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Some Reflections of a Métis Law Student and Assistant Professor on Indigenous Legal Education in Canada

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SOME REFLECTIONS OF A MÉTIS LAW STUDENT AND ASSISTANT PROFESSOR ON INDIGENOUS LEGAL EDUCATION IN CANADA

Scott Franks[†]

ABSTRACT

This Article is a reflection on some of my experiences as a Métis law student and assistant professor on the subject of Indigenous legal education in Canada. I introduce myself and what brought me to law school and describe some of my experiences as a law student, as a co-president of an Indigenous Students Association, and as a student organizer for an Indigenous law camp. I argue that a significant barrier to Indigenization and decolonization of Canadian legal education is the perseverance of an ideology rooted in settler colonialism and an individual affective commitment to its future, which is facilitated by racism. The existence and nature of this barrier is highlighted through an exploratory discussion of some of the experiences that are commonly shared by Indigenous law students and professors. I describe my approach to Indigenous legal education at the Lincoln Alexander School of Law (“Lincoln Alexander”) at X University in Toronto, Ontario, as one way to work towards facilitating efforts towards Indigenization and decolonization.

Although the Truth and Reconciliation Commission’s Final Report and Calls to Action (“Calls”) have significantly impacted Indigenization activities in Canadian legal education, choices to be made about how the Calls are to be implemented are not self-evident. Thus, as an assistant professor at Lincoln Alexander School of Law, I am now trying to decide how to do this work. I propose a pedagogy based on the deconstruction or critique of settler colonial and racial hierarchies embedded in the rule of law through critical methodologies. This deconstruction is necessary before we can effectively teach students about Indigenous legal orders. When we do teach Indigenous legal orders, we should consider teaching those orders in stand-alone courses or focusing on Indigenous legal methodologies in our courses. Finally, I briefly discuss a proposal for integrating Indigenous legal issues and perspectives in the curriculum.

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I. INTRODUCTION

I am a citizen of the Manitoba Métis Federation.¹ My mother's and father's families are originally from the area surrounding the Red River in Manitoba. Sometime after the Red River Resistance in 1870, my family went west into Saskatchewan, where they settled along the north Saskatchewan River in the territory of the Nehiyaw Nation.² Although I am ethnically and culturally Métis, most of my childhood was in the context of Nehiyawak and settler culture in La Ronge, Saskatchewan—a northern, rural community governed under the adhesion to Treaty 6.³

I am writing this Article to share the experiences that I have had in my capacity over the years as a Métis law student, law clerk, lawyer, and now, as an assistant professor. I will describe my experiences alongside the scholarship and writing of Indigenous law students, professors, and lawyers. I will then discuss some of the Indigenization initiatives that I am undertaking at the Lincoln Alexander School of Law. I hope that my experiences resonate and affirm those of other Indigenous law students and professors, or alternatively, provide space for mutual reflection on the differences in our journeys. For American readers, I hope my footnotes provide an orientation to the Canadian literature on Indigenous legal education, broadly understood.

The momentum to Indigenize Canadian law schools has grown over the last six years.⁴ This momentum is attributable, in part, to the findings

¹ American readers may be unfamiliar with the Métis people as an Aboriginal people. For more information on the history of Métis governance, see KELLY SAUNDERS & JANIQUE DUBOIS, *MÉTIS POLITICS AND GOVERNANCE IN CANADA* (2019).

² The Red River Resistance has been the subject of several non-Métis Canadian historians' work. *See, e.g.*, GERHARD J. ENS, *HOMELAND TO HINTERLAND: THE CHANGING WORLDS OF THE RED RIVER METIS IN THE NINETEENTH CENTURY* (1996) (Can.); DALE GIBSON, *LAW, LIFE AND GOVERNMENT AT RED RIVER, VOL. 1: SETTLEMENT AND GOVERNANCE, 1812-1872* (2015) (Can.).

³ American readers may be unfamiliar with Treaty 6. For more information, see generally ALEXANDER MORRIS, *THE TREATIES OF CANADA WITH THE INDIANS OF MANITOBA AND THE NORTH-WEST TERRITORIES* (2014); HAROLD CARDINAL & WALTER HILDEBRANDT, *TREATY ELDERS OF SASKATCHEWAN: OUR DREAM IS THAT OUR PEOPLES WILL ONE DAY BE CLEARLY RECOGNIZED AS NATIONS* (2000).

⁴ For the purposes of this Article, Aboriginal law refers to Canadian law as it relates to Indigenous peoples, whereas Indigenous law refers to the legal orders of Indigenous peoples.

and Calls to Action of the Truth and Reconciliation Commission (“TRC”) that were released in 2015.⁵ As an assistant professor at the Lincoln Alexander School of Law at X University,⁶ I welcome this renewed commitment to Indigenize the curricula at Canadian law schools. The need to explain *why* Indigenous legal education is necessary is becoming less and less pressing.⁷ As a result, many scholars now focus on *how* Indigenous law can be brought into Canadian legal education and practice.⁸ However, I am

Indigenous legal education refers to any activity that integrates Indigenous pedagogies, epistemologies, ontologies, or cosmologies, or that integrates Indigenous legal perspectives, issues, or laws in the curriculum. For a survey of recent commentary in Canada on Indigenizing the academy, see Karen Drake, *Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom*, 95 CAN. B. REV. 9, 10–12 (2017).

⁵ See *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, TRUTH AND RECONCILIATION COMM’N OF CAN. (2015), http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf [<https://perma.cc/NQN6-RZ3F>]; TRUTH AND RECONCILIATION COMMISSION OF CANADA: CALLS TO ACTION, TRUTH AND RECONCILIATION COMM’N OF CAN. (2015), https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf [<https://perma.cc/FX48-NSCP>] [hereinafter CALLS TO ACTION].

⁶ While the university is in the process of being renamed, the Indigenous faculty members at “Ryerson” University refer to their employer as X University. For more information on this decision and the role of Egerton Ryerson, the school’s namesake, in the design of the Indian Residential School model in Canada, see Indigenous Students from X University, *Introducing X University: An Open Letter to the Community from Indigenous Students*, YELLOWHEAD INST. (May 11, 2021) (Can.), <https://yellowheadinstitute.org/2021/05/11/welcome-to-x-university-an-open-letter-to-the-community-from-indigenous-students/> [<https://perma.cc/STV2-SUKM>]; see also *Egerton Ryerson Statue Toppled at Canada Indigenous School Protest*, BBC NEWS (June 7, 2021) <https://www.bbc.com/news/world-us-canada-57381522> [<https://perma.cc/BX6P-LRWQ>].

⁷ For an argument on *why* education in Indigenous legal orders is necessary, see Drake, *supra* note 4, at 13–22; LANCE FINCH, *THE DUTY TO LEARN: TAKING ACCOUNT OF INDIGENOUS LEGAL ORDERS IN PRACTICE* (2012).

⁸ See, e.g., Fraser Harland, *Moving from the Why to the How of Indigenous Law*, 1 MCGILL L.J. 721 (2016) (Can.); Val Napoleon & Hadley Friedland, *An Inside Job: Engaging with Indigenous Legal Traditions Through Stories*, 61 MCGILL L.J. 725, 733 (2015) (Can.) [hereinafter *An Inside Job*]; Aaron James (Waabishki Ma’iingan) Mills, *The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today*, 61 MCGILL L.J. 847, 856–57 (2016) (Can.) [hereinafter *The Lifeworlds of Law*]. Scholars have developed innovative, pragmatic, and persuasive pedagogies based on both Indigenous and western epistemological and ontological frameworks. See Hadley Friedland, *Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws*, 11 INDIGENOUS L.J. 1 (2012) (Can.); Hadley Friedland & Val Napoleon, *Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions*, 1 LAKEHEAD L.J. 17 (2015) (Can.) [hereinafter *Gathering the Threads*]; John Borrows, *With or Without You: First Nations Law (in Canada)*, 41 MCGILL L.J. 629 (1996) (Can.) [hereinafter *With or Without You*]; John Borrows, *Heroes, Tricksters, Monsters, and Caretakers: Indigenous*

also mindful of the experiences of other Indigenous legal scholars and lawyers, such as Patricia Monture-Angus,⁹ Tracey Lindberg,¹⁰ James (Sakej) Youngblood Henderson,¹¹ Robert Williams,¹² Aaron (Waabishki Ma'iingan) Mills,¹³ John Borrows,¹⁴ Lindsay Borrows,¹⁵ Gordon Christie,¹⁶ Val Napoleon,¹⁷ Karen Drake,¹⁸ Jeffery Hewitt,¹⁹ Harold Johnson,²⁰ Patricia Barkaskas,²¹ and Christine Zuni Cruz.²²

Law and Legal Education, 61 MCGILL L.J. 795 (2016) (Can.) [hereinafter *Heroes and Tricksters*]; John Borrows, *Outsider Education: Indigenous Law and Land-Based Learning*, 33 WINDSOR Y.B. ACCESS JUST. 1 (2016) (Can.) [hereinafter *Outsider Education*]; Patricia Barkaskas & Sarah Buhler, *Beyond Reconciliation: Decolonizing Clinical Legal Education*, 26 J.L. & SOC. POL'Y 1 (2017) (Can.); Drake, *supra* note 4; Kirsten Anker, *Teaching 'Indigenous Peoples and the Law': Whose Law?;* 33 ALT. L.J. 132 (2008) (Aus.).

⁹ See, e.g., PATRICIA MONTURE-ANGUS, *THUNDER IN MY SOUL: A MOHAWK WOMAN SPEAKS* (1995) (Can.).

¹⁰ See, e.g., Tracey Lindberg, *Critical Indigenous Legal Theory Part 1: The Dialogue Within*, 27 CAN. J. WOMEN & L. 224 (2015) [hereinafter *Critical Indigenous Legal Theory*].

¹¹ See, e.g., James (Sákéj) Youngblood Henderson, *Postcolonial Indigenous Legal Consciousness*, 1 INDIGENOUS L.J. 1 (2002) (Can.).

¹² See, e.g., Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741 (1997).

