

**An Unprincipled Relationship: Settler Colonialism,  
Recognition, and Reconciliation in the Principles  
Respecting the Government of Canada's  
Relationship with Indigenous Peoples**

by  
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## Abstract

The contemporary discourse of reconciliation in Canada is imbued with liberal conceptions recognition. A discourse analysis of the *Principles respecting the government of Canada's relationship with Indigenous peoples* reveals the implicit values and ideologies within the document, shared with other contemporary federal policy changes, that privilege the Canadian constitutional framework and capital accumulation. This analysis applies a critical lens to the *Principles*, and compares the text with relevant documents, including the Truth and Reconciliation Commission's final report, United Nations Declaration on the Rights of Indigenous Peoples, and Supreme Court of Canada title cases, *The Principles*, as a key plank of the government of Canada's project of reconciliation, appears to be yet another method of insidiously maintaining colonial relations, and reveals greater continuity with previous overtly assimilationist policies than any substantive change in relations.

**Keywords:** Crown-Indigenous Relations; Reconciliation; Politics of Recognition; Discourse Analysis; Critical Theory

This project is dedicated to Indigenous land defenders everywhere,  
especially the youth.

May landback be more than a rallying cry in your lifetime and mine.

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## List of Acronyms

|       |   |
|-------|---|
| ARO   | Aboriginal Representative Organization        |
| AFN   | Assembly of First Nations                     |
| FPIC  | Free, prior, and informed consent             |
| MNBC  | Métis Nation British Columbia                 |
| MOU   | Memorandum of understanding                   |
| SCC   | Supreme Court of Canada                       |
| TMX   | Trans Mountain Pipeline Expansion             |
| TRC   | Truth and Reconciliation Commission of Canada |
| UBCIC | Union of British Columbia Indian Chiefs       |

# Chapter 1.

## Introduction

In June 2015 the Truth and Reconciliation Commission (TRC) released their final report titled “Honouring the Truth, Reconciling for the Future.” The evidence was undeniable: Canada committed genocide against Indigenous peoples.<sup>1</sup> The TRC outlines in no uncertain detail the systematic and deliberate effort undertaken by the Canadian state to eliminate Indigenous peoples as distinct people. Duncan Campbell Scott, the Deputy Superintendent of the Department of Indian Affairs from 1913 to 1932,

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<sup>1</sup> While the TRC settles on the attenuated charge of “cultural genocide,” Canada’s action arguably fit the UN definition of genocide as outlined in the UN Convention on the Prevention and Punishment of the Crime of Genocide. The TRC begins with the following:

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as ‘cultural genocide.

Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_acquisition\\_lists/2015/w15-24-F-E.html/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf)

Article 2 of the UN Convention on the Prevention and Punishment of the Crime of Genocide states the following:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide* [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

Canada’s treatment of Indigenous peoples included many, if not all, of the above acts and thus satisfies the definition of genocide. I feel the modification of the term with “cultural” attenuates the horrors inflicted and stating unequivocally that Canada committed genocide strengthens calls for justice and action.

affirmed such when he told a parliamentary committee in 1920 that “our object is to continue until there is not a single Indian in Canada that has not been absorbed in to the body politic.”<sup>2</sup> The institutions—more akin to forced labour concentration camps than “schools”—were central to this project of assimilation and elimination. The “schools” left a “trail of disease and death”<sup>3</sup> such that, according to Scott himself, “fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein.”<sup>4</sup> Overtly assimilationist policy continued well into the 20<sup>th</sup> century. The *Indian Residential Schools Settlement Agreement*, agreed to in May 2006, and the subsequent establishment of the TRC, was the result of concerted effort by residential school survivors themselves.<sup>5</sup> The TRC recognizes the “courage and determination” of residential school survivors and calls on settlers and the Crown to act with the same courage and determination in a “process of reconciliation.”<sup>6</sup> The TRC’s Final Report and 94 Calls to Action have permeated the political discourse in Canada ever since. Genocide denial has become more and more difficult, even for “old stock” Canadians,<sup>7</sup> as activists, academics, public commentators, and politicians have turned to the TRC to hold to account the Crown, the Catholic, Anglican, and United Churches, institutions of higher education, municipalities, organizations, corporations, and individuals. Projects like the CBC’s Beyond 94<sup>8</sup> and the Yellowhead Institute’s annual Calls to Action Accountability status report<sup>9</sup> aim to help the TRC avoid the fate of lapsing

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<sup>2</sup> Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_acquisition\\_lists/2015/w15-24-F-E.html/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf)

<sup>3</sup> Milloy, J. S. (2017). *A national crime: The Canadian government and the residential school system (Vol. 11)*. Univ. of Manitoba Press.

<sup>4</sup> Ibid.

<sup>5</sup> Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_acquisition\\_lists/2015/w15-24-F-E.html/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf)

<sup>6</sup> Ibid

<sup>7</sup> Everest, M. (2019). Calling Forth Hatred: A Discussion on Marginality, With the Canadian Response to the Syrian Refugee Crisis as Case Study. *Past Imperfect*, 21(2), 84-103.

<sup>8</sup> *Beyond 94: Truth and Reconciliation in Canada*. (2018, March 9). <https://newsinteractives.cbc.ca/longform-single/beyond-94>

<sup>9</sup> Jewell, E., & Mosby, I. (2020). *Calls to Action Accountability: A 2020 Status Update on Reconciliation*. <https://yellowheadinstitute.org/wp-content/uploads/2020/12/yi-trc-calls-to-action-update-full-report-2020.pdf>

into memory that has befallen too many previous commissions and reports. Reconciliation is, and has remained, a point of discussion and contention. For the TRC, reconciliation is “about establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country. In order for that to happen, there has to be awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour.”<sup>10</sup> The TRC acknowledges that “we are not there yet” and emphasizes the “urgent need for reconciliation” and an expanded public discourse beyond the harms of residential schools. There is hope, despite the “deteriorating” relationship between Aboriginal peoples and the federal government, that Canada has a “second chance” for reconciliation, with “Canada’s place as a prosperous, just, and inclusive democracy” at stake.<sup>11</sup> But still, barriers to reconciliation remain. As former lieutenant-governor of British Columbia, the Honourable Steven point said, “What are the blockages to reconciliation? The continuing poverty in our communities and the failure of our government to recognize that “Yes, we own the land.” Stop the destruction of our territories and for God’s sake, stop the deaths of so many of our women on highways across this country...”<sup>12</sup> The commissioners of the TRC noted,

“Reconciliation between Aboriginal and non-Aboriginal Canadians, from an Aboriginal perspective, also requires reconciliation with the natural world. If human beings resolve problems between themselves but continue to destroy the natural world, then reconciliation remains incomplete. This is a perspective that we as Commissioners have repeatedly heard: that reconciliation will never occur unless we are also reconciled with the earth.”<sup>13</sup>

The explicit link between economic, environmental and social justices made in the TRC highlights the gravity of reckoning with Canada’s colonial present; just as “reconciliation between Aboriginal and non-Aboriginal Canadians” cannot be achieved without reconciliation with the earth, environmental justice and equitable and ecologically sound resource management cannot be realised within a state structure that perpetuates the colonial subjugation of Indigenous peoples.

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<sup>10</sup> Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_acquisition\\_lists/2015/w15-24-F-E.html/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf)

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

Later that same year, on October 19, 2015, Justin Trudeau's Liberal Party won the 42<sup>nd</sup> Canadian Federal election, running in part on promises to "enact the recommendations of the Truth and Reconciliation Commission" and to "have a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition, rights, respect, co-operation, and partnership."<sup>14</sup> Trudeau frequently invoked reconciliation in both the run up to the 2015 election and during his first term as Prime Minister, going as far as to declare that "No relationship is more important to Canada than the relationship with Indigenous Peoples."<sup>15</sup> It seemed, at least on the surface, to be a sign that the federal government was prepared to take Indigenous rights seriously. The open, conciliatory tone struck by Trudeau's government contrasted outgoing Prime Minister Stephen Harper's dismissive and confrontational approach, including the denial of Canada's colonial history. Trudeau disarmed many critics at the time by visiting with and listening to grassroots activists, and by appearing genuine in his desire for change. While there was legal precedence for such a shift, the increased awareness of injustice and shifting public opinion after Idle No More contributed to the rhetorical change adopted by Trudeau's Liberals.<sup>16</sup> Supreme Court of Canada (SCC) rulings since the 1970s<sup>17</sup> and following the adoption of Section 35(1) of the *Constitution Act, 1982* established that Aboriginal title had not been extinguished in much of the country,<sup>18</sup> and that the Crown and project proponents have the duty to consult in cases of possible Aboriginal rights infringement.<sup>19</sup> In 2014, Aboriginal title was awarded by the Supreme Court for the first time in *Tsilhqot'in Nation v. British Columbia*.<sup>20</sup> Indeed, in 2015 one

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<sup>14</sup> *Real Change: A New Plan for a Strong Middle Class*. (2015). Liberal Party of Canada. <https://liberal.ca/wp-content/uploads/sites/292/2020/09/New-plan-for-a-strong-middle-class.pdf>

<sup>15</sup> Trudeau, J. (2017, June 21). *Statement by the Prime Minister of Canada on National Aboriginal Day*. Prime Minister of Canada. <https://pm.gc.ca/en/news/statements/2017/06/21/statement-prime-minister-canada-national-aboriginal-day>

<sup>16</sup> Lukacs, M. (2019, September 19). *Reconciliation: The False Promise of Trudeau's Sunny Ways | The Walrus*. <https://thewalrus.ca/the-false-promise-of-trudeaus-sunny-ways/>; Barker, A. J. (2015). 'A direct act of resurgence, a direct act of sovereignty': Reflections on idle no more, Indigenous activism, and Canadian settler colonialism. *Globalizations*, 12(1), 43-65.

<sup>17</sup> *Calder v. British Columbia*, 1973 SCR 313 (1973) <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>

<sup>18</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010

<sup>19</sup> *Haida Nation v. British Columbia (Ministry of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>; *Taku River Tlingit Nation v. British Columbia (Project Assessment Director)*, [2004] 3 SCR 550

<sup>20</sup> *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 SCR 257

could be excused for thinking that a sympathetic government in Ottawa could result in the material change required to work toward true reconciliation.<sup>21</sup> It was in this air of optimism in which the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* was announced. While just one aspect of the Trudeau government's project of reconciliation, the *Principles* promised to be a guiding document that would broadly impact policy making and government operations across departments.<sup>22</sup>

What little optimism this confluence created was crushed as the intertwined apparatus of capital and the state made clear just what reconciliation meant. "Reconciliation" as a political discourse and project was presented by the political elite as centering future good relations between Indigenous peoples, settlers, and the Government of Canada alike. The intervening six years reveal Trudeau's project of reconciliation to be a yet another cynical project of Canadian hegemony. As Martin Lukacs argues, "the transformation underway among the Liberal Party, government institutions, and the broader establishment was less a sea change than a shape-shift," and any suggestion of sharing "land, resources, [or] power" was out of the question.<sup>23</sup> Reconciliation is, for all intents and purposes, dead. Good riddance. I urge you to not shed a tear from the death of reconciliation, but rather rally behind Indigenous resurgence and refusal as alternatives to state led projects of reconciliation, recognition, elimination, and assimilation. The prospect of good relations is still possible, but Trudeau's project of reconciliation, typified by the *Principles* and the *Rights and Recognition Framework*, offers little that deviates from the colonial status quo of liberal recognition, and land theft. Canada faces a reckoning of its own making—one of mass graves and mass extinctions, increasing inequality and increasing temperatures—and the institutions that created the conditions for this reckoning must adapt, quickly and radically, or all be burned down.

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<sup>21</sup> See for example Ansloos, J. (2017, September 21). *The trickery behind Justin Trudeau's reconciliation talk*. Maclean's. <https://www.macleans.ca/politics/ottawa/the-trickery-behind-justin-trudeaus-reconciliation-talk/>

<sup>22</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>23</sup> Lukacs, M. (2019, September 19). *Reconciliation: The False Promise of Trudeau's Sunny Ways* | *The Walrus*. <https://thewalrus.ca/the-false-promise-of-trudeaus-sunny-ways/>;

In this paper I employ a critical discourse analysis to interrogate the *Principles* as a text, and situate the *Principles* in the contemporary socio-political context. I build my theoretical and philosophical basis in chapter three. I begin with an exploration of liberalism as a political philosophy, starting with John Locke and Thomas Hobbes, and the implications of the complimentary and contrasting philosophies of these two men for the role of the state. I critique liberal conceptions of private property as a right, drawing on Marx's "so-called primitive accumulation" to highlight the violent origins of this institution. Next, I examine capitalism as a mode of production, and Imperialism as an essential characteristic of capitalist relations.<sup>24</sup> Drawing on the black radical tradition,<sup>25</sup> I examine the role race—the social production of difference<sup>26</sup>—plays in reproducing capitalist relations as *racial capitalism*. I continue with an overview of settler colonialism as a structure, not an event,<sup>27</sup> then explore the differences between Western conceptions of sovereignty and Indigenous nationhood. I then discuss Gramscian hegemony and Marxist theories of the state, neoliberal governmentality and cultural reformation, and how changes influence western conceptions of race, culture, and the role of the individual. I conclude my theory section with a bit of background on the creation of the "Indian" in North America as a legal and racial category.

Chapter four consists of my sequential analysis of the *Principles* themselves. Using the text of the *Principles* as a starting point, I explore topics as wide ranging as shifts in rhetoric as a result of the changing political stripes of government; Indigeneity as cultural expression versus as a political position; the *Principles* relation to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the TRC's Calls to Action; the role of treaty making in Canadian statecraft; the development of reconciliation as a legal and popular discourse; free, prior, and informed consent (FPIC); justified infringement of Aboriginal rights and title; and the framing of self-determination in narrow economic terms. I situate the *Principles* in the broader project of Canadian colonial hegemony, to demonstrate how it perpetuates the colonial status quo, upholds

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<sup>24</sup> Lenin, V. I. (1999). *Imperialism: The highest stage of capitalism*. Resistance Books.; Smith, L. T. (2012). *Decolonizing methodologies: Research and indigenous peoples*. Zed Books Ltd.

<sup>25</sup> Robinson, C. J. (2020). *Black Marxism, Revised and Updated Third Edition: The Making of the Black Radical Tradition*. UNC Press Books.

<sup>26</sup> Melamed, J. (2015). Racial capitalism. *Critical Ethnic Studies*, 1(1), 76-85.

<sup>27</sup> Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of genocide research*, 8(4), 387-409.

white supremacy, and prizes the individual as the ultimate unit of justice. The RCMP invasion of Unist'ot'en is discussed to illustrate the inherent violence of colonial infringement of Aboriginal rights as "rule of law." I situate the *Principles* within the Canadian constitutional status quo to demonstrate how, despite positive language, the *Principles* represent the bare minimum effort by the Federal Government to adhere to their legal responsibilities.

Chapter five dives deeper into the liberal politics of recognition, drawing heavily from Glen Coulthard's *Red Skin, White Masks*, as well as returning to the texts Coulthard draws upon: Hegel's master-slave dialectic of mutual recognition as explained in *Phenomenology of Spirit*; Franz Fanon's critique of Hegel in a colonial context in *Black Skin, White Masks*; and Charles Taylor's contemporary liberal articulation of Hegel in relation to identity formation in *The Politics of Recognition*. Next I explore Crown recognition in relation to Indigenous nations. The tension between the state's desire for certainty, simplicity, and standardization, and the nested sovereignties and kinship networks of Indigenous nations presents a problematic that the *Principles* largely avoid addressing. The Métis Nation of British Columbia's assertions of rights west of the Rockies and support of the Trans Mountain Pipeline (TMX) are examined to illustrate how colonial recognition can be employed to obfuscate consent. I conclude the chapter with a discussion of Audra Simpson's conception of refusal as an alternative to recognition, and Leanne Betasamosake's understanding of refusal as key to generative resurgence. In my conclusion I attempt to answer the question: how do the *Principles*, as one plank of the Crown's project of recognition and reconciliation, perpetuate or challenge the status quo systems of racial capitalist, imperial, and colonial oppression?

## Chapter 2.

### Methods

#### 2.1 Situating

This project was born out of a personal desire to understand and counter political rhetoric used in the public discourse by governments, media, and private individuals I understood to be loaded with implicit and explicit ideological positions. I came into this project with a sense that something about reconciliation and recognition did not add up. I thought I would uncover some undeniable truths and reveal—a-ha!—the flimsy basis for the contemporary reconciliation narrative. It seems naïve now to think that my personal journey of discovery would result in the changes I so desired. My hubris has diminished, but my resolve strengthened, as I came to better understand the long history of struggle and resistance, and the countless barrages of intellectual refutation that leave but a dint in the armor of the settler state. My interest in rhetorical analysis predates my enrollment in graduate studies in 2017, and my discomfort with the colonial present developed gradually from youth. There was not one event that opened my eyes, but rather it was a cumulative effect of cognitive dissonance and a curious mind. By the time Idle No More arose in 2012 I was convinced there was a problem with capitalism, and that Indigenous sovereignty presented a compelling alternative. I was still in elementary school in 1999 during the WTO protests in Seattle, but these and the other anti-globalization protests of the early 2000s opened my eyes to the interconnectedness of anti-capitalist struggle even if I lacked the language to articulate it as such. Half the students at the elementary school I attended were Indigenous. I was in Grade 2 when the last residential school closed in Canada. Many of my Indigenous peers' parents attended the Kuper Island Residential School. My parents attended public schools and both attended post-secondary studies at the University of British Columbia. I can look back now and understand that the goals of assimilation through education did not end with the closure of the Kuper Island Residential School in 1975, but were perpetuated in the BC public school system. I did not learn about Kuper Island Residential School in elementary or secondary school. I learned about the fur traders and the family compact, John A. MacDonald—"the Father of Confederation"—and the CPR, Vimy Ridge and D-Day, "peace keeping" and the War Measures Act. I also learned about Emily Carr and the

disappearance of both sea otters and Indigenous peoples from British Columbia's coast. Smallpox. Abandoned villages. I learned stereotypes—drunk, lazy, undeserving of their exorbitant government handouts—that I now know better describe the Anglo rentier class. But I did not learn about residential schools, or the E&N Land Grant, the Douglas Treaties, Joseph Trutch, John A. MacDonald the racist drunk, and Duncan Campbell Scott. And yet there continues to be resistance to teaching this history today. As if confronting the soul of white folk—the ownership of the earth forever and ever, Amen!<sup>28</sup>—would so harm the ego of white Canadians and indeed amount to reverse racism and social engineering and that these fragile white children could not handle such horrific details as the lived experience of colonized peoples. But Canada the benevolent is a lie, and is a lie the institutions of the colonial state do their best to perpetuate. The *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* perpetuates this lie. And while better writers than I have already taken it to task as a facile repackaging of the status quo, I wanted to reveal the ideological depths of the narratives it tells itself. I am not certain I succeeded in this task, but at the very least I succeeded in understanding better my own narratives, because the truth about stories is, that's all we are.<sup>29</sup>

## 2.2 Critical Discourse Analysis

My research methods for this project came about as a result of my exploration of my primary object of analyzed, the aforementioned *Principles*. The text, as an outward facing document produced by Canada's Ministry of Justice, is interesting not just for what is written, but also for its political and rhetorical purposes. It is a document for public consumption, written in accessible language for a generalized public audience, but it is also intended as a guide for reforming various facets of federal policy, legislation, bureaucracy, and operations. The dual role—for both the public and federal bureaucracy—structures the *Principles*; it is vague and positive in a public relations sense, and carefully worded to avoid overstepping the legal status quo. It was my supervisor who, upon reading an early draft, suggested that what I was undertaking was a form of discourse analysis. Discourse analysis is a method of “analyzing human life

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<sup>28</sup> Du Bois, W. E. B. (1920). *Darkwater: voices from within the veil*. Harcourt, Brace and Howe, 1920.

