

Nêhiyaw Pimatisiwin and Regenerative Constitutionalism

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If we engage closely with nêhiyaw wiyasowewina, or Plains Cree law, we can pull and braid together constitutional principles that seek kinder relations with the ecological world. At the heart of an ethic of this type of constitutional kindness is regeneration. Regenerative constitutionalism provides constitutional agency to new generations to deal with the contemporary ecological relations and environmental crises they may face. It also includes inherent processes of birthing, living, and passing on from a legal and constitutional order. The three areas of nêhiyaw pimatisiwin that this article engages with — land-based legal pedagogy, the Cree language, and nêhiyaw narrative traditions — all have qualities of a natural life that allow them to be revisited, nourished, and thus regenerated by the new generation that takes them up. This article explores these four areas for their regenerative qualities as a pathway towards constitutional kindness.

Si nous engageons en collaboration avec nêhiyaw wiyasowewina, ou le droit des Cris des plaines, nous pouvons tirer et tresser ensemble des principes constitutionnels qui cherchent à établir des relations plus gentilles avec le monde écologique. Au cœur d'une éthique de ce genre de gentillesse constitutionnelle est la régénération. Le constitutionnalisme régénérative offre aux nouvelles générations une capacité constitutionnelle pour faire face aux relations écologiques contemporaines et aux crises environnementales qu'elles peuvent rencontrer. Il comprend aussi les processus inhérents de la naissance, de la vie et de la mort dans un ordre juridique et constitutionnel. Les trois domaines de nêhiyaw pimatisiwin avec qui cet article engage — la pédagogie juridique fondée sur le territoire, la langue Crie et les traditions narratives de nêhiyaw — ont tous des qualités d'une vie naturelle qui leur permettent d'être revisités, nourris et ainsi régénérés par les nouvelles générations qui les adopte. Cet article explore ces trois domaines et comment leurs qualités régénératives fonctionnent comme une voie vers la gentillesse constitutionnelle.

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I. Introduction — Circling Sweetgrass

One of my enduring memories of my childhood — from the time I could barely walk all the way up into my teens — was an ever-present braid of sweetgrass in our house. Like my growth, the sweetgrass would go through its own lifecycle as well. It would sometimes be long and full, mostly green with purple roots, with a wispy knot tied on its end. At other times, it would be a quarter length of its former self, dark singes on the end being burned. Sweetgrass always hovered over us, tucked into a large picture of a mountain lake (a fixture in the various living rooms of my childhood, no matter what house we were renting at the time), protecting us. Whenever life's events called for it, my mom would bring it down and soon its sweetness filled the air in all of life's happenings: when someone would pass on, when someone would get married, when we just had particular visitors, when my mom just had particular *feelings*. Through its spirit, whikask supported life's most important moments.

This is to say, my family has always been guided by sweetgrass. We think of ourselves as sweetgrass people. Our knowledge, memory, and understanding of sweetgrass grew as we picked it, stored it, prepared it, cleansed with it, gifted it, grieved with it, and are buried with it. It is one of the central medicines relied upon within a practice of *nēhiyaw pimatisiwin*, or Plains Cree way of life.

As I have walked more into our sweetgrass teachings in adult life, I understand a braid of sweetgrass can be a metaphorical representation of our lifetimes.¹ We can lay it flat and view our lifetimes in a linear sense, tracing how we move from each stage of life, from infancy towards old age along the stretched-out braid. We can think of how our lives begin just like a blade of grass. As *awasisak* (children or literally, “travelling spirits”), our physical selves are pulled into material existence from the mysterious garden of where we are before we become human.² As we are given a form and begin to push out into the world, the nature of life causes us to gather and amass more of everything — knowledge, skills, weight, and responsibilities. And just as sweetgrass gets thinner and wispy on its ends, so too does our carriage of this world as we become older. We quietly begin to lose some and then eventually most of what we physically carry, and become materially unweighted again. And when the time comes, we return to that diffuse part of the garden of life, back to the mystery place of where we came. Or as Leona Makokis notes, “[t]he final ceremony of

1 For a more in-depth description of the life stages from a *nēhiyaw* perspective, see Leona Makokis et al, “Cree Relationship Mapping: *nēhiyaw kesi wāhkotohk* — How We Are Related” (2020) 15:1 First Peoples Child and Family Rev 44 at 52-55

2 *Ibid* at 50.

an individual's life is their passage into the next world where they return home to the spirit life."³

And although we could adopt this linear view of life, like other teachers within nêhiyaw pimatisiwin, sweetgrass teaches us the obligation and power of going circular.⁴ One of our principles within wâhkôtowin is that as we become the old ones, our life journey circles back and we close the connection with our awasisak and oskayahk (youth). In doing so we share our accumulated knowledge, experience, and wisdom as the younger ones begin their movement through life's stages. Then the world and the worldly cycle is theirs. Or to put it another way, the lives of sweetgrass, the lives of people, and as this article advances, the lives of constitutions, are cyclical and inherently regenerative.

II. Regeneration and Constitutional Kindness

I have started this article with this reflection because sweetgrass provides us an analogous frame to think about the natural cycles of birth, life, and death of constitutions. Considering sweetgrass as an implicit constitutional force in nêhiyaw lives reveals a foundational lesson on constitutionalism.⁵ Constitutions, in their most vital essence, are living, breathing entities, and understanding them accordingly means appreciating the natural cycle of life of a constitution. This includes coming to terms with how it will pass on, and how we will regenerate its knowledge in its next lifecycle.

As this collection of articles is concerned with how we relate to the ecological lifeworlds around us, a core challenge that is foundationally acknowledged by many of the authors is the inability for constitutional traditions to adapt in a robust and nimble way to the ecological challenges that we face, both as individual nations and collectively as international agents and citizens. While reciprocal, respectful relations with landscapes, waterscapes, and non-human beings have always been central within nêhiyaw law, the contemporary eco-

3 See Leona Makokis et al, "mâmwî-nêhiyaw iynîkahîwewîn" (2010) at 19, online (pdf): *Blue Quills First Nation College* <https://www.bluequills.ca/Documents/Resources/Publications/BQ_SSHRC_2010_final_report.pdf> [<https://perma.cc/2SU6-9SKX>].

4 The late Michael (Mah'koos) Merrier, in conversation in 2004, shared this way to think about sweetgrass and human life cycles.

5 From the brief reflection above, you can see that sweetgrass plays a role in constituting us. This isn't the act of constituting in the positivistic legal sense, but as a relational act. Each interaction with sweetgrass in our lives further entwines our understandings of the gift of the medicine. The physical braid can be emblematic of such constituting — each individual blade of grass adds to the bundle that provides vital teachings on how to persist and share a life based on miyo pimatisiwin, or good living.

logical challenges and environmental catastrophes that we are now facing have made our more-than-human constitutional relations an emergency on a universal scale. Law is not the only avenue for potential transformation to address climate change and climate catastrophe. However, law's vital ability to ensure corrective actions by societies makes it one of the most viable institutions for reformation. As constitutionalism is by-and-large a reflection of how societies express their most fundamental or supreme laws, constitutions play a front-and-center role in addressing climate emergency.

