Kent Roach. *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case*. McGill-Queen's University Press, 2019. 307 pp. ISBN: 9780773556386.
https://www.mqup.ca/canadian-justice--indigenous-injustice-products-9780228000730.php

It is more than three years since Colten Boushie, a young man of the Red Pheasant Cree Nation, was murdered on the Stanley family farm in rural Saskatchewan. Gerald Stanley, the defendant whose case was constructed upon a sequence of tragic and remarkably unlikely coincidences operating in concert, was acquitted on February 9, 2018. The murder, trial, and eventual acquittal were each seismic reaffirmations of the intrinsically violent cornerstones of a settler colonial legal doctrine that serves to dispossess Indigenous peoples in Canada. In Stanley's trial, as Ken Williams (Cree from the George Gordon First Nation) commented, "the system did not fail the colonisers" and Kent Roach seeks to show his readership how and why this case is emblematic, not aberrative, of the Canadian criminal justice system (*Media Indigena*). In *Canadian Justice, Indigenous Injustice*, Roach unpacks the negligent policework, sub-par prosecution, and judicial irregularities that yielded a not-guilty verdict. In doing so, he illustrates that these very inexplicabilities are deeply embedded within the settler colonial imaginary of a lawful Canada.

Canadian Justice, Indigenous Injustice traces a significant instance of the "gap between law and justice" in the Colten Boushie murder trial, wherein a more fundamental legal argument unfurled by proxy (179). A shift occurred, incrementally but steadily, whereby the defence of one's property mutated from being the source of Gerald Stanley's exculpation from blame, to being his tacit justification for the murder. The transformational undercurrents at play resemble the dynamics of what Unangax scholar Eve Tuck and K. Wayne Yang term "settler moves to innocence… those strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all" (10). Roach's account follows a path that is acutely attuned to this fraught context, and his analytical methodology draws on histories that exist within and without the Canadian legal canon to underscore "the impossibility of reconciliation unless there is a full accounting of the truth, and specifically, the multi-faceted and multi-generational harms of colonialism on Indigenous people" (12).

Of course, many would curtail that quoted sentiment at reconciliation. Numerous scholars, including Billy-Ray Belcourt (Driftpile Cree Nation), have argued compellingly that reconciliation represents "an affective mess… stubbornly ambivalent in its potentiality" with a tremendously disproportionate pressure on Indigenous peoples to accede to the state's levelling terms. That Roach's contribution so effectively demonstrates the fundamental absurdity of what Yellowknives Dene scholar Glen Coulthard calls "the optics of recognition and reconciliation" which "produce neocolonial subjectivities" in the legal sphere is, however, ironically inconsistent with his reluctance to question reconciliation as a vehicle for the Indigenous justice he champions (156). I raise this tension here to give a lens for my review; Roach does timely and impressive work in *Canadian Justice, Indigenous Injustice*, but it is work that is sometimes flecked with strange foci and odd critical omissions. If it is the case that truth "may be a barrier to reconciliation," then a more rigorous examination of the criteria that coalesce to constitute reconciliation is required (12).

Roach explains at the outset that his project uses "a criminal process approach" to undertake a holistic study of the justice process from policework through to sentencing, across legal representation and media representation. This slant is deployed to "place the Stanley/Boushie case in its larger historical, political, social, and legal context," and thus exposes a slew of deeply lodged, interwoven deficiencies of the Canadian judicial system that contravene the

superficial equality and plurality of sovereignties that the nation espouses (11). Roach identifies the most egregious aspects of the trial to be ones that sit well within the bounds of Canadian judicial protocol, encapsulating the structural inequities that exacerbate these issues. It is an impressive take-down of the fallacious paradigm of neutrality that buttresses Canadian (and more generally settler colonial) law writ large; a framework that "enables actors of the settler state [to] continue their predictable looped playback of regret, apologies and promises for a better tomorrow" (Nunn, 1331), as evinced by Prime Minister Justin Trudeau's controversial "we must do better" afterword contribution to the proceedings.

