

**Protecting Indigenous Knowledge and Heritage,
New Edition**
A Canadian Obligation

Marie Battiste and James (Sa'ke'j) Youngblood Henderson



Contents

Exordium / 3

PART 1: THE LODGE OF INDIGENOUS PEOPLES' KNOWLEDGE AND HERITAGE IN MODERN THOUGHT

- 1 Eurocentrism and the European Ethnographic Tradition / 21
- 2 Indigenous Peoples' Struggles for Respect, Dignity, and Self-Determination / 38
- 3 What Is Indigenous Peoples' Knowledge? / 73

PART 2: THE INDIGENOUS PEOPLES' MOVEMENT TO REFORM KNOWLEDGE AND HERITAGE REGIMES

- 4 The Indigenous Domain and Eurocentric Intellectual and Cultural Property Rights / 109
- 5 Rethinking Intellectual Property Rights / 136
- 6 Indigenous Peoples' International Reforms of Knowledge and Heritage / 175
- 7 Protecting Indigenous Peoples' Knowledge and Heritage in Canadian Law / 216
- 8 Indigenous Peoples' Knowledge and Heritage in Canada / 233

PART 3: CANADIAN LAW AND POLICY REFORMS

- 9 Aligning Canadian Law with Indigenous Peoples' Inherent Rights / 253
- 10 Decolonizing the Educational System / 287

Reflections / 318

Appendix A: United Nations Declaration on the Rights of Indigenous Peoples (2007) / 325

Appendix B: *Declaration on the Rights of Indigenous Peoples Act* (British Columbia, 2019) / 338

Appendix C: *United Nations Declaration on the Rights of Indigenous Peoples Act* (Canada, 2021) / 342

References / 348

Index / 375

Exordium

We come from the land, the sky, from love and the body. From matter and creation. We are, life is, an equation we cannot form or shape, a mystery we can't trace in spite of our attempts to follow it back to its origin, to find out where life began, even in all our stories of when the universe came into being, how the first people emerged.

– LINDA HOGAN, *DWELLINGS* (1995, 95–96)

FROM THE BEGINNING, the forces of the ecologies in which we live have taught Indigenous Peoples a proper kinship order and have taught us how to have nourishing relationships with our ecosystems. The ecologies in which we live are more than settings or places; they are more than homelands or promised homelands. These ecologies do not surround Indigenous Peoples; we are an integral part of them and we inherently belong to them. The ecologies are alive with the enduring processes of creation itself. As Indigenous Peoples, we invest the ecologies with deep respect, and from them we unfold our structure of Indigenous life and thought.

Ecological insight creates our vision of the animate “natural” world, informing Indigenous Peoples’ communion with the land, our wisdom, and the various dimensions of our faith and our hopes. Indigenous order, consciousness, and heritage are shaped and sustained by ecological forces and by the interrelationships of their changing forms. Ecologies are not static or gentle; they are places of eternal and often violent change. Indigenous orders are also not singular modes of existence, but are manifest in diverse ways. We carry the mysteries of our ecologies and their diversity in our oral traditions, in our ceremonies, and in our understanding and expressions of them; we unite these mysteries in the structure of our languages and our ways of knowing. The forces and aspects of our ecologies are manifest in our stories and art, which are to us what water is to plants (Hogan 1998, 227).

Ecological teachings have defined for Indigenous Peoples the meaning of life, our responsibilities, and our duties. They have developed our consciousnesses, our languages, and what others have categorized as our “cultures.” In other words, the teachings have allowed us to flourish. These multilevelled teachings have always been mysterious and sacred processes, emanations of our

responsibilities to and solidarity with the particular environments in which we participate. This symbolic literacy is passed on through our oral traditions (Battiste 1984), offering succeeding generations the path of knowledge that informs their heritage. An example of these traditions is the understanding the Mi'kmaq of Atlantic Canada have of their beginnings:

In the beginning when the Mi'kmaq people awoke naked and lost, we asked our Creator how we should live. Our Creator taught us how to hunt and fish and how to cure what we took, how to make clothes from the skins, to cure ourselves [using] the plants of the earth. Our Creator taught us about the constellations and the stars, how to make our way in the darkest of nights, and about the Milky Way which was the path of our spirits into the other world. Our Creator taught us how to pray, to sleep, and to dream and told us to listen to the animals that would speak to us in our dreams bringing us guidance and support. Our Creator taught us all that was wise and good and then gave us a language, a language in which we might be able to pass on this knowledge to our children so that they could survive and flourish. Our Creator also taught us about the two worlds that were divided by a cloudlike substance that opened and fell at various intervals and the firm and believing of heart would be able to move between those worlds unscathed but the weak and unbelieving would be crushed to atoms. (Battiste 1984, 45–46)

These teachings reveal to the Mi'kmaq how to live and how to communicate with and respect other life forms. They reveal to the people how to hunt and fish, how to take medicines from the earth, and how to respect what they harvest (Henderson 1995, 225–36). They teach succeeding generations how to acquire new teachings and deeper understandings through prayers, ceremonies, and dreams, all of which offer replenishment of the body and soul. These teachings emphasize that through dreams and visions people will find additional lessons and guidance. The teachings make the Mi'kmaq aware that all that is wise and good in the ecology is at the heart of their language, so they may share this knowledge with others, so they too may survive and flourish.

