

What Is Justice?

Legal conflicts in zones of liminality in Louise Erdrich's justice trilogy



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Abstract

Legal liminalities occur on American Indian reservations because federal, state, and tribal legal systems collide within the same area. These clashes are dangerous because they create mazes in the law that make it incredibly hard to prosecute criminals on the reservation, as well as to protect the American Indian community, and find justice after a crime has been committed. Using—amongst others—Victor Turner’s theories of liminality, Duncan Kennedy and John T. Noonan Jr.’s theories of socially engaged law, and Jean Paul Sartre’s theories on Engaged Literature, this thesis analyses the representation of justice and the consequences of the search for justice within the legal zones of liminalities in Louise Erdrich’s justice trilogy—consisting of the novels *The Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016)—as well as how those representations could be considered elements of activist literature. This thesis will conclude that multiple kinds of justice present are in the trilogy and that these kinds of justice overlap, but that an ideal and balanced justice can only be achieved without the interference of legal liminalities. Also, Erdrich’s writing can be considered literature of social protest which pleads for less legal interference on the reservations and more tribal sovereignty.

Keywords

Louise Erdrich, American Indian, Native American, law, Critical Legal Studies, The Mask of the Law, liminality, justice, borders, engaged literature.

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Introduction

Justice is often seen as a goal that can be achieved through a variety of (belief)systems—for instance, through tradition, through an established justice system, through the belief in karma, or by denying it all together—but regardless of the form, what constitutes justice is always open to interpretation. In the chapter “Force of Law” Jacques Derrida focuses on “a difficult and unstable distinction between justice and *droit*, between justice (infinite, incalculable, rebellious to rule and foreign to its symmetry)” and “the exercise of justice as law or right, legitimacy or legality” (250). In order to be able to see and use laws or rights as an exercise of justice, justice must be limited and cut until it can be seen as a workable concept and through these limitations, justice is in a sense denied (Derrida 252). Following Derrida's deconstruction of the term, the question of what is justice in itself already seems complicated enough, but justice becomes a concept that is even harder to define when it is applied to zones of liminality. State, federal, and tribal law clash on American Indian reservations and each system of law has its own interpretation of justice. The clashes create gaps between the legal systems and these gaps have as a consequence that crimes are not punished and victims are left without justice. Another issue is that what is seen as justice in one system can be interpreted as something else, for example as vengeance, in another. For the American Indians living on those reservations questions of “what is ‘inside’ law and what is ‘outside’” are very important, often changing, and rarely in their favour (Baron 1084). These questions of justice are central to the novels of Louise Erdrich’s latest trilogy as they present situations and characters that are trying to find justice in the liminal zone of an Ojibwe Indian reservation.

1.1 The American legal system and the American Indian

While the overlapping jurisdictional areas on Indian reservations function as very clear examples of the clash between law and justice, the reservations are not the only places where American Indians have to deal with the complexity of jurisdiction. In fact, in the United States Indian life in general is already complex and rife with influences of tribal as well as state and federal law. Through these diverse influences even members of Indian tribes living outside of reservations or Indian land, such as urban Indians, have to deal with the clashes of different legal systems. An example of the influence of different legal systems on the daily

lives of American Indians is the use of blood quantum. American Indians need a written certificate, the Certificate of Degree of Indian or Alaskan Native Blood, to be officially recognised as a member of an Indian tribe by the federal government. In order to get this official document, a federal form needs to be filled out via the Bureau of Indian Affairs. On this form the applicant needs to give information about their heritage to prove a relation to “an enrolled member(s) [going back three generations] or a federally recognized tribe. . . which appears on the list of recognized tribes published in the Federal Register by the Secretary of the Interior” (“Certificate of Degree”). Being part of a tribe that is federally recognised is thus essential to being regarded as Indian. Complicating the situation even further, state and federal recognition of Indian status differs from the tribal way of determining who is or is not Indian. While there is certainly a difference between Indian tribes, most of them adhere to measuring Indian blood quantum rather than tribal blood quantum used by the state (Gover 114). This means that although in the past many Indian tribes accepted members of other tribes as their own and people had roots in many communities, the combined heritage is not applicable for the blood quantum used by the state. This leads to the possibility that while someone has 100 per cent Indian heritage, they are, for example, only 1/4 Chippewa and that will be the number featured on their Native American membership card (“Indian Country Diaries”).

The example of blood quantum in relation to identity connects to who is recognised as Indian by state legal systems. This recognition by the state is extremely important when looking at the development of criminal law involving American Indians that will be discussed in chapter two. Another example of the state’s influence on Indian identity is the Indian Child Welfare Act. The Indian Child Welfare Act was passed in 1978 in response to the disproportionate number of children that had been removed from their homes to be placed with white families or at boarding schools (*Urban Indian America* 13). The act has given tribal governments jurisdiction over court procedures involving children who are wards of the tribal government, regardless of the place of residence of the child concerned. The need for this act shows that there are issues of geography and jurisdiction in regards to child welfare. However, while this act should give tribal governments more power to protect Indian children, the act is often violated or disregarded because state governments do not always acknowledge tribal enrolment criteria to determine if a child is Indian. The legal clashes present in the construction of blood quantum and the Indian Child Welfare Act illustrates how

justice and jurisdiction are complicated concepts even outside reservations. Furthermore, the clashes show how Indian life is determined and characterised by confusing and sometimes conflicting laws from different systems. These legal liminalities play a role in almost every aspect of Indian life and the matter is complicated further by the fact that every Indian tribe has its own rules, laws, and enrolment criteria. The different legal systems and the accompanying legal liminalities occur very clearly on the borders of Indian reservations where the combined involvement of tribal, state, and federal governments is strongest.

1.2 Liminality and Law

While there have been multiple studies on the intersection of law and literature (Brook 1987; Ward 1995; Baron 1999; Posner 2009; Dolin 2011) and studies on liminality in anthropology (Turner 1969), literature (Capri and Gaakeer 2013), and in Bible studies (Stahl 1995), the complex relation of law and liminality has not yet been extensively applied to a case study of American Indian literature. American Indian literature, and American Indian Studies in general, are fields of study that lend themselves to interdisciplinary approaches. A combined study of law, liminality, and literature can be applied to an American Indian case study. The combination of these three fields works especially well because of the connectedness of the disciplines in the daily lives of American Indians. As Louise Erdrich has said, American Indians are “besides being a people. . . also a legal entity, and the history of Native people quickly became a legal history” (qtd. in McGrath). The combination of different theoretical approaches from the disciplines of liminality, law, and literary studies, with their focus on American Indian issues, will form the basis of the theoretical framework of this thesis.

Originating in the field of anthropology with Arnold van Gennep and Victor Turner, the term liminality is connected to a rite of passage: an undefined period of space or time that is passed through in a transition from one state to another—in anthropology often applied to puberty in adolescents or in the cultural evolution of a small society. Since then, this concept has been applied in many different fields of study, especially in border studies, and can be used to study the geographic border area as well as the more figurative concept of legal liminality. Moreover, liminality has been connected with a difference in social status and Turner describes how that can create a sense of hierarchy and conflict: “The concept of ‘conflict’ has come to be connected with the concept of ‘social structure,’ since the differentiation of parts becomes opposition between parts, and scarce status becomes the

object of struggles between persons and groups who lay claim to it” (*Ritual Process* 126). The presence of different systems will create a hierarchy of those systems in which one is dominant over the other and create conflict for the people in the in-between. In this context, the in-between becomes a state for people that do not fully belong to either culture and yet have to deal with both.

The concept of liminality will help to structure and understand difficulties in physical as well as cultural and legal border zones between American states and Indian territory. The border area of an Indian reservation is one of these zones of liminality and by historically analysing the developments of tribal and federal law regarding American Indians legal liminalities can be revealed. To clarify and add to the concept of liminality related concepts will be discussed such as schismogenesis, hybridity, and the Third Space. Together these concepts will be used to determine where zones of liminality exist in different spheres, for example, geographically and legally, but within fictional characters as well to be able to describe a state of balance within the zone of liminality. The concept of a legal liminality on reservation borders will be applicable to a case study within literature. Liminality in literature is interesting because of how literary narratives can create a “literalization of liminality” (Wyile 120). By setting a narrative within a liminal zone of conflicting cultures, literature is able to present characters who “are made intensely aware of the demarcating and separating, yet, at the same time, also bridging and enabling functions of borders” (Nischik 91). In other words, literature is able to portray the intense interaction of characters with the border they live on and how those borders push cultures together while at the same time illuminating their differences. Thus, literature is an excellent medium to explore the presence and consequences of liminality. Liminality as a concept from anthropology and how it is used in other disciplines will be extensively discussed in chapter one. In addition, chapter one will look at what kinds of liminality are present in everyday life for American Indians, not just on reservations, but as a whole in the United States. This will aid in the identification of liminal culture and identity in Louise Erdrich’s trilogy. Moreover, chapter one will introduce the issues of land and landownership and the origins of those conflicts. How these issues of land and landownership influence legal liminalities will be discussed in chapter two.

From the discipline of law, Critical Legal Studies and the Mask of the Law are theoretical frameworks that will be used in this thesis. The legal theories focus on the social aspects of law and are ideally suited to discuss liminalities. Critical Legal Studies concerns

itself with contradictions found in legal thought and two of these contradictions are relevant to the case study of justice in the liminal zone of an Indian reservation. The first contradiction is between the commitment to apply rules mechanically and the commitment to ad-hoc standards in which each case has its own situation sensitive standards. In other words, the conflict between the necessity for the same general standards for every legal case and the perceived desirability of letting each legal case be influenced by the specific social situations surrounding it. The second is between “a commitment to an intentionalistic discourse, in which human action is seen as the product of a self-determining individual will, and determinist discourse, in which the activity of nominal subjects merits neither respect nor condemnation because it is simply deemed the expected outcome of existing structures” (Kelman 3). This may be understood as the contradiction between the individual as being solely responsible for his or her actions and the influence of the society in which the individual has been raised. Critical Legal Studies is in itself quite interdisciplinary and through its discussion of contradictions between the law as it is written and the law as it is enacted, it focuses on the relationship between legal scholarship and the struggle to create a more humane and equal society (Kennedy and Klare 461). This theoretical approach helps us to understand the legal conflicts that are present in the practice of law regarding American Indians as well as to place “juridical institutions and individual actors in their social and historical contexts” and will be discussed in chapter 2.1 (Wilkins 8).

The Mask of the Law approach focuses on so-called masks that, as John T. Noonan Jr. describes, act as “legal constructs which suppress the humanity of a participant in the process” (qtd. in Wilkins 8). In his work *Persons and Masks of the Law* Noonan Jr. explains his concept of the Mask of the Law by using examples from slavery. Through the use of specific wording the law is able to mask a person's humanity. By using the word ‘property’ to refer to people, their humanity is stripped and they can be freely traded and sold according to the law (Noonan Jr. 58). A similar mask has been placed on American Indians. Throughout history, legal documents have referred to American Indians as being inferior in status and worth to the men in court and in Congress. An example of this can be found in the U.S. Supreme Court case *In Re Mayfield* (1891) in which a married Indian man committed adultery with a non-Indian woman. The Supreme Court decided in *In Re Mayfield* that the tribal courts could have jurisdiction in cases where all parties were Indian and that the court invested in them this power of self-government to “encourage them as far as possible in

raising themselves to our standard of civilization” (141 U.S. 107). The American legal system is based upon common law—or case law—which means that it builds its current laws on precedents. Cases such as *In Re Mayfield*, though over a century old, are still referred to and used to support arguments in contemporary cases connected to its subject matter. This has as result that the derogatory language is still used in modern day courtrooms. The masks of language, like the one in *In Re Mayfield*, display how the law can be used to place groups of people in less favourable positions when dealing with legal issues. Using the concept of Mask of the Law in this thesis will help explain the discrepancies between legal power, which was often placed in the federal government, and the Indian tribe which was more often found in an inferior legal position and will be discussed in chapter 2.2. In addition to the discussion of Critical Legal Studies and the Mask of the Law, chapter two will analyse the origins of legal liminality through court cases and legal developments and dive into the conflicts between the different systems of justice that exist in one place. This will place the crimes and legal liminalities presented in Louise Erdrich’s trilogy and their legal consequences in a legal and historical context.

1.3 Louise Erdrich and Engaged Literature

As discussed before, literature is an excellent medium to analyse legal liminalities present in the works of American Indian writer Louise Erdrich. Karen Louise Erdrich was born on 7 June 1954. She is part Ojibwe (also known as Chippewa) on her mother’s side and her maternal grandparents lived on North Dakota’s Turtle Mountain Reservation where her grandfather served as tribal chair (Stookey 1-2). Her writing is inspired by the world she grew up in and is centred around community. Erdrich does not shy away from the hard reality of life on Indian reservations, of amongst others alcoholism and poverty, while at the same time creating characters that are non-stereotypical. By bringing serious problems in the Indian community to the foreground Erdrich calls attentions to social issues that exist on the edges of Indian reservations. In her latest trilogy consisting of *The Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016) the main issues are legal liminalities: the conflicts between tribal, state, and federal legal systems. These novels are centred around the themes of justice and revenge and approach them from different angles. *The Plague of Doves* is about “wild justice,” or revenge, the second novel *The Round House* is about “justice denied” as well as “sexual violation” and “tangled jurisdictions,” while the third novel *LaRose* is about a

“natural justice” with “old roots in indigenous culture” (Erdrich qtd. in Treisman). All three novels are set in and around an unnamed Ojibwe Indian reservation in North Dakota where these zones of liminality are very much present. In chapter three, Louise Erdrich’s latest novels will serve as a case study to analyse justice in a zone of liminality. Using the theories of liminality and theories of Critical Legal Studies and the Mask of the Law discussed in chapters one and two, this chapter will look at the presence of liminality and the three main representations of justice in the novels. In addition, the chapter will discuss the liminal space between justice and vengeance and the possibility of achieving justice in a zone of legal liminality.

Analysing these three novels with a focus on zones of liminality is important because they reflect on contemporary society. The novels demonstrate how liminality causes issues with the achievement of justice on a societal scale as the denial of justice is a theme that is echoed throughout the three novels. In her novels, Erdrich achieves to present relatable characters that are confronted with the issues of liminality and she therefore confronts the reader with injustices faced by individuals and communities. The activist elements that are present in Louise Erdrich's fiction make a strong case for the use of theories of Engaged Literature that were established by Jean Paul Sartre. These theories can function as a tool to discuss Erdrich's novels not as autonomous works of literature, but as works of art that are intrinsically connected to the social circumstances of the present. Furthermore, the use of Sartre's Engaged Literature theories will give an idea of an American Indian perspective of the issues of law and order as well as an indication of pressing issues related to American Indian communities in these zones of liminality.

Sartre posed that “the ‘committed’ writer knows that words are action. He knows that to reveal is to change and that one can reveal only by planning to change” (37). This theory focuses on the idea that literature is not autonomous art separate from the real world, but that literature has connections to society and is even a factor in influencing it. Engaged literature is present in American Indian society in terms of the role of oral tradition and the importance of lessons to be derived from stories. It is present in western tradition as well when looking at the Nobel Prize in Literature which is awarded each year to an author whose body of work gives a new or interesting insight in society or humanity (“All Nobel Prizes in Literature”). The theory of Engaged Literature closely links the novels' content and criticism to contemporary society and will help place the activist elements of Erdrich's fiction in

perspective as well as to connect them to current issues in American Indian society. Most importantly, the analysis of these three works will exemplify how the clash of two systems in which one is dominant over the other will lead to justice becoming an unreachable goal within either system for the non-dominant group. Chapter four will discuss Erdrich's activist elements and Sartre's Engaged Literature to show the relevance of literature in the discussion of social issues and the role of literature in society as a method of inciting social change. The chapter will relate the analysis of legal liminalities and justice in Erdrich's works to the bigger picture of American Indian activism as well as discuss Erdrich's role as an activist writer.

Taking advantage of the interdisciplinary character of American Studies, elements of three fields of study—anthropology, law, and literature—can be applied effectively to one case study. The combined approaches will create a framework to answer the question central to this thesis: what is justice in the borderlands of American Indian reservations and how are justice, and the conflicts emanating from it, represented in Louise Erdrich's latest trilogy consisting of *The Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016)? Moreover, can these representations of justice and legal liminalities be considered activist? More specifically, this thesis aims to analyse zones of legal liminality, where often different ideas of justice overlap because of overlapping cultures and legal system, and aims to determine whether justice can be achieved at all in such zones. My hypothesis is that while the Indian characters in Erdrich's trilogy try to find justice on the reservation, the legal liminalities prevent them from achieving justice and from finding a new balance within their community. Only when the Indian community can rid themselves of legal liminality through more tribal sovereignty will justice be an achievable concept on Indian reservations.

Chapter 1: Liminality and the American Indian Experience

In critical literature, liminality is described as being ambiguous and sometimes indeterminable; it is neither here nor there; it is a state of in-betweenness (Daly 71; McMaster 84-6; Turner, *Ritual Process*). As a result, liminality is a concept that is hard to define and more often finds itself in-between definable concepts and situations. For instance, liminality occurs in the shift between cultures, between customs, and between laws. Liminality's leading scholar Victor Turner likens it to "death, to being in the womb, to invisibility, to darkness. . . to the wilderness" (*Ritual Process* 95). These connotations match the in-between and ambiguous state that has been accorded to liminality by other authors. But while Turner exemplifies his concept of liminality by discussing changes within small and secluded communities, modern authors like Agnes Horvath, Bjørn Thomassen, and Harald Wydra have argued that liminality can be applied to understand many social and political transformations in the contemporary world (1).

The term liminality can be applied to the lives of American Indian people. The liminality experienced by American Indians, however, is neither a "rite of passage" (Turner, *Ritual Process* 97)—as described by anthropologist Arnold van Gennep—nor is it a signifier of Arpad Szakolczai's concept of modernity who views everything in modern life as a "permanent liminality" (qtd. in Horvath et al. 3). Rather, liminality has been a perpetual state for American Indians in terms of culture, identity, and law, one that began far before the start of Szakolczai's modernity in the early twentieth century (Thomassen, "Thinking" 50). And through this perpetuated liminality, issues of social invisibility, childlike references in law and culture, and the issue of "liminal beings [having] no status" have become a permanent reality in the existence of many American Indians (Turner, *Ritual Process* 95).

