apathy—justice is no longer is an active and shared endeavour, but the jurisdiction of the state and its institutions. In order to facilitate participation that goes beyond passive representation, it is necessary to unsettle the coloniality of liberal Modernity, i.e., its Idea of being, its Idea of being-in-the-world, and its Idea of world history as Europe's progressive history.

History beyond ideology entails history that is living, i.e., tradition, shared memories, embodied knowledge, situated practices, etc. In this manner, conservative and realist theories of universal history that are based in the 'nation state' are insufficient. This is not to say that they are unnecessary, but that they fail to capture the full range of historical knowledge that escapes and exceeds the category of the nation state and nationalism. The centrality of the nation state in modern historical narratives (which has been challenged for at least three decades now[122]), overlooks all the various other forms of social organization that have and do exist. History beyond ideology demands investigation into the emergence of the nation form in history. This has been one of the tasks of this 'Part I'. As has been shown, the nation state is not a static entity that appeared fully formed and is thus incapable of transformation, but neither is it fully malleable and capable of becoming anything. The unfolding of the nation state has shown itself to be indispensable to the formation of liberal Modernity. What would it mean for the nation state to release its role in coloniality? Much work is being put towards this question. Indeed, is it not the case that the bulk of social theory is put towards 'making the state work for everyone' (or contending that this is an impossible task)? Whatever the case, what has been revealed is the breadth of knowledge we have to ground a truly collective 'collective memory'; thus, opening the expanse of available futurities. From Indigenous knowledge to critical feminist perspectives and posthumanist methodologies, it *can* be easier to imagine the end of capitalism rather than the end of the world.[123] This thesis hopes to contribute to this

[122] Etienne Balibar, "The Nation Form: History and Ideology." *Review (Fernand Braudel Center)* 13, no. 3 (1990): 329–61. http://www.jstor.org/stable/40241159.

[123] The phrase 'it is easier to imagine the end of the world than it is to imagine the end of capitalism' is found in Mark Fischer's *Capitalist Realism* (2009), the earlier form of which is attributed to Fredric Jameson's *The Seeds of Time* (1994). The first expression of the phrase, however, is found in H. Bruce Franklin's essay "What Are We to Make of J.G. Ballard's Apocalypse?" (1979).

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work by considering how these interventions might gain foothold through disruption of the coloniality of law. This is the topic of 'Part II'.

IV. CONCLUSION.

The purpose of this 'Part I' was to reveal the structural delusions of modernity/coloniality. To do this, I first delineated between a weak and strong form of modernity. Whereas the weak form entails historical becoming, the strong form impedes historical becoming by enforcing a particular kind of being and being-in-the-world as the standard of what is 'modern' or 'acceptable'. It does this through the imposition of a self-referential system of knowledge which reproduces itself through the reterritorialization of difference. The form of strong 'Modernity' this thesis takes issue with, and which is implied in the whole of decolonial scholarship, is liberal Modernity. Within liberal Modernity, the particular Idea of being and being-in-the-world is the 'modern Human' as the 'political, legal, and economic citizen of the nation-state'. Within these Ideas reside intrinsic and extrinsic particularities which are concealed within a self-universalizing logic. This veneer of universality justifies and is justified by a particular Idea of history, i.e., not only that history progresses teleologically, but also that this progressive line *is* the historical becoming of Europe's provincialized milieu.

To exemplify how this self-referential system of knowledge manifests as colonial compulsion, I looked to the development of the modern disciplines—the *paideia* of liberal Modernity. The assumptions and commitments underlying the formation of the disciplines *explicitly* reproduce liberal Modernity as coloniality by seeking out difference in order to reterritorialize it within its self-referential system. The hierarchical ordering of the disciplines *implicitly* reproduces liberal Modernity as coloniality by prioritizing the production of universals over particular knowledge which conceals the particularity of produced universals. The subversive role of knowledge today, and the move towards interdisciplinary and transdisciplinary approaches to research is not evidence of liberal Modernity 'overcoming' itself, but of the persistence of historical becoming which, while impeded, can never be fully stopped.

If we now consider, as Spinoza had, 'why men fight for their servitude as stubbornly as though it were their salvation' we come to three distinct yet interrelated assumptions: that one's freedom depends on the existence of a state; that the stability of the modern administrative state depends on its ability to fulfill the common good; and that the common good depends on commercial expansion. However, as this section has revealed, the belief that these assumptions are universal, i.e., persist across time and space, is a delusion. Once we deconstruct the presumed 'givenness' of these claims, man's 'servitude' is found in his dedication to false Ideas: behind the veneer of universality, those who benefit the most from the structure of liberal Modernity (the elite and ruling class) wield its self-referential and self-reproducing knowledge

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system to justify their rule as benevolent and portray their exploitation as for the common good (or at least, the closest to the common good we can get). Under this system, there is no peace or prosperity, only privilege. This privilege is not just between the colonized and colonizers (nor just peripheral and core states), but ubiquitous in liberal Modernity as a condition of its underlying dualistic and hierarchical logic. In ‘Part II’, the structural delusions of liberal Modernity will reveal the dominant approach to justice to be intrinsically insufficient.

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PART II: DISRUPTING THE COLONIALITY OF LAW

Somewhere, and I can't find where,
I read about an [Inuit] hunter who asked the local missionary priest,
"If I did not know about God and sin, would I go to hell?"
"No," said the priest, "not if you did not know."
"Then why," asked the [Inuit] earnestly, "did you tell me?"

— Annie Dillard*, Pilgrim at Tinker Creek*, 1974.

To attempt to imprison the law of a time or of a people within the sections of a code is about as reasonable as to attempt to confine a stream within a pond. The water that is put in the pond is no longer a living stream but a stagnant pool, and but little water can be put in the pond.

— Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, 1936.

I. INTRODUCTION.

In 'Part I', this thesis laid bare the structural delusions of liberal Modernity. These delusions are justified by the coloniality of law. The purpose of this 'Part II' is to reveal how and why the dominant approach to justice, rules-based justice, is intrinsically insufficient. To do this, the chapter begins by explicating rules-based justice which is characterized by three fundamental assumptions: (1) the world is characterized by the social conflict of wills which are equally as arbitrary, (2) social conflict will only end in the unity of the highest concept, and (3) the goal of philosophy and life is to reach this highest concept. Upon these assumptions, rules-based justice is not only incapable of addressing the coloniality of law, it unwittingly perpetuates it. In order to disengage from this form of justice, it is necessary to rethink power. This reconceptualization of power follows Foucault's departure from the 'juridico-discursive model' to the 'participative-discursive model'. Under this latter model, power is no longer bound to state and legal institutions and inflicted from the top down, but ubiquitous within a society and immanent in social relations. The development of the participative-discursive model corresponds to the development of the creative exercise of governmental power from the preservative exercise of governmental power. In disaccord with traditional hypotheses of power, this does not entail the elimination and suppression of discourse and knowledge on 'undesirable' peoples and ways of life, but the expansion of discourse and knowledge. It is this expansion which underlies liberal Modernity's logic of 'capture and domination'.

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The participative-discursive model of power accompanied by an alternative conception of truth/truth-making demands a new framework for justice. The thesis offers one based in place. This section draws from the work of Leanne Simpson, Shiri Pasternak, and Glen Coulthard to overturn the assumptions of rules-based justice and introduce the assumptions grounding a place-based justice. These three assumptions are: (1) the world is characterized by harmony and conflict, both 'social' and 'natural', between wills which rooted or disengaged from place, (2) conflict, whether 'social' or 'natural', is not ended through the authority of the highest concept, but through the grounded authority of place, and (3) the goal of theory and life is not to reach the highest concept which only offers recognition claims based on 'essentialist' notions of identity, but to engage with the interconnected totality of life without the imperative to 'reconcile' it with the 'One'.

II. RULES-BASED JUSTICE AND THE COLONIALITY OF LAW.

There are two points to be explored: (1) how justice under liberal Modernity manifests as a rules-based endeavour, and (2) how rules-based justice produces and reproduces the coloniality of law. To do this, the section will first provide a philosophical overview of rules-based justice to reveal its affinity with the assumptions and commitments of liberal Modernity. From this, the section will explore the colonial encounter starting in 1492 to demonstrate how rules-based justice and the coloniality of law are co-constitutive.

II.I Rules-Based Justice:

While legal positivism is often pitted against natural law theory, when viewed historically, legal positivism is shown to unfold from many of the same assumptions driving natural law theory. Indeed. In 1625, Hugo Grotius (1583—1645) published *On the Law of War and Peace*. This text would evoke a 'modern natural law' which would be taken up and expanded on by theorists such as Thomas Hobbes (1588—1679), John Locke (1632—1704), Christian Thomasius (1655—1728), and many others. Like the 'traditional' natural law theory of Baruch Spinoza (1632—1677) and Gottfried Wilhelm Leibniz (1646—1716), the modern natural law theorists took the problematic object to be the reality of social conflict. However, whereas the traditional natural lawyers—in accordance with the Thomistic interpretation—saw the end of conflict in the development of individual character, the modern natural lawyers conceded social conflict to not only be inevitable but also ineradicable. As a corollary to this, the natural law theorists were not concerned with questions of the good nor of individual perfection, but of obligations, rights, and duties.[124] This marks the departure to be taken between natural law theory and the doctrine of legal

[124] J. B. Schneewind, "Kant and Natural Law Ethics," *Ethics* 104, no. 1 (1993): 53-7. http://www.jstor.org/stable/2381693.

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positivism. That is, whereas traditional natural lawyers perceive the force of law to reside in its merit as revealed to and in the perfected individual, legal positivists perceive the force of law to reside in 'social facts' without regard to the justice of its content, i.e., the authority of law is rooted in structures of governance that produce laws.

In contemporary legal theory and practice, the philosophical doctrine of legal positivism and the moral doctrines of traditional natural law persist concurrently in complex ways. It is in this interdependent relation that we identify the predominant approach to justice within liberal Modernity, that is, a historically specific rules-based justice. A philosophical investigation into rules-based justice may start in Kant and traverse through Hegel, for it is Kant who reveals the legal consciousness of the official and it is Hegel, though oft-ignored in contemporary legal theory, who extends (or rather, relocates) this reasoning to the citizen. In 'Part I', the thesis gave a brief overview of the Kantian subject as fundamentally a legal subject which will now be briefly expanded on.

To recall, Kant sets up a division between the noumenal and phenomenal worlds. Whereas the noumenal world contains 'things in themselves'—things as they truly exist, the phenomenal world contains 'appearances'—things they appear to the human subject. Humanity, which only has access to the phenomenal world, first exists in an 'original position' or state of nature. In contrast to the interpretation made by Wolff, Kant does not believe the original position to be conducive to human autonomy. Rather, it is precisely because of the individual's 'will to govern', i.e., to assert rights and justice as their arbitrary will demands, that *precludes* human autonomy. The reality of this produces the social contract which is in constant threat of fracturing through humanity's 'unsocial sociability':

> By 'antagonism' I mean the unsocial sociability of men, i.e., their propensity to enter into society, bound together with a mutual opposition which constantly threatens to break up the society. Man has an inclination to associate with others.... But he also has a strong propensity to isolate himself from others, because he finds in himself ... the unsocial characteristic of wishing to have everything go according to his own wish.[125]

To address this, Kant argues for the necessity of absolute obedience to existing law. Indeed, while Kant holds that citizens can voice their concerns on public institutions,[126] they must not proceed to civil disobedience, for "any insurrection that breaks out in rebellion is the highest and most punishable crime within a commonwealth, because it destroys its foundations".[127] On this, Kant's moral philosophy

[125] Immanuel Kant, "Idea for a Universal History," in *Kant: On History,* ed. Lewis White Beck, (Bobbs-Merrill, 1963), 15.
[126] Immanuel Kant, "On the common saying: That may be correct in theory, but it is of no use in practice (1793)," in *Practical Philosophy*, ed. Mary J. Gregor, (Cambridge University Press, 1996), 302.
[127] Kant, "On the common saying," 298.

