



Visual Legalities of Race and Reparations

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Abstract

Drawing attention to the legal and psychoanalytic genealogy of reparations, this article examines the relationship between reparations and racial difference through an analysis of the Canadian Broadcasting Corporation's documentary series *8th Fire: Aboriginal People, Canada and the Way Forward*. The representational life of reparations in liberal settler colonialism is a repository for addressing the broader landscape of legality—sovereignty, self-determination and anti-colonialism—beyond the confines of international human rights mechanisms. This article considers the following questions: How do forms of testimony animate connections between reparations and racial difference? In what ways do visual and representational practices operate through racial and colonial temporalities central to reparative juridics? What is the relationship between reparations and possibilities for anti-colonialism? I argue that the social, legal, cultural, and representational life of reparations in settler colonialism is structured by racial difference.

Keywords: reparations, settler colonialism, race, representation, testimony, legality

Résumé

Évoquant la généalogie juridique et psychanalytique des réparations, cet article examine la relation entre les réparations et les différences raciales à partir d'une analyse de la série documentaire *8th Fire : Aboriginal People, Canada and the Way Forward* du Réseau anglais de Radio-Canada. Au sein du colonialisme de peuplement libéral, la vie représentative des réparations est un mécanisme permettant d'examiner l'ensemble des questions touchant la légalité—soit la souveraineté, l'autodétermination et l'anticolonialisme—au-delà des limites des mécanismes internationaux de promotion des droits humains. Cet article tente de répondre aux questions suivantes : Comment les différents types de témoignages animent-ils les liens entre les réparations et les différences raciales ? De quelles manières les pratiques visuelles et représentationnelles opèrent-elles à travers les temporalités raciales et coloniales centrales aux réparations judiciaires ? Quelle est la relation entre les réparations et les possibilités d'agir de manière anticoloniale ? Les dimensions sociales, juridiques, culturelles et représentationnelles des réparations sont, à mon avis, structurées par les différences raciales au sein du colonialisme de peuplement.

¹ The author thanks Fenn Stewart and Shaira Vadasaria for generous engagement and research assistance.

Mots clés : réparations, colonialisme de peuplement, race, représentation, témoignage, légalité

I. Introduction

This country is founded on...the negation of Aboriginal people to justify the theft. You know, someone comes to your house, and you welcome them and pretty soon they take over your house. You have to have a reason for it. It's 'cause they're not really human.

—Lee Maracle²

How does a nation pursue reparations for colonialism? How do individual citizens participate in reparations? Lee Maracle, echoing Frantz Fanon, argues that settler colonialism is accomplished through the logic of dehumanization.³ Maracle suggests that historical and genealogical reconstruction is necessary and requires attention to mutually sustaining forms of annexation: territorial, spatial, temporal, and ontological. Settler colonialism requires the demarcation of racial difference. Reparations often signal a legal process based on narrative and evidentiary reconstruction. These legal processes include assessments concerning what is to be paid, restored, and repaired. This article examines the possibilities for considering reparations as also, and equally, a cultural, aesthetic, and affective process that is constituted by conditions of racial difference.

In settler societies, including Canada, the United States, Australia, and New Zealand, Indigenous and non-Indigenous people are invited to participate in a cultural and national imagination of reparation and reconciliation. A discourse of reconciliation structures the use of the past as a legal and extra-legal resource for managing the present and gesturing to multicultural futures. In the Canadian context, narratives of reparation appear in legal and extra-legal processes invoking legacies of colonial governance. For example, Mark D. Walters argues that a “jurisprudence of reconciliation” (a form of reparation) permeates Canadian law concerning Indigenous people.⁴ Canada’s ongoing Truth and Reconciliation Commission, a quasi-legal practice motivated, as the official mandate explains, by an “emerging and compelling desire to put the events of the past beyond us so that we can work towards a stronger and healthier future,” involves practices of reparation including acknowledging the impact and ongoing consequence of residential schools, “witness[ing], support[ing], promot[ing] and facilitate[ing] truth and reconciliation.”⁵ A recent Indigenous contemporary international art

² Lee Maracle, “Indigenous in the City,” Canadian Broadcasting Corporation, *8th Fire: Aboriginal People, Canada and the Way Forward* (2013), <http://www.cbc.ca/doczone/8thfire/index.html>.

³ Frantz Fanon, *The Wretched of the Earth*, trans. Constance Farrington (New York: Grove Press, 1963).

⁴ Although “reconciliation is not often considered a legal concept,” Walters maintains, it is nevertheless an “aspect of legality.” Mark D. Walters, “The Jurisprudence of Reconciliation: Aboriginal Rights in Canada,” in *The Politics of Reconciliation in Multicultural Societies*, eds. Will Kymlicka and Bashir Bashir (London: Oxford University Press, 2008), 165.

⁵ Truth and Reconciliation Commission of Canada, *Our Mandate: Introduction*, <http://www.trc.ca/websites/trcinstitution/index.php?p=7>.

exhibition called *Sakahàn: International Indigenous Art* (linked to *Decolonize Me*, an exhibition exploring colonization and self-determination) explores “ideas of self-representation to question colonial narratives and present parallel histories” in order to invite viewers to “bear witness to important life events.”⁶ Although these projects are differently positioned and offer different stories of settler colonialism, these few examples reveal that legal (land title cases, for example), quasi-legal (a truth and reconciliation commission), and creative commemoration (artistic, visual, aesthetic) produce, rearticulate, and constitute representational scenes of reparation in settler colonialism. Anti-colonialism and decolonization are distinct from practices of official reconciliation in a settler state; however, these forms of reparation arguably provide a blueprint for considerations of anti-colonialism and sovereignty.

