

“It Happened More Than Once”: Freezing Deaths in Saskatchewan

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Le présent article analyse les enquêtes et une commission sur des décès par hypothermie en Saskatchewan, au Canada. Il souligne les économies raciales et d'espace liées à ces décès, et il suggère que les relations structurelles propres au colonialisme de peuplement produisent et encouragent les expulsions continues et quotidiennes d'autochtones de la part des colonisateurs, expulsions qui sont inévitablement violentes. La ville coloniale appartient au colonisateur et son occupation est inévitablement récusée par la présence des autochtones dans la ville. L'autochtonité met mal à l'aise, car elle conteste la prétention du colonisateur à la légitimité en remettant en cause une fiction très tenace dans les états coloniaux selon laquelle les peuples autochtones seraient à l'agonie. La pratique qui consiste à repousser les autochtones aux périphéries de la ville vient du besoin des colonisateurs de maintenir les lignes de force des villes coloniales. Aujourd'hui, quand cette pratique est scrutée par le droit, comme ce fut le cas dans l'enquête sur le décès de Neil Stonechild, et dans des enquêtes sur les décès par hypothermie, elle est considérée soit comme le fait de quelques policiers sans vergogne ou encore on la nie carrément. Ce qui demeure dans les registres judiciaires, toutefois, ce sont les économies raciales d'espace dans la ville coloniale et la dévalorisation persistante de la vie autochtone, une dévalorisation que la loi produit et soutient. Dans la première partie, je présente des idées sur les économies raciales et d'espace de la ville coloniale. Dans la deuxième partie, j'étudie le cas du décès de Neil Stonechild, ainsi que la réponse du droit à ce décès, la Commission d'enquête Wright. Dans la troisième partie, j'analyse les enquêtes sur les décès par hypothermie de Rodney Niasatus et de Lawrence Wegner, deux jeunes autochtones morts dix ans après Stonechild, et j'explore deux mouvements dans l'espace et le temps : Niasatus et Wegner traversant la ville pour trouver la mort dans un champ gelé de la zone nord-ouest, et le cheminement que l'enquête nous invite à faire en nous faisant croire que Niasatus et Wegner sont les seuls responsables de leur décès. Dans le panorama des décès d'autochtones en détention en Saskatchewan, y compris en prison, par suicide et à la suite de violents affrontements avec la police, le corps d'un autochtone est un corps qui ne peut être assassiné.

This article examines inquests and an inquiry into freezing deaths in Saskatchewan, Canada. It outlines the racial spatial economies of which these deaths are a part, and it proposes that the structural relations of settler colonialism produce and

sustain ongoing, daily evictions of Aboriginal people from settler life, evictions that are inevitably violent. The colonial city belongs to the settler, and Aboriginal presence in the city inevitably contests settler occupation. Aboriginality unsettles, challenging the settler's claim to legitimacy by calling into question the colonial state's most enduring fiction that Aboriginal people are a dying race. The dumping of Aboriginal people to the outskirts of the city is a practice born of the settler's need to maintain the lines of force of the colonial city. Today, when dumping comes under legal scrutiny, as it did in the inquiry into the death of Neil Stonechild and in inquests into freezing deaths, it is either transformed into a practice of a few bad cops or denied outright. What remains on legal record, however, are the racial spatial economies of the settler city and its persistent devaluation of Aboriginal life, a devaluation that law both produces and sustains. In the first part of the article, I present ideas about the racial/spatial economies of the colonial city, and in the second part I examine the death of Neil Stonechild and the Wright Inquiry, which responded to this death. In the third part, I examine inquests into the freezing deaths of Rodney Naistus and Lawrence Wegner, two young Aboriginal men who died a decade after Stonechild, exploring two movements in space and time: Naistus and Wegner as they moved through the city towards their death in the frozen fields of the northwest section of the city and the journey we are invited on through the inquest, a journey through which we come to understand the deaths of Naistus and Wegner as no one's fault but their own. Across the landscape of Aboriginal deaths in custody in Saskatchewan, including deaths in prison, deaths due to suicide, and deaths that occur in violent confrontations with the police, the Aboriginal body is a body that cannot be murdered.

The kid went out, got drunk, went for a walk and froze to death.¹

Alleged comment, Sargeant Jarvis, investigating officer, Stonechild case

We had indicated, as I understand, that we didn't have any other incidents of this nature. In fact, we have. And that's come to my attention, and I think we have to take ownership of things that have transpired. It happened more than once and we fully admit that and, in fact, on behalf of the police department I want to apologize to those people who we had said it was a one of-a-kind incident.²

Police Chief Russell Sabo

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1. Alleged response of Sargeant Jarvis, the investigating officer in 1990 into Neil Stonechild's death when asked by a fellow police officer what he thought of the Stonechild file. See Justice David H Wright, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Regina, SK: Government of Saskatchewan, 2004) at 124.
 2. Police Chief Russell Sabo, quoted at CBC News Online, "Indepth: Neil Stonechild: Who Was Neil Stonechild?" *CBC News* (3 November 2005) <http://www.cbc.ca/news/background/stonechild/>.

It's a very old practice to get rid of the Indian who was inebriated or mad.³

Sakej Henderson, legal scholar

Introduction

There can be no more quintessential Canadian death than a freezing death. A country that makes icons of its fields of ice and snow, and whose citizens are daily reminded in the national anthem that they are the “true north strong and free,” should not be able to take lightly such deaths—that is, to regard them as inevitable. Seventeen-year-old Neil Stonechild, whose body was found in a field in the north-west section of the city of Saskatoon on 29 November 1990, died with strange marks on his wrists and face. Viewing his body for burial, his family wondered if someone had broken his nose, and his older brother, who had been arrested himself, thought the marks on his brother's wrists looked like handcuff marks.⁴ His death was not seriously investigated until a decade later in 2000 when the Royal Canadian Mounted Police (RCMP), investigating the deaths of two Aboriginal men found in similar circumstances, Rodney Naistus and Lawrence Wegner, and a third man, Darryl Night, who survived after being dropped off by police in the same area of Saskatoon, added Stonechild to their list of suspicious deaths.

This article examines inquests and an inquiry into freezing deaths in Saskatchewan. It suggests that the structural relations of settler colonialism produce and sustain ongoing, daily evictions of Aboriginal people from settler life—evictions that are inevitably violent. The colonial city belongs to the settler, and Aboriginal presence in the city inevitably contests settler occupation. Aboriginality “unsettles,” challenging the settler's claim to legitimacy by calling into question the colonial state's most enduring fiction that Aboriginal people are a dying race. White settler colonies such as Canada, Australia, and the United States all have similar histories of prohibiting Aboriginal peoples from cities and policing evolved to maintain these colonial arrangements.⁵ The dumping of Aboriginal people to the outskirts of the city is a practice born of the settler's need to maintain the lines of force of

3. Sakej Henderson, the director of the Native Law Centre, cited in DeNeen L Brown, “Left for Dead in a Saskatchewan Winter: A Survivor's Story Exposes Police Abuse of Indigenous Canadians: [Final Edition],” *Washington Post* (22 November 2003) A1.

4. Susanne Reber and Rob Renaud, *Starlight Tour: The Last Lonely Night of Neil Stonechild* (Toronto: Random House Canada, 2005) at 71.

5. See, for example, Penelope Edmonds, *Urbanizing Frontier: Indigenous Peoples and Settlers in Nineteenth-Century Pacific Rim Cities* (Vancouver: UBC Press, 2010); Amanda Nettlebeck and Russell Smandych, “Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police” (2010) 43:2 *Australian and New Zealand Journal of Criminology* 356.

the colonial city. Today, when dumping comes under legal scrutiny, as it did in the inquiry into the death of Neil Stonechild and in inquests into freezing deaths, it is either transformed into a practice of a few bad cops or denied outright. What remains on legal record, however, are the racial spatial economies of the settler city and its persistent devaluation of Aboriginal life, a devaluation that law both produces and sustains.

The first part of this article presents ideas about the racial/spatial economies of the colonial city. The second part examines the death of Neil Stonechild and law's response to this death in the form of the Wright Inquiry. In the making of public memory, Stonechild's death is attributed to policing gone awry. Police "anger" is acknowledged but only as it is exceptional. The inquiry concludes that there exists cultural misunderstanding between the police and Aboriginal peoples. Yet the inquiry revealed a pervasive and active dehumanization of Aboriginal people, a dehumanization so bureaucratized that, with rare exceptions, hardly an officer could be found who was troubled by Neil Stonechild's death and almost no one devoted their full professional energies to its investigation. With a profound indifference to Aboriginal death as its key feature, spaces of the policing of Aboriginal populations bear a close resemblance to spaces of exception where law authorizes its own suspension. There can be no failure to care, and thus no responsibility for it in such a zone.

The third part of this article examines the inquests into the freezing deaths of Rodney Naistus and Lawrence Wegner, two young Aboriginal men who died a decade after Stonechild, exploring what they show about policing and law's response to it. I explore two movements in space and time: (1) Naistus and Wegner as they moved through the city towards their death in the frozen fields of the northwest section of the city and (2) the journey we are invited on through the inquest, a journey through which we come to understand the deaths of Naistus and Wegner as no one's fault but their own. Across the landscape of Aboriginal deaths in custody in Saskatchewan, including deaths in prison, deaths due to suicide, and deaths that occur in violent confrontations with the police, the Aboriginal body is a body that cannot be murdered. As Marlene Nourbese Philip has written, in law the slave is considered an object of property and thus "not capable of being murdered."⁶ Relatedly, I argue that the Aboriginal body, as always outside of the human, is also not capable of being murdered. Exploring the conventional contours and devices of the legal narrative that turns Aboriginal death into a story of a dysfunctional or of a "troublesome" population meeting a predictable end, this article suggests that freezing deaths are only ever considered the final installment in wasted lives.

