**Slide One: General Intro**

Tansi, … bonjour,… hello… I wish to thank the organizers of the conference and the Danish Institute for International Studies for kindly offering me an invitation to speak. This is my first visit Denmark or any Nordic European country, I look forward to an engaging conference and possibly visiting some of the local cultural sites.

The National Centre for Truth and Reconciliation (NCTR) is located in Canada on Treaty One Territory these are the ancestral lands of the Anishinaabeg, Anishininewuk, Dakota Oyate, Denesuline and Nehethowuk Nations. This is also the Homeland of the Red River Métis and the province of northern Manitoba also includes the ancestral lands of the Inuit. The NCTR respects the spirit and intent of Treaty Making and remains committed to working in partnership with First Nations, Inuit and Métis people in the spirit of truth, reconciliation and collaboration.

**Slide Slid one: Overview of Talk**

In a speech delivered to the NCTR in 2022, Honorable Murray Sinclair, a former Commissioner of the Truth and Reconciliation Commission of Canada, recalled his legal studies at the University of Manitoba.[[1]](#footnote-2) As a young Indigenous law student with an interest in Indigenous laws and cultures, he described a meeting with a group of local Elders and Knowledge Keepers to discuss community laws and cultural practices. To attend the meeting, he was taken on a journey in the back of a pickup truck along winding unpaved roads deep into the bush. When he asked why they were meeting in the backwoods, he was told it was because some of the traditional laws and cultural practices they would perform and discuss were not fully endorsed by settler authorities.[[2]](#footnote-3) *Giizih-Inini,[[3]](#footnote-4)* Spiritual Guide for the NCTR, describes a similar story. From his own experience he notes that many cultural ceremonies and Indigenous social protocols “went underground” in the 1940s and 1950s when provincial and federal governments refused to formally recognize or even acknowledge collective traditional expressions of immanent Indigenous law, culture, and identity.[[4]](#footnote-5) And in some cases made their practice illegal.

These anecdotes illustrate the gradual and purposeful erosion of Indigenous knowledge practices and worldviews in the colonial era: the progressive loss of cognitive social bonds, community memory, cultural identities, and normative natural laws resulting from the overwhelming assertion of imperial sovereignty and uncompromising colonial settlement.[[5]](#footnote-6) As a catalyst to this process, the Canadian residential school program served as a solvent, dissolving community and family bonds and effacing the cultural identities of Indigenous children.[[6]](#footnote-7) The attrition of Indigenous cognitive landscapes occurred in coordination with the physical loss of lands. Indigenous legal scholar James (Sa’ke’j) Youngblood Henderson has described this enfolding Indigenous colonial experience as the “ideological twins of violence and imagination…. Violence controls the physical contexts of genocide and legal authority, while imagination controls the intellectual justification of violence in the context of cognitive and cultural imperialism.”[[7]](#footnote-8) If ever we are to braid together our respective intellectual worldviews, acknowledge our mutual humanity, dignity, and human rights, we must create a meaningful space for Indigenous ways of knowing in our academic, social, and professional fields. Fields currently built on specific western bodies of knowledge. This quest begins by acknowledging the removal, co-opting, and absorption of Indigenous cognitive understanding, the ideological violence practiced on Indigenous imagination.

I argue in this presentation that in the colonial relationship between Indigenous peoples and Imperial/Settler authorities – religious, legal, and cultural – there has always been an ongoing tension between the formal, legal and statist methods of enshrining valued and sanctioned memory, what James Tulley has called the “universal pretentions of the juridical” ; and the implicit, sacred, and immanent Indigenous order pre-existing in local contexts of nature and humanity. As Harold Berman describes in his work, *Law and Revolution*, this inherent tension between innate human rights and statist authority, has resulted in well-known peoples’ revolutions – French, English, Russian. The *UN Declaration on the Rights of Indigenous Peoples* is the most recent example of these revolutions. I suggest that to find pathways for a meaningful framework of international rights that incorporates the life ways of Indigenous peoples, we must recognize this inherent tension between the latent normative order of Indigenous peoples rights, expressed and understood within their self-determined worldviews; and human rights understood as the will of the sovereign.