This article advances three areas of *nêhiyaw pimatsiwin* — lands and territoriality, stories, and language — that inform *nêhiyaw* constitutionalism in a manner that can address climate change, climate catastrophe, and our ecological relationships generally. In doing so, I introduce two new concepts, *constitutional kindness* and *regenerative constitutionalism*, as instruments that could be implemented to address these conditions. Within *nêhiyaw* legal and constitutional thought, the obligations to reciprocal relations with the more-than-human world provide the foundation for an ethic of constitutional kindness. Constitutional kindness is characterized by a recognition of the inspirited nature of the land and an acknowledgement of relations and kinship with the more-than-human world. The concept of natural law within *nêhiyaw* world-views supports such constitutional kindness. In this regard, as Leona Makokis et al note, the natural world — in this case, grass — provides us with important teachings on such kindness:

The grass is a symbol for the lesson of kindness. The spirit of kindness is taught best by the grass since it is the covering, the cloak, of the earth. Without this earth covering, there would be constant soil erosion and the land base would be consistently changing its form. The ecosystem is dependent on a consistent land base. The grass is trampled, stomped, walked upon until it bows low and lays flat against the earth. However, it eventually picks itself up and continues its upward growth ... [t]he grass is pulled up by all forms of herbivores and people for life sustaining purposes. It resumes its growth eventually and consistently. This constant revival is believed to be humility, forgiveness, and especially kindness, displayed by the grass spirit.⁶

As this article explores, *nêhiyaw* law recognizes the non-human right to *miyo pimatisiwin* (or good living), and this right creates corresponding constitutional and legal duties to avoid transgressing the nature of our kinship with the non-human world, avoiding actions that would diminish the collective good living of more-than-human beings and things.

6 Makokis et al, *supra* note 3 at 15.

It is important to note that an ethic of constitutional kindness does not mean that every nêhiyaw person is an environmentalist at heart, or that there is something inherent about nêhiyaw citizenries that makes each collective decision ecologically sound. On the contrary, the nêhiyawak are consumptive beings, and our humanness means we are just as capable of inhumane actions towards our more-than-human kin, and towards the landscapes and waterscapes that give and nurture our lives. The existence of practices of constitutional kindness within our intellectual, spiritual, physical, and emotional traditions means we have long contemplated the frailty of our humanness. Our stories, our language, and our lands guide us back towards right relations.

At the heart of an ethic of constitutional kindness is *regeneration*. Regeneration includes providing constitutional agency — including powers to amend and change constitutions — to younger generations. It also means that older legal and normative principles are transformed by new observations, and includes inherent processes of *birthing, living, and dying* within a legal and constitutional order. As I suggested earlier, regeneration in a constitutional context is the life, death, and regrowth of legal and political commitments in a cyclical manner. This is significant in an environmental context, as if we are going to meaningfully engage in the ecological challenges we face in front of us, regenerative constitutionalism is required to maintain kindness in our constitutional dealings.

Thus, the indicators of a regenerative constitution include these three: 1) the ability for new generations to determine constitutional commitments; 2) an ability for transformation and reinterpretation of constitutional terms to meet contemporary needs; and 3) the contemplation of the natural life, death, and rebirth of a constitution. With these three indicators in mind, Canada's Constitution is notoriously non-regenerative. It is no coincidence that it is also *unkind* to the ecological world. Canada's Constitution is silent on placing particular obligations on specific levels of government regarding the health of the more-than-human world.⁷ The division of powers set out in 1867 — seven generations before the writing of this article — makes unity on environmental decisions from provinces, territories, and the federal government elusive. While Canada's doctrine of federalism certainly does not inhibit federal and provincial governments from legislating in a constitutionally kind way towards

7 However, there are thinkers who argue that the use of unwritten constitutional principles provides a pathway for such recognition. See Mari Galloway, "The Unwritten Constitutional Principles and Environmental Justice: A New Way Forward?" (2021) 52:2 Ottawa L Rev 1; Lynda Collins, "The Unwritten Constitutional Principle of Ecological Sustainability: A Solution to the Pipelines Puzzle?" (2019) 70 UNBLJ 30.

the more-than-human world, it provides little constraint on the nature of such governing.⁸ In particular, and except in limited situations involving Aboriginal rights or treaty rights, the Canadian Constitution fails to restrain governments from extraction and exploitation of lands and waters, nor does it effectively structure its relationships with flora and fauna in a respectful manner.

Because of its heavy reliance on judicial interpretation, section 35⁹ is one area within Canadian constitutionalism where there has been some incremental progress on constitutional limitations in relation to environmental extrativism. For example, John Borrows notes that the decision in *Tsilhqot'in Nation v British Columbia* infers an inherent limit on the Crown in the context of Aboriginal title by showing¹⁰ that the courts can derive limits on environmental uses from unwritten sources. Federalism has made it difficult for courts to challenge the division of powers in situations where sound ecological governance would serve the well-being of Canadian citizens while alleviating some of the impact of Canada's continued colonial approach to nation-to-nation relations with Indigenous nations. Even if there is an appetite for constitutional reform within the Canadian polity, the amending procedures for formal amendment of Canada's Constitution make this a difficult process, requiring near total consensus among federal and provincial governments.¹¹ Further, it does not express with precision any fundamental rights to a healthy environment for its citizens, and has not been interpreted in a manner that allows for robust accountability for Canadian actors engaging in environmental harms internationally, including through domestic court actions.¹² It is not a stretch, then, to say that Canada's Constitution is largely out of touch with its own citizenry regarding environmental norms, beliefs, and values. So just as *nêhiyaw*

8 For example, federal and provincial governments will engage in jurisdictional neglect regarding environmental harms, refusing to take up responsibilities in this area. This often (but not exclusively) happens to the detriment of Indigenous folks residing in the north. See Dayna Nadine Scott, "The Environment, Federalism, and the *Charter*" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *The Oxford Handbook of the Canadian Constitution* (Oxford: Oxford University Press, 2017) 493.

9 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35, [*Constitution Act, 1982*].

10 See *Tsilhqot'in v BC*, 2014 SCC 44 at paras 93-94; John Borrows, "Earth Bound: Indigenous Law & Environmental Reconciliation" in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto, 2018) 49.

