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Grammars of Critique and Colonial Accusation

> Me you have killed because you wanted to escape the accuser, and not to give an account of your lives. But that will not be as you suppose … For I say that there will be more accusers of you than there are now … if you think that by killing me you can avoid the accuser censuring your lives, you are mistaken; that is not a way of escape which is either possible or honourable; the easiest and noblest way is not to be crushing others, but to be improving yourselves. This is the prophecy which I utter before my departure, to the judges who have condemned me. (Plato 2010: 17a)

There are moments when unsettling encounters disturb the contentedly familiar understandings that shape our worlds. Those occasions may leave us feeling utterly confused, fumbling to repair disrupted meanings, even prompting suspicions that something very wrong has happened which needs to be categorized and remedied. It is then that we may become, as with Socrates' accusers in Plato's words that began this chapter, those that "censure lives." Such censuring may even end up "crushing others" in ways that leave no room to think about "improving" ourselves. Should censures involve agents of state justice, we might find ourselves formally accusing others of committing a criminal offence. For example, on a Monday evening in November 1883, near Calgary in Canada, a man named Thomas Douglas (a "labourer") went about the mundane task of hitching a team of horses, having been asked to do so by an "Indian Department" farm instructor Alexander Doyle.[1] That routine chore completed, he watched with mounting curiosity and

[1] "R. v. Doyle (Embezzlement)," 1883.

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then unease as the team rounded a hill heading toward Calgary, instead of Fish Creek where the instructor was stationed. He later reflected: "This aroused my suspicions and I went up the hill and saw him driving towards the … stacks. I saw him throwing sacks of oats over the fence." These unexpected happenings interrupted anticipations that ordinarily helped Douglas make sense of the world. Confused, this "labourer" searched for explanations, settling on vernaculars of mistrust and blame. The latter led Douglas in the direction of censure, and the laying of an information before a Northwest Mounted Police officer, accusing Doyle of criminal wrongdoing. A subsequent arrest hailed the accused to face a preliminary examination overseen by a justice of the peace. At this venue, Douglas orally swore an accusation under oath, now framed as a criminal charge of embezzlement, in the accused's presence. Several witnesses offered verbal evidence, which the accused very briefly questioned ("cross-examined"). The justice wrote down what he took to be legally relevant and entreated a statement under caution from the accused. Doyle's short response averred simply that he went to retrieve some empty sacks. In the end, however, the justice decided that there was sufficient evidence of criminal activity to bind the accused over to trial at a competent court.

Fading transcripts of the legal performances at hand reveal much about officially sanctioned accusatory thresholds that once opened doors to colonial courtrooms. Remaining records indicate that pre-trial practices of accusation were basic to translating local social meanings into argots of criminal law. It is worth emphasizing what is mostly overlooked: despite their deceptively humdrum local appearance, performances of accusation across the prairies and elsewhere did not simply form adjuvant thresholds to colonial criminal law. Rather, they constituted the latter's very foundations. This is an important concept, for without accusations that could initiate legal pathways for punishable offences, colonial criminal justice is unlikely to have emerged as it did. From disruptive phenomenological encounters that momentarily confused accusers, colonial accusations of crime materialized around raised suspicions and inclinations to point fingers. Once it became possible for those pointed fingers to find their way to state justice institutions, certain pre-trial procedures appeared. These ranged from information laying, arrest, preliminary examinations, to grand juries, and so on. As varied as accusatory procedures were across times and places, their point was uniformly to select who to admit to further juridical chambers. Through rituals of accusation, in other words, the intricacies of

everyday events were translated into locally inflected categories of law, and selected individuals nominated to face criminal trials.

This book brings into focus a largely unnoticed, but pervasive, social and political lineage that cast certain practices of accusation as uniquely legitimate thresholds to colonial criminal law and order. Via a sociology of accusation, it thus spotlights the grounds from which colonial criminal law emerged. The significance of that point should be emphasized: without gatekeeping accusatory powers, colonial criminalization could not apprehend and capture the accused individuals required for its marque of criminal justice to assign culpability, guilt, or punishment. Although now embedded in seasoned pre-trial bureaucracies and state institutions, initiating moments of accusation still form thresholds that translate everyday social lore into sovereignly ratified idioms of criminal law (Pavlich 2018a). In colonial settings, however, distinctive accusatory thresholds were pivotal to the creation of criminal justice seeking to border social orders in support of settler agrarian capitalism. Perhaps it is worth recalling that the etymology of the term "threshold" connotes a beginning, an inception, a verge, a commencement, and is related to "making noise" but also to separating "grains from husks by stamping" (Ayto 2011: 529). As we shall see, accusatory thresholds in Alberta involved politically charged theatres that staged performances as lawful entryways to criminalization. These thresholds involved decisions on whom exactly to "stamp" out as a criminal "husk" as judged by colonial legal agents. Those called upon to perform the violent stamping did so by categorizing accused subjects and acts as potentially criminal.

CRIMINAL ACCUSATION AND ALBERTA CIRCA 1874–1884

Despite their foundational significance for criminalization, social performances of criminal accusation have attracted little scholarly attention. Perhaps it serves dominant legal fields well to obscure their conditions of possibility, thus concealing contingent beginnings in shadowy powers of categorization conducive to their purposes. On this note, discourses that exclusively target state-defined crimes and criminals, or doctrinal legal scholars who emphasize narrow, technical discussions of procedure, all too often reinforce sovereign declarations of criminal justice. For these discourses, the very premise of a sociology of accusation is likely seen as irrelevant. Real research lies in describing the being of crime and criminals, not to worry about their contingent becoming. But the following approach directs its gaze precisely to the latter: to the socio-political

rationales and performances of accusation that first categorize certain acts and actors as criminalizable. Criminalization from this vantage depends foundationally on ways of accusing, which serve as the underlying conditions of its possibility.

The plan is to draw on paradigmatic examples to chart a genealogy of the powers and social performances that staged criminal accusations in and around what is now known as the Province of Alberta, circa 1874–84 (see Figure 1.1).[2] Within what First Nations refer to as Turtle Island, these lands were altered by a sovereignty grab through attempts to enforce "law" and manage far-reaching dispossessions for colonial settlement.[3] The decision to focus on the decade following 1874 relates to the Dominion of Canada's explicit call for a mounted paramilitary police force that, under its purview, was to administer law and social order across the North-West Territories, west of Manitoba to the Rocky Mountains.[4] Throughout this decade, the political and social justifications for establishing a Northwest Mounted Police were laid bare, as were its rationales for deploying colonial criminalization to regulate disorder (Wallace 1997). Such deployments were predicated on forming thresholds of accusation by which so-called disorderly actions could be managed through criminal law.

Emphasizing social and political dimensions of criminal accusation, the discussion explores models of power (sovereign, disciplinary, biopolitical) through which the Dominion set about ruling through criminal law to ensconce dispossessing social orders. Comparable socio-political rationales and practices shaped nineteenth-century criminalizing legal fields across the British Empire – South Africa, New Zealand, Australia, India, Caribbean colonies, and so on (Ford 2011; Nettelbeck et al. 2016). However, the Albertan example during a "decisive" decade for crafting colonial criminal law provides an exemplary glimpse into

[2] By genealogy, I refer to Foucault's (1977) use of Nietzsche as a way of approaching past discourses through "lines of descent" that do not settle on fixed origins, but which focus on the "becoming" or emergence of phenomena like criminal accusation (see also Koopman 2013; Shoemaker 2008). The boundaries of Alberta as a district province are not strictly or rigidly used to bind the following examples; rather, the point is to use a shorthand to signal the lands upon which most of the examples referred to occurred. The contingencies of geographical definition, no less than social limits, are here recognized as a manifestation of complex historical decisions.

[3] See Harris 2020; Hunt and Stevenson 2017; Starblanket and Stark 2019.

[4] Creating a Federally funded police force was anomalous, given that the *British North America Act* (1867) legislated policing as a provincial matter (Macleod 1976: 6 and 70).

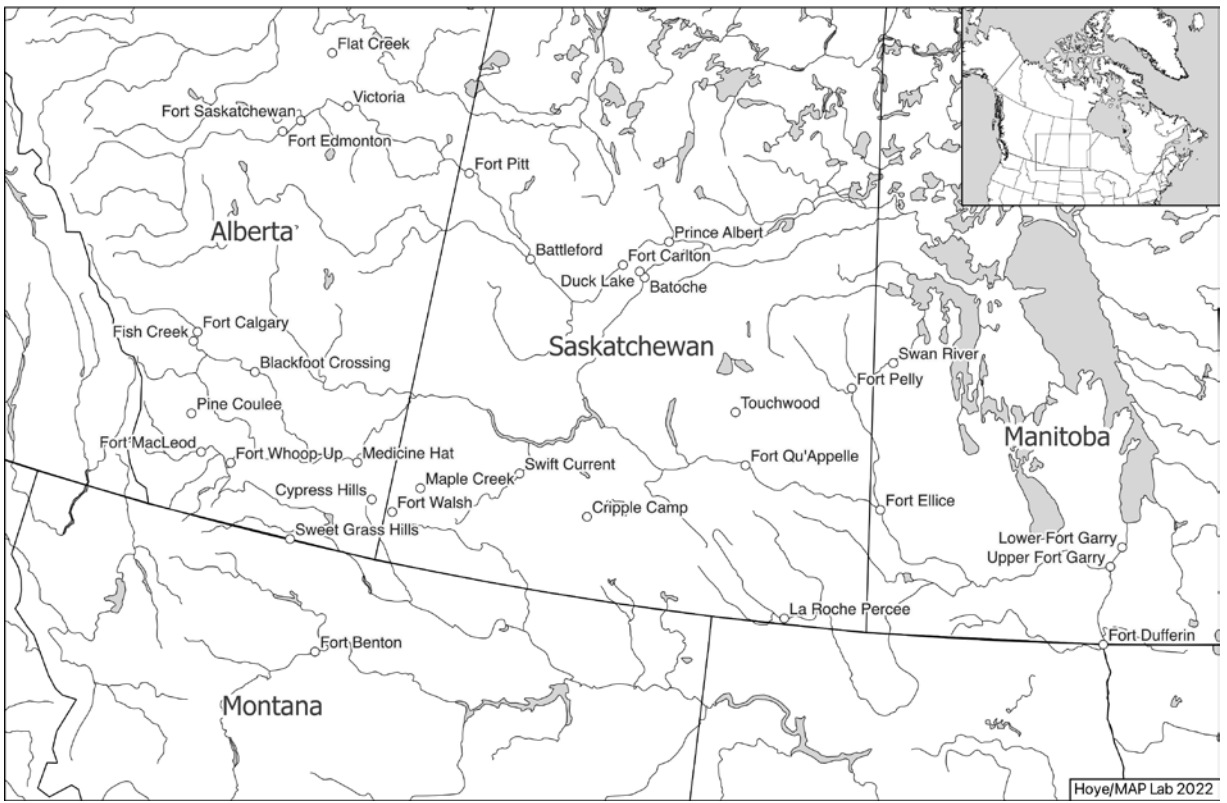

FIGURE 1.1 Overview map: provincial boundaries of Canada.