Ancient teachings say that everyone should seek wisdom, not only knowledge. Knowledge is of the past, but wisdom is of the future. Everyone should seek knowledge, so they may have kindness for all, for knowledge is both receiving and giving; knowledge that is not used is abused. Wisdom comes only when a person stops looking for it and starts living the life the Life-giver intended for them.

The excerpt above (Battiste 1984) is a brief outline of a longer story of how the ecological forces are the teachers of the people, Lnu or Mi'kmaq. (Note that

“Mi’kmaq” and “Mi’kmaw” are not interchangeable. “Mi’kmaq” is the noun form, and “Mi’kmaw” is the adjective.) Many similar versions exist among other Indigenous Peoples. Every force is interrelated throughout stories and in ceremonies in a complex system of ecological kinship. The interaction of these constantly shifting forces is necessary to achieve balance and harmony. Through language, ritual, prayer, and an intimate knowing of their ecologies, Indigenous Peoples assist the forces of creation in maintaining these fragile harmonies. Only through respectful activities and sharing can Indigenous Peoples sustain Creation’s forces. Our Indigenous order, our shared and personal responsibilities, and our caring for the ecologies animate our ancestors’ legacies and heritages for the present generation with a vision of a sustainable future. It is a form of belonging for the present generation, a manifestation of caring that extends for at least seven generations and beyond. These heritages create a choice of lifestyles for each generation, and the responsibilities that follow from them are the defining characteristics of our collective order and wisdom.

These Indigenous legacies and heritages did not tell us how to protect them, only how to live them. Protecting Indigenous Peoples’ relationships with their ecologies and their humanity has never been easy. Indigenous Peoples have had to unite and learn how to overcome the Eurocentric knowledge system, which was conceived as universal and which viewed Indigenous Peoples as inferior. This was and remains a difficult task.

Indigenous Peoples have had to exercise and assert our ancient teachings in the context of modern Eurocentric thought and legal systems. Through the process of European colonization, Indigenous Peoples have experienced the migratory predators of the world and have been forced to adapt and change. We have experienced the colonization of our creation, our ecologies, our minds, our languages, and our spirits. Yet even with horrendous losses, we have resisted and endured issues that were imposed on us and that needed to be transformed, and we are working toward restoration and recovery from the losses. Tragically, the struggle has left Indigenous Peoples’ order, knowledge, and languages vulnerable and endangered; knowledges fade and then disappear when Indigenous Peoples are stripped of their lands, their languages, and their ancestral and traditional activities on those lands. Although many of the processes of old-style colonization have waned in the new millennium, a threatening transformation has emerged. “Globalization,” with its cognitive and linguistic imperialism, is the modern consuming force that is taking our knowledge, heritages, and creativity.

Still, Indigenous Peoples remain hopeful, believing that we can reconstruct modern thought and resolve the global crisis facing everyone. We believe no part of the earth is expendable or can be considered as “waste.” We respect and

appreciate the inherent value of every life force and place in the ecological order. The Creator has taught us this consciousness and created this awareness. Yet we know by experience that not all peoples share our world view. As the twenty-first century unfolds, industrialized societies are expecting Indigenous Peoples to share their knowledge, hearts, bodies, and souls so that Eurocentric society can solve the various problems that its own world view has created. Given the history of relations between the Eurocentric colonizers and the Indigenous colonized, this is an extraordinarily bold expectation.

Within this long and abusive history, Indigenous Peoples have attempted on the long, difficult road leading to the United Nations Declaration on the Rights of Indigenous Peoples to break free from world-wide subjugation. Eurocentric colonization disrupted Indigenous Peoples' lives, languages, social relations, and ways of thinking about, feeling, and interacting with the world. Our ways of being have been systematically fragmented and devalued in Eurocentric knowledge, sciences, and other dominant modes of knowing. Cognitive imperialism (Battiste 2000) is the hierarchical, invidious monoism (Minnick 1990) and patrimonial monologue (hooks 1988) created by Eurocentrism (Blaut 1993). This is often referred to as "the Eurocentric monologue" or as "the voice of truth," as "progress," and as "historical accountability." In various forms, voices, discourses, and eras, Indigenous people have been contesting the Eurocentric monologue and its predictable distribution of "poison and prosperity" (Findlay 2000). Depending on the context and place, their contestations have been variously heard or dismissed, legally won or challenged, socially accepted or denounced. Some post-colonial Indigenous writers call for Indigenous intellectuals and artists to create new literatures or to construct new national cultures based on Indigenous thought and heritages. Many Indigenous writers have attempted to take up the cause. Their writings and their intellectual practices have sought to determine the breaks between the past and the present, and to offer theory from their distinctive knowledge and heritage and their response to their conditions. Other Indigenous scholars have begun to reclaim their own perspectives, their own designs, their own strategies, and their own visions. Reclaiming and revitalizing Indigenous knowledge and heritage is a vital part of any process of decolonization, as is reclaiming land, language, and nationhood.