11 See *Constitution Act, 1982*, *supra* note 10, ss 38-49; *Reference re Senate Reform*, 2014 SCC 32 at paras 33-41.

12 I argue that the application of Indigenous legal principles can aid in creating an environment of greater relationality internationally in challenges regarding transnational corporate harms. See Darcy Lindberg, "Wâhkôtowin and Restoring Humane Relationality Within the Transnational Corporation" in Oonagh Fitzgerald, ed, *Corporate Citizen: New Perspectives on the Globalized Rule of Law* (Montreal: McGill-Queens Press, 2020) 141 [Lindberg, "Wâhkôtowin: Within the Corporation"].

communities continue to revitalize constitutionally-kind practices, Canadian constitutionalism has much to learn from these practices as well.

The idea of regenerative law and regenerative constitutions is not new, nor is it confined into nêhiyaw legal thinking specifically, or Indigenous legal traditions generally. For example, Thomas Jefferson advocated for an American Constitution that lapsed every 19 years, so that a new generation wasn't saddled with the constitutional commitments of older ones.¹³ Famously noting that, "[t]he earth belongs in usufruct to the living ... and not to the dead," Jefferson argued that between "generation and generation there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independent nation to another."¹⁴ Perhaps Jefferson was noting a particular inherent regenerative quality of constitutionalism, one that the US and Canada are outliers of. Zachary Elkins notes that the average age for constitutions that govern nation-states is only 16 years.¹⁵ By contrast, the ages of North American constitutions — Canada's being 156 years old and the US's at 245 years at the time of this writing — are outliers regarding the natural life of constitutions.¹⁶

III. Turning Towards Constitutional Kindness nêhiyaw pimatisiwin

Drawing the regenerative practices within respective Indigenous constitutions to the fore provides the promise of constitutional kindness generally. As Indigenous constitutional practices can be solely expressed through unwritten legal norms, principles, and practices, maintaining the legitimacy

13 See Axel Gosseries, "Constitutions and Future Generations" (2008) 17:2 *The Good Society* 32.

14 Significantly, Jefferson is appealing (albeit from the perspective of a different intellectual tradition) to laws of nature in considering the regenerative nature of a constitution. See "Thomas Jefferson to James Madison, September 6, 1789", Washington DC, Library of Congress, online (pdf): <https://memory.loc.gov/service/mss/mtj/mtj1/011/011_0912_0958.pdf> [<https://perma.cc/W47W-EZRG>].

15 This varies from one region to another. While South American constitutions' average lifespan is 12 years, Western European constitutions last an average of 32 years. See Mark Ruetter, "U of I scholars collecting, analysing constitutions from around the world" (2017), online (blog): *University of Illinois Urbana-Champaign* <<https://news.illinois.edu/view/6367/206732>> [<https://perma.cc/U8Z5-V2C7>]. For a more sustained look at reasons for constitutional change or alternatively endurance, see Zachary Elkins, Tom Ginsburg & James Melton, *The Endurance of National Constitutions* (Cambridge: Cambridge University Press, 2009).

16 The challenge of a frozen constitution fundamentally hampers Canada's constitutional practices towards the environment. Canada's written Constitution contains no explicit duty on constitutional decision makers to consider the health of the environment. See 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 at 297–300.

of unwritten constitutional norms is a live concern within Indigenous communities. And despite Western law's tendency to favor positivistic expressions of governance and thus written constitutions, there is just as much power in unwritten forms of constitutionalism.¹⁷ As Stephen Cornell notes: "[m]any commentators on constitutionalism assume that this higher law will be written, but there is no reason to think it must be. An unwritten constitution can be as powerful as a written one, and a written one can be ignored as much as an unwritten one."¹⁸

As I have previously written:

I consider the constitutionalism of my home nation (the *nêhiyawak*, or Plains Cree peoples) as encapsulating a totality of ideals, principles, and aspirations arising out of the ontologies and epistemologies that further a shared understanding of what it means to be *nêhiyaw*. This totality is held collectively and can neither be fully understood or directed by an individual. It is also never fixed; as social and legal norms continue to be transformed through contestation and shifting agreements amongst society members, so does *nêhiyaw* constitutionalism ... Beyond written texts or customary practices, the epistemological and ontological underpinnings of constitutional principles lay within narratives, songs, artistic renderings, ceremonies, spiritual and place names, kinship models, bundles, and language.¹⁹

These three distinct aspects of *nêhiyaw pimatisiwin* that inform its constitutionalism — land-based legal pedagogy, the Cree language, and *nêhiyaw* stories and ceremonies — have both constitutionally kind and regenerative qualities within them. The remainder of this article explores these three areas within *nêhiyaw pimatisiwin* before concluding with two brief examples of how this might look within legislation and within a written constitution.

A. The Constitutive Nature of *nêhiyaw askîy*

Nêhiyaw askîy, or Cree territory, is a primary source of law within *nêhiyaw* constitutionalism. How we view ourselves as *nêhiyaw* people is deeply embedded within lands and waters, as the territory holds law and governance teachings innately within it. Winona Wheeler reminds us: "[t]he land is mnemonic, it has its own set of memories, and when the Old People go out on the land,

17 For the most recent discussion of the tension between unwritten constitutional principles and positive law in Canada, see *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at paras 49–84.

18 Stephen Cornell, "'Wolves Have a Constitution': Continuities in Indigenous Self-Government" (2015) 6:1 International Indigenous Policy Journal 1 at 3.

19 See Darcy Lindberg, "Drawing upon the Wealth of Indigenous Laws in the Yukon" (2020) 50 The Northern Review 179 at 181.

it nudges or reminds them, and their memories are rekindled.”²⁰ Or to put it another way, our lands are storied with the experiences of the past upon them, and when we call upon the land to story-tell, we ask it to assist in reconstituting ourselves as nêhiyaw people. These stories teach us of our original relationships with askîy (land) and nipîy (water). As Wheeler continues, “artifacts carved on the landscape — trenches dug during warfare, wagon tracks, property boundary markers, even old abandoned cars — contain embedded stories and serve to nudge memory.”²¹

Nêhiyaw oral history is abundant with stories about our first encounters with landscapes and waterscapes, and of how the more-than-human world has gifted us with shelter, medicines, or nourishment to survive. Our âtayôhkêwina (our origin or sacred stories) tell of our original relationships with specific places within nêhiyaw askîy. In this sense, stories, quite literally, ground us into our territory and jurisdiction. One example is the creation of paskwawi-mostos sakihikanihk (or Buffalo Lake). As I have previously summarized the story:

Kayas (a long time ago), there was a time when a group of nêhiyawak (Plains Cree peoples) were struggling to find food. This was around the time when paskwâw-mostos (buffalo) were disappearing from the prairies. One hunter, knowing he would need assistance to find buffalo, engaged in ceremony for four days, seeking guidance for a successful hunt on behalf of the community. Finally, upon the fourth evening, he dreamt about a place further west on the prairies where he would find a buffalo. Setting off the next day with another hunter, they travelled for another four days. On the fourth day, they came upon the hill and, faithful to his dream, they found a sole buffalo on the other side. With care, the hunter approached and was able to pierce the animal with an arrow. The buffalo sprang away, leaving a trail of blood as it ran further across the prairies.

