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The Bankruptcy of the Category of Religion: A Decolonizing Approach

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Abstract: This article takes as its point of departure the 2022 Interim Report of the United Nations Special Rapporteur on Freedom of Religion or Belief, entitled "Indigenous Peoples and the Right to Freedom of Religion or Belief." The report recommends "collaborat[ing] with indigenous spiritual leaders and influencers to support conservation efforts and the sustainable development of traditional lands *through a human rights-based approach*." We ask what a human-rights-based approach to the conservation and sustainable development of traditional Indigenous lands looks like. More specifically, would such an approach be in line with the worldviews of the Indigenous peoples potentially affected by such conservation or development? We consider these questions both legally and theologically. We acknowledge that the protection of human rights is better than their violation, but we also take seriously critiques of this standard human rights discourse. We argue that case studies such as Oak Flat, Lake Titicaca, and the Klamath River call us away from abstract affirmations of the human right to religious freedom and toward a rights-of-nature framework – even as we consider critiques of this framework as well. Ultimately, both Western legal discourse and Western religious studies discourse reduce Indigenous cosmologies (which are metaphysical systems) into cultural debates, thus erasing the sovereignty of Indigenous lands and peoples. A decolonizing approach therefore requires a rethinking of the sacred.

Keywords: Religious Freedom, Rights of Nature, Decolonization

This article takes as its point of departure the 2022 Interim Report of the United Nations Special Rapporteur on Freedom of Religion or Belief, titled "Indigenous Peoples and the Right to Freedom of Religion or Belief."[1] We are especially interested in the recommendation to "collaborate with indigenous spiritual leaders and influencers to support conservation efforts and the sustainable development of traditional lands *through a human rights-based approach*."[2] What would a human-rights based approach to the conservation and sustainable development of traditional Indigenous lands look like? More importantly, would a human-rights based approach be in line with the worldviews of the Indigenous peoples potentially affected by such conservation or development? Considering these questions requires thinking legally but also theologically. When we, the authors, started talking about the report we saw parallels between the legal critiques of the rights-based discourse on land protection and the Indigenous theological critiques of understanding religion as mere belief, which conceals or undermines the ontological status of

1. Ahmed Shaheed, "Interim Report of the Special Rapporteur on Freedom of Religion or Belief: Indigenous Peoples and the Right to Freedom of Religion or Belief" (New York: United Nations, October 10, 2022), https:// www.ohchr.org/en/documents/thematic-reports/a77514-interim-report-special-rapporteur-freedom-religion-or-belief.
2. Shaheed, "Interim Report of the Special Rapporteur," art. 86h (emphasis added).

sacred lands. Western legal categories and Western religious studies categories alike reduce Indigenous cosmologies, which are metaphysical systems, into cultural debates. It is not surprising that the legal system mirrors the categories of religious studies, as they are both products of colonial Euro-modernity, as we discuss in this article.

Before we begin our response to the UN Interim Report we would like to contextualize our critique and our particular approach to the above mentioned question by presenting our positionality on the subject matter. I, Cecilia Titizano, am writing as a theologian and an Andean woman of Quechua/Aymara descent, currently living in the United States. I am particularly interested in uncovering the subtle yet pernicious ways in which Indigenous ways to experience and describe reality are rendered unreal, hence inhibiting their axiological power. I, Dana Lloyd, come to this conversation with Cecilia as a scholar of law and religion, and a settler and immigrant to the United States, where I write about Indigenous struggles for religious freedom as struggles for sovereignty. This article begins with the recognition that protection of Indigenous human rights is better than their violation. But we show that protecting Indigenous lands through the framework of human rights – especially the human right to religious freedom – fails in courts. Cecilia's theological perspective explains this failure as a result of the colonial structure that lies at the foundation of the religious category of the sacred that determines the legal framework of religious freedom.

From Land Rights to the Rights of the Land?

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was a result of Indigenous activism. Lakota historian Nick Estes describes Indigenous international activism and organizations like the International Indian Treaty Council as a result of local movements such as the American Indian Movement.[3] Legal scholar Kristen Carpenter explains that "it was precisely because of ongoing human rights violations in their home countries that Indigenous Peoples, including leaders from the United States, began to participate at the United Nations."[4] However, Native American studies scholar Joanne Barker (Lenape) critiques the rights discourse as a settler colonial discourse that cannot really advance or protect the well-being of Indigenous peoples: "Rights, while appealing to extra-state or global humanitarian ideals, are articulated through legal ideologies and discourses that have been developed to serve imperialists."[5] We recognize both notions as true and ask how the international community can address the continual violation of Indigenous peoples' human rights while acknowledging the coloniality of the human rights discourse.

As Anishinaabe jurist John Borrows argues, "ambiguity is a legal reality in all rights language. Rights are necessarily expressed in general terms to provide wide-ranging protections against state intrusions. Their broad framing has not prevented us from giving them meaning in specific cases […] If anything, their very breadth elevates our expectations. The generalized nature of rights heightens the public demand we place on these concepts."[6] However, Native studies scholar Peter Kulchyski criticizes this notion of universal human rights as contradicting the specificity of Indigenous rights. Moreover, the

3. Nick Estes, *Our History Is the Future: Standing Rock Versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance* (New York: Verso, 2019), 198–199.
4. Kristen A. Carpenter, "'Aspirations': The United States and Indigenous Peoples' Human Rights," *Harvard Human Rights Journal* 36 (2023): 41–88, 45.
5. Joanne Barker, "Confluence: Water as an Analytic of Indigenous Feminisms," *American Indian Culture and Research Journal* 43, no. 3 (2019): 1–40, 18.
6. John Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019), 30.