<sup>29</sup> King, T. (2003). *The truth about stories: A native narrative*. House of Anansi.

[that] is a matter of openended interpretation rather than factfinding”<sup>30</sup> and entails “an approach to the analysis of language that looks at patterns of language across texts as well as the social and cultural contexts in which the texts occur.”<sup>31</sup> I came to this project with a strong worldview, one that questions the world as it is presented, and seeks to understand the ideology of popular or politically expedient narratives. This mirrors what Barbra Johnston identifies as “the basic questions a discourse analyst asks: ‘Why is this stretch of discourse the way it is? Why is it no other way? Why these particular words in this particular order?’”<sup>32</sup> These questions underlay my principle research question, and I attempt to answer them by exploring the material and philosophical histories implicit in the text itself. This exploration is intrinsic to the practice of *critical* discourse analysis. As Brian Paltridge explains “it is through discourse that many ideologies are formulated, reinforced and reproduced. Critical discourse analysis aims to provide a way of exploring this and, in turn, challenging some of the hidden and ‘out of sight’ social, cultural and political ideologies and values that underlie texts.”<sup>33</sup> To that end, the *Principles* present a useful point of departure to explore Canada’s colonial present. The *Principles’* role in upholding and informing colonial discourse will be examined through the application of the critical theories I explore in chapter three. I contrast the discourse presented in the *Principles* with the historical development of relations between the Crown and Indigenous peoples, with an eye to the material conditions of capitalist development and state power. I draw upon contemporary criticism and critical theory to reveal the unstated ideological assumptions that underpin the text of the *Principles*. I frequently employ theories of capitalism, liberalism, and settler colonialism, drawing from western political philosophy and contemporary anti-colonial theorists. In practice, this means approaching the text at both the granular and meta scale. I analyze the text at the level of individual words, phrases, sentences or paragraphs, and compare the *Principles* to other documents, primarily the Truth and Reconciliation Commission’s 94 Calls to Action, UNDRIP, and supreme court decisions regarding rights and title cases. I relate the text to these other documents as relevant, when the *Principles* implicitly or explicitly mention these texts.

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<sup>30</sup> Johnstone, B. (2018). *Discourse analysis*. (Third edition.). John Wiley & Sons, Inc.

<sup>31</sup> Paltridge, B. (2012). *Discourse analysis: an introduction*. (Second Edition). Continuum.

<sup>32</sup> Johnstone, B. (2018). *Discourse analysis*. (Third edition.). John Wiley & Sons, Inc.

<sup>33</sup> Paltridge, B. (2012). *Discourse analysis: an introduction*. (Second Edition). Continuum.

## Chapter 3.

### Theory

#### 3.1. Liberalism and property

*“...the racial, colonial, gendered, and generational making of property and the capacity for possession are both a consequence of particular historical conditions of dispossession and continue to be reproduced in new ways in the present” – Alyosha Goldstein*

The institution of property is essential to capitalist relations. Contemporary capitalist conceptions of property are codified by a basket of rights relating to an object held by an individual or group of individuals, or a firm.<sup>34</sup> While the rights conferred to private property vary, the definition and protection of these rights is tantamount to accumulation and enables free exchange on the market. But what makes property? Property, as a social relation, is inherently political. Classical liberalism understands property as a *right*. This rights stems from conceptions of sovereign power, and has important implications for the rights of individuals and the role of the state. Two 17<sup>th</sup> century English philosophers, Thomas Hobbes and John Locke, provide a useful starting point for understanding the modern construction of property rights, as they together provide “the main structure of English liberal theory” and important implications for the liberal democratic state.<sup>35</sup> Both Hobbes and Locke describe an imagined “state of nature” that preceded the development of governance. For Hobbes, the state of nature is typified by violent mutual distrust, of “war of all against all”<sup>36</sup>; the “faculties” of man largely being equal, one cannot merely claim what another has. The free pursuit of individual goals inevitably leads to violent struggle.<sup>37</sup> It is fear of the “common power”—the Leviathan—that prevents a return to the state of nature and maintains the peace.<sup>38</sup> Hobbes describes the life of an individual in the state of nature as having “no knowledge

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<sup>34</sup> Mann, G. (2013). *Disassembly required: A field guide to actually existing capitalism*. AK Press.

<sup>35</sup> Macpherson, C. B. (1962). *The political theory of possessive individualism: Hobbes to Locke*. Clarendon Press.

<sup>36</sup> “Bellum omnium contra omnes”

<sup>37</sup> Hobbes, T. (2018). *Leviathan*. Lerner Publishing Group.

<sup>38</sup> Biser, J. J. (2020). Locke versus Hobbes: Political economy of property rights. *Journal for Economic Educators*, 20(1), 1-27.

of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.”<sup>39</sup> Hobbes justifies an individual’s submission to the unlimited power of the sovereign and relinquishment of liberty and property as preferable to the constant warring of the state of nature.<sup>40</sup> Locke was less pessimistic about humanity than Hobbes; Locke’s state of nature is one of reason, peace and harmony, but where the risk of a Hobbesian intrusion of violence is ever present.<sup>41</sup> For Locke, an individual is motivated to willingly seek out “society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name – property.”<sup>42</sup> According to Locke, man in the state of nature was a fundamentally moral being, and, through reason, would enact laws that preserve mankind, and uphold the will of God.<sup>43</sup> For Locke, property rights begin with the individual’s person, and extend to include that which one has worked to produce by combining labour with that which “he removes out of the state that Nature hath provided.”<sup>44</sup> For Locke, the role of government is limited to protecting private property rights, and cannot seize an individual’s property without consent. In Hobbes’ *Leviathan* there are no inherent property rights; the sovereign retains absolute power as long as they prevent all from killing all, and may or may not grant rights to individuals as they see fit.<sup>45</sup> C.B. Macpherson argues that Hobbes and Locke have more in common than superficially appears, in that both men’s conceptions of justice, freedom, and property

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<sup>39</sup> Hobbes, T. (2018). *Leviathan*. Lerner Publishing Group.

<sup>40</sup> Ibid

<sup>41</sup> Biser, J. J. (2020). Locke versus Hobbes: Political economy of property rights. *Journal for Economic Educators*, 20(1), 1-27.

<sup>42</sup> Locke, J., & Shapiro, I. (2003). *Two Treatises of Government and A Letter Concerning Toleration*. Yale University Press.

<sup>43</sup> Ibid. “Thus the law of Nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men’s actions must, as well as their own and other men’s actions, be conformable to the law of Nature - i.e., to the will of God, of which that is a declaration, and the fundamental law of Nature being the preservation of mankind, no human sanction can be good, or valid against it” para. 135

<sup>44</sup> Ibid. “Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this “labour” being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others” para 26.

<sup>45</sup> Biser, J. J. (2020). Locke versus Hobbes: Political economy of property rights. *Journal for Economic Educators*, 20(1), 1-27.

hinge upon what he calls “possessive individualism.”<sup>46</sup> Both Hobbes and Locke begin their deduction from the individual, an individual that “has already been created in the image of market man.”<sup>47</sup> Society, for both Locke and Hobbes, is understood as merely “a series of relations between proprietors. Political society is the contractual device for the protection of proprietors and the orderly regulation of their relations.”<sup>48</sup> Accepting the “equal” subordination of members of society to the market as right or natural inevitably results in a political authority that revolves around enforcing market relations. Macpherson argues that the “basic assumptions of possessive individualism” remain central tenants of modern liberal theory in part because they still “correspond to our society” but “the emergence of working-class political articulacy” has undermined the “obligation of the individual to the liberal state.”<sup>49</sup>

For both Hobbes and Locke, and many other liberal theorists that followed, the right to property is a given. While even classical liberals acknowledged, with the development of fiat currency, the inevitable problem of inequal distribution of property, the historical material development of property is assumed away: enterprising individuals create their property by mixing their labour with the material environment.<sup>50</sup> For Marx, this dogmatic view of previous accumulation—as Adam Smith labelled it—was to political economy akin to theology’s original sin. The “diligent, intelligent, and, above all, frugal elite” came to possess capital while the “lazy rascals, spending their substance” ended up with “nothing to sell except their own skins.”<sup>51</sup> Marx challenges this “insipid...defence of property,” stating:

“In actual history it is notorious that conquest, enslavement, robbery, murder, briefly force, play the great part. In the tender annals of Political Economy, the idyllic reigns from time immemorial. Right and “labour” were from all time the sole means of enrichment, the present year of course always excepted. As a matter of fact, the methods of primitive accumulation are anything but idyllic.”<sup>52</sup>

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<sup>46</sup> Macpherson, C. B. (1962). *The political theory of possessive individualism: Hobbes to Locke*. Clarendon Press.

<sup>47</sup> Ibid, p. 269

<sup>48</sup> Ibid, p. 269

<sup>49</sup> Ibid, p 271-272

<sup>50</sup> Locke, J., & Shapiro, I. (2003). *Two Treatises of Government and A Letter Concerning Toleration*. Yale University Press.

<sup>51</sup> Marx, K. (2010). *Capital: a critique of political economy*. Madison Park. Chapter 26

<sup>52</sup> Ibid

For Marx, “so-called primitive accumulation” was necessary to initiate capitalist social relations, and is “nothing else than the historical process of divorcing the producer from the means of production. It appears as primitive, because it forms the prehistoric stage of capital and of the mode of production corresponding with it.”<sup>53</sup> Alyosha Goldstein summarizes “so-called primitive accumulation” as the “coerced incorporation of noncapitalist forms of life, land, and labour into capitalist social relations.”<sup>54</sup> If we take the above as true, then the creation of property is inherently violent. Thus, assuming away property (as exterior to the self) is to assume away the violent processes which created the property relation in the first place.

French anarchist Pierre-Joseph Proudhon criticized private property as amounting to robbery, and equated the absolute dominion of the proprietor—the “owner”—over his property to that of abuse.<sup>55</sup> Proudhon’s conception is, however, self-refuting: theft by definition assumes a violation of already existing property relations, a transgression of prior possession. Robert Nichols argues that dispossession retains great power as a critical discourse to describe the “specific species of theft” that is settler colonialism, a “form of structured dispossession.”<sup>56</sup> Dispossession in this context need not succumb to the contradictions levelled at theft above; the negation of *possession* is incidental to the transpired settler colonial structure. He argues that deracination or desecration more accurately describe the processes enacted. Deracination implies an uprooting of peoples, while desecration implies violence to the land itself rather than its human occupants. Neither of these definitions suppose possession. Nichols succinctly explains:

“...colonization entails the large-scale transfer of land that simultaneously *recodes* the object of exchange in question such that it appears *retrospectively* to be a form of theft in the ordinary sense. It is thus not (only) about the *transfer* of property, but the *transformation into* property. In this context then dispossession

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<sup>53</sup> Ibid

<sup>54</sup> Goldstein, A. (2017). On the reproduction of race, capitalism, and settler colonialism. *Race and Capitalism: Global Territories, Transnational Histories*, 42-51.

<sup>55</sup> Proudhon, P.J., & Tucker, B. (1876). *The works of P.J. Proudhon. Vol. 1, What is property?: an inquiry into the principle of right and of government*. Translated by Benj. R. Tucker.

<sup>56</sup> Coulthard, G. (2014). *Red skin, white masks: rejecting the colonial politics of recognition*. University of Minnesota Press, 7. Audra Simpson defines settler colonialism as “an ongoing structure of dispossession that targets Indigenous peoples for elimination.” Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press, 74, quoted in Nichols, R. (2018). Theft is property! The recursive logic of dispossession. *Political Theory*, 46(1), 3-28.

may refer to a process by which new proprietary relations are generated, but under structural conditions that demand their simultaneous negation.”<sup>57</sup>

The creation of private property in land “simultaneously extended and masked the reach of state power.”<sup>58</sup> Nichols describes the process of colonization as an assemblage of both state demands for territorial sovereignty *and* individual capital accumulation that, while analytically distinguishable, uniformly functioned to dispossess Indigenous peoples.<sup>59</sup> The liberal justification for colonial theft hinges upon racist conceptions of the Doctrine of Discovery and *terra nullius*; as per Locke’s conception of property, in the eyes of European colonists Indigenous people evidently did not *improve* the land and thus did not *own* it in the first place.<sup>60</sup> Indeed, the liberal ideals of freedom and equality for all came with a caveat: freedom, liberty, and justice belonged only to those who take it. Locke justified chattel slavery as “self-evident and indisputable” and was directly involved in its legalization in the Province of Carolina.<sup>61</sup> The contrast between Locke’s defence of individual liberty from the tyranny of absolute monarchy and his defence of absolute dominion over another ostensibly free individual was not lost on Scottish economist Adam Smith. He disagreed, noting that “The freedom of the free was the cause of the great oppression of the slaves ... And as they are the most numerous part of mankind, no human person will wish for liberty in a country where this institution is established.”<sup>62</sup> The naturalization of property as a core tenant of liberalism reveals the liberalism’s “possessive individualism” as an exclusionary project that depends upon selective dehumanization to support the “freedom” of the esteemed free men, and demonstrates the continuity of thought between the enlightenment era gestation of liberal thought and the development of the totalizing racialized capitalist world system that grew out of it.

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<sup>57</sup> Nichols, R. (2018). Theft is property! The recursive logic of dispossession. *Political Theory*, 46(1), 3-28. Emphasis in original.

<sup>58</sup> Chang, D. A. (2011). Enclosures of land and sovereignty: The allotment of American Indian lands. *Radical History Review*, 2011(109), 108-119. quoted in Nichols (2018)

<sup>59</sup> Nichols, R. (2018). Theft is property! The recursive logic of dispossession. *Political Theory*, 46(1), 3-28.

<sup>60</sup> Atleo, C. (2021) *Between a Rock and a Hard Place: Canada’s Carbon Economy and Indigenous Ambivalence*, in Carroll, W. K. (Ed.). *Regime of obstruction: How corporate power blocks energy democracy*. Athabasca University Press.

<sup>61</sup> Losurdo, D., & Elliott, G. (2011). *Liberalism: a counter-history; translated by Gregory Elliott*. Verso Books.

<sup>62</sup> Smith, A. (1982). *Lectures on Jurisprudence*. Liberty Classics pp. 452 3, 182.

## 3.2. Capitalism and Imperialism

While commonly taken for natural, eternal, and coherent by its many defenders, capitalism as a social relation is a relatively recent material development, one that will surely not persist forever. Capitalism developed in a very specific time and place: the English countryside in the 16<sup>th</sup> and 17<sup>th</sup> centuries. The specific conditions for the development of capitalism in England at this time include a unified political state, well developed transportation routes, and a concentrated property ownership class able to leverage land as capital.<sup>63</sup> In Britain, enclosure (theft of common lands) both dispossessed subsistence peasants and increased the efficiency of agricultural production, reducing the labour force necessary to feed the masses. “So-called primitive accumulation” provided the initial capital required to start the accumulation process. Factories replaced the cottage industry with mechanization, standardization, and mass production. Peasants, now without land or the means to sustenance through farming that land, became the working class, and became reliant upon market exchange for survival.<sup>64</sup>

Capitalism is a mode of production and the dominant social form of relations in the world today. The primary aim of capitalist production is the accumulation of wealth for individual capitalists. This is achieved through the production of commodities for exchange on the market. Under capitalism, the *means* of production is owned by private firms, and everything and anything (including land, labour, and money) may be commodified. It is a social relation in that it constructs institutions, organizations, and political systems, and structures interactions between people and between human and non-human beings for the purpose of individual capital accumulation.<sup>65</sup> Marx differentiated between those who own the means of production (capitalists), and those without capital who sell their time as a commodity (wages) on the market (labour). Wealth is created by mixing capital with labour in the production process and selling the resulting commodities for more capital. Profit, according to Marx, is the surplus value

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<sup>63</sup> Wood, E. M. (1998). The agrarian origins of capitalism. *MONTHLY REVIEW-NEW YORK*, 50, 14-31

<sup>64</sup> Mann, G. (2013). *Disassembly required: A field guide to actually existing capitalism*. AK Press.

<sup>65</sup> Ibid.

generated by labour in the production process that is appropriated by capitalists. This appropriated surplus value becomes the feed capital in the next phase of reproduction.<sup>66</sup>

But it is not enough to merely appropriate surplus value; capitalist reproduction incentivizes ever greater accumulation. Rosa Luxemburg argued in *The Accumulation of Capital* that expansion becomes a “coercive law” for individual capitalists. Competition forces all other capitalists in the market to expand as well, for failing to do so results in economic death.<sup>67</sup> Capitalist reproduction itself depends upon the final conversion of produced commodities back into capital (money) through exchange on the market. Thus, without sufficient market *demand* to recapitalize produced commodities, reproduction fails.<sup>68</sup> It is important to note that *value* here is narrowly defined as exchange value, the price a commodity commands in the market, rather than the utility the commodity affords an individual (use value). The value of a commodity is socially produced in relation to its convertibility to another commodity.<sup>69</sup> According to Marx, the existence of exchange value itself implies a set of social relations antithetical to the pursuit of “real wealth,” the things that contribute to human and social wellbeing. The distribution of wealth (who gets what) is decided through market exchange. Neoclassical economists defend the market as the most (economically) *efficient* means of distribution because rational self-interested actors participating in a perfectly functioning market will maximize total societal benefit (the aggregate of individual increases of pleasure, or alternatively total profits) through self-regulating means.<sup>70</sup>

Rosa Luxemburg and V.I. Lenin both identified primitive accumulation as not only a specific historical manifestation of capitalism, but *an essential characteristic* of capitalism. Imperialism, according to Lenin, is a natural outcome of monopoly and finance capital, and the *Highest Stage of Capitalism*.<sup>71</sup> The thirst for accumulation compels capitalists to seek new commodities to exploit and new markets for distribution. But demand for capitalist production could not be satisfied by the European working

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<sup>66</sup> Ibid.