The hunters followed this blood trail for another four days. Finally, they came to a spot where the buffalo had finally succumbed to its injury. Pulling the arrow from the buffalo, the two men were surprised to see water springing from the wound, rather than blood. They watched this for some time. The water formed a puddle, then a small pool, and then eventually a pond. The hunter who dreamt the buffalo left to gather the rest of the people. This took another four days. When he returned with them, they were surprised to see that the pond had turned into a large lake, in the shape of a buffalo. Understanding that the lake was a gift from kisê-man'to, (the creator) the people knew it would be a place

20 Winona Wheeler, “Cree Intellectual Traditions in History” in Alvin Finkel, Sarah Carter & Peter Fortna, eds, *The West and Beyond: New Perspectives on an Imagined Region* (Red Deer: Athabasca University Press, 2010) 47 at 55.

21 *Ibid.*

of generosity toward them. And the lake provided — it brought all sorts of animals, including buffalo, from the prairies to its banks. It allowed large grasses, shrubs and trees to form at its shores. The lake became a place of abundance, and nourished the people for many years.²²

As this brief recount shows, the creation of Buffalo Lake instigates a relationship based on humility, respect, and reciprocity with the waters and the lands around them. The lake was a gift to the nêhiyawak through the kindness of the Buffalo Nation to provide nourishment and shelter for nêhiyaw peoples, especially during the winter months.²³ Or more concretely within nêhiyaw constitutional terms, it is an example of wâhkôtowin. Described as the “law that governs our relations,” one dimension of wâhkôtowin deals directly with the non-human world. As Sylvia McAdam quotes her father, Francis McAdam Saysewahum:

Long ago after the human beings were created, they were allowed to walk with the animals and talked amongst each other like relatives. Even the trees, plants, all manner of life was able to communicate with each other. That was the beginning of understanding wâhkôtowin and the laws surrounding it. ... We still remember we are related to all of creation, that is still followed to this day.²⁴

Métis writer Maria Campbell recalls this ecological dimension of wâhkôtowin as she notes:

Today [wâhkôtowin] is translated to mean kinship, relationship, and family as in human family. But one time, from our pace it meant the whole of creation. And our teachings taught us that all of creation is related and inter-connected to all things within it. Wâhkôtowin meant honoring and respecting those relationships. They are our stories, songs, ceremonies, and dances that taught us from birth to death our responsibilities and reciprocal obligations to each other.

22 As I previously recounted in Lindberg, “Wâhkôtowin: Within the Corporation”, *supra* note 12 at 143.

23 The story concludes with a lesson on ohcinewin, or retribution, for repeated transgressions against the natural world: “One winter, many years later, the people were crossing the lake to visit relatives who had settled on the other shore. While they were crossing, a young boy came across a buffalo horn sticking through the ice. You see, the people used to run buffalo into the shallows of the lake for a more successful hunt. They must have hunted so much that year that one buffalo must have slipped past their attention and eventually floated to the centre of the lake before freeze-up. The young boy wanted the horn, and he begged his mosôm (grandfather) for it. Understanding that it would be a transgression to take it, the mosôm said no. But, as young ones have a special gift for, the boy was able to work the tenderness of his mosôm until the grandfather finally relented. Taking his hatchet, the boy hit the ice around the horn to retrieve it. Instead of freeing the horn, the ice cracked up, first around the two, then around the rest of the community. While some were able to scramble across the ice to the other side and others back to the shore they came from, some were lost in the water.” *Ibid* at 144.

24 Sylvia Saysewahum McAdam, *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Saskatoon: Purich Publishing, 2014) at 10.

Human to human, human to plants, human to animals, to the water and especially to the earth. And in turn all of creation had responsibilities and reciprocal obligations to us.²⁵

Leona Makokis et al note that the ecological world is a vital relation for children as they grow within the nêhiyaw world as wâhkôtowin:

... recognizes the relationship the *awâsis* has to the land and Mother Earth. It is important that a child remains connected to the land and the community from which they come. In a *nêhiyaw* universe, the land and Mother Earth are understood as being animate — and play a vital role in the health and nurturing of the *awâsis*.²⁶

A story like the *Creation of Buffalo Lake* holds power as it gives life to what the relationality intended by wâhkôtowin means. We can infer obligations to maintain balance with the more-than-human world around the lake, including acknowledging that just as it provided and provides nêhiyaw peoples with shelter and nourishment in the winter, it also does so for other non-human beings and things.

Storying the land is a significant legal process in this manner, as it adapts wâhkôtowin in setting social and legal norms towards a physical space. CF Black notes that “when a nation finds itself in a new ecological situation, there is an expectation that a new contract with the spirit of the Land will appear and validate the people’s arrival.”²⁷ Land-based law learning is a “dialogical encounter with Indigenous jurisprudence” that reveals “a logos posited in Land.”²⁸ Within the story of the *Creation of Buffalo Lake*, the narrative not only provides jurisdiction for nêhiyaw peoples (the lake is gifted to the nêhiyawak to aid our survival), but ensures a shared ethos in those who know the story in their future interactions with the lake. So when an âtayôhkêwin furthers nêhiyaw jurisdiction, it is also unfolding further obligations for nêhiyaw peoples.

B. Nêhiyaw askîy and Regeneration

It is commonly understood within nêhiyaw narrative traditions that it is not only the text or words spoken during storytelling that are important, but where

25 Maria Campbell, “We need to return to the principles of Wâhkôtowin” (2007), online (blog): *Eagle Feather News* <<http://aboriginalasasktellwebhosting.com/Resources/November-2007.pdf>> [<https://perma.cc/8CK8-SVVD>].

26 Makokis et al, *supra* note 1 at 52.

27 CF Black, *The Land is the Source of the Law: A Dialogic Encounter with Indigenous Jurisprudence* (New York: Routledge Press, 2011) at 129.

