THE AFTERLIVES OF *TERRA NULLIUS*: UNMARKED GRAVES, INDIGENOUS 'DISCOVERIES', AND COLONIAL AFTER-THOUGHTS

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The 2013 film *Rhymes for Young Ghouls* by writer-director Jeff Barnaby, of the Mi'kmaq nation, tells a fictionalized story about Indian residential schools in Canada.[1] The film's narrative centers on a Mi'kmaq Indian reserve in the mid-1970s, where Aila, a teenage Mi'kmaq girl, sells drugs to pay off truant officers to keep her and her friends from having to attend the local residential school. The film begins in 1969, when Aila's mother commits suicide after accidentally killing her son Tyler, Aila's younger brother, for which Aila's father takes the blame and goes to prison. In the narrative backstory, her parents were victims of the local residential school. These schools existed in Canada and the United States from the late 19th to the late 20th centuries, and in Canada at least 150,000 Indigenous children attended residential schools. The colonizing function of residential schools was to eliminate Indigenous people as a distinct people through coerced assimilation to Euro-American norms. Among other things, residential schools made it easier to steal Indigenous territory by fracturing Indigenous communities (see Brown and Estes 2018). The inter-generational trauma produced by these schools haunts Aila's waking life and her dreams. Notably, Aila's dead brother Tyler appears in her dreams, standing in the woods, his clothes, face and hair darkened with dirt as if he just crawled out of the grave. Tyler's ghost has a message for Aila, which he delivers after truant officers forcibly take her to the residential school, where she is beaten and her braids

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violently shorn by nuns, after which they throw her into a locked cell where she passes out. Here Tyler returns to Aila's dreams to lead her through the woods beside the school, toward a clearing, where he points for her to walk forward and look. Aila covers her mouth in horror at what she finds. The camera pulls back to show her standing on the edge of an open pit filled with the dead bodies of dozens of children piled on top of each other—a residential school mass unmarked grave. The dream has revealed a nightmare. It is possible that to some viewers—especially those of us who are not Indigenous—the scene could appear to be a dramatic exaggeration to reinforce the horror of residential schools. In fact, it revealed a deeper truth that was buried, literally and figuratively, by the Canadian government and the Catholic church. This ugly truth became clearer to the public eye eight years later. Aila's nightmare of a fictionalized residential school mass grave eerily foreshadowed the May 2021 discovery of unmarked graves by the Tk'emlúps te Secwépemc First Nation on the grounds of the former Kamloops Indian Residential School in British Columbia, on their unceded territory, containing the remains of 215 children, some estimated to be as young as three years old. The Catholic church ran the school until 1969, when the Canadian federal government took it over until it closed in 1978.

For decades, children of the Tk'emlúps te Secwépemc nation as well as other First Nations in the province were forced to go to the school, and many of these children did not return home. The story told by Canadian and Catholic officials to First Nations families about the fate of their missing children was that they ran away, never heard from again, and thus they were not on school grounds, either alive or dead. This response by church and state officials to Indigenous claims about the whereabouts of their children is a contemporary form of *terra nullius*, to draw upon a key concept in colonialist logic used to justify seizing Indigenous territories centuries ago on the premise that these lands were empty of people. No one was there, went this logic, and thus the land was available for Europeans to claim. In our time, I argue, this logic of *terra nullius* took on an after-life in which it served to deny the embodied presence and thus evidence of the harm done to Indigenous children by residential schools. Once again, now in the 21st century, government and church officials of the colonizing society deemed the land to be empty of Indigenous people, here in the form of human remains. However, the colonizer's view is not the end of this story; Indigenous people have their own stories that counter colonial erasure through the assertion of Indigenous nationhood, presence and resistance. Indigenous communities such as the Tk'emlúps te Secwépemc heard stories from former students about what happened to their missing peers. The First Nation thus initiated their own search, and the use of ground-penetrating radar led to the discovery of the children's remains. In the words of Chief Rosanne Casimir of the Tk'emlúps te Secwépemc First Nation, the radar technology allowed them to "look beneath the surface of the soil and to confirm some of the stories that were once told [...] we do know that there is still more to be discovered." To Casimir, what they revealed to the public was "a harsh reality and it's our truth, it's our history...And it's something that we've always had to fight to prove. To me, it's always been a horrible, horrible history" (Austin 2021/2022). The discovery in Kamloops was the first of many across the country that revealed the "horrible history" that many Indigenous people knew all too well—"it's our truth, it's our history"—while the wider settler public ignored or disavowed it. To 'discover' the remains that Indigenous people knew were buried in their traditional territories, with "still more to be discovered" in Casimir's words, turns the table on the performative function of one

