

3. Law, Colonialism and Space

Canadian law is largely devoid of our views. It most often acts as if we are not even here—through the doctrines of discovery, Crown sovereignty and constitutional law. We need to at least find ways to attenuate that force. (Borrows 2010b, 142)

All the oppression of Aboriginal Peoples in Canada has operated with the assistance and the formal sanction of the law. The Canadian legal system is at the heart of what we must reject as Aboriginal nations and as Aboriginal individuals. (Monture-Angus 1995, 250)

Embedded in this research are questions about the limitations inherent in seeking recognition of Indigenous people as subjects of Canadian law. As Christie (2007) states, arguments for recognition “begin with the assumption that the state (or dominant society) is there, a given, and then imagine Indigenous peoples coming to the centre of power to try to argue (somehow) that they should have a place within the larger system. This approach begins with the notion that in some way the power structure of Canada is legitimate” (16). This analysis has been applied to efforts by Indigenous peoples’ land use rights, treaty negotiations and other broad discussion of rights, but has not yet been applied to the scale of bodily violence.

Categories of ‘Indians’ (and the contemporary equivalent, ‘Aboriginal’) and ‘Indian space’ have become naturalized in Canadian society and in much scholarship on Indigenous-government relations, and they continue to be enforced through a set of state-determined power relations, and histories of both physical and epistemic violence. This system of categorization is foundationally gendered, as the rights and socio-legal standing of ‘Indians’ have always been delineated along gender lines, resulting in distinct experiences of violence for ‘Indian’ men, women and two-spirit people. I argue the perpetuation of this categorization serves to affirm the closure of settlement, and reinforce Indigenous peoples’ status as colonized subjects: dependent, victimized and

incapable of progress, a product of spaces which are inherently violent, impoverished and marginalized. We see these categories at work when we talk about native people 'migrating' from reserves (Indian space) to cities (non-Indian space). This framing undermines claims of Indigenous people in BC to anything more than those "points of attachment" (Harris 2008, 5) within their traditional territories that together cover all of BC.

This section is intended to provide a foundation from which to understand the role of law in shaping day-to-day reality in Indigenous communities and the potential to address violence through legal means. I hope to show how law structures the categories in which Indigenous people are situated in relation to socio-legal norms and in the criminal justice system. I situate my exploration of violence within the colonial history of BC's legal geographies in order to argue that the issue of interpersonal violence should be addressed as an integral part of asserting Indigenous self-determination. To do so, we must begin with understanding the primary spatial and embodied categories of colonialism: 'Indians' and reserves. Together with other categories embedded within foundational discourses of colonialism, such as categories of gender, these form the basis on which Indigenous-government relations are negotiated and shape the possibilities for recognition of Indigenous people as legal subjects. I hope to show how colonial categories and their spatialization entail the erasure of Indigenous subjectivities and territories, making it difficult for Indigenous people to be seen as anything other than colonial subjects within their subjectivity as 'Indians'. I will argue that this erasure might be understood as the spatialization of the violence of law itself.

In this section, I first discuss the creation of Indian reserves within the settlement process of BC, and the legal measures through which Indigenous peoples became 'Indians' across this settler geography. Second, I trace the ways that western legal thought was used to create 'Indians' as colonial subjects who were void of their own legal order, which preceded the creation of reserves. This history is useful in understanding how settlers imagined themselves and justified the violent acts which settlement entailed. It also illustrates how the violent erasure of Indigenous self-determination and Indigenous geographies was naturalized. Third, I suggest that in the ideological shift from *terra nullius* geography to the settler society 'Indians' became imagined as subjects of the reserve, a mobile status that travels with Indigenous people

across diverse spaces within Canada. I suggest the logics of *terra nullius*, the frontier and the reserve are activated within Canada's colonialscape, a concept which is helpful in understanding the spatial rationales through which colonial relations are continually remade. Finally I discuss the manifestation of colonialscape logics in the treatment of violence toward Indigenous people across reserve and non-reserve spaces. This history provides an important foundation for understanding the colonial logics embedded in everyday socio-legal relations in Canada which make it difficult to recognize Indigenous legal orders as a possible venue for addressing violence and for reasserting Indigenous peoples' agency.

3.1 Creating reserves: material reality

Colonialism in a place like British Columbia is not so much a set of tactics that others employed at some time in the past as an ongoing set of relationships based on the fact that newcomers established themselves here, and refashioned a strange place, making it their own. (Harris 1997, xvii)

As Cole Harris (2002) has shown, Canadian Indian reserves can be understood as a manifestation of colonial ideologies, produced in order to realize the ongoing dispossession of Indigenous peoples of their territories and to establish the sovereignty of the Canadian state. Yet the creation of BC entailed not only the mental work of imagining 'Indians' as without legal tenure, but also the practical work of individuals mapping out and dividing up land, confining 'Indians' onto reserves through force: "violence was not only an *outcome* of law, but its *realization*" (Blomley 2003, 129, emphasis in original). Reserves in BC came into being through a land policy with a mandate "to grant miniscule reserves and ignore title" (Harris 2008, 437). Through this process, native people became trespassers in their own territories, at the same time as

becoming subjects of the federal *Indian Act* as status Indians⁸. As Doug Harris (2008) notes in his account of reserves and fisheries in BC, reserves became points of attachment within native people's traditional territories, but little more. Reserves were, and are, part of territorial strategies to empty space of Indigenous tenure, yet in BC the lack of consensus around the legal issue of title is evident in the lengthy and messy treaty process that is still ongoing. "The arbitrary boundaries created by the Indian Act cookie cutter, which divided aboriginal peoples into bands, cut across the aboriginal legal orders" (Napoleon 2009, 384). Although the reserve geography of BC is often taken as fixed or natural spaces of Indigenous occupation, the history of reserve development in the province reveals that their construction and realization was anything but neutral.

