A Book Review of Sébastien Grammond

Terms of Coexistence: Indigenous Peoples and Canadian Law

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Sébastien Grammond's *Terms of Coexistence*[2] offers a clean, concise account of the present state of aboriginal law as it is applied to Indigenous peoples. Grammond brings together his passion for history and legal analysis in his attempt to create a complete overview of where Indigenous peoples legally stand today in Canadian law. This broad review covers a gamut of issues, including Indigenous peoples' land, their identity, their legal claims and their rights, and their sovereignty. Overall Grammond's text successfully follows through on its initial premises of discussing the laws affecting Indigenous peoples in Canada; however, the small disclaimer on whose perspective is to be illuminated is one that cannot be ignored:

> 2. PERSPECTIVE- This book was written by a non-indigenous lawyer. As such, it offers a non-indigenous perspective on the subject, yet one that seeks to be sensitive to the realities and needs of the Indigenous peoples. Indigenous readers may legitimately feel that the book does not sufficiently represent their cultures, philosophies and worldviews and is firmly rooted in Western ways of thinking. Indeed, I lay no claim to expertise concerning Indigenous philosophy, political traditions, and legal systems. In fact, as I will make clear shortly, this book is about Canadian (non-Indigenous) law, not about the legal systems of the Indigenous peoples.[3]

Interestingly, while Grammond attempts to give life to laws on, about, and for Indigenous peoples in Canada, the human subjects of his research are silenced and objectified through this process of embodying their identities within data, text, statistics and facts. Similar to the decisions rendered by the Supreme Court of Canada, Grammond also notes that an Indigenous peoples'

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2 Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law* (Toronto: Carswell, 2013) at 2 [Grammond, *Terms*]. The book is an evolution from Grammond's original 2003 title, *Aménager la coexistence : les peuples autochtones et le droit canadien* (Brussels: Bruylant, 2003).

3 Grammond, *Terms*, *ibid.*

perspective, history, and laws are important legal fodder, but then in a quick narrative turn, retells judicial tales that imply his support of the legal status quo. In the end, Grammond binds Indigenous identity with the shackles of the constitutional interpretation through our common law: raising doubt that co-existence is possible, giving us the terms by which Indigenous peoples must exist within the common law and summarizing a non-Indigenous, and Quebecois, and human rights centered perspective on how Indigenous peoples arrive at our current legal situation. My review argues that this position is simply no longer acceptable.

As an Indigenous scholar reading a legal account of law and Indigenous peoples in Canada, I admit that I have come to expect the Indigenous voice to be missing. Grammond's legal account is no different. Overlooked in his text is the lived experience of Indigenous peoples: a description of how Indigenous peoples engage with the law today; our aspirations and shared fears; our individual and community achievements; our contributions to Canadian society and law. The author painstakingly references the commissions for which we have been fodder, along with the many articles that reference the statistics of birth, incarceration, children-in-care, and the membership codes and legislation that inform our legally-crafted identities. Our identities are presented as technical data for legal consumption that fails to see the racialized practices to which we are subjected through traditional legal analysis. The author's reliance upon secondary sources and jurisprudence is presented as relevant cold, hard facts — devoid of Indigenous life stories or context. Rather, a descriptive institutional grey hue is cast over our complicated lives as described by Grammond.

Like a by-product of the Aboriginal industries[4] of social services, corrections, lands and natural resource development projects, and Indian Affairs overseers, the research for this book is completely dependent on Indigenous

4 To further highlight my own naiveté I will recall selecting Frances Widdowson and Albert Howard's 2008 book *Disrobing the Aboriginal Industry: The Deception Behind the Indigenous Cultural Preservation* (Montreal: McGill-Queen's University Press, 2008) off the shelf at a book store. When I read the main title I recall thinking, "finally, someone has told the tale of how Indigenous peoples are used to fuel the social system, especially when it comes to Indian Affairs and corrections. Someone has reviewed the lives of Indigenous peoples so as to expose the fact that Indigenous peoples are used to justify fears of belonging and ownership." For those of you familiar with this work, you will know I was more than disappointed with the sub-title — "*The Deception Behind the Indigenous Cultural Preservation*" — was more apropos of the lack of meaning and substance of Indigenous legal systems, worldview, and teachings. The complete lack of inclusion of Indigenous perspective is on the extreme end of the exclusionary scale for Widdowson, but it is another example of a discussion around Indigenous peoples with no attempt to understand, contextualize, or include.

peoples to exist but is created with no recognition of the fact that it cannot exist without us. These industries have also been influenced by a growing number of judicial decisions where, again, the Indigenous voice is silenced. Of course, with my knowledge of the colonizer's perspective found in this book, I was not disappointed when I finally put down Grammond's dense 540 page treatise; he delivered a traditional perspective of Aboriginal law, from a non-Indigenous perspective, as promised.

Surprisingly, I found myself immersed in the richness of his historic research, appreciative of his extensive review of legal cases. Ultimately I am thankful, as an Aboriginal law scholar, to be offered this insight into a non-Indigenous perspective of Aboriginal law. I am mindful, however, that the lens he applies to his work is aligned with numerous authors and judges who write and work in this area of law. Grammond's voice represents the dominant perspective that continues to shape the legal discourse and informs the voice we give to legal writing and the legal reality of Indigenous peoples in Canada. I see, through his text, how a non-Indigenous story reads — a fact-based, rational analysis that is consciously devoid of Indigenous stories. Thus, it seductively appeals to those legally trained to consider the rational and factual-based truth. Knowing that this is his language is immensely helpful for me as an Indigenous person not only living the law Canada imposes on Indigenous peoples,[5] but teaching in and studying it. I don't expect a full account. I don't expect inclusion. I expect a rationalization for the status quo.

For an undertaking of this magnitude, *Terms of Coexistence* is thorough in its non-Indigenous research. Grammond provides to his readers a complete description of Aboriginal law in Canada, which in itself is a daunting task. His traditional historical account of Indigenous peoples in Canada will be met with absolute pleasure by those seeking refuge in a chronology of historical events that have informed the development of Aboriginal legal doctrine and that explains our current patterns of litigation and negotiation that have often stifled Indigenous identities, contributions, and of course, our legal systems. For those who are interested in a fuller perspective, a richer analysis of the salient points Grammond raises, they will have to look elsewhere because Grammond is shooting for a rational account that results in a judicial-like objectivity and precision that misses the mark of Indigenous peoples' experience of attempting to co-exist with and flourish in conflicting legal orders. For

5 Another component of this discipline is that non-indigenous authors like Grammond do not have to take their work home with them, literally.

others, who do not require the inclusion of Indigenous perspectives on this topic, his aim is accurate.