6. Marlene Nourbese Philip, *Zong!* (Middletown, CT: Wesleyan University Press, 2008) at 191.

The Racial Spatiality of the Colonial City

For modernity, inside has tended to connote subjectivity, the realm of deep feelings, of Truth; outside suggests physicality, human difference, strangeness.⁷

In the most elemental way possible, a freezing death is the outcome of movement—from the space of the living to the space of the dead; from a space of warmth and shelter from the elements to a space of extreme cold and danger. It is useful to think about freezing deaths in terms of space and movement. The inquest reveals, in the first instance, that young Aboriginal men and women are in the city but not of it, moving through city space as shadow figures in periphractic space, banished within.⁸ Who is and is not of the city? David Goldberg's careful and now iconic consideration of race and urban location begins to answer this question by charting how "[r]acisms become institutionally normalized in and through spatial configuration."⁹ The racialized, at once a condition marked on the body (skin, wounds) and an invisibility (non-persons), cannot occupy the same space as Europeans and the Europeanized. The city belongs to rational men and women, individuals who are owners of themselves.

In liberalism, to become an individual, Radhika Mohanram reminds us, is to progress out of body and into mind.¹⁰ How else to mark the line between owner and owned, person and non-person, belonging and non-belonging, if not spatially? Importantly, fences or borders are enactments rather than permanent lines; settlers lay constant siege to the city, inscribing their claims on the ground and on bodies in the language of rationality and order, thereby marking the lines of force of the colonial project.¹¹ It is not only that Aboriginal peoples must be confined to reserves, but their own necessary incursions into settler spaces (incursions due to the impoverished conditions of reserves¹²) must also be policed and constrained if the line is to hold. There cannot be much work for Aboriginal people to do in the colonial city, and Aboriginal presence in the city must be continuously policed. As Laura Hudson writes, drawing on Achille Mbembe,

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7. David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Cambridge, MA: Blackwell, 1993) at 186.
 8. Anna Secor makes this argument about Kurdish refugees in Turkey. See Anna J Secor, "An Unrecognizable Condition Has Arrived" in Derek Gregory and Allan Richard Pred, eds, *Violent Geographies: Fear, Terror, and Political Violence* (New York: Routledge, 2007) 37.
 9. Goldberg, *supra* note 7 at 185.
 10. Radhika Mohanram, *Black Body: Woman, Colonialism, and Space* (Minneapolis, MN: University of Minnesota Press, 1999) at 16.
 11. Goldberg, *supra* note 7 at 191, recalling Frantz Fanon.
 12. Evelyn J Peters and Vince Robillard, "'Everything You Want Is There': The Place of the Reserve in First Nations' Homeless Mobility" (2009) 30:6 *Urban Geography* 652.

[c]olonial sovereignty winds up overwriting racial difference with narratives of “wars without end” and with bunkers and checkpoints that monitor and control a resistant, dominated population that cannot be fully absorbed into the institutions of the state. Taken by force, colonial lands are built upon the blood and bones of the colonized, both those killed in the struggle for sovereignty, and those consigned to die in impoverished and invisible excluded spaces of native towns. In colonial occupation, two maps cover the same ground; two nations occupy the same space and vie for power, an example of the unstable boundaries of modernity’s inside/outside.¹³

There is a gendered component to the colonial arrangements Hudson describes. The policing of Aboriginal women often occurs within a context of prostitution, both actual and presumed.¹⁴ However, for both Aboriginal men and women, evictions from the city take place in the context of the police’s patrol of areas of the city where Aboriginal peoples are the majority. As the Aboriginal Justice Implementation Commission described for the province of Manitoba, there exists a historic tension between Aboriginal peoples and the RCMP, originating in the fear of Aboriginal insurrection but continuing today as a solidified mistrust of the police by Aboriginal peoples and a documented over-policing (arrests, charges, and so on) as well as under-policing (failure to provide services when needed).¹⁵ As several research reports have confirmed, regardless of gender, Aboriginal people on city streets are widely assumed, by both the public and the police, to be out of place as alcoholics, drug users, gang members, prostitutes, and criminals.¹⁶ This

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13. Laura Hudson, “A Species of Thought: Bare Life and Animal Being” (2011) 43:5 *Antipode* 1659 at 1665.
 14. See Sherene Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” (2000) 15:2 *Canadian Journal of Law and Society* 91.
 15. “Policing” in Aboriginal Justice Implementation Commission, ed, *The Justice System and Aboriginal Peoples: Report of the Aboriginal Justice Inquiry of Manitoba*, volume 1 (Winnipeg: Queen’s Printer, 1991) Aboriginal Justice Implementation Commission <<http://www.ajic.mb.ca/volumel/chapter16.html>>.
 16. See Christine A Walsh et al, “Homelessness and Incarceration among Aboriginal Women: An Integrative Literature Review” (2011) 9:2 *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health* 363; Saskatchewan Indian Institute of Technologies, *Urban First Nations People without Homes in Saskatchewan* (Saskatoon, SK: Saskatoon Indian Institute of Technologies, December 2000) YWCA Regina <<http://www.ywcaregina.com/Programs/HomelessnessPoverty/Homeless%20Urban%20First%20Nations.pdf>>; Insightrix Research, *The Saskatoon Housing and Homelessness Plan 2011–2014* (Saskatoon, SK: Saskatoon Homeless Advisory Committee, March 2011) City of Saskatoon <<http://www.saskatoon.ca/DEPARTMENTS/Community%20Services/PlanningDevelopment/Documents/Neighbourhood%20Planning/Housing/Housing%20and%20Homelessness%20Report%202011%20final.pdf>>. On case studies from British Columbia, Alberta, Saskatchewan, and Manitoba, see Katie McCallum and David Isaac, *Feeling Home: Culturally Responsive Approaches to Aboriginal Homelessness*, SPARC Report (Vancouver: Social Planning and Research Council of British Columbia and the Centre for Native Policy and Research, July 2011) Social Planning and Research Council of British

observation, of course, is not to deny such problems—it is merely to emphasize that all Aboriginal bodies are regulated by the presumption that they are not respectable citizens.

How does the inquest arrange its own and our knowledge of the movements of Aboriginal people in the city? Here too we might return to Goldberg who put it starkly, drawing on Herbert Spencer's notion of degeneration. In the colonial story, races have their proper places; when removed (dispossessed), they generate pathologies, pathologies that the body politic must guard against.¹⁷ Alcohol and drug abuse become the evidence of this pathology—and not the evidence of dispossession—and if we find frozen bodies on a field outside of town, it can only be the outcome of these pathologies and not the result of the drawing of lines of force. Alcohol or drugs, mental incapacity, and mental illness, whether present or not, become both cause and effect, the explanation for why otherwise healthy young men's bodies lie frozen in place just outside the city. We need not dwell, then, on journeys that begin in the back of a police cruiser. We need not ask what the policing is for and where it leads. Indeed, it is imperative to head off at the pass any such intrusions into the story of the pollution of the body politic and the evictions that are required to maintain its purity.¹⁸ You lay waste to yourself; we have not laid waste to you. This statement will become the mantra of inquests and inquiries into freezing deaths. It is what we might also term a pedagogy as well as a racial/spatial economy—that is to say, instruction on who and where we are, a lesson made true on the ground.

Waste and Its Spaces

Scholars have identified the condition of being surplus under colonialism and capitalism as one of being marked for death through an increasing animalization. Hudson comments on the reduction of surplus populations to animals, a banishment to the constitutive outside:

One key quality of surplus populations is that their numbers and proportions expand beyond the ability of capital to incorporate them, leaving them in circumstances little beyond the bare life of the animal. As the

Columbia <<http://www.sparc.bc.ca/component/. . ./doc/478-feeling-home-final-report.pdf>> ; Stephen Gaetz et al, *The State of Homelessness in Canada 2013* (Toronto: Canadian Homelessness Research Network Press, 2013) Homeless Hub <[http://www.homelesshub.ca/\(S\(5ppaou45fpvu-h445ynolffjh\)\)/ResourceFiles/SOHC2103.pdf](http://www.homelesshub.ca/(S(5ppaou45fpvu-h445ynolffjh))/ResourceFiles/SOHC2103.pdf)>; Native Women's Association of Canada, "Aboriginal Women and Homelessness: An Issue Paper" (2007); Aboriginal Standing Committee on Housing and Homelessness, *Plan to End Aboriginal Homelessness in Calgary* (2012) Aboriginal Standing Committee on Housing and Homelessness <<http://www.aschh.ca/Plan%20to%20End%20Aboriginal%20Homelessness%20in%20Calgary%202012.pdf>>.

