# THE LIFEWORLDS OF LAW: ON REVITALIZING INDIGENOUS LEGAL ORDERS TODAY

*Aaron Mills**

What ultimately counts as law and as the legitimate processes of its generation, adjustment, and destruction are both empowered and constrained by the constitutional order from which they derive life. A constitutional framework, in turn, reflects unique understandings about what there is and how one can know: a lifeworld. Reflecting on his own experience, the author emphasizes how legal education harms when it fails to acknowledge and to begin to articulate the lifeworld beneath any system of law it aims to impart.

There are serious questions to be taken up in considering whether we may move law between constitutional contexts without subjugating the law of one community to the lifeworld of another. The author asserts this is particularly important with respect to Canadian law schools' recent interest in teaching Indigenous peoples' own systems of law. He argues that Canadian (liberal) and Indigenous (what he calls "rooted") constitutionalisms are not only different, but different in kind. As such, efforts to articulate Indigenous law within the forms of liberal constitutionalism ignore or trivialize the ongoing significance of Indigenous lifeworlds to governance of Indigenous lives today. Many Indigenous legal scholars are adverting to this tension, moving on from simply making space for Indigenous law in the academy to asking whether and how this may be done. The author briefly canvasses Indigenous theorists (students, professors, lawyers, and elders) whose works present Indigenous systems of law within their own lifeworlds.

Tracking the lifeworld-law relationship, he proposes three reforms to legal education in Canada: (1) teach that all law is storied; (2) teach that Canadian constitutional law is a species of liberal constitutionalism; (3) require students to enrol in a prerequisite on an Indigenous people's constitutional order before enrolling in a course on their law. By way of example, he concludes with the syllabus for an intensive course he designed and taught on Anishinaabe constitutionalism.

Le produit qui portera ultimement l'étiquette du droit et du processus légitime de sa génération, de sa révision et de sa destruction est à la fois habilité et contraint par l'ordre constitutionnel dont il émane. Un cadre constitutionnel reflète à son tour d'uniques compréhensions de ce qui existe et des moyens de connaître : un lifeworld . En se penchant sur sa propre expérience, l'auteur souligne la mesure dans laquelle l'éducation juridique cause du tort lorsqu'elle ne parvient pas à reconnaître et à articuler de manière préliminaire le lifeworld qui sous-tend tout système juridique qu'elle vise à conférer.

D'importantes questions doivent être posées lorsqu'on considère la possibilité de déplacer aisément le droit entre des contextes constitutionnels donnés, sans assujettir le droit d'une communauté au lifeworld d'une autre. L'auteur affirme que ce questionnement est d'autant plus important compte tenu du récent intérêt pour l'enseignement des systèmes juridiques propres aux peuples autochtones au sein des facultés de droit canadiennes. Il soutient que les différences entre le constitutionnalisme (libéral) canadien et le constitutionnalisme (que l'auteur appelle « enraciné ») autochtone s'étendent à même leur nature. Ainsi, les efforts d'articuler le droit autochtone dans les contours du constitutionnalisme libéral ignorent ou banalisent l'importance continue des lifeworlds autochtones pour la gouvernance des vies autochtones aujourd'hui. Plusieurs auteurs juridiques autochtones se penchent sur cette tension, et passent du simple effort de tailler une place pour le droit autochtone dans le milieu académique à se demander si et comment cette inclusion peut s'effectuer. L'auteur offre un bref survol des théoriciens autochtones (étudiants, professeurs, avocats et ainés) dont les ouvrages présentent les systèmes juridiques autochtones selon leur propre lifeworlds .

Sous l'angle de la relation lifeworld -droit, il propose trois réformes quant à l'éducation juridique au Canada : (1) enseigner que toute forme de droit est récitatif; (2) enseigner que le droit constitutionnel canadien s'insère dans le constitutionnalisme libéral; (3) exiger que les étudiants suivent un cours obligatoire sur l'ordre constitutionnel des peuples autochtones avant de suivre un cours sur leur droit. En guise d'exemple et de conclusion, il propose le plan de cours d'une classe intensive sur le constitutionnalisme Anishinaabe qu'il a conceptualisé et enseigné.

* JD (Toronto), LLM (Yale), SSHRC Talent Award winner, Vanier Canada Scholar, Trudeau Foundation Scholar, and doctoral candidate (University of Victoria). I'm a Bear Clan Anishinaabe from Couchiching First Nation, Treaty #3 Territory and from North Bay, Robinson-Huron Treaty Territory. The fantastic work of the McGill Law Journal 's editorial board has greatly improved this article. I'm also grateful for the engagement of audience members when I presented an earlier version of this article at the symposium on Indigenous Law and Legal Pluralism that preceded this special issue.



Citation: (2016) 61:4 McGill LJ 847 — Référence : (2016) 61:4 RD McGill 847

## Introduction: Lifeworld, Legality, and Legal Education

I'm [1] one of the many who found law school extraordinarily challenging. As dawning slowly rolled over my peers that first year, I fumbled clumsily in the dark. I waited for my light bulb to appear. I waited and waited, but it never came. I just couldn't get it. And I didn't understand why; I'd been a strong student until then. Many of my professors were excellent too; in most instances, I couldn't tell myself the problem was their teaching. As clarity set over my friends, I slipped further into a cloud of confusion and I began to question if I belonged. As I listened to their brilliant questions—which not only synthesized but creatively applied the material in new ways—I felt stupid.

