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Making Meaning: Indigenous Legal Education and Student Action

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Résumé de l'article

Les étudiants en droit contribuent à donner un sens et un objectif à leur université et à leur société, particulièrement dans le domaine du droit autochtone et canadien. Ils le font par le biais de leurs questions, de leurs recherches, de leur implication au sein de comités, de leurs services, de leurs choix de carrière et de leurs expériences passées. On peut observer cette contribution dans la mise en place de programmes et de cours en droit autochtone à l'Université de la Colombie-Britannique, à la Osgoode Hall Law School de l'Université York, à l'Université de Toronto et à l'Université de Victoria. Ces initiatives démontrent que les étudiants constituent une force importante pour persuader les facultés de droit d'ajouter des cours autochtones, mais également des concours de plaidoirie, des expériences cliniques, des stages, des événements sur le terrain, des revues savantes et des activités d'enseignement des traditions juridiques autochtones. Ces développements ont des répercussions sur des questions telles que notre place en société et la direction que nous prenons dans nos cercles juridiques et politiques élargis. Puisque la mobilisation des étudiants change la manière dont nous enseignons et pratiquons le droit au Canada, cet essai se propose d'examiner les façons dont le sens est généralement donné en termes contextuels, même si nous débattons de l'idée que le droit (et la vie) a des objectifs plus larges et universels.

McGill Law Journal — Revue de droit de McGill

MAKING MEANING: INDIGENOUS LEGAL EDUCATION AND STUDENT ACTION

*John Borrows**

Law students help universities and societies make meaning and purpose, particularly as it relates to Indigenous and Canadian law. They do this through their questions, research, committee work, service, career paths, and past experiences. Some of their insights are found in the unfolding of Indigenous legal education initiatives at the University of British Columbia, Osgoode Hall Law School at York University, the University of Toronto, and the University of Victoria. These initiatives illustrate that law students are a significant force in persuading law schools to add Indigenous courses, moot courts, clinical experiences, internships, land-based events, scholarly journals, and teaching Indigenous legal traditions. In the process, these developments have implications for questions like why we are here and where we are going in our broader legal and political circles. As student action is changing how we teach and practice law in Canada, this essay examines ways in which meaning is more generally made in contextual terms, even as we struggle with the idea that law (and life) has broader, universal purposes.

Les étudiants en droit contribuent à donner un sens et un objectif à leur université et à leur société, particulièrement dans le domaine du droit autochtone et canadien. Ils le font par le biais de leurs questions, de leurs recherches, de leur implication au sein de comités, de leurs services, de leurs choix de carrière et de leurs expériences passées. On peut observer cette contribution dans la mise en place de programmes et de cours en droit autochtone à l'Université de la Colombie-Britannique, à la Osgoode Hall Law School de l'Université York, à l'Université de Toronto et à l'Université de Victoria. Ces initiatives démontrent que les étudiants constituent une force importante pour persuader les facultés de droit d'ajouter des cours autochtones, mais également des concours de plaidoirie, des expériences cliniques, des stages, des événements sur le terrain, des revues savantes et des activités d'enseignement des traditions juridiques autochtones. Ces développements ont des répercussions sur des questions telles que notre place en société et la direction que nous prenons dans nos cercles juridiques et politiques élargis. Puisque la mobilisation des étudiants change la manière dont nous enseignons et pratiquons le droit au Canada, cet essai se propose d'examiner les façons dont le sens est généralement donné en termes contextuels, même si nous débattons de l'idée que le droit (et la vie) a des objectifs plus larges et universels.

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Introduction: Contextualizing the Big Questions

I struggle to find life's meaning. The book *The Hitchhiker's Guide to the Galaxy* says that the answer is 42. While I like this answer, this issue is not solely numeric or metaphysical. Ordinary questions about life's physical trajectory can be difficult, such as "where did I come from?", "why am I here?", and "where am I going?". For example, try answering these queries with reference to your own educational, employment, relational, political, social, or economic status. You will find many strands in your answers that complicate understanding since causation and trajectories are not linear. Furthermore, some things simply cannot be known.

At the same time, I should not overstate these challenges. These questions may yield obvious responses when considering specific issues. This is particularly true regarding education. For example, people go to university to prepare for future employment. In contemplating where they come from, a university student might say that they came from a secondary school. In discussing why they are here, they could talk about developing skills, discipline, and friendships while receiving academic credentials. Finally, successful students might report that they are going to use these skills to support themselves and their loved ones. Thus, it is possible to provide some tangible, tentative answers to life's biggest questions if we consider more modest, proximate ends.

Nevertheless, these inquiries become more difficult when considering our interior views, particularly those related to timeframes beyond our lifetimes. Our emotional, psychological, intellectual, and spiritual lives are notoriously complex. Our internal ideas and feelings constantly shift. Furthermore, approaches to life's so-called meaning are influenced by our class, race, gender, culture, religion, age, sexual orientation, and other varied contexts. Our perspectives are also intergenerational. This gives rise to many perspectives on where, why, and how questions.

This essay examines how university students change understandings of where we came from, why we are here, and where we are going in relation to Indigenous and Canadian law. Part I examines more general student approaches to education, including the intrinsic and instrumental motivations of students and how those students influence their professors' teaching and writing. Part II highlights Indigenous legal education initiatives at the University of British Columbia, Osgoode Hall Law School at York University, the University of Toronto, and the University of Victoria. This second Part shows that law students are a significant force in persuading law schools to add Indigenous courses, moot courts, clinical experiences, internships, land-based events, a scholarly journal, and teaching in legal traditions to the mix of learning opportunities in these institutions. Part III discusses the importance of graduate students in asking where we came from, why we are here, and where we are going in

legal, political, social, and economic terms. Finally, Part IV discusses the development of the joint Indigenous law and common law degree (JID/JD) program at the University of Victoria Law School as a dimension of student action in changing how we teach and practice law in Canada.

Ultimately, this essay concludes by suggesting that life's meaning, in part, revolves around our capacities for growth. This growth is enhanced when students compare, contrast, consider, criticize, concur, and reject other people's views, including those of Canada's legislatures and courts, as well as their own communities', professors', and colleagues' views. In following these paths, this essay concludes that it is not easy to find life's meaning, in either proximate or absolute terms. Nevertheless, striving to understand life's purposes, while accepting the task's possible futility, creates constructive tensions that appropriately challenge self-assured stories about where we came from, why we are here, and where we are going as individuals and societies.

I. University Students and Proximate Life Purposes

Despite certain limits,[1] students ask big questions and reflect on life's purposes in universities. For example, university students see their own lives in broader contexts when they learn more about themselves, their

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[1] Law schools, which are the locus of inquiry in this essay, do not explicitly engage with ultimate, transcendent, or metaphysical questions. Their treatment of ultimate ends, goals, aims, and objectives is often subtle, indirect, and embedded deep within assumptions about the meaning and purpose of law in western democracies. Perhaps law schools do not explicitly engage in "purpose of life" inquiries because there is a genuine concern that choosing, identifying, or following specific ends could devalue or ignore stories in reductive, exclusionary, and harmful ways. This is one reason why inquiries from religious, spiritual, emotional, and psychological perspectives are scarce in these settings.

Furthermore, there is a strong view that perceiving ultimate ends is beyond human discernment and comprehension. Some also think that ideas about ultimate designs are false, fabricated, fake, and fictitious. Thus, very few law professors speak about God, gods, the sacred, or the inner complexities of teleological human motivations in classes. While these issues are not completely absent, they play a vanishingly small role in our discussions, despite how important they may be to individuals, groups, and entire societies outside of legal education. In fact, if these issues are raised at all, it is often (though not always) through their dismissal as being irrelevant to contemporary legal understanding and practice. As noted, some even consider that discussion of the spiritual or supernatural can be distracting and dangerous.

Marginalization of these questions is revealed in how law schools structure class discussions and teaching materials. While I have views about the hidden nature of law school's teleological commitments (see generally John Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019) [Borrows, *Indigenous Ethics*]), this essay focuses on more relative, proximate engagements with large questions about life's meaning.

neighbours, and people they will never meet. They pursue post-secondary education to grapple with perspectives very different from their own. In the process, students seek to better understand their communities' histories and contemporary circumstances, and to contribute to the larger world.

Other students study for reasons that are not obvious at the outset, particularly when they acknowledge that they do not really know themselves. These students go to school to learn who they may be or become. In other words, they attend university for intrinsic reasons. They are prepared to be surprised about their own past, present, and future. From these vantage points, asking students where they came from, why they are here, and where they are going may be precisely what they hope to forge and learn in university.

Many of these same students use their education to challenge existing conditions and fight injustice. They are motivated to learn by their acceptance, alteration, transformation, or rejection of their prior views. I regularly encounter university students who implicitly tackle larger pressing questions related to where they came from, why they are here, and where they are going.

