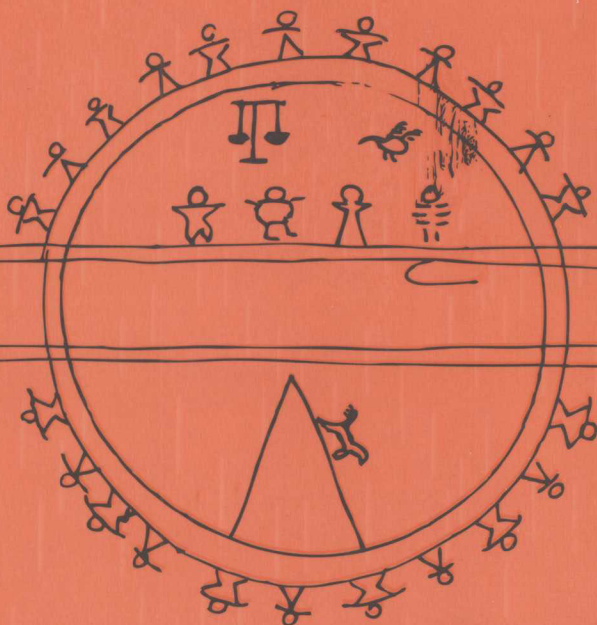


DRAWING OUT LAW

A SPIRIT'S GUIDE



JOHN BORROWS (KEGEDONCE)

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*To Jeeneequae, my mother, and Chik'chik'chikaudesae and Keegitah,
my daughters.*

Preface: N'gii-pawaudjige¹

I really don't want to write this preface. I would rather readers went directly to chapter 1 and read the book on its own terms, without the aid of this introduction. This would introduce you more quickly to an Anishinabek legal method. It would allow you to struggle in a direct manner with the book's central questions. Turning immediately to chapter 1 would also allow you to more sharply encounter with greater intimacy the particular Anishinabek methodology I am trying to follow in this work (though, of course, there is more than one Anishinabek intellectual method).² To dive into the deep end of this text, I encourage you to skip the next few pages and come back to the preface when you have finished the last chapter. If you find yourself wondering 'what's the point?' once you begin reading, you can always come back to the preface for more explanation. Even if the work becomes too alien or confusing, I hope you do not turn back here immediately. Ironically, reading the preface could also cause you to miss important elements of the text. Nevertheless, I want to make sure that readers have a degree of choice about how to proceed through this book. For those who desire greater context before proceeding further into the work, or desire more explanation after you have finished reading it, I offer the following reflections, on the advice of wise counsellors.

This book was conceived of and written in layers. Its cyclical development began its formal life as a Foreword to the first edition of the *Indigenous Law Journal*.³ While the present book originates from a relatively recent essay, the work is much older in many ways. It stretches back into some of my earliest memories with my grandparents, parents, aunts, uncles, and cousins. In other important respects, the book significantly predates me. At the same time, this work is very current. It

covers the period of time during which I have worked as a law professor in various Canadian and American law schools. While the reflections that follow are not strictly autobiographical at times, they mirror the experiences I gained over the last twenty years of my life. At the same time, it is crucial to note that many of the events and characters found herein are of a composite nature. They are drawn together from a kaleidoscope of people, places, and ideas, and do not necessarily represent one place or person. They are also very much a product of what I have read in this period; the work of Dr Basil Johnston, an Elder from my reserve, deserves special acknowledgment in this regard. The influence of his work can be felt in almost every chapter.

Thus, care should be taken not to read everything found in this work in a literal way. Readers are encouraged to search for the deeper symbolism embedded in the broader structure and finite particulars of this work. As this book intermixes constituent fictive and non-fictive elements, it is important to re-emphasize that all references to people, events, institutions, organizations, or locales are not to be taken literally, as this is a creative work of a philosophical nature that amalgamates, fuses, merges, combines, and synthesizes historical eras, personalities, places, and ideas.