I understood the new words in my texts, the new words from the front of the lecture hall. But for the life of me, I couldn't understand how to make the right meaning of them in sentences and paragraphs. To me, these were an endless litany of non-sequiturs. None of them fit together to produce the understanding it seemed everyone else acquired. The lessons didn't slowly cohere as a structure that I could then wield to frame future sentences. I never learned to think like a lawyer. Class became a battleground, law school a war, but one I waged inside of and against myself. I wanted desperately to accept the knowledge shared as given, yet I resisted it with all my being. Some days it seemed I fought over almost every utterance. Every sentence was a clash over stakes I couldn't articulate, but which pounded their urgency throughout me, sometimes so powerfully it felt as though my chest might burst as I sat there, silently.

Unable to identify what was happening, my frustration turned into a deep sense of failure. A professor who asked from across his desk what happened during my December exam was kind and encouraging. He wanted me to succeed. But I'd figured out I wasn't like the others here. I wouldn't be a lawyer or an academic. I'd work till eleven almost every fiy sloisysof failure.4 s8

purposes of this article, the imposition of its constitutional order) over the Indigenous lands, peoples, and lifeworlds already present. I didn't understand this until I took a course on law and liberalism in my LLM degree. Throughout my JD, I had no language for expressing the profundity of what was so terribly wrong with what I was learning. I had nothing more focused than a physical reaction and a relentless emotional response to all of the beneath-the-law that was unsaid yet taken as sacred and that was necessary to make the law I was learning coherent. But it felt like violence alright and my reactions were visceral.

All of which is a way of saying that my legal education presumed a common, foundational set of understandings between it and I that proved absent.[11] I struggled to make sense of the words because the glue holding their assemblages together was the lifeworld of Canadian liberalism, which I couldn't get to stick. My Anishinaabe ears just couldn't hear why in a criminal law matter, I should desire vindication of the right, why liberty should even be forefront in my mind, or why a criminal harm to one person should constitute a harm to all. Similarly, my criminal law professor (who I very much liked) couldn't understand my strong rejection of desert as a justification for punishment. Across all my first-year courses there was a disconnect in context never breached, and that couldn't have been breached, for I wasn't taught "this is the law within Canada's liberal constitutional context." I was taught "this is the law in Canada." I didn't even understand that the Canadian law I was learning had a world beneath it, much less a liberal world. The things that accounted for the law's being Canadian were our constitutional idiosyncrasy (being formally a constitutional monarchy, federalist, and securing particular kinds of group rights) and, of course, the doctrine it gave rise to, but never our notion of legality itself.[12] Insofar as that goes, the story was simply: law is

---

[11] For wonderful studies of this tension, see Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" (1989–1990) 6 Can Hum Rts YB 3; Patricia Monture-OKanee, "Thinking About Aboriginal Justice: Myths and Revolution" in Richard Gosse, James Youngblood Henderson & Roger Carter, eds,

law is law. I experienced it as an institutional erasure of the distinction between the concept and conceptions of law. [13]

The rest of this article attends to the lifeworld-law relationship and my thesis in respect of it—that what we call law exists as such only within its own lifeworld. In particular, I focus on Indigenous law revitalization today to illustrate the stakes in failing to attend to the distinction between internal and external legal pluralism (i.e., legal pluralism within and across distinct lifeworlds). In Part I, I canvass some recent Indigenous work that insists on the need to situate the study of Indigenous law within Indigenous lifeworlds. To expand upon what lifeworld means and to make the conversation more concrete, I turn to my doctoral work in Part II. I offer a simple sketch of what I call a "rooted" constitutional logic, which characterizes Anishinaabe lifeworld and thus Anishinaabe constitutional order. My hope is that with at least the thin contours of rooted constitutionalism in view, some foundational differences between Anishinaabe (again, a species of rooted) and Canadian (a species of liberal) lifeworlds will be disclosed. I contend that where the lifeworlds of the peoples to be brought into a pluralist arrangement are not only different but different *in kind*, external legal pluralism sometimes allows "legal pluralism" to serve as a redescription of imperialism. Thus, I then consider how distinctions of this magnitude might be responsibly taken up in legal education, offering three specific recommendations. The third of these is, I believe, novel to legal education in Canada, so I conclude with one example of what taking up this recommendation could look like: the syllabus for an intensive course I built and taught at Lakehead University in 2015.

## I. Lifeworld and Contemporary Scholarship on Indigenous Legal Orders

Because of the groundbreaking work of Indigenous scholars like those I've cited above, I'm one of many new Indigenous scholars entering both an academy and a legal profession keen to better understand how we (that is, Indigenous societies) govern ourselves and manage conflict, and how they and the institutions they populate might learn from us. That's no small thing for those who've come before me to have accomplished. And yet, seen from a distance, it's still only a small step. Now the central struggle is to educate those wanting to know more about the paramount importance of engaging not only with Indigenous legal orders, but also and necessarily with the lifeworlds beneath them. One can't simply translate law across distinct constitutional contexts and expect it to retain its

---

[13] John Rawls famously draws a distinction between the concept and competing conceptions of justice in John Rawls, *A Theory of Justice*, revised ed (Cambridge, Mass: Harvard University Press, 1999) at 5, 8–9.

integrity and thus its functionality; the discussion must first be between the respective constitutional orders generative of each of those systems of law.