Yet other university students are more cautious in their approaches to university life. Their interests are more instrumental. They go to school to confirm their own ideas, identities, feelings, and frameworks. They are no different than most of us in this regard. We all struggle with complexity. This is why humans use mental shortcuts, called heuristics, in identifying and assessing information. This favours the status quo and introduces bias into our decision-making.[2] Heuristics often provide shortcuts for taking action because we do not have the time, information, or abilities to explore all the varied implications of the information that we receive.[3] Life's ambiguities can be overwhelming and thus, when learning, we necessarily use rough estimates about how to proceed when presented with new ideas. This happens in university even as we try to widen our horizons or opportunities. Default positions, which affirm our views, help us take action without having to analyze every new detail that we encounter. Thus, heuristics can serve us well.

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2 For an excellent analysis of heuristics and biases, see Daniel Kahneman, *Thinking, Fast and Slow* (Toronto: Anchor, 2013).

3 A discussion of heuristics and biases in a legal setting is found in: Eyal Zamir & Doron Teichman, eds, *The Oxford Handbook of Behavioral Economics and the Law* (New York: Oxford University Press, 2014); Mark Kelman, *The Heuristics Debate* (New York: Oxford University Press, 2011); Richard H Thaler & Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New York: Penguin Books, 2009).

Unfortunately, danger arises when our biases hide our preconceptions, predilections, and predispositions, particularly from ourselves. This can be a challenge for university professors and students if our identity-based frameworks prevent us from facing facts or respecting others' opinions. Thus, universities function best when they bring our own biases to our attention. The following examples demonstrate students' humility and resolve to both respect and challenge received wisdom. These examples show why students are at the heart of any university's mission because of how they reflect upon preconceived ideas and forge new pathways.

Speaking personally, I have been impressed with how university students, as a group, broaden our horizons and expand our views. I see more of how other people frame life's purposes because of their participation in class, office visits, faculty governance, and research output. My most important experiences in universities are with students. This is not to diminish professors' contributions. I merely acknowledge an obvious point: professors are not the fount of all knowledge; they are not necessarily the most innovative part of our post-secondary education systems. Students ask questions that often propel a professor's own work. Students' research advances knowledge in key ways as professors learn from, with, and alongside students as we teach, mentor, supervise, and read their work. As I said, they have been some of my greatest teachers. I absorb as much from them as any other source.

One reason that student engagement can be enriching is because student experiences can be more varied when compared to those of their professors. Students therefore bring unexpected perspectives to their interactions. They teach faculty and one another in direct and vicarious ways. Some students read widely and pass along what they have learned in class, conversations, and essays. Moreover, life is not static. Through thirty years of teaching, I have noticed that each generation raises different concerns. Students ask tough questions about things that I rarely or unfairly consider. Since their collective life experience is broader than my own, I would be foolish not to learn from them. Not only do they answer questions, but they also question answers that I assumed were not subject to further interrogation.[4] When this happens, I learn more about life's meaning.

There are also times when students teach me what not to do. Like all people, they can be foolish. Their missteps and oversights give me pause.

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[4] See Sarah Noël Morales, "*Snuw'uyulh*: Fostering an Understanding of the Hul'qumi'num Legal Tradition" (PhD Dissertation, University of Victoria, 2014) [unpublished] at 42 [Morales, "*Snuw'uyulh*"].

They also make mistakes; they get things wrong and require correction. Like their professors, they make errors. How we convey and respond to subpar grades, teaching evaluations, and peer review can be done well or poorly. Furthermore, a lapse in judgement can reveal assumptions that would otherwise remain hidden.

Furthermore, every decade, one or two students unfortunately cause great harm to their colleagues and our school. Whether through plagiarism, passive acquiescence, misdirected activism, intimidation, harassment, or obliviousness, a few students have torn us apart in detrimental ways. I have seen professors do the same thing. These are tough moments. We do all that we can to prevent them. Yet even these terrible experiences also generate lessons; they are teachable moments about life's purposes.

Fortunately, ninety-nine per cent of my interactions with students have been enriching. Their essential role requires continual highlighting: universities would be significantly diminished if they were solely research labs or partisan think-tanks. If students did not keep posing big questions, our inquiries would lose valuable context and content. In this way, they help us deepen searches for life's meaning.

II. Law Students and Indigenous Legal Education Initiatives

While individual agency is key in considering life's big questions, we must also pose our queries collectively. We need one another's insights. We live in communities that require one another's care and contrariness. We are warmed by fires that we have not built and we drink from wells that we have not dug. We are entangled.[5] What we do has an impact on those around us. Our actions have consequences for people whom we will never know. Individuals are not isolated atoms living in a social vacuum. For this reason, in addition to strongly encouraging individual freedom to question in unique ways, we must also approach life's purposes as groups.

In this light, students are also key to universities because they do more than educate us as individuals. They change how we collectively organize and communicate knowledge. In this way, they are an important part of how universities govern themselves. Students bring systemic concerns to the fore. They have an enormous impact on how we structure learning, including what we teach and write. This is particularly the case with Indigenous issues.

For example, students have greatly influenced universities' work in Indigenous law through the years. While they have not uncovered where

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[5] See Borrows, *Indigenous Ethics*, *supra* note 1 at 115–20.

we came from, why we are here, and where we are going from metaphysical standpoints, they have substantially reframed approaches to these questions from historical, political, economic, ecological, and social perspectives. Their demand for relevant curricula, support, and community-based learning has changed how and what we learn. Societally, while many problems remain, many universities now more clearly acknowledge that we come from a colonial past, and they must grapple with its ongoing effects to enhance our future health and well-being. These are significant where, why, and what-for contributions that enhance searches for life's meaning.

To illustrate, I will provide a few examples of how I have seen students shape the way in which we collectively ask questions in law schools, drawn from my own experience.

In 1992, when I taught at the University of British Columbia (UBC) Law School, I was the First Nations Legal Studies Director.[6] I chaired a First Nations Legal Studies Committee that had a significant number of student representatives who later became leaders in their field.[7] The stu-

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6 The UBC Law School changed the name of the First Nations Legal Studies Program to the Indigenous Legal Studies Program. Information about the program can be found at: "Indigenous Legal Studies" (2020), online (pdf): *Peter A Allard School of Law* <allard.ubc.ca> [perma.cc/AYW3-YSBH].

7 For a small sample of Indigenous students who made a contribution to student government at this time, among others, see Diane Haynes, "Ardith Wal'petko We'dalx Walkem" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/R5RJ-B5PN]; Dan Fumano, "'It's about time': Leading First Nations Law Expert Named to B.C. Supreme Court", *Vancouver Sun* (22 December 2020), online: <vancouversun.com> [perma.cc/A3B8-UV84]; Ardith Walkem & Halie Bruce, eds, *Box of Treasures or Empty Box?: Twenty Years of Section 35* (Penticton, BC: Theytus Books, 2003); "Terri-Lynn Williams-Davidson" (last visited 4 September 2022), online: *Terri-Lynn Williams-Davidson* <www.ravencallingproductions.ca> [perma.cc/WP3U-66Q6]; Diane Haynes, "Terri-Lynn Williams-Davidson" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/4XWN-RR2P]; Gid7ahl-Gudsllaay Lalaxaaygans (Terri-Lynn Williams-Davidson), O*ut of Concealment: Female Supernatural Beings of Haida Gwaii* (Victoria, BC: Heritage House, 2017); "Darwin Hanna" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/BXJ8-P69K]; Darwin Hanna & Mamie Henry, eds, *Our Tellings: Interior Salish Stories of the Nlha7kápmx People* (Vancouver: UBC Press, 1995); Sheldon Cardinal, *The Spirit and Intent of Treaty Eight: A Sagaw Eeniw Perspective* (LLM Thesis, University of Saskatchewan, 2001) [unpublished]; "Leona Sparrow" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/ZML9-RS8V]; Leona Sparrow, Jordan Wilson & Susan Rowley, "ĆƏSNA?ƏM, The City before the City: A Conversation" (2018) 199 BC Studies 45; "Cynthia Callison" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/Q5BJ-2QC9]; Cynthia Callison, "Appropriation of Aboriginal Oral Traditions" (1995) UBC L Rev 165; Penny Cholmondeley, "Duncan McCue" (2008), online: *Peter A Allard School of Law* <historyproject.allard.ubc.ca> [perma.cc/4YGD-ZFUE]; Duncan McCue, *The Shoe Boy: A Trapline Memoir* (Vancouver: Purich Books, 2020).

dents were not satisfied with how the school prepared them for practice or how we reflected their concerns. As a result, they requested more classes in both Indigenous peoples' own law and Canadian law as it relates to Indigenous peoples. Their views resulted in an increase in courses from two to seven and led to more people being hired to teach in the field.