The first chapters establish the lattice of historical, socio-economic, and political contexts that precipitate the current legal relationship between the settler province of Saskatchewan and its Indigenous peoples. Roach is firm that "[c]riminal trials" such as Gerald Stanley's "should not be a contest of historical grievances. But if they become one, there should be equality of arms" and any such parity must begin with a sustained inquiry into Canada's grievous colonial history (169). The bulk is subsequently dedicated to examining the trial with this social history foregrounded, taken in tandem with a number of criminal cases that share parallels with Boushie's murder. Roach then turns to the legislative and social legacies of the case for Indigenous and non-Indigenous folks. He gestures toward proposals for judicial reform that stress the remedial potential of Canada's Numbered Treaties and the inclusion of Indigenous legal frameworks, congruent with Shiri Pasternak's claim that "simultaneous operations of law may take place in a single area, across distinctive epistemological and ontological frameworks" (148).

The cloaked prejudices that feed into demographic jury selection, the controversial use of peremptory challenges, and the racialised denigration of Indigenous witnesses in the Boushie murder to preclude Indigenous presence in the trial all receive a wealth of scrutiny. These are patently unsurprising—yet unexpectedly complex—phenomena that Roach guides his reader through adroitly. Indeed, the author excels at expressing dense legal traditions in a near-narrative manner that is simultaneously comprehensible for the non-expert reader and compelling to the specialist. Legal argot is accompanied not just by explication, but by direct application to verbatim, human excerpts from the trial transcript, then extrapolated to comment on the structural fabric of the Canadian justice system. Stanley's defence peremptorily dismissed five "visibly Indigenous jurors" from an already underrepresented pool of eligible candidates and, in a move entirely compliant with the Canadian legal mechanisms, was not obliged to provide a reason (95). Roach conceptualises the notoriety of these challenges not just in terms of the lightning rod that they represented to the case, but also the myriad concealed prejudices and clusters of structurally racist policies that such tactics reinforced. Implicit bias is one such factor that Roach grapples with throughout, with particular reference to the inadequacy of combatting it via the specious notion of randomness in the judicial process.

"Eliminating" bias, in fact, simply transfers it to a faux point of neutrality within an inherently discriminatory legal architecture. This is not to say that the elimination of bias is not a worthwhile pursuit, but that this purported panacea is often yet another settler move to innocence. Roach observes that the court and, by extension, the settler-Canadian social imaginary have "elevated random selection that treated everyone the same over substantive equality that [is] attentive to disproportionate impact" (101); random selection unfailingly privileges the majority at the expense of minorities. This is the type of ersatz parity that comes under steady fire throughout as a covert tool of Indigenous suppression, and Roach

emphasises that it is incumbent upon members of a just society to "question public exercises of power even by twelve anonymous fellow citizens who are conscripted to do a difficult job" (13).

Roach concomitantly forwards a persuasive take on just how entrenched property has become to the notion of just cause. This is not necessarily new ground, but Roach does give an especially cogent interpretation. A self-defence gambit was never employed by Stanley, yet Roach calls out the inferred omnipresence of defence of property throughout the trial to reveal that "the boundaries between defence of property and self-defence are fluid" in this and other murders of Indigenous people (204). I hear Roach's argument as echoing the type of critical charge levied against the similarly "neutral" anatomy of the sciences by Ojibwe pedagogist Megan Bang and Douglas Medin; Roach ceaselessly foregrounds the notion that the hard questions and answers that arise from Colten Boushie's murder "depend on who's asking" (Medin and Bang 10). Roach even goes so far as to suggest that a jury comprising both Indigenous and non-Indigenous representatives could be parsed as a right conferred by the peacekeeping clause of Treaty 6. It is in such moments of bold acuity that *Canadian Justice, Indigenous Injustice* excels.

