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Patricia Barkaskas

Sarah Buhler

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## **Beyond Reconciliation: Decolonizing Clinical Legal Education**

**PATRICIA BARKASKAS & SARAH BUHLER\***

Comment les cliniques juridiques et les éducateurs juridiques cliniciens réagissent-ils aux préjudices continus du colonialisme de peuplement ? À l'heure où la « réconciliation » est très présente pour plusieurs éducatrices et éducateurs juridiques – compte tenu des appels à l'action de la Commission de vérité et de réconciliation, est-ce que la réconciliation peut se faire de manière efficace par l'enseignement clinique du droit ? Est-ce que la réconciliation exige la décolonisation et, si c'est le cas, est-ce que l'enseignement clinique du droit peut se diriger vers celle-ci ? Voilà les questions dont traitent le présent article. À partir de nos expériences respectives des programmes d'enseignement clinique du droit de l'University of British Columbia et de l'University of Saskatchewan, et en fondant notre analyse sur la littérature critique sur le colonialisme de peuplement et la décolonisation, nous avançons que le but de la réconciliation, telle qu'elle est généralement comprise, n'est pas suffisant et que nous devons aller plus loin pour contester la structure du colonialisme de peuplement en décolonisant et en intégrant les perspectives autochtones à l'enseignement clinique du droit. Nous soutenons que les approches à la décolonisation et l'engagement vers l'intégration de perspectives autochtones à la fois dans les dimensions théoriques et pratiques des programmes d'enseignement clinique du droit, peuvent intervenir dans l'éducation juridique normative et confronter l'hégémonie coloniale qui sous-tend le système juridique canadien. Ultiment, nous croyons qu'il est déstabilisant, productif et essentiel que ceux et celles d'entre nous qui sont impliqués dans l'enseignement clinique du droit au Canada apprennent avec et des communautés autochtones, relativement aux défis et aux possibilités que présente le fait de se diriger vers une justice décolonialisée.

How can legal clinics and clinical legal educators respond to the ongoing harms of settler colonialism? At a time when "reconciliation" is top of mind for many legal educators in light of the Truth and Reconciliation Commission calls to action, can reconciliation be taken up in a meaningful way through clinical legal education? Does reconciliation demand decolonization and if so can clinical legal education work towards decolonization? These are the questions we consider in this article. Drawing on our respective experiences with the University of British Columbia and the University of Saskatchewan's clinical law programs, and grounding our analysis in the critical literature on settler colonialism and decolonization, we propose that the aim of reconciliation, at least as it is typically understood, is not enough and that we must go further to challenge the structure of settler colonialism by decolonizing and Indigenizing clinical legal education. We argue that decolonial approaches and engagement with processes of Indigenization in both the academic and practical aspects of

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\*Sarah Buhler is an Associate Professor at the University of Saskatchewan College of Law. Patricia Barkaskas is the Academic Director, Indigenous Community Legal Clinic, and an Instructor at The University of British Columbia Peter A. Allard School of Law.

clinical law programs can intervene in normative legal education and challenge the colonial hegemony underpinning the Canadian legal system. Ultimately, we propose that it is unsettling, productive and essential for those of us involved with clinical legal education in Canada to learn with and from Indigenous communities about the challenges and possibilities of working towards decolonial justice.

IN DOMINANT CANADIAN DISCOURSES, COLONIALISM TENDS to be referred to as an unfortunate vestige of the past. Yet despite ongoing disavowals, Canada persists as a settler colonial state, dedicated to ongoing dispossession of Indigenous communities. Audra Simpson writes that, “[i]n spite of the innocence of the story that Canada likes to tell about itself: ... That it is a place that reconciles, that apologizes ... Canada is quite simply a settler society. A settler society whose ... performance of governance seeks an ongoing settling of land.”<sup>1</sup> In other words, settler colonialism functions as a “structure, not an event”<sup>2</sup> that is centred around the ongoing taking of land and that continues to shape the daily material realities and relationships of Indigenous and non-Indigenous people in Canada. The Canadian legal system is deeply implicated in this ongoing settler colonial project: as Audra Simpson has written, “in law, settler colonialism maintains itself.”<sup>3</sup>

Indigenous communities have resisted colonialism since the beginning and continue to do so. Indigenous people across Turtle Island are working towards decolonization; Indigenous resurgence is exemplified by movements such as Idle No More and Standing Rock #NODAPL.<sup>4</sup> Yet the realities and “trauma trails”<sup>5</sup> of colonialism also continue in the present moment, and events that are traceable to the dispossessions of settler colonialism bring people to community legal clinics on a daily basis. How can legal clinics and clinical legal educators respond to the ongoing harms of settler colonialism? How should we grapple with the inherent paradox of seeking justice through the Canadian legal system—the “quintessential institution that embodies and reproduces the marginalization of ... Aboriginal peoples”?<sup>6</sup> Can our pedagogies and practices work towards the goals of decolonization? These are the questions we take up in this article.

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<sup>1</sup> Audra Simpson, “RACE 2014 Keynote 1: ‘The Chief’s Two Bodies: Theresa Spence and the Gender of Settler Sovereignty” (October 2014) online: <[vimeo.com/110948627](https://vimeo.com/110948627)> [perma.cc/6B77-G8VL]. We became aware of this presentation through reading Julie Kaye’s article “Reconciliation in the Context of Settler-Colonial Gender Violence: ‘How do we reconcile with an abuser?’” (2016) 53 *Canadian Review of Sociology* 461 at 462.

<sup>2</sup> Patrick Wolfe, “Settler Colonialism and the Elimination of the Native” (2006) *J of Genocide Research* 387 at 388 [Wolfe].

<sup>3</sup> Audra Simpson, “Subjects of Sovereignty: Indigeneity, the Revenue Rule, and Juridics of Failed Consent” (2008) 71 *Law and Contem Problems* 191 at 214.

<sup>4</sup> See: online: <[idlenomore.ca](http://idlenomore.ca)> [perma.cc/CRA5-76CM] and online: <[nodaplsolidarity.org](http://nodaplsolidarity.org)> [perma.cc/MD25-U2E5].

<sup>5</sup> Judy Atkinson, *Trauma Trails, Recreating Song Lines: the Transgenerational Effects of Trauma in Indigenous Australia* (Sydney: Spinifex, 2002).

<sup>6</sup> Dara Culhane & Renee Taylor, “Theory and Practice: Clinical Law and Aboriginal People” in Dorothy E Chunn & Dany Lacombe, eds, *Law as a Gendering Practice* (Don Mills, ON.: Oxford University Press, 2000) 120 at 121 [Culhane & Taylor].

We are writing this article at a time when the subject of “reconciliation” is top of mind in many legal circles. In particular, legal educators across the country are grappling with the question of how to respond to the Truth and Reconciliation Commission’s (TRC) Call to Action number 28, which is aimed directly at law schools.<sup>7</sup> Call to Action 28 exhorts every Canadian law school to require students to take a course on the topic of Aboriginal people and the law, and to require “skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”<sup>8</sup> In many conversations about reconciliation in law schools and beyond, “reconciliation” is taken up as a goal that will resolve outstanding injustices and absolve Canadians and Canada of ongoing responsibility relating to colonialism.

Drawing on our respective experiences with the University of British Columbia and the University of Saskatchewan’s clinical law programs, and grounding our analysis in the critical literature on settler colonialism and decolonization, we propose that the aim of reconciliation, at least as it is typically understood, is not enough and that we must go further to challenge the structure of settler colonialism by decolonizing and Indigenizing clinical legal education. We argue that decolonial approaches and engagement with processes of Indigenization in both the academic and practical aspects of clinical law programs can intervene in normative legal education and challenge the colonial hegemony underpinning the Canadian legal system. Ultimately, we propose that it is unsettling, productive, and essential for those of us involved with clinical legal education in Canada to learn with and from Indigenous communities about the challenges and possibilities of working towards decolonial justice.