Furthermore, UBC students wanted an Indigenous legal clinic, a national Indigenous moot court, and more opportunities to associate with lawyers who represented Indigenous people. Their study, advocacy, and support helped form the Indigenous legal clinic in Vancouver's Downtown Eastside.[8] Their efforts at UBC and elsewhere led to the creation of a nation-wide Kawaskimhon Moot experience that continues to be part of national law school curricula over twenty-five years later.[9] Métis student Jean Teillet at the University of Toronto Law School was a key individual in generating this development.[10] While getting the profession to support Indigenous students has been more challenging, student calls for the profession's backing remains an important goal at all law schools.[11]

When I later taught at Osgoode Hall Law School at York University, Indigenous student leadership also animated my experience. They helped form "why we were there," which informed "where they would go." As noted, Indigenous communities and students were not well served by law schools' conventional curricular offerings. Anishinaabe law student Susan Hare was instrumental in the establishment of the Indigenous Lands, Resources & Governments Intensive Law Program at Osgoode, where I was hired to teach in 1994. Ms. Hare worked with faculty members to design its major features and fundraised to support its operation. As the course began, and through the years, it has remained relevant as it continues to be responsive to student feedback.

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8 See Patricia Barkaskas & Sarah Buhler, "Beyond Reconciliation: Decolonizing Clinical Legal Education" (2017) 26 J L & Soc Pol'y 1 at 7. See also Sarah Buhler et al, "Clinical Legal Education on the Ground: A Conversation" (2020) 32 J L & Soc Pol'y 127.

9 Information about the most recent Kawaskimhon Moot can be accessed here: "Kawaskimhon Moot 2021" (2021), online: *University of Saskatchewan College of Law* <law.usask.ca> [perma.cc/3LCH-Z392]. For an example of the kind of arguments made at the moot, see Lara Ulrich & David Gill, "The Tricksters Speak: Klooscap and Wesakechak, Indigenous Law, and the New Brunswick Land Use Negotiation" (2016) 61:4 McGill LJ 979.

10 Jean Teillet's accomplishments since graduating from the University of Toronto Law School are listed on her law firm's webpage (see "Jean Teillet" (last visited 8 August 2022), online: *Pape Salter Teillet LLP* <pstlaw.ca> [perma.cc/763Y-JGG6]). For a sample of her writing, see Jean Teillet, *The North-West Is Our Mother: The Story of Louis Riel's People, the Métis Nation* (Toronto: Harper Collins Canada, 2019).

11 For a discussion of Indigenous peoples and the legal profession, see Sonia Lawrence & Signa Daum Shanks, "Indigenous Lawyers in Canada: Identity, Professionalization, Law" (2015) 38:2 Dal LJ 503.

The Osgoode Intensive Program has now been running for over twenty-five years and has enrolled over 450 students from many law schools.[12] These students spend an entire semester working with Indigenous communities around the world, in places that the students often have an active role in choosing. They study in an academically rigorous placement-based course that contains their entire credit load for the term. A series of intensive seminars early in the semester precedes seven-week field placements with Indigenous organizations, environmental organizations, Indian reserves, law firms, or government departments working on applied legal issues. Students' written work has made a significant difference to these groups. Their research papers ensure that they stand back and critically assess their experiences in order to ask bigger where, why, and what-for questions.

Indigenous student leadership was also key to broadening the legal academy's horizons when I taught at the University of Toronto Law School. Planning began in the late 1990s, and their efforts eventually led to the establishment of the *Indigenous Law Journal* (ILJ) in 2002. Douglas Sanderson[13] and Karen Abbott[14] were key figures in its development. The ILJ is a student-run legal journal "dedicated to developing dialogue and scholarship in the field of Indigenous legal issues both in Canada and internationally. The journal publishes articles, notes, case comments, and reviews grounded in all areas of study pertaining to both the laws of indigenous peoples and the law as it affects indigenous peoples."[15] The ILJ's publications throughout the past two decades have demonstrated how students make a significant contribution to scholarship during their university studies, and how they have invited others to do the same. As with

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12 For information about the Intensive Program in Indigenous Lands, Resources & Governments, see "Intensive Program in Indigenous Lands, Resources & Governments" (2016), online: *Osgoode Hall Law School* <www.osgoode.yorku.ca> [perma.cc/8CY5-ZHQH].

13 Professor Sanderson is now a tenured Professor at the University of Toronto Law School. For a sample of his recent writing, see Douglas Sanderson (*Amo Binashii*), "The Residue of *Imperium*: Property and Sovereignty on Indigenous Lands" (2018) 68:3 UTLJ 319 [Sanderson, "Residue of *Imperium*"]; Douglas Sanderson (*Amo Binashii*) & Amitpal C Singh, "Why Is Aboriginal Title Property if It Looks Like Sovereignty?" (2021) 34:2 Can JL & Jur 417.

14 Karen Abbott is now a judge on the Provincial Court of British Columbia. She completed her Ph.D. at Royal Roads University. For a sample of her legal writing, see Karen L Abbott, "Urban Aboriginal Women in British Columbia and the Impacts of Matrimonial Real Property Regime" in Jerry P White, Paul Maxim & Dan Beavon, eds, *Aboriginal Policy Research*, vol II (Toronto: Thompson Educational, 2004) 165.

15 The *Indigenous Law Journal* homepage is found at: "Indigenous Law Journal" (last visited 8 August 2022), online: *Indigenous Law Journal* <ilj.law.utoronto.ca> [perma.cc/S6FL-2J2Y].

other initiatives described herein, the ILJ encourages big questions, which often go to the heart of where we came from, why we are here, and where we are going in Indigenous and other legal relationships.

During my time at the University of Toronto, law students also assisted in developing the June Callwood Program in Aboriginal Law when a donor approached me seeking to support Indigenous law students. After conversations with Dean Ron Daniels and the Indigenous Law Students' Association, the Callwood Program was initiated and now provides up to two summer fellowships of up to $10,000 for law students to work with community organizations on Indigenous legal issues.[16]

In 2001, I was hired as the Law Foundation Professor in Indigenous Justice and Governance at the University of Victoria (UVic) Law School. In taking this position, I also saw how law students helped propel Indigenous law scholarship and program development. In so doing, they further changed how we approached "why we are here" and "where are we going" questions. For example, as Nunavut became a new territory, there was a need to provide legal education in the north because there was only one Inuit lawyer in the area when the territory was created. UVic Law School co-op student Kelly Gallagher-McKay (who, a decade later, became a university professor[17]) worked with Inuit leaders, other leaders, and organizations in Iqaluit to develop a proposal to host legal education in the north. Through her efforts, as well as other student and community efforts, UVic ran the Akitsiraq Law School from 2001 to 2005 in partnership with the Akitsiraq Law Society and Arctic College in Iqaluit, Nunavut.[18] The program operated in the north on a cohort model with students proceeding together through a four-year law degree.[19] Most of the students were Inuit and they taught me much about Inuit law along the way. Inuit law has metaphysical and practical orientations that expanded my understanding of life's meaning once again.

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16 Information about the June Callwood Program in Aboriginal Law can be found at "June Callwood Program in Aboriginal Law" (last visited 8 August 2022), online: *University of Toronto Faculty of Law* <www.law.utoronto.ca> [perma.cc/H4JJ-MMVU].

17 Professor Gallagher-Mackay now teaches at Wilfrid Laurier University. For a sample of her writing, see Kelly Gallagher-Mackay, *Succeeding Together: Schools, Child Welfare, and Uncertain Public Responsibility for Abused or Neglected Children* (Toronto: University of Toronto Press, 2017); Kelly Gallagher-Mackay & Nancy Steinhauer, *Pushing the Limits: How Schools Can Prepare Our Children Today for the Challenges of Tomorrow* (Toronto: Doubleday Canada, 2017).

18 See Kelly Gallagher-Mackay, "Affirmative Action and Aboriginal Government: The Case for Legal Education in Nunavut" (1999) 14:2 CJLS 21.

19 See Shelly Wright, "The Akitsiraq Law School: A Unique Approach to Indigenous Legal Education" (2002) 5:19 Indigenous L Bull 14.

In particular, the students took an Inuit language and law course with Inuit Elder-in-Residence Lucien Ukaliannuk, which caused them to bring questions about Indigenous law more generally to my classes on contracts (voluntary obligations), remedies, and Indigenous Peoples and Canadian Law.[20] In addition, the students asked questions about how to live well, how to become a balanced legal professional, and how to fulfil their responsibilities to past and future generations. They wanted to be responsively responsible to Inuit lifeways in how they would, one day, practice law. They were very proactive learners. The students' questions helped me see the place of Inuit law in Nunavut and their views reinforced the importance of Indigenous law more generally, as necessary to understanding law in Canada.

Law students from the south learned lessons about Indigenous law's importance too. Akitsiraq students met other law students in our Victoria-based UVic JD program in the Akitsiraq cohort's final year.[21] Inuit students enrolled in our conventional JD courses on the southern edge of Vancouver Island to complete their degree. In Victoria, they introduced their perspectives on law to faculty and other law students.