In the mid-nineteenth century, British interest in what is now known as British Columbia changed from trading country to settlement frontier, marking the beginnings of a fundamental transition in relations with Native peoples (Harris 2008). Beginning with the creation of the Colony of Vancouver Island in 1849, processes of dividing land into reserves and that for settlers, continued in tandem for 75 years. In 1924, the Dominion and provincial government agreed on what they regarded as the final reserve geography of BC (Harris 2008). With few exceptions the need to seek agreement with Native peoples over the shared use of space was ignored. Instead, during this time of early settlement, "a carefully choreographed display of violence" (Harris 2002, 22) was used to keep Indigenous people in their place – that is, out of the places that white settlers had deemed to be desirable for themselves. The BC government was the only provincial government in Canada that would not acknowledge Indigenous peoples' right to negotiate the use of land, thus the lack of treaties and late creation of reserves in the province. Here, the Crown did not negotiate transfer of rights to land or governance, but "merely asserted such rights, and acted as if their unilateral declarations have (sic) legal

⁸ Not all Indigenous people were granted Indian status, as status was determined by a set of state-imposed regulations based on gender, marital status, education level and other factors. Additionally, Métis people and Inuit people were categorized differently than other Indigenous groups or First Nations in Canada. For more on Indian status in Canada, see Bonita Lawrence, 2003, *Gender, Race, and the Regulation of Native Identity in Canada and the United States: an overview*, *Hypatia* 18(2), 3-31 and Royal Commission on Aboriginal Peoples. 1996. *Part Two: False Assumptions and a Failed Relationship*. Ottawa: Government of Canada.

meaning” (Borrows 2002, 113). BC reserves were created only when white settlers were increasingly encroaching on the land and had interest in capitalizing on the land and natural resources (Miller 2009). Thus, the Fraser Valley and Vancouver Island reserves were established first and other areas were plotted out later.

Reserves were seen as a temporary measure, meant to be self-sustained through access to fisheries while Indigenous people became part of the wage economy, thus, “the land policy was built around access to the fisheries” (Harris 2008, 39). The power dynamics which shaped the creation of reserves in BC centered around the tension between provincial and federal fights for control, and the shared desire of both governments to establish a prosperous, powerful settler society (Harris 2002). The rights of ‘Indians’ were formed within these overlapping and often competing jurisdictions related to federal and provincial governance, as well as the administration of reserves themselves within a federally defined band system.

The settlement of BC, as with colonialism the world over, was premised on, and facilitated through, a process of creating spaces which were orderly, easily commodified and clearly defined through the imposition of Western socio-legal property regimes. These regimes were enacted through tools of the western geographic imaginary, including the frontier, the survey and the grid (Blomley 2003), which served to neutralize the violence inherent in property’s realization. As stated by Mitchell (2002) in his account of colonial Egypt, “The colonial presentation of law as a conceptual structure brought from abroad performs the silencing of the actuality out of which property is made. But it is not just the colonial legal texts that produce this difference. The very act of colonial occupation produces it” (77). In BC, reserves became compartments to which Indigenous people could easily be relegated in order to clear up the rest of the land for settlers to develop (Harris 2002). This process depended upon well-established traditions of positioning the category of ‘Indian’ or savage opposite that of English settler subject. Settlers acting on behalf of the Crown or the colony “took European civilization, Native savagery, the superiority of colonial power, and the sovereign rights of colonizers to colonial land completely for granted” (Harris 2002, 6). Through this process, new geopolitical spaces—those of firmly demarcated reserves, towns, and spaces of resource extraction and production—were superimposed onto the former territories of Indigenous peoples, and their boundaries closely monitored and policed. Colonial power

operated in favor of settlers and the expansion of capitalist ideologies of empire, and law was used to construct, enforce and normalize power relations literally on the ground through separating 'Indian' spaces from settler spaces. Thus as materializations of the violent power of law, arbitrary boundaries became legal realities (Harris 2002, 271).

Indeed, the establishment of lawful spaces, and unlawful spaces, were central to the frontier landscape in which reserves emerged. In Blomley's (2003) analysis of the role the western geographic imaginary played in colonial violence, the frontier, the survey and the grid are exposed as central to processes of settlement. Blomley explains that the boundaries created around that which is deemed law vs. the violent world of nonlaw entails the inscription of "a *frontier*—which may be figurative, temporal and spatial" (124, emphasis in original). An imagined frontier was integral to implementing a regime of private property within the sovereign territory of Canada, and the simultaneous implementation of a regime of Indian reserves. This imagined frontier is also temporally bound, as Indigenous land tenure exists prior to its establishment, consisting of nomadic, temporary or otherwise uncertain claims to the land. Thus, the imagined frontier which brought delineated reserves for 'Indians' and western property regimes for settlers is made possible by imagining its spatio-temporal edges against which Indigenous claims exist. The frontier makes property and reserves necessary to bring order and lawfulness to the land, rendering violence to the space beyond the space and time of the frontier, or under the control of the frontier's logics. "Western notions of property are deeply invested in a colonial geography, a white mythology in which the racialized figure of the savage plays a central role" (Blomley 2003, 124).

However, despite the obvious racism underpinning the settler view through which reserves came to be formed, the history of BC is told in a particular way in order to minimize the violence and lawlessness inherent in its creation. Harris (1997) argues that smallpox is downplayed in historical accounts of BC's creation because this history threatens the narrative that European contact meant progress and improvement for the savages. The logics underpinning the reception of law in Canada can be traced to its roots in *terra nullius* and the doctrine of discovery, which naturalizes the categorization of Indigenous people as 'Indians' incapable of formulating their own law, thus hiding the violence inherent in their displacement.

