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Working for Postcolonial Legal Studies: Working with the Indigenous Humanities

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Abstract

The postcolonial lends its name to multiple processes with outcomes as distinct but related as political emancipation and cultural renewal. This essay locates the postcolonial in institutional contexts that speak not only to the authority and directive power of the law and legal studies but also to new initiatives under the aegis of the Indigenous humanities that help legal studies rethink and redeploy disciplinarity as such and renegotiate relations with other forms of academic inquiry, pedagogical practice, and social activism. In unpacking the legacy of the traditional humanities, elaborating the power of Indigenous law and knowledge, and rethinking discourses, identities, and institutions, participants in the Indigenous humanities re-imagine legal studies. They do so by collaborating across cultures and disciplines in order to achieve new communities of resistance and respect, while making legal education a vital resource, a sustainable knowledge economy for all of us. Working for postcolonial legal studies means working with the Indigenous humanities, then, opening up institutional and discursive space in the interests of decolonising and underlining the value of Indigenous law and knowledge to social justice and global development.

Keywords: Postcolonialism, Legal Studies, Humanities, Indigenous Humanities, Indigenous Law and Justice, Globalisation

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'The fundamental issue is the identity of the decision-maker. The Van der Peet test entrenches European paternalism because the courts of the colonizer have assumed the authority to define the nature and meaning of Aboriginal cultures.'

- Barsh and Henderson, 1997, p 1102 -

'The pathway to a new relationship is paved with the long-term commitment to share the definitional power that creates the legitimacy whereby words and phrases gain their accepted meaning ... The re-examination of the way language sanctions particular worldviews and understandings is central to this process of change.'

- Monture-Angus, 1999, p 43 -

1. Law, Humanities, Postcolonialism, and Indigenous Humanities

Any bringing together of law, social justice, and globalisation does well to recognise the grounding of all three to a significant degree in the history and diffusion of the disciplines known as the humanities. Not only is the law an important component of the textual humanities but its ethical engagement with notions of the good and of the just society draw on cultural, philosophical, and theological traditions widely exported from Europe to its steadily growing overseas possessions[1]. Humanities knowledge has long been a globalising practice, key to Europe's 'civilising' mission, expanding forms of obligation and entitlement to justify and make more efficient particular colonising practices[2]. Understanding the role of the humanities in colonialism is therefore critical to the project of decolonising and achieving genuinely postcolonial legal and education systems and sets of social relations and realities.

In framing my discussion with epigraphs drawn from the work of colleagues, I mean to establish both my indebtedness to them and our interest in forms of accounting - their implications for the location of problems, the possibilities of transformation, and questions of responsibility - as central to decolonising legal studies, itself both agent and object of decolonising. This paper locates the postcolonial in institutional contexts that speak not only to the authority and directive power of the law and legal studies but also to initiatives under the aegis of the Indigenous humanities at the University of Saskatchewan that help legal studies rethink and redeploy disciplinarity while renegotiating relations with other forms of academic inquiry, pedagogical practice, and social activism. In re-imagining legal studies, participants in the Indigenous humanities collaborate across cultures and disciplines in order to achieve new communities of resistance and respect, while remaking a sustainable knowledge economy for all of us.

Understood as a literal, discursive, and cognitive mapping project in the name of progress, reason, and civilisation, modernity was a mapping that allowed settler nations to imagine and legitimate their claims to the New World. The project of Empire depended massively on cultural capital at home and abroad, on penetration of English as world language and diffusion of Western thinking as natural and neutral way of conceiving of and categorising the world. Especially compelling was the consolingly cohesive 'family of Indo-European languages' of Oriental Jones, part of the move from classical diachrony to global synchrony, from Eurocentric classicism to a comparative effort designed more concertedly to recognise as well as manage diversity[3]. Equally powerful were the self-evident and seductive 'truths' of Arnold's (1903) 'enlightened community' and all it takes 'for granted': the value of 'impartial reflexion,' 'the bond of a common culture,' 'equality,' 'independence, and a habit of uncontrolled action,' 'sturdy moral constitution'–and that 'high reason and … fine culture' that makes 'a *great* nation' (Arnold, 1993, pp 1-6, 38) – big terms that support big stories of *terra nullus* and civilising missions.