individual nature of human rights contradicts the communal nature of Indigenous rights. The UNDRIP, he tells us, mixes human rights and Indigenous rights without distinction, and this conflation is problematic: "extending universalism basically means assimilation," thus erasing, rather than promoting, Indigenous sovereignty.[7] Literary scholar Mishuana Goeman (Tonawanda Band of Seneca) argued in 2008 that "in Indigenous Studies […] there is recognition of the important spiritual role [of land], the necessity to protect land from environmental devastation, and a legal narration of its borders and boundaries, but too often we overlook the fundamental role of place making in moving toward cultural sovereignty."[8] As we are writing this article, in 2024, this does not seem to be a problem in Indigenous studies, but Goeman's critique should be taken seriously when we talk about Indigenous human rights – especially the right to religious freedom. While attorney Adrienne Tessier argues that "articles 12 and 25 of UNDRIP succeed in broadening what constitutes religion and spirituality in international law,"[9] we doubt the ability of the category of religion to advance Indigenous peoples' sovereignty.

Specifically, when it comes to religious freedom and land rights, two issues bother us most. The first is that for Indigenous peoples, religion has been a tool both of oppression and of resistance, and the legal framework of religious freedom – because of its narrow understanding of religion as *belief* – may not be capacious enough to capture this duality. The second is that the notion of land rights assumes land is a resource, commodity, and property, but for many Indigenous peoples land is not that. How are we to think of land rights if land is not only sacred but a relative? Indeed, when we focus on *human* rights, aren't we neglecting the rights of the land itself? Osage theologian George (Tink) Tinker critiques the notion of land rights as problematic and argues the following:

> Who is it that is 'giving' these rights? From a Native perspective, who are we human beings to grant rights to other (i.e., non-human) people? What gives humans this power, this right? While this might be suggested as an antidote to speciesism, it actually perpetuates speciesism by articulating human centric hierarchical authority in terms of the invented structures of law.[10]

We keep this critique in mind as we think about instances where land rights struggles turn into protection of the rights of the land itself. Is the rights discourse ever appropriate when we think of Indigenous justice?

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7. Peter Kulchyski, *Aboriginal Rights Are Not Human Rights: In Defence of Indigenous Struggles* (Winnipeg: Arbeiter Ring Publishing, 2013), 23.
8. Mishuana Goeman, "From Space to Territories and Back Again: Centering Storied Land in the Discussion of Indigenous Nation Building," *International Journal of Critical Indigenous Studies* 1, no. 1 (2008): 23–34, 24.
9. Adrienne Tessier, "Indigenous Religious Freedom in International Law: a Discussion of the Potential of Articles 12 and 25 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)," in *Research Handbook on the International Law of Indigenous Rights*, ed. Dwight Newman (Cheltenham, UK: Edward Elgar Publishing Limited, 2022), 376–395. Article 12 of the UNDRIP states that "(1) Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains; (2) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned." Article 25 adds that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."
10. George Tinker, "Rights of Nature: Water, Trees, Eagles, and Worldview" (forthcoming), 19.

Geographer Joel Correia argues that "Indigenous justice struggles for land and political recognition are always more than rights-based claims."[11] We can argue the same about Indigenous religious freedom: Indigenous struggles for religious freedom are struggles for sovereignty, and Indigenous sovereignty transcends the realm of human rights. Sovereignty can be understood as a people's right to self-determination, including the right to decide the fate of that people's territory. But if the land is understood not only as territory but as a relative, then sovereignty must also be understood differently, that is as a partnership between the people and the land. If the land is sacred, then partnership with the land is also at the heart of religious freedom. This understanding of sovereignty and religious freedom challenges a human rights-based approach to Indigenous justice, and this challenge is at the heart of this article.

Goeman asks whether it is possible to maintain political vitality while making Indigenous spaces that are not based on abstracting land into state spaces.[12] She explains that this question is important because maintaining a relationship with the land is at the heart of Indigenous struggles. Additionally, the question of land also becomes one that is included in the discourse of struggles that are framed as struggles for religious freedom. In such struggles, land plays different roles, as home, property, sacred, and kin, but Goeman wants to think about land as a "storied site of human interaction."[13] What will happen to the rights discourse if we take Goeman's suggestion seriously?

I, Dana, am writing as a legal scholar, and so the relationship between stories and law are of particular interest to me. In his book *Indigenous Law's Ethics*, Borrows cites Anishinaabe elder Basil Johnson who wrote: "[Through stories] our ancestors intended to prepare the minds of their children to look for and see relationships between plants, weathers [*sic*], seasons, insects, birds, animals, and fish and to make stories out of what they had perceived." And Borrows concludes: "Instead of laws that are guidelines, our ancestors made up stories to guide us along on the right course.[14]

Anishinaabe scholar Leanne Betasamosake Simpson adds that "Stories direct, inspire and affirm ancient code of ethics."[15] Indeed, scholars of law and literature have thought of common law (the legal system in the United States, where I work) as a set of stories.[16] We can think of what witnesses do in courtrooms as telling stories, and we can read legal decisions, written by judges, as stories as well. In cases about Indigenous lands, the stories are stories about land, but Indigenous legal scholars argue that it is more than that: these storied lands are the source of Indigenous law. And when storied lands are the source of Indigenous law, what we get is law whose center is not about rights but responsibilities.