This presentation will identify and examine an Indigenous cognitive thread in the weave of this controlling imperial imagination. First contact elicited a critical Indigenous response that contributed inspiration for the creatively destructive ‘western’ understanding of Indigenous societies that facilitated and justified their colonial removal. Until recently, histories of the colonial encounter commonly assumed this imperial imagination went predominantly unchallenged, the overwhelming cognitive impact of colonial settlement simply engulfed and eroded Indigenous epistemologies and self-sustaining ideas of natural law and immanent social organization.

But centuries of colonial engagement demonstrate “the Eurocentric legal tradition of the imposed order of a sovereign has never been able to exclude the immanent … sacred, or customary law,”[[8]](#footnote-9) those collective cognitive social principles that supported Indigenous societies for generations before colonial contact. In fact, since the early recorded observations of imperial explorers, Indigenous intellectuals and representatives have consistently refuted Enlightenment European social paradigms of individualism with arguments for immanent collective community values; respectful acknowledgement of diversity; and an inherent spiritual relationship with local ecology, shared through performance, language, and cognitive material expression.[[9]](#footnote-10) This critical dialogue extended over centuries. It demonstrates colonial encounters were complex and multi-dimensional relationships, and as with all intimate and significant relationships over time, the influence was profound and reciprocal. Inevitably, through ongoing contact, a thread of Indigenous influence coloured the weave of western epistemologies of governance and social theory. And European social theorists borrowed freely, if not admittedly, from the fabric of Indigenous social thought. This Indigenous epistemological influence can be found in our institutions of governance, in our mechanisms of social representation, and our public spaces of culture, heritage, and social memory. It is these same Indigenous epistemological lifeways that we must acknowledge and revive to bring the international views on human rights into a meaningful relationship with Indigenous societies.

**Slide #2 Presentation Overview**

In recognition of the conference theme, that archives are contested assertions of authority, and that shared, displaced and disputed archival heritage is a matter of global concern, I shall consider some examples from the colonial history of the Indigenous peoples of Canada including the history and legacy of the residential school system in Canada. My examples will highlight periods when juridical authority asserted its jurisdiction with archival documentation; and Indigenous peoples’ responded with expressions of their customary laws of immanent order.

**Slide #3**

The context of this ongoing interaction begins with British contact with non-Christian societies in what has been characterized as a kind of residual medieval and personalized approach to sovereign authority. The British acknowledged Indigenous Identity, albeit as a subject of the Crown. This recognition was expressed in treaties, sovereign protocols and proclamations. Since this period, Indigenous communities have consistently argued for recognition of their inherent rights as Indigenous peoples, but only recently that we see colonial legal instruments such as commissions offer a renewed cognitive space for the Indigenous perspective. These legal instruments reflect “a national narrative with a profound sense of mistrust and disagreement about thefounding of the modern state and the legitimacy of its current authority.”

This concept of respectful engagement has been a consistent claim of Indigenous campaigns for rights since first contact. Inter-societal recognition and accommodation across communities of equals has been a traditional Indigenous governance model. Political order in Indigenous societies has emerged from collective and respectful consensus, “cultivating relationships of spiritual kinship, linking individuals, communities, and the natural world, not from the coercive will of the sovereign.” As legal scholar Mark Walters, observes, to maintain a sense of ordered freedom within these societies requires that individual communities honour the sacred duties of care and respect that ties of spiritual-kinship imply. These are traditions of reconciliation that were embodied in the original treaties created from the mid-17th to early, 19th century. I would argue that our contemporary TRC is returning to these Indigenous traditions of governance; of inter-societal accommodation and negotiated self-determination*.*

The example most often cited on this concept of respectful inter-societal relations is the exchange of two row Wampum belts at Niagara in 1764 to enshrine the sovereign Indigenous rights recognized in the Royal Proclamation of 1763.

First Nations regarded the agreement, represented by the Proclamation and the two-row wampum, as one that affirmed their powers of self-determination …it demonstrates the foundation-building principles of peace, friendship, and respect agreed to between the parties.

