

Our More-than-Human Constitutions

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I. Introduction

The “living tree” stands as the leading interpretive metaphor of the Canadian Constitution.¹ Set in contrast to conceptions of the Constitution as fixed or static,² the living tree is widely understood to suggest a constitution that is “constrained by the past, but not entirely.”³ This recurrent metaphorical deployment of the living tree sits in tension with a persistent constitutional inattention to actual trees and to the living communities of which they (and we) form a part.⁴ The metaphorical living tree is rarely understood to mingle its

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1 *Edwards v Canada (Attorney General)*, 1929 CanLII 438 (UKPC) at 136.

2 See Étienne Cloutier, “A Tale of Two Metaphors: A Narrative Take on the Canadian Constitution” (2019) 64:3 McGill LJ 447 (contrasting the “dynamic” metaphor of the “living tree” with the more “static” competing metaphor of constitutional “architecture”).

3 Vikki C Jackson, “Constitutions as ‘Living Trees’? Comparative Constitutional Law and Interpretive Metaphors” (2006) 75:2 Fordham L Rev 921 at 926. Jackson continues, “[I]t captures the idea of constraint, the role of text and original understanding in the roots of the constitutional tree and the role of precedent and new developments in its growth” (*ibid.*).

4 Aaron Mills points out that, “[u]nlike Canada’s constitutional image of a ‘living tree,’ no tree is actually freestanding. The roots are buried in and wrapped tightly against earth. The tree is grounded in

roots with those of other plants and fungi, to bend toward the sun, to flow with sap.⁵ Like the flattened, veinless sugar maple leaf that adorns Canada's flag,⁶ the leaves of the metaphorical living tree are not often thought to crumple and fall and bud anew with the changing seasons, or to then nourish new life after death.⁷ Beyond the metaphorical stretching of limbs and anchoring of roots, there are few traces within Canada's Constitution of attention to the liveliness of trees, their communities, and the obligations they might provoke.⁸ Where actual living trees do emerge in Canadian constitutional text and interpretation, they appear, alongside the more-than-human others they shelter and sustain, as commercial-products-in-waiting: as "natural resources" and "forestry resources" to be exploited without apparent reciprocal obligation.⁹

This narrowed conception of trees, their meanings, and their communities of life finds contrast in the approaches to more-than-human life anchoring many Indigenous constitutional orders.¹⁰ In these legal orders, the fleshy, relational materiality of trees is not a footnote to a single broadly drawn metaphor, or grounds for unrestrained exploitation, but is instead the living heart of trees'

something beyond itself." See Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847 at 863 [Mills, "Lifeworlds"].

- 5 Notably, Vicki Jackson explores the deeper naturalistic potential of the living tree metaphor, but suggests that the lively qualities of trees represent a limitation of the metaphor: "A tree's branches will grow in directions influenced by the availability of sun and water, responsive to a natural environment, but the environment of a constitution is made up of human beings, acting individually, in groups, and in institutions. There is a choicefulness in constitutional development that natural, organic metaphors obscure" (Jackson, *supra* note 3 at 959–60). This criticism presumes (we think mistakenly) that humans and their communities are not also deeply "influenced by the availability of sun and water" and "responsive to a natural environment," and, conversely, that there are not meaningful forms of "choicefulness" in the more-than-human world.
- 6 "Tree expert taps into the truth behind use of iconic maple leaf", *CBC News* (1 July 2017), online: <cbc.ca> [perma.cc/8MR6-2S2X] (identifying the leaf represented on the Canadian flag as the sugar maple, and noting that the Canadian five-dollar bill and penny controversially depict a Norway maple leaf which is not in fact native to Canada). See also Government of Ontario, "Sugar Maple — *Acer saccharum*" (last modified 27 November 2023), online: <ontario.ca> [perma.cc/F8PK-N996].
- 7 On the neglect of regeneration as a principle of Canadian state constitutional law, and an argument for the value of regenerative constitutionalism, see Darcy Lindberg, "Nēhiyaw Pimatisiwin and Regenerative Constitutionalism" (2025) 29:2 Rev Const Stud 281 [Lindberg, "Nēhiyaw Pimatisiwin"].
- 8 But see Lynda Collins, "The Unwritten Constitutional Principle of Ecological Sustainability: A Solution to the Pipelines Puzzle?" (2019) 70 UNBLJ 30.
- 9 See Pamela Spalding, "Making Space for Indigenous Legal Relationships with Plants in Aboriginal Law" (forthcoming in the second issue of this collection) [Spalding, "Making Space"]; Lindsay Borrows, "Learning Law from Plants" (2025) 29:2 Rev Const Stud 281 [L. Borrows, "Learning Law from Plants"]; Jessica Eisen, "The Unwritten Constitution and the More-than-Human World" (forthcoming in the second issue of this collection) [Eisen, "More-than-Human World"].
- 10 See e.g. Darcy Lindberg, "Transforming Buffalo: Plains Cree Constitutionalism and Food Sovereignty" in Nathalie Chalifour, Heather McLeod-Kilmurray & Angela Lee, eds, *Food Law and Policy in Canada* (Toronto: Carswell Publishing, 2019) 37; Mills, "Lifeworlds", *supra* note 4; Sarah Morales, "St'lul Nup: Legal Landscapes of the Hul'qumi'num Mustimuhw" (2016) 33:1 Windsor YB Access Just 103 at 103–123.

legal position as members of a shared community. Within Anishinaabe law, for example, people look to ininaatig (the sugar maple, literally “the man-tree”¹¹) as one of many more-than-human teachers who guide individuals and communities in lawfully patterning their lives.¹² The canon of Anishinaabe maple sugaring stories¹³ treat ininaatigoog (sugar maples, plural) not only as a source of analogical guidance to intra-human relations, but also as guides for humans in their engagements with these trees themselves. These two strands of guidance are not severable, but are co-constituted elements of an interconnected web of just relations.¹⁴ Anishinaabe botanist Robin Wall Kimmerer, for example, describes how ininaatigoog demonstrate a praxis of citizenship that goes beyond the rights-based framing of state constitutionalism,¹⁵ and is instead upheld through responsibility and gifting, a recognition that all flourishing is mutual, and a balanced approach to meeting the needs of intertwined communities of human and more-than-human life. She explains that ininaatigoog¹⁶ provide many essential gifts like oxygen, wood for warmth and building materials, shade, soil stability and health, and delicious food, and offers her gratitude for members of human communities who show analogous qualities: those who “know their responsibilities and seem to thrive on meeting them.”¹⁷ But the

11 James Vukelich Kaagegabaw, “Ininaatig ᐃᓄᓗᐅᐅ ‘A maple, literally “The man-tree”” (6 July 2017), online (video): <youtube.com> [perma.cc/VX23-U6PF]. See also Nora Livesay & John D Nichols, eds, *The Ojibwe People’s Dictionary*, online: <ojibwe.lib.umn.edu> [perma.cc/6CUW-A3Y8].

12 In the territories of the Anishinaabe Nation across the Great Lakes region, sugar maple trees (*Acer saccharum*) are a dominant canopy species throughout the hardwood forests. A wealth of knowledge has been recorded by Anishinaabe scholars about the centrality of ininaatig to their cultural identity and well-being. See e.g. Lana Ray & Paul Cormier, “Killing the Weendigo with Maple Syrup: Anishinaabe Pedagogy and Post-Secondary Research” (2012) 35:1 Can J Native Education 163; Leanne Betasamosake Simpson, “Land As Pedagogy: Nishnaabeg Intelligence and Rebellious Transformation” (2014) 3:2 Decolonization: Indigeneity Education & Society 1; Waaseyaa’sin Christine Sy, *Following ininaatigoog Home: Anishinaabeg Womxn iskgamiziganing | Following Our Trees Home: Anishinaabeg Womxn at the Sugar Bush* (PhD Dissertation, Trent University, 2019) [unpublished].

13 See Pamela Spalding, *Unsettling Landscapes: Applications of Ethnobotanical Research in Defining Aboriginal Rights and Re-affirming Indigenous Laws in T’Sou-ke Territory, Vancouver Island and Beyond* (PhD Dissertation, University of Victoria, 2022) [unpublished] (coining the phrase “canon of plant knowledge”) [Spalding, *Unsettling Landscapes*].

14 A version of this conceptualization of law through the lens of relationship emerges in feminist and relational frameworks within state legal traditions. See especially Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy and Law* (Oxford: Oxford University Press, 2012). For a brief example of relational frameworks in Anishinaabe law see Lindsay Borrows, “Learning, Living and Teaching Anishinaabe Law: A Tribute to Jean Borrows” (2024) 35:2 CJWL 214 at 232–34.

15 Robin Wall Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge, and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013) at 173: “When my kids were in school they had to memorize the Bill of Rights, but I would venture to guess that maple seedlings would be schooled instead in a Bill of Responsibilities.”

16 Kimmerer uses the term “anenemik” from the Potawatomi dialect. Here, we use the Ojibwe dialect word (“ininaatig”).

17 Kimmerer, *supra* note 15 at 169.

ininaatig does not emerge in this constitutional framework as metaphor alone. Instead, the ininaatigoog are fellow citizens of the Maple Nation, who are owed human gratitude, protection, and advocacy.¹⁸

In view of differences in this depth and quality of attention to the living world, it can be tempting to focus solely on broad contrasts between state and Indigenous legal orders. But a simple story of contrasts threatens to obscure important nuances in the relationships that animate these legal orders and their relationships to each other. It is true that within Anglo-European (hereafter, imperfectly, “Western” or “state”) legal traditions,¹⁹ law is often cast as a quintessentially human enterprise, with the human capacity for deliberate governance understood to distinguish us from a living world driven by instinct, or even chaos. And it is also true that these same Western legal traditions have often deployed law as a tool to hasten, justify, and facilitate so-called efficient human domination of the more-than-human world.²⁰ Yet, resistance to dominant extractive narratives within state law has been ever-present.²¹ Even within Western legal paradigms, theorists have argued that tools of the governing legal order might be used to protect and valorize animals and the environment — for example, through the ascription of “rights,” or the development and interpretation of protective legislation and regulations.²²

18 *Ibid* at 174. “[T]he maples, our most generous of benefactors and most responsible of citizens ... deserve you and me speaking up on their behalf.”

19 The terms “Western” and Indigenous can be difficult to pin down with precision, and any claims respecting either category invite recognition of exceptions. The same is true for other terms that seek to describe legal, political, and social orders, including, *inter alia*, colonial, liberal, capitalist (often seen as attached to the “Western” category) and kincentric, reciprocal, or gift economy (often cited in connection with Indigenous orderings). Where we use these imperfect terms, it is because, despite their imprecision and potential to promote stereotypical contrasts, they are sometimes necessary to gesture toward durable and socially meaningful patterns and lifeways. Our thanks to John Borrows for a thoughtful discussion on this point in connection with an earlier draft of this paper.

20 See Maneesha Deckha, “Constitutional Protections for Animals: A Comparative Animal-Centred and Postcolonial Reading” in Kelly Struthers Montford & Chloë Taylor, eds, *Colonialism and Animality: Anti-Colonial Perspectives in Critical Animal Studies* (New York: Routledge, 2020) 219; Jessica Eisen, “Constitutional Animal Protection: Written Provisions and Unwritten Principles” in Anne Peters, Kristen Stilt & Saskia Stucki, eds, *Oxford Handbook of Global Animal Law* (New York: Oxford University Press) [forthcoming in 2025]; Angela P Harris, “Vulnerability and Power in the Age of the Anthropocene” (2015) 6:1 Wash & Lee J Energy, Climate & Environment 98; Michael M’Gonigle & Louise Takeda, “The Liberal Limits of Environmental Law: A Green Legal Critique” (2013) 30:3 Pace Env’t L Rev 1005 .

21 See Benjamin Richardson & Stepan Wood, eds, *Environmental Law for Sustainability: A Reader* (Portland: Hart Publishing, 2006) at 3. See also Virginia Anderson, *Creatures of Empire: How Domestic Animals Transformed Early America* (Oxford: Oxford University Press, 2004) (describing complexity and countercurrents within European traditions during the early colonial period).