Settler law is a different story. Goeman writes that "land claims argue from a place of precedence and must 'prove' or legitimate the length of our occupation *on* the land, rather than the importance of land *to* us. While this is a strategic move for indigenous peoples, it is imperative not to be caught in this statist ideology."[17] It is important, she clarifies, not to think of land as that *upon* which humans make history.[18]

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11. Joel Correia, *Disrupting the Patrón: Indigenous Land Rights and the Fight for Environmental Justice in Paraguay's Chaco* (Berkeley: University of California Press, 2023), 161.
12. Goeman, "From Space to Territories," 23.
13. Goeman, "From Space to Territories," 23.
14. Basil Johnston, *The Gift of the Stars* (Cape Croker First Nation, ON: Kegedonce, 2010), 13. Cited in Borrows, *Law's Indigenous Ethics*, 5.
15. Leanne Betasamosake Simpson, "Land as Pedagogy: Nishnaabeg Intelligence and Rebellious Transformation," *Decolonization: Indigeneity, Education, & Society* 3, no. 3 (2014): 1–25, 8.
16. See, for example, Ronald Dworkin, "How Law Is Like Literature," in *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1986), 146–166; Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986).
17. Goeman, "From Place to Territories," 24.
18. Goeman, "From Place to Territories," 24.

Can settler courts take Goeman's advice and think of land as having agency? Can land be a relative rather than an object? In cases about sacred sites, such as *Apache Stronghold v. United States*, which was decided by the Ninth Circuit Court of Appeals on rehearing in March 2024, land can be either commodity or sacred, both of which limit land's role to that of an object; even if thinking of land as a *sacred* object might lead to better legal outcomes than seeing land as an object of *property* rights, it is still no more than an object, which, as we argue in this article, is problematic.[19]

Chí'chil Biłdagoteel, known in English as Oak Flat, is the place where Ga'an (guardians or messengers between Apache peoples and the Creator, Usen) reside. It is a 6.7-square-mile stretch of land within what is currently managed by the U.S. federal government as Tonto National Forest, east of Phoenix, Arizona. Since 2014, a proposed copper mine has threatened to permanently alter the area through an underground mining technique that would cause the earth to sink, up to 1,115 feet deep and almost 2 miles across.[20] Apache Stronghold, a grassroots organization, has challenged the proposed mining plan in court, arguing that destroying their sacred sites would infringe on their free exercise of religion, a right promised to them by the First Amendment to the U.S. Constitution, the American Indian Religious Freedom Act (1978),[21] and the Religious Freedom Restoration Act (1993).[22]

This case is controlled by precedent from 1988 (*Lyng v. NICPA*), where the U.S. Supreme Court declared constitutional a plan to build a road and log trees in the High Country in northern California, an area sacred to the Yurok, Karuk, and Tolowa peoples, which has been managed by the federal government as the Six Rivers National Forest.[23] Forty years after the *Lyng* case was tried in court, the Apache peoples are arguing that their case is different from the High Country, even though the cases sound very similar, and that even though the court failed to protect the High Country from development, it should protect Oak Flat. The main difference between the cases is that the Yurok, Karuk, and Tolowa relied on the religion clauses of the First Amendment to the U.S. Constitution and on the American Indian Religious Freedom Act – a law that has been declared in *Lyng* to have "no teeth" – whereas the Apache have the Religious Freedom Restoration Act, which is supposed to bypass the *Lyng* precedent. More substantially, Apache Stronghold argues that because Oak Flat would be utterly destroyed by the mining, no religious exercise would ever be possible at this place again. In the case of the High Country, the court said that building a logging road through the sacred area would not prohibit any religious exercise: the place would still be accessible – indeed, even more accessible – to Yurok, Karuk, and Tolowa people who want to use the place for religious purposes. The Oak Flat case is different because if it were mined then the place as they know it would not exist anymore.

In its original decision, the Ninth Circuit Court of Appeals rejected Apache Stronghold's claim, justifying its decision by saying that the Apache only recently revived their ceremonial use of Oak Flat, and therefore, destroying this place does not pose a substantial burden on the free exercise of their religion. Religious studies scholar Michael McNally argues that this justification is factually wrong.[24] However, our

19. *Apache Stronghold v. United States*, No. 21–15295 (9th Cir. 2024).
20. Anna V. Smith, (2022) "At Oak Flat, Courts and Politicians Fail Tribes," *High Country News*, July 26, 2022, www.hcn.org/articles/indigenous-affairs-justice-at-oak-flat-courts-and-politicians-fail-tribes.
21. American Indian Religious Freedom Act (1978), 42 U.S.C. § 1996.
22. Religious Freedom Restoration Act (1993), 42 U.S.C. §§ 2000bb-2000bb4.
23, *Lyng v. Northwest Indian Cemetery Protective Association* (1988), 485 U.S. 439.
24. Michael McNally, "The Sacred and the Profaned: Protection of Native American Sacred Places That Are Already Desecrated," *California Law Review* 111 (2023): 395–464.

concern here is different.[25] The U.S. legal system allows only for two stories about land to be heard: land can be either property or sacred. As such, all we can do is use it, act upon it, and fight over it. I argued elsewhere that when the competition is between religion and property, the right to property is always going to win.[26] This is so despite the fact that, as religious studies scholar Tisa Wenger argues, the place has become "even holier in and through the Western Apache fight to defend it in court."[27] But the point we want to make here is that both stories, of land as sacred of and land as property, regardless of who wins, do not correspond with Indigenous cosmologies according to which the land is not an object of rights at all.