of the most troubling of colonialist concepts, that of *discovery*. It transforms the act of discovery into that which proves and centers Indigenous presence as well as the continued harm of colonialism. This discovery contrasts with the constructed absence and disavowal of Indigeneity and of the violence of colonial land theft that had been the central function of *discovery* since the time of European conquest.

To explain its foundational and performative purpose, the word 'discovery' references the legal rationale for European conquest by means of *the doctrine of discovery*. The doctrine of discovery is a late 15th-century Catholic Decree that laid the legal basis for explorers to make claims to territories that they deemed to be *terra nullius*, as in 'lands of no one.' *Terra nullius* did not mean the territory was without people literally; rather, it meant that the land so discovered was empty in the sense that the Indigenous peoples present were not Christians (and generally not 'civilized' in the eyes of Europeans), and were thus not deemed to be worthy of respect or fair treatment as full and equal human beings (see Pateman [2007] 2017). In other words, Indigenous peoples were present, of course, but *terra nullius* does the performative ideological work of producing them as absent for legal, political and socio-economic purposes. To draw this logic into our time and context, we exist now in a period shaped by the afterlife of *terra nullius* in which the absence and death of Indigenous people has become a background, disavowed presumption of settler colonial societies, not a new revelation but a colonial afterthought.[2] From the settler perspective—that of the state and the church, for example—the residential school grounds were the contemporary version of 'lands of no one,' *terra nullius,* when it came to questions about the remains of the children. This modern version of *terra nullius* is a performative production of Indigenous absence: nothing to discover, nothing to see here—no graves, no genocide, no modern colonial rule. This production of Indigenous absence has deep historical roots in the ontological presumptions that are core to logics of settler sovereignty and belonging.

The afterlives of *terra nullius* we see in the case of residential schools is an example of the settler logic I call necro-Indigeneity. I devise necro-Indigeneity from the concept of necropolitics, defined by Achille Mbembe to refer to "new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of *living dead*" (Mbembe 2003, 39–40). Necro-Indigeneity is similar to but not quite the same as Ruth Wilson Gilmore's notion of racism as "the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death" (Gilmore 2007, 28). With the concept of necro-Indigeneity, I point to the settler colonial presumption of Indigenous death that is not premature, as if it is forthcoming, but rather as death that is already enacted and buried in the past, which is thereby now an after-thought or barely thought of at all, unmarked and thus unremarkable to the settler eye. Of course, Indigenous people do experience "vulnerability to premature death;" that is, racism, in Gilmore's terms. However, racism is not the whole story. Necro-Indigeneity expresses the idea that the existence of settler society is premised on Indigenous absence through death that has already been enacted and defined as the ontological condition of Indigenous people. By the logic of necro-Indigeneity, Indigenous peoples do not exist as contemporary beings but rather as peoples whose terms and meaning of existence are consigned to the 17th, 18th, or 19th centuries, and are thus ontologically *out of time* in the 20th and 21st centuries. This absence is applicable to

