

“From Many Peoples, Strength”: Towards a Postcolonial Law and Literature¹

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There is no human being who is not the product of every social experience, every process of education. . . . Indeed, even if it were possible, a judge free of this heritage of past experience would probably lack the very qualities of humanity required of a judge. Rather, the wisdom required of a judge is to recognize, consciously allow for, and perhaps to question, all the baggage of past attitudes and sympathies that fellow citizens are free to carry, untested, to the grave.

True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind. . . .

Canadian Judicial Council
Commentaries on Judicial Conduct (1991)

You cannot just ‘write the truth,’ you have to write it *for* and *to* somebody, somebody who can do something with it.

Bertolt Brecht “Writing the Truth: Five Difficulties”

To promote legal cultures that fulfill their mandate to create and sustain a democratic society requires rethinking conceptual, institutional, cultural, legal, and other boundaries. If culture is what people do habitually and hence often unthinkingly, then cultural critique means probing the terms, rationality, and knowledge a particular culture takes for granted, and/or enthusiastically imposes on those it colonizes. Only in understanding culture in the plural and as a set of historically contingent practices and protocols can we develop means of improving or replacing what at a particular time and place seems to be the sole or the “natural” way to think, act, and interact. Only by doing so can we confront “privileged innocence” (McIntyre) and overcome “the wall

of ignorance” (Ndebele 336) constructed by colonial apparatuses and dominant knowledge paradigms that sustain domination. And the decolonization of a postcolonial law and literature worthy of the name can proceed effectively only with the assistance and authority of those construed as colonized others, as Paulo Freire among others has argued, and in the space “between law and custom” recently mapped by Peter Karsten for the “lands of the British diaspora.”

My purpose in sharing my experience as a non-Aboriginal woman trained in literary study and cultural theory, teaching interdisciplinary seminars in a Law College, and working collaboratively with Aboriginal scholars is to try to rearticulate legal and literary thinking/teaching in order to further the reciprocal acculturation of Aboriginal and non-Aboriginal precepts and practices the Supreme Court of Canada seeks in recent groundbreaking decisions, including *Van der Peet*, *Delgamuukw*, and *Gladue*. These decisions show how inadequate to the task of dismantling ideological obstructions and enabling a postcolonial justice are the autonomy and good intentions of the Court. Yet it is a task in which we all have an interest—and an obligation and opportunity to use our knowledge and to learn from Aboriginal scholars and writers (to whose work I am greatly indebted) to make a difference. We have all, though not equally, been affected by what Mi’kmaw scholar Marie Battiste calls “cognitive imperialism” and have much to gain from “unfolding the lessons of colonization,” learning from diverse perspectives, and seeing “the many sides of our confinement, our box” (xvi–xvii). Source of and sanction for the brutal simplicities of complex identities collapsed into the crude calculus of Aboriginal and non-Aboriginal difference, for example, that colonial box constructs cultural divides that keep us firmly within the status quo. Unpacking the historical inscription of cultural divides and the law’s participation in the creation of difference is the beginning of redress. As Njabulo S. Ndebele argues, “It is justice we must demand, not guilt. . . . The demand for justice . . . is more immediately and concretely threatening: *it keeps our attention firmly on the search for the actual process of redress.*” To do otherwise, Ndebele concludes, is to neglect the past so “deeply embedded in the present” and “to postpone the future” (340–43).

As my epigraphs suggest, I am interested in intellectual and social formations and what they can mean for decision-making and the dissemination of knowledge useful within and beyond the academy, within internally conflicted yet cohesive communities. When writers and researchers deny the relational nature of all identity and meaning, and the embeddedness of discourses in larger cultural contexts, disciplinary strength (or depth and breadth) doubles as sterility. When such writers and researchers operate in enclaves, they are obstructed by the very institutional structures that remain unexamined because apparently so “natural” or “proper” and incidentally lucrative.

It is here that a postcolonial interdisciplinary law and literature, a form of Gayatri Spivak’s disciplinary “interruption” (21), can usefully unsettle disciplinary formations, terms, and assumptions and help unpack and unsettle more thoroughly Eurocentric systems within law and literature—systems that sustain oppression and suppress relationality without acknowledging their own role in the process. Such oppressive systems remain firmly in place in legal and educational institutions where Aboriginal or Indigenous knowledge is too often treated as at best a supplement to Eurocentric thought—the privileges and priorities of which are as invisible as they seem natural and benign:

Alienation is to the oppressed what self-righteousness is to the oppressor. Each really believes that their unequal relationship is part of the natural order of things or desires by some higher power. The dominator does not feel that he is exercising unjust power and the dominated do not feel the need to withdraw from his tutelage. The dominator will even believe, in all good faith, that he is looking out for the good of the dominated, while the latter will insist that they want an authority more enlightened than their own to determine their fate. (Noël 79)²

While recent decisions offer important new paradigms, the Courts have evidently gone as far as they can within legal protocols to reconceive terms and categories to achieve redress and now look to dialogue across disciplines and cultures to help think through issues of authority, identity, and difference. If culture has always supported and supple-

mented the law's efforts to regulate human behaviour, legal studies has not always been attentive to the defining characteristics of its relation to the broader culture(s) it inhabits and purports to serve.³ If legal argument too depends on the culture of the expert, on the academic capacity to present argument, it is a culture and dependency so habitual as to resist and resent conscious and critical scrutiny. All this despite the challenges and best efforts of Critical Legal Studies, Critical Race Theory, and Feminist Legal Studies.⁴ What remains invisible is the complicity of knowledge economies—buttressed by an exaggerated faith in (predominantly White male) expert testimony—in producing and reproducing identities and difference, inequalities and injustices.