¹³ See, e.g., Aaron James (Waabishki Ma'iingan) Mills, *Driving the Gift Home*, 33 WINDSOR Y.B. ACCESS JUST. 167 (2016) (Can.) [hereinafter *Driving the Gift Home*]; *The Lifeworlds of Law*, *supra* note 8.

¹⁴ See, e.g., JOHN BORROWS, *DRAWING OUT LAW: A SPIRIT'S GUIDE* (2010) (Can.).

¹⁵ See, e.g., LINDSAY KEEGITAH BORROWS, *OTTER'S JOURNEY THROUGH INDIGENOUS LANGUAGE AND LAW* (2018) (Can.).

¹⁶ See, e.g., Gordon Christie, *Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions*, 6 INDIGENOUS L.J. 13 (2007) (Can.).

¹⁷ See, e.g., Val Napoleon & Hadley Friedland, *Indigenous Legal Traditions: Roots to Renaissance*, in *THE OXFORD HANDBOOK OF CRIM. L.* 225 (Markus D. Dubber & Tatjana Hörnle eds., 2014) (U.K.); *An Inside Job*, *supra* note 8; *Gathering the Threads*, *supra* note 8.

¹⁸ See, e.g., Drake, *supra* note 4.

¹⁹ See, e.g., Jeffery G. Hewitt, *Decolonizing and Indigenizing: Some Considerations for Law Schools*, 33 WINDSOR Y.B. ACCESS JUST. 65 (2016) (Can.).

²⁰ See, e.g., HAROLD R. JOHNSON, *PEACE AND GOOD ORDER: THE CASE FOR INDIGENOUS JUSTICE IN CANADA* (2019).

²¹ See, e.g., Barkaskas & Buhler, *supra* note 8.

²² See, e.g., Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229 (1999) [hereinafter *Road Back In*]; Christine Zuni Cruz, *Four Questions on Critical Race Praxis: Lessons from Two Young Lives in Indian Country*, 73 FORDHAM L. REV. 2133 (2005) [hereinafter *Four Questions*]; Christine Zuni Cruz, *Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples*, 82 N.D. L. REV. 863 (2006) [hereinafter *Toward a Pedagogy*].

These scholars identify several risks and barriers to the Indigenization of Canadian legal education and practice, including: the distortion, severance, mistranslation, and misappropriation of Indigenous legal orders;²³ racial prejudice against Indigenous law students, faculty, and staff;²⁴ and the preservation of settler-colonial supremacy and Western epistemologies, ontologies, and pedagogies.²⁵ These risks remind us of the importance of Indigenous epistemologies, ontologies, and cosmologies as the source of

²³ Broadly, these risks include the internal distortion caused by the assimilation of non-Indigenous worldviews; external distortion caused by the recording of Indigenous legal orders in non-Indigenous sources; the severance of Indigenous legal orders from their epistemological, ontological, and cosmological foundations; and the risk that Indigenous legal orders may be interpreted incompletely or incorrectly. See Christie, *supra* note 16; FINCH, *supra* note 7, at 34–35; *Outsider Education*, *supra* note 8; Henderson, *supra* note 11; Drake, *supra* note 4, at 20–21 (on language, interpretation, and translation); Aimée Craft, *Living Treaties, Breathing Research*, 26 CAN. J. WOMEN & L. 1, 15 (2014) (on language, interpretation, and translation); *Critical Indigenous Legal Theory*, *supra* note 10, at 229, 233–34, 242, 245 (on the challenge of interpreting and translating Indigenous legal orders). Some communities also oppose recording Indigenous legal orders in writing. See JOHN BORROWS, *RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW* 15 (2002). There is the risk that Indigenous legal orders and liberal constitutionalisms are fundamentally incommensurable. See generally Aaron James Mills (Waabishki Ma'iingan), *Miinigowiziwin: All That Has Been Given for Living Well Together: One Vision of Anishinaabe Constitutionalism* (2019) (Ph.D. dissertation, University of Victoria) (Can.) [hereinafter *All That Has Been Given*], https://dspace.library.uvic.ca/bitstream/handle/1828/10985/Mills_Aaron_PhD_2019.pdf?sequence=1&isAllowed=y [https://perma.cc/Y585-36X5]. Finally, courts currently limit Indigenous legal orders as evidence, rather than according them judicial notice as a non-domestic legal system. BRUCE GRANVILLE MILLER, *ORAL HISTORY ON TRIAL: RECOGNIZING ABORIGINAL NARRATIVES IN THE COURTS* 106–09 (2012) (Can.) (on Indigenous legal orders as evidence of practice, customs, and traditions). However, Val Napoleon and Hadley Friedland argue that Indigenous legal orders are robust enough to withstand the distorting potential of Eurocentric education and settler colonialism. As they put it, “[w]hat we do not want to do is let these critical questions paralyze us into inaction. Narratives of fragility or incommensurability related to Indigenous laws are narratives of colonialism. The stories, and the elders and communities we have learned from, all teach us that Indigenous laws are made of stronger stuff.” *An Inside Job*, *supra* note 8, at 754.

²⁴ See, e.g., Scott J. Franks, *Towards Implementing the Truth and Reconciliation Commission’s Calls to Action in Law Schools: A Settler Harm Reduction Approach to Racial Stereotyping and Prejudice Against Indigenous Peoples and Indigenous Legal Orders in Canadian Legal Education* (2020) (LL.M. thesis, York University); Tracey Lindberg, *What Do You Call an Indian Woman with a Law Degree? Nine Aboriginal Women at the University of Saskatchewan College of Law Speak Out*, 9 CAN. J. WOMEN & L. 301 (1997) [hereinafter *What Do You Call*]. These experiences are consistent with the experiences of Indigenous persons in Canadian society and higher education. See, e.g., Melanie A. Morrison, Todd G. Morrison, Rebecca L. Harriman & Lisa M. Jewell, *Old-Fashioned and Modern Prejudice Toward Aboriginals in Canada*, in *THE PSYCH. OF MOD. PREJUDICE* 277 (Melanie A. Morrison & Todd G. Morrison eds., 2008); Todd G. Morrison, Melanie A. Morrison & Tomas Borsa, *A Legacy of Derogation: Prejudice Toward Aboriginal Persons in Canada*, 5 PSYCH. 1001 (2014) [hereinafter *A Legacy of Derogation*].

²⁵ See Christie, *supra* note 16, at 15–18; Henderson, *supra* note 11, at 16–19; *All That Has Been Given*, *supra* note 23, at 3.

Indigenous legal orders and as a basis for Indigenous legal education.²⁶ In short, we should center decolonization in our activities.²⁷

II. EDUCATION AND PRACTICE

I never wanted to be a lawyer. The Red River Métis, of which I am a descendant, were dislocated and dispossessed in their homelands through Canadian constitutional law and its enforcement by the Royal Canadian Mounted Police—and, likely, plenty of lawyers.²⁸ In my hometown, the only lawyer I had a favourable view of was Harold Johnson—and he has recently written an apology for his participation in the legal system as a crown prosecutor and criminal defence lawyer.²⁹ However, before law school, I was an Indigenous policy and programming consultant. I understood that law seemed to authorise or ground every policy issue impacting Indigenous peoples. That is why I went to law school, to learn more about how law impacts policy.

At a law school admissions event, I met a bencher³⁰ from a provincial law society.³¹ At some point in the conversation, the bencher asked me, “Which one of your parents is Indian?” “That’s not how it works,” I responded frankly. I explained that both of my parents are Métis, but I

²⁶ *All That Has Been Given*, *supra* note 23. John Borrows describes, for example, the importance of Indigenous legal categories in our descriptions of Indigenous law. *See Heroes and Tricksters*, *supra* note 8. Lindsay Borrows describes how the principle of *dabaadendziwin*, or humility, can be applied in legal education. *See Lindsay Borrows, Dabaadendziwin: Practices of Humility in a Multi-Judicial Legal Landscape*, 33 WINDSOR Y.B. ACCESS JUST. 149 (2016) (Can.). I believe this principle recognizes the relational and emotional aspects of learning. Mi’kmaq educator Marie Battiste describes an approach that engages learners, including settlers, in a reflexive process that engages their spiritual, intellectual, emotional, and physical selves. *See MARIE BATTISTE, DECOLONIZING EDUCATION: NOURISHING THE LEARNING SPIRIT* 66–69, 160–63, 176 (2013) (Can.).

²⁷ Hewitt, *supra* note 19, at 67–71. The Article defines decolonization as the dismantling of racial and settler-colonial hierarchies embedded in the rule of law. Tuck and Yang define decolonization as the repatriation or rematriation of Indigenous land and life and the transformation of Indigenous and non-Indigenous peoples’ relationship outside of settler colonialism. *See* Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 DECOLONIZATION: INDIGENITY, EDUC. & SOC’Y 1, 21, 35 (2012). For Hewitt, decolonization in Canadian legal education “is the complicated work of acknowledging historic and ongoing wrongdoings along with claiming responsibility through naming, dismantling, countering and neutralizing both the collective and individual assertions and assumptions made in relation to Indigenous peoples.” Hewitt, *supra* note 19, at 70.

²⁸ *See* M. Gouldhawke, *A Condensed History of Canada’s Colonial Cops*, NEW INQUIRY (Mar. 10, 2020), <https://thenewinquiry.com/a-condensed-history-of-canadas-colonial-cops/> [https://perma.cc/TM3U-J23Z].

²⁹ JOHNSON, *supra* note 20.

³⁰ American readers may be unfamiliar with the term “bencher.” For a detailed description, see LAW SOC’Y OF ONT., *Benchers*, (Can.), <https://lso.ca/about-lso/governance/benchers> [https://perma.cc/72WH-A6ZG].