17. Goldberg, *supra* note 7 at 200.

18. *Ibid* at 187.

commodity form becomes unstable with the devaluation of labor power, humanness is no longer regarded as sufficient to determine moral value, leading to instabilities in the constitution of the human-animal divide.¹⁹

Both humans who are less than human and animals find themselves penned in (prisons, zoos) under regimes where they are surplus.²⁰ Without moral standing, surplus beings are also outside of law. Prisons, for example, are increasingly spaces where people's suffering is seen as "non-criminal" and where prisoners "are seen as more beast than human."²¹ As Hudson importantly reminds us, the state of nature is both "the undifferentiated world prior to human law" and the place where law has authorized its own absence.²² It is useful to remember Michael Taussig's space of death, the place "where the Indian, African, and white gave birth to a New World."²³ As Sylvia Wynter, Achille Mbembé, and Denise da Silva each show, the condition of modern life is Black/Aboriginal death, the "necropolitics" of bare life.²⁴ In these spaces of death (or spaces of exception for Giorgio Agamben²⁵), where law operates through its suspension, those marked for death are simultaneously inside and outside the law and the body politic.

Analyzing "the brutality of the urban present,"²⁶ Vinay Gidwani and Rajyashree Reddy suggest that we return to the meaning of waste for enlightenment thinkers such as John Locke.²⁷ If for Locke waste is the political other of value—things cast out as excess or detritus—they note that what jeopardizes urban life is waste within—that which refuses to be improved.²⁸ Gidwani and Reddy emphasize that waste is "*material excess that is unruly and improper*: disordered matter, or matter out of place."²⁹ If under colonialism those who did not make rational use of their lands (for Locke, Indians of India; for our society, indigenous peoples) had to be evicted from the modern, in the urban present similar evictions occur. Providing examples from the contemporary Indian context, Gidwani and Reddy

19. Hudson, *supra* note 13 at 1660.

20. *Ibid* at 1660.

21. *Ibid* at 1671.

22. *Ibid* at 1676, n 5.

23. Michael Taussig, *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing* (Chicago: University of Chicago Press, 1987) at 5.

24. Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, after Man, Its Overrepresentation—An Argument" (2003) 3:3 *Centennial Review: The New Centennial Review* 257. Achille Mbembé, "Necropolitics" (2003) 15:1 *Public Culture* 11. Denise da Silva, *Towards a Global Idea of Race* (Minneapolis, MN: University of Minnesota Press, 2007).

25. Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005).

26. Vinay Gidwani and Rajyashree N Reddy, "The Afterlives of 'Waste': Notes from India for a Minor History of Capitalist Surplus" (2011) 43:5 *Antipode* 1625 at 1653.

27. *Ibid* at 1649.

28. *Ibid* at 1626.

29. *Ibid* at 1627 [emphasis in original].

provide a framework for how I propose that we consider freezing deaths and the racial/spatial economies of which they are a part:

The casual evictions of street vendors and slum dwellers in Bangalore; the killings of vulnerable migrant children on the outskirts of Delhi; the stories of street children eliminated by police in Mumbai; or the mysterious disappearances of ragpickers in police lock-ups in Delhi are not anomalies. They are rather applications of the supplementary, violent, order of “police” that has *always* co-existed with the ethical order of “police” as *salus publica*—the wellbeing of the public—that we encounter in different guises in the writings of Thomas Hobbes, John Locke, Adam Smith and Jeremy Bentham, the order of “police” that Michel Foucault identified as the wellspring of governmental power.³⁰

In this supplementary order of “police,” excess matter—“waste”—is either expelled or else violently absorbed through primitive accumulation when it becomes a threat to the liberal social order of “property” and “economy.” Often the excess matter is “surplus humanity” that is superfluous to a regime of capitalist value.

In the following section that looks into the inquiry into Neil Stonechild’s death, and in the inquests into the freezing deaths of Rodney Naistus and Lawrence Wegner, the contemporary colonial city is constituted through a series of expulsions and evictions—the excretion of waste in modern society. Marked as surplus humanity, Aboriginal peoples endure an intense policing in the city. When these evictions and expulsions end in death, law is the “biopolitical tactic” that will teach us that what has happened is simply waste disposal.³¹ At inquests and inquiries, we will learn that it is impossible to chart harm, negligence, or indifference towards a group to whom so little is owed and who are marked above all by their own superfluity.

The argument I propose—that freezing deaths are the outcome of what is understood as waste disposal both in law and society—stands in contradistinction to how such evictions are typically understood. The sparse research literature on what has been called “dumping,” for instance, considers the practice to originate in police who are attempting a more informal approach to keeping order and who take a hard line approach to law and order.³² Frustrated police transport troublesome people out of the city, removing a problem from one domain to another and avoiding in the process the administrative work that comes with formally detaining someone. When dumping exposes the vulnerable to danger, scholars have tended to consider it an unintentional consequence of an admittedly irregular police practice. That police are able to take the risk that a person who has been dumped might die is not

30. *Ibid* at 1653 [emphasis in the original].

31. *Ibid* at 1649.

32. William King and Thomas Dunn, “Dumping: Police-Initiated Transjurisdictional Transport of Troublesome Persons” (2004) 7:3 *Police Quarterly* 339.

something that many scholars have examined. Those critical scholars who consider the role that racism plays in police decisions to dump racialized individuals do not connect dumping to the annihilative impulse that is at the heart of establishing settler sovereignty.³³ That is, they do not consider the threat that indigeneity poses to the settler's position as legitimate owner, which is a profound challenge to the settler state and to individual settlers who must believe in their own entitlement.

One consequence of failing to connect dumping to sovereignty is that we cannot make sense of police responses to freezing deaths—the casual, apparently incompetent investigations of them, for instance, and the widespread police indifference to the loss of Aboriginal life. Importantly, the law's response in considering the deaths as due to a strange cultural incompatibility between police and Aboriginal peoples (the conclusion of the inquiry into Neil Stonechild's death, as I discuss later in this article) or, more often, in considering freezing deaths as the natural demise of a dying people (as in the Wegner and Naistus inquests) becomes comprehensible only when we take sovereignty into account. Dumping inscribes settlers' claims on the ground and upholds the racial order on which colonialism depends. We can expect, then, that dumping will have widespread social and legal approval.

“A Chasm Separates Us”: The Wright Inquiry and Neil Stonechild

Through the surveillance, arrest, detention, and brutalizing of Aboriginal peoples, to say nothing of outright murder, colonial power is made tangible. It is the Aboriginal body on which colonial power must first be inscribed. Taussig reminds us that colonizers “mimic the savagery they have imputed” to others, understanding their acts of violence as necessary in the face of the threat posed by the colonized.³⁴ Yet terror, like the torture on which it so often depends, defies a standard rational explanation. How to make sense of the decision to brutalize and then leave a man

33. Elizabeth Comack writes: “In many respects, the stories of Neil Stonechild, Rodney Naistus, Lawrence Wegner, and Darryl Night epitomize the troubled lives endured by many Aboriginal people in this racialized space. All of them, for instance, had in common problems with drug and alcohol abuse. Given their regular contact with the Saskatoon Police Service, they were cast as ‘troublesome.’ Regardless of the name used to describe the practice—Starlight Tours, drop-offs, dumping, breaching, or unarresting—the act constitutes one of the racialized policing strategies that officers utilize in their efforts to contain and control this troubled and troublesome population. Whether emanating from frustration in dealing with repeat troublemakers, disillusionment with other sectors of the criminal justice system for being ‘too soft on crime,’ a sense of entitlement in imposing their own brand of ‘street justice,’ or simply being tasked with the insurmountable assignment of managing the effects of a systemic problem, police officers may well turn to this racialized practice as a way of fulfilling their role as reproducers of order.” Elizabeth Comack, *Racialized Policing: Aboriginal People's Encounter with the Police* (Halifax: Fernwood Press, 2012) at 151.

34. Taussig, *supra* note 23 at 9.

to die and to remain apparently impervious to the consequences of one's actions? How to understand the collective indifference to his death, evident even when the law appears to be calling the police to account? Taussig suggests we consider "intricately construed, long standing, unconscious cultural formations of meaning," abandoning facticity. In the space of death, "reality is up for grabs."³⁵ In the inquiry into the death of Neil Stonechild, what becomes visible, even as it defies rational explanation, is a widespread collective indifference to Aboriginal death. The frozen fields of the prairie become a place where reality is up for grabs, a space where law has authorized its own suspension.

When the province of Saskatchewan established a judicial inquiry into Stonechild's death and the Commission began its hearings in September 2003, the handcuff marks on Neil Stonechild's wrists became one of the commission's preoccupations. Experts deliberated if the marks on Stonechild's wrists were the result of the youth falling on the frozen grasses and twigs of the prairie or on its crusted snow. Might they have come from the wrist cuffs of his own soft cotton lumberjack coat tightening on flesh after he had fallen? Alternatively, could the marks have come from handcuffs and, specifically, police issued handcuffs, possibly used first to hit Stonechild in the face and later to bind his wrists? Frozen prairie grasses or police issued handcuffs—in the inquiry each item belongs to a world view, and the extent that one is favoured over the other stakes out the "sides" of the debate. Handcuffs offer evidence of Stonechild's death as a death in custody; prairie grasses, on the other hand, can help us to accept the investigating officer's quick assessment of the body in the snow: "The kid went out, got drunk, went for a walk and froze to death."