The *Indian Act* of 1876 was another strategy to facilitate colonial expansion, providing a national legal foundation based on the assumption that Indigenous people were inferior to Europeans. A report of the Department of the Interior of the same year expressed this paternalistic and assimilationist philosophy that 'Indians' were to be treated as "children of the state" (Comack 2012, 70). This legal framework was established during a time when the goal was to assimilate 'Indians', to 'civilize' them, in order to eventually rid Canada of 'Indians' altogether. The dehumanizing inscription of 'Indians' as colonial subjects of Canada is evident in the lasting ways 'Indians' were given restricted legal rights and status. The *Indian Act* created categorizations and sub-categorizations of 'Indians', in a highly gendered system of stratification determined by the federal government. Replacing Indigenous peoples' existing systems of diverse identifications emerging within place-specific cultural worldviews, the *Indian Act* established one unitary way of defining who was and who was not an 'Indian' male and female within the cultural worldview of European settlers. Indigenous nations each had systems of gender and cultural identity enacted within their distinct worldviews – including non-binary gender roles that are now called 'Two-Spirit'. All 'Indians' were made to ascribe to this imposed system in order to count as legal subjects. The price of not counting was not having access to the rights and resources provided through the *Indian Act*, such as on-reserve housing, dental and health care, and education (minimal as these provisions might be).

Within this gendered system, Indian status was granted to 'Indian' men, women married to 'Indian' men and children of those men, thereby instituting a patrilineal definition of Indian status. Until 1985, non-Indigenous women gained status when they married status Indian men while Indian women lost status when marrying non-status men. My mother, who married my father in the mid-1970's has Indian status to this day despite the fact that she is not Indigenous and she divorced my dad over 30 years ago. The establishment of a patriarchal system of power and leadership was also introduced and enforced through the *Indian Act*, as only men could run for chief and council and only men could vote in band elections until 1951. Additionally, 'Indians' were denied the right to vote in provincial or federal elections until 1949 in British Columbia provincial elections, and 1960 in federal elections.

The *Canadian Criminal Code* was also used to create laws which were specific to 'Indians'. For example, a number of status offences applied only to Indigenous people, including the 1884 ban of the *potlatch* and the *tamanawas* (a healing ceremony), as well as the 1885 ban of the sundance (Comack 2012). In these examples, the laws of colonial Canada can be seen as rooted in Christian doctrine, as Indigenous spiritual and cultural practices that were seen as preventing conversion were simply made illegal.

The establishment of a new stratified system of colonial power relations required the actions of individuals to make these laws real through bringing meaning to emergent categorizations of 'Indians' and reserves. Indian agents and the North West Mounted Police (NWMP) were responsible for enforcing the word of colonial law, including the *Criminal Code* and *Indian Act*. Indian agents could in fact conduct trials anywhere in Canada (including off reserve) for *Indian Act* violations and some *Criminal Code* violations. Thus, Indian agents could ask police to prosecute Indians and then the agents themselves sat in judgment of those cases (Comack 2012). These legal technicians were integral to the civilizing mission of Canadian law, ensuring Indigenous peoples' submission to colonial rule (Comack 2012, 74). Armed with the violent technologies of law enforcement – a gun and a badge to go with it – police and Indian agents served to keep 'Indians', as colonial subjects, in line with settler priorities. The legal systems of Indigenous people themselves were effectively mapped over, although they remained (and continue to remain) alive and active through diverse strategies of resistance. One such strategy of cultural survival was to go underground and be unrecognizable to agents of colonial law. In one well known example from my own community, potlatches continued to be practiced out of sight, such as by wrapping gifts in Christmas paper in order to mask their real purpose.

In summary, the province of British Columbia and the country of Canada used both ideologies of European superiority and the actions of individual legal technicians on the ground to cement the new colonial vision of BC. Creating social relations in which these power relations were naturalized and seen as necessary for progress, law itself carries the mythical power to enforce its own vision as truth. Canadian law bulldozed over pre-existing Indigenous geographies, yet Indigenous jurisdiction was never ceded. Rather, Canadian legal representations of space came to be given certain performative power through the violence of law, where Indigenous spatial representations continued

to be lived upon the land but were not successfully performative. In other words, while Indigenous people's socio-legal practices of living their obligations and relations within their traditional territories continues to this day, the spatial relations they produce remain unrecognized within dominant operations of power.

Thus, as I have outlined, law was not only used to empower and enforce colonial worldviews but was in fact constitutive of colonial ideologies, categories, and spatial imaginings. The existence and nature of law itself, as a civilizing system, was at the heart of colonial subjectivities which set colonists apart from Indigenous people and turned them into 'Indian' men and 'Indian' women, gendered and racialized subjects of colonial rule. Indigenous people were constructed as a racial group incapable of having systems of law, because Indigenous legal systems were not recognizable as law to settlers. As I will explore in the next section, conceiving of 'law' in terms which did not include Indigenous law allowed for the lands of Canada to be conceived as empty in the doctrine of *terra nullius*. Indigenous people essentially disappeared in the process, as their lands were envisioned as void of legitimate legal subjects. As 'Indians', Indigenous people became residents of spaces which were legally delineated as reserves, though any place where they lived within Canada were subject to federally defined categories, and could thus be imagined as 'Indian' or 'reserved' space to justify government intervention. Further, this imaginary served to render invisible Indigenous territorialities and to neutralize their threat to Canadian sovereignty. As I will show, this fundamental differentiation between Indigenous law (or lack thereof) and Western law, and the subsequent categorization of Indigenous people as 'Indians' under Canadian rule, is still foundational to socio-legal relations in BC today.