The result is that Aboriginal peoples in the justice system are reduced to objects of the expert gaze, “preserved, dissected, analysed, written-about, and, above all, owned, controlled, appropriated” (Wright 117), their experiential or local knowledge rendered invalid even as they are forced to bear the burden of proof. The expert gaze, as Frantz Fanon argues, repeats the “perverse logic” of colonialism whereby it “distorts, disfigures, and destroys” the “past of an oppressed people” (qtd. in Lawrence 23) and creates what Mi'kmaw professor Bonita Lawrence calls the “stick figures” of non-Indigenous acts of excavation (24). When Aboriginal peoples “say today that they have had to go to court to prove they exist, they are speaking not just poetically, but also *literally*” (Culhane 48). And there is no denying the costs of such defensive postures and the charges of special pleading they typically entail. What Mohawk professor Patricia Monture-Angus recommends is a refocusing of energies and analyses, “turning the conversation around so that Canada is required to be accountable for the wrongs it has perpetuated an articulation of their role rather than a repackaging of Aboriginal thought” (*Thunder* 253).

Thus, as important as interdisciplinary work to progressive scholarship and transformative practice are Aboriginal modes of thinking and experiencing that understand themselves as always already relational, and do so within historically specific understandings of socially organized power. Only with such assistance can the Courts “entertain and act upon different points of view with an open mind,” as the Canadian

Judicial Council advises, and achieve that “enlargement of mind” that the Court considers “not only consistent with impartiality,” but also “its essential precondition” (*R.D.S.* at para. 42). If there is no avoiding power imbalances or the pattern of inclusion/exclusion in any institutional structure or power-knowledge matrix, we still have options other than repeating the patterns of the past. Aboriginal activism’s double gesture of working within and against dominant theories and structures of legitimacy (Smith; Battiste) can help bring about postcolonial justice if we connect landmark legal judgments to their cultural antecedents and consequences in the so-called old and new humanities.

If the history of English Studies is deeply implicated in forms of internal and external colonization (Baldick; Hunter; Willinsky, for example), Cultural Studies, feminist, and postcolonial studies have done much to retrieve that history and redress its effects. Each of these projects emphasizes productive mediation, contexts of power, and the complex exchange involved in making meaning, extending understanding, and assigning value and status. Challenging traditional distinctions between high and low culture or between the marginal and the central, these so-called new humanities—and particularly the Indigenous humanities (see Len Findlay)—stress too the researcher’s/ writer’s responsibility for those framings of projects that help create and shape what many claim to discover existing fully formed “out there.” Far from disavowing power or retreating into research or art for its own sake, teacher-scholars in these areas actively work for more equitable participation in education and in a more diverse yet just society. Decolonizing methodologies, for Maori academic Linda Tuhiwai Smith, for instance, means challenging dominating universals, resisting the “systemic fragmentation” of disciplinary knowledges, and researching back “with a view to *rewriting* and *re/righting* our position in history” and settling “some business of the modern” (28–34).

Let me illustrate some of these general contentions by way of specific examples from the law and literature, beginning with three Supreme Court of Canada decisions before turning to legal education and the rich source of useful knowledge to be found in the Aboriginal cultural archive and current cultural renaissance. Although in the 1996 *Van der*

Peet decision, centering on the definition of Aboriginal rights recognized and affirmed by s.35 (1) of the *Constitution Act, 1982*, the Court explicitly cautions that “*Aboriginal* rights cannot . . . be defined on the basis of the philosophical precepts of the liberal enlightenment” (para. 19), it remains unable to attend equally to the authority of different legal cultures. The decision is structured around secure notions of the central and marginal or incidental, difference reduced to the singularity of “*the* Aboriginal perspective” (emphasis added) feminized in its association with sensitivity and its opposition to non-Aboriginal knowledge and expertise. Following the Dickson Court in the 1990 *Sparrow* decision, the Court agrees that it is “crucial to be sensitive to the Aboriginal perspective itself on the meaning of the rights at stake” (at para. 49, citing *Sparrow* p. 1112). Yet, that Aboriginal perspective must be “cognizable to the Canadian legal and constitutional structure” (at para. 49). Significantly, despite an avowed concern with the specifics of the case, the appellant (Dorothy Marie Van der Peet, a member of the Sto:lo nation “charged with selling [ten] fish caught under the authority of an Indian food fish licence, contrary to s.27 (5) of the *British Columbia Fishery (general) Regulations, SOR/84-248*”) is quickly obscured in the generalizing categorizing of legal discourse concerned with the fixing of Aboriginal identity, with developing “a basic analytical framework for constitutional claims of Aboriginal right protection under s.35.1” of the Constitution Act, 1982 and with the retrieving of some “pristine Aboriginal society,” as Justice L’Heureux-Dubé comments in her dissent (paras. 131 and 168).