The inquiry into Neil Stonechild's death chose the handcuffs side of the debate. The details implicating the police were hard to ignore. The Honorable David Wright, commissioner of the inquiry, believed the testimony of Jason Roy, Neil Stonechild's friend, that he saw Neil, bloodied and bruised, in the back of a police cruiser on the night of 24 November 1990. Justice Wright came to the conclusion that Stonechild had been in the custody of Constables Larry Hartwig and Brad Senger around midnight on 24 November and that Stonechild died of exposure in the early morning hours of 25 November. While the commissioner concluded that the 1990 investigation into Stonechild's death was superficial and totally inadequate, and that more senior officers had ignored reports that Stonechild's death was a suspicious one, he did not connect these actions outright to murder, or even to racism. Damning as the details were, they did not, in the commissioner's mind, indicate an entrenched and systemic devaluing of Aboriginal life among police. They only indicated, as Joyce Green has written, a tense relationship between two communities (Aboriginal and police) who are culturally different.³⁶

35. *Ibid* at 9.

36. Joyce Green, "From Stonechild to Social Cohesion: Anti-Racist Challenges for Saskatchewan" (2006) 39:3 *Canadian Journal of Political Science* 507.

Writing of the “chasm” that separates Aboriginal and non-Aboriginal people, and noting that the two communities “do not know each other and do not seem to want to,” Commissioner Wright ends his report with a ringing endorsement of the 1999 *Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta*, in which Aboriginal problems in the justice system are attributed to Aboriginal people’s cultural practices (such as failing to make eye contact with authority figures or telling the police what they want to hear).³⁷ If Aboriginal cultural practices complicate relations with the police, the judge nevertheless found it difficult to ignore entirely that the Saskatoon Police Service did not once indicate a desire to improve relations with Aboriginal people. He recommended that police be trained in race relations and anger management and suggested ways in which the two communities might better get along, principally through improved liaison and better complaints and investigation procedures. The commissioner did not make clear who was angry, and one can only presume that he believed that Constables Hartwig and Senger were frustrated with Stonechild for his drunken and disorderly conduct and wanted to teach him a lesson, a lesson that ended in his death. If indeed the constables engaged in what researchers identify as a “shadow system” of police punishment (intended to teach drunks a lesson without engaging the justice system),³⁸ what does it mean that a young man’s life is risked in the interest of discipline? What might be the sources of a rage that goes so far? These are the questions the inquiry does not pursue.

An observer at the Stonechild inquiry would have had to engage in mental gymnastics, if not a complex round of psychic denials, to avoid the issue of race and colonialism as white witness after white witness, with rare and notable exceptions, stonily denied wrongdoing, doggedly insisted that they could not remember, and repeatedly suggested that prairie grasses could lacerate and leave grooves on an inert face. Police officers who simply could not fathom what could have been wrong with a drop off in sub-zero temperatures on the edge of town, and those who appeared to have easily maintained a ten-year silence about the body discovered there, give a face to the idea of authorized violence. Where there might have been shame, grief, or outrage, there was only coldness, calculation, and indifference on the part of many white officers.

A Granite Structure of Indifference to Aboriginal Death

In Saskatchewan, “starlight tours” is the term used to describe the police practice of dropping off Aboriginal men in an isolated area outside the city. The fact that there is a popular term is testimony to the fact that “it happened more than

37. Wright, *supra* note 1 at 208-9.

38. Simon Pemberton, “Demystifying Deaths in Police Custody: Challenging State Talk” (2008) 17:2 *Social and Legal Studies* 237 at 242.

once.” The practice of drop-offs is a lethal one when the temperature is minus 28 degrees Celsius and if the long walk back to town is undertaken without proper clothing and shoes. Sakej Henderson, an Aboriginal legal scholar, notes that in Saskatoon Aboriginal activists have long viewed freezing deaths suspiciously but until Darryl Night came forward it was hard to verify the connection between police and the deaths.³⁹ For their part, police explain drop-offs as a part of policing the prairie city. Officers Ken Munson and Dan Hatchen, for instance, explained that they dropped Darryl Night near the power plant, the area where all three men’s bodies were found, because he wanted to be dropped there to “walk off his anger” before returning to what he said was his home a half hour’s walk away.⁴⁰

Bruce Bolton, a retired police officer and the supervisor who had approved the quick closing of the Stonechild file, testified that he himself had dropped someone off in an isolated area thirty-five years earlier. When asked by the commissioner why he did it, Bolton explained: “What I can recall of the incident, the person was dealt with several times during my shift in which he was making a nuisance of himself at a hospital, as a matter of fact, and he was requesting a ride home. The hospital, of course, would not pursue any charges for his actions, and it was a case of him requesting a ride home every night.”⁴¹ Apparently tired of being called, Bolton taught his nuisance a lesson. We do not learn if the person in question was Aboriginal, but the inquiry learned that Bolton was disciplined for his actions and that the incident was well known in the police department at the time. Other drops-off were also well known, for example, an officer was disciplined in 1976 for dropping three Aboriginal people, including a pregnant woman, outside city limits and leaving them to walk back to the city.⁴² A second police officer who participated in the inquiry revealed that he would sometimes transport a person causing a disturbance to another location several blocks away, a process he described as “unarresting” a person.⁴³ Behind these actions, explained as born of frustration or even acquiescence to Aboriginal requests, lies an ominous incapacity to imagine Aboriginal peoples as being within the circle of humanity and a deep drive to ensure that they remain literally and figuratively outside of it. Who, after all, would willingly walk in sub-zero temperatures, inebriated and without proper clothing, and who would consider this activity safe?

By all accounts, Neil Stonechild was not only a handsome, joyful seventeen year old but also an alcoholic whose addiction often brought him trouble with the law.

39. Henderson, quoted in Brown, *supra* note 3.

40. Candis McLean, *When Police Become Prey*, documentary (90 minutes), directed/produced by Candis McLean (Silver Harvest Productions, 2007).

41. Bolton, cited in Wright, *supra* note 1 at 196.

42. Donald E Worme, *Submissions on Behalf of Stella Bignell and the Family of Neil Stonechild* (Saskatoon: Commission of Inquiry into Matters Relating to the Death of Neil Stonechild, 2004) Government of Saskatchewan <<http://www.justice.gov.sk.ca/stonechild/finalsubs/Bignell%20-%20Final%20Written%20Submissions.pdf>> at 4-6.

43. Wright, *supra* note 1 at 131.

Amid the scant details about the youth who painted murals, won a wrestling championship, attended Alcoholics Anonymous, and had close relationships with his mother and siblings, there are stories of his alcoholic belligerence, break-ins, and causing disturbances. Stonechild was serving a six-month open custody sentence at the Yarrow Youth Farm, an open custody facility for young offenders.⁴⁴ On the night of 24 November, Stonechild and his friend Jason Roy set off drinking and partying. Recalling that he had learned on the bus earlier in the evening that his former girlfriend Lucille Horse and her companion were going to be babysitting at her sister's apartment in Snowberry Downs, Stonechild and Roy set off from an apartment where they had been drinking at 11 pm to try to find the apartment where Lucille Horse was babysitting. They stopped at a 7/11 convenience store to warm up (an indicator of how few public spaces of shelter were available to them), and it is likely that Stonechild caused a disturbance. A witness testified that Officers Hartwig and Senger stopped him and asked for identification. The officers said that they were looking for Neil Stonechild because there had been a disturbance at the 7/11 (Commissioner Wright noted that the evidence establishes that Officers Hartwig and Senger stopped Stonechild there).⁴⁵

Police records confirm that two officers received the following call from dispatch on the night of 24 November: "drunk to be removed Neil Stonechild, 17 years old" and that Constables Larry Hartwig (whose regular partner was Ken Munson, implicated in the drop-off of Darryl Night) and Bradley Senger, a new police officer, were on their way to find Stonechild at 11:51.⁴⁶ Constable Hartwig used the computer in the cruiser a few minutes later to search the name "Tracy Horse," the false name Stonechild's friend Jason Roy gave to the officers when he was stopped by the officers. Roy testified that he did so that night because he was afraid that he too would be put in the back of the police cruiser along with his friend. Roy was let go and watched his terrified friend being driven off. Haunted and plagued with nightmares, he told several people, including the police investigator and a counselor, that he saw Stonechild in the back of the cruiser, bloodied and screaming that the cops were going to kill him. Both Senger and Hartwig maintained that they did not remember whether Stonechild was in their vehicle on the night of 24 November, and both claimed not to recognize Stonechild's name when his body was found (a name they had nonetheless entered on the computer that night and a person whom Hartwig had arrested or ticketed several times prior, as confirmed in the testimony of Sergeant Wylie). Through the simple device of "I don't remember," both avoid being directly connected to the drop-off, although a polygraph test administered to Constable Senger suggested that he was lying about Stonechild not being in the cruiser that night.

44. *Ibid* at 59.

45. *Ibid* at 192.

46. *Ibid* at 73.