The broader community outside the law school also gained a heightened appreciation for Indigenous law when Inuit law students and elders met with Kwakwaka'wakw elders and law keepers in the Mungo Martin Big House next to Victoria's inner harbour. Around a blazing fire, surrounded by clan and crest carvings, Inuit and Kwakwaka'wakw people shared their laws. They explained how they regulated resource use, land allocation, family matters, and other contemporary issues. They talked about larger philosophical questions that placed us in a broader stream of time. We talked about the stars, winds, ice, rain, elements, and animals and the ways that they all give rise to obligations. We discussed their millennial-long history, colonialism's recent impacts, and their future hopes for greater self-determination. This was a transsystemic engagement between legal systems through story, song, dance, and discussion. It revealed innovative approaches to where, why, and what-for questions. It was not long before a proposal was drafted for a joint Indigenous law and common law degree for UVic.

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20 For information about Lucien Ukaliannuk, see "Igloolik Elder Praised for Preserving Inuit Justice, Law", *CBC News* (11 October 2007), online: <www.cbc.ca> [perma.cc/93T5-APUR].

21 See "Future Akitsiraq Law Grads Get First Look at Campus", *UVic News* (25 January 2005), online: <www.uvic.ca> [perma.cc/8RTH-8CMA].

The idea of a joint Indigenous law and common law degree was first discussed in the early 1990s. Professors Trish Monture,[22] Sakej Henderson,[23] my Ph.D. student Harold Cardinal,[24] and I generated the idea. We were teaching in the Summer Program in Native Legal Studies at the Native Law Centre in Saskatoon, Saskatchewan, and the students wanted more Indigenous law content.[25] In response, our idea was to teach Indigenous peoples' own legal orders in law school settings, including creating a comprehensive program hosted by the First Nations University (FNU) in Regina. When the FNU Law School idea failed to transpire, I became fixated on the idea of an Indigenous Law Degree. From this experience, and building on my graduate work,[26] my scholarship dove more deeply into Indigenous peoples' own law and its relationship with broader Canadian

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22 For a sample of Professor Monture's scholarship, see Patricia A Monture, "Women's Words: Power, Identity, and Indigenous Sovereignty" (2008) 26:3/4 Can Woman Studies 154; Patricia A Monture, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah" (1986) 2 CJWL 159; Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Halifax: Fernwood, 1995); Patricia Monture-Angus, "Standing against Canadian Law: Naming Omissions of Race, Culture and Gender" (1998) 2 YB New Zealand Jurisprudence 7; Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism, and Correctional Practice" (1999) 19:1/2 Can Woman Studies 24; Patricia A Monture-Okanee, "The Violence We Women Do: A First Nations View" in Constance Backhouse & David H Flaherty, eds, *Challenging Times: The Women's Movement in Canada and the United States* (Montreal & Kingston: McGill-Queen's University Press, 1992) 193; Patricia A Monture-Okanee, "The Roles and Responsibilities of Aboriginal Women: Reclaiming Justice" (1992) 56:1 Sask L Rev 237.

23 For a sample of Professor Henderson's scholarship, see James [sákéj] Youngblood Henderson, "Empowering Treaty Federalism" (1994) 58 Sask L Rev 241; James Youngblood Henderson, *First Nations Jurisprudence and Aboriginal Rights: Defining the Just Society* (Saskatoon: Native Law Centre, 2006); James [sákéj] Youngblood Henderson, "Mikmaw Tenure in Atlantic Canada" (1995) 18:2 Dal LJ 196.

24 For a sample of Harold Cardinal's work, see Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M.G. Hurtig, 1969); Harold Cardinal & Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000).

25 For historic information about the Program of Legal Studies for Native People, see Ruth Thompson, "The University of Saskatchewan Native Law Centre" (1988) 11:2 Dal LJ 712. Subsequent developments can be examined at: "Program of Legal Studies for Native People Gets New Name" (13 December 2017), online: *University of Saskatchewan College of Law* <law.usask.ca> [perma.cc/BK78-JLGW]. Spring and summer law courses for Indigenous students can be found at: "University of Saskatchewan College of Law Offers 1L Indigenous Students Summer Classes" (last visited 8 August 2022), online: *Indigenous Law Centre* <indigenouslaw.usask.ca> [perma.cc/S44K-5XVG].

26 Publications drawn from my graduate work include: John J Borrows, "A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government" (1992) 30:2 Osgoode Hall LJ 291; John Borrows, "Negotiating Treaties and Land Claims: The Impact of Diversity within First Nations Property Interests" (1992) 12 Windsor YB Access Just 179.

law.[27] Thus, in 2005, as Akitsiraq was winding down, I composed a thirty-page document proposing a joint Indigenous law and common law degree at the UVic Law School.[28] With the encouragement of our then-Law Dean Andrew Petter,[29] Canada Research Chair Jeremy Webber,[30] and Jim Tully,[31] the proposal outlined the broader contours and specific details of a joint Indigenous law and common law degree.

Law students at UVic and elsewhere supported the necessity of seeing Indigenous law as an ongoing force in Canada. UVic students, led by Doug White, formed an Indigenous Law Club that provided excellent feedback on the proposal.[32] They generated further student and Indigenous community interest and their enthusiasm led to the creation of an initiative that piloted different aspects of the future degree. Along the way, UVic offered summer programs in Indigenous law, specialized Indigenous law methods courses, and land-based experiences with communities, experiences in which students eagerly partook. Professor Val Napoleon was hired and planning for the joint Indigenous law and common

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27 See John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) [Borrows, *Recovering Canada*]; John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) [Borrows, *Indigenous Constitution*].

28 The outline of the Indigenous Law curriculum, which we now teach at UVic Law School, is detailed in: Borrows, *Indigenous Constitution*, *supra* note 27 at 228–36.

29 Prior to serving as Dean of UVic Law School, Andrew Petter had served in the Government of British Columbia as Attorney General, Minister of Finance, Minister of Forests, Minister of Advanced Education, Minister of Health, and Minister of Aboriginal Relations. His academic work is represented in Andrew Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights* (Toronto: University of Toronto Press, 2010).

30 Professor Webber has written about Indigenous legal issues in Jeremy Webber et al, eds, *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics* (Vancouver: UBC Press, 2014); Hester Lessard, Rebecca Johnson & Jeremy Webber, eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community* (Vancouver: UBC Press, 2011); Jeremy Webber & Colin M Macleod, eds, *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver: UBC Press, 2010); Hamar Foster, Heather Raven & Jeremy Webber, eds, *Let Right Be Done: Aboriginal Title, the* Calder *Case, and the Future of Indigenous Rights* (Vancouver: UBC Press, 2007).

31 Professor Tully was a special advisor to the Royal Commission on Aboriginal Peoples from 1991 to 1995. His publications also substantially engage with Indigenous issues (see e.g. James Tully, *Public Philosophy in a New Key* (New York: Cambridge University Press, 2008); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, UK: Cambridge University Press, 1995)).

32 For a discussion of Doug White's leadership as a student at UVic Law School, see "The First Nations Connection" (4 September 2007), online: *Canadian Lawyer* <www.canadianlawyermag.com> [perma.cc/PQ6S-QEFA].

law degree kicked into high gear.[33] Among other activities, Professor Napoleon created an Indigenous Law Research Unit to work with communities to help them revitalize their laws as they invited us into their work. Some of the initiatives were national, and students from across the country enrolled in them, which further enhanced the field.[34] Student class participation and research papers revealed other dimensions of the field and these students took their experiences at UVic back to their law schools and communities.

This soon led the law school to work more closely with Indigenous communities. Before long, we were invited to Osgoode Hall Law School,[35] McGill Law School,[36] Western University Law School,[37] Windsor Law School,[38] the University of Toronto Law School,[39] and others to offer land-based Indigenous law courses and orientations for even more students.[40] When you are out on the land, forests, fields, shorelines, and in the homes of Indigenous communities, questions about where we came from, why we are here, and where we are going inevitably arise. In our time together, elders, wisdom-keepers, storytellers, Chiefs, band councillors, and First Nations members both prompt and respond to these questions. The discussions are wide-ranging. Fortunately, when students interact with one another, Indige-

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33 For recent publications by Val Napoleon, see Angela Cameron, Sari Graben & Val Napoleon, eds*, Creating Indigenous Property: Power, Rights, and Relationships* (Toronto: University of Toronto Press, 2020); Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 Lakehead LJ 16; Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 McGill LJ 725.

34 The Indigenous Law Research Unit's website can be found at: "Indigenous Law Research Unit" (last visited 8 August 2022), online: *ILRU* <ilru.ca> [perma.cc/S2FY-AUZ2].

35 See Serena Dykstra, Zachary Donofrio & Jasleen Johal, "Anishinaabe Law Camp", *Obiter Dicta* (29 September 2014), online: <obiter-dicta.ca> [perma.cc/B5VC-JNUC].

36 See "Anishinaabe Law Class: Law as a Human Experience*"* (1 November 2017), online: *McGill Focus Law* <focuslaw.mcgill.ca> [perma.cc/6BGK-3VYW].

37 See "Indigenous Law Camp Imparts Valuable Lessons", *Western Law Faculty News* (29 March 2017), online: <law.uwo.ca/news/> [perma.cc/UCT8-BAJX].