Hosted by journalist Wab Kinew of the Ojibways of Onigaming First Nation in Northwestern Ontario, the Canadian Broadcasting Corporation’s *8th Fire: Aboriginal People, Canada and the Way Forward* is a provocative examination of the historical and contemporary circumstances of Indigenous people in settler Canada. *8th Fire* puts pressure on the concept of reparation and compels a consideration of reparations through visual and aesthetic fields of legality. Legality, according to Patricia Ewick and Susan Silbey, is related “to meanings, sources of authority, and cultural practices” that are “both embedded and emergent features of social life. Legality operates, then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as law) is constituted.”⁷ Through an analysis of *8th Fire*, the scenes of reparation that I canvass in this article demand an examination of the connections between the legal, cultural, and visual life of reparations in settler colonialism. The representational life of reparations in liberal settler colonialism is a repository for addressing the broader landscape of legality—sovereignty, self-determination, and anti-colonialism—beyond the confines of (international) human rights mechanisms. Reparations are, I argue, a representational process that links legal, quasi-legal, and visual scenes where testimony (and biography) provides the narrative scaffold. Relying on the documentary mode of testimonial subjects, *8th Fire* is an invitation to experience the humanity of those who have been “barred from ordinary humanity” in settler colonialism.⁸

The title *8th Fire* invokes the “Anishnaabe prophecy that declares that now is the time of Aboriginal peoples and the settler community to come together and build the ‘8th Fire’ of justice and harmony.”⁹ *8th Fire* is structured by a mode of documentary realism that is pedagogical: a lesson in nationalism, ethics, and reparations. The series includes four episodes: “Indigenous in the City” links a series of vignettes concerning Indigenous artists and storytellers and explores issues confronting working and middle-class Indigenous people living in hostile

⁶ National Gallery of Canada, *Sakahàn: International Indigenous Art*, <http://www.gallery.ca/en/about/1372.php>.

⁷ Relying on Michel Foucault’s theorization of power and Michel deCerteau’s “practices of everyday life,” Ewick and Silbey develop the concept of legality in order to capture the everyday, mundane, and routine practices that constitute law. Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), 22–23.

⁸ Paul Gilroy, *Against Race: Imagining Political Culture Beyond the Color Line* (Cambridge, MA: Belknap, 2000), 349.

⁹ CBC, *8th Fire*.

urban centres; “It’s Time” offers an historical overview of the 500-year relationship between Indigenous people and the settler state; “Whose Land is It Anyway?” explores land theft, sovereignty, and possibilities for land reclamation and compensation; and “At the Crossroads” sheds light on a new generation of Indigenous artists and storytellers navigating everyday life and advancing new individual and collective possibilities. *8th Fire* has been celebrated as a “provocative, high-energy journey through Aboriginal country,”¹⁰ for “dispel(ling) many of the misconceptions and negative stereotypes held about First Nations people by average Canadians,”¹¹ and for speaking directly to “the non-native viewer.”¹² It has been nominated for several awards.¹³ Other responses have been less laudatory: “This TRC-inspired kumbaya sing-a-long serves to invisibilize the real violence that is continuously enacted on our peoples through ongoing forms of colonial racism, domination, abjection and subjugation.”¹⁴ Nevertheless, *8th Fire* has been widely received as an educational and “cultural”¹⁵ resource and a pedagogical tool for secondary and university students, health trainees and workers, and community service workers.¹⁶

In the first section of this article, I explore the concept of reparation. Drawing attention to its genealogy as a legal and philosophical concept constituted through particular obligations and entitlements, I explore the breadth and scope of reparations. Using David Eng’s exploration of the codeterminacy of reparation and the category of human, I explore some of the connections between reparation and racial difference.

In the second section, I examine the CBC’s *8th Fire* for what it reveals about race and reparations in contemporary settler colonialism. In this documentary series, the past functions as a resource for the cultural imagination of reparation and reconciliation. Testimony functions as a particular technology in the series, transforming a temporality of racial ontology into aggregate experience. I argue that the social, legal, cultural, and representational life of reparations in settler

¹⁰ The Alberta Association of Services for Children and Families (AASCF), Aboriginal OBSD Resources, http://www.aascf.com/component?option=com_docman&Itemid,133/gid,667/task,cat_view?cat_order=name&cat_order2=ASC.

¹¹ Bruce DeMara, “CBC Series *8th Fire* Aims to Dispel Native Stereotypes,” *Toronto Star*, January 17, 2012, http://www.thestar.com/entertainment/2012/01/17/cbc_series_8th_fire_aims_to_dispel_native_stereotypes.html.

¹² Bob Goulais, “CBC’s 8th Fire Has It Right,” *Anishinaabe Blog*, January 27, 2012, <http://www.anishinaabe.ca/bgc/index.php/tag/stereotypes/>.

¹³ Brian D. Johnson, “Introducing the Canadian Screen Awards, and Their 2013 Nominees,” *Macleans*, January 15, 2013, <http://www2.macleans.ca/2013/01/15/introducing-the-canadian-screen-awards-and-their-2013-nominees/>.

¹⁴ Jarrett Martineau, “Micro-Review: *8th Fire*—CBC Doc Zone,” *feministfilm*, June 6, 2013, <http://feministfilm.tumblr.com/post/17101017996/becoming-wave-culturite-micro-review-8th>.

¹⁵ Canadian Federation of Medical Students, “Aboriginal Health,” <http://www.cfms.org/index.php/global-health/projects/aboriginal-health.html>.