The slipping past and through and manipulating around Indigenous voice is a recurring trope throughout the text. On page 25, for example, Grammond asks the question: "what would the answer of colonial law have been if the issue of Aboriginal rights had been squarely raised?" The implication appears to be that the question has not been asked. Indigenous peoples believe that the claim to rights has always been asked for, asserted, and defended.

This is just one example of glossing over Indigenous peoples' history in the text. A look at the *Tsilhqot'in* case[6] squarely highlights the reality that the Tsilhqot'in peoples made it clear from the beginning that their land was theirs, that they were responsible to it, and that they were not going to let it just be taken. In Canadian legal terms, they have Aboriginal rights, including title, to that land. The Tsilhqot'in might well be surprised to learn that this current legal construct had not been captured in the several hundred years of interacting with Settlers.[7] Stepping around the question of whose land this is does not fit with Indigenous reality, nor is it part of Indigenous history.

The kind of review of history that excludes Indigenous voice also denies the reality that Aboriginal peoples had no rights to vote and were legally precluded from bringing legal claims and hiring lawyers to even ask the necessary questions. It skips over the conversation around passes that had to be obtained from the Indian Agent to travel for any reason and of permits which had to be requested to sell grain or livestock. It denies starvation and famine as strategies used to eliminate Indigenous resistance to repressive policies. It preserves the fiction of the honour of the Crown and the mythology of doctrines and duties, of fiduciaries, and of interjurisdictional immunities. For in spite of passes, permits, prisons, school jails, hunger, death and historic injustices, Indigenous peoples were asking the question "why are you denying us our land?" in any way they could.

Aside from these concerns about approach, perspectives and lenses, as well as lack of peripheral vision, Grammond's methodology is worthy of review. The book's layout creates a system of pigeon holes that contributes to the diminishment of Indigenous identities for it does not fit well into the structure he uses for capturing vignettes of history. This structure, combined with his personal writing style, is a large part of the fingerprint of research and writing

6 *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 256.

7 As would the Cree, the Dene, the Mohawk, the Micmac, and most others.

that Grammond leaves on the reader. *Terms of Coexistence* is tightly organized into five chapters: Concepts, Aims and Methods, Indigenous peoples and the Law throughout History, Land and Resources, Indigenous Governance, and Applying and Adapting Legislation.

Each chapter has numerous themes within that are further organized, mostly in chronological order, but always in a manner that offers salient points supportive of each highlighted chapter topic. Each theme is parsed out with precision to allow for subcategories of the discussion within each topic. Each subcategory is further compartmentalized into a numerical system of not-quite paragraphs, but of sub-sub categories. To some, an observation of the writing system might seem trite, but this methodology is instrumental in constructing the legal position of Indigenous peoples in Canada. Similar to the regulatory effect of the *Indian Act*[8] upon Indigenous persons' identities, this method of numbering and compartmentalizing Aboriginal existence into 455 numbered spaces that are no longer than six paragraphs is extraordinary and telling. This particular, detailed system of presenting information is clearly a structure that is safe, clean, and organized, with an index matched to allow one's mind to compartmentalize the information into narrow legal categories. It is a neat and tidy presentation of legal doctrine. The message left for the reader is that this complicated and multidimensional legal history can be sterilized and placed into boxes, with each theme capable of review in six or so paragraphs.

Aboriginal law is not clean and organized, sterilized, and easily compartmentalized. It cannot easily be put into boxes. Aboriginal law is complex and layered. It is alive and organic. Placing Aboriginal law into a clean system for analytic processing is counter to the lived reality of Indigenous peoples in Canada. Indigenous history and law is built on the lives of our ancestors and the occlusions in the relationship with non-Indigenous peoples. The law actually grows out and through the relationships as we live and reaches through to the needs we have from each other, as those needs arise. Spiritual laws wrap around laws of nature and ultimately dictate what laws a community will create to facilitate the citizenship in their relationships. Those man-made laws, in turn, wrap back through natural and spiritual laws and impact the lives of the peoples within them.[9] Given our place as the ones who are ultimately dependent on all else in existence, the role of spiritual and natural laws are

8 *Indian Act*, RSC 1985, c I-5.

9 Do not let the language fool you: my prose is there to indicate the very living nature of the laws, their power and force. Traditional laws and nature herself are not afraid of death, of reaction, and of teaching lessons that last through generations.

predominant. For Indigenous peoples, even non-Indigenous laws, determined through the cross-referencing of the judicial decision, the armchair review of history and the current needs of the political leadership, are so enmeshed, so interdependent, that they ensure the terms of co-existence with common law spill over onto the players, often rendering principles hard to extract and examine on their own. Neither is as clean and tidy as Grammond and his dissection infer.

In seeking to truly understand the past relationships of the First peoples to the contemporary global world and with the new settlers on Turtle Island, one could consider the relationships and constrictions, and perhaps even venture into the mysterious places of situated indigenous knowledge and oral traditions to appreciate the full story. Instead, here we read about the normalization of legally-constructed communities with new systems and institutional structures between peoples who have come to live in a common space and the silencing of Indigenous peoples within this space. Notably, the Indigenous bodies caught in the middle of this process are racialized, erased, made invisible, and wiped away by rational legal accounts of Indigenous peoples experienced in Canadian law through a non-Indigenous accounting. This process of recounting the legal standing of Indigenous peoples in Canada is important to a reading of the text because of the first overt demand Grammond makes of his reader: to reconstruct Aboriginal law and to re-label it "Indigenous peoples' law," a term he uses throughout. It is a label that presumes some level of ownership of the law by Indigenous peoples at best, and one that instills a romantic idea of pride and inclusion of Indigenous people at worst.

When I teach Aboriginal law, I tell my law students on the first day of class that I am teaching a body of Canadian law that has been imposed on Indigenous peoples. It is not our law, there can be no ownership of this law, as the name Aboriginal law implies. "Aboriginal peoples" is a legal construct, negotiated with Indigenous leaders for the purpose of creating section 35 within the 1982 *Constitution*.[10] This provision names the Aboriginal peoples of Canada although the actual definition is still being litigated.[11] Section 35 serves as a very good example of the ongoing paradox of Aboriginal law: it is not the law of Indigenous peoples, yet we must use it as the legal avenue by which we can participate in and gain entrance to the Canadian legal system.

10 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.

11 *Daniels v Canada (Minister of Indian Affairs and Northern Development)*, 2014 FCA 101, 371 DLR (4th) 725; *R v Powley*, 2003 SCC 43, [2003] 2 SCR 207; *Reference whether "Indians" includes "Eskimo"*, [1939] SCR 104, [1939] 2 DLR 417 (the definitive case for Inuit); *McIvor v Canada (Registrar of Indian and Northern Affairs)*, 2010 BCCA 338, 321 DLR (4th) 558.

