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## The Consequences of Unfreedom: Learning from Story Amidst a Global Climate Crisis

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Article abstract

As the world navigates the impending consequences of climate change, Canada remains one of the few countries to reject the right to a healthy environment for its citizens within the Canadian Constitution. Although Canada purports itself to be a free and democratic society, many argue that their freedoms are continually neglected by laws that continue to disregard the environment and, therefore, their right to a healthy existence. This article is an investigation into a particular word that is woven throughout Canada's Constitution: "freedom." It is an investigation into the conflicting understandings of the word and how these contrasting meanings have impacted Canada's Constitution and its relationship to land. This article analyzes the history of freedom as seen through a liberal belief system and contrasts this understanding with Indigenous concepts of freedom, as told through Haisla and Nuu-chah-nulth stories. These narratives explore how the differing concepts of freedom have affected relationships with the land and the laws that govern the land. Finally, the discussion of these themes draws upon the possibility of using story within Canada's laws to change the Constitution's current relationship with the land in order to mitigate the potential effects of climate change. I argue that the liberal, colonialist world view is ever present in our current legal system and is in fact facilitated through the word "freedom." Until we begin to re-story our Constitution through a diversity of understandings and world views, Canada will continue to ignore the looming ramifications of climate change.

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## The Consequences of Unfreedom: Learning from Story Amidst a Global Climate Crisis

Meghan Robinson\*

*As the world navigates the impending consequences of climate change, Canada remains one of the few countries to reject the right to a healthy environment for its citizens within the Canadian Constitution. Although Canada purports itself to be a free and democratic society, many argue that their freedoms are continually neglected by laws that continue to disregard the environment and, therefore, their right to a healthy existence. This article is an investigation into a particular word that is woven throughout Canada's Constitution: "freedom." It is an investigation into the conflicting understandings of the word and how these contrasting meanings have impacted Canada's Constitution and its relationship to land. This article analyzes the history of freedom as seen through a liberal belief system and contrasts this understanding with Indigenous concepts of freedom, as told through Haisla and Nuu-chah-nulth stories. These narratives explore how the differing concepts of freedom have affected relationships with the land and the laws that govern the land. Finally, the discussion of these themes draws upon the possibility of using story within Canada's laws to change the Constitution's current relationship with the land in order to mitigate the potential effects of climate change. I argue that the liberal, colonialist world view is ever present in our current legal system and is in fact facilitated through the word "freedom." Until we begin to re-story our Constitution through a diversity of understandings and world views, Canada will continue to ignore the looming ramifications of climate change.*

*Tandis que le monde se prépare en vue des conséquences imminentes du changement climatique, le Canada demeure l'un des rares pays qui rejettent le droit à un environnement sain pour ses citoyens dans la constitution canadienne. Même si le Canada se déclare une « société libre et démocratique », plusieurs soutiennent que leurs libertés sont continuellement négligées par des lois qui continuent à faire fi de l'environnement et, par conséquent, de leur droit à une existence saine. Le présent document constitue une enquête sur un mot particulier qui est intégré à la constitution canadienne : liberté. Il s'agit d'une enquête sur les compréhensions conflictuelles du mot et sur l'incidence de ces significations opposées sur la constitution du Canada et sa relation avec la terre. Le présent document analyse l'histoire de la liberté dans le cadre d'un système de croyances libérales et compare cette compréhension aux concepts autochtones de la liberté, tels qu'ils sont rapportés dans les histoires des Haisla et des Nuu-chah-nulth. Ces récits examinent l'effet que les différents concepts de la liberté ont eu sur les relations avec la terre et les lois qui régissent la terre. Enfin, la discussion de ces thèmes s'appuie sur la possibilité d'utiliser l'histoire dans les lois du Canada pour modifier la relation actuelle de la constitution avec la terre, afin d'atténuer les effets éventuels du changement climatique. Je fais valoir que la vision du monde libérale et colonialiste est toujours présente dans notre*

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\* PhD student in Interdisciplinary Studies at the University of British Columbia, Vancouver, Canada. I am beholden to the Squamish territory on which I was raised and to the stories that have guided me. I am grateful to Eden Robinson for the laughter, and for permission to work with her story in this article.

*ystème judiciaire actuel et qu'elle est en fait facilitée par le mot « liberté ». Jusqu'à ce que nous commençons à réinterpréter notre constitution au moyen de diverses compréhensions et visions du monde, le Canada continuera à ignorer les ramifications imminentes du changement climatique.*

## I. INTRODUCTION: CANADA'S CURRENT CONDITION

As I write this article, we are nearing the end of the warmest year on record, following the hottest decade on record. The Arctic is melting at a faster rate than predicted, the world's oceans are rising and acidifying, entire ecosystems are being destroyed, and human action is causing the sixth mass extinction of the earth's 4.5-billion-year life cycle.<sup>1</sup> It is no longer a question of whether humans are causing the global climate crisis, it is a question of whether governments and courts are willing to do anything about it and, if not, why. As countries around the world begin to amend or develop their constitutions to include the rights and/or protections of the natural world,<sup>2</sup> Canada remains openly opposed to recognizing the part it plays in the climate crisis.<sup>3</sup> As countries such as Bolivia and Ecuador constitutionalize the rights of Mother Earth, Canada remains one of the few countries in the world openly opposed to including the right to a healthy environment within its Constitution.<sup>4</sup> The Netherlands, for instance, is presently celebrating a major victory for climate justice, with the Dutch Supreme Court establishing that the country was taking inadequate action to counter climate change and declaring this lack of action to be a violation of human rights.<sup>5</sup> In Canada, meanwhile, fifteen Canadian youths have filed a lawsuit against the Canadian government alleging that their constitutional rights to life and liberty were being infringed upon due to the government's contributions to greenhouse gas emissions.<sup>6</sup> The Canadian government's argument was that climate change is a global problem, not Canada's problem alone, and that, therefore, the case should be dismissed. Antithetical to the Dutch government, the Federal Court of Canada granted the government's motion to strike the claim, stating that climate change policies are for elected politicians, not judges, to decide.

This defeat arrives in the wake of the Canadian government contentiously purchasing an oil pipeline running through two of its provinces, ignoring the objections of many Indigenous populations whose territories will be directly affected by this action.<sup>7</sup> Additionally, in 2007, the United Nations [UN] ratified the *UN Declaration of Rights of Indigenous Peoples [UNDRIP]*, which acknowledges the "urgent need to

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<sup>1</sup> Henry Fountain et al, "A Crash Course on Climate Change, 50 Years after the First Earth Day," *New York Times*, (19 April, 2020), online: <[www.nytimes.com/interactive/2020/04/19/climate/climate-crash-course-1.html](http://www.nytimes.com/interactive/2020/04/19/climate/climate-crash-course-1.html)>.

<sup>2</sup> Judith Kimmerling, "Habitat as Human Rights: Indigenous Huarani in the Amazon Rainforest, Oil and Ome Yasuni" (2016) 40:3 *Vt L Rev* 445.

<sup>3</sup> Canada, the United States, New Zealand, and Australia are four of the few countries in the world that remain openly opposed to amending their legal systems to include the rights of nature. To read more on this, see David R Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (Toronto: ECW Press, 2017).

