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FOLLOW THE DRINKING GOURD: OUR ROAD TO TEACHING CRITICAL RACE THEORY AND SLAVERY AND THE LAW, CONTEMPLATIVELY, AT MCGILL

*Adelle Blackett**

And so the document or music ...
is not just the hidden transcript of repressed knowledge of alienation
but is the reservoir of a certain knowledge of freedom.¹

This short essay reflects on two recent pedagogical initiatives at McGill: the development of a regular, elective course on Critical Race Theory (CRT), and teaching Slavery and the Law as a specialized topic course. The initiatives could be seen as *ad hoc*, sitting outside of the various, formal, federative moments of major curricular reform that the Faculty of Law has undertaken over the past several decades, and that have

* Adelle Blackett, Ad. E., is Professor of Law and Canada Research Chair in Transnational Labour Law and Development, McGill University. I had the pleasure to work with a number of leaders of student-initiated seminars on Critical Race Theory (CRT) at McGill, including in the 2011–2012 initiative which I sponsored: Anne-Karine Dabo, LL.B. & B.C.L. 2013, Manpreet (Preeti) Dhaliwal, LL.B. & B.C.L. 2013, Emily Elder, LL.B. & B.C.L. 2014, and Alexander Ostroff, LL.B. & B.C.L. 2014; in 2012–13, sponsored by then Banting Postdoctoral Fellow, Dr. Armel Brice Adanhounme: Lillian Boctor, LL.B. & B.C.L. 2015 & Alyssa Clutterbuck, LL.B. & B.C.L. 2016; in 2013–2014, sponsored by Professor Vrinda Narain: Ngozi Okidegbe, LL.B. & B.C.L. 2015. Three student-initiated seminar leaders (Boctor, Clutterbuck & Okidegbe) accompanied me in a CRT collective during Fall 2014, discussing lessons learned and researching materials for the first faculty-taught CRT course, in the form of a Specialized Topics in Law course, in the 2014–2015 academic year. I taught the course for a second year in 2015–2016. Former McGill law student and current McGill history graduate student, Nadir Khan, provided research assistance as I developed the course on Slavery and the Law, taught in Fall 2016. I am grateful to all of the participants in each course, for the depth of their commitment to the collective learning.

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¹ Fred Moten, *In the Break: The Aesthetics of the Black Radical Tradition* (Minneapolis: University of Minnesota Press, 2003) at 227.

come to characterize the faculty's self-understanding as transsystemic.² In this reflection, however, I argue that the progression at McGill toward teaching CRT and Slavery and the Law should be understood as an integral part of the collective project of cultivating jurists who live rooted,³ multilingual,⁴ and layered lives in law.⁵

² The list of contributions on McGill's transsystemic, or integrated, curriculum is currently extensive. A selection of representative reflections includes Harry Arthurs, "Madly Off in One Direction: McGill's New Integrated, Polyjural, Transsystemic Law Programme" (2005) 50:4 McGill LJ 707 [Arthurs, "Madly Off"]; Harry W Arthurs, "Law and Learning in an Era of Globalization" (2009) 10:7 German LJ 629 [Arthurs, "Law and Learning"]; Julie Bédard, "Transsystemic Teaching of Law at McGill: 'Radical Changes, Old and New Hats'" (2001) 27:1 Queen's LJ 237; Helge Dedek & Armand de Mestral, "*Born to be Wild*: The 'Trans-systemic' Programme at McGill and the Denationalization of Legal Education" (2009) 10:7 German LJ 889; Vincent Forray, "Enseigner le droit complexe, redéfinir le droit en compétence : sur une analyse américaine du programme transsystème de McGill" (2010) Jurisprudence 267; H Patrick Glenn, "Doin' the Transsystemic: Legal Systems and Legal Traditions" (2005) 50:4 McGill LJ 863; Richard Janda, "Toward Cosmopolitan Law" (2005) 50:4 McGill LJ 967; Rosalie Jukier, "Transnationalizing the Legal Curriculum: How to Teach What We Live" (2006) 56:2 J Leg Educ 172; Daniel Jutras, "Énoncer l'indicible: le droit entre langues et traditions" (2000) 52:4 RIDC 781; Nicholas Kasirer, "Legal Education as *Métissage*" (2003) 78:1-2 Tul L Rev 481; Nicholas Kasirer, "Bijuralism in Law's Empire and in Law's Cosmos" (2002) 52:1-2 J Leg Educ 29 [Kasirer, "Bijuralism"]; Yves-Marie Morissette, "McGill's Integrated Civil and Common Law Program" (2002) 52:1-2 J Leg Educ 12; Peter L Strauss, "Transsystemia: Are We Approaching a New Legal Langdellian Moment? Is McGill Leading The Way?" (2006) 24:4 Penn St Int L Rev 763; Shauna Van Praagh, "Palsgraf as 'Transsystemic' Tort Law" (2011) 6:2 J Comp L 243. I have shared my own early reflections on transsystemic legal education in Adelle Blackett, "Globalization and its Ambiguities: Implications for Law School Curricular Reform" (1998) 37:1 Colum J Transnat'l L 57.

³ I am inspired by the work on lifeworlds-law as expressed through the notion of rooted constitutionalism articulated by Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847. Mills is careful to underscore that "rooted" is not to be conflated with the "diverse" or even with "dissent" (see *ibid* at 865). His notion is deeply relational.

⁴ See Roderick A Macdonald, "Legal Bilingualism" 42:1 McGill LJ 119 at 126, arguing that

[l]egal bilingualism (or more radically, legal multilingualism) takes as given that the complete normative content of law cannot be expressed by a particular set of words in one or any number of languages; but it also takes as given that language is a privileged communicative symbolism for apprehending law's normativity. All law, given this insight, is multilingual.

⁵ See Samantha Samuels, Aliah El-houni, Simone Akyianu, Brittany Williams, Shantelle LaFayette & Baya Yantren, "Placing Slavery Within the Law" (2016-17) 5 Contours 69, reprinted in (2017) 1:2 *Black Lawyer-ish* 5 (the Canadian Association of Black Lawyers' quarterly magazine) cited in *McGill Law Focus Online* (April 2017) (presenting six class participants' reflections on the Slavery and the Law course, including the perspective that Slavery and the Law offers a foundational historical basis for a transsystemic approach to the study of law).

*When the sun comes up and the first quail calls,
Follow the drinking gourd.*

These are the words of an African American slave song that pointed the way to freedom. The Rev. Dr. Martin Luther King, Jr., in his 1962 Massey Lecture entitled, *Conscience for Change*, wrote the following gracious account of the “singular” relationship between African Americans and Canada:

Deep in our history of struggle for freedom Canada was the north star. ... Our spirituals, now so widely admired around the world, were often codes. We sang of “heaven” that awaited us and the slave masters listened ..., not realizing that we were not speaking of the hereafter. Heaven was the word for Canada and the Negro sang of the hope that his escape on the underground railroad would carry him there. One of our spirituals, “Follow the Drinking Gourd”, in its disguised lyrics contained directions for escape. The gourd was the big dipper, and the north star to which its handle pointed gave the celestial map that directed the flight to the Canadian border.⁶

I had not expected to encounter the Drinking Gourd⁷ in law school. Like many law students, I came to the study of law expecting—or at least

⁶ Martin Luther King, Jr, *Conscience for Change*, Massey Lectures, 7th series (Toronto: Canadian Broadcasting Corporation, 1967) at 1. I thank Wainright Law Librarian M^e Daniel Boyer for drawing the transcript of Dr. King’s Massey Lectures to my attention.

⁷ Harris Braley Parks, an entomologist and lay folklorist from Texas, wrote about the three occasions in which he recalls hearing the song, and an explanation provided to him by “an old Negro at College Station, Texas, who had known a great many slaves in his boyhood days” (HB Parks, “Follow the Drinking Gourd” in J Frank Dobie, ed, *Follow de Drinkin’ Gou’d* (Denton, Tex: University of North Texas Press, 2000) 81 at 82):

He said that just before the Civil War, somewhere in the South, he was not just sure where, there came a sailor who had lost one leg and had the missing member replaced by a peg-leg. He would appear very suddenly at some plantation and ask for work as a painter or carpenter. This he was able to get at almost every place. He made friends with the slaves and soon all of the young colored men were singing the song that is herein mentioned. The peg-leg sailor would stay for a week or two at a place and then disappear. The following spring nearly all the young men among the slaves disappeared and made their way to the north and finally to Canada by following a trail that had been made by the peg-leg sailor and was held in memory by the Negroes in this peculiar song (*ibid*).

References to the drinking gourd are found in a number of literary sources, including the play by Lorraine Hansberry, “The Drinking Gourd” in Robert Nemiroff, ed, *Les Blancs: The Collected Last Plays of Lorraine Hansberry* (New York: Random House, 1972) 217.

