

## Teaching Aboriginal Law in an Age of Reconciliation

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I was born in northern Saskatchewan in the city of Prince Albert and raised in Regina, where I went to an inner-city high school. It was here that I was first introduced to Native Studies, and as I think back, I am sure these years were integral to my foundational learning of becoming an ally. I learned a lot from my First Nations and Métis classmates of whom some became lifelong friends. I spent my undergraduate years at Queen's University and the University of Regina, where I earned degrees in Biology and Canadian history. In 1998, I enrolled at the College of Law at the University of Saskatchewan. During a guest presentation to my first-year Property Law class, Professor James (Sákéj) Youngblood Henderson, Director of the Native Law Centre of Canada, left a lasting impression with his lecture on treaty rights. For the first time, I learned that I had been born in Treaty 6 territory and raised in Treaty 4, the lands of the Cree, Lakota and Métis. That was the day I discovered I was a treaty person—and twenty years later, I am still discovering what that means.

Since 2009, I have taught courses on Aboriginal law at the Faculty of Law, University of New Brunswick. As a law teacher, my primary goal of this work is to introduce my students to what it means to be a treaty person. For many of my students, our classroom is the first time that they have ever thought of themselves from this perspective— or about the obligations and responsibilities that are part of reciprocal treaty relationships. I often reflect upon my time as a law student. I clearly recall asking Professor

Henderson how a non-Indigenous person could ever help mend the centuries of broken promises and establish trust between settlers and Indigenous communities. He told me to “go study the system.” During my own graduate studies at McGill University and the University of Victoria, I did my best to grapple with the complexities of meaning in systems of oppression created and maintained by the Canadian state. In my courses, I introduce my students to the legacy of colonialism and do my best to inspire them to become a part of decolonization efforts outlined in the *Truth and Reconciliation 94 Calls to Action*.<sup>1</sup> As an ally, I try to reflect the spirit and intent of treaty relationships in my classroom by teaching students they can play an integral role in decolonizing our country by reshaping a more inclusive nation based on mutual acceptance and respect for legal plurality. In this short piece, I will provide an overview of some of the pedagogical methods I have been taught to take my students on their personal journeys as they discover what it means to be a treaty person. I will begin with my classroom experiences and then move onto the broader university and social context.

Since 2009 I have taught an upper year elective - Law 4193: *Aboriginal Peoples and the Law*. In 2015, in response to the TRC Call to Action #28, I developed another seminar - Law 3809: *Aboriginal Self-Government and Economic Development*.<sup>2</sup> As with

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<sup>1</sup> The Truth and Reconciliation Commission, *The Final Report of the Truth and Reconciliation Commission of Canada*, 6 vols. (Montreal and Kingston: McGill-Queen’s University Press, 2015). A summary of the 94 Calls to Action may be found at: [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf)

<sup>2</sup> Call to Action #28: We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law,

any university program, the students arrive with a variety of life experiences, knowledgeability, and educational backgrounds. As second or third-year law students, they have already been introduced to legal concepts such as Aboriginal title and sentencing circles in the first-year curriculum. My challenge is to teach them that Aboriginal and treaty rights pre-exist the Canadian state and that section 35 of *The Constitution Act, 1982*, in which “existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed,” did not create these pre-existing rights.<sup>3</sup> As an introduction to the idea that treaties represent a constitutionalized nation-to-nation relationship between First Nations and the Canadian state, I show my students a documentary by the National Film Board of Canada called *Dancing Around the Table*. In this two-part series, Prime Ministers Trudeau and Mulroney, along with a series of provincial premiers, fail to grapple with the positions advocated by First Nations and Métis leaders about the meaning of Aboriginal and treaty rights. University of New Brunswick law graduate, former judge and member of Tobique First Nation, Graydon Nicholas suggested that I show this film to my students to teach them that we are still in the early stages of discovering the meaning of section 35 and that as lawyers they will play an important role in unwinding centuries of legalized colonialism and constructing a more pluralistic constitutional order. Throughout the course, we delve into challenging topics such as the

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which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

<sup>3</sup> *Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

noxious legacy of residential schools, the limitations of judicial decisions, and the challenges of negotiating a new constitutional relationship in the aftermath of the failed Charlottetown and Kelowna Accords. The law has often been used as a tool of oppression. I teach my students that the law can be used to dismantle colonial relationships and reimagine a more inclusive and social contract.

