

## “Conversational Flows: Indigenous Intellectual Property in the Law School Lounge”

Rebecca Johnson

In the chapter that follows, I explore the interface of a number of complicated questions that have emerged in conversations with colleagues and friends about the concepts of intellectual property and cultural property, both in the context of western and various Indigenous legal orders. These questions take us into the realm of tangibles and intangibles, as well as different structures of valuing Intellectual Property (IP). They also invite conversations around identifying IP related harms in the world around us, and about the kinds of remedies that might be appropriate in a world where ideas have value, and we encounter disputes around how those ideas are used, shared, and controlled. In what follows, I draw on an IP conflict that emerged in British Columbia in 2013, involving a pair of Hupacasath masks. I imagine a set of conversations occurring in the law school lounge as first and upper year students grapple with the questions raised by the case.<sup>1</sup>

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[Setting: the student lounge on the main floor of the law school.<sup>2</sup> A glass wall opens out to a courtyard, hedged by towering trees. It is a late fall day, and leaves lay on the ground, occasionally scooped up by a lazy breeze. Students sit in groups, and a low buzz of conversation hums as students move in and out of the space.]

Evie and Dawn, two first year students, enter the lounge, still in conversation about their Criminal Law class. They join the queue at the snack bar, grab cups of coffee. They see Ami and Shiloh, their upper-year ‘law buddies’, sitting at a table near the window. Shiloh also notices the pair of first year students, and beckons them over.

Evie rolls her shoulders as she sits down. “Wow. Crim law. My head is feeling fuzzy from class today. I’m just not sure what to make of that masks case.”

Ami raises an eyebrow, curious. “Masks? I don’t remember a masks case from first year crim. What kind of masks are we talking about here?”

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<sup>1</sup> I take influence here from Val Napoleon in Napoleon, Val. “Indigenous Women Talking: The Work of Indigenous Feminisms in the World.” In *Critical Indigenous Feminisms*, edited by Emily Snyder, Val Napoleon, Rebecca Johnson and Debra Mckenzie. Toronto: U of T Press, forthcoming. Available at: <https://ilru.ca/wp-content/uploads/2020/08/Napoleon-Indigenous-Women-Talking-0072.pdf> That work is influenced in turn by Miriam Toews’s novel, *Women Talking*.

<sup>2</sup> Gillian Calder notes in her work that the student lounge is often a site of both rich conversation, and ongoing harm. See, Calder, Gillian. “Embodied Law: Theatre of the Oppressed in the Law School Classroom.” *Masks: Online Journal of Law and Theatre* 1 (2009): 1-35.

Evie pulls out her laptop, brings up a newspaper article, and reads out the headline: “BC families search for sacred cedar masks sold at auction.”<sup>3</sup>

She turns the screen to face Ami, who pulls the laptop closer and looks at the screen. The article opens with a black and white photo of a young Indigenous man with a large headdress in the shape of a sea serpent attached to his head. The young man, face painted, and staring directly at the camera, is standing against the background of a painted screen carrying a coiled sea serpent, posed so that the mask on his head almost appears to emerge from the screen itself.

“Cool photo,” says Ami. “I like seeing the mask actually on a person’s head. You usually get photos of masks that look like they are in a museum or gallery. Interesting to see the mask in action! It says here this photo was taken in 2006 at a memorial feast in Port Alberni, where the mask was last danced.”

He slides the laptop back to Evie. “So,” he continues, “you are talking Indigenous masks and dances in crim law?! I’m intrigued. What happened in class? How did this mask question come up?”

“Well,” she said, “we were looking at two different crimes: Theft, and Possession of Stolen Goods. We were talking about the differences between actually ‘stealing’ something, and ‘having’ something in your possession that is stolen. Lots of the focus was on what it is that makes either of these things a crime. Basically, the point was related to knowledge and intent: having both *mens rea* and doing the *actus reus*. You know the routine.”

Dawn grins while slowly walking her fingers across the table to Ami’s phone, and starts sliding it towards herself. “Like if I *accidentally* pick up your phone and walk away with it, thinking it is mine, then that is not theft....”

Ami raises an eyebrow, places his hand on top of his phone, and slides it back to his side of the table.

Dawn shrugs, and continues: “If I buy something from the Pawn Shop at the corner, and it turns out to have been stolen, but I didn’t *know* that it was stolen, then I’m not guilty of being in possession of stolen goods. You know, stuff like that. People were bringing up all sorts of hypothetical examples. What if, for example, you intend to steal your neighbour’s umbrella, but accidentally end up taking your own? Is it still theft?”

Craig, an upper year student sitting at the next table, rolls his eyes and gives an exasperated huff. “Why do our profs waste time talking hypotheticals instead of taking on the elephant in the room? Why are we talking about stolen umbrellas instead of stolen land? If she is going to talk

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<sup>3</sup> Drews, Keven "B.C. families search for sacred cedar masks sold at auction" *Globe and Mail* (Thursday, Nov 29, 2012, 04:27am EST). <https://www.theglobeandmail.com/news/british-columbia/bc-families-search-for-sacred-cedar-masks-sold-at-auction/article5789775/>

about possession of stolen property, why not talk about what it means for people today to argue that they ‘own’ land in this province?”<sup>4</sup>

Shiloh turns to the side with a smile, acknowledging her friend, “Hi Craig!” She turns back to the table, saying, “Introductions are in order. Evie and Dawn, I am not sure if you know Craig yet? Craig and I were in legal process class together in first year. He is Wet’suwet’en, and has family who were deeply involved with the Unist’oten land defence camp. It was pretty tough, and we have had lots of conversations about what kinds of laws get enforced, and which ones don’t.”<sup>5</sup>

Craig nods at the first years. Shiloh shifts her chair to the side, and draws him into the conversation. “While I can see that your hearing superpowers seem intact, why don’t you join us while we talk about the first-years have been doing in class today?” Craig shrugs and pulls his chair over to their table.

Evie returns to the story. “Actually, Craig’s question about stolen land has been bumping around in my head since we had that talk on the Douglas Treaties in our property law class.<sup>6</sup> So today, as we were working through the elements of the offence for theft and possession, the Prof invited us to think about something more concrete. Basically, she told us about these carved masks belonging to an Indigenous family here on Vancouver Island. One of the younger family members took the masks and sold them to an auction house. Some community member had been scanning the web, and recognized the masks listed for sale on the auction company’s website. They told the family, who then tried to get the auction house to stop the sale. But the auction house wouldn’t, and so the masks were sold to an anonymous buyer for something like \$25,000.”<sup>7</sup>

“Actually”, said Dawn, scrolling down on her phone, “It was \$22,500 for the male mask, and \$4,000 for the female mask.”

