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Law and Humanities: A Field Without a Canon

Sara Ramshaw¹

Originating from the ancient Greek, *κανών*, *kanōn*, canons are measuring rods, or standards. They are intrinsic to the establishment of a “field” of intellectual thought for they define the parameters, about which there is certain level of agreement, as to the importance of certain texts and core issues at stake.² In this sense, canonization invites community and consensus. Those of us who consider ourselves “law and humanities” scholars, in other words, do so only because there have been key texts and authors around which/whom we identify, thereby circumscribing law and humanities as a distinctive field of inquiry.

The exercise of identifying a canon has inherent value, as Seron et al point out in relation to the “law and society canon”:

¹ Associate Professor, University of Victoria Faculty of Law. I wish to thank Gillian Calder, Maneesha Deckha, Rebecca Johnson, Freya Kodar, Pooja Parmar and Sundhya Pahuja for insightful conversations and comments on earlier drafts, as well as the anonymous reviewer. Thanks also to Tori Harker and Erika Richards for research assistance.

² Scott Cummings, “Law and Social Movements: Reimagining the Progressive Canon”, *Wisconsin Law Review* (2018), 441-501, p. 443.

... defining a canon, like defining law itself, requires not only measurement and judgment but imagination. If in fact a canon is something of a ‘spectral figure’ (Mawani 2012), a moving target that new scholarship strives both to join and to displace, then perhaps the religious connotations of the term canon are more apt than one might initially think: Both mapping and countermapping enact a faith that law and society may contribute to the perhaps unreachable ideal of a just society.³

That said, canons are also, by their very nature, exclusionary.⁴ Important voices and texts, especially outsider perspectives such as feminist and Indigenous voices, are always left out of or fall below the requisite standard for elevation to the status of canonical belonging. Judith Resnick wrote about this in relation to feminist voices and the “law and literature canon” almost 30 years ago:

The question is that of the canon: what (and who) is given voice; who privileged, repeated, and invoked; who silenced, ignored, submerged, and marginalized. Law and literature have shared traditions – of silencing, of pushing certain stories to the margin and of privileging others. An obvious example in literature

³ Carroll Seron, Susan Bibler Coutin, and Pauline White Meeusen, “Is There a Canon of Law and Society?”, *Annual Review of Law and Social Science* 9 (2013), 287–306, p. 300.

Gillian Calder notes that canons are also colonial in nature. Unfortunately, I do not have space in this short Commentary to explore this issue further.

⁴ Marsha Kindall-Smith, Constance L. McKoy and Susan W. Mill, “Challenging exclusionary paradigms in the traditional musical canon: Implications for music education practice”, *International Journal of Music Education* 29(4) (2011), 374 – 386.

is the exclusion of certain books from the canon of the ‘great books.’ In law, white men have similarly enjoyed a place of power, speaking as if for us all, while women and minorities have been excluded-precluded from being judges, jurors, lawyers, and at times, even witnesses. We women might have been the subject of the discussion, as defendants or as property, but we were not the authors or the speakers; we have been closed out of the hierarchy of holding the power to write the canon.⁵

Canonization is thus not without controversy. It invites us to ask who has the authority to determine or set the standard and what criteria matters for “deciding what counts as ‘foundational texts that exemplify, guide, and constitute a discipline’”⁶

This short Commentary imagines law and humanities not as a “canon” per se, but as a “field without a canon”;⁷ or a canon that resists canonization. Arts-based practices utilized in legal research and teaching expose the law and humanities “canon” to its dual (and somewhat contradictory) nature: ever straining towards a pre-established archive, it must also leap ahead fearlessly to properly defy disciplinary boundaries and move the field beyond siloed thinking, which, if I understand it correctly, is one of the preliminary aims of law and humanities scholarship and pedagogy. Arts-based practices consist not of a stable collection of set texts, but instead signify a process of experimentation that is ever in flux and alive to possibility. It

⁵ Judith Resnik, “Constructing the Canon”, *Yale Journal of Law and Humanity* 2 (1990), 221-230, p. 221 (citations omitted).

⁶ Op. cit., p. 442 (citation omitted).

