MULTICULTURALISM AND DECOLONIZATION

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Over the last five decades, Canadian multiculturalism has been celebrated for transforming public attitudes and government policies towards cultural minorities. It has established a set of public ideals that aim to eliminate minority marginalization and has successfully urged public and private actors to develop institutional practices by which these ideals can be attained.

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A similar kind of success cannot be claimed with regards to the policies and practices that aim at improving state relations with Indigenous peoples. On one hand, international and domestic efforts have led to several noteworthy policy reforms. Predominantly, the United Nations Declaration of the Rights of Indigenous Peoples (2007) and initiatives, such as Canada's Truth and Reconciliation Commission (Canada, 2015), seek to address the historical injustices of colonialism. On the other hand, none of these initiatives have so far transformed the relations between Indigenous and settler populations. To the contrary, Canada, like many colonizing states, continues to witness intense conflict between Indigenous communities, industry and state actors, notably over projects for land development and resource exploitation. Here, and in many other corners of the world, governments and developers treat Indigenous rights as obstacles to economic development. A colonial mindset has licensed the use of coercion against Indigenous peoples and their supporters who resist mining, logging, and pipeline projects which encroach on Indigenous territories. Despite well-publicized reports of this coercion and Indigenous resistance to it, openly hostile publics continue to deny their responsibility to address the wrongs of colonialism.

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In one sense, multiculturalism is irrelevant to these disputes. Canadian multiculturalism was not designed to respond to the history of coercive assimilation against Indigenous peoples, who are recognized as "founding peoples", not cultural minorities. Nevertheless, over the last 50 years, scholars and the public have debated multiculturalism and cultural rights

partly in the context of considering the wrongs of colonialism. Multiculturalism's advocates, including myself, have examined Canada's history of injustice to Indigenous peoples partly in terms of its impact on the cultural distinctiveness of Indigenous ties to land and resources (e.g., Eisenberg 2009, chp 6; Kymlicka 1995, especially 79–80, 85–87, 116-20; Taylor 1994, 26, 39–40). In the US, advocates and critics of multiculturalism point to the ways in which the cultural assumptions of dominant groups have distorted legal decisions about tribal rules and Indigenous religious practices (Song 2007). In Latin America, Africa and the Middle East, multiculturalism is often understood to include the accommodation of Indigenous rights (see, e.g., Ennaji ed., 2014; Kymlicka and Pföstl eds., 2014; Sieder ed., 2002).

It is a mistake to conclude that these scholars are unfamiliar with the history and treatment of Indigenous peoples in their countries or that they believe cultural disadvantage to be the central wrong of colonialism. Yet, some of the early scholarship on multiculturalism was primarily interested in how cultural identity anchors a person's self-understanding and is tied to their sense of dignity and self-respect. It pointed to histories in which dominant groups used culture to exclude and marginalize minorities, in order to point out the damage colonialism has done to people's identities. As a result, this scholarship failed to recognize that Indigenous political authority – not cultural identity – was at the heart of many colonial struggles.

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Today, it is widely recognized that the aim of historical policies of assimilation, which sought to alter the culture or language of an Indigenous community, was not merely to reshape Indigenous culture. Rather, their intent was to pacify Indigenous communities that actively resisted the imposition of state authority. This pacification sometimes involved undermining familial, political and economic structures of authority by which Indigenous peoples organized their communities. These structures of authority suffered when the "cultural" practices that sustained them were prohibited. On the West Coast, practices such as the Potlach and other official feasts, Spirit Dancing, and whale hunting were means by which political leadership within Indigenous communities was established and political authority managed. The aim of colonial restrictions on these cultural practices was to replace Indigenous structures of authority and governance with colonial structures. Restrictions successfully undermined Indigenous governance structures, thus breaking ties between the Indigenous community and its traditional territories, weakening kinship networks and family bonds, and rendering communities financially dependent on settler governments. Band councils were then introduced as alternative means of governance.