This chapter looks at liminality more closely, guided by Turner's observations since the late 1960s and more recent anthropological and sociological usage of the concept. Discussing what liminality entails in anthropology and other fields will aid in the identification of moments of liminality in the analysis of Erdrich's novels in chapter three. This chapter discusses how the concept of liminality is present in the cultural and sociological sphere of American Indian communities all over the United States. It will touch upon identity issues

that are also discussed in Louise Erdrich's novels, such as the use of the word Indian, the use of language, and assimilation policies such as the Indian boarding schools. Moreover, it will discuss different groups and movements within American Indian society such as the Métis, urban Indians, and the Pan-Indian movement as they emphasise the in-between character of American Indian life. The chapter concludes with the discussion of land and landownership—with a focus on the reservation areas—the connotations they have for different parties, and the origins of the conflicts that followed. The discussion of these manifestations of liminality will inform the development of legal liminality in chapter two, in addition to illuminating liminalities analysed in chapter three.

1.1 Liminality

The concept of liminality originates with the two anthropologists Arnold van Gennep and Victor Turner. Van Gennep coined the term liminality in his book *Rites de Passages* in 1906. In this work he separated three moments in a rite of passage: preliminal, liminal, and postliminal, the second of which was the moment of in-betweenness (Van Gennep 11). Van Gennep defined liminality as “a phase, a fleeting, ephemeral moment destined for supersession” (Pérez Firmat xiii-xiv). In this definition, liminality is a temporary phase that cannot last indefinitely. Van Gennep's theories on liminality were not actively used, however, until Victor Turner rediscovered them in the 1960s. Turner used Van Gennep's theories on liminality, and added to them that liminality “should be looked upon not only as a transition between states but as a state in itself, for there exist individuals, groups, or social categories for which the liminal 'moment' turns into a permanent condition” (Pérez Firmat xiii-xiv). Van Gennep's definition shows how the zone of liminality acts as a halfway station in which both the 'old' and the 'new' system are in place and there is a time of conversion. The temporal element to his definition indicates that having both systems in place at the same time is not an ideal construction. Turner's definition shows how specific individuals and social groups are forced to live in that less than ideal zone of liminality and for whom that zone of confusing clashes of different cultures, languages, and legal systems has become a permanent reality.

In Victor Turner's *The Ritual Process* from 1969—the work that revived Van Gennep's earlier theories of liminality—he writes about liminality and *communitas*, the liminal in rites of passage within small communities. From the observation of these small

communities, Turner was able to determine that societies living within the liminal in a permanent way share three characteristics. The principles of a community or the people themselves “(1) fall in the interstices of social structure, (2) are on its margins, or (3) occupy its lowest rungs” (*Ritual Process* 125). The characteristics show how a liminal state of a society is rarely a favourable one. In his later work *From Ritual to Theatre: The Human Seriousness of Play* (1982) Turner elaborates on the negative connotations of the term liminality. He writes that the term *limen*, chosen by Van Gennep, originates from Latin and translated means ‘on the threshold’ and is connected to terms such as social limbo and ambiguity (*Ritual to Theatre* 24). This negativity is connected to being neither one nor the other as “it is no longer the positive past condition nor yet the positive articulated future condition” (Turner, *Ritual to Theatre* 41). While the discourse on liminality at that time was mostly in relation to negative periods of time, Turner also mentioned positive effects, as the liminal can function as an “independent domain of creativity” (*Ritual to Theatre* 33). It can function as a place for a plurality of ways of living with multiple social roles and multiple places of belonging and the struggle between different systems could spark resourcefulness and creativity. Still, Turner ends on the remark that while a liminal society might be more creative, it is more destructive than a normative society (*Ritual to Theatre* 47).

In *From Ritual to Theatre: The Human Seriousness of Play* Turner makes another interesting statement: “sociocultural systems drive so steadily towards consistency that human individuals only get off these normative hooks in rare situations in small-scale societies, and not too frequently in large-scale ones” (44). In *Liminality and the Modern: Living Through the In-Between* (2014) Bjørn Thomassen aims to zoom in on precisely those large-scale societies and their experiences with liminality when he argues that liminality is equally applicable to “larger groups or entire societies [that] undergo change and transition, how they live through the uncertainties of the in-between, and how they come out on the other side of it—if at all” (1). Thomassen writes that liminality refers to any “betwixt and between” and any “in-between place or moment, a state of suspense, a moment of freedom between two structured world-views or institutional arrangements” (*Liminality* 7). This suggests that liminality is a concept that can be applied to both small scale societies and situations, such as seen in Van Gennep and Turner, but it is similarly applicable to change in large-scale societies and settings, such as the legal position of American Indians discussed in this thesis. Thomassen even posits that liminality “more directly so than any other concept we have, ties

together the micro and the macro, operating from the ‘middle’” and is thus ideally suited to analyse the larger societal issues stemming from it as well as the individual cases of liminality (*Liminality* 7).

Van Gennep, Turner, and Thomassen have all said that liminality occurs in a rite of passage or moment of transition, which could become permanent. Hovarth, Thomassen and Wydra broaden that definition in *Breaking Boundaries: Varieties of Liminality* (2015) when arguing that it is not just a psychological moment of transition, but that it is often also relatable to a physical state. In a chapter of *Breaking Boundaries* Arpad Szakolezai writes that “in any situation with strongly marked centers and boundary lines, the regions far from the center and close to the border are marginal. . . However, when emphasis shifts to the relationship between two centers, marginal zones become liminal by being situated in between the two centers, thus mediating them” (24). A liminal zone can thus be created by both ideological and geographical difference through the physical presence of different systems that have to be mediated. The combination of ideological and geographical distance can result in very intense zones of liminality, like the ones visible on the borders of Indian reservations. Gregory Bateson referred to the creation of this possibly endless liminal space as schismogenesis.

Bateson argued that there are three possibilities when profoundly different cultural communities meet: “(a) the complete fusion of the originally different groups, (b) the elimination of one or both groups, (c) the persistence of both groups in dynamic equilibrium within one major community” (179). Bateson came to recognise that the status quo that is created in one of these three options does not always turn out to be ideal, especially if the transitional moment takes on a more permanent state. Bateson's conclusion about these failed status quo situations is very bleak as he believes that when the cultures’ “previous unity is broken, their schismatic components are forced to stay together, producing an unpleasant, violent, harrowing, truly miserable existence” (Hovarth et al. 27). Liminality occurs in moments of transition or when cultures clash in the same geographical area and there are more systems present and relevant at the same time. While this liminality can coincide with moments of creation, as suggested by Victor Turner, a constant state of liminality rarely has a positive effect on the sovereign and characterising elements of a society. Rather, it forces people living in those societies to constantly compromise between different systems of being.

1.2 Liminal Indian Identity

Indian identity is by no means a concept that is easily explained, or can be said to have one explanation at all. Even without going into the issues of terminology when using words like Indian, American Indian, or Native American as a collective word for vastly different kinds of Indian societies. To be able to use and talk about an Indian identity as a working concept though, and keep it as broad as possible, Indian identity could be referred to as “a manifest affiliation with people known to themselves and others as Indians” (Harmon 248).

Throughout history, however, Indian identity was not as much of a social choice as it might appear from this definition. By the start of the twentieth century ‘Indian’ had become a category of United States and Canadian law, one that had indispensable criteria based on biological descent, “rather than meaningful participation in a dynamic, self-defining cultural group” (Harmon 250). Since the discovery of North America there have been sexual relations between natives and Europeans, as a result, scholars have argued that rather than the use of biology, social relations and history should be factors to explain a classification such as Indian (Harmon 251; McCulloch and Wilkins 367; Snipp 31; Winant 2). Yet, even when looking at social relations and history there can be no one classification of Indian with a fixed set of characteristics, especially when taking into account the vast number of tribes with different cultural heritages and developments through time. Harmon then rightly states that ‘Indian’ can have hundreds of formulations at any possible level, be that personal, tribal, or communal, but that ‘Indian’ also “refers to an identity that transcends tribal and individual differences—an overarching social category variously defined by such factors as racial traits, descent, and political status” (254). With no way to determine what would be exclusively Indian, but with influences from every social and historical direction, Indian identity can in a way be said to be a liminal state.

In *The Location of Culture* Homi Bhabha elaborately discussed the liminal space in regards to identity. He likens it to a Third Space in which identity is able to function as a kind of stairwell in which “the hither and thither of the stairwell, the temporal movement and passage that it allows, prevents identities at either end of it from settling into primordial polarities” (4). So, in a liminal space an individual’s identity is unable to settle into one end of the spectrum. Rather, the individual is forced to stay somewhere in the middle and through this create social differences in the performance of identity. Further on, Bhabha develops this idea when he writes that these “social differences—where difference in neither One nor the

Other but *something else besides, in-between*—find their agency in a form of the ‘future’ where the past is not originary, where the present is not simply transitory” (219). In other words, agency can be found by accepting that a state of in-betweenness is not a halfway station and instead has the potential to be a fully developed future. In discussing the Third Space, Bhabha stresses the positivity of the cultural hybridity it creates, especially the freedom and creativity it may unleash in terms of identity performance. His emphasis on creativity that follows the process of liminality is an extrapolation of what Victor Turner described when discussing positive angles to liminality. However, while the Third Space may free individuals from the confinement of one previously determined identity, Bhabha fails to mention the identity conflict that can go hand in hand with that indecisiveness in the liminal space, which is particularly important when observing American Indian identity.

Maybe more than any other minority group in the United States, American Indians have had to deal with conflicts of identity, always finding themselves having to choose between traditional culture, assimilation to American culture, or struggling with combining the two. Even more so this was a reality for those of mixed ancestry who were part native and part European. The best example of this are the Métis, most of whom reside in Canada. Métis derived from the French word for mixed, but while the terms mixed-blood and half-breed are now deemed derogatory, the Métis have made the word their own. Back in colonial times most Métis children would be considered French when raised by their French fathers and would have a tribal identity when raised by their Indian mothers (Brown and Schenk 324). On other occasions, especially after the colonial period when the amount of Métis had grown significantly, they would be seen as a group stuck between two worlds. Today, the Métis are no longer seen as a group in-between two cultures, but as a group on their own. In 2011, 451,795 people in Canada identified as Métis, which comprises 1.4% of the total Canadian population (“Aboriginal Peoples”). However, it was only in 1982 that the Métis were officially recognised as an Indigenous group by the Canadian government (“The Constitution Act”, 1982, sec. 35). The Métis did not get a similar recognition in the United States, where they are not recognised as a group of Indigenous people and even the word Métis is not often used. Many Métis that lived in the United States have joined tribes of American Indians, as was the case for many Métis who lived on the Turtle Mountain Indian reservation in North Dakota, or went without any recognition of their Indian identity (Nichols 175).

When examining a liminal Indian identity, it is important to discuss the cultural assimilation of American Indians through American policies and the institutes of Indian boarding schools, as the goal of assimilation policies was to undermine Indian identity. Probably the most well-known and first all-Indian boarding school was the Carlisle Indian Industrial School founded by Richard Henry Pratt in 1879. The school closed in 1918 and by then over 10,500 Indian children had attended Carlisle (Triller Doran 293). Pratt's goal with the Indian boarding schools was to "kill the Indian and save the man" (qtd. in Wilson 312). In other words, through exposure to western culture and ideology and the complete removal of all things Indian, Indian children would become assimilated American children. When children were removed from their homes and arrived at Carlisle Indian Industrial School, their hair was cut, their names were changed, they were put into different clothes, and they were no longer allowed to speak their native languages (Trafzer, Keller, and Sisquoc 17; Wilson 311-12). These practices have created a liminal zone within Indian identity.

In response to calling the removal of children from their parents cruel, Carlisle answered: "[T]he real cruelty was in keeping them ignorant and an encumbrance on the body politic" (Pratt 42). The truth of the matter is that hundreds of children ran away, many died of epidemics that swept through the schools and those that eventually did return home did so with an affected and sometimes split sense of self that could not really be rectified (Wilson 318). The boarding schools left children in limbo "feeling that they were full members neither of the 'tribal' world nor of the developing Anglo-American society around them" (Wilson 321). Although the horrors of the Indian boarding schools are undeniable and have scarred generations of Indian children, other students have "used the potentially negative experience to produce a positive result" (Trafzer et al. 1). They have done that by turning an experience that was supposed to destroy Indian identity into one that might preserve it by taking action to protect Indian culture, communities, and languages (Trafzer et al. 1).

The need for assimilation to a western culture became even greater when large numbers of American Indians flocked to urban areas in the 1950s and 1960s influenced by the Indian relocation and termination policies—the consequences of which on tribal land will be discussed in chapter 1.3. By the end of the 1960s, over 500,000 American Indians were living in urban areas such as Los Angeles, Chicago, and Minneapolis (Wilson 393). By 1990 over 60% of the Indian population lived in urban areas (Fixico 4). The policies that had led to their move to the cities had been "specifically designed to undermine their sense of a tribal

identity” (Wilson 393), by breaking up Indian extended families and making assimilation to American culture key for survival in the cities. The Bureau of Indian Affairs portrayed relocation as a ‘New Deal’ for American Indians that would give them a chance to improve their economic situation, but relocation was a cultural shock (Fixico 13-4). The urban setting was, amongst others, very hard on traditional Indian family structure, Indian language, gender perceptions, and spirituality (Fixico 46-51).

The assimilation process in the cities “accelerates at the cost of losing identification with traditional backgrounds” (Fixico 173), and within the cities hybrid communities are created that are a mix of the old and the urban new. Adjustment was the only way to rise above the sociocultural alienation that negatively impacted so many Indians who moved to the cities and lost themselves (174). In a way the goal of undermining tribal identity succeeded and many Indians in the cities lost touch with their tribal identity, especially when growing up in the cities as first or second generation urban Indians. However, this loss of a tribal identity did not equal the complete assimilation into white America. What the relocation often did was that it transformed tribal identity in a more generic “Indian” identity, influenced by mainstream stereotypes and internalized by Indians themselves, fostering a form of pan-Indianism (3, 6).

As noted previously, in some measure the Indian boarding schools and relocation policies have had positive effects as well. One of these effects was that it brought Indians from many different tribes together in one place. And, as Hazel Hertzberg argued “such institutions as the government boarding schools, ironically, offered a common experience for thousands of Indian youth” (Davies and Iverson 18). This has given American Indians the chance to develop a pan-Indian identity that transcends individual and tribal identity. This pan-Indian identity has similar neither-this-nor-that characteristics to those finding themselves in the in-between. In this case, however, the connotations are positive. In Los Angeles, for example, Indians have formed a Los Angeles Indian culture by dissolving tribal barriers through focusing on common Indian clubs, social activities such as Powwows and Indian interests (Fixico 54). While tribal identity is maintained to a certain degree, a general Indian identity is often given preference.

The power of a pan-Indian identity is also visible within tribes and on the reservations. The Sun Dance tradition, a good example of pan-Indian expression, has been adopted by some native groups for who the Sun Dance was not, or only in small measure, part of their

original religious culture (Irwin 112). The pan-Indian movement really took off after the occupation of Alcatraz Island in 1969 by American Indians calling themselves ‘Indians of All Nations’. The protest was unsuccessful in getting their own cultural centre, but was very successful in uniting Indians from all over the country (Wilson 395). From that moment on this new-found pride of being Indian and accepting an Indian identity went across the country and lifted part of the stigma attached to a American Indian racial identity (Thornton 75-6). However, while pan-Indianism has made expressing an Indian identity more generally acceptable, it has created more difficulty with the official recognition of being Indian according to states and the federal government, especially when taking into account those that identify as Indian out of a “‘romanticised’ notion of being native” (75-6).

The use of language has been an issue in every phase of (forced) assimilation, but is also an integral part of identity. The connection with identity creates liminal zones within the language, as, in the case of many native languages, they are no longer widely spoken and are no longer seen as an identity marker. This creates an in-between situation even though one of the languages is often barely an option. Through stigmas on indigenous languages, the lack of Indian languages spoken in schools, and the forceful assimilations to western culture, indigenous languages have become endangered. The struggle with what languages to learn and use is present in Indian cultures as each Indian nation has its own language, but English is the language used in education, media, and government. Add to that that most Indian languages were oral languages and a significant amount of the surviving languages has remained so (Szasz 73). Written Navajo, for instance, only came into existence in the 1930s (73).

Nonetheless, social groups that have (partly) lost their language are able to maintain a strong sense of identity, and the importance of language in identity is visible in the many attempts to revive indigenous languages. Programmes all over the United States are initiated to give Indian children and adults the opportunity to immerse themselves in their languages. The University of Minnesota, for example, supports the Enweyang (meaning ‘our voice’) Ojibwe Language Nest programme on campus that teaches Ojibwe to pre-schoolers and has American Indian college students and pre-schoolers join in Ojibwe seasonal activities in the native language (Child 27). The use of indigenous language in literature that is written in English, like done by authors such as Tomson Highway and Louise Erdrich, is another way in which languages are brought closer together and make the divide between them smaller. Still,

even though there are initiatives to restore indigenous languages, language is still a major part of a liminal identity.

1.3 Liminality of the Land

Besides liminality in Indian identity, there is liminality of the land and both are important when discussing legal issues on the American Indian reservations. While there is the belief that all Indian land is held in common, in fact the division and ownership of land is much more complicated (Frantz 51). The discussion of the liminality of land in this section will aid the understanding of some of the court cases that will be discussed in chapter 2.3 as well as contextualise the analysis of legal liminality and liminality of the land in Erdrich's novels in chapter three.

Reservations are usually a combination of “tribal land held in trust, trust land allotted to individual Indians by the federal government, trust land assigned to individual Indians by the tribe, land owned by individual Indian families, and land owned by individual non-Indians acquired from Indian families” (51). Trust land is land that is owned by Indian individuals or Indian tribes that is held in trust by the federal government. Especially the land owned by individual non-Indians creates jurisdictional issues as in some reservations the “distribution of land property between Indians and non-Indians often resembles a chunk of Swiss cheese” (57). The patches owned by non-Indians escape the control of the tribe and are under state jurisdiction. The development of the checkerboard Indian reservations has a long and complicated history. Due to the limitations of this thesis, this section will briefly discuss the different perceptions of land to provide some historical context before focusing on three major policies—the Dawes Act, the Indian Reorganization Act, and Termination Policies—that have had direct consequence on the characteristics of Indian reservations that cause so many jurisdictional difficulties.

