

# Miyo Nêhiyâwiwin (Beautiful Creeness)

## Ceremonial Aesthetics and Nêhiyaw Legal Pedagogy

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*Abstract: Ceremonies serve as teaching instruments of law and are integral to the survival and revitalization of Nêhiyaw/Cree legal orders. As Indigenous legal orders receive further academic consideration, ceremonies challenge the forms of law and the ways we view law. This article explores the beauty of Nêhiyaw laws and the necessity of this beauty. As a form of legal pedagogy, Nêhiyaw ceremonies display this necessity. By examining the aesthetics of these ceremonies more closely, we are gifted with the richness of legal teachings these beautiful acts provide.*

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I have a tin ear. It's not going to do you any good to sing to me.

— Justice Allan McEachern<sup>1</sup>

Songs are the history of a community passed down so long that it has become a melody.

— Elisa Penn<sup>2</sup>

## I Pe'yak: The Beauty of Nêhiyaw Resiliency

When I started my Juris Doctor degree at the University of Victoria, Faculty of Law in 2009, some fellow first-year students and I were given the opportunity to learn about the legal traditions of the Hul'q'umi'num' people in the Cowichan Valley on Vancouver Island. As part of these legal teachings, Sarah Morales, Hul'q'umi'num' community member and current law professor at the University of Ottawa, described the origins of Swuq'us (Mount Prevost). This mountain is important within the cosmology of the Hul'q'umi'num' people, as it is where their second ancestor, Stuts'un, was dropped from the sky.<sup>3</sup> As Morales spoke, the mountain lay in the distance as a reminder that the law can be written into the land, and also of the complex richness legal relations can provide.

Later, displaying the damage that this origin story did to his conception of law, one participant questioned whether the story was relevant to his own legal education. Despite the willingness of many law students to engage with the questions Indigenous legal orders raise about their personal theoretical conceptions of law, resistance to the pedagogies of Indigenous law is prevalent. As the study of Indigenous legal orders grows within institutions that teach Canadian common and civil laws, we are undertaking growth and even contestation in our considerations of the bounds of law. While the inclusion of Indigenous legal orders in formal legal education has been a long time coming, by way of the work of many Indigenous and non-Indigenous jurists and thinkers, this work remains in its infancy. Law schools are still building their relationships with Indigenous legal orders as their pedagogies adapt to account for the legal pluralism that exists within Canada.

Anishinaabe professor John Borrows (amongst many others engaged in this work) would caution that questions like my classmate's, about the legitimacy of forms of Indigenous laws, require supportive responses, even when they are laden with assumptions about legal reasoning within Indigenous communities. This article seeks to support a greater understanding of the form and personality of another legal tradition, that of Nêhiyaw (or Plains Cree) law. It is an offering

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1 Justice Allan McEachern at the trial of *Delgamuukw v. British Columbia*, expressing his embarrassment about having a witness for the plaintiff, Gitksan Elder Antgulilibix (Mary Johnson) tell her ada'ox through song in court. For an account of this, see Leslie Hall Pinder, *The Carriers of No: After the Land Claims Trial* (Vancouver: Lazarus Press, 1991) at 6. While expressed differently, this article explores Justice MacEachern's tone deafness to the form of Gitksan legal reasoning that was presented to him as a common gap in understanding the aesthetic forms of Indigenous legal orders. For a fuller exploration of this see Antonia Mills, *Eagle Down is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: UBC Press, 1994).

2 Elisa Penn was a classmate during my JD studies at the University of Victoria.

3 For a more in-depth account of this description, see Sarah Morales, *Snuw'uyulh: Fostering an Understanding of the Hul'Qumi'Num Legal Tradition* (Ph D Thesis, University of Victoria Faculty of Law, 2014) [unpublished] at 144 to 147.

of a remedy to those who may carry an impoverished view of law in which, for example, creation stories about the land do not matter in legal reasoning. Law can be beautiful. It can even be imaginative and seem fantastical. Within this beauty lie the precepts of order and rule of law that are found in the common law. With the exploration of the aesthetics of Nêhiyaw legal orders in this article, I argue that beauty is essential. To trace the legal practices of Nêhiyaw people through stories, songs, ceremonies, artistic renderings, languages, and teachings is to be introduced to a lineage of Nêhiyaw resiliency.

This article delves deeper into the functional aspects of beauty, going beyond mere surface aesthetics. First, it examines one location of Nêhiyaw legal knowledge, the sweat lodge ceremony, to provide an example of how aesthetics influence Nêhiyaw legal pedagogy. Understanding that the ceremony is only one of the many avenues towards Nêhiyawîwin (Creeness) or Nêhiyaw pimatisiwin (Cree way of life), I examine the lodge for its wahkotowin (relationship) teachings, and the role that aesthetics play to allow these teachings to take place. Second, I look at the role of aesthetics in the protection, survival, and revitalization of Nêhiyaw law. The aesthetics of Nêhiyaw legal pedagogy played a significant role in ensuring the survival of Nêhiyaw legal practices.<sup>4</sup> Nêhiyaw legal pedagogy is often beautiful.

## II N'îso: The Significance of Legal Aesthetics

As in many other Indigenous societies, law constellates within Nêhiyaw pimatisiwin from many locations. It is found in “dreams, dances, art, the land and nature, and [is] found in how people live their lives.”<sup>5</sup> It is “written on our hearts.”<sup>6</sup> It is passed down through Elders and families, and is recorded in stories, songs, and customs.<sup>7</sup> “Legal capacities, relationships, and obligations” are contained in “narrative practices, rituals, and conventions.”<sup>8</sup> While it is normal to describe Indigenous laws in this manner, there is a tendency to shy away from describing non-Indigenous legal orders in similar terms. Notably, as my classmate’s comment suggested, Western legal theory has diminished or degraded the legitimacy of laws sourced from the land, or from spiritual and natural origins.

