AARON MILLS*

First Nations' Citizenship and Kinship Compared: Belonging's Stake in Legality†

Many First Nation individuals appear to accept that debates about belonging to First Nations political community are properly framed as debates about citizenship. Interlocutors frequently identify the ongoing significance of kinship, but fold it into their conception of citizenship. This Article resists citizenship's orthodoxy. Kinship is not a unique feature of First Nations citizenship, but rather is its own model of belonging to a political community: a model internal to First Nations law, understood on its own terms. There are, then, two models of belonging to First Nations political community, citizenship and kinship, within and over which debates about belonging play out.

For First Nations political communities using their own systems of law, kinship is a source of fundamental legal interests, just as citizenship is a source of fundamental rights and freedoms in modern liberal democracies. However, comparativists, legal theorists, and political theorists have struggled to appreciate this reality because internal (or settler) colonialism disconnects kinship from legality conceptually and thus institutionally. Those connections must be reestablished.

To that end, this Article shows that, functionally, kinship is a full answer to citizenship. The argument is made in two interwoven parts, each of which turns on the picture of kinship as a structural feature of First Nations law, understood on its own terms. First, kinship is

* Assistant Professor and Canada Research Chair (Tier 2) in Indigenous Constitutionalism and Philosophy, Faculty of Law, McGill University, Montreal, Que., Canada. Thank-you to Kirsten Anker, Adelle Blackett, Meaghan Daniel, Evan Fox-Decent, Will Kymlicka, Scott Webber, and two external reviewers for incisive comments on drafts which greatly improved this Article. Special thanks to Robert Leckey and to James Tully who commented insightfully on multiple drafts. My excellent research assistant, Marian Daubioul, worked diligently in formatting the footnotes. Finally, I am an Anishinaabe, and I gratefully acknowledge my Anishinaabe mentors, whose teachings and care have enabled many of the insights expressed herein: *nokomis*, Bessie Mainville (now in spirit), the oldest man from Mitaanjigamiing First Nation (now in spirit), Elder Harry Bone, and Grandmother Sherry Copenace. All errors are my own.

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citizenship's political equal insofar as it offers a justificatory account of belonging to a political community; second, kinship is citizenship's legal equal insofar as it, too, serves as a foundation for fundamental legal interests. The gravamen of this Article is, thus, twofold. First, one is not hearing what First Nations law says about belonging if one is only willing or able to listen in the language of citizenship. Second, the stakes in one's choice of model are significant: citizenship and kinship structure legality in fundamentally different ways.

Introduction

Understanding how individuals belong to a community is complicated and contentious for any diverse political community. First Nations[1] are diverse communities, and, like other communities, we engage in robust debates about belonging. Because of internal (or settler) colonialism's imposition of Western legal and political institutions upon us, many First Nation individuals take as axiomatic that belonging debates are, and ought to be, debates about citizenship. Interlocutors frequently identify the ongoing significance of kinship, but fold it into their conception of citizenship.[2]

This Article resists citizenship's orthodoxy. Prior to internal colonialism,[3] First Nations' law determined belonging to First Nations political community. Kinship is a structural feature of those legal systems.[4] I will argue that, properly understood, kinship is not a unique feature of First Nations citizenship. Rather, kinship is its own model of belonging to a political community: a model internal to Indigenous

1. "First Nations" is the term used in Canada to refer to the many Indigenous peoples who lived on Turtle Island (what many today call North America) prior to the arrival of European nations (hence *First* Nations). They are distinguished from Inuit peoples, whose communities also preexist colonization, and Métis peoples, who have their ethnogenesis in French and British colonialism of Turtle Island.

2. *See, e.g.*, Jill Doerfler, Those Who Belong (2015); Val Napoleon, *Thinking About Indigenous Legal Orders*, *in* Dialogues on Human Rights and Legal Pluralism 229, 245 (René Provost & Colleen Sheppard eds., 2013); Leanne Simpson, Dancing On Our Turtle's Back 90 (2011).

3. 1 JAmes Tully, Public Philosophy In A New Key 261–62 (2008) (introducing the term "internal colonialism"). I address the term in Part III.A, but, in brief, it names the kind of colonialism which permanently imposes settler sovereignty (and so settler jurisdiction and its legal and political institutions) upon Indigenous peoples and their lands. The term is deployed in a related but distinct way in John Gillespie & Hong Thi Quang Tran, *Legal Pluralism and the Struggle for Customary Law in the Vietnamese Highlands*, 70 Am. J. Comp. L. 1 (2022).

4. Robert A. Williams, Jr., Linking Arms Together 70 (1999); Richard Overstall, *Encountering the Spirit in the Land: "Property" in a Kinship-Based Legal Order*, *in* Despotic Dominion 22 (John McLaren et al. eds., 2004); Leo Kevin Killsback, *A Nation of Families: Traditional Indigenous Kinship, the Foundation for Cheyenne Sovereignty*, 15 Alternative 34 (2009); James (Sákéj) Youngblood Henderson, *Ayukpachi: Empowering Aboriginal Thought*, *in* Reclaiming Indigenous Voice And Vision 248, 270–71 (Marie Battiste ed., 2000); Russel Lawrence Barsh, *The Nature and Spirit of North American Political Systems*, 10 Am. Indian Q. 181, 187–89, 193–94 (1986).

law, understood on its own terms. There are, then, two models of belonging to First Nations political community, citizenship and kinship, within and over which debates about belonging play out.

In general, comparative law scholars, legal theorists, and political theorists have not seriously engaged with kinship.[5] Perhaps they have not adverted to its normative content or its role in the governance of Indigenous communities. They may not have understood that, within Indigenous political community, kinship is a source of fundamental legal interests just as citizenship is a source of fundamental rights and freedoms in modern liberal democracies.[6] Internal colonialism disconnects kinship from legality conceptually and thus institutionally. Consequently, kinship is too easily read in the private sphere songs-and-dances sense of culture, which absents legal authority. However, kinship is relevant to comparative law and to legal and political theory, and this Article begins to address the lacuna within them. This Article shows that, functionally, kinship is a full answer to citizenship. The argument is made in two interwoven parts, each of which turns on the picture of kinship as a structural feature of Indigenous law, understood on its own terms. First, kinship is citizenship's political equal insofar as it offers a justificatory account of belonging to political community; second, kinship is citizenship's legal equal insofar as it serves as a foundation for fundamental legal interests.

This Article makes three major contributions, one each in the fields of Indigenous legal traditions, legal and political theory, and comparative law. The first contribution is to offer an internal view of kinship as a structural feature of Indigenous law. In explicating kinship's relation to legality, I seek to empower Indigenous communities to reclaim kinship within their systems of law and governance. To use the often-invoked skeletal metaphor, kinship not only forms part of "the bones" of Indigenous law, but also is its spine. Apprehending the normative integrity of kinship will thus be indispensable to First Nations' contemporary membership debates as well as to Indigenous law and governance revitalization projects as they contend with internal colonialism. The negative corollary of this benefit is the disclosure of citizenship's structural predisposition to distortion in its articulations of Indigenous

5. Important exceptions include Williams, Jr., *supra* note 4, at 62–74; Michael Asch, On Being Here To Stay (2014); Mark D. Walters, *"Your Sovereign and Our Father": The Imperial Crown and the Idea of Legal-Ethnohistory*, *in* Law And Politics In British Colonial Thought 91 (Shaunnagh Dorsett & Ian Hunter eds., 2010); *see also* Bruce Morito, An Ethic Of Mutual RespeCT (2012). There's much to learn about kinship in Morito's remarkable text, although he does not frame his analysis in respect of it. *See id.* at 33, for his most direct engagement with kinship.

6. Anthropologists, of course, have long understood this relationship. *See, e.g.*, E. E. Evans-Pritchard, Kinship And Marriage Among The Nuer 152–80 (1951); Eric R. Wolf, Europe And The People Without History 88–89 (1997) (1982); Leopold Pospisil, The Kapauku Papuans Of West New Guinea 32–33 (2d ed. 1978).

law and governance. These reciprocal insights, in turn, reveal what is for decolonization's purposes the insufficiency of merely correcting institutional power imbalances as between Indigenous and settler peoples. Internal colonialism purports to *recognize* Indigenous peoples through differentiated citizenship, but this approach to Indigenous difference is deeply inadequate to the task of decolonization.[7] Genuine agency demands that we be heard on our own terms and in our own ways,[8] which necessitates the revitalization of our law.[9]

The gravamen of this Article is, thus, twofold. First, one is not hearing what Indigenous law has to say about belonging if one is only willing or able to listen in the language of citizenship. Second, the stakes in one's choice of model are significant: citizenship and kinship structure legality in fundamentally different ways. One readership for this argument is thus members of First Nations communities and the scholars in the fields of Indigenous legal traditions, Indigenous resurgence, and Indigenous studies who support their projects and dialogues on belonging specifically, and on Indigenous law revitalization generally.

I recognize that many such readers may find my argument for kinship-beyond-citizenship controversial. One reason is that, as we shall see, it cannot be squared with sovereignty as a conception of political authority, and thus does not aim at Indigenous sovereignty as a vision of freedom from internal colonialism.[10] Yet many First Nation individuals and the scholars in the fields just mentioned act and argue in support of visions of Indigenous sovereignty that are in some ways distinct from the sovereignty of modern liberal democratic states, and in other ways similar to it.[11] This commitment is understandable: internal colonialism has sought to reshape—and in

7. Joshua Ben David Nichols, A Reconciliation Without Recollection? (2020).

8. The approach is described, with frequent Indigenous examples, in James Tully, *Deparochializing Political Theory and Beyond: A Dialogue Approach to Comparative Political Thought*, 1 J. World Phil. 51 (2016); *see also* Dale Turner, *On the Politics of Indigenous Translation: Listening to Indigenous Peoples in and on Their Own Terms*, *in* Routledge Handbook Of Critical Indigenous Studies 175 (Brendan Hokowhitu et al. eds., 2020); Dale Turner, This Is Not A Peace Pipe 55 (2006).

9. I have made this point in Aaron Mills, *The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today*, 61 McGill L.J. 847 (2016); *see also* Robert YELKÁTŦÈ Clifford, *WSÁNEĆ Legal Theory and the Fuel Spill at SELEKTEL (Goldstream River)*, 61 McGill L.J. 755 (2016); Joyce Tekahnawiiaks King, *The Value of Water and the Meaning of Water Law for the Native Americans Known as the Haudenosaunee*, 16 Cornell J. L. & Pol'y 449 (2007).

10. This is a hotly contested topic within contemporary Indigenous political theory and advocacy. As a point of entry, see Taiaiake Alfred, *Sovereignty*, *in* Sovereignty Matters: Locations Of Contestation And Possibility In Indigenous Struggles For Self-Determination 33 (Joanne Barker ed., 2005). In addition to modified Westphalian uses of "sovereignty," some Indigenous interlocutors deploy the term in ways that appear to share nothing in common with the standard range of its contemporary uses. *See, e.g.*, Patricia Monture, *Notes on Sovereignty*, *in* Justice For Natives: Searching For Common Ground 197 (Andrea P. Morrison & Irwin Cotler eds., 1997).

11. *See, e.g.*, Leanne Simpson, *Looking After Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships*, 23 Wíčazo Ša Rev. 29 (2008); Heidi

many respects, has reshaped—First Nation political communities as something akin to mini-states.[12] If we accept the finality of the reshaping story, then it follows that what First Nations need is ultimate authority over their local executive, legislative, and judicial powers of government.[13] Against this goal, some may feel that asking what it would mean to take kinship seriously as its own model of belonging to First Nations political community is impractical or even oblivious to contemporary political context. It may not even be worth exploring how kinship structures legality differently.

I appreciate these concerns. But—at least in Canada—I do not accept that, in general, things are so dire. Consequently, I do not share the conclusion toward which such a view points. Indisputably, internal colonialism has profoundly impacted the organization and the function of governance in First Nations (and in the United States, Native American) political communities. Yet I have been blessed to know Dakota, Nehetho (Rock Cree), Inniniw (Oji-Cree), and especially Anishinaabe elders, knowledge holders, medicine people, and ordinary community members who not only remember, but also actively live out their kinship responsibilities in the ways that I shall describe in this Article. In many First Nations, the kinship system I describe (or for non-Anishinaabe communities, something near it) remains operational and powerful—even if damaged, incomplete, and subordinate to the formal internal colonial government. Because of its informality, Indigenous people often talk about kinship as merely culture. Yet kinship as its own model of belonging to First Nation political community remains *actual*, even in the face of internal colonialism. Such power and resilience make it worth considering how kinship might be revitalized and, as appropriate, reimagined today. Indigenous sovereignty is an honorable goal, but it is not the only responsible vision of Indigenous freedom from internal colonialism.

The second major contribution of my argument follows from the disclosure of citizenship's limitations for revitalizing Indigenous law on its own terms. I identify what is, from the standpoint of Indigenous law, the contingent (and at risk of provocation, parochial) character of debates about belonging in Western political thought.[14] These debates

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Kiiwetinepinesiik Stark, *Nenabozho's Smart Berries: Rethinking Tribal Sovereignty and Accountability*, 2013 MICH. ST. L. REV. 339; Audra Simpson, Mohawk Interruptus 12, 20, 104–05 (2014); NAvajo Sovereignty: Understandings And Visions Of The Diné People (Lloyd L. Lee ed., 2017).

12. Paul Nadasdy, *Boundaries Among Kin: Sovereignty, the Modern Treaty Process, and the Rise of Ethno-Territorial Nationalism Among Yukon First Nations*, 54 Comp. Stud. Soc'y & Hist. 499 (2012).

13. *See, e.g.*, Angelique EagleWoman (Wambdi A Was'teWinyan), *Envisioning Indigenous Community Courts to Realize Justice in Canada for First Nations*, 56 Alta. L. Rev. 669 (2019).