³¹ This event occurred on January 29, 2013, at 6:00 PM at 1128 West Georgia Street in Vancouver, British Columbia.

could see that his interest in the conversation was quickly diminishing. Perhaps he felt uncomfortable with my reply. The bencher's question may have relied on racialized stereotypes about Indigenous identity and could have demonstrated a lack of knowledge about Indigenous nationhood and citizenship.³² When the bencher asked me, "Which one of your parents is Indian?" he appeared to be collapsing meaningful legal and social categories—Indigenous, First Nations, status Indian, mixed-ancestry, and Métis—into one broader racial category—Indian.³³ His question also seemed to disclose that I was white-passing in that context; I was not "prototypical" of the racialized stereotype of an "Indian."³⁴ The fact that I am racialized as white (or mixed) in certain contexts is important. As a young person in northern Saskatchewan, I was racialized as a person of mixed-settler and Indigenous ancestry.³⁵ When I moved southeast, I found that I was identified by others as white more often than as Indigenous or Métis. Since my Métis identity has always been important to me, I would emphasize my background whenever it was relevant.

Recently, there has been a refocusing on non-Indigenous persons, often racialized as white, who mistakenly or fraudulently claim Indigenous identity.³⁶ In response, some individuals accused of falsely claiming Indigeneity reply that they are "metis," in the sense that they are mixed-race. As a Métis person, these replies are offensive and risk further confusing settlers—like the bencher I met—about the differences between Indigeneity and race.

³² For a discussion of processes of social categorization, see MARY E. KITE & BERNARD E. WHITLEY, JR., *PSYCHOLOGY OF PREJUDICE AND DISCRIMINATION* 87 (3d ed. 2016). For a discussion of processes of racialization, see MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 55-56 (2d ed. 1994). Chelsea Vowel addresses the interplay between these two processes in CHELSEA VOWEL, *INDIGENOUS WRITES: A GUIDE TO FIRST NATIONS, MÉTIS & INUIT ISSUES IN CANADA* 1 (2016) (Can.). Other Indigenous law students similarly report being stereotyped on the basis of race and gender. *What Do You Call*, *supra* note 24, at 303, 315.

³³ For a sociological description of how a single racial category undermines distinct Indigenous identities, see CHRIS ANDERSEN, "MÉTIS": RACE, RECOGNITION, AND THE STRUGGLE FOR INDIGENOUS PEOPLEHOOD 26 (2014) (Can.).

³⁴ KITE & WHITLEY, *supra* note 32, at 131-33.

³⁵ I purposefully distinguish between race and ancestry.

³⁶ In the 2010s, the Canadian art and literature scene was the focus of these false claims. Joseph Boyden was among the most well-known examples of a person who is alleged to have falsely claimed Indigenous identity. See, e.g., Cheryl Simon, *Fraudulent Claims of Indigeneity: Indigenous Nations Are the Identity Experts*, *THE CONVERSATION* (Nov. 22, 2021), <http://theconversation.com/fraudulent-claims-of-indigeneity-indigenous-nations-are-the-identity-experts-171470> [<https://perma.cc/JRM8-Y6RG>] (listing Cheyenne Turions, Joseph Boyden, Michelle Latimer and Carrie Bourassa as people called out for fraudulently holding positions by claiming Indigeneity).

This distinction is becoming more relevant as law schools increasingly have to interrogate the appropriateness of admissions and hiring criteria based solely on self-identification (or, at best, lineal descent of any degree).³⁷

My point is that deeply embedded ideas about race continue to shape the experiences of Indigenous faculty, staff, and students. Even though Indigeneity is not a racial category, Indigenous persons are racialized in Canadian society.³⁸ Canadian society remains highly prejudicial towards Indigenous peoples and, in particular, Indigenous women and girls.³⁹ Race remains the lens through which many Canadians understand Indigenous identity. Thus, it should not come as any surprise that anti-Indigenous racism reverberates in law schools.⁴⁰

Because I am racialized as white (or ambiguously mixed race), I rarely experience overt racial discrimination. However, this is not the experience of many racialized Indigenous law students. Indigenous law students are often stereotyped by their peers and professors as lazy, militant, angry, or

³⁷ See, e.g., *University Launches Formal Investigation*, UNIV. OF SASK. (Nov. 18, 2021), <https://news.usask.ca/articles/general/2021/university-launches-formal-investigation.php> [<https://perma.cc/ZDP2-9EPQ>] (announcing investigation into a professor's representation about her Indigenous identity); Office of the Provost and Vice-President (Academic), *Carleton Developing Indigenous-Specific Hiring Policy*, CARLETON UNIV. (Dec. 7, 2021) (Can.), <https://carleton.ca/provost/2021/carleton-developing-indigenous-specific-hiring-policy/> [<https://perma.cc/N3GN-KDFA>] ("Carlton University is among those institutions that are committing to collaboratively developing an Indigenous-specific hiring policy to protect positions . . ."). The Faculty Association at Ryerson University has developed a memorandum of understanding related to the hiring and advancement of Indigenous professors and librarians that offers an alternative process, stating that an Indigenous faculty member is a person who self-identifies as Indigenous and who demonstrates "lineage and/or acceptance by an Indigenous community." Memorandum of Understanding - 28: Hiring and Evaluation of Indigenous Faculty Members and Librarians, RYERSON UNIVERSITY (2021) (Can.), <https://www.ryerson.ca/content/dam/faculty-affairs/rfa-collective-agreement/CA-2020-2023/MOU-28.pdf> [<https://perma.cc/HL7Z-FR36>]; see also Jennifer S. Simpson, *Universities and Claims to Indigenous Identity*, RYERSON UNIV. (Nov. 15, 2021) (Can.), <https://www.ryerson.ca/provost/about/off-the-fence-blog/2021/11/universities-and-claims-to-indigenous-identity/> [<https://perma.cc/XUP9-CFBG>].

³⁸ The *Indian Act* relies on technocratic definitions that obfuscate an underlying racial logic. See ANDERSEN, *supra* note 33, at 31; BRENNA BHANDAR, *COLONIAL LIVES OF PROPERTY: LAW, LAND, AND RACIAL REGIMES OF OWNERSHIP* 4 (2018); GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION* 41 (2014).

³⁹ *A Legacy of Derogation*, *supra* note 24; NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, EXECUTIVE SUMMARY OF THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2019), (Can.), <https://www.deslibris.ca/ID/10100806> [<https://perma.cc/JHY7-UGUM>]; Sherene H. Razack, *Gendering Disposability*, 28 CAN. J. WOMEN & L. 285 (2016).

⁴⁰ My colleague Angela Lee notes that this experience is not limited to law students. The University of British Columbia interviewed Indigenous students and professors on their experiences in higher education. The students who were interviewed spoke about traumatic experiences in the classroom related to processes of racialization. *How Do You Talk About Indigenous Issues in the Classroom?*, FIRST NATIONS & INDIGENOUS STUDIES, UNIV. OF B.C. (2008) (Can.), <https://inthearts.arts.ubc.ca/> [<https://perma.cc/4ZLQ-4B4E>].

unintelligent.⁴¹ The imposition of these racial stereotypes on Indigenous students can have a profound effect on their law school experiences. Some may feel the need to work two or three times harder than their non-Indigenous peers to disprove negative stereotypes or presumptions of competence held about them.⁴² A student faced with these stereotypes might feel tokenized or essentialized.

Although I never felt a need to conceal my identity, I acknowledge that for others it can be a means to avoid discrimination or to acculturate to a different sort of identity, whether cultural or professional.⁴³ There are a variety of reasons why students may choose to do this: some may be the first in their family or community to attend law school,⁴⁴ while others may choose to disassociate from their Indigeneity or their interests in the practice of Indigenous or Aboriginal law.⁴⁵ Within Indigenous student cohorts, issues of belonging and identification can undermine solidarity and mutual support.

When not appropriately contextualized, some educational content can also replicate racial stereotypes in the classroom and cause harm to Indigenous students.⁴⁶ Indigenous students may be called upon by their professors to speak on issues related to Canadian Aboriginal law, Indigenous legal orders, or the Indigenous perspective, which can be a

⁴¹ *What Do You Call*, *supra* note 24, at 313; MONTURE-ANGUS, *supra* note 9, at 35. Although these accounts are dated, they remain consistent with what I have heard from my racialized peers.

⁴² *Critical Indigenous Legal Theory*, *supra* note 10, at 233; *Road Back In*, *supra* note 22, at 872, 878.

⁴³ For a description of how Indigenous law students negotiate their professional and community identities, see Sonia Lawrence & Signa A. Daum Shanks, *Indigenous Lawyers in Canada: Identity, Professionalization, Law*, 38 DALHOUSIE L.J. 503 (2015).

⁴⁴ “She said being first is hard on the soul of that first person, because it is like we are put through a sieve not made for us.” *Toward a Pedagogy*, *supra* note 22, at 867.

⁴⁵ MONTURE-ANGUS, *supra* note 9, at 66. For example, to advance in their career, some Indigenous law students may choose not to identify and may choose to complete coursework that is consistent with a more traditional legal education. *Heroes and Tricksters*, *supra* note 8, at 806.

⁴⁶ Lindberg describes how Canadian legal education disembodies the law from Indigenous peoples’ social reality through fact patterns: “This is my personhood, and we are dismembering it. Its main organs are taken out: the facts, the issues, and the ratio.” *What Do You Call*, *supra* note 24, at 318. In 2019, a law professor at the University of Toronto assigned a fact pattern involving the apprehension of an Indigenous child from their family. Joe Friesen, *University of Toronto Law School Dean Apologizes for Assignment That Used ‘Troubling’ Indigenous Stereotypes*, GLOBE & MAIL (Dec. 12, 2019), (Can.), <https://www.theglobeandmail.com/canada/article-university-of-toronto-law-school-dean-apologizes-for-assignment-that/> [https://perma.cc/5UL9-VNQG]. The context of the apprehension involved parental drug and alcohol use, the failure of the parents to attend programs, and the grandmother’s positive engagement with the child. *Id.* The assignment recalled stereotypes and “old-fashioned” prejudices about Indigenous families. *Id.* The Dean apologized for the assignment and its impact on Indigenous law students. *Id.*

tokenizing experience.⁴⁷ In some cases, these experiences, even when solicited from Indigenous students in the classroom, may be dismissed.⁴⁸ Some Indigenous students will expend emotional labour managing emotions like anger, discomfort, or anxiety on the part of their non-Indigenous peers and professors.⁴⁹ They may be ignored or patronized.⁵⁰ Administrators might saddle an Indigenous law student with additional academic work to help them “succeed” in law school when what they really need is “life support.”⁵¹ If a student is successful in school, their non-Indigenous peers may perceive those successes to be unmerited.⁵² Some Indigenous students may consciously or unconsciously contort their thinking to accord with a Eurocentric perspective.⁵³ Others will resist the imposition of a Eurocentric worldview.⁵⁴ Some will burn out or withdraw from school.⁵⁵

The agency of settler institutions, professors, and students must be centered in the replication and imposition of prejudice and stereotyping. Indigenous law students are not inadequate or damaged.⁵⁶ For example, Monture-Angus rejects the pathologization of Indigenous students and professors as disadvantaged without identifying the cause of that “disadvantage”: “Disadvantage is a nice, soft, comfortable word to describe dispossession, to describe a situation of force whereby our very existence, our histories, are erased continuously right before our eyes. Words like ‘disadvantage’ conceal racism.”⁵⁷ Indigenous law students are, in many cases, answering important questions about themselves and their relationships to their community and the legal profession.⁵⁸ At the same time, they are navigating an environment—and a legal order—that is sometimes prejudicial to them.

