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2017

Law As ... Forest: Eco-logic, Stories and Spirits in Indigenous Jurisprudence

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Recommended Citation

Anker, Kirsten, *Law As ... Forest: Eco-logic, Stories and Spirits in Indigenous Jurisprudence*, *Law Text Culture*, 21, 2017, 191-213.

Available at: <http://ro.uow.edu.au/ltc/vol21/iss1/10>

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Abstract

Taking up the suggestion that minor jurisprudence may consist either in the perpetual critique of the outsider to major jurisprudence or in the initiation of new grounds for jurisprudence, this essay wonders whether some forms of Indigenous jurisprudence – with a focus on the articulations of North American scholars – might do both. Emerging out of embodied relations with sentient forests, mountains, rivers and other non-humans, practices of Indigenous jurisprudence are at once a living critique of the disenchanted character of modern law, as well as a literal grounding of jurisprudence in relationships to place. The essay takes Indigenous jurisprudence on its own terms, particularly through ecologies as teacher, place-based stories and a participatory consciousness that experiences the spirit of the land, while attempting to articulate this jurisprudence in the idiom of the author's own intellectual tradition, such as through the scientific foundations of Earth jurisprudence, through metaphor in the analysis of myth, and through semiotics as a way of comprehending a sentient landscape.

Law As...Forest: Eco-logic, Stories and Spirits in Indigenous Jurisprudence

Kirsten Anker*

1. Introduction

Between where I live and work in Montreal lies a mountain, the eponymous Mount Royal. Every day I ride or walk through its forest, enjoy the respite from traffic and tarmac, and engage in some free-range musing on matters such as this essay. In particular, I am contemplating taking property students on a tour of the Mountain – an adventure designed to facilitate place-based learning about law – and wondering whether this literally ‘outside’ education supports an ‘outsider’ jurisprudence, as Peter Goodrich’s version of minor jurisprudence – the theme of this symposium – has been styled (Tomlins 2015: 241-2). I am also wondering how, in our Faculty’s attempt to bring Indigenous legal traditions into the curriculum, we can draw students’ attention to Indigenous practices of ‘learning law on and from the land’ on the Mountain (Borrows 2016: 4; Simpson 2014). Do these practices provide a ‘grounds’ for law in another version of minor jurisprudence – one that initiates or provides alternative foundations to those of power and violence (Minkinnen 1994: 358)?

My wheels engage the manicured gravel of Chemin Olmstead as it snakes through the Mountain, and I look around at a landscape shaped by law. The park is legally a product of City Charters, secured loans, expropriations, Quebec’s first environmental protection legislation,

and the papers commissioning Olmstead's design. As I round a corner and the city's towers come into view, so does explorer Jacques Cartier's more distant and tenuous act of jurisdiction in the company of his Hochelagan guides. The Mountain is a *lawscape*, and the neologism speaks not just to the knowledge that law must have a material existence in some place, but also to the way that law authorises and enacts the mark of humans on the land (Graham 2011). In the idiom of legal geography, this mountain space and the law are 'mutually constitutive' (Delaney 2010: 8). On the Mountain, the law enacts culturally significant notions of this space as public, dedicated to urban leisure, to be enjoyed by strolling or biking on paths, reposing on benches or grass, or admiring the view of the city from the Belvedere; it also produces the Mountain – complete with its reigning 100 foot Christian cross – as space within the territorial sovereignty of a French-speaking province within the Canadian state. In turn, it is culturally mediated understandings of spaces like this one – for example, as a segmentable Euclidian grid – that enable legal phenomena like property and jurisdiction to be meaningful in their modern sense.

In these terms, however, my sylvan *lawscape* is invested in the separateness of 'law and [space]' that the 'Law As...' symposia have targeted as the problematic reflection of legal realists' distinction between law in books and law in action, and the largely instrumental, functional and empirical approaches that it spawned (Fisk & Gordon 2011: 520-1). In inviting us to eschew the 'law and...' binary, and its modernist tendency toward functional and causal explanations, 'Law As...' asks us to embrace instead, through a syntax of simile or metaphor, the realm of image and imagination. Law as forest. Forest as law. But this move confronts another modernist binary if we take law and space as human constructions, products of our imagination. That human minds are the only source of law designed to act on the world (and for that matter, that humans are the only legal subjects) speaks to a set of distinctions provoked and amplified by modernity's rationalisation of mysticism, a condition that Max Weber called disenchantment (2004: 12-3) in which the world came to be seen as 'knowable, predictable, and manipulable by humans' (Jenkins 2000:

12). Disenchantment divides mind from matter, human from non-human, culture from nature.

