

## DABAADENDIZIWIN: PRACTICES OF HUMILITY IN A MULTI-JURIDICAL LEGAL LANDSCAPE

Lindsay Borrows\*

*Dabaadendiziwin is the Anishinaabe word which roughly translates to 'humility' in English. The late elder Basil Johnston said that we can talk of dabaadendiziwin/humility, but until we can look at the squirrel sitting on the branch and know we are no greater and no less than her, it is only then that we have walked with dabaadendiziwin/humility. Law places diverse peoples together in complicated situations. It challenges people to step outside of themselves and consider new ways of being. This paper advocates that humility is an important legal principle to bring people together in a good way. It considers first, what is humility and why is it an important legal principle? Second, what processes are in place in both Canadian and Anishinaabe law to actively cultivate humility? And third, how can diverse peoples use these processes when interacting with one another in ways that foster greater harmony in this multi-juridical country? The examples show that Canadian colonial law has tried to account for the need to humble oneself to a position of being teachable through Charter analyses, diversifying the bench, and through Aboriginal rights doctrines of taking into account the "aboriginal perspective", and reconciliation. The paper also considers how Anishinaabe law fosters humility through linguistic structure, leadership structure, ceremonial practices and akinoomaage (learning from the earth). This paper is a call for people to confront the challenge of working across legal orders, and replace timidity, fear and pride with courage, gratitude and humility.*

*Le mot dabaadendiziwin est un mot anishinaabe qui signifie ni plus ni moins « humilité » en français. Selon feu l'aîné Basil Johnston, nous pouvons bien parler de « dabaadendiziwin » ou d'humilité, mais ce n'est que lorsque nous regardons l'écureuil sur la branche et que nous savons que nous ne sommes ni plus grands ni plus petits que lui que nous comprenons parfaitement le sens de ce mot. La loi contraint des peuples diversifiés à vivre ensemble des situations complexes. Elle oblige les personnes à élargir*

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\* Lindsay is Anishinaabe and a member of the Chippewas of Nawash First Nation in Ontario. She received her B.A. from Dartmouth College, and her J.D. from the University of Victoria. She is an articulated student at West Coast Environmental Law, and is part of their Revitalizing Indigenous Laws for Land, Air and Water (RELAW) team. Lindsay is interested in law as an exercise of story-telling. She received a grant from the Canada Council for the Arts and left law school for a time to participate in the Indigenous Writing Program in Banff. Her forthcoming book (UBC Press), *entitled Otter's Journeys: Indigenous Language and Legal Revitalization*, is a work of creative non-fiction that considers how language revitalization theory can inform efforts in revitalizing Indigenous laws. She is also a contributor in *Centering Anishinaabeg Studies: Understanding the World Through Stories* (Michigan State University Press, 2013). Lindsay has worked with the Pascua Yaqui Tribal Court in Arizona, as a legal support team member for the U.N. Special Rapporteur on the Rights of Indigenous Peoples, as a senior researcher with the University of Victoria Indigenous Law Research Unit, and as a temporary articulated student at The Law Centre – a clinic that provides legal representation to people who cannot afford a lawyer.

*leurs horizons et à envisager de nouvelles façons d'être. Dans ce texte, l'auteure affirme que l'humilité est un principe de droit important qui permet de rassembler des personnes d'une bonne façon. Dans ce contexte, elle se demande d'abord en quoi consiste l'humilité et pourquoi elle constitue un principe de droit important. En deuxième lieu, elle examine les processus qui sont en place tant dans le droit canadien que dans la loi anishinaabe afin de promouvoir activement l'humilité. En troisième lieu, l'auteure se demande comment des peuples diversifiés peuvent utiliser ces processus dans le cadre de leurs interactions de façon à promouvoir une plus grande harmonie dans le pays multijuridique qu'est le nôtre. Les exemples qu'elle donne illustrent comment les acteurs du droit colonial canadien ont tenté de reconnaître l'importance de l'humilité en veillant à ce que la loi puisse être enseignée au moyen d'analyses fondées sur la Charte et en adoptant des mesures visant à diversifier la composition de la magistrature ainsi que des doctrines davantage axées sur le point de vue autochtone et sur la réconciliation aux fins de l'analyse des droits autochtones. L'auteure se penche également sur la façon dont la loi anishinaabe cherche à promouvoir l'humilité au moyen de la structure linguistique, de la structure hiérarchique, des pratiques cérémoniales et de la méthode appelée « akinoomaage » (enseignements de la terre). Enfin, l'auteure demande aux peuples de faire preuve d'audace afin de composer avec divers ordres juridiques et de remplacer la timidité, la crainte et l'orgueil par le courage, la gratitude et l'humilité.*

“It’s one thing to know a story, or to hear a concept and learn a word; it’s quite another to act on it.” [Basil Johnston] said that we can talk of humility, but until we can look at the squirrel sitting on the branch and know we are no greater and no less than her, it is only then that we have walked with humility.<sup>1</sup>

## I. INTRODUCTION

Working across differences can be a challenging endeavour. When I was twelve years old, my family moved from Ontario to Arizona. My classmates at Mesquite Junior High School were shocked to learn that even though I spoke English I did not know the Pledge of Allegiance and that I was equally oblivious about cheerleading and football. I was shocked to learn that in the desert you could literally fry an egg on the hood of your car and that I had to check my shoes for scorpions before putting them on. Most jarring of all were the extreme measures my middle school took to ensure safety in response to the Columbine shootings just one year earlier. I told a teacher of my struggle living in this new culture with foreign expectations and an undercurrent of fear. She told me: “[T]here is no growing in a comfort zone, and no comfort in a growing zone.” At the time, I took this as bad news. I wanted the discomfort to be taken away and not acknowledged as being necessary for growth. I invite you to reflect for a moment on a time when you too were completely out of your comfort zone. How did you arrive at that

<sup>1</sup> Lindsay Borrows, “On the Road Home: Stories and Reflections from Neyaashiinigiimiing” in Jill Doerfler, Niigaanwewidam James Sinclair & Heidi Kiiwetinepinesiik Stark, eds, *Centering Anishinaabeg Studies: Understanding the World through Stories* (East Lansing, MI: Michigan State University Press, 2013) at 399.

uncomfortable place? What made it so uncomfortable? What did you do to adapt or adjust? How did it shape who you are today?

Law is often a site of discomfort.<sup>2</sup> This is true of both the public affected by the law and those who spend their lives practising it. The Truth and Reconciliation Commission of Canada put it this way:

Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the residential school system. In addition, Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment. When children were abused in residential schools, the law, and the ways in which it was enforced (or not), became a shield behind which churches, governments, and individuals could hide to avoid the consequences of horrific truths. Decisions not to charge or prosecute abusers allowed people to escape the harmful consequences of their actions. In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by law. Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression.

To this point, the country's civil laws continued to overlook the truth that the extinguishment of peoples' languages and cultures is a personal and social injury of the deepest kind.<sup>3</sup>

I find it necessary to take a moment to recognize how incredibly substantial these discomforts can be. In law school, I had two student colleagues tragically take their own lives. This affects me on the deepest level. I do not assert that the legal community is alone with its high rates of depression, suicide, alcohol, and drug abuse. In trying to make sense of all of the hurt, fear, and discomfort that exists worldwide, I am reminded of my teacher in Arizona saying "there is no growing in a comfort zone, and no comfort in a growing zone." While I agree that much of the discomfort we face is an excellent opportunity to learn, sometimes it surpasses the growing zone and enters a danger zone.

