Book Review

Law's Indigenous Ethics. By John Borrows. University of Toronto Press, 2019. vii + 381 pages.

Reviewed by Eden Alexander*

Law's Indigenous Ethics offers an invitation to change the very idea of what Canadian law is. Drawing on Anishinaabe legal principles, Canadian jurisprudence, legal theory, and doctrine, the text explores the relevancy of Indigenous law in contemporary legal affairs. It argues that extending the seven Anishinaabe grandmother and grandfather teachings of love, truth, bravery, humility, wisdom, honesty, and respect to Canadian law and policy would help us all better constitute ourselves within our communities. Borrows maintains that we have a choice about how we interpret Canadian legal obligations and how we understand legal values generally. He highly recommends choosing to follow the river where equality flows in more than one direction.

Water doesn't work that way, you say?
Well, let us see.

John Borrows is professor and Canada Research Chair in Indigenous Law at the University of Victoria Faculty of Law, and a preeminent legal scholar in Canada. He is Anishinaabe/Ojibway from the Chippewas of Nawash unceded First Nation on the shores of Georgian Bay, Ontario, and he has written his newest book from an Anishinaabe legal perspective. Over the course of an introduction, seven chapters, a conclusion, and over 120 pages of footnotes, Borrows introduces the reader to creatures from Anishinaabe stories, such as heroes, tricksters, monsters, and caretakers. He is generous in how he shares Anishinaabe teachings and law, and this giving methodology contributes to a work equally valuable to the fields of Indigenous studies, legal theory, and ethics.

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"The truth about stories," author Thomas King says, "is that that's all we are."[1] But what if this statement applied, not only for people (Indigenous or otherwise), but to Canadian law itself? Law both arises out of, and is continuously shaped by, broader social narratives, and it is only possible to make intellectual and normative sense of any story when understood in its larger cultural context.[2] As Borrows states: "law's origin is a big deal ... [but] law hides its cultural nature." By unveiling the cultural nature of Anishinaabe law, Borrows challenges the supposition that matters of public importance are always best controlled, managed, and regulated by a higher power, a supreme and hierarchical authority in law.

To Borrows, all law is fluid. Law reflects its origins and changes over time; it transforms depending what stories get fed into it; and sometimes it grows into a monster that threatens to eat you alive. Indigenous laws, to Borrows, are a third branch of Canada's constitutional framework,[3] and as such they contain existing, cognizable, and recognized legal principles available to shape Canadian law.

In chapter one (*Zaagi'idiwin*), Borrows argues that love is a legal value that should be available, by extension, within the Canadian Constitution. Indigenous laws, he reminds us, have survived the assertion of Crown sovereignty. Although they have been negatively affected by past Canadian actions, Indigenous legal traditions are inextricably intertwined with present day customs, practices, and traditions that are now recognized and affirmed in section 35(1) of the *Constitution Act, 1982*.[4] To Borrows, relating the Anishinaabe teaching of love to section 35 could provide new avenues and insight into the development of Canadian constitutionalism.

> We choose to interpret treaties and other legal rights in the light of love, or we can choose some other, more pernicious goal. In making these choices, we must remember that it is a constitution we are interpreting, a constitution that seeks to advance higher aspirations. (35)

In chapter 2 (*Debwewin*), Borrows suggests that by unbundling the "truths" behind Canada's national origin story we might understand more about the law. He argues that courts and legislatures have created a coherent framework to interpret Indigenous–Crown treaties, but that in doing so, lawmakers have favoured Crown dominance and relied upon moral and ethical assumptions without transparency. Canadian law, he says, claims authority over issues of moral, social, economic, religious, spiritual, and philosophical questions, while explicitly prohibiting discussion or argument on spiritual and philosophical grounds.