Beyond the city's towers, I see in the curved horizon the turtle's shell on which Skywoman and her grandsons created this world (White 2015: 29). Joe Sheridan and Dan Roronhioke:wen Longboat explain that Haudenosaunee mythology expresses the way that Creation in this part of the Earth 'thinks' (Sheridan & Longboat 2006). Their elaboration of a sentient ecology or an 'animist realism' contrasts with European understandings of imagination as having an interior source in human cognition, in *opposition* to reality (6). Gliding through the trees, I am reminded of Indigenous friends and colleagues who claim that the law is 'in' or 'of' the ground (Brehaut & Vitenbergs 2001: 10), that 'the land is the source of the law' (Black 2011). Dene scholar Glen Coulthard describes a 'grounded normativity' derived from place-based practices (2014: 60). Anishnabe law professor John Borrows, notably, has developed a contemporary Indigenous jurisprudence encompassing laws that flow from sacred Creation or the observation of the natural world alongside positivistic, deliberative and customary sources (2010: 24-35). *Sákéj* Henderson and Marie Battiste similarly write of Mi'kmaq legal traditions as developing out of ecological forces (2000: 9). My challenge here is to take these manifestations of Indigenous law seriously 'as law' (Friedland & Napoleon 2015: 17). I do this by alternating between a mode of sensuous engagement I have been shown by elders such as Stephen Augustine (Mik'maq) and Tom Cook (Mohawk), and one in which I grapple intellectually with these expressions of law 'on our [Indigenous] terms' (Henderson 2007) – largely from Canadian Indigenous scholars – within the idiom of my own knowledge tradition and (common law) jurisprudence. The difficulty of doing so is testament to the extent to which forests have, in my tradition, long been law's Other: a savage threat to, or shadow of, its very existence (Harrison 1992).

More recently, though, the possibility of a jurisprudence grounded in the Earth has been taken up by the Wild Law/Earth Jurisprudence movement. In general, its proponents see the dystopia of the unfolding

Anthropocene as a product of law disconnected from its ecological home, part of the larger disjuncture between culture and nature, and of the mastery of humans over nature (Cullinen 2011; Burdon 2015). This literature will provide me with some working material and points of reflection, although its critique of the liberal, rational tradition in law does not go far enough. In particular, the strategic allocation of personhood to rivers, ecosystems and non-human species in one of the movement's major projects – the rights of nature – does not destabilise the dualisms between culture and nature, and mind and matter, that constitute disenchantment, if these entities are not considered to be genuine actors. If forests are persons, what do they think about the rights of nature, and how would we ever know? Alessandro Pelizzon notes that Indigenous peoples have occupied a special position in Earth Jurisprudence (2014: 177). However, there has to date been only thin engagement with the *lawscapes* of Indigenous peoples, and in particular, with stories, spirits, ceremonies and dreams as they relate to a sentient ecology.

In this short essay, I ask what it is to take forests, mountains, and rivers as law. Given life-ways in which humans, animals, plants and other entities such as spirits are selves and persons, this turns out to be similar to taking law as a forest. That is, if there is no categorical distinction between humans and nature, '[t]his makes our understanding of ecology legal, just as it makes our law ecological.' (Philippopoulos-Mihalopoulos 2011: 2). Beginning with the 'logos' of the ecological, I trace through the ways in which forests might be thought of as a 'source' of law, either as model, metaphor or, scientifically speaking, as a manifestation of fundamental physical laws. While there is a consonance of sorts between Indigenous and Earth jurisprudence on these eco-logics, Indigenous forms of deep participation in ecological process suggest that the mythos of storied places is more apt to account for grounded jurisprudence than logos. Responding to the difficulties in taking animist stories either literally or simply metaphorically, I conclude that they express a truth of a participatory consciousness, in which spirits are a phenomenon produced by the interaction of human minds with other self-organising properties of the world. This practice

is at once a living critique of disenchanted law, and a grounding of jurisprudence in relationship to place.