Such issues of “legitimacy” are a result of the dominance of legal positivism in Western legal thought.<sup>9</sup> The omnipresence of legal positivism still influences how Indigenous legal ordering is theorized. Wider aesthetic expressions of law, once more varied and prominent within Western legal practices, have been narrowed as Western legal orders have developed.<sup>10</sup> Eve Darian-Smith suggests that there is a tendency within Western legal systems to assume:

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4 See Katherine Pettipas, *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994).

5 John Borrows’s description of the locations of law, as recounted in Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding, and Applying Indigenous Laws” (2012) 11 *Indigenous LJ* 1 at 8 [Friedland, “Reflective Frameworks”].

6 *Ibid.*

7 *Ibid.* at 9.

8 Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (Ph D Dissertation, University of Victoria Faculty of Law, 2009) [unpublished] at 71.

9 Val Napoleon, “Thinking about Indigenous Legal Orders” in René Provost & Colleen Shepard, eds, *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013) 229 [Napoleon, “Legal Orders”].

10 One area where we see aesthetics playing a role in Western legal systems is in courtrooms, where protocols surrounding dress, speech and positioning are still important. However,

(1)[t]hat legal meaning is found strictly within legal texts, reports, and documents, (2) that law is almost wholly addressed in formal legal arenas such as courtrooms, governmental assemblies, and places of legal adjudication, (3) that law should be described in the vocabularies of European-based languages, primarily English, and (4) common law and civil law legal systems are preferred.<sup>11</sup>

Such legal personality means that “there is virtually no accommodation made for the production of legal meaning outside conventional Euro-American legal spaces, places, forums, vocabularies, cultural logics, and textual modes of communication.”<sup>12</sup> Similarly, Hanne Petersen contends that Western law is dominated by the belief that law should be “closely related to a society embedded in a rhythm of industrial production and industrial productivity.”<sup>13</sup> The continued movement of legal systems towards technical efficiency has created a new aesthetic of Western legal systems. Industrial and decontextualized, it produces rhythms that seem unnatural in comparison to those of the lifeworlds that give law its purpose. Its new aesthetic is increasingly black letter and dispassionate, an unmelodic reasoning.

### III Nisto: Wahkotowin and Setting Our Relations in Stone

The impoverished role of aesthetics in Euro-American legal systems delegitimizes the aesthetics of other legal systems.<sup>14</sup> Euro-American legal systems’ failure to recognize that Indigenous laws have their own internal logic reinforces current legal and economic structures, and denies, misrepresents, or fabricates the legal concepts or categories of Indigenous peoples.<sup>15</sup> Their increasing focus on legal efficiency further renders these systems ill-equipped to engage with legal knowledge that goes beyond writing and speech.

Nêhiyaw law is found in songs, stories, ceremonies, kinship orders, and artistic renderings. The kehte-ayak (old ones, or more commonly, Elders) carry laws within them, waiting for younger ones’ visits to enrich future generations.<sup>16</sup> Nêhiyaw law is written into the land and offers its legal pedagogy, if we are attentive enough to listen to the stories.<sup>17</sup> Hadley Friedland notes that “engaging

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these practices are often viewed as “formality”, unmoored from any substantive importance they may have had.

11 Eve Darian-Smith, “Producing Legal Knowledge” in Eve Darian-Smith, ed, *Laws and Societies in Global Contexts* (Cambridge: Cambridge University Press, 2013) 97 at 100–101.

12 *Ibid* at 101.

13 Hanne Petersen, “On Law and Music: From Song Duels to Rhythmic Legal Orders?” (1998) 41 *J Legal Pluralism* 75 at 80.

14 See Darian-Smith, *supra* note 11 at 97–109.

15 Sonia Smallacombe, “On Display for Its Aesthetic Beauty: How Western Institutions Fabricate Knowledge about Aboriginal Cultural Heritage” in Duncan Ivison, Paul Patton & Will Sanders, eds, *Political Theory and The Rights Of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000) 152 at 161.

16 Paulina Johnson, *E-kawôtiniket 1876: Reclaiming Nêhiyaw Governance in the Territory of Maskwacís through Wâhkôtowin (Kinship)* (Ph D Dissertation, University of Western Ontario Graduate Program in Anthropology, 2017) [unpublished] at 164.

17 For example, the name of my hometown, Wetaskiwin, is a corruption of the word witiskiwin or witaskewin, which translates into “living on the land together”. It is the location of a peace treaty between Nêhiyaw and Blackfoot peoples. See Darcy Lindberg, “Engaging in Indigenous Laws: Therein Lies the Many Meanings of Witiskiwin”, *Bar Talk* (April 1,

robustly and respectfully with Indigenous legal traditions, so that they can be accessed, understood and applied today requires more than merely identifying and articulating legal principles.”<sup>18</sup> Understanding the role of Nêhiyaw aesthetics in legal reasoning is thus essential when engaging with Plains Cree law.

This article is not concerned with wholly describing a large breadth of Nêhiyaw law or providing a grand narrative on Plains Cree legal theory. It instead examines the (legal) norms shared amongst Nêhiyaw peoples and their use in providing collective meanings. My approach is supported by social interaction theories of law and Nêhiyaw conceptions of law.<sup>19</sup> The word for law within Nêhiyawêwin (the Cree language) is *wiyasiwêwin*, which translates to ‘the act of weaving’.<sup>20</sup> In one manner then, walking in a “lawful” manner within Nêhiyaw pimatisiwin is to live one’s life in a manner that braids together the legal teachings one continues to observe and attain in one’s life, both for personal and collective strength. This calls for a consideration of the normative aspect of Nêhiyaw legal ordering, where social norms become law through normative contemplation and reflection.<sup>21</sup> A normative approach to Nêhiyaw legal ordering requires a relationship with the institutions of Nêhiyaw law, like ceremony, family, language, and land-based teachings, to identify legal practices that are invariably bound with other social norms. While hierarchical authority (like the governing and law-making powers given to chiefs, for example) exists within Nêhiyaw societies, and declarative law has a necessary purpose within it,<sup>22</sup> normative persuasion remains an integral element in how law is learned, passed down, transformed, and even critiqued. Thus, the object of this *wiyasiwêwin*, the strands that will give this legal ordering collective strength, often relies upon a persuasive aesthetic for its inclusion.

