Canadian Journal of Family Law

Volume 33 | Number 2

2020

Confronting Cannibalism, Review of Hadley Louise Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Univ. Toronto Press, 2018)

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CONFRONTING CANNIBALISM

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Review of Hadley Louise Friedland, *The* Wetiko *Legal Principles*: *Cree and Anishinabek Responses to Violence and Victimization* (Univ. Toronto Press, 2018)

INTRODUCTION

In their first year of law school, common law students learn of a figure who tests the boundaries of state punishment and criminal culpability: the cannibal. The cannibals who law students encounter are two sailors, Captain Tom Dudley and his crewmate, Edwin Stephens, who set sail for Australia from Southampton on May 19, 1884.[1] Part of a

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[1] Our account of the *Mignonette*'s voyage and the events that led to the trials of Dudley and Stephens draws on the following secondary sources: Allan C Hutchinson, *Is Eating People Wrong?: Great Legal*

four-man crew, they were sailing the *Mignonette* to Sydney for its new owner. Almost two months into their journey, they were caught in a storm. An enormous wave damaged the boat, and Dudley ordered his crew to abandon ship. The crew hurriedly lowered the ship's thirteen-foot lifeboat into the water, managing to salvage only two cans of food and no drinking water.

Within two weeks, having eaten all their provisions and forced to drink their own urine, the men considered the desperate maritime custom of sacrificing one shipman so that the others could live. Richard Parker, the crew's seventeen-year-old cabin boy, had become gravely ill after drinking seawater and was slipping in and out of consciousness. Dudley suggested that they kill Parker to save themselves. Dudley eventually slit Parker's throat and the three men consumed him. A few days later, a German freighter rescued them.

From the moment of rescue, the seamen were forthright about what they had done. Dudley and Stephens believed that the laws of the sea justified killing in such

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Cases and How They Shaped the World (Cambridge: Cambridge University Press, 2011); Michael G Mallin, "In Warm Blood: Some Historical and Procedural Aspects of *Regina v. Dudley and Stephens*" (1967) 34:2 U Chicago L Rev 387; AW Brian Simpson, *Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which it Gave Rise* (Chicago: University of Chicago Press, 1984); Andrea Hibbard, "Cannibalism and the Late-Victorian Adventure Novel: *The Queen v. Dudley and Stephens*" (2019) 62:3 English Literature in Transition, 1880–1920 305.

dire circumstances.[2] At their bail hearing, defense counsel urged the magistrates to reconsider the charge of murder.[3] Citing Blackstone's *Commentaries on the Laws of England*, the defense reminded the court of "the great universal principle of self-preservation, which prompts every man to save his own life preferable to that of another."[4] Amongst the seafaring community, popular opinion was initially on their side. Fellow seamen contributed generously to a legal defense fund,[5] and Dudley expressed his "thanks for numerous favours of sympathy to myself and companions" in a letter to the *Times* of London.[6]

Dudley and Stephens did not fare as well before the courts. At trial and on appeal, the presiding judges convicted them of murder.[7] Shoring up the law of murder to apply in cases of maritime calamity, Lord Coleridge refused to allow "compassion for the criminal to change or

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2 See "The Wreck of the Mignonette", *The Times* (9 September 1884) 3.

3 "The Wreck of the Mignonette", *The Times* (12 September 1884) 4.

4 *Ibid*. See Sir William Blackstone, *Commentaries on the Laws of England*, vol 4 (London: Strathan & Woodfall, 1795) at 185.

