

Reconciling Indigenous Exceptionality:
Thinking Beyond Canada's Petro-State of Exception

by

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Bachelor of Arts (Honours), University of Victoria, 2012

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We acknowledge with respect the Lekwungen peoples on whose traditional territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

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Abstract

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This thesis is concerned with the Canadian state's rhetoric of reconciliation, the logic of exceptionality that supports it, and the ways this logic helps soften Indigenous communities for resource development. In formulating my theoretical framework, I draw from Agamben's theories of sovereignty and states of exception, Mark Rifkin's reworking of Agamben's theories to accommodate a settler-colonial context, Pauline Wakeham's application of the logic of exceptionality to rhetorics of apology and terrorism, and Glen Coulthard's concepts of translation (as the attempt to bring Indigenous discourses and life ways into the realm of a Western/settler-colonial discourse of state sovereignty) and grounded normativity (as a way of making visible the contingency of such narratives of state sovereignty).

Following the work of James Tully and John Borrows in *Resurgence and Reconciliation*, particularly the argument that transformative reconciliation must involve reconciliation with the living earth, my project aims to show that official reconciliation actually prevents the possibility of transformative reconciliation because of the role it plays in furthering an extractivist agenda by "exceptionalizing" Indigenous peoples and life-ways to rhetorically contain Indigenous anti-colonial or anti-industry actions, physically contain Indigenous dissenters during moments of crisis (i.e. states of exception), pre-emptively frame Indigenous dissenters as terroristic, and foreclose discussions of ongoing colonialism.

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Dedication

To my mom, Barb, whose creativity and enthusiasm permeate all she does. And to my dad, Chip, whose wisdom and sense of humour bring light wherever he goes. Your love and support have carried me through many years of school and multiple career changes. Please be warned: I'm not done yet.

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Introduction

Over the last thirty years, uses and definitions of the term “reconciliation” as it relates to Indigenous peoples in Canada have proliferated to such an extent that virtually all aspects of Indigenous-state and Indigenous-settler relations can be, or have been, described according to the language of reconciliation. Scholars have discussed legal and juridical reconciliation,¹ economic reconciliation,² constitutional reconciliation,³ official or state-controlled reconciliation,⁴ and, more recently, “transformative” reconciliation.⁵ Courts have discussed reconciliation between competing aspects of the Indigenous-state relationship,⁶ between pre-existing Indigenous title and Crown sovereignty,⁷ and between Indigenous peoples and the needs of the settler population,⁸ proposing Aboriginal⁹ title¹⁰ and treaties¹¹ as forms of such reconciliation. And,

¹ Borrows, *Recovering Canada*; Macklem and Sanderson, eds, *From Recognition to Reconciliation*; Reynolds, *Aboriginal Peoples and the Law*.

² Newman, “Consultation and Economic Reconciliation.”

³ Henderson (James (Sa’ke’j) Youngblood), “Incomprehensible Canada”; Mackey, “The Apologizer’s Apology”; Webber, “We Are Still in the Age of Encounter.”

⁴ The scholars who have taken up official or state-controlled reconciliation are too numerous to name here. Those that have been most influential to my own work include: Alfred, *Wasáse*; Borrows, *Recovering Canada*; Coulthard, *Red Skin White Masks*; Henderson and Wakeham, eds., *Reconciling Canada*; Manuel and Derrickson, *The Reconciliation Manifesto*; Simpson (Leanne), *As We Have Always Done and Dancing on Our Turtle’s Back*.

⁵ Asch, Borrows, and Tully, eds. *Resurgence and Reconciliation*.

⁶ *R v Sparrow* [1990]

⁷ *R v Van der Peet* [1996]

⁸ This has been the type of reconciliation most frequently discussed by the courts. Notable cases include *R v Gladstone* [1996], *R v Marshall* [2005], and *Tsilhqot’in Nation v British Columbia* [2014].

⁹ A note on terminology: “Aboriginal” is a legal category in Canada and as such is the term I use when referring to the discourse of the state and the courts; “Indigenous” is the term preferred by most scholars and activists who contest the state’s frameworks and as such is the term I use when referring to non-state discourses. Both terms refer to the same group of people as both include First Nations, Inuit, and Métis. According to Alfred, many Indigenous peoples “embrace the label of ‘aboriginal,’ but this identity is a legal and social construction of the state, and it is disciplined by racialized violence and economic oppression to serve an agenda of silent surrender” (*Wasáse* 23). For more on the distinction, see Asch, *Here to Stay* (8), Alfred, *Peace* (23), Reynolds, *Aboriginal Peoples* (xii), and Wilson, *Research is Ceremony* (54).

¹⁰ In *Delgamuukw v British Columbia*, the court “sought to reconcile constitutional recognition of a prior Indigenous presence with Canadian sovereignty [by extending] constitutional protection to Indigenous territories in the form of Aboriginal title” (Macklem and Sanderson, *Recognition* 3).

¹¹ In *R v Sioui*, the court “sought to reconcile the fact of prior Indigenous presence with Canadian sovereignty [by conceiving] of treaties between Indigenous peoples and Canada as instruments of reconciliation” (*Ibid.*, 4).

governments have established Ministries of Reconciliation,¹² the Truth and Reconciliation Commission, reconciliation workshops,¹³ and even, in Victoria, a “Year of Reconciliation,”¹⁴ while also publishing numerous statements regarding the reconciliation of Indigenous peoples and government. In short, “reconciliation” has become the *mot du jour* in the Indigenous politics conversation.

Official reconciliation has been critiqued at length by numerous scholars as an uneven and nonreciprocal process whose insufficient scope (particularly regarding its wholesale avoidance of questions of territorial sovereignty) and affective ability to both “assuage settler guilt” (Coulthard 127) and pacify a pathologized and victimized Indigenous population contribute to a “politics of distraction” that allows substantial claims to go unaddressed while preserving the colonial status-quo. Critiques have also highlighted the presumption and reinforcement of a “legitimate” and totalizing sovereign state with which to reconcile, the assimilative extinguishment of a broad spectrum of Indigenous rights to land and sovereignty, and the denial of ongoing colonialism with the effect of pre-emptively delegitimizing future Indigenous anticolonial practices, all while upholding a national narrative of “domestic bliss.”¹⁵ To these important and insightful critiques, I add my own argument that the official reconciliation that appears in policies, court decisions, land and governance agreements, and formal government apologies, and which promises to atone for a long history of institutionalized

¹² Ontario’s Ministry of Aboriginal Affairs became the Ministry of Indigenous Relations and Reconciliation in 2007. British Columbia’s Ministry of Aboriginal Affairs has recently been renamed the Ministry of Indigenous Relations and Reconciliation.

¹³ The government of Canada has been hosting the following workshops by webcast: <https://www.cspsefpc.gc.ca/events/sice/index-eng.aspx>

¹⁴ 2017 was declared “A Year of Reconciliation” by the City of Victoria: https://www.victoria.ca/assets/City~Hall/Media~Releases/2016/2016Jun30_MR_2017%20Declared%20A%20Year%20of%20Reconciliation.pdf

¹⁵ For examples of the types of critique listed above, see (among others) Alfred, “Deconstructing,” “Restitution,” and *Wasáse*; Borrows, “Canada’s Colonial Constitution,” “Crown and Aboriginal Occupations,” and *Recovering Canada*; Corntassel and Holder; Coulthard; Christian; Dean; Henderson (James Sa’ke’j Youngblood); Henderson (Jennifer), Mackey; Manuel and Derrickson; McCready; Million; Minnawaanagogiizhigook (Dawnis Kennedy); Simpson, *Dancing*; Turner, “Reconciliation”; Wakeham, “Reconciling ‘Terror’”; and Waziyatawin.

settler-colonial violence, paradoxically reinforces the contested sovereignty of the Canadian state and softens Indigenous communities for resource development through its reproduction of Indigenous exceptionalism to settler society and settler-state sovereignty. State-controlled reconciliation as a means of environmental exploitation becomes doubly paradoxical in the context of recent arguments by both John Borrows and James Tully that “transformative reconciliation” cannot occur between Indigenous and non-Indigenous people and between Indigenous people and the Crown until we achieve a “collective reconciliation with the earth” (Borrows, “Earth Bound” 49) because “the unsustainable and crisis-ridden relationship between Indigenous and non-Indigenous people that we are trying to reconcile has its deepest roots in the unsustainable and crisis-ridden relationship between human beings and the living earth” (Tully, “Reconciliation” 84).

My thesis draws from Pauline Wakeham’s critique of the federal government’s 2008 apology for the Indian Residential Schools to inform its explication of this cruel paradox of reconciliation.¹⁶ In her critique, Wakeham draws connections between the two “seemingly contradictory rubrics” of the Age of Apologies and the War on Terror (“Reconciling ‘Terror’” 6), revealing in particular their shared “strategic invocations of the logic of exceptionalism” (“Rendition and Redress” 279) to manage Indigenous challenges to the territorial sovereignty of the Canadian state, whether such challenges require redress or retribution. Through this logic of exceptionalism, reconciliation and apology continue a long tradition of governmental framing of Indigenous peoples and Indigenous issues as “exceptional” within the wider domain of Canadian settler-colonial law and politics, whose two related goals have scarcely changed over the last

¹⁶ With thanks to Nicole Shukin for underscoring both the cruelty and the paradoxicality of reconciliation in her notes on this paper.

several hundred years: to reaffirm the legitimacy of state sovereignty and to acquire access to the lands and resources on which both national and provincial economies depend.

To understand the crucial role that such “exceptionality” plays in the constitution of Canada’s sovereignty, I employ Giorgio Agamben’s theory of the “state of exception” as both the heart and foundation of sovereignty, as well as his related conceptions of “bare life” as both the foundational exception and the subject of sovereign biopower, the “camp” as the attempted “localization” of the state of exception (19), the “relation of ban” as sovereignty’s paradoxical inclusive exclusion of the exception, and “zones of indistinction” as the topological zones in which inside and outside, rule and exception, “pass through one another” (37). Despite the Eurocentrism of their original contexts, Agamben’s theories become highly useful for understanding the relationship between Indigenous peoples and sovereign states in a settler-colonial context once reworked and “recontextualized.” To achieve this, I draw from two main sources: American scholar Mark Rifkin and Dene-Canadian scholar Glen Coulthard. Rifkin applies Agamben’s theories to the similar settler-colonial context of the United States in “Indigenizing Agamben: Rethinking Sovereignty in Light of the ‘Peculiar’ Status of Native Peoples”; while Coulthard, through his theories of cultural translation and “grounded normativity,” sheds an Indigenous light on Agamben’s Eurocentric conceptions, making visible an alternative to Indigenous exceptionality in Canada and an “outside” to Western sovereignty that Agamben himself cannot articulate. For Agamben, exceptionality is never fully outside the realm of the sovereign because it is always included *as the exception* and thus is always constituted in relation to sovereign power; here I will show how Coulthard, with the help of Rifkin, can take us beyond that limitation.

Using this theoretical framework, I illustrate the ways in which reconciliation functions as a type of “cultural translation” that reinforces the sovereignty of the state and the exceptionality of Indigenous peoples at its foundation, which paradoxically paves the road for continued territorial expansion and more intensive resource development and exploitation on Indigenous lands. Furthermore, I take up Coulthard’s formulation of “grounded normativity” as “the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time” (13) to illustrate the ways in which such grounded normativity—as political praxis—holds the potential to unravel the twin fictions of state sovereignty and Indigenous exceptionality by refusing cultural translation and transmutation, thus making visible a possible outside of state sovereignty that cannot be folded into the discourse of the sovereign, even as its exception.¹⁷ By challenging, on the one hand, the exceptionality that is reproduced in reconciliation projects and, on the other hand, the stability and coherence of a state sovereignty that is founded on both the paradoxical exclusion and recognition of Indigenous peoples and discourses as well as the exploitation of Indigenous lands and resources, this thesis aims to elucidate the links between official reconciliation, state sovereignty, and the exceptionality of Indigeneity to both. Furthermore, by elucidating the connection between official reconciliation and resource exploitation in a time when leading scholars have pointed to the importance of reconciliation with the living earth as a requirement for “transformative reconciliation,” this paper also aims to illustrate how official, state-controlled reconciliation specifically undermines transformative reconciliation.

¹⁷ This is a construction of these concepts and the logic that supports them and is not, in any way, intended to essentialize or concretize the authority of Europeans, the sovereignty of the state, the exceptionality of translated Indigenous sovereignty, or the “outsideness” of “untranslated” (and “untranslatable”) Indigenous peoples, intelligences, sovereignties, and ontologies.

My argument thus proceeds as follows: in Chapter One, I establish my theoretical framework, including a discussion of Agamben, Rifkin, and Coulthard. In Chapter Two, I discuss the historical context in which reconciliation occurs, including historical events of the last few centuries that demonstrate the relation of Indigenous exceptionality to Canada's sovereignty. In Chapter Three, I discuss state-initiated reconciliation in action, focussing on the logic of exceptionality, the translation of Indigenous interests into terms commensurate with settler colonialism, and the consequent reaffirmation of state sovereignty in, ironically, an apologetic mode, rendering official reconciliation yet another tool for colonial expansion. I also consider the significance of resources in Canada's "reconciled" nation, tracing the connection between sovereignty, territory, and resources, while highlighting the interaction between the concurrent rhetorics of reconciliation/apology and (eco-)terrorism in response to perceived threats to Canada's resource economy. Finally, in my conclusion, I briefly consider the current Unist'ot'en re-occupation camp in the context of Coulthard's notion of "grounded normativity" and John Borrows' and James Tully's notion of "transformative reconciliation" as a potential "outside" to Agamben's political ontology of Western sovereignty that, through its refusal of state-controlled reconciliation processes, exemplifies the type of space in which radical reconciliation is possible. As this analysis will show, although Agamben's theoretical framework emerged in a Eurocentric context, it provides invaluable insight into the logic of sovereignty underlying Canadian State constructions of Indigeneity, enabling a thorough and productive diagnosis of State-Indigenous relations. However, as an ontology of *Western* sovereignty in "settled" states, Agamben's work itself stabilizes the totalizing sovereign-exception relation, which he himself does not think beyond (except as a possible *future* activity still within the ontological bounds of Western states). Furthermore, Agamben's focus on the sovereign-

exception relation as a relation of “ban” or abandonment limits the applicability of this formulation to the exceptionalization of Indigenous nations in the context of liberal settler culture and the politics of recognition and reconciliation. In order to think “beyond” this formulation, then, I conceptualize the sovereign-exception relation as an ultimately failed attempt to “translate” untranslatable Indigenous relational ontologies into discrete rights and cultural accommodations under the guise of reconciliation.

Chapter One: Indigenous Exceptionality

1. The “State of Exception”

From the outset of *Homo Sacer: Sovereign Power and Bare Life*, the first in a series of works devoted to interrogating the foundations of political power, institutions, and violence in the West, especially in relation to notions of the unpolitical, Agamben characterizes his critique of sovereign power as an attempt to uncover the latter’s hidden structure in order to make possible the emergence of a new politics. Agamben conjectures that “if politics today seems to be passing through a lasting eclipse, this is [likely] because politics has failed to reckon with [the] foundational event of modernity”: the inclusion of bare life, or politically-unqualified life, in politics *as* its exception (4). The end to this “eclipse” thus requires a “reflection that ... interrogates the link between bare life and politics, a link that secretly governs the modern ideologies seemingly most distant from one another” (i.e. fascism/totalitarianism and liberal democracy), in order to, finally, “be able to bring the political out of its concealment” (4-5). It is through this link between bare life and politics, the exception and the rule, outside and inside, fact and law that sovereign power constitutes itself as sovereign by simultaneously constituting bare life as the exception to its own sovereignty—a decision that at once creates the sovereign as such *and* employs sovereignty as the decision to mark the exception.¹⁸ To bring this link out of concealment is, therefore, to unravel the circular logic of sovereign power and expose its contingency upon the discourse of absolute state sovereignty that it monopolizes and unceasingly perpetuates. In other words, a new politics can emerge only when the limit and utter contingency of Western politics and the sovereignty of the State become visible, a requirement that I argue “grounded normativity” holds the potential to fulfill, as that which not only exists beyond the

¹⁸ Agamben draws from Carl Schmitt’s definition of sovereignty: “Sovereign is he who decides on the state of exception” (qtd. 11).

normative state structure but also undermines the ontological foundations of state sovereignty because it refuses the exceptionalization required by the State to constitute itself as sovereign.

According to Agamben, the Greeks had two separate words for “life.” *Zoē* referred to the “simple act of living common to all living beings (animals, men, or gods); whereas *bios* referred to “the form or way of living proper to an individual or a group” (1). When referring to the political life of the citizens of classical Athens, only the term *bios* would have been appropriate because life as *zoē* cannot be political as such. *Zoē* is merely the condition of being alive, what Agamben calls “bare life.” Bare life was thus excluded from the *polis*, or city-state, and “confined—as merely reproductive life—to the sphere of the *oikos*, ‘home.’” It was, in this way, the *exception* to the political realm (2). Moreover, bare life is embodied, for Agamben, in the figure of *homo sacer*, or sacred man: an “obscure figure of archaic Roman law, in which human life is included in the juridical order...solely in the form of its exclusion (that is, of its capacity to be killed)” (8). Agamben argues that the link between bare life and politics has remained concealed because previous theorists, including Foucault, have failed to articulate the “hidden point of intersection between the juridico-institutional and the biopolitical models of power,” which are, in fact, inseparable (6). Agamben thus “corrects” Foucault’s thesis that it is simply the inclusion of *zoē* (or “bare life”) in the *polis* (or political realm) that characterizes modern politics (9), showing that it is upon the exceptionalization of *zoē* that the foundations of the political depend:

...[T]he decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life—which is originally situated at the margins of the political order—gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* [or politically qualified life] and *zoē*, right and fact, enter

into a zone of irreducible indistinction. At once excluding bare life from and capturing it within the political order, the state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested. (9)

Crucially, Agamben illustrates that “the inclusion of bare life in the political realm constitutes the original—if concealed—nucleus of sovereign power. *It can even be said that the production of a biopolitical body is the original activity of sovereign power*” (6). In other words, the creation of the realm of sovereign politics requires circumscribing the “political,” an act that demarcates what is outside as much as what is inside. As such, sovereign power exists by creating a realm for its own validity and, simultaneously, excluding the “exception” to that realm—by constituting an “inside” where sovereign power functions and an “outside” that sovereign power abandons. Since it is constituted by (*and* constitutive of) sovereign power, this “outside” exists as such only *in relation to* sovereign power and is thus not actually “outside” sovereign power at all. It exists, rather, in a “zone of indistinction” between outside and inside, included specifically as what is excluded. Therefore, the exception to this realm—bare life—does not pre-exist politics, but rather is *produced* in the very moment when sovereign power seeks to define itself against an outside. The exception is thus the very foundation of sovereign power, which cannot exist as such without it. Put another way, sovereign power is the power over bare life, which sovereignty itself produces by deciding on its exceptionality. This unbreakable link between bare life and politics means, in Agamben’s view, that bare life is and always has been included in politics as that which is necessarily excluded, making biopolitics as old as politics itself. The circular and self-perpetuating/self-legitimizing logic of the exception—whereby bare life is excluded because it is the exception, but bare life is the exception because it is excluded—

precludes any historical conception of an origin of Western politics as well as any foreseeable end, unless the circle can be brought “out of concealment” and revealed for what it is.

Just as the political realm is defined against the bare life that is included in it only as an exception, so the juridical order is defined against the chaos that is likewise included in law as an exception. By suspending itself in the state of exception, juridical rule creates a situation of chaos against which it defines the realm of its validity. While previous theorists have noted that sovereignty “interiorizes” the excess against which it defines itself through an interdiction (or authoritative prohibition),¹⁹ Agamben argues that the sovereign-exception relation is more complex since this interiorization is not simply a matter of the juridical order interdicting what is outside and thus maintaining a continuous ability to interdict. Rather, this interiorization is a matter of the “suspension of the juridical order’s validity” such that the rule “withdraw[s] from the exception and abandon[s] it” (18) and yet maintains itself in relation to the exception as that from which the exception is excluded (the exception is always an exception *to* something). The situation in the state of exception is thus not a “fact” that occurs *first* or independently, since that situation is “only created through the suspension of the rule” (18). However, the situation is also not one of law since it occurs in the suspension of the law’s validity. The sovereign decision on this exception thus “institutes a paradoxical threshold of indistinction” (18) between fact and law, inside and outside, that underpins the (territorial) localization and (juridical) ordering of political space. As a zone of indistinction—rather than a clear border—between inside and outside, the state of exception itself remains fundamentally unlocalizable. The relation of exception by which chaos is included in the juridical and by which bare life is included in the political is thus the hidden foundation of politics.

¹⁹ The theorists cited by Agamben are Deleuze and Guattari, Foucault, and Blanchot.

What is unique about the modern state (versus the “classical world” [2]) is not the biopolitical exception at its foundation, but rather the increasing frequency with which the state of exception comes “to the foreground as the fundamental political structure [until it] ultimately begins to become the rule” (20). To maintain the distinction between the exception and the rule, “our age tried to grant the unlocalizable [state of exception] a permanent and visible localization, the result [of which] was the concentration camp [of Nazi Germany]” (20)—a space that not only stabilized the necessary exception to sovereignty, but also, by reducing the political life of Jewish citizens (and other targeted groups) to bare life, also stabilized the necessary exception to political life. For Agamben, the *Muselmann* (literally “Muslim” but also “camp jargon” for the concentration-camp inhabitant), represents “the most extreme figure of [the bare life of] the camp inhabitant” because he has lost so much and endured so much that “he is no longer capable of distinguishing between pangs of cold and the ferocity of the SS,” such that “he moves in absolute indistinction of fact and law...and of nature and politics” (185). The camp, then, is the ultimate “space of exception.” In establishing a permanent space in which bare life is produced, sovereign power consequently establishes a permanent space in which it can exist sovereignly.

If the state of exception is how sovereign power exerts itself as such (as a precisely *sovereign* power), then the permanent, spatialized state of exception, the camp, allows sovereign power to continuously re-exert itself and thus maintain sovereignty as such by maintaining itself in relation to the space of absolute exception. Agamben calls this a “relation of ban,” which captures the paradoxical status of the camp as being that which is included only as an exclusion, that which has been abandoned by the law and yet retains its relation to the law. Accordingly, the inhabitants of the camp are reduced to a form of bare life or, in other words, a category of life that is not “extrapolitical”—free from law, politics, and sovereign power—but “rather, a

threshold in which law constantly passes over into fact and fact into law, and in which the two planes become indistinguishable” (171). Inhabitants of the camp cannot appeal to the law as regular citizens with regular rights, nor can they be subjected to the regular and regulated legal processes enjoyed by even criminal civilians. Furthermore, inhabitants can be put to death “with impunity” (47) since there is no law that applies to them and thus no law that protects them. This highlights both the exceptional status of the inhabitants of the camp (who can be killed but not murdered) as well as the exceptional status of those who kill bare life in the camp (since they are exempted from punishment). While the “camp” in Agamben’s thinking was epitomized by Jewish concentration camps during World War II, Indigenous incarcerations within reserve systems and Indian Residential Schools—both of which become spaces where the most basic of human rights are removed from the inhabitants within—can also be approached as “camps” in an Agambian sense.

2. “Indigenizing Agamben”

Within this ontological framework of Western sovereignty, no “outside” can exist except as the paradoxically included exception. However, adjusting this framework to accommodate a settler-colonial context—where Western politics operates in an originally and still largely “non-Western” place—opens a space for imagining a possible outside to Western politics of state sovereignty, one that perhaps holds the potential to bring the structure and foundation of such politics “out of concealment.” Mark Rifkin, in his application of Agamben’s theorization of sovereignty to the settler-colonial context of the United States,²⁰ reworks three aspects of

²⁰ Indigenous-state relations in the United States have evolved in ways that are both different from and similar to the evolution of Indigenous-state relations in Canada. While the legal, political, and social dynamics of exceptionality differ in these two contexts, Rifkin’s settler-colonial-specific adjustments allow Agamben’s theories to inform a reading of the exceptionality of Indigenous peoples that lies at the core of Canada’s state sovereignty. In using

Agamben's theories to make these necessary adjustments: "the persistent inside/outside topology [Agamben] uses to address the exception, specifically the ways it serves as a metaphor divorced from territoriality; the notion of 'bare life' as the basis of the exception, especially the individualizing ways that he uses that concept; and the implicit depiction of sovereignty as a self-confident exercise of authority free from anxiety over the legitimacy of state actions" ("Indigenizing Agamben" 90). Rifkin argues that such adjustments allow for "a reconsideration of the 'zone of indistinction' produced by and within sovereignty," thereby "opening up analysis of the ways settler-states regulate not only proper kinds of embodiment ('bare life') but also legitimate modes of collectivity and occupancy—what [he calls] *bare habitance* (90). Significantly, Rifkin emphasizes the importance of the territoriality of the exception, inverting Agamben's prioritization of biopolitics over geopolitics to confront his presumption of "a coherence between territory and political entity" ("(Geo)politics" 3) that does not hold true for settler-colonial contexts where multiple competing political entities stake overlapping territorial claims. It is because of its lack of coherence between territory and political entity that the settler-colonial context becomes a possible site from which the totalizing structure of state sovereignty can be challenged by the "outside" that it has failed to incorporate as its exception.

To overcome this incoherence and assert complete territorial sovereignty, the Canadian settler-state constructs pre-existing Indigenous nations as the exception to both the regular status of foreign nations within international politics as well as the regular status of citizens within domestic politics. First Nations cannot be recognized as independent foreign nations without

Rifkin's texts in the Canadian context, I follow Rifkin's own suggestion that "placing Agamben's argument in dialogue with U.S. Indian policy can generate analysis of how the topos of 'sovereignty' works to support a particular settler-state regime, and therefore, it might be useful as a way of approaching other settler-states as well" ("Indigenizing Agamben" note 5). For a useful comparison of legislation regarding Indigenous peoples in these two settler-colonial states, see Borrows, "Legislation and Indigenous Self-Determination in Canada and the United States" in *Freedom and Indigenous Constitutionalism*.

undermining Canada's claim to territorial sovereignty; however, neither can First Nations be entirely denied their status as nations without undermining the treaties from which the state claims to derive its territorial sovereignty. In the words of John Borrows, "If Aboriginal peoples do not possess the inherent authority to enter into treaties, then the whole treaty process is a sham" ("Tracking Trajectories" 297). As such, Indigenous peoples must simultaneously be both within the political order as something other than citizens as well as outside the political order as something other than independent nations. Their fundamental exceptionality enables the state to "acquire" sovereignty over the land via treaties with Indigenous nations, while also asserting sovereignty over Indigenous nations via the sovereignty over the land gained through the very treaties that require the nations be recognized as nations in the first place.²¹ To articulate this constitutive paradox, the state manipulates the language of "sovereignty," dividing it into the "inherent sovereignty" held by First Nations and the "underlying sovereignty" always maintained by the state. As a floating signifier—always defined on the state's terms—"sovereignty" becomes a point of translation between an Indigenous discourse and politics and a settler-colonial discourse and politics, bringing the former into the realm of the latter as its founding exception.

