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Scott Franks

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Book Review

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Abstract

Harold Johnson was a Cree lawyer, trapper, author, and storyteller from the Montreal Lake Cree Nation. He practiced as a criminal defence lawyer and then as a Crown prosecutor in my hometown of La Ronge, Saskatchewan. *Peace and Good Order: The Case for Indigenous Justice in Canada* ("Peace and Good Order") is Harold's resignation letter to the legal profession, apology for his participation in Canada's criminal law system, and argument for Indigenous jurisdiction. It is, in part, an autobiographical account of his relationship to Canadian law as a Nehiyaw man. And it comes at a time when more and more Indigenous students are turning to Canadian law as a means to help their communities.

Book Review

Peace and Good Order: The Case for Indigenous Justice in Canada by Harold R. Johnson¹

SCOTT FRANKS²

HAROLD JOHNSON WAS A CREE LAWYER, trapper, author, and storyteller from the Montreal Lake Cree Nation. He practiced as a criminal defence lawyer and then as a Crown prosecutor in my hometown of La Ronge, Saskatchewan.³ *Peace and Good Order: The Case for Indigenous Justice in Canada* (“*Peace and Good Order*”) is Harold’s resignation letter to the legal profession, apology for his participation in Canada’s criminal law system, and argument for Indigenous jurisdiction.⁴ It is, in part, an autobiographical account of his relationship to Canadian law as a Nehiyaw man. And it comes at a time when more and more Indigenous students are turning to Canadian law as a means to help their communities.

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1. (McClelland & Stewart, 2019) [Johnson, *Peace and Good Order*].
 2. Scott Franks is an assistant professor at the Lincoln Alexander School of Law at Toronto Metropolitan University, is a citizen of the Manitoba Métis Federation, and is from La Ronge, Saskatchewan.
 3. Harold passed away on 9 February 2022. I will refer to Harold Johnson by his first name out of respect for him as a person from my hometown.
 4. *Supra* note 1. Haneen Al-Noman has already written a wonderful review of *Peace and Good Order* from a criminal law and procedure perspective. See Book Review of *Peace and Good Order: The Case for Indigenous Justice in Canada* by Harold Johnson, (2021) 44 Dal LJ 311. I will not repeat what Al-Noman has already said. Instead, I want to share some thoughts about *Peace and Good Order* from the perspective of a Métis law student, lawyer, and assistant professor from the community in which Harold worked.

Peace and Good Order is an important contribution to the scholarship on Indigenous legal practice and education. Although *Peace and Good Order* fits more within the critical and post-colonial Indigenous legal literature than the recent literature on the revitalization of Indigenous legal traditions, it can be read intertextually with Harold's other work, particularly his fiction, for insights into Nehiyawak legal thought.⁵ As a first-hand reflection on legal education and practice, Harold's story can also be read alongside the accounts of Indigenous and non-Indigenous law students, lawyers, and judges.⁶ What makes *Peace and Good*

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5. Harold rejected referring to Nehiyaw traditions as "law." In *The Power of Story*, he explained that

[t]hese are definitely not laws. Law requires authority and is a symptom of a people who have lost their sense of self and become reliant on systems. Law is required by people who have severed their spiritual connections. They no longer know how to be. They need someone to tell them.