Many law students, including me, end up Indigenizing their own education.⁵⁹ If they are fortunate, they might have the support of an

⁴⁷ *What Do You Call*, *supra* note 24, at 307, 319.

⁴⁸ MONTURE-ANGUS, *supra* note 9, at 20.

⁴⁹ *Id.* at 18–19; *What Do You Call*, *supra* note 24, at 319.

⁵⁰ *What Do You Call*, *supra* note 24, at 314, 319.

⁵¹ JOHNSON, *supra* note 20, at 25 (referring to “life support” as things like “reliable daycare, affordable transportation and health services”).

⁵² Cherie D. Werhun & April J. Penner, *The Effects of Stereotyping and Implicit Theory on Benevolent Prejudice Toward Aboriginal Canadians*, 40 J. APPL. SOC. PSYCHOL. 899, 911 (2010).

⁵³ JOHNSON, *supra* note 20, at 20.

⁵⁴ *Driving the Gift Home*, *supra* note 13, at 868.

⁵⁵ *Id.* at 819; *What Do You Call*, *supra* note 24, at 320; *Critical Indigenous Legal Theory*, *supra* note 10, at 233; *Toward a Pedagogy*, *supra* note 22, at 872.

⁵⁶ Eve Tuck, *Suspending Damage: A Letter to Communities*, 79 HARV. EDUC. REV. 409 (2009).

⁵⁷ MONTURE-ANGUS, *supra* note 9, at 14, 21.

⁵⁸ *What Do You Call*, *supra* note 24, at 322; Lawrence & Daum Shanks, *supra* note 43; *Road Back In*, *supra* note 22; Williams, *supra* note 12.

⁵⁹ *The Lifeworlds of Law*, *supra* note 8, at 850.

Indigenous faculty member.⁶⁰ Before law school, I completed the Program of Legal Studies for Native People (“PLSNP”) at the University of Saskatchewan. For two months during the PLSNP, I learned about *Nehiyawak wiyasiwêwina* from Elder Wes Fineday in Treaty 6 Territory. As a Métis person from Treaty 6 Adhesion Territory, these teachings resonated with me. I hoped to continue this education in Indigenous law when I accepted an offer at Osgoode Hall Law School (commonly referred to as Osgoode) in Toronto, Ontario.

However, when I started law school in 2013, Osgoode did not offer a course in Indigenous law.⁶¹ Like others before me, I had to seek out other opportunities to learn the kind of material and skills that I believed were necessary to practice in or for Indigenous communities.⁶² In my second year, I helped organize the first annual Anishinaabe law camp at Neyaashiinigmiing, where John Borrows and community members from the Chippewas of Nawash Unceded First Nation taught us about Anishinaabe *inakonigewin*.⁶³ I also participated in the Kawaskimhon Aboriginal Law Moot, a moot based in part on Indigenous dispute resolution practice. I also completed a placement with the Metis Settlement Appeal Tribunal in Edmonton, Alberta, through an intensive course in Indigenous Lands, Resources, and Governance.⁶⁴ These experiences were essential to my well-being and success in law school. But Indigenizing the curriculum might not be sufficient for ensuring the success of other Indigenous law students and professors, or for facilitating some of the normative objectives underlying critical Indigenous legal theory.

⁶⁰ I feel that it is probably more common for an Indigenous law student and their Indigenous professor to take on the additional work of Indigenizing the student’s learning. This is not always the case. At Osgoode, I was incredibly fortunate to have the support of non-Indigenous Professors Andrée Boisselle, Shin Imai, and Brian Slattery.

⁶¹ Osgoode now offers courses on Indigenous legal orders. Indigenous law is not a mandatory course, but students are required to take at least one course on Aboriginal law or Indigenous legal issues and perspectives.

⁶² *The Lifeworlds of Law*, *supra* note 8, at 850.

⁶³ *The Anishinaabe Law Camp*, OSGOODE HALL L. SCH. OF YORK UNIV., (Can.), <https://www.osgoode.yorku.ca/programs/juris-doctor/experiential-education/anishinaabe-law-camp/> [https://perma.cc/3X2C-QVC9]. For student reflections on the Anishinaabe law camp, see Serena Dykstra, Zachary D’Onofrio & Jasleen Johal, *Anishinaabe Law Camp*, OBITER DICTA (Sept. 29, 2014), (Can.), <https://obiter-dicta.ca/2014/09/29/anishinaabe-law-camp/> [https://perma.cc/3LX5-8HDK]; Allison Grandish, *Anishinaabe Law Camp 2015: The Stories Behind the Law*, OBITER DICTA, (Oct. 13, 2015), (Can.), <https://obiter-dicta.ca/2015/10/13/anishinaabe-law-camp-2015/> [https://perma.cc/RBU5-WCVH].

⁶⁴ For information on the Kawaskimhon Aboriginal law moot, see *Kawaskimhon National Aboriginal Moot*, OSGOODE HALL L. SCH. OF YORK UNIV., <https://www.osgoode.yorku.ca/programs/juris-doctor/jd-program/mooting-lawyering-skills/kawaskimhon-national-aboriginal-moot/> [https://perma.cc/RB5W-WPKF]. For information on the Intensive in Indigenous Lands, Resources and Governance, see *Intensive Program in Indigenous Lands, Resources & Governments*, OSGOODE HALL L. SCH. OF YORK UNIV., (Can.), <https://www.osgoode.yorku.ca/programs/juris-doctor/jd-program/clinics-intensives/indigenous-intensive/> [https://perma.cc/LU27-X728].

In mid-October 2015, shortly after the release of the Truth and Reconciliation Commission's report into Indian Residential Schools in Canada, the Canadian Institute for the Administration of Justice ("CIAJ") held its annual conference on the banks of the South Saskatchewan River.⁶⁵ The title of the conference, "We Are All Here to Stay," repeated the memetic closing line of Chief Justice Lamer's reasons in *Delgamuukw v. British Columbia*.⁶⁶ No more apt statement of settler futurity may ever be spoken.⁶⁷ In his opening address, Saskatoon Tribal Council Chief Felix Thomas challenged the meaning of the conference's theme.⁶⁸ For Chief Thomas, "being here to stay" meant the over-incarceration and criminalization of Indigenous peoples.⁶⁹ "Here," Chief Thomas explained, "means in jail."⁷⁰ He offered an alternative interpretation based on treaty principles that the conference should be about "gathering together" to reflect not only on Canadian law about Indigenous peoples but also Indigenous realities, life, and legal orders.⁷¹ Justice LaForme shared Chief Thomas's concern, adding that "we are all here to stay, but not in the same way."⁷² Justice LaForme appeared hopeful that change was possible.⁷³ He reflected that "we have moved on from hearing 'there is no such thing as

⁶⁵ CAN. INST. FOR THE ADMIN. OF JUST., 2015 ANNUAL CONFERENCE: ABORIGINAL PEOPLES AND LAW: "WE ARE ALL HERE TO STAY" (2015), <https://ciaj-icaj.ca/wp-content/uploads/page/2016/07/2015-aboriginal-peoples-and-law.pdf> [<https://perma.cc/PS5K-YEYY>].

⁶⁶ *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010, 1124 (Can.). In *R. v. Bloom*, Justice Green comments how "[t]hese final words achieved a meme-like status in the critical commentary that followed *Delgamuukw*." [2016] O.N.C.J. 8, 11 (Can.).

⁶⁷ This theory of reconciliation is premised on the Crown's assumed sovereignty and Indigenous acquiescence to the Crown's interests. Michael Asch writes that "what at first blush reads as an open-ended process becomes one based on this singular pre-condition: the agreement on the part of Indigenous peoples that the scope of their political rights, and in particular their right to self-determination, is circumscribed by the fact that, at the end of the day, whatever rights they may have are subordinate to the legislative authority of the Canadian state." MICHAEL ASCH, *ON BEING HERE TO STAY: TREATIES AND ABORIGINAL RIGHTS IN CANADA* 11 (2014).

⁶⁸ CAN. INST. FOR THE ADMIN. OF JUST., *Aboriginal Peoples and Law: We Are All Here to Stay*, 2015 Annual Conference, at 52:18 (Oct. 14, 2015), <https://ciaj-icaj.ca/en/library/videos/annual-conferences/#goto-2015-aboriginal-peoples-and-law-we-are-all-here-to-stay> [<https://perma.cc/SK4H-7YTK>] [hereinafter 2015 Annual Conference Video].

⁶⁹ *Id.* at 54:02.

⁷⁰ *Id.*; Scott Franks, *Notes on Aboriginal Peoples and Law: We Are All Here to Stay, Canadian Institute for the Administration of Justice, 2015 Annual Conference, in WE ARE ALL HERE TO STAY* (2015) (on file with author).

⁷¹ 2015 Annual Conference Video, *supra* note 68, at 54:17.

⁷² Franks, *supra* note 70.

