



Laughing at Law: A Case for Comic Jurisprudence in the Climate Crisis

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Abstract

Critical legal scholars and activists do a lot with law: we ‘trash’ it, we resist it, we dissect it, we occasionally (reluctantly) appeal to it — we also laugh at it, albeit less systematically. This laughter, I argue, is valuable — and we would benefit from making a method out of it. I show how this might be done with reference to a rambling and ongoing legal story: the 56 judgements related to Indigenous and allied opposition to Canada’s notoriously controversial Trans Mountain Pipeline expansion project. Interpreting this as a chain novel of sorts (with a cast of characters that would put Tolstoy to shame), I demonstrate how engaging with law through a comic lens can help us ‘deal’ with the seeming immovability of modern Western law’s most self- (and other-) destructive tendencies in the context of the climate crisis. This comic mode/mood of engagement — characterised by flexibility and life-orientation — stands in contrast to the rigidity and linearity of the tragic vision that dominates modern Western law. The comic vision shows us that we can engage fruitfully with a tragic, coercive law by declining to take it seriously — because, ultimately, this law can be ‘tricked’ into serving higher objectives than its own rule.

Keywords Climate justice · Settler colonialism · Law and comedy · Canadian tar sands · Pipelines

Introduction

Law is an illusion. Settler law doubly so.
- Douglas Adams, very paraphrased.

Modern Western law poses a dilemma for anti-colonial legal theorists and activists: on the one hand, this law ‘perpetuates a problematic anthropocentrism, facilitates environmental exploitation, and enables human interferences with

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ecological processes' (Horst 2024, p. 83). This notion has still further dimensions in settler colonial contexts, where 'the law' often refers to the seemingly immovable law of a still-invading foreign power. However, precisely because of this immovability, activists and scholars must continue to engage with 'the law'. How might we navigate and understand these engagements?

I suggest that these engagements can be fruitfully interpreted (if not *understood*, exactly) through a comic lens. To illustrate this, I turn to a body of 56 settler legal judgements (and counting, at the time of writing) chronicling the ways in which Indigenous, allied, and climate activist protesters upset settler Canadian law by repeatedly defying an injunction awarded to Trans Mountain Pipeline ULC by the British Columbia Supreme Court in 2018 (this body of cases will hereinafter be referred to as 'TMX').

The TMX cases touch multiple societal nerves at once. They deal with a pipeline expansion project in a time of climate crisis, at a time when pipelines have become widely understood by the public as lightning rods for jurisdictional conflicts between Indigenous nations and settler colonial states (Temper 2019). They also speak to the critical material and symbolic significance of the Alberta tar sands (the world's third largest oil reserve) to climate activists, those embedded (materially or politically) in the Canadian oil and gas economy, and Indigenous land protectors (see, e.g. Huseman & Short 2012).

To legal scholars, the TMX cases offer a series of texts that constitute an important artefact of settler legal literature in a conspicuous 'pipeline conflict'. This vast body of work is valuable for its capacity to reveal things about the machinations of settler legal thinking and power. However, a literary interpretation of the texts of these cases shows that they reveal more than just settler legal perspectives — ideas and perspectives from those that settler law acts *against* in these conflicts (Indigenous land protectors, their allies, and climate protesters) are seeded into the narrative, creating points of rupture and interference. This body of case law, then, is not an extended settler legal monologue but a *novel* — characterised by a 'cacophony of discourses' (Simpson 2016).

In this paper, I show how a comic interpretation of these judgements alerts us to critical disruptions in settler legal narratives. Those acting against the TMX project invite us to *laugh at settler law*. If we take up this invitation, we can viscerally observe settler law's tragic abstraction from life and the natural world, in service of dogged devotion to vacuous notions of its own rule — this abstraction makes settler law incapable of responding organically to life-oriented stories asserted by Indigenous Caretakers and climate protesters. But the comic worldview, and the laughter enacted within it, also offers *hope* in the face of a tragic settler law intent upon total power — irreverent, comic engagements with human-made laws show that positive laws are just *one* set of rules governing us in a broader cosmic sense, opening possibilities for meaningful articulations of climate *justice* that move beyond the foundational principles of modern liberal legal orders.

I will begin by briefly describing the novel in question. I will then consider how we might interpret this novel comically, showing how others have understood the relationship between law and comedy. I will then get on with the meaty business of

reading the TMX novel comically, illustrating what it reveals about law ('Episode 1'), life ('Episode 2'), and justice ('Episode 3').

The TMX Novel

Beginning in 2018, hundreds of protesters occupied several sites in Burnaby, British Columbia at which construction of the Trans Mountain Pipeline expansion project (TMX) was meant to occur. This occupation effectively blockaded access to construction sites for TMX and its employees.¹ An injunction to stop the blockade was initially awarded to the Trans Mountain Pipeline ULC in March 2018 and duly served on protesters.

However, protesters from a diverse array of backgrounds refused to obey the injunction, resulting in 196 arrests and convictions for criminal contempt of court since 2018. Sentences for contemnors ('even the term is anachronistic and baffling!', Ceric observes (2020, p. 364)) escalated as disobedience continued over time, and charges were upgraded from *civil* to *criminal* contempt of court.² Prosecutions, sentencing cases, and corresponding appeals continue at the time of writing.³ Those charged with criminal contempt of court for defiance of the injunction include prominent Indigenous activists, allied scholars,⁴ medical professionals, ordained ministers, environmentalists, climate activists, and Elizabeth May, MP for Saanich-Gulf Islands, British Columbia and Leader of Canada's Green Party.⁵

Spiegel uses courtroom ethnography to explore the 'dramas' that occurred over the course of 15 months and over a dozen of the TMX trials. The courtroom in this context, Spiegel explains, is 'a critical setting for grounding debate on what it means to contest interlinked climate, environmental, legal and sociocultural injustices — and for reflecting on what some judges preclude from articulation' (2021, p. 2). Thus, courtroom ethnography, Spiegel explains, 'offers a fertile terrain for exploring the affective and political landscapes in and around a judicial setting, allowing an in-depth examination of colonial performance' (*ibid*).

The *texts* of these judgements offer a similarly 'fertile terrain', allowing for an in-depth examination of colonial *literature*. Such analysis is not a purely representational (or whimsical!) exercise. Legal texts bring material forms and realities into being — they stop some courses of action whilst setting others in motion (see, e.g. Birrell & Matthews 2020). But the relationship between the legal text and material reality is not a straightforward one — a simple matter of issuing an order and

¹ For a full judicial account of the relevant events, see *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 874 (CanLII) [1].

² *Her Majesty the Queen v. Cass*, 2018 BCCA 424 [2].

³ Recent cases include *R. v. Dick* 2024 BCCA 272 (CanLII) and *R. v. Leyden* 2024 BCCA 227 (CanLII).

⁴ E.g. Canadian poet Rita Wong (*Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 1246 (CanLII)), known for her essay *Decolonization* (2008), on the potential for solidary alliances between Asian migrants and Indigenous people in Canada.

⁵ *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 947 (CanLII).

making it so. As legal scholars, we can exercise our prerogatives to read legal judgments with attention to the inevitable heteroglossia of all texts (Valverde 2015, p. 7). In doing so, we might encounter in these judgments ‘a whole cast of characters with distinct, individual voices’ that introduce ‘a wide variety of perspectives and mini-languages’ into the fabric of the law (*ibid*).