I use the words *aesthetics* and *beauty* with slightly different meanings. Aesthetics describes the spectrum of sensory experience, ranging from the limited sensuality of black letter law to full sensory experiences like the sweat lodge ceremony. Beauty describes *persuasive aesthetics* that draw individuals towards the sensory experience. Nêhiyaw law is often meant to be practiced beautifully in order to convey its persuasive authority. The shared processes within Nêhiyaw law require participants to embody law, act in harmony with other participants, call through melody for others to participate, and deepen our relationships with each other through sensual experiences of law.

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2016), online: <<http://www.cbabc.org/BarTalk/Features/In-this-Issue/April-2016/Engaging-in-Indigenous-Laws>>.

18 See Hadley Friedland, *Reclaiming the Language of Law: The Contemporary Articulation and Application of Cree Legal Principles in Canada* (Ph D Dissertation, University of Alberta Faculty of Law, 2016) [unpublished] ch 4 at 162 [Friedland, *Language of Law*].

19 For a description of social interaction theory of law, see Lon L Fuller, “Human Interaction and the Law” in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L. Fuller*, revised ed (Portland, OR: Hart Publishing, 2001) at 231.

20 See Sylvia McAdam, *Nationhood Interrupted: Revitalizing nêhiyaw Legal Systems* (Saskatoon: Purich Press, 2014) at 104.

21 Jeremy Webber, “Legal Pluralism and Human Agency” (2006) 44 Osgoode Hall LJ 167 at 196.

22 Nêhiyaw communities are increasingly declaring laws based upon the legal norms within their societies. For example, the Samson Cree Nation is setting their “Kisê-manitow Wiyasiwêwina Kihcimasinakikanis: The Living Law of the People of Maskwacis” to writing. See Johnson, *supra* note 16 at 40.

Wahkotowin, the laws that govern our relationships, provides an example of the need for persuasive aesthetics within Nêhiyaw legal ordering.<sup>23</sup> From her research of Cree legal traditions within the Aseniwuche Winewak Nation in Western Alberta, Hadley Friedland notes that wahkotowin speaks of “each individual existing and inextricably connected within a network of relationships” and “informs and permeates Cree legal thought and practice.”<sup>24</sup> Wahkotowin operates internally to structure Plains Cree social and legal lives, as well as informs international relations. As Harold Cardinal notes:

We have to be able to understand where the doctrine of Wa-koo-towin comes from and what role it played in the treaty-making exercise. Because when our Elders lifted the pipe, when our Elders used the sweet grass, when our Elders used the ceremonies to go into a treaty-making session, they weren't putting on an anthropological show to impress Europeans newly arriving into their territory. They were doing that for a very specific reason. That was their way of moving, their way of giving life, their way of giving physical expression to the doctrine of Wa-koo-towin, the kind of relationship that they were under an obligation to extend to and enter into with other peoples.<sup>25</sup>

Ceremonialism is a physical expression of wahkotowin. To examine this further, I explore personally situated knowledge from sweats that I have had the rich fortune of attending. I have chosen these experiences specifically to honour the holder and facilitator of these sweats, Ron Marshall,<sup>26</sup> and the knowledge he graciously passed on to those who attended his sweat. While his lodge was run in a manner consistent with Nêhiyaw teachings, with permission Ron ran this lodge on the territory and land of the Songhees Nation. The lineage of his teachings can be followed to Peter O'Chiese and Lloyd Haarala, from whom he received the knowledge to run the lodge. Ron left us for the spirit world in April 2015, leaving a large gap in our community regarding how to be kind and generous, alongside the loss of his knowledge and wisdom. He is missed in many ways each day.

I am cognizant of our ceremonial protocols. I acknowledge that some teachings, lessons, procedures, and events that occur in lodges are inappropriate to recount here. I am also aware of the way that ceremonies are exotified when they are recounted or described.<sup>27</sup> My intention is not to glorify them in this

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23 Harold Cardinal, “Nation-Building as Process: Reflections of a Nêhiyaw (Cree)” (2007) 34:1 *Can Rev Comparative Literature* 65 at 74–75.

24 Friedland comes to this conclusion on the basis of interviews with elders and community members of the Aseniwuche Winewak Nation. See Friedland, *Language of Law*, *supra* note 18 at 165.

25 *Ibid* at 75.

26 Ron was a member of the Ahousaht First Nation and was brought into the nêhiyawak through his marriage and through his ceremonialism.

27 The exotification of Indigenous ceremonial practices is common, and often causes them to be exploited by others for profit. As I write this, some are attempting to urbanize the sweat lodge and convert it into a commercial wellness operation. See “Shapehouse: An Urban Sweatlodge”, online: <<http://www.theshapehouse.com/>> The worst example of harm caused by this commodification was the deaths of three people in a sweat in 2009 held by self-help author James Ray. Ray was sentenced to three years in prison for negligent homicide. Participants reportedly paid \$10,000 to attend his self-help camp where the sweat was held. See Nathan Thornburgh, “Negligent Homicide: The Case of the Sweat Lodge Guru”, *Time*

manner nor to provide a full descriptive analysis of the lodge as legal practice. My intention is to use a few teachings to show the significant legal education that occurs in ceremony. I rely on my own discretion to discern what is appropriate for the purposes of this article.

