Introduction

Stacy Douglas and Suzanne Lenon

This special issue of the *Canadian Journal of Law and Society* takes as its focus the relationship between law and decolonization. Does the deconstruction of colonial institutions and practices such as law insinuate the eradication of the contemporary state-form as we know it? And if so, what does such a dismantling entail, and how might political-juridical framework(s) be newly imagined, let alone concretely constructed? Importantly, several of the articles contained herein point to settler-colonial sovereignty as an unfinished project. In so doing, this issue delves into the tensions raised by the question: What is the relationship between law and decolonization?

The juncture of law and decolonization has become all the more urgent since the emergence of the Idle No More movement in the fall of 2012. With its roots in centuries of Indigenous resistance, this grassroots movement developed largely in response to controversial omnibus legislation introduced by the federal Conservative government. Bill C-45 introduced substantive changes to the *Navigable Waters Protection Act* that considerably reduced the scope of protected waters and eliminated the Crown's legal obligation to consult with communities before beginning or approving development. These suggested changes provoked anger from environmental groups as well as from many First Nations communities, who saw the move as an encroachment on their autonomy in relation to local waterways as well as a breach of the federal government's fiduciary duty, which includes consultation.[1] Bill C-45 also included changes to the *Indian Act,* including a proposal for the leasing of previously federally protected reserve lands without majority support from a particular band, thus giving the Aboriginal affairs minister—an agent of the federal government—the ability to circumvent community opposition to the leasing of land. In essence, these legislative changes were recognized as tools with which the federal government could ramp up their plans for oil and gas development on reserve land by eliminating the need for consultation and even for majority consent. Unfortunately, despite the incredible energy behind the Idle No More movement and amazing feats of strength, resistance, and

[1] This duty is set out in the *Royal Proclamation of 1763*, affirmed in section 35 of the *Constitution Act, 1982*, and has been drawn on substantially in Canadian case law. Cf. *R v Van der Peet* (1996); *R v Sparrow* (1990); *Delgamuukw v BC* (1997).

Canadian Journal of Law and Society / Revue Canadienne Droit et Société, 2014, Volume 29, no. 2, pp. 141–143. doi:10.1017/cls.2014.9

solidarity,[2] the bill passed in December 2012 and is now known as the *Jobs and Growth Act, 2012*.

These actions of the Canadian state, along with orchestrated police violence against resisting Indigenous communities in Elsipogtog in October 2013, remind us of the fictions of Indigenous autonomy within the political-juridical framework of a settler state. While legal abstractions claim to protect historical agreements, the Canadian government's omnibus bill reminds us of the inconsequence of these promises when economic interests are in play. Patrick Wolfe employs the term "logic of elimination" to describe the multifarious procedures whereby settler colonial societies seek to eliminate the problem of Indigenous heteronomy.[3] Because settler colonialism is first and foremost a territorial project, elimination is an organizing principle of settler colonial society rather than a one-off occurrence. Law, for example, has functioned to systemically erase Indigenous bodies and communities from the land in order to protect and make room for colonial wealth. As Pamela Palmater argues, the objective of federal policies toward Indigenous peoples has always been one of eliminating the "Indian problem."[4] However, conflicts between Indigenous communities and the Canadian state at Barrier Lake, Burnt Church, Caledonia, Elsipogtog, Goose Bay, Grassy Narrows, Gustafson Lake, Ipperwash, Khanesetake, Lubicon Lake Nation, and Temagami can simultaneously be understood as sites of resistance that reveal the fiction of settler colonialism's sovereign claim.

This special issue begins with the premise that "decolonization is not a metaphor."[5] We follow Eve Tuck and K. Wayne Wang (who follow Frantz Fanon) in their argument that to use decolonization as a metaphor empties it of its unsettling, chaotic content. The process of decolonization is one with material consequences for Indigenous and settler populations. Indeed, because we live in an ongoing colonial project where law is key to maintaining social, economic, and political settler legitimacy, decolonization of the political-juridical apparatus will have necessary effects in these spheres. However, our task is not to offer concrete prescriptions, but to explore important questions that the very relationship between law and decolonization surfaces.

In recognizing the limits of academic explorations (for example, the gravitational pull of English and its weighted presence in our discussions, theories, and conceptualizations of the world, and the ways academia reproduces power and privilege), this special issue seeks to engender conversations with an approach that recognizes the uncertainty of its own task. It is our hope that the issue enables

---

2 Some examples are: the hunger strike by Chief Theresa Spence of Attawapiskat First Nation; Idle No More round dances and teach-ins; and the December 10, 2012 and January 11, 2013 National Days of Action. See also the edited volume by the Kino-nda-niimi Collective, *The Winter We Danced: Voices from the Past, the Future, and the Idle No More Movement* (Winnipeg: ARP Books, 2014).

3 Patrick Wolfe, "Structure and Event: Settler Colonialism and the Question of Genocide," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, edited by A. Dirk Moses (Oxford: Berghahn Books, 2008), 102–32.

4 Pamela Palmater, "Why Are We Idle No More?," *Ottawa Citizen*, December 28, 2012.

5 Eve Tuck and K. Wayne Wang, "Decolonization is Not a Metaphor," *Decolonization: Indigeneity, Education & Society* 1, no. 1 (2012): 3.

https://doi.org/10.1017/cls.2014.9 Published online by Cambridge University Press

a consideration of law and decolonization that reflects this crucial topic into multiple and overlapping spheres. As such, the articles that follow address the tension between law and decolonization through a variety of different methods, including conceptual investigations of terms such as jurisdiction and certainty (Pasternak and Mackey), visual aesthetics (Murdocca), intra-institutional research (Nagy), as well as domestic and international case law (Keenan and Thielen-Wilson). Together, the authors traverse themes such as reparations, reconciliation, resistance, and, perhaps most commonly, settler-colonial law's fantasy of sovereignty. In so doing, they consider how the presence—or absence—of political-juridical frameworks might better attend to the legacies of colonialism.

Stacy Douglas
Department of Law and Legal Studies
Carleton University

Suzanne Lenon
Department of Women & Gender Studies
University of Lethbridge

https://doi.org/10.1017/cls.2014.9 Published online by Cambridge University Press