We must identify with the Aboriginal label to gain legal status to bring any legal claim for any rights or jurisdiction. We are left dependent on this and other Canadian legal constructs to claim any rights to self-determination. The rights and self-determination (or self-government or sovereignty) that could be potentially recognized is defined within this same legal construct — even though we do not define ourselves through it and cannot raise our own children through it, and have had no inclusion in the design, creation, and implementation of these legal processes. It is not our law.

Indigenous laws are laws from our histories, spirituality and our familial community relations. When Indigenous Knowledge Keepers are introduced as teachers in my class, I explain that the Cree or Dene or Michif teacher is talking about Cree or Dene or Michif law that comes from their own history. Together, the presentation of Indigenous law with Canadian law broadens the boundaries of traditional legal orders for the student, creating a possibility for a pluralistic or pluricentric legal approach to understanding and learning law — a way of knowing law that often does not co-exist with typical common law doctrines or academic writing.

I continue to explain to my students that these Indigenous bodies of law are very much alive, and are as rich and as far-reaching as traditional Canadian law. I also teach that the laws of Indigenous peoples are categorized differently: in Canadian law we have constitutional law, federal law, provincial law, territorial law, and municipal law. We have common law and legislation, regulation, and policies. I say that these laws may have had spiritual components but are mainly secular today. We then take the time to review Indigenous categories, the ones Indigenous historians recognize as shaping their way of understanding life: spiritual laws, natural laws, and human-made laws. The students are taught that the laws are not only between peoples but also between all living creatures because of the complete reliance of humans on the land and resources.[12] Between the lessons taught by the Knowledge Keepers and myself, the students begin to appreciate that simply because Indigenous laws are not written down does not make them inapplicable, invaluable, or

12 One evening in 2005, a university land management class was outside with a Knowledge Keeper and a dendrologist after a day of naming trees. They heard the Knowledge Keeper explain that the medicinal plants she picks are no longer available to her. Although the plants she was pointing out were still growing and ripe for picking, she had a contract with the fireflies that held she could only pick until the fire flies came out, then she had to leave the particular plant for them as they also relied on it for survival. Although this level of detail is not available in a text on Amazon.com or the SSRN library of academic articles, it is available in plenty of other anthropological texts. There are also Knowledge Keepers in each Indigenous community who would love to be invited to teach in a class with a law professor.

unattainable. My students also study how to look at nature so as to understand natural laws and to contextualize themselves within it. There are clear demarcations where Canadian and Indigenous laws merge. Where they diverge, students are taught to respect that there may be two ways, though inconsistent — two systems that can co-exist.

Grammond's attempt to rename this body of law "Indigenous peoples' law" ironically also demonstrates a deep understanding that Aboriginal law is not quite the correct lexicon to capture the essence of "Indigenous" law. He correctly points out that the label "Aboriginal law" misses the point. However, his relabeling attempt implies ownership over a body of law, by Indigenous peoples that does not represent our perspective, our systems, our agency, our peoples, or our legal history. His relabeling is also devoid of discussion of the imposition of laws and the subjugations of Indigenous peoples.[13] Through the omission of Indigenous laws or even Indigenous perspective, texts like *Terms of Coexistence* avoid the irony that self-determining Indigenous peoples engaging in any claimed rights are forced to attach to aboriginal law language, labels, instruments, and processes themselves to even participate within the Canadian legal conversation to realize their rights.[14] The Canadian system is thus allowed to be seen as normal, as non-cultural, as evolutionary, civilized, and superior.

Grammond has various methods to limit the experience of his Indigenous subject matter as he reviews the points of law under which he examines us. In the first chapter when he discusses "historical injustices,"[15] for example, he often refers to land dispossession and Residential Schools.[16] These are two very important items to be sure. The former is the basis of uprisings for Indigenous peoples across the world, Canada not excepted, and with controversies raging on today. The latter is a recent example for Canada where damages are

13 He makes a few statements that the state did not intervene in any structured way in Indigenous legal systems until the middle of the 19th century, denying the role of Jesuits, the place of warfare, the treatment of women, the strategies for denial of food and of alcohol. See e.g. Grammond, *Terms*, *supra* note 2 at 353 for this language.

14 For example, a Cree person who wants to assert a right to hunt must first prove they are Aboriginal, in the Canadian Constitutional context and under the Canadian statutory regime, but not through their own citizenship regulations or traditions. Arguably, citizenship seems to be a basic competency for any self-governing nation, yet one that has eluded most Indigenous groups in Canada with the exception of the Inuit who create their own membership codes. Although First Nations can add to their own citizen registry, they have no control over the Federal Registry, even though it was originally tied to the land grabbing by the Queen.

15 The language of a gentleman — not to be confused with travesties, grave injustices, atrocities, or genocide.

16 Grammond, *Terms*, *supra* note 2 at 13, 22.

being regularly quantified in judicial-like hearings. However, these historic injustices are but two and, with so many to choose from, I was hoping to see a slightly longer list with inclusions of, perhaps, the lack of recognition of treaty rights, the continuous removal of Indigenous children from their families (today and historically), the extreme rates of incarceration, the hundreds of missing and murdered women,[17] the legislated oppression through the *Indian Act* and other statutes, the exclusion of Indigenous peoples in the discussion on resource development and management, the impact of resource development and land use by non- Indigenous peoples on the traditional economic and social structures and relationships within nature, to name but a few.[18] I was left wanting more.

Grammond's style of review of the history and law for Indigenous peoples in Canada, the US, and even his international examples, are minimally cross-referenced, thus avoiding the abrupt, corrupt, and damaging cross-roads where individuals and nations collide. The carnage from those collisions is the recognition of the Indigenous identity, the legal systems and the citizenry we see today, minimal, dependent, imposed, and controlled. Grammond's account of Residential Schools is mentioned as an example of an attempt to use a regulated school system to attempt to assimilate Indigenous peoples into mainstream society. It is set out as a series of factual events within each subcategory. It first shows up as a sentence in sub-subcategory 10, is then mentioned in sub-subcategory 32, briefly, but is then expanded slightly more in 102 and 111.[19] These themes are quite independent of each other; the first is in the early pages of the book and is a mention of an example of historical injustice, then it appears in 102 as an example of government policy of the early 1900s and then in 111 as a late 1960s settlement claim within the rise of Aboriginal litigation. It is put forward as a way to present programs and services, an historic account of how the Indigenous schooling process worked.