The new test increases the burden of proof regarding Aboriginal rights, adding to the *Sparrow* test in the most abstract and impossible of terms: “an activity must be an element of practice, custom or tradition *integral* to the *distinctive* culture of the Aboriginal group claiming the right” and be “*central* to the Aboriginal societies that existed in North America prior to contact with the Europeans” while manifesting “*continuity* with” those customs etc. “that existed prior to contact” and “cannot be simply as an incident” (paras. 44–46; 55–63; emphasis added). In elaborating the test, the Court invokes the unquestioned authority of the *Concise Oxford Dictionary* on the distinction between *distinct* and *distinctive*—

despite recent studies of the history of the OED and the ideological activity of dictionary making more generally (Willinsky).⁵

Nor could *Delgamuukw* act on its efforts to achieve a new judicial analysis placing “equal weight” on different legal cultures, oral and written evidence. Although the Court took a bold step in recognizing the importance of culture and modes of crosscultural encounter and exchange in modern as well as traditional societies, it could not break with colonial thinking that depends on false polarities whereby oral storytelling is relegated to an exoticized cultural realm while written documentary history is constructed as authoritative and truthful. The Court insists that “the trial judge’s assessment of expert witnesses must be shown due deference” (para. 78), but nowhere is there sensitivity to the construction of expertise (and its need of its other—myth, fiction, untruth)—or to the exaggerated suspicion of oral evidence (Magner 68) and story in “dominant knowledge paradigms” (Razack *Looking* 36–55). In citing uncritically—and incompletely—the Report of the Royal Commission on Aboriginal Peoples (vol. 1, 33), the Court re-inscribes the opposition, “objective” written history/ “subjective” oral testimony even as it tries to respect oral history equally. The Court overlooks RCAP’s emphasis on the myth of progress underpinning traditional western humanist historiography, its presumptions about the naturalness of its separations (“the scientific from what is religious or spiritual”), its investment in distance and linearity, and the contrasts (“rich and complex” rather than “absolute”) between “Aboriginal and non-Aboriginal historical traditions” with “different purposes for revisiting the past, different methodologies and different content and forms” (vol. 1, 35). The Court likewise overlooks an endnote that warns about the presumption that oral accounts need validating in the written record, recommends an understanding of “the broader cultural and institutional contexts from which the oral history and the documentary record come,” and concludes that “divergent histories” be resolved “by mutually respectful negotiation” (vol. 1, 40–41). Thus, traditional disciplinary authority proves a major roadblock to new judicial thinking (Findlay “Just” 52–54).

Despite the best intentions of the Court, it (like the traditional law school) remains confined within the very enlightenment reasoning that

the legal and literary canon sustains (and is sustained by) and that the Court knows cannot properly define Aboriginal rights or render justice for Aboriginal peoples (*Van der Peet* at para. 19; *Gladue* at paras. 33–34).⁶ Aboriginal peoples in 1997 represented 12% of the prison population but only 3% of Canada's population; Saskatchewan's figures are an appalling 72% and 12% respectively [*Gladue* para. 58]). Though the US has the highest rates of incarceration at 649 inmates per 100,000 (Bauman 115), Canada is another world leader at 130 per 100,000 (*Gladue* para. 52). In registering these sorry statistics, the Court cites approvingly the Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide*:

The Canadian criminal justice system has failed the Aboriginal peoples of Canada—First Nations, Inuit and Métis people, on-reserve and off-reserve, urban and rural—in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice. (Cit. *Gladue* at para. 62)

But such a recognition treats these “different world views” as pre-existent, stable, and self-evident without understanding the history of the production and reproduction of difference.⁷

The *Gladue* decision is itself striking evidence of the Court's determination to alter “the method of analysis” (para. 33) in order to address the disproportionate incarceration of Aboriginal peoples by attending to their exceptional circumstances, as required by s 718.2(e) of the Criminal Code:

All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

While the Court strives to attend respectfully to those exceptional circumstances, give the mandated “fair, large and liberal construction

and interpretation,” and give “real force” to remedial objectives (paras. 32–34), it has failed to do so effectively. It remains confined by inherited Eurocentric categories of identity, motivation, and relevant circumstances, reducing the life of nineteen-year-old Aboriginal woman Jamie Tanis Gladue to social symptoms (poverty, abuse, educational and economic disadvantage) severed from their historical sources, individual from collective experience, private from public, present from past circumstances. The Court’s determined “impartiality” ironically blinds it to persistent biases that read to confirm existing beliefs about relevant circumstances and Aboriginal heritage without learning from the knowledge accumulated over centuries by Aboriginal peoples to revalue the “Indigenous Difference” (Macklem) and develop a more effectively healing legal hermeneutic.