The liminality of the land can be seen in the opposing views of the land that were present in Indian and western ideology since the beginning of colonisation. Most Indian groups, hunters and agriculturists “viewed land as a common resource rather than a commodity that could be *owned*” (Wilson 23-4). Tribes and individual Indian families used the land and sometimes had designated areas for hunting or growing crops, but fenced-off parcels of land that would be property of an individual would have been alien to most

American Indians (Wilson 23-4). Contrary to the American Indians, the Europeans, who came from a long tradition of landownership, immediately wanted to claim or buy land as their own. The vast differences between these perceptions of land thus went hand in hand with cultural misunderstandings. A tribal leader of the Wampanoag commented on the idea of ownership after he had been arrested for hunting on land that had been ‘sold’ to settlers: “What is this you call property? It cannot be the earth. For the land is our mother, nourishing all her children, beasts, birds, fish, and all men. The woods, the streams, everything on it belongs to everybody and is for the use of all. How can one man say it belongs to him only?” (Waters 28-9). In general, American Indians valued land for its produce rather than the land itself and rejected ownership of it. These conflicting ideologies and the accompanying cultural understandings have been at the basis of many treaties and policies changing the Indian lands and reservations.

Besides the symbolic liminality of the land, liminality is present in the labels that are given to land: whether land is individual or communal land, Indian land, state land, federal territory, or whether that is hard to determine. Ever since Europeans settled in North America there had been conflicts about land and landownership, some of those, as discussed previously, due to cultural misunderstandings. But with the creation of colonies, and the formation of the United States of America, there was a rise of immigrants coming to North America. With this rise in immigrants came a rise in conflicts with American Indian tribes. At first these conflicts were approached with treaties that would solve the land problems between American tribes until the early 1800s (e.g. “Treaty of Green Bay”). In 1830, however, treaties were no longer sufficient and the U.S. government passed the Indian Removal Act. The Indian Removal Act led to the loss of native lands and authorised the removal of southern Indian tribes to federal territory west of the Mississippi (“Indian Removal Act”). Among the tribes that faced removal were the Five Civilized Tribes; their migration is now known as the Trail of Tears. After removal it would take until 1851 for reservations to be established with the Indian Appropriations Act. This act began the process of moving American Indians to reservations that form the basis of the reservations that exist today.

After the establishment of reservations and the move of Indian tribes to those reservations, the Allotment Act of 1887, or the Dawes Act, was one of the first U.S. acts that had a major influence on the state of Indian reservations. The policy proposed by the act was that “when the President . . . considered that a tribe was sufficiently ‘advanced’, its members

would be told to select individual allotments—generally 160 acres per nuclear family—and the remainder of the reservation would then be sold” (Wilson 303-4). The Dawes Acts decidedly shrank the Indian reservations. In 1891 over twelve million acres of land—11.5 per cent of all reservation land—had already been restored to being ‘public domain’ in two years (304). After 13 years, the government had assigned 33,000 allotments and ‘released’ over twenty-eight million acres of land (308). These allotments were to be held in trust for 25 years, but this restriction was lifted early in 1906, again creating the possibility for non-Indians to buy land on the reservation. Often the trust was lifted of the best lands and those were sold to non-Indians or, after a generation or two, there were so many heirs to one particular allotment that the allotment could no longer be divided and was instead leased to non-Indians. This selling and leasing of allotments led to the checkerboard Indian reservations.

The Indian Reorganization Act, also known as the Wheeler-Howard Act, was signed in 1934 and its goal was to conserve and develop Indian lands and resources. The act was supposed to start a new era of “self-determination” and “tribal empowerment” by “addressing the severe problem of Indian land loss” (Carpenter 30). The Indian Reorganization Act brought about a major change in federal policy by terminating the allotment policies instated by the Dawes Act (Deloria and Lytle, *Nations* 149). In addition, the Indian Reorganization Act made five major changes: it caused for surplus land to be returned to tribal control, the trust period of allotted land was to be extended indefinitely, “money was authorized for land acquisition, new Indian reservations could be proclaimed, and the secretary of the interior was provided with an opportunity to develop a conservation program for reservation land” (149). The acquisitions of allotments by non-Indian people had led to the checkerboard appearances of reservation lands and through the changes in policies that could now be somewhat rectified. However, the act did not disturb non-Indian private ownership on reservation lands which meant that the checkerboard pattern would continue to exist. The act would prevent Indian lands from being broken up in the future by the selling of land to non-Indians (146). Unfortunately, the governmental support of tribal self-government and secure Indian lands was short-lived as less than twenty years later Congress called for termination of the federal-Indian relationship (Anderson 921).

Relocation and termination policies were to end the Indians’ status as government wards and give them full citizenship. At first glance that seems like an improvement to a

situation in which the federal government has political and economic control over Indian nations, however, these policies would severely damage Indian identity—as described in chapter 1.2—and Indian lands even more than they already had been. Congress officially adopted the Federal Indian Termination policy in 1953 and implemented Concurrent Resolution 108 that declared the intent of Congress to free a certain number of tribes throughout the United States “from Federal supervision and control” (67 Stat. B132). One way of ending federal responsibility was Public Law 280, which transferred criminal jurisdiction to the states and will be discussed in chapter 2.3.1. Congress passed twelve termination bills between 1954 and 1962 that gave terminated tribes the options of selling their reservations, dividing communal land into individual allotments, or forming a private management corporation, all of which amounted to a return to the Dawes era (Philp 165). The selling of reservations did not give tribes the money and independence they had hoped for. Instead, much of the money they were due would be put into a trust or guardianship “for Indians too young or incompetent to handle it themselves” (Wilson 366). More land would be in hands of the federal government who made a huge profit, and with the removal of federal protection states had the freedom to control and interfere in tribes with taxation, adoption policies, and criminal jurisdiction.

The liminality within Indian identity has created a multitude of problems on a personal level as discrimination and assimilation policies have affected the sense of self. The problems also occur on a governmental level as they influence who can and cannot be officially seen as Indian. In combination with the liminality of Indian land and the checkerboard design that has had a negative effect on the Indian reservations, liminality becomes less of an abstract concept. The conflicts between ‘traditional’ and assimilated, Indian and non-Indian, and Indian country and United States of America, have displayed an abundance of liminalities. They all come together when looking at liminalities in a legal context and when analysing Louise Erdrich’s justice trilogy.

Chapter 2: Legal Frameworks and Legal Liminality

As a legal entity, American Indians have had their fair share of legal issues with state and federal laws, that continue during their fight for more tribal sovereignty. While the law is alleged to be a neutral and rational entity, in reality the practice of justice through legal systems is not free of bias. Rather than taking laws at face value and seeing law and legal practice as a process that happens outside of society and merely functions as a framework, Critical Legal Theory and the Mask of the Law are two theories within the domain of law that aim to critically evaluate the law as a part of society, in particular with regard to its influence on the inequalities within the law. The strong social engagement of these two legal theories makes them very relevant to the discussion of justice in the zone of legal liminality. Combined, elements of Critical Legal Studies and The Mask of the Law will help identify moments of liminality when analysing Louise Erdrich's novels in chapter three. Furthermore, the use of socially engaged theories will make it possible to switch from a macro perspective, that is the abstract laws and policies regarding American Indians, to a micro perspective, namely the consequences of these laws and policies for individuals. Critical Legal Theory and the Mask of the Law will be discussed in part one and two of this chapter.

In addition to forming a legal framework in which to view the concept of justice, these theories will give an insight into the development of especially federal legal policy in regards to American Indians, their culture and territories. As has been insisted by Vine Deloria Jr., a prominent American Indian writer, historian, and activist, it is key to be aware of the historical context of the American Indian legal history in order to understand the policy decisions and legal developments. Subsequently, the third part of the chapter will discuss federal court cases, especially in regards to the development of criminal jurisdiction, to give that historical context. This historical context is needed because of the importance of legal history in the life of the American Indian characters in Erdrich's novels and to analyse legal liminalities in a larger framework of justice and injustice within American Indian history. In this section legal liminality will be illustrated in a less abstract sense through the use of Supreme Court cases. These cases will exemplify how liminality of land and identity, as discussed in chapter one, have consequences for the legal liminalities found on Indian reservations.

2.1 Critical Legal Studies

Critical Legal Studies (from here on referred to as CLS) is a movement in legal theory that has been around since the 1970s. CLS is the first movement in legal theory and scholarship in the United States that has a Left political stance and perspective (Hunt 1). The movement as a whole agrees on the need for a more equal and democratic society and is influenced by Marxist and Weberian traditions (Kennedy qtd. in Hackney Jr. 28). Furthermore, CLS focuses on issues of law in society rather than solely emphasising legal practices, but it does not have a set of agreed upon political beliefs or methodological approaches (Kennedy and Klare 461). Instead, “CLS has sought to encourage the widest possible range of approaches and debate within a broad framework of a commitment to democratic and egalitarian values and a belief that scholars, students, and lawyers alike have some contribution to make in the creation of a more just society” (462). Thus, CLS wants to encourage law to be equal and equally accessible by everyone. The Critical Legal Studies Movement is a movement within legal scholarship, but one that has made it its aim to show how law influences society and how hierarchies play a role in this.

The Critical Legal Studies Movement was established when its key scholar Duncan Kennedy wrote the article “Form and Substance in Private Law Adjudication” in 1976. In this article Kennedy discusses the issues and contradictions between rules and standards, the one being fixed laws and the other developed from morals, and really emphasises the problems that can occur in the practice of law that is based on rules only. Kennedy elaborates on three observations in regards to rules: first, that every rule has a measure of imprecision in regards to its purpose and the wider the scope of the rule, the more serious the imprecision; second, that the multiplication of rules undermines their ability to be realised as it increases the number of jurisdictional questions, especially in borderline cases; and third, that in order to be clear on what rules are applied by judges a regime of general rules should be kept to a minimum (1689-90). What follows from these observations is that rules are made by the ones least likely to suffer from the negative side effects that can follow them. By making sure that rules are transparent, it is least likely that imprecision will follow and that those without power in the system and those in borderline cases will be disadvantaged. The creation and application of laws are among the things most often critiqued by CLS.

Mark Kelman, another prominent participant in the CLS movement, advanced Kennedy's argument on the issues of general laws, but rather than only focusing on examples

from contract law, Kelman exemplifies his statements by using examples from criminal law and other domains. Kelman is very fond of anaphora in his writings when he writes about why rules are less than ideal:

[R]ules are bad because they are underinclusive as to purpose, overinclusive as to purpose, or both. . . Rules are bad because they enable a person to ‘walk the line,’ to use the rules to his own advantage . . . and unjust outcomes will occur more often because people will actively attempt to arrange their affairs so that they are favored by the rules. . . Rules are bad because they inevitably have gaps and conflicts. . . rules are bad because they are dynamically *destabilizing*. (41-44)

Moreover, Kelman suggests that rules can be less applicable than they appear, can become less accurate over time, and the rule system may become more complex when accommodating exceptions and even become (more) class-biased (44). In other words, Kelman argues that the rules that make up a society's laws are never fully able to deal with whatever purpose they were written for, that they do not adapt to changing situations over time, and that this creates gaps in laws that can cause justice to slip away. These severe issues will be visible in the court cases that will be discussed later in this chapter.

The social consequences of the failures and gaps in laws and rules that are described by Kennedy and Kelman have a very strong presence in the writings of Roberto Mangabeira Unger. Unger stresses that the problem of the pre-critical doctrine, before the CLS movement took place within legal scholarship, was that there was a strong opposition between contract and community, between “a conception of community as an idyllic haven of harmony, and contract, as a realm of unadulterated self-interest and pure calculation” (174). Unger adds that other major issues of law that CLS needs to be critical of are objectivism and formalism in legal thought. Objectivism is the belief that authoritative legal documents and ideas “embody and sustain a defensible scheme of human association” with an “intelligible moral order” (80-1). The formalism that Unger critiques is a commitment to “a method of legal justification that contrasts with open-ended disputes about the basic terms of social life—disputes variously dubbed ideological, philosophical, or visionary” (79). Here Unger shifts attention to the human aspect of the law, that ideas and documents do not always have a moral order that stays relevant as society changes and that law can be influenced by personal purpose, policies,

and principles. He links this to the personal in the way that it connects to those that have to interpret and remake the laws that exist, namely the judges, lawyers, and policy makers.

In *Philosophy of Law* legal scholar and philosopher John Finnis addresses one of the permanent questions of legal theory: “Why should law be treated as a social form or type that warrants a place in the grand explanatory typology of social forms that makes up social theory?” (299). A Critical Legal Studies answer to this question can already be found in the name of the movement: because it is critical of the way that law influences society. Law, and especially a law that is conscious of its failings, gaps, and its influence on different layers of society has a place in social theory. In a way, the Critical Legal Studies movement has been an activist movement as it took a stance against the rigid and impersonal way that law appeared and was taught across the United States. The introduction of this thesis already discussed two of CLS's most important contradictions—applying rules mechanically vs. applying rules with situation sensitive standards and intentionalistic vs. determinist discourse. Through the awareness of these contradictions, the understanding of gaps within rules and law, and the consequences of those gaps, Critical Legal Studies aids a search for justice in a situation in which a society has fallen into the gaps. Its critical stance on laws, as well as its focus on equality, and the dismissal of hierarchies will be used to analyse the concept of justice in Erdrich's novels.

2.2 *The Mask of the Law*

The Mask of the Law is a legal theory with influences of philosophy and history that was developed by Professor John T. Noonan, Jr., who served as a federal judge on the United States Court of Appeals for the Ninth Circuit. His book *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks* (1975) formed the basis of his theory and here he introduced his person-centred view of the law. The Mask of the Law concerns itself with the questionable role that people play in legal proceedings in contrast with the central role that rules have. Noonan wrote that as he became “increasingly conscious of the central place of the human person in any account of law[, he] also became increasingly conscious of the neglect of the person by legal casebooks, legal histories, and treatises of jurisprudence” (xv). Noonan concludes this train of thought by stating that he believes that the “neglect of persons . . . had led to the worst sins for which American lawyers were

accountable” (xv). Ergo, the rigid focus on rules only leads to the masking of individuals involved in legal conflicts and has dire consequences.

According to Noonan, this worst sin is visible in legal discourse in various ways. One of the most important ones is the way legal documents and cases are discussed in law schools and the influence this has on next generation lawyers and judges. He writes that working with cases and exercising case law develops a sense of justice, “a sense of what was due to particular individuals in concrete situations” (xviii-xix). The premise of this is that due to the constant examples of what effect laws have upon people, lawyers cannot forget that their actions influence persons (xviii-xix). The way the cases and the people in them are dealt with, however, completely strips the people from their personal identity. Names are erased and replaced with vague and impersonal terms such as plaintiff and defendant, or worse P and D, or even worse the simplistic A and B. One of Noonan's aims with his Mask of the Law theory is to make people involved in legal history, legal philosophy, and legal education aware of that law should not be seen as “a set of technical skills which may be put to any use but as a human activity affecting both those acting and those enduring their action” (xix).

Besides the teaching of law, Noonan finds fault in the treatment of law in general. The faulty perception of law is often a problem in regards to the position of persons in legal discourse. The legal system is perceived as a tradition constantly refined by reason, but within this definition, the main focus is removed (Noonan xix). Noonan posits that law is a living system because it lives in people. Instead of leaving people out of the discussion, Noonan puts people at the centre of legal discourse by saying that “rules of law are formed by human beings to shape attitude and conduct of human beings and applied by human beings to human beings. . . they exist as rules—not as words on paper—in the minds of persons” (4). Forgetting the influence on people through the impersonal application of law is something that is reflected in the theories of CLS as well. But the Mask of the Law puts an extra emphasis on discourse and the use of language that disguise any personal human involvement and consequences of the practice of law.

Noonan dedicates a large part of *Persons and Masks* to the people that suffer from the masks of law because they are unseen victims of the legal process, but he also discusses the people that are responsible for the making of the law. Noonan explains how ‘enlightened’ individuals like Thomas Jefferson and George Wythe, both important legal scholars and

practitioners, “though supporting liberty and advocating emancipation of slaves, actually did nothing even when vested with political power, to end slavery” (qtd. in Wilkins 8). Consequently, Jefferson and Wythe masked their own humanity by accepting the entrenched legal framework that was connected with the institution of slavery and removed humanity from the legal process on both sides. These masks, according to Noonan, are dual because they are imposed on others and applied to oneself. Moreover, these masks are socially constructed and are especially dangerous because “they have been stamped with approval by society’s official representatives of reason” (8-9), namely the highest—and supposedly neutral and objective—judges of the United States.

Walter Weyrauch supports Noonan's arguments on the use of 'masks' to describe legal constructs that hide or suppress the humanity of people involved in the legal process. He states that “the major role of masks in our legal system is to objectify human conflict and exclude much human information that would be relevant if the only purpose of the system were to render ‘justice’” (714). However, Weyrauch does not believe that rendering justice and keeping a focus on the individual throughout the legal process are the only important parts of the legal system. He stresses that the functionality of the legal process is important and that in this case masks can have a positive function as well and criticizes Noonan for not including multiple dimensions of masking in *Persons and Masks of the Law*. Weyrauch writes that the use of masking can be beneficial to lawyers and judges because then they “do not always comprehend the human significance and the gravity of their acts. Such insights might make them cynical and eventually ineffective in their task, especially their task of rendering peace as skilled craftsmen even at the cost of occasional injustice” (699). Furthermore, abstraction of the facts is an “integral and necessary part of legal thought” which helps legal professionals with the exercise of their legal skills and prevents bias (708). With this view in mind, masks could have the positive effect of keeping legal matters more neutral and easing some of the pressure of lawyers and judges and prevent them from experiencing personal guilt.

