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The Essence of Theatre as the Foundation of Law

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ABSTRACT: Canada has been described as a pluralistic legal society that recognizes and values both the common law and Indigenous legal orders. However, the predominant legal order in Canada was used as a tool for the attempted colonization of Indigenous cultures across the country and is built upon a normative worldview that fundamentally contradicts Indigenous worldviews. The liberal worldview that guides the common law has concentrated on the individual and has relegated the interrelationship between community, story, and land to a facet of society that holds little importance. This article is an investigation into the relationship between theatre, story, and law, exploring the essence of theatre as a communal site of resistance against the dominant structures of a liberal worldview. It explores whether theatre, as a creative medium, could have the power to make space for a pluralistic society in which Indigenous laws and the common law are valued as equal and autonomous. This article draws on the work of Leanne Betasamosake Simpson, Glen Coulthard, and Jarrett Martineau to explore the interconnection between the natural world, story, theatre, and law.

KEYWORDS: *Indigenous legal traditions; Canadian state law; colonialism; environmental protection; theatre; story; legal pluralism;*

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Introduction

Imagine back to the moments before a piece of theatre began. The soft hum of the audience members; the shifting, trepidatious feet of the performers and the muffled murmurs of the technicians making their last-minute show calls. The darkness of the theatre space embraces the entire collective with the promise of transporting the group to a shared realm of reality that deviates from the social constructs of the everyday. Within a moment, a constellation of light spreads across the stage, transporting the collective into a story that shapes communal capacity, engaging consciousness and shaping shared counter-realities. Now imagine that same theatre space unconstrained by the walls of a structure. The trees stand beside the audience members with excited anticipation; the nerves of the actors are grounded by the comfort of the soil; the wind whispers words of encouragement to the technicians, and a constellation of stars lights up the stage. The natural world encircles the collective as they journey together through an imaginative interrelated existence explored through story.

These storied experiences have existed since the world began.² They are the creation of community, the embodiment of imagination and the foundation of culture that have woven together relational networks of responsibility to people, place, creativity, and spirit. Stories shape our understanding of the world and our relationships within its dynamic continuance, but they also provide a possibility for transformative imaginings of renewed realities.³ Theatre acts as a medium to teach and embody these stories, as does the law.⁴ Where there is land, there is culture, where there is culture there are stories and where there are stories there is law.⁵ As Barak writes, “the world is filled with law. Every human behaviour is subject to a legal norm... Wherever there are living human beings, law is there. There are no areas in life which are outside of law.”⁶ Over time, however, cultures have converged, and value systems have clashed. Above all, the foundational source of colonizing Nation States, the violent domination of liberalism, has attempted to consume diverse cultures and lands.⁷ The pursuit of power and progress led liberalism to separate law from land and story,⁸ for the foundation of the liberal worldview is the autonomy and centrality of the individual.⁹ In order for the individual to exercise the critical values of liberalism, one would have to control, alter and dispose of the natural world as a lifeless object of property.¹⁰ Liberalism became the architect of colonialism, attempting to destroy the interconnected relationships centring community,

² Jarrett Martineau, “Creative Combat: Indigenous Art, Resurgence, and Decolonization” (Doctor of Philosophy: University of Victoria, 2015) [unpublished].

³ Andrew Hatala, Kelley Bird-Naytowhow, “Performing Pimâtišiwîn: The Expression of Indigenous Wellness Identities through Community-based Theater” (2020) 34:2 *Medical Anthropology Quarterly* 243.

⁴ Geoff Park, *Theatre Country: Essays on Landscape and Whenua* (Wellington: Victoria University Press, 2006).

⁵ Janet Stephenson, Mick Abbott & Jacinta Ruru, eds, *Beyond the Scene: landscape and identity in Aotearoa New Zealand* (Otago: Otago University Press, 2010).

⁶ Aharon Barak, “Judicial Philosophy and Judicial Activism” (1992) 17:1 *Tel-Aviv University Law Review* 483.

⁷ Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).

⁸ Andreas Malm, *Fossil Capital* (London: Verso, 2016).

