

Justice and the Colonial Collision: Reflections on Stories of Intercultural Encounter in Law, Literature, Sculpture and Film

Rebecca Johnson*

We also have no history of colonialism.
Canadian Prime Minister Steven Harper¹

Communities, and particularly national communities, are constituted in part through narratives about their origin. In settler societies, ordinary stories of contact and arrival have played foundational roles in the national imaginary. Questions of membership, belonging, inclusion and self-definition have been imagined in particular ways in these stories—stories which position people in relationship to each other and to the state.²

While there are still some who continue to tell stories of Canadian colonial innocence, it is clear that the Canadian national imagination continues to be haunted by the question of aboriginal-settler relations. The Canadian state has had a long history of criminalizing indigenous law and culture, of hanging their leaders and incarcerating their people, of dispossessing indigenous peoples of their land, of forcibly removing their children from their families to be placed in residential schools where they suffered physical and sexual abuse, of legislation prohibiting indigenous people from using law to pursue their claims.³

* Professor of Law at the University of Victoria, Canada.

** Many thanks to the editors of this volume for opening a productive space for me to spend time thinking about this case, and sorting through the different genres in which justice might be expressed. I have learned much along the way. As always, the process of learning is filled with debts. Elisapee Karetak is at the front of that list, as her film made visible to me a history that I had not known, a history that remains to be restored. My wonderful colleagues at the University of Victoria have always fostered a space for engagement and thinking anew, and I have learned much from students in my criminal law class, who asked questions that helped me focus attention in different directions. I owe further debts to all those involved in the visionary Akitsiraq I law program, a program that opened space for a different way of imagining Canada's colonial past and future.

1 Ljunggren 2009.

2 For a longer elaboration of this point, see Lessard, Johnson & Webber 2010, 5.

3 Much of this history is captured in the Report of the Royal Commission on Aboriginal Peoples, Canada 1996. See generally, Borrows & Rotman 2003.

Law, while implicated in many of these histories of injustice, has not operated on only one side of the colonial equation. Though law has been the vehicle through which people have been stripped of land, culture and indeed humanity, it has also been used to undo colonial policies, acknowledge indigenous claims and histories, deliver justice.⁴ Even in the face of law's many failures in Canada's colonial past, one can point to moments of seeming success. For example, the acquittal in *R v. Kikkik*, a high-profile murder and criminal negligence trial from 1958.

The case involved two Ihalmiut families. The Ihalmiut were a small band of Inuit (at the time called 'Eskimo') whose culture was dependent almost exclusively on caribou. The Ihalmiut, due largely to author/explorer Farley Mowat's book, *The People of the Deer* (1952), were among the best known Inuit in Canada,⁵ and in 1956, were featured on the cover of *Life* magazine, with the title 'Stone Age Survivors'.⁶ Two years later, they were in the international news again, but this time the headlines spoke of murder and criminal abandonment. A man named Ootuk had shot his brother-in-law Hallow in the back of the head. Hallow's wife Kikkik in turn stabbed Ootuk to death. Then, in an attempt to reach the nearest trading post, she began a 45 kilometer trek, carrying a baby on her back, and dragging two of the other four children behind her on a caribou skin. Several days into the journey, she left her daughters Nesha and Annacatha behind, buried in a snow cave. Nesha froze to death, but Annacatha was found alive. Kikkik was charged with the murder of Ootuk, for criminal negligence in the death of Nesha, and for the abandonment of Annacatha. The jury hearing the trial seemed to understand that the trial was a space of intercultural encounter, and in that space, acquitted Kikkik of all charges.

In this paper, I take up *R v. Kikkik*, one of these moments of ostensible success, in order to ask what might be learned about law and justice by exploring the different ways the story of encounter is told. Here, I juxtapose four different accounts of Kikkik's story: the trial transcript; a narrative account in a best-selling book; three Inuit sculptures; and a documentary film.

We will begin with the legal story captured in the trial transcripts of *R v. Kikkik*. From the transcript, I will focus on the statement given by Kikkik to the police (through a translator), the strategy of Kikkik's lawyer, the judge's charge to the jury, and the jury's moment of judgement. The trial transcript seems to offer us an objective account of the facts, one focused on questions of *actus reus* and *mens rea*: what did Kikkik do, and what were the reasons for her actions? In this story, though challenges of cultural translation float just below the surface, Justice itself emerges primarily in the jury's pronouncement of the phrase 'not guilty'.

The second text is a chapter from Farley Mowat's book *The Desperate People*

4 On this double-direction in law in the context of settler-aboriginal relations, see Borrows 2002.

5 In contemporary Canada, the community would be referred to as the *Ahiarmiut*. Here, where much of my focus is on a case situated in the 1950s, I will largely use Mowat's term, *Ihalmiut*, conscious of the very real politics of naming. For more on the challenges of ethnic nomenclature for the peoples of the arctic, see King & Lidchi 1998, 10–17.

6 For the role of these photos in sustaining a certain image of the Ahiarmiut, see Marcus 1998, 190.

(1959). In this work, Mowat draws on a number of literary tools to offer the reader a powerfully subjective and embodied experience of Kikkik's story, as well as the backdrop conditions of starvation and cultural dislocation caused by the government's 1957 decision to relocate the Ihalmiut from their traditional territory to a location over one hundred miles to the North. This text invites the reader to occupy the subjective points of view of several of the parties, and makes visible a number of the colonial injustices which had remained unaired in the courtroom.

There is a third rendering of the story in three carvings by Inuit sculptor Peggy Ekagina, carvings that are part of a collection of Inuit sculpture on display in the Yellowknife Courthouse. These three sculptures (representing the deaths of Hallow, Ootuk and the child Nesha), open up space for another way of engaging with Kikkik's story. We will consider both the images captured in stone, and the conditions of their production in order to pose additional questions about colonial collisions.

Finally, we will look at the film *Kikkik* (Gjerstad and Karetak 2001) – E1-472 (Kreelak 2003).⁷ Made nearly 50 years after the fact, the film offers us the tale of Kikkik narrated from the perspective of Kikkik's daughter Elisapee (who was carried on her mother's back in 1958, but who knew nothing of the events that occurred until, as a 16 year old, she read Farley Mowat's book). The film foregrounds questions, like 'Who was my mother? How did these terrible events happen? And how am I linked to this past?' The film draws us into a conversation about the continuing demands of justice, demands linked perhaps less to questions of guilt and innocence than to questions of visibility, acknowledgement and the need to think about reconciliation of colonial and indigenous legal orders in the present.

Set alongside each other, these different texts make visible the many challenges for the legal imagination as it seeks to do justice at the encounter of settler and indigenous legal orders. Each genre of story, with its enabling and limiting conditions, provides us with a different field of vision. Taking inspiration from James Clifford's work on juxtaposition (Clifford 1988, 10), the recasting and repositioning of those stories alongside each other can better help us understand how, in the space of intercultural encounter, we are both caught in and implicated in the stories of the other.

1. The legal case (the trial)

Let us begin with our legal text, captured in the form of 'the case'. This was a case that had captured national and international public attention. Murder in the far north was an uncommon event, and this story involved 3 dead bodies. The facts were widely reported, and seemed largely uncontested: Hallow was dead at Ootuk's hand; Kikkik had admitted to killing Ootuk, and to leaving two of her children buried in the snow.

⁷ The 2001 film is available online at <<http://gjerstad.info/ole/portfolio/kikkik-2001/>>. There is a second version of the film, completed a few years later, written by Elisapee Karetak, co-produced by Ole Gjerstad, and directed by Martin Kreelak, which draws on the material from the first documentary but adds another 30 minutes of footage. Available on <<http://www.isuma.tv/hi/en/imaginative/kikkik-e1-472>>.

At issue was only the legal meaning to flow from these facts. Two separate trials were to be held, one on the murder charge, the other on charges of criminal negligence and abandonment. The trials were held in Rankin Inlet before Justice John Sissons, the first resident Justice of the Northwest Territories Supreme Court. The Crown Prosecutor and Defence lawyer were flown in from far distant parts of Canada. A 6 man jury was struck from the community, all of them men working in the Rankin Inlet nickel mine, two of them Inuit. Time-Life had also flown a team of journalists to the north, providing the public with photos and media coverage of the trial.

In Canada, non-jury trials result in publically accessible judicial reasons, generally in the form of written and reported judgements.⁸ These judgements do not simply report the outcome, but also set out the legal question, give an account of the evidence and arguments made, and provide a thoroughly reasoned application of the legal principles to the facts. Jury trials do not generate the same kind of legal texts: while the trial judge has a legal obligation to provide reasons for the conclusion,⁹ the jury is prohibited from doing the same thing.¹⁰ In a jury trial, the functions of judgment are split,¹¹ and the jury's role is to perform its judgement in the most binary fashion, pronouncing an accused 'guilty' or 'not guilty'. In the context of an acquittal then, we are left with a very spare form of legal text, little more than 'a conclusion'.

