Winter's Topography, Law, and the Colonial Legal Imaginary in British Columbia

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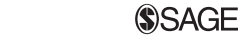

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Abstract

This article examines how images of nature, weather, and topography disclose a politics of recognition (who is visible/invisible) invested in a burgeoning criminal justice milieu, where punishment of wrongdoing became increasingly racialized in British Columbia during the early confederation period of Canada's history. Drawing from archived court documents and colonial writing, it examines dominant environmental metaphors and tropes that structured this politics of recognition within the colonial legal imaginary. I argue that images and understandings of topography, nature, weather, and seasons shaped the background enactment of law in early Canadian lawmaking practices. By examining these natural tropes, this article seeks to understand the contours of a contextually specific colonial legal imaginary as a vital component for entry into the criminal justice system. This colonial legal imaginary predisposes certain groups, and particularly Indigenous peoples, as subject to the constraining power of law, thereby fueling the growth of crime control industries over the last 150 years.

Keywords

nature as metaphor, law, crime, seasons, colonialism, accusation, politics of recognition, punishment, racialized wrongdoing, coloniality, Canadian law, Canadian lawmaking, codification, metaphors, natural tropes, colonial tropes, environmental metaphors

Introduction

On April 25, 1879, members of the Anderson Lake Indigenous community (St'át'imc peoples) travelling along the Douglas wagon road saw smoke billowing from behind the trees in the direction of what they recognized to be the residence of Thomas Poole. A prominent settler and tender of a roadhouse in the Pemberton region of British Columbia, Poole had maintained good relations with the St'át'imc community. The rising plume of smoke caught their concern as they changed course to check on the family. They approached to find the house in a smoldering ruin and the badly burnt bodies of Thomas Poole and his daughter in the potato cellar. Immediately, the group sent one of the younger members to the nearby Anderson Lake community to raise the

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alarm and summon the nearest police officer, Livingston. When he reached the community, they were told to cross the lake in a canoe to where the constable was stationed. What happened after this point involved a long-drawn-out series of trials that consisted of many accusations. The trials lasted approximately 12 years, with no one being charged unequivocally with the crime.[1] Yet, this event is significant because it speaks to a number of important themes within early Canadian law and its development: the importance of colonial law to the early period of Canadian confederacy (1849–1871); how Canada established sovereignty over a vast area consisting of many different Indigenous communities and nations; and what the settler colonial society "thought" about the project of establishing Canada.[2] We might call this complex of themes the "colonial legal imaginary" for the images, ideas, philosophies, hopes, and dreams that the colonial regime had about their developing nation.

This case, buried deep in the BC Provincial Archives and all but lost to history, has nevertheless written its mark on the region. First, the few settlers that were in the Pemberton region during the 1870s left the area. Second, the subsequent investigations reached the limits of law in a territory that was difficult to navigate, let alone police: the investigations inaugurated manhunts traversing treacherous and mountainous terrain searching for a spectre of criminality never to be found. Surprisingly, my research into this case has shown that the interaction between the law and seasons exemplified the limits that settlers sought to overcome, such as difficulties of weather, geography, and space, and their relationship with Indigenous people. This article explores these limits of early Canadian colonial law through the trope of winter—a legal impasse that the manhunts sought to overcome, just as law sought to overcome the limits of land and culture at the juncture of the colonial encounter.

I argue that embedded within the way that policing occurred during the early era of confederation in British Columbia was a pattern of exclusion and criminalization of Indigenous people that lies as the backdrop for contemporary policing practices. My project asks how a contextually specific legal imaginary comprises a vital component for entry into the criminal justice system and predisposes certain groups of people as subject to the constraining power of law. Many images in archival records exhibit how the encounter of European settlers and Indigenous populations was contoured by the English colonial project to conquer what they saw to be uninhabited wilderness. As such, images and perceptions of nature are significant when evaluating how law was introduced into British Columbia. To do so, I examine how images, experiences, and writings about nature, landscapes, seasons, and weather form the foundation of early Canadian lawmaking practices. My analysis of dominant seasonal and environmental tropes that structure legal imaginaries reveals the different ways that Canadian law helps to structure inequalities (by introducing prejudices into policy) that result in the disproportionate incarceration of Indigenous peoples.