⁹ Aaron Mills. “The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today” (2016) 61:4 *McGill Law Journal* 847.

¹⁰ Alan Ryan, *The Making of Modern Liberalism* (Princeton: Princeton University Press, 2014) at 593.

culture and land.¹¹ Within Canada, the liberal worldview is engrained within the systems of the settler Nation state.¹² Many of these systems, including Canada's common law, have been and continue to be used as instruments through which colonialism permeates.¹³ As James Boyd White writes, "what has been happening to law, however, is that it is becoming an instrument of empire and power, and in the process losing its essential character."¹⁴

In this paper, I argue that *story and law are in fact one in the same, and story is the essence of theatre*. Story and law "weave together an understanding of both the established (what is) and the possible (what might be)."¹⁵ They are an imaginative framework for interpreting relationships alongside obligations. Many Indigenous laws and legal traditions¹⁶ recognize the integral connection between law and story. As Borrows illustrates, "within Indigenous legal traditions, creation stories are often one source of sacred law".¹⁷ In Canada, however, our common law has been stripped of its true meaning¹⁸ by the liberalist Nation State, forced to become the product of the colonizing will, immersed in liberalist thought. As the dominant legal structure in Canada is common law, its invalidation of story and land have caused Indigenous thoughts, values, lifeworlds and laws to not only be undermined, but exist as a mere whisper within our legal structures.¹⁹ This has caused not only disastrous consequences for relationships with each other and the natural world, but it is constructing a singular story that could jeopardize our collective survival. In this paper I argue that theatre can act as a medium for guiding law back to its fundamental elements, reconnecting common law to story in order to support law's purpose of guiding people to "maintain good relations: relations within communities, relations between communities and relations with other beings of creation."²⁰ I argue that theatre can create collective, creative space for the common law to learn from Indigenous legal orders by reconnecting law to story and story to land. Theatre has the creative capability to make space for a re-imagined pluralistic society in which Indigenous laws and the common law are valued as equal and autonomous and the natural world and story are once again reconnected to law.

The first section of this paper will explore the essence of theatre, setting the foundation for why this art form has the power to make a difference. The second section will analyze how liberalism attempted to use colonization to eradicate theatre and assimilate Indigenous legal traditions. Theatre and Indigenous lifeworlds have both had to resist and refuse the dominant

¹¹ Cormac Cullinan, *Wild Law: Manifesto for Earth Justice*, 2nd ed (Cambridge: Green Books, 2011).

¹² Gordon Christie, *Canadian law and indigenous self-determination: a naturalist analysis* (Toronto: University of Toronto Press, 2019).

¹³ Patricia Monture-Angus, *Journeying Forward: Dreaming First Nations' Independence* (Halifax: Fernwood, 1999), at 9.

¹⁴ James Boyd White, *Keep Law Alive* (Durham: Carolina Academic Press, 2019).

¹⁵ Hester Lessard, Rebecca Johnson & Jeremy Webber, Eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, (Vancouver: UBC Press, 2011) at 8.

¹⁶ It is important to note that I do not essentialize all Indigenous cultures, laws, stories or legal traditions as the same, for all Indigenous cultures are unique. However, for many Indigenous populations, their unique laws and legal traditions have philosophical underpinnings that are shared through story. This relationship between story and law is explored by scholars such as John Borrows, Glen Coulthard, Wade Davis, Patricia Monture-Angus and Jeremy Webber, among others.

¹⁷ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 25.

¹⁸ Gerald Postema, *Bentham and the Common Law Tradition* (Oxford: Oxford University Press, 2019) writes about how the Common Law, or *lex non scripta*, was understood as an unwritten body of attitudes, practices, and thought patterns recorded in the memories of the community that were passed on through tradition and occurrence. It was understood as a practice that only communal use could validate, an expression of the shared values of the common good.

¹⁹ James (Sákéj) Youngblood Henderson, "Postcolonial Indigenous Legal Consciousness" (2017) 1 *Indigenous Law Journal* 1 at 55.