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corresponds with the Hobbesian conception of liberty as existent *among States but not men*. Within the State, the task of the official is to delegate authoritative determinations (positive law) to replace the judgements of individuals and thus ensure the citizen's freedom from another individual's arbitrary will.

It is clear that Kant asserts the necessity of absolute obedience; however, it is not the case that Kant is advocating for totalitarianism (see footnote).[128] As revealed in 'Part I', Kant argues that while the noumenal world is inaccessible to human experience, it also does not preclude what reason demands. In other words, in place of a consequentialist view of God or of the Leviathan ('follow the law or else face punishment'), it is the individual's rationality which guarantees its external freedom from another's arbitrary will through the *self-legislation of law*, and it is this self-legislation of law which guarantees the external freedom of all. However, for many Hegelian scholars, herein lays a paradox:

> The paradox arises from Kant's demand that, if we are to impose a principle (a maxim, the moral law) on ourselves, then presumably we must have a reason to do so; but, if there was an antecedent reason to adopt that principle, then that reason would not be self-imposed; yet for it to be binding on us, it had to be […] self-imposed.[129]

This paradox emerges out of the realization that Kant foregrounds the legal consciousness of the official and not the citizen. In other words, "[w]hat the observing philosopher and observed legal official accept as legal "actuality" is a supersensible world that is above and separate from human experience".[130] For Hegel, Kant's empty legal formalism produces a false moral authority which at best produces duties that the moral person *ought* to oblige. At worst, it overlooks the continuous struggle between wills which precludes knowledge of the progression of *Geist* [the highest development of the collective spirit or mind].

Hegel's philosophy addresses Kant's empty formalism by incorporating the noumenal within the phenomenal—or rather, by presenting a supersensible world that contains both. There is no externality to the Hegelian Ideal. Any and all 'actuality' is produced in and through the mind. Yet, and as a corollary to this, Hegel's ideal world is not fixed in time or space. By taking social relations into account, Hegel's philosophy shows how the legitimacy of 'forms', such as institutional orders, do not reside in some

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[128] This is contentious. In *The Metaphysics of Morals*, Kant holds that "there can thus be no rightful resistance on the part of the people to the legislative head of state. For a state of right becomes possible only through submission to his universal legislative will. Thus there can be no right of sedition (*seditio*), and still less a right of rebellion (*rebellio*), least of all a right to lay hands on the person of the monarch as an individual, or to take his life on the pretext that he has misused his power (*monarcho-machismus sub specie tyrannicidii*). The least attempt to do so is high treason (*proditio eminens*), and a traitor of this kind, as one who has tried to *destroy his fatherland* (*parricida*), may be punished with nothing less than death." See Immanuel Kant and Hans Reiss, *Kant: Political Writings*, 2nd ed. (Cambridge University Press, 1991), 144.
[129] Terry Pinkard, *German Philosophy, 1760-1860: The Legacy of Idealism* (Cambridge University Press, 2002), 59.
[130] Willian E. Conklin, *Hegel's Laws: The Legitimacy of a Modern Legal Order* (Stanford Law Books, 2008), 86.

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external source (an objective 'supersensible' world), but through the development of the individual's legal consciousness. And this consciousness develops through continuous struggle with oneself and with others. According to Hegel's 'philosophical jurisprudence', it is only when all inhabitants recognize themselves in the legal order and, in turn, all inhabitants recognize one another, that institutions and their posited rules become universal.[131] To understand how this occurs, a few terms need to be introduced and examined; these are, *particular laws* [*Gesetze*] and *the Law* [*Recht*].

For Hegel, there are two senses of 'particular laws': In one sense, they refer to "the laws" that are posited by an external author (a legislature, a court). These are mediated by *Verstand* ['the understanding'] and are what Kant establishes in his empty legal formalism. Within Hegel's philosophy, *Verstand* has only a negative meaning since it can only establish formal identity (i.e., determinateness and fixity). It is the presumption that concepts have essence which alienates thinking from actual existence. *Verstand* thus "privileges a professionally trained elite of expert knowers of indeterminate concepts, knowers who ultimately posit their arbitrary wills behind the legal analysis of concepts or the posit of their constitutional values".[132] In contrast to this, the second sense of particular laws is those legal rules mediated by *Vernunft* ['reason']. These laws become particularized within a subject's consciousness. This sense of particular laws is located in the unfolding of the principle of 'self-legislation' in time. That is, the conviction that the first rule-applier is not the official, but the individual who recognizes her powers of self-determination.[133] This is the struggle implicated within Hegel's philosophy.

Let us imagine this dialectic. First, I unconsciously exist in the whole. Through my engagement with legal objects (e.g., particular laws), I come to realize that I possess an individual will that is distinct from the many; I exist as an immediate and self-conscious will separate from society. At this point, I do not recognize myself in the legal formalities presented before me. Due to this, I might challenge laws which prevent me from fully exploiting the market, then my fortune may be hindered by an other arbitrary will exploiting the market. I might attempt to create a fraudulent scheme, then I might be frauded by an other arbitrary will's scheme. I might undermine the legal obligations of a contract, then I might be undercut by an other arbitrary will not following through with their end of a contract. The concepts which were once abstract and separate from my will become actualized in my social experience and thus particularized in my will. For Hegel, this is an immanent and linear process. This means each self-conscious realization, or structure of consciousness, unfolds from my experience of it and provides the basis for the next. Through

[131] Conklin, *Hegel's Laws*, 92.
[132] Conklin, *Hegel's Laws*, 103.
[133] Contemporary examples of this is found in the work of Jeremy Waldron. See Waldron, "Human Dignity: A Pervasive Value," *NYU School of Law, Public Law Research Paper* No. 20-46, (2019): 1-18. http://dx.doi.org/10.2139/ssrn.3463973

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these experiences, I come to recognize the other arbitrary wills within the society and the legal formalities which had once appeared to be a burden on my will, now appear to be a shared universal between us. The *Geist* of legal reasoning reaches its highest development as *Recht* which is when the laws of a state are truly universal (i.e., each arbitrary will recognizes one another).[134]

Kant's and Hegel's ideas on legal reasoning and legal consciousness reveal the form of justice reified within liberal Modernity. This is referred to here as rules-based justice. We can infer three fundamental assumptions of rules-based justice: (1) the world is characterized by the social conflict of wills which are equally as arbitrary, (2) social conflict will only end in the unity of the highest concept, and (3) the goal of philosophy and life is to reach this highest concept. Though perhaps not readily apparent, these assumptions are problematic. To show this, it is first necessary to explore what exactly is meant by the 'coloniality of law'. A comprehensive appraisal of the entirety of modern law, even of just Canada, is not possible here. Instead, the discussion will limit itself to Spain's colonial encounter with the so-called 'New World'. Of course, the modern legal systems of Canada, the United States, and other 'core countries' each contain their own genealogical line of development which do not trace directly to Spain or the Crown of Castile. Nevertheless, because the early years of the colonial encounter realize the self-referential system of knowledge of liberal Modernity, it has critical insights for modern law in general.

II.II The Coloniality of Law:

The Spanish conquistadors were privately financed enterprises. This meant that the Crown of Castile was only relied upon for legal authority.[135] At the moment of the colonial encounter, the Indigenous peoples of the Americas had no legal status. This ambiguous legal status could do nothing to prevent the brutal colonization methods, such as *repartimiento* (also known as *mit'a; cuatequil,* meaning forced labour), initiated by the conquistadors in these early years. This legal grey space made way for the institution of the *encomienda* in 1503 by Nicholas de Ovando, Columbus's successor. The *encomienda* was a royal grant system which attempted to define the status of the 'Indian' and curb the abuses of *repartimiento*. It worked by "permitting the grantee (*encomendero*) to receive tribute in goods and labour services from the Indians compromising the *encomienda*".[136] As Batchelder and Sanchez reveal:

> The justification for the *encomienda* was that the Indians owed service to the Crown, and the Crown temporarily transferred that service obligation to a Spaniard, usually as a reward for his service to the Crown. Thus, the cession was the usufruct of a royal prerogative, with the tribute owed the *encomendero* in commutation of the tribute otherwise owed the Crown. In return,

[134] Conklin, *Hegel's Laws,* 92-110.
[135] Ronald Batchelder and Nicolas Sanchez, "The Encomienda and the Optimizing Imperialist: An Interpretation of Spanish Imperialism in the Americas." *Public Choice* 156, no. 1/2 (2013): 45.
[136] Batchelder and Sanchez. "The Encomienda and the Optimizing Imperialist," 46.

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> *encomenderos* were obliged to provide for the protection, education, and religious welfare of Indians.[137]

This system is based on the logic of *colonial benevolence*. Such 'benevolence' provides the moral justification for the imposition and expansion of what we retrospectively identify as liberal Modernity. While liberal Modernity is typically associated with colonialism of the covert and benevolent type, colonialism of the overt and cruel type is its Janus face; this may be referred to as *colonial realism*. This co-constitutive relation is a result of their common genealogical line and complementary logics: while both emerge from Christian and Enlightenment/civic humanism, colonial realism establishes the logic of domination while colonial benevolence establishes the logic of universalism—a universalism which, by way of its historical development and Janus face, perpetuates coloniality as capture.

From the perspective of colonial benevolence, the failure of the *encomienda* was due to the failure of the *encomenderos* to uphold their obligations. An attempt to remedy these failures led to the proclamation of the 35 Laws of Burgos in 1512-13 which held that Indigenous peoples were free people (i.e., had souls) and therefore could be 'taught' and 'willingly converted' to Christianity. This, along with the New Law of the Indies, 1542, which also attempted to forbid the enslavement of Indigenous Americans, would be highly contested by Peruvian *encomenderos* in fear of losing their wealth and status. In 1544, these *encomenderos* would "[rally] around Gonzalo Pizarro, who requested that Emperor Charles V suspend the New Laws until they had had adequate opportunity to voice their objection" insisting "… that he only wanted justice for the encomenderos, [whose] rights the New Laws had compromised".[138] Despite the pushback, the New Laws were decreed, yet they did little to curb the destructive consequences and abuses of the *encomienda*. Later, a revised form of the *repartimiento* system would return.

From 1550 to 1551, European theologians would be assembled to argue whether Indigenous peoples were, in Aristotelian terms, 'natural slaves'. This is the Valladolid debate. In this, the Spanish humanist Juan Gines de Sepulveda argued for the moral and therefore legal permissibility of the violent enslavement and extermination of Indigenous peoples. In short, Sepulveda held that the institutions of cannibalism, idolatry, and human sacrifice found in Mesoamerican kingdoms revealed the Indigenous Americans to be barbarous since, as members of the society, they participated in the development of these institutions rather than contravening them. Sepulveda deduces that Mesoamerican societies are not true commonwealths and Indigenous Americans, in not realizing this, are not rational, enlightened men. As

[137] Batchelder and Sanchez. "The Encomienda and the Optimizing Imperialist," 46.
[138] Borowitz, Molly. "Clearing the King's Conscience: Tyranny and Legal Fiction in the New Laws of 1542." *Colonial Latin American Review* 33, no. 2 (2024): 126-7. Paraphrased and translated from Gonzalo Pizarro, "Representación de Gonzalo Pizarro al rey [1544]." In *Documentos relativos a don Pedro de la Gasca y a Gonzalo Pizarro*, edited by Juan Pérez de Tudela y Bueso (Real Academia de la Historia, 1963).

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such, Sepulveda concludes that the Spaniards are morally right to subjugate the Indigenous Americans and introduce the necessary prerequisites for civilization.

Although Sepulveda draws from the Old Testament to liken the Indigenous Americans to peoples in the bible who had been annihilated by God for their 'wickedness',[139] his argument is secular rather than theological. Even so, his logic is preceded by various ontological assumptions on Good vs Evil, on natural law, on reason and the faculties, etc.; and these ontological assumptions remain 'hidden' in the transcendent status of Christianity. Thus, when he argues that Mesoamerican kingdoms cannot be true commonwealths due to their institution of inhumane practices ('inhumane' being the breach of human freedom), he simultaneously makes the argument that Indigenous Americans, by right of Nature itself, ought to be violently subjugated by the Spanish. In other words, the institution of human 'unfreedom' in Mesoamerican society permits their enslavement by the Spanish, yet the institution of human 'unfreedom' in Spanish society (slavery) is disregarded because the Spanish are in possession of the fundamental faculties implanted by God and thus are the ones who discern Good from Evil as presented in Nature and are not party to discernment themselves.