We begin by situating ourselves and introducing our respective clinical law programs, in order to provide necessary context for the discussion that follows. We then turn to a brief overview of settler colonialism and the role of law in maintaining settler colonialism in Canada. In the next section, we turn our attention to critiques of dominant discourses around “reconciliation” and argue that justice demands decolonization and Indigenization. We then turn to a discussion of decolonization and clinical legal education. Drawing on examples from our own experiences, we focus both on the challenges and paradoxes of decolonizing clinical legal education, as well as the possibilities for creating space for decolonial justice within clinical law programs.

## I. SITUATING OURSELVES AND OUR CLINICAL LAW PROGRAMS

Indigenous teachers and scholars remind us that we are all shaped by our histories, identities and experiences, and that our perspectives are informed by who we are, and

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<sup>7</sup>See for example, the Reconciliation Syllabus project, online:

<[reconciliationsyllabus.wordpress.com/about](http://reconciliationsyllabus.wordpress.com/about)> [perma.cc/32KF-W2D7].

<sup>8</sup> Call to Action 28 reads as follows: “We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.” Truth and Reconciliation Commission, *Final Report: Truth and Reconciliation Commission of Canada: Volume One: Summary* (Toronto: Lorimer, 2015) at 323 [TRC].

where we are located. Lisa Monchalin explains that “given the colonial past and present” it is imperative that we “acknowledge that where one stands in the world affects one’s view.”<sup>9</sup> It is therefore important for us to situate ourselves and introduce the clinical law programs with which we are associated. Because one of us is Indigenous and one of us is not, we are located very differently with respect to this work. This difference of location is reflected throughout this paper: we note especially that where Indigenous communities are referred to as “our” communities, this reflects Patricia’s (but not Sarah’s) belonging and membership within an Indigenous community. We introduce ourselves in our own voices, and then move on to introducing our respective clinical law programs: the Indigenous Legal Clinic Program at the University of British Columbia Allard School of Law and the Intensive Clinical Law Program at Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) in partnership with the University of Saskatchewan College of Law.

## **A. SITUATING OURSELVES**

### **1. PATRICIA**

My approach to the work I do as a lawyer and an educator is informed by my experiences as a Métis woman. It is impossible to talk about myself without also speaking to my family—who I am from. I am descended from Métis families of the historical Métis Nation of the Northwest. My great grandfather was John Colin Fraser, son of Philip Joseph Fraser—son of Nancy Brazeau and Simon Fraser of the Lac Ste Anne Métis community—and Marie-Euphrosine (“Frozine”) Fortier—daughter of Pélagie Deçoigne and André Fortier of the Lac La Biche Métis community. Both sides of these lineages can trace familial connections back to Red River. “Grampa Jack,” as he was (and is still) called, spoke predominantly Cree until he was about six-years old (and as I understand it, some Michif and a little French as well, but not English); however, my grandfather and his siblings were not actively taught Cree—the exception being to speak with horses—and were encouraged to speak English, though Grampa Jack, his mother, and all their relations spoke Cree almost always. Grampa Jack had attended residential school and his trauma from that experience translated into intergenerational traumas, including a deep distrust of education and the Catholic Church, as well as deeply rooted internalized racism. He is referred to in the family as a “horse-whisperer” and was employed for many years by the Calgary Stampede to assist with their horses. I grew up pouring over black and white photographs of various of my great-uncles and aunts, as well as my mother and her siblings, riding with Grampa Jack in the annual Stampede Parade on the revered Pintos he raised. I also caressed with reverence the well-worn leather of Grampa Jack’s tack and the weathered wood of his fiddle—unused since his passing in 1974, two years before I was born.

Growing up in Alberta I was routinely asked: What are you? (Sometimes I am still asked this today ...). Given the ongoing stigma of self-identifying as Métis in a province plagued by intense racism and white supremacy, my family’s Indigenous heritage was something we did not talk about outside the family until I was in my late

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<sup>9</sup> Lisa Monchalin, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* (Toronto: University of Toronto Press, 2016) at xvii and xix.

teens in the early 1990s; although when I encountered racism against Indigenous peoples in various contexts I always positioned myself as a Métis person from a Métis family. I know this was not necessarily the case for other members of my family. Different members of my family had different relationships to their Métis identity. Members of my family like myself who bear certain physical features and were therefore more readily perceived as Métis<sup>10</sup> were regularly subjected to racialization. For us, there was a more immediate and consistent need to address our identity; for others, who were less recognizably identifiable to outsiders, there was less concern with bringing our family's heritage into the open.

In positioning myself I also acknowledge that my father's family is not Métis; but they are also not my people. I bear my father's surname, which was his father's name. My father's father died when he was twelve years old. I knew my paternal Grandmother, Matilda Horvat, and other relations from that side of my genealogy only a little. Apparently my Grandmother was born in Okučani, Croatia (Yugoslavia, as it was then). Her mother, Ljubiča, along with Matilda and her brother, are described as "Serbo/Croat" speaking "Yugoslavians" on the passenger list of the S.S. Marloch in 1928 travelling from Antwerp to Quebec, which brought them to Canada to meet up with Josip Horvat, who was homesteading in Bittern Lake, Alberta. It should be noted that Matilda and other members of her father's family alternatively claimed they were from Czechoslovakia (as it would have been then), Hungary, and Ukraine. My Grandmother's farm was located off the Yellowhead Highway outside of a small village called Wildwood, Alberta. She lived on the original land her husband was granted from Canada, which he "settled" after arriving from Lithuania. The rather cruel irony that they were the direct beneficiaries of colonialism while my mother's family suffered as a result of it is not lost on me.

My mother's family, on the other hand, did not possess land. They lived almost always all together in intergenerational households and when not together always within the same geographic area within the Métis Homeland, though never in the same places for very long. They were poor and the places they lived were always small—much too small for the numerous children of two generations so close in age that aunts and uncles grew up with nieces and nephews as though siblings. In a triangle defined by a line stretching across what is referred to as central Alberta, from around Edmonton, down to a point at Lethbridge in the south of the province, my mother's family moved routinely, following work and new opportunities that might allow them to break free from the poverty they knew only too well. This was a pattern that continued through my childhood. My Nana and Papa helped raise me, often living with us and caring for us. I spent summers from the time I was old enough helping to look after my siblings and cousins; on a few occasions living at a relative's house to make this possible.

I provide the aforementioned as truth of the complexities of being Métis in an environment where in the minds of settler Albertans, Indigenous peoples either existed at the margins of their communities or were confined to reserves and/or, in the specific context of Alberta, the Métis Settlements—not where we walked amongst them carrying our identities with us. And while I did not live in a single and specific geographic Métis

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<sup>10</sup> This is not to suggest that Métis people, or other Indigenous peoples, look any particular way or are identifiable by their physical attributes; rather, through processes and narratives of racialization societal perceptions are formed that cause people to make assumptions about what Métis peoples, or any other group of racialized peoples for that matter, look like.

community, I grew up within my extended Métis family, aware of our history, which was not the history of the settlers we were surrounded by and, indeed, who even make up parts of the other lines of my family tree. It is as a result of the collective experiences of my family imparted to me through their stories, teachings, knowledge, and ways of being, and through my own experience as a Métis person living in a colonial society, that my ideas of justice were formed and continue to take shape. This in turn informs my work at all levels.