Unfortunately, these elements are occasionally lost in a barrage of procedural information. It is creditable that Roach endeavours to write for a lay-audience, but one gets the sense that he does not always trust them enough to grasp the salient points informing his perspective. Passages in the text where Roach lingers on details of the trial that he has already covered comprehensively could be sacrificed to more fully explore Indigenous legal alternatives, as he does with the appeal to the Treaty 6's peacekeeping clause and the Numbered Treaties more generally. Essential yet ultimately swollen sections on Stanley's hang fire defence and the peremptory challenges that were evoked in the trial could be condensed to good effect. In return for this trade-off, Roach could devote sufficient space to begin to follow up the question posed by the final chapter "Can We Do Better?" with "How Can We Do Better?"

Gerald Stanley's acquittal generated international ripples within Canada and without. Bill C-75, passed into law in June 2019, amended the Criminal Code to abolish peremptory challenges, in order to nullify discriminatory deployment. Writing prior to the bill's Royal Assent, Roach argues that C-75 is a necessary step, yet still insufficient on the greater scale. Alongside other band-aid measures, there "may be improvements" that arise from such piecemeal reforms, "but they do not even begin to address the legacy of colonial and systematic discrimination" that they purport to solve (207). Abolishing peremptory challenges amounts to papering over the problem of Indigenous exclusion within the judicial system without confronting the lack of active Indigenous inclusion, two issues which Roach locates as intimately related, but not diametric. Consequently, Roach proposes a remedial tactic that foregrounds Indigenous treaties in the redress of the Crown's racist justice system.

His line of reasoning here is promising but unavoidably inchoate, in line with Mi'kmaq scholar Bonita Lawrence's contention that the settler colonial formation "produces a way of thinking—a grammar—which embeds itself in every attempt to change it" (25). As Anishinaabe legal theorist John Borrows explains in his foreword, "treaties between Indigenous Peoples and the Crown are foundational agreements. They formed our country on the Prairies and beyond. They are also our highest law because they are constitutionally recognized and affirmed" (viii). This is a reconciliatory sentiment that Roach carries forward, and indeed one part of an important discussion that goes otherwise untouched. Though sophisticated and astute, Roach's critique fails to adequately interrogate the dicey presupposition that the Numbered Treaties are themselves appropriate rubrics for harmony

between an inherently possessive settler colonial state and Indigenous peoples. Borrows attests that "[c]olonization has broken both the Treaty and Aboriginal law and cultural teachings" (xii). Yet we must also remember that colonization brokered the terms of Treaty 6. Not unilaterally, of course—I do not mean to diminish the roles that Indigenous Peoples had in the design and negotiation of treaties—yet the very presence of The Crown as a party to this negotiation is proof positive of colonialism's embeddedness as an actant in the diplomatic process, not just the cause of its failure. Indeed, Scott Richard Lyons (Ojibwe/Dakota) has argued forcefully against the reductive and racist narrative of Indigenous gullibility that clings to the idea of informed assent via the use of "X-marks" in early treaty-making with colonising forces.

By and large, Roach follows in just this spirit. He refuses to rest on a deleterious dichotomy of Indigenous absence and presence, and this complexity underpins most of his thesis. Yet where Lyons' complication of the internal agonistics of such "coerced signs of consent made under conditions not of our own making but with hopes of a better future" executes a difficult balancing act (40), *Canadian Justice, Indigenous Injustice* leans at times a little too far towards a reading that implies a jarring colonial ambivalence. Roach acknowledges that Treaty 6 was finally fully signed in the December of 1882 when many of the Indigenous peoples it was to apply to faced starvation, and "the physical hunger of Indigenous people and colonial government's fears about possible conflict with them were factors in the negotiation of Treaty 6" (17). Despite this awareness, he hesitates to trouble the matrices of power that inhere in that embryonic political context. For all of the excellent work that Roach performs to foreground Indigenous legal understandings in *Canadian Justice, Indigenous Injustice*, he consistently couches this work in a tenor of mutual aid which invariably conjures an attendant implication of mutual responsibility. I do not doubt Roach's intentions, but as the breadth of his investigation should suggest, enriching the state of Canada "by greater awareness of, and respect for, Indigenous law" (232) is unequivocally not a responsibility of Indigenous communities; it is a hitherto enforced legacy.