I want to be careful not to trivialize the dangerous levels of discomfort in which many people live. I invite us now to make an important distinction between healthy discomfort that invites learning and the dangerous variety and to put aside our rightful distrust of the latter for another discussion and context and focus instead on the immense benefits of the former.<sup>4</sup> This article focuses on the cultivation and

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<sup>2</sup> For discussions of law as a site of discomfort, see Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Halifax: Fernwood Publishing, 1995); Tracey Lindberg, *Birdie* (Toronto: Harper Collins, 2015); Robert Williams, Jr, "Vampires Anonymous and Critical Race Practice" (1997) 95 Mich L Rev 741; Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010).

<sup>3</sup> *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) at 202, online: <[http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf)>.

<sup>4</sup> The reason I have brought up this continuum is to introduce some nuance to the concept of discomfort as valuable. I do not want to minimize suffering or struggle and the many forms it comes in.

application of humility when working across different legal orders.<sup>5</sup> To put oneself in a “foreign” mindset is to be in a growing zone. Humility is a state of being that can open hearts and minds to see a situation in different ways.

A story is told of a rabbi who was conversing with two friends.<sup>6</sup> The rabbi asked the first man: “[H]ow do you know when the night is over and a new day has begun?” He replied: “When you look into the east and can distinguish a sheep from a goat, then you know the night is over and the day has begun.” The rabbi then asked the second man the same question. He replied: “When you look into the distance and can distinguish an olive tree from a fig tree, then you know morning has come.” The two men then asked the rabbi how he could tell when the night is over and the day has begun. The rabbi thought for a time and then said: “When you look into the east and see the face of a woman and you can say ‘She is my sister,’ and when you look into the east and see the face of a man and can say ‘He is my brother.’ Then you know the light of a new day has come.” Humility fosters a view of equality that has power to usher in the light of a new day.

A primary purpose of law is to create standards for achieving broad, aspirational principles such as equality, freedom, and justice.<sup>7</sup> Different legal systems employ unique processes for establishing these principles to varying degrees of success. In spaces of interaction between legal orders – such as Canada with the common, Civilian, and Indigenous legal traditions – I argue that humility should be more actively developed.<sup>8</sup> This article explores three questions. First, what is humility and why is it an important legal principle? Second, what processes are in place in both Canadian and Anishinaabe law to actively cultivate humility?<sup>9</sup> And, third, how can diverse peoples use these processes when interacting with one another in ways that foster greater harmony in this multi-juridical country?

I will first define humility and discuss why it is important in a multi-juridical legal context. I will then consider examples of humility in Canadian colonial legal cases. When confronted with issues related to religion, gender, ability, and Indigenous rights, the court occasionally responds by looking outside of their own worldviews and considers another perspective. This suggests that humility is not a foreign concept.<sup>10</sup> The third section looks to some processes, sources, and resources in Anishinaabe law that

<sup>5</sup> Val Napoleon distinguishes the use of the term “legal order” from the term “legal system.” A “legal order” describes law that is embedded in social, political, economic, and spiritual institutions. A “legal system” describes state-centred legal systems in which law is managed by legal professionals in legal institutions that are separate from other social and political institutions. See Val Napoleon, “Thinking about Indigenous Legal Orders,” Research Paper for the National Centre for First Nations Governance (2007), online: <[http://fngovernance.org/ncfng\\_research/val\\_napoleon.pdf](http://fngovernance.org/ncfng_research/val_napoleon.pdf)>.

<sup>6</sup> As told by Gordon B Hinckley, “Experiences Worth Remembering” (2006), online: <[https://speeches.byu.edu/talks/gordon-b-hinckley\\_experiences-worth-remembering/](https://speeches.byu.edu/talks/gordon-b-hinckley_experiences-worth-remembering/)>.

<sup>7</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 46, 64; James Tully, *Public Philosophy in a New Key*, vol 1: *Democracy and Civic Freedom* (Cambridge: Cambridge University Press, 2008); John Rawls, *The Law of Peoples with the Idea of Public Reason Revisited* (Cambridge MA: Harvard University Press, 1999).

<sup>8</sup> I have chosen to use the term “legal principle” in discussing humility as opposed to the “virtue ethics” language developed by Aristotle. It is mostly personal preference, and in virtue ethics discourse, humility was not considered especially important by Aristotle.

<sup>9</sup> The Anishinaabe are also known as Ojibwe or Chippewa. The nation’s land base is around the Great Lakes in both the United States and Canada. They are one of the most populous Indigenous nations in North America.

<sup>10</sup> I use the term “Canadian colonial law” to refer to the law that European colonizers brought to the land now known as Canada. Colonial law includes both the common law and civil law. Its roots stem from the legal systems of England and France and have developed in unique ways since coming to North America.

function to actively cultivate humility. I conclude by recommending ways of moving forward with greater humility in our decision making, legal rhetoric, and practice in Canada.

## II. WHAT IS HUMILITY AND WHY IS IT IMPORTANT IN A MULTI-JURIDICAL LEGAL CONTEXT?

Anyone who has looked at statutory interpretation in a Canadian legal setting understands the complexity of defining terms. According to the often cited text on statutory interpretation by lawyer Elmer Driedger, “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”<sup>11</sup> Judges engage in arduous (even acrobatic) arguments to assert what a single word must mean. The definition is a choice made to support the conclusion the judges wish to reach. As symbols of meaning, words can be imprecise and vary in depth depending on the speaker or listener’s interpretations. Author and civil rights activist, Maya Angelou, writes: “Words are things. They get on the walls. They get in your wallpaper. They get in your rugs, in your upholstery, and your clothes, and finally in to you.”<sup>12</sup> Given the power of words to seep in and define everything around us, I think it is useful to spend a moment considering what humility means.

Understanding and living the full meaning of humility is the work of a lifetime. Basil Johnston, the late Anishinaabe elder and author from my home community, the Chippewas of Nawash First Nation, refers to the elusiveness of understanding with which Canadian judges also grapple.<sup>13</sup> Basil said to me: “It’s one thing to know a story, or to hear a concept and learn a word; it’s quite another to act on it.”<sup>14</sup> He told me we can talk of humility, but until we can look at the squirrel sitting on the branch and know we are no greater and no less than her, it is only then that we have walked with humility. I think about this teaching often. It comes to me when I look out my window, when I’m walking outside, when I’m alone or with others. When I watch a robin bathing in the pond, contemplate the life of the cedar and how it has grown from a rock, or see the mountains standing firm on the horizon day after day, it is humbling. It is humbling to observe how so many beings are supported on the earth despite the many difficulties of life.

With the earlier caveat regarding the limitations of a single definition, I define humility in a broad and fluid sense. Humility is a state of positioning oneself in a way that does not favour one’s own importance over another’s. Humility is a condition of being teachable. Humility allows us to recognize

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<sup>11</sup> Elmer A Driedger, *The Construction of Statutes* (Toronto: Butterworths Press, 1974) at 67, cited in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27.

<sup>12</sup> Video interview of Maya Angelou on the power of words, <<http://www.oprah.com/own-master-class/Dr-Maya-Angelou-on-the-Power-of-Words-Video>>.