## 2. SARAH

I approach this work from my perspective as a settler clinical legal educator.<sup>11</sup> My grandparents were Mennonite farmers who settled north of Saskatoon on Treaty 6 territory after fleeing war and turmoil as refugees from what is now Ukraine. The Russian Mennonite communities—my people—who settled in the Canadian prairies starting in the 1870s were direct beneficiaries of Canadian colonial government policies that sought to settle the traditional territories of Indigenous nations in the wake of the signing of treaties, genocidal policies that included deliberate starvation of Indigenous nations, and forcible taking of Indigenous children to residential schools.<sup>12</sup> As Esther Epp-Thiessen points out, Indigenous communities were relocated to reserves precisely in order to make space for European settlers including the Mennonites.<sup>13</sup>

These Mennonites, including my forebears, who settled in western Canada had the sense or the understanding that “they were settling on mostly empty land, land waiting for settlement, cultivation and ‘development’.”<sup>14</sup> This attitude toward the land is exemplified in the following quote by a Mennonite author writing in 1957:

Before us lay a mighty expansive chunk of natural resources and opportunity. We chose where we wanted to live, bought land for a dollar an acre or thereabouts, and made our living. West, north, or any direction spelled opportunity. An undeserved opportunity to be sure, but there it was, ours as a gift of God’s hand.<sup>15</sup>

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<sup>11</sup> I am aware of the critique that those of us who use the term “settler” can do so as a performative “move to innocence.” I hope I am not doing this but am aware of the tendencies and the contradictions of desiring to be a “good settler.” For an excellent discussion of these issues see Corey Snelgrove, Rita Kuar Dhamoon & Jeff Cornstassel, “Unsettling Settler Colonialism: the Discourse and Politics of Settlers, and Solidarity with Indigenous Nations” (2014) 3 *Decolonization: Indigeneity, Education & Society* 1 at 15.

<sup>12</sup> See James Daschuk, *Clearing the Plains: Disease, the Politics of Starvation, and the Loss of Aboriginal Life* (Regina: University of Regina Press, 2013); and Esther Epp-Thiessen, “Mennonites Colonizing Canada and the US” (2014) 2 *Intersections: MCC theory and Practice Quarterly*, online: <[mcccanada.ca/sites/mcccanada.ca/files/media/common/documents/intersectionswinter2014web.pdf](http://mcccanada.ca/sites/mcccanada.ca/files/media/common/documents/intersectionswinter2014web.pdf)> [perma.cc/F8UM-9GTQ] [Epp-Thiessen]; and see a paper that my uncle, sociologist Leo Driedger, wrote in 1972 about this issue: “Native Rebellion and Mennonite Invasion: An Examination of Two Canadian River Valleys” (1972) 46 *Mennonite Quarterly Review* 290.

<sup>13</sup> *Ibid*, Epp-Thiessen.

<sup>14</sup> *Ibid* at 12.

<sup>15</sup> *Ibid* at 14.

As Epp-Thiessen points out, Mennonite settlers were generally oblivious to the fact that the land was Indigenous land.<sup>16</sup> Yet regardless of what they knew or did not know, they and their descendants benefitted greatly from the settler colonial project of the Canadian federal government.

I grew up overseas, in Bangkok, Thailand, far from Treaty 6 territory, and then lived in Winnipeg and Toronto. However, I have early memories of finding arrowheads while walking on my family's land north of Saskatoon with my father. I recall discussions about how this land once was long ago the hunting territory of Indigenous people, but did not connect these discussions to any current or ongoing issues. It is really only since moving back to Saskatchewan in 2002 that I have begun to learn about the history and ongoing realities of colonialism in my community, mindful of Emma Laroque's words that "[t]he responsibility to clean up colonial debris ... lies first with the colonizer. Colonizer sons and daughters need, even more than us, to dismantle their colonial constructs."<sup>17</sup> I am mindful also of Sylvia McAdam (Saysewahum)'s call to non-Indigenous people to learn from Indigenous communities about how to "collectively work toward dismantling destructive and oppressive systems which have been imposed on Indigenous peoples through colonization."<sup>18</sup>

Certainly, while a lack of discussion and acknowledgement of the complicity of Mennonites in colonialism is ongoing, there are also examples of Mennonites working to educate themselves, build relationships, and work towards justice. For example, the Mennonite Central Committee has been working in partnership with Indigenous communities for over thirty years in Canada.<sup>19</sup> Mennonites and Lutherans in Saskatchewan have been working in partnership for years with the Young Chippewyan First Nation to support the Nation's land claim.<sup>20</sup>

## B. SITUATING OUR CLINICAL LAW PROGRAMS

### 1. INDIGENOUS COMMUNITY LEGAL CLINIC

The Indigenous Community Legal Clinic (ICLC) at the Peter A. Allard School of Law at the University of British Columbia (UBC) is a full term program comprised of fifteen credits, eleven based on the practical component, and four based on the academic course component.<sup>21</sup> Students commit to one full term, which they spend primarily at the ICLC's location on Alexander Street in the Downtown Eastside (DTES) of Vancouver, an area often referred to as "Canada's poorest postal code." Significantly, it is important to note that the DTES is a dynamic and thriving community that is home to a large urban Indigenous population; it is not just the story that is told about it in sensationalized and

<sup>16</sup> *Ibid.*

<sup>17</sup> Emma Laroque, *When the Other is Me: Native Resistance Discourse 1850-1990* (Winnipeg: University of Manitoba Press, 2010) at 162.

<sup>18</sup> Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing Nêhiyaw Legal Systems* (Saskatoon: Purich, 2015) at 36 [McAdam].

<sup>19</sup> See online: <[mcccanada.ca/stories/mcc-urges-governments-respect-treaty-relationship](http://mcccanada.ca/stories/mcc-urges-governments-respect-treaty-relationship)> [perma.cc/H4E7-5KH3].

<sup>20</sup> For a documentary film about this story, see online: <[reserve107thefilm.com](http://reserve107thefilm.com)> [perma.cc/VM5H-FFSK].

<sup>21</sup> See online: <[allard.ubc.ca/iclc/indigenous-community-legal-clinic](http://allard.ubc.ca/iclc/indigenous-community-legal-clinic)> [perma.cc/WE3U-WJAS].



voyeuristic news reports. The program was founded in 1991, by the then Dean of UBC Law, Lynn Smith, as the UBC First Nations Legal Clinic (as it was then); the first group of students began working on files in 1994. Currently, seven students per term are temporarily articulated under the Rules of the Law Society of British Columbia. There is a weekly lecture on Thursdays at Allard Hall on UBC campus.

The clinical learning environment at the ICLC is unique in many ways, and the pedagogy is designed to integrate experiential learning of the practice of law in the legal clinic setting with learning to apply ideas and theory about decolonization, and Indigenizing law into students' practice. The ICLC program is designed to explore how the Canadian legal system functions in relation to Indigenous people. It provides experiential learning to law students while providing the underserved Indigenous community in the Lower Mainland (and even sometimes individuals from around the province) with access to justice through the provision of pro-bono legal services.

The academic component of the ICLC program focuses on issues relating to decolonizing and Indigenizing law. Students read and are encouraged to discuss and reflect on certain themes, which are informed by current files they are dealing with at the clinic. Some of these themes are related to issues specific to Indigenous peoples and the law, and some are central to experiential learning pedagogy. Examples of themes explored include: access to justice, advocacy, antiracism, agency, argument, authority, cultural competency, cross-cultural understanding, decolonization, evidence, experience, Indigenous legal traditions, Indigenous legal theory, Indigenous feminisms, Indigenous methodologies, language, reconciliation, representation, resistance, self-determination, sovereignty, and trauma-informed practice. Students read scholarly publications, many by Indigenous authors, such as works examining decolonization and Indigenous legal orders, as well as new studies on clinical legal education. The course utilizes weekly reflective journaling, participation in rounds, class discussions based on the weekly readings, attendance at lectures, and a substantial research paper. The graded term papers are comprised of an independent legal research paper and critical self-reflection paper, which includes analysis of student's experiential learning at the ICLC and how they have engaged with processes of decolonizing and/or Indigenizing throughout the term.