Though the Supreme Court of Canada has been resisting the legacy of liberal enlightenment thinking and the discursive and cognitive (as well as literal) mapping of colonialism, many of its recent decisions have also reinscribed dominant discourses that undervalue Aboriginal peoples and world views, except as the object of 'expert' inquiry. If legal argument depends on the culture of the expert, it is a culture and dependency so habitual that it resists critical scrutiny of its particular history in the golden age of European imperialism and its imbrication with the division of labour and rise of the modern professions.

What remains invisible is the complicity of knowledge economies in producing and reproducing

inequalities and injustices[4]. Dominant knowledge and its dominating paradigms sustain elite privilege while obscuring knowledge of the material conditions within which education, religion, and the law – what George Manuel calls the 'laboratory and production line of the colonial system' (quoted. in Canadian Government, 1996, p 335) - actively produce differences of cultural identity. Keeping the expert/judicial gaze firmly on Aboriginal responsibilities has sustained and masked strategies of domination/exculpation as well as appropriation and cooptation.

If the postcolonial is itself a highly contested term and far from a completed project in Canada and in other former colonial jurisdictions, the current era is also 'a site of rupture of old discursive regimes' and as such 'a site of possibilities' (Nakata, 2000, p ix)[5]. In elaborating these possibilities, I draw on the Indigenous humanities, a socially and politically committed, collaborative, cross-cultural, and cross-disciplinary practice at the University of Saskatchewan. The very unfamiliarity of the Indigenous humanities as term and practice, a strategic catachresis, unsettles the taken-for-granted categories of mainstream legal thinking insufficiently attentive to its own routines and presumptions about what counts for authority, identity, expertise, and evidence. In the name of the Indigenous humanities, then, I aim here to open up some institutional and discursive space in the interests of decolonising legal studies and underlining the value of Indigenous law and knowledge to social justice and global development.

2. Postcolonialism and Globalisation

The postcolonial lends its name to multiple processes, works in progress, and diverse aspirations and applications with outcomes as distinct but related as political emancipation, cultural renewal, and a fervent hope for justice for all [6]. If the first phase of the postcolonial focused on territoriality and political independence of new or reconfigured nation states, the current phase is preoccupied with the intersecting domains of the social, cultural, and economic as well as with the deterritorialising discourses of globalisation and cyber-community, the ominous shift 'from *terra nullus* to *terra virtualis*' (Findlay L, 2003). In insisting that these processes are both completed and ongoing, one employs an increasingly distinctive postcolonial double gesture marking a shift from binary oppositions (either/or) to the more productive and processive modes of both/and.

The Saskatchewan initiatives are both rooted in the history of the province and in the self-understandings and self-determination of Aboriginal peoples as well as thoroughly embedded within one of the most encompassing if elusive realities I wish to emphasise, namely, the extensive imbrication of Postcolonialism and Globalisation. Indeed, the increasing identification or equation of these latter two phenomena marks the falling into relative disuse of such former discursive peers as poststructuralism and postmodernism and the rise of more sharply political notions like 'post-development' (Rahnema and Bawtree, 1997). If the postcolonial has been the conscience of globalisation, it has also been its cover in claims about moving beyond centre-periphery dualisms of mercantile and imperialist control to power itself as dispersed, even deterritorialised, and democratically available to 'all' at the click of a mouse.