In opposition to Sepulveda who argued in defence of the *encomienda* system and the colonists' property rights, Bartolomé de las Casas—a priest who had long been outspoken on the humanity of Indigenous Americans—argued against the moral and legal permissibility of the enslavement of Indigenous Americans. Unlike Sepulveda's secular position, Las Casas' position was openly theological. It attacked from three angles: pragmatic, logical/philosophical, and reflective. Pragmatically, Las Casas opposed the enslavement of Indigenous Americans on the grounds that it would interfere with their conversion to Christianity. Like Sepulveda, this presumes the Indigenous Americans to be inferior, but ignorant and thus innocent. To have 'war' against Indigenous Americans would only make Christians seem angry and unjust:

> And so what man of sound mind will approve a war against men who are harmless, ignorant, gentle, temperate, unarmed, and destitute of every human defense? For the results of such a war are very surely the loss of the souls of that people who perish without knowing God and without the support of the sacraments, and, for the survivors, hatred and loathing of the Christian religion.[140]

[139] Juan Gines de Sepulveda, "A Treatise of the Just Causes for War against the Indians," in Bartolomé de Las Casas and Franklin W. Knight, *An Account, Much Abbreviated, of the Destruction of the Indies* (Hackett Publishing Company, Incorporated, 2003), 103-105; see Sepulveda's application of Sodom and Gomorrah.
[140] Bartolomé de Las Casas and Martin L. Marty, *In Defense of the Indians*, trans. Stafford Poole, (Northern Illinois University Press, 1992), 34.

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Philosophically, Las Casas sought to delineate between four kinds of 'barbarians' found in Aristotle's philosophy and following from Saint Thomas and other clergy scholars. The first kind describes the man who, driven by rage or hatred, leaves the path of right reason and descends from his position of supreme goodness to supreme wickedness. Las Casas relates this form to the Spaniards and the inhumane practices they imposed on nations, including those practices inflicted in the so-called New World. The second kind describes those who lack certain characteristics of civility, such as written language, not in nature but by circumstance such as living in a barbarous kingdom. Under such, the subjects may be so virtuous in themselves that they follow the rules of the kingdom and its ruler(s) even if it slights them as individuals. The third kind describes those without any political organization at all, which describes "barbarians in the absolute and strict sense of the word".[141] Lastly, from the clergy scholars, the fourth kind describes all non-Christians. On these four categories, Las Casas refutes each of Sepulveda's defences: on the first, the Spaniards risk barbarism by continuing their attacks against the Indigenous Americans; on the second and third, the Indigenous Americans *do* have political organization, and though it is inferior to the Spaniard's, their inferiority of governance does not translate to their absolute inferiority in nature; and on the fourth, if the Spanish continue their 'war on the Indians', they risk spreading barbarism by impeding the conversion of the Indigenous peoples to Christianity.

To expand on the first refutation, Las Casas provides a reflective argument against the Spaniards themselves, i.e., that the Spaniards are at risk of becoming barbarians themselves by continuing to carry out barbaric acts against the Indigenous peoples. The underlying premise of this argument is that the Spaniards are driven by hatred, greed, and ignorance:

> Their error and ignorance are also convincingly substantiated by the fact that they draw conclusions on matters which concern a countless number of men and vast areas of extensive provinces. Since they do not fully understand all these things, it is the height of effrontery and rashness for them to attribute publicly to the Indians the gravest failings both of nature and conduct, condemning en masse so many thousands of people, while, as a matter of fact, the greater number of them are free from these faults. All this drags innumerable souls to ruin and blocks the service of spreading the Christian religion by closing the eyes of those who, crazed by blind ambition, bend all their energies of mind and body to the one purpose of gaining wealth, power, honor, and dignities.[142]

For his part, in 1502, Las Casas took part in the conquest of Cuba, settled in Hispaniola and made a fortune as an *encomendero* [*slave-holder*]. It was during this time that he developed his views on Spain's exploitation of the so-called New World. In 1509, he renounced his land grant, released his slaves, and returned to Rome. Three years later, in 1512, Las Casas became the first ordained priest to denounce

[141] Las Casas, *In Defense of the Indians*, 38.
[142] Las Casas, *In Defense of the Indians*, 33.

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Spain's colonial presence in the Americas. It should be noted that at least initially, Las Casas' sympathy was largely reserved for the Indigenous Americans. Indeed, in 1516, Las Casas suggested to King Charles' counselors to issue a license for the importation of slaves, from Africa and elsewhere (i.e., including white slaves), to alleviate the burden placed on the Indigenous slave population. In 1517, a young King Charles "authorized the export of 15,000 slaves to San Domingo, and thus priest and King launched on the world the American slave-trade and slavery".[143] Las Casas perhaps assumed African slavery to be a more 'just' evil due to legal rights of slaves codified within *Las Siete Partidas*, without which the Indigenous Americans experienced "… violent and raging perdition" which, if unimpeded, "…was to sterilize and consume the greater part of mankind in [the] indies".[144] However, he later expressed regret on this position.[145]

Las Casas's defence presents the precursor to much of liberal international law and development studies. In other words, while it is critical of colonial realism (colonialism which is cruel and overt), it does not question the underlying value of colonialism in spreading Christianity (or 'capitalism' and 'liberal democracy' in its modern derivatives). That said, if we imagine ourselves in Las Casas' position, the approach of colonial benevolence may appear as the only avenue for delimiting the abuse of power of our contemporaries. Such a realization grounds Audre Lorde's insight: that 'the master's tools will never dismantle the master's house'.[146] Colonial benevolence and its modern derivatives do not truly challenge the abuse of power; rather they make the effects more diffuse and obscure which in many ways justifies the expansion of power. This point will be expanded on in the next section 'Rethinking Power'.

To conclude this section, the tension between Sepulveda's and Las Casas' positions provide critical insights into the coloniality of law. In accordance with the material-historical and philosophical phenomenon discussed in 'Part I', the self-referential knowledge system of liberal Modernity produces a matrix of power which holds the 'rational' (formerly Christian) European subject as the standard of moral progress (i.e., of what is 'modern' or 'acceptable'). This is co-constituted through the devaluation of non-European subjects. For Sepulveda, the non-European subject is essentially irrational and thus incapable of moral progress. For Las Casas, the non-European subject has the capacity for rationality—and thus is

[143] C. L. R. James, *The Black Jacobins* (Vintage Books, 1989), 4.
[144] Bartolomé de Las Casas, *History of the Indies*, eds. and trans. Andrée Collard (Harper and Row, 1971), 115.
[145] In Lawrence A. Clayton, "Bartolome de Las Casas and the Conquest of the Americas" (Willey-Blackwell, 2011), Las Casas is cited: "The suggestion to issue a license to bring African* slaves to the Indies was made first by the cleric Casas [writing in third person], not seeing how unjust the Portuguese were in taking slaves [on the coast of Africa]. Later on he realized how unjustly and tyrannically Africans were taken slaves, in the same fashion as Indians" (135).
[146] Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House," in This Bridge Called My Back: Writings by Radical Women of Color, ed. Cherrie Moraga and Gloria Anzaldua (Kitchen Table Press, 1983), 94-101.

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capable of moral progress—yet this capacity is underdeveloped and in need of intervention. This same double-sided logic was identified in the thought between Kant and Voltaire. Which is to say, the denigrated status of the non-European and their culture is not intrinsic to Christianity nor secularism, but internal to the system of liberal Modernity itself, driven primarily by the material (economic, social, political, and cultural) prospects gained through exploitation and dispossession.

The coloniality of law is law which functions as the de-subjectified European subject reifying the self-referential knowledge system of liberal Modernity, i.e., as "the great driver of binary patterns (right/wrong, legal/illegal) [which] establishes, among many things, fixed roles that subalternize social relations."[147] Indeed. In the first instance of the colonial encounter with the Americas, the Indigenous subject does not have formal legal status within any European legal system and neither does the European subject pre-emptively afford any type of informal legal status to them. As Columbus' letters and journals disclose, the two main goals of colonial conquest was to convert the Indigenous population to Christianity and to use the Indigenous population to enrich the Spanish monarchy. Neither require the Indigenous subject to be granted legal status, yet both implicate law. Indeed, the Valladolid debate revealed how the materialization of the second goal quickly gained pre-eminence even as it impeded the first, and it was in the tension between these two goals that law is introduced as a mediating factor. If the non-European subject is not a rational being capable of moral progress, then they cannot gain legal status. They are "natural slaves" that, as Sepulveda and Kant would argue, the rational European can 'do with as they please'.[148] If the non-European subject has the capacity for rationality and moral progress, they do gain legal status; however, it still does not make them equal to the European subject. The non-European subject continues to be an irrational being, only now they are *capable* of becoming rational. They become wards of the state that, as Las Casas and Voltaire would argue, can become *like* rational Europeans with time and under guidance. Yet the non-European will never be identical to the European subject since it s only the European subject that is allowed to choose and realize its own destiny.

Put differently, law emerges in the colonial encounter as a means to justify the imposition of liberal Modernity by mediating its worst effects. Although one can argue that modern law—whether within a nation-state or between nation-states in the international order—has exceeded this pattern in various ways, I would rebut this claim in two ways: first, it is not 'modern law' which has overcome itself, but the inevitability of historical becoming (weak modernity; the shared act of reflecting on the past) which continuously destabilizes stabilizing structures; second, 'strong Modernities' are characterized by how

[147] Alexandre Franco Bahia and Rainer Bomfim, "Coloniality of Law – a historical-institutional pattern of power," *Revista Videre, Dourados* 14, no. 29 (2022): 122. https://doi.org/1030612/ videre.v14i19.12989
[148] Kant, *Anthropology From a Pragmatic View*, 15.

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they are able to restabilize their structures; this is not done by denying change, but by managing it. Thus, while the structures of liberal Modernity appear different today than they did in 16th century, it is still the case that its matrix of power remains. While law has in some ways created space for the resistance of colonized people, in doing so, it has also determined the discourse within which resistance is possible. Since European legal systems, both common and civil as well as international law, operates as the de-personalized European subject, it manages resistance by reterritorializing it within the self-referential knowledge system of liberal Modernity. This is especially apparent when we examine how justice is approached in liberal Modernity, that is, as a rules-based endeavour.

To recall, the three fundamental assumptions of rules-based justice are: (1) the world is characterized by the social conflict of wills which are equally as arbitrary, (2) social conflict will only end in the unity of the highest concept, and (3) the goal of philosophy and life is to reach this highest concept. First, by assuming the equivalence between the arbitrariness of wills, rules-based justice strips each person of their specificity to make everyone "equal before the law". In other words, each person is disconnected from the particularity of their environment, family, community, culture, etc. and adjoined to the state as one 'political and legal subject' among many. When decontextualized, this might appear to be both logical and productive; however, in context, the act of imposing this idealized societal structure establishes and conceals power relations. Indeed. Since the idealized societal structure is not actually universal but particular to the milieu of European thought and history, its imposition does not introduce a 'universal equality' but rather the 'un-universal bias' towards the self-supposed superiority of European culture. The imposition of the idealized societal structure denigrates the societal structures of all other cultures by displacing them. Further, since the political and legal subject that constitutes the idealized societal structure is not actually universal but a particular kind of European subject, the imposition of the idealized societal structure results in a hierarchical ordering of subjectivities. For example, from who is deemed to be authoritative (the 'modern' bourgeois European), to who readily accepts this new authority (e.g., the petite bourgeoisie, the settler, the comprador), to who stands in the way of this authority (e.g., the Other, Indigenous peoples, Deleuze's concept of the 'war machine').