Incongruously, on the witness stand, Constable Hartwig boasted of his excellent memory. He could recall both a minor and a major incident of that night's shift but declared that he had no memory of Neil Stonechild in the cruiser. When he was interviewed in 2000 by the RCMP, Hartwig stated that Stonechild had not been in his custody, but he added that he had heard that two officers had arrested Stonechild and had detained Jason Roy who had given the false name "Tracy Horse" to them. When asked how he came to know the name Tracy Horse, Hartwig replied that he had learned of the name through newspaper articles. The inquiry confirmed that this detail did not appear in any media reports. It is likely that Hartwig could have only known the name and its connection to Jason Roy because he had himself entered it on police computers on the night of 24 November. Faced with such a chilling possibility, Justice Wright concluded that Hartwig "recalled what happened, and his assertions are a deliberate deception designed to conceal his involvement."⁴⁷

Hartwig's duplicity was matched by other police officers. The paper file of the investigation into Stonechild's death was destroyed in 1998, and when the investigation was reopened in 2000, investigators had no written reports to go on until an Aboriginal officer, Ernie Louttit, came forward with a copy he had made in 1990 when he had tried to have the case investigated more thoroughly. Louttit was told to back off in no uncertain terms when he complained in 1990, and he made a copy of the file to pursue his own investigation but gave up after a few years. The paper file indicates that Sergeant Keith Jarvis closed the file on Neil Stonechild on 5 December 1990 and that he spent a mere twenty hours on the investigation. Jarvis told the inquiry that he thought that Stonechild was heading for a nearby adult correctional centre and got lost, an implausible theory given that Stonechild would have known that he would not be admitted there. Only ever understood as passing through the colonial city, enroute to prison or reserve, the young Stonechild cannot be imagined as being of the city. If he ended up frozen to death in a field outside of town, it can only be of his own volition.

Jarvis's appearance at the inquiry began a long line of appearances by white police officers, most of whom revealed an indifference to Stonechild's death and a subsequent cover-up of their participation in the investigation. The officers at the scene, and those charged with processing the reports afterwards, all failed to consider the death as warranting extensive investigation. Stonechild's clothing was destroyed and there was little or no follow-up with Jason Roy's testimony. Senior officers approved the file's closure, and, most damning of all, police misled the media on how much of an investigation had actually been carried out on the Stonechild file and about whether or not Hartwig and Senger were suspects. The very highest-ranking police officers continued through the years to cover up details leading up to and including the moment that a public inquiry was called. In sum, few

47. *Ibid* at 82.

police officers behaved ethically with respect to Neil Stonechild. Some lied, others could not remember, and all but two (tellingly, an indigenous officer and a white officer who had an adopted indigenous son who knew Neil Stonechild) could not find it in their hearts to pursue the story of what happened to Neil Stonechild.

From where does the collective indifference to the loss of Aboriginal life come? It is tempting to consider the role of gender here, given that all of the police officers mentioned earlier are men who are performing what scholars have referred to as hegemonic masculinity and about which I have elsewhere argued is organized around whiteness.⁴⁸ Of deep interest to me is the way that a focus on the performance of hegemonic masculinity can obscure a widespread and entrenched devaluing of Aboriginal life on the part of individual white persons, particularly those who wield power. What are we to make of legal actors such as Justice Wright who accumulates the evidence of a collective devaluing of Aboriginal life but is unable to pursue accountability (at least in so far as findings of guilt) and unwilling to interpret the evidence as anything other than an incompatibility between two different cultures? One obvious explanation is that legal processes such as inquiries largely function as performances of the law's, and thus colonial society's, essential goodness—a staging of its commitment to the rule of law.

Freezing deaths are highly controversial when the circumstances surrounding them include evidence of a stunning level of police indifference, incompetence, and duplicity. The commissioner dealt with the controversy by turning our attention to a framework guaranteed to cleanse public memory of the violence and dehumanization—cultural difference. If the problem is one of culture, then we need not consider racial hierarchy and we need not consider the relationship between police and Aboriginal peoples as a colonial one. Reconciling the duplicity and unethical behaviour of the police—behaviour that appears to be institutionalized—with the staging of the essential goodness of the state requires a parallel staging of Aboriginal difference, a difference understood as a resistance to modern life and as a descent into alcoholism and criminality. When he concludes that both “sides” are to blame for the police failures uncovered at the inquiry, Justice Wright transforms a drop-off and the mark of police handcuffs on the face and wrists of the dead into a story of a hard-to-police population and a police force that did not try hard enough. In the inquests described in the next section, we see the same fidelity to the story of Aboriginal difference, a difference that enables us to understand that Aboriginal people are the authors of their own demise. Equally on record, however, are the racial spatial economies of the city and the evictions that the law must disavow if it is to preserve settler sovereignty.

48. Sherene Razack, *Dark Threats and White Knights: The Somalia Affair, Peacekeeping and the New Imperialism* (Toronto: University of Toronto Press, 2004) at 57-63.

***Mapping Freezing Deaths: Rodney Naistus
and Lawrence Wegner***

I watch myself when I am in the city.⁴⁹

To gather when one is dislocated, Goldberg reminds us, is to resist.⁵⁰ Gathering is emplacement, and survival is a refusal to budge. Goldberg asks where can the racially marginalized go in the settler city. Rodney Naistus came from Onion Lake First Nations, from a Cree reserve that straddles the border between Alberta and Saskatchewan, in Treaty Six territory. Naistus also came from the prison to the city. The week before he was found frozen to death in a field just over one kilometre from the power plant where Darryl Night was dropped by the Saskatoon police, twenty-three-year-old Rodney Naistus was released from a Saskatchewan correctional centre. Invited for a night out by his brother Darryl, with whom he spent time in several group homes while they were children (an early eviction from family life),⁵¹ Naistus headed for Saskatoon on the bus. He had arranged to meet his close relative Charlene Baptiste in a mall, along with his half-brother Sheldon Lee Bear. Baptiste gave him her address and directions to her apartment and thought that he might stay either with her or her brother Dale. Naistus stayed with his brother Darryl at Charlene's apartment on the night of 27 January 2000. Baptiste, who did not come home that night, returned on Friday, 28 January with Rodney Harper, and after playing Nintendo, all four young people went to the Redrock Grill. Naistus and his brother stopped off enroute briefly at Dale's house, and he too came to the bar where they met a bricklayer named Pat Cooper for the first time. Apart from Cooper, they had limited money and did not drink more than three or four beers while at this bar.⁵² Playing pool and gambling slots, the group left the bar at around 6 pm to continue drinking in the apartment of Charlene Baptiste. They piled into a cab (with the exception of Dale who could not fit into the cab) and stopped to buy more beer. Charlene recalled that they then spent the hour "remembering old times and laughing." They were all "half cut" by which she meant partially intoxicated, when Naistus and Cooper left her apartment and set out for a club to "find some girls." The two men took a bus downtown.

With maybe \$10 in his pocket to cover the bus fare back to Onion Lake reserve, Naistus arrived at the JAX nightclub with Cooper, his new friend but was refused entry because of his attire (he was wearing a muscle shirt) and likely because

49. Calvin Chocan, council member, Onion Lake Band, testifying at the Naistus inquest. See *Coroner's Inquest into the Death of Rodney Hank Naistus*, Coroner HM Harradence (Saskatoon, SK: Coroners Service of Saskatchewan, 2001) at 914 [*Naistus Inquest*].

50. Goldberg, *supra* note 7 at 189.

51. *Naistus Inquest*, *supra* note 49 at 654.

52. Rodney Harper testifying at *Naistus Inquest*, *ibid* at 493.

both men were drunk. The men continued to Winston's bar where Naistus played the gambling machines. When they left the bar, as Pat Cooper testified, a woman pushed Naistus and told him to "fuck off." She left with Cooper to continue to another bar. Naistus went off in another direction and was not seen again. When his body was found, a witness, Charity Dawn Nightraveller, called police to report that she had seen Naistus in a 7/11, a convenience store, and one of the few places to get warm (as the Stonechild inquiry revealed). The store's cameras did not confirm this report. Others thought they had seen Naistus at the club C-Weeds, but Calvin Chocan from Onion Lake, who knew Naistus well, was certain that he was neither there nor at a party at a Weldon street house, near where Darryl Night was picked up by police officers Munson and Hachen the day before. The next day, Naistus's frozen body was found by a passing jogger, Pat Lorje, a woman who was also a member of the provincial parliament. Lorje described to the inquest the body frozen blue, the thin clothing, and a jacket pulled up to the neck revealing the bare chest of a young man with tears in his eyes. She noticed his brush cut and tattoos and, as she commented to a journalist later, knew immediately that he was Aboriginal.⁵³

Periphractic Marginalization

Rodney Naistus's exclusion from the city was a continuous one, enacted over time (generations). In their study of urban homeless Aboriginal peoples, Evelyn Peters and Vince Robillard note that until the 1940s most Aboriginal people lived on reserves, but by 2006 45 percent lived in cities.⁵⁴ Inferior levels of economic development and the poor condition of reserve housing pushed many Aboriginal people off reserve. The majority were fleeing not only poverty but also the family conflict that poverty, lack of educational and employment opportunities, and the dysfunction created by alcoholism and violence creates. Some male respondents of the study left the reserve to spend time in correctional institutions. Once in the city, racism, poverty, dysfunction, and low levels of education (obtained either in residential schools or non-residential schools) combined to limit employment and housing options.