Without coming to terms with the intersecting systems of domination, sexism and racism, and the particular histories of colonization, the Court cannot comprehend the circumstances that gave rise to the events in the life of Jamie Gladue sentenced to three years’ imprisonment for manslaughter in the killing (on her nineteenth birthday) of her twenty-year-old common law husband Reuben Beaver. Effectively, the Court isolates the appellant from the histories of her community and the violence of colonial experience. Instead the Court locates issues within bourgeois notions of “the spousal relationship,” and blames her as “the aggressor,” although she was five months pregnant and Beaver had already been convicted for assaulting her, while focusing on her need to correct her “problem” with alcohol. The result is that the British Columbia Court of Appeal decision is upheld and the appeal dismissed.⁸

Though for its efforts in such decisions, the Supreme Court has found itself accused of activism and reverse racism,⁹ it has struggled to change its terms and evidentiary standards. It has thus struggled to live up to its fiduciary duty to Aboriginal peoples and the constitutional recognition of Aboriginal rights and the Court’s obligation to render “a generous and liberal interpretation” of the constitutional provision, resolve ambiguity “in favor of Aboriginal peoples,” and “be sensitive to the aboriginal perspective on the meaning of the rights at stake” (*Van der Peet* at paras. 24–49). In rethinking those terms and evidentiary standards, the Court

might profitably attend to those who have written about dominant terms of engagement in Canadian society. Writing about the invisibility and elasticity of the whiteness that constitutes Canadian nation-building and legitimates its “myth-making intellectual elite,” Dionne Brand comments on the particular challenges facing those “excluded” from Canadian whiteness and especially the difficulties of protecting oppositional terms from co-optation by the state. In this context, “excluded”—already too benign a term “for the denial of history”—is but one of a number of terms that have become “bureaucratic glosses for human suffering,” while preserving white privilege and its “innocence.” From her perspective, “Access, representation, inclusion, exclusion, equity. All are other ways of saying race in this country without saying that we live in a deeply racialised and racist culture” (175–79). Monture-Angus is similarly concerned to reject dominant terms, including the divisive categories of the Indian Act, that keep people fighting for “assorted crumbs, rather than spending [their] energy shedding the shackles of [their] colonial oppression” (“Standing” 89–90). Reflecting on the mandate (“equality of opportunities for women”) of the Royal Commission on the Status of Women in Canada, legal scholar and now provincial court judge Mary Ellen Turpel-Lafond deconstructs culturally inappropriate dominant discourses that install White men as the measure of all things:

Equality is simply not the central organizing political principle in our communities. It is frequently seen by our Elders as a suspiciously selfish notion, as individualistic and alienating from others in the community. (180)

What is more, equality as sameness discourses have a habit of conveniently eliding the history of inequalities. Anatole France is but one of many critics who have shown the irrationality of the formal equality principles of the law that ignore as they legitimate unequal socio-economic and other relations:

The law in all its majestic impartiality forbids both rich and poor alike to sleep under bridges, to beg in the streets and to steal bread. (qtd. in Hunt 184)¹⁰

Helpful in understanding legal education's role in the sort of impasses experienced by the Court is African-American legal scholar Patricia Williams who challenges legal discourse and rationalities and their pretensions to universal truths by considering them not within "the four corners of a document" but within the broader framework of the disciplines of "psychology, sociology, history, criticism, and philosophy." Her belief is that "theoretical legal understanding and social transformation need not be oxymoronic"; that legal theory need not be a matter of "exclusive categories and definitional polarities" (8–9). Yet her work has been dismissed as "trendy" and "marginal"—or "nice and poetic": "This is a law review, after all. This is just a matter of style," claimed one editor supporting his editorial changes (7, 48). Even students concluded that what Williams taught was "not law" (95). But from Williams' point of view, "formalized, color-blind, liberal ideals" of legal writing ensure "an aesthetic of uniformity, in which difference is simply omitted" (48). The enabling (and enabled) fiction of neutrality, the myth of "a disinterested knowledge" that John Barrell identifies with "a particular *social class*" (92) as well as gender and race, explains the backlash against her own efforts to include those disadvantaged by a system that marginalizes the many by universalizing the experience of the few. One of the troubling consequences is the distorted public perception that "blacks commit most of the crimes" despite U. S. Bureau of Justice Statistics for 1986 that show whites accounting for 71.7 percent of all crimes and all others responsible for the remaining 28% (Williams 73). Such distorted perception is replicated here in Canada where crime is racialized, the work of alien or infantile others threatening the social fabric, and *white* crime rendered relatively invisible. The result is such claims as these:

Unfortunately, these days most of the murderers seem to be Black. . . . Are we a society of racists? Certainly not. It's just that White Canadians are understandably fed up with people they see as outsiders, coming into their country and beating and killing them. (Maharj, *Toronto Star*, 15 April 1994; qtd. in Henry and Tator 3)

Although statistics are banned, everybody knows the tale they tell: Young Black men are responsible for a disproportionate amount of violent crime in Toronto. (John Barber, *Globe and Mail* 12 April 1994: A3; qtd. in Henry and Tator 171)