It is important to know that Harriet Tubman repeatedly put her own emancipation in peril to lead hundreds of enslaved Africans to freedom. While legendary, Tubman did

hoping—to engage with notions that looked more like Dr. King’s capacious vision of social justice,⁸ than a close study of riparian rights. To a first-year law student coming from undergraduate studies in history, the past too often seemed conspicuously absent,⁹ and everyday life far removed from Old Chancellor Day Hall’s ornate, elegant, and “noble”¹⁰ doors.

Yet my first years studying law at McGill could hardly have been more context-laden: they included the fall of the Berlin Wall, alongside encounters with resistance to settler colonialism here and abroad, including a seventy-eight-day armed resistance to further territorial dispossession by Mohawk nationals of Kahnawà:ke—facing the Sûreté du Québec, the Royal Canadian Mounted Police, and ultimately, the Canadian army—in defence of neighbouring Akwesasne territory (the so-called “Oka Crisis”), and soon-to-be president Nelson Mandela’s triumphant release after twenty-seven years in prison under apartheid in South Africa. They included the tragic violence of misogyny, in Mark Lépine’s mass murder of fourteen women at École Polytechnique de Montréal. After living in deep

not act alone, but in networks. Both R.J.M. Blackett and Eric Foner have documented the many other persons of African descent who returned to slave states to help other enslaved persons to freedom and those who acted in critical solidarity with them, including members of Indigenous nations, and white settlers (see RJM Blackett, *Making Freedom: The Underground Railroad and the Politics of Slavery* (Chapel Hill: University of North Carolina Press, 2013) at 74; Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York: WW Norton, 2015)). It is also important to know that an underground railroad evolved in Canada, to free those enslaved in Canada (see notably Dorothy W Williams, *The Road to Now: A History of Blacks in Montreal* (Montreal: Véhicule Press, 1997)). For W.E.B. Du Bois, the fugitive slave embodied the “potentialities in the future” (William Edward Burghardt Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (New York: Russell & Russell, 1935) at 13 [Du Bois, *Black Reconstruction*]).

⁸ The Rev. Dr. Martin Luther King, Jr. was, in Anthony Cook’s words, the “paradigmatic organic intellectual of twentieth-century American life [whose] method and practice offer direction to progressive scholars” (Anthony E Cook, “Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.” in Kimberlé Crenshaw et al, eds, *Critical Race Theory: The Key Writings that Formed the Movement* (New York: New Press, 1995) 85 at 90 (invoking Gramsci’s concept of the organic intellectual)).

⁹ But see e.g. *RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd*, 2002 SCC 8 at para 19, [2002] 1 SCR 156 (affirming that “the common law does not exist in a vacuum. The common law reflects the experience of the past, the reality of modern social concerns and a sensitivity to the future. As such, it does not grow in isolation from the [Canadian Charter of Rights and Freedoms], but rather with it”). See also W Wesley Pue, *Lawyers’ Empire: Legal Profession and Cultural Authority, 1780–1950* (Vancouver: UBC Press, 2016) (charting the use of history in the development of lawyers’ professional mythology).

¹⁰ See e.g. Ian C Pilarczyk, “A Noble Roster”: *One Hundred and Fifty Years of Law at McGill* (Montreal: McGill University Faculty of Law, 1999).

admiration of the Honourable Justice Thurgood Marshall, I witnessed in horror the Senate Judiciary Committee hearings of his replacement on the United States Supreme Court, Clarence Thomas: Professor Anita Hill's sexual harassment allegations, located in "the overlapping margins of race and gender discourse and in the empty spaces between, ... resist[ed] telling."¹¹ In Montreal, the 1987 Remembrance Day shooting of an unarmed nineteen-year-old Black man who was exponentially more likely to be my classmate in high school than in law school—Anthony Griffin—led to mass community protest of systemic, anti-Black racism alongside the manslaughter and criminal negligence trial of Constable Allan Gosset, which ended with his acquittal on appeal.¹²

While social context sometimes felt distant, several professors worked hard to ensure that it was understood to be a crucial part of the legal education we received. Even on the first-day welcome of first-year students to the Faculty of Law in 1989, then Dean Yves-Marie Morissette invoked one of the most pressing legal battles to unfold in Canada: Chantal Daigle's decision to slip across the Canadian border into the United States to obtain an abortion, in the midst of her urgent, public fight through Canadian courts against her ex-boyfriend's successful temporary injunctions preventing her from obtaining an abortion in Quebec. The Supreme Court of Canada issued its decision—with reasons provided later—apparently to prevent any other woman from living a similar judicial nightmare.¹³

But mostly, I experienced the study of law by observing those students who spoke out without bearing the implicit burden of representing their

¹¹ Kimberlé Crenshaw, "Whose Story Is It, Anyway? Feminist and Antiracist Appropriations of Anita Hill" in Toni Morrison, ed, *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality* (New York: Pantheon Books, 1992) 402 at 403.

¹² See *R v Gosset*, [1993] 3 SCR 76, 105 DLR (4th) 681 (requiring a retrial on the basis of a misdirection to the jury); *Augustus v Gosset*, [1996] 3 SCR 268, 138 DLR (4th) 617 (the civil liability suit brought by Anthony Griffin's mother, Gloria Augustus). See also John F Burns, "Montreal Journal: A City's Blacks, No Longer Merely Les Invisibles", *The New York Times* (11 December 1987), online: <www.nytimes.com> (noting that the incident sparked the establishment of an official inquiry by the Quebec Human Rights Commission into relations between the police and racialized communities). See also the writing of the first James Robinson Johnston Chair in Black Canadian Studies at Dalhousie University, and community advocate from Quebec, Esmeralda MA Thornhill, "So Seldom for Us, So Often against Us: Blacks and Law in Canada" (2008) 38:3 *J Black Studies* 321.

¹³ See *Tremblay v Daigle*, [1989] 2 SCR 530, 62 DLR (4th) 634 [cited to SCR]. The decision was rendered on 8 August 1989 but reasons were delivered on 16 November 1989. In the words of the Court, it "decided in its discretion to continue the hearing of this appeal although it was moot, in order to resolve the important legal issue raised so that the situation of women in the position in which Ms. Daigle found herself could be clarified" (*ibid* at 571).

underrepresented racialized community, and who seemed to know that they would be validated, and heard. In contrast, I rarely spoke, and chose my moments with what might have seemed like excessive care.¹⁴ I knew that from the tenor of some classroom discussions, some forms of privilege were not ready to be named.¹⁵

The riverbank makes a very good road.

The dead trees show you the way.

“It is unusual to remember an article after twenty-five years.”¹⁶ Neil Gotanda’s opening words ably capture how Mari Matsuda’s multiple consciousness framework honestly and urgently mapped a jurisprudential method—explicitly built upon W.E.B. Du Bois’ theorization of “double consciousness” through which African Americans see the world at once through the perspective of the dominant group in society through which they are oppressed outsiders and from their own perspective—for generations of lawyers and law students, myself included.¹⁷ Matsuda’s method is literally a map, offering an alternative geography of the study and practice of law that enabled outsiders from historically marginalized commu-

¹⁴ Matsuda frames this “constant shifting of consciousness” as a creative process that is learned, and analogizes it to peeling away layers of consciousness, to decide what layers might be raised in some contexts (see Mari J Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11:1 *Women’s Rts L Rep* 7 at 8 [Matsuda, “When the First Quail Calls”], reprinted in Mari J Matsuda, *Where Is Your Body? And Other Essays on Race, Gender, and the Law* (Boston: Beacon Press, 1996) 3). But learning this method is essentially a part of unlearning another process central to sustaining intersubjective colonial world views: “a terror of the mind; a daily exercise in self-mutilation” (George Lamming, “Sea of Stories”, *The Guardian* (24 October 2002), online: <www.theguardian.com>).

¹⁵ A lighthearted caricature offered in one first-year class of Harvard’s Duncan Kennedy lecturing at McGill on legal hierarchy while wearing a plaid lumberjacket somehow stuck with me. It immediately seemed to cast Kennedy’s critique as one not to be taken too seriously, paradoxically centering identity where it had up until that point not ever been addressed. It also felt like I was put on notice of the kind of privilege that neither clothing nor any ivy league designation would likely afford insider-outsiders like me (see Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy” (1982) 32:4 *J Leg Educ* 591, reprinted in David Kairys, ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982) 40). See also Cheryl I Harris, “Whiteness as Property” (1993) 106:8 *Harv L Rev* 1707.

¹⁶ Neil Gotanda, “Reflections on Mari Matsuda’s ‘Multiple Consciousness as Jurisprudential Method’” (2012–13) 18:1 *UCLA Asian Pac Am LJ* 103 at 103.