<sup>4</sup> César Rodríguez-Garavito, "A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations" in John H Knox & Ramin Pejan, eds, *The Human Right to a Healthy Environment* (Cambridge, UK: Cambridge University Press, 2018).

<sup>5</sup> Hague Court of Appeal (Civil-law Division), *Urgenda Foundation v State of the Netherlands*, Case No 200.178.245/01 (9 October 2018) [unofficial English translation].

<sup>6</sup> *La Rose v R*, 2020 FC 1008.

<sup>7</sup> Kathleen Harris, "Liberals to Buy Trans Mountain Pipeline for \$4.5B to Ensure Expansion Is Built," *CBC News* (28 May, 2018), online: <[www.cbc.ca/news/politics/liberals-trans-mountain-pipeline-kinder-morgan-1.4681911](http://www.cbc.ca/news/politics/liberals-trans-mountain-pipeline-kinder-morgan-1.4681911)>.

respect and promote the inherent rights of Indigenous peoples.”<sup>8</sup> The *UNDRIP* affirms a broad degree of political, environmental, spiritual, economic, and cultural rights, including self-determination,<sup>9</sup> lands and resources,<sup>10</sup> living in freedom,<sup>11</sup> and conservation and environmental protection. Canada and the world’s three largest settler states (New Zealand, the United States, and Australia) were the last to approve the *UNDRIP*. In fact, the four settler states were the only countries to initially reject the declaration,<sup>12</sup> which elicits an examination into the relationships that these four states have with their Indigenous populations and with the lands sustaining them. All of these actions (or inactions) by the Canadian legal and political systems beg the question of why we are one of the few countries in the world not currently modifying its behaviours in the face of the global climate crisis.

Laws translate the moral foundations of a society into guidelines for behaviour. They are an expression of a society’s consciousness.<sup>13</sup> Canada’s laws are currently enacted through its Constitution, which is said to encompass the moral code of law.<sup>14</sup> A country’s Constitution encompasses the fundamental principles that regulate a society’s behaviour,<sup>15</sup> and this article will investigate one particular word that is woven throughout Canada’s Constitution: “freedom.” Canada is defined as a “free and democratic” society,<sup>16</sup> purportedly as a multi-juridical country that embraces civil law, common law, and Indigenous laws. Yet many Indigenous peoples in Canada are not only weary of its legal system but also vehemently opposed to it.<sup>17</sup> This is because Canadian law is not only fraught with racist undertones built upon a colonial history but is also intricately bound to a dominant world view that is antithetical to Indigenous realities.<sup>18</sup> I argue that this dominant, colonialist world view is ever present in our current legal system and is in fact facilitated through the word “freedom.” As Mark Walters notes, “law is an interpretive enterprise, and its interpretive life is in language.”<sup>19</sup> One could say that law is not just an interpretation of language but also an interpretation of a lifeworld, the unique experiential understanding of how one comes to know.<sup>20</sup> I argue that the belief system underlying the language and lifeworlds on which Canada’s Constitution is built has affected relationships with the land and is in direct conflict with the laws, lifeworlds, and belief systems of Canada’s Indigenous peoples.<sup>21</sup>

<sup>8</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (13 September 2007), preambular para 7.

<sup>9</sup> *Ibid.*, arts 3

<sup>10</sup> *Ibid.*, arts 10, 25–30.

<sup>11</sup> *Ibid.*, art 7(2).

<sup>12</sup> Paul Joffe, “UN Declaration on the Rights of Indigenous Peoples: Canadian Government Positions Incompatible with Genuine Reconciliation” (2010) 26:2 NJCL 121.

<sup>13</sup> Interview of Femke Wijdekop by Silver Donald Cameron, *The Green Interview* (November 2015), online: <thegreeninterview.com/wp-content/uploads/wijdekop-femke-the-green-interview-transcript.pdf>

<sup>14</sup> David Ingram, *Law: Key Concepts in Philosophy* (London: Continuum International, 2006) at 50.

<sup>15</sup> John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 23 [Borrows, *Canada’s Indigenous Constitution*].

<sup>16</sup> *Canadian Charter of Rights and Freedoms*, s 8, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

<sup>17</sup> John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 107 [Borrows, *Freedom*].

<sup>18</sup> Aaron James Mills (Waabishki Ma’iingan), *Miinigowiziwin: All That Has Been Given for Living Well Together One Vision of Anishinaabe Constitutionalism* (PhD dissertation, Faculty of Law, University of Victoria, 2019) [unpublished] [Mills, *Miinigowiziwin*].

<sup>19</sup> Mark D Walters, “The Emergence of Indigenous Rights Law in Canada” in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law* (Portland: Hart Publishing, 2009) at 47.

<sup>20</sup> David Seamon, *life takes place: phenomenology, lifeworlds and place making* (New York: Routledge, 2018).

<sup>21</sup> Aaron Mills, “The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today” (2016) 61:4 McGill LJ 847 [Mills, “Lifeworlds of Law”].

The first section of this article will discuss the concept of freedom as seen through the liberal belief system that is foundational to the Canadian state. The second section will discuss how this concept, which is inextricably linked with Canadian constitutionalism, is contrary to Indigenous concepts of freedom, as told through Haisla and Nuu-chah-nulth stories. This section will explore how these differing concepts of freedom have affected our relationship with the land and the laws governing the land. The third section will explore stories as law and the possibility of using story to change our relationships with the land in order to mitigate the potential effects of climate change.

It is important to note that this article is a preliminary exploration of this topic. Its creation has led to more questions than answers, but I hope to continue its initial considerations. I feel the themes of this article have led to important apperceptions for the philosophical underpinnings of Canada's Constitution and could lead to significant movement towards advancing Canada's support for, and protection of, Indigenous knowledges, laws, and the natural world. As a country that claims to be multi-juridical, it is necessary to adapt our legal system to not only respect, but also provide space for, diverse lifeworlds. As a non-Indigenous person, I do not claim to fully understand Indigenous traditions and laws; however, I believe it is of vital importance to diversify our understanding of the world, the diverse realities contained within it, and the laws that correspond with these realities. As Robert YELKÁTFE Clifford writes, "it is not just considering a different set of laws or rules. It is a shift in our thinking and approach."<sup>22</sup> This shift must include transforming our perception of the language on which our legal system is built, in order to see language through diverse lenses, and expanding Canada's values to include a polychromatic, imaginative world view, within which the natural world is included.

## II. FREEDOM DISCUSSED THROUGH A LIBERALIST LENS

As James Tully notes, a constitution is "the system of laws, rules, norms, conventions and procedures which govern the actions of all those subject to it."<sup>23</sup> The current principles of Canada's constitutionalism are based upon fundamental freedoms, rights, and relationships, all of which attempt to determine the extent to which limits of power and control are to be exercised.<sup>24</sup> Central to Canada's constitutionalism is the concept of freedom, seen as fundamental to our rights as individuals within the state. Section 1 of the *Canadian Charter of Rights and Freedoms* in fact guarantees the rights and freedoms of its citizens, which are justified in a free and democratic society.<sup>25</sup> Freedom is seen as a fundamental human right;<sup>26</sup> both freedom and rights are seen as imperative within a person's perception of "good government" and a successful society. As Will Dudley explains, "freedom, one of our most common and powerful concepts, is used (and misused) with extraordinarily little appreciation for its significance."<sup>27</sup> The concept of freedom plays an important role within Canadian society; however, our understanding of the word differs by culture, and its realization within Canada has a significant effect on relationships within our society.

