

Gender, Power, and Representations of Cree Law

EMILY SNYDER



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Introduction

“*Miyo-wicêhtowin*” is a Cree word meaning “having or possessing good relations.” It is a concept that arises from one of the core doctrines or values of the Cree Nation. The term outlines the nature of the relationships that Cree peoples are required to establish. It asks, directs, admonishes, or requires Cree peoples as individuals and as a nation to conduct themselves in a manner such that they create positive or good relations in all relationships, be it individually or collectively with other peoples. “*Miyo-wicêhtowin*” as a concept and as a term originates in the laws and relationships that their nation has with the Creator.

– Harold Cardinal and Walter Hildebrandt,
Treaty Elders of Saskatchewan

Discussions of Cree law often refer to good relations and living well. Common definitions of *miyo-wicêhtowin* describe it as a principle that promotes “getting along well with others” and “living in harmony together.”¹ These explanations are very introductory and do not convey the depth of *miyo-wicêhtowin* or the web of legal principles and Cree norms that are connected to it. Cardinal and Hildebrandt’s book, for example, outlines several related principles and discusses them in the context of treaty relations. One book could never cover the entirety of Cree law, yet it remains pertinent to consider how the concept of good relations is represented, given its centrality in Cree law. Like all legal principles, *miyo-wicêhtowin* is variously interpreted. It is a broad concept, one that I engage here for thinking about power, law, and citizenship – that

is, how people relate to and live with one another.² Representations of what is, or ought to be, normal or the norm in Cree law and society, and how various interpretations work to include and exclude some citizens, are central to this book.

Many questions could be asked of good relations. What constitutes good relations? What does it mean to live well and to live in harmony? According to whom? Moreover, what happens when “good relations” is interpreted in ways that are oppressive? In her work on happiness, Sara Ahmed centres questions about power to show how relations of oppression can be perpetuated in social ideals.³ Although happiness is not the same as good relations, her work is nevertheless insightful – “to make a simple point: some bodies more than others will bear the promise of happiness.”⁴

Do some Cree bodies, more than others, bear the promise of good relations? Are some Cree citizens upheld and empowered by good relations, whereas others are marginalized by, and perhaps even resist, normative articulations of what it means to be a good Cree citizen and legal subject? Bodies and notions of subjectivity are created, sustained, and rejected in legal interpretations and practices. As a socially and culturally constructed entity, law is rife with assertions of normalcy, as well as challenges to the status quo as it operates in and through law. Legal analysis demands thinking about power – who and what is included or excluded, and on whose terms. Countless scholars and activists have examined the ways that relations of domination are reproduced in law. Feminist, queer, Indigenous, and critical race theorists, among many others, continue to lay bare the truths and consequences of sexist, heteronormative, racist, colonial, neoliberal, and classist oppression as they are maintained through law. Much of this critical discussion about power in Canada has centred on state law. This discussion is important. Questions should also be asked about power in Indigenous laws. This book concentrates on power relations in Cree law, particularly as they operate in public representations of Cree law.

There are multiple legal orders in Canada, including numerous Indigenous legal orders.⁵ Unlike state laws imposed on Indigenous peoples, a focus on Indigenous law shifts to an examination of Indigenous peoples’ own means of managing how to live together, and with others. There is a need for increased research about Indigenous laws and for practically oriented engagement in this growing field. As Val Napoleon and Hadley Friedland emphasize, “if Indigenous people cannot use Indigenous law, that is, if people cannot reason with it and apply it to the messy and mundane, then it will continue to be talked about only in an idealized

way or as a rhetorical critique of Canadian law.”⁶ It is crucial to understand the immense possibilities and resources of Indigenous laws while also acknowledging the difficulties and limitations of any legal tradition (including Canadian laws).⁷

One area that requires deep, pragmatic engagement is how Indigenous laws and revitalization efforts are gendered. Through an approach that imagines law as a social enterprise, social context is understood to influence the ways that Indigenous laws are used and depicted. Sexism is a pervasive reality that Indigenous people face in both settler society and their own societies, yet not enough attention is paid to how these realities converge with Indigenous law. Indigenous laws are dynamic resources for managing social conflict,⁸ but they are incomplete if gender and power are not fully taken into account.

This problem of not critically attending to gendered power dynamics is evident in both the specific material that I discuss in this book and the literature on Indigenous law more generally. This should not be surprising, given the calls from Indigenous feminist scholars to attend to sexism as it operates in decolonization politics and Indigenous politics more broadly, as well as calls from feminist legal scholars to account for how gender operates in law. This finding is also in line with a 2009 International Council on Human Rights Policy report on legal pluralism and international law, which notes that “human rights standards relevant to plural legal orders have developed furthest in respect of indigenous peoples and minority rights, but this work has occurred largely without reference to standard-setting on other matters, notably culture and gender equality.”⁹ Although these general developments pertaining to Indigenous law should not be exaggerated (state laws consistently still trump and degrade Indigenous laws), the point about gender is significant.

Through an examination of gender, power, and Cree law, this book makes a unique contribution to various fields by critically approaching Indigenous laws as a site of gender struggle.¹⁰ It draws on and adds to Indigenous legal studies, Indigenous feminist studies, feminist legal studies, and Indigenous studies more generally. Further, it is informed by socio-legal studies and critical literature on cultural studies, representation, aesthetics, and law, and is pertinent to those who work in legal education. Throughout, I take an interdisciplinary approach, though my reading of various fields is also heavily influenced by sociology.¹¹ Too often, engagement with social norms, socialization, and stereotypes *within* Indigenous societies and cultures is absent in academic discussions about Indigenous law.

A central contribution of this book is that it articulates a framework of Indigenous feminist legal theory and demonstrates how it is important for critically engaging Indigenous laws. I first heard this term several years ago, when I was a student in a class taught by Napoleon, who asked us to think about what this term might mean.¹² In response, I have tried to navigate what I already knew about feminist legal theory and Indigenous feminist theory while learning about Indigenous law and Cree law specifically. I believe that non-Indigenous people – especially white settlers, such as myself – have an obligation to learn about the Indigenous laws of the Indigenous territories in which they live. If we take seriously decolonization and anti-colonial politics in socio-legal relations, then this learning becomes requisite. I am from southern Ontario, in Haudenosaunee and Anishinaabe territory, though I have lived in many different places, including previously and currently on Cree and Métis homelands. I also come to this research because of an interest in Cree law, as my partner is Cree.