While Weyrauch mentions the positive effects of masking, something that Noonan fails to do, the rest of his argument makes clear that The Mask of the Law is indeed an important legal theory to be considered in the practice of law. He agrees that while there can be positive effects of masking, many ways of employing the construct are negative. Weyrauch revisits Noonan's examples of legal documents surrounding slavery and writes that, indeed,

“masks are particularly effective tools for enforcement because they disguise the implicit value judgement of the legal process, for example, by labelling fellow human beings as ‘property’” (717). Moreover, the use of masking can be dangerous because people who are involved in the legal system are less likely to question or criticise decisions made that appear to be based on the objective application of laws, even though in reality they might not be neutral (Weyrauch 717).

Both Weyrauch and Noonan have given substance to the claim that legal masks exist and that their use can have negative consequences. A *Harvard Law Review* author stated in agreement with Noonan that “where legal rules are bereft of a sense of the persons they govern, legal roles become distorted, rules become masks, and justice is denied” (“Review” 1114), but criticizes that while Noonan makes a plea for the unmasking of humanity, he explains neither a methodology, nor the results of an unmasking (1116). When reading Noonan and Weyrauch, however, characteristics of masking can be found throughout the texts and these can be applied to legal documents, the discourse on legal matters in general, or even events related to legal issues in society. The most important of these characteristics are 1) the stripping of the personal identity of people involved in legal proceedings by, for instance, the omission of names, personal information, or context (Noonan xviii; Weyrauch 702), and 2) that masks usually favour established powers and thus the conceptual masks of the present legal system reflect who is in a position of power (Weyrauch 718; 720).

As Weyrauch has stated, “seen in a broad perspective, the whole of law is a mask” (724). This mask of neutrality and objectiveness that law can possess has led to law that is popularly accepted in social life. This acceptance allows law to be used to enforce social policies that are usually instigated by the established powers, the way slavery was a legal institution is an example of such a social policy. A focus on the presence of these ‘masks’ and the deconstruction thereof should give access to a human presence within legal proceedings that is often denied or omitted. Because of its close ties to the social sphere, law—and with law legislators, lawyers, and judges—depend on cultural conventions and accepted norms and values of their era. This era, with a continuation of social justice movements in the twenty-first century, calls for the removal of masks and for a stronger presence of humanity in legal proceedings to prevent minorities from being disadvantaged more than average (Cunneen 2006; Barker 2008; Loury 2010; Green II et al. 2016). Noonan questioned in 1975 whether if rules are indispensable, does taking people into account by bending rules to fit them and their

social situations distort the process of law. However, not taking people into account has resulted in horrible social situations such as the legal institution of slavery and others that are still in effect today like the vulnerable legal position of American Indian women in sexual assault cases. This suggests that there is no other option than giving humanity more of a voice in the process of law. The hiding of people's identity and forgoing the human aspects of law, in addition to the power struggle between hierarchies of people and hierarchies of law are the most important characteristics of *The Mask of the Law*. These elements will be applied to Erdrich's novels to analyse discrepancies between law and people, and to analyse power struggles between laws.

Both Critical Legal Studies and Noonan's *The Mask of the Law* agree that law should be placed in the larger historical and social context. They differ in that Critical Legal Studies stresses the hierarchal power difference of the elite placing masks on the lower social classes, while the *Mask of the Law* emphasises that masks are also applicable to that elite. Using a combination of both theories may help to demythologise law as an objective and neutral concept and reveal how law is political and flawed. Showing the flaws within legal decisions and proceedings will open up a space in which legal liminality becomes visible.

2.3 Relevant Court Cases and Policies and Legal Liminality

In his substantial work *Law and the American Indian: Readings, Notes and Cases* (1973), Monroe Price writes that "the history of the relationships between American Indians and non-Indians is permeated with law and legal problems; it is a constant striving for a definition of status, for a definition of place and role in the American context" (viii). Within problems of jurisdiction, especially in regards to criminal jurisdiction, conflicts become visible, in particular when it is deemed critical for a dominant society to assert and impose its own laws and judicial system over a minor one (Price vii). The dominant society in this study is embodied by the American government and the minor society consists of the Indian tribes. This already indicates an imbalance in status and power. Price notes that power flows in specific ways and that there are always at least three competitors for power in this situation: the federal government, the state, and the Indians (1-2). The struggle for power is reflected in the development of the court cases that will be discussed in this section. Furthermore, it will give the historical development of legal liminalities that have been created through that struggle. Moreover, it will place the legal issues and liminalities present in the novels

analysed in chapter three in their larger historical and legal context. This context is important, because it is through the overlap and gaps within different legal proceedings and outcomes of court cases that legal liminality has got a strong hold on criminal law in Indian country.

A situation that illustrates the power struggle between the different governmental parties, the legal liminality this power struggle causes, and the effects of liminality on Indians, is the case of Jay Morningstar. Jay Morningstar was an enrolled member of the Antler tribe and was drinking at a tavern in Summit Hill, Colorado. Summit Hill is a small non-Indian town which is located on the Antler Reservation, but falls under state jurisdiction. Jay was involved in a brawl and pulled a knife with which he stabbed an innocent bystander. The bartender called the local authorities, but three different groups arrived to arrest Jay Morningstar. Since Jay was a reservation Indian and was believed to have violated tribal law, the tribal police wanted to take him into custody. The state police wanted to arrest Jay because the incident happened in Summit Hill which falls under state jurisdiction. As a third party, a federal agent believed the event had violated a provision of the federal Major Crimes Act and should thus be turned over to the federal authorities. Who ultimately has custody is the ultimate question and Jay Morningstar is caught in the middle (Deloria and Lytle, *American* 161).

Figuring out who has jurisdiction in regards to criminal law in Indian country is often a hard question to answer. Determining who has jurisdiction in a criminal case is related to the treaty, statute, or act that has been violated, whether or not the offender and/or victim is Indian, and the location of the crime (Deloria and Lytle, *American* 178). All of these factors, however, have complications that make it harder to determine the right course of action. This section will be divided into three parts, each of which will discuss the development of one of the factors that determine jurisdiction. The first subsection will discuss the many changes in statutes, laws, and court case decisions that have created legal liminalities. These treaties, statutes, and acts have determined who should have jurisdiction, but they overlap and are further complicated because each state applies different statutes. The second subsection will illustrate the developments in criminal law that are concerned with Indian identity. This will build on the problematic discussion in chapter one on when someone can be identified as Indian according to classifications of the tribe, the state, or the federal government. In the third subsection, the development of the importance of geographical location of the crime is

of great importance. It will continue the discussion on liminality of the land in chapter one, but with a greater emphasis on legal liminalities and criminal law.

2.3.1 Treaties, Statutes, and Acts

There has been a long history of state and federal interference in criminal jurisdiction on Indian reservations and much of that interference is due to statutes, acts, and treaties written by the United States government. Important to note is that in the beginning, with the establishment of the United States, only the federal government was allowed to deal with the Indian tribes. The Commerce Clause of the U.S. Constitution states that only Congress has the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes” (art. I, sec. 8, clause 3). One of the first major treaties between the United States Government and an Indian nation that made this interference possible is the Canadaigua Treaty of 1794 between the United States and the Iroquois Six Nations. This treaty resolved issues of misconduct between the two parties by not letting individuals retaliate privately, but resolving the issue through the official channels of representatives of each party who determine the course of actions. While this treaty offered a peaceful and equal sounding solution to violence between the two groups, the treaty ended on a less than egalitarian note in article 7: “and such prudent measures shall then be pursued, as shall be necessary to preserve our peace and friendship unbroken, until the Legislature (or Great Council) of the United States shall make other equitable provision for that purpose” (Pickering 46). This particular point has laid the groundwork for federal intrusion into tribal relations and tribal jurisdiction as it gives the United States the power to change its dealings with crime involving Indians and on Indian territory as it sees fit. The federal government acted on this possibility later on by, for example, the Indian Country Crimes Act (1817) that made offenses by non-Indians on Indian land federal offences, and the General Crimes Act (1874) which stated that all the general laws of the United States would extend into Indian Country except if that crime was committed by an Indian against an Indian, if the Indian had already been punished by the local law of the tribe, or if the tribe had sole jurisdiction of the offense (18 USC. Sec. 1152).

Treaties and acts such as the ones discussed previously show the involvement and intrusion of the federal state in the domestic workings of the Indian tribes, but at this point the tribes still had full jurisdiction on crime within their nations. This level of independence is confirmed in the Supreme Court case *Ex Parte Crow Dog* (1883). Crow Dog was a member of the Brulé band of the Lakota Sioux and he killed Lakota chief Spotted Tail in 1881. The tribal

council dealt with the killing and Crow Dog paid restitution to the late chief's family to restore peace within the tribe. Afterwards, however, the U.S. government prosecuted Crow Dog for murder in a federal court. Through a writ of habeas corpus, a legal action reporting unlawful detention before a court, the case of Crow Dog made it to the United States Supreme Court in 1883. The Supreme Court decided that federal courts had no jurisdiction because Crow Dog had already been tried by the tribal system and Crow Dog was released (109 U.S. 556). The release of Crow Dog sparked controversy and called into question the workings of the tribal court system. Moreover, "to allow a 'primitive' form of justice to flourish in the case of the most serious crime was unthinkable" (Deloria and Lytle, *American* 169). This controversy surrounding Ex Parte Crow Dog eventually led to the Major Crimes Act (1885).

The Major Crimes Act (1885) was another major intrusion into the independence and sovereignty of the tribes and limited its capabilities of dealing with crime within its own territory, stating:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. (18 USC. Sec. 1153)

While tribal authorities had already lost the authority of persecuting non-Indians committing crimes within Indian Country and persecuting all crimes outside of their borders, with the Major Crimes Act they lost the ability to persecute serious crimes within their own community as well. The Major Crimes Act was called into existence because of the American government's distrust of the tribal system's ability to handle serious crimes. The implementation of the act acted as a sort of fulfilment of the guardianship obligation that the United States has over Indian tribes (Deloria and Lytle, *American* 171). Through this act, Indian tribes were reduced to wards of the federal states in regards to protecting and persecuting their own people. The tribes' position weakened after the 1968 Indian Civil Rights Act which allowed tribal courts to only fine up to \$500 and/or six months of jail time and left them with no other means to deal with serious crimes.

The previously discussed cases, treaties, and policies have illustrated the complicated relationship between tribal and federal jurisdiction when referring to criminal cases. The introduction of Public Law 280, however, complicates the process even further by entering state jurisdiction into the big and complicated maze that is criminal jurisdiction on the edges of Indian reservations. Public Law 280 was passed by Congress in 1953 and required the transfer of civil and criminal jurisdiction from the federal government to the states in six states: California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska (French 76). Other states were allowed to implement Public Law 280, but were not obliged to; in total fifteen states accepted full or partial Public Law 280 jurisdiction (Melton and Gardner). The most important thing to note about Public Law 280 is that this transfer of civil and criminal jurisdiction happened without the consent of the Indian nations in those states. The transfer of power resulted in a “chaotic allocation of law enforcement authority” (Clinton 504-5). Public Law 280 introduced concurrent jurisdiction between state, tribal, and sometimes federal authorities making it even less clear who is in charge (Dimitrova-Grajzl, Grajzl and Guse 128). It expanded non-tribal law enforcement and had a damaging effect on the sovereignty of the Indian nations (128). Through the limitations of Public Law 280 and the ambiguities contained in it, it created “legal gaps and vacuums” which lead to further “confusion and lack of clarity” (Goldberg, Champagne, and Singleton 11).

2.3.2 *Indian v. Non-Indian*

Whether an offender or a victim of a crime is Indian or not is also important when looking at the development law regarding Indians. Being Indian or non-Indian is so vital because it has a direct effect on who would have jurisdiction in that case. In *Handbook of Federal Indian Law* (1942) Felix Cohen wrote that “attempts of tribes to exercise jurisdiction over non-Indians, although permitted in certain treaties, have been generally condemned by the federal courts since the end of the treaty-making period, and the writ of habeas corpus has been used to discharge white defendants from tribal custody” (148). One of these condemned attempts was visible in the Supreme Court case *Oliphant v. Suquamish Indian Tribe* (1978). Mark Oliphant, a non-Indian living on the Port Madison Indian Reservation was arrested by the tribal police for assaulting a tribal officer and resisting arrest. Oliphant challenged his arrest by means of a writ of habeas corpus because he felt that the tribal court had no jurisdiction over him. While the lower courts ruled against Oliphant and supported the tribal police’s need for law and order as an important part of tribal sovereignty, the Supreme Court overruled the lower courts

and decided that tribal courts do not have the criminal jurisdiction to arrest non-Indians (435 U.S. 191).

The ruling that tribal courts could not try non-Indians was brought to a next level through the ruling in the Supreme Court case *Duro v. Reina* (1990). The Supreme Court continued to limit the powers of tribal jurisdiction through their rulings. *Duro v. Reina* (1990) concerns Albert Duro who lived on the Salt River Indian Reservation, but was a member of a different Indian tribe. Albert Duro allegedly killed an Indian boy within the reservation's boundaries. The case was dismissed on a federal level—as federal courts try serious crimes under the Major Crimes Act—and Albert Duro was then charged by the tribal court for the illegal firing of a weapon (a minor crime that the tribal courts are able to try). Albert Duro issued a writ of habeas corpus to the Supreme Court which was granted. The Supreme Court ruled that since Albert Duro was a United States Citizen and not a member of the Salt River Pima Maricopa Indian Community he should be treated like Mr. Oliphant in *Oliphant v. Suquamish Indian Tribe* (1978) and the tribal court has no jurisdiction over him (495 U.S. 676). This decision led to the conclusion that tribal courts did not have jurisdiction over Indians, they only had jurisdiction over Indians who were members of their own tribe.

Seeing as this placed Indian tribes in a precariously vulnerable position and removed much of their ability to keep the peace within their reservations, Congress followed the Supreme Court's decision in *Duro v. Reina* with an amendment to the Indian Civil Rights Act. Before *Duro v. Reina*, the Indian Civil Rights Act read that “‘powers of self-government’ means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses” (25 USC. Sec. 1301). Through the amendment via the Department of Defense Appropriations Act of 1991 the following was added to the Indian Civil Rights Act: “and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians” (25 USC. Sec. 1301). This somewhat restored the tribal sovereignty that was lost through the Supreme Court decision of *Duro v. Reina*. The amendment that gave tribal courts jurisdiction over other Indians was held up in the Supreme Court case *Lara v. United States* (2004).

Classification of who is and who is not Indian plays a major role in the confusion of who has jurisdiction in legal proceedings. The example of the Indian Child Welfare Act (1978) discussed in the introduction is one of the acts in which classification is extremely

important to determine the course of action. The Indian Child Welfare Act (ICWA) was enacted to define areas of exclusive jurisdiction according to residence and wardship status for tribal courts. In the Supreme Court case *Adoptive Couple v. Baby Girl* (2013) the ICWA was supposed to be a clarifying legal document to guide the people involved through the jurisdictional maze. However, the blood status of baby girl Veronica was discussed and disputed by the court; if children like Veronica “lack sufficient ‘Indian blood,’ they do not warrant the legal protections that their *political status as* American Indian tribal members otherwise affords” (Pearl 239-40). Baby Veronica is classified as Indian because she is 1.2% (3/256) Cherokee, but since she “*isn’t that much of an Indian*”, according to the majority of the Supreme Court’s judges, breaking with the ICWA “isn’t really that big of a deal,” no matter that under Cherokee membership requirements Veronica’s blood quantum is irrelevant (240). With a 5-4 majority the Court decided that baby Veronica would be placed with the adoptive couple outside the Cherokee tribe. Whether a person is classified as Indian or non-Indian by the state or by the tribe, then also very much influences what protection can be given and which authority is in charge over the legal case.

2.3.3 Location of the Crime

In determining which authority has jurisdiction, the location where the crime has been committed is most important. The most important questions concerning location are: 1) did the crime occur in Indian Country and 2) did the crime occur in a state in which Public Law 280 applies. In *American Indian, American Justice* (1987) Vine Deloria Jr. and Clifford M. Lytle bring together these questions, the issues of which statute or act has been violated, and the ‘Indianness’ of the people involved into a table which organises matters of jurisdiction in an almost transparent manner.

<i>Location Where Crime Is Committed</i>	<i>Federal Jurisdiction</i>	<i>State Jurisdiction</i>	<i>Tribal Jurisdiction</i>
I. <i>In non-Indian Country</i>			
A. Federal law involved	Yes	No	No
B. State law involved	No	Yes	No
C. Tribal law involved	No	No	Maybe
II. <i>In Indian Country</i> (where P.L. 280 or specific statute applies)	No	Yes	No
III. <i>In Indian Country</i> (no P.L. 280)			
A. Crimes by Indian v. Indian			
1. Major Crimes Act	Yes	No	No ^b
2. Other crimes	No	No	Yes
B. Crimes by Indian v. non-Indian			
1. Major Crimes Act	Yes	No	No ^b
2. General Crimes Act	Yes	No	Yes ^c
3. Assimilative Crimes Act	Yes	No	Yes
C. Crimes by non-Indian v. Indian			
1. General Crimes Act	Yes	No	No
2. Assimilative Crimes Act	Yes	No	No
D. Crimes by non-Indian v. non-Indian	No	Yes	No
E. Victimless and consensual crimes			
1. Crimes by Indians	No	No	Yes
2. Crimes by non-Indians		Yes ^a	
a. General Crimes Act	Yes	Yes ^b	No
b. Assimilative Crimes Act	Yes	Yes ^b	No

Table 1. Criminal Jurisdiction and the Indian Justice System.
(Deloria and Lytle, *American Indian* 179)

While its goal is to present the Indian justice system in a more approachable and clear fashion, that is not exactly what it accomplishes. Yes, it gives directions in the maze of jurisdictional issues, but what it also does is show how complicated the system is, even in a simplified form. Especially important when talking about gaps and liminality is the consideration: what happens when one of these first questions cannot be answered? Who has jurisdiction when it is unclear or unknown where the crime has been committed? Who has jurisdiction when it is unknown whether the offender is an Indian or a non-Indian? What if the “maybe” that can be read in table 1 is just not good enough?