As such, it is my hope that readers do not linger on the supposed literal, real-world physicality of any individual in this book; rather, I encourage readers to feel the spirit of the characters and look through them into the larger issues they encounter. This should allow readers to generalize and synthesize ideas in a way that goes beyond any single set of experiences and opinions. This approach is consistent with a form of Anishinabek literacy that tells stories through the words of supernatural beings, past leaders and ancestors, animals, plants, insects, or rocks. I learned this method of storytelling from my Anishinabequae mother, who would communicate about the world around her through her indirect teaching style and third-person perspective. This was in contrast to the more direct style of teaching of my Yorkshire-born father. My mother spoke in her way to explore ideas and events in a manner that freed us to question the larger forces at play in what we were experiencing and hearing. She was the major carrier of culture in our home, encouraged by my father's love and support. Thus, in line with an Anishinabek method, the characters in the following pages function as conduits for further reflection, rather than as specific personalities that should attract real-world approbation or blame.

I use this methodology because of the opportunity it presents to step

back and reflect upon what I have learned from an Anishinabek perspective. As such, the book is very much the product of how I reason about and understand Anishinabek law. I feel as if I am being more candid in communicating my insights in this book than is the case with my other work, notwithstanding this work's somewhat unconventional style. What follows may be too ambiguous, vague, or obscure for some readers because of its deep and sometimes hidden roots in Anishinabek and common law language and culture. Notwithstanding these challenges, I hope that some people may see within these pages an ancient, rich, contemporary but nevertheless still developing Anishinabek legal perspective.

Despite its challenging methodology I have tried to write the book in a way that my Anishinabek grandparents, parents, and adult children would understand. They are my first audience. I hope that in writing in this manner, my future great-great-great grandchildren will also find it somewhat accessible. In this regard, the book does not always follow the conventions of published Canadian legal scholarship. In fact, the central images and ideas that follow were broadly composed while I was asleep. They are largely the product of dreams I shared with my daughter a few years ago as we went running each morning through our neighbourhood. As we enjoyed the new light of each day, I would tell her what I had learned the night before and I would discuss with her what I thought these dreams might mean. After some time of thoughtful silence, she would often add her own ideas about their possible meanings, and help me speculate about how they all fit together. As this went on for a few weeks, I came to feel like each chapter was simultaneously dreaming itself into existence *and* giving me an opportunity to develop a deeper relationship with my (then) teenage daughter. These dreams and discussions enabled me to share with her how I experienced the world as an Anishinabek man involved in legal education. After some weeks, I began to write down what I was learning from these dreams and conversations. The chapters in this manuscript quickly began to take shape and I saw a potential book in their midst. At some point in the process, at the end of a day's writing, I developed the practice of calling my mother, father, and sister at home on the reserve to get their feedback on what I was thinking. For three months I experienced a wonderful pattern: dream, discuss, write, discuss, dream, discuss, write, discuss, et cetera.

At the end of the summer when this work was almost complete, I found myself back home on the Cape Croker Indian Reserve, *Neyaashi-*

inigiing. With a draft manuscript in hand, my family set aside a portion of each day to listen to me read from this book. Their wonderful generosity and kind attention allowed me to further develop my ideas. These experiences embedded the work more deeply in the world of Anishinabek clan and kin. Our family is linked to the otter (*nigig*) dodem, and I have felt the strength that comes from this connection in my work. Furthermore, I was energized as I realized the story was literally living as oral tradition in the lives of people who are closest to me. Though interspersed with periods of writing, the book you are holding in your hands first lived an oral life – through my initial talks with my daughter, to my weeks-long recitation of this work in the comfortable surroundings of my parents' and sister's home. I rewrote portions of the book as a response to my family's feedback and, when I was finished, I once again sought their insights in accordance with our traditions.

Thus, four years after our initial dream-world discussions, my daughter read and responded to a draft of this work while on mid-term break from Dartmouth College. We spoke once again about its images and meanings. My mother, sister, and father also read the book at this point and we engaged in another round of intense discussions, intermingled with laughter, tears, teasing, and encouragement. The book subsequently went through a similar process as I taught Anishinabek law from these pages to students in a Tribal Courts class at the University of Minnesota Law School. I also benefited from Vancouver Island author Jack Hodgins' thoughts on an earlier draft. He helped me identify a better way of organizing the book. My colleagues Ben Berger, Hester Lessard, and Jeremy Webber also made helpful suggestions in relation to some of the theoretical issues discussed herein. I am also grateful to the anonymous readers who reviewed this book for the University of Toronto Press. Their comments were very helpful. While all errors are my own, I am grateful to everyone for their feedback on the stories and ideas I shared with them. In addition, I want to express my gratitude to the Trudeau Foundation for its financial support while I travelled through Anishinabek territory in the United States and Canada to complete this book. Furthermore, the book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Aid to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