The geographic layout of the city of Saskatoon confirms urban Aboriginal marginalization. In a study of race relations in Saskatoon, Cara Spence explored the contributions of the housing sector and reported that Saskatoon had the highest rate of economic segregation of any other urban centre. The fastest growing segment of the population, Aboriginal people in Saskatoon, are younger than their non-Aboriginal counterparts (40 percent are under fifteen compared to 22 percent of

53. Pat Lorje, quoted in Brian Hutchinson, "Frozen Ghosts," *Saturday Night Magazine* (19 August 2000) at 30.

54. Peters and Robillard, *supra* note 12 at 653.

the non-Aboriginal community) and two-thirds live in poverty earning less than \$20,000. Geographically concentrated on the west side of the city, this young, poor population largely lives in substandard housing. Educators have linked housing options to the population's rate of academic failure—for example, “school children living in the inner-city switch schools three times per school year,” owing to inadequate housing.⁵⁵

Describing policing in Saskatoon and other prairie cities with a high Aboriginal population as “racialized,” Elizabeth Comack suggests that police, confronted with “the daunting task of responding to the ‘disorder’ that results from these social conditions,” draw upon the colonial and racist social order of which they are a part, utilizing strategies such as dumping “to reproduce order when dealing with troubled and troublesome people.”⁵⁶ Policing, she writes, is inevitably racialized when police are confronted with “the daunting task of responding to the ‘disorder’ that results from these social conditions.”⁵⁷ The explanation that police are driven to the strategy of starlight tours by the difficulties of their jobs, harnessing their racism to the unenviable task of cleaning up city streets mystifies policing and sustains the police story that when violence occurs it originates in the difficulties and stressors of policing. More fundamentally, such explanations leave out the willingness to risk Aboriginal life that lies at the heart of dumping. We will need to go beyond the difficulties of policing a poor and socially excluded population, and to transcend facticity, as Taussig advises, to grasp that waste disposal is in fact the disposal of a human being. Police-initiated transjurisdictional transport of troublesome persons is not simply, then, a police strategy gone wrong but, rather, an annihilative impulse around which the settler city is organized.⁵⁸

From the moment he got off the bus and sought out family and friends, whose own disjunctive inclusion reveals itself in apartments and bars in the city's west end and in the highly policed streets surrounding them, Rodney Naistus was in the city but not of it. In Saskatoon, we see the spatial/racial economy enacted in the first instance when poverty produces a concentration of Aboriginal people in poor housing—a periphractic marginalization, to return to Goldberg, where spaces that are in the city but not of it are fenced off invisibly, its residents deprived of services, private space (crowded apartments), and public space, the latter accomplished by a policing that makes of the streets a militarized zone for Aboriginal bodies. There is informally restricted access to clubs and restaurants, leaving the marginalized to gather where the monetary and emotional (less racism) costs are likely to be lower than elsewhere. If we follow Rodney Naistus, we see the movements of the

55. Cara JA Spence, *An Analysis of Race Relations in Saskatoon, Saskatchewan: The Contributions of the Housing Sector* (Saskatoon, SK: Bridges and Foundations CURA Project on Urban Aboriginal Housing, 2004) at 18.

56. Comack, *supra* note 33 at 25-8.

57. *Ibid* at 28.

58. King and Dunn, *supra* note 32.

dispossessed from one space of confinement to another—in the city but not of the city. Naistus comes to the city apparently still wearing the clothes he wore when he entered the “work camp,”⁵⁹ clothing woefully inadequate for the Saskatchewan winter.⁶⁰ Here, in apartments and bars, he meets his family and friends. They drink together and sign his hat, as he sets off with a pal to find women. When money and friendship run out, only the street is left. To be forced onto the streets is to become prey. It can only end badly. There is no other space to be but the prison, the police station, the drunk tank, and the lethal sub-zero temperatures of outside, all destinations that begin in the back of a police cruiser.

As if it could operate a satellite to track the past, the inquest begins by asking an RCMP officer to trace Naistus’s last movements on a map. Even a simple exploration via google maps of these movements generates an embodied sense/knowledge of how space and subjectivity are intertwined in a colonial settler context. Mapping establishes that all activities take place over a very small geographical area, no more than a few kilometers from the edge of the city and geographically distant from middle-class areas. The testimonies of Aboriginal witnesses reveal a social world of economically marginalized young people, some of whom attend college or university but none of whom will be understood simply as college students or young people partying on a Friday night. Related to each other either by blood or through membership in the same reserve communities, these young people look after each other. Drinking is part of what the group has in common, although financial limitations and perhaps race limit where the drinking is done. As with other young people, there are specific nightclubs (JAX, near the bus station; C-Weeds, and Red Rock Grill) and specific apartment buildings and houses, all on the west side of Saskatoon.

Calvin Chocan, for instance, attended a party at 725 Weldon (the apartment building where Darryl Night had attended a party) at which there were several people from the Onion Lake band. He did not recall seeing Naistus there that night. Far from understanding these movements as revealing a world of youthful partying, kinship, and care, the inquest forms a picture of Aboriginal people leading a dissolute life that is bound to end badly. Alcohol and its connection to Aboriginal bodies cancels out other possibilities. Questions posed to Aboriginal witnesses make this world appear as a shadow world, a world that is the antithesis of respectability, where young people drink for long hours in less than reputable places. We learn what Aboriginal people drink, where, when, and for how long, and the details easily eclipse any others, such as the love and support with which Naistus appears to have been received when he left the penitentiary and arrived in Saskatoon and the evidence of lives lived in community.

59. Hutchinson, *supra* note 53.

60. Naistus *Inquest*, *supra* note 49 at 1116.

A Coronial Narrative of Freezing Deaths

Police establish that there was only one set of footprints at the scene and acknowledge under questioning by counsel for the family that it is possible that Naistus was dropped off and had started walking, although they did not investigate this possibility at the time.⁶¹ On his own initiative, Constable Yuzdepski followed the footprints, but he was not directed to do so by the Major Crimes Unit when they were called to investigate. In 2001, when the RCMP took over the investigations, a videotape of a constable walking the route Naistus might have taken was made in response to the coroner's request for one.⁶² Freezing deaths were discussed at the inquest, but a codified story took shape early on about how they come about. Stories that might run counter to this codified narrative were actively discouraged. For example, Pat Lorje, the member of provincial parliament who found Naistus and who paid careful attention to the footprints at the scene, returning several times during the day she found Naistus, actively considered why there seemed to be only one set of footprints. In an article based on an interview with Lorje, the magazine *Saturday Night* reported that she suspected that Naistus might have been dumped.⁶³ Requesting that the coroner recall Lorje to explain her comment to the magazine, counsel for the family, Mr Winegarden, alluded delicately to the need to consider "the totality of circumstances, the holistic experience" from the "First Nations' perspective," presumably an experience in which in the winter of 2000 three Aboriginal men were found frozen to death in the same area of the city.⁶⁴ The coroner rejected this idea and did not permit Lorje's recall.

The story of freezing deaths that breaks through the surface of detail about excessive drinking and inadequate clothing is a different one than Lorje's. Questioning an RCMP officer, the coroner established that the police investigated and rejected the theory that Naistus could have been dumped by a taxi driver who was deprived of his fare. Sargeant Bob Peters (then of the Major Crimes Unit) informs the coroner that there had been "a rash" of freezing deaths that winter, something he felt occurred when people who were "partying, and ventured out to get sick, and that is where they ended up."⁶⁵ Terrance Moyana, a pathologist acknowledged his awareness of freezing deaths and maintained that they happened once or twice a year and that it was possible to freeze fairly quickly in Saskatchewan's weather. His story was a rural one:

And I guess the typical story that we got of some of the cases I did before, there would be a person, maybe there was a get-together, it is usually out

61. *Ibid* at 265.

62. *Ibid* at 283.

63. Lorje, quoted in Hutchinson, *supra* note 53.

64. *Naistus Inquest*, *supra* note 49 at 102.

65. *Ibid* at 566.

in the country, there was a get-together or maybe drinking at one residence, and the houses being fairly spread apart in the country, one person would see the lights to his house in the distance and then they try to walk home. Really maybe told not to do because it is really cold and then they sometimes insist and then they die of cold exposure somewhere between the two houses. That is a fairly typical story.⁶⁶

Established as more typical of the country rather than the city, freezing deaths are uncoupled from any possibility that they are the result of murder. Dr Graeme Dowling, chief medical examiner of the province, confirmed that cold exposure is not normally treated as a suspicious death.⁶⁷ People go out into a sparsely populated area and they freeze to death—a banal occurrence.

The codified story is given further credence when the inquest tests the theory that Naistus was simply someone who got lost, either because he was unfamiliar with Saskatoon or was illiterate and could not determine the street sequence since they were marked by letters of the alphabet. Charlene Baptiste was interviewed on 19 February at 8 or 10 pm at the office of the RCMP. An Aboriginal officer, Constable Lerat, tried to establish what Naistus might have been doing in the industrial area of the city where he was found. The constable asked Baptiste whether Naistus had enough education to know his alphabet (the streets were marked by letters). Baptiste recalled that she thought the question “stupid” because it made Naistus look dumb. It is difficult to tell from a transcript what Baptiste could have meant when she answered one of Constable Lerat’s questions by saying that Naistus was slow, like her brother Dale. Pressed by counsel for the family to explain, she could only say that it was hard to explain what she meant but that she did not mean that Naistus was dumb.⁶⁸ When she was asked if Naistus might possibly have been going to pick up bottles at the nearby landfill, Baptiste noted that at the time she thought this question too was a stupid one since it was 2 am on a cold morning and she could not imagine who would go to collect bottles at that time. In any case, she commented to Constable Lerat that Naistus was “a home kind of person” who would not be collecting bottles. Marked as surplus in these questions, a member of a population without employment who survives on the remains of garbage dumps and landfills, Naistus himself acquires the patina of what Michelle Yates (writing on “the labor theory of value and disposability in contemporary capitalism”) notes is “a kind of disposability and throwing away within capitalism . . . little more than the human-as-waste, excreted from the capitalist system.”⁶⁹

66. *Ibid* at 155-6.