To explore the link between the aesthetics that operate during a sweat lodge and the teaching wahkotowin obligations, I look at Nêhiyaw people's relationship with stones. I have chosen this relationship because of how it challenges differing conceptions of how we relate and to what we are related.<sup>28</sup> Stones form the physical center of any sweat lodge ceremony, causing Nêhiyaw peoples to relate to rocks as animate beings. Rocks are also our relations; we refer to them as our kôhkoms and mosôms.<sup>29</sup>

The procedures to maintain proper wahkotowin with our grandmothers and grandfathers begin long before they are used in a lodge. Gathering stones begins a ceremonial relationship with them.<sup>30</sup> When stones are gathered for a lodge, a tobacco offering is usually given. As in many other sweats, in Ron's lodges the mosôms and kôhkoms are heated until they are glowing red. Once the stones are heated and centered in the lodge, they are gifted with medicines (for example, ground cedar, sweetgrass, bear root or sage), which are placed on them. Then the internal work of the lodge begins. As hard as it may be to conceptualize sweat stones as a living, animated beings, experiencing the lodge confirms this teaching as their heat permeates everything, including our skin and bones. This experience pulls the individual into a deeper relationship with the sweat stones.

The focus of the first round of Ron's lodges would be gratitude towards all the things that help us survive and live a good life. As part of his teachings, Ron was obligated to splash the stones — one splash of water for each stone used for the particular ceremony in quick succession. This was an explicit pedagogical act in every sweat, as Ron would acknowledge his obligation to honour the stones in this way, and as participants who experienced the heat within the lodge during this act, we shared the burden of this obligation. The final procedure that Ron practiced for the maintenance of our relationship with the stones was to feed the kôhkoms and mosôms. At the completion of the ceremony the sweat stones were fed first, with food brought by participants for feasting after the ceremony.

The sweat lodge ceremony is aesthetically full.<sup>31</sup> It requires participants to engage physically, intellectually, emotionally, and spiritually with what is around them. Touch, taste, smell, sight, and hearing are all important to the experience. One interpretation of Ron Marshall's relationship teachings is that we have an obligation to treat the sweat stones as our *Elder* relatives.<sup>32</sup> This obliga-

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*Magazine* (23 June 2011), online: <<http://content.time.com/time/nation/article/0,8599,2079491,00.html>>.

28 In this article, when the first-person plural is used, as it is in this sentence, I am referring to the nêhiyawak, or Plains Cree peoples.

29 *Grandmothers and grandfathers* in nêhiyawêwin.

30 One story of respect for rocks, which I was told by nêhiyaw Elder Mahkoos (Michael Merrier), was of an old man who was careful not to displace stones from their resting places, even if they were in his way. As Mahkoos told it, to do so would be to disrupt the stone's journey of thousands of years which brought it to the place where it rested.

31 This is only a small example of how wahkotowin was taught within Ron Marshall's sweat lodge. A particular strong memory I have was of one lodge where the first round lasted close to two hours, as Ron expressed his continued gratitude to many things.

32 This is important, as there are often specific requirements and obligations regarding the treatment of Elders.

tion supports specific protocols, like the requirements to gift sweat stones with medicines and food.

The descriptive account of Ron Marshall's teachings on stones may raise questions for skeptics on how they are understood as law. How is feeding sweat stones a lawful practice? What is legal about a tobacco offering? These questions reflect Western law's tendency to "steal all of the modes of reasoning" that are viewed as legitimate, especially in formal legal education settings in Canada.<sup>33</sup> Thus it is imperative that these institutions engage in "Indigenous legal epistemologies" to "develop an understanding of how Indigenous peoples create and justify what they think they know to be true in their own terms."<sup>34</sup> By doing so, legal education can engage in more meaningful questioning about specific legal processes within Indigenous societies, rather than fixate on questions of their legitimacy.

Recognizing these teachings as law raises concerns about the availability and intelligibility of this legal knowledge. Friedland notes that resources of Indigenous legal knowledge are not always publicly available, and many require immense commitment to access them.<sup>35</sup> Indeed, many factors limit the general accessibility of sweat lodge ceremonies and their associated legal knowledge. Physical health can be an overt limiting factor, as the practice can be arduous. There also may be procedural limitations based on an individual's alcohol or drug consumption, or on their sex or gender.<sup>36</sup>

Recognizing ceremonies as legal resources might address some barriers that impede the availability and intelligibility of these laws. Expanding the understanding within the legal community of ceremonial aesthetics aids this translation. Aesthetics are vitally important for such complex relations between humans and the natural world. For Indigenous people to relate to *mosôm* and *kôhkom* stones as relatives, or to a mountain as a first ancestor, ceremonial aesthetics are essential.

#### **IV Ne'yo: Becoming "Rich in Relations"<sup>37</sup> — Protected by Beautiful Legal Practices**

The *wahkotowin* experienced and taught in the lodge is just one point in a multitude of legal principles that can be located within our ceremonies, each providing points where we can begin to connect and constellate the form of a legal order. Ceremonial aesthetics have been integral to the protection of Nêhiyaw ceremonialism in the face of colonial oppression, and thus towards the survival of Nêhiyaw legal ordering in general. I briefly explore four ways that ceremony and ceremonial aesthetics have impacted and may continue to impact the survival of Nêhiyaw legal traditions. They are: 1) to protect them in the face of ex-

33 This sentiment (paraphrased here) was shared by John Borrows in a class lecture at the University of Victoria in March 2016.

34 John Borrows, "Heroes, Tricksters, Monsters & Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795 at 823.

35 Friedland, "Reflective Frameworks", *supra* note 5 at 12. Friedland acknowledges that "deep knowledge of ceremony" is practically unobtainable for the majority of legal practitioners.