17 Surprisingly he pays little to no lip service to this growing phenomena which of course is very, very messy.

18 I should note that he does say that "looking at the past, it is difficult to say what its present day situation would be but for the unjust act. A host of unrelated factors may have led to the loss anyway" (Grammond, *Terms*, *supra* note 2 at 22) and further that "full restitution of lost property may lead to results that are not consonant with distributive justice for example of IP represent a tiny fraction of the peoples but got the whole of the resource" (*ibid*) leaving a large wake for no one having to take responsibility for the current state of affairs (unrelated factors may have led to the loss anyway) and for the judicial lens that saves room for the common law perspective and the fact that settler institutions are all here to stay (*Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193, Lamer CJC).

19 Grammond, *Terms*, *supra* note 2.

Residential School in the international context has less of an assimilationist policy flavour served up by Grammond and more of a taste of an organized, systematic violation of children through physical, emotional, sexual, and intellectual abuses complete with spiritual cleansing and the erasure of families, values, and connections. Through no coincidence, the disintegration of Indigenous language, laws and peoples followed. The "historic injustice" of Residential School is the example of our Canadian history, together with our reserve systems, that puts our Indigenous peoples perilously close to the apartheid example in South Africa. "Historical Injustice" sure, but "historical" could be replaced with "horrific," "appalling," or "brutal." Grammond does reach far enough to concede that Residential Schools *may have been the cause of later anti-social behavior.* But, this is offered up to the reader only as a factual statement on the policy of not sending children to the school and the reality that financial settlements are available for physical assaults sustained by those who attended "there is a penalty for not sending children and a settlement claim for physical and sexual abuse and not for a claim for eradication of a culture."[20] There is little mention of the devastation a mother or father would experience when a three-ton truck, like the ones used to haul sheep or pigs, pulled up to the homes of First Nations families to remove all the children, even babies, living there. No mention is made of the fact that some of these parents tried to hide their children from the Indian Agent retrieving them. Nor is any mention made of the numbers of children who died during the residential school experiment, or who starved or were found dead after attempting to flee these schools so that they might return to their homes. So clean is the writing on Residential Schools, that the mention of the fact there was a penalty for refusing to send your child leaves the reader with the impression that there may have been nothing more than the choice between paying a small fine or simply sending the child or children off to school.

By contrast, if a context were given for a historic injustice like Residential Schools, another surface of the terms under which we do coexist would be exposed. For example, imagine the moment of choice in the movie *Sophie's Choice.* The idea of choosing which child should be separated and which should be kept close provides another dimension. The Residential School experience had such a "choice": give up your child or go to jail. This was a choice Indigenous parents made, all while knowing that the child could be damaged, tortured, changed for the worse, or even killed. You can be sure under the Residential School experiment that there may have been some subsequent anti-social

20 *Ibid* at 11, 119 (clinical review of the legal penalties and remedies around the residential school process).

behavior. Now imagine also that "choice" being foisted upon a family more than once, with each school year and in regard to each child — and further, if the child returns in the summer they are different, removed, sad, and damaged, for having been beaten, intimidated, raped, starved, and worked like an indentured servant. Imagine the children's language, self-respect, culture, and connections to family amputated. So, is the phrase "anti-social behavior" appropriate enough to encapsulate the result of all this suffering and injustice? Such a diluted view of the history of Jim Crow would be akin to a discussion of seat selection and schooling options for African Americans, and we are far past that view of a white-washed African-American reality.[21]

Grammond does not see that Residential School is so much more than an example of an historic injustice. Residential School is a metaphor for the terms of coexistence between the Settlers and the Indigenous peoples by the 1900s. It shows beautifully that Indigenous peoples (or "the Indian problem"), were an obstacle in the way of settlement. They were a peoples not conforming to the needs of the new government. They were a peoples with a past and a culture and a spirituality that could be isolated and removed. They could be stripped of family and history or have it beaten out them. Residential School shows peoples so dehumanized to most Settlers and their heirs that ripping children from Indigenous mothers and fathers was not an inhuman act, or even really out of the ordinary — it was the very same mentality that justified land-grabbing, the use of alcohol in business transactions, starvation in reserve creation, stopping Indigenous spiritual practices, and imposing Christianity on a peoples with their own belief system. Residential School is one great example of the disembowelment of a nation on Canadian soil, but unfortunately, it is not seen in its full version in Grammond's book.[22] This is frustrating because such issues are global and scope, and we still see the "oh well, that is how it was back then" mentality

21 Given the fact that the Truth and Reconciliation Commission has been throughout Canada several times, that the Federal government has publicly apologized, and that there is plenty written on the subject and residual effects of Residential schools, I am not sure how this information escaped a more detailed review, particularly since it is the most referenced injustice. (Perhaps this is not an oversight, perhaps a cleaner, more simple context was sought, but it does leave the impression of a single unfortunate event — one easier to read and likely to write.)

22 Residential School mentality and ongoing legacy is also very much alive today with the continuous removal of Indigenous children from their families with more of them in care today than at the height of the Residential School System. See National Collaborating Services for Aboriginal Health, *Aboriginal and Non-Aboriginal Children in Child Protection Services* (Fact Sheet) (Prince George: University of Northern British Columbia, 2010) online: National Collaborating Centre for Aboriginal Health <http://www.nccah-ccnsa.ca/docs/fact%20sheets/child%20and%20youth/NCCAH_fs_childhealth_EN.pdf>.

that sidesteps the responsibility to stop the suppressive colonial practices that linger to this day.

Even without a personal Indigenous lens, any author, including Grammond, can research the treatment of the newcomers by Indigenous peoples to see the beginning of the relationship from another perspective.[23] It is not a leap of faith to find the stories of acceptance, of peace and of friendship where Indigenous peoples worked with the newcomers to order the settlement. There are numerous accounts of warfare to define the relations, good and bad, between the newcomers and between and among First Nations — researching such accounts of warfare is one consistent way of understanding boundaries, intertribal agreements, the exclusion of newcomers, the formation of allegiances, and so on. Grammond barely skims the surface.

Sub-sub-category 37 is also worth a look. It is a vignette, four short paragraphs titled "WHAT RIGHT TO COLONLIZE?"[24] These paragraphs are packed full of information, again attesting to Grammond's ability to pack and organize. A review of a time frame from the conquistadors to the current administrative control is found within these two pages and the filling-in-between is delicious: hints of academic idealism "back in the day," deductions through logical reasoning over land appropriation, minimal weight of the Indigenous interests (legal or academic), hegemony, practical needs versus principled considerations, and so much more, is all packed in here. The summary flows beautifully, is clean, and has several crisp start and end benchmarks. Look closer. You can see the laws of Indigenous peoples as the frog in the jurisprudential water as it starts to boil. They were there and they were active, but they were simply overcome, outnumbered, and drowned in the largesse of the developing civilization.