In a recent special issue of *The South Atlantic Quarterly* on 'Anglophone Literatures and Global Culture' (100(3) Summer 2001), the complexities of the claim for English as a world language are explored with exemplary tenacity. In considering the literary uses of English as a world language, the contributors play variations on the fact that 'literature was global … before it was ever national ' (O'Brien and Szeman, 2001, p 609), but do so in order to intensify rather than dissipate the current challenges posed by and in the name of globalisation:

> 'If globalization theory doesn't necessarily acknowledge the concerns of postcolonialism, postcolonialism has always, at least implicitly, been concerned with the implications of globalization … Though there is no shortage of criticism of postcolonial studies – even or especially from within its own ranks – no other critical practice has foregrounded the links between cultural forms and geopolitics to the degree that postcolonial studies has over the past four decades. No other materialist practice has considered the modalities of race, nation, gender, and ethnicity, in relationship to the global activity of hegemonic cultural, political, and economic forces, with the degrees of complexity and sophistication that have come to be associated with the best work in the field. Before postcolonial studies, Western scholarship was an

embarrassment.' (O'Brien and Szeman, 2001, p 606)

The importance of English as a world language perhaps gave literary critics an advantage in laying claim to the postcolonial as an area of intellectual activity. But coming first has drawbacks as well as advantages. And so, as the textual humanities more broadly understood have taken the postcolonial on board, they have helped expose the progressive depoliticising of literary work professing to be postcolonial, the melancholy and fatalism that have accompanied this depoliticising and reduction to 'an Anglo-American consumer item' (Viswanathan, 2000, p 26), and the opportunity for law and history in particular to re-politicise the term while employing it more willingly and robustly than hitherto.

3. Defining the Indigenous Humanities

In the Indigenous humanities, then, we aim to move beyond postcolonial theory as forms of fatalism and impossibility to theory as success and the possibility of transformation. The Postcolonialism/ Globalisation nexus requires attention to multiple and conflicted histories and critical geographies that have generated clear opportunities and challenges in the enormously complex but necessary domains of international law, international human rights, indigenous intellectual property and cultural rights, and planetary challenges regarding climate change and food security, resource depletion and environmental degradation.

Under the aegis of postcolonial education and the Indigenous humanities, we are pursuing the connections between legal studies and the humanities more generally at my own university (with its unique capacity represented by the Native Law Centre of Canada under Research Director James Youngblood Henderson and its productive association with the Humanities Research Unit co-directed by Marie Battiste and Len Findlay). I should stress, however, that these initiatives themselves come out of a sense of frustration among a disciplinary diaspora with the persistently colonial university mainstream that favours 'native-newcomer' relations. The Indigenous humanities for us is where authority and diversity are understood as a set of emergent and potentially transformative interrelations. Postcolonial legal studies figure in this arrangement as a small, arguably marginal, component of legal education narrowly understood, but also as a prominent player in new coalitions and capacity-building with decolonising as their objective and Indigenous issues consequently as a major focus and set of defining concerns (Smith, L, 1999; Battiste, 2000; Battiste and Henderson, 2000; Henderson, Benson, and Findlay, 2000; Battiste, Bell, and Findlay, 2002)[7].

In working together across difference, the Indigenous humanities acknowledge that we all have a stake in dismantling colonial structures and oppressive singularities while re-imagining and rebuilding practices and institutions and telling stories otherwise. If '[e]xternal oppression becomes self-oppression … until the result is immobility, inaction, and self-isolation' and the 'tragic experience of colonization is a shared experience' (Daes, 2001, pp 3-4), then we share the obligation to remythologise who we are and would like to be. There's no avoiding stories big and little – or the opportunities and hazards as well as the ongoing challenge to make a difference. Thinking in 'a decolonized way' (Monture-Angus, 1995, p 250) is important for all of us because colonialism is what has taught coloniser and colonised how to value difference, how to fragment and compartmentalise, how to legitimate the illegitimate, and how to reproduce hierarchy[8].