38 See Hanna Askew, "Learning from the Land: Anishinaabe Law Camp at Walpole Island First Nation" (15 May 2016), online (blog): *West Coast Environmental Law Blog* <www.wcel.org> [perma.cc/P3ND-FQBM].

39 See Meena Sundararaj, "A Student Writes: Indigenous Law in Context at Neyaashiinigmiing Cape Croker Reserve", *University of Toronto News* (13 October 2017), online: <www.law.utoronto.ca/news/> [perma.cc/4285-H2S3].

40 For a discussion of land-based legal education, see Borrows, *Indigenous Ethics*, *supra* note 1 at 149–75.

nous communities, and the natural world in these settings, you cannot contain the scope of conversation within conventional university bounds.

III. Graduate Students and Indigenous Law

As Indigenous legal education efforts grew alongside more frequent attentiveness to life's broader questions, Indigenous law initiatives arose at many schools. This led to a number of Indigenous and other students enrolling at UVic Law School with the goal of studying Indigenous Law in their graduate degree programs. They wanted to contribute to the development of the field in university and community settings. Many of these graduate students are now professors and teachers at other schools and some are colleagues at UVic, teaching in the school's Indigenous law (JID) and common law (JD) joint degree. A summary of their research in the next paragraph demonstrates their work's ground-breaking reach. From their titles, you can also see that many asked questions that reframe where we came from, why we are here, and where we are going, at least legally speaking. Some of their work even poses such questions on a much wider scale and in an exceptionally deep way.

The research on Indigenous peoples' law and its more general relationship with Canadian law is burgeoning. It now influences countless law students, and others, as these former graduate students teach and continue to write through their professional careers. As noted, in the last ten years, the following authors have researched Indigenous law and its interactions with Canadian law: Ryan Beaton,[41] Kinwa Bluesky,[42] Andrée Boisselle,[43] Keith Cherry,[44] Robert Clifford,[45] Aimée Craft,[46] Alan Hanna,[47] Carwyn Jones,[48]

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41 See Ryan Beaton, *Positivist and Pluralist Trends in Canadian Aboriginal Law: The Judicial Imagination and Performance of Sovereignty in Indigenous-State Relations* (PhD Dissertation, University of Victoria, 2021) [unpublished].

42 See Kinwa Kaponicin Bluesky, *Art as My* Kabeshinan *of Indigenous Peoples* (LLM Thesis, University of Victoria, 2006) [unpublished].

43 See Andrée Boisselle, *Law's Hidden Canvas: Teasing Out the Threads of Coast Salish Legal Sensibility* (PhD Dissertation, University of Victoria, 2017) [unpublished].

44 See Keith Cherry, *Practices of Pluralism: A Comparative Analysis of Trans-Systemic Relationships in Europe and on Turtle Island* (PhD Dissertation, University of Victoria, 2020) [unpublished].

45 See Robert Clifford, *WSÁNEĆ Law and the Fuel Spill at Goldstream* (LLM Thesis, University of Victoria, 2014) [unpublished].

46 See Aimée Craft, *Breathing Life into the Stone Fort Treaty* (LLM Thesis, University of Victoria, 2011) [unpublished].

47 See Alan Hanna, *Dechen ts'edilhtan: Implementing Tsilhqot'in Law for Watershed Governance* (PhD Dissertation, University of Victoria, 2020) [unpublished].

48 See Carwyn Jones, *The Treaty of Waitangi Settlement Process in Māori Legal History* (PhD Dissertation, University of Victoria, 2013) [unpublished].

Dawnis Kennedy,[49] Darcy Lindberg,[50] Danika Littlechild,[51] Johnny Mack,[52] Aaron Mills,[53] Sarah Morales,[54] Val Napoleon,[55] Joshua Nichols,[56] Nicole O'Byrne,[57] Jacinta Ruru,[58] Nancy Sandy,[59] Jennifer Sankey,[60] and Kerry Sloan.[61]

As you see, graduate students are making a significant difference in examining the resurgence of Indigenous law and its relationship to the Canadian state. Along the way, they reframe some of society's biggest questions. Reading their work reveals the unsettling nature of the state's framing of society's foundation, organization, and goals. They discuss how the assumptions built into Canadian legislation, case law, and governance accentuate acquisitiveness in ways that conceal Indigenous views of the state's origin, operation, and future fate.

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49 See Dawnis Kennedy, *Aboriginal Rights, Reconciliation and Respectful Relations* (LLM Thesis, University of Victoria, 2009) [unpublished].

50 See Darcy Lindberg, *Nêhiyaw Âskiy Wiyasiwêwina: Plains Cree Earth Law and Constitutional/Ecological Reconciliation* (PhD Dissertation, University of Victoria, 2020) [unpublished].

51 See Danika Billie Littlechild, *Transformation and Re-Formation: First Nations and Water in Canada* (LLM Thesis, University of Victoria, 2014) [unpublished].

52 See Johnny Mack, *Thickening Totems and Thinning Imperialism* (LLM Thesis, University of Victoria, 2009) [unpublished].

53 See Aaron James Mills (Waabishki Ma'iingan), *Miinigowiziwin: All That Has Been Given for Living Well Together: One Vision of Anishinaabe Constitutionalism* (PhD Dissertation, University of Victoria, 2019) [unpublished] [Mills, *Miinigowiziwin*].

54 See Morales, "*Snuw'uyulh*", *supra* note 4.

55 See Valerie Ruth Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD Dissertation, University of Victoria, 2009) [unpublished].

56 See Joshua Nichols, *Reconciliation and the Foundations of Aboriginal Law in Canada* (PhD Dissertation, University of Victoria, 2016) [unpublished].

57 See Nicole Colleen O'Byrne, *Challenging the Liberal Order Framework: Natural Resources and Métis Policy in Alberta and Saskatchewan (1930 – 1948)* (PhD Dissertation, University of Victoria, 2014) [unpublished].

58 See Jacinta Arianna Ruru, *Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand's National Parks* (PhD Dissertation, University of Victoria, 2012) [unpublished].

59 See Nancy Harriet Sandy, *Reviving Secwepemc Child Welfare Jurisdiction* (LLM Thesis, University of Victoria, 2011) [unpublished].

60 See Jennifer M Sankey, *Globalization, Law and Indigenous Transnational Activism: The Possibilities and Limitations of Indigenous Advocacy at the WTO* (LLM Thesis, University of Victoria, 2006) [unpublished].

61 See Karen L Sloan, *The Community Conundrum: Metis Critical Perspectives on the Application of* R v Powley *in British Columbia* (PhD Dissertation, University of Victoria, 2016) [unpublished].

In noting this work, I should also highlight that there are many other graduate students who write in this field. In the prior paragraph, I only referenced UVic graduate students who subsequently taught in university settings. The individuals above are all university professors. Other former UVic graduate students writing in this field work in key positions in governments, law firms, courts, Indigenous communities, and non-governmental organizations. Furthermore, while UVic Law School has been fortunate to host a large number of students working with Indigenous legal issues, other law schools have also experienced a significant expansion of people working in this field.[62] This activity demonstrates that students are a leading force in assisting Indigenous communities in the communication and revitalization of Indigenous peoples' own laws. In the process, they help our country more clearly see where we came from, why we are here, and where we are going in relation to these fundamental relationships.

IV. Colonialism and the Resurgence of Indigenous Law: The JID/JD Dual Degree

Despite the positive changes outlined in this chapter, there are important questions that are less likely to receive consideration from other Canadian legal institutions. Courts and legislatures have consistently avoided big questions such as how Canada can claim legitimate governance over Indigenous peoples.[63]

For example, the Crown's claim to overarching governance rests on assumptions of Indigenous political, legal, and social inferiority when the parties encountered each other.[64] Crown claims arise solely from unilateral Crown assertions without any meaningful participation or engagement from Indigenous peoples who were "here first."[65] The Crown's assertions are a weak foundation from which to ask "where did we come from" questions.[66] One-sided, racist suppositions make it difficult for the Crown

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62 For a sample of this work at other Canadian law schools, see Tracey Lindberg, "Critical Indigenous Legal Theory Part 1: The Dialogue Within" (2015) 27:2 CJWL 224; Brenda L Gunn, "Remedies for Violations of Indigenous Peoples' Human Rights" (2019) 69: Supp 1 UTLJ 150; Emily Snyder, "Challenges in Gendering Indigenous Legal Education: Insights from Professors Teaching about Indigenous Laws" (2019) 34:1 CJLS 33.

63 See John Borrows, "Canada's Colonial Constitution" in John Borrows & Michael Coyle, eds, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017) 17.

64 See Borrows, *Indigenous Constitution*, *supra* note 27 at 12–22.

65 See *ibid*.

66 See John Borrows, "Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*" (1999) 37:3 Osgoode Hall LJ 537 at 574–76.

to admit that its claims of where it came from as a government did not adequately deal with prior Indigenous land relationships and social orders.