Second, while rules-based justice contains a capacity for dealing with particular and changing problems as they arise in time (as described in the move from Kant's empty formalism to Hegel's immanent dialectic), its commitment to the 'highest concept' forgoes the complexity of historical becoming for the simplified and provincialized logic of liberal Modernity. For example, when Hegel asserts, "if no state is there then reason [the reason associated with the progress of self-conscious will] demands that one be

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founded,"[149] he presumes the givenness of the 'reason associated with the progress of the self-conscious will which demands a state'. As revealed in Part I, however, this 'reason' is neither neutral nor universal; rather, it is located within that particular European subjectivity mentioned above. More specifically, it derives from the bourgeois European man who ensures the stability of his conception of self-actualization through a state which, above all else, protects his right to property and thus facilitates the expansion of his wealth. This was perhaps first made intelligible by Marx who 'flipped Hegel onto his head' (or feet if you prefer) to reveal the dialectic to progress *materially*, not idealistically, and to be driven by class conflict, not social conflict between identically arbitrary wills. On this note, Buck-Morss and others have extended this materialist intervention to reveal the dialectic to unfold materially between the colonized and the colonizers, thus making the colonized, enslaved, and disenfranchised the bearers of historical progress.[150] Ultimately, while Hegel's dialectic is of significant use, certain interventions against its idealism and teleological commitments must first be made.

Last, the question must be asked of whether an end to all social conflict is wholly desired. It is Friedrich Nietzsche (1844—1900) who recognized an important implication in the German Idealist project, particularly of Hegel. In the German Idealist tradition, the development of self-consciousness occurs through reason turning back on and critiquing itself. Hegel believed himself to have completed the project of German Idealism by placing reason within history. More specifically, upon the assumption that 'reason governs the world', Hegel shows world history to unfold as a rational process towards its teleological end in *Geist*.[151] With this realization, a new stage of self-consciousness is reached wherein, we can look back on history from an enlightened position but we ourselves no longer make history, or rather, no longer have the need. The necessary history has been done (which for Hegel is the progressive line of liberal Modernity) and through its dialectical unfolding across the world, social conflict will finally cease. However, as Nietzsche recognized, while social conflict is undesirable, it is also the thrust of culture. The end of social conflict also results in the end of creative advance into novelty. In response to this, Nietzsche commented on the need for 'history'—that is, the 'progressive' line of liberal Modernity—to reflect back on and correct itself:

> For the origin of historical education and its inherent and totally radical opposition to the spirit of a "new age," of a "modern consciousness"—this origin must itself be once again recognized historically. History must itself resolve the problem of history. Knowledge must turn its barbs against itself. This

[149] Georg Wilhelm Friedrich Hegel during a lectures series held in 1822, as cited in Conklin, *Hegel's Laws*, 109.
[150] Susan Buck-Morss, "Hegel and Haiti," *Critical Inquiry* 26, no. 4 (2000): 821–65. https://doi.org/10.1086/448993.
[151] Georg Wilhelm Friedrich Hegel and John Sibree. *The Philosophy of History* (Dover Publications, 2004), 28, 38.

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> triple Must is the spiritual imperative of the "new age," if there is in it truly something new, powerful, vital, and original.[152]

By attempting to decomplexify social and power relations, rules-based justice works to conceal and perpetuate the coloniality of law. In response, we might reapproach social and power relations, not with the intention of simplifying them, but with the goal of generating better arrangements for managing its complexity. This requires us to rethink what power and social conflict is.

III. RETHINKING POWER.

It is Foucault who provides the key to rethinking power. Like most scholars, Foucault shifts the focus of his work throughout his life. This thesis is interested in the shifts that took place between his publishing of Volume I and II of his *History of Sexuality*. Together, these texts develop his theory of power. Let us begin with the model of power Foucault seeks to unsettle. The juridico-discursive model of power describes power in purely negative terms within a relation of domination. Under this model, power is something that is possessed by officials, exerted only to repress, and centralized within state and legal institutions. This model of power has traditionally been used to describe the operation of power in a society and is what grounds Marxist and liberal theories (including neoliberal). However, Foucault argues that this model of power is inadequate because it thinks of power only in terms of judgement. This fails to see power as constitutive of thought itself. For Foucault, the persistence of the juridico-discursive model conceals, and thus precludes investigation into, the model of power he takes to truly be operating. We shall call this latter model of power the participative-discursive model. Though Foucault explores his theory of power through the history of sexuality, this paper will apply his ideas to the history of modernity/coloniality.

Building on his early work on the role of discourse in knowledge,[153] Foucault examines the development of mechanisms of power to explain how knowledge, both as a plane of discourse and of visibility, is intertwined with power. This is introduced through a rejection of the 'repressive hypothesis'. In regard to the history of sexuality, the repressive hypothesis claims that the rise of industrialized society in the 17th century led to the suppression of discourse about sex and this in-turn caused a sexual regime of repression. As it goes, this regime supposedly culminated in the 19th century and has since been overcome due to sexual liberation movements around the 1950s. The issue with this narrative is that it disregards the

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[152] Friedrich Nietzsche*, On the Use and Abuse of History for Life*, trans. Ian C. Johnston (Richer Resources Pubns, 2010), 30-1.
[153] See Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. Richard Howard (Vintage Books, 1988); *The Order of Things*: *an Archaeology of the Human Sciences* (Vintage Books, 1994); *The Archeology of Knowledge and The Discourse on Language,* trans. A. M. Sheridan Smith *(Harper & Row, 1976).*

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'creative' (as in, productive rather than negative) exercise of power. It is due to this creative exercise of power that discourses on sexuality have actually *increased* rather than decreased since the 19th century.

The insufficiency of the repressive hypothesis stems from its basis in the juridico-discursive model of power. The juridico-discursive model, or Hobbesian-Schmittian interpretation, corresponds to traditional sovereign power. Traditional sovereign power develops from the earlier absolutist sovereign power of 'the ancients', in which, sovereigns could take life arbitrarily. As this absolutist sovereign power weakened, however, "mechanisms of power [began to] work in the form of law".[154] The sovereign's right to "*take* life or *let* live"[155] was no longer between the sovereign and his subjects, "but only in cases where the sovereign's very existence was in jeopardy… If he were threatened by external enemies who sought to overthrow him or contest his rights, he could then legitimately wage war, and require his subjects to take part in the defense of the state".[156] Moreover, "if someone dared to rise up against him and transgress his laws, then he could exercise a direct power over the offender's life: as punishment, the latter would be put to death".[157] The traditional sovereign/monarchical power over life was not 'arbitrary' because it was expressed through theories of law, but the theories of law were produced precisely for monarchical power to express itself: "law was not simply a weapon skilfully wielded by monarchs; it was the monarchic system's mode of manifestation and the form of its acceptability".[158] The logic of this is demonstrated in Thomas Hobbes' *Leviathan*.

Hobbes provides a bleak conception of life without a sovereign (or commonwealth or state), what is referred to as 'State of Nature'. Whereas the civic humanists of Italy accounts justified the state as instrumental in fulfilling human's natural sociability and need for political life, Hobbes conceived of the sovereign as vital to keep humans from 'perpetual war': "For as amongst masterless men, there is perpetual war of every man against his neighbour, no inheritance to transmit to the son nor to expect from the father, no propriety of goods or lands, no security, but a full and absolute liberty in every particular man."[159] Without a sovereign, the only alternative is a life that is "… solitary, poor, nasty, brutish, and short"[160] Thus, humans necessarily form a social contract and give their rights to a sovereign. In following this line of reasoning, Hobbes conceived each sovereign to exist in the 'State of Nature' that each individual man has left. This grants the sovereign absolute liberty: "In states and commonwealths not dependent on one another, every commonwealth (not every man) has an absolute liberty to do what it

[154] Foucault, *The History of Sexuality, Vol. 1,* 88.
[155] Foucault, *The History of Sexuality, Vol. 1,* 138.
[156] Foucault, *The History of Sexuality, Vol. 1,* 135.
[157] Foucault, *The History of Sexuality, Vol. 1,* 135.
[158] Foucault, *The History of Sexuality, Vol. 1,* 87.
[159] Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Hackett Publishing Company, 1994), 140.
[160] Hobbes, *Leviathan*, 76.

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shall judge (that is to say, what that man or assembly that representeth it shall judge) most conducing to their benefit."[161] Liberty of man is derived from the existence of the sovereign, and the existence of the sovereign is derived from its ability to protect itself—whether by legally requiring its subjects to participate in war or by eliminating subjects who transgress its laws (and thus the legitimacy of its existence).

This traditional sovereign/monarchical power begins to transform in 17th century England alongside the development of the British empire. The power to "*take* life or *let* live"[162] becomes "replaced by a power to *foster* life or *disallow* it to the point of death".[163] This is the shift from the preservative exercise of governmental power to the creative exercise of governmental power mentioned in 'Part I'. To recall, Machiavelli and other Italian civic humanists of the 16th century conceptualized governmentality as the production and reproduction of political life. That is, the state was seen as that structure which facilitated political life, and political life was seen as that practice which guaranteed the individual's moral autonomy; thus, the individual's moral autonomy, which requires political life, justified the existence of a state. This relationship between the individual and the state with political life as proxy emerged from an application of Aristotelean and humanist thought to the city-state; however, this lineage of thought was also what barred Machiavelli and others from conceptualizing the creative exercise of governmental power.

Aristotle's highly influential *Politics* develops an earlier line of thought first conceived in Plato's *Republic*. In *Republic*, Plato argues for the existence of the 'Ideas', those fully ideal (or intellectual) objects which wholly comprise the real world and to which objects in the phenomenal world of our senses derives but only imperfectly. This is envisioned in Plato's allegory of the cave. In the allegory, the shadows on the wall represent phenomenal objects and our sense-knowledge. When the prisoner is freed and sees the fire, he tries to turn back to the wall in denial but is then dragged out of the cave to see all things illuminated by the sun and eventually the sun itself. This describes the process of coming to the real, fully ideal world, through reason. Those who have the capacity for reason and the leisure time to develop this capacity—the free, wealthy men—are able to have knowledge of all phenomenal things and particular situations to an extent greater than the general rules of law. In *Politics*, Aristotle amends this line of reasoning to conclude that only philosopher-kings who appear far more intelligent than their subjects could rule without law, if their intelligence was comparable to that of their subjects, they could

[161] Hobbes, *Leviathan*, 140.
[162] Foucault, *The History of Sexuality, Vol. 1,* 138.
[163] Foucault, *The History of Sexuality, Vol. 1,* 138.

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not rule better than the law.[164] The great divergence between Plato and Aristotle (and the cause of the intellectual clashes between their later factions) is whether Ideas were real. Whereas Plato believed Ideas to constitute the only 'real' world, thus making the 'real' only accessible in the mind, Aristotle believed the 'real' to be wholly material, thus ideas are *abstractions* from sense-data.

The Aristotelian and humanist tradition provided the vocabulary for understanding the tension between the nation-state as the universal structure of virtue within the material world of particularity. It was due to this seemingly insoluble tension that Machiavelli and the other civic humanists could only theorize the preservative exercise of governmental power, that is, state power put towards its own retrieval since "… in progress of time this excellence [of the state] becomes corrupted, unless something be done to restore it to what it was at first, these bodies necessarily decay".[165] According to Pocock, it is the transplantation of the ideas of civic humanism in England (and then to the United States) that the creative exercise of governmental power and the modern administrative state emerges. The pivotal object was the formation of governmental agencies which contained such a capacity for dealing with particularity that the state could retain its structure through time without having to return to its beginnings. Foucault's history of sexuality conveys how these agencies formed through the technology of power he refers to as disciplinary power and biopower.