Learning across different fields holds tremendous potential, alongside numerous tensions and difficulties, as I detail in the next chapter. Although, as I demonstrate throughout this book, some scholarly research does work across the fields of feminist legal theory, Indigenous feminist theory, and Indigenous legal theory, explicitly bringing these three theories together to lay out a framework of Indigenous feminist legal theory has not yet been attempted. This articulation emerges from working with the tensions between these theories and with the Cree materials that I discuss in this book. Indigenous feminist legal theory is an approach to Indigenous laws that is intersectional, anti-essentialist, and attentive to power. Explicating this approach in detail here encourages anti-colonial feminist legal analysis and deep engagement with Indigenous laws as gendered.

Indigenous laws need to be understood as gendered. This might at first seem an odd statement to those who see gender roles as central to Indigenous societies and thus as fundamental to Indigenous law. What I am arguing includes the ways that gender is embedded in social structure and organization but also brings in discussion about power, exclusion, dissent, disagreement, and oppression – which is overwhelmingly missing in academic work on Indigenous law, if and when gender is talked about (a problem that is not unique to academia). Carolyn Korsmeyer suggests that calling something “gendered” is to make obvious that “there is a hidden skew in connotation or import, such that the idea in question pertains most centrally to males, or in certain cases to females.”¹³ She explains, “I consider hidden gender a particularly interesting force over thinking because it can be so insidious. Most of the time it is either nearly invisible

or apparently trivial; and yet careful scrutiny reveals systematic meanings that exercise considerable influence on the framing of ideas.”¹⁴ It is necessary to make gender explicit. However, this does not entail “figuring out” and conveying what “the rules” may be for gendered subjects in Cree law: rather, it involves thinking about how gender is constructed and can be contested in enactments of law, which include the ways in which law is represented.

Too often a gendered approach to Indigenous law is imagined as one in which the key question becomes, What are the laws about gender? I focus instead on asking, How are Indigenous laws gendered? This shift in questioning treats law as dynamic, contested, and deliberated.¹⁵ Applying the latter question to Cree law necessitates examining the difficult relationship between various interpretations about tradition and gender roles, and understanding Cree law as a resource that can both challenge sexism and be used to perpetuate gendered oppression. This type of analysis also requires navigating and deconstructing various dichotomies to acknowledge the dangers and realities of these dualisms, while also challenging them and resisting drawing easy lines between them. These dichotomies, which come up throughout the book, include academic/community (or academic/Indigenous),¹⁶ Indigenous/feminist, authentic/colonized, man/woman, public/private, and mind/body.

My way into this discussion is through focusing on certain publicly available resources about Cree law, which are meant to advocate empowerment of Cree people and laws. I examine eleven resources in this book. The sample is small, in part because there are few publicly available secondary resources on the subject. Further, I applied the following criteria when I created the sample: the resources had to be contemporary (with a copyright between 2000 and 2013); be produced primarily by Cree people; be about decolonization and Cree empowerment; aim to educate; and be directly or indirectly about Cree law. The eleven resources are

- On the Path of the Elders (educational website, including the online game Knowledge Quest).¹⁷
- *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (general audience book).¹⁸
- *Muskwa: Fearless Defender of Natural Law* (graphic narrative).¹⁹
- *Wahkohtowin – Cree Natural Law* (short documentary).²⁰
- *Cree Restorative Justice: From the Ancient to the Present* (academic book).²¹
- *Cree Narrative Memory: From Treaties to Contemporary Times* (academic book).²²

- [Four Directions Teachings.com](#) (interactive educational website).²³
- Intercultural Learning Program Lectures (university lectures available online).²⁴
- Online Video Series (short videos).²⁵
- *Cultural Teachings: First Nations Protocols and Methodologies* (general audience book).²⁶
- *Mikomosis and the Wetiko* (graphic narrative).²⁷

These works are more fully discussed in [Chapter 2](#). Although they do not include textbooks, and only some are accompanied by curricular resources, such as lesson plans, I frame them as being about legal education. As I demonstrate in [Chapter 2](#), the resources were produced to educate and will be used in educational contexts. I use “educational” broadly, to recognize the multitude of formats through which people can learn and teach about Indigenous law.

With the eleven resources, I wondered if and how they included Cree women as legal agents and citizens; how they interpreted, taught, and represented Cree law; and how they constructed gender in their articulations of Cree law. Indigenous men are also affected by colonialism in ways that are particular to their gender, and though this issue is worth examining,²⁸ it is not my focus here, as Indigenous men have featured prominently in Indigenous history and in current work on Indigenous peoples more generally, including in Indigenous law. Masculinity should be discussed as part of understanding gender, but what is evident is the frequent erasure of other Indigenous gendered subjects’ presences and realities. For example, the resources do not address queer and two-spirit issues. Although a gendered analysis necessitates attending to all gendered subjects, this book focuses on women and the ways in which the materials take up and naturalize the gender binary.

Despite their variety and range, most of the materials do not depict Cree women as complex legal agents and citizens. Indeed, women are consistently undermined throughout the sample. Overwhelmingly, they are marginalized in and by resources that seek to educate and to contribute to decolonization and revitalization for the Cree collective as a whole. Overall, three thematic representations emerge – two very dominant themes regarding gender and law, and one anomaly. First, women are absent from many of the representations of Cree law. As I show, many of the resources that do this might mistakenly be read as gender neutral, but instead prioritize men’s experiences and knowledge, and portray men as universal authoritative figures who speak for everyone. In these materials,

men appear simply as citizens – not as gendered citizens – thus speaking to the invisibility (or “neutrality”) and normalcy of male privilege. I examine these representations in [Chapter 3](#), with a close look at how the problem of gender neutrality plays out in interpretations of Cree legal principles, obligations, rights, processes, and responses.

The second dominant theme is that women, when present, are associated with “women’s issues” and are typically tied to rigid interpretations of gender roles. They appear as explicitly gendered subjects. Motherhood, nurturance, and teaching the next generation are lauded as traditional and respected gender roles. One could suggest that these representations help to alleviate the problem of women’s exclusion by according them a central role as mothers of the nation; however, I argue that the ways that gender roles are framed perpetuate essentialisms and reduce women to rhetorical figures wherein the complexities of their lives and of legal principles related to gender are not deeply engaged. Drawing on anti-essentialist Indigenous feminist approaches, I examine how Cree women’s legal agency is depicted as being exercised most appropriately through embodiment and the private realm. Rather than challenging male privilege, the representations exacerbate the problem by limiting women to their bodies. On the whole, the representations of gender – both the exclusions and inclusions of Cree women – are phallogocentric in that male experiences and ideas are universalized as Cree. I examine these problems in [Chapter 4](#), through an analysis of the ways that gender complementarity – or the idea that opposite gender roles are functional and balanced – is deployed in discussions about motherhood and women’s laws.