3.2 Empty land and the doctrine of discovery

Simply put, the law creates reality that is real because it has been created by the law. (Culhane 1998, 65)

As I have discussed, reserves and 'Indians' are legal and social categories which are ontologically linked, and inherently co-constitutive in their definition and regulation

through the federal *Indian Act* and their everyday use by Canadians. Embedded in these concepts are racist ideologies which justified and legitimated colonialism in the first place, positioning Indigenous people as inferior to Europeans. The myth of European discovery of Canada embedded in Canadian law perpetuates the myth of inferiority of Indigenous peoples (Borrows 2010), categorizing 'Indians' as incapable of governing themselves and incapable of formulating law. This categorization of 'Indians' as the racialized subjects of European settlers was integral to the formation of reserves. As Cole Harris (2008) writes, "Had Natives been treated as people, rather than as Indians, there would not have been reserves" (157).

Indigenous peoples' relationships to the Canadian state have been shaped by the imposition of a Canadian legal system which has rendered Indigenous legal practices all but invisible. "In Canada, the law has often layered itself over pre-existing Indigenous legal landscapes, concealing this previous existence" (Borrows 2010, 68). The Canadian legal system has been used to entrench colonial power relations between Indigenous peoples and the Canadian government, and has shaped all aspects of Indigenous peoples lives. So while Canadians largely take for granted the neutrality of Canadian law and governance, Indigenous people's experiences reflect the culturally-specific, power-laden nature of law. Discourses about 'Indians' embedded in Western legal discourse can be understood as legitimizing, energizing and constraining roles of power in the violent conquest of 'The New World' (Williams 1990). In order to imagine the lands of Turtle Island, and other parts of the world, as available for settlement, they needed to first be cleared of any legal 'owners'. Religious and racial ideologies were utilized in creating ideas of European Christians as fundamentally different from Indigenous peoples, who were imagined as unable to formulate their own legal orders. Through this racial categorization of non-Europeans, meaningful legal status was denied to Indigenous people because 'heathens' and 'pagans' were seen as lacking the rational capacity to exercise equal rights under the West's medievally derived law. In this way, the category of Indian 'other' was formulated in opposition to that of civilized, Christian European settlers. Conquest of their lands was constructed as morally just because it was done in the name of God. It was also seen as being carried out for the 'heathens' own good, because they were in need of being converted to Christianity.

The legal codification of these racial categorizations can be traced back to the decrees of Popes that allowed Christians to use “a vanquishing violence” (Frichner 2010, 9) to claim lands belonging to non-Christians in perpetuity within a framework of dominance. The 15th century law of Christendom stated that discovery gave title to assume sovereignty over, and to govern, lands of Africa, Asia, and North and South America. This principle, now known as the doctrine of discovery, has been recognized as a part of international law for nearly four centuries and is integrated into political and judicial texts the world over.

Empire’s rule of law thus begins with the doctrine of discovery and its discourse of conquest, which naturalizes the concept of *terra nullius*, or empty lands, while denying fundamental human rights and self-determination to Indigenous peoples (Williams 1990, 325). Together, these ideas created the mythology around which the Canadian legal order was founded:

Within this ideology, human beings can be considered, legally, not to exist, and can be treated accordingly. At this most fundamental, common sense level, a study of British and Canadian law in relation to Aboriginal title and rights therefore begins not ‘on the ground,’ in concrete observations about different peoples’ diverse ways of life, but rather ‘in the air,’ in abstract, imagined theory. Hovering, like the sovereign, who embodies this abstraction, over the land. (Culhane 1998, 49)

The racially based doctrine of discovery is not only at the heart of justifications for the theft of Indigenous territories, but fundamentally denying Indigenous peoples’ humanity. Institutionalization and depoliticization of the doctrine of discovery lies at the root of violations of Indigenous peoples’ human rights, both individual and collective (Frichner 2010). The United Nations Permanent Forum on Indigenous Issues calls this holistic structure the Framework of Dominance (Frichner 2010), claiming it is responsible for centuries of dispossession and impoverishment of Indigenous peoples.

Originating in legal rationales of the middle ages, this mythology has been encoded in Canadian law as well as nationalist stories about Canada’s legal foundations. In colonial societies, law is presented as “the opposite of violence, exception, arbitrariness, and injustice, yet somehow these features [are] all incorporated within it” (Mitchell 2002, 77-8). This presentation of law and legal actors as non-violent

arbiters of justice is evident in the narratives told in history books, in which the NWMP are portrayed as aiding natives, bringing law and order to the West (Comack 2012). These stories comprise the foundational Canadian national mythologies, which are naturalized in the concept of *terra nullius* in which the lands of Canada were empty of civilization before settlers arrived here and brought the rule of law with them.

Yet, as Indigenous peoples, legal scholars and others have argued, by imposing a system of governance within the European tradition, Canada has subjugated Indigenous rights to Canadian values, imposing a culturally-specific form of governance on Indigenous peoples (Alfred 2001). Consequently, material realities of colonialism are extensions of a racist discourse of conquest that at its core regards Indigenous peoples as normatively deficient and culturally, politically, and morally inferior (Williams 1990, 326). Moreover, legal categorization of 'Indians' has underpinned Canadian policies which seek to assimilate Indigenous people in to Canadian society 'for their own good' while stripping them of their political and individual agency. As Williams (1990) writes, "Animated by a central orienting vision of its own universalized, hierarchical, position among all other discourses, the West's archaic, medievally derived legal discourse respecting the American Indian is ultimately genocidal in both its practice and its intent" (326). Principles generated by this discourse of conquest continue to be used to deny Indigenous nations the ability to govern themselves according to their own vision. By categorizing Indigenous legal practices as 'cultural beliefs' and Canadian law as 'truth', Indigenous peoples continue to be legally constituted within these foundational ideologies emerging from the doctrine of discovery (Monture-Angus 1999, Culhane 1998).