<sup>67</sup> Luxemburg, R. (2015). *The accumulation of capital*. Routledge. 40-41

<sup>68</sup> Ibid, 44

<sup>69</sup> Marx, K. (2010). *Capital: a critique of political economy*. Madison Park., 33-34

<sup>70</sup> Geoff Mann (2013) *Disassembly Required: A Field Guide to Actually Existing Capitalism*. AK Press

<sup>71</sup> Lenin, V. I. (1999). *Imperialism: The highest stage of capitalism*. Resistance Books.; Luxemburg, R. (2015). *The accumulation of capital*. Routledge.

class alone, and thus new markets and the imposition of capitalist relations were required to rescue European capitalism from itself. David Harvey argues such processes of “accumulation through dispossession” continue today, embedded in globalization and the neoliberal modernity. Capital seeks a spatial fix, of selective devaluation, capital flight, or the opening of new markets just as Britain exported capital and labour to the colonies in North America and elsewhere.<sup>72</sup>

Glen Coulthard argues that for primitive accumulation to prove a powerful analytical tool for understanding the contemporary liberal settler nation, one must reject its temporal and teleological framing. The persistence of primitive accumulation is apparent by the “violent, state-orchestrated enclosures” of contemporary neoliberal capitalism. Coulthard rejects Marx’s original (Eurocentric) assumption that primitive accumulation was a necessary and inevitable step along the development arc of human societies. Marx’s interest in colonialism in his early writing stems from what the colonial condition reveals about the essential nature of capitalism, rather than a particular interest in the colonized. His early writing reflects the modernist ontological milieu in which Marx wrote by assuming that non-capitalist, non-Western societies existed “without history”.<sup>73</sup> Coulthard argues that shifting our framing to the colonial relation offers “a better angle from which to both anticipate and interrogate practices of settler-state dispossession justified under otherwise egalitarian principles.”<sup>74</sup>

### **3.3. Racial capitalism: accumulation through the social production of difference**

*“But what on earth is whiteness that one should so desire it?’ Then always, somehow, some way, silently but clearly, I am given to understand that whiteness is the ownership of the earth forever and ever, Amen!” - W.E.B. DuBois, The Souls of White Folk*

Cedric Robinson argues in *Black Marxism: The Making of the Black Radical Tradition* that Marxist class analysis alone is incapable of explaining why certain ideas of social

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<sup>72</sup> Harvey, D. (2001). Globalization and the “spatial fix”. *geographische revue: Zeitschrift für Literatur und Diskussion*, 3(2), 23-30.

<sup>73</sup> Coulthard, G. (2014). *Red skin, white masks: rejecting the colonial politics of recognition*. University of Minnesota Press., 9-10

<sup>74</sup> Ibid, 12

ordering appear over and over again at various “stages” of the Western Civilization project. One specific form of social ordering Robinson identifies as enduring is racialism, “the legitimation and corroboration of social organization as natural by reference to the “racial” components of its elements.”<sup>75</sup> Racialism pre-dates capitalist development, and is a structural component not only of European relations to non-Europeans, but also internally within Europe. Racial capitalism acknowledges that the historical development of capitalist social relations followed established racial directions, and that emergent social structures would necessarily be imbued with racialism.<sup>76</sup> Indeed, as Jodi Melamed asserts, “capitalism *is* racial capitalism.”

“Capital can only be capital when it is accumulation, and it can only accumulate by producing and moving through relations of severe inequality among human groups...it does this by displacing the uneven life chances that are inescapably part of capitalist social relations onto fictions of differing human capacities, historically race.”<sup>77</sup>

Racial capitalism helps expand our understanding of what Marx referred to as the “reserve army” of surplus labour critical to capitalist reproduction. It is not merely that capitalism produces precarity through surplus labour, but rather ascribes differential valuation on classes of individuals in order to create that very precarity. Segmented labour markets, such as “undocumented” workers in the United States and Temporary Foreign Workers in Canada, are but one example of capitalism’s reliance upon socially produced precarity. Laura Pulido, in discussing the poisoning of Flint, Michigan’s drinking water, draws from Rosemary-Claire Collard and Jessica Dempsey five typologies of value accorded by capitalist relations.<sup>78</sup> She argues that white supremacy and racial capitalism render Black people, people of colour, and Indigenous peoples expendable (“Outcast Surplus”), and that their “value” is derived from the ability for the externalities inherent to capital accumulation to be borne by such surplus people and places. Racially devalued populations are afforded a relatively muted response to basic reproductive injustices compared to the moral outrage afforded when wealthy White communities face similar injustices. Pulido argues that the treatment of racialized

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<sup>75</sup> Robinson, C. J. (2020). *Black Marxism, Revised and Updated Third Edition: The Making of the Black Radical Tradition*. UNC Press Books. 2

<sup>76</sup> Ibid

<sup>77</sup> Melamed, J. (2015). Racial capitalism. *Critical Ethnic Studies*, 1(1), 76-85. (77)

<sup>78</sup> Collard, R. C., & Dempsey, J. (2017). Capitalist natures in five orientations. *Capitalism Nature Socialism*, 28(1), 78-97.

communities provides the testing ground for capitalist shock treatments (“The Underground”), typified by debt discipline, followed by neoliberal austerity and structural readjustment perfected in the global south in the 1980s before being imported back to the metropole. Finally, Pulido relates the Black population of Flint as a “Threat” to capital through the continuity of the Black Radical Tradition and its historic and ongoing role in fostering social change that disrupts capital’s mechanisms for accumulation, most obviously in ending slavery, but also the aim to dismantle racial structures as a whole.<sup>79</sup>

### 3.4. Settler colonialism: a structure, not an event

*Indigenous peoples are those who have creation stories, not colonization stories, about how we/they came to be in a particular place - indeed how we/they came to be a place. Our/their relationships to land comprise our/their epistemologies, ontologies, and cosmologies. – Eve Tuck and K. Wayne Yang, 2012, Decolonization is not a metaphor*

Colonialism is the process of the imposition of social relations by an invading culture and society. Settler colonialism is a specific form of colonialism differentiated by the fact that those who come to implement the colonial relation do not leave, and instead adopt the inhabited land as their own. Land possession is *the* principle aim of settler colonial dispossession.<sup>80</sup> The violent edge of colonialism, invasion, is but a prelude to the systemic violence encoded in the colonial *structure*. This structure consists of the colonial institutions, agencies, and governance that enable and administer Indigenous dispossession and violence. The violence of settler colonialism is predicated on logics of elimination of the native. Since the Native exists, the colonial project is incomplete until

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<sup>79</sup> Pulido, L. (2017). Flint, Environmental Racism, and Racial Capitalism. *Capitalism, nature, socialism*, 27(3), 1-16

<sup>80</sup> Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of genocide research*, 8(4), 387-409;

Rowe, A. C., & Tuck, E. (2017). Settler colonialism and cultural studies: Ongoing settlement, cultural production, and resistance. *Cultural Studies↔ Critical Methodologies*, 17(1), 3-13.

“The specific formation of colonialism in which people come to a land inhabited by (Indigenous) people and declare that land to be their new home. Settler colonialism is about the pursuit of land, not just labor or resources. Settler colonialism is a persistent societal structure, not just an historical event or origin story for a nation- state. Settler colonialism has meant genocide of Indigenous peoples, the reconfiguring of Indigenous land into settler property. In the United States and other slave estates, it has also meant the theft of people from their homelands (in Africa) to become property of settlers to labor on stolen land.”

such time as the native has been eliminated or subsumed into the body politic. The historical and place specific processes of the legitimization of colonial structures and delegitimization of Indigenous knowledge, governance, and relations are unique to each settler-colonial project, but all settler colonial projects view Indigenous people, knowledge systems, and relationships as inferior to the colonizers own ontological and epistemological worldviews.<sup>81</sup> Colonialism makes these relationships savage and pre-modern.<sup>82</sup>

It is impossible to discuss settler colonialism without discussing both imperialism and race. Unpacking colonial logics reveals a basis in imperialist expansion and the social production of race. I will further explore the economic understanding of imperialism later, but Linda Tuhiwai Smith outlines three other understandings of imperialism that warrant noting; imperialism as the subjugation of 'others', as an idea or spirit, and as a discursive field of knowledge. In addition to more brutal and genocidal practices, colonial powers developed sophisticated 'rules of practice' for dealing with Indigenous peoples, including legislating possession of land and identity. Imperialism's 'spirit' comes from European Enlightenment and is intrinsically tied to the development of the modern state, science, and modernity, while the imperial imagination promised new worlds, wealth, and discoveries waiting to be controlled. Imperialism's hold upon the popular imagination extends even to the minds of colonized peoples through cultural hegemony.<sup>83</sup>

Colonial racial regimes are place specific and work in a variety of ways, but serve to reproduce colonial relations between colonizer and colonized. For example, the "one-drop rule" of reproducing Black slaves served to maintain the supply of slave labour, while blood quantum regulations serve to legally vanish Indigenous peoples who stand in the way of settlement. Wolfe explains that it is not that settler colonialism targets any one race, but rather it is through the targeting itself that race functions: "Black people were racialized as slaves; slavery constituted their blackness. Correspondingly, Indigenous North Americans were not killed, driven away, romanticized, assimilated,

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<sup>81</sup> Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of genocide research*, 8(4), 387-409.

<sup>82</sup> Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, education & society*, 1(1).

<sup>83</sup> Smith, L. T. (2012). *Decolonizing methodologies: Research and indigenous peoples*. Zed Books Ltd.

fenced in, bred White and otherwise eliminated as the original owners of the land but as *Indians*.” The racialization of Blacks and Indigenous people in North America serve the interests of the colonizers and capital accumulation, and both stolen bodies and lands become property of the settlers<sup>84</sup>.

Alyosha Goldstein notes that racial capitalism and colonialism are historically distinct yet intertwined.<sup>85</sup> While the economic motivations for colonial expansion stemmed from capitalist overproduction, racism provided a philosophical and moral cover for the atrocities perpetrated in the name of “civilization.” Civilization itself is foundational to settler identity, but the making of civilization depends upon the overproduction of nature—that is, the exploitation of labour and the environment for the purpose of accumulation—and thus the overproduction of nature becomes central to settler identity.<sup>86</sup>

### 3.5. Sovereignty, Indigeneity and Nationhood

In *For Whom Sovereignty Matters*, Lenape scholar Joanne Barker argues that “Sovereignty” is “historically contingent” and “carries the horrible stench of colonialism.”<sup>87</sup> Yet over the past 50 years, Indigenous scholars, activists, and individuals have articulated—in practice and theory—a distinctly anti-colonial conception of sovereignty, one intrinsically linked to land, culture, and kinship.<sup>88</sup> To understand this discursive shift we must first understand the origins of the word and its political implications. Modern Western conceptions of sovereignty correlate strongly with the rights of the modern nation state to “exclusive jurisdiction, territorial integrity, and non-intervention in domestic

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<sup>84</sup> Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of genocide research*, 8(4), 387-409.

<sup>85</sup> Goldstein, A. (2017). On the reproduction of race, capitalism, and settler colonialism. *Race and Capitalism: Global Territories, Transnational Histories*, 42-51.

<sup>86</sup> Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, education & society*, 1(1).

<sup>87</sup> Barker, J. (2005). For Whom Sovereignty Matters in Barker, J. (Ed.) *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (pp. 1-31). University of Nebraska Press.

<sup>88</sup> Simpson, A. (2020). The Sovereignty of Critique. *South Atlantic Quarterly*, 119(4), 685-699.

affairs.”<sup>89</sup> The ancient theological origins of the word described the “power and arbitrary nature of the deity” in the Near East, and was “appropriated by European political thinkers...to characterize the person of the King as head of state” in the 17<sup>th</sup> century.<sup>90</sup> The process of state development and territorialisation is intertwined with the historical development of capitalism and property relations, and relied upon mutual recognition between states. Nations became the ultimate expression of sovereignty only once its authority to exercise power within its borders was mutually recognized by other states. The violence necessary to establish and enforce sovereign rule—that “might makes right”—is implicit in states’ mutual recognition.<sup>91</sup> This process of territorialisation—the enclosure of previously stateless regions into the state system—is an ongoing violent process.<sup>92</sup> As Ayesha Saadiqi put it, “every border implies the violence of its maintenance.”<sup>93</sup>

As the “nation state” matured, Barker describes how civil society, democracy, and citizenship transformed the institutions of the state and shifted debate about the source of sovereignty to two sources: individuals or the “law of nations.”

“In both kinds of debates, sovereignty was about figuring out the relationship between the rights and obligations of individuals (citizens) and the rights and obligations of nations (states). Sovereignty seemed to belong to nations but was then understood to originate either from the people who made up those nations or as a character of the nation itself (nationhood). The former assertion has defined the work of contemporary Indigenous scholars and activists, who have argued that sovereignty emanates from the unique identity and culture of peoples and is therefore an inherent and inalienable right of peoples to the qualities customarily associated with nations.”<sup>94</sup>

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<sup>89</sup> Barker, J. (2005). For Whom Sovereignty Matters in Barker, J. (Ed.) *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (pp. 1-31). University of Nebraska Press

<sup>90</sup> Deloria Jr, V. (1979). Self-determination and the concept of sovereignty, in Oritz, R. (Ed.) *Economic development in American Indian reservations*, pp 22-28.

<sup>91</sup> Barker, J. (2005). For Whom Sovereignty Matters in Barker, J. (Ed.) *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (pp. 1-31). University of Nebraska Press

<sup>92</sup> Walia, H. (2013). *Undoing border imperialism*. Ak Press.

<sup>93</sup> Siddiqi, A. [@AyeshaASiddiqi]. (2015, September 2). *every border implies the violence of its maintenance* [Tweet]. Twitter. <https://twitter.com/ayshaasiddiqi/status/639054385797038080>

<sup>94</sup> Barker, J. (2005). For Whom Sovereignty Matters in Barker, J. (Ed.) *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (pp. 1-31). University of Nebraska Press

In contrast to the military might of Westphalian nation-state, Indigenous nationhood often derives power from the rights and responsibilities of each citizen. Kahnawake scholar Taiaiake Alfred asserts that “indigenous nationhood is about reconstructing a power base for the assertion of control over Native land and life.”<sup>95</sup> Sisseton Wahpeton Oyate scholar Kim TallBear similarly connects assertions of Indigenous nationhood to land, stating “We privilege our rights and identities as citizens of tribal nations for good reason: citizenship is key to sovereignty, which is key to maintaining our land bases.”<sup>96</sup> Kahnawà:ke Mohawk scholar Audra Simpson argues that sovereignty is a form of relationality, a “political project of justice,” and a means to protecting Indigenous lands from harm.<sup>97</sup> To Louis Hall, Mohawk nationhood is a “cultural and political ‘right’ and a ‘good,’ and a matter of principle rather than procedure.”<sup>98</sup> In *Tsawalk*, Umek describes the mutual respect for the sovereignty of *hahuulthi* (ancestral territories) in Nuu-chah-nulth territory as being legitimized through individual’s and individual chiefs’ respect and honour for teachings and the laws of the creator.<sup>99</sup> Cree writer, activist, and jurist Syliva McAdam states simply that “nationhood is primarily about land, language, and culture” and without these elements Indigenous sovereignty is not possible.<sup>100</sup> Tk’emlupsemc, French Canadian, and Ukrainian scholar Sarah Nickel defines Indigenous sovereignty as “the processes by which Indigenous people outline and execute their own political strategies, institutions, and customs according to local and historically specific circumstances.”<sup>101</sup> Taken together, Indigenous conceptions of nationhood differ greatly from that of the modern nation-state. For Alfred, Indigenous nationhood provides a “sharp contrast to the dominant understanding of ‘the

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<sup>95</sup> Alfred, T. (2009). *Peace, power, righteousness: An indigenous manifesto*. Oxford University Press, USA.

<sup>96</sup> TallBear, K. (2013). *Native American DNA: Tribal belonging and the false promise of genetic science*. U of Minnesota Press.

<sup>97</sup> Simpson, A. (2020). The Sovereignty of Critique. *South Atlantic Quarterly*, 119(4), 685-699.

<sup>98</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>99</sup> Atleo, R. (2004). *Tsawalk: a Nuu-chah-nulth worldview*. UBC Press.

<sup>100</sup> McAdam, S. (2015). *Nationhood interrupted: revitalizing nêhiyaw legal systems*. Purich Publishing

<sup>101</sup> Nickel, S. (2019). *Assembling Unity: Indigenous politics, gender, and the Union of BC Indian Chiefs*. UBC Press

state': there is no absolute authority, no coercive enforcement of decisions, no hierarchy, and no separate ruling entity."<sup>102</sup>

The Royal Commission on Aboriginal Peoples estimated that there were between 60 and 80 historical Aboriginal Nations.<sup>103</sup> These nations had diverse social and political institutions, managed animals and landscapes, tended terrestrial and aquatic gardens, and engaged in peace treaties, alliances, and conflicts long before Western notions of sovereignty arrived in North America. The diversity of Indigenous political institutions responded to and were informed by the nations' environment and material conditions. These systems of governance and exercises of sovereignty often surpassed the sophistication of Westphalian conceptions of the state<sup>104</sup> and were duly recognized as "nations" by European imperial powers, most obviously in the *Royal Proclamation of 1763*.<sup>105</sup>

### 3.6. Ideology, Hegemony and State Power

But what is "the State"? It is an abstract,<sup>106</sup> an artificial man, an arbiter of justice, reward, and punishment.<sup>107</sup> While the classical liberal view of the state is principally one of unbiased adjudication of private contracts and enforcement of peace,<sup>108</sup> other perspectives of the state more readily describe the contemporary reality of the western nation state. James C. Scott argues that the State exercises simplification, through

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<sup>102</sup> Alfred, T. (2009). *Peace, power, righteousness: An indigenous manifesto*. Oxford University Press, USA.

<sup>103</sup> Government of Canada. (2008). *Highlights from the Report of the Royal Commission on Aboriginal Peoples*. <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/157254798501>

<sup>104</sup> Indeed, in his *Ethnological Notebooks* (1880-1882), Karl Marx praised the Iroquois Confederacy's freedoms of democracy and commitment to peace as evidence of a higher society than any society in antiquity or any existing capitalist society. see: Rosemont, F. (1992). *Karl Marx & the Iroquois*. Red Balloon Collective.

<sup>105</sup> Burrows, J. (1997) *Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government in Asch, M. (Ed.) Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*. UBC Press.

<sup>106</sup> Edelman, M. (1964). *The Symbolic Uses of Politics*. University of Illinois Press.

<sup>107</sup> Hobbes, T. (2018). *Leviathan*. Lerner Publishing Group.

<sup>108</sup> Locke, J., & Shapiro, I. (2003). *Two Treatises of Government and A Letter Concerning Toleration*. Yale University Press.

cadastralization, standardized measurements, or the introduction of last names to name but a few, for the purpose of rational management. Such an exercise collapses the means and goals of bureaucracy, business, and predictability into an often contradictory assemblage.<sup>109</sup> Marxist analysis of the state generally focuses on class antagonism and economic production. The economic base and superstructure theory of the state posits that the conditions of production, that is to say the social relations that enable economic production, gives rise to political structures. The ruling class derives its power from the economic development of the state and thus cannot oppose the forces of production.<sup>110</sup> The so called “instrumentalist” Marxist view of the State suggests it is the mechanism through which ruling class individuals assert their common interests, while a third perspective contends that the principal purpose of the State is to manage social cohesion by reducing conflict between classes within the bounds of social order.<sup>111</sup> Finally, Marx described the state as an institutional ensemble: the repressive mechanisms of State power—government, courts, and the police and military—are decidedly concrete *public* manifestations of power, while civil society is institutionally separate from the State.<sup>112</sup>

According to Italian Marxist Antonio Gramsci, the State is “the entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance but manages to win the active consent of those over whom it rules.”<sup>113</sup> For Gramsci, class dominance could be asserted through the coercive violence of the State, or it could be exercised through hegemony.<sup>114</sup> Most simply, hegemony is thought leadership, and involves “developing intellectual, moral and philosophical consent from all major groups in a nation.”<sup>115</sup> As Robert Bocock explains, “...for Gramsci hegemonic leadership fundamentally involved producing a world-view, a philosophy and moral outlook, which other subordinate and allied classes, and groups, in a society

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<sup>109</sup> Scott, J. C. (2008). *Seeing like a state*. Yale University Press.