5 See Hibbard, *supra* note 1 at 308.

6 Hutchison, *supra* note 1 at 26.

7 For a discussion of whether the necessity defense is best conceptually defined as an excuse or justification, see Edward M Morgan, "The Defence of Necessity: Justification or Excuse?" (1984) 42:2 UT Fac L Rev 165 ("[r]ather than compassion for the accused based on the presence of an excusing condition, a justification seeks to establish that the act for which he is charged did not constitute a criminal offence in the first place" at 167).

weaken in any manner the legal definition of the crime."[8] However, rather than donning the black hoods that judges typically wore when condemning an accused to death, Lord Coleridge paired his verdict with a request for royal clemency. Six months after their conviction, Queen Victoria pardoned Dudley and Stephens.[9]

For students of criminal law, the case bearing the sailors' names—*R. v. Dudley and Stephens*—stands for a strict and narrow construction of the necessity defense. Though the case captivates law students as a dystopian thought experiment come to life, few, if any, learn of the case's political stakes at the time it was decided. This historical amnesia cleanses the case of its imperialist roots. For the Victorians, the ordeal of the *Mignonette* and the resort to cannibalism by the sailors was about far more than the scope or meaning of the necessity defense. At stake were fundamental questions about what it meant to be human, to be English, and to be *civilized*.

Professor Hadley Friedland's illuminating and important book, *The* Wetiko *Legal Principles: Cree and Anishinabek Responses to Violence and Victimization*, analyzes Indigenous legal responses to another cannibal figure wholly absent from Canadian legal education to date: the *wetiko*.[10] As Friedland writes in the preface, "[t]he

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8 *R v Dudley and Stephens*, [1884] EWHC 2 (QB), 14 QBD 273 [*Dudley and Stephens*].

9 Simpson, *supra* note 1 at 239–41.

10 See Hadley Louise Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018).

wetiko (or windigo) concept has existed within Cree and Anishinabek societies for centuries."[11] While it has often been translated into English as "cannibal," it encompasses far more than actual or metaphysical flesh-eating. At base, it signals monstrosity. "Beyond the ancient stories of cannibal giants who roamed the land," Friedland writes, "the concept is used to describe human beings who do monstrous things."[12]

Friedland opens and closes her text with two stories—"Sweet Dirt" and "Beyond Sweet Dirt"—that tell of haunting but ultimately hopeful encounters with *wetikos*. These bookend stories, as Genevieve Painter has written, "frame the book's pleadings on why the *wetiko* stories count as law," and "cage the book's common law chapters," thereby leaving us "free to imagine the worlds left outside them."[13]Storytelling as legal method provides a transformative window into what law can be and who can define it.[14]

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11 *Ibid* at xvi.

12 *Ibid*.

13 Genevieve Painter, "Hadley Louise Friedland: The *Wetiko* Legal Principles: Cree and Anishinabek Responses to Violence and Victimization. Toronto: University of Toronto Press, 2018. 144 pp.", Book Review (2019) 34:3 CJLS 557 at 559.

14 See Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 Lakehead LJ 16; Rebecca Johnson & Lori Groft, "Learning Indigenous Law: Reflections on Working with Western Inuit Stories" (2017) 2:2 Lakehead LJ 117.

The common thread that Friedland pulls through these stories is the enduring question of how we should protect the most vulnerable from abuse. Friedland's work goes further than simply acknowledging problems of physical and sexual abuse. She explains the procedure historically used by Cree and Anishinabek peoples when dealing with *wetiko* figures, and in doing so, raises critical questions for readers about the Canadian criminal law system's obsessive focus on punishment. The book is informed by accounts of Cree Elders and knowledge keepers, including *wetiko* stories that they learned as children and that they will pass down to the next generation.

In this essay, we consider the potentially transformative role of *wetiko* stories for Canadian legal education. Our aim is not to assimilate *wetiko* principles into dominant legal training. Indeed, we share Friedland's resistance to studying *wetiko* stories primarily with a view to reconciling them with Canadian state law.[15] Rather, we see in Cree and Anishinabek law important alternatives to the punitive impulses that are characteristic of Canadian criminal law. Where the English courts took pains to condemn Dudley and Stephens as murderers who had contravened Englishness itself, Cree and Anishinabek peoples confronted monstrousness as a presence within. *Wetiko* stories, Friedland reminds the reader again and again, can provide tools for protecting "our children from

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15 See Freidland, *supra* note 10 at 110 ("the most logical place to begin further research is not *wetiko* law's relationship with Canadian state law at all," Friedland writes. "Rather, the place to begin is within Indigenous societies.").

terrible harms caused by people close to us, and [for] thinking about how to recognize and respond to people close to us who may cause terrible harm to others."[16] Acknowledging this *closeness* provides a very different vantage point to the *distance* that the common law urges law students to construct between victims and offenders.

