FIRST NATIONS' SELF-GOVERNMENT, INDIGENOUS SELF-DETERMINATION:

ON THE TRANSFORMATIVE ROLE OF AGONISTIC INDIGENEITY IN CHALLENGING THE CONCEPTUAL LIMITS OF SOVEREIGNTY

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Abstract

This thesis explores the possibilities of decolonizing the Euro-American political traditions of sovereignty in an effort to re-craft the social contract between the Canadian state and Indigenous peoples. It argues that the Canadian state embodies a particularly narrow conception of sovereignty that limits the possibility of actors representing claims to Aboriginal self-government to challenge the paramountcy of the state. Claims to Aboriginal self-government are truncated because most meaningful manifestations of self-government that challenges the principles of sovereignty are largely rejected by the Canadian state. There are models of Aboriginal self-government that are permissible, proving that the state is willing to negotiate to some extent and to stretch its understanding of sovereignty to accommodate Aboriginal rights, but important models recognizing Indigenous nationhood are squeezed out by the limited political imagination that positions the state in its hierarchical apex, to the exclusion of Indigenous self-determination. This thesis will first delineate how Canadian sovereignty is legitimized and established, and will proceed to argue that the models of Aboriginal self-government that are permissible are those that do not challenge the paramountcy of the state and therefore allow only for a constrained model of self-determination. Through a critical theoretical lens of Indigeneity, this thesis will examine the underlying assumptions that curtail the discourse on self-government. A new social discourse framework called agonistic Indigeneity will be presented as an avenue for challenging colonial state sovereignty and for asserting political imaginations that privilege Indigenous understandings of sovereignty.

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List of Abbreviations

AFN   Assembly of First Nations

FMC   First Ministers' Conferences

FSI   Federation of Saskatchewan Indians

INAC   Indian and Northern Affairs Canada

JBNQA   James Bay and Northern Quebec Agreement

MLA   Member of the Legislative Assembly

OHCHR   Office of the High Commissioner for Human Rights

RCAP   Royal Commission on Aboriginal Peoples

UN   United Nations

CHAPTER 1: INTRODUCTION

First Nations' self-determination is a mercurial subject in Canadian politics, having changed in tone and content since its first substantive articulation in the 1970s.[1] The topic of First Nations' self-determination has garnered considerable academic attention, specifically in regards to legal rights of self-government and implementation models. The study of self-determination is more than an exercise in exploring the limits of the legal, economic, or political sciences; it is, more importantly, an effort to understand and improve the realities of First Nations' communities. There is compelling literature drawing connections between self-determination and articulations of personal, social, and economic development issues, such as child welfare, public health, economic self-sufficiency, and education (see Belanger, 2008; Hylton, 1999; RCAP, 1996). Many First Nations' leaders have declared self-determination "as essential in breaking the cycle of deprivation and dependency" (Fleras and Elliott, 2003: 190). There is no denying that self-determination leads to stronger and healthier communities, or that the absence of self-determination is "the foundational cause or resource alienation and collective political and economic marginalisation" (O'Sullivan, 2007: 76).

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[1] When "First Nations" is used in this thesis, it will refer to status and non-status Indians. This thesis will not address the quest for sovereignty by Inuit or Métis. It will, however, also refer to "Indigenous" people, more broadly encompassing a spectrum of Aboriginal people who are the subject of colonial legislation and who identify with the self-determination discourse.

1.1. Departure point and research question

This research takes as its departure points the legitimacy and inevitability of First Nations' sovereignty. The thesis will explore the types of claims for sovereignty and propose a constructive approach to advance the discourse and decisions toward recognition and implementation of self-determination. The central research question is: Is the contemporary Aboriginal self-government discourse between the governments of the Canadian state and First Nations irreconcilable based on the underlying theoretical assumptions informing state and Aboriginal arguments? In dealing with this question, the objective of the thesis is threefold: first, to describe the models of self-government currently available to First Nations; second, to identify the theoretical assumptions underlying the concept of sovereignty; and third, to propose alternatives to the conceptualization of First Nations' sovereignty in politically productive terms for both Indigenous and non-Indigenous peoples. This thesis intends to question the theoretical underpinnings that contribute to the irreconcilability of the sovereignty discourse, and, specifically, to examine the ways in which two contradicting interpretations of sovereignty articulated by the government of Canada and by Aboriginal governments and theorists propel the uncompromising arguments around the entitlement of First Nations sovereignty. The hope is to produce a thesis that offers a synthesis of claims to self-government that will highlight the theoretical shortcomings of the existing discourse, which could be built upon by future researchers to create a politically sustainable space for discussion leading to real and overdue progress in Indigenous self-determination.

The remainder of this chapter outlines the historical context of the Aboriginal self-government discourse, describes the theoretical framework that informs the research, and delineates the organization of the thesis. First, however, it is important to explain my choices in terminology. I have conscientiously reflected on the words that will be used in this thesis, and my choices reveal my concern about the oft-haphazard approach to using political terms in the context of Aboriginal politics in Canada, as well as the propensity for misunderstandings in cross-political dialogues. I wish to be cognizant and careful about the terminology, because I have learned, over the course of writing this thesis, that there lies a real danger in being capricious about the application of terms that have complex denotations; where politics of Aboriginal peoples are concerned, especially in matters of self-determination that can radically alter the course of decolonization, there is no room for ambiguity or inattention.

1.2. Terminology

In the context of Aboriginal politics, self-government, self-determination, and sovereignty are multifaceted concepts that connote the ability of a nation to articulate its own political dimensions and means of existence. All of the terms have an ethical dimension that reflects that a "moral good" (Moore, 2000: 225). Self-government, self-determination, and sovereignty "[reflect] people's identity; [provide] a forum in which citizen autonomy can be expressed; in which citizens are empowered to shape the context in which they live, and realize their political aspirations" (Moore, 2000: 225). The definitions and interpretations might hold different meanings for Aboriginal and non-Aboriginal scholars. The bifurcated definitions reveal the differences in scope of political autonomy, as well as various emotional charges (apathy, struggle, or intense

aspiration), in different peoples' political locations. Priority will be given to defining and understanding the Aboriginal interpretations of the terms in an effort to buttress the Indigenous political paradigm.

1.2.1. Sovereignty

Sovereignty can be expressed both in the sense of literal separation and in the sense of recognizing and legitimizing inherent Aboriginal claims to land, identity, and politics (Maaka and Fleras, 2005: 37). The early definition of Aboriginal sovereignty was expressed by the Federation of Saskatchewan Indians in the 1970s as the inherent and absolute right to govern, where the state has power to which "none other is superior or equal" (Maaka and Fleras, 2005: 49). In the Aboriginal context specifically, sovereignty is a concept that is "founded on an ideology of indigenous nationalism and a rejection of the models of government rooted in European cultural values" (Alfred, 2001: 26). An important component of Aboriginal sovereignty is the rejection of "conventional forms of 'Western' society-building associated with multiculturalism, individual rights, and universal equality" (Maaka and Fleras, 2005: 7). Claims around sovereignty challenge the "colonial agendas that have had a controlling (systemic) effect in privileging national (white) interests at the expense of indigenous rights" (Maaka and Fleras, 2005: 13) and instead privilege the right of a nation to define and act on its politics without interference from other sovereign nations.

The definition of sovereignty can be problematic. Many Aboriginal scholars recognize the European roots of the term and associate with it the necessary existence of a unitary, official, coercive political body or a head of state; the British tradition of political thought that bore the concept of sovereignty is perceived as dissonant or

incompatible with many Aboriginal concepts of governance. As Alfred explains, the European understanding of sovereignty in statist and institutional terms creates a danger for Aboriginal people using the term to further their claims, because in doing so, they "are making a choice to accept the state as their model and to allow indigenous political goals to be framed and evaluated according to a 'statist' patters. Thus the common criteria of statehood … come to dominate discussion of indigenous peoples' political goals as well" (1999: 56–57). In this thesis, sovereignty is a central concept, and the two meanings of the word will be thoroughly explored in an effort to understand the challenges inherent in framing First Nations' self-determination in Euro-Canadian terms.

1.2.2. Self-government

While sovereignty is an insurmountable power that defines all other powers without interference, self-government refers to the ability of a group or people to govern over internal matters without intervention or conditions imposed by others. The definition given by the *Blackwell Dictionary of Political Science* is the following: the freedom to "act independently of external circumstances and unfettered by what William Blake called the 'mind-forged manacles.'… Among political scientists [it] has been as a sort of half-way stage to full independence. … " *Blackwell* acknowledges limits of authority implicit in self-government, calling it a transition phase to independence, and thus less powerful than sovereignty. RCAP also engaged in a definition of self-government, contributing a rather flexible definition of it as "the ability to assess and satisfy needs without outside influence, permission or restriction" (RCAP, 1995).

Like the standard definition of sovereignty, many Aboriginal scholars object to the definition of self-government encompassed in *Blackwell*. Self-government, for many Aboriginal writers, implies a pacifying concession by a superior power, a state-delegated authority that is monitored to remain within the paradigmatic confines of that superior political power; it can be a paternalistic notion of granting some responsibilities akin to a municipality (Deloria Jr. and Lytle, cited in Monture, 1999: 29). A self-government arrangement, understood by Deloria Jr. and Lytle, can occur only when "the larger moral issues that affect a *people's* relationship with other people are presumed to be included within the responsibility of the larger nation" (Monture, 1999: 29). In the Canadian context, self-government is a sub-sovereign position wherein inter-Aboriginal relations are subsumed in the Canadian state. Both the non-Aboriginal and Aboriginal definitions point to self-government as a concept that is limited to delegated administrative roles. Such a limit in autonomy, argue some Aboriginal scholars, including Monture, entrenches "the false belief of Aboriginal inferiority" (Monture, 1999: 29). Self-government thus characterizes the most moderate and politically pacifying expression for Aboriginal accommodation within the state. It is certainly the least controversial of Aboriginal goals, but also the least meaningful for many Aboriginal communities.

1.2.3. Self-determination

Self-determination is a term that is rarely found in government or non-Aboriginal writings (which prefer to use the narrow term of self-government) because it has a more intangible or woolly connotation. This concept, however, is central to the discussion of autonomy. It refers to "a nation's right to determine its own future as free as possible

from external interference or domination by another nation or nation-state" (Murphy, 2001: 368), and, more specifically, "the right of Aboriginal people to determine their political future and to freely pursue their cultural and economic development" (Frideres and Gadacz, 2001: 232). Self-determination is the ability of a community to administer its own "good life," and, as Ponting explains, it is the "autonomy that enables individuals or collectivities to shape their own economic, social, cultural, and political destiny" (1997: 355). What is important to note is that self-determination is like a river from which tributaries—other rights—flow; self-government can be understood as a tributary of self-determination. Self-determination is thus the "collective power of choice; self-government is one possible result of that choice" (RCAP, 1996, cited in Ponting, 1997: 355). Self-determination will form the overall theme of this thesis, constituting the closest term for the aspirational goal that has the power to contest the ubiquity and neutrality of state sovereignty.

1.2.4.   Limitations of translation

Some Aboriginal writers have argued that using the English language to communicate with a broader audience compromises the expression of Aboriginal philosophies and claims. As the argument goes, none of the terms—sovereignty, self-government, or self-determination—can fully express the Indigenous paradigm of autonomy, because all three terms originate in a non-Aboriginal context and can thus serve only a non-Aboriginal polity. Alfred is one scholar who recognizes this discursive asymmetry and proposes a Mohawk word instead: *tewatatowie,* meaning "we help ourselves." The RCAP report explains that *tewatatowie*

> is understood not only in terms of interests and boundaries, but also in terms of land, relationships and spirituality. ... This requires respect for the common

interests of individuals and communities, as well as for the differences that require them to maintain a measure of autonomy from one another. For the Mohawk, as for many other Aboriginal peoples [the Nuu-cha-nulth near-equivalent of sovereignty is *Ha Houlthee*], sovereignty does not mean establishing an all-powerful government over a nation or people. It means that the people take care of themselves and the lands for which they are responsible. It means using political power to express the people's will. (RCAP, 1996: Chapter 3)

These alternative words tell us that English terms informed by European political traditions are not the only option for communicating the sentiment of autonomy, and that there is a strong will among Aboriginal scholars to use Indigenous words to relay more accurate visions of self-determination. While there is an option to replace the terms sovereignty, self-government, and self-determination with Indigenous words, doing so may prove ineffectual and cumbersome for this thesis, because as non-speakers of these languages, I and my non-Aboriginal readers would still have to rely on an English translation, and even then, the meaning would be porous. Thus, I propose to approach the terminology of this thesis by recognizing that self-determination is the term that most thoroughly encompasses the ambitions and visions of First Nations peoples; however, as self-determination has many tributaries of expression, this thesis will specifically explore the tributary of self-government, while simultaneously acknowledging the shortcomings of the term. There is an element of hubris in such a decision, as self-government cannot in reality be separated from the other elements of self-determination; the characteristics of other tributaries will seep into the topic of self-government. However, self-government is arguably a crucial step towards self-determination, and the extensive literature that has been published on the topic must be synthesized so that the existing models of self-government can be understood and used further.

1.3. The historical context of self-government

The chronology of the First Nations' self-government context in post-Confederation Canada can be traced to the *Constitution Act* of 1867, which placed Indians and lands reserved for Indians under the purview of the federal government. Acting on this jurisdiction over Indians, the federal government consolidated its Indian laws into the 1876 *Indian Act*, which defined the limitations of Indian band councils by allowing few delegated responsibilities while the "primary decision-making responsibility rested with the Minister of Indian Affairs and Northern Development" (Wherrett, 1999). Until the 1950s, the *Indian Act* was the source of government efforts to assimilate and marginalize Indians through citizenship laws, enfranchisement, prohibitions of spiritual practices, and imposed administration of community governance structures (including the banning of hereditary governance). The *Indian Act* defined the provisions of local government in a way that severed the traditional methods of governance and leadership: In an effort to expedite assimilation, an elective system was introduced, imposing three-year terms lengths and the threat of being deposed if the Superintendent-General of the Department of the Interior (responsible at the time for Indian affairs) deemed the elected chief to be incompetent or otherwise unsavoury (Dickason, 2002: 264). In this way, the *Indian Act* fundamentally changed the way that Indians related to their leadership, undermining the status of traditional leaders and wedging the Canadian state into a supervisory and censorious role of Indigenous politics.

The assimilative efforts of the federal government towards Indigenous peoples continued to be expressed through the *Indian Act* until the 1950s, when the legislation was revised; Indian Affairs programs were devolved from the federal government to

bands and provinces, and while Indian Affairs would retain its veto powers over bands, the revisions did allow for increased self-control, including some decision-making power over health and education, limited management of reserve lands and band funds, and reinstatement of cultural practices (Dickason, 2002: 311). Despite the supposed shift towards greater self-reliance on reserves, the fact remained that the Government of Canada was puppeteering bands and their composition by insisting on communicating only with elected chiefs of sanctioned band councils and favouring compliant bands by allocating more charitable welfare grants (Dickason, 2002: 377). The result of this political manipulation by the government was twofold: It hollowed out the traditional leadership structure and values, and it created an overwhelming dependency on the state. Together, these factors fragmented communities and introduced a dominant sense of individualism and competition, which would prove to be major obstacles impeding the articulation of self-government.

1.3.1.   The 1960s and 1970s

The early expressions of the claims for First Nations sovereignty were couched in the resistance to then–Prime Minister Pierre Elliot Trudeau's 1969 *Statement of the Government of Canada on Indian Policy*, better known as the White Paper policy proposal. This policy proposal was an attempt to position Indians as Canadian citizens equal to all other Canadian (non-Aboriginal) citizens by erasing their status and denying claims to special legal standing. While the White Paper may have been a well-intentioned attempt to realize Trudeau's "just society" at all levels of Canadian citizenship, the primary objective of the policy was to assimilate Indians, which enraged many First Nations people across Canada. In response to the White Paper, the Indian

Chiefs of Alberta on behalf of treaty Indians published *Citizens Plus*, also known as the

Red Paper; the document demanded that the legal status of Indians be retained and the

federal government acknowledge its fiduciary duty in the relationship with Indians. The

lobbying efforts of First Nations individuals and groups compelled Trudeau's

government to withdraw the policy proposal in 1971. The White Paper–Red Paper ordeal

proved to be the first major example of the clout that Indians could yield in policy

making (or un-making) regarding their rights.

The 1970s would prove to be an exciting year for the mobilization of Aboriginal

groups and the articulation of political demands for self-determination. Following the

withdrawal of the White Paper in 1971, there was a series of legal and political milestone

events and publications that would define the path of the sovereignty discourse for the

coming thirty years. These milestones included the Supreme Court's recognition of

Aboriginal rights in the *Calder* case in 1973, and the 1975 negotiation of the *James Bay*

and Northern Quebec Agreement. The agreements were a sign that the federal and

provincial governments recognized Aboriginal title and, more generally, Aboriginal

political and economic claims, although not necessarily self-government. Also in this

period, First Nations organizations, including the National Indian Brotherhood, the

Native Council of Canada, and the Federation of Saskatchewan Indians, became

prevalent and influential. With the mobilization of these groups also came a shift in

rhetoric, notably with the term "self-government" appearing in the documents and

demands of many of these organizations.

In 1977, the Federation of Saskatchewan Indians (FSI) published a paper entitled

Indian Government; this paper is widely seen as the first formal articulation of the

claim to Aboriginal self-government (Belanger and Newhouse, 2008: 7). The paper's

purpose was to "define the degree and nature of Sovereignty we wish to exercise" (FSI,

1977: 6) and then to see to it that the federal government ensures that "the degree of

sovereignty which we need and the resources which we need … are made available to us

under Canadian Law" (FSI, 1977: 9). The FSI thus situated itself as a strong challenger

to the Canadian state's agenda on Aboriginal administration. The paper was an assertive

move—the first of its kind—to delineate First Nations' sovereignty.

1.3.2.   Constitution days

With the myriad publications and with the influential mobilization following the 1970s,

Indian self-government was gradually becoming a political inevitability. The self-

government discourse generated by First Nations was imbued with an explicit desire to

have the right to self-government entrenched in the Constitution. When the

Constitution Act was patriated in 1982, First Nations were ostensibly awarded

recognition of "existing" Aboriginal rights and, at first glance, the document catapulted

the Aboriginal self-government movement forward. In section 35, the Constitution

explicitly states its recognition of Aboriginal rights (including in this category Indian,

Métis, and Inuit peoples): "The existing aboriginal and treaty rights of the aboriginal

peoples of Canada are hereby recognized and affirmed." This provision in the

Constitution significantly changed the debate from questioning whether Aboriginal

rights exist to a debate about how to define Aboriginal rights. Section 35 created the

basis upon which First Nations could assertively articulate their claims for self-

government.

Despite the surface achievement in Aboriginal rights being recognized in section 35, the legal recognition marked a bittersweet achievement. First Nations had not been direct players in the constitutional process. Not coincidentally, the specificities of the term "existing" in section 35 were not initially defined, creating troublesome ambiguity around the potency of the recognition. Understanding the potential difficulties and dissatisfactions that the ambiguities surrounding constitutional Aboriginal rights might produce, a provision under section 37 was added; [2] it required a series of constitutional conferences—First Ministers' Conferences (FMC) on Aboriginal Constitutional Matters—to be called within several years of patriation, during which Aboriginal rights would be identified, defined, and discussed.

The first of these conferences was in March of 1983; Prime Minister Trudeau and the provincial and territorial premiers met with representatives of the four national Aboriginal organizations (the Assembly of First Nations, the Métis National Council, Inuit Tapiriit Kanatami, and the Native Council of Canada). After two gruelling days of negotiation, the discussions were stonewalled by two factors: first, the leaders of the four Aboriginal organizations were in a state of disunity and disorganization in their efforts to articulate a unified demand for land claim and self-determination rights. Second, the provincial leaders, namely the premiers of Saskatchewan, British Columbia, and Newfoundland, outright rejected the inherent right of self-government. They refused to entertain the prospect of a third order of government for First Nations' self-government, and their most generous concession allowed merely for a variant of

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[2] Section 37(1) reads, "In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date."

municipal status. These premiers' unwillingness to consider anything more than contingent Aboriginal rights created an impasse, and the first FMC ended without any success in defining the scope of self-government. The one negotiated success that the FMC yielded was the inclusion of the following two subsections to section 35 of the Constitution: the first subsection read, "For greater certainty, in subsection (1) 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired" (adding certainty that the phrase "treaty rights" encompasses presently existing and future land claim agreements), and the second read, "Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

Subsequent FMCs were held in 1984, 1985, and 1987. The agendas at the 1984 and 1985 conferences were set to discuss the single issue of self-government, but again, the provinces—specifically Saskatchewan, British Columbia, and Newfoundland—would not agree to more than a contingent form of self-government. The provinces' argument was that First Nations held no inherent right to self-government; the deeper assumption behind this idea was the insistence on the permanence of the division of powers in sections 91(24) (federal jurisdiction over Indians and lands reserved for Indians) and 92 (exclusive areas of provincial jurisdictions) of the Constitution. The condition put forth by many provinces was that only the models of self-government that adhered to the existing "context of Confederation," and thus to the existing division of powers, would be considered. Unsurprisingly, the baseline conditions of the provinces were unacceptable to the AFN, and talks halted.

None of the conferences yielded any substantive measures in further defining Aboriginal rights or arranging a constitutional model for Aboriginal self-government. Although there was important support for self-government from Ontario, New Brunswick, and Manitoba, it was not enough to trump the prevailing sentiment held by the other provinces that First Nations did not have an inherent right to self-government. However, the conferences had three direct implications. First, they increased public education about and support for Aboriginal political issues, including the urgent need to arrange meaningful models of self-government if Aboriginal peoples were to harness themselves a safe distance from their marginalized socio-economic precipice. Second, the conferences set up a precedent for including Aboriginal organizations in constitutional talks. Third, for better or for worse, the conferences brought provinces to the discussion tables; this was an important development, as the Aboriginal–provincial relationships had long required better communication. Given the constitutional requirement for federal jurisdiction for Indian affairs, provinces had been excluded from negotiations, but their inclusion would prove to be necessary; as Calder writes, "If new arrangements for Indian self-government are to be workable, those arrangements should be ones on which all affected parties—the provinces as well as Indian people and the federal governments—can agree" (1988: 82).