“What?!” said Shiloh.

“I know, eh?” Dawn said, “A piece of me wants to talk about the differential valuing of the male and female masks, and maybe also about what makes a mask ‘male’ or ‘female’ in the first place, but maybe that can wait for another day. Let me just read you a bit from the news article on the case itself:

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<sup>4</sup> Pasternak, Shiri, and Dayna Nadine Scott. "Introduction: Getting Back the Land." *The South Atlantic Quarterly* 119, no. 2 (2020): 205-13; See also Claxton, Nicholas XEMTOLTW, and John Price. "Whose Land Is It? Rethinking Sovereignty in British Columbia." *BC Studies* 204 (2019-2020): 125-48.

<sup>5</sup> Ceric, Irina. "Beyond Contempt: Injunctions, Land Defense, and the Criminalization of Indigenous Resistance." *South Atlantic Quarterly* 119, no. 2 (2020): 353-69. See also Napoleon, Val. "Behind the Blockade." *Indigenous Law Journal* 9, no. 1 (2010): 1-14.

<sup>6</sup> Cook, Peter, Neil Vallance, John Lutz, Graham Brazier, and Hamar Foster, eds. *To Share, Not Surrender: Indigenous and Settler Visions of Treaty Making in the Colonies of Vancouver Island and British Columbia*: UBC Press, 2021.

<sup>7</sup> <https://www.theglobeandmail.com/news/british-columbia/bc-families-search-for-sacred-cedar-masks-sold-at-auction/article5789775/>

For the Hamilton and Sayers families, the two cedar masks depicting male and female serpents and known as hinkeets to the Hupacasath culture of Vancouver Island were among the most sacred of possessions. Accompanied by shawls and even a specific dance, the masks were born of royal roots and for more than 100 years had been passed down the generations for their safe keeping – until they were sold unbeknownst to family members at an auction at the beginning of November. The families say one of their own, a relation entrusted with their safe keeping, was behind the sale, and now they’re pleading for whomever may have bought them for a chance to negotiate their return. The family member responsible for the masks was out of the country and could not be reached for comment.”

Dawn paused, and Evie picked back up the story. “The Prof then asked us to think about all the wrongdoing in the story. What can be said about the woman who took the mask to the auction company? Is it theft? Or some fraud in her telling them that she had the right to sell the mask when she didn’t? What about the auction company and the person who eventually bought the mask? Were they in possession of stolen goods?”

“So, was anyone charged with a crime in this case?” Craig asked.

“No,” Evie said. “The Auction company claimed that the person who gave them the mask also showed them a Will saying that this person had been left all of her grandmother’s ‘household possessions.’ I guess that included the masks. That is why the auction company refused to call off the sale. The mask was sold to an anonymous buyer, and that was that.”

Ami tilts his head. “So, just stop there. The auction firm saw a copy of the Will? If there was a Will, then the sale was lawful, and it can’t really be crime, So why are you are talking about this case in Criminal Law? If anything, its sounds like a family fight that belongs in a Wills and Estates class, or maybe in a Property class?”

Evie furrowed her brow, and rolled her shoulders again. “I know this is how generations of students have learned law, but I have gotta say that it is confusing trying to figure what kind of legal problem you are dealing with. What IS the difference between a crim law and a property law question and a wills and estates question anyways?!”

Dawn picks up the thread. “You are not alone in asking the question Ami. Do you know our classmate Karen, or “IKEA” for short?”

Evie added, “IKEA is shorthand for ‘I Know Everything Already’. Maybe you have someone like that in your year? Anyway, our increasingly vocal classmate piped up in class to tell the Prof that the story already got mentioned in her section of Property Law, and so she didn’t know why the Prof was talking about it in Crim law.”

Dawn interjects, adopting a somewhat smarmy voice, saying, “And this isn’t going to be on the exam, right?”

Evie gave a bit of a sigh, and continued, “It is not that I think questions can’t be asked, but I am irritated by how often she challenges the Prof about what we are supposed to be learning. Like, she thinks the rest of us don’t notice that she doesn’t act like that with our male professors?”

Shiloh laughs. “Gender dynamics, my friend. Power dynamics are part of the field and something that needs taking up in so many contexts. But, tell me more. What did the Prof say?”

“Well”, says Dawn, flipping out her note book, and reading off a list, “The Prof said that categories of thought were exactly what we should be thinking about. This is in fact a case that you could study in property, tort law, contracts, criminal law, evidence, remedies, conflicts, and more. Part of the difficulty, she said, is that the design of legal education can sometimes leave us believing that law exists in silos. She cautioned us to avoid getting constrained by our own habits of thought about law.”<sup>8</sup>

Dawn stops and looks up. “I like her phrase, habits of thought.” She drops her eyes back to her notebook. “The professor also said that, and I quote, [she continues reading, but adopting a lofty and sonorous tone of voice], “In learning law in these times, we have to continually stop to ask about the scaffolding that supports our understanding of law. And we must remember that the scaffold is often internalized.” She pauses and laughs. “Whatever that means!”

She returns to her notes and continues. “The Prof told us that this case tells quite a bit about the auction house, and about its ideas about property ownership, and about criminal law. Those ideas, she said, are based on their beliefs about Canadian property law and Canadian criminal law. She told us that, particularly when asking about a Hupacasath mask, we should be asking what Hupacasath law might say about this problem. We needed to ask questions about our own assumptions about what it is to ‘own’ something, or to take something that doesn’t belong to you, and about what kinds of remedies are possible when something has been taken.”

Evie picks up the thread, “Basically, she reminded us that we live in a multi-juridical Canada, and that we need to spend a bit longer thinking about how the questions and answers might shift depending on the legal regimes, traditions and orders that we draw upon. She told us that this case is a good one for thinking about complications and entanglements between Indigenous legal orders and the Canadian common law system. So, she told us to think about this mask using both Canadian Law and Hupacasath Law. And then, she gave us a list of questions to look at over the weekend.”

Dawn lets out a huff of air and rolls her eyes. “As usual, she gives us more questions and no answers.<sup>9</sup> I ask you, would it be so hard to just give us a FEW answers?!”

Ami sniggers. “Yep, she does that all the time! OK. So out with it. What were the questions?”

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<sup>8</sup> There are many ongoing conversations about the challenges of teaching in ways that don’t reinforce those silos. See forthcoming volume on transsystemic teaching of law.

<sup>9</sup> Johnson, Rebecca. “Questions About Questions: Law and Film Reflections on the Duty to Learn.” *The Northern Review* 50 (2020): 83-108.