CANNIBALISM ON THE HIGH SEAS

Had the *Mignonette* sailed a century earlier, it is unlikely history would remember the names of Dudley or Stephens, and certainly not as men convicted of murder. British maritime historians have shown how regulatory and cultural changes transformed shipping over the long nineteenth century.[17] Labourers and progressive reformers campaigned against the despotic and dangerous maritime conditions that caused so many sailors to perish in catastrophic and preventable shipwrecks. The eponymous Plimsoll lines that mark safe submersion levels on ships—a corrective against owners who frequently overloaded ships and collected insurance payouts when the vessels sank with crew on board—originated during this era, as did

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16 *Ibid* at 74.

17 See Glen O'Hara, "'The Sea is Swinging into View': Modern British Maritime History in a Globalised World" (2009) 124:510 Eng Hist Rev 1109.

rules on minimum food, water, and accommodation provisions for crew.[18]

The expansion of maritime regulation coincided with and infused larger cultural transformations in English seafaring. In popular literature and songs, Victorian authors and lyricists recast ships as places of civility. Breaking with the tradition of outcaste pirates and avaricious captains, "Honest Jack" emerged as an exemplar of altruistic and stoic masculinity.[19] In 1852, when the H.M.S. *Birkenhead* was transporting troops to fight in the Eighth Xhosa War, it sank off the coast of South Africa. As it was sinking, the commanding officer allegedly ordered the men to stand back to allow seven women and thirteen children aboard to be rowed to safety.[20] Immortalized in Rudyard Kipling's "Soldier an' Sailor Too," the chivalrous

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18 See Nicolette Jones, *The Plimsoll Sensation: The Great Campaign to Save Lives at Sea* (London: Little, Brown Book Group, 2006); Leon Fink, *Sweatshops at Sea: Merchant Seamen in the World's First Globalized Industry, from 1812 to the Present* (Chapel Hill: University of North Carolina Press, 2011).

19 See Jones, *supra* note 18 at 15.

20 See "The Wreck of the Birkenhead" in William OS Gilly, ed, *Narratives of Shipwrecks of the Royal Navy between 1793 and 1857*, 3rd ed (London: 1864) 348; David Seton, *Narrative of the Wreck of the 'Birkenhead'* (London, 1890), cited in Lucy Delap, "'Thus Does Man Prove His Fitness to be the Master of Things': Shipwrecks, Chivalry and Masculinities in Nineteenth- and Twentieth-Century Britain" (2006) 3:1 Cult & Soc Hist 45 at 49.

ethic of "women and children first" was invented as naval tradition.[21]

This Victorian ethic of self-sacrifice challenged the prevailing maritime custom of resorting to survivor cannibalism in cases of shipwreck. The legal historian A.W. Brian Simpson, in his work *Cannibalism and the Common Law*, notes that English sailors regularly drew lots in cases of starvation to decide both who would die and who would do the killing.[22] Popular songs, newspapers, and literary accounts recounted the macabre tradition. As Simpson writes bluntly: "[t]here was nothing whatever secret about the matter. What sailors did when they ran out of food was to draw lots and eat someone."[23]

By 1884, the year the *Mignonette* sank, legal and cultural tides were turning. Not only was the state exercising greater authority over conduct and conditions aboard ships, social understandings of cannibalism were also changing. Cannibalism—real and imagined—increasingly became for the English a marker of Indigenous barbarism in Africa, the Pacific, and the

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21 See Rudyard Kipling, "Soldier an' Sailor Too" (1893) in *The Collected Poems of Rudyard Kipling* (London: Wordsworth, 2001) ("But to stand an' be still to the *Birken'ead* drill is a damn tough bullet to chew" at 447).