## 2. COMMUNITY LEGAL ASSISTANCE SERVICES FOR SASKATOON INNER CITY (CLASSIC)

Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) has been in existence since 2007, first as a clinic housed within a local youth centre called the White Buffalo Youth Lodge and more recently as a storefront community legal clinic located in Saskatoon's low-income but rapidly gentrifying Riversdale neighbourhood.<sup>22</sup> CLASSIC was founded by law students, who gained the support of many community organizations, including Indigenous organizations, before commencing operations. CLASSIC's mandate is to work "toward social justice with low-income, marginalized Saskatchewan residents, with a commitment to Indigenous peoples, through a legal clinic that is guided by the

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<sup>22</sup> See Allan Casey, "Reviving Riversdale: Gentrification and Reconciliation in one of Saskatoon's Poorest Neighbourhoods" *The Walrus Magazine* (October 2014) online: <[thewalrus.ca/reviving-riversdale](http://thewalrus.ca/reviving-riversdale)> [perma.cc/9ATK-6QGY].

needs of the community.”<sup>23</sup> Currently, about one half of CLASSIC’s clients identify as Indigenous, and they approach CLASSIC with a variety of legal troubles including criminal charges, prison discipline matters, evictions, and social assistance matters.<sup>24</sup> Some of CLASSIC’s law students are Indigenous, and one out of six clinic staff members is Indigenous (but CLASSIC currently has no Indigenous lawyers on staff). CLASSIC’s board of directors includes representatives from Indigenous organizations that have supported CLASSIC since its inception.

CLASSIC is fortunate to have the guidance and advice of Maria Campbell in her role as CLASSIC’s Cultural Advisor. She conducts a session with incoming clinic students each term to teach them about Indigenous legal traditions and protocols in our territory. CLASSIC continues to consider how to Indigenize its practice and is committed to continually engaging with its community in order to do this. For example, CLASSIC recently hosted a community feast and discussion afternoon for Indigenous women. This involved soup and bannock, and gifts for the women who attended, and a discussion about CLASSIC and the legal system and their impact on the community.<sup>25</sup>

In addition to its advocacy for individual clients, CLASSIC seeks to work collaboratively with community partners on systemic issues through its recently launched Systemic Initiatives Program. This program works with community members and partners to identify and carry out law reform, educational, and other systemic projects. Examples of current projects include a project that seeks to identify alternatives to incarceration for Indigenous people in Saskatchewan, a law and policy reform project that addresses the issue of telephone and visitor access in Saskatchewan correctional centres, and the development of a self-advocacy workshop/toolkit for community members.

The Intensive clinical law program at CLASSIC is a fifteen-credit, full-term program offered by the University of Saskatchewan College of Law in partnership with CLASSIC. Each semester, between ten and fifteen upper year law students enroll in the program. Students spend four days each week at CLASSIC, and are responsible for interviewing new clients and representing existing clients in all aspects of their legal matters. In the academic clinic seminar, students engage in case rounds, read literature relating to critical and community lawyering, and reflect critically on their experiences in light of the literature. They write a major research paper focused on a theme relating to some aspect of their work and experiences at CLASSIC: papers focus on a broad array of themes, from access to justice, to critical approaches to lawyering, to critical analyses of law and legal institutions. The Systemic Justice seminar is a separate, full-year, six-credit program where six upper year students take on aspects of Systemic Initiative Program projects, write a major research paper, and attend a weekly seminar.

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<sup>23</sup> Community Legal Assistance for Saskatoon Inner City Inc., Mission Statement, online: <classiclaw.ca/home.html> [perma.cc/8BTX-TUZW].

<sup>24</sup> CLASSIC, “Background Report 2014-2015,” on file with author.

<sup>25</sup> This project and several other related initiatives were made possible with funding support from the University of Saskatchewan’s Office of Community Engagement and Outreach.

## II. SETTLER COLONIALISM AND THE ROLE OF CANADIAN LAW

Settler colonialism is, at its root, about access to Indigenous land and the corresponding elimination of Indigenous societies.<sup>26</sup> Glen Sean Coulthard has noted that although the means and tools of settler colonialism have transformed over time, “the *ends* have always remained the same: to shore up continued access to Indigenous peoples’ territories for the purposes of state formation, settlement, and capitalist development.”<sup>27</sup> Yet dominant discourses continually occlude and deny the ongoing settler colonial project; Canada is persistently presented as a “post-colonial” society.<sup>28</sup> Within this paradigm, the colonial past and present are erased and those who come here from elsewhere are all cast in the same light—people relocating by choice to a benevolent Canadian society. Within the post-settler society paradigm Canadians are encouraged to think of themselves as naturalized citizens whose ancestors may have made a choice to come to Canada, which is then presumed to be an existing society with a long history—but not one marred by the process of colonialism. Of course, this reframing entirely erases the facts of colonization and the genocide of Indigenous peoples in North America. As we will discuss below, it is this same narrative that also invites us to accept that reconciliation with Indigenous peoples is possible without decolonization or Indigenization.

Sylvia McAdam (Saysewahum), a founding member of the Idle No More movement, explains that settler colonialism manifests in “multiple disruptions, causing nations of Indigenous people to lose their connection to the laws that the Creator has given them to live by.”<sup>29</sup> These ongoing disruptions also include vast health, education, and housing disparities, the crisis of missing and murdered Indigenous women, the over-incarceration and over-policing of Indigenous men and women, and the apprehension of Indigenous children from their families by state agencies. As Elizabeth Comack concludes, “[c]olonialism has produced the social and economic marginalization of Aboriginal people in contemporary Canadian society.”<sup>30</sup> This marginalization exists on reserves but also in Canadian urban centres, where over half of Indigenous people now reside: the conditions faced by many urban Indigenous communities, including the fracturing of some communities and families, are linked also to colonial dispossession.<sup>31</sup>

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<sup>26</sup> See Wolfe, *supra* note 2 at 403.

<sup>27</sup> Glen S Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014) at 125 [Coulthard [Emphasis in original]. See also Joyce Green, “Honoured in Their Absence: Indigenous Human Rights” in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Halifax: Fernwood Press, 2014) 1 at 5.

<sup>28</sup> Catherine Dauvergne, *The New Politics of Immigration and the End of Settler Societies* (New York: Cambridge University Press, 2016) at 5.

<sup>29</sup> McAdam, *supra* note 18 at 27.

<sup>30</sup> Elizabeth Comack, *Racialized Policing: Aboriginal People’s Encounters with the Police* (Halifax: Fernwood Publishing, 2012) at 81.