the living and the dead today, as a people whose meaningful lives and deaths are consigned to a settler past. By this settler logic, Indigenous people should not be here now just as they were not deemed to be there at first encounter, and this is how *terra nullius* does its performative work, then and now. The after lives of *terra nullius* in the contemporary context takes the form of settler disavowals and denials about Indigenous claims for and about their people and their land. In resistance, Indigenous people's assertions that their deceased relatives are where they say they are, in and of the soil, are direct efforts to counter the logic of necro-Indigeneity, through the assertion of Indigenous presence, in all forms. These are acts of Indigenous resurgence. Leanne Betasamosake Simpson (Michi Saagiig Nishnaabeg) describes resurgence as being about "nation building, addressing gender violence, movement building, linking up and creating constellations of co-resistance with other movements" (2016, 27). When Indigenous nations such as the Tk'emlúps te Secwépemc take on the grim task of locating the remains of the ancestors of their community, one can read this as a refusal of modern *terra nullius* to instead assert Indigenous presence in the form of nation and movement building. Through their expression of self-determination and stewardship over their territories, the Tk'emlúps te Secwépemc refused the settler production of Indigenous absence on this matter. They did so less to discover what they did not know, for they did know, and more to heal their community, return ancestors to their relatives, and reveal to the settler public the presence of the brutal, genocidal truth of modern Canadian settler rule. Through these efforts, Indigenous nations flip the idea of 'discovery' on its head. They do so by performatively recasting the manipulative colonial logic of discovery that denied the humanity and existence of Indigenous people into an Indigenous *discovery* of the inhumanity and brutality of modern colonial rule that is brought to light through the articulation of Indigenous nationhood and territorial responsibility. This was not a *discovery* of something these Indigenous nations did not know, but rather a discovery of the violence, abuse and deaths produced by residential schools that the settler society sought to bury and disavow.

Years before the discoveries of 2021, this 'horrible history' of residential schools, as Casimir called it, was available to the Canadian settler public and government officials. From 2008–2015, the Truth and Reconciliation Commission (TRC) of Canada heard testimony from over 6500 witnesses, mostly Indigenous survivors. Still, the discovery of human remains on school grounds came as a shock to the wider settler society. This 'settler shock'—the fact that a good deal of settler society was shocked at what colonial institutions had done to Indigenous people, to children—speaks to the sustaining power of disavowal in settler colonial societies. Canadian settler society, as with settler societies in general, disavow the nation's genocidal history by trying to leave the matter buried, equivocating on the issue, or through outright denial. For example, in 2009 the federal government under Conservative Party Prime Minister Stephen Harper denied a $1.5 billion request from the TRC to fund searches for the remains of the missing children, thereby leaving this deeper truth buried. Along with the refusals by the Canadian federal government to help, many school documents and student records were destroyed or withheld by government and church officials, and some documents burned in fires in poorly kept buildings (Narine 2023). Even without the full cooperation of the Canadian federal government and the Catholic church, the TRC concluded, in its 2015 final report, that in pursuit of "Canada's Aboriginal policy [...] to eliminate Aboriginal governments [...and] to cause Aboriginal peoples to cease to exist as distinct legal, social, cultural,

religious, and racial entities in Canada," the "establishment and operation of residential schools were a central element of this policy, which can best be described as 'cultural genocide'" (Truth and Reconciliation Commission of Canada 2015).[3] This report was an important step in the public recognition of the harm done by residential schools. At the same time, the TRC's claim of *cultural* genocide, as powerful as it is—evidenced by the fact that then Prime Minister Harper did not accept its use—did equivocate slightly, if meaningfully, on the matter (Barber 2015). The TRC report intentionally deployed the modifier 'cultural' to define the genocide carried out by residential schools as limited to "the destruction of those structures and practices that allow the group to continue as a group" but did not include "*physical genocide* [...] killing of members of a targeted group" (1). To be sure, the TRC received neither resources from the Canadian government nor adequate cooperation from the Catholic church to look for evidence of "physical genocide." In defiance of these disavowals and equivocations, the Tk'emlups te Secwépemc Nation initiated their own search, which they deemed their responsibility as stewards of their territory. By so doing, they showed the presence rather than the absence of the truth of these lands, just as Jeff Barnaby conveyed about his Mi'kmaq community through Aila's nightmare scene in *Rhymes for Young Ghouls*. The dramatic impact of that scene in the film and the tangible work of the Tk'emlups te Secwépemc Nation are evidence of the power of Indigenous resurgence that refuses and counters the ontological absence produced through the colonial logic of necro-Indigeneity. Unfortunately, this shock to the settler system, if likely only a fleeting one, required the discovery of the evidence of dead bodies, a painful and painstaking process for Indigenous communities to go through.