Roach asserts regularly that the Treaties held between the Crown and First Nations hold the potential to provide informative guides for the future of justice as "a foundation to reclaim common ground on the basis of mutual consent and assistance" but without the specificity one would hope to see (37). Roach seems to expend a lot of energy on the premise that the Treaties *can* work and perhaps not enough on looking at the manifold material and social conditions that have fed into their historical inefficacy in buttressing the rights of Indigenous peoples in Canada. Scholarship on the subject of the politics of reconciliation by Indigenous theorists is rich and somewhat conspicuous by its absence from Roach's argument. Nonetheless, his approach reminds us that observance of treaties is not optional, and that adherence is not somehow gracious on the part of the settler state. Despite the aforementioned paucity of Indigenous critics, Roach never descends into prescription—there is no pretension to fully understand nor judge Indigenous laws, only a demand for the space for Indigenous communities to define and apply these laws (229).

During his analysis of the Indigenous witnesses at Stanley's trial, Roach relays the important ways in which the Canadian court was complicit in the infringement of Cree law. Eric Meechance and Belinda Jackson were both friends of Colten Boushie's and witnesses to his murder. Quite aside from disparaging their trustworthiness with barely veiled racial prejudice, Stanley's lawyer Scott Spencer "confronted Jackson with a photo of the deceased as he had already done the day before with Meechance… a violation of Cree law with respect to a deceased's journey after death" (156). On neither occasion did anyone outside of the court's gallery pay mind to this significance. Key here is the way in which Roach situates this

instance of injustice within a frame that is not constrained to a discussion of mere cultural difference, which, in the hierarchical settler purview, is a category that occupies a position below that of the law. Roach is talking about Cree laws, not Cree beliefs, and this is where his work exhibits a generative deviation from the settler colonial historical norm which presumes Indigenous alternatives to be "a soft form of law" (228). Liberal Canada pays ample lip-service to ambiguous notions of Indigenous self-determination yet tends to hold fast to its juridical singularity without any substantive concession. The nation is consistently recalcitrant towards accepting that the "normative lifeways and resurgent practices" expressed by Indigenous peoples might nourish "alternative structures of law and sovereign authority" that are "grounded on a critical refashioning of the best of Indigenous legal and political traditions" (Coulthard 179). By illuminating the pervasiveness of this national systemic attitude against Indigenous legal self-determination, Roach makes the intrinsic violence that attends to it abundantly clear. Perhaps even to a fault.

Roach made the decision not to involve Colten Boushie's family during the book's production, a decision which I think bears some coverage here. As a methodological choice, Roach conscientiously elects not to interview anybody personally involved in the case to "avoid increasing the trauma they already have experienced" (11). However, according to a report by Ntawnis Piapot (Piapot Cree Nation), aspects of Roach's rehashing of the story have performed this traumatising work regardless. Colten's cousin Jade Tootoosis was critical of the fact that the Boushie/Baptiste family were neither asked for their consent nor forewarned of the book's production and release, which fell near the one-year anniversary of Stanley's acquittal (Piapot). Tootoosis also objected to the book's original cover: a vertically split panel, half black, half red, with Gerald Stanley's face set in dotwork style alongside one of the photos of Colten Boushie most used by the media. It is an admittedly coarse image that has since been changed by the publisher at Roach's request.