Within the Canadian legal system, there is a philosophical foundation that affects a law's interpretation. The words of our Constitution have a power that is based upon their historical and

<sup>22</sup> Robert YELKÁTFE Clifford, "Listening to Law" (2017) 33:1 Windsor YB Access Just 47 at 51–52.

<sup>23</sup> James Tully, "The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy" (2008) 65:2 Mod L Rev 204 at 205.

<sup>24</sup> Patrick J Monahan, Byron Shaw & Padraic Ryan, *Constitutional Law*, 5th ed (Toronto: Irwin Law, 2017).

<sup>25</sup> *Charter*, *supra* note 16.

<sup>26</sup> Rights and freedoms are intricately connected. Further exploration of this topic would require a discussion of the relationship between them. Due to the limited length of this article, I will not be able to discuss this relationship in detail.

<sup>27</sup> Will Dudley, *Hegel, Nietzsche, and Philosophy: Thinking Freedom* (Cambridge, UK: Cambridge University Press, 2002) at 1.

philosophical origin. Liberalism, an ideology that is considered an integral component of capitalism,<sup>28</sup> dominates the current constitutional frameworks within the Western world.<sup>29</sup> This is significant because it means that the view of the world – how we interact with it – and the principles by which we are guided are built upon liberalism and capitalism.<sup>30</sup> It is of vital importance to reflect critically on the principles that are foundational to the language used within our liberal constitutional framework. As Cormac Cullinan asserts, “language shackles us to the world we know.”<sup>31</sup> I will not go into great depth regarding the history of colonialism and liberalism, but it is important to understand the liberal view of the world because it is intertwined with the language and beliefs of Canada’s legal system and, therefore, with the ways in which relationships are conducted, both with the land and with people.

At the core of a liberal world view is the independence and centrality of the individual.<sup>32</sup> The liberal world view, which is the bedrock of the Crown, is centred on the rational free human, with non-human elements of the world appraised for their economic potential and ability to enhance individual autonomy. Liberalism is said to value objective reason, autonomy, the detachment of self from subjectivity, and the dichotomy between subject and object. It is suggested that reason must separate itself from magic, and objectivity, and must liberate itself from the community in order for freedom to be realized. Freedom could be described as the zenith of liberalism.<sup>33</sup> As Jean-Jacques Rousseau states, freedom is “the most sacred of human attributes – indeed not as an attribute at all, but as the essence of what being a man is.”<sup>34</sup> Within liberalism, freedom is understood as the ability to do things without being impinged upon; being free to do as one wishes, without impact; wanting things and not being stopped from having them. It is a power over everything and a freedom from anything. Georg Hegel suggests that freedom “simply consists of conquest or possession of that which obstructs you, until you have conquered and possessed everything.”<sup>35</sup> This concept of freedom arose in order for “man” to break free from the tyranny of religion, shift away from the feudal aristocracies of nation-states, move towards industrial capitalism, attempt to distance himself from the social inequalities of the time, and explore the possibility of expansion across oceans and lands.<sup>36</sup> It was a conscious movement towards science defeating faith, a promise for economic liberalism, political emancipation, and geographical liberty in order to create the liberated individual. As Gordon Christie writes, the essence of liberalism is that “the individual is primary and society exists to enhance freedoms enjoyed by individuals (and must be built in accord with this vision).”<sup>37</sup>

Power and freedom became inextricably linked, and John Locke theorized that the ability for an individual to exercise control was critical to gaining both power and freedom. This control not only included oneself but also expanded to include land, which was defined as “property.”<sup>38</sup> Caught within this “freedom from” and “power over” was the animacy of the natural world. The earth lost consciousness and

<sup>28</sup> Radha D’Souza, “The ‘Rights’ Conundrum: Poverty of Philosophy amidst Poverty” in Reza Banakar, ed, *Rights in Context: Law and Justice in Late Modern Society* (London: Routledge, 2016) 55.

<sup>29</sup> Mills, *Miinigowiziwin*, *supra* note 18.

<sup>30</sup> Michael J Sandel, “The Procedural Republic and the Unencumbered Self” (1984) 12:1 *Political Theory* 81 at 83.

<sup>31</sup> Cormac Cullinan, *Wild Law: Manifesto for Earth Justice*, 2nd ed (Cambridge, UK: Green Books, 2011) at 97.

<sup>32</sup> Mills, “Lifeworlds of Law,” *supra* note 21.

<sup>33</sup> Philosophers such as Thomas Hobbes, John Locke, Immanuel Kant, Jean-Jacques Rousseau, and Georg Hegel were some of the most well-known thinkers responsible for the liberalism movement and the current conceptions of freedom.

<sup>34</sup> Quoted in Isaiah Berlin, *Freedom and Its Betrayal*, edited by Henry Hardy, 2nd ed (Princeton, NJ: Princeton University Press, 2014) at 35.

<sup>35</sup> Quoted in *ibid* at 111.

<sup>36</sup> Lisa Lowe, *The Intimacies of Four Continents* (Durham, NC: Duke University Press, 2015) at 3–7.

<sup>37</sup> Gordon Christie, *Canadian Law and Indigenous Self-determination: A Naturalist Analysis* (Toronto: University of Toronto Press, 2019) at 280.

<sup>38</sup> John Locke, *The Second Treatise of Government* (Cambridge, UK: Hackett Publishing, 1690).

spirit amidst the struggle for liberty. If land was not “productive” to capitalist growth, if it was not “owned,” tilled, and cultivated, then it was described as useless and “land to no one.”<sup>39</sup> Therefore, within the liberalist context, property and freedom are intimately connected. The natural world transformed into property and became inanimate capital to control. The idea of property initially began with the individual’s dominion of himself, but it was modernized to include land – to transform not only himself but also the earth. The dichotomy between subject and object that was infused into liberalist beliefs decontextualized the consciousness of the natural world, separating life from land. Earth was reduced to a form of property in order to achieve freedom. The desire for rights and freedoms necessitated the death of the natural world. The earth had to be inextricably linked to objectivity and property in order to control, alter, and exercise freedom. Property rights expanded the world view to include the belief that humans had the authority to dominate the earth as an object.<sup>40</sup> As Alan Ryan illustrates,

[t]he idea that we are free agents makes little sense unless we are free to do something; what we do makes a difference to the physical world, so we must have the right to control it, alter it and dispose of it in the exercise of our freedom. The thought that we might not be able to appropriate things is incoherent, for what can prevent us? The appropriating will can only be forestalled by another such will, and things have no such will of their own. ... The world needs an owner; it has no value or point until it is given one.<sup>41</sup>

The expansion of property as a requisite for freedom established an opportunity for colonial settlement in North America. Lisa Lowe describes liberalism not as being complicit in colonialism but as the very architect of colonialism.<sup>42</sup> As Locke wrote, the “wild woods and uncultivated waste of America” was an inanimate wasteland awaiting allocation for property in the liberalist search for freedom.<sup>43</sup> The uncultivated land of Locke’s statement is a reflection of the liberalist beliefs that made their way to Canada. As Walters writes, it is an “evocative expression of an entire cultural tradition concerning humanity, a tradition with a complete set of associated social, political, legal, religious and philosophical assumptions.”<sup>44</sup> As a result of this tradition, colonialism emerged, and the liberalist search for freedom undeniably shaped history’s most disastrous subjugation of peoples and land.

