Settler Moves to Innocence: A Transnational Legal Glossary

by Azeezah Kanji

ACROSS THE GEOGRAPHY of the colonial present, recent events highlight how the settler's "rule of law" serves more to enforce the law of settler rule, predicated on the subjugation and elimination of autonomous Indigenous life.

Spanning the country that currently calls itself Canada, the plunder-for-profit of Indigenous territories persists; yet, it is Indigenous peoples resisting corporate invasions who are charged with "theft" — as with the RCMP's **latest arrests** of Wet'suwet'en water protectors — and who are forced to pay compensation to their dispossessers - as **Haudenosaunee land defender** Skyler Williams was **ordered** by an Ontario court last month.

In Kashmir, the Indian government's project of accumulation by violent anti-Indigenous dispossession also **continues to intensify**; but it is the "unlawful activities" of Kashmiri journalists and human rights defenders like **Irfan Mehraj** (arrested March 20) and **Khurram Parvez** (re-arrested March 22) that are in the dock. Meanwhile, the Indian military's own **"activities" in Kashmir** — prolific extrajudicial killings, **arbitrary detentions,** tortures, and rapes — remain **legally immunized** from **civilian prosecution.**

In Israel, protesters have mobilized en masse to defend a judiciary that has served as the **prime sanctifier** of the state's violations against Palestinians — land evictions, home demolitions, torture interrogations, extrajudicial assassinations, and settlement expansions — a structure of colonial aggression laid bare in recent days yet again by Israeli forces' **naked brutalization** of Palestinian worshippers at Al Aqsa mosque. Symptomatically, of the approximately 400 Israeli settlers who participated in the anti-Palestinian pogrom at Huwara in February, **only one** has been sentenced — to four days' house arrest — while Palestinians are subject to a separate Israeli military "justice" system with the incredible **conviction rate** of 99.76%.

In Palestine as in Canada as in Kashmir, settler impunity is secured not through the suspension of law, but its application.

As legal theorist Scott Veitch demonstrated in **Law and Irresponsibility,** although "it is commonly understood that in its focus on rights and obligations law is centrally concerned with organizing responsibility […] legal institutions are [in fact] centrally involved in organizing irresponsibility."

The following are some of the moves to innocence deployed in various settler legal systems to organize irresponsibility, while maintaining the façade of colonial legitimacy.

Erasure:
Most bluntly, the evidence of atrocities is simply obliterated or obscured. Consolidating settlers' attempted erasure of Indigenous peoples is an erasure of the erasure. The bodies of the "disappeared" are **burned** beyond

recognition or **buried** in **unmarked** graves; torture is performed by **"invisible" means** that avoid leaving a physical mark; documentation is **destroyed**, **deemed classified, deleted**, **disallowed**, or disabled altogether (for example, via **legal regulations** r**educing the resolution** of publicly-available satellite imagery of Palestine, **making** certain types of damage like the holes from drone strikes impossible to discern).

Temporal Containment:
When confronted with indelible evidence of colonial wrongs, settler innocence is preserved by locating such wrongs in "the past" and beyond legal redress. From **treaty violations** to **drinking water deprivations** to **residential school depredations** — Canadian **statutes of limitations** continue to be **wielded** to limit Indigenous recovery for "historic" injustices, despite their ongoing harm. Israeli law **requires** **Palestinians** to file complaints about violations within 60 days: a condition made difficult if not impossible to fulfill by Israel's blockade. India has **refused to pursue** legal proceedings for events like the 1993 Sopore massacre — in which "members of the BSF [Indian paramilitary Border Security Force] are said to have indiscriminately shot or burned to death scores of [Kashmiri] civilians," **according to Amnesty International** — due to the lengthy period of time elapsed: a delay produced by the state's own decades-long failure to investigate (see also "Strategic Incompetence" below).

Definitional Gerrymandering:
Another way of writing colonial atrocities out of legal existence is by restricting the scope of what is legally proscribed. The international crime of genocide was deliberately drafted to exclude "measures like population transfer, cultural genocide, and the liquidation of political groups" at the insistence of Canada and other colonizing states, as genocide historian A Dirk Moses has **shown**. In **Israeli jurisprudence,** the prohibition against torture has been **interpreted** — in contravention of international law — to **permit "necessary" abuse**. India supposedly has no need to **ratify** the Convention Against Torture at all, because according to **India's representative to the UN**, "the concept of torture is completely alien to our culture and it has no place in the governance of the nation." Apparently, the **methods** routinely applied against Kashmiri detainees — such as **beatings**, **brandings**, **genital electrocution**, **forced excreta consumption,** and **anal petroleum injections** — do not qualify.