Just as Agamben notes that the permanent, visible localization of the necessary state of exception emerges in modernity with the space of the camp, so the permanent, visible localization of the necessary Indigenous exception arguably emerges as the reserve. These disparate and highly constructed locations enclose First Nations precisely within the paradox of their (non)nationhood by at once recognizing and yet circumscribing the (extremely reduced)

²¹ I have drawn attention to the term "acquire" because the Canadian nation-state has not actually established, legally, that it "acquired" sovereignty over all Indigenous peoples and lands. While the Supreme Court of Canada cannot entertain the question of the legitimacy of this sovereignty (from which it derives its authority to pose any question at all), the Court does tend to refer to the State's "assertion" rather than its actual "acquisition" of sovereignty (Reynolds 60).

territory of those nations, while also denying the political autonomy that would, in the regular case of recognized foreign nations, be accorded that territory. On the reserve, Indigenous peoples are reduced to “bare habitance” (Rifkin’s version of collective bare life) in the denial/inhibition of their political capacity as a nation, but also in their diminished visibility as anything other than the exception that the State requires and discursively constructs them to be. This reduction to bare habitance produces the most prominent lens through which Indigenous life is visible, and the “historical practices of state surveillance in these spaces [are] a form of societal expectation that still shapes social relations, ... a historically generated ‘colonial dream’...of Indigenous pacification, containment, and demobilization” (Audra Simpson 127). A crucial difference between the reserve and the camp, however, is that reserves have also at times helped protect Indigenous ways of life because they constitute collectively held (home)lands on which First Nations live as distinct political and cultural communities and over which First Nations have some (albeit extremely limited) jurisdiction. As will be seen in the following chapter, reserves were often initially requested by First Nations specifically as self-chosen exceptional spaces that were to remain outside the reach of settler-colonial expansion and influence. Over time, however, due to relocations to less desirable land, legislative oppression under the Indian Act, and ongoing loss of territory (and resources) to the needs of an ever-growing settler society, reserves have become spaces of exceptionally intrusive laws and exceptionally poor living conditions, with exceptionally limited access to the government services and protections enjoyed by the rest of (settler) society. As such, reserves are spaces where Indigenous people are allowed by the state to die—without these deaths counting as either individual “murders” or a collective genocide—but not spaces where inhabitants are put to death, as in the concentration camps to which Agamben makes frequent reference. This distinction has allowed the state to eschew

responsibility for the abominable living conditions of a particular group within its polity despite its undeniable complicity in the establishment and maintenance of these conditions. Within this settler-colonial liberal democracy whose sovereignty depends, paradoxically, on both the exceptionality and the accommodation of Indigenous nations as treaty partners on “reserved” lands, the permanent space of exception must be, at once, under the sovereign control of the State *and* a distinct political sphere “beyond” the reach of the State and therefore beyond its liability.

So long as this Western state discourse of sovereignty and Indigenous exceptionality remains the only (visible) discourse, and so long as it encompasses everything around it, there can be no outside to the state’s sovereign power within its borders. This is why Agamben says that “[t]he ‘ordering of space’ that is, according to Carl Schmitt, constitutive of the sovereign *nomos* is therefore not only a ‘taking of land’ (*Landesnahme*)—the determination of a juridical and territorial ordering (of an *Ordnung* and an *Ortung*)—but above all a ‘taking of the outside,’ an exception (*Ausnahme*)” (19). Land title and self-governance agreements, recognition and reconciliation politics, treaties and discourses of multiculturalism that reduce Indigenous political difference to mere cultural or ethnic difference are all methods of “taking the outside” (understood here as Indigenous political autonomy) into the sovereign *nomos* as an exception. In each instance, an Indigenous struggle for land or autonomy undergoes the violent and possibly irreparable translation into terms acceptable to the settler-state and is thus “taken into” settler-state discourse as an exception that, despite its exceptionality, is now defined entirely through the language of settler-colonialism. This is why the ongoing refusal and rejection of such forms of translation as well as the perpetuation of productive and reciprocal practices of alternative

political orders hold so much potential to unravel this hierarchical Indigenous-state relationship and sow the seeds for transformative reconciliation to occur in its place.

3. An Indigenous Alternative to the Agambian Exception

Similar to Agambian bare life, Indigenous peoples are continuously constituted by the settler-state as either within a state of exception or, in the case of a return from bare life to the regular political sphere (as through enfranchisement), completely within the structure of the state itself as rights-bearing citizens with no claim to even an exceptional form of nationhood. It is in light of this conception of state sovereignty that the radicality of Coulthard's politics of "grounded normativity" emerges. Not just validating but actually making visible an Indigenous discourse that exists outside the discourse of the sovereign settler state, Coulthard's theory of "grounded normativity" as "the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time" (13) exposes the contingency of a supposedly absolute sovereign power whose existence as such in fact relies upon its ability to incorporate, or translate, all other discourses, even if it does so by constituting them as the exception. Moreover, this theory enacts an alternative politics that radically precludes the possibility of a single, dominating, centralized state power and state discourse. The principle of grounded normativity necessarily emerges out of direct relationships with the land, so that all thought, speech, and practice reflect the particular topological relations between humans and nonhumans that shape the occupancy of land and subject position and, analogously, reject those "complex topological relations that make the validity of the juridical order possible" (Agamben 19). In other words, Coulthard responds to the structural entrapment of Indigenous

people within the sovereign state with his theory of “grounded normativity,” which provides a specifically (Dene-) Indigenous, and non-Western, framework for articulating Indigenous struggles for land and autonomy (or, cautiously, “sovereignty”²²) without translating these struggles into settler-colonial terms, thereby keeping those struggles outside the discourse of the state altogether.

As the opposite of grounded normativity, the “translation” of Indigenous land-based practices and struggles into settler-colonial terms risks critically altering the nature of the struggles themselves through such translation:

...one of the negative effects of this power-laden process of discursive translation has been a reorientation of the meaning of self-determination for many (but not all) Indigenous people in the North; a reorientation of Indigenous struggle from one that was once deeply *informed* by the land as a system of reciprocal relations and obligations (grounded normativity), which in turn informed our critique of capitalism ... to a struggle that is now increasingly *for* land, understood now as material resource to be exploited in the capital accumulation process. (Coulthard 78)

The “reorientation” that Indigenous struggles undergo in the process of this discursive translation dismantles not only the aim of those struggles but also the critique of settler-colonialism enabled and informed by those struggles. This process began as early as the treaties, at which time the Crown “reoriented” Indigenous conceptions of governance over and ownership of land—imposing specifically Western versions of these concepts (like patriarchy and property)—in

²² Many Indigenous scholars take issue with the application of the term “sovereignty” to the kind of independence and self-determination at stake for First Nations. This is because a Western ontology of sovereignty cannot accommodate notions of land as the reciprocal relations between living beings into its understanding of land as territory, property, and resource. For distinctions between types of sovereignty embraced by the state and First Nations, see Webber, “Age of Encounter.” For an Indigenous critique of the Western conception of sovereignty, see Alfred, *Wasáse and Peace*. For an account of an Indigenous form of sovereignty, see Simpson, *Dancing*.

order to facilitate the appropriation of that land. The then “reoriented” form of “sovereignty” that was assured to Indigenous peoples within the treaties and that has since been recognized thus now signifies only as much or as little as the state—within whose discourse the term operates—requires in order to uphold its own absolute sovereignty.

In *Red Skin White Masks*, Coulthard makes visible the continuation of this discursive violence in contemporary forms. Land title and self-governance agreements (both of which constitute “reconciliation” as per its articulation by the Court as the “fundamental objective of modern Aboriginal law” [Reynolds 29]) for instance offer non-treaty nations increased “sovereignty” in the form of increased jurisdictional scope, but at the cost of abandoning their specifically Indigenous conceptions of land and government for those of the settler-colonial state and the “organizational imperatives of capital accumulation” (Coulthard 62). Such agreements aim “to facilitate the ‘incorporation’ of Indigenous people and territories into the capitalist mode of production and to ensure that alternative ‘socioeconomic visions’ do not threaten the desired functioning of the market economy” (66). In other words, the state neutralizes a threatening Indigenous discourse by incorporating that discourse into itself as a nonthreatening exception that not only supports Canada’s underlying sovereignty, but also provides the space for its rearticulation and reassertion. Reconciliation, as the court-articulated objective of reconciling the pre-existence of sovereign Indigenous peoples to the Canadian state’s assertion of (always already) underlying sovereignty (through land claim settlements, modern treaties, and self-governance agreements) is exactly the type of problematic translation against which Coulthard warns: the translation of Indigenous struggles into the terms of an enemy whose unquestioned structure is fundamentally counter to that struggle, in which case, as Agamben himself

forewarns, “one ends up identifying with an enemy whose structure one does not understand” (12). The struggle is thus lost in the translation.

“Grounded normativity” counters these acts of translation by making visible that enemy structure, calling attention to the existence of an Indigenous way of being, or an alternative (Indigenous) ontology of “sovereignty,” that exists outside of and in total contradiction to the state’s discursive construction of Indigenous peoples and their supposed exceptionality. By embodying an Indigenous subject position for which the sovereign state cannot account, Coulthard’s notion of grounded normativity brings “out of concealment” (Agamben 4-5) the contingency of the state’s claim to absolute sovereignty and, therefore, its hidden foundation on the exception of alternative Indigenous sovereignties. The constructedness of that exception here becomes apparent as an anxiety that manifests in the almost ritualistic insistence on Indigenous exceptionality. “Grounded normativity” responds to this daily effort with an alternative daily effort to embody another side of Indigenous existence, the side rooted in land as “an ontological framework for understanding *relationships*” (Coulthard 60) that operates outside the ontological framework of Western sovereignty—not as an exception, but as a true outside that unravels the State’s narrative of sovereign power.

The following chapter will look to the history of Indigenous-state relations to trace the state’s construction of Indigenous exceptionality throughout each century since settlement. My discussion will show that, while the state’s tactics have evolved in response to Indigenous resistance efforts, changing human rights standards, and public pressure in both the domestic and international spheres, the relation of exceptionality has nevertheless been reproduced at every stage in the shared history of Indigenous peoples, the Crown, and settler society more generally.

Chapter 2: A History of Exceptionality

1. Introduction

In its final report, the Royal Commission on Aboriginal Peoples (RCAP) divides the history of Canada into four main stages: Separate Worlds, Contact and Co-operation, Displacement and Assimilation, and Negotiation and Renewal.²³ The historical context presented in this chapter will roughly follow RCAP's stages; however, because this project is specifically concerned with the Indigenous-state relationship, I will not be touching on RCAP's first, pre-contact stage, Separate Worlds. As such, this historical context will be presented in three stages, which also correspond to Tully's "three phases or ways of life [that] can be seen to comprise a meta-cycle of life": conciliation, crisis, and reconciliation ("Reconciliation" 95). The reciprocal relationships represented by conciliation, crisis and reconciliation can also be applied to the stages of the Indigenous-state relationship, as Tully himself explains: "The sustainable and conciliatory inter-societal 'middle ground' of the early peace and friendship treaties gave way to periods of treaty violation, marginalization, and genocide; then the courageous resilience and resurgence of Indigenous peoples in the twentieth century; further encroachment on their territories and resources; and the contemporary attempts to address the Indigenous crisis separately by reconciliation through modern treaties and other means" (96). While Tully's three phases illustrate the (pre)conditions for transformative reconciliation,²⁴ the historical stages depicted here illustrate the (pre)conditions for an assimilative, oppressive, and ultimately violent form of reconciliation that attempts to stabilize the exceptionality of Indigenous peoples and

²³ *Report of the Royal Commission on Aboriginal Peoples. Vol. 1: Looking Forward Looking Back*. All quotes taken from Vol. 1.

²⁴ Tully distinguishes between the three phases as a meta-cycle of life, where reconciliation is transformative, and the three phases as they apply to the history of Indigenous-state relationships where "attempts at reconciliation have brought about positive change in several cases, but they have not been transformative" ("Reconciliation" 96).

lifeways.²⁵ For this reason, I have taken the liberty of altering the names of the three historical stages here analyzed both to reflect the elements most relevant to my argument as well as to highlight the way Indigenous exceptionality has been inscribed in each stage. For the purposes of this paper, stage one will be Segregation and Alliance, stage two will be Subjugation and Assimilation, and stage three will be Reconciliation. This chapter will demonstrate, through historical examples, that the State's construction of Indigenous exceptionality is at least as old as (and, in fact, older than) the State itself and has continued in various forms into the present. This ongoing relation of exceptionality provides the historical context within which reconciliation can be read as a tool of settler colonialism.

The first stage, Segregation and Alliance, dates from early contact to the late 1700s and includes early Crown-Indigenous relations that established Indigenous exceptionality by constructing First Nations as nations-not-nations, or nations enough to sign treaties but not nations enough to retain their sovereignty. Indigenous peoples were "outside" the emerging colonial-political order, but as independent political groups. Nation-to-nation alliances and pre-Confederation treaties between settlers and Indigenous groups acknowledged the nationhood of Indigenous peoples while Crown declarations, like *The Royal Proclamation of 1763*, sought to limit that nationhood by bringing Indigenous peoples under Crown protection.

The second stage, Subjugation and Assimilation, begins in the early 1800s, especially with the effects of the War of 1812, and lasts until the publication of the "White Paper" in 1969. Indigenous-Crown and Indigenous-settler relations during this time reinforced Indigenous exceptionality through the construction of Indigenous peoples as "bare life" (rather than as "nations-not-nations") through federal legislation culminating in the "vast administrative

²⁵ I use "lifeways" in the sense described by Aaron Mills as not just "specific shared practices or qualities, but rather...how the world appears to us: the ontological, epistemological, and cosmological system within which a people consistently becomes itself, within which forms and substance continually change" (136).

dictatorship” (Tully “Reconciliation” 105) of the Indian Act and the creation of Indian Residential Schools. This period saw a dramatic shift in the way Indigenous people were regarded by settlers and settler governments—still “outside” the dominant political order, but now as uncivilized wards of the state rather than as independent political groups—which coincided with a dramatic shift in the government’s approach to land. Treaties were made for the purpose of land acquisition rather than alliance-building and were frequently not upheld by the state; First Nations’ territorial sovereignty was severely constrained through loss of land to settler encroachment, the implementation of the reserve system, and intrusive federal policy; and Residential Schools (and the “60s Scoop”) removed an entire generation of Indigenous people from the land. These attempts to diminish Indigenous territory and sovereignty sought (and failed) to eliminate “traditional Indians” and produce instead enfranchised/assimilated members of the settler population.

The third and final stage, Reconciliation, begins with the Indigenous response to the Pierre Elliot Trudeau government’s 1969 “White Paper” and continues to the present day. This period includes various forms of interaction and negotiation between the state and Indigenous peoples that appear to correct past wrong-doings but that in fact continue patterns of colonization. State-Indigenous relations during this period establish Indigenous exceptionalism by once again constructing First Nations as “nations-not-nations,” employing a rhetoric that condemns the earlier attempts to construct Indigenous peoples as “bare life” yet still achieves widespread dispossession of Indigenous lands and dilution of Indigenous political power. Aboriginal and treaty rights are “recognized and affirmed,” yet also constrained and infringed upon; disputes over land title are decided by the highest court, yet so are definitions of Aboriginality; federal government bodies distance themselves from the explicit racism of

previous times yet ignore the foundational racism of colonization; and modern treaties are sought to “settle” land claims in unceded territories, especially those whose land is required for the extraction or transportation of oil and gas.

2. Stage 1: Segregation and Strategic Alliances

According to RCAP, the first stage of the relationship between Indigenous peoples and European newcomers was a period of curiosity and apprehension as well as “mutual tolerance and respect,” particularly relative to the periods that followed (42). This was less because Europeans inherently respected the nations they encountered and more because maintaining good relations with the first peoples was essential to their survival on these new lands. This initial imbalance of power “helped to overcome the colonial attitudes and pretensions the first European arrivals may originally have possessed” (95) and allowed for negotiations, alliances, treaties, and trade economies²⁶ to take place. Despite the many instances of co-operation and peaceful co-existence, Europeans, particularly the British, still managed to make significant advances towards establishing their claim to sovereignty over Indigenous peoples and lands, in turn beginning the process of constructing Indigenous peoples as both outside and inside the realm of colonial political life and law—or, in other words, as existing in a state of exception in relation to the new British colony.

Of particular importance to the British project of establishing a lasting presence in North America was *The Royal Proclamation of 1763* (which has served as a key historical document for both the defence of and encroachment on Indigenous sovereignty), issued on October 7 of

²⁶ Trade economies took the form of Indigenous trade practices and adhered to Indigenous trade traditions and protocols specifically because of the reliance of European traders on Indigenous friendship and co-operation. Commercial treaties between trade companies, like the Hudson Bay Company, and First Nations in Ontario and Quebec were possible because European traders followed Indigenous law and custom. See Miller, *Compact* 3-33.

that year—the historical circumstances surrounding which are crucial to understanding its role in Indigenous-British relations. After the war with France had ended, French Indigenous allies, “having never been conquered, Either by the English or French, nor subject to the Laws, consider[ed] themselves as free people” (qtd. in Borrows, “Wampum at Niagara” 157) and demanded gifts from their former adversaries as a form of reparation for the casualties they suffered during the war and as payment for the continued use of their land (157-8). By January of 1763, the British government was already preparing to “...to conciliate...the Indian Nations...by affording them...Protection from any Incroachments on the Lands they have reserved to themselves, for their Hunting Grounds...” (qtd. in Ottawa, *Application* 5) as concerns grew over the “twin problems” of potential animosity from First Nations formerly allied with France and “mounting dissatisfaction of some of its own [I]ndigenous allies over incursions by American colonists on their lands” (RCAP 108). British fears came to fruition that summer when an “Indian rebellion” broke out over the unauthorized settlement of Americans on their lands (*Application* 6). The British were at risk of losing their Indigenous allies, and thus also their “aspiration for the development of North America” (Borrows, “Crown and Aboriginal Occupations” 10), unless concessions were made, so, that October, the British government issued the Royal Proclamation, which assured Indigenous groups of the continued possession of their unceded territories:

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the

Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds....²⁷

Notably, the Proclamation recognizes, at least nominally, the status of Indigenous groups as nations, yet in the same breath it describes these nations as living “under Our Protection,” even on “Territories ... not having been ceded to, or purchased by Us.” The motive of “conciliation” speaks to the period as one of early interdependence, when the good will of the Indigenous peoples on Turtle Island was essential to the survival of the newcomers—and certainly the Royal Proclamation stands out as an act of recognition of the authority and autonomy of Indigenous nations—but the joint effect of this “pacifying” concession is a formal assertion, by Britain, of its own underlying sovereignty to the same Indigenous lands it purports to recognize *as Indigenous*:

And We do further declare it to be Our Royal Will and Pleasure... to reserve under Our Sovereignty, Protection, and Dominion, for the Use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West....

The Royal Proclamation, in effect and from the perspective of the British Crown, brought First Nations “into the fold” of its jurisdiction as, paradoxically, an outside or limit of the new dominion and its settler reach. As Borrows succinctly puts it, “while the Proclamation seemingly reinforced First Nation preferences that First Nation territories remain free from European settlement or imposition, it also opened the door to the erosion of these same preferences”

²⁷ *The Royal Proclamation of 1763* (UK), reprinted in RSC 1985, App II, No 2, http://avalon.law.yale.edu/18th_century/procl1763.asp

(“Wampum” 160). The ambivalence within this text points to a duplicitous approach to Indigenous peoples and belies the amity this document intended to represent.

Internal communications around the time of the Proclamation help elucidate the Crown’s intentions. For instance, two months after the Royal Proclamation was issued, the British Crown restated its expansionist objectives when “the Governor of Quebec, James Murray, was issued Imperial Instructions which contained three provisions...specifically relating to Indians.” These included instructions to maintain good relations with First Nations so that “they may be induced by Degrees, not only to be good Neighbours to Our Subjects, but likewise themselves to become good Subjects to Us” as well as instructions to “use the best means You can for conciliating their Affections, and uniting them to Our Government” while “reporting to Us, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them” (Ottawa, *Application* 10). Clearly, the British Crown was concerned with placating First Nations enough to enable the British to not only remain in North America but to remain as sovereign with Indigenous peoples as subjects of the British empire. The language of conciliation foreshadows the contemporary rhetoric of formal reconciliation, with its similar goal of inducing Indigenous people to be good neighbours and good subjects to settler society and settler governments respectively, particularly in the context of gaining access to land, whether for settlement (then) or resource development (now). Furthermore, the instruction to report to the Imperial government “whatever Information you can collect with respect to these People” foreshadows the current government’s use of surveillance of Indigenous people to anticipate and prevent anti-government (and anti-industry) actions.

It is important to note that First Nations at the time did not interpret the Royal Proclamation as undermining their sovereignty. The subsequent Treaty of Niagara, signed in

1764 by chiefs representing more than two dozen First Nations across North America (Borrows, “Wampum” 163) ratifies the interpretation of the Royal Proclamation as affirming and protecting Indigenous sovereignty. In fact, the two-row wampum belt exchanged at the Treaty of Niagara “illustrates a First Nation/Crown relationship that is founded on peace, friendship, and respect, where each nation will not interfere with the internal affairs of the other. An interpretation of the Proclamation using the Treaty of Niagara discredits the claims of the Crown to exercise sovereignty over First Nations” (164). The discrepancies between the Royal Proclamation on the one hand and the Treaty of Niagara on the other illustrate the power First Nations held during this period, such that Britain sought their friendship, alliance, and co-operation even while rhetorically extending the scope of its authority to their people and land.

At the time, the different interpretations held by First Nations and the British Crown also resulted from the very different cultural backgrounds of the treaty parties, particularly regarding their perspectives on “possessory rights to land and the authority of European monarchs over Indigenous peoples” (RCAP 118). It is, of course, understandable and even expected that two cultures with such distinct understandings of relationship to land and distributions of power would interpret the language of these treaties differently, especially so early in the Indigenous-European relationship. Nonetheless, the Pre-Confederation treaties, including the Treaty of Niagara, began a pattern of translating/supplanting Indigenous discourses of land, resources, sovereignty/nationhood, and the interrelationships that connect these ideas, with corresponding yet incompatible European discourses that, conveniently, aided and ultimately enabled both the territorial and the political expansion of European powers in North America. Furthermore, the signing of treaties, despite the recognition of some form of existing Indigenous nationhood implicit in doing so, legitimated European presence on (formerly) Indigenous land.

Hence, the treaty system is expressly designed not only to recognise and treat the Aboriginal people as equal, self-governing nations, but also to continue, rather than extinguish, this form of recognition through all treaty arrangements over time. Indeed, the legitimacy of *non*-Aboriginal governments in [North] America depends on this continuity, for it is the condition of Aboriginal consent to recognise them. (Tully, *Strange Multiplicity* 124)²⁸

As I argued in Chapter One, it is precisely this recognition of (limited) sovereignty or self-determination that constitutes the initial construction of First Nations as exceptional to the regular status of nations, i.e. nations enough to sign treaties yet not nations enough to retain the rights and powers usually accorded to sovereign nations. After all, “it was a time when the European powers were developing great ambitions for North America. These ambitions would drive them to claim these lands as their own, to proclaim their exclusive sovereignty over the Aboriginal inhabitants, and to issue instructions either to drive the Aboriginal peoples farther inland or to *subdue* them entirely” (RCAP 96, emphasis mine). As such, these early treaties served to both commodify—through discursive translation—Indigenous lands (now possessed by Europeans) and legitimate Crown sovereignty and jurisdiction over them. Furthermore, they anticipate later efforts to subdue (in the sense of both to “bring under the control of” as well as to “mak[e] ... submissive or compliant”)²⁹ the First Nations over which the Crown claimed exclusive sovereignty in order to facilitate Crown and settler expansion over Indigenous land.³⁰

²⁸ Put another way, “[t]reaties offer us a way of seeing the recognition of that principle [of temporal priority] as the basis for the legitimacy of our settlement here and not in opposition to it” (Asch, *On Being Here to Stay* 75).

²⁹ *OED* “subdue” 1. b.: “To make (a people, a territory, etc.) subject to the power or authority of another; to bring under the control of” and 2. g.: “...to have the effect of making (a person) submissive or compliant; to seduce, win over. Also: to calm down; to make quiet.”

³⁰ This thread will be picked up in Chapter Three, where I discuss the Canadian state’s current efforts to “soften” Indigenous communities for resource development projects.

Despite their conciliatory spirit, the Royal Proclamation and the pre-Confederation treaties that followed ratified the exceptionality of Indigenous nationhood in their management of the spaces where Indigenous nations were “allowed” to exist. For instance, the paradoxical spatial arrangement spelled out in the Royal Proclamation “reserve[s],” under Crown sovereignty, lands and territories “not included” in the Crown’s “Three New Governments” for the *use* of the Indians—i.e. it reserves for Indians their own land, while referring to that land as both *beyond* the limits of the dominion governments and yet *under* the sovereignty of the Crown, serving to both include and not include, or “except,” Indigenous nationhood. Within the overarching goal of conciliation, however, this relationship was portrayed as a kind of tripartite relationship, which “raise[d] the dilemma of the Crown and Indian nations *simultaneously* having *sovereign* rights to the same land” (RCAP 240, emphasis mine). In this asymmetrical formulation of a nation-to-nation relationship (which is also already a nation-under-nation relationship), Indigenous sovereignty became the exception to the *underlying* sovereignty claimed by the Crown, paradoxically both “contained” within and yet exempted from it. This containment became literal when, following the precedent of the Jesuits, who established the first reserves in eastern Canada in order to limit the nomadic lifestyle that would inhibit regular participation in the church, the British began “their own program of attempting to convert and civilize the Indians” (RCAP 135) on reserves—a marked departure from the relationship implied in 1763. While not camp-like spaces in the Agambian sense (as would become the case later on), these early reserves nonetheless constructed Indigenous spaces and nationhood as exceptional. Furthermore, the containment of Indigenous bodies went hand-in-hand with this new individualizing civilizational project—which strove to produce discrete subjects of civil society—and thus signals the beginning of a transition from a nation-to-nation relationship to a

ward-of-the-state relationship. Unsurprisingly, this civilizational discourse continues throughout each phase of Indigenous-Crown/state relations since it centres around the exclusion and exceptionalization of Indigenous ways of being and, crucially, Indigenous ways of interacting with the highly desirable and resource-rich lands on which they live. As non-Indigenous groups increasingly had less need for Indigenous assistance and more need for Indigenous lands and resources, this civilizational discourse correspondingly ramped up to become a central goal of new non-Indigenous governments during the next stage of the Indigenous-Crown relationship.

3. Stage 2: Assimilation and Subjugation

The changes in the Indigenous-settler/Indigenous-Crown relationship that eventually led to policies of civilization and assimilation of Indigenous people began in the late 1700s and early 1800s because of three main contributing factors. The first was a “change in the colonial economic base” as the fur trade was replaced with economies that were highly incompatible with mobile Indigenous hunting and gathering societies, namely agriculture and resource extraction to support permanent settlements (RCAP 131). The decrease in Indigenous-held land, the impact of settlement on animal food sources, and the end of the fur trade era left Indigenous economies struggling and in need of assistance from the colonial government. The second factor was a sudden influx of immigrants from the American side of the border following the American Revolution. The 1780s saw thousands of Loyalists arrive in Canada in need of land on which to settle, which put immense pressure on First Nations land and resources, particularly in the Maritimes (130). Finally, the third factor was the end of the War of 1812, when Indigenous military allies were no longer necessary given the unlikelihood of another war between Britain and the United States. All three factors precipitated a shift in colonial focus away from

Indigenous people (as business partners, military allies, and a strong majority population) and towards the Indigenous lands needed to expand the colony and its burgeoning economy. As Indigenous peoples increasingly became viewed as the obstacles rather than the means to achieving such growth, “Indian policy” during the second stage of the Indigenous-settler relationship increasingly focused on finding a “solution” to what the colonial government perceived to be an “Indian problem.” The Crown’s initial desire to conciliate First Nations was then replaced by the dominion government’s desire to eliminate them, resulting in a period of conflict and crisis in the relationship cycle. As Tully writes, “[t]he sustainable and conciliatory inter-societal ‘middle ground’ of the early peace and friendship treaties gave way to periods of treaty violation, marginalization, and genocide” (“Reconciliation” 96). Furthermore, since the Canadian nation-state was especially concerned with stabilizing its claim to sovereignty and expanding its territory at this time, this stage in the relationship shows a marked intensification of the production of Indigenous exceptionality.