<sup>13</sup> Some of Basil Johnston’s most influential books are Basil Johnston, *Think Indian: Languages Are beyond Price* (Cape Croker, ON: Kegedonce Press, 2010); Basil Johnston, *Honour Mother Earth: Mino-audiaduah Mizzu-Kummik-Quae* (Cape Croker, ON: Kegedonce Press, 2003); Basil Johnston, *The Bear Walker and Other Stories* (Toronto: Royal Ontario Museum, 1995); Basil Johnston, *The Manitous: The Spiritual World of the Ojibway* (Toronto: Key Porter Books, 1994); Basil Johnston, *Ojibway Ceremonies* (Toronto: McClelland and Stewart, 1982); Basil Johnston, *Tales the Elders Told Ojibway Legends* (Toronto: Royal Ontario Museum, 1981); Basil Johnston, *Ojibway Heritage* (Toronto: McClelland and Stewart, 1976).

<sup>14</sup> Borrows, “On the Road Home,” *supra* note 1.

our dependence upon others and to consider their perspectives along with our own. A humble opinion may be given in a spirit of deference or submission. The antonym is expressed in terms such as arrogant, elevated, or prideful. In English, the etymological origin of humility is derived from the Latin word *humilis*, which literally means “on the ground” from Latin *humus* meaning “earth.”<sup>15</sup> This is where the colloquial expression describing a person as being “down to earth” stems. Even in English, humility is linked to the earth. In Anishinaabemowin, the word for humility is *dabaadendiziwin*. It means “to measure out your thoughts.” This refers to being careful with our thoughts or views and appropriately apportioning our judgements. *Dabaadendiziwin* is one of the Anishinaabe Seven Grandfather Teachings.<sup>16</sup> This suggests it is a highly important principle to learn and live.<sup>17</sup>

The *Harvard Business Review* published surprising research related to humility.<sup>18</sup> Over an intensive five-year study on what makes a business successful, researcher/author James Collins and his team came to a paradoxical discovery.<sup>19</sup> The study concluded that the key ingredient that allows a company to become great is having an executive in whom “genuine personal humility blends with intense professional will.”<sup>20</sup> These executives were “a study in duality: modest and willful, shy and fearless.” The data shocked the business world, which has traditionally valued principles such as intelligence and charisma over personal humility. Humble leaders were open to accept personal fault and make changes and learned from failure instead of being halted by it. They were okay with the discomfort in their growing zone. Interestingly, Collins’ study did not focus on whether or not the characteristic of humility that executives of top businesses have can be developed and, if so, how. In contrast, this article concerns itself precisely with the ways in which humility is actively developed and exercised.

What could the *Harvard Business Review* report’s findings mean in a legal context? If legal actors practised humility in a more rigorous way, the legal system could be more open to positive change. Failures might be seen as an opportunity to try again, instead of leading to cynicism that often accompanies failed decisions. In law school, students might have lower levels of depression and substance abuse if humility were fostered as an important aspect of their learning as reflected in the law itself.<sup>21</sup> When these students become decision makers in various capacities, this humility would be more

<sup>15</sup> *Online Etymology Dictionary*, <<http://www.etymonline.com/index.php?term=humble>>.

<sup>16</sup> For further discussion of these teachings, see Eddie Benton-Benai, *The Mishomis Book: The Book of the Ojibway* (St Paul, MN: Indian Country Press, 1979).

<sup>17</sup> “The Seven Grandfather Teachings,” *Anishnaabeg Bimaadiziwin: An Ojibwe Peoples Resource*, online: <<http://ojibweresources.weebly.com/ojibwe-teachings--the-7-grandfathers.html>>.

<sup>18</sup> James Collins, “Level 5 Leadership and the Triumph of Humility and Fierce Resolve,” *Harvard Business Review* (July 2005), online: <<https://hbr.org/2005/07/level-5-leadership-the-triumph-of-humility-and-fierce-resolve>>.

<sup>19</sup> James C Collins, *Good to Great: Why Some Companies Make the Leap...And Others Don't* (New York, NY: Harper Business, 2001).

<sup>20</sup> Note that throughout this article I do not comment on the “intense professional will” aspect of Collins’ findings. I do not believe the practice of law is systemically lacking in hard work or professional drive. These qualities are alive and well.

<sup>21</sup> A large amount of literature exists on depression, suicide, and substance abuse in the legal profession. See Mary Ann Glendon, *A Nation under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* (Cambridge: Harvard University Press), 1996; Bridget A Maloney, “Distress among the Legal Profession: What Law Schools Can Do About It” (2001) 15 *Notre Dame JL Ethics & Pub Pol’y* 307; Andrew Benjamin, Elaine Darling & Bruce Sales, “The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers” (1990) 13:3 *Intl J L & Psychiatry* 233; Laura Rothstein, “Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual” (2007) 69 *U Pitt L Rev* 531.

likely to carry forward and allow for a more adaptable, teachable, open, “down-to-earth,” measured legal system. Hopefully, legal actors would see themselves as life-long students as they continually interact with new people and new situations in their work and personal lives. The varying legal orders in Canada could interact less destructively and, instead, learn from the strengths of others to replace their own weaknesses.

For example, when a Gitksan woman is in a Canadian court for an Aboriginal title claim and asserts her rights through *adaawk* (a spirit song defining relationships to particular territories), humility and an acceptance of healthy discomfort might deter the non-Gitksan judge from saying: “We are on the verge of getting way off track here. To have witnesses singing songs in court is not the proper way to approach this problem ... I just say, with respect, I’ve never heard it happen before, I never thought it necessary, and I don’t think it necessary now. It doesn’t seem to me she has to sing it.”<sup>22</sup> Instead, that judge might learn about the function of *adaawk* and work to appreciate the legal significance of the song as an assertion of ownership. Or if a woman who has ranched with her husband throughout her life divorces and claims half of the interest in the ranch, the male judge does not dismiss her application because hers “was the work done by any ranch wife.”<sup>23</sup> Practices of humility might help the judge see the woman’s work as equally valuable to the man’s work.

Humility, just like any principle, if left unchecked or unbalanced could be harmful. For the Anishinaabe peoples, there is an emphasis on the Seven Grandfather Teachings of love, honesty, respect, truth, courage, wisdom, and humility. Basil Johnston has said of these teachings: “[A]nd where exactly are the grandmothers?”<sup>24</sup> He has also wondered why there are only “seven” teachings. To me, his rhetorical question suggests that even as we focus on particular principles, obligations, or rights we should (perhaps humbly) remember the importance of balance and non-essentialism in our pursuits.

### III. HUMILITY AND THE COMMON LAW

The following examples show that humility is not a foreign principle in Canadian colonial law, as some might believe. While there is plenty of room for improvement, practices of humility are actually integral to the functioning of the system. However, they are not discussed often or developed in explicit ways, to the detriment of citizens and participants in the system. Some instances where Canadian colonial law must work across differences by engaging with various perspectives include cases where age, religion, gender, sexuality, race, ability, and indigeneity are at play. I consider three examples of humility that common law reasoning employs first in the context of religion, gender, and, finally, Aboriginal rights jurisprudence. While the first three examples are not about working across legal orders, what they teach about humility in working across differences generally contain analogous lessons.