That being said, with its timeliness and potential for wide-ranging appeal, Roach's contribution to this conversation could have a wide influence on reading lists in the field of Canadian law and settler colonial jurisdiction more broadly. This book provides crucial insight into the areas where the law and justice enjoy scant nodes of commonality, avowing that Indigenous laws must not be blithely binarised as adversarial to Canadian law but instead as concurrent and coherent alternatives. Roach offers a narrative of inequity that, despite its maddening injustices, starts to desanctify the monotheorism of settler law and instead travels toward an understanding of "the many-tentacled system by which indigenous law and federal Canadian law can relate" in ways that are not *de facto* antagonistic (Garcia 268). This work delineates a vital move. But instead of being a move towards settler innocence, the kind of mutually integrative relationships between Indigenous and settler laws that Roach marks out a nascent trajectory for start to move away from settler innocence or, at the least, rigid settler definitions of innocence. One would hope for further scholarship to continue along this trajectory and to readily understand, as Roach does here, that "Indigenous laws" are just that and not a euphemism for something else. This kind of scholarship is already emerging apace. Spearheaded by John Borrows and Val Napoleon (Saulteau First Nation), The University of Victoria in Canada launched the "world's first Indigenous law program" in 2018 from which students will "graduate with professional degrees in both Canadian Common Law (Juris Doctor or JD) and Indigenous Legal Orders (Juris Indigenarum Doctor or JID)" ("World's First Indigenous Law Program"). Though interactions between Indigenous peoples' laws and settler laws will doubtless be characterised by "[c]ontingency and incommensurability," endeavours like this engage in the "complex process of affective labor" (Rowe and Tuck 8) needed for any wider imbrication of legal frameworks to occur. And it is within the reading

lists of such projects, subject to approbation and problematisation, that Roach's work could be of assistance.

With his incisive interrogation of the various settler moves to innocence made during the Stanley trial, the incendiary media coverage, and what the legislative aftermath represents, Roach's contribution reminds us that declaring "'[n]ot this' makes a difference even if it does not immediately produce a propositional otherwise" (Povinelli 192). The recognition and integration of Indigenous legal and cosmological understandings that Roach advocates will help to orient discourses of Indigenous law and serve as an augmentative perspective to the decolonisation of Canada's legal system.

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Works Cited

Belcourt, Billy-Ray. "Political Depression in a Time of Reconciliation." *Active History*. 15 Jan. 2016, www.activehistory.ca/2016/01/political-depression-in-a-time-of-reconciliation/.

Coulthard, Glen Sean. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis, MN: University of Minnesota Press, 2014.

Garcia, Edgar. "Pictography, Law, and Earth: Gerald Vizenor, John Borrows, and Louise Erdrich." *PMLA*.134:2 (2019): 260-279.

Harp, Rick, host, and Brock Pitawanakwat and Ken Williams, guests. "Injustice for Colten Boushie." *Media Indigena*. Episode 102, Media Indigena, 15 Feb. 2018, www.mediaindigena.libsyn.com/ep-102-injustice-for-colten-boushie.

Lawrence, Bonita. *"Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood*. Lincoln, NE: University of Nebraska Press, 2004.

Lyons, Scott Richard. *X-Marks: Native Signatures of Assent*. Minneapolis, MN: University of Minnesota Press, 2010.

Medin, Douglas L. and Megan Bang. *Who's Asking?: Native Science, Western Science, and Science Education*. Cambridge, MA: The MIT Press, 2014.

Nunn, Neil. "Toxic Encounters, Settler Logics of Elimination, and the Future of a Continent." *Antipode*. 50:5 (2018): 1330-1348.

Pasternak, Shiri. "Jurisdiction and Settler Colonialism: Where Do Laws Meet?" *Canadian Journal of Law and Society*. 29:2 (2014): 145-161.

Piapot, Ntawnis. "Book About Gerald Stanley Case Upsets Colten Boushie's Family due to Lack of Consultation." *CBC News*, 21 Feb. 2019, https://www.cbc.ca/news/canada/saskatchewan/boushie-family-triggered-by-roach-book-1.5026486.

Povinelli, Elizabeth A. *Economies of Abandonment: Social Belonging and Endurance in Late Liberalism*. Durham, NC: Duke University Press, 2011.

Rowe, Aimee Carrillo and Eve Tuck. "Settler Colonialism and Cultural Studies: Ongoing Settlement, Cultural Production, and Resistance." *Cultural Studies ↔ Critical Methodologies*. 17:1 (2017): 3-13.

Tuck, Eve and K. Wayne Yang. "Decolonization is Not a Metaphor." *Decolonization: Indigeneity, Education & Society*. 1:1 (2012): 1-40.

UVic News. "World's First Indigenous Law Degree Launches with Historic and Emotional Ceremony." *University of Victoria*, 22 Oct. 2018, https://www.uvic.ca/news/topics/2018+jid-program-launch+news.