And the process of decolonising is not a solitary or singular activity, but one that requires dialogue, alliances, and, most importantly, the authority of the colonised other in multiple sites of action, as Paulo Freire (1980) and others have argued[9]. In the context of a supposedly post-Apartheid South Africa, the so-called 'new South Africa' – an expression 'fraught with much meaning and meaninglessness all at once' (Ndebele, 1994), for instance, recognises that the 'African struggle for liberation' is incomplete so long as 'the enemy' now declaring friendship 'still holds the keys' to the 'prison doors,' still defines realities, and makes 'obscene attempts to appropriate those who have been victims of [Roelof (Pik) Botha's] government' (Ndebele, 1994, pp 337-39). If we are limited only by our imaginations, our freedoms remain sharply curtailed when 'the brazen oppression of the past' is replaced by a newly 'seductive oppression,' and 'the inventive capacity' of the liberated is 'harnessed according to the demands of a structured business and industrial culture' (Ndebele, 1994, p 338). Still, for all its evil, obscenity, and pain, Ndebele (1994) remains committed to 'keeping the past alive,' especially in the face of purposive amnesia. For him, the past is a 'legitimate point of departure,' a source of redemption on the road to the 'decisive corrective action' that is justice for all. 'To neglect

the past,' in Ndebele's terms, 'is to postpone the future' (Ndebele, 1994, pp 340-43).

The Indigenous humanities are committed to 'sharing the definitional power' (Monture-Angus, 1995) and 'keeping the past alive' (Ndebele, 1994), to recirculating in multiple sites the historical and cultural archive, including findings of Royal Commissions, especially the Royal Commission on Aboriginal Peoples (RCAP; Canadian Government, 1996). In the wake of failed discussions among Canada's first ministers to give meaning to the nature and scope of the 1982 constitutional affirmation of Aboriginal and treaty rights, RCAP aimed to fulfil the promise of Canadian federation and to realise constitutional and treaty principles and goals. RCAP is, as Coon Come (2001) argues, 'the most authoritative and comprehensive study ever taken into the conditions [Aboriginal peoples] face,' a report that has been 'buried and ignored by the government of Canada,' even though its 'findings have never been discredited. Never impeached. Never refuted' (p 5). Coon Come (2001) points to the particular ironies of being called to account for what some regarded as his 'inflammatory' rhetoric when he was in fact citing RCAP (and other official sources) at the World Conference on Racism in Durban in September 2001. Minister Robert Nault, the Minister of Indian and Northern Affairs, demanded an apology when he should have recognised Coon Come's words 'as being from official reports with which he should be very familiar' (p 7)[10].

4. Canadian Law

Though the Supreme Court of Canada has been struggling to maintain 'the honour of the Crown' at stake in treaty interpretation (*Badger* [1996]) and displace the liberal enlightenment thinking it knows has been so damaging to Aboriginal peoples in the justice system (*Van der Peet* at para 19; *Gladue* at para 33-34, for example), it continues to accommodate 'the Aboriginal perspective' in ways that maintain the status quo. Deferring to mainstream expertise that continues to haunt treaty and other litigation, the Courts reproduce old polarities, dominant discourses and taxonomies of difference that undervalue Aboriginal peoples and world views. Despite a series of groundbreaking decisions that aim to decolonise legal thinking and favour Aboriginal understandings in the case of ambiguities in treaty or statute interpretation - (*Nowegijick* [1983]); *Sparrow* [1990]; *Badger* [1996]; *Van der Peet* [1996]; *Delgamuukw* [1997]; *Gladue* [1999]; *Marshall* [1999] - the Supreme Court's autonomy has proven unable to come to terms more fully with what Macklem (2001) identifies as the 'social facts' of 'Indigenous Difference'[11]. As Monture-Angus (1999) sees it, the *Delgamuukw* decision's giving equal weight to oral and written evidence does no more than adapt entrenched rules of evidence to ''accommodate' Aboriginal peoples. It is not that there is anything wrong with the rules and, therefore, a small re-jigging of the rules will suffice'. The result is that 'Indians' are seen as the problem, and 'not the methods of history or law,' so that the 'dominant system's monopoly on the definitions of both legal and political terminology holds the book open to a page where the oppression of Aboriginal Peoples is still writ large ' (Monture-Angus, 1999, pp 31-33).