This is a responsibility more and more scholars are taking up. I'm in the third year of my PhD and my dissertation is on Anishinaabe constitutionalism. [14] I've carefully assembled what I think is a most incredible committee for such a project: John Borrows, James Tully, Heidi Stark, and Jeremy Webber. I'm so blessed to be shaped and guided by this team. Each is brilliant and has reshaped or is reshaping his or her respective field. Each works very seriously with Indigenous legal orders. And critically, albeit in different ways and to different degrees, each has attended to the lifeworld point in how they go about that work.

Jeremy Webber has explicitly theorized the commitment to these ideas in two critically important papers that should be required reading for everyone in the field. [15] He establishes that all law—not just Indigenous peoples' legal systems—is a function of lifeworlds (although he uses different language to make the point). Heidi Stark's work on treaty relationships reflects the same commitment. She's intentional and rigorous in reasoning her treaty analysis through Anishinaabe lifeworld. [16] John Borrows took working explicitly within Anishinaabe worldview and through Anishinaabe communicative practices as his central project in Drawing

---

14 By Anishinaabe "constitutionalism" I don't mean a combination of founding documents and informal but clearly established conventions: such ideas represent but one conception of the broader concept of constitutionalism. I mean constitutionalism as a framework for how we constitute ourselves as political community. If a lifeworld is a set of ontological, cosmological, and epistemological understandings through which the world appears to us (the "world" within which all viewing happens with respect to the inherently situated notion of "worldview"), a constitutional order is the framework through which we manifest those understandings in pursuit of the vision of freedom they suggest. Thus any constitutional order—as I intend that term—reflects an understanding of what a person is and what community is, and pursues a vision of freedom determined by these understandings for its members. It's only against a shared set of such understandings that law comes into the world.

15 See Jeremy Webber, "Legal Pluralism and Human Agency" (2006) 44:1 Osgoode Hall LJ 167; Jeremy Webber, "The Grammar of Customary Law" (2009) 54:4 McGill LJ 579. In the former, Webber explains that the nature of law is intimately connected to the processes of its generation; in the latter, he adds that those processes, too, are part of a distinct legal language unique to each society.

16 See Heidi Kiiwetinepinesiik Stark, "Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty Making with the United States and Canada" (2012) 36:2 Am Indian Q 119; Heidi Kiiwetinepinesiik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada" (2010) 34:2 Am Indian Culture & Research J 145.

> [l]aw is a dynamic force. Western written law contains Western values, beliefs, and precepts that dictate thinking, behaviour, and approach to justice. Once law is adopted, it begins its work. If any law must be written, and applied to us, it should be law we fashion and create based on our own understanding of law, with knowledge of the importance of the relationships critical to our communities. It should also be based on what we know motivates and influences our social structure, with an understanding of our social reality and our separate consciousness as Indigenous peoples.[21]

Cruz's formulation beautifully captures the vital importance of lifeworld to law. Unless we intentionally guard against doing so, when we bring Indigenous law into Canadian legal education, legislation, or courts, we take it out of its own lifeworld and into another. I'm not categorically suggesting that these aren't places for Indigenous legal orders. I'm saying we must always account for this movement. I'm saying that, for those of us who appreciate what's at stake in the relationship between a legal order and the constitutional order which gave and which sustains its life, there are very serious questions to be taken up in considering whether we may safely move law between constitutional contexts. [22]

To illustrate that the conversation is deepening, I want to focus on how many of us are now attending to the lifeworld-law relationship. We bring different understandings and use different words (even in English) to talk about the world beneath law and this is to be celebrated. Further, some of us openly engage the relationship between lifeworld and law while others of us prefer to work implicitly, even through indirection. We differ even in how we conceptualize the relationship: some of us draw out the kind of distinction between lifeworld (and hence constitutional order) and law that I have here, while others (including many gete-Anishinaabeg ) collapse lifeworld and law, saying that for Indigenous peoples, lifeworld is law.[23] But in our respective ways of organizing and ex-

---

21 Christine Zuni Cruz, "Law of the Land: Recognition and Resurgence in Indigenous Law and Justice Systems" in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, Indigenous Peoples and the Law: Comparative and Critical Perspectives (Oxford: Hart, 2009) 315 at 335.

22 See Sákéj Henderson's enlightening discussion of what he calls the "pretense of benign translatability" across distinct "constitutional wordworlds" (Sákéj Henderson, "Governing the Implicate Order: Self-Government and the Linguistic Development of Aboriginal Communities" in Proceedings of the Conference of the Canadian Centre for Linguistic Rights (Ottawa: University of Ottawa, 1995) at 285).

23 See Basil Johnston, Ojibway Heritage: The Ceremonies, Rituals, Songs, Dances, Prayers and Legends of the Ojibway (Toronto: McClelland and Stewart, 1976) at 13 (speaking of

pressing our understandings, each of us is disclosing the same powerful insight that every system of law—Indigenous or not—has a home.

Sákéj (James Youngblood Henderson) [24] and Patricia Monture [25] are for me among the most powerful intellectuals explaining the relationship between lifeworld and law. Much of Leanne Simpson's work builds from a world beneath too. [26] Harold Johnson [27] and Sylvia McAdam (Saysewahum) [28] have produced texts of exceptional importance. Because of the combination of their accessibility and their relentless commitment to situating Nehiyaw (Cree) law in respect of Nehiyaw lifeworld, they make wonderful starting points for anyone wanting to appreciate the importance of lifeworld to law.