Moreover, even if we could somehow legitimate the unjust sources of government power relative to Indigenous peoples, the next question is equally challenging: How can Canada justify governing Indigenous peoples when the contemporary effects on Indigenous peoples are disastrous? Indigenous peoples' life expectancy is ten to fifteen years shorter than that of other people in Canada;[67] infant mortality rates are two to four times higher;[68] employment on reserve is over twenty-five per cent below the national rate;[69] median income is approximately fifty per cent less than non-Indigenous income;[70] approximately fifty-seven per cent of First Nations young adults on reserve have completed high school compared to 89.2 per cent of non-Indigenous young adults off-reserve;[71] and over forty per cent of reserve homes require major repairs with problems in plumbing, water access, and quality, as well as exposure to allergens and mold.[72] Furthermore, Canada unequally and chronically underfunds First Nations education, child-care, and social services when compared with the general population.[73]

The undermining of Indigenous governance in Canada, and replacing it with federal and provincial so-called jurisdiction, is not justifiable in light of Canada and the provinces' prejudice, ineffectiveness, and ongoing harm. Other questions follow, such as how the Crown can justify claiming underlying title to land throughout Canada, or how it can claim exclusive use and possession in places where Indigenous traditional owners have

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67 See Joe Sawchuk, "Social Conditions of Indigenous Peoples in Canada" (last modified 28 August 2020), online: *The Canadian Encyclopedia* <thecanadianencyclopedia.ca> [perma.cc/CRB6-VXJT].

68 See *ibid*.

69 See Indigenous Services Canada, *Annual Report to Parliament 2020* (Ottawa: Indigenous Services Canada, 2020) at 27.

70 See *ibid* at 17.

71 See *ibid* at 36.

72 See *ibid* at 51.

73 See Naiomi Walqwan Metallic, "A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the *Caring Society* Case" (2018) 28 J L & Soc Pol'y 4; "It's Time for Fair Funding for First Nations Schools" (last visited 2 September 2022), online: *#EndtheGap* <www.endthegap.org> [perma.cc/75CL-595L]; Mohammad Hajizadeh et al, "Socioeconomic Inequalities in Health among Indigenous Peoples Living Off-Reserve in Canada: Trends and Determinants" (2018) 122 Health Policy 854.

not transferred such rights to them through treaties, agreements, or other means.[74]

Another question reasonably flows from these inquiries: How do Canadian courts justify their role in adjudicating Indigenous and Crown disputes when they are creatures of the state with which Indigenous peoples are in conflict?[75] Courts have not meaningfully asked where we came from, why we are here, and where we are going when relating to Indigenous peoples. This is to say that courts do not clearly acknowledge their colonial roots, their ongoing colonial supervision, or their suppression of meaningful Indigenous self-determination.

The situation could have been different. In 1982, existing Aboriginal and treaty rights were recognized and affirmed in section 35(1) of Canada's *Constitution Act, 1982*.[76] This was a missed opportunity to place Indigenous governance on solid constitutional grounds. Furthermore, Aboriginal title recognition has been slow to develop and Crown title over Indigenous land has not been justified either.[77] This is despite over fifty cases interpreting section 35(1) decided by the Supreme Court of Canada. These cases are in addition to the thousands of cases heard in lower-level bodies across the land. While section 35(1) has generated noticeable changes, such as requiring the Crown to justify its actions when breaching Aboriginal and treaty rights,[78] Indigenous peoples have been unable to have their most important powers clearly endorsed, such as Indigenous governance and law.[79] Moreover, the courts have not adequately justified where their authority comes from, why they are here, or where they are going (except to say that they are here to stay[80]), relative to Indigenous peoples throughout the land.

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74 See Borrows, *Recovering Canada*, *supra* note 27 at 111–37.

75 For a discussion of the problematic nature of Canadian law in relation to Indigenous peoples, see Gordon Christie, *Canadian Law and Indigenous Self-Determination: A Naturalist Analysis* (Toronto: University of Toronto Press, 2019).

76 Being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

77 See Borrows, *Indigenous Ethics*, *supra* note 1 at 88–113.

78 In *R v Sparrow*, the Supreme Court found that section 35 demanded that the government justify "any ... regulation that infringes upon or denies aboriginal rights" ([1990] 1 SCR 1075 at 1109, 70 DLR (4th) 385). It said that "[s]uch scrutiny is in keeping with the liberal interpretive principle enunciated in *Nowegijick* ... and the concept of holding the Crown to a high standard of honourable dealing with respect to the aboriginal peoples of Canada" (*ibid*).

79 However, there are arguments that Indigenous governance has been impliedly recognized by the courts (see Sanderson, "Residue of *Imperium*", *supra* note 13 at 331–32).

80 See *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at 1124, 153 DLR (4th) 193.

Fortunately, Canadian courts and legislatures do not hold all of the power when considering the revitalization of Indigenous peoples' law. Indigenous peoples deepen their own legal traditions in ways that decentre the state.[81] They ask and create their own answers about life's purposes.[82] In the process, Indigenous peoples have revitalized their laws by bolstering potlatch and feast traditions on the west coast,[83] expanding Guardian Watchperson programs throughout the country,[84] strengthening their internal constitutional relationships from coast to coast,[85] and using custom and declarations to protect their communities through a worldwide pandemic.[86]

Universities generally, and law schools more particularly, engage with Indigenous communities to ask larger questions. As noted in the last section, this prompts students to produce innovative scholarship aimed at understanding how to teach Indigenous legal orders.[87]

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81 See Robert YELḰÁTŦE Clifford, "W̱SÁNEĆ ('The Emerging People'): Stories and the Re-Emergence of W̱SÁNEĆ Law" in Karen Drake & Brenda L Gunn, eds, *Renewing Relationships: Indigenous Peoples and Canada* (Saskatoon: Wiyasiwewin Mikiwahp Native Law Centre, 2019) 83 at 108–13.

82 For discussions of Indigenous normativity in relation to broader views about life's purposes, which discuss who we are and where we are going, see Sarah Morales, "*Stl'ul Nup*: Legal Landscapes of the Hul'qumi'num Mustimuhw" (2016) 33:1 Windsor YB Access Just 103. For a similarly wide view, see Nancy Sandy, "*Stsqey'ulécw Re St'exelcemc* (*St'exelemc* Laws from the Land)" (2016) 33:1 Windsor YB Access Just 187.

83 See Sara Florence Davidson & Robert Davidson, *Potlatch as Pedagogy: Learning through Ceremony* (Winnipeg: Portage & Main Press, 2018) at 67–75; Gwi'molas Ryan Silas Douglas Nicolson, *"Playing the hand you're dealt": An Analysis of Musgam̱akw Dzawada̱'enux̱w Traditional Governance and Its Resurgence* (MA Thesis, University of Victoria, 2019) [unpublished].

84 See Corbin Greening et al, "The Case for a Guardian Network Initiative" (July 2020), online (pdf): *University of Victoria Environmental Law Centre* <elc.uvic.ca> [perma.cc/EEA6-HDMP].

85 See Alex Geddes, "Indigenous Constitutionalism beyond Section 35 and Section 91(24): The Significance of First Nations Constitutions in Canadian Law" (2019) 3:1 Lakehead LJ 1; Mills, *Miinigowiziwin*, *supra* note 53 at 38–39. See generally Gabrielle Appleby, Vanessa MacDonnell & Eddie Synot, "The Pervasive Constitution: The Constitution Outside of the Courts" (2020) 48:4 Federal L Rev 437.

86 See Chantelle Richmond, Heather Castleden & Chelsea Gabel, "Practicing Self-Determination to Protect Indigenous Health in COVID-19: Lessons for This Pandemic and Similar Futures" in Gavin J Andrews et al, eds, *COVID-19 and Similar Futures: Pandemic Geographies* (Cham: Springer, 2021) 307; Danielle Hiraldo, Kyra James & Stephanie Russo Carroll, "Case Report: Indigenous Sovereignty in a Pandemic: Tribal Codes in the United States as Preparedness" (2021) 6 Frontiers in Sociology 1.

87 For example, Aaron Mills, who now works at McGill's Faculty of Law, proposed that law schools should teach that all law is storied, that Canadian constitutional law is a species of liberal constitutionalism, and that students should take a prerequisite on an Indigenous people's constitutional order before enrolling in a course on their law (see

Furthermore, Canada's Indian Residential School Truth and Reconciliation Commission also prompted law schools to engage more fully with Indigenous law and Canadian law dealing with Aboriginal peoples.[88] The twenty-eighth Call to Action from the Commission stated:

> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.[89]

At UVic Law School, these varied efforts paved the way for the launch of the common law (JD) and Indigenous law degree (JID), launched in 2018. The JID/JD is a transsystemic law degree that teaches Indigenous law alongside the common law. This four-year program compares and contrasts legal traditions to understand where the gaps, inconsistencies, and taken-for-granted assumptions are present in conventional law school teaching and practice. In the first year, students take five classes. There is a course in constitutionalism that teaches Anishinaabe *chi-naaknigewin* alongside Canadian federalism, the *Canadian Charter of Rights and Freedoms*,[90] and Aboriginal and treaty rights. This is the course that I convene.[91] There are written constitutions developing throughout Anishinaabe territory in Ontario,[92] and we also discuss Anishinaabe constitutions, legislation, and tribal court decisions from Minnesota, Wisconsin, and Michigan, since Anishinaabe law is also practiced in these jurisdictions.[93] Other first

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Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847).