22 See *supra* note 1.

23 *Ibid* at 140.

Americas.[24] The famed explorer Richard Burton developed a taxonomy of thirteen "African stares" after he journeyed to the lakes region of East Africa from 1857–1859. Last among them was the "stare cannibal"—the savage African ready to consume another.[25] Colonial accounts of the Pacific Islands likewise depicted Indigenous peoples as cannibals. As Tracey Banivanua-Mar observes in her study of nineteenth-century colonial discourses about Fiji:

> [c]annibalism epitomized Fiji in Europe, Australia, and the United States, where a vibrant market emerged in postcards, travel narratives, missionary reminiscences, exhibits or traveling freak shows displaying human [flesh] and other specimens."[26]

By the time that Dudley and Stephens stood trial, consuming human flesh evoked a barbarism that Victorians sought to vanquish from within and project onto the colonial other.

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[24] Surekha Davies, Book Review of *An Intellectual History of Cannibalism* by Cătălin Avramescu, (2010) 20:2 Intell Hist Rev 275 at 276 (observing how post-colonial scholarship in recent years has shown that "the cannibal has been perceived not only as evidence of isolated madness or perversion, but also as a trope that pervades colonial writing").

[25] See Dane Kennedy, *The Highly Civilized Man: Richard Burton and the Victorian World* (Cambridge, MA: Harvard University Press, 2005) at 115.

[26] Tracey Banivanua-Mar, "Cannibalism and Colonialism: Charting Colonies and Frontiers in Nineteenth-Century Fiji" (2010) 52:2 Comp Stud Soc & Hist 255 at 257.

Lord Coleridge appealed to this sense of civility in upholding the conviction of Dudley and Stephens. Writing for a unanimous court, he proffered a vision of English, Christian seamen who would fulfill their duties to others even to the point of death:

> The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the *Birkenhead*; these duties impose on men the moral necessity, not of the preservation, but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink, as indeed, they have not shrunk.[27]

Lord Coleridge breathed into criminal law a Victorian ideal of duty-bound masculinity. Where maritime custom had once acknowledged and regulated survival cannibalism, eating another's flesh was now cast as anathema to English identity.

By reading this vision of chivalrous and honourable English civility into law, Lord Coleridge, like his cultural and literary counterparts, elided the realities of imperial brutality and privation. The *Birkenhead* tradition of "women and children first"—or, as Lucy Delap more accurately describes it, "ladies . . ., [then] . . . white women and children" first—was invented on a naval ship carrying soldiers to fight a war of conquest against the Xhosa

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[27] *Dudley and Stephens*, *supra* note 8.

people.[28] In her study of late-Victorian adventure novels, Andrea Hibbard observes that valiant heroes served to inoculate readers from the "sordid spectacle of voracious self-interest exhibited not only by the desperate Dudley and Stephens, but on a much larger scale by the 'scramble for Africa' and the New Imperialism."[29] The rapacious monstrousness at the heart of empire was concealed behind a veneer of heroic civility.

THE MONSTROUS WITHIN

Reading *wetiko* stories alongside *Dudley and Stephens* illuminates how imperial distinctions between the human and the less-than-human, the civilized and the barbaric, indelibly shaped legal systems in the colonies and the metropole. At stake in Friedland's work is the question of how societies should conceive of and respond to monstrosity. Not only did colonial projections of monstrousness onto Indigenous peoples work to justify brutal conquest in the name of a civilizing mission, they also fueled the punitive response to Dudley and Stephens' act of desperation. This impulse continues to shape Canadian criminal law. While Friedland writes first and foremost for Indigenous communities, every law student in Canada would benefit from learning of the relational logic at the heart of Cree and Anishinabek responses to violence and victimization. Problems of violence, abuse, suffering, and trauma cannot be denied away through projection or punishment. Through Friedland's recovery of *wetiko* stories, we look monstrosity in the face. We see "darkness

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28 Delap, *supra* note 20 at 52.