Disciplinary power and biopower are "two poles of development linked together by a whole intermediary cluster of relations."[166] Disciplinary power, which precedes biopower, refers to procedures of power inflicted on the individual human body to enact "its disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls".[167] This pole of power corresponds to "anatomo-politics" which characterize the formation and development of the disciplines of the individual body. On the other pole, biopower "focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary".[168] This pole of power corresponds to "bio-politics" which characterize the interventions and regulations exerted on the population in order to bring

[164] Aristotle and Ernest Barker, *The Politics of Aristotle, trans.* Ernest Barker (Clarendon Press, 1948), 134-35 (1284a), 126-27 (1282a-b).
[165] *Niccolò Machiavelli, Discourses on Livy, Book III (Oxford University Press, 2008), 1.*
[166] Foucault, *The History of Sexuality, Vol. 1*, 139.
[167] Foucault, *History of Sexuality*, *vol 1*, 139.
[168] Foucault, *History of Sexuality*, *vol 1*, 139.

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about certain conditions.[169] As Foucault asserts, these poles of power no longer sought to kill, but "to invest life through and through" in order to uphold the pre-eminence of death and power.[170] Whereas traditional sovereign/monarchical power was exercised through laws, obliged from the top downward, and backed by the threat of death, disciplinary and bio-power is circulated immanently (i.e., between people and in relationships) through knowledge (or discourse) and backed by the end of life.

To demonstrate this, Foucault begins by acknowledging that the issue with sexuality in the 17th century revolved around a notion of waste: "At a time when labour capacity was being systematically exploited, how could this capacity be allowed to dissipate itself in pleasurable pursuits, except in those – reduced to a minimum – that enabled it to reproduce itself?"[171] Sexuality became a category through which to study the population, and ultimately, further the mercantilist goals of (European) nation-states: "the birthrate, the age of marriage, the legitimate and illegitimate births, the precocity and frequency of sexual relations, the ways of making them fertile or sterile, the effects of unmarried life or of the prohibitions, the impact of contraceptive practices," and so on.[172] It is the presence of power that conditions the possibility of knowledge, and power relations which produce gaps and discontinuities:

> We should admit ... that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. These 'power-knowledge' relations are to be analysed, therefore, not on the basis of a subject of knowledge who is or is not free in relation to the power system, but, on the contrary, the subject who knows, the objects to be known, and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformations.

It is the development of particular kinds of knowledge (or discourses) which permit certain kinds of life over others. While Foucault focuses his concept of power on the history of sexuality, it is also applicable to the history of modernity/coloniality. For example, the psychiatric and psychological discourses produced by and within the colonial matrix power is what enabled Samual A. Cartwright to argue for the presence of 'drapetomania' among slaves attempting to escape. More generally, as briefed in 'Part I', the modern disciplines—the *paideia* of liberal Modernity—produced by and within the colonial matrix of power attempts to present liberal Modernity's self-referential system of knowledge as reality itself. (Moreover, as argued in 'Part I', although modern disciplines now exceed their original purpose, this

[169] I have come across other readings of Foucault's work which collapses disciplinary power into 'biopower' and maintains the distinction between anatomo-politics and biopolitics as two manifestations of 'biopower' (whether applied to the individual or applied the population).
[170] Foucault, *History of Sexuality*, *vol 1*, 139.
[171] Foucault, *The History of Sexuality, Vol. 1,* 6.
[172] Foucault, *The History of Sexuality, Vol. 1,* 25-26.

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exceedance derives from historical becoming, not from liberal Modernity overcoming itself). Liberal Modernity generates the discourses to perpetuate the [individual, rational, secular human] as the [political and legal/economic citizen of the state]; these discourses produce knowledge on the individual (i.e., how to make individual conform to a certain kind of life) and onto the population (i.e., how to make the certain kind of life the only permitted one).

It can now be inferred that rules-based justice is grounded upon the juridico-discursive model of power. As established, the juridico-discursive model corresponds to traditional sovereign/monarchical power and the preservative exercise of governmentality. Since the juridico-discursive model can only conceive of power negatively, i.e., as the negation of arbitrary wills under a shared rule of law, it is insufficient for conceptualizing power today. In the modern administrative state and the international state-system, power operates both negatively and positively. By grounding itself in the juridico-discursive model of power, rules-based justice also becomes insufficient for conceptualizing justice by concealing and perpetuating power relations. If we recognize the positive/creative exercise of governmental power, and thus, shift our theorization from the juridico-discursive model to the participative-discursive model, we are implored to rethink our approach to justice. Foucault once again provides insight into this on his discussion on resistance.

If power is ubiquitous within the social field, where lies the role of resistance? This topic is taken up in Vol. II of the *History of Sexuality* which discusses rationalization and the production of specific rationalities, that is, not "the progress of rationalization in general".[173] These underlie the processes of subjectification. These processes occur within power relations, which is to say, power is not only ubiquitous to experience, but *immanent* in it, i.e., power both creates and preserves available/acceptable subjectivities through discourses and knowledge. It follows then, that resistance can present itself in two forms: reactive and active. A reactive form of resistance comes in response to a display of power. In such a case, resistance is reappropriated and folded back into the mix of power relations. How might resistance look in its active form then? As Foucault reveals throughout the second volume, active resistance is resistance *turned upon itself*. It refers to the ability to *affect oneself*, to create a subjectivity that deviates from current forms of knowledge.

Deviation from these forms of knowledge, for instance, from the categories and roles imposed on us (woman/man, student/teacher, citizen/ruler, etc.), disrupts the strategies of power that rely on these categories and roles to order our lives—to discipline and to punish. In other words, active resistance

[173] Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 780. http://www.jstor.org/stable/1343197.

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makes resistance primary to power. Thus, we return to the infamous quote from the first volume: "where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power".[174] This line of reasoning can be applied to the category of justice. More specifically, if justice is having one's resistance adequately addressed (i.e., not silenced or ignored), then justice within the participative-discursive model of power must primarily concern itself with defending the production of active resistance—the self-production of being and being-in-the-world that deviates from those which are solely permitted. Perhaps a secondary section is needed to further specify this claim to avoid confusion on what the 'self-production of being and being-in-the-world' entails.

III.I Reterritorializing Truth:

Since the early 20th century, the development and infiltration of 'post-modern' thought has led to various 'crises' in Western academia. Foremostly, the loss of faith in 'Truth' and 'Progress' based on the linear and teleological march of time and history. While humanity's access to truth has been a reoccurring theme in philosophical inquiry from Plato and Aristotle to Kant, the post-modern unsettles the very possibility of Truth itself. This was, in many ways, a reaction against the horrors of Nazism which some hold as epitomizing the culmination of 'the modern':

> At no point in its long and tortuous execution did the Holocaust come in conflict with the principles of rationality. The 'final solution' did not clash at any stage with the rational pursuit of efficient, optimal goal-implementation. On the contrary, it arose out of a genuinely rational concern, and it was generated by bureaucracy true to its form and purpose .... The Holocaust was not an irrational outflow of the not-yet-fully-eradicated residues of pre-modern barbarity. It was a legitimate resident in the house of modernity; indeed, one who would not be at home in any other house.[175]

Nazism laid bare the structural delusions of Modernity. The minds of Europe saw "how the appropriation of truth within modernity must lead to an inevitable crisis and how that crisis must leave [them] with a notion of truth which [they could] no longer accept".[176] It must be noted that outside of Europe, such crises were already taking place around the world.[177] The colonial encounter and expansion across North America, the North Atlantic slave-trade, and the colonization of Africa, among other horrors were also crises of Modernity—though they were not recognized as such. This is especially clear when we accept that (liberal) Modernity is not synonymous with the pursuit of technological rationality, but that technological rationality is one manifestation of its larger system of knowledge. For example, John Gast's

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[174] Foucault, *History of Sexuality*, *Vol. 1*, 95.
[175] Zygmunt Bauman, *Modernity and the Holocaust* (Oxford: Polity Press, 1989), 17.
[176] Jeff Malpas, "Retrieving Truth: Modernism, Post-Modernism and The Problem of Truth." *Soundings: An Interdisciplinary Journal* 75, no. 2/3 (1992): 287–306. http://www.jstor.org/stable/41178577.
[177] See Aime Cesaire, "Discourse on Colonialism".

painting *American Progress* (1872) lays bare the romantic nationalism and ideological exceptionalism that underlaid westward expansion. It was the spatiotemporal location of the Holocaust which implored Europe to reflect on truth and progress in a manner that colonized peoples around the world had been for hundreds of years.

For some, it would seem as though the minds of Europe reacted against Nazism, not by relativizing truth, but by abandoning the notion altogether. This sort of interpretation is held by thinkers as diverse as Alan Sokal to Daniel Dennett to Roger Scruton. These thinkers accuse 'the post-modern' as falsely positing a reality in which all truth is 'merely relative' leading to two fundamental issues: (1) it removes all ground upon which to establish normative claims, and (2), it eliminates the vocabulary needed to critique the inevitability of 'truth-making'. It is through this interpretation that post-modern philosophy is related to the rise of 'post-truth'. Indeed, many today would associate post-modern philosophy with the rise of 'fake news' and populist leaders such as Donald Trump. That said, very few theorists included under the banner of 'postmodernism' argue against truth in this manner. The rejection of truth in itself and the embracement of absolute relativism cannot be tied to the thought of Jean-Francois Lyotard for instance (who is truly of 'postmodernism'), nor to any of the French poststructuralists including Jacque Derrida. Moreover, it is precisely through the work of these diverse thinkers that we gain better concepts for understanding notions of 'truth' and processes of 'truth-making' without constructing strong Modernities nor falling into absolute relativism.

The French poststructuralists in many ways were responding to two traditions of thought: phenomenology which attempted to ground truth in experience and structuralism which attempted to ground truth in social systems and languages. Against this, the poststructuralists argue that *there is no stable grounding for essential truth to be established*. This does not mean that there is no ground to establish truth whatsoever, but rather, that we can't construct truths and then presume them to be true across all space and time; it is an unsettling of absolute Truths. This should not be deceiving to practitioners of the scientific method, especially after the intervention of Karl Popper's 'falsification principle',[178] yet many commentators took it as an affront to science, engineering, and technology.

Nietzsche understood that if there is no Truth beyond the sensible flux of life, then we necessarily collapse into nihilism. However, while critics of the 'post-modern' fought against this nihilism by holding onto perceived Truths, Nietzschean and poststructuralist thought saw the inevitability of nihilism as an

[178] Against the commitments of logical positivism, Popper held that scientific inquiry should organize itself around *modus tollens*; that is, the logical criterion of falsification. For example, the claim 'all swans are white', supported by x-amount of observations of what swans, is a logical fallacy since it relies on inductive inference, however, the claim 'not all swans are white', supported by x-amount of observations of non-white swans, is valid.

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invitation for active creation. Indeed. Deleuze argues that concepts do not *represent* the order of reality but *create* this order. The adverse side of this was explored through Foucault above. The two reveal how 'truth' and 'truth-making' operates in free-roaming flux. To explore the favourable side of knowledge-power as active creation, Deleuze's concepts of 'territory', 'deterritorialization', and 'reterritorialization', are useful. A territory is constructed from a milieu. A milieu is a 'technical term which combines its three meanings in French', those are, "surroundings", "medium", and "middle".[179] As Deleuze states, "every individual experience presupposes, as an *a priori*, the existence of a milieu in which that experience is conducted, a species-specific milieu or an institutional milieu".[180] This is because "the world necessarily and only expresses itself in a variety of milieus, because only a milieu can distinguish something from chaos".[181] The formation of a territory within a milieu occurs through a ritornello, i.e., markers which are repeated in the world to signify a domain. This is language and culture, but before such forms, it is also expressions of the individual body made to 'feel at home'; a child humming a familiar tune while walking alone in a forest, a woman twisting the necklace around her neck at work before a stressful meeting, a bear marking a trail of trees to signify its travel route.