Listen to the story Apache elders tell in court: Oak flat is a ceremonial ground and the activities that take place there cannot be relocated. Ga'an come to these ceremonies to guide Apache people and to help them heal. Coming-of-age ceremonies that take place there connect the girls and boys who undergo them to the land itself, and the land provides sacred medicine plants, animals, and minerals. "Because the land embodies the spirit of the Creator, if the land is desecrated, then the spirit is no longer there. And so without that spirit of Chí'chil Biłdagoteel, Oak Flat is like a dead carcass."[28] The story Apache Stronghold tells the court is about religion because the case is about religion. But it is also a story about life and relationships. However, the first sentence in the court decision refers to Oak Flat as "federally owned land within the Tonto National Forest." The court continues to state that "Oak Flat is a site of great spiritual value to the Western Apache Indians and also sits atop the world's third-largest deposit of copper ore."[29] The land has spiritual value (to Apache peoples), and it has economic value (supposedly to everyone). Occupying no more than 2–3 pages out of a 241-page court decision, the Apache story, according to which "everything has life, including air, water, plants, animals, and *Nahagosan*—Mother Earth herself," and explaining the Apache peoples' desire to remain "intertwined with the earth, with the mother," is simply not taken into account by the court.[30] As Anishinaabe legal scholar Lindsay Keegitah Borrows argues, "when governments [and we can add, courts] make decisions without adequate knowledge of stories, people suffer."[31]

Again, the land's spiritual and economic values are in competition here; both are more important than the land's status as relative, to whom we cannot assign any value. And since the competition is between economic and religious value, or, in other words, between the right to religion and the right to property, the control the *Lyng* precedent holds over the Oak Flat case is detrimental: According to the Ninth Circuit Court of Appeals, "The project challenged here is indistinguishable from that in *Lyng*." Therefore, "Under *Lyng*, Apache Stronghold seeks, not freedom from governmental action 'prohibiting the free exercise' of religion,

25. It is important to note that even if it is factually correct, reading this case through the theoretical lens of settler colonialism would help us see that if Apache ceremonial life in the area had been suppressed until recently, we should look to the settler state as the culprit. Indeed, we should wonder how Chi'chil Bildagoteel has become part of the Tonto Forest rather than an Apache reservation.

26. Dana Lloyd, *Land Is Kin: Sovereignty, Religious Freedom, and Indigenous Sacred Sites* (Lawrence: University Press of Kansas, 2024).

27. Tisa Wenger, "Fighting for Oak Flat: Western Apaches and American Religious Freedom," *Journal of Law and Religion* 39, no. 2 (2024): 1–23.

28. *Apache Stronghold v. United States*, 184.

29. *Apache Stronghold v. United States*, 12.

30. Apache Stronghold's reliance on the 1852 Santa Fe Treaty is quickly dismissed by the court, which declares that the government's statutory obligation to transfer Oak Flat abrogates any contrary treaty obligation (*Apache Stronghold v. United States*, 52).

31. Lindsay Keegitah Borrows, *Otter's Journey Through Indigenous Language and Law* (Vancouver: UBC Press, 2018), ix.

but rather a 'religious servitude' that would uniquely confer on tribal members '*de facto* beneficial ownership of [a] rather spacious tract […] of public property.'"[32]

The land transfer is conditional on a successful environmental review, and so at the time of this writing, there is still a chance that Oak Flat will be protected for environmental reasons. However, unless Apache Stronghold takes the case to the Supreme Court and wins, Oak Flat will not be protected as a sacred place. And it is even more unlikely that it will be protected as an agent, relative, and living being. Thus, coming back to Carpenter's assertion that the UNDRIP was created because of the violation of the human rights of Indigenous peoples in their home countries, we can ask whether the United Nations can offer Oak Flat better protection than that offered by U.S. courts.

Andean Ontology and the Political Eruption of *Tirakunas* or Earth Beings

I, Cecilia, am particularly taken by Dana's description of *Apache Stronghold v. United States*, where "land can be either commodity or sacred," yet in both cases, land is an object and not a relative, because, as I understand her argument, at the center of the struggle is the conception of what is conceived of as sacred. In the following section, using examples from the Andean context, I will decolonize Western understandings of the sacred, which, as Dana indicated, objectivize the land and her inhabitants, humans and other-than-humans alike. When Dana asks: can land be a relative rather than an object? My answer is yes, she could be, she and all her children, but such a shift will require us to stop reducing ontological conflicts into merely epistemological ones.[33]

Every year, thousands of pilgrimages arrive in Cusco, Peru, to visit the *Tataycha Qoyllur Rit'i*. *Tataycha* is a term of endearment that can be translated as "beloved father," and *Qoyllur Rit'i* means in Quechua "shining snow" or "star of the snow."[34] Since precolonial times, the mountain *Sinakara* with its glacier *Qoyllur Rit'i* has been considered the son of *Ausangate*, the holiest mountain in the region. Today it is also the place where thousands of pilgrims from the surrounding region travel to honour Christ, in the *Corpus Christi* feast. *Corpus Christi* is a Catholic feast centred on the veneration of the Eucharist. The documentary series *Standing on Sacred Ground* (2013) features a group of *Q'ero* walking toward the rapidly disappearing glacier. The *Q'ero* are Quechua-speaking communities that for hundreds of years have lived in high altitudes, 125 miles from Cusco. During the conquest, they fled to the highlands to limit their exposure to the Spanish crown and later national governments. They are considered shamanic masters, practicing ancient ways of relating to the world and pursuing spiritual growth and healing.[35]

In the documentary we see them struggling to find a place in the glacier where they can offer their *mesa*, containing nourishment for the *Tataycha Qoyllur Rit'i*.[36] If he accepts their offering, following the Andean ethical principle of reciprocity, he is obliged to care for their community. The *Q'ero* delegation is

32. *Apache Stronghold v. United States*, 27**.**

33. "Ontology relates to *being*, to what *is*, to what *exists*, to the constituent units of reality." Colin Hay, "Political Ontology," in *The Oxford Handbook of Political Science*, ed. Robert Goodin (Oxford: Oxford University Press, 2011), 3.