¹⁷ See W.E. Burghardt Du Bois, *The Souls of Black Folk: Essays & Sketches*, 2nd ed (Chicago: AC McClurg, 1903) at 3–4.

nities to see and live our own interlegality.¹⁸ Her courageous and compelling article draws its title—“When the First Quail Calls: Multiple Consciousness as Jurisprudential Method”¹⁹—from the first line of the spiritual alluded to by Dr. King, embodying a call to action, and a map: *Follow the Drinking Gourd*.²⁰

While studying law, multiple consciousness as jurisprudential method helped to support devoting myself fully to mastering what was being taught in law—within and beyond classrooms, including law journal membership, mooting, and work as a student clerk. It added critical layers to any discussion of the significance of legal translation. And it validated my soul-sustaining decision to remain in active communion with community, in part by volunteering and ultimately joining the board of the Montreal Domestic Workers’ Association. Inviting inspired speakers like Professor Patricia J. Williams, who first visited the McGill Faculty of Law in the context of the Annie Macdonald Langstaff Workshop Series in 1990, was part of the multiple consciousness strategy.²¹ Williams’ authoritative and affirming analysis of race in the United States²² was paralleled only by how meaningful it was to have her claim the hallowed space that was the faculty’s main seminar room. The room was packed, and not only with the usual suspects. One McGill law professor leaned over to me and mentioned with enthusiasm how different the seminar room looked. And true to her inimitable style, when Williams’ presentation ended, the room so typically full of the comments of seemingly self-assured speakers accustomed to claiming space and being heard, fell silent with the weight of what had been experienced.²³ The room not only looked different; it felt

¹⁸ See generally Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 2nd ed (London: Butterworths, 2002) (drawing the analogy of law as a map at 417–38).

¹⁹ See Matsuda, “When the First Quail Calls”, *supra* note 14.

²⁰ See King, *supra* note 6 at 1.

²¹ I particularly appreciated the fact that the lecture series coordinator at the time, Professor Colleen Sheppard, worked closely with student groups like the McGill Association of Women and the Law, to ensure our input in the choice of speakers and to facilitate our active participation throughout the visit.

²² It is difficult to overstate this legacy to generations in and beyond law. At the time, I was profoundly influenced by several of the articles soon to appear in book form in Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge, Mass: Harvard University Press, 1991). See also Pat Williams, “Response to Mari Matsuda” (1989) 11:1 Women’s Rts L Rep 11.

²³ I still treasure the beautiful, hand-written thank you note that Pat Williams mailed to me, and was privileged to have been able to pursue my graduate study at Columbia, where she served as one of the members of my sterling supervisory committee (along with Mark Barenberg (chair), Lori Damrosch, and David Leebron).

different, as members of the faculty and university community came to terms with the need to sit still and contemplate...

*Left foot, peg foot, travelling on.
Follow the drinking gourd.*

It is with that call to action and map that, on my return to teach law at McGill in 2000, I encouraged a generation of students who seemed also to be searching for an alternative imaginary, to hold on to the kind of social justice our communities recognize in Matsuda's words: "children with full bellies sleeping in warm beds under clean sheets."²⁴

Although I expressed an interest in CRT, I taught mostly in the fields of labour and employment law as well as international trade law. A few years later, I stepped into the first-year course, Foundations of Canadian Law, into which I introduced a segment on CRT. Alongside other readings, students were introduced to Matsuda's pivotal piece. That module was taken up by many of my colleagues and is still taught in some sections of the required course, over a decade later. But for over a decade, students yearned for opportunities to engage in a fulsome manner, when they struggled with representations of race that may have reinforced racialized "othering": when the principle of the best interests of the child was applied through international law to the consideration of immigration claimants, while the overtly racist statements of the immigration officer were strategically not litigated;²⁵ or when the relationship between social context and impartiality was put to stark relief when embodied in the first Black judge in Nova Scotia, who had attended segregated schools in Nova Scotia;²⁶ or to cases in my own subject area, labour law, that subsume claims of Aboriginal rights to the division of powers while espousing a "frozen rights" assumption that at once ignores and yet illustrates the

²⁴ Matsuda, "When the First Quail Calls", *supra* note 14 at 8. See also Colleen Sheppard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada* (Montreal: McGill-Queen's University Press, 2010) (drawing on this "bread and roses" image of economic security and human dignity in her framing of the notion of inclusive equality at 3–14).

²⁵ See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 5–7, 63–76, 174 DLR (4th) 193. See also Alyssa Clutterbuck, "Rethinking *Baker*: A Critical Race Feminist Theory of Disability" (2015) 20 Appeal 51 (a student-initiated seminar leader whose article offers an analytical entry point to an intersectional analysis of disability that resists essentializing); Roger Rowe, "*Baker* Revisited 2007" (2008) 38:3 J Black Studies 338 at 338–41.

²⁶ See *R v S (RD)*, [1997] 3 SCR 484, 151 DLR (4th) 193. See also Carol A Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood, 1999) at 83–111.

ongoing enactment of settler colonialism.²⁷ Each such moment across the curriculum runs the risk of yielding a form of racial invisibility, in which the terms of entry about the knowledge of racialization and settler colonialism are erased, or mediated, or disciplined. Collectively, students began to make their call for CRT to be taught as a part of the regular course of offerings more audible, and distinct.

I also realized, perhaps only in retrospect, that it was not just the students who yearned for closer engagement with CRT. I started my academic career schooled in Derrick Bell's "racial realism",²⁸ a wide-eyed awareness of systemic exclusions and the challenge to addressing them. Over time I came to appreciate the depth of that challenge, including how it operates in competitive contexts, to make solidarities between historically marginalized communities both more necessary, and also more challenging. Yet I invariably carried a cautious optimism about the potential for change over time that often inhabits those who are starting a new relationship, after having been welcomed into a dynamic and powerful community of cosmopolitan academics that is the McGill Faculty of Law, and through it, the broader academic world.

Soon after I started teaching at McGill, I wrote an article on mentoring the other for access to justice that ends on a decidedly tentative but hopeful note.²⁹ The article is informed by Charles R. Lawrence III's beautifully compelling classic, "The Word and the River: Pedagogy as Scholarship as Struggle."³⁰ Lawrence expresses his partial sense of alienation

²⁷ See e.g. *Mississaugas of Scugog Island First Nation v National Automobile, Aerospace, Transportation and General Workers Union of Canada*, 2007 ONCA 814 at paras 25–48, 287 DLR (4th) 452 (rejecting the Mississaugas of Scugog Island First Nation's asserted right to regulate labour relations on reserve lands). See also John Borrows, "Frozen Rights in Canada: Constitutional Interpretation and the Trickster" (1997) 22:1 *Am Indian L Rev* 37 (critiquing the Supreme Court of Canada's test for the proof of Aboriginal rights under section 35(1) of the *Constitution Act, 1982* that "does not extend protection to [A]boriginal practices that developed solely as a result of European influence—even if those practices are crucial to their contemporary physical and cultural survival" at 63).

²⁸ See Derrick A Bell, Jr, "Racial Realism" in Crenshaw et al, *supra* note 8, 302.

²⁹ See Adelle Blackett, "Mentoring the Other: Cultural Pluralist Approaches to Access to Justice" (2001) 8:3 *Intl J Leg Profession* 275 at 285:

Whether mentoring the other for access to justice will ultimately, actually be transformative cannot, of course, be the conclusion of this paper, because it will depend on the particular dynamic of the interactions that are created by persons committed to such a project; but to the extent that such persons exist, then the transformative potential is necessarily present as well.

³⁰ See Charles R Lawrence III, "The Word and the River: Pedagogy as Scholarship as Struggle" (1992) 65:5 *S Cal L Rev* 2231 [Lawrence, "Scholarship as Struggle"]. *Itera-*

from the role of “scholar” and the risk of assimilation that it entails.³¹ His dual subjectivity or multiple consciousness positionality enables him to remain alive to the “social realities that are unseen by those who live more fully within the world of privilege.”³² He embraces “the Word”, understood as an “interdisciplinary tradition” of “teaching, preaching, and healing ... wherein healers are concerned with the soul and preachers with the pedagogy of the oppressed.”³³ And in this tradition of teaching, inspired by Paulo Freire,³⁴ hierarchy between teachers and students is challenged, as part of recognizing a shared “struggle against dehumanization” (“the River”).³⁵ Lawrence cultivates a practice of raising hard questions, drawing on “an inheritance of passion and hope.”³⁶

When I met Lawrence for the first time, and experienced his legal theory workshop at the McGill Faculty of Law on 6 October 2016, I sensed the powerful presence of the Word and the River in his “performance for self”: Lawrence consciously embodied the civil rights challenged to covering³⁷—that is, the coercion to behave like insiders in the legal academy.

tions of this classic work were shared with the Association of American Law Schools’ Special Commission on Meeting the Challenges of Diversity in an Academic Democracy (see Charles R Lawrence III, “Toward a Pedagogy of Diversity” in Association of American Law Schools Special Commission on Meeting the Challenges of Diversity in an Academic Democracy, *Perspectives on Diversity* (Washington, DC: AALS, 1997) 41).