36 Darcy Lindberg, *kihcitwâw kikway meskocipayiwîn (sacred changes): Transforming Gendered Protocols in Cree Ceremonies through Cree Law* (LLM Thesis, University of Victoria Faculty of Law, 2017) [unpublished] (examines the gendered nature of protocols within Nêhiyaw ceremonies); we need to ask what holistic, social, political and legal effects gendered protocols have in communities.

37 See Friedland, *Language of Law*, *supra* note 18, at 151.



ternal threats on Nêhiyaw legal orders; 2) to facilitate an embodiment of legal knowledge within the person; 3) to ensure Nêhiyaw laws are transmitted generationally; and 4) to give Nêhiyaw laws mechanisms for transformation and evolution.

### **Beauty is essential to protect Nêhiyaw laws**

In the face of the hegemonic position of the Canadian common law, the beauty of Nêhiyaw laws facilitates their continued relevance in communities, and their survival. The colonial project in Canada has attempted to dismantle the systems of order that Indigenous people relied upon for social cohesion. As part of this effort, Indigenous ceremony was overtly targeted by government policy. As Katherine Pettipas notes, 1914 amendments to section 149 of the *Indian Act* prohibited “indigenous forms of activities” like dancing and ceremonies from continuing without “the approval of the superintendent general of Indian Affairs”,<sup>38</sup> which essentially amounted to prohibiting ceremonial expressions. This ceremonial prohibition caused Plains Cree peoples to adopt strategies to ensure the survival of ceremonial practices like the Sun Dance,<sup>39</sup> the Tea Dance,<sup>40</sup> the Circle (or Round) Dance,<sup>41</sup> the Grass Dance,<sup>42</sup> the Giveaway Dance,<sup>43</sup> and sweat lodge ceremonies.<sup>44</sup> One strategy, often discussed by our Elders, was the performance of ceremonies away from the gaze of Canadian authorities.<sup>45</sup> The resilient continuation of Nêhiyaw ceremonial practices preserved portions of Nêhiyaw legal orders and traditions.

For many ceremonies, their legal teachings were preserved in songs and stories in the absence of the practice of the full ceremonial system. One example is the loss of the site of the Mistasinii (the big stone) in Saskatchewan. The Mistasinii is a transformation rock. Our stories talk about it being a child who transformed himself into stone. Before this transformation, the child (also known as Buffalo Child) was lost by his family, only to be saved and raised by buffalo peoples. Torn between his two families, he eventually turned himself to stone to avoid hunting his own kin.<sup>46</sup> The site of the Mistasinii, on the elbow of the *kisiskaciwani-sipiy* (the ‘Swift Flowing River’ or South Saskatchewan River) was long a gathering place and a site of significant ceremony for many prairie nations, including the Nêhiyawawak.<sup>47</sup> The prohibition on ceremonies ended traditional gatherings at this site. Finally, the Mistasinii was lost to the water of Lake Diefenbaker when the reservoir was created by the damming of

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38 Pettipas, *supra* note 4 at 149.

39 *Ibid* at 107.

40 *Ibid* at 169.

41 *Ibid* at 169.

42 *Ibid* at 95.

43 *Ibid* at 186–87.

44 One story I have been told has women carrying the knowledge of sweat lodges through this period by holding lodges in their kitchens. They would place blankets over their kitchen tables, heat stones on their stoves, and perform the ceremony.

45 For obvious reasons, records of ceremonies taking place “underground” are absent in historical accounts. Pettipas’s study supports this, as she notes that ceremonies were sometimes interrupted in the more secluded locations on reserves, and that these “type[s] of gathering[s] probably occurred frequently and escaped the notice of Indian Agents and missionaries”. See Pettipas, *supra* note 4 at 186.

46 Neal McLeod, *Cree Narrative Memory: From Treaties to Contemporary Times* (Saskatoon: Purich, 2007) at 20.

47 *Ibid* at 20-21.

the South Saskatchewan in 1967. While the ceremonialism at Mistasinii may have been lost, its laws (namely, the treaty relationship between the Nêhiyawawak and buffalo peoples) remains embedded within Nêhiyaw narrative practices as accounts of the Buffalo Child are passed along orally.

The link between beauty and the survival of Nêhiyaw knowledge systems is identified by others. In his study of Nêhiyawêwin, Jeffrey Muehlbauer notes that a link could be drawn between Nêhiyawêwin's beauty and its survival<sup>48</sup> — similar to the role of aesthetics in the survival of the English and German languages. The respective aesthetic qualities of English and German helped their preservation throughout history, specifically in their continuation in literature. Speaking of English and German, Muehlbauer states that the “creation of certain works of art in the language[s] provided both a reason to know the language and a reason to believe its value.”<sup>49</sup> The continuation of Nêhiyaw âtayôhkêwin (sacred stories) like that of the Buffalo Child rely upon their persuasive aesthetic to be carried in individual memory and to form part of the collective “Cree narrative memory.”<sup>50</sup>

### **Beauty is essential for the embodiment of Nêhiyaw legal knowledge**

The aesthetic quality of ceremony enables legal knowledge to be carried *within* the individual. Ceremony creates an embodiment of law, which ensures a deep understanding of legal principles. Within Nêhiyaw ceremony, songs provide experiences that explain and expand relationships to other people, to spiritual beings, and to other animate or inanimate things. As with many ceremonial practices, these songs are learned and passed down orally, often within the context of a specific ceremony. The oral nature of transference of songs invites the person to embody the legal knowledge within them.