To be clear, the formation of territory occurs in both the weak form (historical becoming) and strong form of modernity. The difference in territory formation between the weak and strong form is the extent to which they can reterritorialize themselves against deterritorializing forces. While deterritorializing forces are often associated with globalization, more precisely, they are all the forces that exist relative to a territory which threaten the stability of that territory. For example, all territory formation that has occurred in the last 10,000 years has occurred upon a milieu characterized by a remarkably stable climate system.[182] The destabilization of this order due to climate change is one of the most significant deterritorializing force, transcending all notions of 'inside/outside'. Hypothetically speaking, a weak modernity foresees its collapse under the worst outcomes global climate change and attempts to impede those outcomes (or at least mitigate its worst affects). In contrast to this, the strong Modernity cannot imagine its collapse, only its overcoming; it responds to the accumulating crises of climate change by digging its heels in and countering with more severe techniques of power. It seems strange to personalize abstract structures though the point is to tease apart the subtleties of their inner logics. Whereas a weak modernity or historical becoming (which is not becoming itself, but the shared act of reflecting on

[179] Brian Massumi, "Notes on the Translation and Acknowledgement", in Gilles Deleuze and Felix Guattari, *A Thousand Plateaus*, (University of Minnesota Press, 1987), xvii.
[180] Gilles Deleuze, *Desert Islands and Other Texts (1953-1974),* ed. David Lapoujade, trans. Michael Taormina (Semiotext(e), 2004),19.
[181] Arjen Kleinherenbrink, "Territory and Ritornello: Deleuze and Guattari on Thinking Living Beings," *Deleuze Studies* 9, no. 2, (2015): 212. http://www.jstor.org/stable/45331572.
[182] Shaun Marcott et al., "A reconstruction of regional and global temperature for the past 11,300 years," *Science* 339, no. 6124, (2013): 1198-1201. https://doi.org/10.1126/science.1228026.

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becoming) implies a humbleness, an innate curiosity, a ‘spirit’ of learning and desire to be taught, a strong Modernity implies exclusion and elimination or capture and domination.

If ‘truth’ and ‘truth-making’ is situated in territories constructed upon various dimensions of milieus (biological, cultural, ecological, and institutional), what are the implications of transplanting certain ‘truths’ elsewhere? This was explored in ‘Part I’. The transplantation of situated truths as universal or neutral truths transforms narratives of historical becoming (the shared act of creating territory by reflecting on becoming) into a strong Modernity (the act of reterritorializing itself by territorializing difference). The concepts of milieu, territory, deterritorialization, and reterritorialization help us address both of the issues illuminated above: (1) by grounding truth in spatiotemporal sites of knowledge production, we retain some form of ground upon which to assert normative claims, yet this ground is necessarily in productive tension with other sites of knowledge across space and time; (2) as a corollary to (1), the concepts of milieu and territory as a spatiotemporal sites of knowledge production not only retains the vocabulary needed to discuss truth-making, it also expands this vocabulary by opening ‘truth-making’ to critiques across space and time. The question becomes then, how can tension between spatiotemporal sites of knowledge production remain productive and not fall into relations of domination? This thesis will attempt to respond to this through a new conception of justice and law based in place.

IV. PLACE-BASED JUSTICE AND DISRUPTING THE COLONIALITY OF LAW.

Two premises have been established: (1) that power is not merely delegated from state and legal institutions, but ubiquitous in society through knowledge (and discourses), and (2) there is truth to be found, yet this truth is always situated. The first premise reveals the workings of liberal Modernity’s self-referential system of knowledge, i.e., the force of the nation-state, capitalism, patriarchy, and technological rationalism *are* delegated through law, but preceding these laws are certain systems of knowledge that justify such structures as rational conclusions. This was explored in ‘Part I’. The second premise provides the key for a fuller conception of justice which, if operationalized, would disrupt the coloniality of law by impeding the reproduction of liberal Modernity’s self-referential system of knowledge. Taken together, these premises reveal situated truth to necessarily be accompanied by situated knowledge and discourses. If the foremost injustice of coloniality is the disparagement of situated truths and their situated knowledge and discourses, then justice which exceeds coloniality must both destabilize colonial Truths that draw from knowledge and discourses ‘out of place’ while also supporting decolonial truths which that draw from knowledge and discourses ‘rooted in place’. Once again, this is not a move towards absolute relativism—especially not in certain topics such as environmental and climate change studies which participates in milieus that spans the globe.

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It is through these two premises, and upon the material-historical and philosophical backdrop provided in 'Part I', that the need for a place-based justice is argued. This will be done through a comparative analysis against the assumptions and commitments of rules-based justice, those are: (1) the world is characterized by the social conflict of wills which are equally as arbitrary, (2) social conflict will only end in the unity of the highest concept, and (3) the goal of philosophy and life is to reach this highest concept. I will address each of these by drawing from three seminal texts: Leanne Simpson's *As We Have Always Done*, Shiri Pasternak's *Grounded Authority*, and Glen Coulthard's *Red Skin, White Masks*.

To begin, in *As We Have Always Done*, Simpson draws from her past and current relationships, experiences, and knowledges to detail her 'Radical Resurgence Project'. This project encompasses Simpson's reflections on building resistance within the context of grounded normativity. In contrast to the detached, abstracted, and top-down normativity upheld by rules-based justice, grounded normativity "is predicated on deep, spiritual, emotional, reciprocal, real-world relationships between living beings".[183] As Simpson reveals throughout the book, to label the project a 'resurgence' is a misnomer since "it's just Indigenous life as it has always unfolded"[184]; a *return* to *Nishnaabewin* ["all of the Nishnaabeg practices and ethical processes that make us Nishnaabeg"[185]] rather than an overcoming or abandonment of the past.

Simpson's recovery of the situated subjectivity of *Nishnaabewin* dismantles the liberal Modernist assumption of the arbitrary will. The discourse of the arbitrary will assumes the desires, interests, and normative specificity of each individual rooted in place and community to be problematic and a barrier to equality; however, this understanding of will only makes sense in the context in a society wholly comprised of 'rational', European/white, property owning or wealthy, and educated men. The discourse of the arbitrary will conceals power relations since it obfuscates the existence of the Self/Other dichotomy when it is precisely through existence of the Other (i.e., the 'irrational, non-European/white, poor or working class, and 'uneducated') that the preferred subjectivity of liberal Modernity ('the European self') can exist. As such, the discourse of the arbitrary will actively creates a reality in which people do not seek authority in their living relations and embodied reality, but in the *logos* of state and legal institutions. The disruption of this discourse is in accordance with Simpson's overarching goal. For example, Simpson defines her use of the term 'radical' "… to mean root, to channel the vitality of [her] Ancestors to create a present that is recognizable to them because it is fundamentally different than the one settler colonialism

[183] Leanne Betasomoake Simpson, *As We Have Always Done*, (Minnesota University Press, 2017), 180.
[184] Simpson, *As We Have Always Done*, 201.
[185] Simpson, *As We Have Always Done*, 21.

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creates".[186] Thus, her will and the will of her community is not arbitrary but rooted in place and drawn from tradition and situated knowledge.

This overturning of the first assumption folds into the overturning of the second. Each of the three authors reject the idea that the end of conflict requires unity in a highest concept which, in liberal Modernity, presents as the nation-state conditioned by global capitalism. In fact, it is through the preoccupation with universalizing the nation-state, both materially and theoretically, that maintains conflict by attempting to territorialize the different ways of being and being-in-the-world. This is revealed by Pasternak, a "white Canadian citizen with full citizenship status and a professional life",[187] whose book explores the anticolonial struggles of Anishnaabe territory located in the western half of what the settler entity refers to as Quebec. Pasternak investigates the colonial techniques of dispossession deployed in a region known as Barriere Lake. These techniques have not expelled the Anishnaabe community from the area but rather has instantiated "the perpetuation of a set of exhaustive administrative regimes that undermine, erase, and choke out the exercise of Indigenous jurisdiction, rendering Indigenous people peripheral to effective participation in land governance".[188] This reveals the material processes contributing to the universalization of the nation-state, i.e., the perpetuation of nation-state sovereignty as the only and most fundamental source of authority and governance.

These material acts have been met with unremitting resistance by the Indigenous community. For example, Pasternak reveals how the community "adopted an attitude of noncooperation" against the tallyman system instituted by the Department of Indian Affairs between the 1940s and 1950s:

> The Barriere Lake men took out hunting licenses, yet refused to make the maps for trapping permits, knowing that this information would cede the remaining control they had over their land base. Resisting the logic of mapmaking, Barriere Lake community members found outside buyers for furs and other ways to circumvent the system that penalized them for refusing to map their territory for the government. They trusted only their own resource-management system, and so they ignored designated "seasons" of harvest and they did not cooperate with game wardens who carried out patrols… One game warden report documents the fierce resistance of Algonquin women who hit back with paddles and whatever else they had when attempts were made to search and confiscate their hunting and trapping spoils… The resistance seemed to be effective, even against the threat of RCMP violence. Lévesque found that the RCMP demurred from arresting and charging the Algonquins… The lack of enforcement the RCMP and game wardens could exercise with the Algonquins demonstrates how settler laws lacked authority at Barriere Lake and set the limits of state sovereignty.[189]

[186] Simpson, *As We Have Always Done*, 43.
[187] Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (University of Minnesota Press, 2017), 52.
[188] Pasternak, *Grounded Authority*, 55.
[189] Pasternak, *Grounded Authority*, 110.

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Indigenous resistance such as this has persisted across so-called Canada since the colonial encounter, yet the theoretical fixation with the nation-state has "almost completely written [this resistance] out of Canadian economic historiography".[190] The view that Indigenous society has effectively been destroyed and that Indigenous resistance is both futile and practically nonexistent "… predominates in Canadian historiography and figures into the new political economy studies of Canadian capitalist development, where scholars [continue] to mostly ignore Indigenous land interests and economies".[191] Young academics entering into the field as well as economists and policymakers who draw from this research internalize the minoritization of Indigenous peoples and either perpetuate policies that disregard their interests and authority or impose paternalistic 'assistance' based around uncritical engagement with Canadian politics and the settler nation-state.

From the perspective of liberal Modernity, the promise of the nation-state to eliminate conflict derives from its ability to breakdown communities and define each individual as 'equal' under the rule of law. Although conflict is expected at the start of this transition (from 'pre-modern' to 'modern'), the implicitly held belief is that its unfolding in time as characterized by Hegel's dialectic would eventually produce a state in which all concerns of the citizenry, including Indigenous peoples, people of colour, and immigrants, will be dealt with through the expansion of discourse and the expansion of technologies of power. However, since wills are not arbitrary—and since conflict is not only social but ecological and cultural—the dialectic does not progress evenly, but as a widening of access to prosperity: whereas settlers reap economic benefits of exploitative extraction while residing in spaces elsewhere, perhaps vacationing somewhere nearby, the Indigenous peoples who are 'rooted in place' through culture and traditions and with economic principles that are inextricable from ecological integrity, they are pilfered alongside the lands. This is not the elimination of conflict, but the production of conflict. Pointing to the reality of this is not a call to abandon the rule of law, but to recognize a critical oversight that impedes the realization of a full conception of justice.

If conflict (social and ecological) is not eliminated by obligatory unification under the authority of the 'highest concept', what would eliminate it? To be more accurate, we should instead ask: what approach to justice would enable conflict to be productive rather than destructive? Within the framework of rules-based justice, conflict (which is only assumed to exist between people) can only be viewed negatively since it threatens the cohesiveness of the whole. However, as both Nietzsche and Hegel understood, conflict is the driver of novel experience—it is the catalyst which enables learning—which is why Hegel's 'end of conflict' in the 'end of history' was such a devastating and depressing claim. The

[190] Pasternak, Grounded Authority, 73.
[191] Pasternak, Grounded Authority, 74.

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outwardly destructive nature of conflict occurs in the realm of free-floating ideas upon which incompatibility in thought becomes a matter of rhetoric—whoever can appear more convincing. This results in the rise of 'post-truth'. However, in disaccord with those who trace 'post-truth' to 'post-modern' thought, I would argue that it is more correctly traced to the rise of positivism which claimed access to an ahistorical universalism; for it is in 'history', that is, the longstanding traditions, shared memories, embodied knowledges, and situated practices that ground people in a place, that incompatibility in thought moves from a matter of rhetoric to a matter of legitimacy. It has been the dis-imbedding of truth from place that post-truth gains a foothold.