> It blinds us. This approach banishes wisdom from other fields by failing to acknowledge law's own relationship with and manipulation of metaphysics. (66)

In chapter 3 (*Zoongide'ewin*), Borrows tells the story about the netmaker/spider to analogize a story about the Crown, the Supreme Court of Canada, and an Indigenous community in Northern British Columbia—*Tsilhqot'in Nation v. British Columbia*.[5] Borrows examines the application of the doctrine of *terra nullius* to the claim of Aboriginal title of the Tsilhqot'in and argues that the Court's approach has quietly re-asserted Crown superiority. By writing that *terra nullius* does not apply in Canada (because Indigenous Peoples were First Peoples), but then treating the lands at issue as if no Indigenous Peoples had care of their jurisdiction, the Court refused to acknowledge the relevancy of Indigenous law to Canadian legal issues.

> Bold and brave jurisprudential acts can become surprisingly thorny gifts. (112)

In chapter 4 (*Dabaadendizowin*), Borrows asserts that Aboriginal title's relationship with private property interests can best be understood when the principle of humility is observed. Former Supreme Court Chief Justice Antonio Lamer is well known for saying that when it comes to reconciliation, "let us face it, we are all here to stay."[6] Canadian history cannot be undone and we must now choose how to take that history with us into the future. Borrows eloquently captures this when he explains that law is relational:

> To be alive is to be entangled in relationships not entirely of our own making. We are only a small part of the greater whole. (117)

In chapters 5 and 6 (*Nibwaakaawin* and *Gwayakwaadiziwin*), we are asked to think about legal education and its role in re-ordering legal relationships in Canada. To do so, the chapters highlight the work of various individuals in the legal community who connect students with learning opportunities in the context of law's sources, particularly opportunities to take legal lessons outside. These chapters acknowledge that identifying, learning, and applying Indigenous law in a contemporary context is not easy. Bringing Indigenous laws into the academy engages a myriad of critical questions.

Lastly, chapter 7 (*Manaaji'idiwin*) discusses mutual responsibilities in Indigenous and settler relations, especially as they relate to accountability for past harms like the history of residential schools. Borrows reflects that the legal principle of respect is significant in Canadian and Indigenous legal systems and

that it should guide the recognition of responsibilities for the harms of Canadian law generally. Nations, he says, are intergenerational—they live on past the biological lifetime of their citizenry, for example in the stories that are shared. Once told, stories are loose in the world. Just as we can never take back a harm once done, we can never get rid of the stories left as explanation.[7] Recognition of responsibility, says Borrows, may allow a new story to be told.

Borrows shares his considerations through the Anishinaabe legal lens, and while he acknowledges that his text does not represent all of the Indigenous legal traditions in Canada, he hopes that it may make space for them to interact with Canadian law.

This new book by John Borrows offers an entryway into the practice of Indigenous law, and an invitation to reconsider Canadian law as a whole. It is about the revitalization of Indigenous legal traditions, the revitalization of the common law, and it is about understanding law as a human activity. Law is not just an idea, not just an imposition from a hierarchical and untouchable source. Law is practice, an extension of society, and a story that we all can participate in making. Borrows contends that the river can (and should) run both ways. Let us see.

Notes

1. Thomas King, *The Truth About Stories: A Native Narrative* (CBC Massey Lecture, Part 1, 2003).
2. The Hon. Lance Finch Chief Justice of BC, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (Paper delivered at the Continuing Legal Education Society of British Columbia Indigenous Legal Orders and the Common Law Conference November 15, 2012).
3. John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).
4. Section 35(1) of the *Constitution Act, 1982,* provides: "The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed." *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, <http://canlii.ca/t/ldsx>
5. *Tsilhqot'in Nation v British Columbia,* [2014] 2 SCR 256.
6. *Delgamuukw v British Columbia,* [1997] 3 SCR 1010 at para 186.
7. King, *The Truth About Stories*, *supra* note 1

Eden Alexander is a lawyer practising in Justice Canada's Northern Region Office in Whitehorse. The opinions expressed herein are the author's own and do not represent those of the federal Department of Justice or the Government of Canada.