Harold Johnson, *The Power of Story: On Truth, the Trickster, and New Fictions for a New Era* (Biblioasis, 2022) at 144 [Johnson, *The Power of Story*]. For examples of critical and post-colonial Indigenous legal theory, which focuses more on a critique of Canadian law and its imposition on Indigenous peoples and their legal orders, see Gordon Christie, "Critical Theory and Aboriginal Rights" in Sandra Tomsons & Lorraine Mayer, eds, *Philosophy and Aboriginal Rights: Critical Dialogues* (Oxford University Press, 2013) 123; Tracey Lindberg, "Critical Indigenous Legal Theory Part 1: The Dialogue Within" (2015) 27 CJWL 224 [Lindberg, "Critical Indigenous Theory"]; James (Sákéj) Youngblood Henderson, "Postcolonial Indigenous Legal Consciousness" (2002) 1 Indigenous LJ 1. For examples of Indigenous legal theory that focuses primarily on Indigenous peoples' legal orders, see John Borrows, "With or Without You: First Nations Law (in Canada)" (1995) 41 McGill LJ 629; Val Napoleon, "Thinking about Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Springer, 2013) 229; Sarah Morales, "Locating Oneself in One's Research: Learning and Engaging with Law in the Coast Salish World" (2018) 30 CJWL 144; Robert YELKÁTTE Clifford, "Listening to Law" (2016) 33 Windsor YB Access Just 47. For a list of Harold Johnson's writing, see note 12, below.

6. For the accounts of Indigenous scholars, see e.g. Henderson, *supra* note 5; Aaron James (Waabishki Ma'iingan) Mills, "Driving the Gift Home" (2016) 33 Windsor YB Access Just 167; Lindberg, "Critical Indigenous Theory," *supra* note 5; Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Fernwood, 1995); John Borrows, *Drawing Out Law: A Spirit's Guide* (University of Toronto Press, 2010); Christine Zuni Cruz, "On the Road Back In: Community Lawyering in Indigenous Communities" (1999) 24 Am Indian L Rev 229; Robert A. Williams Jr, "Vampires Anonymous and Critical Race Practice" (1996) 95 Mich L Rev 741; Gordon Christie, "Culture, Self-Determination and Colonialism: Issues around the Revitalization of Indigenous Legal Traditions" (2007) 6 Indigenous LJ 13; Angelique EagleWoman et al, "Storytelling and Truth-Telling: Personal Reflections on the Native American Experience in Law Schools" (2022) 48 Mitchell Hamline L Rev 704; Jaime MN Lavallee, "How To Be Biased in the Classroom: Kwayeskastowin - Setting Things Right?" (2022) 48 Mitchell Hamline L Rev 771; Scott Franks, "Some Reflections

Order so compelling is Harold's caution to Indigenous law students and lawyers who hope to advance Indigenous justice within settler colonial legal systems.

Harold structures *Peace and Good Order* as a formal legal submission. On one level, the work's formality illustrates how Indigenous lawyers are changed by—and how little they may change—the law, which is a recurrent theme in the book. On another level, its structure may be a rhetorical strategy to persuade or appeal to settler readers who may be unfamiliar with Indigenous storytelling traditions.⁷ Harold's use of structure (and his decision to abandon structure at key points) reflects both his training in the law and his own agency as a Nehiyaw storyteller. Thus, the work's structure also says something to Indigenous audiences, particularly law students, who might be searching for their own voice in Canadian legal contexts.

Harold begins his opening argument with his resignation from the legal profession. The death of Colten Boushie and the trial of Gerald Stanley is Harold's catalyst, but it is clear that the problem goes much deeper.⁸ "Everything that has been done to Indigenous Peoples," Harold writes, "has been legal."⁹ Residential schools, child removal, Indian hospitals, inequitable services, community dislocation and displacement, forced sterilization, over-policing and incarceration, gender discrimination, expropriation—all of these colonial