14. For my sources of inspiration, see Tully, *supra* note 8; Simon Roberts, Order And Dispute: An Introduction To Legal Anthropology 7–17 (2013) (1979).

typically put at stake distinct features and even conceptions of citizenship, but fail to question whether citizenship is the appropriate model of belonging. Citizenship passes as the natural, even necessary, model of belonging to contemporary forms of political community, a meta-norm beyond the field of contention. On the legal side, these debates typically assume that the fundamental legal interests of community members are to be identified and actualized in rights discourse. I aim to render the moral force of that view contingent. As a way of representing legal interests, rights have considerable appeal when mapped against a legal and political history that has justified the instrumental treatment of some persons by others. But for many Indigenous peoples, utility has never been an organizing moral or legal principle. I explain below that, rather, we have responsibilities discourse which takes the fundamental legal interests of persons seriously. This is a second respect in which my comparative exposition with kinship brings into relief citizenship's idiosyncrasy, which the ambient discourse and ethos of contemporary Western liberal democracies can make difficult to discern.[15]

This Article therefore also invites inheritors of the Western liberal democratic tradition to reflect on the possibility of citizenship's contingency and to apply the intellectual resources of kinship in the service of better understanding citizenship in relation to its Indigenous and its settler subjects.[16] A second readership, therefore, consists of legal and political theorists of citizenship; settlers participating in personal and grassroots reconciliation projects; and state legal and political actors engaged in formal reconciliation or the administration of justice in relation to Indigenous peoples.

A third contribution is to comparative law. My comparison of the distinct ways in which citizenship and kinship relate to legality engages ongoing debates about the proper scope of comparative law. In several points of methodology, this Article adopts a classically comparative approach. It draws a functional comparison, mapped descriptively and analytically, between two legal traditions (state-based positive law and "chthonic"[17] or informal, decentralized Indigenous systems of law) in respect of a fundamental feature of legality.[18] However, that feature

15. Many writers engaged with Indigenous law have observed the difficulty of identifying specific aspects of one's own tradition (of whatever domain) absent the contrast afforded by the disclosure of another tradition. *See* 1 Tully, *supra* note 3, at 32; James Tully, Strange Multiplicity 110–11 (1995); Jeremy Webber, *The Grammar of Customary Law*, 54 McGill L.J. 579, 582 (2009); John Borrows, Recovering Canada 16 (2007); Lance Finch, *The Duty to Learn* ¶ 23 (Nov. 2012), www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf; Kenneth M. Morrison, The Solidarity Of Kin 5–6 (2002).

16. Marie-Claire Foblets, *Kinship Through the Twofold Prism of Law and Anthropology*, *in* The Oxford Handbook Of Law And Anthropology 532 (Marie-Claire Foblets et al. eds., 2020).

17. H. Patrick Glenn, Legal Traditions Of The World 60–97 (5th ed. 2014).

18. *See* Ralf Michaels, *The Functional Method of Comparative Law*, *in* The Oxford Handbook Of Comparative Law 345 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019).

is neither legal rules nor legal institutions, at least not in the conventional range of uses of "legal institution." Citizenship is conventionally framed as a *political* institution, given its role in specifying the *demos*. In addition to that role, my comparison draws upon citizenship's and kinship's juridical (norm-setting) function as fundamental sources of normativity in their respective legal traditions. From this standpoint, they are properly understood as legal institutions. I thus stand among those who would expand comparative law analysis beyond its conventional scope.[19]

On the one hand, this proposal might be read as supporting the further development of a sociological approach to comparative law. My argument draws extensively upon my lived experience of Anishinaabe law in Anishinaabe community.[20] It reflects fifteen years of Anishinaabe elders' mentorship, land-based education, participation in ceremonies, and hearing and living out our stories. Often the sources I draw upon reflect what many might consider an anthropological or ethnohistorical approach to scholarship. However, I think such a view misreads my central point, and so overlooks my intended contribution to comparative law. I rely on what, from an extrinsic standpoint, may appear as the resources of culture but are rather the resources of Indigenous law.

The approach taken here is thus helpfully illuminated by Munshi's work on *minor comparativism*.[21] Munshi presents two core features of minor comparativism. First, "it adopts the perspective of those who remain foreign *within* one's own country."[22] Second, "a minor comparativism sets the official image of a particular state *against* the reflections of its minority subjects" (in contrast to its treatment of them).[23] My enterprise is fruitfully understood as distinguishing weak and strong versions of Munshi's minor comparativism, and introducing the strong version. In the unique case of Indigenous peoples living under conditions of internal colonialism, minor comparativism's first feature is met by definition. However, the second feature is met in a particular, and strong, way. Colonized Indigenous peoples' reflections of themselves occur not only in and through their cultures, but also and more specifically, through their systems of law. Accordingly, the comparison which strong minor comparativism contemplates is between the positive law of the colonizing state and the surviving but damaged

19. Mathias Siems, *The Power of Comparative Law: What Types of Units Can Comparative Law Compare?*, 67 Am. J. Comp. L. 861 (2019).

20. "Anishinaabeg" (singular and adjectival form, "Anishinaabe") is the ethnonym for an Algonquian-speaking Indigenous people of Turtle Island (i.e., North America). Our communities span from western Quebec to southern Manitoba in Canada, and across Michigan, Wisconsin, and Minnesota in the United States. We're often called Ojibwe in Canada and Chippewa in the United States.

21. Sherally Munshi, *"You Will See My Family Became So American": Toward a Minor Comparativism*, 63 Am. J. Comp. L. 655 (2015).

22. *Id*. at 664.

23. *Id.* at 665.

law of the colonized Indigenous people, understood on its own terms. I thus encourage comparativists to relinquish the formalist, positivist conception of legality[24] to which so many maintain fidelity, in order to engage with Indigenous law on its own terms and with the scholarly field of Indigenous legal traditions.[25]

To the extent that my invitation to engage with Indigenous law is taken up among these readerships, the law, policy, academic, and general-public discourse of modern liberal states (I have Canada especially in mind) might better respect Indigenous law, and thus Indigenous freedom. Misreading of Indigenous behavior and decision-making should diminish. There should be less fear of Indigenous difference[26] and less misidentification of Indigenous law as non-law.[27]

I. Terminology

First, while in general I refer to "Indigenous" peoples, I refer to "First Nations" kinship structures. In Canada, the descriptor "Indigenous" is taken to refer to First Nations, Inuit, and Métis peoples. I do not know enough about Inuit and Métis kinship to know how well my argument applies to them. Further, as an Anishinaabe, most of my examples are of my people. Because kinship factors differently into the legal systems of every First Nations group on Turtle Island, I have sought to avoid a pan-Indigenous approach to theorizing it, even as I insist upon kinship's pervasive structuring power. The account I give of Anishinaabe kinship should thus be read as illustrative, not determinative, of how kinship in other First Nation groups might compare with citizenship.

Second, there is a tension in referring to Anishinaabe (and I suspect more generally, to First Nations) "political communities" insofar as by that term one means, narrowly, people under government. Prior to colonialism, Anishinaabeg had govern*ance* but not govern*ment*—at least not within any conventional range of uses of the word. There was no body representative of either the will or the interests of its community members; self-rule was enacted through the direct authority of individuals and groups acting together.[28] Thus, I am using "political

24. Pierre Legrand, *Jameses at Play: A Tractation on the Comparison of Laws*, 65 Am. J. Comp. L. 1 (2017).

25. As an exemplar, see Mark D. Walters, *The Judicial Recognition of Indigenous Legal Traditions:* Connolly v Woolrich *at 150*, 22 Rev. Const. Stud. 347 (2017).

26. *See* Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation, [2008] 2 CNLR 201, 2008 CanLII 11049, at 44 (Can. Ont. Sup. Ct.) (finding that if Indigenous law is allowed to exist alongside Canadian common law, chaos will ensue).

27. Siems, *supra* note 19, at 868–69. In terms of judicial decision-making, see Delgamuukw v. British Columbia [1991] 79 D.L.R. (4th) 185 (Can. B.C.S.C.). For an argument denying the institutional basis for Gitksan and Wet'suwet'en law, see *id.* at 213–14. *See also id.* at 219–21 (reducing purported Gitksan and Wet'suwet'en laws to customs and expressly denying their status as law).

28. *See also* Marshall Sahlins, Stone Age Economics 186 (1972); Mina Tapaiatic, *Nothing Ruled Over Me*, 22 Nation 10, 12 (1994).

community" absent its subjection thesis: individual Anishinaabeg were never "under" any kind of public authority.[29] Yet I have preserved "political community" as a term of self-description because, in its wider usage, it remains the best term we have for an association aimed at promoting and protecting the freedom of its members through their political, social and economic cooperation.

Third, I prefer James Tully's term "internal colonialism" over the more common "settler colonialism." Both terms specify the same kind of colonialism, in respect of the same set of features (presented in Part III.A), with the same goal: the elimination of Indigenous peoples, whether totally or qua peoples.[30] However, they make different assumptions about the modality of colonial power. Settler colonial discourse, following Patrick Wolfe's now iconic turn of phrase, tends to assume that since "settler colonizers come to stay,"[31] therefore "invasion is a structure not an event."[32] Internal colonialism also describes the permanent imposition of settlers and their institutions, but conceptualizes their exercise of power over Indigenous peoples, our lands, and our law as a process. The processual characterization foregrounds dynamism which the structural characterization resists, and for this reason is better able to account for colonialism's adaptive, subordinating exercise of power over that Indigenous peoples experience.[33] The term "internal colonialism" is thus better able to address the neocolonial governance of Indigenous peoples *through* their exercise of state-sanctioned freedoms, presented in the discourse of self-governance but designed to reinforce the colonizing state's claim to sovereignty (as governmentality scholars like Paul Nadasdy have clearly shown[34]).

29. As evidence for this claim, consider the absence of discernible government in Anishinaabe ethnography and in *aadizookaanan*, our sacred stories (commonly mistranslated as "legends"), and the frequent presence of structured but ad hoc deliberative councils in both. If I may be permitted one positive assertion of the claim, it is this. In the Treaty of Niagara of October 1764, the relationship between Britain and the Anishinaabeg of what was then called the Western Confederacy was three months old. Sir William Johnson, Superintendent of Indian Affairs of the Northern Colonies, wrote to General Gage, Commander-in-Chief of Britain's forces in North America. He explained of the Six Nations and the Western Indians that: "[I]t is necessary to observe that no Nation of Indians have any word which can express, or convey the Idea of Subjection, they often say, 'we acknowledge the great King to be our Father, we hold him fast by the hand, and we shall do w^{t}. he desires' many such like words of course, for which our People too readily adopt & insert a Word verry different in signification, and never intended by the Indians without explaining to them what is meant by Subjection." Letter from William Johnson to Thomas Gage (Oct. 31, 1764), *in* 11 The Papers Of Sir William Johnson 394, 395 (Milton W. Hamilton ed., 1953).

30. 1 Tully, *supra* note 3, at 261–64; Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. Genocide Rsch. 387, 387–88 (2006).

31. Wolfe, *supra* note 30, at 388.

32. *Id*.

33. Mary Eberts, *Still Colonizing After All These Years*, 64 U. N.B. L.J. 123 (2013).

34. *See* Paul Nadasdy, Hunters And Bureaucrats (2003); Paul Nadasdy, Sovereignty's Entailments (2017). In the American context, see Larry Nesper, *Negotiating Jurisprudence in Tribal Court and the Emergence of a Tribal State: The Lac du Flambeau Ojibwe*, 48 Current Anthropology 675 (2007).

II. Methodology

This Article proceeds by way of descriptive, analytical, and normative comparison, although the normative grounds of comparison may not be immediately apparent to all readers. I will explain in this Part that this is because kinship's normative content is to be discerned through descriptive and analytical exposition, rather than expressly and independently articulated (and so readily contrasted with citizenship). Specifically, I present a descriptive and analytical account of citizenship, and then of kinship, as distinct models of belonging to political community mapped against common criteria. It is likely that nearly all readers will have some sense of the complex and multiform relation between citizenship in the modern liberal democratic tradition and law. Because of the amount of scholarly attention citizenship has received, I cover it only briefly. Moreover, my engagement with it is instrumental: the value of comparison with citizenship is that it will help us to better understand kinship. Equally certain, most readers will have little sense of kinship's relation to legality in Indigenous communities. My comparative methodology aims to bring kinship's normative content to the fore, addressing this knowledge deficit. In a context of scarce resources and pervasive colonial pressure, Anishinaabeg and other Indigenous peoples are unlikely to take kinship seriously as an object of potential legal and political revitalization if we fail to apprehend its foundational, structuring role in our law.

For each model, I begin with a rationale that explains its connection to Indigenous political communities today. Insofar as the goal is to present a clearer view of Indigenous peoples' options, it is important to appreciate the distinct reasons that citizenship and kinship remain in use. I then engage in two entwined discussions which constitute the core of this Article. The first regards the model's defining feature: what I call its "logic" or fundamental, shared value, which brings individuals into relations of ongoing cooperation, and which thus serves as the basis for political community (in respect of citizenship, autonomy; in respect of kinship, mutual aid). I discuss how each logic animates and constrains (i) the structure of belonging individuals have to their community, and (ii) the form and substance of community members' fundamental legal interests. The second discussion explores each model's articulation of political boundary. If the first discussion discloses a model's animating force, the second one presents that force's limits. I characterize how political boundary operates within that model and then map it against three analytic features of which any conception of political boundary must account: consistency, permanency, and clarity.

By proceeding in this comparative fashion, I hope to assist readers to more fully apprehend and to demystify kinship's normative content so that readers can appreciate how, for kinship's practitioners, kinship relates to legality in (what is for them) much the same quotidian

way that citizenship does for members of modern liberal democracies. Kinship establishes the fundamental legal interests of community members; those interests are known to all; all are required to respect those interests or to suffer the accepted consequences through the accepted legal institutions, their processes, and their actors.

A vital distinction is that, within kinship political communities, fundamental legal interests have the form of responsibilities, not rights. I begin to theorize the distinction below. For the purpose of methodology, what matters is that rights are necessarily abstract, propositional, and expressly articulated. For these reasons, a key methodological task of comparativists and of legal theorists is to discover and to clarify the abstract principles and rules which given proper institutional expression, subject conduct to law. Responsibilities, conversely, are necessarily grounded, experiential, and implicit. They are deeply substantive. What I shall call the "implicit normativity thesis" holds that part of the normativity of Anishinaabe law is always already implicit in our relationships—principally via kinship—with one another, with Earth, and with spirit. Anishinaabe law takes that legal norms are *immanent* in our relationships.