²⁰ *Supra* note 12.

structures of a liberalist worldview.²¹ The liberal belief system can be seen as antithetical to the values of many Indigenous peoples and most forms of theatre. This strength demonstrated by the shared resisted refusal and the mutual resurgence by both Indigenous laws and theatre can act as a guide for common law. This strength can guide common law towards a resistance against the dominant liberal power structures that have disconnected it from its life source: story, creativity, and the natural world. The third section of this paper will expand upon this co-resistance by theatre and Indigenous lifeworlds by exploring the metaphorical connection between creation, creating and the *constellations of co-resistance*, as described by Leanne Betasamosake Simpson²². Finally, this paper will explore the elements of law and theatre through the lens of grounded normativity, as defined in Glen Coulthard's *Red Skin, White Masks*. By framing law and theatre in grounded normativity, I will demonstrate the vital connection between the natural world, creativity, story and the law.

As I write this paper, the liberalist worldview under which I have grown has shifted much of the world into a modality of thought that is threatening our collective existence. Climate change is humanity's greatest threat, and it is a consequence of a cultural worldview that has valued infinite growth on a finite planet, employing domination over diversity to do so. The dominant worldview has used the natural world as a mere prop to be used then thrown away in the theatre of human progress. The IPCC 2019 Report on Climate Change acknowledges that "the current geographic spread of the use of land, the large appropriation of multiple ecosystem services and the loss of biodiversity are unprecedented in human history".²³ As a non-Indigenous person, I must situate myself within this work. I do not claim to fully understand Indigenous legal traditions, stories or lifeworlds. I also do not essentialize that all Indigenous cultures, traditions, laws are the same, in fact I implore that the diversity of Indigenous knowledges is required to guide the liberal world towards reconciliation with the Earth. I believe it is of vital importance to diversify our understanding of the world, including the diverse realities contained within in it and the laws that correspond with these realities. As Rob Clifford writes, "it is not just considering a different set of laws or rules. It is a shift in our thinking and approach".²⁴ This shift must include transforming our perception of the language onto which our legal system is built, to see language through diverse lenses, expanding Canada's values to include a polychromatic, pluralistic, imaginative worldview, within which the natural world and stories are valued. As Wade Davis writes, "together the myriad of cultures makes up an intellectual and spiritual web of life that envelops the planet and is every bit as important to the well-being of the planet as is the biological web of life"²⁵ I write this paper because of my belief in the power of theatre, imagination, and creativity to revitalize a connection between the dominant worldview and the natural world. Reconnection and reconciliation with the natural world and the teachings of stories requires non-Indigenous peoples to share the commitment of responsibility to the power of story, diversity, and interconnectivity. Though the theatrical story of human civilization may change, the themes are constant: The only way to protect Mother Earth and all of her diversity,

²¹ Aaron Mills, *supra* note 8.

²² Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).

²³ IPCC, 2019: Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems [P.R. Shukla, J. Skea, E. Calvo Buendía, V. Masson-Delmotte, H.-O. Pörtner, D. C. Roberts, P. Zhai, R. Slade, S. Connors, R. van Diemen, M. Ferrat, E. Haughey, S. Luz, S. Neogi, M. Pathak, J. Petzold, J. Portugal Pereira, P. Vyas, E. Huntley, K. Kissick, M. Belkacemi, J. Malley, (eds.)]. In press.

²⁴ Robert YELKÁTTE Clifford, "Listening to Law" (2017) 33:1 Windsor Yearbook Access to Justice 47 at 51-52.

²⁵ Wade Davis, *Wayfinders: Why Ancient Wisdom Matters in the Modern World* (Toronto: House of Anansi Press Inc, 2009) at 2.

is to uphold the importance, influence and strength of the thousands of languages, stories, laws, realities, and imaginations that have remained akin with the natural world.