In the following sections, I detail a short history of the relationship between nature and law by focusing on two distinct paths of sociological understandings of crime, that of positivist and antipositivist perspectives. Within these perspectives are significant differences in how we can move to a more critical evaluation of the understanding of nature as a social creation. I argue that how we view nature has implications for how we view and interpret crime. Viewing crime through a biological, organic, or genetic perspective has very significant consequences for how we govern, develop policy, and understand differences between people in society. By taking an antipositivist approach, we can see the history of "difference" and challenge how we have historically excluded people from society. The next section explores in more detail the Thomas Poole case to show (1) the significance of seasons and particularly how winter challenged law, and (2) how this experience of the weather is contoured by certain interpretations of people within Canada (both settlers and Indigenous peoples). Finally, I provide a reading of Canadian colonial adventure literature to show how these images of nature reflect discursive motivations for bringing "English" law into Canada.

Nature, Law, and the Nature of Law

The initial attempt to think through the relationship between nature, seasons, and crime was made by Cesare Lombroso (1835–1909), often credited as the father of criminology. Lombroso attempted to show that criminal behavior is directly linked to nature—both the *nature* of people and the natural environment. For Lombroso, criminality was reflected in the anatomy of the individual. The size and shape of skulls, the size and shape of bodies, and congenital differences could all be interpreted as factors that indicated the individual's propensity for criminality. Like many social scientists of his time, Lombroso believed in social Darwinism, a school of thought that suggested that natural selection occurred not just in nature but also in human societies. For social Darwinists, this process of natural selection meant that human societies inevitably improved—that is, become more civilized—over time as less desirable traits receded to make way for more sociable ones. In that vein, Lombroso believed that criminals were genetic throwbacks to a more savage time (Lombroso & Horton, 1968). Hence, in his famous text titled *Criminal Man* (Lombroso, 2006), he wrote "Born criminals, programmed to do harm, are atavistic reproductions of not only savage men but also the most ferocious carnivores and rodents" (p. 348). Clearly, Lombroso did not think well of people who committed crimes, but more significantly, he espoused racist views that were in line with a particular form of social Darwinism, this being the eugenics movements of the turn of the century. Eugenics became a significant movement of social engineering across the world—to the extent that sterilization policies were enacted in Canada and the United States—and influenced the Nazi regime to believe that they could engineer a perfect race through genocide (Barrett & Kurzman, 2004). These are clear examples of how broad perceptions of people influence policy and formalize patterns of marginalization and exclusion.

Lombroso was also interested in the relationship between the natural environment and crime. He studied the effects of geography and climate on crime rates, and suggested that there is a relationship between crime, temperature, and seasons. For instance, he found that murder, political crimes, and revolutions occur with greater frequency during the hottest months because of, as he put it, the greater "sensuality" that occurs during warmer seasons (Falk, 1952, p. 202). In early criminological literature (beginning in the mid-19th century), there is a persistent understanding that there is a causal relationship between seasons and crimes. Put another way, an organic or biological perspective of crime suggests that criminality is located in the body and in the "nature" of the individual. As a way of explaining cause, Lombroso and others argued that seasons impacted people's biology, causing a variation in the kinds and intensity of crimes committed thereby suggesting there is a strong physiological relationship between crime and weather, and consequently crime and seasons. Thus, the positivist school shows a preoccupation between an understanding of physiology, metabolic increases, and needs and that of criminal behavior and sex crimes (Falk, 1952, pp. 212–213).