22 See e.g. Angela Fernandez, “Not Quite Property, Not Quite Persons: A ‘Quasi’ Approach for Nonhuman Animals” (2019) 5 Can J Comp & Contemp L 155; James R May & Mary Daly, *Global Environmental Constitutionalism* (New York: Cambridge University Press, 2014); Christopher D Stone,

Indigenous legal orders similarly resist a simple or unified account. It is significant that Indigenous legal orders are (in part) sourced from the Land, thus providing distinct lifeways, precedent, authority, standards, criteria, processes, and principles that govern people's relationships within and with the living world.²³ But care must also be taken not to homogenize or romanticize Indigenous legal thought and action. Indigenous legal orders in Canada are as diverse as the over 70 Indigenous languages spoken. The "ecological Indian"²⁴ is a persistent trope that does not account for the decision-making complexities Indigenous people face, particularly in their engagements with the colonial state's dominant economic systems.²⁵ Even internal to Indigenous legal orders and their associated economic systems, debate continually arises around whether and how people ought to kill animals (through practices like hunting, fishing, or farming), cut down trees or clear forests, or allow for mining companies to operate in their territories in ways consistent with community norms and laws.

Just as homogenizing accounts of Indigenous and state legal orders are incomplete and misleading, so too is the implication that Indigenous and state approaches to the more-than-human world can be fully understood independently of one another.²⁶ All legal orders can and do, at times, facilitate ecological harm. It is, after all, a central condition of life that we must take from the

"Should Trees Have Standing? — Toward Legal Rights for Natural Objects" (1972) 45:2 S Cal L Rev 450; Lynda Collins & Lorne Sossin, "In Search of an Ecological Approach to Constitutional Principles and Environmental Discretion in Canada" (2019) 52:1 UBC L Rev 293.

23 Many scholars have described Indigenous constitutionalism as flowing from the more-than-human world, as understood by generations of people living rooted in place. See, for a few examples, all of the articles in the following special issue edited by John Borrows: *Indigenous Law, Lands and Literature* (2016) 33:1 Windsor YB Access Just, online: <ojs.uwindsor.ca> [perma.cc/6CUW-A3Y8]. Authors include Hannah Askew, Robert Clifford, Jeffrey Hewitt, Hadley Friedland, Sarah Morales, Kerry Sloan, Lindsay Borrows, Aaron Mills, and Nancy Sandy. See also John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) [J Borrows, *Canada's Indigenous Constitution*].

24 Stephen Krech III, *The Ecological Indian: Myth and History* (New York: WW Norton & Company, 1999); John Borrows, "Living between Water and Rocks: First Nations, Environmental Planning and Democracy" (1997) 47:4 UTLJ 417 at 424–25.

25 The relationship between legal and economic systems is critical to understanding legal relations with the more-than-human world. Our aim in this collection has been to focus on foundations of the legal order, i.e. on constitutionalism. But we have continually found our thinking drawn back to the crucial role that economic arrangements play in defining these relations. We hope to take up this theme more squarely in future work.

26 Treaty-making between various Indigenous nations, between Indigenous nations and animals, and later between Indigenous and European nations, are perhaps the starkest formal examples of intersocietal legal co-development. See e.g. Hannah Askew, "Re-Learning Reciprocity: Settler Treaty Obligations and the More-Than-Human World" and Rebeca Macias Gimenez, "Learning about Treaties with the Animal People: Lessons for Treaty 8" (forthcoming in the second issue of this collection). But the interconnections and impacts between legal orders go much deeper than treaty.

Earth in order to survive, individually and in our various, overlapping collectivities. Flowing from this capacity for harm, all people must choose whether and how to develop laws aimed at tending relationships with the Earth. These processes do not happen in isolation — especially not in territories concurrently claimed by multiple constitutional jurisdictions, as is the case across the lands over which Canadian state law has claimed authority. This reality means that no state or Indigenous legal order in these territories can fully tell its own story of human-Earth relations in isolation from those of the others, even as this truth embeds all of us in histories of tragedy, violence, resilience, and renewal.

Conflicts over how best to manage our legal relations with the more-than-human world are thus best understood not as a “clash of civilizations,” but as a necessary effort to find ways to live together in the face of criss-crossing commitments and countercurrents, within and across legal orders. Many have observed that the essential work of reconciliation between Indigenous and Western legal orders requires reconciling ourselves with the Earth,²⁷ including the “lifeworlds” we each explicitly and implicitly uphold.²⁸ The revitalization of Indigenous legal orders, the enrichment of state legal approaches, and the development of multi-juralism in Canada, all depend upon increased engagement across legal orders on these questions of common concern.

To be sure, there are important reasons for many projects aiming to revitalize Indigenous legal orders to take place with separation from practitioners and theorists of state law.²⁹ In addition, there is a need for theory that engages the intersections between state and Indigenous legal orders. There are many important reasons for theorists of Canadian state law to ensure their frameworks actively engage with and do not ignore, footnote, or otherwise bracket the implications of their work for Indigenous legal orders. Those engaging with Canadian law must account for the histories of displacement, violence, and denial of Indigenous people and their lifeways.³⁰ These moral and political

27 Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015) at 18 [TRC]; John Borrows, “Earth-Bound: Indigenous Resurgence and Environmental Reconciliation” in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 49.

28 Aaron Mills defines a “lifeworld” as “the ontological, epistemological, and cosmological framework through which the world appears to a people.” See Mills, “Lifeworlds”, *supra* note 4 at 850, n 6. See also Aaron Mills, “Rooted Constitutionalism: Growing Political Community” in Asch, Borrows & Tully, *supra* note 27, 133.

29 See *infra* notes 41–43 and accompanying text.

30 Given the role Canadian law has played (and continues to play) in the subordination of Indigenous people, The Truth and Reconciliation Commission Calls to Action include calls directed to the legal

obligations are now supplemented by constitutional,³¹ statutory,³² and professional requirements³³ to consider Indigenous perspectives. For Canadian legal professionals to uphold the “duty to learn”³⁴ and the “duty to act,”³⁵ they must diligently seek to understand the territories upon which settlers have built their polities. Gestures toward the required reconciliation of Indigenous and state legal orders are increasingly common in literature on environmental law and animal law. Our project seeks to encourage movement from gesture to conversation and action, while honouring the particular challenges of work at these intersections.³⁶ It is from this perspective that the present collection investigates and exhumes the entanglements and tensions between various approaches to constitutional law and the more-than-human world across Canadian state and Indigenous legal orders.

It is our hope that in coming together to share the work in this collection, we will identify and support emergent coalitions of thinkers across schools of thought that have often been working in separate silos.³⁷ The contributors

profession/community (#27, #28, and #50), including learning the “history and legacy of residential schools.” See *TRC*, supra note 27 at 3, 5–6.

31 The following cases litigated under section 35 hold that Indigenous perspectives must be taken into account: *R v Sparrow*, 1990 CanLII 104 (SCC) at 1112; *R v Van der Peet*, 1996 CanLII 216 (SCC) at paras 19, 31, 40–42, 50 (see also paras 263–64); *Delgamuukw v British Columbia*, 1997 CanLII 302 (SCC) at para 41 [*Delgamuukw*]; *Mitchell v MNR*, 2001 SCC 33 at para 10; *Mikisew Cree*, 2018 SCC 40 at para 1; *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44 at paras 34–35, 41; *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 10; *R v Ippak*, 2018 NUCA 3 at paras 73–77, 83–94; *Pastion v Dene Tha’ First Nation*, 2018 FC 648 at paras 7–14; *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at paras 13, 197.

32 See e.g. *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; *Impact Assessment Act*, SC 2019, c 28, s 1; *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24; *Indigenous Languages Act*, SC 2019, c 23; *R v Gladue*, 1999 CanLII 679 (SCC) at paras 67–69; *R v Williams*, 1998 CanLII 782 (SCC) at para 22; *R v Barton*, 2019 SCC 33 at para 201.

33 See e.g. The Federation of Law Societies of Canada National Requirement (approved March 12, 2024, to be in effect January 1, 2029), online: <flsc.ca> [perma.cc/7QDL-PMRY]. Various provincial law societies have their own requirements around intercultural competency and Indigenous people. See, for example, the mandatory Law Society of British Columbia, “Indigenous Intercultural Course”, online: <lawsociety.bc.ca> [perma.cc/AJF8-J88S].

34 The Honourable Chief Justice Lance SG Finch, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (paper delivered at the Indigenous Legal Orders and the Common Law symposium of the Continuing Legal Education Society of British Columbia, November 2012), online (pdf): <web.archive.org> [perma.cc/4QQE-EME8].

35 The Honourable Chief Justice Robert J Bauman, “A Duty to Act” (paper delivered at the Canadian Institute for the Administration of Justice’s 2021 Annual Conference: Indigenous Peoples and the Law, Vancouver, 17 November 2021), online (pdf): <afn.bynder.com> [perma.cc/HXU9-MWPY].

36 See discussion below, under the heading “Risky Intersections: The Dish with One Spoon, the Whelks, and the Quahogs.”

37 For another example of work with similar coalitional aspirations, see the More-than-Human (MOTH) rights group, online: <mothrights.org> [perma.cc/AX5H-SNW6].

to this collection represent a range of scholarly and activist approaches and orientations. Several focus on the revitalization of Indigenous legal orders as their primary pursuits. Others mainly work in animal law, a field focused on analyzing, reforming, or radically reimagining state legal approaches to our relationships with animals — often with an emphasis on industrial breeding and confinement.³⁸ And some are most regularly engaged in environmental law, a field generally focused on the impact and reform of legal institutions at the level of species, ecosystems, or global ecological sustainability, sometimes interfacing with deeper theoretical and movement principles such as “deep ecology” or “rights of nature.”³⁹ Some in our group move between these and other disciplinary orientations, including feminist jurisprudence, postcolonial theory, constitutional law, Aboriginal law, ethnobotany, political theory, and political economy. Some identify as scholars, some as activists, some as both. Across these divergent starting points, we understand this group of contributors to be particularly committed to speaking and listening across differences and to seeking opportunities to deepen multijural thinking in their own disciplines and beyond. By bringing these approaches together under the broad heading of “more-than-human constitutionalism” (a term about which we will say more below), we hope to advance more just engagements between legal orders and with the Earth, elevate a decolonial ethic within environmental and animal law, invite attention to the value and experiences of more-than-human entities across disciplines, and amplify the rich body of existing research working to revitalize Indigenous legal orders.

II. Risky Intersections: The Dish with One Spoon, the Whelks, and the Quahogs

We are not sanguine about the risks of inviting conversations that cross state and Indigenous legal orders, traversing deep differences in standpoint, ontology, and epistemology. Engagement across traditions is an enduring requirement of living in proximity to different groups of people, yet it can be fraught with misunderstanding and even abuse, particularly when power and resources are unevenly distributed.⁴⁰ Indigenous people and governments face tremendous pressure to distort their claims, analyses, and ambitions to render them

38 See Megan A Senatori & Pamela D Frash, “The Future of Animal Law: Moving Beyond Preaching to the Choir” (2010) 60:3 J Leg Educ 209; Visa AJ Kurki, “A Bird’s-Eye View of Animals in the Law” (2024) 87:6 Mod L Rev 1452.

39 See Peter D Burdon, *The Anthropocene: New Trajectories in Law* (Abingdon: Routledge, 2023).

40 See Iris Marion Young, “Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought” in Ronald Beiner & Jennifer Nedelsky, eds, *Judgment, Imagination and Politics: Themes from Kant and Arendt* (Lanham, Maryland: Rowman & Littlefield, 2001) 205; Kely McKerracher, “Relational Legal

legible to state legal institutions.⁴¹ Among the risks Johnny Mack identifies in such enterprises is a “convention complex,” through which “critique is domesticated as it passes through institutionalized mediums,” and is neutralized by colonial “institutional grammar and imperatives” — including those of much academic legal theory.⁴² There is a critical need for the important ongoing work seeking to revitalize and regenerate Indigenous legal orders on their own terms, or in conversation with parallel projects of Indigenous legal resurgence, “turning sideways” from engagements with settler institutions.⁴³ In fact, interjural projects like this one are only possible in the context of these intra-Indigenous projects. Given the extent to which statist legal theory has so often proceeded without attention to its Indigenous counterparts, the integrity of engagement across these legal orders positively requires distinct, ontologically prior projects dedicated to resurgence of Indigenous legal thought. And yet, we are persuaded that a significant part of the collective intellectual work needed in this moment of planetary crisis and opportunity must have an interjural quality — that there is also something important to be built by those who are moved to address themselves to the risky intersections of Indigenous and state legal theory.