Evie looks back at her notebook. “Well. She said that we should be at least thinking about how this case makes sense from the perspective of Hupacasath law. She said we should be asking at least five different questions<sup>10</sup>:

1. What kind of property is this?
2. Who is the owner?
3. What is the underlying purpose of the property?
4. What is the legal harm or injury?
5. What are the range of historic and present day remedies?

“In class, the Prof told us that if we think only through the common law, it is easy to presume that one person has the authority over what happens to the mask. But this needn’t be the same in Hupacasath law.

“Yikes”, said Ami. “I have to say that the questions make me nervous, since I don’t know very much about Hupacasath law.”

Dawn cracked a smile, “Karen raised that in class, and the Prof reminded her that we are only a few months into law school, and that we don’t know much about Canadian law either!”

Shiloh smiled. “I gotta say that certainly feels right!” She shifted in her seat, and said “I take comfort in those reminders that the goal isn’t to know things, but to begin learning how to learn.”

Craig said, “Well, that means getting comfortable with discomfort. It means taking seriously that we live in a country that has multiple legal traditions at play when dealing with almost any legal issue.”

Shiloh, who had pulled up the news account on her phone and was scrolling through it, said, “Get out! This story has local connection. I think the Sayers family here includes Dr. Sayers! She gave a guest lecture in our Business Associations class on some run of river project up near Port Alberni, and we did get a bit of background on the Hupacasath. The Hupacasath are part of the Nu-chah-nulth legal order, right?” She looks over to the coffee line up and says, “Hey, there’s Lauren! She is in my IP class and friends with Dr. Sayers. I’m pretty sure she will know more about this case. You guys shift over and make space!” She jumps up, and strolls over to the lineup, and starts chatting animatedly with an older woman.

Dawn raised an eyebrow. Ami plows in, “Lauren is in third year. She came back to law school after her kids were all grown and having their own kids. She was a serious activist in her younger days, and is a bit of a radical grandmother to lots of people. I think she’s Kwak’waka wakw.”

Lauren comes over to the table, setting her books and coffee down, reaching into her knapsack for a lunchbag. She pulls out a couple of apples, a well-used Swiss Army knife, and starts coring

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<sup>10</sup> See introductory chapter in this volume. See also Napoleon, Val, Rebecca Johnson, Debra McKenzie, and V.K. Wilson. "An Interrupted Intergenerational Conversation: Indigenous Art and Society/Cultural Expression." 81. Victoria, BC: Indigenous Law Research Unit, 2021, p. 8 (Draft 008)

the fruit. “So, Shiloh says you guys are looking at the stolen hinkeets case in criminal law? I would love to hear what you are thinking about the problem.”

Evie glanced down at her notes again. “Well, the first and second questions seem a bit tangled to me: what kind of property is it, and who is the owner. The conflict here is over ownership. According to the woman who sold it, she was the owner. She was the owner because her Grandmother left the masks to her in the will. At least, that is, if you think that masks like these belongs to the category of ‘household possessions.’”

Lauren smiles, placing sections of cut apple on a napkin in the middle of the table. “Household possessions is such an interesting term, isn’t it? Have a slice of apple.” She thoughtfully folds the knife back on itself, and returns it to her knapsack, smiling. “It makes you think of something you would use in your kitchen, or something you might use to decorate your living room.”

“Exactly!” Evie says. “And the newspaper article emphasized that. The family said that the masks were cultural property, and not household possessions.<sup>11</sup> The family said the masks were sacred. The prof told us that some masks aren’t just like ‘art pieces’, but also have intangibles attached to them.”

Dawn pipes in, “As you might imagine, at this point, I was thinking my brain was going to liquefy and pour out my ear. Cultural Property? Intangibles? I don’t even know what she means. Anyways, she tells us that these masks also have songs and dances that go with them. And of course, at the same time she is talking, I can hear Karen still muttering away behind me that this is obviously just a family fight, or Intellectual Property problem and not a crim law problem.”

Lauren smiles. “It sounds like different people are thinking about different aspects of the problem. The distinction between private law and public law can be helpful, but also make it tricky. In the Canadian legal system, Criminal Law is used for harms to the public. So, one might ask what kind of harm there was in the selling of this mask? And to know what kind of harm it was, you still need to have a sense of what kind of property it was.”

She continued. “A mask like this needs to be understood as part of a legal order in which the potlach was an important piece of public ceremony. I am not sure how much background you two have on the potlach. Have you taken it up in Criminal Law class yet?”

Evie nods. “Well, just a bit. Basically that the potlach was a crime from 1885 to 1951.”

Ami adds, “I did my undergrad in anthropology, and there is so much stuff written from an anthropological perspective about Potlach.<sup>12</sup> We did learn that there were many different kinds of potlach ceremonies, and they could mark different kinds of legally important events: naming ceremonies, passing of chieftainships, marriages, memorials. They took significant preparation,

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<sup>11</sup> Is this a good spot to have students raise questions about the difference between law and culture?

<sup>12</sup> Bracken, Christopher. *The Potlatch Papers : A Colonial Case History*. Chicago: University of Chicago Press, 1997.

could continue for days, and would involve dances and songs from both the hosting nation or family, and others who were invited. It would conclude with the giving of gifts to all who were in attendance. Sir John A referred to them as Indian festivals of debauchery.<sup>13</sup> People who held potlach ceremonies were given mandatory jail sentences, and masks and regalia were confiscated by the state.”

Craig jumps in “Debauchery?! And this from the man who introduced both the Chinese Head Tax, and the Indian Residential Schools as a program for nationwide assimilation?! Man, if that isn’t the pot calling the kettle black! Basically, it is one state criminalizing the legal institutions of another state!”

Lauren picks up another slice of apple, and says, “You could think of potlach as a kind of institutional structure within the legal cultures of the west coast, many of which are structured through a nuanced and sophisticated gift economy. The masks and dances are part of the process of publically validating the legal events occurring at those ceremonies. A mask like this would have songs and dances associated with it. Different songs or dances would be associated with events like marriages, naming ceremonies, memorial potlaches and more. They would have been part of the processes through which legally important activities were publically affirmed.”

Shiloh says, “So, if I hear you right, the important point is that masks like these are not just beautiful objects, but are associated with legal proceedings? So, you are saying that when we see them, the word ‘law’ should actually come to mind.”