⁷ I owe this phrase to Sundhya Pahuja.

is this process of discovering new arts-based practices that ensures law and humanities remains a vibrant, yet ever-changing, field for years to come.

To that end, in the sections to follow, I will survey a sampling of outsider approaches to law and humanities scholarship and pedagogy, those more concerned with process than product, and which are coming from outside of or beyond the more traditionally conceived canon of law and humanities. These approaches fall into two broad categories: (1) arts-based practices in legal scholarship or research; and (2) arts-based practices in legal pedagogy.⁸ A uniting feature of both these approaches is that they are being undertaken and explored by Canadian legal scholars at a small law school on Vancouver Island on the West Coast of Canada.

The reason for the focus on the University of Victoria Faculty of Law (UVic Law)⁹ is twofold. Firstly, Canadian law and humanities scholars generally do not fair particularly well when it comes to foundational law and humanities texts (the “canon”?). A quick glance at the table of contents of existing law and humanities collections uncovers very few Canadian and Indigenous voices.¹⁰ This was similarly noted by Gary Watt in his review of Sarat et al’s

⁸ A note on terminology: I am using the term “arts-based practices” as opposed to “arts and humanities-based practices” mainly because the latter is quite clunky. Also, I view both arts and humanities as overlapping and complementary, as an attempt to make sense of humanity and human experience. However, the emphasis on “arts” allows for a more targeted engagement with theatre, dance, cinema, music, visual arts, etc., upon which many of the approaches in this Commentary are focused.

⁹ For more information, see <https://www.uvic.ca/law/index.php>.

¹⁰ See, for example, Sarat et al’s *Law and the Humanities: An Introduction* (Cambridge:

Teaching Law and Literature (2011),¹¹ speaking not only about the absence of Canadian law and humanities scholars, but also those in the United Kingdom (UK) as well.¹² Watt, as one of the founding co-editors of the UK journal of *Law and Humanities* (along with Paul Raffield), has done much to draw attention to the work being done in the UK in relation to law and humanities scholarship. However, no equivalent journal or edited collection has yet to come out of Canada. Accordingly, I am using this Commentary to draw attention to some of the interesting and experimental approaches to law and humanities scholarship and teaching coming out of Canadian law schools, particularly UVic Law; work that would undoubtedly be ignored or overlooked if a more traditional canonical approach to law and humanities scholarship is encouraged.

The focus on UVic Law also stems from the impressive concentration of law and humanities scholarship and pedagogy in such a small institution. Approximately half the faculty has written on or engaged with arts-based practices in their academic research and teaching at some point in their careers, and almost all have taught on the Legal Process course (LAW 106), which introduces newly-arrived law students to legal institutions, skills and theories through various arts-based practices.¹³ Moreover, as the following will demonstrate, these scholars exhibit a

Cambridge University Press, 2010) in which but two of 20 chapters are written by scholars in Canadian institutions.

¹¹ Gary Watt, “A review of *Teaching Law and Literature*, edited by Austin Sarat, Catherine O. Frank and Matthew Anderson”, *Law & Literature* 26(2) (2014), 231-247.

¹² *Op. cit.*, p. 244.

¹³ Legal Process is a 2-week intensive course that all first year law students must take when they arrive at UVic Law. Arts-based practices figure highly in this course, including the use of

robust dedication to experiential learning and a commitment to community engagement and justice. Values of openness, compassion and social responsibility guide not only the research being undertaken at UVic Law, but also the pedagogical approaches and engagement with those outside the law school.¹⁴

As a fairly new faculty member (I arrived in July 2017), I can only speculate as to why this is the case. The faculty and staff employed at the institution are undoubtedly passionate, adventurous and creative – but this is also the case at many other law schools throughout Canada (and the world). Perhaps it is the fact that research and teaching takes place at UVic Law in a pluralistic and transsystemic academic environment, one that is strongly committed to interdisciplinary approaches to understanding law. UVic Law’s long-standing commitment to pluralist scholarship and pedagogy ultimately culminated in the establishment of a world-leading joint degree program in Canadian Common Law (Juris Doctor (JD)) and Indigenous Legal Orders (Juris Indigenarum Doctor (JID)) (JD/JID), which welcomed its first cohort of students in September 2018. JD/JID students take transsystemic courses in which Canadian common law is taught directly beside one or more Indigenous legal traditions, such as Gitksan

theatre to introduce students to Alternative Dispute Resolution (ADR); the use of soundscapes in Downtown Victoria to introduce students to living law; and a guided walk up a local mountain (PKOLS) to introduce students to Indigenous laws.