Sanitization: The pervasive use of euphemisms further untethers settler projections from reality. **Colonial genocides** like Canada's are downplayed as "cultural genocide," not an independent crime in international law. Under Indian legal codes, there are no enforced disappearances in Kashmir, **only** **thousands** of **mysteriously "missing persons"**; no torture or torturers, **only** "voluntarily causing hurt." Israel, too, neither "tortures" nor "murders" Palestinians. **Torture** isn't torture, but "**special measures**" or "**exceptional ways to investigate**." Killing is never murder, **merely** "recklessness"/"negligence," or (**in more than 99% of cases**) no crime at all. In one of the very rare instances of prosecution, an Israeli "Defense" Forces (IDF) soldier was **sentenced** in 2019 to just 30 days of community service for killing unarmed 14-year-old Palestinian protester **Othman Hiles**; while Palestinians are **penalized** by a legislated minimum of two years imprisonment for throwing stones.

Falsification: While colonial violence is minimized, the spectre of Indigenous violence is inflated or fabricated whole cloth.

Time and time again, video footage and forensic evidence have proven that Palestinians killed for "attacking" Israeli soldiers were in reality shot in the back or while immobile on the ground; and that Indigenous people charged with "assaulting" Canadian police officers were the targets of police brutality, not the instigators.

In Kashmir, Indian forces' penchant for falsely framing massacre victims as militants is so well-known that a special term for this practice — "**fake encounter killings**" — has been coined. Yet, despite **more** **than 500** official inquiries into extrajudicial executions in Kashmir having been ordered since 1989, only one had been completed as of December 2021.

Inversion of Guilt (Appeal to "Self-Defence"):
That Indigenous peoples' true "offence" is their failure to submit to colonial domination and die off, is indicated by the range of absurd circumstances deemed by settler authorities to justify the killing or injuring of Indigenous "threats." Purportedly dangerous behaviours include: **wearing a jacket**, **Indigenous headdress**, or other **"terrorist"**

clothing; holding a ceremonial arrow; **holding** a towel (presumed "Molotov cocktail"); **throwing** a hat; **having** a car accident; **helping** a car accident victim ; **chatting** with a colleague; having **autism**, **Down's syndrome**, or **psychiatric disabilities**; **living** in a dilapidated tin shack (presumed "terrorist training facility"); **defending oneself** from **settler attacks**; being a **human rights defender**, **journalist**, **doctor documenting** evidence of rape and torture, or **lawyer**; being on one's own ancestral lands ("**trespassing**," "**encroaching**," or "**invading**").

Mystification (Appeal to "Accident"):
In the alternative, Indigenous deaths are ascribed to improbable - if not wholly implausible - technological malfunctions, mishaps, or "**bad luck.**" For instance, the infamous 2009 "**Shopian double rape**" case, in which the battered bodies of two young Kashmiri sisters-in-law were found in a stream near an Indian military camp, was **chalked** up by India's Central Bureau of Investigation to accidental drowning — in water that was only ankle-deep. Israeli police officer Ben Deri was spared a manslaughter charge for killing 17-year-old Palestinian Nadeem Nawara during a Nakba Day demonstration; **ostensibly**, the live bullet he fired inexplicably "poked" its own way into his gun's magazine. This recalls, too, the 2018 **acquittal** of Canadian Gerald Stanley for killing young Cree man Colten Boushie, on the theory that due to an **exceptionally unlikely** "hangfire" his bullet inadvertently shot itself point-blank into Colten's head.

Deputization:
As the exculpation of Gerald Stanley illustrates, the ambit of impunity extends to private civilians, deputized as subcontractors of the state's claimed "**monopoly** on the legitimate use of force." This may be done formally: for example, India's **current marshalling** of **civilian militias** in Kashmir and Israel's **similar plans** for a settler "national guard" — or informally: the de facto stamp of authorization accorded to acts of settler vigilantism, such as the **killing** of **Colten Boushie** or the Huwara pogrom. Deputization is, in fact, a double move to innocence for the price of one. Settlers' violence is protected, as is the state's veil of plausible deniability for the rapes, assaults, land theft, and massacres they enact.

Strategic Incompetence:
Indeed, in the West Bank, 65% of Palestinian complaints about settler attacks are **dismissed** by Israeli police on grounds of "offender unknown," and another 21% for "insufficient evidence." Somehow, Israel's **vast surveillance** apparatus in the occupied territories is incapable of identifying Israeli perpetrators — even when **named** by Palestinians or **recorded** in IDF operations logs. In Canada, **decades** of **inquiry after inquiry** repeatedly reveal the same "flaws" in police investigations of Indigenous deaths, including at the hands of police: failure to properly preserve and handle evidence, interview witnesses, or, in many instances, actually conduct any investigation at all. Cases regarding India's mass abuses against Kashmiris have been held up by Indian authorities for months or years thanks to the "unavailability" of **translators**, **forensic tests**, **the proper paperwork** — even because the government office **claimed** it didn't have any stamps!