To better understand the elements behind a jury's moment of decision, one can look backwards to the trial transcript.¹² Though the transcript is not a judgement, it does provide us with a kind of legal text to explore: the record of what went on in the courtroom, the testimony of the witnesses, the rulings on admissibility of evidence, the arguments of the lawyers, the judge's charge to the jury, and the jury's conclusion. From the transcript, I focus on 4 pieces of the story: the challenges of translation, Kikkik's account of the killing, the strategies used by the defence lawyer in cross-examining witnesses, and the judge's address to the jury.

The first observation is that the challenges of both linguistic and cultural translation are visible throughout the transcript. This is not surprising since there

8 For Bryna Bogoch's work on the reporting of judgments in Israel, see Bogoch, Halperin-Kaddari & Katvan 2011.

9 In the Canadian context, the duty of a trial judge to provide reasons for conviction is set out by the Supreme Court in *R. v. Sheppard*, [2002] 1 S.C.R. 869. The reasons must be sufficiently intelligible to allow an appellate court to review those reasons for correctness.

10 See § 649 of the Criminal Code of Canada, which makes it a crime to disclose any element of the juror's deliberation process, or any discussions of the jury that happened outside of the open court process.

11 In a jury trial, the functions of judgement are split between the judge and jury: the judge (the 'finder of law') ensures trial fairness, and explains the relevant legal principles to the jury. The jury (the 'finder of fact') decides what facts have been proven and applies the law to those facts to come to a conclusion on the question of guilt or innocence. Where the jury pronounces an accused guilty, there is a sentencing hearing, and in the report of this hearing, there may be a more robust account of the story, and the judge determines the appropriate punishment. But where an accused is acquitted, there is nothing more to say.

12 Unless there is an appeal from a jury trial, the trial transcript is generally not available. In his own biography, Judge Sissons devotes a chapter to the Kikkik case, reproducing parts of the transcript from each of the two trials. Elisapee Karetak acquired a copy of the transcript from the murder trial, and made it available to the University of Victoria's law school library. Unfortunately, it seems that the transcript of the second trial (on the criminal negligence and abandonment trials) is no longer available.

were very few people from either community who were truly literate in the language of the other. A conscious effort was made to ensure a representative jury, but even still, one of the Inuit jurors had to be replaced because he could not follow the proceedings in English. Further, the court interpreter had to be replaced as he kept summarizing the testimony rather than reporting it. Throughout, there is evidence of slippage in the words and concepts being used to speak across the language divide. We will return to this question later, at this point noting only that worries about translatability were very much in the minds of those participating in the trial.

With the challenge fore-grounded, let us turn to the account of killing provided by Kikkik herself. While other witnesses took the stand, the main evidence against Kikkik came in the form of the statement she gave to the police (through an interpreter during two days in custody).¹³ Here, I reproduce the statement as it was admitted (and read to the jury):

Q. Will you tell me everything that happened on the day your husband died, to the smallest detail?

A. Yes. Early in the morning Hallow got up and we had no food, he went jigging and caught two fish, he returned to the igloo and started to eat. Just before Hallow started to eat Ootuk came to visit us and ate with us. While eating Ootuk and Hallow discussed going for Family allowance to Padlei, they did not talk anymore and Hallow left to go jigging.

Ootuk stayed in the igloo. Ootuk said that he would like to gather up the caribou hide as it would be good to eat. I said I have no more caribou hide. Ootuk tried to eat a small piece of caribou hide which were scraps from the boots I was sewing. When Ootuk finished eating the hide he said "I would like to look for ptarmigan" and Ootuk went out.

I told my daughter Ailoyoak "you go out and see where Ootuk went." I asked her this because it was a very stormy day and I knew it was no good to hunt ptarmigan and I wanted to know which way he went. My daughter Ailoyoak went out and came back right away and Ailoyoak said that Ootuk is walking downwind towards the edge of the lake.

A little later I heard someone walking outside the igloo and I thought Hallow had come back but Ootuk entered the igloo and said "it's cold." He stood beside the stove. Ootuk wanted a cup of tea and Ailoyoak put some old tealeaves and a little water on the stove. When the tea got warm, everyone had a little tea. Ootuk then asked my children to fix his doorway, but the children did not go. Ootuk then asked me to go and fix the door to his igloo and for me to take Hallow's shovel. I said "yes" but I did not go.

¹³ Judge Sissons spent significant time determining whether or not the statement had been voluntarily given. Though this case was heard long before the right to counsel found constitutional protection in the form of § 9 of the Canadian Charter of Rights and Freedoms, it is nonetheless disquieting to see in the record that not only was Kikkik questioned over two days without the presence of a lawyer, she was also unrepresented by counsel at her preliminary inquiry. Elisapee Karetak pointed out (in an email conversation, on file with author) that her mother's case changed the way the Circuit Court subsequently addressed the need for an accused to have a lawyer present in questioning.

Ootuk then went out and I followed shortly after. Ootuk was cleaning Hallow's big rifle just outside the igloo. I asked Ootuk why he was cleaning the rifle and he answered "I am taking the snow off it." I was afraid and told Ootuk to leave the rifle alone. Ootuk was rubbing the snow off the rifle with his hand.

I took hold of the rifle and Ootuk held it also. Ootuk said "I won't bother you and you let it go." I let go of the rifle and Ootuk started pointing the rifle at me. I was about five to six feet from him at the time. Ootuk had the rifle at his shoulder at a normal firing position and I jumped and grabbed the barrel near the muzzle. The rifle went off and the bullet just missed my head as I had pushed the rifle sideways as it went off. I had grabbed the rifle with my left hand. After the bullet we started to fight for the rifle. I got both hands on the rifle. I fell down but managed to get up again. We were fighting at this time. When I got up I knocked Ootuk over. Ootuk was pretty weak and chilly and not strong.

I was right on top of him and I called for my daughter Ailoyoak. She came quite soon. I thought that Hallow was still alive. I asked Ailoyoak to take away the rifle and said, "As soon as you get it away you bring your father to help me." Ailoyoak got the rifle and started running with it towards the jigging hole to get her father. Ailoyoak returned, was crying and saying, "My father is shot and is dead." I asked Ootuk why he had shot Hallow and Ootuk answered, "it's not my fault, my wife told me to kill Hallow." I said "I don't believe you as Hallow is Howmik's brother." Ootuk said "Hallow was Howmik's brother and does not look after his sister." I did not answer and Ootuk said "You let me go now." I said "yes" but did not let go. Ootuk then offered to give me his deaf and dumb daughter to let him go.

My daughter Ailoyoak went in the house at this time. I told her to go as she was getting chilly, cold. I asked Ootuk how I could look after my family now that he had killed my husband. Ootuk answered "You will get lots of family allowance and will be all right after." I answered "I could never look after them." Ootuk said "I will get lots of rations and I will look after everybody." I did not answer. We did not talk again and I still held Ootuk down.

I then called "Daughter, daughter" and both Ailoyoak and Karlak, my son, came out. I was still holding Ootuk. I asked my daughter to bring me a knife. Both Ailoyoak and Karlak bring me knives which they got at the igloo. I then tried to stab Ootuk with the large knife my daughter had brought but it would not work, as it was too dull. I stabbed once near the right breast with the large knife but it would not go in. Ootuk grabbed the knife with his right hand and took it from me. When he grabbed it away he struck his forehead some place and I got the knife back and dropped it and picked up a little knife which my son Karlak handed me. Karlak was standing beside Ootuk and I. As soon as I got the small knife I stabbed in the same place. The knife went in and I stayed on Ootuk until he died. When Ootuk stopped moving I removed the knife and stood it up in the snow behind Ootuk's back.

Kikkik's lawyer, Sterling Lyon, later to become the Premier of Manitoba, did not object to the admission of the statement, taking the position that it revealed no crime: Kikkik had simply done what was necessary to protect both herself and her children. The Crown Prosecutor took the position that there was no self-defence here as the evidence showed Kikkik to have been in complete control of Ootuk. The Crown did suggest, however, that Ootuk's killing of Hallow was the kind of provocation that could reduce murder to manslaughter.