⁷³ Sean Fine, *Harry LaForme, a Groundbreaking Indigenous Judge, Looks Back in Anger at the Milestone Canada Missed*, *GLOBE & MAIL* (Nov. 22, 2018), (Can.), <https://www.theglobeandmail.com/canada/article-harry-laforme-a-pioneering-indigenous-judge-looks-back-in-anger-at/> [<https://perma.cc/K3MA-CFV6>].

sovereignty' [among non-Aboriginal lawyers and judges] to reconciliation and the kinds of discussions that we are having here [at this conference]."⁷⁴

For me, the conference was like a rock concert of Indigenous legal scholarship. Over eighty judges heard some of the most renowned Indigenous scholars chart a path towards respecting Indigenous legal orders in Canadian courts.⁷⁵ As part of the highlights, John Borrows laid out arguments for taking judicial notice of Indigenous stories as sources of law. Aimée Craft shared her community-based work on *Anishinaabe nibi inaakonigewin*, or Anishinaabe water law, in Manitoba and Northwestern Ontario. Jeffery Hewitt and Caleb Behn tailored their presentations to incorporate Indigenous and non-Indigenous ways of understanding, challenging listeners' assumptions about the supremacy of the western philosophy and the (in)validity of Indigenous legal orders. How could the participants not come away with a greater understanding of the importance of Indigenous laws to the rule of law in Canada?⁷⁶

During Behn's presentation, a participant commented on how justices are sworn to uphold the rule of law.⁷⁷ The participant was responding to Behn's position that Indigenous peoples' resistance to extractive industries is authorized under Indigenous law.⁷⁸ A possible subtext to the participant's comment was Behn's relationship to George Behn, Behn's great grandfather and defendant in *Behn v. Moulton Contracting Ltd.*⁷⁹ In *Behn*, the Supreme Court of Canada did not consider whether the Behn family was authorized under Indigenous law to oppose Moulton Contracting's activities on their land.⁸⁰ Noting that the Behn family's actions were not authorized by the *Indian Act* band council, the Court characterised George Behn's actions as "self-help remedies" that would "bring the administration

⁷⁴ Franks, *supra* note 70.

⁷⁵ Some of these speakers included Val Napoleon, Maria Campbell, Kimberly Murray, Jason Madden, Marilyn Poitras, and Winona Wheeler. Sylvia McAdam Saysewahum joined from the audience; her questions to Chief Justice McLachlin were, however, not answered. See 2015 Annual Conference Video, *supra* note 68.

⁷⁶ Borrows argues that Indigenous law is one of three legal orders that comprises the rule of law in Canada. JOHN BORROWS, CANADA'S INDIGENOUS CONSTITUTION 23 (2010). The rule of law in Canada is often presented as consisting only of European–French and English—systems of legal thought. For a discussion of this limited view of the rule of law, see *The Lifeworlds of Law*, *supra* note 8, at 852–53.

⁷⁷ Caleb Behn, President & Exec. Dir., Keepers of the Water, Indigenous Peoples and the Environment, Presentation at the Canadian Institute for the Administration of Justice Annual Conference: Aboriginal Peoples and the Law: "We Are All Here to Stay" (Oct. 15, 2015).

⁷⁸ *Id.*

⁷⁹ [2013] 2 S.C.R. 227 (Can.).

⁸⁰ Because of the nature of the litigation, the Supreme Court of Canada did not consider the Indigenous law argument to be relevant (though it did acknowledge the argument). *Id.* at 235. In my view, the Supreme Court's narrowing of the issue to abuse of process assumes that the Behn family's decision to rely on their rights under Indigenous law to block Moulton's access was not a valid legal avenue.

of justice into disrepute.”⁸¹ In short, the Court reasoned that the Behn family’s actions were lawless. In the context of the panel’s discussion, the participants’ comments implied that Indigenous legal orders were outside, or disorderly, to the Canadian rule of law. I was stunned. Were we even attending the same conference?

By the third conference day, many of the other Indigenous law students had left. I stayed because I hoped that the then-Chief Justice of the Supreme Court of Canada, Beverly McLachlin, would call upon the justices to thoughtfully consider the application of Indigenous law in her keynote speech. After all, only a few months prior, she had described Canada’s colonial policies towards Indigenous peoples as “cultural genocide.”⁸² Unfortunately, the Chief Justice’s speech was very light on the theme of the conference. She spoke at length about the “access to justice” problem, which she characterized as Indigenous peoples’ distrust and lack of knowledge of the Canadian justice system rather than as the system’s own unresponsiveness to Indigenous legal perspectives or embedded prejudice.⁸³ Finally, towards the end of her speech, the Chief Justice touched on the need for judicial education on Indigenous history, legal traditions, and customary laws.⁸⁴ However, her remarks centred on “alleviat[ing] the alienation experienced by many First Nations people involved in the legal system” and their “empower[ment] . . . to participate more fully in its processes” and not on the application of, or deference to, Indigenous legal orders in Canadian law.⁸⁵ Instead of locating the primary responsibility to take action on justices, she noted the absence of Indigenous lawyers and

⁸¹ *Id.* at 246. This logic was followed at the trial level in *Foxgate Developments*. *Foxgate Developments Inc. v. Doe*, 2020 ONSC 6529 at paras. 107–08 (CanLII) (Can.).

⁸² Sean Fine, *Chief Justice Says Canada Attempted ‘Cultural Genocide’ on Aboriginals*, GLOBE & MAIL (May 28, 2015), (Can.), <https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/> [<https://perma.cc/QU6D-A2PU>].

⁸³ Beverly McLachlin, Chief Justice of Canada, Remarks at the Canadian Institute for the Administration of Justice Annual Conference: Aboriginal Peoples and the Law: “We Are All Here to Stay” (Oct. 16, 2015), *in* CAN. INST. FOR ADMIN. JUST.: PAPERS & ARTICLES, <https://ciaj-icaj.ca/wp-content/uploads/documents/2015/10/916.pdf?id=472>

[<https://perma.cc/MK7H-2GKT>]. The speech is formulaic in its description of access to justice. The first half of the speech is not tailored or responsive to Indigenous peoples’ experiences in the justice system—it could have been written for any audience. The Chief Justice’s remarks on Indigenous peoples’ distrust of, and therefore *their failure* to access, the legal system, ignores the reality that Indigenous peoples have consistently turned to the law for redress. Instead, the speech walks a thin line between the state’s acceptance of its responsibility for disempowering Indigenous peoples’ access to legal redress and shifting this burden of access entirely onto Indigenous peoples—making them responsible for any “mistrust” they might have towards that system. Each of the reasons the Chief Justice gives for this mistrust—a “clash of cultures” or geographical isolation—centre Indigenous peoples’ responsibility or position.

⁸⁴ *Id.* at 10–11.

⁸⁵ *Id.* at 11.

justices and suggested that there was a lack of engagement among communities in advancing their Indigenous legal orders in Canadian courts.⁸⁶

At the time, I felt that the Chief Justice could have said more. It felt like a lost opportunity, given the strength of the Indigenous scholars at the conference. I remember thinking: *you have hundreds of judges and lawyers in this room right now who can learn how to engage with Indigenous law if you'd only tell them that it's OK*. The conference's theme, "We Are All Here to Stay" posed a challenge to the participants: "What does it mean to be 'here to stay'?" One possible answer challenges the supremacy of settler interests in our collective understanding of the rule of law in Canada, as demonstrated by the application of an Indigenous legal order in a case such as *Behn* or as presently is the case in Wet'suwet'en territory.⁸⁷ The other answer is an iteration on the status quo: being here to stay in the same way.

To me, it appeared that an important barrier to Indigenization and decolonization of Canadian legal education was the perseverance of an ideology rooted in settler colonialism and an affective commitment to its future. What I learned in law school is that racism is not the whole story. Canadian law is deeply invested in ensuring the future allocation of resources to settlers. Even seemingly progressive notions (such as reconciliation) or activities (such as the integration of Indigenous legal orders) manifest in this context of a perceived threat to settler futurity.⁸⁸ Racism facilitates a deeper ideology of settler colonialism.

III. TEACHING

I joined the Lincoln Alexander School of Law in 2020. As a new assistant professor, I have felt welcomed in my work on Indigenizing the first-year curriculum. I want to say this up front because I genuinely

⁸⁶ *Id.* at 12. Here, again, the Chief Justice places the responsibility on Indigenous peoples to engage with the Canadian legal system. In describing some areas of judicial reform, she notes that these activities "do not fundamentally change the way that the justice system interacts with Aboriginal people," though it might "promise to alleviate the alienation experienced by many First Nations people involved in the legal system, and empower them to participate more fully in its processes." *Id.* at 11. It is unclear whether she is aware that there are hundreds, if not more, Indigenous persons trained in Canadian law. The Indigenous Law Centre Summer Program at the University of Saskatchewan graduated hundreds of Indigenous law students, some of whom went on to receive law degrees and enter the profession. *About the Summer Program*, INDIGENOUS LAW CTR., (Can.), <https://indigenoulaw.usask.ca/ilc-summer-program.php#TheSummerPrograminPropertyandCustomaryLaw> [<https://perma.cc/X2MV-99HF>]. At the CIAJ's conference, there were at least four Indigenous justices: Justices Gerald Morin, Tony Mandamin, Murray Sinclair, and Harry LaForme. See 2015 Annual Conference Video, *supra* note 68. I attended the conference with at least eight other Indigenous law students.

⁸⁷ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 1111 (Can.).

⁸⁸ For a discussion of the concept of "settler futurity" see Tuck & Yang, *supra* note 27, at 14.

appreciate the faculty, staff, and students at our school. Like many Canadian law schools, our school is committed to the implementation of the Truth and Reconciliation Commission's Call to Action 28. In this section, I want to share some of my thoughts on implementing the Calls in the context of Indigenous legal education, more broadly defined, in Canadian law schools.

The Truth and Reconciliation Commission's Final Report and Calls to Action have had a significant impact on Indigenization activities in Canadian legal education. Three Calls attend to the need for cultural competency and Aboriginal and Indigenous law training for law students and legal professionals, and for the creation of Indigenous law institutes:

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

....

50. In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.⁸⁹

Canadian law schools have responded with a variety of formal and informal initiatives intended to implement the Calls.⁹⁰

⁸⁹ CALLS TO ACTION, *supra* note 5, at 3, 5-6.