The cultural practices Indigenous communities seek to protect today are often ones that give content and meaning to the traditional legal and political authority structures that communities seek to rebuild. These practices are the means through which community political authority is manifested. Perhaps because of this connection, courts are careful, when they decide to sanction the revitalization of Indigenous languages or cultural practices, not to alter colonial relations of political authority. Judges are careful to distinguish the accommodation of Indigenous cultural identity from the recognition of Indigenous governance authority. Domestic courts in Canada, the United States and Australia typically accomplish this by shifting disputes that involve Indigenous territories or access to resources away from questions about Indigenous jurisdictional authority towards questions about the role of a particular territory or resource in a community's cultural identity. Such shifts transform disputes about jurisdictional authority into questions about narrow legal exemptions for cultural practices. For instance, courts will consider the question of whether an Indigenous community's distinctive identity requires exemption from a state licensing requirement to fish in a particular way or in a particular place. However, they will not consider the question of whether Indigenous jurisdiction over the resource is the practice that makes the culture distinctive (see Borrows 1997-8). An Indigenous community's right to manage a resource, which has been central and definitive of the community's distinctive way of life, is thus transformed into a right to have access to the resource – as deemed necessary by state courts – for limited cultural purposes.

The driving forces behind decolonization today include efforts to re-establish the authority of Indigenous peoples to govern themselves and their communities through their own laws and governance structures regardless of whether or not this helps to secure lost cultural practices. In fact, some Indigenous scholars go so far as to condemn cultural recognition and intercultural dialogue as pernicious forms of recolonization (see Coulthard 2014a). These scholars point out that Indigenous peoples often do not situate themselves in relation to values such as progress, development, modernization and globalization in the same ways that settler populations typically do. These differences in values and dispositions are then carried into interactions with the state, such as land development negotiations, court cases and intercultural dialogue, where

Indigenous perspectives can end up being viewed by settlers as incomprehensible, unpersuasive, or as confirming that communities are backward and unable to govern themselves (Coulthard 2014b). Those sympathetic with the circumstances this creates for Indigenous peoples, point to the pernicious effects of colonialism that have distorted identities by leading Indigenous peoples to internalize attitudes of inferiority and ambivalence towards their own traditional governing institutions and practices (Tully 2010:244).

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It would be misleading to diagnose these concerns as matters requiring cultural protection, even if cultural differences are implicated in how disputes unfold. Today, Indigenous scholars argue that decolonization requires re-establishing Indigenous authority by rebuilding Indigenous political and legal orders and reintroducing traditional practices, customs and languages (see Asch, Borrows and Tully eds., 2018). For some communities, these are daunting projects that require reconstituting Indigenous legal traditions and governance structures and revitalizing Indigenous languages. Obviously, this requires that states agree to help rebuild some Indigenous cultural practices. But the purpose of these efforts is not only to protect cultural identity. Instead, the point is to reconstitute political and legal orders as legitimate sources of governance for communities, sometimes even if this requires departing from traditional practices and values.

In the context of decolonizing Indigenous-settler relations, reforms that subordinate Indigenous legal orders to state authority, such as proposals to use federal and municipal government structures as templates for self-government, are unsatisfactory. Unsurprisingly, Indigenous communities increasingly reject such reforms or consider them to be temporary way stations on the road to more genuine forms of self-determination (see Coyle 2020). More genuine forms of self-determination require recognition of Indigenous political orders as distinct political entities with legitimate lawmaking authority over communities and traditional territories independent of state concession or the delegation by states of constitutional authority to them (Borrows 2020).

The re-establishment of Indigenous authority structures, in the sense I have described, poses significant challenges to contemporary governance and raises many difficult questions. One question is how can Indigenous legal orders, which directly contest the authority of the state, coexist with the state? Is the sovereign legal authority of contemporary states compatible with Indigenous legal authority? If it is compatible, what measures are required to secure the coexistence of legal orders in ways that make sense to populations throughout the world who live on territories where these authorities overlap? If these different authority structures are incompatible, how far can either Indigenous or settler legal orders go in successfully addressing colonial injustice? These are some of the pressing questions we face today. They are different from the questions addressed by multiculturalism. They implicate cultural difference but, at the same time, are sensitive to the fact that state-based cultural protections can be an obstacle to decolonization.

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