---

2014) (teaching about " Enendegwad, the Law of the Orders"); Fred Kelly, "Reconciling Sovereignties: Combining Traditional Law and Contemporary Western Law to See Truth and Reconciliation" (Lecture delivered at the Faculty of Law, McGill University, 21 September 2015) (teaching about four orders of law, the foundation of which is "Kagakiwe Inaakonigewin " or sacred law); Harry Bone (Giizis-Inini) in Joe Hyslop et al, Dtantu Balai Betl Nahidei, Our Relations to the Newcomers: Treaty Elders' Teachings Volume 3 (Treaty Relations Commission of Manitoba & Assembly of Manitoba Chiefs Secretariat, 2015) at 19, 173, 175 (teaching of " Gagiige-Onaakkonigewinan (eternal law)" as the foundation of law); Arthur Solomon, "Notes on the Philosophy of an Indian Way School" in Michael Posluns, ed, Songs for the People: Teachings on the Natural Way (Toronto: NC Press, 1990) 98 (teaching about "the natural way" and Creator's "original instructions" that constitute it); Oshoshko Bineshiikwe – Blue Thunderbird Woman et al, "Ogichi Tibakonigaywin, Kihche Othasowewin, Tako Wakan: The Great Binding Law", online: <www.turtlelodge.org/2015/11/manitoba-elders-share-a-message-with-national-energy-board-and-the-public>.

24 James (Sákéj) Youngblood Henderson, " Ayukpachi : Empowering Aboriginal Thought" in Marie Battiste, ed, Reclaiming Indigenous Voice and Vision (Vancouver: UBC Press, 2000) 248 at 271–74; James (Sákéj) Youngblood Henderson, " Sui Generis and Treaty Citizenship" (2002) 6:4 Citizenship Studies 415 at 425; James (Sákéj) Youngblood Henderson, The Míkmaw Concordat (Halifax: Fernwood, 1997) at 32; James (Sákéj) Youngblood Henderson, Marjorie L Benson & Isobel M Findlay, Aboriginal Tenure in the Constitution of Canada (Scarborough, Ont: Carswell, 2000) at 401–19.

25 Patricia A Monture-Angus,

A great many younger scholars who have or who are emerging from what I think of as the Victoria School (which marries a substantive commitment to Indigenous law with a theoretical commitment to the social production of law) have the lifeworld-law relationship squarely in their sights. I find so much to be excited about when I imagine the potential impact of Indigenous law scholars and practitioners like Aimée Craft, [29] Rob Clifford, [30] Dawnis Kennedy, [31] Johnny Mack, [32] and Danika Billie Littlechild, [33] just to name a few. Of course, there are many other amazing scholars to emerge from the University of Victoria Faculty of Law in recent years who are seriously engaged with Indigenous peoples' own legal orders, but these ones strike me as particularly engaged with the life beneath law. I'm so fortunate to have been able to learn from them during my PhD (and in the cases of Kennedy and Littlechild, during my JD too).

Next, there are those doing work with the old people on the lifeworld-law relationship of their respective peoples. [34] And finally, there are the growing number of old people choosing to speak for themselves, wanting to share aspects of their teachings openly, and insisting (although often too gently to be called insistence) on the primacy of understanding Indigenous lifeworld before one can understand Indigenous law. [35] Texts of ex-

---

[29] Aimée Craft, Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One (Saskatoon: Purich, 2013); Aimée Craft, Anishinaabe Nibi Inaakonigewin Report (University of Manitoba's Centre for Human Rights Research and Public Interest Law Centre, 2014), online: <static1.squarespace.com/static/54ade7ebe4b07588

traordinary value here include the three Treaty Relations Commission of Manitoba  Treaty Elders Teachings

that because of their genesis in the rooted constitutional mode, relationships across Indigenous constitutional orders naturally take the form of treaty (intentionally deepened, always-already-interdependent relationships) as opposed to contract (an international, exchange-centred connection between independent autonomies).

The second part of my dissertation is a detailed exploration of how Anishinaabe lifeworld both empowers and constrains Anishinaabe inaakonigewin , our conception of law. That is, I map out one view of the Anishinaabe instance of the rooted constitutional mode. And if I do a good enough job, it should be clear both that (1) while rooted is very different from liberal constitutionalism, it need not be scary for those considering living within it, and (2) not only is there room for settler society to reconstitute itself in the rooted constitutional mode—through treaty, settler society's invited in. This would mean a transformation of our shared political community, which at present has as conditions of its possibility both the domination of Indigenous peoples and the usurpation of our territories. But if settlers were willing to abandon their existing colonial relationship with Indigenous peoples, sustained through the imposition of Canada's liberal constitutional order over still-rooted Indigenous ones, they could find non-violent belonging within Turtle Island's rooted treaty order.

I offer this explanation of my project because I think thanity, whicna6natin

iinmpower.so

st8.5.5

ences a still higher level of conditioning. It's subject to the branches, which are subject to the trunk, which is subject to what the roots will bear. All are intimately connected but never so tightly as to eliminate difference. No two trees are the same even if they're both white birch, the same age, and growing right next to one another. Similarly, while two Anishinaabe communities may have nearly identical constitutional structures, they will have laws that differ. Each level of legality within the lifeworld-law relationship is both empowered and constrained by the levels below. I want to say that every people is a tree. We tell different stories of creation (even those of us who don't acknowledge doing so or who explicitly disclaim a view of creation) and the story we tell powerfully conditions the constitutional order we bring into being. For all societies, that constitutional order will shape legal processes and institutions, and thus ultimately what we count as law. [40]

This isn't quite the full image, however. Unlike Canada's constitutional image of a "living tree", [41] no tree is actually freestanding. The roots are buried in and wrapped tightly against earth. The tree is grounded in something beyond itself. A lifeworld doesn't reflect the spontaneous ideas of those standing within it. Our creation stories are of something common: the earth beneath and all around us. What varies is how we understand it.