Throughout the 1980s, the term "Aboriginal rights" became widely recognized as having broader application than just to land rights; it was seen as reference to self-government as well. Contrasted against the wider context of the constitutional conferences, the efforts to establish self-government in First Nations' communities gained powerful support with the publication of the *Report of the Special Committee on*

Indian Self-Government, also known as the Penner Report. As a response to First

Nations' increasing demands for self-government, Prime Minister Trudeau had

commissioned Ontario Member of Parliament Keith Penner to chair the Parliamentary

Task Force on Indian Self-Government. Penner's report made several recommendations

for recognizing the Indian self-government as a distinct order of government, including

entrenching the right in the Constitution and establishing arrangements for fiscal

support of Indian government. Importantly, Penner's committee asserted that "full

legislative and policy-making powers on matters affecting Indian people, and full

control over the territory and resources within the boundaries of Indian lands, should be

among the powers of Indian First Nation governments" (1983: 64). The report called for

establishing a constitutionally entrenched municipal-style model of self-government

that would assign First Nations governments jurisdiction over "education, child welfare,

health care, membership, social and cultural development, land and resource use,

revenue-raising, economic and commercial development, justice and law enforcement,

and intergovernmental relations" (Belanger and Newhouse, 2008: 10). Arguably the

most insightful aspect of the Penner report was his expansion of the meaning and scope

of the "citizens-plus"[3] approach previously advocated by Harold Cardinal in the *Red*

Paper. Whereas previously "citizens plus" meant that Indians were subject to the main

obligation of Canadian citizenship—allegiance to the Crown—, Penner advocated that

"citizens plus" would mean that Indians' primary political allegiance would be to their

First Nation citizenship, not to the Crown. This would mean that Indian governments

could be selective in applying certain general Canadian laws, such as the Charter of

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[3] "Citizens plus" refers to an approach whereby Indians are entitled to all of the benefits of Canadian citizenship in addition to some exclusive Aboriginal rights.

Rights and Freedoms, to their citizenry (Boldt and Long, 1988: 40). This recommendation was among Penner's strongest for broadening the special rights and status of Indians.

Penner's report was a symbol of remarkable support in the development of the self-government movement because it represented Canadian political sympathy for the view that Aboriginal people have a historical basis for their claims to self-government (Belanger and Newhouse, 2008: 10). However, because many of Penner's recommendations would require a constitutional rearrangement of federal–provincial jurisdictions, the provinces showed no signs of cooperating with the jurisdictional rearrangements. Regrettably, the federal government ignored the report's suggestions for implementation, which temporarily slowed down the momentum of the self-government movement.

When Trudeau was succeeded as Prime Minister by John Turner and then Brian Mulroney in 1984, the political agenda-setting shifted in focus from Aboriginal issues to North American relations. Over the next seven years, the failure of the Meech Lake and Charlottetown Accords to satisfy Aboriginal peoples with constitutionally recognizing their right to self-government was another signal that the momentum behind the discourse on self-government was decelerating. The Meech Lake Accord, whose principal purpose was to deal with constitutional issues of importance to Quebec, would not have advanced Aboriginal rights because it was silent on such rights. Conversely, the Charlottetown Accord, if passed, would have created a Constitution that would have "explicitly recognized [Aboriginal peoples'] inherent right to govern their own affairs and … would have provided a constitutional and policy framework for proceeding with

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the implementation of self-government" (Hylton, 1999: 1). Considering these high

stakes, its failure was devastating to the movement towards self-government.[4]

1.3.3.   Change through courts and modern treaties

The Canadian government's efforts to appease First Nations' demands for sovereignty

was half-heartedly acknowledged in the 1995 Inherent Rights Policy, which recognized

the inherent right to self-government as an existing right under section 35 of the

Constitution, but also subjected First Nations self-government to be vetoed by superior

provincial or territorial jurisdiction where it overlapped. The Inherent Rights Policy was

buttressed by the Canadian Charter of Rights and Freedoms and the Criminal Code

(Ponting, 1997: 361), which, not surprisingly, First Nations leaders rejected on the basis

that the legislation recognized neither their collective rights nor the nation-to-nation

premise of their sovereignty in relation to the Canadian state. Added to the discontent of

First Nations in this period was the fact that the government ignored the Royal

Commission on Aboriginal Peoples' support for self-determination because it was too

expensive of a recommendation.

Despite the significant obstacles in the attitude and discourse of the federal

government, First Nations have maintained a steady momentum in pursuing the

definition and articulation of self-government in the judicial and political spheres.

Progress in the judicial sphere has added to this: The *Sioui*, *Guerin*, and *Calder* cases

are among those that have recognized First Nations' rights in treaty-making or have

recognized Aboriginal title. Since these cases, there have been several successes in First

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[4] The rejection of the Charlottetown Accord can largely be attributed to the lobby of the Native Women's Association of Canada, who objected to the prevailing negotiation procedures and the exclusion of Aboriginal women's unique political claims. Overwhelmingly, status Indians on reserve also voted against it.

Nations' realization of self-government: The James Bay and Northern Quebec Agreement (1975), the Inuvialuit Final Agreement (1984), the Sechelt Indian Band Self-Government Act (1986), the Selkirk First Nation Final Agreement (1997), the Nisga'a Final Agreement (1999), and the Anishnaabe Government Agreement (2004) are among the land claims and self-government agreements that have been settled since the late 1960s, when First Nations activists first used a political podium to make demands for self-determination. There can be no doubt that progress in the form of land management proposals, devolution, treaty land entitlement, and respect for treaties has whittled away the encumbrances and strict colonial attitudes of the *Indian Act*. These cases, some of which will be explored more fully in the next chapter, are a testament to the fact that the history of First Nations' claims to self-government has been fraught with difficulties, but has nonetheless created precedence in re-forming the landscape of the Canadian state.

While this historical background may conclude on an optimistic note, it is not the aim of this thesis to trumpet the successes arising from the Canadian government's benevolent agreement to First Nations' self-government. The scope of self-government in contemporary Canadian political repertoire must be closely examined through a critical lens of Indigeneity; only then can we fully grasp the shortcomings of self-government options, and only then can we propose an alternative to the contemporary approach to settling self-government grievances.

1.4. Theoretical perspective of thesis

The political theory of Indigeneity will guide this thesis. The theory of Indigeneity is relatively new to the discourse of political science, although it has garnered an impressive amount of attention and support internationally, with important research emerging from Aotearoa New Zealand. The core of Indigeneity is a political awareness of original occupancy coupled with an objective of *convivencia*, or coexistence. *Convivencia* requires a balanced cooperative relationship between all First Nations communities and all governments, bringing "disparate elements into complementarity" (Harris and Wasilewski, 2004: 7). In order to reach this objective, Indigeneity also requires a rejection of the primacy of state sovereignty. Indigeneity opposes "unilateral assertion of absolute Crown sovereignty over land, its justification for exercise of authority and legitimacy, its claims to ownership of resources, and its right to rule over inhabitants" (Maaka and Fleras, 2005: 54). In this way, Indigeneity questions the construction of political "normalcy" (the naturalized behaviours, conventions, and values of the state) and makes space for Indigenous membership within the greater polity without surrendering Indigenous cultures, rights, and identities. Indigeneity allows for a conceptualization of Indigenous identity that is malleable and dynamic, and not stagnant and frozen in time, allowing for Indigenous identity that has a place in the modern world without assuming an exclusive traditional/modern dichotomy. In this way, Indigeneity privileges the *political* over the cultural; this is to say, Indigenous peoples are entitled to rights—namely rights to self-determination—not because they are a vulnerable ethnic minority with cultural needs, but because they have inherent and inalienable political autonomy and the political rights. Indigeneity calls for constructing a new constitutional arrangement that assumes a non-colonial political relationship

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between Indigenous peoples and the state, and for re-transferring power "from those who have it to those who never consented to give it away" (Maaka and Fleras, 2005: 54), thus creating legitimate "co-sovereignties" (Maaka and Fleras, 2005: 54).

It is important to add here what Indigeneity is *not*. First, generally it is not about Indigenous secession; within the Indigeneity framework, Indigenous peoples, for the most part, are seeking not to separate from the state, but rather to belong to a greater polity while also publicly asserting both their cultural and political identities. Second, Indigeneity is not a divisive racial policy; the rights of Indigenous peoples are based on their political—not racial—status. Third, Indigeneity is not a crisis of legitimacy for the state; although it challenges the state to re-transfer political power for Indigenous self-determination, it does not subtract from the rights of non-Indigenous citizens, nor does it call into question the relationship between the state and non-Indigenous citizens. Indigeneity does not see power as a zero-sum game wherein a gain for Indigenous peoples is a loss for the rest of the polity. Rather, Indigeneity seeks to reallocate political power to create space for Indigenous self-determination, which does not threaten the rights of non-Indigenous peoples. Finally, Indigeneity is not a guarantee of justice. While it can create a positive space for challenging the state and for creating a nurturing environment for self-determination, it is not a panacea for all Indigenous political challenges (O'Sullivan, 2006).

Indigeneity in the Canadian Aboriginal context is stymied by the efforts of the Canadian state (policy-makers and politicians) to accommodate Aboriginal *cultural* needs into the existing framework. Indigeneity rejects these efforts, which are merely reconfirming the sole legitimacy of the existing state sovereignty, and, by extension, are

recolonizing the political relationship with Aboriginal peoples. This lens of Indigeneity will be used here as a critical theory that prioritizes a politically—not culturally—focused discussion of First Nations self-determination. Indigeneity will emerge as the guiding theory in Chapter 3, in a discussion of the limits of sovereignty.

1.5. Organization of thesis

This thesis consists of three main chapters and a concluding chapter devoted to addressing the central research question and the three objectives outlined above. The first core chapter is dedicated to describing the continuum self-government models, ranging from state-determining models such as the municipal-style arrangements, to self-determining models such as the nation-to-nation relationship. The second core chapter discusses the theoretically irreconcilable assumptions that block the progress of Aboriginal self-determination, questioning the Canadian concept of sovereignty, its source of legitimacy, and why Indigeneity is irreconcilable within it. The third core chapter offers the theory of agonism as a potential theoretical framework that could offer hope for living together differently; a theory of radical democracy, agonism espouses the virtues of democratic conflict as a means of questioning the fundamental assumptions of political relationships. It is an exciting and deeply germane application of theory that can be used to stretch the imaginative political possibilities, potentially revealing a previously inconceivable approach to constructing a space for shared sovereignty.

The concluding chapter provides a recommendation to open up a space for constructive yet critical dialogues between First Nations and the Canadian state using

the concept of radical imagination, which might be the first step towards achieving meaningful and respectful self-determination arrangements. The conclusion will address the original research question by answering that the sovereignty discourse is, in its current form, irreconcilable, but with the application of agonistic debate and an openness to radical imagination, there is incredible potential to reform assumptions about the limits of Canadian sovereignty in order to produce a mutually beneficial Indigenous–state relationship.

CHAPTER 2:
THE SELF-GOVERNMENT CONTINUUM

The 1982 amendments to the Canadian Constitution recognizing and affirming the existing Aboriginal and treaty rights of Aboriginal peoples (Indians, Métis, and Inuit comprising the category) was an indication that the Canadian state explicitly acknowledged Aboriginal peoples as original partners in Confederation. Section 35 of the Constitution opened the door for negotiating and implementing the inherent right to self-government, and this move shifted the sovereignty discourse towards an academically and legally accepted assumption that Aboriginal self-government is a Constitutional right. Accordingly, this thesis takes as its departure point the existing and legitimate right of Aboriginal self-government. However, there still remains a need to deflect the potently dismissive charges that First Nations lost their sovereignty through colonization, or that they surrendered their rights to sovereignty during the treaty-making process with Europeans (Flanagan, 2008). Thus, this chapter will begin with a brief discussion of the sources of legitimacy that reinforce First Nations' claims to self-determination. The bulk of this chapter will elaborate on the existing models of self-government and will describe the literature written by experts or proponents of each model. The purpose of outlining and describing the models of self-government, and of synthesizing the arguments for and against each model, is to understand the range of opportunities and limitations of self-government in Canada. Understanding the major self-government models proposed will allow for the subsequent discussion about the place of Indigenous self-determination within Canada.

2.1. Sources of legitimacy of right to self-government

While First Nations have been articulating their claims for self-government since the 1960s, there has been enough contestation and ambiguity surrounding the legitimacy of these rights to warrant an explanation of the sources of legitimacy. There are several authoritative sources of legitimacy behind these claims that, collectively, establish the unquestionable premise that self-determination is a legitimate political claim: the Creator, the United Nations' Covenant on Civil and Political Rights, the United Nations' Declaration on the Rights of Indigenous Peoples, the *Royal Proclamation of 1763*, and Canadian law.

2.1.1. Creator

The first source of legitimacy for the claims to self-determination comes from the perspective of many First Nations that self-government is an inherent right that derives from the Creator and cannot be conferred, retracted, or manipulated by the Canadian state. An eminent First Nations leader speaking on this issue has described the right to self-government thus: "The most precious aboriginal right of the First Nations is the right to self-government. ... The Creator gave each people the right to govern its own affairs, as well as land on which to live and with which to sustain their lives. These Creator-given rights cannot be taken away by other human beings" (Ahenakew, 1985: 24). Ahenakew is not alone in framing Aboriginal rights in terms of inherent Creator-given rights; RCAP reflected the consensus of testimonials expressing the notion that self-determination and sovereignty "can neither be given nor taken away, nor can its basic terms be negotiated" (RCAP, 1996). This notion of inherent self-determination is

the very backbone of all other political and legal claims, and it must be considered as such, in spite of or in addition to Canadian common law.

2.1.2. International recognition

The second source of legitimacy for Aboriginal rights to self-government comes from the United Nations' International Covenant on Civil and Political Rights, adopted in March of 1976. The first article of the Covenant reads, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Further, it states, "The States Parties to the present Covenant, including those having responsibility for the administration of Non–Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations" (OHCHR, 1976). Thus, the UN covenant provides some important support for the legitimacy of First Nations self-determination; some First Nations in Canada use the document to emphasize that Canada has an obligation to not hinder or obstruct the path to self-determination. Further to the 1976 covenant is the UN Declaration on the Rights of Indigenous Peoples, which was adopted by the UN in 2003.[5] Self-determination is established as a right in the third article, which reads, "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Further, the fourth article states, "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy and self-government in matters relating to their internal and local affairs, as

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[5] Canada initially voted against it, but in 2010, it formally signed on in support of the declaration.

well as ways and means for financing their autonomous functions." The declaration is important because it affirms a relationship between Indigenous peoples and the state, wherein Indigenous peoples are entitled to an autonomy that extends beyond simply having special status or special rights *within* a state. The declaration recognizes that Indigenous peoples have a legitimate claim to autonomy that parallels the state, and this recognition has provided Canadian First Nations with a considerable boost to their claims for self-government.

2.1.3. Royal Proclamation of 1763

The *Royal Proclamation of 1763* is the third important source that supports claims to First Nations' self-government. Issued shortly after the conclusion of the Seven Years' War, the *Royal Proclamation* is a founding document of Canada that defines the limits of the relationship between the British Crown (later to become the Canadian government) and First Nations people. The document assured three things: the colonial government could not survey or grant any non-ceded territory; British subjects, as individuals, were not allowed to settle on or purchase Indian land; and an official system of public purchases and of extinguishing Indian title would be established (Borrows, 1997). The *Royal Proclamation* explicitly recognizes that Indians are nations and that they have not ceded their territories unless specifically through treaties. The rights established in the *Royal Proclamation* have survived through the confederation of Canada and have never been reneged or relinquished; the document and the substantive content of it formulate an important component of Canadian constitutional law. In fact, section 25 of the Canadian Charter of Rights and Freedoms refers to the enduring legitimacy of the Royal Proclamation:

> The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, including ... any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763.

This document is called upon by First Nations scholars and activists as evidence of the continuity of First Nations' nationhood and of the integrity of First Nations' land where no treaties have been signed.

2.1.4. Canadian law

The fourth important source of legitimacy behind First Nations' claims to self-government is Canadian law. Canadian law has long been a source of antagonism, frustrating the determination of First Nations' to affirm their inherent right to self-government. Colonial attitudes—the Doctrine of Discovery, Terra Nullius, and, European racial superiority—underpinning many court decisions[6] concerning Aboriginal rights would for many years thwart First Nations' determination to prove and act on their inherent right to self-government. However, with the *Calder* (1973), *Sparrow* (1990), and *Delgamuukw* (1998) cases, among others, First Nations achieved some victories in holding the state to account not only for their obligatory fiduciary duty, but also for recognizing and affirming the inherent rights to land title and self-government. The legal system as a source of legitimacy is important leverage for First Nations, who use progressive rulings by the courts as a tool for engaging the federal government on matters of self-government. In view of the fact that the burden of proof still lies with First Nations and not with the state, and that the courts are, in general, a colonial mechanism reflecting Euro-Canadian colonial assumptions, the courts are by

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[6] See, for example, *St. Catherines Milling v. The Queen*, which informed the legal understanding of Aboriginal title for over 80 years, ruling that Aboriginal title was only a usufructuary right based on the good will of the Crown, which could also take away the right at any time.

no means an ideal route for First Nations to establish self-government. However, because the courts are a legitimate source of state accountability, legal support for Aboriginal rights lends strength for First Nations seeking recognition of self-government.

These above-listed sources of legitimacy for claims to self-government are important in establishing that these claims are not arbitrary or historically moot. These arguments cement the grounding for further discussions of self-government models, making indisputable the fact that First Nations have a secure departure point for pursuing self-government.

2.2. Government of Canada's Policy on Self-Government

Since its explicit recognition of Aboriginal peoples' inherent right to self-government in 1985, the Government of Canada has crafted a policy guiding the process of self-government negotiations. Entitled "The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government," the policy spells out the government's official position on negotiating the details of Aboriginal self-government. While the Canadian government concedes that self-government agreements must be tailored to individual community needs and specificities, it qualifies its position by stating that all Aboriginal governments and institutions exercising their inherent right to self-government, regardless of their administrative nuances, must conform to the Canadian Constitution and, more specifically, to the Canadian Charter of Rights and Freedoms (INAC, 2010b). Self-government is framed as a form of integrated participation with the Canadian

federation, a means of cooperation with other levels of government, and an indispensable component of Canadian federalism.

INAC is clear that it will not negotiate secessionist or isolationist models of self-government, explicitly drawing the limits on its interpretation of self-government within the Canadian fabric thus: "The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states" (INAC, 2010b). INAC further limits its scope on allowable negotiable items to "matters that are internal to the group, integral to its distinct Aboriginal culture, and essential to its operation as a government or institution" (INAC, 2010b). Off-limits negotiation items are those relating to Canadian sovereignty, defence, and external relations. The policy also specifies that self-government arrangements are not to exclude existing federal or provincial laws, and that enacted First Nations' laws under self-government arrangements will coexist with state laws. Where there are conflicts in execution between federal or provincial and First Nations laws, The Government of Canada's official position is that

> negotiated rules of priority may provide for the paramountcy of Aboriginal laws, but may not deviate from the basic principle that those federal and provincial laws of overriding national or provincial importance will prevail over conflicting Aboriginal laws. (INAC, 2010b)

In circumstances of divergent interpretations in matters of more general application (the federal or provincial governments identify these circumstances), the extant federal or provincial laws will supersede the laws of the First Nations' government.

The federal government's position on self-government is clear: there is willingness, or rather an honoured obligation, to negotiate self-government agreements with First Nations, but resultant arrangements must conform to the Canadian

Constitution and applicable laws. The federal government recognizes First Nations'
inherent right to self-government, but has rigorous qualifications. Adding the
consideration that most negotiations—especially those that will result in protection
under section 35 treaty rights—are trilateral, involving the federal government, the
appropriate provincial government, and the First Nation, the negotiators representing
First Nations must contend with a complex web of multi-layered government provisos.
The official position of the federal government coupled with the fundamental
assumptions dictating the political hierarchy of claims and priorities inform the scope of
self-government models that are deemed to be negotiable options.

At the time of writing, the Government of Canada negotiated 18 comprehensive
self-government agreements with 32 First Nations communities, including in
Newfoundland and Labrador, Quebec, British Columbia, and the Yukon. Three
significant agreements—Nisga'a, James Bay, and Nunavut—that demonstrate the
federal government's scope of self-government negotiations are described below.

2.2.1. Nisga'a Self-Government Agreement

The Nisga'a nation in northwest British Columbia embodies a notable example of a shift
in First Nations–state relations away from the *Indian Act* and towards greater self-
determination. Signed by the Nisga'a, the Government of British Columbia, and the
Government of Canada in 1998 and ratified in 2000, the Nisga'a self-government
agreement was a result of the 1973 *Calder* case, which saw Frank Calder, a Nisga'a MLA,
take to court a case addressing Aboriginal land title in BC. While he lost the case on a
technicality, the Supreme Court acceded that "indeterminate land rights do exist"
(Denis, 2002: 41), an acknowledgement that led to the constitutional recognition of

Aboriginal rights, later to be articulated in section 35 of the Constitution. However, it would not be until 1991 that the BC government would open up the negotiations for self-government. The agreement that resulted from the negotiations provides space for a Nisga'a government, and Nisga'a authority over membership and jurisdiction over resource management, culture, health, policing, justice, child welfare, education, and taxes. It also releases the Nisga'a nation from the *Indian Act* and provides for forest and timber cutting rights, oil and mineral resources, and more than a quarter of the salmon fishery (Fleras and Elliot, 2003: 168). In comparison to the mini-municipality model of the Sechelt First Nation, described below, "the Nisga'a Agreement is placed within a land claim agreement that will remove Parliament's power to revoke the Agreement because these self-governing rights are constitutionally protected" (Fleras and Elliot, 2003: 169). This is to say, there is greater acknowledgement of the parallel nationhood of the Nisga'a and a greater spirit of self-determination in that the agreement allows the Nisga'a to delineate their destiny without external interference.

The Nisga'a Agreement ensures that the Nisga'a have paramountcy over several areas in governance. The Nisga'a own lands in fee simple, meaning that the Nisga'a have immense control over their land use; requiring no consultation with or consent from either the federal or provincial governments, the nation can dispose of its estate as it sees fit without the land losing its "Nisga'a Land" designation. The agreement also sets out that the Nisga'a have "exclusive authority to determine, collect, and administer any fees, rents, royalties, or other charges in respect of mineral resources on or under Nisga'a Lands." The Nisga'a have exclusive ownership of all forest resources, although the agreement stipulates that Nisga'a laws regarding forestry must meet or exceed the

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standards in provincial laws. The BC government does, however, own "submerged lands" within Nisga'a territory. Third, and arguably most importantly, the Nisga'a have control over the laws they make regarding administration, management, and operation of the Nisga'a Government; they have jurisdiction to establish public institutions and corporations (although their incorporation and registration must conform to federal laws), establish election laws and financial administration laws, and establish programs to protect culture and language. With most of these areas of jurisdiction, the Agreement states that, in the event of inconsistency or conflict between a Nisga'a law and a federal or provincial law, the Nisga'a law prevails; the federal or provincial laws prevail in several policy areas including public safety and order, regulation of transportation, and intoxicants.