Recognizing a general and specific category of "Indigenous Peoples" in United Nations (UN) and Canadian laws has been a challenge, and determining how to appropriately protect, implement, and enhance Indigenous Peoples' knowledge and heritage has been complex. This book documents Indigenous Peoples' quest to protect Indigenous knowledge and heritage since 2000. Our original focus in *Protecting Indigenous Knowledge and Heritage: A Global Challenge*

(Battiste and Henderson 2000) was both global and local, explaining and working to ensure that Indigenous Peoples' knowledge and heritage were understood, respected, and protected in the United Nations and North America. We encourage everyone to read that book for the various international and national frameworks Indigenous Peoples confronted, struggled against, and overcame.

Nearly a half-century of Indigenous Peoples' advocacy and activism has led to incredible challenges and adversities, which were overcome to bring about two major accomplishments in reclaiming our humanity and ecologies. The first accomplishment was the passage of the UN Declaration on the Rights of Indigenous Peoples (Indigenous Rights Declaration), first by Indigenous Peoples and then by the states' representatives, in 2007. The second accomplishment was the enactment of legislation by the province of British Columbia (*Declaration on the Rights of Indigenous Peoples Act*, 2019) and the Government of Canada (*United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14) to make their laws align with and be consistent with the inherent human rights memorialized in the Indigenous Rights Declaration. The legislation requires these governments and Indigenous Peoples to develop and implement a collaboratively developed action plan of tangible and measurable steps to realize a legislative transformation leading to distinct inherent human rights. These achievements are significant to Indigenous Peoples' well-being and recovery from colonization and to the interrelated set of events set in motion by Indigenous Peoples' advocacy, leadership, and endurance, which activated the decolonization movement. The provincial and federal legislative acts and their action plans include the interrelated goals of full enjoyment of Indigenous Peoples' right to self-determination and the rights to own, use, develop, and control ancestral lands and resources; to enjoy living without colonial domination, systemic racism, discrimination, oppression, and other inequities; and to exercise their inherent rights to maintain, control, develop, protect, and transmit their knowledge systems, heritage, and languages.

The focus of this book is on Indigenous Peoples' inherent rights to exercise, protect, and transmit the diverse knowledge systems, heritages, and languages of the Indigenous domain, both in Canadian society and beyond. While the Indigenous Rights Declaration is broad and inclusive of various areas of human rights, culture, land, and self-determination, less than a third of it affirms Indigenous Peoples' right to their knowledge systems, heritages, and languages.

Indigenous Peoples' achievements in generating legal instruments that protect their knowledge and heritage have in turn generated an engaging attempt to reform modern thought and law. They have created a path toward a better present and an inclusive and just future. Many meaningful systemic challenges

remain. The global knowledge economy remains exclusive, confined to an insular Eurocentric or “Western” privilege. This exclusivity, along with colonization universals, hierarchies, and various forms of linguicide and genocide, continues to generate inequality of opportunity, capability, health, and prosperity for Indigenous Peoples and disparity in the application and advancement of their knowledge systems and heritages. The Eurocentric avoidance and erosion of Indigenous Peoples’ knowledge concern both the Indigenous people to whom this knowledge belongs and the non-Indigenous people who seek to know more about it, and indeed benefit from it.

These advances in protecting Indigenous Peoples’ knowledge and heritage continue to chip away at many intractable Eurocentric systemic barriers and overwhelming transformative challenges. Over the past decades, scientists, industries, and governments have expressed an astonishing interest in the knowledge of Indigenous Peoples, reinvigorating the predatory mentality of Eurocentric thought and raising questions about both the ethics of the new global enterprise and Indigenous Peoples’ ability to survive it. The parallels between the dispossession of Indigenous lands and the dispossession of Indigenous intellectual knowledge are striking. Yet the protection of Indigenous Peoples’ knowledge and heritage remains threatened and endangered. Our heritage and teachings are still open to pillage by the same people who have been taking our lands and resources for more than five hundred years.

The rush on Indigenous Peoples’ knowledge systems, teachings, and heritage by academics, environmentalists, and scientists is an effort to access, know, and assert control over these resources. The need to conserve disappearing biological resources raises the issues of development ideology and the lack of economic benefits flowing to Indigenous Peoples for the use of their knowledge and their resources. At the intersection of these trends is the issue of the legal status of Indigenous groups and their control over specific and useful knowledges as *sui generis* (self-generating) intellectual property rights, as well as over their lands and other resources.