of a Métis Law Student and Assistant Professor on Indigenous Legal Education in Canada" (2022) 48 Mitchell Hamline L Rev 744; Tamara Pearl, *Māmawī Wichitowin: Colonization is Not About Sharing Space. The Treaties Are*. (LLM Thesis, University of Saskatchewan, 2020) [unpublished]. Also, for examples of the account of non-Indigenous scholars, lawyers, and judges, see e.g. John Reilly, *Bad Medicine: A Judge's Struggle for Justice in a First Nations Community* (Rocky Mountain Books, 2010); John Reilly, *Bad Judgment: The Myths of First Nations Equality and Judicial Independence in Canada* (Rocky Mountain Books, 2014); John Reilly, *Bad Law: Rethinking Justice for a Postcolonial Canada* (Rocky Mountain Books, 2019); Rupert Ross, *Dancing with a Ghost: Exploring Aboriginal Reality*, 2nd ed (Penguin Books, 2006) [Ross, *Dancing with a Ghost*]; Rupert Ross, *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin Books, 1996) [Ross, *Returning to the Teachings*]; Hannah Askew, "Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools" (2016) 33 Windsor YB Access Just 29; Ontario, Ministry of the Attorney General, *First Nations Representation on Ontario Juries: Report of the Independent Review*, by The Honourable Frank Iacobucci (Ontario MAG, February 2013); Lance Finch, *The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice* (Continuing Legal Education Society of British Columbia, 2012).

7. Johnson's *The Power of Story* explores some of his thoughts on storytelling. *Supra* note 5.
8. For a history of Stanley's killing of Boushie and the subsequent trial, see Kent Roach, *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case* (McGill-Queen's University Press, 2019); Gina Starblanket & Dallas Hunt, *Storying Violence: Unravelling Colonial Narratives in the Stanley Trial* (ARP Books, 2020).
9. Johnson, *Peace and Good Order*, *supra* note 1 at 11.

and settler-colonial activities are, or were, authorized by Canadian law. Just as Prime Minister Stephen Harper apologized for Canada's residential schools, Harold suggests that "someday, in the future, a Prime Minister of Canada is going to stand up and apologize for my participation in the over-incarceration of Indigenous peoples."¹⁰ The proceeding nine chapters and a personal account of the loss of his brother form Harold's testimony, as a witness and a party, against the Canadian criminal law system.

Within this formal structure, Harold tells us a story of his legal education and practice. He begins his testimony with his entrance into the legal profession. Harold, a member of the Montreal Lake Cree Nation, grew up on his family's trapline in Molanosa. Like many other young men in northern Saskatchewan, he worked in forestry and the uranium industry. He left the North to attend law school. In his own words, he wanted to show them that "Harold Johnson isn't stupid."¹¹ After graduating from Harvard University with a master's degree in law, Harold articulated for Gerald Morin, a lawyer from the Peter Ballantyne Cree Nation who would go on to become Saskatchewan's first Indigenous judge. Harold practiced for twenty years, first as defence counsel and then as a Crown prosecutor in northern Saskatchewan courts. In his life, Harold was also an advocate for the treatment of alcohol use in the North, a trapper, and a writer of fiction and non-fiction.¹²

In *Peace and Good Order*, Harold tells us about moments in this journey, from his struggles in legal education¹³ to the difficult quandaries he faced both as defence and Crown counsel in northern Saskatchewan¹⁴ and his experience

10. *Ibid* at 15.

11. *Ibid* at 20.

12. For Harold's fiction, see Harold Johnson, *Billy Tinker* (ThistleDown Press, 2001); Harold Johnson, *Back Track* (ThistleDown Press, 2005); Harold Johnson, *Charlie Muskrat* (ThistleDown Press, 2008); Harold Johnson, *The Cast Stone* (ThistleDown Press, 2011); Harold Johnson, *Corvus* (ThistleDown Press, 2015); Harold Johnson, *The Bjorkan Sagas* (House of Anansi Press, 2021). He also wrote non-fiction on topics of interest to him, including treaties, wolves, and alcohol addiction. See Harold Johnson, *Two Families: Treaties and Government* (Purich Pub, 2007); Harold Johnson, *Cry Wolf: Inquest into the True Nature of a Predator* (University of Regina Press, 2020); Harold R Johnson, *Firewater: How Alcohol Is Killing My People (and Yours)* (University of Regina Press, 2016). Harold also wrote on and from the Nehiyawak storytelling tradition. His memoir *Clifford* blurs the line between fiction and non-fiction. See Harold Johnson, *Clifford: A Memoir, a Fiction, a Fantasy, a Thought Experiment* (House of Anansi Press, 2018) [Johnson, *Clifford*]. In 2022, Harold's reflections on the Nehiyaw storytelling tradition were published posthumously. See Johnson, *The Power of Story*, *supra* note 5.