88 See Karen Drake, "Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom" (2017) 95 Can Bar Rev 9.

89 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: TRC, 2015) at 3. For commentary about the importance of Indigenous law to the Truth and Reconciliation process, see Kathleen Mahoney, "Indigenous Legal Principles: A Reparation Path for Canada's Cultural Genocide" (2019) 49:2 American Rev Can Studies 207.

90 Part I of the *Constitution Act, 1982*, *supra* note 76 [*Charter*].

91 Another way of teaching Anishinaabe law is discussed in: Aaron Mills, Karen Drake & Tanya Muthusamipillai, "An Anishinaabe Constitutional Order" in Justice Patrick Smith, ed, *Reconciliation in Canadian Courts: A Guide for Judges to Aboriginal and Indigenous Law, Context and Practice* (Ottawa: National Judicial Institute, 2017) 260.

92 See Leaelle N Derynck, *An Anishinaabe Tradition: Anishinaabe Constitutions in Ontario* (LLM, University of Western Ontario, 2020) [unpublished].

93 For a discussion of Anishinaabe law in the United States, see Larry Nesper, "Negotiating Jurisprudence in Tribal Court and the Emergence of a Tribal State: The Lac du Flambeau Ojibwe" (2007) 48:5 Current Anthropology 675; Matthew LM Fletcher, "*Laughing Whitefish*: A Tale of Justice and Anishinaabe Custom" (2008) Michigan

year courses engage Cree legal traditions and Canadian criminal law, Gitksan law related to land and Canadian property law, legal research and writing, and law, legislation, and policy. In the second year, students learn Tsilqhot'in laws of voluntary obligations, which is taught transsystemically with contract law. There is a course in Hulqumi'mum (Salish) law of involuntary obligations, which also conveys Canadian tort law principles throughout second year. Students take other classes from the general curriculum in the remainder of their second year. In upper years, they take transsystemic business associations, transsystemic administrative law, and electives from the general curriculum. In addition, they must take two community-based courses for an entire semester, immersing them in a particular legal tradition. Field courses exist in Hulqumi'num law, Cree law, Kwakwakawak law, and W̱SÁNEĆ law.

There are approximately twenty-five students admitted each year and they come from all walks of life. A slight majority of students are Indigenous, but the program is designed to appeal to students from many different backgrounds. It is an honour to teach all of them.

In the program's first year, students faced high expectations. They studied under the media's glare. They were the first students in the world enrolled in a professional degree combining the study of Indigenous law and the common law. They also experienced the culmination of many years of piloted courses, projects, scholarships, and planning as their first year unfolded. There were more than a few uneasy moments as everyone worked through the newness of the program. Fortunately, the students were brilliant. They have written outstanding papers, made significant contributions to Indigenous communities through their summer employment and course work, and are now graduating to fill coveted positions in communities, government, law firms, and other places where Indigenous law interacts with contemporary affairs. As you can see, these students have a strong proximate sense of where they came from, why they are at UVic, and where they are going in the short term.

The second-year cohort was equally as strong in their preparation and participation. The students also faced unique challenges. In the middle of their first year, nation-wide protests broke out against a Coastal GasLink pipeline and in support of Wet'suwet'en hereditary chiefs.[94] One of the ep-

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State University College of Law Legal Studies Research Paper Series Research Paper No 06-16 at 10–11. The resurgence of Anishinaabe responsibilities in one community is described in: Matthew LM Fletcher, *The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians* (East Lansing: Michigan State University Press, 2012) at 2–33.

94 For context surrounding this dispute, see generally Malcolm Lavoie & Moira Lavoie, "Indigenous Institutions and the Rule of Indigenous Law" (2021) 101 SCLR 325.

icentres of protest was on the steps of the British Columbia legislature in Victoria, B.C.[95] Many students spent weeks camped out on the legislative lawn to advance Indigenous law as a vehicle for addressing energy conflicts in the province and beyond.[96] There were also healthy differences of opinion among the student group. These students definitely knew where they came from before entering UVic, and why they were studying at the school. However, the protests gave rise to further questions concerning where they might go with their education, given the conflict regarding Indigenous laws with Canadian law more generally.

The third year of the Program occurred during a worldwide lockdown due to the COVID-19 pandemic. As I prepared my course, I was concerned that we would not effectively learn Anishinaabe and Canadian constitutionalism because we could not meet face-to-face. I normally take my students outside when learning Anishinaabe law. We can draw teachings, processes, and principles from the natural world and I was worried that virtual learning would interfere with this process. When we are outside together, we might see a robin (*pitchii*) which would prompt discussion about freedom in Anishinaabe and Canadian constitutional traditions.[97] Anishinaabe people can "read" this bird as communicating liberty, choice, autonomy, and self-determination because of the narratives associated with it.[98] When learning outdoors, I could reference hundreds of "cases" from the world's living law library to illustrate legal relationships, processes, and principles. After a discussion of Anishinaabe laws from our oral traditions, I might then reference various written Anishinaabe constitutional freedoms before discussing Anishinaabe Tribal Court cases

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95 See Roxanne Egan-Elliott & Louise Dickson, "Protesters Block Legislature Entrances, MLAs Have to Squeeze by to Hear Throne Speech", *Times Colonist* (11 February 2020), online: <www.timescolonist.com> [perma.cc/DFR9-6RWP]. For a discussion of the site-specific nature and spatialization of Indigenous politics, see Carol Hunsberger & Rasmus Kløcker Larsen, "The Spatial Politics of Energy Conflicts: How Competing Constructions of Scale Shape Pipeline and Shale Gas Struggles in Canada" (2021) 77 Energy Research & Soc Science 1.

96 See Richard Watts, "UVic Students Walkout in Solidarity with Wet'suwet'en Chiefs over Pipeline", *Times Colonist* (10 January 2020), online: <www.timescolonist.com> [perma.cc/EKK6-UXTT]; The Canadian Press, "Horgan Says Pipeline Protests at B.C. Legislature 'counterproductive'", *CTV News* (4 March 2020), online: <vancouverisland.ctvnews.ca> [perma.cc/6MDU-ZN53]; The Canadian Press, "Protesters Pack up Camp at B.C. Legislature after Five Arrests Wednesday night", *CKPGToday* (7 March 2020), online: <ckpgtoday.ca> [perma.cc/3GJJ-63G4]. For a discussion of Indigenous law and energy conflicts, see Kathleen Mahoney, "Indigenous Laws and Human Rights Uprisings" (2020) 21:2 Seton Hall J Diplomacy & Intl Relations 108.

97 See Mentor L Williams, ed, *Schoolcraft's Indian Legends* (East Lansing: Michigan State University Press, 1956) at 106–08.

98 See John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 209–14.

dealing with these responsibilities.[99] This would eventually lead to discussions of section 7 *Charter* rights to life, liberty, and security, as we compared and contrasted Supreme Court of Canada approaches with Anishinaabe constitutionalism on this point.[100] Finally, I might drum and sing an Anishinaabe song referencing freedom, or discuss the etymology of freedom in Anishinaabemowin, *dibenindizowin*, which can mean that a person possesses liberty within themselves and their relationships.[101]

Fortunately, the students embraced working together through the challenges of COVID-19, despite our distance and bi-weekly transsystemic constitutional law classes held over Zoom, the videoconferencing software. With their enthusiasm and modifications to the curriculum, we learned and applied Anishinaabe and Canadian constitutionalism in a revised format. Six months after the course was finished, the students presented me with a small book of reflections regarding what they learned during the year. In their short commentary, I was encouraged to see that Anishinaabemowin (the Ojibwe language) figured prominently. In regard to constitutional law, they discussed *debwewin* (truth),[102] *wazhashkoonh*

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[99] See Anishinaabe court cases dealing with section 7-like rights in the *Charter* in: Matthew LM Fletcher, "Indian Courts and Fundamental Fairness: Indian Courts and the Future Revisited" (2013) 84:1 U Colo L Rev 59 at 91, n 128, which reads:

> Spurr, No. 12-005APP, at 7 (citing Crampton v. Election Bd., 8 Am. Tribal Law 295, 296 (Little River Band of Ottawa Indians Tribal Ct. May 8, 2009); Bailey v. Grand Traverse Band Election Bd., No. 2008-1031-CV-CV, 2008 WL 6196206, at *9, 11 (Grand Traverse Band of Ottawa and Chippewa Indians Tribal Judiciary, Aug. 8, 2008) (en banc); Deckrow v. Little Traverse Bay Bands of Odawa Indians, No. C-006-0398, 1999 WL 35000425, at *2 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Sept. 30, 1999)).