This map and that of Figure 1.2 were drawn up by Sandy Hoye (Métis Archival Project, University of Alberta) with reference to Kelly and Kelly (1973: inside cover) and Wilkins (2012: opening page), acknowledging the helpful advice of Frank Tough. Reprinted with permission.

how accusatory thresholds were deployed by a newly formed Northwest Mounted Police. An enduring link between colonial sovereignty and accusatory thresholds of criminalization is reflected by a quest to order societies in favour of dispossessive settlements (Ford 2011). That is, these thresholds aimed at realizing the Dominion's sovereign jurisdiction over "criminal" matters for an envisaged settler-colonial society; thereby forging gateways to state criminalizing arenas where limits for a colonially imagined, if divesting, social order could be regulated. The map in Figure 1.1 provides a sense of the sheer geographic scale of the lands the Dominion set about policing.

There are, of course, many historical analyses of the Alberta and Dominion context during the decade under review here, but one might at least point to certain key events.[5] Following 1867, an unsteady federation of four initial eastern Dominion of Canada provinces had elected a conservative prime minister (John A. Macdonald) with visions of a "national policy." That policy was to extend "Canada westward through settlement and development," building a railway to aid a proposed expansion (Beahen and Horrall 1998: 14; see also Macleod 1976: 51). Such a dispossessing socio-political agenda was silhouetted against British Imperial and Dominion claims to legal sovereignty over territories to which Indigenous Peoples had developed eons old, storied, relations.[6] The quest to enforce colonial law was aimed at appeasing Indigenous peoples and regulating "intending settlers" (Smith 2009: 59).[7] In 1870, under the guise of "purchasing" Rupert's Land for the sum of $1.5 million from the Hudson's Bay Company, the Dominion proclaimed sovereign ownership over all the North-West Territories

[5] See, for instance, Andersen 2015: 201; Andersen and Hokowhitu 2007; Carter 1997, 1999, 2016; Dempsey 1996, 2014, 2018; King et al. 2005; McNeil 2019; Teillet 2013, 2019.

[6] See Borrows 2019; Miller 1996; Teillet 2013, 2019. The politics of naming is always historically located, and harbours different potentials and dangers. I will use the term "Indigenous" to refer to First Peoples of Turtle Island, part of which is today commonly signalled as Canada. When quoting from archival documents, and when relevant to the discussion, I have cited then contemporary uses of terms like "Indian," or categories of miscegenation. I recognize here a politics of naming that made use of, and so gave meaning to, words in historical languages. The references to gender in documents remain, but with the proviso that we again recall the fluid performativity of identities. In all such naming, the aim is not to reify categories, but to imply a use of referents borne to the socio-political rationales that this book seeks to chart.

[7] Peter Russell's (2019: 125) chapter title summarizes the net effect of confederation in a rather flippant way, but with some poignancy: "English Canada Gets a Dominion, French Canada Gets a Province, and Aboriginal Canada Gets Left Out."

(see Russell 2019: 168 ff; Tough 1997: 8–13). Thereafter, it declared an intent to promote settler agriculture and commerce across this claimed "possession" by enforcing a sovereign law that would stifle rival bids, such as from Indigenous law or the United States. At the same time, its settlement ambitions required that anticipated Indigenous resistance and challenge be managed (Simpson 2011).

In this political climate, the Dominion's approach to policing took form around Métis and Indigenous contestations, such as in July 1869 at the Red River Colony (Teillet 2019: 37 ff, 174).[8] Unheeded appeals to the Dominion expressed clear anxieties that locally distinctive cultures and land arrangements were at risk.[9] Such apprehensions were exacerbated by political positions adopted by Dominion surveyors who reviewed the colony's seigneurial system of land organization (that granted each plot access to water). As Teillet (2019: 177) puts it: "The surveyors, led by Colonel John Stoughton Dennis, arrived in Red River in August 1869 and, like the road relief crew before them, immediately took up with the Canadian Party. This made the Métis suspicious of their survey objectives." With the leading figure of Louis Riel,[10] a concerted opposition resisted the Dominion's annexation attempts, declaring the provisional sovereignty of a Red River Government, locally authorized to negotiate terms under which the Colony might enter the Confederation (Stegner 2000; Teillet 2019: 207 ff). That government assumed control of Fort Garry (Winnipeg) and within months had established a distinctive code of law (Teillet 2019: 186). Some dissenters were imprisoned, but one – a fractious Orangeman and Métis antagonist (Thomas Scott) – was sentenced by a tribunal to death, stirring a significant military response from the Dominion (Reid 2012). This took form as an Expeditionary Force of 1,000 troops under the command of Colonel Garnet Worsley, with a young William Butler (who we encounter in the next chapter) as

[8] Two noted challenges to Dominion sovereignty were led by Louis Riel. They have sometimes been cast as "rebellions" (implicitly assuming established sovereignty), and later "resistances" (see Hamon 2021: 51). For our discussion, it is important to recognize the fundamentally contested sovereignty politics that initiated military warfare in 1869–70 and again in 1885.

[9] The Dominion's prime minister, John A. Macdonald, stated his intent to annex the Red River Colony (set up in 1811–12 by Thomas Douglas, an earl of Selkirk), but encountered, "a fiery twenty-five-year-old, a St. Boniface mystic named Louis Riel, whose resistance to Confederation, at least in Red River, was as vehement as Macdonald's determination to see it succeed" (Wilkins 2012: 2).

[10] There is a considerable literature on, and biographies of Lous Riel, but see, for example, Doyle 2017; Hamon 2021; Reid 2012; Teillet 2019.

an intelligence officer (Doyle 2017: 25 ff; Teillet 2019: 215 ff). Following several noted military encounters with Indigenous forces, the overwhelming British force prevailed, yielding Manitoba as a province of the Confederation in July 1870, and an arrest warrant was issued for Louis Riel who fled to Montana. Interestingly, he was in 1873 elected to the Dominion parliament, took an oath of office in disguise, but never sat as a member in Ottawa (Teillet 2019: 264).

In the wake of the Red River events and on the strength of dubious intelligence reports (see Chapter 2), the Dominion government under MacDonald looked to experiences from the Royal Irish Constabulary to establish a Northwest Mounted Police. The latter was to enforce Dominion law over the North-West Territories to curb resistance to planned "European" settlement across them. If criminalization was elemental to creating colonial law and order here, accusation lay at the inaugurating heart of what emerged as criminal matters. Several accounts detail the Dominion's founding of that Northwest Mounted Police of some 330 men and its gruelling march in the latter part of 1874 along varied westward routes across the prairies (see Figure 1.2).[11] Much less, if anything, has been written about a key dimension to that force's mission soon after arriving. It was to create theatres of criminal accusation through which social disorder could be categorized – despite existing Indigenous legal fields – as crimes, and so funnelled into chambers of Dominion criminal justice. The oversight is consequential, because accusation created on-the-ground conditions for police officers to enforce criminal law and thereby to pursue social infrastructures for colonial settlement ambitions (Nettelbeck 2014; Simpson 2011). Accusation was foundational to a colonial rule by law, the upshot of which Geonpul scholar Moreton-Robinson in another context boils down to this: "The lives of Indigenous people were controlled by white people sanctioned by the same system of law that enabled dispossession" (Moreton-Robinson 2015: 5).

Ongoing Indigenous contestations, or innovative uses, of Dominion law happened in the face of settler dispossession, imported diseases (e.g., smallpox), ransacked buffalo herds (see Figure 7.1), and the consequent onset of pervasive starvation across Alberta.[12] Such devastating effects

[11] For instance, see Beahen and Horrall 1998; Birchard 2009; Dempsey 1974; Denny 1972; Horrall 1973, 1972; Macleod 1976; Morgan 1970; Nettelbeck et al. 2016; Wilkins 2012.

[12] See Niemi-Bohun 2016; L. Simpson 2020; Smith 2011; Stegner 2000.

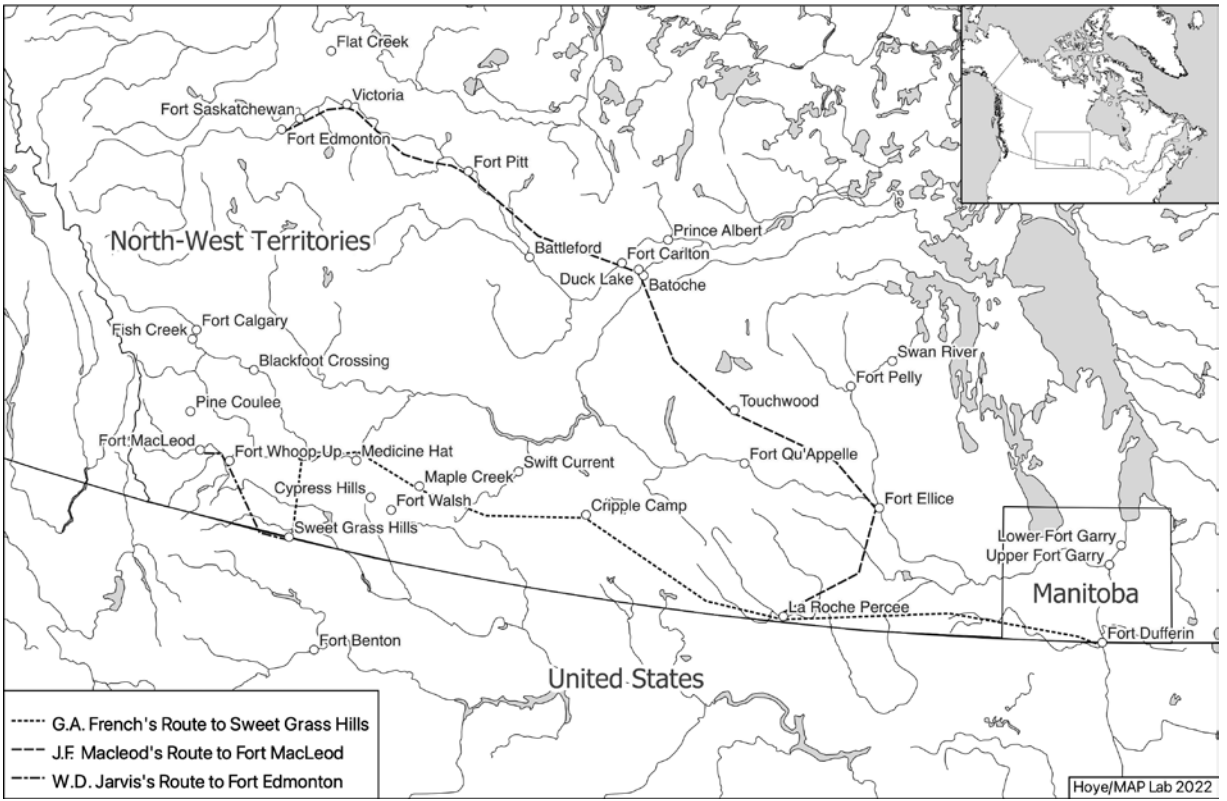

FIGURE 1.2 Routes taken by different divisions of the North-West Mounted Police, 1874.
See acknowledgment for Figure 1.1.