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<sup>22</sup> Leslie Pinder, *The Carriers of No after the Land Claims Trial*, online: <<http://opie.wvnet.edu/~jelkins/lawyerslit/pinder/carriers%20of%20no.pdf> at 1116>. Quote from the *Delgamuukw*, *infra* note 42.

<sup>23</sup> *Murdoch v Murdoch*, [1975] 1 SCR 423 at 425, para 1.

<sup>24</sup> Borrows, “On the Road Home,” *supra* note 1. This question is also asked by Edna Manitowabi, “Grandmother Teachings” cited in Leanne Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence, and a New Emergence* (Winnipeg: Arbeiter Ring, 2011) at 35–39.

## A. Religion

Imagine you are a doctor. You are working with a patient, a young woman, who needs a blood transfusion in order to remain alive. The process is highly successful, and there is little doubt she will recover once the procedure is over. You find out that the young woman is a member of the Jehovah's Witness faith, and, therefore, she has denied the transfusion. Do you accept her beliefs and essentially let her die? This is a scenario that the Supreme Court of Canada adjudicated in 2009 in the case *A.C. v Manitoba (Director of Child and Family Services)*. Benjamin Berger discusses how Justice Ian Binnie's dissenting opinion is a mix of both humility and fidelity to the constitutional rule of law.<sup>25</sup> Berger points to a particular quote by Binnie J that shows his humility, yet fidelity, to the rule of law as he balances the young woman's rights under the *Canadian Charter to Rights and Freedoms* to follow her religious beliefs, although it is outside the norm of his own cultural view: "The Court has ... long preached the values of individual autonomy. In this case, we are called on to live up to the s. 7 promise in circumstances where we instinctively recoil from the choice made by A.C. because of our belief (religious or otherwise) in the sanctity of life."<sup>26</sup>

Binnie J believed that the young woman's right to autonomy in making the best decision according to her own beliefs should not be hindered even if he and a large portion of society would disagree with her decision. His thought process provides insight into how the approach of reasoning on a balance of probabilities in a *Charter* case (the *Oakes* test) provides judges space to extend beyond their own mind and put themselves into a different worldview.<sup>27</sup> While a section 7 analysis doctrine does not demand active cultivation of humility, it does provide room to ask questions about "pressing and substantial purpose," "rational connection," "minimal impairment," and "overall balancing" of whether the effects would be overly deleterious.<sup>28</sup> These questions are one formula for understanding how a person such as A.C. might be affected if her notion of what is best is denied.

Berger wisely cautions us by saying that fidelity to the constitutional rule of law allows decision makers to stave off the relativism of excess humility.<sup>29</sup> In other words, there are times when people should interfere with others' ideas of what is best. The difficulty is in knowing when truth exists as an absolute beyond beliefs. In the mid-nineteenth century, the Hungarian physician Ignaz Semmelweis learned that 10 percent of women in his clinic died of childbed fever.<sup>30</sup> A neighbouring clinic had a death rate of only 4 percent. After investigating, he discovered that since his was a teaching clinic, doctors would go directly from performing autopsies to delivering babies. He concluded that the corpses contaminated their hands and caused deadly fevers in the women. The doctors scorned him when Semmelweis recommended they all wash their hands frequently with a disinfectant. His conclusions

<sup>25</sup> Benjamin Berger, *Law's Religion: Religious Difference and the Claims of Constitutionalism* (Toronto: University of Toronto Press, 2015), ch 4 "The Stories We Live By: Religious Diversity and the Ethics of Adjudication."

<sup>26</sup> *AC v Manitoba (Director of Child and Family Services)*, [2009] 2 SCR 181 at para 219, as quoted in Berger, *supra* note 25. *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>27</sup> *R v Oakes*, [1986] 1 S.C.R. 103

<sup>28</sup> Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 5th ed (Toronto: Irwin Law, 2013).

<sup>29</sup> *Ibid.*

<sup>30</sup> Kay Codell Carter & Barbara R Carter, *Childbed Fever: A Scientific Biography of Ignaz Semmelweis*, (New Brunswick, NJ: Transaction Publishers, 2005)



contradicted the “truths” of the other doctors. He made it a policy anyway, and the death rate dropped by 90 percent.

This example suggests that perhaps truth is a wide spectrum where the various ways of being can fit, yet sometimes an act or idea is off the spectrum of truth and should be changed. It can be as simple as washing one’s hands, yet pride and closed-mindedness prevents us from changing our actions. While Binnie J may have given weight to the importance of autonomy in A.C.’s decision, one could easily see how the majority reached another conclusion. Humility is not about viewing oneself as being above or below another. It is instead seeing all life as equally deserving of respect. Space must be taken up as necessary, just as it must be given away at times as well.<sup>31</sup>

## B. Gender

In the literature on judicial humility (most of which has come out of the United States), there is a strong message regarding the importance of diversity in the courtroom to ensure varying perspectives are heard.<sup>32</sup> As Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court wrote: “We women judges all have had the experience of being ‘outsiders’ in the American legal system, and this experience can make a difference on the bench. Each of us comes from a world that defines a woman’s role as wife, homemaker, mother ... I do not think being different is the equivalent of being wrong. Being different is okay.”<sup>33</sup> Abrahamson J expresses that while differences could be seen as a disadvantage, it could also be interpreted as a great benefit as it creates a deeper sense of empathy in an individual and allows for varying views.

In my first year of law school in Toronto, an email was sent around to the student body directed towards women. The message informed us that there would be a special seminar over the weekend to teach women how to “take up more space.” The description of the lecture cited statistics about how women are socialized to be more quiet, non-adversarial, gentle, and empathetic. It explained that this is a detriment when practising in Canada’s adversarial legal system. The workshop was to focus on the ways that women could take up more space and develop bolder, more assertive, non-emotional ways of being. While I think there can certainly be value in developing these attributes, I wondered what it might be like to have a weekend workshop focused on the development of more traditionally “feminine” values.<sup>34</sup> It seemed to me then, as it does now, that we should be helping the legal system by promoting kinder, more gentle, and, yes, humble people.<sup>35</sup>

<sup>31</sup> For some insightful Jewish teachings on what is meant by humility and taking up space, see Alan Morinis, *Everyday Holiness: The Jewish Spiritual Path of Mussar* (Boston, MA: Shambhala Publications, 2008) at 45–54.

<sup>32</sup> Robert Rubinson, “The Polyphonic Courtroom: Expanding the Possibilities of Judicial Discourse” (1996) 101:1 Dickinson L Rev 3; Jose M Lopez, “Living on the Diversity Track-On the Evolution of a Bilingual Multicultural Approach to Judging” (2009) 48 Judges Journal 25;

<sup>33</sup> Justice Shirley S Abrahamson, “The Woman Has Robes: Four Questions” (2010) 14:3 Golden Gate UL Rev 4.

<sup>34</sup> Stephen Ellmann, “The Ethic of Care as an Ethic for Lawyers” (1992–1993) 81 Geo LJ 2665, n 2, 3; Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development*, (Cambridge, Mass.: Harvard University Press, 1982); Mary Field Belenky et al., *Women’s Ways of Knowing: The Development of Self, Voice, and Mind*, (New York, NY: Basic Books, Inc., 1986).