¹⁴ Due to space limitations, I am unable to detail all the arts-based approaches to community engagement being carried out at UVic Law. Two examples include Testify: Indigenous laws + the Arts (see <http://testifyindigenous.ca>) and the Lawyers on Stage Theatre (LOST), whose Director is UVic Law Professor Emeritus Andrew Pirie and cast members include UVic Law faculty and students. All profits from the LOST shows go to local charities.

Law, Anishinaabe Law, and Cree Law, to name a few examples.¹⁵ These laws often make themselves known through arts-based practices, such as storytelling, songs, ceremonies, beading, drumming, and visual art. Thus, as will be detailed below, Law and Humanities as a “field without a canon” is best typified by the research and teaching undertaken at UVic Law, as that which resists canonization in an on-going practice or project of plurality and experimentation.

I. Arts-Based Practices in Legal Research

The research and scholarship of Rebecca Johnson¹⁶ is but one example¹⁷ of cutting edge law and humanities research being carried out at UVic Law. Johnson is probably best known for

¹⁵ For more on the transsystemic nature of the teaching in the JD/JID program, see Sara Ramshaw, “Against Exclusion: Teaching Transsystemically, Learning in Community” (2019) 30(2) *Law and Critique* 131-136.

¹⁶ For more information, see <https://www.uvic.ca/law/facultystaff/facultydirectory/rebeccajohnson.php>.

¹⁷ Other examples include: Brad Byran, “Legality Against Orality” *Law, Culture, and the Humanities* 9(2) (2013), 261-74; Patricia Cochran, *Common Sense and Legal Judgment: Community Knowledge, Political Power and Rhetorical Practice* (Montreal and Kingston: McGill-Queen’s University Press, 2017); Maneesha Deckha, “Pain, Pleasure, And Consenting Women: Exploring Feminist Responses to S/M and its Legal Regulation in Canada Through Jelinek’s *The Piano Teacher*” *Harvard Journal of Law & Gender* 30 (2007), 425-459; Robert Howell (and Roch Ripley), “The Interconnection of Intellectual Property and Cultural Property (Traditional Knowledge)” in Catherine Bell and Robert K. Paterson, eds, *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC Press, 2009), 223-

her writings on law and film/popular culture.¹⁸ Her more recent scholarship persists in its concern with stories and storytelling through a focus on Indigenous laws.¹⁹ As mentioned

246; Freya Kodar, “*Til Debt Do Us Part: Reality TV and the Financial Literacy Regulatory Project*” in Peter Robson and Jessica Silbey, eds, *Law and Justice on the Small Screen* (Oxford: Hart Publishing, 2012) 211-27; Val Napoleon (with Hadley Friedland), “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” *McGill Law Journal* 61(4) (2016), 725 – 754; Pooja Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (New York: Cambridge University Press, 2015); and Jeremy Webber (with Hester Lessard and Rebecca Johnson), eds., *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: UBC Press, 2011).

¹⁸ For example, Rebecca Johnson, “Reimagining ‘The True North Strong and Free’: Reflections on Going to the Movies with James Boyd White” in Julen Etxabe and Gary Watt, eds, *Living in a Law Transformed: Encounters with the Works of James Boyd White* (Ann Arbor: Michigan Publishing, 2014) 173-187; Rebecca Johnson, “Television, Pleasure and the Empire of Force: Interrogating Law and Affect in *Deadwood*” in Peter Robson and Jessica Silbey, eds., *Law and Justice on the Small Screen* (London: Hart, 2012) 33-61; Rebecca Johnson (with Ruth Buchanan), “Strange Encounters: Exploring Law and Film in the Affective Register”, *Studies in Law, Politics, and Society* 46 (2009), 33-60; Rebecca Johnson (with Ruth Buchanan), “Getting The Insider’s Story Out: What Popular Film Can Tell Us About Legal Method’s Dirty Secrets” *Windsor Yearbook of Access to Justice* 20 (2001), 87-110. For a full list of her publications, see <https://www.uvic.ca/law/facultystaff/facultydirectory/rebeccajohnson.php>.

