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RECOGNIZING MULTIPLE LEGAL SYSTEMS: DECOLONIZING OUR UNDERSTANDINGS OF “THE” LAW WITH VAL NAPOLEON

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There’s no such thing as “the” law. We live in a world where [multiple legal systems operate simultaneously](#), but because of systems of power and oppression, certain legal systems are valued and respected over others. For example, here in what many people call Canada, state laws (including common law and civil law) are understood by the general public as binding legal systems that guide Canadian society.

And yet, for thousands upon thousands of years before Canadian state law was established, Indigenous groups across Turtle Island have had their own legal systems, like every other society. It seems obvious [but this fact is often obstructed](#) because colonization has tried to destroy these legal systems as part of its attempt to [disappear Indigenous peoples and cultures](#). However, these laws remain and Indigenous peoples are rebuilding, reimagining, and revitalizing their legal systems, despite the colonial nation-state’s attempts to extinguish them.

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Our laws, our institutions have been undermined and there are gaps and there are distortions. So the work is fundamentally about rebuilding our legal orders which is about rebuilding intellectual life, about rebuilding citizenry; it's rebuilding an aspect of their legal orders from which a symmetrical conversation can take place with Canada.

So, as we work within the state legal system to push for important and essential changes to unjust laws, laws which [disproportionately impact](#) Indigenous women and gender diverse folks, how can we also respect the Indigenous laws that have existed on these lands long before the Canadian laws that drive our work? How do we hold ourselves accountable to Indigenous laws without idealizing or romanticizing them?

I had the honour of sitting down with Indigenous feminist and leading legal scholar [Val Napoleon](#) to ask some of the big questions we have been talking about together as staff at West Coast LEAF.



Val Napoleon smiles in front of some trees. Photo Credit: [UVic](#)

Val Napoleon is from the Sauteau First Nation, in the [Treaty 8](#) part of British Columbia. She is Cree, and her family is also Mohawk, Dunneza, and Sauteau. She is also an adopted member of the Gitanyow (Gitksan) in which she belongs to one of the northern most

Gitxsan house groups, House of Luuxhon. She is a [grandmother](#), a [professor](#), an [artist](#), and an activist whose work is focused on revitalizing [Indigenous laws](#), amongst other research interests. She is the director of the [Indigenous Law Research Unit](#) (ILRU) and the co-founder and director of the [newly launched](#), first of its kind [Indigenous Law Degree Program](#) (JID/JD Joint Degree Program), at the [University of Victoria](#) (UVic).

Here's a peek into our interview with Val Napoleon where we are reminded to never think of the Canadian legal system as "the only" legal system.

Q: To what extent do you think it's possible to decolonize the Canadian legal system?

A: Any legal order is going to reflect the society that it's a part of. Law is constituting and it's constituted by the economic, political, social dynamics that it's a part of. Law is a distinct mode of governance; it's never separate from the economy, it's never separate from how we manage our politics and how we organize ourselves. So, we have to decolonize Canada in order to decolonize law. In order to create new dynamics that law can reflect, we have to create a new Canada.

[In the work we're doing with Indigenous law](#), we spend time asking questions about what law is: What makes it legal? What should it do? Who should be involved with it? What is the work of law? How have we recorded law in memory? And so I think that the ways that Indigenous people are asking questions about the role of law, the function of law, the elements of law, all of these different things, those are questions that aren't just important for Indigenous peoples. They're important for everybody. Every Canadian should have the opportunity to ask these questions.



Artwork by Val Napoleon, "Teacher and People." Photo Credit: [ILRU](#)

Q: Are there ways for the colonial legal system and Indigenous legal systems to co-exist? Can you share an example of how this might work?

A: They're coexisting now, to varying degrees of success. What we have for the most part is an asymmetrical relationship between Canada, Canadian law, and what Indigenous peoples are trying to do through law. There is no Indigenous legal order or a system of laws that is intact for Indigenous peoples.

Our laws, our institutions have been undermined and there are gaps and there are distortions. So the work is fundamentally about rebuilding our legal orders which is about rebuilding intellectual life, about rebuilding citizenry; it's rebuilding an aspect of their legal orders from which a symmetrical conversation can take place with Canada.

It's slow work, there's no quick fixes with rebuilding Indigenous law. Colonization has created these huge problems and our societies weren't perfect before. I mean we had sexism, we had sexual violence, we had all these things before too but not to the extent that we have now. And so there are these massive problems that no legal order, no law—Canadian law or otherwise—is going to fix overnight. It's going to take time.

So I think that the most respectful thing that non-Indigenous peoples can do is to treat Indigenous law as law. It has to be accountability. There has to be an understanding of power dynamics and legitimacy and all of these different things.

An example [would be the ongoing work with our] major [water project](#). It's with three regions of water scarcity. So there's Cowichan, Similkameen, and Tsilhqot'in, and the work has been to substantively articulate and restate Indigenous law for water and legal processes, along with looking at B.C. or state water laws and the spaces that might exist within the new [Water Sustainability Act](#) to create and to draw on both so that what can be built is a management system for water which is sustainable.