Notwithstanding the innovatory arrangement for the Nisga'a and the scope of Indigenous paramountcy in governance, it would be shrewd to approach evaluation of the Nisga'a agreement with a fuller understanding of the results of the negotiations:

> The Nisga'a people obtain title to about eight per cent of the land in their original claim, logging rights to some further land, financial compensation, and political autonomy amounting to a form of municipal government. They agreed to surrender their exemption from income taxes and they were forced to accept sharply curtailed fishing rights …: the BC government had imposed a veto on granting the Nisga'a control over the fishing industry in their region. Finally, the Nisga'a agreed to be bound by the *Charter*: a federal government *sine qua non*. (Denis, 2002: 43–44)

Denis hints that the agreement is framed in a way that allows the governments of Canada and BC to assert their paramountcy through the enforcement of standards with regards to Nisga'a self-government. The Nisga'a Agreement explicitly provides that many areas of governance measure up to the general accepted standards of the federal government, including its Constitution's financial administration standards, conflict of

interest standards, public order, and peace standards. The agreement also establishes a certainty clause that states the Nisga'a do not have authority over criminal law, although the agreement does contain provisions for a Nisga'a administration of justice. Denis notes that "the Nisga'a court and police services are to be considered as a kind of substitute for the B.C. courts and police services. As such, they are under the authority of the provincial government, and they must operate in accordance with B.C. standards" (2002: 47). Denis further asserts that the negotiation reflected a power dynamic between the parties insofar as the results of the self-government negotiations were a truncated version of the original claim, "not only in terms of amounts of land, resources and autonomy but also in terms of the kind of autonomy and right to self-government" (2002: 44). Thus, while the responsibilities granted to the Nisga'a nation are largely inclusive, there remains a provision that requires the Nisga'a laws "to operate within the appropriate federal and provincial laws as well and ... to provide comparable or better levels of service in areas assumed from other levels of government" (Coates and Morrison, 2008: 110). This means that, while the Nisga'a have substantial autonomy in performing some governance and management functions, they are circumscribed within legal and political precedents and standards set by the Canadian state. Within this framework, the Nisga'a essentially becomes a third order of government in dealing with some matters normally dealt with by the national or provincial governments, but under the political and legal purview of the Government of Canada.

The Nisga'a self-government is widely applauded as a new form of self-government that awarded the band an unprecedented degree of autonomy and control over the delivery of important services to the community. However, the agreement must

be viewed with a critical eye to the process by which it was produced, as opposed to only the result. It is clear that, while the results of such an agreement are arguably better for bands than life under the *Indian Act*, there are techniques of the state, explored below, that limit the scope of autonomy available in the trilateral federalism model.

2.2.2. James Bay and Northern Quebec Agreement

The James Bay and Northern Quebec Agreement (JBNQA) was the first comprehensive claim, or modern treaty, to be signed in Canada.[7] Originally signed in 1975 by the James Bay Cree and Inuit, and the Governments of Quebec and Canada, it was the result of a major movement protesting the Quebec government's plans for building a massive hydroelectric project in Cree and Inuit territory. Without consulting the Cree, Inuit, or Naskapi in the region, the province of Quebec had been planning on developing the James Bay area—territory where no treaties had been signed—into the largest hydroelectric project in North America (Dickason, 2002: 395). The Grand Council of the Crees applied for an injunction to stop the project, but the injunction was suspended merely a week later, when the "Quebec Court of Appeals … ruled that Aboriginal rights in the territory had been extinguished by the Hudson's Bay Company charter of 1670" (Dickason, 2002: 397). There was a period of vehement resistance on the part of the Aboriginal people in Quebec, which was ultimately tempered by First Nations' leadership, embodied by Billy Diamond, who reasoned, "… our people are still very much opposed to the project, but they realize they must share the resources" (Dickason, 2002: 397). Thus began the process of negotiating the agreement, which would ultimately allow for the hydroelectric project to proceed, with flooding of 10,500 square

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[7] Paul Rynard defines a comprehensive claim or modern treaty as "a post-1930 treaty dealing with peoples and lands for whom no previous treaty exists" (2000: 212).

kilometers of James Bay territory, and financial and political compensation for the Cree, Naskapi, and Inuit (Dickason, 2002: 398).

The JBNQA required the Cree and Inuit to "cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the territory and in Quebec, and Quebec and Canada accept such surrender" (Canada, 1975). In exchange for their rights and territorial interests, the Cree, Naskapi, and Inuit communities received $133,815,678; $9,000,000; and $91,184,322 respectively from the governments, and some addition lump-sum payments. The Aboriginal signatories were granted an advisory position on matters of environmental and social protection on the territory covered by the agreement. In addition, the agreement created the provisions for control over health and two culturally specific school boards—the Cree and the Kativik School Boards.

A land regime was devised that categorized lands into levels I, II, and III. Category I lands are designated exclusively as Aboriginal lands; they are further subdivided into categories IA and IB. Category IA, where all of the Cree communities are located, is land under federal jurisdiction, but the agreement stipulates that Quebec retains ownership of mineral and subsurface rights on these lands (Quebec requires the consent of the community to extract these minerals). Category II lands are designated as provincial lands but where Aboriginal people co-manage and have exclusive rights to hunting, fishing, and trapping. Category III lands are public lands belonging to Quebec, but where Aboriginal people control some administration and development processes and have exclusive rights to harvesting some animals (Canada, 1998).

The total land covered by the James Bay Agreement spans 1.07 million square kilometers, and this area is largely in Nunavik (Inuit territory in northern Quebec). Rynard (2000) explains that the majority of the land covered in the agreement is Category III land (public land belonging to Quebec in which the Indigenous peoples have some hunting and harvesting rights). On category II lands, which comprise 18 percent of the Cree territory, the Cree have exclusive hunting, trapping, and harvesting rights, but by virtue of being Quebec lands, this territory gives the province the rights to pursue development projects (with compensation awarded to the Cree); the Cree have largely reduced their influence over the activities on this land to an advisory role. Category I lands are those that award the James Bay Cree the highest degree of self-government available to them; on these lands, Cree can "pass by-laws and, for the most part, control development" (Rynard, 2000: 222), but they span only about 5,600 square kilometers, what amounts to "1.5 per cent of the land which the Cree use, as they always have, as their material and cultural base" (2000: 223).

The JBNQA gave the communities municipal-style jurisdiction (as public corporations/municipalities) over making bylaws regarding environmental (water, atmosphere, and soil) and protection and use of "natural resources (excluding wildlife), consistent with applicable laws and regulations and taking into account that Quebec will own the minerals and subsurface rights" (Canada, 1975), in addition to public security, public health and hygiene, land planning, some public services (water supply, lighting, power, municipal roads, transportation, recreation and culture, and some tax levies. All of these above provisions ensure that "The laws of Quebec, including the *Cities and Towns Act* but excluding the *Municipal Code*, shall apply within the Territory insofar as

they are applicable and not derogated from by the provisions of this Act" (Canada, 1975). This is to say that the provisions in the Act are framed in such a way that they conform to the expectations and provisions stipulated in the province's legislation regarding other municipalities.

Understood in the historical context—the agreement was negotiated several years before the constitutional recognition of inherent rights of Aboriginal people, and at a time when Aboriginal rights were only minimally and vaguely defined in law—the compensation for ceding Aboriginal rights can be interpreted as materially generous; however, the requirement for extinguishment clauses has been interpreted as an overt effort to "replace Aboriginal title … with crown ownership to, and sovereignty over, the traditional lands of the Aboriginal Nation involved" (Rynard, 2000: 218). It can and has been argued that the extinguishment clauses in exchange for treaty rights, seen in the JBNQA and, in different wording in the Nisga'a Agreement,[8] provides for a "redefinition [that] inevitably involves the confining and limiting of fundamental rights" (Rynard, 2000: 220). While the James Bay Agreement had the result of yielding greater control for the Aboriginal people than they previously had without treaty, the subdivision of their lands left them with control over only a fraction of their territory and with no rights over subsurface resources; furthermore, their assignment to advisory roles regarding development projects, and their extinguishment of rights, did not, in absolute terms, yield a laudable long-term arrangement. Indeed, as Matthew Coon Come as expressed, "Extinguishment has injected a fundamental instability into the relationship between the Crees and the other signatories of the James Bay and Northern Quebec

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[8] The Nisga'a Agreement states, "the Nisga'a Nation releases that aboriginal right to Canada to the extent that the aboriginal right is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.

Agreement. ... Extinguishment is simply *terra nullius* applied after the fact. ... It puts the power to make decisions about our lands and waters, and thus about us, exclusively in the hands of others" (Coon Come quoted in Rynard, 2000: 233). Coon Come reflected on the James Bay agreement as one that betrays the governments' disregard for the nation-to-nation relationship with Indigenous peoples by virtue of its non-negotiable requirement of extinguishment. While the agreement made provisions for material compensation and Aboriginal control over limited hunting rights, education, health, and other social and cultural issues, which are improvements over the previous lack of control over the relationship with federal and provincial governments, the JBNQA displays the results of an asymmetrical political relationship that largely dismissed the *sui generis* nationhood of the Cree.

2.2.2. The Nunavut Land Claims Agreement

Nunavut is the largest land claims agreement in Canada, spanning over a fifth of Canada's total area. Approximately 85 percent of the population of Nunavut is Inuit; it is a sparsely populated territory, with its largest metropolis housing a population of 6,000 people. The land claim process, which resulted in the creation of a new territory in 1999, began in 1976, when Inuit Tapirisat submitted a claim proposing the creation of the northern jurisdiction. The proposal was buttressed by the Royal Commission on Economic Union and Development Prospects for Canada, or the Macdonald Commission, which recognized the potential for regional government to meet the cultural and political needs of the north. It also coincided with a crisis of Arctic sovereignty, when the "United States sent the *Polar Sea* through the Northwest Passage without permission from Canada. This was the second such infringement on the part of

the Americans … who wanted those waters to be declared international" (Dickason, 2002: 407). The federal government of Canada, concerned about losing its assertion of sovereignty over the Arctic, reasoned, "Since the Inuit have been in the region for more than a thousand years and represent about 85 per cent of its present population, the creation of a self-governing territory was … the best possible demonstration of effective occupation" (Dickason, 2002: 407). Thus coalesced the factors leading to the negotiation of the Nunavut Land Claim Agreement (NLCA), which involved the extinguishment of Inuit rights[9] in exchange for fee simple ownership of 350,000 square kilometers and a cash payout of $1.17 billion over 14 years. It is important to note that the Nunavut agreement embodies a form of public government, rather than Inuit self-government *per se*.

The Nunavut agreement, which is constitutionally protected under section 35, sets out the governance structure in Nunavut. The Nunavut government is a public government, meaning all residents may vote in elections, hold office, and benefit from services. More than any other jurisdiction in Canada, the federal government, through INAC and other federal departments, is immensely influential in Nunavut's governance. Graham White explains, "not only does the Nunavut government depend almost entirely on the federal government for its finances, but Ottawa retains various powers that 'south of 60' fall under provincial jurisdiction, most notably over Crown land and non-renewable resources" (2009: 59). Michael Mifflin attributes this extreme dependency on the governance set-up in Nunavut. The Government of Nunavut has responsibility over delivering services, but has few resources to execute its roles; the money lies with the

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[9] The agreement reads, "Parties agree on the desirability of negotiating a land claims agreement through which Inuit shall receive defined rights and benefits in exchange for surrender of any claims, rights, title and interests based on their assertion of an aboriginal title."

land claims organization, Nunavut Tunngavik Incorporated (NTI), which distributes the

land claim money but has no responsibility for providing government services. Strictly

speaking, NTI fulfills an important role in representing Inuit as beneficiaries of the

agreement: they have jurisdiction over appointing members to the co-management

boards, for ensuring that the rights entrenched in the agreement are being fulfilled.

However, the governance roles of NTI extend further than this:

> NTI could in important ways be characterized as an Inuit government. Among its manifold activities are programs to promote Inuit culture, to deliver employment training (usually in partnership with government), to provide financial assistance to hunters, and to foster economic development—the latter including a controversial policy to permit uranium mining on Inuit-owned lands. It also performs social welfare functions ....NTI is deeply involved in the development and implementation of important Nunavut government policies, from education and health care to wildlife management. It also serves as an advocate for Inuit interests in federal policy issues, such as the compensation and treatment of residential school survivors. (White, 2009: 60–61)

While NTI is heavily involved with some service delivery and capacity training, Mifflin

argues that "this de facto parallel system of governance keeps the Nunavut government

wholly dependent on the federal government to finance even its basic operations"

(2009: 93). One example that reflects the exclusion of the government from harnessing

territorial monies is with the division of the natural resources: the Nunavut Agreement

stipulates that ownership of resources is divided between the Government of Canada

and NTI. Mifflin explains,

> The agreement transferred to NTI the right to mines, minerals and royalties on 18 percent (356,000 square kilometres) of the territory, while Canada retained the remainder (minus the communities, which are territorial responsibility). In addition, the Nunavut Agreement ensures that Canada pays resource royalties to NTI equivalent to 50 percent of the first $2 million of resource royalties earned annually and 5 percent of the rest. (2009: 93)

As a result of this arrangement and the division of resources among the Government of Canada and NTI, the Government of Nunavut has no ownership of lands outside of the municipalities and receives no royalties from the resources. As a result, the territorial government "has remained almost wholly dependent on federal transfers," receiving about 90 percent of its budget from the federal government (Mifflin, 2009: 93). The Government of Nunavut's heavy reliance on federal transfers points to an asymmetrical power relationship that affects its ability to follow through in service delivery and self-determination in policy direction. While all provincial governments enjoy the right to make exclusive decisions regarding resource development, the negotiated Nunavut agreement deprives the territorial government of benefitting from many of these resources and controlling the direction of this particular policy area. The federal government's non-negotiable position on retaining rights over these lands has been explained as a reaction to the lack of capacity in Nunavut to support the logistics of jurisdiction over resources. The argument was that, until the issue of capacity could be adequately resolved, the devolution could not proceed in Nunavut's favour.

As an institution, the design of the Government of Nunavut's is premised on the general territorial government model. At the bureaucratic level, departments—overseen by ministers—deliver the services to the residents of Nunavut. However, it is not at the bureaucratic level that the Government of Nunavut showcases its adherence to Inuit values, but rather at the legislative level, where, although there are signs of permeating Westphalian values, the decisions are made on the basis of consensus. There are no parties, and candidates for office run as independents. The infusion of Inuit values into

legislative decision-making is complemented by the Nunavut government's remarkable amount of jurisdictional control over public policy issues; the territorial government has jurisdiction over "health, education, welfare, culture, municipal government, civil law, transportation …" (White, 2009: 67). As discussed above, where it falls short is jurisdiction over Crown lands and non-renewable resources.

Despite the setbacks in expectations and delivery of services related to lack of capacity, the Government of Nunavut can be situated as a strong model of Inuit governance because it has strong links to Inuit cultural values entrenched in its very governance. As White explains, "not only has the Government of Nunavut set itself the goal of elevating Inuktitut to the working language of government by 2020, but it has also committed itself to the principles of Inuit Qaujimajatuqangit (IQ)15—literally, "that which has been long known by Inuit," that is, Inuit values and world views" (2009: 75). While the execution of these goals might not be an easy task, with critics charging the goals with distracting from service delivery, the determination of the Inuit to meld Westphalian governance practices with Inuit cultural and political values proves to be a compelling example of Indigenous peoples' ability to bridge the gap between Canadian and Aboriginal political aspirations.

2.3. Models of Aboriginal Self-government

The above three case studies demonstrate that, given the vast cultural and political diversity across First Nations, there will be as many forms and visions of self-government as there are nations. Every nation has a different reality that will inform its chosen governance model: variations in the size of land, treaty arrangements or lack

thereof, demographics, relationships with neighbouring communities, and degree of adherence to traditional life, among other differences. First Nations mould self-governments to their own needs and circumstances, but there are key claims to rights that can be found in most, if not all, self-government claims and negotiations. Generally, First Nations self-government models work to "replace the *Indian Act*, protect federal government–Aboriginal relationships, and provide for culture-specific government structures and processes" (Coates and Morrison, 2008: 108). Under the awning of greater control over their own lives and less dependence on the federal government, First Nations' self-governance specifically calls for the right to control land, resources, and livelihood; the right to preserve culture and language; and the right to autonomy within the state, entailing some kind of constitutional reform (Maaka and Fleras, 2005: 50). To execute these specificities, all self-government arrangements require culturally appropriate political institutions, a territorial base, control over membership, fiscal support from the federal government, and some kind of political relationship with the federal and provincial governments (Ponting, 1997: 367). Conversely, the Government of Canada has a slightly narrower expectation of what self-government entails, reflecting a strictly political understanding of self-determination to address "the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements and their responsibilities for providing programs and services to their members" (INAC, 2009).

While First Nations' claims and arrangements exist as the basis of every self-government model, there are notable variations in the models themselves, which will be delineated below. Important to note throughout this discussion is that self-government

is not a single event established at the signing table, but rather a process allowing for First Nations to assume governing responsibility at their own pace as training and resources are established.

As will be seen through examples of specific self-government arrangements, models of self-government are arguably too nuanced to be broadly categorized; despite the dangers of reducing the arrangements into categorical models, for the purpose of this thesis, the four models used here will be conceptualized along a continuum that depicts a range of autonomy. The models are borrowed from Frances Abele and Michael J. Prince's (2006) article, "Four Pathways to Aboriginal Self-Government in Canada," which offers an insightful and useful framework of the governance options along the continuum that has since been reiterated in other literature (Maaka and Fleras, 2005; 2008). The models proposed here are 1) mini-municipalities, 2) adapted federalism, 3) trilateral federalism, and 4) nation-to-nation models. It is useful to add that the models can be assigned to a certain degree of radicality. While there is nothing inherently radical about any of these models, when power and sovereignty are considered a zero-sum game, the more self-governing a particular nation is, the less power is at the hands of the state, making a given self-government model all the more "radical" and potentially divisive. The perceived radicality of a model reflects the degree to which the model challenges the status quo relationship with the state; that is to say, the more First Nations re-create a space for their self-determination, the more they alter the construct of Canada's state sovereignty. Thus, mini-municipalities are the least radical of the five models, while adapted and trilateral federalism can be classified as moderate. The nation-to-nation and the independence models can be conceptualized as

the most radical or provocative of the five models. However, it is important to note that most First Nations engaged in the discourse strive for the principles of coexistence and equality, not zero-sum power, to be the impetus behind self-determination. These concepts will be further discussed in the next chapter.

2.3.1. Mini-municipalities

In Canada, the mini-municipality is a common model of self-government. It is structured around the delegation of political power from either the provincial or federal level of government. This model of self-government emerged in the 1980s, when INAC shifted its philosophy away from the direction of control-and-deliver and towards devolution and decentralized service delivery (Fleras and Elliott, 2003: 184). Devolution was touted as the best solution for addressing local problems; it was believed that a band well equipped with financial resources would be more effective to deal with community affairs than a highly centralized bureaucracy would be, and in line with this policy shift, INAC began transferring federal funds directly to bands in an effort to "improve the quality of service delivery, develop long-term expenditure plans, reduce administrative burdens, emphasize local accountability in spending, and foster transparency in decision-making" (Fleras and Elliot, 2003: 184).

Reflecting the model of non-Aboriginal municipalities across the countries, the mini-municipality model involves taking on small responsibilities, such as the provision of some services to small populations and the generation of own-source revenues. Although, as the name implies, the mini-municipalities are smaller in population and influence than non-Aboriginal towns, and despite the fact that they remain under the supervision of the federal government, the mini-municipality model gives First Nations

communities slightly more autonomy than the band structure under the *Indian Act* (Abele and Prince, 2006: 572). This low level of devolution of responsibilities, combined with the federal prerogative to veto laws, makes the mini-municipality model most appealing to mainstream bureaucrats and politicians, who consider it the least disruptive concession to First Nations' demands for self-government; it allows for band leaders to be "accountable to the local population they represent ... [but they] are not a fourth level of government" (Frideres and Gadacz, 2001: 256). The dominant idea behind this model of self-government is that "the acceptance of the municipal style of government by Aboriginal people would lead to acceptance of the dominant society's culture and values" (Frideres and Gadacz, 2001: 256). Thus, because the model does not recognize Aboriginal sovereignty, because it does not change the fundamental structure of the federation, and because it assumes that bands will adopt the mainstream municipal style of governance instead of exercising more traditional modes of governance, it is also the model most adamantly rejected by most Aboriginal groups. Alfred reflects on this model of self-governance thus: "By allowing indigenous peoples a small measure of self-administration, and by forgoing a small portion of money derived from the exploitation of indigenous nations' lands, the state has created incentives for integration into its own sovereignty network" (1999: 60). This is to say that the mini-municipality model is seen by critics as a pacifier for First Nations seeking self-government, obscuring the path to meaningful self-determination and instead creating ripe circumstances for continued state paramountcy and colonial status quo. The fact that the mini-municipality model is situated "within a constitutional framework that secured the legitimacy of Canadian jurisdiction over all people and lands" (Fleras and Elliot, 2003: 184) means that this model makes little room for recognizing First Nations'

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sui generis sovereignty. The mini-municipality model does little to restructure the Aboriginal–state relationship, and it reflects no commitment to "crafting a new political order that acknowledged the principle of the nations within" (Fleras and Elliott, 2003: 184).

The Sechelt First Nation Self-Government Agreement, signed in 1986, is an example of the mini-municipality model. The agreement should be understood, as all self-government agreements should, in the context of the band's geopolitical location. The Sechelt First Nation is located on the beautiful, scenic Sunshine Coast of British Columbia, where its 2500 acres of land promised enticing development opportunities (Cassidy and Bish, 1989: 136). The band saw the interferences and restrictions of INAC and the *Indian Act* as an obstacle to its economic development goals, and it negotiated greater autonomy over its resources and lands. The Sechelt band identified the mini-municipality model as the arrangement that would best suit the needs of the band: "This would enable it to live in harmony with the neighbouring municipalities of Sechelt and Gibsons, and enjoy the advantages of the existing municipal system in British Columbia" (Exell, 1988: 100). Thus emerged the *Sechelt Act*, which established the band as a legal entity and created "two governing institutions: the Sechelt Indian Band Council and the Sechelt Indian Government District Council" (Peters, 1999: 415). The band council administrates the band's constitution (which resembles the *Indian Act* with additional jurisdiction over property, membership, and taxation), and it now can execute some roles that had previously been the jurisdiction of INAC: "the construction of roads, the granting of access to and residence on Sechelt lands, and the zoning of land" (Frideres and Gadacz, 2001: 254). While the band council has jurisdiction only within the borders

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of the reserves, the district council has authority over the district, with "powers that resemble a typical local government corporation in British Columbia" (Peters, 1999: 415). The Sechelt self-government agreement offered the band an arrangement that opened up channels of relationship-building with the province, instead of merely with the federal government and INAC. However, according to the Act, their administrative powers are always subject to provincial approval in the fields of local government, and property and civil rights (Rose, 1993). Thus, self-government for the Sechelt community is ultimately predicated on deciding who is a member and to whom to grant the political franchise; many other decisions must still be passed by the BC Legislature or by the federal department of Indian Affairs.