After the War of 1812, and “because of their concern for the defence system of Upper Canada, which had proven inadequate during the war, British officials altered immigration policy” (Surtees 65) to bring more (and more loyal) British immigrants to Canada, greatly increasing the European population in need of settlement lands. Furthermore, the “normalization of relations” (RCAP 131) between the United States and Great Britain effectively quashed the need for Indigenous military alliances on either side. For the Canadian side, this was particularly significant because maintaining Indigenous alliances had been a major contributing motivation for the Crown’s declaration that Indigenous land would be protected from settlement in *The Royal Proclamation of 1763*. Combined with the declining importance of the fur trade and thus of commercial alliances between First Nations and Europeans, post-war stability did not bode

well for Indigenous people. In fact, by 1830 “Indian policy” had been transferred from military to civil authorities, a first step towards the social project of “dismantling Aboriginal nations and integrating their populations into the burgeoning settler society around them” (131). Although a series of territorial treaties signed between 1815 and 1825, as well as the Robinson treaties signed in 1850, did proceed according to the principles outlined in the Royal Proclamation, this process deteriorated as the perceived value of maintaining healthy treaty relationships with First Nations *as nations* declined. In particular, because the “singular, hierarchical conception of sovereignty” assumed by British/European law is “incapable of comprehending multiple sovereign actors on a given territory” (Macklem, “Pluralism” 21), the already-established sovereignty of the Crown (as evinced in its transfer of Indian policy to the domestic sphere of “civil authorities”) negated the necessity of instituting additional nation-to-nation relationships.³¹

In addition to Indigenous nationhood, First Nations economies and livelihoods were also increasingly under threat as lands were increasingly being appropriated for the settlement of non-Indigenous people—a population that by 1812 “outnumbered the Aboriginal population by as much as 10 to 1, with the ratio increasing further in the ensuing decade” (RCAP 130). John Borrows describes the conditions experienced by his Anishinaabe ancestors in the subsequent decades:

Because much of our hunting and fishing grounds had been surrendered under Treaty No. 72 and because inadequate compensation was being received in return for these lands, we had little land or remuneration left for subsistence. Although we had survived on our

³¹ While the very existence of the treaties acknowledges that Indigenous nations belong to a category of organized peoples capable of making treaties, the recognition of Indigenous peoples as nations *but not states* has allowed the Canadian nation-state to both legitimate its existence through treaties *and* subordinate Indigenous sovereignties and Indigenous governments based on their lack of statehood. The association of nation-*states* with exclusive control over a demarcated territory and the association of sovereignty with *states* together exceptionalize Indigenous sovereignty, since Indigenous nationhood and governance took forms “unknown to centralized state governing systems” (Leanne Simpson, *Dancing* 85).

lands for thousands of years, we were pushed to the verge of starvation when we surrendered our traditional lands. ... The Band also could not hunt freely because the settlement of their traditional territories was driving out game. Fishing too was more difficult because the commercial fishing of the settlers was depleting the stock of fish. The Chippewas of the Nawash might have perished in 1858 if the government had not provided food for us. (Borrows, “Genealogy of Law” 333, 337)

When struggling First Nations were forced to accept starvation relief payments in order to survive, they underwent a shift in the eyes of the non-Indigenous population, who began to see Indigenous peoples not as autonomous political groups but rather as a drain on public funds and an impediment to productive development (RCAP 131), as wards of the colonial government rather than nations themselves—a position that was eventually concretized in the Indian Act. In the meantime, the government had two problems to solve: the financial dependence of First Nations’ on the government and the government’s dependence on First Nations for more Indigenous land. Both problems seemed solvable if First Nations could be enticed to use the land more “efficiently” by converting from hunter-gatherer societies to agricultural societies. “While trade and Native people were compatible, sedentary agriculture and migratory peoples were not” (Miller, *Compact* 301). The solution to this incompatibility was a policy shift towards “measures designed to alter the essentials of Aboriginal societies through so-called ‘civilization’ policies and to dispossess them through territorial treaties” (301), effectively translating Indigenous lifeways into practices more easily reconcilable to the settler-colonial need for land.³²

In 1857, the colonial government in Canada began its civilization project in earnest when it imposed its *Act to Encourage the Gradual Civilization of the Indian Tribes of this Province*,

³² As we will see in the following chapter, the needs of settler society to expand over Indigenous land still constitute a “justifiable” infringement on the exceptional Aboriginal and treaty rights of Indigenous peoples.

1857. The main goal of this act was to encourage the voluntary enfranchisement of Indigenous men “of good character” (RCAP 137) who would afterwards enjoy equal rights with settlers as well as the rights to twenty hectares of their tribal or reserve land in the form of freehold tenure (Miller, *Compact* 232). As such, neither the enfranchised person nor the land given to them would thereafter be considered “Indian” under the law. As J. R. Miller describes it, “as First Nations gave up Indian status through their males, the quantum of reserve land would shrink, too. The fewer the Indians, the smaller the area of reserves until the ultimate was achieved: there would be no more ‘Indians’ and no more reserves” (232). Or, in the words of John S. Milloy, the goal of “full civilization” of Indigenous people “would be marked by the disappearance of those communities as individuals were enfranchised and the reserves were eroded, twenty hectares by twenty hectares” (59). The objective of this Act was, clearly, to reduce both the population and the land base of Indigenous groups, as well as to divide families, communities, and, therefore, nations—to “break them to pieces” as one Indigenous chief put it at the time (qtd. 59).³³ It was a “direct attack on the social cohesion of Aboriginal nations” and it “shattered partnership for development that had existed between Crown and Aboriginal peoples up to that point” (RCAP 138). If successful, such divide-and-conquer techniques would not only weaken the external threat to the growth and prosperity of the new settler society; they also, by bringing the enfranchised and his land under settler jurisdiction, would enact both a political and a territorial “taking of the outside” (in the Agambian sense) that would not only help secure the Crown’s claim to Indigenous land, but also allow for more extreme exclusion of and violence towards the remaining (and increasingly exceptionalized) First Nations. After creating the opportunity to

³³ This objective was later stated by the commissioner of Indian Affairs in 1890: “The work of sub-dividing reserves has begun in earnest. The policy of destroying the tribal or communist system is assailed in every possible way and every effort [has been] made to implant a spirit of individual responsibility instead” (qtd. in Coulthard 13). This attempted transformation of communal being into discrete individual subjecthood will be taken up again later on.

decline assimilation, which was initially offered in the form of voluntary enfranchisement, the colonial government doubled down on essentially all First Nations for doing exactly that, as will be shown below. Wendy Moss and Elaine Gardner-O'Toole observe that, “federal and provincial governments have frequently taken the view that the Indians’ refusal to abandon their distinctive cultures, government and identities is a refusal to take up the ways of a more ‘advanced civilization’ and accordingly, a refusal to take up the ‘responsibilities’ of full citizenship” (3). This refusal by Indigenous peoples to translate their traditional forms of political participation into the Western ideal of the liberal individual citizen of a single sovereign nation-state explicitly frustrated the settler-colonial project of elimination through enfranchisement and implicitly weakened the government’s insistence on the “backwardness” and “savagery” of First Nations, even as the government blamed these qualities for Indigenous peoples’ refusal to assimilate.

Understanding what is offered through enfranchisement—a form of political life otherwise denied to Indigenous peoples at the time—requires understanding how Indigenous political structures no longer “counted” or were considered legitimate or advanced enough to qualify as “political” to the now dominant Euro-Canadian population and policy-makers. In her work on the Doctrine of Discovery—the politico-juridical principle that European nations could “discover” and claim rights to lands already inhabited by Indigenous people but previously unknown to other Christian, European nation-states³⁴—Tracey Lindberg discusses the process of dehumanizing the Indigenous Other in order to justify not “counting” Indigenous presence on “discovered” lands. This dehumanizing process enabled the European “discoverers” to supersede Indigenous social and political systems, economies, laws, *et cetera*. “Ignoring Indigenous legal orders and governmental authorities results in a constructive legislative *terra nullius*—where

³⁴ Tully clarifies that the Doctrine of Discovery gave discovering nations an “exclusive right against other European nations to settle and acquire land from Aboriginal occupants,” a right that did not extend to any non-European nations but also that did not constitute a right *over* the Aboriginal occupants of that land (*Strange Multiplicity* 123).

Indigenous sovereignty, governmental autonomy, and legal orders are supposed to be non-existent” (116). As such, enfranchisement, to the colonial “discoverers,” appears to offer political life to an otherwise non-political being (or bare life) in the form of political rights, such as the right to vote, as well as political protection in exchange for “appropriate” political participation, such as support for the settler political system, government, social structure, economy, and so on.³⁵ However, the pre-enfranchisement Indian was not *non*-political but rather *otherly*-political, and protection under the colonial system came at the cost of his participation and membership in his own political system. Furthermore, the protection and participation afforded to the enfranchised Indian as a Canadian citizen do not erase the multinational and multicultural identity of one whose “Canadian” political affiliation is his *second* (as opposed to his first or only); instead, this multinational identity—which is not recognized by the dominant colonial society because it implies a *prior* national identity—becomes yet another form of exceptionality.³⁶ Tully writes that, in order to be recognized *as citizens*, multinational people are constrained by the “prevailing norms of public recognition” and thus often “experience the norms of citizenship as alien and imposed, rather than self-imposed. They are treated as ‘subjects’ rather than ‘citizens’; unfree in the very activities in which they are supposed to constitute themselves as free citizens and free peoples” (*Public Philosophy* 165-6).

Enfranchisement sought to bring Indigenous people into the fold of the Canadian nation-state, to translate Indigenous citizenship into Canadian citizenship and, with it, Indigenous sovereignty

³⁵ Notably, Alberta premiere Jason Kenney has recently announced plans for new legislation that would fund a \$1-billion “Indigenous Opportunities Corporation” to finance Alberta First Nations’ investments in resource development. Focusing exclusively on First Nations that support Alberta’s oil and gas industry, this “economic outreach” recalls the historical assimilation agenda (via enfranchisement) as well as the current assimilation agenda (via official reconciliation tactics) in which context it will be taken up again in the following chapter. Thank you to Nicole Shukin for bringing this current event to my attention.

³⁶ The idea that First Nations are non-political was expressed over one hundred years later in a 1977 *Edmonton Report* column in response to the “Dene Declaration” of self-determination: “How is it that these territorial natives whose politics up until now were generally considered non-existent should suddenly emerge with such advanced left-wing inclinations?” (qtd. in Coulthard 70).

into support for Canada's sovereignty, but the translated or enfranchised Indian citizen is an unfree exception to the norm of free citizens, contained and managed precisely through his citizenship within the colonizing state.

The force with which the colonial government tried to enfranchise Indigenous men, or, in other words, tried to convert supposedly bare life into politically-qualified life, reveals an underlying doubt regarding the alleged illegitimacy of Indigenous political and legal orders that fuels the urgency with which colonial orders attempt to draw otherly-political (as opposed to non-political) Indigenous people away from very real and thus very threatening "Indigenous sovereignty, governmental autonomy, and legal orders" (Lindberg 116). The construction of a "legislative *terra nullius*" thus not only justifies the imposition of a colonial alternative but also, when paired with the increasingly coercive imposition of enfranchisement, attempts to nullify the politically and legally threatening Indigenous order that already exists. While the government pointed to Indigenous peoples' near universal refusal to assimilate as further evidence of their "backwardness" and "savagery"—and thus as further warrant to impose that assimilation upon them—its anxiety regarding the stability and security of settler sovereignty is evident in statements by government officials such as deputy superintendent general of Indian Affairs, Duncan Campbell Scott, who argued "that *involuntary* enfranchisement was desirable because it 'would also check the *intrigues* of *smart Indians* on reserves, who are forming organizations to *foster* these *aboriginal* feelings, and to *thwart* the efforts and policy of the Government. Such a man should be enfranchised'" (Miller, *Compact* 235, emphasis mine). The perceived "aboriginal" threat to "Government" thus specifically contributed to the government's commitment to enfranchisement policies and belies its insistence that Indigenous peoples are a form of non-political bare life. This attempted "politicization of bare life"—the "inclusion of

bare life in the political realm” as its exception—constitutes, according to Agamben, “the original...nucleus of sovereign power,” which defines the realm of its validity against the exception of bare life. Scott’s comments illustrate the relevance of Agamben’s work to this non-European context in that they highlight the connection between the paradoxical inclusion (or politicization) and exclusion (or depoliticization) of “bare life” on the one hand and the production and protection of sovereign power through the decision on the exception of bare life on the other hand. The Canadian state’s anxiety regarding unenfranchised Indigenous people stems from the perceived threat not just to the colonial social order, but to the very heart of colonial power.

These “smart Indians” fostering “aboriginal feelings” and forming organizations to “thwart” the government are the same “Indians” that today’s colonial government meets with “reconciliation” in the form of barely-disguised extinguishment clauses³⁷ and the lure not of citizenship but of freedom from the Indian Act.³⁸ Enfranchisement required Indigenous people to individually give up their Indian status and all associated rights, including their membership in their communities/nations, their share of treaty annuities, and their ability to live on reserves, with the goal of bringing all Indigenous people into the dominant society as politically non-Indian individuals with no outstanding claims to land or sovereignty and no membership within competing “nations.” In exchange, enfranchised individuals would have all the rights of Canadian citizens and would leave behind their position as wards of the government. Despite the tyrannical nature of the Indian Act, the “only recourse allowed victims of the act [was]

³⁷ Following criticism from the United Nations in 1975 as well as the constitutional entrenchment of Aboriginal rights in 1982, the federal government has had to change its terminology in comprehensive land claims and self-government policies from the “extinguishment” of rights to the “modification” of rights. Arthur Manuel and Ronald Derrickson argue that, since “modification” has similarly been criticized as just another form of extinguishment, “reconciliation” is now the official means of terminating Aboriginal rights and title (see especially pages 100-109).

³⁸ Or, the threat of accusations of terrorism or lawlessness, as will be seen in the following chapter.

enfranchisement, whereby the Indian is expected to deny his birthright, declare himself no longer an Indian and leave the reserve, divesting himself of all his interest in his land and people. ...All this to enter a society which he generally finds prejudiced against him” (Cardinal 38).

Unsurprisingly, enfranchisement failed because Indigenous people did not want to stop being Indigenous, be it legally, politically, culturally or otherwise. Today, reconciliation, particularly in the form of modern treaties and land claim settlements, requires Indigenous nations to collectively surrender their claim to sovereignty, as well as to any rights or any lands that fall outside of an exhaustive list or demarcated area agreed upon by both the nation and the Canadian government. In exchange, “reconciled” or “treatised” nations gain certainty over their existing rights and escape the Indian Act, thus leaving behind their position as wards of the state. As such, reconciliation and enfranchisement are functionally equivalent in that they both bring Indigenous peoples into the fold of the state, quashing the threat and uncertainty of outstanding claims to land and sovereignty in exchange for freedom from the Indian Act. However, reconciliation is poised to succeed where enfranchisement failed because it allows Indigenous peoples to retain important aspects of their Indigeneity, even though the possibility of their political autonomy is eradicated. As the chief of the Tsawwassen First Nation, Kim Baird, stated regarding the Tsawwassen Final Agreement: “The treaty represents our final break from the Indian Act—through self-government, not assimilation” (qtd. in Miller, *Compact* 280). Through some minor concessions that do not interrupt capital accumulation or settler-colonial regimes (such as the recognition of cultural rights), then, the State manages to advance its goal of elimination through assimilation.

Although the enfranchisement goals of the Civilization Act proved to be almost entirely unsuccessful—with many Indigenous people speaking out against the blatant attempt to divide

and conquer their nations—the colonial government continued to increase its control over the Indigenous population. In 1860, it gained jurisdiction over Indian affairs from Britain and in 1867 issued the British North America Act—the “blueprint of Confederation” (RCAP 166)—which extended “exclusive Legislative Authority of the Parliament of Canada” to “Indians, and Lands reserved for the Indians.”³⁹ These changes ushered in a drastically different period of Indigenous-state relations from the one previous. According to Milloy, “[i]n short, in the period in which the British imperial government was responsible for Indian affairs, from 1763 until 1860 when that responsibility was transferred to the government of the United Canadas, Indian tribes were, de facto, self-governing. They had exclusive control over their population, land, and finances” (57). After Confederation, this was no longer the case.

Among the earliest acts of the new Canadian government regarding Indigenous people was *An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31st Victoria 1869*, issued just two years after Confederation. With many of its provisions echoing those of the Civilization Act, this new act added the explicit goal of assimilation, which had been “adopted as the fundamental principle of federal policy” (RCAP 166). This was to be achieved through several measures, including imposing “municipal” elected governments in place of traditional governments and transferring most powers from bands to the federal government. The government of the time believed that if “the various systems of development were ever to produce the civilized Indian amenable to enfranchisement, then native self-government had to be abolished” (Milloy 61). This provision was aimed more at the First Nations in areas of long-term European settlement, as it was believed that their longer exposure to European norms had prepared them for this next step

³⁹ *British North America Act 1867* 30-31 Vict. (UK) <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t13.html>

towards “civilization.” Historian John Tobias writes that “[t]his extensive education in what was regarded as the more sophisticated aspects of European civilization was to be provided by a paternalistic government which would lead the Indian away from his ‘inferior’ political system. It thereby established another criterion of civilization” (43). From its earliest days, then, we see that the Canadian government was deeply concerned with eliminating alternative assertions of sovereignty.

In addition to assimilating First Nations through enfranchisement and the implementation of electoral governments on reserves, the Enfranchisement Act also added multiple provisions encouraging British/European patriarchal family units.⁴⁰ These provisions regulated family affairs through the revocation of either status or money/annuities from any Indigenous person that defied the family structures and relations prescribed by the settler government. For instance, the act encouraged a patriarchal family structure with its provision that “any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issued of such marriage be considered as Indians within the meaning of this Act” (3), meaning only Indigenous men would be able to pass down their legal Indigenous identity (“Indian status”) to their children. Leanne Simpson argues that the “church, the state, and broader Canadian society worked in concert to surveil and confine Indigenous bodies and intimacies to Euro-Canadian heteropatriarchal marriages... to reproduce the building blocks of Canadian nationalism... while also placing Indigenous conceptualizations and forms of intimacy and relationship as transgressive, immoral, uncivilized, and criminal” (*Always* 104). Provision 10 of the Enfranchisement Act extends this heteropatriarchal structure to band governments, stripping both women and youth of their political power in the community. It states that “The

⁴⁰ For more on gender discrimination in the Enfranchisement Act and subsequent policies and legislation, see Coulthard 83-96.

Governor may order that the Chiefs of any tribe, band or body of Indians shall be elected by the *male* members of each Indian Settlement of the *full age of twenty-one years* at such time and place, and in such manner, as the Superintendent General of Indian Affairs may direct... unless deposed by the Governor for dishonesty, intemperance, or immorality” (4, emphasis mine).

Indian Affairs even had an “Immorality on Reserves” filing system, highlighting the exceptional status of Indigenous peoples in relation to the settler state government—after all, no such system of control has ever existed for non-Indigenous Canadians.

The reaction to such legislation from many First Nations was a staunch refusal to participate in these assimilation tactics:

Many eastern bands clearly stated that they would never request an elected band council because they did not wish to be governed and managed by the government of Canada.... Such protests were interpreted as demonstration of the fact that the Indian needed more direction and guidance, for subsequent amendments and later Indian acts increased the authority of the superintendent general to interfere in the band and personal affairs of the Indians. (Tobias 45)

When Indigenous people refused to voluntarily give up their power, their culture, their communities, and their land, the government responded with legislation that would entrench their exceptional status as “passive objects” of democracy “rather than active agents able to participate on their own terms” (Borrows, *Recovering* 44). Milloy notes that “In the Consolidated Indian Act of 1876 the political formula of [the Enfranchisement Act,] 1869 was repeated, and its accompanying implication, that Indians would lose control of every aspect of their corporate existence, was spelled out in extensive and complex terms” (62).

The Indian Act has since become the defining legislation for Indigenous-state relations not only because it “governs every detail of Indigenous life” (Tully “Reconciliation” 105) but also because it imposed a new “trustee-ward” dynamic between the Indigenous people and the State:

Under the Indian Act, First Nations people were legally children, and their legal parent, the federal government, had the right and responsibility to make decisions on their behalf. The trustee-ward, adult-child relationship embodied in the Indian Act was the antithesis of the kin relationship—brother to brother and sister to sister under their mutual parent, the Great White Queen Mother—that both sides had talked about during treaty negotiations. (Miller, *Compact* 190)

While the Act has undergone many amendments that reflect the changes that have occurred over time within both “Indian policy” and Indigenous responses to such policy,⁴¹ the overarching trustee-ward relationship continues to constrain Indigenous political, social, economic and cultural freedoms. This harmful relationship is at the heart of many First Nations’ decisions to trade their resulting legal inferiority for the small measure of self-governance to be gained in the comprehensive land claims of the last few decades, despite all the problems inherent in these negotiations.

The creation of the Indian Act coincided with another sequence of events that ultimately reinforced the colonial government’s claims of sovereign authority over Indigenous people and lands—the signing of the numbered treaties from 1871 to 1921. Because the history of and numerous issues with the numbered treaties have been scrutinized at length by several scholars,

⁴¹ For instance, when a group of British Columbia First Nations, the Allied Tribes, attempted to assert Aboriginal title to their unceded lands in the 1920s, their position was not only rejected by the joint parliamentary committee, but in fact “Parliament amended the Indian Act to make pursuing claims so difficult as to be impossible” by effectively criminalizing the fundraising necessary to pursue such claims (Miller 238).

this paper will outline only a general history of the treaties, focusing in particular on an account of Treaty 8 to examine the ways in which the numbered treaties foreshadow the role of contemporary official reconciliation in government approaches to accessing Indigenous land and resources.⁴²

The numbered treaties were largely oral negotiations that were later transcribed as written treaties, often omitting key promises that led to the conclusion of those negotiations. The discrepancy between oral and written promises, as well as the explicit use of particular language and symbols to mislead Indigenous signatories into believing that they were engaging in a nation-to-nation agreement with the British Crown, contributed to the interpretive differences of the two treaty parties. For instance, Lieutenant-Governors, despite being “appointed by and answerable to the federal government” made frequent references to the British Crown during treaty negotiations. They “portrayed themselves as representatives of Queen Victoria and insisted throughout that the treaties were being made with the Crown” (Miller, *Compact* 157), which was simply not the case.

In addition to such omissions, the language of the treaties was not always interpreted equally by both parties. In particular, the “arrangements respecting land” signaled to First Nations arrangements for sharing the land, while to the Crown these signaled arrangements for surrendering the land (RCAP 148). The concept of sharing the land, especially between nations, represents a fundamental difference to the colonial/European understanding of a society’s relationship to land, in essence as the lack of a cognizable relationship to land (possessory) against which the Crown defines and validates its sovereign space there. “Sharing” does not fit into the (settler-) colonial narrative of sovereignty unless it is the Crown benevolently “sharing”

⁴² For more on the numbered treaties, see Asch, *On Being Here to Stay*; Miller, *Compact, Contract, Covenant*; Fumoleau, *As Long As this Land Shall Last*.

its own land *back* with the Indigenous peoples—thus “sharing” in the context of Western sovereignty must include the surrender of the land first before it can be “shared” (back) on terms set by the sovereign.⁴³ This difference of meaning is exemplary of the type of discursive translation necessary to the construction of Indigenous exceptionality at the heart of state sovereignty. That two cultures would have different understandings of the arrangements regarding the land is, in itself, not necessarily problematic. The problem, rather, is the subsequent erasure of one particular party’s understanding that then transforms the numbered treaties into tools of colonization, rather than the covenants between equal parties that they were presented to be.⁴⁴

Unlike the earlier peace and friendship treaties, the numbered treaties no longer sought to establish trade partnerships and military alliances with First Nations, but rather to acquire access to Indigenous lands and resources. In fact, in 1871 no treaties had been signed since the Robinson treaties of the 1850s primarily because the colonial government had already acquired access to all the arable land in Upper Canada (Miller *Compact* 110). It therefore had no further need for new trade or military alliances with First Nations. Northern areas not suitable for agriculture were only brought into the treaty process when the increasing economic importance of minerals drove settler interest to explore the mining potential further north.

The northern numbered treaties in particular were often requested by First Nations that were already experiencing the effects of settler presence on their lands in order to establish protected reserve areas free from Euro-Canadian settlement as well as to obtain annuities and

⁴³ In one version of the contemporary British Columbia Treaty Commission process, the government actually referred to the “negotiating process [as] ‘surrender and grant back.’ Suggesting that to begin the negotiations Indigenous peoples had to surrender all of their rights and then the government would decide which of [their] rights it would ‘grant back’” (Manuel and Derrickson 105).

⁴⁴ Michael Asch argues that by honouring the treaties as they were understood by the Indigenous signatories, and thus as the covenants that they were presented to be, the treaties can provide a “foundation on which we can build today” (Asch, *On Being Here to Stay* 165).

agricultural tools and knowledge that would help offset the negative effects settlement was having on traditional livelihoods (Miller, *Compact* 195). The combination of financial need and lack of military contributions contributed to the unfavourable attitude the colonial government held towards First Nations during this time, which in turn fueled its reluctance to sign new treaties except where there was a clear economic interest in the land. As such, many First Nations were initially denied their request for treaties because the government wanted to avoid financial responsibility, even when it knew the extent to which those nations were suffering from starvation and disease directly related to Euro-Canadian settlement. As with the mining potential in northern Upper Canada, it was only the prospect of resource wealth that changed the government's mind. According to Miller's *Compact, Contract, Covenant*, this was true of Treaty 9, where "First Nations made overtures for entering treaty long before the government was amenable to the idea, and... the Crown's attitude shifted once considerations of resource wealth and infrastructure in which southerners were interested took centre stage" (207). It was also true of Treaty 11, where "[a]s long as they [the Dene peoples] were occupying lands that had not attracted the attention of southern economic interests, Ottawa was content to leave them as 'out of treaty Indians'.... What changed the situation was the discovery of oil at Norman Wells, NWT, in 1920" (218). If, as Macklem suggests, these treaties were seen (by the Crown) as "a means of formally dispossessing Indigenous peoples of ancestral territory" rather than as nation-to-nation agreements to share sovereignty over that territory (21), then this distinction between treaty Indians and "out of treaty Indians" reflects the Crown's objective of incorporating Indigenous lands, peoples, and sovereignties into its own discourse of sovereignty in order to replace Indigenous ancestral lands (spaces of Indigenous sovereignty) with Indigenous reserve land (spaces of "translated" Indigenous sovereignty that are both excluded from the rule of law

and yet subject to the force of law). The decision to make treaty with a nation can thus be understood as a decision on the exception in the sense that it exceptionalizes Indigenous sovereignty through an act of translation that neutralizes opposition to the state's colonial and extractivist agenda. Hence the effect that the discovery of resources had on the government's decision to negotiate treaties, which was particularly true in the Treaty 8 region.

Initially regarded as a "wild outpost of the northern fur trade," the area of northeast British Columbia now covered by Treaty 8 was, by 1872, "being heralded as one of the most exciting of mining and agricultural frontiers" (Brody 57). First Nations in the area were facing economic hardship as fur prices dropped, and they looked to the federal government for assistance in the form of annuities. However, at this time "it was the federal government's policy to negotiate treaties only with Aboriginal petitioners who lived on lands that Canada required for immediate development" (Ray, "Treaty 8" 10). In 1890, right after the deputy minister of Indian Affairs recommended against a treaty in the region, mineral discoveries, particularly petroleum, in the Mackenzie River region "forced the government to reconsider the matter" (Ray et al 154).⁴⁵ At the time, British Columbia was excluded from the proposed treaty, which was to focus on the Mackenzie River region (155). However, the discovery of gold in the Klondike (Yukon) around this time turned the region, including northern British Columbia, into an international attraction (156), precipitating both conflict and treaty in the province.

Eager to take advantage of the possibilities for economic prosperity, British Columbia began issuing mining licences before any treaties had been signed. The subsequent influx of settlers led to increasingly heated confrontations, especially in the Fort St. John area, where First Nations were particularly upset that settlers were using their land and resources (not to mention destroying their bear traps and poisoning their dogs) without any treaty. In his 1897 journal,

⁴⁵ See also Miller, *Compact* at 201.

North West Mounted Police (NWMP) inspector J. D. Moodie wrote that, unless the Indian Department stepped in to assist, the “Indians” of the area would most likely “take what they consider a just revenge on the white men who have come... and scattered themselves over their country. When told if they started fighting as they threatened, it could *only* end in their *extermination*, the reply was, ‘We may as well die by the white men’s bullets as of starvation’” (qtd. in Ray 26, emphasis mine). First Nations in the region were facing, by that time, all the devastating effects of a settler invasion onto their land, yet with none of the protections or concessions afforded by a treaty. Furthermore, it was the defensive stance that local Indigenous people took in order to protect their land from invasion, theft and destruction (rather than the invasion/theft/destruction itself) that was seen not only as precipitating violence against the land-defenders but also as *inevitably* ending in their total extermination. What the Indigenous group understood that Moodie seems to have missed is that the loss of their land and resources was itself a form of extermination. As will be shown in Chapter Three, Indigenous land-defenders have continued, to this day, to face threats of immediate extermination in their refusal of the more prolonged processes of extermination such as colonization, assimilation, or other forms of dispossession of their lands and resources.