See also *Champagne v People (of the Little River Band of Ottawa Indians)*, Case No 06-178-AP (Little River Band of Ottawa Indians CA 2007); Matthew Fletcher, *American Indian Tribal Law* (New York: Aspen Publishers, 2011) at 405–12.

[100] In particular, we consider *Carter v Canada (Attorney General)*, 2015 SCC 5 and *R v Morgentaler*, [1988] 1 SCR 30, 44 DLR (4th) 385, in the context of *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, 107 DLR (4th) 342, and *Canada (Attorney General) v Bedford*, 2013 SCC 72.

[101] Anishinaabemowin is the original language of the northern and western Great Lakes of North America. Citations to *dibenindisowin* can be found by Reverend Frederic Baraga, stating that the word means "liberty, freedom, independence" (Reverend Frederic Baraga, *A Dictionary of the Otchipwe Language* (Cincinnati: Jos A Hermann, 1853) sub verbo "dibénindisowin"). See also *The Ojibwe People's Dictionary* (last visited 4 September 2022) sub verbo "dibenindizowin", online: *The Ojibwe People's Dictionary* <ojibwe.lib.umn.edu> [perma.cc/K63G-L45X] (giving the meaning "s/he is independent, is h/ own master" for the word *dibenindizowin*).

[102] See Basil H Johnston, *Anishinaubae Thesaurus* (East Lansing: Michigan State University Press, 2007) sub verbo "dae'b'ingaewin" ("to tell what one knows according to his/her perception and according to one's fluency; to have the highest degree of accura-

(muskrat),[103] *giiwedanang* (the north star),[104] *zaagi'idiwin* (love),[105] *aamoyag* (bees),[106] *manidoo makwa* (spirit bear song),[107] *michi-dawadanaa* (space or the great opening),[108] *akinoomagewin* (learning from the earth),[109] *nigig* (otter from clan teachers),[110] *memengwaag* (butterflies),[111] *aabawaawendam* (forgiveness),[112] *ningowaaso-miigiwewin* (seven gifts or ancestral teachings),[113] *bimaadiziwin* (life),[114] *zoongidewin* (courage),[115] and *nibwaakaawin* (wisdom).[116] Of course, the students also learned principles of federalism, Aboriginal and treaty rights, and *Charter* rights from both Anishinaabe and Canadian constitutional perspectives in our time together. However, the students' messages to me emphasized that they were thinking more broadly about the materials than often occurs in a conventional first year constitutional law course. In fact, I hope that you can see from the An-

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cy; to be right, correct; to have truth" at 73). See also Borrows, *Indigenous Ethics*, *supra* note 1 at 53–56.

103 Muskrat is a hero in Anishinaabe creation stories (see Nicolas Perrot, *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes*, ed by Emma Helen Blair (Cleveland: Arthur H Clark, 1911) vol I at 35–36; Pierre François Xavier de Charlevoix, *Journal of a Voyage to North America*, ed by Louise Phelps Kellogg (Chicago: Caxton Club, 1923) vol 1 at 155–56). See also Borrows, *Indigenous Constitution*, *supra* note 27 at 331–32.

104 See Borrows, *Indigenous Ethics*, *supra* note 1 at 114.

105 See *ibid* at 24–49.

106 See Wendy Makoons Geniusz, "Manidoons, Manidoosh: Bugs in Ojibwe Culture" in Monica Macaulay, Margaret Noodin & J Randolph, eds, *Papers of the Forty-Fourth Algonquian Conference* (Albany: SUNY Press, 2016) 85 at 99.

107 For information about bears in Anishinaabe law, see Borrows, *Indigenous Ethics*, *supra* note 1 at 176–78.

108 See Basil Johnston, *The Gift of the Stars (Anungook gauh meenikooying)* (Cape Croker First Nation, Ont: Kegedonce Press, 2010); Annette Sharon Lee, William Peter Wilson, Carl Gawboy, *Ojibwe Sky Star Map – Constellation Guidebook: An Introduction to Ojibwe Star Knowledge* (Minneapolis: Native Skywatchers, 2014).

109 See Borrows, *Indigenous Ethics*, *supra* note 1 at 150.

110 See Lindsay Keegitah Borrows, *Otter's Journey through Indigenous Language and Law* (Vancouver: UBC Press, 2018).

111 See John Borrows (Kegedonce), *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010) at 14–16.

112 See Borrows, *Indigenous Ethics*, *supra* note 1 at 162.

113 See generally *ibid*; Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (St Paul, MN: Red School House, 1988).

114 See D'Arcy Rheault, *Anishinaabe Mino-Bimaadiziwin: The Way of a Good Life (*Peterborough, Ont: Debwewin Press, 1999); Winona LaDuke, "Minobimaatisiiwin: The Good Life" (1992) 16:4 Cultural Survival Q 69.

115 See Borrows, *Indigenous Ethics*, *supra* note 1 at 92.

116 See *ibid* at 239–40.

ishinaabe words above that the students were engaging with constitutional themes discussed in this essay: where we came from, why we are here, and where we are going. All of this once again demonstrates how students are taking significant steps in advancing the resurgence of Indigenous law.

When students learn about Indigenous legal traditions, they discover other ways of formulating and practicing law. For instance, Indigenous peoples' law is often explicitly connected to their community aspirations, such as commitments to a living earth, intergenerational care, and healing. These kinds of principles cause students to ask questions about life's potential purposes raised by these ambitions. Of course, Indigenous peoples (like all other legal communities) do not always live up to their highest aspirations, and this causes students to inquire about human frailty in relation to law, too. Moreover, the students also learn about the challenges that Indigenous peoples encounter in meeting their goals within Canadian law because it marginalizes them. These concerns cause students to pose further questions about fairness and justice, whether life has any meaning, or whether they can discern its broader purposes.

Conclusion: Education, the Meaning of Life, and Indigenous Law

At the end of this essay, I return to the question: What is the meaning of life? This paper suggests that, if there is an answer, it revolves in part around our capacities for growth. Student initiatives, described in this essay, exemplify this pattern. As we grow, we enhance our abilities to discern our own life's purposes. As we learn, we gain insight about where we came from, why we are here, and where we are going. In this quest, we benefit from comparing, contrasting, considering, criticizing, concurring, and rejecting other people's views. To illustrate this process, we have considered how law schools, and perhaps even broader society, benefit from understanding Indigenous perspectives that were previously marginalized and concealed. These examples suggest that discovering life's meaning is not solely an individual experience; it flows from the quality and sustainability of our relationships. This suggests that humans make their own meanings even as forces beyond our control also form our purposes.

If understanding life's meanings is simultaneously within and beyond our capacities, this implies that we should work hard to apprehend it, while also recognizing the potential impossibility of the aim. If this seems like a contradiction, it is a healthy one. This paradox facilitates creativity. Striving to understand life's purposes while accepting the task's possible futility pushes us into unknown territory. This creates a constructive tension that is key to learning.

Education would be regressive if its sole purpose was to confirm what we already know. It would lose its dynamic power if it merely involved the

restatement of pre-existing truths. However, as this essay has shown, using Indigenous examples, education must go further and challenge our assumptions and practices. It must move beyond repetition or risk becoming an empty ritual. Replicating what we already know is necessary, but insufficient, to meet our own needs and society's demands.

Fortunately, student research, advocacy, negotiation, and hard work are widening our views about what at times seems impossible—respecting Indigenous peoples' search for life's purposes within and beyond Canada's legal frameworks. This work is slowly gaining momentum as students shed greater light on our collective past, present, and future. In the process, this impacts society as a whole, as student ideas and research spread beyond universities through their work.[117]

Despite the immensity of the task, whether finding the meaning of life or changing Canada's legal structure as it relates to Indigenous peoples, there is great worth in tackling what seems impossible. Challenging the status quo can help us see more clearly where we came from, why we are here, and where we are going as individuals and society, even if we do not believe or appreciate the answers that we receive.

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[117] Finding space for Indigenous law and governance is not easy when Canadian law continues to dominate. As students identify these and other ambiguities, this helps us search for clarity. Incongruity can prompt a search for clarification. Acknowledging uncertainty can be an invitation to study. Experimentation must contemplate the possibility of failure, and I have had my share of disappointments working to enhance Indigenous law. The biggest problem is the work's vast scale. For instance, legislatures and courts do not know enough about Indigenous law (see generally Joshua Ben David Nichols, *A Reconciliation without Recollection?: An Investigation of the Foundations of Aboriginal Law in Canada* (Toronto: University of Toronto Press, 2019)), and many Indigenous communities struggle to escape colonialism's grasp (see William Nikolakis, Stephen Cornell & Harry W Nelson, eds, *Reclaiming Indigenous Governance: Reflections and Insights from Australia, Canada, New Zealand, and the United States* (Tucson: University of Arizona Press, 2019)).