Mythology in Legal Education: Fostering Reconciliation and Improving Mental Health

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This article contends that two superficially unrelated problems with Canada's legal system have a deep and common source. Having largely excluded Indigenous beliefs from law-making processes in the past, Canadian courts must now find practical ways to incorporate Aboriginal perspectives in Aboriginal rights litigation. This is a matter of legal education writ large. Canada's legal system is also currently grappling with problematically high rates of depression and malaise among its practitioners. A common denominator to these two problems is the fact that a mechanistic view of nature brought to North America centuries ago by Europeans concertedly displaced and largely eradicated the nomadic ways of life of Indigenous peoples and the mythic belief systems associated with their ways of life. The Europeans entrenched a highly rationalistic, mechanical and productive system of living while they physically ruined or destroyed much of the surrounding natural ecology and marginalized Indigenous worldviews, all in the interests of socio-economic expansion and scientific progress. Canada's legal system is slowly coming to terms with the emotional and psychological damage that its behaviour caused Indigenous people and is causing its own practitioners. This article proposes that an educational ounce of mythology could well be worth a pound of cure.

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I. Introduction

This article addresses two seemingly diffuse challenges that press upon the Canadian legal system. One is the difficulty of incorporating what is called 'the Aboriginal perspective' into Aboriginal rights litigation, a "crucial" obligation that has been placed upon courts for at least 25 years.[1] The other is a troublesome sense of malaise among Canada's legal practitioners or what a recent report identifies as "alarming rates of anxiety, depression, substance use and burnout" among lawyers and law students.[2] Both problems are complex but this

1 See *e.g. R v Sparrow*, [1990] 1 SCR 1075, 46 BCLR (2d) 1 at paras 40, 69 [*Sparrow* (1990)].

2 "Report from the 2019 Annual Conference: The Practice of Well-Being: Exploring the Legal Regulator's Role" (2019), online (pdf): *Federation of Law*

article contends that they share at least one deep root. The Canadian legal system and the broader society in which it is ensconced hold tightly to a mechanistic view of nature. This view conceptually and actually disconnects individuals from the natural world in ways that leave individuals with a feigned sense of self-control and a private feeling of being lost. By contrast, some or many Indigenous peoples in Canada maintain some semblance of a holistic view of nature, as reflected in their mythologies and spirituality, and thereby feel connected to their natural surroundings. However, their views or knowledge have been "delegitimated" and "concealed from public view", as John Borrows proposes.[3]

This acculturated divide in thinking about nature is very deep. For this reason, this article does not offer unduly optimistic possibilities for bridging it, but it does contend that if socio-cultural and legal reconciliation between Indigenous peoples and non-Indigenous people in Canada is a *genuine*, mutual aspiration,[4] and if Canada's legal system *sincerely* wants its practitioners to find value, meaning or fulfilment in their work, these expectations will remain unfulfilled until Canada's legal educators and practitioners question their mechanistic understanding of nature.

To expose how deep the root of the problem extends, Part II of this article discusses how a mechanistic view of nature came to displace animism and how more recently the Industrial Revolution socially implemented or reified the mechanistic view, which prevails to this day. Eurocentric socio-industrial expansion into North America directly affected *nature* because of *a way of perceiving nature*. It transformed the landscape by developing it, and by concomitantly marginalizing Indigenous beliefs and relationships to the land.

Societies of Canada <flsc.ca/wp-content/uploads/2021/05/2019ConferenceREPORTEFin.pdf> ["Report from the 2019 Annual Conference"].

3 John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) at 31.

4 The Supreme Court of Canada has observed that the "grand purpose" of section 35 of the *Constitution Act, 1982* is "[t]he reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship": *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 10.

Complicit in this process, the Canadian legal system "weakened ancient connections to the environment".[5] The prosecution of Beverly and Nicole Manuel for obstructing a highway is discussed, to show that Canadian law purports to consider and recognize Aboriginal law, but that the Rule of Law in Canada remains the Rule of *Canadian* Law.

Part III of this article proposes that legal education is wedded to a mechanical view of nature, which is linked to the rationalism demanded of all public higher education in Canada. Law school prepares students for the practice of law to a limited extent because it provides them with the specialized information needed to represent clients who will rely upon their specialized knowledge. However, formal legal education is not obviously or systemically concerned with the mental health aspects of legal practice. Law students who wish to become lawyers to *help* other people become disillusioned and demoralized in practice by the labyrinthine obstacles that impede this modest goal or they acquire a real distaste for having to 'help' clients whose conduct offends their own personal sense of morality. Law school does not prepare students for such realities, but it could lay the groundwork for *different* realities. It could emphasize that the highly mechanical dispute resolution system in place in Canada is an unwelcome, 'alternate' dispute resolution system to Indigenous peoples who hold a spiritual view of nature. It could attempt to offer some of the practical wisdom that comes from mythology alongside its curricula of specialized knowledge.

Part IV of this article addresses the malaise of legal practitioners. It proposes that the intellectually mechanistic foundation of the profession and associated processes have a psychologically deleterious influence on practitioners and others. At a recent conference addressed to the mental health of Canadian lawyers, a presenter suggested that Indigenous lawyers might find it challenging to find 'their space' in Canada's legal profession because the legal system has oppressed Indigenous peoples.[6] This article tackles the cause underlying this

5 Borrows, *supra* note 3 at 30.

6 "Report from the 2019 Annual Conference", *supra* note 2 at 3.

symptom. It proposes that the mental health of Indigenous and non-Indigenous lawyers alike depends at least partly on the willingness and capacity of Canada's legal system, including its legal education system, to give ground to a holistic view of nature. For at least a millennium the belief that humankind can control nature has been strengthened by the constant destruction of nature. More recently, as humankind becomes trapped in one extreme weather event after another — whether a tsunami, a flood, a drought or forest fire — such presumptuousness is being sorely tested.

II. How a Mechanistic View of Nature Emerged from a Mythic View of Nature

A. Contrasting Worldviews

In 1988, lawyers for the Gitksan and Wet'suwet'en chiefs who claimed Aboriginal title in a British Columbia Superior Court, gave an extensive opening address. They claimed therein that the Gitksan and Wet'suwet'en world view is of a "qualitatively different order" than that of the French and English people whose ancestors travelled across the Atlantic Ocean to North America centuries earlier.[7] In particular, Stuart Rush and his co-counsel submitted:

> [t]he Western world view sees the essential and primary interactions as being those between human beings. To the Gitksan and Wet'suwet'en, human beings are part of an interacting continuum which includes animals and spirits. Animals and fish are viewed as members of societies who have intelligence and power, and can influence the course of events in terms of their interrelationship with human beings.[8]

This article relies mostly upon this Gitksan and Wet'suwet'en worldview as representative or at least reflective of the kind of *animistic* mentality that can be contrasted to a mechanistic worldview. It is the animistic aspect of the Gitksan and Wet'suwet'en belief system that is implicitly absent from a 'Western'

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7 See *e.g.* Stuart Rush et al, "Gitksan and Wet'suwet'en Address" (1988) 1 CNLR 16 at 24.

8 *Ibid.*

worldview in which the most important relationships are those between human beings, as Rush and his colleagues put it.

Western mythology was itself once animistic (and totemistic), but it eventually became anthropocentric.[9] According to Yuval Harari, "Animism (from '*anima*', 'soul' or 'spirit' in Latin) is the belief that almost every place, every animal, every plant and every natural phenomenon has awareness and feelings, and can communicate directly with humans".[10] Theodore Reik observes that animism is a belief system in which "the whole of nature, including inanimate objects, has a will and a soul".[11] It was "common among ancient foragers",[12] and can involve the worship of a natural creation such as a tree, from whom the worshipper believes that he or she descended.[13] Like the ancestors of the Gitksan and Wet'suwet'en peoples, the Haida people who inhabit the Haida Gwaii archipelago off the coast of British Columbia also hold an animist view of nature. John Vaillant observes:

> the Haida's world is capable of changing form and function as whim or circumstance dictate. Thus, a rock is never just a rock, and a crab is always more than a crab. Mountains can take the form of killer whales, and a canoe can open its mouth and tear out the throat of a grizzly bear. Virtually every rock, reef, island and inlet in the archipelago has some supernatural association …[14]

What Vaillant calls the 'supernatural' dimension or character of animism is a scientific construction based on a view of nature that does not countenance animate beings and inanimate objects changing their forms and characteristics — *i.e.* ontologically mutating — in ways that defy mechanistic explanations.

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9 See *e.g.* Theodor Reik, *Myth and Guilt: The Crime and Punishment of Mankind* (New York: George Braziller, 1957) at 164, 210–11.

10 Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (Toronto: Signal, McClelland & Stewart, 2016) at 60.

11 Reik, *supra* note 9 at 164.

12 Harari, *supra* note 10 at 60.

13 Reik, *supra* note 9 at 164.

14 John Vaillant, *The Golden Spruce* (Toronto: Vintage Canada, 2005) at 56–57.

The eponymous golden spruce tree of Vaillant's *The Golden Spruce*, which the Haida people called K'iid K'iyaas (or Elder Spruce Tree), was itself believed to be "a human being who had been transformed".[15]

In some early human societies, animism was gradually replaced with totemism, in which certain animals (the "most powerful, feared, and admired") are worshipped and deified as 'personifications' of tribal ancestors.[16] Trees are especially revered in totemic belief systems. As Reik explains, "every form of religion" and "the folklore of all people" identify trees with human life.[17] "The sacred tree is in the earliest stages [of human history] not a symbol, but is instinct with divine life".[18] It is a "totemistic god".[19] Reik explains:

> [w]e have heard that native tribes of Australia and Africa do not hesitate to call a tree or a plant their ancestor. They consider them children of nature, not only equal to but superior to themselves. To modern man who considers himself the crown of creation the concept of God as a big tree is entirely alien … To recognize in a tree a god was familiar to the primitive tribes, 'familiar' also in the sense that they considered themselves descendants of this tree god.[20]

In both animistic and totemic belief systems, humankind is *vulnerable*, not powerful. The security and well-being of humankind is believed to depend upon the wills of animals and other powerful spirits. So, for example, in 1986, the British Columbia Court of Appeal learned that salmon in Salish mythology are "a race of beings that … had … established a bond with human beings requiring the salmon to come each year to give their bodies to the humans who, in turn,

15 *Ibid* at 18.