The nation-to-nation relationships so valued by both parties in the previous century were, by this point, an almost ironic goal since, clearly, Canada’s stance on the sovereignty of First Nations—even those who had not yet “ceded, released, surrendered, and yielded”⁴⁶ to the Dominion their rights and title to their traditional territories—was that such sovereignty was secondary to that of the State. Likewise, Indigenous sovereignty clearly came second to the economic prosperity of the colony, and, moreover, was to be extinguished with the minimum possible expense. As the situation in north-eastern B.C. intensified, a NWMP officer wrote to

⁴⁶ As per the language of the treaties.

Superintendent General of Indian Affairs Clifford Sifton that the “[Indians] will be more easily dealt with now than they would be when their country is overrun with prospectors and *valuable* mines be discovered. They would then place a higher *value* on their rights than they would before these discoveries are made” (qtd. in Miller, *Compact* 204, emphasis mine). Following the reference to the economic value of the mines, the “value” of Indigenous rights appears to be similarly economic, as well as contingent upon the market value of the land to be exchanged for those rights. This sentiment was repeated by Treaty 8 negotiator J.A.J. McKenna in a letter to Clifford Sifton 17 April 1899, wherein McKenna proposed that, since the land in the Treaty 8 region was not “of appreciable value agriculturally,” the government should only pay “half the amount which we agreed to pay under the former treaties,” insisting that “the object of the Commissioners should simply be to secure the relinquishment of the Indian title at as small a cost as possible” (qtd. in Fumoleau 58). Such references to the “value” and “cost” of Indigenous rights and title underscore the transactional (rather than sacred) nature of the treaties as well as the contingent (rather than essential or inherent) nature of Indigenous rights and title in the eyes of government officials.

This view of Indigenous sovereignty, as already secondary to Crown sovereignty since it held no inherent value to the federal government, was expressed explicitly by Member of Parliament Day Hort McDowell in April 1894 regarding the applicability of game laws to Indigenous peoples whose hunting rights were protected by treaty:

“[T]here is no necessity for the Government to make a Treaty with Indians, or anybody else; that the treaties made have merely been to bring about a peaceful, happy and speedy conclusion of the entry of whites into lands formerly occupied by Indians, but that the Privy Council have decided once and for all that the whole North West of Canada

belongs to Her Majesty, that it is her property, and that she has absolute rights to do whatever she wishes.” (qtd. in Fumoleau 44)

Furthermore, in the official report of the Treaty 8 Commission, which was presented to the Minister of the Interior on 22 September 1899, treaty commissioners recounted that ““We showed them that, *whether treaty was made or not*, they were subject to the law, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin”” (qtd. in Fumoleau 88, emphasis mine). From these statements, it would appear that what the government sought to “purchase” through treaty was not so much Indigenous rights and title to the land, which it saw as already limited by Crown sovereignty, but rather the assurance that it would have continued and unfettered access to that land, essentially pre-empting resistance in the same manner that contemporary rhetorics of reconciliation and terror pre-empt resistance by “settling” claims entirely on the State’s terms and then “punishing” any subsequent refusals to comply with those terms.⁴⁷

By the summer of 1898, the situation in Fort St. John “reached a flashpoint” when “about five hundred Indians gathered ... to block the northward progress of the NWMP, miners, and prospectors until Canada signed a treaty with them” (Ray et al 160). Canadian and American newspapers ran the story “that five hundred Indians camped at Fort St. John are opposing the Mounted Police and miners getting further north until treaty is made with them”” (qtd. in Ray 31). Both the federal and provincial governments became concerned that a “major armed clash would generate adverse publicity and undermine their efforts to promote development in British Columbia and the North-West Territories” (Ray et al 160). As such, it was the urge to protect development, along with the discovery of lucrative natural resources and the direct action of First

⁴⁷ The pre-emptive work of these rhetorics will become clear in the next chapter.

Nations, that finally motivated government officials to revive their treaty plans, and to, this time, include northeastern British Columbia. In other words, Treaty 8 served as a reconciliatory gesture offered by the government in order to obtain (peaceful) access to resources in the face of Indigenous resistance that threatened the economic development and international reputation of the state—a sequence of events eerily similar to those playing out in contested sites of Indigenous sovereignty and resource development in the contemporary (and supposedly post-colonial) age. Significantly, this treaty was also viewed by the federal government as a more cost-effective method of policing northeastern First Nations because it was too expensive to use the NWMP in such remote areas: “To bring law and order to the region the government essentially had two choices: bring a sizeable armed force at considerable expense or conclude a treaty” (Ray et al 169). The equivalence implicit here between treaty process and police/military action again foreshadows the co-operative application of rhetorics of reconciliation and terrorism used to obtain peaceful access to Indigenous land and resources, while the equivalence between signing treaty and imposing colonial law and order points to the co-opted purpose of the treaty to become another instrument of settler-colonial dominance over Indigenous peoples.

Despite the fact that numbered treaties at least pretend to offer protections for an Indigenous way of life, the civilizational focus of government policies during the years these treaties were being negotiated further undermines this offer. In addition to the educational policy of educating Indigenous children in “industrial schools,” which were later renamed “residential schools,” the 1885 and 1894 amendments to the Indian Act outlawing the Potlatch and Sun Dance ceremonies respectively further subjected Indigenous peoples to tyrannical measures of control. While the potlatch was “considered... destructive, degrading, and ‘evil’” (Turner and Spalding 275), the Sun Dance was considered “dangerous”—ostensibly because of “practices

such as piercing the body during prairie ceremonials” (Miller *Canada* 18). However, the “fact that the amendment also outlawed any sharing or giving away of property made clear that Aboriginal values and communal bonds were under attack” (18). The “dangerous practice” feared by the government, then, was actually more likely the “systems of law, governance, and civic education” denoted by the term “potlatch” (Tully, “Reconciliation” 89), which “oversaw and directed people’s land use and occupancy, and their proprietorship over lands and resources” (Turner and Spalding 274-5). The punishment for practicing systems of law and governance involved in the use and distribution of resources according to norms so antithetical to those of capitalism, extractivism, property, and centralized heteropatriarchal governments were draconian: “Anyone hosting or attending a potlatch was subject to severe punishment, confiscation of all potlatch goods, and imprisonment. Villages were burned, leaders and elders were imprisoned, children were apprehended and put up for adoption, all in retribution for potlatching during the period of prohibition” (Turner and Spalding 275). Although the potlatch ban was lifted in 1952, such explicitly assimilative policies continued for over a decade and culminated, in many ways, in the now infamous “Statement of the Government of Canada on Indian Policy, 1969” put forward by Prime Minister Pierre Elliot Trudeau and Minister of Indian Affairs and Northern Development Jean Chrétien—better known as the “White Paper”—that aimed to eradicate First Nations as such.

Among the policy changes proposed in the White Paper were the elimination of collective Indigenous rights and legal Indian status, the transfer of reserve land into fee simple land, the transfer of provided services from the federal government to the provincial governments, and the end of the treaties as documents governing Indigenous-state relations. In other words, the 1969 White Paper was supposed to be the “solution” to the “Indian problem”

articulated by Duncan Campbell Scott when he defended a bill for involuntary enfranchisement in 1920, stating “‘I want to get rid of the Indian problem. I do not think as a matter of fact, that this country ought to continuously protect a class of people who are able to stand alone. That is my whole point. Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department and that is the whole object of this Bill’” (qtd. in Miller *Compact* 223). Similarly, the White Paper of the Trudeau government also intended to “absorb” every single Indian “into the body politic” by erasing Indigenous difference. The report characterized the special treatment of Indigenous peoples as discrimination based on racial difference as opposed to a recognition of political difference and proposed that a just society was one in which all citizens were treated equally under the law. Beneath this thinly-veiled attempt at forcibly assimilating all Indigenous peoples lies the familiar civilizational discourse, which Dale Turner intimates in *This is Not a Peace Pipe*:

Forcing Indians to embrace Canadian citizenship would have two advantages for the state: first, it would eliminate discriminatory (and expensive) Indian policies, and second, Indians as Canadian citizens would be welcomed into mainstream Canadian society. Once Indians were ‘welcomed’ into mainstream Canadian society, they would finally leave their primitive ways behind; more importantly, they would give up their [I]ndigenous connections to their homelands. (23)

The “trade” of Indian status for private/individual ownership of land and the equal rights and benefits of non-Indigenous Canadians is essentially what enfranchisement offered as well. The White Paper would, in effect, constitute mass involuntary enfranchisement on a scale of which Duncan Campbell Scott could only have dreamed in 1920.

Ironically, this proposal inspired a new generation of Indigenous scholars and activists to speak out and demand change, and thus began a new stage of Indigenous-settler/Indigenous-state relations. Harold Cardinal responded to the Trudeau's White Paper proposals for a "just society" with *The Unjust Society: The Tragedy of Canada's Indians*, familiarly known as the Red Paper, inspiring the "red power movement", which in turn "gave birth to the first cross-Canada political organization of Indian people, the National Indian Brotherhood," ultimately forcing the federal government to table its widely-rejected White Paper (RCAP 187).

4. Stage 3: Reconciliation

The relationship between Indigenous peoples and the state has changed significantly since the 1969 White Paper in large part because of the refusal of Indigenous scholars, activists, and community members across Canada to accept the status quo of settler supremacy and ongoing colonialism. Indigenous peoples of the last five decades have effectively resisted policy and legislation, resource development, ongoing land theft, and the economic disparity experienced by Indigenous people both on and off reserve. In turn, the government has responded with several "reconciliatory" gestures, although never to an extent that would affect its own extractivist agenda. As Tully says about this stage in the meta-cycle, "contemporary attempts at reconciliation have brought about positive change in several cases, but they have not been transformative. Hence the continuing dual crisis" in the relationship between Indigenous and non-Indigenous people and in our collective human relationship with the living earth ("Reconciliation" 96). These reconciliatory gestures and their participation in the exceptionalizing of Indigenous peoples, particularly in the context of resource development, will be examined in detail in the following chapter. In this section I will therefore provide a general

overview of some of the significant events that characterize the current stage of Indigenous-state relations, which will inform my discussion in Chapter Three.

Following the publication of the “Red Paper,” the creation of the red power movement, and the birth of the National Indian Brotherhood, the early 1980s brought nationwide discussions of the patriation of Indigenous rights in the context of the *Constitution Act, 1982*. Many First Nations opposed patriation because it would restate the Indigenous-Crown relationship as being between First Nations and the Canadian Crown rather than between First Nations and the British Crown, with whom the First Nations had originally agreed to sign treaties, as discussed in the previous section of this chapter. The first ministers conference in November 1981 produced a draft of the constitutional amendment that “had a glaring omission”: Aboriginal rights (RCAP 191). While Indigenous people across Canada “galvanized... in [a successful] effort to have Aboriginal rights reinserted into the package” (191), a “lack of consensus” during the three subsequent first ministers conferences on “whether the right of Aboriginal self-government flowed from inherent and unextinguished Aboriginal sovereignty, and from treaty and Aboriginal rights, or whether it was to be delegated from federal and provincial governments” (193) thwarted efforts to define what these protected rights actually were. This governmental inability to recognize an inherent Indigenous right to self-government after years of meetings on the topic would later contribute to the widespread Indigenous opposition to the Meech Lake Accord, which recognized Quebec as a distinct society that ought to be constitutionally protected. The Accord was killed in June of 1990 by Oji-Cree MLA for Rupertsland Elijah Harper, who famously signalled his dissent in the Manitoba legislature by holding up an eagle feather (196).

The last five decades have also seen an increase in confrontations between Indigenous peoples and industry, which is frequently supported by the police, the military, and the provincial

and federal governments. In response to the proposed Mackenzie Valley Pipeline, which would cut through “the entire western half of [Dene, Inuit, and Métis] homeland,” sixteen Dene chiefs established the Indian Brotherhood of the Northwest Territories in 1969 (Coulthard 57). Groups representing Inuit and Métis communities were established shortly after to collectively push back against this “resource megaproject” (RCAP 190), ultimately forcing the (first) Trudeau administration to set up the Mackenzie Valley Pipeline Inquiry, which “recommended that no pipeline ever be built” in that area (Coulthard 59). Shortly after this, another “resource megaproject” was proposed—a massive hydroelectric dam that was to be built on the homeland of the James Bay Cree of northern Quebec. The James Bay Cree also staunchly resisted the proposed project, eventually leading to “the negotiation of Canada’s first treaty in over fifty years” (Miller, *Compact* 250) and recalling “[t]he driving force of capitalism in [Indigenous] dispossession” (Simpson, *Always* 13) that initiated several of the numbered treaties.

Such confrontations continued to escalate in the 1990s, which saw multiple instances of military intervention in response to Indigenous blockades and occupations set up in resistance to the ongoing theft of land. Of particular importance to the changing Indigenous-state relationship were the events of the spring of 1990 (famously known as the Oka Crisis, which will be discussed in Chapter Three), when the Kanien’kehaka responded to Quebec’s plans to develop on their ancestral lands (including a burial ground) by blockading and occupying the contested site. The situation escalated to the point of a military intervention by the State and resulted in the death of a police corporal. It was in response to these events, as well as to the failure of the Meech Lake Accord, “and the government of Canada’s failure to resolve the growing rift in relations between Aboriginal peoples and the Canadian state,” that the federal government established RCAP in August 1991 (RCAP 199). Just five years later, in September 1995,

members of the Stony Point Ojibway band in Ontario peacefully occupied Ipperwash Park to protest an unresolved land dispute. Again, the situation escalated to the point of fatal violence, this time when police shot and killed an unarmed protestor. The subsequent establishment of the Ipperwash Inquiry (like the establishment of the Royal Commission) indicates an acknowledgement on behalf of government that the tactics of forced subjugation (and assimilation) could no longer be deployed without facing some form of accountability, particularly in the form of a reconciliatory gesture.

Confrontations over land claims and resource development at Haida Gwaii (1985), Gustafsen Lake (1995), the Sun Peaks resort in Kamloops (2004), Caledonia (2006), Elsipogtog (2013), Grassy Narrows (2002-ongoing), and Unist'ot'en (2009-ongoing) have all been sites of both colonial violence and Indigenous resurgence across Canada.⁴⁸ These resistance and resurgence efforts characterize the current stage of Indigenous-state relations because they not only illustrate the refusal by some Indigenous people to accept ongoing colonialism, but also exemplify the increased pressure on the provincial and especially federal governments to change the nature of their interactions with First Nations.⁴⁹ The international visibility of such conflicts in more recent years (because of the Internet, social media, and other digital technologies) has forced Canada into a performance of apology and reconciliation, sometimes at the outright behest of the United Nations.⁵⁰ Furthermore, Indigenous rights and title cases have been increasingly in front of the courts, and several key decisions have changed the playing field over which Canada and First Nations compete for jurisdiction.

⁴⁸ For more on blockades and occupations, see Borrows, "Crown and Aboriginal Occupations of Land" as well as Belanger and Lackenbauer, *Blockades or Breakthroughs?*

⁴⁹ This is not to suggest that First Nations must reject resource development in order to reject colonialism and dispossession. Rather, this is to suggest that when First Nations *do* reject resource development and are *still* forced to place their bodies on the line to have this refusal recognized, this resistance becomes anticolonial.

⁵⁰ See Manuel, *The Reconciliation Manifesto* 168-179.

Various forms of “reconciliation” with respect to Indigenous peoples have appeared in court decisions, beginning with two cases on Aboriginal and treaty rights in 1990. In *Sioui* (1990), the Court found that the treaty between the Crown and the Wendat (or Huron) represented an intention that “Wendat rights...be reconciled with the needs of the settler society... to expand” (RCAP 208), while in *Sparrow* (1990) the Court found that the federal power over “Indians and Lands reserved for the Indians” (*Constitution Act, 1867*) “must be reconciled with federal duty” to “recognize[] and affirm[] existing Aboriginal and treaty rights” (*Constitution Act, 1982*) by demanding “the justification of any government regulation that infringes upon or denies Aboriginal rights,” subsequently known as the “*Sparrow* test” (*Sparrow* 1077). Problematically, the “Court is at pains to always balance the existence of the right with the ability of governments to infringe it, as if infringement somehow formed part of the right instead of an exceptional action” (Reynolds 108-9). Given that the primacy of settler society’s needs is essentially embedded within the *constitutionally protected rights* of Indigenous peoples, this “restraint on the exercise of sovereign power” (*Sparrow* 1109) actually reifies the exceptionality of Indigenous people in relation to settler-society—not only a *sui generis* exceptionality in the possession of unique rights, but also an Agambian exceptionality in the indistinction between protected rights and infringeable rights, or between rights and non-rights. Both these early cases depict a form of reconciliation that explicitly allows for the “justifiable” (according to the *Sparrow* test) expansion of settler society onto treaty-protected Indigenous lands, limiting but still allowing the pursuit of land and resources by the settler state without Indigenous consent.

The definition of reconciliation within the courts has shifted since these two first uses in 1990, but the following decisions, where the type of reconciliation being considered is

reconciliation as “rendering consistent” as opposed to “restoring friendship,”⁵¹ all make considerable room for government infringement of Aboriginal rights and title, which are subordinated to the interests of both federal and provincial governments specifically as well as to those of settler society in general. *Van der Peet* [1993] weighed the reconciliation of pre-existing Indigenous societies with the assertion of Crown sovereignty as well as the reconciliation of Indigenous interests to the interests of non-Indigenous Canadian society, the latter of which (reconciliation of Indigenous interests to non-Indigenous interests) has predominated the courts ever since. *Gladstone* [1996] considered “the reconciliation of aboriginal societies with the broader political community of which they are part,” while *Haida* [2004] discussed how “to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake” (45). *Little Salmon* [2010] considered the “reconciliation of Aboriginal and non-Aboriginal Canadians” and *Tsilhqot’in* [2014] questioned how “broader public interests [are] to be reconciled with the rights conferred by Aboriginal title” (1). This form of reconciliation, which consistently realigns Indigenous interests according to the needs of settler society, “requires that Indigenous peoples reconcile themselves to colonialism” (Borrows, “Constitution” 33) through the forced translation of their interests into the terms dictated by the State and the settler society it represents. The problematic effects of this type of reconciliation and its contribution to the exceptionalizing of Indigenous sovereignty will be the main focus of the following chapter. While these decisions allow for almost unlimited infringement upon Aboriginal rights and title, their shared goal of reconciling government/settler-society interests with Aboriginal rights and title limits the speed at which industry-related projects can proceed on Indigenous lands, creating economic uncertainty for resource companies and thus adding more pressure onto the

⁵¹ *Oxford English Dictionary*. “reconciliation” I. 1b.

government to “settle” or reconcile open or ongoing land claims by First Nations that might otherwise seek recognition from the court.

This pressure, from both the courts and Indigenous resistance movements, to “settle” Indigenous-state relations has led to several reconciliatory gestures on the part of the Canadian government. The establishment of RCAP, the 1998 government statement *Gathering Strength*, the 2008 apology for residential schools, and the establishment of the Truth and Reconciliation Commission in 2008 and the National Inquiry into Murdered and Missing Indigenous Women and Girls in 2016 all speak to a government desire to “smooth things over” with Indigenous peoples, who hold considerable power to block or at least disrupt major industry projects. In the words of Glen Coulthard, “the state has always responded to increased levels of Indigenous political assertiveness and militancy by attempting to contain these outbursts through largely symbolic gestures of inclusion and recognition” (162-3).

Despite these direct and indirect gestures, Canada as a state of “extractivist capitalism” (55) remains deeply invested in the ongoing dispossession of Indigenous lands, or at least the unrestricted access to such lands for the purposes of resource extraction and transportation. To this end, modern treaties, comprehensive land claims settlements, and self-government agreements have attempted to “reconcile” Indigenous sovereignty with Crown/state sovereignty by bringing the meaning of Indigenous sovereignty into alignment with the state’s purposes, or, by bringing Indigenous sovereignty “into” Crown/state sovereignty as its exception. This signals a return to the type of exceptionality established during the first, conciliatory stage of the relationship, Segregation and Alliance, when the Crown began treating First Nations as nations-not-nations through the simultaneous, contradictory recognition of their nationhood *and* imposition of a hierarchical relationship of “protection” that privileged British sovereignty over

that of the Indigenous nations. The relationship between the Crown and First Nations entered a period of crisis during the subsequent stage of Subjugation and Assimilation, when the State laboured intensively to construct Indigenous exceptionality and reduce Indigenous peoples to bare life through the implementation of extremely oppressive and assimilative legislation, such as the Indian Act, that subjected Indigenous peoples to a degree of state domination unlike anything that non-Indigenous citizens of the democratic nation-state of Canada have ever experienced. Following much resistance and resilience by Indigenous peoples, as well as further encroachment on Indigenous land, the Indigenous-state relationship has now entered a stage of attempted “reconciliation.” Despite many positive changes during this stage, the construction of Indigenous exceptionality continues in new and less detectable forms posing as offers of inclusion and recognition, particularly in the renewed treatment of First Nations as nations-not-nations, this time through policies, court rulings, and rights and title settlements that both recognize and yet constrain Indigenous nationhood (by both delimiting rights and infringing upon them). Meanwhile, omnibus bills, mass surveillance, and rhetorics of terrorism operate alongside “official” reconciliation to produce a state of exception in which Indigenous anti-colonial and anti-industry resistance constitutes a national security threat. These forms of “reconciliation” and their complementary methods of oppression will be the subject of the following chapter.

CHAPTER 3: Reconciliation and its Outside⁵²

1. Introduction

During the current historical period, which began with the 1969 White Paper, federal and provincial governments have adjusted numerous aspects of their policies towards and treatment of the Indigenous peoples living within “their” borders. Such adjustments have been demanded directly and indirectly by both Indigenous and non-Indigenous people living in what is now called Canada. In fact, so much visible positive change has occurred that the explicitly oppressive, assimilative, civilizational, colonial, and ultimately racist policies that characterized over a century of the Indigenous-state relationship seem, to some, to be so distant a memory that they no longer even have a place in Canada’s national narrative. How else could (the now-former) Prime Minister Stephen Harper claim at the 2009 G20 Summit that “we” in Canada “have no history of colonialism”⁵³ just one year after he presented, on behalf of the Canadian government, an apology to Indigenous peoples for the enforced enrollment of thousands of Indigenous children in Indian Residential Schools across the country, which were deeply associated with the objective to “kill the Indian in the child”?⁵⁴ The enormous contradiction in Harper’s statement only makes sense if an entire history of colonial expansion over Indigenous lands can be bracketed out of his apology.

⁵² I recognize and agree with the arguments of Taiaiake Alfred and Jeff Corntassel, who warn that “there is a danger in allowing colonization to be the only story of Indigenous lives. It must be recognized that colonialism is a narrative in which the Settler’s power is the fundamental reference and assumption, inherently limiting Indigenous freedom and imposing a view of the world that is but an outcome or perspective on that power” (“Being Indigenous”). While this chapter does focus on the tools of colonialism currently being deployed by the state, it does so in the hopes of making more visible the contingency of settler state power and the contingency of Indigenous peoples’ constructed, translated, exceptionalized identity as always in relation to that power.

⁵³ CPAC Digital Archive <http://www.cpac.ca/en/programs/primetime-politics/episodes/15506330>

⁵⁴ The 2008 apology was presented in the House of Commons where several leaders of Indigenous organizations were invited to respond. Beverly Jacobs, President of the Native Women’s Association of Canada, mentioned colonization twice in her response to Harper’s apology, first linking it to the residential schools and later to the impact felt by Indigenous people today.

Pauline Wakeham reveals this exact type of bracketing process as the result of a “strategy of containment” typical of government apologies and state-initiated gestures of reconciliation whereby the federal government attempts to manage its own liability “by framing past wrongs in terms of historically delimited, specific injuries rather than acknowledging the systemic and ongoing practices of colonialism” of which they are a part (“Reconciling ‘Terror’” 3). Isolating particular grievances from the broader context of ongoing colonialism, this strategy of containment allows state agents and actors to depict these grievances as “exceptions to the imagined norm of Canadian civility” (“Rendition and Redress” 279-80) and thereby delegitimize Indigenous anti-colonial resistance. Through its “logic of exceptionality,” then, the discourse of reconciliation determines which grievances fall under its purview and which are “redressable.”⁵⁵ Questions regarding the control of territory and the use of land and resources have thus typically fallen outside the purview of state-centred reconciliation, which focuses on containable “exceptions” that can be redressed without requiring the state to make structural changes or curb its heavily extractivist federal agenda, while still allowing it to rhetorically close “the sad chapter in our history.”⁵⁶ As Taiaiake Alfred similarly argues, the historicizing of colonial crimes suggests such “changed circumstances for both the alleged perpetrators and for the victims [that] the crime has been *erased* and there is no obligation to pay for it,” regardless of whether or not those crimes continue into the present and future (*Wasáse* 156, emphasis mine).

The “exceptionalizing” of both governmental wrongs (which are framed as exceptions to the government’s regular treatment of its citizens) and land-related Indigenous concerns (which,

⁵⁵ Furthermore, as Nicole Shukin brought to my attention, the Truth and Reconciliation Commission itself is “an exception to the law” in its role as an extra-legal commission that “aired” but did not “criminally prosecute” the thousands of deaths of Indigenous children in the Indian Residential Schools.

⁵⁶ Stephen Harper, “Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential Schools system,” Office of the Prime Minister, 11 June 2008, <https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649> All quotes taken from this source.

through their notable absence from the discourse of reconciliation, are framed as “outside and beyond” its scope [Wakeham “Rendition” 288]) thus plays a crucial role in the story Canada tells itself (and the world, in the case of the 2009 G20 Summit) about itself. According to Harper's 2009 statements, this story of Canada describes a nation so peaceful that it has “no history of colonialism” and a people so “humble” and “self-effacing” that “we sometimes forget the assets we do have.” The irony here is that, for Harper, this Canadian national narrative starts “with our two major cultures”—referring to the English and the French—and includes forgotten “assets” that would seem to be the hundreds of First Nations with whom the story of Canada actually began. In the context of this “historical amnesia”⁵⁷ regarding Indigenous peoples—who, if not colonized, must have either willingly given over the territory that became Canada or voluntarily joined its mainstream society as a cultural minority (if English and French are “the two major cultures”)—Harper's comments at the 2009 G20 Summit seem to corroborate the 2008 apology's imposed “closure” of the “sad [colonial] chapter” of Canadian history.⁵⁸

This is the story that the dominant discourse of reconciliation seeks to protect. And this perspective is a calculated one. Not only does the erasure (to use Alfred's term) of colonial crimes obscure ongoing colonialism and its role in the continued encroachment of government and settler society on Indigenous land, but the parallel erasure of First Nations *as nations* (rather than as a heterogeneity of communities constituting a homogeneous cultural minority) from this version of the Canadian origin story obscures the ongoing challenges to the legitimacy of state sovereignty by nations that assert, to this day, legally valid claims to their own uninterrupted

⁵⁷ I borrow this term from title of Rebecca Shrubbs's Master's thesis, ““Canada has no history of Colonialism.” Historical Amnesia: The Erasure of Indigenous Peoples from Canada's History” (although I have not spent much time with her actual work): <http://hdl.handle.net/1828/5778>.

⁵⁸ Coulthard also compares these two “seemingly contradictory events” to conclude that “this form of conceptual revisionism is *required* of [a state-sanctioned] approach [to reconciliation] that attempts to apply transitional justice mechanisms to nontransitional circumstances” (108).

political and territorial sovereignty. As such, both the continued dispossession of Indigenous land and resources and the stability of the state's discourse of sovereignty hinge upon the fabricated exceptionality of colonial injustices (the state's own exceptional behaviour) and Indigenous sovereignty (the exceptional status of First Nations) through the dissemination of a particular national narrative of Canadian principles that are, conveniently, presented in the dominant discourse of reconciliation as a form of "making amends." Reconciliation as "making consistent"—the type of reconciliation in litigation and negotiation of rights—further advances the state's colonial objectives through its translation and exceptionalization of Indigenous sovereignty, intelligence, and lifeways. Reconciliation, then, serves as the device (legal, political and rhetorical) best suited to the state's ongoing colonial project.