The element of necessity in this thesis (i.e., *always* already implicit) means that no account of Anishinaabe law on its own terms can be given that fails to attend to kinship. Within the scholarly field of Indigenous legal traditions, this is a minority view,[35] and I hope this Article might assist in shifting that circumstance. For, if the implicit normativity thesis is correct, the methodological consequence is significant. Descriptive and analytical research is not a preamble to the discovery or clarification of abstract legal principles and legal rules. Anishinaabe communities practicing Anishinaabe law on its own terms are not seeking to apply transcendent norms; it is, consequently, not the comparativist's or legal theorist's task to clarify and render such norms accessible. Rather, the purpose of descriptive and analytical exposition is to disclose the implicit normativity that always already exists inside of our various kinds of relationships (again, principally via kinship). The governing methodological principle is, thus,

35. For what I think can reasonably be called the leading view, see the implicit account of Indigenous law's normativity in Borrows's typology of the sources of Indigenous law. John Borrows, Canada's Indigenous Constitution 23–58 (2010) [hereinafter Borrows, Canada's Indigenous Constitution]. In Borrows's account, kinship stands in contingent relation to Indigenous legality. *Id.* at 29, 77. Borrows therefore defends positivist Anishinaabe law operating within jurisdictions of the common law and civil law as law which is legitimately and authentically Anishinaabe law: John Borrows, *With or Without You: First Nations Law (in Canada)*, 41 McGill L.J. 629, 647, 653 (1996); John Borrows, *Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education*, 61 McGill L.J. 795, 813, 815, 821–23 (2016). Borrows is clear, however, that he holds the legitimacy and authenticity of positivist Anishinaabe law as insufficient to render it Anishinaabe law "on its own terms"; moreover, he implies that Anishinaabe law rendered into terms of the common law or civil law should remain subordinate to Indigenous law organized on its own terms: Borrows, Canada's Indigenous Constitution, *supra* note 35, at 14–15, 23–24.

humility: rather than prescribing, we aim for clarity and accessibility by opening a way to a practice that invites the reader into the implicit normativity.[36]

The critical takeaway, if the implicit normativity thesis holds, is that the descriptive and analytical account of Anishinaabe kinship I present is at once the beginning of a normative account of Anishinaabe law (and as I have said, only the beginning of such an account: kinship is a vital component of, but does not exhaust, the normativity of Anishinaabe law). The availability of such an account of kinship—descriptive, analytical, *and normative*—enables many Anishinaabeg today to see Canadian citizenship as internal colonial: a strong version of minor comparativism.[37] After all, the necessity for Indigenous law *revitalization* follows from the damage internal colonialism has wrought upon Indigenous peoples' systems of law and governance, a central feature of which is the imposition of citizenship over kinship. For the same reason, sometimes Indigenous law is not engaged even where it remains intact, because having misunderstood kinship, one misrecognizes Indigenous law in plain view. My hope is that my methodology discloses a wider range of options for Indigenous communities seeking to revitalize their systems of law and governance.

III. Citizenship

Why do so many Indigenous peoples today deploy citizenship models of belonging? What drives citizenship's conception of belonging and its relation to legality? What limits or boundaries does it impose upon political community? The answers to these questions will enable a meaningful comparison with kinship, and the resulting contrast will afford us a deeper understanding of kinship and its relation to legality.

A. Rationale: Why Citizenship?

Canadian internal colonialism is the leading reason why First Nations frame our contestation over belonging in terms of citizenship. Internal colonialism is distinguishable by the particularity of its two-part object. First is the acquisition of the prerequisites of sovereignty: territory and exclusive jurisdiction; second is the post-fact legitimation of these acquisitions and therefore of the colonizing power's resulting

36. A poignant example is offered in a story Randy Councillor shared about the learning process of Nanabozho, the Anishinaabe trickster and culture hero. The story recounts *nokomis*, Nanabozho's grandmother, teaching a young Nanabozho to value wellness (which contemplates injury and healing) over non-harm. But, instead of prescribing that principle to him, she leads him into the forest to observe it in practice and so to achieve it himself. The story casts their discursive interaction in relation to observed animal behaviour, before culminating in Nanabozho's normative dawning. The story concludes: "On this day Nanabohzo learned to learn." *See* Randy Councillor & Art Przybilla, *Nanabohzo Learns*, *in* Ojibwe Tales 23, 25 (2004).

37. Munshi, *supra* note 21.

claim to sovereignty.[38] Internal colonial powers require these ends because rather than exploiting Indigenous peoples' labor and lands as resources (as in extractive colonialism), they aim to settle and govern their own population upon the (now formerly) Indigenous lands and jurisdictions, along with the Indigenous peoples already there.[39]

Whatever citizenship's merits, it remains one of the technologies through which Canada's claim to sovereignty over Indigenous peoples and our lands operates. Under Canadian law that claim enjoys de facto, not de jure, authority.[40] Canada therefore seeks to fill its legitimacy deficit, but in the clear absence of the means to do so (either conquest or cession of sovereignty),[41] it cannot—not at least insofar as Indigenous peoples qua peoples retain the fundamental freedom of self-rule. Canada thus strives to constrain Indigenous people to accept that rather than exclusive jurisdiction and radical title (the prerequisites of sovereignty), what we now need is to have our difference appropriately recognized within Canada.

With internal colonialism in plain view, some have forcefully rejected the *recognition* proposal.[42] For those engaged with it, recognition is to be achieved through differentiated citizenship, one aspect of which is circumscribed group rights. Those group rights (paradigmatically, aboriginal and treaty constitutional rights)[43] may sit in tension with the rest of Canada's unique liberal constitutional framework. However, they achieve the radical purpose of converting First Nations' political claims into legal ones, which are consequently asserted within, not over or against, Canadian sovereignty. There is a rich literature on differentiated Indigenous citizenship in Canada, representing (often implicitly) a wide range of views as to how internal colonialism and Indigenous self-rule are to be traded off.[44]

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38. 1 Tully, *supra* note 3, at 262.

39. *Id*.

40. Two cases establish this proposition: Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, para. 32 (Can.); Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004 SCC 74, para. 42 (Can.). For an analysis of their effect, see Felix Hoehn, Reconciling Sovereignties (2012).

41. Regarding the justificatory power of conquest, the Supreme Court of Canada expressly recognized that "Canada's Aboriginal peoples were here when Europeans came, and were never conquered" in *Haida Nation*, 2004 SCC 73, para. 25. As for cession, with the exception of those who finalized what Canada calls "comprehensive claims," Indigenous communities across Canada have consistently rejected the claim that they ceded their lands or jurisdictions.

42. *See, e.g.*, Taiaiake Alfred, Wasáse (2009); Audra Simpson, *supra* note 11; Glen Sean Coulthard, Red Skin, White Masks (2014).

43. Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s 35 (U.K.).

44. Some of the leading texts in these debates include: Charles Taylor, *The Politics of Recognition*, *in* Multiculturalism 25 (Amy Guttman ed., 1994); Will Kymlicka, Multicultural Citizenship (1996); Alan C. Cairns, Citizens Plus (2000); John Borrows, *Uncertain Citizens: Aboriginal Peoples and the Supreme Court*, 80 Can. Bar Rev. 15 (2001); Turner, *supra* note 8; Patrick Macklem, Indigenous Difference And The Constitution Of Canada (2007); "Borrows, Canada's Indigenous Constitution," *supra* note 35.

For our purposes, what matters is that differentiated citizenship operates in two interlinked registers which express Indigenous difference within Canadian sovereignty. The first is our belonging to Canada; the second, our belonging to First Nations political communities (which are typically, but not necessarily, located on Indian reserves[45]). In both registers, a leading instrument of differentiated First Nations citizenship is the Indian Act.[46] Taken together, several of its provisions constructively impose a citizenship model of belonging on reserve communities. This instrument of colonial governance identifies belonging in respect of a formal status which entitles its bearers to basic legal, political, and social goods universal to the membership.[47] It also establishes basic political participation rights through elections and a system of representative government.[48] The conception of citizenship presented is arguably thin, but clear.

The critical point is that the frame for belonging in the first register (to Canada) bears powerfully upon the second (to individual First Nations), and this is as intended. A precondition for Indigenous recognition within Canadian sovereignty is intelligibility. In practice, this means Indigenous peoples must be rendered governable within Canadian institutions. Citizenship is among the most important. First Nations' participation in citizenship not only facilitates the efficiency of internal colonialism, but to the extent that we appear actively engaged in its institutions, Canada's legitimacy goal is also assisted. Our acceptance of differentiated citizenship facilitates a transformation of subjectivity which, in James Tully's way of putting the point, allows for Indigenous peoples to be governed "through their freedom."[49] It is a testament to the success of this project that First Nations vigorously debate conceptions of citizenship (perennially weighing civic with ethno-nationalisms) and preconditions for citizenship (*jus sanguinis*, *jus soli*, kinship links, and replication of Indian Act categories, among

45. Canadian law recognizes lands reserved for Indians in a number of constitutional documents beginning with the Royal Proclamation 1763 (U.K.), *reprinted in* R.S.C. 1985, app. II, no. 1, various treaty documents, and the Constitution Act, 1867, 30 & 31 Vict., c 3 (U.K.), *reprinted in* R.S.C. 1985, app II, no. 5 c 3, § 91(24) (Can.). Reserves are defined in federal legislation, the Indian Act, R.S.C. 1985, c I-5, § 2(1) (Can.).

46. Indian Act, R.S.C. 1985, c I-5.

47. *Id.* at § 4.1 (establishing the application of Indian Act provisions to all band members). Additionally, under Canada's federalist constitutional structure, federal laws apply to Indians. Section 88 of the *Indian Act* provides that provincial laws of general application also apply to Indians.

48. *See id.* §§ 2(1) ("elector"), 74 (providing for government by election), 75 (providing eligibility conditions for political office), 2(3) (establishing the principle of the consent of the governed). Legislative drafters appear to have gone out of their way to avoid including a provision which directly provides for responsible government. Instead, that body has to be inferred through a number of provisions, including section 2(1) at "council of the band" (establishing a body which is elected), section 2(3) (providing, by necessary implication, that such bodies are vested with powers), sections 81–87 (identifying what those powers are and qualifying them).

49. 2 James Tully, Public Philosophy In A New Key 116 (2008).

other possibilities)—but not whether citizenship should serve as belonging's organizing principle.

Finally, it must be acknowledged that although First Nations' use of citizenship has its origins in internal colonialism, most First Nations people probably do not think of themselves as passively suffering citizenship. On the contrary, many emphasize First Nations' agency.[50] I said at the outset of this part that internal colonialism is the "leading" reason for First Nations' entanglement in citizenship. There are other reasons. Indeed, many First Nations scholars, cognizant of citizenship's colonial origin in our communities, openly invoke it. They appeal to its theoretical resources to promote Indigenous agency and to counter forms of oppression.[51] Some would argue that citizenship's capacity to generate freedom transcends (or outweighs) its negation of our freedom as an imposed institution. Some may do so because internal colonialism has transformed their subjectivity and they no longer reason as they or their ancestors once did.[52] Yet many would resist this criticism, insisting that their appeal to citizenship's emancipatory potential is genuine and deliberate. For our purpose, being descriptive and analytical, the difference is irrelevant. Yet I suspect that acknowledging it will matter greatly to citizenship's defenders within First Nations.

B. Logic: How Does Citizenship Work?

Citizenship is a formal status of belonging to a political community. The logic, or fundamental value, to which its modern version gives expression, is liberty: citizenship is a form of belonging which corresponds to a political community whose fundamental commitment is to the autonomy of its members. The formal status of citizen thus trades one's absolute (and theoretical) pre-political freedom for membership in a cooperative organization (today, typically a state) that better allows each to pursue their own ends, consistent with the same freedom for others. Citizenship aspires to this purpose through its distribution of fundamental legal, political, and social goods. Shortly, we shall explore how this tripartite division of content structures law, and

50. This point is heavily emphasized throughout John Borrows's extensive body of work. *See* JOHN BORROWS, FREEDOM & INDIGENOUS CONSTITUTIONALISM (2016). Borrows expressly connects an emphasis on agency with his understanding of Anishinaabe citizenship in *id.* at 7.

51. Joyce Green, *Canaries in the Mines of Citizenship: Indian Women in Canada*, 34 CAN. J. POL. SCI. 715 (2001); John Borrows, *"Landed" Citizenship: Narratives of Aboriginal Political Participation*, *in* CITIZENSHIP IN DIVERSE SOCIETIES 326 (Will Kymlicka & Wayne Norman eds., 2000); James (Sákéj) Youngblood Henderson, *Sui Generis and Treaty Citizenship*, 6 CITIZENSHIP STUD. 415 (2002).

52. Tully explains this feature of internal colonialism in 2 TULLY, *supra* note 49, at 116–17. For an account of what the experience is like, see Johnny Mack, *Hoquotist: Reorienting Through Storied Practice*, *in* STORIED COMMUNITIES: NARRATIVES OF CONTACT AND ARRIVAL IN CONSTITUTING POLITICAL COMMUNITY 289 (Hester Lessard et al. eds., 2011).

how it varies across conceptions of citizenship. However, that examination will be clearer if first we state the basic structure of citizenship's model of belonging.

At the heart of the model is a kind of reciprocity: an individual claims belonging to a political community and, reciprocally, the political community claims the individual as one of its own. Citizenship status thus has subjective and objective dimensions. The former we typically describe as a claim of self-identification, the latter as a claim of community recognition. What matters for our purposes is the specific way in which the claims align. Here, the mode of reciprocal relation is *direct*. The individual's claim to belong and the community's claim of recognition are directed at one another; each is expressly *for* the other.[53]

This architecture of belonging—a direct exchange of claims—is deployed in the context of First Nation political communities' membership debates. The orthodox First Nations view that belonging is a matter "of who you claim and of who claims you" invokes the structure of a citizenship model of belonging. Predictably, those who hold this view typically contemplate that membership in a First Nation entails a formal status that grants its bearers some version of the modern suite of citizenship's legal, political, and social goods. This view is understandable given that, under internal colonialism's centralization of political authority, matters of distributive justice are always at stake in the question of membership. First Nations thus have good reason to consider the question of belonging in respect of access to economic goods, such as on-reserve housing and post-secondary education funding.