<sup>110</sup> Jessop, B. (1982). *The Capitalist State: Marxist Theories and Methods*. Martin Robertson & Company Ltd.

<sup>111</sup> Ibid

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Bocock, R. (1986). *Hegemony*. Routledge.

accepted.”<sup>116</sup> Hegemony is not mere indoctrination; maintaining hegemonic domination necessitates building alliances and attending to popular demands, and organizing this support in such a way as to facilitate the long term goals of the ruling class.<sup>117</sup>

Building upon Gramsci, Louis Althusser identifies a *private* manifestation of State power, which he calls the “Ideological State Apparatus.”<sup>118</sup> Ideologies can be understood generally as “systems of basic ideas shared by the members of a social group.”<sup>119</sup> These apparatuses parallel Gramsci’s civil society: the church, educational institutions, the family, trade unions, media, cultural institutions, etc. Althusser contends that these apparatuses are the realization of an ideology, and that ideology necessarily exists within an apparatus, that *ideology is material*.<sup>120</sup> Thus our mode of ideological analysis must be material. And while the primary functionary method of repressive state power is through violence, and ideological state power primarily through ideology, neither can operate free of either violence or ideology.<sup>121</sup> The military and law enforcement, undoubtedly violent, enact State ideology through, for example, foreign policy, “the rule of law,” or selective and uneven enforcement. Families, the church, or trade unions enact ideology through ritual or group dynamics, through discipline and reward according to internal rule sets. Yet the very nature of ideology is obfuscation; ideologies never say “I am ideological.”<sup>122</sup> Modern liberal democratic states internalize and obscure ideological logics through the naturalization and reproduction of organizations, systems, laws, and institutions.

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<sup>116</sup> Ibid

<sup>117</sup> Jessop, B. (1982). *The Capitalist State: Marxist Theories and Methods*. Martin Robertson & Company Ltd.

<sup>118</sup> Althusser, L. (2006). Ideology and ideological state apparatuses (notes towards an investigation). *The anthropology of the state: A reader*, 9(1), 86-98.

<sup>119</sup> Teun A. van Dijk, 2011, Discourse and Ideology. In Teun A. van Dijk (Ed.), *Discourse Studies. A Multidisciplinary Introduction*. Second Edition. (pp. 379-407). London: Sage

<sup>120</sup> Althusser, L. (2006). Ideology and ideological state apparatuses (notes towards an investigation). *The anthropology of the state: A reader*, 9(1), 86-98.

<sup>121</sup> Ibid

<sup>122</sup> Ibid

### 3.7. Neoliberal governmentality, race, and cultural reformation

*"[Capitalist Realism is] more like a pervasive atmosphere, conditioning not only the production of culture but also the regulation of work and education, and acting as a kind of invisible barrier constraining thought and action...neoliberalism has sought to eliminate the very category of value in the ethical sense."*- Mark Fisher, Capitalist Realism

In his lecture series, *The Birth of Biopolitics*, Foucault explains his concept "governmentality" and its relation to neoliberal political economy. Governmentality, literally "governing mode of thought," suggests two things. First, with regards to representation, government "defines a discursive field in which exercising power is 'rationalized'." The delineation and specification of objects, borders, arguments and justification, enable both the definition of problems and for those problems to be addressed. Governing "structures specific forms of *intervention*." Knowledge itself "represents the governing reality."<sup>123</sup> Second, Foucault uses "government" in a more general context than political representation to mean "the conduct of conduct," and extends the term to both governing of self and governing of others.<sup>124</sup>

Foucault argues that neoliberalism consistently expands the economic form within the social sphere, in effect blurring the social and the economic. The economy "embraces the entirety of human action," and market economic rationality comes to govern spheres that are certainly not exclusively economic. Market logics justify limited governmental action, and the government itself becomes an enterprise. For neoliberals, "the state does not define and monitor market freedom, for the market is itself the organizing and regulative principle underlying the state."<sup>125</sup> Rather than the state controlling the market, *the market controls the state*. Simultaneously, the neoliberal subject, *homo economicus*, utilizes market logics, such as cost-benefit calculations, within social spheres such as the family or professional life. Neoliberalism "ties the rationality of the government to the rational action of individuals."<sup>126</sup> Neoliberal

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<sup>123</sup> Lemke, T. (2001). 'The birth of bio-politics': Michel Foucault's lecture at the Collège de France on neo-liberal governmentality. *Economy and Society*, 30.2, 190-207.

<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Ibid

governmentality views *homo economicus* as a “behaviouristically manipulable being” which responds rationally to changes in variables in the environment.<sup>127</sup>

As the divide between the private and public spheres blurs, government becomes a continuum, extending “from political government through to forms of self-regulation,” what Foucault calls “technologies of the self.” Concurrent with the “withdrawal of the state,” neoliberal hegemony develops—through state apparatuses (both ideological and repressive)—“indirect techniques for leading and controlling individuals without at the same time being responsible for them.” By enabling individuals and groups to participate in “solving” societal problems, individuals assume responsibility for failure. Neoliberal rationality seeks to make the economic-rational actor one and the same as a responsible and moral individual.<sup>128</sup>

As part of neoliberalism efforts to “create a social reality that it suggests already exists,” societal failures are cast as the product of individual faults.<sup>129</sup> Neoliberalism discusses race in largely a similar vein. Lester K. Spence argues that neoliberal governmentality has rendered political problems within the Black community in the United States as technical and actionable. Elite projection of technologies of the self, of subjectivity (for those able to govern themselves) and subjection (for those unable to), are “designed to get black people to act according to market principles, in which intra-racial inequality is increasingly posited as being the function of an inability to properly exercise self-governing capacity.”<sup>130</sup>

Race as a discourse is irrelevant because governments have long since formally ended racial discrimination, such as Jim Crow laws in the United States (or exclusionary immigration laws in Canada) and governments have formally “embraced minorities into [their] political and economic fabric.”<sup>131</sup> Michael C. Dawson and Megan Ming Francis, speaking specifically to the conditions in the United States, argue

“Neoliberalism provides putatively “raceless” regulations combined with massive levels of unemployment and incarceration that reinforce white supremacy, particularly for the black poor, across all domains. The result is a racial order that

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<sup>127</sup> Ibid

<sup>128</sup> Ibid

<sup>129</sup> Ibid

<sup>130</sup> Spence, L. K. (2012). The neoliberal turn in Black politics. *Souls*, 14(3-4), 139-159.

<sup>131</sup> Dawson, M. C., & Francis, M. M. (2016). Black politics and the neoliberal racial order. *Public Culture*, 28(1), 23-62.

maintains white supremacy but is much more insidious, since it is now cloaked in the scientific trappings of neoliberalism.”<sup>132</sup>

Dawson and Francis outline how neoliberalism obscures racial logics while celebrating racialized economic relations, including capital accumulation through the criminal justice system and an exploitive credit-debt system. The neoliberal racial order differs from Jim Crow by “moving the mechanisms for maintaining and reproducing white supremacy...from the state sector to the economic sector and civil society.”<sup>133</sup> While racial discrimination is no longer official state policy, much of civil society, economic actors and institutions, and the coercive arm of the state still “work explicitly and implicitly...to maintain a new form of white supremacy.”<sup>134</sup>

### 3.8. The creation of the “Indian”

Before colonization there were no European settlers in North America, but there were no “Indians” either. Instead, there were many sovereign Indigenous nations, with different social organizations, and different rights and responsibilities of membership. “Indians” were created by the colonizers, as both a racial and legal category.<sup>135</sup> In *The Imaginary Indian*, Daniel Francis describes how, in the White imagination, the “Indian” came to represent “everything that was evil and alien.”<sup>136</sup> Othering Indians as uncivilized savages facilitated the creation of “Indians” as a racial and legal category, and served settler colonialism’s goal of the elimination of the native.<sup>137</sup> The shift in perspective, Francis argues, occurred as Indigenous peoples came to be viewed as hindering rather than helping the expansion of the settler state and capital accumulation. Until the 18<sup>th</sup> century, European powers depended upon alliances with the pre-existing sovereign Indigenous nations to ensure military supremacy over their imperial adversaries. Following the War

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<sup>132</sup> Ibid

<sup>133</sup> Ibid

<sup>134</sup> Ibid

<sup>135</sup> TallBear, K. (2013). *Native American DNA: Tribal belonging and the false promise of genetic science*. U of Minnesota Press.; Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>136</sup> Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>137</sup> Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of genocide research*, 8(4), 387-409.

of 1812, however, British administrators in what is now Canada began to view Indigenous peoples as “a social and economic problem rather than a diplomatic one.”<sup>138</sup> By the time of the passing of the Indian Act in 1876, the Crown had purchased vast tracts of Indigenous lands through treaties, extending Crown sovereignty in the process. Colonial expansion was aided and abetted by settler violence, and the exchange of territory for reserve land and cash payments often came about under coercive conditions, with nations accepting small parcels of land in order to stave off annihilation.<sup>139</sup> Settlers vastly outnumbered Indigenous people throughout much of eastern Canada, and the settlement of the prairies had begun in earnest. Settlement disrupted existing social and economic relations, as the land that supplied food and medicine was turned to farms and crossed with infrastructure. While violence played a pivotal role in coercing Indigenous acquiescence to colonial governance, going forward a modern set of technologies — institutions, legislation, policing, education, cadastralization, and accounting — would seek a softer, more politically palatable means to the same ends.<sup>140</sup> The solution to the “Indian problem” was to be through assimilation into the body politic. To save the man, so it went, you must kill the Indian inside him. By training and educating the individual in the ways of the colonizers he may possess the same skills, means, and goals as the Anglo and Franco settlers. The new bureaucratic methods remained violent and coercive to their core.<sup>141</sup>

It is within this modern milieu that the Indian Act came to define who is and is not “Indian.” In 1876 the definition was limited to “any male person of Indian blood reputed to belong to a particular band,” as well as his wife and children. Gender discrimination in the Indian Act meant that any women who married a non-status man, and any children born of such a union, would cease to be considered “Indian” by the Crown. It was not until 1985 that this discrimination was partially rectified.<sup>142</sup> The loss of status for Indigenous women who married out both reduced the number of Indians recognized by

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<sup>138</sup> Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>139</sup> Neu, D., and Therrien, R. (2003). *Accounting for Genocide: Canada’s Bureaucratic Assault on Aboriginal People*. Fernwood Publishing.

<sup>140</sup> Ibid.

<sup>141</sup> Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>142</sup> Ibid

the Crown and severed kinship and social ties to ancestral homelands and communities. In 1982 Kathleen Jamieson described Indigenous women as “citizens minus” due to the gender, economic, and racial discrimination they faced.<sup>143</sup> White legislators expected Indian Status to be a temporary, stop-gap measure that individuals would abandon once properly educated through voluntary enfranchisement. Enfranchisees would receive a portion of reserve land and funds, cease to be legally Indian, and receive the rights and privileges of full Canadian citizenship. In the sixty-three years that enfranchisement was legislated, however, only 250 individuals chose to give up Indian Status.<sup>144</sup> While ultimately unsuccessful in assimilating Indigenous peoples, enfranchisement demonstrated the commitment of the Canadian state to liberalism, a unified property regime, and the perpetuation of the logics of racial capitalism.<sup>145</sup> While the shelving of the White Paper—officially the *Statement of the Government of Canada on Indian Policy*<sup>146</sup>—spelled the end of the federal government’s overtly assimilative policies, Canada’s totalizing liberal project has continued through modern treaties, urbanization, and the supremacy and legitimacy of colonial structures.<sup>147</sup>

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<sup>143</sup> Nickel, S. (2019). *Assembling Unity: Indigenous politics, gender, and the Union of BC Indian Chiefs*. UBC Press

<sup>144</sup> Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>145</sup> See Goldstein, A., & Roy, A. (2017). On the reproduction of race, capitalism, and settler colonialism. *Race and Capitalism: Global Territories, Transnational Histories*, 42-51. Goldstein here talks about the process of allotment in the United States that is not dissimilar in nature and intent to enfranchisement, but was ultimately much more successful in its assimilative goals.

<sup>146</sup> The White Paper was a 1969 position paper released by Indian Affairs that sought to complete the assimilation project through the elimination of Indians as a special status and absolve the federal government of specific responsibilities to Indigenous peoples. Indigenous peoples in Canada organized to denounce the White Paper, and it is often viewed as marking a new era of more organized, visible, and militant activism by Indigenous peoples in Canada. See Cardinal, H. (1969). *The unjust society*. Douglas & McIntyre, for a contemporary response and Nickel, S. (2019). *Assembling Unity: Indigenous politics, gender, and the Union of BC Indian Chiefs*. UBC Press, for a history of the impacts of the White Paper on Indigenous organizing in British Columbia and nationally.

<sup>147</sup> Turner, D. A. (2006). *This is not a peace pipe: Towards a critical indigenous philosophy*. University of Toronto Press.

## Chapter 4.

# Document analysis: *Principles respecting the government of Canada's relationship with Indigenous peoples, 2017*

### 4.1. The Ten Principles

On July 14, 2017, Jody Wilson-Raybould, the first Indigenous Minister of Justice and Attorney General of Canada, presented the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*. The accompanying press release trumpeted that the *Principles* will “serve as the basis for federal engagement with Indigenous peoples on the on-going work of rebuilding and reconciliation, turning the page on the Indigenous-Crown relationship, and creating the space for strong Indigenous governments, political, social, economic, and cultural development and improved quality of life”<sup>148</sup>. The *Principles* are one of several changes made during Trudeau's first term in the name of reconciliation, including committing to adopt UNDRIP and implement the TRC's Calls to Action<sup>149</sup>, splitting Indigenous and Northern Affairs Canada (INAC) into Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC),<sup>150</sup> and the development of the *Recognition and Implementation of Indigenous Rights Framework*<sup>151</sup>. The *Principles* are meant to “guide the review of laws, policies and operational practices”<sup>152</sup> of the Federal Government.

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<sup>148</sup> Canada, Ministry of Justice. (2017, July 14). *Government Of Canada Sets A Principled Foundation For Advancing Renewed Relationships With Indigenous Peoples Based On The Recognition Of Rights*. [https://www.canada.ca/en/department-justice/news/2017/07/government\\_of\\_canadasetsaprincipledfoundationforadvancingrenewed.html](https://www.canada.ca/en/department-justice/news/2017/07/government_of_canadasetsaprincipledfoundationforadvancingrenewed.html)

<sup>149</sup> Tasker, J. P. (2016, December 15). *Justin Trudeau announces 3 steps to help enact Truth and Reconciliation calls to action*. CBC News. <https://www.cbc.ca/news/politics/trudeau-indigenous-leaders-trc-1.3897902>

<sup>150</sup> Tasker, J. P. (2017, December 4). *Indigenous Affairs is no more—Departmental split is underway, Liberal government says*. CBC News. <https://www.cbc.ca/news/politics/indigenous-affairs-dissolution-two-new-departments-1.4432683>

<sup>151</sup> King, H., & Pasternak, S. (2018). *Canada's Emerging Indigenous Rights Framework: A Critical Analysis*. Yellowhead Institute.

<sup>152</sup> Canada, Ministry of Justice. (2017, July 14). *Government Of Canada Sets A Principled Foundation For Advancing Renewed Relationships With Indigenous Peoples Based On The Recognition Of Rights*. [https://www.canada.ca/en/department-justice/news/2017/07/government\\_of\\_canadasetsaprincipledfoundationforadvancingrenewed.html](https://www.canada.ca/en/department-justice/news/2017/07/government_of_canadasetsaprincipledfoundationforadvancingrenewed.html)

While the *Principles* are essentially internal guidelines, they are outwardly aspirational, drawing upon the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), RCAP, the TRC's Calls to Action, as well as section 35 of the *Constitution Act, 1982*<sup>153</sup>. In some respects, the *Principles* are an attempt to legally "operationalize" aspects of UNDRIP, including free, prior and informed consent (FPIC)<sup>154</sup>.

On the surface, Trudeau's positive public rhetoric stands in contrast to that of Stephen Harper's Conservative government, which denied Canada's colonial history at the G20 conference in 2009, and sparked the Idle No More protests in 2012 after introducing Bill C-45, unilaterally imposing changes to the Indian Act.<sup>155</sup> When Harper's government indicated its intent to vote against UNDRIP in 2007, the Government of Canada stated:

"Canada will vote against adoption of the current text because it is fundamentally flawed and lacks clear, practical guidance for implementation, and contains provisions that are fundamentally incompatible with Canada's constitutional framework. It also does not recognize Canada's need to balance Indigenous rights to lands and resources with the rights of others."<sup>156</sup>

While many critics have charged that Trudeau's actions have deviated little from Harper era policies, I would argue that the rhetorical shift is also overstated. Jody Wilson-Raybould herself repeated Harper era rhetoric nearly verbatim, stating that UNDRIP was "unworkable" in her 2016 address to the annual meeting of the Assembly of First Nations (AFN).<sup>157</sup> This is not to say there has been *no* concrete changes. Several of the TRC Calls to Action have been completed, perhaps most notably the

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<sup>153</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>154</sup> Newman, D. G. (2017). *Political Rhetoric Meets Legal Reality: How to Move Forward on Free, Prior, and Informed Consent in Canada*. Macdonald-Laurier Institute.

<sup>155</sup> Wilson, D. (2015). Irreconcilable differences: First Nations and the Harper government's energy superpower agenda. In Healy, T. & Trew, S. (Eds.), *The Harper Record 2008–2015* (pp. 19–36). Canadian Center for Policy Alternatives.

<sup>156</sup> Canada, I. and N. A. (2007, September 12). *Statement by Canada's New Government Regarding the United Nations Declaration on the Rights of Indigenous Peoples*. <https://www.canada.ca/en/news/archive/2007/09/statement-canada-new-government-regarding-united-nations-declaration-rights-indigenous-peoples.html>

<sup>157</sup> Kirkup, K. (2016, July 20). *Government supports Indigenous declaration without reservation: Wilson-Raybould* | CBC News. CBC. <https://www.cbc.ca/news/indigenous/government-supports-undrip-without-reservation-1.3687315>; Wilson, D. (2015). Irreconcilable differences: First Nations and the Harper government's energy superpower agenda. In Healy, T. & Trew, S. (Eds.), *The Harper Record 2008–2015* (pp. 19–36). Canadian Center for Policy Alternatives.

establishment of the National Inquiry into Missing and Murdered Indigenous Women and Girls (TRC Call to Action #41), and work toward ending boil water advisories on reserves is ongoing (though seemingly never complete)<sup>158</sup>, but when it comes to questions of economic development, inherent rights, comprehensive land claims, and reconciliation, Trudeau's Liberal government seems intent on perpetuating White Paper liberalism.<sup>159</sup>

The *Principles* informed the creation and implementation of the *Recognition and Implementation of Indigenous Rights Framework*<sup>160</sup> that many Indigenous critics suggest perpetuates the aims and goals of the White Paper.<sup>161</sup> Indeed, as Glen Coulthard argues, recognition as an ontological structure is assimilative because “in order to be recognized, you have to make yourself like the power structure that is recognizing you.”<sup>162</sup> As Hayden King and Shiri Pasternak argue that while the *Principles* “do represent a shift in rhetoric from previous governments, they nonetheless emphasize the supremacy of the Canadian constitutional framework and constrain the possibilities for self-determination among Indigenous peoples” and are only “innovative insofar as they do not stray far from pre-existing institutions and structures, which entrench the authority of the federal and provincial governments.”<sup>163</sup> Larry Chartrand argues that the *Principles*

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<sup>158</sup> Stefanovich, O., & Jones, R. P. (2021, March 10). *Federal government vows again to end boil water advisories but offers no new target date* | CBC News. CBC. <https://www.cbc.ca/news/politics/ottawa-new-website-term-drinking-water-advisories-1.5943388>

<sup>159</sup> Turner, D. A. (2006). *This is not a peace pipe: Towards a critical indigenous philosophy*. University of Toronto Press.