⁹⁰ For a summary of each law school's progress on the implementation of the Calls, see *Reconciliation Initiatives & Responses to the TRC Report in Canadian Law Schools*, COUNCIL CAN. LAW DEANS (2018), <https://cclcd-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf> [https://perma.cc/U2W7-SNW5]; *Reconciliation Initiatives & Responses to the TRC Report in Canadian Law Schools*, COUNCIL CAN. LAW DEANS (2021), <https://cclcd-cdfdc.ca/wp-content/uploads/2021/07/2021-TRC-Positions-of-Canadian-Universities-June-2021-Copy.pdf> [https://perma.cc/Y6XU-XSF5].

In my capacity as a faculty member, I am now trying to decide how to do this work, which raises myriad questions. The structure, content, and delivery of courses is one consideration. Should Indigenous legal orders be taught in a mandatory course?⁹¹ How might we respond to arguments from faculty that a mandatory course interferes with academic freedom?⁹² Should Indigenous law, issues, and perspectives also be integrated throughout the curriculum?⁹³ How do we ensure that Indigenous legal education is not sequestered to one week in an integrated, or segregated to one mandatory, course?⁹⁴ Should students be required to take a course in constitutional law, legal theory, or Aboriginal law before they take a course in Indigenous law?⁹⁵ Should students receive preparatory education in the history of settler colonialism, Indigenous and settler relationships, or residential schools before they attend a course on Indigenous law?⁹⁶ Should students be required to learn about Indigenous epistemologies, ontologies, cosmologies, and ethics before they learn about a specific Indigenous legal order?⁹⁷

Whether mandatory or elective, or both, what should the content of such a course be? What are the pedagogical objectives of such a course?⁹⁸ Should a course on Indigenous law address Indigenous legal theories and methodologies, multiple Indigenous legal orders in a comparative form, or a single Indigenous legal order? If an Indigenous legal order is taught, should they be those of the territory where the school is located, or those of the educator's home territory?⁹⁹ How should our courses reflect the guidance of Indigenous communities and elders?¹⁰⁰ Should certain content

⁹¹ Drake, *supra* note 4, at 26–27.

⁹² For a reply, see *id.* at 12.

⁹³ It can be both mandatory and integrated: *Id.* at 26–27.

⁹⁴ If Indigenous laws are integrated in the curriculum without a mandatory course, students—and professors—might struggle to make sense of those laws. Miscategorization, disconnection, abstraction, and potentially even subjugation are risks in this context. For a discussion of some of these risks. *See id.* at 27.

⁹⁵ *The Lifeworlds of Law*, *supra* note 8, at 870.

⁹⁶ *See id.* at 869–70.

⁹⁷ *Id.* at 871.

⁹⁸ Drake's mandatory course on Anishinaabe law had two objectives: first, to illustrate that Anishinaabe law is *law*, how to discern law from Indigenous sources, and how to apply Indigenous law in practice; and second, to “equip students with the tools to set aside their own ontology, epistemology, ethic, and logic and begin to grasp the Indigenous ontology, epistemology, ethic and logic that give rise to the Indigenous laws at issue.” Drake, *supra* note 4, at 22.

⁹⁹ Drake proposes that students should be taught the Indigenous legal order of the territory in which the educator and students are located: *Id.* at 23. We might also ask how the legal order of the host territory might direct an educator in this choice. *See id.*

¹⁰⁰ An Elders' advisory circle may help guide the Indigenization and decolonization of law schools, including courses. Hewitt, *supra* note 19, at 81.

be excluded?¹⁰¹ More fundamentally, how should the structure or delivery of the course uphold Indigenous legal orders or reflect an Indigenous pedagogical practice?¹⁰² Should we prioritize materials written or spoken by Indigenous persons?¹⁰³ What evaluation methods, if any, should be used in a course on Indigenous law?¹⁰⁴ Are final exams inconsistent with Indigenous epistemologies?¹⁰⁵ Are reflective journals more appropriate?¹⁰⁶ Can we reconcile the grade curve with Indigenous epistemologies?¹⁰⁷

It is also necessary to consider the experiences of both Indigenous and non-Indigenous students in the classroom. How do we ensure that the classroom is safe for Indigenous students while also creating space for non-Indigenous students to unsettle themselves?¹⁰⁸ Should we consider Indigenous law student cohorts in the classroom? How might an educator offer support for Indigenous law students within or outside of the classroom? How might an educator support or enable self-reflection and introspection among non-Indigenous students on some of the assumptions they might carry about Indigenous peoples and Indigenous legal orders?

Indigenous faculty are often called upon to teach not only Canadian Aboriginal law, but many other areas of state law, including property, contracts, or torts. This leads to a consideration of resourcing, capacity, competency, and institutional objectives. Who is competent to teach Indigenous legal education? Should it be limited to Indigenous faculty members or community members? How do we ensure that educators—Indigenous or not—have adequate support and training to integrate Indigenous legal education in their courses or teach a course on Indigenous law?¹⁰⁹ Should Indigenous faculty members be responsible for providing this support to non-Indigenous colleagues in their efforts to integrate the curriculum?¹¹⁰ If so, how might Indigenous faculty be accommodated or compensated, if at all, for this bijural role? If Indigenous community members teach, should the institution or the professor pay them for their

¹⁰¹ HADLEY LOUISE FRIEDLAND, *THE WETIKO LEGAL PRINCIPLES: CREE AND ANISHINABEK RESPONSES TO VIOLENCE AND VICTIMIZATION* 13 (2018) (Can.).

¹⁰² For a discussion of Indigenous pedagogies in a Anishinaabe law course, see Drake, *supra* note 4, at 28–30; *The Lifeworlds of Law*, *supra* note 8. Mills discusses, for example, how Anishinaabe law structures when in the year certain content can be discussed. *Id.* at 873.

¹⁰³ *The Lifeworlds of Law*, *supra* note 8, at 876.

¹⁰⁴ See Drake, *supra* note 4, at 30.

¹⁰⁵ See *id.* at 30.

¹⁰⁶ See Barkaskas & Buhler, *supra* note 8, at 8.

¹⁰⁷ *Road Back In*, *supra* note 22, at 268.

¹⁰⁸ Tuck & Yang, *supra* note 27, at 21. See also Eve Tuck & K. Wayne Yang, *Series Editors' Introduction*, in *INDIGENOUS AND DECOLONIZING STUDIES IN EDUCATION: MAPPING THE LONG VIEW* x–xxi, xiv (Linda Tuhiwai Smith, Eve Tuck & K. Wayne Yang eds., 2018) [hereinafter *MAPPING THE LONG VIEW*] (providing a brief overview of efforts to decolonize higher education).

¹⁰⁹ Hewitt, *supra* note 19, at 72.

¹¹⁰ Hewitt reminds us that some institutions may “take more from Indigenous scholars and Indigenous law students than from their non-Indigenous colleagues and students.” *Id.* at 78.

labour? If so, how should that labour be valued? What is the role of non-Indigenous professors, staff, and students in Indigenous legal education?¹¹¹

A more difficult question is whether Indigenous legal orders should be taught at all within the overarching structure of Canadian legal education?¹¹² What risks might exist—to Indigenous legal orders or communities—when we implement Indigenous legal education without also undertaking decolonization of Canadian legal education and practice?¹¹³ These are just some of the questions I am asking myself.

The pedagogical choices I have made during my time at Lincoln Alexander reflect my ethical commitments as a Métis person who, for the most part, sees *Nehiyaw wiyasiwêwina* as governing his life.¹¹⁴ Like other Canadian law schools, Lincoln Alexander offers a mandatory course in Indigenous law. However, our current curriculum places Indigenous law within a mandatory course on Aboriginal law, the Canadian law that purports to apply to Indigenous peoples. This placement creates unique challenges for Indigenous and non-Indigenous students alike.

On one hand, teaching and learning settler colonial law alongside Indigenous law offers opportunities to critically assess and imagine alternatives to the status quo. On the other, this juxtaposition risks subjugating Indigenous law within a dominant, settler colonial worldview. For some law students, this course marks their first time grappling with their settler worldview as an object—as a lens through which they make sense of the law and its relationship to society.¹¹⁵ That can be a challenging thing for some to grasp, especially since they will be doing this within a broader curriculum that, in some cases, uncritically concretizes their dominant worldview. Distortion, mistranslation, and false categorization are risks when teaching Indigenous and colonial legal orders side by side, even despite the best efforts of an educator.¹¹⁶ I know it can be done because I have had professors who have done this well, but the difficulties inherent in the exercise are magnified for me as an early career professor. This challenge leads me to believe that I should divide the content of the current Aboriginal law and Indigenous law course into separate courses.

I am starting to think that if we require students to take a course on Indigenous law, we should make it a stand-alone, substantive one.¹¹⁷ I am not convinced that Indigenous law should be taught trans-systemically or

¹¹¹ Mills describes, for example, how non-Indigenous faculty can support Indigenous students and their faculty colleagues in their efforts to teach and learn about Indigenous legal orders. *The Lifeworlds of Law*, *supra* note 8, at 871.

¹¹² *Id.* at 872; Hewitt, *supra* note 19, at 71–80.

¹¹³ Hewitt, *supra* note 19, at 71–80.

¹¹⁴ I am not fond of the “two-worlds” persona I am sometimes offered as a Métis person. That said, my knowledge of *Nehiyaw wiyasiwêwina* is limited.

¹¹⁵ *Road Back In*, *supra* note 22, at 239.

¹¹⁶ On the challenges of mis-categorization, see *Heroes and Tricksters*, *supra* note 8, at 812.

¹¹⁷ I think Mills’ course on Anishinaabe rooted constitutionalism is one possible approach. *The Lifeworlds of Law*, *supra* note 8.

within a framework of legal pluralism.¹¹⁸ I do recognize that a trans-systemic or pluralistic approach has some benefits. For example, we may organize our understanding of Indigenous legal orders according to trans-systemic categories. In turn, a trans-systemic approach can make Indigenous legal orders more approachable and cognizable to persons who are unfamiliar with Indigenous epistemologies, cosmologies, and ontologies.¹¹⁹ There is a persuasive turn to this approach.¹²⁰ Yet, I am concerned that there are also substantial risks, such as the mistranslation, severance, and distortion to Indigenous legal orders mentioned above.¹²¹ I am also concerned that courts may apply—and counsel may argue for the application of—Indigenous law in ways that sustain settler colonialism.