Amid these dominant images of gender and law, the third anomalous theme arises, in the graphic narrative *Mikomosis and the Wetiko*, which takes an Indigenous feminist approach to Cree law. In [Chapter 6](#), I provide a case study of this resource, demonstrating what this approach enables and contrasting it with the other materials. It is the only resource that identifies itself as feminist. Furthermore, it is unlike the others in that it opens up discussion and debate about Cree law and gender, whereas the others shut down discussion by representing Cree law in singular terms.

It is troublesome that all but one of the resources portray Cree law in oversimplified ways – that is, it is often discussed in generalities and is treated as relatively one-dimensional and uncontested. In [Chapter 2](#), I draw on John Borrows’ work on deliberative law to show how the debates, discussions, and conflicts that shape any legal order are largely missing in the materials.²⁹ This absence of conflict and lack of acknowledging internal power dynamics and struggles causes Cree law to come across as perfect – as

though it works well for everyone (so long as they are being “properly” Cree) – and it is treated as if it can cause no harm. Gender, too, is oversimplified through both its omission and its inclusion on overwhelmingly invariable terms. Cree gender roles are also portrayed as if they are perfect, as they are depicted as uncontested and working for everyone. There is a connection between the representations of gender and the representations of Cree law. When the latter is oversimplified, complicated gendered realities are disallowed. For example, the possibility that Cree law can perpetuate harm cannot adequately enter into a conversation if it is depicted as perfect. Cree law *cannot* be perfect when gendered conflict is taken into account. Likewise, the representations of gender disallow complex readings of Cree law. For instance, to depict motherhood as Cree women’s *primary* way into legal agency undermines the possibilities and practices that exist for gendered subjects in Cree law.

It is crucial to note that these *representations* of gender and Cree law should *not* be misread to mean that Cree law itself is simple or that Cree people construct, act, and engage their gender in straightforward ways. Cree women are not afforded their complexity, and again, Cree law, like all legal orders, has great depth and is both an immense resource and something that can perpetuate oppression, as humans interpret and use law. What is striking, then, is how these difficulties and nuanced realities are generally absent in the materials. Jeremy Webber argues that all law (non-state and state) “is inherently non-consensual, that it is always to some extent peremptory and imposed, establishing a collective position against a backdrop of deep-seated normative disagreement.”³⁰ Law necessarily involves disagreement,³¹ much of which is connected to systemic social problems (such as racism and sexism).

It is troublesome that most of the materials examined for this book are intended to advance legal revitalization, decolonization, and the empowerment of Cree people as a whole, yet come at the expense of certain gendered subjects. As I discuss in [Chapter 5](#), the resources depict Cree law and gender roles in aesthetically pleasing ways (except for *Mikomosis*) – Cree law and gender relations get wrapped up in incontestable discourses about sacredness, tradition, and good relations. The aesthetically pleasing representations gloss over internal power dynamics, concealing oppression in the name of good relations. I consider why Cree law and gender are so overwhelmingly depicted in such a manner, particularly in a colonial context, but argue that a more nuanced approach is still needed. The resources rely heavily on differentiating “Cree ways” from “white ways,” and I examine the use of oppositional politics and the race and gender essentialisms upon

which they rely. These problems are not unique to this research on Cree law – they mirror broader identity politics that play out in Indigenous contexts and in settler society. Scott Richard Lyons notes, for example, that “many thinkers today are deeply invested in traditionalism and this is not necessarily a problem. It can become a problem, however, when the traditional is transformed into a fetish, loses its realism, denies the actually existing diversity of Indian life, and/or confuses modern practices and institutions with the assimilation of a ‘white’ or ‘Western’ identity.”³² Both Indigenous and non-Indigenous thinkers can take up and sustain fundamentalist ideas about Indigenous identities (and other identities). Within these politics, binaries and oppositions become further entrenched rather than engaging in politics of deconstruction.³³

Difficult aesthetics are central to my articulation of Indigenous feminist legal theory and should be central to legal practices. A key part of analyzing the Indigenous feminist graphic narrative *Mikomosis* in [Chapter 6](#) includes examining the importance of troublemaking. I draw on Ahmed’s feminist killjoys and Napoleon’s Indigenous feminist tricksters to show the importance of troublemaking in representational practices (and beyond). Interpreting good relations through the lens of Indigenous feminist legal theory encourages a reading of this principle that approaches Indigenous laws as gendered, takes a deliberative approach to law, and works with difficulty and discomfort rather than against it. Difficult aesthetics, when applied to good relations, acknowledge that good relations can be positive, empowering, and inspiring but can also be deployed in harmful ways. Aesthetics are an important, though often overlooked, part of legal analysis.³⁴

ANALYZING REPRESENTATIONS

How law is publicly represented and talked about matters, especially when the portrayals are backed as authoritative because they were created by teachers, professors, elders, and/or community organizations. My way into exploring the representations is through a focus on discourse. This includes text and talk but also encompasses images, and I examine text, conversation, sound, and images in the eleven materials.³⁵ An orientation toward discourse enables an analysis of how certain ideas about subjectivity, particularly gendered, sexed, and racialized subjectivities, circulate in and are disciplined by narratives about and practices of Cree law. Law is often wrongfully thought to occur only in courtrooms or, with a *slightly*

more generous non-statecentric view, in ceremonies and sentencing circles. Indigenous law (and law generally) is more complex than this and is practised and interpreted in the everyday beyond those spaces. Portraying law and engaging in educational practices, as the resources do, are also the doing of law.³⁶ This orientation to representation requires examining not just what gender looks like as it is constructed in narratives about law, but also analyzing how truths about gender and law are constructed and used.³⁷ As Gillian Rose emphasizes, there is a need to determine “how a particular discourse works to persuade. How does it produce its *effects of truth*?”³⁸

The language of “truths” is loaded, particularly given the historical and persistent denial of Indigenous peoples’ experiences. Treating truths as constructed and contingent is not to deny Indigenous peoples’ experiential claims or to suggest that their realities are fabricated or false. Rather, as Joan Scott advocates, “experience is at once always already an interpretation *and* something that needs to be interpreted.”³⁹ As there is no singular Indigenous experience, it remains crucial to consider how various interpretations of Cree law are asserted, how they align or differ, and which are the most powerful and why.⁴⁰ As Norman Fairclough explains, one of the main tenets of critical discourse analysis (CDA) is that discourses are relational.⁴¹ CDA examines social relations as they play out in, and are perpetuated through, communication.⁴² This approach is committed to examining how discourse reproduces inequalities and privileges via the production of knowledge, truth, and subjectivities.⁴³

It is also important to look not only at what is said, but also at what is left unsaid.⁴⁴ As Bernard McKenna notes, “a discourse has a history; is a product of a community; has boundaries that determine what can be said; has characteristic ways of saying things; sometimes gets conventionalized into genres; and often uses specialized lexis and grammar.”⁴⁵ One can see these patterns play out with the eleven resources – particular narratives about Cree law, supported by the grammars of sacredness, tradition, and good relations, become conventionalized and create boundaries through which non-normative Cree bodies and interpretations of law are often disallowed. In discussing the power of normative discourses, Teun A. van Dijk states that “some ‘voices’ are thereby censored, some opinions are not heard, some perspectives ignored” and that those who assert non-dominant perspectives “may also be banished as hearers and contestants of power.”⁴⁶ Likewise, McKenna highlights this problem that “speaking subjects cannot enter the order of discourse if they do not meet certain requirements.”⁴⁷ Pushed out by dominant discourses, Indigenous feminist engagements

with law, for instance, are often rendered not speakable or not hearable – they do not register as legitimate or authoritative accounts of Cree law.