To illustrate how legal education itself “makes invisible white criminality” (88), Williams considers how an exam in criminal law can “convey stereotypes, delimit the acceptable, and formulate ideals” (85) by asking students to “individualize the test” of provocation in a scenario based on Shakespeare’s *Othello*. “The model answer” gave points for recognizing that “a rough untutored Moor might understandably be deceived by the wiles of a *more sophisticated* European” (Williams 80; emphasis added). When a student complained that the exam was racist (not to mention sexist), the professor appealed to Shakespeare’s “facts,” while invoking his own academic freedom (84). Especially troubling is the way in which the exam “frame” reduces “the facts to . . . racist generalizations and stereotypes” and, without acknowledging responsibility for the “facts,” puts black students in the position of “speaking against” themselves (82), “writing *against* their personal knowledge” and even assuming a “racist/sexist/homophobic . . . mentality in order to do well in the grading process” (87). Such experience of Eurocentric framing is the source of what W. E. B. Dubois termed “double consciousness”: “This sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity” (45). Monture-Angus has reflected on “the intense pain” of similar forms of self-erasure, has faced backlash when she was urged to “make this academic and stop feeling for a while,” and been shuffled around as a person of colour “to accommodate the White experience” of a conference (*Thunder* 24, 19, 25). In such ways hegemony induces the marginal to internalize the appropriateness of their own on-going oppression—or to resist, as in the case of the persistent challenges of Monture-Angus’s scholarship to mainstream legal thinking.

In the Canadian academic context, Sheila McIntyre exposes “studied ignorance” and “privileged innocence” that uphold the status quo and assign to the few power and privilege, and an agency that gives them

access to elite institutions and hence the capacity to shape the dominant “truths.” Such privilege allows its holders to persist in not knowing, in “un-knowing’ and ‘un-thinking’ the realities of systemic inequality, including our own roles in perpetuating those realities.” As McIntyre argues, such “studied ignorance enables and entrenches the freedom of the systemically privileged to dissociate themselves from, and presume themselves innocent of, the cumulative appropriations and dispossessions that define systemic relations of domination” (159). Ian Hingley has written powerfully about his own journey of discovery that clarified the interdependence of oppressor and oppressed, the systematic dependence of his own power and privilege on the oppression of others, and his own responsibilities for the choice to work for change (101–11).

Unfortunately, Hingley’s story is all too rare. Indeed, the more institutions are invested in the discourses of free inquiry and exchange, critical thinking, objectivity, disinterest, and excellence, the less able they are ironically to countenance or tolerate, far less promote and value, difference—the diversity of thinking on complex matters, the diversity of interests people seek to advance, the diversity so crucial to a multicultural society and its democratic institutions. It is the so-called “hidden curriculum” (Jackson), what Dorothy Smith calls “relations of ruling” (qtd. in Margolis 3), so prominent yet so natural and habitual as to be invisible, that masks the particular interests of a disinterest that is an indifference to all but the privileges of the status quo. Those who like Williams and McIntyre would “out” the system or “who rock the boat risk a painful immersion in chilly waters” (Acker 77). Within the academy Aboriginal students and faculty are frequently required to write within and take their departure from mainstream academic discourse in ways that intensify their sense of alienation (Lawrence 24).

In helping bridge what the Royal Commission on Aboriginal Peoples has called the “cultural divide” between Aboriginal and non-Aboriginal legal and literary orders, I draw on one of Canada’s foremost intellectuals: Cree playwright Tomson Highway and his *Dry Lips Oughta Move to Kapuskasing*. Highway’s work is a useful corrective to the sort of intercultural sensitivity training available on the market that urges people to regard culture as décor or a consolingly consumable version of dif-

ference (Morrison et al, for example). Far from being enriched or transformed by such instruction, readers will find stereotypes reinforced. Further, such thinking underpins much academic discourse where talk of becoming culturally attuned to diversity betrays old colonial habits of harmonizing or assimilating the anomalous to dominant views and ways—without exploring its own complicity in systems of domination.

Cultural anthropologist Edward T. Hall's model of high- and low-context cultures defined in terms of their dependence on the contexts of messages has proven a potent means of managing difference and organizing or filtering apprehension of the world so that attention is diverted from power relations to ritual and logic (or their absence) and behavioural gestures. In such a model our gaze is drawn to body language and eye contact as access to a culture's meanings and values. Similarly, charts of Native and non-Native values are widely used in Canadian judges' training sessions (Razack *Looking* 184). Legal positivism has nothing to fear here. And the dangers of so isolating cultural signs from their history and social contexts are highlighted by the Special Rapporteur to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Dr. Erica-Irene Daes:

the heritage of an indigenous people is not merely a collection of objects, stories and ceremonies, but a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity. The diverse elements of an indigenous people's heritage can only be fully learned or understood by means of the pedagogy traditionally employed by these peoples themselves, including apprenticeship, ceremonies and practice. Simply recording words or images fails to capture the whole context and meaning of songs, rituals, arts or scientific and medical wisdom. This also underscores the central role of indigenous peoples' own languages through which each people's heritage has traditionally been recorded and transmitted from generation to generation. (Para. 8)

As Sherene Razack argues too, cross-cultural communication problems are not a matter of "technical glitches" or navigating "unchanging

essences” but of understanding the history of social relations and the ways “an alienating and racist environment” *produces* behaviours and identity (*Looking* 8–10). Only then will we face the racism that is not exceptional but foundational to Western rationality and notions of progress (Bhabha 41–43). Also, without confronting intersections of sexism and racism, we’ll never counter Aboriginal women’s over-representation in Canadian prison. According to the Aboriginal Justice Inquiry of Manitoba, Status women are 131 times more likely to be incarcerated than white women—and their imprisonment is most often related to a history of abuse (Razack *Looking* 68).