Lauren continues. “Sometimes. Not all masks function as law. But sometimes they do. It has been easy for the general Canadian population to think about the masks primarily as art because so many of these masks, regalia and other objects ended up in museums and private collections when they were confiscated, or forfeited, or sold in the years when everything associate with Potlach was made a crime. You sometimes hear people talk about these masks as if they are remnants of a vanished past, but that is not a helpful view. Potlaches definitely moved underground during the years of criminalization, but the practices continued.<sup>14</sup> People in community continue to organize potlach ceremonies for important legal events. During the pandemic, we even saw people adapting by moving some ceremonies online!<sup>15</sup> “

Dawn nodded, “And I guess that explains the present, since museums and private collections around the world are full of objects forfeited during the years of the ban.”

Evie added, “I guess it would be unsurprising that there has been the development of a market for West Coast art. And I wonder if this idea of the masks as former legal objects contributes to

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<sup>13</sup> Sir John A MacDonald (1894). For a fact sheet of quotes, see <https://educ.queensu.ca/sites/webpublish.queensu.ca.educwww/files/files/JAM%20Fact%20Sheet.pdf> . See also For background, history, and a showcase of Potlach culture, see <https://potlatch6767.com/>

<sup>14</sup> For a visual introduction to potlatch, see: <https://umistapotlatch.ca/potlatch-eng.php>. See also resources from the Bill Reid museum at Simon Fraser University: [https://www.sfu.ca/brc/online\\_exhibits/masks-2-0/the-potlatch-ban.html](https://www.sfu.ca/brc/online_exhibits/masks-2-0/the-potlatch-ban.html)

<sup>15</sup> Louie, Ren 'Wikinanish'. "Persistent to Potlatch: The Continuity of Nuu-Chah-Nulth Potlatches through Covid-19." *Martlet*, February 1, 2021 2021. <https://www.martlet.ca/potlatch-nuu-chah-nulth-covid-19/>

their current value in the art world? Do you think that makes them more valuable objects to trade?’

Ami picks up another slice of apple and says, “But that photo in the paper was from a Potlach in 2006, right? People were still dancing this specific mask at contemporary potlach ceremonies? So then, the masks, the songs, and the dances were still doing the work of law?”

He pauses, looking out the window. He continues, saying, “What a story. To be honest, I can’t believe the sister sold the masks. It does feel like theft.”

The group sits quietly for a moment, listening to the swirl of conversation in the room around them. Evie says, “I think I feel that way too, Craig. It makes me think about the question of the injury. The selling of the mask seems obviously wrong.”

She looks back to her open laptop, scrolling down through the article. “So, they quote her brother about the masks. He says:

They are not chattel to be bought and sold; they are our family histories over thousands of years, and our place within Hupacasath and Nuu-chah-ulth culture. ... If you were to even hint at the idea of selling those masks, my mother would have slapped the taste right out of your mouth.<sup>16</sup>”

Dawn leans back and sighs. “OK. I am all opposed to violence yada yada yada, but I like how he put that. It sounds like the family members understood pretty clearly the significance of the masks. It says in the paper that their sister sold the masks without telling anyone, took the money, and then left the country with her boyfriend. Obviously she knew that what she did was wrong.”

Again, Craig shakes his head, “And so we just circle back to the beginning. Wrong according to whose law? It is like Canadian law still can’t see Hupacasath law? Or is it pretending not to see it? I don’t get how the auction company, or the police, or the government can just rely on a narrow interpretation of ‘household possessions’ in order to dispossess a group of people of their cultural heritage. It is like they are totally ignoring the cultural value of the masks.”

“Can we stop for a minute?” Dawn asked. “I still don’t really get why we are using the word ‘cultural’. I mean, if we are saying the mask does the work of law, then why aren’t we talking about its legal value? Or, is talking about cultural value just a way of saying that the mask has non-market value?”

Lauren says, “So maybe this brings us back to those ‘habits of thought’ you mentioned, Dawn. One habit here is the treatment of the mask as only a thing of beauty, without seeing the Intellectual Property in it, the “IP.”. The mask *means* something, and it *does* something. There will certainly be stewards for masks like these, and maybe the word steward is richer than the word owner, but it is certainly the case that the use of the mask is *controlled* by those who have authority to make decisions about the use of the mask. IP, even in the West, is not just about the

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<sup>16</sup> Wiwchar, David. "Sacred First Nation Masks Sold to Highest Bidder." *Indian Country Today*, December 10, 2012 2012.

protection of ideas. It is also about who ‘controls’ the use of that intellectual property. This is perhaps an even bigger problem where the value of the IP leans in the direction of something that we might call the sacred. The western habit of separating reason and emotion<sup>17</sup> sometimes stumbles with intangible cultural and societal expressions that operate on a spiritual level.

Craig jumps in again, “Even raising language about the sacred or spiritual gets you in trouble. The Western legal system prioritizes ‘the rational’ and mocks what it doesn’t understand, treating it as unsophisticated, or primitive. Many of these masks and dances are part of a sophisticated intellectual tradition that links the past, present and future together in different ways. Focusing on the mask as just a piece of art to be bought and sold means Indigenous peoples are denied the right to control the ways we gather and organize our own knowledge. Or, for it to make sense, we are required to talk about the spiritual values in our knowledge using western terms like ‘epistemology’ and ‘ontology’. The system treats us like a vanishing vulnerable population, at best, offering to protect a limited number of our artifacts like some collection of dinosaur bones from the past!”

Dawn points to her laptop again. “OK. What about the question of remedies? The Prof asked us if the way we describe the harm shapes the kinds of remedies we can imagine? So, can we talk more about terminology here? I heard you say both ‘cultural heritage,’ and ‘intellectual property’. I’m not sure that I exactly get what you mean. Are these two different things?

“We were talking about the terminology in our IP class today” says Lauren, “and about the overlaps between cultural heritage and intellectual property.” She opens her notebook. “One of the articles we looked at defined cultural heritage as ‘the legacy of physical artifacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations.’<sup>18</sup> You can see in that definition the idea of an inheritance that is shared; not something passed on to just one person.”

Evie nods, saying, “So that fits here. If the masks are cultural heritage, then they have a shared inheritance. They didn’t belong just to the sister, even if she was left them in her Grandmother’s will. What she was given was something more like stewardship than ownership?”

Lauren continues. “Another challenge is that cultural heritage can take tangible and intangible forms. The tangible stuff seems obvious: things you can see and touch – monuments, works of art, objects, even places and landscapes. Intangible cultural heritage is a bit more slippery. It is all that which is non-physical and only visible through tangible expression. Things like language, ritual, songs, music, and social practices. The intangibles here are things of great value to the Hupacasath, though they seem to be invisible to the auction house.”