In this book, I do not focus on *what* Cree law is; rather, I concentrate on *how* it is represented – how it is talked about, visually depicted, how interpretations are put forth, how these are gendered – and I examine what these representations might be *doing*. This approach is influenced by CDA and by the work of several scholars, including Napoleon's emphasis on the importance of legal reasoning and the intellectual aspects of law, and Carol Smart's call to pay attention to "knowledge and ideas" rather than focusing only on "the law" itself.⁴⁸ This tactic is also somewhat akin to Patricia Hill Collins' approach in her work on black sexual politics. Although not writing about law, she explains that her book "does not tell readers what to think. Rather, it examines what we might think about."⁴⁹ Further, I am indebted to Ahmed's work on happiness, in which her primary question is "not so much 'what is happiness?' but rather 'what does happiness do?'"⁵⁰ I am interested in thinking about what good relations does, as a broad principle about citizenship and living well together, as it is deployed in the materials, which aim to educate and empower. How does it compel people to interact with Cree law and society? What narratives do dominant assertions of living well rely on? What discourses "stick" to this legal principle?⁵¹ What does it take for variously gendered subjects to engage with this concept? What do good relations look like when interpreted through the lens of Indigenous feminist legal theory? And what does the notion of difficult aesthetics offer to this deliberation?

Aesthetics are usually thought of as referring to beauty or to the analysis of art, yet this interpretation is too limited.⁵² As Korsmeyer emphasizes, a feminist approach to aesthetics necessitates examining how representations "are indicators of social position and power."⁵³ She maintains that "aesthetic ideologies that would remove art from its relations with the world disguise its ability to inscribe and to reinforce power relations."⁵⁴ Likewise, Desmond Manderson states that "aesthetics is the faculty which reacts to the images and sensory input to which we are constantly exposed and which, by their symbolic associations, significantly influence our values and our society."⁵⁵ Part of critically reading what discourses do necessitates examining how they are aesthetically and affectively deployed.

With this analysis, however, I focus only on the eleven resources themselves, and thus the people who might use them are rendered somewhat absent. Investigating, for example, how educators might employ them (or not) in classrooms and how students engage with them would no doubt bring additional conversations to this work.⁵⁶ It is important to examine

Cree law as it is articulated in educational resources. Though research into Cree law is a nascent field, academic and general audience resources that deal with it (and with Indigenous laws overall) have increased to some extent, and it is important to understand these resources.⁵⁷ Revitalization efforts in educational contexts are a somewhat recent development.⁵⁸ Verna St. Denis argues that “cultural revitalization” is frequently advocated “as a primary solution to the educational inequality and marginalization” that Indigenous peoples encounter.⁵⁹ Jennifer Wemigwans also notes that “the difficulty for many of us [educators ...] was a lack of readily accessible Indigenous knowledge resources that we could reference on a regular and ongoing basis.”⁶⁰ Neither St. Denis nor Wemigwans is referring specifically to resources about Indigenous law – St. Denis concentrates on initiatives such as language revitalization programs and Wemigwans on Indigenous knowledge online – though legal education initiatives (that focus on Indigenous laws rather than on state laws) are also a recent trend.

When working in the area of Indigenous law, it is crucial to reflect on how one talks about and presents it, which involves thinking critically about the resources that one uses and how they are engaged with. Because the field of Indigenous law is so new, there is an ongoing need for increased foundational work on theory, methodology, and pedagogy. My research on Indigenous feminist legal theory and my examination of how Cree law and gender are represented are intended to contribute to this growing movement in the field. Scholars such as Gordon Christie, Napoleon, and Borrows have produced engaging theoretical discussions of Indigenous laws that provide researchers with useful frameworks from which to extend their own analyses.⁶¹ Further, Friedland illustrates that there are different methodologies in the field, and she and Napoleon have produced work on legal methodologies for substantively engaging with Indigenous laws.⁶² Friedland explains, “even if we agree [within the discipline] that Indigenous legal traditions *should* be given more respect and recognition within Canada, and drawn upon in more explicit and public ways, we are still left with the very real question of *how* to do this.”⁶³

It is vital that this work centres the knowledge of Indigenous scholars and communities (including urban, activist, and academic ones). Difficult questions persist regarding my own relationship to this work. How can I, as a white settler, employ Indigenous feminisms and articulate an approach of Indigenous feminist legal theory? How can I proceed with this analysis of Cree resources and a Cree legal principle, when I lack deep cultural knowledge? Is it legitimate for me to make assessments about Cree law, Cree women’s inclusion, decolonization, and Cree people’s revitalization

and education efforts? And who am I to provide the answers to these questions? White settler voices, through white supremacist and colonial structures, are damagingly positioned as authoritative over Others. I aim to disrupt this unearned white privilege through the analysis that follows, while also taking care to understand the power structures within which I am positioned. I do not approach this work with the perception that I am an expert of Cree law; rather, I understand myself as a learner. My analysis is also shaped by my position as an educator. I think that all educators need to foster a spirit of critical engagement whether they are Indigenous or not, to be thoughtful about the resources that are used, and to consider who and what is upheld in them, and why. In writing about Indigenous feminist legal theory, I make no claim to be an Indigenous feminist. I include Indigenous feminism explicitly in this research because, as I explain in the next chapter, it is too often overlooked, but it is crucial to include Indigenous feminism because it can deepen conversations about law. As Joyce Green notes, Indigenous feminism is a “conceptual tool,”⁶⁴ and disregarding the important insights from Indigenous feminisms would be a grave omission. I also treat Indigenous feminist legal theory as an analytic tool – an approach that takes Indigenous law seriously and that engages in analyses to critically interrogate gendered, colonial, heteronormative oppression. The purpose of this book is to take seriously these interconnected structural forms of oppression because not doing so works to create incomplete and erroneous legal analyses and education.