on Indigenous forms of life surrounded a politics of treaty making.[13] With encouragement by missionaries and Northwest Mounted Police officers, the Dominion tried to kindle conditions favourable to signing treaties that affected First Nations' age-old, storied associations to lands. It also sought promises to keep peace in exchange for reserves of land, annuities, agricultural assistance, hunting and fishing rights, and so on (see Morris 1890; Price 1999; Talbot 2009). Treaty Six was signed in 1876 with Cree leaders across central Alberta and Saskatchewan, even as notable leaders like Chief Big Bear (Mistahimaskwa)[14] held out on signing the terms of what he took as destructive to existing forms of life (Miller 2009; Talbot 2009). Treaty Seven was signed in September 1877 and included some 10,000 Blackfoot Nation members of southern Alberta.[15]

In 1876 too, the infamous Indian Act was ratified without Indigenous approval or consultation. Joshua Nichols' (2020: 107) discursive genealogy of this Act points to eradicating ideas of "civilizing, extinction, and culturalism." The purported aim was to eliminate "savagery" and "barbarism" through civilizing processes. However, as Nichols points out, the inherent contradictions of this racist undertaking proved impossible, and "when this project lost steam," white possessive governance turned to "indirect rule" via an administrative autocracy that appealed to notions of culture and self-governance subservient to colonial ambitions (Nichols 2020: 107–9). Indeed, under this Act, "Indian agents" aided by the Northwest Mounted Police (Kelm and Smith 2018; Titley 2009), assumed "dictatorial control" over Indigenous Peoples on reserves (Palmer and Palmer 1990: 43; Swiffen and Paget 2022). A version of indirect rule was, as we shall see in Chapter 5, adopted by the Northwest Mounted Police's approach to "disorder."[16]

[13] See Borrows and Coyle 2017; Dempsey 2015; Hubbard 2016; Price 1999.

[14] Interpreting colonial archives, one confronts the complex matter of nomenclature. Since this book's story is directed to a socio-political logic permeating the grounds of colonial criminalization, one encounters a colonial legal insistence that all participants somehow be named – even sometimes as absent-presence. Indigenous names are not always noted in the archives, and often with appropriation. With respect, when referring to cases, I will mostly refer to archived names, and where possible indicate Indigenous naming in parentheses when first referring to specific people. However, it is important to keep in mind the roles played by translation and a politics of naming in performances at accusatory theatres.

[15] See generally Dempsey 2015; Pillai and Velez 2014; Price 1999; Palmer 1990: 2.

[16] The net effect of this was, as Nichols (2020: 182) puts it, "The Indian Act continues to unilaterally determine the identity of its subjects and govern every aspect of their lives without their consent, but this blatant despotism somehow escapes us."

The decade under review came to an end with echoes of its start in continued challenges to colonial settlement and rule (Dempsey 1979; Wallace 1997). Indigenous and Métis leaders repeatedly petitioned an impassive Dominion government, including appeals to meet treaty obligations, to refrain from imposing its law, and for fair surveys as well as security of title to lands. Again, Dominion land surveyors carried out a mission to divide land into square parcels rather than rectangles with water access (Miller 1996; Teillet 2019). Métis dissatisfaction prompted Gabriel Dumond and four representatives to visit Louis Riel, then exiled in Montana, imploring him to again lead a resistance (Doyle 2017; Reid 2012; Salhany 2019). He accepted, and over the next months petitioned Ottawa for "appropriate surveys and title to farmland, representation in the Dominion parliament and a new railway linking the Saskatchewan River valley to ports on Hudson Bay" (Wilkins 2012: 162). Without satisfactory response, Riel (with Dumond as his military leader) announced an intent "to take up arms for the glory of God, the honour of religion and for the salvation of our souls" (cited in Wilkins 2012: 162). Cree leaders Chiefs Big Bear and Poundmaker (Pitikwahanapiwiyin) supported this resistance (Miller 2012; Salhany 2019). On the ground, the combined forces commandeered supplies – food, clothing, and ammunition – mainly from government stores. Telegraphy wires were cut, and at Frog Lake, a contingent of Chief Big Bear's armed forces under the leadership of Wandering Spirit entered a church service, killing an Indian agent (Thomas Quinn) and nine other men, and taking several women hostage (see Figure 7.3; first on left).[17]

The Dominion responded by mobilizing 8,000 troops under a Major-General Middleton, and speedily sent them westward with the help of a yet incomplete railway (Stegner 2000; Wilkins 2012: 169). This force advanced on a Métis stronghold around Batoche from three directions, and its initial contact with Dumond's outnumbered force (around five to one) was disastrous – with a loss of more than fifty men against two dead and four injured Métis fighters (Teillet 2019: 341; Wilkins 2012: 170). Middleton's attempts to storm the Batoche area by river also went awry due to Dumond's shrewd and well executed strategies, but the battle eventually settled into a stalemate for four days. As Middleton ate his lunch on day four, a Colonel Williams under his command defied orders and attacked Dumond's ranks. By now, the latter had depleted

[17] See Sarah Carter's introduction to Delaney and Gowanlock's (2015: vii ff) study.

their ammunition supplies, even firing nails and pebbles, but eventually they retreated into buildings set against the river (Wilkins 2012: 170). By nightfall, the forces conceded, although Gabriel Dumond refused to do so and managed to evade patrols (Doyle 2017: pt 4). Militia under Chiefs Poundmaker and Big Bear also conceded at Fort Pitt, but not before Chief Big Bear had walked some 100 miles prior to giving himself up to police at Fort Carleton.[18]

Louis Riel wandered the local woods for some three days, and finally surrendered to a Northwest Mounted Police patrol. When presented to Middleton, Riel was asked how he could imagine winning against the odds; he replied that the aim was not so much to win but rather to convince the Dominion "to deal fairly with the people of the territories and their long-neglected rights" (Wilkins 2012: 173). He was transported to face a treason trial on 28 July 1885, refusing against his four lawyers' advice to offer an insanity plea (Salhany 2019). With Socratic overtones he remained unflinching throughout: "In the end, I acted reasonably and in self-defence, while the Government, my aggressor, cannot but have acted madly and wrong; and if high treason there is, it must be on the Government's side, not on my part. I say humbly through the grace of God, I believe I am the prophet of the new world" (cited in Wilkins 2012: 180).

The jury returned a guilty verdict but requested court clemency, which was ignored; Louis Riel was executed on 16 November 1885 (Salhany 2019). Chief Poundmaker and Chief Big Bear were each sentenced to three years imprisonment.

Of course, the historical contestation through which colonial law emerged is complex, with many ways to retell diverse and differently inflected stories. However, suffice here to keep in mind the background violence that forged accusatory theatres as threshold openings to criminalization that aimed to secure possessive settler colonialism in Alberta. Several allied analyses have shown the degrees to which Imperial and colonial sovereignty across eighteenth- and nineteenth-century British contexts relied on a violent rule of criminalization and law to secure forms of social order.[19] Such valuable analyses also highlight the importance of criminalization to fluid Imperial and colonial settlements

[18] Dumond ended up in Montana and his "riding and shooting skills were such that he later became a star in Buffalo Bill Cody's Wild West show, where he appeared alongside Chief Sitting Bull" (Wilkins 2012: 173).

[19] See Benton 2013; Ford 2011; Nettelbeck et al. 2016; Wiener 2008.

across the British Empire, and to the legal orderings of their collective forms. However, I have not found studies that attend specifically to the socio-political footings of accusation from which colonial criminalization could emerge. In response, the following analysis highlights certain rationales of rule by which the Dominion of Canada endorsed legal performances of accusation to enforce colonial criminal law and social order in what is today called the Province of Alberta.

A SOCIOLOGY OF ACCUSATION

The sociology of accusation to follow charts a complex social and political lineage deriving from 1870s Alberta based on a rudimentary credence: justly deciding on who and what to accuse as having transgressed societal limits is too crucial a political, social, and ethical task to hand off to depoliticized, technically, or doctrinally imagined bureaucracies of criminal accusation. This task involves a complex sense of legality that is not well served when handed over *carte blanche* to bureaucracies that work best in shadows, abjuring broad public reflection, seldom probing the unequal processes of their delimiting work (Dyzenhaus 2022). Such bureaucracies typically operate in opaque fields with considerable leeway when deciding on which precise wrongdoings to ban, or how to categorize accusation's potential targets. This is not to deny that state criminalizing institutions in *extreme* cases may be called upon to regulate and even incapacitate (Duff et al. 2010; Kelly 2018); but resorting to institutions that survive on the repressively violent abandonments of offenders should never comprise *routine* patterns of justice. This is especially so for institutions tenaciously plagued by systemic inequalities – racism, sexism, or poverty-perpetuation – that affect both authorized banishers and those who are banned.

The critical scrutiny of criminal justice today is undercut by the dominance of technical discourses that take for granted the unique legitimacy of state criminalizing fields; sometimes the latter are even viewed as necessary, immutable, or beyond serious contest. Herein lies a problem: nowadays in Alberta, as elsewhere, the dominance of state criminal justice has vastly overshadowed – even at times purged – more elementary socio-political, cultural, and ethical vocabularies, such as those framing certain Indigenous laws (Borrows 2016, 2019; Swiffen 2010). These vocabularies elicit normative ideas on how to border societies justly; they do not simply accede to the necessity of individualizing ideas about criminals and their punishment (Fassin 2018; Merry 1999;

Napoleon 2012). Without normative lexica of this sort, state law's idioms of individually culpable criminals are routinely used to define a society's borders. But that move comes at a Mephistophelean cost of depoliticizing or naturalizing prevailing state conceptions of law, while making violence appear as an inevitable fate for offenders (Benjamin 2004: 248). In the process, criminalization may be asserted as the only legitimate way to define fundamental social limits by inversely declaring criminal transgression.

Searching for grammars through which to deliberate democratically on social limits without defaulting to state visions of criminality is, however, no simple undertaking. I am struck that over forty years ago, Galanter (1981) called upon legal theorists to recognize plural calculations of justice, beyond state law, and to focus on how norms regulate societies. For their part, Felstiner, Abel, and Sarat (1980: 631) urged the sociology of law to study disputes as "social constructs" that were transfigured well "before they enter legal institutions." With overtones of both calls, the following analysis focuses on accusatory performances that transformed complex relational conflicts into colonial notions of individualized crimes. It does not, however, accept that disputes necessarily follow pathways of "naming, blaming, and claiming," (631); instead, it explores how a politics of pre-trial accusatory performance in the Albertan context categorized some social conflicts as criminal.