### III. *TERRA NULLIUS* AND ITS CONNECTION TO CANADA’S CONSTITUTION

As discussed above, freedom in the liberalist sense has two crucial principles. First, the fundamental presumption that an individual’s freedom is the essence of what it is to be human. Second, that freedom is contingent on one’s ability to do things with their own property (both body and land) without any impediment – it is a basic human right to control and dominate what one desires, when it is desired, without responsibility. Commodifying land in order to possess it became an essential component to the pursuit of freedom. Within the eyes of influential philosophers and political economists like John Locke, Ramsay

<sup>39</sup> The concept of *Terra Nullius* is expanded below. For an expanded discussion of the concept, see John Borrows, “The Durability of *Terra Nullius*: Tsilhqot’in Nation v British Columbia” (2015) 48 UBC L Rev 701 [Borrows, “Durability”].

<sup>40</sup> Cullinan, *supra* note 31 at 109.

<sup>41</sup> Alan Ryan, *The Making of Modern Liberalism* (Princeton, NJ: Princeton University Press, 2014) at 593.

<sup>42</sup> Lowe, *supra* note 36 at 9.

<sup>43</sup> John Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil-Government in Two Treatises of Government* (Cambridge, UK: Black Swan, 1698) at para 37.

<sup>44</sup> Walters, *supra* note 19 at 45.

McCulloch, and Thomas Malthus, if the land had not been converted into property through labour, then those who were using it could not be free and, therefore, could not possibly be human. The depiction of North America as unused and uninhabited by those that were considered “civilized” and “free” was “a central trope of settler colonialism, employed to banish, sequester, and dispossess indigenous peoples and their lands.”<sup>45</sup>

*Terra nullius*<sup>46</sup> and the Doctrine of Discovery, the terms used to characterize land that had not been settled by colonizing European nations, were used as legal regimes to justify settler supremacy. The assertion of title built upon the colonialist doctrines of discovery and liberal legalism gave settlers exclusive authority to appropriate Indigenous lands. As a consequence, Indigenous laws, traditions, power structures, and beliefs were undermined, and this was directly tied to the lands taken.<sup>47</sup> The concepts of freedom, property, and colonialism were entangled into a web of liberal thought, upon which Canada’s constitutionalism is founded. It seems implausible that Canada’s Constitution would continue to adhere to these outdated and willingly racist doctrines, but objectivity, property, and autonomy are ensnared within the dominant grasp of liberal legalism.<sup>48</sup> The entire legal structure of Canada was, and still is, impacted by the liberal view of freedom, the objectification of the earth as property, and the principle of settler supremacy. This is because liberalist beliefs and world views are inextricably bound to the language of the Constitution, which, inevitably, causes those who uphold the legal system (along with its fundamental freedoms) to share its attitudes.<sup>49</sup> As expressed by James (Sákéj) Youngblood Henderson, “Indigenous thought and law exists in Canada as a constitutional whisper; a problem Eurocentric law has not been able to eliminate or remedy. Most Canadian and Aboriginal judges, lawyers and students have been immersed in Eurocentric thought and in its educational structure, with little awareness of Indigenous thought or experience. Awareness of those excluded traditions is the first step in creating a postcolonial order.”<sup>50</sup>

The belief system underlying freedom has had significant ramifications to relationships, both with the natural world and with Indigenous peoples in Canada. The liberalist belief system upon which freedom is understood has constitutionalized a world view that disregards diverse beliefs and is belligerent to disparate understandings of relations. Canada’s history, and, indeed, its inception, is riddled with examples justifying this claim. I argue that Canada’s sovereignty is a myth as Canada claimed sovereignty over the lands based upon a belief that the “level of social organization was insufficient to occupy and control land,”<sup>51</sup> appropriating lands from Indigenous sovereign nations in order to assume control and ultimate sovereign power.<sup>52</sup> Undoubtedly, this thinking has contributed to oppressive, violent, and prejudiced relationships between Canada’s Constitution and Indigenous peoples. This singular belief system has attempted to erase diverse understandings of freedom, the land, and community, using the legal system to do so. Leroy Little Bear described this insight when he wrote that “one of the problems with colonialism is that it tries to maintain a singular social order by means of force and law, suppressing the diversity of

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<sup>45</sup> Lowe, *supra* note 36 at 10.

<sup>46</sup> Latin for “nobody’s land.”

<sup>47</sup> Robert J Miller et al, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford: Oxford University Press, 2010).

<sup>48</sup> Borrows, *Freedom*, *supra* note 17.

<sup>49</sup> Walters, *supra* note 19.

<sup>50</sup> James (Sákéj) Youngblood Henderson, “Postcolonial Indigenous Legal Consciousness” (2017) 1 Indigenous LJ 1 at 55.

<sup>51</sup> Borrows, “Durability,” *supra* note 39 at 716.

<sup>52</sup> For further discussion on this particular argument, see Michael Asch, “From Terra Nullius to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution” (2002) 17 CJLS 23.



human worldviews.”<sup>53</sup> One of the most significant contradictions between the liberalist world view and Indigenous lifeworlds is the meaning of freedom.

It is important to note that Indigenous knowledges, protocols, and laws may be taught and expressed differently compared to colonialist structures. It is vital that the “what to learn” and the “how to learn” are connected respectfully when engaging with different world views.<sup>54</sup> I feel it is of critical importance to learn from Indigenous knowledges and legal traditions in order to rethink our conceptions of the world and our relationships within that world. As our connection with the earth deteriorates to the brink of disaster, we must re-evaluate how our understanding of the world and the laws attached to such understandings are impacting our relationships. As Radha D’Souza illustrates, “Land is, quintessentially, a relationship. Land is not a ‘thing’. It is a bond that ties people to nature and to each other. Historically, rights transformed places into property. It transformed a relationship into a thing, a commodity.”<sup>55</sup> Within many Indigenous teachings, beliefs and the land are intricately connected, and because the liberalist belief system has disconnected this bond, it is crucial that we learn – respectfully and appropriately – from the traditions and laws that understand this vital relationship.