¹⁹ See, for example, Rebecca Johnson and Lori Groft, “Learning Indigenous Law: Reflections on Working With Western Inuit Stories” *Lakehead Law Journal* 2(2) (2017), 117-144; Rebecca Johnson, “Justice and the Colonia Collusion: Reflections on Stories of Intercultural Encounter

above, arts-based approaches to Indigenous laws is a theme that flows through much of the research undertaken at UVic Law. The scholarship and methods employed by Val Napoleon and John Borrows are telling examples of indispensable law and humanities scholarship from beyond the canon. Both scholars see value in viewing Indigenous stories and traditions as a form of legal precedent, as Borrows explains:

How does a court discover First Nations law in order to receive it into Canadian law? First Nations law originates in the political, economic, spiritual and social values expressed through the teachings and behaviour of knowledgeable and respected individuals and elders. These principles are enunciated in the rich stories, ceremonies and traditions of the First Nations. Such stories articulate the law in First Nations communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution. Some of these narratives pre-date the Common law, have enjoyed their effectiveness for millennia and have yet to be overruled or distinguished out of existence.²⁰

Val Napoleon and Hadley Friedland have further developed this methodology, engaging with publicly available Indigenous resources such as stories, narratives and oral histories through

in Law, Literature, Sculpture and Film” *No Foundations – An International Journal of Law and Justice* 9 (2012), 68-96.

²⁰ John Borrows, “With or Without You: First Nations Law (in Canada)”, *McGill Law Review* 41 (1996), 629 at pp. 646-647. See also, John Borrows, *Law’s Indigenous Ethics* (Toronto: University of Toronto Press, 2019).

common law tools such as case analysis and synthesis.²¹ This method has been honed and expanded by those working in UVic Law's Indigenous Law Research Unit (ILRU), a dedicated research unit committed to the rebuilding and renaissance of Indigenous laws.²² Indigenous legal scholars such as Sarah Morales,²³ David Milward,²⁴ and Alan Hanna²⁵ continue this important work at UVic Law.

²¹ Val Napoleon and Hadley Friedland, "An Inside Job: Engaging With Indigenous Legal Traditions Through Stories", *McGill Law Review* 61(4) (2016), 725.

²² See, for example, Val Napoleon and Hadley Friedland, "Gathering the Threads: Developing a Methodology For Researching and Rebuilding Indigenous Legal Traditions" *Lakehead Law Journal* 1(1) (2015-2016), 16; Hadley Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018). For a video explaining the methodology by Hadley Friedland, see <https://www.youtube.com/watch?v=soXGSaRVq3s>. See also, ILRU, *Gender Inside Indigenous Law Toolkit* (2016), <https://www.uvic.ca/law/assets/docs/ilru/Gender%20Inside%20Indigenous%20Law%20Toolkit%20October%202017.pdf>.

²³ See Sarah Morales, "'a 'lha'tham-* The Re-Transformation of s. 35 through a Coast Salish Methodology", *National Journal of Constitutional Law* 37(2) (2017), 145-176; and "Locating Oneself in One's Research: Learning and Engaging with Law in the Coast Salish World", *Canadian Journal of Women and the Law* 30(1) (2018), 144-167.

²⁴ See, for example, David Milward (with Charles Ferguson), *The Art of Science in the Canadian Justice System: A Reflection on my Experiences as an Expert Witness* (New York: Taylor & Francis, 2017).

²⁵ See, for example, Alan Hanna, "Reconciliation Through Relationality in Indigenous Legal

Other examples abound as to arts-based research practices at UVic Law, not least the non-human/more-than-human law and humanities scholarship being undertaken in relation to Environmental Law²⁶ and Animal Law.²⁷ In the interests of space, I would like to focus on one other creative collaboration embarked upon by several feminist UVic Law academics as an exercise in embodied research and arts-based research and collaboration. “Postcards from the Edge (of Empire)” is a text written collaboratively by Elizabeth Adjin-Tettey, Gillian Calder, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney and Margot Young, which utilises the “scrapbook method” as an alternative form of legal research. According to the authors:

The potential of arts-based research to destabilize hegemonic systems, processes, and worldviews offers an opportunity to create a post-colonial and

Orders” (2019) 56(3) *Alberta Law Review* 817; and “Spaces for Sharing: Searching for Indigenous Law on the Canadian Legal Landscape” (2018) 51(1) *University of British ColBC L Rev* 105.