Of course, for any First Nation under the Indian Act, citizenship is unconventional. "Indians" on reserve do not enjoy the full range of agency under the general private law as other Canadian citizens, especially with respect to property.[54] Also, the mechanism by which modern citizenship is achieved is complicated. Some bands have used a provision of the Indian Act to take control of their band list, and

53. *See* Damien Lee, *Adoption Constitutionalism: Anishinaabe Citizenship Law at Fort William First Nation*, 56 ALTA. L. REV. 785, 802–04 (2019) (offering such an account, noteworthy for complicating the practice of recognition by adverting to a tension between the agency of individual families and that of the wider community).

54. Indian reserves have peculiar private property regimes owing to the fact that section 2(1) of the Indian Act defines "reserve" as "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band." Section 29 provides that "Reserve lands are not subject to seizure under legal process" and section 89(1) similarly provides that "Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band." Bands have various tools for distributing individual tenure on reserve lands, but the impact of these provisions, taken together, profoundly impacts the activity of financial lending institutions. The structural effect is, arguably, a diminishment of the private autonomy of on-reserve First Nation citizens.

thus to create their own citizenship code.[55] Citizenship therein might include non-Indians and might be granted via bases such as right of birth (*jus soli*), naturalization, voluntary transfer between band lists, and adoption. For bands that have not taken this step, although band citizenship may have modern citizenship's character and function, it is not achieved through the mechanism of *jus soli*. Rather, it is determined through a range of legal categories[56] that functionally depend upon genetic ancestry, indirectly preferring *jus sanguinis*. Despite these differences, the underlying logic—liberty—remains the same and assumes expression in common legal, political, and social goods.

Citizenship's logic of liberty bears powerfully upon its normative character. Citizens bear at least citizenship's legal and political goods as *rights*. Citizenship's legal goods take the form of juridical rights, and its political goods, that of participatory rights. These two kinds of rights track citizenship's liberal and republican genealogies, respectively,[57] and are thus concerned with giving legal expression to different facets of individual autonomy. The juridical rights that citizenship distributes typically include both claim rights and liberty rights (also called freedoms, or in the language of Hohfeldian incidents, privileges[58]). The former include claims directed at the state, which entail duties of non-interference in the basic conditions of one's autonomy, such as freedom from arbitrary detention. In the Canadian Charter of Rights and Freedoms, juridical claim rights include the legal rights sections[59] and equality rights.[60] The Charter's juridical liberty rights include its fundamental freedoms[61] and mobility rights.[62] Participatory (or political) rights regard citizens' participation in the public life of the political community, typically including the right to vote and the right to run for political office. These rights of self-rule seek to ensure that individual citizens see themselves reflected in public authority, reflecting citizenship's republican lineage.[63]

Until now, I have deployed a rhetorical simplification in speaking simply of "citizenship." There are diverse conceptions of citizenship which organize, value, and give effect to the three divisions of

55. Indian Act, R.S.C. 1985, c I-5, § 10(1).
56. *Id.* § 6.
57. T. H. Marshall, Citizenship And Social Class (1949); Dominique Leydet, *Citizenship*, *in* Stanford Encyclopedia Of Philosophy (Edward N. Zalta ed., rev. July 17, 2017), https://plato.stanford.edu/archives/fall2017/entries/citizenship; Linda Bosniak, The Citizen And The Alien 17–36 (2006); Jean L. Cohen, *Changing Paradigms of Citizenship and the Exclusiveness of the Demos*, 14 Int'l Socio. 245 (1999).
58. Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L.J. 16 (1913).
59. *See* Canadian Charter of Rights and Freedoms §§ 7–14, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 33 (U.K.).
60. *Id.* § 15.
61. *Id.* § 2.
62. *Id.* § 6.
63. *Id.* §§ 3–5.

citizenship's content in distinct ways. The sketch above approximates a distinctly *modern* family of conceptions of citizenship,[64] which presumes that political community takes the form of a post-Westphalian state, and which, in diverse specific arrangements, places normative emphasis squarely on legal and political rights. On this view, citizenship's social goods are not typically distributed as rights, but rather serve the end of social cohesion by establishing a common civil identity across (often deep) internal diversity, and likewise by establishing a distinct national identity when citizens look beyond the borders of their own community.

In contrast, in the social democratic tradition, citizenship typically contemplates positive economic, social, and cultural rights, which require that juridical rights are read so as to allow for a redistribution of goods.[65] The communitarian political tradition likewise challenges the modern liberal democratic tradition's universal approach to juridical rights as lacking the contingency necessary to take the constitutive power of community, and so differing conceptions of justice, seriously.[66] Leading feminist theorists of relational autonomy also challenge the modern liberal democratic tradition's approach to juridical rights as too narrow.[67] The agonistic democratic tradition, instead, takes a much more robust view of political rights. Its affirmation of the value of conflict, viewed in the context of pluralism as a permanent political condition, recognizes that deep differences can only be provisionally resolved. This understanding implies that internally diverse communities require ongoing political participation.[68]

In various ways and for distinct reasons, each of these families of conceptions of citizenship contemplates a greater distribution of power for political and/or social rights, or to reconceive of juridical rights in a manner that attends to the constitutive power of social context. Concomitantly then, each softens the emphasis that the modern liberal democratic tradition places upon juridical rights. But this is already to state the essential point. As Jennifer Nedelsky observes, "No one among the feminists or communitarians is prepared to abandon freedom as a value, nor, therefore, can any of us abandon the notion of a human capacity for creation in the shaping of one's life and self."[69] Nedelsky further acknowledges that "[t]he commitment to equality

64. 2 Tully, *supra* note 49, at 249–67.

65. T. H. Marshall, Citizenship And Social Class (1949); Multiculturalism and the Welfare State (Keith Banting & Will Kymlicka eds., 2006).

66. Communitarianism And Individualism (Shlomo Avineri & Avner de-Shalit eds., 1996); Charles Taylor, Sources Of The Self (1989); Michael J. Sandel, Liberalism and the Limits of Justice (2d ed. 1998).

67. Jennifer Nedelsky, Law's Relations (2013); Relational Autonomy (Catriona Mackenzie & Natalie Stoljar eds., 2000).

68. *See, e.g.*, Chantal Mouffe, *Democratic Citizenship and the Political Community*, *in* Dimensions Of Radical Democracy 225 (1992); 1 Tully, *supra* note 3; 2 Tully, *supra* note 49.

69. Nedelsky, *supra* note 67, at 121; *see also id.* at 7, 46, 120–23.

that underlies liberal theory (however contested its precise form) underlies my approach as well. So does the sense that the distinctness of each individual matters, and the value of each individual should never be subsumed under some aggregate—whether family, community, or nation."[70] That is, each of these families of conceptions of citizenship still fundamentally incorporates *some* version of what Isaiah Berlin famously termed "negative liberty" as their foundational logic, however much they may be reformed from the perceived excesses of the modern account.[71]

The normative consequences of citizenship's rooting in liberty are significant. One is that each of these traditions of citizenship retains rights discourse (and in the case of claim rights, an expectation of direct normative exchange) as a means of representing community members' fundamental legal interests. We shall see shortly that, for the purposes of Indigenous law revitalization, citizenship's fundamental commitment to liberty is sufficient to position it and kinship as competing, and possibly incommensurable, models of belonging.

C. Boundaries: What Limits Does Citizenship Impose Upon a Political Community?

My comparison of citizenship's and kinship's boundaries once more considers three features which any conception of political boundary must account for: consistency, permanency, and clarity. Citizenship's boundaries operate as political contours. Because citizenship distributes legal and political goods of extraordinary value, as a threshold matter, it must present a bright line boundary around the ambit of its application. Citizenship's political contours are thus uniform (members all belong in the same way), settled (one's belonging stands in perpetuity) and certain (one does or does not belong). I will tackle each feature in turn.

Citizenship is a formal status that a political community bestows. Its formality renders it uniform insofar as all bearers enjoy the same "basic set" of legal and political goods that liberty demands. Uniformity honors the need to offer terms of belonging which all, however positioned, could reasonably accept.[72] Thus, all belong in the same way

70. *Id*. at 86 (citation omitted).
71. Isaiah Berlin, *Two Concepts of Liberty*, *in* Four Essays On Liberty 118 (1969).
72. I refer to the liberal position that justified political community requires some account of individual consent. Iterations of the liberal story from Locke to Rawls have held that consent requires a uniform distribution of citizenship's goods. Over the last three decades, two lines of attack have challenged this view. The first is that of internal diversity; the second, globalization. Neither ground of critique undermines the claim that all citizenship contemplates a uniform *basic set* of legal and political goods. Differentiated citizenship contemplates additions to this basic set for some members, while neoliberalism hollows it out. As a formal status, the basic set of citizenship goods not only survives both attacks, but also is required by them.

(even if the mechanism by which citizenship is achieved in individual cases differs). The simplicity of this point risks concealing its importance. If, for instance, citizenship were contingent upon one's ongoing performance of belonging, even its basic set of goods (such as the right to vote) would be differentiated.

Citizenship is also a settled status. Consider the spatial and temporal challenges it withstands. Many political communities allow citizens to hold multiple citizenships, yet each entitles its bearer to the panoply of legal, political, and social goods their citizenship entails. The citizenship(s) one holds might also change over time. To offer an example common to the Indigenous context, consider that one did not previously know about their identity, but once knowing is able to meet the relevant belonging test. Having done so, they are not given an incomplete bundle of citizenship goods, but rather receive the full range of citizenship-based rights and reciprocal duties. Revocation is considered such a controversial legal sanction precisely because in losing access to the basic set of the community's legal, political, and social goods, its subjects are denied their guarantee of liberty.

Finally, citizenship is a status with a "hard" boundary. At least formally, it is not something one may enjoy in degrees; either one does or does not possess it.[73] Permanent residency, which brings some features of citizenship, is a distinct status with its own boundary. Citizenship's boundaries may shift. Given sufficient time, membership codes change as do the edges of political communities' self-understandings. But such changes either go to the particulars which define the boundary or to citizenship's content, not to the disjunctive quality of its boundary. One never partially or ambiguously enjoys citizenship; the certainty rule always holds fast.

In sum, citizenship is a belonging status one bears with uniformity, settledness, and certainty—factors which support the characterization of citizenship as provisionally closed. However, citizenship's defenders will insist that this is just the point: these three features should be celebrated as virtues for their part in drawing the threshold line without which citizenship could not exist.[74] With this sketch of citizenship's analytic components completed, we are now primed to apprehend how kinship operates differently in respect of consistency, permanency, and clarity.

IV. Kinship

This Part examines why First Nations used (and for many of us, continue to use) kinship as a model of belonging, how kinship models

73. The formality qualification is important. In substantive terms, different groups of citizens can realize citizenship's goods in different ways and to different extents, with the frequent result of systemic inequality.

74. Bosniak, *supra* note 57 at 31.

work, how they relate to legality, and what their limits are. Descriptive and analytical comparison with citizenship will allow us to better understand kinship from the inside, facilitating consideration of its possible use today.

A. Rationale: Why Kinship?

Kinship retains contemporary relevance with many Anishinaabeg today for the simple reason that it is how Anishinaabe law on its own terms understands belonging to Anishinaabe political community. As an intrinsic feature of Anishinaabe law, kinship predates (and survives) colonial imposition, although it is of course impacted by it. Many individuals and families remember how and why kinship works. Yet a deeper and more fulsome explanation derives from two axioms of Anishinaabe ontology. First, Earth is a community. Second, Earth is normative. Its normativity is implicit in the relationships that define it; Earth community is, thus, inherently ordered.[75]

As for the first feature, renowned anthropologist Alfred Irving Hallowell sought to set out what are, from an Anishinaabe standpoint, the set of subjects of Earth community: "[A]ny concept of *impersonal* 'natural forces' is totally foreign to Ojibwa thought."[76] For any given act by wolves or flowers or wind, "*Who* did it, *who* is responsible, is always the crucial question to be answered."[77] Anishinaabeg understand that all kinds of beings—animals, plants, *manidoog* and *aadizookaanag*,[78] and many physical entities Western taxonomies conventionally consider abiotic (such as mountains and rivers) are moral subjects.[79] They

75. As one expression of this idea, see Oshoshko Bineshiikwe (Blue Thunderbird Woman) et al., *Ogichi Tibakonigaywin, Kihche Othasowewin, Tako Wakan: The Great Binding Law*, Turtle Lodge (Nov. 28, 2015), www.turtlelodge.org/wp-content/uploads/2015/11/ScrollBanner_TheGreatBindingLaw_24x36-PROOFv03.jpg.

76. A. Irving Hallowell, *Ojibwa Ontology, Behaviour, and World View*, *in* Culture in History 19 (Stanley Diamond ed., 1960), *reprinted in* Contributions To Ojibwe Studies 535, 544 (Jennifer S. H. Brown & Susan Elaine Gray eds., 2010).

77. *Id.* at 558.

78. There is no English translation for either of these concepts. *Manidoog* (singular, *manidoo*) refers to a broad range of spirit beings, all of which are connected to specific places. They have personality and agency and like all other kinds of animate beings, seek to fulfill their purposes. *See* Basil Johnston, The Manitous (1995). *Aadizookaanag* (singular *aadizookaan*) are another kind of spirit being. They include many of the characters in *aadizookaanan* (our sacred stories), such as Nanabozho. We also often speak of our ancestors as *aadizookaanag*. Both *manidoog* and *aadizookaanag* are distinct from *jiibayag* (singular, *jiibay*), which approximates the notion of a ghost: an incorporeal spirit moved on from the world of the living.