#### IV. FREEDOM DISCUSSED THROUGH INDIGENOUS STORIES

Within this section of the article, I move liberally between the terms “freedom,” “law,” and “knowledge” because they are inextricably connected to one another. The importance is not the description of words or the definition of laws; rather, it is the active engagement with the laws and meanings discovered within the knowledge. As Sarah Morales points out, it is important to ask several questions while engaging with Indigenous knowledges and legal structures, such as how do we avoid assimilating these laws; in what language should these laws be shared and who has the right to share them; and is the relationship between the law, the knowledge, and the culture being respected?<sup>56</sup> As a non-Indigenous person taught within current Canadian structures, I do not attest that I have any claim to speak on behalf of this knowledge. As Laurie Anne Whitt points out, traditional teachings and storytelling teach us that, “if knowledge is not conditioned by respect, it cannot be had.”<sup>57</sup> I am aware that I am on a journey where I may make mistakes; however, I will endeavour to learn with the utmost respect, keeping my responsibility to the natural world at the forefront of my learning.

I will explore freedom and its relationship to law through the novel *Monkey Beach*, written by Haisla author Eden Robinson and the Nuu-chah-nulth creation story *How Son of Raven Captured the Day*, recorded in Umeek, E. Richard Atleo’s *Tsawalk: A Nuu-chah-nulth Worldview*.<sup>58</sup> I discuss the Indigenous relationship to freedom through story because stories are said to be the most reliable source of guidance regarding the nature of reality and the development of positive relationships between all forms of life.<sup>59</sup>

<sup>53</sup> Leroy Little Bear, “Jagged Worldviews Colliding” in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000) at 77.

<sup>54</sup> Laurie Anne Whitt et al, “Belonging to Land: Indigenous Knowledge Systems and the Natural World” (2001) 26:2 *Oklahoma City UL Rev* 701.

<sup>55</sup> Radha D’Souza, *What’s Wrong with Rights?* (London: Pluto Press, 2018) at 5.

<sup>56</sup> Sarah Morales, “Locating Oneself in One’s Research: Learning and Engaging with Law in the Coast Salish World” (2018) 30:1 *CJWL* 144 at 147; Walters, *supra* note 19.

<sup>57</sup> Whitt et al, *supra* note 54 at 728.

<sup>58</sup> Eden Robinson, *Monkey Beach* (Toronto: Vintage Canada, 2001); Umeek / E Richard Atleo, *Tsawalk: A Nuu-chah-nulth Worldview* (Vancouver: UBC Press, 2004) [Umeek, *Tsawalk*].

<sup>59</sup> Umeek / E Richard Atleo, *Principles of Tsawalk: An Indigenous Approach to Global Crisis* (Vancouver: UBC Press, 2011) [Umeek, *Principles of Tsawalk*].

Within Indigenous communities, stories communicate spiritual, moral, and political principles. Laws are embodied within the lived experience and traditional knowledge passed jawbone to jawbone through stories.<sup>60</sup> Stories describe the interconnectivity of all processes and relationships and interpret the responsibilities associated with these relationships. Freedom is paramount to the expression of these relationships and is rooted through the natural world. As Aaron Mills explains,

[o]f course, as carefully as we might observe earth processes and relationships in our efforts to root ourselves in creation, none of us had unmediated access to earth's rhythms. We can only ever understand them through a story. Thus our roots are not really the earth itself, but rather the stories we tell of it. Creation stories set out a people's way of being in and of the earth. They give us our ideas of what a person is, what freedom is, and thus what community is. The trunk is the constitutional order that manifests these understandings as political community. It's our framework for living together called into being by the story we tell.<sup>61</sup>

In regard to the two stories told in this article, I have been given verbal permission by the stories' authors to apply them and their legal teachings to this work.<sup>62</sup> These stories can also be found in the public domain. There is an important distinction between public and private stories that must be respected. Within the Haisla community, for example, there are three types of stories: formal stories, as told through the potlatch; informal stories, often seen through trickster stories, and casual stories, expressed in everyday life through family storytelling. Cultural copyright and systems of law are tied to the potlatch. These stories are for community and community only; they create cohesion, reliability, and trust within the community. To tell these stories outside of the nation would be an infringement of law and disrespectful to the potlatch protocol. The informal and casual stories (the domain to which *Monkey Beach* and *Son of Raven* inhabit) are a public record of the laws of the Haisla and Nuu-chah-nulth communities. They denote laws and responsibilities as expressed through the responsibilities and relationships of the characters, told within a familial setting. As Umeek explains, "[a]lthough the characters never change, a family would have its own version of a story. Despite variations of detail, however, common themes tended to remain intact, and the variations took nothing away from the principal truths conveyed."<sup>63</sup> These two stories are meaningful to this article because they explore Indigenous relationships with the concept of freedom, including its power, importance, and the obligations that are associated with it.

To fully engage with the teachings of these stories, it is important to place ourselves within the lands to which these stories speak. Indigenous lands, cultures, and knowledges are inseparable. The traditional knowledge and laws of the land come to life amidst this relationship and are interpreted through story. Seeing the natural world within our imaginations provides "orientation to, and an explanation of, the nature of existence."<sup>64</sup> Both *How Son of Raven Captured the Day* and *Monkey Beach* take place in the

<sup>60</sup> John Borrows, "Living between Water and Rocks: First Nations, Environmental Planning and Democracy" (1997) 47:4 UTLJ 417 at 454.

<sup>61</sup> Aaron Mills, "Rooted Constitutionalism: Growing Political Economy" in Michael Asch, James Tully & John Borrows, eds, *Resurgence and Reconciliation: Indigenous-settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) at 157 [Mills, "Rooted Constitutionalism"; Asch, Tully & Borrows, *Resurgence*].

<sup>62</sup> Interview of Eden Robinson by Meghan Robinson, 4 November 2020; Interview of Umeek / E Richard Atleo by University of Victoria students, 18 November 2020. Both interviews were completed in the University of Victoria's Environmental Studies Research Colloquium.

<sup>63</sup> Umeek, *Tsawalk*, *supra* note 58 at 4.

<sup>64</sup> *Ibid* at 3.

temperate rainforests of British Columbia. The natural setting of these two stories is a coastline “made of drowned mountains ... as the last Ice Age ended, the water rose, covering the shores of the young, jagged mountains until they appeared as they are today: islands and mainland joined by a complex system of twisting inlets, canals, passages, rivers, streams, waterfalls and lakes.”<sup>65</sup> It is a landscape where the wildness of the ocean melts into a labyrinth of green giants, who are often seen cloaked in a soft, soundless blanket of mist. Crows, ravens, and eagles interweave themselves above the howls of the wolves, amblings of the bears, and the deep descents of the orcas. Ocean squalls, forest showers, and mountain storms are customary, displaying this region’s untamed magnificence. The endless expanse of lush, mossy magic juxtaposed against the tumultuous, yet periodically peaceful, stretch of ocean shapes the setting of these two Indigenous stories.