34. Zoila Mendoza, *Qoyllur rit'i: Crónica de una Peregrinación Cusqueña* (Primera edición. Lima, Perú: La Siniestra Ensayos, 2021).

35. Joan Parisi Wilcox, *Masters of the Living Energy: The Mystical World of the Q'ero of Peru* (New York: Inner Traditions International, Limited, 2004).

36. Andean *mesas* are miniature representations of the components of existence that open channels to communicate with powerful ancestors, known as *Apus* (Aymara) or *Achachilas* (Quechua) and the expansive reality. They have been many times described as altars or ritual or medicine bundles.

seeking his blessings, which is often experienced as good weather and fertility, which in turn ensures the flow of life. The modern gaze interprets this ritual as reminiscent of an ancient past incompatible with modern science, or as a folkloric expression of a religious or spiritual belief system that – along with many other religions – needs to stay in the private realm. Once the Western ontological armature, which supports legal liberal systems, categorizes Indigenous practices as religious beliefs, they lose their potency and their right to claim their ancestral territories. White Earth Ojibwe author and activist Winona LaDuke laments how religious freedom only protects Native religious practices that "do not involve access to sacred sites coveted by others."[37]

The 2022 Interim Report of the United Nations Special Rapporteur on Freedom of Religion or Belief attempts to explain the centrality of land to the protection, revitalization, and flourishing of Indigenous peoples. The Report uses terms such as "distinctive spiritual relationship," "spirituality," "worldview," "way of life," and "culture" to describe Indigenous peoples' relationship with their ancestral territories. However, these terms fall short in expressing the symbiotic relationship of Indigenous peoples with their territories, because within Western categories, religious beliefs and spiritualities belong to the supernatural or sacred realm. We see these limitations when the Report indicates that "many Indigenous peoples primarily cite cultural rights over freedom of religion or belief, when complaining to the Human Rights Committee regarding spiritual practices."[38] Why is that? According to the Report, it is because the latter is less understood and most modern liberal legal systems are unfamiliar with "religious groups" who are not part of an organization or do not have legal personality. But I argue that the underlying issue behind the visible limitations of the modern liberal legal systems is an ontological dispute over the nature of reality. Different assumptions about the nature of reality produce different value systems.[39] In other words, terms such as "spiritual relations," "spirits," "holy," and "sacred" carry vastly different connotations depending on the ontological system from within which they emerge. We glimpse these tensions in Onondaga Nation Turtle Clan Faithkeeper Oren Lyons' explanation that even though many Indigenous peoples use the word "sacred," it is not an Indigenous concept, for it comes from Europe and its Christian belief system. Instead, Lyons replaces the term "sacred space" with the term "a place to be respected."[40]

Conceptions of the sacred are grounded in dualistic categories of analysis such as sacred/profane, natural/supernatural, and immanent/transcendent that continue to pervade the study of religion. Within this framework, everyday life spaces, those in which human beings dwell and work, are considered profane spaces, or devoid of supernatural content, while sacred times and spaces mark the presence of a supernatural "wholly other."[41] This complete "other" is ontologically superior and fully transcendent. When it manifests itself into natural spaces and calendars, it sacralizes them, separating them from their mundane realities. Veronica Salles-Reese, in her book *From Viracocha to the Virgin of Copacabana,* uses Mircea Eliade's analytical category of "wholly other" to describe the sacredness of Lake Titicaca and how, through the

37. Winona LaDuke, *Recovering the Sacred: The Power of Naming and Claiming* (Chicago, IL: Haymarket Books, 2015), 31.
38. "Indigenous Peoples and the Right to Freedom of Religion or Belief," 22.
39. Colin Marshall, ed. *Comparative Metaethics: Neglected Perspectives on the Foundations of Morality* (New York, NY: Routledge, 2020).
40. Christopher McLeod, dir. *Standing On Sacred Ground. Fire and Ice*. Bullfrog Films. Streaming video, 2014. https://docuseek2.com/bf-ssgfi (accessed February 18, 2024).
41. Mircea Eliade and Lawrence E. Sullivan, "Hierophany," in *Encyclopedia of Religion*, vol. 6, 2nd ed., ed. Lindsay Jones (Detroit, MI: Macmillan Reference USA, 2005). Gale eBooks, accessed March 10, 2024, https://link-gale-com.libproxy.scu.edu/apps/doc/CX3424501342/GVRL?u=sant38536&sid=bookmark-GVRL&xid=8d7fba65, 3971.

Virgin of Copacabana, it maintained its sacredness after conquest.[42] From her perspective, the Virgin becomes the most recent hierophany in the sacred history of the lake. Yet this would be an *equivocation* – not because I am doubting the manifestation of the Virgin as wholly other, for within Christianity, which is grounded in Thomistic/Aristotelian ontology, the divine being is completely transcendent and manifests itself through a kenotic process – but because in Andes the divinity is not outside the natural world.[43]