After Grammond's review of treaties, which he shows as existing originally as a document for establishing allegiances, shifts to proposed territorial takeover (and thus evolves into a land-surrender process), he states:

> As the colonizers grew both in number and in strength, however, the object of the treaties instead became their acquisition of territory. This is what gave rise to a paradigm shift: while initial relationships, marked by the stamp of equality, could well be imagined within the framework of international law, the colonizers, now sure of themselves, denied that the indigenous peoples could maintain any sovereignty at all.

23 Of course there are too many to mention but I will point out authors like Sarah Carter, Jim Miller, Olive Dickason, Arthur Ray, Susan Dion, Emma LaRocque, Constance Backhouse, Craig Proulx, Michael Ash and many others.

24 Grammond, *Terms*, *supra* note 2 at 44-45.

> It was therefore, by means of European national legal systems, that the administrative control of Indigenous peoples slowly came to be.[25]

Short and to the point, the body and voice of Indigenous legal order dies within the context of the members of the non-Indigenous choir and their very convincing, accessible hymn books[26] simply because of the dilution of the Indigenous population and the growth of the Settler control. This, coupled with the Settlers' lack of ability to access the recipes of the Indigenous peoples, tells us, says Grammond, that Canadian sovereignty prevails today. This leaves out any hint that the Crown could well have been acting less than honourably and that its land and its sovereignty was based on legal fiction. In fact, it almost implies that the Indigenous peoples slowly, willingly, jumped into the pot on their own accord and that the chefs were doing them a favor.

Terms of Coexistence is an attempt to objectively review the evolution of the laws that have controlled Indigenous peoples in Canada. In his discussion, Grammond almost bills the courts as the White Knights coming in to "review old rules or develop new ones by relying on a new history of the relationship between Europeans and Indigenous peoples, one which is more attuned to the role that the latter played in the development of the country."[27] The courts' approach to Indigenous issues, lauded by Grammond, renders the study of Indigenous legal systems superfluous: it is possible to prove an Aboriginal right without appealing to those systems.[28] He then goes on to rely on the test in *Van der Peet*[29] to outline the integral distinctive culture test to prove a right, custom, or tradition.

However, there is no mention of the lack of action by the honourable or fiduciary Crown fully within its constitutionally-created jurisdiction within its division of powers, until the courts prod at the government monolith. Grammond also minimizes the fact that the review of history as presented is still largely non-Indigenous or that the courts themselves had a very large role in the development of the present-day Indigenous context. The discussion denies Indigenous laws and further, it denies any actions by Indigenous peoples to protest the treatment received historically and legally by the same system

25 *Ibid* at 45.

26 I use this language in direct response to his comments that "Indigenous legal systems suffered the effects of assimilative and paternalistic policies adopted by the colonial and, later, federal authorities. These systems, at least initially, had no written form, which rendered them difficult to understand for the non-indigenous jurist" (*ibid* at 43).

27 *Ibid.*

28 *Ibid* at 212.

29 *R v Van der Peet*, [1996] 2 SCR 507, 137 DLR (4th) 289.

doing the assessment today. The reality that Indigenous peoples themselves, who are not prepared to tolerate partial truths, to be placated by legal recognition without implementation, to be denied recognition, ownership, and rights based on the legal fiction of "discovery" or "continuity," or to continue on in this racialized historical existence, have demanded the review. It is Indigenous peoples who have pushed the evolution of Aboriginal law in Canada. The Courts are merely the only avenue available.

Terms of Coexistence may not employ an Indigenous lens, but I want to argue that it was within Grammond's reach to see the hard work on the part of Indigenous peoples to have new rules developed through new and renewed litigation and through the negotiation process that has replaced some of the litigation. The fact is that the principles of sovereignty and ownership are legal fictions woven together to create the fabric of aboriginal law through half-truths, innuendo, and judicial artistic license of the past — and that the fabric is unraveling because Indigenous peoples are pulling on it. Grammond's own international research must have uncovered the work of Indigenous peoples in the creation of *UNDRIP*.[30] His reading of *Calder*[31] and *Guerin*[32] and any number of the collection of hunting cases throughout the Treaty areas must have given him some indication that it is Indigenous peoples who are at the base of the probing for justice around laws that dictate the lives of Indigenous peoples.[33]

Further to the complete lack of recognition of the ongoing work of Indigenous peoples in demanding a recognition of Indigenous voice, legal institutions and land stewardship, I also found the lack of any recognition or support for a two-way discussion on our legal obligation to work together to build the banks for the pluralistic bridges he refers to early on in the text. It is important to note that these kinds of non-inclusive academic and jurisprudential streams of consciousness can only take the Canadian conversation so far. It is Indigenous peoples themselves who hold the information that is desperately needed to understand the gaps in the relationships between the

30 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/61/53, (2007) [*UNDRIP*].

31 *Calder v British Columbia (AG)*, [1973] SCR 313, 34 DLR (3d) 145 [*Calder*].

32 *R v Guerin*, [1984] 2 SCR 335, 13 DLR (4th) 321 [*Guerin*].

33 See *Guerin, ibid*; *Calder, supra* note 31; *Cardinal v Alberta (AG)*, [1974] SCR 695, 40 DLR (3d) 553; *R* v *Badger*, [1996] 1 SCR 771, 181 AR 321 [*Badger*]; not to mention the movement behind *UNDRIP, supra* note 30, coming from Indigenous peoples who are so tired of looking for one-off cases for some small amounts of justice that an international forum was sought out to find some space for participation in recognition that there has been abuse of generations of Indigenous peoples and it must stop.

non-Indigenous peoples and the original inhabitants who still see themselves as stewards of the land. The combined effort to continue on in terms of living together, understanding each other's boundaries, and reciprocating in each other's processes, is the foundation of the Two Row Wampum and many treaties identified throughout the book.[34] Yet, a conversation about a joint venture is lacking in any reference to a review of the legal status of Indigenous peoples. What repeats throughout the book is what I see as quiet mentions of some of the Indigenous experience: misunderstanding that they were equals,[35] unilateral decision-making on the part of the government,[36] a smattering of recognition of nations and tribes in the legal requirement to Treat with Indians, a watered-down version of the free and prior informed consent that began very early with the ILO but devolved to a duty to consult in the Canadian application of international Indigenous rights.[37]

Of the themes covered in the text, the third chapter on "Land and Resources" is the longest. It is no wonder, for property is always at the heart of the relationship between colonizer and Indigenous peoples. In this discussion, Grammond covers land regimes, reserves, and the concept of fiduciary duty to Indigenous peoples. He covers Aboriginal rights in theory and practice, the content of the rights, who has the onus to prove them, and who has to protect them. He also looks at the creation of treaties and the various forms they took as the object of desire shifted for the Crown and settlement spread. He covers the modern-day duty to consult and its many machinations of when it arises and how far it reaches. Nowhere does he allude to the role of those spaces or resources for Indigenous peoples. The life-giving nature of the land and the laws that arise from it to inform life and laws for Indigenous peoples escapes mention.