While many Eurocentric academic disciplines, educational systems, communities of researchers, and advocates are currently calling attention to the effects of rapid global change generally and on Indigenous Peoples, their knowledge, their heritage, their languages, and their understanding of their environments, these same disciplines, systems, and academics are largely implicated in the damages to Indigenous Peoples and their knowledge. In the past, the imposition of Eurocentric academic disciplinary theory and method to address problems created by Eurocentric systems – poverty, cognitive assimilation, imperialism, cultural racism, and religious conversion – contributed to the losses and erosion of Indigenous and global cultural knowledge, heritages, and

languages. Their wrong assumptions, biased questions, and intrusive research methodologies continue to generate not just the wrong answers but trauma and devastation for Indigenous Peoples and their continuity. The Eurocentric answers further limit the decolonization of the educational system by preventing a recommitment to Indigenous Peoples' knowledge systems, heritages, and languages.

The Indigenous Rights Declaration and subsequent efforts to align laws and policies with it represent an advancement that has uplifted Indigenous voice and vision. It responds to a growing body of Indigenous Peoples' literature and to advocacy groups seeking to prevent peoples and knowledge systems from vanishing, losses and endangerment of languages, and environmental destruction and to promote sustainability. Ethnobiologists, human ecologists, and other social as well as biological scientists are recording Indigenous use of ecosystems, Indigenous ecological concepts, and Indigenous strategies for resource management. They are also documenting the causes and consequences of local cultural and environmental disruption. Cognitive anthropologists and psychologists are studying Indigenous Peoples' perceptions and categorizations of the natural world, their biological learning and reasoning, their environmental beliefs, and their environmentally relevant decision-making. Political scientists and ecological economists are looking at Indigenous institutions and economic models from the point of view of Indigenous ecological sustainability.

Indigenous Peoples understood that to go forward in protecting their knowledge and heritage, they had to lean into their knowledge systems, heritages, legacies, and living languages. They understood that the present systemic situations could only be understood in relation to their past and their meaning-making from their knowledge systems and heritages, to understand them and accept them, maintain and transmit them, if the future was to have meaning. They also began to investigate transformative methodologies for exploring their own ways of life and for understanding and respecting other peoples' ways of life. This developing methodology is called "trans-systemic synthesis." Many Indigenous Peoples view "knowledge" as a fluid concept of an interactive and negotiated consciousness. They live in an "intercultural" environment created by Eurocentric colonialism, but value and celebrate all manifestations of their cognitive heritage. While Indigenous Peoples agree that heritage is "a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity" (Daes 1994, para. 8), they do not view their consciousness and way of life as an exotic, independent, closed, or internally uniform realm.

Indigenous Peoples' social and cultural interactions, some forced and involuntary, with other peoples and their views of life have created an Indigenous

consciousness that is a trans-systemic web of intertwining heritages and diverse knowledge systems. Indigenous consciousness remains dynamic. It tolerates diversity as it seeks to create opportunities to secure and enhance the qualities of Indigenous living. The ways in which Indigenous Peoples relate to their ecologies and to others honour their knowledge and heritage, especially as embodied in their living languages. Before formal education, these diverse modes of thought and activity were taught in and through cultural transmission and language socialization. Today, with many of them endangered, Indigenous languages need to be recovered and restored – not just as communication but as knowledges linking the people to their land, to their teachings, to the core foundations of living in the present and into the future. In so doing, our languages become the source, the comprehension, and applications of our knowledges that will sustain our people into the Seventh Generation and beyond. Schools can potentially support these efforts but only with and through Indigenous languages, Elders, and community-activated learning.

Indigenous Peoples recognize that beyond their own ecological humanity, they belong to a global community; they want only to live with dignity and be at home in that global community and their national communities. They want to participate in the future on an equal basis with others and to have their world views and heritages respected and their self-determination supported. They want every recognized global knowledge system to recognize and respect Indigenous Peoples' knowledge systems, which are tangibly transmitted and demonstrated through Indigenous Peoples' maintenance, control, protection, and development of their heritage resources, intellectual property, art, spiritual traditions, knowledge systems, economic systems, food systems, and spiritual and sacred sites.