Such dominant thinking is especially comfortable with mainstream expert testimony while resisting and resenting as political perversion contrary evidence, as Culhane (1998) has shown in *Delgamuukw*'s duelling anthropological experts (empiricist and revisionary). The result is that the law's failure to 'obey itself' is repeatedly exposed by Aboriginal peoples (Culhane, 1998, p 49). And the Court's 'reliance on activities [of hunting, fishing, picking medicine] fillets Aboriginal society, culture and tradition into only the most visible top layer' (Monture-Angus, 1999, p 120). If non-Aboriginal Canadians without experience of reserve life have difficulties understanding Aboriginal realities, it is no less true, as Coon Come (2001) has argued, for lower court and appeal court judges adjudicating claims regarding Aboriginal rights: 'They often do so without understanding that immediately behind legalistic debates about theories of rights, the denial of these rights causes landlessness, lack of access to resources, mass unemployment and the deprival of [Aboriginal] means of subsistence' (p 3).

If *Delgamuukw* [1997], in its efforts to elaborate 'the nature and scope of the constitutional protection afforded by [Section] 35(1)' (at para 210) of the 1982 Constitution Act to Aboriginal title and the jurisdictional claims of the Gitksan and Wet'suwet'en peoples, ends up threatening Aboriginal title and decision-making in paternalistic concern around cultural preservation with significant consequences for economic development (Monture-Angus, 1999, pp 127-28), it is a decision consistent with *Van der Peet* [1996]. Despite explicit reminders to be 'sensitive to the Aboriginal perspective' in treating Aboriginal rights (at para 49, citing *Sparrow* [1990]), in *Van der Peet* [1996], the Court resorts to categorising legal discourse and binary logic designed to fix Aboriginal identity and origins and develop 'a basic analytical framework for constitutional claims of Aboriginal right protection under section 35.1' of the Constitution Act, 1982 and retrieve 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). And the authority of the *Concise Oxford Dictionary* on the distinction between *distinct* and *distinctive* is unproblematically presumed – this despite recent studies of the history of the *Oxford English Dictionary* and the ideological activity of dictionary-making more generally (Willinsky, 1994; 1998).

And when a divided Court in *Marshall* [1999] (Gonthier and McLachlin JJ, dissenting) reversed the trial court and Nova Scotia Court of Appeal and recognised the Mi'kmaw treaty right to fish and trade and make a 'moderate livelihood,' and hence Donald Marshall Jr's right to catch and sell 463 pounds of eels for CAD 787.10, the Court (like the dissent) did so not by 'sharing the definitional power' (Monture-Angus, 1995) but by focussing rather narrowly on the English text of the treaty which departs from intentions and agreements registered by Mi'kmaw chiefs and Governor Lawrence of Nova Scotia (Barsh and Henderson, 1999, p 3).

Yet the decision occasioned virulent backlash among the media, the public, and even the federal government. *Marshall* both affirmed and 'broadened' (Barsh and Henderson, 1999, p1) the 1985 *Simon v The Queen* decision (which ruled that the 1752 treaty with the Mi'kmaw nation remained in force and placed the burden of proof for extinguishment of treaty hunting and fishing rights on the Crown) so that *Marshall* determines Mi'kmaw right to fish for a 'moderate livelihood' within their territory without external regulation, provided they do not endanger stock survival. If the widespread outrage at '**special** rights' or '**extended** rights **given** to Natives' 'undermin[ing] the whole principle of property in Canada' (Warren; cited in Rotman, 2000, p 627) or signifying 'the death knell for the east coast fishery' (Rotman, 2000, p 628) seems disproportionate to the recognition of **existing** treaty rights assuring something like legislated poverty for Aboriginal peoples, it is a response undeniably revealing of the complexities and contradictions of Canadian multicultural realities, and the communications circuits unevenly available to Canadians today[12]. In this case, the Court has no trouble limiting Aboriginal treaty rights by importing the notion of a 'moderate livelihood' (itself without precedent in Canadian jurisprudence) from a US Supreme Court decision of 1979 (concerned with Indians' right to fish 'in common' with other citizens as opposed to the 'free liberty' identified in treaties discussed in *Marshall;* Barsh and Henderson, 1999, p 9). The Court chooses to do this rather than defer to Mi'kmaw customary law, which could reasonably define the meaning of the treaty 'necessaries' (itself perhaps a mistranslation of the Mi'kmaw concept) in terms of 'moderation and respect.' Elders translate those terms in turn as 'taking only what you need' (Barsh and Henderson, 1999, pp 9-10). It is not so much a matter of what Tom Paine called 'the liberty of appearing,' but the liberty of appearing **as** and **when** an Aboriginal presence is deemed appropriate by those (with academic freedom and freedom of the press on their sides) who shape and ratify rationality, evidence, and consensus.