Through tracing this history of legal rationale and its integration into policies governing the lives of status Indians, it becomes abundantly clear that law is not neutral but is itself violent in a multitude of ways. And law is violent in specific ways in colonial relations. The violence of law is concealed through ideological and material processes of naturalizing unequal rights for 'Indian' men and 'Indian women, and reinforcing the categorization of 'Indians' as 'other'. Williams (1990) argues that "law, regarded by the West as its most respected and cherished instrument of civilization, was also the West's most vital and effective instrument of empire during its genocidal conquest and colonization of the non-Western peoples of the New World, the American Indians" (6).

3.3 Emergence of the colonialscape

Having traced the history and ideological work of *terra nullius* and its codification in Canadian law, as well as the materialization of colonial legal geographies in the creation of Indian reserves in BC, it is useful to now ask what ideological shifts happened in the movement from imagining Canada as *terra nullius* to materializing reserve and non-reserve spaces. 'Indians' went from being constructed as heathens in an empty, lawless land to subjects of federal law in a settler society which relegated 'Indians' to Indian reserves. What kind of ideological work was accomplished in this move from imagined empty land to imagined reserve and settler spaces? How did the categorization of 'Indians' shift? How did the gendered nature of these colonial categorizations impact Indigenous men and women differently? I argue below that 'Indians' are now imagined as subjects of the reserve, carrying this mobile spatial status with them regardless of where they travel within Canadian borders. This is accomplished within the federal reach of the *Indian Act* and *Criminal Code*, as well as the acceptance of Canadian law itself as the supreme law of the land, as 'Indians' are continually at risk of being transported to the reserve through justice wormholes (Osofsky 2008) in which their rights can be denied. I draw on the concept of landscape here, and its recent adaptation to describe 'securityscapes', in developing the concept of 'colonialscape' through which we might understand the interrelated spatial rationales of *terra nullius*, the frontier and reserves.

There are several approaches one might take to make sense of the relationship between imagined Indian space and its materialization in the everyday lives of Indigenous people as subjects of these spaces. Building on Harris's (2008) argument that Indian reserves would not have existed had 'Indians' been seen as human, I would argue that Indian reserve geographies have since produced a different kind of imagined 'Indian' subject emerging through the realization of the reserve itself. As such, there are multiple imaginaries at work, capable of producing 'Indians' as colonial subjects within nested legal rationales which underpin BC's geopolitical relations. Reserve geographies are produced within the rationale of *terra nullius*, and in relation to the imagined frontier, which are all at work under the spatialization of contemporary socio-legal relations. I find this examination of imagined and material geographies useful in understanding the

normalization of violence, as we can see how reserves are produced as spaces of assumed violence, while 'Indians', inherently 'of the reserve', are produced as subjects of this naturalized violence. 'Indians' can thus be understood as 'reserved subjects', as their spatio-legal subjectivity travels with them anywhere within the boundaries of Canada. The reserve, in essence, can be imagined and produced anywhere within national borders – anywhere naturalized as 'Canada' through the doctrine of discovery. This argument rests on the assumption that 'Indian' is not a static legal category, but is constantly made and remade through spatially and temporally specific socio-legal relations. Thus, a spatial analysis helps us to see how 'Indians' are not merely subjects of the federal *Indian Act*, but are produced within the realization and naturalization of reserves as both material and imagined "Indian space" to which 'Indians' can be transported throughout all of Canada.

In understanding how reserves function within the colonial imagination, I find the concept of landscape to be useful. A central theme of cultural geography, landscape has been taken up and defined in various ways over the past several decades. Exploring the productive tensions within studies of landscape, Wylie (2007) recounts that the cultural turn in human geography in the mid 1980s-1990s saw landscape being defined "less as an external, physical object, or as a mixture of 'natural' and 'cultural' elements, and more as a particular, culturally specific way of seeing or representing the world" (13). Representations of landscape—of a particular physical space and its cultural overlay — may be understood as expressions of cultural, political and economic power which are central to local and national identities.

In *Lie of the Land*, Mitchell (1996) explores the connection between the material production of the California landscape and the production of landscape representations, through tracing the reproduction of industrialized agricultural workers' labor. Mitchell explains that the connection between their work and the imaginary through which this work and its products become knowable comprise the making of the California landscape. Mitchell goes on to describe the ways in which 'landscape', like 'culture', 'nature' and 'nation', become integral to naturalized discourses which underwrite the legitimacy of dominant relations of power: "the more the word landscape is used, the greater its ambiguity. And the greater its ambiguity, the better it functions to naturalize power" (2). I would like to suggest here that in the context of settler societies like Canada

and the USA, these relations of power being naturalized are explicitly colonial in nature. Mitchell examines landscape as both a material thing and a representation of that thing to understand relations of labor in California in which the marginalization and resistance of agricultural workers is rendered invisible. Here, I similarly examine colonialsapes as both the embodied, material conditions of violence in Indigenous peoples lives and the representations through which this violence becomes knowable, and thus naturalized as integral to the maintenance of the nation.