The politics of the dead body here is two-fold, on the settler and the Indigenous side. On the one hand, settler state and collaborative institutions such as the church carried out genocidal practices through residential schools and then disavowed the harm done by invoking a modern form of *terra nullius.* On the other hand, the anticolonial politics of Indigenous resurgence refused the performative work of settler disavowals and equivocations, and in so doing affirmed Indigenous presence and existence, in death and life. The Tk'emlups te Secwépemc's "fight to prove" the truth of their history and of the stories they heard doubles as an anticolonial politics because it is a fight for their people's inter-generational memory, capacity to heal, nationhood, and the respect of their ancestors. It is also a defense and articulation of their long-standing sovereignty in relationship to their lands and the people who live and die on them. Even after the discoveries of human remains at multiple residential schools, groups of settler 'denialists' refused to accept the evidence that Indigenous children died and were left in unmarked graves (Taylor 2023).[4] The protestations and actions of these denialists reveal the power of the afterlives of *terra nullius* and of the persistence of necro-Indigeneity as a defining settler logic for justifying settler belonging and claim to these lands. At the same time, Indigenous leaders and nations have turned the performance and politics of 'discovery' back against the Canadian settler society and the institutions of colonial governance to place these ugly, brutal truths before the public. By themselves, such truths do not set a people free, as we know, but they can provoke gestural responses from those responsible, which I consider now.

The truth of Indigenous people's experiences in residential schools confronted Pope Francis during his trip to Canada in July 2022, when he visited many Indigenous nations and offered an apology

for the church's role in the schools (Horowitz and Austen 2022). Not long thereafter, in April 2023, the Vatican formally rejected the doctrine of discovery, 500 years after it created it and two years after the discoveries in Tk'emlups te Secwépemc territory (Chappell 2023). As noted, from first conquest to contemporary colonial rule, the Catholic church was a vital pillar of settler domination over Indigenous peoples. The Pope's 2022 apology and the Vatican's 2023 refutation of the doctrine of discovery are important performative acts that, first, acknowledged the fact of residential school harm and, second, renounced the colonial logic of Indigenous absence that justified centuries of violent conquest preceding and precipitating the creation of residential schools. The potential impact of his statements should be taken seriously, while inviting questions about their substantive meaning for Indigenous peoples and for settler colonial societies. Genocide is at the core of both the doctrine of discovery and of residential schools. The charge of genocide is one that no nation, church or people is likely to accept willingly about their ancestors, institutions, and themselves. However, it is worth asking if in a settler society even genocide itself can become an after-thought, an accepted reality in a context still shaped by necro-Indigeneity, by the presumption of Indigenous death and absence, even in the face of Indigenous resurgence.