Brazilian anthropologist Viveiros de Castro crafted the term *equivocation* to describe a type of communicative disjuncture in which, while using the same words, interlocutors are not talking about the same exact thing but are unaware of this. An *equivocation* is not just a "'failure to understand,' but a failure to understand that understandings are not necessarily the same."[44] In other words, it would be an onto-epistemic mistake because in his studies of Indigenous Amazonian ontologies' conceptions of the world, the latter "exceed" current Western metaphysical domains and scientific methods.[45] In a previous article[46] I explain how Marisol de la Cadena's conception of "excess" as "that which *is* (as in exists, avoiding the term exist!) outside the limit of what considers itself everything, and therefore is not (as in does not exist!) within it,"[47] as a good way to begin to disentangle the challenge that Indigenous ontologies represent to the Western world. The term "excess" acknowledges the possibility of a reality, and Indigenous experience within it, that escapes or exceeds modern epistemic knowledge production. As a result, we find ourselves in an unknown territory, challenging us to consider the plausibility that we do not know what we think we know. Current religious categories of analysis grounded in Euro-ontologies begin to crack. One of the main reasons behind this impasse is the invisibility or negation of what I call *the coloniality of the real, the erasure of different ontologies for the establishment of a Western substantive ontology that is deemed universal*. For the Euro-modern mind, there is only *one* world with many cultures, *one* valid way of knowing, and *one* way of being. The substantive ontology that grounds Christianity and Euro-modernity and its legal systems negates the possibility of a reality rooted in relational ontologies, where the divinity is not "wholly other,"[48] at least not in the transcendent sense.

Going back to the Peruvian Andes, we find Ausangate, described earlier as the holiest mountain in the region and the father of the mountain *Sinakara* with its glacier *Qoyllur Rit'i*. De la Cadena centers her ethnographic study on the relationship between *runakunas* (beings-in-relation) and Ausangate, described by the Quechua people as a particularly powerful and highly respected *tirakuna* (earth-being). To Western eyes, Ausangate is a mountain of the Vilcanota mountain range in the Andes of Peru. For Quechua leader Mariano Turpo and Quechua communities, Ausangate is a *tirakuna* in the same way as Quechua people are

42. Verónica Salles-Reese, *From Viracocha to the Virgin of Copacabana: Representation of the Sacred at Lake Titicaca* (Austin, TX: University of Texas Press, 1997).
43. Eduardo Viveiros de Castro, "Cosmological Deixis and Amerindian Perspectivism," *Journal of the Royal Anthropological Institute* 4, no. 3 (1998): 469–488, https://doi.org/10.2307/3034157.
44. Eduardo Viveiros de Castro, *Cosmological Perspectivism in Amazonia and Elsewhere: Four Lectures given in the Department of Social Anthropology, University of Cambridge, February–March 1998*, vol. 1, HAU Master Series (Manchester, United Kingdoms: HAU Books, 2012), 11.
45. Marisol de la Cadena, "Uncommoning Nature: Stories from the Anthropo-Not-Seen," in *Anthropos and the Material*, ed. Penny Harvey, Christian Krohn-Hansen, and Knut G. Nustad (Durham, NC: Duke University Press, 2019), 36.
46. Cecilia Titizano, "Who is our Neighbor? Other-than-Human People and Climate Change Organizing," *Journal of Catholic Social Thought* 21, no. 2 (2024): 325–341.
47. Marisol de la Cadena, "Not Knowing: In the Presence Of . . .," in *Experimenting with Ethnography: A Companion to Analysis*, ed. Andrea Ballestero and Brit Ross Winthereik (Durham: Duke University Press, 2021), 248.
48. Eliade and Lawrence, "Hierophany," 3971.

runakuna. Perhaps an example will help clarify the situation. Rubén Saraza, a Quechua *amauta* (spiritual teacher and healer), describes Ausangate as an *Apu* (Lord). Saraza describes *Apus* as "sacred mountains, highest place of veneration and protector of the communities."[49] It is important to know *Apu* in their particular personalities and characteristics, for each of them has a particular force that can be channeled or influenced.[50] Earlier in the article, we saw the *Q'ero* delegates bringing a *mesa* containing offerings to *Qoyllur Rit'i*. Guillermo Salas Carreño describes this practice of offering nourishment as a way of building relationships with *tirakunas*, maintaining right and respectful relationships with a large cosmic community that is older and more powerful than they are.[51] In this sense, Ausangate is an elder. He is sacred but not a *super*natural being; he is not outside Nature,[52] nor does he belong to the religious and cultural sphere. One does not have to believe in him, as in accepting that something exists without proof. To interpret him as a deity or "wholly other" would cause him to lose his ontological realism. Ausangate is a powerful, protective, and jealous earth-being with a personality that requires serious commitment and even sacrifices from his acquaintances. Central to the relationship between *Runakunas* and *Tirakunas* is their mutual capacity to interact, for they are kin, members of a cosmic community of beings. Both of them are people with moral agency. According to Theresa Smith, it is precisely their moral agency that constitutes personhood.[53] Ausangate and his son, Sinakara, are sacred spaces in the way Lyons uses the term "a place to be respected."[54] In this sense, both *tirakunas*, like older matriarchs and patriarchs in our human families, are respected, nurtured, and consulted when needed.

Yet, current policies and laws understand religion as being fundamentally about individual beliefs, not about a society that includes other-than-human people. In other publications, I suggested that the *coloniality of the real* erases or silences these other ontologies existing on the outskirts of Euro-modernity from contemporary political conversations. Mario Blaser speaks of "ontological politics" and "conflicts involving different assumptions about 'what exists.'"[55] One moves beyond cultural differences that assume a shared *uni*versal ontology to an ontological opening wherein multiple worlds emerge in a *pluri*verse of ontologies. Decolonial theory helps us comprehend how this happens by exposing Euro-modernity's solipsistic representation of itself and promoting the denaturalization of the principles upon which Western knowledge is built.[56] When other ontologies, in this particular case Andean ontology, are erased through *the coloniality of the real*, different ways to describe and live realities disappear as well. Ontological conflicts are usually interpreted as particularities inherent to their respective traditions or cultures. They are