In his cross-examination of the Crown Witnesses, one can see the defence lawyer buttressing Kikkik's defence by painting a story of starvation and of fear. On the first of these, he asked each of the Crown witnesses questions about food shortages amongst the people at Henik Lake.¹⁴ In each case, he sought confirmation that food had been scarce, that there was little found in the stomachs of the dead. His questions also made visible that one of Ootuk and Howmik's children had died a few days earlier of starvation. The second set of questions focused on Ootuk himself. Each witness was asked if they knew of Ootuk's reputation as a 'witch doctor' (rather than using the less pejorative term 'shaman'), and if they were afraid of him.¹⁵ During his cross-examination of Howmik (Ootuk's wife), Lyon also suggested that Ootuk would beat Howmik, because Ootuk wanted to swap wives with other men. This line of questioning tended to characterize Ootuk as someone particularly dangerous, and of bad character, someone that Kikkik would be right to fear.

Let us turn then to Justice Sissons' address to the jury.¹⁶ In his own biography, Sissons reproduced this section of his charge to the jury:

The privy council of Great Britain knows the common law and has been for centuries the final court of appeal for British colonies, and has a wide experience with, and knowledge and understanding of, colonies and native peoples. I think we should follow the Privy Council thinking and approach. It is by far the best there is.

According to the Privy Council the application of common law principles is somewhat controlled by the evolution of society. Self-defence and provocation have been differently estimated in differing ages. The common law has not changed but in earlier times, when our society was less secure and less settled in its habits, the courts took a more lenient view towards provocation and self-defence, as an excuse or justification, than is generally taken in our society

14 These questions are interesting in terms of the gap they open up, both in terms of Ihalmiut/settler differences, as well as with respect to questions of translation. So, for example, the lack of food is emphasized in the cross-examination of Howmik (at p. 58). But then, on p. 63 of the transcript, there is this interchange between Lyon and Yahah (Howmik's brother): Q. Were you able to leave any food for Kikkik and her children when you left for Padley? A. No Q. Food was very short, was it? A. No, it was not short. Here, one wonders about the translation of the phrase 'food was very short'.

15 Here, the word 'shaman' never emerges, but only the more pejorative term 'witchdoctor'. See the cross-examination of Howmik at p. 56; also the cross-examination of Yahah at p. 64: Q. Was Ootuk a witch doctor? A. Yes. Q. Were you afraid of him? A. I had no cause to be afraid of him.

16 In the address as a whole, he reviews the law on murder, explains both provocation and self-defence, and reminds the jury that their job is to be the judge of the facts.

today when we are more secure and life is guarded by an efficient police force and there is a policeman at every door. [...]

In this present case we have a very primitive Eskimo society, which has not changed very much and is still very insecure and unsettled, with no policeman within one hundred and fifty miles. Justice demands that we revert in our thinking to an earlier age and try to understand Kikkik and her life and her land and her society.

We have at this trial a jury which is well balanced and has an exceptionally wide and accurate knowledge of the area and the people, and a great deal of good common sense. [...] [T]he tests here have to be applied to an ordinary Eskimo, Kikkik, and such a jury as we have here is invaluable.

Justice Sissons' address to the jury foregrounds the challenges of justice in the space of intercultural encounter. While one might, with contemporary eyes, take issue with Sissons' description of the Inuit as 'a primitive society', one can see manifest his sense that she should not be judged by the expectations of a southern people, a people unaccustomed to the land. In the reference to the need to 'revert to an earlier age', in his reference to her as 'a woman of a primitive society' we also have very clear echoes of enlightenment notions of progress, of more or less advanced peoples. And here, the colonial centre is drawn on as a source of understanding and justice: the Privy Council understands the colonies and native peoples, and has an evolutionary approach to justice. The jury is invited to use the resources of the colonial legal system to do justice in this case.¹⁷

The jury, we are told, returned in ten minutes with its verdict of Not Guilty. While we cannot know 'why' they came to this conclusion, one might imagine that the facts and context allowed the jury to absolve Kikkik of responsibility in these deaths by placing the blame elsewhere: on Ootuk, who had killed Hallow and threatened to kill her and the children; or even on the North itself, which had failed to provide sustenance for the people, leaving them deranged from hunger or sorrow.

But this acquittal did not mean she was free, for it was only the first of the two trials¹⁸. The second trial, on the Criminal Negligence and Abandonment charges, began later the same day, picking up where the evidence at the last trial had left off. On February 8th, Hallow and Ootuk both lay dead. At this point, Kikkik's only hope of survival lay in finding food at the Padlei trading post, some 45 kilometers away. The court heard from Kikkik's 12-year-old daughter Ailoyoak, her testimony being translated a sentence at a time by trader Henry Voisey. Through the child, the jury were told that Kikkik had loaded up the children and the sled, and, pulling it herself, had begun to walk. After the first day of travel, they met up with Yahah and his family,

17 Indeed, one gets the sense that the jurors are invited not simply to determine Kikkik's guilt, but simultaneously to put colonial justice on trial. This is an argument made by Orit Kamir (2000, 39) in the context of thinking about King Solomon's judgement (that what is on trial is not the question of 'who is the right mother', but is rather 'what is the source of Solomon's wisdom').

18 A copy of this second transcript is no longer available, and so we can turn only to discussions of the case in the memoirs of Justice's Sissons and Parker.

who were also attempting to reach Padlei. They were, however, unable to keep up the pace. Yahah (who also gave evidence to the court) told them he would take the sled to go on ahead, and they should remain in a snow house; he hoped to make faster time and return with help. Yahah gave them a small amount of caribou entrails to eat before leaving, and they waited in the snow house for several days. After no help arrived, they decided they would have to go on: Kikkik carried the baby on her back and hauled Nesha on a deerskin, while Ailoyoak hauled Annacatha. At night, during a blizzard, Kikkik shovelled a depression in the snow, covered the children with the skins, and sat up for the night. In the morning, she woke the two older children, left the younger ones sleeping under the skin, covered them with the snow blocks and some sticks, and continued on.

Later that day, an RCMP (Royal Canadian Mounted Police) plane spotted Kikkik outside an abandoned cabin, midway between Henik Lake and Padlei. The temperature that day had ranged from between 28 to 42 degrees below zero. Having been told there were 5 children, they asked Kikkik where the other two were. She told them that Nesha and Annacatha had died during the night and that she had buried them in the snow. Kikkik and the three children were then flown on to Padlei. The following day, Constable Laliberti organized for a ground search for the two children's bodies. They followed the trail backwards with an eight-dog team and Inuit guide. Though the men lost the trail, the dogs heard something, and ran for a mound of snow off to the side. The two men heard a voice calling out. Throwing off the sticks that marked the mound, they moved some snow blocks to find a blanket of caribou skins, with two children covered, lying on their side, facing the same direction. Both were wearing heavy corduroy shirts, and were naked from the waist down. Nesha was dead, but Annacatha, still alive, simply smiled up at the constable. The jury were told that there had been no tears, or hysteria from the child.

The question at this second trial was, 'why hadn't Kikkik told the rescuers that the two children had been buried alive, and that they were not yet dead when she left them?' If she had told them right away, there was a possibility that both girls might have been saved. Again, Kikkik's words entered in the form of a statement given to the police through an interpreter:

Q. Were Nesha and Annecatha alive when buried?

A. Yes, both of them.

Q. Why did you bury them alive?

A. They could not walk. I had dragged them a long way. They were heavy.

Q. Why was it that when you were found that same afternoon that you did not tell the police about Annecatha and Nesha, as there was still every possibility that they could have been saved?

A. I was afraid to say.

Justice Sissons charged the jury, telling them that she should be judged not based on the black and white letter of the law but rather in light of her circumstances and her culture. He further directed them to look at the context in order to assess whether or

not she did have the ability to provide the necessaries of life. Again, he referred to the principles of the common law, telling that, if Kikkik could not furnish adequate food, shelter, clothing or protection, the jury could conclude that she had no alternative, and that there was thus no abandonment.

The jury was out only for a few minutes before returning with a verdict of not guilty on both counts.¹⁹ Certainly, the rapidity of the decision-making suggests that the testimony of death, starvation, and freezing storm provided the grounds for an assessment that Kikkik was not 'responsible'. Again, the problem was outside of her: in starvation caused by the failure of the caribou migration, in Ootuk's tragic murder of Hallow, in the punishing cold of the north itself. In such contexts, it is possible for the jury to understand the decision of Kikkik to leave two children behind as the kind of tragic choice made in order to save the lives of some. This is a story of tragedy, not a story of crime.

2. The book *The Desperate People*

Let us turn then to our second account of the story. This text is by Canadian author, Farley Mowat, an iconic conservationist and adventure/travel writer of the 1950s. Mowat, had travelled widely in the North, and had spent time living with the Ihalmiut people (including Hallow and Ootuk), who wrote a series on the case for the newspaper, and then followed up with a book called *The Desperate People*.²⁰ It is in the final chapter of the book that he tells the story of Kikkik.