Ami, who had continued to wander through news reports on the web, says, “Well, that does seem to link us back to the Intellectual Property questions, since the family reported that the masks

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<sup>17</sup> See for example, Bandes, Susan, ed. *The Passions of Law*. New York: New York University Press, 2001.

<sup>18</sup> Shylloin, Folarin. "Cultural Heritage and Intellectual Property: Convergence, Divergence, and Interface." In *A Companion to Heritage Studies*, edited by William Logan, Máiréad Nic Craith and Ullrich Kockel, 55-68: John Wiley & Sons, Inc, 2016. At 55

came with rights, responsibilities and privileges. That is actually quite strong language. And seems to bridge both the tangible and the intangible.”

“Yes,” Lauren says, “it is strong language. The IP with the masks would be of significant value to the family. There would likely be a number of important protocols for engaging with the masks. There would have been a number of extended family members who may have had the right to access the masks on certain occasions. There would have been those charged with teaching the associated songs and dances to others. Someone would have been charged with the care of the masks, as well as the dances and songs. There is significant additional intangible value because of the IP. We bump up into a conflict when we start to commodify that value – how can you put a price on the value to the Hupacasath of the IP associated with those specific masks?”

Evie grimaces, saying “I can’t help it! Now I have those irritating Mastercard commercials running through my mind. You know the ones telling you to use your credit card in the interests of producing “priceless moments”?”

Dawn rocks back in her chair. “You know, the article said that the mask does have royal roots. So, does Royalty make a difference to our story? I mean, does the story still work if we imagine telling it using British Royalty? Can you imagine this scenario: An elderly woman comes in to the auction house, her name is Liz. She wants to sell a bunch of jewels she has, say, a diamond tiara. Or the Crown jewels. Who owns or controls the family jewels? Who decides when and where they are displayed publically? Can they be sold? Can a Royal family also have household object that could be passed down?”

Craig says, “Well, the analogy is interesting, but I wonder if it overshoots the mark? One difference might be that the Queen may well own some family jewels, but the State owns the Crown jewels. In the Hupacasath context, there isn’t a nation state structure.<sup>19</sup> Another difference is that even if the Crown jewels get trotted out for special occasions, they don’t really perform a legal or governance function. For example, they are not associated with legal ceremonies that make legitimate a marriage or adoption as these masks might do. They are important cultural objects, but I don’t see the intangibles, or the IP.”

“I don’t know”, Shiloh said, taking a long slow breath. “What you say seems right, and still... with how much talk there is about ‘The Honour of The Crown’, it seems too quick to say that the actual Crown has *no* governance function. I mean, what about that magical moment what when a new King or Queen gets crowned, and suddenly has two bodies?!<sup>20</sup> Don’t you think that during a coronation, the physical crown itself is maybe doing some legal work? Maybe there is a difference between family jewels and “*The Crown*”?”

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<sup>19</sup> Napoleon, Val. "Thinking About Indigenous Legal Orders." In *Dialogues on Human Rights and Legal Pluralism*, edited by René Provost and Colleen Sheppard, 229-45. Dordrecht Heidelberg New York London: Springer, 2013.

<sup>20</sup> Kantorowicz, Ernst H. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton, NJ: Princeton University Press, 1957.

Ami gives Dawn a sympathetic glance and says “Nice try at constructing a hypothetical exam fact pattern, Dawn.” Slipping into a passable imitation of Yoda’s voice, he continued, “Patience, young Padawan. Much you still have to learn!”

Evie shrugs. “No doubt! I will confess I am still uncertain about the differences between cultural property and intellectual property. Maybe I just have to wait until next year to figure this out?”

Lauren smiles and says, “No point in waiting! Might as well start grappling with the challenge now! The bottom line is that Intellectual Property does have some overlap with Cultural Property. Intellectual Property law deals with creations of the mind, with things produced by human intellect! In Canadian IP law, some forms of protection acknowledge the economic interest in property.<sup>21</sup> One branch of IP deals with things like patents, trademarks, registered designs. In class, we discussed how some people call these industrial property rights since they emerge out of questions about industry and commerce in our society. The other common branch of IP law is linked to the artistic world, in the form of copyright. You know, artistic creations of the mind like poems, novels, films, paintings. Some of the protection here is also rooted in economic questions, but some of it takes us to questions about identity. But these distinctions might get us back to the masks and that question your professor asked you about the *purpose* of the property.<sup>22</sup>

Ami jumps in. “I know Craig said no hypotheticals, but this sort of gets me curious. I know we are only asking about the sale of the mask itself, but now I find myself wondering about other IP questions. Like, who owns the IP on the mask itself? Is it the new owner of the mask, or the person who carved it in the first place? I know this mask is 100 years old, so the carver is probably long dead, but what if the Hupacasath family wanted to make a new copy of the mask? A replica to use? Do they have to ask the original carver or the new owner for permission to make a copy? What if someone did want to make a replica? Who would they go to get permission?”

Shiloh adds, “This is not totally hypothetical, of course. These problems come up in IP law all the time. This is the point. If someone wants to make a copy of an Indigenous cultural or intellectual product, or wants to use Indigenous cultural property for economic purposes, then you end up heading to IP law to ask who actually gets to make that decision. But you can see how tricky it starts to be. For sure, in order to know who you would ask, you can see there are some law questions. I am guessing you have probably seen cases about this in the news: fashion designers copying Inuit shaman’s coats<sup>23</sup>, or Nieman Markus making cloaks using a Tlinkit

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<sup>21</sup> Uerpmann-Witzack, Robert. "Introduction: Cultural Heritage Law and the Quest for Human Identities." In *Cultural Heritage and International Law: Objects, Means and Ends of International Protection*, edited by Evelyne Lagrange, Stefam Oeter and Robert Uerpmann-Witzack, 1-28: Springer International Publishing, 2018 at 22.

<sup>22</sup> Shylloin, Folarin. "Cultural Heritage and Intellectual Property: Convergence, Divergence, and Interface." In *A Companion to Heritage Studies*, edited by William Logan, Máiréad Nic Craith and Ullrich Kockel, 55-68: John Wiley & Sons, Inc, 2016 at 59.

<sup>23</sup> Scassa, Teresa. "Copying of Inuit Robe Highlights Gaps in Canadian Legal Framework." 2015. [http://www.teresascassa.ca/index.php?option=com\\_k2&view=item&id=200:copying-of-inuit-robe-highlights-gaps-in-canadian-legal-framework](http://www.teresascassa.ca/index.php?option=com_k2&view=item&id=200:copying-of-inuit-robe-highlights-gaps-in-canadian-legal-framework); Zerehi, Sima Sahar. "Inuit Shaman Parkea 'Copied' by Ktz Design Well-Studied by

design.<sup>24</sup> In those U.S. cases, people have been making use of the *Indian Arts and Crafts Act* to deal with people wrongly making use of Indigenous intellectual property. In Canada, we don't have that kind of legislation yet. But there are parts of Canadian IP or Copyright or Heritage legislation can deal with some of the questions that come up."