The Essence of Theatre

Theatre is a fascinating enigma. It is ephemeral yet everlasting, individual yet collective, respected but undervalued. It has been fundamental to human civilization across all cultures, beliefs, and landscapes since the dawn of imagination.²⁶ Theatre has the power to be political, social, physical, ethical, or spiritual, it is a limitless expression of human consciousness, which has survived to nourish the creative souls of societies around the world. At the heart of theatre is the story, the two are interwoven through time and space. As Eugenio Barba writes, “The essence of theatre does not reside in its aesthetic quality or in its capacity to represent or criticize life. It consists rather in radiating through the rigor of scenic technique an individual and collective form of being. Theatre can be a social cell that embodies an ethos, a set of values that guide the refusals of each of its components”.²⁷ As the world navigates the contagion of liberal dominance, which has separated the individual from the community, creativity from logic, and human from nature,²⁸ we must imagine a refusal to the single story that threatens the existence of our planet and therefore our futures. As Barba notes, “at the origin of a creative path there is often a wound. It indicates the separation from something vital, reevaluating a part of us that remains in exile deep within us”.²⁹ The natural world is wounded, and we have been separated from a vital condition of our being, our Mother Earth. The essence of theatre as an embodied creation of our social, political, creative, collective histories. Theatre has the potential to captain the ship that is currently sinking, leading us back to the diversity of thousands of imagined realities, a future of connectivity, with one another and with the natural world.

Reframing Law Through Constellations of Co-Resistance

By understanding law within the art space, whether it be within the metaphor of theatre, or itself an art form, one can begin to break down the entrenched liberal values within which the Canadian common law is currently caught.³⁰ As James Boyd White writes, “the law in this living sense is not just a set of rules or institutions, but an activity of the mind and imagination – a form of life – that has the value of justice at its heart.”³¹ At its deepest level, law is imagination. It is an art that frames our understanding of how to live justly in the world.³² However, throughout Canadian history, *justice* has had multiple stories and consequences for different people. State practices have been used to undermine rather than affirm Indigenous legal orders, framing law within a paradigm of “denying the existence, relevance, and legitimacy of Indigenous legal orders”³³. This has

²⁶ Joshua Abrams, “State of the Organizations: Thoughts on the Importance of Theatre Education in 2020” (2021) 31:1 Theatre Topics 1.

²⁷ Eugenio Barba, “The Essence of Theatre” (2002) 46:3 TDR/The Drama Review 12 at 16.

²⁸ Wade Davis, *supra* note 24.

²⁹ Eugenio Barba, *supra* note 26 at 18.

³⁰ Mark D Walters, “The Emergence of Indigenous Rights Law in Canada” in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law* (Portland: Hart Publishing, 2009).

³¹ James Boyd White, *supra* note 13 at 122.

³² John Borrows, *supra* note 16.

³³ Minnawaanagogiizhigook (Dawnis Kennedy) “Reconciliation without Respect? Section 35 and Indigenous Legal Orders” in *Indigenous Legal Traditions* at 81.

enveloped common law in colonial law and framed the concept of *justice* as one which disrespects the potential for pluralism, purports the theft of land assimilates Indigenous lifeworlds and legal orders. As Bobbi Sykes asks, why has the concept of justice become the rationale for white domination of Indigenous peoples?³⁴ It is as if common law, the nation-state and their interpretation of justice are centre stage, encompassed by a single spotlight, leaving all other legal orders and their encounters with justice, hidden in darkness. Therefore, the concept of justice and the understanding of law must be reframed. As Tuhiwai Smith writes, “reframing occurs where Indigenous people resist being boxed and labelled according to categories which do not fit”³⁵. The current Canadian common law and its concept of justice do not fit. Common law is being used to perpetuate colonization, which rejects the true meaning of justice. Therefore, I connect theatre with Leanne Betasamosake Simpson’s concepts of co-resistance, to reframe common law as a form of imagination that will refuse “the forces of mindless empire and control, [imagining] newness of thought, creativity and surprise, the introduction into the world of power an unrecognized voice”.³⁶

Just like stars, lights of the theatre illuminate knowledge. As Simpson writes, “collections of stars within Nishnaabeg thought are beacons of light that work together to create doorways into other worlds. On a conceptual level, they work together to reveal theory, story and knowing”.³⁷ Like stars and constellations, theatre lights may guide the audience towards an accentuated spotlight of creativity, or they may work together to bring light to the entire stage, highlighting the entire story. Like stars and constellations, theatre lights “act as conceptual doorways that return us to our core essence”,³⁸ casting light upon acts of creation, acts of creativity that spotlight the essence of law, which, in essence, is learning how we situate ourselves within relation to each other, to land, to time and to all creation. Simpson describes how when we look at stars, we are seeing the past, by the time we see the light of a star, it has already vanished.³⁹ The constellations of light in a theatre space illuminate the past, present, and future, transporting the collective into a creative space that allows for a reimagining of the world and our relationships within it.

