Erasure in the name of recognition: Canadian multiculturalism and present-day colonialism

Canada expects to mend its relationship with the Indigenous population through the multicultural politics of recognition and reconciliation. However, the goal of recognition is to subsume minority groups into the multicultural polity, which reaffirms colonial ideals because Indigenous sovereignty still exists. The numerous Supreme Court cases dealing with the minute technicalities of Indigenous existence present ample evidence that court forums allow for only a pre-established set of outcomes. A few examples, briefly summarized, include:

- *R v. Van Der Peet*: whether an Indigenous person's right to hunt for food and ceremonial purposes is protected under section 35 of the Canadian Constitution;
- *R v. Sparrow*: whether Indigenous peoples have the right to fish for food and ceremonial purposes outside of government regulations;
- *R v. Desautel*: whether an Indigenous person who is a member of a US tribe but has ancestral ties to a Canadian Indigenous community has the right to hunt in Canada;
- *R v. Pamejewon*: whether First Nations have an inherent right to self-government; and
- *R v. Calder*: whether Indigenous peoples have the right to claim ownership of traditional lands that were never ceded or sold to the government.

It is a deliberate move of colonization that the responsibility to prove land title falls on Indigenous nations, not the Crown. While the government proudly pronounces the healing of its relationship with Indigenous peoples as a multicultural precedent, its methods of achieving this goal reinforce the exact structural violence it needs to dismantle.

BY KATHLEEN THOMAS-McNEILL

Kathleen Thomas-McNeill is a master's student in the interdisciplinary studies program at York University. Her research centres on how official multiculturalism policies—as promoted by the government—handle Indigeneity. That is to say, her research asks how official multiculturalism as a diversity management strategy can really benefit the minority communities of Canada, when the policy documents are encoded with a settler-colonial framework of Indigenous dispossession. The research critiques Canada's self-image and bridges the ideological gap between what Canada says and what Canada does.

IMPORTED LEGALITIES AND THE DOCTRINE OF DISCOVERY

The sources of settler authority have fluctuated since European arrival, from 15th-century papal bulls, to claims to Turtle Island "based on [Britain's] unique configuration of 'discovery' grounded in English concepts of possession" (Pasternak, 2017, p. 6). In fact, until 2014 (with the *Tsilhqot'in Nation v. British Columbia*[1] case), the Crown rested comfortably on the doctrine of discovery to justify its claim to sovereignty and jurisdiction. Essentially, when the first settler's boot hit the shores of the "New World," the land was transformed because that boot–shore impact marked the establishment of Crown title. Britain's inherently hierarchical legalities have no connection to this land base. As Shiri Pasternak (2017) argues, forcing Indigenous peoples to "surrender jurisdiction to their lands through treaty is framed as a positive exchange of rights, but the doctrine of discovery simply plays a less public role than in the courts, never needing to be articulated before a judge or chancing repudiation by the Supreme Court, but all the while drawing the material boundaries around the terms of negotiation" (p. 263).

Again, the top-down legalities of the Canadian state are not connected to this land base. The unquestioned hegemony of Canadian authority over the land indicates the ways Canadian knowledge cleanly reproduces the imperatives of settler colonialism's "right" to seize territory from Indigenous communities.

CANADIAN MULTICULTURALISM: BURYING THE HATCHET

Canadian multiculturalism, specifically as a governing strategy, is based on cultural reductionism. Reductionism is the idea that a complex system can be understood as the sum of its parts. In this context, Canadian multiculturalism is a complex system made up of multiple, stable *culture parts*. The problem arises when this thought system is applied to people. For a culture to be a *part* of a governance strategy, it must be objectified through the freezing of its attributes. In effect, a community's customs must be codified to provide the state with the certainty of its stable distinctiveness. When the state is confident of a cultural group's immutable characteristics, it *recognizes* the group, thereby subsuming it into the multicultural body politic. While this may work (perhaps on a surface level) with racial, linguistic, and ethnocultural minority communities, Canada's inclusion of Indigenous nations in the same category—through the politics of recognition—flashes dispossession and erasure in neon lights. According to Mishuana Goemin (2013), "inclusiveness of a Native past becomes celebrated under multiculturalism, yet, . . . the national space does not become imagined as Native space. If

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anything, multicultural narratives serve to undermine the Native subject, and her land becomes abstracted and incorporated in the national polity" (pp. 35–36).