²⁶ For example, Deborah Curran et al, eds, *Out There Learning: Critical Reflections on Off-Campus Study Programs* (Toronto: University of Toronto Press, 2018).

²⁷ For example, Maneesha Deckha, “Humanizing the Nonhuman: A Legitimate Way for Animals to Escape Juridical Property Status?” in John Sorenson and Atsuko Matsuoka, eds, *Critical Animal Studies: Toward a Trans-Species Social Justice* (London: Rowman & Littlefield, 2018), 209-233; and “Is Multiculturalism Good for animals?” in Luis Cordeiro Rodrigues and Les Mitchell, eds, *Multiculturalism, Race and Animals - Contemporary Moral and Political Debates* (London: Palgrave, 2017) 61-93.

critical lens through which we may view and validate non-Western and non-dominant cultures and epistemologies. This critical approach to scholarship aims at promoting action and social change in non-patronizing ways by destabilizing Eurocentric values, conventions and knowledge systems while broadening the scope of what constitutes legitimate systems and forms of knowledge.²⁸

The resultant text offered a rich discussion of arts-based legal scholarship that also included related information on the social history of postcards, Boal's Theatre of the Oppressed²⁹ and

²⁸ Elizabeth Adjin-Tettey, Gillian Calder, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney, and Margot Young "Postcards from the Edge (of Empire)", *Social and Legal Studies* 17(1) (2008) 5-38, p. 9.

²⁹ Inspired by fellow Brazilian, Paulo Freire's Pedagogy of the Oppressed, Boal proposed a method that, through a series of exercises, games and techniques,

transforms the notion of theatre from one in which the spectator no longer delegates power to characters on stage to think or act in their place, but is freed to think and act for themselves. The theatrical act is thus experienced as conscious intervention, as a rehearsal for social action rooted in a collective analysis of shared problems It is in this manner, theatre as a rehearsal for transformation, that the relationship between equity, law and performance begins to emerge.

Gillian Calder, "Performance, Pedagogy and Law: Theatre of the Oppressed in the Law School Classroom" in Zenon Bankowski and Maksymilian Del Mar, eds, *The Moral Imagination and the Legal Life: Beyond Text in Legal Education* (London and New York: Routledge, 2016), 215 – 254, p. 224.

Tableau Drama,³⁰ feminist politics, performativity and embodiment in law, to name but a few of the topics covered. Feminist methodology and collaboration were performed by these scholars through the use of postcards, scrapbooking and image theatre, once again evidencing the exciting and innovative arts-based research taking place at UVic Law.³¹

II. Arts-Based Practices of Legal Pedagogy

Arts-based pedagogical practices are taken extremely seriously at UVic Law. Gillian Calder, currently the Associate Dean, Academic and Student Relations, is an educator who is not afraid to be innovative and daring in the teaching methods she employs. Calder has taught Constitutional Law, Family Law, Legal Process, and Sexual Orientation and the Law, among other courses, using Boal's Theatre of the Oppressed,³² play-reading,³³ Indigenous law case

³⁰ According to the authors, "One component of the workshop had been the creation of tableaux, visual images using the bodies of other participants as sculptural material in order to convey what they would otherwise use words to convey": Adjin-Tettey et al, "Postcards", p. 14.

³¹ For some examples of innovative arts-based graduate research taking place at UVic Law, see Julie Lassonde, *Performing Law* (LLM Thesis, 2006), <https://dspace.library.uvic.ca/bitstream/handle/1828/117/LassondeFinal2.pdf?sequence=3&isAllowed=y>; and Manpreet (Preeti) Kaur Dhaliwal, *Re-embodiment Jurisprudence: Using Theatre and Multimedia Arts-Based Methods to Support Critical Thinking, Feeling and Transformation in Law* (LLM Thesis, 2017), <https://dspace.library.uvic.ca:8443/handle/1828/8025>.