Another way of understanding the relationship between law and nature is not to see them in a causal relationship to each other, but rather to understand them as social creations. From a constructionist or antipositivist perspective of crime, lived experience should be understood to be fundamentally social. Thus, nature functions not as the ground and truth (physical cause) of this experience, but as a metaphor in our consciousness in terms of how we explain things in the world. We can experience nature, but only through the linguistic and knowledge-based categories that give shape to our experience. In other words, "nature" functions as "discourse" that is shaped historically through the different fields of knowledge, disciplines, or truth discourses. That is, in order to understand the relationship between the seasons and crime sociologically, it is important to understand the manner in which both are produced through social and political ideas that are situated in history and generated through social interaction. Fundamentally, we need to disconnect both nature and law from essence, from understanding nature and law as "things" that have

specific kinds of "beings" in and of themselves. Instead, we need to understand them as a continually productive set of symbols, relations, connections, and networks that exist as structuring potentialities that contribute to how we navigate the world we inhabit. Nature, then, in our understanding of it as a "becoming" (Nietzsche, 1994), allows us to see its "history," its contingency, and how it is meaningful to human actors. By extension, if we can interpret something that we typically understand to be "fundamental" and "natural" as social, discursive, and constructed, then we can interpret law in the same manner—as generated in the mess of human action and interaction. As Giambattista Vico (1668–1744), an early enlightenment Italian philosopher and one of the first to introduce an antipositivist theory of knowledge, once said, "to apply the geometrical method into practical life is 'you would no more than spend your labor on going mad rationally', and you would drive a straight furrow through the vicissitudes of life as if whim, rashness opportunity and luck did not dominate the human condition" (Vico, 1988; 98–99). Similarly, from an antipositivist perspective, understanding meaning frameworks, symbols, images, and discourses is critical for framing how to understand the significance of law and crime—without relying on the metaphysical necessity of explaining away transgression and difference or finding universal principles and laws that formalize negative perceptions of differing people and demographics.

Murder and Winter

A first step in capturing the significance, or meaning, of winter and seasons in relation to law and crime is to examine actual events to see how the experience of nature (including weather, topography, and seasons) constituted a particular "imaginary." For instance, I examine here how dominant metaphors, images, and ideas about seasons, winter, and nature shaped the way law was practiced. Rather than looking at the relationship between nature and law as a causal relationship, I am interested in what nature "meant" to the colonial regime and how that meaning motivated particular governing practices that lie at the foundation of the contemporary justice system.

I now return to the murder case with which I opened this article to examine poignant images of winter I found in the archival documents pertaining to the case. The trial for the murder began on May 4, 1879, two weeks after the incident occurred. The initial coroner's inquest discovered gun and knife wounds on the bodies of Thomas and his daughter Mary. It was presumed that the boy, Perry, had burned in the fire, since a few burnt bones were scattered near the scene and his hat was found in a tree nearby. At the inquest were men of "good-standing" from nearby communities, and the coroner for New Westminster was brought out to lead the inquest. Witness depositions were taken from people in the community and the first accusations were established.[3]

The case was never formally closed. It lasted over a period of 12 years and consisted of different trials and accusations, and from my research, it appears the case lasted this long for various reasons. First, the sparsely populated areas of the region meant that "English" (or colonial) law was not formally established in many of the communities throughout BC and Alberta. The Goldrush began in the summer of 1858 in British Columbia, when 30,000 people flooded to the Fraser River from the American south, Britain, and the rest of Canada with the hope of finding gold, which prompted the establishment of a police force to help keep the peace (Barman, 2004; Downs, 2015). Until 1858, law was primarily informal, frontier law, in that functional law was shaped spontaneously through interactions between colonial powers, corporations (English and French, Hudson's Bay Company and North-West Company), and the various Indigenous nations throughout Canada (Foster, 1994, 2001; Loo, 1994a, 1994b; Webber, 1995). As well, law was plural in the sense that there were different and well-established Indigenous legal traditions and different colonial legal traditions, and their interaction was characterized by relatively informal arrangements developed through various concessions to each other's traditions (Loo, 1995).

It was also in 1858 that British Columbia was established as a crown colony (a colonial administrative region that consisted of a governor appointed by the monarch) and its first constabulary (military style police force) was developed by the royally appointed Chartres Brew. The small force of 12 men faced considerable challenges. They policed an immense wilderness area with few roads from the Pacific coast to the Rocky Mountains (Foster, 1984). Second, because there were so few lawmakers in the region, different community members had to be commissioned as special constables to act on law's behest, carrying out enforcement and arrests and acting as judiciaries. For instance, judges and the only coroner in BC who investigated how and why people had died had to travel long distances. Courts in BC during this time were *oyer and terminer*, and so were only held periodically. Often trials could not be held until months after the crime had been committed.

