



Gender and Violence – The Role of Indigenous Legal Traditions in Combatting Violence Against Indigenous Women

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Overview

- ▶ I argue in favour of a multi-juridical approach to the practice of law, in which deliberative Indigenous legal traditions work in conjunction with the common and civil law systems, to advance social change in relation to violence against Indigenous women:
 - ▶ Discuss the various forms of violence Indigenous women experience – physically, mentally and emotionally – and the significance of recognizing these forms of violence as a means of achieving social change.
 - ▶ Explore the dualism associated with society's understanding of Indigenous culture, and how this serves as a source of continued male dominance, as well as a source of female resistance.
 - ▶ Analyze how Indigenous legal traditions, in conjunction with common and civil law, may be used to address the high rates of violence experienced by Indigenous women, particularly through the use of deliberative law and section 35 of the *Charter*.



The Various Faces of Violence Against Indigenous Women

- ▶ Indigenous women experience grossly disproportionate rates of violence as part of their everyday lives.
 - ▶ Not only are Indigenous women three times more likely to experience violence than non-Indigenous women, but they also make up one-quarter of female homicide victims across Canada.
- ▶ Incarceration rates are also extremely high among Indigenous women in comparison to the non-Indigenous female population, due in part, to their response to the violence they encounter
- ▶ **R v Wagar** and **R v Barton** – examples of how Indigenous women continue to experience violence through stereotyping in the context of sexual assault
- ▶ Violence against Indigenous women does not only come from “settler violence,” but is also perpetuated within Indigenous communities


Culture – A Source of Male Dominance Over Indigenous Women or Their Resistance to it?



- ▶ Culture is a concept that is always deployed in the real world, where the forces of power, privilege, and hierarchy mingle and compete
 - ▶ “male-dominated status quo”
- ▶ However, power can also be used to liberate Indigenous women who have experienced violence by allowing them to unify as a form of female resistance, and to have a voice and forum in which to discuss how the violence they experience can be addressed
 - ▶ Dualism of human behaviour – male dominance vs female resistance



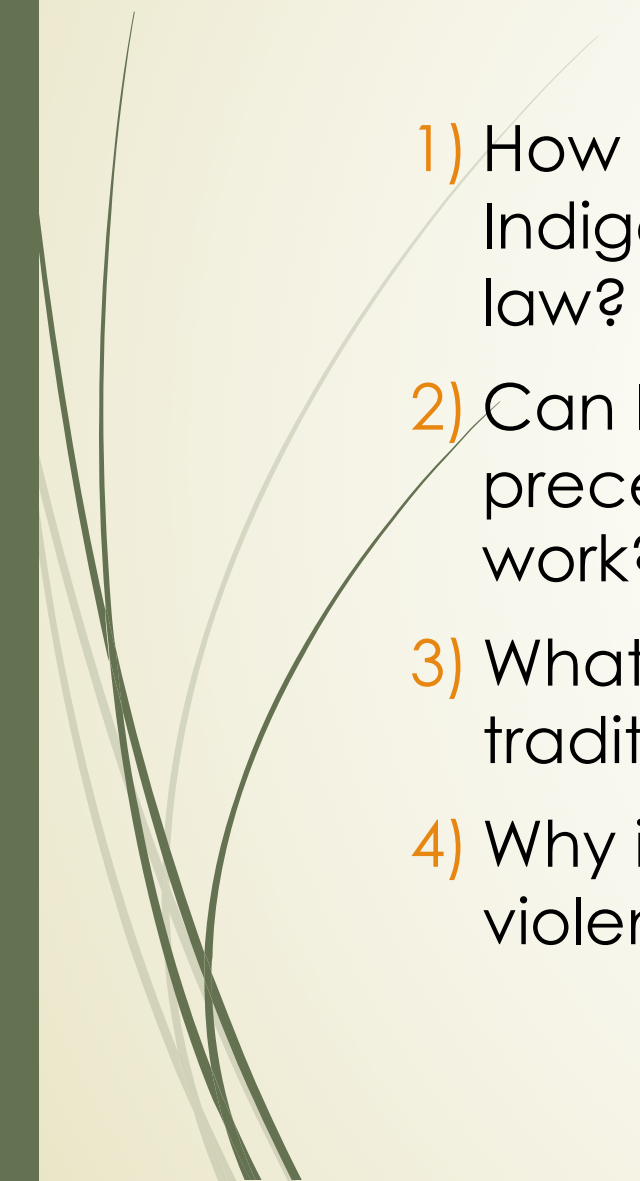
- ▶ We need to acknowledge that male dominance has, and continues to be exerted over Indigenous women from both outside and from within their own communities
- ▶ Native Women's Association of Canada has led various efforts for change through on-the-ground work and policy development
- ▶ By resisting the stereotypical judgements associated with all forms of violence, Indigenous women are demonstrating their power against discrimination, cultural oppression and gender violence
- ▶ "Discussions of culture should never be disconnected from concerns of power; culture can be a source for the abuse of power, as much as it can be a force for liberation."

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Moving Forward – Deliberative Law and Section 35 of the *Charter*



Questions to be Considered

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- 1) How might we begin thinking about violence against Indigenous women through the frame of Indigenous law?
 - 2) Can Indigenous legal traditions--including stories as precedent--and legal processes help us advance this work?
 - 3) What resources are available in Indigenous legal traditions to address gendered oppressions?
 - 4) Why is there no section 35(1) jurisprudence dealing with violence against Indigenous women?

Deliberative Law



- ▶ Because Indigenous law is not static and can be passed down through the generations, its deliberative nature allows it to evolve over time and remain applicable within today's society
- ▶ Deliberative Indigenous laws also incorporate a range of legal ideas, both historic and current, making its integration into a multi-juridical approach more efficient
- ▶ A fine example of deliberative Indigenous law in practice, as it relates to gender violence, can be found in a 2015 article entitled "Gender and Violence: Drawing on Indigenous Legal Resources" by Emily Snyder, Val Napoleon and John Borrows



- Story # 1 – “Origin of the Wolf Crest”
 - Case brief format
- Story # 2 – “The Rolling Skull”
 - Indigenous feminist legal approach
- There is a lot that can be learned from Seven Grandmother teachings in relation to violence against Indigenous women and the application of Indigenous legal traditions
 - Wisdom, Love, Respect, Bravery, Honesty, Humility and Truth
 - These seven principles, if incorporated appropriately, would not only be symbolic of the characteristics that make a good lawyer, but would also serve as guiding principles for a strong multi-juridical approach to the practice of law

Section 35 of the *Charter*



- ▶ It has been suggested that the fundamental purpose of section 35 of the *Charter* is that of reconciliation, by way of protecting Indigenous and treaty rights
- ▶ However, most of the cases argued under this *Charter* provision have focused on land and resource disputes between the Canadian government and Indigenous groups to the exclusion of other human rights issues

Justice

for Missing and Murdered
Indigenous Women



- "Violence against women does not only arise from poor interpersonal relationships; rather, it is connected to larger social structures of inequality that can be found in any society. Violence against women is, therefore, intimately linked with the broader colonial context that Aboriginal rights are designed to address."
- Alternative approaches:
 - Applying "living tree jurisprudence, in recognizing and affirming Aboriginal and treaty rights under section 35(1)"
 - Claiming "Aboriginal rights to safety within their societies under the doctrine of continuity"
- For a more detailed analysis, please refer to John Borrows' 2013 article "Aboriginal and Treaty Rights and Violence Against Women"



Chi-Miigwech!