That's what's at stake. That's what I need you to understand.

The trouble isn't simply that we tell different stories which ultimately generate widely different bodies of law. That's a wonderful thing. We can learn from one another to the benefit of us all. The trouble is that some of us don't just differ but differ in the kind of stories we tell of creation. At thirty-five, my understanding is still small, but I've yet to learn of a Turtle Island Indigenous people who tell a creation story that isn't rooted in earth. [42] I believe all of our ancestors sustained political communities rec-

---

[40] To be clear, I think most law professors in Canada (and indeed entire legal movements: law and society, legal pluralism, comparative law, transsystemic law, and critical legal studies, amongst others) are committed to the general view that context is vital to legal analysis and to legal education, and in particular (1) that it's critical for students to understand law as a function of legal process and of ideology, and (2) that power operates in various ways in the legitimation of one process (whether formal or informal) over another. That is, I think most of us understand that legal education must include the branches beneath the leaves. However, as I go on to explain, I don't think the same can generally be said of the trunk and roots and I see this as a serious failing of Canadian legal education.

[41] See Edwards v Canada (Attorney General) , [1930] AC 124 at 136, 1929 UKPC 86.

[42] I was honoured to be present at Sagkeeng First Nation's Turtle Lodge when The Great Binding Law was presented by Anishinaabe, Dakota, and Nehetho elders to representatives of Enbridge and the National Energy Board regarding Enbridge's proposed Line

cisely because it isn't actually connected to life. Humans simply imagined it and built their constitutional order upon an idea. [44]

The earth-alienation aspect of the lifeworld generative of liberal constitutionalism explains why most Canadians aren't able to see a link between the Charter and global warming, which to me couldn't be clearer. Because of liberalism's view of persons as autonomous and because of its anthropocentric view that only humans are persons, from my perspective it's a worldview irredeemably committed to violence. And because this violent constitutional foundation is hegemonic within Canadian legal education, we generally allow it to occlude contestation that might otherwise enrich classroom discussion from rooted constitutional perspectives ("generally" because heroic attempts from Indigenous students and professors are sometimes made; note also that "rooted" isn't to be conflated with "diverse" or "dissenting"—all good professors make room for these).

What might such perspectives consist of? For political communities rooted in interdependent conceptions of self-community (i.e., in earthways), freedom has a very different meaning than it does within liberal constitutional orders. Most importantly, freedom isn't conceived in terms of autonomous human individuals. It's neither the self's experience of non-interference from the choice-limiting actions of others (negative liberty), nor the self's entitlement to a specified set of collective goods taken as necessary for establishing and securing its personal autonomy (positive liberty). [45] Rather, interdependent persons experience freedom always and only with and through others. An individual's freedom, the freedom of his or her community, and the freedom of all of its other members are mutually constitutive; each serves as an ongoing condition of the possibility of the other. [46]

This has significant implications for the structure of law. Under a rooted vision of freedom, order isn't secured through rule of law; law isn't the formal obligation to respect rules (i.e., rights and correlative duties). Rather, law consists in the informal responsibility to coordinate mutual aid (i.e., gifts and needs) within particular forms of relationship: law is a

---

[44] Importantly, I recognize that there are settler peoples who share this view. For a brilliant articulation of the same worry but from a different perspective, see Peter Gabel, "The Spiritual Dimension of Social Justice" (2014) 63:4 J Leg Educ 673.

866 (2016) 61:M

> terns and repetitions, then the maintenance and renewal of those patterns is all-important. Values and customs are the participatory part that Aboriginal people play in the maintenance of creation. [52]

On the understanding that at least some of the customs to which Little Bear refers have to do with law and in light of what has been shared about rooted constitutionalism, why might anthropologists sometimes struggle finding purpose behind these customs? Little Bear says that the function of Indigenous law (what he calls "Aboriginal values and customs") "is to maintain the relationships that hold creation together" and I've offered above an example of the kind of thinking that produces such a statement. What's the function of Canadian law? What kind of thinking allows for its purpose and how does it differ from mine and Little Bear's? Finally, what implication should follow from this difference for how Indigenous law is taught in law schools, if it should be taught in law schools at all?

### *B. Implications of Lifeworld for Legal Educatioc*

My second suggestion targets the imperialism of legal education in Canada. I suggest that teachers of constitutional law courses include a small section on constitutional context at the outset. Mine didn't. We jumped right into federalism and then spent two classes on section 35 before moving onto the *Charter*, which filled out the rest of the year. The context piece—before any doctrine is engaged—would establish that Canada's constitutional order is one of many within liberal constitutionalism. As such, this approach would own up to Canadian constitutionalism's inflexible structural commitments. In very plain language—language designed so that students with no background in political theory (or any theory, for that matter) can access it—this context component would establish the ideas and understandings liberal constitutional orders take to be sacred, which frame the boundaries of Canadian constitutional discourse and, as a result, are never subjected to interrogation under it. This

sions of the Charter , noting also where Canada's constitutional order deviates from classical liberalism in important ways.