In this multi-juridical work, we take caution and guidance from the risky intersections present in the histories of the Naagan ge bezhig emkwaan (Dish with One Spoon) treaty, which embraces the Anishinaabe and Haudenosaunee territories where we meet to co-author this essay.⁴⁴ We invite readers into the following story of the whelks and quahogs that form the material base (the

Pluralism and Indigenous Legal Orders in Canada” (2023) 12:1 *Global Constitutionalism* 133, online: <doi.org> [perma.cc/6ESP-EXQ9].

41 Johnny Mack, “Turning Sideways: Intimate Critique and the Regeneration of Tradition” (2024) 28:2 *Rev Const Stud* 241 at 250.

42 *Ibid* at 252. See also Glen S Coulthard, “Subjects of Empire: Indigenous Peoples and the ‘Politics of Recognition’ in Canada” (2007) 6:4 *Contemporary Political Theory* 437; Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Toronto: University of Toronto Press, 2005).

43 In arriving at the notion of “turning sideways” in relation to colonial legalities, Mack draws on a Nuuchah-nulth haahuupac’ak (“storied lesson”). He recounts a story in which Raven tricked Skate into playing a spear-throwing game, intending to spear and eat him: “Raven grinned as he looked at Skate’s wide body, thinking there would be no way he could miss. He reached back and threw his spear quickly. To his surprise, Skate simply turned sideways, practically disappearing as a target, allowing the spear to fly by harmlessly”: Mack, *supra* note 41 at 262–66.

44 Historian Victor Lyrwyn explains that “[t]he words *dish with one spoon* and other similar terms have been used since time immemorial by aboriginal people in the Great Lakes and St Lawrence valley region to describe agreements concerning shared hunting grounds”: Victor P Lyrwyn, “A Dish with One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region” (1997) 28 *Algonquian Papers* — Archive 210 at 210. In some cases, terms such as “bowl” or “kettle” were used instead of “dish,” and the term “spoon” does not appear in all of these agreements.

Ibid.

beads) of the Dish with One Spoon wampum belt.⁴⁵ Through this account we aim to show how Anishinaabe and Haudenosaunee constitutionalism are partly imagined and actualized through marine water beings that live in a predator-prey relationship with effects that are predictable and surprising, messy and clear, strengthening and destructive. The locations of the risky intersections we connect include: the intertidal zone of the Atlantic for the shellfish, the Lake Ontario region of Anishinaabe and Haudenosaunee territories, and the contemporary legal landscape in Canada for the contributors to this special issue. We also highlight the ongoing complexities of the treaty's legacies under colonialism, which sheds further light on the beauty and hazards of interjural projects.

A large-scale glass representation of the Dish with One Spoon wampum belt created by Kanien'kehà:ka artist Hanna Claus hangs alongside six other belts from the ceiling of the atrium of the Queen's Law School building where we work.⁴⁶ This reminds us that in 1701, following years of conflict, the Naagan ge bezhig emkwaan agreement was affirmed and memorialized in a wampum belt signifying promises between the Anishinaabe Nation and Haudenosaunee Confederacy to share in relations of abundance and common stewardship, without harm or interference, on the lands and waters around Lake Ontario and eastward into the St. Lawrence Valley region.⁴⁷ The wampum belt was originally crafted of shells acquired from Atlantic nations through trade networks facilitated through Indigenous intersocietal law.⁴⁸ Like other wampum belts affirming treaty agreements, the wampum memorializing the Naagan ge bezhig emkwaan is woven from purple and white shell beads to form images that serve as mnemonic devices recording the terms of the treaties, to help people recall the challenges that brought them together and the commitments made to one another.⁴⁹ The Naagan ge bezhig emkwaan wampum belt shows a dish — made of purple beads in the centre of the belt — which represents

45 Sinew, made of deer, was another primary material used to weave the wampum together, evoking yet another sphere of more-than-human relations relevant to this agreement.

46 Hannah Claus, "Bio", online: <hannahclaus.net/bio> [perma.cc/5VEE-27CZ]. Claus notes, "Together, the seven belts speak to the past, present and future of Indigenous relationships": Queen's Law, "Indigenous Art in the Atrium", online: <law.queensu.ca> [perma.cc/R6YA-Z6AV].

47 Victor Lytwyn recorded one account of this treaty in Lytwyn, *supra* note 44 at 221–22. See also Dean M Jacobs & Victor P Lytwyn, "Naagan ge bezhig emkwaan: A Dish with One Spoon Reconsidered" (2020) 112:2 Ontario History 191 at 194, 200–203. For a Haudenosaunee perspective on the Dish with One Spoon Treaty see, Kayanesenh Paul Williams, *Kayanerenkó:wa: The Great Law of Peace* (Winnipeg: University of Manitoba Press, 2018) at 339–44.

48 Paz Núñez-Regueiro & Nikolaus Stolle, "Wampum: Beads of Diplomacy in New France" (2022) 33 Revue d'anthropologie et d'histoire des arts 6.

49 Heidi Bohaker, *Doodem and Council Fire: Anishinaabe Governance through Alliance* (Toronto: University of Toronto Press, 2020) at 91–92, 110.

the lands and waters. The spoon — made of white beads, nestled inside the purple dish — represents those living on the lands and waters in a spirit of cooperation.⁵⁰ There is no knife in the dish, to remind that this agreement commits the Nations to avoid intrahuman bloodshed or conflict while hunting in these areas. A spoon, by contrast, has smooth edges, representing a gentleness in how we should engage with one another and the Land. This treaty is one of many laws (both intersocietal, and internal to the Anishinaabe and Haudenosaunee legal orders) that ensure checks and balances across the territory as people make food, homes, clothes, fuel, medicines, and tools with more-than-human beings, and engage in reciprocal acts of giving to ensure mutual flourishing.

The white wampum beads in the belt recording this treaty are made of whelks, or more specifically the columella or central column of univalve shells.⁵¹ The purple wampum beads are made of the outer rim of northern quahog (also called hard clams, *Mercenaria mercenaria*, or es in Anishinaabemowin).⁵² Whelks and quahogs live in the same liminal space, the intertidal zone of the Eastern seaboard (between the present-day states of Massachusetts and Florida). Whelks are fairly mobile and can move up to 40 meters per day.⁵³ Quahogs are not mobile and are limited to burrowing one or two centimeters under the sand. The mobile whelks prey on quahogs, their survival dependent on food provided by this bivalve mollusk. Although whelks are predators, the quahogs are dangerous prey because they can damage the whelks' shells. Wampum are thus constructed from more-than-human beings in conflict, predator and prey, the mobile and the burrower. These shells' appearance as emblems of humanist peace and conflict are a small part of their own stories of more-than-human peace and conflict.

As with the human communities who must find ways to flourish together with a dynamic Earth, the whelks and quahogs are continually changed by their interactions with each other and the wider environment. As Lisa Puyo explains, the whelks and quahogs have co-evolved, influencing each other to increase in size and for the whelk to evolve a denser shell to better enable it to pry open the quahog's shell.⁵⁴ In other words, their relationship has quite liter-

50 Some documents suggest that the white beads inside the dish represent a beaver tail, a favourite food of the Ojibwa (Lytwyn, *supra* note 44 at 222).

51 Lise Puyo, *Negotiating Between Shell And Paper: Wampum Belts As Agents of Religious Diplomacy* (PhD Dissertation, University of Pennsylvania, 2022) [unpublished] at 22.

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*, citing Gregory Dietl, "Coevolution of a marine gastropod predator and its dangerous bivalve prey" (2003) 80:3 *Biological Journal of Linnean Society* 409 at 429.

ally strengthened each of these beings, while also carrying forward scars of loss and predation. Puyo identifies an “echo” between this marine biology and the treaty recorded in wampum constructed of these shells:

When joined together, dark and light beads may be used to negotiate peace between former foes, signifying positive or negative values through the contrast of opposing colors and symbols ... [The] present form [of whelks and quahogs] is the result of a biological dialogue spanning millennia. ... Given the specificities of the two mollusks used to make wampum beads, these particular shells can symbolize death, conflict, peace, and reciprocity, in addition to their life-giving associations with water.⁵⁵

Today, whelks, quahogs, and all other life on Earth, confront new challenges posed by climate change and mass extinction.⁵⁶ The great lake, Lake Ontario, around which Naagan ge bezhig emkwaan was negotiated, and where the present work was authored, struggles too. Climate change, pollution, biodiversity loss, industrial agriculture, water quality, and deforestation (to name only a few) are challenging the conditions required for many species’ survival. We both feel the magnetic draw of Lake Ontario’s ocean-like expanse as we write, even as we learn that the lake faces ecological catastrophe.⁵⁷

As the marine life forming the material base of the wampum faces new pressures, so too do Anishinaabe and Haudenosaunee peoples and their legal orders as they work to renew and honour the treaty relationship, even under the weight of devastating colonial intrusions.⁵⁸ In recent years, the Dish with

55 *Ibid* at 23. Puyo quotes William Orchard’s observation that many Indigenous peoples treat shells as “a sacred material which, coming from the water ... symbolizes the power of that life-giving fluid”: *ibid*, citing William C Orchard, *Beads and Beadwork of the American Indians: A Study Based on Specimens in the Museum of the American Indian, Heye Foundation* (New York: Museum of the American Indian, Heye Foundation, 1929) at 17.

56 New Jersey Climate Change Resource Center, “Climate Change Could Threaten Sea Snails in Mid-Atlantic Waters”, online: <njclimateresourcecenter.rutgers.edu> [perma.cc/5LEZ-6P85]; National Fisherman, “Ocean quahog growth rates ‘radically altered’ by climate change, studies find” (28 September 2023), online: <nationalfisherman.com> [perma.cc/XG76-P8ZR].

57 Dan Egan, *The Death and Life of the Great Lakes* (New York: WW Norton & Company, 2017). Egan notes in particular the consequences of zebra mussels’ introduction into the ecosystem from ballast water discharged by large ships from Europe: without natural predators, the mussels “have transformed the lakes into some of the clearest fresh water on the planet. But this is not the sign of a healthy lake; it’s the sign of a lake having the life sucked out of it” (*ibid* at xvi). On the topic of newly introduced species in one Anishinaabe worldview, see Nick Reo & Laura Ogden, “Anishnaabe Aki: An Indigenous Perspective on the Global Threat of Invasive Species” (2017) 13:5 Sustainability Science 1443. For a critical appraisal and argument against use of the term “invasive species,” see Meera Iona Inglis, “Wildlife Ethics and Practice: Why We Need to Change the Way We Talk About ‘Invasive Species’” (2020) 33:2 J Journal of Agricultural Environmental Ethics 299.

58 On the historic complexities of Anishinaabe and Haudenosaunee relations from one Ojibwe perspective, see George (Kah-Ge-Ga-Gah-Bowh) Copway, *The Traditional History and Characteristic*

One Spoon has been frequently named in institutional “land acknowledgments,” sometimes in ways that reduce it to a generic “environmental message” that functions to “blur the territoriality” of the agreement and misleadingly casts the treaty as granting settlers rights to live on and therefore take from Indigenous territories.⁵⁹ Observing the threat this casting poses for their own efforts to assert territorial rights, at least one First Nation has worked to remove references to the Dish with One Spoon from territorial acknowledgments altogether, not trusting how such mentions might be received by those who are not treaty partners.⁶⁰ This distrust of Canadian actors and institutions — including those claiming to pursue reconciliation with Indigenous people and laws — is a justified and important response to a colonial history that has recurrently disrespected Indigenous people and authorities.⁶¹

Like the wampum shell beads of whelk and quahog, the articles contained in this special issue may come from seemingly disparate or even opposing perspectives, and yet together they form patterns that suggest not only tension but also aspirations to partnership. The patterns they stitch are not self-interpreting, and some are vulnerable to misinterpretation and even exploitation. Yet we see in these pieces a shared thread of efforts to understand the ways in which we all share the same home and depend on the more-than-human world. We can benefit from understanding not only our differences and similarities, but also how we are shaped by one another and the Earth. As editors, we do bring our own perspectives and intentionalities to this project, including a shared commitment to the value of interdisciplinarity, a desire to advance efforts to decolonize formal legal academic institutions, a belief in the importance of intentional time spent on the Land, and an admiration for the work that this particular group of contributors has done to move these collective projects forward. Even so, this project is not specifically comparative, and we do not presume or arrive at a single clear conclusion that should be drawn from these “placements

Sketches of the Ojibway Nation (Boston: BB Mussey & Co, 1851). On the contemporary challenges of both Anishinaabe and Haudenosaunee peoples in the Great Lakes region to live according to their own laws and intersocietal treaties with the Crown (i.e. enforce the honour of the Crown), see for example *R c Montour*, 2023 QCCS 4154 and *Chippewas of Nawash Unceded First Nation v Canada (Attorney General)*, 2023 ONCA 565.