In agreement with this, Pasternak reveals that authority should be *grounded*. This is not a 'new' kind of approach to legality. As Simpson states above, it is as many Indigenous peoples have always done. For example, Pasternak examines the legal order of the Mitchikanibikok Inik, a key feature of which "is to ensure a relation of *care* over their lands and people".[192] In interviews with members of the community, Pasternak finds that:

> The Mitchikanibikok Anishnabe Onakinakewin is Barriere Lake's sacred constitution that contains the law for everything that grows on earth. It is not a set of ideas that can be written down, but rather embodies all of the living relationships in their world, which are governed by the principle of respect.

The sacred constitution grows out of place and is rooted to place. It cannot be detached from Barriere Lake and established in Hamilton. We can infer that if anything like a 'highest concept' exists, it does not exist beyond the world, but *in and as the world*. Which is to say, while place-specific legal orders are not readily transplanted, the particularity of these orders could be united on a shared principle of respect and relation of care.

To finish off this section, analysis of Coulthard's *Red Skin, White Masks* reveals why the goal of theory and life is not to reach the highest concept (the nation-state as the arbiter of the totality of social relations and conflict), and in fact, how this goal—driven by Hegel's 'reactional' dialectic—perpetuates settler-colonialism as a structure of domination. He demonstrates this through problematizing "the increasingly commonplace assumption that the colonial relationship between Indigenous peoples and the Canadian state can be reconciled via a liberal "politics of recognition"".[193] Coulthard characterizes this politic "as a recognition-based approach to reconciling Indigenous peoples' assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity-related claims through the negotiation of

[192] Pasternak, Grounded Authority, 77.
[193] Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014), 151.

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settlements over issues such as land, economic development, and self-government".[194] While this may seem promising, the project of reconciliation remains colonial so long as nation-state sovereignty continues to be "structurally committed to the dispossession of Indigenous peoples of [their] lands and [their] self-determining authority".[195] Recognition politics thus has a neocolonial function. To support this claim, Coulthard draws from Frantz Fanon's critique of Hegel's master/slave narrative.

Coulthard organizes his discussion two insights: that seemingly 'negative' emotions felt by colonized peoples ("hatred, contempt and resentment"[196]) can be catalytic for self-recognition and self-affirmative praxis and that these emotions are not derived from an unjustified preoccupation with past harms, but an appropriate response to an ongoing structure of domination and the shortcomings of postcolonial reconciliation. From this, Coulthard draws three points from Fanon's work. First, that the Hegel's dialectic does not unfold 'evenly' since political recognition is granted "from the colonizer to the colonized" and thus "usually ends up being structurally determined by and in the interests of the colonizer".[197] Second, liberal Modernity's self-referential system of knowledge which generates discourses that guide and bound knowledge production facilitate the 'internalization' of colonialism which Fanon refers to as 'psycho-affective' attachments. Lastly, despite the territorializing and reterritorializing logic of liberal Modernity (i.e., how it attempts to universalize itself), the internalization of coloniality can be transformed into self-recognition through a 'resurgence' of tradition, embodied knowledge, and living relations (what Simpson conveys as a return to what 'they have always done'). However, Fanon argues that this self-recognition is "insufficient for decolonization", and that "practices of Indigenous cultural self-empowerment… constitute a "means" but not an "end"".[198] Coulthard rejects this last point.

The err in Fanon's conclusion derives from his extension of the underlying commitment of Hegel's dialectics, i.e., to overcome conflict by transcending to the highest concept. Said differently, this commitment assumes that social transformation only occurs through the slave's engagement with the master (which for Fanon, culminates in the master's death by the hands of the slave), only after can both parties *move forward*. Against this, Coulthard argues that the success of Indigenous resistance in so-called Canada has not been gained through engagement with the 'master/colonizer' on the master's/colonizer's terms, but through unapologetic direct action, through the practice of economic principles not separated

[194] Coulthard, *Red Skin, White Masks*, 151.
[195] Coulthard, *Red Skin, White Masks*, 151.
[196] Jean Améry, "The Birth of Man from the Spirit of Violence: Frantz Fanon the Revolutionary," *Wasafiri* 20, no. 44 (2005): 14.
[197] Coulthard, *Red Skin, White Masks*, 152.
[198] Coulthard, *Red Skin, White Masks*, 153.

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from ecological integrity, through the reterritorialization of the urban, and through the rejection of patriarchal governance structures. This is not a call to disengage from the state's legal and political institutions altogether, but rather to decentre this engagement and when one does enter into engagements, to do so with "a degree of critical self-reflection, skepticism, and caution" and with the goal of moving "away from the largely rights-based/recognition orientation… to a resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically nonexploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions".[199] This is a turn away from the social constructivist reduction of communities into individuals and individuals into political and legal/economic citizens of the state; however, it is not necessarily a turn to an essentialist notion of identity which often perpetuates devaluations of Indigenous peoples as 'behind' or 'pre-modern'. Rather, it is a move to keep identity in tension; to be rooted yet always growing.

With this, we can summarize the assumptions grounding a place-based justice: (1) the world is characterized by harmony and conflict, both 'social' and 'natural', between wills which rooted or disengaged from place, (2) conflict, whether 'social' or 'natural', is not ended through the authority of the highest concept, but through the grounded authority of place, and (3) the goal of theory and life is not to reach the highest concept, but to engage with the interconnected totality of life without the imperative to 'reconcile' it with the 'One'. Upon these assumptions, place-based justice provides a better framework for enacting a fuller conception of justice. It does this two-fold: by disrupting the coloniality of law and by generating a decolonial law. Place-based justice disrupts the coloniality of law by undermining its claim to an ahistorical universalism. This ahistorical universalism both conceals and maintains (colonial) power relations by dis-imbedding people and living relations from their 'history' (i.e., culture, traditions, embodied knowledge, etc.) to instead imbed them in the nation-state which is structurally biased to the interests of state and class elites. Moreover, place-based justice generates a decolonial law by recognizing that authority does not exist solely through nation-state sovereignty but also between people and through the land. Thus, whereas rules-based justice can only address the coloniality of law by expanding discourse of rights and recognition—which unwittingly perpetuates the colonial matrix of power, place-based justice disrupts the coloniality of law by striving for prosperity—cultural, economic, spiritual, and otherwise—that goes beyond privilege.

[199] Coulthard, *Red Skin, White Masks*, 179.

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V. CONCLUSION.

In extending the genealogy of liberal Modernity as coloniality, the second part of the thesis took up the task of problematizing the coloniality of law. The coloniality of law may be summarized as the application of law for the purposes of justifying the territorializing and reterritorializing logic of liberal Modernity, i.e., the process of capture and domination. The purpose of this 'Part II' was to demonstrate how the dominant form of justice, rules-based justice, is fundamentally incapable of addressing the coloniality of law. The intrinsic insufficiency of rules-based justice is due to its basis in an outdated model of power referred to as the juridico-discursive model. This model of power assumes power to be given from state and legal institutions and to operate as proxy to a form of political life that is limited to facilitating the moral autonomy of individuals with equally arbitrary wills. While this model of power corresponds to the preservative exercise of governmental power of the monarchical state, it does not correspond to the creative exercise of governmental power of the modern administrative nation-state. Within the modern administrative nation-state, power operates ubiquitously through discourses. These discourses simultaneously discipline individuals into particular kinds of beings while also generating knowledge that informs the creation of technologies of power that enforce the acceptable kinds of being-in-the-world. Whereas the coloniality of law *justifies* the territorialization and reterritorialization of liberal Modernity, the *force* of this territorialization and reterritorialization is co-constitutive with the creative exercise of governmental power.

To recall, the three fundamental assumptions of rules-based justice are: (1) the world is characterized by the social conflict of wills which are equally as arbitrary, (2) social conflict will only end in the unity of the highest concept, and (3) the goal of philosophy and life is to reach this highest concept. By failing to recognize the creative exercise of governmental power and how it is interwoven with the colonial matrix of power, rules-based justice cannot enact a full conception of justice. Indeed, when it attempts to address injustice by making everyone 'equal' before the law for the purpose of expanding rights and recognition discourses as mediated by the nation-state, it unwittingly perpetuates the coloniality of law. A better framework of justice for disrupting the coloniality of law is place-based justice. This form of justice was explored through the work of Simpson, Pasternak, and Coulthard each of whom reject the fundamental notion that conflict is merely social. That is, underlying each of their works is an understanding that conflict is not only between people and ideas, but also between practices and behaviours that are 'rooted in place' versus practices and behaviours that are not.

First, Simpson's book reveals conflict to not be between equally as arbitrary wills, but between wills formed through particular languages, traditions, and embodied knowledge (i.e., ritornellos) which produce

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particular territories upon many shared and separate milieus. Pasternak's book demonstrates how conflict does not end in the obliged unity of the modern administrative nation-state (which is the highest concept of social organization in liberal Modernist order); in fact, the fixation on universalizing the authority of nation-state is instead a source of conflict. Against this, Pasternak explores the presence of 'grounded authority' amongst the Anishinaabe, that is, the legitimacy of their being and being-in-the-world derived from their relationship to the land. Lastly, Coulthard's rejects the idea that the goal of theory and life is to fully realize the potential of the modern administrative nation-state. Like Hegel's 'reactional' dialectic between the 'master' and the 'slave', the continuous 'realization' of the nation-state enacts the logic of capture and domination—it invites the liberal Modernity to seek out difference (i.e., different ways of being and being-in-the-world) and territorialize it, for example, by providing the 'appropriate' legal and political pathways to 'recognition'. This may appear to eliminate 'social conflict' on the surface, yet it does so by replacing Indigenous peoples self-recognition for recognition from the settler nation-state. This not only furthers 'social' conflict by perpetuating colonial power relations, it also generates 'ecological' conflict by undermining land practices that prioritize the ecological integrity while authorizing land practices that do not.

By overturning the assumptions of rules-based justice, we uncover a new set of assumptions: (1) the world is characterized by harmony and conflict, both 'social' and 'ecological', between wills which are either rooted or disengaged from place, (2) conflict, whether 'social' or 'ecological', is not ended through the authority of the highest concept, but through mutual respect for the grounded authority of place, and (3) the goal of theory and life is not to reach the highest concept but to engage with the interconnected totality of life without the imperative to 'reconcile' it with the 'One'. It should be noted that while the materialization of place-based justice would first be put towards the realization of Indigenous assertions of self-determination, the success of this could be catalytic for further transformations, not only on the notion of state sovereignty, but also on general land practices. Since liberal Modernity disciplines us into performing as political and legal/economic citizens of the nation-state while simultaneously impeding our ability to be integrated community members and responsible constituents of the Earth, many people today lack a conscious and meaningful relationship to the land. The materialization of place-based justice through the realization of Indigenous self-determination would both undermine the absolute authority of the settler nation-state and legitimize the authority of land-based governance. In other words, it would generate productive tension which demands continuous engagement and collaboration.

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CONCLUSION: ON THE POSSIBILITY OF JUSTICE

Serenteletonic: Calm astonishment at all the multitudinous, multi-species occurrences, chances, and couplings which led to your existence, stretching back to the very beginning of life, or even time. Sublime mindfulness that none of these sedimented happenstances necessarily needed to have happened and that, without them, neither you, nor anything you recognize, would exist today. Flowing from this, keen and urgent awareness that choices made now can have outsized impact on the spectrum of possibility concerning which futures can manifest next —of the shadow our current choices cast on all that comes hereafter– whether by maintaining choice or diminishing it, accumulating diversity or narrowing it.