³¹ See Lawrence, “Scholarship as Struggle”, *supra* note 30 at 2238.

³² *Ibid* at 2239.

³³ *Ibid* at 2238.

³⁴ For Freire, a liberatory pedagogy enables both teachers and students to become simultaneously teachers and students, through dialogue (Paulo Freire, *Pedagogy of the Oppressed*, translated by Myra Bergman Ramos (New York: Continuum, 2000) at 72–73, 80).

³⁵ Lawrence, “Scholarship as Struggle”, *supra* note 30 at 2238. Lawrence draws upon Vincent Harding, *There Is a River: The Black Struggle for Freedom in America* (New York: Harcourt Brace Jovanovich, 1981). Harding’s framing of the river, and of the resistance undertaken by the slaves who took their own lives rather than submit to slavery, could hardly be more compelling:

These forerunners who fought and sang, who starved themselves to death in the darkness of the ships’ holds, have forced their way into the ever-flowing river of black struggle. To call such acts “passive resistance” is to deny the existence of vast realms of the spirit, to count resistance only by its outward physical modes. ...

Their form of resistance again challenged and denied the ultimate authority of the white traders over their lives and their spirits (*ibid* at 19).

³⁶ Lawrence, “Scholarship as Struggle”, *supra* note 30 at 2238.

³⁷ Kenji Yoshino, *Covering: The Hidden Assault on our Civil Rights* (New York: Random House, 2006) (prefacing his work with the belief that “if a human life is described with enough particularity, the universal will begin to speak through it ... the yearning for human emancipation that stirs within us all” at xii).

As Lawrence moved throughout the presentation, from shirt and tie to T-shirt, and showed one of the last slides in his presentation—a still image of Lawrence making music with his father—I also gratefully accepted his performance of self, which I heard as an historically rooted, community-redefining narrative: an emancipation song.

Lawrence's presentation offered a name for the kinds of engagements that have never seemed optional or accessory to my work in the legal academy—like stepping up to the plate to serve as a legal expert for an international treaty-making process on decent work for domestic workers.³⁸ And my need to re-root in CRT mostly took hold through exchanges with students within and beyond the classroom, through student and community requests to speak to pressing issues like Afro-centric education for children in the local Montreal Black community, through my responsibilities as a part-time Quebec human rights and youth rights commissioner, and as I worked out an alternative, participatory approach to labour law reform in Haiti—all of this has been rooted in and is part of my teaching and scholarship: “There is no true word that is not at the same time a praxis.”³⁹ Like many of my colleagues, I have tried to enable my teaching and learning to embody this way of being alive in law,⁴⁰ and have treasured the space to develop our curriculum to include CRT and Slavery and the Law.

*The river ends between two hills.
Follow the drinking gourd.*

³⁸ See Adelle Blackett, “Introductory Note to the Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201)” (2014) 53:1 ILM 250; International Labour Organization, *Decent Work for Domestic Workers Convention, 2011 (No 189) and Recommendation (No 201)*, 16 June 2011, (2014) 53:1 ILM 254 (convention entered into force 5 September 2013).

³⁹ Freire, *supra* note 34 at 87.

⁴⁰ The invitation to teach as a way of being alive in law is one of the late Rod Macdonald's cherished gifts to the McGill Faculty of Law (see CBC Radio One, “Interview between Paul Kennedy and Rod Macdonald” in Richard Janda, Rosalie Jukier & Daniel Jutras, eds, *The Unbounded Level of the Mind: Rod Macdonald's Legal Imagination* (Montreal: McGill-Queen's University Press, 2015) 313 at 334 [CBC, “Interview of Rod Macdonald”]: “teaching is a calling ... an ethic of commitment to your students, an ethic of commitment to discovery, and that shapes your life. It's a part of your life ... and that's what I mean by teaching being a way of being alive”). Compellingly, Leanne Simpson teaches about the “art of kindness in knowledge” (see Leanne Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence* (Winnipeg: Arbeiter Ring, 2011) at 126, referencing Nishnaabemowin language expert Shirley Williams' explanation of the concept of “Nbwaakawin”).

In the 2011–2012 academic year, a group of four wise, organized students crystallized years of interest into a way to ensure that content on race would be addressed in a systematic, integrated, and critical manner. They made use of the student-initiated seminar, a unique vehicle in the Faculty of Law’s curriculum. They asked me to be their “sponsor”, which entailed providing guidance as it was solicited or needed.

By design, organizing a “student-initiated” seminar meant that the team of four took a leadership role in preparing materials, and coordinating the teaching of the course. They put energy, experience, and considerable time into galvanizing support for their initiative, identifying readings of interest to establish a syllabus, locating committed community members, including the Honourable Juanita Westmoreland-Traoré of the Cour du Québec, who willingly guest lectured, assuming a significant part of the class facilitation, exploring alternative pedagogical approaches—including a range of expressive means through which to engage with embodiment and affect as part of the pedagogical experience—and generally ensuring a mutually supportive environment for self-learning. It was a tall order, and it was movement building, in a tradition reminiscent of the foundation of CRT in the United States a full generation ago.⁴¹

In institutional terms, student leaders were also listed as participants in the course. They paid to take the course, yet designed and led it without remuneration and without specific training—those who had past teaching experience as graduate students expressed the concern that their expertise was not acknowledged through the format. Small honoraria were provided to the many committed community members who guest lectured in the course, via a university-administered faculty fund to promote pedagogical innovation in teaching and learning. While grounded in an approach that valued active learning and the nexus between teaching and learning, offering an opportunity for students to take their learning into their own hands, the initiative risked a neoliberal⁴² turn. It did not take much time for critically-engaged students and professors alike to discern a troubled asymmetry in the distribution of invariably limited institutional resources: critical new courses on “identity” could be taught by

⁴¹ See Kimberlé Williams Crenshaw, “Twenty Years of Critical Race Theory: Looking Back to Move Forward” (2011) 43:5 Conn L Rev 1253 at 1260 [Crenshaw, “Twenty Years”] (noting that the “movement dimension of CRT is probably the least engaged aspect of its original formation” and stressing that CRT is “constituted through a series of dynamic engagements” that are ongoing).

⁴² See generally David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005); Harry W Arthurs, “The State We’re In: Legal Education in Canada’s New Political Economy” (2001) 20 Windsor YB Access Just 35; Margaret Thornton, “The Law School, the Market and the New Knowledge Economy” (2007) 17:1–2 Leg Education Rev 1. See also Frances Henry et al, *The Equity Myth: Racialization and Indigeneity at Canadian Universities* (Vancouver: UBC Press, 2017).

students themselves, unlike most established, mainstream courses.⁴³ Course staffing—therefore professorial hiring—would continue to emphasize ensuring that colleagues had recognized expertise in the mainstream. The student-initiated seminars were not counted as part of professorial teaching loads; the professorial guidance and mentorship throughout—from design to grading—remained, from an administrative perspective, invisible.

In an early address to the first group of student participants in the student-initiated seminar, I celebrated the fact that they had built such a unique and valorizing initiative, and made the topic of CRT visible at our faculty. I also urged participants not to let the course become colonized.

Students continued to show great solidarity, as a range of racialized students and allies in groups like RadLaw decided not to repeat the circumstance of proposing a plethora of student-initiated seminars. Instead, they resolved to re-offer CRT as the only student-initiated seminar for several successive years, and to make their claim clear: they asked for the course to become a regularly-taught, officially-recognized part of the faculty's curriculum. Building a CRT course became an important dimension of building an understanding of the need to promote equity in hiring. Student leaders carried that experience for three full years, learning from each other and from community. They built critical momentum, as a broad swath of the faculty community came to appreciate the significance of the material as a critical lens through which to engage with—and enliven—McGill's hallmark transsystemic legal education.

*There's another river on the other side.
Follow the drinking gourd.*

On my return from sabbatical in the 2014–2015 academic year, I accepted to teach a specialized topics course on CRT, and repeated the experience in 2015–2016. In the design of the course, it was important to me to work with three of the former student leaders of past CRT courses. We formed a CRT collective,⁴⁴ which provided a meaningful space within

⁴³ See “Terms of Engagement: Student-Initiated Seminars Offer a New Way of Learning at the Faculty of Law”, *McGill Law Focus Online* (December 2012), online: <publications.mcgill.ca/droit/2012/12/10/term-of-engagement>. For all the emphasis on flipped classrooms and similar pedagogical devices aimed at increasing student participation, there was no serious institutional initiative to empower students to teach and learn property law, or corporate law, or even the standard legal theory course, in quite this manner.

⁴⁴ The three students were formally hired as my research assistants, to ensure that their time and engagement was recognized. I had also been able to secure university re-

which to exchange insights into the previous three years, to canvass experiences teaching CRT elsewhere in Canada and in the United States, and to think about the design and development of a course to which full professorial resources were dedicated.