The Indigenous Rights Declaration was enacted in 2007, after several decades of advocacy, activism, and diplomacy by Indigenous Peoples. After another decade, Indigenous Peoples' national advocacy created new legislative frameworks and action plans for protecting and reconciling Indigenous Peoples' knowledge and heritage in British Columbia and Canada. Yet the time has come for another layer of work that builds on these achievements. In a unique partnership between Indigenous Peoples and British Columbia and Canada in reforming existing and new laws, the diverse Indigenous knowledges, heritages, and ways of life can become part of a post-colonial and decolonized Canadian legal order. These diverse Indigenous ways of life “can only be fully learned or understood by means of the pedagogy traditionally employed by these peoples themselves, including apprenticeship, ceremonies, and practices” (Daes 1994, para. 8). The recovery of Indigenous knowledge, heritage, histories, contested stories, and experience is inextricably linked to the maintenance and recovery of Indigenous

Peoples' languages, lands, and livelihood on them. It is all about reconciling what was important about the past with what is important about the present. Today, scholars are investigating the cognitive and social correlates of multilingualism and orality with multiple forms of knowing and expression in literacies.

A persistent challenge in Canada is revising and decolonizing educational institutions, laws, and policies (Battiste 2013). Integrating the Indigenous Rights Declaration in educational law and policy is essential to the reconciliation of Indigenous Peoples' knowledge and heritage with Eurocentric knowledge and heritage. As Indigenous Peoples reclaim their oral traditions, stored in the minds and hearts of their people through their languages, these traditions must be respected by modern curricula and thought. Curricula are the organized portions of education that have been the silencing tool of Eurocentric education of all "others," especially Indigenous Peoples. They are the compacts that represent the consensus of elites' social construction of teaching and learning, and these compacts are politically charged and not neutral (Minnick 1990). An education that does not critique the connections or lack of connections in knowledge with its roots is not education but indoctrination. Indigenous Peoples must participate in educational governance and decision-making, in educational curriculum and pedagogical reform, in carving out their own institutions for self-determination, as well as designing and creating the tools they need to transform the existing crises (L. Smith 2012).

Indigenous and post-colonial scholars trained in the Eurocentric tradition are challenging the assumptions and methodology of their professions and are deconstructing new forms of cognitive imperialism, systemic racism, and cognitive injustice, while also advancing how Indigenous knowledge systems can be understood, necessary, and viable in contemporary institutional change (Kawagley 1993; G. Smith 1997; L. Smith 2012; Battiste 2000, 2013; Cajete 1995, 1999, 2000a; Corntassel 2013; Coulthard 2014; Kovach 2009; Quijano 2007; Mignolo 1995; Odora-Hoppers 2009; Santos 2014). They are challenging the subtle and wider effects of cognitive and linguistic frameworks legitimized by Eurocentric colonialism that continue to systemically discriminate against Indigenous Peoples' knowledge, heritage, and languages. They recognize these as among the most crucial cultural challenges facing humanity today. Meeting the responsibility of challenging these frameworks is not just a task for the colonized and the oppressed; it is the defining challenge and the path to a shared and sustainable future for all peoples.

The decolonization of existing thought and law is already under way in the works of many scholars and in many academic institutions. Over the last three decades, the *Report of the Royal Commission on Aboriginal Peoples* (RCAP 1996b), the reports of the Truth and Reconciliation Commission (2015a, 2015b),

the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), the federal and provincial governments' and academic institutional responses to the Truth and Reconciliation Commission's (2015b) Calls to Action, and much more have led to a critical alignment of thought and values to Indigenous Peoples' recovery from colonization and the restoration of Indigenous self-determination. The critical analysis of how Eurocentric colonialism operated and continues as modernity – through coloniality of power, colonial difference, and colonial semiosis – has been the conceptual tool for decolonizing Eurocentric knowledge and its metanarratives. These thoughts have been helpful in moving away from the transcendental, imperial, universal formulation of European epistemology and toward the idea of knowledge diversity or plurality. However, the distinctive experiences of Indigenous Peoples engaging with decolonization offer remedies and alternatives based on Indigenous Peoples' knowledge systems and heritages. Māori educator and scholar Linda Tuhiwai Smith is one of the leading Indigenous critical theorists of colonization of the Māori in New Zealand, advancing decolonization in theory and research methodologies. She clarifies the nature of the task when she writes that “decolonization is about centering our concerns and world views and then coming to know and understand theory and research from our own perspectives and for our own purposes” (L. Smith 2012, 41). These interrelated strands weave solutions for not only decolonizing cognitive imperialism but also sustaining the Indigenous renaissance and empowering intercultural diplomacy.

Eurocentric education has robbed Indigenous Peoples of their humanity. Savages, slaves, commodities, half-castes, squaws, and half-breeds are just some of the derogatory labels used to dehumanize them. Indigenous scholars are now struggling to define Indigenous humanity for the benefit of their people and for the education of others. First, they need to understand the Eurocentric systems of thought that gave rise to this alienation, and then they need to create a shared language that academics, leaders, and advocates on both sides can use to discuss diverse knowledge systems that have been either excluded or defined as education, science, social sciences, the humanities, and politics, which together have created “an epic story telling of huge devastation, painful struggle and persistent survival” (L. Smith 2012, 20).