—Richard Fisher, Xander Balwit, Thomas Moynihan in collaboration with The Bureau of Linguistical Reality 2023

From industrial pig farming to the dredging of ocean floors for sand, our world sanctions the exploitation of nature for the social, political, and economic endeavours of humans—but *whose* world sanctions this and for *which* human? In the search of alternative futurities, that is, other possibilities for being and being in the world, it is necessary to question why our options seem so limited in the first place. To do this, the thesis applied the concept of modernity/coloniality from decolonial scholarship. The 'modernity' of 'modernity/coloniality' is further specified as 'liberal Modernity' which is differentiated from the weak form of modernity as well as other strong Modernities. It is evident that liberal Modernity is not reducible to capitalism—which is its coadjutant—nor to liberalism/neoliberalism, republicanism, humanism or scientific rationalism. Rather, each of these are aspects of liberal Modernity's *territoriality* ('territory' in the Deleuzian sense, i.e., as a spatiotemporal site of knowledge production composed of a philosophical-cosmological and material-historical grounding). With the exception of capitalism, these aspects are not *intrinsically* colonial. Coloniality emerges when relationships of productive tension fall prey to the process of 'capture and domination' (i.e., reterritorialization). For example, the logic of capitalism is necessarily a logic of coloniality because it is characterized by the capture of value, the translation of use-value into exchange value, and thus the domination of exchangeability.

While a decolonial capitalism is paradoxical (since the logic of capitalism is necessarily a logic of coloniality), liberalism, republicanism, humanism, scientific rationalism, and other expressions of Euro-America's historical becoming can be made to fit in a global decoloniality—to differing extents—by 'provincializing' their claims to universality. This does not entail a utopic expulsion of Euro-American derived thought from everywhere besides Europe, but critical deference for the persistence of historical becomings not of endogenous European origins. The logic of liberalism is only a logic of coloniality insofar as it operates as a means to capture political and moral traditions, translate these traditions into the unit of the individual and the nation-state, and thus reify the dominance of representative democracy, the right to private property, Westphalian sovereignty, etc. The logic of liberalism (or republicanism, or

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humanism, or scientific rationalism, etc.) escapes the logic of coloniality when it productively engages with deterritorializing forces. In other words, when it not only commits itself to affecting, but also to being affected. This is what is meant in the concept of historical becoming as the *shared act* of reflecting on the past to participate in the construction of the new. That said, actualizing relationships of productive tension is not only an epistemological process arbitrated by 'rational minds', but an ontological process that unfolds historically, in space and time.

To elaborate, as established in the introduction, the 'act of reflecting' is not conducted by a transcendental ego, but through the passive syntheses of time—through memory and habit—which precedes the category of the 'human' from humanist discourse. It follows that the disruption of the transcendental ego is a disruption of the ontological distinction between 'modern and unmodern', 'human and nonhuman', 'subject and object', 'culture and nature', 'rational and irrational', and so on. To be clear, this 'flattening' of ontology does not argue, for instance, that a human is the same as a dog. It argues that the differences between a human and a dog goes beyond the external into the internal (or intensive). To recall, internal differences refers to 'differences in kind', i.e., intensive differences which exist in space and time and thus cannot be measured. For example, take the 'Yaxcha', the tree of life in Mayan culture and cosmology, and the *Ceiba pentandra*, its scientific genus. A *Ceiba pentandra* can be differentiated from another Ceiba pentandra through various measurable differences, such as the depth of the tap root, biological age, trunk height, the spread of the crown, etc. But the Yaxche cannot be differentiated from a *Ceiba pentandra* through any logical, mathematical, or scientific calculations. The Yaxche is characterized by intensive difference while the *Ceiba pentandra* is characterized by external difference; the particularity of the Yaxche is spatiotemporal and thus cannot be generalized into an abstract universal while the *Ceiba pentandra* is abstracted from space and time to function as a universal. The overdominance of external difference has led to dichotomies that have had lethal consequences for those who reside on the 'wrong' side. Recognition of internal difference and its equivocation with external difference leads to the realization that all matter (humans, dogs, and otherwise) is not (only) discrete, but *entangled* in various biological, cultural, material, cosmological, and linguistic/symbolic relations, among others.

The overdominance of external difference frames liberal Modernity as global design while the disregard for internal difference impedes investigation into its parochial and provincialized character. That is, it hides its endogenous European origins under abstracted universals. To recall, these are its Ideas of being, being-in-the-world, and world history. As such, addressing liberal Modernity through methods that only recognize external difference will be insufficient. In the context of this thesis, this is exemplified in the inability for rules-based justice, which bases itself in the external differences of 'the human', to address coloniality. Addressing coloniality demands recognition and deference to the internal differences of 'the

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human'—including the translation of 'community' to a collection of 'individuals'. Thus, in order for a global historical becoming to emerge, that is, a framework for historical reflection and participation that is 'universal' yet does not produce a strong Modernity/coloniality, it is necessary to mitigate the overdominance of external difference by engaging with internal difference. The thesis offered one approach which it referred to as 'place-based justice'. The concept of 'place' engages with internal difference by recognizing that processes of meaning-making are grounded in space and time, i.e., in territory. While external differences contribute to territory formation (e.g., climate, relative humidity, distribution of forest cover, etc.), internal differences are what characterize a ritornello—markers that signify a territory. This is because territories are *spatiotemporal* sites of knowledge production and internal differences are those differences that *exist in time and space* (while external differences are abstracted from time and space).

Territories are constructed upon various overlapping milieus of varying scales (e.g., an ideological milieu, an ecological milieu, a biological milieu, etc.) Milieus are frames of potentiality. For example, a territory formed within an arid climate will be characterized by different ritornellos than a territory formed within a tropical climate (ecological milieu); yet 'water' has linguistic and cultural significance for both the Atacameños of Chile and the Kanamari of Brazil (biological-ecological milieu). This thesis has investigated how liberal Modernity evolved from various different territories constructed on various different milieus across the European region (i.e., historical becomings of Europe) into a global territory of endogenous European origins (i.e., a strong Modernity). The globalization of this territory is colonial because it necessitates the reterritorialization of difference, i.e., the elimination or subordination of territories not endogenous to Europe. This elimination/subordination occurs through the elimination/subordination of internal differences leading to the overdominance of external differences in knowledge production. The elimination/subordination of internal differences is enacted through material and immaterial processes/relations—though we must keep in mind that the material and immaterial are co-constitutive. Materially, the elimination/subordination of internal difference occurs through a wide range of acts, including the extirpation of 'idolatries' and Indigenous parishes in Peru (to impose Christianity), the physical atrocities, including dismemberment, sanctioned by King Leopold the II in Congo (to enforce commercial rubber harvesting), the residential schools across North America, and so on. These are 'justified' through immaterial relations, i.e., the Ideas of being, being-in-the-world, and of world history, which denigrated non-European peoples alongside their ecologies, cultures, economic relations, cosmologies, epistemes, languages, sexualities, and more.

The dominion of external difference implores us to eliminate tension and it does so by reterritorializing difference. While recognition of external difference is necessary, the reterritorialization of difference

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prioritizes one territoriality over and above all others. Against this, recognition of internal difference necessitates investigation into the productive tension between territories. This is referred to in decolonial scholarship as the move towards the 'pluriversal' rather than the 'universal'. Whereas the universal imposes a particularity as global design (which characterizes a strong Modernity), the pluriversal facilitates relationships of collaboration and cooperation (which characterizes a weak modernity as the *shared* act of reflecting on the past). Liberal Modernity, as a strong modernity, enacts a logic of coloniality by disregarding internal difference which impedes the unfolding historical becomings not of endogenous European origins. In contrast, a weak form of modernity is compatible with a decolonial perspective because it is receptive to internal difference, thus enabling critical engagement between different philosophical-cosmological and material-historical groundings. Ultimately, then, this thesis is arguing for place-based justice as a means to actualize a weak form of modernity in place of liberal Modernity or any other strong Modernity.

By grounding truth and meaning-making in space and time, place-based justice provides a defence against the reterritorializing force of liberal Modernity. This is because if truth is grounded, it is not possible for it to be represented purely by external differences. Those unconvinced by this argument may contend that truth must necessarily rise above place if we are to discuss phenomenon such as climate change, the global spread of infectious disease, and the end of wars. To this, I would argue that truths that seemingly transcend space and/or time are actually truths that remain true in various places. For example, the effects of climate change, which will either worsen or lessen in time (depending on what is done to address it), interjects into most if not all earthly space. This is why the problem of climate change is 'true' in most if not all places. Moreover, by continuing to ground truth in place, we are driven by different assumptions and commitments when working towards solutions. For example, electric cars and solar energy would be critiqued to the extent that it relied upon the exploitation of Congo for critical minerals. The expansion of critical mineral development and nuclear power in Canada would be critiqued to the extent that it interfered with Indigenous self-determination. Which is not to say that critical mineral extraction would not be possible, but that it would have to be done in such a way that it did not further colonial power relations. If we take place seriously, solutions would be implored to more deeply address the problems our world faces. For example, increased funding for public transit, a move away car-centric urban planning, policies that support a professional culture of degrowth. Of course, the world is not and will never be so simple.

The theorization of place-based justice does not call for a utopic overhaul of the system, but a critical intervention. It hopes to lift Indigenous self-determination from a normative goal (something we *should* do; colonial paternalism) to a strategic and proactive goal (we will be in a better position to tackle

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domestic and international problems when Indigenous self-determination has been actualized and relationships of cooperation and collaboration have been established). Since place-based justice relies upon the concept of territory, however, its actualization would have to unfold historically. This is because liberal Modernity as coloniality has imposed the dominion of external difference, while territory formation is characterized by internal difference. While scholars of the Western intellectual tradition have begun to theorize how place/territory could be (re)constructed in the colonial core, it is evident that place has already persisted in the lived experiences and relationships of Indigenous peoples all around the world. Thus, in Canada for instance, place-based justice is not theorized to overcome rules-based justice to then establish Indigenous self-determination and governance; rather, place-based justice would be co-constitutive with the actualization of Indigenous self-determination and governance. It also follows then that while rules-based justice alone is not sufficient for addressing the coloniality of law, things such as the expansion of rights and increased recognition are in many ways necessary for a place-based justice to emerge.

To conclude, the intention of this thesis is to provide a theory of justice that can supplement rules-based justice to better address the coloniality of law. For example, a place-based approach to justice may apply in instances when the rule of law prohibits the expression and expansion of Indigenous self-determination. Which is to say, the intention of this thesis is not to settle old problems, but to open up the possibility of pursuing new ones. Evidently, such a project demands a more thorough examination into how one might claim or pursue a ‘place-based justice’. This includes a stronger, more rigorous understanding of place. Do all Indigenous communities have ‘place’? Do all settlers suffer from an absence of place? While the thesis provides insight into how place is lost or devastated, much more attention is needed to understand how place is formed and sustained. This also begs the question of whether the concept of ‘place’ can always be applied with a positive connotation which entails elaboration on the ‘problem of the beautiful soul’.

Furthermore, due to the correlation of rules-based justice with settler legal orders and the correlation of place-based justice with Indigenous legal orders, the full theorization of a place-based justice requires further analysis into how it might be applied and what its application might result in. For example, what is the role of settler policymakers, lawyers, and judges in realizing a place-based justice? Additionally, if place-based justice is co-constitutive with the actualization of Indigenous self-determination, how would the realization of place-based justice change the relationship between settler and Indigenous legal orders? It is clear that the full theorization of a place-based justice requires further engagement with comparative law and systems of legal pluralism. These questions guide the next step of my academic and intellectual journey.

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As mentioned in the introduction, my next step will be to complete the transsystemic law program at the University of Victoria. During this program, I will have the ability to refine my conceptualization of place through field studies that facilitate my interaction with living examples. Moreover, I will be able to contribute to the construction of a transsystemic knowledge basin, participate in the actualization of Indigenous self-determination, and engage with the historical unfolding of legal pluralism between settler and Indigenous legal systems. Alongside my legal education, I plan to further refine my historical knowledge, particularly of the "Classics" and of historical becomings beyond Europe. Following the completion of the JD/JID degree, I will expand my legal knowledge as a practicing lawyer in Indigenous and environmental law before continuing my research in a PhD. In an ideal future, I envision myself as an active community member in both academic and legal spaces, contributing to the hopeful pursuance of futurities beyond capitalist exploitation and climate disaster.

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