<sup>35</sup> This is one of the goals express in mindfulness in legal education, see Tim Iglesias, “Offering and Teaching Mindfulness in Law Schools” (2014–2015) 49 USF L Rev 24; Leonard Riskin, “Mindfulness: Foundational Training for Dispute Resolution” (2004) 54 J Leg Ed 79.

In an article entitled, “Will Women Judges Really Make a Difference?” then Justice Bertha Wilson described how she viewed her appointment to the Supreme Court of Canada as the first female judge in 1982.<sup>36</sup> Women from all over the country phoned or wrote her with excitement. They expressed the sentiment that now their voices would be heard. It was a new era for women. She asked herself: “So why was *I* not rejoicing? Why did *I* not share the tremendous confidence of these women?” She wrote:

First came the realization that no one could live up to the expectations of my well-wishers. I had the sense of being doomed to failure, not because of any excess of humility on my part or any desire to shirk the responsibility of the office, but because I knew from hard experience that the law does not work that way. Change in the law comes slowly and incrementally; that is its nature. It responds to changes in society; it seldom initiates them. And while I was prepared – and, indeed, as a woman judge, anxious – to respond to these changes, I wondered to what extent I would be constrained in my attempts to do so by the nature of judicial office itself.<sup>37</sup>

She went on to describe how judges are cautioned against exercising bias and how this is almost impossible to achieve.<sup>38</sup> Everyone has a set of experiences that colours how they see the world.<sup>39</sup> Ultimately, Wilson concluded that women often do see the world differently from men and that women judges when hearing a case will bring that different view forward in positive ways to better represent the female half of society. The increasing level of gender diversity in the legal profession is evidence of humility, as many are recognizing that perhaps we need to create new stories surrounding gender roles.<sup>40</sup>

### C. Aboriginal Rights

Section 35 of Canada’s *Constitution Act* presents several calls to humility in its interpretation. It states, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”. The resulting jurisprudence dealing with Aboriginal rights and title holds that

<sup>36</sup> Wilson J cites several other interesting articles on the topic. NJ Wikler, “On the Judicial Agenda for the 80s: Equal Treatment for Men and Women in the Courts” (1980) 64 *Judicature* 202; RS Abella, “The Dynamic Nature of Equality” in S Martin & K Mahoney, eds, *Equality and Judicial Neutrality* (Toronto: Carswell, 1987) 3 at 8–9.

<sup>37</sup> Bertha Wilson, “Will Women Judges Really Make a Difference?” (1990) 28 *Osgoode Hall LJ* 507, online: <<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1764&context=ohlj>>.

<sup>38</sup> An interesting case that raises important issues regarding judges and bias is found in *R v S (RD)*, [1997] 3 SCR 484. For commentary, see Richard Devlin & Dianne Pothier, “Redressing the Imbalances: Rethinking the Judicial Role after *R. v. R.D.S.*” (1999–2000) 31 *Ottawa L Rev* 1; Christine Boyle et al, “*R. v. R.D.S.*: An Editor’s Forum” (1998) 10 *CJWL* 159.

<sup>39</sup> Critical race scholars make this point in strong ways. See Derek Bell, “The Legal Academy and Minority Scholars” (1990) 103 *Harv L Rev* 1855; R Delgado, “Mindset and Metaphor” (1990) 103 *Harv L Rev* 1872; A Harris, “Essentialism and Feminist Theory” (1990) 42 *Stanford L Rev* 581; D Kennedy, “A Cultural Pluralist Case for Affirmative Action in Legal Academia” (1990) *Duke LJ* 705; M Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations” (1987) 22 *Harvard Civil Rights-Civil Liberties L Rev* 323 [Matsuda, “Looking to the Bottom”]; M. Matsuda, “Affirmative Action and Legal Knowledge: Planting Seeds in Plowed Up Ground” (1988) 11 *Harv Women’s LJ* 1; RA Williams, “Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color” (1987) 5 *Law and Inequality* 103.

<sup>40</sup> A powerful article that makes this point is Jennifer Nedelsky, “Embodied Diversity and the Challenges to Law” (1996–1997) 42 *McGill LJ* 91.

the “Aboriginal perspective” must be taken into account, including honouring Indigenous laws as a way to work towards reconciliation.

In *R. v Van der Peet*, former Chief Justice Antonio Lamer emphasized the point that “the only fair and just reconciliation is ... one which takes into account the aboriginal perspective while at the same time taking into account the perspective of the common law.”<sup>41</sup> True reconciliation will, equally, place weight on each.”<sup>42</sup> Furthermore, in *Delgamuukw v British Columbia*, in its determination of the legal source and nature of Aboriginal title, the Supreme Court of Canada held that “the source of aboriginal title appears to be grounded both in the common law and in the aboriginal perspective on land; the latter includes, but is not limited to, their systems of law. It follows that both should be taken into account in establishing the proof of occupancy.”<sup>43</sup> The decision in *R. v Tsilhqot’in* recognized the existence of Aboriginal title over Tsilhqot’in traditional territory, including the right to govern those lands according to their own laws.<sup>44</sup> These doctrines are appealing because, in theory, they put Indigenous law on equal ground with colonial law and vice versa. Reconciliation must be an honouring of multiple perspectives, not one over another. These doctrines, however, have proven to be difficult to apply.

Hamar Foster compares entering a multicultural legal world to looking at an optical illusion.<sup>45</sup> He says ignorance also plays a part in the inability to see another perspective: “If we do not educate ourselves about others we will invariably make incorrect, and often damaging, assumptions about them.”<sup>46</sup> In addition to ignorance, he adds that racism, or at least prejudice, prevents people from seeing tribal law as actual law flowing from reasoning people who are not in any way savage or inferior. The stories he shared in his article, “One Good Thing: Law, Elevator Etiquette, and Litigating Aboriginal Rights” show how Canadian colonial law takes up too much space at the expense of Indigenous law.<sup>47</sup>

Lawyer and writer Leslie Pinder wrote of her experience participating in the *Delgamuukw* trial. She shared how uncomfortable it was for her to be a part of that experience and how embarrassing the blindness of the judges was. She reflects on lawyers’ roles in creating meaning in the following way:

What knowledge can be found to sustain us when we have destroyed the stories. Lawyers assemble the evidence with words cut from the environment; they hold up as evidence, hacked up pieces of meaning. Lawyers don’t have to take responsibility to construct a world. We charge ourselves only to destroy. We say no. We are the civilized, well-heeled, comfortable carriers of no.<sup>48</sup>

<sup>41</sup> *R v Van der Peet*, [1996] 2 SCR 507.

<sup>42</sup> *Ibid* at para. 50.

<sup>43</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 [*Delgamuukw*].

<sup>44</sup> *R v Tsilhqot’in*, [2014] 2 SCR 257 at para 35: “The Aboriginal perspective focuses on laws, practices, customs and traditions of the group (*Delgamuukw*, at para 148). In considering this perspective for the purpose of Aboriginal title, one must take into account the group’s size, manner of life, material resources, and technological abilities, and the character of the lands claimed.” B Slattery, “Understanding Aboriginal Rights” (1987) 66 Can Bar Rev 727, 758, quoted with approval in *Delgamuukw*, *supra* note 42 at para 149.