This can shed light upon various forms of unauthorised authoring that go on in and around law — trickery, the seeding of new lives, ideas, and timelines — and offer us a means of *dealing* with over-heroised subjects and concepts of modern law without *legitimizing* them.⁶

The Comic Vision

This project of interpreting British Columbia Supreme Court/Court of Appeal judgements as a comic chain novel can be situated within a sizeable and growing body of work that seeks to understand the relationship between law and humour. In a special issue of *Law, Culture, and Humanities* devoted to this topic, authors consider the subversive possibilities that emerge when law is ‘hit’ with humour. Humour can serve both diagnostic and remedial functions, the special issue editors find, acting as ‘a societal thermostat that detects public uneasiness’ (Adriaensen et al. 2023, p. 3) and ‘slowly activates social change’ (Nocella & Chiaro 2023, p. 1). In a piece for this journal on the 2012 student strikes in Quebec, Brabazon considers the ways in which law can be dealt with ‘impudently’ (e.g. through spectacular, ‘carnavalesque’ over-compliance) to ridicule the absurdity and arbitrariness of particular legal rules (2022, p. 1). Ertür, in relation to the Gezi resistance, considers the ‘explosive’ nature of humour, and its capacity to offer (through social dissemination) a ‘counter-monumentalisation’ to the law — in these instances, when counter-authoritarian laughter takes over the populace, humour offers the possibility of ‘a re-articulation of constituent power’ (2016, p. 109). Humour invites us, as legal *subjects*, to ‘judge’ law against its purported, but unfulfilled, ideals — comedy can constitute ‘revenge inspired by the phantom of justice against the unjust legal system’ (Carbone & Rossi 2023, p. 12). We can see that — akin to Critical Race Theory’s ‘counterstories’ (Delgado 1989) — laughter can serve as a ‘weapon’ wielded by those without material and political power to introduce subversive ideas and stories into entrenched authoritative narratives.⁷

Much of the existing critical legal literature on law and comedy draws on Western philosophies of laughter, and canonical Western literary works such as Sterne’s delightful *Life and Opinions of Tristram Shandy* (1759–1767). This piece is greatly influenced by this thought but owes its primary intellectual debt to Indigenous

⁶ The ‘tragic paradigm’, within which modern settler law is situated, “distorts the picture of human finitude by making the subject too *heroic*” (Critchley 2007, p. 77). This coheres with Loizidou (2022) and Fitzpatrick’s (1992) observations—in different contexts—of the seeming inevitability of *law* within Western legal theory.

⁷ Adriaensen et al. note understandings of humour as “a weapon of the weak” (2023, p. 3).

scholarship related to the comic worldview — including Napoleon (2015) and Borrows' (1997; 2016) use of Indigenous comic devices to critique settler law, and Anishinaabe theorist Lawrence Gross's wider reflections on the comic worldview in Indigenous thought (2016).

Gross's understanding of the comic worldview in Anishinaabe thought in turn draws on John Moreall's understanding of the tragic and comic worldviews — these, Moreall argues, are present in all societies to varying degrees (1998, 1999).

In the simplest terms, Moreall argues that:

tragedy embodies mental rigidity and comedy embodies mental flexibility. Socially, tragedy values hierarchy, patriarchy, militarism, and tradition; while comedy questions all of these. Most generally, tragedy sees life as individual struggle, while comedy sees it as social adventure (1993, p. 333).

Tragic narratives are characterised by their hero's dogged devotion to abstract principles (so dogged, often, that the hero must give their life in service of these principles), as well as their linearity, emotionality, and teleology (Moreall 1998, p. 345). We can see elements of this tragic vision in dominant settler Canadian cultural and legal meta-narratives such as the legal myths that attend private property rights and economic development (Shah 2023).

By contrast, certain Indigenous worldviews can be said to be more comic than tragic — for example, Anishinaabe thought, Gross (2016) argues, tends towards the comic rather than the tragic. This worldview has physical life, rather than *abstracta*, at its heart, and life is rendered as a situated, communal activity of sorts (Vizenor 1990, p. 282). While the tragic vision is characterised by a sense of rigidity, the comic vision is characterised by flexibility. Traditions are 'never so sacrosanct as to not be open to comic possibilities, new ways of being in the world' (Gross 2016, p. 126).

In keeping with these understandings of comic engagements with law, this paper contends that subjecting settler Canadian law to irreverent, comic treatment can offer a means of 'dealing' with (NB: not *fixing* or *overpowering*) its rigidity and narrowness. Those engaging in direct action against the Trans Mountain Pipeline Expansion Project produce *laughter* at various sites of settler legal narration: on Indigenous land, in the courtroom, and in the texts of settler legal judgments. Laughter forces embodiment, if only momentarily. It thus serves as a visceral counter to settler law, which requests attachment to disembodied, fantastical ideas such as the part-formed myth its own rule on Indigenous land. The laughter produced by activists in the TMX cases shows us the limits of this original myth, as well as the ongoing detachment of settler law's rule from the simple, primordial goal of preserving life.

The fact that the laughter in this context is produced in conjunction with life-oriented narratives asserted by Indigenous activists is significant: laughter here not only illustrates the limits of settler law, but offers audiences/readers a glimpse of more life-oriented, grounded counter-narratives. The grounded nature of these narratives unlocks a key narrative benefit of humour: reminding us any radical reimagination that we might seek is to be found *here*, in the messiness of *this actual world and life* — 'imperfect as it is and we are, it is only here that we can make a difference'

(Critchley 2002, p. 17). Laughter can bring us down to Earth (or at least remind us that there *is* an Earth) — which is where we need to be in order to *respond to* (NB: not *fix* or *solve*) the climate crisis in a meaningful way. This does not mean that laughter is not sacred or transcendent, or that we should be seeking to avoid sacredness or transcendence — rather, the embodied nature of laughter reminds us of the sacredness and transcendence to be found in deep engagements with this world and life. In this way, laughter has a ‘messianic power’ (Critchley 2007, p. 78). A comic mode of engagement (understood by Critchley’s as ‘*comic acknowledgment*’) can help us respond to the complex ethical ‘demands’ arising from the climate crisis and settler epistemic injustices against Indigenous peoples without over-egging the emancipatory capacities of any singular figure, concept, idea, or law (*ibid*).

With all this in mind, let’s dive into the story:

Episode 1: Law (“The bare assertion”)

An early TMX judgement introduces us to three people:

Justin Bige, age 28, related to the Łutsël K’é Dene First Nation in the North-west Territories.

Stacy Gallagher, age 58, a member of the Serpent River First Nation in Ontario. A Sun Dancer and pipe carrier.

James Leyden, age 68, of Anishinaabe and Italian descent. Leyden received an invitation in 2018 ‘from Tsleil-Waututh and Squamish First Nation elders to provide cultural and support services as a Sun Dancer and Sweat Lodge Fire Keeper’.⁸

Bige, Gallagher, and Leyden were arrested for alleged criminal contempt of court for disobeying the ominously capitalised ‘Injunction’, the settler writ from which all our story flows. They were amongst a group of protestors singing and blocking traffic access to Bayview Drive, with Mr. Gallagher ‘drumming and encouraging the singing’.⁹ RCMP officers read the Injunction to them, with advice that ‘[i]f they continued in their unlawful conduct...they would be arrested for criminal contempt of court and charges would be laid against them’.¹⁰ Bige, Gallagher, and Leyden declined to leave and were duly arrested.¹¹ All three were found guilty for criminal contempt of court by Mr. Justice Affleck.

This scene takes place on the unceded territories of a number of Indigenous groups (or First Nations), including the Tsleil-Waututh, Squamish, Musqueam, Coldwater, and Stk’emlúpsenc te Secwépemc Nations.¹² This means, as the term

⁸ R. v. Leyden 2024 BCCA 227 (CanLII) [26]–[33].