My third suggestion for institutional reform is the most important. Many of Canada's law schools are already engaging with Indigenous peoples' legal orders. I've suggested that this interest has just about become mainstream and that the debate is now deepening. I frequently hear Indigenous law students and professors and Indigenous community members voicing mixed feelings and raising thoughtful, challenging questions about the uptake of Indigenous law by the state and in Canadian law schools. Often these questions regard issues of translation (ontological, epistemological, procedural, discursive) and the abstracting of law situated in particular lands, relationships, and cultural understandings (i.e., what I call rooted constitutionalism). [57] Despite the considerable time and efforts of so many, I think the complex debate around the teaching of indigenous law in Canadian law schools is still in its early days.

Although I'm still a doctoral candidate, with increasing frequency, a law professor will inform me about what's happening at his or her faculty or what new curricular moves they're contemplating with respect to Indigenous peoples' legal orders. I'm always grateful for these conversations, but they often come with some awkwardness. I'm not always able to support proceeding as described. Over time, I've figured out the reply I'm comfortable with and it's as follows. The first step is to gently suggest that I don't think it's okay to simply teach a course on an Indigenous legal order (or a comparative law course that draws on aspects of an Indigenous legal order with aspects of either Canada's common law or civil law traditions) that fails to attend to the question of lifeworld. When we do this, I worry that we do violence to Indigenous legal orders and that we mislead students about what it means to work with them. We disappear the stakes.

That said, I want to encourage the study of Indigenous legal orders at law schools in Canada. If we don't teach Indigenous law, how can we expect Canadian law practitioners to understand Indigenous perspectives (including, for instance, actions of civil disobedience which may seem like non-compliance but which are often compliant with a distinct Indigenous legal order) and, just as important, to advert to their own participation in suppressing Indigenous law, acting and advising clients as if there is none? I hope this article doesn't have a chilling effect on law faculties, but

---

[57] I've had most of these discussions informally, but one event that I found particularly useful insofar as these questions go was "Indigenous Law Across Territories: Taking Counsel Together" (Talking Circle on Indigenous Legal Traditions held at the Saskatchewan Law Foundation Conference 2015, Native Law Centre, College of Law, University of Saskatchewan, 27–29 March 2015).

rather encourages and even supports them in taking up the significant challenge of teaching Indigenous law in the context of Indigenous constitutionalism. That said, I would advocate for caution in how we go about encouraging the study of Indigenous legal orders. Those committed to teaching and studying these orders must understand that the responsibility,

the subject matter were all so rich. The students struck a terrific balance between sharing their own insights and entering into dialogue with the perspectives and questions of others. Everyone engaged respectfully and strove to engage the Anishinaabe practice of non-contradiction as they voiced their disagreement with others. For those with no experience at this, early success was a remarkable feat! Especially in a law school context where we're trained to be adversarial, it would've been easy to grow frustrated and to decline to voice one's disagreement under this condition. But this didn't seem to happen. There were artful articulations of dissent. I was so proud of the students for their commitment to and success in meeting the deep challenge my course offered. I was moved by their efforts.

What follows is my syllabus, which is just one example of what a course on Indigenous constitutionalism could look like. You'll notice that there are no headings dealing with property, voluntary obligations, etc. I probably wouldn't use those kinds of headings to organize a course I ran on Anishinaabe law anyhow. Regardless, as I said, I think that Anishinaabe law should be a separate and second-order course. Meeting times and boilerplate portions have been removed and some stylistic changes and corrections have been introduced, but what's presented is otherwise unedited from how it appeared at the time I offered the course. That being the case, in some instances I would use different language today.

Law 2555: Special Topics in Law: Anishinaabe Constitutionalism
Winter 2015—1 credit intensive

Course Description and Core Topics

This is a course about (one view of) Anishinaabe constitutionalism—the total relational structure that allows for Anishinaabe political communities to come into being, to maintain their integrity over time, and to adapt to new realities. It's a course about law, but not as most of us probably understand that word. We're going to develop our capacity to understand Anishinaabe constitutionalism "from the inside", that is, within its own cultural context. This is a daunting challenge for it requires us to be able to think about law in ways that will be foreign to many of us, including leaving conventional legal discourse behind. The goal will be to begin to understand the total relational structure through which Anishinaabe societies governed themselves prior to colonization and through which, albeit in different ways and to different degrees, Anishinaabe political communities continue to do so today.

This may sound like a deeply theoretical exercise. But the goals of this course are intimately connected to empowering students to have a direct

done and having reflected on some of them. Beyond this, it means connecting to one another in a way that allows you to share your gifts, while simultaneously ensuring you benefit from the gifts of others. This means taking risks and sharing your perspective in class. It also means being conscious of how much space one takes up in the class. It's about how one engages with others in the class, not the idea that more is better. We're going to learn that we need each other to make this class work; we're going to practise the very thing we're learning.

70% Take-home exam consisting of three questions.

Materials

Readings are separated into mandatory and supplemental. All you need to read are the mandatory readings . It would be impossible to do all of the mandatory and supplemental readings and no one is encouraged to try. While the supplemental readings provide additional content or new perspectives on the themes of the day, they are only there in case anyone wants and has time to push further than they're expected to, or in case someone feels they need additional resources for their class participation or for their exam. Having said that, please note that on all days (except our first day) there are two related topics per class, each of which has mandatory and supplemental readings.

Because most of the readings require you to be reflective in ways not ordinarily expected within the practice or study of Canadian law, I have assigned a lower page count for each class than what I have been told you are accustomed to. At the end of each reading, I've added content in square brackets ("[]"). To assist students to evaluate their time allocation throughout the week, the first piece of information within the square bracket indicates the page length of the reading. That the total page count for any given day is low does not mean there is little work to do, but rather that I will expect you to enter class having spent time reflecting on some of the materials that grabbed you. Occasionally there is a second piece of information, pertaining to the Indigenous or non-Indigenous identity of the author/orator. Where no second piece of information is provided, the author/orator is Anishinaabe. The vast majority of our texts come from Anishinaabe authors/orators.