<sup>45</sup> Hamar Foster, “One Good Thing: Law, Elevator Etiquette, and Litigating Aboriginal Rights” (2010) 37 Advocate Quarterly 66.

<sup>46</sup> *Ibid* at 68.

<sup>47</sup> *Ibid*

<sup>48</sup> Leslie Pinder, *The Carriers of No after the Land Claims Trial*, online: <<http://opie.wvnet.edu/~jelkins/lawyers-lit/pinder/carriers%20of%20no.pdf> at 1119>.

Her thoughts throughout the article speak to the importance of not running away from the discomfort that comes when working across differences. She says: “Go right up to the edge of embarrassment, take yourself there, go over the edge.”<sup>49</sup> She did not suggest that the judges or lawyers were incapable of understanding Gitksan law but, rather, that they were too embarrassed and uncomfortable to take the evidence presented to them as legitimate and rich.

In summary, practices of humility are not absent from Canadian law. It can be employed in various ways including through the *Oakes* analysis in *Charter* cases, diversifying the bench, and through Aboriginal rights doctrines of taking into account the “Aboriginal perspective,” and through reconciliation. Decision making will be strengthened through even more conscientious efforts at practising humility, along with other important principles.

#### IV. HUMILITY AND ANISHINAABE LAW

The Anishinaabe Nation’s land base is located around the Great Lakes region and spans west into the prairies and east into Quebec. The Anishinaabe have various creation stories. Some describe how they came from the corpses of animals after the great flood (this was also the birth of the *dodem* or clan system).<sup>50</sup> Stories also tell how the Anishinaabe came from the east and travelled west, following the *megis* shell.<sup>51</sup> They began to settle once they reached the Great Lakes area. The name, Anishinaabe, is a reminder of an ideal regarding how humans should live. “*Nishi*” means good. “*Naabe*” means being. It is with the goal to be good in mind that people structure their relations with one another. Because we fall short of our best intentions, legal responses are developed to ensure harms are mitigated. Another interpretation of the name sheds insight into humility. The word could also stem from *anishinaa*, meaning “for nothing.”<sup>52</sup> The idea is we are nothing without the Creator or without a spiritual life. A life of reflection brings meaning and substance. We are *shawenimaawag*, blessed and pitiful. We are to live by this humility, a remembrance that we are a small though beautiful part of the great creation.<sup>53</sup> This section considers four practices of Anishinaabe law that work to cultivate humility. The first is linguistic structure, the second is leadership structure, the third is ceremonial practice, and, finally, I conclude with a discussion of *akinoomaage* (learning from the earth).

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<sup>49</sup> *Ibid* at 1120.

<sup>50</sup> Pamela Williamson & John Roberts, *First Nations Peoples* 2d ed (Toronto: Emond Montgomery, 2004); Darlene Johnston, “Connecting People to Place: Great Lakes Aboriginal History in Cultural Context,” prepared for the Ipperwash Commission of Inquiry, <[https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/transcripts/pdf/P1\\_Tab\\_1.pdf](https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/transcripts/pdf/P1_Tab_1.pdf)>.

<sup>51</sup> *Ibid*, also printed in Wanda D McCaslin, *Justice as Healing: Indigenous Ways* (St. Paul, MN: Living Justice Press, 2005) at 93–97.

<sup>52</sup> “The Etymology of Anishinaabe” 2:1 (1995) Oshkaabewis Native Journal 19.

<sup>53</sup> Peter Kelley, Grand Chief Treaty Council Number Three in Canada, echoed this thought when he defined Anishinaabe as “one who humbles himself before the Creator.” Kelley says Ojibwe humble themselves in all their religious ceremonies, especially the vision quest. When on a vision quest, the Indian must not even kill a mosquito, to constantly remember the sacredness of life and his “nothingness.” Visions only come to the humble.

### A. Linguistic Structure

Anishinaabemowin is a member of the Algonquian language family.<sup>54</sup> It is verb oriented. For example, if you go to a pow wow, you would say in English: “They are having a give-away” to describe the gifts given at the end of the pow wow. The giving of gifts in this sentence has been made into a noun – a “give-away.” Anishinaabemowin keeps the action of gift giving in verb form, which would translate to be “they are giving away gifts.” A favourite example of mine of how verb oriented the language is can be seen in the word “blueberry pie” from the Leech Lake community in Minnesota.<sup>55</sup> It is *chigayatewemitigozhiminibaashkiminisaganibiitoosijiganizhegwaabikiniganibakwezhigan*, which literally translates to mean “old-time-French-man-exploding-blueberry-blueberry-sauce-layered-between-thing-bend-over-and-put-it-in-the-oven-bread.” While this particular element of the language does not speak to the concept of humility, I think it is important to recognize how powerful the differences in linguistic structure can actually be in how you see the world. A blueberry pie suddenly has a whole story when you use the Anishinaabe word.

Another distinctive element of the language is that nouns are marked for animacy. In English, what is seen to be devoid of life is imbued with spirit in Anishinaabemowin. This view of the world where humans and non-humans are part of the same living community with accompanying legal rights and obligations will be explored further in a later section of this article under the concept of *akinoomaagewin*. When you speak, you are forced through linguistic structure to acknowledge that the drum, the pipe, the beaver, or the pine tree are all animate beings.

In the summer of 2012 while home at the Cape Croker Reserve, I had an interesting conversation with Basil Johnston. I was working for the University of Victoria’s Indigenous Law Research Unit in the Accessing Justice and Reconciliation project.<sup>56</sup> Hannah Askew, my friend and coworker, and I had asked Basil about the author and lawyer Rupert Ross’ work and what he thought of it. Basil recounted a story. When Ross was trying to publish his first book, *Dances with the Ghost*, the book came to Basil for review.<sup>57</sup> He wrote to the publisher with one comment: “Publish it.” It became a bestseller for about ten weeks when it first came out and has subsequently received a lot of attention. Basil remembered something that stood out to him from the book that Ross himself did not fully understand since he did not speak Anishinaabemowin.

When Ross was working in the fly-in courts in northern Ontario in the Anishinaabe communities, people did not respond directly to the question “do you swear to tell the truth?” He said in our language the word for truth is *debwe*. It literally means “the best of your knowledge” or “truth in so far as you can know it.”<sup>58</sup> Embedded in the word for truth that was being asked in court (*debwe*) was an acknowledgement that perhaps there is something the speaker still does not know. Since life is a

<sup>54</sup> See generally Basil Johnston, *Anishinaubae Thesaurus* (East Lansing, MI: Michigan State University Press, 2007).

<sup>55</sup> Different words exist in different communities. While someone from northern Ontario would recognize the word for blueberry pie from this northern Minnesota reservation, it might not be the same word they use. Given the large geographic distance between communities, dialects can be quite distinct.

<sup>56</sup> For information on the Indigenous Law Research Unit project, see <<http://www.indigenousbar.ca/indigenouslaw/>>.

<sup>57</sup> Lawyer, author, and Indigenous rights advocate Rupert Ross explores how Anishinaabe laws interact with Canadian laws through his work experience in courts in northern Ontario. Rupert Ross, *Returning to the Teachings: Exploring Aboriginal Justice* (Toronto: Penguin Canada, 2006); Rupert Ross *Dancing with a Ghost: Exploring Indian Reality* (Oxford: Butterworth-Heinemann, 1992).