GENDERED REALITIES

Indigenous women contend daily with gendered realities.⁶⁵ Of course, not everyone has the same experiences, but no one is exempt from the systemic ways that sexism operates in social relations and norms that circulate through law, politics, economics, and personal relationships. These gendered dynamics function both explicitly and implicitly, and in describing law as gendered, I focus on these power dynamics.

The marginalization of women and violence against women are major social problems in Indigenous communities. These problems are also pervasive in non-Indigenous communities, though as the following discussion highlights, they are exacerbated for Indigenous women as they contend with sexist, racist, and colonial oppression. Indigenous women face marginalization in many different ways, from both Indigenous and non-Indigenous people.⁶⁶ Gender shapes experience, and though Indigenous

people face some similar social and legal issues, Indigenous women can experience them differently than Indigenous men and can encounter additional challenges. Kim Anderson maintains that these gendered realities are erased when “decolonization, healing, sovereignty, and nation building are areas of priority.”⁶⁷ In Indigenous politics, it is commonly expressed that “if we work in these areas, so the logic goes, then the dire conditions in which many Native women find themselves will improve. Yet, in spite of our efforts to achieve self-determination since the middle of the twentieth century, the lives of Indigenous women continue to be plagued by violence and poverty.”⁶⁸ Indigenous feminists, as discussed in the next chapter, illustrate how decolonization efforts need to be explicitly gendered, given the ways that colonial and patriarchal violence work together. Complex social issues cannot be challenged if they are not directly addressed.

Colonial violence and patriarchal violence are reliant on each other. Further, patriarchal oppression is heteronormative – it relies on and perpetuates the idea that heterosexuality is the only normal way to be and that the gender binary is a normal and natural means for hierarchically organizing gender and sexuality. Chris Finley argues,

colonialism disciplines both Native people and non-Native people through sexuality. The logics governing Native bodies are the same logics governing non-Native people. Yet the logic of colonialism gives the colonizers power, while Native people are more adversely affected by these colonizing logics. The colonizers may feel bad, stressed, and repressed by self-disciplining logics of normalizing sexuality, but Native people are systematically targeted for death and erasure by these same discourses.⁶⁹

How much power non-Indigenous people with non-normative sexualities have should not be overstated. However, the point to take from Finley is that Indigenous people experience heteronormative oppression in a more adverse way: as it operates in relation to colonization, heteropatriarchy aims for the elimination not only of queer Indigenous people but of Indigenous peoples. To talk about colonialism necessarily means having to talk about patriarchy, and to talk about patriarchy means having to talk about heteronormativity – these forms of oppression all sustain each other. Yet people too often treat sexism, heteronormativity, and colonialism as if they are discrete.

Indigenous social norms regarding gender have been severely impacted by the colonial imposition of heteronormative, patriarchal, Christian, Victorian notions of gender.⁷⁰ Attempts at assimilation included (and still

include) efforts to Christianize Indigenous women to be like Euro-Canadian women and to reinforce heterosexual relationships, family structures, and gender roles.⁷¹ Kiera Ladner writes that “Indigenous women were considered within Indigenous society as persons,” unlike in European arrangements, where women were treated as property and as subordinates.⁷² Forced attendance at residential schools and imposed state policies, such as the Indian Act, negatively affected Indigenous gender roles and harmed Indigenous women.⁷³ Joanne Barker explains, “the provisions [of the Indian Act] represented and perpetuated a much longer process of social formation in which Indian men’s political, economic, and cultural roles and responsibilities were elevated and empowered while those of Indian women were devalued.”⁷⁴ She maintains that “as with all assimilation policies, it was based on an inherently racist and sexist assumption that Indian governance, epistemologies, beliefs, and gender roles were irrelevant and invalid, even dangerous impediments to progress.”⁷⁵ Through the Indian Act, patrilineal means for establishing status were put forth, which perpetuate discrimination against Indigenous women.⁷⁶ A fair amount has been written about gender, band membership, and Indian status,⁷⁷ which is important, as the effects of these policies are both material and ideological. However, additional conversations about gender are needed, as it should not be imagined only in relation to Indian status.

It is crucial to recognize the impacts that colonialism has had, and continues to have, on Indigenous women’s rights to political involvement, positions of leadership in their communities, and economic well-being,⁷⁸ while also not oversimplifying Indigenous gender norms prior to contact. Working against this oversimplification includes deconstructing and challenging romanticizations of Indigenous traditional gender roles in which pre-contact societies are imagined as perfect and then ruined by colonialism. Emma LaRocque hesitates to label male privilege and violence as products of colonialism and questions the “over-riding assumption that Aboriginal traditions were universally historically non-sexist and therefore, are universally liberating today.”⁷⁹ Further, as Napoleon states, “the overall picture that emerges from these early sources [of pre-contact gender relations] is of extraordinary diversity, flexibility, and tolerance among most Aboriginal nations across North America.”⁸⁰ Nonetheless, she too maintains that “there was no golden age – hardship, wars, violence, sexism, prejudices, repression, and homophobia existed for many Aboriginal nations as in the rest of the world.”⁸¹ Though not all Indigenous societies had or have similar gender norms, and though scholars should be careful not to romanticize gender relations prior to contact as perfect,

various Indigenous concepts about gender have undoubtedly been impacted by colonization.⁸²

This approach of treating the past as including oppression is not meant to deny the significant violence that Indigenous women face because of colonialism. Colonial violence has been, and still is, reliant on violence against Indigenous women.⁸³ Gendered violence, such as sexual assault, is a common means of colonial oppression and degradation.⁸⁴ In Canada, rates of sexual assault are 3.5 times higher for Indigenous women than for non-Indigenous women.⁸⁵ Further, research indicates that the brutality of the violence done to Indigenous women is often more severe.⁸⁶ Citing a government survey, an Amnesty International report states that “young First Nations women are five times more likely than other women to die as a result of violence.”⁸⁷ The report clarifies that the statistics “almost certainly underestimate the scale and severity of the violence faced by Indigenous women.”⁸⁸ There are many complex reasons why Indigenous women may not disclose incidents of violence, but the fact that much crime data come from government surveys must be considered. Given the violent history and contemporary practices of the state, many Indigenous women are unlikely to see government surveys as trustworthy or safe outlets for disclosing violence. As a 2010 fact sheet by the Native Women’s Association of Canada (NWAC) notes, “community-based research has found levels of violence against Aboriginal women to be even higher than those reported by government surveys.”⁸⁹