2. Eco-logics

The squirrels darting across my path on Mount Royal bring to mind the story Leanne Betasamosake Simpson recounts, in 'Land as Pedagogy,' about the discovery of maple syrup: *Kwezens* [young woman] looks up and greets *Ajidamoo* [squirrel], who is busy up in a tree nibbling on bark, and then sucking. Curious, *Kwezens* does it too: 'nibble, nibble, suck' (2014: 3). The actions of squirrels, forests, rocks and rivers represent properties of the world that we can model, an eco-logic. A contemporary example is forestry practices that tap into the way mycorrhizal (subsoil fungal) networks exchange nutrients between trees: sparing 'mother' trees that are net suppliers from the cut allows the forest to regenerate more quickly (Jones et al. 2003). That these properties could shape norms for silvicultural regulation is one way to think about forests as (a source of) law

Borrows expands the idea of modeling beyond resource management, writing that we might 'examine how a certain bird relates to an animal... and see standards for judgment' or draw analogies 'from the behaviours of watersheds, rivers, mountains, valleys, meadows or shorelines to guide legal actions' (2010, 28-9). For example, the mast fruiting of pecans, in which groves of trees coordinate their irregularly abundant crop to coincide with low squirrel populations, counsels the Potawatomi to seek strength in unity and act as one (Kimmerer 2013: 18). The Anishnabe word for this legal practice is *giknawabiwin*, from the roots *aki* (earth) and *noomaage* (to point towards and take direction from) (Borrows 2016: 13). In the same vein, Cormack Cullinan begins his Wild Law manifesto with reflections on the self-organisation of a termite nest as a lesson for building human communities that are 'well-functioning, harmonious and resilient' (2011: 26).

Modelling thus runs from the literal to the metaphoric. Forests teach us how to practice forestry; they also, analogically, provide raw materials with which to think about law: law as... forest. But while,

for example, Duncan Kennedy's image of precedent as a 'forest of constraint' (Winter 2003: 2) might make sense to a people in whose linguistic memory trees constituted an obstacle to cultivation, forests can also be experienced as a co-evolved network of relationships. Anishnabe scholar Aaron Mills (2017) argues that treaties signed with European nations in North America were, for Indigenous peoples, patterned on these relationships and the condition of interdependence, rather than on contract and the voluntary assumption of mutual obligation by independent entities.

These two contrasting properties of forests, used to inform human law not directly related to forests, may prompt a concern, shared with critiques of classical natural law, that claiming ecological phenomena as the source of legal models or metaphors involves projecting our own ideas onto 'nature', allowing us to rationalise everything from the overthrow of tyrants to social Darwinism. Any ideology, runs the critique, can be defended by arbitrary appeals to nature, since the ultimate basis of any claimed natural right lies in private insight or intuition (Holtermann 2014). To claim forests as the source or 'grounds' of law when their properties are open to interpretation and manipulation for political purposes or self-interest thus poses the problem of that law's legitimacy.

Cullinan's riposte is that, while there is a margin of error, 'natural' models are helpful because 'those patterns that have ... stood the tests of millennia, are likely to have inherent qualities that are consistent with the basic principles of the Earth system' (Cullinan 2011: 28). What the invocation of untroubled 'nature' here does not confront, though, is that the concern for the private or 'subjective' quality of interpretation and representation posits 'human thoughts' and 'ecological phenomena' as situated on opposite sides of an ontological chasm, that of the division between mind and matter. However, the fact that eco- and geo-logical entities, relations and patterns provide raw materials for thinking reveals that our very ability to reason builds on the way we analogue from our experiences and interactions with the world around us (Winter 2003). 'Nature' is not available to us unmediated – whether

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through our motor-neuron system, language or scientific practice – but neither does it simply disappear into a fabricated or subjective ‘cultural’ output (Latour 2004: 459). Our thoughts are embodied and emerge out of the correlation of different sets of kinesthetic experience of things in the world (Merleau-Ponty 2012; Varela et al. 1993). And, as I will argue below, there is a way in which some of those things in the world also ‘think’.