5. Working with the Indigenous Humanities

It is here that the Indigenous humanities help unpack and displace what McIntyre (2000) calls 'studied ignorance' and 'privileged innocence,' those acts of elision and strategic innocence that support claims to 'discover' out there in the real world what has been actively produced and reproduced in the first place. So it is that 'Aboriginal problems' are perceived where they have been all too actively produced, for example, in the racialised urban space that makes them so visible and so readily documented[13]. 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' (p 159). In the division of academic labour, the social relations of production are all too often suppressed with judicial as much as academic disciplinary expertise isolated from the object of inquiry, itself isolated from social relations. Indeed, the more institutions are invested in the discourses of free inquiry and exchange, objectivity, and excellence, the less able they are to countenance or tolerate, far less promote and value, difference–the diversity so crucial to a multicultural society and its democratic institutions. It is the so-called 'hidden curriculum' (Jackson, 1968), what Dorothy Smith calls 'relations of ruling' (quoted in Margolis, 2001, p 3), so prominent yet so natural as to be invisible, that masks the particular interests of a disinterest regarding all but the privileges of the status quo. And those who would 'out' the system 'risk a painful immersion in chilly waters' (Acker, 2001, p 77), as McIntyre

among others know only too well[14]. What is interesting about the privilege of 'detached' observation is what it renders visible and invisible, what it values and undervalues in the process. In particular, as Frantz Fanon argues, the detached expert repeats the 'perverse logic' of colonialism whereby it 'distorts, disfigures, and destroys' the 'past of an oppressed people' (quoted in Lawrence, 2002, p 23). In the process, such logic produces the 'stick figures' that Bonita Lawrence (2002) identifies with non-Indigenous 'expert' acts of excavation (p 24).

What the 'disinterested' scholar/teacher/judge cannot comprehend is the experience of being reduced to objects of the expert gaze, 'preserved, dissected, analysed, written-about, and above all, owned, controlled, appropriated' (Wright, 2001, p 117), of having experiential or local knowledge rendered invalid, and being forced constantly to bear the burden of proof. 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'* in the light of sovereignty claims in British Columbia based on appeals to *terra nullus* (Culhane, 1998, p 48). Aboriginal peoples are forced to marshal meagre resources to react and respond without equitable access to the media and other mainstream institutions--and there is no denying the costs of such defensive postures and the charges of special pleading they typically entail. And reacting means justifying selves in dominant terms, 'putting the colonizer at the centre' and hence becoming 'co-opted into reproducing (albeit unintentionally) [Aboriginal peoples'] own oppression.' The answer is to be 'preemptive and proactive' (Smith, G, 2000). What Monture-Angus (1995) recommends is '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' (p 253)[15]. Holding mainstream institutions to account is, then, a major focus of the Indigenous humanities.