Mowat arrives at the final chapter after having first drawn a vivid portrait of life amongst the Ihalmiut, a community of inland Inuit who had lived on the land near Ennadai Lake for over 1000 years, and whose culture was intimately linked to Caribou.²¹ There had been little contact between them and the Canadian state before the 1940s. From the 1920s on, however, the Canadian government had been increasingly focused on questions of Northern Sovereignty. Though no treaties were signed with the people (Diubaldo 1985, 381), weather stations, military bases and DEW (Distant Early Warning) line radar stations were constructed across the north. All Inuit ('Eskimo') were counted and given tags with identification numbers, and were treated as wards of Indian Affairs.²²

19 Indeed, in his memoirs, Judge Sissons said that the jury returned 'before the prosecutor could finish voicing his many objections to my charge'. Sissons also reports that the Justice Department had been unhappy with the charge to the jury (being of the view that the judge had pretty much directed the jury to return with an acquittal in the second of the two trials), and had wanted to appeal the case, but had not done so, realizing that 'public opinion would not stand for further harassment of Kikkik' (Sissons 1968, 111).

20 Mowat, unlike others at the time, had access to the trial transcripts, which Time-Life magazine had acquired for him.

21 This is in opposition to the coastal Inuit, who also hunt for caribou, but whose culture is more closely linked to the sea: seals, walrus, whales, polar bears.

22 These disks, stamped with 'Eskimo Identification Canada' provided a first name and a number. The number would indicate if the person was from the East or West, provide the number of the region the person was from, and then follow with an identifying number. The numbers enabled them to be identified for the purposes of Family Allowance, a social benefit that was available to all Canadians. In 1968, Project Surname began the process of shifting away from the Eskimo Identification Numbers.

Mowat makes visible the ways that contact with white traders and government policy seemed to bring in their wake patterns of social and physical dislocation: changes to migration patterns of the caribou, increases in tuberculosis and disease, periods of famine and starvation. By the mid-50s many Ihalmiut had died of starvation or disease. By some counts, there were only 52 Ihalmiut left near Ennadai Lake.²³ Around this time, the government decided the Ihalmiut should be relocated and retrained as fishermen.²⁴ This attempt failed miserably, and the Ihalmiut simply walked the long distance to return to Ennadai Lake. But in late 1957, following two more years of starvation, as the caribou migration had failed to pass by Ennadai, the government again decided to relocate the people. With no advance warning, planes arrived one morning, and in 6 flights, the Ihalmiut were flown from Ennadai to Henik Lake, over 200 miles away, and 45 miles from the nearest trading post at Padlei.

While the legal tale hinted at the hunger and starvation as a way of explaining Ootuk's actions (and justifying Kikkik's response), Mowat's text shows us that the starvation is not simply a matter of failed caribou migrations, or poor hunters. The people were left at Henik Lake with little more than what they had on their backs. Their dogs had mostly died (or been eaten) in the famine the year before. They were left in a terrain that was not familiar to them, with no winter food caches, no kayaks, and no dog teams. They could not travel to the caribou, and the caribou did not travel to them. Requests were sent for help that never arrived. Finally, in the blizzards of February, we watch family after family attempt to walk to the Trading Post to get help. We follow the trail of frozen dead bodies littered along the way, as people succumb to starvation and cold. In this narrative account, we watch as the Ihalmiut are crushed 'in a hell which had been contrived from them by men of good intentions' (Mowat 1959, 254).

And it is here that Mowat finally arrives at the story of Kikkik. The chapter opens in April of 1958, in the Rankin Inlet courtroom (or, as he describes the makeshift location, 'the beer-parlor-cum-recreation hall of the North Rankin Nickel Mine'). He describes the physical space, the jurors sitting uncomfortably on the wooden bench, an audience of off-shift miner's wives, a husky nuzzling at a garbage can outside the insulated building. He describes the planes converging on Rankin Inlet, bringing crown attorneys, defence lawyers and Indian affairs people from hundreds of miles to the west, east and south, and the strange disconnection of the small woman sitting on a bench, her moccasined feet not reaching the floor. He lets us hear the indictment being read to the accused:

23 As Marcus points out, there is contestation in the literature about the size of the population, whether they numbered in the thousands or only in the hundreds. But we do know that by the mid-50s, they had been reduced to only 50 people (Marcus 1995).

24 For an elaborated account of this and other attempts to relocate, retrain, and resettle the Inuit, see Tester & Kulchyski 1994.

You, Kikik of Henik Lake, stand charged before his Lordship in that you, Kikik, No. E-1-472, did murder Ootek [...] How say you to this charge? (Mowat 1959, 251.)²⁵

But having situated us in the space of the courtroom, Mowat uses the device of a flashback to pull us back to the evening of February 7, 1958. Using the voice of an omniscient narrator, he draws us to Henik Lake, where only two Ihalmiut families remain, huddled in their snow houses after three days of freezing blizzard. Significantly, we begin not in the igloo of Hallow and Kikkik, but find ourselves instead inside the snow house with Ootuk and his wife Howmik (crippled from an earlier battle with polio). In Mowat's description of the children inside the snow-block barricade roofed with a piece of canvas, one can catch a flavour of the writing:

The year-old boy Igyaka, lay rigidly inert, and did not hear the wind. His small body was shrunken into a macabre travesty of human form by the long hunger which, two days earlier, had given him over to the frost to kill.

Beside him on the sleeping ledge of hard-packed snow his two sisters lay. There was Kalak who had been born deaf and dumb out of a starvation winter ten years earlier and there was little Kooyak who was seven years of age. They lay in each other's arms under the single remaining deerskin robe—and they were naked except for cotton shifts grown black and ragged through the months. There were no more robes to lay across their bloated bellies and their pipstem limbs, and none to hide the frozen horror of the boy who lay beside them—for the other robes which the family had possessed when winter came had long ago been eaten, as had the children's clothes; for all of these had of necessity been sacrificed to hunger. (Mowat 1959, 252–253.)

But Mowat describes not only the horrors of cold and starvation confronting these two families, the last two to remain alongside the frozen lake. He also describes their bonds, the relationship between these two men, Hallow and Ootuk, brothers-in-law, lifelong companions (in Ihalmiut terms 'song-cousins'), and complementary halves of a whole: one was a hunter, providing food for both families; the other a shaman/visionary, shouldering and resolving problems of the mind/spirit. And so he has us sit alongside the two men as the better hunter tells his life-long friend that there is no food here to sustain even one family, let alone two, and that on the morrow, he will take his family and attempt to trek to Padlei. We watch, privy to both men's knowledge that Ootuk will not be able to follow with his own family: having eaten most of their skin clothing and robes, his children could no longer leave the snow shelter. Both men knew that Hallow's decision was a death sentence for Ootuk. And both knew there was nothing to be done. Hallow headed back to the lake to see if

²⁵ The spelling of names in the book differs from the spelling of names in the court case: Kikik instead of Kikkik, Ootek instead of Ootuk, Halo instead of Hallow, Yaha instead of Yahah. Given that part of the challenge was in determining how to represent the sounds of Inuktitut in English, there were a range of ways people's names were spelled. Here, I will use the forms of names as captured in the trial transcript, except where I am quoting from Mowat's text.

he could catch another fish before trying the voyage. And so, Mowat tells us, Ootuk finished drinking tea with Kikkik. Finally, he left, taking Hallow's rifle and walking out onto the ice:

He did not pause until he stood a single pace behind the crouching figure of his other self. Perhaps he stood there for an eternity, knowing what he would do, yet hesitating until the wind, blowing through the torn cloth parka, warned him that he must finish quickly. For indeed this was the finish—not only of the broken life that Ootek had led through the long years but, so he believed, the finish of the interminable struggles of the people who called themselves Ihalmiut. When such an ending comes, it is not good to go alone. Ootek intended that the few survivors by the shores of Henik Lake should be together at the end—and so he raised the rifle and, without passion, blew in the back of Halo's head. (Mowat 1959, 258–259.)

Through referencing the same facts, the narrative invites us to understand them through the minds of the Ihalmiut. We are asked to imagine ourselves as part of this small group, banished to the far north and left to starve and die. This telling does not suggest the Kikkik was wrong to take Ootuk's life. But it gives an account in which Ootuk is not painted as threatening witchdoctor, or a crazed aggressor; he is someone whose life and death must be grieved. Most significantly, the government is drawn explicitly into the frame of those implicated in the terrible tragedy: through their relocation (deportation) of the Ihalmiut away from their traditional home at Ennadai Lake, and through their failure to respond to messages that the people were in desperate conditions.

