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Contents

Transformative justice in Canada will mean the restoration of Indigenous governance practices and the recognition of Indigenous justice. Actions are being taken on this basis. Only this month, overshadowed perhaps by the Stanley and Cormier verdicts, was the announcement that the University of Victoria has launched the first Indigenous law program in a university context. This owes much to the organizing efforts of Indigenous communities, students, and faculty. It is a contribution, as Senator Murray Sinclair, chief commissioner of the Truth and Reconciliation Commission, has suggested in acknowledging the program.

John Borrows, Canada Research Chair in Indigenous law, who conceived the program along with Val Napoleon, Law Foundation chair in aboriginal justice and governance, describes the difference between common law and Indigenous law as follows: "Indigenous law looks to nature and to the land to provide principles of law and order and ways of creating peace between peoples, whereas the common law looks to old cases in libraries to decide how to act in the future."

It must be remembered too that each nation had their own laws for maintaining care and stability in the nation and care of, and with, the land. Those laws and systems of justice were developed over many thousands of years. They were well-developed and practised. This is stressed clearly in the statements from the Indigenous law program.

Mainstream society talks about reconciliation but says little about truth. So genocide is not mentioned and the term itself is avoided in mainstream society. Yet Indigenous people focus, rightly, on the truth of genocide. This truth includes the residential schools, the child-welfare systems, the killing and disappearing of Indigenous women and girls.

And it is carried out not illegally but through the very mechanisms of criminal-justice and legal systems on stolen Indigenous land.

According to 2011 records, while Indigenous children made up less than seven percent of the population, they represented more than 48 percent of all children in care in Canada. The number for Manitoba was a stunning 85 percent.

There is no justice on stolen Indigenous land

Justice in Canada must include—indeed, will only be founded on—addressing the fact of land theft and land rights of Indigenous people. That Stanley could get away with killing Boushie for coming onto "his land" in a context of colonial occupation of land by settlers and the Canadian settler state says plenty about the nature of land issues in Canada.

It has been emphasized at recent rallies that the land question must be dealt with all over so-called North America. Several people have connected colonial violence against the land with colonial violence against women. In Vancouver, speakers reminded the assembly that Indigenous women began disappearing as soon as the colonizers arrived. Kanahus Manuel pointed out that the Hudson's Bay Company took Indigenous girls and women. Defiantly, she said: "How dare Canada?"

Now governments want to bring more men from outside into their territories—and more women will go missing. Defending the land is the work of stopping women from going missing.

Indigenous justice

At a recent conference of the Metro Vancouver Aboriginal Executive Council that I attended, Norm Leech asked: "When was there justice for Indigenous people?" The answer was straightforwardly: "Before colonization." So that is what justice would look like for Indigenous people. Not the colonial injustice of colonial systems.

On August 17 of 2014, the body of 15-year-old Tina Fontaine, an Indigenous girl from Sagkeeng First Nation, was pulled from the Red River in Winnipeg, Manitoba. She had been wrapped in a duvet weighted down by rocks. Intentionally submerged.

Her death was a major impetus to the forming of a national inquiry on missing and murdered Indigenous women and girls in Canada. The Native Women's Association of Canada estimates that the number of missing and murdered Indigenous women in Canada is a staggering total of about 3,000.

On February 22, 2018, a predominantly white jury in Winnipeg delivered a not-guilty verdict in the trial of 56-year-old Raymond Cormier, the man who *admitted* to throwing her body in the river. This verdict came only weeks after another infamous decision, this from Saskatchewan, where white farmer Gerald Stanley was declared not guilty of killing Indigenous youth Colten Boushie, despite *admitting* that he shot the young man in the head when he came onto the Stanley farm.

In response to these verdicts, gatherings and marches calling for "Justice for Tina Fontaine" and "Justice for Colten Boushie" have been held in cities and towns across so-called Canada. While the two killings, and the anger at the trial outcomes, were the sparks for the rallies, the real target was the legal system in Canada and the ongoing character of colonial (in)justice in the country.

The killing of Fontaine goes well beyond the horrible, vicious act that directly took her life but throughout the entire colonial criminal-justice system and child-welfare system in Manitoba and Canada. These are themselves murderous systems during the history of colonial occupation. Many have concluded: "The whole damn system is guilty as hell."

Criminal-injustice systems

Contrasted with the lack of justice that Indigenous victims feel, the legal system in Canada is particularly harsh on Indigenous people. Indigenous people in Canada are disproportionately targeted and processed by the criminal-justice systems in Canada.

While Indigenous people in Canada make up 4.3 percent of the population, they represent more than 25 percent of prisoners. Between 2005 and 2015, the population of Indigenous prisoners grew by 50 percent compared to an overall growth of 10 percent. Indigenous women make up 37 percent of all women serving a sentence over two years. In some parts of Canada, Indigenous people are incarcerated at rates 33 time higher than non-Indigenous people. And incarceration practices are racialized. Indigenous women do harder time. They do the majority of solitary confinement. They are subjected to more maximum-security placements. And they are subjected to more use-of-force interventions.

The colonial courts have made, and continue to make, millions of dollars on processing the bodies of Indigenous people. As I have argued, without processing poor and oppressed people, and the flow of public money generated by this, the criminal-justice system in Canada would collapse. Generations have been processed through the system. They are not in conflict with the law; the law is in conflict with them. Settlers (and settler criminologists, lawyers, and legal scholars) need to confront this reality.

Speakers at rallies have asked, rightly, why Indigenous people have to go through a court system that outlawed Indigenous peoples own governance and justice practices. The legal document that frames and manages Canadian state governance of Indigenous people and communities, the Indian Act, is an overtly racist piece of legislation that provided a model for the Nazis and their racist programs.

Stolen lives: From residential schools to child-welfare systems

The residential-school system legally stole Indigenous children from their families and communities and transferred them to all-encompassing total institutions of cultural erasure. In those institutions (they were not schools), children were subjected to starvation, experimentation, torture, and physical, emotional, and exual abuse and more.

More than 6,000 of the stolen children placed in residential schools never made it out alive. This is not ancient history, as many apologists for settler colonialism claim when telling Indigenous people to “get over it” or to “move on with their lives”. The last residential school in Canada did not close until 1996.

At the time of her killing, Fontaine was in so-called care of the child-welfare system. She was placed by herself in a hotel with no social supports or care. Today, legal scholars like Pam Palmater suggest that the child-welfare systems serve a function similar to that of the residential schools.

And Indigenous children within the child-welfare systems are still subjected to demeaning, dehumanizing, and abusive conditions and circumstances. This includes, again, physical, emotional, and sexual abuse. Palmater notes that for the more than 10,000 Indigenous children in Manitoba, the province in which Fontaine lived and was killed, foster care has become the new residential school.

Colonialism has a tendency to mutate, to evolve. And its does so within legal frameworks. As Indigenous activists and scholars alike point out, today, in the twenty-first century, there are more Indigenous children who have been forcibly removed from their parents and placed into foster care than was the case at the height of the residential-school era.