The Sechelt self-government arrangement gives the Sechelt a municipal style of governance with limited self-determination; it does not change the fundamental structure of Canadian federalism, but merely makes space for the delegation of some First Nation–specific control over administration without altering the fundamental structural framework of the Canadian state to include the band as a "nation within."

2.3.2. Adapted federalism

Adapted federalism is a model of self-government that entails creating a new public government with a particular degree of autonomy within the Canadian federation. A public government is one that serves all residents of a territory, regardless of their ethnicity. However, within the scope of its authority, a public government may recognize and give special policy or program considerations to some particular cultural or political group, provided such special conditions do not contravene the Canadian Charter of Rights and Freedoms. One example of successful adapted federalism is the creation of

Nunavut in 1999. A public government for Nunavut was a feasible opportunity because the dominant population of Inuit (85 per cent of the population) and the commitment to staff the bureaucracy in proportional numbers meant that the Inuit would largely control their own political affairs (Abele and Prince, 2006: 575).

The specific elements and circumstances—population and physical landscape—that converged to allow for this adapted federalism in Nunavut means that this model cannot be easily replicated in southern Canada. However, in the context of southern Canada, Abele and Prince have proffered a hypothetical form of adapted federalism: a quasi-province that would not be land-based, but rather a representative body of the disparate Aboriginal groups that could participate in the Canadian federation as one voice for all Aboriginal peoples. It is easy to foresee, however, that such a model would be unfavourable among First Nations, who are situated in drastically diverse political and cultural contexts. A symbolic province would also be a logistical difficulty for the federal government; not only would the distribution of funding among the varied groups be difficult to administer, but government responses to a quasi-province's claims would be difficult to articulate. A pan-Aboriginal polity has few Aboriginal advocates, and would likely not be embraced by the federal government or by Aboriginal groups. Nonetheless, adapted federalism belongs on the continuum of self-government models because it exists—in the form of adapted public government—at the territorial level in the Canadian North (that is, Yukon Territory, Northwest Territories, and Nunavut).

2.3.3. Trilateral federalism

Trilateral federalism is popular among Aboriginal peoples and among federal representatives. It is the model advocated by Keith Penner and by the Royal

Commission on Aboriginal Peoples, and it suggests that Aboriginal governments be recognized as a distinct order of government alongside, and on par with, the federal and provincial governments of the Canadian federation; this political relationship is rooted in honouring historical treaties, which, as Kiera Ladner explains, "recognized and affirmed Indigenous constitutional orders" (2006: 17); this is to say that treaties allow all constitutional orders—state, provinces, and First Nations' governments—to exist independently, only to be limited by the terms of the treaties. The underlying principle of trilateral federalism is shared sovereignty between the federal, provincial, and First Nations governments. According to Ladner, this relationship could yield a fruitful form of self-government for any First Nations (whether they signed a treaty or not); in the cases where First Nations do not have a treaty, "the prerogatives of both 'sovereigns' remain intact as neither constitutional order has ever been subsumed by, limited by and/or incorporated into the other" (2006: 17). In the cases where there are treaties, the treaties would affirm the independent sovereignty of the First Nations. Thus, this third order form of self-government provides favourable circumstances for all First Nations, as "Indigenous rights and responsibilities are vested in and limited by Indigenous constitutional orders" without being contingent on the recognition of the state through the Constitution (Ladner, 2006: 17).

The underlying motive of trilateral federalism is to "change the relationship of Indian First Nations to other governments, not to fragment the country" (Penner, 1983: 41–42). This model would promise "financial stability and regular access to common sites of intergovernmental decision-making as the other two orders. This … would

improve their capacities for long-term planning, internal development, and cooperation with other levels of government in Canada" (Abele and Prince, 2006: 579).

Even with the progressive intentions behind trilateral federalism, it remains a conditional form of autonomy with strings attached; the possibility of a third level of government is limited by the supremacy of Canada's foundational principles, as entrenched in the Canadian government's policy on self-government. As mentioned earlier, in 1995, the Canadian government, headed by Prime Minister Jean Chrétien, introduced the "Inherent Right of Self-Government Policy," which recognized the inherent and constitutional right of Aboriginal self-government and allowed for the negotiation of self-government agreements related to matters internal to First Nations' communities and integral to First Nations' cultures, lands, and resources (INAC, 2010a). The Government of Canada assured First Nations that this policy would have no ramifications on the conditions of existing treaties; it would only negotiate agreements building on existing treaties—within the scope and limitations of the policy and recognition of self-government—if Treaty First Nations desire it. This policy was an important admission by the federal government that there was an imaginary and real possibility for creating trilateral federalism between federal, provincial, and Aboriginal jurisdictions. However, the recognition of the right of Aboriginal groups to govern themselves in internal matters was limited to operating within the Canadian system and in conformity with other governments. The federal government explicitly stated that Aboriginal self-government is not synonymous with internationally recognized sovereignty, but rather should guide the incorporation of First Nations into the existing sovereign structure of the state, the Constitution, and the Canadian Charter of Rights

and Freedoms. Thus, while the federal government made space for a third order of government held by Aboriginal actors, it is feasible only with the state retaining its paramountcy over matters of national interest, including Canadian sovereignty.

The Nisga'a self-government agreement in British Columbia, the Tlicho self-government arrangement in the Northwest Territories, and the Nunatsiavut self-government in Labrador are examples of trilateral federalism.

2.3.4. Nationhood

The basis of the nationhood model of self-government is a bilateral nation-to-nation relationship between First Nations and the Crown, whereby First Nations have complete sovereignty over their internal affairs. The principal difference between this and the previous models is that, in this nation-to-nation model, self-determination is not subsumed under the Canadian state; rather, the political relationship is as treaty-based coequals, with the Aboriginal source of political legitimacy deriving "outside of and prior to the Canadian state" (Abele and Prince, 2006: 580), and "guaranteed by virtue of aboriginality (ancestral occupation)" (Fleras and Elliott, 2003: 188). This model is designed to allow two sovereign political communities to coexist in one territory. The nation-to-nation model gains legitimacy from the existence of a *sui generis* "confederated civilization with distinct governance, law, and economies prior to the imperial treaties" (Henderson, 2008: 20) that has been recognized by the Supreme Court of Canada[10] as sovereignty that "pre-existed and continued regardless of an imperial claim to Crown jurisdiction or sovereignty over their territory" (Henderson, 2008: 21). Further, because First Nations were excluded from negotiations that would

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[10] See *Van der Peet*, for instance.

lead to Canada's confederation, some Aboriginal people argue that there is no legitimacy in their incorporation into the state, especially because the *Royal Proclamation of 1763*, which had seemingly guaranteed the nation-to-nation relationship, was not explicitly entrenched in the 1867 *British North America Act* of Canada's confederation. Thus, without Aboriginal consent for being subsumed into a constitutional federation, there is no basis for their contemporary inclusion within the state. Instead, First Nations retain their Royal Proclamation status of nationhood *alongside* the Canadian state. This nationhood model reflects the prior sovereignty of First Nations and aims to rebuild the treaty-based nation-to-nation relationship.

The First Nations vision of this nation-to-nation model based on mutual respect and autonomy is symbolized by the *Gus-wen-tah*, or the Two-Row Wampum, which Mohawk scholar Patricia Monture-Angus described as

> two rows of purple shell imbedded in a sea of white [shells]. One of the two purple paths signifies the European sailing ship that came here. In that ship are all the European things—their laws, languages, institutions and forms of government. The other path is the [Aboriginal] canoe and in it are all the [Aboriginal] things—our laws, institutions and forms of government. For the entire length of that wampum, these two paths are separated by three white beads. Never do the two paths become one. They remain an equal distance apart. And those three white beads represent "friendship, good minds, and everlasting peace." It is by these three things that Aboriginal Peoples and the settler nations agreed to govern all of their future relationships. (1999: 37)

The Two-Row Wampum is a metaphor for what James Tully (2000) calls an Indigenous interpretation of shared jurisdiction and sovereignty. It symbolizes a peaceful coexistence of power situated within distinct ontologies. Canada can constitute both non-Aboriginal and First Nations sovereignties, as "free and equal peoples on the same continent can mutually recognise the autonomy or sovereignty of each other in certain spheres and share jurisdictions in others without incorporation or subordination"

(Tully, 2000: 53). From the perspective of many Indigenous advocates of the nation-to-nation relationship, the goal is not "to destroy the state, but to make it more just and to improve [First Nations'] relations with the mainstream society" (Alfred, 1999: 53). Indeed, nationhood is interpreted by many First Nations advocates as a functional sovereignty, whereby First Nations

> are treated as sovereign for the purposes of entitlement and engagement. The intent is not to demolish Canada or overturn its sovereignty … but only to dismantle that part of the "house" that has precluded them from their rightful place as the original occupants and the nominally sovereign co-founders of Canada." (Fleras, cited in O'Sullivan, 2007: 91)

Nationhood thus requires a theoretical component in addition to a logistic approach; this theoretical component requires modifying the structure or "house" of the Canadian state and rebuilding it using a blueprint of Indigeneity. This concept will be more fully discussed in the following chapters. As Abele and Prince note, the concurrent logistics of nationhood require three processes: first, to build political and administrative institutions within Aboriginal communities; second, to align the parallel institutions between Aboriginal communities and the federal bureaucracy in order to facilitate budgeting and other administrative logistics; and third, to form shared institutions reflecting the realities of interdependence between Aboriginal and Canadian communities and coordinating the overlapping jurisdictions. Given the reluctance of the federal government to drastically reformulate its relationship with First Nations' governments, this model has not been successfully implemented anywhere in Canada. Abele and Prince do note, though, that there is theoretical support among many non-Aboriginal Canadians to affirm the nation-to-nation model of self-government, and that the shifting attitudes may soon create ripe circumstances for actualizing this model.

2.4. Accounting for variations in models

The self-government continuum described above reflects models that can be broadly

characterized as having three groups of proponents: individual bands (Sechelt/Nisga'a),

pan-Aboriginal organizations (AFN), and nations that assert their sovereignty outside of

the state (Mohawk). Claude Denis (2002) explains that the various models of self-

government differ on issues of adherence to the Canadian constitution, application of

the Charter, and scope of autonomy. The individual bands that seek self-government,

such as the Sechelt and Nisga'a, tend to agree to be situated within the Canadian

Constitution and adhere to the Charter, and they generally adopt municipality-type

governance structures. The general thrust of pan-Aboriginal organizations, such as the

AFN, is one that tends to seek adherence to the Constitution but non-application of the

Charter and a nation-to-nation relationship that parallels provincial and federal

governments. Finally, nations such as the Mohawk, who have never signed treaties and

have an assertive culture of independence, generally seek self-government outside of the

scope of both the Canadian Constitution and the Charter, and autonomy parallel to that

of the provincial and federal governments.

The variation in the themes of the self-government models is in some part due to

the federal government's case-by-case approach to negotiations and, more specifically,

to the very fact that there is no general framework on self-government models (a missed

opportunity forfeited by the failure of the Charlottetown Accord). As Denis offers,

> The difficulty rests with the fact that local and regional negotiations are being
> conducted (and concluded) before a general framework has been established. In
> this context, being more radical than what many First Nations seek, the AFN
> position makes it difficult for these more limited deals to be achieved and it
> delegitimizes them—nations seeking limited deals are said to undermine pan-

Canadian efforts. Conversely, when the leadership is weakened and governments go directly to individual nations to make agreements, it is the official position that is delegitimized. (2002: 45)

Given the lack of a coherent pan-Canadian agreement on the desired nature of First Nations–state relations or on concepts of self-determination, and given the absence of a First Nations–originated policy on self-government, the federal government negotiates with First Nations on a case-by-case basis. The variations in the particularities of self-government sought by each band oftentimes works to the advantage of the federal government, which approaches bands in a "piecemeal process," allowing for the state to pursue "its own agenda of containing the scope of indigenous demands. … In this respect, one might say that the unofficial motto of the federal government regarding post-Charlottetown indigenous issues is 'divide and rule'" (Denis, 2002: 46).

2.5. Gaps in the continuum

The models of self-government described above reveal important insights regarding the permissible adjustments to First Nation–state relations. The types of models that are considered workable, and the types of arrangements that are *excluded* from the feasibility of negotiations indicate that there is a predetermined repertoire of political manoeuvring in negotiating self-government that can be considered by the state to be a viable option. Overwhelmingly, self-government negotiations are "bounded by the Inherent Right Policy and government mandate and … driven largely by government rather than Indigenous mandates" (Irlbacher-Fox, 2009: 8–9). This means that the scope of the agreements is predetermined by official policy positions of the government even before negotiations can begin. Although every First Nation has its own vision of what self-determination through self-government entails, the federal government is the

agent that has the final say on the scope of self-government. This pattern is especially evident in the certainty provisions of self-government agreements that provide "de facto definitions of the scope and extent of the right [of self-government]. Imposed by the federal government, certainty clauses require Indigenous peoples to express their inherent right to self-government only as described in the self-government agreement" (Irlbacher-Fox, 2009: 7).[11] Certainty provisions are an indication of the limitations of self-government determined by the federal government. The interference of the federal government in First Nations' articulation of self-determination reflects the colonial relationship that underpins the self-government agreement.

The default colonial relationship dictating the self-government arrangements translates into the fact that the "acceptable" models of self-government—those that have been implemented in communities—are the models that are least disruptive to the paramountcy of the Canadian state. The mini-municipality, adapted federalism, and trilateral federalism models, to different extents, are deemed suitable because they do not alter the basic composition of the Canadian state, precisely because they do not radically challenge the political supremacy of the state. They are integrated into the existing structure and, to varying degrees, facilitate First Nation–initiated decision-making and administrative authority. While devolved administrative power is not to be altogether discounted, it is interesting to note that the model that has not yet been realized as a workable arrangement—the nationhood model—is also the one that calls for a stern questioning of the state's legitimacy and, by extension, a restructuring of the state's key composite features. Ladner observes that certain claims of self-government

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[11] For instance, in the Tłîchô Agreement of 2003, the certainty provision states that "Subject to provisions related to amending the Agreement, the Tlicho may not exercise or assert any Aboriginal or treaty rights other than those set out in the Agreement and defined rights under Treaty 11."

are excluded and ruled out when "federal policies and programs continue to speak of Indigenous governments exercising delegated responsibilities" (2006: 14) and do not substantively support First Nations' self-determining efforts in relevant jurisdictions. Indeed, as Maaka and Fleras note, in the framework of Indigeneity, self-determining models should be more than about cultural recognition or social equality through First Nations' administration; self-determination must challenge the foundational arrangements of exploitation, redistribute jurisdictions to which First Nations are rightfully entitled, and reinvigorate the treaty relationship (2005: 51). Most importantly, meaningful self-determination must be self-defined. First Nations, not the Canadian state, must be the ones to articulate what self-determination will look like, and, to achieve popular sovereignty, the models must be couched in the "consent of the people or their representatives. Without this consent, Indigenous peoples remain without sovereignty" (MacDonald, 2011: 258). Maaka and Fleras, and many who share their views, maintain that, without these components, self-government will always remain merely devolved administration, a regressive form of self-government that will stall the process of decolonization and arrest the Indigenous–state relationship in its current state of dependency.

2.5.1. Factors stunting the continuum

As is evident by the options available to First Nations along the self-government continuum, the full potential of self-determination is held back by several immediate factors. First, federal and provincial governments' recognition of self-government is always "contingent," meaning that it must emerge from the existing federal division of powers demarcated by the Constitution and must "depend either on authority delegated

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from presently existing levels of government or on authority provided by Acts of Parliament" (Asch, 1992: 46). This notion of self-determination necessarily being situated beneath the dominant Canadian sovereignty will be the main theme explored in this thesis, and Chapter 3 will focus on that analysis.

The second factor limiting the self-government options points to the trend that the self-government agreements, even the trilateral model that embodies the principle of shared sovereignty between federal, provincial, and First Nations governments, all too often are modeled after municipalities, making them inherently "[s]ubordinate or inferior" to the constitutionally recognized federal and provincial governments, and without "capacity to exist as a government and engage in administration and service delivery without the federal and/or provincial government providing resources and/or powers of taxation" (Ladner, 2006: 12). This means that band council governments are always supervised by the federal government; band funding, administration, third-party management, elections, and by-laws can often be overridden at the federal government's discretion (Ladner, 2006: 13).

The third factor limiting the options for autonomous Aboriginal self-government is the neoliberal ethos underpinning the Canadian government's decision-making process in modelling the self-government continuum. As MacDonald notes, there is "the practical benefit to neoliberal governments of conceding certain forms of self-government" (2011: 264). This is to say that the Canadian government, in its neoliberal manifestation, prefers some degree of Aboriginal self-sufficiency over total dependency on the state. To compact the need to divest itself of Aboriginal dependency, the state also perceives outstanding land and self-government claims as halting neoliberal growth

of the Canadian economy; as MacDonald notes, Aboriginal control over land—currently

20 percent of Canada's land is controlled by Aboriginal peoples—can be an impediment

to resource extraction and transportation (2011: 264). Thus, conceding self-government

arrangements eliminates many obstacles to economic development and may, in an effort

to minimize risk, be a greater long-term gain for the Canadian government than

altogether denying self-government on principle. While the government may appear to

be responding to the demands of First Nations under the guise of decolonization, the

self-government concessions are neatly orchestrated to be the least disruptive to the

state while being the most beneficial to its own interests. As Irlbacher-Fox notes, within

the neoliberal framework of conceding self-government for purposes of diminishing

state dependency and benefiting the economic development of First Nations, self-

government agreements "are more akin to lifelines that cannot be refused. … This is the

fundamental problem with land claim and self-government agreements. They embed

colonialism as the structure regulating Indigenous–state relations. They do not undo

ongoing injustices" (2009: 168–169). While the focus here is not strictly on the

incompatibility of the neoliberal ethos with Indigenous self-determination (this is a

complex research area in and of itself), it is important to note that the framing of self-

government has been overtaken by a vocabulary dominated by the extolling of the

virtues, or, in the very least, the neutrality, of neoliberal models that work to deny First

Nations that full right to mould their own political structures. As Kuokkanen writes,

"Considering that Canada's current … self-governance policy is premised on the

extinguishment of Aboriginal rights and Aboriginal title in exchange for rights included

in the new settlement of agreement…, it can be difficult to see modern treaties and

agreements toward greater self-reliance. For many, the Canadian Aboriginal self-

government policy represents a subversion of sovereign governments into segments of the colonial state" (2011: 287).

Understanding the state's interests and its non-negotiable requirements in the analysis of self-government models will allow us to see that the state is not neutral, and that the existing continuum of self-government models should not be accepted as an inevitable or timeless Truth. Identifying the state's interests and motivations in engaging in self-government negotiations will allow scholars, Aboriginal leaders, and activists to challenge the existing breadth of options and possibly even create a new continuum of options based on the interests of First Nations.

2.5.2. State-centered vs. Indigenous-centered models of self-determination

Adopting a lens of Indigeneity, it becomes evident that the broader problem with the current condition of the self-government continuum is that the models proposed as workable and viable are state-centered models of determination, as opposed to Indigenous-centered models of self-determination. State-centered models create arrangements that cement state paramountcy, prioritizing the interests of the state over those of Indigenous peoples (Maaka and Fleras, 2008). Conversely, Indigenous-centered models of self-determination call for more than merely sharing political space with the state; they require a change in the foundational colonial relationship and an institutional restructuring that can yield sustainable self-determining arrangements that do not reproduce the existing subordination of Indigenous peoples to the state. The existing agreements do not reflect a change in the colonial relationship. The following chapter will offer an in-depth examination of the assumptions that have led to the

creation of the current dualism between state-centered models and Indigenous-centered models of self-determination. At the heart of the dualism is the questionable notion of indivisible and unassailable state sovereignty that has evolved in a way that has naturalized the inevitability of state paramountcy at the exclusion of an Indigenous framework of sovereignty.

CHAPTER 3:
GENEALOGY OF SOVEREIGNTY AND IMPLICATIONS ON INDIGENOUS SELF-DETERMINATION

In describing the current status of the self-government options and opportunities available, it became evident in the preceding chapter that the models that are most frequently negotiated are Canadian state–centered models that dilute many First Nations' ideals of self-determination. Those models that are deemed practical by the Canadian government—mini-municipality and trilateral federalism—are least disruptive to the paramount sovereignty of state. Moreover, the models designed by the state end up "[handing] off large areas of responsibility to Indigenous peoples without passing on the actual decision-making power necessary to truly transform these policy areas. This is precisely the kind of change many Indigenous scholars and activists [including Alfred and Monture-Angus] have warned against" (MacDonald, 2011: 258).

The continuum of models described in Chapter 2 is the product of entrenched political assumptions and values about the contemporary understanding of the limits of state sovereignty. The objective in the present chapter is to explain how the discourse about self-government has come to be so limited, and how this limited discourse falls short of achieving fruitful self-determination for First Nations. Towards that end, the principal tasks in this chapter are to uncover the construction of sovereignty and the underlying assumptions behind it, and to determine what aspects of the traditional theory of sovereignty are restraining the continuum of self-government models. More

specifically, this chapter seeks to answer the following questions: What are the theoretical roots of modern sovereignty that define Canadian politics? How has the process of constructing this specific formulation of sovereignty accounted for the supremacy and paramountcy of Canadian state sovereignty, and how does the statist definition of sovereignty affect the viability of First Nations' self-government? Where does the state get its unquestioned legitimacy for claiming sovereignty? Why are claims for First Nations self-government (the ones that are beyond the mini-municipality and even trilateral federalism) generally viewed as outrageous and defeasible? This chapter relies on the theory of Indigeneity in addressing those questions, and points to an agonistic approach to remedy the stunted discourse on First Nations self-determination.