Colonialsapes, then, might be understood as representations of the space now called 'Canada', which perpetuate and manifest particular (colonial) expressions of power. Such representations take not only visual forms (such as maps, paintings or photographs of 'Indians') but also textual (legal) forms within which western ontologies of space, race, gender and power are embedded. Just as landscapes appear to create a complete view of a particular space, colonialsapes create the appearance that a colonial spatio-legal perspective of 'Canada' is somehow 'true'. Colonialsapes thus cover over other spatial relations and representations, as the colonial view blankets over these prior and deeper spatial orders. The concepts of *terra nullius*, the frontier and Indian reserves (and their outside, non-reserve spaces, cities, and so on) are culturally rooted ideas which together form a colonial way of seeing the Canadian landscape. As representations of the colonialscape, Indian reserves reinforce the underlying power relations which naturalize settlement, and hide Indigenous ways of living in relation to the land in ontologically distinct understandings of space. Further, the spatial representations which make up the colonialscape have been given material significance through legal and social enforcement. In this research, then, when I talk about colonialscape logics, I am speaking of the underlying categorizations and representations of *terra nullius*, 'Indians', Indian reserves, the frontier and so on, which together form a coherent logic which naturalizes colonial power relations. Importantly, I am also speaking of the spaces of settlement which form their outside: the city, civility, spaces of progress and resource extraction are all naturalized through the colonialscape as that which is not Indigenous.

In the colonialscape, reserves become the natural space of 'Indians', as Indigenous territorialities are rendered an impossibility in order to facilitate the reception of Canadian sovereignty. Indian reserves were first imagined as a space in which to

contain 'Indians' and to neutralize their potential claims to the lands of North America by enfolding them as subjects defined through the jurisdiction of the Canadian state. The category 'Indian' is spatialized in the form of Indian reserves, which were first imagined and then materialized by technicians of Canadian law, expressed in legal text, and realized in the form of physical force and control. However, today, Indigenous people are no longer contained, by force or by choice, to Indian reserves. I contend here that the 'problem' of Indigenous territorialities continues to be erased or neutralized within the colonialscape by imagining 'Indians' as residents of reserve spaces no matter where they travel. In the discussion that follows, I will show how 'Indians' are transported "to a different spatio-temporal configuration" (Osofsky 2008, 118) through justice wormholes to spaces where violence is expected and naturalized, in situations of interpersonal violence. The violence of law is spatialized through colonialscape logics to transport 'Indians' to a space in which justice is hard to come by.

As this research will show, Indigenous people are turned into 'Indians' and residents of 'Indian space' not only through the *Indian Act* or *Canadian Constitution*, but through the everyday actions and logics of networks of Canadian legal technicians. These spatial logics are not only racialized but are also gendered, as ideas about the proper place of 'Indian' women underpin the type of targeted sexualized violence experienced by Indigenous girls and women, as well as responses to this violence by officials of Canadian law. These actions are further normalized through socio-legal discourses which emerge from, and sustain, the colonialscape. In her study of the role of 'Indianness' in the transit of US imperial history, Chickasaw scholar Jodi A. Byrd (2011) argues that "Indianness can be felt and intuited as a presence, and yet apprehending it as a process is difficult, if not impossible, precisely because Indianness has served as the field through which structures have always already been produced" (xviii). It is not the reserve that is ubiquitous, then, but the colonial imaginary, which is based on Indigenous erasure.

The processes and logics underpinning colonial socio-legal relations are depoliticized through dominant ways of seeing the nation of Canada. The realization of the grid, explicitly a regime of property (Blomley 2003, Delaney 1997), entailed the violent displacement of Indigenous peoples in order to physically empty the land upon which the grid could be materialized. Not only were Indigenous people themselves

displaced in the process, but by imagining the lands through the grid, Indigenous peoples' cultural, political and legal systems of meaning were rendered invisible or inconsequential. Rather than speaking of a bend in the river as connected to a particular ancestor or story, that place where land meets water became merely one part of the larger whole of Canadian lands opened up for ownership, exploration and settlement. However, within the a-historical, depoliticized colonialscape, the fractured geography of Indian reserves is neutralized, and their historical socio-legal construction within processes of colonialism is rendered invisible. This spatial imaginary can be put to work at any given time in order to produce colonial relations in which settler society can prosper. Various kinds of violence are naturalized and rendered invisible through this colonial ordering of space. Resting on a naturalized imaginary in which 'Indians' are subjects of reserves, and on a legal framework through which 'Indians' are subject to the *Indian Act* anywhere in Canada's borders, the reserve is always an emergent possibility. Anywhere and everywhere is *terra nullius*, as the empty lands imaginary can be seen as underpinning natural resource acquisition throughout northern BC, as pipeline routes, fracking, and other extraction are shown to be occurring on unused or uninhabited lands. Indigenous resistance to this development has made visible the ways that the lands are actually in use and are inhabited by Indigenous nations, although it may fail to 'matter' within legal processes.

Within colonialscape logics, as the violence of displacement is rendered invisible, violence against Indigenous women is also made to be invisible in their gendered and racial construction as reserved subjects. Together the colonialscape works dynamically to produce 'Indians' as subjects of spaces which they fail to fully occupy, claim, or govern: their lands, their homes, and their bodies. For example, the violence of tearing children from their families and homes is seen as necessary, as 'Indians' themselves are constructed as incapable of caring for their own children. The violence of taking children to residential school is justified in this same way, through a rhetoric of care within an imagined colonial view.