<sup>160</sup> Canada, I. and N. A. (2018). *Overview of a Recognition and Implementation of Indigenous Rights Framework* [Report]. <https://www.rcaanc-cirnac.gc.ca/eng/1536350959665/1539959903708>

<sup>161</sup> Diabo, R. (2018). Trudeau Government “Rights Recognition Framework” a Plan to Entrench 4th Level of Indigenous Government and Permanent Subjugation of First Nations. *First Nations Strategic Bulletin*, 16(4–9), 1–8.; King, H., & Pasternak, S. (2018). *Canada's Emerging Indigenous Rights Framework: A Critical Analysis*. Yellowhead Institute.; Mahboob, T. (2020, September 27). *Throne speech commitment to reconciliation must go beyond empty words: Indigenous lawyer Pam Palmater* | CBC Radio. CBC. <https://www.cbc.ca/radio/sunday/the-sunday-magazine-for-september-27-2020-1.5735476/throne-speech-commitment-to-reconciliation-must-go-beyond-empty-words-indigenous-lawyer-pam-palmater-1.5738819>; Pictou, S. (2018, June 5). *Mikmaq and the Recognition and Implementation of Rights Framework*. Yellowhead Institute. <https://yellowheadinstitute.org/2018/06/05/mikmaq-rights-framework/>

<sup>162</sup> Coulthard, G. (2017). Dechinta Bush University: Land-based education & Indigenous resurgence. In McFarlane, P. & Schabus, N., *A Manual for Decolonization* (pp. 57–61). Federation of Post-Secondary Educators of BC. [https://fpse.ca/sites/default/files/news\\_files/Decolonization%20Handbook.pdf](https://fpse.ca/sites/default/files/news_files/Decolonization%20Handbook.pdf)

<sup>163</sup> King, H., & Pasternak, S. (2018). *Canada's Emerging Indigenous Rights Framework: A Critical Analysis*. Yellowhead Institute.

are merely “positively framed statements of the existing status quo of Aboriginal rights doctrine or Canadian policy on self-government through treaties. They do not challenge Canada’s unilateral assertion of Crown sovereignty or the discovery doctrine in which this unilateral assertion is grounded. Nor do they question Canada’s ability and right to unilaterally infringe Aboriginal rights in the broader interests of Canadian society.”<sup>164</sup> A charitable reading of “reconciliation,” as it has been used since the 2015 election, suggests it is at best a reform minded project that seeks to craft a kinder, gentler colonial relationship based on partnership and economic development. Even at its best it is an uneven project; many negotiated agreements and memorandums of understanding have been signed that provide funding and certainty to Indigenous nations, or advance projects and reform child and welfare services for example. Despite the appearance of progress, for others reconciliation is yet also another project of assimilation, one that asks more of Indigenous peoples than settlers and the settler state, all while perpetuating colonial relations.<sup>165</sup> The *Principles*’ reliance upon the politics of recognition inherently limits outcomes to those acceptable as part of a multicultural liberal capitalist state. The *Principles*, as one plank of the broader project of reconciliation, warrants further critical examination as a rhetorical and ideological tool of the state.

## **4.2. Presentation, Preamble, the First *Principle*, and UNDRIP**

The *Principles* are an outward facing document. From introduction to presentation, this is no ordinary government white paper, but rather as much public relations as policy document. This is no inscrutable internal document; the relatively short text is spread across 18 pages, and images accompany the preamble and each of the *Principles*. Each *Principle* is set apart from the accompanying commentary, and the text never overwhelms the page. Each image occupies the right third of the page, and present a positive tapestry of Indigenous diversity and the cultural landscape. Far from the notion of the vanishing Indian, the Noble Savage, or the Other that encapsulates all

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<sup>164</sup> Chartrand, L. (2019). Mapping the Meaning of Reconciliation in Canada: Implications for Métis- Canada Memoranda of Understanding on Reconciliation Negotiations. In Borrows, J., Chartrand, L., Fitzgerald, O. E., & Schwartz, R. (Eds.), *Braiding legal orders: Implementing the united nations declaration on the rights of indigenous peoples*. ProQuest Ebook Central <https://ebookcentral-proquest-com.proxy.lib.sfu.ca>

<sup>165</sup> Ibid.

that is evil to White society,<sup>166</sup> the *Principles* present an inclusive, vibrant, and diverse image of Indigenous peoples and landscapes. The images include carefully selected representative icons of the geographic breadth, and cultural diversity of Indigenous peoples in Canada. Inuit and the north are represented by the aurora borealis, a woman in a parka looking directly at the camera, and the sun setting behind an inuksuk. Pacific coast nations are represented by a close-cropped image of a weathered totem pole, and drying smoked salmon could represent interior and coastal nations. Métis representation include the Métis flag flying from a wooden cart, and a smiling man looking at the camera dressed in beaded buckskin, an animal pelt hat, and the Métis sash. Plains nations are represented by a teepee, detail of a head dress, and a young person with their back to the camera dancing in a ribbon skirt with beadwork and feathers. A final image includes two smiling women in eye glasses looking away from the camera, adorned with colourful bead work and clothes, clutching an object made of eagle feathers.<sup>167</sup> The images situate Indigeneity within an inclusive multicultural Canada, simultaneously celebrating Indigenous cultural diversity and reducing Indigeneity to a collection of cultural symbols and landscapes. The images implicitly present an acceptable version of Indigeneity, one of smiling, happy people engaging in cultural activities within the settler state.

The preamble begins by affirming Canada's constitutional framework of recognition and asserts that section 35 of the *Constitution Act, 1982* "holds the promise that Indigenous nations will become partners in Confederation." The preamble continues, asserting that the *Principles* represent a "commitment to good faith, the rule of law, democracy, equality, non-discrimination, and respect for human rights" and acknowledges the "often troubled relationship" between the Crown and Indigenous peoples.<sup>168</sup> Inclusive language is peppered throughout, including recognizing the "diverse needs and experiences of Indigenous women and girls" and that "Indigenous perspectives and rights must be incorporated in all aspects of [Crown-Indigenous relations]." The preamble concludes by urging readers to read the *Principles*

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<sup>166</sup> Francis, D. (1992). *The Imaginary Indian: The image of the Indian in Canadian culture*. Arsenal Pulp Press.

<sup>167</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/cs-jjc/principles.pdf>

<sup>168</sup> Ibid.

“holistically,” acknowledging that implementation will be “contextual,” and asserts that the *Principles* are a “fundamental change in the relationship with Indigenous peoples.”<sup>169</sup>

At first blush, the first *Principle* reads as a departure from the status quo:

“The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.”<sup>170</sup>

The first *Principle* recognizes that Indigenous people have the right to self-determination, including self-government and asserts that this *Principle* “reflects the UN Declaration’s call to respect and promote the inherent rights of Indigenous peoples.”<sup>171</sup> The commentary claims to reflect articles 3 and 4 of UNDRIP, but a closer reading reveals subtle differences between the two with regards to the source and expansiveness of Indigenous rights. Article 3 of UNDRIP states:

“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>172</sup>

Article 4 of UNDRIP states:

“Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”

In UNDRIP, the right of Indigenous peoples to self-determination is innate. All matters of cultural, economic, and political affairs, including “autonomy or self-government” flow from this right.<sup>173</sup> While the first *Principle* agrees with article 3 that Indigenous peoples have the “right to self-determination, including the inherent right of self-government,” these rights require “recognition and implementation” that stem from “relations” with the Crown.<sup>174</sup> The commentary goes so far as to acknowledge that “Indigenous peoples’ ancestors owned and governed the lands which now constitute

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<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> United Nations. (2011). *United Nations Declaration on the Rights of Indigenous Peoples*.

<sup>173</sup> Ibid.

<sup>174</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

Canada prior to the Crown's assertion of sovereignty" and agrees that the government should "respect and promote the inherent rights of Indigenous peoples...especially their rights to their lands, territories and resources" but suggests that these rights are derived from Indigenous peoples "political, economic, and social structures and from their cultures, spiritual traditions, histories, laws, and philosophies."<sup>175</sup> The subtle shift makes "land, territories and resources" out to be not an innate right, as in article 3 of UNDRIP, but rather a claim that must be proven, as outlined in *Delgamuukw v British Columbia*.<sup>176</sup> The *Principles* note that it is "the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination" which, for the federal government, includes "changes in the operating practices and processes of the federal government."<sup>177</sup> Both the judicial test to prove Aboriginal title and comprehensive claims negotiations are expensive, arduous, and long processes; radical changes to these "operating practices and processes" are required if the Crown is to "shift" its relationship with Indigenous peoples to one "based on recognition and respect for the right to self-determination." Indigenous peoples' ability to "define and govern themselves as nations and governments" and to determine "the parameters of their relationships with other orders of governments"<sup>178</sup> are hindered by fact that options remain limited to those offered up by the Crown, including that of the developing Recognition and Implementation of Indigenous Rights Framework<sup>179</sup>. Whether the *Principles* represents a "fundamental change" to the government of Canada's relationship with Indigenous peoples depends entirely on the actions of the government itself, not merely the aspiration statements contained within this document.

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<sup>175</sup> Ibid.

<sup>176</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

"In order to make out a claim for aboriginal title, the aboriginal group asserting title must satisfy the following criteria: (i) the land must have been occupied prior to sovereignty, (ii) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation, and (iii) at sovereignty, that occupation must have been exclusive." Para. 143

<sup>177</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>178</sup> Ibid.

<sup>179</sup> King, H., & Pasternak, S. (2018). Canada's Emerging Indigenous Rights Framework: A Critical Analysis. *Yellowhead Institute*.

### 4.3. The Second, Third, and Fourth *Principles*, and the origins of Canadian Constitutional legitimacy

The second, third, and fourth *Principles* draw directly from Canada's constitutional legal framework. The second *Principle* states:

“The Government of Canada recognizes that reconciliation is a fundamental purpose of section 35 of the *Constitution Act, 1982*.”<sup>180</sup>

Legal discourse of “reconciliation” as it relates to Aboriginal rights did not begin in earnest in Canada until 1990, when Chief Justice Dickson ruled in *R v Sparrow* that “Federal power must be reconciled with federal duty and the best way to achieve that reconciliation is to demand the justification of any government regulation that infringes upon or denies aboriginal rights.”<sup>181</sup> In *Sparrow* reconciliation was related to the “recognition and affirmation” clause in section 35 (1) of the *Constitution Act, 1982*,<sup>182</sup> providing the thread that leads to the above claim of the second *Principle*. The Supreme Court's conception of reconciliation shifted dramatically half a decade later. Chief Justice Lamer prefaced his infamous *Delgamuukw* ruling — “Let us face it, we are all here to stay” — by affirming his own ruling in *Van der Peet* a year prior that “a basic purpose” of section 35 is “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.”<sup>183</sup> This shift was irrespective of the two reports RCAP released relating to Crown-Aboriginal relations more than a year prior to the decision that emphasized “co-existence” and “partnership” rather than extinguishment. It was almost as if reconciliation was a doctrine the Supreme Court justices “pulled from thin air.”<sup>184</sup> Leaving aside that “reconciliation” could not have been a “fundamental purpose” of section 35 upon its writing as it had yet to enter the popular discourse, the Supreme Court's definition of reconciliation in *Van der Peet* and later cases creates a *barrier* to the recognition of rights and title. As Anishinaabe jurist and academic John Borrows argues,

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<sup>180</sup> *ibid*

<sup>181</sup> *R v Sparrow* [1990] 1 SCR 1075.

<sup>182</sup> Stanton, K. (2017). Reconciling Reconciliation: Differing Conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission. *Journal of Law and Social Policy*, 26, 21.

<sup>183</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

<sup>184</sup> Barsh, R. L., & Henderson, J. Y. (1996). The Supreme Court's Van der Peet trilogy: naive imperialism and ropes of sand. *McGill LJ*, 42, 993.

“Courts have read Aboriginal rights to lands and resources as requiring a reconciliation that asks much more of Aboriginal peoples than it does of Canadians. Reconciliation should not be a front for assimilation.”<sup>185</sup> I would argue that reconciliation has become yet another rhetorical and legal tool reproducing colonial power relations. Dwight G. Newman, citing *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, notes another more recent shift in the Supreme Court of Canada’s interpretation of reconciliation, arguing that “reconciliation is now something that structures the processes of current interaction between the Crown and Aboriginal peoples.”<sup>186</sup> This process based approach to reconciliation is evident in many of the *Principles* and in other Trudeau era reconciliation efforts.<sup>187</sup>

In the commentary of the second *Principle*, reconciliation is explicitly tied to recognition, stating that “reconciliation requires recognition of rights” and later “Reconciliation, based on recognition, will require hard work, changes in perspectives and actions, and compromise and good faith, by all.”<sup>188</sup> Implicitly, the second *Principle*, and the *Principles* as a whole, rely upon the *politics of recognition*, that is, according to Coulthard, the “expansive range of recognition-based models of liberal pluralism that seek to ‘reconcile’ Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state.”<sup>189</sup> I will further explore the basis for and ramifications of the politics of recognition in section 5. The commentary hints at the recently concluded Truth and Reconciliation commission by urging us all to acknowledge “the wrongs of the past, know our true history, and work together to implement

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<sup>185</sup> Borrows, J. (2001). Domesticating doctrines: Aboriginal peoples after the Royal Commission. *McGill LJ*, 46, 615.

<sup>186</sup> Newman, D. G. (2008). Reconciliation: Legal conception (s) and faces of justice. In Whyte, J. (Ed.) *Moving Toward Justice: Legal Traditions and Aboriginal Justice*. (pp. 80-87). Purich Publishing.

<sup>187</sup> See, for example, the “Reconciliation Roundtables” and the Implementation of Rights and Recognition framework.

<sup>188</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>189</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

Indigenous rights.”<sup>190</sup> While the *Principles* lack of specificity can be attributed in part to their function as general guidelines, the omission of any detail as to what the alluded past wrongs and true histories entail serves to whitewash the active role of the Federal Government, and the Department of Justice specifically, had and continues to have in upholding processes of colonial assimilation and cultural genocide. The second *Principle* concludes by explicitly tying the *Principles* and reconciliation more generally to UNDRIP and the TRC Calls to Action, as well as “constitutional values.” A generous reading of the *Principles* shows inspiration from a few of the TRC Calls to Action, notably #43 (implementation of UNDRIP), and #45.iii (renewed treaty relationships based on mutual recognition, respect, and responsibility),<sup>191</sup> but the *Principles* do not satisfy in full either of these Calls to Action.

The Third *Principle* states:

“The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.”<sup>192</sup>

The accompanying commentary reaffirms the Crown’s “fiduciary duty” born out of the *Royal Proclamation of 1763*, but also suggests that the “overarching aim” of the *Principles* is “to ensure that Indigenous peoples are...full partners in Confederation.”<sup>193</sup> This line is lifted directly from TRC Call to Action #45, section iv. Call to Action #45 calls for a “Royal Proclamation of Reconciliation” developed with Aboriginal peoples.<sup>194</sup> Crown-Indigenous Relations and Northern Affairs Canada cites the adoption and release of the *Principles* as evidence that the Crown is working to implement Call to Action

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<sup>190</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>191</sup> Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to Action*. [http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf)

<sup>192</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>193</sup> Ibid

<sup>194</sup> Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to Action*. [http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf)

#45.<sup>195</sup> CBC's *Beyond 94* project lists Call to Action #45 as not yet started<sup>196</sup> and the Yellowhead Institute's Calls to Action 2020 status update lists it as incomplete.<sup>197</sup> In their methodology section, Yellowhead's Eva Jewell and Ian Mosby note that "'In Progress,' tends to give a false sense of advancement without meaningful structural or policy changes in the areas of reconciliation."<sup>198</sup> The government is doing just this, masking their own inaction in completing Calls to Action, by suggesting that the mere existence of the *Principles* is evidence of progress. This renders the *Principles* as more of a public relations exercise than the "fundamental change" it claims to be.

The fourth *Principle* states:

"The Government of Canada recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government."<sup>199</sup>

The accompanying commentary begins by directly affirming "the inherent right to self-government as an existing Aboriginal right within section 35" but the remainder of the commentary walks back much of that directness. "Recognition" is the "starting point of discussions *aimed* at interactions"; "Indigenous people have a unique connection and constitutionally protected *interest* in their lands" (emphasis added). The commentary ends by summarizing nation-to-nation relationships as inclusive of a number of half measures and uninspiring procedural aspirations. According to Canada, the nation-to-nation relationship includes "mechanisms" and "processes" that "recognize," effective decision making "involving" Indigenous peoples, "mechanisms to support" transitioning away from colonial governance, and "ensuring...the space for the operation" of Indigenous law.<sup>200</sup> The fourth *Principle* embeds and subordinates Indigenous self-

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<sup>195</sup> Canada, Crown-Indigenous Relations and Northern Affairs Canada. (2018, April 23). *Royal Proclamation and Covenant of Reconciliation*. <https://www.rcaanc-cirnac.gc.ca/eng/1524503097736/1557513982301>

<sup>196</sup> *Beyond 94: Truth and Reconciliation in Canada*. (2020, April 12). <https://newsinteractives.cbc.ca/longform-single/beyond-94>

<sup>197</sup> Jewell, E., & Mosby, I. (2020). *Calls to Action Accountability: A 2020 Status Update on Reconciliation*. <https://yellowheadinstitute.org/wp-content/uploads/2020/12/yi-trc-calls-to-action-update-full-report-2020.pdf>

<sup>198</sup> Ibid

<sup>199</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>200</sup> Ibid

government within the framework of constitutional federalism and the whims of the Federal Government. While aspiring to Indigenous self-government as a “distinct order of government” the commentary suggests such an order would at best become a partner in decision making and falls short of the more direct and emancipatory language of Article 3 of UNDRIP that defines Indigenous self-determination as inclusive of the ability to “freely determine their political status...”<sup>201</sup> Evidently Canada is still intent on ascribing political status, be it through litigation or legislation, and is intent on narrowly defining and regulating what Indigenous self-government entails.

#### **4.4. The fifth *Principle*: treaties and the origins of colonial recognition**

The fifth *Principle* states:

“The Government of Canada recognizes that treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.”<sup>202</sup>

The *Principles* recognize the pluralistic nature of Indigenous peoples, but sidesteps the sticky question of just *who* is considered Indigenous, and thus recognized as such by the colonial government. In the fifth *Principle*, the Crown agrees that reconciliation can look different depending on “different nations, groups, and communities,” but “nations, groups and communities” is ill-defined. This point begs further exploration, and I will return to the questions of recognition and membership in the Chapter 5. The commentary continues by asserting that the *Principles* are the “modern expression” of historic treaties, and recognizes the “role that treaty-making has played in building Canada” but simultaneously diminishes the agency of Indigenous nations by suggesting that mutual “recognition and respect” stems from treaties, including the Royal Proclamation of 1763, and that having the “choice and opportunity to enter into treaties, agreements, and other constructive arrangements with the Crown” again stems from section 35 of the *Constitution Act, 1982*.<sup>203</sup> If the *Principles* are indeed the “modern

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<sup>201</sup> United Nations. (2011). *United Nations Declaration on the Rights of Indigenous Peoples*.