3.1. Importance of genealogical study

The viability of First Nations' self-determination is undoubtedly contingent on the state's particular interpretation and articulation of sovereignty, which makes the construct of Canada's sovereignty an important variable to demarcate and understand in the policy analysis. As Dominic O'Sullivan argues,

> Opportunities for self-determination for minority indigenous groups within the democratic pluralist nation state are variously limited: limited by the right of the state to govern on behalf of all citizens, by the requirements of the common good, and by democracy's tendency to see the community as an homogenous whole. Minority indigenous groups do not fit easily into that assumed whole, and the extent to which they may be self-determining is an outcome of the power relationship they have with the state. (2006: 76)

The construct of sovereignty and the corresponding power relations between a state and Indigenous peoples are at the heart of the challenge of self-determination. The political thought of sovereignty makes up "a language woven into the everyday political, legal and social practices" (Tully, 2000: 36) of Canadian society; as a foundation of the state's

institutions, the dominant theory of sovereignty continues to facilitate internal colonization. Importantly, this concept of sovereignty, as we know it in the contexts of modern nation-states, is neither an a priori nor a universal concept; it was theorized and constructed in an era of extreme conflict in Europe, and then exported to other parts of the world, only to become an artificially universal political standard. As Karena Shaw explains, "We do not have sovereign states because they are inevitable or necessary, but because their inevitability and necessity have been produced; we have been and must continue to be convinced of them" (2008: 39). States have traditionally favoured a concept of sovereignty that reinforces their own legitimacy, a concept that is delimited by "powers typically exercised by an independent state" (Macklem, 2001: 109). This narrow definition immediately excludes Indigenous people based on the requisite organization of political legitimacy based on states, not peoples or nations. Indigenous peoples, not only in Canada, but also in the USA, South America, Australia, New Zealand, and other colonized countries or regions, have original counterparts to Western political thought on sovereignty, but, as Tully argues, their language of political thought is "massively unequal in [its] effective discursive power in the present" (2000: 37). This is to say that there is an enduring asymmetry in the dissemination of political thought, with Western political thought dominating the discourse; the effect is that most contestation of Western concepts of sovereignty, especially if generated by Indigenous peoples, is overlooked, and more often is dismissed. The state is in the business of securing and protecting a cohesive identity, which would arguably risk fracture if it were to share equal political space with Indigenous sovereignty. To make the challenge even more formidable for First Nations, the leading principle of the international world order is the inviolability of state sovereignty. The vehemence with which the Canadian state

protects its sovereign power, and the support the state has from the international political system, have severe consequences for the viability of shared sovereignties that would allow for Canadian First Nations' self-determination. To challenge the international political order is a daunting undertaking, and First Nations are tasked with presenting an alternative to the inviolability of state sovereignty that will allow for self-determination.

The remainder of this chapter will be largely theoretical, synthesizing the extensive scholarship on sovereignty theory in an effort to understand how the theory has hindered self-determination practices. The discussion begins with a brief delineation of the early political theory on sovereignty that emerged between the sixteenth and eighteenth centuries. A careful review of the genealogy of sovereignty theory and the main themes entrenched in it will aid in understanding how sovereignty remains a central construct in political relationships between peoples and the state, and how its reproduction regulates the threat of the competing sovereignties of First Nations. Flipping this statement, this chapter will attempt to show how the construct of sovereignty and its lasting power over the imagination has limited the continuum of First Nations' self-government models, which is reduced to a selection that retains a colonial hierarchy that necessarily deprives First Nations of their nationhood.

3.2. Sovereignty in theory

The theoretical genesis of modern sovereignty was not a linear process with a singular point of departure; there were many important theorists who contributed at different times to the discourses of authority, legitimacy, state capacity, and sovereignty, and in

the heated context of seventeenth- and eighteenth-century Europe, there was no shortage of thought on the topic of power and politics. However, given the constraints of this thesis, a select group of theorists whose seminal works have lasting influence in defining the activities of the state will be discussed here. Jean Bodin, Thomas Hobbes, and Jean-Jacques Rousseau are early modern philosophers whose paradigmatic work has shaped the foundations of sovereignty "that most directly frames and severely constrains contemporary Indigenous politics" (Shaw, 2008: 19), and Michel Foucault's instrumental work in enriching the extant literature on sovereignty and power will round out the theoretical discussion of the construction of sovereignty.

Sovereignty—one of the most widely used but misunderstood political terms—is a principle in Western political thought that governs and defines the relationship between and within states. Its traditional definition as a basic rule of coexistence, as a social adhesive, and a form of exertion of authority, has been shaped over centuries of theorization, with political theorists such as Bodin, Hobbes, Rousseau, and Foucault contributing to its robust and multifaceted denotation. The term's proclivity to change in meaning in the past foreshadows its potential to change in meaning in the future. The term can at any political moment encompass conventions around government, law, international relations, ethics, and war (Prokhovnik, 2008: 8), but these elements coalesce in different combinations yielding diverse interpretations in response to the surrounding political climate. There cannot be a singular and static concept of sovereignty assigned to Canada—or any other state—because the definition "is always articulated in and contingently situated in particular languages, cultures, and sets of

contemporaneous questions" (Prokhovnik, 2008: 10). Indeed, we must weigh Alan

Cairns's argument that Canadian sovereignty

> ... is not the result of a plan or design of a founder, or the conscious pursuit by several single-minded generations of a dominating, guiding vision. ... The aggregate product of the endeavours of our ancestors, the contemporary administrative state in Canada, is the cumulative consequence of thousands of past decisions and actions, scattered over more than a century, by political and bureaucratic elites who necessarily had little appreciation of the state-citizen relationship to which they were contributing (1990: 321).

Accepting Cairns's argument that the articulation of sovereignty is a by-product of

national discourses and behaviours by countless actors over many years, it behoves us to

take into consideration historical attitudes, values, and beliefs in evaluating how the

past has shaped contemporary Canadian articulations of sovereignty. Given that the

scope of sovereignty changes as frequently as the political cultures, priorities, and

tensions change, it is important not only to discuss the theoretical legitimization of the

epistemology and ontology of Western sovereignty, but also understand what the

prevalent attitudes were and are in shaping how Canada has established its sovereignty

as paramount over Indigenous sovereignty.

Despite the pliability in definition, there are predominant themes and patterns

that characterize sovereignty, and which may have informed a specific formulation of

sovereignty in colonial states, especially in Canada. Bartleson (1995), echoed by

Macklem (2001), offers that, above all definitions, sovereignty is about asserting legal

expressions of collective difference. Ultimately, all definitions of sovereignty protect a

group's right "to construct, protect, and transform its collective identity" (Macklem,

2001: 111), and this conceptualization of sovereignty should be thought of in terms of

relationships as opposed to terms of institutions. Prokhovnik further proposes a

relevant deconstruction of the dominant definition, which can help unpack our understanding of Canadian sovereignty. She writes that the dominant concept of sovereignty has four constituent propositions: first, sovereignty means absolute and indivisible power; second, sovereignty means final and supreme authority; third, it entails a dichotomy between legal (law-making power) and political (legitimate power) supremacy; and fourth, it requires that internal and external sovereignty be mutually exclusive dimensions (2008: 2). Each of these propositions, however, has been proven to be malleable, changing under diverse circumstances and processed to make sense in disparate contexts. Broadly speaking, in the sixteenth and seventeenth centuries, Jean Bodin and Thomas Hobbes constructed a theory around sovereignty that would cement the legitimacy of a single authority over a unified nation. Their definition of sovereignty has changed in the contemporary context, reflecting a far broader scope of state control over some aspects of citizenship, such as taxation, while contracting in other areas, including monetary control, national loyalty, and labour control. The defining characteristics of a political era have undoubtedly shaped the contemporary concept of sovereignty.

Taking the lead from leading sovereignty scholar Stephen Krasner (2009), a neorealist political scientist, the definition of sovereignty can be sub-divided into four categories: international legal sovereignty (which involves states recognizing other states); Westphalian sovereignty (referring to the territorial boundaries of sovereignty and the primacy of non-intervention); interdependence sovereignty (which addresses the effects of globalization on changing the scope of sovereignty); and domestic sovereignty (the exertion of authority over internal citizens within the geographical

borders). For the purpose of understanding the meaning of sovereignty as it applies to First Nations in Canada, the most relevant tributary of sovereignty's definition will be discussed here: domestic sovereignty. Thus, the question asked in this section will be how is authority manifested and exercised?

3.3. Brief genealogy of main themes of sovereignty

A brief genealogy of sovereignty will allow us to identify the main themes and conventions regarding sovereignty that have been articulated and naturalized since the sixteenth century. An examination of how Bodin, Hobbes, Rousseau, and Foucault conceptualized sovereignty will allow us to see how the tradition of sovereignty is composed of several common themes that have built the foundations for the contemporary Canadian state, which has largely shut out competing notions of sovereignty for Indigenous peoples. The centuries of reproduced (with some variation) sovereignty discourse can show us that "one of the ways … [it] 'works' is by establishing parameters of possibility: by convincing us that it is the only possible solution to the problem of social and political order (all else is the state of nature)" (Shaw, 2008: 154). As a result, we are presented with a legacy of largely undisrupted mythology that becomes the target of agonistic Indigeneity, a framework that seeks to problematize the dominant discourse and open up a space for Indigenous concepts of self-determination. The following theories are severely synthesized for the purposes of demonstrating the early emergence of the core normative features of governance.

3.3.1. Jean Bodin

Formulating his theory against the sixteenth-century backdrop of the end of feudalism, a civil war, and the emergence of a centralized France, Jean Bodin is widely considered to be the earliest modern thinker to construct of a substantive theory of sovereignty and immensely influence the foundation of the discipline of political science (Merriam, 1972: 14). He characterized sovereignty as absolute, indivisible, and completely free from the limits of law. For Bodin, sovereignty is "The absolute and perpetual power of a commonwealth" (Merriam, 1972: 14) whereby the sovereign is entitled to make and enforce laws "to the subjects in general without their consent" (Merriam, 1972: 15). In the context of the religious conflict between Catholics and Huguenots in France, and the resultant shifts in political order due to the waning power of the Catholic Church, the papal institutions, and the Holy Roman Empire, Bodin articulated a political theory that would support the emergence of secular politics and unified statehood. Central to the logic of Bodin was his argument for the asymmetrical nature of absolute sovereignty, placing the sovereign as the ultimate power so as he "commands but cannot be commanded" (Prokhovnik, 2008: 51). This characterization of sovereignty reflects Bodin's unambiguous hierarchy of normative values, wherein the political values of order and political stability supersede liberty. For Bodin, a strong commonwealth must be unified by an absolute sovereign, who must be above "the commands of someone else and ... able to give the law to subject, and to suppress or repeal disadvantageous laws and replace them with others" (Bodin, quoted in Prokhovnik, 2008: 38). Bodin argues that under no circumstances may resistance—in the form of physical violence or

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otherwise—against a legitimate sovereign be condoned or forgiven;[12] because the sovereign is responsible for uniting the otherwise-disparate and conflicting subjects by making and enforcing laws, he must be above the law, not subject to it, and by extension, must be protected from any kind of resistance. As Prokhovnik explains, for Bodin, "the sovereign can never be legitimately hindered by any of his subjects, even if his commands are not honest or just" (2008: 40).

Also important to Bodin's conceptualization of sovereignty is its indivisibility; the sovereign is holder of absolute power, although he has the prerogative to assign "trustees and custodians of that power until such time as it pleases ... the prince to take it back, for the latter always remains in lawful possession" (Bodin, quoted in Prokhovnik, 2008: 39). This means that any sharing or distribution of this power is a temporary loan, and it can be revoked by the sovereign at his discretion. For Bodin, the temporary doling out of powers did not diminish the absolute and indivisible nature of the sovereign. In Bodin's characterization, sovereignty will always amount to absolute and perpetual power, always above the law.

Bodin's political theory on sovereignty had a direct implication on the theoretical underpinnings of absolutism in seventeenth- and eighteenth-century France and would become "the foundation of the modern theory of sovereignty" (Merriam, 1972: 16). Bodin contributed to the conceptualization of sovereignty as "primarily a legal concept," with "legislating as the key function of the sovereign" (Prokhovnik, 2008: 51). As an early theorist on sovereignty, Bodin defined the relationship between sovereign and

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[12] In fact, he did add one qualification: A tyrant can be justifiably and lawfully killed by a foreign prince. This qualification is consistent with theory supporting absolute sovereignty because Bodin's political ideal is to instate *legal* absolute sovereignty.

subject in legalistic terms, and while "the persistence of older patterns in political life in France distort and make more complex the impact of his theory," (Prokhovnik, 2008: 52), there are recognizable threads of Bodin's theory and value hierarchy distinguishable in the reflections and publications of his successors.

3.3.2. Thomas Hobbes

Thomas Hobbes's theory on sovereignty is widely considered to have provided "the paradigmatic definition of sovereignty not just for the modern state but also ... for the modern international system" (Prokhovnik, 2008: 55). Hobbes's sovereignty is premised on his characterization of man in the state of nature—that is, prior to and outside of political community and organization. Hobbes surmised that, based on man's predisposition to be competitive, greedy, diffident, and in search of glory, man is naturally inclined to war and quarrel. Without "a common power to keep them all in awe," (Hobbes, 1983: 143) men are caught in a state of war, "where every man is enemy to every man" (1983: 143) and where "every man has a right to every thing; even to one another's body" (1983: 146). To support his characterization of man, Hobbes uses North American Indigenous peoples to exhibit what he considers an accurate representation of evidence of the dynamics in the state of nature: "For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all" (1983: 144). This statement—factually baseless and poorly researched—has enormous implications for future theory, which assumes only a specific kind of organization and political community to be legitimate governance. Despite the negative ramifications, however indirect, that Hobbes's statement has for the viability of Indigenous sovereignty, his characterization of the

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"natural" state of man establishes the foundation for the necessity of having a common sovereign who will keep man out of the state of nature. From this emerges his concept of sovereignty.

For Hobbes, sovereignty is essential if man is to be saved from the ruthless and insatiable drive of other men's natural right to every thing, for, "as long as this natural right to every thing endureth, there can be no security to any man" (1983: 146). Sovereignty begins when all men renounce or transfer their natural rights, thus entering into a covenant held together by a common power that will "direct their actions to the common benefit" (1983: 176). By transferring all of their natural rights, power, and strength to the sovereign, men authorize the sovereign to legislate and rule for the greater peace, safety, and security of the political community. Indeed, it is the sovereign's key role to exercise executive decision-making powers in order to eliminate conflict, factions, and residual potential for war (in sum, the return to the state of nature). Hobbes, echoing Bodin's normative hierarchy, places more importance on political stability and peace than on individual rights. This root ideal gives rise to one of the most germane concepts in genealogy of sovereignty: indivisibility of sovereignty.

Like Bodin, Hobbes argues that the sovereign commonwealth cannot be divided, as dividing power is tantamount to completely dissolving it: "powers divided mutually destroy each other" (1983: 288). Centralized executive power is essential if the sovereign is to keep the state unified, and divisions or devolution of power will not only dilute the single instruction and lawmaking power, but, more worryingly for Hobbes, will create private judging that can proliferate destructive opinions and undermine the unity of the commonwealth. Hobbes's design of sovereignty is intended to prevent disagreements in

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an effort to collaterally prevent the complete unravelling of the fabric of the commonwealth. It is thus not surprising that Hobbes also condemns dissent; he argues that, through the process of agreeing to the covenant, men entered a non-reversible arrangement without any option of withdrawing their participation in the commonwealth. The permanence of their obligation means that they cannot withdraw their consent and therefore cannot resist the sovereign.

In sum, the key attributes of Hobbesian sovereignty are as follows: To keep men out of the state of nature, the sovereign, sitting at the apex of power and above the law, holds exclusive authority to create law that will eliminate conflict and keep the commonwealth united. All of Hobbes's constituent characterizations of sovereignty point towards the theme of sovereign indivisibility, a construct that he defends convincingly, and, as we will see, has a strong residual effect on subsequent theories in Western political thought. The fundamental upshot of Hobbes's view of sovereignty is that it places order above freedom and rights (both individual and collective). This notion has an important implication for sovereignty in relation to Indigenous peoples not only within the Canadian polity, but also other polities. As Shaw articulates, "By locating the realm of the properly political as the negotiation of relations between preconstituted subjects and a sovereign—in relation to governance—Hobbes effectively stabilizes politics in the form of the modern nation state" (2008: 203).

3.3.3. Jean-Jacques Rousseau

Following the publication of Hobbes's work,[13] Jean-Jacques Rousseau was the next

writer to significantly contribute to the canon of writing on the nature of sovereignty.

Preceding (and later influencing) the French Revolution, Rousseau's seminal work on

sovereignty, *The Social Contract*, offered a description of an ideal political arrangement

that would augment and defend man's freedom as closely as it could resemble freedom

in the state of nature, which, for Rousseau, was characterized by man having complete

freedom but also the lack of rationality and morality. Thus, Rousseau positioned himself

opposite Hobbes, creating an image of the state of nature that was more positive than

Hobbes's, including a general absence of inequality. However, like Hobbes, Rousseau

believed that the state of nature was an unsustainable environment for infinite

successful human preservation, and prescribed "the complete transfer of each associate,

with all his rights, to the whole community" so that "each of us puts his person and all

his power in common under the supreme direction of the general will" (1994: 55). The

incentive for entering a social contract and forming civil society is for man to gain civil

freedom, enhance rationality, amplify ideas, and, generally, raise the soul to a level

where he can become "an intelligent being and a man" (1994: 59). These qualities are,

for Rousseau, an immediate improvement over the unenlightened personalities that

occupy the state of nature.

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[13] In the intervening years, John Locke published his theory on political organization, generally amounting to the notion that the legislature is the supreme governmental sovereign, but their sovereignty is subordinate to the political sovereignty of the civil and political society, which has "the right to resume the sovereignty temporarily placed in the hands of the Legislature" (Merriam, 1972: 32). In essence, Locke's theory on sovereignty is less developed or refined than Hobbes's and can be summed up by the argument that sovereignty is not absolute. Because of the lack of a fleshed-out theory on the nature of sovereignty, Locke's work will not be considered here.

The creation of this unified political body having a common general will by means of a social contract is the sovereign. This means that sovereignty is held not by an office or representative, but by the people comprising the body politic. According to Rousseau, the general will "always tends to the public welfare" (1994: 66) and can never err because it is always leaning towards the conservation of the whole sovereign. Because this collective body is united by the transfer of rights to a social contract that represents the common will, the sovereign can be neither divided nor transferred; as Merriam explains, the "the will ... is one or not at all" (1972: 388). Further, Rousseau stipulates that, logically, there can be no dissent against the sovereign, as the sovereign "has and can have no self-interest that is contrary to [the people]" (1994: 58). If an individual person disagrees with the will of the sovereignty, Rousseau argues that the only solution is to cast that person out of the social contract, to force him to be free (1994: 59). Thus, Rousseau argues that the operation of sovereignty must be devoid of contradiction and subversion, which would otherwise render sovereignty "absurd and tyrannical, and subject to the most terrible abuses" (1994: 58).

Rousseau's sovereignty, in the hands of the people, is inalienable, indivisible, infallible, and absolute, "untrammeled by limitations, incapable of contractual restraint" (Merriam, 1972: 37). What is interesting about Rousseau's conceptualization of sovereignty for Aboriginal peoples is that it tends to be based on the assumption that all people are of the same nation. Moreover, it pits the sovereignty of the people as a single nation against the sovereignty of the monarchy or some other configuration of state power. It does not take into account the possibility of a multiplicity of nations existing within a single state (i.e., a multi-nation state) and the need to recognize and reconcile

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the rights of the various nations and the state. Thus, Rousseau, like Hobbes, contributes to the conceptualization and consolidation of a paradigm of sovereignty that does not contribute to the recognition and reconciliation of the rights of Aboriginals vis-à-vis other nations or the state.

3.3.4. Common themes

The theories described thus far are governed by a particular ontology that reinforces several defining features of sovereignty. First, according to these theories, sovereignty must be vertical; sovereignty is always ultimate, and, with an unmitigated right to rule, the sovereign and his metaphorical fist hover over civil society. Second, as Hobbes and Rousseau establish, the contract is the basis of creating sovereignty and the state. The original notion of inalienable, indivisible, and infallible sovereignty looking out for the best interest of the people remains a defining feature in the international adoption of governing conventions. Behind the social contract lies the idea that the people consent to the system of sovereignty; this implicit acquiescence evokes permanence and inevitability in the theoretical truths of the construct of sovereignty. Foucault would also later comment that the contract stands for a guarantee of life; citizens enter a contract and authorize sovereignty "in order to protect their lives. It is in order to live that they constitute a sovereign" (1997: 241). This is to say that the contract is presented as *the* alternative to the state of nature, which nearly ensures death, and that constructing the particular form of sovereignty common in Western political thought is synonymous with guaranteeing life; who could object?

Third, related to the contract, in delimiting the "natural" condition of humans and establishing that a social contract that creates an infallible sovereign is a preferable

condition to "what it was before" (Rousseau, 1994: 70) in the state of nature, the political theorists discussed here have created an seemingly unobjectionable truth: Sovereignty, as conceived in the canon of Western political thought—united, ultimate, indisputable, and legitimate—is the saving grace of humankind; without it, we are doomed to some variation of gross trouble. This normative assumption is that, naturally, no one would want to be less-than-empowered, less-than-protected, and the normative judgement is that political societies thrive under the conditions of sovereignty and suffer without it.

Fourth, these models of sovereignty have in common two basic but dangerous assumptions: first, that there is a common will or a common good, and second, that the sovereign must be unified to protect or carry out this common good. The methodology of determining the common good is not substantively discussed, the omission addressed only with a mere guess that the common good finds its expression through a process of elimination or through an enlightened office. As we will see later, these assumptions are entirely inappropriate for colonial contexts where the common good of the settlers is inimical to the common good of the colonized. This assumption that there is a unified common good silences conflicting interpretations of the common good, and, in a colonial context, where one sovereign has not only imposed its common will on another sovereign body but also prioritized and naturalized it, the silencing of any competing understanding of the "good" will prove to be the most significant obstacle to surpass or renegotiate for those who are excluded.

3.4. Sovereignty as power

The themes produced and reproduced by Bodin, Hobbes, and Rousseau have lent sovereignty a very particular meaning and expression, most pervasively, "supremacy over all other potential authorities within that state's boundaries" and a concentration of "power sufficient to secure independence from other states" (Fowler and Bunck, 1995: 5). Sovereignty came to denote the separation of internal from external; the state, through bounded territory, identified itself by the exclusion of other states. The construction of the concept of sovereignty has been the result of a complicated interplay between theory, historical context, and practical adjustments to political procedure, and there have been shifts in the meaning of sovereignty that have reflected the changing political landscape throughout the history of modern politics. While sovereignty has relented in its early draconian expression of ultimate, undivided, and unaccountable power, the state, which has long been the fulcrum of the expression of sovereignty, has seen unprecedented shifts in the amount and type of power it can wield. In an increasingly globalized world, politics is no longer defined solely by de jure state sovereignty. Instead, it is being usurped by the proliferation of multiple centers of power. There are trends in denationalization of currencies and commodities, permeable borders, governance activities by international private and public organizations, cross-border terrorism, piracy, and supranational judicial decision. While these changes do not render state sovereignty obsolete, they do highlight that sovereignty is a malleable concept that can allow for relational change. Importantly, both on the international stage and domestically, sovereignty is no longer conceptualized as a top-down, centralized process; rather, it is "present in and formative of social relations. …

According to Michel Foucault, it is more helpful to speak of power relations than of power per se" (Edkins and Pin-Fat, 2004: 2).

Michel Foucault is responsible for framing questions around sovereignty in terms of political power; he refocused attention not on state behaviour by means of policy and law, but in terms of "mechanisms, techniques, and technologies of power" (1997: 241). Foucault was interested in the production of power by governments, and specifically the techniques of government used to dominate, determine, and limit the framework of actions available to "individuals who are free" (Foucault cited in Hindess, 1996: 100). Foucault's seminal work on the role of power in the state has become an important beacon in rethinking political relations, steering the discipline away from the narrow conception of sovereignty as an arrangement of government, and towards a meaning of government that focuses on conduct and behaviour. For Foucault, sovereignty is "merely a term for the kinds of power that have little or nothing to do with states or kings" (Martel, 2007: 238). Sovereignty is a pretext for the exertion of power, and the concept of sovereignty itself, according to Foucault, is outmoded. It is power, exerted through regimes and controlling the content of human lives, calling itself sovereignty, that defines political relationships. Foucault makes the argument that "so long as we understand sovereignty purely according to a medieval juridical model, we will never understand how sovereignty is not so much an actual font of authority, but a rhetorical production" (Martel, 2007: 239).