### V. HOW SON OF RAVEN CAPTURED THE DAY

This story comes to us from the Nuu-chah-nulth (“people who dwell along the mountains”), who live on the west coast of Vancouver Island, British Columbia:

In the beginning of time, there was no light.<sup>66</sup> Across the river from Son of Raven, a Chief guarded the light of day, safely stowed away in a box. Those who were constantly immersed in darkness began to tire of their reality. “We have to capture the light of day, and we will do so by distracting the Chief with a dance,” cried Son of Raven. “Because Son of Deer can run far and jump high, we will tie Cedar around his tail, and while the Chief who owns the day watches Son of Deer dance, Son of Deer will subtly make his way towards the box, plunge the cedar into the fire and run away with the light of day!” All were in compliance with the plan, and protocols began in preparation for Son of Deer to appear before the Chief.<sup>67</sup> With preparations finished, protocols in place and Son of Deer dressed in his most beautiful dancing regalia, they made their way across the waters to dance for the Chief. Son of Deer leapt, soared and bounded, bewitching the Chief and his people with the beauty of his movements. He performed with the needs of those immersed in darkness planted on his shoulders. Son of Deer effortlessly danced his way towards the Day Box, without any detection from the Chief. Swiftly, he dipped the cedar in the fire and hastily made his way to the exit. However, the Chief and his people were faster. They snuffed out the fire on the cedar, and promptly caught on to the plan of Son of Raven attempting to capture the daylight.

Those immersed in darkness joined together to develop a new plan. The salmon run was in full force, so the people who lived in darkness decided to use this time to their advantage. They transformed into salmon, waiting to be caught, so they could then transform again and capture the daughters of the Chief. Unfortunately, Son of Raven was known for his ego, and their plan was foiled when Son of Raven transformed himself into a massive King Salmon, catching the suspicions of the people of the day. The people who lived in darkness tried again by transforming into salmonberry, but again Son of Raven’s ego took hold and his transformation into a giant salmonberry ruined yet another plan.

<sup>65</sup> Robinson, *supra* note 58 at 193.

<sup>66</sup> Interestingly, the Māori creation story follows similar principles, including the world beginning with no light.

<sup>67</sup> As Umeek / E Richard Atleo explains, there were important protocols that had to be followed in order for Son of Deer to dance for the Chief who owned the Day. These protocols are not normally described in the story because they would have been familiar to those in the Nuu-chah-nulth community who would be listening to the story. As Umeek explains, “an important underlying assumption about traditional experience is that the whole of life and existence is characterized by relationships that are inherent” (Umeek, *Tsawalk*, *supra* note 58 at 7). The traditional protocols included prayers, acts of self-discipline, cleansing ceremonies, and extensive preparation.

Thus, the people who lived in darkness used Raven's particular desire to do great deeds to their advantage. They turned Son of Raven into a tiny leaf, floating in the Chief's well. The Chief's daughter took water from the well, swallowed the tiny leaf and soon after became pregnant. The Chief's daughter bore a son, whose constant cries roused the suspicions of the people who speculated it may be Son of Raven. However, unable to know for sure, they accepted the son. The boy grew, and as he grew he continued to whine, his cries only suppressed when he was allowed to play in a canoe. His mother owned a paddle of great power, which the boy constantly wailed for. His whines evoked the suspicions of the people who lived in daylight, but they said nothing.

Eventually, the boy found the Day Box and cried that he wanted to play with the Day Box in the canoe. The Chief refused. On and on, day after day, the boy cried to play with the Day Box in the canoe. Unable to listen to the boy's relentless whining, the boy's grandmother urged the Chief to give in. The boy was given permission to play with the Day Box in the canoe, and the crying stopped. Of course, the boy was watched intently by all those on shore. Time went by and the people on the shore let their eyes wander. All of a sudden, the boy grabbed his mother's great paddle, jumped in the canoe with the Day Box, and plunged the paddle in the water, heaving his canoe across it. Before the Chief and his people could catch him, the boy came upon the other shore and opened the Day Box. It was the first time the people of darkness had seen light, brought to them by Son of Raven. They were immersed in the brilliance of day. Even now, Ravens are given first choice of food at low tide, an honour and privilege given to them for the gift of light Son of Raven gave to the people of darkness.

## VI. MONKEY BEACH

This story comes to us from the Haisla ("dwellers downriver") and takes place at the head of the Douglas Channel in British Columbia, where the Haisla have lived for over nine thousand years:

"Contacting the dead, lesson one. You must control the way you enter this state of being that is somewhere between waking and sleeping."<sup>68</sup> Lisamarie is a sister, daughter, granddaughter, niece and, somewhat reticently, a burgeoning medicine woman. Lisamarie and her family are Xa'aaisla, now commonly known as Haisla, living at the end of the Douglas Channel, a boat ride away from the summer and winter villages her ancestors used to move between before colonization found its way up the channel in the 1800s.

Quiet and solitary, Lisamarie was what the other teens would call "a loner". School felt like a jail sentence, friends were non-existent, and her parents did not understand her. Lisamarie's temporary solace could only be found fishing with Mick,<sup>69</sup> picking *oxasuli*<sup>70</sup> with Mama-oo,<sup>71</sup> or searching for B'gwus<sup>72</sup> at Monkey Beach with Jimmy.<sup>73</sup> But how could she be anything different? No one was like her. When her dreams first began, before she learned to control them, she was constantly awoken by a little man dancing in her room, hurling terrifying noises at her. Bad things would happen following his midnight visits, and no one ever believed her. They would just call her crazy, tell her she's dreaming. When she told her dad about the little man, he looked at her like she was dancing around the room naked. When she told her

<sup>68</sup> Robinson, *supra* note 58 at 139.

<sup>69</sup> Lisamarie's uncle.

<sup>70</sup> The *oxasuli* plant is a traditional medicine plant in Haisla territory. It is a powerful medicine that can be a strong medicine or can lead to sickness or even death if it is not shown respect. In *Monkey Beach*, it is used as a symbol to portray the potential danger in Lisamarie's spiritual gifts if not controlled.

<sup>71</sup> Lisamarie's grandmother.

<sup>72</sup> *B'gwus*, known as "the wild man of the woods" is a traditional Haisla story.

<sup>73</sup> Lisamarie's younger brother.

Mom, she would just give Lisamarie a hug and say “Everyone has bad dreams – they’re just dreams and they can’t hurt you.”

When she told Jimmy that she’d seen him die, he just laughed and ruffled her hair. How was she going to protect her baby brother if no one would listen? Her only friends were Mama-oo and Mick. They understood her. They remembered the old ways. They regarded her dreams a gift, a portal to the traditional Haisla ways. But they were gone. That same little man came to her the nights before they died. He warned her and she did nothing but stew in her terrified silence.

She sped towards Monkey Beach in her putt-putt motorboat, the winter’s surf freezing her hands to the throttle and the whisper of the Coast Guard through the receiver: “Jimmy’s boat is missing” on a terrible feedback loop in her brain. To try and keep her mind occupied with something other than her worst fears being realized, she tried to remember the guidance of her Mama-oo when they would go out tromping through the forest together.

“‘You’re giving tobacco to a tree?’

‘The tobacco is for tree spirits. You take something, you give something.’

‘What do spirits look like?’

‘I don’t know. Never seen one. The chief trees – the biggest, strongest, oldest ones – they had a spirit, a little man with red hair. Olden days, they’d lead medicine men to the best trees ...’<sup>74</sup>

It was then that her Mama-oo told her about her gift. That her ancestors could also travel to the spirit world. She was considered a medicine woman. Not many were like her anymore but if they were, they were doing it in secret. The old ways were gone.