Through accusation, in other words, one might say that disputed relations "are transformed as they are negotiated" and fixed through legally "narrow" and specialized juridical discourses (Mather and Yngvesson 1980: 788). The intended yield is a genealogy of shadowy and contingent accusatory grounds that transpose locally disturbed relations into legal idioms of criminality, highlighting a legacy grounding of massive criminal justice leviathans that engulf us nowadays. However, as early protagonists of restorative justice were to experience, the difficulties faced by quests to transform the repressive foundations of state criminalization should not be underestimated. Having brazenly promised nothing short of a "paradigm shift" away from retributive criminal justice, restorative advocates quickly found themselves gripped by the modern state's stealthy, tentacular clasps and co-optations (Pavlich 2005; Ruggiero 2011; Zehr 2015).

Jurisprudence offers little by way of fundamental critiques of criminal justice, tending to conceptualize *accusation* through state law's lenses as necessarily involving matters of criminal procedure. Many incline to the view that accusation is simply a procedural matter, essentially

encased within doctrinal and rights-based procedures as defined by state criminal law (e.g., Cicchini 2020; Peterson 1974–75; Webb 2015). Accusation should then be approached as a straightforward technical issue of conforming to positive laws – such as safeguarding the interests and procedural rights of participants (accusers, the accused, and so on) at thresholds to state criminalization (Brockman and Rose 2011). For legal theorists of this persuasion, legitimate accusations cannot but be positioned within state legal fields; the validity of pre-trial practices accordingly rests on whether procedures adhere to doctrines and principles of sovereign law (Cicchini 2020; Steinfield 2013–14), or whether they obey state-authorized canons of proper process (Brockman and Rose 2011). As important as discussions of fair processes and rights of the accused may be, the emphasis on technical procedure alone downplays – or more usually ignores as legally extraneous – social and political relations that animate thresholds of criminal accusation in the first place. A legal theory that encloses accusation solely within sovereign legal doctrine mostly eschews foundational critiques of the wider justice of pre-trial practices, deferring instead to technicalities of whether bureaucratic administrations adhere to legally decided procedure – in police charge offices, prosecutorial offices, grand juries, preliminary judicial inquiries, and so on. Whatever the gains, such approaches are limited by an implicit belief in sovereignly proclaimed restraints on state power, all too often glossing over the systemic and unequal abandonments that criminalizing processes or punishments consistently yield.

By contrast, several analysts aim to justify criminalizing limit subjugation by deferring to philosophy. A burgeoning literature on criminalization (and over-criminalization) offers analytic philosophical arguments to decide when the repressions of state criminal law are justifiable (e.g., Duff et al. 2010; Edwards 2021). Although broad, this approach aims to limit criminalization and to isolate only the defensible uses of state criminal justice. Such perspectives do recognize, as Edwards (2021: n.p.) aptly observes, "the life of the criminal law begins with criminalization." The attempt to delimit appropriate uses of state criminalization through analytic philosophy (rather than state legal discourses) is to be lauded; and yet, a retreat into philosophy comes with lapses, including not seeing how socio-political (accusatory) forces commence and indeed enable state criminalization. What justifications might be provided for criminal accusation at thresholds to criminal law, especially when alternative patterns of governance may be conceivable? The emphasis on philosophically determining when states

may legitimately criminalize and punish certainly has merit, but it also overlooks key issues. For example, it eclipses the wider social and normative bases of institutions that attribute criminal responsibility (Lacey 2017), a collective historical ethics behind matured notions of criminal guilt (Norrie 2016), and the institutional history of civil laws that shape social and political horizons (Farmer 2016). Moreover, rarefied analytic philosophies directed to doctrines of criminal law underplay the foundational role of a socio-politics that shapes accusatory performances to criminalization (Pavlich 2017).

In short, neither a jurisprudential retreat to criminal procedure, nor a wholesale resort to analytical or modal philosophical argument, pays sufficient attention to the founding social and political configurations of accusation. These are the very foundations of criminalization, *the* sources that open criminal causes, that determine how certain subjects become candidates for criminalization in specific contexts (Pavlich 2018a). It is worth returning here to Agamben's (2008: 15) conclusion following an adroit interpretation of Kafka's *The Trial*:

> Neither guilt (which, in ancient law, is not necessary) nor punishment define the trial, but rather, the accusation. Indeed, the accusation is, perhaps, the juridical "category" par excellence (*kategoria,* in Greek, means accusation) … that without which the entire edifice of the law would crumble: the implication of being in the law. The law is, that is to say, in its essence, accusation, "category." And the being – implicated, "accused" in the law – loses its innocence, becomes a *cosa,* that is, a cause, an object of dispute.

The sociology of accusation, then, far from being a technical aside to the study of state criminalization, focuses attention on the latter's very categorizing source (Pavlich 2018a).

That kind of sociology requires suitable vocabularies – partially recognizing but also working beyond technical, doctrinal, or analytical philosophical idioms. It demands vernaculars through which to approach the politics of accusation and the resultant categorization of social limits at the start of legal processes. This book's Preface mentioned the etymology of the term "accusation" as descending from the Ancient Greek *kategoria*, connoting how social "categories" of meaning were politically shaped through structured accusations (see Antaki 2017; Negrier-Dormont 1994). Centuries later, as also noted, Latin influences used the term *crimen* to signify the start of a legal cause, and as importantly, an accusatory "calling to account" by historically sanctioned authorities (Ayto 2011). Calling someone to account for crime or delict by laying an information or charge before a public

official signalled politically authorized beginnings for legal action that involved social limits of one sort or another.[20]

Working off such etymological cues, a suitable sociology might focus on how accusations play out through historical performances. Here authorized juridical agents call subjects to account for normatively framed social transgressions (see Girard 1979). Broadly, accusatory "hearings" happen on various stages through diverse performative regimes that categorize different societal norms and name transgressions, thus cataloguing local or contextually sanctioned ideas of social limitation. Which precise rituals are to count as a "proper" accusation is of course a matter of contingent history (Quintilian 2010: 100). This is to say that rituals of accusations are malleable, assuming various historical modes of categorization; including, orchestrated public confrontations, shaming rituals, social media allegations, juridical inquisitions, or examinations, and so on. Moreover, outlining what is locally accepted as a legitimate accuser, accused subject, or considered as an authentic accusation, are all matters of socio-political histories. So too are the normative categorizations that reference social limits through various locally enacted accusations (e.g., infidelity, impiety, dishonesty, laziness, greed, self-centredness, suspected criminality, and so on) – they might also extend to problematized collective structures, such as policing systems that perpetuate unequally marginalizing, racist, sexist, poverty-inducing structures (see Lebron 2017; Lentin 2020; Maynard 2020: 73, 2017).

However, even though accusation per se has and could assume diverse historical forms, today's gigantic criminalizing systems across the globe have granted an almost hegemonic privilege to one form; namely, *criminal* accusation (see Pavlich 2018a). Accusations that categorize offences as crimes against sovereign states have become rudimentary to societal forms that define themselves in large measure through and against categories of crime and social disorder.[21] Of course, not all accusations

[20] Influential anthropological discourses approached accusation as an historically structured mechanism of blame in support of revered social orders. It was founded on socio-political and cultural ideas of sacrifice, the scapegoat, and imposing mediating third parties who curtailed age-old blood-feuds (Girard 1979).

[21] Such accusatory hailing to account in Roman law was pivotal to starting a public cause (or delict). As accusers who followed variously prescribed rituals of accusation for different social strata (recognizing the inequalities of such processes and that these were unavailable to many), citizens could only initiate a public court hearing following successful accusations (Pavlich 2018c; Rutledge 2001).

acquire local normative traction to open gates to criminal law, and part of what we investigate here is how legal performances favour certain kinds of criminal accusations. But as state criminal accusations monopolize openings to criminalization, so they increasingly usurp jurisdiction over violently enforceable interpretation (Cover 1986: 1603; Herrup 1987: 93 ff). Here relational bridges come to span problematized everyday meaning frames (e.g., disorder) and legal languages that open out to criminalizing prohibition. The political effect is to categorize selected relations as socially disordering crimes committed by individual criminals. Today, this sort of accusation typically unfolds within bureaucracies sanctioned by occidental systems of law, wherein accusers (be they members of the public, police officers, or prosecutors) provide information adjudicated at cusps of criminalizing fields (by say justices of the peace, grand juries, judges, and so on). It involves pre-trial legal hearings with authority to commence criminal matters by translating, as noted, social lore as (criminal) law, customary rite as lawful right, public fame as legally countenanced suspicion, and so on (Pavlich 2018a: 123 ff). Such translations may deploy contingent ideas of crime,[22] but they also tenaciously capture subjects in unequal ways, exposing people disproportionately to the possibility of the state's legally enforced violence.[23]

COLONIAL ACCUSATIONS AND PARADIGMATIC EXAMPLES

As a sociologist of accusation, I have distilled this book's theory from close readings of archived documents. The archives consulted are vast but include the textual remains of fifty preliminary examinations or summary trials for indictable offences with different degrees of completeness, some of which are highlighted here. Surviving textual records may be interpreted as offering at least a sense of how colonial officials drafted criminal accusation as it unfolded in Alberta in that

[22] The contingency of crime is not a new idea, though it took specific form in colonial contexts like Alberta. In an allied way, Judith Flanders (2014) provides an account of how in Britain modern crime (including murder) was invented and shaped through a Victorian ethos that embraced literary as well as scientific stories of criminalization.

[23] Here I refer to a remarkably widespread, and tenaciously unequal capture of Indigenous, black, and poorer people in criminalizing arenas across the globe (see Cunneen and Tauri 2016; Friedland 2009; Maynard 2017; Wacquant 2009b; Webster and Doob 2007).

crucial decade following the arrival of the Northwest Mounted Police (Wallace 1997). My narrative, however, claims neither to have discovered nor comprehensively represented a past ethos, even less to say that its interpretations are based on a random sample of officially selected records – avoiding the pretense that the entire population of written records is known.

Rather, my story unfolds by tapping selectively and fortuitously into legal archives from a different time with a direct purpose in mind: to apprehend socio-political rationales of accusation forming thresholds to colonial criminalization – renewed versions of which shape criminal law today. This approach certainly dovetails with "history of the present" approaches that look to perturb current social forms by charting untypical lineages, enabling the possible transformation of unjust social relations (Carney 2015; Garland 2014). It also defers to genealogical diagnoses (Koopman 2013; Rose 1996; Shoemaker 2008) and Indigenous legal approaches (Borrows 2019; Napoleon 2019). This helps one to navigate complex lines of descent behind contingent political and plural legal arrangements that variously circle around criminalizing concepts of social order, sociality, and society. To repeat: my aim then is not to discover or represent a fixed ontology of colonial law in Alberta, but to tell one of many possible stories seeking to re-politicize today's prevailing use of criminalization to order and border societies.

