

kihcitwâw kîkway meskocipayiwin (sacred changes):
Transforming Gendered Protocols in Cree Ceremonies through Cree Law

by

Darcy Lindberg
Bachelor of Arts, University of Alberta (Augustana Campus), 2003
Juris Doctor, University of Victoria, 2012

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of

MASTER OF LAWS

in the Faculty of Law

© Darcy Lindberg, 2017
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part, by photocopy or other means, without the permission of the author.

Supervisory Committee

kihcitwâw kîkway meskocipayiwin (sacred changes):
Using Law to Address Gendered Protocols in Cree Ceremonies
by

Darcy Lindberg
Bachelor of Arts, University of Alberta (Augustana Campus), 2003
Juris Doctor, University of Victoria, 2012

Supervisory Committee

Dr. John Borrows (Faculty of Law)
Supervisor

Dr. Heidi Kiiwetinepinesiik Stark (Faculty of Political Science)
Co-Supervisor

Abstract

Supervisory Committee

Dr. John Borrows (Faculty of Law)

Supervisor

Dr. Heidi Kiiwetinepinesiik Stark (Faculty of Political Science)

Co-Supervisor

Engaging in Cree ceremonies, in one manner, is a legal act. It is also a gendered act as well. Thus, ceremony is one avenue to seek both legal and gendered transformations. The transformational processes this thesis contemplates are the protocols (or rules of procedure) involved in Cree sweat lodge (*matotisân*) and pipe (*ospwakân*) ceremonies.

Some of these protocols are gendered in nature, in that they set out different actions based upon sex or gender. Looking at gender is a necessary part of our continuing work with Indigenous legal orders. Further, engaging in ceremony as legal practice offers one avenue in addressing the potentials for inequality that gendered protocols bring about. While this research does not seek a definitive resolution to some critical discourses about gendered protocols, it focuses on their legal nature to explore processes of change that reaffirm the sanctity of Cree ceremonial spaces while opening up these spaces for radical dissent. This research is animated by these three questions:

1. What are the processes for changing the gendered nature of protocols in Cree ceremonies, and as result changing Cree law?
2. What are the barriers within Cree social practices that prevent ceremonial change?
3. What are the potential dangers Cree spiritual and legal practices changing?

In order to maintain the integrity of the knowledge systems resident in Cree ceremonies, to uphold our obligations to the relations involved in the ceremonies, and to avoid potentials for violence in our deconstructions or transformation, an ethos of deep relationality should inform our processes of change. This means seeking out methods of change that are already resident within ceremonial structures, and ensuring reciprocity when we actively seek transformations by upholding obligations resident in *nehiyaw piimatisiwin* (Cree way of life/being).

Table of Contents

Supervisory Committee	ii
Abstract	iii
Table of Contents.....	iv
Acknowledgements.....	v
Chapter 1: Introduction.....	1
Chapter 2: Gendering Pipe Ceremonies.....	24
Chapter 3: Legal Theory and Cree Ceremonial Protocol.....	46
Chapter 4: The Transformation of Natural and Sacred Laws.....	72
Chapter 5: Coming with Tobacco: Methods for Ceremonial Change.....	94
Bibliography.....	112

Acknowledgments

I am grateful to many people who are responsible for my journey towards this thesis and its completion. I first would like to raise up the old ones and ceremony holders for their knowledge, protection and friendship, upon which my interest and experience in these ways would be different, and perhaps would not have caused my curiosity into what I have written about here. Too numerous to name here, I acknowledge your mark in my life. I also include here my family, as much of what I share here has come from you.

I am especially grateful for the Coast Salish peoples for their welcoming and support, as the majority of this thesis was completed upon their unceded territory.

I also am grateful for the guidance of my supervisors and members of the committee that has reviewed this writing and have provided invaluable feedback and support. Dr. Val Napoleon, kinanâskomitin the support and encouragement to engage in these critical thoughts about ceremony and law. Dr. John Borrows, kinanâskomitin for the constant supportive responses to this work and valuable guidance on where it could be improved. Dr. Heidi Stark, kinanâskomitin for your encouragement and keen eye in reviewing this on short notice. And to Zoe Todd, kinanâskomitin for your guidance in reviewing this work as an outside examiner.

I am also grateful for my partner Sarina Piercy for supporting me in a thousand rooted ways during the writing of this work.

Finally, I am thankful for those who have carried our ceremonies and languages over the rough grounds and hard seasons so that we can continue to practice them today. I am also thankful for those young ones that will take them up and transform them, and transform our laws, in ways we have not dreamt as of yet. Kinanâskomitin.

I Dream in Methodologies (Part 1) – Freeing the Pipe:

Notes from a dream on May 2, 2016:

I am out on a frozen lake, trying to remove a wolf from the frozen ice. Although the ice is thick enough to hold my weight, I feel heavy and nervous with the obligation that has brought me out here. The wolf is long and straight, at least fifteen feet long, and has frozen in the water, with their long spine sticking above the ice.

The obligation. Although I don't know where it has arisen from, or who had told me to do so, I feel an obligation to cut the wolf free from the ice. I have already started this process, meticulously cutting a few feet of the wolf at a time. Once this portion is free, it is magically freed from the ice as well, and sinks to bottom of the lake where it continues its cyclical journey by slowly disintegrating and being subsumed by the web of relations below the surface. This transformation.

In the dream, I suddenly become aware of my method of transformation. My cutting tool is a long, curved blade that, in this dream world, is sharp enough to cut through the frozen spine. It works well when I swing it with all my might at the same spot on the spine, over and over. Once the cut works almost all the way through, the portion of the wolf gives way and it sinks through the cold water.

And then I am once again aware of the danger. As I separate more parts of the frozen wolf, more water rises through the growing hole, surrounding my feet. As my fear increases, I change my method, to try to save time. I try to cut bigger pieces. Also, instead of striking straight through (which takes a long time), I start by making an initial deep cut at one spot on the spine, then coming at six inches above the spine back towards the first cut. Like cutting a wedge in a trunk to fell a tree. This method is far faster than cutting at a single point, and this portion of the wolf gives way and falls away.

Except it doesn't fully give way. Under the water, it still must be attached to the rest of the spine, and is swinging down under the water like a pendulum. In doing so, it makes a large unnerving creak, like the sound of a hundred-foot tall tree being felled. The creaking doesn't cease, but continues. Then the piercing sound transforms into that of a whimpering dog, as though it is undergoing intense suffering. Like a pendulum, its wail continues in rhythmic swings.

I failed my obligation. I try to cut the portion of the wailing wolf completely free, but the breaking point is too submerged in water and my blade cannot reach. When it does connect to the spine, it has no strength to cut. The wolf continues to swing and continues to sing its wailing song up through the water, to the horror of my ears. I turn back on my footsteps, and make my way back to the safety of the pines on the bank of the lake. As I get back to the bank, I begin to wake. My last dream-soaked thought before waking is the realization that the spiny wolf was a pipe-stem. I wake up with the knowledge that the wolf-pipe is still half frozen in ice.

“Law is in our dreams.”¹

Peyak (one): Introduction

The language of our relations is embedded within our dreams. I had the aforementioned dream during my first year of graduate studies with the University of Victoria’s Faculty of Law, where I spent long hours thinking about Cree law, and the proper and appropriate methods to honor Cree legal thought through academic studies. As may be evident in this dream, I have been quietly working through my own fears of upending my obligations to the knowledge structures that my research relies upon. Like the dream, my research is engaged in a deconstruction. And like I have been taught to approach anything that is ceremonial I am seeking a proper way to honor the subject of this deconstruction. As opaque and subjective as dream consciousness may be, it is illustrative of how some forms of Cree law require us to embark on the tangles of our societal practices and braid together a story of what law is.

To talk about law within dreams is also an act of intentional destabilization.² Of course, law is much more than the stuff of dreams or of unconscious thinking, but is also based on deep methods of societal and personal deliberation. As in other Indigenous legal traditions, Cree law can also be found in “dances, art, the land and nature, and...in how people live their lives.”³ It is passed down through elders, clans, and families, and are recorded in stories, songs, and customs.⁴ “Legal capacities, relationships, and obligations” are contained in “narrative practices, rituals, and

¹ John Borrows as quoted in Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding, and Applying Indigenous Laws” (2012) 11 Indigenous LJ 1, at 8. [Friedland, *Reflective Frameworks*]

² This, destabilization, of course is relative to our various positions of what constitutes law and where it is located. For an example of the explication of law within dreams in an Anishinaabe context, see John Borrows, *Drawing Out Law: A Spirit’s Guide* (Toronto: University of Toronto Press, 2010).

³ Friedland, *Reflective Frameworks*, *supra* note 1 at 8.

⁴ *Ibid* at 9.

conventions.”⁵ These laws can be “written on our hearts.”⁶ They are also found in deliberative practices and positivistic declarations made by Cree societies and people.⁷ Dreams can be legal, but their legality is dependent upon their relation to these other systems of deliberation, and the interpretation that is offered by these deliberative mechanisms. For reasons that will be furthered in this thesis, my dream is law to me. It speaks to me through signals and messages taught to me through my ceremonial life, of my obligations to take care of our sacred things in a proper manner, and to ensure that our lives continue in a cyclical nature with all of our relations. The dream teaches me how to encounter sacred transformations. It speaks of processes.

This thesis is a long contemplation on processes. The transformational processes I will contemplate in this thesis are embedded within Cree sweat lodge (*matotisân*) and pipe (*ospwakân*) ceremonies. As those who engage with ceremony will know, the practice of ceremony is an exercise of process. The outcome of ceremony is also dependent upon a multitude of relations. While we may enter the willow frames of our lodges with a singular purpose or load our pipes with specific intentions, it is through interaction of relations that guides ceremony. Perhaps the only thing we can fully control in ceremony is our attention to process. In this sense, ceremony is the totality of deliberative acts aimed towards maintaining sacred processes.

Two of those sacred processes are the *matotisân* and *ospwakân*. These ceremonies are also autonomous beings within Cree epistemologies. Through deliberate enactment of procedure, the sweat lodge – the willow and stone and all other grandmother/grandfather relations that comprise

⁵ Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (Ph.D. Dissertation, University of Victoria Faculty of Law, 2009) [unpublished] at 71. [Napoleon, *Ayook*]

⁶ Friedland, *Reflective Frameworks*, *supra* note 1 at 8.

⁷ For a sustained look at categories of sources for Indigenous laws (beyond those sourced in custom) See John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

of it - becomes a ceremonial womb that provides a rebirth for its participants. Similarly, through ritualized processes, the pipe – the pipestone and the stem coming together - is awakened and carried like a child, and lives as an autonomous being alongside its carrier. In this way, the pipe and sweat lodge ceremony also embody Cree law.

Further, as instruments of relationality for Plains Cree normative practices, the pipe and sweat lodge ceremonies offer a place of access to Cree law.⁸ The pipe, for example, provides a “medium of communication that sustains the foundations of human relationships.”⁹ It is an instrument to create and access an interconnected web of relations between humans, families, nations, animals, spiritual beings and ecological elements.¹⁰ It does so as “an embodiment of natural elements in an assembly of family or kinship relations which place the pipe holder in the centre of a web of significations that extend far beyond the materiality of each element” and is a “medium for maintaining the dynamics of reciprocity that sustain the integrity and wholeness of the community, its relationship to the sacred powers of creation, and specific connection to individual gifts and abilities given by those powers.”¹¹

⁸ For more on the link between the pipe and Cree law, see wahpimaskwasis (Little White Bear) Janice Makokis, *nehiyaw iskwew kiskinowâtasinahikewina – paminisowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator*, (2005) MA Thesis for the University of Alberta, [unpublished] at 45-6, [Makokis, *Cree Women*] and Chief Wayne Roan and Earle Waugh, “Meanings of Sacred Pipe” (2004) online: *Nature’s Laws*. <http://wayback.archive-it.org/2217/20101208172609/http://www.albertasource.ca/natureslaws/traditions/ritual_meanings_pipe.html>.

⁹ Lee Irwin, “Walking the Line: Pipe and Sweat Ceremonies in Prison” (2006) 9:3 *Nova Religio: The Journal of Alternative and Emergent Religions* 48. [Irwin, *Walking the Line*]

¹⁰ *Ibid* at 49.

¹¹ *Ibid* at 49.

Thus, carrying a pipe is a legal act.¹² Pipe ceremonies have acted as locations for Cree legality since time immemorial.¹³ Publicly, pipe ceremonies have manifested legal responsibilities within historical treaty making processes, including those between Cree people and other Indigenous¹⁴ and non-Indigenous nations.¹⁵ However, the heft of the legal work that carried out by the pipe and pipe ceremonies is within legal practices implicit in day-to-day Cree life. For example, the pipe serves as an instrument that carries and strengthens principles of *wahkotowin* in Cree societal practices. While its meaning is rich and deeply layered, *wahkotowin* describes our relationships with all beings, and the gifts and obligations that arise from these relationships. It encompasses a broad network of relations, connecting us to all animate and inanimate beings, seen or unseen. It is a Cree legal concept integral to *nehiyaw piimatisiwin* (Cree way of life).¹⁶ Hadley Friedland states that a “fundamental background societal story underlying Cree legal traditions...is that of a society (and world) of relationships”¹⁷ and that “relationships are foundational to everything in Cree legal thought.”¹⁸ Friedland explains that, “just as the background story of individuals as atomistic units informs and permeates western legal thought and practice,” *wahkotowin* speaks of

¹² See Andrew Gray, “Onion Lake and the Revitalisation of Treaty Six” (1997) online: *Honour Bound: Onion Lake and the Spirit of Treaty Six*, at 35-6. <http://www.iwgia.org/iwgia_files_publications_files/0143_Honour_bound.pdf>; Robert Williams, *Linking arms together: American Indian treaty vision of law and peace, 1600-1800*. (Oxford: Oxford University Press, 1997).

¹³ In that the origins of the uses of pipes by Cree people is beyond our collective memory’s reach.

¹⁴The central Alberta town of Wetaskiwin derives its name from a peace-making event between Cree and Blackfoot peoples at its location, where the inadvertent sharing of a pipe enabled a treaty to form between the two nations. A small description of this event is found at: <https://www.wetaskiwin.ca/DocumentCenter/View/48>. This is a story I am familiar with, and used it to describe our ongoing work with Indigenous laws in Canada in Darcy Lindberg, “Engaging in Indigenous Laws: Therein Lies the Many Meanings of Witiskiwin”, online: (April 1, 2016) Apr CBA Bar Talk. <<http://www.cbabc.org/BarTalk/Features/In-this-Issue/April-2016/Engaging-in-Indigenous-Laws>>

¹⁵ Pipe ceremonies played an integral role in the process of the signing of Treaty 6. See Neal MacLeod, *Cree Narrative Memory: From Treaty to Contemporary Times* (Saskatoon: Purich Press, 2007) at 52.

¹⁶ See Makokis, *Cree Women*, *supra* note 8 at 82.

¹⁷ See Hadley Friedland, “Chapter 4: Wah-Ko-to-win: Laws for a Society of Relationships” in *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada* (Ph.D. Dissertation for the University of Alberta Faculty of Law, 2016) [Unpublished]. at 15. [Friedland, *Wah-ko-to-win*].

¹⁸ *Ibid*, at 15.

the “narrative of each individual existing and inextricably connected within a network of relationships” and “informs and permeates Cree legal thought and practice.” As centres for these relationship principles, pipe and sweat lodge ceremonies are significant pedagogical institutions for wahkotowin. In this way, ceremony is law, and law is ceremony.

Gendered Procedures: Skirt and Menstruation Protocols

Carrying a pipe is also a gendered act. Looking at gender is a necessary part of the continuing work with Indigenous laws and legal orders.¹⁹ I am drawn to this contemplation of the gendered nature of these ceremonies by way of my own ceremonial experiences, and their importance in my continued journey. These ceremonies continue to provide me with great strength and learning. Part of this learning is a deeper understanding equality and balance that emerge within Cree ceremony. I have often found that these principles of equality, generosity and kindness can be radically different than what is taught in other social institutions.

While drawn to these forms of egalitarianism and equality espoused in Cree ceremonies, I also recognize parts of the ceremonies that hinder these aspirations, or are at least performed in a manner that is antithetical to them. Understanding there are many things in our ceremonies that cause gendered inequalities within our ceremonies (like the naked use of patriarchal power dynamics for example), there are also hidden forces within our procedures that create gendered inequalities as well. One of these influences are the procedures that these ceremonies rely upon for

¹⁹ See Emily Snyder, *Gender and Indigenous Law, A Report prepared for the University of Victoria Indigenous Law Unit, the Indigenous Bar Association, and the Truth and Reconciliation Commission of Canada*, online: (2013) <<http://indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf>> [Snyder, *Gender and Indigenous Law*]

stability and consistency. As these practices provide a foundation for ceremony, they can also entrench practices that cause gendered inequalities.

This thesis will focus on these foundational procedural rules. While they have been described in many different manners, including as rules, as directives, as procedures, as custom, and as laws. For consistency sake, I will generally use *protocol* to describe these directives or rules. Due to their gendered natures, this thesis will focus on two types of protocols. These are protocols that attempt to direct ceremonial dress and participation in ceremony during menstruation. Both protocols have direct gendered implications in ceremonial participation, in the performance of the ceremonies, and in the influence ceremony has within Cree societies. Dress protocols for both sweat lodge and pipe ceremonies stipulate generally that women should wear skirts during the ceremonies. Often this requirement means that the skirt has to be ankle length. Menstruation protocols require that women refrain from partaking in pipe and sweat lodge ceremonies for the duration of their period of menstruation.

Cree teachings and beliefs on the power and ceremony of a menstrual cycle are a significant factor into the maintenance of both skirt and menstruation rules. According to some nehiyaw piimatisiwin teachings, one rationale for these rules is to recognize and honor the life-giving force carried by women. Rules requiring skirts to be worn during ceremony are representative of this, as the skirt symbolizes the teepee or lodge, linking womanhood to the center of the familial structure. Menstruation protocols are rooted in similar teachings. According to these beliefs, when a woman is experiencing menstruation they are undergoing an internal cleansing ceremony, parallel to the work that occurs in the lodge. This has been referred to a number of different ways

in Cree communities, including as ‘moon time’²⁰, ‘sacred time’, and a time when ‘(spiritual) kokums are visiting’.²¹ In some teachings, the connection between womanhood and the moon is a significant relation; ‘moon time’ refers to the close link between women-hood and lunar cycles. Moon lodges (lodges held during the evenings of full moons) are an example of a practice that keeps this connection. Moon lodge ceremonies are mostly led by women, and are mostly for women only. Similarly, in addition to the work women pipe-holders do at all times, women pipe-carriers may load their pipes for moon ceremonies during full moons as well. While it is not the purpose of this thesis to do a deep exploration of these cosmological relationships based on gender, an exploration of this vein would reveal a significant relationship between lunar teachings and womanhood for some Cree peoples, families, and societies.

While historically there have been different characterizations of menstrual experiences within Cree communities,²² current narratives hold that the protocols honor women and womanhood in general. It was also a historical practice for women to attend their own ceremonies separate from men (and led by women ceremonial holders) during their times of menstruation.²³ Aside from these separate ceremonies, women are asked to exclude themselves from pipe and sweat lodge ceremonies during their menstruation, due to beliefs that the powerful state they are in can disrupt the actions (or powers of the ceremonial holder) within some ceremonies.²⁴

Choosing the Wealth and Burden of Ceremony

²⁰ Makokis, *Cree Women*, *supra* note 8 at 62.

²¹ See Reuben Quinn’s teaching in: Amaskwaciy History Series, “History of Cree Language, Part 1.” Online video clip. Youtube, June 9, 2016. Accessed on December 9, 2016.
<https://www.youtube.com/watch?v=CpvuED_hJTM>

²² Makokis, *Cree Women*, *supra* note 8 at 62.

²³ *Ibid* at 112.

²⁴ *Ibid* at 112.

I have shared the above to give an understanding of the position of these beliefs in Cree epistemologies to the reader who is unfamiliar with these protocols. While I will engage in discourses that challenge these protocols for their gendered nature and the inequalities that may arise because of this gendering, it is important to note that these protocols are held in positive terms by the ceremonial families and communities that practice them. These practices can be ascribed to a ‘gender positive’ view of the gender dynamics that interplay in Cree social norms and laws.²⁵ Gender positivity in this manner is expressed as the essentiality of female and male aspects in Cree life, where holding up the strength, power, and privilege of one gender does not necessarily result in a corresponding detriment to others. A common metaphor often invoked to explain the separation yet essentiality of male and female aspects in Cree life is the balance resident within an eagle feather. According to the metaphor, women represent one half of the feather and men the opposite, separated by the feather’s backbone. While both have independence of each other in some ways, they are ultimately reliant upon each other for flight. This metaphor extends to the physical dimensions of the pipe. The female and male aspects of the are represented in the pipe through the pipe-stem (male) and pipe bowl (female), and speak of the separation yet interdependence of male and female– both are different in their material constitution and serve different purposes, but each vitally important to each other. Finally, there is another version of the eagle feather metaphor that holds women as the backbone of the feather, holding the men, the youth, and the elders of the community together.

The gendered nature of Cree ceremonies (and Cree social practices) has positive outcomes for many women who participate in them. These norms can provide spaces of shelter and

²⁵ As will be discussed in Chapter 2, Kiera Ladner uses the term ‘gender positive’ to note how the characteristics of gender in Blackfoot constitutionalism. See Kiera Ladner, “Gendering Decolonization, Decolonizing Gender” online: (2008) Paper Presented at the 80th Annual Conference of the Canadian Political Science Association UBC June 2008. <<http://www.cpsa-acsp.ca/papers-2008/Ladner.pdf> > at 6.

liberation from the hegemonic force the Canadian state has played in the lives of Indigenous peoples through assimilative and neoliberal practices. Such emancipatory potential is especially prescient considering Canada is barely three generations from the outright prohibition of the ceremonies that these protocols are embedded in.²⁶ As ceremonial practices are revitalized these protocols can be viewed with pride as a part of this revitalization.

I also note that participation in these ceremonies (and thus engaging with their rules and protocols) is voluntary. This voluntariness is important to keep in mind in reading this examination; while the gendered rules bring about larger questions of equality, the optional nature of committing to ceremony provides a further layer of nuance to theoretical arguments based on equality. Further, I have deliberately relied for the most part on the narratives of those who choose or aspire to come into these circles, as it is vitally important that the critical voices have a stake and obligation towards the communities (and their norms) they are challenging. While I am assertively listening to dissenting voices towards the protocols, I am also rigorously seeking change that is reliant upon and genuine towards my family/community teachings around the pipe, and ceremony in general.

As will be explored further, these practices are more complicated than a simple formula of ‘gendered practice = site of oppression’. Sweat lodge and pipe ceremonies have a complex set of rights, obligations and burdens tied into their participation. Absence in participation does not necessarily equal a deprivation of a privilege. A commitment to regular ceremonial practice burdens the participant with significant obligations. A participant is commonly required to refrain from drugs and alcohol, from engaging in negative behavior or even negative thinking for a period

²⁶See generally, Katherine Pettipas, *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994).

of time before the ceremony.²⁷ These obligations are greater for those who hold ceremonies. For example, the requirements for pipe carriage can include a prohibition from alcohol or drugs for the remainder of the pipe holder's life, treating a pipe bundle with the care and humility of raising a child, avoiding the use of their pipe in negative situations or for negative purposes, the diligent observation of protocols on its use (or prohibition of use) during times of mourning in their lives, and the requirement to offer assistance upon request without discrimination.²⁸ When I speak about prohibition or non-participation in these ceremonies, the individuals for whom these protocols affect their participation are not only absent in the right to the ceremony, but also absent in the burden of the ceremony as well. As John Borrows notes, choosing to carry a right also means a choice to carry a corresponding obligation.²⁹ Those who have encountered particularly hard sweats understand this notion clearly; while there is an immense privilege that the lodge brings, there also is suffering. A right of participation is not merely the disadvantage of those who can't participate – but rather is a disadvantage to a community as whole, as it affects or disrupts the carrying of the burden of ceremony. It weakens the relations we have in our ceremonies. It lessens the collective ability to call spirit into ceremony. It erases potential for passing ceremonial practices from generation to generation.

Paddling the Canoe: Animating Equality and Radical Dissent

While many find comfort and strength in these protocols, there are also those who are critical of their gendered nature and their unequal consequences. These critiques include how the protocols

²⁷ In some lodges, this requirement is for four days before. In other lodges that I have attended, this requirement has been four months.

²⁸ I also note that there is a common I have heard in Cree and Blackfoot communities that “you do not hold the pipe, but the pipe holds you.” This saying is an acknowledgement that there is wealth within the obligations that are put on a pipe holder that direct them towards *miyo pīmatisiwin* or a good life.

²⁹ Shared by John Borrows in a presentation to law students at the University of Victoria in January, 2010.

essentialize the role of women in Cree societies,³⁰ limit their participation in the socio-legal-political world that ceremony is embedded in, and generate inequalities in Cree societies beyond ceremony. It has been observed that these protocols can create uneven and unequal participation in ceremonies and act as significant barriers for women and girls, as well as those who do not fit into contemporary cis-gendered heteronormative assumptions of gender and sexuality. Much of the gender balancing or aspirations towards gender positivity sought through these ceremonies is based upon a gender binary. Gendered protocols can create an unequal ability for control and authorship of participation within Cree ceremonial life for its citizenry. As I will explore in the further chapters, beyond the rule-making function of these protocols, these rules continue to gender Cree legal actors in a manner that positions genders and sexual orientations differently within Cree societies.

One of the animating themes of this thesis is the notion of equality. Returning to my claim that there are aspirations within these ceremonies towards forms of equality that differ from Canadian societal ideals of freedom and equality, the question of whether ceremony lives up to these ideals is tangent to the focus of this research. This issue, as Jeremy Webber states, is a “general issue inherent in the very normative aspiration of law, given that law can never quite achieve its aspiration to perfect justice (because of human frailty but also because we inevitably have different views of what that justice is).”³¹

This thesis, in exploring the role of that gendered protocols may have in interfering in such equality, is ultimately wrestling with the ‘human frailty’ question. While the other issue Webber

³⁰ I acknowledge that terms like equality, freedom and equity are fraught with their own fundamental positions on their meanings. For example, liberal ideals of freedom would differ than Marxist ideals of freedom.

³¹ As recorded in Val Napoleon, *Ayook*, *supra* note 5 at 58.

points out (on what version of *equality* is aspired towards in Cree ceremonies) is vitally important as well, it will generally remain outside the scope of this thesis.³² While it undoubtedly underpins some of the discussions in the coming chapters, there are two reasons I have kept it on the periphery. The first is pragmatic, as engaging in a substantive discussion on differing visions of equality offered by different societies (or segments of societies) deserves more space than I could give as part of this research. Secondly, the seriousness of the equality claims this thesis relies upon, whether they are rooted in nehiyaw pimatisiwin,³³ liberalism, or within one of the many forms of Indigenous feminisms,³⁴ are significant irrespective of their foundations. While there is much reason to use caution when thinking of the implementation of liberal rights towards Indigenous peoples,³⁵ the greater Cree citizenry contains many foundational positions on what constitutes equality.

In thinking of differing versions of equality, I am reminded of the work of James Tully on constitutionalism within diverse societies and relations.³⁶ Tully utilizes Bill Reid's carving, *The*

³² In this vein, I acknowledge a question you may ask as a reader of this thesis is whether I am employing a Cree vision of equality (if such uniformity of a vision exists).