¹⁶ *Ibid.*; AASCF, Aboriginal OBSD Resources; Brenda Boreham and Terri Mack, “National Aboriginal Day,” *Canadian Teacher Magazine* (May/June 2013), http://www.canadianteacher magazine.com/ctm_first_nations_education/may13-national-aboriginal-day.shtml; First Nations Child and Caring Family Society of Canada/University of Alberta, “First Nations Children’s Action Research and Education Service,” <http://www.extension.ualberta.ca/research/institutes-and-centres/fncares/>; Ontario Secondary School Teachers’ Federation (OSSTF), *Full Circle: First Nations, Métis, and Inuit Ways of Knowing* (Toronto, ON: OSSTF/FEESO, 2012); Vancouver Island University, “Supporting Aboriginal Higher Learners,” <http://www.viu.ca/aboriginal/higher-learners/>.

colonialism is structured by racial difference. This article is motivated by the following questions: How do forms of testimony animate connections between reparations and racial difference? In what ways do visual and representational practices operate through the racial and colonial temporalities central to reparative juridics? What is the relationship between reparations and possibilities for anti-colonialism?

II. What is Reparation?

The concept of reparation has specific genealogies that are philosophical, political, cultural, religious, and legal. A cursory review of the *Oxford English Dictionary's* definition of reparation reveals these genealogies as interdependent.

Reparation, n.: 1. An act of replacing or fixing parts of an object or structure in order to keep it in repair, or of restoring an object or structure to good condition by making repairs. Also: a part that has been repaired; 2. Restoration of something to good or proper condition, position, or level, compensating for deterioration or decline; an instance of this. 3. The action of making amends for a wrong or harm done by providing payment or other assistance to the wronged party; an instance of this. Also: payment or assistance given in compensation for such a wrong; an example of this; 4. Theol. Deliverance from sin and damnation, esp. by the atonement of Christ; salvation, redemption; 5. A reconciliation.¹⁷

The *OED* definition illustrates the breadth of the definition of reparation and the diffuse nature of its possible iterations in social, political, and cultural life. Indeed, to render whole (what may be broken), to redo (what has been undone), to fix (what is broken or perceived to be broken), to replace (what has been removed or stolen), to redress (what or whom has been injured or disarranged), to compensate, to pay, to reconcile *is* the work of reparation—whether legal, cultural, psychic, or philosophical.

From Aristotle's "corrective ethics"¹⁸ to St. Thomas Aquinas's "commutative justice,"¹⁹ the animating concept of reparation has a long history in Western political and legal philosophy. Reparations were reconstituted in the post-World War II period culminating in a recent and significant United Nations statement of principles and guidelines for reparation. As the guidelines assert: "The various forms of reparation" include: *restitution* (to "restore the victim to the original situation before the gross violation"), *compensation* (to provide "for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances in each case"), *rehabilitation* (which may include medical, psychological, legal, or social services), *satisfaction* ("includes a broad range of measures, from those aiming at cessation of violations to truth seeking, the search for the disappeared, the recovery and the reburial of remains, public apologies,

¹⁷ *Oxford English Dictionary Online*, "reparation, n.," <http://www.oed.com.ezproxy.library.yorku.ca/viewdictionaryentry/Entry/162653>.

¹⁸ Margaret Urban Walker, *What is Reparative Justice?* (Milwaukee: Marquette University Press, 2010).

¹⁹ *Ibid.*

judicial and administrative sanctions, commemoration, and human rights training”), and *guarantees of non-repetition* (“comprise broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services”).²⁰ These guidelines—restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition—point to the complexity of practices that compose the fields of activities associated with reparations.

As an international human rights mechanism, reparations are bound by liberal moral and legal obligations and entitlements.²¹ Indeed, reparation *binds* entitlement and obligation. As Margaret Walker explains:

An obligation implies the existence of a corresponding entitlement, and vice versa. If we have an obligation to repair a historical injustice, then there must be specific others—a community or particular individuals—who have an entitlement to reparation for that injustice. If a person or community has a reparative entitlement, then an individual or group must exist to whom the obligation to make repair can be assigned. Entitlement is the logical flip side of obligation, and from the specification of an obligation we can derive a statement about the corresponding entitlement.²²

The mutually conditioning relationship between entitlements and obligations suggests that the legal, philosophical, and cultural imagination of reparations is structured through liberal individualism. In some instances, the liberal subject in reparations is confined to an individual entitlement and demand for “repair” (for example, in a case where an individual is at the centre of a demand for recompense). In other instances, the liberal subject is stretched to the collective (in the context of historical claims). In most cases, however, the transformation from the individual to the collective is amplified to the point of where “claims to *x*” are battlegrounds for the politics of difference and violence. Michel Rolph-Trouillot describes this reparative process as “transformative rituals” that “imply a transfer to collectivities . . . the attributes that a dominant North Atlantic discourse had hitherto assigned to the liberal subject.”²³ In reparations, as in liberalism, the liberal subject is the bait and switch for the category of human.

Psychoanalysis offers another genealogy for the concept of reparation. David Eng argues that, although the “political and psychic genealogies of reparation would seem to circulate in widely disparate economies,” the “convergence of moral

²⁰ UN General Assembly, Resolution A/60/147, “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” December 16, 2005, http://untreaty.un.org/cod/avl/ha/ga_60-147/ga_60-147.html.

²¹ Mark Goodale and Sally Engle Merry, eds. *The Practice of Human Rights: Tracking Law Between the Global and Local* (Boston: Cambridge University Press, 2007).

²² Margaret Walker, *Taking Responsibility for the Past: Reparation and Historical Injustice* (London: Blackwell, 2002), x.