"In the case you guys are looking at," adds Lauren, "the Sayers and Hamilton families tried to make an argument that the masks were protected from sale under the BC *Heritage Conservation Act*. But that legislation treats the ownership of such cultural pieces as individual rather than collective. Because this interacts with BC provincial laws that treats inherited objects as individually owned, there is a kind of erasure of the Nu-chah-nulth understanding of collective ownership."

Dawn says, "Yes, I know I am just in first year. I know I am just a baby learner, but..." She trails off, and then takes a slow breath. "Well, that seems a bit wrong. So BC inheritance law trumps Nu-chah-nulth cultural heritage law? Surely it is time that such a law be changed!?"

Shiloh pops in, "It says here that there is a working group of First Nations leaders and Provincial government representatives who are looking at the question<sup>25</sup>. But as you can imagine, there are lots of political questions there, since there are many different First Nations. Do they have to come to an agreement with the province first about their own legal orders? And if you want to see Craig blow his top again, you just remind him that the Provincial body that is working with First Nations to address possible changes to the Heritage Conservation Act is the Ministry of Forests, Lands and Natural Resources."

Evie add, "I guess that is what the family members were saying too. Wawmeesh Hamilton says these masks were among the most sacred of possessions. So that brings us back to the Prof's question 3 about underlying purposes, right. Sound like you are saying that it doesn't make sense to talk about the mask as if it were just a piece of art, or just a piece of intellectual property. In this context, the mask seems to be a piece of a governance structuring, or related to establishing the family's place in society. So, there is something artistic, something about governance, something about intangible intellectual property. That is lots bundled into one object."

Craig pops in again, "Exactly! And yet, Western law continues to flatten things. *The Indian Act* still forces many Indigenous folks to adopt Western style wills and concepts to deal with the legal transmission of title to such objects. It changes how we think about what is possible. And why do we keep talking this way?" He pauses, and shakes his head, adding, "In fact, why am I

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Anthropologists." *CBC News*, December 2, 2015 <https://www.cbc.ca/news/canada/north/inuit-shaman-parka-design-history-1.3345968>

<sup>24</sup> [https://www.arctictoday.com/neiman-marcus-agrees-to-settle-in-landmark-indigenous-property-rights-case/?wallit\\_nosession=1](https://www.arctictoday.com/neiman-marcus-agrees-to-settle-in-landmark-indigenous-property-rights-case/?wallit_nosession=1)

<sup>25</sup> Drews, Keven. "Woman Asks B.C. To Alter Heritage Law; Family to Punish Member over Masks' Sale." *global News*, January 20, 2013. <https://globalnews.ca/news/380655/woman-asks-b-c-to-alter-heritage-law-family-to-punish-member-over-masks-sale-3/>

talking this way? I mean, I am irritated listening to myself. Saying ‘title’ and ‘transmission’ in the same sentence makes me think of trying to sell my old car.”

“Well, there you go, Craig”, smiles Lauren. “Driving us towards a conclusion. Pun intended.”

Dawn adds, “You know, we have been focusing lots on the seller and the auction house. But now I am wondering about why a buyer would purchase such an object. Do you think the auction company told the buyer that there was a conflict over ownership? I mean, if I try to imagine myself as a buyer, I don’t know that I would feel really great about buying the mask if I knew the story behind it.”

Evie turns back to the open computer screen. “I don’t know. For sure the auction company knew. The newspaper article says that the family went to the auction company and asked them to stop the sale. Wawmeesh Hamilton, the older brother, said, ‘We tried to explain to them that there is a difference between private property and family cultural property, but their heads were full of dollar signs instead of sense. The art auction is a game played by rich people who don’t care about cultures or correctness.’<sup>26</sup> He clearly doesn’t have a high opinion of the auction house.”

Ami adds, “Do you think he’s right? Do you think this is a case of people who don’t care, or people who actually don’t know? I mean, I remember a friend of mine telling a story about his elderly mother taking her first visit to China, and sitting on what looked like a stool, but what was actually an ancestor shrine of some sort. She had no idea why people were yelling at her. She obviously didn’t ‘mean’ to do harm, but I can see why the local peoples would feel disrespected. I can also see why it would have been better for her to know a bit more about Chinese law/society/culture.”

Craig shakes his head. “No way! There is no way the auction company gets to make a claim of innocence here. Let’s be honest. They knew there was a conflict. If they specialize in West Coast Art, then they know about this history of the potlach and unjust legal dispossession. So, we are going to take seriously their claim that a mask is simply a household possession?! I think that conclusion is contestable even in Canadian law. They are not legislators, and they are not judges, but they get to decide that Hupacasath law is irrelevant, and strip this family of its intellectual property and turn its cultural heritage into a tradeable art commodity?!” His voice continues to rise, gathering a few looks from people at the tables close to them. “So what that the potlach is no longer illegal! This is just a continuation of cultural genocide through new means?!”

“Strong words Craig,” Ami says. “I am not quite sure what I think about calling it cultural genocide, but... you do leave me wondering. Why is the burden of proof here on the Hupacasath rather than on the auction house? Do you think that a court may be able to take

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<sup>26</sup> Wiwchar, David. "Sacred First Nation Masks Sold to Highest Bidder." *Indian Country Today*, December 10, 2012.

judicial notice of a history of legal dispossession? Maybe the principle of buyer *beware* should be supplemented by the notion of buyer *be aware*.

Shiloh adds, “OK. That’s a good bumper sticker line.” She continues, “I guess if we are going to start talking Evidence Law, maybe we should also start talking about Equity? Why do we assume it is equitable to let the buyer keep the mask?”

There is silence for a few minutes at the table. Lauren pushes another slice of apple over to Craig, “The loss of the mask is significant. The family has lost control of it in circumstances they should have been able to control. The mask and its songs and dances were a symbol of their continued cultural existence. They should have been able to maintain control of possession and use of the masks. It speaks to their very continued cultural existence. Having an understanding of the injury can shape how you think about possible remedies.”

Evie says, “I guess this is why my head starts aching, trying to figure out how to describe the injury. There’s the loss of the mask itself. There is the fact of having your own family member be the one to sell it. There is the injury of being told that criminal law can’t help you because this isn’t really theft, but only the sale of a household possession. There is a refusal to acknowledge the existence of Hupacasath law, let alone its relevance.”