16 Reik, *supra* note 9 at 164, 210.

17 *Ibid* at 136. See also Vaillaint, *supra* note 14 at 147–48.

18 Reik, *ibid* at 136–37.

19 *Ibid* at 141.

20 *Ibid* at 144.

treated them with respect shown by performance of the proper ritual".[21] This myth reflects an ethos of what Marianne and Ronald Ignace call reciprocal accountability.[22] In the Secwépemc tradition, salmon and other animals are believed to help out human beings by "letting themselves be caught".[23] Even so, there is never a point at which the Secwépemc people become confident of their capacity to control nature, so they maintain an ethos of carefulness toward nature, for the sake of both their own and nature's sustainability. In one Secwépemc tale, Coyote catches far too many fish than he needs to get through the winter. He hangs all the fish on a line but the great weight of the fish impedes his ability to walk underneath his catch. So, Coyote throws a fish into the river, but it springs to life and swims away. In turn, all the other salmon throw themselves into the river and swim away and Coyote is left with no fish to feed him through the winter.[24] The conservationist ethos is clear: overfishing, greed and waste lead to scarcity and human socio-economic insecurity.

In contrast to such a view, Garrett Hardin surmised in 1968 that an American plainsman who might have cut out the tongue of an American bison 150 years earlier, for dinner, only to "discard the rest of the animal", was not "in any important sense being wasteful".[25] Here, Hardin identifies a purely utilitarian and mechanical view of the bison, in sharp contrast to the traditional Secwépemc belief that some animals such as salmon are human kin — *kindred spirits*, as the expression goes — making it immoral to waste the meat of animals that have to be killed for human survival.[26] To the Western plainsman, the value

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21 *R v Sparrow* (1986), 36 DLR (4th) 246, 9 BCLR (2d) 300 (BCCA) at para 19. This is the British Columbia Court of Appeal's paraphrase of Dr. Wayne Suttles' evidence [*Sparrow* (1986)].

22 Marianne Ignance & Ronald E Ignace, *Secwépemc People, Land, and Laws* (Montreal: McGill-Queen's University Press, 2017) at 206, 210.

23 *Ibid* at 204–205.

24 *Ibid* at 203.

25 Garrett Hardin, "The Tragedy of the Commons" (1968) 162 Science 1243 at 1245.

26 See Ignace & Ignace, *supra* note 22 at 204–205.

of the bison fluctuates depending upon accessibility and need, nothing more. Hardin comments that, in light of the scarcity of bison today, "we would be appalled at such behaviour",[27] thus making the morality of the waste contingent upon supply, not the nature of the slain animal. No sense of ontological relationship or connection to the bison *is felt*.

Lawyers in the *Delgamuukw*[28] trial told the presiding justice that he could expect to hear evidence of how thousands of years ago in what is now British Columbia, humans had failed "to observe the proper respect for salmon and mountain goats and the spirits of these fish and animals".[29] For example, according to the Gitksan oral tradition (ada'ox), a "giant grizzly bear" ripped through a forest, sending trees into a nearby lake and causing the lake level to rise rapidly.[30] As Susan Marsden paraphrases the belief, the mountain collapse, a subsequent landslide near Temlaxam, and subsequent climate change over 3,000 years ago were "an expression of displeasure on the part of the spirit world".[31] The Anishinabek people share a similar animistic understanding of nature in which animals and plants talk to one another. Borrows observes that the Anishinabek people "attribute some of their society's afflictions to a misbalance between humans and animals".[32]

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27 Hardin, *supra* note 25 at 1245.

28 *Delgamuukw v British Columbia*, [1991] 3 WWR 97, 79 DLR (4th) 185 (BCSC) [*Delgamuukw* (1991)].

29 Rush et al, *supra* note 7 at 25.

30 *Ibid* at 34.

31 See Susan Marsden, "The Gitk'a'ata, Their History, and Their Territories Report Submitted to the Gitk'a'ata" (January 2012) at 17, online (pdf): *Impact Assessment Agency of Canada* <www.ceaa-acee.gc.ca/050/documents/57088/57088E.pdf> and see *ibid* at 25. Remarkably, such an Indigenous belief ascribes *human* fault or *guilt* for events that a century ago the scientific community would have believed were beyond human control. Today the scientific consensus is that human beings could have caused or expedited climate change by mismanaging the planet's natural resources.

32 Borrows, *supra* note 3 at 49–50.

In some early human societies, distinctively human forms of deities eventually replaced animal or totemic forms, but the transition was not necessarily direct or immediate. Syntheses are discernible in mythologies that contain human-animal figures, such as Thoth in Egyptian mythology, Chiron (the Centaur), Pan or the satyrs of Greek mythology.[33] In the Secwépemc tradition, the original inhabitants of the earth, *stsptékwle*, have "characteristics of both men and animals".[34] With such myths, in which humans physically merge with animals and thereby acquire animal strength and prowess, human fear of the natural world is giving way to a fantasy of superhuman or at least extra-human control of the natural world, which is when a mechanistic view of nature becomes evident. A mechanistic view is perfectly reflected, for example, in Hesiod's poems, which were composed circa 700 BC. The Titan Prometheus cleverly steals from Zeus a "gleam of weariless fire" in a fennel stalk or in a hollow read and gives it to mortal men, in *Theogeny* and *Works and Days*, respectively.[35]

B. The Agricultural Revolution & Cosmic Law

Well after early humankind had domesticated or learned to make fire and to channel its power for survivalist purposes — possibly 300,000 years ago[36] — it remained vulnerable to a myriad of naturally perilous conditions, both climatic and animalistic, as many societies still do. In Secwépemc lore, 'the Old-One' sends Coyote to travel the world "troubled with great winds, fires and floods", to "put it to rights", and among other things, Coyote introduces salmon into

33 Reik, *supra* note 9 at 210–11. Reik observes that only 8,000 years passed from animism, to totemism, to the worship of a superhuman deity, "a mere fraction of the time during which Homo sapiens inhabited this planet" (*ibid* at 310).

34 James Teit, "The Shuswap" in Franz Boas, ed, *Memoirs of the American Museum of Natural History*, vol 2, part 7 (New York: GE Stechert & Co, 1909) 443, reproduced in Ignace & Ignace, *supra* note 22 at 31.

35 See Mark A Morford & Robert J Lenardon, *Classical Mythology*, 2nd ed (New York: Longman, 1977) at 45, 47. According to Aeschylus, Prometheus is born from Themis, the goddess of earth and personification of justice (*ibid* at 37, 44).

36 Harari, *supra* note 10 at 13.

the rivers so that the earth inhabitants have "fishing places".[37] In this tale, the ancestors of the story-tellers acquired the ability to sustain themselves on fish, and to gain a modest 'upper hand' on nature by the extraordinary powers of a mythic Coyote. With time, observational discernment, and mechanical ingenuity, different human societies acquired ever-greater *self*-control over perilous nature.[38]

Astronomical observations from Mesopotamia led to an awareness of cosmic regularity or periodicity, which in turn taught agrarian societies the most effective and productive times for planting and harvesting.[39] For Robert Taylor, celestial patterns or cosmic 'order' provided the earliest "lawbooks or code" for agrarian societies that wished to endure and to thrive.[40] Thus, during the agricultural revolution, which can be dated to about 9500-8500 BC,[41] humankind remained connected and attuned to the natural world or at least to the solar system. Human societies relied on natural celestial and seasonal rhythms for their own survival, but Harari argues that forager societies, which might have been animistic, probably remained more socio-economically secure.[42]

By the time positive law is revealed to Moses, as reported in the Pentateuch (written circa 1,000 BC),[43] the law has no connection to a cosmic deity, such as Shamash, the Babylonian Sun God, who gave the law to King Hammurabi,[44] or to an animistic deity such as Thoth, the Egyptian Moon God with the head

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37 Teit, *supra* note 34, reproduced in Ignace & Ignace, *supra* note 22 at 31.

38 Harari, *supra* note 10 at 54–55, 77.

39 Robert D Taylor, "Reclaiming Our Roots: Law and Mythology," (1991) 29:2 Duquesne Law Review 271 at 277–78.

40 *Ibid* at 277, 278, 283, 284.

41 See Harari, *supra* note 10 at 87. See also *ibid* at 276–77.

42 Harari, *ibid* at 58, 62.

43 Reik, *supra* note 9 at 323.

44 Taylor, *supra* note 39 at 283–85; and René A Wormser, *The Story of the Law* (New York: Simon and Schuster, 1962) at 6.

of an ibis, who was believed to be the ultimate judge of human conflicts.[45] The God of the Old Testament orders humankind to "subdue" the earth and "have dominion over the fowl of the air, and over every living thing that moveth upon earth".[46] This God is also unlike the Sun deity worshipped by Biano, a Peublo Indian, who told Carl Jung that his people practiced their religion daily to help their father across the sky, failing which "in ten years the sun would no longer rise".[47] Jung realized that this belief connected Biano's people to nature and accounted for "the enviable serenity of the Pueblo Indian".[48] By contrast, Biano told Jung that Caucasians "think with their heads" and are "always uneasy and restless".[49] Positive law in the Pentateuch is generally divorced from nature and natural law, both in terms of its intellectual roots and in the sense that it provides prohibitions exclusively in relation to human conduct. This is unlike Anishinabek environmental law[50] and the positive law of the Secwépemc people, which includes "practical resource management regimes" that are sustained "by a system of spiritual beliefs and sanctions".[51]

C. The Mechanization of the Natural World in Western Thought

In the mid-17th century, which roughly demarcates the beginning of the Enlightenment, the Jesuit — and legally-educated René Descartes — was sure that humankind could mark itself off from "beasts" on account of its reason or

45 Wormser, *ibid* at 6.

46 Genesis 1:28.

47 Carl Jung, *Memories, Dreams, Reflections*, revised ed, translated by Richard Winston & Clara Winston (New York: Vintage Books, 1965) at 250–52.

48 *Ibid* at 250–53.

49 *Ibid* at 248.