29 *Supra* note 1 at 318.

in the daytime."[30] But we also see clear-eyed collective responses motivated by protection and repair. And, as such, we "feel the brightness too."[31]

Friedland is motivated by a deep concern with the violence and victimization that grips too many Indigenous communities today. Anguish and hope are palpable in her writing. "Nowadays, many Indigenous people are grieving," she laments.[32] "They are grieving the memories of children and adults lost to violence and victimization, both from residential schools and within communities. It's hard to think about what has happened to so many of our children."[33] Many Indigenous people "struggle to cope" each day with "the horror, loss, and grief" that results from "overwhelming" levels of violence.[34] Mary Ellen Turpel-Lafond has long stressed the urgency of the situation:

> [t]he pressing reality is that we have unprecedented levels of violence experienced in Aboriginal families and communities in the current generation, likely connected to the

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30 Friedland, *supra* note 10 at 10.

31 *Ibid* at 10.

32 *Ibid* at 11.

33 *Ibid* at 11–12.

34 *Ibid* at 12.

> intergenerational trauma from the residential school experience.[35]

Colonial displacement and dispossession, the fracturing of families and nations, and the ongoing repression of Indigenous traditions have together left communities ripe for cycles of abuse to set in over time.

To make matters worse, the pain of violence and abuse is especially acute when inflicted by someone one knows and trusts. This is the problem at the core of Friedland's book: how should Indigenous communities respond to violence and abuse committed from within? The challenge is a dual one of both protection and rehabilitation. Rather than condemning those who harm children as monstrous outsiders, Friedland acknowledges the ties that bind victims and offenders, the vulnerable and the broken. Her aim is to find within Indigenous legal traditions, specifically *wetiko* stories, tools, and practices to "think about and respond to . . . violence in principled and effective ways."[36]

Friedland draws parallels between the tactics, characteristics, and possible causes of *wetikoism* and those who abuse and sexually victimize children today. If the analogy holds, she argues, then *wetiko* principles could be "usefully applied to the present urgent issue of child

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35 The Honourable ME Turpel-Lafond, "Some Thoughts on Inclusion and Innovation in the Saskatchewan Justice System" (2005) 68:2 Sask L Rev 293 at 295.

36 Friedland, *supra* note 10 at 112.

victimization."[37] Friedland knowingly treads on dangerous ground. The pedophile, the abusive parent, and the woefully negligent caregiver attract a level of scorn in dominant Canadian society today that marks them as the cannibal of old—monstrous figures undeserving of human community. As James Kincaid observes in his cultural study of child molesting, "the recent translation of 'sexual offenders' into 'sexual predators' transforms these particular criminals into ogres, beyond redemption and with no claim on human civil rights."[38] The ogre, the predator, and the starving sailor who kills and consumes another mark themselves as less than fully human. Or do they?

Rather than vilifying the *wetiko* as a foreign other, Cree and Anishinabek peoples treated those who committed monstrous acts as still one of their own. They adopted a ladder approach to respond to violence and victimization. Friedland shows through oral accounts, written records, and interviews that healing was the first and most common response to *wetikoism*.[39] A person suspected of becoming a *wetiko* might be taken to a healer or treated to generous hospitality in an effort to treat their affliction. As with other responses, healing efforts were only undertaken after community members considered all the circumstances of a given case. Where healing failed or proved insufficient to protect others from harm, community members would closely supervise suspected

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37 *Ibid* at 73.

38 James Kincaid, *Erotic Innocence: The Culture of Child Molestation* (Durham, NC: Duke University Press, 1998) at 11.

39 See Friedland, *supra* note 10 at 85–86.

wetikos, using coercive tactics as necessary.[40] Community members pursued other measures when necessary, including supervision, separation, incapacitation, or, in extreme cases, death.