Through Indigenous diplomacy and advocacy, Indigenous Elders and scholars have inspired an Indigenous renaissance that can be likened to the European renaissance after the Dark Ages. The Indigenous renaissance is based on respecting, recovering, and restoring Indigenous Peoples' precolonial civilizations, heritage, and knowledge and their treaties with the British sovereign as the basis for the present and into the future for the Seventh Generation. The renaissance becomes the spirit and intent of the Indigenous Rights Declaration, and involves

stabilizing and restoring Indigenous languages and honouring Indigenous world views, cognitive categories, and communicative powers. It requires the interrogating of Eurocentric concepts of civilization and knowledge and the assumptions of peoples other than themselves. In articulating and sustaining the Indigenous renaissance, Indigenous Peoples assert that the existing Eurocentric concepts of “culture” need to be demystified and decolonized and reconnected holistically with Indigenous world views and spiritual foundations. The Eurocentric conceptions of culture need to be both comprehended and inclusive of Indigenous Peoples’ perspectives on their knowledge and heritage. As post-colonial studies scholar Edward Said (1993) stated, it is necessary to approach European perspectives on culture with an awareness of the “all-pervasive, unavoidable imperial setting.” It is also necessary to comprehend Indigenous Peoples’ resistance to imperial culture. Abundant Eurocentric perspectives on culture, cultural analysis of differences, cultural policies, and cultural industries speak to ethical pluralism; however, these perspectives often weaken pluralism rather than empowering diversity.

Survival for Indigenous Peoples is more than a question of physical existence; it is an issue of preserving Indigenous Peoples’ knowledge systems in the face of cognitive imperialism. It is a global issue of maintaining the Indigenous domain, composed of knowledge systems, heritages, world views, languages, and stewardship of the environment, among the world’s other knowledge systems. It is a matter of Indigenous Peoples sustaining spiritual links with the land that inform their humanity and personhood. Indigenous Peoples remain committed to defining themselves based on their knowledge systems and heritages as protected by the Indigenous Rights Declaration, but also comprehending other knowledge systems and heritages to achieve a meaningful and flourishing future. They comprehend the need to listen to and engage with other knowledge systems and heritages to accomplish this formidable transformation, but the trans-systemic realization of such a transformation must rest on firm protection of their knowledge systems, heritages, and resources. The cognitive heritage that gives Indigenous Peoples their identity is under assault by those who would gather it up, strip away its honoured meanings, convert it into a product, and sell it. Each time that happens, knowledge and heritage die a little, and with them, the people.

Indigenous Peoples’ efforts in UN specialized meetings and international conventions attest to the perceived gravity and urgency of protecting their peoples, knowledge systems, heritages, and languages from extinction (Maffi 1996). They also attest to a keen shared interest in the future of humanity and of life on earth. Indigenous delegates at the United Nations have since developed principles and guidelines for protecting Indigenous heritage, created ethical

standards for large-scale research, and developed professional societies, training programs, international research centres, and advocacy groups for the benefit of Indigenous Peoples. Much of their work has taken the form of international declarations, and there are innumerable Indigenous movements, grassroots movements, and local organizations working to implement and respect Indigenous rights. However, there has been little interdisciplinary discussion across the educational systems of the Indigenous Rights Declaration and the remarkable convergence of interests.

Even with the Indigenous Rights Declaration, Indigenous Peoples' search for cognitive, social, and legal justice appears endless as resilience and cognitive struggle remain constant. Under the declaration and the British Columbia and Canadian legislation and action plans, the challenge for Indigenous Peoples in Canada is to implement their inherent human rights, which reflect their constitutional rights and their Aboriginal and treaty rights, which are part of the supreme law of Canada. The Canadian legislative framework still requires more years of efforts by Indigenous Peoples to realize the restoring spirit of self-determination and bring back into existence their knowledge systems, heritages, languages, dignity, and health from the oppressed colonial regimes that generated fragmentation and loss.

Most Canadians do not understand the importance of these new legislative frameworks. They have little comprehension of how the legislative frameworks help or hinder Indigenous Peoples in the quest to secure knowledges, heritages, and languages. The scope of the challenge is vast. Eighty per cent of the world's people depend on Indigenous Peoples' knowledge for health and security, and half rely on Indigenous Peoples' knowledge and crops for food (UN Development Programme 1994). Trade and tourism that rely on Indigenous Peoples' knowledge translate into tens of billions of dollars a year. Indigenous cultural artifacts and art that manifest Indigenous Peoples' spiritual images or dreamings and their relationships with sacred environments generate many millions of dollars a year. Regrettably, existing legal regimes, both internationally and nationally, provide little protection from unauthorized takings or reproductions of intellectually, culturally, and spiritually sensitive knowledge, and often actively discriminate against this knowledge. Despite endless advocacy by Indigenous Peoples and allies, neither international nor national law has kept pace with these commercial developments, and understanding this controversy and the deficiencies in existing law requires contemplation of disturbing issues about the rule of law and the idea of knowledge.