A slightly different criticism is that a version of the ‘naturalistic fallacy’ is being committed when we attempt to derive norms for our ethical or legal practice from facts (Warren 2006: 14). Further, to the extent that models are simply instructive, and lack any forceful or obligatory qualities, they can hardly be law at all. In promoting a new ecologically-grounded natural law, Wild Law enthusiasts sidestep the naturalistic fallacy argument by adopting a teleological or purposive understanding of human action. However provisionally or imprecisely formulated by our theories, they argue, there are certain ‘laws of nature’ – the planetary limits that circumscribe a safe operating space for humanity (Wijkman & Rockström 2012), for example – that are fundamental in the sense that if we do not heed them, we will destroy the very conditions of possibility of human law (Lee 1989; Cullinan 2011: 113). Human law can thus be ‘natural’ in the same way that architecture and engineering – or any other purposive endeavor – are normative in a *given-if-then* relation: given gravity, if we want buildings to be safe, then certain engineering principles ought to be followed (Barnett 1996: 656). These are as inviolate as any sovereign commands. An alternative take on the leap between fact and norm is inspired by ‘new materialism’ scholarship in legal theory. Margaret Davies, for example, argues that the lived interactions between humans and non-humans that models express form ‘pathways’ – neural and geographic – over time that both constitute the field of the thinkable and the doable, and create normative expectations (Davies 2017: 68).

In the Wild Law Literature, the inherent properties of life on Earth, what Cullinan calls the ‘Great Jurisprudence’, give rise to several paradigmatic elements of human Earth Jurisprudence (Cullinan

2011: 79; Berry 1999: 162). The tendency towards *diversification* and *complexity* in Earth systems requires ‘bottom-up’ governance that is polyarchic, context-sensitive and adaptive (Koons 2011: 53) and scaled to the particular ecosystem such as a watershed instead of to the artificial political territory of states and jurisdictions (Karkkainen 2004). *Autopoiesis*, the inherent ability of life to self-organise and reproduce, constitutes a form of subjectivity in contradistinction to the disenchanted modernist world as a collection of objects (Koons 2011: 48). Non-human subjectivity finds expression as the claim that natural entities warrant legal consideration, often in the form of standing, or rights (Stone 1972). It has been the basis for hallmark projects like Ecuador’s constitutional ‘rights of nature’ and the Whanganui River Deed of Settlement in New Zealand (2014) in which the river is recognised as a legal person (Hutchinson 2014). The *interconnectedness* of all things translates to a principle of ‘relational responsibility’ because each element is an essential part of the functioning of the whole (Koons 2011:51-21).

There is much in these principles of Earth Jurisprudence that resonates with, and indeed has likely been influenced by, Indigenous cosmologies, including the personhood of non-humans, and holistic understandings of conditions of interdependence. And yet, if Earth Jurisprudence has updated classical natural law’s anthropocentric focus on human reason by supplementing reason with scientific description (Burdon 2015: 90), it has yet to engage robustly with the methods of Indigenous jurisprudences. For while certain Indigenist scholars have found insights of Western science to confirm the make-up of the earth as they know it – such as quantum theory’s wave/particle dualism as a reflection of an energetic flux ordering the universe (Cajete 2000: 15, Henderson 2000: 265, Black 2011: 16) – that knowledge cannot be reduced to the logics of empirical description. For example, Yagumbeh scholar Christine Black (2011) argues that the fundamental Law of Relationship sourced in the land’s own energies is accessed through human ‘feelings’ for particular geographic sites (16). According to Greg Cajete (2000), a University educator from Santa Clara Pueblo, Indigenous ecological knowledge ‘is a reflection of the metaphoric

mind and is embedded in creative participation with nature. It reflects the sensual capacities of humans'(14). Chickasaw/Cheyenne legal philosopher Sakej Henderson (2007) offers the idea of law as dreams – in distinction to rules, facts or ideal ways – as Indigenous peoples' unique contribution to jurisprudence. And ubiquitously, laws from place, like other laws, are recorded in stories (Friedland & Napoleon 2015: 22). This suggests turning to mythos rather than logos as the expression of law as forests and forests as law (Harrison 1992: 29).

3. Mythos – Storied Places

When Skywoman fell to a watery earth in these parts, the geese softened her landing, the turtle offered its back for rest, and the water animals took turns diving fatally deep in the attempt to retrieve ground for her home. 'Skywoman bent and spread the mud with her hands across the shell of the turtle. Moved by the extraordinary gifts of the animals, she sang in thanksgiving and then began to dance, her feet caressing the earth. The land grew and grew... until the whole earth was made. Not by Skywoman alone, but from the alchemy of all the animals' gifts coupled with her deep gratitude' (Kimmerer 2013: 5).