³³ Cree ways of being or ways of life.

³⁴ I acknowledge that these positions are not mutually exclusive of each other, I use them here to illustrate possible different foundational positions.

³⁵ As the promise of liberal rights theory can be contradictory towards the liberation goals of Indigenous peoples. Robert Williams writes, "[m]ost American Indian, Black, and Latino people were highly critical of the white man's law long before being exposed to *The Structure of Blackstone's Commentaries*, or the works of famous dead Europeans. If not ourselves, then certainly our parents and grandparents lived the contradictions of liberalism and liberal rights theory with a degree of intensity that few nonminority intellectuals can ever hope, or rather not hope, to experience. While many of the minority students that we teach today appear not to feel those contradictions as intensely as our elders or perhaps even ourselves, nonetheless, the tangible impact of the denial of rights to our various peoples still is felt even by this generation born to relative, though by no means, complete privilege. In short, peoples of color, for the immediate present at least, do not require critical legal theory or CLS in order to be critical of the United States legal system. We are all aware that there is much work yet to be done." See Robert Williams, "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987) 5 *Law and Inequality* 103, at 129

³⁶ See James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995). This is of course, a reductive take on Tully's work, and of our relationships in Canadian society generally. To use the metaphor is to tacitly agree that we are all in the same canoe. For example, the metaphor upsets the principle of two parallel canoes (each nation travelling down the river of life together, but

Spirit of Haida Gwaii, to symbolize the challenges of constitutionalizing within a populace of diverse, contending, and sometimes discordant voices. In *the Spirit of Haida Gwaii*, many beings (human and non-human alike) occupy one canoe. As Tully describes, the occupants do not share the same language yet come to an understanding of each other. This occurs through the sharing stories until there is a recognition of “their common and interwoven histories come together from a multiplicity of paths.”³⁷ In Tully’s interpretation, this journey has its perils; the danger of tipping is always present. And yet the movement of the canoe persists and despite the moments of discord, it moves forward.

Of course, in this view of *The Spirit of Haida Gwaii*, it is impossible to ignore the differing positions of power the situation is fraught with. Some characters are privileged/burdened with paddles. A human figure (often thought of as a Chief) sits in the safety of the middle of the canoe, providing orders for direction (or sits at the mercy of the others who can steer the canoe). This thesis can be viewed as one experiment in shifting the dynamics in our collective canoe. Perhaps it is *privilege/burdening* one group of actors with one paddle, amidst the supporting and/or countervailing work of the other paddlers.

Tully would state that in order to come to a collective understanding that could form the basis of a collective constitution, the passengers in the canoe need to come to a common language first. You may have noticed I began this thesis talking about language. *The language of our relations*. I am using language in a broad (and perhaps too florid) sense, as I am not speaking of specific words, phrases and etymology, but am thinking of the system of relationships that occurs in nehiyaw pimatisiwin. There are Cree social norms that belong in a system altogether different

separate) resident in the ‘Two Row Wampum’ Treaty (or Tawagonshi Agreement) between the Haudenosaunee and European settlers in 1613.

³⁷ *Ibid* at 26.

than those found in Canadian societies. To some entering this system is like walking into a foreign space with a different dialect. It is a language to itself.

As I contemplate differing versions of equality and whether they can come to a common understanding of language, I am reminded of an experience I witnessed while leading a discussion at the University of Victoria in the summer of 2016. I was asked to speak by the professors of an intensive course teaching methodological frameworks to access Indigenous laws. As it was a summer course, there were visiting law students and scholars from across North America attending as well. I was sharing essentially the crux of this thesis, of ceremonial protocols and their gendered nature. I witnessed the conversation turn poignantly into an argument on theories of equality, during which one well-meaning student confronted another student (who was from a Cree community in Western Canada) about her claims that these ceremonial protocols honored women. The confronting student was well-versed in liberal feminism and its positions on gender inequality and forwarded these arguments. One included a claim of ‘false consciousness’, that the honor the Cree student was professing to feel was only a product of the patriarchal hierarchy of the community. The Cree student chose to respond by disengaging in the discussion, and very soon after, left the room entirely. Afterwards, she shared that she felt the space was closed to her view, and thus didn’t feel like being a part of the circle at this point.

Of course, this situation occurs in the inverse as well, for like the student in this story, the people who share their voice of concern for the gendered protocols in this thesis also express similar challenges in the safety of a circle. To continue to participate, they must quiet their objection. Or they can choose to leave the circle entirely. Such losses and erasures from our ceremonial circles are inconsistent with Cree legal principles as well. Wahkotowin practices are thinned through exclusions in our ceremonial circles. The ethos of my writing here is that the loss

of participation in our circles harms us. In a symbolic sense, I hope to encompass my work with this spirit so such marginalization doesn't occur.

Given my reach in this thesis to contemplate different versions of equality, you may find it specious that this thesis does not do a thorough dive into significant questions on spiritual or sacred authority, in which such omissions may be seen as favouring versions of equality that are liberal or secular in nature. Perhaps some readers may find my raising of any questions towards ceremony as simply wrong. Some may believe that instructions from such sacred sources are unalterable, or that humans do not have the capacity to change sacred instructions. While this thesis focuses on the social aspects of law (and therefore ceremony), I have not lost touch of the belief of these practices being gifted from sacred sources. However, as I explore in Chapter 4, I am curious how such instruction must be interpreted (and in some cases translated) by a mediating force to hold legitimacy within the normative practices of a society. Tracing rule or law making to this mediating force within ceremonies provides valuable insights in the legal aspects of them.³⁸ Finally, I ask the reader to keep in mind, as I have in engaging in this research, that this examination is focused on the legal nature of ceremony, of which maybe only a small portion of their purpose; that they are centered upon sacred experiences that are beyond law.

Braiding Methodologies: Opening the Pipe

³⁸ Further, this thesis does not take a 'master clock-maker' approach to creation (in that a creative force set in motion the world with delicate hands and then fades into a role as passive observer), in which original instructions cannot be altered. My position is informed by what I have learned within pipe ceremonies, sweats and sun dance ceremonies themselves – that ceremony provides an avenue for a continued relationship with all of the beings in our lives, including a creative force.

Although it may not be explicit at this point, I have introduced two threads to be braided together in this thesis. The first will be my exploration of how participating in ceremony is participating in Cree law. The second will be a further examination of the gendered nature of ceremony.³⁹ Like a good braid, my work with each of these threads is integral to the strength of the other. As all work with Indigenous law requires us to work with gender, any descriptive analysis of ceremony as law requires a critical lens to its gendered nature and the implications of this gendering. Further, a gendered analysis Cree law must take Cree epistemologies into account. The inward look towards Cree epistemology is integral in a critique of gendered law. In this manner, one part of this work cannot proceed without the other.

Of course, a strong braid at the very least requires a third thread. This final thread to the braid is legal theory. As I will explore further, current theoretical work aids this critical look at Cree law, in that it provides one analysis that furthers conversations beyond paralysing discourses around Cree protocols. I acknowledge that the resurgence of the study of Indigenous laws requires strong inward focus on internal methods of research, especially in critical academic studies of Indigenous knowledge traditions. While there is an explicit focus on non-Cree theoretical works for portions of this examination, an undercurrent in this thesis is the relation between academic theories on law and our teachings on nehiyaw piimatisiwin.

This thesis will be a journey to find a strength through careful weaving of these threads. It will be an act of attempted braiding. There is a teaching in my family that your hair is your history, that each strand is one of your stories that have helped you get along in the world. To gather your

³⁹ For a critical look at the perceived neutrality of the law: towards gender see Carol Smart, *Feminism and the Power of Law* (New York: Routledge, 1989); towards class and race, see Sherene Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George" (2000) 15 *Canadian Journal of Law and Society* 91.

hair together is to collect your stories and bind them together. In this way, the strength of a braid holds the relations of stories together, provides us a pattern to follow where before there were only individual strands, and allows us to understand the strength of collectivity. Addressing the relational, legal and gendered aspects of Cree ceremonies, I will attempt to braid each of these stories in a way that they are examined and move to complement each other, and to give strength to each other. Of course, to engage in any act of braiding, it requires us to let down our hair, and comb through the knots our stories become entangled in. The critical engagement of our stories and beliefs, practices and memories are a necessary part of this process. Kindly, yet firmly, I will move through this process.

The course of this thesis will be a study in outlining a process or methodology for a community-appropriate process for ceremonial change. This thesis seeks to reaffirm the sanctity of Cree ceremonial spaces while opening spaces for radical dissent. The research questions that this thesis is centred around are:

1. What are the processes for changing the gendered nature of protocols in Cree ceremonies, and as result changing Cree law?
2. What are the barriers within Cree social practices that prevent ceremonial change?
3. What are the potential dangers Cree spiritual and legal practices changing?

My braid analogy suggests that this thesis will take a narrative approach to the research it is engaged in.⁴⁰ I primarily rely on stories. This thesis will be a combination of an examination of narratives from Cree people and theoretical/critical analysis of academic thinkers on Indigenous laws, Cree ceremonies and Indigenous feminisms. A large portion of this research will reply upon my personal experiences in ceremonies and the conversations of these issues that have grown out

⁴⁰ See Shawn Wilson, *Research is Ceremony: Indigenous Research Methods* (Black Point, N.S.: Fernwood Publishing, 2008).

of these experiences. This has been characterized as an auto-ethnographic approach to research. It will also combine this methodological approach with the use of available texts such as stories, songs and narratives to support my examination of this research. It is a hope that the conclusions on a proper methodology will inform further academic research that would involve direct research on the ground within Cree communities that would allow me to ask these questions to participants, holders of ceremony, and knowledge keepers. Even if it does not spur further academic study by me, it will nonetheless inform my approaches in my continued ceremonial life as a participant and helper.

Proposed Chapter Examinations:

To position this research within the circle of these dialogues, my chapters will be organized in the following way:

Chapter 2: Gendering Pipe and Sweat Lodge Ceremonies: Law is gendered. The particular rules, protocols and laws pertaining to ceremony are undoubtedly gendered. It is necessary in our critical work through Indigenous laws to work with gender as well. This chapter will explore the gendering that is implicit and explicit in Cree legal traditions. This chapter will begin by examining dress and menstruation protocols further, including the voices of Cree peoples who have raised concerns about their use. From this examination, I will explore further challenges in the critical discourses of gender and Indigenous laws generally, and specifically how those challenges affect discourses on Cree protocols. This includes discussions on the harm of the essentialization of women and girls in gender discourses, harmful gender dynamics, discourses on ‘traditionalism’, and the effect of colonization on gender dynamics in communities. Finally, I will explore how theoretical analyses of law can provide routes beyond the paralyzing nature of these discourses.

Chapter 3: Situating Pipe Ceremonies as a Source of Implicit Law and Legal Pedagogy: Building upon how legal theory can be utilized to move our critical discourses on Cree ceremonial law, I will use various theoretical tools to analyze the adaptive and reflective nature of Cree ceremonies. To aid this analysis, I will examine the importance of aesthetics toward the legal work that Cree ceremony does, how viewing law as interactive in nature provides vital tools for ceremonial change, and explore the importance of ceremonial protocol to the foundation of ceremonies in general. The latter will allow me to identify links between teachings on nehiyaw piimatisiwin and legal theory.

Chapter 4: Sacred and Natural Sources of Law in Cree Ceremony: Uncovering the legal aspects of ceremony has far reaching implications in critically responding to the gendered nature of law. As ceremony is often linked to sacred and natural foundations, ceremony provides a particular challenge to critical resurgence of Cree law. Fundamental beliefs of the unchanging nature of sacred or natural laws lead to a hardening of discursive structures that can inhibit regenerative processes from occurring. These originalist approaches to Cree law can mimic the “exclusivist” nature of the approach to Canadian law that limits contemporary attempts at interpretation.⁴¹ Also, charges of mysticism can stymie critical discussions on spiritual practices from moving forward. This chapter theorizes a method to describe practices that are sacred or natural in origin that is respectful of the sacred processes they are embedded in, while giving societies the ability to deliberate upon sacred things. This will lead to potentials for re-envisioning our discussions on Cree spiritual and natural law, by looking how to value sacred or natural instruction, while allowing us to continue to think of these processes as reflexive or adaptive. This includes

⁴¹ See generally John Borrows, “(Ab)Originalism and Canada’s Constitution” in *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 130.

understanding the traditions of evolution of Cree ceremonies, and the continuation of reflexive, responsive relations to the sacred or natural that maintains the integrity of human agency within these practices.

Chapter 5: Coming with Tobacco - Methodologies towards Ceremonial Transformation: Using the examinations in the previous chapters, I will conclude this thesis by exploring potential methods resident in Cree ceremonial practice to investigate and initiate ceremonial change. I will rely on Cree teachings on obligations in the face of a necessity of transformational forces to set out how I should continue to pursue changing practices for my personal pipe.

Cree (*Nehiyawak*) Peoples

While the ceremonial practices that this thesis examines are similar to ceremonies within the traditions of other Indigenous peoples, the focus will be on practices within Cree communities. While I am keeping this examination open to the greater Cree citizenry, I also acknowledge that most of the experiences and teachings I will explore here are from the Plains Cree peoples. I also acknowledge that there are wide variances in the practices of different Cree groups across Canada. Distinctive Cree societies include the Eeyouch (Eastern James Bay) Cree in Quebec, the Mushkegowuk (Moose Cree) in Northern Ontario, and the Swampy Cree in Northern Ontario and Manitoba, the Sakiwiniwak (Woods Cree) of Northern Manitoba, Saskatchewan and Alberta, the Plains Cree in Central Saskatchewan and Alberta, and the Aseniwuche Winewak in Western Alberta as well as communities in Northwest B.C.⁴² Thus, there is a danger in thinking all Cree societies represent one homogenous group. However, as the voices I will use in this study are specific to experiences with ceremony, my intention is not to describe

⁴² See Hadley Freidland, *Cree Legal Traditions Report: Aseniwuche Winewak Nation* (2012) Indigenous Law Research Unit, University of Victoria: Victoria BC.

an area of a Cree legal order in its entirety, but rather to interrogate one instance of contestation within Cree law.

Much of the knowledge of ceremony that I explore in this thesis will be from my personal knowledge base gained through experiences in ceremony. I will often locate experiences within my family knowledge, and of my greater relations in Cree communities in Alberta. This is an acknowledgment of the source of that knowledge from my lineage on my mother's side (Samson Cree Nation, Maskwacis, Alberta).⁴³ However, I have also experienced the ceremony talked about in this thesis in traditions held by the 'bush' Cree⁴⁴, as well as the Stoney and Blackfoot peoples as well.

The dream I shared above is significant as a touchstone for the method of analysis I will take in this research. Like the dream, this research requires the careful theoretical deconstruction⁴⁵

⁴³ I am a non-status Cree. While it is not used often today, growing up we referred to ourselves, perhaps with tongue in cheek, as *halfbreeds*. When I reached adolescence, I was encouraged by my relations from Maskwacis to identify as Plains Cree without politics or shyness involved. And so I honor this request to this day. My father is of Swedish-Canadian heritage who, at his request, was buried with moccasins on his feet so he can walk softly in that other world.

⁴⁴ I have an obligation to continue to tease my Woodland Cree sisters and brothers.

⁴⁵ Deconstruction is a loaded term, especially its location in an academic production such as this thesis. As Robert Williams argues, the deconstructionist positioning of post-colonial legal thinkers can interfere with the work towards civil equality that many minority socio-legal scholars and workers have been engaged in. Critical Legal Theory uses deconstructive analyses of the law to point out the contradictions of the use of liberalist arguments to advance minority rights. Williams sustains an argument that Indigenous peoples are well aware of the contradictory nature of liberal rights theory, yet are not in a privileged position to ignore these discourses in their efforts for equality. See Robert Williams, "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987) 5 *Law and Inequality* 103. To temper academic interpretations of this, I also remind the reader that there are forms of deconstruction within Cree ceremony as well. First, I am reminded of the necessity of deconstruction in our lodges, how they sit as willow skeletons in our yards and ceremonial grounds after a new lodge is constructed, continuing to hold these sacred spaces until the weather and earth reclaims them to begin a journey into another form or being. Second, I think about the deconstruction that occurs in the preparation for thirst dance ceremonies on the prairies. A tree is felled and reconstructed as a center pole that holds the ceremony together. Usually it is the *iskwesis* (young girls) who take the first chops of an axe to the tree, due to beliefs that the young ones are closer to the good energies of creation. It is then brought into a new being through its raising at the start of the ceremony. Finally, I am reminded of the moment a pipe ceremony concludes, when the pipe stem is removed from the pipe bowl. In my own practice, I have been told to acknowledge 'all of our relatives' when this occurs. All of these acts are characterized by care and purpose, and often rebirth.

of a sacred and valued thing. As the dream instructs, sometimes a transformational force is necessary, even upon our most respected things. Sometimes things get stuck. And like the dream, I seek to highlight the position deconstruction has played and continues to play within the natural regeneration of our ceremonies. Understanding that our communities have resident knowledge related to taking apart and reconstructing sacred and legal practices,⁴⁶ such a methodology would be the gift of this study. I should note that what is written here is a reflection of my earnest and open journey into the heart of these issues. While this is a graduate thesis, I see it only as a conversation into how I can be an *oskapeyos* (helper) in this world. I also recognize that some of what I will speak of here is often not spoken in an academic context. I am very cognizant of our protocols on sharing what occurs in ceremony – I am using my self-discretion in this manner throughout this thesis to share what is appropriate. In writing this, I can already feel a thousand side-eyes from a thousand aunties, for starting to speak of things that I don't have a complete knowledge of, or out of curiosity to join the conversation. Please take this examination as one story in a long conversation, one that is not complete.

⁴⁶ As I will put forth later in this thesis, I contend that ceremonial circles present micro-centers for Cree legal orders. It is my personal experience that, as systems of knowledge, that some of these circles are vibrant and intact. However, I acknowledge that some ceremonial circles are currently recovering from the effects of sustained assimilative practices towards Cree communities by the Canadian state. An example that is integral to this thesis is the idea that women had a parallel ceremonial space during their times of menstruation, where they were provided with teachings that were only for them. While historically this may have been a common practice, unfortunately the fracturing of community structures has resulted in this practice being less common contemporarily; often when women are excluded from sweats during their periods of menstruation, they are isolated without these teachings taking place, especially in urban settings.

“Law is a site of gender struggle.”¹

I Dream in Methodologies (part 2): The Invitation

Aunties
Of a thousand side eyes
 I know
Kokums
Of a million sacred times
 I know
Sisters
Of a hundred publications
 I know

That I don't know what I am talking about
Set me straight -
Medicine my *napew* mind

Niso (Two): Gendering Pipe Ceremonies

The language of our relations is also embedded in our memories. There was a time when me and my eldest brother, Brian lived together in Wetaskiwin during a hard winter. It was one of those winters that used to be commonplace but are becoming more uncommon on the prairies these days, with temperatures dipping into the high -20's or low -30 C's for weeks on end, multiple times throughout the winter. We were struggling to make rent, and each month we would see our fridge and cupboards becoming even barer. I was completing my final semester of high school, and we were scraping by Brian's social assistance and the wages I earned working odd jobs on the weekends.

¹ Emily Snyder, Val Napoleon, and John Borrows, “Gender and Violence: Drawing on Indigenous Legal Resources” (2015) 48:2 UBC L Rev 593, at 605. [Snyder et. al., *Gender and Violence*]

It was also within this frozen Wetaskiwin² winter that reinforced for me how I was also residing in *wahkotowin*.³ That season we strongly leaned upon the web of relationships in which we were embedded within, and I learned very quickly who the best purveyors of *wahkotowin* were. The *kokums*.⁴ And the aunties, the sisters and the mothers. Beyond seemingly endless capacities for compassion and generosity, the women in our family seem to work from an internal governance set to make our relations strong, balanced and fair. There of course are many mosums, uncles, brothers and fathers who do this good work as well, but we were always one or two steps behind the work of the kokum and aunties, learning from them, often failing them.

One particular cold month towards the end of that winter, our cupboard had run almost comically bare. Knowing it would be a hungry few days if I didn't, I remember sucking down my pride, bundling up myself and walking across town late at night to my great aunty Nancy's place, practicing a nervous conversation in my head along the way about how we would need to borrow some food, knowing that she would have very little to spare herself. I remember her answering the door, and her inviting me into the kitchen for tea. I remember the air of her kitchen being thick with a familial presence, like the feeling of being a young kid surrounded by brothers and sisters and cousins in one house. That warmth. I had barely started to work through my prepared conversation when I saw she had pulled a plastic grocery bag and began filling it with soups, pastas, canned meats and crackers. I still don't fully understand where her knowledge of our situation came from that night; perhaps it was the look on my face, or perhaps my aunty Nancy

² Wetaskiwin is a slight corruption in the work *witiskiwin*, which means, "learning to live on the land together." The Cree name for Wetaskiwin is *witiskiwin sputinow*, that is often described as the 'hills of peace' to commemorate a treaty made between Cree and Blackfoot peoples in the area.

³ For a greater analysis of *wahkotowin* as a Cree legal concept, see Hadley Friedland, "Chapter 4: Wah-Ko-to-win: Laws for a Society of Relationships" in *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada* (2016) Ph.D. Dissertation for the University of Alberta Faculty of Law. [Unpublished]. [Friedland, *Wah-ko-to-win*].

⁴ Grandmothers in Cree.

did a quick quiet study of the situation – *why would he come on such a cold night so late, so late in the month?* –she knew. And perhaps upon an obligation that our families have relied upon for uncounted generations, she acted in a quick and loving way according to these obligations. Obligations that I too am still trying to play catch up on.

This is but one small example of *wahkotowin*. I also reflect on this at the beginning of this chapter because within this reflection are two threads that are integral to holding this thesis together. As I have furthered my learning of *wahkotowin* as a Cree legal principle, it is reflections like these that help me understand further how such gifting are acts of Cree law, and what law looks like in practice. This situation - of someone approaching someone else in a time of need and receiving help without any need for future reciprocity from the giver, even when it was the last of the person's food, money or tobacco - played out countless times in my childhood and young adulthood. As I have had experiences with other Cree peoples and communities, I find something distinctly Cree about these forms of generosity my family practiced.⁵ They rarely ever involved explicit deal making, but would often be reciprocated months, or even years later. There were no ledgers to calculate who owed who what, no moments of accounting a bottom line of gift-giving, but just the normative practice of providing for those in need, and the knowledge that you will be protected by those around you when you are in need as well.

The second thread of this reflection is that my memories are mostly filled with the women in my family holding up these *wahkotowin* obligations. I consider this example here to acknowledge the gendered nature of the story; while not exclusive, my reflections on *wahkotowin* within my family is dominated by women. If *wahkotowin* is implicit law, then through its practice,

⁵ Of course, related obligations for generosity can be found within the social and legal norms of a number of different Indigenous societies as well. The nuanced form and procedures of gifting can be teased out through legal studies of these legal traditions.

it is governed by women. This governance was never discussed as such, but only laid as a hidden seam that kept our relations together. Aside from the unequal burden of work in maintaining our relations, women are often disadvantaged by the language of law, as it often fails to reflect how *wahkotowin* is realized within Cree families. Not only is all law gendered through its “language and reasoning”, but “that gender matches the male gender of its linguistic architects.”⁶ Despite the historical centrality of women and girls to the maintenance of *wahkotowin*, how we talk about Cree governance is often overwhelmed by the patricentric nature of our discussions of law. Our contemporary narrative processes on Cree ways are marked by an erasure and absence of the voices of women and girls, or in some cases, misrepresent or diminish their roles in Cree legal life.⁷ This can leave serious and significant gaps in our reflections on Cree law, if not for the work of many Cree academics, activists and writers, who are working against this gender gap. Further as Cree and Western law are bound together, it provides gaps in Western law as well. Because of this, it is necessary when we are working with Indigenous laws to work with gender as well.⁸

An examination of our theoretical understandings of Cree law to address this gap. As the legal nature of our *wahkotowin* teachings are further examined, legal theory gives us unique tools to address this gap. For example, it can help reconcile the substantial role women and girls play in sustaining the practiced law of *wahkotowin* and the ‘stated’ law that often leaves their voice absent. This chapter will explore current theoretical work and critical discussions around the gendered

⁶ Lucinda Finley, “Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning.” *Notre Dame L.Rev* 64: 886 at 892. [Finley, *Breaking Women’s Silence*]

⁷ For a sustained look at the absence or erasure of the voice of Cree women and girls in Cree legal education materials, see Emily Snyder, “Representations of Women in Cree Legal Educational Materials: An Indigenous Feminist Legal Theoretical Analysis.” (2014) Ph.D. Dissertation, University of Alberta, Department of Sociology., at 16. [Unpublished]. [Snyder, *Women in Cree Legal Education Materials*]

⁸ Emily Snyder, *Gender and Indigenous Law*.” A Report prepared for the University of Victoria Indigenous Law Unit, the Indigenous Bar Association, and the Truth and Reconciliation Commission of Canada. March 31, 2013. <<http://indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf>> forthcoming UBC Press. [Snyder, *Gender and Indigenous Law*].

nature of Indigenous laws. It will specifically employ the voices of Cree women to begin to examine dress and menstruation protocols. Drawing from these experiences, I will also explore how these protocols present challenges within critical discourses about Indigenous law. From this review, I will specifically look at how we can use approaches of legal theory to move critical discourse past these barriers.

Gender and Indigenous Laws

As noted above, thinking of law as ‘gender neutral’ creates dangerous blind spots that allow oppressive practices created or aided by laws and legal norms to persist. Such blind spots are especially prevalent for men, where the accepted language of law can be devoid of competing terms to a male-oriented social view, thus to men is seen as “natural, inevitable, complete, objective and neutral.”⁹ Indigenous law is no exception. It is “heavily influenced by dominant social norms.”¹⁰ Thus, our work within Indigenous laws requires us to consider gender.¹¹ The harms associated with hidden nature of gender in law are especially persistent because they are not understood until they are carefully examined.¹² The hidden gender within Indigenous legal orders causes Indigenous women and girls to experience life differently, despite facing common social, political, and legal issues.¹³ For example, Indigenous women face higher levels of violence in relation to the rates experienced by non-Indigenous women,¹⁴ including higher rates as victims of homicide.¹⁵ There are also significant gaps in how Indigenous women experience laws

⁹ See Finley, *Breaking Women’s Silence*, *supra* note 6 at 892.

¹⁰ Snyder et al., *Gender and Violence*, *supra* note 1.

¹¹ Snyder, *Gender and Indigenous Law*, *supra* note 8 at 13.

¹² Carolyn Korsmeyer, *Gender and Aesthetics: An Introduction* (New York: Routledge, 2004) at 3-4.

¹³ Snyder, *Women in Cree Legal Education Materials*, *supra* note 7 at 16.

¹⁴ *Ibid* at 2.

¹⁵ Studies suggest that an Indigenous woman is seven times more likely to be a victim of homicide than a non-Indigenous woman. See Vivian O’Donnell and Susan Wallace, *Women in Canada: A Gender-based Statistical Report: First Nations, Inuit and Métis Women*, online: (2011) Statistics Canada. <www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf.>

surrounding marital separation than men.¹⁶ And finally, as the examples further will show, gendered laws create different outcomes in Cree social life generally for men and women.