Building on John Borrows's work, Friedland identifies three features of collective decision-making in response to *wetiko* figures:

> (1) legitimate decisions are collective and open; (2) authoritative final decision-makers are leaders, medicine people, and the closest family members of the *wetiko*; and (3) there are procedural steps to determine legitimate and effective responses.[41]

These procedural steps include "recognizing and sharing information about warning signs," gathering evidence to determine if a person "fits in the *wetiko* category," and deciding on a response.[42] In contrast to the reactive Canadian criminal law, Cree and Anishinabek peoples worked to prevent harm. "Intervention to prevent *wetiko* transformations and behaviours is *the* most consistent normative principle in these stories," Friedland writes.[43] Justice measures were motivated not simply by after-the-fact repudiation, but instead by a set of interlocking

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40 See *ibid* at 88.

41 *Ibid* at 75.

42 *Ibid* at 79.

43 *Ibid* at 34–35.

responsibilities among community members to prevent suffering before it occurred.

LIVING HISTORY

In harnessing the past to serve the present, Friedland's work reveals the Faulknerian truth that the past is never dead; it's not even past. Law students learn early and often that the *Canadian Constitution* and the common law are *living trees*, not dead wood. And yet, when it comes to Indigenous laws and traditions, they regularly learn the opposite. They read judicial decisions by the country's highest court that in many cases require Indigenous claimants to present backward-looking evidence of practices preceding European contact.[44] To insist on the vitality of Indigenous laws and traditions, as Friedland does, is to insist on the vitality of Indigenous peoples. As John Borrows has written, "[w]e are not past-tense peoples. We should be physically free to travel through space and philosophically at liberty to carry our ideas through time."[45] Requiring Indigenous peoples to leave their legal pasts behind, to treat them as regressive, or to access them

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44 See e.g. *R v Van der Peet,* [1996] 2 SCR 507; *R v Pamajewon* [1996] 2 SCR 821.

45 John Borrows, "Physical Philosophy: Mobility and the Future of Indigenous Rights" in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Portland, OR: Hart, 2009) 403 at 419, cited in Friedland, *supra* note 10 at 44.

only in calcified form denies them the temporal liberty accorded to Canada's dominant legal system. [46]

Excavating the past can also be fraught with pain. This is especially true in the case of Indigenous stories and traditions, which were so often weaponized by colonial forces to instill a sense of shame. As Frantz Fanon observed, internalized shame is the ultimate turn of the colonial screw. "By a kind of perverted logic," Fanon wrote, the colonial power

> turns to the past of the oppressed people, and distorts, disfigures, and destroys it . . . the total result looked for by colonial domination was indeed to convince the natives that colonialism came to lighten their darkness.[47]

Degrading Indigenous pasts advanced that most insidious of colonial goals: the native should come to believe that he was in need of European provenance.

One sees this logic at work in the colonial treatment of *wetiko* stories. As Friedland notes, "Canadian

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[46] See e.g. CF Black, *A Mosaic of Indigenous Legal Thought: Legendary Tales and Other Writings* (New York: Routledge, 2017); John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002); Lindsay Keegitah Borrows, *Otter's Journey through Indigenous Language and Law* (Vancouver: UBC Press, 2018); Saliha Belmessous, *Native Claims: Indigenous Law Against Empire, 1500–1920* (New York: Oxford University Press, 2011).

[47] Frantz Fanon, *The Wretched of the Earth*, translated by Constance Farrington (New York: Grove Press, 1963) at 210–11.

government and courts, as well as academics and newspapers have used the *wetiko* stories to say Indigenous people were superstitious, brutal, or uncivilized."[48] Settlers used stories of monstrousness to cast Indigenous peoples as barbaric. The fact that English maritime custom had long recognized survivor cannibalism as legitimate was beside the point. Many today feel "cautious, ashamed, or doubtful about using the *wetiko* stories" based on a well-founded fear that these stories will once again be turned against Indigenous peoples.[49]

Friedland resists this understandable urge to not drag stories of monstrousness into the light. For Friedland, acknowledging violence and victimization, past and present, is necessary to realize different ways of addressing wrongdoing. "The *wetiko* stories are powerful examples of Cree and Anishinabek peoples' profound strength, resourcefulness, and teamwork in protecting themselves and those they love."[50] Rejuvenating *wetiko* stories offers a set of tools to address violence and victimization beyond the punitive logics of repudiation and retribution. More importantly, Friedland's project lays claim to the Indigenous humanity that settlers once used these very stories to deny: "where in the past the figure of the cannibal has been used to construct differences and uphold racism," literary theorist Maggie Kilgour writes, "it now appears in

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48 Friedland, *supra* note 10 at 13.