59 Jacobs & Lytwyn, *supra* note 47 at 203, 205.

60 *Ibid* at 206 (reporting that Walpole Island First Nation “has taken an active role in shaping land recognition statements that are being made in their territory such as the University of Windsor’s statement. The Dish with One Spoon is not mentioned because it blurs the integrity of the First Nation to decide on how and when it is appropriate to share its territory with others”).

61 See Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Patricia Monture-Angus, “Standing Against Canadian Law: Naming Omissions of Race, Culture and Gender” (1998) 2 YB New Zealand Jurisprudence 7.

alongside.⁶² We do not employ a consistent or pre-determined methodology to strategically compare these articles or the different legal orders with which they engage.⁶³ Instead, we let the pieces sit beside one another, tolerating and welcoming uncertainty as to endpoints, and inviting the agency of authors and readers to join in making sense of how these lines of inquiry are entangled and what meanings these entanglements might have.

III. Finding Words: Shared Terms and their Limits

Law and language are deeply connected.⁶⁴ Language gives us tools to build relationships, and helps us make meaning of what is important to us as individuals and collectives. Law is also fundamental to these same tasks of meaning-making and relationship-building. Anthropologist Wade Davis discusses the power of language as follows:

A language, of course, is not just a set of grammatical rules or a vocabulary; it's a flash of the human spirit, the vehicle by which the soul of a particular culture comes into the material world. Every language is an old-growth forest of the mind, a watershed of thought, an ecosystem of social, spiritual and psychological possibilities. Each is a window into a universe, a monument to the specific culture that gave it birth and whose spirit it expresses.⁶⁵

Similarly, legal traditions are not just sets of rules, or precedents; they are the shadows of human ideas that run towards sunset waiting for daybreak's fresh light, they are the breath of values that hover like clouds on a winter's morning, and the flash of principles that arch across the night sky as storytellers look up in awe. They also form the prelude and apologia to our basest and most violent moments: they break hearts, shatter peace, and leave bodies in their wake.⁶⁶ These internal workings of our legal traditions — words, ideas, values, and principles — have the power to facilitate or threaten the embodied creation of safety, dispute resolution, and relationship building. They shape and express our choices as to who should be listened to, who should be seen, with whom we should feel — and who we imagine is listening, seeing, and feeling with us. These choices — what feminist legal theorists have called “legal method” —

62 Jessica Eisen, “Analogy and Alterity” in Chloë Taylor, ed, *The Routledge Companion to Gender and Animals* (London: Routledge, 2024) 115.

63 On methodology in comparative constitutional law more generally, see Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford: Oxford University Press, 2014).

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

65 Wade Davis, “Why Indigenous languages matter” (1 October 2019), online: *Canadian Geographic* <canadiangeographic.ca> [perma.cc/YA3Q-UXFT].

66 See Robert M Cover, “Violence and the Word” (1986) 95:8 Yale LJ 1601.

can be vehicles for the embrace or exclusion of human beings and beyond.⁶⁷ What kinds of laws can see and hear and feel with women?⁶⁸ With cows and with otters?⁶⁹ With the ininaatig, the moss at their feet, and the snow on their branches?⁷⁰

An overemphasis on words and text as means of communication, connection, and authority is underinclusive. Amongst humans, the centrality of oral traditions rather than written records has been used by text-centric colonial institutions as a pretense for the exclusion and denial of Indigenous histories and jurisdiction.⁷¹ These (il)logics echo through many relations of oppression within state legal traditions, including sex inequality (with women excluded from literacy, then debased on this basis), animal and environmental exploitation, and (dis)ability, among others.⁷² Artists, activists, storytellers, community leaders, and scholars have long worked to challenge these text-centric narratives of incapacity and worthlessness to illuminate diverse forms of equality and value, and highlight the role of connection, emotion, and care in political life.⁷³ Some of the articles in this special issue ask readers to consider how our languages of law might be more attentive to the voices of the more-than-human. How we conceive of language and law — what they are and what they do — are important components of this inquiry. If law, for example, is only seen in

67 See e.g. Katharine T Bartlett, “Feminist Legal Methods” (1989) 103:4 *Harvard L Rev* 829.

68 See *ibid.* For a discussion of the relationship between inattention to plants and the political and legal subordination of women, see Spalding, “Making Space”, *supra* note 9.

69 See Jessica Eisen, “Milk and Meaning: Puzzles in Posthumanist Method” in Mathilde Cohen & Yoriko Otomo, eds, *Making Milk: The Past, Present and Future of Our Primary Food* (London: Bloomsbury Academic, 2017) 237 [Eisen, “Milk and Meaning”]. For a story of learning law with otters see, John Borrows, *Law’s Indigenous Ethics* (Toronto: University of Toronto Press, 2019) at 5–23. See also John Borrows, “Learning Anishinaabe Law from the Earth” (2025) 29:2 *Rev Const Stud* 209 [J Borrows, “Learning Anishinaabe Law from the Earth”].

70 See Karen Bakker, *The Sounds of Life: How Digital Technology is Bringing Us Closer to the Worlds of Animals and Plants* (Princeton, NJ: Princeton University Press, 2024); Stefano Mancuso and Alessandra Viola, *Brilliant Green: The Surprising History and Science of Plant Intelligence* (Washington, DC: Island Press, 2018). For examples of listening and learning law from plants in this collection, see especially L Borrows, “Learning Law from Plants”, *supra* note 9; Askew, *supra* note 26; Lindberg, “Nēhiyaw Pimatisiwin”, *supra* note 7; and Spalding, “Making Space”, *supra* note 9.

71 See *Delgamuukw*, *supra* note 31 at paras 87, 98. See also J Borrows, *Canada’s Indigenous Constitution*, *supra* note 23 at 12–22.

72 For interconnected explorations of these phenomena, see e.g. Jacques Derrida’s conceptualization of “carnophalocentrism,” and Carol J Adams’s feminist vegetarian critical theory, both explored in Carol J Adams & Matthew Calarco, “Derrida and *The Sexual Politics of Meat*” in Annie Potts, ed, *Meat Culture* (Boston: Brill, 2017) 31. Linking these hierarchies to the disability context, see Saunara Taylor, *Beasts of Burden: Animal and Disability Liberation* (New York: The New Press, 2017), ch 4 (“The Chimp Who Spoke”).

73 For an introductory overview of some work in this vein, see the essays in Carol J Adams & Lori Gruen, eds, *Ecofeminism: Feminist Intersections with Other Animals and the Earth* (New York: Bloomsbury, 2014).

the positivistic terms of the dominant common law as taught in law schools, we miss the opportunity to understand how law also functions through social interactions, through conversations between groups, through sacred encounters, and through custom. We also risk missing the ways that all these modes of legal engagement are shaped by our relations with the more-than-human world.

This special issue is undeniably composed of written text. But we also know it to be comprised of the lives, experiences, and interconnections that bring each of us to this project, and to the more-than-human others who have shared their teachings with us, who have nurtured and loved with us, who have feared and run from us, and who have given their lives or had their lives taken to nourish and shelter us. These pieces are authored in English, a language often violently forced upon generations of Indigenous children and families, through assimilative projects aiming to destroy the lifeworlds of Indigenous legal orders.⁷⁴ Where key legal terms are offered in Anishinaabe, Cree, and other Indigenous languages, the authors in this collection have endeavoured to soak these terms in story, materiality, and personal meaning, so that unfamiliar readers may encounter them more deeply. Yet the risks of misinterpretation across modes of life and across legal orders are real. Without full access to the interpretive tools and cultural resources of a given legal order, readers run the risk of importing their own worldviews onto them, thereby distorting the realities these terms are deployed to invoke.⁷⁵

We are persuaded by Val Napoleon's response to one part of this challenge: the fear of harming another's culture given our lack of knowledge. Napoleon has co-developed, alongside Hadley Friedland, a Narrative Analysis method as one framework and practice to support the revitalization of Indigenous laws.⁷⁶ Using this framework, Napoleon and Friedland invite their students to engage with stories from Indigenous legal traditions, helping students draw links between these stories and the use of caselaw in the common law tradition. When taught in the law school classroom, Napoleon and Friedland will regularly say that this method is just one beginning, a tip of the iceberg, a taste

74 Again, the term "lifeworlds" is elaborated in Mills, "Lifeworlds", *supra* note 4. See Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Legacy*, vol 5 (Winnipeg: TRC, 2015) at 6.

75 See Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 Indigenous LJ 1.

76 "Narrative Analysis Method: Analytical Framework", online: *Wahkohtowin Law & Governance Lodge* <<https://www.ualberta.ca/en/wahkohtowin/media-library/data-lists-pdfs/analytical-framework-human-and-social.pdf>>. See also Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Traditions" (2015) 1:1 Lakehead LJ 16.

of a taste, of how this method works in real life when chosen and applied by Indigenous communities. Nevertheless, students regularly, and understandably, are fearful of causing harm by working with stories from Indigenous legal orders they may know little about. Napoleon says to this: *These laws are not fragile, they will not be broken by a law student.*⁷⁷ We know that, in engaging with articles in this issue, readers will not suddenly become experts on all the ideas and perspectives shared. While we ourselves have learned a great deal from engaging with these contributions, we leave with an even longer list of things we want to learn more about.⁷⁸ Novelist Chimamanda Ngozi Adichie eloquently shares that there is a danger in a single story.⁷⁹ When we think we know something because of a single or even narrow set of stories, we are destined to misinterpret.⁸⁰

And yet, the alternative of closing ourselves off to each other's stories leads us to distance ourselves from one another. As teachers, we must learn when and where and with whom we have found moments to share our own partial knowledge in the face of vulnerability. And as students, we must find ways to continually hone our own abilities to listen, and listen again; to know, always, that there is more to learn; and to trust the strength and integrity of what others choose to share with us. We are thankful that the contributors to this collec-

77 Val Napoleon, "Did I Break it? Recording Indigenous (Customary) Law" (2019) 22 *Potchefstroom Electronic LJ* 1; Val Napoleon, "Intersocietal Legal Pedagogies: Teaching Indigenous Law" (provisional title) in Val Napoleon & Debra McKenzie, eds, *Teaching Intersocietally* (Toronto: University of Toronto Press) [forthcoming in 2025]; Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) 61:4 *McGill LJ* 725 at 754 ("Narratives of fragility or incommensurability related to Indigenous laws are narratives of colonialism. The stories, and the elders and communities we have learned from, all teach us that Indigenous laws are made of stronger stuff").

78 Hadley Friedland often invites her students, after a lesson, to reflect and identify something they have learned and something they want to learn more about. Our thanks to Hadley Friedland for allowing us to share this here.

79 Chimamanda Ngozi Adichie, "The danger of a single story" (July 2009), online (video): <ted.com> [perma.cc/T2EM-9FHX].

80 Misinterpretation can and does cause pain and harm, particularly in circumstances of inequality. See Young, *supra* note 40. But not all misinterpretation is dangerous. Sometimes it can even be creative, productive, intentional, and/or beautiful. For a theory of legal syncretism (defined as "the process and the result of adoption, rejection, invention, and transformation of diverse and seemingly opposite legal rules, principles, and practices into a constitutional state with imperial or colonial legacies") in the African context, see Berihun Adugna Gebeye, *A Theory of African Constitutionalism* (Oxford: Oxford University Press, 2021) at 10. A brief summary of the book can be found in Berihun Adugna Gebeye, "Legal Syncretism: A New Frontier of Constitutional Studies" (2 October 2024), online (blog): <frontiers.csls.ox.ac.uk> [perma.cc/G2ZQ-3Y3R]. For an example of legal syncretism at play in the Canadian context see David Leo Milward, *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Aboriginal Rights* (Vancouver: University of British Columbia Press, 2012). See also Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 3rd ed (Cambridge: Cambridge University Press, 2020), ch 8 ("Law: A Map of Misreading").

tion have chosen to share and learn together. Thus, as we define the terms of the present inquiry — “Our More-than-Human Constitutions” — we take care to attend to the importance of language, its power to build and to break, and also to the ways it ties us to (or excludes) particular communities, histories, and ways of knowing. With all this in mind, we offer here some reflections on our key terms of engagement: “Our,” “More-than-human,” and “Constitutions.”