Working with gender while engaging with Indigenous laws can be a practice of decolonization as well. Addressing gender within Indigenous laws is integral to Indigenous sovereignty.¹⁷ Finding the hidden gendering within Indigenous legal orders strengthens the sovereignty of Indigenous nations, as it loosens a reliance upon Canadian state-law¹⁸ for possible resolution of gender inequities and inequalities.¹⁹

The Harm of ‘Gender Positivity’ within Cree Ceremonial Protocols

While the impact of gender is often hidden in law, the two rules within Cree ceremony that are the focus of this thesis - dress protocols and menstruation protocols – are explicit in their differential treatment of genders. As introduced in the previous chapter, the power dynamics created by dress and menstruation protocols are often articulated in positive terms, couched within aspirations of balance and equality in ceremonial practices. Such discourse around Cree pipe and sweat-lodge ceremonies is discussed as men and women occupying separate halves of ceremony, each particular but necessary for the ceremony to take part. Women’s roles in this balance are often expressed as “occupy[ing] one half of our lodges, one half of our ceremonies, and one half of the

¹⁶ See Jessica Asch, Hadley Friedland, & Val Napoleon, “A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution” online: (2015) Center of Excellence for Matrimonial Real Property < <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf> > ; Kiera Ladner, “Gendering Decolonization, Decolonizing Gender” online: (2008) Paper Presented at the 80th Annual Conference of the Canadian Political Science Association UBC June 2008. <<http://www.cpsa-acsp.ca/papers-2008/Ladner.pdf> > at 6. [Ladner, *Gendering Decolonization*].

¹⁷ *Ibid* at 10.

¹⁸ For a detailed discussion of the challenges of using state law for governance on issues related to the vulnerability and security of women and girls in Indigenous communities see John Borrows, “Aboriginal and Treaty Rights and Violence Against Women” in *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016).

¹⁹ Ladner, *Gendering Decolonization*, *supra* note 16 at 10.

revered positions in Indigenous societies.”²⁰ It has also been expressed as women “contributing to the function of [fasting] ceremon[ies]” by “occupy[ing] half the teepee.”²¹

Kiera Ladner would call this an example of a *gender positive* social order.²² In her exploration of the constitutional order of the Blackfoot Confederacy, Ladner posits that Blackfoot constitutionalism is gender positive in that it is a “political system which vehemently disallow[s] the institutionalization of power” to create an order that is “not based on the subjugation, domination or oppression of women but [is] instead created in an attempt to formulate a way to live together in the best way possible.”²³

The idea of ‘gender positive’ balance within ceremony has been expressed by other Indigenous societies as a *duality*. For example, duality of gender is integral to an Indigenous feminist movement in Central America, and was relied upon in their reclamation of spiritual practices from the colonial effects of Catholicism.²⁴ This collective of women described their duality as “the dual unity of the feminine and masculine” that is “fundamental to the creation of the cosmos.”²⁵ In this use, duality should not be conflated with dualism.²⁶ A dualism suggests a tension between genders, in that they are two contrary forces working against each other to form a balance. When one force gains, the other loses, and vice versa. A duality, in contrast, consists of two forces that are essential to make something whole. While each undoubtedly influences the

²⁰ Tracey Lindberg, *Critical Indigenous Legal Theory*. (2007) Ph.D dissertation with the University of Ottawa, Faculty of Law [unpublished] at 154.

²¹ See wahpimaskwas (Little White Bear) Janice Makokis, *nehiyaw iskwew kiskinowâtasinahikewina – paminisowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator*, (2005) MA Thesis for the University of Alberta, [unpublished] at 112. [Makokis, *Cree Women*]

²² Ladner, *supra* note 16 at 13.

²³ Ladner, *supra* note 16 at 13.

²⁴ Sylvia Marcos, “Mesoamerican Women's Indigenous Spirituality: Decolonizing Religious Beliefs.” 25: 2 *J of Feminist Studies in Religion* 25. [Marcos, *Mesoamerican Women's Indigenous Spirituality*]

²⁵ *Ibid* at 35.

²⁶ *Ibid* at 35.

other, the strength of one does not diminish the strength of the other, but in some beliefs, enhances it.²⁷ As discussed in the previous chapter, duality informs the epistemological foundations of sweat and pipe ceremonies as each convey aspirations towards the maintenance of these dualities. Along with a method to ensure safety and security, the separation of men and women into two different sides of the sweat lodge and the designation of specific rounds to female relations and male relations are attempts to honor and foster the duality of the biological sexes.²⁸ The pipe ceremony has a similar representation. The pipe stem is often understood to be the male aspect of the pipe, while the bowl represents the female aspect. The work of the ceremony cannot begin before the two are put together, as the pipe is not whole before this work. The separation of the pipe-stem and pipe-bowl at the end of the ceremony is significant, as it is generally causes the ‘decentering’ of the ceremonial space, and frees the relations within the ceremony to carry on outside the ceremony.

I should note here as well that pipe and sweat lodge ceremonies are in many aspects based on strong participatory and egalitarian practices. While protocols create issues surrounding access, a number of lodge holders welcome people from all communities to attend. And although Cree lodges are centered upon Cree spiritual beliefs, sweats are diverse and cosmopolitan in terms of the spiritually that is encouraged within them. A common refrain at the start of sweats is that everyone can pray in their own way as they feel comfortable, to whatever creative being or force that they wish, within their own language should they choose. While there are Cree specific

²⁷ A common refrain I hear in sweat lodge ceremonies is the strength of women means that everything else within a community is stronger as well.

²⁸ While such ‘dualities’ are often expressed as delineations of biological sexes, there are contemporary and historical examples of our communities accounting for other genders in various contexts. Nonetheless, as will be discussed later in this chapter, one of the large consequences of the gendered nature of ceremony is the marginalization of other genders through an absence of acknowledgement, a lack of understanding of ‘what side of the lodge’ people who do not identify within heteronormative gender norms, and other general lack of accommodation of gender outside of the heteronormative perceptions of gender.

spiritual norms, sweat lodge ceremonies do not limit the participant's spirituality. As will be discussed in Chapter 3, the open and reflexive nature of these ceremonies is a reflection on both Cree legal personality and of the principle of autonomy that can be seen as a norm within Cree societies.

While such overt gendering may be seen to correct away from gender-neutral positioning that allows gender to remain hidden from critique in many legal systems, this does not diminish both the actual and the potential for unequal treatment based on gender. And although there are parts of sweat lodge ceremonies that can be radically democratic and participatory, ceremonial protocols on dress and menstruation can work against (rather than reinforce) this equality work. First, within a duality, any aspect that fulfills an aspiration of 'gender positive' may only be positive for those who identify as heteronormatively male or female. It has been raised that peoples who do not identify as cis-gendered male or female have experienced further alienation by practices within ceremony where ceremonial holders are unaccustomed to dealing with (or perhaps do not acknowledge) a spectrum of gender positions. The gendered nature of pipe and sweat lodge ceremonies has caused people who identify as either lesbian, gay, bi-sexual, trans, or two-spirited from taking part in the ceremonies,²⁹ or even when partaking in ceremony, caused them to experience shame and humiliation in their participation.³⁰ By its very nature, ceremonial practice based on a heteronormative duality either excludes other gender positions along the spectrum, or at least causes other genders to conform towards heteronormative practices.

²⁹ See Erica Lee, "Skirting the Issue: A response and call to action" (2015), online: *Moontime Warrior*, <<https://moontimewarrior.com/2015/06/19/skirting-the-issue/>> [Lee, *Skirting the Issue*]; Alaers, Jill. "Two-Spirited People and Social Work Practice: Exploring the History of Aboriginal Gender and Sexual Diversity", 11:1 *Critical Social Work* (University of Windsor, 2010). [Alaers, *Aboriginal Gender and Sexual Diversity*].

³⁰ See Drew Hayden Taylor, "The Shame of Skirt-Shaming" (2016) Online: *Windspeaker*, <<http://www.windspeaker.com/blogs/the-urbane-indian-drew-hayden-taylor-945801/entry/4/>> [Taylor, *Skirt-Shaming*]; Dana Wesley, *Reimagining Two-Spirit Community: Critically Centering Narratives of Urban Two-Spirit Youth* (MA Thesis, Queen's University, 2015) [unpublished] at 76-7.

Further, even if some parts of pipe and sweat lodge ceremonies do realize gender positivity in some aspects, the dualistic characteristics of dress and menstruation protocols can fail to support this work. As you recall, a main rationale for menstruation and dress protocols is their necessity to maintain a balance of energy during these ceremonies. It is a teaching that the power of womanhood can be disruptive to the power of the ceremony.³¹ As wahpimaskwasis (Janice Makokis) explains, “it is believed that during [moon] time when a woman is on her natural moon cycle she possesses such power that her energy has the ability to override the men’s pipe and energy during the ceremony.”³² Thus women are excluded from pipe ceremonies led by men, or from circles where men’s pipes are present, during this time. While this could be interpreted as ‘gender positive’, the oppressive nature of the teaching (that women’s ceremonial presence is suppressed for the benefit of the male aspect of ceremony) signals a dualism at play. The power of women is suppressed as not to override the power of men.

Second, while expressed as gender positive, such gender positivity is often unrealized, as the inequality inherent in these protocols is further actualized in treatment and expectations of women and girls outside of the ceremonies. Kim Anderson’s research highlights an example of this. One participant shares her experience in reengaging in cultural practices. This participant notes:

I walked out of there, like a traditional female dancer, swaying in my skirt in the street. I felt very proud to be in a skirt as a Native woman. That’s what all that symbolized, and it was really exciting. So, I really tried to observe all the practices. And some of it was my determination that this was going to be who I was, and this was what you had to adopt.

It all worked fine until the day that we were supposed to sing at a feast, and lo and behold, I was on my period. And another woman in our singing group was on her period as well. So instead of going into the room and joining the circle, we stood

³¹ Makokis, *Cree Women*, *supra* note 21 at 112.

³² *Ibid* at 112.

in the middle of the room, and we were standing in the doorway, singing with them. Now already that felt kind of weird. Then we sat outside the feast room, on the floor in the stairwell the rest of the time. I remember the woman I was with didn't see this as a problem. She instructed me, kind of importantly, "Now the women have to bring us food." I felt like saying, "You're being a fool to think this is an empowering thing for us to do, as women, to be sitting in the stairwell outside the feast. And why is it the women have to bring us the food – so there's another bloody job for women to do? Why the hell can't the men bring us food?"

So ever since then, the menstrual taboos as they are practiced right now have struck me as ...unsafe. And yet I understand how the power of giving life that it represents is so important to honor.³³

This example highlights the complexities of ceremony's simultaneous ability to provide participants with a strong sense of belonging while at the same time creating shame and marginalization.

These experiences display how protocol affects general relations between community members in a manner that is gendered. As Heidi Stark points out, the reasoning behind menstruation protocols does not prohibit men from acting as helpers and bringing food to the women separated from the others due to the protocols.³⁴ Much like the unequal weight in upholding *wahkotowin* that I reflected upon at the start of this chapter, the blending of protocol into other social norm enables this inequality to persist.

Gendered protocols can lead to harmful misconceptions of the role of women in leadership positions as well. This dynamic is intertwined with notions of historical labour divisions within communities, where gendered divisions of labour are often linked to community governance responsibilities.³⁵ As Beverly Hungry Wolf describes:

³³ Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Second Story Press, 2000) at 265-66.

³⁴ From a personal conversation with Heidi Stark in April 2017 in Victoria, BC.

³⁵ See Lindberg, *Critical Indigenous Legal Theory*, *supra* note 20 at 151-3.

“[t]he people of the past thought it a great honour that the women should bear and rear the children, ensuring that there would be people in the future. Equally honourable was the women’s work of creating the lodges that made the homes, taking them up and down when camp moved, heating them and providing the bedding and clothing for the household members. In the social life of my grandmothers, a household was judged not only by the bravery and generosity of the man, but also by the kindness and work habits of the woman.”³⁶

Aside from the unequal burden of labour that would be created by these dynamics (or is created, just like the story I shared at the beginning of this chapter suggests), historical dynamics such as these have often been used to work against the public leadership efforts of Cree women.³⁷ The idea that the ‘traditional’ role of women as life givers or backbone of the community is sometimes interpreted as to say they should not assume leadership positions on the ‘frontlines’ of their nations or communities.³⁸ Such beliefs in traditional gender roles and views on community leadership sometimes directly interact with the effects of menstruation protocols. An example of this surfaced in the early summer of 2015, when Kim Jonathon was named the interim chief of the Federation of Saskatchewan Indian Nations.³⁹ As part of the procedure with her position, Chief Jonathon was presented with a headdress in a bonnet ceremony in her own community. This was done with some contestation, as some felt she should not be presented with the headdress based on her gender, and due to beliefs rooted in the ceremonial protocols based on menstruation.

³⁶ *Ibid* at 149.

³⁷ Another common refrain I have heard from time to time: it is the men’s role in communities to protect women as life givers, so they must stand behind men for this protection.

³⁸ I have heard this especially in terms of political discussions within communities, where women leaders have been criticized for being out ‘in front’, where it is implied that they are putting themselves in harm’s way. Notions of traditional gender ‘roles’ play into these conversations, as it is sometimes said that men as ‘warriors’ need to step in front and protect women. Aside from the overt misogyny within these sentiments, they are based on ideals of community harmonies, free of gendered violence, that historically and contemporarily are not true. The high level of violence women and girls experience within our communities is indicative of this. As Val Napoleon notes in comments on an earlier draft of this thesis, “this form of gendered nationalism provides the justification for violence against women when they fail to live up to the idealization of their role.”

³⁹ Aboriginal Peoples Television Network, “Feathers Ruffled after FSIN chief receives headdress from her community” (2015) online: APTN < <http://aptn.ca/news/2015/06/23/feathers-ruffled-fsin-chief-receives-headdress-community/>>

Ceremonial Protocols as Traditional or Colonial

While one of the rationales for dress and menstruation protocols are their historical roots, some link these protocols to colonial practices. Skirt protocols especially have been linked to colonizing efforts on Indigenous communities. Speaking about her home community, Cree academic Alex Wilson states that “[i]f you talk to elders here, they can remember a time, or they tell stories of their grandparents' time, when people made their own clothes and it didn't have to do with cloth and it didn't have to do with long skirts.”⁴⁰ Anishinaabe writer Leanne Simpson links skirt protocols to assimilative efforts of residential schools. Simpson notes that “[w]e were forced to wear skirts in residential schools, at church and in missions in order to assimilate us from being Nishnaabeg women into the ideals of settler housewives. Under colonialism the skirt has been and still is in many cases a tool of oppression.”⁴¹ Further, while the reclamation of historical practices works as a way to address colonized methods of patriarchy,⁴² such ‘traditional reclamation’ doesn’t address oppressive practices resident within community norms that are not a product of colonization.⁴³

The critical discourse around skirt and menstruation protocol is heightened in its importance to a current resurgence of ceremonial practices. As there are old ones still among us who remember ceremonies being prohibited by the Canadian state (like the sun dance, sweat lodge,

⁴⁰ Alex Wilson, as cited in Canadian Broadcast Corporation, “Indigenous ceremony at University of Winnipeg sparks sexism debate” (June 11, 2015) online: CBC <<http://www.cbc.ca/news/canada/manitoba/indigenous-ceremony-at-university-of-winnipeg-sparks-sexismdebate-1.3123568>>

⁴¹ Leanne Simpson, as cited in Taylor, *Skirt-Shaming*, *supra* note 30.

⁴² Patricia Monture, *Thunder in My Soul: A Mohawk Woman Speaks*. (Halifax: Fernwood Publishing, 2005) at 179.

⁴³ See Kim Anderson, 'Affirmations of an Indigenous Feminist' in Cheryl Suzack et al, eds, *Indigenous Women and Feminism: Politics, Activism, Culture* (Vancouver: UBC Press, 2010) at 86-88. Further the syncretic nature of colonial practices with internal practices, especially within ceremony, means that reclamation of traditional practices cannot always root out patriarchal colonial oppression.

round-dance and give away ceremonies) there is a reflexive protection of ceremony as it resurges.⁴⁴ A product of this resurgence has been a growing number of people returning to ceremonial practices,⁴⁵ and ceremonies being practiced in new communities and institutions where they weren't before.⁴⁶ This resurgence furthers the complexity for women who oppose the gendered protocols, as they can simultaneously feel pride and a need to support such reclamation, while recognizing their potential subjectivity to uneven and oppressive rules if they participate.

While locating the origins of skirt protocols may be significant in critical discourses about decolonization, the need for change should not rest upon a determination of it being a 'colonial' or 'traditional' practice. This line of reasoning engages in a form of essentialization regarding individual and community identity. If the adoption of new practices within a community renders those new practices (or older ones that incorporate them) as 'inauthentic', then it creates an impossible standard for community 'authenticity' and propagates stereotypical views of the authentic Indigenous person as frozen in time to practices before settler contact. It fails to take into account Indigenous resiliency and agency in authoring changes in community practice, and the syncretism that is resident in many Indigenous social, economic, legal and spiritual practices. As Lee Maracle states, if we are thinking 'traditional' clothing, then we should return to men wearing loin cloths and to women going topless during summer months, as her ancestors used to.⁴⁷ Plains Cree author Emma Larocque acknowledges the significance of resurgent community practices such as ceremonies, yet raises the caution that "as women we must be circumspect in our

⁴⁴ See generally, Katherine Pettipas, *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994) [Pettipas, *Severing the Ties*]

⁴⁵ In my own experiences in working with Cree, Stoney and Blackfoot communities in Alberta, the last 15 years has seen a large resurgence of sun dance/rain dance ceremonies in communities.

⁴⁶ Erica Violet Lee notes a need for universities to come up with their own frameworks on ceremonial practices within the schools in light of increased practice in university settings. See Lee, *Skirting the Issue*, *supra* note 29.

⁴⁷ Maracle, as cited in Taylor, *Skirt-Shaming*, *supra* note 30.

recall of tradition” including asking “ourselves whether and to what extent tradition is liberating to us as women.”⁴⁸ A blind faith to tradition in ceremony can miss the point of the ceremony entirely. As John Borrows states, “[ancient] aboriginal traditions are only relevant if they have application in contemporary circumstances . . . [t]he preservation of traditions in some distant past and the failure to implement them in the present renders these traditions dead.”⁴⁹

Examples of Transitions in Cree Ceremonies

Acknowledging the ability for ceremonies to evolve and transform can lead to highly charged discussions. Many of these beliefs stem from the sacred or natural origins of many ceremonies. Spiritual or divine law is often discussed as being connected to a creator, and transforming ceremonies would be violating sacred or divine instructions.⁵⁰ Further, as discussed before, some ceremonial practices and rules are tied to beliefs that transformation would violate a fundamental balance ceremonies require.⁵¹ Such a position ignores historical examples of ceremonial development and transformation. Within Cree ceremonial practice, there are multiple examples of whole ceremonies developing in relation to the changing lives of Cree people. The Horse Dance developed with Cree peoples’ evolving relationship with horses, which didn’t begin until the 1700’s.⁵² The *Wihtigokaancimuwin* (Weetiko Dance) is said to evolve from Cree interactions with

⁴⁸ Emma Larocque. “The Colonization of a Native Woman Scholar”, in *Women of the First Nations: Power, Wisdom, and Strength*, eds. Christine Miller and Patricia Chuchryk (Winnipeg: University of Manitoba Press, 1996) at 14.

⁴⁹ John Borrows, “Stewardship and the First Nations Governance Act” (2003) 29 Queen’s L J 103 at 112

⁵⁰ See McAdam, Sylvia, *Nationhood Interrupted: Revitalizing Nehiyaw Legal Systems* (Saskatoon: Purich Publishing, 2014).

⁵¹ For example, see discussions on women’s participation in ceremonies while they are experiencing menstruation. These protocols are challenged for the limitations it provides on women who participate in ceremonies.

⁵² See John S. Milloy, *The Plains Cree: Diplomacy and War, 1790 to 1870* (1990) (Winnipeg: University of Manitoba Press, 1990) at 24-25. [Milloy, *Plains Cree*].

Blackfoot people⁵³, which didn't occur with regularity until around 1730.⁵⁴ The Sun Dance Ceremony was 'adapted' into the Rain Dance Ceremony by Plains Cree communities as a result of the colonial prohibition of ceremonies.⁵⁵

Moreover, there has been a long line of internal evolutions on ceremonial practices. Sweat lodges were held under kitchen tables during the *Indian Act* prohibition of the ceremonies.⁵⁶ Within the practices of some ceremonial holders, menstruation rules and the role of women generally has been evolving as well.⁵⁷ Some sweat lodge holders continue to transform their ceremonies away from protocols based on dress and menstruation, to reflect a transformation in the gender dynamics within both Cree and Canadian societies.⁵⁸ The question of the whether ceremony can transform and evolve is based on fundamental positions that are more normative assumption than accurate description of the history of Cree ceremonies. A fuller dialogue would be centered on the processes that have allowed for ceremonial evolution. Such a dialogue would raise important issues for future research like: 1) who is privileged with authorizing ceremonial transformations; 2) what are the normative practices that act as barriers to a healthy evolution of

⁵³ See Fine Day's telling of the story to David Mandelbaum. The dance involves contrary actions. According to Fine Day, it developed from an encounter with the Blackfoot while hunting buffalo. Fine Day's account can be found online at: <http://ourspace.uregina.ca/bitstream/handle/10294/1813/IH-DM.82.pdf?sequence=1> (Last accessed on April 1, 2016).

⁵⁴ Milloy, *Plains Cree*, *supra* note 52 at 24.

⁵⁵ See Pettipas, *Severing the Ties*, *supra* note 44 at 179-80. As the ceremonies were held in the summer when rain was much needed and often scarce on the prairies, the name change was an attempt to curry favor with local settler people. Cree people used the mistaken belief by settlers that the ceremony's purpose was to provide rain as a way to gain allies of the ceremony during the period it was prohibited.

⁵⁶ See Umista, "the Story of the Masks", online: Umista <http://www.umista.ca/masks_story/en/ht/potlatch02.html.> (Last accessed on April 1, 2016).

⁵⁷ Most of the discussion around ceremonial rules has occurred by and large with the offering of ceremonies inter-societally, like in University settings, for example. Pipe ceremony and sweat lodge ceremony rules are an example of this. Cree protocols on the handling and playing of drums, for example, is an area with similar rules of gender, yet relatively receives very little attention.

⁵⁸ As one lodge holder shared with me, "my teacher would scold me really hard for holding lodges for men and women at the same time," as he continued to hold these types of lodges.

ceremony; and 3) at what degree is normative fluidity harmful to the integrity of the ceremonial practice itself.

It also important to note that in the voices recalled here do not encapsulate the normative values of all Cree peoples. The greater Cree citizenry, like all societies, are filled with contrary positions and voices of disagreement. There are traditionalists, spiritualists, atheists, catholics, capitalists, agnostics, anarchists, contrarians, socialists, amongst others. Not all Cree people engage in pipe or sweat lodge ceremonies. However, as the effects of ceremony are beyond spiritual practice, people from many positions within the Cree citizenry have a stake in such critical discussions. As Cree philosopher and academic Erica Violet Lee notes, creating space for ceremonies is important to “even those of us who are agnostic/atheist” in that ceremony can provide a safety of space in places (like university campuses, in her example) that traditionally can be places of contestation for Cree people.⁵⁹

Critical Discourses on Gender in Indigenous Laws

As law is a social practice, the tensions within the praxis of Cree ceremonies over the gendered protocols are reflected in critical discourse on Indigenous laws as well. While fundamentalist beliefs on the nature of Indigenous laws underlie all of these areas⁶⁰, critical discussions on Indigenous laws often get stifled within three areas of discourse: 1) the essentialization of women’s roles in communities⁶¹ 2) fundamentalist positions on traditionalism⁶² and 3) reluctance to critically discuss laws sourced to sacred or natural origins.⁶³ These three areas of discourse can often lead to “intellectual blackholes” where further theoretical or analytical work is stymied by

⁵⁹ Lee, *Skirting the Issue*, supra note 29.

⁶⁰ See Snyder et al., *Gender and Violence*, supra note 1 at 613.

⁶¹ *Ibid* at 611.

⁶² *Ibid* at 609.

⁶³ *Ibid* at 612.

“idealistic rhetoric” of these concepts.⁶⁴ As Emily Snyder, Val Napoleon, and John Borrows state, this “rhetoric is widespread in academic texts, in discussions at conferences and workshops, in classrooms, in universities, at meetings, in the media, and in everyday conversations.”⁶⁵ These “binaries of authentic/inauthentic and traditional/colonized...create intellectual blackholes that have lived consequences for Indigenous peoples, especially women” as they freeze social interactions within the snapshot of these binaries.⁶⁶ This results in systemic patriarchal structures and implicit oppressive practices persisting and remaining in operation within Indigenous communities. These are explored further below:

Essentialization of Gender: These discourses usually involve conflating the role of women and girls to motherhood. Examples of this include rhetoric that talks of women as ‘mothers of nations’ or are the ‘backbones of our communities.’ As Napoleon, Borrows and Snyder suggest, such rhetoric “ultimately obscures, mischaracterizes, and too narrowly frames Indigenous women’s options, choices and contributions within their societies. This is particularly problematic when women’s responsibilities and contributions as citizens are only framed in relation to nurturing and caring for the nation.”⁶⁷

The ‘mothering of a nation’ rhetoric is especially relevant within Cree ceremonial life. As discussed earlier in this chapter, many of the symbols and analogies that form the foundation of pipe and sweat lodge ceremonies involve essentialized conceptions of women in a motherhood role. The sweat lodge, for example, is representative of a womb and the ceremony is often emblematic of a rebirth. Such symbolism and representations exist within pipe ceremonies as well, as you may recall the representations of the male and female aspects in the pipe stem and pipe

⁶⁴ *Ibid* at 608.

⁶⁵ *Ibid* at 608.

⁶⁶ *Ibid* at 608.

⁶⁷ *Ibid* at 611.

bowl, respectively. It is the pipe bowl (the female aspect) that holds the medicine for the ceremony. Although it is important not to take symbolic representation literal, this reflects a ‘woman as holder of the sacred’ imagery.

Traditionalism: As explored earlier in this chapter, critical discourses often become flat by assertions of tradition and the importance of upholding such traditional values. As Borrows, Napoleon and Snyder state: “tradition is not neutral and it can be purposefully deployed in ways so as to discipline and morally police women.”⁶⁸ Similar to the challenges in fundamental positions on tradition in the practice of ceremony, “evocations of culture and tradition can corrosively inhibit nuanced, non-essentialized views and practices of Indigenous law.”⁶⁹ The role of tradition in ceremony is especially complex, considering much of the practices and protocols of ceremony require some level of adherence to tradition.

Sacred and Natural Laws: Practices sourced to sacred or natural sources are often very difficult to objectify in critical discourse. Some people simply feel uncomfortably bringing up sacred or spiritual issues, given the secular nature that much of academic practice is based upon. Others believe that sacred or natural practices (like ceremony) cannot be discussed critically, due to their spiritual nature. Others may believe that such critical discourse is futile, in that sacred and natural law have no processes for change. A continued silence of critical discussions on sacred or natural law has large consequences for both Indigenous law and gender equality. The evocation of the ‘sacred in law’ often places these laws ‘beyond human challenge and understanding.’⁷⁰ However, the idea that sacred or natural law is out of reach for human critique erases part of the need for ceremony itself. As one function of pipe ceremonies and sweats is communication with natural or

⁶⁸*Ibid* at 618.

⁶⁹*Ibid* at 618.