Dawn looks out to the woods behind the school, watching a swirl of leaves caught in a gust of wind. “Part of me is stuck on thinking how sad I would be if something like this were to happen in my own family. In some ways, it would be way easier to have the mask stolen by a stranger, than to be sold by your own family member. That must have been so hard on the rest of her family. Well, that is a story that many of us know in our personal lives, eh? Many a family has seen their own members break the law, and have been left trying to figure out how to respond: Change the locks? Call the police to report it? Let it go?”

Lauren says, “Well, the Hupacasath certainly understood the magnitude of the injury that was done here. I assume your Professor told you that the sister was stripped of her name?”

Ami tilts his head, “Say what!?”

Evie nods, scrolling down through the open article and pushing it over to Ami to read. “Yes, she said that the family held a public ceremony, at which they stripped the family member of her name, title and responsibilities. Serious business. It sounded a bit like being banished, or excommunicated, or exiled. Or a bit like losing your citizenship.”

Ami looks up from the article. “Listen to this: one family member said, ‘these things are considered to be some of our very highest property, and they would be covered by our very highest laws, and those laws have consequences to them. It’s an egregious offence.’” He pauses for a moment, then says “Now that is weird....”

“Why do you say that!?” Craig snaps at him, “It is not weird at all. In fact, it speaks to all the intellectual property implications in this case. It tells us that the intangible property, you know, the songs and dances that went with the mask, that those make the mask even more valuable to the Hupacasath. You know there has been a big harm where the remedy is so big!”

“Whoa, whoa, whoa!” says Ami, holding up his hands in a defensive posture. “I didn’t mean the *ceremony* was weird. I was looking at the way the newspaper reported it. The paper says, “

...they plan to strip the family member who sold the ‘hinkeets’ of her royal title and cultural responsibilities at an upcoming ceremony, shedding light on the internal disciplinary proceedings practiced by First Nations for generations.”<sup>27</sup>

“So what is the weird part of that?” Craig says, still looking at Ami suspiciously.

“Well,” he says, “I just thought it weird that they would describe ceremony as ‘internal disciplinary proceedings.’ That’s not the language you see in the papers when they are referring to Canadian law. We usually call that stuff ‘law’. Calling it ‘internal’ implies that non-Hupacasath people have no responsibilities when dealing with Indigenous property. And the phrase ‘disciplinary proceedings’ is something you hear when the hockey league is trying to deal with fights on the ice between its players. It makes it sound like an administrative or bureaucratic process rather than as a legal process related to the very highest form of property.”

“Ah,” says Shiloh, “I see your point. The newspaper describes the problem as a private one for the family to sort out. Not one that implicates Indigenous Intellectual Property. In effect, the auction house, the buyer, the police, the legislature, and media all *implicitly* deny the existence of Hupacasath Law. Or, put otherwise, they deny that Hupacasath Law has any jurisdictional traction in contemporary life. If there is a remedy, it is only of the Hupacasath against one of their own. Hupacasath law has no extra-territorial reach.”

Ami says, “So then, are we saying that there is no Indigenous IP problem with this case?”

“Well,” Shiloh comments, “I guess I am saying that under the current statutory regime, it is hard to find a harm recognizable for Western IP with the sale of the mask. This reminds me of Professors Morales and Thom saying that Canadian property laws cast a shadow and make it difficult for Indigenous property laws and principles to be seen and exercised.”<sup>28</sup> For the Hupacasath here, there is little in the Canadian legal system that could provide a remedy for the harm done. It does not seem to get them the mask back”.

Shiloh turns to Evie. “That was one of the questions the Prof asked you, right? About remedies for this kind of legal harm?” Evie nods, and Shiloh continues. “In terms of present day remedies, it sometimes feels like the Canadian legal order suffers from a lack of imagination.”

Lauren interjects, “Before everyone falls into the pit of despair, I think it bears saying that Hupacasath law is not without resources for addressing complex problems like these. In this case, the mask is gone. That is an injury. But you can imagine the mask being lost in other ways. What if, for example, it was lost in a house fire? You would still have questions about the relationship between the mask and the songs. There are protocols in place for making a new mask, and for re-connecting the mask to those songs and dances: there would be a ceremony at which that would happen. And in fact, something like that happened in this case. I am not

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<sup>27</sup> Drews, Keven. "Sale of Island Masks Sparks First Nations Concern over Preservation of Culture; Port Alberni Families Plan to Discipline Woman Who Deal 'Cultural Property' Considered Sacred." *Times colonist*, January 20, 2013, 01:00 am 2013.

<sup>28</sup> Morales, Sarah, and Brian Thom. "The Principle of Sharing and the Shadow of Canadian Property Law." In *Creating Indigenous Property: Power, Rights, and Relationships*, edited by Angela Cameron, Sari Graben and Val Napoleon, 120-60. Toronto: University of Toronto Press, 2020 at 122.

diminishing the injury in this case. I am only noting that the question of “what next” is addressed in Hupacasath law. There are legal principles in place to address how one responds to the relationship between the physical object of the mask, and the other intangible intellectual and cultural properties that are carried with it. What you see here in the ceremony, however it was reported, was that two big things happened. First, there was a public acknowledgment of the magnitude of the harm. In stripping the sister of her name, they were not just punishing her. They were affirming and enacting the significance of Hupacasath Intellectual Property Law. Second, in carving a new mask, and attaching the songs and dances to it, they were enacting a lawful response to and repair of that injury.”

Craig adds, “You are reminding me that the issue here is control and not just protection. Because the point is not that a mask like this could never be sold. The question is how the decision gets made and by whom. Sometimes families made decisions to sell masks like these when they were no longer being danced, or when their needs were dire. It would be pretty paternalistic to say that a group could *never* make the decision to sell a mask or another object.”

Evie asks, “But this gets us back to the question of how a buyer would know if they could or couldn’t buy something. How would you know if someone was selling you someone’s family property, or something that was made for the market?”

Lauren smiles, “There are questions in all markets. In the context of masks, it has always been the case that some are ceremonial, some are for trade. You could probably tell from seeing how well the back of the mask was set up for being worn (with pieces to connect or hold in place).”<sup>29</sup>

“That reminds me of this pair of Inuit sunglasses I have.” says Dawn. “My sister brought them back from a trip up North. They look like the glasses in the film *Atanarjuat*. They are carved from some kind of bone or antler, I think. My pair have the artist name carved on the back, and came with a certificate of authenticity. So, I guess they are at least covered by IP law in some way?” They are beautiful to look at, but not really designed for being worn. I imagine that there would be different kinds of artistry and time involved to have a pair fitted to wear. Such things, whether worn or hung on the wall, don’t seem to raise quite the same questions. Fabulous functional objects. Definitely associated with the north, but not quite raising the same IP questions about ceremony or governance.