The complicated jurisdictional maze that exists in Indian country is not very beneficial to the welfare of American Indians residing there. It has a negative impact on the ability to provide public safety as it is hard to determine which law enforcement unit is in charge in what area and in regards to which offender (Anderson 951). These gaps make it easy for criminals to exploit the situation and that leads to more crime or at least a lower prosecution rate (951). Dealing with the jurisdictional maze asks for a high level of collaboration between tribal, state, and federal law enforcement officials, but there is a high level of distrust that has

accumulated through the years which makes smooth cooperation difficult (951). Through all the changes made to tribal sovereignty and the changes in criminal jurisdiction for tribal, state, and federal authorities, it is easy to see how individuals—Indian and non-Indian—that have to deal with it all can fall between the cracks.

Chapter 3: Louise Erdrich's Justice Trilogy

In *The New York Times Book Review*, Maria Russo writes that “law is meant to put out society’s brush fires, but in Native American history it has often acted more like the wind.” What Russo observes is that while law is meant to create an orderly and just society, the opposite often happens on Indian reservations, and law leads to more legal conflict rather than a peaceful resolution. The historical and legal background to the creation of this complicated and liminal situation on Indian reservations has been discussed in chapters one and two. While the historical and legal background of legal liminalities gives an overview of the struggle between American Indians and the law, it does not comment on the effect of the law on communities and individuals. To get an indication of how the liminal legal issues can play out in American Indian communities, this chapter turns to literature as literature is able to act as a reflection on society as well as give insight in how legal liminalities influence the lives of individuals. To look at the effects of law on people, as suggested by both Critical Legal Studies and *The Mask of the Law*, elements from both legal theories—hierarchies present in law, the critical stance on laws, criticism on the hiding of humanity within law, and the demythologisation of law to show its flawed character—will be applied in the analysis of liminality and justice. The legal liminalities and the concept of justice will be analysed in three works of literature by Louise Erdrich: *Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016).

In *The Plague of Doves*, Mooshum, Evelina, Bazil, and others in their Indian community, deal with the unjust lynching of three Indians by a mob of non-Indian men from a town near the reservation. This lynching happened decades ago, but still influences the daily lives and relationships of the people in the community. In *The Round House*, the Indian woman Geraldine is raped and because of legal issues her attacker, a non-Indian man named Linden Lark, cannot be arrested. While her husband Bazil is still convinced law holds the solution, her son Joe is determined to find justice for her another way. In *LaRose*, the Indian man Landreaux Iron accidentally shoots the young boy Dusty. Following old Ojibwe law, Landreaux attempts to make amends by giving his youngest son, LaRose, to Dusty’s parents, Peter and Nola Ravish. The aim of the analysis of these novels is not to determine whether or not a character’s effort to get justice is right or wrong, nor to offer any moral judgement on

what happens in the novels. Instead, the aim of this chapter is to analyse situations and characters' actions to determine what these characters see as justice or revenge within the limited options offered by a flawed justice system rife with legal liminalities on Indian reservations.

Louise Erdrich, as mentioned in the introduction, referred to the three novels as revolving around issues of wild justice, justice denied, and natural justice. These are also the kinds of justice central to the three works of literature *Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016). However, rather than each novel exhibiting one particular kind of justice, all three variations are present in each of the novels and are connected to themes of land, identity, religion, history, and healing. This chapter is constructed analogously. Rather than discussing the novels separately, followed by a comparison, justice in the zone of liminality will be placed in the centre of my analysis of all three conjointly. This kind of analysis makes it possible to offer an in depth look at the concept of justice and its effect. The following will thus discuss how issues of wild justice, justice denied, and natural justice are interconnected in the three novels and will illustrate not only how the issues of justice and injustice are represented as an inextricable part of the American Indian experience, but also how legal liminalities can create a dangerous situation for American Indians on Erdrich's fictional Indian reservation as the law rarely offers them protection. In order to be able to focus fully on the analysis in this chapter, more detailed synopses of the characters and storylines of the three novels are provided as an appendix to this thesis.

3.1 Wild Justice

Wild justice, or rough justice, as it is more commonly called, is the pursuit of justice without any regards for the present justice system. In *Rough Justice: Lynching and American Society 1874-1947* Michael Pfeifer described that wild justice is something that happens in communities which are impatient with the delays of legal processes and what the community may see as a degree of legal leniency that a criminal may not deserve (3). Instead of resorting to a court of law, the community will take the law into its own hands and act as the judge, the jury, and the executioner. While taking the law into one's own hands is certainly not restricted to one group of society, the execution of rough justice often has a class or racial element (3). The class and race element to wild justice must be understood in the light of Critical Legal

Studies as discussed in chapter 2.2: it creates a hierarchy within a justice system—be it an official or an invented one—as well as in light of the discussion of discrepancy between a white and Indian system of justice in chapter 2.3. Important for wild justice is that the community believes it is better and more effective in deciding who is guilty of a crime and thus rejects the justice system already present in the community. In the discussion of wild justice in this analysis, the racial hierarchy is most prevalent.

This racial hierarchy in combination with the rejection of the legal powers is very visible in the lynching of three American Indians—and the almost lynching of another—in 1911 described in *The Plague of Doves*. This moment in history weaves the characters of *The Plague of Doves* together. The race relations so important for this instance of wild justice are foreshadowed in another event. Mooshum is a Métis man who even as a young man was already accused of a crime he did not commit. A woman was murdered on a nearby farm on state land close to Maude's farm, where Mooshum and his girlfriend Junesse were living at the moment. When news of the murder made the rounds, "the neighbors disregarded the sudden absence of that woman's husband and thought about the nearest available Indian" (Erdrich, *Plague* 17). In an act of wild justice the neighbours go to Maude's farm with the intention of taking Mooshum with them and taking care of law and order themselves. This is only avoided by Maude stepping in and removing the neighbours from her land. The fact that the actions of the mob do not surprise Maude or her husband, shows that mobs of white farmers blaming 'the nearest Indian' is not an uncommon response to a murder near the reservation. This situation resonates the discussion of schismogenesis in chapter 1.1 as two societies co-exist in an uneasy balance which includes a racial hierarchy and a permanently unpleasant social environment. In addition, as Mooshum is only saved because of Maude, this situation creates expectations for the violence that could happen if no one interferes, should a similar occasion of a white mob seeking revenge arise again.

This is exactly what happens in the scenes that describe the townsmen's search for the Indians and the ensuing lynching in 1911, an event which Mooshum barely survives. Not only does the mob forcefully remove the Indian men from the church where they are hiding—with the priest doing nothing to prevent the men from being taken as he presumes their guilt without question—they violently resist the established system of law by revolting against the sheriff so they can act out their own form of justice. The sheriff is at the scene of the lynching in time to take over, but suggestions to "drive the suspects to jail" rather than prematurely

hang them are ignored (Erdrich, *Plague* 73). When the sheriff points out the fact that law and order should be handled by the police, the townsmen respond that they are “going to finish it” leaving no room for misinterpretation (73). The townsmen disregard the present legal system even more by injuring the sheriff in order to get what they see as justice for the murdered family. While they reject the prevailing system of justice, that of local government, they are at the same time very much aware of the differences in jurisdiction on the reservation. As described in chapter 2.3.1, the Major Crimes Act gave the federal government jurisdiction of murders happening on reservation land. With critical and at the same time whining comments such as “all the good trees is back of us, over the reservation line” (*Plague* 74), the townsmen of Pluto reveal that they are aware of the reservation’s legal system, as well as that they are wilfully rejecting their own local justice system. Their critical stance on law means in this case that, instead of using that critical perspective to make a more equal society as suggested by Critical Legal Studies, the townsmen use it to find the mazes of the law. By choosing to lynch the Indians on state land they avoid federal prosecution that would be present on the reservation and through the townsmen’s wilful rejection of the state’s justice system they are able to take advantage of the legal mazes liminalities have created and avoid all consequences for their actions.

While the racial element is very much present in the scenes from *The Plague of Doves* discussed above, Erdrich shows that it is not always only white against Indian violence that leads to the practice of wild justice. In *The Round House* Linden Lark is released from custody, even though all parties involved know beyond a doubt that he is guilty of raping Geraldine. The difference with the lynching in *The Plague of Doves* is that the townsmen disregard local law to begin with, whereas the Indian community in Erdrich's trilogy only acts on wild justice when it becomes clear that tribal, local, and federal law is about to fail their sense of justice. This instance of wild justice occurs in *The Round House* after Lark's appearance in the grocery store and the attack by Joe and Bazil Coutts results in Bazil's first heart attack. Lark's release and his part in Bazil's heart attack are avenged by the Coutts' community. Whitey tells Joe that after they went to the hospital, “some members of our family paid a visit” and they “messed him up good, man. He won't come around you. Tell your mom and dad” (288). The same conspiring happens after Joe is driven to his absolute limit and decides that taking the law into his own hands is the only remaining possibility to get justice for Geraldine’s rape. While Joe does not do so with the same absolute dismissal of

the law that was present in the townsmen from *The Plague of Doves*, he is still more than willing to put the law aside to get what he perceives as justice. His murder of Lark, aided by his friend Cappy, is known throughout the community but friends and family and even the tribal police help him cover it up as they perceive this unlawful act as an act of justice through extra-legal means.

Besides these moments in which Indian and non-Indian groups are pitted against each other in the borderland of the Indian reservation when trying to find justice outside of the established laws, wild justice is present throughout the three novels in ways that highlights the historical and cultural conflicts that are present between the American Indian society and outside legal influences such as federal laws and police forces. Characters take justice into their own hands and often go for an act of revenge rather than seek justice through the complicated legal process because they distrust the capabilities of the established law or because they know the failures that resulted when in the past they did rely on the authorities. Similar to Critical Legal Studies and the Mask of the Law, characters in the novels have realised that law as it exist in their society, has become impersonal and disregards human consequences, especially those that affect already vulnerable groups such as American Indians on the reservation. The distrust in the capabilities of the authorities and their justice system is apparent in both *The Round House* and *The Plague of Doves*. Joe notes about “FBI agents who draw Indian country” that if they are “assigned to Indian Country they are either rookies or have trouble with authority” (*Round* 108). Moreover, he wonders if he “should even talk to the cops” (81), seeing as they miss crucial information that could lead to justice for his mother. In *Plague of Doves* tribal police officers are not to be trusted as they are biased and only protect “good blood stock” (57), disadvantaging people with a Métis heritage like Mooshum and Junesse.

A similar situation appears in *LaRose* when after a long struggle following the death of his son, Peter is told that it was not an accident, but possibly a negligent homicide. The realisation that this was not only handled wrongly by the tribal police—who operate only within the reservation while Peter is a white farmer living off the reservation—but that these facts were also withheld and that it takes a drug-addicted thief to tell him the truth about his son's death, lead to Peter taking justice into his own hands. He takes the man responsible for his son's death, Landreaux Iron, out to federal land and plans to kill him to get justice for his son. Peter's goodness is at odds with his lust for revenge: “Peter's hands are cool and steady

because they belong to the other man, the one who pictured doing this and did not, the man who split Landreaux's skull a thousand times chopping wood. The other man who dreamed what Peter is doing now" (*LaRose* 341). Still, the fact that Peter may have wanted to be violent towards Landreaux but did not act upon it, shows that he is aware of the legal consequences that revenge might have. The loss of trust in the system, however, leads him to seek justice himself through a violent act of revenge.

The realisation that relying on the authorities will result in failure is reflected in many of Maggie's actions in *LaRose*. Maggie, Peter and Nola's daughter, is described by Nola as a "monster" and a "little bitch", which is perhaps caused by her often cruel and vindictive behaviour (*LaRose* 139; 85). Having a bad relationship with almost every adult in her life has given Maggie reason to distrust authority all together and take matters into her own hands. When *LaRose* is bullied at school Maggie almost kills his bully and tells *LaRose* afterwards that "now you know what revenge looks like" (125). Maggie believes that justice does not just occur through the passing of time, nor that other people can get it for you. Instead, Maggie believes that justice is something achieved through revenge and she has no moral objections to that. But Maggie's quests for revenge have a snowballing effect; every act of revenge leads to another one in retaliation, suggesting this is not the way towards justice and healing. Most stunning is that after Maggie sought justice for *LaRose* by attacking his bully, she is sexually assaulted by four older boys one of whom is the bully's older brother. Maggie does not talk about this to an adult, nor does she report this to the police. She only tells *LaRose*, who is only six years old at the time, and their conversation—"what would you do if boys jumped me, if they touched me and stuff, all over, in a bad way. I would make them die, said *LaRose*. Do you think you could? I would figure it out" (*LaRose* 140)—leads to the continuation of the revenge cycle while echoing the history of ignored sexual assault of Native women. Wild justice, thus, is very often represented in the three novels, and it is always connected to violence and going against the authorities.

3.2 *Justice Denied*

Discussing the concept of justice denied, the focus of this analysis is on how legal liminalities cause a breakdown of the justice systems that are present. Rather than creating a possibility for justice, legal liminalities prevent law from doing what it is meant to do and people are left

with a legal system that is unable to help or protect them and are thus often left without justice. This is mainly due to the issues that have been discussed in chapter 2.3: the issue of where the crime has been committed, the question of the identity of the people involved, and the question of what crime has been committed and which government agency has jurisdiction over that crime. In the many instances of justice denied in Erdrich's trilogy, characters deal with consequences of their being deprived of justice in the present, as well as injustices of past that still influence them in the present. The denial of justice can be seen from two perspectives: one where the focus is on a moral injustice that has strong ties to the historical and legal treatment of American Indians, and one where the focus is on the mazes created by the clashes of the different legal systems and their consequences in the present.

Moral injustice can be found in many instances throughout the trilogy and is usually connected with the legal system. This moral injustice is present in many of Mooshum's stories in *The Plague of Doves* and *The Round House*. Mooshum's stories link the past to the present as in the native oral tradition time is cyclical rather than linear, meaning that there is no clear separation between history and the now. The presence of Louis Riel in especially *The Plague of Doves* shows the dynamics of cyclical moral injustice. Louis Riel was a political leader of the Métis in Canada who, after a failed attempt to resist government law over a nation of Métis, was sentenced to death. His death forced many of the Métis to leave, some of whom went to the Turtle Mountain reservation in North Dakota. Mooshum proclaims that "Riel, if he'd won there'd be some justice! This devil would not dare to chase an Indian" (*Plague* 38), calling attention to the fact that if there had been justice in the past, things would not be as they are now. These stories and Mooshum's reaction exemplify how abstract laws from the present, but also those of the past, are still able to have a strong negative impact on communities in the present.

Besides the lack of political and identity rights that are stressed through the references to Riel, many of these moral injustices are about land rights. Land is a sensitive subject for many of the characters and it is not just presented as painful for older characters, but as an injustice that is passed on to each generation. That this trauma is passed on is not surprising as each new generation has to deal with the consequences of allotment policies, the checkerboard state of the reservations, and the presence of many non-Indian people and towns within the borders of the reservation, all of which has been discussed in chapter 1.3. Evelina, one of the narrators from *The Plague of Doves*, describes what the loss of land does to her

family: “I saw the loss of their land was lodged inside of them forever. This loss would enter me, too. Over time, I came to know that the sorrow was a thing that each of them covered up according to their character” (84). The injustice of the loss of land does not only create a deep generational trauma, it also sets the scene for the legal liminalities in which in ownership of land plays a central role.

Another kind of moral injustice that appears throughout the novels is the lack of legal punishment, or even a trial, for people who have wronged others. The non-Indian townsmen from *The Plague of Doves*, for instance, never had to face any consequences for their actions, showing again a legal hierarchy criticised by Critical Legal Studies. Instead, “the Buckendorfs got rich, fat, and never died out. . . They prospered and took over things. Half the county. But they never should of [sic]. And Wildstrand. Nobody hauled him up on a murder charge” (82). The way the non-Indian townsmen thrived after the crime is a moral injustice as there is no legal prosecution, and there are no other developments that could afterwards be seen as a kind of poetic justice. Mooshum describes the future of the lyncher Lungsford who, “out of disgust. . . went back to the civilized world he called Minnesota. He moved to Breckenridge, where in 1928 they went and hung the sheriff” (82). Through his story Mooshum describes moral injustice in that Lungsford faced no consequences for the lynching of the three Indian men. Moreover, the legal inaction after the lynching of the Indian men allowed Lungsford to move away and aid in the murder of another. The whole situation seems even more unjust when the townsmen still face no legal consequences for their actions as vigilantes after they “admitted that they probably were mistaken” (92). The vigilantes’ knowledge of the law and their position as white farmers in regards to their local police department places them in a position from which they can defy the consequences that usually occur after committing a crime, especially if the crime was committed against Indians.

A similar moral injustice of a white attacker evading legal consequences because the victim is Indian occurs in *The Round House*. The character Linden Lark attacked Geraldine, whom he raped, and Mayla, whom he murdered, and during the attack he brags: “I won't be caught, he said. I've been boning up on law” (189). The legal liminalities within the different legal systems create a unsafe living environment on the reservation in which criminals cannot only get away with crimes after the fact, they can even plan their crimes in specific ways in order to be completely sure they will not be prosecuted. The revelation of this through Lark's statement strongly demythologises law and reveals it as profoundly flawed. The moral

injustice of Lark's release is further stressed in the scene in the grocery store. When Joe and Bazil attack Lark, he “seemed to be smiling” (285), showing excitement and happiness because of the Coutts' helplessness in the face of injustice. Lark does not face any legal consequences and he is able to move in the same circles as the Coutts family, making them uncomfortable and afraid of his presence and his power to evade the law. The tribal council, who “had given Lark notice that he was barred from the reservation” displays their weak legal position when it comes to justice within their borders and protecting their people as they can officially bar someone, “but there was really no way that could be enforced” (312).