79. Hallowell, *supra* note 76; Robin Kimmerer, *Returning the Gift*, 7 Minding Nature 18, 21–22 (2014); Ignatia Broker, Night Flying Woman 54, 56–57 (1983); Ogimaagwanebiik (Nancy Jones), *Trees*, *in* Dibaajimowinan 106, 110 (H. James St. Arnold & Wesley Ballinger eds., 2013); Wendy Makoons Geniusz, *Preface to* Mary Siisip Geniusz, Plants Have So Much To Give Us, at xiii (2015); James Dumont & R.a. Antone, What Was Never Told Curriculum 24 (1997); *see also* Paul Nadasdy, *First Nations, Citizenship and Animals, or Why Northern Indigenous People Might Not Want to Live in Zoopolis*, 49 Can. J. Pol. Sci. 1 (2016).

possess intelligence,[80] volition,[81] and agency.[82] Thus my elders have taught me that before I harvest anything from the Earth, I should speak to it, express my need, ask permission, offer tobacco, and if I know it, sing the appropriate song.

As for the second feature, the logic or governing norm of Earth community is mutual aid and its practice is structured by kinship. We come to apprehend these paired axioms in either (or both) of two ways. The first is phenomenological-ecological.[83] We observe that subjects of Earth's order exist in complex, diverse, dynamic, and vitally, interdependent relations defined by the exchange of gifts, as traditional Indigenous knowledge[84] and Western ecological sciences[85] show. One arc of contemporary phenomenology builds from this feature.[86] A rare few are able to bring the two epistemologies together.[87] The second path into acceptance of the paired axioms is cultural. Anishinaabe creation stories reveal that all of us stand in relations of interdependence defined by gift exchange, and that our practice of mutual aid is structured through kinship.[88] As participants of that order, Anishinaabeg,[89] like many other First Nation

80. Many *aadizookaanan* demonstrate this understanding. *See, e.g.*, Patricia Ningewance, Gii-Nitaa-Aadisooke 35, 35–37 (2018); Wâsagunäckąnk [also given as Wâsāgunackąng], *Nänabushu and the Dancing Bullrushes*, *in* 7 Ojibwa Texts Collected By William Jones 45 (Truman Michelson ed., 1917); Kāgigē Pinasi (John Pinesi [also Penessi, Penassie]), *The Mink and the Marten*, *in* 7 Ojibwa Texts Collected By William Jones 127 (Truman Michelson ed., 1919).

81. Ningewance, *supra* note 80, at 100, 100–01; Patronella Johnston, *The First Water Lily*, *in* Tales of Nokomis 45 (1970); Susan Enosse, Why The Beaver Has A Broad Tail / Amik Gazhi Debinung We Zawonugom (Mary Lou Fox ed., Melvina Corbiere trans., Highway Book Shop, 1974); Hallowell, *supra* note 76, at 550.

82. John Borrows, *Earth-Bound: Indigenous Resurgence and Environmental Reconciliation*, *in* Resurgence and Reconciliation 49, 52 (Michael Asch et al. eds., 2018); Edward Onabigon, *Elder's Comments*, *in* Voice of the Drum 282, 286 (Roger Neil ed., 2000); Cecilia Sugarhead, *The Dog and the Squirrel*, *in* Ninoontaan / I Can Hear It 43 (John O'Meara ed. & trans., Algonquian and Iroquoian Linguistics, 1996).

83. Kayanesenh Paul Williams, Kayanerenkó:wa: The Great Law of Peace 132–33 (2018); Simpson, *supra* note 2, at 91.

84. Randy Councillor & Art Przybilla, *The Great Law*, *in* Ojibwe Tales, *supra* note 36, at 27; Ogimaagwanebiik (Nancy Jones), *Animals*, *in* Dibaajimowinan 92 (H. James St. Arnold & Wesley Ballinger eds., 2013).

85. Fritjof Capra, The Hidden Connections (2004); Fritjof Capra & Ugo Mattei, The Ecology of Law (2015); Suzanne Simard, Finding the Mother Tree (2021); Edward Goldsmith, The Way: An Ecological Worldview (2014).

86. David Abram, The Spell of the Sensuous (1997); Martin Lee Mueller, Being Salmon, Being Human (2017).

87. *See* Nancy J. Turner, The Earth's Blanket 69–94 (2007); Kimmerer, *supra* note 79; James Tully, *Reconciliation Here on Earth*, *in* Resurgence and Reconciliation 83 (Michael Asch et al. eds., 2018); James Tully, *On Resurgence and Transformative Reconciliation*, *in* Plants, People and Places 402 (Nancy J. Turner ed., 2020); Kyle Whyte, *Indigenous Environmental Justice: Anti-colonial Action Through Kinship*, *in* Environmental Justice: Key Issues 266 (Brendan Coolsaet ed., 2020).

88. James Youngblood Henderson, First Nations Jurisprudence and Aboriginal Rights 150–51 (2006); Deborah McGregor, *Honouring Our Relations: An Anishinaabe Perspective on Environmental Justice*, *in* Speaking for Ourselves: Environmental Justice in Canada 32 (Julian Agyeman et al. eds., 2009).

89. Andrew J. Blackbird, History of the Ottawa and Chippewa Indians of Michigan 72, 77 (1887); Thomas Peacock & Marlene Wisuri, Ojibwe Waasa Inaabida 44, 50, 70, 74 (2002); Basil Johnston, *Introduction* to The Gift of the Stars / Anangoog Meegiwaewinan 7, 11 (2010); Brian D. McInnes, Sounding Thunder 111 (2016).

peoples, ascribe kinship positions to Earth relatives.[90] Although I would specify his use of "love" as mutual aid,[91] Stan McKay, a Fisher River Cree, illustrates the point when he says that:

> Indigenous Spirituality from around the world is centred on the notion of our relationship to the whole creation. We call the earth "our mother." The animals are "our brothers and sisters." Even what biologists describe as inanimate, we call our relatives.
>
> This calling of creation into our family is a metaphorical construction that describes the relationship of love and faithfulness between human persons and creation. Our identity as creatures in the creation cannot be expressed without talking about the rest of creation, since that very identity includes a sense of the interdependence and connectedness of all life.[92]

Both paths into apprehending the logic and structure of Earth's inherent order disclose that there is no nature/culture cleavage within Anishinaabe legal and political thought.[93] Anishinaabeg understand that we are immanently and inextricably part of Earth's inherent order, and as such, we have developed our legal system to function as a logical extension of it, reconcilable to it.[94] Order within Anishinaabe kinship therefore reflects our understanding of Earth's inherent order through what we might call ecological mimesis in respect of the ecological path to understanding, or family resemblance in respect of the cultural one.[95] In sum, the deeper answer is that kinship's ongoing prominence today reflects, first, the reality that many Anishinaabeg have not forgotten the specific way in which law connects us to Earth's

90. Henderson, *supra* note 88, at 151; Harold Johnson, Two Families 30 (2007); Grand Council of Treaty No. 9, 4 Ont. Indian 20, 20 (1981); 2 D'Arcy Linklater et al., Ka'esi Wahkotumahk Aski: Our Relations with the Land 39 (2014); Oren Lyons, *Spirituality, Equality, and Natural Law*, *in* Pathways to Self-Determination 5, 8 (Leroy Little Bear et al. eds., 1989); Williams, *supra* note 83, at 132; Susan M. Hill, The Clay We Are Made Of 4 (2017).

91. Peter Kropotkin, Mutual Aid: A Factor of Evolution, at xii–xiv (1904).

92. Stan McKay, *Calling Creation into Our Family*, *in* Nation to Nation 28, 29 (Diane Engelstad & John Bird eds., 1992).

93. Linda Clarkson et al., Our Responsibility to the Seventh Generation 4 (1992); Rosamond M. Vanderburgh, I am Nokomis Too 182 (1977); Kimmerer, *supra* note 79, at 20–21. This is a perspective common with other Indigenous peoples, too. *See* Umeek (E. Richard Atleo), Tsawalk 12, 27 (2004); Umeek (E. Richard Atleo), Principles of Tsawalk 160 (2011); McKay, *supra* note 92, at 29; Henderson, *supra* note 4, at 257, 271–72.

94. *See also* Simpson, *supra* note 2, at 89; Kiera L. Ladner, *Governing Within an Ecological Context: Creating an AlterNative Understanding of Blackfoot Governance*, 70 Stud. Pol. Econ. 125, esp. 135 (2003); Stephen J. Augustine, *Negotiating for Life and Survival*, *in* Living Treaties 16, 17 (Marie Battiste ed., 2016).

95. Henderson, *supra* note 4, at 258.

implicit normativity, and second, our desire to sustain that connection today.

B. Logic: How Does Kinship Work?

Kinship is about relatedness. When non-Indigenous peoples speak of kin, they often mean lineal (consanguineal) descent: blood kin. But in many systems of Indigenous law, certainly in Anishinaabe law, kinship is an ordered system of social relations in which relatedness is the organizing feature. Blood may factor in but need not.[96] Kinship, then, is neither a relation of genetic descent nor a formal status (as in citizenship), but instead a dynamic set of social positions to inhabit.

By way of overview, the logic (or fundamental value) to which kinship gives expression is mutual aid.[97] Kinship is thus a form of belonging which corresponds to a political community whose fundamental commitment is to the integrative flourishing of its members. Kinship position indicates membership in a cooperative organization (a complex system of ordered social relations we may call extended family) that allows each member to flourish: to be able to participate in gift exchange such that their diverse kinds of needs are met.[98] Kinship positions achieve this purpose by structuring the exchange of needs and gifts throughout the community in dynamic sets of position-specific responsibilities.[99] In Hallowell's expression, "kinship terms were not merely a device for specifying the relationship of persons, but were also a means by which the normative orientation of the self in a traditional system of socially sanctioned roles and values was achieved."[100] I will begin to unpack these statements by explaining how kinship operates as a structure of belonging to political community. From there, I will work my way toward its animating logic of mutual aid.

Kinship position begins with the idea of consanguineal relatedness but exceeds it.[101] As social categories, kinship positions are

96. Marshall Sahlins, What Kinship Is—And Is Not 2–11, 62–89 (2013).

97. Williams, *supra* note 83, at 3, 132–36 (2018); 1 Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples: Looking Forward and Looking Back 12–13 (1996) (Can.).

98. Ideas: Elders and members of Mishkeegogamang Ojibway Nation talk about their values and beliefs: Interviews 2001 at 5–6 (Mishkeegogamang Ojibway Nation ed., 2012).

99. *See also* Barsh, *supra* note 4, at 194; Harold Cardinal & Walter Hilderbrandt, Treaty Elders of Saskatchewan 34 (2010); Makokis et al., *Cree Relationship Mapping: nêhiyaw kesi wâhkotohk—How We Are Related*, 15 First Peoples Child & Family Rev. 44, 49–52 (2020).

100. A. Irving Hallowell, The Ojibwa of Berens River, Manitoba 13, 50 (Jennifer S. H. Brown ed., 1992).

101. This may be true of kinship among Algonquian peoples generally. Métis philosopher Lorraine Mayer explains that the same holds true in the Swampy Cree context: Lorraine Mayer, *Ástam ánimotahtak (Come, let's talk, have a discussion)*, *in* Philosophy and Aboriginal Rights 296, 304 (Sandra Tomsons & Lorraine Mayer eds., 2013).

defined not by genetic linearity, but rather by a unique set of responsibilities.[102] Explaining her Mohawk woman's conception of gender, Patricia A. Monture said, "My understanding always comes from a woman's place, a mother's place, an auntie's place, a sister's place, and a *kohkum*'s [grandmother's] place. And each of these are sets of responsibilities, not roles."[103] These responsibility sets exist only in the context of a relationship. The kinship position "aunt," for instance, implies relatedness between a person and their mother's or their father's sister. Responsibilities internal to that position are thus inherently relational.

These inherently relational responsibility sets are highly specified.[104] For instance, in *anishinaabemowin*, there are different words for "aunt." My father's sister is *nizegos*, while my mother's sister is *ninoshe*.[105] We even specify whether my brother (*niijiikiwe*) is oldest (*niigaanis*), older (*nise*), or younger (*nishiime*).[106] Position titles differ to signal the different sets of responsibilities internal to them.[107] Different position titles thus reflect the reality of the most salient feature of this system: its distribution of responsibility between community members. Thus, my aunt (*ninoshe*) is responsible for providing me with a broad moral and practical foundation in Anishinaabe teachings and conduct, whereas the responsibilities my aunt (*nizegos*) bears to me are better described as instructive, corrective, and disciplinary.

In establishing responsibility sets, kinship position articulates fundamental legal interests. This explains why, prior to internal colonialism, Anishinaabe law[108] (and other First Nation peoples legal systems[109]) addressed one another by our kinship position titles and not by personal names. Anthropologist Ruth Landes conducted field work among Anishinaabeg at Manitou Rapids (where my original two teachers were from), in the 1930s (the decade they were born). She observed that "Proper names are commonly used in addressing offspring. All other

102. Williams, *supra* note 83, at 3.

103. Patricia A. Monture, *Women's Words: Power, Identity, and Indigenous Sovereignty*, 26 Can. Woman Stud. 154, 158 (2008).

104. The terminological specificity is readily apparent in any Anishinaabe kinship schedule. *See, e.g.*, F. G. Speck, *Kinship Terms*, *in* Family Hunting Territories and Social Life of Various Algonkian Bands of the Ottawa Valley 24 (1915); Ruth Landes, Ojibwa Sociology 7–11 (1937); Edward S. Rogers, The Round Lake Ojibwa, at B10–B34 (1962); R. W. Dunning, Social and Economic Change among the Northern Ojibwa 79, 85–97 (1959).

105. The spellings for the kinship terms given in this paragraph (and in two cases, the terms themselves: *niijiikiwe* and *niigaanis*) were suggested by Grandmother Sherry Copenace, although she is quick to assert that other dialects, orthographies, and regional differences are also correct.

106. *Nishiime* differs from the other terms in that it does not specify gender.

107. Robert A. Williams, Jr., suggests that this is a feature of Indigenous kinship systems generally. *See* Williams, Jr., *supra* note 4, at 65 (a Haudenosaunee example), 67 (a Cherokee example), 71 (the claim stated as a general proposition).

108. 1 Doris Pratt et al., Untuwe Pi Kin He: Who We Are 62–63 (2d ed. 2014); *see also* A. Irving Hallowell, *supra* note 100, at 13.