### **Beauty is essential for laws to be passed down intergenerationally**

The aesthetics of ceremony provide methods of transference of Nêhiyaw law *intergenerationally*. If ceremonies offer an embodiment of law, then it is imperative for each generation to use methods of transference to retain this knowledge. The transference of rights to hold a sweat lodge is one example of this intergenerational sharing. Lodge rights are generally passed down from a teacher to a learner, who has usually served as an apprentice or oskapêwis.<sup>51</sup> These requirements may include obligations to fast, to learn songs to be sung in the sweat,<sup>52</sup> to become a pipe-holder, and to learn the procedural rules for putting up a sweat and holding a ceremony. These obligations ensure a lodgeholder has attained a sufficient level of embodiment of the principles upon which the sweat lodge is based.<sup>53</sup> If legal principles (either implicitly or explic-

48 See Jeffrey Muehlbauer, “nêhiyawêwin katawasisin: The Plains Cree Language is Beautiful” (2011) 31:1 Can J Native Studies 73, at 76–77.

49 *Ibid* at 76.

50 McLeod, *supra* note 46 at 11.

51 *Helper* in nêhiyawêwin.

52 It is a commonly said that a person needs to learn sixteen songs in order to be able to run a lodge: four for each round.

53 Sometimes obtaining this knowledge can lead to a person being described as an Elder, although this designation can be problematic in some instances, as discussed further in this article.

itly expressed in the lodge) were merely written and codified, there would be less responsibility to go through an embodiment process. The sensory nature of sweat lodges provides an attraction to this form of learning. The tendency of ceremony to provide an embodied learning process personalizes the responsibility for legal learning and promotes an assertive approach to law. If there are not learners within each generation to assertively undertake ceremonial learning, the practices will be lost.

### **Beauty is essential for Nêhiyaw laws to transform and evolve**

Ceremonial aesthetics provide mechanisms for Nêhiyaw laws to transform and evolve in a way that is closely tied to the intergenerational transmission of legal knowledge. As ceremonial processes are embodied and made personal, legal principles or rules are reinterpreted by the participant or knowledge holder. Although sweat lodge teachings may put positive obligations on a person to act relationally with other people, beings, and things, these obligations are usually flexible by nature, where a participant can adapt and apply their interpretation of this obligation outside the ceremony. While still aided by the normative discourse that takes place in Nêhiyaw societies, this allows law to be highly dependent upon the context that it is applied.

Acknowledging the ability for ceremonies to evolve and transform can lead to highly charged discussions. There are fundamental beliefs that integral practices of ceremonies, like the protocols that guide how they proceed, cannot be changed.<sup>54</sup> Some of these beliefs stem from the sacred origins of many ceremonies, as spiritual or divine law is often discussed as being connected to a creator. Some believe that even discussing spiritual laws violates an inherent code of conduct regarding them.<sup>55</sup> Further, within some ceremonial practices and rules are beliefs that their transformation would violate a fundamental balance that ceremonies require.<sup>56</sup> There is much wisdom and knowledge to be gained in listening to how the Elders guide individuals through processes that are spiritual in nature or source. However, the position that ceremony can never change ignores historical examples of ceremonial development and transformation. The Horse Dance developed with Nêhiyaw peoples' evolving relationship with horses,<sup>57</sup> a relationship that did not begin until the 1700s.<sup>58</sup> The Wihigokaancimuwin

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54 For the experiences of those who wish to participate in ceremonies but are prevented from doing so due to the gendered nature of ceremonial protocol, see Drew Hayden Taylor, "The Shame of Skirt-Shaming", *Windspeaker* (1 June 2016), online: <<http://www.windspeaker.com/blogs/the-urbane-indian-drew-hayden-taylor/post/the-shame-of-skirt-shaming-june-2016/>>; For a response to Drew Hayden Taylor, see Ruth Hopkins, "On Skirt Shaming" (3 August 2016), *Sovereign Bodies* (blog), online: <<http://www.sovereignbodies.com/blog/skirts>>.

55 See McAdam, *supra* note 20 at 39.

56 See Erica Lee, "Skirting the Issue: A response and call to action" (19 June 2015) *Moontime Warrior* (blog), online: <<https://moontimewarrior.com/2015/06/19/skirting-the-issue/>> on women's participation in ceremonies while they are experiencing menstruation. An implicit gendered dualism underpins the arguments for the maintenance of the gendered nature of the protocols.

57 See McLeod, *supra* note 46 at 25, for small glimpses into the role of horses within Plains Cree cosmology. McLeod hints at Plains Cree creation stories within our oral traditions regarding the horse, in which the horse is gifted to Plains Cree peoples, obliging the people to hold Horse Dances.

58 See John S Milloy, *The Plains Cree: Trade, Diplomacy and War, 1790 to 1870* (Winnipeg: University of Manitoba Press, 1990) at 24–25.

(Weetiko Dance) evolved from Nêhiyaw interactions with Blackfoot people,<sup>59</sup> which did not occur with regularity until around 1730.<sup>60</sup> The Sun Dance Ceremony was “adapted” into the Rain Dance Ceremony by Plains Cree communities as a result of the colonial prohibition of ceremonies.<sup>61</sup>

There is an internal evolution of ceremonial practices as well. Some sweat lodge holders continue to evolve away from protocols that prohibit participation based on harmful gendered dynamics and stereotypes.<sup>62</sup> Sweat lodges were held under kitchen tables and in disguise during the *Indian Act* prohibition of the ceremonies.<sup>63</sup> As I wrote part of this article, I listened to the Black Lodge Singers sit around a sacred drum and sing about Mighty Mouse, Disneyland, and Fred Flintstone.<sup>64</sup>

Nêhiyaw stories and teachings offer lessons on ceremonial transformations, as they are full of instances of transformation, shape-shifting, and fluidity. A boy is shape-shifted into a buffalo and then back again, and finally into a rock, in order to teach of our relations to the buffalo people.<sup>65</sup> A prairie becomes full of hills in order to demarcate a territory so that we stop needless violence between the Nêhiyawak and Blackfoot peoples.<sup>66</sup> A buffalo becomes a lake that nourishes our ancestors in a time of great need.<sup>67</sup> The northern lights shapeshift above us, and transform our realities only if we dare to whistle at them. The lessons and language of transformation is all around us. A fuller dialogue would be centered on the processes that have allowed for ceremonial evolution. Such a dialogue would raise important issues, like who can authorize ceremonial transformations, what normative practices are barriers to a healthy or unhealthy evolution of ceremony, and to what degree is normative fluidity harmful to the integrity of the ceremonial practice itself?