⁷⁰*Ibid* at 612.

spiritual elements, if the dialogue of this communication was pre-set with no chance for transformation, change, or other interpretation, then this purpose of ceremony would be redundant. Codified or set out rules would suffice in that case. We would only need to rely upon law that is told to us by our elders, as told by theirs, with little change or adaptation to our contemporary circumstances.

Reframing Questions of Gender in Cree Law:

As discussed above, both theory and practice of Cree ceremonial law are burdened with social, emotional, economic and intellectual barriers inhibiting the critical analysis of gendered imbalances within them. While there are many other avenues to address this, Indigenous legal theory offers methods to move beyond the barriers of dialogue and ask questions of ceremony. The use of ‘traditional’, ‘fundamental’, and ‘cultural’ in these discussions can create fixed values of these terms as this rhetoric freezes these discourses. Legal theory can do the work of teasing out the nuances in these terms and find their flexibilities and fluidity. To do so, a reframing of our inquiries of ceremonies is required away from questions of whether something is possible, towards questions of *how*. Instead of getting lost in whether something is traditional or not, or an essential part of culture (and thus must be unchanging), reframing questions as legal questions can help work through the issues that cause a paralysis during these conversations. As you will recall from the questions this thesis is focused upon, it is premised upon the ability to move beyond gatekeeping questions on whether ceremonial change is possible. The reframing of these animating questions from gatekeeping questions is outlined below:

Original Critical Question(s):	Reframed Question(s):
Can ceremonies adapt or change? Does changing a ceremony ruin a ceremony?	What are the processes for changing protocols in Cree ceremonies (and as result changing Cree law)?

Who/what has the authority to change ceremonies?	What are the barriers within Cree social practices that prevent ceremonial change? Why is changing ceremonies so difficult?
Can sacred or natural laws be changed? Can humans change ceremony?	What are the potential dangers to Cree spiritual and legal practices in changing ceremonies?

Through such reframing, we are able to move beyond the intellectual traps that these conversations generally are stymied through.

The hidden nature of gender in law requires a further step in this reframing, one that provides an explicit gendered analysis. In her doctoral research into the representations of women in Cree legal education materials, Emily Snyder has developed such an analytical frame.⁷¹ Aside from the gendered realities of Indigenous laws, Snyder is working from the concern that “feminist legal theory fails to take into account indigenous laws and routinely overlooks the insights from indigenous feminism[s].”⁷² She is also concerned with Indigenous feminist scholarship’s focus on state law, leaving gaps with critical looks on Indigenous legal traditions.⁷³ Snyder’s method of analysis is adopted here to ask further gendered questions to move discussions on the gendered nature of ceremonial protocols past fundamental traps.⁷⁴ These questions can be elucidated as follows:

⁷¹ Snyder, *Women in Cree Legal Education*, *supra* note 7.

⁷² *Ibid* at 37.

⁷³ *Ibid* at 37.

⁷⁴ I acknowledge the premise of Snyder’s dissertation, that there is an absence or erasure of Cree women’s voice in the materials she examines in her dissertation. I contend that this should equally reflect questions on the gendered nature of the production of the publicly available resources Snyder relies upon in her dissertation. As I briefly explore in chapter 5, if we are to fully address the lack of representative voices from women in our legal resources, then we need to move beyond current publicly available resources towards legal resources that are harder to access. Continued research projects based within communities is one way to access these other legal resources. This should have an effect on the methodologies we use for accessing and explicating Indigenous laws.

Original Critical Question(s):	Reframed Question(s):	Gender Analysis:
Can ceremonies adapt or change? Does changing a ceremony ruin a ceremony?	What are the processes for changing protocols in Cree ceremonies, and as result changing Cree law?	What are the processes for changing gendered protocols in Cree ceremonies? Does this differ from other ceremonial changes?
Who/what has the authority to change ceremonies?	What are the barriers within Cree social practices that prevent ceremonial change? Why is changing ceremonies so difficult?	Is there a gendered nature to the normative practices that cause ceremonial change?
Can sacred or natural laws be changed? Can humans make these changes, or are we reliant upon the non-human actors according to their sacred or natural origins.	What are the potential dangers in changing ceremonies to Cree spiritual and legal practices?	Are there harmful possibilities for women if the gendered protocols are changed? Are there harmful effects that can occur in strategies for gender equality?

Reframing the questions of ceremonial rules and ceremonial transition within an Indigenous legal and gendered perspective allows us to move through an examination of these rules to their fullest. As Hadley Friedland and Val Napoleon state, “[l]aying bare the interpretive choices we make in a transparent fashion is one way of resisting the assertion of unquestionable, privileged truths that can contribute to fundamentalist trends within societies or communities.”⁷⁵ As I will begin to explore in the next chapter, theories of law can help me see how we structure our relationships with each other in ceremonies, and how we can further reflect on the fairness of these relationships.

⁷⁵ Hadley Friedland & Val Napoleon, “Gathering Threads: Developing A Methodology for Researching and Rebuilding Indigenous Legal Traditions” 1 Lakehead LJ 1, at 30.

Nisto (Three): Legal Theory and Cree Ceremonial Protocol

I Dream in Methodologies (part 3): Chasing Turtles

“There is a story I know,” so the story is told. “It’s about the earth and how it floats in space on the back of a turtle. I’ve heard this story many times, and each time someone tells the story, it changes. Sometimes the change is simply in the voice of the storyteller. Sometimes the change is in the details. Sometimes in the order of events. Other times it’s the dialogue or the response of the audience. But in all the telling of all the tellers, the world never leaves the turtle’s back. And the turtle never swims away.”

One time, it was in [Victoria] I think, a young girl in the audience asked about the turtle and the earth. If the earth was on the back of a turtle, what was below the turtle? Another turtle, the storyteller told her. And below that turtle? Another turtle. And below that? Another turtle.”

The girl began to laugh, enjoying the game, I imagine. ‘So how many turtles are there?’ she wanted to know. The storyteller shrugged. ‘No one knows for sure,’ he told her, but its turtles all the way down.” (Thomas King, *the Truth about Stories: A Native Narrative*. (2003) House of Anansi Press Inc.: Toronto, at 1-2.)

The language of our relations is also embedded in our collective journeys. One such journey, the theoretical pursuit of finding out *what is law* can turn into a bottomless search for imaginary limits of an infinity of turtles, stacked one upon another. Our many schools of legal theory, including legal positivism,¹ naturalism,² social interaction theory,³ post-modernism, legal

¹ See H.L.A. Hart, *The Concept of Law* (1975; repr., Oxford: Oxford University Press, 1961.) [Hart, *Concept of Law*] at 90-91.

² See generally, George Pavlich, “Classical Natural Law” in *Law and Society Redefined* (Oxford: Oxford University Press, 2011) at 14-26.

³ See generally, Lon Fuller, *The morality of law* (New Haven: Yale University Press, 1964). [Fuller, *Morality of Law*]

pluralism,⁴ and Indigenous legal theory⁵ engage in the chase of conceptualizing law. While I haven't managed to escape the few turtles within my day-to-day views of law, there are some people who believe the question of *what is law* will never be able to reach a resolution.⁶ The search for a grand unifying narrative of law has become an intellectual quagmire. As Michel Foucault states, “[i]n each case, the attempt to think in terms of a totality has in fact proved a hindrance to research.”⁷ While William Twining cautions that “[j]urisprudence is a wasteland of false polemic” he states that “one way of disposing of such squabbles is to show that the best interpretation of two apparently conflicting positions is that they provide answers to different questions rather than rival answers to shared questions.”⁸ In this sense, Thomas King is instructive as to the futility of searching for a perfect analysis of limits and demarcations between law and non-law, for as the story goes, the earth never leaves the turtle's back and that turtle never leaves the next one's back. And so on.

I am also cautioned of the limits of theory by a teaching from Victor Underwood, knowledge keeper from the Tsawout First Nation on Vancouver Island. Victor has been generous in his time and experience by hosting sweat lodge ceremonies for college and university students in the Victoria area. During one lodge, after sharing a teaching from his community on healing, he was careful to acknowledge that his lesson was a teaching, but not law. This was a significant distinction to him. Victor stated once something is acknowledged as a law it becomes open ground

⁴ See generally, Boaventura de Sousa Santos, “Beyond Abyssal Thinking” in *Epistemologies of the South: Justice Against Epistemicide* (Boulder: Paradigm Press, 2014) at 118-136.

⁵ See generally, John Borrows, “Indigenous Legal Traditions in Canada”, (2006) online: Report for the Law Commission of Canada <http://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-66-2006E.pdf> [Borrows, *Legal Traditions*]

⁶ See generally Brian Tamanaha, “An Analytical Map of Social Scientific Approaches to the Concept of Law” (1995) 15 *Oxford Journal of Legal Studies* 501.

⁷ Michel Foucault, *Power/Knowledge* (New York: Vintage, 1980) at 81.

⁸ William Twining, *Globalisation and Legal Theory* (New York: Cambridge University Press, 2000) at 39.

for a hundred competing interpretations, all seeking to be the best one.⁹ If something is a teaching, then it exists in a reciprocal relationship with other teachings around it. It provides the listener with the autonomy to choose the best interpretation for their situation. I think a lot about Victor's teaching and how knowledges relate to each other. This teaching - *that once something is recognized as a law, it becomes grounds for contestation through interpretation* - points out hidden politics in legal theorizing, and the power of something being determined as law. Chasing turtles can be a strange game.¹⁰

For those who make Cree spiritual and ceremonial practices as an integral part of your life, my use of theoretical concepts developed in Western legal theory for a study of Cree ceremony may cause concern. I too have felt this tension in engaging in this research. And as an Indigenous researcher, I am not alone. This is a common challenge and concern amongst Indigenous researchers engaged in socio-legal studies regarding their home nations or communities. As Hul'qumi'num academic Sarah Morales states, the study of a personal Indigenous legal tradition brings on worries that "the subject matter [is] too trite", and that we do a "disservice to [our] communit[ies]" by misrecognizing aspects of indigenous social orders as laws.¹¹ Gordon Christie

⁹ I am reminded by Val Napoleon in review of a draft of this thesis that argumentation is a part of every legal tradition. My point here is not to suggest that some Indigenous legal orders are devoid of methods of contestation, nor that contestation is negative. I relate to Victor Underwood's story in the authority of the word 'law', that once something is 'law' a different type of contestation (often for the 'right' interpretation) occurs than when there is a multitude of lessons to choose to follow or reason from. There is an affective economy attached to the word law. For example, in discussing this thesis with friends both in my personal, ceremonial and academic circles, some people have taken exception to my earlier characterizations of the rules around menstruation as law. While I take seriously the identification of what is a law in Cree normative practice and what isn't, I found such contestation curious in that accounting for them as 'rules', 'procedures', 'protocols' or 'laws' does little to change the effect of the norms around menstruation and ceremonial participation.

¹⁰ And of course, our 'turtles' are constantly shifting. As John Borrows states "[t]here is no timeless trait, characteristic, custom, or idea that is categorically fundamental to being Indigenous" and it is "misleading to claim that Indigenous societies possess an unalterable central essence or core." See John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 3. [Borrows, *Indigenous Constitutionalism*]

¹¹ Sarah Morales, *Snu'uyulh: Fostering an Understanding of the Hul'Qumi'Num Legal Tradition*. (Ph. D. Thesis: University of Victoria, Faculty of Law, 2014). (Unpublished) At 194

expands on this, as he cautions that relying on non-Indigenous legal theory creates a risk as harmful colonial structures may lie hidden in the language of legal theory, and thus colonialism will be reproduced in Indigenous texts.¹² Christie elucidates this as follows:

“On the one hand, there is concern over the possibility that Indigenous scholars might unreflectively or uncritically fall into thinking and writing in non-Indigenous ways, a failing that can re-inscribe the very ways of thinking that historically have worked so powerfully against Indigenous peoples.”¹³

Thus Christie believes that in the construction of an Indigenous legal theory, the theorist may borrow from non-Indigenous legal theory, but must “(a) maintain their grounding in their communities, (b) carefully assess the web of conceptual relationships within which a non-Indigenous theoretical position or argument is embedded in relation to this grounded Indigenous existence, and (c) excise the content of the non-Indigenous argument or position from these extraneous matters, so it can be put to use by and for Indigenous peoples.”¹⁴

While I take these cautions very seriously, I am also pushed by a curiosity that is faithful to the ethic that Victor Underwood shared. I am curious to the relations between nehiyaw piimatisiwin and legal theory. It is neither my purpose or within the scope of this research to set out a grand narrative on Cree laws, or even an area of Cree law. Legal theory however serves this thesis by making a link between social norms and legal norms and their effect on the lives of Cree peoples. As introduced in the previous chapter, theory provides an avenue to engage deeper into issues of gender in Cree law. Specifically, this chapter will engage in theories of law to answer the nature of Cree ceremonial laws, including: 1) the importance of their aesthetic make-up to their

¹² See Gordon Christie, “Indigenous Legal Theory: Some Initial Considerations” in Benjamin J. Richardson, Shin Imai & Kent McNeal, eds., *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oxford: Hart, 2009) c. 8 [Christie, *Indigenous Legal Theory*].

¹³ *Ibid* at 25.

¹⁴ *Ibid* at 44.

continued practice, 2) the relational aspect of Cree ceremony that serves as a backbone to the legal practices informed by the ceremonies, and 3) the relationship between protocols and socio-legal practice outside of these ceremonies.

Cree Ceremonial Law and Legal Aesthetics

The recognition of social norms within Indigenous communities beyond mere custom¹⁵ has taken the persistent work of many thinkers to expand colonial limitations of theoretical understandings of Indigenous law.¹⁶ Despite this continuing work, there still are challenges of ‘legitimacy’ on whether social norms within Indigenous societies constitute law. Much of these ‘legitimacy’ issues largely arise because of the dominant role legal positivism has played in Western legal thought.¹⁷ While concepts of law are widening in many legal theories, the implicit omnipresence of legal positivism still influences how we think of law in Indigenous contexts. As Janna

¹⁵Notoriously H.L.A. Hart described legal systems without a centralized process for the enactment of positive laws as ‘pre-legal’ in nature. See Hart, *Concept of Law*, note 1. It has taken the strong and continued work of many legal scholars to work against the empirical nature of legal positivism to gain the recognition of Indigenous laws and legal orders.

¹⁶ See Borrows, John. *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010); Borrows, John. *Drawing Out Law* (Toronto: University of Toronto Press, 2010); Borrows, John “(Ab)Originalism and Canada’s Constitution” (2012) 58 *Supreme Court Law Review* 351; Christie, Gordon. “Indigenous Legal Theory: Some Initial Considerations.” In Benjamin J Richardson, Shin Imai & Kent McNeil, eds. *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oregon: Hart Publishing, 2009) 195; Fletcher, Matthew. “Rethinking the Role of Custom in Tribal Court Jurisprudence” (2007-2008) 13 *Michigan Journal of Race and Law* 57; Friedland, Hadley. “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws” (2013) 11:2 *Indigenous Law Journal* 1; Friedland, Hadley. *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saulteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns* (LLM thesis, University of Alberta, 2009); Friedland, Hadley & Val Napoleon. “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015) 1:1 *Lakehead Law Journal* 16. Napoleon, Val. “Thinking About Indigenous Legal Orders.” In René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013); Napoleon, Val & Hadley Friedland. “An Inside Job: Engaging with Indigenous Legal Traditions through Stories,” 61:4 *McGill L J* 725; Emily Snyder, “Indigenous Feminist Legal Theory” (2014) *Canadian Journal of Women and the Law* 26:2; Emily Snyder, Val Napoleon, & John Borrows (2015). *Gender and Violence: Drawing on Indigenous Legal Resources*. *UBC Law Review*, 48(2). Lindberg, Tracey. *Critical Indigenous Legal Theory*, (PhD dissertation, University of Ottawa, 2007); Napoleon, Val. *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD dissertation, University of Victoria, 2009). This is only a small sampling of the many thinkers engaged with theoretical work on a number of Indigenous legal orders.

¹⁷ Napoleon, Val. “Thinking About Indigenous Legal Orders.” In René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013); [Napoleon, *Legal Orders*]

Promislow states: “if it is acknowledged that positivist conceptions of law do not correspond with all legal systems, positivist ideas still inform assessments of legality in non-Western systems.”¹⁸

The recognition of pipe and sweat lodge ceremonies within Cree law suffers from this effect of legal positivism. Specifically, Western legal theory either has moved away from or fails to acknowledge the importance of ceremonial aesthetics and their significance to the practice of law. Though once a significant part of Western legal practice, aesthetical dimensions of law have been excluded as legal practice has become more focused on its technical efficiency.¹⁹ As a result, as Eve Darian Smith suggests, there is a tendency within the practice of Western legal systems to assume the following:

- (1) That legal meaning is found strictly within legal texts, reports, and documents, (2) that law is almost wholly addressed in formal legal arenas such as courtrooms, governmental assemblies, and places of legal adjudication, (3) that law should be described in the vocabularies of European-based languages, primarily English, and (4) and common law and civil law legal systems are preferred.²⁰

Such legal personality means that “there is virtually no accommodation made for the production of legal meaning outside conventional Euro-American legal spaces, places, forums, vocabularies, cultural logics, and textual modes of communication.”²¹ Similarly, Hannah Petersen notes that Western law is dominated by the belief that law should be “closely related to a society embedded in a rhythm of industrial production and industrial productivity.”²² The efficacy in which the

¹⁸ Janna Promislow, *Towards a Legal History of The Fur Trade: Looking For Law At York Factory, 1714-1763* (LLM Thesis, York University, 2004) [unpublished] at 30.

¹⁹ One area where we see aesthetics playing a role in Western legal systems is in courtrooms, where protocols surrounding dress, speech and positioning are still important. However, these practices are often viewed as ‘formality’, unmoored from any substantive importance they may have had.

²⁰ Eve Darian-Smith, “Producing Legal Knowledge” in Eve Darian-Smith, ed, *Laws and Societies in Global Contexts* (Cambridge: Cambridge University Press, 2013) 97, at 108 [Darian-Smith, *Legal Knowledge*].

²¹ *Ibid* at 108.

²² Hannah Petersen, “On Law and Music: From Song Duels to Rhythmic Legal Orders?” (1998) 41 *Commission on Legal Pluralism* 75 at 80.

industrial world must work means aesthetical qualities of law are diminished. The impoverished role aesthetics plays in Euro-American legal systems has a delegitimizing effect on the aesthetics of other legal systems.²³

Beautiful Cree Legal Practices

As I related earlier in this thesis, law can be found in a variety of places. Contrary to the impoverished nature of Western legal tradition's attention to the beauty of the law, the long and varied list of where law is located (within stories, songs, dreams, artistic renderings, kinship orders, ceremonies, place names and locations, for example) displays the richness of aesthetics found in many Indigenous legal orders. Western legal practice, especially current formal legal education, leaves us ill-equipped to understand or translate knowledge that requires an engagement beyond the two dimensions of writing and speech. As Hadley Friedland notes, "engaging robustly and respectfully with Indigenous legal traditions, so that they can be accessed, understood and applied today [,] clearly requires more than just identifying and articulating legal principles."²⁴ Methods of translation are then vitally important when engaging with Indigenous legal orders. Because of both their role as pedagogical instrument for Cree legal principles and their inextricable connection to their aesthetical characteristics, developing methods to view ceremonies as legal resources serves this issue of translation. When we view ceremonies in this way, we can begin to develop a different understanding of how ceremonies make reason for Cree people and act as a mediator for disagreement and conflict. The particular aesthetics of Cree ceremony significantly impact the survival of Cree legal tradition by protecting legal norms in the face of external threats on Cree legal order, by facilitating an embodiment of legal knowledge within the person, by ensuring that

²³ Darian-Smith, *Legal Knowledge*, *supra* note 20 at 97-109.

²⁴ Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding, and Applying Indigenous Laws", 11 *Indigenous L J* 1, at 12. [Friedland, *Reflective Frameworks*]

Cree laws are transmitted generationally, and by giving Cree laws mechanisms for transformation and evolution.

Recognizing law within ceremony, and ceremony as legal institutions is significant in our interpretations of Cree legal principles as well. Jeremy Webber notes that violence occurs when a principle of law is separated from the institution that the principle is “interpreted, adjusted and deployed.”²⁵ The removal of the principle (in Webber’s example he is speaking of property rights) causes the principle to lose its “scope or function” once “shorn” from the legal institution, leaving the principle “a superficial resemblance to the original”.²⁶ This is especially significant in the conflicts between legal orders when one society interacts with another (especially in occupying the same land base), as the principle will be “a shell reconstructed according to the social and legal presuppositions of the incoming society.”²⁷ This provides a large impetus for the maintenance and recognition of these ceremonies as legal institutions. While the ideas of generosity, balance, equality and fairness that are espoused in sweat lodge ceremonies may still persist if the link is severed (in that there are other pedagogical tools within Cree societies that teach these principles as well), without the lodge these principles are re-interpreted by other means of legal reasoning. With the persistence of Canadian state law in Cree societies, undoubtedly some of this re-interpretation (if not a large part of it) would be done through liberal rights discourses.²⁸

Two characteristics of Cree legal traditions make ceremonial aesthetics especially significant. First, much of Cree law is unwritten (in the strict ‘pen-to-paper’ sense) but rather is

²⁵ See Jeremy Webber, “Public Law Dimension of Indigenous Property Rights” in *The Proposed Nordic Saami Convention: National and International Dimension of Indigenous Property Rights*, eds Nigel Banks and Timo Koivurova (Portland: Hart Publishing, 2013) at 79. [Webber, *Public Law*]

²⁶ *Ibid* at 79.

²⁷ *Ibid* at 79.

²⁸ As is the point Webber is making in the article. Indigenous property rights are interpreted through a liberal rights model, failing to recognize the public-law dimension of Indigenous property rights.

resident in songs, stories, ceremony, art and artistic performance, land and land-based practices, language, and within knowledge keepers and the old ones. An understanding of Cree aesthetic aids in the identification and translation of the legal principles within these resources.

Second, Cree legal orders, like many other Indigenous legal orders, are largely decentred.

As Val Napoleon states:

Since law is a cultural institution, societies that are organized centrally will have centralized processes for enacting law. This is the case for Canada, which is centrally organized as a nation state with hierarchical levels of law-making authority and adjudication. However, decentralized societies do not have formal, centralized processes for enacting law.²⁹

Aesthetics provide a centering function for Cree societies. Ceremony and songs either require or facilitate the creation of a physical center for participants.³⁰ For the acts that don't create a physical centre (like the retelling of story or the interpretation of art, for example) these processes involve a metaphysical centering as they remind the listener or viewer of their place within the Cree polity or society, and their obligations of holding this place.³¹ These practices enable a micro-centering within Cree legal orders that are sometimes temporary and transient, yet are relied upon for legal work and legal teaching to take place.

Social Interaction Theories and Cree Ceremony

²⁹ Napoleon, *Legal Orders supra* note 17 at 5.

³⁰ The physical circle in pipe ceremonies and sweat lodge ceremonies in particular is highly significant to the actions and symbolism of a ceremony. Other social practices, like round dances and sharing circles call for the creation of a circle. While there are many teachings on the importance of a circle, the one that I reflect on as a thread through much of our ceremonies is one of democracy and egalitarianism. I have been taught that when we make a circle, no one is closer to the center than another, regardless of our various positions in our communities and in life.

³¹ There are many stories told by a Cree person to another that would not create this feeling of centeredness (like someone talking about their tomato crop last spring, or a hockey game they saw in 1978). It is the interpellation into thinking or understanding their place within their web of relations that would make a conversation 'legal'.

The aesthetics of Cree legal practices shows that Cree ceremony often relies upon persuasion rather than static commitments to the ‘rule of law’. While legal positivism can provide useful tools of analyses for certain portions of Indigenous legal orders³², it is inadequate to fully account for the legal resources within a decentralized greater Cree society. The nature of Cree law means legal positivism would fail to recognize much of the structure and tendencies of Cree legal orders.

The persuasive, relational and beautiful nature of *nehiyaw pimatisiwin* can be better accorded with interactive theories of law. As Lon Fuller states, “the Law does not tell a [person] what [they] should do to accomplish specific ends set by the law giver, it furnishes [them] with baselines against which to organize [their] life with [their] fellows.”³³ In this sense, the primary form of all laws can be described as ‘customary’ in nature.³⁴ Law is grounded within normative practices of a community and emerges from them to facilitate the interaction between the members of the society.³⁵ According to Fuller, “we cannot understand “ordinary” law [positive law] unless we first obtain an understanding of what is called customary law.”³⁶

Fuller’s human interaction theory revives custom from the static view of it being mere habit, formed from repetition, with little reasoned thought behind the action.³⁷ To Fuller,

³² For a good example of legal positivism used to understand the law within Gitksan normative practices, see Napoleon, Val. *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD dissertation, University of Victoria, 2009). [Unpublished] [Napoleon, *Ayook*]. Napoleon uses Hart’s description of primary and secondary laws to describe the legal processes inherent in the Gitksan legal order.

³³ Lon Fuller, “Human Interaction and the Law, in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L. Fuller*, revised ed. (Portland: Hart Publishing, 2001) [Fuller, *Human Interaction*] at 254.

³⁴ As I will discuss later, customary law is often broadly applied to Indigenous laws due to issues of translation and accessibility of law within Indigenous communities by outsider. With improving methods, we can start to see the ongoing deliberation in some laws deemed customary.

³⁵ While it is beyond the scope of this thesis, an interesting study would be conceptions of ‘community’ and whether that includes all beings within *nehiyaw pimatisiwin* teachings, and the effect on Fuller’s theory when we see that it isn’t just human-to-human interaction, but also human-to-animal or human-to-other being interactions in Cree law making.

³⁶ Fuller, *Human Interaction*, supra note 33 at 250.

³⁷ Jeremy Webber, “The Grammar of Customary Law” 54 McGill LJ 579 at 584. [Webber, *Customary*]

customary law arises from the necessity of organization and interaction between individuals within a society. Thus, custom represents a ‘language of interaction’ where individuals can coordinate their actions on the basis that others will participate in the pattern.³⁸ Further, Fuller’s theory of social interaction “avoids the dual errors of treating legal reasoning as though it were either (1) self-contained, autopoietic, generated from its own internal resources; or (2) a purely intellectual process...where only things that are considered are prior articulations within a given normative tradition.”³⁹

Jeremy Webber supplements Fuller’s pragmatic view of customary law by exploring possible demarcations between legal norms and other social norms, and how societies engage in this deliberation to create law from these social norms. Webber argues that it is within distinct normative contemplation and reflection that law arises.⁴⁰ Webber states:

The expressions of customary law therefore exist in an interpretive relationship with practice, mediated by other participants’ interpretations and actions. That reasoning is necessarily evaluative. Participants seek to weigh the impact of past norms, judge the appropriateness or acceptability of that impact—what has proven important in previous decisions, what has proven ill-conceived—and seek to revise the norms and their application accordingly.⁴¹

The critical discourses explored in Chapter 2 are an example of this normative contemplation occurring in Cree ceremonial practice. Acknowledging that there are those who are comfortable with a status quo operation of the skirt and menstruation rules, the contrary voices have weighed the impact of the norms, and are engaging in processes of revision of the norms.

³⁸ *Ibid* at 584.

³⁹ *Ibid* at 587.

⁴⁰ Jeremy Webber, “Legal Pluralism and Human Agency” (2006) 44 *Osgoode Hall L.J.* 167 at 196. [Webber, *Human Agency*]

⁴¹ Webber, *Customary*, *supra* note 40 at 587.