As scholars have argued of the Downtown Eastside of Vancouver, the logics of the reserve and the frontier are used to naturalize widespread neglect, as well as processes of gentrification. Colonial BC was described in the same ways the Downtown Eastside is today, as empty and ready for development: "the characterization of life in

the Downtown Eastside as 'degenerate' and as 'waste' is an old frontier trick remade for a contemporary moment (Dean 2010, 123). Gentrification might be understood as a new word for conquest, as it uses a similar discourse to claim jurisdiction over Indigenous territories in the name of progress. In representing the Downtown Eastside as the frontier, Indigenous people, sex workers and other residents fail to adequately claim or occupy this space.

On the other hand, law can be used to create spaces where violence by Indigenous people is made hyper-visible, as "law constructs boundaries between legitimate and illegitimate violence and produces sociospatial zones in which violence is tolerated" (Sanchez 1997, 547). Blomley (2003) explains "Gendered violence is also understood legally in relation to the grid, with the law differentiating violence against women to the extent that it is coded public or private" (132). Lisa Sanchez's (1997) analysis of spaces of the sex trade recognizes that violence needs a space and the law provides for it by creating spaces where violence has no witness. Reserves are also such spaces. And yet colonial law can be used within any space – urban, rural, reserve, non-reserve – to create a space where violence against Indigenous people has no witness. I suggest this is not only because reserves are physically and socially isolated from mainstream Canadian society, but also because Canadian legal actors are unable to 'witness' this violence due to the inability to recognize violence against Indigenous people, given their primary socio-legal construction as 'Indians'.

Thus, although I agree with many aspects of Razack's (2000) analysis of how the murder of Pamela George was handled in the courts, my analysis differs in significant ways. Razack claims that as an Indigenous sex worker, Pamela George was "considered to belong to a space to which violence routinely occurs, and to have a body that is routinely violated" (93). Although Razack calls for Pamela George's location in this space to be connected to colonial dispossessions, I would argue that Pamela George's murder would have been naturalized in any space within Canada, not only the inner city spaces of prostitution. If Pamela was murdered in her home, would she have a better chance of justice? If she was found on the side of a remote highway or on a college campus, would she, as an Indigenous woman, have found 'justice' within Canadian law? I would argue, no. Given the prevalence of violence against Indigenous women – children, adults, students, elders, sex workers, homeless, transient, and

professionals—there are no spaces within Canada where violence against us is rendered problematic. Yet it is useful to understand the specific spatial and legal mechanisms through which this violence is naturalized through transporting ‘Indians’ through justice wormholes, as various jurisdictional mechanisms and individual legal technicians work together to continually constitute Indigenous people as unworthy of justice across diverse settings. Such are the manifestations of colonialscape logics in ongoing settler colonialism. Although ‘spaces of prostitution’ are indeed constructed as zones in which violence against women is justified through the stigma against sex work, the whole of Canada is rendered as a zone in which violence against Indigenous people is justified, and indeed, necessary. It is not enough to see these as connected, but we must see these spatialized legal relations as interrelated such that the violence against sex workers and the violence against all Indigenous people stems from the same socio-legal relations: simply, our dehumanization.

Thus, being made a subject of ‘the reserve’, emerging within the logics of the frontier, means that you are produced as a specific kind of legal subject – an ‘Indian’, against whom violence is naturalized. These logics can be mobilized to justify violence in the Downtown Eastside as easily as in a remote highway or logging road in northern BC. Reserved subjects are of a time and place in which police negligence or excessive force is routine. ‘Indians’ do not have the capacity to make decisions for themselves, and, as failed legal subjects, are not reliable witnesses. Investigations into violence against Indigenous women can be seen as produced through the spatial relations of the reserve. Any space, not only the Downtown Eastside, can become a space of exception. Reserves are spaces of exception and anywhere can become the reserve. In court cases, this can be seen at work when the validity of testimony made by young women is called in to question. Indeed, this is a reason why many cases fail to get to court in the first place. It is up to police to gather evidence, and then Crown Counsel decides whether or not there is enough evidence to press charges. In my work on violence over the years, I repeatedly heard that cases did not get to court because young women or boys were said to be unreliable witnesses that would not stand up to cross examination. Maybe they were drinking or they have a history of sexual abuse which will be triggered and cause them to cry under questioning. Maybe their mother is a drug addict and none of the family can be seen as credible. Maybe that young woman is known to police for

working on the streets herself or has been in trouble with the law. Or maybe they are just plain 'Indian', and 'Indians' cannot be trusted.

In logics of the colonialscape, the naturalization of violence on reserves entails a certain kind of temporal warping, as reserves are always stuck in the past, beyond the realm of progress. Their inherent violence and neglect remains unchanged. As subjects of the reserve, 'Indians' are also stuck in the past, forever at risk of being transported to these spaces in which justice cannot be achieved. As Linda Tuhiwai Smith (1999) discusses, Western concepts of space and time are encoded in language, philosophy and science – and, socio-legal scholars would argue, in law. Western conceptions of space “have meant that not only has the indigenous world been represented in particular ways back to the West, but the indigenous world view, the land and the people, have been radically transformed in the spatial image of the West” (51). While the rest of BC was opened up for 'development' or settlement, moving forward through time, reserves remained outside these zones of 'progress'. Some efforts to move reserve economies in to the future, such as through selling land, can be seen as attempts to reimagine reserve spaces as enfolded in to the time and place of modern Canadian socio-political relations

The colonialscape covers up the ways in which reserve economies and politics are produced through policies and programs of neglect. They were never set up to thrive, but to make themselves obsolete by getting rid of 'Indians' altogether. Byrd's (2011) analysis of U.S. empire is useful here, as she contends that “ideas of Indians and Indianness have served as the ontological grounds through which U.S. settler colonialism enacts itself as settler imperialism” (xix). Here, I aim to provide a geographically based analysis of the way Indianness leaves indigenous people “everywhere and nowhere” (Byrd 2011, xix) in the Canadian colonialscape, contending that justice wormholes can be configured through various spatio-legal mechanisms to reproduce reserves and perpetuate the erasure of Indigenous territorialities.