These risks and structural constraints explain, in part, why I do not focus on an Indigenous legal order in my course on Aboriginal and Indigenous law.¹²² If I do teach about Indigenous legal orders in my course, I focus on the theoretical and methodological frameworks that we can use to approach these legal orders. I believe that Canadian Aboriginal law first needs to be deconstructed, and students need to learn how to critically interrogate their assumptions about race, Indigeneity, and the prioritization of settler worldviews and interests.¹²³ Although Indigenous legal orders are made of “stronger stuff,”¹²⁴ we should endeavour to reduce compromising their integrity as much as possible.¹²⁵ Yes, Indigenous legal orders are dynamic, responsive, and resilient. However, when Canadian law stains Indigenous law in ways that sustain settler colonialism, and these threads are woven back into Indigenous law, we might want to be more concerned about what’s been gathered together. One way to do this is to develop courses that are rooted in an Indigenous legal order.¹²⁶

¹¹⁸ Mills argues 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” *Id.* at 854.

¹¹⁹ Borrows argues that Indigenous law should ideally provide its own autonomous categories, rather than relying on existing categories in western law. *Heroes and Tricksters*, *supra* note 8, at 808–09.

¹²⁰ *An Inside Job*, *supra* note 8, at 733–34.

¹²¹ See *supra* text accompanying note 23.

¹²² I incorporate Indigenous legal perspectives throughout the course, and I use Mills’ work to frame the overall structure of the course. However, I do not dedicate any lectures to a particular Indigenous legal tradition. For the most part, I focus on Canadian law and how it purports to relate to Indigenous legal orders.

¹²³ Mills proposes that students receive instruction on how liberal constitutionalism shapes the stories that the dominant Canadian legal system tells about law. *The Lifeworlds of Law*, *supra* note 8, at 870. I agree and would add that other critical legal theories, such as critical race theory or critical feminist legal theory, can contribute to our understanding of settler colonial legal systems. I describe this further in this essay.

¹²⁴ *An Inside Job*, *supra* note 8, at 754.

¹²⁵ Mills “advocate[s] for caution in *how* we go about encouraging the study of Indigenous legal orders.” *The Lifeworlds of Law*, *supra* note 8, at 872.

¹²⁶ *Id.*

However, teaching a stand-alone course in an Indigenous legal tradition also poses its own challenges. Personally, I would not be comfortable teaching a course in *Nehiyaw wiyasiwêwina*, *Anishinaabe inaakonigewin* or Métis law. To be competent in such an undertaking, at least in my own understanding of what competency means in this context, I would have to dedicate a significant part of my life to this study. Ideally, I need to learn the language through which an Indigenous legal order is expressed.¹²⁷ But as a tenure-track assistant professor who is just starting his PhD, I do not have the capacity to do so. Because of my junior status, there are structural constraints on my ability to live a life that will permit me to educate myself and others about Indigenous law. I imagine that many other newly hired Indigenous law professors are in a similar position, likely due to the recent momentum in law schools to hire Indigenous faculty. Although many law schools are deeply invested in delivering Indigenous law courses, the demands placed on Indigenous faculty members pull against making this a reality.

It is generally known that many pre-tenure faculty members try to harmonize their teaching, research, and service as much as possible because they know that research is both hard to do during the teaching term and is weighted more strongly than teaching and service during tenure review. Indigenous faculty members whose research is not related to Indigenous law cannot harmonize their Indigenous law-related teaching and service obligations with their research agenda. A law school that wants a course in Indigenous law might be asking a pre-tenure faculty member to pursue additional community-based research that is necessary to teach an Indigenous legal order even though that member's primary research is in another area. To teach an Indigenous legal order, I believe an educator must commit to learning an Indigenous language and honouring their relationships with the Indigenous nation sharing its legal tradition. Thus, aside from considerations such as the content and delivery of such a course, there are structural barriers for pre-tenure faculty tasked with this work.

In response to the risks and structural barriers noted above, I propose to offer a course in Indigenous legal theory rather than on an Indigenous legal order. This course would introduce students to Indigenous legal research methodologies and methods with a focus on how Indigenous legal orders might be approached, revitalized, and applied.¹²⁸ Since there is no single Indigenous legal methodology, students would be introduced to methodologies such as critical Indigenous legal theory; trans-systemic, pluralistic, hybrid approaches; and rooted constitutionalism.¹²⁹ Students

¹²⁷ For a discussion of the relationship between language and an Indigenous legal order, see Craft, *supra* note 23, at 15; *see also* Drake, *supra* note 4, at 30–31.

¹²⁸ Harland, *supra* note 8; *An Inside Job*, *supra* note 8, at 733.

¹²⁹ *Critical Indigenous Legal Theory*, *supra* note 10; Aaron James (Waabishki Ma'iingan) Mills, *Rooted Constitutionalism: Growing Political Community*, in RESURGENCE AND

would also receive training in several different methods for receiving, learning, and teaching Indigenous law, such as the narrative analysis method developed by the University of Victoria's Indigenous Law Research Unit,¹³⁰ land-based learning and environmental observation,¹³¹ critical introspection and self-reflection,¹³² and community, elder, or spiritually-guided learning.¹³³ This course will also focus on Indigenous legal practice—what it means to be an Indigenous person or a settler practicing Indigenous law in either Indigenous or settler colonial legal contexts.¹³⁴ The purpose of this course will be to equip students with the intellectual and effective resources to critically engage with Indigenous and settler colonial law. I would like students to see that their specific engagement with either legal order is a choice that is informed by their epistemological, ontological, and even cosmological commitments. In short, the focus of the course will be on the theory and practice of Indigenous law and not any particular Indigenous legal order.

Students—especially non-Indigenous students—also need to understand the seriousness of their role as legal professionals, as individuals trained in applying methodologies of legal reasoning to stories, relationships, and cases. At least for now, few law students can escape the cultural, social, and professional context they enter into when they become lawyers. They will be changed.¹³⁵ And when they go into a community, they arrive as lawyers, as technicians of law—even if they aspire to something else.¹³⁶ They will be looked to and be seen as possessing skill and competency in legal reasoning. At the same time, students need to develop

RECONCILIATION: INDIGENOUS-SETTLER RELATIONS AND EARTH TEACHINGS 133 (Michael Asch, John Borrows, & James Tully eds., 2018) (Can.); Willie Ermine, *The Ethical Space of Engagement*, 6 INDIGENOUS L.J. 193 (2007) (Can.); Henderson, *supra* note 11.

¹³⁰ *With or Without You*, *supra* note 8; *Gathering the Threads*, *supra* note 8; *An Inside Job*, *supra* note 8; Emily Snyder, Val Napoleon & John Borrows, *Gender and Violence: Drawing on Indigenous Legal Resources*, 48 U.B.C. L. REV. 593 (2015) (Can.); *Heroes and Tricksters*, *supra* note 8; Hannah Askew, *Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools*, 33 WINDSOR Y.B. ACCESS TO JUST. 29 (2016).

¹³¹ *Outsider Education*, *supra* note 8; see Drake, *supra* note 4, at 31-32.

¹³² *Critical Indigenous Legal Theory*, *supra* note 10. For an example of a settler's journey through this process, compare the writings of Rupert Ross, which disclose a shifting perspective and approach to Indigenous legal orders. RUPERT ROSS, *DANCING WITH A GHOST: EXPLORING ABORIGINAL REALITY* (2d ed. 2006) (Can.) [hereinafter *DANCING WITH A GHOST*]; RUPERT ROSS, *RETURNING TO THE TEACHINGS: EXPLORING ABORIGINAL JUSTICE* (1996) (Can.) [hereinafter *RETURNING TO THE TEACHINGS*].

¹³³ *Driving the Gift Home*, *supra* note 13.

¹³⁴ *Road Back In*, *supra* note 22; *Four Questions*, *supra* note 22; JOHNSON, *supra* note 20; Askew, *supra* note 130; *DANCING WITH A GHOST*, *supra* note 132; *RETURNING TO THE TEACHINGS*, *supra* note 132.

¹³⁵ JOHNSON, *supra* note 20, at 39; *Road Back In*, *supra* note 22, at 232.

¹³⁶ Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002) (Can.); *Road Back In*, *supra* note 22.

skills and competencies that will prepare them for practice in or in relation to Indigenous community contexts.¹³⁷ When they do draw from an Indigenous legal tradition, they must consider the potential violence caused by the extraction and redeployment of Indigenous legal resources, particularly within the neoliberal marketplace of legal services.¹³⁸ I think that a course that focuses on methodology is appropriate to this context.

It is not my intention to privilege methodology over Indigenous legal orders, or the stories and experiences that give them life and application. Within the western empirical tradition there is a risk of methodologism, the prioritization or idolization of the empirical scientific method over other

¹³⁷ An Indigenous community context is not as rare as some students might think. If a lawyer is advising a municipality, for example, they will need to take into consideration impacts of municipal decision-making on nearby Indigenous communities. Similarly, lawyers that work for proponents in a variety of industries will need to understand the Indigenous community context and the Crown-Indigenous relationship because proponents regularly discharge the procedural components of the Crown's constitutional duty to consult and accommodate. As Drake points out, there are other reasons why law students should learn about law in Indigenous-practice contexts. Any law student may one day become a judge tasked with interpreting an Indigenous legal order. Law schools need to prepare their students to be able to "grasp the Indigenous ontology, epistemology, ethic, and logic" of an Indigenous community and "discern the normative principles within sources of Indigenous law, such as stories, land, and language." Drake, *supra* note 4 at 21-22. There is another question of what these skills and competencies are, and what they should be called. The Truth and Reconciliation Commission specifically identified cultural competency as a required competency for the legal profession. The Advocate's Society and Aboriginal Legal Services have each produced guides on Indigenous cultural competency. THE ADVOCATES' SOCIETY, INDIGENOUS BAR ASSOCIATION, & LAW SOCIETY OF ONTARIO, *Guide for Lawyers Working with Indigenous Peoples* (2018), https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/Guide_for_Lawyers_Working_with_Indigenous_Peoples_may16.pdf [<https://perma.cc/2LEQ-99AQ>]; LORNA FADDEN, COMMUNICATING EFFECTIVELY WITH INDIGENOUS CLIENTS (Jonathan Rudin & Amanda Carling eds., 2017), <https://aboriginallegal.ca/downloads/communicating-with-indigenous-clients.pdf> [<https://perma.cc/GQ45-56GT>] (Can.). The Canadian Bar Association has developed an online course based on an Indigenous cultural competency approach: CANADIAN BAR ASS'N, *The Path: Your Journey through Indigenous Canada* (2021) https://www.cba.org/ThePath?lang=en-ca&utm_source=cba&utm_medium=email [<https://perma.cc/8CD9-YDJ5>]. Some scholars reject or caution against reducing such competencies to "cultural competency." *Toward a Pedagogy*, *supra* note 22, at 889; Pooja Parmar, *Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence*, 97 CAN. B. REV. 526, 536-41 (2019) (Can.).