28 *Ibid* at 167.

they are told, who is present in their retelling, when they are told, and for what purpose. As Howard Norman notes:

To the Cree, stories are animate beings. ... In this respect, one could ask, what do stories do when they are not being told? Do they live in villages? ... Do they tell each other to each other? Some Cree say this is true ... [a] symbiotic relationship exists: If people nourish a story properly, it tells them useful things about life.²⁹

With each retelling of a story that draws in the knowledge, wisdom, and experience of the past, new collections of understandings are also bundled within the story. While it doesn't displace actual living on, near, or visiting these sites of nêhiyaw legal and constitutive knowledge, visiting through stories is a constitutive act. Kiyokêwin, or the act of visiting, is a shared principle within nêhiyaw and Métis societies. Kiyokêwin, whether it be the physical visitation of the sites of stories, or with each other in retelling (or both), provides nêhiyaw storying with its regenerative quality. Additionally, Anna Corrigan Flaminio considers kiyokêwin as a methodology towards healing situations and environments.³⁰ So, good visiting towards our land-based stories enables an ethic of constitutional kindness within us. Good visiting has the potential to heal ourselves, and points us towards reconstituting our relations with the more-than-human world in a healing manner as well.

There are many other examples of land-based storying within nêhiyaw as-kiy. We have our Wîtaskêwin sputinow, or the hills near Wetaskiwin, Alberta, where the nêhiyawak and the niitsitapi (Blackfoot) recommitted to live on the land together in peaceable relations.³¹ The Creation of the Neutral Hills memorializes a similar treaty event, where the hills arose overnight from the vastness of the prairies to teach the nêhiyaw and niitsitapi of loving kindness in sharing the land.³² Southeast of Buffalo Lake is mistasinîy (or the big stone), a large stone that our âcimowina tell us was once a human who had the ability to shapeshift into a paskwâwi-mostos (buffalo). Lost by his human family as a child, he was taken in and raised by buffalo peoples. Upon learning of his human roots later in life, he chooses to turn himself to stone to avoid having

29 Howard Norman, "Crow Ducks and Other Wandering Talk" in David M Guss, ed, *The Language of the Birds: Tales, Texts, & Poems of Interspecies Communication* (San Francisco: North Point Press, 1985) 18 at 19.

30 See Anna Flaminio, *Gladue Through wâhkôtowin: Social History Through Cree Kinship Lens in Corrections and Parole* (Master's Thesis, University of Saskatchewan Faculty of Law, 2013) [unpublished].

31 This is one translation of the origins of the town Wetaskiwin, Alberta.

32 See the story of the Neutral Hills, which is presented in Anne Speight, *The Shadows of the Neutrals and Open Memory's Door* (Coronation, AB: Old Timers' Centennial Book Committee, 1967) at 1–3.

to hunt his own kin.³³ The site of the Mistasinîy, on the elbow of the kisiskaciwani-sipiy (the swift flowing, or South Saskatchewan River), was long a ceremonial gathering place for many prairie Indigenous nations.³⁴ Nêhiyaw âskiy not only shelters and nurtures nêhiyaw peoples, but is *constitutionally animated* as it continues to nourish us through the stories of its creation.

1. Constitutional Nature of nêhiyawewin

If we consider nêhiyaw constitutionalism a living, breathing ecology, then nêhiyawewin, or the Cree language, is the lifeblood of such an ecosystem.³⁵ This is to say, we understand our speech to be significant and precious. It is often said by the old ones that our speech is like a prayer, not to be wasted, always spoken in earnest. And mostly not to be harmful in our speech, and to remember that pâstâmwîwin and ohcinêmwîwin are laws linked to talking wrongfully about human and non-human beings and things, respectively.

One interpretation of the word nêhiyawewin relates to “those who speak precisely.”³⁶ This is a characteristic that is readily understood by lawyers and academics; in these lines of work there is an expectation of tâpwêwin (truth) in speech. Speech and language are the fabric of wiyasiwêwina, or laws, as “language encodes the identity of [Cree] People.”³⁷

Nêhiyawewin has an ecological dimension to it as well, as language and land have a natural entanglement. Nêhiyawewin is “closely connected with the experiences of the natural and supernatural world.”³⁸ Marie Battiste and James Sakej Henderson generalize that it is understood within Indigenous societies

33 Neal MacLeod, *Cree Narrative Memory: From Treaties to Contemporary Times* (Saskatoon: Purich Publishing, 2007) at 23.

34 The mistasinîy was submerged in the damming of the South Saskatchewan River in 1967, and currently sits beneath Lake Diefenbaker.

35 See Pauline Johnson, *E-kawôtiniket 1876: Reclaiming Nêhiyaw Governance in the Territory of Maskwacis through Wâhkôtowin (Kinship)* (PhD Dissertation, University of Western Ontario Graduate Program in Anthropology, 2017) [Unpublished] at 152.

36 See Gary Bottling, *Chief Smallboy: In Pursuit of Freedom* (Calgary: Fifth House, 2005). As you may recall, the more common interpretation of nêhiyaw is the four-bodied ones. I accept both interpretations of nêhiyawewin, of being of four-bodies, and of speaking precisely. Both interpretations serve as constitutional foundations for the collective identity of nêhiyaw peoples.

37 Blue Quills First Nations College, “Pimohteskanaw (The Path): Blue Quills 30th Anniversary Book” (2012) at 22, online (pdf): *Blue Quills First Nations College* <<https://www.bluequills.ca/Documents/BQ-30th-Anniversary-Book.pdf>> [<https://perma.cc/TE2R-GHYX>]. As John Borrows reminded me during my PhD research, English can be viewed as a Cree language as well, as it is the primary language used by Cree peoples. For this point regarding Anishinaabemowin, see Lindsay Borrows, *Otter's Journey Through Indigenous Language and Law* (Vancouver: University of British Columbia Press, 2018).

38 Ida Swan, *Language Shift: A Study of Three Generations within A Cree Family* (Master's Thesis, University of Saskatchewan College of Education, 2000) [unpublished] at 24.

that “humans perceive the sensuous order of the natural world through their eyes, noses, ears, mouths, and skins” and “[t]hus language exists in a sensory relationship to the world.”³⁹ In this respect, it is unsurprising that the ecological world has a strong hand in the development of language. “Since people enter into language through their sensory relationships with the natural world, languages cannot be understood in isolation from the ecologies that give rise to them.”⁴⁰ Nêhiyawewin and the principles around maintaining a livelihood (or pimaciwin) are intimately linked. Considering her childhood in Wapawakasik, or Sandy Narrows, Ida Swan notes this connection:

Wapawakasik was a totally Cree speaking community, comprised of two extended families who nurtured the cultural context for the natural acquisition and transmission of the Cree language. Our task as children was to imitate our Cree role models by making traps, fixing nets, making moccasins, moss bags, and cooking food while at the same time discussing the motions and actions of each activity. We learned the importance of each action, event, and social practice. The daily enterprise of listening and talking was augmented by adults enabling us to learn the sounds and meanings thus connecting words to the practices.⁴¹

The Cree language is inherently tied to our land-based practices, and as a verb-heavy language, is naturally regenerative. Aaron Paquette notes that verb-based thinking produces a distinct worldview that influences law and governance:

Treaty 6 was agreed to by two different peoples with two very different world views. Municipalities, provinces, and the federal government are bound by the language of laws. The English language is a noun-based language that, by its nature, lends itself to the concept of physical, time-based ownership. The Cree language is a verb-based language that, while certainly has nouns, is more focused on action, relationships, and an understanding of cycles and impermanence. As you can imagine, this led to two entirely different understandings of what the words of Treaty conveyed.⁴²

As Paquette intimates, nêhiyawewin informs our relationality towards non-human being and things and their place within our constitutional order.⁴³

39 Marie Battiste & James Sakej Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage* (Vancouver: Purich Publishing, 2000) at 26.