The mazes created by the clashes of multiple legal systems are front and centre in *The Round House*. Within the first pages of the novel it is already made clear that something terrible happened to Geraldine, as well as that it is very likely that getting justice for her through official legal channels will be incredibly hard. Joe is at the hospital with his parents and, even as a thirteen year old boy, he is aware of the legal issues and of how they will influence his family's future:

Three men came through the emergency ward doors and stood quietly in the hall. There was a state trooper, an officer local to the town of Hoopdance, and Vince Madwesin, from the tribal police. My father had insisted that they each take a statement from my mother because it wasn't clear where the crime had been committed—on state or tribal land—or who had committed it—an Indian or a non-Indian. I already knew, in a rudimentary way, that these questions would swirl around the facts. I already knew, too, that these questions would not change the facts. But they would inevitably change the way we sought justice. (16)

Joe's observations reflect the complicated legal system discussed in chapters 2.3.2 and 2.3.3, and they include the clash of the different legal systems at work on Indian reservations: federal, state, and tribal. In addition, Joe's observation reveals some nuances that add another layer of meaning to the situation at the hospital. The fact that his father had to insist that all three police officers take a statement demonstrates that apparently it is unusual that all three police officers handle the same case. In addition, it demonstrates that cooperation between the different police branches in ambiguous cases like this one is rare. The jurisdictional maze might have already made justice for Geraldine impossible if Bazil had not insisted on all three departments being involved, since anyone of them could possibly be responsible for finding her attacker. What this indicates is that law should be more concerned with the people

involved, as Critical Legal Studies and the Mask of the Law suggested, and less concerned with only doing what the letter of the law says. Since if that was done in this case, none of the police officers might have shown up, as jurisdiction could not be established yet, leaving Geraldine in a legal limbo.

This legal limbo and the conflict and hardship that legal liminalities bring to the Indian community are foreshadowed at the very start of *The Round House*. Joe is working in the garden with his father and comments on the removal of plants:

It seemed increasingly important to me that each one of these invaders be removed down to the very tip of the root. . . Each little tree required its own singular strategy. It was almost impossible not to break off the plant before its roots could be drawn intact from their stubborn hiding place. (4)

This metaphor foreshadows the legal issues to come, in addition to echoing the legal injustices of the past. For Joe it is important that every ‘invader’ is removed to the root as each kind of interference will lead to problems. Not only that, but like every little tree every law has its own origins, use, and field of application. Especially if these laws are connected to decisions made through the Supreme Court, as described in chapter 2.3, and have set a precedent, laws that interfere in legal matters on the reservation can be incredibly hard to overturn. The impossibility of ridding the garden of the roots, thus ridding the Indian community of federal and state law, refers to the persistence of federal and state interference in legal matters on the reservation. Moreover, it comments on the seemingly helpless position of American Indians and the tribal governments to rid themselves of federal and state law. The laws do not help or protect Joe and his family, instead they destabilise his family’s foundation. The metaphor of laws as stubborn roots is repeated towards the end of the novel, strengthening the feeling of justice denied. The problems of legal liminalities were clear at the start, but even though terrible crimes have been committed there is no progress towards more tribal legal sovereignty.

The legal maze of identity and the importance of the race of the attacker can be seen through Joe’s thought process and the frequent presence of Linda Wishkob. Linda’s presence especially raises the issue of a duality of identity as she is Lark’s twin sister, but she has been raised Indian on the reservation. While biologically she is Caucasian, she has been adopted into the Indian community. She inherited the allotment land from her adoptive parents and has

been involved in spiritual tribal ceremonies. Linda is considered Indian by the community, as “Indians know other Indians without the need for a federal pedigree” (*Round* 36). Yet, Linda would not be acknowledged as Indian by the government standards of blood quantum discussed in chapters I.1 and 2.3.2. Therefore, Linda’s situation and identity are contrasted with Lark’s. Lark is born and raised as a white man off the reservation. He does, however, have Linda’s kidney through a transplantation, blurring the biological and cultural lines of whiteness and Indianness.

The evidence that leads to Lark being identified as Geraldine’s attacker is devastating because Bazil knows the chance of a white man being convicted for the rape of a Native woman on tribal land is minimal, again pointing to the hierarchies that are present in law. This inferior legal position is something Bazil wishes to fight by setting precedents that could ultimately lead to the right to prosecute all crimes that happen on the reservation. Until that dream becomes a reality, however, “the problem remains. Lark committed the crime. On what land? Was it tribal land? fee land? white property? state? [*sic*] We can't prosecute if we don't know which laws apply. If it happened anyplace else... Sure, but it happened here” (*Round* 231). This once again shows how this tangle of laws and the liminalities it creates are damaging to the Indian community, as well as being specific to Indian Country.

The concept of justice denied within legal liminalities is related to the question whether or not justice must then be achieved through different means. While chapter 3.1 discussed the moral and legal injustices that occur when justice is taken in one’s own hands, the eye for an eye way of achieving justice must also be taken into account here, even if it puts the characters in tough positions. Justice denied pushes characters into situations they do not want, but now see as the only possible way to reach a goal as the system that is in place has failed them, emphasising the flawed character of law on Indian reservations. As Joe says in *The Round House*, “if they could prosecute Linden Lark, I would not have to lie about the ammunition or practice to do what someone had to do” (306). In some way there has to be justice for his mother and when the law fails, Joe tries to find justice outside of it. Joe’s father is even more conflicted by it as he is a tribal judge and thus deeply immersed in all law that relates to the Indian reservation and Indian community. While he long believed himself to be no “hanging judge” (*Plague* 91) and that justice could be found within the system, Bazil is forced to redefine his moral standing as well as his trust in law:

Any judge knows there are many kinds of justice—for instance, ideal justice as opposed to the best-we-can-do justice, which is what we end up with in making so many of our decisions. . . . Lark's killing is a wrong thing which serves an ideal justice. It settles a legal enigma. It threads that unfair maze of land title law by which Lark could not be prosecuted. His death was the exit. (*Round 357*)

Bazil knows that justice is not always ideal, but when best-we-can-do justice has been replaced with no justice at all because of the legal liminalities, it opens up a new kind of space in which justice can only be found outside of law. Justice denied does not only show the dysfunctional character of law on Indian reservations, it almost always forces the people involved to find justice through other channels.

3.3 *Natural Justice*

Natural justice is not focused on revenge, as is the case with wild justice, or on trauma and last resorts, and the violence connected with this, as is the case with justice denied. Instead, natural justice is focused on healing and on letting go of the need for violence as a means to repair an injustice. According to John Braithwaite, natural justice or restorative justice “is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have afflicted the harm must be central to the process” (28). In natural justice healing is central to the achieving of justice. Braithwaite writes that natural justice “involves a shift from *passive responsibility* to which offenders are held by professionals for something they have done in the past to citizens taking *active responsibility* for making things right into the future” (28). Natural justice is what the Mask of the Law and Critical Legal Studies hope that law can be: a system to achieve justice that involves law, but puts human experience at the centre. Throughout Erdrich’s trilogy, natural justice occurs in two different forms, one of which is very close to Braithwaite’s definition of offender and victim working together to create a new balance for them and their community, the other is a natural justice through the passing of time and generations in which a balance will restore itself, often through religious practice.

The best example of the first kind of natural justice can be found in the novel *LaRose*. As discussed earlier, the Ojibwe man Landreaux Iron accidentally shoots and kills Dusty, the son of Nola and Peter Ravish who live off reservation. In an attempt to pay their dues to the

Ravish family, Landreaux and his wife decide to give them their youngest son LaRose; “our son will be your son now. . . It is the old way” (Erdrich 16). The involvement of both families and the active responsibility Landreaux and his wife Emmaline take in this case shows their dedication to natural justice. The novel offers natural justice as a way to follow tribal law and as an alternative for the violence that results from the clash of legal systems in the other two novels. However, it does not offer natural justice as an easy way out. Instead, following natural justice brings all characters involved possibly more internal struggles than the characters dealing with violence and injustice. This illustrates that all rules have downsides, and that even the use of an old tribal law cannot guarantee an immediate solution. Emmaline did not “want to give LaRose to them. . . [but] it seemed the only way” for her to make repairs for her husband’s actions and she struggles with this decision (36). Landreaux is mentally wasting away and even welcomes that Peter changes his mind and does decide to kill him. Landreaux is almost thankful that his mental suffering over the death of Dusty and the partial loss of his son is over when he says that “this will all be over soon. Peter is a good shot” (327). Nonetheless, even with the struggles all characters experience, following the old law of peaceful restoration avoids further violence as well as “a whole revenge plot going between our families” (131). Maggie is convinced that revenge is never going to happen between the two families because “we guys all love LaRose” (131).

While this instance of natural justice does not connect to the struggle of legal liminalities as much as was the case with justice denied as discussed above, land and law are still important in instances of natural justice. The location of where Dusty died, for instance, is deemed important. The first page of the *LaRose* states that “the reservation boundary invisibly bisected a stand of deep brush” (3), referring to the checkerboard pattern that characterises most reservation. This statement illustrates that while the difference between different kinds of land might be hard to see, it is important because location can play a crucial role, especially in a criminal case. The fact that the tribal police had jurisdiction on the land where Dusty died can make all the difference, especially when Romeo believes he uncovers information that would turn the accident into a negligent homicide. The definite jurisdiction of the tribal police creates more possibilities for Landreaux to make amends for his actions according to tribal law. The conflict between different kinds of law in *LaRose* is also self-inflicted rather than imposed. All characters endure hard moments trying to follow the old laws rather than letting the incident slide by as there were no official legal repercussions. This

then creates a mental and emotional conflict between traditional healing and the American legal system which is expressed by multiple characters. Nola, for example, has mostly denied her Indian identity and resents that traditional law has not only forced its way into her life, but gave her half-sister something to hold over her: “what a big time traditional person to give your son away to a white man and almost white sister” (234). Conflicts between different systems of achieving justice are thus still very much present.

A similar case in which the tribal laws conflict with the federal laws appears when Emmaline talks about her decision to give away LaRose to Nola and Peter. She is very troubled by her decision and takes her troubles to Father Travis who responds that she “can retrieve LaRose at any time. Just say you want him back. Peter and Nola have to listen. If not, you can go to social services” (37). Father Travis’ statement shows that he upholds federal law over tribal law, as well as that there is a legal hierarchy that is present for everyone on the reservation. While the Iron and Ravish families choose to follow tribal law in this case, federal law and social services can overrule tribal law at any time. Emmaline, who is aware of this hierarchy, responds to Father Travis with the phrase “rez omerta” (37), meaning a code of silence on the reservation. This shows Emmaline’s belief that while tribal law might not get everything right, it is preferable to involving federal or state institutions in Indian matters. One system, even though it might not be perfect, is better than the multitude of legal liminalities that accompany federal and state law and have a negative effect on the American Indian community.

While old tribal laws can create possibilities for more violent forms of justice, such as the defeat of the Wiindigoo or the Liver Eater in *The Round House*, most forms of natural justice in Erdrich’s trilogy are connected to tribal laws focused on healing such as the one described earlier. Another example is that of Bazil Coutts using natural justice in his court proceedings to bring an Indian boy, Corwin Peace, back into the community in *The Plague of Doves*. Rather than rigidly following the system set in place to deal with theft, Bazil lets himself be inspired by his own and Corwin’s history, placing human experience at the centre of the practice of law. Bazil decides to “take advantage of [his] prerogative to use tribally based traditions in sentencing to set a precedent” (*Plague* 209). The use of tribally based tradition in law means that instead of paying fines or going to prison, Corwin will learn to play the fiddle from the man he stole it from. This will bring him back into the community, in

addition to teaching him to respect his teacher and the instrument. Again, healing rather than punishment is key in this situation.

Healing is key in moments when characters point out that time heals all wounds and justice will be served eventually. This often happens either through a generational justice or through the faith in a God who will eventually set things right. In *The Plague of Doves*, Basil Coutts relates his sentencing of Corwin as an apprentice fiddle player to a historical justice that has worked its way down generations. One of Corwin's ancestors had saved one of Basil's ancestors and Basil believes that "perhaps as they had saved my grandfather, I was meant to rescue their descendant. These sort of complications are simply part of tribal justice" (209). Listening to the past to learn other ways of justice is an important part of Basil's way of practicing law. However, he is not the only one who is inspired by the past. As in many American Indian works, storytelling plays a part in Erdrich's trilogy. The stories that are set in the past, often told by resident storyteller Mooshum, inform the present and teach listeners about, amongst others, justice and mercy. One of his stories is about Nanapush and the Wiindigoo that had claimed his mother. Eventually the story teaches that "wiindigoo justice must be pursued with great care. A place should be built so that people could do things in a good way" (*Round* 220), rather than immediately turn to violence.

The religious element plays a role in restorative justice, but like all the other elements of American Indian life, as described in chapter 1.2, it is rife with liminalities. Few characters on the reservation are only interested in either traditional Indian rituals or the Catholic faith. Most characters are involved with both. *LaRose*'s Landreaux, for instance, is a "devout Catholic who also follows traditional ways" (3). In *The Plague of Doves* Clemence has pictures in her kitchen of John F. Kennedy, Pope John XXIII, and Louis Riel; a Catholic American president, the leader of the Catholic church, and the leader of the Métis people respectively. Both religions influence the characters in the novels in regards to achieving justice, but while traditional Indian religion more often offers restorative actions, as discussed previously, Catholicism offers the passing of time. In *The Round House* Father Travis talks to Joe before the murder of Lark and tells him that "so it is that every evil, whether moral or material, results in good" (297). All events happening after a crime will then eventually lead to something good according to Father Travis. Joe does not follow his advice and takes matters into his own hands. In *LaRose* Father Travis gives other boys similar advice. He says that they "should let things play out" (314). According to this doctrine, violence and revenge

should not be necessary for justice to occur and it would hurt the one finding justice in the meantime by being forced to face legal consequences. Healing, whether through reparative actions or through the passage of time, is thus central to the finding of natural justice.

3.4 Questions of Justice

The discussion of wild justice, justice denied, and natural justice has shown how justice works on the reservation and how legal liminalities in the search for justice have impacted the lives of the characters in Louise Erdrich's *The Plague of Doves*, *The Round House*, and *LaRose*. Two questions still need to be discussed to fully capture the characters' idea of justice: is there a conflict between justice and revenge? And when an ideal justice is achieved, if it can be achieved at all? Some of this has been touched upon already in the previous sections, but a further analysis will lead to a more comprehensive idea of justice in the liminal legal zone of the Indian reservation and it will connect the different kinds of justice discussed previously.

The theme of justice v. revenge runs through all three novels, but characters differ in their identification of which acts constitute as justice and which acts as revenge. The fact that Erdrich's trilogy spans decades but involves many of the same characters means that sometimes development is visible—for instance, in the character Basil who initially thought himself to be no hanging judge, but changed his perceptions of justice and revenge in order to have his morals fit the troublesome situation he found himself in. This same mental change can be seen in his son, Joe. Joe has always been an honest boy and only when he tasks himself with the murder of Lark, his morals shift in order to ease his conscience. Joe is very much aware that his future actions are not morally acceptable—"I'm going to call this like it is. Murder, for justice maybe. Murder just the same" (*Round* 328)—and for this reason he does not want to involve his friend Cappy. The murder of Lark would not be a justice that restores a balance, instead it would bring more violence. Knowing this, Joe has shifted the murder from revenge to justice in order to make it morally acceptable: "I realized that my deceits were of no consequence as I was dedicated to a purpose which I'd named in my mind not vengeance but justice" (304). As long as something is just there will be no consequences, and this has to be just because the justice system in place has, according to Joe, is flawed and has left him with no other option—connecting justice denied and wild justice.

Another character that deals with conflicts between justice and revenge is Nola Ravish. While the old laws that made Landreaux and Emmaline give their son LaRose to Nola and Peter are working towards justice and a new balance, Nola is not satisfied. She believes that this cannot be justice because, although it was an accident, Dusty is still dead and Landreaux has not been sufficiently punished. While LaRose is Nola's reason to stay alive, she keeps saying and imagining that to get even, someone should kill Landreaux. Nola says that "maybe she would get the release she needed if she killed Landreaux instead of herself. Sure, she might go to jail. Maybe for a long time even. She'd plead guilty, but who would not understand?" (*LaRose* 112). If a murder can seem so right, a life for a life after the death of a child, it cannot be revenge and it has to be an act of justice. So while the process of reaching natural justice is still ongoing, Nola is tempted by the fast results wild justice could bring. While she does not act on those temptations in the end, the question of what would result in justice for Dusty's death has multiple answers for her. Healing through the presence of LaRose and vengeance through the death of Landreaux are both justice for Nola.

What is justice and what is revenge seems evident to some of the characters, while it remains harder to determine for some of the other characters as some even change their minds along the way to suit their purpose. However, determining when justice is achieved might be even harder. All attempts to achieve justice through wild justice or revenge, or by going outside the law because of justice denied do not seem to lead to a new balance. Legal liminalities continue to exist and create hierarchies as well as hiding the consequences of law for the people involved. Bazil notes that the act of murder created a situation in which "there was no justice for your mother, his victim, or for Mayla, and yet justice exists" (*Round* 357). The duality means it is hard to determine when or if justice is actually achieved without a court of law determining that it did. The major acts of wild justice and those that follow justice denied are always followed by negative side effects. In the case of Joe's murder of Lark, while the community accepts it as justice, Joe suffers the consequences. He has terrible nightmares and his and Cappy's plan to escape for a bit eventually leads to the death of Cappy in a car accident. Joe's continued struggle is internal, "I knew that they knew everything. The sentence was to endure" (371). Justice might not be achieved after all because there is no peaceful balance.

The only instance in the three novels in which justice has been achieved is just before and during Hollis' party in *LaRose*. Peter gave in to the temptation to solve his pain by wild

justice, but was unable to do so because his gun's bullets had been removed by LaRose. Nola tried to commit suicide, but was stopped by Maggie. Landreaux wanted to die, but kept on living. They were unable to break the fragile balance that had been in place through the use of the old law of restorative justice. Nola, Peter, and Landreaux are all together at Hollis' party and while there is some awkwardness between some of the characters, the sense of acceptance and peace reigns. The injustice of the death of Dusty no longer stands between them. The adults seem to have accepted what the children had already realised halfway through: Dusty's death has connected the two families and made them one with LaRose as their connecting factor. Moreover, the body of the first LaRose will be returned to the family indicating that it might be possible that time can heal all wounds. The only way in which balance can be found again is when the balance was not disturbed by legal injustices imposed on the community in the first place.

Justice has, thus, been represented in three different ways in *The Plague of Doves*, *The Round House*, and *LaRose*: as wild justice, justice denied, and natural justice. Characters from the novels have trouble reaching either of the three manifestations of justice, because of legal liminalities present on the reservation. The liminalities cause different kinds of justice to overlap and create conflict and confusion between what is justice and what is revenge. The only time that balance can be restored to the community, and in which justice can be said to be achieved without a continuation of violence, is when legal liminalities do not exist and only one legal system is used. *LaRose* is the only novel in the trilogy that offers this idealised image. Commentary on the representations of justice and liminality, in terms of engaged literature, as well as the meaning and use of an idealised image, will be further discussed in chapter four.