If English, like the Law, has proven a loyal servant of imperial formations, it has also, in extending its ambit and authority across cultural, national, and other differences, been transformed in the process and become a crucial site and symptom of resistance and struggle. African-American feminist Audre Lorde’s famous challenge—“the master’s tools will never dismantle the master’s house” (112)—is not as self-evidently helpless and hopeless as many have taken it to be. In a form of linguistic determinism, some activists dispatch English from their toolbox without recognizing how it differs from itself in the hands or mouths of those who use it otherwise in resistance. In the face of statistics showing only 4—Cree, Inuktitut, Ojibway, and Dakota—of 50 Aboriginal languages in Canada with a chance of survival (Ignace, qtd. in Philip A6; Statistics Canada 1999), clearly the dominance of English cannot be underestimated. Still, tools are transformed by their strategic deployment for diverse ends, as Metis-Salish writer Lee Maracle suggests when she claims, “we’ve taken hold of that language and made it partly our own. Instead of an imposition, it’s become our own, and it has a beauty, when we use it” (Kelly 79). Likewise Lorde’s emphasis on the master’s house directs us to deconstruct and reconstruct institutions to new designs that will liberate the many rather than sustain the luxury of the few. As Ruth Wilson Gilmore has argued, this means concentrating on “fundamental orderings in political economy. If the master loses control of the means of production, he is no longer the master” (70). This for me means collaborating across cultures and disciplines (and not accumulating intellectual private property) and communicating in multiple

locations inside and outside mainstream institutions to keep connected to the crises and contradictions of social conditions.

Deriving authority and strength from multiple sources entails understanding and acting upon a cultural poetics and politics of difference such as Highway offers in a wonderfully humorous and unsparingly critical play that shows us how legal scholars and culture workers alike can bridge that “cultural divide.” If we cannot fully understand others’ stories, we retain some capacity to look, listen, and learn. Highway’s *Dry Lips Oughta Move to Kapuskasing* invites just such looking, listening, and learning. Indeed, it is a text that students and I have found enormously useful in the context of a Law and Culture seminar—in part because it is not a predictable source. It is a text without obvious relevance for those interested in law and justice and in the particular challenges to judicial thinking of difference as a category of cultural identity. It is a text that critiques while refusing to give centre stage to colonial realities that have had disproportionate space in the historical record. Instead, the play focuses on life on the reserve, on Aboriginal heritage, culture, and stories, while showing that there is no secure inside or outside to the reserve or the identities of community members, no escaping the colonial institutions of education, religion, and the law constructing and reconstructing identity and difference—and supporting the work of Corrections Canada. From the earliest lines, characters are correcting one another, preoccupied with past and present violence, with betrayal and bickering, pattern and paternity, legitimacy and illegitimacy, inclusion and exclusion, innocence and guilt, ignorance and knowledge, rules and resistance, domination and self-determination. Memories of efforts to retrieve historical sites at Wounded Knee, South Dakota, 1973, bring back earlier violent confrontations at the Wounded Knee Massacre in 1890, the last major clash between federal troops and American Native peoples.

In an interview Highway has commented on the surprising cultural ignorance that has survived highly developed communications technology. Outrage at his play taught him that:

non-Native people . . . knew more about the size of Elizabeth Taylor’s breasts, Michael Jackson’s most recent nose job and

Madonna's most recent fuck than they did about their own systems of gods and goddesses. So that a Cree Indian from caribou country ended up knowing more about Hera and Zeus [whose story is reworked in the play]. . . than the people the stories belonged to. ("Let Us Now Combine" 25)

In another interview Highway has talked about the need to fill people's heads not with Greek and Christian mythology but with "our own hero stories, our own Weesageechak stories, our own Nanabush stories, our own incredible times of heroism and tragedy and incredible comedy. Because until that day arrives we are going to continue to be colonized" (Loucks 9). Still, Highway is not restrained, as the Courts are inclined to be, by notions of frozen or authentic traditional culture but mixes mythologies and languages (Cree, Ojibway, and English) in order to remake meanings, to enrich who we are and help us become who we would like to be.

If mainstream audiences were often perplexed by early performances, Aboriginal women experienced the pain of their representation in the play. Anita Tuharsky could find no redeeming qualities in the play, "nothing to balance the negativity," the presentation of Aboriginal women as "loose, unfaithful, sleazy drunks," nothing to correct "the damaging stereotypes" of Aboriginal men and women. In short, she argued, "Highway's images only open the wounds and adds salt to them" (5, 13). Poet and activist Marie Annharte Baker offers a more nuanced but no less troubled review of the play. She understands that some look to the play "to educate the public about racism and sexism in a community in transition," yet she concludes the play "silenced Aboriginal women." Still, she "had to see it for herself" and she found laughter as "unavoidable" as the determination not to be thought unable to "get it" (88). If the play could prove "a wonderful revelation about contradictions in Indian lives" for "whites and white-nosers," "to a young Indian person, the play might be another affront to one's identity." Even more damaging, Baker wonders if anyone would come away with a better understanding of sexism and racism or if we are yet able to "describe the frontier attitudes toward sex which end in intolerable violence toward

women and children. We are still far too willing to participate in the violent fantasies about us.” Finding “a small comfort to see poison,” Baker hopes “the cure doesn’t kill” (89).