There is an epidemic of missing and murdered Indigenous women and girls in Canada. The 2010 NWAC fact sheet noted 582 cases of missing and murdered Indigenous women.⁹⁰ More recently, a 2014 Royal Canadian Mounted Police (RCMP) report revealed 1,181 “police-recorded incidents of Aboriginal female homicides and missing Aboriginal females.”⁹¹ Although the report correctly indicates that Indigenous women experience disproportionate amounts of violence compared to non-Indigenous women, it also claims that “the majority of all female homicides are solved (close to 90%) and there is little difference in solve rates between Aboriginal and non-Aboriginal victims.”⁹² This last assertion is problematic as it tells us little about how Indigenous women and non-Indigenous women and their families are treated by police in these cases. A 2008 Amnesty International report notes that “despite assurances to the contrary, police in Canada have often failed to provide Indigenous women with an adequate standard of protection.”⁹³ This problem still exists today. Under the federal Conservative government, Bernard Valcourt, the minister of Aboriginal Affairs and Northern Development Canada, responded in 2014 to the

problem of missing and murdered Indigenous women and girls by blaming Indigenous men for the violence.⁹⁴ It is necessary to recognize internal violence and oppression, though Valcourt's comments relied on stereotypes and ignored broader systemic social realities concerning colonial and patriarchal violence, including ignoring the responsibilities that settlers have to live ethical relationships. White settler privilege and complacency are central to the problem of gendered violence against Indigenous women and girls.

Indigenous people have long organized and protested around the issue of violence against women, and activism increased in the wake of the 2014 RCMP report, including through social media outlets such as Twitter, with the hashtag #MMIWG (Missing and Murdered Indigenous Women and Girls).⁹⁵ Part of the calls for the federal government and settler society to act included a national inquiry. Launched in September 2016, the inquiry is independent of the federal government and is set up to be run by five commissioners (however, a commissioner and other staff have left because of concerns about how the inquiry is being run).⁹⁶ The inquiry is ongoing at the time of writing. Having the state held accountable for its "justice" policies is important, as is having resources diverted to policy change and support in communities, but inquiries have tended to minimize social problems by not naming them for what they are, and the state typically remains firmly intact rather than fundamentally challenged. This particular inquiry has been heavily criticized on many issues and has been especially denounced for its treatment of families and community members.⁹⁷ Complex social problems require complex discussions in which realities concerning physical violence need to be considered alongside mental, spiritual, economic, spatial,⁹⁸ cultural, colonial, and heteropatriarchal violence. One of the biggest challenges for a national inquiry will be to work with these complexities and to compel others to do the same.

Economically, Indigenous women typically have lower incomes than non-Indigenous women, earning only 77 percent of what non-Indigenous women in Canada make.⁹⁹ Indigenous women are more likely than other women to live below the poverty line.¹⁰⁰ Further, compared to non-Indigenous women, they are overrepresented in manual labour jobs and clerical work, and under-represented in management positions.¹⁰¹ Poverty can lead to many problems, such as those involving health, and is also undoubtedly related to the discussion about missing and murdered women and girls. Amnesty International notes that "the social and economic marginalization of Indigenous women, along with a history of government policies that have torn apart Indigenous families and communities, have

pushed a disproportionate number of Indigenous women into dangerous situations that include extreme poverty, homelessness and prostitution.”¹⁰² The overrepresentation of Indigenous women in Canadian prisons is also complexly related to poverty.¹⁰³

Indigenous women face marginalization within Indigenous communities as well. For instance, on average, they make less money than Indigenous men.¹⁰⁴ Further, they face political marginalization, as they are less likely to be elected into leadership positions in communities.¹⁰⁵ As a result, their concerns may not reach, or be heard by, predominantly male decision-makers, and Indigenous men are more likely to occupy positions in which they can exercise control over resources within a community.¹⁰⁶ Many people have noted the disconnect between these realities and women’s historical roles as leaders in Cree society.

It is necessary to also consider how property is gendered, as it shows some of the very material ways that power manifests.¹⁰⁷ Previously, state laws pertaining to property on reserve very directly and negatively affected Indigenous women who lived on-reserve by treating them as men’s property and disallowing their traditional property rights and relations (Indian Act laws are premised on men as having property rights). Heteropatriarchal matrimonial property laws played a role as well.¹⁰⁸ The laws pertaining to matrimonial real property on-reserve have since changed – the state “provided” First Nations with the “opportunity” to develop and apply their own laws regarding property or to use the provisional federal rules instead.¹⁰⁹ Indigenous and Northern Affairs Canada claims that this change will address the “unacceptable legislative gap” that previously existed,¹¹⁰ but questions still remain about how Indigenous or federal laws will actually be used and accessed in practice. The changes certainly constitute an improvement, but they do not resolve the reality that property is often a mechanism of power. Indeed, a key argument throughout this book is that though Indigenous peoples can and do interpret and use law in ways that can be empowering, laws are also contextually embedded and can be employed to reproduce social norms and problems. It remains vital, then, to consider how the realities of sexism in Indigenous communities, how predominantly male political leadership, and how men’s economic status compared to Indigenous women’s can play out in the interpretation and use of laws pertaining to property. Generally speaking, Indigenous women who experience a relationship breakdown with an Indigenous man are not coming to the situation from a comparable social standing. Further questions remain about domestic violence in relation to property and power.

Violence against women is a significant problem in Indigenous communities. For example, Indigenous women face high rates of sexual violence.¹¹¹ They are vulnerable to it as adults but also as children (61 percent of Indigenous women reported it, compared to 35 percent of Indigenous men).¹¹² Rates for domestic violence are also high.¹¹³ Although violence can be understood as occurring between individuals, it is also connected to larger social problems – violence against women is perpetuated through social structures and circumstances. For example, an Indigenous woman might have difficulty in leaving an abusive relationship due to a lack of resources and/or a housing shortage.¹¹⁴ Further, the pervasiveness of violence against women is perpetuated by social norms in which the degradation of Indigenous women is treated as normal and is supported by denigrating stereotypes that attempt to devalue their worth and right to their own bodily and mental safety.