[Another example is our project where] we're working with Gitxsan women to substantively articulate and restate historic [Gitxsan human rights law](#) in a way that we'll be working with them to create resources to support them, like educational resources as well as practical guides and other kinds of things, to help them deal with the shameless sexism that is in our communities, that is a part of our political organizations. And so there will be some connections with the [Charter](#), or various human rights legislation and so on, that will need to be thought about.

Q: What are the opportunities and limitations of the Canadian legal system when it comes to advocating for Indigenous rights and sovereignties?

A: There's separate areas of work. There's the work we're doing which we deliberately turn away from Canadian law in the research that we do with Indigenous law, because if we start with Canadian law what we find is that it becomes a black hole. It

becomes the way that law is defined and Indigenous law is then organized within conceptions of rights within Canadian law. And that's not helpful to doing the work of Indigenous law, to rebuilding Indigenous law.

Sometimes it's an important strategy, like with the [pipelines](#) or other kinds of things for people to take aspects of Canadian law to advance positions.

[However], if you look at major litigations undertaken by Indigenous peoples, there is a cost to them too that's beyond the [financial](#). For the Gitksan and Wet'suwet'en people to have undertaken [Delgamuukw](#) for the number of years that they did, was a massive cost on every level for people to take and that cost is still being borne in terms of continued [internal conflict](#), and other kinds of things that are going on in the communities.

So there's good reason if you've got a good political project and good strategies to undertake Canadian law, the problem is it can become a be-all and end-all in and of itself. And that's the care that has to be taken with it I think.



Collage of Val Napoleon's artwork. Photo Credit: [UVic](#)

Q: What advice would you give someone who wants to learn about the Indigenous laws that exist

on the lands that they live on? What actions would you encourage them to take?

A: Wherever you are in Canada, there's an Indigenous legal order, whether people can see it or not. So one thing I often do is ask people to think about the questions they are going to ask of Indigenous law. And then I asked them if they would ask those same questions of Canadian law and, if not, why not.

No legal order is perfect. Indigenous laws weren't perfect, but they enabled Indigenous peoples to manage themselves through tens of thousands of years. Canadian law is not perfect. So I guess the point there is not to idealize Indigenous law.

For non-Indigenous peoples, the realization that law is alive and it's a human construction, and right now and probably for decades and decades to come, it's going to be one of contention with dynamics that are going to be confusing and contradictory sometimes. Sometimes non-Indigenous peoples are afraid to ask hard questions about law and they shouldn't be. They should ask hard questions. Law has to do the hard work of law, and if it doesn't do that it shouldn't be, it shouldn't exist.

Folks who focus on state law and the colonizing nature of state law, the oppression of state law, and so on, sometimes erase all other law, including Indigenous law, in their fight against state law. And so what I would advocate for is to develop an understanding of law, good and bad, the potential and the failures, and to do that in a way that's intelligent and thoughtful and to apply those same questions to Indigenous law as you would to Canadian state law.

So I think that the most respectful thing that non-Indigenous peoples can do is to treat Indigenous law as law. It has to be accountability. There has to be an understanding of power dynamics and legitimacy and all of these different things. And to not romanticize it.

Q: What would solidarity from feminist legal communities look like?

A: I consider myself a feminist and I think that feminism is really important to Indigenous law. I think that all Indigenous law that we rebuild should be [Indigenous feminist law](#).

So what can other feminists do? Other feminists can support that. Solidarity from other feminists would be taking Indigenous law seriously and understanding that for Indigenous women we have to deal with sexism within our own legal orders and communities, as well as with Canadian law.

I went to a conference a number of years ago, in New York. I talked about Indigenous law and it was so interesting because it was a group of about 200 women and, for the most part, not a single one was interested in what I was saying. Because [...] their whole focus had been state law and the problems of state law. They'd been fighting for decades for equality, against discrimination, all of the different things that they were doing. And so my coming along and talking about the importance of Indigenous laws was like "Why are you talking about that? Here's what's important over here!"

Folks who focus on state law and the colonizing nature of state law, the oppression of state law, and so on, sometimes erase all other law, including Indigenous law, in their fight against state law. And so what I would advocate for is to develop an

understanding of law, good and bad, the potential and the failures, and to do that in a way that's intelligent and thoughtful and to apply those same questions to Indigenous law as you would to Canadian state law.



Val Napoleon sits in front of one of her paintings. Photo credit: [UVic](#)

Kaymi Yoon-Maxwell is a mixed race settler whose ancestors come to Turtle Island from Korea and Scotland. Kaymi is committed to working in solidarity with Indigenous peoples towards shifting the colonial default and honouring the laws of these lands. Kaymi can often be found whispering encouragement and admiration to various houseplants, like a true millennial plant-parent.

Questions? Feedback? Email us at
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