I am used to trawling stories for law. What else is the common law but the lessons drawn from human drama, the making of myths for living? Like tenure and estates, Skywoman's story could simply be a story *about* land, a figurative representation of a real geological event, such as the subsidence of a great flood, for instance. That was the approach of the trial judge in the *Delgamuukw* Aboriginal title case from British Columbia to a story told by the Gitksan plaintiffs in which, following the disrespectful behavior of some young people who danced with the bones of trout on their heads, a giant supernatural bear (*mediik*) descended a nearby slope, felling trees in his wake to devour the humans, afterwards regaining his home in the lake (Borrows 2010: 33-4). Chief Justice McEachern took this story as a metaphor for a land slide, corroborating geological evidence (*Delgamuukw v British Columbia* 1991, (e)). But for the Gitksan, the story communicates legal principles, the interpretation of one elder being that 'they should

just take enough to eat and not to play with it, that's why this tragedy happens to them' (quoted in Borrows 2010: 34). Skywoman likewise provides us with instructions or orientations.

This law might be said to 'come from the land' because such stories can tightly weave narrative and place in our imaginations. In Australia, elaborate Dreaming tracks or 'songlines' record the movements of proto-human ancestors across the land in the creation time (*tjukurra*), creating its features and bequeathing designs, songs and ritual knowledge or law (Strehlow 1947; Munn 1973). To sing the songs of these itineraries is to recite maps of the land, and they can literally be used to find one's way in the physical environment. Conversely, the land is a mnemonic for the law, and walking through it physically or mentally calls up ancestral songs in which law and lawful behavior is narrated (Morphy 1983). In *Wisdom Sits in Places*, Keith Basso (1996) recounts how Apache placenames are highly descriptive of geomorphological features, or of events that took place there – Water Lies With Mud In An Open Container or Widows Pause for Breath. Site visits with elders usually prompt stories of when the ancestors first arrived and named them, some of which contain lessons or morality tales, but all of which connect present speakers of those names, through the sounds spoken by their ancestors, with the past and with an intimate and image-rich knowledge of the land.

Law stories can be *about* places and ecologies; in turn, landscapes provide points of social reference, a kind of archive for memories (Schama 1995). In Basso's words, land becomes a symbolic resource alongside language, to be 'manipulated by Apaches to promote compliance with standards for acceptable social behavior and moral values that support them' (Basso 1996: 41). But is it thus only human imaginations that invest the world with meaning, that construct a *lawscape* as an interpretation of events? If this is the turn to imagination that 'Law As...' invites, then we have not troubled the disenchantment of the world, but rather carried it forward. If stories, law, thinking, and ends are the creation of the human mind that is placed into the land, then the land is simply matter.

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This would not seem to be taking the stories on their own terms. For instance, in the *Delgamuukw* plaintiff's opening statement, the 'ownership'-like attachment between the Gitksan and their territory is told as a marriage of the Chief with the land: 'Each Chief had an ancestor who encountered and acknowledged the life of the land. From such encounters came power. The land, the plants, the animals and the people all have spirit – they must be shown respect. That is the basis of our law' (Overstall 2004: 25). For one particular House, that marriage took the form of the union of the chief's sister and a frog, producing frog offspring recognized by the House as their kin (27-8). In the case of the *mediik*, the elder quoted above understood the disaster as the response of a non-human agent to disrespectful behavior. In other Indigenous territories, rocks and glaciers listen and react to humans (Povinelli 1995; Cruikshank 2005).

Several authors warn us not to take this talk of animals, rocks or places as persons and agents as merely symbolic or metaphoric, since this reduces Indigenous knowledge to a belief or mere cultural construction in contrast to scientific accounts in which frogs and humans definitively do not have babies together (Povinelli 1995: 505; Little Bear 2000: 78; Nadasdy 2007: 34-7). However, cautions against the 'new animism' in ecologically-oriented theory argue that it may be taking Indigenous accounts of sentient landscapes too literally and simplistically, thereby overlooking both the sophisticated use of metaphoric tropes by Indigenous peoples (Peterson 2011: 117) and the complexities of translations from the particularities of Indigenous terms into humanist categories like persons and agents. These equivocations are necessarily metaphorical (Wilkinson 2017: 303).