A discussion on land and resources is incomplete without reference to section 91(24),[38] section 88 of the *Indian Act*[39] and to interjurisdictional

34 The discussion on treaties is found throughout the book but is focused mainly in chapter three (Grammond, *Terms*, *supra* note 2).

35 He states clearly: it is entirely possible that there was a misunderstanding at the time of the conclusion of treaties: where Indigenous peopless saw an exchange between equal peoples, the colonial governments considered the matter a simple real estate transaction *(ibid* at 67).

36 *Badger*, *supra* note 33.

37 Grammond, *Terms*, *supra* note 2 ch 2-4.

38 *Constitution Act, 1867* (UK) 30 & 31 Vict, c 3, s 91(24), reprinted in RSC 1985, App II, No 5 [*Constitution Act, 1867*].

39 Section 88 of the *Indian Act*, *supra* note 8, opens the door wide for provincial footprints on Indigenous authority and states: Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time, in force in any province, are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act

immunity, and Grammond delivers here. His book takes the reader through federal and provincial powers and power struggles, through the *BNA*[40] provisions, and he even goes so far as to note the effects of the *NRTA*[41] on the Treaty relationship as described in the *Badger*[42] decision. However, nowhere does he mention that Indigenous peoples in Canada who once held the responsibility for all of the territory are now "legally" entitled to less than 3% of it.[43]

With this kind of title denial, it is conceivable that natural resource development can be inhibited by Indigenous claims to Aboriginal title on the lands. Although Grammond offers this small mention he does not go into any discussion as to the implications this has for the major development projects taking place in the country today with the current trend for resource development and extraction and international agreements for Canadian resources. He does mention the *James Bay Development Corporation v Chief Robert Kanatewat*[44] and that the court ruled in favour of the Cree and Inuit against the development project without any agreement from them with Quebec. But it is a mention with no analysis. As astonishing as this may seem, the fact remains: the issue of traditional territory, title and land use is very much alive and well for Indigenous peoples, as is the original concept of settlement, the Treaty relationship and the inclusion of Indigenous peoples in resource development.

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or the *First Nations Fiscal Management Act*, SC 2005, c 9, or with any order, rule, regulation, or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.

40 *Constitution Act, 1867*, *supra* note 10.

41 Being Schedules 1-3 of the *Constitution Act, 1930*, 20-21 George V, c 26, (UK), reprinted in RSC 1985, App II, No 26.

42 While he does mention the fact that hunting rights are for food and not commercial sale — he does not mention that this was a unilateral decision that altered the treaties in the prairie provinces profoundly in denying commercial rights, which must have existed prior. Otherwise, why did these rights need to be denied in legislation that minimized not just hunting but all that hunting is connected to (teachings, ceremony, self-reliance, community, economy, and livelihood)? These denials were made without so much as a conversation with Indigenous peoples. How is that possible in even a basic contractual agreement, never mind a treaty? How is this not even worth a mention by Grammond? See *Badger*, *supra* note 3.

43 On page 112 in his brief mention of agricultural practices, he gives us another example of glossing when he mentions that the government was attempting to "civilize" Indigenous peoples building them permanent residences, initiating them to agriculture and schooling their children" (Grammond, *Terms*, *supra* note 2). I cannot imagine a more civilized look at what were apartheid practices of limiting land use and occupation, and forced removal of children to eradicate family systems, bonds, language, and teachings.

44 *Société de développement de la Baie James c Kanatewat*, [1975] CA 166, [1974] QJ No 14 (QL) (QCCA).

In the chapter on "Indigenous Governance", Grammond thoroughly reviews the judicial instruments that courts have access to for their assessment of whether or not a First Nation can leverage any authority, jurisdiction or rights. Again, his text does not leave room for Indigenous inclusion or sovereignty in order to honour the past land agreements or to justify modern-day inclusion of Indigenous voice/representation in the Canadian democracy. He once again implies, in his diplomatic approach, that Indigenous peoples could simply have authority to self-govern, in whatever manner they choose due to the fact they have not been conquered for example, and that the doctrine of discovery is no longer holding water. Very early on in the book, he states:

> It can thus be appreciated that the negation of Indigenous Sovereignty was purely unilateral. It did not result from an agreement or a Treaty by which the Indigenous peoples renounced their sovereignty, but simply from a change of attitude of the colonial powers. Traditional methods of acquiring land, be they cession or conquest, were not applied. The corollary of this ambiguous situation is Canada's difficulty in justifying its sovereignty over its territory according to the principles of international law. At the end of the day, it appears that the Canadian sovereignty is simply based on the unilateral negation, based on racist criteria, of the sovereignty of the continents first inhabitants. The Canadian government's position (as well as that of most states) is that it is simply a fait accompli, which cannot be questioned.[45]

Here in his work, we again see Grammond's "this is the way it is" sensibility take over any type of assessment of the position of the law. But, it is in this Chapter that he adds a discussion on the Constitutional principles that "may" apply to the "recognition of the group's self-regulation capacity," for which the "consequences of their recognition for indigenous legal systems remains at this time largely speculative."[46] His choice of language reveals his own views: the language of "group," of "self-regulation," and of "capacity" connote something far less than sovereignty to any reader. *Group*, not nation, and not even Indigenous peoples, just *group*, like a book club. *Self-regulation*, not jurisdiction, authority, or power — just self-regulation, like a local sports team. And lastly, the term used most often to deny aboriginal rights - capacity. A word which maintains the parent-child, fiduciary-dependent relationship and which ultimately connotes the inability of Indigenous peoples to look after ourselves. This discussion of groups, self-regulation, and capacity all proceeds

45 Grammond, *Terms*, *supra* note 2 at 89.

46 *Ibid* at 384, where he is discussing how much elasticity section 35 has in light of some supreme court decisions and decides that it may very well be that Indigenous peoples could demonstrate "that many aspects of indigenous legal systems are 'integral to the distinctive culture' of the Indigenous peoples. Moreover, as they are held by indigenous groups, certain aboriginal rights imply the recognition of the groups' self-regulation capacity" (*ibid*).

without any mention of the obstacles Indigenous peoples have had placed in their path to ensure that the capacity to raise their children, to maintain their religion, to be self-sufficient, and to govern has been largely been legislated away. It is a modern-day academic, jurisprudential, and political injustice that handicaps any potential for the realization of Indigenous sovereignty, or even inclusion, in a discussion on any matters "Aboriginal."