<sup>31</sup> As of 2006, about half of all Indigenous people in Canada lived in cities, and Saskatoon has one of the highest Indigenous populations of any Canadian city at almost 10% (Statistics Canada, 2008, online: < [statcan.gc.ca/tables-tableaux/sum-som/101/cst01/demo64a-eng.htm](http://statcan.gc.ca/tables-tableaux/sum-som/101/cst01/demo64a-eng.htm) > [perma.cc/KJY6-UX29]; For more information about inequality and health disparity in Saskatoon’s core neighbourhoods see M Lemstra, C Neudorf & J Opondo, “Health Disparity by Neighbourhood Income” in Mark Lemstra and Cory Neudorf, eds, *Health Disparity in Saskatoon: Analysis to Intervention* (Saskatoon: Saskatoon Health Region, 2008) 126. As Nicholas Blomley has pointed out, the current high rates of poverty within many urban Indigenous

Canadian law plays a central role in the settler colonial project, consistently working to provide the framework and justifications for the “systematic [erasing] of Indigenous bodies and communities from the land in order to make room for colonial wealth.”<sup>32</sup> Critical scholars such as Sarah Hunt and Sherene Razack have documented the ways that the Canadian legal system justifies the ongoing evictions of Indigenous people from land and life itself, and how these issues are linked to violence against Indigenous bodies, particularly those of women and LGBTQ2S folks.<sup>33</sup> For example, Razack has shown how official inquests or inquiries into the deaths of Indigenous people in police custody constructs Indigenous people as less-than-human.<sup>34</sup> Overall, as Larry Chartrand notes, Canadian law has “failed to bring equality of justice to Aboriginal peoples as the doctrine continues to reinforce a construct of Indigenous peoples’ inequality and subservience to Canadian adopted British power.”<sup>35</sup> Justice Harry Laforme discusses the racist foundations of law relating to Indigenous people in Canada: “[Aboriginal peoples] are forced to fight for their rights in a legal system that is still rooted in, and contaminated by, notions of racial superiority based on the doctrine of discovery that affect not only the strength and nature of their rights to land, but their identity and sovereignty.”<sup>36</sup>

### III. RECONCILIATION OR DECOLONIZATION

Indigenous teachers and scholars have cautioned against moves towards reconciliation that seek to absolve Canadians for injustices of the past, but that do not address ongoing injustice and violence towards Indigenous communities. For example, Coulthard notes that moves to reconciliation by the Canadian state serve to “neutralize the legitimacy of Indigenous justice claims by offering statements of regret and apology for harms narrowly construed as occurring in the past, thus off-loading Canada’s responsibility to address structural injustices that continue to inform our settler-colonial present.”<sup>37</sup> Similarly, Leanne Simpson has written: “I wonder how we can reconcile when the

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communities are linked to colonial dispossession and the “remaking” and appropriation of land: Nicholas K Blomley, *Unsettling the City: Urban Land and the Politics of Property* (New York: Routledge, 2004) at 113. In Saskatchewan an Indigenous person is three and a half times more likely to live in poverty than a non-Indigenous person: see Comack, *ibid.*, at 80. For an in-depth overview of housing issues for Indigenous people in Saskatoon, see Alan B Anderson, *Home in the City: Urban Aboriginal Housing and Living Conditions* (Toronto: University of Toronto Press, 2013).

<sup>32</sup> Stacy Douglas & Suzanne Lenon, “Introduction” (2014) 29 Can J of Law and Society 141 at 142.

<sup>33</sup> See Sarah Hunt, “Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law” (2015-2016) 37 *Atlantis* 25 and Sherene H Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015) [Razack].

<sup>34</sup> *Ibid.*, Razack.

<sup>35</sup> Larry Chartrand, “Indigenizing the Legal Academy from a Decolonizing Perspective” (2015) University of Ottawa Faculty of Law Working Paper Series, online: <papers.ssrn.com/sol3/papers.cfm?abstract\_id=2631163> [perma.cc/5XHH-XTUB].

<sup>36</sup> Harry Laforme, “Section 25 of the Charter; Section 35 of the Constitution Act, 1982: Aboriginal and Treaty Rights – 30 Years of Recognition and Affirmation” in Errol Mendes, *Canadian Charter of Rights and Freedoms*, 5<sup>th</sup> ed, (LexisNexis, 2013).

<sup>37</sup> Coulthard, *supra* note 27 at 155. See also discussion in Julie Kaye, *supra* note 1 at 464. Note that Victoria Freeman supports the goal of reconciliation, but states that reconciliation must be “a multi-faceted and ongoing process of building the relationships, alliances, and social understanding that are necessary to support the systemic changes that are true decolonization.” Victoria Freeman, “In Defence of Reconciliation” (2014) 27 Can J L & Juris 213 at 216.

majority of Canadians do not understand the historic or contemporary injustice of dispossession and occupation, particularly when the state has expressed its unwillingness to make any adjustments to the unjust relationship.”<sup>38</sup> In other words, reconciliation in the context of an ongoing abusive relationship is impossible and unjust without an end to the ongoing abuse.<sup>39</sup>

Furthermore, the dominant project of reconciliation ignores the ongoing resistance of Indigenous peoples against a state that does not recognize our sovereign nations, does not hear our voices or listen to our stories, and does not value our laws. Coulthard writes that,

[i]n the context of Canadian settler-colonialism, I contend that what gets implicitly represented by the state as a form of Indigenous *ressentiment* – namely, Indigenous peoples’ seemingly pathological inability to get over harms inflicted in the past – is actually a manifestation of our *righteous resentment*; that is, our bitter indignation and persistent anger at being treated unjustly by a colonial state both historically and in the present. In other words, what is treated in the Canadian discourse of reconciliation as an unhealthy and debilitating incapacity to forgive and move on is actually a sign of our *critical consciousness*, of our sense of justice and injustice, and of our awareness of and unwillingness to *reconcile* ourselves with the structural and symbolic violence that is still very much present in our lives.<sup>40</sup>

In response, scholars have called for decolonization and an end to the ongoing harms caused by settler colonialism. Andrea Smith explains that decolonization “entails not a going back to a pre-colonial past, but a commitment to building a future for indigenous peoples based on principles of justice and liberation.”<sup>41</sup> In an influential article, Eve Tuck and K Wayne Yang argue that “decolonization is not a metaphor.”<sup>42</sup> Rather, it is fundamentally and always about the “repatriation of Indigenous land and life”<sup>43</sup> and as a result “[s]ettler colonialism and its decolonization implicates and unsettles everyone.”<sup>44</sup> Similarly, Coulthard explains that,

the theory and practice of Indigenous anticolonialism ... is best understood as a struggle primarily inspired by and oriented around *the question of land*- a struggle not only *for* the land in the material sense, but also deeply *informed* by what the land *as a system of reciprocal relations and obligations* can teach us about living our lives in relation to one another and the natural world in nondominating and nonexploitative terms.<sup>45</sup>

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<sup>38</sup> Leanne Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence* (Winnipeg: Arbeiter Ring Press, 2011) at 21 [Simpson].

<sup>39</sup> Simpson, *ibid* and also see Kaye, *supra* note 1.

<sup>40</sup> Coulthard, *supra* note 27 at 126 [emphasis in original].

<sup>41</sup> Andrea Smith, “Unsettling the Privilege of Self-Reflexivity” in France Winddance Twine & Bradley Gardener, eds, *Geographies of Privilege* (New York: Routledge, 2013) 263 at 274 [Smith].

<sup>42</sup> See Eve Tuck & K Wayne Yang, “Decolonization is not a Metaphor” (2012) 1 *Decolonization: Indigeneity, Education & Society* [Tuck & Wang].

<sup>43</sup> *Ibid* at 1.

<sup>44</sup> *Ibid* at 7.

<sup>45</sup> Coulthard, *supra* note 27 at 13 [emphasis in original].