The exertion of power through techniques of government is a complex theme arguably deserving of more thorough discussion than this chapter will allow. However, a general picture of Foucault's concepts can be drawn here, aiding in the coming

discussion of the Government of Canada's exertion of power. Foucault's concept of

power opens with his assertion that power is "a ubiquitous feature of human

interaction" (Hindess, 1996: 100), present in every social context everywhere. Foucault

clarifies, though, that the "exercise of power is not simply a relationship between

partners, individual or collective; it is a way in which certain actions modify others.

Which is to say, of course, that something called Power, with or without a capital letter,

which is assumed to exist universally in a concentrated or diffused form, does not exist.

Power exists only when it is put into action" (1982: 788). Thus, power in the context of

government and state is very specific: it is a process of placing limitations on the

behaviours or thoughts of others. Power in government is executed by a process of

"guiding the possibility of conduct and putting in order the possible outcome" (1982:

789). Foucault concisely states: "To govern … is to structure the possible field of action

of others" (1982: 790). Power is inherently about limiting the scope of the behaviours of

others, and as such, it is not an observable mechanism; if executed properly, it is not

even noticed.

Given his definition of power, Foucault sees the state as a locus of mandated

behaviours and norms, drawing a kind of box around the permissible actions of the

citizens (or subjects):

> I don't think that we should consider the "modern state" as an entity which was
> developed above individuals, ignoring what they are and even their very
> existence, but, on the contrary, as a very sophisticated structure, in which
> individuals can be integrated, under one condition: that this individuality would
> be shaped in a new form and submitted to a set of very specific patterns. (1982:
> 783)

Foucault offers us a very useful conceptualization to apply to the relationship between

First Nations and the Canadian state. For First Nations, "the discourses and practices of

modern sovereignty are synonymous with those of colonialism" (Shaw, 2008: 173). And if sovereignty is an idiom—an expression whose meaning is not evident from the term itself—it becomes clear that the reason that the continuum of self-government models is limited is not because it must respect objective conventions surrounding domestic sovereignty, but because the Canadian state has a stake in protecting its colonial paramountcy. In the context of First Nations' self-government models, the state has exerted its power by defining the north and south, and east and west poles of the continuum. It has restricted the scope of movement available for First Nations to establish a model of nationhood, and thus has saved itself from being challenged or, worse, undermined.

The ideas established in the early theories for sovereignty, which have been reproduced as natural and entirely logical, contribute an immense degree of support towards the modern form of lived sovereignty. In order for the state to control behaviours and set limitations for contesting sovereignties, it requires a narrative that will remind citizens (or subjects) of their unfavourable state of nature, legitimize the *need* for the existence of a protective authority, and establish the incontestability of the role of the state. While Bodin, Hobbes, and Rousseau are not mentioned in the daily rhetoric of modern politics, their ideas form the backbone of the "normal" in the political.

If we agree with Foucault that sovereignty is a facade for power—that beneath the doctrine of sovereignty is actually a regime of power that determines the content of our civil relationships—and if sovereignty is simply a strong metaphor or image of power, then what are the costs or implications of believing in this metaphor of sovereignty? We

do not have to accept sovereignty exists the way Hobbes or Rousseau described it; indeed, it does not anymore. But Hobbes and Rousseau were not inventing the concept from scratch. They were reflecting power relations existing at the time and attaching a name to it and prescribing the best use for it. This expression of power has changed with different contexts since the sixteenth to eighteenth centuries, but it remains a fact that the doctrine of sovereignty has consistently offered states and centers of authority a name for exerting power for the common good, and states have reproduced the arguments put forth by early theorists to legitimize their exercise of this power. Foucault's argument about the exertion of power in the name of sovereignty is an appropriate means through which to conceptualize the Canadian expression of sovereignty over First Nations in matters of self-government.

3.5. Canadian state's exertion of power

Canada's exertion of sovereignty can be recognized in its erasure or non-acknowledgement of prior sovereignty among the Indigenous nations pre-contact. The *Constitution Act of 1867*, which established a new confederation, made only one mention of Aboriginal people; it was in section 91(24), where Canada asserted the federal jurisdiction over "Indians and Lands reserved for the Indians." This statement made no note of "the fact that, prior to European contact, Aboriginal people belonged to nations structured by ancient forms of government exercising sovereign authority over persons and territory" (Macklem, 2001: 107). It was a statement of imperial supremacy and control, showing no deference to the extant nationhood or concept of *tewatetowie*.

Canada's exertion of power and sovereignty is situated in doctrines that reflect the greater themes of the traditional approaches to exercising sovereignty prescribed by Hobbes and Rousseau. The doctrines contributing to the stagnation of First Nations' self-determination are the following: the doctrine of discovery, terra nullius, the doctrine of civilization, the doctrine of settlement, and the doctrine of sovereign incompatibility. These doctrines and assumptions are a lattice of interwoven and mutually reinforcing arguments of logic that work to create the overarching standard of paramount Canadian power.

Sovereignty in Canada in regards to First Nations rests on the principle of "colonizer's law," which requires that all First Nations people "exist *within* the dominant societies as minorities, domestic, dependent nations, aboriginal peoples or First Nations *of* Canada" (Tully, 2000: 38). Colonizer's law rests up the doctrine of sovereign incompatibility, which necessitates that "only Canada can hold absolute authority and have the final say over Canadian territory" (Maaka and Fleras, 2005: 211). The presumption of exclusive sovereignty in Canada has dominated the governance myth continuously since the sixteenth century, when the territory of Canada was "discovered"; informed by the imperialist principles of Europe, the colonizing powers asserted sovereignty over the territory through the "doctrine of discovery," which granted sovereignty over a territory by virtue of discovery, given that the territory was *terra nullius*, or land occupied by no one.[14] Despite the presence of Indigenous peoples, international law recognized European sovereignty over the land because "European powers viewed Aboriginal nations as insufficiently Christian or civilized to justify

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[14] Tom Flanagan, in *First Nations, Second Thoughts* (2008), is an example of a contemporary academic who still espouses these views. His research and publications are largely premised on the assumption of terra nullius.

recognizing them as sovereign over their lands and peoples" (Macklem, 2001: 114).

Thus, the assertion of sovereignty by early colonizing powers was recognized by the

international community, which was a sufficient concession for the further

normalization of unilateral sovereignty over the prior sovereignty of Aboriginal nations.

The imperial presumption of state sovereignty was later cemented during

Confederation and the drafting of the *Constitution Act of 1867*, which, in section 91(24),

acknowledged state sovereignty over Aboriginal peoples and assigned the state the

jurisdiction over "Indians, and Lands reserved for the Indians." In this section of the

Constitution, Canada erased the history and legitimacy of Aboriginal sovereignty, and

established itself as the immovable sovereign over First Nations peoples. In the

patriation of the 1982 *Constitution* Act, section 52 further entrenched state supremacy

and the paramountcy of Canadian state laws: "The Constitution of Canada is the

supreme law of Canada, and any law that is inconsistent with the provisions of the

Constitution is, to the extent of the inconsistency, of no force or effect." Thus, we can see

that the double reinforcement of section 91(24) and section 52 solidify the state's

assertion of its indivisible sovereignty.

Canadian sovereignty is hinged on the proposition that "the exercise of exclusive

jurisdiction over the territories of indigenous peoples is not only effective but also

legitimate ... [and] there is no viable alternative" (Tully, 2000: 51). From a critical

perspective, this is a truism that does not reflect the possibility of building a society in

which all peoples are free and equal. This concept of sovereignty, which emerged out of

a deeply entrenched European tradition described above, has isolated many other

variations of sovereignty, especially shared sovereignty.[15] How did the Canadian state's

sovereignty supersede the sovereignty of the First Nations who had governed themselves

since time immemorial? Tully explains, convincingly, that there were two processes that

worked to legitimize the sovereignty of the Canadian state. The first was a simple

assertion of sovereignty on the premise of "discovery," along with a definition of the

border, which sufficed in the eyes of the European community as an act of sovereignty.

The second process was to gain internal sovereignty (after all, the Indigenous population

of the territory was not persuaded by Canada's announcement of sovereignty to the

European community). These processes entailed acquiring consent from the First

Nations through treaties, which symbolized international negotiations between two

sovereign entities. While the expectation with treaties was that First Nations people

would consent to *coexisting* Crown sovereignty under the condition that their own

sovereignty would not be undermined nor interrupted, the reality was that treaties were

interpreted by state officials as First Nations' consent to *exclusive* Crown sovereignty.

These deceptive negotiations resulted in the successful acquisition of First Nations'

consent for Canadian state sovereignty. It was a "technique of government," as Tully

calls it, a subtle strategy employed by the government in establishing its unquestioned

legitimacy and raison d'être.

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[15] In the context of First Nations' self-determination, Canada's political structure as a federalist state does not dilute this argument about the indivisibility of state sovereignty. First Nation governments will not be treated as provincial equivalents because, as per section 91(24) of the Constitution, Canada has jurisdiction over First Nations, making First Nations politically subordinate to the state. Furthermore, the federalist division of powers does not grant provinces the sovereignty that First Nations claim; provinces arose from the colonization of Canada and thus do not have the treaty-based sovereignty that First Nations do. It should not be argued that federalism is evidence that sovereignty is divisible, because provinces do not lay claim to the *sui generis* form of sovereignty held by First Nations. Furthermore, as Alan Cairns notes, the Canadian Constitution, and specifically the Charter, is "a device to limit the creation of provincial diversities by the exercise of provincial jurisdictional power" (1990: 335). This is to say that the Constitution was designed to prevent provinces from fracturing from the state or competing with federal citizenship. Cairns illuminates the consistency in the thought that the Canadian state is at the apex of power.

3.5.1. Techniques of government

Techniques of government are used to minimize the liabilities associated with being a colonial state. Canada has had to work to normalize and justify the colonial state model as desirable, legitimate, and "an end in itself" (Tully, 2000: 40). The technique of government in the name of exercising sovereignty has been to extinguish Indigenous peoples, initially intended to occur through extinction (a real possibility in the nineteenth century), and later by means of "the overwhelming power of the dominant society … [weakening] the indigenous population to such an extent that their will and ability to resist incorporation would be extinguished" (Tully, 2000: 40). This latter technique of government has proven to be effective in three ways. The first result it has had is discursive: delegitimizing the inherency of the Aboriginal claim to sovereignty through such presumptions as *terra nullius* and the primitive thesis. The second result of the latter technique is the extinguishment of rights "through conquest, the assertion of sovereignty and the doctrine of discontinuity, supersession or by the unilateral effect of lawmaking or voluntarily," as through treaties. The third result it had on weakening Indigenous resistance was through integrating or assimilating First Nations into the dominant society "through re-education, incentives and socialisation so that they lose their attachment to their identity" (Tully, 2000: 40–41). These techniques of government have worked to erase First Nations' points of contention, easing them into the dominant narrative, and thus allowing the state to "capture their rights, dissolve the contradiction and legitimise the settlement" (Tully, 2000: 41).

Evident in these techniques of government is a reflection of the early theorists' myth-making processes, namely of weaving a narrative of united state that has as little political diversity and dissent as possible. In order to survive, the colonial state must be

united and uninterrupted with dissent. The narrative of the common good—touting the virtues of Western European political and cultural ideals—told by a sagacious sovereign proved, in Canada's case, to subvert *sui generis* Indigenous sovereignty and position Canadian sovereignty, as conceptualized by the Canadian state through the persistent and pervasive lens of Eurocentric paradigms, as the only legitimate form of sovereignty.

3.5.2. Undermining First Nations' sovereignty: Constitution and courts

More recently, state sovereignty has been unquestioningly asserted through Section 35 of the *Constitution Act, 1982*, which states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." The document unilaterally "subjects [Aboriginal peoples] to the Canadian constitution. In so doing, it reaffirms the system of internal colonisation" (Tully, 2000: 45) by undermining the inherency of First Nations' sovereignty, which had to be recognized by the state and the courts before it gained legitimacy. Without the state's recognition, Aboriginal sovereignty stood no chance of independently being acknowledged and respected prior to this document. As Tully elaborates, Aboriginal pre-existing "activities, institutions and practices, which are the universal criteria of sovereignty and self-determination, did not give rise to any rights until they were recognized by the Crown as common law rights until 1982, and as constitutional rights thereafter" (2000: 46).

It is appropriate to note that the Constitution's recognition of Aboriginal rights—and the Canadian courts' general approach to recognizing Aboriginal rights—relies on a model of liberal-pluralism that acknowledges Aboriginal rights within the purview of minority rights in general. The Constitution arguably subverts Aboriginal nationhood

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and related claims to sovereignty by selectively recognizing "way-of-life" rights of cultural distinctiveness, which offers "Indigenous communities a substantial degree of protection for their cultural practices *within* the Canadian state, [but] ... nevertheless [fails] to challenge the colonial origin of Canada's assumed jurisdiction over the lives and lands of Aboriginal peoples" (Coulthardt, 2003: 15). The liberal values underpinning the Constitution dictate that Aboriginal rights are "subsumed within the superior forms of sovereignty held by the provincial and federal governments" (Turner, 2006: 57). Conflating Aboriginal rights with other minority rights in a liberal framework is dangerous because it presupposes the political equality between Indigenous and non-Indigenous peoples and positions the Canadian state as the sole and ultimate source of sovereignty, thus excluding competing claims to sovereignty by Aboriginal peoples.

A second gesture of entrenched Canadian sovereignty is evidenced by the response of courts to claims of Aboriginal sovereignty. Maaka and Fleras (2005) show that there are pervasive attitudes within the legal system halting the process of legally securing the models of self-determination. They write that in 2002, Chief Beverley McLachlin "argued that under English colonial law the pre-existing laws and interests of Aboriginal peoples were absorbed into common law upon the Crown's assertion of sovereignty" (2005: 211). This statement reflects the legal system's power in affirming the paramountcy of Canadian sovereignty, which itself is predicated on an assertion justified by certain logics skewed to benefit the state. Furthermore, where First Nations challenge state sovereignty through the courts, the legal system requires the burden of proof to be not on the state to prove its underlying title to land, but on the First Nations. First Nations must satisfy the court with evidence that the "they occupied the claimed

land at the time the Crown asserted sovereignty over them, and that the occupation was exclusive" (Tully, 2000: 47). In a joint submission to the UN Committee on Economic, Social, and Cultural Rights, a group of Canadian Indigenous organizations and BC nations succinctly expressed the courts system's entrenched conflict of interest thus: "Rather than require the Crown to demonstrate how it has acquired Indigenous Peoples' lands and resources, Canadian jurisprudence requires Indigenous Peoples to prove that they had exclusive occupation and control of their lands when the Crown asserted sovereignty. ... If Indigenous Peoples are not able to meet these [standard of occupation] tests, their rights do not continue" (INET et al., 2006: 18).

The state has developed the court as a technique of government, excluding First Nations from pursuing land-based self-determination through non-colonial mechanisms. The compliance of First Nations in using these channels—however reluctantly—has served as further justification of Canadian sovereignty.

First Nations, aware of the theoretical machinations of the state, have in effect been working to "modify the techniques of government to gain degrees of self-government and control over some of their territories" (Tully, 2000: 38). The most potent mechanism of challenging the techniques of government is to question the underlying presumptions and myths that drive the techniques forward. This is a difficult task, especially considering the asymmetrical dispersal of power and the entrenched political and legal structure of the state. However, as Alfred argues, it is crucial to "deconstruct to notion of state power to allow people to see that the settler state has no right to determine indigenous futures" (1999: 47).

3.6. Conclusion

Often scholars and advocates of First Nations' self-government and self-determination will highlight the egregious fourth-world conditions on reserves, the colonial paternalistic attitudes, and destructive "Indian policy" to emphasize the need for First Nations to determine their own futures. In focusing on the violences exacted by the state, the intention is to raise awareness and condemn the harmful practices and policies of a seemingly short-sighted and ignorant Canadian state. However, while these practices and particular violences are not to be overlooked, and indeed provide weighty evidence to justify the urgency of the call for self-determination, the underlying challenges remain largely uncontested. Shaw writes, "We are … reluctant to throw into question the sovereign state as the assumed ground and frame for the political, even though it is this assumption which has contributed to the apparent necessity of and legitimacy for such violences" (2004: 204). Sovereignty as a construct has worked to limit the scope of political imagination. As a result, scholars discuss many adjacent problems related to colonization and state-determination, but they shrink from addressing the alarming pervasiveness of the assumptions embedded in sovereignty. Shaw elaborates: "We can imagine, and perhaps even produce, divided authorities or shared authorities; we can debate over jurisdictions, 'levels' of government, and so on, but only to the extent that sovereignty is already resolved" (2004: 206). Until scholars address the question of how sovereignty is understood and what this understanding entails, the patterns of colonization and state-centric governance will be reproduced in perpetuity, and no arrangement of self-government will possibly reflect self-determination.

What is the legacy of the political thought on sovereignty? As Turner explains, "history and Western philosophy have not been kind to Aboriginal ways of understanding the world, so it is vital that Aboriginal voices be listened to and respected as philosophically legitimate participants in the discourse of Aboriginal sovereignty" (2006: 69). Many advocates of self-determination—Aboriginal and non-Aboriginal— seek not a manifestation of sovereignty that altogether disrupts the unity of Canada, but rather a form of self-determination that promotes a different form of relationship with the state, wherein the state is one sovereign next to others, without hierarchical prioritization of interests. As Macklem argues,

> The constitutional task is to establish arrangements that enable Aboriginal along with federal and provincial governments to exercise sovereign authority in a manner that expresses and protects the lived experiences of the overlapping communities they serve. This task includes determining which level of government—federal, provincial, or Aboriginal—should prevail in the event that one level exercises sovereign authority in a manner than conflicts with or threatens the sovereignty of another. (2001: 123)

While Western political thought has established a regime of thought in evaluating sovereignty, we know that this tradition is a construct, and with the incorporation of Indigenous political thought in the discourse of sovereignty, the construct can be dismantled and rebuilt in a way that respects Indigenous sovereignty.

CHAPTER 4:
TOWARDS AN AGONISTIC INDIGENEITY

The preceding chapters have established that certain processes and narratives of the Canadian state's legitimization of sovereignty have limited the scope of the possibilities for Indigenous self-government. The discourse itself has been characterized by the presupposition of the Canadian state's interests and imagination of what constitutes a permissible degree of dividing sovereignty. This prioritization of the state's concept of sovereignty over Indigenous claims to self-determination has had the effect of muting the Indigeneity underpinning the discourse and, by extension, diminishing the space for meaningful debate about the possibilities of reconfiguring Aboriginal–state relations. Heretofore in Indigenous–state politics, any well-intentioned attempts to find middle ground between First Nations' rights to self-determination and the Canadian government's control of the sovereignty have been piecemeal, skimming the surface of the issues of the debate without truly addressing the ways in which the two parties relate to one another. Some attempts at improving Indigenous–state relations and introducing a viable model of coexistence have included constitutional reform, comprehensive and specific land claims, amendments to the *Indian Act*, and devolution of power, but each "solution" has been compromised by the Canadian government's "insisting on its placement within the framework of Canadian society and subject to the *Constitution* of Canada" (Fleras and Elliott, 2003: 200). The solutions to First Nations' demands for accommodating self-determination have been characterized by the state's insistence on subordinate self-sufficiency or, at most, a degree of federalism that allows for extensive

autonomy over issues relating to First Nations but that retains the status quo in constitutional space; as Turner has observed, the "interpretations of section 35(1) [of the Canadian Constitution] have produced a 'theory' of Aboriginal rights in Canada but have failed to reconcile these two seemingly incommensurable positions [of Aboriginal nationhood and Canadian sovereignty]" (2006: 5). None of the proposed compromises or solutions to Indigenous claims to self-government has worked to change the fundamental structure of the political relationship between Indigenous people and the Canadian state.

This power relationship has a profound effect on curtailing the future of Aboriginal self-determination. Harris and Wasilewski explain that self-determination "relies on two things. First, each person/group has to be allowed to speak for him/her/themselves. ... Second, each voice has to actually be heard. It is not enough to simply give voice, although that is one step" (2004: 10). A society with multiple interests necessarily requires not only a nominal podium for the articulation of debate, but also a reciprocal engagement in dissent. The process of giving voice is not enough, as it can be patronizing toleration, a "parent" listening to a "child's" complaint merely for the sake of letting the child exhaust itself with the tantrum. The stagnant debate on Aboriginal self-determination is hindered by this merely perfunctory effort to "hear out" the challenges to state sovereignty, and given the limited scope of self-government models and the rejection of what are seen as "radical" models, it is clear that the existing colonial power relations significantly stymie the momentum of Aboriginal self-government and, more importantly, self-determination.

4.1. Scope of chapter

This chapter introduces agonism as an approach for the Canadian state and First Nations to productively re-engage in the discussion about self-determination. Agonism, as it will be used here, is an important and yet under-considered tool for negotiating diversity and conflict in political relationships. The framework of agonism emerges out of an acknowledgement that there are permanent irreconcilable differences—usually stemming from identity issues—that emerge in the discourses of democracies; if these highly impassioned conflicts are suppressed under the guise of conciliation or consensus, they do not, as might be expected, reflect a legitimate discourse between political adversaries, but rather they transform into a dichotomy between "us" and "them" and become a moral battlefield between right and wrong (Mouffe, 2005). Agonism is an alternative to the liberal rationalism, which cannot adequately process social pluralism or conflict, and it attempts to divert democratic discourse away from negotiation and compromise and realign it with legitimate conflict and what Mouffe (2005) calls the "constitutive outside."[16] Agonism, in short, requires political players to recognize the contingency of their own beliefs and enter into democratic debates, not pegging their ideological counterparts as enemies, but understanding that every political belief, including one's own, is couched in an ontological system that is vulnerable to moral interrogation. A more detailed description of the approach is discussed in section 4.3.

Currently, democratic discourse is marked by a dominant approach to profound and passionate societal divides. Deliberation, which is an attempt to resolve

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[16] Mouffe uses "constitutive outside" as an expansion of Derrida's "différence," referring to a search for what something or someone is *not*, a search that implicitly involves hierarchy and relationality.

disagreements in terms that seek fair cooperation from both sides, attempts to find

mutually reasonable terms that seek ultimate consensus on an issue of difference.

