

EDGEWISE

In Indigenous communities all over the coastal and interior Pacific Northwest, the potlatch was a key ceremonial event that acted as both court and parliament. Banned in 1884 for being anti-economic and for obstructing assimilation and the church's control, the potlatch is now seeing a huge resurgence in BC.

Traditionally, the ceremony recounts in dance and song what amounts to the constitution of the territory, along with principles of citizenship, governance, managing conflict and tools for challenging power imbalances, and interacting with other peoples beyond one's own society.

Students who have studied with John Borrows now practise Indigenous law in many settings, through activities such as potlatching, feasting, circle decision-making, land-based learning and other traditional structures and their contemporary applications.

The Indigenous Law Research Unit, led by Borrows' law faculty colleague Val Napoleon, is committed to the recovery and renaissance of Indigenous laws covering lands, waters and resources, and governance, justice and citizenship.

UVic is the national leader in master's and doctoral research on Indigenous legal orders and their relationship to state law, and has trained many of the early-career scholars now teaching in law schools in Canada and internationally.

UVic's proposed joint degree in Canadian Common Law and Indigenous Legal Orders, led by Borrows, will have a transformative effect on the relationship between Indigenous legal traditions and state law in the world today.

Watch John Borrows talk about his work at bit.ly/uvic-borrows

DRAWING LAW FROM THE LAND

Borrows. Image courtesy of the Royal BC Museum and Archives. UVIC PHOTO SERVICES

Blending Indigenous legal traditions with common law benefits all Canadians

by Suzanne Ahearne

Where John Borrows comes from in Ontario, the Anishinaabe call this warm, late-spring weather *aabawaa*. As things begin to melt and flow again, the meeting of hot and cold air masses can make it foggy and difficult to see.

In Ojibway, the word for this weather phenomenon also makes its way into the language of human relationships and legal practice: *aabawaa-wendam* means forgiveness.

"With forgiveness, as with the land, there are mists between people," says the Canada Research Chair in Indigenous Law at the University of Victoria. "The word refers to a time when you can't yet see clearly. But as the ice and snows recede, it's time to begin to reconstruct your relationship given what happened in the winter of your conflict."

It's a fitting analogy for where we are in the process of rebuilding relationships between Indigenous and non-Indigenous Canadians, and of redefining Canadian law so that Indigenous legal traditions are re-established and given equal footing with common law.

To understand the principles of law at work in Indigenous traditions, to be able to read

nature for lessons in respect, equality and the security it provides, requires a shift in thinking and a different kind of literacy. Borrows calls this process "drawing the law out of the land."

When we think about law, we might think of a court process or lawyers and judges and their focus on words. But in visual and oral cultures, the law is often found in the artistic and physical world, explains Borrows, who is Anishinaabe/Ojibway and a member of the Chippewa of the Nawash First Nation.

Primary Indigenous law research, such as the work led by Borrows and colleagues at UVic, involves documenting ceremonial dances, cultural practices such as the potlatch, origin stories, contact stories about settlers, totems, wampum belts and other artistic works, and then teasing out the legal principles and precedents embedded within them.

One of the goals of this primary research, he says, is to change a misunderstanding held by some who think there's no such thing as Indigenous law: either Indigenous people never had legal systems because they were primitive in some respect; or if they had them, they're broken and they're gone or irrelevant in a modern context.

Borrows also points out that, with 150 years

of repression of Indigenous people in Canada, it's been hard to apply Indigenous law in contemporary circumstances. The revitalization of Indigenous legal traditions is creating pathways out of an era of control, into an era of shared autonomy and responsibility.

The UVic research program is establishing a process for Indigenous communities to identify what their laws are in historic terms, and what they could be today. The goal is to help them create legal institutions that are transparent, accountable and potentially "harmonizable" with other laws in the country.

This will benefit areas such as child welfare, education, health, housing, and resource development.

Borrows acknowledges there's still a lot of conflict and fear when it comes to Indigenous issues in Canada.

"That's why we need law," he says. "We can't just default to blockades and occupations, or dismiss the concerns of the other side. Conflicts fester and boil and we don't have an avenue or a process that's orderly to deal with those fears. Indigenous law is building bridges of understanding."

Borrows' research is funded through the Canada Research Chair program.