However, charting the socio-political backgrounds of criminal accusation from archival remains requires vigilance, given the official purposes that archives were designed to serve.[24] Accordingly, my analysis does not privilege, or rest findings on, deep dives into colonial law's canons or ratios. Nor does it traipse along conceptual paths taken by empirical sociologists of law who claim – sometimes privileging enumeration above all else – a comprehensive representation of aged colonial laws. It

[24] Relying on Linda Tuhiwai Smith's related methodology, I have respected this dictum throughout: "research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions" (Smith 2013: 6). In addition, even if I do not follow the Hegelian (or Marxist) trajectories of Fanon, this analysis does support a version of critical theorizing that Coulthard (2014: 13) describes as grounded normativity; namely the "place-based foundation of Indigenous decolonial thought and practice … by which I mean the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time."

also declines conventional historical supplication to discover a "past" that ignores the nub of what Tomlins raises by these rhetorical questions:

> Must one, though, treat the past as never capable of anything but being-past? Might not the past inject itself into our here-and-now, precisely at moments in which it becomes recognizable, and is recognized by us? Might it not at those moments become both enlivened by our recognition, and enlivening of our recognition, of the interest we discover in the past precisely because it has managed to force recognition upon us? (Tomlins 2020: 4)

Closer to critical theories that cultivate a sense of the erstwhile as imperceptibly yet durably flooding social forms today (Stoler 2016), this book repudiates legal histories that claim to "discover" an abstracted ontology of law. At the same time, it recognizes clear "family resemblances" with critical legal histories that rename and redefine what we so often assume law to be.[25]

The following sociology of accusation also acknowledges a debt to Wittgenstein (1980: 51–121) in its attempts to wrest official meanings from quieted legal archives.[26] His ordinary language approach insists that the use of words in a language, as indicated by grammatical rules within "language-games," determines their meaning. I have probed dusty archival documents in attempts to trace certain implicit rules for how words were used in archived language-games of colonial law. These point to how local users made use of – and so made meaningful – words like "prosecutor," "arrest," "prisoner," the "accused," "crime," "law," "order," and so on in particular legal language-games. Wittgenstein tells us further that these language-games evince forms of life: "The term "language-game" is meant to bring into prominence that the *speaking* of language is part of an activity, or of a form of life" (Wittgenstein 1980: 23; emphasis in original).

Through both "surface" and "depth" grammars, criminalizing language-games in colonial legal fields used words in specific ways – to border, order, and ban forms of social life (Pavlich 2018a; Pitkin 1973; Turner 2021). These language-games determined how to use the term "criminal accusation" in mid-nineteenth-century Alberta: they signalled socio-political processes that commenced with "information" that might occasion an arrest of everyday forms of life, leading to decisions on whether the accused's unsettling odyssey into Dominion criminal justice would end or continue. Such language-games of accusation rested

[25] See, for example, Dubber and Tomlins 2018: chapters 6, 13, 16, 26, 31, 42.

[26] For discussions of how Wittgenstein's approach may be used to highlight colonial legal practices, see Nichols 2020; Turner 2021.

ultimately on conventions behind colonial forms of life (Wittgenstein 1980: 226e), indicating socio-political rationales that made sense of what could legally count as properly accusing someone of committing a crime.[27]

Sitting amid a pile of archived transcripts, one recalls the attempt to make sense of complex legal tales. Justices of the peace had long ago transcribed what they intended future readers to encounter as legal truths. Almost 150 years on, my eyes cautiously probe the written words left by an agitated justice of the peace's pen, exploring how a delegated Dominion agent proclaimed criminal law. My specific quest was to bring underlying socio-political logics and meanings of accusation into focus – "fusing" one might say Gadamer's (2013: 455 ff) "meaning horizons." That fusing gaze is admittedly directed by critical sociological lenses that tint disquieted readings, recognizing that reflexive sociological language-games demand unsettling readings of what appears familiar (Bourdieu 1992). It is also shaped by transiently lived and repeatedly interrupted forms of life; an unsettling that seeks to discern and trouble the violent edges of imperial or colonial pens etching a white male privilege into preserved manuscripts – probing a "white man's law" in development (Foster 1992; Harring 1998; Nettelbeck 2013). From the outset, however, I note that my genre of analysis, while influenced by and written as an ally of critical Indigenous studies (Hokowhitu et al. 2020) or Indigenous laws (Borrows 2016; Napoleon 2019; Starblanket and Kiiwetinepinesiik Stark 2019), is written by a non-Indigenous social analyst seeking reflexively to name and challenge a tenaciously pervasive "coloniality" (Maldonado-Torres 2007).

But the following reading also takes seriously the combined effects of intent, aleatory, and power by which documents, and interpretations, survive in officially sanctioned archives. Colonial powers enclosed official decisions and process around what to archive for unknown futures, the stories that legal authorities – haphazardly yet with local presumptions of purpose – intended to leave behind. Despite the aleatory of what remains, one may read between recorded lines to discern a violent law-creating lineage that still affects today's widespread institutions of criminal justice, all grounded on local criminal accusations. Yet, it is important to keep in mind that archived legal texts and records

[27] Specifically, such an approach seeks to highlight, "different modes of organizing colonial power and the different political rationalities these modes depended upon" (Scott 1995: 197).

worked "through a double logic of violence: the violence of law and the violence of the archive" (Mawani 2018: 297). A focus on "paradigmatic" examples affords glimpses of that violence, through which selected language-games made accusatory performances intelligible to users (Agamben 2009b). Furthermore, a reliance on reading and reasoning through example is close to allegory and quite different from sampled representation or discovery mentioned before. The socio-political rationales of colonial criminal accusation in Alberta may then be interpreted from paradigmatic examples that imply rules for the use (and so the meaning) of terms. Examples of criminal accusation might then shed light on wider meaning frames, recognizing

> a singular case that is isolated from its context only insofar as, by exhibiting its own singularity, it makes intelligible a new ensemble, whose homogeneity it itself constitutes. That is to say, to give an example is a complex act which supposes that the term functioning as a paradigm is deactivated from its normal use, not in order to be moved into another context but, on the contrary, to present the canon – the rule – of that use, which cannot be shown in any other way. (Agamben 2009b: 18)

If Agamben worked through examples of camps (concentration, refugee) to render oft-eclipsed elements of modern politics intelligible, the following isolates paradigmatic examples that highlight facets of colonial accusation and the socio-political foundations of criminalizing bans. The aim of such a paradigmatic understanding is to extract and name a ruling politics that regulated social limits through accusations of crime. In many ways, as implied, this approach refuses a tenacious colonial emphasis on discovery – whether of lands or knowledge – seeking instead to use exemplars to highlight a socio-politics of accusatory performance at the start of criminalizing laws in Alberta. Bentham's example of panoptic surveillance in penitentiaries aided Foucault's (1977) nuanced charting of disciplinary powers, emphasizing exemplary patterns and techniques of modern European rule. More reservedly, in what follows, an analogous exemplary concept – threshold "theatres of criminal accusation" – references legally prescribed roles, powers, and performances that produced linked accusatory gateways to, and at the foundations of, Dominion criminalization.[28]

[28] No doubt, archived transcriptions of performances at colonial theatres invite one to consider the margins of what Stoler calls an "archival grain" and that "colonial administrations were prolific producers of social categories" (Stoler 2010: 1). Accusation was, as I shall argue throughout, basic to categorizing colonial notions of criminal disorder.

What precise genre of critique is implied by a sociology that approaches accusation through examples of performance following scripts of colonial language-games and forms of life? To be sure, it does not revolve around judgement, but around attempts to "separate out" or interrupt sedimented and depoliticized ideas that present themselves as necessary (Butler 2020; Williams 2017). The unpacking and repacking of concepts or examples, a deconstruction of sorts, also refuses the intellectual blackmail of dominant versions of modern critique that extort critics to judge social contexts against progressive criteria, or risk not being critical at all (Derrida 2002; Pavlich 1998, 2000). Disrupting familiar words commonly used in criminalizing arenas is a countermanding venture; blunt instruments of doctrinal judgment may miss the nuance of how normative collective limits are tackled by legal discourses.[29] Yet a critical sociology of this sort makes no pretence at being an all-embracing, complete, or exclusively valid story. On the contrary, there are many stories to tell about the complex matters at hand, including many that are not mine to tell. Ultimately, however, stories signal how we plurally and variously comprehend ourselves and respond to our worlds – alone, together, with others, or in relation to the lands on which social limits are criminalized.[30] What follows then is but one story among many, aiming to unsettle sedimented colonial legal stories with ancestries of white patriarchal privilege (Ahmed 2007; Starblanket and Kiiwetinepinesiik Stark 2019). It is an ally to Indigenous discourses that challenge the coloniality within dominant performances of justice.

THEATRES AND PERFORMANCES OF ACCUSATION

> Most legal transactions were (and are) spectacularly unspectacular, involving paper-pushing (or the equivalent), forms and formulae, deals in back rooms with no spectators to applaud or hiss. Trials were not single spectacular events but made up of a series of actions – formal accusation, investigation, interrogation, compilation of evidence, decisions on proper procedures and methods of proof – most of which took place in private chambers. (Stone Peters 2022: 9)

[29] Examples of these might include the ferocity of a "necropolitics" (Mbembe 2019), or biopolitical sovereignty that produces "bare life" akin to Hobbesian states of nature (Agamben 1998).

[30] Here I tap into and take leads from various Indigenous law approaches (e.g., Borrows 2019; Dempsey and Dempsey 2018; Napoleon et al. 2013; Snyder 2018).

Legal performances at "theatres" of accusation in Alberta – as may be glimpsed from paradigmatic examples – introduced varied recitals, from information laying to arrest to preliminary examination.[31] Yet *criminal* accusation was routinized in Alberta only once Northwest Mounted Police officers established theatres by which social disorder could be categorized through Dominion law.[32] In the sociology of accusation to follow, I use the term "theatres" lithely to reference diverse performances at the pre-trial stages or chambers of law noted earlier (King 2003). No doubt, this approach to accusation as inaugural recital of criminalization owes a debt to a substantial literature that has studied law – beyond its textual, rule-driven, technical, or doctrinal claims – as a performance (Sarat et al. 2018). One might recall Balkin and Levinson (1999: 729) who famously argued: "Law, like music or drama, is best understood as performance – the acting out of texts rather than the texts themselves." Or stated more assertively: "Law is the ultimate performative institution: producing the frameworks of subjecthood and subjectivity through discursive acts" (Stone Peters 2008: 181).[33] Law may then be approached as, "a performance art: an art of public rhetorical suasion, in which compelling stories dramatized before the relevant audience (judges, juries) ultimately shape legal outcomes, often making doctrine simply irrelevant" (Stone Peters 2014: 34).