50 See Borrows, *supra* note 3 at 16–20.

51 Ignace & Ignace, *supra* note 22 at 209–10.

"good sense".[52] He disagreed with "the ancients, that animals speak, although we do not know their language" and was certain that animals had "no intelligence at all".[53] In his view, animals had "entirely different" souls than human beings had, and functioned more akin to clocks, "composed only of wheels and springs".[54] This mechanistic view of animal nature may be starkly contrasted to the animistic view held by the Gitksan, Wet'suwet'en and Musqueam peoples in British Columbia, and by the Anishinabek people in Ontario, in which animals are spirits that are capable of judgment, as discussed above. It is also in stark contrast to Jung's belief that "all warm-blooded animals" have "souls like ourselves" and share an "instinctive understanding" with humankind.[55]

Remarkably, Descartes understood that human beings suffered from "a number of disorders, both of mind and body", and he made it his life-long goal to attain a knowledge of medicine comprised of "all the remedies which nature has provided", to liberate humankind from such illnesses and disorders.[56] However, he had an ulterior motive for improving the mental and physical health of humankind, which was to enable humankind to become "as it were, the lords and masters of nature".[57] This ulterior motive has been a guiding aspiration, if not fantasy, of scientific research to this day — it is also God's edict

52 René Descartes, *Discourse on Method*, translated by Arthur Wollaston (Middlesex: Penguin Books, 1960) at 11–12, 37–38. This book was originally published in 1637.

53 *Ibid* at 81.

54 *Ibid*. See also *ibid* at 82.

55 Jung, *supra* note 47 at 67.

56 Descartes, *supra* note 52 at 85. Descartes maintained a holistic view of *human* nature in which "the hands of God" or "animal spirits" guide the movements of the human body, which he believed were "far better ordered [than animal organs], with a far more wonderful movement, than any machine that man can invent" (*ibid* at 79).

57 *Ibid* at 84–85.

in the Old Testament, as indicated above — but it is not necessarily conducive to mental health.

In the early decades of the 17th century, Puritans crossed the Atlantic Ocean to convert Indigenous peoples to Christianity[58] while Jesuit missionaries in New France endeavoured to convert non-literate Indigenous peoples such as the semi-nomadic "Algonkian" tribes to the Christian religion and to agriculture.[59] Some Indigenous peoples such as the Hurons were already "agricultural, maize-growing Indians",[60] but the Jesuits had limited success attempting to convert others to this way of life. As George Stanley remarks, some Indigenous peoples regarded the labour needed to clear and cultivate the land with "antipathy" and preferred "the lost joys and freedom of the chase".[61] Many generations later, Alexis de Tocqueville similarly observed that Indigenous peoples in America "found themselves obliged to live ignominiously by labor, like the whites. They took to agriculture and, without entirely forsaking their old habits or manners, sacrificed only as much as was necessary to their existence".[62] More poignantly, de Tocqueville observes:

> [a]fter having led a life of agitation, beset with evils and dangers, but at the same time filled with proud emotions, [the Indian] is obliged to submit to a wearisome, obscure, and degraded state. To gain by hand and ignoble labor the bread that nourishes him is in his eyes the only result of which civilization can boast, and even this he is not always said to obtain.[63]

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58 See *e.g.* John M Barry, *Roger Williams and the Creation of the American Soul* (New York: Viking, 2012) at 157, and Nathaniel Philbrick, *Mayflower* (New York: Viking, 2006) at 191.

59 George FG Stanley, "The First Indian 'Reserves' in Canada" (1950) 4:2 Revue d'histoire de l'Amérique française 178 at 178–79.

60 *Ibid* at 192.

61 *Ibid* at 183.

62 Alexis de Tocqueville, *Democracy in America*, vol 1 (New York: Random House, 1945) at 358.

63 *Ibid* at 360–61.

Put more bluntly, Harari proposes that a "forager economy provided most people with more interesting lives than industry or agriculture do". He emphasizes that a painting from circa 1200 BC depicts an Egyptian farmer in a "hunched position" who, "like the ox" pulling his plough, "spent his life in hard labour oppressive to his body, his mind and his social relationships".[64] Lawyers who overwork in isolation through the weekends, slouched behind their desks in the sterile isolation of their law offices,[65] would do well to note that their agrarian ancestors not only *chose* to live as they did, but purposely marginalized the alternative and arguably more 'interesting' way of life of the forager and hunter and gatherer.

The intellectual conversion that the Jesuits sought to achieve, away from animistic, totemistic and paganistic beliefs, toward faith in a monotheistic Deity incarnated by Jesus of Nazareth, also involved a physical conversion away from an immediate relationship with nature, to a physically mediated, more sanitized and secure relationship with nature. Jung neatly contrasts these bi-polar worldviews when he observes that his mother's "Christian surface" could be contrasted with the "deep ground" in which she was rooted, a paganism that "connected [her] with animals, trees, mountains, meadows, and running water".[66] The Jesuits in New France wished to pull Indigenous peoples away from this type of raw embeddedness in and connectivity to nature, which was often a hard sell, though near the mid-17th century mark Father Druillettes evidently persuaded the Abenaki to "forsake their pagan manitous" in favour of Christian beliefs.[67]

At this time, English immigrants to the Eastern shores of the 'New World' were toppling thick forests and exporting lumber back to England, Spain, and the West Indies. By 1675, "hundreds of sawmills" were already

64 Harari, *supra* note 10 at 56, 106.

65 See "Report from the 2019 Annual Conference", *supra* note 2 at 2. The Report notes "overwork" and "neglect of other areas of one's life and poor self-care" as problems associated with lawyers' poor mental health (*ibid*).

66 Jung, *supra* note 47 at 90.

67 Stanley, *supra* note 59 at 185–86.

operating in New England and Atlantic Canada.[68] John Locke had led Englishmen to believe that they could transform nature's raw elements, including land, into their own private property, by laboriously harnessing or mechanically cultivating resources into something socio-economically *productive or useful*. He wrote: "the grass my horse has bit, the turfs my servant has cut, and the ore I have dug in any place where I have a right to them in common with others, become my property without the assignation or consent of anybody".[69] This logic is an historical precursor to what is known in Canadian Aboriginal rights litigation today as the development rationale or justification, which is discussed below.

When European adventurers finally reached what is now British Columbia both by inland routes and the Pacific Ocean, much of the planet's oceans "had already been explored and mapped" by seafarers such as James Cook.[70] Technological ingenuity had given European hunters, trappers and voyageurs significant control over nature's resources. The non-literate Indigenous peoples who were living in the region held animistic and totemic beliefs, but the Europeans who entered their hunting and fishing grounds regarded animals foremost as commercial goods and only secondarily as sources of their *own* survival. The Europeans destroyed nature's creatures and ecology without compunction. A "cruel" international sea otter trade along the North Pacific coast had almost run the species into extinction.[71] Vaillant suggests the Haida people who participated in the "heady" and "destabilizing" trade had otherwise viewed the otter as a "spirit relation" and once the animal was nearly exterminated, "the Haida were reduced to selling carvings to passing sailors and

68 Vaillaint, *supra* note 14 at 84.

69 John Locke, "An Essay Concerning the True Original, Extent and End of Civil Government" in Saxe Commins & Robert N Linscott, eds, *Man and the State: The Political Philosophers* (New York: Random House, 1947) 57 at 73. Locke's essay was originally published in 1689. See also Barry, *supra* note 58 at 160.

70 EJ Hobsbawm, *The Age of Revolution* (London: Cardinal, 1962) at 19. See also *Delgamuukw* (1991), *supra* note 28 at paras 140–41, 175–86.

71 *Delgamuukw* (1991), *ibid* at paras 180, 690.

trading potatoes with former enemies".[72] The idea that nature was "organic",[73] which is logically consistent with the animism of some of the Indigenous people whom the Europeans encountered, had no relevance to the predominantly mechanistic approach to nature that had become deeply inculcated in the Western mind. If there was any doubt about this, the Industrial Revolution firmly dispelled it.

D. The Industrial Revolution

In the 1780s, the English economy suddenly acquired an exponential productive capacity in the cotton and slave trade.[74] The slaves were treated commercially like Descartes' clocklike animals, composed of "wheels and springs" with "entirely different" souls from humans.[75] The international cotton trade showed that "natural connections" among humankind had been severed in the service of "power accumulation and expansion".[76] In 1800, England produced millions of tonnes of coal, an "astronomic" level that engendered the railway, and two decades later such systems were underway in Europe and the USA.[77] Multinational industrialization continued to sever any spiritual or mythic connection that existed between peoples and the cosmos, and the applicable law or lack thereof was complicit in this achievement. Hobsbawm writes:

> both Britain and the world knew that the Industrial Revolution launched in these islands by and through the traders and entrepreneurs, whose only law was

72 Vaillant, *supra* note 14 at 91–92.

73 Max Oelschlaeger, *The Idea of Wilderness: From Prehistory to the Age of Ecology* (New Haven: Yale University Press, 1992) at 129.

74 Hobsbawm, *supra* note 70 at 43, 49–51, 53.

75 Descartes, *supra* note 52 at 81–82.

76 See Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1968) at 157.

77 Hobsbawm, *supra* note 70 at 60.

> to buy in the cheapest markets and sell without restriction in the dearest, was transforming the world. Nothing could stand in its way.[78]

On a much less visible scale — indeed, on a microscopic scale — scientific knowledge about gases and chemistry was further distancing humankind spiritually or emotionally from nature. The English chemist, Humphry Davy, wrote:

> [t]he composition of the atmosphere and the properties of the gases, have been ascertained; the phenomena of electricity have been developed; the lightnings have been taken from the clouds; and, lastly, a new influence has been discovered, which has enabled man to produce from combinations of dead matter effects which were formally occasioned only by animal organs.[79]

Thus, scientific and technological capabilities of some European societies had led some Europeans to believe that Descartes' wish could be fulfilled — that they could control nature *and that it was not the other way around*. The hubris in this belief, which was sheer fantasy when Hesiod wrote the myth of Prometheus, had reached frightening dimensions when Mary Shelley wrote *Frankenstein* (subtitled *The Modern Prometheus*). Her well-known 1818 novel need not be summarized here, but Laura Crouch makes the astute observation that:

> Mary Shelley replaced Davy's dream of the great parent, Science, providing community among her children, which would lead to great social change, with a vision of the isolated scientist. While working on his project, Frankenstein found he could not write to his family, even though he knew they would be worried by his silence. …

78 *Ibid* at 68–69.

79 Humphry Davy, "A Discourse Introductory to a Course of Lectures on Chemistry" in John Davy, ed, *The Collected Works of Sir Humphry Davy* (London: Smith, Elder, 1839) 307 at 321. See also Laura E Crouch, "Davy's 'A Discourse, Introductory to a Course of Lectures on Chemistry': A Possible Scientific Source of 'Frankenstein'" (1978) 27:1 Keats-Shelley Journal 35 at 39.