In Chapter Two, I traced the state's exceptionalization of Indigenous peoples through the three major stages of the Indigenous-state/Crown relationship. In Chapter Three, I continue my analysis of this relation of exception into the present day, where the discourse of reconciliation emerges as the ideal conduit for exceptionalization given the global visibility of Canada's actions towards its citizens, the constitutionally entrenched rights of Indigenous peoples, and the increased national/economic dependence on natural resource mega-projects. Building on the connections Wakeham makes in her two texts on reconciliation and terror (which she connects through their shared Agambian logic of exceptionality), I argue that the logic of exceptionality visible in rhetorical gestures of reconciliation (such as apologies or statements of contrition) and in the rhetorical framing of Indigenous terror threats not only serves to delegitimize or otherwise manage Indigenous anti-colonial resistance (as Wakeham illustrates), but also to soften Indigenous communities for resource development both on a rhetorical level (by encouraging and discouraging particular types of behaviour) and on legal and political levels (by permanently

“settling” land disputes according to extractivist agendas and by criminalizing anti-energy dissent).

Through this argument, I show how the logic of exceptionality invoked by the Canadian state’s aforementioned rhetorical moves, where “reconciliation” suggests making amends (but also making amenable), does its most significant and enduring work for the stabilization of both state sovereignty and state access to land and resources in legal and political initiatives similarly characterized in terms of “reconciliation,” but where “reconciliation” denotes “rendering consistent.” For this latter argument, I employ Coulthard’s conceptualization of “translation” as the act of “rendering consistent” to theorize the process by which the “constitutive outside” of state sovereignty (Indigenous sovereignty) is brought into the realm of the state’s sovereign power *as its exception*.

This chapter will proceed as two distinct but overlapping and interrelated arguments. The first half of the chapter will focus on the logic of exceptionality operating within the Canadian state’s rhetorics of apology and terror in relation to its protection and development of energy infrastructure on Indigenous lands. The second half of the chapter will position legal and political forms of reconciliation within this state project of maintaining Indigenous exceptionality in service of its continued expansion onto Indigenous lands through my theorization of “translation” as a productive addition to the Agambian concepts of exception and sovereign power. The conclusion to this thesis will then take up Coulthard’s notion of “grounded normativity” to imagine a path towards alternative configurations of the state-Indigenous / sovereign-exception relation⁵⁹ that support transformative, and thus mutual, reconciliation.⁶⁰

⁵⁹ In seeking freedom from the sovereign-exception relation, it is important not to essentialize Indigeneity as the ultimate or sole alternative. This would risk reifying “*a priori* ideas of ‘Indianness’” (Borrows, *Freedom* 20). In this sense, what is “lost in translation” is not *necessarily* the Indigeneity of an alternative discourse so much as the freedom to choose an alternative discourse. Because the Canadian state has focused so much of its necessary

2. Logic of Exceptionality in Rhetorics of Apology/Reconciliation and Terror

In both her 2012 article “Reconciling ‘Terror’: Managing Indigenous Resistance in the Age of Apology” and her 2013 chapter “Rendition and Redress: Maher Arar, Apology, Exceptionality,” Pauline Wakeham elucidates the surprising connection between discourses of apology/reconciliation and discourses of terror during the current age, which is characterized by both the prevalence of state apologies (leading some to call it the “Age of Apology”) and the globalization of the post-9/11 “War on Terror.” Whereas “Reconciling ‘Terror’” focuses on the implications of the intersection of these two discourses for Indigenous peoples in Canada and New Zealand, “Rendition and Redress” explores the way state apologies complicate the traditional Agambian concept of a state of exception associated with the War on Terror, which Wakeham argues operates by “invok[ing] alibis of exigency and contingency that reinforce the very logic of exceptionality that legitimated certain gross injustices in the first place” (280). Wakeham joins many other scholars in locating this logic of exceptionality in the current discourse of terror, but her unique intervention is her explication of how discourses of terror and reconciliation, while “seemingly contradictory,” actually intersect in ways that have significant ramifications for racialized minorities generally, and Indigenous peoples in settler-colonial states specifically. Although Wakeham does not explicitly connect the logic of exceptionality to state responses to Indigenous peoples, the correlation in her works between exception, terror and reconciliation and between terror, reconciliation and Indigenous peoples, when read together, provides crucial insight into the way a logic of exceptionality can be invoked by the seemingly

“exceptionalization” on a specifically Indigenous alternative, this relation of exception has significant potential for disrupting the totalizing discourse of state sovereignty.

⁶⁰ Ideally, settler spaces could then be open to being “reconfigured by Indigenous knowledge” (Starblanket and Stark 182).

unrelated discourses of reconciliation and terror to both manage Indigenous resistance and rationalize colonial state violence.

Within the rhetoric of reconciliation—which not only prescribes the continued contribution of Indigenous peoples to the making of a stronger Canada by logically incorporating them within the “settled” nation-state regardless of outstanding claims to independence and sovereignty, but also implies the end of colonialism—this logic of exceptionality “*foreclose[s]* upon any need for ongoing anticolonial resistance in the present and future” (“Terror” 6), while simultaneously releasing the state from any moral obligation to repair its relationship with Indigenous peoples. Once anticolonial resistance has been delegitimized, present and future anticolonial resistance can be more easily cast as “excessive and even irrational in the face of settler states’ commitment to rapprochement” (8). Coupled with the contemporaneous discourse of terror and especially given the imprecision with which “terror” and “terrorist” are defined within this discourse, “excessive and irrational” anticolonial practices become constituted as terrorist activities directed not towards a colonizer but towards the sovereign nation of Canada, and, by extension, its citizens. This terrorist frame denies Indigenous nations the right to protect their land, resources, and autonomy, and reveals, according to Wakeham, the true source of the “state of terror”: settler societies’ anxiety regarding the legitimacy of their own claim to the land, and the fear that “territorial possession and state sovereignty might be held to account in structural, economic terms” (8).

Drawing from Stuart Elden’s *Terror and Territory*, Wakeham investigates the place of “territory” in discourses of both terror and reconciliation within the context of the settler-colonial state’s anxiety. Elden’s work traces the etymology of his two eponymous terms to highlight the essential link between terror, territory, and state sovereignty:

The control of territory is what makes a state possible. Thus, control of territory accords a specific legitimacy to the violence [of states] and determines its spatial extent. Those in control of territory—states—can act in ways that those not in control of territory cannot. ...To control a territory is to exercise terror; to challenge territorial extent is to exercise terror. While the first is generally obscured by the workings of the state-centric international system, the second is continually reinforced by it, in that self-determination movements the world over (that is, those that seek control of a space currently held by a state) are necessarily coded as ‘terrorists.’ (Elden xxx)

Concluding that discourses of reconciliation and terror both seek to manage Indigenous resistance, self-determination and control of territory (“Terror” 8), Wakeham actually overlooks a crucial element of both the Canadian state’s relationship with Indigenous peoples as well as Elden’s own theorizations regarding terror and territory: the significance of the extraction and transportation of non-renewable resources, for which the state requires unfettered access to Indigenous lands.

Referring to the Bush administration, Elden states, “if the US is not seeking to simply acquire territory in its expansionism, ...its real achievement will be in the establishment of bases, the facilitation of free passage of its forces, or capital flows and access to energy” (84). If Canada is turning the “terrorism” frame inward, then it too must be seeking something other than the acquisition of territory; along with reinforcing its claim to the land, colonial Canada, like the U.S., would also greatly benefit from “capital flows and access to energy” in these areas of territorial/terroristic dispute. Wakeham’s association of terror and reconciliation can thus be directly applied to current issues surrounding resource extraction and transportation in Canada. The notable absence of any mention of land, resource, and sovereignty disputes in Harper’s 2008

apology and surrounding reconciliatory gestures, and its facilitation of the framing of Indigenous anticolonial practices as terroristic, allows the government of Canada to doubly undermine the legitimacy of Indigenous land- and resource-related protests in the exact moment that unprecedented national resource extraction projects are underway.

2.1 Exceptionality and Harper's 2008 Apology

Apology and terror work together in complex ways that cumulate multiple consequences. Both concepts effectively collapse the differences of a range of practices, with the former collapsing the various colonial practices and injuries of the past under a single apology and the latter collapsing various anticolonial practices under the single term, "terrorism." On the part of apology, this collapse denies ongoing colonialism, distracts attention from the underlying yet unmentioned issue of land theft, and—by thus purporting to have covered *all* of the now *past* colonial crimes—places the onus on Indigenous peoples to continue this reconciliatory move by forgiving settler Canada. For instance, Harper's 2008 apology collapses a multifaceted colonial project of dispossession into a synecdochic representation of Indian Residential Schools in ways that not only obscure that ongoing project but also implicitly undermine the future claims of First Nations to self-determination. The use of Indian Residential Schools as representative of significantly broader acts of colonial dispossession turns the focus of redress onto Indigenous children as the victims of colonial violence, producing a second synecdochic reduction that frames Indigenous peoples as childlike, helpless, stunted, and in need of paternal and pedagogical assistance from the nation-state. In her chapter "The Camp, the School, and the Child: Discursive Exchanges and (Neo)liberal Axioms in the Culture of Redress," Jennifer Henderson focuses on two main tropes that she argues are crucial to applications for redress by

marginalized groups because they connect the historical wrongs done to these groups with violations of (neo)liberal individualism, thus translating⁶¹ them into a language that can be easily understood within the “common sense of neoliberalism” (65). These two tropes are “the carceral and the deserving child” (64), signalling, in the (neo)liberal lexicon from which they came, violations of the “essential, negative liberty of the individual” (66) and the “unmarked universal, ...poised to realize his or her potential as an individual” (70), respectively. In addition to framing human rights abuses in terms of individual as opposed to collective rights, the shared focus on the individual within these two tropes serves to undermine or erase the impacts that these redressable wrongs had on the communities from which these individuals came as well as the impacts on an (Indigenous) ontology of sovereignty based in human- and non-human relations.

Henderson argues that when the child—both past and present or “lost and contemporary” (71)—is repeatedly cast as the face of the Indigenous “victim” or “survivor,” the implicit suggestion seems to be that where development could not occur before because of state intervention, development can *now* occur because the child is *still* (and always, because they are a child) “poised to realize his or her potential as an individual” (70), thus leaving room for the state to now take on the role of their saviour. The proliferation of children in the “iconography of Aboriginal redress” (71) becomes even more sinister as the backdrop for current educational development programs in that its suggestion of children begetting children (since each generation is similarly represented by the trope of the deserving child) recalls one of the injustices committed by the Government of Canada when, in the words of Stephen Harper, it “undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow.” Acknowledging the failure of the Canadian government to “protect” Indigenous

⁶¹ As indicated above, I will take up the concept of “translation” in depth in the second half of this chapter, but I would still like to draw attention to its role in the rhetoric reconciliation here as well.

peoples, apparently from its own policies, the apology evokes the “fiduciary” relationship between the Crown and First Nations—one in which First Nations have been cast as the “child” since the numbered treaties (as noted in Chapter Two) and as “wards” in the decades that followed. Reaffirming this position, Harper subsequently laments that “as you became parents, you were powerless to protect your own children from suffering the same experience.” This framing of multiple generations of Indigenous people as child-like and powerless, not to mention “damage[ed]” and riddled with “social problems that continue to exist in many communities today,” implicitly undermines the capacity of First Nations for self-determination without having to make any reference to—and thereby validate—any such claims. Leanne Simpson argues that “fixing the ‘social ills’ without addressing the politics of land and body dispossession serves only to reinforce settler colonialism, because it doesn’t stop the system that causes the harm in the first place while also creating the opportunity for neoliberalism to benevolently provide just enough ill-conceived programming and ‘funding’ to keep us in a constant state of crisis, which inevitable they market as our fault” (*Always* 42). In this way, the government produces a “state of exception” in which it appears as a saviour rather than an oppressor by attributing the crisis to exceptionalized Indigenous peoples instead of the government that created it. The federal government thus attempts, through this apology, to obscure both “competing claims to sovereignty which threaten the very legitimacy of the Canadian nation-state” (75) and its assumed position as the adoptive parent of Indigenous peoples, effectively cementing the exceptionality of Indigenous sovereignty as *not*-sovereignty and Indigenous peoples as a non-political actors, recalling the type of apolitical bare life that is the exception to the political realm.

Despite the clear connection between the government policies of the past and the rhetoric of the apology in their assumption of parental control over a purportedly incapable Indigenous population, Harper insists that “[t]here is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again.” These attitudes were earlier identified as “the assumption [that] Aboriginal cultures and spiritual beliefs were inferior and unequal”—a sentiment implicitly reproduced by Harper’s own association of Indigenous peoples with powerless children, but also explicitly rejected through his repeated references to the “vibrant cultures and traditions” from which Indigenous children were removed and the “vibrant cultures and traditions” now called upon to “contribute to a stronger Canada for all of us.” Followed almost immediately by the prescriptive request for “the forgiveness of the Aboriginal peoples of this country,” this apology thus demarcates the colonial injustice being redressed (an educational policy based on a supposedly naïve assumption of superiority) but not the acts to be forgiven, since all colonial injustices are reduced to a single “redressable” issue (that of Indian Residential Schools) and since the public nature of the apology precludes any discussion of additional causes or the wider colonial project itself. According to this apology, then, the cause of the Residential Schools was a misplaced, ignorant or naïve “assumption” of *cultural* and *spiritual / religious* superiority—rather than a deliberate strategy of expansion and dispossession through the assimilation and “absorption” of independent nations into the “body politic” (to use the language of Duncan Campbell Scott). Any other cause or reasoning behind the Residential Schools, and any other government-desired outcome, is thus precluded from the apology-forgiveness exchange. As such, the apology, in collapsing colonial practices, leaves no room for those receiving the apology to forgive some crimes but continue to demand restitution for others. In other words, the reconciliation of Indigenous peoples and the Canadian government is predicated

on the willingness of Indigenous people—as individual victims/survivors of Residential Schools—to forgive *all* the “attitudes that inspired the Indian Residential Schools” (definitionally delimited by the government and not open for discussion) regardless of whether these were the attitudes that these Indigenous peoples themselves encountered during their experiences within the Residential Schools and regardless of whether these or other unnamed alternative causes continue to this day.

The forgiveness requested by the state therefore ultimately equates to an “acquiescence to the colonial status quo” (Wakeham, “Terror” 6) and becomes a way of conveniently thrusting upon Indigenous peoples the image of the good Canadian citizen, ever contributing to a stronger Canada with their “vibrant” culture. As A. L. McCready says, “the Harper administration seems to use recognition and apology to reward ‘good’ racialized ethnic groups (that can be interpreted as embodying Canadian national values rearticulated by a right-wing government) and punish ‘bad’ ones (that can be interpreted as uninterested in assimilation, stubbornly different, and threatening)” (169). This type of moralizing recalls the aims of the explicitly assimilationist legislation on enfranchisement that invited “Indians ... of good character”⁶² (again, those “embodying Canadian national values”) to join civilized Canadian society and subsequently punished those “uninterested in assimilation” through increased restrictions on their freedom. It would seem, then, that the assimilationist objectives and the civilizational discourse of the Canadian government has remained fairly constant over the last century, despite its efforts to disguise their continuity beneath a shiny new vocabulary and rhetorical frame. Ironically, it is precisely that type of “policy of assimilation” to which Harper attributes the establishment of the Indian Residential Schools in his 2008 apology. Leanne Simpson echoes McCready’s concern:

⁶² *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians* 3rd Session, 5th Parliament, 1857. <http://caid.ca/GraCivAct1857.pdf>

[T]here is an assumption that if I act nicely, calmly, and happily, Canadians will support me ... because it feeds into Canada's international narrative of themselves as being a champion of human rights and the benevolent empathetic state that cares about the oppressed. There is an assumption that if we behave as "good Indians" in the eyes of white liberals and even what remains of the Canadian Left, we will be rewarded with rights and recognition. There is an assumption that I need to come at this from a place of pity, victimhood, and powerlessness. (*Always* 235)

In this felt assumption that conformity and palatability will lead to rights and recognition, Simpson's statement undermines the distance Harper attempts to establish between a historical government's "assumption" of cultural superiority and his own government that "Today ... recognize[s] that this policy of assimilation was wrong." In this way, the apology for the now-denounced historical assumption of superiority works to reinscribe a new assumption of superiority in its interpellation of Indigenous peoples as powerless victims.

2.2 Exceptionality, Terror, and Resources

While the rhetoric of apology collapses differences to manage its liability and contain Indigenous claims, the rhetoric of terror collapses differences such that all anticolonial practices, no matter how legitimate, can be framed as "terroristic." This is particularly so because of the way "terrorist" has come to no longer signal just an act, but also an intention to act. In this way, even a peaceful protestor can be seen as a "proto-terrorist" and a peaceful road blockade an act of "proto-terrorism." This blanket term removes the historical specificity of Indigenous resistance and ignores the fact that the right to protect one's land, resources, and autonomy is one that, as Wakeham says, "European nation-states hold as sacrosanct for themselves" ("Terror" 8).

This highlights the exceptional status of First Nations as nations-not-nations that the state continues to produce,⁶³ this time through the denial of the right to “national self-protection” (8). Both apology and terror thus deny the historical specificity of Indigenous claims or demands, preclude recognition of any ongoing colonialism, and undermine Indigenous claims to land, resources, and sovereignty. While the rhetoric of apology manages to undermine the legitimacy of all present and future Indigenous anticolonial practices (since it suggests that colonialism is over and the government has now addressed all its past crimes), the rhetoric of terror provides the new frame for all those who continue their anticolonial practices despite their supposed de-legitimization by the rhetoric of apology.

In collapsing these crucial differences, the government manages to create the illusion that those cases that do require attention—either as anomalous moments when the state has unfortunately injured a particular individual or collectivity or as exceptional moments when the need for extra precautions justifies the use of excessive force and the application of excessive terms (like “terrorist”)—are exceptions to the normal behaviour and environment of the civil nation of Canada. In these cases, the logic of exceptionality works specifically to contain the state’s own wrongdoings and thereby manage its liability. This logic also works, however, to establish the exceptionality of Indigenous sovereignty.

When applied to Indigenous peoples defending their land against a colonial oppressor, “terrorist” may seem like a fairly recent lens through which to view Indigenous resisters, but, in fact, this lens continues the long-standing civilizational discourse that has historically cast

⁶³ The exceptional status of First Nations produced by the state occurs by removing the much broader scope of their nationhood, making the settler colonial state “concomitantly *reductive* and *productive*” (Stark and Starblanket 183) as opposed to simply eliminatory. Coulthard also notes the “*productive* character of colonial power” as equally important as “the coercive power of the settler state” in “liberal democratic contexts like Canada” specifically in the ability of settler-colonialism to “produce *forms of life* that make settler-colonialism’s constitutive hierarchies seem natural” (152, emphasis in original).

Indigenous peoples as acting “outside” the settler-state version of “law and order” or “rule of law.” This evokes Hugh Brody’s description of the popular notion amongst early settlers of an “Indian nation” with a “boundary, beyond which the white man’s law did not run” (61), thus positioning Indigenous peoples as the exception to rule of “the white man’s law” and framing them as lawless, uncivilized, and even savage. Coulthard argues that this “civilizational discourse that rationalized both the theft of Indigenous peoples’ land base and their subsequent confinement onto reserves facilitated a significant geographical separation of the colonizer and the colonized that lasted until the mid-twentieth century” (174). This same civilizational discourse was also crucial to the rationalization of imprisoning Indigenous children in Indian Residential Schools in order to “civilize” them by destroying their “uncivilized” Indigeneity, or to recall the infamous saying mentioned above, to “kill the Indian in the child.” This discourse continues today under the guise of “law and order,” which is a more objective-sounding norm that nonetheless situates Indigenous people—particularly those who resist the colonial status quo—as outside the bounds of “civilized society” and facilitates their containment in Agambian camp-like spaces by framing them as a threat to the stability, prosperity, and even safety of Western civilization. Today, rather than “civilize the savage” or “kill the Indian in the child,” the settler-State seeks to “restore law and order” *vis à vis* “Native terrorist threats.” In other words, this discursive exclusion of Indigenous peoples from the realm of law and order has crucially validated their physical containment in stable, visible spaces of exception from that same realm, as will be shown in two case studies below. While “terrorist” is now the *mot du jour*, Indigenous peoples have been portrayed as problems and dangers to society for centuries,⁶⁴ originally to aid

⁶⁴ Within Sherene Razack’s anthology *Race, Space, and the Law: Unmapping a White Settler Society*, several chapters touch on this fact, including Renisa Mawani’s “In Between and Out of Place: Mixed-Race Identity, Liquor, and the Law in British Columbia, 1850-1913”; Carol Schick’s “Keeping the Ivory Tower White: Discourses of Racial Domination”; Sherene Razack’s “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George”;

the state's acquisition of land and now to aid the state's access and rights to that land and its resources.

In addition to being constructed as “exceptions” to the rule of law by their non-conformity to “civilized” “law and order,” Indigenous peoples have also, paradoxically, frequently been *excluded* from the rule of law in Canada by the state and settler society. This exceptionality is produced in part by “the old and new faces of colonialism that continue to distort and dehumanize Indigenous peoples” (Alfred and Corntassel 601), thereby constructing them as exceptional bare life. John Borrows, for instance, describes some of the many effects of the state's “failure to extend the rule of law to Aboriginal peoples” (*Recovering Canada* 132). These include disproportionate levels of exposure to governmental interference, which is “evidenced through the suppression of Aboriginal institutions of government, the denial of land, the forced taking of children, the criminalization of economic pursuits, and the negation of the rights of religious freedom, association, due process, and equality”; through a “lack of cultural protection [that] led to further vulnerability and violence, as Aboriginal peoples were not extended the institutional means to resist the violation of their rights”; and, finally, through the absence of “‘a division of political power’ that would prevent the provincial and federal governments from usurping the powers of Aboriginal governments,” which has allowed those usurping governments to be “unjustly enriched at the expense of Aboriginal peoples” (132).

Indigenous women have experienced this lack of protection under the law to a devastating degree. With the number of Missing and Murdered Indigenous Women and Girls (MMIWG) surpassing one thousand, Indigenous women represent the most targeted female

demographic in Canada.⁶⁵ And yet, the vast majority of these cases not only remain unsolved, but in fact were not even deemed “suspicious” in the first place.⁶⁶ Cases of missing women who frequently move between the city and their reserve often are not properly classified as missing persons because of the assumption that their inability to be located is an inevitable consequence of their transience.⁶⁷ A historical continuity emerges here between the 20th century, where transience normalizes the disappearance of Indigenous women from the settler space of the city, and the 19th century when, according to Patrick Wolfe, “nomadism normalized [the] removal” of Indigenous peoples from lands desired by settlers (18). This continuity illuminates an ongoing settler tendency to engage in the othering and, as such, dehumanizing of Indigenous peoples to justify settler actions (or *in*action in the case of police). In both instances of Othering, with a period of over one hundred years between them, Indigenous peoples are treated as exceptions—to the rule of police intervention and protection and to the norm of a proprietary interest in the land.

In addition to being ignored because of transience, missing Indigenous women with “high risk lifestyles”—either sex workers, drug users, or those living on the streets—have been under-reported and frequently dismissed as suffering the inevitable consequence of these life choices. In the case of Pamela George, a Saulteaux woman murdered by two white, male teenagers in Regina in 1995, “[b]oth the Crown and the Defense maintained that the fact that Pamela George was a prostitute was something to be considered in the case,” especially since the accused were “white university athletes” (Razack 91-2). Pamela George—like many other Indigenous women

⁶⁵ “In Canada, statistics show that Indigenous women and girls are 12 times more likely to be murdered or missing than any other women in Canada” (“Preface” in *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol 1a).

⁶⁶ See page 690 of the *Final Report* for findings related to the “failure of police services to ensure there is justice and protection for Indigenous women, girls, and 2SLGBTQIA people.

⁶⁷ According to a reporter, “the police don’t look for transient adults because such individuals often go missing and often don’t want to be found” (qtd. in Razack 106).

and girls—appeared to belong to a “space of exception” to the “regular” spaces of urban settler society, “a space in which violence routinely occurs ... [with] a body that is routinely violated,” diminishing the visibility of both the “enormity of what was done to her” (93) and the criminality of the white, middle-class, male athletes who killed her. Audra Simpson attributes the view of Indigenous women as “killable, able to be raped without repercussion, expendable” as a result of the historical rendering of female Indigenous bodies as “less valuable because of what they are taken to represent: land, reproduction, Indigenous kinship and governance...” (156). The rendering of Indigenous women as “killable” bare life is thus deeply connected to their embodiment of uncontainable Indigenous sovereignty that the state seeks to exceptionalize.⁶⁸ The devaluing of Indigenous women can be directly linked to the gender discrimination of colonial laws and policies like the provisions of the Indian Act that “led to loss of status for many Aboriginal women ... including the right to live on reserves” and is “deeply implicated in the over-representation of Aboriginal women among those who do survival sex work in urban cities” (Dean 191).⁶⁹

Indigenous women, as “bodies that reproduce nations” rather than as discrete individual subjects, are to this day targeted by colonial violence, including through “media, books and oral culture” that “continue to justify the strangulation of Indigenous women’s body sovereignty” (Simpson, *Always* 88-9). This violence casts shadows over Indigenous “civility” when “Indigenous women are blamed by the state for causing the violence by making poor lifestyle choices, and Indigenous men are named as the perpetrators of this violence” (89). The deflection

⁶⁸ Similarly, Leanne Simpson situates this pattern within colonialism, which has in large part attempted to control Indigenous women and queer people by exercising control over their sexual agency, which Simpson argues is seen as a threat to heteropatriarchy and the heteronormative nuclear family (*Always* 107).

⁶⁹ For more on the colonial gender discrimination, see the *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol 1a, Chapter 4: Colonization as Gendered Oppression.

of the colonial state's culpability pits Indigenous men and women against each other (a long-standing colonial strategy for implementing heteropatriarchy), thus substantiating the continued construction of Indigenous lawlessness *and* violability. Simpson argues that sexualized and gendered attacks have "intergenerational staying power" and thus contribute to the destruction of "the base of our nations and our political systems because they destroy our relationships to the land and to each other by fostering epidemic levels of anxiety, hopelessness, apathy, distrust, and suicide. They work to destroy the fabric of Indigenous nationhoods by attempting to destroy our relationality by making it difficult to form sustainable, strong relationships with each other" (93).

Recently, this "exceptional" treatment of Indigenous women by both the state and RCMP has been challenged by Indigenous groups demanding justice for the Missing and Murdered Indigenous Women and Girls. Advocates for the MMIWG have mobilized successfully to bring the politics of reconciliation to bear on these unsolved cases, forcing the government's hand, in its own self-proclaimed era of reconciliation, to finally initiate a full inquiry into these under-investigated cases. Unlike the residential school survivors, synecdochally represented by the trope of the deserving child, the missing and murdered Indigenous women and girls—whose experience of violence is frequently attributed to their own "free choices" and whose carceral space of exception has no physical, visible border—have even been excepted from the type of redressable injustice that warrants an official apology from the state—despite systemic racism being similarly implicated in both "cases." Whereas Indian Residential Schools can be contained as a "single" instance of injustice that occurred during a distant time and under a distant administration, MMIWG expose a much less "containable" problem of *ongoing* systemic racism occurring under the nose of the current administration. However, the National Inquiry into MMIWG does share some similarities with the 2008 apology for the Indian Residential Schools

and even the corresponding Truth and Reconciliation Commission: namely, this new state-controlled display of reconciliation politics participates in a “politics of grief” that exploits Indigenous trauma and grief to “placate Indigenous resistance and to appease the moral concern of Canadians” (Simpson, *Always* 239) and draw attention away from discussions of land, nationhood, and the “renewal of place-based practices” (239).