TRC Commissioner Murray Sinclair has made reference to the lost opportunity of the Proclamation and the promise of self-determination captured in the Niagara ceremony of 1794 and the Wampum belt created there. The NCTR call to action number 45 recommended a renewed Proclamation with the social protocol of the wampum to cast a new post-colonial model for Indigenous – settler relationships. The belts, no less than the proclamations*,* represent materials of social memory. Whether we choose to call them archival is more of a question of culture.

**Slide #4**

By the second half of the 19th century the Crown had abandoned these relationships of mutual esteem. Common law produced a positivized doctrine of Crown sovereignty that shaped the political relationships with Indigenous peoples. The law became more of a blunt force instrument for Indigenous dispossession. Proof of sovereignty became documentary evidence of ownership of land. Pathways of Indigenous self-determination became limited to the stifled arguments of colonial common law.

The Cowichan petition of 1909 is a model document of this era. Thought to be the first official document to make the legal argument for Aboriginal rights and title written in legal formality, the Cowichan Petition was written by lawyers Clark and O’Meara in 1909 under the direction of Cowichan Elders from Vancouver Island. The document – sent to the British Colonial Office, the BC Government, and Ottawa – influenced the Nisga’a Petition of 1913, which eventually led to the vital 1973 Calder Supreme Court decision. That decision is generally thought to be the dawn of the modern era of Indigenous activism on rights and title in Canada. There was no other time before the 1970s that Indigenous people were closer to forcing Canadian courts to adjudicate the land question than the two years between the presentation of the Cowichan Petition in the Spring of 1909 and the Dominion Election of 1911.

**Slide #5**

The Indigenous residential school system, or IRS, is another product of these colonial empires of Uniformity. Begun in the 1880s and modeled after examples in other jurisdictions including France and the U.S., the goal of the IRS was the forceful removal of children from their homes to be isolated in residential schools to be completely assimilated into the culture of European Settlers. This period from the turn of the 20th century until the last quarter of the century I have termed the “Great Assimilation.” There is no limit to the disheartening examples available, but the positive doctrine of sovereignty legitimized the erasure of the identity of Indigenous children, the result was genocide. The disclaimer I am showing is the caution the NCTR employs for all disturbing images on our web site. I caution the audience this is an unavoidably disturbing image of an unsettling story.

**Slide #6**

This is a photo a of gravesite near an IRS known as St. Joseph’s or alternatively Dunbow. It depicts 27 women and girls attending to a graveyard with crosses and gardening equipment. It is a posed photo, the girls are all wearing summer hats, they are facing the camera and have not yet been at work in the gravesite. That would come later. This type of photo was common for its time. In their constant effort to convince the federal government to fund their IRS work, religious orders such as the Catholic Grey Nuns who operated this school, would regularly accompany their quarterly reports and correspondence with images giving proof of the thriving and worthwhile endeavor of residential schools.

The Dunbow remains fell into a no-man’s land in terms of government jurisdiction: too young to be archaeological, too old to have been recorded as a cemetery in the young province of Alberta. No government department was immediately prepared to step forward and assume responsibility for the disposition of these remains.

Continuing with the theme of contested and unsettled archives, I wish to offer one example of the challenges of tracking down historical records with the inconsistent recordkeeping of the IRS.

This is a letter in Indian Affairs RG 10 files, from Dr. T.J. Orford, Indian Agent, Moose Factory to P. Langlois, Principal, Les Missionnaires Oblats de Marie Immaculée, École-pensionnat Indien d’Albany, January 19, 1942,

It reads:

The Department has just received the September quarter return of the Albany Indian Residential School… The names of the pupils numbered as follows were shown on the June quarter return but do not appear on the September return, although no application has been received for their discharge.