As Elizabeth Anderson notes, Webber identifies “three levels of normative determination: the coordination of human interaction, the grammatical “language” structure used to express norms in a legal fashion, and the debates that utilize that grammar to negotiate the resolution of a particular situation.”⁴² Thus, these “second and third levels operate as somewhat of a feedback loop: where this process of expression of norms and contestation is “ongoing and perpetual.”⁴³

These three levels of normative determination can be applied to the ceremonial protocols and help analyze their development, their continued expression, and their contestation. While historical gaps may obfuscate the protocol’s origins (and history of practice, contestations and changes), contemporarily we see the processes of the second and third levels occurring. The contestation of the validity or relevancy of the protocols is evident by the voices expressed in this thesis; the language used to express this contestation is a strategic force in resolving these situations. It is through this normative process that the protocols maintain both their relevancy and their ‘just’ nature to the society deploying them. If the practice of a norm is void of the second and third step (that a common grammar cannot be found that sets the communicative stage of the dis/agreement, or there is no resolution to the conflict), then the norm would lose relevancy and its legitimacy as being ‘just’.

Acknowledging that this thesis primarily utilizes voices that either problematize or advocate for change in the gendered protocols, further research could deeply examine whether the protocols on dress and menstruation are in danger of losing their relevancy within Cree communities or not, based upon Webber’s evaluative criteria. Undoubtedly, for some people within the Cree citizenry, these norms have caused a loss of the relevancy of the norms. There are

⁴² Elizabeth Anderson, “Benevolent Grandfathers and Savage Beasts: Comparative Canadian Customary Law” (2010) 15 Appeal L J 1, at 7-8.

⁴³ *Ibid* at 8.

some who do not engage in these ceremonies due to these protocols. However, the ceremonies persist, despite of the rules. What I can conclude from my own ceremonial practices is that these contesting voices indicate healthy structures for normative development in Cree societies.

Another characteristic common within Cree communities, a reluctance to proclaim authority over a story, is supported by social interactive theories of law. In his exploration of Cree narrative memory, Neal MacLeod states reflects on this, noting that it is a common refrain stated by the *kehte-ayak* (old ones) when telling a story is ‘*take pity on me, for I don’t know much*’.⁴⁴ Similarly there is often an acknowledgement up front by speakers that they can “only speak of things [they] knew about.”⁴⁵

Coupled with the understanding that our versions of a story are only a small part of the collective narrative, there is a simultaneous call for the listener to take the stories seriously, even when they are fantastical in nature or challenge our own reasoning. As an exaggerated display of this call, Macleod notes sometimes a listener is presented with a knife by speaker with these instructions: “if what I say angers you, then you can use this knife on me” or “if you do not believe what I say, then you can use this knife on me”.⁴⁶ In her research interviews with Cree elders in western Alberta, Hadley Friedland notes a similar experience.⁴⁷ During one interview, as the interviewee was describing his experience of a moose singing and speaking to him, he then confronted her about whether or not she believed the account.⁴⁸ I view this encounter more than

⁴⁴ Neal MacLeod, *Cree Narrative Memory: From Treaty to Contemporary Times* (Saskatoon: Purich Press, 2005) at 12. [MacLeod, *Cree Narrative Memory*]

⁴⁵ *Ibid* at 12.

⁴⁶ *Ibid* at 12.

⁴⁷ Hadley Friedland, “The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saulteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns” (LLM Thesis with the University of Alberta, 2009) [Unpublished] at 60. [Friedland, *Wetiko*]

⁴⁸ *Ibid* at 60.

a simple contestation for the believability of the experience; it was aimed at the deeper normative practice of allowing an autonomy of voice for the speaker.

Jeremy Webber notes that this respect for autonomy of the individual may be a normative practice held commonly among Indigenous people in North America. He states:

There is great reluctance to impose a particular interpretation of the law either on any member (in some societies) or on someone of high rank (when the society is hierarchically ordered). Such an imposition is considered deeply incompatible with the person's dignity. Indeed, this respect for a person's moral autonomy may contribute to the prevalence of banishment as a punishment in many indigenous societies: rather than forcing compliance, the community treats offenders as having, by their conduct, placed themselves outside society.⁴⁹

Though it is very difficult to categorize common normative practices as held by all Indigenous societies, Webber's statement is supported by Napoleon's reflection on the decentralized nature of many Indigenous legal orders, and the experiences noted above. As Victor Underwood sweat-lodge theorizing suggests, a respect for autonomy allows teachings and stories to maintain their integrity, free from the fight to provide the ultimate interpretation and a dominant narrative.

Human interaction theory also allows us to view legal orders that utilize practices that are often described as 'custom' as vibrant, living and adapting. In particular, it allows an interrogation of levels of normative reflection that influence these practices. This interrogation is significant in legal theory's role in moving past the 'intellectual blackholes' discussed in Chapter 2. As those discourses implicitly suggest a static nature of law, specifically in assertions that ceremonial laws cannot change (fundamentalism), that acts of tradition are beyond critical discourse (traditionalism), and that gender roles are essential to the harmonious balance of Cree societies

⁴⁹ Webber, *Customary*, *supra* note 37 at 587.

(essentialism), an interactive theory of law allows for a nuanced look at how custom changes and is part of continuing deliberations. Interactive theories allow me to rest fundamental positioning and to tease out processes of change within Cree societies. As Gerald Postema states “implicit rules emerge over time from a process of mutual accommodation and adjustment of expectations and actions of interacting agents.”⁵⁰ While we may view such conflicts in discourse as regressive or harmful, another view that I choose to take is that the consistent raising of issues with gendered protocols signifies the potential emergence of new rules. Conflict can be a necessary part of the emergence of law through interactive processes. It is regenerative. The voices of the women and girls are calling for changes; the challenge of these norms signals a healthy legal order that has maintained its ability to react to the peoples and beings it seeks to serve.

Authority in Ceremonial Practice

While interactive theories fit well with many social normative practices in Cree communities, how do they deal with the authoritative position that Cree ceremonial protocols seemingly take? As discussed in Chapter 2, there are large pressures to conform to protocol rules. The negotiation or deliberation of protocol is prohibited, due to the entrenched nature of these rules within ceremonial practice. As such, those who wish to challenge the norms are often left with two unsatisfactory and sometimes unsafe choices: to either choose not to participate in the ceremony, or to succumb to the pressures around them and take part and go along with the ceremonial rules despite their discomfort.⁵¹

⁵⁰ Gerald Postema, “Implicit Law” in *Law and Philosophy* 361 at 258. [Postema, *Implicit Law*]

⁵¹ I note that some ceremonial holders will make adjustments for those who don’t or can’t adhere to protocols, including participating in ceremonies from a distance, or outside the primary circle of the ceremony.

Confronting these issues can be difficult as the individual and social pressure to respect ceremonial protocol can seemingly outweigh an autonomy of choice. This pressure is not only placed on participants of ceremony but to those who hold ceremonies as well, as there are similar expectations on ceremonial holders to govern their practice with similar protocols. These raise questions of authority,⁵² in that a ceremonial holder stands in a position of authority within Cree socio-legal praxis.⁵³ Gerald Postema states that “[l]aw is not the product of authority but its necessary precondition. Authority is compatible with law when it, and its directives, are rooted deeply in the social interaction of the communities it purports to serve. For only then can it enable and enhance the self-directed action of its citizens.”⁵⁴ This provokes questions of a process of ‘crystallization’ of Cree ceremonial protocol where it became rooted as an authoritative practice within Cree societies. One hypothesis is that ceremonial protocol engaged in a process similar to the one Val Napoleon describes in her study of Gitksan legal traditions. In this study, Napoleon tracks the move of implicit Gitksan legal principles into explicit law by observing norms rooted in the social interactions of the Gitksan into law recorded within Gitksan oral narratives.⁵⁵ It is beyond the current scope of this thesis to fully interrogate such a movement with respect to protocols based on dress and menstruation. I also acknowledge that such an interrogation is hampered by the lack of available resources to fully track the roots of the ceremonial rules. I share it here to leave open the possibility of this avenue of future research.⁵⁶

⁵² I acknowledge that this portion of my thesis is focused on human authority. In the next chapter, I will discuss further the idea of authority accounting for non-human sources, and the implications on legal theory.

⁵³ This is especially significant in that it relates to other points and institutions of authority within Cree societies. Such a question is applicable to other positions of authority in Cree communities, as it is located in formal positions of leadership like chiefs, councillors, chair people, directors and managers, as well as in elders, medicine people and knowledge keepers.

⁵⁴ Gerald Postema, *Implicit Law*, supra note 50 at 387.

⁵⁵ Napoleon, *Ayook*, supra note 32 at 270.

⁵⁶ There is a counter-hypothesis to the creation of the dress and menstruation rules that will be discussed in the next chapter. It involves the rules’ often being linked to sacred and natural laws in some discourses.

Ceremony Protocols as Horizontal Social Plain: Secondary and Primary Laws

While the processes of creating explicit law is instructive in our understanding of the interplay between implicit norms and explicit rules, the full purpose of ceremonial protocol is not simply to manage or direct ceremonial space. It provides a platform of consistency that participants can rely upon in their relations within these spaces. It also provides participants with the safety and security of understanding a ceremony as legitimate, in that the ceremonial holder has learned and followed the teachings from their mentors and community. It is in this ritual that the participant is free to explore the space that ceremony provides that is often beyond our normal day-to-day relational and spiritual experience. Ceremony space is ultimately a space of vulnerability; protocol gives an indication that the space is safe for this exploration.

Protocol also serves as a check and balance towards those who practice ceremony. While I acknowledge that there can be a wide variety of protocol and practices when we compare different sweat-lodge ceremonies, protocol offers an avenue to evaluate the actions of ceremonial holder and signal to the community or society of their authority to hold the ceremony. This is consistent with what Jeremy Webber states about the necessity of evaluation in expressions of law. Here participants use community protocol to judge “the appropriateness” of the ceremony, in accordance to the “impact of past norms.”⁵⁷ As the inter-societal practice of ceremony (either ceremonies shared between Indigenous communities, or ceremonies shared in non-Indigenous settings) becomes more common, the danger of ‘ceremonial fraud’ or the appropriation of ceremonies has become more prevalent.⁵⁸ To be given the right to hold the ceremony, a lodge

⁵⁷ See Webber, *Customary*, *supra* note 40 at 587.

⁵⁸ People holding ceremonies without the guidance of being mentored can have significant and really harmful effects. The worst example was the deaths of 3 people in a sweat in 2009 held by self-help author James Ray. The conditions of the lodge are described beyond anything I have ever witnessed by lodge keepers, including

holder must go through a number of different experiences to gain the wisdom and knowledge to hold it properly. A variety of practices (such as fasting, acting as a oskapeyos (helper), rain/sun dancing,⁵⁹ pipe carrying, continued study of the lodge through attending ceremonies, general community support, learning medicines, and general studentship under a ceremonial mentor) must be undertaken to obtain the right to hold sweats, for example. I note that this is not a ‘checklist’ of requirements, but rather is a journey over many years aided through the careful observation by a mentor or community.

Of course, imitating the material holding of a lodge can occur without going through this journey. One can attend a lodge a few times and understand the nature of the structure and form of the ceremony and all that is physically required. They could observe how the willows are bent and tied together to make the frame, and how it is covered by blankets and tarps to keep light out when the door is closed. They can learn to fill a bucket with water, and how to heat the rocks to be placed in the center of the lodge. They may even learn a song or two. One can imitate the lodge without going through the necessary steps of learning and may even be able to replicate the physical experience of a lodge. However, such experiences are emptied of the layers of value ceremony provides. Missing such an attention to protocol and rules is one signifier to participants and to a community of a failure to live up to the position. When such imitation lodges do occur, the lack of adherence to certain protocols is an important signifier to a community to hold these

encouraging people passing out and vomiting to stay within the lodge. Ray was sentenced to 3 years in prison for negligent homicide. Participants reportedly paid \$10,000 to attend his self-help camp where the sweat was held. Found online: <http://www.bloomberg.com/news/articles/2015-03-03/self-help-author-imprisoned-for-sweat-lodge-deaths-is-making-a-comeback>

⁵⁹ See Katherine Pettipas, *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994). [Pettipas, *Severing the Ties*]

lodge keepers accountable. If this system of accountability is diminished or lost entirely, the results are often dangerous.⁶⁰

Beyond their role in the management of rules and as an instrument of accountability, protocol also has significant relational purposes for the ceremonies themselves. Protocol creates a connection to all the relations of the ceremony. It is vitally important to setting the space for, maintaining a relationship with, or creating a harmony with the spiritual elements that will play a part in the ceremony. The importance of gifting, for example, is illustrative of this. One of the first teachings I received about the sweat lodge were the protocols for gifting when requesting one to be held. Gifting moves beyond just an obligation towards for the lodge holders and their helpers, but extends to all beings who will interact with the lodge. I was taught to give tobacco (for the creator), sweetgrass (for our ancestors who have passed before us), prints of the four sacred colors (blue, red, white, and yellow⁶¹ for grandmother/grandfather spirits who will help in the ceremony), fish and corn (or sometimes berries, for the other participants in the lodge) and other gifts (blankets, teas, honoraria, medicines, clothing, etc; for the ceremonial holders).⁶² It is through gifting that I confirm and hold a relationship with all of these respective things/beings.

Protocol also forms the basis of a system of exchange within ceremonial knowledge systems. Mekwan Awasis, custodian for Cree sacred items housed at the Glenbow Museum in Calgary, Alberta, describes how protocol provides an avenue to access knowledge:

⁶⁰ Again, I acknowledge the legal theories applied here are mostly concerned with human interaction, and thus human accountability. In the next chapter, I move further towards other forms of accountability, including towards natural and spiritual sources.

⁶¹ I acknowledge other communities use different colors in their ceremonies, these colors are representative of Plains Cree lodges.

⁶² Protocols on gifts can be varied community to community, and between types of ceremonies. An examination of the types of sweat lodge ceremonies is beyond the scope of this examination, but I encourage those who take part to ask what kind of lodge they are in, and what is the lineage of the ceremonial holder (who have they learned the practice from).

Gaining access to information within a traditional knowledge system depends on abiding by particular protocols to acquire that information. The offering of cloth and tobacco to an elder when making a request is a means of acknowledging the source of that elder's knowledge. In the offering, generations of ancestors who perpetuated and accumulated a wealth of sacred knowledge and ceremonial practices become immanent through the act of exchange. Following through with acts of protocol demonstrates that the one requesting information understands and respects the sacred nature of that knowledge and the laws of exchange and reciprocity that guide the process. Within this relational system of knowledge sharing, the acts of protocol themselves are equally as important as the information acquired.⁶³

As protocol cannot be linked or defined to one static purpose, a static legal analysis (as merely rule to keep an order, for example) only captures a limited part of their function. However, in a legal analysis, protocol's role in guiding further legal processes is instructive of its positioning within Cree legal traditions. Based on Mekwan Awasis's reflection, Claire Poirer interprets the relationship between protocol and the rest of the ceremony as "horizontal socialization" versus "vertical socialization".⁶⁴ As Mekwan Awasis further states:

When we prepare those ceremonies and even when we prepare a sweat everything is over here horizontally. It's horizontal, it's on the ground. Everything is laid out here, the rocks... in all our different ceremonies... when you socialize even with people, well that's the same thing you do with these, whether they're artifacts... you socialize with them, you're socializing with them.⁶⁵

Moving beyond the horizontal to the vertical requires the "adherence to acts of protocol, but it is up to the participant to decipher the vertical axis for themselves."⁶⁶ Recalling my reflections on

⁶³Claire Poirer, *Drawing Lines in the Museum: Plains Cree Ontology as Political Practice*, *Anthropologica* 53 (2011) at 294

⁶⁴*Ibid* at 295.

⁶⁵*Ibid* at 295.

⁶⁶*Ibid* at 296.

social interaction theory, the vertical axis represents the personal autonomy that is afforded to the ceremony participant. In this way, the performance of law within ceremony is reflexive in nature; while the protocol in engaging in ceremonies may teach us of our relationship to the elements necessary for the ceremony, the movement into the vertical axis gives us the freedom and obligation to define our own personal relationship with these elements. This personal interpretation extends to how we relate outside of ceremony.

Exploring this further, let's examine how this practice would apply to the role of stones in sweats.⁶⁷ Stones form the physical center of any sweat lodge ceremony. By doing so, it causes us to relate to rocks as animate beings. Not only are the stones alive, but they are also our relations – they are often referred to our *kokums* and *mosums*. The procedures of maintaining proper *wahkotowin* with our grandmothers and grandfathers begin long before they are used in a lodge. As one of my teachers, Ron Marshall (Niso Asini)⁶⁸ has taught me, gathering stones begins a ceremonial relationship with them.⁶⁹ When stones are gathered for a lodge, a medicine (usually in the form of tobacco) is offered as they are picked.⁷⁰

In Ron Marshall's lodges, as is with most sweats, the *mosums* and *kokums* were heated until they were glowing red. Once placed in the center of the lodge, medicines (usually ground cedar and sweetgrass, sometimes bear root or sage) would be placed on the stones as they entered

⁶⁷ In the sweat-lodge, stones are our ancestors, our grandmothers and grandfathers who sacrifice themselves for our experience.

⁶⁸ Niso asini, a knowledge keeper and ceremonial holder from Ahousaht First Nation, learned to hold lodges in a way that is often carried out in Cree communities in Alberta. He held his lodge in a bear lodge tradition. His teachers were Peter O'Chiese and Lloyd Haarlha. Ron left us for the spirit world in April of 2015. His kindness and generosity are missed in big and little ways, each day.

⁶⁹ One story of respect for rocks I was told was by Cree elder Mahkoos (Michael Merrier) was of an old man who would be careful not to displace stones from their resting places, even if they were in his way. As Mahkoos told it, to do so would be a disruption of its journey that took it thousands of years to get to the place it rested.

⁷⁰ On the prairies, river stones are usually used. In Ron's lodge, lava rocks (the most coveted sweat stones for their ability to retain heat, to release it evenly, and to be reused) were used.

the lodge. As hard as it may be to conceptualize sweat stones as a living, animated beings, as the intense heat permeates through your skin into your bones, the experience embeds this teaching within you. Some lodges are so hot that you must come to relational terms with the sweat stones to get through each round.

The focus of the first round of Ron's lodges would be on gratitude – towards all the things that help us survive and live a good life.⁷¹ As part of his teachings, Ron was obligated to splash the stones – one splash of water for each stone used for the particular ceremony – in quick succession. This was an explicit pedagogical act in every sweat, as Ron would acknowledge his obligation to honor the stones in this way, and as participants we all shared burden of this obligation. The lodge would become extremely hot while this was occurring. A final procedure on the maintenance of our relationship with the stones that was practiced by Ron was feeding the *kokums* and *mosums*. At the completion of the ceremony, the sweat stones were fed first, as food was brought by participants for feast afterward.

This, of course, is only a small portion of such teachings on our kokum and mosum asini/stones. It would be improper for me to explicate all of these here. One general interpretation of Ron Marshall's relationship teachings is that we have an obligation to treat the sweat stones as our relatives. Moreover, the requirement is we treat them as our *elder* relatives.⁷² A more specific interpretation of an obligation is a requirement to gift them, with tobacco and with food. However, like Victor Underwood, Ron taught us that we are to find our own relationship with stones beyond the relationship that the protocol asks us. When we leave the lodge, we understand how our stone

⁷¹ The other rounds were focussed on the following: the 2nd round for health and gratitude towards women; the 3rd round for health and gratitude towards men; and the 4th round for health and gratitude towards the individual participant.

⁷² This is important as there are often specific requirements and obligations in the treatment of elders.

relations are all around us, and the ceremonial ethic that began with the protocol becomes a multitude of gifts and obligations in our everyday lives. Of course, we are only wealthy with these multitudes if we choose.

Ron's treatment of stones is an example of the horizontal practice that Mekwan Awasis contemplates. The interpretations of the horizontal practice within the ceremonial set up translates into how we choose our relationships with stones, the vertical practice. Returning to legal positivism – in all its incongruence with Indigenous legal orders - provides an analytic that can further our understanding of this horizontal/vertical imagery. In his theory on rules of recognition within a legal system, H.L.A. Hart states that, apart from primary laws, a different set of rules are necessary for the operation of a legal system. Secondary laws set procedure for primary laws to be created, adapted, modified, transformed or enforced.⁷³ As Val Napoleon notes in her examination of Gitksan law:

Hart's secondary rules include (1) rules of recognition which will specify the conclusive and affirmative indicator that a rule has become a rule of the group, (2) rules of change 'which will empower an individual or body of persons to introduce new primary rules for the conduct of the life of the group', and (3) rules which will empower individuals to 'make authoritative determinations of the question whether, on a particular occasion, a primary rule has been broken'.⁷⁴

Protocols like giving tobacco have this function in relation to the action of ceremony; tobacco is provided not only as an acknowledgement to the system of knowledges that ceremony resides in, but it also links the giver and receiver to the creative forces that will inform the ceremony. In

⁷³ See Hart, *Concept of Law*, *supra* note 1 and Mathew Fletcher, "Rethinking Customary Law in Tribal Court Jurisprudence" (2007) Michigan J. Race & L 57. Fletcher suggests that Tribal Courts in the US return to Hart's vision of primary and secondary rules to apply customary law.

⁷⁴ Val Napoleon, *Ayook*, *supra* note 32 at 251. Within this passage Napoleon references Hart, *Concept of Law*, *supra* note 1 at 92 and 93.

regards to a spiritual legal process, tobacco protocol sets the procedure for the laws to be created, transformed or enforced.

While this theory of primary and secondary rules came about as an analytic for positivistic law, they have been applied to analyze Indigenous legal orders.⁷⁵ Returning to her examination of Gitksan law, Val Napoleon employs this analysis to examine the nuances of explicit and implicit law within Gitksan society. Napoleon notes the “danger of drawing on H.L.A Hart’s theory for application to decentralized societies” is that “the identification and explication of primary and secondary rules will become a centralized process” that takes away from the “maintenance of meaningful authority” of decentered processes. However, it is a useful frame of analysis for legal institutions that have centering functions. As you will recall, earlier in this chapter I reflected on the centering occurs in ceremony, both physical and metaphysical during its performance. I view ceremonies as a micro-center within Cree societies, in that they do not center an entire legal order, but provide a location of centering within it. In this manner, the concern that the primary/secondary/strict rule analysis will centralize a decentered process can be avoided if an analysis is limited to the ceremonial processes themselves.

Returning to Mekwan Awasis’s discussion on vertical and horizontal axis as a frame for legal practice, the primary and secondary rule analysis furthers our understanding of the interplay between protocol and reflexive legal practices that are informed by ceremony. In the context of decentralized legal order, if the purpose of a secondary law is that it “enable[s] people to interpret primary laws” then we can connect the importance of protocol in shaping how we practice and

⁷⁵ See Richard Overstall, “Encountering the Spirit in the Land: Property in a Kinship Based Legal Order” in John McLaren, Andrew R. Buck, & Nancy E. Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005) 22 at 44; Napoleon, *Ayook*, **supra** note 32 at 254.

observe the obligations ceremony sets out for the participant.⁷⁶ So, while a sweat lodge ceremony may be reflexive in nature in how it teaches our relationship to stones, it is informed by the secondary rule. As secondary rules of Cree ceremony, protocols not only serve a gatekeeping function, but set the landscape of ceremony where the internal interpretation of legal teachings can take place, and effect how these legal teachings are lived and put into practice outwardly.⁷⁷

Implications on Gendered Aspects of Protocol

While the primary/secondary rule demarcation and Mekwan Awasis's horizontal/vertical socialization idea helps me understand a braid between nehiyaw piimatisiwin and legal theory, what does it tell us about the gendered nature of protocols? First, it reemphasizes the displacement of female voices in norm making procedures. The absence and erasure of the Cree female voice has been noted in historical Cree legal education texts⁷⁸ and in discourses on Indigenous rights.⁷⁹ In the same light, dress and menstruation protocols create absences in our ceremonial lives where the norm making processes of ceremony are influenced by these protocols. You may recall from the second chapter that menstruation protocols subjugate women into traditional gender roles as caregivers and providers. The protocols can limit the opportunity for women to occupy positions of decision-making, leadership and power. They also cause an absence of women from some of the institutions that are relied upon for social norm production and deliberation in Cree societies.

⁷⁶ Napoleon, *Ayook*, *supra* note 32 at 254.

⁷⁷ Using the secondary rule analysis in this manner may be out of step with my analysis Chapter 2 that prescribes a move away from fundamentalism. I am using the primary/secondary analysis to provide a different lens of description to work at the same foundational challenges. The next chapter delves further into questions of authority in Cree ceremony.

⁷⁸ Emily Snyder, "Representations of Women in Cree Legal Educational Materials: An Indigenous Feminist Legal Theoretical Analysis." (Ph.D. Dissertation with the University of Alberta Department of Sociology, 2014) at 16. [Unpublished]. [Snyder, *Women in Cree Legal Education Materials*]

⁷⁹ As Jeremy Webber notes, the majority of gains in rights discourse in Aboriginal law in Canada are focused around activities historically related to men. See Webber, *Public-Law Dimension*, *supra* note 25, at 83.

Second, the gendered imbalances within secondary rules ripple out into the gendered interactions in the primary/vertical world and into wider societal practices. Protocols on dress and menstruation inform societal norms outside the ceremonies. This perpetuates the gendered nature of social/legal norms. As I explored how ceremonial aesthetic is integral to Cree legal practice, the implications of this have multi-layered effects on women and formal leadership in Cree communities. As discussed in Chapter 2, Chief Jonathon's ability to wear the headdress as a chief is directly impacted by the gender in ceremonial protocol. This is also evident in the societal impediments for women and girls to experience and lead hunts, drumming, ceremonies, and a myriad of other Cree social practices.⁸⁰ There is a specific kind of patriarchy enabled by Cree ceremonial protocol.

Finally, the exploration of primary and secondary rules in ceremonial norms highlights the entrenched nature of dress and menstruation protocols. While the entrenched nature of protocol is an overall positive for the survival and continuance of these ceremonies (for example, the sturdiness of ceremony protocol has provided a protective barrier against successive waves seeking the assimilation of Cree peoples into the general Canadian state) it further hinders potential flexibility or change of gendered protocols. When we examine the roots of menstruation and dress protocols further, an additional layer of entrenchment becomes apparent. Their link to sacred or natural sources provides another complexity in how we can work respectfully against fundamental positioning of law. The next chapter will be dedicated to the examination of sacred and natural roots of social and legal norms specifically.

⁸⁰ See Tara Williamson, "Of Dogma and Ceremony" (2013) online: *Decolonization: Indigeneity, Education and Society*. < <https://decolonization.wordpress.com/2013/08/16/of-dogma-and-ceremony/>>

I Dream in Methodologies, Part 4

“The Indians believe that these are the spirits of the dead dancing in the sky. But the white men say that it is only the shadow of the ocean. I believe the white men too, for they have airplanes and they can go up at the sky and look at all these things. But I believe the old Indians too who said that it was the spirits of the dead dancing. For sometimes when there is a fresh fall of snow you can sometimes see a huge footprint -- a solitary one. Who could make it but the ghosts? I believe both explanations.”

~ Fine Day, as recorded by David Mandelbaum, talking about the Northern Lights.