A. “Constitutions”

The essays in this collection explore the roles that the more-than-human world plays in the deepest foundations of law and governance across legal orders. We use the term “constitutional” in this broad sense, capturing the many ways that communities constitute themselves, including in relation to the Earth, through law.⁸¹ This definition exceeds more limited statist conceptions of “constitutionalism” that require, for example, formal institutions separating distinct “branches” for judicial, legislative, and executive function,⁸² and which may focus more narrowly on questions of “power, control, and hierarchy.”⁸³ Constitutions on this account can take many forms and intervene in complex ways in legal and social life. They may be “written or unwritten, may be good or bad, effective or ineffective at achieving the goals of the society they govern.”⁸⁴

Constitutions can overlap territorially.⁸⁵ In some cases, this overlap is affirmed and recognized within and across legal orders, as with the Canadian Constitution’s recognition of both provincial constitutions and a national constitution,⁸⁶ Canadian state recognition of the continuing authority of Indigenous legal orders,⁸⁷ and mutual recognition of overlapping territorial

81 See Jennifer Nedelsky, “Transforming Constitutionalism from a More-than-Human Perspective” (2025) 29:2 *Rev Const Stud* 239 [Nedelsky, “Transforming Constitutionalism”].

82 Stephen Cornell, “‘Wolves Have A Constitution:’ Continuities in Indigenous Self-Government” (2015) 6:1 *Intl Indigenous Pol’y J* 1 at 2–3.

83 See Nedelsky, “Transforming Constitutionalism”, *supra* note 81, describing her own decision to set aside the more traditional constitutionalist question of “how do we govern ourselves?” and instead pursue the “more open-ended and mutually respectful question” of “how do we best constitute ourselves as cooperating communities that are safe and inclusive for all and foster wise decision-making?”

84 *Ibid* at 3.

85 J Borrows, *Canada’s Indigenous Constitution*, *supra* note 23 at 8.

86 See Emmett Macfarlane, “Provincial Constitutions, the Amending Formula, and Unilateral Amendments to the Constitution of Canada: An Analysis of Quebec’s Bill 96” (2023) 60:3 *Osgoode Hall LJ* 655.

87 See e.g. *Campbell v Canada (Attorney General)*, 2000 BCSC 1123 at para 81: [V]arious observations by the Supreme Court of Canada support ... the submission that aboriginal rights, and in particular a right to self-government akin to a legislative power to make laws, survived as one of the unwritten ‘underlying values’ of the Constitution outside of the powers distributed to Parliament and the legislatures in 1867.”

governance as between multiple Indigenous legal orders.⁸⁸ Treaties often embody this quality of inter-constitutional recognition, sometimes even giving rise to new shared constitutional orders with new powers, subject to new constraints.⁸⁹ But even absent mutual respect and acknowledgement, constitutionalism in the sense we have described may exhibit territorial overlap. Multiple legal orders can operate and constrain themselves in the same time and space, even where those legal orders ignore or dispute each other's authority. This has been the case when Canadian and Indigenous legal orders have operated concurrently despite active state efforts to suppress and deny the existence of Indigenous law,⁹⁰ or where Indigenous legal orders have rejected the legitimacy of the Crown's exercises of authority over their territories.⁹¹ Our conception of constitutionalism thus tolerates and welcomes attention to complex, even messy, stories of legal authority, and does not depend on a state-centric understanding of law or a Weberian localization of "legitimate use of force" within a single governing authority.⁹²

88 For a description of how the Haudenosaunee Confederacy (i.e. Six Nations) organize themselves in overlapping territories and across the longhouse, see Kayanesenh Paul Williams, *Kayanerenkó:wa: The Great Law of Peace* (Winnipeg: University of Manitoba Press, 2018) at 38–82. The British Columbia Court of Appeal's treatment of overlapping title claims has addressed some of the challenges woven jurisdictions pose for Canadian and Indigenous law, particularly respecting the resolutions of contemporary title cases and land claims. See e.g. *Maliu v British Columbia*, 2024 BCCA 406.

89 Consider, for example, Gayanashagowa (the Great Law of Peace), binding together the Iroquois Confederacy, which would later enter into the Dish with One Spoon agreement with the Anishinaabe Nation, as discussed above. See J Borrows, *Canada's Indigenous Constitution*, *supra* note 23 at 72–77; Cornell, *supra* note 82 at 6.

90 One well-known example is the Canadian state ban on the Potlach ceremony at which economic and political arrangements were affirmed pursuant to Coast Salish, Kwakwaka'wakw, Nuu-chah-nulth, and Dene legal orders. See Douglas Cole & Ira Chaikin, *An Iron Hand Upon the People: The Law Against Potlatch on the Northwest Coast* (Seattle: University of Washington Press, 1990). See also Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, vol 6 (Winnipeg: TRC, 2015) at 41–79. See especially *ibid* at 46: "One of the most damaging consequences of residential schools has been that so many Survivors, their families, and whole communities have lost the connection to their own cultures, languages, and laws. The opportunity to learn, understand, and practise the laws of their ancestors as part of their heritage and birthright was taken away. Yet despite years of oppression, this knowledge did not disappear; many Elders and Knowledge Keepers have continued to carry and protect the laws of their peoples to the present day."

91 See e.g. *Logan v Styres*, 1959 CanLII 882 (ONSC); Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham: Duke University Press, 2014). In some cases, political agreements are developed between legal orders despite foundational disputes respecting the legitimacy of each other's claims to legal authority. See e.g. Haida Nation, "Kunst'aa guu — Kunst'aayah Reconciliation Protocol" (2009), online: <haidanation.ca> [perma.cc/H7JT-V44C] (specifying that the parties to the agreement, i.e. Haida Nation and the British Columbia Government, "hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii," detailing those differing views, then proceeding to set terms for agreement despite them).

92 Max Weber, "Politics as a Vocation", translated by HH Gerth & C Wright Mills, in HH Gerth & C Wright Mills, eds, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946) 77

Further deepening the pluralism of the legal orderings we hope to address, we decline to place an anthropocentric limit on our definition of constitutionalism.⁹³ The communities that may come together to set roles, programs for collective action, and limits on authority, may include human beings, more-than-human beings, or both. As several of the articles in this special issue elaborate, Indigenous constitutionalism has long recognized treaty relations with animal nations among other more-than-human treaty partners.⁹⁴ Moreover, Indigenous legal orders often attend to relations with the more-than-human world as central dimensions of constitutional ordering.⁹⁵ Even within state legal traditions that have often declined to ascribe agency or co-citizenship to the more-than-human world,⁹⁶ a growing number of constitutional texts recognize animals and environments as objects of protection;⁹⁷ and, even without explicit textual mentions, it is hard to imagine a constitution that does not include some unwritten direction or constraints shaping collective human engagement with the more-than-human world on which our collectivities depend.⁹⁸

Stephen Cornell begins his reflections on Indigenous constitutionalism by naming and sharing, with permission of his sons, a teaching offered by the late Matt Rigney, an elder of the Ngarrindjeri people of southern Australia: “You know, wolves have a constitution ... The wolf pack has rules ... Each wolf knows its role and respects the rules. That makes the pack effective. When they follow the rules, the system works.”⁹⁹ Even within Western symbology, the “wolf pack” sits alongside other observations of animal social organization (e.g. “pecking order,” “herd mentality”) deployed as metaphors for human law and politics.¹⁰⁰ Our understanding of constitutionalism is wide enough to embrace relations between and within communities of more-than-human beings who

at 78, defining the state as a “human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.”

93 For a discussion of the anthropocentric presumptions underlying much state constitutional theory, see Jessica Eisen, “Animals in the Constitutional State” (2018) 15:4 *International Journal of Constitutional Law* 909.

94 See e.g. Askew, *supra* note 26; Gimenez, *supra* note 26.

95 See e.g. Mills, “Lifeworlds”, *supra* note 4 on “Rooted Constitutionalism”; Cornell, *supra* note 82 at 6–9; *Restoule v Canada (Attorney General)*, 2018 ONSC 7701 (Affidavit of Heidi Stark at paras 5–9).

96 For an influential argument that at least some animals should be understood as co-citizens in liberal political orders, see Sue Donaldson & Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011).

97 See Jessica Eisen & Kristen Stilt, “Protection and Status of Animals” in Rainer Grote et al, eds, *Max Planck Encyclopedia of Comparative Constitutional Law*, online: <oxcon.ouplaw.com> [perma.cc/8SVA-6XHM].

98 See Eisen, “More-than-Human World”, *supra* note 9.

99 Conversation with Matt Rigney, Ngarrindjeri elder (June 2011), cited in Cornell, *supra* note 82 at 1.

100 Cf. Rivka Galchen, “The Myth of the Alpha Wolf” (25 March 2023), online: *The New Yorker* <www.newyorker.com> [perma.cc/8XT7-CUH2].

have arrived at collective arrangements as to how they will pattern relations within their own communities.¹⁰¹

Our understanding of constitutionalism as including more-than-human collectivities poses interpretive challenges. Recognition that animals and more-than-human entities constitutionally order themselves independently of humanist legal relations raises profound methodological challenges for human beings who wish to account for these arrangements.¹⁰² Human beings often lack the skills and respect necessary to listen across profound differences in communicative mode, embodiment, affect, and collective life.¹⁰³ The obstacles presented by this kind of listening can reach orders of magnitude above those posed by intrahuman engagements, even across troubled human histories and profound human differences.¹⁰⁴ But these challenges are not reason to dismiss more-than-human constitutions as beyond meaningful human comprehension or engagement. Postures of attention and curiosity, of affective and intellectual commitment, can be built and nourished through research in books and, especially, on the Land.¹⁰⁵ A meaningful study of constitutionalism that is not constrained by anthropocentric bias requires that we work across these modes of engagement.

B. “More-than-Human”

The insufficiency of Earth-oriented terminology in English has posed challenges in our work. At several points in our work on this project we have debated the appropriate language to describe the array of plants, animals, water, rocks, and others we hoped our lines of inquiry to embrace, both as individuals and as collectives. We are not alone in this struggle. Many others have discussed the inadequacy of current expressions of the English language to represent ecological worldviews marked by animacy and relationality.¹⁰⁶ Adding to

101 For examples of more-than-human animal social organization, see Marc Bekoff & Jessica Pierce, *Wild Justice: The Moral Lives of Animals* (Chicago: University of Chicago Press, 2010). On the coordinated decisions and actions of pecan trees, see Kimmerer, *supra* note 15 at 11–21 (“The Council of Pecans”).

102 Cf. Eisen, “Milk and Meaning”, *supra* note 69.

103 See Frans De Waal, *Are We Smart Enough to Know How Smart Animals Are* (New York: WW Norton & Company, 2016); Thomas Nagel, *What Is It Like to Be a Bat?* (New York: Oxford University Press, 2024); J Borrows, “Learning Anishinaabe Law from the Earth”, *supra* note 69.

104 Consider, for example, the Plains Cree story of the Buffalo Stone Child, explored by Darcy Lindberg in his contribution to this collection: Lindberg, “Nēhiyaw Pimatisiwin”, *supra* note 7.

105 See J Borrows, “Learning Anishinaabe Law from the Earth”, *supra* note 69. See also Sue Donaldson & Will Kymlicka, “Rethinking Membership and Participation in an Inclusive Democracy” in Barbara Arneil & Nancy J Hirschmann, eds, *Disability and Political Theory* (Cambridge: Cambridge University Press, 2017) 168 at 191–96.

106 Stephan Harding, *Animate Earth: Science, Intuition and Gaia*, 2nd ed (Cambridge, UK: Green Books, 2009); Kimmerer, *supra* note 15 at 48–63; David Treuer, “Language Carries More Than Words” (19 June 2008), online (podcast): <onbeing.org> [perma.cc/KJ2D-25ZA].

the challenge of finding a wholistic English language term to describe life in its various forms, many Indigenous worldviews consider rainbows,¹⁰⁷ water,¹⁰⁸ rocks,¹⁰⁹ and weather¹¹⁰ as living relations to whom we owe a duty of care.¹¹¹ We hoped our core unit of analysis would be capacious enough to embrace these entities as well. Who (or, in English, sometimes what¹¹²) is owed our care and responsiveness is culturally dependent. In a project aiming at cross-cultural constitutional analysis, we sought terms capable of faithfully carrying a range of meanings, without being so flexible as to be void of analytic purchase.