⁹ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 (CanLII) [7].

¹⁰ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 (CanLII) [10].

¹¹ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 (CanLII) [11].

¹² For details, see the claim brought by these Nations against the state for its flawed approval of the TMX project: *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (CanLII), [2019] 2 FCR 3.

suggests, that the land in question was *never surrendered to the Canadian government (or British Crown) by treaty or otherwise* (see, e.g. Feltes & Coulthard 2022, p. 20). Most land in the Canadian province of British Columbia, where our story takes place, comprises unceded land (*ibid*). Indigenous protesters and their allies say that they are then governed by Indigenous laws on these lands — not settler law. Mr. Justice Affleck, in his reasons for judgement, summarises the argument of the counsel for the defendants as follows:

I understand Ms. Rauch to take the position that each was praying, dancing, and singing, and became indifferent to the reading of the injunction and to the reading of the five steps to them by the police. They were governed by aboriginal laws which they considered applied to their conduct.¹³

The judge explains that Ms. Rauch ‘places great stress on the importance of applying not only the criminal law of Canada to her clients’ conduct, but also aboriginal law, which I understand her to say governs these proceedings’.¹⁴

This (that Aboriginal law governs the proceedings) is the logical inference from the premise (that TMX construction, and the court itself, both sit on unceded Aboriginal territory (Spiegel 2020)). To draw a different conclusion (that *settler law* instead applies) the law must tell a non-logical story. This is a difficult position in which to find oneself (emotionally, spiritually, and intellectually) and settler law does not rise well to the challenge. In Bige, Gallagher, and Leyden’s trial, the judge can only respond to the assertion of the applicability of Aboriginal law by saying that they can find ‘no basis on which to articulate the reason why aboriginal law applies, except the bare assertion that it does’.¹⁵ The elephant in the room here is, of course, that there is little basis on which to articulate the reason why *settler law* applies on Aboriginal land, aside from the bare assertion that it does.

Enter: The Trickster

Incomplete settler legal origin stories have long frustrated Indigenous scholars (see, e.g. Christie 2019, p. 11). Comedy can help give narrative voice to these frustrations. Borrows notes an Indigenous intellectual tradition that helps audiences grapple with ‘ideas and principles that are partial and incomplete’ (1997, p. 39): the character, and narrative device, of the trickster.

The trickster is a shape-shifting, part Earthly, part divine presence present in the myths of cultures around the world — except, conspicuously, modern Western culture (Hyde 2008). The combined divinity and humanity of the trickster conveys lessons about how to grapple with the realities of an imperfect world (and our imperfect natures), ‘in pointed contrast to the omnipotent, all-knowing but distant deities that are central to the pantheons of state religions and their powerful ecclesiastical hierarchies’ (Napoleon 2015, p. 874). Trickster characters (such as the

¹³ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 [44].

¹⁴ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 [44].

¹⁵ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 [47].

Anishinaabe's Nanabush, the Cree's Wisakejak, the Akan Anansi the Spider, and the Olympian Hermes) are neither good nor evil; their actions seek generally to confound and entertain rather than to convey specific moral lessons through exemplary action — these narratives thus prompt an 'awakening of understanding because listeners are compelled to interpret and reconcile the notion that their ideas may be partial' (Borrows 1997, p. 39).

We can interpret the subversion of settler narratives in the *Trans Mountain* cases as the work of the trickster. This is not to say that any particular claimant or activist is a *trickster*, but rather that the narrative device of the trickster might be at work in the texts of these judgements. Though trickster narratives do not 'promise a happy ending', the comic chaos wrought by the trickster in otherwise predictable and linear narratives can provide valuable insights to us as readers (Vizenor 1990, p. 284). The humour of a *narrative interrupted* can 'effect a détournement' in legal discourses (Goodrich 2017, p. 363). Laughter in the law, Goodrich suggests, 'signals a possibility, an instance of potential for change' (2017, p. 363) — the comic is 'premonitory' in this way (2017, p. 373). In other words: by playing with the law irreverently, TMX contemnors introduce trickster discourse into settler judgements. This plants seeds of potential other worlds in the texts of these judgements.

These 'seeds' include the assertion of higher order obligations and principles that might transcend settler law. At one point in the TMX saga, activists Rita Wong and Jennifer Ireland requested that Justice Affleck (who presided over most of the post-April 2018 TMX criminal contempt/sentencing trials) recuse himself from adjudicating the remainder of these cases because of alleged bias against the protesters. The judge explains:

During her submissions on the recusal application Ms. Wong expressed her disapproval of the court's application of what she described as man-made laws rather than the application of natural law. She was critical of my failure to consider the impact of the pipeline on the natural world...Ms. Wong's central position is that the court should have ignored the law of this province which governed the court's approach to the application for an injunction and should have refused to grant it because the rules of natural law dictated that it should be refused.¹⁶

The recusal application was set aside because 'it is not open to a Judge of this Court to refuse to apply the law of this province and instead seek to apply the vaguely defined concept of natural law'.¹⁷ Even to the sympathetic reader, Wong's request might at first glance seem a little vague and far-fetched — as it in some ways is, in this context. But narratively, Wong successfully highlights one of the 'fictitious limits of the scope of [settler] legal enquiry' (Borrows 2019, p. 67). We might compare Wong's work to a joke in the 1988 film *The Naked Gun*, in which two men walking together approach a doorway — one opens the door and walks through it, and the other simply walks around it. As he does so, the camera frame widens to

¹⁶ *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 2141 [40].

¹⁷ *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 2141 [40].

reveal that the door is simply a set prop. There is no wall next to it. We as an audience simply imagined there was. Who said we cannot invoke higher order natural legal obligations in a settler legal court?

Aldous Huxley contrasts tragedy with ‘wholly-truthful art’, which we might liken to comedy in this context. Wholly-truthful art, Huxley explains ‘overflows the limits of tragedy and shows us, if only by hints and implications, what happened before the tragic story began, what will happen after it is over, what is happening simultaneously elsewhere’ (1931, p. 183). The TMX contemnors may not legitimately expect to win these cases on the basis of the arguments they make in their own defence — nevertheless, they introduce *other* signalling ‘premonitory’ narratives about the limits of settler law, asserting the presence of other legal and moral adherences.

Mutual Unrecognition

The seeds of subversion and doubt planted by the TMX contemnors *matter* because law needs our strong faith. Settler law doubly so. Even the most positivistic conceptions of law admit that, ultimately, law’s identity *as law* is derived from a populace’s general sense of its lawlikeness.¹⁸ Settler law needs faith from the populace it claims to govern a bit more desperately than other systems of law might, mired as it is in an inherent ‘legitimacy crisis’ (Green & Hendry 2019, p. 268). Put simply, the crisis is this: large swathes of the Indigenous population hold in recent memory the distinct moment that settler law came to stake a claim to jurisdiction over their lands, in ways that much of the population did not accept. The ‘origins of law’ myths from jurisprudential lore that might hold sway in populations that cannot really remember the originary moments of their extant legal systems cannot work in contexts where everybody *remembers* (to varying degrees) *what actually happened*. New myths are needed in this case. But, alas, settler legal mythmakers have done a bad job providing them — ‘despite half a millennium of occupation...still no settler mythology has arisen’ (Sheridan & Longboat 2006, p. 372). Participants in the law stage spectacles for us that demonstrate just how nonsensical it is that settler law still cannot — or will not — tell us on what Earth it is doing here.