These critical perspectives reveal that true reconciliation demands decolonization, and this requires Canadians to put an end to ongoing colonial violence.<sup>46</sup> As Leanne Simpson writes,

[f]or reconciliation to be meaningful to Indigenous Peoples and for it to be a decolonizing force, it must be interpreted broadly. To me, reconciliation must be grounded in cultural generation and political resurgence. It must support Indigenous nations in regenerating our languages, our oral cultures, our traditions of governance and everything else residential schools attacked and attempted to obliterate.<sup>47</sup>

Indeed, the Truth and Reconciliation Commission recognizes this requirement, noting that for reconciliation to happen, there must be “acknowledgement of the harm that has been inflicted, atonement for the causes, and *action to change behaviour*.”<sup>48</sup>

## IV. CLINICAL LEGAL EDUCATION AND DECOLONIZATION

Where are legal clinics and clinical legal education located in relation to settler colonialism and decolonization and the debates and discussions referenced above? Can clinical legal education be a site from which to engage in decolonization or decolonial practices and pedagogies? We argue that confronting these questions is unsettling and also generative. It requires exploring the paradox of working within the dominant colonial legal system, working to reveal decolonial spaces within the system, and working to connect our work in clinics with broader Indigenous struggles for justice. Ultimately, we do believe that clinical legal education is a place where we can engage with the work of decolonization and provide what Marie Battiste calls “ethical space for decolonization” within legal education.<sup>49</sup> This is because in clinics we encounter and confront daily the harms of settler colonialism and the laws and systems that perpetuate these harms. Because decolonization begins “under the conditions in which we currently live”<sup>50</sup> it is imperative to consider the organizing opportunities, resources and tools at hand, and begin to address the issue from where we are located.

### A. CONFRONTING THE PARADOXES OF WORKING WITHIN THE DOMINANT LEGAL SYSTEM

An important question that clinical legal educators and legal clinics will need to ask themselves is whether or not they are committed to a process of decolonization and what

<sup>46</sup> Erica Violet Lee, “Reconciling in the Apocalypse” (March/ April 2016) 22 CCPA Monitor 18 at 18.

<sup>47</sup> Simpson, *supra* note 38 at 22.

<sup>48</sup> TRC, *supra* note 8 at 7 [emphasis added].

<sup>49</sup> Marie Battiste, *Decolonizing Education: Nourishing the Learning Spirit*, (Saskatoon: Purich Publishing Limited, 2013) at 104.

<sup>50</sup> Smith, *supra* note 41 at 274.

it might entail. Legal clinics might find that much of their work falls within the category of what Tuck and Yang describe as “settler harm reduction,” or projects aimed at alleviating suffering and the harms of colonialism,<sup>51</sup> rather than the work aimed at transforming the colonial structure itself. Tuck and Yang argue that settler harm reduction can function as a stopgap measure to reduce harm and may be urgently necessary.<sup>52</sup> However, they note that “by definition, settler harm reduction ...is not the same as decolonization and does not inherently offer any pathways that lead to decolonization.”<sup>53</sup> Indeed, Jeffrey Hewitt questions whether even the word “Indigenization” as it has been taken up by law schools in the current discourse around the TRC’s Calls to Action has been robbed of its original context and meaning, and so whether this makes the focus on decolonizing even more important. He suggests that emphasizing Indigenizing, in this decontextualized sense, without decolonizing, risks replicating settler-colonial erasure of Canada’s colonial past and present:

The settler population is afforded the deniability of ongoing wrongdoing and responsibility. Therefore, decolonizing is the complicated work of acknowledging historic and ongoing wrongdoings along with claiming responsibility through naming, dismantling, countering and neutralizing both the collective and individual assertions and assumptions made in relation to Indigenous peoples. Thus, if law schools’ varying responses to the TRC focus mainly on Indigenization, are they then able to deny any wrongdoing or take responsibility for contributing to colonization?<sup>54</sup>

Similarly, in the context of the justice system, Wanda McCaslin and Denise C Breton warn that making the legal system more “Indigenous –friendly or a little less oppressive” is far from a decolonizing move, as such moves “leave the existing colonial power-over structure in place and unchallenged ... [and] also leave unchallenged the entire history of genocide theft, betrayal, oppression, and every manner of cruelty and injustice that every Indigenous person, community and nation now inherit.”<sup>55</sup>

Much of the work that clinics engage in may be indeed characterized as forms of “settler harm reduction.” As such, it might be difficult to see where Canadian urban legal clinics might be able to support the visionary work of “the repatriation of Indigenous land and life” that is fundamental to decolonization.<sup>56</sup> After all, legal clinics often find themselves working with some clients who have been alienated from political communities and nations precisely as a result of the forces of colonialism and dispossession. Clinics find themselves navigating the Canadian legal system in the realm

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<sup>51</sup> Tuck & Yang, *supra* note 42 at 21.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid* at 21-22.

<sup>54</sup> Jeffery Hewitt, “Decolonizing and Indigenizing: Some Considerations for Law Schools” (2016) 33:1 Windsor YB Access Just 65 at 70.

<sup>55</sup> Wanda McCaslin & Denise C Breton, “Justice as Healing: Going Outside the Colonizers’ Cage” in Norman K Denzin, Yvonna S Lincoln & Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Los Angeles: SAGE, 2008) 511.

<sup>56</sup> Tuck & Yang, *supra* note 42 at 1.

of what Douglas Hay has termed “low law”<sup>57</sup> (that is, legal matters taken up by lower level courts and administrative tribunals) and attempting to help reduce harm to clients facing homelessness, hunger, loss, and the violence of carceral systems. Can this be a place from which to consider decolonization?

We believe that we can indeed seek to engage decolonial theories to help us think about our work within the existing Canadian legal system. Indigenous scholars have long debated the efficacy of using the “hostile terrain”<sup>58</sup> and “white space”<sup>59</sup> of the colonial legal system in aid of Indigenous struggles for sovereignty, land, and justice. Sakej Henderson has written: “it seems to make sense that the law cannot be the doctor if it is the disease.”<sup>60</sup> But many hold this profound critique and skepticism of the Canadian legal system in tension with the idea that it is essential to keep pushing for change within the system.<sup>61</sup> As Joyce Green argues, legal action might be part of a “decolonization toolkit.”<sup>62</sup>

This suspicion of Canadian law and legal institutions, held in tension with a notion that this system may still be one tool in a larger toolkit, provides a helpful lens for clinics to use when approaching their work. It is a critical lens that invites us to be wary, to work hard to learn with and from our community partners and clients about the impact of Canadian law and legal systems, and at the same time work to demand justice from the legal system. This may lead to a disconcerting uncertainty and lack of clarity, which may be exactly what is needed to “open space for genuine attention to alternative frameworks and seed possibilities for creative and engaged relationships and collective projects.”<sup>63</sup> It does seem necessary for those working within law clinics, especially non-Indigenous lawyers and students, to remain decentred, unsettled, and unsure about their place. This may help to work against ongoing colonial impulses towards trying to re-position settler lawyers and law students working in clinics as “innocent do-gooders.”<sup>64</sup> Indeed, it is our suggestion that this critical skepticism about law, mixed with a profound hope for justice, is a natural position for clinical legal educators and those working in clinics, and that it is learned from the clients and communities we work with. As Dara Culhane and Renee

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<sup>57</sup> Douglas Hay, “Time, Inequality, and Law’s Violence” in Austin Sarat & Thomas R Kearns, eds, *Law’s Violence* (Ann Arbor: University of Michigan Press, 1995) 141 at 167.

<sup>58</sup> Joyce Green, “Honoured in their Absence: Indigenous Human Rights” in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Halifax: Fernwood, 2014) 1 at 7 [Green].

<sup>59</sup> Christine Z Cruz, “Four Questions on Critical Race Praxis: Lessons from Two Young Lives in Indian Country” (2004-2005) 73 *Fordham L Rev* 2133 at 2145 [Cruz, Four Questions].

<sup>60</sup> Sakej Henderson, “Postcolonial Indigenous Legal Consciousness” 1 (2002) *Indigenous Law Journal* 1 at 27.

<sup>61</sup> Brenda L Gunn, “Protecting Indigenous Peoples’ Lands: Making Room for the Application of Indigenous Peoples’ Laws within the Canadian Legal System” (2007) 6 *Indigenous Law Journal* 32 at 36.