In this case, the coroner from Clinton was on vacation and asked Judge Saunders to act on his behalf. On the way to the initial inquest, the judge came down with a sickness that prevented him from arriving. He commissioned community member C. Phair to act as coroner in his stead. Who was able to accuse and who was accusable was an important marker of power relations within this colonial context. The first accusations were levelled against Indigenous people—specific individuals but also entire communities (Unger, 2019). However, after these initial accusations were seen as not viable, suspicion was drawn to a settler in the area involved in road building. This man was also the first person to level accusations and was commissioned to find the accused. James Halliday, the initial accuser and accused, was eventually acquitted.

The correspondence between the attorney general, the constables, and the special constables from 1882 shows how the weather and terrain affected the manhunts that ensued at different points during the trials. There are two important moments that I found in the archives. In 1882, Constable Livingston, the constable in charge of the Poole investigation, wrote to the attorney general about a new suspect and the hunt for this person, who had also been implicated in a different murder years previously. In Livingston's letter, we see that the hunt for Charlie was complicated by weather, terrain, and a lack of people and resources. He wrote the following:

> That in our arrival there found that he [Charlie] had crossed the mountains some time previous and was there encamped on one of the two streams emptying in to the head of the Bute Inlet. Owing to the great quantity of loose snow which had fallen in the lowest layer of mountains the Indians deemed the crossing of them impractical and would not make the attempt.[4]

Continuing, he expressed frustration "after having traveled a distance of one hundred and fifty miles and without having accomplished anything." This manhunt continued the next summer and into the fall.[5]

The second moment in the legal experience of winter is from 1883, when another commissioned individual tasked with finding Charlie, Mr English, sent a telegraph detailing a different manhunt through the mountains and topography of the Western interior of British Columbia. In the exchange between Attorney General F.L.C. Reed and Mr English, we learn that it took roughly two years. After a year of tracking Charlie and searching the mountains in the Tsilhqot'in region, they called off the hunt until the following spring when the snow melted. It appears that because of the treacherous mountainous terrain, constables depended upon the judgment of Indigenous guides to determine when and how it was possible to continue the search. The hunt was terminated by the Indigenous guides because of the threat of winter and treacherous terrain in what the special constable reported as "a very miserable and mountainous part of the country." In essence, finding the killer was impaired by the difficulty of the terrain and the changing of the seasons.[6]

In her archival research of 19th-century legal cases, historical legal scholar Shelly Gavigan (2012) argues that "the land, the distance, the space, the weather, the terrain, the seasons, the

location—a 'distinct sense of place'—significantly form and inform the stories" embedded within the experience of the cases. This certainly was the circumstance with the Poole trials (p. 13). The environment, and specifically winter weather, greatly affected how law was practiced, understood, and enacted within the young colony of British Columbia. At the same time, the experience of winter in this case reveals several deeper experiences of the relations between Indigenous peoples and the burgeoning settler society in British Columbia that I will detail in the following sections of this article, such as the prejudicial and violent discourses embedded within the colonialism project. It is my contention that by examining how lawmakers experienced seasons, and especially winter, we can see how the enactment of law during this time was fundamentally *colonial*: dependent upon the attempt to establish a British law through the rationalization and centralization of law in Canada to the exclusion of Indigenous peoples and their traditions. In the Poole case, the inquisitions and investigations reflected in significant ways the increasing marginalization of Indigenous peoples that the new colonial laws instituted. The emerging colonial law made decisions about who was able to accuse and who was accusable, an important marker of power relations of the time. In the Poole case, Indigenous individuals and even entire communities were accused of the murders, and it is this "accusability" that evinces how colonialism formalized patterns of domination and violent sovereignty through law (Pavlich & Unger, 2016).