Whilst settler law works to myth-make (we can only assume that somebody somewhere is in charge of this, given its paramountcy?), it must buy time with strategic silences, evasions. It cannot speak too clearly, in every case (in every court), to the nature of the relationship between settler and Aboriginal law — even though this is, often enough, a glaring issue where Aboriginal people are concerned. Allowing Aboriginal law real, reliable purchase in any legal cases can instigate a ‘deluge’ that would force judges to grapple seriously with the concept and prospect of Indigenous self-determination (Borrows 1997, p. 42). Thus, the court insists upon framing contemnors’ adherence to Indigenous laws in terms of ‘beliefs’, ‘attachments’, and the

¹⁸ See, e.g. Hart’s ‘critical reflective attitude’ as outlined in *The Concept of Law* (1961) and Kelsen’s *Grundnorm* as outlined in *The Pure Theory of Law* (1967).

euphemistic ‘Aboriginal lens’.¹⁹ Indigeneity as an *identity* is narrowly recognised, but the concept of Indigenous self-determination is never acknowledged.

But, today we are writing (/reading) a piece on comic subversions, not (only) settler legal tragedies! In response to settler nonrecognition of Indigenous law in the TMX cases, Indigenous people in turn *refuse to recognise settler law as legitimate*. Miranda Dick says to the court in no uncertain terms: ‘like I said, how many times before, that the imposed, assumed jurisdiction on to our [Secwépemc] people is still ... thriving and still trying to fine and imprison us’.²⁰

Mr. Gallagher’s actions at the scene of his ‘crime’ are described as follows:

Mr. Gallagher was...advised he was under arrest. Constable Potts touched Mr. Gallagher’s arm, which he pulled away, and Mr. Gallagher said, ‘Get your hands off me, I am in prayer’. Mr. Gallagher was holding a smudge pot and a feather. Corporal Mulrooney testified he was aware of the cultural significance of those objects. Constable Potts remained with Mr. Gallagher for about 30 minutes while Mr. Gallagher prayed and chanted. During that time, a member of an RCMP Division Liaison Team spoke to Mr. Gallagher, who did not appear to respond.²¹

James Leyden testifies:

that he is a sun dancer who ‘must walk in peace and humility, in knowledge, wisdom, and truth’. Mr. Leyden spoke of his belief in natural law, saying everything is a spirit and we are all connected. He testified that when people who protested were arrested, he and others of like mind would be present ‘to hold the people and to talk to them about “walking in peace”’, and everyone is invited to pipe ceremonies, including the police.²²

The authority of settler law is (subtly and politely — perhaps even unduly generously, in Leyden’s case — but definitively) not recognised by Dick, Gallagher, or Leyden. Gallagher commits the ultimate insult to a tragic law by *ignoring* settler law altogether. ‘Get your hands off me’, Gallagher says, which we might translate roughly into Hartian as: we have critically reflected upon your law and found it to be lacking. Challenged in this manner, the settler judge acts as any tragic character might: it doubles down, stamps its foot, insists that its worldview is the correct one, and demands agreement. ‘The’ rule of law must prevail.

We can see this in the court’s sentencing of MP Elizabeth May, in which Mr. Justice Affleck says:

The rule of law is not a guaranteed feature of Canadian life. It needs constant vigilance to be sustained...We can easily look to other places in the world to see where the rule of law has never existed or has been lost. The dire conse-

¹⁹ See, e.g. *R. v. Leyden* 2024 BCCA 227 (CanLII) [49].

²⁰ *R. v. Dick* 2024 BCCA 272 (CanLII) [55].

²¹ *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 2141 (CanLII) [24].

²² *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 2472 (CanLII) [28].

quences are on the daily news that we all see. The law applies to everyone. Nobody is entitled to pick and choose the laws or the court orders they will obey because they believe they have a higher obligation.²³

We can see the judge here grow more polemical as his sermon progresses. Settler law is riddled with anxiety — it does not have land of its own to stand on — so it is understandable that the judge (merely an orator for settler law here) would catch some of this nervousness. All law requires belief, but it is especially in settler states — where legitimacy is most anxiously sought — that the regime in power would require ‘constant vigilance’ to sustain its rule and ensure that nobody finds a ‘higher obligation’ to which to attend. Consider Howe and Monaghan’s findings, as a result of a series of Freedom of Information requests, that the Royal Canadian Mounted Police (RCMP) had for many years been using actuarial models that translated the potential ‘successes’ of [Indigenous activist] movements into ‘risks’ associated with public order (2018, p. 325). ‘Constant vigilance’, indeed!

Pasternak and Dafnos explain that because modern infrastructures such as railways and pipelines are.

built on the literal ground of historical patterns of land grabs and migration, no other political group in Canada shares with Indigenous peoples the legal and material power to consistently intervene in the flow of capital from coast to coast and over international borders (2018, p. 740)

Indigenous legal orders thus pose a *material* threat to a settler ‘petrostate’. Thus, British Columbia, where most land is ‘unceded’, has in recent years developed an ‘injunction habit’ to patch over the open question regarding the nature of its jurisdiction (2020, p. 354). Contempt of court remains the only remaining common law criminal offence not contained in Canada’s Criminal Code. As Goodrich observes: ‘it seems it will not do to *play* the law too visibly’ (2017, p. 362). Again — settler law, doubly so!

Alas, then, settler law speaks in awkward, puffed-up, patronising tones. It tells the poor TMX ‘contemnors’ that have tried very hard to politely ignore it:

I commend you all for your concerns for the environment and Indigenous issues that have largely motivated you to do what you did. However, you were seriously misguided in the means by which you sought to express them. In the future, I sincerely hope that these sentences will bring home to you that such illegal actions will not be tolerated and that it behooves you to resort to legal means of expressing your views and disseminating your messages to drive the societal, political, or social change that you seek.²⁴

At this point, the reader of the judgement might be forgiven for rolling their eyes. West observes that ‘the humour in comedy is usually someone with a great deal of social prestige and power, who is able to force much of the play’s society into line

²³ *Trans Mountain Pipeline ULC v Mivasair*, 2018 BCSC 947 (CanLII) [2].

²⁴ *Trans Mountain Pipeline ULC v Mivasair*, 2023 BCSC 410 (CanLII) [135].

with his obsession' (West 1985, p. 187). Consider Hyacinth Bucket (pronounced '*Bouquet*') of the BBC sitcom 'Keeping Up Appearances' (1990–1995) —all family members, neighbours, and acquaintances are forced to continuously conform to Hyacinth's 'notions' of an upper middle-class (rather than a merely middle-class) lifestyle. The humour extends to the 'absurd or irrational law' stemming from this character 'that the action of comedy moves toward breaking' (*ibid*).

It is one thing for contemnors to refuse to recognise settler law; it is a bigger thing to render settler law *laughable* in this process of nonrecognition. As Goodrich explains, 'the animadversion of laughter threatens the jurisdiction, the carapace of solemnity whose root is in the ceremonial foundations of the legal, in the spectacle of seriousness' (2017, p. 362). Comic engagements insert 'countertexts' into settler law's own solemn texts (p. 363). The evidence is: here we are, reading them as such!

A Word on Civil Disobedience

Some TMX characters see their actions as a form of civil disobedience. Civil disobedience has a paradoxical relationship with law, generally defying elements of its authority and *in so doing*, affirming its broader legitimacy — in many ways, 'appealing to the legal system's "better self"' (Megret & Khoday 2022, p. 170). In the sentencing of activist and environmentalist Dr. Takaro in the TMX cases, Justice Fitzpatrick (Justice Affleck has, by this point in the saga, retired from the judiciary altogether) cites the idea that civil disobedience 'when properly understood indicates the highest respect for the rule of law as a benign and necessary part of the structure of a just and democratic society'.²⁵

In this way, civil disobedience accords with the nature of parody, which 'always implicitly reinforces even as it ironically debunks' (Hutcheon 2000, p. xii). Parody — like civil disobedience — can be considered a form of 'authorised transgression' (*ibid*). On this basis, both civil disobedience and parody have been criticised as 'ideologically suspect' (*ibid*).