40 *Ibid.*

41 Swan, *supra* note 38 at 3.

42 Aaron Paquette, “Treaty Acknowledgement at Urban Planning Committee” (22 May 2019), online: *Facebook* <<https://www.facebook.com/AaronWardDene>> [<https://perma.cc/4WB9-76W8>].

43 Or as Brittany Johnson observes: “Relationality is complex: it explains not only where our place is in the universe, but how that place is related to all the other places and persons within the spaces that we occupy together; it includes and explains how we are interconnected to one another. Within

2. The Regenerative Nature of nêhiyawewin

Nêhiyawewin enables a worldview that fosters “an understanding of cycles and impermanence.”⁴⁴ This is a deeply regenerative quality. Committing to the inclusion of nêhiyawewin within the reclamation and revitalization of constitutional practices by nêhiyaw peoples will propagate ideas of a cyclical and impermanent constitution.

The worldview that nêhiyawewin fosters is also inherently collaborative and social. Sylvia McAdam (Saysewahum) notes that the term for Creator’s law, manitow wiyinikwêwina, can be translated into “act of weaving.”⁴⁵ The word for human law, by contrast, is nêhiyaw wiyasewêwina, which can be etymologically broken down as “wiyasowe,” meaning “a meeting,” and “wina,” meaning “the collection of ideas.”⁴⁶ Both of these descriptions of law reinforce the collective and deliberative character of nêhiyaw legal processes. In this sense, law has a deep social dimension to it, relying upon all areas of nêhiyaw society and nêhiyaw politics to give it strength. There is a transformative quality to this, allowing for regeneration of laws.

The animacy portrayed within nêhiyawewin is a key characteristic to this regeneration as it allows legal principles to evolve and to remain contemporary. The respective views of animacy (Euro-western and nêhiyaw) explain the orientation of their respective legal ordering as well. Many forms of state law differ in how they view animacy, recognizing it in limited circumstances beyond human life. As, according to these legal and intellectual traditions, “the only way to be animate, to be worthy of respect and moral concern, is to be a human,”⁴⁷ Western law most often approaches ecologies in a hierarchal manner, with humanity at its apex. This is a core challenge to Earth jurisprudence movements, and perhaps causes orientations towards conceptions of legal personhood framed within Western legal thought.

these shared connections and spaces, there are included other-than-human, other-than-animal, (non) bodied, and unseen beings, and these beings are understood as being either animate or inanimate; not everything that is inanimate means that it cannot become animate or cannot be acted upon, as much of animacy is dependent on the actors, actions, or connections that are needed for something — such as a dream — to become animate.” Brittany Johnson, *Relationality: Women, Sex, and the Animate* (Master’s Thesis, University of Alberta Faculty of Arts, 2017) [unpublished] at 7.

44 Paquette, *supra* note 42.

45 McAdam, *supra* note 24 at 38.

46 Leona Makokis, *Leadership Teachings from Cree Elders: A Grounded Theory Study* (Köln, Germany: Lambert Academic Publishing, 2009) at 56.

47 Robin Wall Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013) at 57. Returning to the arrivals on nêhiyaw âskiy described in the previous section, our nêhiyawak ancestors relied upon social practices, ceremony, and stories to build a relationship with the ahcâhk of nêhiyaw-âskiy.

3. *The Constitutive Nature of nêhiyaw Stories*

Eric Adams notes that “constitutions are the stories nations tell about themselves.”⁴⁸ That is to say that storying is essential to constitutional practice. Nêhiyaw constitutionalism, and its link to storying, is no different. Neal McLeod refers to nêhiyaw storytelling as the Cree narrative memory: a collection of stories that are held communally by nêhiyaw peoples and kept alive by present-day storytelling.⁴⁹ And like the storying that is central to all constitutional orders, nêhiyaw storying is ordered through the precepts of nêhiyaw intellectual traditions.

There are parts of this intellectual tradition that are uniquely nêhiyaw. For example, âtayôhkêwina (sacred stories) and kayas-âcimowina (long ago stories) are the collective responsibility of nêhiyaw citizenries as a whole. This means that no one owns these stories, and we must to adhere to nêhiyaw narrative norms in our uses of them. It is also acknowledged that no single person can know a whole story on their own. This is expressed in subtle but strong ways. A common refrain, often expressed by our older ones is: “take pity on me, for I don’t know much.” I have heard our old ones speak this in ceremonies, educational settings, public gatherings, and in private one-on-one conversations. It is not only an outward contemplation of tapateyimisôwin (humility) but also an acknowledgement of how they resist individuality (and in turn ultimate authority) in the experience or information they are sharing. As Neal McLeod notes, one of his relatives always began stories with the acknowledgement that he could “only speak of things he knew about,” leaving room for other stories to compliment his knowledge, avoiding an absolute position.⁵⁰

Coupled with the acknowledgement that stories are generally owned and shared collectively, there is an obligation for the listener to take what is relayed in the story as truthful. MacLeod notes the older practice within his home community where a speaker presents a knife to the listener with the instructions, “if what I say angers you or if you do not believe what I say, then you can use this knife on me.”⁵¹ Relatedly, Hadley Friedland notes a similar expression in her work with the old ones from Aseniwuche Winewak Nation in Western Alberta. During the course of one of her interviews, an elder began to describe his communications with moose, including speaking the same language and conversing with them. After he recalled these experiences, he asked her the

48 Eric Adams, “Canadian Constitutional Identities” (2015) 38:2 Dal LJ 311 at 311.

49 See MacLeod, *supra* note 33.

50 *Ibid* at 12.

51 *Ibid*.

question, “Do you believe me?” Friedland notes that the elder (whom she knew and had strong relations with prior to her research) was challenging her as a researcher, that her role required her full openness to his story.⁵² This expectation of the listener in the storyteller/listener relationship is not about authority, attempts to stop the listeners’ own interpretation, or their questioning of the story entirely. It is a call to consider the information relayed earnestly.