The role of the artist that Highway likens to “the role of the shaman in traditional, pre-Christian Indian society” (“Let Us Now Combine,” 27) is clearly a risky one, especially when the artist plays with taken for granted assumptions about cultural and other categories. In his attempts to recover “the sacred woman in all of us, a woman and land who have been raped, distorted and abused by centuries of exploitation, oppression and victimization,” Highway “steps harshly on our sensibilities, our deepest fears and yet he is constantly urging us to turn around and take a second look” (Loucks 11).

His is a play, then, that breaks the silence of shame and self-blame and moves Aboriginal people to speech and action while exposing cycles of abuse and connecting individual and collective histories to current responsibilities in Aboriginal as well as non-Aboriginal societies. It does so by having the trickster-teacher Nanabush (Weesageechak, Raven, Coyote) make visible cycles of abuse and their sources. The Trickster-teacher straddles the consciousness of humanity and the Great Spirit, the physical and spiritual, past and present, is neither he nor she, and is very much “the worse for wear and tear” since colonization (12–13). The residents of the Wasaychigan (window) reserve have lived with their problems for so long that those problems are invisible because apparently so natural. Now, “before the healing can take place, the poison must first be exposed” (as the epigraph from Lyle Longclaws makes clear). The play begins with signs of neglect and cultural domination (a Marilyn Monroe poster) overlooking the remains of a party, Zachary Jeremiah Keechigeesick’s “bare, naked bum” and Nanabush/Gazelle Nataways with the markers of objectified womanhood: “a gigantic pair of false, rubberized breasts” and the first words are a symptom of oppression within the Native community: “Hey, bitch!” (15–16).

Unlike those concerned to manage cultural diversity, Highway is not content with recording the visible signs of cultural difference. Instead he is concerned to unravel the multiple and conflicted histories that explain the current state of affairs and to do so by drawing on English, Ojibway,

and Cree as well as classical, Christian, and Aboriginal myth. The journey of discovery as recovery and redress connects current conditions inside the reserve to a history of colonization, to the persistent power of sexism, racism, capitalism inside and outside. We register the repetition of past colonial violence in current patterns of domestic violence, external racism internalized as sexist abuse so that, as Maracle claims, “men have a vested interest in holding on to the issue of racism, because then the enemy is external” (Kelly 80). In the process Aboriginals and non-Aboriginals alike recognize the legacy of the so-called “gifts” of colonization (alcohol, disease, guns, and the institutions of patriarchy, education, religion, law, and medicine): dispossession, confinement, poverty, crime, violence, and the fetal alcohol syndrome that literally silences Dickie Bird (Cockney rhyming slang for “not a word”—and a nice reminder of resistance at the heart of empire). In reliving and even repeating the past, characters (and audience) learn to stop laying blame elsewhere—“That wasn’t my fault, Joe. It’s that witch woman of yours Gazelle Nataways” (23)—and come to an understanding of collective accountability. Thus, characters acknowledge that “we were all there” (85) and none had intervened to stop the self-abuse and come to the rescue of Gazelle Nataways and her unborn child. In learning to respect community sanctions, they stop indulging in forms of singular scapegoating too often supported by the judicial system.

Remembering the words of the Canadian Judicial Council and Brecht (with whom I began) can help us maintain an optimum awareness of audiences and outcomes. Such awareness, I would argue, should not mean the zealous defence of purity or objectivity but of productive hybridity empowering faculty research and student curiosity. It is not a matter of moving the mental furniture in a limiting add-on fashion as much as furnishing mental and social movement in modes of exchange both respectful and rigorous. Productive hybridity remains easier to articulate than to accomplish. Consider the resistance to and backlash against Patricia Williams, Patricia Monture-Angus, Sheila McIntyre, the Supreme Court of Canada, and Tomson Highway. Yet, we need a critical mass of faculty and a mass of critical students, and that requires at all stages effectively transformative communication across communities of redress.

Hence, my emphasis is on connecting Aboriginal and non-Aboriginal students and not only to the net! But to many histories, literatures, and knowledges that will serve them and others well inside and outside the academy so that we can derive strength from our many peoples (as the Saskatchewan motto in my title suggests). That means, as Monture-Angus suggests, “shar[ing] the definitional power that creates the legitimacy whereby words and phrases gain their accepted meaning” and attending to the ways that English “sanctions particular worldviews” and is experienced in “hierarchical and gendered” and even “colonial” ways (*Journeying* 43). It means too not leaving all the work of history to professional, academic historians but attending to the elders, story-tellers, and writers in Aboriginal and non-Aboriginal culture—and not showing undue reverence to male authorities of either culture: the Supreme Court’s 1990 *Sparrow* decision, for example, cited only male non-Aboriginal authorities (Monture-Angus *Journeying* 113).