The constellation of light is a necessary aspect of theatre, highlighting the interrelatedness of all things, acting as a metaphor for the interrelatedness between creativity, meaning, relationship and continuity⁴⁰ The practice of creativity and art-making as constellations of meaning, constellations of resistance, have been used by Indigenous communities for millennia, to understand reality, community and more recently, to resist colonial forces.⁴¹ As Jarrett Martineau writes, “at its core, Indigenous art reaffirms our relationality with the dynamism of all creation. Artmaking enables Indigenous people to intervene into dominant colonial discourses, histories and regimes of colonial representation that have normalized our dispossession. By altering the terrain of our perceptual experience, creativity reconfigures not only given distributions of the sensible, but our relationships to place, space and time”.⁴² With its interrelated elements of light, story, community and resistance, theatre offers a space for innovation for the rule of law, a reframing of legal structures towards the

³⁴ Roberta B. Sykes, *Black Majority* (Melbourne: Hudson Publishing, 1989) at 146.

³⁵ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed (London: Zed Books, 2012) at 154.

³⁶ James Boyd White, *supra* note 13 at 103.

³⁷ Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017) at 212.

³⁸ *Ibid.* at 212.

³⁹ *Ibid.* at 218.

⁴⁰ Brian Massumi, *Semblance and Event: Activist Philosophy and the Occurrent Arts* (Cambridge: MIT Press, 2011).

⁴¹ Leanne Betasamosake Simpson, *Dancing On Our Turtle’s Back* (Winnipeg: ARP Books, 2011).

⁴² Jarrett Martineau, “Creative Combat: Indigenous Art, Resurgence, and Decolonization” (Doctor of Philosophy: University of Victoria, 2015) [unpublished].

opportunity for legal pluralism in Canada. As Martineau observes, “new worlds demand new stories, and Indigenous creativity and storytelling offer a primary means through which to mobilize resurgent art-making within decolonial struggle”.⁴³ Creativity is a foundational aspect of Indigenous culture and it is interwoven with Indigenous legal traditions.⁴⁴ It is also foundational to storytelling and to theatre. Indigenous laws and theatre can re-awaken common law’s creativity, affirming its necessity as a collective practice in the creation of laws. Theatre has the potential to connect creativity with diverse legal structures in meaningful ways, rebuilding collective responsibilities of equal respect, so legal pluralism may become a creative expression, “an embodied practice that is lived and expressed within a dynamic continuum of existence”.⁴⁵

The Liberal Worldview and its Attack on Theatre and Indigenous Laws

The liberalist worldview is a modern extension of imperialism, and colonialism has been an accessory to both.⁴⁶ As Linda Tuhiwai Smith writes, “Imperialism frames the indigenous experience. Imperialism and colonialism brought complete disorder to colonized peoples, disconnecting them from their histories, their landscapes, their languages, their social relations and their own ways of thinking, feeling and interacting with the world.”⁴⁷ These structures have attempted to force a set of values upon the diversity of the world, values that are built upon control, exploitation, measurement, reason, never-ending “progress”, and individual freedom; values that are antithetical to Indigenous lifeworlds.⁴⁸ Throughout history, the natural world designs the foundations of stories and stories delineate laws. However, imperialism used colonialism to perform a singular story of what is deemed real, significant, and valuable; as Gordon Christie writes, “given that the liberal cannot easily countenance forcing individuals or groups to change their way, mechanisms must be put in place within these Indigenous societies that “gently” encourage movement towards more liberal environments. This transpires, however, through the exercise of Crown power.”⁴⁹ One of these mechanisms was an attack on the significance of story, notably within the medium of theatre. Theatre’s cultural value became tied to its economic value, caught within a liberal ideology of necessary, continual economic growth.⁵⁰ As Barba writes, “All forms of theatre, even under the most favorable conditions, are subject to constraints: time, money, space. These constraints decide the rules of the game and mark the boundaries of what is possible”.⁵¹ The spectator became a consumer, and theatre and its stories became an economic liability. The liberal paradigm attempted to reduce story to fiction, stripping stories of their worth, truth and essence. As Johnny Mack describes, “the presence of imperialism in this plurality cultivates grounds that encourage certain stories to thrive

⁴³ *Ibid.* at 12.