From the moment it dawned on me that what I was experiencing could be turned into a book, I recognized I had to sustain the oral di-

mension of this work. Since I initially encountered many of the ideas found in these chapters as images in dreams, I decided to represent them in pictographic form to the best of my remembrance and ability. The Anishinabek have a long history of recording dreams, songs, and stories in this manner.⁴ Thus, at the beginning of each chapter I have provided illustrations related to the ideas within each chapter that take inspiration from other forms of Anishinabek literacy. The images are meant to function as mnemonic devices or memory aids for those who want to subsequently 'read' the book in oral form. While understanding these images requires a different set of skills than those taught in law schools, their presence provides readers with an opportunity to access ideas in subsequent readings without having to use the English text. In this light, I hope readers feel empowered to remember and develop their own interpretations of what they see and read in images. Since these representations are not meant to be formalized in their meaning, like those found on Midewewin scrolls or other sacred texts, they can take on a life of their own. They represent my dreams. They replicate images of scrolls discovered by me with my family's help. As offered in this book, they are not meant to be read within a single interpretive tradition. Thus, the ideograms can be adapted and reformulated to suit the recipient's purposes. In my view, legal traditions are often at their most relevant when they continually change and address ideas their creators did not necessarily envision. As such, I hope readers partially see this work as an invitation to creatively develop Indigenous legal traditions in accordance with their own familial and community standards. Perhaps this work will even inspire the development of further books and writings that convey thoughts in accordance with distinctively Anishinabek and other Indigenous forms of literacy. We may yet see the development of books that more richly rely upon our own pictography.

In studying the accompanying images and text, I also hope readers will see that Anishinabek legal traditions are drawn from places other than courts, legislatures, lawyers' briefs, or law professors' lectures. Indigenous laws can be revealed in broader ways. They are nourished by a grandparent's teachings, a law professor's reflections, an animal's behaviour, an engraved image, and a landscape's contours. Anishinabek law can grow from an ancient story recast in a contemporary light, or through a community's restorative justice efforts. These laws are sourced in the thunder and lightning, in animal creation narratives, individuals' efforts, educational creativity, community resistance,

Canadian legal doctrines, comparative law's insights, family members' relationships, community deliberations, Windigo stories, and our experiences with and reflections on the Great Mystery. Readers who desire a more explicit discussion of Anishinabek laws in 'Western' legal and philosophical terms (and how they can be understood and applied in an intersocietal context) should consult my work *Canada's Indigenous Constitution*, a book written simultaneously with this one. The thesis of that book is that Indigenous laws can be recognized and affirmed in a Canadian context, and can also be justified through 'Western' legal argumentation. In contrast, the book you are holding in your hands draws more heavily on Anishinabek forms to justify multi-juridical engagement. As a result, the arguments in this book are made in implicit terms and in a manner that is more consistent with varying Anishinabek philosophical traditions. In this book, there is a greater scope given for readers to use their agency by drawing their own conclusions about the meanings hidden in the text. An examination of both works will reveal that I believe Anishinabek and other North American legal traditions and philosophies can be brought into conversation with one another. However, a close study of both works will also illustrate my view that the tone and method of engagement across cultures should change with the context in which the debate is set. The differing voice and style of these two books exemplifies the point that legal pluralism is alive and strong, but should not be reduced to one kind of argument that creates a fused or shared horizon. Readers who are interested in the implications of my approach should compare and contrast the methods and ideas in this book with those found in *Canada's Indigenous Constitution*.

In the end, this is a book about cycles, circles, seasons, and rounds, and how our choices interact with the seemingly stable repetitive recurrences seen in most of our lives. I have been conscious of my connections with the past, present, and future in this work. Despite the linear nature of much of common law scholarship, I hope this book is received in a context that finds a life in the complex interactions of different people's life patterns. This hope lies close to the heart of the standards encouraged in this work. We all have a degree of power to make choices about what we encounter in this world, despite the differing limitations, opportunities, and constraints we each experience within the context of our cultures. This is the law as I see it.