Then we might add that even Western scientific concepts are metaphoric, although the words may have since lost their imagistic associations, so that we perceive a difference between metaphorical and literal claims (Davies 2017: 131). But just as these scientific conceptions have pragmatic and not purely symbolic significance, so, arguably, do the concepts at work in stories. Paul Nadasdy argues, for instance, that certain animal behaviors in the arctic are difficult to reconcile with

biologists' views about competitive natural selection, but compatible with Cree understandings that the animal has decided to gift itself to hunters (Nadasdy 2007).

Consequently, I do not wish to suggest that place-based stories are either entirely literal or entirely metaphorical. Instead, the imaginative use of metaphors or constructions are not pure products of human minds but emerge out of relations with our environments (Longboat & Sheridan 2006). Hearing Skywoman on her terms, the story is about gift giving between humans and animals, the bonds of gratitude that bind us to them. It exemplifies the fusion of facts and norms in long-standing habits that have led Haudenosaunee people to survive. It is 'how Creation in these parts thinks.'

4. The Spirit of the Land

So Skywoman is a story told in sensuous relationship *with* the land. I once asked Keptin Stephen Augustine whether the short Creation story he had presented as the Mi'kmaq Constitution had an exegetical tradition wherein different interpretations over time would produce the rich detail required for the application of law to the variability of life. He paused, and replied that the details came in the telling of the story in ceremony: with embodied experiences of the heat of the fire, the smell of the sweetgrass, and the sound of the drum. This 'participatory consciousness' (Berman 1981) helps explain, I think, some of the tropes of fusion (marriage) or metamorphosis in storied places, as well as the 'spirit' or sentience of the world around us.

As some of the examples of Storied Places showed, Indigenous accounts of law may include something akin to a spirit, power or force that is in, or emerging out of, the land. Sakej Henderson, who in Canada has perhaps done the most to present the spirits of the land in jurisprudential terms, tells us that a Mi'kmaq word, *nestumou*, refers to everything a Mi'kmaq person can experience, including sacred realms (*nestunk*) that exceed what exists in an empirical sense (Henderson 2000: 258). Here is a sample of his statements linking spirit to place and mind to matter:

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The sacred order is also a place where the animate power of the spirits (*mntu*) exist in harmony... To [Mi'kmaq people], every stone, tree, river, coastline, ocean and animal is a discrete *mntu*. (257-8) The earth ... is an external reality that is in a continuous state of transformation. ... Some of these changes occur in cycles or patterns, and these cycles or patterns are understood as part of a whole. (258) [T]he sacred space is considered as a transforming flux that constitutes an indivisible web of meanings. (259) Perceiving these forces is a pathway to understanding multilevel sensations and instincts. These forces provide the link between the natural context and Aboriginal consciousness and order. They create continuity between one's inner life and one's capacity for action. (262) Some people are born with an ability to create relationships with the essential forces in nature; others have to acquire this ability through experience. The vision quest in the forest is one way to make alliances with *mntu* (267).

Rather than reading these kinds of statements as poetic license, or simply belief, I will track my – perhaps awkward and treacherous – attempt to find within my own intellectual tradition an idiom that can hold onto an encounter with Indigenous Earth-based jurisprudence and take spirits seriously. Here goes... Becoming expert in the patterns within the continuous transformation of reality Henderson mentions by immersing oneself in them produces a contextual, embodied knowledge (Aristotle called it *phronesis*). Action based on this kind of knowledge is not produced by rational deduction, necessarily, but comes as 'instinct', often with an emotional force: think of the master chess player's rapid moves that come from 'the gut' (Flyvberg 2001: 17-20), or the fishing guide who feels 'called' by certain spots in the lake where the fish will be biting, the result of being able to read the prevailing conditions intuitively against accumulated patterns of previous successful expeditions – 'pattern thinking' (Ross 1996: 73).