Climate activists around the world (conspicuously, groups like Extinction Rebellion and Just Stop Oil) have made use of civil disobedience-like strategies, based often on the narrative that 'decades of campaigning against climate change have not worked and the only thing that will help to address the issue is massive economic disruption'.²⁶ For these civil disobedients, law-violation is seen as a last resort, and frequently coupled with a 'willingness to suffer punishment' (Megret & Khoday 2022, p. 170). Mars, at Trans Mountain protests that pre-date the current stream of case law under discussion, observed that some climate activists 'sang "Oh, Canada!" and began a chain of voluntary arrests' — staging a spectacle of devotion to the 'higher order' ideals of the settler state and its laws, whilst dissenting to a particular manifestation of these laws (2015, p. 114).

²⁵ *Trans Mountain Pipeline ULC v Mivasair*, 2022 BCSC 1034 (CanLII) [86]. Citing *MacMillan Bloedel Ltd. v. Brown*, 1994 CanLII 3254 (BC CA), [1994] B.C.J. No 268 (C.A.) [126].

²⁶ These are the words of Roger Hallam, a climate activist associated with the Extinction Rebellion and Heathrow Pause movements, as noted in Megret and Khoday (2022), p. 169.

By contrast, Indigenous protesters and their allies shouted phrases such as ‘no pipelines on stolen Native land’ — disaffirming the authority of the settler state whilst also dissenting to a particular instantiation of its laws (*ibid*). This distinction is noteworthy — the judgments show that the contemnors explicitly identified as Indigenous overwhelmingly pled not guilty, or refused to plead one way or another, to the charge of criminal contempt of court. The non-Indigenous contemnors overwhelmingly pled guilty to the charges. Indigenous contemnors repeatedly, and emphatically, assert the non-applicability of settler law on the unceded territory on which the ‘protest’ sites were located. Indigenous protesters go further than parodying settler law; they push settler law into exposing its own comic contours. When Indigenous protesters are brought into court to answer for their crimes of standing in place on their unceded lands, the awkward incompleteness of the settler jurisdictional story is thrown into sharper relief than more traditional ‘civil disobedience’ narratives would likely allow.

Nevertheless, the civil disobedience/parody of the climate protesters contributes weight to the ridiculing of settler law in this instance — in aggregate the disruptions to settler law enacted by the TMX contemnors elucidate the hollowness of the settler state’s claims to absolute legal authority over Indigenous lands *as well as* its inapt response to the climate crisis. A number of contemnors assert their belief that these elements of settler law are inextricably intertwined (as we will see in the subsequent sections). All together, they help to make a fool of settler law. Note, though: this does not constitute a ‘happy ending’ in which all characters happily rejoice in having defeated the enemy together and move towards joyful communion. But, let’s close this episode here, and address the largely *ambiguous* ending that all this might foreclose, in Episode 3.

Episode 2: Life (‘The Hypothetical Case of the Lost Alpinist’)

So here we are: settler law’s claim to jurisdiction is partial and vacuous, evaluated rationally. But it could perhaps be excused for this vacuity if *substantively* this law offered us a means of living well. Unsurprisingly, I argue that the TMX cases show us that it does not offer a substantive vision for *how we might live through* the climate crisis.

As the climate crisis increasingly takes hold over imaginations and actual breathed atmospheres, we see clearly the prescience of Vizenor’s diagnosis: that ‘[t]he colonists strained to tame the wild, the tribes and the environment; now, high technologies overbear postcolonial promises and transvaluations, the tragic mode is in ruin’ (1990, p. 283). Why does settler law not act to save *itself*, if no one else? We can locate an answer in the distinction between the tragic and comic visions. The comic vision has the preservation and enjoyment of *Earthly life* at its heart, while the tragic vision has devotion to *abstract, heavenly* ideals at its heart. Here is the kicker: tragic heroes are willing to die in service or pursuit of these ideals. The comic protagonist would not hear of it (Morreall 1998, p. 345). Goodrich again: modern law’s affects are ‘lodged in the logic of death’ (2022, p. 16). If settler law’s own rule is amongst its highest ideals, then it might be willing to die for these.

Indigenous people in the Canadian settler state have *already* experienced world-deaths — or *apocalypse* — at the hands of still-colonising colonisers (Gross 2016). Indigenous survival in the face of what Gross terms ‘post apocalyptic stress syndrome’ involved the radical revitalisation of culture, law, and relationships — all facilitated by the comic vision, Gross argues (2016, p. 124). Indigenous people have survived in creative, powerful, and resurgent ways — amounting to *survance*, as Vizenor (2008) terms it, more so than mere survival.

The Indigenous Caretakers that invoke Indigenous laws and responsibilities to resist TMX assert life-oriented narratives that dialogue with the destructions enacted by colonial capitalism. We can take Miranda Dick’s story as illustrative here. The judge first notes the destructive impacts of Canada’s infamous colonial residential school system on Ms. Dick:

She advises that her father and grandparents went to residential school from the age of five to their teenage years. Ms. Dick notes many of the now known results of residential schools, including a loss of language and culture, that unfortunately, resonates in Indigenous communities to this day. Ms. Dick says that she remains of the view, which I accept is held by some Indigenous peoples, that Canada’s residential school program was ‘genocide’ and ‘land theft’ and that the historical and ongoing impacts of colonisation continue now. She says that this was her motivation with respect to her antipathy toward Trans Mountain and her breach of the Injunction in October 2020.²⁷

Ms. Dick’s resistance is a generative one, borne from a desire to *live*, embedded in a broader project of imbuing her community with life. For instance:

Ms. Dick speaks of her efforts to revitalise their Indigenous language and use of the land for food, which gave rise to her concerns about a pipeline spill that might impact our waterways, wildlife, and people.²⁸

The term ‘revitalise’ is especially important here — it speaks to Ms. Dick’s attachment to a specific mode of life that is being *regenerated*. De Goede and Randalis argue that in contemporary capitalist systems, meaningful political action in response to the climate crisis is displaced in lieu of a compulsive focus on quantitative evaluations of risk (2009, p. 867). Further, they argue that ‘[i]n order for tragedy and disaster to translate into meaningful political action...an enchanted attachment to life has to be cultivated’ (p. 874). It is precisely this mode of *particular, rooted* obligation and responsibility that Birrell and Matthews (2020) suggest should characterise a ‘re-storied’ set of laws fit for the Anthropocene.

Settler law’s enchanted attachments, as we have seen, seem to overwhelmingly be with the rule of law itself — the lawness of the law. Its faith is all in one lawish basket. Miranda Dick and others in the TMX saga, by contrast, demonstrate attachments to *specific modes of life*, embedded in specific places. They act to protect these attachments, rather than to *avoid* the spectre of a lawless world that haunts the

²⁷ *Trans Mountain Pipeline ULC v Mivasair*, 2023 BCSC 410 (CanLII) [24].

²⁸ *Trans Mountain Pipeline ULC v Mivasair*, 2023 BCSC 410 (CanLII) [25].

settler imaginary (we might recall its oft-repeated fear that ‘the rule of law is fragile’). Let us consider these two perspectives more closely by contrasting two stories in the TMX judgments.