For a sociology of accusation, one might acknowledge some proximity to Goffman's (1959) work, but especially to his "dramaturgy." One might also note an overlap with his approach to "stigma" and the importance of "information control":

> Society establishes the means of categorizing persons and the complement of attributes felt to be ordinary and natural for members of each of these categories. Social settings establish the categories of persons likely to be encountered there. The routines of social intercourse in established settings allow us to deal with anticipated others without special attention or thought. (Goffman 1970: 11–12)

[31] In other places, grand juries were often assigned the task of determining whether there was sufficient evidence against the accused to send them to trial (Kains 2015). However, colonial rule over the North-West Territories was explicit from the outset that "preliminary examinations" overseen by justices of the peace, not grand juries, should ultimately decide on whether there was sufficient evidence to open or close threshold gateways to criminalization in specific cases.

[32] Through such powers, modern imperial and colonial law defined bigoted concepts of its other. Against a pre-modern, "primitive," or "savage" law based on myth, a colonial "white man's law" presented itself as a non-mythical unity unlike the "others" that it prejudicially defined (Fitzpatrick 1992; Foster 1981).

[33] So, one might say, "while legislators, judges, texts, institutions, ideas, and social practices produce and enact law, so does performance" (Stone Peters 2022: 5).

As vivid as research on law, performance, and theatre certainly is, it too has paid scant attention specifically to theatres of accusation that shape thresholds to criminal law. Redressing the oversight, this book seeks to understand how accusatory performances undergird criminal law. Taking a cue from Goodrich (2011), it attends then not to sanctioned performances of legal trials but seeks to infiltrate the proscenium by which such law appears. The point here is

> literally to look behind the scenes, into the emptiness that is filled by images and imaginings, to apprehend the staging of law as a theatrical and present drama. A history of such an imaginary, of its spectacular persons and illustrious jurisdictions … Sovereign rule is much less a sword than a shield … Kafka taught us this already and used the gate as the quintessential emblem of law. (Goodrich 2011: 811)

One might say that performances at colonial theatres of criminal accusation simultaneously reference offstage and frontstage thresholds; from shielding accusers' phenomenological meaning ruptures, or discretionary decisions on which specific lives to arrest, to preliminary judgments on whether to bind an accused over to a trial. All such performances shielded what could be contextually declared as law and social order.

Acting out the beginnings of colonial law at theatres of accusation evokes theoretical notions of both performance and theatricality. But how are we to understand these terms? As Stone Peters (2014) notes the very idea of a performance is ambiguous because it denotes specific stages and staging but also intimates universal application (recall Shakespeare's *As You Like It*, "all the world's a stage …"). Performance in its ambiguity renders local forms of criminal accusation both discernible and tangible, but it also sediments accusatory forms of life more generally. However, criminalizing accusations typically distinguish their performances from the everyday, starting with information laying and arrests that interrupt lives and hail accused parties to account for specified actions. As legal forms, accusatory performances arise from and animate legal texts (e.g., magistrate handbooks), implying the "performativity" through which accusatory rituals routinize criminalizing thresholds. Here we also find unique sorts of "speech acts" (e.g., Austin 1975; Searle 1970) where certain uses of words themselves occasion legal acts (such as when justices of the peace declare that "the accused is hereby bound over to trial"). Directly relevant to "theatres of accusation" too, one might reference Judith Butler's (2006) work on performativity, noting that identities appear and are reproduced socially through repeated performances that are shaped by (and perpetuate)

power relations. The reproductions are never fixed, as local identities surface through repeated role enactments in contexts shaped by intersecting power relations (Cho, Crenshaw, and McCall 2013). As such, socio-political forces shape a gendered, racialized, age-infiltrated, economically aligned (and so on) performativity that yields local instances of, say, accusers, witnesses, and accused identities.

Thinking further about the performativity of colonial accusation, let us recall Derrida's (2002) powerful essay on law as a performative force through which the "mystical foundations of authority" are violently enacted. Referencing Benjamin's (2004: 236 ff) "Critique of Violence," he educes violence as intrinsic to law-creating and sustaining forces – repeatedly enacted through decisions mired in paradox, promising a justice that can never fully arrive (Derrida 2002: 258 ff). Law emerges then through a never-ending, groundless performativity that violently declares and institutes legal fields in the name of justice. Control over the means of legal violence gives a sense of why criminal accusation was so key to securing a settler-colonial order. But justice cannot finally be named, even as given examples of law try to do so. If law aims to settle conflicts through determining judgements, justice is impossibly and permanently unsettled. Justice is impossible precisely because it forever eludes determined capture by any system or judgment of law, incessantly harbouring the promise of ever more just social arrangements. Elaborating perhaps upon Wittgenstein's "conventions" that groundlessly found grammars of meanings for given forms of life, Derrida (2002: 242–43) describes how law's violent performances, inceptions, commencements, and judgments occur in the name of a forever elusive promises of justice. Colonial regimes of accusatory categorizations may be then said performatively to commence, again and again, openings to possible criminalization.[34] Its theatres oblige participants to encounter the words and violent force of a law whose mythical foundations never allow for complete or final justification.

The term "theatre" in what follows (referring to its etymology) is used to connote coordinated spaces designed to be "looked at" or "watched" by an audience (Ayto 2011: 526). The spectacular powers of theatre require audiences to encounter their own ethics and deceits, enticing

[34] In this sense, accusatory performance could be regarded as "an essential part of legal meaning outside the trial … where ceremonies of promulgation or the signing of treaties, festivals of justice, the choreography of policing, or the vast array of penal performances (public and private) display and publicize the law, demonstrate law's force, act as dramatic exemplars" (Stone Peters 2008: 181).

viewers to re-negotiate everyday identities.[35] Yet there is an aporetic dimension to such theatres insofar as law over millennia lays diverse claims to legitimate, expert rules, and lucid procedures – each laying claims to justice without falling prey to deprecating theatricality (Beatty 2022). At the same time, as Stone Peters (2014: 34) notes, law always seeks a "back-up for the not-always-convincing ordering rod" by employing "every theatrical art in its means: sensational narrative, emotion-stirring speeches, dramatic staging, images meant to terrify and arouse."[36] In other words, "both legal performance itself and law's ambivalent relationship to its own theatricality matter to the way in which law produces itself, to its specific outcomes, to its broader effects, and to its meaning or institutional self-conception" (Stone Peters 2008: 182).

The staging of accusation through diverse theatres across the prairies in nineteenth-century Alberta sought to render Dominion criminal law as a unified material force whose workings could be observed, archived, and its choreographed projections apprehended. Those accusatory theatres negotiated categories and moral limits to envisaged colonial orders (see Leiboff 2021: 88 ff). They performatively shepherded – in unequal ways – so-called defiant individuals from everyday social to legal fields, opening pathways to potential criminalization. To set the stage for what follows, as it were, one might note that the Northwest Mounted Police performatively declared a presence across the prairies in contexts with contesting powers and legal fields. It did so by requiring local informants to deliver information about indictable crimes to justices of the peace at arrayed theatres of accusation.

COLONIAL RULE AND CRIMINALIZING POWERS

Throughout this decade, the performativity of colonial criminal accusation enabled a wider colonial politics of possession, as criminal laws helped to shape social arrangements for planned migratory settlement (Cavanagh and Veracini 2017; Harris 2020; Simpson 2016b; Storey

[35] Like Goffman (1970; 1959), Stone Peters (2008: 183) insists that *theatre* is central to who we become generally since "theatricality is a recognition of roleplaying as the foundation of identity, and illusion as the foundation of life. Theatricality is an understanding that life is a performance." In addition, Leiboff (2021) recognizes the link between theatre and legal theory arguing that a longstanding emphasis on theatre in legal analysis makes it quite feasible to develop a "theatrical jurisprudence."

[36] More specifically, Stone Peters (2022: 8) notes: "In this view, theatre and law were opposites. Theatre was the realm of artifice, ostentation, vulgar entertainment, melodrama, narcissistic self-display, hysteria, perfidy. Law was the realm of dispassionate reason, objectivity, discipline, and the sovereignty of truth."

2018). Managing Indigenous dispossession through criminalization has left enduringly destructive imprints on current horizons:

> There is no bright line between the phases of repression and resilience and of recovery and revitalization of Indigenous legal traditions. Dispossession, dislocation, and social disintegration continue. At a certain point, though, in almost every country with an Indigenous population, there is some recognition that the state criminal justice system has failed and is failing Indigenous peoples. (Napoleon and Friedland 2016b: 12)

Such breakdowns are all too evident in the noted disproportionate capture of BIPOC cohorts (Cunneen and Tauri 2016; Friedland 2009; Maynard 2017), as well as failures to police say missing and murdered Indigenous women.[37] This is precisely why observers insist that something be done about routinely relying on morally defunct practices of punitive criminalization (Kelly 2018: 178 ff), repressively "bad" and unequal legal fields (Reilly 2019), systemic racist and sexist failures of policing (Buller et al. 2019; Lebron 2017), and so on.[38] Some also suggest the value of eventually abolishing key elements of criminal justice systems borne to colonization (Carrier and Piché 2015; Davis 2003; Ruggiero 2011), while others promise that restorative paradigms could valuably replace adversarial courts of criminal law (Zehr 2015).[39]

Although difficult to envisage when confronted by hegemonies of state criminalization, the varied examples suggest how we might go about rethinking violence and revitalizing law as a reasoned deliberation related to lands, environments, without simply routinizing vengeful and repressive criminalizing institutions (e.g., Napoleon and Friedland 2016a; Zehr 2015). The present analysis provides for an allied possibility: re-imagine accusation beyond the rote and technical practices of criminalization to reconsider how, what, and who might aptly be accused of generating destructive social relations. Several guiding concepts are

[37] See Buller et al. 2019; Carter 2016; A. Simpson 2011; L. Simpson (2020).

[38] For instance, as Maynard (2017: 3) puts it, "the state possesses an enormous, unparalleled level of power and authority over the lives of its subjects. State agencies are endowed with the power to privilege, punish, confine or expel at will."

[39] The words of a recently retired judge in Alberta bring a critical choice into sharp relief: "If we as a society are prepared to continue spending billions of dollars to vent our anger, hatred and vengeance, we should maintain our criminal justice system just the way it is … But if we truly want to have a just, peaceful, and safe society, we should be looking to a complete change in our approach to dealing with wrongdoing" (Reilly 2019: 173). Echoing others, one might say that coercive criminalizing institutions should be used meagrely and with effective restraining oversight (Kelly 2018).

helpful when considering accusation in colonial Alberta, but three in particular might also be regarded as imperatives for orientating a critical approach to the topic.