Ultimately, the course contained a number of distinct pedagogical characteristics. First, the course was contextualized and historicized. Students read classic texts on CRT in Canada, the United States, and beyond, but began by studying key historical cases of the interaction of race and the law in Canada from studies written or edited by Constance Backhouse and Barrington Walker.⁴⁵ This early approach disrupted commonly-held myths about Canadian racial innocence. Students also learned the history of the CRT movement and its specificity in the Canadian context,⁴⁶ the development of specific analytical lenses—notably intersectionality and approaches to racial profiling—and considered their portability and application to a range of contemporary cases.

Second, participants read two leading scholarly books in their entirety each term, something that is far from the norm in legal education. In both years, one book centred on racism and the law,⁴⁷ and the other, on settler colonialism.⁴⁸ Through these books, they engaged racialization across common law and civilian legal traditions, and rethought the relationship between customary law, legal pluralism, and state power when it was marshalled in support of racial subordination.⁴⁹ They considered legal methods, including the relationship between narrative and ethnographic

sources to hire one of the leaders of the student-initiated seminar while she designed the course in 2012–2013, and to work more closely with her in its design.

⁴⁵ In CRT, Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 1999) and in *Slavery and the Law*, Barrington Walker, ed, *The African Canadian Legal Odyssey: Historical Essays* (Toronto: University of Toronto Press for The Osgoode Society for Canadian Legal History, 2012).

⁴⁶ See Aylward, *supra* note 26. The students attended guest lectures at McGill offered by leading thinkers in the field: Professors Tracey Lindberg and Joanne St. Lewis of the University of Ottawa, and Professor Anthony Stewart of Bucknell University.

⁴⁷ See Tanya Katerí Hernández, *Racial Subordination in Latin America: The Role of the State, Customary Law, and the New Civil Rights Response* (Cambridge: Cambridge University Press, 2013); Osagie K Obasogie, *Blinded by Sight: Seeing Race through the Eyes of the Blind* (Stanford: Stanford University Press, 2014).

⁴⁸ See Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham: Duke University Press, 2014).

⁴⁹ See Hernández, *supra* note 47 at 11–17 (“disrupt[ing] the traditional narrative of Latin America’s legally benign racial past” by implicating the state in the support of customary law of racial inequality, at 17).

research.⁵⁰ They engaged with a sustained challenge to forms of colonial recognition that embed and perpetuate asymmetrical—and ultimately non-reciprocal—relations.⁵¹ They explored the prospects that “refusal” might constitute a necessary—and constitutional option-opening—response that centres questions of legitimacy.⁵² Through this inquiry, they considered whether work that engaged explicitly with settler colonialism and white supremacy⁵³ was complementary to, or part of the “broader project” that Kimberlé Crenshaw calls for, one that is prepared to “interrogat[e] the limitations of contemporary race discourse.”⁵⁴

Participants wrote book reviews, and each had the opportunity to present one review to a visiting author. Students were initially surprised that their work might be read by colleagues other than me and some of their peers. They readily embraced this opportunity to enter into dialogue with the authors, to share insights, and to deepen their own learning. Authors graciously read the book reviews in advance, and all expressed their appreciation for the opportunity to exchange with a group that had read and engaged carefully with their work. These moments were opened to the wider faculty, university, and Montreal community, which enabled the learning to be shared more broadly.

⁵⁰ See Obasogie, *supra* note 47 at 200–04 (discussing the “visual turn” in CRT, to move beyond a constructionist turn in race scholarship toward a constitutive analysis of how and why race has been framed through visual cues). We exchanged on the importance of engaging Du Bois’ contributions to this analytical turn.

⁵¹ See Coulthard, *supra* note 48 at 3–7.

⁵² Audra Simpson explains ethnographic refusal in the following manner:

[T]here is a political alternative to “recognition,” the much sought-after and presumed “good” of multicultural politics. This alternative is “refusal,” and it is exercised ... as a political and ethical stance that stands in stark contrast to the desire to have one’s distinctiveness as a culture, as a people, recognized. Refusal comes with the requirement of having one’s *political* sovereignty acknowledged and upheld, and raises the question of legitimacy for those who are usually in the position of recognizing: What is their authority to do so? ... Those of us writing about these issues can also “refuse” (A Simpson, *supra* note 48 at 11 [emphasis in original]).

It is my suggestion that Simpson’s approach has the potential to open distinct constitutional options for the same reasons: the manner in which it questions authority to recognize, and the insistence on acknowledgement and respect of sovereignty.

⁵³ Coulthard engages extensively with Frantz Fanon, *Black Skin, White Masks*, translated by Richard Philcox (New York: Grove Press, 1967) and Frantz Fanon, *The Wretched of the Earth*, translated by Richard Philcox (New York: Grove Press, 2004), through which he offers a pivotal challenge to the recognition/redistribution debate while engaging—as does Audra Simpson—with the semi-autonomous psychological dimension of colonial power (see Coulthard, *supra* note 48 at 16–18, 25–49).

⁵⁴ Crenshaw, “Twenty Years”, *supra* note 41 at 1352.

The author-meets-readers sessions were also a cardinal component of the third pedagogical dimension: the course was taught contemplatively. This contemplative approach entailed situating critical analytical engagement with course materials within a framework that fostered reflective, meditative practice. A practicum was integrated in the design of the CRT course, which encouraged students to follow or contribute to ongoing case litigation, policy work, or activism with community organizations beyond the classroom, as a way to ground their in-class reflections and learning. Fo Niemi, executive director of the Montreal-based Centre for Research and Action on Race Relations, addressed the course with a discussion of recent cases involving CRT each year at the beginning of the year.

Participants were encouraged to keep a notebook with their reflections throughout the course, and to see the course as a space to acknowledge the study of CRT—and law in general—as embodied in close analytical engagement. There was a deliberate attempt to incorporate into the teaching and learning observations of surrounding conditions, and knowledge of what has happened in similar situations in the past. There was an intentional method to humanize the pedagogy, so that the course could “expres[s] the consciousness of the students themselves.”⁵⁵ The practica were interspersed throughout the course, and student participation through the presentation of précis, active use of questioning, and presenting the book reviews sought to ensure that student agency remained central to the course. Time was built in for reflection—moments without words spent sensing the weight of what was read—in an effort to counteract a tendency to “elbow the contemplative to the sidelines.”⁵⁶

The course aspired to a less certain, more probing approach to pedagogy, explained by Tobin Hart as the “art of pondering”.⁵⁷ By decentering my own role, I strove to leave space for self-reflective, focused, even uncomfortable dialogue⁵⁸ mediated through close, active engagement with the assigned texts. Some might dismiss teaching of this nature to relatively societally-privileged law school students, even inadvertently with the unfortunate framing of “pedagogy for the privileged,”⁵⁹ but most recognize

⁵⁵ Freire, *supra* note 34 at 69.

⁵⁶ Tobin Hart, “Opening the Contemplative Mind in the Classroom” (2004) 2:1 *J Transformative Education* 28 at 29.

⁵⁷ *Ibid* at 37.

⁵⁸ See e.g. Rhonda V Magee, “Legal Education and the Formation of Professional Identity: A Critical Spirituo-Humanistic—‘Humanity Consciousness’—Perspective” (2007) 31:3 *NYU Rev L & Soc Change* 467.

⁵⁹ See e.g. Ann Curry-Stevens, “New Forms of Transformative Education: Pedagogy for the Privileged” (2007) 5:1 *J Transformative Education* 33.

that the call for CRT and alternative pedagogical approaches in law tends to come precisely from those who know an “othered” social reality and seek to make their law school experience speak to—indeed be accountable for—social justice. This project is at one with an approach that “moves from self-centredness to ... solidarity, from uncritical acceptance of inequality to questioning of the structures that render such inequality, and from disengagement to an enacted commitment to social justice.”⁶⁰

And while conscious of the ways in which decentering could simultaneously be destabilizing for racialized faculty members too readily “presumed incompetent”⁶¹ especially if they step out of “role” and stop covering, by accompanying class participants I have attempted to help build community in law. Sometimes this community-building process has yielded intensely challenging exchanges; at other times it has meant being silent together; throughout it has required a commitment by all not only to speak, but to listen deeply...

Silence in law was not always an easy positionality to embrace. Yet participants have repaid the trust rooted in the deliberate decision to leave space for all concerned to remain open to unexpected insight.⁶² Exchanges were respectful, insightful, and at times even soulful, as when in the last intervention on the last day of the first CRT class, a student read some of 2016 MacArthur Fellowship recipient Claudia Rankine’s poetry,⁶³ and the room was full and still. And on an occasion that I experienced as one of the hardest, after a significant part of the course went by, one racialized student was finally able to give themselves permission to move away from a pre-packaged, omnibus critique of the legal world, to enjoy deep, creative, and scholarly engagement with the assigned books and their authors. This movement remains one of my most meaningful facilitative engagements in the CRT course. Without having to invoke the understandable but invariably troubled language of safe spaces, I can affirm that each CRT class became a community.