“So this gets back to the point” Craig says, “*Whose* Intellectual Property law? You just can’t have a conversation about a Hupacasath mask without having a conversation about Hupacasath law.” Both BC and Canada have ratified UNDRIP. Article 31 asserts the right of Indigenous Peoples to maintain, control, protect and develop their cultural heritage. So the point is, that the conversation can’t end with Canadian IP law. The rebuilding of right relations with Canada has to involve Indigenous legal orders.”

The group sits quietly for a minute, as the flow of students moves in and out of the space around them. Evie smiles, and says, “Well, I guess that is the answer I will be giving in the next crim class: ‘The conversation can’t end with Canadian IP law! Nor can it end with Canadian Criminal Law!’”

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<sup>29</sup> Find cite for this.... I read this somewhere but now don’t recall (check the stack of articles)

Evie re-opens her notebook, and taps the list written there, saying, “So lets recap. The prof told us to ask 5 different questions: 1. What kind of property is this? 2. Who is the owner? 3. What is the underlying purpose of the property? 4. What is the legal harm or injury? And 5. What are the range of historic and present day remedies?” She raises her eyes, and says, “I don’t know that I could answer these yet, but I do feel like I understand the questions a little bit better. I really wonder about that last question, about what some of the historic and present day remedies might be.”

Dawn hold out an arm, and says, “Evie! Stop!” She wrinkles up her face and says, “My brain is tired! Lauren, Ami, Shiloh, Craig....You guys are amazing, and this has been a very tasty intellectual meal, but I am full to the brim. I feel like that guy in Monty Python’s *The Meaning of Life*. Please, no more! No last ‘wafer-thin mint for me, John Clease!’ I think I need some time to digest.”

Shiloh laughs, and then looks at her watch. “Time flies! OK, my next class starts in an hour, but I have got to get a bit of fresh air before we head back in there. Are any of you up for a bit of a ‘post-meal’ walk to speed up the mental digestive juices?”

“Well,” Dawn said, “if you are planning to stroll by the parking lot, I would be happy to join you.”

“The parking lot!?” Shiloh said with a raised eyebrow. “Not exactly the most scenic walk around here. So, I guess that means you are still working on that plan to quit smoking?”

Dawn shrugs and grins, “It’s the last designated smoking spot left on campus. Life is a work in a process, you know. But hey! Lets call it harm-minimization. We both get a walk. I will stand downwind from you in the parking lot to make sure you get fresh air. You can keep talking to me about the case, thereby filling your obligations to me as a mentor!”

Shiloh laughs, saying “OK, pack it up and lets take a stroll. Anyone one else want to join?” Ami and Evie agree, and the group head out of the lounge in the direction of the great outdoors, leaving Lauren and Craig behind. Lauren finishes her final bite of apple, sitting with Craig in companionable silence. “So many important questions raised by the case.”

Craig nods. “I don’t even know what to think about the prof opening that can of worms in a first year crim class. Is she going to give them answers, or just let those questions sit there? Quite the privilege to just throw the problem out there. Of course there are Indigenous intellectual property laws out there, and maybe the students can even start to see those laws, but it can’t just be about comparing different legal rules. It is not only about concepts of law but about legal structures and institutions.”

Lauren nods, “It is hard to get past an interest in Indigenous law generally to a commitment to deal with law in all its messy and very particular detail. Honestly, I kind of like it that she gave them something complicated to cut their teeth on. As you say, it does raise all the big questions. And I do mean all. How do we teach and learn law when issues cross boundaries – jurisdictions, ways of being and knowing, material and spiritual. And so many different legal questions are implicated: criminal, tortious, property, wills and estates, harm, remedies, ownership – alongside

other ways of thinking about law – gender, power, privilege. Of course there will be answers to find, but I do like it that this group of students is at least grappling with the harder questions.

“And for us Indigenous folks?” Craig asks. “Don’t you think we are also facing harder and harder questions about implementing Indigenous law in the ordinary spaces of daily life?” Craig shifted a bit in his seat, and said, “So many difficult politics here. It is one thing to remind outsiders that Indigenous law continues to exist in the world, but it is another thing to do the hard work of actually using Indigenous law to solve problems in the world. One can’t just talk about Indigenous Intellectual Property Laws springing back into existence without taking Institutions into account. This is going to mean the rebuilding of Indigenous IP Institutions.”

“Yes,” Lauren says, “and you are right that it is going to require some work exploring how current Canadian and international institutions may need some re-engineering, and changes in policy, and operating assumptions.” Her attention is caught by a swooping movement, as in the forest outside the window, a pair of ravens landed in a branch high in a tree. They caw back and forth, seemingly in the middle of an ongoing piece of storytelling. With a glint in her eye, Lauren continues, “and I suspect this will involve conversations and collaborations with our activists, artists and intellectuals, old and young alike!”

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And so we leave our imagined characters as they continue the work of learning law, whether in the spaces of the formal classroom, or through engagements with others in the lounge, or indeed, to conversations while walking, even if only to the designated smoking areas alongside the parking lot. I am left carrying forward a few thoughts. One is that it matters, when thinking about Indigenous intellectual property, to be specific about the legal orders from which the questions arise. This does not mean ‘knowing’ everything about each Indigenous legal order in North America, but it does mean a change in the presumption that Canadian default understandings of property apply. Indigenous art and societal/cultural expressions take meaning within the rich context of their legal orders, and these expressions require specific engagement with questions of governance, economy, and identity. Colonial inheritances and histories will remain a part of the conversation, as they often situate contemporary conflicts that continue to carry the legacy of that the stories that are told about both Indigenous and Settler state lawfulness and lawlessness. The conversations, especially intergenerational, and with spaces for interruption, are crucial to the work of unsettling our inherited colonial erasures, and engaging in the (perhaps messy and difficult but also more life affirming) practices of learning law and acting lawfully in the multi-juridical world we have inherited. Part of the work that needs doing is being done within Indigenous communities, as they engage with (and in cases rebuild) the law around important societal and cultural expressions. Part of the work is being done by non-Indigenous folks and institutions, as they do the work of learning about the legal regimes of others, in order to grapple with the questions that will enable respectful and practical engagements with the world of the real, both

tangible and intangible. What lies ahead, we hope, are more conversations which open space for more questions. Conversations worth having.

DRAFT