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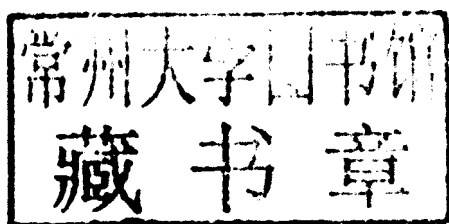
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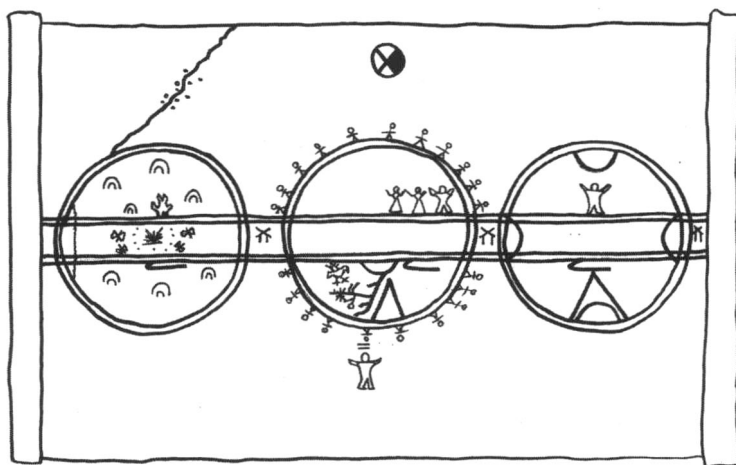
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PART ONE: MINOKMI

Issues: The First Hill



DAEBAUJIMOOT¹



Mishomis sat for some time, contemplating the morning's conversation with his grandson. It was often like that at this time in his life. Long days reflecting on an even longer life, peppered with fleeting moments of real-time human association. Yet when he was a younger man it seemed as though he never had a moment's peace. He had worked hard as a labourer in many different fields: logger, painter, plasterer, farmer, and road builder. This kept him busy from sunup to sundown; except for that time he spent working in films. California had been a welcome change for a while, but it was also a very demeaning place, especially during the Depression. So he eventually moved back to the reserve, Grapes-of-Wrath-style, and resumed his life on the land. He would work twelve-hour days, and then when he came home it always seemed that something else was pressing, calling his attention. A door to hang, a net to repair, an old car needing attention, or a family prob-

lem to resolve; the demands seemed endless. No time to rest. He also drank a little too hard through some of these periods. Life drowned in cold, deep waters. Whole years were washed from his mind. Gone: *gausee-ibeegeawin*. Too much living had been lost to those dark spirits, and he knew they always lurked nearby, threatening to submerge him.

But now as he sat silently in his old chair, he could also remember the quiet times. Hunting, fishing, talking with his wife and friends – there were periods of peaceful reflection. Thinking back, all in all, he was grateful life had unfolded the way it did. He was happy to live out his last years close to those experiences, painful though some of them were. They reminded him he was alive. He was also grateful for the time to try to make sense of the world now that he was older, to see if he could pass on a little understanding. Looking around his old cabin, he saw memories embedded in every corner. The world outside his door recorded his recent history, and that of his people, the Anishinabek of Neyaashiinigmiing.² It was the same beyond the reserve's borders. Lake Huron and the Saugeen Peninsula archived a rich knowledge of how to properly live with the land. When he thought about all this, he longed to tell others about what he had learned. He was always glad when someone stopped by and asked him to share these things with them.

His grandson had been here this very morning with just such a request. A recurring dream about four hills had been occupying the young man's mind for some time. He had asked about what they meant. Mishomis had heard about these hills from other people many times. Basil had first told him about them when he was a younger man.³ The four hills of life, as they were called, taught the Anishinabek about life's seasons. They represented many teachings about how to live in balance with the world. As Mishomis' thoughts returned to his grandson and his dream, he reflected on life's repetitions and the struggle it took to climb through them. The four hills symbolized that journey. They represented the fact that many of the most important issues a person confronts in life often manifest themselves at a very young age. Then, as you grow older, you continue to cycle through them and encounter them over and over again. It was like climbing boundless hills. While these issues may be experienced differently each time, this does not make each journey any less difficult. And this knowledge certainly does not prepare you for your first encounter. Certain issues remain with us all our days; only our perspective on them changes. Our interpretation grows.