49 *Ibid*.

50 *Ibid*.

projects to deconstruct them." [51] In laying bare the "ordinariness of human monstrousness," Friedland identifies violence and suffering as unifying rather than distinguishing features of humanity.[52]

BEYOND "RESTORATIVE JUSTICE"

Readers may be tempted to treat Friedland's work as part of the now voluminous literature on "restorative justice." For decades, progressive reformers around the world have advocated for alternatives to the punitive and managerial work of criminal law.[53] In contrast to Western criminal law systems, which are structured around state–offender dyads, restorative justice practitioners advance "a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the

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51 Maggie Kilgour "The Function of Cannibalism at the Present Time" in Francis Barker, Peter Hulme & Margaret Iverson, eds, *Cannibalism and the Colonial World*. (Cambridge: Cambridge University Press, 1998) 238 at 242.

52 Friedland, *supra* note 10 at 46, citing Lou Marano et al, "Windigo Psychosis: The Anatomy of an Emic-Etic Confusion [and Comments and Reply]" (1982) 23:4 Current Anthropology 385 at 401 (Ruth Landes's response).

53 See e.g. Jennifer J Llewellyn & Daniel Philpott, *Restorative Justice, Reconciliation, and Peacebuilding* (New York: Oxford University Press, 2014); John Braithwaite, "Setting Standards for Restorative Justice" (2002) 42:3 Brit J Crim 563; Kathleen Daly & Julie Stubbs, "Feminist Engagement with Restorative Justice" (2006) 10:1 Theor Crim 9. We draw the language of "managerialism" from Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (Princeton, NJ: Princeton University Press, 2018).

future."[54] Key to these processes is the goal of preserving and repairing human relationships. "Restorative justice must be sought through practices which integrate the wrongdoer so they remain in the relationship," write Jennifer Llewellyn and Robert Howse, "and not through punishment which isolates the wrongdoer and removes them from relationship."[55] Restorative justice programs can provide victims an opportunity to have their voices heard in a forum that is attuned to their needs and preferences.[56] Advocates emphasize that restorative justice does not mean that a wrongdoer escapes punishment or responsibility. In fact, restorative justice programs often require offenders to take responsibility for wrongdoing before entering into discussion with individuals or communities affected by that wrong.[57]

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54 Tony F Marshall, *Restorative Justice: An Overview* (London, UK: Home Office, Research Development and Statistics Directorate, 1999) at 5.

55 Jennifer J Llewellyn & Robert Howse, *Restorative Justice—A Conceptual Framework* (Prepared for the Law Commission of Canada, 1999) at 38.

56 See e.g. Clare McGlynn, Nicole Westmarland & Nikki Godden, "'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice" (2012) 39:2 JL & Soc'y 213.

57 See e.g. Anthony Duff, "Alternatives to Punishment—Or Alternative Punishments?" in Wesley Cragg, ed, *Retributivism and Its Critics: Canadian Section of the International Society of Law and Social Philosophy (CS, IVR): Papers for the Special Nordic Conference held at the University of Toronto, 25–27 June 1990* (Stuttgart: F Steiner, 1992) (Duff writes "the way in which harm is repaired by the offender

However, "restorative justice" is not a term that appears in Friedland's text. The omission is undoubtedly purposeful. As it has proliferated across legal contexts, restorative justice has gradually gained specific connotations, some of which cut against the outcome that Friedland seeks. Elsewhere, Friedland has written critically with Val Napoleon on the limits of "restorative justice" as it is popularly used in Canada.[58] In particular, they have criticized those who too frequently reduce "restorative justice" to healing and then conflate this narrowed concept with "Aboriginal justice" generally.[59]

Friedland's text may be better understood as a critical intervention in restorative justice work. The fact that she focuses on violence and victimization, including sexual abuse, is especially significant. The use of restorative justice in the context of sexual violence and abuse remains deeply controversial. Skeptics have expressed concern that restorative justice programs may re-victimize vulnerable complainants, trivialize gender-based

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through restorative justice processes is important and can include alternative forms of punishment, rather than restorative justice necessarily being as an 'alternative to punishment'" at 44), cited in McGlynn, Westmarland & Godden, *supra* note 56 at 217.