Despite being exceptions to the *protection* of the rule of law, Indigenous peoples are decidedly not excluded from the *application* of the rule of law, as evinced by their significant over-representation in Canadian prisons.⁷⁰ In fact, while Indigenous people represented only 4.1% of the population of Canada in 2016/2017, they represented 28% of provincial/territorial inmates and 27% of federal inmates. In Saskatchewan (home of Pamela George), Indigenous people make up 14% of the population but a whopping 76% of the prison population. These numbers are even more drastic for Indigenous women and youth, creating a situation where “the typical offender is also the typical victim: a young Native woman” (Razack 104). This discrepancy between the lack of police protection for Indigenous women and their significant over-representation in prisons points to an Agambian “relation of ban” whereby the exception of bare life is both abandoned by the law and yet never free from it. Simultaneously under- and over-policing Indigenous people reinforces the exceptionality of Indigeneity, here embodied by those who do not conform to the expectations of “civil society” and the state-defined rule of law. There is a zone of indistinction between being over-policed (a state of exception) and under-policed (a form of bare life) where the law’s failure to protect Indigenous people is vindicated by their susceptibility to being constructed as lawless, criminal, and more recently, proto-terroristic.

⁷⁰ <https://www.washingtonpost.com/news/worldviews/wp/2018/07/01/canadas-indigenous-population-is-over-represented-in-federal-prisons-and-its-only-getting-worse/?noredirect=on>; and <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>

The connection between the “terror” lens and the threats to territorial sovereignty, including its crucial access to resources (for both its economic and existential stability) has been elucidated by Elden, who notes that the “terror” lens tends to be applied to non-state actors challenging the territorial extent of a sovereign state. In the settler-colonial context in Canada, where the territorial extent of the sovereign state has yet to be definitively established in legal terms,⁷¹ these threats are overwhelmingly represented by Indigenous peoples as both the necessary but unstable exception to state sovereignty and as the population most affected by resource development. This is evident in the government’s tendency to frame Indigenous people as “terrorists,” or Indigenous acts as “terroristic,” specifically when those people or acts are defending the land from colonial expansion.

In “Reconciling ‘Terror,’” Wakeham notes two particular instances where Indigenous land defenders were portrayed as terrorists, specifically the Oka crisis of 1990 and the Caledonia land dispute of 2006. Wakeham points out the new significance of reading these two events together in light of the rhetoric of terror: “...both land occupations have become key sites of settler anxiety regarding Indigenous calls for sovereignty and the return of expropriated territory. It is therefore no coincidence that Indigenous resistance at both Oka and Caledonia have been framed as ‘terroristic,’ given the term’s current usage for delegitimizing ‘challenge[s] to territorial extent’” (19). Significantly, during the events at Oka, the use of tear gas by the *Sûreté du Québec* created confusion that led to gunfire from both sides, with fatal results for one police corporal. The media frenzy surrounding the corporal’s death escalated the confrontation: the

⁷¹ See John Borrows (*Freedom*) on the void left by the doctrine of discovery and related notion of *terra nullius* once these concepts were discredited as legitimate ways of attaining sovereignty over a territory. As Borrows shows, in the absence of these justifications, the Canadian state has insisted that its mere assertion of sovereignty was enough to extinguish the sovereignty and land title of the First Nations. This proposition was accepted by the Supreme Court in its 2014 *Tsilhqot’in* decision. Borrows stresses the immense implications for future land title cases now that the Court has “‘granted’ the Crown title by an originalist fiction” (141). This does not have any legal basis, but also cannot be easily challenged since the Supreme Court cannot easily challenge the sovereignty of the state that affords it its legitimacy as a court.

government declared a state of emergency and invoked the *National Defence Act* to obtain military support. As mainstream media outlets broadcast the Oka Crisis for a global audience, two competing discourses of “law and order” emerged: state representatives frequently referred to the necessary restoration of law and order and the contrasting “lawlessness” and “terrorism” exhibited by the Mohawks,⁷² while “Mohawk spokespersons complained ... that Mohawk sovereignty placed them beyond Canadian law” (Lackenbauer, “The Oka Crisis” 198). Eventually the Mohawks adopted the state’s discourse of law and order to justify their actions and to request “an acknowledgement of their rights to occupy land in the area” (Borrows, *Freedom* 77). As the event developed and more non-local Mohawks joined the protest, the scope of the demands broadened. Eventually, the “dominant Mohawk voices at the barricades were explicitly sovereigntist, and the Kanesatake land settlement issue seemed to recede to secondary importance, overshadowed by broader efforts to extract official recognition for the Mohawks’ distinct political and legal status” (Lackenbauer “Oka” 180). Thus the two competing discourses of “law and order” here morph into two competing discourses of sovereignty. The Mohawks, in challenging the state’s assertion to sovereignty over their land, solidify their position as “outside the official and legitimate political sphere: they viewed themselves as freedom fighters for their nation, while from the government’s perspective they appeared as ‘terrorists’” (Morris 84).⁷³ In the face of this inherent challenge to the legitimacy of Canada’s claim to sovereignty (over Mohawk territories) the state responded with “governmental blockades [that] become visibly physical, demonstrating the material power of Canadian society to block Indigenous peoples from lands they regarded as their own” (Borrows, *Freedom* 76). Or, as Lackenbauer puts it: “Of course, the government could not concede on a point that could jeopardize the integrity of the

⁷² For examples, see Wakeham, “Reconciling Terror” 15.

⁷³ Morris describes the visibility of the Mohawk externality as a result of their easily identifiable garb.

entire Canadian state, and Lieutenant Colonel Pierre Daigle's battalion was called upon to bring pressure to bear in the field" ("Oka" 187).

Even after the Mohawks were enclosed within the reserve, the military continued to advance so as to further contain the protestors within. This tactic served to put tangible pressure on the remaining protestors to surrender, but it also had the effect of containing an "Indigenous threat" to the "integrity of the state" within a visible and stable (because state-controlled) space of exception to the regular order—both because it was under siege by the military in a declared "state of emergency" and because it was a materialization of the state of exception whereby the state can at once claim to seek "nation-to-nation" negotiations (as Quebec said) and encroach on the territory claimed by that nation when negotiations fail to produce results.

In addition to the events at Oka in 1990 and Caledonia in 2006, numerous other land-related protests have gone tragically wrong in recent Canadian history. A particularly violent year for Indigenous-state relations was 1995, which saw both the Gustafsen Lake incident and the Ipperwash crisis. As described in the previous chapter, the events at Ipperwash Park began as a peaceful protest to the state's ongoing possession of land claimed by the Stony Point Ojibway band. The government had originally tried to buy the land to use during World War II (Holmes 20), promising that it would be returned afterwards. When the band declined the offer, the government invoked the *War Measures Act* (claiming a state of emergency or exception) to justify their appropriation of the land (19), compensating the band with a mere \$15 per acre (20). The Department of National Defense (DND) built a military camp—Camp Ipperwash—directly on top of a burial site (confirmed by archaeologists in 2010⁷⁴) and then chose to keep the camp after the war ended (23). Frustrated after many years of trying to reclaim their land, some Stony

⁷⁴ "Ipperwash Timeline," in *Treaties Matter: Understanding Ipperwash*
http://www.anishinabek.ca/download/Treaties%20Matter_Understanding%20Ipperwash_2011_FINAL.pdf

Point members decided to occupy the camp in 1993 and then the park in 1995 (25). In response, the Ontario Provincial Police (OPP) peacefully co-occupied the park, until two events precipitated a change in police action: a protestor smashed the window of a police cruiser and, since the officers then had to retreat, the OPP lost “containment” of the park. This incident instigated rhetorics of terror and law and order from the state, beginning with the mayor’s press release entitled “Reign of Terror Continues,” which characterized the occupiers as “terrorists” and their activities as “illegal” (Lackenbauer, “Ipperwash” 274). Furthermore, residents were reportedly “terrified” and rumours even circulated that some were buying guns for protection (275). Fittingly, the two events that altered the peaceful occupation and initiated the discourse of terror both involved an implicit “challenge [to the] territorial extent” (Elden xxx) of the state, as manifested in the transgressions of real and symbolic boundaries: the symbolic barrier separating the protectors of the settler state from its opposition is smashed when a protestor smashes the physical barrier of the cruiser window, while the physical boundary of the park, separating the city and nearby cottages from the “aboriginal unrest” within (Robinson), becomes “transgressable” as soon as the OPP can no longer “contain” the symbolic space of the Indigenous occupation.

This language of containment recalls a history of containment efforts by the colonizing settler state, such as the creation of reserves and the institution of residential schools. Not surprisingly, it is when the issue of competing sovereignties resurfaces that, once again, temporary camp-like spaces emerge as new sites of visible, stabilized Indigenous exceptionality to re-settle both the particular territory in dispute as well as the inherent challenge to Canada’s asserted sovereignty. However, the struggle to determine the terms of the occupiers’ enclosure within the camp—with protestors and police each seeking control of that boundary—

differentiates this camp from those described by Agamben. Unlike in Agamben's "camp," the space of exception that emerges in Ipperwash Park derives much of its significance from its geographical location on the very land over which the two nations stake their competing claims. The camp—as a space of exception—only serves the interests of state sovereignty if the state itself makes the decision on that exception; after all, according to Agamben (and, more properly, Carl Schmitt), sovereign power is the power to decide on the exception. The competing purposes served by this type of self-imposed enclosure cannot be explained by Agamben's "implicit depiction of sovereignty as a self-confident exercise of authority free from anxiety over the legitimacy of state actions" (Rifkin, "Indigenizing" 90). Rather, these competing objectives point to the anxiety-ridden sovereignty performed by settler-colonial states whose coherence and legitimacy depend on the state's ability to contain the legitimate competing claims of Indigenous nations.

This anxiety over the containability of competing sovereign claims, here embodied by those occupying Ipperwash Park, escalated when protestor Cecil Bernard George approached the police, marking a further transgression of the line separating the representatives of state power from the Indigenous protestors. George was forcefully taken down, "excessively beaten on his head and face," and arrested (Linden 464). When fellow protestors tried to rescue him from the police, an OPP officer thought shots were fired (although the occupiers say they had no weapons in the park that night [470]) and so opened fire on the car and school bus. Three people were wounded, including Dudley George of the Ojibway Nation. His brother and sister attempted to take him to the hospital but were arrested and detained for over an hour on the way, despite the severity of George's injuries. Dudley George died in the hospital early the next morning. The Sergeant who shot and killed George testified that he had mistaken a dark stick George had been

carrying for a rifle. Whether true or not (the judge determined that to be a lie), that fatal error illuminates how the “state of terror” felt by the OPP following the violation of those crucial boundaries between Indigenous land defender and state law enforcer—first with actual violence, but later with only the threat of potential violence—precipitated the paranoid attitude of “act first, think later” among law enforcers. As Agamben says, “one of the paradoxes of the state of exception lies in the fact that in the state of exception, it is impossible to distinguish transgression of the law from execution of the law”—an ambiguity that, in this case, resulted in the literal execution of a symbolic transgressor (57). The immediate and disproportionate response to three imagined threats—Cecil Bernard George, the van and car, and then Dudley George—reveals the deep anxiety felt by settler Canada in general and the state in particular when Indigenous people assert their right to the land, especially by physically occupying that space in a way that defies all colonial efforts to contain the exceptionalized Indigenous population. Significantly, it was the inability to contain that population within the park that initiated the deployment of two extra police units, the Crowd Management Unit (CMU) and the Tactical Response Unit (TRU), whose presence would fatally escalate the situation.

Following the incident, an official inquiry into the events was launched, which released two recommendations for public apologies. The first was to be issued by the OPP to Cecil Bernard George “for the use of excessive force in the form of blows to his head and face at the hands of one or more unidentified police officers during the course of his detainment and arrest....” (Linden 695). The second was to be issued by the federal government “with appropriate compensation to the Kettle and Stony Point First Nation for the failure of the federal government for more than 60 years to honour its promise to return the lands to the First Nation”

(Linden 696). The Inquiry also recommended that the Federal government finally honour that promise by immediately returning the Nation's lands.

That same summer, in Gustafsen Lake, a privately-owned ranch became the site of the most costly RCMP operation of its kind in Canadian history when a group of Indigenous peoples occupying their sacred and unceded land for a Sun Dance ceremony refused to comply with the ranch owner's eviction notice, instead calling for "an international inquiry into the subject of unceded Indigenous lands" (Shrubsole 1).⁷⁵ Significantly, it was when Sun Dancers erected a fence to keep wandering cattle off their sacred space that, "out of fear that the Sun Dancers were trying to stake out territory" (6), the ranch workers presented the Indigenous group with an eviction notice, allegedly armed with both weapons and racial slurs. Instead of leaving the territory, the Sun Dancers responded by "mount[ing] an 'armed defensive stance'" (7), necessitating an RCMP mediating presence. Three Indigenous RCMP constables were responsible for securing the area and setting up meetings between the Sun Dancers and the rancher. These three constables "believed that a meeting established for late August would have resolved the situation if not for the Emergency Response Team (ERT) that was discovered by occupiers on 18 August" (8). At this point, and to their dismay, the constables, who had been successfully maintaining peaceful relations between the opposing parties, were taken off the case, returning to the site an atmosphere of fear, anxiety, and defensiveness. In their place, the Canadian military then supplied four hundred RCMP officers and four Armoured Personnel Carriers (10), although more APCs, as well as "more ammunition and ... more troops" would be requested following a gun battle on 11 September. The establishment of clear boundaries, and

⁷⁵ Lawyer and activist Dr. Bruce Clark was responsible for aiding in this inquiry. "Clark's *Petition* [was] an exercise in Canadian and British jurisprudence and international law, arguing for third-party adjudication over unceded Indigenous lands within the contemporary boundaries of the Canadian state" (Shrubsole 6), and would play a major role in the unfolding of events that summer.

the real or imagined violation of those boundaries, becomes a key element of this “incident” as well when it precipitates two separate instances of shots being fired: first by the occupiers when they noticed ERT members at the perimeter of the site and, second, by a police sharp-shooter targeting an unarmed protestor crossing through a “no-shoot zone” (10). In neither instance was a boundary actually crossed, but when the subject of the protest is the physical space on which the protest occurs, that space takes on all the significance of the “larger tract of [unceded] Shuswap Nation [land]” (6); and, by extension, the literal transgression of that border takes on the significance of the larger invasion and co-occupation of disputed land by competing sovereignties. As an added source of anti-colonial resistance and tension, this same ceremony was the target of an assimilationist policy in the 1894 Indian Act amendment outlawing the Sun Dance.

While the spiritual nature of the Sun Dance might suggest this incident was a largely religious dispute, multiple Sun Dancers asserted the opinion that “relief for indigenous peoples could only be ascertained through sovereignty and a return to traditional ways of life, which had historically been suppressed by the federal government” (10). In the media portrayal of this incident, however, the religious activists were strongly distinguished from political activists in order to more easily identify terrorist-like activists within the group and to suggest that their political agenda regarding claims to land and sovereignty was, in fact, not the concern of the entire community. In his article, “Colonizing Surveillance: Canada Constructs an Indigenous Terror Threat,” Craig Proulx argues that another significant effect of equating Indigenous protestors with terrorists is that it “socially sorts and demonizes community activists, relegating legitimate treaty, land and resource complaints by them to mere minority *interests* as opposed to serious sovereignty issues faced by First Nations” (90). Proulx describes this move as a

technology of power typically used by oligarchies;⁷⁶ the oligarchic state “minimizes and delegitimizes activists as *small factions* who are, supposedly, unsupported by the whole community” (90), effectively depicting those activists lobbying for land and sovereignty as exceptions to the community and its own less-demanding claims. Making use of this tool in the Gustafsen Lake standoff, RCMP and media participated in the “sorting” of political and religious activists—renamed “hawks” and “doves,” respectively (Shrubsole 10)—to enable the continued framing of a faction of the group as “conspiracy theorists and militants” (11), despite the fact that many of the “doves” named sovereignty as essential to their healing and that it was the “doves” who called in the “hawks” to protect the Sun Dance ceremony (11).⁷⁷ Ascribing land and sovereignty claims to a militant faction reduces the obligation of the state to acknowledge, let alone redress, these “exceptions” as legitimate concerns. Furthermore, dividing these two groups despite the clear overlap in their demands undermines the ability of the nation to advocate for their rights *as a nation* and instead treats the community as an aggregate of more and less like-minded individuals.

According to Russell Diabo and Shiri Pasternak in their article “First Nations Under Surveillance,” the Department of Indian and Northern Affairs Canada (INAC) similarly factionalized Indigenous protestors claiming sovereignty and/or exclusive land rights. INAC, under the direction of Stephen Harper, spied on First Nations—especially those where occupations and protests were anticipated—and prepared a weekly “hot spot binder” that “closely monitors any and *all* action taking place across the country” (Diabo and Pasternak). The federal government feared that these “hotspots” would prove to be unpredictable and difficult to

⁷⁶ Proulx argues that Canada is an oligarchic state ruled by corporate investors.

⁷⁷ Although later court proceedings regarding the 18 arrested protestors “confirmed that RCMP had deliberately spread misinformation” (Hanson), and although five years after the occupation, RCMP officers and Indigenous protestors who had been at Gustafsen Lake participated in a joint healing ceremony, no government inquiry or apology have been offered.

manage because they were “led by what the government labels as ‘*splinter groups*’ of ‘*Aboriginal Extremists*.’” INAC further characterizes these “splinter groups” as existing “outside negotiation processes to resolve *recognized* grievances with *duly elected* leaders” (qtd. in Diabo, Pasternak, emphasis mine). Furthermore, INAC stated to the RCMP that it sought to “avoid giving standing to such splinter groups so as not to debase the *legally recognized government*” (emphasis mine), referring to the elected band council governments. INAC’s language in these statements associates those pursuing *unrecognized* grievances outside of the state-imposed band council governments as unpredictable exceptions to the “legally recognized government,” thus both rejecting the grievances and delegitimizing the method for pursuing them on the basis of their inability to be contained by state-controlled processes of recognition and assimilation. The very fact of their being “outside” of such processes is used to justify the surveillance of these “splinter groups” *before* they have even engaged in any dangerous or criminal activity. INAC shares its concerns with a number of other groups, including the Canadian Security Intelligence Service (CSIS), the Department of Fisheries, Government of Canada, Natural Resources Canada, and Transportation Canada (ibid.), indicating the government’s mobilization of multiple departments (i.e. Indian Affairs, Security Intelligence, and Natural Resources) to co-operatively contain Indigenous anti-colonial and anti-industry resistance.

Additional collaboration between CSIS, the RCMP, the National Energy Board (NEB), and private energy companies including Enbridge—what Monaghan and Walby call a “surveillance web” (52)—established in response to a perceived increase in threats to energy projects facilitates the monitoring and prosecution of these potential “threats” to critical infrastructure, which is defined as “physical and information technology facilities, networks, services and assets, which if disrupted would have a serious impact on the health, safety, security

or economic well-being of Canadians or the effective functioning of governments in Canada.”⁷⁸

Critical Infrastructure Protection (CIP) actually originated in the Cold War era to respond to “sabotage and espionage by state-based actors,” but it now encompasses “non-state threats associated with terrorism; as well as disruptions presented by social movements” with a “substantive” focus “on imagined threats of the environmental movement” (51-2). Monaghan and Walby illustrate how this “state-corporate symbiosis” under the banner of “CIP security governance” exceeds its mandated response to “criminal or terrorist worlds” and instead embodies “neo-liberal governance practices that rationalize the exclusion and surveillance of actors that are deemed as outsiders, critics, or hostile to economic development” (52). Indigenous anti-colonial land-defenders could easily be defined under any or all of these three terms.

Through the decision on who constitutes an “outsider” and thus who is a legitimate target of surveillance, state agencies decide who will be able to access and participate in “social spaces or events deemed to be of special significance” (54). For instance, critics of pipelines—which fall under the critical infrastructure category of “energy” (Groves)—would be barred from “nearing the sites they are critical of” (54) with no prerequisite of criminal record or criminal intent.

This criminalization of dissent disproportionately affects Indigenous people who—because of the centrality of energy to these CIP agencies—become a main and constant focus of cooperative investigations by the RCMP Critical Infrastructure Intelligence Team (CIIT), CSIS, the Integrated Terrorism Assessment Centre (ITAC), and the NEB Security Team, who view Indigenous peoples as likely sources of “extremism.” These investigations continue regardless of whether perceived threats ever come to fruition⁷⁹ and even when the sources are mere social media feeds, which in one case had the NEB Security Team “warn about ‘the possibility of

⁷⁸ This definition was provided in 2004 by the Department of Public Safety and Emergency Preparedness. It is quoted in Monaghan and Walby, 55.

⁷⁹ According to the examples cited by Monaghan and Walby, these suspicions are usually *not* justified in the end.

activities associated with the All Native Basketball Tournament being held in Prince Rupert” (62). The tenuousness of the connection drawn between a basketball tournament and a prospective site of energy development (Prince Rupert being the desired endpoint for several pipelines) highlights the role Indigeneity plays in the selection of whom to surveil; in relation to other dissenters, “Indigenous groups are monitored more closely and on mere suspicion rather than on reasonable grounds” (66). Clearly Indigeneity and exceptionality go hand-in-hand for the “petro-security apparatus” in Canada, which, by evoking a constant potential terror threat, creates a state of exception where it can engage in “anti-democratic practices of control and suppression” (67) that especially target anti-colonial and anti-energy Indigenous resistance. The militarized responses to and presence at direct action events, like Oka and Gustafsen Lake, as well as the aggressive police presence at the Unist’ot’en camp and healing centre, illustrate the state’s readiness to respond to these threats to its resource economy with extreme force and prejudice. As the group most affected by these resource projects, Indigenous people are the most frequent targets, not only of the petro-security apparatus, but also of state violence, which conveniently allows the state to reassert its territorial sovereignty over Indigenous land under the banner of the “fictional” (as Agamben says) “state of exception” warranted by the state-produced “terrorist” threat to its energy infrastructure.

The illegal and extralegal surveillance of First Nations and “eco-terrorists” has been justified through appeals to the logic of pre-emption that accompanies counter-terrorism efforts. While on the one hand condemning these exceptional, terroristic factions, the state on the other hand produces these same Indigenous and eco-terrorists through the criminalization of dissent regarding industry, which disproportionately affects Indigenous peoples. In particular, the state has enacted several key pieces of legislation that have facilitated the framing of Indigenous land-

defenders as terrorists, by either further excluding First Nations from decision-making processes regarding resource projects and leaving them with no other recourse than direct action, or by redefining terms relating to resource development and terrorism so that ever-more anti-colonial acts are characterized as terroristic. In particular, Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*, and Bill C-45, the *Jobs and Growth Act, 2012*, “made it easier for the Canadian government to develop lands over which Indigenous peoples may have Aboriginal title, rights, or treaty protections” (Borrows, *Freedom* 178).⁸⁰ They also removed protections triggering assessments and exempted pipelines from review processes (178), thus closing the regular channels through which opposition to these highly-contentious projects can be expressed and *recognized as legitimate* by the state. Bill C-36, Canada’s first post-9/11 *Anti-Terrorism Act*, included “serious disruption of an essential service” for “ideological or political purposes” in its definition of “terrorist activity” (if not the result of dissent or protest, neither of which are defined in the Act). Omnibus Bill C-51, *Anti-Terrorism Act, 2015* increased CSIS’s powers to “disrupt terrorism,” in part by facilitating preventative arrests. Opposition to this bill included First Nations and Amnesty International Canada, who expressed concern that groups like Greenpeace and Indigenous communities could be targets of counter-terrorism strategies under the bill.

As recently as this summer, Conservative leader Andrew Scheer vowed to “invoke constitutional authority to build major [energy] projects.”⁸¹ This would be achieved by declaring the “construction of pipelines to be in the national interest.”⁸² Scheer also suggested

⁸⁰ Coulthard similarly emphasizes that Bill-C45 “unilaterally undermines Aboriginal and treaty rights by making it easier for First Nations’ band councils to lease out reserve lands with minimal community input or support, by gutting environmental protection for lakes and rivers, and by reducing the number of resource development projects that would have required environmental assessment under previous legislation” (128).

⁸¹ <https://www.conservative.ca/cpc/build-the-pipe/>

⁸² <https://newsinteractives.cbc.ca/elections/federal/2019/party-platforms/>

Trudeau “enact emergency legislation to prevent the pipeline [TMEP] having to go for a secondary assessment by the National Energy Board.”⁸³ This invocation of a state of “emergency” or exception explicitly to advance resource development shows that this process of limiting dissent has not only survived since Harper’s government, but promises to continue and perhaps even expand under a new Conservative leader.

Problematically, the Canadian federal government, over the course of just a few years, legislated both decreased opportunities for Indigenous peoples to oppose energy infrastructure on their land and increased opportunities for Indigenous peoples to be labeled as terrorists when exercising alternative methods of communicating opposition. The precarious politico-judicial position of dissenting Indigenous peoples therefore encourages First Nations to pursue land rights through reconciliation rather than direct action, since direct action inevitably leads to a disproportionately violent response from the state. And yet, the complete avoidance of outstanding Indigenous claims to land and sovereignty in formal reconciliation processes *again* leaves Indigenous peoples with few options other than direct action to make their concerns and demands heard.⁸⁴ Indigenous peoples are thus cornered by both the discourse of terror (with the surveillance and criminalization of energy sector critics under its banner) and the discourse of reconciliation, which contains demands and grievances within the context of exceptional state wrongdoings.

3. Reconciliation as the Translation of the Exception

⁸³ https://globalnews.ca/news/4482140/andrew-scheer-trans-mountain-plan/?utm_expid=.kz0UD5JkQOC06yMqxGqECg.0&utm_referrer=https%3A%2F%2Fglobalnews.ca%2Fnews%2F4482140%2Fandrew-scheer-trans-mountain-plan%2F

⁸⁴ In fact, in the 2012 BC Court of Appeal’s *Tsilhqot’in* decision, Justice Groberman wrote “... I see broad territorial claims to title as *antithetical to the goal of reconciliation*, which demands that, so far as possible, the traditional rights of First Nations be fully respected without placing unnecessary limitations on the sovereignty of the Crown or on the aspirations of all Canadians, Aboriginal and non-Aboriginal” (qtd. in Reynolds 101, emphasis mine).

Legal and political forms of reconciliation, such as modern treaties and self-governance agreements, and the recognition of land title, appear to offer recourse for First Nations claiming land and/or sovereignty, but their “discursive translation” of these terms actually precludes successful claims for land and sovereignty by reframing them within a settler-colonial discourse of state sovereignty. Building on the work of Paul Nadasdy, who writes that “to engage in the process of negotiating a land-claim agreement, First Nations people must translate their complex reciprocal relationship with the land into the equally complex but very different language of ‘property,’” Coulthard elucidates the deeply problematic nature of translation:

... one of the negative effects of this power-laden process of discursive translation has been a reorientation of the meaning of self-determination for many (but not all) Indigenous people in the North; a reorientation of Indigenous struggle from one that was once deeply *informed* by the land as a system of reciprocal relations and obligations (grounded normativity), which in turn informed our critique of capitalism..., to a struggle that is now increasingly *for* land, understood now as material resource to be exploited in the capital accumulation process. (78)

Understanding discursive translation, therefore, as a critical function of legal/political reconciliation given its role in settling claims, I seek to show in this section how translation serves to exceptionalize the constitutive Indigenous outside to state sovereignty so that it can be “reconciled” with that sovereignty. To illustrate how the role of translation operates in the exceptionalizing of Indigenous concepts, I again return to Agamben’s interrelated concepts of the exception as the foundation of sovereign power, bare life as the foundational exception and subject of sovereign biopower, the camp as the attempted stabilization and localization of the exception, the relation of ban as the sovereign’s paradoxical inclusive exclusion of the exception,

and zones of indistinction as the topological zones where inside and outside and rule and exception pass through one another. The relationship of the rule to the exception, according to Agamben, can be stated like this: the rule first constitutes itself as a rule by maintaining itself in relation to the exception that emerges from the rule's own suspension of itself. In other words, the rule and the exception become the rule and the exception in relation to each other at the same moment specifically as the rule differentiates itself from the not-rule, the exception. In this way, sovereignty presents itself as the decision on the exception (Agamben 25). To reiterate the place of Indigeneity within these concepts, one could say that European authority, and later state sovereignty, in "Canada" established itself as European sovereignty in the same moment that it "decided" that Indigenous sovereignty was not (or did not count as) authority/sovereignty but rather constituted the exception to authority/sovereignty, thereby establishing European authority and state sovereignty as the "rule" in "Canada."⁸⁵ This decision on the exception continues today, most recently in the 2014 *Tsilhqot'in* decision that accepted the proposition that the Crown acquired underlying title to the land simply through the European assertion of sovereignty. If the notion of *terra nullius*—"nobody's land"—does not apply in Canada (as the Court confirmed), then it was a political rather than geographical "emptiness" into which the Crown inserted itself as sovereign. As Borrows writes, "[s]ome kind of legal vacuum must be imagined to create the Crown's radical title" (*Freedom* 142). This exclusion of pre-existing Indigenous sovereignties upholds the Crown's tenuous claim to sovereignty. According to Agamben, sovereign power relies on its relation to that which it excludes and oppresses in order to uphold the structure of that power; in Canada this relation has manifested as the oppression

⁸⁵ Once again, this is a construction of these concepts and the logic that supports them and is not, in any way, intended to essentialize or concretize the authority of Europeans, the sovereignty of the state, or the exceptionality of Indigenous peoples, intelligences, and sovereignties.

and exclusion of Indigenous peoples and political orders, which have historically and presently represented a form of constitutive outside for the state.