This time she was going to acknowledge her gift, use it to make sure Jimmy made it safely where he was meant to go. She knew she could access the spirit world and save Jimmy using the powers found on Monkey Beach. Her Mama-oo told her: “In a time distant and vague from the one we know now, flesh was less rigid. Animals and humans could switch shapes simply by putting on each other’s skins. Animals could talk, and often shared their knowledge with the newcomers that humans were then.”<sup>75</sup> It was on the shoreline of Monkey Beach, knees resting on the soft moss and the remnants of clam shells scattered across the sand, that she found Micky, Mama-oo and Jimmy: a fire in the distance, dark figures standing in the firelight, singing a farewell song in Haisla. Jimmy smiles at her. She knows he’s going to be ok. She knows he is with the ancestors. The crows dance around her head, and her Mama-oo pushes her back towards the world of the living. Aux’gwalas, they sing “Take care of yourself, wherever you’re going.”<sup>76</sup>

## VII. FREEDOM THROUGH AN INDIGENOUS LENS

Although neither story explicitly defines freedom, they provide the reader/listener with the capacity to attain their own interpretations and takeaways. The stories provide a mechanism for transmitting laws and lessons without confining the stories to an explicit definition of their significance. As Alan Bruce Hardy writes, “teachings that asserts a singular strict definition or explanation would arguably stifle the creativity which provides flexibility for law to adapt to changing times and circumstances.”<sup>77</sup> We will all take away different learnings from these stories. The stories provide a subjectivity to their interpretation that is an inherent quality of our lived experience. As Umeeek, E. Richard Atleo says, stories are “a constellation of

<sup>74</sup> Robinson, *supra* note 58 at 152.

<sup>75</sup> *Ibid* at 210.

<sup>76</sup> *Ibid* at 374.

<sup>77</sup> Alan Bruce Hanna, “Dechen ts’edilhtan: Implementing Tsilhqot’in Law for Watershed Governance” (PhD dissertation, University of Victoria, 2020) [unpublished].

teachings developed to maintain and to enhance life's major purpose, namely, the development of harmonious relationships between and among all life forms."<sup>78</sup> For me, even though they describe differing realities, they share similar thematic conclusions.

I have used these two stories because they look at freedom through two different lenses, one through the lens of the animal world and the other within the domain of the spirit world. Both connect freedom with community and the land. These stories are a conversation with the natural world, transmitting "important information about the nature of that world, its beings and processes. [They] are a means of relating knowledge and of correlating behaviour ... accounts of human listening, speaking and communicating with the nonhuman," affirming the importance of relationships with the natural world and the freedom correlated to those relationships.<sup>79</sup> These stories provide creative, dynamic lessons for interpreting and responding to lived complexities. They demand that readers ask themselves important, pertinent questions in regard to freedom: how would our laws govern our freedoms if they were expressed through stories; how would we see the natural world differently if we understood our fundamental freedoms as a responsibility to the collective community, a community in which the natural world is included?

As noted above, neither story explicitly defines freedom; however, they creatively lead the reader/listener towards a series of lessons that formulate unique interpretations of the events at hand. Therefore, my description below is based upon my own interpretations of the stories, in conjunction with personal interviews with the authors. Both stories describe freedom as a responsibility and an obligation to members of their community. The freedom to shape-shift and to move liberally between the spirit world, the non-human world, and the physical world not only are seen as gifts but also denote privilege that must be used to benefit all. Raven uses his freedom to transform himself, despite the inherent risks of being consumed, so that he may bring daylight to his community. Lisamarie travels freely to the spirit world, even though it is a place that brings her great discomfort, so that she may learn for the benefit of her brother and her community as a whole.

The natural world features prominently as a central figure in both stories, a fundamental facet to the foundation of freedom. Both of the characters have a respectful, reciprocal relationship with the natural world. They use the land as a teacher, protector, transformer, guide, and sustainer. Most aspects of the natural world can be seen in these stories: water, earth, animals, sun, and sky, identifying the inextricable relationship between life, light, and all aspects of being. Both Raven and Lisamarie are intimately connected and inextricably linked to the natural world and, without it, would be nothing. Without a symbiotic relationship with the land, freedom would not be possible. Freedom, as described within these two Indigenous stories, describes a series of interconnected relationships between the natural world, the collective, and the responsibility owing to both. Everything is interconnected.<sup>80</sup> Everything exists within a relationship, whether directly or indirectly. This interconnected relationship also encompasses law, governance, knowledge, beliefs, and lifeworlds. One does not and cannot exist without the other, and freedom exists because of these relationships and is not antithetical to them.<sup>81</sup>

Another aspect of these stories that permeates throughout is the critical relationship between freedom and respect. Although Raven and his friends were attempting to break rules to attain daylight, they respect and continue to follow important community protocols. They do not see these protocols as limiting their

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<sup>78</sup> Umeek, *Principles of Tsawalk*, *supra* note 59 at 54.

<sup>79</sup> Whitt et al, *supra* note 54 at 734.

<sup>80</sup> Umeek, *Principles of Tsawalk*, *supra* note 59.

<sup>81</sup> Diane Engelstad & John Bird, *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* (Toronto: Anansi, 1992).

freedom, but, rather, the idea of respecting protocol is tied to their ability to gain freedom. In *Monkey Beach*, both Lisamarie's brother and uncle died on the ocean. Respecting the ferocity and potential dangers of the natural world is a crucial aspect of survival and, ultimately, of freedom.

These stories portray an understanding within many Indigenous communities that freedom shapes one's ability to move liberally between different worlds in order to gain access to valuable insights, observations, laws, or conditions for the community. Both Son of Raven and Lisamarie use their freedom to do something for the collective. Although freedom may be a lonely endeavour, as seen in Lisamarie's journey, it is not for autonomous opportunity. Rather, it is the freedom to see other life forms through a relational framework, whether it be through the spirit world, the animal world, or the physical world. As Aaron Mills explains, "if we're always already connected in relations of deep interdependence, then the question of freedom is never about standing apart from the other and always about *how* to stand with it."<sup>82</sup> By looking to these stories in order to explain the essence of freedom, we sever the colonialist belief in "freedom from" and instead move towards the Indigenous concept of "freedom within" the collective. By looking to these stories, we begin to discover that the colonial, liberal vision of freedom creates the consequences of unfreedom<sup>83</sup>: trapping individuals in a disharmonious, detached relationship with one another and with the natural world and constituting laws and governance that may lead towards the irreversible effects of climate change. Relearning the meaning of freedom through Indigenous stories has the potential to guide our value systems and governing bodies towards a dependent, harmonious relationship with the natural world. We confront the dominant liberal world view that has led to the separation of the self and instead look to Indigenous knowledges that have the capability of revitalizing the possibility for interdependence and, thus, the possibility of freedom.