These questions provide room for necessary critical approaches when Nêhiyaw sacred practices are also viewed as legal resources and institutions. Val Napoleon warns that viewing law sourced from spiritual origins with an authority that precludes their inclusion into critical discourses closes off an examination of the reasoning processes that is necessary in lawmaking.<sup>68</sup> As all

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59 See Fine Day’s telling of the story to David Mandelbaum. The dance involves contrary actions. According to Fine Day, it developed from an encounter with the Blackfoot while hunting buffalo. Interview of Fine Day by DG Mandelbaum (29 July 1935), online: <<http://ourspace.uregina.ca/bitstream/handle/10294/1813/IH-DM.82.pdf?sequence=1>>

60 Milloy, *supra* note 58 at 24.

61 See Pettipas, *supra* note 4 at 179-80. As the ceremonies were held in the summer when rain was much needed and often scarce on the prairies, the name change was an attempt to curry favor with local settler people. Nêhiyaw people used the mistaken belief by settlers that the ceremony’s purpose was to provide rain as a way to gain allies of the ceremony during the period it was prohibited.

62 As one lodge holder shared with me, “my teacher would scold me really hard for holding lodges for men and women at the same time”, acknowledging that his lodge was changing the tradition he was taught in.

63 See “The Story of the Masks”, *Umista*, online: <[http://www.umista.ca/masks\\_story/en/htpotlatch02.html](http://www.umista.ca/masks_story/en/htpotlatch02.html)>.

64 Black Lodge Singers, *Kids’ Pow-wow Songs*, (Canyon Records, 1996).

65 See the story of paskwaw-mostos awasis (Buffalo Child) in McLeod, *supra* note 46 at 21.

66 See the story of the Neutral Hills in Anne Speight, *The Shadows of the Neutrals and Open Memory’s Door* (Coronation, AB: Old Timer’s Centennial Book Committee, 1967) at 1-3.

67 The story of the creation of Buffalo Lake, passed orally in my family, involved a buffalo being hunted and producing water, not blood, out of its wound. The water continued to spill out of the wound until it became the shape of a buffalo. Communities gathered at this new lake as it became a place of refuge and provided plentiful food and shelter.

68 Napoleon, “Legal Orders”, *supra* note 9 at 7.

law at some level becomes “interpreted by humans,” to view laws as “outside human control” removes human agency from the practice and interpretation of law.<sup>69</sup> As ceremony is inextricably linked to Indigenous spiritualities, positioning law within ceremony in this manner can lead to “[i]ntellectual [b]lackholes” in which discussion, criticism, and transformation of laws is closed off.<sup>70</sup> Mystifying deliberative processes (even if they include deliberations with non-human beings) also has implications for communal positions of authority. Napoleon argues that the mystification of laws sourced from sacred or natural places creates an environment where Elders are held up as “priest-like beings who are also sacred,” which can lead to serious asymmetries in power and authority.<sup>71</sup>

This caution against mystifying sacred or natural normative practices provides a further imperative to explore and understand Nêhiyaw legal aesthetics. Such an examination may show implicit boundaries on the legitimate use of ceremonial authority that are undetectable or unintelligible to the external viewer. For example, Nêhiyaw sweat lodge ceremonies include specific ceremonial songs, specific requirements for set up and design of ceremonial locations and structures, and general procedures and protocols that govern the operation of the ceremony.<sup>72</sup> Recognizing that there may be a wide variance in these protocols from lodge to lodge, there is a general understanding within Nêhiyaw societies of the significance of the maintenance of ceremonial protocol. As Mekwan Awasis explains:

Following through with acts of protocol demonstrates that the one requesting information understands and respects the sacred nature of that knowledge and the laws of exchange and reciprocity that guide the process. Within this relational system of knowledge sharing, the acts of protocol themselves are equally as important as the information acquired.<sup>73</sup>

Thus, a lodge holder’s inability to adhere to these protocols may be a signal to their community of their failure to have properly learned the procedures of holding a lodge, of their failure to have apprenticed to gain rights to run the ceremony, or that they have engaged in conduct that jeopardizes their ability to be a ceremonial holder. These are methods of accountability; ceremony unmoored from protocol is generally met with lack of community support and participation, can cause some to caution others against engaging in the ceremony, and, in some instances, is met with direct intervention.

This identifies a significant fault line that is central to the issues of translation and intelligibility raised earlier in this article. To a Nêhiyaw person like me or to the reader who participates in sweats, it is trite to say that protocol serves as an accountability mechanism. However, as the consequences for

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<sup>69</sup> *Ibid* at 6.

<sup>70</sup> Emily Snyder, Val Napoleon & John Borrows, “Gender and Violence: Drawing on Indigenous Legal Resources” (2015) 48 UBC L Rev 593 at 608.

<sup>71</sup> Napoleon, “Legal Orders”, *supra* note 9 at 7. At the very least, we have agency to bring questions of transformation to the spiritual or natural sources of laws we are questioning, as our Elders did at the signing of treaty, for example.

<sup>72</sup> In saying this, I acknowledge there are a wide variety of types of lodges and variations on these ceremonial characteristics.

