

Carmela Murdocca *To Right Historical Wrongs: Race, Gender, and Sentencing in Canada* Vancouver: UBC Press, 2013. Pp. 280. \$32.95. Paper.

To Right Historical Wrongs: Race, Gender and Sentencing in Canada, takes a critical look at the restorative implications of amendments to Canadian sentencing practices. Murdocca focuses on the 1996 emendation to the Criminal Code of Canada, section 718.2 (e): “A court that imposes a sentence shall take into consideration the following principles:... (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.” This emendation asks judges to consider historical and cultural context when sentencing all offenders, with an emphasis on aboriginal offenders. Murdocca rounds out extant scholarship on the revision, which debates the merits of cultural sensitivity or special treatment. She argues convincingly that the teleology of the ‘cultural sensitivity’ argument actually undermines Aboriginal interests, as it forces aboriginal and nonwhite settler offenders to perform or act out cultural, racial, and gendered identity, re-inscribing the systems of subjugation which the restorative measures seek to redress. Murdocca undertakes the uncomfortable task of illustrating how seemingly progressive liberal policies of inclusion function to reinscribe and reproduce colonial power through systems of exclusion.

Rooted in a critical theoretical framework of both postcolonial and indigenous scholarship, Murdocca deconstructs the use of racial and cultural difference in policing colonial structures of power. Murdocca argues that representational governance practices such as sentencing provision 718.2 (e) can be best described through Foucault’s concept of biopower. Murdocca showcases the way in which particular racialized and gendered subjects are produced and legitimized through official institutions and structures. Situated within the context of law, Murdocca pinpoints the judicial system as a pivotal site for examining how citizens and subjects are produced by, and in relation to, hegemony. Murdocca shows that any effort to redress systemic racism that relies on biopolitical systems will fail to account for the connection between existing structures of domination and the ideological impetus behind legal redress (132).

Throughout the book’s four concise chapters, Murdocca provides a panoramic view of the development, application, and interpretation of sentencing provision 718.2 (e). Murdocca posits that the historical accountability and restorative drivers behind this sentencing provision are situated within a larger approach to proliferating indigenous/settler issues, which began with the 1996 Royal Commission on Aboriginal Peoples’ report. The report, she argues, inadequately concludes that the challenges facing Aboriginal people are predominantly characterized by a difference in worldview or culture. Murdocca reads the development of 718.2 (e) within Bill C-41, as a continuation of this myopic formulation of cultural difference, which fostered the concept of alternative or restorative sentencing practices. Murdocca documents early resistance from indigenous women’s groups in Canada against the cultural and restorative additions to criminal code revision. She shows that women’s groups raised concerns about ongoing violence within Aboriginal communities and the risks of alternative sentencing provisions for aboriginal offenders. Particularly in the case of sexually-based crimes, these

restorative alternatives to conventional incarceration have been particularly damaging for aboriginal women and children. Likewise, this subjective sentencing provision invites speculation into the sexual and cultural practices of Aboriginal people: a precarious opportunity for prejudiced essentialism and paternalism. Echoing the concerns of early dissenters: Murdocca shows that the sentencing provision has failed to reduce the number of Aboriginal women in Canadian prisons and conveys why the rates of incarceration are actually on the rise.

To Right Historical Wrongs contains an in-depth exploration of the precedent-setting *Gladue* case, which has become the benchmark example of judicial interpretations of section 718.2 (e). Through a meticulous review of the case proceedings, Murdocca unveils the nuanced process of judicial interpretation required by the ambiguity of section 718.2 (e). Unpacking the subjective cultural projection, gendered assumptions, and racial stereotyping that develop out of the use of culture as a factor in sentencing, her close-reading of the court transcripts lays bare the acute personal prejudices invited into the sentencing process. She relates long passages in which the judge and defense council jointly formulate the identity, experience, and cultural reality of racialized, gendered offenders. This in-depth exploration of the actual interpretation involved in section 718.2 (e) is particularly valuable. In reaction to the *Gladue* case and 718.2 (e), the practice of compiling Gladue Reports—reports expounding the so-called relevant contextual and cultural background of the offenders who are to be sentenced—has become an accepted practice. She broadens her critique to include Aboriginal male offenders by exploring the *Ipeelee* case's invocation of 718.2 (e). Her analysis reflects how this sentencing provision is further diluted by discretionary judicial interpretation of the seriousness of an offense, the authenticity of an offender's cultural affiliation, in addition to assumed knowledge of specific indigenous cultures. She shows that this restorative measure actually re-invents the colonial moment in which normative settler assumptions judge contemporary Aboriginal offenders as worthy or unworthy of their indigenous identity and culture.

In the final chapter, Murdocca expands her analysis in order to reflect the comparative nature of distinguishing “all offenders” from “Aboriginal offenders,” in the Criminal Code. She focuses on sentencing in the cases of two black women, individually charged with importing cocaine into Canada from Jamaica. Through her analysis of the *Hamilton* case's use of 718.2 (e), Murdocca reveals how notions of discrimination and racial difference become instrumental in the application of liberal ideology. Murdocca exposes the colonial intersection between racial representation and notions of criminality. This chapter represents an articulate and invaluable illustration of the paternalism encouraged by racially discrete sentencing measures. Specifically, the exploitation of Gladue Reporting to substantiate the personal views of the sentencing judge for this case conveys the troubling potential for paternalism and systemic oppression in restorative measures that work to reflect cultural distinction.

To Right Historical Wrongs poses important questions about how historical accountability and restorative justice reinforce and strengthen existing structures of power and governance in long-standing liberal democracies. After nearly two decades of apologies to marginalized and persecuted minority groups, various reparations programs,

a truth commission, and the largest settlement in Canada's history, Murdocca's contribution comes at a pivotal moment in Canadian thinking. As a resource for lawmakers, scholars, policy makers, and any institution that seeks to apply restorative measures, this book offers cautionary insights into the role of redress strategies in the formation and governance of racial subjectivity. In a controversial but vital inquiry, Murdocca presents a reading of sentencing provision 718.2 (a) as a self-congratulatory liberal policy that falls dangerously short of addressing ongoing conditions of colonial domination in Canada.

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