58 See Val Napoleon & Hadley Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D Dubber & Tatjana Hörnle, eds, *The Oxford Handbook on Criminal Law* (Oxford: Oxford University Press, 2014) 225.

59 *Ibid* at 238. See also Chris Cunneen, "Thinking Critically about Restorative Justice" in Eugene McLaughlin et al, eds, *Restorative Justice Critical Issues* (London: Sage Publications, 2003) 182.

violence, and further endanger victims.[60] What Friedland's work demonstrates is that local laws and practices can offer modes of protection and repair that the state system has failed to provide. Cree and Anishinabek responses to *wetikoism* offer examples of how communities might observe and collect information to assist offenders and those around them, deal with violent behavior, and provide a process for escalating proceedings if help and healing are not accepted.[61] As John Borrows has written, "[i]n Anishinabek law, legal remedies are not usually punitive. However, examples can be found in which drastic action had to be taken against individuals to preserve community safety."[62] It is simply not the case that Indigenous legal traditions lack the tools to deal with forms of monstrous violence and victimization that afflict every human society.

All that said, even as the text elucidates *wetiko* principles and discusses at length the elements that may contribute to abuse, Friedland leaves readers without a clear sense of how these approaches might operate in practice today. What would a new future that attempted to deal holistically with underlying causes of *wetikoism* look like? What institutional forms and processes might allow for more productive responses to child abuse in Indigenous

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60 For a discussion of these debates, see e.g. Angela Cameron, "Stopping the Violence: Canadian Feminist Debates on Restorative Justice and Intimate Violence" (2006) 10:1 Theor Crim 49; Ruth Lewis et al, "Law's Progressive Potential: The Value of Engagement with the Law for Domestic Violence" (2001) 10:1 Soc & Leg Stud 105 at 123.

61 Friedland, *supra* note 10 at 109–10.

62 John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 81.

communities today? Would these initiatives exist in relationship with, or wholly separate from, existing programs? As more Indigenous nations push for greater sovereignty over both child welfare and criminal proceedings, these questions will only become more pressing. Readers will hope for future work from Friedland that will attempt to operationalize her insights.

CONCLUSION

Societies define themselves in part by how they understand and respond to monstrousness. Recapitulating defenses of the individual psyche, societies often project monstrosity onto others as a way of rendering themselves pure. In her meditation on cannibalism, anthropologist Shirley Lindenbaum identifies projection as a common thread. "The common factor in the history of cannibal allegations," Lindenbaum writes, "is the combination of denial in ourselves and attribution of it to those who we wish to defame, conquer, and civilize."[63] This is the imperialist posture at the heart of *Dudley and Stephens*—a posture that has been erased over time in legal training that abstracts the case from its historical and material context. When Lord Coleridge deemed survivor cannibalism an offence against Englishness, he implicitly conjured the savage cannibal in need of English saving.

Unmasking the history of English survivor cannibalism and the colonial imperative to criminalize it reveals only half the picture. Hadley Friedland's work is

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63 Shirley Lindenbaum, "Thinking About Cannibalism" (2004) 33 Ann Rev Anthro 475 at 491.

daring because she refuses to deny or look away from monstrousness. In doing so, she steps outside of the colonial mindset altogether. She is not interested in denial as a defence against the colonizer's dehumanizing projections. Instead, what drives Freidland's text is a humane and pragmatic invitation to Cree and Anishinabek peoples to draw on their own traditions to address violence and victimization *today*.