109. 1 Pratt et al., *supra* note 108, at 89.

relatives should be addressed by terms of relationship, and this is said to be out of considerateness."[110] She goes so far as to say that children who called older persons or strangers by a personal name earned strong rebuke by "shocked" parents.[111] As invocations of Anishinaabe law, kinship position titles are not words to be used lightly. To refer to someone as "kin" is not to assert affection for them or to rhetorically imply that one is a "kindred spirit" with another by virtue of a shared set of experiences or shared politics. As the base unit by which responsibility is distributed, kinship location specifies legal interests.

A benefit of understanding kinship in respect of sets of responsibility is that a kinship position may be occupied by those willing to bear out the responsibilities intrinsic to it, even without consanguineal or affinal link. What anthropologists call "fictive kin" are recognized in a multiplicity of First Nation contexts (although as I have explained, the falsity assumption of "fictive" is itself false; our recognition of kin is genuine even when extended to non-humans).[112] Many Anishinaabeg I know have adopted others, including, sometimes, non-Anishinaabeg, as kin. Much has been written about the commonality of this practice during the fur trade era, as traders sought advantageous kinship positions within influential First Nation families.[113] Also, many of us who belong to First Nations know community members who have taken an interest in the welfare and instruction of someone younger. It is common even today to hear one address a woman who bears out such responsibilities as "aunty," even where no blood relation exists. We often speak of this phenomenon as part of our culture generally, but more specifically it is a vestige of our legal system which has survived colonial imposition and erasure.[114] As a community member acquires more significant age, they may take on an instructional role vis-à-vis the community more generally.[115] Nowadays we often call such folks "elders," but it remains common to hear them called "grandfathers" and "grandmothers," their classificatory position titles within Anishinaabe law.[116] Further, kinship is also the language of Anishinaabe law used to describe treaty partners.[117] Finally, many

110. Landes, *supra* note 104, at 14.
111. *Id*.
112. *See also* Sahlins, *supra* note 96, at 63.
113. Sylvia Van Kirk, "Many Tender Ties": Women in Fur-Trade Society, 1670–1870 (1980); Bruce M. White, *Give Us a Little Milk: The Social and Cultural Meanings of Gift Giving in the Lake Superior Fur Trade*, 48 Min. Hist. 60 (1982).
114. Tully explains the twinned aspects of internal colonialism in 1 Tully, *supra* note 3, at 262–264.
115. *See* Boyce Richardson, Strangers Devour the Land 141 (1975).
116. *See, e.g*., Rogers, *supra* note 104, at G5, G6 (the Glossary). For Swampy Cree context, see Mayer, *supra* note 101, at 304–05.
117. The evidence for this claim in primary sources is everywhere. A rich literature analyzes it: Walters, *supra* note 5; Cary Miller, *Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820–1832*, 26 Am. Indian Q. 221 (2002); Johnson, *supra* note 90; Aimée Craft, Breathing Life Into the Stone Fort Treaty 86–93 (2013).

First Nation peoples of Turtle Island extend our kinship structure throughout creation.[118] For Anishinaabeg, the sun is grandfather; the moon, grandmother; Earth, mother; animals, our elder brothers and sisters. As with human communities, the kinship location ascribed to non-humans reflects our understanding of the relative weight of their responsibility sets vis-à-vis us.

Thus far I have explained that kinship is a structure of belonging to political community that turns on position-specific responsibilities and I have addressed how expansive and inclusive such an approach to belonging is. However, to appreciate how mutual aid bears upon Anishinaabe legality, the vital task of unpacking "responsibility" remains. Responsibility refers to the way in which kinship position structures one's practice of mutual aid.[119] Kinship position establishes responsibility and responsibility is satisfied through the bestowal of gifts and the presentation of one's needs. In Indigenous law theorist James (Sákéj) Youngblood Henderson's way of putting the point, "The function of kinship and relationship is to reconcile the different gifts and expressions of creativity among its members,"[120] and reciprocally, "If one does not ask for help when help is needed, then one is not kind."[121] For brothers, responsibility contemplates a roughly even (but very loose) exchange of gifts and needs. That is, on a holistic scale brothers will exchange on roughly equal terms, but marked by dramatic give and take in any instance. For parents, responsibility means giving in massively unequal measure to children and giving in certain ways, ensuring that core needs are met. Kinship societies are thus substantively thick. To participate effectively in kinship, one must have understood the responsibility sets internal to each kinship position.

Gift exchange in kinship communities is often described as reciprocal. However, as with citizenship, one needs to specify the mode of reciprocity invoked. What has become the orthodox vocabulary for gift exchange relationships was famously introduced by Marshall Sahlins. For Sahlins, "reciprocity" describes "those 'vice-versa' movements between two parties."[122] For greater certainty: "reciprocity stipulates two sides."[123] A—perhaps *the*—central feature of Sahlins's reciprocity, then, is that it is dyadic. *A* gives to *B* in direct (and shared) expectation that *B* will give back to *A*: what anthropologists and sociologists call a *counter-gift*. The resulting exchange relation thus has the reductive

118. Johnson, *supra* note 90 at 30; Linklater et al., *supra* note 90; Lyons, *supra* note 90; McKay, *supra* note 92, at 29.

119. Rogers, *supra* note 104, at B13–B34 (offering a remarkable, detailed account of how kinship structures mutual aid); *see also* Williams, Jr., *supra* note 4, at 69–70; Alan Hanna, *Reconciliation Through Relationality in Indigenous Legal Orders*, 56 Alta. L. Rev. 817, 828, 839 (2019); Hill, *supra* note 90, at 42.

120. Henderson, *supra* note 88, at 152.

121. *Id.* at 153; *see also* Umeek, Tsawalk, *supra* note 93, at 12.

122. Sahlins, *supra* note 28, at 188.

123. *Id*. at 189.

quality of a transaction. I suggest, then, that we might more specifically call what Sahlins termed "reciprocity" as "direct reciprocity."

Of course, Sahlins recognizes relational contexts of dyadic gift exchange in which "the expectation of a direct material return is unseemly."[124] Sahlins deals with this tension by treating it as an axis along which one locates three representative kinds of reciprocity: generalized, balanced, and negative.[125] For our purposes, generalized reciprocity, "the solidary extreme,"[126] is the relevant category, for it describes relations of genuine mutual aid; Sahlins even gives kinship as one such example.[127] Against this acknowledgment, however, he is quick to assert that "This is not to say that handing over things in such form, even to 'loved ones,' generates no counter-obligation. But the counter is not stipulated by time, quantity, or quality: the expectation of reciprocity is indefinite."[128] For Sahlins, then, we may only ever attenuate the meaning of "counter-," but never abandon its transactional frame. Direct reciprocity is, therefore, not the mode of reciprocal relation that animates Anishinaabe kinship because even in its generalized version, it remains dyadic.

Kinship reciprocity is indirect and circular. In practicing Anishinaabe law on its own terms, I do not meet my responsibilities to my brother because he does so for me; I do so because he is my brother and he is in need. Our belonging to one another consists not in an exchange of claims, but in the exchange of trust and care that befits brothers and in the concomitant practices of mutual aid internal to that relation.[129] An exchange of trust and care does not operate on transactional terms; it is moved by *need*. Thus, when my brother is called to practice his responsibility to me, he does not expect a countergift.[130] My brother and I know that the benefit of his gift to me—my return gift—will travel onward through our circle of relationality: I will share my gifts when presented with others' needs, and kinship responsibility will structure how I do so.[131] Thus "return" gifts are not countergifts:

124. *Id*. at 194.

125. *Id*. at 193–96. Sahlins is careful to observe that reality is rather a spectrum among these illustrative positions of midpoint and endpoints. *Id*. at 191–93, 196.

126. *Id*. at 193.

127. *Id*. at 194.

128. *Id*.

129. This is why the language of responsibility more appropriately identifies the normative character of Anishinaabe law (and possibly of Indigenous law generally) than does duty. At least since Hohfeld, legal scholars and practitioners have ordinarily taken that rights-claims and duties are correlative; every claim-right entails a duty. *See* Hohfeld, *supra* note 58. Against this discursive context, "duty" signals direct reciprocity and thus a structure of normative interaction irreconcilable to kinship.

130. My Anishinaabe account of "the gift" thus stands in tension with a key aspect of the account of Mauss, and following him, Derrida and many others who accepted that counter-gifts are obligatory. *See* Marcel Mauss, The Gift 3, 5 (W. D. Halls trans., W. W. Norton & Company, Inc., 2000) (1925); 1 Jacques Derrida, Given Time (Peggy Kamuf trans., University of Chicago Press 1992) (1991).

131. *See, e.g.*, Basil Johnston, *The Gift of the Stars / Anungoog Gauh Meenikooying*, *in* The Gift of the Stars / Anangoog Meegiwaewinan 19 (2010).

they need not flow back to the donor (which would be direct exchange), but may move in any direction where need presents. Gifts "return" not to the donor qua donor, but to the relational circle from which they were called. Kinship reciprocity is not direct and dyadic as between donor and recipient, but circular as between the entire kinship-defined set of donor-recipients. In Rauna Kuokkanen's articulation, "In this kind of reciprocity, gifts are not given first and foremost to ensure a countergift later on, but to actively acknowledge the sense of kinship and coexistence with the world."[132]

Finally, the circle metaphor may be explained as follows. Each of us occupies many kinship positions. I am son to one community member, brother to another, and nephew to a third. Each position establishes a set of responsibilities to and from me, and vitally, *through* me each is linked with all the others. It is the same for my brother, and so on for each of us. Our community is thus a "circle" of a great many crisscrossing interconnections defined by mutual aid.

Now it may be objected that through his term "pooling," Sahlins took account of the kind of circular reciprocity I have just explained. Thus, even if I have rejected Sahlins's language of generalized reciprocity, perhaps I ought to use "pooling" in lieu of "circular reciprocity." Yet again, Sahlins's term does not provide for an Anishinaabe conception of kinship. Sahlins's account of pooling is emphatically committed to the centralization of gift exchange,[133] where redistribution is organized through the authority of a chief.[134] In contrast, within Anishinaabe kinship, no chief—and for that matter, no centralization—is required to realize kinship exchange. Community members manage the give and take of kinship relationality, a point that Sahlins's survey of Anishinaabe ethnography appears to support.[135] In the result, I am resolved that circular reciprocity is the most appropriate term.

C. Boundaries: What Limits Does Kinship Impose Upon a Political Community?

Because citizenship and kinship are animated by different logics, they naturally place different senses of political boundary around belonging. Recall that citizenship's boundary operates as a kind of political contour which is necessarily uniform, settled, and certain. The

132. Rauna Kuokkanen, *The Gift as a Worldview in Indigenous Thought*, *in* Il Dono / The Gift: A Feminist Analysis 81, 89 (Genevieve Vaughan ed., 2004). I take Kuokkanen's remarkable essay as essential reading on "the gift" and I recommend it to all scholars thereof. She offers a thoughtful critique of the extant literature on the gift, but more importantly, she offers a positive and decidedly Indigenous account of the gift.

133. Sahlins, *supra* note 28, at 188–90.

134. *Id*. This anthropological overgeneralization of kinship political community has deep roots. *See* Henry Sumner Maine, Ancient Law 128, 140 (Beacon Press, 10th ed. 1963) (1861).

135. Sahlins, *supra* note 28, at 269–70 (discussing "Plains Ojibway").

necessity consists in the fact that for liberty to be realized, a certain closedness in each of these factors must obtain. In contrast with liberty, mutual aid can only be realized in an ethos of openness. Kinship's boundaries thus differ with citizenship's on each point of comparison (again: consistency, permanency, and clarity). I describe kinship's boundary in respect of "relationality gradients," which are differentiated (members belong in multiple, variable and dynamic ways), contingent (one's belonging depends upon one's ongoing practice of mutual aid), and ambiguous (one belongs to lesser or greater degrees). As previously, I shall turn to each feature in turn.

1. Differentiated

A vital aspect of kinship's open-boundedness is that all community members belong in multiple, variable, and dynamic ways. Every community member occupies multiple kinship positions, the set of such positions varies with each community member,[136] and for any given community member, the set of kinship positions occupied changes over time. Anishinaabeg and many other Indigenous peoples advert to the differentiated quality of our belonging through our practice of personal introduction. Within Anishinaabe spaces, I rarely hear folks introduce themselves by identifying a profession or a series of embodiments meant to disclose how they experience and exercise power. Instead, we identify ourselves in respect of our most salient relationships. Usually our kinship positions vis-à-vis parents and children come first. Depending on the context, many will also indicate grandparents or other kin who have been influential in their lives. We identify in respect of our teachers, our clan, the medicine societies to which we belong, our community of origin, and our treaty relationship (where one exists).

Precisely because kinship is not a uniform status, all of this information needs to be frontloaded so that speaker and listener can establish how to relate with one another, and thus what responsibilities exist between them. By way of indicating just how important possessing this kind of knowledge is, my grandmother taught me that the first thing my son should hear upon entering our world is who he is. After he drew his first breath, I told him he is a beautiful boy, an Anishinaabe, a member of the Bear Clan, and that I am his father. He's now seven years old, and, to this day, unless we're in ceremony, I ordinarily call him *ningozis* ("my son") or by nicknames.

It follows from the differentiation of kinship position that the distribution of kinship's goods is also variable and dynamic. Instead of a uniform distribution of legal, political, and social goods, kinship family distributes these goods along substantive lines. Some, by virtue of their kinship positions, will have significantly greater responsibilities than do others.

136. Rogers, *supra* note 104, at B10.

The differentiated quality of kinship's boundary is further complicated when one considers the additional multiplicity and variability of kinship positions introduced by "metaphorical" or "fictive" kinship and by non-humans. Anishinaabe philosopher Dennis McPherson and philosopher J. Douglas Rabb remind us that if mutual aid is the engine that drives kinship, it is not limited to humans: "[I]t is through the exchange of gifts that one maintains one's membership in Ojibway society. Are not these other-than-human persons with whom they exchange gifts members of that society and entitled to the same respect and help accorded to any other member of the community?"[137] Relationships with animals (except for those associated with one's clan) and spirits (*manidoog* and *aadizookaanag*), tend to be more personalized and so less widely shared, further enhancing the degree of difference that exists within kinship community.