<sup>58</sup> Basil Johnston, *Anishinaube Thesaurus* (East Lansing: Michigan State University Press, 2007) at 154.

learning journey that we are all on, one cannot simply promise to tell the “full truth” in the way the community members were demanded to in court. *Debwe* speaks deeply to the importance of humility in our interactions with others.

## B. Leadership Structure

When the *Indian Act* came into effect in Indigenous communities across Canada, a “chief” system was set up.<sup>59</sup> The chief was elected by band members as the head leader, with councillors also elected to act with him or her to form a band council. When I lived in Eskasoni First Nation on Cape Breton Island (Unama’ki), Nova Scotia, the people I talked to had little regard for the band council system. They have a traditional system called the Sante Mawio’mi or the Grand Council.<sup>60</sup> It is composed of “*Keptinaq*” who are leaders within their districts or communities.<sup>61</sup> Every summer, they meet with other Mi’kmaq Nation members at the St Anne Mission on the Potlotek Reserve (Chapel Island). The event has special significance because it is when the “old laws” are lived to their ideal, and their religion, language, family, and culture harmonize. The *Indian Act*’s band council is not seen to be as large of an influence as the traditional structure.

In Anishinaabe communities, our leadership structure was run by *ogimaak*.<sup>62</sup> An *ogimaa* is a leader. Although the current chief of a community can be called an *ogimaa*, she or he is not the only one.<sup>63</sup> The community is full of *ogimaak* or people who are leaders over different areas such as music, medicine, caregiving, storytelling, engineering, cooking, law, and so on. *Ogimaa* derives from the verb *gidaaswin*, which means “to count.” *Ogimaa* means “one who counts his or her followers.”<sup>64</sup> To be an *ogimaa* or leader in Anishinaabe communities, it is not just that you have many followers. It is that you can count

<sup>59</sup> The goal of the *Indian Act*, RSC 1985, c I-5, was expressed as follows: “Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic.” Duncan Campbell Scott, testimony before the Special Committee of the House of Commons examining the Indian Act amendments of 1920, National Archives of Canada, Record Group 10, box 6810, file 470-2-3, volume 7, 55 (L-3) and 63 (N-3), quoted in John Leslie, *The Historical Development of the Indian Act*, 2d ed (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Branch, 1978).

<sup>60</sup> Jaime Youngmedicine Battiste (editor and contributing author), *Honouring 400 Years: Kepmte’tmnej*, Eskasoni First Nation (2010). See also see Jaime Battiste, “Understanding the Progression of Mi’kmaq Law (2008) 31 Dalhousie LJ 311.

<sup>61</sup> See *Introductory Guide to Micmac Words and Phrases*, compiled by Evan Thomas Pritchard, annotations by Stephen Augustine, observations by Albert Ward (Rexton, NB: Resonance Communications, 1991). Another version is recounted by Reverend D MacPherson in *Souvenir of the Micmac Tercentenary Celebration* (St Anne de Restigouche, QB: Frères Mineurs Capucins, 1910); James (Sakej) Youngblood Henderson, “Mikmaq Tenure in Canada” (1995) 18 Dalhousie LJ 195 at 217–236.

<sup>62</sup> Lindsay Borrows, *Otter’s Journeys: Anishinaabek Law and Language Revitalization* (forthcoming).

<sup>63</sup> *Champagne v Little River Band of Ottawa Indians*, Case no 06-178-AP (2006) was heard in an Anishinaabe tribal court. It involved a leader who was charged with fraud. The introductory paragraph recounts a Nanabozho story of greed and the arguments go on to relate this Nanabozho story to the requirements of leadership or being an *ogimaa*. See Little River Band of Ottawa Indians, <<https://turtletalk.files.wordpress.com/2013/05/lrb-v-champagne-ii.pdf>

<sup>64</sup> Basil Johnston taught me this principle. This principle was also discussed by Anton Truer, who writes: “The Ojibwe word for leadership – *ogimaawiwini* – literally means “to be esteemed” or “to be held to high principle.” It comes from the morpheme *ogi*, meaning high, found in other Ojibwe words such as *ogichidaa* (warrior), *ogidakamig* (on top of the earth) and *ogidaaki* (hilltop).” Anton Truer, *The Assassination of Hole in the Day* (Vancouver: Borealis Books, 2011) at 14.

your followers. Leaders know who they are leading and in what capacity. They are part of a whole. It would be impossible to have just one leader given the variety of needs in life. A saying that I hear at home is that the problem with politics is there are too many chiefs and not enough Indians. There is humility built into a structure where there are many leaders. Although one has expertise in a particular area, they are also enmeshed in a web of relations to which they look for help in other areas.

Another aspect of the traditional governance structure is related to the *dodem* or clan system.<sup>65</sup> When my great-great-great grandpa Peter Kegedonce Jones signed the 1854 treaty,<sup>66</sup> he did not sign with his Christian name but, rather, with a drawing of our *dodem*, the otter.<sup>67</sup> This shows an important aspect of Anishinaabek *Inaakonigewin* or law – negotiating a sharing of land is not done as an individual. He saw himself as representing his people – the otter clan. While some might question this act as an example of humility (after all, someone could just sign the clan’s symbol without their approval), it could show that one is not thinking merely of herself but also of the collective.<sup>68</sup> Overall, these decentralized systems of governance with power spread out among a wide variety of people may have worked to foster humility.<sup>69</sup> Again, I continually want to reiterate it was not perfect, and humility is only one important part of a healthy legal system.

### C. Ceremonial Practices

In 2012, a Ted Talk by Amy Cuddy entitled “Your Body Language Shapes Who You Are” became one of the top ten most popular talks in the forum’s history.<sup>70</sup> It currently has over six million views. Cuddy is a researcher and professor at Harvard Business School specializing in body language and how it informs how you feel about yourself and how others view you. Her thesis is essentially if you make poses to make yourself “big,” such as standing with your feet firmly planted, hands on hips, head up, you are more likely to be perceived as competent and therefore gain success. I was talking to a friend about this thesis one afternoon. We had both made the observation that it seems almost opposite to what we are taught to do in our spiritual traditions where one finds strength by looking inwards, kneeling, bowing the head, or making offerings.<sup>71</sup> In Anishinaabe spiritual practices, the Creator is the source of

<sup>65</sup> Patricia D Mcguire, “Restorative Dispute Resolution in Anishinaabe Communities: Restoring Conceptions of Relationships Based on *Dodem*,” National Centre for First Nations Governance (2008).

<sup>66</sup> This history is described in John Borrows, “A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government” (1992) 30:2 Osgoode Hall LJ 291.

<sup>67</sup> Darlene Johnston, *Litigating Aboriginal Identity* (on file with author); Heidi Bohaker, “Reading Anishinaabe Identities: Meaning and Metaphor in *Nindoodem* Pictographs” (2010) 57 *Enthnohistory* 11.

<sup>68</sup> Edmund Jefferson Danziger, Jr, *The Chippewa of Lake Superior* (Norman, OK: University of Oklahoma Press, 1978) at 23: “A Band Civil Chief had no coercive force. Control over affairs depended entirely upon personal prestige and the demands of the moment ... Civil Chiefs, usually men who inherited their position, also presided at band councils and represented their people at common and grand councils. All men and women past the age of puberty were included in open discussions of the band council.”