**That’s 21 numbers representing 21 unnamed children.**

As always, the numbers that begin with a zero indicate girls

1970s New dawn of Indigenous rights

Rediscovery of Diversity

**Slide #10** This brings me to the revolutionary breakthrough of the UNDRIP. This UN Declaration builds on a structural latticework of post-war international statements on human rights. Notably, article #3 draws forth the first article of the two 1966 UN covenants on human rights: these are the *International Covenant on Civil and Political Rights* (UN General Assembly. 1966) and the *International* *Covenant on Economic, Social and Cultural* *Rights*. (UN General Assembly. 1966). These two covenants expand on the 1948 *Universal* *Declaration on Human* *Rights*. The covenants continued to elaborate on the international legal trajectory of highlighting human rights over state values begun in 1948 (Anaya. 2004, pp.49-61).

**Slide #11** The Covenants are a breakthrough in that they forcefully introduce human rights as a judicially cognizable and enforceable entity in court. They also forcefully advocated for collective self-determination, a core issue of the Indigenous rights movement. Through the covenants, Indigenous representatives expanded on the contemporary distinction between “peoples holding the right of self-determination” and “minorities holding the right to cultural integrity” (McHugh, 2005, p. 299). Indigenous representatives in Canada recognized in these thoughts the potential for their own struggles for recognition and supported the development of the universal human rights program, predominantly through the UN, as a “remedy to assimilation” and racial discrimination. While resisting the domestic Indigenous assimilationist projects that first grew out of the post-war international claims for human rights, for example the infamous *White Paper* of 1969, Indigenous peoples formulated their own arguments tying together the mid-20th century rights models for “self-determination, minority and human rights.” The covenants influenced national discussions on Indigenous rights in both legal and political spheres. In part this was this due to the ongoing campaigns of Indigenous representation. Canadian public discourse absorbed the growing contemporary international human rights consciousness in its public policy dialogue on Indigenous rights. International forums on Indigenous rights influenced the tone of such domestic work as the *Canadian Charter of Rights and Freedoms* (Canada. 2008). It also informed the arguments of activist public litigation law that enabled Indigenous rights campaigns in Canada (McHugh. 2011, pp. 8-9). Ultimately, as a remedy for assimilation, the international Indigenous rights movement made effective use of the post-war movement towards pan-statist, collective human rights. The first article of both Covenants reads:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (U.N. 1966)

Article three of the UNDRIP reads:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (U.N. 2007)

**Slide #12** The idea of inherent human rights is an entirely new frame of reference in the history of Eurocentric legal thought and tradition. It has since the covenants been confirmed in serval important international declarations. These include:

**Slide #13 T**hese developments in legal thought do not underplay the accomplishments of Indigenous activists who have for generations argued for their collective inherent rights as Indigenous peoples. The UNDRIP represents a revolution in legal thought. The inherent rights expressed in the UNDRIP exist as a holistic refection of the elusive imllicit order of human life and behaviour developed by Indigenous thought and law. As Henderson observes, in the history of Eurocentric legal thought, inherent human rights have existed as a shadow realm that reveals and reflects the concept of law both as an immanent order and as the will of the sovereign. And like other legal revolutions such as the French and Russian, the memories of these radical developments are reflected in public records. In this case, the Indian Residential School Settlement Agreement, which assigned the Truth and Reconciliation Commission the mandate to create a unique set of records to be preserved at a publicly available Indigenous research centre. The recordkeeping instructions for the TRC included:

a. Acknowledge Residential School experiences, impacts and consequences;

b. Provide a holistic, culturally appropriate and safe setting for former students, their families and communities as they come forward to the Commission;

c. Witness, support, promote and facilitate truth and reconciliation events at both the national and community levels;

d. Promote awareness and public education of Canadians about the IRS system and its impacts;

e. Identify sources and create as complete an historical record as possible of the IRS system and legacy. The record shall be preserved and made accessible to the public for future study and use.

**Slide 14** in 2015, when the TRC completed its work it had acquired roughly 7,000 Survivor and witness statements and over 4 million digital records documenting the history and legacy of residential school. To deal with this unprecedented set of over 300 tbs of digital material the NCTR turned to the Canada Foundation for Innovation.