Ne’yo (Four): The Transformation of Natural and Sacred Laws

The language of our relations is also embedded within ceremony. It is through persistent ceremonialism that I have begun to gather the ability to read this language. I have found that there is a certain discomfort in discussing spiritual practices within academic spaces and within academic studies. Part of this discomfort comes from those who partake in particular practices we describe as ‘spiritual’ or ‘sacred’, in that our experiences will be dismissed as superstitious, unintellectual or generally unintelligible. This personal discomfort is coupled with fears of revealing too much of ceremony in a space that has historically been a location of colonial violence for Indigenous knowledges. As discussed in Chapter 3, another part of this discomfort is the challenge in discussing law within a Western framework. The impoverished view of what is law and what forms it can take can lead to these experiences as being diminished in their influence on legal practices within a community.

Despite this uncomfortableness, the paralyzing nature of discourses on sacred or natural laws requires this examination in this study. Sacred practices within Indigenous communities (and

non-Indigenous communities too) play a foundational role in lives of those who practice them. It is within this sturdiness that people center their lives around, and build communities and legal systems with. I am no different; I have made an assertive choice in my life to center it with particular practices and ceremonies within my family's teachings, and within the ceremonies that I have been fortunate to be a part of from other traditions and communities. While I recognize the social and deliberative richness of ceremony in teaching our relational obligations to one another, I also recognize the ineffability of ceremony, for what occurs during ceremonies both communally and personally often is beyond description. While I have discussed ceremony in analytic or theoretical detail throughout this thesis, my intention is not to diminish or turn a blind eye to the indescribable characteristic of ceremony. I also do not feel encumbered by any secular/spiritual divide that especially haunts liberal discourses especially. I have not succumbed my spiritual experiences unto the nihilism that liberal rights discourse tacitly favours.¹ There are things I do not know – about sacred experiences especially – that liberal legal discourses continue to fail miserably to provide avenues that satiate my curiosities into sacred experiences.

And this is why Fine Day's contemplation on the northern lights is important to me, and also serves as part trickster, part touchstone for this chapter. Fine Day's answer displays a critical and curious mind founded both on the norms that hold a community together and on an openness to different knowledges brought literally through new ways of viewing the world. The dual ways of seeing the world is something that Indigenous people are accustomed to. We talk about this as 'walking in two worlds', with the epistemologies of our beliefs rooted in the cosmologies of our

¹ For a thorough discussion on the role of nihilism on the death of imagination within legal studies, see generally Mark Antaki, "The Turn to Imagination in Legal Theory: The Re-enchantment of the World?" (2012) 23 Law Critique 1.

communities and influenced by Canadian societal forces around us. James (Sakej) Youngblood Henderson calls this being part of “split head generation”, walking with the souls of our nations, and minds influenced by colonial forces.² It is through this dual knowledge that we can gather as the “split head resistance.”³ While I take a reflection on the influence of colonization on my own personal praxis, and my part in continuing colonization (by my participation in neo-liberal practices) very seriously, I also understand the wealth in braiding knowledges together and the strengths they create. Like Fine Day, I too find wealth in splitting my mind into different beliefs, as contradictory as they may be. Sometimes we need to be open to how our knowledges will eventually merge.

Let’s explore this further. Fine Day’s belief in the northern lights as our ancestors dancing in the sky is the same teaching that I grew up with. I remember one cold winter night, my older brother and older sister talking about the northern lights. They said that if you whistle at them, they would come down and take you up to where our relatives who have long passed were dancing. So when they were out, in all our trickery we would lean out our bedroom windows at night and whistle, caught up in the terror-delight of being captured by those dancing spirits. Sometime later, I asked my grandmother about this. She said to me, with the sing-song look that only kokums seem to have, ‘they take you to a place so beautiful, you don’t want to return.’

I note here that the Cree words to describe the northern lights are *cipayak mimehitowak*, meaning the ‘ancestors are dancing’. I carried this story with me for a long time, and as I grew up I began to understand this story as a resource for Cree law. *Don’t whistle at the northern lights.*

² See Sakej Youngblood Henderson, “The Split Head Resistance: Using Imperial Law to Contradict Colonial Law for Aboriginal Justice” in *More Will Sing Their Way to Freedom: Indigenous Resistance and Resurgence*, ed. Elaine Colburn (Halifax: Fernwood Publishing, 2015) at 50. [Henderson, *The Split Head Resistance*]

³ *Ibid* at 54.

Don't call your ancestors down too soon. Don't give in and follow them home. And like Fine Day, my belief in the northern lights was also coupled with the growing belief in a scientific understanding of what causes the northern lights. As that story goes, cosmic dust (usually from solar flares) enters our atmosphere and the burning particles dance until they are extinguished. Both these beliefs in the northern lights - as our dancing ancestors and as bursting embers of solar dust - are both rooted in my knowledge and yet at the same time too fantastic to be true in my mind. Perhaps these Cree and non-Cree views of the northern lights will merge someday.⁴

Of course, I mostly believe the Cree story of the northern lights not for a linear scientific explanation, but to its position within a constellation of Cree teachings on our ancestors, our duties to miyo piimatisiwin, and our importance to our families around us. Within the principles of *don't whistle at the northern lights* and *don't call your ancestors down too soon* lays a wealth of knowledge that requires an immersion in Cree societal life to understand. As I have grown older, and have learned to understand the hard challenges that many of my young relatives (especially have with current living conditions on reserves), causing the principle *don't call our ancestors down too soon* to have another significant connotation with regards to suicide crises faced by our communities.⁵ The admonishment of whistling (*do not interrupt ceremony*), is another important principle that I carry with me from the story as well.

As formal Western legal education has further attuned to the specialized nature of practicing law, one form of rational legal thought dominates law school thinking. Or as was

⁴ I am reminded by a story Duncan Grady, psychology professor and Blackfeet knowledge keeper once told me. He said he was talking to his elders back home about new advances in DNA examination, and that within hair we can now trace lineage. They started laughing at him saying, "its about time they figured that out, we have been saying our ancestors are in our hair all the time." This teaching about hair and family, is one that my family shares as well. DNA science tells us much more of course, but Indigenous knowledges and scientific knowledges often overlap.

⁵ See Globe and Mail, *Attawapiskat: Four things to help understand the suicide crisis*. (July 8, 2016) Online: Globe and Mail <<http://www.theglobeandmail.com/news/national/attawapiskat-four-things-to-help-understand-the-suicidecrisis/article29583059/>>

repeated in the first few weeks of my juris doctor studies, I was being introduced to *thinking like a lawyer*. In this form of thought, different reasons compete with each other until one rationale generally is awarded the ‘winner’, and is held up as superior to the others. Such thinking diminishes our understandings of our social practices, often decontextualizing them and narrowing out their multifaceted reasons of their importance. This occurs for ceremony as well. I recall a conversation I had with a fellow law student, while I was preparing for work in the Sundance lodge that summer. I was talking of its requirements. During the conversation, she abruptly reduced the purpose for dancing to a single purpose: ‘to enter into a ritualistic fast to gain a vision’. I was caught off guard by this reduction and the romanticized nature of it. Ceremony is multiple in its purposes, and is often indistinguishable between its purposes for communities. All of this is to say that while I discuss the legal aspects of ceremony, none of this should reduce the complex elements of ceremony to this, nor should those who do not practice them take my theories as telling the whole story. There are ineffable aspects that can only be understood and known through practicing ceremony.

Fine Day’s observation is also instructive as it shows us the evolving nature of our knowledges. The western hypothesis of the northern lights that Fine Day discusses - that the northern lights have been confirmed to be the reflection of the stars off the ocean because of airplanes - has obviously evolved. Our evolving observational tactics and technologies do not always mean we arrive at full knowledge. History has shown us time and again how our most foundational beliefs can evolve.

Sources of Indigenous Laws

There is a story that I will paraphrase here, about Weesakeechak and the ducks. In one telling, Weesakeechak charms the ducks with a song, before telling them that he is going to run a

ceremony. A 'Shut-eye Dance'. Inviting his duck relatives to join, he entices them to move in a circle, with their eyes closed. Weesakeechak implores:

Now little brothers, here in the center I shall stand; I shall sing. When I sing, you will dance; you will close your eyes. Not until I cease singing will you open your eyes ...you will dance with all [of] your might.⁶

Weesakeechak, using his authority within the 'ceremony' to his advantage, captures the ducks one by one.

I enter this analytical observation of sacred and natural law with my eyes wide open to them. As Weesakeechak's encounter with the ducks tells us, there is an inherent danger in keeping our eyes closed, even in ceremony, even when authority tell us to do so.⁷ Adherence to ceremonial authority or tradition does not mean that we lose our vigilance in these spaces. While some may feel my analytic look at ceremony is a form of violence to the ceremonies themselves, my intention is to remain eyes-wide-open in how we think of our traditional practices. I acknowledge that I do not know much, and ask for patience and good thoughts if reading this analysis offends you or your ways of being in any manner.

My analysis of sacred or natural law is aided by John Borrows' work around the sources of Indigenous laws. Borrows states that:

Laws can arise whenever interpersonal interactions create expectations about proper conduct. Indigenous legal traditions develop in the same way; they can be based on

⁶ *Sacred Stories of the Sweet Grass Cree*. (1930) Ottawa: Printer to the King's Most Excellent Majesty, at 38.

⁷ John Borrows uses the sister story from the Anishinaabe tradition (where Weesakeechak is replaced with Nanabush, and later in the story the fox who steals the ducks from Weesakeechak in the Cree telling is replaced with the Winnebago peoples in the Anishinaabe telling) to an interpretation on how the legal principles within it can influence development in Cape Crocker, where John is from. See http://iog.ca/wp-content/uploads/2012/12/2005_February_tanaga6summary.pdf

supernatural declarations, naturalistic observations, positivistic proclamations, deliberative practices, or local and national customs.⁸

While laws that are sourced from positivistic, deliberative or customary origins make easier work for our schools of theory, theoretical analysis is challenged by law sourced from natural or sacred sources. This includes Fuller's theory of social interaction. As you recall, I theorized in the previous chapter the development of ceremonial protocol can be aligned with Fuller's theory in the implicit nature of the rules, and the social processes involved to create legal norms that involve ceremony. I also explored the possibility of implicit norms of ceremony (relational norms) moving towards explicit norms (ceremonial protocol), and the role of these secondary rules on the creation of primary law through ceremonial practices.

Sacred and natural laws challenge social interactive theories on the belief that law emerges through the deliberation or contestation between members of a society. Sacred or natural law denotes a declaration from a source that has an authoritative influence on the social norms of a society. This is especially prescient in ceremonial protocol, as they are often expressed as 'original teachings' or 'original law'⁹, or the product of natural divisions of gender that are cosmological in nature.¹⁰ Further, the origins of ceremonies themselves are often located as gifts from sacred or

⁸ John Borrows, "Indigenous Legal Traditions in Canada", (January, 2006) online: Report for the Law Commission of Canada, at 7. <http://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-66-2006E.pdf> [Borrows, *Legal Traditions*]

⁹ Cree jurist Sylvia McAdams implies that Cree laws, although varied in different areas now, are sourced from the same divine proclamation. See Sylvia McAdam, *Nationhood interrupted: revitalizing Nêhiyaw legal systems*, ed (Saskatoon: Purich Publishing, 2015), at 37.

¹⁰ See wahpimaswasis (Little White Bear) Janice Makokis, *nehiyaw iskeww kiskinowâtasinahikewina – paminiowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator* (MA Thesis for the University of Alberta, 2004) [unpublished] at 82-92. [Makokis, *Cree Women*]

natural sources. This includes pipe ceremonies¹¹, sweat lodge ceremonies¹², sun dance ceremonies and horse dance ceremonies.¹³

While some of Cree law (like in other Indigenous legal orders) can be rooted in origin stories, John Borrows cautions against adopting an interpretive ethic of ‘originalism’ when utilizing these resources. As Borrows states:

The justifications for an originalist approach are varied. Nevertheless, they generally coalesce around an idea that law has a specific historical meaning to which judges must defer. Originalism privileges a ‘settled’ view of a particular moment in the past, concluding that precise constitutional understandings are inherent within some prior declaration or experience. As such, originalism has been called a ‘paradigmatic form of legal positivism.’ It gives prominence to subjective intentions and/or so-called objective public meanings of a constitution’s drafters, ratifiers and/or receivers. Originalism is often used in an exclusivist, either/or manner, prohibiting and discouraging modes of constitutional interpretation based on other grounds. While attempts have been made to reconcile originalism and living tree constitutionalism, many are skeptical about the success of these efforts. Originalism generally places dispositive weight on formative historical understandings and meanings, whereas living tree constitutionalism draws guidance from history but gives it lesser weight.¹⁴

While originalist interpretive methods receive (albeit critiqued) support in the United States, it currently is not a supported method in Canadian jurisprudence.¹⁵ While constituted by different sources, originalist thinking in Indigenous law can create the same challenges as it does in state-

¹¹ See Mark St. Pierre and Tilda Long Soldier, *Walking in the Sacred Manner: Healers, Dreamers, and Pipe Carriers – Medicine Women of the Plains Indians* (Toronto: Simon & Schuster, 1995) at 41.

¹² An origin story for sweat lodge ceremonies that I have heard by both Cree and Anishnaabe knowledge keepers involves a young man searching all over the ends of the earth for a cure for his community’s people, who are overcome by a number of sicknesses. After seeking the advice of many different animals through journeying many different directions, finally the eagle believes he knows where the boy can find a cure. The eagle flies the boy to the dark side of the moon, where he is met by spiritual grandmothers and grandfathers. Each mosum or kokum gives him a ceremony to help his people with, and returns to his community with seven ceremonies. One of those was the sweat lodge ceremony.

¹³ See Horse Dance Origin Story (or how the Cree acquired horses) was told by Eli Pooyak from Sweetgrass Cree Nation in Saskatchewan, on March 18, 1974. Online: <<http://ourspace.uregina.ca/bitstream/handle/10294/1610/IH-074.pdf?sequence=1>> [Pooyak, *Horse Dance*]

¹⁴ John Borrows, “(Ab)Originalism and Canada’s Constitution” in *Freedom and Indigenous Constitutionalism*, (Toronto: University of Toronto Press, 2016) at 130.

¹⁵ *Ibid* at 130.

law, specifically in the exclusivity it creates in interpretive efforts. An originalist approach favors literal, unchanging reading of law. In terms of law based on sacred or natural instruction, an originalist approach often means relying upon the initiated ceremonial holder or old one for meaning.

As such theory either needs to find a way to account for sacred or natural origins of normative practices within a community, or finding a way to work around origin stories. There is a danger in both routes. The first, relying on the proclamation from knowledge keepers and authoritative voices can lead to or perpetuate power imbalances, and can also leave us misinformed about what normative aspirations are actually practiced on the ground within societies. Napoleon discusses this as a danger of the ‘mystification’ of law.¹⁶ This mystification can provide authority, or the appearance of authority, without structures of accountability. As Weesakeechak’s encounter with the ducks teaches us, shutting our eyes on ceremonial processes allows for ceremonial authority to be abused. This is seen in a current trend in regarding old ones/elders as unquestionable authority figures in communities. Napoleon states that this creates an environment where elders held up as “priest-like beings who are also sacred”, and seriously disrupts the balance of power and authority in communities.¹⁷ While I hold very close the obligation to hold our old ones up as respected knowledge keepers, and to listen and attend on them in special ways (and receive so much wealth from this obligation), the knowledge they share still needs to be relational to the web of teachings throughout a community. The abuse of ‘old one’ authority occurs when we take every instruction at face value and blindly follow such instructions.

¹⁶Val Napoleon. “Thinking About Indigenous Legal Orders.” In René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013) at 6. [Napoleon, *Legal Orders*]

¹⁷ *Ibid*, at 7.

The second danger is that even without an abuse of authority, charges of ‘mysticism’ can obscure the reasoning processes that exist within a deeper knowledge of ceremony and cultural practices. When charged as merely ‘mystical’, spiritual processes are given little weight in legal theory or are outright dismissed as ‘non-legal’. Further, understanding that the ‘mystification’ of ‘sacred’ normative practices creates these issues, it also obscures structures internal to Indigenous communities that hold elders and ceremonial leaders accountable. Without the knowledge of these internal checks on authority, external viewers only see positional authority. *An elder is an elder because they are.* This is especially problematic when legal knowledge is shared inter-societally. As Cree elders continue to be called upon to teach externally (for example, to lead ceremonies at universities and colleges), it is done so distanced from the internal methods of legitimizing the ceremonial holder’s authority. Without proper methods of translation, we are closing our eyes in ceremony, hoping the authority we give to the ceremony holder has been earned and will not be misused or abused.

Law’s Mediation between Creative Process and Social Deliberation

I wish I were revealing some brilliant new method in accessing the sacred in a manner that is respectful of community practices of ceremony, while providing the grist for the academic millstone in researching Indigenous law. However, much like ceremonies themselves, this process is appropriately complex, and at times difficult. While I don’t see an easy path, I do however believe that both legal theory and Cree knowledges can lead us to acknowledge the limits to where we can go with an examination of sacred law.

The theory of social interaction is helpful in helping us understand where sacred process ends and law begins. Law is a social process. Acknowledging that our societies have spiritual or natural sources that declare or initiate social norms, such sacred or natural instruction requires an

intermediary for translation of the instruction or declaration. Without an intermediary to translate, we would never hear the law. The intermediaries of sacred or natural processes within Cree societies include the old ones (elders), ceremonial holders, medicine peoples, knowledge keepers, artists, singers, and participants in ceremonies themselves as well. Further, after such natural or sacred declaration, the process of becoming a social or legal norm requires the agreement of a community/society/nation to abide by the declaration. In this sense, only until a deliberative process occurs that the instruction or rule is law.

One version of the story of how the Cree acquired horses is an example of this process.¹⁸ I share this story here as it contains instructions from a natural or sacred source. The instructions within the story still continue to be practiced within some Cree communities today. The story is also a creation story for ceremony, in that it lays out the obligations and procedures for the Horse Dance Ceremony. Below is a portion of a long story. The story begins by describing the hard time a Cree community has in gathering food and moving camps, using primarily the strength of the people and dogs. Witnessing this, a shy young man is visited by a mysterious man at night, who asks him to come along with him to receive a gift. After four nights of being visited, the young man finally decides he will follow this mysterious visitor. The story below picks up with a young man approaching a lodge after following his strange visitor there. The story continues:

"I am glad to see you, my grandson," said the man. "I am glad you have come for your mistatim." The boy thought to himself, "This man is going to give me some big dogs," mistatim meaning big dog. "Oh, my grandchild," said the man to the boy, "you take one of the drums and sing with me. I am going to teach you four songs which will take four nights. Once you have learned them you will never forget them." And so, the old man sang through the night and the boy sang with him.

¹⁸ Pooyak, *Horse Dance*, supra note 13.

The account continues with the teachings going on for four days between the man and the boy. Finally, once the man is satisfied that the boy has learned the four songs, he gives the boy further instructions:

"Today, later in the day towards evening, we will go to the edge of the lake. The song that we sang here the first night, you will sing beside the lake. Then you will sing the second, then the third, and finally the fourth. While you are singing the fourth song beside the lake, out of the water will come the mistatim that you have come to get."

In this account, the boy does as the old man says and the songs draw a horse out of the lake. The old man continues his instructions to the boy:

Sometime in the future, horse dances will be held by your people. These songs I have taught you will be sung at these dances. They will be called horse songs. Go now, my grandchild, these horses you are taking home will be very useful to you and your people."

Upon the guidance of the old man, the boy leads the stallion back to his community. Following the stallion were forty mares. The old man gives some final instructions to the boy:

"My grandson," he said, "when you get home with the horses, they will stand in a bunch and refuse to move or eat. Every morning before sunrise for four days you will burn incense around the horses. Your friend will help you. You will repeat this at noon and again after sunset. After you have done this for four days the stallion will come home."¹⁹

As the story goes, the boy does as the old man says, and the stallion returns to the water, while the forty mares birth colts for the community to use.

Some of the protocol told to the young man in the story is similar to the protocol of the horse dance that is held by many Plains Cree communities to this day. This includes songs that are sung during the ceremonies, the use of medicines to cleanse the horses, and the circling of a lodge during the ceremony. Sometimes, the origin story is told during the ceremony or in preparation for the ceremony. While the story of the acquisition of horses has both sacred and natural elements, an observation of the interactive nature of sacred or natural law is important within the story. The instruction to the young boy is sacred in nature. He follows these

¹⁹ *Ibid* at 4-7.

rules/laws/obligations as he is told. This story is significant to my contemplation on ceremony and law, as it leaves me with the question of how do those instructions become the social norm that endures as the Horse Dance Ceremony today? At some point (perhaps soon after the gift of horses described in the story occurred), the community makes a deliberative choice to continue to uphold the sacred protocol given to the young man, or at least how they have been instructed through the story. Of course, we do not have a historical record of how this deliberative process continued beyond what he knows in the story, all we know is that the protocol endures in some form.

It is within this historical gap, from sacred instruction to social norm, that a further exploration of interactive theories may be instructive. While we can theorize on a rote, democratic process taking place in these instances of historical deliberation, where reflection is done in a harmonious way, it is not hard to understand that these moments of community deliberation must have had hard contestation and the implementation of well used methods of persuasion and coercion. Just like every society, I acknowledge that some these historical deliberations must have been marked and driven by genius, salesmanship, demagoguery, populism, ‘horse-trading’, and oratory, let alone the disproportionate influence of power dynamics that cause some voices to be heard more than others. Relying on the work of Jes Bjarnup, Napoleon notes a need to view the assertiveness in deliberative processes in Indigenous communities.²⁰ She notes the problem with Fuller’s theorizing is that “human beings in Fuller’s interactive theory of law are rational, but are also solitary, passive, and reactionary and ought to be replaced”²¹ with the thought of our citizens being “agents that have the capacity to engage in the intentional activity of performing actions and

²⁰ Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (Ph.D. Dissertation, University of Victoria, Faculty of Law, 2009) [unpublished] [Napoleon, *Ayook*]

²¹ Jes Bjarnup as quoted in *ibid* at 282.

making rules for their own conduct based upon representations of what to do in specific situations.”²²

This is all to say, at some point a sacred instruction becomes a social norm through a deliberative process that is unique from society to society. Returning to the Horse Dance story, implicit within the story are number of signals that place the story as sacred in nature for Cree people. These include the repetition of four in events, the visitation by a mysterious force, and the gifting of the horses from a natural source. Some of these signals would mean nothing to a non-Cree person confronted with the story. The sacred nature of the story means that the protocol instructed within the story is to be seen as sacred as well. This elevates it beyond mere day-to-day deliberative practice, but into another level that carries an institutional force that ceremony does in Cree societies.

Creative Realities to Imaginative Realities

“Modern business people and lawyers are, in fact, powerful sorcerers. The principle difference between them and tribal shamans is that modern lawyers tell far stranger tales.”²³

Our ability to theorize on sacred and natural processes that create law is aided by locating where a sacred declaration turns to deliberative action. These moments of interpretation can be viewed as instances of demarcation between different legal realities for Cree people. This is mostly an experiment in collecting and ordering my own thinking to “imagine the world and [myself] within it in a coherent way”, but for the purposes of this examination I will characterize these as 1)

²² Jes Bjarnup as quoted in *ibid* at 282.

²³ Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (Toronto: McLennan & Stewart House of Canada, 2014) at 28.

Creator/Creative reality, 2) Imaginative reality, and 3) objective reality.²⁴ I would describe these as:

Creator/Creative reality: The process of receiving instruction, rules or guidance from a creative source. This instruction is received through such creative processes like ceremony, song, dream, medicine, sacred, natural or supernatural events, and within art making. Such a reality can be shared as a group, but generally is only consciously experienced by the individual person (or persons) experiencing the creative event.

Imaginative reality: The process of acting on the instruction, rule or guidance as put towards a society from the intermediary of the creative source. This includes the deliberative processes as a community or society in interpreting sacred, natural or supernatural events, ceremonies, songs, dreams, or even positions on how society should govern. Certain ceremonial protocols (beyond their first instruction like those evidenced in the Horse Dance story) fit into this category, in that they are set out through deliberation on principles sourced from a sacred or natural origin.

Material reality: The process of dealing with the things that are materially realized for a community. This includes deliberative processes to deal with day-to-day concerns that arise such as care-taking, wellness, and protection issues in communities, as well as environmental and economic concerns.

I should note my categorization of creative and imaginative reality does not discount the sacred experiences of Cree peoples by rendering them as strictly meta-physical/non-real. It in fact intends the opposite. Separating experiences of creative reality respects the autonomy of those who have those experiences without interrogating the truth of those experiences on an individual level. I

²⁴ James Boyd White, *Living Speech: Resisting the Empire of Force* (Princeton: Princeton University Press, 2006) at 101.

respect the consciousness of the old ones, ceremonial holders, knowledge keepers, dreamers and medicine peoples and do not wish to delegitimize their sacred experiences. There are those who I have developed relationships with who are especially gifted in their relations, whom I trust to provide counsel from the resources within their creative relations. I have placed my trust and at times, my life, upon these gifted ones. This categorization helps me maintain that autonomy, and helps me better understand ceremony as an institution. For through the process of a creative reality held by one person becoming an imaginative reality for a community, there must be an institutional instrument to aid this transition. Ceremony with the autonomy, respect, and authority given to ceremonial holders is one such institution. Because ceremony is a tool for a creative reality to become an imaginative reality, protocol is all the more important in that it acts as a check on the authority of the process.

Creative and Imaginative Realities in Other Legal Systems

While the characteristics and personality may be different, the creative realities, imaginative realities and objective realities exist within other legal systems as well. Specifically, the ability for a society to create and foster imaginative realities is necessary for the function of a legal system. In her study of the history of the development of human beings, Yuval Noah Harari's description of the necessity of human 'myth-making' is instructive. Harari points our ability to imagine as a vital skill towards our legal collectivity.²⁵ As Harari states imagination "has enabled us not to merely to imagine things, but to do so *collectively*."²⁶ Imaginative renderings allow people to "cooperate in extremely flexible ways with countless numbers of strangers."²⁷ Not only does this

²⁵ Harari, *Sapiens*, *supra* note 23 at 25.

²⁶ *Ibid* at 25.

²⁷ *Ibid* at 25.

cooperation occur in real time, but over generations as well. My steps within a sun-dance lodge are walking in relation with all of those who have danced there before me.

A common misunderstanding of origin, creation and re-creation stories is linked to the view of these stories as ‘myth’ and the diminished view ascribed to stories that are categorized as mythical in nature. As described above, the pursuit of a scientific truth within stories flattens out and empties the layers of knowledge within stories of their value. This moves us back into the era of Hart and Dworkin, where Indigenous legal orders are described as primitive, non-legal, or pre-legal in nature. There is a danger that this may destroy the authority and rationality of a narrative, in that stories that are deemed mythical in nature can see their positions as legal authorities diminished.²⁸ Harari acknowledges and points out that legal positivism requires the same imaginative process that is often discounted as myth in Indigenous legal traditions. As Harari notes, the creation and belief in the limited liability corporation is every bit of an act of imaginative process as is the belief in, for example, the gift of horses to the Cree from the waters. As Harari states, corporations are:

“a figment of our collective imagination. Lawyers call this a ‘legal fiction’. It can’t be pointed at; it is not a physical object. But it exists as a legal entity. Just like you and me, it is bound by the laws of the countries in which it operates. It can open a bank account and own property. It pays taxes, and it can be sued and even prosecuted separately from any of the people who own or work for it.”²⁹

Our ability to enact and believe detailed and complex legal fictions is essential to the operation of Canadian law. We can imagine and stake our lives on the legal fiction of the limited liability

²⁸ As I have experienced in countless experiences in obtaining my Juris Doctorate from the University of Victoria from 2009 to 2012. As Uvic is one of the leaders in holding up Indigenous people and communities and allowing them to describe their laws, there is always the interactions between a community’s notion of their laws and the pre-conceived notions of law that law students bring. I wrote about once such experience in my paper, “Setting Relations in Stone: Cree Legal Aesthetics” (2015) [Unpublished], where Dr. Sarah Morales was describing Hulqulmin’um legal orders through community narratives that was explicitly called into question by a classmate.