We have settled on the provisional and imperfect term, “more-than-human.” The phrase was first coined by David Abram as he encountered “a lack of precise words and phrases by which to articulate the real relation between our species and the countless other shapes of sensitivity and sentience with whom our lives are entangled.”¹¹³ He deployed the term “more-than-human” to capture the “multiform exuberance of nature,” and the “many-voiced creativity that steadily surges all around us and even through us” — hoping to “remind” humans “of our embedment in an earthly cosmos that we humans did not create, that we do not control, and that necessarily exceeds all our knowing.”¹¹⁴ We have relied on this term because we believe it is capacious enough to refer to the land, animals, plants, rocks, sky beings (rainbows, stars, weather, clouds etc.), water, fungi, fire, and air, all of which we hope to address in this project, while still effectively directing readers to the set of Earthly relations we hope to invoke.¹¹⁵

107 See, for a Tsilhqot’in example, Linda Ruth Smith, “The Ways of Our Esghaydam ‘Ancestors’: Nenqayni Laws of Respect” (A Yunesit’in and Xení Gwet’in Project in collaboration with the Tsilhqot’in National Government, 2017) at 22–24.

108 See, for a Syilx example, the “siwlk^w Water Declaration” (adopted 31 July 2014, Okanagan Nation Annual General Assembly, Spaxomin, Syilx Territory), online: <syilx.org> [perma.cc/WWY2-D5AX].

109 See, for a Cree example, Darcy Lindberg, “Miyo Nèhiyâwiwin (Beautiful Greeness): Ceremonial Aesthetics and Nèhiyaw Legal Pedagogy” (2018) 16/17:1 *Indigenous LJ* 51.

110 See, for an Anishinaabe example, Verna Patronella Johnston, “Nanabush and the Skunk” in *Tales of Nokomis* (Don Mills, ON: Musson Book Company, 1975) at 5–7.

111 See Sarah Morales, “*‘a’lha’tham: Involuntary Obligations that Flow from a Web of Relations*” (Tort Law and Social Equality Project Speaker Series, delivered at the Faculty of Law, University of Toronto, 13 December 2024) [unpublished].

112 See Debra Merskin, “*She, He, not it: Language, Personal Pronouns, and Animal Advocacy*” (2022) 8:2 *J World Languages* 391.

113 David Abram, “On the Origin of the Phrase ‘More-Than-Human’” in César Rodríguez-Garavito, ed, *More Than Human Rights: An Ecology of Law, Thought and Narrative for Earthly Flourishing* (New York: New York University MOTH Project, 2024) 313 at 313–314.

114 *Ibid* at 314, 319.

115 We intend this list to be illustrative, not exhaustive, since we are not aware of every being that is considered living across cultural traditions. We are, at this time, purposefully excluding artificial intelligence, robots, and other artificial entities, from our definition. Though we recognize the challenges of distinguishing the artificial from the natural (particularly as human interventions in the natural world

Some alternative terms we might have used to describe the relationships on which we focus in this special issue include the natural world;¹¹⁶ the environment, biosphere, or ecosphere;¹¹⁷ other-than-human beings or non-human beings;¹¹⁸ Land (or uncaptialized land);¹¹⁹ all creation;¹²⁰ all beings;¹²¹ all our

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- become increasingly profound and pervasive), we think that the justice problems posed by artificial entities like robots or AI are quite distinct from the questions we hope to explore in relation to the more-than-human communities and entities with which we are concerned. For a classic provocation on the increasingly blurred boundaries between the natural and the artificial, see Donna J Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature* (London: Free Association Books, 1991), ch 8 (“A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century”). See also *infra* note 116, discussing the term “natural world.”
- 116 Though used by many Indigenous writers, we have ultimately chosen not to centre this term because it may suggest that places/beings not influenced by humans are natural, and that those influenced by humans are “not-natural.” See generally critiques on the term wilderness (i.e. the natural): David Treuer, “Return the National Parks to the Tribes”, *The Atlantic* (12 April 2021), online: <theatlantic.com> [perma.cc/X227-VZF8].
- 117 The terms “environment,” “biosphere,” and “ecosphere” seem only to attend to systems rather than individual experiences or species. See Mark Sagoff, “Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce” (1984) 22:2 Osgoode Hall LJ 297.
- 118 The terms other-than-human and non-human each seem to introduce a binary view of human or not, misleadingly suggesting that humans are not also animals or parts of nature.
- 119 Sandra Styres & Dawn Zinga, “The Community-First Land-Centred Theoretical Framework: Bringing a ‘Good Mind’ to Indigenous Education Research?” (2013) 36:2 Canadian Journal of Education 284 at 300–301: (“We have chosen to capitalize Land when we are referring to it as a proper name indicating a primary relationship rather than when used in a more general sense. For us, land (the more general term) refers to landscapes as a fixed geographical and physical space that includes earth, rocks, and waterways; whereas, ‘Land’ (the proper name) extends beyond a material fixed space. Land is a spiritually infused place grounded in interconnected and interdependent relationships, cultural positioning, and is highly contextualized.” While the terms land or Land may effectively evoke the broader sets of relations invoked by Styres and Zinga and others who use the term, we felt the framing did not quite capture the attention to the specific species or individuals who we wished to include in our inquiry, particularly those who have been domesticated or held in captivity.
- 120 This term is used by many Indigenous peoples, and is frequently invoked in community settings. It is expansive and can refer to existence beyond this Earth, and include the sky worlds and spiritual worlds. One challenge with this term is that it has the potential to evoke Euro-Christian or other traditions of creationism which are distinctive from Indigenous definitions, and which risk importing visions of hierarchy or dominion which we do not share. For a nice example of the application of this term see Deborah McGregor, “Honouring Our Relations: An Anishinaabe Perspective on Environmental Justice” in Julian Agyeman et al, eds, *Speaking for Ourselves: Environmental Justice in Canada* (Vancouver: UBC Press, 2009) 27.
- 121 Cf. Joanna Macy & Molly Brown, *Coming Back to Life: The Updated Guide to The Work that Reconnects* (Gabriola Island, BC: New Society Publishers, 2014) at 160–66 (describing a “communal ritual” in which participants speak on behalf of “any nonhuman being”). One of the contributors to this special issue, Maneesha Deckha, has developed a conceptualization of animals as “legal beings” as an alternative to “legal personhood.” The term “beings” as she develops it excludes plants and ecosystems, which we wished to include in the conversation we invite with this special issue. See Maneesha Deckha, *Animals as Legal Beings: Contesting Anthropocene Legal Orders* (Toronto: University of Toronto Press, 2020) at 153–157.

relations;¹²² or the living world.¹²³ Indigenous language words from the over 70 Indigenous languages spoken throughout Canada could also be put forward and defined as well, though each of these would be anchored in a specific cosmology that might not readily apply to other Indigenous or state legal orders. Although we have chosen more-than-human as our central term of inquiry, many of these alternative terms appear in this collection, and even in this introductory essay, to invoke different specifications of the broader discussion.

We recognize that the term more-than-human carries some ambiguity. Taken to its most literal extreme, it could be thought to include *everything*, material and otherwise. But, as the term has come to develop in academic and activist literature, we believe that the term more-than-human effectively conveys the relational spaces we seek to examine in this project. In fact, we think the term's ambiguity is a strength with respect to our particular purposes. Its flexibility allows us to sidestep some questions of inclusion that have haunted the silos we identify and seek to challenge between Indigenous law, animal law, and environmental law. It does not rest on hierarchies of concern as between nature and culture, or between green and urban spaces, as environmental law has sometimes done.¹²⁴ It does not hold cognition or sentience out as the *sine qua non* of moral concern, thus departing from prevalent approaches within animal law that risk excluding many of the entities and communities we seek to include.¹²⁵ It allows for continuities between human and other life that are hospitable to analyses within various Indigenous legal orders, while not insisting on any particular conception of those continuities that might impair the term's usefulness in analyzing state legal orders as well. In short, the term more-than-human is capacious enough to invoke at a more general level the entities and relationships we have in mind. But our selection of this term is also informed by the proliferation of work by scholars within Indigenous law,¹²⁶ animal law,¹²⁷ environmental law, and the rights of

122 See e.g. Winona LaDuke, *All Our Relations: Native Struggles for Land and Life* (Cambridge, MA: South End Press, 1999).

123 See e.g. Jean Chamel & Yael Dansac, eds, *Relating with More-than-Humans: Interbeing Rituality in a Living World* (Cham, Switzerland: Springer Nature Switzerland AG, 2022).

124 See Abram, *supra* note 113.

125 For a classic articulation, see Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: T Payne & Son, 1789) at 308, n 2 (“[T]he question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?”).

126 See e.g. Soren C Larsen & Jay T Johnson, *Being Together in Place: Indigenous Coexistence in a More Than Human World* (Minneapolis: University of Minnesota Press, 2017).

127 See e.g. Irus Braverman, “More-than-Human Legalities: Advocating an ‘Animal Turn’ in Law and Society” in Austin Sarat & Patricia Ewick, eds, *The Handbook of Law and Society* (Malden: Wiley-

nature¹²⁸ who have seen their related aspirations reflected in this language. Like all categories of thought and identity, the choice of terminology here is at once affective, intellectual, political, and provisional.¹²⁹

C. “Our”

Finally, and perhaps most fraught, we have named the more-than-human constitutional relations examined as “ours.” We imagine several layers of tension in this gesture. The first and most obvious is between Indigenous and state approaches. The notion that Canada’s Constitution in some way belongs to Indigenous people, many of whom actively resist its legitimacy,¹³⁰ may strike some readers as grating. And the converse notion that settlers may claim Indigenous legal orders with the word “our” feels even more jarring, threatening to evoke the paternalism, objectification, and dispossession that has so often threatened meaningful reconciliation.¹³¹ Second, the term “our” risks evoking an ownership or property relation to the more-than-human world — a problematic association in view of the harms that propertization and commodification have wrought for animals and the Earth.¹³² As should be clear from our above discussion of the term “constitution,” however, we do not here treat the more-than-human world as a collection of inert objects who are always ownable and never owning. Instead, it is our intention to include animals, plants, and other natural entities in the “we” who own and shape these relations. This sense of an interspecies law shared and shaped by a collective “our” is well developed in Indigenous constitutional theory.¹³³ But the notion of more-than-human polities remains novel theoretical terrain within state law,¹³⁴ such that the use of the term “our” poses a risk that some readers anchored in Western

Blackwell, 2015) 307.

128 César Rodríguez-Garavito, *supra* note 113 at 15 (“Introduction”).

129 Cf. Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca: Cornell University Press, 1990).

130 E.g. Monture-Angus, *supra* note 61.

131 See e.g. Gregory Younging, *Elements of Indigenous Style: A Guide for Writing By and About Indigenous Peoples* (Edmonton: Brush Education, 2018) at 91 (“Indigenous Peoples are independent sovereign nations that predate Euro-colonial states and are not ‘owned’ by Euro-colonial states. Indigenous style therefore avoids the use of possessives that imply this, such as ‘Canada’s Indigenous Peoples,’ ‘our Indigenous Peoples,’ and ‘the Indigenous Peoples of Canada.’”)

132 See e.g. Gary L. Francione, *Animals, Property and the Law* (Philadelphia: Temple University Press, 2007).

133 See e.g. J. Borrows, “Learning Anishinaabe Law from the Earth”, *supra* note 69.

134 A growing number of scholars in political theory are turning their attention to how animals in particular might be better integrated into liberal/Western political theory and practice. See Donaldson & Kymlicka, *supra* note 96; Tony Milligan, “The Political Turn in Animal Rights” (2015) 1:1 *Politics & Animals* 6; John Olusegun Adenitire & Raffael Fasel, *Animals and the Constitution: Towards Sentience-Based Constitutionalism* (Oxford: Oxford University Press, 2025).

worldviews may reflexively take the term as suggestive of human possession of the “more-than-human,” the “constitution,” or both.

We retain this “our” in the face of these risks to reflect the reality that, for better or for worse, we (human and otherwise) share in each other’s constitutional journeys at every level. The interconnections aimed at and explored here — between state and Indigenous legal orders, between human and Earth — do in fact create an inevitable and fraught “our.” This uneasy assemblage is tasked with finding ways to live and sustain life together, in relations of mutuality, threat, separation, sustenance, and danger. It is the shape, the threat, and the promise of this “our” that makes interjural projects so challenging and so important.