⁴⁴ Umeek/E. Richard Atleo, *Tsavalk: A Nuu-chab-nulth Worldview* (Vancouver: UBC Press, 2004).

⁴⁵ Leanne Betasamosake Simpson, “I am Not a Nation-State”, *Indigenous Nationhood Movement* (November 06, 2013) <<http://nationrising.org/i-am-not-a-nation-state/>>.

⁴⁶ Linda Tuhiwai Smith, *supra* note 34.

⁴⁷ *Ibid.* at 20 & 29.

⁴⁸ Aaron Mills, *supra* note 8.

⁴⁹ Gordon Christie, *supra* note 11 at 312.

⁵⁰ Janelle Reinelt, “What UK Spectators Know: Understanding How We Come to Value Theatre” (2014) 66:3 *Theatre Journal* 337.

⁵¹ Eugenio Barba, *supra* note 26.

and choke life out of their competition.”⁵² This imperial shift in value towards story was a direct undermining of Indigenous cultures, for stories were used to instill Indigenous law, truth, and ways of knowing.⁵³ Intricately bound to one another,⁵⁴ stories, the natural world and the common law became disconnected by liberal forces in order to advance imperial power over other ways of knowing. As Asch et al. explain, within Indigenous cultures, stories were used to represent creative relationships depicting “the earth’s teachings. They represent the land waking up. These characters encourage relationships, and their interactions and tensions help us understand ourselves as human beings in deeper ways.”⁵⁵ Indigenous knowledges, the natural world and theatre were caught within the imperial maelstrom that was attempting to eradicate the value of culture, story and land.

Despite this, theatre has survived. Not only that, but theatre also continues to flourish, bringing together community in a collective imagining of new and old possibilities. Both Indigenous cultures and theatre have refused the singular story of imperialism, rejecting its attempts of assimilation. As Perry Shawana writes, “once considered dead or dying, Indigenous legal regimes have re-emerged as a vibrant and integral aspect of Indigenous desires for autonomy and self-determination.”⁵⁶ Because common law is currently ensnared within the jaws of the liberal regime, theatre can act as an example of strength, a precedent for defiance against a single story. Theatre can also create space for working towards a pluralistic society in Canada, holding common law and Indigenous laws on equal footing, operating side by side, embracing their independence and interdependence.⁵⁷ Common law and Indigenous laws can use theatre as a space to co-exist as independent systems, each “capable of existing in its own rights, while at the same time each open to incorporating new ideas and knowledge from the other”⁵⁸ Theatre can create space for the transmission of laws, the common law acting as audience, actively listening towards a movement of reconciliation and resurgence, moving towards a truly pluralistic society. The movement towards legal pluralism in Canada can use theatre as not only a medium, through the transmission of laws, stories, and collective space, but theatre can be a metaphor for what pluralism should look like. Just as a piece of theatre requires an audience, the audience requires a story. But not a single story, as imperialism has endeavoured to construct, but a diversity of stories that spread across time, cultures, lifeworlds, environments and relationships.

Theatre, Law, and Grounded Normativity

Theatre is a metaphorical demonstration of the interrelatedness of all things. Without an audience, there is no creation; without performers, there is no meaning; without light, there is no focus; without stories, there is no diversity. We return, therefore to the theatre located beneath the stars, nestled between the trees, set within the natural world. How do theatre, law and the natural world relate to one another? They relate through their intimate, indivisible connection: the natural

⁵² Johnny Mack, “Hoquotist: Reorienting through Storied Practice” in Hester Lessard, Rebecca Johnson & Jeremy Webber, Eds, *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, (Vancouver: UBC Press, 2011) at 302.