<sup>62</sup> Green, *supra* note 58 at 12.

<sup>63</sup> Eva Mackey, “Unsettling Expectations: (Un)certainty, Settler States of Feeling, Law, and Decolonization” (2014) 29 *Can J of Law & Soc’y* 235 at 250. See also Alison Jones, who argues for the importance of a “politics of disappointment,” which entails an inability to have certainty or clarity, “not (or not only) as a state of resignation about the impossibility of fully coming to know the other” but also as a disruption of the colonizing impulses that lead to a desire for certainty. Alison Jones, “The Limits of Cross-cultural Dialogue: Pedagogy, Desire and Absolution in the Classroom” (1999) 49 *Educational Theory* 299 at 315.

<sup>64</sup> Amanda Gebhard, “Talking about Residential Schools Today: On Learning to Embrace Uncomfortable Knowledge” (July 2014) *Briarpatch Magazine* online: <[briarpatchmagazine.com/articles/view/talking-about-residential-schools-today](http://briarpatchmagazine.com/articles/view/talking-about-residential-schools-today)> [perma.cc/M3EG-PWBD].



Taylor write: “[o]ur clients’ skepticism about the law is based on experience, not theory.”<sup>65</sup>

## **B. LINKING THE WORK OF CLINICS WITH BROADER INDIGENOUS STRUGGLES FOR JUSTICE**

We believe that legal clinics, most of which are located in urban centres, can link their work with larger decolonial struggles and issues. Cities exist on Indigenous land, and decolonization struggles are ongoing in urban contexts.<sup>66</sup> Indeed, Coulthard has argued that the work of decolonization and the “efficacy of Indigenous resurgence hinges on its ability to address the interrelated systems of dispossession that shape Indigenous peoples’ experiences in *both* urban and land-based settings.”<sup>67</sup> For example, issues relating to housing, health, policing, criminalization, and incarceration are all familiar ones at CLASSIC and the ICLC and at many other legal clinics in Canada.<sup>68</sup> In the urban context, we believe clinics can frame their work on evictions, inadequate housing and homelessness, gentrification of neighbourhoods, policing, and incarceration as being connected to larger justice issues relating to settler colonialism and land.<sup>69</sup> Reframing our existing work in this way might open up possibilities for more or better collaborations with Indigenous communities and groups already working on these issues. Certainly, working together with community partners to imagine how the day-to-day work of legal clinics could connect more clearly to larger decolonial struggles for land and life would be fruitful. In this way, clinics may find that they have a role to play as allies of Indigenous communities working on these issues.

## **C. CREATING DECOLONIAL SPACES**

Indigenizing our pedagogies and practices within the clinic can also help to create the necessary space for decolonizing work. To this end, the ICLC strives to incorporate Indigenous pedagogies and practices, including story-telling and talking circles, to advance new ways of learning law. This encourages both Indigenous and non-Indigenous students to engage in reciprocal and holistic self-reflection. Encouraging open dialogue with students about their identities as Indigenous or non-Indigenous peoples and how that relates to their experience working for Indigenous clients at the ICLC promotes

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<sup>65</sup> Culhane & Taylor, *supra* note 6 at 135.

<sup>66</sup> See C Teelucksingh, “Toward Claiming Space: Theorizing Racialized spaces in Canadian Cities” in C Teelucksingh, ed, *Claiming space: Racialization in Canadian Cities* (Waterloo: Wilfred Laurier University Press, 2006) 1 at 17.

<sup>67</sup> Coulthard, *supra* note 27 at 176 [emphasis in original].

<sup>68</sup> According to Statistics Canada, in 2010/2011, close to 80% of adult admissions to Saskatchewan Correctional Centres were Aboriginal: Mia Dauvergne, “Adult Correctional Statistics in Canada, 2010/2011” *Statistics Canada* (11 October 2012) at 12 online: <statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.pdf> [perma.cc/3V3H-KZBM]; See also: Sherene H Razack “‘It Happened More than Once’: Freezing deaths in Saskatchewan” (2014) 26 CJWL 51 at 53.

<sup>69</sup> See: Gabrielle Weasel Head & Yale D Belanger, “‘All We Need is Our Land’: Exploring Southern Alberta Urban Aboriginal Homelessness” *The Homeless Hub* (2014) online: <ion.uwinnipeg.ca/~epeters/Workshop%20Papers/Belanger.pdf> [perma.cc/ZDC4-QHMY]; and see Coulthard, *supra* note 27 at 174.

engagement with self-reflexive critique and reflection. Integrating critical decolonial and Indigenous legal theories into their understandings and practices allows students to develop analytical tools that contribute to destabilizing established methods of interacting with Indigenous clients and strategizing about legal issues. The program aims to disrupt how students have been taught to think about and practice law by contributing to their knowledge of how colonialism is entrenched in and replicated through the Canadian legal system. In doing so, students come to recognize the various Indigenous legal values that clients often offer when discussing their own legal problems.

An essential part of Indigenizing the curriculum at the ICLC is that much of the classroom discussion is student-led. Non-Indigenous and Indigenous students reflect on their various interpretations of their experiences with clients and their thoughts about assigned readings. Students are asked to facilitate one class and set of readings each during the term. In many cases, the student who is leading the facilitation brings their personal history of what brought them to the work in the ICLC and/or their story of working through decolonization or Indigenizing their experience in law school, as well as their attempts to continue with these processes through the legal work they are doing on behalf of clients at the ICLC.

In their work with clients, students in the program are encouraged to *listen* to their clients. Students are told to not just “hear” their client’s version of events or the facts that may apply to potential legal issues; rather, *listening* in this context is about holding space for clients to tell their stories, their histories, and express their concerns about what has and is happening to them within the confines of the Canadian legal system. In particular, students are told to *believe* their clients when they are talking about their experiences and to take clients’ versions of events as not just as the source of legal instructions to guide students in acting on legal issues, but also as *resistance narratives*. These resistance narratives work to undo the notion of the natural Canadian post-settler society. The lived traumas and triumphs of Indigenous peoples in their historical and ongoing resistance to colonialism and in their embodied experiences of displacement actively undermine the legitimacy of the Canadian state and resist the possibility of Canada as a post-settler society where meaningful reconciliation is possible without decolonization and Indigenization. Drawn from individual stories is a broader collective history of existence and survival that is directly linked to self-determination and sovereignty

When clients’ resistance narratives are acknowledged, recognized, and heard this helps to Indigenize the student lawyer/client relationship. It also Indigenizes each client’s particular legal issue at the ICLC because students then work with clients to include their particular story and specific Indigenous legal values into the legal analysis and approach taken in resolving clients’ legal matters, including by informing the courts of such when appropriate, as a purposeful decolonial strategy that Indigenizes the courtroom. These combined aspects of the program—teaching students Indigenous legal theory and methodology, along with ensuring they invite their clients to Indigenize their interactions with the legal system—work together to destabilize and intervene in established patterns of power.<sup>70</sup>

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<sup>70</sup>See Shelley Bielefeld, “Compulsory Income Management and Indigenous Peoples – Exploring Counter Narratives amidst Colonial Constructions of ‘Vulnerability’” (2014) 36 Sydney Law Rev 695.

This work cannot be divorced from the connection to inherent Indigenous rights and self-determination. Part of this project involves imagining what meaningful self-determination looks like for Indigenous peoples like the clients serviced by the ICLC program; Indigenous peoples who live in urban environments, including the DTES (where the majority of the clients who utilize the ICLC's services live), and people who reside on reserves in and around the Lower Mainland, as well as those who contact the ICLC from urban, rural, and reserve communities across the province. All of these Indigenous peoples continue to function within and under the jurisdiction of the Canadian legal system. Most are individuals from communities without the political and economic means to challenge federal, provincial, and/or municipal governments in order to defend their inherent Indigenous rights. Most of these people are individually embroiled in some dispute within an aspect of the Canadian legal system and require assistance in dealing with an individual legal issue that may seem unrelated to the greater goal of achieving Indigenous sovereignty.