Indeed, all the problems noted above are supported by stereotypes that normalize the devaluation of Indigenous women. Especially pervasive in the limiting of Indigenous women's identity is the princess/whore dichotomy. Describing Rayna Green's work on the "Pocahontas Perplex," Sarah Carter explains,

the beautiful "Indian princess" who saved or aided white men while remaining aloof and virtuous in a woodland paradise was the positive side of the image; but there was her opposite, the squalid and immoral "squaw" who lived in a shack at the edge of town and whose "physical removal or destruction can be understood as necessary to the progress of civilization."¹¹⁵

Carter argues that the negative side of the dichotomy was especially pervasive in western Canada during the late nineteenth century, deployed in a way "that confirmed cultural difference and the need for repressive policies."¹¹⁶ The binary "left newcomers little room to consider the diversity of the Aboriginal people of the West or the complex identities and roles of Aboriginal women."¹¹⁷ This problem persists throughout Canada, occurring in both settler society and Indigenous communities.¹¹⁸

Indigenous women contend with many challenges that are crucial to understand in discussions about law and beyond. Yet it is necessary to reject depictions of Indigenous women (and Indigenous people more generally) as victims only, wherein their agency is denied. It is also crucial to resist stereotypes. As Barker asserts, "the important conceptual challenge in understanding the impact of these ideologies [of patriarchy and

heterosexism] on Indian peoples is refusing a social evolutionary framework in which pristine, utopian Indian societies degenerate into tragically contaminated ones.”¹¹⁹

The preceding discussion focused broadly on Indigenous women, though these systemic social problems are of course also something that Cree women deal with. Although there are Cree values that advocate respect and empowerment for women, one must ask about the difficult disjuncture between these ideals and the realities that Cree women face in their communities (and in settler society). Too often discussions about Cree law (and other Indigenous laws) concentrate solely on cultural values and ideals rather than the time- and place-specific realities of what is actually happening on the ground. Just as the princess/whore dichotomy needs to be eliminated, the perfect/dysfunctional dichotomy about Indigenous laws and gender needs to be challenged.

INDIGENOUS LAWS

I approach law, generally, as something that is about conflict management and how people attempt to live together. This approach provides a deep reading of law (rather than looking just at formal legal processes and rules), although it raises particular questions regarding the identification of law. How, for example, is one to differentiate between legal norms and social norms? These questions, which are by no means new, present a sizable philosophical challenge, though two things are very clear – we live in a multi-juridical society in Canada, and Indigenous laws have existed and continue to exist.¹²⁰ An anti-colonial legal pluralist lens in this (and other) colonial territory opens up how law can be understood and decentres and challenges the validity of the state.

My approach to Indigenous law is largely influenced by the work of Napoleon and Borrows (though I draw on numerous other scholars throughout this book). Napoleon has written widely on Indigenous laws, including examining methodologies for practically engaging with Indigenous laws, and has worked with various legal orders, including focusing on Gitksan legal theory.¹²¹ Borrows, a constitutional legal scholar, has written extensively on Indigenous laws and Anishinaabe law.¹²² Their analyses of Indigenous legal orders provide important insights.

I discuss their ideas in more detail in the next chapter (along with those of Christie). Further, my approach is informed by work that Friedland has done independently and in collaboration with Napoleon.

The term “Indigenous law” is sometimes used in various ways. Much has been written on customary law, but I generally do not employ this literature here. Customary law and Indigenous law are often wrongfully conflated. This conflation has meant that Indigenous laws are often not treated as law – the misconception is that Indigenous peoples had/have customs rather than law per se.¹²³ As I discuss in [Chapter 2](#), Borrows shows that Indigenous laws come from many sources, of which customary law is just one.¹²⁴ Webber argues that all legal traditions include customary law, which involves active reasoning.¹²⁵ However, Napoleon contends that when Indigenous law is reduced to customary law, its intellectual aspect is often denied, and Indigenous peoples are treated as engaging in traditions and practices rather than in legal processes and reasoning.¹²⁶ The reduction of Indigenous laws to rigid, singular conceptualizations of tradition can (among many problems) result in limited discussions about gender that become bound in the language of authenticity and culture, at the expense of critique, reasoning, and an attentiveness to systemic social realities.¹²⁷

Assumptions about Indigenous laws – that they are simple, primitive, inherently sexist, not adaptable, and just custom – are based on racist and colonial hierarchical approaches to law.¹²⁸ This hierarchical ordering claims that Indigenous laws are so primitive that they are not law at all and that law started with the laws of settlers.¹²⁹ These ideas are challenged by Indigenous legal theory, which treats Indigenous laws as complex and as containing practical tools for social organization and conflict management. When writing about Indigenous laws, I (and many others) am not referring to band governance. Though band governance is connected to Indigenous laws in certain ways, it can be thought of as something that *undermines* Indigenous legal orders, given that band councils are state governance structures on decentralized social, political, and legal structures.¹³⁰

Further, Indigenous laws and restorative justice should not be conflated.¹³¹ As Napoleon et al. contend, though restorative justice programs commonly claim to take up Indigenous principles, they often do so in a general way that is “unrelated to the laws and legal orders of the local Indigenous peoples where they are applied.”¹³² Not only is it inaccurate to conflate Indigenous laws and restorative justice, doing so erases the complexity of Indigenous laws and reduces “Aboriginal justice” to general pan-Indigenous principles that are contrasted with adversarial state laws.¹³³

When discussing Canadian laws (and the laws of other settler states), I use the terms “state law” and “Aboriginal law.” These terms refer to state legal practices and laws that are about and imposed on Indigenous peoples. Even though Indigenous people use the state legal system for various

reasons, it is still overall an imposed colonial institution that wrongfully asserts itself as “the” form of law.¹³⁴ “Indigenous law” refers to Indigenous peoples’ own internal legal traditions. I have used the broad language of “Indigenous” here, though research on Indigenous laws should speak specifically about particular legal traditions and legal orders (for example, Cree law).

As illustrated throughout this book, Cree legal traditions are plural and changing, yet like the conclusions in Friedland and Napoleon’s work on Indigenous legal traditions, Cree law has also maintained “consistency and continuity” over time.¹³⁵ As the authors explain, “time and time again, we saw that Indigenous legal principles can and do maintain their core integrity while adapting to new and changing contexts.”¹³⁶ In her work on Gitksan law, Napoleon emphasizes that Gitksan society is decentralized (as is Cree society) and that “Gitksan legal traditions are based on a non-State, decentralized political structure.” These legal traditions differ from state legal traditions in that they do not possess “centralized legal and enforcement bureaucracies.”¹³⁷ This is not to say that Gitksan law or other Indigenous laws are without structure, authorities, legal precedent, and accountability processes.¹³⁸ Borrows maintains that “many Indigenous peoples believe their laws provide significant context and detail for judging our relationships with the land, and with one another. Yet Indigenous laws are often ignored, diminished, or denied as being relevant or authoritative in answering these questions.”¹³⁹