The Hypothetical Case of the Lost Alpinist versus the Secwépemc Caretaker

Several TMX ‘contemnors’ that raised the defence of necessity against their charges for criminal contempt of court.²⁹ The defence was based upon the (undisputed) connection between the Trans Mountain Pipeline’s planned activities and the exacerbation of climate change. The defendants argued that the urgently impending and current dangers of climate change left them with ‘no viable or reasonable legal alternative’, but to attempt to block TMX construction.³⁰

In assessing the viability of this defence, the court draws on Fletcher’s *Rethinking Criminal Law*, to consider the hypothetical ‘lost alpinist’:

who on the point of freezing to death breaks open an isolated mountain cabin is not literally behaving in an involuntary fashion. He has control over his actions to the extent of being physically capable of abstaining from the act. Realistically, however, his act is not a ‘voluntary’ one. His ‘choice’ to break the law is no true choice at all; it is remorselessly compelled by normal human instincts. This sort of involuntariness is often described as ‘moral or normative involuntariness’.³¹

Distinguishing this hypothetical case from the TMX defendants’ positions, the judge finds that there is ‘no “air of reality” to the defence of necessity’ because the defendants had ‘alternatives to breaking the law’, e.g. applying to the court to have the injunction set aside prior to being arrested. Furthermore, the judge expressed doubt that ‘the defence of necessity can ever operate to avoid a peril that is lawfully authorised by the law’.³² This circular repetition of variations of the word ‘lawful’ in the face of such existential threats as those asserted by the defendants is emblematic of the mythic, all-transcendent force of settler law (Shah 2021). More specifically, we can interpret this singular commitment to the abstract rule of law in the lost alpinist’s tale as tragic — the alpinist must remain completely committed to the rule of law for as long as his relative freedom to choose a specific course of action remains intact. Only when pure human instinct takes over can he deviate from the rule of law. Within this story, the alpinist retains no ability to think flexibly and choose an alternative course of action if the rule of law turns out to be problematic, dangerous, or wrong.

By contrast, consider Miranda Dick’s articulation of her responsibilities to the land on which TMX intrudes:

²⁹ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50.

³⁰ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50 [23].

³¹ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50 [13]. This excerpt was originally cited in *Perka v. The Queen*, 1984 CanLII 23 (SCC).

³² *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50 [46].

I want the ... courts to recognise [Secwépemc] peoples and also my heritage of being a [Secwépemc] woman...I have a lot of duties and responsibilities in our traditional territories of the Secwépemc Nation. I'm relied heavily on — for my children and my community, and the judge has — you have not taken into any consideration the outcome of clean water, the outcome of remediation work, the fact that the conflict of interest that Canada has on the impacts of Indigenous people affected by the — by this pipeline. And I feel you still have not heard me...Not taking into consideration the systemic issues of violence that we face as indigenous women. Not taking into consideration the impacts that ... our people have to ... do in a colonial structure. Like I said, I'm ... relied heavily for my community and our people. I'm a teacher. I teach how ... to practice our religion, our culture, our ceremony, and again, you still have failed to recognise that we were doing ceremony ... [A] sacred fire in our ceremonies are still what keep our ... our Nation intact and the fact that when we stand up and we are doing ceremony without our traditional territories, that the colonial structure has still hampered that by fining and imprisoning our Indigenous people.³³

Ms. Dick references here substantive attachments and responsibilities to *specific* modes of life. She also notes the narrowness of settler legal reasoning, shown through its incapacity to take into account factors *around* and *above* the law: clean water, the principle of remediation, and — of course — the broader colonial structure. Christie suggests that the failure to meaningfully take into account this structure in cases involving Indigenous articulations of rights and responsibilities shows a fundamental break between the rule of settler law and any credible notion of *justice* (Christie 2019, p. 11). In her defence, Ms. Dick also relies on a letter provided by Dr. Janice Billy, a Secwépemc community leader:

As Secwépemc, the Creator, gave us instructions on how we were to live. These instructions included 4 main responsibilities — to look after the land, language, the culture, and the people. These responsibilities are embodied in Secwépemc Law. Throughout her life, [Ms. Dick] has maintained her duty to fulfil these sacred responsibilities.³⁴

Billy's brief description of Secwépemc law indicates that it is closely tied to *living things* and responsibilities towards them: land, language, culture, people. How would one describe settler law in an equivalent number of words? So far, we have only seen its 'rule' referenced as part of its substance.

In this way, settler law — in comparison with even the brief articulations of Secwépemc law that have made their way into the texts of settler judgments — appears vacuous, mechanical, and tragic in its application. Per de Goede and Randalls, this will not do in the climate crisis. On the basis of its repeated

³³ R. v. Dick 2024 BCCA 272 (CanLII) [55].

³⁴ *Trans Mountain Pipeline ULC v Mivasair*, 2023 BCSC 410 (CanLII) [56].

demonstration of ‘unalive’ mechanical repetition, we might appropriately conceptualise settler law as a joke. Of course, not all jokes are pleasant.

In addition to Indigenous articulations of responsibility, a range of life-oriented stories are introduced into the courtroom by other contemnors. Ordained minister Barry Morris explains that his decision to disobey the injunction was a dilemma causing ‘moral anguish’. Morris explains:

My presence on Burnaby Mountain was precipitated by a call from Will George of the Tsleil-Waututh Nation, issued to all religious leaders to ‘stand with us in our defence of the lands and waters’. . . I felt that under the extenuating circumstances, I had no other choice [but to breach the injunction]: the context of reconciliation; the exigencies of climate change that threaten human survival; the inaction of government on climate change; the pressure and moral dilemma I faced as a church minister for institutions that were complicit in the oppression of First Nations peoples... I felt that my action was important as a statement of hoped-for reconciliation between the Churches of which I’ve been a part — who partnered with the Crown to run the destructive Indian residential schools — and the First Peoples of these lands who continue to suffer the inter-generational pain of that era.³⁵

Morris’s statement evinces a life-orientation that accepts painful responsibility for the past.

The deep allyship on display here is in keeping with a key element of the comic vision: the view of life as a *collective* and *joint* endeavour (rather than a solitary struggle) (Morreall 1998, p. 354).

Other contemnors assert life-oriented narratives gleaned from their personal and professional experiences. For instance, Mr. Offley, a registered nurse, felt that action was necessary ‘because the Canadian government has failed persistently to protect us from the devastating human health impacts of unchecked climate change’.³⁶ Offley further notes that nursing associations have been raising awareness of this issue for a long time.

After considering the depositions and affidavit at length, Justice Affleck reiterates that the single question to be answered when deciding if the defence of necessity can operate is simply: ‘Did the applicants disobey the injunction because they had no choice but to do so?’ The judge thus transforms broader life-oriented narratives into a discrete question of individual volition. The answer to this question, the judge states, is simply ‘no’. This is right — as the judge says: ‘each [defendant] made a considered choice...Each was aware of the injunction. Each made a decision to disobey the injunction’.³⁷

These contemnors *chose* a life-oriented path in lieu of what they believed to be a destructive one. This choice, considered from a comic perspective, is a sensible and life-oriented one. Within a tragic landscape, however, the choice is impermissible. In

³⁵ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 1246 [38].

³⁶ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 1246 [41].

³⁷ *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 1246 [49].

sentencing these contemnors, the primary concern is *securing compliance* (rather than other matters that might be taken into account in non-contempt matters, such as rehabilitation).³⁸ The tragic ego of settler law is fragile and it must respond to acts of disrespect with shows of force.

For Bergson, characters like the judges in these cases might appropriately be considered:

past-masters in absentmindedness, with this superiority over their fellows that their absentmindedness is systematic and organised around one central idea, and that their mishaps are also quite coherent, thanks to the inexorable logic which reality applies to the correction of dreams (1900, ch. I, II).