Geographic boundaries around reserves themselves are also materially significant for Indigenous people in BC. An examination of the daily life of reserve residents reveals the impact of their fractured social and geographic isolation. There are a number of small reserves in the area around Williams Lake, where I travelled as a consultant working with Victim Services to support a project to assist in the development

of programs for local youth. None of the surrounding reserve communities had high school available, so young people had to travel to Williams Lake for school. Many of these students lived in Williams Lake, apart from their families, reminiscent of residential school days. Isolated from familial supports, I heard that some of the youth had become involved in gang activity, and many dropped out of school. Driving to one of the nearby reserves, I was struck by the lack of buildings of any kind along the small roads, and the total isolation of these communities. We approached a cluster of buildings and a cross road that indicated we had arrived 'somewhere'. But for young people living there, it was obvious how the lack of educational opportunities and lack of jobs emerged directly from the isolation and lack of resources within the reserve itself. The only jobs available seemed to be at the band office, which was a new building of only a few rooms. While isolation may be desired or beneficial for some Indigenous people as a way to maintain traditional land use and connections to territory, we know that reserve geographies in BC often do not match up with Indigenous territorialities.

These realities of isolation are out of sight, out of mind for most Canadians, including the government officials making decisions about services for reserve residents. Rather than seeing that low employment, high suicide rates, high alcoholism, and high drop out rates emerge within a set of constrained opportunities for young people, 'Indians' are just seen as lazy welfare bums, trouble makers and violent offenders. Thus, more government intervention is justified because of 'Indians' failure to succeed, and the negligence of the reserve geography itself is rendered invisible.

The embodied realities that are erased through the naturalization of the colonialscape are illustrative of the underlying Indigenous socio-legal relations which cross over reserve boundaries. Although tethered to reserves through the *Indian Act*, Indigenous people are indeed mobile, and more and more natives in BC now live off reserve. Indigenous people often move between reserve and non-reserve spaces in their daily life both in order to access services and to maintain family relations. In tension with their legal subjectivity as 'Indians', Indigenous people have maintained and sustained their own legal subjectivity through activations of cultural, legal and political systems that were here prior to settlement. Although these legal relations may not be visible within the terms of Canadian law, they are productive of categories of knowledge and identity which are lived in tension with those of the colonialscape under Canadian law.

Some have argued that the very representational tools used to naturalize colonialscape logics—such as gridded maps—can be used as tools of resistance which express active Indigenous spatialities. Sparke (1998) writes that maps can be used to “dim the violence of displacement” (485) yet can also provide sites in which surviving and continuing Indigenous territorialities can be represented simultaneously with those of colonialism. In a study of Indigenous politics in urban Australia, Jane Jacobs (1996) draws on Said in stating that anti-imperialism efforts are geographical because the imperial project entails acts of geographical violence. “For the colonized, insurgency is in part a search for and restoration of place lost” (150). Maps, as expressions of the cartographic vision of the world, can be reclaimed by Indigenous peoples in representing places in a hybrid vision using a spatial narrative that can be widely read, yet “unsettles the comprehensive hold of colonial constructs” (Jacobs 1996, 151). Sparke (1998) calls this remapping an example of “contrapuntal cartographies” (467), bringing together the dominant colonial discourse and other, older histories against which the dominant discourse acts. In the terms of this research, I understand this dual mapping as a spatial representation of legal pluralism.

Indigenous geographies are productive of another imaginary and diverse legal relations which produce legal subjects spatially rooted in Indigenous worldviews. These subjectivities are not temporally or spatially determined by the *Indian Act* nor the jurisdictional reach of the Canadian state, but emerge within relations which reach back prior to Canada’s formation. If we understand the colonialscape to cover up the violence of Canadian law, and to naturalize bodily violence against Indigenous people by constructing them as reserved subjects, making interventions into the colonialscape is one possibility for shifting norms around violence. What spatial imaginary is put to work under the inherently plural vision of Indigenous law?

The texture, shape and potential of pluralistic law in BC, particularly its anti-violence strategies, are explored in the chapters that follow. In particular, how might our definition of violence change if we do not separate the violence of erasure central to ‘Indians’ and ‘Indian space’, and the embodied violence naturalized within these categories? Although the land was imagined as empty, and made to be legally empty, we know through Indigenous peoples lived experiences, oral histories and legal

relations, that the land was not empty. It was, indeed, rich with life. Life that goes back to time immemorial, not back to the date of Canada's formation as a state.

Despite the ways in which the violence of Canadian law reproduces Indigenous peoples' dehumanization, we continue to turn to the criminal justice system and changes in legislation, in situations of crisis. Although the utility of Canadian law and recognition within normative legal categories have been examined in relation to land claims, cultural knowledge and other issues of collective and personal rights, I now turn to examining its utility in cases of interpersonal violence. In the next chapter, I discuss several cases in BC in which violence against Indigenous women and girls, men and children has become visible within Canadian social and legal discourse, resulting in court cases, inquiries and the creation of new governmental monitoring tools. I describe how this recognition is achieved and how legal actors and systems respond in light of this recognition. In doing so, I aim to highlight the interpersonal level at which colonialscape logics are manifested in the everyday lives of Indigenous people, as they seek justice within systems that continue to transform them into subjects of reserved spaces in which violence is expected. In these examples, it becomes clear that colonialscape logics serve to naturalize violence in urban streets, remote highways, and private homes, indeed, anywhere an 'Indian' body might turn up.