²³ Michel-Rolph Trouillot, “Abortive Rituals: Historical Apologies in a Global Era,” *Interventions* 2, no. 2 (2000): 173.

response to violence in the domain of the political and psychic is no coincidence.”²⁴ As Eng suggests, “[I]n its plural form, reparations describe the convergence of a number of political as well as social justice movements seeking redress for state-sponsored and extra-state violence. In its singular form, however, reparations describe the repairing of harm in object relations theory, not on the level of the social but on the level of the psychic.”²⁵ Eng demonstrates that whether a political or psychic definition of reparation is mobilized, each is motivated by an “expansion of reparations” in a “more productive and moral direction.”²⁶ Drawing on Judith Butler’s exegesis on Antigone’s mourning and grief over the death of her brother Polyneices,²⁷ and on Melanie Klein’s object relations theory and “its moral genealogy of reparation,”²⁸ Eng argues that reparation creates the human, and that “those to whom reparation can be offered become the very sign of the human.”²⁹

To recall the drama, Eng explains: “Antigone not only buries her brother Polyneices in defiance of the King’s command, but also refuses to disavow her act of disobedience, even in the face of death. In so doing, she figures a crisis in kinship and politics in a state of war.”³⁰ In mourning Polyneices, Antigone enacts an ethics of care and kinship. Eng continues: “By insisting on her right to bury Polyneices, Antigone enacts kinship not just as a repeated ‘public scandal’ on the edges of social and cultural intelligibility but, equally important, as the condition for care—as the *precondition* of being human in a state of violence.”³¹ The “performance” of kinship by Antigone, “the one that happens when the less than human speaks as human,” is an “act of *repairing*, an act of *reparation*.”³² The form of kinship and care enacted by Antigone is the precondition to the category of human. Antigone’s grief and mourning “raises critical questions of how kinship is mobilized to secure the conditions by which certain lives become livable and recognizable or, alternately, repudiated and foreclosed.”³³ Eng’s analysis of Antigone’s performance of kinship reveals a distinct politics of social difference where reparation is the precondition to the category of human.

Furthermore, Eng highlights Antigone’s kinship performance against a striking passage from Klein in which she offers an account of reparation as represented and constituted by the colonial encounter. Part of the passage from Klein reads:

[T]he explorer gives expression to both aggression and the drive to reparation . . . especially was this so in former times when ruthless cruelty against native populations was displayed by people who not only explored but

²⁴ David L. Eng, “Reparations and the Human,” *Columbia Journal of Gender and Law* 21, no. 2 (2011): 570–71.

²⁵ *Ibid.*, 568.

²⁶ *Ibid.*, 568.

²⁷ Eng argues that Antigone symbolizes “both gender and kinship trouble” in her refusal to follow the king’s command not to mourn the death of her brother Polyneices (because he is viewed as a traitor to the king, the law forbids the mourning of his death). *Ibid.*, 563.

²⁸ *Ibid.*, 576

²⁹ *Ibid.*, 565.

³⁰ *Ibid.*, 562.

³¹ Emphasis in original. *Ibid.*, 565.

³² Emphasis in original. *Ibid.*

³³ *Ibid.*, 564.

conquered and colonized . . . the wished-for restoration found full expression in repopulating the country with people of their own nationality.”³⁴

Eng demonstrates that Klein’s theory of reparation is constituted through the European colonial encounter: “Reparation comes to name the psychic and social process of responding to the horrors of genocidal destruction.” Eng continues,

In Klein’s colonial theater of the New World, reparation is ultimately driven by the colonizer’s will to life and drive for self-preservation in a new and unyielding territory, but one thoroughly divested of responsibility to the native other. His precarious life triumphs over the precarious existence of the native other.”³⁵

This representational terrain of reparation gives rise to moral questions that constitute the content and form of racial difference. Reparation (to restore a state of affairs, to repair the brutality of violence, and to constitute the human) is underpinned by racial and colonial difference. Reparation is a theatre for racial difference and the category of human. As Eng explains: “[W]e might describe the political unconscious of reparation as the hidden history of colonialism and race . . . reparation names the collective and political process by which love and justice become naturalized properties of the (European) liberal human, foreclosing the possibility for racial reparations and redress.”³⁶

What of the relationship between reparation and possibilities for anti-colonialism? Eng’s analysis recalls Fanon’s treatise on anti-colonialism, since he highlights the idea that possibilities for reparation and possibilities for decolonization are always invested in the violence of colonial projects. *The Wretched of the Earth* begins with the following prescription for decolonization: “National liberation, national reawakening, restoration of the nation to the people or Commonwealth, whatever the name is used, whatever the latest expression, decolonization is always a violent event.”³⁷ Reparation as restoration is constitutive of decolonial possibilities in Fanon’s vision. Fanon’s call for decolonization offers a new *scene* for human relations and new forms of *relating* in a social and psychic field that has been distorted by colonialism. Fanon’s uncompromising violent *scene of decolonization* is arguably as aesthetic as it is doctrinaire. As Samira Kawash explains: “In Fanon’s account of the violence of decolonization, violence oscillates between two forms: a mythical violence that would find a new arrangement of rule within the flow of history (this new arrangement might be called ‘postcolonialism’ or ‘neocolonialism’), and a new divine violence that would herald the blasting open of history to an order not after but on the other side of colonialism.”³⁸ Violence, therefore, is central to both the colonial and the anti-colonial process. Fanon offers one consequence of the “other side of colonialism:” “Individualism is

³⁴ Melanie Klein, *Love, Guilt and Reparation*, cited in Eng, “Reparations and the Human,” 578.

³⁵ Eng, “Reparations and the Human,” 579.

³⁶ *Ibid.*, 581.

³⁷ Fanon, *The Wretched of the Earth*.