Chapter 4: Erdrich and Engaged Literature

In her book *Native Literature in Canada: From the Oral Tradition to the Present* Penny Petrone argues that the literature of “native peoples has always been quintessentially political, addressing their persecutions and betrayals and summoning their resources for resistance. The political dimension is an inherent part of their writing because it is an inherent part of their lives” (182). Petrone further argues that the presentation of native lives offers political commentary on the past, current, and future social situation of the American Indian community (182). Following Petrone’s argument, socially committed writing is inherent to American Indian literature. Moreover, social or political engagement does not have to be front and centre for a novel to be considered socially or politically engaged. Any literature that discusses and describes, in this case, American Indian life and does so with social and political connotations can be seen as a literature of social engagement. When an author writes novels that focus on where a problematic situation exists and what can and should be done to remedy the problem—so beyond giving a literary reflection of the issues—that can be considered activist literature as well.

While in her interviews Louise Erdrich has not explicitly spoken about the underlying political motives in her writing, her novels do have many activist qualities. Erdrich’s social and political engagement is evident through the subtle but thought-provoking characters and situations she creates in her fiction. At times, her subtlety makes room for activist moments in which she makes the reader aware of hard and troublesome facts in need of remedying or correction. Following a short discussion of engaged literature, this chapter will place Erdrich’s justice trilogy in a context of social protest literature, connect social protest literature to the socially engaged theories of law discussed in chapter two, and analyse some activist elements in the three novels. This will demonstrate how Erdrich ties her fictional world to past and contemporary social issues, as well as how the problem of legal liminalities in Indian reservations should be noticed and dealt with beyond the scope of a novel or literary analysis.

4.1 Engaged Literature

Raymond Williams wrote about literature *in* society rather than literature *and* society as a way to suggest their intertwined character and how there is a bidirectional influence between the two (24). Williams wrote that “you will find that in most examinations of the relationship of literature to society. . . it is supposed that the society exists before the literature is written. . . This organization ignores the reality which is that in any given phase of common experience writers are sharing the life of their society” (24-5). Literature, thus, is closely linked to the society in and for which it is created and serves as commentator on and active agent in that society rather than a mere reflection of it. By no means can literature be seen as separate from society.

According to Jean-Paul Sartre, the goal and function of a writer is “to deliver a message to his readers” (41). This writer would then be called a committed writer. Williams and Sartre agree that literature is not an autonomous work of art that fits in the *l’art pour l’art* movement that saw art only as an autonomous object. In addition, Charles Glicksberg wrote that “literature does not operate in a vacuum,” that without the interaction with society literature would not exist (1). Glicksberg even implies that literature's main characteristic is that it is a social act as well as a social product (1). Moreover, as Romy Clark and Roz Ivanič stated in *The Politics of Writing*, “writing. . . is tightly woven into the fabric of socio-political action and the shaping of ideologies and social structures” (57). Therefore, literature must be seen as an art form that is deeply influenced by society, and that at the same time has a strong influence on society. While all these theories discuss how literature is intrinsically tied to society and can play a role in social change, this chapter will mostly use Sartre’s theories of the committed writer. Analysing the engaged elements of novels will give an inclination of the message the author will portray, but it will not be able to conclude anything definite about readers’ reception and possible social change resulting from the novels.

Besides being an influence on society in general, the activist message must reach its readers through engaged literature. This kind of activist literature can be seen as “an extension of the revealing power of consciousness,” the committed writer's thoughts and motivations on paper, and it is the task of the committed writer to transport this consciousness to his or her readers (Goldthorpe 141). Sartre wrote that words are referential and directly transfer meaning. Therefore, it is not merely the message of the text that has an activist character, but activism can be found within the linguistic and literary character of the text (Goldthorpe 141).

Through the message and the character of the text, “the purpose of literature . . . is to arouse emotions or reactions which can then be deflected into channels of socio-political reform” (Glicksberg 8). In other words, the writer invites the reader to critically assess the situation presented in the novel as well as to think about his or her own responsibility to bring about change. Important to note is that activism actively incites readers to notice social issues and includes a clear call for social change that has been designed by the author. This social change can appear in a more toned down form of activist literature that Glicksberg calls the “literature of social protest” (76). The literature of social protest would describe those novels that are “dedicated to a humanitarian cause, without being revolutionary in aim or propagandistic in content” (Glicksberg 76). The reader is not told what to think or what to do with the information given in the novel. Instead, it incites readers to relate the knowledge gained from the fictional world to reality and come to his or her own conclusions. In addition to Sartre’s theories on the committed writer, Glicksberg’s concept of literature as social protest will form the starting point of the analysis of Erdrich’s engaged elements.

While Sartre’s theories of Engaged Literature stem from the late 1940s, these theories and the need to bring change through literature are still very much relevant when discussing literature today. American Indian literature especially shows this literary engagement when writing about the issues in the American Indian community. Indian literary nationalists have even united “literature and nation building” and ground American Indian literature “in history and politics, allying it in particular with broader struggles for autonomy” (Huhndorf, “Picture” 364). American Indian literature aims to be literature of social protest in that it offers new perspectives, demythologises, and calls for social change (Seeds and Smelcer 2002; Huhndorf, “Literature” 2005; Eigenbrod 2010). In a way, Engaged Literature and Erdrich’s use of it, are to literature what Critical Legal Studies and the Mask of the Law have been to law: a socially engaged method to make readers and users of law aware of social issues and offer ideas of change.

While literature can thus have an influence upon society, especially when written by a committed writer, this does not mean that the activist message is overtly present or leaps from the page. Erdrich’s novels can be considered as Glicksberg’s literature of social protest, because the activist elements in them make readers aware of social issues, but do not lead the fight against them. She writes literature of social protest that does not tell her readers what is wrong, what is right, or what they should believe. Instead, through the subtle ways in which

she presents her characters and their situations, Erdrich plants seeds of doubt about the rightness and causes of issues in the American Indian community as well as the larger North American culture and—with sometimes firm nudges—attempts to raise her readers' awareness of flaws and deficiencies that need to be corrected.

4.2 Erdrich's Activism

Louise Erdrich has commented that “any human story is a political story” (qtd. in Chakvin and Feyl Chakvin 238), and that that is the way she approaches social protest in her novels, through the representation of her characters. However, in the past, Erdrich has been criticized, also by other Native American writers, for the lack of political commitment in her novels and poetry. Leslie Marmon Silko, another prominent Native writer, was especially harsh in her criticism of Erdrich's apparent lack of political engagement in her review of Erdrich's novel *The Beet Queen* (1986). Silko wrote that the self-referential writing she found in *The Beet Queen* has “an ethereal clarity and shimmering beauty because no history or politics intrudes to muddy the well of pure necessity contained within language itself” (179). Silko's comments imply that she believes Erdrich's prose to be well-written and poetic, but that it is of a lesser value. Silko attributes this lesser value to her belief that writing poetic prose is much more difficult if it includes social and political engagement. In Silko's opinion Erdrich fails to include this social and political engagement and, thus, takes an easy road to a well-written novel. Silko even goes as far as stating that *The Beet Queen* “belongs on the shelf next to the latest report from the United States Civil Rights Commission, which says black men have made tremendous gains in employment and salary” (184), as it displays a similar inaccuracy about reality and does not offer social engagement to counter the injustice of daily Indian life.

Much of the criticism aimed at Erdrich's novels has been for her “friendly negotiations of the boundaries between Native American and Euroamerican cultures” (Rowe 204). But while this might seem true at first glance, upon closer inspection it becomes clear that the social commentary can be found within the characters. In the ambiguity of the characters' identities in *The Beet Queen*, for instance, or in the personal and cultural struggles of Nanapush and Pauline who have dealt with assimilation policies in *Tracks* (1988) completely differently. While the social commentary within the characters could be seen as engaged

literature, it could not have been described as activist. This subtlety of social engagement present in Erdrich's earlier works, however, has been largely exchanged for a more overt social and political activist commentary focused on boundaries in *The Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016). The representations of the boundary between Indian and non-Indian identity, between different kinds of law, and between history and the present in Erdrich's latest works all offer a commentary on the social reality of the American Indian community as well as debunking myths and stereotypes.

The Round House, the second novel in the justice trilogy, most obviously serves the goal of social protest. The helplessness and confusion experienced by especially the characters Joe, Geraldine, and Bazil act as beacons to highlight a problem present in the fictional reservation as well as in reality. Sexual assault on Native women and the legal loopholes that give assaulters the opportunity to commit crimes and get away with them are acted out on a small scale in *The Round House*. Even so, the impact of this event on a single family has a major impact in the community. The reader is taken on a legal journey by thirteen-year-old Joe and experiences the injustice that is unique to the Indian reservations. Already, the social and political aims are much closer to the surface in this novel than in any of Erdrich's previous works by making the issue central to the novel rather than embed it in a subplot or a (minor) character. Using characters to call attention to the consequences of legal liminalities is similar to one of the main points of *The Mask of the Law*, it gives legal issues a human face to make readers aware of the flaws of law. Engaged Literature is able to place legal consequences at the centre of a community, and thus, as suggested by *The Mask of the Law*, break through the impersonal perception of law. Through the centrality of human experience of law in fiction, Erdrich is able to include activist elements as they continuously focus on the injustice of law. Yet, the importance of this issue becomes even more clear in *The Round House*'s afterword.

Most of Erdrich's books do not have an afterword and instead have an acknowledgement or a brief word of thanks. The presence of an afterword already reveals that the author has additional contextual and factual information and a message that she wants to pass on to her readers which was not, or not in similar words, present in the novel itself:

This book is set in 1988, but the tangle of laws that hinder prosecution of rape cases on many reservations still exists. 'Maze of Injustice,' a 2009 report by Amnesty International, included the following statistics: 1 in 3 Native women will be raped in

her lifetime (and that figure is certainly higher as Native women often do not report rape); 86 percent of rapes and sexual assaults upon Native women are perpetrated by non-Native men; few are prosecuted. (*Round 372*)

Statements like this one prove Erdrich's commitment to changing or at least calling attention to the major issue of sexual assault and rape in the Indian community and the role that flawed legal systems play in this. It aims to make readers realise that this problem is not going away and, while there are initiatives that will help battle the problem, much more is needed to combat the injustice of the situation. An afterword such as this one shows that Erdrich takes her role as a committed writer seriously as she offers a taste of reality in her fiction and harsh factual reality in her afterword to make readers aware of the widespread existence of the issue.

In *The Plague of Doves* and in *LaRose* the activism is not as obviously at the centre of the novel compared to *The Round House*. While *The Round House* was intensely focused on assault and the flaws of law, *The Plague of Doves* offers social engagement through its characters and how they cope with legal injustice. Quite similar to Erdrich's novel *Tracks*, the characters of *Plague of Doves* are forced to live with the consequences of past and present injustices in the Indian community. For Nanapush and Pauline this was assimilation, for Mooshum, Evelina, Bazil, Marn, Cordelia, and others it is the wild justice lynching of the innocent Indian men. But contrary to *Tracks*, the injustices in *The Plague of Doves* are intrinsically tied to the plot and this injustice trickles down through generations and confirms that the borders and boundaries—the liminal spaces—between races, physical places, and identities can be vile and dangerous places. These borders and their representations in the novels echo Critical Legal Studies' criticism of hierarchies. By increasing the presence of border areas, and people who inhabit those spaces, and connecting those to crime and its legal consequences in her fiction, Erdrich is able to present hierarchy and the unjust situations they can create.

The pervasiveness of injustice in each character and situation of *The Plague of Doves* make it activist rather than just socially engaged. The emphasis on borders and boundaries suggests that they form a serious issue as well as indicating a hierarchy and an us v. them mentality that disadvantages the Indian community. This is coupled with a powerlessness similar to the one that can be seen in *The Round House*, especially through the background story of Louis Riel, the Métis leader who fought the government for rights and lost. The social

protest in this novel is definitely linked to the past. It advocates learning from the past and the injustices that occurred then in order to prevent them from happening in the present.

Furthermore, it is tied to the belief that the Indian community will be in a better position to be able to counter injustice through education in both Anglo and Ojibwe culture—Evelina, Joseph, and Bazil all have the opportunity to go to university but are still very much connected to their reservation lives—and through the coveting of and learning from history.

LaRose's engaged elements can be found mostly in characters and situations that defy stereotypes about the Indian community. The novel has a wide range of characters who identify themselves on a spectrum of Indianness rather than being either Indian or non-Indian and includes a multitude of non-Indian reactions to Indian identity and culture. The character Maggie, for instance, shifts from having almost no ties with her Indian heritage to being immersed in it and accepting that side of herself through her relationship with the Iron family. The non-Indian character Peter provides commentary to the use of tribal law and Indian culture as he finds himself deeply involved in it while he had not been involved before Dusty's death. Furthermore, *LaRose* counters stereotypical notions of the noble savage and the vanishing Indian and draws the reader into a society that has adjusted to modern life and at the same time has remained unique. The Iron family—especially the children Snow, Josette, Coochy, and Hollis—embody this through their seamless mix of Catholic and traditional religion, their balanced native and assimilated identity, and their effortless fusion of culture, advocating for a society that accepts cultural pluralism and cherishes dual identity. Similar to how the *Mask of the Law* demythologises law by finding the human perspective, *LaRose* demythologises what it means to be Indian by showing its variety and actively countering stereotypes.

Although the younger generations are able to find this balance in the border areas of religion, identity, race, and culture, the adults in *LaRose* experience more conflict, which is represented in Emmaline and Nola. As half-sisters they present the opposing ends of the spectrum: Emmaline identifies as 100 percent Indian while Nola feels almost completely white. Yet, following old tribal laws is Emmaline's undoing while it acts as Nola's salvation, displaying the uneasy balance between identity boundaries for the adults. However, even though the adults struggle with identity, religion, and other cultural and legal boundaries, a new kind of balance occurs in the end. Most importantly, *LaRose* features restored balance after injustice through the use of old traditional tribal laws and without any intrusion of

federal or state law. Even though fiction might idealise this successful balance, it can be set as a goal that can be pursued and achieved in the non-fictional world and thus incite action.

While *The Round House* advocates very strongly for tribal sovereignty, the Indian community in *LaRose* reaches a more peaceful new status quo than in any other of Erdrich's works.

Moreover, none of Erdrich's other works feature such an effective call for more tribal sovereignty, as the Indian community is successfully able to deal with crime, conflict, punishment, and reparation, without any outside legal intrusions.

By highlighting issues and suggesting possible—if still fictional—ways of change Louise Erdrich is able to link her fiction to reality. Using similar methods in literature that Critical Legal Studies and the Mask of the Law apply to law, Erdrich demythologises legal issues, reveals the consequences of legal liminalities on an Indian community, and actively promotes awareness and change. Her writings show how the world in which Erdrich was raised has had an enormous influence on her style of writing, but her novels also reflect her hope that her stories can inspire change in a community that has been victim to injustice for generations. And while there is awareness for the complicated legal situations on reservations and injustice specific to the American Indian community, such as the Missing and Murdered Aboriginal Women's movement in Canada and the reports on Violence against American Indian and Alaskan Native Women in the U.S., the issue needs to be addressed more and more widely. Through books like Erdrich's justice trilogy, the issues reach a wider audience and while that might not immediately change the situation, Erdrich at least hopes that "this particular issue becomes more widely understood" (qtd. in Brown).

Conclusion

In most societies the law determines what is considered justice. What is right and what is wrong is described in laws and what happens to those that defy the existing laws is supposed to be clear and most of all equal. However, when liminalities within different societies and different laws cause a breakdown of the legal system, justice once again becomes a concept that is open to interpretation. In this thesis the concept of justice has been examined by studying the liminalities of law and identity in three novels by Louise Erdrich: *The Plague of Doves* (2008), *The Round House* (2012), and *LaRose* (2016). The liminalities in identity and law are present in real life as well as in academic discourse and they are represented in detail in Erdrich's fiction. Moreover, while the novels might be set in a fictional Indian reservation, the characters are lifelike, their actions relatable, and their struggles very much tied to issues in the real world. Justice been represented in the novels as a concept as complex and varied as the characters pursuing it. Furthermore, it has also been shown to be a challenging and an often unreachable goal for people living in a zone of liminality.

5.1 Liminalities

P. Jane Hafen has commented that “Indian written expression rests at the center of a series of seeming contradictions” as Indian writers “exist in complex relation to multiple traditions” (234). In this liminal situation of contradictions and ambivalences, Louise Erdrich can be found as a writer, influenced by her European and Indian background, the Indian cultural traditions, Catholic religion, and an American university education. The liminalities present in Erdrich's personal life are reflected in the novels in various ways: the central position of many Métis and part-Indian part-European or American characters such as Mooshum (*The Plague of Doves*; *The Round House*), the prevalent conflict and the symbiosis of traditional Indian and Catholic religion for characters like Landreaux (*LaRose*), and the presence of the duality of Indian cultural lessons and the American education system for Evelina (*The Plague of Doves*). But most explicitly these liminalities have been present in regards to the criminal legal system.

Legal theories Critical Legal Studies and The Mask of the Law have argued that law should be more considerate of the people involved, that it should be aware of the hierarchies

that can be created through law, and that law should be placed in its larger historical and social context. This is also how Erdrich's novels approach the criminal justice system. The novels emphasise the historical background and the two legal theories inform the characters and their search for justice when using the legal system. Legal liminalities, especially those that create dangerous situations, are made visible because of the human presence in the process: the injustice of the system in *The Round House*, for instance, becomes visible through Geraldine, Bazil, and Joe Coutts. Moreover, the struggle and hierarchy between Indians and non-Indians is revealed through the Coutts' powerlessness in the face of legal liminalities. This all calls for a social change and for more consideration of people in the legal process when making and adapting existing criminal laws. Especially in *The Round House*, the social and historical context of law, as well as how these legal liminalities came to be, are explained in detail. This is done by Erdrich not only to place the existing laws in context, but to emphasise that legal injustice has a history that precedes the actual instances of injustice in the novel. This paves the way for understanding characters' searches for justice that might go against the law, but most importantly it stresses that legal liminalities have been present for a long time and that American Indians today still suffer the consequences.