> Scientific study had not made Frankenstein a happy man, full of an insatiable curiosity and hopeful of improving the world. Rather, he soon became surfeited with his knowledge and lost his hope. His study led to his destruction.[80]

Lawyers will readily recognize the same isolationist or segregationist tendencies of their demanding schedules and the confidentiality of their files. They will also admit that the highly specialized knowledge that they apply in their law office research dens does not often lead to an emotionally rewarding result, as is discussed in Part IV of this article.

It is with *Frankenstein* in mind that American and British determination to expand their respective societies by industrializing the North American frontier in the early 19th century, at almost any cost, is best understood. In 1830, U.S. President Andrew Jackson publicly eschewed a conservationist mentality by proposing that a "good man" would prefer an "extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute", and "occupied by more than 12,000,000 happy people", to a country "covered with forests and ranged by a few thousand savages".[81] The English Crown north of the American border broadly shared this mentality. In 1830, Lieutenant Governor Sir John Colborne of Upper Canada enforced a "civilization" policy that financially coerced Indigenous peoples into a "sedentary, agricultural, European way of life".[82] Animism, paganism, and foraging were to be eliminated.

To recall, forests figured prominently in mythology since time immemorial. Even the dense forests that once covered what is "rural Europe" today were held

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80 Crouch, *ibid* at 43.

81 Andrew Jackson, "President Jackson's Message to Congress 'On Indian Removal'" (6 December 1830), online (pdf): *National Park Service* <www.nps.gov/museum/tmc/MANZ/handouts/Andrew_Jackson_Annual_Message.pdfwww.nps.gov/museum/tmc/MANZ/handouts/Andrew_Jackson_Annual_Message.pdf>; also reproduced in Thomas King, *The Inconvenient Indian: A Curious Account of Native People in North America* (Toronto: Anchor Canada, 2013) at 87.

82 *Restoule v Canada (Attorney General)*, 2018 ONSC 7701 at para 106 [*Restoule*].

to be "sacred" by the tribespeople who inhabited them.[83] Yet, to the Lockean mentality, they existed only to be destroyed. Upon approaching a settlement that he had started in Upper Canada on April 17, 1833, Thomas Need first felt "sorrow" at the sight of felled trees along a shoreline, but upon seeing a waterfall and lake beyond the clearing, he shared the "exultant feelings of the choppers, as one after another the noblest among these ancient lords of the soil groaned under the stroke of the axe, trembled for a few seconds, and fell".[84] Need alluded to the mythic significance of the trees as 'ancient lords of the soil', not dissimilarly from the belief of Indigenous peoples of Australia and Africa that their ancestral trees were "superior" to themselves,[85] but Need's self-interest in building a settlement sufficed to topple the forest in an act of mythic regicide.

Mining was another pressing concern of European socio-industrial expansionists. In 1845, the Government of the Province of Canada issued licences to mining companies in territories that the Anishinaabe peoples claimed as their own, without first securing a treaty with the Anishinaabe people. In 1846, Chief Shingwaukonse felt the need to write to an English Governor General, "I see Men with large hammers coming to break open my treasures to make themselves rich & I want to stay and watch them and get my share".[86] He saw no choice. He complained in 1848, that the miners had mined "without consultation, had burned the forest and driven the game away, and had forbade the Indians to cut timber on certain tracts".[87] Thus, as Jung elegantly observes, what Europeans call "colonization, missions to the heathens, spread of

83 Hobsbawm, *supra* note 70 at 85.

84 Thomas Need, *Six Years in the Bush: Or, Extracts from the Journal of a Settler in Upper Canada, 1832-38* (London: Simpkin, Marshall & Co, 1838) at 56–57. For Vaillaint, "North American immigrants" such as Need "were a restive people" who "cut the forest the way they breathed the air—as if it were free and infinite": Vaillant, *supra* note 14 at 89.

85 See Reik, *supra* note 9 at 144.

86 See *Restoule*, *supra* note 82 at para 126.

87 *Ibid* at para 129. This is the court's paraphrase of Chief Shingwaukonse's position.

civilization, etc., has another face — the face of a bird of prey seeking with cruel intentness for distant quarry — a face worthy of a race of pirates and highwaymen".[88] Hobsbawm observes that British "government policy was firmly committed to the supremacy of business" and to this extent was prepared to topple the "gods and kings of the past",[89] including the "ancient lords of the soil".[90] Vaillant observes that "[t]he European settlers of North America *mastered their environment* as no one had before … logging the continent faster than anyone else in history".[91] The concept of "forest conservation" was "anathema" in British Columbia and by the 1880s the "problem of the day" was how to turn the region's "infinity of trees, and the land on which they stood, into something *productive*".[92]

E. The 20th Century Mechanization of Work

At the outset of the 20th century, productivity in manufacturing was so highly prioritized by state and corporate interest alike that many citizens found themselves economically bound to machines for several hours a day to make their living. European peasants migrated "into the towns and factories where their muscles were increasingly needed" in the mid-19th century,[93] and a similar domestic migration occurred later in America. Theodore Dreiser conveyed how the "single mechanical movement" of a shoe-leather hole-punching machine that Carrie Meeber operated for one morning in Chicago had become "absolutely nauseating".[94] Henry Ford was soon producing automobiles by assembly line. A lathe operator at his plant described his experience as "a form

88 Jung, *supra* note 47 at 248.

89 Hobsbawm, *supra* note 70 at 68–69.

90 Need, *supra* note 84 at 57.

91 Vaillant, *supra* note 14 at 87 [emphasis added].

92 *Ibid* at 93.

93 Hobsbawm, *supra* note 70 at 187.

94 Theodor Dreiser, *Sister Carrie* (New York: Penguin Classics, 1981) at 39. Dreiser's book was originally published in 1900. See also Harari, *supra* note 10 at 56.

of hell on earth that turned human beings into driven robots".[95] In 1920, the Czech playwright, Karel Čapek, fictively likened the new mechanical working class to robots, arguably ushering in the very first public use of the word "robot".[96] In his play, a female visitor to a robot factory urges the Head of the Physiological and Experimental Department to modify the latest models of robots with a chemical so that they "acquire souls, launch a revolution, destroy and recreate mankind".[97] In *This Side of Paradise*, Eleanor Savage tells Amory Blaine, "the only thing that separates horses and clocks from us" is that human beings "can't go tump-tump-tump without going crazy".[98] Such writers as Dreiser, Fitzgerald and Čapek elegantly depicted the soul-destroying effect of the increasing mechanization of the wider economy.

F. The Mid-20th Century Tragedy of the Commons

By the mid-20th century mark, the landscape and waterways of America had become so polluted from industrialization and concomitant human population growth, that human beings could no longer enjoy the same degree of access to clean air and water that their forefathers took for granted. John Kenneth Galbraith largely blamed the post-WWII political-economic prioritization of goods produced for private consumption over public services for this predicament, suggesting that a demand for "a nontoxic supply of air" should not

95 Charles Madison, "My Seven Years of Automotive Servitude" (1980) 19(4) Michigan Quarterly Review 445 at 454.

96 Karel Čapek, *R.U.R. (Rossum's Universal Robots)* (Mineola: Dover Publications, 2001). Karel's brother Josef is credited with coining the word "robot", to connote serfdom or drudgery: Dan Halpern, "Robots and Hopes", Book Review of *Cross Roads* by Karel Čapek, translated by Norma Comrada and *Karel Čapek — Life and Work* by Ivan Klíma, translated by Norma Comrada (11 November 2002) *The New Republic* at 35–36.

97 Robert Pynsent, "Tolerance and the Karel Čapek Myth" (2000) 78:2 The Slavonic and East European Review 331 at 348.

98 F Scott Fitzgerald, *This Side of Paradise* (New York: Dover Publications, 1996) at 177.

involve a "revolutionary dalliance with socialism".[99] The problem was not insignificant. It broached "social unhealth".[100] Soon, human connections to nature would be severed in irreversible ways. As Hannah Arendt observed, "no remedy can be found to undo what has been done".[101]

Ten years later, Garrett Hardin observed that "the law, always behind the times," had not managed to prevent American citizens and businesses from routinely polluting and ruining one another's common waterways and lands.[102] Lax environmental laws had allowed private property owners to pollute waterways, land and air spaces to the point where large numbers of people (including the property owners themselves) no longer enjoyed liberal access to clean water, soil and air. Too many people had consciously acted on the logic that their personal contributions to environmental waste or degradation could not adversely affect everyone, including themselves, or they acted upon the gambler's mentality that Shelley depicted in *Frankenstein*, being that the rewards of manipulating nature might well be worth the risks. People erroneously assume that they are disconnected from nature when they waste and ruin natural resources, and in turn pollute the natural environment, as if such behaviour could *never* have naturalistic implications *for themselves*.

The horrors of this mechanistic view of nature are being increasingly felt in this century. On September 11, 2020, the Governor of California stood amidst the smoke-filled and charred ruins of Butte County and desperately impressed

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99 John K Galbraith, *The Affluent Society* (Boston: Houghton Mifflin, 1958) at 252.

100 *Ibid* at 251.

101 See Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958) at 238. Similarly, Harari observes that the Agricultural Revolution wrought such influential socio-economic changes to previous modes of life that there was "no going back": see Harari, *supra* note 10 at 98–99, 110.

102 Hardin, *supra* note 25 at 1245. See also Joseph L Sax, "Takings, Private Property and Public Rights" (1971) 81:2 The Yale Law Journal 149 at 150 ("[t]he abandon with which private resource users have been permitted to degrade our [American] natural resources may be attributable in large measure to our limited conception of property rights" (at 155)).

upon his attentive public that "the extreme droughts, the extreme atmospheric rivers, [and] the extreme heat" afflicting the state[103] was a sure indication that Mother Nature "bats last and bats one thousand".[104] Governor Gavin Newsom was expressing *humility* before "the powers in nature", consistent with the Aboriginal perspective in which humankind is vulnerable, not powerful, in relation to nature.[105] Mother Nature made herself *felt* in California, just as she did in British Columbia on July 29, 2021, when the small town of Lytton experienced the hottest day in Canada's recorded history, just shy of 50 degrees Celsius,[106] and burned down the next day.[107] So many human beings have failed to act as if their behaviour was interconnected to and dependent upon nature that the consequences of industrialization are now being painfully felt. Is it not high time, therefore, to second-guess what Galbraith sarcastically called "the American genius"?[108]

G. Conservation vs Development

Arguably, nearly every step taken in Canada's pre and post-confederation political-legal history has involved concerted ruination of the natural ecology and greater emotional alienation or spiritual separation of people, Indigenous and non-Indigenous alike, from their natural surroundings.[109] Of course, some

103 Don Thompson, "'The Debate is Over': Amid Wildfires, California Governor Calls for Climate Change" (11 September 2020) *Global News*.