³⁸ Samira Kawash, “Terrorists and Vampires: Fanon’s Spectral Violence and Decolonization,” in *Frantz Fanon: Critical Perspectives*, ed. Anthony C. Alessandrini (London and New York: Routledge, 1999), 241.

the first to disappear,” Fanon declares.³⁹ To find a way on the other side of colonialism is to resist the violent (Hegelian) dialectic forced on colonized people. Fanon imagines a repudiation of liberalism and capitalism as structured through individualism. He offers a new form of kinship and collectivity: “The very forms of organization of the struggle will suggest to him a different vocabulary. Brother, sister, friend—these are words outlawed by the colonialist bourgeoisie, because for them my brother is my purse, my friend is part of my scheme for getting on.”⁴⁰ Elizabeth Povinelli observes that Fanon is invoking a form of “sociality” that is an “intensification of kinship rather than its negation.”⁴¹ To destroy the colonial dialectic of liberal individualism is to articulate a new form of kinship as a prophylactic to the racial schema of human difference required by colonial projects. Kinship as reparation, and reparation as kinship, imagines a new relation of friendship, neighbourliness and collectivity on “the other side of colonialism.” When kinship is *intensified*, or offered as a horizon, we must ask how and whether kinship as a form of community can or may avoid romanticism, violence, or nepotism.

III. *8th Fire*

8th Fire is animated by an aesthetic and representational ethics of kinship and neighbourliness as reparation. Against the backdrop of Toronto’s urban sky, Wab Kinew begins *8th Fire* with the following invitation to viewers:

It has been about 500 years since your people met my people and things look a little bit different. Let’s face it though, our relationship still needs a lot of work. Some people call it reconciliation, some people call it the *8th Fire*, a First Nations prophecy that says that now is the time for *all* people to come together and build a new relationship. If not, things could get a little awkward. After all, Aboriginal people are Canada’s fastest growing population and more than half of us now live in the cities. So, come meet the neighbours, and I promise “honest injun,” no guilt trips, maybe even a few surprises.⁴²

The narrator of *8th Fire* speaks directly to the settler, calling on the settler to concede the lack of knowledge animating the settler’s understanding of Indigenous people’s contestations with the Canadian state since early settler colonialism. In addressing and speaking directly to the settler Canadian, *8th Fire* sets up a representational structure in which the (white settler) spectator is *pulled* inside the individual and collective stories depicted in the four episodes. In this sense, *8th Fire* is immediately structured as pedagogical, providing non-Indigenous Canadians with a window into the lives of Indigenous people. The invocation of *relationships needing work, reconciliation, neighbours, and no guilt trips* collapses a

³⁹ In a 1961 speech in Havana, Che Guevara is said to have proclaimed: “Individualism must disappear.” See Jon Lee Anderson, *Che: A Revolutionary Life* (New York: Grove Press, 1997), 456–92. Other scholars have reflected representations of the phrase in Palestinian art. See Gannit Ankori, *Palestinian Art* (London: Reaktion Books, 2006), 56. See also Dionne Brand, *In Another Place Not Here* (Toronto: Vintage Canada, 1996).

⁴⁰ Fanon, *The Wretched of the Earth*, 471.

⁴¹ Elizabeth A. Povinelli, *The Empire of Love* (London and Durham: Duke University Press), 231.

⁴² CBC, *8th Fire*.

discourse of (human) recognition and reparation facilitated by the narrative and visual mechanism of testimony.

8th Fire is structured in a journalistic documentary style. The narrator frames the intervening stories concerning urban Indigenous issues, land and territory, and community and culture. The documentary prioritizes a present-day account of the lives of those featured. Each individual featured provides a testimonial account of life in contemporary settler colonial Canada. The subjects of the documentary offer stories of what it means to thrive as Indigenous people in a liberal settler state. Collectively, the first-person testimonies are performative and affective. The stories are candid and cut through with some historicization of the conditions of life and death for Indigenous people. The individual testimonies give rise to particular forms of “citationality” for the current state of reconciliation and reparations.⁴³ There is a common narrative that links the four episodes. In each episode, an implicit temporality structures the testimonial content: How can (and how have) Indigenous people find (found) a way forward (now that going *back* is not an option)?

The first episode, for example, opens with the following challenge from Leslie Varley, of Aboriginal Health Services, British Columbia, to non-Indigenous Canadians: “What stereotypes do you have, as a Canadian, about Indigenous people? I really, really ask you to examine those stereotypes that you carry.”⁴⁴ Indeed, *8th Fire* is intended to debunk myth and stereotype by highlighting the individual life stories of Indigenous people. The first episode canvasses the lives of urban Indigenous people (whom one grandfather refers to as “concrete Indians”). As the narrator declares: “After all, it’s true, we’re not all hidden away on reserves anymore . . . so, how do we form a new relationship, if we don’t know each other?”⁴⁵ The litany of racist stereotypes are offered in quick streeters with Indigenous and non-Indigenous people in urban spaces, thus conveying the sense that such stereotypes saturate the cultural imagination and are commonplace perceptions facilitated by routine pronouncements of racial stereotypes. The narrator dismisses the list of racial stereotypes as “comic book characters,” and according to a series of rapid testimonies, “We’re kind of invisible almost. The only time we’re really noticed is when something is wrong.” As Nakuset, a community worker in Montreal adopted into a white Jewish family as a child, explains: “[D]eath rates, poverty, alcoholism, I don’t see myself as an Aboriginal being any of those statistics.” These individual accounts, these urban testimonial subjects, confound stereotypes and do not express simple appeals to “Aboriginal authenticity”; rather, collectively, their insights reveal the density and complexity of political subjectivity for Indigenous people navigating ongoing settler colonialism.