2. Contingent

In kinship societies, the quality of one's belonging is a function of one's practice of mutual aid. Kinship positions remain viable only insofar as one realizes the responsibility their positions contemplate. Where one fails to appropriately exchange gifts and needs, one runs the risk of (at least functionally) losing kinship position. One's membership in political community is thus permanently at issue: always becoming, never become.

The radical contingency that characterizes individual belonging powerfully conditions the boundary of kinship communities, temporally and spatially. Temporally, many First Nation communities of the eastern woodlands sustained political communities through patterned mobility (what John Borrows has cleverly described as "settled flux"[138]). Anishinaabeg, and others, too,[139] constituted our communities in an annual round (the circle metaphor again) which saw community members aggregate in sizes that varied with the local wild food economy's capacity and then disperse as groups moved in different directions throughout the territory toward their next respective stopping places.[140] Spring through winter, a typical annual round would

137. Dennis H. McPherson & J. Douglas Rabb, Indian From the Inside 90 (1993); *see also* Basil Johnston, *Seagull*, *in* The Gift of the Stars / Anangoog Meegiwaewinan 37, 38 (2010); Robin Wall Kimmerer, Braiding Sweetgrass 382 (2013).

138. Borrows, *supra* note 50 at 21.

139. Marie Battiste, *Nikanikinútmaqn*, *in* The Míkmaw Concordat 13, 16–17 (James (Sákéj) Youngblood Henderson ed., 1997); Antonia Mills, Eagle Down Is Our Law 38–40 (1994).

140. William W. Warren, History of the Ojibway Nation 263–66 (1885); Dorothy Dora Whipple (Mezinaashiikwe), *Ziigwan, Niibin, Dagwaagin, Biboon / Spring, Summer, Fall, Winter (Version 2)*, *in* Chi-mewinzha 18 (Wendy Makoons Geniusz & Brendan Fairbanks eds., 2015); Ron Geyshick, *Gawa Bay*, *in* Te Bwe Win (Truth) 94 (1989); Michael Greenlar, Kokom Lena of the First Nation Algonquin 64–68 (2017); George I. Quimby, *A Year with a Chippewa Family, 1763–1764*, 9 Ethnohistory 217 (1962).

include distinct staples locations for maple sugaring, berrying, fishing, ricing, bird hunting, large mammal hunting, and winter trapping, with medicinal and other plant harvesting throughout but focused on summer. At each location, a different number of families would assemble, ranging from a camp of one or two families in midwinter to the entire village in high summer, when a productive fishery could support population density. The relevant implication with respect to contingency is that at certain times of the year, areas of habitual patterned "use" (i.e., of gift exchange) and habitation would regularly be void of people. Even our villages were not permanently populated, and their locations, too, could change.

Understanding the spatial dimension of the boundary of Anishinabe political community is more involved. The key insight is that instead of bright line contours, one discerns only a gradient in the thickness of lived relationships.[141] The gradient is thickest at the center, the village site. Having the greatest density of kin, the village is the communicative nexus of gift exchange. Because kinships between villagers are in general more tightly bound, the village is also the place where gift exchange most powerfully impacts persons' lives. The gradient is, reciprocally, thinnest toward the periphery, where fewer individuals are related and where relations are less tightly bound and less robustly sustained. Toward the periphery, gifts are shared less frequently and in general, to lesser effect (there are, of course, exceptions).[142]

Some readers might expect to find the relationality gradient articulated in the two senses of nationhood and territoriality, analogizing to public international law, and then to exclude the latter for relevance.[143] But Anishinaabe law considers non-humans (i.e., "territory"[144]) possible community members. The Anishinabek Nation, a political territorial organization representing approximately three dozen Anishinaabe communities in Ontario, offers a helpful formulation of the point:

141. In addition to this primary function, understanding boundaries as gradients of relationality also helps to explain certain Anishinaabe behavioral taboos, such as the prohibition against marrying within one's own clan. Clan identity is patrilineal; clan members who are otherwise total strangers are thus regarded as brothers and sisters for the purposes of responsibility.

142. *See also* SIMPSON, *supra* note 2, at 89; Meaghan Daniel, Finding Law About Life: A Cross-Cultural Study of Indigenous Legal Principles in Nishnawbe Aski Nation (May 14, 2018) (LL.M. thesis, University of Victoria) (UVicSpace); SAHLINS, *supra* note 28, at 198.

143. Paul Nadasdy carefully draws out how, among Yukon First Nations, both concepts are, rather, associated with the settled, political contours conception of boundary. *See* Nadasdy, *supra* note 12.

144. Leroy Little Bear, *Aboriginal Relationships to the Land and Resources*, *in* SACRED LANDS: ABORIGINAL WORLD VIEWS, CLAIMS, AND CONFLICTS 15, 19 (Jill Oakes et al. eds., 1998).

> All our lands are known to us; we continue to use them as the source and support of our lives and communities, both in an economic sense and in a spiritual way. Each place has its name and its importance to us. Let any who doubt our connection with these lands live with us, observe our ways. Though we have shared our lands through Treaties, *we have never separated our people and our lands in our minds*.[145]

Where land (that is, mountains, lakes, animals, spirits, plants, etc.) is not a thing but rather another kind of person with whom one stands in relation, the nationhood/territoriality distinction which public international law uses to articulate jurisdiction becomes incoherent.[146] Thus Indigenous political theorists Heidi Stark and Gina Starblanket wonder "how have our attempts to assert our political authority through framing nationhood become wedded to territorial boundaries and fixed political formations that close off our rich understandings of relating to one another?"[147] In his remarkable text, *An Infinity of Nations*,[148] Anishinaabe historian Michael Witgen recounts that New France's Chief Financial Officer in the 1680s called the Anishinaabeg, Cree, and Oji-Cree peoples, "an infinity of undiscovered nations."[149] Witgen rejects the hard-boundedness of nationhood in the Algonquian context, preferring the contingency of ongoing dynamic relationships between communities:

> Of course, this was not actually a world of indigenous nations, but rather a world of bands, clans, villages and peoples. In the Native New World land was not the exclusive dominion of a single individual or nation. It was instead a shared resource where use rights were claimed, negotiated, and exercised as part of the lived relationships that people forged with one another in the process of creating landscape and social identity.[150]

Even conflicts with other peoples—and we have had our share—were not negotiated around hard boundaries. Anishinaabe scholar Thomas Peacock and coauthor Marlene Wisuri explain that "our ancestors engaged in armed struggles with other tribal nations for the use of the

145. Union of Ont. Indians, *From the Anishinabek (the Ojibway, Ottawa, Potowatomi and Algonquin Nations) To the Parliament of the Dominion of Canada*, 3 Ont. Indian 18, 19 (1980) (emphasis added).

146. Daniel, *supra* note 142, at 70.

147. Gina Starblanket & Heidi Kiiwetinepinesiik Stark, *Towards a Relational Paradigm: Four Points for Consideration: Knowledge, Gender, Land, and Modernity*, *in* Resurgence and Reconciliation 175, 190 (Michael Asch et al. eds., 2018).

148. Michael Witgen, An Infinity of Nations (2012).

149. *Id.* at 20 (citing Jean Talon, Mémoire sur la domination des Francois en Canada, f 210, Colonies, Series C11E, Des limites des Postes, AN C11 E 1 (July 1687) (Archives Nationales de France)).

150. *Id.* at 20.

land; however, international boundaries as we know them today did not exist in those times. In a sense, land was not something to possess and govern. Land was a place to live and to be a part of."[151] Note the discursive shift here. Not only from jurisdiction (power over) to relationality (power with), but also if we must normalize power relationships in language, then as between us and land, it is *we* who are part of *it*.[152]

The significance of this insight goes directly to kinship's conception of boundary. Toward the periphery of kinship communities, the relationality gradient thins such that eventually persons do not recognize one another as kin. At some point, we are not engaged in mutual aid with the land. As we approach these relational limits, we find that someone else or some other people lives a stronger relationship with the land, in consequence of which even our system of law provides that the land in that area should be considered part of their community.[153]

On the way to this limit, something interesting occurs. Sometimes a geographical feature such as a river serves to functionally separate our community from theirs. But the geographical edge does not map to a political line; rather, it represents the limit of sustained relationships, a visual marker of life inadequately integrated with land.[154] Meanwhile, as we approach our relational limit, so do others. The line between our community and theirs is not bright.[155] At the interstice, land (and so the edges of political community) is often shared.[156] Use arrangements are required to avoid conflict in areas where thin relationality gradients overlap. A much-discussed Anishinaabe law (and Haudenosaunee law) example of such an arrangement is the "Dish With One Spoon" treaty relationship.[157]

Importantly, this conception of territorial boundary still allows for exclusion; the axis of and justification for exclusion just works differently. Interlopers may be excluded, not because they have crossed a political contour, but because they are assuming agency (whether

151. Peacock & Wisuri, *supra* note 89, at 45; *see also* Helen Agger, Following Nimishoomis 86–87 (2008); A. I. Hallowell, *Some Psychological Aspects of Measurement Among the Saulteaux*, 44 Am. Anthropologist 62, 71 (1942).

152. Taken together, I think this is sufficient to hold that sovereignty—at least any Westphalian conception of it—is irreconcilable with kinship understood as its own model of belonging to political community.

153. Little Bear, *supra* note 144, at 15.

154. Peacock & Wisuri, *supra* note 89, at 45.

155. Simpson, *supra* note 2, at 89.

156. Heidi Kiiwetinepinesiik Stark, *Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty Making with the United States and Canada*, 36 Am. Indian Q. 119, 129–35 (2012); Hill, *supra* note 90, at 80–84; Rachel Ariss & John Cutfeet, Keeping the Land 50 (2012).

157. Simpson, *supra* note 11, at 36–38; Victor P. Lytwyn, *A Dish with One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region*, *in* Papers of the Twenty-Eighth Algonquian Conference 210 (David H. Pentland ed., 1997); Williams, *supra* note 83, at 339–44; Dean M. Jacobs & Victor P. Lytwyn, *Naagan ge bezhig emkwaan / A Dish with One Spoon Reconsidered*, 112 Ont. Hist. 191 (2020).

harvesting or simply passing through) in an area where they lack the enabling relationships—and others hold them. Thus, one will find many anecdotes of exclusionary actions in Anishinaabe stories and ethnography.[158]

3. Ambiguous

Finally, kinship is not disjunctive. Unlike citizenship's in/out binary—the holder of more than one passport has full citizenship in more than one state—for kinship belonging is always a matter of degree. The quality of one's belonging tracks one's practice of mutual aid, turning on questions like what sort of kinship positions one occupies, how many times over, and how effectively one realizes (and is known to realize) their responsibilities under them.[159] As a result, no one ever has—and no one needs—a precise sense of another's terms of belonging. Because the goods of membership are differentiated anyhow, it is sufficient to know how one relates to the other parties relevant to the circumstance at hand.

Living with this kind of ambiguity has interesting consequences. Contemporary Indigenous political orthodoxy generally requires that, for individuals who attach their Indigenous identity to an Indigenous political community, it must be their community of origin. At least for Anishinaabeg, our distant ancestors did not share this practice. When our systems of law were vital, our ancestors' practices of community identification and of mutual aid were aligned.[160] French explorer and fur trader Nicolas Perrot observed of Anishinaabe kinship in the late 1600s that "for as the ties of marriage and alliance are so strongly knit together, each man considers himself as a member no longer of the village where he was born, but of that one in which he has settled."[161] As relationships in one's natal community thinned and those in one's current community thickened, a point would be reached at which one belonged in greater degree to the latter community. Thus Ruth Landes observed at Manitou Rapids in the 1930s that "[p]eople may at any time (though not to-day due to the regulations of the Canadian Government), become citizens of any village where they have cordial relatives or friends."[162] The late,

158. *See, e.g.*, George Copway, The Life, History, and Travels, of Kah-ge-ga-gah-bowh 19–20 (1847); Peter Jones, History of the Ojebway Indians 71 (1861); *see also* Brian Noble, *Treaty Ecologies: With Persons, Peoples, Animals, and the Land*, *in* Resurgence and Reconciliation 315, 317–18 (Michael Asch et al. eds., 2018).

159. *See also* Simpson, *supra* note 2, at 90.

160. *See* Leanne Simpson, *Our Elder Brothers: The Lifeblood of Resurgence*, *in* Lighting the Eighth Fire 73, 74, 85 (2008) (presenting a distinct but similar claim).

161. Nicholas Perrot, *Memoir on the Manners, Customs and Religion of the Savages of North America*, *in* 1 The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes 140 (Emma Helen Blair ed. & trans., The Arthur H. Clark Company, 1911).

162. Landes, *supra* note 104, at 4.

great Anishinabe public intellectual Basil Johnston, too, addressed this point directly, saying:

> When asked of their identity, men and women might answer "Zaugee," or "zaugeewinini," meaning "I am of the People of the River Mouth," or "Pottawotomi," which means "I am of the People of the Keepers of the Fire," or "Menominee—I am of the People of the Wild Rice," or "Mitche Kuneewinini—I am of the People of the Water Fence (Rama)." In all cases the emphasis was not on the place or origin of birth, but on an affiliation, "I am of the People of . . ." Custom and practice seemed to indicate that totemic and band or community affiliation took precedence over tribe or other consideration.[163]

Conclusion

This Article has offered a descriptive, analytical and normative comparison of citizenship and kinship. I have drawn primarily from Canadian law and from Anishinaabe law to do so. First, I have compared each as a model of belonging to First Nations political community. I have shown that the two models' respective fundaments, their distinct logics of liberty and mutual aid, animate those models and define their political boundaries. Second, I have explained how kinship operates as a structural feature of Anishinaabe law, specifying the distribution of normative responsibilities community members bear to and for one another. I have also explained that internal colonialism has damaged the proper functioning of kinship in First Nation communities. At the same time, internal colonialism has imposed a citizenship model of belonging upon First Nation communities. Citizenship distorts Indigenous law by placing liberty, not mutual aid, at its center.