Monday January 26th

Anishinaabe Law Revitalization, Constitutionalism, and Cultural Context

***Mandatory (13 pages)***

1. Leland Bell, "Sacred Fire", The Beaver (Summer 1981) 56 at 56–57. [2pp]
2. Darlene Johnston, "Welcome Address" (2007) 6:1 Indigenous LJ 1. [2pp]
3. Basil H Johnston, "Is That All There Is?: Tribal Literature" (1991) 128 Can Literature 54. [9pp]

***Supplemental***

4. Leroy Little Bear, "Dispute Settlement among the Naidanac" in Richard F Devlin, ed, Canadian Perspectives on Legal Theory (Toronto: Emond Montgomery, 1991) 341. [8pp, Blackfoot]
5. Jim Dumont, "Justice and Aboriginal People" in Royal Commission on Aboriginal Peoples, ed, Aboriginal Peoples and the Justice System: Report of the Round Table on Justice Issues (Ottawa: Minister of Supply and Services Canada, 1992) 42. [42pp]
6. Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter : Interpretive Monopolies, Cultural Differences" (1989–1990) 6 Can Hum Rts YB 3. [42pp, Cree]
7. Patricia Monture, "Notes on Sovereignty" in Andrea P Morrison & Irwin Cotler, eds, Justice for Natives: Searching for Common Ground (Montreal: McGill-Queen's University Press, 1997) 197. [2pp, Mohawk]
8. Royal Commission on Aboriginal Peoples, "Aboriginal Concepts of Law and Justice: The Historical Realities" in Royal Commission on Aboriginal Peoples, ed, Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada (Ottawa: Minister of Supply and Services Canada, 1996) 12. [13pp, multiple authors]
9. Aaron Mills (Waabishki Ma'iingan), "Opichi: A Transformation Story, an Invitation to Anishinaabe (Ojibwe) Legal Order" (2013) 34:3 For the Defence 40. [11pp]

Tuesday January 27th

(1) Freedom ***Through*** and the Foundation of Anishinaabe Political Community: Interdependence

***Mandatory (23 pages)***

10. Basil Johnston, "The Vision of Kitche Manitou" in Basil Johnston, Ojibway Heritage: The Ceremonies, Rituals, Songs, Dances, Prayers and Legends of the Ojibway (Toronto: McClelland and Stewart, 1976) 11. [2pp]
11. Stan McKay, "Calling Creation into Our Family" in Diane Engelstad & John Bird, eds, Nation to Nation: Aboriginal Sovereignty and the Future of Canada (Don Mills, Ont: House of Anansi Press, 1992) 28. [7pp, Cree]

878 (2016) 61:M cG

25. “Nanabush and the Skunk” in Patronella Johnston, Tales of Nokomis (Okemos, Mich: Nokomis Learning Centre, 1994) 5. Illustration by Francis Kagige. [3pp]

***Supplemental***

26. Cary Miller, “Gifts as Treaties: The Political Use of Received Gifts in Anishinaabeg Communities, 1820–1832” (2002) 26:2 Am Indian Q 221. [25pp]
27. Bruce M White, “‘Give Us a Little Milk’: The Social and Cultural Meanings of Gift Giving in the Lake Superior Fur Trade” (1982) 48:2 Minnesota History 60. [12pp]
28. Jacques LePique, “Mishi Ginabig in Lake Michigamme” in Arthur P Bourgeois, ed, Ojibwa Narratives of Charles and Charlotte Kawbawgam and Jacques LePique, 1893–1895 (Detroit: Wayne State University Press, 1994) 43. [2pp]
29. Kawbawgam, “A Famine and How a Medicine Man Saved the People” in Arthur P Bourgeois, ed, Ojibwa Narratives of Charles and Charlotte Kawbawgam and Jacques LePique, 1893–1895 (Detroit: Wayne State University Press, 1994) 79. [2pp]
30. Letter from Jeffery Amherst to Sir William Johnson in Milton W Hamilton & Albert B Corey, eds, The Papers of Sir William Johnson , vol 10

***Supplemental***

48. James Tully, "Consent, Hegemony, and Dissent in Treaty Negotiations" in Jeremy Webber & Colin M Macleod, eds, Between Consenting Peoples: Political Community and the Meaning of Consent (Vancouver: UBC Press, 2010) 233. [18pp, Settler]

(2) Niagara, 1764

***Mandatory (21 pages)***

49. Image: Ojibwe Cultural Foundation, 24 Nations Belt .
50. Image: Ojibwe Cultural Foundation, 1764 Great Belt .
51. Letter from Sir William Johnson to Thomas Gage in Alexander C Flick, ed, The Papers of Sir William Johnson , vol 4 (Albany: University of the State of New York, 1925) 328. [3pp, British]
52. William Johnson & Guy Johnson, "A Conference with Chippewas" in Alexander C Flick, ed, The Papers of Sir William Johnson , vol 4 (Albany: University of the State of New York, 1925) 478. [4pp, British]
53. Sir William Johnson, "An Indian Congress" in Milton W Hamilton & Albert B Corey, eds, The Papers of Sir William Johnson , vol 11 (Albany: University of the State of New York, 1953) 278 [with omissions]. [11pp, British]
54. Letter from Sir William Johnson to Thomas Gage in Milton W Hamilton & Albert B Corey, eds, The Papers of Sir William Johnson , vol 11 (Albany: University of the State of New York, 1953) 336. [3pp, British]