When decolonizing Eurocentrism, it is easy to offer analyses that have little explanatory power. In this book, we seek to offer practical explanations that we hope will lead to concrete solutions in the implementation of the

Indigenous Rights Declaration. The overall rhythm of the text is synthetic and conceptual – we attempt to move forward from the experiences and shared lessons of the past. Our discussion occasionally spirals back on itself as we seek to integrate fragmented dimensions into a complex whole. We base our understandings on our experiences as Eurocentric-trained scholars, one trained in education and the other in law, and on linguistic, cultural, and ecological awareness drawn from our Mi'kmaw and Chickasaw heritages. We use trans-systemic perspectives that articulate both Indigenous and Eurocentric knowledge systems because they are involved in both protecting Indigenous knowledge and heritage in the twenty-first century and remedying the systemic injustices toward Indigenous Peoples over the past five hundred years.

Throughout the book, we will be manifesting the teachings of both worlds through our Indigenous consciousnesses. Our intention is that, throughout this book, English words importing the singular will include the plural, and words importing the masculine will include the feminine (and vice versa). Likewise, the word importing land includes water, air, and ecologies. The Indigenous concept of knowledge is holistic and interconnected, but in English it is not. We will use “Indigenous” and “Aboriginal” as interconnected; the English language attempts to divide them into separate categories, such as Indian, Inuit, and Métis, without understanding the deep, interconnected nature of these categories. We will follow the Indigenous Peoples’ protocol developed in the Indigenous caucus at the United Nations, and not name the participants of the Indigenous Peoples movement to maintain the solidarity and dedication of the global movement and prevent individualizing of the knowledge or heritage.

In [Part 1](#), we begin by discussing Eurocentrism, its assumptions and its biases toward Indigenous Peoples’ knowledge and heritage, which created a global tragedy and crisis. Eurocentrism is the source of the oppression and rejection of Indigenous Peoples’ knowledge and heritage. Indigenous Peoples’ global determination forced the United Nations to confront the Eurocentrism in its laws and to apply remedies. We examine the contexts of Indigenous Peoples’ struggle for respect, dignity, and self-determination in international law that activated the Indigenous Rights Declaration. These events demonstrate the modern epic of human liberation, a narrative of the powerless speaking back to the powerful in the face of opposition and criticism. Then we speak to the Eurocentric quandary of what Indigenous Peoples’ knowledge and heritage is.

[Part 2](#) recounts the achievements of the Indigenous Peoples’ movement to reform the knowledge and heritage regimes of the United Nations and Canada. It has been an intercultural, interdisciplinary, and trans-systemic journey into the conflicted heart of Eurocentric and Indigenous thought. Indigenous Peoples’ global and local challenges to Eurocentric intellectual and cultural property

regimes activated a rethinking and reform of the existing regimes, which denied the Indigenous domain and its knowledge systems, creativity, and laws. They also brought about reforms of the United Nations' concept of cultural and heritage rights, including Indigenous Peoples' knowledge and heritage. In Canada, Aboriginal Peoples began to assert the need to reform and enhance their knowledge and heritage as complementary to their constitutional rights. They sought to protect their *sui generis* domain and its knowledge and heritage in Canadian legislation in a spirit of partnership and mutual respect – with some success.

Indigenous Peoples have devoted remarkable and fiercely driven energy to establishing trans-systemic protocols for eliminating the deliberate and systemic discrimination embodied by colonialism and racism, which have denied Indigenous Peoples' humanity, personhood, and inherent human rights. This diplomatic process has involved Indigenous Peoples' using their knowledge and heritage to confront Eurocentric thought to rebuild their humanity and inherent rights. In this decolonizing effort, Indigenous Peoples have asserted that all interactions between knowledge systems and cultures and among development processes must be understood from a trans-systemic perspective that respects – not just tolerates – constructive diversity and does not rely on conventional knowledge systems or cultural perspectives. They have maintained the primacy of Indigenous Peoples' knowledge and heritage in constructing the trans-systemic transformation. It remains a challenging journey through unquestioned acquiescence to Eurocentric thought and law, a journey into humanity, and a journey into the uncharted options of a post-colonial, decolonized world.

Part 3 addresses the new Canadian framework for protecting Indigenous Peoples' knowledge and heritage. It focuses on the challenges the partnership of Canada and Indigenous Peoples will face in reforming and reconciling Canadian law and policy to protect Indigenous Peoples' inherent rights and to generate an inclusive and just society. It also highlights the need to decolonize public education to achieve trans-systemic cognitive justice.