Projection of Responsibility (Blame the Victim):
The "mystery" of Indigenous debility and demise is resolved by **portraying** Indigenous peoples themselves as the source of their own suffering. Palestinian children's deaths are **pinned** on their own parents and communities for leaving them in the way of Israel's missiles, not on the occupation army that fired them. Kashmiri deaths in Indian detention are **blamed** on detainees' "drug addictions," not on the interrogators who likely tortured them. In inquests, Indigenous deaths in Canadian police custody are attributed to Indigenous people's "failing" organs or "**excitable" nervous systems,** not to the police force that **pulverized**, **pepper-sprayed,** or **grossly medically neglected them** — echoing the 19th-century medical officials who wrote off the alarming Indigenous mortality rates in Canadian prisons by **explaining** that "the Indians cannot bear confinement as well as whites or Chinese."

Self-Sanctification:
Grotesquely, such depictions of "inherent" Indigenous dysfunction enable acts of colonial violence to be presented as benevolence. For instance, in August, Vancouver police **announced** that Anishinaabe man Chris Amyotte had died in "medical distress" despite their "life-saving attempts" — neglecting to mention that they had **shot him** six times with a beanbag gun while he was naked, obviously unarmed, and pleading for aid. In another appalling incident **recounted** by sociologist Stanley Cohen in his classic study States of Denial, an Israeli deputy Attorney General originally denied compensation to an elderly Palestinian man whose wife was beaten and shot by soldiers, by arguing that they had actually saved him money: "the plaintiff only profited from the death of the

deceased because he had to support her while she lived and now he no longer had to."

Massification of Violence (Blame the System): Perversely, colonial structures are legally shielded by their sheer pervasiveness and massiveness of scale. Canada **invokes** the "**systemic**" nature of anti-Indigenous oppression to let individual perpetrators off the hook. Israeli **soldiers** and **settlers** evade punishment for shooting and stone-pelting Palestinians, by citing all the other cases in which killers and attackers of Palestinians have been set free without charge. Palestinians, meanwhile, are required to pay prohibitively expensive "guarantees" of **20,000–30,000** shekels (~$7,500–$11,500) per complainant to access Israeli courts - **amounting** to over one million shekels to seek compensation for bombings that wiped out dozens of family members at once. The greater the atrocity, the more total the impunity.

Exceptionalization (Blame the Individual): While individuals exonerate themselves by blaming "the system," the system is exonerated by blaming isolated individuals. As the Vancouver Police Department **maintained** in the 2009 inquiry regarding the death of Mi'kmaq man Frank Paul — who was dragged out onto the winter street by officers while he was soaking wet and immobile, and left to die of exposure — "the most important reality emerging from the evidence is the complete absence of racism, malice or bad faith on the part of police […] Mr. Paul's death was the result of errors in judgement by two police officers." (Although **neither** was ever charged.) By definition, both India's and Israel's military "justice" mechanisms deal only with "**aberrations**" or "**exceptional incidents**." For example, the **sole convictions** to emerge from Israel's mass devastation of the Gaza Strip in Operation Protective Edge (2014) were against three soldiers for stealing the equivalent of $900. The recent – and extremely unusual – **military court conviction** of an Indian army official for an anti-Kashmiri fake encounter killing was because he "exceeded" his authority under the Armed Forces Special Powers Act; the egregious "special powers" **endowed** to the occupation forces by the act itself remain sacrosanct.

Cooptation of Injury (Become the Victim): Having severed the "bad apples," settler states make themselves out to be the sufferers of colonial brutality as opposed to the source. "Exceptional" IDF outrages are **denounced** by Israeli judges for "stain[ing] the IDF's moral image" and "play[ing] into our enemies' hands." In Canadian courts, settler killings of Indigenous people, like Brayden Bushby's 2017 fatal trailer-hitch assault on Anishinaabe woman Barbara Kentner, are **deplored** as a cause of "dismay" for settlers and an offence to "the *c*ommunity" as a whole. As in all criminal cases, the "plaintiff" is not the injured person but the state.

This creates the paradox wherein the state, built on anti-Indigenous violence, becomes the victim of anti-Indigenous violence, while Indigenous legal authority continues to be effaced.

Dissociation from Consequence: Settler impunity is fully actualized when it can persist even in the face of official acknowledgements of culpability. In Kashmiri fake encounters such as at Pathribal, India's own Central Bureau of Investigation **concluded** that the Indian military committed "cold blooded murder"; yet all charges against the soldiers were summarily dropped. Canadian inquests and inquiries determine that Indigenous people died by **police** "**homicide**," or under **highly suspicious circumstances** in police custody; but no charges are even laid. In Israel, out of the few settler prosecutions for targeting Palestinians, almost **one-fifth** end with a finding of "guilt without a conviction" — meaning "the court found that the defendant did commit the offense […] but refrained from convicting him or her by law," anyway.

Returning to Huwara: one week after the pogrom, five more Palestinians — a family — were **wounded** in a settler hatchet attack, as settlers and soldiers were filmed **dancing together** in the streets. This, then, is the ultimate settler move to legal innocence. More effective than simply hiding the truth, it is making the truth of no consequence at all.

CITATION

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