Laws to Manage Dispossession and Fabricate Ordered "Settlement"

The stories we tell ourselves about how to live affect how we understand the justice of "being with" (Nancy 2000). At theatres, these stories might be enabling, respectful, life-affirming, pro-social, tolerant, benevolent, based on integrity, equity, compassion, honour, and so on (Napoleon and Friedland 2016b); they may equally be disparaging, disrespectful, life-destroying, anti-social, retributive, intolerant, duplicitous, callous, merciless, and so on. At times they might work under the pretext of the former while generating conditions for the latter (Simpson 2016b: 439). Colonial stories developed at accusatory theatres trace an empire's purposes behind legal fables about criminal wrongdoing (Ford 2011; Rafter 2008).[40] Specifically, meta-narratives of colonial entitlement lay behind many accusations, with legal stories reflecting and deflecting attention away from criminal law's socio-political encasing.[41] A key purpose of colonial criminalization was to categorize relational order and disorder in ways that served the "European" and "British" settlement of the "west" (Barman 2007; Harris 2020).[42] In many ways we see then that, as Ford (2010: 85) puts it, "settler violence … was clothed in law – a

[40] These often proceed from broader legal metanarratives:

> The story that settler societies like the United States, Canada, and Australia tell about themselves is that they are new, that they are beneficent, and that they are virtuous. They arrive at this story and this version of themselves through discourse and practices like law – because in law, and through law, they render justice. They are with law, they are governed by law, they are thus lawful, and, by extension, take on a "fair" character. These are not, "savage states" ruled by magic, pure belief, or unregulated emotionality. These states have institutions like law that regulate activity, guard against excess and abuse. (Simpson 2016a: 1305)

[41] In this regard, Linda Tuhiwai Smith notes poignantly that "the racialization of the human subject and the social order enabled comparisons to be made between the 'us' of the West and the 'them' of the Other" (Smith 2013). Equally one may here detect in these values: "Through the law, politics, and culture, the nation has been created as a white possession" (Moreton-Robinson 2015: 31).

[42] There is a political logic at play that furthered colonial dispossession. This insight demands a "history of political rationality's 'Others,' that is, a history of exclusions: the exclusions from the polis that the intersection between politics and rationality has produced – and that philosophy had no small part in legitimising – are legion" (Cornelissen 2018: 149).

law which, in important respects, settlers constituted and controlled." While this is not the place to repeat or precis expanding debates on "settler colonialism,"[43] it suffices to reference colonial settlement ambitions that criminal accusation aided and abetted (Cavanagh and Veracini 2017; Harris 2020).[44] When thinking about settlement, one might start by noting that settlers hailed from varied socio-economic, racialized, and gendered backgrounds (Carter 2016, 1997; Mawani 2012, 2007).[45] Some groups of settlers are often overlooked as such, including long-standing Black communities in Alberta (e.g., Vernon 2020), even though they did not always choose to do so (Winks 2000). However, an overarching paradigm of power shaped these social contexts,[46] which Wolfe (2006: 388) references as a basic logic of elimination:

[43] A prudent and general caution that I have kept in mind is reflected by this question: "what good is it to analyze settler colonialism if that analysis does not shed light on sites of contradiction and weakness, the conditions for its reproduction, or the spaces and practices of resistance to it?" (Snelgrove, Dhamoon, and Corntassel 2014: 27).

[44] However, one should be careful because the concept has ambiguously served "as an analytic, as a social formation, as an attitude, as an imaginary, as something that names and helps others to name what happened and is still happening in spaces seized away from people, in ongoing projects to mask that seizure while attending to capital accumulation under another name" (Simpson 2016a: 440).

[45] While recognizing heterogenous patterns of settler colonialism, the following critique of criminal accusation in the decade following the Northwest Mounted Police's deployment in Alberta recognizes "the coming of settlers was variously buttressed by military force; commercial and, later, industrial capital; and the administrative apparatus of a state. But in the long run, the durability of settler colonialism rested on the creation of resident, settler populations" (Harris 2020: 3). It also takes heed of Atwood's sense that settlers – as against explorers – seek to "impose order":

> They do not move through the land, they go to one hitherto uncleared part of it and attempt to change Nature's order (which may look to man like Chaos) into the shape of human civilization: houses, fenced plots of ground with edible plants inside and weeds outside, roads; and, later and for purposes other than survival, churches, jails, schools, hospitals and graveyards … So, the Canadian pioneer is a square man in a round hole; he faces the problem of trying to fit a straight line into a curved space. (Atwood 2012 130; with thanks to Ross Lambertson for bringing this quote to my attention)

[46] While my analysis does not explicitly engage with Coulthard per se, it does echo this point:

> What do I mean by a colonial – or more precisely, settler colonial relationship? A settler colonial relationship is one characterized by a particular form of domination; that is, it is a relationship where power – in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial, and state power – has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the dispossession of Indigenous peoples of their lands and self-determining authority. (Coulthard 2014: 6)

Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base … settler colonizers come to stay: invasion is a structure not an event. In its positive aspect, elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence.

Colonial structures of accusation assisted the "recursive dispossession" and formed colonial law to assert exclusive claims to "legitimate violence" (Nichols 2019: 91–92). Criminal accusations fashioned legal quests to engineer social infrastructures favourable to possessive settlement.[47]

Hybrid Powers Shape Colonial Theatres of Criminal Accusation

The socio-politics of accusatory theatres need not be confined to Hobbesian social or political compacts, or to power conceived as a constraining force possessed by a commanding leviathan. This is precisely why theorists like Foucault (1980, 2000), drawing on Nietzsche (1967), analyzed power as a nominal, diffuse, relational, and productive force. That force was tied inexorably to historical subjections and subjects as both instruments of and vehicles for its exercise and resistance. Looking crosswise at that influential discourse, criminal accusation could be approached as a manifestation of, and a channel for, hybrid socio-political arrangements. This includes: strategic spectacles undergirded by criminal laws designed to display sovereign strength; observing and forging individual obedience to disciplinary norms; and the racialized, gendered, and class-based management of population groups (Mbembe 2019: 72 ff). It also takes seriously Scott's sense that:

In any historical instance, what does colonial power seek to organize and reorganize? … what does colonial power take as the target upon which to work? Moreover, for what project does it require that target-object? And how does it go about securing it in order to realize its ends? In short, what in each instance is colonial power's structure and project as it inserts itself into – or more properly, as it constitutes – the domain of the colonial? (Scott 1995: 197)

Colonial powers of sovereignty relied on spectacular legal representations and performances. Indigenous and colonial sovereignties co-existed

[47] The "social" and concepts of "social order" thus became a pivotal aspect of colonial powers. On this note Scott insists that in colonial political arenas, "governor and governed are thrown into a new and different relation, one which is not merely the product of the expanded capacity of the state apparatus, but of the emergence of a new field for producing effects of power – the new, self-regulating field of the social" (Scott 1995: 203).

even as the former were variously, as Audre Simpson puts it, "secreted."[48] Moreover, if European sovereign powers partially emerged from regulated military relations through treaties – like those of Westphalia (Philpott 1995) – colonial sovereignty in Alberta was partially negotiated through numbered treaties. As noted, Treaties 6 and 7 were in 1876 and 1877, respectively, endorsed amid social upheaval, starvation, and colonial fears of combat, countenancing different ideas of sovereignty (Borrows and Coyle 2017; Miller 2009). At one level, as Mbembe (2019: 77) argues, this sort of sovereign power should be tracked very carefully for it has a tenacious capacity to nurture rather than rescind ruthless states of nature – hence his warnings of an enduring sovereign politics that soars around tangible threats of death.[49] At the same time, Audre Simpson (2020: 690) points out that there is a need to distinguish colonial forms of sovereignty from the possibility of life-generating and resurgent forms of Indigenous sovereignty.

Colonial forms of life were simultaneously buttressed by disciplinary powers and technologies centred around shaping obedient habits and normalized individuals (see Smart 1985). Alongside exemplars evinced by military and plague regulations (see Foucault 2015, 1979), normalizing corrective powers formed in disciplinary fields of knowledge (e.g., "police science"). Attempts to reconcile individual and societal orders through normalizing powers (including Bentham's exemplary "panoptic surveillance") targeted individual governors (e.g., accusing police officers) and the governed (e.g., the criminally accused) – such individuals were also placed within biopolitical – racialized and gendered – groupings.

Here one encounters a third model of power, "colonial governmentality" (Chatterjee 2019; Mbembe 2019; Scott 1995; Su Rasmussen 2011)

[48] That is, there is a concealed element of sovereignty rendered invisible by a "secreted" version thereof:

> The sovereignty that cannot be spoken of is also what remains secret; it is the sign that is attached to robust Indigeneities that move through reservations and urban locales, persistent and insistent "survivals" (descendants of treaty signatories, descendants of the historically recognized, as well as the unrecognized, in collective or individual form) that are nightmarish for the settler state, as they call up both the impermanence of state boundaries and the precarious claims to sovereignty enjoyed by liberal democracies such as the United States. (Simpson 2011: 211)

[49] Agamben (1998) too calls attention to the ways that biopolitical forms of sovereignty cement rather than avert brutal states of nature by creating *homo sacri*, yielding vast "camps" that endlessly generate marginalized expanses of "bare life" stripped of the choices to engage in a political life that allows people to flourish.

that may be extrapolated from Foucault's more Eurocentrically framed "mentalities" of biopolitical rule. The debates here are complex, but for our purposes one might say that criminally accused individuals were simultaneously posited as members of putative population groupings, endowed with prejudiced, historically attributed, characteristics. In turn, a relationally and racially conceived biopolitics (see Lemke 2011: chapter 3) was unequally directed to the health of population groupings, based on imputed indicators (mortality rates, birth rates, hygiene, food supply, housing, customs, sanitation, and so on), and categories of peoples situated on so-called evolutionary paths (as defined by elites).[50] Unlike sovereign powers over life and death, or individually and socially normalizing disciplines, biopower either sustained the flourishing of life forms within enunciated population groups or abandoned them to the point of their annulment (see Swiffen 2010; Swigeen and Paget 2022). Foucault puts it this way:

> I think that one of the greatest transformations political right underwent in the nineteenth century was precisely that, I wouldn't say exactly sovereignty's old right – to take life or let live – was replaced, but it came to be complemented by a new right which does not erase the old right, but which does penetrate it, permeate it. This is the right, or rather precisely the opposite right. It is the power to "make" live and "let" die. The right of sovereignty was the right to take life or let live. And then this new right is established: the right to make live and to let die. (Foucault 2003: 241)

The coldness of that power's capacity to withdraw support for life was rendered cruelly palpable by the work of certain Indian agents, with the support of some Northwest Mounted Police detachments (Daschuk 2014), whose rationing practices abandoned starving people to severe suffering, even to points of devastating expiration (Hubbard 2016; Mamers 2020; Nichols 2020; Swiffen and Paget 2022). When combined with sovereignty politics, colonial biopolitics harboured the potential to descend into Mbembe's (2019) "necropolitics."

In tandem, fluid amalgams of sovereignty, disciplined habits, and biopolitics shaped colonial political horizons, and yielded triangulated powers to forge theatres of accusation. These theatres commenced criminalizing performances, aiming to enforce social orders in favour of settlement, acquisitive agrarian capital, and Indigenous dispossession.