Napoleon and Friedland outline four eras that they assess Indigenous laws to have gone through: roots, repression and resilience, recovery and revitalization, and a renaissance.¹⁴⁰ Regarding the first era, they counter the widespread misconception that Indigenous peoples were/are lawless and start instead from the position that Indigenous peoples had laws, noting that this is the only logical place to begin, as they dealt with conflicts and survived for so many years prior to contact.¹⁴¹ During the second era, Indigenous laws were severely compromised as the state denounced their existence and imposed a foreign legal order.¹⁴² However, Indigenous laws were never eradicated, and people practised their laws despite state coercion and violence.¹⁴³ During the third era, it became “evident” to the state that the criminal justice system has grossly failed Indigenous peoples.¹⁴⁴ The fourth era entails a shift from recovery and revitalization to a renaissance, which is characterized by rebuilding – a movement to take Indigenous laws “seriously as *law*” and to find ways to draw out, debate, use, and engage with Indigenous legal traditions.¹⁴⁵ The renaissance is “about rebuilding the intellectual resources and political space to have more symmetrical,

reciprocal, and respectful conversations within and between Indigenous and state legal traditions.”¹⁴⁶ Throughout this book, I use the language of revitalization though do so in the spirit of the renaissance – undertaking legal analysis that treats Indigenous laws seriously.¹⁴⁷ For me, this involves examining the complex ways that gender operates in Indigenous legal orders – the rebuilding of Indigenous legal orders will be partial if Indigenous laws are not treated as gendered.

CREE BRIEF

Cree identity, culture, and peoples are heterogeneous,¹⁴⁸ though this is not to suggest that there are not distinct Cree communities and cultural, social, political, and legal norms. Cree peoples have their own histories, stories, ceremonies, language, and laws. The Nehiyawak (Cree people) are First Nations peoples who reside in what is now commonly referred to as Canada and in parts of the northern United States. In Canada, their traditional territory is expansive, and they “are a people of the boreal forest and prairie. Their homeland stretches from James Bay to the Rocky Mountains; the diverse ecologies of this terrain influence their laws.”¹⁴⁹ Cree people now live in various parts of Canada, and a significant number of First Nations do not live on-reserve.¹⁵⁰ Importantly, reserves do not properly reflect the breadth of Cree traditional territory or the historical subsistence patterns in which Cree people moved throughout their territories to locate resources.¹⁵¹

The Cree language is an Algonquian language, and there are several dialects and sub-linguistic groups – Atikamék Cree (Quebec); Moose Cree (Moose Factory, Hudson Bay); Swampy Cree (northern Ontario, Manitoba, eastern Saskatchewan); Woodlands Cree (parts of Manitoba, northern Saskatchewan); and Plains Cree (southern Saskatchewan and central Alberta).¹⁵² Oral tradition is central in Cree culture and contains information about history, law, politics, economics, spirituality, relationships to the land, and social relations. As Napoleon and Friedland explain, “within most, if not all, Indigenous societies, stories are understood to be tools for thought and intellectual resources for reasoning.”¹⁵³ They discuss the work of Cree elder Louis Bird, noting that “Bird’s explanation of and approach to stories emphasizes that, in Cree society, the tasks of both telling and listening to stories are highly intellectual and demanding,” and although stories change, Cree people “take the stories that have actually been brought down for generations because

they have a value” for thinking about current contexts.¹⁵⁴ Cree peoples’ histories and contemporary contexts have been affected by the fur trade, treaties, nation-to-nation disputes with other Indigenous peoples and with settlers, land claims, colonial policies such as the Indian Act and residential schools,¹⁵⁵ industry and environmental degradation, and settler violence, in which Indigenous women have been especially (though not solely) targeted.

With respect to gender, there are significant omissions in the literature on Cree people and peoples. For instance, one can find literature devoted to male figures such as mistahi-maskwa (Big Bear) or Chief Poundmaker’s role in history, as well as wîsahkêcâhk (often referred to as Elder Brother), who is a central Cree trickster.¹⁵⁶ Yet fewer pieces are about the women who have shaped Cree history, and as I discuss in [Chapter 6](#), Indigenous feminist tricksters remain marginal in the literature and beyond. Some scholarly works have considered the erasure of Indigenous women in history – for example, Carter’s *Capturing Women* and Carter and McCormack’s edited collection *Recollecting*.¹⁵⁷ Those particular texts include Cree women, though are not focused on them. Cree women are discussed in health research (about nutrition, diabetes, reproductive health) and in some research on economic impacts on women’s work, food management, and productive roles due to changes in social, economic, and political structures since contact.¹⁵⁸ There are also some anthologies about Indigenous women in which chapters examine Cree women, as well as a handful of biographical and autobiographical resources about Cree women.¹⁵⁹ Women are largely missing in the scholarship on politics, governance, law, treaty making, and land claims, despite the principles that women are central to Cree society.

The focus of this book is broadly Cree, as the materials that I analyze range from being pan-Cree to having a particular focus, such as the Mushkegowuk Cree.¹⁶⁰ It would be ideal to have a narrower focus, given the specific geographic, linguistic, political, and cultural contexts of the different Cree collectivities,¹⁶¹ but I am limited by the small amount of contemporary public print and digital resources available in the area of Cree law. As there are few public secondary resources on Cree law, imposing geographic limiters would be unproductive. Many times throughout this book, it is necessary to broadly draw on the literature, as, for example, on work done on Indigenous law.

Because of this pan-Cree focus, gendered descriptions characterizing Cree society would be challenging to write, given the variation in and among regions and communities. However, broad descriptions do exist

in the literature. For example, in commenting on gender norms in Cree society, Mary Ellen Turpel states,

the traditional teachings by our Cree elders instruct us that Cree women are the centre of the Circle of Life. While you may think of this as a metaphor, it is in fact an important reality in terms of how one perceives the world and how authority is structured in our communities. It is women who give birth both in the physical and in the spiritual sense to the social, political, and cultural life of the community. It is upon women that the focus of the community has historically been placed and it was, not surprisingly, against women that a history of legislative discrimination was directed by the Canadian State. Our communities do not have a history of disenfranchisement of women from political or productive life. This is probably the most important point for feminists to grasp in order to appreciate how State-imposed gender discrimination uniquely affected First Nations women.¹⁶²

Turpel adds, “women are at the centre. We are the keepers of the culture, the educators, the ones who must instruct the children to respect the Earth, and the ones who ensure that our leaders are remembering and ‘walking’ with their responsibilities demonstrably in mind.”¹⁶³

Such statements about gender are common. They are quite general, and the complexities of how people engage with these norms are not mentioned. Throughout this book, I examine gender norms, legal norms, and good relations, considering how people represent gender and law, and what discourses are used to create authoritative truths. To reiterate, my intention is not to state what Cree law is. Rather, I consider how people are representing Cree law and gender. Before proceeding to that analysis, however, I will discuss Indigenous feminist legal theory, which is relied on and developed throughout this book.

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