104 Don Thompson, "Amid Ashes, California Governor Fires Away on Climate Change" (11 September 2020) *The Washington Post*.

105 See Ignace & Ignace, *supra* note 22 at 205.

106 "Canada Weather: Dozens Dead as Heatwave Shatters Records" (30 June 2021) *BBC News*.

107 Vjosa Isai, "Heat Wave Spread Fire That 'Erased' Canadian Town" (12 July 2021) *The New York Times*.

108 Galbraith, *supra* note 99 at 253.

109 See Borrows, *supra* note 3 at 31. In *Mikisew Cree First Nation v Canada (Minister of Heritage)*, 2005 SCC 69 at para 24, the Supreme Court of Canada observed that "[t]he post-Confederation numbered treaties were designed to open up the Canadian west and northwest to settlement and development".

Indigenous peoples themselves have at times been "implicated in serious environmental destruction".[110] Even so, the unwavering and inchoate project of non-Indigenous population growth and industrialization, which continues unabated today, has reached such a troublesome point that some Indigenous leaders see no realistic choice but to become partners with the Eurocentric beast that devoured their cultures.[111]

Despite overwhelming evidence that industrial development, human population growth and economic or commercial growth — *not environmental conservation* — have been the top priorities of duly elected federal and provincial governments for over a century, Chief Justice Antonio Lamer observed in 1996 that conservation is of "overwhelming importance to Canadian society as a whole".[112] This proposition, which defies credulity, was intended to install a principled constraint on the exercise of Aboriginal fishing rights. A year later, Chief Justice Lamer declared that "the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia" and even "the settlement of foreign populations to support those aims" could also justifiably restrict Aboriginal title.[113] This pro-development rationale permits federal and provincial governments to restrict the exercise of Aboriginal rights and title if they can justify doing so on the basis of the greater socio-economic interests served by industrialization and non-Indigenous population growth. Jim Reynolds dates such logic broadly back to the 16th century, to Thomas More's *Utopia* (1516), and later to Emerich de Vattel's *The Law of Nations* (1758).[114] In Canadian law, then, industrial-scale

110 Borrows, *ibid* at 33.

111 See Christopher Nowlin, "Indigenous Capitalism and Resource Development in an Age of Climate Change: A Timely Dance with the Devil?" (2020) 17:1 McGill Journal of Sustainable Development Law 71 at 91.

112 *R v Gladstone*, [1996] 2 SCR 723, [1996] 9 WWR 149 at para 74.

113 *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 66 BCLR (3d) 285 at para 165. La Forest J agreed (*ibid* at para 202) [*Delgamuukw* (1997)].

114 James Reynolds, *Aboriginal Peoples and the Law: A Critical Introduction* (Vancouver: Purich Books, 2018) at 8–9.

natural resource development *and* ecological conservation can override or restrict Aboriginal rights, even though pre and post-federation law in Canada has largely prioritized industrial development over conservation.

H. Canada's Rule of Law Lacks an Aboriginal Perspective

Indigenous people who attempt to resist the tide of non-Indigenous industrial development by means considered illegal according to Canadian law quickly learn that the Canadian legal system has little patience for the Aboriginal perspective, despite lip service to the contrary. In 2001, Beverly and Nicole Manuel participated in a blockade on one side of a public highway near Kamloops, British Columbia, protesting the establishment of the Sun Peaks ski resort. In defence of their actions, the Manuels, who are both members of the Secwépemc (Shuswap) Nation, claimed that they had a duty to protect the lands that the Creator had bestowed upon their people.[115] They were concerned that commercial developments were imperilling "the land, and the plants and animals inhabiting the region".[116] Their Nation claimed ownership of the lands through which the Sun Peaks Road traversed, but the federal government had rejected their land claim in 1996 and Nicole Manuel knew this.[117] She also knew that her Nation's land claim remained "unadjudicated and unconfirmed in law (taking into account all of Canadian law, including the aboriginal perspective, aboriginal legal systems, and Canadian common law and criminal law)", and that it "conflicted with established common law property rights".[118] She also knew that no negotiating or judicial process of "reconciling" her Nation's "beliefs in their title to the land with the assertion of Crown

115 *R v Manuel*, 2008 BCCA 143 at paras 2, 9 [*Manuel* (2008)].

116 *Ibid* at para 2.

117 *Ibid* at paras 27, 33.

118 *Ibid* at para 58.

sovereignty" was underway or complete when she and her mother blocked the Sun Peaks Road.[119]

Even so, the Manuels were entitled to be honestly mistaken about property ownership and, by implication, they were entitled to believe honestly that the government's rejection of their land claim in 1996 was not legally authoritative or binding on the land title issue. The trial judge had rejected their colour of right defence on the basis that it was moralistic, not legalistic, even though the Manuels believed that they owned the land in question and relied partly on legal documents dating back to 1862 to ground their belief.[120] As Justice Levine described their position:

> they honestly believed that, *in accordance with aboriginal law*, they had a legal right to block Sun Peaks Road. Nicole Manuel testified that her understanding of the laws of her people, which she described as "natural laws" and the "laws of the Creator", imposed a duty on her and her people to take care of and preserve the land.[121]

The BC Court of Appeal agreed that the Manuels' beliefs "in their people's title to the land and the law of the Creator" are beliefs about their "legal rights" and that their "aboriginal perspective", which is "at the root of aboriginal law", is "part of Canadian law".[122] However, the court considered this fact irrelevant to the central issue of whether the Manuels *honestly* held their beliefs.

The court concluded for various reasons that the Manuels did not honestly believe that they were entitled to block the road. Most significantly, the court emphasized that the Manuels were familiar with *Delgamuukw* and would have understood, therefore, that "the attendant uncertainties and the processes for reconciliation" encouraged therein did not include "self-help" remedies such as

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119 *Ibid* at para 60.

120 See *ibid* at paras 24–28, 30, 36, 52. And see *R v Manuel*, 2007 BCCA 178 at para 4 [*Manuel* (2007)].

121 *Manuel* (2007), *ibid* at para 3 [emphasis added].

122 *Manuel* (2008), *supra* note 115 at para 53. See also *Manuel* (2007), *ibid* at paras 9, 12–3.

blocking a road.[123] Of course, *Delgamuukw* is *Canadian* common law, not Aboriginal law, and nowhere suggests or implies that Indigenous people must first attempt to engage the government in negotiations before they can sincerely maintain a belief that they own a particular tract of land or territory.[124] The Court of Appeal in the Manuels' case expressly dismissed the insinuation that lower courts had applied "one system of law over another",[125] meaning Canadian law over Aboriginal law — Canadian law that preferred industrial development over Aboriginal law that preferred stewardship — *but this is precisely what had occurred*.

According to the court, "Canadian law" includes "aboriginal, common, and criminal law",[126] but in fact Canadian law mostly *excludes* Aboriginal law from its ambit,[127] with exceptions made for Indigenous adoption and marriage customs, and for sentencing, as is discussed below. Ultimately, the court reasoned that the Manuels' self-help behaviour *undermined* "the rule of law",[128] even though the very same logic could be applied to the Crown's acquisition of the land in dispute — that the Crown had *helped itself* to the land in violation of the rule of law. This latter proposition was implicit in the Manuels' defence. The court sent a clear message to Indigenous peoples that their spiritually based sense of obligation to protect the land is not relevant to Canada's Rule of Law if

123 *Manuel* (2008), *ibid* at para 62. So, the court concluded that there was no reasonable doubt that the Manuels acted without colour of right (*ibid* at paras 58, 63).

124 The court partly found the Manuels' belief insincere because they knew that their Nation had not yet attempted reconciliation as encouraged by *Delgamuukw*: *ibid* at para 60. See *Delgamuukw* (1997), *supra* note 113 at para 186.

125 *Manuel* (2008), *ibid* at para 58.

126 *Ibid* at para 62.

127 In 2019 Justice Church observed, "[w]hile Wet'suwet'en customary laws clearly exist on their own independent footing, they are not recognized as being an effectual part of Canadian law": *Coastal GasLink Pipeline Ltd v Huson*, 2019 BCSC 2264 at para 128.

128 *Manuel* (2008), *supra* note 115 at para 62.

it is acted upon in a way that conflicts with Canada's non-Indigenous, legislative system of governance. However, this Canadian Rule of Law cannot be isolated from what Justice David Gibson calls the "arrogance" of the Eurocentric law makers who endeavoured to eradicate the kind of mythical-ethical understandings of land held by such Indigenous peoples as the Anishinabek and Secwépemc people.[129] The obligation of Canada's courts to heed the Aboriginal perspective remains *pro forma* in the face of statute law created by predominantly non-Indigenous federal and provincial governments.

III. The Mechanistic Approach of Legal Education: Preparing for Disillusionment

A. The Rationalistic Nature of Epistemic Humility

Thirty years ago Taylor proposed that legal education in America could benefit from a course in Law & Mythology.[130] He had spent many hours over decades counselling lawyers who had become "unhappy with lawyering as a way of life" and discerned that one of the root causes of such malaise was that "judges, lawyers, and legal educators" were largely "cut off from the mythological soil in which culture in general and law in particular have grown".[131] Taylor therefore proposed that "mythological nutrients are essential both to a healthy psyche and to experiencing in one's vocation a sense of energizing adventure, instead of banal and debilitating routine".[132] At about this time, J.C. Smith did in fact offer a course on law and mythology at the University of British Columbia. The core required reading for his course was his recently published *Psychoanalytic Roots of Patriarchy*.[133]

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129 See *R v Morrisseau*, 2017 ONCJ 307 at paras 94–95 [*Morrisseau*].