³² See above. Calder, "Performance, Pedagogy and Law".

³³ Gillian Calder, "Guantánamo: Using a Play-reading to Teach Law" *Canadian Theatre*

briefing method,³⁴ dance,³⁵ games,³⁶ and film.³⁷ Calder utilises arts-based pedagogies in the law school classroom to get students “‘out of their heads’ and ‘into their bodies’”,³⁸ pushing them to “‘experience the power of law using experiential, non-textual learning’”.³⁹ Calder’s arts-based pedagogical practices asks students to reflect on what is missing in traditional legal learning and “‘identify how they have had inadequate opportunities to develop empathetic skills in their legal education’”.⁴⁰ Ultimately, what Calder strives to explore in her teachings is “‘what the power of art in a legal education has the potential to do’”.⁴¹

Review 142 (2010), 44-49.

³⁴ Gillian Calder, “Indigenous Ways of Being and Knowing (A Try): An Exercise in Family Law and Sex-O at UVicLaw”, <https://reconciliationsyllabus.wordpress.com/author/gilliancalder/>.

³⁵ Gillian Calder (with Sharon Cowan), “Re-imagining Equality: Meaning and Movement” *Australian Feminist Law Journal* 29 (2008), 109-130.

³⁶ Gillian Calder (with Suzanne Bouclin and Sharon Cowan), “Playing Games with Law” in *The Arts and the Legal Academy: Beyond Text in Legal Education*, Zenon Bankowski, Maksymillian Del Mar and Paul Maharg, eds. (Ashgate, 2013), 69-85.

³⁷ Gillian Calder, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” *Canadian Journal of Women and the Law* 21(1) (2009), 55-89.

³⁸ Calder et al, “Playing Games”, p. 78.

³⁹ *Op. cit.*, p. 80.

⁴⁰ Calder, “Guantánamo” p. 47.

⁴¹ *Op. cit.*, p.48.

Film also plays a large role in the UVic Law classroom.⁴² In a Special Issue of the *Canadian Journal of Women and the Law* on the topic of feminism, law, and film,⁴³ Guest Editors, Gillian Calder and Rebecca Johnson, put out a call to feminist colleagues, asking them to tell stories about the way they have used film in their teaching. UVic Law professors, Elizabeth Adjin-Tettey and Freya Kodar responded by explaining how film can be a useful tool for teaching trespass torts as a form of protection for individual autonomy and dignity.⁴⁴ In particular, they looked to the documentary film, *The Sterilization of Leilani Muir* (1996) to teach students about the case of *Muir v Alberta*,⁴⁵ which involved the unlawful sterilisation of Leilani Muir at the age of fourteen. According to Adjin-Tettey and Kodar, “[s]imply reading texts that describe experiences and realities, particularly written from places of privilege such as the Bench and academia, ‘risks distancing ... readers from the issues and thereby failing to engender empathy

⁴² Of note, Maneesha Deckha has consciously refrained from showing films in her Animals, Culture and Law class because of how animals are brutally treated in routine animal-use industries. She has written about this dilemma in an invited commentary for the Films for the Feminist Classroom website: http://ffc.twu.edu/issue_9-1/rev_Deckha_9-1.html.

⁴³ *Canadian Journal of Women and the Law* 21(1) (2009).

⁴⁴ Elizabeth Adjin-Tettey and Freya Kodar, “Using Film in the Classroom: The Call and Responses”, *Canadian Journal of Women and the Law* 21(1) (2009), 197-199, p. 197. See also Elizabeth Adjin-Tettey and Freya Kodar, “Film as a Complement to the Written Text: Reflections on Using *The Sterilization of Leilani Muir* to Teach *Muir v. Alberta*” *Alberta Law Review* 48(3) (2011), 615-29.