When we braid these two aspects — that the speaker does not have all the knowledge *or the whole story*, and that the listener must seriously account for what they hear — we see that they are not antithetical but are each equally integral to nêhiyaw reasoning. They practice the mind to engage in a form of nêhiyaw intellectualism that requires any potential cynicism in the listener to the “authenticity” of a story to be replaced with an intellectual curiosity. Often a story is shared for far more than its “factual basis” — some of our strongest lessons on legal principles come from fantastical stories.⁵³ If we acknowledge that there is more to what a story holder knows, then it makes the listener seek other stories that confirm, deny, transform, collaborate with, or show hidden paths within the original speaker’s stories. Further, by demanding the serious attention of the listener — even to the aspects of a story that challenge our current intellectual processes — nêhiyaw reasoning also demands that the speaker’s story is included in its rightful place alongside the other strands of a community. These narrative skills ensure there is no threat of the authority of the single story or of one dominant way of thinking of law. Justice is only possible collectively, through our sharing of our individual truths. When nêhiyaw storying engages in such a collective practice, it is inherently regenerative as it allows stories to take on new forms, transformations, interpretations, and understandings.

4. Regeneration and nêhiyaw Storying

Further, as we turn towards nêhiyaw stories, we are also regenerating their place within our constitutive relations. For example, atayôhkêwina, and how they describe the animacy of the more-than-human beings and things, including their ability to have their own law, governance, and culture, make us constitutionally related to the ecological world. Pauline Johnson notes that atayôhkêwina “are sacred stories of how the world was shaped, when pisiski-

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

53 For example, the Wisakechak cycle of stories are uniformly considered as legal teachings.

wak, animals, and humans could talk, and when Wisahkêcâhk transformed the world of misadventure, love, and mischief.”⁵⁴ Within them, “animals and other non-human agencies sp[ea]k and behave like humans” and “the landscape and fauna had not yet acquired [the] customary characteristics” we attribute to the land today.⁵⁵

Often implicit in these portrayals is a critical discussion or commentary on these laws. These thicken our understandings of wâhkôtowin as Pauline Johnson notes: “[t]hese narratives give insight into the way that nêhiyaw people are related to their ecology and environment, and importantly with other beings.”⁵⁶ As “[m]any âtayôhkêwina and teaching stories are about marriage, births, and transformations between humans and animals,” there is a kinship aspect to this wâhkôtowin.⁵⁷ When âtayôhkêwina display the laws and societal norms of non-human beings, we can view the critical histories within âtayôhkêwina as meta-narratives on legal pluralism, especially insofar as many stories involve the conflict and resolution of human and non-human legal norms.

Consider the story of mistasiniy, or *Buffalo Child*. In this story, a grandmother loses her child on the prairie, and despite the community searching for it for days, it isn’t found. However, the paskwawi-mostos, or Buffalo peoples, have taken compassion on the boy and have started to raise it among them. The boy eventually grows to become a young man, and chooses to return to the nêhiyaw. Seeing that they hunt his other family, out of spite he returns to live with the buffalo. Talking about his time amongst humans, he shares his anger. As the story continues:

One day, there was a buffalo hunt that really disturbed Buffalo Child so he left the camp. He found some buffalo and he decided he liked the buffalo better because they didn’t talk all the time. He found his father buffalo and told him, “I was treated with respect, I respected them. But father I hated it, there was always buffalo meat hanging in the racks. They ate it — ate us. They slept on our skins on the floor. They live in homes made of our hides. Buffalo is everything.”

The father said, “This is our life. Those people you saw, they come from the same creator that we do. Our work is to feed the people, we cover them, and we keep them warm. The people live by us. That is the reason you saw what you saw.”

54 Johnson, *supra* note 35 at 27.

55 Robert Brightman, *Âcaðôhkiwina and âcimôwina: Traditional Narratives of the Rock Cree Indians* (Regina: Canadian Plains Research Center, 2007) at 6.

56 Johnson, *supra* note 35 at 87.

57 Art Napoleon, *Key Terms and Concepts for Exploring Nihiyaw Tapisinowin in the Cree Worldview* (Master’s Thesis, University of Victoria Faculty of Humanities, 2014) [Unpublished] at 86.

The father continued, “But there is another law. They cannot kill too many of us. They cannot get greedy and kill too much. They can only kill as many of us as they can use. These Crees have to take care. They must treat us with respect and we must be good to them. We multiply quickly and there are many of us, but even then, we must flee when we see them.”⁵⁸

As an intellectual device, the story teaches us about the agency of paskwawimostos, who are presented as an autonomous people with their own law, culture, and governance. As a constitutive resource, the story is a source of legal principles. Even in the brief excerpt above, wâhkôtowin (the laws that govern relations), miyo-wicehtowin (good assistance), and ohcinewin (transgressions against the natural world) displayed and provided another braid to our collective constitution.

IV. Enacting Constitutional Kindness

The three areas I have loosely introduced above — nêhiyaw âcimowina (narrative process), nêhiyaw âskiy (Plains Cree territory), and nêhiyawewin (Plains Cree language) — have constitutive force in the lives of nêhiyaw peoples, and have regenerative aspects in relation to their practice. The land regenerates our legal knowledge through our visitations. The language is reanimated when we direct it in constitutional conversations and situations. Stories return us to situations where we can see the law, culture, and society of the more-than-human world more clearly. If we braid these together, we can start to see that Cree constitutionalism is meant to be alive and is best practiced in a regenerative manner.

How the lessons of nêhiyaw regenerative constitutionalism are taken up as movement towards constitutional kindness in other polities, or even within nêhiyaw written constitutions, is the next turn in this thinking, to be taken up at a later time. However, I conclude this article with two brief examples of how regenerative constitutionalism is currently (or possibly can be) expressed within written legislation and constitutions. As I have attempted to suggest, the three areas of nêhiyaw pimatisiwin noted above — stories, language, and land-based practice — are all inherently regenerative. In contrast, positivistic law — that is, law captured in legislation, codes, regulations, rules, and constitutions — can have a particularly static quality to its form and processes. This of course is part of positivistic law’s appeal, as it provides stability, pre-

58 See the story, “Ahtahkakoop Learns the Story of Buffalo Child” in Deanna Christensen, *Ahtahkakoop: The Epic Account of a Plains Cree Head Chief, His People, and their Struggle for Survival 1816-1896* (Shell Lake, SK: Ahtahkakoop Pub, 2000) at 44.

dictability, and certainty for a society to set its norms and expectations upon, all qualities that Indigenous citizenries desire for their laws as well. While expressing law through written legislation is not the desire of every Indigenous nation or community, those who do make these choices are often confronted with the challenge of maintaining a regenerative quality to their laws within a strict form.