Law and Power

What can provide a counterpoint to the earlier scholarship on the biological understanding of the relationship between law and seasons is a mode of interpretation that seeks to understand the meaning frameworks that frame legal relations and produce the conditions of criminality itself. That is, following a constructionist, spatial, and topographical approach to crime and law, we can understand crime as constructed in time and space. Deviance from normative behaviors is only constructed as criminal because of the contextual, societal, and contingent knowledge categories that seek to criminalize transgression (Foucault, 1977). Crime cannot be inherent in individuals since what is considered wrongdoing worthy of criminalization changes over time and space and depends on context (Henry, 2009). As such, the different historical inscriptions (writings, histories, correspondences, formal documents, etc.) left behind of how law was practiced in its different forms through history give researchers windows into how and why people were criminalized, marginalized, and vilified by law (Foucault, 1977, 1980, 1996, 2014, 2015; Mahon, 1992).

Many ideas surrounding colonial law are based on different understandings of the land, environment, nature, climate, forest, and seasons. Scholars (Mawani, 2007; Shields, 1991; Valverde, 1991) suggest that many of the ideas around the development of law in Canada are closely tied up with ideas about nature. Examining the history of law in Canada and Britain during the time of colonization, we see a mingling of social discourses, philosophies, and nationalisms that are constitutive of a legal imaginary that is productive of how law developed in Canada. For instance, in examining early Canadian nationalisms we can see the emplotment of a particular romanticizing of the "untouched" landscape, the harsh beauty of the Canadian wilderness, and the kind of people that would constitute the proper inhabitants of that land. Think of, for instance, the national anthem with the famous line "The true north, strong and free." What is implied in saying "true" north? This line suggests that nature, as an imaginative trope, is coeval with images of liberty, the rule of law, and the people that follow that rule of law (Shields, 1991). At another level, there's a deep (ontological) connection between the hardness and harshness of the climate and landscape and the kind of people that have built a nation out of that land. As many scholars have noted, colonialism was in part a gendered and sexualized process that imparted heteronormative and patriarchal values through imperialist law, policing, and colonial expansionism (Connell, 2005; Rifkin, 2011; Veracini, 2010). These processes that privileged and naturalized particular models of masculinity and femininity led to widespread gendered violence through law

and policing practices (Morgensen, 2013). In important ways, a critical analysis of nature contextualizes and discloses the experience and deployment of law in a colonial context and the profound effects on the lived experiences of people that become subject to that law.

An important form of literature that was common until mid-20th century is colonial adventure fiction. Postcolonial scholars have noted that this kind of writing helped resolve the ambivalences of the colonial project by providing images of masculinity, romanticized narratives of foreign lands, and derogatory judgments of people that inhabited those lands (Blunt, 1994; Dixon, 1995; Philips, 2011; Said, 1994). In very poignant ways, colonial adventure literature relies on Eurocentric perspectives of Western superiority to help justify the prejudices, stereotypes, and negative perceptions of others that the colonial project relied upon.

Canada had its own colonial adventure literature, in particular from a British military officer named Sir William Francis Butler. In 1870, Butler acted as an intelligence officer under Colonel Garnet Wolseley to the Red River expedition that sought to suppress the Red River Rebellion of 1869–1870. He was further tasked with reporting on the conditions along the North Saskatchewan River, and until 1873, he travelled north-west to Fort St John, and finally down the Caribou wagon road to the Fraser Valley. The task of the expedition to the Red River Fort and through Western Canada was to report on the conditions along the Saskatchewan river and to help bring Canadian law and sovereignty into what he described as a solitary, wild, northern climate populated by wild people, myths, and irrational customs (Butler, 1872). He recounted his travels in the form of adventure literature in two books: *The Great Lone Land* (Butler, 1872) and *The Wild North Land* (Butler, 1873). In these narratives, Butler relied upon the romanticization of the landscape and the disparaging descriptions of Indigenous people that were common in colonial adventure fiction. In denigrating stereotypical terms, Butler described the "savagery" of the people and a life bound to extinction in contrast with the rationality and commerce of the inevitability of the progress of civilization. As well, in these writings, winter was a particularly brutal, but romantic, time in his descriptions of the landscape. Butler, in terms that reflect a common colonial imaginary of the emerging political landscape of Canada, described the commercial potential in the wildlife and the landscape, even in its harshness and inhospitable vagaries (Willems-Braun, 1997). For instance, in January, overlooking the forks of the Saskatchewan River, Butler envisioned a futurity of trade and development:

> As I stood in the twilight looking down on the silent rivers merging in the great single stream which here enters the forest region, the mind had little difficulty in seeing another picture, when the river forks would be a busy scene of commerce, and man's labour would waken echoes now answering only to the wild things of plain and forest. (1872, p. 331)

After hearing news of different wars in the rest of the world, Butler continued to describe the "war" with the winter he was fighting:

> It was the close of January the very depth of winter. With heads bent down to meet the crushing blast, we plodded on, ofttimes as silent as the river and the forest, from whose bosom no sound ever came, no ripple ever broke, no bird, no beast, no human face, but ever the same great forest-fringed river whose majestic turn bent always to the northwest. (p. 335)

Butler described the sovereignty of Canada over the Saskatchewan wilderness by dating the initial dispossession and relocation of Iroquois to this area from Lower Canada (now Quebec) and the preeminence of the Fort des Prairies in 1774 which he also surmised was built by the French and taken over by the British Hudson's Bay Company (1872, p. 332). We see in Butler's almost mystical account of his travels through Canada a connection between colonial and political discourses of Canadian sovereignty and law alongside the challenges of the "wilderness" that

Canada symbolized. Butler's narratives reflect that these images of nature and law are "deeply imbricated with colonial forms of power" (Willems-Braun, 1997, p. 11). Different Canadian nationalisms that arose in the 19th century also show us elements of the colonial legal imaginary. In particular, the nationalist movement called the Canada First Movement, especially one of its more notorious members, Robert Grant Haliburton, believed that Canada's cold and harsh climate was amenable to producing a hardy race and powerful nation (Mawani, 2007, p. 719). A colonial imaginary has real implications for law and people. For instance, legal scholar Willems-Braun (1997) wrote that when these images are "wedded to a Western metaphysics of truth, such representations [of nature and law] could be seen as revealing the 'real' structure of the landscape, and could give rise, in turn, to forms of administration that accepted this as a matter of course" (p. 11). That is, when these images of nature and people inform disciplines of science and law, they reproduce the power relations of the production of this rhetoric space called 'nature' and it becomes possible to write a genealogy of 'nature' as the absence of culture (Willems-Braun, 1997, p. 11).

In a similar vein, legal geography scholar, David Delaney (2001) has argued that nature is a cultural construction in which law is profoundly implicated in its production. That is, what law has to say about nature has profound and direct material implications of what happens to that land, how it is conceived, and what happens to people in that land. He opined that law, as a social site of authority, validates and legitimatizes through a discourse understood to be rational, legitimate, and universal, predisposes relations of colonial disenfranchisement, dispossession, and violence. He proffered that "*Law matters*, at least because these metaphysical distinctions are realized—perhaps 'concretized' is the better term—on segments of the material world" (Delaney, 2001, p. 498; emphasis original). In other words, previously informal discourses, stereotypes, presuppositions, and prejudices enter into legal culture through a myriad of sources, including philosophical, theological, political, and economical. Once these discourses enter into law, there are direct effects on the material production of space and identities as well as the boundary-creating activities associated with the criminal justice system. Because of these conceptions, it became legally justified to take land away from Indigenous peoples throughout Canada (Harris, 2002, 2004).

In the ontologizing of nature through law are implicit and often very explicit assertions of what constitutes the proper citizen, how they live, and how they work the land. Since the 15th century, the church and royal families have shaped how we understand the land by attempting to express Western European dominance around the world. These understandings are embedded within two distinct legal doctrines that motivated global colonial expansion. The first is the doctrine of discovery, referring to a claim embedded within the 1494 Treaty of Tordesillas that stipulates that governments can lay claim to lands that are uninhabited by Christian peoples. This was used predominantly in the dispossession of lands inhabited by Indigenous peoples, and involved the reassertion of Roman legal conceptions of terra nullius. Terra nullius means "empty land," which signified the colonial interpretation of a territory, in that if the land was unclaimed by a sovereign state, it could be claimed by another government. Together, these discourses comprise what Frichner (2010) called more broadly a "Framework of Dominance" wherein these conceptions of law/nature allowed for widespread occupation, dispossession, and genocide of Indigenous populations around the world. These theological, legal, and philosophical understandings of nature prefigure a politics of recognition that saw non-Western subjects and cultures as less than human (or not human at all), and that constituted a narrative of the proper relationship to land and space.