The trial transcript hinted at the difficulties facing Kikkik at this moment. The narrative form here makes it explicit, telling the readers that there was not enough wood to build a fire, and that to give water to her children, Kikkik would have to hold a bag of snow against her body, using her own reserves of heat to melt it. Even when she meets up with Howmik's brother Yahah, we feel the exhaustion of the woman who, carrying a baby on her back and having pulled a sled the day before, now lags behind the group with her 9 year old son Karlak, who cannot keep up the pace. Her resources are so depleted that she is unable to close a gap of one mile in order to sleep in the travel igloo Yahah had built, and that she instead crouched in the snow during the night, using her body to shelter Karlak beneath while the snow piled on top of her. When she managed to make it to the igloo the next morning, we hear Yahah tell her that he will take her sled. He will travel faster without her and try to send help back. She is to wait in the snow house with the children till help returns. And so, Kikkik and her five children waited in the igloo for five days with no food, and no heat.

And Yahah did arrive at Padlei, telling authorities what had happened, and where to find both Howmik and Kikkik. A plane was sent out. Howmik and her children were picked up from the banks of Henik Lake on the 14th of February. The plane flew twice over the snow igloo where Kikkik and her children were known to

be waiting, but it did not return for them. As Mowat puts it, using the same language that would be used in the indictment against Kikkik, 'for two additional days and nights, Kikkik and her children remained abandoned' (Mowat 1959, 270). The plane, instead of returning for Kikkik, took two days to fly to deliver the bodies of Hallow and Ootuk to the coroner at Eskimo Point. When the plane failed to return for her, Kikkik knew that she had no choice but to continue. Having not eaten for over a week, she spent one more day walking, dragging the two young girls in a caribou skin, before deciding what must be done if any of them were to have a hope of survival. She left the two girls covered by skins, placed some snow blocks on top, covering them with two twigs in the shape of a cross. At that moment, whether or not they still breathed, they were lost to her.

And so when the police located her near an abandoned hut along the trail, and asked about the two other children, she said they were dead. The facts are the same, but the focus is different. Our attention is taken off her failure to tell the police that the children might be alive, and is focused instead on the police who had been more interested in taking the dead and frozen bodies of the men to the southern coroner than with continuing the search for Kikkik and her children. And we see also that, having found Kikkik, they were not so anxious to recover the bodies of two dead children, as they had been the bodies of the two men, simply leaving a constable behind 'to collect the dead children by dog team the next day' (Mowat 1959, 273).

And so, in the last two pages of the chapter, we are returned again to 'the law', and 'the trial'. Mowat says relatively little of the law, telling us simply that Kikkik endured two preliminary hearings and was examined by a senior crown attorney flown in from Yellowknife, and all this without a defence attorney present. At that point, 'the whole mighty paraphernalia of our justice closed about her' (Mowat 1959, 274). But Mowat also adds:

But here, if anywhere in this chronicle, there emerges some denial of the apparent fact that man's inhumanity to man is second nature to him. Kikkik was tried before a judge who understood something of the nature of the abyss which separated Kikkik from us, and who was aware that justice can sometimes be savagely unjust. (Mowat 1959, 274.)

He puts his stamp of approval on the decision, saying that it is 'to the everlasting credit of the handful of miners who held the woman's life in their hard hands, they did acquit her'.

In *The Desperate People*, Mowat puts his descriptive and lyric powers to work in the service of a set of arguments about law and justice. And the genre he has chosen enables him to write the legal tale in a way that is both passionate and polemical. We are invited to exercise judgement, but not against Kikkik. Rather, we are asked to judge the government officials who moved the Ihalmiut to Henik Lake in the first place; the officials who did not respond to early calls for help; the RCMP who chose to deal with the bodies of the dead before seeking bodies of the living; a state that imagined it could be appropriate to put Kikkik on trial in the first place. Interestingly, Mowat sees judge and jury alike as candles against the dark. It is not

‘the law’ here that poses the difficulties; it is the Canadian Federal Government. If there is an indictment of the justice system, it comes in the assessment (performed through the chapter) that the real crimes were incapable of being addressed in the courtroom itself.

3. The sculptures

On display in the Yellowknife Courthouse one can see the Sissons/Morrow Collection: 14 small sculptures, each carved by Inuit hands, representing landmark cases from the Northwest Territories between 1955 and 1970. Three of the works in the collection concern the Kikkik case. Here we have a different genre in which the story is told. Before turning to the carvings themselves, let me make a few comments on the conditions of their production.

In the 1950s and 1960s, as Inuit were being relocated and resettled across the north, the government set up a number of art programs. These were a kind of make-work program designed to give the newly displaced people something to do and a way to make a living. While government attempts to turn the caribou hunting Ihalmiut into fishermen had been a total catastrophe, the move to press the Inuit in the direction of art was more successful. As Dorothy Eber notes, ‘there is not an art gallery in the Western world without an Inuit print’ (Eber 1998, 53–54). Welfare teachers like Jim Houston had been sent to the north by the Department of Northern and Indian affairs and had actively worked to develop carving talent in the community.²⁶ The Coppermine Inuit, even with restricted access to materials, became masters of small composite carvings.

Justice Sissons, known amongst the Inuit as *Ekok-toege* (‘He Who Listens’), received just such a carving as a gift from an Inuit defendant. Inspired by the gift, he decided he would like to have more Inuit carvings to document some of the important cases he heard: and so the Sissons/Morrow collection began.²⁷ Believing it would be inappropriate to directly approach carvers to have them ‘carve him a crime’, he was never directly involved in commissioning the works.²⁸ In her research into the collection and the artists that produced the carvings, Eber discovered that few of the artists had any idea who had commissioned the pieces, or where the carvings had ended up.²⁹

26 In his own memoir, speaking of Jim and Alma Houston (who put the Inuit carvers on the map), Sissons reports that Jim Houston told him that ‘if an Eskimo was hard up and came to him, he simply handed him a piece of stone and told him to take it and do some carving’ (Sissons 1968, 98). For more on Jim Houston, and early Inuit photography, see also Eber 1998, 53.

27 For a lovely full length treatment of the collection, see Eber 1997.

28 He was perhaps not wrong that some Inuit would hesitate to represent some of the terrible acts occurring in these cases. When Eber was interviewing Inuit and working with images of the carvings in order to finally attribute authorship to various carvings, she spoke to the adult children of Peggy Ekagina, the woman to whom the carvings are now attributed. Eber reports that, when asked about the Kikkik sculptures, Ekagina’s children refused to believe that their mother had produced them, denying that she would have carved the desperate acts depicted in the sculptures. See Eber 1997, 198.

29 In one excerpt that makes visible the ways that art production was sustaining daily life, the wife of one

Let us then return to the story of Kikkik, and the images we have of these three carvings from the Sissons/Morrow Collection.³⁰ Now attributed to Coppermine Inuit artist Peggy Ekagina (c.1919–93), these three small carvings tell key moments of the case in stone and metal. In each case, the key moment involves a death. In her book *Images of Justice*, each sculpture is accompanied by a few words of description. And so, one can see ‘Kikkik kills Ootuk’.



Photos courtesy of the Supreme Court of the Northwest Territories.

The second image carries the label ‘Ootuk murders Hallow, Kikkik’s husband’.



carver recalls that her husband made the carving around the time he had ordered an outboard motor, a tent, and fish nets and didn’t have food for the children. As she said, ‘He collected those small little pieces of whalebone from the ground around the old Co-Op store. He took them home and started carving them’ (Eber 1997, 192).

³⁰ The visual and the tactile offer us ways of apprehending the world that sometimes overlap and sometimes diverge. Kikkik’s story is carved in stone, but we are in a position here only to look at an image; we are still a step away from the actual carvings, and are thus not in a position to feel the coldness or weight of the stone, to run our fingers over the surfaces, or to move ourselves in space around them. There are good reasons to attend to the differences in the media explored, but in the context of this discussion, where the carvings are accessible to most people only through the photographic image, it is hard to avoid the slippage. I thus move back and forth between speaking of ‘the carvings’ and of ‘the images’ conscious that there are times when one or the other word might be substituted to better effect.

The third of the carvings, the one which might seem most ambiguous to a viewer unfamiliar with the case, is accompanied by the text, ‘When Kikkik journeys for help, two children are left behind in a snow house that the others may survive.’



To begin, one can imagine a viewer without the advantage of labels, and with no prior knowledge of the trial. In such a case, that viewer might wonder why one person is pointing a gun at another, why a woman is holding a man down, what the two people are doing in the third carving? One might or might not see that there is any relationship of the sculptures to each other. There are a wide number of cultural narratives that might be drawn on to make sense of the images. But in the context of the labels given to the carvings, the three scenes seem fairly straightforward: as viewers, we are bystanders at the moments presumably of most concern to the legal order: the death of Hallow, the death of Ootuk, the death of Nesha. One might note that each of the scenes is situated just *prior* to a death. Frozen in stone is a moment of action—a moment where one person makes a choice that will shortly result in the death of another.