Thus, Indigenous citizenries have been engaging with this challenge of law textualization while maintaining a reflexive, regenerative approach. For example, the *Tsilhqot'in Nation Wildlife Law* provides a great example of how the challenge of codifying law (to provide certainty for its members and non-members alike) while retaining the nuances of a reflexive, regenerative constitutional practice is balanced. Coming into force in August of 2019, the law sets out standards of conduct according to Nulh Ghah Dechen Ts'edilhtan ('Tsilhqot'in law, or literally, "laying down the stick").⁵⁹ As such, the Tsilhqot'in have set out a process — the Nagubets'eneten process — to set parameters on how an offender of the wildlife law will be dealt with:

15 The Nagubets'eneten process will include the person being referred; three representatives from Xení Gwet'in, one of which will be an elder; and any additional persons who the referred person and the three representatives from Xení Gwet'in jointly agree upon. Core legal principles of the Nagubets'eneten process are:

- a) to include teaching T'Silhqot'in culture and laws in a positive way;
- b) to ensure the person is accountable for their actions by applying disciplinary measures to the person, which could range from guidance and teaching to a ban on hunting in the Declared Title Area;
- c) to ensure relationships are restored; and,
- d) to include T'Silhqot'in ceremony.

The law directly references both relationality and ceremonial participation as part of the core legal principles of Nagubets'eneten. The Nagubets'eneten process provides a model that could be adopted within *nêhiyaw* legislation or written constitutions to provide the reflexive and interpretative space for maintenance of the regenerative qualities of *nêhiyaw* constitutional practices.

59 These principles include taking "only the wildlife you need and no more," respecting "the capacity of the nen [land] to give, so that it can continue to give," and ensuring "that the nen remains healthy and abundant so that it can be maintained for all" T'silhqot'in peoples' use in the future. See *Nulh Ghah Dechen Ts'edilhtan (Tsilhqot'in Nation Wildlife Law)*, 2019, enacted by the Xení Gwet'in First Nations Government Chief and Council and endorsed by the T'Silhqot'in Council of Chiefs, ss 2(a-f), online: *T'Silhqot'in First Nation* <<https://tsilhqotin.ca/publications/wildlife-law/>> [<https://perma.cc/C4LG-F834>].

The Othasowewin (Constitution) of the Nishichawayasihk Cree Nation (NCN) is an example of the expression of regenerative constitutionalism within a written constitution.⁶⁰ While the Othasowewin contains the hallmarks of written constitutions — it sets up the respective branches of governments within NCN governance, distributes powers amongst them, and sets out the fundamental rights of NCN citizens — it also provides room for unwritten constitutional norms and practices to have effects on the Nation's constitutional dealings.

For example, the revitalization of nīhithawīwin is one of the Nation's constitutive principles.⁶¹ It ensures that NCN “customary law principles based on the oral teachings of [NCN] ancestors shall be used in interpreting [the] Constitution.”⁶² The customary laws include seven sacred teachings according to NCN life: “Our customary laws are based on the seven sacred teachings of our ancestors as represented by the animals to remind us of our connection to Mother Earth — love (eagle), respect (buffalo), courage (bear), honesty (loon), wisdom (beaver), humility (wolf) and truth (turtle).”

A large part of customary legal ordering expressed in the Constitution revolves around relations with the more-than-human world. For example, Ethinesewin (wisdom) provides a “duty to respect and seek traditional knowledge and wisdom, including the influence of the moons and seasons on climate, weather, animals, plants and Ethiniwuk, individuals as well as seasonal harvesting cycles and practices.”⁶³ It also constitutionalizes the principle of oh-cinewin, describing it as “what a person does to all creation will come back to that person.”⁶⁴

The obligation on NCN governments and decision makers to interpret the customary law principles within the Constitution will ensure that regenerative practices like land-based legal learning, language, storying, and ceremonies will be considered. The Earth-centered nature of the NCN Constitution is certainly in contrast with the Canadian Constitution, which is devoid of ex-

60 While written in a different dialect than Plains Cree, this Constitution is illustrative of the challenges faced by Cree communities in implementing legal terms in the Cree language.

61 Section 1.3 states: “As preservation our culture and our language is of paramount importance, this Constitution shall be printed and published in Nehethowewin and English in the event of a conflict between the two language versions, both versions shall be treated equally.” *Nishichawayasihk Cree Nation Othasowewin (Constitution)* (29 November 2017), online (pdf): *Nishichawayasihk Cree Nation* <<https://www.ncncree.com/wp-content/uploads/2017-11-29-NCN-Constitution-Final-Approved.pdf>> [<https://perma.cc/BSD5-5MVP>].

62 *Ibid*, s 1.2.

63 *Ibid*, s 1.2(e).

64 *Ibid*, s 1.2(h).

press terms concerned with the health and well-being of the more-than-human world. As more Indigenous nations are taking up written constitutions, the Othasewin provides an example of how Earth-centered principles can be incorporated within them.

V. Conclusion

As I conclude, I am often reminded that in terms of the earth-centered nature of *nêhiyaw wiyasiwêwina*, the old ones in our communities will often say, in one way or another, that someone living without an understanding of *nêhiyaw pimâtisiwin* (or Cree way of living) is like a child caught out in a prairie winter storm, unclothed and unsheltered. As this article hopefully illustrates, this lesson can be extended in a constitutional sense, specifically in the sense that there is a necessity to be sheltered by *nêhiyawâtisowin* (Greeness) in legal and constitutional expression. This too has its cycles through the periods of our lives. As young ones, we are bundled by *nêhiyawâtisowin*, furnished with teachings to shelter us from the outside storms. This is why we hold up our old ones, because we have been lucky to have those older hands that are knowledgeable in working with the hides of our traditions, in sewing the strands of *nêhiyawâtisowin* that will furnish our cradleboards, in beading the *âtayôhkêwina* (spiritual stories) unto our vests until we eventually become those old ones.

Lately though, I have been thinking of this refrain in a *literal* sense. What if a loss of *nêhiyaw wiyasiwêwina* means we are literally caught unsheltered? What if our loss of kinship with the ecological world means it will one day be unable to shelter and nourish us? As hard as it is to imagine, our collective constitutional unkindness towards the ecological world has already created unnourishing environments. In this sense, we are experiencing *ohcinêwin*, or retribution for our transgressions against the natural world. As Mushkego storyteller Louis Bird reminds us, according to natural law, the immediate retribution shown in our stories is not necessarily a metaphor, even if justice is often cumulative and slow developing.⁶⁵

Returning to the natural law teaching on kindness and grass earlier in this article, a corresponding teaching is that we spend so much time making our moccasins soft so that we can walk gently on this earth as an act of reciprocal kindness, for we acknowledge how it enables us to continue our lives, through its kindness too. We can fix our laws to be just as soft and forgiving as grasses, as the leathers of moccasins. Ekosi.

65 Louis Bird & Susan Elaine Gray, *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams* (Montreal: McGill-Queens University Press, 2007) at 71–80.