Indigenous nations have political distinctions in their sets of legal traditions, languages, and laws. However, instead of recognizing Indigenous nationhood as politically distinct, Canada aims to assimilate Indigenous populations into an inevitably impoverished ethnocultural minority according to multiculturalism's design.

Canada has sought the municipalization of Indigenous society from its conception. Two years after Britain recognized Canada as a sovereign nation, Canada passed the *Gradual Enfranchisement Act* of 1869, which provided the legislative means to abolish Indigenous nations' customary governments, blocking them from jurisdiction and governing power. In most communities, the Department of Indian Affairs (the federal agency devoted exclusively to the Native population and their exhaustive management and relocation per the *Indian Act*) introduced an electoral system that was, as Pasternak (2017) reports, "designed to undermine traditional and hereditary chiefs. It gave the superintendent general of Indian Affairs the power to direct elections and depose any chief deemed afflicted by 'dishonesty, intemperance, or immorality' " (p. 162). Given that the fetishization of Native difference had already been established in settlers' collective memory and legalities—for example, *noble* or *ignoble* savage stereotypes—Indian Affairs was at liberty to depose whomever it chose. If a reminder is needed that colonialism is not a historical event, Canada forced the Algonquins of Barriere Lake (one of the last treaty bands still governing themselves under a *customary* system) to assimilate to the elective band council system in 2010. Canada is in the business of trying to govern as much of Indigeneity as possible because settler colonialism requires the complete historical erasure of its Native past.

NEGOTIATION, NOT LEGISLATION

It is a natural precondition for the settler state to do everything in its power to erase both the violence of its colonial history and Indigeneity itself, with all its claims to land jurisdiction. Assertions of Indigenous nationhood and sovereignty were "not the 'culture' that multiculturalism sought to protect and preserve. This, rather, was . . . something that was and still is, to say the least, an uneasy fit within a state that wishes to be singular, even when it imagines itself 'federalist' " (Simpson, 2014, p. 159). Thus, we can see how, per the colonial equation, court decisions still grow out of the naturalization of Indigenous dispossession and erasure and take Crown sovereignty for granted. As Pasternak (2017) points out, " 'Every time someone has sought to challenge in a Canadian court the Crown's or domestic legislation's authority, or the court's jurisdiction, over an Aboriginal person or group, the court has dismissed the challenge as non-justiciable.' . . . [T]he game is 'fixed.' The common law works in conjunction with legislative and executive powers to claim and define state territory. It holds the power of enforcement" (p. 16). The fact is that the court is an inappropriate forum for these discussions. The stakes of true reconciliation are so massive that negotiations are the only way out. Considering that Canada continues to address these matters in a forum that fundamentally antagonizes negotiation, this country is still drastically missing the mark when it comes to the *belonging* touted by multicultural discourse.

NOTES

1. In *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, the Supreme Court of Canada granted a declaration of Aboriginal title for the first time in Canadian history, confirming that the *terra nullius* doctrine—that "no one owned the land prior to Europeans asserting sovereignty"—never applied to Canada (Mandell Pinder LLP, 2014, p. 1).

REFERENCES

Goemin, M. (2013). *Mark my words: Native women mapping our nations*. University of Minnesota Press. http://www.jstor.org/stable/10.5749/j.ctt46nq0v

Mandell Pinder LLP. (2014). *Tsilhqot'in Nation v. British Columbia 2014 SCC 44 – Case summary*. https://www.mandellpinder.com/tsilhqotin-nation-v-british-columbia-2014-scc-44-case-summary/

Pasternak, S. (2017). *Grounded authority: The Algonquins of Barriere Lake against the state*. University of Minnesota Press. https://doi.org/10.1111/cag.12502

Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press. https://doi.org/10.1215/9780822376781