49. Rubén Saraza Barriga, *El Poder de La Wak'as. Lenguaje de La Espiritualidad Andina* (Puno, Perú, 2019), 30.
50. There are places that have a healing force, others have a force of abundance, justice, personal growth, etc.
51. Guillermo Salas Carreño, *Lugares Parientes. Comida, Cohabitación y Mundos Andinos* (Fondo Editorial de la Pontificia Universidad Católica del Perú, 2019).
52. The capitalized terms "Nature" and "Culture" refer to an ontological division present in many euro-modern ontologies.
53. Theresa Smith, *Island of Anishnaabeg: Thunderers and Water Monsters in the Traditional Ojibwe Life-World* (Lincoln: University of Nebraska Press, 2012).
54. McLeod, *Standing on Sacred Ground. Fire and Ice*. 2014.
55. Mario Blaser, "Ontological Conflicts and the Stories of Peoples in Spite of Europe: Toward a Conversation on Political Ontology," *Current Anthropology* 54, no. 5 (2013): 564–565, https://doi.org/10.1086/672270. See also Anders Burman, "The Political Ontology of Climate Change: Moral Meteorology, Climate Justice, and the Coloniality of Reality in the Bolivian Andes," *Journal of Political Ecology* 24, no. 1 (2017): 921–930.
56. Walter D. Mignolo, "Decolonizing Western Epistemologies/Building Decolonial Epistemologies," in *Decolonizing Epistemologies: Latina/o Theology and Philosophy*, ed. Ada María Isasi-Díaz and Eduardo Mendieta (New York, NY: Fordham University Press, 2012), 22. Aníbal Quijano develops the useful hermeneutical tool that he titles the colonial matrix of power (cmp) to represent the geographical, political, and onto-epistemological extension of western domination.

idiosyncratic cultural stories that serve as moral compasses, but they are not rational ways to describe *the real*, nor can they prescribe rational ethical imperatives that can translate into policy. The result is an *ontological armature of the culture-and-nature divide that converts every other ontology into just another cultural perspective on nature – one universal nature.* As Philippe Descola argues, modernity constructed the concept of nature or naturalism over against culture, as a particular ontological formation.[57] We can see how this local ontology became *uni*versal. The *coloniality of the real* negates the presence of multiple ontologies and transforms them into many cultures (multiculturalism), reducing ontological conflicts into merely epistemological ones.

The recognition of the insidious presence of coloniality is an important first step to open ourselves to the possibility of a reality where *tirakunas* are not supernatural beings: they are instead just a different type of beings in a much larger family of relatives. The second step, and perhaps the most critical one, is the ongoing process of decolonizing that Indigenous scholars invite us to join. At the surface level, their decolonizing proposal addresses similar issues to decoloniality;[58] however, they ground their decolonizing efforts in the cosmic memory of their ancestors, ever present in their cosmologies. In the Andes, ongoing decolonization entails recovering their ancestral memories and healing practices to expulse the ailing energy of colonialism. Ancestral memory is available through narratives and rituals woven into everyday life. It persists to give meaning, life, and continuity to their identity and liberation struggles. In this sense, decoloniality as a theoretical framework on its own does not encompass the complexity that Aymara and Quechua decolonizing *sentipensante cosmovivencia* entails. S*entipensante cosmovivencia*, or "feeling, thinking, and experiencing the cosmos," is a complex onto-epistemological category that can be roughly translated as the cultivation of relational and dialogical experiences with the cosmic community in everyday life, transforming, reconceptualizing, and reconstituting ways of living/knowing/thinking/acting/being in the world.[59] The cosmic memory of their ancestors or the long or mythical memory denotes their millennial wisdom or cosmologies, precolonial ethics, and continual colonial resistance.[60] This leads me to propose a double-hermeneutical movement from decolonizing to re-realizing and from re-realizing to decolonizing the natural existence of *tirakunas*.

Conclusion: Water Come, Water Come Back

Dana has clearly stated above how, despite the important local protections that the international Indigenous right to religious freedom offers to Indigenous peoples, religious freedom is not enough. Struggles to overcome what Cecilia has called the *coloniality of the real* are still too few to make an impact in most parts of the world. Yet, there are hopeful examples where Indigenous onto-epistemologies are having an impact on policies. In this conclusion, we will share one case of Quechua and Aymara women leaders in Peru and Bolivia who were able to protect a sacred site from destruction. In 2015, thousands of Titicaca giant frogs (*Telmatobius culeus*), fish, and birds were found dead on the Bolivian side of Lake Titicaca. A few months

57. Philippe Descola, *Beyond Nature and Culture*, trans. Janet Lloyd (Chicago, IL: University of Chicago Press, 2013).
58. On the decolonial turn in religious studies see Natalie Avalos, "Indigenous Religious Traditions and the Decolonial Turn in Religious Studies," *Religious Studies Review* 50, no. 2 (2024), 267–272.
59. Cecilia Titizano, "Indigenous Feminist Epistemologies: A Methodological Reflection at *El Mercado/Qhathu*" in *Religion in the Américas: Transcultural and Trans-hemispheric Approaches*, ed. Chris Torres and Jessica Delgado (New Mexico Press, forthcoming).
60. Silvia Rivera Cusicanqui, *"Oprimidos Pero No Vencidos" Luchas Del Campesinado Aymara y Quechwa 1900-1980*, 1ra ed. (La Paz, Bolivia: Hisbol - CSUTCB, 1984), 212.

later, 10,000 more giant frogs died in the Coata River, which overlooks the Peruvian sector of the lake. In 2016, 50 Quechua and Aymara women leaders, from both countries, formed the Women United in Defense of Water: Titicaca Lake (*Mujeres Unidas en Defensa del Agua: Lago Titicaca*). This is a collaborative effort between the water defenders, the *K'ayra* Center, the International Union for Conservation of Nature (IUCN), and Amphibian Ark (among other organizations) to help frogs rescued from the lake increase their population, within the sanctuary of the center, to more than 290 individuals. Yet, despite these efforts the lake and its native populations are facing extinction.