The constitutional rights of Aboriginal Peoples and the Indigenous Rights Declaration reveal and challenge the ongoing oppressive Canadian law and policies. They speak to the required true and equal partnership of Indigenous Peoples and Canadian politicians in developing collaborative action plans to make the law consistent with the Indigenous Rights Declaration in order to rebuild Indigenous Peoples' knowledges, heritages, and languages in a post-colonial and just Canadian society. The challenge of changing British Columbia and Canada law is as difficult as it is urgent. It will provide a useful model of reform for other nations and make Canada a true leader in upholding

Indigenous rights. If progress is to be made toward building more peaceful, cooperative, and just societies where human security is valued as paramount, Indigenous Peoples and communities must be involved drivers, leaders, participants, discussants, and changemakers.

Indigenous Peoples now need to continue their movement to create a patriated Canada. Despite the recognition and affirmation of Indigenous rights in the Canadian constitution, and the numerous court decisions calling for rights recognition and respect, and the numerous human rights laws and instruments that the federal, provincial, and territorial governments are bound by, many provinces and territories, in both overt and subtle ways, deny Indigenous Peoples' humanity and dignity, and do not respect their inherent and treaty rights that inform humanity, knowledge systems, and heritages.

The Indigenous Peoples' movement and renaissance must generate a new alignment focused on generating a sustainable environment and Canada's role in international law reforms. We focus on the challenges of this partnership in reforming the laws and the need for educational alignments to create trans-systemic cognitive justice. Every Canadian can actively participate and be involved in the transformation of laws and education to develop an inclusive and just Canada. This is a further act of reconciliation in the context of the Truth and Reconciliation Commission's Calls to Action (2015b).

We end the book with some reflections on the trans-systemic challenges of protecting Indigenous Peoples' knowledge and heritage. Trans-systemic diplomacy must empower a fair and just space between cultures that must be respected and honoured. Such efforts must respect the unique approaches to peace building and ways of living together that Indigenous Peoples can offer. This trans-systemic diplomacy necessarily includes the return to and recovery of Indigenous teachings about ecologies, and a rebirthing of Indigenous connections with the spirit of these teachings, which must be nourished and reconciled in the collective consciousness.

To continue to exclude Indigenous Peoples from the dialogue of knowledge, heritage, culture, equity, and fairness is to further impose cognitive imperialism and systemic and direct discrimination – thus enlarging the pool of development's victims. New attempts must be made to create trans-systemic and intercultural venues for dialogue and cooperation, to empower trans-systemic diplomacy, and to prevent ethnic warfare, separatism, apartheid, and genocides. Our shared future can be a proud one. Together the international and national communities, institutions, and legal systems can foster an era of cooperation, understanding, and respect among diverse peoples of the earth, and forge a true renaissance. Only a global and local effort can ensure that respect for Indigenous Peoples' perspectives, their knowledge and heritage, is integral to all that

we do. In this process, everyone has a powerful and indispensable role. And when we meet these challenges, the judgment of history will be that each intellectual tradition met and respected the others' knowledge and heritage. Together this honour and respect will lift our cultures into a fair global order and into the new and higher level of civilization the world needs. We cannot afford not to do it.

Copyright © 2024 Marie Battiste and James (Sa'ke'j) Youngblood Henderson

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

UBC Press is a Benetech Global Certified Accessible™ publisher. The epub version of this book meets stringent accessibility standards, ensuring it is available to people with diverse needs.

Library and Archives Canada Cataloguing in Publication

Title: Protecting indigenous knowledge and heritage : a Canadian obligation /
Marie Battiste and James (Sa'ke'j) Youngblood Henderson.

Names: Battiste, Marie Ann, author. | Henderson, James Youngblood, author.

Description: New edition. | Includes bibliographical references and index.

Identifiers: Canadiana (print) 20240392590 | Canadiana (ebook) 20240392604 |

ISBN 9780774881142 (hardcover) | ISBN 9780774880831 (PDF) |

ISBN 9780774880848 (EPUB)

Subjects: LCSH: Cultural property—Canada. | LCSH: Intellectual property—Canada. |

LCSH: Indigenous peoples—Canada. | LCSH: Traditional ecological knowledge—Law

and legislation—Canada. | LCSH: Indigenous peoples—Legal status, laws, etc.—Canada.

Classification: LCC GN380 .B37 2024 | DDC 305.897/071—dc23



Canada Council
for the Arts

Conseil des arts
du Canada

Canada



BRITISH COLUMBIA
ARTS COUNCIL



BRITISH
COLUMBIA

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada, the Canada Council for the Arts, and the British Columbia Arts Council.

UBC Press is situated on the traditional, ancestral, and unceded territory of the xʷməθkʷəy̓əm (Musqueam) people. This land has always been a place of learning for the xʷməθkʷəy̓əm, who have passed on their culture, history, and traditions for millennia, from one generation to the next.

Purich Books, an imprint of UBC Press

University of British Columbia

www.purichbooks.ca