IV. Where We Gather: Language and Land

Projects that share in the traditions of Western intellectualism, as this special journal issue most certainly does, pose particular challenges for both interjural and land-centric theory.¹³⁵ As many of the works in this issue attest, land-based learning is a crucial element of Indigenous legal pedagogy that is best experienced in embodied ways, instead of through text.¹³⁶ We strove in our process to incorporate land-based learning, even as we knew the resultant journal articles could only do so much to advance this commitment. While still in development, the pieces in this collection were shared at a workshop in ɫəkʷəŋən territories (Victoria, British Columbia), beside another lively waterscape. Our conference hotel was located on a significant site to the Songhees and Esquimalt Nations: a 19th century burial ground.¹³⁷ Just as the inn disrupted the ceremonial burial markers that had been made and tended by the earlier ɫəkʷəŋən speaking-peoples for their beloved ancestors, the ocean we appreciated from the windows, patios, and outdoor pathways evinced disruption of the homes of marine species, as large ships, skyscrapers, float planes, and recreational boat traffic covered the waters. Our gathering site was rich in history and contemporary significance for Indigenous, non-Indigenous, and more-than-human communities. To deepen our connection and accountability to the Land, our group also travelled in the middle of our workshop to learn from Chief Gordon Planes at T’Sou-ke First Nation within Coast Salish territory.

135 See Mack, *supra* note 41.

136 John Borrows, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33:1 Windsor YB Access Just 1.

137 Songhees Nation, “ɫəkʷəŋən Traditional Territory”, online: <songheesnation.ca> [perma.cc/NV5B-6PXP].

We stood at the edge of the ocean behind the band office, where Chief Planes welcomed us with a speech and a song. The ocean here had none of the busy traffic that was visible around our conference room downtown. As we walked up Broom Hill, we learned from Chief Planes, and from special issue contributor ethnobotanist Pamela Spalding (Métis),¹³⁸ about the incredible and diverse cultural uses of plants like western redcedar (*Thuja plicata*; xpéy'), yellow cedar (*Callitropsis Nootkatensis*; páshələq̓w), salmonberries (*Rubus spectabilis*; ?əlílə?) and chocolate lily (*Fritillaria affinis*).¹³⁹ Chief Planes explained various pressures facing the Nation including housing developments and urbanization, and his hopefulness for modern treaties. Coming from many diverse starting points in our knowledge of plants, of T'sou-ke Nation and territory, and of Indigenous plant relations more broadly, we were each shaped in distinct ways by this experience on the Land. For those of us more accustomed to standing as teachers in the front of law school classrooms, or as presenters at conferences and workshops, it was a productive shift to be encouraged with expert guidance to honour the authority and wisdom of plants. Many of us found the experience had a particular impact on our own sense of audience, purpose, humility, community, and accountability, as we turned to the writing of the articles in this collection and beyond. On the hike, we stopped regularly to observe and learn. We shared stories from our experiences as mothers and fathers, professors and students, sons and daughters, lawyers and government employees, sisters and brothers; stories of growing up and of growing old. The time flew by as we enjoyed our walk together. This experience resonates with the broader lessons of land-based learning that have been replicated countless times: that learning on and with the Land re-connects our heads with our bodies and hearts.¹⁴⁰ We feel the imprint of this experience on the conversations at our workshop and on the written contributions to the special issue. And so, we encourage readers to use this special issue as a springboard to head outdoors, and observe, over time, what the more-than-human can teach us about the questions of justice, obligation, care, and community explored in this issue.

138 See Spalding, "Making Space", *supra* note 9.

139 See "Figure 3.2. T'Sou-ke Customary Landscape Map; 'An assemblage of lands governed by the laws of an assembly'" in Spalding, *Unsettling Landscapes*, *supra* note 13 at 100; see also "Appendix A: Ethnobotany Summary Table for T'Sou-ke Plant Relationships" at 283.

140 Dwayne Donald, "We Need a New Story: Walking and the wáhkóhtowin Imagination" (2021) 18:2 *J Can Association Curriculum Studies* 53; Mande McDonald, "Moosehide Tanning and Wellness in the North" in Gina Starblanket & David Long, eds, *Visions of the Heart: Issues Involving Indigenous Peoples in Canada*, 5th ed (Don Mills, ON: Oxford University Press, 2020) 220; L Simpson, *supra* note 12. For a thoughtful treatment of Western legal and political inattention to the connection between mind, body, and affect, see Jennifer Nedelsky, "Embodied Diversity and the Challenges to Law" (1997) 42:1 *McGill LJ* 91.

V. Our More-than-Human Constitutions: A Field Guide

We offer here a brief summary of the articles included in this special double issue of the *Review of Constitutional Studies*. Although the special issue spans two volumes, we have not divided the articles into two groups, thematically, jurisdictionally, or otherwise. Instead, we have arranged the articles in an order that connects each piece to the contributions appearing before and after it — adopting flow rather than category as our framework. We have decided to begin volume one with two contributions that we receive with special gratitude in this collection: those of John Borrows and Jennifer Nedelsky. These scholars have had a tremendous influence on the ideas developed in this collection, and have served as generous and caring mentors to the next generation(s) of scholars who have endeavoured to follow the paths they have charted in legal and political theory. Each of them has contributed work to this collection that reflects and builds upon their decades of intellectual leadership across intersecting communities of inquiry. In many ways, we recognize that this collection would not have been possible without them.

In his article, “Learning Anishinaabe Law from the Earth,”¹⁴¹ John Borrows takes up the question of how Anishinaabe law might better respect more-than-human beings and laws “on their own terms,”¹⁴² according special care when these more-than-human entities and legalities have been placed in forced relations with human polities. Recognizing that this project is invariably mediated through human acts of interpretation and translation, and fraught with risks of bias and distortion, Borrows nonetheless identifies the more-than-human world as an active participant in Anishinaabe law and seeks ways to hone its human practitioners’ receptivity to the messages conveyed by the Earth. Setting the stage for this exploration, Borrows describes the 1763 journey of Anishinaabe people to Niagara to take up a British invitation to treaty following the Seven Years War. Borrows details Anishinaabe efforts to seek guidance from the more-than-human world on this journey, first receiving a message from a turtle spirit through ceremony urging them to take the journey, only to later encounter a rattlesnake en route warning them to return home. The conflicting advice from the turtle spirit and the rattlesnake reflected disagreements amongst the Anishinaabe themselves as to the wisdom of proceeding. Borrows draws out some of the interlocking hazards and rewards this story illustrates respecting teachings from the Earth: ambiguity and risk of misinterpretation on the one hand, and the procedural benefits of dialogue and flexibility on

141 J Borrows, “Learning Anishinaabe Law from the Earth”, *supra* note 69.

142 *Ibid.*

the other. Looking forward, Borrows shares a series of personal accounts of his own experiences learning to listen to *bineshiyag* (birds); *gigooyag* (fish); his own *doodem* (clan) ancestor, *nigigwak* (otters); and *mashkikiig* (plants). Across these experiences, Borrows draws out a crucial lesson about learning Anishinaabe law from the Earth: that human beings are best positioned to do this work in familial, social, and legal systems that nourish receptivity to the more-than-human world.

Jennifer Nedelsky's contribution, "Transforming Constitutionalism from a More-than-Human Perspective,"¹⁴³ bears her hallmark ability to draw on wide-ranging perspectives with attention to multiple scales, skillfully connecting literature from seemingly disparate disciplines. Weaving together ideas from feminist political economy and legal theory, care ethics, labour law and policy, comparative constitutional law, spirituality, environmental psychology, and Indigenous legal thought, Nedelsky invites readers into a deepened understanding of the imperative to change Canadian law to better account for our collective kinship as living beings. She de-centers traditional accounts of state constitutionalism to consider more expansively how we might better "constitute relations among and between human and more-than-human members of the Earth community, so that all may flourish,"¹⁴⁴ focusing on the transformation of existing norms. For example, Nedelsky asks how the current value system grounding Canadian law must transform to ensure mutual responsibility over existing individualistic conceptions of autonomy and freedom that are contributing to the climate crisis. She also asks, how might a basic framework of responsibilities instead of rights become the dominant approach? Despite practical, institutional, and power-based challenges, in addition to challenges of imagination, Nedelsky holds out hope in this project of more-than-human constitutionalism: that the science of interdependence will overcome the philosophy of individualism.

Darcy Lindberg's article, "Nêhiyaw Pimatisiwin and Regenerative Constitutionalism,"¹⁴⁵ takes up related questions about the constitutional norms needed to improve relations with the more-than-human world within *nêhiyaw wiyasowewina* (Plains Cree law). Taking a braid of sweetgrass as his material and metaphorical starting point, Lindberg's work artfully weaves between three core strands of *nêhiyaw* constitutionalism (territory, language, and storytelling), exploring how each engages crucial meta-principles of *regeneration*

143 Nedelsky, "Transforming Constitutionalism", *supra* note 81.

144 *Ibid.*

145 Lindberg, "Nêhiyaw Pimatisiwin", *supra* note 7.

and *constitutional kindness*. Crisscrossing between these interlaced elements of *nêhiyaw wiyasowewina*, Lindberg persuasively demonstrates the importance of these principles — not only for the *nêhiyaw* legal order that anchors his analysis, but also for other legal orders and systems aiming to heal relations with the more-than-human world during the present moment of ecological crisis. On Lindberg's account, constitutional kindness arises from recognition of kinship with the Earth, and stands as a necessary legal bulwark against the excesses of human beings' inevitably consumptive dimensions. This principled commitment to constitutional kindness, Lindberg explains, must be perpetually renewed, thus linking kindness to his second identified principle of regeneration. Lindberg explores the ways that *nêhiyaw* territory, language, and storytelling evince a commitment to regeneration of this kind, supporting a temporally flexible legal order capable of allowing new generations to determine their commitments to the Earth; to engage in acts of transformation and reinterpretation as needed; and even to embody a constitutional order that lives, dies, and is reborn in the cyclical fashion of natural life. As is characteristic of Lindberg's work, the writing is beautiful, and the analysis at once provocative and inviting. The essay concludes with reflections on the special challenges these commitments pose for current efforts to codify unwritten Indigenous constitutions, offering some examples of efforts to preserve regenerative qualities in the face of the demands of positive law.

Adebayo Majekolagbe picks up these themes of regeneration and transformation, this time in the context of Canada's growing body of climate-change litigation under the *Canadian Charter of Rights and Freedoms* ("*Charter*"). His article, "Dark Innovations, Climate Justice, and the Canadian *Charter*,"¹⁴⁶ asks a pivotal question: is the Canadian Constitution "living" enough to address the defining issue of this century — climate change? He argues that, while courts have not been forthcoming in addressing issues of climate justice, there is ample transformative space in Canadian law for the judiciary to sufficiently innovate existing rules, norms, and precedents to address the unique challenges posed by climate change. These innovations, he suggests, are not overt but "dark," meaning under-the-radar, slow, and incremental. In his words: "The debate is no longer whether courts can grow and groom the Constitution as a living tree, but what should be the 'natural limits' within which such growth must occur."¹⁴⁷ Majekolagbe grounds his analysis of dark innovations in a careful reading of leading court cases addressing climate change in Canada.

146 Adebayo Majekolagbe, "Dark Innovations, Climate Justice, and the Canadian *Charter*" (2025) 29:2 *Rev Const Stud* 305.

147 *Ibid.*

Taking climate justice as his organizing framework, Majekolagbe proposes that the next phases of judicial innovation in Canadian climate litigation must be guided by the transboundary nature of climate change and its disproportionate adverse impacts on the most vulnerable communities. These considerations mandate a just rethinking of such doctrinal issues as *locus standi*, justiciability, cause of action, evidence, and forms of relief.

Stepan Wood's piece, "A Hot Day in Iqaluit? Environmental Rights in Canada's Constitutional Cul-de-Sac,"¹⁴⁸ situates this *Charter* litigation in the broader context of Canadian constitutional approaches to environmental rights. Wood's contribution examines how Canadian law has evolved at a "plodding" pace since the 1970s towards recognizing an explicit right to a healthy environment. He uses the analogy of a cul-de-sac, a controversial street type common in suburban areas, to explore how Canada's aversion to constitutional amendment forces advocates of environmental rights into legal dead ends while leaving space — albeit limited — for the development of alternatives that pursue healthier interactions with the more-than-human world and between settler-colonial and Indigenous legal orders. The article explores a wide range of avenues available for pursuit of environmental rights, including *Charter* litigation under sections 7 and 15; Aboriginal and Treaty Rights through section 35 of the *Constitution Act, 1982* and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP); ordinary legislation; and emerging discourse around rights of nature. In view of the obstacles in each of these paths, Wood concludes that, "like a real-world cul-de-sac, Canada's constitutional one requires advocates of a legally enforceable right to a healthy environment to take longer and more circuitous routes to elusive destinations, and pushes them onto crowded arterial roads of existing constitutional rights and environmental statutes."¹⁴⁹ Despite these challenges, Wood concludes that it is not a complete dead-end for environmental rights, closing his contribution with some hopeful developments that he expects will contribute to a safer and healthier environment for the Earth and future generations.