<sup>73</sup>In Claire Poirer, *Drawing Lines in the Museum: Plains Cree Ontology as Political Practice* (2011) Anthropologica 53 at 294.

breaking protocol may not be as immediate or visible as methods of accountability within Western legal orders, those unfamiliar with Nêhiyaw ceremonialism may question protocols' effectiveness in this matter.

Aside from highlighting the dominance of positivistic legal processes, this fault line also marks the need for legal education to facilitate a greater understanding of the significance of protocols and procedures. If these methods of accountability are unintelligible to the external viewer of ceremony, aesthetics become a *mere* surface beauty. Without an understanding of the sacred nature of the exchange, the prints hung in the lodge become *just* cloth of colorful expression. A pipe song becomes *just* a superfluous melody. It is in this scenario that the danger that Napoleon cautions against becomes real: law becomes removed from human agency. To view aesthetics as deeper than surface beauty is to understand these internal accountability methods. Finally, as ceremony is often the medium of the relationship between Indigenous societies and the spiritual world, the danger of fundamentalisms within Indigenous law can be addressed through a return to and deep engagement with Indigenous ceremonial systems.

Nonetheless, these methods of accountability may be fractured within Indigenous communities themselves. Canada's systematic efforts to dismantle ceremonial systems in Indigenous communities undoubtedly weakened these accountability systems. This reality reinforces the importance of looking inward to ceremonial practices for potential accountability mechanisms, to revitalize their uses, and to address areas where they are absent. It should also be noted that just because something is beautiful does not mean that it cannot also be messy, problematic, dangerous, paradoxical or complex. Nêhiyaw ceremonies can perpetuate power imbalances and asymmetry, and are subject to potential misuse and abuse. The examination of aesthetics allows for critical examination of ceremony for its avenues for transformation, as well as potential harms.

## **V Niya'nan: Two Points of Caution**

In reintroducing the idea of the beauty of legal relations, especially those within Indigenous legal orders, I raise two points of caution. The first is not to seek Indigenous legal knowledge and experiences with Indigenous law for its aesthetics only. As Canada is still in the early stages of Indigenous laws being a main focus of formal legal teaching, there may be a tendency to focus on the elements of Indigenous legal traditions that are celebratory in nature, or to use Indigenous legal processes as ceremonial "window dressing" for the continuation of pedagogies that are largely informed by Canadian common and civil laws.

The use of Elders within law schools is one situation where the tendency for beautiful inclusion of Indigenous laws may fail to create spaces of contestation between Indigenous legal orders and common/civil legal education. For example, it is becoming more common for universities to invite Elders to act as representatives from Indigenous communities and welcome guests during special events. While the invitations are well-meaning, and are intended to ensure that these schools have a relationship with, and in some cases, the approval of the peoples whose territories the university is situated upon, I often wonder how the schools would respond if a community or nation refused to offer such a welcome. Would a conference be rescheduled until the university addressed a harm? Would the start of an academic school year be delayed?

Tied to this is the acknowledgement that Indigenous communities often must use and benefit from positivistic legal processes. Declarative law and codified rules based upon deliberative processes are necessary for Indigenous communities to set out the obligations and constraints that law provides their respective citizenries. Alongside laws sourced from spiritual, natural, and customary sources, deliberative and positivistic legal processes are also woven into the legal fabric of Nêhiyaw pimatisiwin.

My second caution is that, in spite of the evocative performance of Nêhiyaw law, there may be inequality, abuse of power, and continual contestation layered behind the performative aspect of Indigenous laws and legal principles. The protocols of many Nêhiyaw ceremonies require women to wear skirts during their participation. For some individuals, ribbon skirts form an integral part of their personal practice within the legal pedagogy involved in ceremony, but others contest these requirements.<sup>74</sup> While ceremonial performance may colour the view of Nêhiyaw law as harmonious or balanced, inequities still exist in the beautiful performance of law. Aesthetics, in this manner, can be dangerous, as they can mask the contestation that is a necessary element of every legal system.

## VI Nikotwa'sik: Conclusion

I have attempted to remind you, as others remind me, that law is often about persuasion.<sup>75</sup> What I have offered above is a brief glimpse into how to better understand the methods of persuasion which occur in Nêhiyaw sweat lodge ceremonies. The beauty resident in Nêhiyaw ceremonies is integral to the continued teaching and practice of these Nêhiyaw legal principles. Taking seriously the aesthetics of these ceremonies allows us to gain significant insights into how legal knowledge is transmitted in ceremony. It allows us to acknowledge the significance of ceremony to law, the hidden methods of resiliency that ceremony provides to our legal traditions, and how Indigenous forms of law are performed far more dynamically than what Western legal thinking may currently be willing to acknowledge. This movement is, of course, already afoot. Land-based legal education is practiced in some form within the law faculties at the University of British Columbia, University of Victoria, University of Toronto, Lakehead University, and Osgoode Hall Law School amongst others.<sup>76</sup> These practices propel our legal pedagogies towards a greater understanding that celebrative gratitude, in all its playfulness and colour, is serious. If we let it be in all its many forms, law can be beautiful.

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<sup>74</sup> See Lindberg, *supra* note 36 at 36–7

<sup>75</sup> Interview of John Borrows by Monica Pohlmann, “John Borrows on indigenous legal traditions: ‘We need to explore how we can take that law and carve it in new and beautiful ways’”, *Globe and Mail* (5 December 2014), online: <<http://www.theglobeandmail.com/opinion/john-borrows-on-indigenous-legal-traditions-we-need-to-explore-how-we-can-take-that-law-and-carve-it-in-new-and-beautiful-ways/article21960774/>>.

<sup>76</sup> See John Borrows, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33 Windsor YB Access Just 1.