Resisting the “myth of the vanishing Indian,”⁴⁶ the testimonial narratives provide an affront to racist stereotypes. There is a rhetorical pragmatism that propels

⁴³ Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005).

⁴⁴ Leslie Varley, Aboriginal Health, Provincial Health Services Authority of British Columbia, in CBC, “Indigenous in the City,” *8th Fire*.

⁴⁵ Ibid.

⁴⁶ Brewton Berry, “The Myth of the Vanishing Indian,” *Phylon* 21, no. 1 (1960): 51–57; Philip Deloria, *Playing Indian* (New Haven: Yale University Press, 1998).

the narrative, conveying what Rosalind Morris (assessing some of the ways in which the South African Truth and Reconciliation Commission “captured” the political problem of sexual violence) describes as a “nearly Habermasian conception of the political as a space of transparent communicative relations between all people.”⁴⁷ The individual testimonies are embodied performances of liberal individualism. *8th Fire* proceeds through an imagined landscape of equal and legitimate political subjects facilitated by an era of reconciliation; however, these testimonies are not projected onto uncontested political space. Instead, the narratives constitute forms of subjectivity (and the discursive formations required by those subjectivities) that are made possible in a new century of liberal settler colonialism. In an era of reparations, where the “guilt of nations”⁴⁸ is manifest through testimonies of survival, endurance,⁴⁹ and through the persistence⁵⁰ of racialized subjects, historical forms of racial governance and violence (corporeal, territorial, epistemological) are overlaid with stories of reparative overcoming. Even where a calibration of the links between past and present is advanced in *8th Fire*, the idea of a *new* time for relations between Indigenous and non-Indigenous people prevails.

8th Fire attempts to depict the contingency between the colonial past and present. The documentary is structured through rough-cut distinctions between past and present. The testimonial and authorial subjects of the present offer complex stories concerning living on and living with ongoing settler colonialism. The past is represented through archival images of maps, the *Indian Act*, and vast barren land. The past is marked as legal racial governance and expanses of landscape (an iconographic image of Canadian nationalism) and the present is represented as urban dirt, noise, and traffic. The mini-history lesson offered in “Indigenous in the City” asks:

What is it that was lost, that leaves Aboriginal peoples caught between two worlds? That leaves more in poverty, out of school and in trouble with the law? The source can be directly traced to our colonial history. Way back in 1876, the new government of Canada passed the *Indian Act* which made Indians wards of the Crown.

What follows is a short inventory of the historical strategies (criminalization, forced removal, the reservation system, regulation by government agencies, the interruption of processes of cultural transmission) of settler colonial racial governance. The narration is set against archival and landscape images—the contingency between past and present is rendered spectral and ahistorical.

⁴⁷ Rosalind Morris cited in Jean Comaroff and John L. Comaroff, “Criminal Obsession, after Foucault: Postcoloniality, Policing, and the Metaphysics of Disorder,” in *Law and Disorder in the Postcolony*, eds. Jean Comaroff and John L. Comaroff (Chicago: University of Chicago Press, 2000), 65.

⁴⁸ Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustice* (Baltimore: Johns Hopkins University Press, 2000).

⁴⁹ Elizabeth A. Povinelli, *Economies of Abandonment: Social Belonging and Endurance in Late Liberalism* (Durham and London: Duke University Press, 2011).

⁵⁰ Carmela Murdocca, “Persistence and Memorialization: Self-Harm and Suicide in Reparation Politics in Canada,” *Australian Feminist Law Journal* 38, no. 2 (2013): 93–107.

In a way that recalls Maracle's insistence on the need to recognize the processes of dehumanization in settler colonialism, the featured and celebrated Cree artist Kent Monkman addresses the ongoing violence of colonization. "There was such a strong will to disappear us, to disappear us from the places where we lived, the places where we were born. Our present is informed by our histories and we have to engage with these histories to understand where we are right now," Monkman insists. Monkman is a multimedia artist whose "subversive work" concerning colonized sexuality "reverses" the colonizing gaze.⁵¹ "While you've been looking at us, we've also been looking at you," he declares.⁵² The depiction of Monkman's anti-colonial work highlights possibilities for finding a way through ongoing violence. The episode, however, truncates the politics of reversal and transversal inspired by Monkman's work and reorients the settler-viewer to learning about the work of Indigenous artists. The episode concludes with Kinew declaring: "One of the solutions, get to know your neighbour! It's all about education." Monkman's anti-colonial creative interventions, and those of the other artists depicted, are transformed into "native informant"⁵³ pedagogy confined to the realm of racial difference. Reconciliation and reparation is rendered possible through neighbourliness as an ethic of kinship.

The third episode, "Whose Land Is It Anyway?," begins with Kinew stating: "Let's face it, one of the biggest issues that stands between us is land. It used to be all ours and now, not so much. But, you know what, I'm not mad."⁵⁴ The past is represented with archival romanticism through images of the *Indian Act* and original treaties, casting a pall over graffiti in the streets of Winnipeg, combined with the music of Winnipeg's Most, a hip hop crew. Far from offering a teleology or chronology of the centrality of land theft and land redistribution to the settler colonial project—and obscuring violence, eviction, forced removals, forced re-removals, environmental and food source destruction—the episode foregrounds successful land redistribution and economic contracts between Indigenous and non-Indigenous Canadians. "The best relationships between native people and non-native people are business relationships. That's the best because it's based on work, it's based on production, it's based on sharing," states Chief Clarence Louie, the chief of the Osoyoos Band in the Okanagan Valley in British Columbia.⁵⁵ Chief Louie continues: "Most of this desert back here [pointing to the Okanagan Valley behind him], this 1,000 acres, we can make millions off it, easily."⁵⁶ Indeed, the Osoyoos band have "developed," "redistributed," and engaged in economic neoliberal partnership contracts—the land is now a centre of tourism in the Okanagan valley boasting a vineyard, a golf course, and a five-star hotel. The local non-Indigenous winemaker states: "The band understands what it takes to

⁵¹ The narration describes Monkman's work in this manner.