We get an example of genocide rendered as an after-thought from Pope Francis himself in an interview during his flight back to Rome at the end of his visit to Canada. Brittany Hobson, an Anishinaabe journalist for Canadian Press, asked him the following question: "The people who heard your words of apology this past week expressed their disappointment because the word genocide was not used. Would you use that term to say that members of the Church participated in genocide?" To this question, he replied: "It's true. I didn't use it because it didn't come to my mind but I described the genocide and asked for forgiveness. […] Yes, genocide is a technical term. I didn't use it because it didn't come to mind, but I described it […] It's true, yes, yes, it's genocide. You can all stay calm about this. You can report that I said that it was genocide" (Vatican News 2022). Granted, this is an unscripted answer, possibly worded hastily and poorly. Nevertheless, it is an apt metonym for how settler colonial governments, institutions and publics that contributed to the violence against Indigenous peoples and their dispossession respond to evidence of the damage they have wrought. They tend to, at once, begrudgingly gesture towards and then quickly away from the implication of the brutal truths with which they are confronted. We see this in the way in which Pope Francis' response does performative work at multiple levels. His answer is at once apologetic ("I asked for forgiveness") and presumptive ("you can all stay calm about this"), even casual ("it didn't come to mind") and defensive ("but I described the genocide"). This is not to say that he did not take seriously the harm caused by residential schools, but it is to note that calling it *genocide* was, by his own admission, an after-thought until an Indigenous journalist asked him a direct question. The ambivalence conveyed in the performance of the Pope's acknowledgement may well do more to reinforce the status and power of the Canadian settler state and Catholic church than it does to offer a path toward substantially addressing Indigenous people's concerns and demands.

For a colonial institution to admit to genocide of any sort, cultural or physical, should be damning, jarring, and lead to transformative change; it should change everything. And yet, what has changed or is changing? We should read the Pope's apology and fumbling acknowledgement of the church's

role in genocide as an example of what Yellowknives Dene political theorist Glen Coulthard critiques as a colonialist 'politics of recognition.' Coulthard levels his criticism at the idea that the destruction wrought by colonialism can be substantially addressed through apologies and acknowledgments from settler institutions and actors who seek reconciliation with Indigenous peoples but without any concrete repair, including the return of land. If anything, the performance of these acknowledgements—as we see with the popularity of land acknowledgements by settler institutions today—may serve to strengthen rather than weaken the status and legitimacy of settler institutions that make this gesture. As Coulthard states, the "politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend" (Coulthard 2014, 3). In other words, without a substantial transformation of the institutions and authority over land that define the purview of the modern settler state, an apology or acknowledgement primarily serves to reaffirm the legitimacy and standing of settler sovereignty. As well, taking heed from Coulthard's critique of recognition politics, the acknowledgement of genocide by colonial institutions likely serves to reinforce rather than challenge a foundational settler presumption. This is the presumption of necro-Indigeneity—the Indigenous *nullius* of *terra nullius*—only now with a liberal apology and acknowledgement appended to it as another example of the colonialist politics of recognition. If this is the dynamic at work here as we observe settler institutional and public responses to the discovery of the remains of Indigenous children, then an actual concrete next step toward repair would be to take seriously the 'terra' in *terra nullius*. Stealing Indigenous children and stealing Indigenous land go hand in hand in any comprehensive narrative of the history and purpose of residential schools. It follows then that reparations for the genocide documented by the TRC and for which Pope Francis apologized must include returning the land stolen from Indigenous people in order to seriously redress the harm in a way that deconstructs rather than reproduces settler institutions and logics. Maybe then the acknowledgment of genocide would be more than a colonial after-thought. It might become the basis for a transformative politics of anti-colonialism and decolonization instead of a perpetually haunting nightmare.

Notes

[1] Written and directed by the late Jeff Barnaby of the Mi'kmaq nation. Barnaby died in 2022.

[2] The 'afterlife of terra nullius' draws upon and recasts to address the dynamics of Indigeneity and colonialism Saidiya Hartman's fundamental concept, the "afterlife of slavery," by which she denotes "the skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment" as a consequence and continuing impact of slavery (Hartman 2008). I thank Andrés Fabián Henao Castro and Elva Orozco Mendoza for noting and encouraging further development of this 'afterlife.'

[3] For more on "cultural genocide," see Macdonald (2015).

[4] For more on denialism, see Justice and Carleton (2021).

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Biography

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