<sup>69</sup> The diffuse nature of Anishinaabe historic governance is described in Rebecca Kugel, *To Be the Main Leaders of Out People: A History of Minnesota Ojibwe Politics, 1825–1898* (East Lansing, MI: Michigan State University Press, 1998).

<sup>70</sup> Amy Cuddy, “Your Body Language Shapes Who You Are,” TED Talks, <[http://www.ted.com/talks/amy\\_cuddy\\_your\\_body\\_language\\_shapes\\_who\\_you\\_are?language=en](http://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are?language=en)>.

<sup>71</sup> For an example, see Michael McNally, *Honoring Elders: Aging, Authority, and Ojibwe Religion* (New York: Columbia University Press, 2009) at 8.

the strength, and we humble ourselves to that source.<sup>72</sup> How then should we understand the role of humility in Anishinaabe ceremonial practices if it seems rather opposite to Cuddy's research?

Again, humility is not about making yourself too small or too big. It is about taking up the right amount of space. There is room for many practices to ensure people find themselves in a position of openness. In Anishinaabe alternative dispute resolution forums, a proceeding might begin with a smudge.<sup>73</sup> A person turns their attention to prayer as they petition for a clear mind, open eyes, ears to hear, and a good heart.<sup>74</sup> They recognize they come with limitations and need help to achieve the best result. A proceeding might also begin with a drum song.<sup>75</sup> The drumbeat is to connect people to the heartbeat of the earth. What we call spirit syllables are the parts of the song that have no semantic meaning. It does not matter if people know what those sounds mean because their message is for the spirit realm. An elder might offer a prayer to invoke a sense of humility.<sup>76</sup> These prayers use the language of pity, smallness, and contain verbal recognitions of how blessed we are to be alive. By putting ourselves in a space to recognize a broader vision of who we are and how we fit into the world, decision making is influenced.

#### D. *Akinoomaage*

Another important practice to cultivate humility is that of *akinoomaagewin*. The word loosely means "to teach." It literally means "that which points to the earth." The idea is that we learn by looking to the earth – our teacher. The rocks, animals, plants, water, and sun all contain lessons through which we can analogize and distinguish in our own decision making. John Borrows talks about this in his article "Indigenous Love, Law and Land in Canada's Constitution." He gives the following example of how treaties were made in light of practices of *akinoomaage*. He writes:

One of the sources of environmental legal insight comes from watching the rivers flow, the grasses grow, and the sun shine. In fact, one of the strongest symbols used in describing the importance of Indigenous treaties is "as long as the shine shines, the grass grows, and the river flows". This representation, while possessing deeper meaning, emphasizes the perpetual nature of agreements to live together in peace, friendship and respect. Thus, we can more fully understand Anishinaabe treaties by examining how Anishinaabe people describe these natural processes.<sup>77</sup>

<sup>72</sup> For an example of Anishinaabe offerings, see Basil Johnston, *Ojibway Ceremonies* (Toronto: McClelland and Stewart, 1982) at 117–121.

<sup>73</sup> Online <<http://www.anishinaabemdaa.com/#/about/ceremonies/Ceremonies>>.

<sup>74</sup> The concept of goodness in Anishinaabe lifeways is described in D'Arcy Rheault, *Anishinaabe Mino-Bimaadiziwin: The Way of a Good Life* (Peterborough, ON: Debwewin Press, 1999).

<sup>75</sup> Basil Johnston, *Ojibway Ceremonies* (Toronto: McLelland and Stewart, 1982) at 31–41. Further information about Anishinaabe drumming is found in Thomas Vennum, *The Ojibway Dance Drum: Its History and Construction* (Minneapolis: Minnesota Historical Society, 2009); Frances Densmore & Smithsonian Institution, Bureau of American Ethnology, *Chippewa Customs*, reprint edition (Saint Paul, MN: Minnesota Historical Society Press, 1979) at 95–97, 107.

<sup>76</sup> Pebaamibines Dennis Jones (author) & Aza Erdrich (illustrator), *Daga Anishinaabemodaa: Let's Speak Ojibwe!* (Minneapolis: Wiigwaas Press, 2010).

<sup>77</sup> John Borrows, "Indigenous Love, Law and Land in Canada's Constitution" in Arthur Schfar, Steven Lecce, eds., *Fragile Freedoms: Human Rights in Global Context* (London: Oxford University Press, 2015) (forthcoming)



If the sun, the grass and the river, as this example suggests, are all sources of environmental legal insight, it seems important we live harmoniously with those teachers. I am frequently impressed that it seems to be Indigenous peoples worldwide that are at the forefront of standing up for the rights of the environment.<sup>78</sup> When a rock is not seen as existing to be fracked or blown up, and trees do not exist just to be transformed into products for humans, the way we make decisions changes.<sup>79</sup>

## V. CONCLUSION: INCORPORATING HUMILITY

This article has considered the ways in which law is a site of discomfort. Law places diverse peoples together in complicated situations. It challenges us to step outside of ourselves and consider new ways of being. Canadian colonial law has tried to account for the need to humble oneself to a position of being teachable through *Charter* analyses and diversifying the bench and through Aboriginal rights doctrines of taking into account the “Aboriginal perspective” and reconciliation. The article has also considered how Anishinaabe law fosters humility through linguistic structure, leadership structure, ceremonial practices, and *akinoomaage*.

The article began with a personal experience of moving to Arizona from Ontario when I was in Grade 7. In response to the difficulty I had adjusting, I was told “there is no growing in a comfort zone, and no comfort in a growing zone.” I then invited you to reflect for a moment on a time when you too were completely out of your comfort zone, how that made you feel, and how it shaped you today. I invite you to reflect now on a related, though different, set of questions. Considering both the Canadian colonial law and Anishinaabe legal practices of humility, what will you do in your life to more actively cultivate a way of being that is “down-to-earth,” open, and taking up the right amount of space? It is not a question to be asked or answered once. Humility is an ongoing process. As Indigenous legal traditions are starting to become more mainstream in the colonial legal landscape of Canada, it will be interesting to see what syncretic developments will occur. My hope is that people do not shy away from the challenge of working across legal orders but, instead, replace timidity, fear, and pride with courage, gratitude, and humility.

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<sup>78</sup> Deborah McGregor, “Coming Full Circle: Indigenous Knowledge, Environment, and Our Future” (2004) 28 *American Indian Quarterly* 385; Isabel Altamirano-Jiménez, *Indigenous Encounters with Neoliberalism: Place, Women and the Environment in Canada and Mexico* (Vancouver: UBC Press, 2013); see also reports from James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, <<http://unsr.jamesanaya.org>>.

<sup>79</sup> David Suzuki wrote: “I believe the overarching crisis resides in the modern, urban human mind, in the values and beliefs that are driving much of our destructiveness ... The way we see the world shapes the way we treat it. If a mountain is a deity, not a pile of ore; if a river is one of the veins of the land, not potential irrigation water; if a forest is a sacred grove, not timber; if other species are biological kin, not resources; or if the planet is our mother, not an opportunity – then we will treat each one with greater respect. That is the challenge, to look at the world from a different perspective.” David Suzuki, *The David Suzuki Reader: A Lifetime of Ideas from a Leading Activist and Thinker*, revised ed (Vancouver: Greystone Books, 2014) at 10.