130 Taylor, *supra* note 39 at 272.

131 *Ibid.*

132 *Ibid.*

133 Joseph C Smith, *Psychoanalytic Roots of Patriarchy: The Neurotic Foundations of Social Order* (New York: New York University Press, 1990).

This article agrees with Taylor that law students (and post-secondary students generally) would benefit by some form of education about mythology, but with the broader heuristic objective in mind of demonstrating the epistemological limits of *rationalism*. Taylor correctly notes that "lawyers are by training and education hyper-rationalists",[134] but the same can be said generally of any student who has received a post-secondary education. Whether a student is enrolled in a liberal arts or social sciences program, he or she is trained and expected to be ultra-rationalistic. Irrational arguments and exam answers in economics, history or political science are not typically praised. Success in college and university depends greatly upon a student's ability to be logical, which is also a critical aptitude required of a law student and a litigator.

Ideally, formal education in North America, including legal education, is expected to be self-aware or, more pointedly, self-doubting, much like Descartes was, *to a point*. Vicki Jackson recognizes the need for "epistemic humility" in *knowledge* institutions such as universities.[135] Her suggestion is that prevailing knowledge always stands to be tested by further inquiry and, in turn, by further knowledge. Similarly, for Harari, a hallmark of modern science is that it accepts "that the things that we think we know could be proven wrong as we gain more knowledge." [136] Of course, such reasoning makes the very concept of 'knowledge' problematic. If new knowledge (*e.g.* Galilean) displaces old knowledge (*e.g.* Ptolemaic), then the old knowledge was a mistaken *belief*, not knowledge. Such concessions lead toward Socratic wisdom, which does not result in greater knowledge, but an awareness of one's own ignorance and a feeling of wonderment. Yet, knowledge institutions today aspire to be "organs

134 Taylor, *supra* note 39 at 272.

135 Vicki C Jackson, "Knowledge Institutions in Constitutional Democracies: Preliminary Reflections" (2021) 7:1 Canadian Journal of Comparative and Contemporary Law 156 at 159, 215.

136 Harari, *supra* note 10 at 279.

of epistemic objectivity"[137] that are open to "*reasoned* challenges to current views of knowledge".[138] Their epistemic humility remains safely *one-sided*.

Bill Bryson safely concludes from interviews with leading international scientists: "we live in a universe whose age we can't quite compute, surrounded by stars whose distances from us and each other we don't altogether know, filled with matter we can't identify, operating conformance with physical laws whose properties we don't truly understand".[139] Further scientific research and rational inquiry into these grand mysteries could result in greater enlightenment, but could equally result in greater humility. For Jung, "the rationalistic picture of the universe is invalid, because incomplete".[140] It should be no surprise, then, that when rationalists struggle with questions of human origins, purposes and destinations, their writings invariably tend to take on a "mythic dimension".[141] Jack Goody and Ian Watt rightly observe that "the illogical and mythical nature of much of Western thought and behaviour is evident to anyone contemplating our past or our present".[142]

It was precisely the mythical understandings of nature and of humankind's relationship to natural creatures held by Indigenous peoples in North America that Cartesian rationality and Christian theology earnestly strived to eradicate. There was little epistemic modesty in this hugely successful colonial endeavour, which in turn established Eurocentric knowledge institutions that remain fervently committed to rationalism, objectivity, and 'truth'. Rush and his colleagues expressed concern in the *Delgamuukw* trial that the spiritual explanation for certain natural events offered by the Gitksan and Wet'suwet'en people would be undervalued in court as "mythical" and not "scientific" or

137 *Ibid* at 203.

138 *Ibid* at 215 [emphasis added].

139 Bill Bryson, *A Short History of Nearly Everything* (London: Black Swan Books, 2004) at 299.

140 Jung, *supra* note 47 at 305.

141 See Smith, *supra* note 133 at 52.

142 Jack Goody & Ian Watt, "The Consequences of Literacy" (1963) 5:3 Comparative Studies in Society & History 304 at 320–21.

causal, such that "Indian reality" would be "denied or devalued".[143] This is precisely what the hyper-rationalistic assumptions of higher education do: they *devalue mythic belief systems*, except from ethnographic and anthropologic perspectives. Overtly mythic beliefs are considered interesting and worth studying for comparative purposes, but as sources of *accurate* information about history or the natural world they are presumed to hold little if any epistemic value.

B. The Lawyer's Divided Self

Derek LaCroix, the executive director of the Lawyers Assistance Program of British Columbia, observes that Canadian students enter law school purportedly to "help others".[144] Surely there is a grain of truth to this observation but it states only part of the case. Some individuals enter law school to assist others whereas some or many lawyers enter law school to earn significant incomes and to enjoy the social status and power that many lawyers enjoy. For those individuals who wish to help others, it is significant that presenters at a Canadian conference observed that lawyers "sometimes experience a sense of disconnect between their personal values and their work, which can lead to well-being challenges".[145] Douglas Litowitz notes the same problem among American lawyers. They either repress their "internal sense of morality" or they superficially split their "*true-inner-layman-self*" from their "*false-outer-lawyer-self*" by telling themselves, for example, "[t]he law is just a job, but it isn't *me*".[146] Both forms of attempts to smooth over the inner conflict will not put an end to the mental unwellness produced by the inner conflicts.

Realistically, barristers seldom find themselves in the highly romanticised situation of helping a virtuous David defeat an immoral and menacing Goliath.

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143 Rush et al, *supra* note 7 at 25.

144 Derek LaCroix, "Meaning, Values and the Practice of Law" (2021) 79:3 The Advocate 399 at 399.

145 "Report from the 2019 Annual Conference", *supra* note 2 at 3.

146 Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L* (Akron: Akron University Press, 2006) at 141.

In some or many cases they will find themselves doing precisely the opposite: 'helping' Goliath to keep David at bay. In such cases it is difficult for lawyers to believe privately, except with a guilty conscience, that they have *helped* anyone. Litowitz describes this predicament well. In light of certain experiences he had as a corporate lawyer, in which his firm took ethically contrasting positions on different files, he mused aloud to his colleague, "[d]oesn't it seem a little hypocritical to think of ourselves as *protectors*, when we are also *attackers*"?[147] His colleague quickly rationalized by a "sleight of hand" that his firm consistently protected clients.[148] For Litowitz, such a rationalization was an attempt to smooth over the divided lawyer's self. This self is divided between the "false lawyer-self" who "speaks in legalese while the true self looks on helplessly in shame at what the other half of its personality is doing".[149] Indeed, lawyers whose *personal* conscience extends beyond their *professional* ethics rationalize their inner moral doubts in terms of abstract matters of rights and justice, yet this private ambivalence can eventually be soul destroying.

Law school is partly accountable for the inevitable disillusionment that broadly conscientious individuals experience in the practice of law because it does not necessarily concern itself with the realistic life of legal practice. Jerome Frank was an especially harsh critic of the lack of realism in America's system of legal education. He surmised in 1949 that "a majority" of professors in most American law schools had "never met and advised a client, negotiated a settlement, drafted a complicated contract, consulted with witnesses, tried a case in a trial court or assisted in such a trial, or even argued a case in an upper court."[150] LaCroix correctly observes that law students are trained to be 'objective' and to apply the law "without regard for personal values".[151] Litowitz broaches this point by emphasizing that law students learn law from "the

147 *Ibid* at 143.

148 *Ibid.*

149 *Ibid* at 23.

150 Jerome Frank, *Courts on Trial* (New York: Atheneum, 1969) at 227. Originally published in 1949.

151 LaCroix, *supra* note 144 at 399.

perspective of a reviewing court".[152] With a similar concern in mind, Frank urged that the cases taught in law school be studied "in the light" of such disciplines as "history, ethics, economics, politics," and notably for this article, "psychology and anthropology". [153] Students learn legal principles de-contextualized from the problematic and in some cases profoundly troubling social situations that led to the case whose principles they must memorize. Textbook criminal law highlights cases in which the State has violated the constitutional due process rights of presumptively innocent persons, but defence lawyers soon learn that the world of criminal law is *realistically* a very violent and menacing social realm in which innocent people are harmed and traumatized by their clients, often indefensibly. Defence lawyers learn to rationalize the fact that they *generally* do everything in their professional capabilities to keep harmful people at liberty among potential victims.

What matters to students is the *ratio* of the case — the discreet *point of law* that must be applied to all similar fact-patterns. Learning the picayune nature of the common law does not prepare a student for the adversarial tumult of litigation, in which a modicum of professional bullying is considered completely acceptable. A great memory ensures success in class, but an aptitude for ring-fighting is prized in the real world of legal practice. Law professors need not concern themselves with the latter type of mettle. They must ensure that students can recite the formal mechanics of law — the *rules* for filing papers on time (civil and criminal procedure, and limitations periods), and the prevailing doctrines of substantive law. If legal educators were to tell their students that the practice of law will not resemble anything like the education they are currently receiving — that they might well find legal practice distasteful or depressing, as Taylor, LaCroix, and the Report from the 2019 Conference are reporting — fewer students would probably choose to write the bar exams and to become

152 Litowitz, *supra* note 146 at 21. Frank made a similar observation decades earlier, that American law students "study, almost entirely, upper court opinions": Frank, *supra* note 150 at 227.

153 Frank, *ibid* at 239.

lawyers. Perhaps this eventuality would cause enough concern to engender institutional reform and a mentally healthier legal system all around.