But in the act of noting what is captured in stone, one can also ask what is absent. What falls outside the field of representation here? In light of Farley Mowat’s retelling of Kikkik, one wonders if the key moments of the tale could have been captured otherwise. What would it mean to have a carving of the Ihalmiut chasing after caribou? Or a bureaucrat in Ottawa authorizing the relocation, or an airplane carrying the people away from their home? Or of a family eating its own clothes for sustenance? Or of Howmik and Ootuk’s child dead of starvation? Or of Kikkik carrying a baby on her back while dragging her daughters behind her on a caribou skin, or of sheltering five children beneath her body in a snowstorm?

In the context of a set of carvings by an Inuit woman capturing in Inuit form a story about another Inuit woman, one might be forgiven for having expected to somehow see something different. But of course, what we have are works that were commissioned for a judge wanting to memorialize landmark cases. In this landmark case, the criminal justice system (with its individualizing focus on questions of guilty act and guilty mind), was called upon to determine Kikkik’s individual responsibility for the deaths of Hallow, Ootuk and Nesha. With such a question fore-grounded, it

is perhaps unsurprising that the colonial context seems to remain so clearly outside the field of the visible.

But of course, whatever the conditions that inspired its production, any piece of art, as an object, retains an element of its own autonomy. Art inevitably opens space for reflection that cannot be fully anticipated by its creator (or the person who commissioned the work). The carvings, as works of art, are more than simply representations, or pieces of a legal story, or totemic commentaries on colonial history (though they may also be that). Further, the sculptural medium itself gives us a very particular way of engaging with Kikkik's story. For in the freezing of images in time, the carvings have something of the character of what Rancière refers to as the 'Pensive Image' (Rancière 2009).

A pensive image, for Rancière, is one marked by a contamination of two arts, of two ways of making us see. In his discussion of the photograph of an Alabama kitchen wall, for example, he draws us to an image marked by both literary excess and pictorial silence. It is neither 'the raw record of a social fact', nor 'the composition of an aesthete engaged in art for art's sake' (Rancière 2009, 123). It is the contamination of these two ways of seeing (or, 'image functions') that gives us the pensive image. The pensiveness, he would say, is less a function of the image itself, than of the set of distances between different ways of seeing. These distances result in an image which 'resists thought—the thought of the person who has produced it and of the person who seeks to identify it' (Rancière 2009, 131). The pensive (with its distances, contaminations, hauntings) interrupts the expected relationship between narration and expression, and invites a certain state of contemplation.

The Kikkik sculptures are marked by this contamination, this 'pensiveness'. We have the fact of the legal story, with all the 'literary excess' that involves. But there is also the 'pictorial silence' of the sculpture. The idiom of stone is one in which action is arrested in movement. The freezing of the picture thwarts the narrative's logic of forward action, and puts conclusions in suspense. We are held in a space of stillness where the landscape of what can be seen or thought may be reconfigured. This does not mean that these sculptures are devoid of meaning or can't bear meaning, but rather that the minimalism of the object itself—and its freezing of a moment in time—invites the viewer into a different kind of relationship. The story of Kikkik is transformed by the idiom in which the story is captured. And certainly, this idiom, with its pensive quality, invites a different kind of work from its audience, and offers different rewards.³¹

The sculptures may have something to tell us, but not in any straightforward way. In these carvings, we have compelling works of art that speak to a moment in time, a moment of intercultural (legal) colonial encounter. The conditions for

31 As Rancière puts it, 'Like researchers, artists construct the stages where the manifestation and effect of their skills are exhibited, rendered uncertain in the terms of the new idiom that conveys a new intellectual adventure. The effect of the idiom cannot be anticipated. It requires spectators who play the role of active interpreters, who develop their own translation in order to appropriate the "story" and make it their own story. An emancipated community is a community of narrators and translators' (Rancière 2009, 22).

the production of the carvings, conditions in which the Inuit were ‘tutored’ to produce art for a southern economy, point to yet another complicated encounter between north and south. And the carvings themselves, both in what they do and don’t represent, and in the productive contamination of ‘image functions’, open space for us to think about the shape of the colonial encounter, and the ways that, in art, questions of law and justice slide sometimes together, and sometimes slide in unexpected directions.³²

4. The film

As is perhaps common in the context of family and community tragedies, after Kikkik’s trial, the story lay silent for many years. Neither Kikkik nor her 4 older children spoke openly about the events of 1958. Elisapee, the baby who had been carried on her mother’s back, grew up knowing nothing of the story. It was only when she was 16 that she discovered the secret her mother had kept from her, and it was long after her mother’s death that she began the process of dealing with the event and the silences through film.³³ The film (part documentary, part biopic, part road trip) is not just an effort to learn about her mother, but also to pose questions about the past, and its relationship to the present. The film offers us a re-enactment of Kikkik’s trial. But it also follows Elisapee from North to South and back as she travels across the country to meet Farley Mowat, her mother’s lawyer Sterling Lyon, and Joe Laliberti (the constable who found Annacatha in the snow). She interviews a number of government officials about the relocations, and, taking two of the last surviving Ihalmiut elders with her, returns to Ennadai Lake for the first time since the relation of 1957.

A first observation is that this film, unlike the other three texts, is narrated from an Ihalmiut perspective.³⁴ While Ihalmiut voices emerge in the other three texts, those emergences are limited in ways that are worth reflecting on. In the trial transcript, we have some of Kikkik’s words, but they are words which we see only in their translated version, and are words generated in the context of a police interrogation. In the Mowat text, we have a chance to enter more richly into the inner life of Kikkik, but we are offered that invitation through the descriptive and imaginative powers of a man who is sympathetic to, but not a member of, that Ihalmiut community. In the wonderful Peggy Ekagina carvings, we have the visual

32 Rancière puts it thus: ‘What there is are simply scenes of dissensus, capable of surfacing in any place and at any time [...] It means that every situation can be cracked open from the inside, reconfigured in a different regime of perception and signification. To reconfigure the landscape of what can be seen and what can be thought is to alter the field of the possible and the destruction of capacities and incapacities’ (Rancière 2009, 48-49).

33 For those of us at University of Victoria, the film is particularly close, as she was part of the groundbreaking effort to place a law school in Inuit territory.

34 In saying this, I do not mean to imply that it is thus a more ‘authentic’ or ‘more truthful’ version. Indeed, the film is co-produced with a Norwegian-born and Montreal-based film-maker. The observation is simply that the film is a kind of intercultural encounter that invites the (English-speaking) viewer to linger for a while with Ihalmiut bodies, and voices and spaces.

representation of Kikkik, performing the words spoken in court. But again, if the images are Ihalmiut bodies, they are captured for a particular purpose, and prioritize a Southern way of understanding the tragedy. Without presuming that there is one particular or authentic kind of Ihalmiut voice, the film does offer us the opportunity to follow the story from the perspective of at least one of its insiders.

It is of interest that this insider perspective is one which actively engages with the stories told by others. Drawing on the transcripts and the sculptures, the film re-enacts portions of the trial, positioning the viewer somewhat in the position of the jury.³⁵ In addition, drawing both on Mowat and the documentary and governmental records of the past, the film presses us beyond the courtroom walls, to make visible the broader context of colonial encounter which led to the hardships endured by Kikkik and the other Ihalmiut during the 1950s. Powerfully, the film also considers the ways the past always laps into the present, allowing us to engage 50 years later with many of those who were touched by or implicated in the story. There are three parts of the filmic account I wish to focus on here. First, I will consider the trial re-enactments, and how their filmic performance opens up space for focusing on the real challenges of intercultural translation. Second, I explore how the film asks us to think about the role of government action in the tragedy. Finally, I will consider how the film asks us to think about finding answers in the present rather than exclusively in the past, and how it does this through its attention to testimony, witnessing, and action outside of the courtroom.

First, the film provides us with a re-enactment of moments from the trial. We find ourselves in the courtroom (filmed in black and white to further give us the impression of returning to the past), and listen to Justice Sissons remind us of the responsibility of giving Kikkik a fair trial. We see an interpreter standing beside Kikkik, translating for her. Judge Sissons emphasizes that Kikkik has the right to be presumed innocent, and to be judged by a jury of her peers. We are told to use our experience, and our common sense in rendering judgement. While we see a court attempting to take care to ensure both that she understands the process, and is understood, the court procedures almost immediately begin to feel jarring.³⁶

The judge tells Kikkik to stand up so she can be sworn in as a witness.³⁷ She is first asked if she is a Christian. We watch her face as she is asked the question in her

35 In a classic article, Carol Clover argues that North American film-making generally situates the spectator in the place of a jury (Clover 1998, 97). There are of course subtleties between being situated as jury and being situated as witness, but this is a topic for a larger paper.