67. *Ibid* at 309-10.

68. *Ibid* at 479.

69. Michelle Yates, “The Human-As-Waste, the Labor Theory of Value and Disposability in Contemporary Capitalism” (2011) 43:5 *Antipode* 1679 at 1680.

Policing

It proves difficult to substantiate the story of an allegedly drunk, illiterate man, a possible collector of waste, who did not know his way around town and who may simply have gotten lost. Forensics could only establish that Naistus could have been at the lower level, rather than the upper level, of intoxication.⁷⁰ The police appear not to have thoroughly investigated either the tire tracks or the footprints, but this observation is in dispute, often by the coroner himself. The Naistus inquest took place one year after Darryl Night's story led to Constables Munson and Hatchen being charged with dropping him off near the power plant on an extremely cold night the day before Naistus was found. It was inevitable then that the shadow of this event would fall on the Naistus inquest. Police officer Hoover testified that some districts are policed more often than others. His own District 6 bordered on District 7 (the area of Saskatoon that included the Stroll) where Naistus was found. On the night of 28 January, it was established that most officers were working elsewhere but that Munson and Hatchen were working in District 8. Further, between the hours of 1:18 and 2:24 am, they were recorded as being on a break, after which they were called to a domestic dispute and were in the vicinity (100 yards) from Dale Baptiste's house, where Naistus might have been headed.

Winegarden, counsel for the family, laid out for the coroner the family's theory as to what happened that night. Naistus could have been picked up by the two officers and then dropped in the area in which he was found, perhaps because the officers were headed to the domestic dispute. DNA in the squad car proved inconclusive, but Naistus's clothes were never tested for the DNA of the two officers. Arguing that Munson and Hatchen should have been called to testify, Winegarden was criticized for his speculations about their involvement and his insistence that their movements be "mapped." He countered that other assumptions were "mapped," namely the party on Weldon Avenue for which there is no evidence that Naistus attended. Unproven and damaging evidence had already been entered on the record—for example, that a constable had asked Charlene Baptiste if Naistus knew his alphabet, a question that suggested that Naistus was illiterate and got lost of his own accord. On this latter point, Winegarden won the day (the coroner declaring that he found the question about Naistus's illiteracy inappropriate), and the inquest heard from Munson and Hatchen, although the coroner reminded counsel that the two officers were about to be sentenced for their dropping off of Darryl Night and that he did not want their testimony at the inquest to influence their sentencing hearing. Munson and Hatchen insisted that they did not have Naistus in their cruiser at any time on the night of 28 January and in the early morning of 29 January 2000. They maintained that they would have noted this even though they had not noted that Darryl Night was in their cruiser the night before.

70. *Naistus Inquest*, *supra* note 49 at 214-15.

Coronial care for police witnesses stands in stark contrast to the treatment of Aboriginal witnesses. As in other inquests, the coroner and the police routinely mix up Aboriginal names—Night stands in for Naistus, a Freudian slip that betrays not only the unconscious possibility that both are cases of dumping by Officers Munson and Hachen but also more generally the interchangeability of the native body and its status as less than human.⁷¹ Two Aboriginal sisters who testify, the Nighttraveler sisters are more than once referred to as the Nightcrawler sisters, and when Charlene Baptiste is confused with Charity Nighttraveler, counsel for the family is obliged to point out that Nighttraveler is “kind of a well-known name in First Nations country.”⁷² As if this were not enough, Aboriginal people themselves refer to each other differently from the official record. Rodney was Steve to his family and friends.⁷³ The coroner reminds several native witnesses to speak up, even instructing Dale Baptiste to spit out his gum.⁷⁴ The instructions have the effect of infantilizing Aboriginal participants and emphasizing their difference. The coroner remarks that witnesses are transient and hard to contact (although it is not clear that he is referring only to Aboriginal witnesses).⁷⁵ If the inquest has difficulty pinning down Aboriginal life, it succeeds in leaving us with a record of its strangeness, its difference, its physicality, its habitat. We are left only with the possibility that Naistus caused his own demise, through his habits and his own nature. The police are in consequence seen as being saddled with a difficult job, which the inquest will help them improve. The recommendations advise police to keep records of who is in their cruisers and to patrol isolated areas during the winter months. In such a story, the possibility that Naistus was driven to his death is next to impossible.

When asked how much he had had to drink on the night of 28 January, an Aboriginal witness Calvin Chocan told the coroner that he had had maybe six beers. He explained: “I watch myself when I am in the city. I don’t like indulging myself when I am not at home sort of.”⁷⁶ What is there to be watchful of: the cold, the police? The inquest does not pursue these questions. As the submission of the Federation of Saskatchewan Indian Nations (FSIN) to the inquiry noted, a special investigations unit to receive complaints about police had to be created to accommodate the flood of calls the FSIN received from callers about their experience with police. Aboriginal people had to be watchful of the police and the back of a police cruiser was indeed something to be feared, as the 800 or so calls to the office of the Assembly of First Nations made clear when the RCMP began its investigations into the deaths of Stonechild, Naistus, and Wegner.⁷⁷

71. *Ibid* at 1032.

72. *Ibid* at 551, 574, 575, 1116.

73. *Ibid* at 545.

74. *Ibid* at 613.

75. *Ibid* at 743-4.

76. *Ibid* at 914-15.

77. Silas E Halyk, *Submission of the Federation of Saskatchewan Indian Nations to the Commission of Inquiry into the Death of Neil Stonechild* (Saskatoon, SK: Commission of Inquiry into Matters

Lawrence Wegner: "It reads like a murder mystery"

There is a possibility that there might be a cover up. It reads like a murder mystery, I know that. It seems unfathomable in a lot of ways and maybe we should make a movie out of it some day, but the fact is, it is a possibility.⁷⁸

Lawrence Wegner did not come from a prison or a reserve but, rather, from a university in the city where he was studying to be a social worker. His landlady described him as an honest young man who very much wanted to serve his community by becoming a social worker.⁷⁹ Like Rodney Naistus, however, he too would be marked as someone who could only have caused his own demise, a marking accomplished by references to his mental illness and drug use. Amid these details, it is hard to consider the possibility that Wegner might not have been the author of his own demise. If the inquest leaves us with any clue that it might be otherwise, it is only in the everyday details of life in Saskatoon, details that confirm a racially divided world, a world "cut in two," in Frantz Fanon's words.⁸⁰

Wegner went missing on 31 January 2000 when the temperature in Saskatoon fell to minus 22 degrees. He was found frozen solid on 3 February. There were superficial abrasions on his wrists. Dressed far too lightly for the weather, Wegner was found in a t-shirt and without shoes. Ominously, his coat and shoes were never found. Several police witnesses recalled that his socks were clean and without holes, indicating that he could not have walked far without shoes. There was only one set of tracks, but the first police officers on the scene contaminated it, and Wegner's movements could not be traced for certain. The tracks seemed to indicate that Wegner had gotten up and fallen over. They ended near a "prairie road." The socks, a key piece of evidence, were washed by Wegner's family when his clothes were returned, and it was never established whether they had in fact been clean and without holes. A police officer, who walked the route Wegner was assumed to have taken, found his own socks to be very worn, dirty, and with holes.

In the documentary film *Two Worlds Colliding* about freezing deaths in Saskatoon, Aboriginal lawyer Don Worme stands at the site where Lawrence Wegner was found. Our imaginations run wild as the camera pans over the frozen field. The sheer emptiness of the landscape, its frozen beauty, seem to spell danger and death because there is so little shelter from the elements and because of its isolation.

Relating to the Death of Neil Stonechild, 2004) Government of Saskatchewan <<http://www.justice.gov.sk.ca/stonechild/finalsubs/FSIN-finalsub.pdf>> at 34-5.

78. GJ Curtis, lawyer for the Wegner family in *Coroner's Inquest into the Death of Lawrence Kim Wegner*, Coroner HM Harradence (Saskatoon, SK: Coroners Service of Saskatchewan, 2002) at 2385 [*Wegner Inquest*].
79. *Ibid* at 464.
80. Frantz Fanon, *The Wretched of the Earth*, translated by C Farrington (New York: Grove Press, 1963) at 39.

It is impossible to believe that anyone would come here of their own volition on an extremely cold night. There is something utterly terrorizing about the prospect of being left here on an intensely cold night. The camera captures Wegner's mother on the same landscape, touching the frozen prairie grasses and wondering why the police could not see her son as human. The grasses are the same kind that experts (rejecting the theory that the marks were caused by police-issued handcuffs) speculated caused the marks on Neil Stonechild's wrists. As inquests typically do, the Wegner inquest worked with the hypothesis that Wegner simply wandered off in a drug-induced psychosis and came to the area near the dump where he froze to death, the same story that the Naistus inquest pursued, with drugs taking the place of alcohol. As with these other freezing deaths, spatiality lends coherence to the narrative about dysfunction and wasted lives that end near the dump.