The application had to Reframe the Concept of Innovative Research through Decolonization

**Conclusion:**

The mandate of the NCTR is an example of the role of archives, as the conference theme suggests, to bring a certain kind of decolonization to a profoundly colonized history. Unstated in its mandate, the ultimate NCTR goal is to create a new conceptual space where the holistic and immanent orders of Indigenous communities can grow uninhibited, to cross-pollinate with the rational, individual Enlightenment principles of European thought to seed hybrid flowers to grow freely in a colourful garden of collective and individual rights unhindered by centuries of imperial judgement. It is time for our knowledge professionals to stop behaving like displaced Europeans, and like Murray Sinclair, go back to the land and rediscover the thoughts and Ideas of identity, belonging, and community, where they once grew freely.

1. The National Centre for Truth and Reconciliation (NCTR) was created as part of the mandate of the Truth and Reconciliation Commission of Canada (TRC). The TRC was part of the Indian Residential School Settlement Agreement (IRSAA). This agreement brought together government authorities, Christian religious orders, and Indigenous representatives to address the harms Canada’s residential school program committed against the Indigenous societies of Canada. The TRC was charged to listen to Survivors, their families, communities, and others affected by the residential school system, aid in their healing, and educate Canadians about their experiences. The resulting collection of statements, documents and other materials now forms the sacred heart of the NCTR. The NCTR Archives and Collections is the foundation for ongoing learning and research. Here, Survivors, their families, educators, researchers, and the public can examine the residential school system more deeply with the goal of fostering reconciliation and healing. For more information on the NCTR see: <https://nctr.ca/>. [↑](#footnote-ref-2)
2. Honorable Murray Sinclair, P.C., O.C. “Special Presentation to the National Centre for Truth and Reconciliation (NCTR),” October 12 (?) 2022. On the question of preserving and sharing Indigenous law in public practice see Val Napoleon, “Did I Break It? Recording Indigenous (Customary) Law,” PER/PELJ 2019(22), DOI:<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a7588>. [↑](#footnote-ref-3)
3. Knowledge Keeper, Elder Harry Bone, C.M. is from the Keeseekoowenin Ojibway Nation. He has served as Director of Native Programs for the Federal Government, Vice-President of Aboriginal Cultural Centres of Canda, and as Chairperson of the Treaty Relations Commission of Manitoba (TRCM) Council of Elders and Assembly of Manitoba Chiefs (AMC) Council of Elders. [↑](#footnote-ref-4)
4. Giizih-Inini[Elder Harry Bone, O.C.], lecture to University of Manitoba Graduate Archival Studies class, HIST 7372, “History of Archiving and the Archival Record,” March 8, 2023. [↑](#footnote-ref-5)
5. The most known government action against the practice of Indigenous ceremony, immanent law, and social protocol is the restrictive laws applied to Potlatch ceremonies performed by Indigenous communities on the West Coast of Canada. The first anti-Potlatch proclamation was issued in 1883. The first formal anti-Potlatch legislation was passed as part of the *Indian Act* in 1885. For a study on the repatriation of confiscated Potlatch materials see Emma Louise Knight, “The Kwakwak’wakw Potlatch Collection and its Many Social Contexts: Constructing a Collection’s Object Biography,” *MA Thesis,* Faculty of Information, University of Toronto, 2013. Restrictions on the Sundance ceremony and other Indigenous cultural expressions would follow. The Sun Dance was outlawed under the *Indian Act* of 1895. Although anti-Potlatch legislation was removed in 1951, many Indigenous communities remained cautious in holding public Potlatches. For an example of the enforcement of the Potlatch ban, see Tina Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951,” *Canadian Historical Review*, vol. 73, no. 2, (June 1992), pp. 125-165. For a postmodern study of the enforcement of the Potlatch restriction see Christopher Bracken, *The Potlatch Papers: A Colonial Case* *History*, Chicago: University of Chicago Press, 1997. The legislated cognitive elimination of Indigenous knowledge practices occurred in colonial jurisdictions around the globe. In New Zealand in 1907 settler society passed the *Tohunga* *Suppression Act,* a piece of legislation designed to prohibit the *tohunga* (traditional *Māori* healers) from sharing their traditional knowledge through community cultural protocols. The *Act* specifically prohibited the *tohunga* from performing “quackery,” otherwise described as traditional medical treatment. For an overview of this cognitive erasure see Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, London & New York: Zed Books/University of Otago Press, 1999, p. 85.[confirm page #] [↑](#footnote-ref-6)
6. See Truth and Reconciliation Commission of Canada, “Honouring the Truth, Reconciling for the Future,” *Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, Montréal and Kingston: McGill-Queen’s University Press, 2015. There are examples of similar deliberate erasures of Indigenous knowledge and identity in colonial statist jurisdictions across the globe. See for example, Anna Haebich, “Forgetting Indigenous Histories: Cases from the History of Australia’s Stolen Generations,” *Journal* *of Social History*, Vol. 44, No. 4, Summer 2011, pp, 1033-1046; Fiona Murphy, “Archives of Sorrow: An Exploration of Australia’s Stolen Generations and their Journey into the Past,” *History and Anthropology*, Vol. 22, Issue 4, 2011, pp. 481-495; Verne Harris, “Redefining Archives in South Africa: Public Archives and Society in Transition, 1990-1996,” in Verne Harris, *Archives and Justice: A South African Perspective*, Chicago: The Society of American Archivists, 2007. [↑](#footnote-ref-7)
7. James (Sa’ke’j) Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition,* Saskatoon: Purich Publishing Limited, 2008, p. 15. Colonial studies have thoroughly examined the international history of Indigenous dispossession and its resistance. See Aimée Césaire, *Discourse on Colonialism* (trans. J. Pinkham), New York: Modern Reader, 1972; Franz Fanon, *The* *Wretched of the Earth* (trans. C. Farrington), New York: Grove Press, 1963; C.L.R. James, *The Black Jacobins: Toussaint L’Ouverture and the San Domingo Revolution*, London: Secker &Warburg, Ltd., 1938; Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment*, (trans. John Cumming), New York: Herder and Herder, 1972; Edward Said, *Culture and* *Imperialism*, Cambridge: Harvard University Press, 1992; Said, *Orientalism*, New York: Vintage Books, 1979. For Canadian context see, Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia,* Vancouver: UBC Press, 2002; and Harris, *The Reluctant Land: Society, Space, and Environment in Canada Before Confederation,* Vancouver: UBC Press, 2008; James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life,* Regina: U. of R. Press, 2013; Kent McNeil, *Flawed Precedent: The St*. *Catherine’s Case and Aboriginal Title,* Vancouver: UBC Press, 2019; Hayden King, Shiri Pasternak, et al., *Land Back: A Yellowhead Institute Red Paper*, Toronto: Yellowhead Institute, 2019. [↑](#footnote-ref-8)
8. James (Sa’ke’j) Youngblood Henderson, “The Art of Braiding Indigenous Peoples’ Inherent Human Rights into the Law of Nation-States,” in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws,* Waterloo: Centre for International Governance Innovation, 2017, pp. 10-15. See also P. G. McHugh, *Aboriginal* *Societies and the Common Law*. [↑](#footnote-ref-9)
9. For an examples of ordering and sharing non-textual Indigenous knowledge see John Borrows (Kegedonce), *Drawing Out Law: A Spirit’s Guide*, Toronto: University of Toronto Press, 2010; Aaron Mills, “Miinigowiziwin: All That Has Been Given for Living Well Together One Vision of Anishinaabe Constitutionalism,” *PhD Dissertation,* University of Victoria Faculty of Law, 2019; Kekek Jason Stark, “Anishinaabe Inaakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin,” *Montana Law Review*, Volume 82, Issue 2, Summer 2021, pp. 293-341; and Darren Courchene, “Anishinaabe Dibendaagoziwin (Ownership) and Ganawenindiwin (Protection),” in Indigenous Notions of Ownership & Libraries, Archives, and Museums. Camille Callison, Loriene Roy, Gretchen Alice Lecheminant (eds.), Berlin: Walter de Gruyter, 2016. [↑](#footnote-ref-10)