We need to recognize what “we” take for granted—our languages, history, and culture—and the identities and legitimacies they entail. We might recall the privilege of carrying on conversations in our own languages and consider the experience of “the contradictions that arise for those of us who are continually forced to negotiate, converse and discuss in a second and foreign language” (Monture-Angus *Thunder* 264). Justice Gerald Morin has talked about the value of the Cree court established in Northern Saskatchewan as access to legitimacy, as, importantly, the experience, the feeling of empowerment and justice by those given voice in their own terms. Then we might better appreciate the lessons of Tomson Highway who on behalf of the true “aristocrats” of the land *welcomes* us to share that land (“Tomson Highway”).

I do not claim to speak on behalf of Aboriginal peoples or share anthropological assumptions about the knowable other, reducing cultural complexities and identities to a matter of material practices and the academic management and consumption of difference. Nor do I want to promote academic careerism (“I *do* postcolonial studies) that thrives on the oppression of Indigenous or other marginalized groups (much as nineteenth-century professionalizing depended on the monitoring and measuring of the underclasses). We should never forget that “research is

probably one of the dirtiest words in the indigenous world's vocabulary" and colonialism has meant disconnecting Indigenous peoples from their histories and languages and forms of "systematic fragmentation" that put their skulls in museums, art work in private collections, "customs" to anthropologists, and languages in the hands of linguists (Smith 1, 28). Teaching and collaborating with others across disciplines and cultures has taught me, however, the importance of historicizing, theorizing, and Indigenizing notions of authority, identity, difference, and language as a means of identifying intellectual roadblocks and reproductive engines built into the institutions we inhabit. In this context too showing solidarity with Aboriginal peoples and emphasizing the specificities of the production of difference might help us eventually dislodge the colonial and neo-colonial paradigms that we have inherited in the names of truth, knowledge, and an endlessly well-intentioned mission and that we have deployed in the name(s) of justice.

Notes

- 1 Versions of this paper were presented at the third annual meeting of the Working Group on Law, Culture and the Humanities, Georgetown Law Center, Washington, DC, 10–12 March 2000, and the meetings of the Association of Canadian College and University Teachers of English at the annual Congress of the Social Sciences and Humanities, University of Alberta, Edmonton, 24–27 May 2000. I gratefully acknowledge the generous and suggestive comments of the reviewers of this essay. I am as always grateful to James (Sakej) Youngblood Henderson, Marie Battiste, Lynne Bell, and Len Findlay for ongoing and enriching discussions on issues of difference, law, and postcolonial justice.
- 2 For a fuller discussion of the embeddedness of colonial thinking in the law and efforts to displace colonial discourse, see Henderson, Benson and Findlay, especially 247–329.
- 3 See, for instance, Daniel Jutras' argument for comparative legal scholarship in considering the relationship of everyday life and state law.
- 4 Building on the critical turn of such scholars as Roberto Unger and Duncan Kennedy, Critical Legal Studies (CLS) has been concerned to demystify legal reasoning and underline its indeterminate, value-laden, and political character. Not content with CLS efforts to change thinking, Critical Race Theory (CRT)—associated in the US with Patricia Williams, Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberlé Williams Crenshaw, among others—is explicitly political and activist in its orientation, analyzing the role of

racism and the experience of people of colour, recognizing the limits of rights discourses, and seeing in the law both a resource and a powerful source of inequality. John Borrows, Patricia Monture, Mary Ellen Turpel-Lafond, and James (Sakej) Youngblood Henderson elaborate what CTR can mean for Aboriginal peoples seeking justice in Canada, while Carole A. Aylward and Constance Backhouse add importantly to the history of racism and the law in Canada. Monture, Turpel-Lafond, and Sherene Razack have likewise been powerful voices for women's issues, working to ensure that gender is not treated as an isolated category but one of several intersecting systems of domination in the context of law and justice.

- 5 For a wonderfully enlightening and entertaining fable for non-Aboriginal peoples on "their own distinct (or distinctive?) cultural context" (995), see Barsh and Henderson.
- 6 In addition to Findlay, "Just Expression" and Williams, *Alchemy* discussed later in this essay, see Canada *Law and Learning*; Razack, *Looking*; Borrows, Introduction, *Recovering Canada*; and Costello, "Schooled by the Classroom" for thoughtful critiques of legal education.
- 7 On the need of a contextualized understanding of difference and the complicity of scholarship in producing and reproducing inequalities, see Razack, *Looking*, and Razack, ed. *Race*. Patrick Macklem's emphasis on legal-cultural hybridity, his refusal to reduce Indigenous difference to cultural difference, and his attentiveness to "history and context" (4–29) lead him in directions similar to those pursued by Henderson, Benson and Findlay.
- 8 For a fuller discussion of the case, see Findlay, "Discourse."
- 9 For some recent media examples, see Ibbitson and Chase; Wallace; "The Supreme Court All At Sea." Far from seeing juridical activism as a threat, Kelly and Murphy argue that it deepens constitutional supremacy (3–27).
- 10 On "the cold game of equality staring," see Razack, *Looking*, 23–35; Williams, *Alchemy*. See too Macklem, *Indigenous Difference*.

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