⁵³ Val Napoleon, Catherine E Bell, Eds, *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver, UBC Press, 2008).

⁵⁴ Hester Lessard, *supra* note 14.

⁵⁵ Michael Asch, James Tully & John Borrows, eds, *Resurgence and Reconciliation: Indigenous-settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) at viii-ix.

⁵⁶ Perry Shawana, “Legal Processes, Pluralism in Canadian Jurisprudence, and the Governance of Carrier Medicine Knowledge” in Law Commission of Canada, Ed, *Indigenous Legal Traditions* (Vancouver: UBC Press, 2008).

⁵⁷ *Ibid* at 121-123.

⁵⁸ *Ibid* at 123.

world shapes stories and stories guide law. All three are relational, they envision relationships bound by responsibilities, connected through *grounded normativity*.⁵⁹ As Coulthard explains, we are (or should be) “deeply informed by what the land as a mode of reciprocal relationship ought to teach us about living our lives in relation to one another and our surroundings in a respectful, non-dominating and nonexploitative way. The ethical framework provided by these place-based practices and associated forms of knowledge is what I call grounded normativity”.⁶⁰ Unfortunately, when liberal thought turned land into property, the connection between land, stories and law was damaged.⁶¹ Grounded normativity, for those caught within the liberal doctrine, was a knowledge that was distorted by the structures of the Nation State, disconnecting creativity, law, and land. As Radha D’Souza writes, “Land is, quintessentially, a relationship. Land is not a ‘thing’. It is a bond that ties people to nature and to each other. Historically, rights transformed places into property. It transformed a relationship into a thing, a commodity”.⁶² Theatre as a medium has the potential to reconnect these relationships through its embodied expression of stories and the elements that are necessary for its creation, such as relationship, convergence, diversity, content, and imagination. As Tuhiwai Smith observes, creativity can reframe the liberal worldview. Imagination can “unleash the creative spirit as a way of reimagining the world and our position within the world”.⁶³ Theatre can create space for new potential, but can also describe past wrongs, as delineated by the natural world.⁶⁴ Land presents relationships, both good and bad, because land *is* a relationship. Land also communicates creativity, constantly demonstrating acts of creation amidst interdependence, responsibilities, and reciprocity.⁶⁵ Laws flow from these connections and creations, laws are *performed* by the Earth. As Borrows explains, “aside from sacred sources, Indigenous peoples also find and develop law from observations of the physical world around them. When considering laws from this source, it is often necessary to understand how the earth maintains functions that benefit us and all other beings”.⁶⁶ Therefore, Indigenous laws can guide common law towards a reframing of its relationship with the natural world, reconnecting the animacy of the natural world and disconnecting property from land. This may then guide common law back towards its core essence of imagination, creativity and story, guided by the relationships of the natural world, reconnected to grounded normativity.

Conclusion

Some may still question the connection between theatre, law and the natural world. This paper attempts to illustrate the critical truth that we are all intimately connected “within a dynamic continuum of existence”⁶⁷, to which these three elements are connected. The dominant liberal worldview has attempted to distort this understanding by using mechanisms, like the common law,

⁵⁹ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

⁶⁰ *Ibid* at 60.

⁶¹ Robert J Miller et al, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford: Oxford University Press, 2010).

⁶² Radha D’Souza, *What’s Wrong with Rights?* (London: Pluto Press, 2018) at 5.

⁶³ Linda Tuhiwai Smith, *supra* note 34 at 201.

⁶⁴ Laurie Anne Whitt et al, "Belonging to Land: Indigenous Knowledge Systems and the Natural World" (2001) 26:2 Oklahoma City University Law Review 701.

⁶⁵ Jaskiran Dhillon, “Notes on Becoming a Comrade: Indigenous Women, Leadership, and Movement(s) for Decolonization” (2019) *American Indian Culture & Research Journal* 43:3 41.

⁶⁶ John Borrows, *supra* note 16 at 28.