36 There is more to be said about the way the cinematographic choices of the film contribute to this sense. For an introductory survey of the ways legal scholars can take up the challenges of filmic texts, see Buchanan & Johnson 2001, 87. See also Buchanan & Johnson 2009, 33.

37 The film deviates in some interesting ways from the text of the trial transcript: Kikkik never testified at trial, and so was never sworn in. The film takes the material from the transcript (in which other Ihalmiut witnesses were sworn in) edits it down, and condenses it into this scene. While one might argue that it is not quite accurate, one would have to concede that it is also absolutely 'truthful'. The essence of what happened has been captured in a more tightly edited form, so that we can capture more cleanly the ways the oath-testing procedures of settler law did not fit with the reality of how the Ihalmiut experienced settler religion in the north.

own language, and she nods her agreement. The judge asks ‘Which church?’ There is an exchange between her and the interpreter, who then gives her answer to the court: ‘Both of them.’ At this point, the Crown smirks and adds, ‘A prudent decision, my lord.’ In follow-up questions about when she goes to church, she indicates that she goes ‘When they come.’ After another snort of laughter from the Crown, the judge accepts this answer. The court clerk places Kikkik’s hand on the bible and proceeds to read out the form of the oath. The visual set up of the scene, with the plays around translation, the visual responses provided by the actress playing Kikkik (with a close-up which invites us to ask about her response), and the humor at her expense, provides its own form of commentary on the challenges of translating not only words, but experiences. It points to an abyss between Ihalmiut life/law/culture, and settler law as performed in the courtroom.

The question of translation is fore-grounded even more strongly in a later scene where Kikkik tells her own story to the courtroom.³⁸ While in the actual trial, her words were simply read to the jury, the film makes the choice to give Kikkik a voice. We listen (if we are English speaking) to her talk in a language that we do not know. She pauses between sentences, leaving time for the translator to repeat the sentence in English for the jury (and us). A close-up on her face invites us into close proximity with her, even though we are unable to speak her language and cannot be sure what she says. We are reliant on the translator, and that reliance is made visible/audible for us in a disruptive way. For though we know the translator standing beside her is an Inuit man, the English translation we hear is delivered through the voice of a woman. It is a woman whose accented voice marks her as an Ihalmiut (perhaps it is the voice of Elisapee?). This form of performance, though of course a creative enactment, places the question of translatability right in front of us. Whether or not we ‘understand’ her voice, we are made to ‘hear’ its difference. English listeners experience more directly the discomfort of wondering if the translation is accurate, and being unable to know for sure. This discomfort is amplified by a mis-mapping of genders (in terms of the translator we see and the voice we hear).

Later in the film the jury returns with a verdict of non-guilty. Judge Sissons asks the translator to let Kikkik know that she is not guilty. We sit watching as the translator speaks sentence after sentence to a baffled looking Kikkik. Eventually, the judge interrupts to ask what he is saying. The translator explains to Judge Sissons that there is no word for ‘guilty’ or ‘acquit’ in Inuktitut, shrugs apologetically and says he is telling her that the jury has concluded that she didn’t kill anyone. As he adds, she is having a hard time understanding. Judge Sissons finally says, ‘well, then just tell her she is free to go.’ In this brief moment in the film, one that draws uncomfortable or shocked laughter when shown in the law school classroom, the question of justice in a cross-cultural encounter is powerfully written in a way that would not be possible to replicate in a legal argument. The chasm is made visible.

Let us move then from the courtroom to the ‘bureaucrat’s office.’ Recall that

38 Of course, in the trial itself, her voice was never heard: her words (translated into English) were read to the jury. See section on the trial transcript, *supra*.

the polemical edge of Farley Mowat's book had been aimed at the government. His indictment was that the Ihalmiut had been delivered into a hell contrived by 'men of good intentions'. The film allows us to hear from three of the men who had been involved with the Ihalmiut in the 1950s: Gordon Roberston (who had been the Deputy Minister, Department of Northern Affairs), Bob Phillips (who had been the head of the Arctic Division of the Department of Northern Affairs), and Walter Rudnicki (who had been the Chief of the Social Services Division of the Department of Northern Affairs). Just as the camera had allowed us to focus on Kikkik as she told her story, we now have the chance to focus on 'the face of government', to listen to three of its representatives give their own accounts of the decision to relocate the Iharmit to Henik Lake. This part of the film participates in 'truth-telling' around the relocations, but does so in a way that makes visible the limitations of theorizing 'the government' as if it were a singular actor; we listen to very different responses from the three men questioned.

We hear first from Walter Rudnicki, who speaks openly about his experiences of the fragmentation in 'governmental' decision-making: it was not until after the deaths at Henik Lake had been reported in the media that he learned a decision had been made to move the Ihalmiut away from Ennadai Lake. He gives an account of decision-makers operating on the basis of incomplete and inaccurate information. Further, he explicitly links the tragedy to broader colonial attitudes of the time, and of the government sense that the Inuit were largely a portable people who could be moved without consultation. We get a quite different response from Phillips. Asked directly whether the Ihalmiut had been consulted about the move to Henik Lake, Phillips responds defensively, making a reference to the forces of political correctness which would seek to re-write the past to suit themselves. He insists on not only the good intentions of the government of the day, but on the moral correctness of their decision-making process. The government, he tells us, knew all too well about the consequences of repeated starvation, and knew that the horizon ahead was bleak. The Ihalmiut did not have the same information, he tells us, and were thus not in a position to make decisions in their own best interests. Robertson, our third voice of government, follows neither of these two paths. He weaves a line between the two, emphasizing the complexity of the problem government was trying to negotiate, and observing that, even at the time, there had been a number of different views on the question of how to ensure that the Ihalmiut could continue to thrive in the North.

Given what has come before in the film, it is hard to avoid discomfort in listening to someone assert that the government knew the land better than the people who had lived in it and on it for over 1000 years. We have already seen how these 'good intentions' were based on a very real ignorance about the land producing disruption, starvation and death. We also see how the compartmentalization of responsibilities marked the very real gaps that were present not only in decision-makers' knowledge of 'the north', but also in its knowledge of the people who had lived on the land for hundreds of years. There is certainly 'judgement' involved, but not of the kind that asks us to particularize guilt: what is indicted is a more generalized colonial

attitude that resulted in a kind of toxic failure to treat the Ihalmiut as important decision-makers in the shape of their own lives. We can see the limits of the legal approach which seeks to individualize responsibility for a tragedy; the target here is less an individual than an ideology. Indeed, when both Phillips and Robinson are speaking, a portrait of Queen Victoria hangs visibly in the background, offering its own commentary about the colonial attitudes which shaped the past and linger into the present.

The third aspect of the film I wish to focus on here concerns its stance with respect to the past and the present. Though the film re-enacts parts of the trial, and opens a space for calling government to account, the most powerful parts of the film involve its attempt to displace the question 'who is responsible' with the question 'what remains to be done'? The film asks us to think about what is necessary to deal with the full impact of the events of 1958 for the children who lived through it. Consider the way it engages with Annacatha. Figured in the three other texts only as a child abandoned, this text gives Annacatha voice. Speaking in her own language, Elisapee translating for her, she speaks of witnessing her mother's terrible exhaustion on the trek through the snow, and of begging her mother to let them walk, even as she acknowledges that they had no skins left to wear. She tells of her mother kissing her and Nesha, and wrapping them in the skin before covering them with snow, and hearing the footsteps walking away. Annacatha speaks aloud of her experience of being left alone inside the snow cave with her little sister to die and she tells of her sister singing snatches of a melody to her before she died. We also hear Annacatha singing an Inuit song, with subtitles telling us the song is one expressing thanks to a dead mother who gave all she could. The scene is followed by one in which Annacatha is reunited with Constable Laliberti (who had found her in the snow so many years before). There is something powerfully deep, both beautiful and terrible, in the keening noise she makes as the two of them stand in a tight embrace.³⁹

The film points in the direction of several kinds of performances in Elisapee's journey. It raises questions about performing apologies from the past, but also moments where the victims of the trauma have the opportunity to meet with those who were allies, or helped them on this journey. The moments in which people attempt to give thanks for the help they were given in the past, are at least as powerful as those that direct our attention towards retribution on those who participated in the harms. In criminal law, our focus is rarely, if ever, on this side of the justice coin.