C. Practical Intelligence (or Wisdom) and Mythology

Students attend post-secondary educational institutions for a wide variety of reasons, extending from a wish to develop technological knowledge that can be applied toward a career, to a wish to learn about the world for the mere sake of learning about the world. In most if not all cases, however, students wish to *connect* themselves in a fulfilling way to their broader society. This aspiration is not restricted to certain law students. It is arguably a universal human predicament and wish that stems from an organic sense of existential insecurity in relation to one's wider environment, precisely the existential condition of early humankind that engendered mythology. James Hollis observes that human beings are "the animal that suffers disconnect from meaning", and that because of this natural condition, the human cognitive or somatic system doggedly "forges new connections" from prior interactions.[154] At least in the past, these connections were deeply mythical. They were not formed by an *accurate* understanding of one's natural or social world, and they are not likely to be formed in the future by a university education that promises a greater understanding of these worlds through scientific research and rationalism. Smith astutely observes: "[i]t is impossible to seek meaning in life or for life without entering the realm of myth and mythic thought".[155]

Jung aptly imagines that an individual who seeks meaning to his or her life "is constantly looking around for external rules and regulations which can guide him in his perplexity", and he casts "a good deal of the blame" for this situation on "education" that "promulgates the old generalizations and says nothing about the secrets of private experience".[156] For him, man could not readily become "conscious of his uniqueness and his limitation" because his era "concentrated

154 James Hollis, *Living an Examined Life* (Boulder: Sounds True, 2018) at 4–5.

155 Smith, *supra* note 133 at 65.

156 Jung, *supra* note 47 at 330.

exclusively upon extension of living space and increase of rational knowledge at all costs".[157] Arguably, the fears, insecurities, anxieties and desires that privately afflict individuals are more determinative of individual mental health than the formal education, training and accreditations that students receive in post-secondary education. Higher education, including law school, can improve any student's life by providing for a remunerative career and creating valuable social relationships, but it will not necessarily teach or even strive to teach what Socrates called "practical intelligence".[158] The latter is more encompassing than formal education because it must discern what type of education is most conducive to an individual's mental health and what social relationships will be most existentially fulfilling *for the individual*. These are pressing and most difficult decisions for many people and they will have to be informed as much by intuition or instinct as by reason or common sense. When "reason fails" to guide individuals, they will make or find new connections to "cope with and accept reality",[159] and these connections will be drawn unconsciously or consciously from stories derived from mythologies. Smith observes, "we do not find the meaning of life, but rather give a meaning to life".[160] In his view, it is best that individuals be made aware of the mythical influences upon their decisions so that they may be more discerning in their existential choices.[161]

157 *Ibid* at 325.

158 See Plato, "Socrates' Defense (Apology)" in Edith Hamilton & Huntington Cairns, eds, *Plato: Collected Dialogues*, translated by Hugh Tredennick (Princeton: Princeton University Press, 1961) 3 at 8.

159 Smith, *supra* note 133 at 67.

160 *Ibid.* See also Jung, *supra* note 47 at 341, 347.

161 *Ibid.*

IV. The Malaise of Lawyers in a Mechanistic Legal System

A. The Mechanical Condition of Unhappiness

LaCroix recently reiterated a seemingly implacable problem with the Canadian practice of law. There appears to be no "meaning" or "sense of fulfillment" in practicing law for many young lawyers, who report a "sense of isolation" in the practice, "with little or no possibility of a fulfilling and healthy life".[162] Evidently, lawyers suffer "significantly higher" rates of "major clinical depression and of alcoholism" than other professional Canadians.[163] A 2019 report noted "alarming rates of anxiety, depression, substance use and burnout in the legal profession, with similar results among law students".[164] Taylor has similarly observed that many American lawyers either suffer unhappiness in private or eventually emerge from "their closets of pain", desirous to understand "the many complex roots of their unhappy state of affairs".[165] Litowitz has observed that there is "morose quality" to the lives of American lawyers, who have "given up any hope for an interesting and fulfilling life".[166]

By now it should be evident that the emotionally burdensome monotony of weekly and largely sedentary office 'work' is simply part of a greater historical and larger socio-economic shift away from hunter-gather and forager economies. By the turn of the 20th century, agricultural mass production had a new urban cousin in mechanical and industrial mass production, which was soul destroying. The modern legal profession is *deeply* ensconced in this mass-productive, mechanical socio-culture, which is devoted primarily to ever-greater productivity of goods. As Litowitz observes: "[l]aw firms have become factories

162 LaCroix, *supra* note 144 at 399–400.

163 *Ibid* at 399.

164 "Report from the 2019 Annual Conference", *supra* note 2 at 1.

165 Taylor, *supra* note 39 at 272.

166 Litowitz, *supra* note 146 at 18.

and legal services have become commoditized".[167] LaCroix similarly observes that Canadian lawyers complain of "churning out work product for clients like a machine", and that the need for "volume, speed and uniformity of work product" has eroded legal professionalism in Canada.[168] This mechanical socio-culture is the 'successful' product of a concerted, multi-century Eurocentric effort to demolish and to eradicate alternative modes of human living regarded as unproductive, nomadic, superstitious, pagan, or primitive. Harari writes: "on the whole foragers seemed to have enjoyed a more comfortable and rewarding lifestyle than most of the peasants, shepards, labourers and office clerks who followed in their footsteps".[169] Eurocentric colonists *were not careful about what they wished for*.

Critically, evolutionary psychologists maintain that over millennia the human brain adapted to "a life of hunting and gathering", and has not yet come to evolutionary terms with the sedentary, mechanistic life of a mass production society.[170] Harari aptly observes that "our current post-industrial environment, with its mega-cities, aeroplanes, telephones and computers … makes us feel alienated, depressed and pressured".[171] By all indications, lawyers experience all too often this kind of depression and pressure because Harari rightly recognizes that human beings "*subconsciously* still inhabit" the world of the forager or hunter-gather.[172] This is the world that preoccupied Jung. It is a *spirited* world, not a mechanical world, which tends to suppress the former.

The secular and mechanistic world of positive law in North America is presumptively rationalistic. This is why the Canadian legal system is unable to receive or to incorporate Indigenous mythology into Aboriginal rights litigation except insofar as it serves a rational or logical purpose, such as informing a court

167 *Ibid* at 81. See also *ibid* at 75.

168 LaCroix, *supra* note 144 at 400.

169 Harari, *supra* note 10 at 56.

170 See *ibid* at 45.

171 *Ibid.*

172 *Ibid* [emphasis added].

about an Indigenous claimant's culture.[173] Unlike Indigenous legal systems that are ethically informed by spiritual and even animistic beliefs, Canada's legal system will steadfastly reject any transgression of logic into a spiritual realm, even though the concept of "logic" evidently derives from "logos, whose first and proper meaning was fabula, fable, carried over into Italian as favella, speech".[174] So, Canada's legal system may pride itself on its enforcement of rationalism, epitomized by an indeterminate concept of the Rule of Law, but for this very reason it can never find itself at harmony or peace with nature — environmental or human — because neither human society nor the natural word is ultimately rational. Jung observes:

> [t]he predominantly rationalistic European finds much that is human alien to him, and he prides himself on this without realizing that his rationality is won at the expense of his vitality, and that the primitive part of his personality is consequently condemned to a more or less underground existence.[175]

This observation reflects Harari's observation that 21st century humans *subconsciously* wish to and indeed *need* to forage, in the sense of breaking free from an oppressively orderly and rational existence. Their *vitality* depends upon doing so. Jung's observation perfectly explains why some lawyers tend to go 'crazy', to use Eleanor Savage's expression in *This Side of Paradise*, in the face of the hierarchically conservate constraints of Canada's legal system. The system resists fluidity and is embarrassed by vivaciousness.

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173 See *Sparrow* (1990), *supra* note 1 at paras 40, 69; and *Sparrow* (1986), *supra* note 21 at para 19.

174 See Giambattista Vico, *The New Science of Giambattista Vico: Unabridged Translation of the Third Edition (1744) with the Addition of "Practic of the New Science"*, translated by Thomas Goddard Bergin & Max Harold Fisch (Ithaca: Cornell University Press, 1984) at 127. This book was originally published in 1725.

175 Jung, *supra* note 47 at 245.

B. Reconciling Rationalism with Mythology

Taylor's observation that unhappy lawyers have little footing in the "mythological soil" of their culture[176] directly conforms to Jung's broader suggestion that when "man was still linked by myth with the world of the ancestors, and thus with nature truly experienced and not merely seen from outside", humankind would have been less likely to be "divided against themselves".[177] For Jung, a divided self is largely a function of human acculturation to a world that has concertedly abandoned or rejected mythic thinking.[178] Again, the agricultural revolution and its trans-Atlantic missionaries generally wrought such a rejection of the mythologizing mentality. Having physically severed its connection to nature — by choosing the symmetry of agriculture and machines over the meandering routes of the forager and hunter and gather — humankind distanced its brain both physically and intellectually from nature, thereby making itself "neurotic".[179]

The antidote, which is much easier identified than achieved, is to bridge the divide between the intellect and the *anima* (or the 'soul' or 'spirit') — or to "integrate" reason and unconscious life.[180] In early human societies mythology did this job. Animistic, totemistic and anthropocentric myths kept the fabrics of the intellect and the soul (or spirit) woven together by bringing a sense of security, *intellectually*, to viscerally perilous and anxious life. Mythology tends to play a "freeing and cathartic" effect on the human mind.[181] Lawyers take great pride in the power of their *brains* to memorize legal points and to convince judges that their arguments are cleverer than those of their professional adversaries, but such demonstrations of rationalism do not bear on the *emotional* health of legal practitioners. As Jung understands: "[i]n the living psychic

176 Taylor, *supra* note 39 at 272.

177 Jung, *supra* note 47 at 144.

178 *Ibid* at 143–44.

179 *Ibid.*

180 *Ibid* at 302. See also Smith, *supra* note 133 at 66.

181 Reik, *supra* note 9 at 204.

structure nothing takes place in a merely mechanical function; everything fits into the economy of the whole, relates to the whole".[182] This is precisely why conscientiously troubled young lawyers pause to ask, "[w]hat good am I doing"?[183] Their mechanical and rational lives *as lawyers* are troubling to them because *as people* they feel an emotional longing for connection with their broader social ecology. Rationalism and doctrinairism dominate Canada's legal system, yet they are also "the disease of our time",[184] according to Jung. The wish of young lawyers to do 'good' reflects their longing to *connect morally* with others in a society guided by an ethos of care and stewardship, not rationalistic rules that promise mastery and control over nature.

So, LaCroix surmises that some non-pecuniary fulfilment could be found in the practice of law if "the culture of law shifts to one in which we respect and support each other and our individual differences".[185] This article agrees, but it proposes that the shift must be more extensive and less anthropocentric, and that legal education should play its rightful part. The shift must involve a re-evaluation of the heightened importance that prevailing North American culture ascribes to human rationality and its mechanistic view of nature.[186] David Gunkel recognizes in *The Machine Question* that "the discipline of philosophy" has "only recently" begun "to approach nonhuman animals as a legitimate subject of ethics".[187] Organic nature in general, which includes

182 Jung, *supra* note 47 at 246. See also Smith, *supra* note 133 at 66.

183 LaCroix, *supra* note 144 at 400.

184 Jung, *supra* note 47 at 300.

185 *Ibid* at 401.