As a non-Indigenous person, I try to introduce Indigenous perspectives by bringing in guest speakers and showing videos by Indigenous elders and professors such as John Borrows and Val Napoleon, who have recently started the world's first Indigenous law program at the University of Victoria. At the beginning of each semester, Elder-in-Residence Imelda Perley welcomes our class to the territory with a ceremony. Our class also goes on several excursions including the Annual Peace and Friendship Treaties conference, the University of New Brunswick Powwow, lectures by visitors such as Chief of the Wolastoq Grand Council Ron Tremblay, and various shows and exhibitions in the Fredericton area such as the Alex Janvier retrospective at the Beaverbrook Art Gallery. Several times during the term, I ask my students to write personal reflection essays on what they have learned in the class and during our experiential 'field trips.' One of my students wrote the following in response to an assigned reading: "Maybe we should stop looking to the government to achieve reconciliation? Perhaps the most meaningful and effective route towards reconciliation is one that can be achieved by the people, for the people, one community at a time."<sup>4</sup> Comments such as these cause me to reflect upon my own journey of understanding about what it means to be a Treaty

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<sup>4</sup> Thank you to Taylor Morin (J.D. 2018) for permission to use this quote.

person. I am continually learning from my students about how we can all work towards better mutual respect and understanding.

From my own personal experience, I know that learning about colonialism can be emotionally challenging. In the words of Kiera Ladner, many non-Indigenous people exist in a state of collective 'historical amnesia' when it comes to nature of Indigenous-state relations in Canada.<sup>5</sup> Further, waking up to the realities of the legacy of centuries of colonialism can be quite a shock to students who previously had little exposure to the nature of the historical, political and legal relationship between Indigenous people and the settler state. It can be very unsettling to law students to question the very nature of foundational legal concepts such as the assertion of Canadian sovereignty. I remember the day in my Advanced Aboriginal law class with Professor Henderson when it dawned on me that section 91(24) of *The Constitution Act, 1982* referred to "Indians and lands reserved for Indians" not as people but as objects of jurisdictional authority reserved to the federal government such as the postal service, currency or lighthouses. As I fluctuated between rage and despair in his office after class, Professor Henderson reassured me that I was merely going through 'a deontological experience' and that this was undoubtedly a sign of intellectual progress. With his words in mind, I try to reassure my students that their emotional reactions to the course materials are to be expected and that there is nothing easy about the decolonization process. Guiding my students through this journey of self-discovery is the most challenging and rewarding part of my job as a law teacher. And I learn as much from the students as they ever do from me.

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<sup>5</sup> Ladner, Keira, "An Indigenous Constitutional Paradox: Both Monumental Achievement and Monumental Defeat. In *Patriation and its Consequences - Constitution Making in Canada*. Vancouver: UBC Press, 2015, pp. 267-289.

For example, this past semester one of my students wrote a paper about the phenomenal economic development strategies that have been introduced at the Membertou First Nation on Cape Breton Island. I am grateful for the introduction to the successful and transformative economic development work that is happening in this First Nation community.<sup>6</sup>

Outside the classroom, I have seen a marked change over last nine years that I have worked at the University of New Brunswick. Prior to the release of the *Truth and Reconciliation Commission's Calls to Action* in 2015, there was very little institutional support for, or interest in Indigenizing the academy. As a university community, we are still in the early stages of the process, but there has been a sea change in the level of appreciation given to the subject of Aboriginal law by my colleagues and the legal community in New Brunswick. For example, the Law Society of New Brunswick has struck a TRC Committee which has unanimously recommended that a course on Aboriginal law be added to the recommended list of courses taken by students who would like to apply for admission to the provincial bar. This unprecedented step signals that the Law Society of New Brunswick expects that all newly practising lawyers in New Brunswick should have a basic competency in Aboriginal law.<sup>7</sup> The Law Society is also

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<sup>6</sup> Justin Cashin (J.D. 2018) wrote an excellent case study for Law 3809 Aboriginal Self-Government and Economic Development on the economic development activities at Membertou First Nation.