"The worst place that Wegner could have lived"

Through a focus on place, the inquest maps Wegner's movements and geographically organizes our understanding of what happened to him. From the coroner's point of view, Lawrence Wegner's problems began and ended with where he lived. Until shortly before his death, Wegner lived in a group home and saw a psychiatric nurse once a month for medication. This medication could be taken all at once (which would increase its effect) or it could be taken in multiple doses.⁸¹ Caught stealing his own medicine from the landlady, Jocelyn Schandler, at the group home, Wegner was kicked out and went to live with friends, twenty-one-year-old Brent Ahenakew and nineteen-year-old Jennifer Heidle. The coroner characterized this couple's apartment as "the worst place where Lawrence Wegner could have gone to live," the environment providing him with an opportunity to take drugs and exposing him to conflict of the kind that added substantially to his stress.⁸² Working with the hypothesis that the mental health system had failed Wegner in allowing him to leave the group home and to live with friends, the coroner explored the idea that community treatment orders should have mandated where Wegner should live.

Throughout the inquest, Wegner's condition as a drug addict provided the dominant frame through which to understand what happened on the night of his death. Friends and one expert sought to make the story more complex to no avail. For example, although it was established that he took drugs, especially when in the company of friends, no one close to Wegner had ever seen him in a psychotic state. Wegner was initially diagnosed with drug-induced psychosis. The psychiatrist whom he saw two days before he disappeared found no evidence of psychosis and altered this earlier diagnosis to mood disorders. The details that would support

81. Dr. Remillard, in *Wegner Inquest*, *supra* note 78 at 2836-7.

82. *Ibid* at 2837.

the story of Wegner's wandering off in a drug-induced psychosis, notably Wegner's state of undress at the time of his death, puzzled many who knew him. Jocelyn Schandler recalled that he was a "meticulous dresser" who was unlikely to be dressed as he was found.⁸³ Friends remembered that he hated the cold, dressed warmly, and usually asked for rides because he hated to walk in the winter. Toxicology reports confirmed that Wegner had smoked marijuana, but no other drugs were found in his system.

While there was much in Wegner's story to indicate that drugs may have played a part in what happened, there were also details that suggested police involvement. The police entered Wegner's story when he called 911 at 9 am on the morning of Sunday, 30 January from the apartment of Jennifer Heidle and Brent Ahenakew. Worried that Jennifer was in an abusive situation, Wegner assisted police in trying to get her to leave for a crisis centre. Reportedly unable to handle conflict, Wegner left the apartment at 8 pm that night when the couple started fighting again. Brent Ahenakew lent him his boots and coat in the hope that Wegner would come back. Neither Jennifer nor Brent remembered much of what happened later that night, but all those who were in the apartment maintained that Wegner was not as stoned as the others when he left. Around 10 pm, Bev Urchenko heard a knock on her door and heard something about a delivery. An hour later, she heard a man screaming and saw two policemen in a car parked in front of Jennifer Whitecap's house. Jennifer Whitecap had called police around 10:30 pm to report a man who had knocked on their door too, yelling "pizza, pizza." Jennifer and her mother, both Aboriginal, were concerned that the man was wearing white socks, no shoes, and only a t-shirt. Sergeant Marsland who took the 911 call informed her that a car was in the area and would be advised to look for someone matching this description. Marsland could not confirm that he had indeed alerted the officer in the area. Marsland, whose work performance had been criticized, struck the coroner who listened to a tape recording of 911 calls as "cold and uncaring."⁸⁴

Somewhere between 11 and 12 pm of the same night, Darlene Katcheech and Benita Moccassin, who both knew Wegner (whom they called "Wagonburner"), testified that they saw him being pushed into a police car in front of the hospital. However, neither woman came forward immediately, and each of them waited for eighteen months after they were initially interviewed by the police and after Benita called the FSIN in November 2001.⁸⁵ Both changed small details in their story, and the coroner advised the jury that their testimony was unreliable owing to the time lag.⁸⁶ One of the women gave details of one of the arresting officers they saw that night to a police artist who was able to provide a sketch to police. There does not appear to have been any follow-up with the

83. *Ibid* at 492.

84. *Ibid* at 2869.

85. *Ibid* at 2295.

86. *Ibid* at 2856.

sketch.⁸⁷ The coroner advised the jury to “spend no time trying to figure out if the sketch represents a particular officer.”⁸⁸ A third witness, Mr. Albert Chastis, who was also Aboriginal, also claimed that he saw the police arresting an Aboriginal man in front of the hospital but his testimony was also discredited. Chastis claimed that he continued driving past the hospital, and when he got to the area near the power station, he went up on a rail bridge because he thought there was a fire. He saw a police car in the distance. Although he offers a detailed story, Chastis earned the coroner’s censure when he explained that he saved the information about the police car at the power plant for the inquest in order to surprise the jury, initially reporting to the police only the arrest in front of the hospital.

A disturbing pattern of indifference to Aboriginal life emerges during the testimonies of some white witnesses, an indifference tinged with anxiety perhaps but shaped nonetheless by the sense that an Aboriginal man walking without shoes and wearing only a t-shirt on an extremely cold night was not something to be overly worried about. For instance, an employee of Co-Op Fuels saw a man, whom he believed was Aboriginal, walking on the train tracks without shoes and wearing only a t-shirt. He called out to him but took no further action. Graham Anderson explained that he felt compelled to testify at the inquest when he heard that the event had “turned racial” and that people were considering the police’s role in Wegner’s death. Two truck drivers also saw someone walking with inadequate clothing for the weather, and one also saw a police car and flashed his lights to warn the police. Neither man attempted to call the police. It is difficult at the inquest to establish why, despite knowing the dangers of the cold that night, these witnesses were not worried enough to call the police. Most disturbing of all was the sentiment, summed up by the family lawyer, Greg Curtis, that these witnesses simply believed that “there is always weird stuff that happens down there . . . That it was just another incident.”⁸⁹

Treatment of Witnesses versus Responses to Police

Aboriginal witnesses described their fear and suspicion of the police. Jocelyn Schandler told the coroner that she had received strange phone calls from someone claiming to be the police; others said that they had been under surveillance. None of this information was deemed relevant for the jury to hear. Darlene Katcheech and Benita Moccassin explained their eighteen-month delay in coming forward by describing themselves as “plain old scared” (in Benita’s words).⁹⁰ Darlene Katcheech described herself as feeling very “nervous” at the inquest. She recalled that her late

87. *Ibid* at 2747-55.

88. *Ibid* at 2857.

89. *Ibid* at 873.

90. *Ibid* at 2146.

father had warned her that the “police can be dirty.”⁹¹ Living with the memory of what happened to Wegner was difficult, she told the coroner, and she had spent a long time worrying about what she should tell the Wegner family. Eliza Whitecap, whose daughter called the police, believed that the police never come when they are called. Eliza, who described herself as not speaking English well, extended her distrust to the coroner himself, suspecting that he mixed up her name several times in a deliberate attempt to confuse her.⁹²

In this racially divided legal world of fearful Aboriginal witnesses whose testimonies are easily discredited and white witnesses anxious to defend the police but who communicate their familiarity of the world where drop-offs occur, the possibility that police removed Lawrence Wegner’s shoes and left him on the edge of town on a freezing cold night is ruled out of hand. The coroner instructs the jury accordingly: “It is my advice to you that there is no evidence at this Inquest of a practice by Saskatoon police of dumping people off.”⁹³ The story that ultimately won the day was the one about Lawrence Wegner ending his last few days in the apartment of Brent Ahenakew and Jennifer Heidle. The coroner’s recommendations centred on the issue of accommodations for someone with mental health and drug problems. He also recommended that the police should keep better records of their 911 calls and that everyone should have an obligatory cross-cultural awareness session since the legal system had to consider Aboriginal culture. As would be the case in the Stonechild inquiry years later, cultural difference stands in for the marking of Aboriginal bodies as challenges to be overcome, chaos to be contained, waste to be expelled.

Conclusion

When it [waste] cannot be easily expelled it is simply abandoned, thrust into a zone of indistinction where it is regulated but not considered worth redeeming.⁹⁴

It is easy to see why settler society must engage in a constant purification of itself, an eviction of Aboriginal bodies from the spaces of the settler and their confinement to the zone of indistinction. The settler’s emplacement depends on this eviction, both materially and symbolically. Inquests and inquiries into Aboriginal deaths in custody provide a means of tracking the evictions that end in death, the racial/spatial economy of the settler city, and the periphractic spaces (in the city but not of the city) where Aboriginal bodies are “regulated but not considered worth

91. *Ibid* at 2354.

92. *Ibid* at 764.

93. *Ibid* at 2868.

94. Gidwani and Reddy, *supra* note 26 at 1653.

redeeming.”⁹⁵ The inquest arranges our understanding of these geographies of violence so that we come to see freezing deaths as the destiny of a people unable to bear the stresses of modern life, the endpoint for those who refuse to be improved. However, the inquest and the inquiry also reveals features of the zone of indistinction. We see its rituals of purification: arrest, detain, evict. In law, these become performances: measure (bruises on wrists), classify (their alcohol consumption and mental illness), and conclude with their difference (not ours, no matter how many deceptions). The full measure of the law does not apply to those in a state of nature since the state of nature is the place where law has authorized its own absence. As waste, as people no one can help or harm, Aboriginal death in custody is banal. Inquests and inquiries ensure that we know this.

95. *Ibid.*