Theorists such as Hannah Arendt, Bonnie Honig, James Tully, and Chantal Mouffe have

challenged the premise of deliberation, arguing that it is "incapable of processing deep

differences," (Dryzek, 2005: 220) and that it neutralizes differences and even erases

identity. The pre-eminent scholar of agonism, Chantal Mouffe, states that consensus

and an aversion to disagreement or conflict leads to apathy and an unwillingness to

engage debates (1998: 14). The conflict in interpretation of sovereignty is one of

Canada's most passionate societal divides, and agonism can be potentially

transformative through its capacity for relationship-building premised on creating space

for explosive debates that can be positively received and meaningfully considered. The

theory of agonism embraces an ethos of democratic expression; as Mouffe, explains,

"the aim of democratic institutions from this [agonistic] perspective is not to establish a

rational consensus in the public sphere; it is to provide democratic channels of

expression for the forms of conflicts considered as legitimate" (Mouffe, 1998: 17). This

chapter will defend the promise of agonism in the sovereignty debate while retaining the

critical lens of Indigeneity to examine the possibilities of future self-government

opportunities for First Nations.

4.2. The problématique: Ever-present antagonisms

Societies like Canada that are situated not only in a multicultural model, but also have a

history of colonization, inevitably face conflicts in identity and disagreements in political

interests. The state's relationship with First Nations is fraught with divergent ethics and

expectations of justice, but the conflicts have not been adequately addressed. The

difficulty is not merely in agreeing on a particular political relationship—for example, deciding which type of self-government model will suit the needs of a particular First Nation—but in truly deconstructing and understanding the respective political and ethical convictions of the political adversary. In the Canadian Indigenous context, the conflict can be summed up as the following: Many Indigenous people[17] defend the Wampum Belt understanding of nationhood, which represents parallel nation-to-nation relationships without subservience to the state, while the Canadian state and Canadian sovereigntists defend the state's unilateral sovereignty (Turner, 2006: 5). This deeply divided interpretation of the Indigenous–state relationship cannot progress, change, or resolve itself without substantive interrogation of what is truly being articulated by each party.

Mouffe explains the incomplete political dialogue in democratic societies thus: "We can all agree on [democratic and political values], while disagreeing sharply about their meaning and the way they should be implemented" (1998: 14). It can be said that both the state and its First Nation adversaries hold a "shared adhesion to the ethico-political principles of democracy while disagreeing about their interpretation and implementation" (1998: 16). The Canadian state and First Nations have a relatively consonant appreciation for the virtues of democracy and representation, and certainly First Nations' self-determination is not about isolation or separation. However, the conflicts established thus far in this thesis highlight the divergent cultural and political

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[17] Dale Turner quoted George Erasmus, National Chief of the Assembly of First Nations from 1985–1991 on the Indigenous interpretation of self-determination: "All across North America today First Nations share a common perception of what was then agreed: we would allow Europeans to stay among us and use a certain amount of our land, while in our own lands we would continue to exercise out own laws and maintain our own institutions and systems of government. We all believe that that vision is still very possible today, that as First Nations we should have our own governments with jurisdiction over our own lands and people" (cited in Turner, 2006: 4–5).

interpretations of the ways in which the state and First Nations can coexist, each fulfilling their imaginings of self-determination. Furthermore, there is evidence in existing self-government agreements, for example those in the Northwest Territories, that the government of Canada "promotes Indigenous change as a way to accommodate and normalize ongoing injustice as the basis of relations between the state and Indigenous peoples" (Irlbacher-Fox, 2009: 2). This means that self-government agreements have tended towards minor accessions positioned as "social, political, and material redemption," (Irlbacher-Fox, 2009: 2) without remedying the dominant colonial relationship that holds First Nations captive to governmental axioms.

The purpose of setting up and describing the antagonistic relationship between the state and First Nation adversaries is not to linger on a dangerous or synthetic "us" and "them" dichotomy that provokes irreconcilability, but instead to engage in an alternative to the heretofore (in the Canadian context) unchallenged method of rational consensus and deliberation. As Fiona MacDonald writes, "Given the state of pluralism rooted in durable identity politics that arises out of the Indigenous challenge to colonialism, Mouffe's argument [for agonism] is extremely relevant in the Canadian context. In order to have meaningful democracy we need choices that go against the current hegemony that are rooted in deep agonistic divisions, which cannot be transcended" (2007: 5). MacDonald is one of the few Canadian scholars of Indigenous politics who explicitly recognize the potential of agonism to challenge the hegemonic norms that delineate the imaginative limitations of Indigenous self-government. She recognizes that models of compromise in the realm of First Nations' self-government arrangements that privilege the unquestioned paramountcy of Canadian sovereignty are

not healthy for Canadian democracy or the Indigenous–state relationship: "An approach based on moral consensus does not embrace the ineradicability of deep conflict nor does it offer meaningful political options that compete with and/or directly call into question the existing political order. It thereby fails to create the conditions for a 'reconciled society' and leads to 'antagonisms' [a we/they relationship that sees 'them' as the enemy]" (2007: 5). For MacDonald, who convincingly argues for fragmenting the paramountcy of state sovereignty in Canada,

> The circumstances of Indigenous peoples in Canada must be recognized not simply as a set of moral problems to be deliberated on, or a set of social problems to be managed by experts but first and foremost as a political problem that requires the recognition of Indigenous groups as distinct legitimate political entities and the creation of specific agonistic democratic processes through which the state is to be held to account for its relationship with Indigenous peoples. The political legitimacy of such democratic processes depends upon de-centering rather than reinforcing Canadian sovereignty. (2007: 6)

The message propagated by Turner (2006), Alfred (1999; 2005), Irlbacher-Fox (2009), Shaw (2008), and others that Indigenous rights (to governance and other rights) must be interpreted as political, and not merely cultural rights, thus affirms the suitability of an agonistic approach to broadening, complicating, and legitimizing the Indigenous self-determination discourse.

4.2.1. Establishing the antagonisms

As was established in Chapter 3, the concept of domestic state sovereignty is an artificial construct normalized over centuries of cumulative theorization by influential European thinkers, reproduced by international governance protocols and standards, and affirmed through domestic Indian policy. The existence of a dominant concept used to delineate relations between two peoples—non-Aboriginal Canadians represented by the Canadian state and First Nations—has stymied the potential for imagining a just cocoexistence

that can allow for full Aboriginal self-determination that is not subject to the paramountcy of the Canadian state. The legitimacy of Canada's state sovereignty is normalized and defended as being in the collective interest of Canada, essential to the purity of the democratic ethos of the state. Seyla Benhabib has argued

> The basis of legitimacy in democratic institutions is to be traced back to the presumption that the instances which claim obligatory power for themselves do so because their decisions represent an impartial standpoint said to be equally in the interests of all. (1996: 69)

In Canada, a country with a colonial past, this basis of legitimacy is highly problematic for First Nations, who must contend with established and normalized "impartial standpoint" that represents not the interests of all, as it might in a fairly politically homogenized unitary state, but merely the interests of those in positions of influence that support the existing colonially based conditions. This is to say that the normalization of democratic processes has presented an enormous obstacle for First Nations because they must continually question and challenge—in a way that sounds "reasonable"—the legitimacy of the interests of the collective polity. In a non-agonistic context, the Canadian state and those representing the dominant interests are hostile towards or defensive about claims that are outside of the scope of "the reasonable."

Aboriginal policy-making by the state, whether in consultation with First Nations or not, is not value-free or bias-free. As Maaka and Fleras write, the "socially constructed conventions, policy and policymaking are infused with dominant values, Eurocentric ideals, institutionalized biases, and vested interests," (2009: 8) which in turn affect the normalizing process of policy design. The uninterrogated assumptions underpinning self-government policies or models are translated into a neutralized and seemingly rational and generous approach to accommodating First Nations claims,

while, in truth, the assumptions and values behind the policies curtail the language of self-determination rights that First Nations are "allowed" to express. The backdrop of Canadian–Aboriginal discussions is made up of liberal, multicultural, capitalist assumptions that support the statist definition of sovereignty and rule out radical articulations of Aboriginal sovereignty.

Furthermore, the Canadian government's approach to Aboriginal self-government policy requires Aboriginal peoples to "[be] Indigenous in a way that reconciles Indigenous rights, interests, and being with what conforms to the norms of the Canadian Constitution, democracy, and dominant culture" (Irlbacher-Fox, 2009: 3). The onus is on First Nations to graciously accept the offers of the Canadian government to implement self-government (but not self-determination) and, more generally, to be the agents of change themselves (instead of the government changing its approach to self-determination). As Irlbacher-Fox argues, tongue-in-cheek, the Canadian government has adopted the approach of restoring "Indigenous peoples to wellness by changing Indigenous cultural norms to better operate within those social and political structures that have been oppressive to Indigenous peoples. Such change among Indigenous and non-Indigenous peoples and institutions will mean that finally Aboriginal rights are meaningfully reconciled with Canadian sovereignty" (2009: 4). It is evident that the policy approach is one that despotically situates Canadian sovereignty and political well being as immovable and sacred, with Indigenous self-government permissible only if it fits within the framework of the Canadian state. However, the Canadian state's policy direction is not without its own friction. Against the push of the Canadian state's Aboriginal policy, Indigenous scholars and activists, cognizant of the

dangers of despotic signification (even if they have not said it in these words), have been challenging the discourse through strategies of "Indigenous resurgence as determined by Indigenous peoples, drawing on Indigenous philosophical and cultural ways" (Irlbacher-Fox, 2009: 4). Taiaiake Alfred, Glen Coulthard, and Dale Turner comprise a segment of this group, and their work aims to challenge the redemptive attitude of the state and create the space for a discourse that seriously considers self-decolonization and self-determination as the keys to peace and justice. Irlbacher-Fox states, "If the mounting evidence of massive policy failure is considered, Indigenous resurgence presents the only viable path toward replacing Indigenous assimilation and social suffering with Indigenous being and well-being as the basis for Aboriginal–state relations" (2009: 5).

This dichotomy in values between Canadian colonial sovereignty and Indigenous resurgence and self-determination makes up the essence of the antagonisms. Considering the disappointments, the ever-present tensions and conflicts, and the low bar that has been set for Aboriginal–state relations, the rest of this chapter calls for a radically different approach to talking: agonism.

4.2.2. The importance of conflict

Conflict is a necessary and inevitable component of modern democracy. Its very existence should not be charged with a negative connotation, nor should it be avoided or denied, because its presence brings a certain value to "a well-functioning democracy" (Mouffe, 1998: 13). However, it has been the Canadian state's tendency to rely on a model of conflict management that prioritizes consensus over confrontation. While this appears to be an even-keeled model, Mouffe argues that "too much emphasis on

consensus, together with aversion towards confrontations, leads to apathy and to disaffection with political participation. Worse still, it may backfire with the result being an explosion of antagonisms unmanageable by the democratic process. This is why a vibrant democratic life requires real debate about possible alternatives" (1998: 14). The process of consensus may appear conciliatory, but in fact, when the motivations and assumptions underpinning conflict resolution are not interrogated, there is a danger that the power dynamics will continue to favour the interests of one party over the other. Andrew Schaap further clarifies Mouffe's theory, explaining that the gravest shortcoming of deliberation is that the rules of engagement in consensus-building and reasoning are entrenched in an existing hegemonic moral tradition that determines what comprises debate and the acceptable terms of debate. This means that consensus is always rooted in political assumptions, not in the moral validity of the dissenting voice, and as such, it must always be "articulated within a determinate political community" (Schaap, 2006: 263). In other words, he writes, "The requirement that particular claims should be reasonable may prevent certain objections to a dominant order from being raised in the first place" (2006: 263). Automatically, the process of deliberation, by virtue of being nested in a certain repertoire of political truths, obstructs certain discussions, especially those discussions that question the presuppositions of democratic relationships, such as those between First Nations and the state. The exclusion of such "radical" or "unreasonable" discussions arguably owes less to logic or soundness of moral claims and more to the weight of political power that has the capacity to naturalize the limits of dominant political values.

When dissenting voices articulating competing interpretations of justice are not truly heard, weighed, and considered, or are ruled out as contenders in a debate based on the radicality of their dissent, the result can often be identity-based alienation from the political process, which in turn can lead to a fracturing around other identity-oriented political challenges. Not only does the process of compromise and deliberation hurt the dissenters (in the context of this thesis, First Nations), it has also hurt the Canadian state by inhibiting it from engaging with potentially creative solutions to the self-government debate. With the tradition of compromise and deliberation, the state cannot process or handle intense dissent, especially when the dissent challenges—as it does in the self-government discourse—the molecular makeup of the state's very existence. There is an authoritarian element to the state's sovereignty discourse that conforms to what Mouffe calls the "mistaken conception" (1998: 23) of democratic discourse that assumes that conflict can be eliminated with consultation and elegant policies. As a result of this belief that a democratic state should have short-lived and easily reconcilable debates with the polity, the state cannot engage in lengthy dissent, such as the challenge of its sovereignty; instead, it becomes defensive and immovable on its stance, silencing the dissenting concerns and closing off its imagination to political alternatives presented by the adversaries.

The problématique established is this section points to the need to address challenges of ever-present antagonisms in a pluralistic democratic society. It is myopic to believe that the question of self-determination for First Nations in Canada can be resolved through a process of conciliatory compromises, when, as it has been established thus far, there are fundamental disagreements about the ethics of self-

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government in the Canadian fabric. Compromises are inherently incapable of challenging the "normalcy" of the dominant political culture, and, instead of creating an atmosphere that can support changes in long-term relationships, compromises instead neutralize the power relations, mask the issues at the root of the problem, and prolong the antagonisms. Thus, one solution to the problématique of ever-present antagonisms is to pursue a radical new social contract that transforms antagonisms into agonism, resulting in an agonistic pluralism that may be the key for reimagining the limits of Canadian sovereignty.

4.3. What is agonism?

Agonism is a framework of radical democracy that "[affirms] the centrality of conflict" (Schaap, 2006: 257) and the right of citizens to contest the conditions of their political existence and relationships. In its essence, it is a "visceral engagement with difference" (Muldoon, as cited in Schaap, 2006: 256), a paradigm that embraces respect for opposing thoughts that may seem radical or unreasonable, and, with that, "a willingness to question what counts as reasonable political speech" (Schaap, 2006: 269). At the heart of agonism is a symbolic severance from the traditional democratic understanding of polity as a whole that is desirably united in a cohesive, common political identity; agonism instead creates space for conflict and for living together differently in a profoundly respectful way. It is not about the prioritization of interests or acceptable claims, but about understanding the values and assumptions of the legitimate adversary. As Foucault introduced the concept in his own work, agonism refers to "a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confrontation which paralyzes both sides than a permanent provocation" (1982: 790).

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The impetus behind agonism is opening dialogic space and facilitating relationships premised on challenging convictions and asking questions about political possibilities. Thus, in the context of Canadian politics of Indigeneity, agonism is applicable as a mode of engagement that attempts to replace a structure of domination with independence and treaty-based autonomy (O'Sullivan, 2007: 81). Agonism is used here not as an end in itself but as a process of rearranging the fundamental assumptions of the political relationship.

Agonism has been challenged on its incapacity to move the decision-making process forward. Whereas deliberation and consensus can yield immediate change and solutions, agonism, it has been argued, stalls the decision-making process because it is continuously calling for an opening up of contestation and an examination of underlying assumptions of reasonableness. To respond to this critique, I offer the explanation that agonism is not preoccupied with the institutional processes, but, as Schaap explains, with the "*ethos* that seeks to postpone the moment of decision in order to affirm the openness of political life" (2006: 270). The presence of contestation and dissent does not require an immediate response and solution. There is value in prolonging the agonistic moment if it means that the creative limits of a solution might be extended and a previously unreasonable solution might become morally defensible. Agonism, ultimately, is about a commitment to process, as opposed to result. This is a critical distinction to make, as the emphasis on process is the key to reconceptualizing the fundamental antagonisms.

4.4. Agonistic Indigeneity

Agonism and the ethos of Indigeneity are mutually supportive concepts and entirely appropriate concepts to apply to the politics of Indigenous self-determination. As Dominic O'Sullivan explains, "The politics of indigeneity does not disregard the rights of others, nor imply political isolation. Rather, it rejects domination and subjugation as the foundation of political order. It rejects one culture positioning itself as the 'normal' basis for the conduct of public affairs" (2006: 2). Furthermore, Indigeneity is rooted in an understanding that "all peoples have a right to coexist, and it is imperative … that each group find their own self-determined ways to share and contribute their communal wisdom to the global society. … This pursuit stands in opposition to the pursuit of dominance, exclusion and exploitation" (Harris and Wasilewski, 2004: 6). Harris and Wasilewski aptly articulate the spirit of Indigeneity: "creating relationships between diverse elements, not eliminating them" (2004: 6). For Harris and Wasilewski, and indeed, many other supporters of the approach, the "practice of indigeneity creates dynamically inclusive dialogic space" (2004: 6). Thus, we can determine that dialogue and relationship-building are the key components of Indigeneity, and they provide substantive support to the operationalization of agonism in the Canadian Indigenous context.

Agonism requires mutual respect and mutual appreciation for an opponent's arguments and stances. It is contingent on the understanding that the political landscape is filled with constructs and therefore that nothing is neutral or inevitable. Thus, when Indigenous political writers, such as Taiaiake Alfred, question the basis of Canadian sovereignty, they are embodying both an ethos of Indigeneity and, however inadvertently, agonism:

> Sovereignty is not a natural phenomenon but a social creation–the result of choices made by men and women located in a particular social and political order. The unquestioned acceptance of sovereignty as the framework for politics today reflects the triumph of a particular set of ideas over others. (1999: 62)

Alfred's assertion agonistically challenges the concept of sovereignty because he calls out the contingency of the state's claim to sovereignty. His statement is agonistic in its effort to open up a discussion about what is politically possible and impossible.

In evaluating the agonistic dynamics of Indigenous assertion of rights to self-determination, the two frameworks have coalesced to form a concept I call *agonistic Indigeneity*. Agonistic Indigeneity refers to "opening possibilities for theorizing the political differently, for rearticulating the necessities embedded in practices of sovereignty" in the Indigenous context (Shaw, 2006: 206). The intention of agonistic Indigeneity is to "engage" instead of "assume" and to bring a new range of discussion topics to the table. Most importantly, it rejects "the terrain of politics as produced by sovereignty" as the foundation of the discussions. Agonistic Indigeneity embraces critical analysis of political circumstances surrounding Indigenous self-determination and can be used to push for an agonistic acknowledgement[18] of the colonial underpinnings of Indigenous–state relations to reject the current repertoire of options as the only repertoire.

Agonism in the context of Indigenous self-determination in Canada must be about liberating the discussion of the framework of sovereignty. If we are ever to see a full form of First Nations' self-determination, the discussion must be released from the terms of "normalcy," and must be friendly towards radical ideas, regardless of the feasibility of policy. First Nations must stand on a podium where their expressions and

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[18] Respectful of adversarial positions but recognizing the need for a prolonged and radical discussion.

desires for self-determination will not be constrained or censored. As Fleras and Elliott explain, self-determination "rejects the legitimacy of existing political relations and mainstream institutions as a framework for attainment of aboriginal goals. ... Proposed instead is the restoration of aboriginal models of self-determination that sharply curtail state jurisdiction while enhancing aboriginal control over land and resources" (2003: 190).

In the Canadian context, the two antagonistic positions include the state's right to govern over its territory and First Nations' inherent right to determine their own futures. These are arguable and merited positions, but it is immediately clear that they are fundamentally discordant and that they comprise this perpetual antagonism in Aboriginal politics. While the antagonism is often reduced to the question of "who owns what" (Maaka and Fleras, 2006), the root of the problem is closer to the normative question of how to live together differently. Agonistic Indigeneity can effectively guide the discussion of living together differently in a respectfully agonistic environment. The key is to envision a social contract that recognizes two facts: first, that both the state and First Nations are permanent and thus require a long-term plan for coexistence that is not about assimilation or hierarchy but rather is non-dominating, and second, that both parties have a claim to sovereignty, albeit on different and mutually exclusive premises. For an agonistic dialogue to be constructive in this context, it is crucial that First Nations communities be recognized and treated as political communities and not merely cultural communities. While there are indeed cultural differences between First Nations and non–First Nation Canadians, the purpose of living together differently is not to celebrate this difference as one among many cultures in the Canadian mosaic, but to

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recognize and respond to First Nations' *sui generis* sovereignty and their special—

political—treaty-based relationship with the state. This political distinction—as opposed

to a cultural/multicultural distinction—should be the basis of the agonistic reform of the

relationship that must respect First Nations as constitutional partners, not, as Maaka

and Fleras explain, "a competitor to be jousted with or a junior partner to be consulted"

(2006: 349).

4.5. Operationalizing Agonistic Indigeneity

Invariably, there will be questions facing the theory of agonistic Indigeneity

related to the execution or implementation of such an aspirational theory. How can

Indigenous people articulate a different political truth, and how can the state recognize

the legitimacy of a different kind of sovereign arrangement? One proposal comes from

Maaka and Fleras, who make a case for "mainstreaming Indigeneity" in public policy, a

process that incorporates into public policy an "indigenous–centered experience that

challenges the deeply ingrained Eurocentric mentality behind policymaking" (2009: 3).

Mainstreaming Indigeneity in policy acknowledges

> the need for indigenous concerns and realities to be incorporated into the design,
> implementation, monitoring, and evaluation of all policies; encourages
> policymakers to adopt an indigenous perspective; and promotes the full
> participation of indigenous stakeholders in policymaking so that indigenous
> peoples' needs and aspirations migrate from the margins to the centre. (2009: 4)

By including Indigenous people in the policymaking process, the hope is to reflect

"growing commitment to partner with indigenous communities in the hopes of

constructively engaging Indigenous peoples as co-participants in policymaking

processes and outcomes" (2009: 7). While Maaka and Fleras certainly make a strong

case for the mainstreaming of Indigeneity and the integration of Indigenous realities

into policy, their example is not as close to the ideal of agonistic Indigeneity as could be hoped for; their idea does not actually question the legitimacy of the state, and it seems to accept the permanence of state sovereignty, with the "best hope" for Indigenous people being the integration of their political demands into the mainstream system. It is diagnostic of Irlbacher-Fox's critique of the complete onus resting with Indigenous people to integrate into the existing system.

MacDonald offers a different conception of operationalizing Indigeneity and agonism. She uses Nancy Fraser's (1997) idea of "counterpublics," spaces and collectivities that have "contested the exclusionary norms of the bourgeois public, elaborating alternative styles of political behavior and alternative norms of public speech (Fraser, as cited in MacDonald 2007: 9). The counterpublics exist beside or outside of the "official public sphere" and challenge the norm or expectation of a united common good or a kind of ethos embedded in the Hobbesian motif, *E pluribus unum* (out of many, one). By virtue of being outside of the official public sphere, counterpublics foster and develop parallel discourses to the sanctioned mythologies of the state. MacDonald explains, "The existence of these counterpublics works for justice by expanding discursive space and assumptions that remain exempt within a single comprehensive public now have a site in which to be publicly argued out" (2007: 10). MacDonald thus reflects an important thread in operationalizing agonistic Indigeneity; the agency among Indigenous peoples located *outside of* the official discourse realm, and by extension, the potential to create and re-create subaltern counterpublics that articulate legitimate political claims, can be capitalized by the trend of fragmentation of political engagement through digital networks and political communication via new

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media. This is to say, there is great potential nested in new media and the power of the Internet to create and assert Indigenous discourses that challenge the hegemony of state discourse about the meaning of sovereignty. While the methodology of using Internet-based media to create counter-discourse is outside of the scope of this thesis, the concept of counterpublics as a means to executing agonistic Indigeneity as a substantive assertion of self-determination certainly points to future research in the field of Indigenous governance.