In regard to self-determination, Grammond is more than aware of research like the Harvard Project[47] that holds that the inclusion of culture in governance generates better socioeconomic indicators. He writes about how the *Indian Act* dictates the majority of the political selection, processes and governance of the Band for many Indigenous peoples. Then he moves on with little more than a backwards glance to talk about governance through the use of the *Indian Act* provisions,[48] through judicial recognition of unwritten practices,[49] through administrative policies and allowances, and through government regulations.[50] All of this is worthy of note and shows avenues Indigenous peoples have had to travel through the matrix of Aboriginal laws. But none of these are self-government. By contrast, they are allowances by government: a *non-indigenous* government. Where is the discussion of Indigenous laws, of Indigenous sovereignty, of Indigenous institutional design for assessment and enforcement? Where is the space or support for Indigenous peoples' laws to be reinstated and implemented in a way that recognizes past historic injustices and subjugation?

One of the many egregious paragraphs found within this Chapter is a step back in time where Grammond actually makes statements about the simplicity of the small local units or bands of the indigenous past, harkening back to the very racist judgments of the late 17th and early 18th centuries.[51] He asserts there were not notions of "sovereign political authority, or of hierarchy of public powers," only persuasive power. He finds the Haudenosaunee may have had a little more sophistication to their governance to unite groups but quickly adds that even Indigenous peoples do not want to go back to those simpler days. Nary a footnote is to be found in this review, leaving a full taint of uninformed racial bias hanging in the air as this section draws to a close.

47 See *Harvard Project on American Indian Economic Development*, online: The Harvard Project <http://hpaied.org/> [*Harvard Project*].

48 Grammond, *Terms*, *supra* note 2 at 352-361; *see Harvard Project*, *supra* note 47.

49 Grammond, *Terms*, *supra* note 2 at 386.

50 *Ibid* at 390.

51 *Ibid* at 354, bottom paragraph.

Embedded in Chapter 5, "Applying and Adapting Legislation", is the state of the law today, including the ever-popular question of "why don't Indians pay taxes?," a passing interest in kinship laws that traditionally maintained the order and structure of the family discussed in terms of child welfare and custody, and the drum roll and final salute to the area that once was the predominant academic writing about Indigenous peoples and law: criminal justice. (We have come a long way, baby.) Taxation in this text is a review of the Canadian law that Indians are exempt from taxes only for property and income on reserve. Grammond does talk about reform and even goes so far as to suggest that any legislative reform being applied to Indigenous peoples should be done "in a manner that is generous and favorable to them," right after he explains that this is a right that is aimed at peoples who were not expected to have large incomes and after explaining how it is hard to imagine how Indigenous peoples should benefit from public services without contributing to them.[52] He also notes, on the same page, that "[i]mproving the economic positon of the Indigenous peoples remains an acceptable goal of tax measures, as long as they are carefully designed." The information on taxation is presented at the end of the book, after a very intense look at the ways in which land was usurped and with a very tertiary examination of taxation being part of the land covenant early on. A review of legal history that examines all of the holes in the fabric of the land holdings that the Canadian government wraps itself in should at least entertain a brief discussion of some key "what ifs." What if the Indigenous land claims are far-reaching? What if Aboriginal peoples are not limited by inalienability of title? What if one day a court determines that the doctrine of discovery, the underlying title of the Crown, and the *de facto* sovereignty are not sufficient to maintain the title of the territory and Indigenous legal systems are recognized as legitimate authority? Wouldn't an exemption from taxation for Indigenous peoples, for the use of the lands that the Crown has benefitted from for so long, go a long way? Wouldn't it say that the Crown has provided fair market value and actual valuable consideration through the tax exemption over the years to pay maintenance for the land, and pay rent and thus mitigate the damages for colonizing the land and the peoples?[53] Indigenous peoples within the prairies, or numbered treaty

52 *Ibid* at 510. But is it so hard to imagine that the non-Aboriginal peoples should benefit from the ill-treatment of Indigenous peoples?

53 This kind of discussion is a classic expression of both the love and the hate for Indigenous peoples: if they are poor, then by all means they can have access to housing and health, safety and security; if they are not poor, they have nothing more than anyone else and should be made to pay for things we have called Aboriginal or Treaty rights. Imagine renting a very nice home. Your landlord owns a few properties and has an income from them. If he decides to live well in a castle, do you go to him and say, "I will only pay rent to you if you do not live any better than I do?" If she decides she likes

areas, held out for Treaty recognition of a tax exemption that was negotiated. Taxation of the membership traditionally through wealth redistribution and tribal reorganization was part of the Indigenous government structure that is now not voiceless in Canada. The power to tax members, for self-governing peoples, is not a power that is acquired through devolution from the federal government. So, Grammond's extension of this logic is a shallow pool in which to see the reflection of self-government.

Kinship laws are the golden ticket for sovereignty from my armchair view. Self-determination, even self-government in its most basic form, would hold that there is a very clear jurisdiction over the membership, language, and children at the very least. In our modern Canadian reality we might even add a few other basics to the self-government list, like religion and association, but even with a very simple notion, kinship, membership, language, and children seems to be a no-brainer. It is likely that fundamental Indigenous systems of laws include who the teachers are and what are the status of the mothers and grandmothers.[54] Traditionally, it is the level of authority of the women, whose power should be implemented to determine who looks after what within the family and within the community systems of ordering. By prescription, through Indigenous kinship law, the children are looked after and protected, the men's roles and contributions are vital and foundational for everyone within the network of the family, and the responsibilities to sustain economic and social vitality are shared. If those laws were imposed, the strength of the women would be immediately perceived within a thriving community. Of course the converse is also true for us, and it is the lack of conversation in our own communities and the non-Indigenous circles around missing and murdered women, around the number of Indigenous children in care today and of the number of men in custody, that keeps basic survival, rather than thriving, the focus.[55]

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drugs and fast cars, do you go to her and say, "I will only pay you rent if you do not do drugs and drive a nice automobile?" Do you withhold your rent? I doubt it. The option you have is to move, unless the landlord is Indigenous.

54 Not to put too fine a point on this, but since the mainstream society really does not want to concern itself with the locations, the lives, and the legal status of Aboriginal women, it will be no loss to Canada to take us out of the Canadian jurisdiction. The phenomenon of missing and murdered women is another topic that Grammond is not interested in pursuing with any fervor.