⁶⁰ *Ibid* at 40–41. For Freire, *supra* note 34 at 49–51:

The oppressor is solidary with the oppressed only when he stops regarding the oppressed as an abstract category and sees them as persons who have been unjustly dealt with, deprived of their voice, cheated in the sale of their labor—when he stops making pious, sentimental, and individualistic gestures and risks an act of love. True solidarity is found only in the plenitude of this act of love, in its existentiality, in its praxis.

⁶¹ See generally Gabriella Gutiérrez y Muhs et al, eds, *Presumed Incompetent: The Intersections of Race and Class for Women in Academia* (Boulder: University Press of Colorado, 2012). Freire of course recognized that the educator as well as the student may be the “oppressed” or the “oppressor” (Freire, *supra* note 34 at 72–75).

⁶² See Hart, *supra* note 56 at 37.

⁶³ See Claudia Rankine, *Citizen: An American Lyric* (Minneapolis: Graywolf Press, 2014).

With research support from Dominic Bell, McGill B.C.L. & LL.B. 2017, on 27 November 2015 Professor Vrinda Narain and I submitted a formal course proposal for an advanced seminar on CRT to be added to the regular course offerings in the Faculty of Law. The proposal received unanimous approval by Faculty Council on the International Day for the Elimination of Racial Discrimination, 21 March 2016. The incoming dean registered the accompanying call to build the complement of tenured or tenure-track faculty members able and willing to teach in this field, and has since integrated CRT into his hiring priorities and public messaging on recruitment and equity.

*Where the great big river meets the little river,
Follow the drinking gourd.*

Teaching CRT with a focus on systemic racism and the challenge of addressing settler colonialism made the need to engage thoroughly with the structuring character of the history of slavery and its persisting legacies seem more urgent. It was an important progression to be able to offer the specialized topics course, *Slavery and the Law*, in Fall 2016. Students had asked for systematic engagement with some of the examples of slavery and the law that they encountered—sometimes in passing, sometimes through close study—in other courses. Some students were particularly interested in contemporary uses of the language of slavery. Whatever the motivations, registration for the seminar was so full that a waiting list had to be established. There was excitement.⁶⁴

The course took as its starting point that slavery was a global legal institution.⁶⁵ In other words, it emphasized the fact that law and contempo-

⁶⁴ See bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (New York: Routledge, 1994) (noting that “[t]o enter classroom settings in colleges and universities with the will to share the desire to encourage excitement, was to transgress” at 9).

⁶⁵ See generally Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2015); Greg Grandin, *The Empire of Necessity: Slavery, Freedom, and Deception in the New World* (New York: Holt, 2014). As Grandin observes, “each generation—from W.E.B. Du Bois to Robin Blackburn, from Eric Williams to Walter Johnson—seems condemned to have to prove the obvious anew: Slavery created the modern world, and the modern world’s divisions (both abstract and concrete) are the product of slavery. Slavery is both the thing that can’t be transcended but also what can never be remembered” (Greg Grandin, “Capitalism and Slavery”, *The Nation* (1 May 2015), online: <www.thenation.com>). See also the sobering, realist historical analysis—and acceptance—of the central role of law in the slave trade in Georges Scelle, *Histoire politique de la traite négrière aux Indes de Castille: contrats et traités d’Assiento*, (Paris: Larose & Tenin, 1906); Anne-Charlotte Martineau, “Georges Scelle’s Study of the Slave Trade: French Solidarism Revisited” (2017) 27:4 *Eur J Intl L* 1131 (offering a remarka-

rary approaches to legal liberalism were at its core. In particular, students recognized that the violence of slavery was not an aberration, but very much a part of how the economic, political, social, and of course legal system was normalized, and maintained for centuries.⁶⁶

In this course, we read several books, written by historians of slavery and capital, and legal historians, and received four guest lecturers.⁶⁷ Throughout, we engaged with the intertwined legal relationship between settler colonialism and enslavement, rather than seeing them as dichotomized historical experiences. Participants learned of the legal apparatus that supported the institution of slavery, and how it constituted notions of freedom and unfreedom before the law. Participants reflected upon them in a series of five short written assignments, spread out throughout the term.

Through historian Professor Afua Cooper's work on the largely untold history of the enslavement of both Indigenous people and people of African descent in territory now called Canada, students learned the story of the slave woman, Marie-Joseph Angélique, who was tortured, convicted, and hanged for setting fire to her mistress' home, and with it, much of Old Montreal, on 10 April 1734, in an attempt to flee.⁶⁸ The class grappled with the originality and perils of Cooper's decision to tell Angélique's story through the available documentation, the court transcript. That transcript was extracted through torture, yet it records Angélique's voice. Cooper frames the transcript as a slave narrative. In so doing, she forces the reader to confront the ultimate paradox of enslaved Africans responding to a radically dehumanizing system, by insisting on retaining their humanity, and resisting.

ble contribution to historical memory that complexifies the portrait of the pivotal French international lawyer known for his "social-utopian sensibility" at 1150).

⁶⁶ But as W.E.B. Du Bois maintains in *Black Reconstruction*, "The mere fact that a man could be, under the law, the actual master of the mind and body of human beings had to have disastrous effects. ... As the world has long learned, nothing is so calculated to ruin human nature as absolute power over human beings" (*supra* note 7 at 52–53).

⁶⁷ Professor Afua Cooper, James Robinson Johnston Chair in Black Canadian Studies, Dalhousie University; Professor Carolyn E. Fick, Department of History, Concordia University; Professor Lea VanderVelde, Josephine R. Witte Chair, University of Iowa College of Law; and Emeritus Professor Jane Matthews Glenn at the McGill Faculty of Law (lecturing on the historical significance of "family lands" in the Caribbean).

⁶⁸ See Afua Cooper, *The Hanging of Angélique: The Untold Story of Canadian Slavery and the Burning of Old Montréal* (Toronto: HarperCollins, 2006) (acknowledging that Angélique maintained her innocence throughout most of the ordeal, confessing only under torture; recognizing that the evidence was all circumstantial, Cooper shared her belief that Angélique set the fire as an act of resistance).

Through legal scholar Lea VanderVelde's *Mrs. Dred Scott*,⁶⁹ participants studied the infamous United States Supreme Court decision that took place over a century later, and that defined the exclusion of African Americans from the constitutional guarantees of "citizenship".⁷⁰ Through it, they considered the life of the historically forgotten Harriet Scott. The relationship between slavery and Indigenous dispossession was also a central theme in VanderVelde's book. Participants studied the relationship between revolution from below and legality in historian Carolyn E. Fick's *The Making of Haiti: The Saint Domingue Revolution from Below*.⁷¹ Fick's engagement with C.L.R. James' demonstration that oppressed people—the slaves themselves—could be agents of historical change⁷² offered an intricate tapestry into the meaning ascribed to freedom by the slaves themselves in their revolutionary moment. A central theme, that of the range of resistance to unjust laws, surrounded the course's framing, and became a pivotal entry point for rethinking law, legality, and relative power.

One of the most challenging texts that participants read was M. NourbeSe Philip's book of "legal poetry", *Zong!*⁷³ Philip writes about the massacre, in which a fully-provisioned slave ship set sail from West Africa for Jamaica in 1781, carrying 470 enslaved Africans. The journey took four months instead of six to nine weeks, and the ship was low on provisions. The ship captain, Luke Collingwood, made an "economically rational" calculation: rather than lose the value of his cargo by running the risk that the enslaved Africans would starve on board or arrive ill at shore, he would jettison them overboard—alive⁷⁴—and have the insurance underwrite his financial loss. Philip affirms that, "There is no telling this story; it must be told."⁷⁵ She uses the words of Lord Mansfield's infamous decision in *Gregson v. Gilbert*, in which Solicitor-General Lee argued that "[i]t has been decided, whether wisely or unwisely is not now the question,

⁶⁹ See Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (Oxford: Oxford University Press, 2009).

⁷⁰ See *Dred Scott v Sandford*, 60 US (19 How) 393 (1857) at 419–20.

⁷¹ See Carolyn E Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (Knoxville: University of Tennessee Press, 1990).

⁷² See *ibid* at 3–4.

⁷³ See M NourbeSe Philip, *Zong!* (Middletown, Conn: Wesleyan University Press, 2008).

⁷⁴ Writes Philip, "The case mentions 150 slaves killed. James Walvin in *Black Ivory*, 131, others 130 and 132. The exact number of African slaves murdered remains a slippery signifier of what was undoubtedly a massacre" (*ibid* at 189, n 3).