Like a fishing guide, the life of someone who lives from and with the land depends on accurate prediction. Forecasting the movement of prey involves direct experience with multiple factors such as time of day, temperature and the distribution of other species, until the hunter

'begins to think, unconsciously, like the prey' (Henderson & Battiste 2000: 45). Both projection into the subject position of another being, and the experience of this process as being the passive reception of knowledge of how to act rather than it being the result of conscious deliberation and effort, may lead to the sense that it is the air, the lake, or the fish that 'speaks', or that they have their own spirits: 'not that cute (or dangerous) little spirits live in them like cartoon characters; [but] that they *have* spirit and fundamentally, *are* spirits' (Ross 1993: 83). The 'dream maps' recounted by Hugh Brody's Dene interlocutors also play on the grounded pragmatism of predictive skills showing up in an 'imaginative' realm: old time hunters who were powerful dreamers 'located their prey in dreams, found their trails, and made dreamkills. Then, the next day... they could go out, find the trail, re-encounter the animal, and collect the kill' (Brody 2013: 8).

Anthropologist Eduardo Kohn (2013), drawing on the semiotics of Charles Sanders Peirce, calls this hunting phenomenon a 'general', meaning a semiotic 'form' that emerges out of patterns or habits in the world – and in the case of spirits, an emergent property of the way that forests and other ecosystems 'think'. Kohn's ethnography of how Runa in the Amazon relate to other rainforest beings offers the claim that these non-human species think because they make and interpret signs. By adding iconic and indexical signs to the symbols that we usually take as constituting representation, Kohn is able to show that biological processes, and life itself, are inherently semiotic. For instance, camouflage works when a prey successfully represents – iconically – a patch of bark or a leaf to its predator; the evolution of anteaters' elongated snouts to fit ant tunnels iconically represents to future anteaters the character of ant habits, and each generation is an iconic representation of its ancestors before it (51, 74). Living organisms also react to events (footprints, noises, chemical traces) in the world because they read them – indexically – as pointing to something else, such as the presence of predator or prey. Indices represent by virtue of a connection between an event and a separate possible one; they are a product of higher order relations among icons (noise/disturbed branch + predator/danger) and possess new properties of reference

with respect to them.

Similarly, symbolic language emerges as a higher order dynamic out of indexical and iconic representation (171). Simple nouns and verbs ('tree' or 'sit') can be learnt indexically – as pointing to objects and actions – only once a series of iconic confusions between disparate vocalisations ('tree'), and between actual trees, and the pattern of experience in which they co-occur indexically, has been made, creating a general conceptual category. But symbols also refer to their object indirectly, by relating systematically and conventionally to other symbols. This makes it possible to experience thought as a purely mental process, and the things symbolic thought points to as a separate realm. Language is thus an example of what Terry Deacon calls 'emergent dynamics': physical processes like convection that otherwise tend towards greater entropy (or randomness) sometimes produce self-organising dynamics – a tornado, for example – that are more ordered and constrained than their constitutive dynamics (cited in Kohn 2013: 54). Such emergent 'generals' are not the imposition of human minds on unthinking matter, and they can manifest themselves in the world independently from humans. Kohn argues that when the Runa dream 'well' or have precipient ayu huasca-induced visions that, for example, presage a successful hunt, the realm of the forest's spirit masters that they enter in these states is a manifestation of the patterns of forest dynamics and constraints (178-83). For the Runa and other people of the Amazon, these emergent spirit masters are also 'selves'; they speak, and can be spoken to. As the recent *Naku* proposal of the Sápara Nation explains, spirits are beings to whom the rights of nature pertain; prior consultations 'should also find ways to take into account the opinions of the beings of the forest' (Castilo et al. 2016).

If the notion of 'expertise' helps situate spirits of the land as phenomena resulting from participatory and embodied pattern thinking, Kohn shows us how this thinking is shared with, and continuous with, the thought of other living beings. Why, though, should this pattern thinking also (and perhaps, especially) manifest in dreams, or through vision quests, shamanistic practices and

hallucinations (surely the most ‘ungrounded’ forms of thinking)? In my introduction, I mentioned that I had been cogitating on this essay while riding through the forest; in fact, a large part of the ‘structural work’ of the essay – how bits fit together – also came to me in periods of semi-wakefulness in the pre-dawn. These are times when my rational executive ‘I’ is less on duty, when the rhythm of pedaling or walking in the varied sameness of the forest or the slide in and out of sleep stimulate (or, more likely, stop repressing) a looser, associational form of thought.