13. See Johnson, *Peace and Good Order*, *supra* note 1 at 29-39.

14. *Ibid* at 41-108.

surviving his brothers, Clifford and Garry, both of whom were killed by drunk drivers.¹⁵ In his journey, he encountered a gated profession,¹⁶ arrogant and ignorant counsel and judges,¹⁷ and cycles of intergenerational trauma.¹⁸ In the end, Harold found himself changed. His experiences led him to conclude that the Canadian legal system is inadequate for healing and restoring Indigenous communities.¹⁹ Indigenization—the inclusion of more Indigenous lawyers—will never be enough.²⁰ The structure and ideology of the Canadian legal system—its purported impartiality, its insistence on deterrence and incarceration, its deprioritization of the community and the victim—restores nothing from the trauma caused by settler colonialism. Harold completes his story with a closing argument for the return of Indigenous criminal law jurisdiction and the role of redemption and healing in Indigenous justice through an interpretation of the “Peace and Good Order” clause in Treaty 6.

In *Peace and Good Order*, Harold touches on what it means to be an Indigenous law student and lawyer;²¹ our responsibilities and ethical obligations to ourselves, our communities, and our profession;²² the limitations of a “culturally sensitive” or “trauma informed” approach to working in Indigenous

15. *Ibid* at 109-19. Harold has written previously on Clifford. See Johnson, *Clifford, supra* note 12.

16. See Johnson, *Peace and Good Order, supra* note 1 at 23.

17. *Ibid* at 27, 31-32.

18. *Ibid* at 71-72.

19. *Ibid* at 127-34.

20. *Ibid* at 39, 91-94.

21. Sonia Lawrence and Signa Daum Shanks have proposed a qualitative study of Indigenous lawyers' experiences in Canadian law to better understand their own understanding of their roles and responsibilities. See “Indigenous Lawyers in Canada: Identity, Professionalization, Law” (2015) 38 Dal LJ 503. For a history of the exclusion of Indigenous persons from the legal profession, see Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism’: Historical Perspectives” (2003), online: SSRN <papers.ssrn.com/abstract=2273323> [perma.cc/2EUL-VEEY]. See also the literature at *supra* note 5.

22. One role is that of an “Indigenous legal warrior,” an Indigenous person trained in both Indigenous and Canadian legal orders who can navigate these legal orders for the strategic advancement of Indigenous self-determination. See Henderson, *supra* note 5 at 3; Christine Zuni Cruz, “Toward a Pedagogy and Ethic of Law/Lawying for Indigenous Peoples: The Pedagogy of American Indian Law” (2006) 82 NDJ Rev 863 at 876. For the related concept of Indigenous word warriors, see Dale Antony Turner, *This is Not a Peace Pipe: Towards a Critical Indigenous Philosophy* (University of Toronto Press, 2006).

community contexts;²³ and the need to respect Indigenous peoples' inherent jurisdiction.²⁴ Non-Indigenous law students and lawyers might value Harold's perspective for what it can tell them about their own biases and harmful practices in Indigenous communities.²⁵ Indigenous law students will benefit from Harold's earnest description of his experience in legal education and practice.²⁶ Indigenous and non-Indigenous criminal law lawyers in Indigenous community contexts will likely value Harold's clear and sometimes searing account of his legal practice in northern Saskatchewan.²⁷ As a Métis lawyer and professor from La Ronge, Saskatchewan, the location of Harold's legal practice, this work spoke to me in a very personal way, as a reminder of some of the reasons why I was motivated to enter the legal profession and become an educator.