Bergson believes that we laugh at displays of absent-mindedness (or ‘automatism’) because they show ‘mechanical inelasticity’ in living things — when living things are instead supposed to display *vitalism* (*ibid*). Vitality demands organic engagement with life and the world around us. Tragedy, by contrast, extracts singular threads from the totality of life — it is something ‘distilled’ from the ‘whole truth’ and this, like other ‘chemically pure’ things, works like a drug — an emotional drug (Huxley 1931, p. 182). We can think of the ‘rule of law’ like this — a tantalising source of synthetic comfort that promises catharsis and good feelings but is likely not able to deliver these in the context of the messiness of real life.

We might derive from Bergson and Huxley that to live is to *respond organically* to our world.

The Comic Quantum World

It is possible I have buried the lede somewhat by only addressing this now, but here we are: *the TMX project went ahead*. Construction was completed and commercial operations began in May 2024 (Williams 2024). This could complicate our story, and our sense of the comic, somewhat. *But not if we remember that the comic is about a degree of comfort with incongruity that tragedy cannot accept*. I will briefly make the argument here that it is not the ‘end’, but the comic means that *matters* most, and anyway, there really is no such thing as ‘the end’ (a somewhat unwieldy argument to make, but here we go).

Tragedy craves order; we can see that settler law does, too. Comedy, by contrast, is comfortable with a degree of chaos. This makes the comic vision an apt lens through which to view the climate crisis, which is characterised by chaos.

A number of theorists have argued that — very broadly speaking — modern Western worldviews understand the physical world largely through the lens of Newtonian physics (in which objects are understood in terms of fixed positions in time and space), whilst many Indigenous worldviews understand the world through a lens more akin to quantum physics (in which matter is understood in terms of flux and flows of energy) (see, e.g. Gross 2016; Peat 1997). This observation has been

³⁸ *Trans Mountain Pipeline ULC v Mivasair*, 2023 BCSC 410 (CanLII) [53].

grounds for intellectual communion between Western quantum physicists such as David Bohm and Indigenous scientists such as Leroy Little Bear (see, e.g. Hill 2008). Peat suggests that this means that Indigenous (Peat specifically referenced Blackfoot Cree, whilst Gross primarily considers Anishinaabe) understandings of reality harmonise with the vibrancy and movements of the natural world (Peat 1997, p. 567). European thinking once did this, too, Peat says — but has in the modern world become abstracted from the actual materiality of life through ‘the secularisation of time and the projection of nature into some world external to the essence of a human being’ (*ibid*). Yet Peat, in communion with Blackfoot elders, suggests that our modern world — perhaps precisely *because* of the quantum nature of reality — contains ‘the seeds of something entirely different’ (p. 573).

Despite an ever-present, violent campaign to impose settler law over Indigenous people and lands, Indigenous lives and laws live on. This provides an answer to a question that might be raised in the context of a quantum view of reality — in a world of complete flux and uncertainty, how can we know anything to be true or real? What are the grounds for hope and faith in such a reality?

An abridged, simplified answer is that Indigenous people *participate* in the natural world ‘by means of acts of renewal... [c]ircling time is always the same, yet always different, always renewed’ (Peat 1997, p. 567). Whyte notes that Indigenous engagement with mythology and law involves a ‘spiralling temporality’, one that considers what ancestors would think about the present, as well as what impacts current actions will have on the future (Whyte 2018, p. 230). This involves ‘counterfactual philosophizing’ — thinking, imagining, and acting *as if* (*ibid*). This offers a coherent philosophy for *getting around* (or under, or over) settler law — an entity intent upon imposing itself upon, rather than *participating* in, its surroundings.

In the TMX cases, Indigenous people, allies, and a range of activists all *got in the way* ‘of the aggressive expansion of the fossil fuel industry’ (Spiegel 2020, p. 2). Some engaged in prayer and ceremony, and others merely stood and/or sang in place. The tragic *abstracta* of the law is defied by the comic *concreta* of participating in ceremonies of protection and renewal, and other forms of *action* in a physical place. The tragic world is of the mind and heavens; the comic world is of the physical body and the Earth (Morreall 1998, p. 345). Through the process of physically ‘getting in the way’ of the law, ‘the body becomes the corpus, the corpus becomes the corpus iuris’ (Goodrich 2017, p. 368).

When people act to physically interrupt and suspend pipeline projects, ‘they attend to the “vital systems” that form alternatives to capitalist exploitation, alternatives to oil-soaked futures, alternatives to the unquestioned occupation of the settler state’ (Spice 2018, p. 52). Material visions of the future are needed to counter death-destined narratives. Davison argues that this is the difference between ‘fantasy’ and ‘imagination’ — fantasy involves a sense of escapism and can correspond with disengagement from life (Davison 2017, p. 7). We can liken this to the tragic worldview that reaches always for the abstract and never for what can really be found in this life. By contrast, ‘we use our imagination not to escape the world but to join it’ — imagination is exhilarating because it offers a ‘dulled consciousness’ an ‘apprehension of the real’ (*ibid*). In contrast to fantasy, which ‘tends to project and paper over’, imagination *receives* signals from the world and *responds* (*ibid*).

Gandorfer calls for an approach to law and literature that ‘push[es] legal and literary concepts to a point where logocentric thought cannot stand the pressure of embodied existence’ (2022, p. 1). In the comic material disruptions to settler law enacted by the TMX protesters, we see the point at which concepts of settler law ‘break’ (or at least, baulk) in the face of physical, embodied pressure. The actions of the TMX protesters create moments of ‘suspension’ in the course of extractive projects (Gupta 2015).

Oil and gas infrastructures have a certain ‘bluster’, Spice says, based on a sense of certainty about, and authority over, the world they anticipate — however, ‘their bluster hides their tenuous nature’ (2018, p. 50). Suspension plays with the bluster of extractive projects in tricky ways, exposing their tenuousness — and this tricky engagement can produce unexpected outcomes. Moments of suspension seed new possibilities — ‘[i]f Indigenous resistance forces pipeline projects into suspension, futures might grow in the space between proposal and completion’ (*ibid*). Suspension not only offers moments of reprieve from destructiveness but also opens possibilities for *changes of course*.

If we truly accept a quantum, chaotic view of the world, we cannot *know* what the effects of resistance to the TMX project will be — despite the fact that the obvious ideal scenario (the project being derailed completely) is no longer possible. Consider, for instance, that many headlines since the project’s completion have been quite chilly and irate, featuring grim reckonings about the costs and relative economic (dis)advantages of the Pipeline (CBC News 2024). We cannot know yet what, if anything, any of this will mean. But it is very important that people tried.

Episode 3: Justice (After the Laughter)

We are now in the final leg of our journey towards our ambiguous ending. Remember, the comic is not all about a jokey good time. And the comic vision cannot tell us everything about what law needs to be and do. But the comic *can* help us orient ourselves in relation to the law in a way that is helpful for climate justice and anti-colonial justice.

Comic engagements with law sow the seeds for consideration of a few strands that might comprise climate justice: the visceral illustration of ‘limits’ on settler law’s claims to legitimacy can help us identify the far-reaching implications of this badly told story; irreverence towards law helps us understand that other things might transcend it. Let us consider each of these in turn.

Where Should we Tell Settler Law to Go?