Significant consequences of this shift in normative logics include the transformation of the form of expression of community members' fundamental legal interests (from relational responsibilities to individual rights) and the structure of normative relations between legal subjects (from circular reciprocity to direct reciprocity). By identifying these consequences, I anticipate that First Nations—and if appropriate, Inuit and Métis communities—along with scholars and practitioners who provide them with intellectual resources, will gain a clearer understanding of citizenship. More importantly, this should lead to the recognition of kinship as a viable alternative. Achieving this understanding would better position First Nations to consider

163. Basil Johnston, Ojibway Heritage 59–60 (1976); *see also* Basil Johnston, Ojibway Ceremonies 159 (1987); William W. Warren, History of the Ojibway Nation 31–38, 82–85, 123, 405 (1885) (translating, and sometimes interpreting the meaning of, many of these names).

how best to achieve their goals. A clearer view of kinship will positively impact a number of challenges and opportunities faced by First Nations. A particularly relevant one is the current debate on membership, including the so-called "pretendian" challenge and the expectations placed on Canadian public and private institutions as they begin to grapple with it in earnest.[164] These rancorous debates would benefit greatly if they took kinship not as a substantive feature of citizenship, but rather as a model of belonging to Indigenous community.

Still more important, my sketch of kinship should serve as a useful resource for those engaged in Indigenous self-determination projects, Indigenous law revitalization and Indigenous resurgence. Many First Nation projects claim to pursue these ends, but the authority they achieve too often remains within Canadian sovereignty, and as an allowance under it, serve to reinforce it.[165] In the case of Indigenous law revitalization, projects often work from within the common law tradition in the forms of reason they deploy and the institutions that they imagine will do law's work (such as courts). Presumably such approaches assist participant Indigenous communities and organizations to achieve their goals. But for those of us who hold that decolonization requires that Indigenous subjects be made the authors of their own projects *and* that those projects proceed on Indigenous peoples' terms and in their ways—I would say, on their own normative logics and so ultimately within *their own legalities*—kinship is a vital and unavoidable legal institution.

In advocating for a contemporary reinvigoration of kinship, I am careful to emphasize that First Nation peoples have always adapted to changing circumstances.[166] This is a great virtue of having modeled one's legal system on Earth's inherent order. Thus in pursuing kinship seriously, I am not calling for a return to a precolonial era in which Indigenous law worked flawlessly and Indigenous peoples lived under ideal circumstances.[167] There was never such an era: Indigenous peoples' systems of law, like all legal systems, are flawed.

164. Some recent reports in this dialogue include Queen's University, Office of Indigenous Initiatives, First Peoples Group, "Gii-ikidonaaniwan" / "It Has Been Said": Queen's University Identity Project, Final Report (2022); First Nations Univ. of Can. & Nat'l Indigenous Univ. Senior Leaders' Ass'n, *Indigenous Voices on Indigenous Identity: What Was Heard Report*, Nat'l Indigenous Identity F. (June 2022), www.fnuniv.ca/wp-content/uploads/Indigenous-Voices-on-Indigenous-Identity_National-Indigenous-Identity-Forum_Report_March-22_June-22-FINAL.pdf; Jean Teillet, Indigenous Identity Fraud: A Report For the University Of Saskatchewan (2022).

165. For a cogent analysis of this problem, see Joshua Nichols, *Democratic Futures and the Problem of Settler States: An Essay on the Conceptual Demands of Democracy and the Need for Political Histories of Membership*, *in* Democratic Multiplicity 214 (James Tully et al. eds., 2022).

166. Stark, *supra* note 156, at 124; *see also* Henderson, *supra* note 88, at 153–54; Williams, *supra* note 83, at 139.

167. *See* Val Napoleon, *Aboriginal Discourse: Gender, Identity, and Community*, *in* Indigenous Peoples and the Law 233, 233–34 (Benjamin J. Richardson et al. eds., 2009); Val Napoleon, *Behind the Blockades*, 9 Indigenous L.J. 1, 13 (2010).

Likewise, Indigenous peoples, like all peoples, consistently fall short of our aspirations. I believe kinship would make a material difference in the quality of First Nation and settler lives, but it does not have all of the answers to the problems of belonging, and in fact will create new challenges. As an Anishinaabe, I suggest that revitalized kinship is a return not to the past, but to ourselves. It reflects a marked shift in First Nation–settler power dynamics and in the focus of First Nations' normativity. This has nothing to do with going back in time.[168] The idea was clearly expressed by Dave Courchene Sr., President of what was then the Manitoba Indian Brotherhood (today, the Assembly of Manitoba Chiefs). Speaking at the 1971 Treaty Centennial Commemorations held at Lower Fort Garry, he said:

> Long before the whiteman came, we were adapting our ways to adjust to our changing environment. For had we not, we would have died as people, many centuries ago.
> But we adapt in our ways and not in anyone else's. We will make our own lives. And our young will assure us of that.[169]

The project is to make kinship work today, fully cognizant of and sensitive to the internal colonial mess we inhabit,[170] but always on our own terms and in our own ways.[171] I have called this project a revitalization of kinship, not a reproduction of it: its purpose is not to recreate kinship as it existed in its precolonial state, but rather to explain that kinship system so that, seeing it clearly, we may give it new life. In some cases, that might mean running it much as it did (and in constrained ways, does) operate. In others, that may mean letting it serve as a foundation for a new vision of belonging to political community and of articulating fundamental legal interests.

I hope that interested legal and political theorists of citizenship find value in engaging with kinship. For example, citizenship theorists working within the social democrat, communitarian, and feminist relational autonomy traditions might particularly see mutual aid as a core value. By presenting mutual aid as an animating normative logic, I aim to clarify its distinction from mutual aid understood merely as a function of liberty. This Article serves as an invitation to dialogues, many of which are already underway. I have frequently cited James Tully, whose work exemplifies deep engagement with these questions. I hope more

168. Simpson, *supra* note 2, at 52–53.

169. Press Release, Manitoba Indian Brotherhood, Address by Chief Dave Courchene, President, Manitoba Indian Brotherhood, at Treaty Centennial Commemorations, Lower Fort Garry, Manitoba, August 2, 1971 at 2–3 (Aug. 2, 1971).

170. Borrows discusses the need for Anishinaabeg to ground their legal and cultural theory in the messiness of our contemporary predicament. *See* John Borrows, Law's Indigenous Ethics 238–39 (2019); John Borrows, *Maajitaadaa: Nanaboozhoo and the Flood, Part 2*, *in* Centering Anishinaabeg Studies: Understanding the World through Stories, at ix (Jill Doerfler, Niigaanwewidam James Sinclair & Heidi Kiiwetinepinesiik Stark, eds., 2013).

171. *See* Robert Alexander Innes, Elder Brother and the Law of the People (2013).

in legal and political theory might follow, and likewise, that my comparison (and minor comparativism) of how citizenship and kinship each relate to legality provides adequate reason for comparative law engagement with the question of Indigenous law revitalization.

I would be remiss if I failed to advert to what this Article is not. First, I have not endeavored to consider kinship critically. I found it impossible, in a single article, to offer a critical examination of kinship alongside an adequate descriptive and analytical one. One must have a serious account of one's object of inquiry from the inside before one can fairly subject it to critique, so the descriptive and analytical project had to come first. Yet engaging with power is a vital task, one which must be pursued prior to kinship's systemic revitalization. Confronting a similar tension, Métis scholar Kim Anderson states:

> If Western feminism is unpalatable because it is about rights rather than responsibilities, then we should take responsibility seriously and ask if we are being responsible to *all* members of our societies. If we are to reject equality in favour of difference, then we need to make sure those differences are embedded in systems that empower all members.[172]

Although her point is aimed at what she calls Western feminism, it should be applied to the revitalization of Indigenous legal systems and of Indigenous political community more generally. Kinship must be held to such a standard. I began to engage critically with kinship in my dissertation, and I look forward to further developing that work. This Article should facilitate critical consideration of kinship.

Second, because I have not undertaken a critical investigation of kinship, neither have I presented a normative argument preferring it over citizenship (although I have certainly gestured toward that outcome). Given the abysmal record of realizing the fundamental rights and freedoms of Canadian citizenship for Indigenous peoples, it seems unlikely that the fundamental legal interests of kinship could fare any worse.[173] The question of whether kinship might be better merits serious consideration.

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172. Kim Anderson, *Affirmations of an Indigenous Feminist*, *in* Indigenous Women and Feminism 81, 88 (Cheryl Suzack et al. eds., 2010). On my reading of the text, I think Anderson is responding to a view sometimes expressed by indigenous theorists that we ought to reject formal equality, not equality *simpliciter*.

173. 1 A. C. Hamilton & C. M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba (1991); Hon. David H. Wright, Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild (2004); 1 Hon. Sidney B. Linden, Report of the Ipperwash Inquiry (2007); Truth and Reconciliation Commission of Canada, The Final Report of the Truth and Reconciliation Commission of Canada (2015); Gerry McNeilly (Independent Police Review Director), Broken Trust: Indigenous Peoples and the Thunder Bay Police Service (2018); Hon. Murray Sinclair, Thunder Bay Police Services Board Investigation: Final Report (2018); 1A–B The National Inquiry into Missing and Murdered Indigenous Women and Girls, Final Report: Reclaiming Power and Place (2019); Commission d'enquête sur les relations entre les Autochtones et certains services publics : Écoute, réconciliation et progress, Rapport final (2019).

Third, this Article does not offer a theory of Anishinaabe law. I have addressed one feature of Anishinaabe law in some detail and it discloses much about the normative character of Anishinaabe law. For instance, one often hears that Indigenous law is operationalized through responsibilities, not rights, but one is hard pressed to locate a scholarly explanation of what that means. I have begun to flesh out a reply. However, because presenting kinship was an article-length project, I have refrained from offering a robust account of Anishinaabe law's normativity. I have not asked key questions about legal authority, institutions, remedies, or what sources of responsibility exist beyond kinship. Neither have I offered a theory of Anishinaabe democracy: I have not sought to answer how Anishinaabe kinship organizes collective deliberation, what space it leaves for individual dissent, or how it navigates internal difference. This Article is a first step toward the accounts of Anishinaabe law and political community, on their own terms and in their own ways, that must now follow.[174]

As for the distance this first step has travelled, the comparison this Article has undertaken demonstrates that kinship is its own model of belonging to Indigenous political community and that the fundamental legal interests of kinship are distinct from those of citizenship. The larger conclusion suggested is that citizenship and kinship are incommensurable in the strict sense of lacking a common measure. It appears that neither may be cast in the terms or institutions of the other because the difference between them is not of mode but of kind. The distinction in forms of normative expression (rights vs. responsibilities) and in modes of normative interaction (direct vs. circular reciprocity) suggests that those differences of kind are distinguishable by their different normative character.

Whether from a positivist, natural law, interpretivist, realist, law and society, or critical legal studies standpoint, Canadian law—like all contemporary state law within the Anglo-American genealogy—has what we might call a "prescriptivist" character. Its transcendent, abstract, propositional, and expressly identified norms are meant to be imposed upon its subjects by legitimate legal authorities. But at least insofar as kinship reveals, Anishinaabe law understood on its own terms appears normative without being prescriptive. Operating under what I have called the implicit normativity thesis, it shows us what good relationships and proper behavior (in its myriad relational contexts) looks like, but it's deep commitment to contingency declines to reveal what any of us must or must not do in given circumstances.

174. Indigenous folks are of course already at work on such projects. *See, e.g.*, Kahente Horn-Miller, *What Does Indigenous Participatory Democracy Look Like? Kahnawa:ke's Community Decision Making Process*, 18 Rev. Const. Stud. 111 (2013); Val Napoleon, *Gitxsan Democracy: On Its Own Terms*, *in* Democratic Multiplicity 195 (James Tully et al. eds., 2022). This Article is meant to serve as a resource for those projects to come.

Its institutions present no legal authorities, formal or informal, empowered to legislate, adjudicate, or enforce legal prescriptions.[175] To be sure, all legal systems must have consistent and rational means of generating, interpreting, and enforcing law. However, presumably the kinds of institutions appropriate to a conception of law that identifies legal norms immanently in our relationships will do so in a radically different way.

An account of how Anishinaabe law enacts normativity without prescriptions is beyond the scope of this Article. This significant claim deserves further research, which I am currently developing. Here, I have focused on demonstrating that each model of political community membership is rational within its own logic and how the choice of model bears upon a community's praxis of legality. The unique logics of liberty and mutual aid are evident in the legal and political concepts suited to each. I therefore suspect that neither model is rational within the internal morality of the other, which complicates the possibility of legal pluralism across this divide.[176] Exploring this issue further will be the focus of future research.

175. This is not true of Anishinaabe law articulated on common law or civil law terms and for their institutions. Consider the classic example of tribal governments and judiciaries in the American context. *See* Robert D Cooter & Wolfgang Fikentscher, *Indian Common Law: The Role of Custom in American Indian Tribal Courts (Part I of II)*, 46 Am. J. Comp. L. 287 (1998); Robert D. Cooter & Wolfgang Fikentscher, *Indian Common Law: The Role of Custom in American Indian Tribal Courts (Part II of II)*, 46 Am. J. Comp. L. 509 (1998); Matthew L. M. Fletcher, *Rethinking Customary Law in Tribal Court Jurisprudence*, 13 Mich. J. Race & L. 57, 94–95 (2007). As a methodological commitment, see Nawendiwin: The Art of Being Related (Tara Williamson, et al, eds., 2022), which applies the case method to various kinds of Anishinaabe stories and subsequently offers a synthesis of legal prescriptions (rules and principles the authors claim to identify within the stories). The synthesis is presented in the spirit of the *Restatements of the Law* tradition, with the significant difference that the legal findings are determined by scholars, not judges.

176. This tension is centrally at issue in Gillespie & Thi Quang Tran, *supra* note 3; *see also* Kirsten Anker, *Postcolonial Jurisprudence and the Pluralist Turn: From Making Space to Being in Place*, *in* In Pursuit of Pluralist Jurisprudence 261 (Nicole Roughan & Andrew Halpin eds., 2017).