In the first essay of volume two of this special issue, ethnobotanist Pamela Spalding offers a closer look at the challenges posed by litigation asserting Aboriginal and Treaty Rights before Canadian courts, bridging doctrinal analysis with her extensive archival and ethnoecological research, conducted in collaboration with T'sou-ke First Nation. Her article, "Making Space for

148 Stepan Wood, "A Hot Day in Iqaluit? Environmental Rights in Canada's Constitutional Cul-de-Sac" (2025) 29:2 Rev Const Stud 341.

149 *Ibid.*

Indigenous Legal Relationships with Plants in Aboriginal Law,”¹⁵⁰ explores the depth and contours of T’sou-ke relations with culturally significant plants, mapping this plant knowledge onto the Supreme Court of Canada’s governing tests for Aboriginal and Treaty Rights under section 35 of the *Constitution Act, 1982*. Spalding’s contribution not only considers how the evidence she gathers regarding T’sou-ke plant relations might support section 35 claims, but also deploys her knowledge of these relationships to critique the limits of the governing legal tests. Spalding’s thoughtful and wide-ranging analysis unearths the gender bias implicit in legal inattention to plant knowledge; unjust assumptions embedded in doctrinal “continuity” requirements which disregard colonial disruption of plant relations; legal framings of “commercial” practice that are inattentive to Indigenous political economies; and the fascinating, trans-continental, inter-juridical history of the humble potato.

Lindsay Borrows’ article, “Learning Law from Plants,”¹⁵¹ guides readers through another inter-juridical inquiry into the relationship between plant knowledge and law. Shifting her gaze back and forth between Anishinaabe and Canadian state law, Borrows demonstrates important differences between the place of plants in each legal order: Canadian law tends to alternately ignore plants or focus on their exploitation, while Anishinaabe law has developed myriad ways of representing plant interests in legal processes, establishing written and unwritten commitments to plant protection and equality, inclusion of plants in agreements respecting ongoing interspecies relationships, and epistemological and pedagogical commitments to learning from plants. Borrows’ aim is not, however, to paint a flat, unified, or static conception of either Anishinaabe or state law. To the contrary, she demonstrates that both legal orders are sites of disagreement, contestation, and ongoing opportunities for learning and transformation. Borrows’ purpose in juxtaposing these legal traditions is instead to offer a *way in* to Anishinaabe plant law for students immersed in common law legal training, given that land-based pedagogy is not always as widely available as it should be in Canadian law schools. Attentive to the obstacles likely to face common law students taking up this kind of learning, Borrows takes care to name and explore “plant bias” as a psychological and cultural reality. She concludes with a deeply particularized account of her own experience “articling” under the tutelage of stinging nettle. In so doing, she invites students through the page onto the Land to learn not only what legal lessons nettle has to offer (for example, regarding reciprocity and relationality), but also how land-based pedagogy operates to deepen receptivity to those lessons.

150 Spalding, “Making Space”, *supra* note 9.

151 L. Borrows, “Learning Law from Plants”, *supra* note 9.

Hannah Askew, the Executive Director of the Sierra Club BC, offers another meditation on the significance of land-based legal pedagogy in “Re-Learning Reciprocity: Settler Treaty Obligations and the More-Than-Human World.”¹⁵² Askew describes her advocacy work as being deeply shaped by experiences learning about Anishinaabe law from human and more-than-human teachers in Neyaashiinigiing, a reserve of the Chippewas of the Nawash Unceded First Nation. Identifying as a settler of English and Scottish descent, Askew draws on these experiences as she considers the place of herself and other settlers living on lands subject to treaties between Indigenous peoples and the more-than-human world. Askew suggests that Crown-Indigenous treaties should be understood in light of pre-existing Indigenous treaties with more-than-human others, such as the Anishinaabe treaty with the deer or Hoof Nation. Yet, Askew understands that this shift in thinking poses serious challenges for settlers raised without a sense of reciprocity or obligation to the Earth, and offers poignant personal accounts of her own obstacles to receiving teachings from and about the more-than-human world during her time in Neyaashiinigiing. At the same time, Askew describes a growing sense among settlers that human-Earth relations are badly in need of repair, seeing in this sense of rupture an opportunity to engage in deeper learning about Indigenous legal orders, taking treaties with the more-than-human world as a starting point. As a step forward on this journey, Askew describes forest walks hosted by the Sierra Club, in which supporters are invited to develop their own attention and sense of reciprocity to more-than-human others. Askew cautions that taking up this invitation can pose risks where human participants are in the early stages of their learning to listen and respond to the more-than-human world. For this reason, Askew proposes grounding settler learning in human and more-than-human treaty relations, and the Indigenous legal orders from which each are given shape and meaning.

Rebeca Macias Gimenez picks up this inquiry into Indigenous treaties with the more-than-human world, and their implications for subsequent treaties between the Crown and Indigenous nations, in her article “Learning about Treaties with the Animal People: Lessons for Treaty 8.”¹⁵³ Drawing on years of community-based research in cooperation with West Moberly First Nations, Gimenez’s research explores the interpretation of Treaty 8 and state regulatory processes in relation to the First Nations’ own Dunne-Za and Nêhiyaw (Cree) legal principles. Her contribution to this collection explores the relationship between the Crown and Treaty 8 First Nations in view of the latter’s pre-

152 Askew, *supra* note 26.

153 Gimenez, *supra* note 26.

existing treaty relationships with animal nations, particularly moose. Gimenez locates her analysis in the context of numerous Crown-authorized industrial projects that have collectively threatened animal communities in the region, with devastating impacts on the ways of life that the West Moberly sought to protect through Treaty 8. Her analysis draws out several points of interconnection between Crown-Indigenous relations and Indigenous-animal agreements, including the view that many Indigenous signatories understood themselves to be vouching for the Crown with their animal treaty partners in agreeing to their shared use of the Land. Gimenez draws on Nèhiyaw and Dunne-Za stories to illuminate West Moberley agreements with moose, illustrating how these interspecies agreements simultaneously authorize the hunting of moose and set protocols requiring that moose be accorded respect and protection. Weaving between human and interspecies treaties, Gimenez proposes that all treaties must be understood in deeply relational terms, as agreements that are necessarily *collective* in character, producing *intergenerational* partnerships, and requiring *interface* across potentially vast differences in legal and ontological orderings. In view of these principles, Gimenez takes up such challenging questions as whether and how animals can be thought to meaningfully consent to being hunted and how best to approach the presence of violence within the treaty relationship. She concludes her analysis reflecting on Blueberry River First Nations' recent experiences inside and outside the courtroom as holding out hope for future treaty engagements that both honour substantive Indigenous law (including regarding animal relations) and produce institutions that enable more meaningful joint decision-making over time.

Maneesha Deckha takes up the question of legal relations with animals in the context of Canadian state legal institutions. Her article, "Animals, Colonialism, and the Rule of Law,"¹⁵⁴ argues that the "rule of law" may serve a constructive role in interspecies relations, despite that value's deep historical imbrication with colonial governance. Deckha's work contributes to the emerging body of research connecting the rule of law with the problem of animal welfare underenforcement, particularly in view of the *de jure* and *de facto* self-regulation of many animal-use industries. Deckha begins by addressing the three leading contemporary conceptualizations of rule of law — formal, procedural, and substantive — arguing that the latter provides the most potential for robust protection of animals. Deckha anticipates, however, that efforts to deploy the rule of law in this way might be objected to on the grounds that such projects would "undermine anti-colonial and decolonization goals" given the rule of law's con-

154 Maneesha Deckha, "Animals, Colonialism, and the Rule of Law" (forthcoming in the second issue of this collection).

nection to “a legacy of British imperialism, involving the colonial subordination of colonized peoples and pre-existing Indigenous legal orders worldwide.”¹⁵⁵ Reminding readers that animals have been colonial victims and subjects too, Deckha affirms that reconciliation approaches (engaging with state law instead of turning entirely away from it) can still be transformative and decolonizing. Deckha cautions that the rule of law is not a panacea, and that legal systems are not necessarily superior to other modalities in governing with non-violence. While conceding that a single idea or value can rarely resolve deep and complex problems, she argues that rule of law has particular potential to address the harms experienced by animals under Canadian state law. The rule of law is centrally concerned with curbing arbitrary power — a preoccupation that makes it well-suited to addressing the circumstances of animals who are so often subjected to unrestrained coercion in industrial settings. Deckha argues that, properly informed by feminist and Indigenous legal commitments, the rule of law can be valuable to challenging both anthropocentric and colonial law.

The rule of law has long been held by Canadian courts to be among those “unwritten constitutional principles” that form the foundation and architecture of Canada’s legal order. In the final article of this double issue, “The Unwritten Constitution & the More-than-Human World,”¹⁵⁶ Jessica Eisen expands and challenges conventional understandings of Canada’s unwritten Constitution. Typically, Canada’s unwritten Constitution is understood to consist of praiseworthy commitments that are so core, stable, and binding that they need not be written, including such principles as democracy, the rule of law, and the protection of minorities. Eisen argues that, in reality, there are more disreputable elements of Canada’s unwritten Constitution: “shadow” commitments that shape and reflect durable hierarchies under Canadian law. Since the nation-state’s founding and continuing to the present day, Canadian law has embraced two interrelated shadow commitments: to the subordination of Indigenous legal orders and to the exploitation of the Earth and animals. Through analysis of legislation, case law, and academic scholarship, Eisen shows how Earth exploitation and the presumption of Crown sovereignty operate as shadow commitments of the Canadian Constitution. Recognition that these harmful commitments are core, stable, and binding features of the Canadian state should not, Eisen argues, be taken as reason for apathy. To the contrary, those seeking to transform unjust constitutional relations can profit from an honest recognition of the depth and entrenchment of the status quo relationships they seek to change. After all, we cannot change what we cannot tolerate knowing.

155 *Ibid.*

156 Eisen, “More-than-Human World”, *supra* note 9.

VI. Conclusion

We conclude by returning to where we started: among the trees. In her contribution to this collection, Lindsay Borrows shares a teaching she was given on a forest walk, from Miptoon C, a Nawash band councilor, Anishinaabe Elder, and ecologist.

[H]e pointed out two trees growing side by side. One tree was tall with a thick trunk and many needles. The other was short and spindly. It was discoloured and had fewer needles, despite being the same species. Miptoon asked us which tree was stronger. At first it seemed obvious — the tall, robust-looking tree. Upon closer examination however, we noticed the stunted tree was not growing directly into the soil. Its roots were stretched over the base of a rock, and extended a couple of feet before they reached the soil. These growing conditions were obscured by a low bush. His point was that we must judge with fuller context. He was teaching us to see the strength of each tree, and account for their growing conditions. He then encouraged us to remember these trees when we needed to judge situations involving people, too.¹⁵⁷

We believe this teaching offers many important lessons for this project. These include the importance of receptivity to many forms of strength and beauty, the limits of the human gaze, and the potential to extend those limits through diligence and openness to lessons from the Land and those who know her well. We see in the shorter tree a recognition of the tremendous resilience of the many Indigenous legal orders that survive and thrive in the face of colonial incursions that have threatened to separate them from the Earth that gives them life. We see also in this shorter tree a message of hope for state legal orders that, despite a posture of distance from the living world, still draw sustenance from it and maintain a potential for connection. The robust tree stands alongside us all, in our distinct struggles and successes, a reminder not only of the tremendous strength of earthly life, but also of the risk that we may be distracted by more ostentatious displays of strength to overlook gentler virtues. We also see in this story a recognition that there is more to learn through attention to interconnection than to comparison alone. There are moments for drawing contrasts and distinctions between lifeways, and between the unique constellations of obligation, authority, and care developed within state and Indigenous legal orders. But there is also much to be gained by looking deeply at complexities within and across legal orders, and by grappling with the sometimes-beautiful, sometimes-heartbreaking ways that these legal stories have grown within and alongside each other and the more-than-human world.

157 L. Borrows, “Learning Law from Plants”, *supra* note 9.