³⁹ We are also able to follow Elisapee's older brother Karlak, who is reduced to tears as he has a chance (as an adult) to meet Sterling Lyon, and express his thanks for the work the lawyer did in defending his mother. In the longer version of the film, we also travel with Karlak out across the tundra, as he takes his own family to show them the place where his mother had sheltered the children on that last night. The scene speaks to the importance of sharing the memories with others, rather than keeping them hidden within. Again in the longer version of the film, we also hear from Kalak (Ootuk and Howmik's daughter, born deaf and dumb from starvation, the one Ootuk had offered to give to Kikkik). Her story written before her, she delivers it in sign language, Elisapee reading it aloud. She speaks of waiting in the igloo, of help finally coming, and of only knowing her father was dead with the frozen bodies of Hallow and Ootuk were loaded into the plane alongside them. This is a scene of painful touching power, linking these two cousins who had both been rendered fatherless by the tragedy.

These performances ask us to think about justice as a requirement on settlers to take action, to intervene, to do the best they can in situations of encounter, to do no harm and to behave with responsibility. These are not dimensions of justice that can easily be captured within the boundaries of a criminal law case, but they are questions that are no less pressing in the context of the larger project of theorizing the meaning and the demands of justice.

Elisapee's journey to discover her mother must also involve, the elders tell her, a return to Ennadai Lake, to reconnect with the land which had been their home (see Laugrand, Oosten & Serkoak 2009, 113–135). Taking 2 of the remaining 4 elders with them, Kikkik's children return to Ennadai Lake. We are brought to the land in summer, rather than in the winter landscape that occupies so much space in the cultural imagination of the North. We watch as a fish is caught, and food is shared as the Elders speak of the past and the time before contact with the white people. Wized, ancient, bent over, the elders tell of their relocation, of the steam rollers that rolled their furs and tents into the ground, destroying their tools and their food caches, leaving only enough time for the men to gather their few remaining sled dogs as the people were loaded directly onto airplanes and flown 200 miles further north. We see one of the female elders pick through the shrubby landscape, identifying places where tents had sat, where fires had been built, and she retrieves a rusted, and now v-shaped bent can and describes how that tool had been used to boil water and make tea. What might appear to be the garbage of western society, functioned here as a marker of Inuit presence, and is evidence to her of the destruction of their homes. We sit before the screen and hear the wails of grief as well as her words telling us of her great happiness at finding herself one more time at the site where they had so greatly suffered.

While these emergences of the past in the present are painful to watch, they also contain the seeds of hope. Without denying the devastation of the past, we have a gathering in the present of family/allies/lawyers/police. In the gathering of the children and grandchildren of Kikkik, we see the survival of the people in the face of the many forces which so decimated their communities. And as we move towards the end of the film, we are pulled increasingly away from questions of guilt, and towards questions of healing. The film asks us to think about justice, not only as settling accounts, or revisiting of trauma on the heads of the guilty, but to think about the importance of particular forms of acknowledging and witnessing—a return to the trauma to restage as it should have been performed, by taking responsibility.

The filmic text, positioning the viewers to have an experience of connection, works powerfully to make visible the injustices of this legal approach to responsibility. The film asks questions not only about guilt and responsibility but about ongoing encounters between settlers and indigenous people. Elisapee seeks not judgement, but understanding, and she looks for keys to a path that continues to move forward. She models a different form of engagement, one which seeks to make visible both the pain of the past and to acknowledge the resilience of those who survived and the skills and practises that might foster more healthy way of moving forward in a

context where a return to the past is not possible but where the present must take account of the persistence of that past. The film invites the spectator to rethink the past, and to implicate oneself in both that past and the project of moving forward.

5. Conclusion

Bakhtin argued that meaning emerges most richly through dialogue and encounters, along borders and intersections (see Conquergood 1992, 41). The story of Kikkik affirms his insight. In the borders and intersections, we have a rare opportunity to explore what happens as a tale of intercultural encounter is retold in four different genres: legal, literary, sculptural and filmic. While in each telling we have a tale of colonial tragedy, we also have the opportunity to reflect on the challenges of justice in the context of that colonial history.

The trial transcript makes visible some of the challenges of justice in the context of intercultural encounter. While we have a pronouncement of ‘not guilty’, the process of getting there makes visible challenges of translatability. What we see is not simply the question of how to translate (and whether or not a particular translator provides an accurate translation), but also the challenge of different concepts of guilt and innocence. Even with all the challenges of the narrowness of form, it also points to the possibility of encounter, the possibility of understanding, albeit in a limited fashion. Even with all limits of the legal arena made visible, the trial transcript also shows us a group of legal participants, working within the spare, objective and dispassionate language of law to do justice.

While the courtroom account suggests a separation of passion and emotion,⁴⁰ Farley Mowat’s narrative attempts to pull passion back into that legal story, in a way that makes visible the ways law’s identification of legal questions leaves important issues of justice beyond the court’s capacity to address. It aims to actively introduce more textured forms of subjectivity, albeit narratively imagined. The omniscient narrator allows us to imagine ourselves in a number of different positions: to imagine ourselves as Ootuk, as Kikkik, as Howmik. We are invited to imagine ourselves hungry in the cold, to feel the weight of a child on our back, a bag of snow held against our body. The account is a powerful cry of rage against the wilful innocence of government institutions and actors who had produced such a tragedy for the Ihalmiut. While polemical, it suggests that there is something important that happens in the moment of intercultural contact: that life amongst a people can help reveal things about their lives, their struggles, their motivations, that do not simply ‘justify their actions’, but also help us see how ‘we’ (as outsiders) are in fact deeply implicated in those tales.

The sculptures, in capturing images from the tale, push in the opposite direction. Where one might argue that in Mowat we have a polemic, Peggy Ekagina gives us ‘pensive images’. The images, rendered in stone, arrest the forward movement of the

40 On the blending of passion and reason in judicial opinion writing, see Belleau, Johnson & Bouchard 2007.

story, disrupting the flow of the tale, inviting the viewer to pause. We have here a 'contamination' in the most productive sense of the word. The sculptures, rendering the legal tale in stone, can press us to think about representations of justice, and the translation of justice from one medium to another. Even in the texture of the stone carvings, we have traces of intercultural encounter and translation as two cultures bump up against their differences (in both legal concepts and forms of artistic practice). Again, we are invited to consider both that which is familiar and that which is strange in the images from the tale.

Finally, in the film, we see these different accounts put into dialogue with each other, as the story of Kikkik is situated as only one piece of a larger story; one implication shift to another space of exploration, in a medium that invites us to follow one woman on a journey through and with the texts, asking us to think about the shape of past encounters, and the ways the past not only inflects the present, but also demands continuing engagement with the traces of the past. Though it paints the most textured portrait of the harm done to the Ihalmiut, it also is most explicit in its assertion that the quest must be more than a search for villains. Without denying the power of a desire to name 'the truth' of the story, it also enables us to ask other questions about the ways that colonial practices of seeing the world have had devastating implications for individuals and communities.

Each of the four texts gives us something: additional angles of sight for engaging in a collective discussion about justice and its acts, pronouncements, patterns of reasoning, visual forms, affective engagements and its demand that we act, that we see, that we feel, that we question. All four texts invite us to draw something into the present, or to project ourselves forward into the future: it is in the nature of a text's invitation. In placing the different texts alongside each other, there is room not only for 'comparison' (which text is better or worse), but for reflection on the lenses of analysis opened for us as we put the texts into conversation with the present, asking how we might think of justice in the now.

It becomes perhaps easier to sense that the questions asked in the texts are ones not to be answered only by Inuit, but also by Canadian settlers. That is, the question of responsibility requires a different approach, one that takes up reconciliation in a more robust fashion. The solution is not to be lulled into the response Steven Harper gave in his talk on economic advantages in Canada—to claim that 'we' have no history of colonialism. An attitude of denial is it is not helpful to the project of living in the present in a way that acknowledges the inherited past. The 4 texts challenge us to think about the limits of an approach to Justice that ends with the speaking of the words 'Not Guilty'. They make visible the persistence of wounds, and the ways in which the injustices linger on, in spaces of silence, denial and shame. It asks us to think about what it might mean to repair those spaces, or to answer the questions left open. But it also asks us to understand how settlers are implicated in the story, and that we too carry this history with us. The film asks us to acknowledge the terrible damage that followed from mistakes that were made, rather than insisting on a position of innocence. The texts put together suggest that there is room for

change. One of these changes can involve taking a more proactive approach to our re-encounters with the past: one in which the colonial subject grapples with uncertainty, open to the possibility that all four texts, put together, can help us see more. Our history is full of archetypal stories of contact and arrival. Where we understand the stories as 'conjunctural, not essential', it may be easier to accept that the stories can sustain 'multiple telling and retellings to produce not an undecipherable jumble of competing claims but a conversation threaded with echoes, collisions, resonances, surprises, ironies, epiphanies, and invitations to rethink orthodoxies' (See Lessard, Johnson & Webber 2010, 5-7).

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