***Supplemental***

55. John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government" in Michael Asch, ed, Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference (Vancouver: UBC Press, 1997) 155. [16pp]
56. "Nations at Indian Congress at Niagara" in Milton W Hamilton & Albert B Corey, eds, The Papers of Sir William Johnson , vol 11 (Albany: University of the State of New York, 1953) 276. [1p, British]
57. AF Hunter, "Wampum Records of the Ottawas" in Annual Archaeological Report 1901, Being Part of Appendix to the Report of the Minister of Education Ontario (Toronto: LK Cameron, 1902) 52. [4pp, unknown]
58. Alan Corbiere, "Gchi-Mial 421pp,

62. Mark D Walters, "' Your Sovereign and Our Father ': The Imperial Crown and the Idea of Legal-Ethnohistory" in Shaunnagh Dorsett & Ian Hunter, eds, Law and Politics in British Colonial Thought: Transpositions of Empire (New York: Palgrave Macmillan, 2010) 91. [14pp, Settler]

Friday January 30th

(1) Contemporary Colonialism and Anishinaabe Constitutionalism Today

***Mandatory (11 pages)***

63. Tom Flanagan, "Native Talks with the Crown Challenge Canada's Very Existence", The Globe and Mail (25 January 2013), online: <www.theglobeandmail.com/commentary/native-talks-with-the-crown-challenge-canadas-very-existence/article7779669/>. [2pp, Settler]
64. Anishinabek Nation, Anishinaabe Chi-Naaknigewin (Anishinabek Nation Constitution) , online: <www.anishinabek.ca/roj/download/Anishinaabe%20Chi-Naaknigewin%20Document%20-%20Proclaimed%20June%206,%202012.pdf>.

***Supplemental***

65. Harry S LaForme, "Resetting the Aboriginal Canadian Relationship: Musings on Reconciliation", online: Ontario Bar Association <www.oba.org/en/pdf/sec_news_abo_may13_laforme.pdf>. [11pp]
66. Union of Ontario Indians, "From the Anishinabek (the Ojibway, Ottawa, Potowatomi and Algonquin Nations) to the Parliament of the Dominion of Canada" (1980) 3:12 Ontario Indian 18. [6pp]
67. Context for the Anishinabek Nation Constitution is available on the Anishinabek Nation, Restoration of Jurisdiction website, online: <www.anishinabek.ca/roj/anishinaabe-chi-naaknigewin.asp>.

(2) Conclusion

Special Guest: Jana-Rae Yerxa

***Mandatory (10 pages)***

68. Jana-Rae Yerxa, "Gii-kaapizigemin Manoomin Neyaashing: A Resurgence of Anishinaabeg Nationhood" (2014) 3:3 Decolonization 159. [7pp]
69. Gary Potts, "Growing Together from the Earth" in Diane Engelstad & John Bird, eds, Nation to Nation: Aboriginal Sovereignty and the Future of Canada (Don Mills, Ont: House of Anansi Press, 1992) 199. [3pp]

## Conclusion: *Weweni*—Go Carefully

I've really only made one point in this article but I've tried to put much into it. It's wonderful to see so many law schools finding ways to engage with Indigenous legal orders. It's also wonderful to hear so many Indigenous law professors, law students, and community members posing questions about this development. I've argued that we should study Indigenous legal orders at Canadian law schools, but only if we're prepared to exercise great care in how we go about it, and this means attending to the Indigenous lifeworlds beneath them. If we fail to go carefully, I worry that we open up Indigenous legal orders to further colonization by inviting legal education to liberalize them.

In addition to trying to draw attention to the paramount importance of attending to the lifeworld-law relationship and its impact on students, I've suggested three institutional reforms for Canadian law schools: (1) they should run a module introducing the idea that all law, legal processes, and legal institutions come from somewhere and can never stand outside of that home (although they may cross contexts within it); (2) Canadian constitutional law courses should situate their subject matter within the domain of liberal constitutionalism; and (3) law schools deciding to offer courses on Indigenous legal orders should first require students to take a prerequisite course on Indigenous constitutional orders. Finally, law schools need to be clear about what they are and aren't can.dl of . Astud donts havng tomepleed tboh ta rerequisite aonstit-]TJ T* -.0112 Tc .136 Tw [(dutionalism;)5.9(and )5.8(an dade ondsth amightab aith I-5.7(rea-]TJ T* -.0113 Tc .10307Tw [(dspct mo )nd)aspct mf trecognze t]TJ T*

well blew it. Not for lack of trying, of course. I gave it a good effort and I think our time together was still of some value. But the experience (and this was just one such experience) of our two meetings together clearly revealed how impossible it is to understand our law without having first had the opportunity to learn about the constitutional framework that gives it life and meaning. This experience helped me to see that because of this necessity, I needed to work out a course-length approach to sharing, and in my Anishinaabe constitutionalism syllabus for the intensive course I taught at Lakehead University, I've offered one example of the beginnings of what that could look like.

If this article helps to create discussion about the conditions under which we can meaningfully study Indigenous legal orders in Canadian law schools, I'll have achieved my aim. I'm certain some will disagree with my approach and that'll be good too. What matters is that there are more and more of us engaging in our respective best ways. We need all of our gifts.