The Indigenous humanities lay claim to the rigour and authority of the traditional humanities, while their collaborative, cross-cultural, and cross-disciplinary practices act as a necessary corrective to past paternalism and resurgent neo-colonialism. In this project we remain students, using, as it were, the master's tools to dismantle the master's house (Lorde, 1984). If the humanities were central to the cultural completion of colonialism, then they can be an important part of decolonisation; the humanities role as class specific nationalism and expansionist but exclusionary internationalism is available in English as the supreme lingua franca. We aim to dismantle the master's house by reinterpreting and exposing the foundational violences of the traditional humanities (Bhabha, 1994) and their complicity in acts of delegitimation and dispossession and by unpacking a 'commitment to humanism' and equality that 'co-exists' with a 'material practice of inequality' and exposing the 'ideologies of justification. . . constructed in law, government, imagination, and popular culture,' as Culhane (1998, p 49) argues. We do so by rereading treaties and case law and revaluing Aboriginal knowledge and heritage, the authority of the elders and educators, court workers as well as cultural workers (like Tomson Highway, Lee Maracle, and Louise Halfe) and showing no undue deference to male authorities of any culture.

In the case of *R v Gladue* [1999] such cultural knowledge can usefully address deficits of discourse, understanding, and remedial action. Aboriginal cultural resources–Tomson Highway's *Kiss of the Fur Queen*, and *Stolen Life: The Journey of a Cree Woman*, a collaboration between Rudy Wiebe and Yvonne Johnson–help unpack ideological obstructions and enrich the Court's sense of relevant 'circumstances,' 'the Aboriginal perspective,' and 'Aboriginal heritage' so that it might address more effectively the disproportionate incarceration of Aboriginal peoples. The Aboriginal archive expands on the experience of an urbanized young Aboriginal woman (Jamie Gladue) victimized within and without her community and often, 'between a rock and a hard place, between either continued violence or double victimization and the harsh reality of being without community and family,' as Razack (1998, p 66) argues in promoting understanding of links between sexual violence, colonialism, and persistent racism. Without such knowledge, circumstances become a weak form of mitigation because of a very narrow interpretation that severs symptoms from sources and understands 'Aboriginal heritage' and domestic violence as respectively romantic residue and social universal distinct from a history of social abuse in and as the colonial experience[16].

The work of the Indigenous humanities is, then, about redeeming expert knowledge, about making disciplinary inquiry more relational, sociable, modest by negotiating a place within an array of Indigenous, non-Indigenous, and hybrid forms and locations of inquiry and authority. Expert knowledge has too often operated in isolation within colonial cognitive and educational hierarchies. It can be redeemed in ways that fill in the 'stick figures'(Lawrence, 2002) dear to autonomous disciplinary inquiry. Elite schematism and abstraction need to be made more relational because otherwise all our identities are formed and deformed in the process. We need to recognize what 'we' take for granted–our languages, history, and culture–and the identities and legitimacies they entail.

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.

In the spirit of Linda Smith's 'Twenty-five Indigenous Projects' (1999, pp142-161), and consistent with the commitment to sharing definitional power, I draw attention to the following initiatives designed in whole or in part to promote postcolonial education, development, justice, and legal studies:

- a collaborative book on Spacing Culture, Placing Heritage: Essays in Decolonisation
- Banff Symposium on Aboriginal Education
- dialogues on Aboriginal Education, Aboriginal and Mainstream Science, and Aboriginal Peoples and the Energy Sector
- Dialogue and Declaration on Indigenous Civilisations: Towards Postcolonial Standards of Civilisation (Canadian Commission for UNESCO, 2001)
- conference, web site, report, and academic book on Aboriginal Community Economic Development
- essays and presentations on treaty federalism and treaty economy
- Bioshuffle–a set of symposia and cultural interventions on health and food security
- a SSHRC Strategic research project on Co-operative Membership and Globalization: Creating Social Cohesion through Market Relations
- work with TRIBE, an Aboriginal artist-run centre, and BlackFlash, a community-based magazine on culture and curatorship, new media theory and practice
- University of Alberta summer research institute on State Culture and Class Cultures: Law, Literature, Citizenship, and Social Cohesion, 2002

The extended and revitalised humanities are dedicated to public re-education, to rebuilding institutions and disciplines, and to displacing Eurocentric singularities and nominal universals that deny and distort the realities of difference and commonality that define us all. To that extent too the Indigenous humanities represent an opportunity and obligation for all of us to ensure justice for Indigenous peoples in Canada and beyond – to be proactive and hold the mainstream institutions to account. Aboriginal people will continue to protest from the margins until Courts and the academy make better provision for Aboriginal versions of legitimacy inside and outside the courtroom and classroom.