4.6. Conclusion

What will be the next step after an agonistic approach is taken to the self-determination discourse? Agonism is not meant to be a categorical solution to a stalled discourse. There will be variations in every community's approach to determining a model of self-government, and rightfully so; some communities may opt for a mini-municipality model, while others may push for a nationhood model that would suit their own contextual political needs. The proposal is not to reroute the discourse from one module to another streamlined one, but rather it to create an agonistic political atmosphere that will make space for Aboriginal-led initiatives on imagining self-determination. When the discourse is so entrenched in the "foundational principles of a colonial constitutional order," there is only dim hope that any changes to the relationships will occur (Fleras and Elliott, 2003: 199). There is an urgent need for releasing the discourse from the foundational principles and assumptions so that the discourse no longer reflects despotic signification. The ultimate purpose of creating such a podium and working on an agonistic future is twofold: first, to ensure that Aboriginal rights to self-

determination are taken seriously, and second, to ensure that self-determination via

self-government is realized (Fleras and Elliott, 2003: 197).

CHAPTER 5: CONCLUSIONS

This chapter will reiterate the impetus behind this research, will unpack my findings and the answers to the research questions, and will suggest further developments for this research.

5.1. Reiteration and reflections on purpose of the thesis

This thesis emerged out of my observations of Indigenous–state relations and, more specifically, my concerns about the constraints imposed on the continuum of self-government models. Curious about the underlying contingent and historical philosophical limitations that form the very framework for imagining First Nations' self-government, I wanted to challenge the notion that the existing module for living together differently in Canada is the only kind of relationship possible. At the beginning of the research process for this thesis, I was at some level aware of the significance of hegemonic norms, which Chantal Mouffe articulated in the following way: "What is at a given moment considered as the 'natural' order—jointly with the 'common sense' that accompanies it—is the result of sedimented practices" (2005: 18). In other words, the expected and the normal are habituated constructs. As such, they have the potential to change. Chantal Mouffe's interpretation of democratic politics proved to be germane in the ideas underpinning this thesis. While Mouffe does not specifically apply agonism to Indigenous politics, her concept of agonism is malleable in its ability to defend the legitimacy of questioning political hegemony. Thus, it is appropriate to apply agonism to

the Indigenous context in Canada because Mouffe's concept can engage with ever-present hierarchies and conflicts that are inescapable in colonial states.

Furthermore, I was captivated by the Maori paradigm of Indigeneity, specifically defined here as a mode to "endorse a post-colonial social contract that challenges the foundational principles of a settler constitutional order" (Maaka and Fleras, 2005: 14). Indigeneity is an exciting paradigm that has the potential to meaningfully expand the self-determination discourse to include Indigenous articulations of self-determination, necessarily functioning through a process of questioning colonial norms and hierarchies.

Thus, with these learning objectives in mind, I hypothesized that what appear as natural and inevitable constraints bookending the Indigenous self-government continuum are in fact historically situated and socially constructed constraints. Specifically, Western political theory had defined the characteristics of sovereignty in such a way that Indigenous self-determination is stymied for as long as it challenges the colonial premise of Canadian sovereign paramountcy. Compounding this issue, the conceptualization of sovereignty, which has its origins in Western political thought, has proven to be quite stagnant in denotation; when it does adapt, and many scholars will point to the changing nature of the state in the face of globalization and corporate influence, the fluctuating definitions remain variations on a theme, with the rules of sovereignty remaining entrenched in international practices and norms. As such, the definition and articulation of sovereignty excludes new understandings or definitions based on a different—Indigenous—appreciation of self-determination. In other words, it appears as though "Aboriginal sovereignty has tended to be defined as something

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analogous to the sovereignty of the State or government in international law. It has …
been wrongly conflated with the concept of 'State sovereignty'" (Jones, 2002). This
narrow understanding of sovereignty excludes Indigeneity from determining the
political relationship between First Nations and the state. The political imagination of
actualizing Indigenous self-determination appears, in this light, quite dull and
uninspired.

Again, drawing on the political acumen of Mouffe, I embraced the idea that
"[t]hings could always be otherwise and … every order is predicated on the exclusion of
other possibilities" (2005: 18). The objective of this thesis has been to explain, through a
critical lens, in what ways the Canadian state, espousing the fundamental assumptions
of theories of the state embodied in Western political thought, has limited the
opportunities for imagining Indigenous self-determination. Following the process of
researching the genealogy of sovereignty as it pertains to the Canadian state's treatment
of Indigenous rights to self-determination, I reached the conclusion that what is
required to change hegemonic norms or any other descriptive phrase for the "natural
order" of the state is an equal-parts dose of an understanding of the history of thought,
an inclination to accept the "truth" as contingent, and a radical approach to imagining
an alternative.

5.2. Answer to the research question

This thesis sought to answer the following research question: Is the contemporary
Aboriginal self-government discourse between the governments of the Canadian state
and First Nations governments irreconcilable based on the underlying theoretical

assumptions informing state and Indigenous arguments? Precisely, this thesis was designed to determine what the theoretical assumptions of sovereignty are, how they impact the viability of Indigenous rights to self-determination, and how they could be reconfigured to yield a more productive discourse that legitimizes Indigeneity.

In short, the answer is yes—the discourse surrounding Indigenous self-determination is irreconcilable in the way it is currently framed within the Western state sovereignty paradigm. The self-determination discourse is framed in a way that ensures that Indigenous self-determination is always positioned as inferior to state sovereignty, and by extension, the discourse ensures that Indigenous articulations of self-determination in ways beyond the sanctioned continuum of self-government are delegitimized and rendered infeasible.

The research supporting this thesis was largely centered around a critical reading of sovereignty discourses and an analysis of the limits that these entrenched paradigms have on contesting notions of sovereignty—i.e., an Indigenous articulation of self-determination that questions the colonial underpinnings of the Canadian state. The research found that there is ample scholarly historical and social analysis conducted on the validity of such a claim that Western modes of sovereignty undermine Indigenous nationhood and self-determination.

5.3. The political problem and the role of imagination

Ultimately, at the heart of the struggle for conceptualizing and achieving self-determination is the problem of dissonant imaginations around the issue of sovereignty. First Nations, in their struggle for self-determination, face two related challenges. The

first is what Alan Cairns describes as the "pastness of the Canadian state" (1990: 345),

which refers to the inertia of the federal government and its inaction on issues of

change. Cairns explains that the pastness of the traditions of the Canadian government

and the constitution are "based less on its [the constitutional order] intrinsic virtues

than on the procedural hurdles to its formal modification" (1990: 345). In other words,

it is not because it is right and virtuous that the division of power remains such that

First Nations' self-government is subjected to dominance by the Canadian state, but

because it is too much trouble to change the relationship. Cairns, quoting Roger

Gibbins, explains that the Canadian division of power "survives not because of its

functional congruence with an underlying deeply federal society, 'but because the

governments of the Canadian federal state are able to defend their constitutional

position'" (1990: 346). Cairns's analysis of the stagnancy of the Canadian state in the

face of change provides important leverage for the argument about the power of

dissonant imaginations and in turn reveals, indirectly, how germane the agonistic spirit

can be in redefining the limits of First Nations' self-government. The Canadian state, its

administration, and the theoretical underpinnings of the apparatus are immovable in

their stance on changing the relationship with First Nations because they can *afford* to

be immovable, not because of an inherent virtue in permanence. This acknowledgement

of the stubbornness of the state opens up the floodgates for a powerful push for

agonistic discourse, which can be the setting for a major rearticulation of what is

politically possible for First Nations' self-determination—as defined by First Nations.

The second part of the challenge for First Nations' self-determination is the

concept of sovereignty that has been entrenched in Canadian political tradition for

centuries. As discussed in Chapter 3, the dialogue around self-determination is limited by the legacy of sovereign indivisibility and hierarchical power, ideas that had been entrenched in the governing traditions during the colonial conception of Canada. However, as Dubois (2011) has written, the contemporary reality of state sovereignty is such that territory is becoming increasingly irrelevant to the definition of sovereignty. The significance of this is that the state is still governed by assumptions about the primacy of the state over its citizens and the indivisibility of power, but the reality of globalization and deterritorialization demands that these concepts be revised. In turn, this means that the state is located in a sentimental past, out of sync with the realities of new concepts of sovereignty that do not depend on delineating territorial jurisdiction. It thus does not have the capacity to process diverse articulations of nationhood and sovereignty that Indigenous people are putting forth.

5.3.1. John Ralston Saul on the importance of political imagination

At a lecture on Aboriginal–state relations at the University of Saskatchewan in October 2011, Dr. John Ralston Saul, discussing the power of dominant ideas in Canadian political thought, argued that the way to make substantive change in political morality and fairness is through imagination. He explained that history has been a succession of "big ideas"—linear rationality, liberalism, and Westphalian sovereignty—that have coalesced around the articulation of Canadian morality and philosophical identity. According to Saul, these big ideas change as new understandings of the public good emerge; there is a constant need to reconceptualize what is good and fair for Canada by imagining, thinking, and presenting alternative ideas to challenge the dominant repertoire of political norms and ideas. For Saul, imagination holds the tools for

repaving the way. Saul argued that we are *lucky*, contrary to the evidence, to have Aboriginal political thought (Indigeneity, as we may recognize from this thesis) to offer paradigms that are different from the dominant Canadian vision, including circularity, multiple ideas of belonging, and non-Westphalian sovereignty. He concluded by emphasizing that, in being a treaty nation and collectively a métis civilization, Canadians must use their imaginations to re-create and re-conceptualize a new path for Indigenous–state relations. Rejecting restraint as unidirectional, Saul, without explicitly saying so, was propounding the ethos of radical imagination and agonistic Indigeneity.

5.3.2. Indigenous-centered radical imagination

Radical imagination is a process "by which we collectively map 'what is,' narrate it as a result of 'what was,' and speculate on what 'might be'" (Haiven and Khasnabish, 2010: iii). It is a (necessarily communal) process of mapping out alternatives to political realities, first by coming to terms with historical subjectivities, and second by letting go of inevitabilities and moving instead in radical new directions based on collective visions of different political realities. The first component of the phrase "radical imagination" is crucial in the process of mapping out the "might be": etymologically, "radical" comes from Latin, meaning "of or having roots," and thus "implies looking beyond surface or easy answers and a desire to uncover the deep reasons for our present reality. It also implies that answers to social problems will require fundamental solutions, not temporary fixes" (Haiven and Khasnabish, 2010: v). In short, radical imagination is the process of understanding root causes—including issues such as the evolution of concepts and words—and refusing to accept the contemporary realities as the only realities; it is a process of thinking and discussing what many do not dare to think or discuss.

The second component of the term is imagination. Imagination is a powerful tool in political change. Taiaiake Alfred explains that the dominant narrative in the imagination of the Canadian state and polity has been the key to the success of establishing lasting state paramountcy and seemingly permanent subordination of First Nations:

> The successful colonization of North America has allowed Euroamericans to transform the foundational elements of the old colonial imagination into a dynamic cultural, political and legal framework which serves to rationalize the illegal and immoral displacement, dispossession and deculturation of the human societies and human beings whose homeland this continent truly is. (2010: 6)

The colonial state of Canada succeeded largely because it was able to subvert Indigenous identity, solidarity, and self-determination, imposing on First Nations a greater political scheme that purportedly served "the common good." However, as Manuel and Posluns have written, "People can only become convinced of the common good when their own capacity to imagine ways in which they can govern themselves has been destroyed" (1974: 60). The "common good" is a powerful construct that constrains the imagination and dictates a conformist approach to relating with one another. It defines the limits of our ontology (our understanding of being and relating) and tells us what belongs within and outside of the scope of the "normal." Todd May has argued, "How we think about our world and how we live in it are entwined. Our ontology and our practical engagements are woven together" (2005: 74). When people are dictated a "common good" and a narrative of sovereignty, they learn to think about their world in a very narrow way and implicitly reject any challenges to the dominant narrative. May further writes, "If particular things are what they are and nothing else, then we will not waste our time imagining what else they might be or might become" (2005: 74). What this signifies is that a story can be very powerful. It can dissuade people from imagining a

different outcome or a different process. It can turn off our storytelling capacity in general, leaving a polity with only one story of what the reality is. This is very dangerous because it rules out the possibilities of changing realities for the better; May argues, "Perhaps there is more going on in our world than is presented to us. We don't know. The only way to find out is to experiment" (2005: 74). This sentiment is at the heart of this thesis. We must learn to risk experimentation in the political field, to understand what our narrative is, what our constraints are, and how to imagine once again.

5.4. Agonistic Indigeneity as framework for self-determination

One path to operationalizing radical imagination is through agonistic Indigeneity, a multifaceted concept that embraces the agonistic spirit of conflict as a form of affirming different ontologies, while maintaining the focus on rejecting unilateral claims to political assertion in an effort to open up political space for imagining a new, non-colonial relationship between the state and Indigenous people. The contribution of agonism would be a confrontation of the hegemonic power relations "through a process of disarticulation of existing practices and creation of new discourses and institutions" (Mouffe, 2005: 33). In the framework of agonistic Indigeneity, agonism acknowledges that political relationships are neither ahistorical nor neutral. The element of Indigeneity extends and focuses the agonistic thread by affirming the need to replace colonial state-centric ideas of political relationships and hierarchies with Indigenous-centric political goals. Together, agonistic Indigeneity is a framework that challenges[19] the statist model of sovereignty—"coercive control, control of territory, population

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[19] This contestation is premised on the understanding that political constructs are vulnerable to deconstruction, and in fact *should be* deconstructed as a way of re-imagining different possibilities.

numbers, international recognition" (Alfred, 2006: 323)—and expands the limits of the definition to encompass post-colonial political thought about the nature of self-determination. Agonistic Indigeneity can be an influential framework for understanding First Nations' claims to self-determination in a way that does not presuppose sovereignty in a territorial, Westphalian denotation.

In the context of Indigenous self-determination in Canada, antagonisms exist in the paramountcy of state sovereignty premised on a colonial history, which in turn is met by ardent Indigeneity calling for a place for non-colonial Aboriginal self-determination that might take a form previously not entertained by the Canadian government's decision-makers. The challenge in this case is that there is an entrenched hierarchy of norms that has privileged the Canadian state's notion of "natural" politics, in which, according to Mouffe, "the articulatory practices through which a certain order is established and the meaning of social institutions is fixed are 'hegemonic practices'" (2005: 18). The role of agonism, in such a context, is to transform political relationships to reflect a mutual recognition of the opponent's legitimacy (2005: 20).

The recognition of legitimacy is the most challenging aspect of framing agonistic Indigeneity. Visions and versions of self-government arrangements vary not only between First Nations and the Canadian state, but also among First Nations; there is little, if any, consensus among First Nations on what self-determination might look like. Despite the difficulties associated with working with such fragmented visions, the most crucial aspect is to maintain the level of mutual respect and recognition of legitimacy between the multiplicity of First Nations and the state; without an underlying acceptance of the contingency of beliefs and assumptions, the hegemonic order that

buttresses the status quo will not change. The role of agonistic Indigeneity is to support a legitimate forum to challenge the hegemonic political imagination, and to introduce radical counter-hegemonic discourse to the self-determination debate.

To paraphrase a motif from the Zapatistas, Indigenous peoples must make the road to self-determination by walking (Rebick, 2010: 64). That is to say, there is no unambiguous vision of the ideal form of self-determination, no predetermined, prepaved "road" to take; rather, the form that Indigenous self-determination will take place will be shaped by the very process of defending that right and articulating the limits of self-determination. Thus far in the self-government project, the road has been stripped to a dusty stretch of forks and potholes; there have been seemingly well-intentioned efforts to reconcile the antagonisms and make space in the Canadian fabric for meaningful self-government, but colonial standards and assumptions retain their grasp on the discourse, continually reproducing existing power structures. We have seen evidence of this in the examples of the self-government models that prioritize state sovereignty over First Nations' nationhood; trilateral federalism (sometimes referred to as treaty federalism in the case of First Nations with treaties) is a popular model that will likely be the one to form the template for current and future self-government arrangements, and while it grants First Nations long-overdue model for self-sufficiency, it remains a model that is subject to the ultimate sovereignty of the state. The message received in the general acceptance of this model is that the state is wary of acknowledging the colonial basis of its existence and engaging in a project of reconceptualising its foundational relationship with First Nations. There is a need for a

new road to self-determination, one that has agonistic beginnings of respectful but critical dialogue.

Whereas the road will be built by walking, and whereas we cannot reliably predict what shape the road will take, the process of walking could benefit from experimentation as well. The model of self-determination that best reflects the ethos of Indigeneity is not about severing relations with the state, but about creating new partnerships and a new vocabulary to discuss political possibilities. I am keen to conclude this thesis with a recommendation for the concept of radical imagination as a potential tool for creating the agonistic atmosphere that will be so important for First Nations in their challenge for self-determination.

5.4. Changing the basis of the Indigenous–state relationship

This thesis was not written to merely acknowledge that there is a dissonance in various interpretations of the meaning of sovereignty. It is a call for a change in the way we think about the possibilities of the political relationship between First Nations and the state. In the same vein, this thesis is not purporting to be policy directed. This thesis does not offer models for what self-government should look like. Instead, I have worked to uncover and deconstruct the assumptions that have for so long limited the scope of our collective engagement on the topic of self-determination and coexistence, and I have applied framework that can allow the discourse (and First Nations articulating their political needs, preferences, and visions) to be freer and more productive than it currently is. To be perfectly clear, this thesis is an encouragement (not just for decision-makers, but for all of Canadian civil society) to critically rethink the way we think about

sovereignty, hierarchy, and Indigenous–state relations. We are surrounded, for better or for worse, by a web of norms, values, and protocols that define the ways in which we relate to one another. This web, however, is artificial, constructed by a confluence of events and philosophies in colonial political relations. This thesis is thus an attempt to introduce a productive way of thinking politically that might broaden our understanding and respect for what we have previously considered to be unmanageable, irrational, unfeasible, and unsound policy. I maintain, in postmodern enthusiasm, that there are many truths, and that an agonistic approach to hearing truths that contradict an established compendium of sanctioned "Political Truths"[20] is the only way we can begin to reimagine the possibilities for multiple expressions of self-determination.

The critical interpretations of sovereignty and Indigenous–state relations written about in this thesis admittedly have a long process of maturation, and there are some potentially important political implications in following the research direction in which they are rooted. This thesis has been heavily influenced by concepts of Indigeneity that have their roots in Maori thought in Aotearoa New Zealand. Indigeneity as a political theory has been adapted from its Maori origins to the Canadian context,[21] and it should be treated as a valuable resource for articulating questions around the contingency of colonial hegemony and the possibilities of moving towards an Indigenous-centered— and not colonial— political relationship. Further research might study the ways in which Maori have conceptualized their self-determination and nationhood, and might ask, what can Canada learn from the Maori community that uses and maximizes Indigenous

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[20] Referring to those truths based on the imperial justifications of colonization and subsequent sovereignty referred to in Chapter 3: the interpretation of sovereignty as indivisible and paramount, and the implications on Indigenous–state relations flowing from the strict adherence to these principles.
[21] Most expertly argued by Maaka and Fleras (2005; 2006).

political thought? What can be done in Canada by stepping back from case-by-case self-government negotiations and rethinking the paradigm for concepts of sovereignty, self-government, and Indigenous–state relations? How can examples of Maori political thought be harnessed to provide a radically reimagined political future for First Nations in Canada?

5.4.1. Research shortcomings

I must acknowledge a paradox that I could not successfully reconcile in writing this thesis. By studying sovereignty as it applies to the self-government continuum and therefore how it limits Indigenous self-determination, the starting point of this thesis had to be one that took sovereignty (as understood in terms of Western political thought) to be the main factor of the political relationship between First Nations and the Canadian state. I adopted a lens of sovereignty, albeit a critical lens, to discuss the political nature of, and tensions within, Aboriginal–state relations, and as a corollary of adopting this lens, I have admitted to a degree to reproducing the very assumptions I have worked to expose and critique. By attributing the problems with the self-determination discourse to the state's role in imposing its manifestation of sovereignty, I deflected the attention from Indigenous political thought and automatically affirmed the dominance of the state. This could be taken to be a problematic aspect of my thesis. By focusing on the relationship between First Nations and the state, I may have unwittingly prioritized the state as the fulcrum of political activity. I certainly tried to consistently prioritize an Indigenous-centred critique of the limits of the relationship, but I pivoted the political successes of Indigenous peoples around the receptiveness of the state to their fight for self-government. This is a paradoxical issue for scholars of Aboriginal

politics; while we want to center the concerns of First Nations in order to prioritize their

arguments over the dominant state discourses, we enable the very centering of the state.

5.5. Final Thoughts

By looking at some of the roots of sovereignty through a critical lens, specifically at a

brief history of the theory of sovereignty, it becomes clear that sovereignty has become a

sine qua non of politics; it is an indispensable, non-negotiable concept that has become

the lowest common denominator in negotiating surrounding political realities. This is to

say that, as it stands, there can be no political arrangement involving a state and non-

state actor that does not reduce the possibilities to a variant of Western sovereignty

wherein the state is the supreme authority.

I approached this thesis with the intention of understanding the root causes of

the irreconcilability of the self-determination debate involving First Nations and the

Canadian state. The intention was to engage with these root causes and suggest that the

most important step in political negotiation of two poles is an acknowledgement of what

the problem really is. Political change is about imagining our relationships differently

(Haiven and Khasnabish, 2010: vii). The main objective of this thesis was to reflect on

what kind of society we want in Canada, and what kind of relationships we can build

between First Nations and the Canadian state from the existing intersections of political

vectors. Understanding the genealogy of sovereignty is important in explaining the roots

of these irreconcilable differences in the interpretation of sovereignty. I proposed an

agonistic approach to untangling the assumptions behind and expectations for

sovereignty. While there is no guarantee that an agonistic dialogue will liberate the

imaginary prowess of either First Nations or Canadian governments, it is an exciting and yet-unexplored method of discussion that might yield a creative exercise in imagination that can transform the relationship between First Nations and the Canadian state. It is certain that the status quo is at an impasse, leaving both parties dissatisfied; there is constant antagonism and disappointment emanating from both camps, and at this juncture, it would be a travesty to neglect the potential of agonistic Indigeneity as a path to living together differently.

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