How do individuals assert their inherent Indigenous rights in the face of pressure to acquiesce to systems of domination that refuse to acknowledge the legal principles and mechanisms of Indigenous legal systems? Many of the Indigenous peoples who come to the ICLC and to CLASSIC want to promote their understandings of their Indigenous legal systems within the context of their particular legal issue. These clients want student clinicians to represent them in order to help the courts and other actors in the Canadian legal system understand how the history and ongoing legacy of colonialism has affected their lives and continues to impact them. We believe that over time, explaining the circumstances of Indigenous peoples to judges, Crown counsel, opposing counsel, and other legal actors in the Canadian system will promote greater understanding about the ongoing realities of colonization and in turn encourage non-Indigenous Canadians to decolonize their perspectives; ultimately, consistently bringing Indigenous knowledge into the Canadian legal system works to Indigenize the law. This may help open space to usher in radically transformative law and politics regarding inherent Indigenous rights and self-determination. As Christine Zuni Cruz has explained, "The courtroom limits us and challenges us in terms of the narratives and stories we can tell within its strictures, but the stories we can develop in our analysis of our clients' legal situation are limitless."<sup>71</sup>

Henderson states, "(t)o awaken the inner spirit of decent politics, a need for an inclusive, vibrant democracy based on human rights is our responsibility. Everything will now depend on how we carry out our belief."<sup>72</sup> Indigenous peoples are not locked in the past or frozen in time. Val Napoleon notes that,

Indigenous law is not stuck in the past. Rather, I think that Indigenous peoples continue to act on historic legal obligations where they can in modern forms, despite the damage to our legal orders. For example, it is arguable that the work that many people do at the community level with various Aboriginal

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<sup>71</sup>See Cruz, Four Questions, *supra* note 59 at 2145.

<sup>72</sup> James (Sa'ke'j) Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition* (Saskatoon, SK: Purich Publishing Limited, 2008) at 103.

justice initiatives is rooted in their historical obligations in their own legal orders.<sup>73</sup>

As Napoleon points out, Indigenous peoples continue to engage with their own legal orders and obligations, and at the ICLC we endeavour to represent clients within a framework where Indigenous laws and legal systems are recognized and respected. John Borrows also points out that contemporary Indigenous identities, knowledges, cultures, politics, and legal systems do not exist in a vacuum:

[T]he formation of culture and identity is contingent on our interactions with others. This insight makes it difficult to argue that Aboriginal control of Canadian affairs is not “Aboriginal.” Aboriginal values and identity develop in response to their own and other culture’s practices, customs, and traditions. “Aboriginality” is extended by Aboriginal control of both Canadian and Aboriginal affairs. Since important aspects of Aboriginal identity are influenced by Canada, Aboriginal control of Canadian affairs is one way to assert more control over what it means to be Aboriginal. Such assertions may even shape what it means to be Aboriginal. Such assertions may even shape what it means to be Canadian.<sup>74</sup>

Borrows’ words capture the essence at the heart of many stories we hear at the ICLC and at CLASSIC. Many clients refuse to simply acquiesce to the primacy of the legal system of a colonial power and challenge the authority imposed on them by bringing their words and their knowledge to their legal context with the Canadian justice system. Clients’ words exist as more than a narrative of their experiences, at their core their narratives represent Indigenous knowledge, teaching, legal authority, and often even proclamations of their inherent rights. In disputing the authority imposed on them by presenting their stories and their knowledge of their own experiences, clients impose their own authority of what it means to be Indigenous and to assert Indigenous rights within the Canadian legal system. This is precisely the kind of manifestation of inherent rights “through *political will and action*” that Henderson advocates for—peoples taking power back by resisting the domination of the Canadian state, by voicing their Indigenous knowledges, by practicing their legal traditions, and exerting their political will despite the continuing operation of colonialism.<sup>75</sup> Indeed, approaching the law through an Indigenizing lens emphasizes a focus on personhood and the well-being of the collective, not just individuality, and may provide new insight and understanding in how the law functions more broadly for Indigenous peoples. Employing Indigenous legal mechanisms when possible, for example in First Nations or Gladue courts, may provide examples of new frameworks for justice in societies like Canada where the legal system is failing those most in need of its protection. Truly engaging with Indigenous legal principles may radically transform the very notion of *justice*.

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<sup>73</sup> Val Napoleon, “Thinking About Indigenous Legal Orders.” Research Paper for the National Centre for First Nations Governance, (June 2007) at 10.

<sup>74</sup> John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) at 148.

<sup>75</sup> *Ibid* at 101 [emphasis added].

Thus, through making and holding space for Indigenous peoples to tell and retell the stories of injustices they have experienced and demanding that these stories be acknowledged, recognized, and heard, we may assist in a process of revealing future possibilities for justice to be transformed. In Indigenizing the law through peoples' narratives, which reflect Indigenous knowledge and legal authorities, Indigenous peoples will transform the landscape of injustice prescribed by a dominant legal system that is not ours, and in doing so change the meaning of justice entirely. S James Anaya's definition of self-determination is as follows:

[S]elf-determination is ... grounded in the idea that all [peoples] are equally entitled to control their own destinies. Self-determination gives rise to remedies that tear at the legacies of empires, discrimination, suppression of democratic participation, and cultural suffocation.<sup>76</sup>

Surely one of the steps in controlling our destinies is controlling our stories and the narrative/s about how Indigenous peoples are seen and heard.

In this way, legal clinics can indeed work to be places where law students learn how to both navigate within and "step outside" the dominant colonial legal tradition and approach to legal practice, to learn to "read different "texts" and be flexible enough to look for and find law in radically different places than in written words in a bound text."<sup>77</sup> This entails at the very least, a commitment to "cultural literacy," a commitment to interdisciplinary and holistic approaches to practice, a valuing of the self-determination of Indigenous communities, and a knowledge of community, history, and place.<sup>78</sup> In this decolonial approach to legal practice, power, context, and community are taken into account, and the broader justice goals of the community are considered.<sup>79</sup>

## V. CONCLUSION

Whether and how law clinics can contribute to the work of decolonization will ultimately be up to the Indigenous communities with which law clinics work. But we believe clinics can reflect on where and how they are located within the matrix of settler colonialism, where their community allegiances lie, and how they will build alliances with communities towards decolonization and justice. As we have outlined in this article, we believe that decolonial theories and frameworks can help us understand the linkages between the work of urban legal clinics and larger struggles relating to colonialism in Canada, and also to help us link advocacy strategies within the dominant Canadian legal system with larger histories of resistance and struggles for justice. There are no easy paths towards decolonization from where we stand, but we believe that clinical legal education is a place from which to embark on this work.

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<sup>76</sup> S James Anaya, *Indigenous Peoples in International Law*, 2<sup>nd</sup> ed (Oxford University Press, 2004) at 100.

<sup>77</sup>Christine Z Cruz, "Toward a Pedagogy and Ethic of Law/ Lawyering for Indigenous Peoples" (82) North Dakota L Rev 863 at 897-8.

<sup>78</sup>See *ibid* at 892, 895. See also Christine Z Cruz, "[On the] Road Back In: Community Lawyering in Indigenous Communities" (1998-1999) 4 Clinical L Rev 557 at 563.

<sup>79</sup> Cruz, Four Questions, *supra* note 59 at 2147.