⁶⁷ Jarrett Martineau, “Creative Combat: Indigenous Art, Resurgence, and Decolonization” (Doctor of Philosophy: University of Victoria, 2015) [unpublished] at 30.

to disconnect the human and non-human worlds, which in turn has endangered our collective existence. The liberal worldview has attacked the influence of creativity and story in order to spotlight a single story; as Thomas Berry observes, “we are in trouble just now because we do not have a good story... this story presents the universe as a random sequence of physical and biological interactions with no inherent meaning, the society supported by this vision has no adequate way of identifying any spiritual or moral values”.⁶⁸ This liberal story has used legal systems to alter values and misinterpret justice, as Gordon Christie writes, “these systems go into structuring how people *understand* their lives (how they ought to act – “normalized” normative senses of what is correct and incorrect behaviour), and how they understand their interactions with others, with neighbouring peoples, non-humans, the lands, waters, and the rest of the natural world”.⁶⁹

However, the true essence of law is the imaginative reality of spiritual and moral values, it is the living embodiment of *justice*, taught by the natural world and grounded in creativity. Common law must be reframed in order to restore its purpose of guiding justice, as Leanne Betasomasake Simpson writes, “justice” to me... means the return of land, the regeneration of Indigenous political, educational, and knowledge systems, the rehabilitation of the natural world, and the destruction of white supremacy, capitalism, and heteropatriarchy”.⁷⁰ Theatre can reconnect law to its essential nature, which is the creative, imaginative practice of how to live in a good way through relational responsibilities.⁷¹ Theatre is a multifaceted space for recovering common law from the stronghold of the liberal worldview, but also as a path towards creating legal pluralism in Canada. Theatre can function as an example of fortitude, as it has survived the attacks of colonial powers and continues to show possibilities for resistance, continuing to challenge the domination of a single story, having survived, and thrived through thousands of years of history. As Barba describes, “our ancestors gave the example. They approached theatre as one enters the desert: to encounter themselves, but also to found a place different from all others, a fortress with walls of wind where new rules of life could be established”.⁷² Theatre is a place different from all others, it is a metaphorical paradigm that manifests the interrelatedness of all things. Like life itself, theatre is only possible through a relational responsibility to all elements - space, light, darkness, spectators, performers, creativity, imagination, stories. This relational responsibility is also a responsibility to the imagining of new rules of life, new laws, new stories.

Stories are fundamental to theatre and stories act as an imaginative mode of creation that should continue to guide law.⁷³ Therefore, theatre can provide a collective space for (reformed) common law and Indigenous laws to co-exist within complementary, independent systems of affirmation, valuing the diversity of stories to guide just, creative relationships amongst each other and the natural world. As Borrows writes, “When cultures, customs, symbols and traditions of Indigenous peoples form part of Canadian law, this helps to facilitate two kinds of reconciliation: with the earth, and between humans who occupy particular places on that earth”.⁷⁴ Theatre, as the essence of story, is a collective mode of imaginative creation that has the power to reconnect law to

⁶⁸ Thomas Berry, *The Dream of the Earth* (San Francisco: Sierra Club Books: 1990) at 123.

⁶⁹ Gordon Christie *supra* note 11 at 321.

⁷⁰ John Borrows, *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010).

⁷¹ John Borrows, “Seven Gifts: Revitalizing Living Laws Through Indigenous Legal Practice” (2016) 2:1 Lakehead Law Journal 2.

⁷² Eugenio Barba, *supra* note 26 at 28.

⁷³ Aaron James Mills (Waabishki Ma'iingan), *Miinigonizhwin: All That Has Been Given for Living Well Together One Vision of Anishinaabe Constitutionalism* (PhD, Thesis, University of Victoria, Faculty of Law, 2019) [unpublished].

⁷⁴ John Borrows, “Earth-Bound: Indigenous Resurgence and Environmental Reconciliation” in Michael Asch, James Tully & John Borrows, eds, *Resurgence and Reconciliation: Indigenous-settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) at 60.

its foundation of relational justice. Theatre is the soul of a society, the land is its foundation, stories are the medium and laws are the outcome.

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