Iconic representation, argues Kohn, similarly propagates in a playful, effortless way. Camouflage adaptation comes about not because of exertion but by dint of predators’ failure to distinguish between the prey and their environs. Speaking, or thinking (as forests do), in images, allows those images ‘to resonate with other images’ and explore relations without being invested in a stabilised ‘meaning’ (174-6). This associational thinking has a physiological manifestation – shared in dreaming and hallucinatory states of consciousness – in degrees of entropy or disorder in the brain regarding its repertoire of patterns of connectivity (Carhart-Harris et al. 2014). Kohn suggests that the reason why dreams are real, and why they permit those who think with forests to effectively harness its patterns in the ultimately pragmatic game of survival, ‘is that the semiotics of dreaming... involves the spontaneous, self-organising apperception and propagation of iconic associations in ways that can dissolve some of the boundaries we usually recognise between insides and outsides. That is, when the conscious, purposive daytime work of discerning difference is relaxed, when we no longer ask thought for a ‘return’ we are left with self-similar iterations – the effortless manner in which likeness propagates through us’ (Kohn 2013: 187).

5. Conclusion

Today the Mountain is crisp with thaw-frozen snow. As I sit on a bench and watch squirrels in the sun, the fact that I can conjure up law with this word and its cognates – in a way that has nothing to do with squirrels – can make it appear separate from the world. But, as

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an emergent dynamic, it is also 'in' and 'of' the world. That observation alone is not particularly helpful: like the criticism leveled at the Wild Law movement, it leads us to the conclusion that we cannot seek to address the climate crisis by placing 'humans in their proper ecological setting' because the traits that are causing the climate crisis – our abilities to successfully adapt to and manipulate our environment – are part of our biological make-up (Warren 2006: 14). Culture is collapsed into nature.

'Rights of nature' attempts to address the dualism from the other direction – by anthropomorphising nature and attributing to it the core identity of modern legal systems – personhood. Operationally, rights of nature has permitted humans to bring suit on the basis of harm to an environment as an entity through the legal technologies of standing and guardianship (Stone 1972). Persistent philosophical objections to the rights of nature turn around human exceptionalism: while we can recognise the rights of nature semantically, a forest cannot recognise ours, nor be considered to have breached our human rights if we suffer harm at the hand of the 'forces of nature'. If legal processes protecting the rights of nature turn on identifying their interests, how are these to be discerned by humans? Although the paradigm is slowly shifting to encompass forests as selves with rights, rights of nature pushes more obviously up against a category error because we do not think nature can speak.

Neither of these approaches addresses disenchantment and the separation of humans from ecology: the first, because it collapses mind into matter, and denies that the nature of which humans are a part has inherent meaning; the second, because it does not go further than a temporary suspension of disbelief regarding the self-hood of non-humans. In contrast, Indigenous thinkers have long been saying that the Earth is sentient and that we co-exist with other beings in social configurations of interdependence, that law emerges out of, or is patterned into, this dynamic tapestry of relationships and that we access it through stories, ceremony, visions, dreams and walking the land in a mindful way.

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To grasp these propositions as other than cultural belief requires some heavy intellectual reconstruction, and I have dwelt on Kohn's semiotics as one way to elaborate that work. Nevertheless, getting beyond our own disenchantment requires a different practice: not just a turn to imagination, located in human minds, but attention to the way the world is enchanted, the ways in which its mind manifests. Most obviously, this requires direct experience with forests and so on. But disrupting our cognitive schemas also requires attempting to privilege, within our own thought patterns, those modes that reflect the way that forests think, through index and icon, characterised by images, absences, play and generals (Kohn 2013: 35-8, 174-8). In this way, aesthetic approaches to law are productive (Manderson 2000; Goodrich 1991), as is work on law as language that traces its emergence out of the 'imperfect [continuous, habitual and incomplete] practical knowledge', of a community's ways of living and speaking together (Constable 2014: 13). While it may usually be assumed that the community in question is human, attending to the ways in which our linguistic, cognitive and bodily habits exist in relation to the world and emerge as a higher level of patterning against constraints around us, is one way of grounding our jurisprudence by admitting a broader sense of community with life on earth.

Finally, that grounded jurisprudence involves situating human representation as emerging out of broader semiosis provides a way to take Indigenous law seriously in the different modes that are claimed for it. In the end, taking this aspect of Indigenous law as law, recognising it 'on Indigenous terms,' may involve not taking forests as law, but being with them, and thinking with them, as forests.

Endnotes

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