²⁹ Harari, *Sapiens*, *supra* note 23 at 29.

corporation, and believe that it shields us from personal liability, despite its immateriality. It is our belief in ‘imagined realities’ that allows legal systems to work. As Harari asks, ‘[j]ust try to imagine how difficult it would have been to create states...or legal systems if we could only speak of things that [materially] exist, such as rivers, trees and lions.’³⁰ If we look at myth making and myth telling from new, depoliticized eyes, we can view the necessity of this practice.

Legitimate Authority in Imaginative Realities

The arbitrary line between a creative reality and imaginative reality raises the question of legitimate authority in Cree legal orders. When a person who experiences a creative reality that is given authority within an imaginative reality, it asks what are the requirements and scope of such authority. Often the first act towards legitimizing authority of a creative reality is faith. Because of patterned practice, ceremonial participants afford faith in ceremonial leaders or those who partake in special ceremonial practices.³¹

Questions on the legitimation of authority is something that the Canadian legal system must deal with as well. While the operation of law has been separated from spiritual practices within the greater Canadian society (mostly organized religious practice), the Canadian legal system still requires faith in structures of authority. As John Borrows states, “[t]he nation-state is given a monopoly on exercise of power” that is comparable to “religious appeals to supremacy and authority.”³² This monopoly “requires constitutional faith” in that “[l]aw can only claim pre-eminence if its practitioners believe the state’s legal decisions are supreme.”³³ The authority afforded to Cree ceremony in part depends very much upon a same constitutional faith, albeit

³⁰ *Ibid* at 31.

³¹ The creation of songs is an example of this. Often songs become part of Cree ceremony culture through their gifting through fasting.

³² See John Borrows, “Law as religion” in (2016) = *The Immanent Frame: Secularism, religion and the public sphere*. Online: <<http://blogs.ssrc.org/tif/2016/07/13/law-as-religion/>>

³³ *Ibid*.

informed by different cultural practices. The paramountcy granted by some people to sacred or natural processes is enabled through this belief. Like the Canadian legal system, this belief is reinforced by a multitude of other cultural norms in Cree social life. And this is where aesthetics may set Cree legal orders apart from the contemporary Canadian legal system; the open participatory nature of Cree ceremony invites (or at least makes it more readily available) high participation in Cree law. We can all be ceremonial family, or even ceremonial keepers. Such participation invites us towards creation.

Understanding the parallel threads that tie Cree ceremonial law with Canadian constitutional law, I understand the danger in the authority of law and the accountability of this authority. Just as constitutional law has played an intimate role in the subjugation of Indigenous peoples, ceremonial law has the same potential, albeit in different forms and upon a different scale. Authority through supremacy leads to dangerous environments ripe with the potential of unchecked oppression. Therefore, questions of type of authority given to our institutions are integral to the continued healthy practice of ceremony. A deeper understanding of the type of authority that we may give to sacred or natural institutions is helpful to these questions. Joseph Raz argues that while all law claims authority, not all laws have legitimate authority.³⁴ The relationship between the authoritative institution and the individual is vital, and law serves as a mediation of this relationship. He states that “[i]t is not good enough to say that an authoritative measure is justified because it serves the public interest. If it is binding on individuals it has to be justified by considerations which bind them.”³⁵ Other thinkers have delineated authority into two

³⁴ Joseph Raz, *The Morality of Freedom* (1986) Chicago: Clarendon Press, at 70.

³⁵ *Ibid* at 72.

forms: unilateral absolute authority and dialogic or relative authority.³⁶ Dialogic authority differs from absolute authority, in that it is not coercive but invites the individual to investigate its claims for authority.³⁷ Dialogic authority can then be viewed as persuasive in nature. While it isn't within the scope of this thesis to do a large analysis of authority in law, these questions of authority are vitally important to the harms created by gendered protocols. The question of whether the protocols are law can be a circular exercise (in that the effect of the protocols will persist whether we categorize them as laws or not); the real question is the legitimacy of the authority of the structures that continue to implement them. What this cursory look into authority tells us though is that if authoritative relationship exists between ceremony and individuals who participate in them, it is largely dialogic in nature. It seems trite to do an analysis of specific ceremonial practices to move this point; the participatory (rather than mandatory) nature of pipe and sweat lodge ceremonies is indicative of a dialogic authority. The horizontal/vertical praxis discussed in chapter 3 (where a 'vertical' practice is open for the interpretation of the ceremonial participant) also displays the dialogic character the ceremonies.

Identifying the type of authority that may exist is significant in resisting 'fundamentalizing' ceremony. Despite authority influencing our interpretations of sacred and natural law, we still must remember to guard against fundamentalism in our reflections on our legal principles. Returning to Val Napoleon's challenge on sacred and natural laws, in that "laws have to be interpreted by human beings, and law is not just rules... what are the consequences of [a] law being sacred or natural?"³⁸ as "if we believe laws are sacred, our understanding about the responsibility

³⁶ For a deeper look at these types of authority, see Nicole Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* Oxford: Oxford University Press, 2013).

³⁷ See John Cunliffe and Andrew Reeve, "Dialogic Authority" in 19: 3 Oxford Journal of Legal Studies 453.

³⁸ Napoleon, *Legal Orders*, *supra* note 16 at 6.

of human beings can become reduced to following rules.”³⁹ Understanding the line between creative realities and imaginative realities gives me a place to search for the deliberative processes in Cree ceremonies that move sacred instruction to deliberate social norm.⁴⁰

Such a reflection reframes this not as a question of the authority of sacred or natural law, but as a question of the ‘reflexivity’ of interpretive process. Here Napoleon’s exploration of Gitksan law once again is instructive. Describing Stefan Krieger’s analyses of the writings of two Rabbis (Rabbi Akiva and Rabbi Ishmael), she theorizes two approaches to our interpretation of sacred law.⁴¹ Rabbi Akiva interpreted stories in a way that the laws drawn from them “were mandatory, and people have no autonomy in their decision making.”⁴² This contrasts with Rabbi Ishmael’s practice of recognizing the agency of people “to reason in their decision-making processes, and individuals have some independence in their own decisions.”⁴³ The question comes, if ceremonial holders interpret their sacred roles in the manner Rabbi Akiva does – as if they *a priori* void the potential for social interaction to reform ceremonial laws – how do Cree people approach these rules without the agency to transform them?

I believe the answer lies within our stories. Our stories and teachings are full of instances of transformation, shape-shifting and fluidity. A boy is shape-shifted into a buffalo and then back again, and finally into a rock, in order to teach of our relations to the buffalo people.⁴⁴ A prairie becomes full of hills, in order to demarcate a territory so we stop needless violence between us

³⁹ *Ibid* at 6.

⁴⁰ I again acknowledge that there are many who do not share this view. For some, ceremony is wholly a sacred phenomenon beyond current human comprehension of its purpose. Napoleon’s contention here is that if there is no interpretive action or mechanism, is it law?

⁴¹ Napoleon, *Ayook*, *supra* note 20 at 274

⁴² Stefan H. Krieger as quoted in Napoleon, *Ayook*, *supra* note 20 at 274.

⁴³ *Ibid* at 274.

⁴⁴ See the story of paskwaw-mostos awasis (Buffalo Child) in Neal Macleod, *Cree Narrative Memory: From Treaties to Contemporary Times* (Saskatoon: Purich Publishing, 2007) at 21.

Cree and our Blackfoot sisters and brothers.⁴⁵ A buffalo becomes a lake that nourishes our ancestors in a time of great need.⁴⁶ The northern lights shape-shift above us, and transform our realities only if we so whistle and so dare. The lessons and language of transformation is all around us. So why can't our protocols on dress and menstruation change? A better question is, what is the method for such transformations?

⁴⁵ See the story of the Neutral Hills, in Anne Speight, *The Shadows of the Neutrals and Open Memory's Door* (Coronation, AB: Old Timer's Centennial Book Committee, 1967) at 1-3.

⁴⁶ The story of creation of Buffalo Lake, passed orally in my family, involved a buffalo being hunted and producing water, not blood, out of its wound. The water continued to spill out of the wound until it became the shape of a buffalo. Communities would gather at this new lake as it became a place of refuge and was plentiful in the food and shelter provided around it.

I Dream in Methodologies, Part 4: A Moose Story

“One night, a family of moose was sitting in the lodge. As they sat around the fire, a strange thing happened. A pipe came floating in through the door. Sweet-smelling smoke came from the long pipe and it circled the lodge, passing close to each of the Moose People. The old bull moose saw the pipe but said nothing, and it passed him by. The cow moose said nothing, and the pipe passed her by also. So it passed by each of the Moose People until it reached the youngest of the young bull moose near the door of the lodge.

“You have come to me,” he said to the pipe. Then he reached out and took the pipe and started to smoke it. “My son,” the old moose said, “you have killed us. This is a pipe from the human beings. They are smoking this pipe now and asking for success in their hunt. Now, tomorrow, they will find us. Now, because you smoked their pipe, they will be able to get us.” “I am not afraid,” said the young bull moose. “I can run faster than any of those people. They cannot catch me. But the old bull moose said nothing more.

When the morning came, the Moose People left their lodge. They went across the land looking for food. But as soon as they reached the edge of the forest, they caught the scent of the hunters. It was the time of year when there is a thin crust on the snow and the moose found it hard to move quickly. “These human hunters will catch us,” said the old cow moose. “Their feet are feathered like those of the grouse. They can walk on top of the snow.”

Then the Moose People began to run as the hunters followed them. The young bull moose who had taken the pipe ran off from the others. He was still sure he could outrun the hunters. But the hunters were on snowshoes, and the young moose’s feet sank in the snow. They followed him until he tired, and then they killed him. After they had killed him, they thanked him for smoking their pipe and giving himself to them so they could survive. They treated his body with care, and they soothed his spirit.

That night, the young bull moose woke up in his lodge among his people. Next to his bed was a present given [to] him by the human hunters. He showed it to all of the others. “You see,” he said. “It was not a bad thing for me to accept the long pipe the human people sent to us. Those hunters treated me with respect. It is right for us to allow the human beings to catch us.”

(from Michael Caduto, Joseph Bruchac, *Keepers of the Animals: Native American Stories and Wildlife Activities for Children* (1991) Fulcrum Publishing: Golden, Colorado at 7)

Niya'nan (five): Coming with Tobacco - Methods for Ceremonial Change

The language of our relations is also embedded in our obligations to our animal relatives. Such obligations are found in the many different ways to hunt and use a moose. There are many *Cree* ways to hunt a moose. There are very old ways dependent upon the repetition of footsteps through muskeg and bush, the recollection of songs and stories, and sometimes (as discussed above) upon the guidance of ceremonies. They are passed down through families and communities, required teachings learned through the patient experience of preparing to take a life. To some the hunt starts long before the bush. It is initiated through offerings and dreams¹ as they begin to come to terms with harming a relative. All of this is entering into a relationship of reciprocity. All of this is law.² Proper adherence to these laws teaches how to respect the moose's life and how to continue on with our lives in a proper way.

Once a moose has given its life to you – for you³ - there are many *Cree* ways to prepare moose.

The initial frenzy of dressing a moose (skinning it, removing its organs and guts, quartering and

¹ See Richard J Preston, *Cree Narrative: Expressing the Personal Meaning of Events* (2002) Montreal: McGill-Queens University Press, at 187 and 216, for a description of the importance of songs and dreams in preparation for a hunt.

² See John Borrows, *Indigenous Legal Traditions in Canada* (2006) (Ottawa: Law Commission of Canada) at 7. [Borrows, *Legal Traditions*] Borrows observes that “[l]aws can arise whenever interpersonal interactions create expectations about proper conduct.” A close look at the normative hunting practices within Cree communities displays expectations on how hunters conduct themselves towards their prey.

³ For a critique of this view, see Calvin Martin, “Keepers of the Game: Indian-Animal Relationships and the Fur Trade” (Berkeley: University of California Press, 1978). Martin’s position is that the idea that animals would give themselves for humans is harmful towards the preservation of moose populations. While taken out of the web of related principles on moose-human relations this may seem so, I contend that this is a flat understanding of such a statement. It is tied up in a different ethos towards ecological relationships that many Cree continue to practice towards animals. Such refrains reinforce kinship with the moose; in doing so it attempts to remove a large mediating force between humans and moose (that the moose as a different species is a ‘resource’) and causes further reflection and care in our obligations to moose populations in our kinship with them. For a greater exploration of the benefits of moose populations for ecological practices that engage in relational, anthropomorphic dialogue, see Elizabeth Anderson, “Benevolent Grandfathers and Savage Beasts: Comparative Canadian Customary Law” (2010) 15 *Appeal L J* 1. For another contribution that explores a relational approach to environmental conservation see Charlotte Cote,

removing the meat) dissipates and gives way to the slow, hard work of making the most of the life you just took. You have become obligated.⁴ Making use of the meat and the organs is the easier and exciting work. The bones are harder. They can be either cracked open for marrow, can be filled with grease from the fatty parts of the moose, or can be saved for soup. In the very old ways, they were converted into tools for scraping. The moose hide – seemingly growing heavier by the hour with your responsibilities - must be stretched out until it as taut as a drum. The tighter it is, the easier the scraping becomes. Scraping moose hide. Tough work. The older ones have developed a hidden strength for this hardest work, a strength they have been gifted through hours of clutching and grooving scrapers on rough rawhide, convincing tufts of hair that it is okay to fall away. Eventually it relents and gives way to its new life, maybe as a drum, a shelter, or a pair of moccasins.

And then there is the process of using the brain to tan the hide. The old ones know the best tricks, on how to use the brain to make hard things soft, as just like in law or in academia, “[t]he brain is the magic ingredient...that makes everything happen.”⁵ After the brain is cooked it is smoothed all over the hide, it is worked in slowly yet persistently until, as experienced hands know, the transformation is complete. Young hands (*no, young minds*) are easily defeated in this process and are prone to slowing or giving up entirely. It is the old ones who bring us back to this work,

Spirits of Our Whaling Ancestors: Revitalizing Makah and Nuu-chah-nulth Traditions (Seattle: University of Washington Press, 2015).

⁴ For a greater description of obligations related to hunting within the normative practices of the Cree, see Elizabeth Anderson, *Benevolent Grandfathers and Savage Beasts: Comparative Canadian Customary Law* (2010) 15 Appeal 3.

⁵ CBC (2016), “‘Magical Ingredient’: Hunters learn to tan hides using animal brains in Winnipeg”. Retrieved online at: <http://www.cbc.ca/beta/news/canada/manitoba/animal-hide-brain-tanning-winnipeg-1.3518106>. (Accessed on April 3, 2016).

and teach us that learning to grasp these old tools and these laws is form of resistance, a ceremony. And slowly but surely, we eventually become those old ones.

There are many other, non-*Cree* ways to hunt and to harvest a moose. In British Columbia, you are required to buy a licence, and can only hunt them when they are in season.⁶ You are required to remove the edible portions of the moose from its body, except those that are damaged in the hunt. You must ensure that a moose dies quickly, and must make all reasonable efforts to track an injured moose to lessen its suffering. You must report your successful hunt to provincial authorities. So there too are obligations. These obligations are silent on any requirement regarding the hide, the bones, or the brain.

Transformation, Consent, and Violence

Reflecting on these older ways of Cree life, it is easy to understand the necessity of forceful transformations (like the hunt) for survival. Contemplating the necessity of force that occurs through our hunts, I also think about power relations, ideas of consent, and when such transformational acts become violence. I think about whether violence (in some forms) is necessary to live, or whether forced transformations (like those that we impose upon our animal relations that become our food sources) are non-violent when there is consent. I think upon the necessity for ceremonies, like the pipe ceremony described in the aforementioned story, to seek consent from our animal relations. Finally, I wonder what type of consent is made.

The reasons these questions arise in my mind is that it is clear that transformations, even forceful ones, are necessary in our lives. This necessity is not without agency nor obligation. It is accompanied by the choices; the choice of avenues of transformation that we engage in, the choice

⁶ BC's hunting regulations can be found online.
<http://www.env.gov.bc.ca/fw/wildlife/hunting/regulations/1416/docs/Provincial_2014.pdf>

of our obligations, and the choice to seek consent. Some Cree people choose to honor these obligations through entering the hunt in a good way, committing to a relationship (and even a kinship) with the moose, and by using as much of the animal in their life continuing forward as they can. These obligations teach us a lot about a commitment to *miyo piimatisiwin* (to living a good life) and the role of maintaining good relations in living a good life.

Just like hunting moose, we also have obligations for the transformations we may seek in engaging in critical research of Indigenous laws. Returning to the dream I shared at the start of this thesis, my research requires a deconstruction to take place. As this thesis explains, such a deconstruction is necessary to address the potentials for inequality caused by some of our protocols within ceremony. In my consideration on how to carry my personal pipe, I take the concerns of my sisters and brothers seriously, and seek to address the inequalities created by the protocols at the center of much of the discussion of this thesis.

Like the dream, I am searching for the proper method of this deconstruction, one that honours the object of my study (ceremony) in a good way and that walks within the epistemological reasoning that it is embedded in. This chapter concludes this thesis by exploring potential methods to engage further in ceremonial change. You may recall, a look at the hidden gender within Cree ceremonial protocol requires answers to questions of 1) the gender within ceremonial rules, 2) the authority to change ceremonies, and 3) the hidden gendered nature of structures of authority in Cree ceremonies.

The previous three chapters have helped set out preliminary answers for many of these questions. My examination in Chapter 2 displays a difference in both the practice and outcomes of ceremonial protocols for women and girls, and people who do not identify within the heteronormative gender norms that the ceremonial rules tacitly endorses. My examination in

Chapters 3 and 4 problematizes current discourses on the ability of ceremony to change, including their link to sacred and natural laws, and the fundamentalism that underpins these discourses. This fundamentalism is further troubled by questions of power and authority in communities, in that the structures of authority that ceremony enables may lose their democratic and equal nature by the gendered protocols themselves. While these challenges still persist, my examination in the previous three chapters has provided me with an understanding of how these challenges can be addressed, and that through continued dialogue, there are paths to move around these fundamentalisms. Further, if ceremony is to remain a vibrant part of Cree legal orders, addressing these challenges should be viewed as a healthy and natural function of them.

What comes next are the methodological questions of change, the questions of *how*. Two specifically are integral to my next steps to address these protocols: 1) what are the community specific methods to *investigate* ceremonial change, and 2) what are the methods to *instigate* ceremonial change. And with these questions of how, like the moose hunt, come choices of our obligations to the knowledge systems we are interacting with. Our research, whether on paper or within a community, requires an extraction of knowledge.

Returning to the necessity of force that sometimes accompanies needed transformations, while this statement may seem provocative, my intention is to provide a full acknowledgement of the transformational force required in the day-to-day lives of people within all societies. We use transformational force (often bordering on or succumbing to violence) every day for our survival. At its most base, we border enacting violence to ensure our needs for sustenance are met, whether it be towards the moose we hunt or within the work of the slaughterhouse attendant occurring far away from our eyes long before the chicken, cow, or pig show up on our grocery shelves. It touches

the cedar, the cottonwood, and the oak felled to make our walls, our tables, and our center poles. It touches the stone crushed to make our pavement or carved to make our pipe bowls.

Of course, the use of such force is overdone in our world far beyond its necessity. My claim of its necessity is not to promulgate the use of force (or violence), but rather to acknowledge its presence and have a clear vision toward the forces that mediate it in our lives. To better account for it. To relate to those who are subject to our force, and to recognize its effects.⁷ To enter into full contemplation of the use of our ceremonies as relational tools to seek consent. To teach how we can include our animal, plant and other relatives in our deliberations on their uses. And hopefully to ultimately limit our need for it.

More broadly, our use of transformational force extends beyond the physical, but also into the emotional, mental and spiritual aspects of our lives as well. As you may recall from my statements earlier (or know from your own experiences) ceremonies like sweat lodges and sun dances require all of these aspects. Despite my fullest attempts, there is no way my writing can account for the deep complexities of ceremony as compared to experiencing it. Further, by attempting to explicate these complexities, there is a danger I would violate protocol. By singling out its legal nature, I am removing portions of it from the whole. Just as Webber notes a danger of violence when a right is shorn away from its institutive base, research can have the same affect.⁸

The moose story shared at the start of this chapter provides a glimpse into a relational process of transformation within Cree law. The story notes that through the sharing of a pipe

⁷ I argue that the ceremonies that occurred/occur before events like the hunt in Plains Cree communities are actions of such relations. To offer something in return for the lives taken reframes (or works against) the commoditization of game. Such ceremonies are part of a different ecological practice.

⁸ See Jeremy Webber, "Public Law Dimension of Indigenous Property Rights" in *The Proposed Nordic Saami Convention: National and International Dimension of Indigenous Property Rights*, eds Nigel Banks and Timo Koivurova (Portland: Hart Publishing, 2013).

(however unwittingly at the start), the wahkotowin entered into between the moose and humans provides the moose with the knowledge to understand (and convey to the rest of his family) the gift he provides humans through the hunt. The moose affirms consent at the end of the story. *It is right for us to allow the human beings to catch us.* The hunting of moose, with no relationship, and no consent, becomes a relationship of naked violence. So, in the story at the start of this chapter, the pipe-ceremony represents a transformation of the power relationship between humans and moose towards an understanding of the need of such force. Some thinkers would call this a treaty relationship.⁹

This story signifies processes of change and transformation within Cree ceremonies that seek consent (or at the very least a deeper relationship) with our relations that we are transforming. Academic methods of critique and change can enact such force and violence upon Indigenous epistemologies. While there may be a reflex to downplay this as ‘symbolic violence’ only, the legal processing of Cree practices has significant impacts to the resources on which they are embedded.¹⁰ Some methods employed in ethnographic research of Indigenous peoples, for example, have involved a rendering process to make these knowledges translatable for study.¹¹ Adam Gaudry suggests that a legacy of this process is that that researchers are implicitly influenced to translate Indigenous knowledge to fit academic precepts as there is an

⁹ For an Anishinaabe example of this broadened understanding of treaty relationships, see Heidi Stark, “Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada” (2010) 34:2 *American Indian Culture and Research Journal* 145. Stark relies upon a story in which a woman marries a beaver to signal teachings on treaty relationships in Anishinaabe societies.

¹⁰ For a discussion on the decontextualization that occurs through the case brief method, also see Emily Snyder, Val Napoleon, and John Borrows, “Gender and Violence: Drawing on Indigenous Legal Resources” (2015) 48 *U.B.C.L. Rev.* 593, at 632. [Snyder et al., *Gender and Violence*].

¹¹ I share this reflection in my own research of Plains Cree law in preparation of this thesis. I have scoured over the transcripts of interviews that the anthropologist David Mandelbaum conducted in his research of Plains Cree people. Often within these transcripts were notes by the researcher on the ‘uselessness’ of some of the narratives he used. It was in these narratives that I found a wealth of Cree legal knowledge; these were disregarded by Mandelbaum as ‘confused’.

“[o]mnipresent...assumption that researchers need to justify and explain Indigenous knowledges according to a universalized Western worldview”.¹² Leanne Simpson observes that, within the research process, Indigenous knowledge can be:

...stripped of its dynamism and its fluidity and confined to a singular context. It is void of the spatial relationships created between elder and youth. It becomes generalized and depersonalized. It is separated from the land, from the worlds of spirits, from its source and its meaning, and from the methodologies for transmission that provide the rigor that ensures its proper communication.¹³

Yet such research is necessary. I acknowledge the potential effect of my research on the internal methodologies communities rely upon to transmit this knowledge. The legal principle I derived from the moose hunt as described above - *that we are obliged to use the most of the life we have taken for our survival* - is lost if we dismiss, forget, or obscure the methods in which this law is taught. As previously examined, the many instruments of Cree legal pedagogy, such as ceremonies, offerings, songs, and stories, are dependent on the integrity of these internal methodologies to continue to do the legal work they do. My claim of transformational force occurring towards Indigenous knowledge systems in our research should not dissuade attempts engage in research practices focused on Indigenous laws, but rather it is a transparent acknowledgment of the violence that is necessary to sustain an Indigenous legal system.¹⁴ I acknowledge how, by addressing gender within Cree ceremonies in this writing, I am having an effect on those practices. I see the potential dangers stated above as dangers that have been resident and continue to be within my research. By acknowledging it as such, I can begin to

¹² Adam Gaudry, “Insurgent Research” (2011) 26:1 *Wicazo Sa Review* 113, at 115. [Gaudry, *Insurgent Research*]

¹³ Leanne Simpson, “Anticolonial Strategies for the Recovery and Maintenance of Indigenous Knowledge” 28:3-4 *The American Indian Quarterly* 373 at 375.

¹⁴ I am working on the belief in the necessity of academic work in the revitalization and resurgence of Indigenous legal orders.

explore my obligations to Cree ceremonial knowledge structures, to the people that have maintained this legal knowledge over generations, and to the laws themselves.

Receiving the Gift: Methodologies of *How*

When I set out on this research, I aimed to focus the majority of it on research models that were internal to Cree communities, utilizing almost exclusively Cree resources. However, the course of this examination thus far has been changed in its angle do to challenges on the availability of such resources. An examination of publicly available knowledges and my own personal knowledge and experience can only come so far in my research questions. Such a challenge of availability of knowledge is not unique to my study as the revitalization of Indigenous laws presents challenges generally of the availability of legal knowledge to the external researcher. Further, challenges with availability are closely linked to challenges of ‘intelligibility’.¹⁵ Through her studies of Cree and Anishinaabek legal orders, Hadley Friedland analyzes this availability.¹⁶ She identifies three general categories of legal resources according to their accessibility and availability as: “(1) **resources that require deep knowledge and full cultural immersion;** (2) **resources that require some community connection;** and (3) **resources that are publicly available.**”¹⁷

Resources that require deep knowledge and full cultural immersion include laws embedded within a “language, dreams, dances, art, beadwork, pots, petroglyphs, scrolls, songs, natural landscapes, ceremonies, feasts, formal customs and protocols.”¹⁸ **Resources that require**

¹⁵ Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding, and Applying Indigenous Laws”, 11 *Indigenous L J* 1 at 13. [Friedland, *Reflective Frameworks*]

¹⁶ *Ibid* at 10.

¹⁷ *Ibid* at 11.

¹⁸ *Ibid* at 11.

some community connection include laws embedded in “stories, communally owned oral traditions, information from knowledgeable community and family members...as well as personal knowledge and memories.”¹⁹ **Resources that are publicly available** include “published resources” such as “academic works, and works of fiction by community members, descriptive academic work by outsiders...published court cases, [and] trial transcripts.”²⁰

Friedland acknowledges the dilemma that “the most ideal resources are likely the least available at this time, while the least ideal resources are the most available.”²¹ This dilemma may be resolved by a deeper relationship with the communities where these resources reside. As John Borrows states, the teaching of Indigenous laws is “best facilitated by understanding and working through Indigenous legal epistemologies” to “develop an understanding of how Indigenous peoples create and justify what they think they know to be true in their own terms”, including the “sources and limits of [Indigenous] knowledge”.²² Putting it another way, Borrows calls for deeper relationality towards Indigenous knowledge systems, that publicly available resources may not always be able to access.