⁷⁵ *Ibid* at 189.

that a portion of our fellow-creatures may become the subject of property. This, therefore, was a throwing overboard of goods.”⁷⁶

Without repeating those words, Lord Mansfield employs an all too familiar, minimalist legal device: he accepts that the “very uncommon case” should be decided as a matter of insurance law—of course, not as murder or as a massacre—on the basis of whether or not there actually was “necessity”.⁷⁷

Philip’s *Zong!* does not start there. *Zong!* is at once a wake, and a fugue—an act of memory and an anti-narrative. It is framed around the latin “os”, and continues into “sal”, and “ventus”, and “ratio”, and “fer-rum”, and “ebora”, followed by a glossary of words and phrases heard on board the *Zong*. The legal poetry, as told to the author by Setaey Adamu Boateng, an ancestor, works with and through the “word store”⁷⁸ of the decision, until it must move past the limitation of the text itself: across the spaces of the page, through the movement of the water, across the Black Atlantic. Phillip’s work is an unmistakable challenge to an unrelenting, exclusive adherence to legal rationality, and legal formalism.⁷⁹ The work on and beyond the legal artefact that is the case demonstrates—in the fullest sense of the word—what can be so troubled in normalizing certain framings of legal problems. By underscoring the relationship between the past, the present, and the future, Philip implicates legal institutions and actors; she also acknowledges the tension between her own

⁷⁶ *Gregson v Gilbert* (1783), 3 Doug KB 232 at 233, 99 ER 629.

⁷⁷ *Ibid* at 234.

⁷⁸ As Philip explains:

My intent is to use the text of the legal decision as a word store; to lock myself into this particular and peculiar discursive landscape in the belief that the story of these African men, women, and children thrown overboard in an attempt to collect insurance monies, the story that can only be told by not telling, is locked in this text. In the many silences within the Silence of the text. I would lock myself in this text in the say way men, women, and children were locked in the holds of the slave ship *Zong* (Philip, *supra* note 73 at 191).

⁷⁹ Philip adds:

The poems resist my attempts at meaning or coherence and, at times, I too approach the irrationality and confusion, if not madness (*madness is outside of the box of order*), of a system that could enable, encourage even, a man to drown 150 people as a way to maximize profits—the material and the nonmaterial. Or is it the immaterial? Within the boundaries established by the words and their meanings there are silences; within each silence is the poem, which is revealed only when the text is fragmented and mutilated, mirroring the fragmentation and mutilation that slavery perpetrated on Africans, their customs and ways of life (*ibid* at 195 [emphasis in original]).

ability to “function like the law ... to proscribe and prescribe,”⁸⁰ and her desire to allow the poem—and through it, the murdered Africans, who were rendered *dicta* in the *Zong* decision—to (un)tell itself.

It was important for participants to contemplate that the egregious *Zong* case in the United Kingdom, like the *Dred Scott* case in the United States, spurred on successful public and political mobilization for emancipation. It was similarly engaging for participants to consider the tangible understandings of how freedom was framed—in the relationship between land ownership, labour, and the regulation of time. It was necessary for students to contemplate the ways in which re-enslavement occurred, including through prison labour.⁸¹ This led us to grapple with slavery’s legacies,⁸² and implications for the contemporary case for reparations.⁸³ Those coming to the course imagining a straight line between historical experiences of slavery and contemporary uses of the term left with a more textured, even ambivalent, understanding.⁸⁴

Having set out to create a representative composite of readings to capture these themes, at a moment in which the interdisciplinary scholarship on slavery has seen a contemporary renaissance, I was struck when a student pointed out that she found it affirming that several of the authors

⁸⁰ *Ibid* at 199.

⁸¹ One of the assignments was to watch the PBS documentary based on Douglas A Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2009) (see *Slavery by Another Name*, directed by Sam Pollard et al (2012)). Ava DuVernay’s documentary, *13th*, exploring the intersections between race, justice, and mass incarceration in the contemporary United States, was released on Netflix during the course; several students referred to it in class and in their assignments (see *13th*, directed by Ava Duvernay (2016)).

⁸² See generally Catherine Hall et al, *Legacies of British Slave-Ownership: Colonial Slavery and the Formation of Victorian Britain* (Cambridge: Cambridge University Press, 2014).

⁸³ Students had the opportunity to explore contemporary articulations of reparations claims through two alternative sources: a recorded Harvard lecture by the Chancellor of the University of the West Indies, Sir Hillary Beckles, and an article by Ta-Nehisi Coates (see Sir Hilary Beckles, “On Reparatory Justice for Global Black Enslavement: The Greatest Political Movement of the 21st Century” (Weatherhead Initiative on Global History lecture delivered at Harvard Law School, 22 February 2016), online: <www.youtube.com/watch?v=C53rq9iRCEQ>; Ta-Nehisi Coates, “The Case for Reparations”, *The Atlantic*, (June 2014), online <www.theatlantic.com>).

⁸⁴ On this theme, consider most recently Ariela J Gross & Chantal Thomas, “The New Abolitionism, International Law, and the Memory of Slavery” (2017) 35:1 *L & Hist Rev* 99 (arguing that the “slavery-trafficking nexus’ of the new abolitionism may at times contribute to a turning of attention away from legacies of the Atlantic slave trade, and especially away from a discourse of reparations, and furthermore, may constrict understanding of contemporary human vulnerability as a problem of immigration and labor law” at 102).

were racialized, and that most of the authors were women. I admitted to the student that this in part reflected the occasional unanswered invitation and my need to reign in my enthusiasm to make the ambitious reading list manageable, but we agreed that *representation* is also a critical part of rethinking whose work informs the construction of a disciplinary canon.

This concern to rebuild the canon—to call attention to the potential range of a canon that is deeply transsystemic⁸⁵—is part of the reason why I asked only to teach the Slavery and the Law course, once. I want the course to be a basis on which to think about the sources of persisting invisibility that currently inhabit our integrated curriculum. Teaching the course was an opportunity to spotlight what is not always seen, and to do more than hint at the prospect that understanding slavery is important for engaging with foundational understandings of legal liberalism through the prism of a number of obligatory courses in law. Conversations are ongoing—including with some of the several colleagues who have already ensured that there are limited points of contact with the themes of slavery and the law in their courses.⁸⁶

*For the old man is a-waiting for to carry you to freedom,
If you follow the drinking gourd.*

This reflection on teaching—and on the relationship between teaching and writing⁸⁷—has been framed around a living archive, embedded in a slave song, that is also a collectively shared map of meanings. Du Bois considered spirituals to be a “gift of pure art in America.”⁸⁸ For the great

⁸⁵ Consider the breadth of H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed (Oxford: Oxford University Press, 2014). See also Vincent Forray, “De la vocation de Savant’ : En lib(v)re hommage à H. Patrick Glenn” (2015) 37 :2 *Quid Novi* 11, online: <www.quidnovi.ca>.

⁸⁶ The first example is a collaboration with the new, integrated Property Law course, which welcomed Professor Barrington Walker to offer a guest lecture entitled, “You Shall Have the Body: Slavery, Property Rights, and Resistance in Canada” to the full second year cohort on 12 September 2017.

⁸⁷ See generally Lawrence, “Scholarship as Struggle”, *supra* note 30 and accompanying text. See also Richard Michael Fischl, “Teaching Law as a Vocation: *Local 1330*, Promissory Estoppel, and the Critical Tradition in Labour Scholarship” (2017) 33:1 *Intl J Comp Lab L & Ind Rel* 145 (contending that an “under-heralded contribution” of critical theoretical approaches like Critical Legal Studies was to break down the dichotomy between teaching and writing in academic work at 145).

⁸⁸ Du Bois, *Black Reconstruction*, *supra* note 7 at 14. He added that “of all human development, ancient and modern, not the least singular and significant is the philosophy of life and action which slavery bred in the souls of black folk. ... The subtle folk-lore of Af-

soprano, Leontyne Price, spirituals are “the tapestry of life, woven from our cares, suffering, fears, sorrows, triumphs, beauty, and strength.”⁸⁹ Spirituals embody at once serenity and vigilance, acute awareness of space and time, and an uncanny ability to navigate on behalf of one’s own freedom, and that of others. As for the drinking gourd, as Dr. King remembers, the words were also a map quite literally pointing the way to freedom. And framed by Mari Matsuda, that map was a historically rooted multiple consciousness method that retains contemporary significance in law. It was therefore entirely fitting that on her first visit to McGill, on 5 October 2016, Matsuda evocatively addressed the relationship between beauty from ordinary “junk”, dignity in work, a utopian, transformative alternative to liberal constitutionalism, and a peace orchestra.⁹⁰ Following the drinking gourd—the stars, the earth, the long, continuous, flowing movement that *is* the river⁹¹—has got me thinking, differently, still.