<sup>202</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>203</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

expression” of historic treaties, what does this say for the actual modern treaties negotiated? And what constitutes historic? Certainly, the Royal Proclamation and Treaty of Niagara reflect mutual recognition by sovereign nations, and the numbered treaties, the last of which was signed in 1921, could reasonably be considered “historic” as they predate by at least a half century the commencement of the “modern” era of treaty making that began with *Calder v British Columbia*.

In *Calder v British Columbia* the Supreme Court of Canada affirmed that the Royal Proclamation was a statute of the Crown that compelled the nascent settler state to form treaties with the existing Indigenous nations as a condition for extending Crown sovereignty in British North America. The Royal Proclamation is described as the “Indian Bill of Rights” and was “a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories.”<sup>204</sup> Cree scholar Sharon H. Venne asserts that the onus of early treaty making in British North America as having come from the colonists own laws:

“When the colonizers arrived on the northern part of Great Turtle Island, they were mostly from the British Isles carrying English common law with them. When they came into our territories, their own laws dictated the need to have our consent to enter our territories.”<sup>205</sup>

While the Royal Proclamation recognized the need for treaties, the centering of the colonial constitutional framework in the *Principles* diminishes the active role First Nations played in crafting such agreements. Venne continues:

“We were living within our territories under our own laws using our own governments for thousands of years prior to the colonizers arriving. Indigenous Nations have a very defined method for entering into Treaties. Our ancestors had been entering into Treaties with other Indigenous Peoples prior to the arrival of

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<sup>204</sup> *Calder v British Columbia*, [1973] SCR 313

“The Proclamation was an Executive Order having the force and effect of an Act of Parliament and was described by Gwynne, J. in *St. Catherine’s Milling* case at p. 652 as the ‘Indian Bill of Rights’: see also *Campbell v. Hall*. Its force as a statute is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories.” [Pg 394-395]

<sup>205</sup> Venne, S. (1998). What is the Meaning of Sovereignty? *Indigenous Women’s Network*. (retrieved from <https://mgouldhawke.wordpress.com/2020/08/02/what-is-the-meaning-of-sovereignty-sharon-h-venne-1998/>)

the colonizers. Treaty making was not a new concept for Indigenous Peoples. It was not a concept brought across the pond by the colonizers.”<sup>206</sup>

John Borrows argues that interpreting the *Royal Proclamation* requires understanding the context in which the document was crafted, and that relying upon the written words of the *Proclamation* alone “would conceal First Nations perspectives and inappropriately privilege one culture’s practice over another.”<sup>207</sup> Beyond the written word are the deputations, speeches, and exchange of wampum at Niagara in 1764 that codified the *Royal Proclamation* as treaty. The text of the *Royal Proclamation* “uncomfortably straddled the contradictory aspirations of the Crown and First Nations” and “attempted to convince First Nations that the British would respect existing political and territorial jurisdiction by incorporating First Nations understandings of this relationship in the document.”<sup>208</sup> At Niagara, statements and promises made explicit some principles that had otherwise been implicit, “including express guarantees of First Nations sovereignty.” There was an understanding by the presiding British representative, Sir William Johnson, that the Royal Proclamation and Treaty of Niagara did not and should not be seen as an attempt by the British to assert sovereignty over First Nations and that an attempt to subject or subordinate First Nations would have dire consequences.<sup>209</sup> Burrows argues First Nations understandings of the Proclamation were born out through conduct over the following decades, including recitations of agreements made at the Treaty of Niagara and references to preserved copies of the *Royal Proclamation* by First Nations while receiving gifts and signing treaties with the British.<sup>210</sup> Burrows argues that understanding the *Royal Proclamation* in tandem with the *Treaty of Niagara* undermines colonial interpretations that “regard First Nations as subservient to or dependant upon the Crown in preserving their rights” and that such

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<sup>206</sup> Ibid

<sup>207</sup> Burrows, J. (1997) Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government in Asch, M. (Ed.) *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*. Vancouver: UBC Press.

<sup>208</sup> Burrows, J. (1997) Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government in Asch, M. (Ed.) *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*. Vancouver: UBC Press.

<sup>209</sup> Ibid

<sup>210</sup> Ibid

interpretations “should be recognized for what they are – a discourse that dispossesses First Nations of their rights.”<sup>211</sup>

Burrows demonstrated the lengths to which First Nations acted “in accordance with” the *Royal Proclamation* in the decades following the *Treaty of Niagara* while Canada has repeatedly demonstrated its willingness to forego its responsibilities. The fifth *Principle* asserts that new agreements between the Crown and Indigenous peoples “should be based on the recognition and implementation of rights and not their extinguishment, modification, or surrender.”<sup>212</sup> Such a lofty statement contrasts the explicit extinguishment of the right to land in *Treaty Number 8*: “the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included.”<sup>213</sup> Modern treaties such as the *Maa-Nulth First Nations Final Agreement* similarly extinguishes rights but under the guise of certainty. Section 1.11.1 states: “This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, of each Maa-nulth First Nation.” Further, section 1.11.6 “releases Canada...from all claims, demands, actions or proceedings,” both past and future, but does not exclude participation in specific claims.<sup>214</sup> While the language in modern treaties has become obfuscating legalese, the blunt land grabbing sentiment remains. I believe that the “modern

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<sup>211</sup> Ibid, 172: “An understanding of First Nations rights as guaranteed by the Royal Proclamation/Treaty of Niagara would overcome much of the ethnocentrism that has informed colonial legal history in Canada. First Nations would then be regarded as active participants in the formulation and ratification of their rights in Canada. This would go a long way to dispelling notions found in Canadian legal and political discourse that regard First Nations as subservient to or dependant upon the Crown in pressing and preserving their rights. In light of the history and subsequent agreements in relation to the Treaty of Niagara, the Royal Proclamation can no longer be interpreted as a unilateral declaration of the Crown. As a result, the Royal Proclamation can no longer be interpreted as a document which undermines First Nations rights. Colonial interpretations of the Royal Proclamation should be recognized for what they are - a discourse that dispossesses First Nations of their rights.”

<sup>212</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>213</sup> Canada, Indigenous and Northern Affairs. (2008, November 3). *Treaty Texts: Treaty No. 8 [Agreement]*. <https://www.rcaanc-cirnac.gc.ca/eng/1100100028813/1581293624572#chp4>

<sup>214</sup> Nations, M. N. F. (2009). *Maa-nulth First Nations Final Agreement*. Indian and Northern Affairs Canada. <https://www.aadnc-aandc.gc.ca/eng/1100100022581/1100100022591>

expression” that the *Principles* reflect is that of the extinguishment of the numbered treaties rather than the mutual recognition of the Royal Proclamation.

Finally, the fifth *Principle* is imbued with neoliberal conceptions of governance; Indigenous nations have the “choice and opportunity” to enter into “innovative and flexible agreements” with the Crown. The *Principles* envision a devolvement of responsibility, one that enables Indigenous peoples to “determine and develop their own priorities and strategies for organization and advancement...including the right to freely pursue their economic, political, social, and cultural development.”<sup>215</sup> While the specific language of such “flexible agreements” is not prescribed by the *Principles* themselves, the neoliberal language on display suggests such agreements will seek to narrowly define the federal government’s responsibilities in terms of market relations.

#### **4.5. The Sixth and Seventh *Principles*: consent and infringement**

The sixth and seventh *Principles* will be analyzed together due to the overlapping nature of consent and infringement. The sixth *Principle* states:

“The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.”

The seventh *Principle* states:

“The Government of Canada recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown’s fiduciary obligations.”<sup>216</sup>

The sixth *Principle* uses the language of UNDRP in “free, prior, and informed consent” (FPIC), but again stays within the existing constitutional framework as defined by the Supreme Court. The sixth *Principle* also references the *Tsilqot’in* decision, noting that “The Supreme Court of Canada has confirmed that Aboriginal title gives the holder

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<sup>215</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

This final sentence of the Fifth *Principle* lifts its phrasing directly from Article 3 of UNDRIP.

<sup>216</sup> Ibid.

the right to use, control, and manage the land and the right to the economic benefits of the land and its resources.”<sup>217</sup> As noted in the seventh *Principle’s* commentary, this right is subject to “justifiable infringement” as outlined by the Supreme Court in *Delgamuukw v. British Columbia*. “The development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims”<sup>218</sup> are all recognized as justifiable infringement of Aboriginal rights. This incredibly broad definition enables the government to justify just about any project it so chooses to support.

The sixth *Principle’s* commentary gushes that “This principle acknowledges the Government of Canada’s commitment to new nation-to-nation, government-to-government, and Inuit-Crown relationships that builds on and goes *beyond the legal duty to consult*”<sup>219</sup> (emphasis added) and the seventh *Principle* notes that “meaningful engagement with Indigenous peoples is...mandated” if the Crown seeks to infringe Aboriginal rights. This is but another example of positively stating the constitutional status quo. *Haida Nation v. British Columbia* defined the “legal duty to consult” as being part of the Crown’s fiduciary duty, and that the degree to which consultation and accommodation are required is contingent upon both the “strength of the claim” and the severity of the impacts. The SCC also noted that the Crown is under no obligation to reach an agreement but rather must be committed to “a meaningful process of consultation in good faith.”<sup>220</sup> Indeed, the failure of governments to perform the legal minimum—the legal duty to consult—may result in expensive litigation from both project proponents and First Nations. It is less out of benevolence than risk management that the Crown and private industry consult First Nations, and even still project proponents and governments will often do the bare minimum consultation required to proceed with development. Further, while there is clear precedence for “meaningful engagement” surrounding resource development projects, a legal duty to consult with regards to drafting legislation has yet to be established. If the Crown is intent upon exceeding the

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<sup>217</sup> Ibid.

<sup>218</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

<sup>219</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>220</sup> *Haida Nation v. British Columbia (Ministry of Forests)*. [2004] SCC 73

legal duty to consult, heeding Article 19 of UNDRIP by formalizing consultation processes for legislative changes seems like an obvious choice.<sup>221</sup>

Finally, the sixth *Principle* merely *aims* to secure FPIC, implying a project could still proceed without consent. The weasel words in this *Principle* work to head off any suggestion that Canada's adoption of UNDRIP results in veto powers for Indigenous nations. It is clear that the Crown's good intentions matter little, as the status quo of "justifiable infringement" by governments and industry perpetuates the colonial project of the elimination of the native and commodification of Indigenous lands for private capital accumulation. That is not to say that a project proceeding without the express consent of the rightful title holders will proceed easily and quietly; resistance comes in many forms, and government and industry failure to come to a negotiated agreement can lead to expensive litigation and direct action. Secwépemc St'uxwtews Chief Ken Basil captured this sentiment well, when, in August 1975, the Bonaparte Indian Band erected a highway blockade in Cache Creek to protest inadequate housing on reserve, he said, "We have tried many ways of communicating our problems to both provincial and federal governments...but the only thing that gets any attention is the use of force."<sup>222</sup> Simmering disputes can, to the unfamiliar observer, suddenly escalate into conflict and direct action. Media portrayals of blockades as singular, decontextualized events allows them to be dismissed as "aberrant and those behind them as illegitimate."<sup>223</sup> Since the 1980s Indigenous nations and individuals have blockaded highways, railways, and resource roads extensively to pressure governments and industry alike. Often the mere threat of a blockade can bring governments to the table. Blockades have been used extensively to halt logging, resort and tourism development, further land claims, advocate for fishing rights, and as solidarity actions with other nations.<sup>224</sup> Occupations of

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<sup>221</sup> United Nations. (2011). *United Nations Declaration on the Rights of Indigenous Peoples*.

Article 19 of UNDRIP states that: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

<sup>222</sup> Nickel, S. (2019). *Assembling Unity: Indigenous politics, gender, and the Union of BC Indian Chiefs*. UBC Press.

<sup>223</sup> Blomley, N. (1996). "Shut the Province Down": First Nations Blockades in British Columbia, 1984-1995. *BC Studies: The British Columbian Quarterly*, (111), 5-35.

<sup>224</sup> Ibid.

government offices have similarly been used as a pressure tactic.<sup>225</sup> Blockades are often met with violent police removals, and governments can often distance themselves from culpability through appeals to due process, the rule of law, or arms-length operational decisions.<sup>226</sup> I would argue that such appeals are both in bad faith and reflect the liberal state consensus, and reflect the systemic racism of the difference-blind White Paper liberalism. A 2019 study by the Yellowhead Institute found that court injunctions overwhelmingly benefit industry over First Nations: only one in five injunctions filed by First Nations awarded were successful while more than three in four injunctions filed by corporations against first nations were successful.<sup>227</sup> “Immediate financial harm” to corporations often leads to successful injunction filings whereas future harms to First Nations, the cutting of trees for example, are often rejected by the courts. In considering injunction filings by both First Nations and industry, Canadian courts have repeatedly rejected First Nations assertions that blockades are erected in accordance with Indigenous law, and have denied First Nations “proprietary interest in the land.”<sup>228</sup>

The case of the Unist’ot’en reoccupation camp in Wet’suwet’en territory (in what is today northern British Columbia) is illustrative of how the colonial legal system is inherently violent toward those that threaten the viability of industrial development and the expansion of the colonial state, and demonstrates the mechanisms the intertwined apparatus of State and capital will pursue to preserve capital accumulation. Self-described as a reoccupation rather than a protest camp, Unist’ot’en is a powerful site of Indigenous refusal and resurgence.<sup>229</sup> I will expand upon the politics of refusal in the next section, but refusal is, in short, a rejection of colonial institutions that centers

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<sup>225</sup> Nickel, S. (2019). *Assembling Unity: Indigenous politics, gender, and the Union of BC Indian Chiefs*. UBC Press.

<sup>226</sup> The deference to law enforcement operational decisions has repeatedly been used by governments of all stripes to shirk accountability, most recently in the case of the ongoing arrests in Fairy Creek. See for example, Cox, E. (2021, June 1). *B.C. government avoids questions about RCMP conduct at Fairy Creek*. Ricochet. <https://ricochet.media/en/3673>

<sup>227</sup> King, H., & Pasternak, S. (2019). Land Back: A Yellowhead Institute Red Paper. *Yellowhead Institute*.

<sup>228</sup> Kruse, M., & Robinson, C. (2019). *Injunctions by First Nations: Results of a National Study*. Yellowhead Institute. <https://yellowheadinstitute.org/wp-content/uploads/2019/11/injunction-brief.pdf>

<sup>229</sup> Midzain-Gobin, L. (2019). 'Come out and live on your land again': sovereignty, borders and the Unist’ot’en camp. *International Journal of Migration and Border Studies*, 5(1-2), 12-28.

Indigenous sovereignty and nationhood.<sup>230</sup> In 2009, Unist'ot'en erected a checkpoint at the entrance to its territory, later adding cabins in the direct line of several proposed pipeline developments, a traditional Pithouse, and a healing centre.<sup>231</sup> The approved route of the Coastal GasLink pipeline is opposed by Wet'suwet'en hereditary chiefs, the rightful title holders of the territory as recognized by the *Delgamuukw* decision<sup>232</sup>. In November 2018 Coastal GasLink filed for and received a court injunction to allow passage of work crews into Unist'ot'en territory,<sup>233</sup> and in January 2019 RCMP began their violent enforcement of said injunction, including the use of "lethal overwatch" and the exclusion of news media from arrest sites.<sup>234</sup> In January 2020, Wet'suwet'en hereditary chiefs issued an eviction notice to Coastal GasLink employees to leave their territory immediately, and another round of violent RCMP enforcement followed in February 2020. Solidarity actions intensified in February and March, only to end with the onset of the Covid-19 pandemic. Actions included sabotaged and blockaded rail lines, blockades of highways, port accesses, and ferries, and numerous demonstrations across Canada and internationally.<sup>235</sup> The actions themselves also forced the Crown to seek alternative arrangements and led to the signing of a Memorandum of Understanding with the Wet'suwet'en hereditary chiefs on February 29, 2020.<sup>236</sup> While not a negotiated settlement, the MOU is a positive change from outright rejection and litigation, as it suggests a real willingness to engage with and legitimate Indigenous governance structures it did not have a hand in creating. But it also demonstrates the

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<sup>230</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>231</sup> *Timeline of the Campaign: A Timeline*. (n.d.). Retrieved July 7, 2021, from <http://unistoten.camp/timeline/timeline-of-the-campaign/>

<sup>232</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

<sup>233</sup> *ACTION ALERT - Application for Injunction Served to Unist'ot'en Camp*. (n.d.). Retrieved July 7, 2021, from <https://unistoten.camp/action-alert-application-for-injunction-served-to-unistoten-camp/>

<sup>234</sup> Parrish, W., & Dhillon, J. (2019, December 20). *Exclusive: Canada police prepared to shoot Indigenous activists, documents show*. The Guardian. <http://www.theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents>

<sup>235</sup> APTN National News. (2020, February 26). *Three Gitxsan hereditary chiefs arrested as solidarity actions flare across the country*. <https://www.aptnnews.ca/national-news/three-gitxsan-hereditary-chiefs-arrested-as-solidarity-actions-flare-across-the-country/>

<sup>236</sup> Government of Canada. (2020, May 14). *Memorandum of Understanding Between Canada, British Columbia and Wet'suwet'en as agreed on February 29, 2020*. <https://www.rcaanc-cirnac.gc.ca/eng/1589478905863/1589478945624>

reactivity rather than proactivity of the Crown, and the degree of economic disruption and public outcry necessary for the Crown to come to the negotiating table. It should be noted that the MOU was signed despite repeated attempts by the Crown to “conquer and divide” the community by creating and supporting the Wet’suwet’en Matriarchal Coalition with Coastal Gas Link in 2015. The Coalition, composed of three Wet’suwet’en women with dubious leadership credentials, held community meetings with the Crown and industry without the involvement of the hereditary chiefs, and attempted to delegitimize hereditary leadership.<sup>237</sup>

Among those arrested in February 2020 was Gidumt’en clan spokesperson Molly Wickham (Sleydo’). During the Ransom Economy Webinar hosted by the Yellowhead Institute on December 9, 2020 she said:

“...the more we live as Indigenous People, the more that we have, the more freedom that we have, the more we can envision the hope and the realization of our liberation as Indigenous People. And that is what is such a threat to the state, that is what is such a threat to the economy.”<sup>238</sup>

The “threat” presented by Indigenous people living on the land and exercising their culture is an existential one to the settler colonial state in that it exposes the incomplete nature of the colonial project. Further, the framework of racial capitalism illuminates how the intertwined apparatuses of the state and private capital accumulation make “the spectre of race” out to be an existential threat to the state itself, enabling “extreme or surplus violence” as a “counterviolence to the violence of race.”<sup>239</sup> We can also see the inherent violence of banal colonial “engagement” processes and the “rule of law”—injunctions and enforcement, the consultation process, and construction permits. It is these institutions that enable Coastal GasLink to justifiably infringe upon

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<sup>237</sup> Korte, K. (2020, March 11). Wet’suwet’en Matriarchal Coalition funded by B.C., Coastal GasLink to “divide and conquer.” *The Martlet*. <https://www.martlet.ca/wetsuweten-matriarchal-coalition-funded-by-b-c-coastal-gaslink-to-divide-and-conquer/>; Bracken, A. (2020, February 14). *The Wet’suwet’en are more united than pipeline backers want you to think*. <https://www.macleans.ca/opinion/the-wetsuweten-are-more-united-than-pipeline-backers-want-you-to-think/>

<sup>238</sup> The Leap (2020, December 9) *The Ransom Economy: What #ShutDownCanada Reveals About Indigenous Land Rights* [Video] Youtube. <https://www.youtube.com/watch?v=787R8HDcEOM> as cited in Pasternak, S., Metallic, N., Numata, Y., Sekharan, A., Galley, J., & Wong, S. (2021). *Cash Back: A Yellowhead Institute Red Paper*.