And we do have choices; there are alternative models of speaking and acting, of a 'deep listening' (D LeResche; quoted. in Monture-Angus, 1995) that requires a renewed orality that Indigenises those circuits of exchange. In this we can do well to listen to Erasmus (2002) whose Lafontaine-Baldwin Lecture wants to reframe the terms of intercultural discourse to renew 'relationship between aboriginal and non-aboriginal peoples in Canada.' Instead of resorting to legalistic discourse, this means talking 'people to people' as well as 'nation to nation,' nourishing the 'national community' by 'an ongoing act of imagination, fuelled by stories of who we are.' To renew the relationship of 'mutual trust' on which the 'peaceable kingdom' rests, Erasmus recommends three discursive shifts: 'from aboriginal rights to relationship between peoples; from crying needs to vigorous capacity; from individual citizenship to nations within the nation state.' In this message, Erasmus repeats the message of the multi-volume, but long neglected Report of the Royal Commission on Aboriginal Peoples 1996. Instead of polls and surveys and 'unilateral declarations' and coercive definitions, we need stories and symbols that will fire the imagination to see us, as in the two-row wampum belt, 'travelling together on the river of life.' Then we might forget Aboriginal peoples as 'exceptionally needy' and focus on Aboriginal capacity and the remarkable successes achieved all over the country in so many sectors. These are the stories we might tell so that Canada can, as Erasmus argues, provide for the world 'a model of peace and friendship between peoples' (Erasmus,2002, pp 103-24).

6. Conclusion.

Such decolonising work as the Indigenous humanities promote is especially critical at a time when the federal government seems determined to forget the past and focus on the future as in its fall 2000 election platform, *Opportunity for All*, with its promise of 'A Healthy Future for Aboriginal People.'

Or, in the 2002 Throne speech ‘The Canada We Want’ that aims to ‘close the gap in life chances between Aboriginal and non-Aboriginal Canadians’ through a series of government interventions rather than through dreaming/imagining new relationships. In each instance, silence is maintained on the ‘cartographies of violence’ (Oikawa, 2002) that map our landscapes as if the boundaries between past and present, public and private, individual and collective, legitimate and illegitimate spaces were natural facts[17].

Canada also has, however, among its national intellectual instruments a major granting council, the Social Sciences and Humanities Research Council of Canada, and an organisation of learned societies, the Canadian Federation for the Humanities and Social Sciences, entities that are constantly challenged to reconceive the humanities and help reinsert them into the processes that produce academic legitimacy and help shape public policy and public understandings of the facts and consequences of Indigenous difference. The uptake, however tentative, of the Indigenous humanities by these organisations and the scholars they represent will make a difference even as it reveals how meagre still the presence is of Aboriginal scholars within those communities.

The Indigenous humanities, I should stress, is not a ‘discovery’ claimed by our interdisciplinary group at the University of Saskatchewan, though we seem to be using the term earlier and more concertedly than others. We hope it will be taken up by others who will, in the interests of postcolonial legal studies, social justice, and global development, add dimensions to it which we have as yet no inkling of. For our group, encompassing a number of disciplines and colleges, including Law, Arts and Science, Education, and Commerce, the Indigenous humanities is a strategic labelling of actively produced and respectfully disseminated knowledges. The label is deliberately and unapologetically hybrid, collaborative, and interdisciplinary. The Indigenous humanities is catachresis, category mistake, or misnaming such as Spivak (1993) welcomes as the limit of any and every authority and hence also the place of progressive change.