The availability and intelligibility of Indigenous legal knowledge is an immense challenge for legal practitioners, judges and legal academics.²³ However, acknowledging this challenge should not preclude a commitment to move towards these knowledges. It has been noted by Indigenous legal practitioners that the formal practice of Canadian common and civil law requires

¹⁹ *Ibid* at 11.

²⁰ *Ibid* at 11.

²¹ *Ibid* at 12.

²² John Borrows, “Heroes, Tricksters, Monsters & Caretakers: Indigenous Law and Legal Education” (2016) 61:4 McGill L R 795 at 22. [Borrows, *Heroes, Tricksters, Monsters & Caretakers*].

²³ Further, the acknowledgement reinforces the need for comparative legal systems to acknowledge that legal practitioners within Indigenous communities come in different forms than the broader Canadian legal system – that dancers, ceremonial holders, elders, oskapewis (helpers), medicine people, heads of kinship groups and clans, storytellers, and artists (to name a few) are holders and practitioners of Cree legal knowledge.

a deep knowledge of Western legal systems and that this education is an ongoing obligation. Hesquiaht lawyer Estella Charleson points out that “as challenging as the converse effort may seem – a non-Indigenous legal actor learning Indigenous law – Indigenous legal orders are legitimate and must be respected and treated seriously.”²⁴

Committing to a *deep relationality* means that an engagement with an Indigenous legal tradition requires our methodologies focused towards the deep knowledges of the community. In this way, deep relationality becomes a process with no arrival. While the knowledges I have relied on thus far in this thesis have provided a multitude of answers to some of the questions I have engaged with; I acknowledge the questions of how to investigate further and instigate ceremonial change requires immersion within a community, and further ceremonial practices. Friedland is instructive as she notes on current methodologies to reach Indigenous legal orders in academic study. Her reflection allows for an examination of the relational commitment that current methodologies require. By way of example, I will briefly explore the following methodologies: (1) The Linguistic Methodology; (2) Source of Law Methodology; (3) Single Case Interpretation Methodology; (4) Adapted Case Analysis Methodology; and (5) Indigenous Feminist Legal Methodology, to canvas their suitability in furthering my research.

- 1) **Linguistic Methodology:** This methodology is implemented by Matthew Fletcher to address the use of Indigenous laws in tribal courts in the United States.²⁵ The linguistic method involves the identification of “an important and fundamental value identified by a

²⁴ Estella Charleson, “Making Spaces for Indigenous Law” (2015) online: JFK Law <<http://www.jfklaw.ca/making-space-for-indigenous-law/>>

²⁵ Friedland, *Reflective Frameworks*, *supra* note 15 at 18.

word or phrase in a tribal language” as a primary rule.²⁶ The primary rule is then applied to a secondary rule “as necessary, to harmonize outside (positivistic) rules to the tribe’s customs and traditions.”²⁷ Because this method would require a fluent understanding of a communities’ language, the linguistic methodology requires deep knowledge. Thus, it also requires either a deep relationality (or commitment to a deep relationality) from a researcher looking to draw on language as legal resource.

- 2) **Source of Law Methodology:** John Borrows developed this methodology to address the colonial tendency to view legal actions taken by Indigenous people as merely ‘customary’ in nature.²⁸ As discussed in the previous chapter, Borrows sources Indigenous laws to five locations: sacred, natural, customary, deliberative and positivistic sources. Although community connection may be sufficient to source legal principles to an area, a deep knowledge may provide a further identification of sources of laws.
- 3) **Single Case Analysis Methodology:** this methodology relies on a story to be interpreted for its legal processes and decisions. Much like the *source of law* methodology, a community connection may provide an ample background immersion to identify law within a single case, but a deeper knowledge of a community allows for a researcher to fully identify areas of law within a single story. A critique of this methodology is its lack of interpretive limits.²⁹ As Friedland states, “there must be some way to recognize legitimate boundaries for interpretative arguments to take place within.”³⁰ She

²⁶ Matthew Fletcher, “Rethinking Customary Law in Tribal Court Jurisprudence” (2016) Online: Michigan State University College of Law, Indigenous Law and Policy Centre Occasional Paper Series, at 41.

<http://www.law.msu.edu/indigenous/papers/2006-04.pdf>

²⁷ As discussed in Friedland, *Reflective Frameworks*, *supra* note 15 at 41.

²⁸ See generally, Borrows, *Legal Traditions*, *supra* note 2.

²⁹ *Reflective Frameworks*, *supra* note 15 at 21-22.

³⁰ *Ibid* at 22.

acknowledges that a deep knowledge of a community may resolve this challenge, as an interpreter with this knowledge may be “operating within implicit interpretive limits...due to...particular deep cultural knowledge” and “access to family and community connections” in their interpretation.³¹

- 4) **Adapted Case Analysis Methodology:** This methodology relies on the case analysis of many stories to identify and restate legal principles. It also relies on the multiple analyses to immerse the researcher within the stories of a community. Through this immersion, the researcher will see trends of the normative practices of a community, leading to a thicker frame of legal analysis. This methodology may only require the use of publicly accessed knowledges, and may only require light relationality.
- 5) **Indigenous Feminist Legal Methodology:** this methodology asks critical questions of stories. Through this analysis, gender dynamics can be identified, problematized, and critically discussed. This methodology may only require the use of publicly accessed knowledges as well. Similar to the critique of the single-story analysis methodology, this methodology can be critiqued for its lack of explicit interpretive limits.

This comparison is not intended to privilege one method over another, but to evaluate and understand our methodologies according to the level of relationality each requires. As Borrows explains, we will always have gaps in our legal knowledge as “no matter the tradition our knowledge and experience fall short of our actual needs” and that to address this gap “we need one another when we teach and practice law. Law is practiced relationally.”³² However, for critical questions of how to investigate and initiate methods of change for ceremony rely on resources

³¹ *Ibid* at 22.

³² Borrows, *Heroes, Tricksters, Monsters & Caretakers*, *supra* note 22 at 5.

beyond those that are publicly available. Current methodologies that rely primarily on the use of publicly available resources lack the depth to investigate the particular methods for change. Further, much of our publicly available knowledge has either been collected or set out through a male lens. As Snyder has shown, there is a noted absence or erasure of Cree women voice within Cree legal education materials.³³ While her Indigenous Feminist Legal Methodology provides an analysis that gets at questions that reveal the hidden gender within Cree law, with regards to ceremonial protocols this methodology does not get at potential answers for these questions, strictly because of the problem it illuminates.

To further this study by investigating and instigating ceremonial change I seek a method that: 1) does the least amount of violence to the ceremonial knowledge system it engages, and is genuine in a reciprocal relationship for the knowledge it accesses, and 2) reaches knowledges that have been hidden, erased or obscured (namely, the voices of women in how protocols continue and transform), and 3) that engages in the protocols themselves that are necessary for access to ceremonial knowledge. While it is not the course of this current study, the last point is significant as an understanding of Cree legal procedure is valuable in standing up Cree legal traditions and legal principles.

Coming with Tobacco: Seeking a Nehiyaw Methodology for Ceremonial Transformation

I also acknowledge my journey of knowledge is continuing; such commitment to a deeper immersion is faithful to the footsteps of my ancestors in that a learning journey is never complete. These questions must be taken up back within the communities that make these practices as an integral part of their lives. It has been a personal craving of mine as I have engaged further in this

³³ see generally Emily Snyder, “Representations of Women in Cree Legal Educational Materials: An Indigenous Feminist Legal Theoretical Analysis.” (Ph.D. Dissertation, University of Alberta, Department of Sociology, 2014) at 16. [Unpublished]. [Snyder, *Women in Cree Legal Education Materials*]

study to have the old ones with me, the kokums to talk about parts of ceremonies I have never heard of, the aunties to keep me in line with all-important conversations generated from side-eyed glances, and to have a community around me to guide these important, hard and complex questions as they have come up. As this research has engaged me in thinking of my relations, there has been an ongoing thirst to have them directly a part of this journey. As Janice Makokis states, there is:

a complexity associated with being an Indigenous person attending a western institution conducting sacred research [about] their home communities. This is why it becomes import that Indigenous researchers see the research they conduct as an opportunity to engage in a ceremonial research process that transforms their way of thinking and thus contributes to social, political and economic transformative agendas within their communities. If indigenous research is seen in this light the research we embark on becomes the spark that ignites social change within the nations we come from.³⁴

To further the journey this research has initiated, I must engage in the ceremonies themselves to continue seeking answers to the questions proposed here. It is within the relations of ceremony that my further research would be governed by the ceremonial ethics of what is the proper method to engage in necessary deconstruction, by the protocols integral to the maintenance of ceremonial knowledge systems themselves, and supported by the wealth of relations involved in ceremonies. I truly believe that there is a language embedded within ceremony – continued practice of ceremony means a greater fluency in such a language. Engaging in pipe ceremonies and sweats provides more practice at this ‘language.’ Engaging in a variety of lodges and pipe ceremonies also provides a greater understanding of the variance of these ceremonies, of their protocols, and potentials for change. Finally, within our knowledge and wisdom located in our ceremonial structures, or in the connections they foster or create, must lie lessons that provide true equality. It is my belief that we have the resources we need resident within our ceremonies.

³⁴ wahpimaskwasis (Little White Bear) Janice Makokis, *nehiyaw iskwew kiskinowâtasinahikewina – paminiowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator*, (MA Thesis for the University of Alberta, 2005) [unpublished]. [Makokis, *Cree Women*] at 114.

Like I did, in my own ways as I started the work leading to this thesis, the next steps to this research is for me to come with tobacco. As a sacred medicine, offering tobacco signals an intention to access the “relational system of knowledge sharing” where much of our ceremonial teachings are resident.³⁵ In doing so, I am reaffirming a continued journey into understanding my relationship with the land around me, seeking to further a kinship with other beings, and inviting them to influence the deliberative actions that I will play a part in on such a research journey. It is the view of some Cree people that “Cree law relies upon protocols” in that it holds a “foundational importance of relationship between individuals and the Creator, other humans, the land and ‘nature’”.³⁶

A second journey would be to attend knowledge keepers within Cree communities to ask the questions reflected upon earlier in this thesis. While the questions of *can* (can ceremonies change? Can a woman attend ceremony without wearing a dress? Can menstruation protocols change?) are often met with fundamentalist positions, reframing these questions of *how* (how does change occur? how can I instigate change?) can lead to different answers from our knowledge keepers and ceremonial holders. While I acknowledge that reframing the questions may not resolve fundamental positioning, it may provide an opportunity for further exploration of these ideas. In my personal experience, the expressed fundamental positions often are loosened within the actual practice of ceremonies.

An integral step of this continuing methodology is sitting with women and girls to discuss ceremonialism and the gendered nature of them. As this voice is often erased or absent in our

³⁵ Claire Poirer, “Drawing Lines in the Museum: Plains Cree Ontology as Political Practice”, (2011) 53 *Anthropologica* 291 at 294.

³⁶ See Hadley Friedland, “Cree Legal Summary” 2012 *Indigenous Law Research Unit, Cree Legal Traditions Report (Aseniwuche Winewak Nation)* at 44. Online: < http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2012/12/cree_summary.pdf>

current educational discourses of ceremonial life, I am further curious to these experiences. I acknowledge my own privilege in my ceremonial journey to not having the same effects of protocol as my sisters do. I am further committed to seeking their knowledge. I am also seeking their consent on what parts of their voice and experience can be shared publicly in my examination.

Final Thoughts: Tracing Footsteps and New Pathways

I once asked Blackfoot teacher Duncan Grady about ceremonies, and their ability for adaptation. Like many Blackfoot peoples, Duncan is a tall one who is generous with his knowledge, and I still remember his tilted posture as he thought through my question, at some length. Then he said to me (I paraphrase here): “the elders and the ancestors, they love it when they see young people doing ceremonies. Even if they are making it (the ceremony) up! So, it is good when we do these things.” He then turned a bit and said, “of course, when we do ceremonies in the same way that have been done for generations, we are putting our feet in the same footprints as our ancestors have. And all the power that they did those ceremonies in, we are adding to that, and we are using that, when we choose to walk in those footsteps.”³⁷ All my relatives. Ekosi maka.

³⁷ Shared in a personal conversation at Whatshan Lake Lodge, near Nakusp, BC in June of 2007.

Bibliography

Amaskwacyi History Series, "History of Cree Language, Part 1." Online video clip. Youtube. Youtube, June 9, 2016. Accessed on December 9, 2016.

<https://www.youtube.com/watch?v=CpvuED_hJTM>

Anderson, Elizabeth. *Benevolent Grandfathers and Savage Beasts: Comparative Canadian Customary Law* (2010) 15 Appeal LJ 3

Anderson, Kim. 'Affirmations of an Indigenous Feminist' in Cheryl Suzack et al, eds, *Indigenous Women and Feminism: Politics, Activism, Culture* (Vancouver: UBC Press, 2010)

----. *A Recognition of Being: Reconstructing Native Womanhood* (2000) Second Story Press: Toronto.

Antaki, Mark. "The Turn to Imagination in Legal Theory: The Re-enchantment of the World?" (2012) 23 Law Critique 1

Aboriginal Peoples Television Network, "Feathers Ruffled after FSIN chief receives headdress from her community" (2015) online: APTN < <http://aptn.ca/news/2015/06/23/feathers-ruffled-fsin-chief-receives-headdress-community/>>

Asch, Jessica, Friedland, Hadley & Napoleon, Val. "A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution" online: (2015) Center of Excellence for Matrimonial Real Property < <http://coemrp.ca/wp-content/uploads/2015/12/Final-MRP-DR-Toolkit-Version-1.0.pdf> >

Borrows, John "(Ab)Originalism and Canada's Constitution" (2012) 58 Supreme Court Law Review 351;

----. *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010);

----. *Drawing Out Law* (Toronto: University of Toronto Press, 2010);

----. *Freedom and Indigenous Constitutionalism* (University of Toronto Press: Toronto, 2016);

----. "Heroes, Tricksters, Monsters & Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill L R 795;

----. "Indigenous Legal Traditions in Canada", (2006) online: Report for the Law Commission of Canada http://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-66-2006E.pdf;

----"Law as religion" (2016) Online: *The Immanent Frame: Secularism, religion and the public sphere*. <<http://blogs.ssrc.org/tif/2016/07/13/law-as-religion/>> ;

----. "Stewardship and the First Nations Governance Act" (2003) 29 Queen's Law Journal 103.

Caduto, Michael & Bruchac, Joseph. *Keepers of the Animals: Native American Stories and Wildlife Activities for Children* (Golden, Colorado: Fulcrum Publishing, 1991).

Canadian Broadcasting Corporation, “‘Magical Ingredient’: Hunters learn to tan hides using animal brains in Winnipeg”. (2016) Online: Canadian Broadcast Corporation <<http://www.cbc.ca/beta/news/canada/manitoba/animal-hide-brain-tanning-winnipeg-1.3518106>>

----. “Indigenous ceremony at University of Winnipeg sparks sexism debate” (June 11, 2015) online: CBC <<http://www.cbc.ca/news/canada/manitoba/indigenous-ceremony-at-university-of-winnipeg-sparks-sexismdebate-1.3123568>>

Charleson, Estella. “Making Spaces for Indigenous Law” (2015) online: JFK Law <<http://www.jfklaw.ca/making-space-for-indigenous-law/>>

Christie, Gordon. “Indigenous Legal Theory: Some Initial Considerations” in Benjamin J. Richardson, Shin Imai & Kent McNeal, eds., *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oxford: Hart, 2009) 195.

Cote, Charlotte. *Spirits of Our Whaling Ancestors: Revitalizing Makah and Nuu-chah-nulth Traditions* (Seattle: University of Washington Press, 2015).

Cunliffe, John and Reeve, Andrew. “Dialogic Authority” in 19: 3 Oxford Journal of Legal Studies 453

Darian-Smith, Eve. “Producing Legal Knowledge” in Eve Darian-Smith, ed, *Laws and Societies in Global Contexts* (Cambridge: CUP, 2013) 97

De Sousa Santos, Boaventura. “Beyond Abyssal Thinking” in *Epistemologies of the South: Justice Against Epistemicide* (Boulder: Paradigm, 2014)

Finley, Lucinda. “Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning.” 64 Notre Dame L.R. 886.

Fletcher, Matthew. “Rethinking the Role of Custom in Tribal Court Jurisprudence” (2007-2008) 13 Michigan Journal of Race and Law 57;

Friedland, Hadley. “Chapter 4: Wah-Ko-to-win: Laws for a Society of Relationships” in *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada*. (Ph.D. Dissertation for the University of Alberta, 2016). [Unpublished].

----. “Cree Legal Summary” 2012 online: in *Indigenous Law Research Unit, Cree Legal Traditions Report (Aseniwuche Winewak Nation)* at 44. <http://indigenoubar.ca/indigenoulaw/wp-content/uploads/2012/12/cree_summary.pdf>

----. “Reflective Frameworks: Methods for Accessing, Understanding, and Applying Indigenous Laws, 11 Indigenous Law Journal 1, at 8. [*Reflective Frameworks*]

----. The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saulteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns (LLM thesis, University of Alberta, 2009);

Friedland, Hadley & Napoleon, Val. “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015) 1:1 Lakehead Law Journal 16.

----. “An Inside Job: Engaging with Indigenous Legal Traditions through Stories,” 61:4 McGill L J 725

Foucault, Michel. *Power/Knowledge* (New York: Vintage, 1980).

Fuller, Lon. “Human Interaction and the Law, in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L. Fuller*, revised ed. (Portland: Hart Publishing, 2001)

----. *The morality of law* (New Haven: Yale University Press, 1964).

Gaudry, Adam. “Insurgent Research” (2011) 26:1 Wicazo Sa Review 113

Gray, Andrew. “Onion Lake and the Revitalisation of Treaty Six” (1997) online: *Honour Bound: Onion Lake and the Spirit of Treaty Six*. <http://www.iwgia.org/iwgia_files_publications_files/0143_Honour_bound.pdf>

Harari, Yuval Noah. *Sapiens: A Brief History of Humankind* (Toronto: McLennan & Stewart House of Canada, 2014)

Hart, H.L.A. *The Concept of Law* (1975; repr., Oxford: Oxford University Press, 1961)

Henderson, Sakej Youngblood. “The Split Head Resistance: Using Imperial Law to Contradict Colonial Law for Aboriginal Justice” in *More Will Sing Their Way to Freedom: Indigenous Resistance and Resurgence*, ed. Elaine Colburn (Halifax: Fernwood Publishing, 2015)

Irwin, Lee. “Walking the Line: Pipe and Sweat Ceremonies in Prison” (2006) 9:3 Nova Religio: The Journal of Alternative and Emergent Religions 48

King, Thomas. *The Truth about Stories: A Native Narrative*. (Toronto: House of Anansi Press Inc., 2003)

Korsmeyer, Carolyn. *Gender and Aesthetics: An Introduction* (New York: Routledge, 2004)

Ladner, Kiera. "Gendering Decolonization, Decolonizing Gender" online: (2008) Paper Presented at the 80th Annual Conference of the Canadian Political Science Association UBC June 2008. <<http://www.cpsa-acsp.ca/papers-2008/Ladner.pdf> >

Lee, Erica. "Skirting the Issue: A response and call to action", (2015), online: *Moontime Warrior*, <<https://moontimewarrior.com/2015/06/19/skirting-the-issue/>>

Larocque, Emma. "The Colonization of a Native Woman Scholar" in *Women of the First Nations: Power, Wisdom, and Strength*, ed Christine Miller and Patricia Chuchryk. (Winnipeg: University of Manitoba Press, 1996)

Lindberg, Darcy. "Engaging in Indigenous Laws: Therein Lies the Many Meanings of Witiskiwin", online: (April 1, 2016) Apr CBA Bar Talk. <<http://www.cbabc.org/BarTalk/Features/In-this-Issue/April-2016/Engaging-in-Indigenous-Laws>>

Lindberg, Tracey. "Critical Indigenous Legal Theory." (Ph.D dissertation with the University of Ottawa, Faculty of Law, 2007) [unpublished]

MacLeod, Neal. *Cree Narrative Memory: From Treaty to Contemporary Times* (Saskatoon: Purich Press, 2007)

Marcos, Sylvia. "Mesoamerican Women's Indigenous Spirituality: Decolonizing Religious Beliefs." 25: 2 *J of Feminist Studies in Religion* 25

Martin, Calvin. "Keepers of the Game: Indian-Animal Relationships and the Fur Trade" (Berkeley: University of California Press, 1978).

McAdam, Sylvia. *Nationhood Interrupted: Revitalizing Nehiyaw Legal Systems* (Saskatoon: Purich Publishing, 2015)

Meili, Diane. *Those Who Know: Profiles of Alberta Native Elders* (Edmonton: NeWest Press, 1991)

Milloy, John S. *The Plains Cree: Diplomacy and War, 1790 to 1870*, (Winnipeg: University of Manitoba Press, 1990)

Monture, Patricia. *Thunder in My Soul: A Mohawk Woman Speaks*. (Halifax: Fernwood Publishing, 2005)

Morales, Sarah. "Snu'uyulh: Fostering an Understanding of the Hul'Qumi'Num Legal Tradition." (Ph. D. Thesis: University of Victoria, Faculty of Law, 2014) [unpublished].

Napoleon, Val. "Ayook: Gitksan Legal Order, Law, and Legal Theory" (Ph.D. Dissertation, University of Victoria, Faculty of Law, 2009) [unpublished].

----. "Thinking About Indigenous Legal Orders." In René Provost & Colleen Sheppard, eds. *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013)

O'Donnell, Vivian & Wallace, Susan. *Women in Canada: A Gender-based Statistical Report: First Nations, Inuit and Métis Women*, online: (2011) Statistics Canada.
<www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.pdf.>

Overstall, Richard. "Encountering the Spirit in the Land: Property" in a Kinship Based Legal Order" in John McLaren, Andrew R. Buck, & Nancy E. Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005)

Pavlich, George. "Classical Natural Law" in *Law and Society Redefined* (Oxford: OUP, 2011)

Petersen, Hannah. "On Law and Music: From Song Duels to Rhythmic Legal Orders?" (1998) 41 *Commission on Legal Pluralism* 75

Pettipas, Katherine. *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994)

Poirer, Claire. "Drawing Lines in the Museum: Plains Cree Ontology as Political Practice", (2011) 53 *Anthropologica* 291

Postema, Gerald. "Implicit Law". *Law and Philosophy* 361

Preston, Richard J. *Cree Narrative: Expressing the Personal Meaning of Events* (Montreal: McGill-Queens University Press, 2002)

Promislow, Janna. *Towards a Legal History of The Fur Trade: Looking for Law at York Factory, 1714-1763* (LLM Thesis, York University, 2004) [unpublished]

Pooyak, Eli. "How the Cree Acquired Horses" based on an interview conducted at Sweetgrass Cree Nation in Saskatchewan, on March 18, 1974. Extracted online at:
<http://ourspace.uregina.ca/bitstream/handle/10294/1610/IH-074.pdf?sequence=1>. [Accessed on March 22, 2016].

Raz, Joseph. *The Morality of Freedom* (Chicago: Clarendon Press, 1986)

Razack, Sherene. "Gendered Racial Violence and Spatialized Justice: the Murder of Pamela George" (2000) 15 *Canadian Journal of Law and Society* 91

Roan, Wayne & Waugh, Earle, "Meanings of Sacred Pipe" (2004) online: *Nature's Laws*.
<http://wayback.archive-it.org/2217/20101208172609/http://www.albertasource.ca/natureslaws/traditions/ritual_meanings_pipe.html>.

Roughan, Nicole. *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (Oxford: Oxford University Press, 2013)

Sacred Stories of the Sweet Grass Cree. (1930) Ottawa: Printer to the King's Most Excellent Majesty

Carol Smart, *Feminism and the Power of Law* (New York: Routledge, 1989)

Simpson, Leanne. "Anticolonial Strategies for the Recovery and Maintenance of Indigenous Knowledge" 28:3 & 4 *The American Indian Quarterly* 373

Snyder, Emily. "Representations of Women in Cree Legal Educational Materials: An Indigenous Feminist Legal Theoretical Analysis." (Ph.D. Dissertation, University of Alberta, Department of Sociology., 2014) [Unpublished].

----. "Indigenous Feminist Legal Theory" (2014) *Canadian Journal of Women and the Law* 26:2;

----. *Gender and Indigenous Law, A Report prepared for the University of Victoria Indigenous Law Unit, the Indigenous Bar Association, and the Truth and Reconciliation Commission of Canada*, online: (2013) <<http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf>>

Snyder, Emily, Napoleon, Val & Borrows, John. "Gender and Violence: Drawing on Indigenous Legal Resources" (2015) 48:2 *UBC L Rev* 593.

Speight, Anne. *The Shadows of the Neutrals and Open Memory's Door* (Coronation, Ab: Old Timer's Centennial Book Committee, 1967)

Tamanaha, Brian. "An Analytical Map of Social Scientific Approaches to the Concept of Law" (1995) 15 *Oxford Journal of Legal Studies* 501

Taylor, Drew Hayden. "The Shame of Skirt-Shaming" (2016) Online: *Windspeaker*, <<http://www.windspeaker.com/blogs/the-urbane-indian-drew-hayden-taylor-945801/entry/4/>>

Twining, William. *Globalisation and Legal Theory* (New York: Cambridge University Press, 2000)

Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995)

Umista, "the Story of the Masks", Retrieved online at http://www.umista.ca/masks_story/en/ht/potlatch02.html. (Last accessed on April 1, 2016).

wahpimaskwasis (Little White Bear) Janice Makokis, *nehiyaw iskwew kiskinowâtasinahikewina – paminisowin namôya tipeyimisowin: Cree Women Learning Self Determination Through Sacred Teachings of the Creator*, (MA Thesis for the University of Alberta, 2005) [unpublished]

Webber, Jeremy. "The Grammar of Customary Law" 54 *McGill LJ* 579

----. "Legal Pluralism and Human Agency" (2006) 44 Osgoode Hall L.J. 167

----. "Public Law Dimension of Indigenous Property Rights" in *The Proposed Nordic Saami Convention: National and International Dimension of Indigenous Property Rights*, eds Nigel Banks and Timo Koivurova (Portland:Hart Publishing, 2013)

Wesley, Dana. "Reimagining Two-Spirit Community: Critically Centering Narratives of Urban Two-Spirit Youth", (MA Thesis, Queen's University, 2015)

White, James Boyd. *Living Speech: Resisting the Empire of Force* (Princeton: Princeton University Press, 2006)

Williams, Robert. *Linking arms together: American Indian treaty vision of law and peace, 1600-1800*. (Oxford: Oxford University Press, 1997).

----. "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color" (1987) 5 *Law and Inequality* 103.

Williamson, Tara. "Of Dogma and Ceremony", (2013) online: *Decolonization: Indigeneity, Education and Society*. < <https://decolonization.wordpress.com/2013/08/16/of-dogma-and-ceremony/>>

Wilson, Shawn. *Research is Ceremony: Indigenous Research Methods* (Black Point, N.S.:Fernwood Publishing, 2008).