<sup>7</sup> Call to Action #27: We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based

running a series of workshops for its current members so that they can improve their level of cultural competency. I am proud to serve on this committee and to participate in the ambitious educational programming being developed by the Law Society in conjunction with Aboriginal leaders in New Brunswick. The Faculty of Law has also created a TRC Committees in recognition that there needs to be an institutional response to the Calls to Action. I am delighted to be part of a dynamic group of Indigenous and non-Indigenous who are committed to changing the nature of legal education. In response to the Calls to Action, academics are beginning to develop shared resources such as *Reconciliation Syllabus - a TRC-inspired gathering of materials for teaching law* (<https://reconciliationsyllabus.wordpress.com/>). The teaching materials are developed for application in a variety of pre-existing courses. The website is an excellent resource for teachers who would be interested in adding Indigenous content to their courses. More than ever, academics and community members are coming together to explore reconciliation. For example, our Faculty of Law hosted the Canadian Law and Society Association's Mid-Winter Meeting in January 2017 on the theme of *Piluwitahasuwawuwakon* (Wolastoqey for Changing Minds, Living the Truth). The symposium featured keynote addresses by Dr. Margaret Kress on Indigenous feminism and Dr. John Reid on the history of Indigenous-non-Indigenous relations in homelands of the Mi'kmaq, Wolastoqiyik and Passamaquoddy. Recently, our faculty has also hosted Anishinabek law professor John Borrows as well as my teacher Professor Sákéj Youngblood Henderson.

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training in intercultural competency, conflict resolution, human rights, and anti-racism.

There are, however, many challenges to indigenizing the law faculty and the UNB community, and the greater legal community. While the TRC has stimulated more interest in Aboriginal issues, the resources are not always forthcoming. In the introductory seminar course that I teach at the Faculty of Law, I can introduce a small group of approximately 18 students to the basics of Aboriginal-state constitutional relations. This means that approximately one-fifth of our graduating class will have received the knowledge acquisition called for in #28 of the TRC Calls to Action. I hope that UNB will follow the lead of other Canadian universities and devote the necessary resources to ensure that our graduates receive the necessary instruction in Aboriginal law that is now recognized by the Law Society of New Brunswick for future practising lawyers in the province. Many other Canadian law faculties have hired Elders and Indigenous instructors also to help students integrate the shift in mindset that accompanies decolonization and indigenization of the academy. In the past, extra courses and Elders-in-Residence programs were not deemed to be part of the primary mission of a law faculty. This mindset has changed, and now the university needs to devote the resources to bring about the transformational change called for in the TRC Report. A further challenge in our program is attracting Indigenous and Métis students from the Wabanaki Confederacy and other First Nations territories. To attract talented students, many law faculties provide academic and cultural support services. Indigenous students have graduated from our Faculty of Law over the years such as Graydon Nicholas, Pam Palmater; however, we have only just recognized the need for a targeted recruitment strategy. The high level of tuition in a professional program may be acting as a deterrent to attracting Indigenous students to the Faculty of Law. Another issue may be the lack of recognition that the faculty is situated on the unceded territory of the Wolastoqiyik First Nation.

Beyond a territorial acknowledgement on our faculty council materials, there is no expression within the law school that we are located on the lands of the people of the Wolastoqiyik. A further complication is that our building is named after George Duncan Ludlow, a Loyalist settler who was involved in the Indian Day School at Sussex, New Brunswick and as a judge upheld the institution of slavery at a time when other judges were dismantling the institution. As one of my students said in class one day: “There is no reconciliation without truth.”<sup>8</sup> It is time for the Faculty of Law to engage in candid conversations about the legacy of George Duncan Ludlow in an age of reconciliation. If we are to respond to the spirit and intent of the *Calls to Action* and Indigenize the academy, then we must engage in tough conversations about identity, history, and relationship building.

As a law teacher, it is my responsibility to teach my students about the historical context and legal complexities inherent in Indigenous-non-Indigenous relations and to advocate for meaningful change within and beyond the classroom. The future of Indigenous-state relations rests on our ability to educate ourselves and unwind the noxious legacy of residential schools and legal instruments of oppression such as *The Indian Act*. This may seem like a daunting task; however, the following quote from a student paper illustrates that my bright and capable students are eager to take on the challenge and lead us forward: “The awakening is not just information; it is empowerment....the lies, and trickery of the past have no power anymore in the face of knowledge and pride.”<sup>9</sup> In an age of reconciliation, education is the way forward. We may not be able to undo the mistakes of the past; however, we can all

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<sup>8</sup> Thank you to Patrick McGuinty (J.D. 2018) for stating this so clearly in class.

<sup>9</sup> Thank you to Karen McGill (J.D. 2019) for permission to use this quote.

respond to the Calls to Action, promote mutual understanding, and work towards creating an inclusive, pluralistic constitutional order that reflects the realities and ambitions of Indigenous and non-Indigenous.

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