## VIII. STORYING THE CANADIAN CONSTITUTION

In many Indigenous nations, stories are used to convey laws. They are a method for legal dissemination at a nation level and are the description of vital value systems handed down from generation to generation. For the Canadian state, the Constitution is our source of law, the source from which the state's value system is meant to stem.<sup>84</sup> Some argue that the liberalist beliefs of the colonial state have constructed Canada's Constitution – the very foundation of our country's laws – which have therefore constructed the values we are meant to exemplify.<sup>85</sup> If this is so, and the very backbone of Canada's values derives from a belief system that has not only led to the attempted destruction of Indigenous nations but is also currently destroying our planet, then we must learn a new story. Stories are a means of communicating across cultures, landscapes, and realities. Stories softly sway the directions of our values; they act as guides to our actions and "reflect unique understandings about what there is and how one can know: a lifeworld."<sup>86</sup> Stories are the legal imaginations of reality, the direction of our responsibilities that are associated with our freedoms.<sup>87</sup> Constitutional foundations follow similar principles to stories, as they define the guiding principles of behaviour for a society. In fact, stories and constitutions are analogous.

<sup>82</sup> Mills, "Rooted Constitutionalism," *supra* note 61 at 160, emphasis in original.

<sup>83</sup> James Tully, "The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy" (2008) 65:2 *Mod L Rev* 204 at 205.

<sup>84</sup> Borrows, *Canada's Indigenous Constitution*, *supra* note 15.

<sup>85</sup> Gavin W Anderson, "Imperialism and Constitutionalism" in Emiliios Christodoulidis & Stephen Tierney, eds, *Public Law and Politics: The Scope and Limits of Constitutionalism* (London: Routledge, 2008) at 129.

<sup>86</sup> Mills, "Lifeworlds of Law," *supra* note 21 at 847.

<sup>87</sup> John Borrows, *Living Law on Living Earth: Aboriginal Religion, Law and the Constitution* (Toronto: University of Toronto Press, 2006).

There are varying questions regarding how to restructure Canada's legal system to move towards a multi-juridical system and therefore work towards a reconciliatory vision of cultural and natural diversity. What if our Constitution consisted of stories? It is important to note here that these questions must be answered by Indigenous nations and peoples themselves. As a non-Indigenous person, it is imperative that I do not repeat the assimilative atrocities of Canada's past, of which law and research were an important part. I do not claim to know the answer to this question, nor do I wish to devise solutions without making it clear that this discussion cannot be had without Indigenous peoples. If we are to discuss Indigenous knowledge, laws, and language on Indigenous lands, then non-Indigenous peoples must sit down, make space, listen quietly, and actively engage with Indigenous peoples in order to constitute the decolonization of our own knowledges, beliefs, and lifeworlds and avoid repeating our past and present. Prominent Indigenous scholars such as Val Napoleon, John Borrows, and Aaron Mills discuss potential approaches to changing Canada's Constitution in order to better reflect and represent Indigenous world views. A concern I note (and that these authors share) is the potential assimilation of Indigenous laws and lifeworlds into the common law, due to the power of the state and the oppositional nature of the belief systems that have created Indigenous and common laws.

Val Napoleon discusses the possibility of engaging with Indigenous legal traditions through stories.<sup>88</sup> Napoleon writes: “[W]e believe that applying the tools of legal analysis and synthesis to Indigenous stories and oral histories has the potential to increase the accessibility and intelligibility of Indigenous laws.”<sup>89</sup> I believe that we must take Napoleon's approach even further. I think Canada must work alongside Indigenous nations to completely reconstruct the Canadian Constitution so that it is built in equal partnership with Indigenous peoples and Indigenous laws. We must story our Constitution. By storying our Constitution, law is creatively built, lived, and practised through relations, adapting to environmental and cultural changes, exemplifying freedom. Canada is currently shackled to a constitutional foundation that has been created by narrow, self-serving beliefs, imprisoning Canadians in a story that will not have a positive ending. It is clear that we need a profound shift in our relational understanding of language, which is disseminated through our Constitution and how this understanding affects our interactions.

Our Constitution could provide the opportunity to listen to a diversity of stories, recognizing the spiritual, philosophical, political, and social values conveyed in each. The single story that our Constitution has delineated could transform into a metaphoric forest of creativity and meaning. Our Constitution could become the accumulated wisdom and imagination of realities, worlds, relationships. It could story a path that illustrates our social freedoms and fulfills the responsibilities to all our relations, including the earth.<sup>90</sup> By storying our Constitution, we reimagine and revitalize our beliefs, identities, and our relationships, for stories are all that we are.<sup>91</sup>

## IX. CONCLUSION

We currently live in a world where the dominant belief in freedom has created an extractive, unsustainable relationship with the natural world that is presently in crisis. Colonization to the natural world and Indigenous populations in Canada is connected and continues today. In the pursuit of freedom initiated by the liberalist diaspora, Indigenous cultures were undermined as “savage,” “primitive,”<sup>92</sup> and

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<sup>88</sup> Val Napoleon & Hadley Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” (2016) 61:4 RD McGill 725.

<sup>89</sup> *Ibid* at 748.

<sup>90</sup> Umeek, *Principles of Tsawalk*, *supra* note 59.

<sup>91</sup> Thomas King, *The Truth about Stories: A Native Narrative* (Toronto: House of Anansi Press, 2003).

<sup>92</sup> Thomas Hobbes, *Leviathan Parts I and II*, edited by Herbert W Schneider (Indianapolis: Bobbs-Merrill, 1958) 25-136.



“subjective” amidst the quest for property and, thus, the search for freedom. The settler constitutional framework devised through this belief system subjugated Indigenous peoples and the natural world to live within a world view that was antithetical to the Indigenous understandings of community, law, freedom, and reality.<sup>93</sup> Canada has been shaped by an alienated belief, estranging itself from the importance of the community and the earth.<sup>94</sup> As Jim McDowell writes, “the fatal flaw in the cosmology of Westerners is our narrow, self-centered attitude toward our surroundings. It has turned us primarily into takers, not givers.”<sup>95</sup>

This article is an introductory exploration into two fundamental questions; how do we reimagine our understanding of the natural world in order to respect and protect natural and ontological diversity, and how do we change our legal and political structures to reflect these understandings? I argue that the dominant constitutional structures that regulate our actions need to Indigenize their understanding of the word “freedom.” The Indigenous understanding of freedom is illustrated in traditional stories, and if we adhere to the knowledge and laws of these stories, we can learn from “a system of values which induces a profound attitude of respect for the forces which give life to the complex world of which we are but a small part.”<sup>96</sup> Through story, we can reconceptualize the essence of what it is to be human, to be free, to act for, with, and within our communities in an interdependent, harmonious relationship with the natural world.

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<sup>93</sup> Mills, “Rooted Constitutionalism,” *supra* note 61.

<sup>94</sup> James Tully, “Reconciliation Here on Earth” in Asch, Tully & Borrows, *Resurgence*, *supra* note 61, 83 at 89.

<sup>95</sup> Jim McDowell, *The Enigma of Cannibalism: Hamatsa on the Pacific Northwest Coast* (Vancouver: Ronsdale Press, 1997) at 248.

<sup>96</sup> Robert A Williams Jr, “Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World” (1994) 96:4 W Va L Rev 1133 at 1135.