According to Taiaiake Alfred's reading of Foucault's related conceptualization of state power, oppression is an inevitable function of the state and can even be defined as "the continual domination by force necessary to maintain" the framework of state power itself (*Peace* 72). Reading Foucault's formulation of state power onto Indigenous-state relations, Alfred notes that this "perpetual relation of force" speaks to the Indigenous position within Canada, since First Nations were not party to the "constitutionally defined social-political contract" that constrains state power, "and yet [they] have been forced to operate within a framework that presupposes the legitimacy of state power over them" (72). Alfred argues that accepting the state's "anti-historic claim to sovereignty by contract" and, furthermore, "arguing for rights within that framework," not only reinforces that claim to sovereignty but also "empower[s] the state to dominate indigenous peoples" such that "'perpetual relations of force' have become the norm" (72). In Agambian terms, the exception(alization) of Indigenous peoples has become the norm within the structure of sovereign power that depends upon its relation to bare life (here depicted as the targets of "perpetual relations of force"). Alfred thus argues for the rejection of this "classic notion of sovereignty" as a framework within which change is possible. Both Alfred and Agamben, then, posit the exposure and disarticulation of this framework of sovereign power as a precondition for structural political change.⁸⁶ Escaping this framework of Western sovereignty is particularly essential for "peaceful coexistence" (77) and a truly reconciled Indigenous-state relationship. In this sense, "true" or "transformative" reconciliation requires a reconciliation of the sovereign-exception relation.

⁸⁶ Agamben writes that, "only a reflection that...thematically interrogates the link between bare life and politics...will be able to bring the political out of its concealment" (4).

To think beyond the sovereign-exception relation requires thinking beyond the sovereign as sovereign and the exception as exception, since these terms only gain their significance in relation to each other. This is where the concept of “translation” becomes particularly useful. In Chapter One, I introduced Coulthard’s concept of “translation” as a way of understanding how sovereign power maintains itself in relation to something so outside of, and even contradictory to, it (Indigenous sovereignty and alternative modes of being, living and thinking), i.e. by “translating” that constitutive outside into terms cognizable to and within the realm/discourse of the state’s sovereign power—the “taking of the outside” as its exception. Translation is thus the process by which the outside becomes the exception, which is no longer outside but paradoxically both inside and outside the realm (or discourse) of sovereign power. As such, the addition of the concept of “translation” to this Agambian framework makes visible the contingency of Indigenous exceptionality—the fact that the exception is not *essentially* exceptional, but rather was constituted *as* exceptional specifically in relation to sovereign power. Together, then, translation and grounded normativity as an “untranslated” outside (which I take up in more depth in my conclusion) provide an alternative framework from which to imagine alternative configurations beyond the sovereign-exception power relation.

Employing Coulthard’s conceptualization of “translation,” then, I argue that “official” reconciliation exceptionalizes Indigenous sovereignty, lifeways, politics, governments, discourses, peoples—Indigeneity writ large—by “translating” them into terms cognizable to and chosen by the state and determined by their then “exceptional” relation to it. In Canada, where the national narrative that the state acquired its sovereignty through treaty is contested not only by First Nations that never signed treaties, but also by many of the First Nations that did, the “state sovereignty” to which Indigenous peoples must be reconciled is one whose very

legitimacy is at stake in that reconciliation. Competing claims to territorial sovereignty are thus received as existential threats to the legitimacy of the Canadian nation-state—a state whose national and provincial economies depend on industry access to land and resources and which thus doubly relies on the dispossession of these lands and resources from the Indigenous peoples that claim them. This dispossession is and has been facilitated by the state-constructed exceptionality of Indigenous peoples as synecdochic of the state’s foundational exception of Indigenous sovereignty over the lands it claims for itself—lands (and resources) that “contradictorily provide the material and spiritual sustenance of Indigenous societies on the one hand, and the foundation of colonial state-formation, settlement, and capitalist development on the other” (Coulthard 7). The current means of exceptionalizing Indigeneity for the purposes of dispossession is through the state-sanctioned discourse of reconciliation, which translates threatening Indigenous alternatives (especially regarding land use) into a non-threatening “exception” that upholds Canadian state sovereignty, “contains” historical injustices for which the state could otherwise be held accountable, and permits/participates in the ongoing appropriation of land and exploitation of natural resources.

Acts of translation “reconcile” existentially and economically threatening Indigenous alternatives to the state’s discourse of sovereign power to create non-threatening exceptions to mainstream settler-colonial society, which indicates that “reconcile” in such instances means to “render consistent” (in this instance, with settler-colonial agendas/interests). As Alfred argues, the state cannot accommodate independent sovereign nations or relate to them in a “pluralistic and peaceful way. Acceptance of an [Indigenous] existence within the colonial state, however creatively imagined, is a death sentence for that indigenous nation” (*Wasáse* 136) since that nation must undergo a fundamental translation of its nationhood in order to render it consistent

with and acceptable to state sovereignty. As such, “Indigeneity is legitimized and negotiated only as a set of state-derived individual rights aggregated into a community social context—a very different concept than that of collective rights pre-existing and independent of the state” (112). This is also the case with self-governance agreements, which translate sovereignty into nominal control over internal affairs and which Alfred critiques as a trade-off that ultimately preserves the “state’s framework of dominance” (*Peace* 71). Even without signing such agreements, existing Indigenous governments are already subject to a settler state and settler court (re)definition of claims, which tends to “freeze” the rights and claims of these perceived “competitors for lands, resources, and political power” (Borrows, *Freedom* 44) in the distant past. This “unilateral [and exceptional] handicapping of Indigenous governments in relation to other state actors produces an obvious advantage for non-Indigenous governments, who are not considered as being frozen in time” (44). Indigenous governments thus serve as the containable exception to “regular” non-Indigenous governments in relation to which the state maintains its ability to exercise sovereign (and exceptional) power over governments that are at once legally recognized as governments and yet significantly divested of their power to govern. This renders Indigenous governments consistent with the state’s assertion of supreme and underlying sovereignty over all land within its borders.

Given the state’s settler-colonial objective to secure its access to land and resources in support of the “petro-state” economy and its capitalist, extractivist agenda, legal/political reconciliation seeks to render Indigenous claims consistent with a resource development agenda, employing the language of “prosperity” to entice First Nations to submit to processes of “translation.” This is evident in the stated objectives of the British Columbia Treaty Commission (BCTC), which, recalling the language of the *Prosperity Act*, proclaims on the front page of its

website that modern treaties will “establish reconciliation, resolve the land question, and create prosperity for all British Columbians.”⁸⁷ The BCTC’s vision for resolving the land question “requires the parties to begin on the understanding that Canada and British Columbia already have sovereignty and jurisdiction on these lands, and that, moreover, Settlers are in legitimate occupation of the lands they already occupy” (Asch 106). Precluding any discussion of *how* this came to be, particularly without the consent of the First Nations, the Indigenous parties to the agreement “are limited by the terms of the process to finding ways to accommodate their interests *within* the political and legal regime imposed by the Settlers” (106, emphasis mine). Asch continues, “These examples confirm that here the ‘nation-to-nation’ relationship is one in which it is one nation over another” (106), despite the continued use of the word “treaty” to suggest otherwise. These negotiations stabilize or make permanent the exceptional status of First Nations as nation-not-nations thus upholding, while also eliminating future challenges to, Canada’s favourite national origin story as a country founded on the peaceful negotiation of treaties. Of ultimate concern here is the *certainty* over the land that the state gains through this “treaty” process, which the Department of Indian Affairs and Northern Development makes explicit in its stated aim to “exchange the claims to *undefined* Aboriginal rights for a *clearly defined* package of rights and benefits set out in a settlement agreement” (qtd. in Coulthard 59, emphasis mine). This is hardly surprising considering that, according to some estimates, “the amount of investment in resource extraction in Canada that is being held back by economic *uncertainty* over land claims [is] more than \$600 billion” (Manuel and Derrickson 121, emphasis mine). The BCTC website defines “certainty” in the treaty context as “clearly defined land ownership and jurisdiction,” the achievement of which “is a primary goal of the BC treaty

⁸⁷ <http://www.bctreaty.ca/> All subsequent quotes taken from this source.

negotiations process.” Folded into this mandate is a deeply-entrenched colonial desire to settle questions of both territory and sovereignty so that the state can proceed with its exploitation of natural resources, which is why, as Alfred highlights, “[t]hese false decolonization processes ... all demand clear demarcations of the territorial bounds of the concept of Onkwehonwe nationhood” (*Wasáse* 112), whose values “challenge the destructive and homogenizing force of Western liberalism and free-market capitalism” (*Peace* 84).

One way the government has sought to achieve this certainty is by bringing Indigenous peoples into the resource extraction business through resource revenue sharing (Manuel and Derrickson 190). This can only be achieved, however, if land (and, by extension, natural resources) is understood as a commodity. As Coulthard shows, one of the most damaging effects of discursive translation is the way it renders land “as [a] material resource to be exploited in the capital accumulation process” (78). Alfred corroborates this point, stating that the “demand for territorial clarity and non-overlapping negotiations on land issues is predicated on an acceptance of the Euroamerican way of viewing land, demarking and dividing the land and environment and relationships between peoples on the basis of European-derived notions of property, ownership, and jurisdiction” (*Wasáse* 113). In accordance with this translation, the benefits from the land are similarly translated from the support of Indigenous lifeways to the distribution of shares of revenue, once again emphasizing “prosperity” for First Nations. Advocacy for land as a living being is thus translated into an environmental concern, with appropriate corresponding consultation and mitigation strategies. Leanne Simpson describes Traditional Ecological Knowledge (TEK) within this context:

The idea was that if we documented on paper the ways we use the land, policy makers would then use the information to minimize the impacts of development on our lands and

ways of life. The idea was that clearly documented land use would bring about less dispossession, as if dispossession occurs by accident or out of not knowing, rather than being the strategic structure it is. The project was to gather the individual cognitive, territorial maps Elders held in their heads into a collective, a visual re-mapping and *translation* of some aspects of Indigenous Knowledge into a form that would be *recognized* by industry and the state. (*Always 12*, emphasis mine).

What was intended as a means of preserving Indigenous knowledge therefore became translated into a means of Indigenous dispossession. These translations crucially stabilize (or make certain, in the language of the BCTC) the Indigenous exception, since they neutralize further dissent and change *what* First Nations are actually fighting for; furthermore, while shifting attention away from the original, more substantive claims, the state also prepares First Nations and their land (for instance, through the collection of TEK) for resource development.

Once the conversation about the land becomes a conversation about property, and thus a commodity, the appropriate form of compensation would logically be settlement money and revenue sharing, further encouraging First Nation participation in resource development on their land through the promise of prosperity. This recalls the way government representatives of the numbered treaty era, particularly in regards to Treaty 8 negotiations, spoke of Indigenous rights to the land in terms of economic value (described in Chapter Two). Once again, government appears to be “buying” the rights of Indigenous peoples through a “valuation of land to jurisdictional legal [and economic] value” that “fails to account for the relationality of land” (Stark and Starblanket 182), which is lost in the translation of land as “an ontological framework for understanding *relationships*” (Coulthard 60). Just this summer, Alberta premier Jason Kenney spoke of a “moral imperative” to help First Nations invest in oil and gas, a venture for

which his government plans to set aside \$24 million over four years.⁸⁸ This type of investment is not being offered to First Nations that do not put that money directly back into the oil and gas industry.⁸⁹ Similarly, Coulthard writes that “Land claims, according to the Crown, would better enable the Dene to ‘play a part’ in this process [of exploration and development], but in no way would they provide the economic and political infrastructure necessary to block or effectively cultivate a nonexploitative alternative to it” (72-3). This is in line with the overarching purpose of translation through reconciliation: to appease and/or distract First Nations in order to reinforce, beyond a shadow of an economic doubt, access to the land and resources to which those nations lay claim. In case after case, what becomes increasingly clear is that Indigenous participation in state- or industry-led land projects must conform to their extractivist agenda, else be excluded from discussions over the terms of the project altogether.⁹⁰

To further cement economic certainty, negotiations tend to require some form of extinguishment of all outstanding rights so that the First Nation signatory cannot later claim to be “outside” of state power and thus undermine the state’s absolute title to the land.⁹¹

Extinguishment requires that a First Nation “forever cede, release, surrender, relinquish, exchange, or suspend Indigenous rights and interests within traditional territories” (Borrows,

⁸⁸ <https://edmontonjournal.com/news/local-news/moral-imperative-kenney-meets-with-indigenous-leaders-over-promised-1-billion-corporation>

⁸⁹ As Nicole Shukin pointed out during our correspondence, “when advancing or enacting reconciliation becomes equivalent to economic development, the moral ‘valence’ of reconciliation is starkly exposed.”

⁹⁰ Notably, if an Indigenous group facing potential infringement of their rights refuses to participate in the consultation process, this “may be taken as frustrating the Crown’s good faith attempts at consultation. They are also under great pressure to accept whatever ‘accommodation’ the Crown may propose” or else “run the risk that a court may say the Crown acted reasonably and so discharged its duty to consult. Since there is no obligation to agree, they may end up with nothing, even as the project goes ahead despite their concerns. The vagueness about when the duty to accommodate arises and the deference of courts to governments mean that an Aboriginal group may deplete its limited resources trying unsuccessfully to protect its interests from threats posed by a major project such as a pipeline, perhaps promoted by a multinational proponent with enormous resources, and end up with no reduction in the threat and no benefits as compensation” (Reynolds 168-69).

⁹¹ Legally established Aboriginal title is considered a “burden” on Crown title, but the extensive list of justifiable infringements on Aboriginal title—particularly for the “broader public interest” (or, in other words, “whatever the judge determines” (Reynolds 213)—makes clear the truly absolute nature of Crown title in the eyes of both the government and the courts.

Freedom 63). The first modern treaty, the 1975 James Bay and Northern Quebec Agreement, included an explicit extinguishment clause (63) as the only alternative to “having [their lands] seized by Hydro Quebec without compensation” (Manuel and Derrickson 101); however, “outright extinguishment has not been possible since the passage of Section 35 of the *Constitution Act, 1982*” (Reynolds 7), which recognizes and affirms existing Aboriginal and treaty rights. For this reason, and due to criticism by United Nations human rights bodies (Manuel and Derrickson 101), the state has altered its extinguishment vocabulary several times to enable its continued pursuit of “certainty” regarding any “outstanding issues—including claims to un-extinguished Aboriginal rights” (qtd. in Manuel and Derrickson 114). Alternative framings of the extinguishment clause include the “modified rights model,” whereby Indigenous rights to land would effectively be “modif[ied] out of existence” (Manuel and Derrickson 104) such that they would no longer include “what we understood as Aboriginal title” (104). In this sense, “modify” means to refashion Indigenous rights until they come into alignment with the state’s sovereign control over the land, translating what the claimants understand as their rights into what fits within the framework of exclusive state sovereignty. This approach to extinguishment was also condemned as unjust, leading to the current model of extinguishment: reconciliation (104).

Under the umbrella of reconciliation, which has the convenient double-meaning of both making consistent and making amends (with the effect of “making amenable”), the state can demand the translation of a whole spectrum of “uncomfortable” or “challenging” sources of Indigeneity while still upholding its self-image as accommodating rather than assimilative. This type of reconciliation—and concomitant translation—falls under “the now expansive range of recognition-based models of liberal pluralism” strongly critiqued by Coulthard (3). Under such

models, even Indigenous identity must undergo a translation before it can be “recognized” in its new form of (literally state-defined) “Aboriginal” identity. Alfred and Corntassel write that although many “have embraced the Canadian government’s label of ‘aboriginal,’ along with the concomitant and limited notion of postcolonial justice framed within the institutional construct of the state,” this false and imposed identity is actually an instrument in “the state’s attempt to gradually subsume Indigenous existences into its own constitutional system and body politic” (Alfred and Corntassel 598)—a process articulated by Duncan Campbell Scott in 1920. Simpson similarly describes a state-sanctioned and state-imposed identity:

...the colonizer will always reflect back to us what the state wants to see: an “Aboriginal” that shops at the Gap, votes in the election, skips happily to Revenue Canada on income tax day, perhaps knows her language and participates in a ceremony instead of church on Sunday, perhaps even attends a vigil for missing and murdered Indigenous women, because wow, those poor Indigenous peoples just can’t get their shit together. But they certainly do not reflect back anything that has to do with land, sovereignty, or my power as *kwe*. (*Always* 188)

Inherent in this type of state-approved identity is the disarticulation of culture (as language and perhaps ceremony) from politics (as land, sovereignty, and power as *kwe*). This “compartmentalization results in a ‘politics of distraction’ that diverts energies away from decolonizing and regenerating communities and frames community relationships in state-centric [and liberal-individualistic] terms such as aforementioned ‘aboriginalities’” (Alfred and Corntassel 600).

This paradoxical form of exception through recognition marks a significant deviation from the Agambian relation of exception that is characterized by the “banning” or

“abandonment” of the exception and which is evident in the production of Indigenous bare life through, for instance, the under-policing of violence against Indigenous bodies—abandoned by the same laws that protect non-Indigenous bodies—or the severe underfunding (yet also extreme oversight) of essential services on reserves—abandoned by the same government that protects the needs of non-Indigenous citizens in non-Indigenous spaces but also the same government whose (fiduciary) duty it is to protect First Nations.⁹² In the context of a liberal settler culture and politics of recognition and reconciliation, exceptionality occurs through an ongoing negotiation that chips away at that which a Western ontology of sovereignty cannot accommodate in exchange for recognition of what it can: Indigenous language and culture—at least “so long as the settler state and its colonial relations of power are not disturbed” (Stark and Starblanket 182). Coulthard similarly describes the limited capacity of state forms of recognition and accommodation:

...[F]or the state, recognizing and accommodating the “cultural” through the negotiation of land claims *would not* involve the recognition of alternative Indigenous economies and forms of political authority, as the mode of production/mode of life concept [of culture] suggests; instead, the state insisted that any institutionalized accommodation of Indigenous cultural difference be reconcilable with *one* political formation—namely, colonial sovereignty—and *one* mode of production—namely, capitalism. (Coulthard 66)

The recognition and protection of “translatable” or reconcilable aspects of Indigenous “modes of life” are offered in exchange for settler state certainty regarding more substantive, and

⁹² According to Amnesty International Canada, “By every measure, be it respect for treaty and land rights, levels of poverty, average lifespans, violence against women and girls, dramatically disproportionate levels of arrest and incarceration, or access to government services such as housing, healthcare, education, water and child protection, Indigenous peoples across Canada continue to face a grave human rights crisis” (*Matching International Commitments with Nation Action: A Human Rights Agenda for Canada*). For a few specific examples of the underfunding of essential services, see Borrows, *Freedom and Indigenous Constitutionalism* 167-172. For examples of the absurd degree of federal oversight of funds, see Chelsea Vowel, “The Real Math.”

irreconcilable, claims. For instance, the Trudeau government reneged on its campaign promise to implement the United Nations Declaration on the Rights of Indigenous Peoples, which would have required significant changes to Indigenous-related government policies and procedures, but that same government *did* pass the brand new 2019 *Indigenous Languages Act*, which requires promotion of public awareness and translation of documents into Indigenous languages⁹³—significantly less transformative changes, even if a step in the right direction. In a similar vein, Simpson critiques the minimal effort required to change prominent stereotypes: “[stereotypes] are easy because they are acceptable to the oppressor, and they only give the illusion of real change. It is not acceptable to wear a headdress to a party, but it is acceptable to dance on stolen land and to build pipelines over stolen land” (*Always* 113). The protection of Indigenous culture (headdresses) thus distracts from the attack on the Indigenous land-based sovereignties. The subsequent protection of language and culture distracts from (the absence of) questions concerning land and sovereignty.

In this way, both reconciliation as “making consistent” and reconciliation as “making amends” play on and benefit from the rhetoric of apology (as well as the rhetoric of terror) to make Indigenous communities more amenable to resource development, inviting (but also coercing) them to shake the outstretched hand of the state, “settle” their outstanding claims once and for all, and “join” (paradoxically as the exception) reconciled Canada at no cost to settler state sovereignty or the interests of settler society.

⁹³ This is not to suggest that the protection of Indigenous languages is not extremely important. Nor is it to undermine the necessity of the continued recognition of the unique status of Indigenous peoples as the original inhabitants of the land, as represented by their *sui generis* rights. Rather, this is to suggest that the protection of some rights should not come at the cost of others. Until a *sui generis* approach “place[s] ‘equal weight’ on each perspective” (Borrows, *Recovering* 10-11), its recognition is not sufficient to fundamentally change the oppressive, colonial Indigenous-state relationship. It is worth noting, though, that in the context of Canadian state sovereignty, Indigenous exceptionality in the form of recognition as a unique political group with unique rights and privileges does afford Indigenous peoples important protections. Breaking the relation of exception does not mean erasing the “difference” against which the sovereign state defines itself but rather reimagining that “difference” away from the sovereign power that constitutes it as such.

Conclusion: Untranslatable and Irreconcilable⁹⁴

I began this thesis by introducing the problematique in Agamben's *Homo Sacer* of the hidden structure of sovereign power in modern politics—whether democratic or totalitarian—that has, thus far, evaded critique. According to Agamben, it is the inclusion of bare life in politics as its exception that constitutes this hidden structure and, thus, it is only through an interrogation of the link between bare life and politics that this structure can be brought “out of concealment” so that a new politics can emerge. Although Agamben himself does not think beyond the relation of exception—whereby the exception is included in the political realm precisely as that which is excluded—he does allude to its possibility. Throughout this thesis, I have, therefore, sought to interrogate precisely this link between bare life and politics / sovereign and exception as it manifests in the Canadian settler-colonial context where the State produces its sovereignty through its constitutive decision on the exceptionality of Indigenous sovereignty (and of Indigenous peoples as its embodied source). I have traced the production of Indigenous exceptionality through each major stage of the Indigenous-Crown/Indigenous-State relationship to elucidate the State's unwavering commitment to this project and to suggest that this commitment belies what Rifkin critiques as Agamben's “implicit depiction of sovereignty as a self-confident exercise of authority free from anxiety over the legitimacy of state actions” (“Indigenizing” 90), which does not hold true in the settler-colonial context where the

⁹⁴ I feel that it is important to disclaim that, while I in no way intend to simplify, essentialize, or romanticize particular Indigenous legal and political orders, I do generalize Indigenous relational ontologies because of the crucial areas of overlap in the ways particular Indigenous ontologies have been described by Indigenous scholars and because I do not have the cultural or legal competency to work with any one Indigenous legal, political, constitutional, or ontological order on its own terms. The risk of “flatten[ing] the diversity of cultures” (Napoleon 46) through this methodology has informed my decision to engage specifically with the Unist'ot'en camp as my “case study” in grounded normativity and ethical refusal because I have been to and participated in life at the camp, and because, through intermittent personal and professional engagement with members of the Wet'suwet'en nation between 2013 and 2018, I have gained some (very limited) knowledge and understanding of their legal order.

sovereignty of the State relies on the latter's ability to neutralize, or extinguish, legally and politically legitimate assertions of sovereignty within the territory it claims for itself.

While, historically, the State has exercised its sovereign power over Indigenous peoples with near impunity—committing a cultural genocide that reduced formerly recognized nations to collective bare life and imprisoning them on reserves and in residential schools where they were denied even the rights granted to prisoners of its Correctional Services—today the Canadian state faces the challenge of continuing the reduction of politically Indigenous life in ways that are consistent with the liberal democratic ideals it touts on a global stage.⁹⁵ In the context of contemporary politics of recognition and reconciliation, the construction of Indigenous exceptionality continues in new forms that requires a reworking of Agamben's sovereign-exception relation as primarily a relation of "ban" (or abandonment). My thesis has shown that relations of inclusion, recognition, and reconciliation can be equally effective in the production of Indigenous exceptionality. In fact, in a settler-colonial context where the legitimacy of state sovereignty lies in the authority of the treaties to grant it, an "accommodational" (rather than exceptional) Indigenous-state relationship is actually *more* effective because it reconciles Indigenous pre-existence, inherent sovereignty, and *sui generis* rights to the underlying sovereignty of the State and the broadly-interpreted needs of an ever-expanding settler society. This relationship therefore simultaneously extinguishes the legal, political and thus existential threat of prior Indigenous sovereignties, while maintaining the State in relation to the exceptional "nations-not-nations" from which it derives its legitimacy. As I showed in the previous chapter, this reconciliatory approach to the exception depends upon the translation of Indigenous struggles for land and sovereignty into terms "cognizable" (*Van der Peet* at para. 49) within the

⁹⁵ See Chapter Three for an example of Canada's public discourse/narrative of international moral superiority.

overarching framework of settler-colonialism such that the settler-colonial state can “take the [Indigenous] outside” as its exception.

Having interrogated the “hidden” structure of sovereignty in the Canadian context and having established the place of reconciliation politics and discursive cultural translation within this structure, I now turn to untranslatable and irreconcilable alternative politics and sovereignties in order to think beyond the sovereign-exception relation between Indigenous peoples and the Canadian state. I argue that grounded normativity, as a “place-based foundation of Indigenous decolonial thought and practice” that is informed by land as an “ontological framework for understanding *relationships*” (60) and as a “system of reciprocal relations” itself (13), constitutes a type of untranslated and untranslatable “outside” to the (Agambian) ontology of Western sovereignty. Furthermore, because it is “outside” and therefore *beyond* the relation of exception that includes the exception through its (deliberate, decisive) exclusion, grounded normativity provides a potential framework for reimagining (even “transformatively” reconciling) the State-Indigenous (sovereign-exception) relation. Finally, I propose that, in its embodiment of an ethical “earth-bound” (Borrows “Earth-Bound”) Wet’suwet’en normativity, the Unist’ot’en settlement and re-occupation camp refuses translation and reconciliation-to (as distinct from reconciliation-with) (Tully, “Reconciliation”) and thus remains beyond the exceptionalizing reach of state sovereignty. This grounded ethics has created a space that supports “conciliatory, symbiotic, and co-sustainable” interactions (114) and therefore exemplifies the type of space and community in which mutual, transformative reconciliation—between both Indigenous and non-Indigenous humans and between humans and the living earth—is not only possible, but also already occurring.

Transformative reconciliation differs from the type of “translational” reconciliation that has been critiqued throughout this thesis in that the former occurs mutually between interrelated but autonomous parties whereas the latter occurs asymmetrically to force a “dependent” (Alfred, *Peace* 83) subordinated party to align itself with an “independent” “supreme” party. Tully distinguishes between the potentially transformative “*reconciliation-with* all living beings” and the “less-demanding concept” of “*reconciliation-to* a presumptively unproblematic relationship” (“Reconciliation” 90, 91, emphasis mine). In order to be transformative, reconciliation must contend with the “dual crisis” of both the relationship between Indigenous and non-Indigenous people and the relationship between all peoples and the living earth (84). As such, reconciliation must support “conciliatory, symbiotic, co-sustainable interactions” (114) that are ethical both ecologically and socially/politically. In its refusal of reconciliation-to and the colonial power dynamic therein, grounded normativity challenges the crisis-ridden relationship between Indigenous peoples and a settler-colonial society and government bent on assimilating them and their ways of life. In its continuation and regeneration of reciprocal relations with the earth as a living being, grounded normativity also responds to the crisis-ridden relationship between humans and the living earth that has been exacerbated by the *un-grounded* normativity wherein land is property, resources are commodities, and the exploitation of both appears an inevitable, and even worthy, endeavour divorced from the colonization of the peoples who have traditionally cared for them.