186 Rosi Braidotti similarly proposes that "a new, subtler, and more complex relationship to our planetary dimension is now needed and that a more egalitarian relationship to nonhuman others is called for": Rosi Braidotti, "Posthuman Critical Theory" (2017) 1:1 Journal of Posthuman Studies 9 at 10.

187 David J Gunkel, *The Machine Question: Critical Perspectives on AI, Robotics, and Ethics* (Cambridge, Mass: MIT Press, 2012) at 109.

sentient creatures and the human psyche, has been undervalued and damaged for centuries. For Smith:

> [t]he parts of reality which have been repressed through patriarchal culture are our links with the earth and nature, and the similarities and identifications with other animal species and forms of life. To try to understand our relationship to nature we must use a holistic form of thought rather than modes of thought suitable for differentiation only. These holistic approaches will inevitably be mythic.[188]

The type of change encouraged by LaCroix therefore implicates a broader, epistemic change. Rush and his colleagues wished to see this type of change in the *Delgamuukw* trial when they asked the court to take seriously the animistic beliefs of the Gitksan and Wet'suwet'en peoples; that human beings are "part of an interacting continuum which includes animals and spirits".[189] Realistically, a Canadian court will never question its prevailing hyper-rationality and mechanistic view of nature *at an adjudicative stage*, but remarkably it will apply a holistic worldview of nature (involving a spiritual aspect) to the sentencing of Indigenous peoples, consistent with principles of restorative justice. In sentencing an Indigenous offender for mischief, Justice David Gibson observed that "[t]he arrogance of the law makers who formulated [racist] policies blinded them to the richness of the [Indigenous] traditions they sought to end and the unique wisdom they contained" and he agreed on the need "to bridge the Rule of Law and Natural Law".[190] This kind of bridge is missing from legal education and the adjudicative dimension of Canada's legal system. It was not extended to the Manuels.

The Canadian Collaborative Mental Health Initiative ("CCMHI") notes that Indigenous peoples once believed in "a link between people, creatures, and all things created by the Great Spirit", and that humankind is obliged to "take

188 Smith, *supra* note 133 at 66.

189 Rush et al, *supra* note 7 at 24.

190 *Morrisseau*, *supra* note 129 at paras 94–95.

care of the earth – not to control it".[191] Borrows similarly notes, "the water, wind, sun, and stars" and "fish, birds, plants, and animals" are all part of a union that he and his Anishinabek ancestors have with the land, but that such a form of citizenship is being "slowly diminished".[192] This is to put it mildly. With animistic, naturalistic, and empathetic bonds well and purposely severed, the acculturated trade-off for human mental health has been profound. The cultural genocide of Indigenous peoples identified by Harold Cardinal in *The Unjust Society*[193] has had reverberations for the wider non-Indigenous society that purposely destroyed nature to accommodate a highly mechanized, industrialized, and rationalistic existence. Individuals who must make their way in social realms, including the domain of law and justice, which demand rationality and denigrate mythology, are bound to have difficulty finding 'meaning' in them. The lack of meaning and sense of fulfillment that lawyers convey to LaCroix reflects a systemic problem in North America. Arguably, alienation is "the normal condition of human existence", yet is worth attempting to redress.[194]

The recipe for restoring mental health in the well-cemented predicament of mythic alienation today is not to reinvigorate the role of religion into a largely secular mode of life.[195] It is more nuanced and more difficult than this. As a therapeutic modality for Indigenous peoples, the CCMHI encourages the use of a Medicine Wheel that focuses holistically on the mind, body, emotions and *spirit* of people suffering mental health challenges.[196] In its discussion of the

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191 Bill Mussell & Neasa Martin, "Pathways to Healing: A Mental Health Toolkit for First Nations People" (2006) at 3, online (pdf): *Shared Care* <www.shared-care.ca/files/EN_PathwaystoHealing.pdf>.

192 Borrows, *supra* note 3 at 138, 140.

193 See *ibid* at 138–39 and Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: Hurtig, 1969) at 139.

194 Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (New York: W W Norton & Co, 1995) at 244.

195 See Jung, *supra* note 47 at 347–48.

196 Mussell & Martin, *supra* note 191 at 11. See also David Danto & Russ Walsh, "Mental Health Perceptions and Practices of a Cree Community in Northern

spirit, the CCMHI critically observes: "[s]piritual growth is connected to the land, each other, and the community".[197] Again, a critical factor in the current malaise of North Americans, not simply Indigenous peoples, is an acculturated disconnection of everyday human life from nature. No amount of medication can restore this connection. Recently, David Danto and Russ Walsh researched the importance of the medicine wheel to healing Aboriginal communities.[198] Most persons who participated in their study (various community leaders and mental health service providers in northern Ontario Indigenous communities) emphasized the importance of land and having a connection to land as a means of strengthening spiritual health.[199] Generally the participants "characterized their relationship to the land in spiritual terms".[200] The participants also identified the importance of land to mental health.[201] As for emotional health, Danto and Walsh wrote, "[p]articipants also conveyed that community members are healthy owing to their spiritual connectedness".[202]

If reconnecting Indigenous people to the land, physically, intellectually, and spiritually has mental health and emotional benefits for such people, there is no reason to believe that the same types of reconnections would not benefit non-Indigenous peoples. The legal primacy given to commercial and industrial development in Canadian law needs to be re-considered. From its agrarian roots through its manufacturing and industrial forms, resource development systemically marginalized nomadic ways of life and wrought alienation. "Unfortunately", Jung writes, "the mythic side of man is given short shrift

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Ontario: A Qualitative Study" (2017) 15:1 International Journal of Mental Health Addiction 725 at 728.

197 Mussell & Martin, *ibid* at 12.

198 Danto & Walsh, *supra* note 196 at 728.

199 *Ibid* at 732–33.

200 *Ibid* at 732.

201 *Ibid* at 732–33.

202 *Ibid* at 733.

nowadays. He can no longer create fables".[203] Theory and evidence seem at the very least to suggest that an improvement in the mental health of lawyers will require North American culture to accept that the mechanistic worldview to which it and its legal system tenaciously cling *is part of the problem*. North America's enlightened secular society has convinced itself, though not very convincingly, that it prefers the "wintry blasts of modern critical thinking" to the "naïve faiths of the past".[204]

The pressing problem addressed by this article is not the *correctness* of a belief system. It is not knowledge *per se*. It is mental health. If legal education in the 21st century wishes to promote the mental health of prospective practitioners it would highlight for its students that the practice of Canadian law is fundamentally mechanistic, being exclusively committed to rationalism, scientific methodology, and positivism, and that the legal system has therefore tended to be more exploitative of nature than protective of it. Institutionally, the legal system *thrives on damage(s)* and *pain and suffering*, without which the market for civil and criminal lawyers evaporates. Perhaps this simple fact should concern legal educators who would like to see less pain and suffering in their world. Jung rightly proposes, "[t]he more the critical reason dominates, the more impoverished life becomes".[205] Lasch similarly observes that the "self-image of modernity" is "so proud of its intellectual emancipation that it makes no effort to conceal the spiritual price that has to be paid".[206] An increasingly scientifically minded society does not necessarily become a more mentally healthy society.

Thus, a 21st century mechanistic society, including its legal system, may defensibly maintain its constitutional separation of church and state, but if it genuinely wants its populace to be mentally healthy, it must take seriously the proposition that its mechanistic institutions and economic practices, which are geared so heavily toward efficiency and productivity, tend to damage the human

203 Jung, *supra* note 47 at 300.

204 See Lasch, *supra* note 194 at 239.

205 Jung, *supra* note 47 at 302.

206 Lasch, *supra* note 194 at 240.

soul. Against the backdrop of increasing climate change or global warming, the following observation by Lasch seems prescient:

> [i]n an age that fancies itself as disillusioned, this is the one illusion—the illusion of mastery—that remains as tenacious as ever. But now that we are beginning to grasp the limits of our control over the natural world, it is an illusion … the future of which is very much in doubt, an illusion more problematical, certainly, than the future of religion.[207]

Borrows makes the same point when he observes, "[i]ncreasing alienation from our natural and social environments has nearly overwhelmed our ability to effectively function in the places we choose to live".[208] Arguably, the ancestors of Indigenous peoples in North America who held animistic and other mythic beliefs were better connected in this respect.

V. Conclusion

This article has demonstrated that two superficially unrelated problems with Canada's legal system have a deep, common source, and by implication, a common means for betterment. Canada's legal system is currently grappling with a bad conscience in relation to Indigenous peoples, while its own practitioners are afflicted by disturbingly high rates of professional depression and malaise. A system that wants to help people and to attain the respect of the public it serves *clearly has a destructive tendency*. When Canada's legal system subjugated Indigenous legal systems several generations ago, it showed by example that it preferred a society guided and directed by a mechanistic view of nature, not a holistic, organic or spiritual view. The ambitious masters of nature chopped down and toppled their oldest ancestors — the great forests of North America — without compunction. The magnificent axe of the mythic American Paul Bunyan proved to be far mightier than Lady Justice's Roman sword. Indigenous people were given the ultimatum of contributing to the agrarian and industrial destruction of their mythic kin or of relocating their spirited lives in

207 *Ibid* at 246.

208 Borrows, *supra* note 3 at 3031.

remote places. The Europeans wished to get increasingly in control of and away from perilous and obtrusive wilderness, so fur bearing animals were trapped or shot to extinction, mountainsides were blasted asunder with dynamite, and entire forests were flattened.

Now, in this century, as the entire planet faces dangerous rates of atmospheric warming directly correlated with the Industrial Revolution, Canada's courts find themselves coincidentally obligated to consider Indigenous mythologies in which animals, the land, and spirituality play significant roles in human accountability and legal responsibility. This mandate provides a golden, *if not critical*, opportunity for Canada's legal education system in general to do some serious soul-searching in class. Law schools can ask themselves in non-patronizing tones what they might learn about the natural geneses of mythologies across cultures that could facilitate or enable restorative justice, well beyond the narrow confines of Indigenous sentencing practices, to the natural environment and to the quality of life of students who will become lawyers. What myths teach about human vulnerability, insecurity and anxiety in the face of an ever-daunting natural world provide an important counterweight to prevailing but ever-tenuous beliefs about human control over nature. More balance in this respect could have transformative effects on the future of environmental law, Aboriginal rights, and the mental health of lawyers themselves.