<sup>239</sup> Melamed, J. (2015). Racial capitalism. *Critical Ethnic Studies*, 1(1), 76-85.

Wet'suwet'en Aboriginal rights, and demonstrates how Canada's legal system is structured by racial capitalist and settler colonial logic. All of this is to say that the disproportionate and unnecessary violence waged against the Unist'ot'en reoccupation camp is not an aberration but rather the status quo for the colonial nation state, and demonstrates the disingenuity of "reconciliation" as a whole, and the sixth *Principle* specifically. Clearly the aim isn't for FPIC nor a nation-to-nation relationship, but rather "partnerships" with Indigenous peoples within a liberal multicultural capitalist nation state.

#### **4.6. Diversity, Reconciliation and the Eighth, Ninth, and Tenth *Principles***

The eighth and ninth *Principles* both deal with reconciliation. The eighth *Principle* emphasizes the financial relationship between the Crown and Indigenous peoples, while the ninth *Principle* focuses on the political relationship. Both *Principles* embody neoliberal conceptions of governmentality, downloading responsibility, and financial discipline. The eighth *Principle* states:

"The Government of Canada recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development."<sup>240</sup>

The eighth *Principle* narrowly defines reconciliation in economic and financial terms, and the commentary nods to the land question in these terms. The commentary links effective Indigenous self-governance to "access to land and resources" and the ability to generate wealth. The positive statements imply a continuation of White Paper liberalism in that Federal responsibility will be reduced through a "fairer fiscal relationship."<sup>241</sup>

The ninth *Principle* states:

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<sup>240</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

<sup>241</sup> Ibid.

“The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.”<sup>242</sup>

The ninth *Principle* and accompanying commentary emphasizes neoliberal buzz words like “flexibility, innovation, and diversity.” While seemingly a welcome change from rigid, top-down, and paternalistic approaches to governance, there is a creeping neoliberal governmentality inherent within this approach. Neoliberal governmentality rationalizes power, renders complex social issues technically actionable, and serves to reproduce neoliberal market logics within the individual.<sup>243</sup> The Crown need not impose colonial systems upon Indigenous governments by force when such systems are readily adopted. By adopting the means and goals of contemporary capitalism, that is to say the primacy of the individual, and the accumulation of wealth above all else, Indigenous nations face the prospect of losing themselves. It is, as Kam’ayaam/Chachim’multhnii (Cliff Atleo) asserts, that “capitalism cannot be Indigenous without radically altering it into something else, and Indigenous people cannot act as capitalists without radically altering their own worldviews and principles, potentially beyond recognition.”<sup>244</sup> Canada’s hegemonic project cannot be complete without this radical alteration of the self. But unlike earlier assimilationist aims, the neoliberal multicultural consensus encourages “cultural development,” as long as that cultural development does not challenge the supremacy of capital accumulation or the sovereignty of the Canadian state.

The tenth and final *Principle* states:

The Government of Canada recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.<sup>245</sup>

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<sup>242</sup> Ibid.

<sup>243</sup> Lemke, T. (2001). ‘The birth of bio-politics’: Michel Foucault’s lecture at the Collège de France on neo-liberal governmentality. *Economy and Society*, 30.2, 190-207.; Spence, L. K. (2012). The neoliberal turn in Black politics. *Souls*, 14(3-4), 139-159.

<sup>244</sup> Atleo, C. G. (2015). Aboriginal Capitalism: Is Resistance Futile or Fertile? *The Journal of Aboriginal Economic Development*, 9(2), 11.

<sup>245</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

The final *Principle* is innocuous enough and merely recognizes that Indigenous people are not a monolith and acknowledges the different histories of engagement with the Crown by Indigenous people across what is today Canada.

## Chapter 5.

### Recognition, reconciliation, and refusal

#### 5.1. Colonial Recognition and the Canadian Constitutional Framework

Each of the ten *Principles* begins with the same refrain: “The Government of Canada recognizes that...”<sup>246</sup> “To recognize” can mean to acknowledge, or to remember again, or to accept a legal statute. In the *Principles*, the Government repeatedly “recognizes” its legal and moral obligations to Indigenous peoples. While the *Principles* are often written in a way to appear aspirational, they stray little from the legal status quo. In the sixth *Principle*, for example, the Government “acknowledges” the need to go “beyond the legal duty to consult” to cultivate a nation-to-nation relationship. I should hope so; it seems obvious that the Government would pledge to respect the minimum legal requirements set out by the Supreme Court, yet successive settler Governments have demonstrated their willingness to ignore and litigate rulings that increase Government responsibilities or challenge the legislative and economic supremacy of the Crown.<sup>247</sup> The *Principles* also acknowledge the pluralistic nature of Indigenous peoples and suggests diverse approaches to attend to the varying histories and material realities of Indigenous peoples across what is now Canada, but sidesteps the sticky question of just *who* is considered Indigenous, and thus who is recognized, is consulted, and has the right to speak for a collective. In the fifth *Principle*, the Crown agrees that reconciliation can look different depending on “different nations, groups, and communities.”<sup>248</sup> According to the Crown, the individuals who make up these “nations, groups, and communities” constitute both status and non-status Indians, Métis, and Inuit. But status cards and treaty people are merely the legal codification of colonial recognition, and are a simplification of the myriad Indigenous kinship networks and

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<sup>246</sup> Ibid

<sup>247</sup> See, for example, the Government of Canada’s ongoing failure to adequately respond to “The Jordan Principle”

<sup>248</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada’s relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

social organization for the ease of colonial institutions' bureaucratic administration. It is in this colonial context that the *politics* of recognition will be explored.

Recognition is relational. The *Principles* themselves acknowledge as much, as the first sentence of the preamble commits the Crown to a “relationship based on recognition of rights, respect, cooperation, and partnership” and the preamble concludes by acknowledging that implementing “recognition-based relationships is a process.”<sup>249</sup> I would argue that recognition is also, in and of itself, a process. In *Red Skin, White Masks*, Glen Coulthard draws on Hegel's master-slave dialectic to explain that as an individual subject recognizes the other, the other is in turn rendered an individual. It is this relational process, this “constitutive...subjectivity”<sup>250</sup> that the politics of recognition is built upon. Coulthard defines the politics of recognition as the “expansive range of recognition-based models of liberal pluralism that seek to ‘reconcile’ Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state.”<sup>251</sup> Coulthard follows the thread of becoming an individual in Hegel's dialectic through to contemporary liberal interpretations of recognition. It is this liberal politics of recognition that underpin much of the *Principles* themselves. I agree with Coulthard that the ability of colonial “recognition” to enact substantive change is limited; the politics of recognition has left power in the hands of the colonial state, prompting many Indigenous peoples, activists, and scholars alike to call for a “turn away” from recognition and prioritize unilateral assertions of sovereignty, revitalization of culture and language, and anti-colonial direct action.<sup>252</sup> The pale imitation of “sovereignty” that colonial recognition affords, exemplified by the self-governance structures crafted by the Canadian state, bears little resemblance to how Indigenous scholars and activists have articulated sovereignty since the 1970s. Contemporary assertions of Indigenous sovereignty, such as in the case of the Unist'ot'en reoccupation camp examined above,

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<sup>249</sup> Ibid

<sup>250</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>251</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>252</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.; Simpson, A. (2020). The Sovereignty of Critique. *South Atlantic Quarterly*, 119(4), 685-699.; Simpson, L. B. (2014). Land as pedagogy: Nishnaabeg intelligence and rebellious transformation. *Decolonization: indigeneity, education & society*, 3(3).

have articulated a refusal, rather than recognition, of the colonial state's power over Indigenous nations and individuals. The politics of refusal offers a powerful alternative to the constrained liberalism of colonial recognition. In this section I will first expand upon the politics of recognition as explained by Coulthard and discuss how the *Principles* fail to deviate from liberal discourses of identity and recognition. I will conclude with a discussion of the politics of refusal, as an alternative to recognition, and ruminate on some contemporary developments that embody refusal.

## 5.2. The Politics of Recognition

Since the retraction of the *Statement of the Government of Canada on Indian Policy, 1969* — also known as the White Paper — “‘recognition’ has emerged as the dominant expression of self-determination within the Aboriginal rights movement in Canada.”<sup>253</sup> And while the Crown has eschewed “unapologetically assimilationist” policies in favour of those “couched in the vernacular of ‘mutual recognition,’” Coulthard argues that the contemporary “politics of recognition” has served as one method for perpetuating colonial power relations.<sup>254</sup> Coulthard begins his discussion of the politics of recognition with Hegel’s master/slave dialectic, quoting from *Phenomenology of Spirit*: “self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged.”<sup>255</sup> For Hegel, recognition both engenders an individual into being, and is a precondition for the realization of human freedom. It is the reciprocation of recognition — “They *recognize* themselves as *mutually recognizing* each other”<sup>256</sup> — of each self-conscious being recognizing the other and in turn becoming self-conscious that enables the possibility of freedom. Yet Hegel argues that recognition between two self-conscious entities will inevitably be unequal.<sup>257</sup> While the master wallows in relational dependency, the slave realizes his truth — and his

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<sup>253</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>254</sup> Ibid

<sup>255</sup> Hegel, G. W. F. (2018). *Georg Wilhelm Friedrich Hegel: The Phenomenology of Spirit*. Cambridge University Press. <https://doi.org/10.1017/9781139050494>, p. 178 quoted in Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press

<sup>256</sup> Hegel, G. W. F. (2018). *Georg Wilhelm Friedrich Hegel: The Phenomenology of Spirit*. Cambridge University Press. <https://doi.org/10.1017/9781139050494>, p. 184 emphasis in original

<sup>257</sup> Ibid, 191

independence —through the struggle of labour. In becoming consciousness for itself, the slave becomes the master, if only temporarily, before the cycle of interdependent recognition repeats.<sup>258</sup> This Sisyphean depiction of mutual recognition serves as a warning of the inevitable “patterns of domination and inequality” typical of “asymmetrical relations of recognition.”<sup>259</sup>

Unlike Hegel, Fanon argues that, in a colonial context, there is no recognition interdependence cycle nor internal conflict, for “the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work.”<sup>260</sup> Coulthard extends this analysis to the settler-colonial state:

“in the relations of domination that exist between nation-states and the sub-state national groups that they “incorporate” into their territorial and jurisdictional boundaries, there is no mutual dependency in terms of a need or desire for recognition. In these contexts, the “master”—that is, the colonial state and state society—does not require recognition from the previously self-determining communities upon which its territorial, economic, and social infrastructure is constituted. What it needs is land, labor, and resources.”<sup>261</sup>

I believe it is important to differentiate between the contemporary politics of recognition and the mutual recognition Indigenous nations and 18<sup>th</sup> century European powers afforded each other in their quest to carve up North America. In contemporary multicultural societies “relations of recognition” and “large-scale exchanges of recognition” are mediated by the state and state institutions, in contrast to the face-to-face confrontation in Hegel’s dialectic.<sup>262</sup> Further, the treaties signed and alliances formed by European powers as part of the process of state development in North America was historically contingent.<sup>263</sup> It is clear, Coulthard argues, that colonial

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<sup>258</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>259</sup> Williams, R (2001) Hegel and Nietzsche: Recognition and Master/Slave, *Philosophy Today* 45, 5. Quoted in Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>260</sup> Fanon, F. (1991) *Black Skin, White Masks*. Grove Weidenfeld.

<sup>261</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>262</sup> Ibid.

<sup>263</sup> Stark, H. K. (2012). Marked by fire: Anishinaabe articulations of nationhood in treaty making with the United States and Canada. *American Indian Quarterly*, 36(2), 119-149.; Burrows, J. (1997) Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-

recognition of collective rights is limited to the extent that such recognition does not “question the background legal, political, and economic framework of the colonial relationship itself” and notes that colonial institutions—“the state, the courts, corporate interests, and policy makers”—constrain the discourse of recognition in ways that help “preserve the colonial status quo.”<sup>264</sup> Nonetheless, Coulthard interrogates a number of liberal interpretations of recognition due to their pervasiveness in contemporary discourses.

Coulthard highlights Charles Taylor’s “The Politics of Recognition” in which Taylor argues that recognition plays a role in identity formation, and is formed through “dialogue with others, in agreement or struggle with their recognition of us.”<sup>265</sup> For Taylor, recognition and identity have existed since pre-modern times, but what has changed is “not the need for recognition but the conditions in which the attempt to be recognized can fail.” Taylor suggests that “equal recognition” is the “appropriate mode for a healthy democratic society,” and that “withholding of recognition can be a form of oppression.” Taylor argues against a pure form of “difference-blind” procedural liberalism typified by the American liberal tradition in favour of one that accommodates, to some extent, collective goals and variable application of rules. Taylor concedes that radical critics of such a liberalism rooted in absolute universalisms are correct in their assertion that such a liberal tradition reflects a particular (dominant) culture.<sup>266</sup> While Coulthard agrees that Taylor’s brand of liberal recognition is less harmful than Canada’s “past tactics of exclusion, genocide, and assimilation,” Coulthard notes the limits of Taylor’s liberalism in the prescriptive solutions of “self-government” as a method of preserving Indigenous “cultural integrity” and thus stave off the harm of misrecognition.<sup>267</sup>

I think it is worth noting that Taylor, in tracing the genealogy of identity formation as a function of moral and individual worth, links the finding and being of one’s unique

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Government in Asch, M. (Ed.) *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*. Vancouver: UBC Press.

<sup>264</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

<sup>265</sup> Taylor, C. (1994). *The politics of recognition* (pp. 25-74). Princeton University Press.

<sup>266</sup> Ibid, emphasis in original

<sup>267</sup> Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. U of Minnesota Press.

and moral self to the development of modern nationalism.<sup>268</sup> I would argue that a variant of this moral individualism informs Canadian national identity, specifically Canada as a benevolent, tolerant, liberal, and multicultural state. In the wake of yet another mountain of damning evidence to the contrary—the most recent instance being the confirmation of hundreds of children buried in mass graves at residential school sites across Canada<sup>269</sup>—the ability for the state and ideological state apparatus to withstand anti-colonial critique of Canadian national identity becomes ever more important. Symbolic acts of recognition were quickly employed in this case—lowering flags at government buildings, cancelling or modifying Canada Day celebrations, and government ministers wearing orange t-shirts<sup>270</sup>—as a tool to maintain the hegemony of the liberal moral national identity. It remains to be seen if the outrage sparked by the 215 bodies in Tk'emlúps will result in a widespread re-evaluation of the myth of Canadian benevolence, or if Canada's liberal nationalism can adapt and successfully reproduce status quo liberal capitalist social relations. Indeed, if Canada's essential functions as a vehicle for legitimating capital accumulation and colonial dispossession is to remain unscathed, I agree with Coulthard's conclusion that recognition will play a critical role.

### 5.3. Indigenous Nations and Crown recognition

In *Seeing Like a State*, James C. Scott explains that a key element of the state project is legibility; simplifying and standardizing complex local institutions renders them legible to a central bureaucratic repository that a state may monitor. This simplification process is in service of what Scott asserts are essential state characteristics: “taxation, conscription, and prevention of rebellion.”<sup>271</sup> As Heidi Stark explains, the historical process of (Western) state formation in North America in the 18<sup>th</sup> and 19<sup>th</sup> century was complicated in part, by the “dense web of clans, kinship ties, and loyalties to non-Anishnaabe nations [that] existed within nationhood, not as forces that opposed it. These

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<sup>268</sup> Taylor, C. (1994). *The politics of recognition* (pp. 25-74). Princeton University Press.

<sup>269</sup> Trembath, T., & Rieger, S. (2021, May 31). *More than 800 residential school students died in Alberta—Advocates say it's time to find their graves* | CBC News. <https://www.cbc.ca/news/canada/calgary/residential-school-graves-alberta-1.6046329>

<sup>270</sup> Tasker, J. P. (2021, June 23). *O'Toole accuses activists of “tearing down” Canada after towns cancel Canada Day events* | CBC News. <https://www.cbc.ca/news/politics/otoole-activists-canada-day-1.6076752>

<sup>271</sup> Scott, J. C. (2008). *Seeing like a state*. Yale University Press.

overlapping networks...frustrated American and Canadian efforts to impose fixed land boundaries, obtain land cessions, and divide Native nations internally and from one another."<sup>272</sup> It is this process of simplification and certainty that undergirds the Canadian state's project of reconciliation, as evidenced by the ongoing effort to establish a single, legible "Recognition and Implementation of Rights Framework."<sup>273</sup> Crown recognition will not, however, enable Indigenous nations to achieve self-actualization, because, as Fanon argues, this goal is only achievable through the struggle of decolonization.<sup>274</sup> Reconciling the goal of Indigenous sovereignty with the existence of settler nation states is a site of great struggle, and a source of great scholarship.<sup>275</sup> The fifth *Principle* offers a problematic for understanding how the material reality of the colonial present is represented in policy. The accompanying commentary of the fifth *Principle* notes that "reconciliation can be achieved in different ways with different nations, groups, and communities."<sup>276</sup> The *Principles* sidesteps the question of just who is and who is not considered Indigenous in the eyes of the federal government. The cynic in me views this obfuscation as intentional, as the federal government can selectively highlight Indigenous support or opposition to a given project to further the intertwined aims of government and capital. Support by some Indigenous peoples and groups then becomes a bludgeon against those nations and communities who refuse, and serves to transform a question of rights and title into an opinion poll.

To illustrate the above point, I will briefly discuss the case of the Métis Nation British Columbia (MNBC)'s support for the Trans Mountain Pipeline (TMX). MNBC is seen by the federal government as the legitimate representative organization for Métis people residing in British Columbia. MNBC advocates on behalf of Métis interests in British Columbia, such as unequal access to federal funding for child welfare, education,

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<sup>272</sup> Stark, H. K. (2012). Marked by fire: Anishinaabe articulations of nationhood in treaty making with the United States and Canada. *American Indian Quarterly*, 36(2), 119-149.

<sup>273</sup> King, H., & Pasternak, S. (2018). Canada's Emerging Indigenous Rights Framework: A Critical Analysis. *Yellowhead Institute*.

<sup>274</sup> Fanon, F. (1991) *Black Skin, White Masks*. Grove Weidenfeld.