⁴⁵ *Muir v Alberta* (1996), 36 Alta. L.R. (3d) 305, 179 A.R. 321, 132 D.L.R. (4th) 695 (Q.B).

for the marginalized'.⁴⁶ The documentary film, in contrast, enabled Muir to speak in her own voice and, according to the authors,

The images and voices give us the opportunity to humanize her and the others who were sterilized by the state. The visual images and the viewing intimacy combine to provide 'an entry point into the lives of people at the margins [and allow the audience to empathize with them] in ways not possible with the use of text only'. The documentary leaves a much more lasting impression on students than might otherwise have been the case if we read only the conventional texts.⁴⁷

Arts-based legal pedagogical practices thereby have the power to challenge "hegemonic processes about teaching and learning law" and "infuse a human element"⁴⁸ into legal texts and cases.

As one of the most prominent law and film scholars in Canada and beyond, it comes as no surprise that Rebecca Johnson uses film in her law school teaching. As Buchanan and Johnson note, "there is much to learn by taking cinematic portrayals of law very seriously, not as representations of the 'truth' of law, but as analogies for how law itself operates in constructing truth".⁴⁹ One of the courses Johnson teaches at UVic Law is Inuit Law and Film (LAW 339).

⁴⁶ Adjin-Tettey and Kodar, "Using Film", p. 198 (citing Adjin-Tettey et al., "Postcards", p. 9).

⁴⁷ Op.. cit., p. 199 (citing Adjin-Tettey et al., "Postcards", p. 9).

⁴⁸ Op.. cit., p. 199.

⁴⁹ Rebecca Johnson and Ruth Buchanan, "Getting the Insider's Story Out: What Popular Film Can Tell Us about Legal Method's Dirty Secrets", *Windsor Yearbook on Access to Justice* 20 (2001), 87-110, p. 88.

Film is utilized in this course as a form of transsystemic legal pedagogy, as an “attempt to put Canadian and Inuit legal orders into engagement with each other”.⁵⁰ In this course, students

... explore the various aspects of storytelling in cultural tales that seek to persuade us about different ways of understanding law, justice, gender, community and nation. To what extent do these stories help make visible differing legal orders, or differing cultural visions of the role of law in society? To what extent do these narrative explanations of the North conflict or accord with Western/common law socio-legal orders? How do different theories of law, storytelling and rhetoric help us understand these relationships?⁵¹

Arts-based legal pedagogies thus teach students how “sight and sound are integrated into various understandings of law and justice (and truth)” and the “the relationship of the reader/listener/spectator to the object of persuasion”.⁵²

⁵⁰ Rebecca Johnson, “Inuit Law and Film”, <https://rebeccaj63.wordpress.com/inuit-law-and-film/>.

⁵¹ Op. cit.

⁵² Op. cit.

Many other UVic Law faculty members employ arts-based legal pedagogies. See, for example, John Borrows, “Learning from the Land: Outdoor Indigenous Legal Education”, *Windsor Yearbook on Access to Justice* 32 (2016), 1-27; Freya Kodar (with Gail Henderson, Anna Lund, Clayton Bangsund, Carol Liao and Shanthi Sente), “Reconciliation in the Corporate Commercial Classroom”, *Lakehead Law Journal* 2(1) (2016), 49-62; Freya Kodar, “Responding to the TRC in the First Year Tort Law Classroom”, posted on *reconciliationsyllabus: a TRC-inspired gathering of materials for teaching law* (January, 26 2016), <https://reconciliationsyllabus.wordpress.com/2016/01/26/responding-to-the-trc-in-the->

The utilization of arts-based pedagogical practices at UVic Law in relation to student assessment also bears mentioning. As part of the University of Victoria's 2019 Ideafest Festival, which showcases innovative research being carried out by faculty, students and staff from across the university, UVic Law hosted an event entitled, "Reimagining Justice: Art, Law and Social Change".⁵³ For the duration of the festival (March 4-8, 2019), the UVic Law moot court room was transformed into an interactive art installation, showcasing various creative projects that had been handed in over the past several years by students in courses such as Criminal Law, Business Associations, Family Law, Constitutional Law, and Sexual Orientation and the Law.⁵⁴ Gillian Calder explains the purpose behind arts-based assessment practices in law school, and this exhibit more generally:

Part of what we have been thinking and talking about is how evaluation and iterative learning are done at law school. How do we bring deep learning to our students in the kinds of assignments that they have the opportunity to do? How much of who students are is formed by what they go on to do? How much of law involves creativity, imagination and empathy? How do we train those skills? What teachers have always done is to find opportunities with students,

[first-year-tort-law-classroom/](#); and Freya Kodar, "Pedagogical Reflections on Teaching Insite" *Constitutional Forum* 19 (2011), 135-137.