Mishomis could see why his grandson wondered about his dream. He was struggling to understand and overcome the challenges that confronted him on his journey. A law professor's life was easy in some ways; his grandson's life certainly seemed to be more stable than his own had been. At the same time, Mishomis could appreciate some of the challenges his grandson encountered. While they would often dive into deeper subjects, most conversations about his work turned on the disruptiveness of Canadian law. He could relate to that; Mishomis had seen how the law had so deeply dispossessed too many around him. To counter this problem, his grandson's main preoccupation seemed to centre on the reinvigoration of Anishinabek law in contemporary settings. He was searching for ways to more fully draw out law from the world around them. They had returned to the topic this morning when he once again asked about his dream. His grandson seemed especially interested in the first hill.

It reminded Mishomis of his own dream, many years back. He had been given a similar lesson. For as long as he could remember, Anishinabek people had been taught to give the highest regard to their dreams. He was told that they possessed great power. In fact, some dreams could not be shared because they were too sacred. Others could be openly spoken of only if they were not connected to some ceremonial rite of passage. And still other dreams could be widely circulated, because they contained more generalized lessons. In his own dream, from that long-ago day, Mishomis had also been taught about the first hill, though in a different way from his grandson. Mishomis' dream had occurred shortly after he first left home. He had started a new job which he really enjoyed. He was glad to free himself from the constraints around the reserve, and was happy to be earning some money for a change. But he was also a little homesick for family and friends, and he found himself often wondering about them. One night he fell asleep thinking about these things, and had a powerful experience that had stuck with him all the years of his life. It taught him a great deal about the issues his grandson was now reflecting on, concerning the first hill.

In his dream, Mishomis had returned to the reserve to visit with his family. He always enjoyed their company, and was looking forward to relaxing and enjoying a peaceful weekend with them. One of the first things he did upon his arrival was to visit with his Aunt Mary and have supper with her. Aunt Mary's Ojibway name was Wausiiaunce. He drove over to her brand new house, and admired the order which she brought to the place. No matter where she lived, she always had a few

flowers around her yard. It was one of the tidiest places at Neyaashiinigi-miing. Mishomis climbed on the porch and knocked on her gleaming white door. This set off Waubegeeshig and Nag'an'al'mot, who barked and howled their welcome. After a few moments, Aunt Mary looked through her front window and saw that it was her nephew. She opened the door, gave him a big hug, and welcomed him in. His mother soon joined them, walking the few steps from her house across the way.

As he thought of that experience, Mishomis couldn't stop himself from filling in the details of the dream. He knew from many visits to Wasiiyaunce's *wakau-igun* that it usually smelled of roasted duck or pheasant. Sweetgrass hung in every window, adding to the rich fragrance of her home, especially after a hot, sunny day. He was sure they took their time visiting over their food. From what he could remember from his dream, though, he clearly recalled that when they were finished eating they decided to drive down to the lake and take in its beauty. The mixture of rock, water, and stone had a prehistoric quality. So, they got into his aunt's ancient blue jalopy and set out for the bay. In those days, the old dirt road would have been lined with tall timothy grass, rusty alfalfa, Queen Anne's lace and blue creeping bellflowers. As they were getting close to the water, they noticed a small island just off the shore. It had a towering pine tree, *zhingwuak*, growing on it. None of them remembered ever seeing it before. They were curious about how the tree got there. One of the limbs of the giant extended over the water towards the shore, and on the limb was a man. Mishomis and his aunts were perplexed as to what the man was doing there. As they got closer, they eventually noticed that the man on the branch had his hands in a bundle of sticks. They were heaped in a twisted pile, their bulk shadowing the water below.

When they stopped the car and focused their gaze, Mishomis realized that the man's hands were in an eagle's nest. It was a shocking violation of a sacred space. Mishomis called out to him to stop. As these words reached the upper heights of the tree the man lifted a baby eaglet, *migizi*, from inside its home and perched it on the side of the nest. The young bird shrieked in distress, its small, white body quivering with fear. Mishomis called out a few more times and heard his voice ricochet around the lake. His shouting attracted attention of other people in the community, though the man in the tree did nothing to restore the bird to its home. As Mishomis persisted in his pleas, people from the reserve started gathering on the shore to see what was happening. Despite the growing crowd, no one came to the eaglet's aid. It was unnerving. He