⁵² CBC, "Indigenous in the City," *8th Fire*.

⁵³ Gayatri Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, eds. Cary Nelson and Lawrence Grossberg (Urbana: University of Illinois, 1988), 271–313.

⁵⁴ CBC, "Whose Land Is It Anyway?," *8th Fire*.

⁵⁵ Ibid.

⁵⁶ Ibid.

survive in the twenty-first century. They're very forward in their thinking."⁵⁷ In this instance, neoliberalism revives the stereotype of Indigenous people as inevitably on the path to extinction, even as it frames the Osoyoss band as exceptional. These stories of economic ingenuity are presented as affective success stories and as "people thinking creatively."⁵⁸ Reconciliation and reparation is framed within the language of culture and survival as realized through land redistribution and economic contracts. In a neoliberal world, neighbours do business. Transcending the saturation of history and stereotype depicted earlier in the documentary, the individual and collective "native informant" neoliberal subjects offer unfettered acceptance of environmental and land redistribution initiatives. These forms of subjectivity emerge with and through the combined effects of assimilation, neoliberalism and multiculturalism. As Gillian Cowlshaw explains: "In the authorized narratives of sophisticated multiculturalism, there is no room to recognize the legitimacy of the violence of marginalized people, let alone to discover how it is continuously reproduced."⁵⁹ Neoliberal economic contracts necessitate new forms of land redistribution that work to reconstitute the centrality of land theft and violence to settler colonial projects. Economic independence through land redevelopment makes possible reparative and reconciliatory neoliberal kinship. As Irene Watson explains: "The state offers a process of reconciliation, one which leaves intact the scars of annihilation, one which refuses to give restitution for the loss of country, and life, as it continues to bore even deeper into the earth."⁶⁰ *8th Fire* offers the view that reparation, whether legal or economic, provides a path forward—it does so through the spatio-temporal specter of violence.

Recent scholarship demonstrates that the global regime of international human rights proliferates as a legal and cultural (visual/symbolic) phenomenon. As Wendy Hesford explains: "International human rights politics is saturated with images, advocates, policymakers, scholars and news media."⁶¹ The discourse of human rights, therefore, is representational, performative, and affective. As Eng points out (drawing on the work of Lynn Hunt), "human rights are not only legal doctrines forged in the jurisprudence of international relations but also intimately depend on an affective logic, 'on a disposition toward other people, a set of convictions about what people are like and how they know right and wrong in the secular world.'"⁶² Or, as Sharon Sliwinski explains: "[T]he long struggle for universal human rights is a story of atrocious events and courageous campaigners, but it is also a lively aesthetic scene full of pictorial images and fascinated spectators."⁶³ The consideration of reparations as a specific and unique "visual field of human rights" has drawn less attention.

In pursuing an analysis of the visual legalities of reparation, *8th Fire* is instructive to the extent that it provides clues about the structuring and circulating

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Gillian Cowlshaw, *The City's Outback* (Sydney: University of South Wales Press, 2009), 213.

⁶⁰ Irene Watson, "Buried Alive," *Law and Critique* 13 (2002): 265.

⁶¹ Wendy S. Hesford, *Spectacular Rhetorics: Human Rights Visions, Recognitions, Feminisms* (Durham and London: Duke University Press, 2011), 11.

⁶² Eng, "Reparations and the Human," 570–71.

⁶³ Sharon Sliwinski, *Human Rights in Camera* (Chicago: University of Chicago Press, 2011), 4.

representations of reparations in settler colonialism. One of the most important characteristics constructing human rights as representational, performative, and affective process is the role of the spectator. In her influential work, Shoshana Felman describes spectatorship as an “alignment of witnesses,” or bearing witness to the witness, where “life-testimony is not simply a testimony to a private life, but a point of conflation between text and life, a textual testimony which can penetrate us like actual life.”⁶⁴ *8th Fire* operates through the structuring mechanism of testimony. The spectator/witness marks a transfer point for the logic of social difference in the visual legalities of reparations. As Hesford explains (relying on Jacques Rancière), “the distribution of the visible itself is part of the configuration of domination and subjection.”⁶⁵ Bearing witness to testimonies that index reparation (with the goal of “reconciliation” and “no guilt trips”) provides an ethical identification with the testimonial subjects depicted in *8th Fire*. Far from advocating a splitting open of the legal (constitutional, sovereign) and dehumanizing effects of settler colonialism, the testimonies reconstitute a form of ethical and benevolent nationalism. Obscuring the effects of ongoing forms of everyday and structural violence, reparation as a form of visual legality works to shore up the mutual conditioning relationship between violence and reparation. Reparation is not, therefore, the legal or quasi-legal antidote to historical violence; rather, I argue that reparation is constitutive of ongoing violence. This constitutive violence compels an analysis of the racial formations that are part of the legal and psychic genealogies of reparation. As Eng explains: “Reparation and aggression, as well as morality and violence, cannot be described as oppositional. Rather, they must be considered as collectively constituting a larger psychic and social dialectic delineating the evolution of Western subjectivity and conceptions of the human, outside any prospects of the universal.”⁶⁶

Scholarly work has demonstrated that a distinct feature of the visual field of human rights is that of crisis and spectacle. As Hesford explains: “[H]uman rights discourse constructs humanity and its capacities through spectacular rhetorics, imagining technologies, and an ocular epistemology [where] human rights internationalism often functions as a site of power for and normative expression of American nationalisms, cosmopolitanisms, and neoliberal global politics.”⁶⁷ Reparation as representation in *8th Fire* is not depicted as spectacle or crisis. Rather, testimonial narratives of everyday life and human overcoming facilitate the reparations discourse at work in *8th Fire*. The testimonies work to fuse the racial other to new forms of neoliberalism. Importantly, the mode of spectatorship is neither acknowledgment nor (something we might call) ethical responsibility. Rather, the scene of reparation requires that a racial subject perform an ontological reparative overcoming. The subject of racial difference is therefore marked as

⁶⁴ Shoshana Felman, “Education and Crisis, or the Vicissitudes of Teaching,” in *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*, eds. Shoshana Felman and Dori Laub (London: Routledge, 1992), 2.