¹³⁸ Mills and Drake caution against the risk of epistemic violence that might arise from an uncritical engagement with Indigenous legal orders: *The Lifeworlds of Law*, *supra* note 8, at 868; Drake, *supra* note 4, at 20-21. Indigenous legal principles, such as humility, may motivate students to critically reflect on why and how they are engaging with an Indigenous legal order. See, for example, Lindsay Borrows' discussion of *dabaadendiziwin*. Borrows, *supra* note 26. Askew describes an approach centered in *debewewin*, which she interprets as "a quality of intellectual humility." Askew, *supra* note 130, at 38. Askew's article, *Learning from Bear-Walker*, is an introspective description of her engagement with Anishinaabe law with the Chippewas of Nawash Unceded First Nation at Neyaashiimiing.

social, cultural, and theoretical ways of understanding.¹³⁹ This is not my intention when I discuss the importance of methodology. The purpose of methodology is to be better able to understand one or more aspects of the multiple truths of our individual and collective experiences.¹⁴⁰ Each methodology provides a different perspective on these truths. *How* we carry out Indigenous legal education is a question of methodology. We need to be conscious of our choices.

I also believe that we should integrate Indigenous legal issues, perspectives, and orders throughout the curriculum. I distinguish between these three things purposefully. Non-Indigenous faculty members will be called on to implement the TRC's Calls in their courses, with little direction on how to do so. Very few of them will have training in either Indigenous legal theory or methodologies, and even fewer, if any, will have training in an Indigenous legal order. For this reason, we can think about integration as a continuum, starting with a critical integration of Indigenous legal issues in a course. We might use critical legal theory, legal realism, feminist, critical race, or critical disability theory to take a deeper look at the application of Canadian law to Indigenous persons. Indigenous perspectives can be brought in to show the importance of worldview and narrative in how we understand these legal issues. Talking about Indigenous "perspectives" does not diminish the importance of Indigenous *legal* perspectives rooted in Indigenous legal orders. It is simply a starting point.

Additionally, I am proposing a multi-stage project to integrate Indigenous legal issues, perspectives, and orders in our curriculum. Integration reduces the amount of material that must be covered in an Aboriginal law course, allowing for material on Indigenous legal theory to be addressed instead. For example, students can be introduced to the relationship between fee simple property and Aboriginal title, matrimonial property, or the law related to Indigenous human remains and intellectual property, in property law; to anti-Indigenous bias in pre-, mid-, and post-trial procedures, and Indigenous alternative dispute resolution processes in criminal law; or to Indigenous legal theories in a legal theory course. Integration may also support either a critical approach to the common law or trans-systemic approaches to Indigenous and Canadian legal orders.

When I arrived at Lincoln Alexander, I prepared a handbook with a summary of my thoughts on the integration of Indigenous legal education in each of the first-year courses. I included cases and summaries of readings to orient non-Indigenous faculty with each area. I tried to go beyond the more obvious examples of *Gladue* in a criminal law course or *Tsilhqot'in*

¹³⁹ Zhipeng Gao, *Methodologism/Methodological Imperative*, in ENCYCLOPEDIA OF CRITICAL PSYCH. 1176-79 (Thomas Teo ed., 2014), https://doi.org/10.1007/978-1-4614-5583-7_614 [<https://perma.cc/P8BL-W8XN>].

¹⁴⁰ Indigenous epistemologies include empirical methods of observation. See, e.g., *Outsider Education*, *supra* note 8, at 2-5.

in property law and include other cases and examples.¹⁴¹ I offered one-on-one assistance with curriculum development for interested faculty members. Before a session with a colleague, I might ask them to send me their syllabus so that I can see their pedagogical objectives and the relative placement of the Indigenous material in their course. I could then provide a few readings, cases, or comments to start our discussion.

During the session, I might try to understand the unique interests of the faculty member. For example, a faculty member might be interested in corporeal property—human remains—in their property law course. I might respond by providing material on cases involving the repatriation/rematriation of ancestors, legislation governing Indigenous burials, references to literature in museum studies, or Indigenous legal traditions related to feasting. The faculty member would then consider the material and decide whether or how to incorporate it in their course. I might ask the faculty member to follow up with me so that I can document how others might incorporate this material in the same course. This information can be collected in a publicly accessible database. Such a database might reduce the labour contributed by Indigenous professors at other law schools. It might also generate discussions in new doctrinal areas or expand existing discussions to consider new issues or perspectives. This project has received a lot of interest and support within the faculty.

Apart from curricular questions, I think a lot about how we can best support our Indigenous students at Lincoln Alexander. In addition to academic support, Indigenous students should have access to “life support”—communities of care that are adequately funded and supported by the institution.¹⁴² This life support may include an elders-in-residence program, institutionally supported Indigenous student associations, and facilities for ceremonies and gathering. Indigenous students should also have an opportunity to learn about the basics of legal research and writing and to learn one of the most challenging courses—like property or criminal law—or an Indigenous order in an optional, credited, fully funded, summer program for Indigenous students before they are thrown into their first year of law school.¹⁴³

Each law school needs to institutionalize these activities in intentional ways that support (or lessen the workload of) Indigenous faculty. For

¹⁴¹ R. v. Gladue, [1999] 1 S.C.R. 688 (Can.); Tsilhqot’in Nation v. British Columbia, [2014] 2 S.C.R. 257 (Can.).

¹⁴² JOHNSON, *supra* note 20, at 25.

¹⁴³ This was the intent and structure of the Program of Legal Studies for Native People at the University of Saskatchewan. The PLSNP was cancelled in 2020. In response, the Allard School of Law at the University of British Columbia offered a summer course on tort law for Indigenous law students. ALLARD SCH. OF L. & UNIV. OF B.C., *ILS Summer Intensive in Tort Law Builds Community, Provides Skill Development and Indigenous Legal Perspectives* (2021), <https://allard.ubc.ca/about-us/news-and-announcements/2021/ils-summer-intensive-tort-law-builds-community-provides-skill-development-and-indigenous-legal> [https://perma.cc/7VRQ-GGAZ].

example, law schools may hire dedicated staff such as directors or managers of Indigenous legal education and reconciliation, empower a faculty committee dedicated to Indigenization and decolonization, envision plans for decolonization,¹⁴⁴ and create an institutional culture that sees these activities as the shared responsibility of Indigenous and non-Indigenous faculty and staff. Each law school may differ in how it undertakes this work, even though all are committed to implementing the Truth and Reconciliation Commission's Call to Action 28.¹⁴⁵

IV. CONCLUSION

It may be naïve to say this, but I am optimistic that things are changing within legal education. Incoming students at Lincoln Alexander have benefited from recent changes made to secondary and post-secondary curricula, some in light of the Truth and Reconciliation Commission's work or the advocacy of Indigenous educators. Growing up in northern Saskatchewan, I was an early beneficiary of a curriculum that required all elementary school students to attend Nehiyaw language and culture classes, including land-based education. My school experience complemented the rest of my life in the community. A lot has happened in the six years since the Truth and Reconciliation Commission's final report. I feel that students are more aware than they were when I was in law school (even though I was of the Idle No More generation).¹⁴⁶

Indigenous legal scholars have also shifted the field of Canadian Aboriginal law from its almost non-existent foundations forty-years ago. They have contributed to the theorization of Indigenous legal orders, legal pluralism, and to Indigenous legal pedagogies and methodologies. I feel that the challenge we have, as Indigenous law professors, is presenting this diversity while also drawing it together in all aspects of the educational institution, not just the curriculum. And I do not mean to imply that it is solely up to us to do this. I think non-Indigenous law professors can and should play an important role in deconstructing settler supremacy embedded in the rule of law.

As I do this work, I want to continue thinking about two things. First, how can I best support both the Indigenous and non-Indigenous students in my courses? What works for one cohort might not work for the other. I anticipate difficult ethical choices. But I know that one of my primary concerns is the effect of racial prejudice in the classroom and its permeation

¹⁴⁴ Hewitt, *supra* note 19, at 78, 82.

¹⁴⁵ Adrien Habermacher, *Understanding the Ongoing Dialogues on Indigenous Issues in Canadian Legal Education through the Lens of Institutional Cultures (Case Studies at UQAM, UAlberta, and UMoncton)*, 57 *OSGOODE HALL L.J.* 37, 96 (2020).

¹⁴⁶ See generally, THE KINO-NDA-NIMI COLLECTIVE, *THE WINTER WE DANCED: VOICES FROM THE PAST, THE FUTURE, AND THE IDLE NO MORE MOVEMENT* (2014) (describing the Idle No More generation).

into the content that is taught. Second, how can I bring decolonization into my work in integrating Indigenous legal issues, perspectives, and laws into Canadian legal education and practice? I feel a pause when I ask myself this question. I wonder whether Indigenization is even appropriate within the current institutional structure. What are the risks of proceeding with our current momentum? If anything, I think that my practice of decolonization must be relational. I suppose there is a third thing I'm thinking about. What does it mean to be "here to stay, but not in the same way"?