These are not ordinary times. Students in *Slavery and the Law* were studying *Dred Scott* as the forty-fifth president of the United States of America was elected on a campaign predicated on historically racialized divisions that take their origins in slavery and dispossession.⁹² The resurgence of nativism in democratic politicking in a number of democracies in the global North and South through formal institutional spaces is also part of the legal landscape surrounding contemporary legal education. Spaces for critical pedagogy are urgent sites from which to cultivate—indeed fortify—the capacity for solidarity across identity, as well as resistance, in, through, and—as Dr. King recognized, when justice demands—to law. Both CRT and *Slavery and the Law* were interdisciplinary in design while rooted in engagement with legal tradition, and the relationship between legal pluralism and power. They were consciously

rica, with whimsy and parable, veiled wish and wisdom; and above all fell the anointing chiasm of the slave music” (*ibid*).

⁸⁹ “Aida’s Brothers & Sisters” (16 May 2007), online: YouTube <www.youtube.com/watch?v=4VOQPPOnYlc> at 00h:03m:26s–00h:03m:37s. See also *Aida’s Brothers & Sisters: Black Voices in Opera*, directed by Jan Schmidt-Garre & Marieke Schroeder (2000).

⁹⁰ See Mari Matsuda, “The Next Dada Utopian Visioning Peace Orchestra: Constitutional Theory and the Aspirational” (2016) 62:4 McGill LJ 1203 (“[a]n orchestra made from the waste stream is art. And what it is singing to you, with its complaining voice, is a version of constitutionalism” at 1235) [Matsuda, “Constitutional Theory and the Aspirational”].

⁹¹ See Harding, *supra* note 35 at xix (“[a]t first, as the river metaphor took life within me, I was unduly concerned about its apparent inexactness and ambiguity. Now, with the passing of time and the deepening of our vision, it is possible to recognize that we are indeed the river, and at the same time that the river is more than us—generations more, millions more”).

⁹² See Du Bois, *Black Reconstruction*, *supra* note 7 at 28–30.

taught as part of McGill's transsystemic project, understood to be "driven by the power of ideas,"⁹³ and assessed as it "evolves over time".⁹⁴

In "Law and Learning in an Era of Globalization", Harry Arthurs is characteristically careful to flag the risk of an approach to "law without the state" in a context of neoliberalism. But he also foregrounds and encourages the dimensions of McGill's transsystemic thinking that explicitly problematize conventional notions of law, and that acknowledge "radical indeterminacy".⁹⁵ Arthurs encourages our faculty to go beyond students' ostensible desire for predictability in legal studies, and beyond the kind of instrumentalizing "niche marketing" for professional ends that McGill is honestly able to do.⁹⁶ Similarly, former McGill Law Dean Nicholas Kasirer explains transsystemic teaching as "an opportunity to locate law more resolutely in the university, not as a matter of geography but of ideas, and to situate it there as an example of what might be called a foundational discipline."⁹⁷ Kasirer invites us to step outside of "Law's empire" to explain law as a social phenomenon.⁹⁸

Of course there are many reasons why we should think beyond empire in law. For scholar and activist Winona LeDuke, a good place to start is to acknowledge that "[i]t is possible to have an entire worldview that has nothing to do with empire."⁹⁹ This does not mean that the place of law

⁹³ Arthurs, "Madly Off", *supra* note 2 at 712.

⁹⁴ *Ibid* at 711.

⁹⁵ Arthurs, "Law and Learning", *supra* note 2 at 637–38. See also Dedek & de Mestral, *supra* note 2 at 905:

[T]he omnipresent experience of difference leads almost naturally to the attempt to explain discrepant and distinct developments in the respective legal traditions, which, from early on, connects legal discourse with the discussions of historical, sociological, economic, philosophical etc. questions in the classroom—another aspect that makes teaching in the trans-systemic format an exciting, but also difficult task.

The authors add: "Only if it is a given that legal education should be about more than the mastery of positive rules, a programme such as McGill's can hope for acceptance" (*ibid* at 907).

⁹⁶ Arthurs, "Law and Learning", *supra* note 2 at 639.

⁹⁷ Kasirer, "Bijuralism", *supra* note 2 at 30.

⁹⁸ See *ibid* at 31–32.

⁹⁹ Winona LaDuke, "Thinking Beyond Empire" (Lecture delivered at the United Theological Seminary's Spring Convocation 2011, 2 June 2011), online: YouTube <www.youtube.com/watch?v=7XCi6_7plUo> at 00h:11m:14s (emphasizing a vision rooted in the cyclical character of nature). For Leanne Simpson, *supra* note 40 at 40:

The starting point within Indigenous theoretical frameworks then is different than from within western theories: the spiritual world is alive and influencing; colonialism is contested; and storytelling, or "narrative imagina-

ceases to matter. On the contrary, as legal scholar John Borrows argues, it is in attention to Earth, that we can appreciate the importance of alternative geographies of law that reside beyond the borders of contemporary legal imagination.¹⁰⁰ Aaron Mills offers an invitation to consider that a “tree is grounded in something beyond itself. A lifeworld ... the earth beneath and all around us”¹⁰¹ is rooted in an understanding of the interdependent and mutually constitutive character of freedom.

In each of these reflections we can find elements of maps to engage deeply with transsystemic approaches to teaching. Arthurs invites us “to engage students in serious conversations which will free them from the tyranny of rules.”¹⁰² Mills acknowledges that law is “never a collection of freestanding rules and processes” but rather a series of narratives that reflect a deeper worldview. He adds a specific caution, to be attendant to the

tion”, is a tool to vision other existences outside of the current ones by critiquing and analyzing the current state of affairs, but also by dreaming and envisioning other realities.

See also Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Boulder: Paradigm, 2014) [de Sousa Santos, *Epistemologies*] (“defend[ing] the need for creating distance in relation to Western-centric political imagination and critical theory” at ix).

¹⁰⁰ See e.g. John Borrows, “Living between Water and Rocks: First Nations, Environmental Planning and Democracy” (1997) 47 UTLJ 417 (offering an early articulation of the origin of First Nations law in the “political, economic, spiritual, and social values” expressed in the teachings of elders, a jurisprudence that “stakes out an alternative geography of law by reconceptualizing North America’s currently accepted spatial relationships” at 454–55). This compelling article begins as follows:

The western shores of Georgian Bay are a place of ancient life. Prehistoric limestone escarpments rise hundreds of feet into the air and then advance into cool, turquoise waters. Piled at the feet of these giants are the chronicles of a storied past. ... Entombed within these rocks are the remains of the territory’s earlier spirits. ... If you follow the escarpment underwater, you discover eight-thousand-year-old forests, and the hushed campfires of my ancestors, the Anishinabe.

Our presence continues to endure in these margins. ...

The Chippewa of the Nawash First Nation live at the margins of more than just lakes, islands, and land. They exist just beyond the borders of the North American legal imagination (*ibid* at 417–18 [footnotes omitted]).

See also L Simpson, *supra* note 40 at 36 (“[t]hrough these teachings, they will come to understand the Earth as themselves”).

¹⁰¹ Mills, *supra* note 3 at 863.

¹⁰² Arthurs, “Law and Learning”, *supra* note 2 at 639.

risk of doing “violence to Indigenous legal orders” unless they are taught in a situated manner, within their constitutional lifeworld.¹⁰³

I would suggest that teaching CRT and Slavery and the Law has been part of this sensing of an emergent, critical pedagogical posture within transsystemia, to sustain resistance to (re)colonizing an approach that promises freedom. This teaching has sought to cultivate students’ grounded sense of justice, water their ability to inherit and hone their method and map, and trust that they can remain or become engaged—not in the place of, but alongside, community. We have “homework”¹⁰⁴ to do, and that includes the redemptive work of transforming the institutions we inhabit, including our universities and law faculties. And one of the most lasting transsystemic gifts might well be the encouragement to sing.¹⁰⁵ I have loved this teaching and learning, and lived it as an act of love.

¹⁰³ Mills, *supra* note 3 at 871 (adding that it is “not something that just anybody can do” at 872).

¹⁰⁴ Sara Ahmed, *Living a Feminist Life* (Durham: Duke University Press, 2017) at 26.

¹⁰⁵ See e.g. CBC, “Interview of Rod Macdonald”, *supra* note 40 at 313–14. See also Nicholas Kasirer, “Rod Macdonald: *Point de bascule*” in Janda, Jukier & Jutras, *supra* note 40, 252 (expressing “Rod’s aspiration for the university—for all universities—as a place to be free and *engagé*, to be *libre* and engaged, all at once” at 254); Sousa Santos, *Epistemologies*, *supra* note 99 (“[w]e are artists embodied in life, and ascendant is our art” at 14); and of course Matsuda, “Constitutional Theory and the Aspirational”, *supra* note 90 (“[i]n making an orchestra, I attempted to create a little piece of the world I want to live in, in which people make art and music and performance together and share their aspirations” at 1223).