Although framed as a specifically and (perhaps exclusively) Indigenous “mode of life” (Coulthard), grounded normativity as political praxis does not need to be confined to pre-contact traditional activities that perpetuate notions of authentic Indigeneity rooted in the distant past. Nor does it need to reify a fundamental incompatibility between Indigenous and non-Indigenous

ways of being, which would therefore preclude transformative reconciliation. As John Borrows warns, stereotypes of the “ecological Indian”—the essentializing assumption that Indigenous peoples are “necessarily environmentally sound by the mere virtue of their existence” (“Earth-Bound” 50)—are damaging and, moreover, as stereotypes, do not engage critically, specifically, or equally with Indigenous peoples or their laws. Identifying an Indigenous “outside” to the Western structure of sovereignty does not imply or assume undifferentiated potential in all Indigenous spaces, communities, practices, or traditions and does not require that the “outside” be constituted according to racial or otherly-essentialized difference. As Borrows says, Indigenous peoples are “part of humanity, not outside of it” (49). Nonetheless, Indigenous peoples’ own laws and life ways have evolved according to values, principles and, in particular, ontologies that potentiate radical challenges to the socially/politically and ecologically destructive forces of colonialism and capitalism underlying our current, unsustainable relationships to each other and to the natural world.⁹⁶

Embedded in these destructive forces of colonialism and capitalism is a totalizing discourse of sovereignty that understands all the earth as divisible, knowable, containable, and exploitable and all peoples as potential subjects of a state. Western conceptions of sovereignty emphasize exclusive control over a demarcated territory and all the people within it; in fact, *Black’s Law Dictionary* defines sovereignty as the ““supreme political authority of an independent state’ ... with ‘jurisdiction’ or ‘a government’s general power to exercise authority over all persons and things within its territory’” (qtd. in Asch 101-2). According to this definition, Indigenous nations cannot have sovereignty because they are not organized into states and, furthermore, any sovereignty they may once have had must now be extinguished since it

⁹⁶ On this point, Alfred writes that, “There is no inherent conflict between indigenous and non-indigenous values. Rather, it is the historical practice of politics (and the institutionalization of these patterns of governance) that contravenes the basic values of liberal-democratic and traditional indigenous philosophies alike” (*Peace* 168).

cannot exist within the territorial sovereignty of the Canadian nation-state. Considering that at the time of European settlement Indigenous peoples were organized into distinct political groups (nations) that exercised control (in the form of stewardship, responsibility, and the distribution of resources) over particular territories, this narrow understanding of “sovereignty” according to the similarly narrow definition of “statehood” creates a problematic situation in which Indigenous exercises of sovereignty have not been and cannot be recognized as such.⁹⁷ This places distressing limits on Indigenous peoples’ ability to fight for their sovereignty either within the state or in the sphere of international law. Despite underscoring the importance “of developing friendly relations among nations *irrespective of their political, economic and social systems*” and the fact that the “subjection of peoples to *alien* subjugation, domination and exploitation constitutes a major obstacle” to the establishment and maintenance of such friendly relations, the 1970 Declaration on Principles of International Law Concerning Friendly Relations among States in Accordance with the Charter of the United Nations overlooks the possibility that a) sovereign Indigenous nations whose political systems differ from states ought to be treated according to the principle of sovereign equality and b) that Indigenous nations within the settler-colonial state of Canada, particularly those who have never signed treaties with the Crown, are being subjected to “alien subjugation, domination and exploitation” (United Nations, emphasis mine).⁹⁸ As Asch notes, “To be an ‘equal in standing’ in this system requires a party to have the

⁹⁷ Indigenous nations’ lack of statehood continues to undermine their claims to land title in that the courts require proof of both “sufficient” and “exclusive historic occupation” over the area in question for the legal recognition of such claims. Sufficient and exclusive occupation means the claimed land “belonged to, or was controlled by, or was under the exclusive stewardship of the claimant group” who had the “intention and capacity to control the land” (*Tsilhqot’in* at 38, 48). The requirement of “sufficient occupation” echoes the logical underpinning of the Doctrine of Discovery and *terra nullius*, whose “dominant justification for the dispossession [of Aboriginal peoples] was that Aboriginal peoples were not using the land sufficiently. This justification continues today in the ability of governments to infringe Aboriginal and treaty rights [one might even say “with impunity”] to benefit non-Aboriginal people” (Reynolds 28).

⁹⁸ [https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625\(XXV\)](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625(XXV)) Alfred argues that such “[m]yths of national identity and prejudicial attachments to colonial structures and symbols as the guarantors of social peace and ‘national unity’ are sacred and always remain unexamined and unquestioned. This leads to a political climate in which

status of a territorial state” (103). Furthermore, because one element of the principle of sovereign equality, according to the UN Declaration, is that the “territorial integrity and political independence of the State are inviolable,” assertions of Indigenous sovereignty can even be construed as a challenge to or attempted “disruption of the national unity and territorial integrity of a State or country.” When “sovereignities” are understood as mutually exclusive and therefore competitive in nature, Indigenous struggles for sovereignty within Canada become a “zero-sum contest for power” (Alfred, “Sovereignty” 42) that necessitates a relationship of “reconciliation-to” rather than “reconciliation-with.” Additionally, this notion of sovereignty has, arguably, “no relevance to [I]ndigenous values” (Alfred, *Peace* 78) because it constitutes a “peoples-level articulation of an autonomous, not a relational, conception of self” (Mills 160). This makes Indigenous assertions of sovereignty vulnerable because “the state uses the theoretical inconsistencies in that position [of the irrelevance of sovereignty to Indigenous values] to its own advantage” (Alfred, *Peace* 81), suggesting—as the White Paper liberals did—that “Aboriginal forms of ‘sovereignty’ represent a profound misuse of political sovereignty” (Turner, *Peace Pipe* 32). Nationhood, then, would seem to be the more appropriate claim, but an acknowledgement of nationhood by the State does not release Indigenous nations from its underlying sovereignty. If it did, First Nations would not be called First *Nations*. This points to the limit to which Indigenous sovereign authority can be “accommodated” within the sovereignty of the Canadian state.

In its Agambian formulation, the sovereign not only takes land (a territorial ordering) but also “takes the outside” (a juridical ordering), which is included in its realm as its exception. Within a discourse of Western sovereignty, the inclusive exclusion of Indigenous sovereignty—when understood through a similarly Eurocentric lens—is the foundation for the juridical

radical notions of justice are seen as a threat to the very existence of the countries supposedly seeking to transcend the legacy of colonialism” (*Wasáse* 112).

ordering of the sovereign Canadian state. This is evident in the inability of the courts to adequately consider the possibility of Indigenous sovereignty, since the courts derive their authority from a state that itself derives its sovereignty from the extinguishment of Indigenous sovereignty. Juridically, Indigenous sovereignty must be a form of *not*-sovereignty: the exception to sovereignty against which the State defines itself. To restate the implications here, this means that the exception is always the exception *to* the sovereignty that excepts it and therefore always and only exists in relation to that sovereignty.

Grounded normativity—as a place-based framework for enacting a relational politics that is fundamentally incompatible with the state’s sovereign claim to absolute authority over all Indigenous peoples and lands—is not the exception *to* sovereignty because it cannot be included within state sovereignty as its exception. The “sovereignty paradigm,” which relies upon discrete liberal individual subjects (citizens over which it exercises its authority) and which treats land and nonhuman others as property to be divided, owned and exploited (territory over which it maintains exclusive control and resources to support its extractivist/capitalist economy), cannot accommodate non-hierarchical relations between human and nonhuman others in “nondominating and nonexploitative terms” (Coulthard 13). As such, grounded normativity does not exist *in relation to* the sovereign state but rather *outside* the realm of its legitimacy, authority, relevance, and comprehension. Grounded normativity must therefore be understood and engaged with on its own terms and not on the terms of the settler-colonial sovereign state. Similarly, Indigenous sovereignty must be understood and engaged with on its own terms because, as the above discussion illustrates, a Western discourse of state sovereignty crucially misconstrues the objective of Indigenous sovereignty struggles.

Most Indigenous nations employing the word sovereignty “do not seek to destroy the state, but to make it more just and to improve their relations with mainstream society” (Alfred, *Peace* 77), a struggle “less about control of particular policy domains than of *metapolitical authority*—the ability to define the content and scope of ‘law’ and ‘politics’” (Rifkin, *Indigenizing* 90). Heidi Stark and Jason Kekek Stark posit a conception of sovereignty specifically rooted in an Indigenous ontology: “Although the term is often attributed to the Westphalian state system derived from European theological and political discourse, [“sovereignty”] describes at its core the intrinsic political authority that enables the self-governance of all nations” (21) and, furthermore, “animates relationships: relationships with the land, water, animals, and plants; and relationships with one another” (24). These latter articulations of Indigenous sovereignty—as defining and animating Indigenous legal orders and political authority according to Indigenous conceptions of those spheres, which include more-than-human relations—can exist within and alongside the sovereignty of the Canadian state because they do not challenge the existence of the state itself but rather the authority of the state over Indigenous peoples and lands. Audra Simpson refers to sovereignty existing within sovereignty as “nested sovereignty” (12). Although one “does not entirely negate the other, ... they necessarily stand in terrific tension and pose serious jurisdictional and normative challenges to each other” (11). As such, those that “find themselves in a ‘nested’ form of sovereignty” must engage “in politics of refusal” (12)—refusing to recognize the “absolute sovereignty” of the settler state (115), refusing to be (mis)recognized according to the state’s terms, and refusing to stop being *politically* Indigenous. If grounded normativity is a system of ethical and reciprocal relations on and with the land that exceeds (and thus remains outside) the discourse of the State, “refusal” is the choice to critique the colonial and capitalist structures that oppress and dispossess

from within that system of grounded normativity so as to avoid reinforcing the State's totalizing discourse (by similarly remaining "outside" of it). Grounded normativity and a politics of refusal thus work together to refuse discursive translation.⁹⁹ For instance, as Coulthard argues, when Indigenous struggles that were once "deeply *informed* by the land as a system of reciprocal relations and obligations (grounded normativity)" (78) undergo a discursive translation so as to be re-framed within the discourse of settler-colonialism and extractivist capitalism (which can be an intentional strategy for obtaining rights), the very meaning of land itself is reoriented, "understood now as material resource to be exploited in the capital accumulation process" (78). Accordingly, the State responds in the implicitly dominating and exploitative terms of its Western discourse of sovereignty by either offering compensation for the lost land (as property) and the lost resources (as material wealth or potential income) or by "recognizing" an Indigenous interest in the land in such forms as usufructuary rights to "use" the land "owned" by the State and Aboriginal title, which "confers *ownership rights* similar to those associated with fee simple, including: the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to *possess* the land; the right to the *economic benefits* of the land; and the right to pro-actively use and manage the land" (*Tsilhqot'in* at 73, emphasis mine). All of these rights remain infringeable by the Crown and subject to its interests.¹⁰⁰ Furthermore, neither of the above responses (compensation or rights-based recognition) treat the land as a "system of reciprocal relations and obligations" regardless of whether that is what the claimants originally understood it to be. Reynolds contrasts the lack of "legal recognition given to Aboriginal

⁹⁹ Audra Simpson explicitly responds to Coulthard's description of the "turn away from the oppressor" to suggest that the turn away is also a turn towards something else—for Simpson a turn towards "Haudensaunee assertions" that tell a different story from that of the oppressor (24).

¹⁰⁰ This is true even when there is a duty to obtain consent since the federal government has since "diluted that duty so that consultations 'aim' to secure such consent rather than being required to obtain it" (Reynolds 161). This "dilution" modifies Article 32 of UNDRIP as part of the "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples" (published on the Department of Justice website).

sovereignty” against the “relative success achieved in the other main issue in Aboriginal law: the recognition of property interests” (70). This highlights the problematic nature of looking to the state to “bestow” (Audra Simpson 157) or even recognize Indigenous sovereignty, which has typically resulted in the translation of these assertions into containable categories of rights, as further evinced in the 2005 *Marshall/Bernard* decision, where Chief Justice McLachlin “raised doubt ‘whether nomadic and semi-nomadic people can ever claim title to land’... and noted that, although sufficiently regular and exclusive *exploitation of resources* may *translate* into aboriginal title, ‘more typically, seasonal hunting and fishing *rights* exercised in a particular area will *translate* into a hunting or fishing *right*’” (Reynolds 100, emphasis mine).¹⁰¹ The State’s incomprehension and simultaneous *miscomprehension* (because the response does not suggest “that demand does not make sense” but rather that “by that demand, you mean *this*”) of Indigenous sovereignty enacts a form of translation, but the qualities of grounded normativity *as such* did not survive the act of translation. Participating in a politics of recognition and reconciliation-to, then, reinforces the State’s totalizing discourse—which says both that land is property to be owned and exploited and that this understanding of land is the only one—and erases an alternative Indigenous discourse of relational, reciprocal, ethical forms of law, sovereignty, governance and being on the land. The violence of translating Indigenous sovereignty into the exception to settler state sovereignty is, therefore, *ontological*. The alternative to this translation is the refusal of state recognition and reconciliation-to, grounded in untranslatable place-based relational Indigenous ontologies.¹⁰² The constant/persistent *activity*

¹⁰¹ Mel Blaser, “a long-time supporter of the camp” spoke to this point: “I don’t have a right to these fish—I have a responsibility to this river and I will not let that responsibility be diminished” (qtd. in Bliss and Temper 73).

¹⁰² This could potentially have very real and very concrete consequences. There is enough legal scholarship on the State’s (supposed) acquisition of sovereignty to more than suggest that Indigenous peoples have retained *du jure* sovereignty over their land (Asch, Walters, Borrows, McNeil as well as the edited volume *From Recognition to Reconciliation*, eds. Patrick Macklem and Douglas Sanderson) and that the State, therefore, cannot legitimately

through which State sovereignty constructs and maintains itself as such (the activity of producing Indigenous sovereignties and, synecdochally, Indigenous peoples as the “*exceptio* of bare life”) suggests a sovereign self-consciousness of its own lack of structural stability in relation to the Indigenous sovereignty it furiously exceptionalizes. If Indigenous peoples, lands, and sovereignties exist as other than or more than the exception to state sovereignty, as *not* the exception, then the State has to reconceive of its assertion to sovereignty outside of that relation. Or, in other words, if Indigenous sovereignty exists in a form that the state cannot reduce, contain, translate, reconcile, or otherwise exceptionalize, then what or where is the sovereignty of the State?

While a Western ontology of sovereignty and an Indigenous relational ontology are fundamentally at odds with one another, they both require that which the former refers to as territory and the latter refers to as land. Land, as a system of reciprocal relationships or as “a living entity we live *with*” (Starblanket and Stark 182), is not reducible to territory, which conceives of land as the surface area over which a state has exclusive control. The conflict between these two ways of being, then, revolves around their mutual but incompatible need for land/territory. Land is both the site of this conflict and its source. In the previous chapter, this double significance of the land was what differentiated the spaces of exception that emerge in Indigenous-state confrontations from the spaces of exception theorized by Agamben. For Agamben, the space of exception is a physical and localized manifestation of the state of exception, but it does not derive its significance from its specific, geographical location.

claim that it acquired exclusive sovereignty through those peoples or over those lands. (This poses a particular dilemma in areas not governed by treaties, for example on Gitksan territory where the State’s “inviolable” territorial integrity has been mapped directly over Gitksan constitutional “inalienability of territory” (Napoleon 60). This overlapping and over-mapping is partially obscured by the spatial metaphor that the Court (and, previously, the Royal Proclamation) uses to describe Crown sovereignty as *underlying*, which implies that temporal priority belongs to the Crown as opposed to the Indigenous nation. This also implicitly suggests that the Crown’s sovereignty was the first of its kind to exist over Turtle Island, so whatever form of authority Indigenous nations had before the arrival of Europeans, it was not “sovereignty” in that sense.

Moreover, Agamben's space of exception—the camp—is a site of absolute exception where its bare life inhabitants are exposed to the unmitigated force of sovereign power. Earlier I have argued that such camp-like spaces have been produced in Canada (albeit with significant differences) through the containment of Indigenous life on reserves and in residential schools, both of which explicitly inhibited Indigenous sovereignty as the “intrinsic political authority that enables... self-governance” and that “animates relationships... with the land, water, animals, and plants [as well as] with one another” (Stark and Stark 21, 24) by prohibiting Indigenous peoples from accessing their homelands. However, when Indigenous-State confrontations occur on these homelands themselves, these spaces exceed the conceptual limits of the “camp” and hold the potential to enact grounded normativity and refusal as political praxis through direct action on the land beyond the confines of the reserve. *Rather than stabilize and make visible the state of exception (which is the role of the Agambian camp), permanent or semi-permanent (re)occupations of Indigenous lands stabilize and make visible the grounded normativity that exists outside of both the sovereign realm and the state of exception, thereby “re-coding” Agamben’s “camp” as a challenge to, rather than a support of, the legitimacy of state sovereignty.* The Unist’ot’en re-occupation and settlement camp on the traditional territory of the Unist’ot’en clan of the Wet’suwet’en nation therefore re-codes the Agambian camp—as it manifests in Canadian camp-like spaces—and, in doing so, re-frames the State-Indigenous/sovereign-exception relation in terms of a nation-to-nation relation of mutual obligation, autonomy, respect, and equal standing, thus creating the conditions for transformative reconciliation.

While the definitions of direct action are numerous, I here employ the term to mean practices of confrontational, on-the-ground resistance and refusal that are legitimate (even if

“illegal” according to Canada’s rule of law)¹⁰³ and that seek to disrupt the non-consensual activities of the State, its agents, or industry. Aaron Mills argues that, as a form of confrontation, direct action—and conflict more generally—is a “virtual means through which interdependence functions” (160). This aligns with Borrows’ position that direct action can “create false horizons that constrain freedom when conflict constructs essentialized and binary relationships between individuals and groups” (*Freedom* 14) but that the “interdependent nature of civil disobedience, if exercised peacefully to establish a less oppressive reengagement, suggests this power’s potentially democratic character” (51). Coulthard notes that direct action is frequently deemed “illegitimate” when it involves “temporarily blocking access to Indigenous territories with the aim of impeding the exploitation of Indigenous peoples’ land and resources, or in rarer cases still, the more-or-less permanent reoccupation of a portion of Native land through the establishment of a reclamation site which also serves to disrupt, if not entirely block, access to Indigenous peoples’ territories by state and capital for sustained periods of time” (166). Coulthard argues that these sorts of direct action are reactive in the sense that they are reactions to ongoing “degradation of our communities and to exploitation of the lands upon which we depend” (169), but they are also productive, or affirmative, because they enact an alternative “modality of being, a different way of relating to and with the world” (169).¹⁰⁴ As negation *and* affirmation, these sites of direct action employ both the “politics of refusal” (Audra Simpson) as well as the “grounded normative framework” for understanding “proper relationships—relationships between people, relationships between humans and their environment, and relationships between individuals and institutions of authority (whether economic or political)”

¹⁰³ Recall the discursive competition over the definitions of “law and order” in the Kanesatake reoccupation.

¹⁰⁴ Similarly (but also differently), Mills distinguishes between negation or “unmaking” and a type of “railing against the structural violence of contemporary colonialism”: railing against, in this way, is “not reactionary at all. It’s the reflective, steady and often quiet making irrelevant of Canadian constitutionalism” (161).

(Coulthard 62). It is in both its negation/refusal as well as its affirmation/grounded normativity that the Unist’ot’en camp enacts an alternative anti-colonial political and territorial sovereignty, an alternative anti-capitalist economy, and an alternative “modality of being... and relating to and with the world” (169).

The Unist’ot’en settlement camp began as a checkpoint at the entrance of the Unist’ot’en traditional territory following the Pacific Trails Pipeline initial study (2007), which proposed a corridor directly through Unist’ot’en land. The Unist’ot’en, as well as all other Wet’suwet’en clans, unanimously decided to “opt out” of the BC Treaty Process the following year, electing instead to assert their rights and title over their “ancient jurisdiction”¹⁰⁵ according to their own laws. When industry and government proceeded with the plans for the PTP pipeline, the Unist’ot’en erected a log cabin on the exact coordinates of the proposed route to assert their sovereign right to occupy their land “as [they] have always done” (Leanne Simpson, *Always*). Over the course of the following decade, the Unist’ot’en—with the help of other Wet’suwet’en clans, neighbouring Gitksan clans, and countless volunteers—have built a sustainable community that is directly informed by “both an ancient system of values on how to create mutually respectful relationships with the natural world and a transformative politics of decolonisation that seeks to revalue, reconstruct, and redeploy [I]ndigenous cultural practices and governance systems” (Bliss and Temper 71). The settlement now includes a traditional pit-house, a bunk house, and a three-story healing centre to further the camp leaders’ objective of healing “based on connection to the land and revitalizing cultural identity” (Unist’ot’en “Healing Centre”). The centre, which is now the camp’s geographical and intentional nucleus, has allowed the Unist’ot’en to host numerous permanent residents as well as the hundreds of Indigenous and non-Indigenous supporters that arrive every year for such events as the annual educational

¹⁰⁵ <https://unistoten.camp/> All quotes from this source.

Action Camp (with workshops for supporters and allies in decolonization), the annual Youth Mural Camp (which teaches “cultural art” to Indigenous youth), as well as the annual construction camps that draw skilled and unskilled labourers alike from all around the world.

Entry into the camp is granted or denied in accordance with the Unist’ot’en’s “ancient jurisdiction” over the territory, as well as the Free Prior and Informed Consent (FPIC) protocol whereby visitors “identify themselves and their relationship to the hosts, as our ancestors did. Like a border crossing, the protocol questions make Unist’ot’en land a safe place. FPIC ensures peace and security on the territory” (Unist’ot’en “Free Prior and Informed Consent”). Enacting the laws that have always governed that land, the FPIC protocol is a refusal of the State’s sovereign claim to the Unist’ot’en territory and an affirmation of the continued sovereign authority of the Unist’ot’en people. “In ancient times and even today in canoe journeys, and community resistance building gatherings, there exist Protocols where visiting peoples have shown who they are in relation to asking permission to enter the Traditional Lands from the Traditional Chiefs and Matriarchs of the hosting lands. This is a living breathing assertion of the Traditional Laws of the Wet’suwet’en, which have been asserted via protocols like this on the lands for thousands of years, and renewed by today’s sovereigntists.” While it has the effect of also blocking industry access to the territory, the FPIC protocol—as a “living breathing assertion” of Wet’suwet’en law and sovereignty—transcends not only a reactive stance *against* the government but also the sovereign-exception relation that implies a single sovereign authority and that characterizes Indigenous sovereignty as always in relation to that of the sovereign (as its exception).

In 2015, the Unist’ot’en asserted their sovereignty in a form more legible to settler-colonial society, government, and jurisprudence through a press release entitled “Unist’ot’en

Clan Enacts Declaration as Law.” The Declaration specifically states that it is “enacted in response to increasing encroachment onto Unist’ot’en territory by the Crown and associated industry and RCMP,” but also emphasizes that the “Unist’ot’en settlement camp is not a protest or demonstration.” Furthermore, the Unist’ot’en clan, “exercising [their] unbroken, unextinguished and unceded right to govern and occupy these lands,” enacts the Declaration as “official statement and law governing Unist’ot’en territory,” over which they “retain complete jurisdiction,” to “dictate the proper use and access to [their] lands and waters” and according to which they require consent “for any activities and development that take place” on their territory. The Declaration further asserts that the “settlement camp builds both physically and metaphorically on continuous and exclusive use and occupation of the territory by the Unist’ot’en clan since time immemorial,” describing a form of sovereignty over their territory and locating their resistance within that sovereignty. This declaration also explicitly employs the legal language associated with Aboriginal title claims, which require proof of sufficient and exclusive use and occupation over a territory that is then recognized as “belonging” to the title-holders (an acknowledgement that the nation had a form of “recognizable” sovereignty at the time of European settlement).¹⁰⁶ Further declarations include that “traditional Indigenous legal systems remain intact and continue to govern [their] people and [their] land”; that the Crown’s assertion of sovereignty over Unist’ot’en people and lands is “without any clear legal basis”; that the BC Supreme Court has “recognized the integral interrelationship between our lands and resources and our laws and governance system”; and that “permits, licenses, authorizations, and approvals issued by the Province which may affect our Aboriginal rights or title have been issued

¹⁰⁶ Audra Simpson in particular critiques the necessity that First Nations’ historical sovereignty of Indigenous nations have been “visible” to and witnessed by a white settler audience (20). Also, as noted above, even if sufficient and exclusive occupation can be demonstrated and Aboriginal title is conferred, as in *Tsilhqot’in*, the associated rights gained are framed by the context of singular state sovereignty and the influence of capitalist accumulation.

without Unist'ot'en consent, or any accommodation of our [constitutionally-protected] rights.” Finally, the Declaration expresses the Unist'ot'en's continued willingness to “meet with representatives of the Crown on the basis of mutual respect,” thus calling for / inviting) a nation-to-nation relationship between the Wet'suwet'en and the Crown while refusing to reconcile to the government's version of a “domestic-dependent nation”-to-“sovereign nation-state,” or “nation-to-*not*-nation” (and sovereign-to-exception), relationship. This is not an isolationist withdrawal from the State or settler society as a whole, but rather an assertion of and insistence upon equal standing in all interactions. This final point is crucial because the implicit demand for a symmetrical relationship of mutual obligation and respect with the State signals that the Unist'ot'en are refusing reconciliation-to but not reconciliation-*with*.

As Coulthard suggests of sustained direct action, the Unist'ot'en camp is both a “negation” of industry encroachment and State sovereignty as well as an “affirmation” of a specifically Wet'suwet'en grounded normativity. The Unist'ot'en clan's rejection of industry by blocking the extraction of resources from their land, of settler-colonialism and State sovereignty by rejecting State sovereignty over their people and lands, and of reconciliation-to by withdrawing from the BC Treaty Process (2008) and refusing rights-based negotiations with the government, constitute an ethical and political refusal that explicitly challenges the State's totalizing discourse of sovereignty. Meanwhile, their affirmation of Wet'suwet'en legal orders, grounded sovereignty, and reciprocal relationships with the living earth enact a particular place-based normativity that goes beyond the exceptionalizing reach of state sovereignty and thus reveals the fictionality of its totalizing discourse, which is, in fact, not total. Audra Simpson argues that “[i]f a refusal to recognize also involves using one's territory in a manner that is, historically and philosophically consistent with what one knows, then it is an incident of failed

consent and positive refusal” (128). In other words, it is an affirmation embedded in practices of negation, that in this case of the Unist’ot’en and the Wet’suwet’en (whose hereditary chiefs unanimously support the activities and authority of the settlement camp), is an assertion of Indigenous sovereignty.

As evinced in both the literal construction of buildings as well as the activities of nation-building, the Unist’ot’en endeavour to create a community based on gift-reciprocity that is self- and co-sustainable, relying on the gifts of labour and material donations from others and, in return, devoting themselves to the betterment of their own community and, in doing so, the betterment of a much wider global community of allies and supporters whose own relationships to the land have been shaped by the example set by the Unist’ot’en people. While scholars have acknowledged the transformative potential embedded in Indigenous ways of knowing and being on and with the earth,¹⁰⁷ and while it may be controversial to say so, there are few opportunities for non-Indigenous people to engage with and learn from Indigenous life ways in the type of long-term, sustained, or recurrent contexts that could allow new-comers to develop more grounded relationships with a particular place and according to the particular system of governance that guides such relationships. This is especially true if life ways are understood in the sense articulated by Aaron Mills, as not just “about specific shared practices or qualities, but rather about how the world appears to us: the ontological, epistemological, and cosmological system within which a people consistently becomes itself” (136). As an untranslatable outside to state sovereignty, these grounded, rooted, earth-bound life ways make visible alternative modalities of being, sustainable economies, and ways of relating to each other and the natural world—alternatives that are specifically *not* visible within the normative orders generally

¹⁰⁷ In particular the authors of *Resurgence and Reconciliation* (edited by Michael Asch, John Borrows, and James Tully).

experienced by non-Indigenous humans, which have brought these relationships (Indigenous/non-Indigenous and human/earth) to a crisis while simultaneously obscuring the possibility of finding viable alternatives. The Unist'ot'en camp, in the visibility and accessibility of its embodied alternatives, is a space not of exception but of grounded and transformative reconciliation.

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