As sociology of law scholar Renisa Mawani (2005, 2007) suggested, Canadian law was informed by English theories of law that saw law as the pinnacle of a rationality that drew explicitly on specific understandings of nature. At the same time, this discourse informed the manner in which Canada and English legal sovereignty stretched its dominion throughout Canada. We

can see this with travel narratives from people such as Sir William Francis Butler and early geographic surveyists such as George Dawson, where the Canadian north and the inhospitality of the land is contrasted distinctly with the project of bringing law and order into territories that previously were governed by fur trade frontier forms of justice and economic relations. Canada's identity as "civilized" and "lawful" developed through mutually constitutive conceptions of law and nature, where Canadian legality was believed to be rooted in the new nation's climate and landscape (Foster, 1984; Mawani, 2005, 2007). Mawani (2007) wrote that the "symbolic and discursive connections between law and nature are crystallized in Canada's identity where the northern wilderness and harsh climate, in part, inform the nation's essence as lawful and orderly" (p. 718).

To Conclude

In order to understand the relationship between law and seasons, it is necessary to traverse our own assumptions about nature and our own tendencies to ontologize and reify crime and criminality. It is necessary to explore *legal imaginaries* as a way of thinking about the social construction of crime and the contingency of law in which nature becomes narrated through prominent social discourses associated with the colonial project. The attempt to understand law as autonomous and objective obscures power relations in an attempt to universalize a very particular kind of legal framework. While the positivist school of criminology in the 19th century was the first to wed nature, seasons, and physiology to crime and criminality, taking a constructionist and antipositivist perspective allows us to see that often very informal discourses and prejudices enter into formal law, which sediments and justifies the marginalization, dispossession, and legal control of Indigenous peoples in Canada. Archival analysis allows us to see something of our own current tendency to marginalize Indigenous individuals in the continuing lineage of this oppression and in the resurgence of the search for the essence and potentiality of crime. For instance, the biological and organic views of crime have found new momentum in the contemporary landscape of technological policing and with forms of surveillance. And, new forms of biometric and database development of risk probability appear to be another way in which law is managed at the level of the body, the skin, the morphology, and the genes.

Yet, if we understand that crime is socially constructed and is not located in our biology, then we have to question what the contemporary consequences of naturalizing crime like this could be. How might this current fascination and obsession with scientific and technological capacities for crime control disclose common ideas of social engineering and social control? Fundamentally, in order to understand how power shapes language and meaning, I have argued that we should avoid understanding nature and law as natural "things." Rather, we should understand them as a continually productive set of symbols, relations, connections, and networks that shape how we understand and navigate the world we inhabit.

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Notes

1. Archival references for this article can be found in the BC Provincial Archives. Cf. Attorney General, "Thomas Poole," 1879, GR-0431.2.5.3, British Columbia Archives and Museum.
2. Hamar Foster (1984) points to three distinct periods in British Columbia's legal past. The first period is comprised of the years from the early 1800s to 1849 when it was called New Caledonia and was a ward of the Hudson's Bay Company. The second period, Foster lists as the Colonial period of British Columbia's legal history is between 1849 and 1871, which consists of the founding of Vancouver Island as a colony and its eventual confederation into Canada. Finally, Foster lists 1871–1900 as the first 30 years as a Canadian province. An important consideration that Foster points to is that legal history during the second period is that it was fundamentally colonial by importing English law into a legal geography that BC lawmakers sought to establish as unique from the rest of Canada (Foster, 1984).
3. Attorney General, "Poole murder," 1881, GR-0429.140, box 1, file 10, British Columbia Archives and Museum.
4. Attorney General, "Chase for Poole murderers," 1883, GR-0429.197, box 1, file 12, British Columbia Archives and Museum.
5. Attorney General, "Chase for Poole murderers," 1883, GR-0429.197, box 1, file 12, British Columbia Archives and Museum.
6. Attorney General, "Chase for Poole murderers," 1883, GR-0429.197, box 1, file 12, British Columbia Archives and Museum.

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