⁶⁵ Jacques Rancière cited in Hesford, *Spectacular Rhetorics*, 16.

⁶⁶ Eng, “Reparations and the Human,” 580.

⁶⁷ Hesford, *Spectacular Rhetorics*, 3.

ontologically broken (in need of repair) and is (as Eng emphasizes through Butler) “the occasion for a new field of the human, achieved through political catachresis, the one that happens when the less than human speaks as human.”⁶⁸ Racial difference and the category of human define the visual legalities of reparation. Indeed, the scenes of reparation distribute and reorganize the conditions of possibility for reparations in the service of nationalism. Ultimately, *8th Fire* folds the call of decolonization into liberal humanism and reparation. The visual legalities of reparations are structured by finality and closure (with the past) and assimilation through neoliberal economic contracts and neighbourly overcoming. Kinship fails when animated by racial difference. Witnessing the humanity of those who are targets of colonial racism, we are left with the relief that *their* survival and determination confirms settlers’ ethical obligation to a form of nationalism as reparation.

IV. Conclusion

8th Fire functions as a representational form of reparations. In directly addressing the settler, and in revealing some of the complexities of “late liberalism”⁶⁹ for Indigenous subjects, the documentary series offers a unique vantage point from which to address the visual legalities of race and reparations in settler colonialism. Reparation, whether legal, quasi-legal, cultural, or representational, cannot provide the blueprint for anti-colonialism. The category of human structured by a logic of racial difference provides the preconceptual terrain for reparations. As Eng argues, the range of reparative practices that proliferate in liberal multicultural states are bound by constitutive forms of difference.

The final episode of *8th Fire* calls for the eradication of the *Indian Act*. “If I had a magic stick . . . I would say, yes, no more *Indian Act* because for me that legislation doesn’t recognize me as a human being, I’m just a member, I’m not even an adult under the *Indian Act*,” explains Michèle Taina Audette, president of Québec’s Native Women’s Association. “The *Indian Act* has to be scrapped otherwise reconciliation is a dead letter. The future is bleak,” declares Wab Kinew. Echoing the position of the Idle No More movement, the call to eradicate the *Indian Act* (“a colonial institution”⁷⁰) is the clearest form of an anti-colonial politic advanced by *8th Fire*.

Leaders of the Idle No More Movement describe the current Canadian government policy as the “First Nations Termination Plan.” Central to the termination plan are three core and substantive policy measures: 1) A “results based

⁶⁸ Judith Butler, *Antigone’s Claim: Kinship Between Life and Death* (New York: Columbia University Press, 82).

⁶⁹ Povinelli identifies the “chronotype” of “late liberalism” to signify the “shape that liberal governmentality has taken as it responds to a series of legitimacy crises in the wake of anti-colonial, new social movements, and new Islamic movements.” Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham and London: Duke University Press, 2002).

⁷⁰ Taiaiake Alfred and Tobold Rollo, *Restoring and Resetting the Relationship between Indigenous Peoples and Canada* (Idle No More, 2012), http://ipsmo.files.wordpress.com/2012/12/idlenomore_handout.pdf.

approach to negotiating modern treaties and self-government agreements”; 2) “Funding cuts to First Nations regional and national political organizations”; 3) “First Nations Band and Tribal Council funding for advisory services will be eliminated over the next two years.”⁷¹ Some of the effects of these measures, in addition to unilateral changes in a range of bills in Parliament that include the transformation and realignment of property regimes (including the privatization of Indigenous communal property rights in some areas of the country), serve economic and market interests. These “new” measures are repackaged “old” measures that facilitate racial forms of governance in settler colonialism.⁷² The new era of reconciliation and reparation emerges simultaneous with the annihilation scheme of settler colonialism. Notably, some of these new policy measures were identified in *8th Fire* as a promising way forward for Indigenous people and communities. Reconciliation and reparation are not inconsistent with renewed neoliberal vigor by the settler state to forge “relations” with Indigenous people. Rather, as evidenced by *8th Fire*, reparations require neoliberal forms of racial governance. These forms of governance are facilitated and constituted by representational scenes of reparation where the coherence of the racial subject is made manifest through testimonial overcoming. Representational reparations, or the visual legalities of race and reparations, require the “centering” of “marginal” identities (through testimony) as a form of governance rather than subversion or decolonization.

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⁷¹ Russell Diabo, “Canada: Prime Minister Harper Launches First Nations ‘Termination Plan,’” *Intercontinental Cry Magazine*, November 9, 2012, <http://intercontinentalcry.org/harper-launches-major-first-nations-termination-plan-as-negotiating-tables-legitimize-canadas-colonialism/>.

⁷² *Ibid.* These measures are consistent with the significant *Statement of the Government of Canada on Indian Policy (The White Paper)* (Government of Canada, 1969), <http://www.aadnc-aandc.gc.ca/eng/1100100010189/1100100010191>.