⁵³ For more information, see <https://www.uvic.ca/ideafest/events/events/law.html>.

⁵⁴ The Exhibition Catalogue can be found here: <https://rebeccaj63.files.wordpress.com/2019/03/reimagining-justice-exhibition-catalogue-final.pdf>.

when they are doing assignments or in their exams in their courses, to answer questions in ways that the questions demand.

Most commonly in law, that is done through written answers, essays, and exams. But sometimes the question can be best answered by drawing on some other form. What you have in the room is a sampling of some of those. ... We are going to walk around and talk with you about various projects. We invite you to ask questions, and to interrogate us about our experiences as teachers. To ask us how we hold a paper and a project side by side. To ask us more about the learning we have needed to do in order to feel able evaluate these different kinds of engagements.⁵⁵

When asked about her experience of performing her Family Law assignment (in front of her classmates) through the medium of improvised dance, law student, Kristen Lewis, answered with the following:

... the opportunity to do something other than just write a paper helps me to understand how Family Law impacts children. And it helped me to understand how Family Law impacts my own body. I believe this will make me, as a Family Law lawyer, able to see some new possibilities for others. When I read child protection cases, I noticed the gestures that would come up in my body as I read them. In my first year of law school, when I started to get sad as I read cases, I would just compartmentalize the work. When it came to family law, I would just get very sad. I would take 5 minutes to cry and then go back to the case and

⁵⁵ For a transcript of this gallery walk, see <https://rebeccaj63.wordpress.com/2019/03/31/ideafest-the-gallery-walk/>.

read again. So instead of pathologizing my emotional reactions to the cases I decided that I would use body gestures to amplify the reactions I have to the material in the cases. And that helped me get stronger. It is not like I want to be able to handle some of the things that the body is not built to handle: the horror of these cases. To be able to handle those things would become problematic. But dancing gave me the strength so that instead of being numb or just crying on the floor, I could practise having this fluid movement with my body that would let me see a lot more into family law cases. I don't think that end product would have been possible without the dance.⁵⁶

As the above evidences, the arts-based practices in teaching and assessment taking place at UVic Law⁵⁷ have the ultimate goal of instilling empathy, creativity and critical thinking in their graduates.

⁵⁶ Op. cit.

⁵⁷ Other examples of innovative arts-based pedagogical practices at UVic Law include Andrew Newcombe's use of dance in First Year Contracts (LAW 105) and the creative projects submitted for Brad Bryan's Business Associations (LAW 315). I myself also allow for creative projects to be submitted as 40% of the Family Law (LAW 322) grade and have, in the past few years, had students submit paintings, photographic essays, children's stories, carvings, play scripts, short stories, songs and music, poetry, improvised dance performances, etc. One further example of an innovative arts-based pedagogical practice is the improvisational "game piece", *Hydra*, which I helped develop. *Hydra* is a creative legal advocacy training tool that aims to inspire creativity, criticality, and ethics in the lawyers of tomorrow. For more information, see: Sara Ramshaw, Adnan Marquez-Borbon and Seamus Mulholland, "Hydra: A Creative Tool for Critical Legal Advocacy and Ethics" (2017) 12(1) *Critical Studies in Improvisation*.

III. Conclusion

This Commentary attempted to rethink law and humanities as a field without a canon, or as a non-canonical canon. Stressed was the importance of arts-based approaches to/in law and not a particular set of legal texts. To approach is to never arrive, to never close off or shut down possibility. Arts-based practices in law are concerned with process, not end product. This openness to otherness allows for voices typically excluded from canonical collections to join in on the conversation and make evident the power relations underlying and exclusionary nature of the exercise of creating a canon. While a sense of community and belonging is important to those of us who identify as law and humanities scholars, I think focusing on identifying or building a canon as simply a collection of key texts in this area would be a grave mistake and could actually hinder the future of the field.