55 Grammond is as guilty of this as anyone. See Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Sumach Press, 2000); Kim Anderson, *Life Stages and Native Women: Memory, Teachings, and Story Medicine* (Winnipeg: University of Manitoba Press, 2012), and take a look at the stories from the families who are looking for their female family members. In particular Amber Redman's mother has been very vocal. The following website keeps many of their stories alive: Native Women's Association of Canada, *Storytelling: Amber's Story*, online: Native Women's

Grammond sees the importance of cultural context for the child welfare system. He sees there is just simply far too much evidence against the maintenance of the volume of child apprehension to keep on in current approaches. However, he glosses over the reality that Indigenous communities have few vital resources to take on the system as it stands because of the structural defects within it that are detrimental to the children caught up in it. He states:

> When an indigenous community has not established its own child welfare system and the provincial system therefore applies, there remains a risk that decisions will be made based only on western values and without taking into account the increasingly overwhelming evidence of the failure of the system.[56]

The final review of Criminal law offers a peek at the numbers of peoples incarcerated, the movement to sentencing that adapts the Indigenous history of an individual offender, and the aim of Indigenous peoples being able to define crimes within their own communities. The *Gladue*[57] analysis does not expand far enough to review the problems with the current reporting models in many jurisdictions that are using the reported Indigenous accounting as aggravating factors for a Court to maintain institutionalization or increase the sentence for fear of recidivism.[58] Nor does it wrestle with the fact that courts are having to be redirected to actually use section 718.2 (e)[59] in their sentencing. But what is far more interesting is the lack of need to prove identity for a *Gladue*-type analysis for consideration of criminal activity — Grammond does pay homage to the complexities of identity for Indigenous peoples elsewhere in the book. Perhaps it is a given that Indigenous peoples are criminals and proving identity for sanctions within a criminal court context leaves far less at stake for the non-Indigenous reader than the right to property or self-determination.

In his final Chapter, "Applying and Adapting Legislation," Grammond brings home his personal foundation for the space he sees as an opportunity to state the Indigenous position through his lens. It is through the use of formal and substantive equality that he throws out the most breadcrumbs to create a path to a solid legal foundation for Indigenous peoples and Aboriginal Rights. Words and phrases like "distinct society" and "separate legal order" percolate to the surface throughout the book. The other telling feature of

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Association of Canada <http://www.nwac.ca/sites/default/files/imce/NWAC_Storytelling_REDMAN%20Amber.pdf>.

56 Grammond, *Terms*, *supra* note 2 at 520.

57 *R v Gladue*, [1999] 1 SCR 688, 171 DLR (4th) 385.

58 Grammond, *Terms*, *supra* note 2 at 534-36.

59 *Criminal Code*, RSC 1985, c C-46.

this non-Indigenous author is his French ancestry; the analogies between Indigenous peoples and French Canadians are too numerous to overlook. Like his analysis of Indigenous identity in *Identity Captured By Law: Membership in Canada's Indigenous Peoples and Linguistic Minorities,*[60] Grammond uses his lens as a member of a French-Canadian minority to draw out the discussion of the history of the treatment of Indigenous peoples by the government.

I can understand why Grammond engages in these minority analogies. However, this kind of lens rules out the opportunity for a wide-angle view of Indigenous peoples who have not been dispossessed of their autonomy, who did not leave their lands, and who are not just making claims akin to *Charter*[61] Rights.[62] Grammond reviews the ideology of human rights law, the role of equity, and international legal instruments and processes. Although he covers the decline of the autonomy of Indigenous peoples and the resurgence of self-government and inclusion of Indigenous voice through predictable, small, blunt instruments like the duty to consult, he does it in a way that leaves little hope for Indigenous nations to reclaim any of their lands and nationhood. The majority of doctrines reviewed in the text are historically defined and explain how the relationships between Indigenous peoples and the Crown and state took root and evolved. This matter-of-fact account is presented as the established truth of how we as "Canadians" came to live together on Turtle Island. This kind of perspective limits the depth of the potential for recognition that Indigenous systems of governance and relationships to the land itself are not only the key components to our sovereignty but that they are inextricably linked to each other. The observation that Indigenous peoples are tied to the land is ill-informed if the research is not even rich enough to show that the relationship to the land is one of complete dependence on it.

60 Sébastien Grammond, *Identity Captured By Law: Membership in Canada's Indigenous Peoples and Linguistic Minorities* (Montreal: McGill-Queen's University Press, 2009).

61 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

62 References to Quebec figure throughout the book as a method to connect the French claims for a recognized distinct society to Indigenous peoples' Aboriginal rights claims. For example, pages 10 and 14 of the book focus on language as an indicator of diversity. What is missed is the point that language and diversity eradication is precisely what residential school was for and it does not support Aboriginal peoples as distinct. Aboriginal peoples do not have a recognized national language (Grammond, *Terms*, *supra* note 2). Page 27 pre-conquest French law (*supra* note 60) and equity language are often used when looking at the rights of Indigenous peoples through the lens of a non-indigenous person, see page 384 (*supra* note 60). This kind of language waters down the reality that the original peoples' language, practices and culture were decimated through contact and that the practice to do so still exists, and any claim to equity falls on deaf ears for Indigenous peoples.

Quebecois culture is distinct from Aboriginal law. The two deserve distinct legal discourses.[63]

For better or for worse, *Terms of Coexistence* sets up the courts'-eye view of the map of law that rules the lives of Indigenous peoples in Canada, ultimately setting the terms and the tone of coexistence of Indigenous peoples *in absentia*. This book will very likely become widely-read reference material for Aboriginal legal scholars, as the facts are there, the legal instruments are there, and the pieces of history are there, laid out like pebbles on a path to civilization. Each chapter, page, and paragraph are able to stand practically on their own, awaiting the next researcher who will pinpoint the era, the statute, and the case in their own writing. Grammond is an excellent researcher, and his methodology is so predictable and foreseeable, that the soft tick of a metronome can be imagined in the background, with symphony music playing softly, as he wrote his text in which he would fit each idea and morsel of research into a small compartment for ease of location and relocation. Given the scores of academic scholarship on Aboriginal law, this text will blend smoothly into the chorus of colonial apologism.

63 Grammond is not the only academic who wants to wrap minorities around Indigenous legal instruments — a subject worthy of debate and discussion with a full blown recognition of the similarities and the differences. Quebec offers fertile soil for such research as there are Indigenous peoples within Quebec's borders whose histories reach further back than French explorers and farther out than the provincial boundaries.