<sup>275</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>276</sup> Canada, Ministry of Justice. (2018). *Principles respecting the government of Canada's relationship with Indigenous peoples*. <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>

health, and justice.<sup>277</sup> MNBC support of TMX was used by supporters of the project to demonstrate that not all Indigenous groups opposed the pipeline.<sup>278</sup> But what say should the MNBC have in development projects in British Columbia? In 2016, the *Daniels Decision* recognized Métis people and non-status Indians as “Indians” under section 91(24) of the *Constitution Act, 1867* for the first time.<sup>279</sup> The MNBC argues that the Métis Nation is entitled to the same Aboriginal rights under section 35 of the *Constitution Act, 1982* as other First Nations in British Columbia, including the duty to consult and the right to harvest fish and wildlife.<sup>280</sup> MNBC citizen and Manitoba Métis Federation member Stephen Mussell argues that such an assertion is deeply problematic due to the history of Métis people as settlers west of the Rocky Mountains.<sup>281</sup> In *R v. Powley* the Supreme Court of Canada established a test for justifiable infringement of inherent Métis rights, as established by s. 35 of the *Constitution Act, 1982*, specifically grounds these communal rights “in the existence of a historic and present community, and [are] exercisable by virtue of an individual’s ancestrally based membership in the present community.”<sup>282</sup> Citing the Powley test, Mussell claims that to be Métis one “must self-identify as Métis, be distinct from other Aboriginal peoples, be of historic Métis Nation Ancestry and be accepted by the Métis Nation” and that since no historic Métis communities exist in British Columbia west of the Rocky Mountains, “by this definition, no ‘mixed blood’ person descended from a First Nation in British Columbia west of the

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<sup>277</sup> Métis Nations of British Columbia. (2020). *A Tale of Two Nations: Highlighting the inequities of the Treatment of the Métis in BC*. [https://www.mnbc.ca/wp-content/uploads/2020/10/A-Tale-of-Two-Nations\\_Oct-1-for-general-release.pdf](https://www.mnbc.ca/wp-content/uploads/2020/10/A-Tale-of-Two-Nations_Oct-1-for-general-release.pdf)

<sup>278</sup> *Metis Nation BC “Satisfied” with Mitigation Measures for Trans Mountain Expansion Project*. (2016, August 17). <https://www.transmountain.com/news/2016/metis-nation-bc-satisfied-with-mitigation-measures-for-trans-mountain-expansion-project?>

<sup>279</sup> *Daniels v. Canada (Indian Affairs and Northern Development)* [2016] SCC 12

<sup>280</sup> Métis Nation British Columbia. (2020). *A tale of two nations: highlighting the inequalities of the treatment of Métis in BC*. [https://www.mnbc.ca/wp-content/uploads/2020/10/A-Tale-of-Two-Nations\\_Oct-1-for-general-release.pdf](https://www.mnbc.ca/wp-content/uploads/2020/10/A-Tale-of-Two-Nations_Oct-1-for-general-release.pdf)

<sup>281</sup> Mussell, S. (2020). *Do Métis have Rights in British Columbia? Let our Métis People be heard in a Good Way*. Yellowhead Institute. <https://yellowheadinstitute.org/2020/10/22/do-metis-have-rights-in-british-columbia-let-our-metis-people-be-heard-in-a-good-way/>

<sup>282</sup> *R. v. Powley* [2003] SCC 43

Rocky Mountains is Métis either.”<sup>283</sup> This is but one of the most egregious examples of intentional obfuscation of which “groups” represent rights holders.

Returning to the fifth *Principle*, the “communities” mentioned could have most simply been understood as individual Indian Act bands, and individual self-governing First Nations. A few self-governing First Nations could be considered “nations,” such as the Nisga’a Nation, but most self-governing First Nations likely do not constitute the entirety of any one of the estimated 60 and 80 historical Aboriginal Nations. Title cases since 1982 have forced Federal and Provincial governments to recognize that the “duty to consult” extends beyond reserve boundaries and throughout a nation’s traditional territory.<sup>284</sup> More recently, governments have recognized the legitimacy of some traditional governance systems,<sup>285</sup> further complicating the question of *who* must be consulted, negotiated with, and recognized as rightful title holders.<sup>286</sup> There is no one answer to what assemblage of Indian Act bands, traditional leadership, or coalition of leaders and individuals constitutes a “nation,” and individual membership in a nation-like polity is not dependent upon state or band council affiliation.<sup>287</sup> The “groups” mentioned in the fifth *Principle* are most easily understood as any of the many Aboriginal Representative Organizations (ARO), such as the Canada-wide Assembly of First Nations (AFN), regional organizations like the Union of British Columbia Indian Chiefs (UBCIC), and Métis and Inuit specific organizations. AROs advocate on behalf of their constituent member communities in order to influence settler governments and non-governmental organizations, and advance member priorities. The AFN has ongoing formal relations with the Federal government in the form of an MOU of joint priorities<sup>288</sup> and is widely seen as a legitimate representative voice for First Nations across Canada.

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<sup>283</sup> Mussell, S. (2020). *Do Métis have Rights in British Columbia? Let our Métis People be heard in a Good Way*. Yellowhead Institute. <https://yellowheadinstitute.org/2020/10/22/do-metis-have-rights-in-british-columbia-let-our-metis-people-be-heard-in-a-good-way/>

<sup>284</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

<sup>285</sup> Canada. (2020, May 14). *Memorandum of Understanding Between Canada, British Columbia and Wet’suwet’en as agreed on February 29, 2020*. <https://www.rcaanc-cirnac.gc.ca/eng/1589478905863/1589478945624>

<sup>286</sup> Hyslop, K. (2020, February 14). *Wet’suwet’en Crisis: Whose Rule of Law?* The Tyee <https://thetyee.ca/News/2020/02/14/Wetsuweten-Crisis-Whose-Rule-Law/>

<sup>287</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>288</sup> *Assembly of First Nations – Canada memorandum of understanding on joint priorities*. (2017). <https://www.afn.ca/uploads/files/canada-afn-mou-final-eng.pdf>

Critics of the AFN point to its reliance on federal funding as a restriction to “the potential of the AFN to affect transformative change” and to the fact that the AFN, as a state-centric organization, hinders “the goals of Indigenous resurgence and decolonization.”<sup>289</sup> Prominent Mi’kmaq lawyer and academic Pamala Palmater suggests the AFN is “colluding with the Federal Government.”<sup>290</sup> Even still, the AFN maintain a degree of legitimacy as an advocacy organization through its ability to articulate and amplify Indigenous interests and resistance to the settler colonial state.<sup>291</sup> But there are also organizations like the Eastern Woodland Métis Nation, and Unama’ki Voyageur Métis Nation in Nova Scotia, and the Nation Métisse Autochtone de la Gaspésie, Bas-Saint-Laurent et Îles-de-la-Madelein in Quebec, which allow membership based on self-identification as Métis alone. The number of self-identified Métis in French speaking Canada has increased rapidly as recognition of Aboriginal rights and title is confirmed in the region despite being located far from the original Métis Red River settlement and below average growth rates in the general population.<sup>292</sup> Such is an example of what Tuck and Yang term “settler nativism,” one of several “settler moves to innocence” that function to absolve settlers of colonial guilt “without giving up land or power or privilege”.<sup>293</sup> Such organizations threaten to dilute, in the event that their claims to Aboriginal rights are successful, the power that Aboriginal rights have as a group right in and of themselves. Both race-shifting and undermining (in the case of the Wet’suwet’en Matriarchal Coalition) or obfuscating (in the case of MNBC’s support of TMX) the opposition of rightful title holders serves a political end: the elimination of the native

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<sup>289</sup> Cardinal, H. (1969). *The unjust society*. Douglas & McIntyre.; Tomiak, J. (2016). Navigating the contradictions of the shadow state: The Assembly of First Nations, state funding, and scales of Indigenous resistance. *Studies in Political Economy*, 97(3), 217–233. <https://doi.org/10.1080/07078552.2016.1249130>

<sup>290</sup> Tomiak, J. (2016). Navigating the contradictions of the shadow state: The Assembly of First Nations, state funding, and scales of Indigenous resistance. *Studies in Political Economy*, 97(3), 217–233. <https://doi.org/10.1080/07078552.2016.1249130>

<sup>291</sup> Ibid

<sup>292</sup> Bundale, B. (2018, May 27). *The controversial rise of the eastern Metis: “Where were these people all this time?”* | CBC News. CBC. <https://www.cbc.ca/news/canada/nova-scotia/the-controversial-rise-of-the-eastern-metis-where-were-these-people-all-this-time-1.4680105>; Gaudry, A., & Leroux, D. (2017). White Settler Revisionism and Making Métis Everywhere: The Evocation of Métissage in Quebec and Nova Scotia. *Critical Ethnic Studies*, 3(1), 116. <https://doi.org/10.5749/jcritethnstud.3.1.0116>

<sup>293</sup> Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, 1(1).

through dilution or displacement and rendering the land legible, and thus commodifiable, in service of capital accumulation.

## 5.4. Refusal: an alternative to recognition

The *Principles* are filled with the appropriate contemporary rhetoric of reconciliation, but upon further analysis serve to entrench liberal universalisms and conceptions of multiculturalism in Federal policy making. Recognition—“the gentler form...or the least corporeally violent way of managing Indians<sup>294</sup>— renders “complex politics...in reduced forms that imagine ‘flat (dehistoricized) pluralism.’”<sup>295</sup> Audra Simpson argues in *Mohawk Interruptus* that colonial recognition “is only performed...if the problem of cultural difference and alterity does not pose too appalling a challenge to the norms of settler society.”<sup>296</sup> In *Being Indigenous: Resurgences against Contemporary Colonialism*, Taiaiake Alfred and Jeff Corntassel “ask the fundamental question: how can we [as Indigenous peoples] resist further dispossession and disconnection when the effects of colonial assaults on our own existence are so pronounced and still so present in the lives of all Indigenous peoples?”<sup>297</sup> For Alfred and Corntassel the answer is a wholesale rejection of the colonial framework involuntarily hoisted upon Indigenous peoples and nations:

“the Canadian government’s label of ‘aboriginal’...[as an identity] is purely a state construction that is instrumental to the state’s attempt to gradually subsume Indigenous existences into its own constitutional system and body politic since Canadian independence from Great Britain—a process that started in the mid-twentieth century and culminated with the emergence of a Canadian constitution in 1982.”<sup>298</sup>

For Audra Simpson, the alternative to liberal universalisms is the politics of refusal:

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<sup>294</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>295</sup> Simpson, A. (2017). The ruse of consent and the anatomy of ‘refusal’: cases from indigenous North America and Australia. *Postcolonial Studies*, 20(1), 18-33.

<sup>296</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>297</sup> Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and opposition*, 40(4), 597-614.

<sup>298</sup> Ibid.

“Refusal comes with the requirement of having one’s *political* sovereignty acknowledged and upheld, and raises the question of legitimacy for those who are usually in the position of recognizing: What is their authority to do so? Where does it come from? Who are they to do so?”<sup>299</sup>

Audra Simpson also argues that the ongoing debate within Kahnawá:ke around the Kahnawá:ke Membership Law (2008) is a symptom of larger structural questions, including the failure of Canada’s settler state to complete the colonial project of absorbing Indigenous people “into a white, property-owning body politic.” The *Principles*’ recognition of “nations” might suggest a softening of the colonial project, but Simpson asks how a nation is to function “if the right to determine the terms of legal belonging, a crucial component of sovereignty, has been directed by a foreign government.”<sup>300</sup> Leanne Betasamosake Simpson relates Indigenous refusal to both resurgence and persistence. Individual and collective acts of refusal “embody an Indigenous alternative” to the “dispossessive forces of capitalism, heteropatriarchy, and white supremacy.”<sup>301</sup> Refusal, as a refutation of colonial dispossession, does not embody possession in the liberal sense of property, but rather, as Leanne Simpson explains, a “deep, reciprocal, consensual *attachment*. Indigenous bodies don’t relate to the land by possessing or owning it or having control over it. We relate to land through connection—generative, affirmative, complex, overlapping, and nonlinear *relationship*.”<sup>302</sup> Refusal transcends negation; refusal is more than tossing off the chains of colonial recognition, but rather a generative process of organizing on one’s own terms, turning inward, and reclaiming power.<sup>303</sup>

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<sup>299</sup> Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.

<sup>300</sup> Ibid

<sup>301</sup> Simpson, L. B. (2017). *As we have always done: indigenous freedom through radical resistance*. University of Minnesota Press.

<sup>302</sup> Ibid, emphasis in the original.

<sup>303</sup> Ibid.

## Chapter 6.

### Conclusion

Capitalism, imperialism, and settler-colonialism are *political* projects. Political economy reveals that economic and cultural changes do not just passively *happen*, but rather have a material history of political actors inflicting change on the world. While we can track the who's who of the rise of a truly globalized, neoliberal capitalist order, the end result is a totalizing hegemon that has reshaped the world in myriad ways, subjecting Indigenous and non-Indigenous individuals, communities, nations, and classes to the wills of the all-powerful "market." Neoliberal governmentality attempts to remake individuals into the ideal rational, economic actor, and to transform all relationships into transactions. Everything capitalism touches is transformed (and often commodified) in some way: the environment, our relationships with the environment, our relationships each other, and our relationship with ourselves. It is overwhelming enough to lose yourself in. By commodifying any and all facets of human relations, capitalism has also made the market nearly indispensable to human survival. To simply not engage with capitalism is not a readily available option; disturbances in the global economic system are quickly felt by individuals worldwide. Indigenous peoples are not immune, and, despite resistance and persistence, capitalism has altered Indigenous ways of life to varying degrees. If individual and collective Indigenous engagement with capitalism is unavoidable, on what terms should Indigenous peoples resist, mitigate the harms of, engage with, or embrace capitalism? Kam'ayaam/Chachim'multhnii (Cliff Atleo) explores this problematic, criticizing the dogmatic prescription for social malaise—poverty—as doubling down on capitalist production and embracing neoliberal development under the guise of self-sufficiency. He also criticizes the dogma of economic self-sufficiency as the ultimate expression of sovereignty, for Indigenous conceptions of wealth do not hinge on material and monetary gain. Yet the constraints of the capitalist mode of production do necessitate a degree of economic pragmatism to ensure the persistence of Indigenous peoples and nations.<sup>304</sup>

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<sup>304</sup> Atleo, C.G. (2021). *Change and Continuity in the Political Economy of the Ahousaht* [Doctoral dissertation, University of Alberta].

I return now to my primary research question: how do the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, as one plank of the Crown's project of recognition and reconciliation, perpetuate or challenge the status quo systems of racial capitalist, imperial, and colonial oppression? The future outlined in the *Principles* does not stray from the dogma of neoliberal capitalist development as *the* method for Indigenous peoples, communities, and nations to achieve self-sufficiency, and thus effectively govern themselves. The *Principles* do not paint a future vision of Indigenous nations freely articulating sovereignty, but rather a future where Indigenous peoples, communities and nations are "partners" in the endless cycle of capitalist expansion, and neoliberal market economies. This is a narrow vision of "sovereignty" as economic freedom, one that does not offer freedom from the whims of the global marketplace. By embodying the liberal politics of recognition and perpetuating White Paper Liberalism,<sup>305</sup> the *Principles* serves Canada's unfinished hegemonic project of liberalism, white supremacy, racial capitalism, and settler colonialism. The *Principles*, in common with much of the colonial state's action since the White Paper was shelved in 1970, eschews outright assimilative language in favour of neoliberal conceptions of flexibility, innovation, and partnership. It is a softer gentler colonialism,<sup>306</sup> one that uses the technologies of neoliberal governmentality to establish institutions on Indigenous lands and within Indigenous governance structures with the aim of reducing Crown responsibilities to Indigenous peoples and nations, and ensuring investment and capital accumulation are secure and free of disruption. This is not to say the *Principles* themselves achieve these goals, but by positively presenting the status quo as progressive the *Principles* serve to discursively narrow the possible outcome of Crown-Indigenous relations. In the years since the release of the *Principles* the federal government has drafted and implemented legislation following many of the guidelines of the *Principles*, most notably the *Recognition and Implementation of Indigenous Rights Framework* that aims to "domesticat[e] Indigenous self-determination within Canadian

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<sup>305</sup> Turner, D. A. (2006). *This is not a peace pipe: Towards a critical indigenous philosophy*. University of Toronto Press.

<sup>306</sup> Neu, D., and Therrien, R. (2003). *Accounting for Genocide: Canada's Bureaucratic Assault on Aboriginal People*. Fernwood Publishing.

Confederation...[and] guides First Nations towards a narrow model of 'self-government' outside of the Indian Act."<sup>307</sup>

"Recognition" and "reconciliation" are inseparable from the historical material processes in which they came about. Liberal politics of recognition, inclusion, tolerance, and multiculturalism do not alter the global economic and social order structured by centuries of racial capitalism, property relations, white supremacy, settler legal traditions, displacement, and the changing and differential valuation of Indigenous peoples and lands by settler colonialism and racial capitalism. The *Principles* fail to live up to their own assertion that they represent a "fundamental change" in relations in part because of their unyielding adherence to liberalism; the failures of the *Principles* reflect, in part, the failures of liberalism to offer emancipation to those subordinated by the global liberal order. Liberalism is, and has always been, a system of liberation predicated on the exclusion of those necessary to support the "freedom" of the in-group.<sup>308</sup>

Colonial recognition remains a contested assemblage of political, cultural, and personal identities. Reconciliation, as it is defined by the TRC—"establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples"<sup>309</sup>—is only possible through a radical reimagining of the social order, one that prizes the necessities of life above the accumulation of capital. The *Principles*, through their adherence to a liberal capitalist paradigm predicated on endless economic growth, will never achieve true reconciliation. I return to a quote from the commissioners of the TRC that I highlighted in the introduction:

"Reconciliation between Aboriginal and non-Aboriginal Canadians, from an Aboriginal perspective, also requires reconciliation with the natural world. If human beings resolve problems between themselves but continue to destroy the natural world, then reconciliation remains incomplete. This is a perspective that we as Commissioners have repeatedly heard: that reconciliation will never occur unless we are also reconciled with the earth."<sup>310</sup>

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<sup>307</sup> King, H., & Pasternak, S. (2018). Canada's Emerging Indigenous Rights Framework: A Critical Analysis. *Yellowhead Institute*.

<sup>308</sup> Losurdo, D., & Elliott, G. (2011). *Liberalism: a counter-history; translated by Gregory Elliott*. Verso Books.

<sup>309</sup> Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [http://epe.lac-bac.gc.ca/100/201/301/weekly\\_acquisition\\_lists/2015/w15-24-F-E.html/collections/collection\\_2015/trc/IR4-7-2015-eng.pdf](http://epe.lac-bac.gc.ca/100/201/301/weekly_acquisition_lists/2015/w15-24-F-E.html/collections/collection_2015/trc/IR4-7-2015-eng.pdf)

<sup>310</sup> Ibid

The *Principles* fail to offer a path toward reconciliation as called for in the TRC, and reveal the ideological preferences for the package of reforms the Crown is pushing onto Indigenous nations. Refusal represents a radical alternative to gradual assimilation into the capitalist hegemon. Nations and individuals exercising and enacting sovereignty in a struggle against the asymmetric power of colonial relations allows for the resurgence of the decolonized subject.<sup>311</sup> It is this Indigenous resurgence, this generative refusal, that must occur for true reconciliation to be achieved.

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<sup>311</sup> Fanon, F. (1991) *Black Skin, White Masks*. Grove Weidenfeld

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