5.2 Justice

In *The Plague of Doves*, *The Round House*, and *LaRose* justice is represented in three different forms: wild justice, justice denied, and natural justice. Wild justice can be described as the violent search for justice outside of the known system of law, which happens when people take the law into their own hands. Wild justice occurs when characters consider themselves to be judge, jury, and executioner, and is a violent form of justice that is often related to revenge. Justice denied is represented in situations in which characters fail to get justice because of the legal liminalities present in law. Justice denied has a strong historical dimension as injustices in the present echo those of the past, and every new injustice causes greater distrust in the current legal system. Natural justice is a justice that is focused on reparation. Healing, whether through tribal laws, religion, or through the passage of time, is key to getting justice, and justice is ultimately achieved when a new balance is found within the community. Through the ways in which these forms of justice are represented and overlap in Erdrich's trilogy, justice can be viewed as a liminal concept.

From an analysis of many of the characters' motivations and actions, it becomes clear that justice as a result of the process of law is an unreachable goal for the American Indians in the novels. This leads many of them to believe that justice can only be found through tribal law or through violence and revenge, while at the same time they are aware that justice cannot be completely achieved through those channels. Justice cannot always be characterised as simply one kind of justice and rather combines two or more kinds of justice. For instance, a character's difficulty in following tribal laws in the process of healing which ultimately leads to a violent act combines natural justice and wild justice. Likewise, the distrust in the authorities created by the legal system inability to provide justice leads to characters taking the law into their own hands, combining justice denied and wild justice. In this way, as justice is rarely fully achieved and is approached from multiple angles, justice could be seen as a liminal concept: a concept that does not have the same meaning in the zone of liminality as it does outside of that zone because the systems at work are different too.

This liminal concept of justice is at the heart of many questions characters have about whether their actions could be seen as justice or as vengeance. Through the different systems at work in a zone of liminality, none of the systems are able to do an adequate job of protecting victims and guiding them towards justice. The mazes in the law have caused a situation in which federal law does not protect Indian victims as much as it does those of other ethnicities. This is shown through instances in which state law is ignored by white perpetrators, and in which tribal law is able to take only very limited actions to protect the Indian community. Throughout all three novels characters realise that their goal of achieving justice through the instated system of law is unreachable. In order for the characters to decide what equals as justice in the complicated liminal situations in which they find themselves, they are forced to alter their moral standings on when something can be defined as justice or vengeance. By blurring the boundaries between who is able to achieve justice, the line between justice and vengeance also becomes increasingly vague.

Finally, the third book in the trilogy *LaRose* reveals the one way in which justice can be achieved through the process of law. The resolution of Dusty's death is not tainted by the influence of legal liminalities as there are no clashes of legal systems when only tribal law is used. Moreover, the resolution of Dusty's death illustrates how tribal law is able to deal with justice, punishment, and reparation without any state or federal interference. In fact, it is because of the lack of interference and the sovereign status tribal law holds that balance can

be fully restored. There is no deadly violence, no revenge killings, and no need to go outside the law because legal liminalities have created an unjust situation. Instead, tribal law and tribal sovereignty bring balance. In almost every other search for justice in the three novels, legal liminalities are the cause of the imbalance after a crime had been committed and prevent justice from being achieved through a constructed system. While the idealisation of tribal law might in this instance sidestep problems of the tribal legal system, it does show that there can be an alternative to the interferences of state and federal law. Furthermore, it actively stimulates readers to think about what tribal law could achieve if there would be more tribal sovereignty.

All three novels offer representations of justice as wild justice, justice denied, and natural justice, as well as the conflict between justice and vengeance and the difference between balance and imbalance after a search for justice. However, while *The Round House* and *The Plague of Doves* present the injustice of the legal system when it comes to Indian reservations, *LaRose* offers an alternative, namely a diverse community that will be able to live together under one law: a tribal law that restores justice and brings back balance rather than cause more violence. When analysing Louise Erdrich's trilogy as literature of social protest, tribal law and tribal sovereignty are put forward as an alternative to the current system of law which is rife with legal liminalities and at the heart of so much injustice.

5.3 *Limitations and suggestions for further research*

Unfortunately, some limitations were encountered due to the scope of this thesis. This is why, while there is some attention for American Indian identity, this has only been extensively discussed in regards to the connection between law and identity. Similarly, a more complex discussion of the presence and consequences of adoption and childcare has not been presented, and the Indian Child Welfare Act has only been used as an example of the influence of the federal state on Indian identity and the extent to which tribal governments have sovereignty. The liminalities created by legal and identity conflicts on Indian reservations are issues that deserve more research through a wider range of cases studies, and these liminalities and their effects are very well suited to be researched in art and literature. This is partly because the zones of liminality that are present on reservations and in American Indian life in general have led to moments of creativity, as was suggested in chapter 1. A

broad scope could encompass a more comprehensive view of justice and legal conflicts in Indian country, as well as representations thereof on non-fictional reservations.

An example of avenues for further research on the overlap between literature, law, and justice could involve other Native novels in a similar examination of achieving justice and its consequences such as Linda Hogan's *Power* (1999). The scope of research could be broadened by involving other forms of art as well that comment on the legal inequalities when dealing with crime. Moreover, instead of focusing on criminal law which this thesis has done, a study could be done with similar legal liminalities within adoption law. It might be interesting to analyse adoptions in the tribe—non-Indian people adopted by American Indian families—and adoptions out of the tribe—Indian children adopted by white families—and the influence on American Indian identity. This could be analysed in, for instance, Erdrich's *The Round House* (2012) as well as in Barbara Kingsolver's *The Bean Trees* (1988) and its sequel *Pigs in Heaven* (1993). Besides legal liminalities, Indian liminal identity could be further explored in Erdrich's trilogy, especially regarding the characters Linda Wishkob, Evelina, and Bazil who each deal with their own dual identities. This could be done for a larger corpus of Native American works, as well as with a focus on American Indian children and modernization by analysing characters of, for instance, Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian* (2008). Furthermore, by transferring the issue of (legal) boundaries and liminalities to an urban rather than a reservation context by looking at novels such as Louise Erdrich's *The Antelope's Wife* (1998) legal liminalities could be analysed with an emphasis on identity rather than location.

5.4 Conclusion

Looking at the complete picture that *The Plague of Doves*, *The Round House*, and *LaRose* present, there is definitely something that can be learned about justice in Indian country. As Mooshum said in *The Plague of Doves*, “not too many people have the privilege of seeing right before their eyes there is no justice here on eart [*sic*]” (55). It is true that many of Erdrich's readers are not aware of the complicated legal mazes present in regards to American Indians and their lands, nor will they know about the struggles that are present when pursuing justice. The search for justice has been represented in different ways in the trilogy, as have the consequences of this search, and it is through these representations in Erdrich's justice trilogy that issues of law and liminality have been given a human side through the experiences of

individuals and communities. It seems that what Critical Legal Studies and *The Mask of the Law* have done for the human aspect of law in academic debate, literature can do for issues in more social and non-academic discourse. Through the relatable characters in Erdrich's novels, all readers are able to experience the legal struggles American Indians face. Erdrich's part in social justice is achieved when readers realise that justice comes in different forms for American Indians on the reservations, most of which come at a price, and that the liminalities in the legal systems that are responsible for this injustice need to change. Moreover, Erdrich's justice trilogy has challenged literary, cultural, and legal boundaries and made readers aware of what it means to be Indian in a modern day America.

Appendix: Synopses of the Novels

The Plague of Doves (2008)

The novel is set in North Dakota on an Ojibwe reservation and the bordering town Pluto. While the novel spans nearly a century and has multiple first-person narrators, everyone is connected. The novel opens with the murder of almost an entire family in Pluto, only the baby is left alive, and this event and its consequences ties everything together.

Mooshum is a Métis man who is present throughout the entire book. In the historical chapters he is a teenager and in the chapters in the present he is a father and a grandfather. As a teenager he runs away from the reservation with Junesse, who later becomes his wife. They eventually run into Mustache Maud, a non-Indian female rancher, who takes them to her farm and lets them live with her. When a woman is murdered on a nearby farm, other ranchers go to Maude's farm to collect Mooshum, whom they assume is responsible because he is Indian, and hang him. Maude prevents the hanging and removes the men from her property. Afterwards, she sends Mooshum and Junesse back to the reservation.

Later, once Mooshum has been living on the reservation for a while, he and his friend Cuthbert Peace encounter two other Indian men on a walk, Assignak and Holy Peace. The four of them come to the home of the family that had been murdered. Cuthbert insists on helping the animals and the baby, but Assignak insists that if they enter the house, they will be blamed for the murders. Later on in the novel, it is revealed that Mooshum told Eugene Wildstrand that they were at the house when he was drunk. This confession led to the formation of a mob of non-Indian townsmen of Pluto who chase and catch the four Indian men to lynch them in revenge for the family's murder. Mooshum is spared, but the other three men are murdered.

The story of the lynching is told by Mooshum to his grandchildren Joseph and Evelina Harp, the children of his daughter Clemence. While Joseph only appears sporadically throughout the novel, Evelina is one of the novel's narrators. Evelina is a girl of mixed ancestry and is growing up in her chapters of *The Plague of Doves*. Her mixed ancestry is visible in her home situation as she is surrounded by Indian storytellers as well as television and images of Louis Riel, American presidents, and the Pope. Evelina grows from a teenager into a college student and finds herself in between homes, religions, languages, sexualities,

and identities. She works in a diner and in a mental health hospital for a while before being committed herself. Ultimately, she returns to live on the reservation, and marries Corwin Peace. Corwin Peace is the same age as Evelina and they went to school together. While Evelina went to college, Corwin was involved in criminal activities. One of the crimes he committed was stealing the violin of Shamengwa, Mooshum's brother. He is caught when he pretends to play the violin at the mall. Rather than paying a fine or going to prison, Corwin is sentenced to a violin apprenticeship by Judge Basil Coutts. Basil Coutts is a tribal judge on the reservation who is in a relationship with Geraldine, one of Mooshum's daughters. He is also of mixed heritage, but was raised in a border town to the reservation. Basil narrates three storylines: a historical narrative, a recounting of a case he was involved in, and his own history. The historical narrative is about how his ancestor came to Pluto to settle it with other white men, who are the ancestors of many of the white townsmen, and with two Indian guides, the Peace brothers. He shows the intertwining of people and history as the descendants of the original settling party still live together on the reservation or in the surrounding towns.

Another narrative Basil Coutts describes is that of a case involving John Wildstrand, whose family was involved with the lynching. John Wildstrand was married to Neve Harp (Evelina's aunt), but had an affair with Maggie Peace, a young Indian woman. Maggie becomes pregnant with Corwin and John and Billy Peace (Maggie's brother) hatch a plan to kidnap Neve in order to get money to Maggie for the baby without Neve knowing. Their plan works, but John later confesses to his crime anyway and Billy has been changed by the experience and becomes a religious fanatic, starting his own cult. At the start of Billy's career in religion he meets a girl, Marn Wolde, who he converts and marries. They have two children and through Billy's actions and Marn's family farm the cult grows. Eventually Marn wakes up from the cult's oppressing ideology and flees after she kills Billy. Marn returns to work at a diner where she meets Evelina, who works there as well.

The third story is Basil's own history. He lived in a house in a town off the reservation and had a love affair with a much older woman, Cordelia—referred to as 'C'. Cordelia is a medical doctor who does not treat Indians. She likes Basil, but refuses to be with him openly. Cordelia eventually breaks off all ties and Basil starts studying Indian law, eventually moving to Washington D.C. before returning to the reservation as a tribal judge. It is later revealed that Cordelia was the baby that was left behind after the murder of the family in Pluto. At the

very end, it is revealed that the actual murder of the family is Warren Wolde, Marn's uncle, who has no ties with the Indian community, but is indirectly responsible for the death of the Indian men.

The Round House (2012)

The novel is set in North Dakota on an Ojibwe reservation in the late 1980s. It introduces a family of three: tribal judge Bazil Coutts, tribal records keeper Geraldine Coutts, and their thirteen-year-old son Joe. Joe and Bazil find Geraldine in the car after she has been raped. They rush her to the hospital, but it soon becomes apparent that the legal issues surrounding the case will make it hard to catch her attacker. Once home from the hospital, Geraldine retreats into herself while Joe and Bazil try to find a solution through tribal and federal law. One of the cases they look through for inspiration is the case of Linda Wishkob, a non-Indian woman who was adopted by an Indian family after her biological family, the Larks, did not want her because of a disability. Linda is a friend of Geraldine.

Soon Geraldine's attacker is caught and it turns out to be Linden Lark, Linda's biological brother, a non-Indian man living off the reservation who has always had a dislike for American Indians. While it is clear that he is the attacker, he is released because it cannot be concluded which legal authority, tribal, state, or federal, is supposed to try him. Angry and confused, Joe tries to take the law into his own hands by involving his friend Cappy in amateur police work in the hope that they will find what the authorities missed. Joe finds a doll filled with money, but instead of taking it to the authorities he takes it to his aunt Sonja who helps him put it in the bank.

After the attack on Lark, and when Geraldine hears about a non-Indian man wanting to adopt an Indian baby, Geraldine starts to talk about her attack. She reveals that Lark attacked her and a young Indian woman Mayla, who Lark was in love with, because he was jealous that she had a relationship and a baby with another man, the bigoted governor Curtis Yeltow. Lark raped Geraldine and he killed Mayla, although her body is not found until the end. Based on Geraldine's testimony Linden Lark is arrested again, but he is released not long after. Discouraged by the lack of justice and trying to keep Geraldine on the track to recovery, Joe and his father try to keep up their spirits by getting food for Geraldine. In the grocery story they run into Linden Lark. Unable to control his impulses, Bazil attacks Lark, but Lark

does not seem to care. The shock of seeing Lark and the physical violence leads to Bazil's first heart attack. In revenge to Lark's appearance in the grocery store and his involvement in Bazil's heart attack, friends and the extended family of the Coutts' beat up Lark.

Geraldine and Joe both know the story of the Wiindigoo through Mooshum, their father and grandfather, a figure from Indian oral tradition. The Wiindigoo is a violence that cannot be stopped until it is killed itself. Realising that Linden Lark is like the Wiindigoo and will not stop harassing her or her family, Geraldine tells Joe that she will take justice into her own hands. Fearing for his mother's life should she confront Lark, Joe decides to kill Lark himself. He asks his friend Cappy to teach him how to shoot and talks to Linda Wishkob to find out when Lark is at the golf course. After waiting for a few days, Joe sees Lark at the golf course and shoots him non-fatally. Only when Cappy takes the gun from Joe and shoots himself does Linden Lark die. They try to wipe out all their traces and hide the gun on Linda's property.

Both the police and Joe's parents suspect that Joe is behind the murder on Linden Lark, but they are careful not to ask too many questions that could implicate him. Joe's community does not directly ask Joe about the murder, but they imply that they know it was him and that he did the right thing. To escape the people on the reservation and their nightmares about killing Lark, Cappy, Joe, and their other friends go on a road trip to see Cappy's girlfriend. On the way there they are involved in a car accident in which Cappy is killed.

LaRose (2016)

The novel is set in North Dakota on the borderlands of an Ojibwe reservation at the turn of the millennium. The book opens with the death of Dusty Ravish, the son of Nola and Peter who are half Indian and white, respectively, and live just over the reservation border. Dusty was shot accidentally by Landreaux Iron, an Indian man who lives on the reservation, when he tried to shoot a deer. Landreaux is devastated by what he has done and Nola and Peter are torn apart with grief. To try and make amends for his actions, Landreaux and his wife Emmaline, Nola's half-sister, turn to tribal religion and culture. Following old Ojibwe traditions they decide to give their youngest son LaRose to Nola and Peter.

While Nola and Peter quickly come to care for LaRose, they miss Dusty horribly. Emmaline and Landreaux miss their son LaRose and Emmaline's despair eventually leads to Landreaux and Peter deciding that the two families will share LaRose. Meanwhile, LaRose connects with Maggie, Nola and Peter's daughter, as they become brother and sister. They also form a team to protect Nola from herself. Nola constantly imagines harming Landreaux and contemplates harming and even killing herself. LaRose and Maggie try to prevent that by keeping an eye on Nola at all times and by getting rid of all the dangerous things in the house.

Maggie is also troubled by Dusty's death and turns to violence and aggression. She nearly kills one of LaRose's bullies at school when trying to revenge for something he did to LaRose. Later, the brother of LaRose's bully seeks revenge on Maggie and sexually assaults her with his friends. Maggie confesses the assault to LaRose, who is only six at the time. LaRose responds with that he will avenge her as well, leading to a vicious cycle of violence and revenge.

Meanwhile, another person tries to deal with Dusty's death. Romeo is an Indian man who is a former friend of Landreaux. He is a drug addict and through his addiction he is no longer able to think and reason clearly. He is convinced that Dusty's death was not an accident and tries to find evidence of this. He wants Landreaux to suffer because he is convinced that the injury he received as a child when running away from the Indian boarding school was Landreaux's fault. Moreover, Landreaux married Emmaline, with whom Romeo was in love.

Each of the adult characters struggle with the sharing of LaRose, Landreaux still feels deeply guilty and is tempted to take drugs, Emmaline is doubtful about using the old laws and turns to Catholic priest Father Travis for support and affection, Nola attempts to commit suicide, and Peter attempts not to think about it at all, but there is a fragile balance between the two couples. The children, Snow, Josette, Hollis, Coochy, Maggie, and LaRose are all better able to adjust to the new situation. Especially once Maggie and LaRose join the other four at the reservation's high school and Maggie is able to channel her aggression into volleyball.

When Romeo takes his mistaken ideas about Dusty's death to Peter, however, the new found balance is almost broken. Convinced for a moment that Dusty's death was not an accident, but a negligent homicide, Peter rounds up Landreaux and plans to shoot him in the

woods. He even has Landreaux walk towards him from far away so that he can shoot him reminiscent of what Dusty must have experienced. Fortunately, LaRose had removed the bullets from all the guns when he was protecting Nola and in this way has protected both his fathers as well. In the end, with the desires of revenge and suicide out of the way, the families have found a stable new balance in which they can live with each other. While Dusty will stay a difficult memory for each of the characters, his death is no longer a painful hindrance in their interaction.

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