[50] That is, "Biopolitics deals with the population, with the population as a political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem" (Foucault 2003: 245).

Intersectional powers (see Tomlinson 2013) yielded and worked off racialized and gendered identities, for which Andersen (2015: 200) offers this nuanced caution:

> As a methodological principle, scholars should of course seek to incorporate into the raw materials of our analyses the categories used by practitioners to make sense of their world … But neither analytical clarity nor contemporary justice is served by mistaking one for the other. Nor should we be so certain that contemporary recognition, when anchored in the same racialized logic originally employed by the Canadian state to dispossess preexisting indigenous social ontologies, offers the dignity supposed by its authors.

Coloniality and Plural Legal Fields

As implied before, calls to reduce the reach of criminalizing fields of law is not the same thing as demanding their abolition. Plural forms of legality are part of our quests for just collective relations. No one law, as Derrida (2002) cautions, can secure justice. Such thinking dovetails with critical legal pluralists who have long challenged the dominance of imperial or colonial state law's hegemonic claims over "legitimate" theatres that perform normative legal work (Galanter 1981; Griffiths 1986; Merry 1999).[51] That hegemony in some cases even leads some to think that state law defines what law is. By contrast, legal pluralism directs attention to diverse legal fields, as well as the interactions between them, to understand how compliance with social norms happens in varied ways (Benton 2001; Krygier 2017a; Napoleon 2012). Understood as porous and interrelating, these "semi-autonomous fields of law" may be articulated as historical complexes (Merry 1988; Moore 1973); but all are involved with creating, deliberating on, defining, changing, developing, and securing obedience to societal norms.[52] Equally, scholars of

[51] Global accounts of legal pluralism also emphasize complex intersections across state legal fields (Benton 2001).

[52] This is why Moore cautions us that an "emphasis on the capacity of the modern state to threaten to use physical force should not distract us from the other agencies and modes of inducing compliance" (Moore 1978: 56). Instead, many socio-legal fields are involved with social controls and limit-setting. Such fields are both partly autonomous and porous; that is, they are shaped by and shape other arenas that in concert form historical justice arrangements (Moore 2001). From this vantage, "the semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it" (Moore 1978: 56–57).

Indigenous law point to legal fields that organized societies long before colonial law (Borrows 2002; Miller 2012).

Indeed, if as Napoleon (2012: 235) observes, "the basic characteristic of law is that it lays down general rules or baselines that people figure out how to interpret and apply" then all societies work off multiple forms and fields of law. Whether centralized or not, law cannot escape muddled, multifarious, and reflexive attempts to define, manage, and secure compliance to normative expressions of social limits; it ought also to involve critical reflection and deliberation, recognizing diverse ethical sources, targets, and rules to moderate capricious legal powers (Borrows 2019, 2002). In this sense, "law is part of all self-governing societies. All law requires shared understandings and sustained effort to maintain its legality. This is hard work, plain and simple, and should not be taken for granted in any legal order" (Napoleon and Friedland 2016a: 28).[53] Articulations between diversified and semi-autonomous fields of law may alert us to varied legal performances, but they also raise questions about the continued place of centralized, *jurispathic* laws that claim uniquely privileged legitimacy within modern sovereignty configurations (Cover 1983: 40). At the same time, we face political bequests, leading Napoleon to this pragmatic suggestion:

> The Canadian state is not going away and the past cannot be undone. This means that Indigenous peoples must figure out how to reconcile former decentralized legal orders and law with a centralized state and legal system. Any process of reconciliation must include political deliberation on the part of an informed and involved Indigenous citizenry. We have to answer the question, "Who are we beyond colonialism?" (Napoleon 2012: 245).

No doubt the latter question will need to be approached heterogeneously because the varied durability of colonial power still influences today's legal fields (Stoler 2016). On this note, Maldonado-Torres helpfully distinguishes between colonialism and coloniality to signal enduring "patterns of power" that define relational limits today. More specifically, one might say:

> Coloniality is different from colonialism. Colonialism denotes a socio-political and economic relation in which the sovereignty of a nation or a people rests on the power of another nation, which makes such nation an empire. Coloniality,

[53] One might put this another way: "There are multiple legal orders in Canada, including in numerous Indigenous legal orders. Unlike state laws imposed on Indigenous peoples, a focus on Indigenous law shifts to an examination of Indigenous peoples' own means of managing how to live together and with others" (Snyder 2018: 2).

instead, refers to long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations. (Maldonado-Torres 2007: 243)

Challenging the coloniality within performances of accusation could prompt a search for political languages to govern societal limits without immediate resort to repressive or heavy-handed criminalization. Re-engaging a politics of accusation could provide an important way to divert attention away from "criminal" individuals. This might also refocus accusatory performance on different theatres and legal fields, especially those that open out to possibilities for transforming social structures that foster injurious conflict (e.g., poverty, patriarchy, racism).

THE STORIES TO FOLLOW

One story of criminal accusation in Alberta takes us back to two seemingly distant, but influential, intelligence reports – authored by military officers William Butler and Patrick Robertson-Ross. They were instructed in 1870 and 1872, respectively, by the Dominion of Canada (North-West Territories Council) to reconnoitre the North-West Territories in preparation for colonial settlement. Both reporters identified Alberta's supposed lawlessness as requiring colonial intervention. Chapter 2 describes the socio-politics implied by the reports, detailing their race-tinted assessments, and how they divided an assumed population into racially conceived forms of life. Replicating popular imperial supremacist opinions, the reports egregiously placed "white" settlers at the pinnacle of evolutionarily imagined notions of social progress. Both relied on rumour to recommend that law be used to enforce relational orders conducive to colonial settlement. This was to be achieved without provoking wars against Indigenous Peoples.

Chapter 3 studies how a 330-man Northwest Mounted Police force was assembled in response to rumoured law-and-order issues that framed the report's recommendation. This force marched into Alberta in late 1874 (see Figure 1.2) with plans to deploy Dominion law sovereignly over legally plural contexts. With relatively few officers, and claiming jurisdiction over vast geographies, the force set about arranging spectacular symbolic performances of criminal accusation. Senior police officers met with Indigenous leaders to discuss possible targets for legal governance. Based on meetings with leaders in southern Alberta the Mounted Police negotiated an initial target – a socially injurious

liquor trade. A discernible socio-political logic lay behind the symbolic projections of a stable, ascendent, and enduring Dominion rule by criminal law. Theatres of accusation provided performatively staged openings to that law.

More directly focused on the internal scripts for performances at these theatres, Chapter 4 describes how colonial criminal accusation worked through arrayed chambers; laying information, arrest, and summary trials or preliminary examination. It highlights the pre-trial work of oft-overlooked leading actors in law enforcement – senior police officers serving *ex officio* as justices of the peace. Descending from age-old British legal institutions, the colonial justice of the peace migrated to eastern Canada and then to pre-trial arenas in the North-West Territories. By way of paradigmatic examples, this chapter shows how police and justices arranged – relying on legal scripts – theatres where performances of criminal accusation could be staged. The examples suggest that without accusatory theatres, colonial criminalization could not have appeared let alone presented itself as superior to other legal fields. Accusatory foundations were thus performatively implicated at the heart of colonial law's attempts to manage dispossessing settler orders via criminalization.

Frequently serving as accusers, or as facilitators for other accusers, Northwest Mounted Police officers were coached on how and when to delimit social disorder. Chapter 5 highlights examples of their training to perform as accusers (or to facilitate other accusers) around theatres that categorized criminal acts and actors. Here officers were instructed in both "direct" and "indirect" governance (as per Bentham), with lessons derived from paramilitary and police science disciplines. Recruits learned how to follow commands to deploy violence, and how to use discretion in efforts to prevent dissent. With inspiration from the Royal Irish Constabulary, police officers also learned how to become criminal accusers by habit. That training, with its colonial biases clear, is detectable from a paradigmatic example of police responses to the first death of a Northwest Mounted Police constable in 1882. Located within a settler assumptive universe supporting dispossessing visions of social order, one glimpses how police training in this case focused accusations on Indigenous persons.

Following an analysis of key colonial accusers, Chapter 6 focuses attention on the target of Alberta's performances at theatres of accusation: *criminally accused individuals*. It reveals a politics through which accused subjects were formed at police-guided accusatory theatres –

including information gathering, arrest, and examination. These theatres required targeted subjects to perform roles, under the threat of force, as law's accused persons. Referring to three paradigmatic examples, the discussion centres on how colonial law recognized criminally culpable individuals. Underscoring individually based accusations, this law moulded accused *personas* through at least two key techniques. First, its justices transcribed what could be legally "heard" and translated complex relations into idioms of law – thereby attributing degrees of culpability for crimes to accused individuals and deflecting attention away from conflict-generating social structures. Second, the theatres managed avowals of legal truth, thus subtly promoting obedience to colonial law and thence settler social order.

If the previous chapters highlight the rise of intersecting powers behind settler-colonial criminal accusation, the penultimate Chapter 7 focuses directly on a third assemblage of these variously integrated powers – biopolitics. Colonial biopolitics generated and worked through categories that located individuals within divisive population groups (Swiffen and Paget 2022). Revealing an imagined normative social hierarchy, colonial criminal accusation assigned individuals to economic, racialized, and gendered population groups that congealed with white, male, possessive relational orderings. A remarkable assembly of Cree leaders perceptively challenged dispossessing colonial law and order in a translated public letter submitted to a local newspaper. Without political processes to manage conflicts between opposing legal fields, lawless violence could quickly descend around accusatory thresholds – as revealed by a case involving the police inspector Dickens (one of the famous author's sons). Through this example, we glimpse the struggles by which colonial theatres of criminal accusation tried to assert monopolistic jurisdiction – highlighting how violence and force were the currency of lawless, biopolitical battles to declare law. Both this case and another reflects how patriarchal biopower rendered women without name or *persona* in law, as absent referents, even when accusers. Intersectional powers of law and a patriarchal, racialized biopolitics underscored the possessive powers that colonial accusation supported (Carter 1997; Cho, Crenshaw, and McCall 2013; Tomlinson 2013). As is outlined, such powers have left enduring legacies of inequality within criminal justice systems today.

The discussion concludes by reviewing paradigmatic socio-political logics of hybrid sovereign, disciplinary, and biopower within colonial theatres of criminal accusation, as revealed by the preceding analyses of

archived Albertan texts. It traces a "coloniality" within accusatory performances framed by racialized, patriarchal, and marginalizing criminal justice institutions (Maldonado-Torres 2007). In composite, the chapters point to several key social and political foundations through which accusations of crime provided conditions for colonial criminalization to emerge. It is significant that such accusations and the law that they sustained were from the outset placed in the service of dispossessing social, political, and economic ambitions. The book ends by reflecting on two legacy bequests of colonial accusation that might be used to think in ways that exceed the socio-political horizons that contour today's vast, unequal, and repressive criminal justice systems.