For the Aymara leader Luz Mary Quispe, Peruvian teacher and president of the association, the goal is to protect the lake and all its inhabitants because for her, "the lake represents life, it is a living being and, as such, we must treat it with respect."[61] At first glance, Lake Titicaca could be considered a *tirakuna*, but it is much more than that: it is the cosmogonic place of origin for Andean people. Lake Titicaca is *Mama Qucha*, or Lady/Mother Water, and if the lake dries out, the unfathomable watery womb of the cosmos will disappear as well, leaving Andean people and the whole of creation orphans. On the Bolivian side, the water defenders are influencing state policies. On November 22, 2021, the Plurinational Bolivian State Senate approved *Quta/Qucha Mama* (sacred Lake Titicaca) as a subject of rights, "having to establish its binding nature in all instances that state regulations provide." [62] This decision is grounded in the Andean onto-epistemology that informs the 2010 Universal Declaration of the Rights of Mother Earth. The Declaration recognizes the rights of Mother Earth and all beings of which she is composed, including water, which is recognized as a source of life.[63] The "term 'being' includes ecosystems, natural communities, species and all other natural entities which exist as part of Mother Earth."[64] The official Senate document stipulates the following:

> *Quta Mama* is the dynamic living system made up of the indivisible community of all life systems and interrelated, interdependent and complementary beings, who share a common destiny and are defined by their relationship with the system as a whole.[65]

On-the-ground water defenders restate the experience of *Quta/Qucha Mama* as a living being when they sing ""*Yakumama, ama piñakuychu, sichum pantaykipas pampachaykullaway, Yakumama hampukuy, kutiksmay*" (Water don't be bitter, if I have failed you in something forgive me, water come, water come back).[66]

Meanwhile in northern California, in May 2019, the Yurok Tribal Council passed the Resolution to Extend the Rights of the Klamath River, stating that "the Yurok Tribal Council now establishes the Rights of the Klamath River to exist, flourish, and naturally evolve; to have a clean and healthy environment free from pollutants; to have a stable climate free from human-caused climate change impacts; and to be free

61. Sallie Jabiel, "Las Defensoras de la Vida que se Extingue en el Lago Titicaca," *Des-Informémonos: Periodismo de Abajo*, July 17, 2022, https://desinformemonos.org/las-defensoras-de-la-vida-que-se-extingue-en-el-lago-titicaca/ (accessed March 14, 2024).
62. Camara de Senadores, https://web.senado.gob.bo/prensa/noticias/senado-aprueba-reconocimiento-de-la-quta-mama-como-sujeto-de-derechos (Accessed March 14, 2024)
63. Universal Declaration of the Rights of Mother Earth, article 2.e.
64. Universal Declaration of the Rights of Mother Earth, article 4.1.
65. Camara de Senadores.
66. "Ayacucho Women Preserve Water to Confront Climate Change," Euroclima, March 7, 2022, https://www.euroclima.org/en/recent-events-bbe/noticia-bosque-2/704-ayacucho-women-preserve-water-to-confront-climate-change.

from contamination by genetically engineered organisms."[67] Tribal Council attorney Amy Cordalis, has explained this as a way to express Yurok sovereignty and increase protection of the river through tribal law.[68] Acknowledging the rights of nature means granting personhood rights for nature, so that the natural entity is treated as a person would be in a court of law, including standing and remedies. The resolution reflects the centrality of the river to Yurok life. The Yurok people have always lived along the river; in the Karuk language, "Yurok" means "downriver people." The Yurok's relationship with the river is established in their creation stories, according to which the creator has allowed them to live on the river and benefit from its immense bounty, and in exchange for this they have the responsibility to protect it. Remarkably, this is working. At the time of this writing, work to remove the second of four dams from the Klamath River – which have blocked fish passage for over 100 years – is underway. In November 2022, U.S. regulators approved a plan to demolish the dams and open up hundreds of miles of salmon habitat. "The Klamath salmon are coming home," said Yurok Chairman Joseph James. "The people have earned this victory and with it, we carry on our sacred duty to the fish that have sustained our people since the beginning of time."[69]

These stories of Lake Titicaca and of the Klamath River demonstrate that rights are still important to the protection of Indigenous lands and waters. But it is not human rights, to land or to religion, that are useful. Instead, it is the rights of Mother Earth, and human *responsibility*, that bring the water, and the fish, back home.

67. Yurok Tribal Council, Resolution 19–40: "Resolution to Extend the Rights of the Klamath River," May 9, 2019, http://files.harmonywithnatureun.org/uploads/upload833.pdf.
68. Jefferson Exchange Team, "Yuroks Grant Rights to Klamath River," The Jefferson Exchange, Jefferson Public Radio, May 29, 2019, 17 min., 48 sec, https://www.ijpr.org/show/the-jefferson-exchange/2019-05-29/yuroks-grant-rights-to-the-klamath-river?fbclid=IwAR092bQgdLsz2PX_-3oPjSE2s4QpKXDO03IwPIi8S1IMEMc5b1hC9X2oq3M#stream/0 (accessed March 16, 2024).
69. Associated Press, "The Largest Dam Demolition in History is Approved for a Western River," November 17, 2022, https://www.npr.org/2022/11/17/1137442481/dam-demolition-klamath-river-california-federal-regulators-salmon (accessed March 16, 2024).

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