Here, we might welcome tragedy back into the fold, with the promise of a slightly warmer treatment than it has so far received in this paper. We have so far spoken about what tragedy does within the confines of its own narrative — but the staging of tragedy serves a purpose for its audience beyond the logics of its own internal narratives. In their staging of a world in crisis, poised on the brink of transformation,

the audience (unlike the hero of the tragedy) might be encouraged to introspect. Tragedy arises from the ‘torn consciousness’ of a society, in which the society is poised on the brink of an epistemological transition (Khan 2017, p. 275). In these times, traditional heroic figures come under conspicuous public scrutiny. The tragic figure, Khan explains, ‘is one who in his hubris loses sight of these tears and is violently destroyed in his flight to emulate a mythic hero — a catastrophic destruction that entails “the violence of the exemplary”’ (Khan 2017, p. 276). Tragedy prompts its audiences to ‘think about who we are, what we are doing, and what we want out of life’ (Morreall 1998, p. 337).

In other words: it would be ideal if we did not emulate the tragic hero and walk resolutely towards our own demise! It would be better if we instead left the theatre and critically considered a different course. This is not a simple matter in any society, let alone a settler colony, in which everybody is structurally and epistemically implicated in the actions of a violent state and legal system to differing degrees. Settlers cannot simply breathe a cathartic sigh and elect to walk off into the sunset with a transformed consciousness.

Acknowledging the possibility of renewal and world-ending simultaneously involves understanding that ‘the apocalypse is not a catastrophe with no author’ (Simpson et al. 2021, p. 153). The ‘spiralling temporality’ noted earlier has awkward consequences for settlers and settler law — as Whyte argues, the current conditions of settler dominance over Indigenous people may well have been an ideal fantasy for settler ancestors (Whyte 2018, p. 237).

Meditating upon this unsettling shadow of violence that haunts the colonial consciousness, Sartre says to fellow colonisers that attempt to speak to the colonised, or formerly colonised:

They will see you, perhaps, but they will go on talking among themselves, without even lowering their voices. This indifference strikes home: their fathers, shadowy creatures, your creatures, were but dead souls; you it was who allowed them glimpses of light, to you only did they dare speak, and you did not bother to reply to such zombies. Their sons ignore you; a fire warms them and sheds light around them, and you have not lit it. Now, at a respectful distance, it is you who will feel furtive, nightbound, and perished with cold. Turn and turn about; in these shadows from whence a new dawn will break, it is you who are the zombies (1963, p. 13).

See, the joke is less fun now. Not all life worlds and ways of being need survive when new possibilities are seeded. The work of the trickster, we might remember, does not promise a happy ending. Laughter can be cruel; it can be about inciting shame (as we have seen in relation to the mockeries made of settler law, and as many of us can probably attest from personal experience!).³⁹ Interestingly, Sartre suggests that *shame* might present the sole glimmer of hope for the colonial consciousness.

³⁹ Adriaansen et al. consider the limitations of laughter: in line with the ‘Superiority Theory’ of humour, laughter can be wielded by powerful figures to ‘punch down’, to cruelly discourage deviance (2023, p. 4).

Reading the ‘book’ of truth of colonial violences ‘will make you ashamed’, Sartre says, ‘and shame, as Marx said, is a revolutionary sentiment’ (1963, p. 14).

This notion is borne out in a study that investigates ‘the role of group-based shame and guilt in motivating citizens of ex-colonial countries to support restitution to former colonised groups which were the target of violence and oppression’ (Allpress et al. 2010, p. 76). Allpress et al., drawing on Lewis, explain that both shame and guilt are emotions that ‘arise from the violation of a moral or social code’, but the key distinction between the two is that ‘guilt arises because one has behaved badly, whereas shame arises because one is a bad person’ (p. 77). They found that ‘guilt and shame were associated with attitudinal support for intergroup apology and victim compensation. However, only shame was associated with actual political behaviour (signing a petition in support of the apology)’ (p. 82). Their research amongst British participants, focused on Britain’s atrocities during the Mau Mau ‘uprising’, further found a difference between ‘image shame’ (‘aris[ing] from the perception that the ingroup is perceived negatively in the eyes of others’) and ‘essence shame’ (‘aris[ing] from an internalised perception that the ingroup has some inherently negative quality’) (*ibid*). The study found that ‘image shame was associated with support for apology, whereas essence shame was associated with support for more substantial material and financial compensation’ (*ibid*). The study suggests that the deep existential feeling of shame, at a group level, motivates support for material political transformation.

More appropriate than guilt in a state of structural violence would be something akin to group-based essential shame, for which meaningful atonement (material, political, legal), not mere apology, is necessary. To ‘worldmake’, Srinivasan explains, redescrptions ‘must be taken up by the very people whose interests will be undermined if the redescription does in fact take hold’ (2019, p. 146). Srinivasan argues that ‘the slave revolt in morality required not only that the slaves believed themselves to be good, but also that the masters believed themselves to be evil’ (*ibid*). Laughter can produce conditions under which the superego can momentarily observe the ego and find it wanting (Critchley 2007, p. 80) — we might call this shame. Shame is a revolutionary sentiment with world-making potential; ergo, laughter can seed world-making possibilities. We might note that the shame produced through this ego-splitting need not result in ‘self-hatred’ in the individual — but rather, a genuine and useful ‘self-insight’ and ‘self-criticism’ at the group level (*ibid*). *Joining in with the laughter* makes all the difference: there is *consolation* (as well as contrition) to be found in laughing at oneself (Critchley 2007, p. 81).

Better Laws

What sources might we draw on in the process of atonement, if not law? We can look where ‘other’ legal theorists (Western and non-Western) have long looked to substantiate their theories of law: to higher order principles and beliefs that transcend and circumscribe positive man-made laws (the ‘higher obligations’, we might recall, that we were told *never to look at, or else* by the judge in Elizabeth May’s sentencing). It is to transcendent notions of global morality and justice, after all, that

‘climate disobeyers’ around the world turn for the source of their dissent (Megret & Khoday 2022, p. 175). We can add a millionth crisis to the crises that comprise the climate crisis: a crisis of legal positivism. And by crisis, I mean here: a spectacularly staged show of schism.

Settler law (or any human-designed positive law), as Borrows suggests, should not be our best and highest ideal (2019, p. 84). With the comic spirit in mind, we might consider the value of a healthy irreverence towards positive laws.

Let us briefly revisit the hypothetical lost alpinist. In the settler rendering of this tragic story, the lost alpinist could not be primarily oriented towards their own survival — one eye must always be on the dictates and commands of the law, even in the case of imminent death. Only when the alpinist has decided that there is truly *no alternative but to disobey the law* can the alpinist act to save their own life. If we as settlers imagine ourselves as this alpinist, we might critically question whether this story is illustrative of a ‘good life’. We might seek disloyalty to the law on the grounds of a deeper sense of rootedness in *life* rather than the abstractness of the rule of law.

Poking my Nose in (Before I Go)

I will end by briefly poking my own nose into the story — a long line of writers consider this the most comic organ we possess, after all (see the aforementioned *Life and Opinions of Tristram Shandy*). I was motivated to write this piece because I realised, upon encountering writings on the comic vision, that I was utterly *steeped* in the tragic worldview. I realised that I, like many other critical legal scholars upset with the law, was on a mission to *fight* it — to subject it to death by critique, exposure, analysis. This is not a nice way to live and work, and my growing sense of this not-niceness led me to the altar of comic theory. My encounters with the comic mirrored what I observed to be (though this could, of course, be mere confirmation bias) a broader ontological turn in critical legal theory from a focus on *diagnosis* to a focus on *hope* (see, e.g. Dao & Sheikh 2024). The most important lesson I take from readings on the comic worldview is this: we cannot merely stand against things; we have to find things in the real, messy world we love and make efforts to preserve them — our efforts will not always be ideal or perfect; they will often be messy, and there might be no happy ending. Oh, well!

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