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23. Many law schools, law societies, and professional associations have responded to the Truth and Reconciliation Commission's call for cultural competency training in the legal profession. For a critique of cultural competency approaches to Indigenous legal education and practice, see Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97 Can Bar Rev 526. In recent years, momentum has gained for trauma-informed lawyering. For some helpful resources on this topic, see Golden Eagle Rising Society, *Trauma Informed Legal Practice Toolkit* (Golden Eagle Rising Society, 2020).
24. Recently, the Supreme Court of Canada heard arguments in a *Reference on An Act Respecting First Nations, Metis and Inuit Children, Youth and Family*, of which one of the central issues was the scope of Indigenous peoples' inherent jurisdiction over child welfare. See *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185, appeal as of right to the SCC. See also "Reference to the Court of appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families" (10 February 2022), online: *Court of Appeal of Quebec* <www.courdappelduquebec.ca/en/judgments/details/reference-to-the-court-of-appeal-of-quebec-in-relation-with-the-act-respecting-first-nations-inuit> [perma.cc/4PXE-TB7L].
25. Harold challenges the stories of non-Indigenous lawyers and judges who present their personal stories as stories of self-awareness and growth, with uncomfortable descriptions of the harms caused by non-Indigenous lawyers and judges in Indigenous community contexts. See also the literature at *supra* note 5.
26. Not much has changed in Canadian legal education since Harold attended law school. Indigenous law students still experience epistemic barriers when learning Canadian law from an Indigenous legal sensibility. See, for example, the stories of Aaron Mills and Tracy Lindberg. See Aaron James (Waabishki Ma'iingan) Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2015) 61 McGill LJ 847 at 849; Lindberg, "Critical Indigenous Theory," *supra* note 5; Tracey Lindberg, "What Do You Call an Indian Woman with a Law Degree?: Nine Aboriginal Women at the University of Saskatchewan College of Law Speak Out" (1997) 9 CJWL 301.
27. See also Ross, *Dancing with a Ghost*, *supra* note 6; Ross, *Returning to the Teachings*, *supra* note 6.

As I was reading *Peace and Good Order*, I felt some apprehension. I anticipated that non-Indigenous readers might come away with a sense that Indigenous communities are violent or broken. It appears that Harold wrestled with this to some extent as well, particularly as it relates to his discussion of alcohol use in the North.²⁸ Eve Tuck has cautioned against damage-centred narratives—narratives that portray Indigenous peoples as inherently deficient, as broken, or that work to distance settler colonialism as the cause of intergenerational trauma and socio-economic disadvantage.²⁹ Tuck proposes a narrative of desire, one that understands “complexity, contradiction and self-determination of lived lives” and that documents “not only the painful elements of social realities but also the wisdom and hope.”³⁰ *Peace and Good Order*, in my view, illustrates this complexity. Harold is frank about the harms he witnessed in his practice, but he is also resolute in his argument for Indigenous criminal jurisdiction and for redemption and healing within the community.³¹ It is this latter part of Harold’s testimony that speaks to desire and self-determination, and that is the heart of *Peace and Good Order*.

Peace and Good Order is a rare insight into the experience of an Indigenous lawyer who practiced in a community context. It is an approachable text, written plainly and directly. However, it is not an uncomplicated text. Harold’s experiences illustrate some of the “obsidian quandaries” that Indigenous lawyers face when practicing in Indigenous legal contexts.³² *Peace and Good Order* reminds us that our participation in Canadian law is a choice with consequences.

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28. See Johnson, *Peace and Good Order*, *supra* note 1 at 64. In *The Power of Story*, Harold confronts this concern head on, in his discussion of “victim stories” and of “stories of hope and possibility.” Johnson, *The Power of Story*, *supra* note 5 at 97-100. Harold proposes a new story, one of love. *Ibid* at 187.
29. “Suspending Damage: A Letter to Communities” (2009) 79 *Harvard Educational Rev* 409 at 413-16.
30. *Ibid* at 416.
31. See Johnson, *Peace and Good Order*, *supra* note 1 at 134.
32. Henderson, *supra* note 5 at 6.

